

Research Paper

Staatendokumentation



Nigeria

On the situation of sexual minorities, with additional information from FFM Nigeria 2019, update of the analysis of sexual minorities of 30.9.2016

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DISCLAIMER regarding the ANALYSIS

The present analysis is a product of the Staatendokumentation (COI Department) of the Federal Office for Immigration and Asylum and was prepared in accordance with the standards and methodology of the Staatendokumentation adopted by the Advisory Board of the Staatendokumentation.

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The explanations contained in the present product represent analytical evaluations of information from carefully selected and publicly accessible sources, as well as known facts that have been incorporated into the existing product in an equally important and objective manner. The greatest possible scientific diligence, balance and objectivity have been applied in the evaluation. All information used is backed up by sources. In the interests of quality assurance, this product was subjected to peer review prior to publication.

However, the information contained in the product does not claim to be complete. In particular, no conclusions can be drawn from the present product for the legal assessment of a specific procedure in the field of asylum and aliens. Nor does the analysis represent any kind of general or individual decision guideline. In particular, the present document cannot be interpreted as a political statement by the Staatendokumentation, the Advisory Board of the Staatendokumentation or the Federal Office for Immigration and Asylum.

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The present product was prepared by the Staatendokumentation (COI Department) of the Federal Office for Immigration and Asylum in accordance with the Common EU Guidelines for Processing Country of Origin Information (April 2008). The Fact Finding Mission was conducted in accordance with the EU common guidelines on (Joint) Fact Finding Missions (November 2010) and the Austrian Guidelines for Fact Finding Missions (June 2010). In general, the work of the Staatendokumentation follows the methodology adopted by the Advisory Board of the Staatendokumentation (May 2016).

The content of this report is based on interviews and discussions that were conducted in Nigeria during the Fact Finding Mission from 29.9.-5.10.2019. In addition,

secondary sources have been used for better understanding and to establish a context, which are cited according to the methodology.

All information contained in this product has been researched and processed with the utmost care. The product does not claim to be exhaustive and no conclusions can be drawn from it for the legal assessment of a specific asylum procedure. In particular, the present document cannot be interpreted as a political statement by the Federal Office for Immigration and Asylum (BFA).

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Glossary

AGE	Advocate for Grassroots Empowerment
AGHI	Access to Good Health Initiative
AHRDI	Access to Health and Rights Development Initiative
CDSR	Coalition for the Defence of Sexual Rights in Nigeria
COI	Country of Origin Information
COLA	Coalition of Human Rights Lawyers
CSW	Commercial Sex Worker
FCT	Federal Capital Territory (Abuja)
FFM	Fact Finding Mission
ICARH	International Centre for Advocacy on Rights of Health
IDU	Injection Drug User
INCREASE	International Centre for Reproductive Sexual Rights
ISHRAI	Improved Sexual Health and Rights Advocacy Initiative
LEDAP	Legal Defence and Assistance Project
LGA	Local Government Area (district)
LGBTIQ	Lesbian Gay Bi-Sexual Transgender Intersex Queer, also: LGBT+ / or shorter LGBT /LGBTI in source citations
MARPS	Most At Risk Populations (for HIV/AIDS)
MSM	Men who have sex with men - male homo- and bisexuals
NACA	National Agency for the Control of AIDS
NHRC	National Human Rights Commission
PLWHA	People Living With HIV/AIDS
SACA	State Agency for the Control of HIV/AIDS
SMW	Sexual Minority Women
SSMPA	Same Sex Marriage (Prohibition) Act
STI	Sexually Transmitted Infections
TIERs	The Initiative for Equal Rights
WHER	Women's Health and Equality Initiative
WSW	Women who have sex with women - female homo- and bisexual

Executive Summary

This summary consists of conclusions made in the individual chapters below. Each conclusion is based on the information contained in the respective chapter.

In Nigeria, intolerance towards sexual minorities is not really historically rooted. On the one hand, intolerance is superficially rooted in colonial legislation and on the other hand - to a large extent - in the rise of religious fundamentalism over the past twenty years. It is primarily the public that is homophobic, while many people are more tolerant in everyday life. However, the size of the country and its ethnic diversity make it difficult to make generalized statements.

However, gender roles are strongly patriarchal in society and religion, including in the sexual sphere. Same-sex relationships are perceived as alien and as a threat to patriarchy. In addition, sexuality is not openly discussed, taboos emerge. This in turn promotes discrimination of and human rights violations against members of sexual minorities.

The population's approval of the SSMPA and other punitive measures against sexual minorities is still high, but at the same time it has fallen drastically within a few years. In addition, more and more people are willing to accept a homosexual family member. With tolerance increasing, the radicalism of homophobia is decreasing. However, the threshold concerning the use of violence is generally low in Nigeria. While negative media coverage on sexual minorities continues to predominate, a trend towards liberalisation is noticeable. Time and again there is objective reporting, even films on the subject have been released.

Generally, many Nigerians do not deal openly with their sexuality. The social environment leads members of sexual minorities to keep same-sex relationships a secret. Many members of sexual minorities are "regularly" married. On the one hand, this behaviour serves to conceal their sexual identity, on the other hand it serves to comply with social norms.

There are almost no charges and even fewer convictions under the laws specifically applicable to members of sexual minorities. The application of criminal law and Sharia law is difficult: a proof of same-sex sexual intercourse is required. There were also hardly any charges under the SSMPA. Usually, court cases under these laws peter out. However, sometimes other offences are used as a pretext in order to facilitate sentencing. Moreover, the existence of laws specifically applicable to sexual minorities creates the basis for persons to be harassed, threatened or blackmailed by state and non-state actors. Arrests, in turn, hardly ever lead to charges. They primarily serve as a means for blackmailing.

Networks of sexual minorities are primarily available and active in large cities. Previously, if there were organisations active in rural areas those had a health-

background. Nowadays, some urban networks are trying to extend their work to rural areas. Overall, the reach of the networks has improved in recent years. However, different languages and a lack of infrastructure are barriers. In most cases, members of sexual minorities know whom or which organisation they can contact if necessary. The official discourse (by the state) on sexual minorities remains characterized by homophobia. Nevertheless, there are points of contact between in state actors and sexual minorities. These are to be found primarily in the health sector and with the National Human Rights Commission (NHRC). Positive trends are visible concerning cooperation with the NHRC and recognition of human rights violations by the NHRC. The consequences for sexual minority organisations - feared when the SSMPA was introduced - have not materialised. NGOs continue to work, and networks have even been expanded and gained more visibility. The number of organisations has almost tripled. Only in rare and well documented cases government agents imposed measures against NGOs. Subventions continue to be paid and have even increased according to one source.

There is no systematic state persecution or active surveillance of members of sexual minorities. There are no arrest warrants for homosexuality under any of the laws concerned. Assaults by the police or arrests occur by chance or following tip-offs.

Due to stigma and taboo, homophobic incidents occur. Sometimes actual or alleged members of sexual minorities are deliberately lured into traps. Offences range from mockery to dismissal to physical assault. However, the number of incidents of physical assault has decreased. The vast majority of human rights violations against members of sexual minorities are committed by non-state actors. State protection is not to be expected in this respect.

Basically, female homosexuality is less tabooed than male homosexuality. WSW are less threatened and affected by arrests and human rights violations. However, their networks are weaker. Sometimes rape and other forms of violence occur. Some women are imprisoned by their families or forced to undergo "therapies".

Visibility in appearance and behaviour is a risk factor. This particularly affects "effeminate" men. Women who violate social norms can also be affected. If persons of the same sex are living together this does not pose a problem. In Nigeria, for reasons of cost it is not uncommon to share a flat or a hotel room.

According to the human rights report published by TIERS in 2019, more than half of the incidents affecting members of sexual minorities occurred in Lagos. However, concerning information TIERS is dependent on networks in federal states, which means that the number of unreported incidents is high if a network is missing or weak. Consequently, since this report is the only relevant source on human rights violations against members of sexual minorities, it is not possible to make a geographical risk

assessment. Traditionally, in northern Nigeria, there are some areas where transgender women are more likely to be accepted or where homosexuality among men is tacitly accepted.

In several large cities, members and communities of sexual minorities can live more freely.

There is also a greater degree of possible support there. The main advantage is anonymity that naturally decreases in rural areas - but also in the slums of large cities. Admittedly, there are also contrary opinions on that question, namely that society is more tolerant in certain rural areas than in cities. Most documented cases of human rights violations took place in cities. However, this may also have something to do with the fact that incidents are more likely to be reported and documented there.

The influence of age or marital status on the question of personal risk for members of sexual minorities remains unclear, whereas the socio-economic status of a person has a significant influence. On the one hand, with increasing financial power, education and networks available - i.e. with increasing privileges - the risk drops to virtually zero. The main risk group, on the other hand, are those persons whose everyday life is anchored in an environment with low social and economic status.

According to several sources, in case of social violence there is no state protection available for members of sexual minorities. There are no investigations. However, this phenomenon does not only affect members of sexual minorities; rather, the standard of the police force is generally low. However, victims belonging to this group of people are sometimes exposed to coercion or arrest. Another possibility is to appeal to the National Human Rights Commission. Local NGOs collect information on human rights violations against members of sexual minorities. An example of a comprehensive data collection of this kind is the annually updated human rights report by TIERS and cooperating NGOs.

Some NGOs operate hotlines or provide telephone numbers for emergencies. Most sources assume that people in police custody, for example, know who they can call for support. Support is primarily provided for the purpose of bailing out.

Some lawyers and associations provide legal assistance to members of sexual minorities. Among other things, this assistance is provided in the case of the so-called "bail out" from police custody. If a case goes to court, there is usually (legal) intervention by NGOs. Members of sexual minorities can free themselves from an immediate risk situation by moving to a (different) city or part of town. Community networks and NGOs give advice and support to people making that move. In addition, in some cities there are emergency shelters (safe house / shelter) available, organised by NGOs. Occasionally, threatened persons are "referred"

from one city to another.

To come out as a homosexual to the family might still prove to be risky and is possibly leading to rejection, confinement, violence or a forced "conversion" therapy. However, the rejection of homosexual family members is decreasing and at the same time their acceptance is increasing.

1. Sources and methodology

There are numerous sources on the situation of sexual minorities in Nigeria and their living environment. Some of them - especially from the international human rights field - focus their reports on national legislation and on incidents directed against members of sexual minorities. Other sources, e.g. academic studies and reports by local NGOs, attempt to illuminate the issue against a historical background and in a culturally differentiated perspective. Overall, most sources deal with men and, to a lesser extent, women (homo- and bisexual men and other MSM).

In order to verify information from various sources, and with the aim of gathering information on the impact of the Same Sex Marriage (Prohibition) Act (SSMPA), which came into force at the beginning of 2014, the Staatendokumentation (the BFA's COI Department) undertook a fact-finding mission to Abuja and Kaduna from 15 to 23 November 2015. From 29.9. to 5.10.2019 another FFM to Abuja was carried out with the aim of updating the information collected during the first FFM.

1.1. Source selection

For the FFM to Nigeria in 2015, the delegation's main focus was on the situation of MSM in Nigeria. For the 2019 FFM, female members of sexual minorities were also in focus. For the 2019 FFM, several local sexual minority NGOs were interviewed, including an organisation working specifically with WSW, a human rights lawyer and an international human rights organisation. In addition, several diplomatic sources dealing with the issue were interviewed in order to gain a broader overview of the impact of the SSMPA and the situation of homosexuals in general.

The background analysis based on academic sources for the 2016 analysis, based on FFM 2015, was largely retained in this analysis. Finally, recent secondary literature from local sources was also included to contribute to a better understanding.

Since it was assumed that official Nigerian authorities follow the publicly dominant discourse, which can certainly be described as homophobic from a human rights perspective, interviews with Nigerian authorities or state representatives were not conducted on this topic.

1.2. Interview locations

The delegation of the Staatendokumentation conducted its interviews in Abuja and Kaduna during the 2015 FFM, and exclusively in Abuja during the 2019 FFM. As the knowledge and experience of the interviewed sources extends beyond these

locations, the information obtained can to a certain extent be considered relevant to other parts of Nigeria.

1.3. Interviewees

During the 2015 FFM, the delegation met with representatives of two NGOs working in the field of MSM and provide services and support to the MSM communities in Abuja and Kaduna; with representatives of an international health and development research organisation active in both Abuja and Kaduna;¹ with two human rights lawyers² in Abuja; with four (Western) diplomats from different embassies in Abuja dealing with the issue; and with two lawyers in Abuja.

The FFM 2019 delegation met with representatives of two sexual minority groups and a WSW NGO providing services and support to the respective communities in Abuja and partly beyond; with a representative of an international organisation; with a journalist and activist; with a human rights lawyer in Abuja and with several (Western) diplomats from four different embassies in Abuja and dealing with the issue.

Some of the sources consulted also provided written documents containing further information. It should be noted that most of the sources of both delegations have a higher level of education and a relatively good socio-economic position.

1.4. Interview setting

In most of the interviews, the 2015 FFM delegation met individual interviewees. This was the case with four diplomatic sources dealing with the issue, two lawyers and two human rights lawyers. In an interview with an international organisation active in the field of health and development research, the delegation met two local representatives. A group discussion with six NGO representatives took place during a meeting with an NGO active in the field of MSM in Abuja. At the joint meeting with an NGO working in the field of MSM in Kaduna and an international organisation working in the field of health and development research in Kaduna, a group discussion took place with about 25 members of the local NGO and several local employees of the international organisation.

The group discussions allowed different opinions and personal experiences to be expressed; and information given by one member of the group could be supplemented by other members.

¹ This organisation operates clinics in Abuja, Kaduna and Lagos specifically for MSM patients.

² Each of these human rights lawyers represents a different legal aid NGO, each providing *pro bono* legal assistance to vulnerable groups (e.g. prostitutes, MSM, drug addicts).

Most of the 2019 FFM meetings were also held on a one-to-one basis. Only in two interviews with diplomatic sources were there two interviewees each.

1.5. Peer review, citation method

The peer review of this analysis was carried out according to the methodology of the Staatendokumentation.

Delegation sources were informed in advance that the information they provided would be published in a publicly available report. During the FFM, sources were told that they would receive the relevant transcripts of the meeting for correction and that their requests for changes would be considered. Some of the sources have not sent back their transcripts despite repeated requests. In accordance with the methodology of the Staatendokumentation, information from these sources can nevertheless be freely used if anonymised. As the issue of sexual minorities in Nigeria is still a sensitive one, most of the delegation's sources requested anonymity. Their request has been complied with, and therefore the names of the interviewees will not be disclosed.

1.6. Terminology

In this report, the culturally more neutral concept of 'sexual minorities' is used as an umbrella term - a concept often used in the literature and by local NGOs. When referring to specific sexual minorities, this report uses the terms 'men/women/persons who engage in same-sex relationships', as suggested by the researcher Thabo Msibi.³ For men the term MSM (men who have sex with men) is used, for women WSW (women who have sex with women). These terms refer less to sexual orientation and identity and more to sexual activity.⁴ The term MSM is often used in medical research and HIV programmes, and the delegation's interviewees during the 2015 FFM used it more often than, for example, 'gay'. An international organisation working in the field of health and development research stated that the term 'MSM' is more neutral and safer to use. MSM is a recognised term in the health care field, which simply includes all men who have sexual intercourse with other men. Consequently, it includes those men who identify themselves as homosexual or bisexual.⁵

In a study on prostitution [here: "*transactional sex*"] by MSM in urban areas of Nigeria, different terms used in the MSM communities of Lagos and Kano were listed. Some

3 The English wording is: "*men/women/individuals who engage in same-sex relationships*". See: MSIBI (2013), P.2

4 EPPRECHT, Marc (2012): Sexual minorities, human rights and public health strategies in Africa. In: African Affairs, 111(433), 2012, S.238

5 International organisation active in health and development research, Abuja (20.11.2015)

of these terms are reproduced here to illustrate the heterogeneity of terminology in Nigeria. The complete list can be found in the original.⁶

English terms:

- *Rice / top / king*: masculine or anally insertive sexual partner
- *Beans / bottom / queen*: feminine or anally receptive sexual partner
- *Tibi*: homosexual (shorthand for T-B or top-bottom, i.e. the insertive and receptive roles in anal sex)
- *Converted*: straight-identified - or formerly straight-identified - man who has sex with other men, especially for money
- *Market*: transactional sex. "To be on market" is to be looking to get paid for sex; "your market is selling" means that one is attracting sexual partners.

Yoruba term:

- *Sagba*: homosexual

Hausa terms:

- *Harka*: in-group term among MSM for 'gay sex', especially anal sex. In standard Hausa *harka* means 'business'.
- *Mai harka* (plural: *masu harka*): a man who has sex with other men
- *Mai ido*: someone who does *harka*, literally 'a person with eyes'. *Yana da ido* means 'he has sex with men', literally 'he has eyes'.
- *Dan luwadi / Dan homo*: homosexual; somewhat derogatory when used by non-MSM
- *Dan daudu / Dan hamsin*: a man who behaves like a woman, often presumed to do sex work; somewhat derogatory
- *Me'ka* (plural: *me'koki*): more preferred in-group term for effeminate man, and less well-known by general public
- *Hajiyar sama*: advertising partners in anal sex, i.e. 'top'.
- *Hajiyar kasa*: receptive partner in anal sex, i.e. 'bottom'.

⁶ Population Council Nigeria, Abuja (2012): The experiences of men engaged in transactional sex with other men in urban Nigeria. A size estimation and qualitative study, https://knowledgecommons.popcouncil.org/cgi/viewcontent.cgi?article=1016&context=departments_sbsr-hiv, accessed on 6.8.2020, p.19-22

2. Culture, society, politics

2.1. Cultural sensitivity with regard to sexual minorities in Africa

Statements on the subject of sexual minorities in Africa are a challenge. Of course, universal human rights and their validity for members of sexual minorities cannot be questioned. The dominant public discourse on sexual minorities in Africa is promoted by local and international media. However, this discourse is characterised by cultural prejudices and assumptions. One consequence of these assumptions is that at the level of international politics the discourse seems to be frozen in two monolithic positions. On the one hand, many African politicians condemn 'homosexuality' as alien to African cultures and traditions and present it as an import that 'the West' is trying to anchor in Africa through 'neo-imperialist' measures (such as the threat to take away development funds). From a Western perspective, such positions, in turn, strengthen the belief that Africa - which is in any case associated with traditionalism and backwardness - is essentially homophobic, and that it would be the duty of the international community to strongly promote the observance of human rights in Africa on behalf of sexual minorities.⁷

A certain degree of cultural sensitivity is needed to mediate between these two positions. First, same-sex sexuality is nothing new on the African continent. Sexual minorities were traditionally tolerated in many African countries if they did not come to the fore or to the public eye. What is new, however - and many Africans feel uncomfortable or even anxious about this - is the view that homosexuality is a sexual identity, and that people should publicly advocate same-sex relationships as part of an identity policy. This is in stark contrast to the previously prevailing culture of discretion and secrecy regarding sexuality.⁸

Secondly, homophobic rhetoric and anxiety are not rooted in African cultures and traditions. Rather, they must be understood in the context of the "*stresses and strains of globalisation*":⁹

"The most outspoken African homophobes thus have a lot in common with leaders elsewhere in the world seeking scapegoats for three decades of broad economic policy failure and the consequent social breakdown. In that sense, they have more in

7 BROQUA (6.2012), S.11, 19f; VAN KLINKEN, Adriaan S. (2013): Gay rights, the devil and the end times. Public religion and the enchantment of the homosexuality debate in Zambia. In: Religion, 2013, p.2; EPPRECHT, Marc (5.2013): Sources of anxiety about (and among) sexual minorities in Africa. In: International psychiatry, 10(2), 05.2013, https://www.cambridge.org/core/services/aop-cambridge-core/content/view/A394D7BA7674F3280F71A80ABBE50793/S1749367600003726a.pdf/sources_of_anxiety_ab_out_and_among_sexual_minorities_in_africa.pdf, accessed on 15.9.2020, p.35f

8 EPPRECHT (2012), S.226; VAN KLINKEN (2013), p. 6f, 15; BROQUA (6.2012), p.15; ALLMAN, Dan et al (4.2007): Challenges for the sexual health and social acceptance of men who have sex with men in Nigeria. In: Culture, Health and Sexuality, 9(2), 03-04.2007, p.165

9 EPPRECHT (5.2013), p.35

common with the far right in the USA than with traditional Africa".¹⁰

For the corresponding Nigerian context, see section 2.2.

Thirdly, differentiation is needed in the African context because the situation for sexual minorities is not the same in every African country. While more than half of African states criminalise same-sex sexuality, South Africa has one of the most progressive legislations in the world regarding sexual minorities. Progress has also been made in countries like Botswana, Mozambique and the Cape Verde Islands. As different complexities and contradictions prevail in each country, controversies about the rights of sexual minorities can arise and be conducted for different reasons and consequently take very different directions.¹¹

Fourthly, the dogmatic propagation of rights for sexual minorities by Western governments and human rights organisations is perceived as counterproductive by local sexual minority communities. As this both increases the fears of the local population and justifies the anti-colonial homophobic rhetoric, the situation for those affected is worsening. "[As long as] *the perception [in Africa is] that Africa is being "civilized" or talked down to accept same-sex sexuality, it will remain extremely difficult to make headway in changing attitudes towards same-sex relationships*".¹²

The idea of Western activists having to speak for the - otherwise unheard of - seems to be widespread. However, this overlooks the fact that in almost every African country there are local organisations related to sexual minorities. And these do not operate in isolation, they are capable of continental coordination themselves. Among other things, joint statements have been drawn up in the past, which were directed against Western interventions in Africa, because they harmed precisely those population groups that should have been defended by them.¹³

2.2. Historical development and cultural differentiation

Historically, intolerance towards sexual minorities in Nigeria has not always been as strong as it is today. According to a human rights lawyer, there have always been MSM in Nigeria. Nobody harassed them. Sodomy was a punishable offence, but these laws were ignored.¹⁴ In fact, the concept of homosexuality existed in many

10 EPPRECHT (5.2013), p.35

11 BROQUA (6.2012), p.11f; EPPRECHT (5.2013), p.35

12 VAN KLINKEN (2013), p.3. Van Klinken cites: TOGARASEI, Lovemore / CHITANDO, Ezra (2011): 'Beyond the Bible'. Critical reflections on the contributions of cultural and postcolonial studies on same-sex relationships in Africa. In: Journal of Gender and Religion in Africa, 17(2), 2011, p.122

13 BROQUA (6.2012), p.15, 21f; statements to this effect were made at the World Social Forum in Nairobi (2007) and in response to the threat by the United Kingdom to cut aid payments to African countries that violate the rights of sexual minorities (2011).

14 Human rights lawyer (16.11.2015)

locally used languages in Nigeria long before colonisation began. However, due to censorship applied much later, younger generations hardly know this vocabulary anymore. In various parts of Nigeria, members of sexual minorities were able to move around in less restricted spaces than is the case today until the 1990s and even up to the early 2000s. In northern Nigeria, 'transvestites' or men 'perceived as gay' lived undisturbed; there were also bars known as 'gay'. There is also a centuries-old tradition of transgender communities in Nigeria, where men dress openly like women and can assume the roles ascribed to women by society (e.g. cooking).¹⁵ Among the Hausa such men are called *dan daudu*.¹⁶ Among the Igbo people, on the other hand, there is the tradition of *adanma* or *adamma*. These are mainly male dancers who perform dressed as women.¹⁷

Information about MSM in Nigeria is more likely to be found in a historical context, information about WSW hardly ever. According to a scientific article, which, however, lacks a precise time frame, the Igbo (SW Nigeria) have or had a form of female husband. This is the eldest daughter in a family without a male heir, who performs all the functions of the male head of the family, including protection, earning a living and social functions, and who marries a woman. This serves to preserve male succession and does not allow any direct conclusions to be drawn about an actual female same-sex orientation. A "bed partner" is selected for the wife so that offspring can be produced.¹⁸ This practice was also mentioned by the WSW-affiliated organisation WHER in the context of the 2019 FFM. According to this it is socially accepted in some Igbo areas that two women live together and have a child.¹⁹

According to a study on homosexuality from 2000, the Nigerian environment appears to be extremely homophobic. However, a distinction must obviously be made between the dominant discourse and the actual reality of life: "*There is an outward expression of homophobia in the dominant culture, although among the general population, there is greater tolerance and understanding that the practices exist*".²⁰

For the current situation see sections 2.4. and 5.2.

15 INCREASE - International Centre for Reproductive Sexual Rights, Minna (9.2009): Report of the survey on sexual diversity and human rights in Nigeria, <http://www.sxpolitics.org/wp-content/uploads/2009/10/report-on-sexual-diversity-and-human-rights-in-nigeria-1.pdf>, accessed on 6.5.2020, p.1ff

16 INCREASE (9.2009), p.1ff; a source of the delegation confirmed that the *dan daudu* would continue to exist. International organisation active in health and development research, Abuja (20.11.2015)

17 The Guardian (9.6.2019): Adamma Masquerade and Cross-Dressing, <https://guardian.ng/life/adamma-masquerade-and-cross-dressing/>, accessed on 6.5.2020

18 NWOKO, Kenneth Chukwuemeka (3.2012): Female Husbands in Igbo Land: Southeast Nigeria; in: The Journal of Pan African Studies, vol.5, no.1, March 2012; <http://www.jpanafrican.org/docs/vol5no1/5.1Female.pdf>, accessed on 5.5.2020

19 Representative of the local NGO WHER (Women's Health and Equal Rights Initiative) active in the WSW sector (9/10.2019): Abuja, interview

20 AKEN'OVA, Dorothy (7.3.2000): Preliminary survey of homosexuality in Nigeria. Informal presentation at the Commission of the Status of Women, <http://web.archive.org/web/20051213022304/http://www.iwhc.org/docUploads/HomosexualityinNigeria.pdf>, accessed on 6.5.2020)

Finally, it must also be considered that there are countless different cultural and ethnic groups in Nigeria, each of which may have a different perspective on sexual minorities; or which have a different way of dealing with members of sexual minorities.²¹

The situation of sexual minorities is also influenced by external factors. For example, the rise of Christian and Islamic fundamentalists over the past two decades has restricted the range of movement of sexual minorities - among other things, through the introduction of Sharia law in the northern states (see 3.2.).²²

Conclusion

Intolerance towards sexual minorities has no real historical roots in Nigeria. It is superficially rooted in colonial legislation, and not least in the rise of religious fundamentalists over the past twenty years. Homophobia is primarily a public discourse, whereas many people are more tolerant in everyday life. However, it is difficult to make generalised statements, for instance, because of the size of the country and its ethnic diversity.

2.3. Social and cultural environment

The social and cultural environment in Nigeria is conservative and patriarchal. Boys and girls are encouraged to behave in different ways and are assigned opposite roles in society: "*While male children are socialized to see themselves as future heads of households, breadwinners, and owners [...] of their wives and children, female children are taught that a good woman must be an obedient, submissive, meek, and a humble housekeeper.*" From a traditional point of view,²³ women are not meant to have a career. There is a social construct according to which the man is the provider of the family.²⁴

These gender roles are also transferred to the sexual sphere. Men are encouraged to explore and live out their sexuality. This is considered an expression of their masculinity. They are brought up to be dominant, ruthless and in control. On the other hand, women are expected to meet men's needs and put aside their own desires. In this environment, heterosexuality is considered the only acceptable practice and ideology. Same-sex relationships are presented as unproductive and unnatural. They are perceived as a threat to patriarchy and must therefore be kept under control. Both

21 ALLMAN (4.2007), p.159

22 INCREASE (9.2009), p.1ff

23 IZUGBARA, Chimaroke Otutubikey (2.12.2004): Patriarchal ideology and discourses of sexuality in Nigeria, Africa Regional Sexuality Resource Centre, Lagos, https://www.researchgate.net/publication/241469042_Patriarchal_Ideology_and_Discourses_of_Sexuality_in_Nigeria, accessed on 15.9.2020, p.9

24 WRAPA - NGO Women's Rights Advancement and Protection Alternative (9/10.2019)

the Christian and Islamic religions play an important role in maintaining this hetero-patriarchal ideology.²⁵

Sexuality is generally not openly discussed in Nigeria, and most Nigerians feel uncomfortable talking about sex and sexuality. The local NGO INCREASE writes: "*Discourses about gender expressions, identities and sexual orientation are still built on rumours, myths and assumptions, mostly because of the taboo on open discussions*".²⁶ This in turn leads to restrictions and violations of the human rights of members of sexual minorities.²⁷ As a result, same-sex sexuality is often considered a 'curse'.²⁸ That the general socio-cultural environment in Nigeria is very intolerant towards sexual minorities was confirmed by the sources of the 2015 and 2019 FFMs.²⁹ However, there is a change, the younger generation is relatively more open to sexual minorities.³⁰ See 2.4.

In 2015, an international organisation working in the field of health and development research stated that the Nigerian population considered homosexuality a 'foreign thing': "*Foreigners are teaching people to become gay men*".³¹

Conclusion

Gender roles are - also in the sexual sphere - strongly patriarchal in society and religion. Same-sex relationships are perceived as a threat to patriarchy and at the same time as alien. Moreover, sexuality is not openly discussed, taboos are created. This in turn promotes discrimination and human rights violations of members of sexual minorities.

2.4. Public opinion and media representation today

Several sources of the 2015 FFM stated that homophobia and denial of reality are still deeply rooted in Nigeria.³² An international organisation active in health and development research noted that fear is always present in the sexual minority community. MSM feel insecure, and it takes a lot of time to gain their trust.³³ Even though there is a general view on the socio-cultural attitudes of Nigerians towards

25 IZUGBARA (2.12.2004), p.10-19, 28

26 INCREASE (9.2009), p.1

27 INCREASE (9.2009), p.1

28 ALLMAN (4.2007), p.159; similar information from: NGO active in the MSM sector, Kaduna (19.11.2015)

29 Diplomatic Source D (20.11.2015); Diplomatic Source A (18.11.2015); Diplomatic Source B (19.11.2015); Meeting Notes FFM Nigeria 2019 - quotable

30 Nigerian journalist and activist (9/10.2019); Representative of the local NGO C working in the field of sexual minorities (9/10.2019): Abuja, interview

31 International organisation active in health and development research, Abuja (20.11.2015)

32 NGO working in the field of MSM, Abuja (17.11.2015); Diplomatic Source B (19.11.2015); Diplomatic Source A (18.11.2015)

33 International organisation active in health and development research, Abuja (20.11.2015)

sexual minorities, a distinction must be made. The environment is not static, but subject to change.

The authors of the present analysis are only aware of one series of studies from the recent past, which periodically examines the background of social attitudes towards MSM and WSW at two-year intervals. This study was last prepared by Vivid Rain in cooperation with the NGO TIERS. Methodologically, a sample of 2,400 people was used, which was as representative as possible.³⁴ However, it must be remembered that questions regarding taboo topics can lead to wrong answers. According to this survey, 75% of Nigerians support the SSMPA, compared to 87% in 2015 and 92% in 2013.³⁵ A representative of a local NGO said: *"There were changes in the public awareness of the topic. There was a lot of noise after the law (SSMPA). Basically, LGBT issues are not discussed, they are taboo. However, polls show a shift: In 2015, 98% were in support of the SSMPA. Today it is only 70%. Publicly, people are more supportive of LGBT people and rights."*³⁶ Another interesting result of the survey is that in 2015 only 11% of all respondents would have accepted a homosexual family member, but this percentage has now (2019) risen to 30%.³⁷ In addition, in 2019, 28% of those questioned said that they knew a homosexual person personally (in their family, circle of friends, local area). In 2015, this proportion was 21%.³⁸ A local NGO told the 2019 FFM that hatred towards persons who come out has decreased - also in their own family. Not the extent, but the radicalism of homophobia, and consequently the number of physical assaults has decreased.³⁹

Hardly any change was noted, however, in the question of whether one would be born homosexual. In 2015 and 2019, only 5 per cent said yes to this.⁴⁰ At the same time, the study states that 75 % of Nigerians of legal age believe that a same-sex relationship should be subject to fourteen years' imprisonment.⁴¹ In summary, the study concludes that:

- Attitudes towards the rights of sexual minorities are gradually changing, including the acceptance of a homosexual family member.
- Although the majority of Nigerians have a negative attitude towards the rights of sexual minorities, the trend is towards greater acceptance and tolerance.

34 Vivid Rain/TIERS (6.2019), p.6

35 NOI Polls Limited/TIERS (5.2015), p.10; Vivid Rain/TIERS (6.2019), p. 14

36 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

37 Vivid Rain/TIERS (6.2019), p.13

38 Vivid Rain/TIERS (6.2019), p.17

39 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

40 Vivid Rain/TIERS (6.2019), p.11

41 Vivid Rain/TIERS (6.2019), p.15

- Members of sexual minorities are again less strongly perceived in families and communities.⁴²

An Organisation active in health and development research declared in 2015: *"Things are getting better but there is still room for improvement. Gradually people become aware of the MSM population. For those who are enlightened it is nothing new, especially for the young ones, who travel, it is not an issue anymore"*.⁴³

To the 2019 FFM, a local NGO described Nigerian society as hostile to sexual minorities but added that this attitude is slowly changing.⁴⁴ In general, social tolerance towards homosexuality is increasing according to a human rights lawyer interviewed by the 2019 FFM:

"Today people are gradually accepting the fact that LGBTIQ people are there and that they are going to stay. "But this is not with hugs and kisses.".... There has been some form of improvement concerning acceptance, it is not as bad anymore. Before the law [note: SSMPA], people didn't care, and they are going back to that point. Nigerians didn't care about what was behind the doors, we are going to be brought to that state again. "

However, the same source puts the general situation of Nigerian society into perspective shortly afterwards:

*"There is a high level of intolerance today. People are quick to react violently in the entire country, but not just in the case of homosexuality. You could be accused of anything. You could be lynched and punched to death. That is the mood in the country. Because of kidnappings there is a tense atmosphere in the country. People prefer to travel by air. If you can afford to fly you would do so, driving is dangerous."*⁴⁵

A human rights lawyer stated that the SSMPA had led to a significant increase in reporting on sexual minorities in Nigerian media.⁴⁶ According to two diplomatic sources dealing with the issue, there had been more coverage towards the end of 2013 and the beginning of 2014 than before and since. At that time, there was a peak in reporting, which was subsequently reduced to a normal level. The⁴⁷ vast majority of reports on sexual minorities in the Nigerian media are negative. Derogatory terms and headlines designed to encourage reading are used without regard to the negative consequences this has on the community in Nigeria. However, there has been a slight improvement in recent years:

Despite the prevalence of negative coverage and representation of LGBT+ people in Nigeria, the past couple of years have seen a slight increase in the positive coverage by Nigerian journalists in local and international press. Younger, more liberal

42 Vivid Rain/TIERs (6.2019), p. 20

43 International organisation active in health and development research, Abuja (20.11.2015)

44 Representative of the local NGO D working in the field of sexual minorities (9/10.2019): Abuja, interview

45 Human rights lawyer (9/10.2019): Abuja, interview

46 Representative of the Lawyers League for Minorities (16.11.2015)

47 Diplomatic Source B (19.11.2015); Diplomatic Source C (20.11.2015)

*journalists, as well as some platforms in Nigeria, have undertaken more responsible reporting around LGBT+ stories. 2019 saw articles in Guardian Nigeria, Premium Times, Zikoko, NewsWireNG and other local press establishments about issues around SOGIESC [note: sexual orientation, gender identity/expression and sex characteristics] that were not debasing, antagonistic or derogatory.*⁴⁸

There are therefore increasingly positive or factual media reports (such as BBC, The Punch, Guardian) about sexual minorities in Nigeria.⁴⁹ According to a local NGO, Human Rights Radio is a widely listened radio station in Abuja that also reports on sexual minority issues.⁵⁰ Another example of movement in the media sector is the announcement of the release of a film about two WSW. 76crimes reported:

"In Nigeria, the realities of LGBTIQ+ persons are not accurately reflected in the mainstream media especially in films. Their narratives are often sensationalized, promoting myths, stereotypes, and misconceptions about homosexuality.

However, this is changing. The community is taking it upon itself to change the narratives by telling more objective stories that accurately portray the lived experiences of queer people in Nigeria.

*Equality Hub, a Nigeria-based non-profit working to promote the rights of female sexual minorities in Nigeria, is preparing to release a new lesbian themed film titled "Ife".*⁵¹

This is not the first film about WSW; in 2019 "Under the Rainbow" was released, a documentary about a woman who openly declares herself to be a WSW.⁵²

Regarding media coverage, a Nigerian journalist and activist told the 2019 FFM that it was known that asylum seekers would buy newspaper articles to use in support of their asylum claim in Europe. Articles in online media are particularly affected, but the source also provided an example from the print edition of the Nigerian daily newspaper "The Nation".⁵³

Conclusion

Popular approval of the SSMPA and other punitive measures against sexual minorities is still high, but at the same time it has also fallen dramatically within a few years. More and more people are also willing to accept a homosexual family member. With increased tolerance, the radicalism of homophobia is decreasing. However, the threshold of violence in Nigeria is generally low.

48 Imiegha, Phidelia: The Role of Media Portrayal In Advancing Or Reducing Homophobia In Nigeria, in: TIERS - The Initiative for Equal Rights (12.2019): Human Rights Violations Report, <https://theinitiativeforequalrights.org/wp-content/uploads/2019/12/2019-Human-Rights-Violations-Reports-Based-on-SOGI.pdf>, accessed on 25.5.2020, p.54-55

49 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

50 Representative of the local NGO D working in the field of sexual minorities (9/10.2019)

51 76 Crimes (30.6.2020): Film Alert: Nigeria's first lesbian-themed film coming your way, <https://76crimes.com/2020/06/30/film-alert-nigerias-first-lesbian-themed-film-coming-your-way/>, accessed on 9.7.2020

52 76 crimes (30.6.2020)

53 Nigerian journalist and activist (9/10.2019)

While negative media coverage of sexual minorities continues to predominate, a trend towards liberalisation is also noticeable. Very often there is now objective reporting, and films on the subject have also been released.

2.5. Adaptation of members of sexual minorities to society

Usually people in same-sex relationships try to keep this fact secret from their own family and social environment. In this way they try to avoid stigmatisation, discrimination, exclusion and - in some cases – violence.⁵⁴ Sexual orientation tends to be lived out inside the home, not outside.⁵⁵ MSM and WSW have to live their lives quietly in order not to attract attention.⁵⁶ Some of them lead a double life. According to a diplomatic source dealing with the issue, many MSM are married and do not deal with their sexuality openly.⁵⁷ An international organisation working in health and development research stated that 50 % of all MSM are either married and/or practice bisexuality.⁵⁸ Two sources stated that the majority of MSM engage in bisexual relations. Some MSM even have four wives and are still active members of the MSM community.⁵⁹ According to two sources, some women married to MSM know about the sexual preferences of their spouse.⁶⁰

The reason for these marriages is the strong pressure to marry and have children in Nigerian and other African societies:⁶¹

"The transition from adolescence to social adulthood required a man to become (or be thought to become) a father, a woman to become a mother; the transition to respected elder required grandchildren. [...] In the absence of any semblance of welfare state, moreover, children continue to be valued (indeed, are imperative in many cases) for social security".⁶²

Consequently, most people in same-sex relationships in Nigeria also have sexual intercourse with the opposite sex or intend to marry a member of the opposite sex and have children.⁶³

54 ALLMAN (4.2007), p.159f; similar information from: International organisation active in health and development research, Abuja (20.11.2015); cf. Western Embassy A, Abuja (9/10.2019)

55 Western Embassy A (9/10.2019)

56 Nigerian journalist and activist (9/10.2019)

57 Diplomatic source A (18.11.2015)

58 International organisation active in health and development research, Abuja (20.11.2015)

59 NGO active in the field of MSM, Kaduna (19.11.2015); International organisation active in health and development research, local staff, Kaduna (19.11.2015)

60 Representative of the Lawyers League for Minorities (16/11/2015); International organisation active in health and development research, Abuja (20/11/2015)

61 EPPRECHT (5.2013), p.36; Representative of the Lawyers League for Minorities (16.11.2015)

62 EPPRECHT (5.2013), p.36

63 Population Council Nigeria, Abuja (2012), p.44; Representative of the Lawyers League for Minorities (16.11.2015); International organisation working in health and development research, Abuja (20.11.2015); International organisation working in health and development research, local staff, Kaduna (19.11.2015); NGO working in the field of MSM, Kaduna (19.11.2015)

According to a local NGO, interviewed by the 2019 FFM, MSM usually marry to hide their sexual orientation, whereas WSW would not.⁶⁴ According to the WSW NGO WHER, both MSM and WSW marry to keep their sexual orientation secret. To this end, some WSW would even marry MSM.⁶⁵

Conclusion

The social environment leads to secrecy of same-sex relationships. Many people do not deal with their sexuality openly. Many members of sexual minorities are married "normally". On the one hand, this serves as a cover-up, on the other hand it serves to conform to social norms.

64 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

65 Representative of the local NGO WHER active in the WSW sector (9/10.2019)

3. Legal framework and law enforcement

A Nigerian journalist and activist told the 2019 FFM that the provisions of the Criminal Code and Sharia law were still in force and that the SSMPA has not replaced these provisions. He did not know of any other laws concerning homosexuality, but the existing laws were interpreted individually by each police officer. There is no formal training in interpreting the laws, which leads to misinterpretations. Therefore these laws offer a wide scope to terrorise MSM and WSW.⁶⁶

3.1. Criminal Code Act

Sexual relations between men are punishable under the Penal Code, Chapter 21, Sections 214, 215 and 217 and can be punished with up to 14 years imprisonment:

214. *Any person who –*

(1) has carnal knowledge of any person against the order of nature; or

(2) has carnal knowledge of an animal; or

(3) permits a male person to have carnal knowledge of him or her against the order of nature;

is guilty of a felony, and is liable to imprisonment for fourteen years.

215. *Any person who attempts to commit any of the offences defined in the last preceding section is guilty of a felony, and is liable to imprisonment for seven years.*

The offender cannot be arrested without warrant.

217. *Any male person who, whether in public or private, commits any act of gross in-decency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony, and is liable to imprisonment for three years.*

*The offender cannot be arrested without warrant.*⁶⁷

Two scholars from the law faculty of Ebonyi State University refer to the case of *Magaji v. The Nigerian Army*. There the phrase "carnal knowledge" is described as an outdated legal euphemism for heterosexual intercourse. This was only later extended to homosexual intercourse. "The order of nature" is described as *carnal knowledge* between man and woman, whereas *carnal knowledge* between men is described as "against the order of nature".⁶⁸

It should be added that "carnal knowledge" is linked to the penetration of the vagina or anus, and it is therefore argued that same-sex intercourse is not covered by Chapter 214 of the Penal Code and is therefore not punishable. This does not apply

66 Nigerian journalist and activist (9/10.2019)

67 Nigeria: Laws of the Federation of Nigeria 1990. Criminal Code Act, Chapter 21, <http://www.nigeria-law.org/Criminal%20Code%20Act-PartIII-IV.htm#Chapter%2021>, accessed on 7.5.2020

68 NWAZUOKE, Anthony N./IGWE, Chinedu Akam/Faculty of Law, Ebonyi State University (2016): A Critical Review of Nigeria's Same Sex Marriage (Prohibition) Act. In: Journal of Law, Policy and Globalization, Vol. 45, 2016, <http://www.iiste.org/Journals/index.php/JLPG/article/view/28476>, accessed on 7.5.2020; cites *Magaji v. Nigerian Army* (2008) 34 NSCQR (pt 1) 108

to those states in which Sharia law has been introduced.⁶⁹ According to a human rights lawyer interviewed by the 2019 FFM, the Criminal Code nevertheless applies to any same-sex sexual relationship.⁷⁰

At this point it must be noted that neither sexual orientation as such nor gender identity is criminalised. A lawyer interviewed by the delegation in 2015 stated exactly that: "*What is criminalised, is the act of being caught during the act*".⁷¹

3.1.1. Application of the Criminal Code

There are very few documented cases of convictions. One such case has been documented in the national and international press. One actor was sentenced to three months in Abuja.⁷² According to a July 2019 article on the BBC and information provided by a Western embassy to the 2019 FFM, there are charges but no convictions under the Criminal Code.⁷³ According to another Western embassy, there are no convictions under the SSMPA, but rather under the Criminal Code or other laws (e.g. offence against public decency).⁷⁴ A human rights lawyer told the delegation in November 2015 that no one in Nigeria has ever been sentenced for 7 or 14 years in prison, as provided for in the Penal Code.⁷⁵ Another human rights lawyer explained that in the first 52 years after Nigeria's independence, there had been only three cases where persons were convicted on the basis of the above-mentioned passages of the Penal Code. However, as public attention increased in the context of the SSMPA debate, so did the number of charges. The *Solidarity Alliance* (see also 4.1.), which attracted a great deal of attention and provoked incidents, contributed to this. The human rights lawyer also confirmed, however, that no convictions were handed down.⁷⁶ A human rights lawyer mentioned to the 2019 FFM that there had been six cases of convictions under the criminal law in rural areas of the Federal Capital Territory. At first, the persons concerned could not buy their way out of police custody. Then confessions were extorted under threats and beatings. Human rights lawyers have appealed against the sentences, and

69 NWAZUOKE, Anthony N./IGWE, Chinedu Akam/Faculty of Law, Ebonyi State University (2016)

70 Human rights lawyer (9/10.2019)

71 Lawyer B, Abuja (16.11.2015)

72 See for instance: The Guardian (21.9.2012): Nigerian court jails actor for homosexuality under colonial law, <http://www.theguardian.com/world/2012/sep/21/nigeria-court-jails-actor-gay-offence>, accessed on 11.5.2020. However, when comparing the level of penalties prescribed by the law with that applied here, it is unclear whether any of the above-mentioned legal principles have actually been applied in this case.

73 BBC News (31.7.2017): Mass Nigerian arrests for 'homosexual acts' in Lagos State, <https://www.bbc.com/news/world-africa-40774930>, accessed on 8.5.2020; cf. Western Embassy A (9/10.2019)

74 Western Embassy B (9/10.2019)

75 Representative of the Lawyers League for Minorities (16.11.2015)

76 Human Rights Advocate (16.11.2015); the Human Rights Advocate considered that the *Solidarity Alliance* had been responsible for several spectacular cases involving civilian and police violence and indictments. As an example, he cited two *Solidarity Alliance*-organised *get-togethers* in Port Harcourt and Ibadan, which resulted in assaults and arrests.

sentences are pending (as of October 2019).⁷⁷

3.2. Sharia penal codes (Shari'a penal codes)

After the scope of the Sharia was extended between 1999 and 2002 in twelve northern Nigerian states (Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe, Zamfara) to include Sharia criminal law, same-sex relationships are now also punishable under Sharia law in addition to state codified law. The Sharia is only applied to Muslims; non-Muslims can voluntarily submit to a Sharia court. Each of the twelve states mentioned above has its own Sharia penal code, with minor differences. The state of Zamfara was the first to introduce a Sharia penal code, those of the other states are partly based on this version.⁷⁸

In Zamfara, same-sex relations are punishable under Chapter VIII of the *Shari'a Penal Code Law*, sections 130-131 (sodomy) and 134-135 (lesbianism):

Sodomy (Liwat)

130. Sodomy defined

Whoever has carnal intercourse against the order of nature with any man or woman is said to commit the offence of sodomy:

Provided that whoever is compelled by the use of force or threats or without his consent to commit the act of sodomy upon the person of another or be the subject of the act of sodomy, shall not be deemed to have committed the offence.

131. Punishment for Sodomy

Whoever commits the offence of sodomy shall be punished:

- with caning of one hundred lashes if unmarried, and shall also be liable to imprisonment for the term of one year; or if married with stoning to death (rajm).

EXPLANATION: Mere penetration is sufficient to constitute carnal intercourse necessary to the offence of sodomy.

[...]

Lesbianism (Sihag)

134. Lesbianism defined

*Whoever being a woman engages another woman in carnal intercourse through her ***ual [sic!] organ or by means of stimulation or ***ual [sic!] excitement of one another has committed the offence of Lesbianism.*

135. Punishment for Lesbianism

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

*EXPLANATION: The offence is committed by the unnatural fusion of the female ***ual [sic!] organs and or by the use of natural or artificial means to stimulate or*

⁷⁷ Human rights lawyer (9/10.2019); Note: No information on recent convictions based on criminal law was available via online research. There are isolated reports on AllAfrica about arrests or even charges, but not about actual convictions.

⁷⁸ Human Rights Watch (21.9.2004): "Political Shari'a"? Human rights and Islamic law in northern Nigeria, <http://www.unhcr.org/refworld/docid/415c02ae4.html>, accessed on 11.5.2020

attain ***ual [sic!] satisfaction or excitement.⁷⁹

The act of sodomy is defined in the same way in most other Sharia states. Only in Kaduna and Yobe are there some differences: "*Whoever has anal coitus with any man is said to commit the offence of sodomy.* The penalty for sodomy varies. In Gombe, Jigawa and Kano the same punishment applies as in Zamfara: death by stoning is reserved for married men, unmarried men are flogged. In Yobe, Kaduna, Katsina and Kebbi, the only punishment provided for is stoning to death (except in Yobe and Kaduna for sodomy with one's wife). In Bauchi, the Sharia penal law is less specific. There, sodomy is punishable by stoning "*or by any other means decided by the state.*" In Sokoto there is a special addition for the following case: "[I]f the act is committed by a minor on an adult person".⁸⁰ In this case the sentence for the adult offender is up to 100 lashes, for the minor offender imprisonment is ordered [here: "*correctional punishment*"].⁸¹

Lesbianism is defined in the other Sharia states in the same way as in Zamfara. Almost everywhere, the same sentence of up to 50 lashes and up to six months in prison applies. In the state of Bauchi, the sentence can be extended to up to five years. In Kano and Katsina, the punishment is stoning to death. In Kaduna the sentence is not specified, the decision is delegated to the (federal) state.⁸²

3.2.1. Application of the Sharia penal codes

No such convictions were handed out in 2019.⁸³

Cases are brought before Sharia courts, but it is extremely difficult to meet the requirements for evidence.⁸⁴ Two older cases of sentences to death by stoning are documented. On 23.9.2003 a Sharia court in Kobi, Bauchi State, found *Jibril Babaji* guilty of sodomy. The court imposed the death penalty by stoning. In March 2004, the Sharia High Court overturned the sentence and acquitted *Jibril Babaji*. In the other case, *Attahiru Umar* was found guilty of sodomy by a Sharia court in Kebbi on 12.9.2001 and sentenced to death by stoning. The man was accused of abusing a seven-year-old boy. *Attahiru Umar* appealed to the *Kebbi State Shari'a Court of*

79 Zamfara State of Nigeria. Shari'ah Penal Code Law, 2000, Chapter VIII, Hudud and hudud related offences, <http://www.f-law.net/law/threads/37487-Shari-ah-Penal-Code-Law-Zamfara-State-Of-Nigeria-January-2000>, accessed on 11.5.2020

80 OSTIEN, Philip (ed.) (2007): Sharia implementation in Northern Nigeria 1999-2006: A sourcebook, 2007 Vol. IV, Chapter 4, Part III, http://www.sharia-in-africa.net/media/publications/sharia-implementation-in-northern-nigeria/vol_4_4_chapter_4_part_III.pdf, accessed on 11.5.2020, S.69f

81 OSTIEN (2007), p.69f

82 OSTIEN (2007), p.53, 71

83 USDOS - U.S. Department of State (11.3.2020): Country Report on Human Rights Practices 2019 - Nigeria, <https://www.ecoi.net/en/document/2026341.html>, accessed on 11.5.2020

84 International organisation active in health and development research, Abuja (20.11.2015)

Appeal, the outcome is unknown.⁸⁵ A case of a conviction under Sharia law was reported from Bauchi in January 2014. A man had been sentenced to 20 lashes and 5,000 naira for a 'homosexual act'. The sentence was executed on 16.1.2014.⁸⁶ The US State Department reported in 2016-2020 that no persons had been sentenced to flogging for same-sex sexual activities.⁸⁷

3.3. The Same Sex Marriage (Prohibition) Act, 2013 (SSMPA)

On 7.1.2014, the then President Goodluck Jonathan signed the *Same Sex Marriage (Prohibition) Act* 2013, thus expanding the scope of criminalisation of same-sex relations in Nigeria.⁸⁸ The discussions and readings about a law prohibiting same-sex marriage had already started in the National Assembly in 2006.⁸⁹ However, none of the versions drafted before 2013 ever came into force.

The SSMPA states that⁹⁰

1 (1) *A marriage contract or civil union entered into between persons of same sex:*
(a) *Is prohibited in Nigeria: and*
(b) *Shall not be recognised as entitled to the benefits of a valid marriage.*

(2) *A marriage contract or civil union entered into between persons of same sex by virtue of a certificate issued by a foreign country is void in Nigeria, and any benefit accruing there-from by virtue of the certificate shall not be enforced by any court of law.*

(...)

4 (1) *The Registration of gay clubs, societies and organisations, their sustenance, processions and meetings is prohibited.*

(2) *The public show of same sex amorous relationships directly*

or indirectly is prohibited.

85 Human Rights Watch (21.9.2004), p.30f

86 BBC News (16.1.2014): Nigeria gays - 20 lashes for 'homosexual offences', <http://www.bbc.co.uk/news/world-africa-25765845>, accessed on 11.5.2020

87 U.S. Department of State (11.3.2020): Country Report on Human Rights Practices 2019 - Nigeria, <https://www.ecoi.net/en/document/2026341.html>, accessed on 11.5.2020; U.S. Department of State (13.3.2019): Country Report on Human Rights Practices 2018 - Nigeria, <https://www.ecoi.net/en/document/2004182.html>, accessed on 14.8.2020; U.S. Department of State (20.4.2018): Country Report on Human Rights Practices 2017 - Nigeria, <https://www.ecoi.net/en/document/1430111.html>, accessed on 14.8.2020; U.S. Department of State (3.3.2017): Country Report on Human Rights Practices 2016 - Nigeria, <https://www.ecoi.net/en/document/1394515.html>, accessed on 14.8.2020

88 Human Rights Watch (20.10.2016): "Tell Me Where I Can Be Safe" - The Impact of Nigeria's Same Sex Marriage (Prohibition) Act, <https://www.hrw.org/report/2016/10/20/tell-me-where-i-can-be-safe/impact-nigerias-same-sex-marriage-prohibition-act>, accessed on 11.5.2020

89 AKEN'OVA, Dorothy (2010): State-sponsored homophobia. Experiences from Nigeria. In: Perspectives: Political analysis and commentary from Africa, 4, 2010, https://www.boell.de/sites/default/files/assets/boell.de/images/download_de/Perspectives_4-10.pdf, accessed on 11.5.2020, S.16f

90 Nigeria: Same Sex Marriage (Prohibition) Act, 2013 (17.12.2013), <http://www.refworld.org/docid/52f4d9cc4.html>, accessed on 11.5.2020

- 5 (1) *A person who enters into a same sex marriage contract or civil union commits an offence and is liable on conviction to a term of 14 years imprisonment.*
- (2) *A person who registers, operates or participates in gay clubs, societies and organisations, or directly or indirectly makes show of same sex amorous relationships 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, abets or aids the solemnization of same sex marriage or civil union, or supports the registration, operation and sustenance of gay clubs, societies, organisations, processions or meetings in Nigeria commits an offence and is liable on conviction to a term of 10 years imprisonment.*

The SSMPA also provides more extensive definitions of some terms. For instance, "same sex marriage" is defined as: "[T]he coming together of persons of the same sex with the purpose of living together as husband and wife or for other purposes of same sexual relationship".⁹¹

"Civil union" in turn is broadly described as

"any arrangement between persons of the same sex to live together as sex partners, and includes such descriptions as:

- (a) adult independent relationships;*
- (b) caring partnerships;*
- (c) civil partnerships;*
- (d) civil solidarity pacts;*
- (e) domestic partnerships;*
- (f) reciprocal beneficiary relationships;*
- (g) registered partnerships;*
- (h) significant relationships; and stable unions".⁹²*

During the 2019 FFM, no source explicitly questioned the legal force of the SSMPA.⁹³ A local NGO stated that separate versions of the SSMPA have been adopted in 18 states.⁹⁴

3.3.1. Application of the SSMPA

A Western embassy made the following statement during the 2019 FFM:

"When the SSMPA was passed there was a lot of noise, but no case was convicted under this law. The LGBT issue was more in the media since the passing of the law. If there are any convictions, it is under different laws, e.g. 'public indecency'. To clarify, I would say that while the SSMPA is not used to prosecute, it is used as a significant threat and reason to conduct arbitrary arrests and detention."⁹⁵

91 Nigeria: Same Sex Marriage (Prohibition) Act, 2013 (17.12.2013)

92 Nigeria, Same Sex Marriage (Prohibition) Act, 2013 (17.12.2013)

93 Meeting Notes FFM Nigeria 2019 - quotable

94 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

95 Western Embassy B (9/10.2019)

A human rights lawyer interviewed in 2019 on the subject stated: "*The law was not meant to be applied or to prosecute, but to intimidate.*" According to the lawyer, since the introduction of the SSMPA, only one case has been charged under this law.⁹⁶ In August 2018, following a tip-off from the public, a police raid took place in a hotel where an alleged birthday party of MSM was held. 57 men were arrested and presented to the media by the police. The public display has led to social pressure, physical assault and/or job loss for many of those affected, in addition to an ongoing court case.⁹⁷ The case has not yet been decided [status Oct. 2019].⁹⁸ According to a local NGO, none of the 57 defendants are in custody.⁹⁹ According to lawyers in the case of 47 accused men accused of attending a party for MSM, there has not yet been a conviction under the SSMPA [as of February 2020].¹⁰⁰

According to a Nigerian journalist and activist, there are also cases that are being taken to court based on the SSMPA. However, these cases run in the sand, especially when lawyers are called in.¹⁰¹ According to ILGA, in 2018 the SSMPA was used to deny a WSW organisation the use of the name "*Lesbian Equality and Empowerment Initiatives*".¹⁰²

For the application of the SSMPA to organisations active on behalf of sexual minorities, see 4.3.

Regarding the violence, arrests and harassment by the police that can be linked to the SSMPA, see 5.1. and 5.3.

3.4. On the application of specific laws

In general, people are very rarely convicted of offences under Nigerian and Sharia criminal law. What is prohibited under these laws is actual same-sex sexual intercourse. Proof of such an offence, however, requires witnesses - and the provision of such witnesses is naturally difficult. Sources of both the 2015 and 2019 FFMs mentioned that the number of actual convictions under criminal law or Sharia

96 Human rights lawyer (9/10.2019)

97 76 Crimes (28.2.2020): Nigeria: 57 arrests in anti-gay raid led to widespread suffering, <https://76crimes.com/2020/02/28/nigeria-57-arrests-in-anti-gay-raid-led-to-widespread-suffering/>, accessed on 10.7.2020; Human rights lawyer (9/10.2019)

98 Human rights lawyer (9/10.2019)

99 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

100 Reuters (5.2.2020): Court case of 47 Nigerian men charged under homosexuality law delayed again, <https://www.reuters.com/article/us-nigeria-lgbt/court-case-of-47-nigerian-men-charged-under-homosexuality-law-delayed-again-idUSKBN1ZZ2HJ>, accessed 8.5.2020; this case is in all probability identical to the one mentioned above, despite slightly different figures.

101 Nigerian journalist and activist (9/10.2019)

102 International Lesbian, Gay, Bisexual, Trans and Intersex Association (3.2019): State-Sponsored Homophobia 2019, https://ilga.org/downloads/ILGA_State_Sponsored_Homophobia_2019.pdf, accessed on 25.6.2020, p.220

penal laws is very small compared to the number of arrests and charges.¹⁰³ There seems to be a tendency for hardly any convictions to occur under the SSMPA.¹⁰⁴

Inconsistencies and inaccuracies in the numbers of arrests and convictions under the laws which criminalise same-sex relations can be explained by the sheer size of the country and its federal structure. With about 214 million inhabitants, Nigeria is the most populous country in Africa.¹⁰⁵ Nigeria is also divided into 36 states and the Federal Capital Territory (FCT). In addition, the legal system is very complex.¹⁰⁶

However, the following conclusion can be drawn: Compared with the assumed size of the community of MSM, the number of people actually charged and sentenced under criminal law, Sharia penal law or SSMPA are a dwindling minority. In this respect, many interviewees confirmed that there is no systematic prosecution of homosexuals in Nigeria; see 5.1.

The fact that the Nigerian state does not systematically enforce laws that criminalise *same-sex* relations is also in line with Amnesty International's investigations into other countries in sub-Saharan Africa: "*Whereas numerous African countries criminalise same-sex behaviour, only some actively apply the law*".¹⁰⁷ But even if such laws are rarely applied, their very existence can be considered problematic: "*The existence of such laws creates a permissive environment for family members and others in the community to discriminate against, harass and intimidate LGBTI people*".¹⁰⁸ See 5.2.

On the other hand, there are indications that members of sexual minorities are arrested more often than the figures and cases mentioned in this section would suggest. Those who are arrested, however, are much more likely to face problems such as blackmail and coercion (see 5.3.) than to face charges in court.¹⁰⁹ A human rights lawyer told the delegation that after an arrest and the subsequent bail procedure, there would be no further investigation by the police: "*The case disappears*". The reason given by the source was lack of evidence.¹¹⁰ Another human rights lawyer made a similar statement: "*The case is finished when the police get*

103 The interviewees were each able to name cases of arrest, but hardly ever a case of conviction.

104 Protocols FFM Nigeria 2019 - quotable

105 CIA - Central Intelligence Agency (20.4.2020): The World Factbook - Nigeria, <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html>, accessed on 12.5.2020

106 GlobalLex, New York (3.2013): Update - Guide to Nigerian legal information, <http://www.nyulawglobal.org/globalex/Nigeria1.htm>, accessed on 12.5.2020

107 Amnesty International, London (25.6.2013): Making love a crime. Criminalization of same-sex conduct in Sub Saharan Africa, <https://www.amnesty.org/en/documents/afr01/001/2013/en/>, accessed on 12.5.2020, S.21

108 Amnesty International (25.6.2013), p.20

109 Western Embassy A (9/10.2019); NJA - Nigerian Journalist and Activist (9/10.2019); Western Embassy B (9/10.2019); Representative of local NGO C working in the field of sexual minorities (9/10.2019)

110 Representative of the Lawyers League for Minorities (16.11.2015)

their money".¹¹¹ As a result, hardly any case ever goes to court. And if that really happened, many NGOs would intervene.¹¹² The facts mentioned in this paragraph were also confirmed by sources of the 2019 FFM. See 5.3.

Conclusion

There are almost no charges under the laws specifically applicable to members of sexual minorities and even fewer convictions. Criminal law and Sharia law are difficult to apply, and proof of same-sex sexual intercourse is required. Under the SSMPA there were also hardly any charges. Usually, court cases under these laws run aground.

However, other offences are sometimes cited to facilitate conviction. Moreover, the existence of laws specifically applicable to sexual minorities creates a basis for persons to be harassed, threatened or blackmailed by state and non-state actors. Arrests, on the other hand, hardly ever lead to charges, but serve primarily as a means of blackmail.

111 Human rights lawyer (16.11.2015)

112 Representative of the Lawyers League for Minorities (16.11.2015)

4. Organisations active in the field of MSM

The 2015 FFM delegation gathered a lot of information regarding organisations and networks active in the field of MSM in Nigeria. MSM communities in Nigeria are well organised and their organisations provide support in various areas such as health, legal aid and human rights. However, the ability to maintain such services depends on a degree of discretion. There are good reasons why the networks do not present their activities to the public. In the Nigerian context, too much publicity for sexual minorities can lead to a setback - especially if Western partners are involved.

Because of this perception and the concerns it raises, this section provides only part of the information collected.

4.1. Coalitions of organisations for sexual minorities

There are sexual minority networks in most of Nigeria's larger cities. In 2013, ILGA stated that there are two major coalitions of the community in Nigeria: One in the health sector and one in human rights. These coalitions were called *Sexual Minorities Against HIV/AIDS in Nigeria* and *The Coalition for the Defence of Sexual Rights in Nigeria* (CDSR). The coalitions were made up of different actors: "[The] membership [is] spanning from small LGBTI community groups, to national governmental and non-governmental institution".¹¹³

One effect of the SSMPA on the community was to split it.¹¹⁴ A diplomatic source dealing with the issue stated: "*When they were supposed to be united, internal disputes erupted*".¹¹⁵ Another diplomatic source dealing with the issue stated that the question of resource sharing and the question of how to deal with the SSMPA - i.e. whether and how the SSMPA should be legally challenged - were the two main points of contention.¹¹⁶ According to a human rights lawyer, the CDSR was the only relevant coalition before the split. When the SSMPA was signed into law by the President, some younger members of the community wanted to strike back; they formed the *Solidarity Alliance*. The human rights lawyer stated: "*There are now more voices*

113 ILGA - International Lesbian, Gay, Bisexual, Trans and Intersex Association (no date): Nigeria - How structured and active is the LGBTI movement in your country?, <http://ilga.org/ilga/en/countries/NIGERIA/Movement>, accessed on 29.11.2013 (now only accessible on, for instance, <https://web.archive.org/web/20131019002836/http://ilga.org/ilga/en/countries/NIGERIA/Movement>, accessed on 29.6.2020)

114 Diplomatic source B (19.11.2015); Representative of the Lawyers League for Minorities (16.11.2015); Human rights lawyer (16.11.2015); Diplomatic source D (20.11.2015)

115 Diplomatic source D (20.11.2015)

116 Diplomatic source B (19.11.2015)

*speaking of MSM problems; but those voices are not in symphony.*¹¹⁷

Nevertheless, NGOs active in the field of MSM in Nigeria are still networking with each other. This is clearly illustrated in Section 7.2, for example.

4.2. Scope of organisations working for sexual minorities

During the 2015 FFM, an international health and development research organisation stated that MSM in Nigeria have a strong and well-connected community.¹¹⁸ According to several sources from the delegation, most of the organisations active in the field of MSM are based in a state capital.¹¹⁹ Networks are stronger and better organised there than in rural areas.¹²⁰ Some organisations run community centres. In this respect, Lagos, Abuja, Kano, Port Harcourt, Calabar and others were mentioned during the discussions. A 2014 study mentions that seven of the twenty LGAs in Lagos have community centres for MSM.¹²¹

A diplomatic source dealing with the issue expressed concern that the coverage in rural areas could be limited.¹²² A human rights lawyer stated that at LGA level, only those NGOs working in the field of MSM who come from the health sector are active.¹²³ A diplomatic source dealing with the issue also stated that the organisations active in the field of health care have a good reach. They are also active in rural areas. Sometimes, however, the lack of infrastructure could be a problem.¹²⁴ Local staff of an international organisation working in the field of health and development research also mentioned the necessary travel costs as a problem.¹²⁵ In addition, language barriers can be a problem in terms of the reach of organisations.¹²⁶ An NGO working in the MSM sector in Abuja stated that it trains its members in English, and they then pass on their knowledge to the local community in their mother tongue.¹²⁷

An international organisation active in health and development research confirmed that MSM networks also exist in rural areas. However, it is possible that they are not

117 Human rights lawyer (16.11.2015)

118 International organisation active in health and development research, Abuja (20.11.2015)

119 Diplomatic Source A (18.11.2015); Diplomatic Source B (19.11.2015)

120 Diplomatic source B (19.11.2015)

121 SEKONI, Adekemi O./AYOOLA, Oluyemisi O./ SOMEFUN, Esther O. (22.12.2014): Experiences of social oppression among men who have sex with men in a cosmopolitan city in Nigeria. In: HIV/AIDS - Research and Palliative Care, 2015:7, <https://www.dovepress.com/experiences-of-social-oppression-among-men-who-have-sex-with-men-in-a-peer-reviewed-article-HIV>, accessed on 30.6.2020, p.22; in this source the centres are described as follows: "*The centers are usually rented apartments run by local MSM-led nongovernmental organizations (...) The centers are not open to the general public. MSM go there to access services through referrals and by one-on-one introduction.*"

122 Diplomatic source B (19.11.2015)

123 Representative of the Lawyers League for Minorities (16.11.2015)

124 Diplomatic source A (18.11.2015)

125 International organisation active in health and development research, local staff, Kaduna (19.11.2015)

126 NGO active in the field of MSM, Abuja (17.11.2015); more than 500 indigenous languages are spoken in Nigeria. Data from: Central Intelligence Agency (CIA) (13.7.2016)

127 NGO active in the field of MSM, Abuja (17/11/2015)

connected to urban networks. Normally, these local networks work well, with communities organised around "*key opinion leaders*".¹²⁸

An NGO active in the MSM sector in Kaduna stated that it was active in 12 of the 23 LGAs in the state of Kaduna, where it has a reach down to *grass roots level*. Contact is being maintained with individual villages in these 12 LGAs.¹²⁹

A diplomatic source dealing with the issue stated that MSM are normally aware of the organisations working in the field of MSM.¹³⁰ A human rights lawyer, on the other hand, said that there were still MSM who had not yet become aware of existing networks. However, the reach of the networks has improved in recent years. Most MSM have access to these networks, to varying degrees.¹³¹ An NGO active in the field of MSM in Abuja, on the other hand, explained that even MSM who live in rural areas and do not have a telephone are aware of MSM networks. The organisation concerned has extended its reach. It cooperates with other networks and NGOs throughout Nigeria, has its own website and a page on Facebook. Conclusion: "*People are aware of this network*".¹³² The WSW NGO WHER told the 2019 FFM that it is extending its support to rural LGAs. At the same time, female members of sexual minorities are made aware that there are organisations they can turn to.¹³³

During the 2019 FFM, a Nigerian journalist and activist explained that referrals are given, i.e., assistance in changing locations, between e.g., Lagos, Abuja and Port Harcourt. There is a certain degree of cooperation between organisations in Nigeria. But this networking must be done very carefully, he says.¹³⁴ A Western embassy stated that in case of a problem, at least a friend of a friend would know who to turn to. Many NGOs have experience in working with the executive. TIERS, for example, also provides training for the police. In communities like Lagos, most MSM and WSW know who to turn to, but in rural areas, the relevant NGOs are less well known.¹³⁵ See 7.2.

Conclusion

Networks of sexual minorities are mainly present and active in large cities. Previously, there were active organisations in rural areas, if at all, from the health sector. Now some urban networks are trying to extend their work to rural areas. Overall, the networks' reach has improved in recent years. However, language

128 International organisation active in health and development research, Abuja (20.11.2015)

129 NGO active in the MSM sector, Kaduna (19.11.2015)

130 Diplomatic source A (18.11.2015)

131 Representative of the Lawyers League for Minorities (16.11.2015)

132 NGO active in the field of MSM, Abuja (17/11/2015)

133 Representative of the local NGO WHER active in the WSW sector (9/10.2019)

134 Nigerian journalist and activist (9/10.2019)

135 Western Embassy B (9/10.2019)

barriers and poor infrastructure are still obstacles. In most cases, members of sexual minorities know who or which organisation they can contact if they need to.

4.3. Impact of the SSMPA on organisations working for sexual minorities

4.3.1. Relations between organisations working for sexual minorities and the Nigerian Government

In general, the officially dominant discourse on same-sex relations in Nigeria is characterised by homophobia (see 2.3). This is underpinned, for instance, by a statement made by former president Olusegun Obasanjo in 2006: "*Homosexuality is unnatural, ungodly, and un-African*".¹³⁶ The signing into law of the SSMPA by former President *Goodluck Jonathan* in January 2014 was just another example of the official attitude of the Nigerian state. However, the Nigerian state is not homogeneous. It is made up of many different units and authorities and three different administrative levels (federal, state, LGA). It is therefore impossible to generalise the official position of the Nigerian state to the current situation. On the contrary, there seem to be considerable differences between official discourse and the actual attitude and work of state actors.

An international organisation active in health and development research confirmed to the delegation that there was a certain degree of cooperation with specific state actors.¹³⁷ A scientific source reported that the Nigerian Ministry of Health had already established guidelines in 1996 in which homosexuality was described without prejudiced terms and in which the respectful treatment of sexual minorities was recommended as a basic principle.¹³⁸

As mentioned in section 4.4.2, NGOs active in the MSM sector are still officially registered. An international organisation active in health and development research stated that the political will with regard to MSM has improved over time - independently of the SSMPA. Cooperation with specific state actors has not changed since the SSMPA came into force.¹³⁹ With regard to medical issues related to sexual minorities, the director of NACA issued a clear statement in early 2014 that the SSMPA would not prevent his agency from continuing to provide adequate HIV care to sexual minorities.¹⁴⁰

136 Quoted after: AKEN'OVA (2010), p.16

137 International organisation active in health and development research, Abuja (20.11.2015)

138 EPPRECHT, Marc/EGYA, Sule E. (7.2011): Teaching about homosexualities to Nigerian university students. A report from the field. In: Gender and Education, 23(4), 07.2011, S.369

139 International organisation active in health and development research, Abuja (20.11.2015)

140 NACA - National Agency for the Control of AIDS (27.10.2015): Statement on Same Sex Marriage (Prohibition) Act, See: Webarchive (6.4.2014): capture of <http://www.naca.gov.ng/article/statement-same-sex-marriage-prohibition-act-2013>,

This clarification was based on the logical conclusion that a high rate of HIV infection among MSM poses a risk to the entire Nigerian population, among other things because many MSM also have sexual intercourse with women.¹⁴¹ An NGO active in the field of MSM in Kaduna stated that local authorities or elders were willing to let the organisation work undisturbed, e.g. in the field of HIV testing and counselling. Sometimes there is even support.¹⁴² A doctor working for an international organisation working in the field of health and development research makes another argument: "*The doctor's Hippocratic Oath is a strong point. Nobody can challenge a physician to treat MSM as they are included in the oath*".¹⁴³

In the field of human rights, the interests of sexual minorities are represented at a higher level, mainly through organisations active in the medical field. At the grass-roots level, on the other hand, local NGOs active in the MSM sector are also involved.¹⁴⁴

Two local NGOs declared to the 2019 FFM that the National Human Rights Commission (NHRC) has become an ally. In the meantime, it is now possible to discuss sexual minority issues with the director and other NHRC representatives. They have agreed to collect and document human rights violations against members of sexual minorities.¹⁴⁵

A Western embassy confirmed that the NHRC, but also the Ministry of Health will take sexual minorities more seriously - from a health-focused perspective. Also, according to this source, the NHRC is more open to discussing human rights issues, including those concerning sexual minorities: "*The NHRC does not hush away the issue off the agenda. One would not say that the NHRC is more into the topic, but there is not a hard 'no'. There is more intrinsic motivation concerning the topic. They are accepting the fact that those people are there. However, the impact of the NHRC is very limited. ... They are willing to discuss openly*".¹⁴⁶

It also appears from the above-mentioned TIERS report that the NHRC has now recognised human rights violations based on sexual orientation.¹⁴⁷

Conclusion

<https://web.archive.org/web/20140406230728/http://www.naca.gov.ng/article/statement-same-sex-marriage-prohibition-act-2013>, accessed on 30.6.2020

141 International organisation active in health and development research, Abuja (20.11.2015); International organisation active in health and development research, local staff, Kaduna (19.11.2015)

142 NGO active in the MSM sector, Kaduna (19.11.2015)

143 International organisation active in health and development research, local staff, Kaduna (19.11.2015)

144 NGO active in the MSM sector, Kaduna (19.11.2015)

145 Representative of the local NGO C (9/10.2019); Representative of the local NGO D (9/10.2019)

146 Western Embassy B (9/10.2019)

147 TIERS - The Initiative for Equal Rights (12.2019)

The official state discourse on sexual minorities remains dominated by homophobia. Nevertheless, things are beginning to change in the state sector - above all in the health sector and at the National Human Rights Commission (NHRC). Positive trends are visible here in the area of cooperation with the NHRC and the recognition of human rights violations by this authority.

4.3.2. Impact of the SSMPA on the existence and activities of organisations working in the field of sexual minorities

A Western embassy told the 2019 FFM that at the time of the introduction of the SSMPA, the community was genuinely concerned about the potential impact of the law. Some NGOs thought they would have to go underground.¹⁴⁸ An international organisation active in health and development research described the situation in 2014 as follows: "*When the SSMPA was released, everyone went into hiding as nobody knew what the impact would be*".¹⁴⁹

However, not much has happened, so the organisations have resurfaced and continued their work.¹⁵⁰ Several sources of the 2015 FFM delegation had already indicated that little had changed for NGOs active in the field of MSM since the SSMPA came into force. Several sources stated then that no website had been closed down by the government¹⁵¹ and no NGO active in the field of sexual minorities had been dissolved.¹⁵² The organisations remained registered.¹⁵³ Funding for such organisations even increased.¹⁵⁴ A Western embassy told the 2019 FFM that organisations working for sexual minorities continued to be funded.¹⁵⁵ A diplomatic source dealing with the issue stated: "*There are many issues that are not enforced by the police - including sections of the new law*".¹⁵⁶

A Western embassy reported to the 2019 FFM that NGOs working for sexual

148 Western Embassy B (9/10.2019); this is also reflected in statements collected during the 2015 FFM and in literature, according to which MSM at that time were e.g., afraid to visit HIV clinics. See: NGO working in the field of MSM, Abuja (17.11.2015); SCHWARTZ (2.6.2015), p.5; NGO working in the field of MSM, Abuja (17.11.2015); representative of the Lawyers League for Minorities (16.11.2015); International organisation working in the field of health and development research, Abuja (20.11.2015)

149 International organisation active in health and development research, Abuja (20.11.2015)

150 Western Embassy B (9/10.2019)

151 Representative of the Lawyers League for Minorities (16.11.2015)

152 Diplomatic source B (19.11.2015); Representative of the Lawyers League for Minorities (16.11.2015); NGO working in the field of MSM, Abuja (17.11.2015)

153 Representative of the Lawyers League for Minorities (16/11/2015); NGO working in the field of MSM, Abuja (17/11/2015); International organisation working in the field of health and development research, Abuja (20/11/2015)

Some of the partner NGOs mentioned in a report by TIERS (TIERS - The Initiative for Equal Rights, Lagos (3.2016), p.4) and also the NGO TIERS operate their own websites. See: <https://icarh.org/>; <http://www.theinitiativeforequalrights.org/>

154 Representative of the Lawyers League for Minorities (16/11/2015); NGO working in the field of MSM, Abuja (17/11/2015)

155 Western Embassy A (9/10.2019)

156 Diplomatic source B (19.11.2015); NGO working in the field of MSM, Abuja (17.11.2015)

minorities do not use their agenda on their behalf. The work of such organisations does not seem to be criminalised. Often, they act as health organisations, for instance in the field of HIV/AIDS.¹⁵⁷

As early as 2015, a human rights lawyer pointed out that the networks that are active underground had become much stronger since 2014.¹⁵⁸ According to two sources, some of the larger organisations have even become more visible and stronger since the SSMPA came into force.¹⁵⁹ The decline - e.g. in the use of medical services - was only temporary.¹⁶⁰ Soon after the SSMPA came into force, activities organised by organisations in the field of sexual minorities were again taking place - for example, in the spring of 2015 in Asaba, Delta State – a course called Capacity Building Training for Emerging LGBT Leaders, which was publicly mentioned.¹⁶¹

In 2019, a local NGO stated that the community is now more open and public. *"More people are now more open and active since passing of the SSMPA. In that sense the SSMPA was a blessing. There have been significant changes since the law was passed. If the law would not have passed, we would not talk about that issue, it would be a taboo."* The NGO itself has expanded from an organisation for MSM in the health sector to an organisation that deals with a wider range of sexual minority issues. In 2014, there were only 13 sexual minority organisations, in October 2019 there were 37. The situation has forced more people to become active.¹⁶² Another local NGO stated in 2019 that the visibility of sexual minority NGOs had increased. At the same time, the fact that these organisations exist was accepted.¹⁶³

A human rights lawyer confirmed this statement:

*"There was a positive impact of the SSMPA on organisations for LGBT. More organisations were brought up, e.g. the Solidarity Alliance. Human rights organisations work on that issue. In that regard there was a positive impact on human rights awareness. Usually, organisations are left alone by the government, there is no harassment. However, there was the exception of Heartland Alliance in Benue where their office was raided after the SSMPA was passed. But they [the government] don't go after organisations. "We are 'protective human rights organisations'". Registration papers don't show that an organisation is involved in LGBT activities."*¹⁶⁴

157 Western Embassy B (9/10.2019)

158 Representative of the Lawyers League for Minorities (16.11.2015)

159 Representative of the Lawyers League for Minorities (16/11/2015); International organisation active in health and development research, Abuja (20/11/2015)

160 International organisation active in health and development research, Abuja (20.11.2015); representative of the local NGO C active in the field of sexual minorities (9/10.2019)

161 161 76 Crimes/DAEMON, Mike (24.5.2016): Training Nigeria's future LGBT leaders, <https://76crimes.com/2016/05/24/training-nigerias-future-lgbt-leaders/>, accessed on 30.6.2020

162 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

163 Representative of the local NGO D working in the field of sexual minorities (9/10.2019)

164 Human rights lawyer (9/10.2019)

A local NGO stated that since the adoption of the SSMPA, a larger number of people have become more open-minded and active. The issue of homosexuality is now less a taboo than before and is talked about. The organisation interviewed has evolved from an MSM organisation into an organisation covering a wider range of sexual minorities. There is cooperation with the media and Nollywood to reach a younger audience on this subject.¹⁶⁵ Another local NGO also stated that human rights work has become easier since the adoption of the SSMPA. In the medical field, however, there has been a shift from field work to office work due to arbitrary arrests in the field.¹⁶⁶

Conclusion

The consequences feared for sexual minority organisations when the SSMPA was introduced have not materialised. NGOs continue to work; their networks have even expanded and have become more visible. The number of organisations has almost tripled. Only in rare - documented - exceptional cases have government measures been taken against NGOs. Subsidies continue to be paid and, according to one source, have even increased.

165 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

166 Representative of the local NGO D working in the field of sexual minorities (9/10.2019)

5. Persecution, prosecution and human rights violations

MSM and WSW are persecuted by the state, the police, society and private individuals. On state persecution and surveillance, see 5.1.; on social violence and human rights violations by private individuals, see 5.2.; on arbitrary arrests, violence and blackmail by the police, see 5.3.

The exact number of incidents is difficult to establish.¹⁶⁷ An NGO active in the field of MSM in Abuja stated that there is a high level of underreporting.¹⁶⁸ In a report, the NGO TIERS gives figures for the period from December 2018 to November 2019:¹⁶⁹

Perpetrator			Type of the incident
State actor	71	68	Blackmail and coercion
Non-state actor	248	42	Physical assault
Both	11	33	Arbitrary arrest and unlawful detention
		263	Other
Total (incidents)	330	406	Total (Type of incident)¹⁷⁰
Persons involved	397		

According to TIERS, the cases were collected and compiled by human rights organisations in different states of Nigeria between December 2018 and November 2019. The total number of incidents was 330, the number of people involved 397, and the human rights department of TIERS subsequently reviewed all reported cases. The NGOs concerned are mentioned by name in the TIERS report.¹⁷¹

The report shows for 2019 an increase in blackmail, mob violence, targeted abuse, illegal arrests and searches and arbitrary detentions. According to the report, the police are taking targeted action against members of the lower social classes. Women are only affected to a small extent, there were 53 cases in the 2019 report. Here, the authors assume that this is due to a slow reduction of under-reporting among women, as only 21 cases involved WSW in 2018.¹⁷²

167 Diplomatic Source A (18.11.2015); Diplomatic Source B (19.11.2015)

168 NGO active in the field of MSM, Abuja (17/11/2015)

169 TIERS - The Initiative for Equal Rights (12.2019), p.7 and p.16-17

170 Note: The total number here differs from the total number of incidents, as one incident can include two or more types of incidents. See detailed list of incidents in TIERS - The Initiative for Equal Rights (12.2019), p.30- 42

171 TIERS - The Initiative for Equal Rights (12.2019), p.15

172 TIERS - The Initiative for Equal Rights (12.2019), p.15-16

5.1. State prosecution and surveillance of MSM and WSW

Overall, it can be said – and this applies to both the period before and after the SSMPA – that there is no systematic state persecution of sexual minorities. This has been confirmed by sources of the 2015 and 2019 FFMs.¹⁷³ For example, a Nigerian journalist and activist stated to the 2019 FFM that the police would take action based on information from the population and would not specifically look for MSM or WSW.¹⁷⁴ Representatives of a Western embassy confirmed this, stating that there was no systematic state persecution, and no persecution from one city to another.¹⁷⁵ According to another Western embassy, there was no active surveillance in an organised form.¹⁷⁶

According to several sources of the 2015 and 2019 FFMs, the police do not normally take action on sexual minorities on their own initiative.¹⁷⁷ A diplomatic source of the 2015 FFM dealing with the issue as well as a Western embassy and a Nigerian journalist and activist stated to the 2019 FFM that the police do not search for or persecute MSM / WSW. There is no coordinated database that would make this possible.¹⁷⁸ Several sources confirmed to the 2015 and 2019 FFMs that there are no warrants for arrest on the grounds of homosexuality - whether under the Criminal Code, Sharia or the SSMPA.¹⁷⁹

During the 2015 FFM, an international organisation working in the field of health and development research stated that police assaults occur at random and are not systematic,¹⁸⁰ which was confirmed by a Western embassy to the 2019 FFM,¹⁸¹ while another Western embassy stated to the 2019 FFM that there was no strategic plan from the police to deal with MSM and WSW: "*There is no big plan, no strategic effort*".¹⁸² A local NGO stated that there were no arrest warrants against MSM or WSW. Even in prominent cases, such as the Bobrisky case (see 5.3), there were no arrest warrants. Warrants presented (in asylum procedures) are highly likely to be forgeries.¹⁸³ Another local NGO confirmed the fact that arrest warrants for MSM or

173 Diplomatic source D (20.11.2015); NGO working in the field of MSM, Abuja (17.11.2015); Nigerian journalist and activist (9/10.2019); Western Embassy A (9/10.2019); Western Embassy B (9/10.2019)

174 Nigerian journalist and activist (9/10.2019)

175 Western Embassy A (9/10.2019)

176 Western Embassy B (9/10.2019)

177 Human rights lawyer (16.11.2015); Diplomatic source B (19.11.2015); Nigerian journalist and activist (9/10.2019); Western Embassy B (9/10.2019)

178 Diplomatic source B (19.11.2015); Nigerian journalist and activist (9/10.2019); Western Embassy B (9/10.2019)

179 Representative of the Lawyers League for Minorities (16/11/2015); Human rights lawyer (9/10/2019); Nigerian journalist and activist (9/10/2019)

180 International organisation active in health and development research, Abuja (20.11.2015)

181 Western Embassy A (9/10.2019)

182 Western Embassy B (9/10.2019)

183 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

WSW do not exist.¹⁸⁴

A diplomatic source dealing with the issue added during the FFM 2015 that the Sharia police, who are active in some northern states, could also act on its own initiative.¹⁸⁵

Conclusion

There is no systematic state persecution or active surveillance of persons belonging to sexual minorities. There are no arrest warrants for homosexuality under any of the laws concerned. Assaults or arrests by the police occur at random or following tip-offs.

5.2. Violence, intimidation, coercion and blackmail by private individuals

The stigma attached to sexual minorities in Nigeria also leads to violence.¹⁸⁶ The society is hostile towards MSM and WSW.¹⁸⁷ A representative of a local NGO put it this way to the 2019 FFM: "*Generally, society is hostile to gay persons*".¹⁸⁸ Consequently, homophobic incidents occur.¹⁸⁹ Generally, persecution emanates mainly from society.¹⁹⁰ The following types of human rights violations were mentioned by the sources to the delegations of the 2015 and 2019 FFMs: Threats; taunts; blackmail; coercion; physical assault (sometimes resulting in death); degrading treatment; dismissal.¹⁹¹ Sometimes members of sexual minorities are forced to vacate their homes, for example by landlords or young people.¹⁹²

When the SSMPA was hotly debated towards the end of 2013 and the beginning of 2014, sexual minorities were in the spotlight. As one diplomatic source dealing with the issue put it: "*The situation became more dangerous for both LGBTI persons and LGBTI activists. Violence was more likely to occur.*" There actually was an increase in violence and incidents against sexual minorities. The more sexual minorities and the SSMPA were being discussed, the more upset many people became.¹⁹³ Other diplomatic sources dealing with the issue stated that incidents - such as public

184 Representative of the local NGO D working in the field of sexual minorities (9/10.2019)

185 Diplomatic source B (19.11.2015)

186 Diplomatic source A (18.11.2015)

187 NGO active in the field of MSM, Abuja (17.11.2015); Diplomatic Source B (19.11.2015)

188 Representative of the local NGO D working in the field of sexual minorities (9/10.2019)

189 Diplomatic source B (19.11.2015)

190 Western Embassy A (9/10.2019)

191 For an overview of blackmail and coercion within sexual minority communities in sub-Saharan Africa, see: AZUAH Unoma (2011): Extortion and blackmail of Nigerian lesbians and bisexual women. In: IGLHRC - International Gay and Lesbian Human Rights Commission, New York (2011): Nowhere to turn. Blackmail and extortion of LGBT people in Sub-Saharan Africa, <http://www.iglhrc.org/sites/default/files/484-1.pdf>, accessed on 13.5.2020

192 Representative of the local NGO D working in the field of sexual minorities (9/10.2019)

193 Diplomatic source C (20.11.2015)

humiliation or beating of MSM - had always occurred. The MSM community did not give any indication to these sources that their situation had become more difficult due to the new law. The sources did not perceive an increase in violence nor an increase in targeted attacks.¹⁹⁴

Representatives of a Western embassy, however, told the 2019 FFM delegation that the situation for MSM and WSW had worsened after the adoption of the SSMPA. It became more difficult for these groups of people to live in peace or to come out.¹⁹⁵ According to a local NGO, the extent of homophobia has not changed, but the way people act has. Physical violence decreased, but coercion or blackmail increased.¹⁹⁶ The TIERS report cited at the beginning of chapter 5 confirms this statement.¹⁹⁷

The information gathered by the 2015 FFM delegation indicates that the majority of human rights violations against MSM and WSW are not committed by state actors but by others (e.g., family members, neighbours, youth gangs, etc.).¹⁹⁸ The interviews of the 2019 FFM do not suggest this to the same extent. For instance, a local NGO and a human rights lawyer state that the level of social violence has decreased.¹⁹⁹ In any case, the sources of the 2019 FFM agree that there is hardly any state protection in the case of social violence or that MSM and WSW can hardly turn to the police for help in such cases.²⁰⁰ (see 7.1)

The NGO TIERS describes as follows human rights violations by non-state actors: *"On the other hand, blackmail and extortion were the most common types of violations perpetrated by non-state actors. There were also many cases of entrapment: perpetrators pretending to be LGBTQI to lure and attack others."*²⁰¹

Conclusion

Due to stigma and taboo, homophobic incidents occur. Sometimes actual or alleged members of sexual minorities are deliberately lured into a trap. Offences range from taunts to dismissal to physical assault. However, the number of assaults has decreased. Most human rights violations against members of sexual minorities are committed by non-state actors. State protection is not to be expected in this respect.

194 Diplomatic source D (20.11.2015); Diplomatic source A (18.11.2015)

195 Western Embassy B (9/10.2019)

196 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

197 TIERS - The Initiative for Equal Rights (12.2019), p.15-16

198 Representative of the Lawyers League for Minorities (16.11.2015); NGO active in the field of MSM, Kaduna (19.11.2015)

199 Representative of the local NGO C working in the field of sexual minorities (9/10.2019); Human rights lawyer (9/10.2019)

200 Representative of local NGO C (9/10.2019); Western Embassy B (9/10.2019); Representative of local NGO WHER (9/10.2019); Nigerian journalist and activist (9/10.2019)

201 TIERS - The Initiative for Equal Rights (12.2019), p.18

5.3. Blackmail and arbitrary arrests by the police, police violence

As already described under 5.2., most assaults are committed by non-state actors. State actors are responsible for only about 22% of the human rights violations listed in the report of the NGO TIERs (71 of 330). Of these 71 incidents, 33 were identified as arbitrary arrests.²⁰² Although this number seems small in comparison to the size of the Nigerian population, many sources in the delegation of both the 2015 FFM²⁰³ and the 2019 FFM²⁰⁴ cited police extortion and arbitrary arrests as problems.

The report of the NGO TIERs explains the issue:

*"In the reporting period, invasion of privacy, arbitrary arrests and unlawful detention were the most common cases of rights violations perpetrated by state actors."*²⁰⁵

During the 2015 FFM, a lawyer explained that due to widespread corruption in Nigeria - it is in general very easy to be released from police custody - and this concerns not only MSM. While arrests are often reported, there are hardly any convictions.²⁰⁶ A local NGO told the 2019 FFM that the police would even make sure that an NGO was informed of the arrest - so that "bail" would be paid.²⁰⁷ In 2016, the chairman of the NGO TIERs stated that his organisation had spent 600,000 naira within one month to get people suspected of being MSM out of police custody on bail. He added: *"The saddest part is that none of these people were actually caught in the act; they were simply arrested based on speculation and suspicion."*

As mentioned before, MSM are not "caught in the act" by the police but are arrested on suspicion of being homosexual. According to a human rights lawyer, it is sufficient for example if a person "acts feminine".²⁰⁸ People are arrested on the pretext that they are breaking the law.²⁰⁹ The evidence is therefore mixed.²¹⁰ An NGO active in the field of MSM in Abuja reported that there are arrests, but that police investigations hardly ever take place.²¹¹ The chairman of the NGO TIERs explained the police approach:

*"The new trend for Nigerian policemen is to pick up young guys on the road because of the way they walk, take them to cyber cafes and force them to print out their private messages on social media to 'prove' that they're gay, and then lock them up".*²¹²

202 TIERs - The Initiative for Equal Rights (12.2019), p.. 7 and p.16-17

203 NGO working in the field of MSM, Kaduna (19.11.2015); Representative of the Lawyers League for Minorities (16.11.2015); NGO working in the field of MSM, Abuja (17.11.2015)

204 Western Embassy B (9/10.2019); Representative of the local NGO D working in the field of sexual minorities (9/10.2019)

205 TIERs - The Initiative for Equal Rights (12.2019), p.18

206 Lawyer A, Abuja (16.11.2015)

207 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

208 Representative of the Lawyers League for Minorities (16.11.2015)

209 NGO active in the field of MSM, Abuja (17/11/2015)

210 Diplomatic source B (19.11.2015)

211 NGO active in the field of MSM, Abuja (17/11/2015)

212 76 Crimes/ STEWART (5.1.2016)

This approach to mobile phone and social media control has been confirmed by sources of the 2019 FFM.²¹³ It also still happens that MSM and WSW are arbitrarily ensnared through social media. Chat websites and social media are used to track down MSM and WSW. This is done both by private individuals and by the police with the aim of extorting money.²¹⁴ According to a local NGO, police officers use fake accounts on dating apps to identify MSM and WSW.²¹⁵ Another local NGO confirms the police force people to show the contents of their mobile phones or other devices, as well as social media accounts, photos, chats, etc., with the aim of extorting money.²¹⁶

A human rights lawyer reported to the 2015 FFM that some arrests were made deliberately in order to intimidate and blackmail MSM, including with the use of force.²¹⁷ A human rights lawyer said in 2019: "*Arrests are not about prosecution. Arrests are there to extort money. (...) People are arrested, robbed of their money - called 'bail' - and set free again*".²¹⁸ The sums extorted vary: "*Police extortion has no fixed prices. It depends on the victim and on the situation. There are instances where persons paid 2,000 Naira as well as instances where one had to pay 200,000 Naira*".²¹⁹

Many sources stated to the 2015 and 2019 FFMs that the police are mostly trying to extort money and that their aim is not to exercise violence.²²⁰ This is not a phenomenon peculiar to sexual minorities: "*Any place where they [police] can exploit someone, they will do so*".²²¹ If you can pay, you will be released. Otherwise, violence may occur.²²²

The TIERs report states the following:

There are many cases where Police Officers arbitrarily arrest people perceived to be LGBTQI based on information illegally obtained from their phones, or based on circumstantial evidence. The Police Officers then demand huge sums of money from them to process their release. These violations often go unreported due to the lack

213 Representative of the local NGO C (9/10.2019); Representative of the local NGO WHER (9/10.2019); Human rights lawyer (9/10.2019)

214 Representative of the local NGO WHER active in the WSW sector (9/10.2019)

215 Representative of the local NGO C working in the field of sexual minorities (9/10/2019)

216 Representative of the local NGO D working in the field of sexual minorities (9/10.2019)

217 Representative of the Lawyers League for Minorities (16.11.2015)

218 Human rights lawyer (9/10.2019)

219 Representative of the local NGO D working in the field of sexual minorities (9/10.2019); the NGO WHER reported to the 2019 FFM that a "bail out" does not necessarily have to be paid for. Instead, a lawyer is sent to the police station, where he or she has to fill in some forms and the person (in the case of WHER referring to women) is released. Representative of the local NGO WHER working in the WSW sector (9/10.2019)

220 2015 FFM: Representative of the Lawyers League for Minorities (16/11/2015); Human rights lawyer (16/11/2015); NGO active in the field of MSM, Abuja (17/11/2015) / 2019 FFM: Representative of the local NGO C active in the field of sexual minorities (9/10.2019); Nigerian journalist and activist (9/10.2019); Western Embassy B (9/10.2019); Human rights lawyer (9/10.2019); Representative of the local NGO WHER working in the WSW sector (9/10.2019)

221 Nigerian journalist and activist (9/10.2019)

222 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

*of trust in law enforcement institutions.*²²³

A diplomatic source dealing with the issue stated that this approach would be much more likely to be another form of corruption rather than official targeted persecution of sexual minorities or even the implementation of the SSMPA.²²⁴ A Western embassy and a local NGO confirmed this approach to the 2019 FFM,²²⁵ whereas a human rights lawyer explained that arrests for the purpose of blackmail had occurred - almost daily - especially during the implementation of the SSMPA. Today the situation is different: *"Today you don't hear of such cases that much, there is less consistency. There is only a case there and then."*²²⁶

An NGO working in the field of MSM in Abuja declared to the 2015 FFM that MSM were even willing to pay the police, for fear that their arrest would be made public.²²⁷ An international organisation working in the field of health and development research stated that people wanted to be released from a police station as soon as possible. At all costs, the organisation said, they will try to avoid being sent to prison, as in this case anything is possible. Normally, however, MSM are released from custody on bail, the organisation said.²²⁸ Two sources of the 2015 FFM indicated that they suppose there are many cases of extortion overall.²²⁹

In order to give a better picture of the above-mentioned form of corruption, where the difference between bail, ransom and bribes is blurred, some examples given by sources from the two FFMs and the report from TIERS are reproduced here:²³⁰

- International organisation active in health and development research (2015 FFM): *"If the police see two or three men together, they maybe accost them, search through their phones and if they find videos of images containing gay pornography, arrest them."*²³¹
- A local NGO (2019 FFM): *"It is really because of financial motivation of the police officers. The police sometimes watch out for sexual minorities. In certain areas they target people, ask for phones, check WhatsApp or look for gay dating apps."*²³² The NGO added: *"It is about extortion, not about*

223 TIERS - The Initiative for Equal Rights (12.2019), p.18

224 Diplomatic source C (20.11.2015)

225 Western Embassy B (9/10.2019); Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

226 Human rights lawyer (9/10.2019)

227 NGO active in the field of MSM, Abuja (17/11/2015)

228 International organisation active in health and development research, Abuja (20.11.2015)

229 NGO active in the field of MSM, Abuja (17/11/2015); International organisation active in health and development research, Abuja (20/11/2015)

230 Further examples of incidents, which give an impression of their intensity and nature, are available in the following report: TIERS - The Initiative for Equal Rights (3.2016), p.25ff

231 International organisation active in health and development research, Abuja (20.11.2015)

232 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

violence. As long as you can pay, they let you go. If you can't pay, they might physically attack you. Every single time the police has arrested somebody, they will give that person the phone and say: 'Call a friend, a family member!' - just in order to gain money from them. ²³³

- The local NGO WHER active in the WSW sector told the 2019 FFM: *"There is catfishing. People penetrate websites of the community and try to extort money, e.g. you agree on meeting a woman you got to know on the internet, but when you meet it is a man trying to extort money. Even the police are now on social media to bait LGBTI people.* ²³⁴
- A human rights lawyer (2015 FFM) reported on *"bad cops"* in the state of Benue, who regularly blackmail MSM identified by them. ²³⁵
- An NGO active in the field of MSM in Abuja (2015 FFM) reported that police officers threatened an MSM with outing him to his employer. This would be a clear form of blackmail, given the fact that in this case a dismissal could occur. ²³⁶
- An NGO active in the field of MSM in Kaduna (2015 FFM) gave an example of an NGO member. This member was arrested in 2013 on charges of homosexuality under the Nigerian Criminal Code. He had to pay 250,000 naira to get out of this situation quickly. But even after he paid, police officers kept coming to him to blackmail him further. They had repeatedly promised to destroy his file. ²³⁷
- An NGO active in the field of MSM in Abuja (2015 FFM) reported a case where a person suspected of being MSM was arrested and held for two days. At the first court hearing, the person was released on bail. ²³⁸
- The following case study from 11.6.2019 is mentioned in the TIERS report, which has already been quoted several times:
"Paul was on his way to deliver some goods to his client when the police stopped him and searched his bag. After searching and not finding anything incriminating, they asked for his phone. Paul refused at first, but a police officer grabbed him by his pants and said they would take him to the station if he didn't co-operate. After he unlocked his phone, they went through it and discovered some nude photographs. They threatened to arrest him for being gay evidenced apparently by the nude images on his phone. The Police demanded a bribe of 50,000 Naira from him to be set free. He was detained

233 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

234 Representative of the local NGO WHER active in the WSW sector (9/10.2019)

235 Human rights lawyer (16.11.2015)

236 NGO active in the field of MSM, Abuja (17/11/2015)

237 NGO active in the MSM sector, Kaduna (19.11.2015); these experiences have motivated the person concerned to become involved in the MSM community.

238 NGO active in the field of MSM, Abuja (17/11/2015)

*in their van and driven from one point to another for over 5 hours. Paul finally paid them 20,000 Naira before he was let go*²³⁹

However, a diplomatic source of the 2015 FFM who is dealing with the issue stated that it was difficult to say whether every person who is arrested would be released. Some are also held in detention for a longer period.²⁴⁰ One human rights lawyer cited a case in Maiduguri, where several MSM remained detained for more than a month, and a case in Ibadan, where detention lasted three weeks.²⁴¹ A journalist and activist interviewed by the 2019 FFM reported that it can happen that one stays in detention for a very long time (several months) before the case goes to court.²⁴²

However, in March 2016 a prominent activist, Ifeanyi Orazulike, won a trial against the Nigerian police. He had complained that the police had violated his constitutional rights by arresting and detaining him in 2014. The Federal High Court ruled that the Nigerian police must apologise publicly - in two major newspapers - to Orazulike and pay him one million naira compensation.²⁴³ The ruling stated that Orazulike had been held in custody beyond the period specified in the constitution.²⁴⁴ Orazulike - then chairman of the NGO ICARH - had been arrested in October 2014 during a raid by the Nigerian police on the NGO's premises.²⁴⁵ A Nigerian journalist and activist stressed to the 2019 FFM that Orazulike belonged to the elite and that his case could not be transposed to other homosexuals.²⁴⁶

The case of a transgender woman, an artist working under the pseudonym "Bobrisky", was mentioned repeatedly to the 2019 FFM. According to a human rights lawyer, nobody is after her. According to the lawyer this shows an improvement in acceptance.²⁴⁷ According to a Nigerian journalist and activist, Bobrisky is an extreme example. She must be careful where she appears. Only a few MSM and WSW would publicly out their sexual orientation.²⁴⁸ A local NGO puts it this way: "*There were consistent attacks e.g., by the ministry of culture using the state machinery to harass and attack Bobrisky, a trans-woman. In 2019, there was an attack on her. But there was a backlash on the perpetrators, there was public support against those*

239 TIERS - The Initiative for Equal Rights (12.2019), p.19-20

240 Diplomatic source B (19.11.2015)

241 Human rights lawyer (16.11.2015)

242 Nigerian journalist and activist (9/10.2019)

243 76 Crimes/STEWART, Colin (30.3.2016): Cheers and praise for victory in Nigerian court, <https://76crimes.com/2016/03/30/cheers-and-praise-for-victory-in-nigerian-court/>, accessed on 27.5.2020

244 Daily Trust (29.3.2016): Illegal detention, Court awards N1m against police, <http://www.dailytrust.com.ng/news/general/illegal-detention-court-awards-n1m-against-police/140021.html>, accessed on 13.6.2016

245 76 Crimes / STEWART (30.3.2016)

246 Nigerian journalist and activist (9/10.2019)

247 Human rights lawyer (9/10.2019)

248 Nigerian journalist and activist (9/10.2019)

*attacks.*²⁴⁹ In addition to the above-mentioned topics, sources of the 2019 FGM also report about police violence. A Western embassy reports that members of sexual minorities feel that since the adoption of the SSMPA, they have become a group that receives special attention. They are being beaten by the police because of their sexual orientation and more severely than before the adoption of the SSMPA. In prison they are more likely to be subjected to violence and harassment.²⁵⁰ A local NGO indicates that there is support from society in cases of police violence (e.g., arrest and rape by police officers). People turn against the police. In case of arrest, if the person concerned does not make bail, violence may occur.²⁵¹ Another local NGO states that some police officers do not use violence, but others do. Sometimes the people concerned are beaten - even human rights defenders.²⁵² The organisation WHER, which is active in the WSW field, is not currently aware of any cases of police violence against WSW.²⁵³

Regarding persecution and monitoring of NGOs working in the field of sexual minorities, see section 4.3.2.

Conclusion

The most common human rights violations against members of sexual minorities by the security forces are arbitrary arrests, blackmail and violations of personal rights. But police violence also occurs. In most cases, arrests involve the extortion of money in the form of bail.

5.4. Persecution and violence against WSW

According to WHER, an NGO working for WSW, Nigeria is a male-dominated country. Women as members of a sexual minority experience two kinds of stigmatisation, on the one hand as women and on the other hand as WSW. Regarding offences against individuals, non-state actors are also a greater threat to WSW, while at the institutional level (in relation to the organisation WHER) it is state actors.²⁵⁴

It is true that it is difficult for both men and women to live as homosexuals in Nigeria, says WHER. But male homosexuality is more seriously tabooed. Women are more likely to be allowed to have sex with women.²⁵⁵ Moreover, MSM are often more

249 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

250 Western Embassy B (9/10.2019)

251 Representative of the local NGO C (9/10.2019)

252 Representative of the local NGO D (9/10.2019)

253 Representative of the Women's Health and Equal Rights Initiative (9/10.2019)

254 Representative of the local NGO WHER active in the WSW sector (9/10.2019)

255 Representative of the local NGO WHER active in the WSW sector (9/10.2019)

conspicuous in everyday life: *"They are the first in the line of fire."*²⁵⁶ Consequently, according to a local NGO, the police tend to arrest young men more often than women. Women have hardly ever been arrested according to the SSMPA. On the other hand, homosexual women are often raped - sometimes in rapes organised by their own family. Others are married quickly - and sometimes under duress. Still others are locked up or sent to *"conversion therapy"*. Overall, however, there are fewer incidents of rape against women. This depends very much on the individual case.²⁵⁷ The WSW NGO WHER, too, explains that if a woman reveals herself to be homosexual, violence and coercion can sometimes occur - for example in the family: *"They might say that the woman is possessed by a demon and send her to a religious facility for exorcism."*²⁵⁸

According to the already quoted report of TIERS, WSWs are excluded²⁵⁹ from the general women's rights movement and therefore more vulnerable than heterosexual women. State and non-state actors use the SSMPA to commit or justify offences against WSW. Female members of sexual minorities are exposed to every form of violence, both physical (murder, assault, rape, sexual assault) and psychological (threats, coercion, arbitrary deprivation of liberty). Sometimes there is blackmail, sexual harassment by family members and friends and rape with the aim of "healing". Some WSW are forced to marry. Discrimination occurs in the workplace.²⁶⁰

Conclusion

In general, female homosexuality is less taboo than male homosexuality. WSW are less threatened and less affected by arrests and human rights violations. However, their networks are weaker. Sometimes rape and other forms of violence occur. Some women are locked up by their families or forced to undergo "therapies".

256 Human rights lawyer (9/10.2019)

257 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

258 Representative of the local NGO WHER active in the WSW sector (9/10.2019)

259 This exclusion from the women's rights movement is probably rooted in homophobia, which is widespread in Nigeria among both men and women

260 TIERS - The Initiative for Equal Rights (12.2019), p.25

6. Risk factors and risk minimisation

6.1. Visibility: appearance and behaviour

Visibility in appearance and behaviour was mentioned as a risk factor by several sources of the 2015 FFM. MSM whose appearance is not consistent with normal gender roles are at increased risk of physical assault. This is the case, for example, for men who look feminine or who do not dress the way men are generally expected to dress.²⁶¹ A source of the 2019 FFM also presents this as problematic: "*Some people are targeted by community members living close by. They are identified by 'too feminine' or 'too masculine'. If you don't fit in they will tell you to leave or they rob you. Because the legal system is broken people take the law in their own hands.*"²⁶² A diplomatic source of the 2015 FFM and who is dealing with this issue stated that homosexual staff of the embassy concerned deliberately behaved differently in public because they did not want to come into conflict with the law.²⁶³ A Western embassy told the 2019 FFM that local staff do not talk or express their views about this issue.²⁶⁴ As mentioned to the 2015 FFM, an international health and development research organisation gives MSM who visit their clinic advice on dressing appropriately and not leaving the clinic in groups. In general, bisexual MSM are safer in this respect than homosexual MSM who are clearly "effeminate".²⁶⁵ A human rights lawyer interviewed by the 2019 FFM stated that when arrests are made, the police look to see if a man is dressed feminine.²⁶⁶ According to a local NGO, harassment and coercion by the police would mainly affect "*effeminate men*", MSM who behave like women.²⁶⁷

A diplomatic source of the 2015 FFM and who is dealing with the issue stated that people did not want to see any signs of affection or tenderness in public between MSM. The source added that heterosexual couples are not seen kissing on the street.²⁶⁸ On the other hand, according to an NGO active in the MSM field in Nigeria, it is quite common - even between men - to show friendship and affection in public by holding hands.²⁶⁹

The question of who a person lives with can also play a role. In Nigeria's big cities,

261 see for example: Population Council Nigeria (2012), p.39

It can be assumed, however, that the problem of visibility or conspicuousness also applies to persons who are not members of sexual minorities themselves.

262 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

263 Diplomatic source B (19.11.2015)

264 Western Embassy A (9/10.2019)

265 International organisation active in health and development research, Abuja (20.11.2015)

266 Human rights lawyer (9/10.2019)

267 Representative of the local NGO D working in the field of sexual minorities (9/10.2019)

268 Diplomatic source D (20.11.2015)

269 NGO active in the field of MSM, Abuja (17/11/2015)

however, it is common for men to share a flat for economic reasons.²⁷⁰ One lawyer stated that it is not even noticeable when men share a hotel room or bed.²⁷¹ Another lawyer explained that there are no arrests simply because men live together.²⁷² However, it could arouse suspicion if they never have female visitors. An NGO working in the MSM sector in Kaduna explained that in some cases it would cooperate with the lesbian community: "*in order that women are around*".²⁷³ The local WSW NGO WHER told the 2019 FFM that both WSW and MSM marry in order to keep their actual sexual orientation secret. There are also marriages between WSW and MSM [see also 2.3.].²⁷⁴

Conclusion

Visibility in appearance and behaviour is a risk factor. This particularly affects men who are feminine (appearance, clothing, behaviour), but women who violate social norms in this respect can also be affected. Living alone does not pose a problem; this is not uncommon in Nigeria - whether in a flat or hotel room - for reasons of cost.

6.2. Region and place of residence

6.2.1. Geographical differences

For members of sexual minorities, the region of the country in which they are located may also be relevant in terms of the risk of human rights violations. However, the information gathered by the 2015 and 2019 FFMs' delegations is insufficient and sometimes contradictory. It is therefore not possible to generalise. A report by TIERS of December 2019 lists all cases recorded by NGOs from Dec. 2018 to Nov. 2019, including the state where the incident took place. A total of 330 incidents were documented. A statistical analysis of the geographical distribution by state was not carried out. 166 of the 330 incidents recorded in the data set, i.e., just over a half, were reported in Lagos. This may be because the MSM and WSW scene is more active there, and hotlines are widely known. The number of unreported incidents in other parts of the country is likely to be high. As the usability of the data set regarding conclusions on geographical concentrations is difficult to assess, a precise manual estimation was not carried out.²⁷⁵

A local NGO confirmed to the 2019 FFM - in response to the figures in the TIERS

270 NGO working in the field of MSM, Abuja (17.11.2015); Diplomatic source B (19.11.2015); Lawyer A, Abuja (16.11.2015)

271 Lawyer B, Abuja (16.11.2015)

272 Lawyer A, Abuja (16.11.2015)

273 NGO active in the MSM sector, Kaduna (19.11.2015)

274 Representative of the local NGO WHER active in the WSW sector (9/10.2019)

275 TIERS - The Initiative for Equal Rights (12.2019), p.30-20

reports - that this is indeed the case: TIERs collects information from local networks and organisations. As a result, more reports and messages come from Lagos than, for example, from Nasarawa, because there is a denser network in Lagos but not even one organisation in Nasarawa. Therefore: "*A lot of things happen unreported.*"²⁷⁶

The statements from the sources of the 2019 FFM do not give a uniform picture. A local NGO told the 2019 FFM that the facts are different in different places. In the north there were places where it would be easy for transwomen, but not for transmen. In other parts of the north, the Dan Daudu (see 2.2) may disregard social norms. Things are harder in the south. In Edo State, on the other hand, a person who comes out to their family is likely to be taken to church or to a "*conversion therapy*" or will even be beaten. In Abuja, on the other hand, if a person comes out to a friend, this will have no consequences. Only the friendship may be broken off.²⁷⁷

A human rights lawyer noted that there are some communities far north where homosexuality is tacitly accepted. Coming out would be a problem, however. Before the implementation of Sharia law, homosexuality could be lived more openly, but this has changed.²⁷⁸

In conclusion, according to a local NGO, there is one Nigerian state that has decriminalised homosexuality - by passing its own penal code: Lagos. The SSMPA is not applied there either.²⁷⁹ However, the information on this is contradictory. A Western embassy confirmed this in a weakened form: "*Lagos re-wrote its constitution and removed aspects of the law to reduce the criminalization of LGBT.*"²⁸⁰ According to a human rights lawyer, a separate version of the SSMPA has been adopted in Lagos but has not yet been signed into law by the governor.²⁸¹

Conclusion

In the 2019 TIERs human rights report, Lagos accounted for more than half of the incidents. However, TIERs is dependent on networks in the states, which means that the number of unreported incidents is high wherever a network is absent or weak. As this report is the only relevant source on human rights violations against members of sexual minorities, a geographical risk assessment is not possible. In northern Nigeria there are some parts where transgender women or homosexuality among men are

276 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

277 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

278 Human rights lawyer (9/10.2019)

279 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

280 Western Embassy B (9/10.2019)

281 Human rights lawyer (9/10.2019)

more likely to be tacitly accepted.

6.2.2. Urban-rural gradient

There seem to be differences between urban and rural areas. During the 2019 FFM, a local NGO found that in Abuja, Lagos, Port Harcourt, Jos, Calabar and to some extent in Kaduna, the bigger cities, people are freer and larger sexual minority communities also exist. One exception is Benin City, where the probability of being attacked for a lifestyle that does not conform to social norms is higher.²⁸² A Western embassy declared in 2019 that there is a vibrant community of sexual minorities in Lagos.²⁸³ A human rights lawyer told the 2015 FFM that the police in Abuja are very careful when it comes to arrests.²⁸⁴ A diplomatic source dealing with the issue stated that there is more room for dialogue in Lagos, even if the overall situation remains a challenge. In rural areas, on the other hand - whether in northern or southern Nigeria - there is little room for dialogue.²⁸⁵ Another diplomatic source dealing with the issue explained that some villages are more conservative than Abuja, for example.²⁸⁶ Another diplomatic source dealing with the issue stated that the level of support that an MSM can receive also depends on the area. In rural areas there are greater difficulties in this respect. Sometimes a lack of infrastructure is also an obstacle there. Overall, little information on the subject was coming from rural areas.²⁸⁷

WHER, a local NGO active in the WSW sector, told the 2019 FFM that life is more difficult in rural areas or slums. It is easier for the neighbours to see what is going on. Visibility is higher. Life in the city is usually easier and offers more anonymity.²⁸⁸ A Nigerian journalist and activist confirmed this view to the 2019 FFM: "*Generally, a gay person is an endangered species. The situation in cities like Lagos and Abuja is different. It is easier for people in these places. It is much worse in rural areas, because of the lack of anonymity.*"²⁸⁹ A Western message also confirms: "*In urban areas there is more room to navigate.*"²⁹⁰

During the 2015 FFM, an NGO active in the MSM sector in Abuja assessed the situation differently. There was a risk of attacks in both urban and rural areas. However, tolerance is greater in rural communities. Many ethnic groups have their

282 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

283 Western Embassy B (9/10.2019)

284 Representative of the Lawyers League for Minorities (16.11.2015)

285 Diplomatic source C (20.11.2015)

286 Diplomatic source B (19.11.2015)

287 Diplomatic source A (18.11.2015)

288 Representative of the local NGO WHER active in the WSW sector (9/10.2019)

289 Nigerian journalist and activist (9/10.2019)

290 Western Embassy D (9/10.2019)

own specific vocabulary to describe same sex relationships (see 1.6 and 2.2).²⁹¹ A human rights lawyer estimated the risk of assault in the city as slightly higher, as rural communities are more tolerant of same-sex relationships. The human rights lawyer explained that this was because people know each other better, and that no one would take a family member of their own to court. There were hardly any known cases of violence against MSM in rural areas. Accordingly, the human rights lawyer assumed that an MSM who encountered a problem in a city could retreat to his rural home area and would have no problems there.²⁹² An NGO active in the field of MSM in Kaduna has partially confirmed this view. It was mentioned that an MSM who was outed in a city could retreat to his village.²⁹³

A human rights lawyer explained that the urban-rural differences would be reflected in the mentality - a result of culture and history. This was true in specific areas, for example in the Southeast, where historical relationships between women are well known, or in parts of the North, where men are allowed to behave in a feminine manner. People there are not interested in it at all. But this could change in the future due to the influence of the media.²⁹⁴

According to an NGO active in the MSM sector in Kaduna, however, MSM are also beaten or arrested in rural areas.²⁹⁵ A MSM NGO in Abuja made a similar observation, stating that mob violence could also occur in rural areas and smaller villages.²⁹⁶ In general, according to a local NGO, it should be borne in mind that there are also differences within cities, as a result of socio-economic differences. For example, it is possible for members of sexual minorities in the more prosperous part of Lagos (Island) to live without fear. In the slums and suburbs of the other part of the city (Mainland), however, this is different.²⁹⁷

A human rights lawyer said that there was generally more news of human rights violations against MSM from the North and Lagos. In the case of Lagos, the reason could be the size of the population.²⁹⁸ Another human rights lawyer stressed that human rights violations were more likely to occur in urban areas.²⁹⁹

Conclusion

291 NGO active in the field of MSM, Abuja (17/11/2015)

292 Human rights lawyer (16.11.2015)

293 NGO active in the field of MSM, Kaduna (19.11.2015); a member of the organisation said that he had fallen into a "set-up". His own family took him and his partner to the police. As a result, he had to leave his hometown for his village. After several years, when the situation had calmed down, he returned to the city.

294 Representative of the Lawyers League for Minorities (16.11.2015)

295 NGO active in the MSM sector, Kaduna (19.11.2015)

296 NGO active in the field of MSM, Abuja (17/11/2015)

297 Representative of the local NGO D working in the field of sexual minorities (9/10.2019)

298 Representative of the Lawyers League for Minorities (16.11.2015)

299 Human rights lawyer (16.11.2015)

In several large cities, members and communities of sexual minorities can live more freely. There is also a greater degree of possible support there. The main advantage is anonymity. Naturally, anonymity decreases in rural areas - but also in the slums of big cities. But there are also conflicting views, namely that society is more tolerant in certain rural areas than in the city. Most documented cases of human rights violations concern cities. However, this may also have something to do with the fact that incidents are more likely to be documented there.

6.3. Age and socio-economic status

A person's age can play an important role in the acceptance and self-acceptance of MSM. This has been confirmed by a human rights lawyer. As MSM grow older, the pressure on them to marry and settle down increases. If an MSM is still unmarried at around 30 years of age, he or she would be breaking cultural norms; his or her situation would become more difficult, and the psychological pressure would increase.³⁰⁰ An NGO working in the field of MSM, however, stated that especially the younger and poorer MSM have many concerns.³⁰¹ One reason why younger MSM are at higher risk was also mentioned: "*They express themselves more feminine compared to older MSM who can control how to express themselves*".³⁰²

On the other hand, a 2014 study on MSM in Lagos shows no differences between married and unmarried MSM in terms of risk of physical or sexual violence.³⁰³

The socio-economic status of a person is a significant criterion for the risk assessment of sexual minorities. This was confirmed to the delegation by several sources. An international organisation active in health and development research stated that few MSM would feel comfortable if their situation was publicly known. However, if there are MSM who do not have a problem with this, it is usually the rich and better educated ones.³⁰⁴ An NGO active in the field of MSM stated this to the 2015 FFM: "*Wealthy MSM don't have a lot to worry about*".³⁰⁵ A human rights lawyer added that these MSM have the means to 'buy themselves free'.³⁰⁶

For poorer or unemployed MSM, however, the situation is more difficult.³⁰⁷ This was also confirmed by a local NGO to the 2019 FFM. Social violence affects to a greater

300 Representative of the Lawyers League for Minorities (16.11.2015)

301 NGO active in the field of MSM, Abuja (17/11/2015); A study on MSM in Lagos comes to similar conclusions. See: SEKONI/AYOOLA/SOMEFUN (22.12.2014), p.24

302 NGO active in the field of MSM, Abuja (17/11/2015)

303 SEKONI/AYOOLA/SOMEFUN (22.12.2014), p.24

304 International organisation active in health and development research, Abuja (20.11.2015)

305 NGO active in the field of MSM, Abuja (17/11/2015)

306 Human rights lawyer (16.11.2015)

307 NGO active in the field of MSM, Abuja (17/11/2015); The increased vulnerability of poorer members of sexual minorities is also mentioned in the following report: IGLHRC - International Gay and Lesbian Human Rights Commission (2011), p.13; It is also mentioned in: Amnesty International (25.6.2013), p.62

extent people in an environment with low social or economic status and low education. Violence can also occur because the issue is taboo. In such an environment the following applies: *"If they see evil, they either want to burn it or chase it away"*³⁰⁸

According to an ethnographic study on male prostitutes in urban areas in Nigeria, their socio-economic status is also relevant for the risk of arrest and prosecution: *"The likelihood that one will face legal ramifications for same-sex behaviour is related to socio-economic class. Wealthier men are better able to avoid detection, arrest, and prosecution"*.³⁰⁹ A local NGO summed the situation up as follows to the 2019 FFM: *"As a homosexual, if you are rich, you are above the law. If you are middle class, you can get along. But if you are poor, you are subject to stigmatisation and violence."*³¹⁰

Regarding the open handling of homosexual tendencies (coming-out / outing), a human rights lawyer describes the situation as follows to the 2019 FFM:

*"Your position and standing in the society affects your coming out to the public. The privileged can afford to do that. A privileged person is someone with a linkage to power. Somebody who has money, political power, money to buy the police or connections to people who are economically empowered. Upper and middle class persons coming out can live. Then you are well educated, you have more money, you have better connections, and consequently you are better able to defend yourself against extortion or prosecution. There was an example where a university lecturer was caught in the car with his lover. He was accused but prosecution was stopped. All has to do with money or the right connections."*³¹¹

A local NGO also confirmed this view during the 2019 FFM:

*The upper-middle class, higher social classes are not affected. Most of them even have friends in the police force! In addition, there is no homophobia in the upper-middle class. Those people are completely isolated from the harassment and homophobia. If you belong to a lower social class, it is more difficult to live as an LGBT person. Your level of exposure is completely different if you have to use public transport or if you live in crowded parts of cities. Educated people are more informed about rights and more aware of their rights. They know how to blend in, know how to hide apps on their phones. And they are more likely to not hand over their phones or open phones for the police."*³¹²

Conclusion

The influence of age or marital status on the question of personal risk for members of sexual minorities is unclear. However, the socio-economic status of a person has a significant influence. With increasing financial power, education and networking -

308 Representative of the local NGO D working in the field of sexual minorities (9/10.2019)

309 Population Council Nigeria, Abuja (2012), p.37

310 Representative of the local NGO D working in the field of sexual minorities (9/10.2019)

311 Human rights lawyer (9/10.2019)

312 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

i.e., with increasing privileges - the risk decreases towards zero. The main risk group, on the other hand, are those persons whose everyday life is anchored in an environment with a low social and economic status.

7. Protection and legal assistance

7.1. Police and state protection

Several interlocutors of both the 2015 FFM³¹³ and the 2019 FFM³¹⁴ stated that no state protection was available. A representative of the local NGO WHER, which is active in the WSW sector put it like this: *"As soon as you mention you are homosexual vis-à-vis the police you have shot yourself in the leg. You cannot expect any reaction or help when you are attacked."*³¹⁵

The police have only a low level of awareness and understanding of the problems of MSM.³¹⁶ This also applies to WSW. WHER reports that members of sexual minorities feel they are taking a risk as soon as they contact the police.³¹⁷ An NGO working in the field of MSM reported to the 2015 FFM that there are no police investigations in cases of violence against people perceived as MSM. It is easily possible that the police will not intervene when a crime is committed or will arrest the victim instead of the perpetrator.³¹⁸ This information was confirmed by an international organisation active in the field of health and development research.³¹⁹ Also during the 2019 FFM, a local NGO stated that there is no police protection for sexual minorities in case of harassment or social violence. This could even lead to police coercion. The source gave an example where no police investigation was conducted after a proven rape.³²⁰ A Nigerian journalist and activist stated that women were additionally discriminated against in this respect. The source gave examples where the police - despite proven rape - did not investigate. *"Police think that a rape case of lesbians or gays is a laughing matter. (...) If a lesbian woman would go to court she would not get any sympathy."*³²¹

According to a diplomatic source, however, it could be considered a general problem in Nigeria that the police are reluctant to work and that the standard of policing is low. The police often do not consider civil vigilantism to be wrong and therefore do not intervene. This is not only true in connection with MSM, but also for other cases of vigilantism.³²² The NGO TIERS stated in a 2016 report: *"The average citizen of*

313 NGO working in the field of MSM, Abuja (17.11.2015); Diplomatic Source A (18.11.2015); Diplomatic Source C (20.11.2015); The NGO active in the MSM sector brought the example of an MSM who had been beaten up. When he wanted to report it to the police, they told him that it would be better for him to be less feminine.

314 Western Embassy B (9/10.2019); Representative of the local NGO C working in the field of sexual minorities (9/10.2019); Representative of the local NGO WHER working in the WSW field (9/10.2019)

315 Representative of the local NGO WHER active in the WSW sector (9/10.2019)

316 Representative of the Lawyers League for Minorities (16.11.2015)

317 Representative of the local NGO WHER active in the WSW sector (9/10.2019)

318 NGO active in the field of MSM, Abuja (17/11/2015)

319 International organisation active in health and development research, Abuja (20.11.2015)

320 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

321 Nigerian journalist and activist (9/10.2019)

322 Diplomatic source B (19.11.2015)

*Nigeria finds it very difficult to enjoy the protection of their rights and access to basic social services".*³²³

However, in March 2016 the prominent activist Ifeanyi Orazulike won a case against the Nigerian police, who had violated his constitutional rights (see 5.3.).

In contrast, a human rights lawyer stated to the 2019 FFM that the number of police officers in Nigeria (300,000 per 180 million inhabitants) was highly inadequate, and that there were generally not enough resources available for training.³²⁴

In case of human rights violations, the state National Human Rights Commission (NHRC) can also be called upon. The NHRC is an extra-judicial mechanism which, according to its own description, aims to "*create an enabling environment for the promotion, protection and enforcement of human rights*".³²⁵ The 2019 FFM showed that the NHRC is now perceived more positively regarding sexual minorities. See 4.3.1.

Conclusion

According to several sources, there is no state protection for members of sexual minorities in cases of social violence. There are no investigations. However, this phenomenon does not only affect members of sexual minorities; the standard of the police force is generally low. However, for this group of people, extortion or arrest of a victim is possible. Another possibility is to appeal to the National Human Rights Commission.

7.2. Protection by non-state actors

7.2.1. Documentation of human rights violations, data collection

The activities of local NGOs also include the documentation of human rights violations against members of sexual minorities. According to an NGO active in the field of MSM in Abuja, this does not mean that the network hears about every single case.³²⁶

An example of more comprehensive data collection on incidents can be seen in a report published by the NGO TIERS in March 2016, which the organisation produced in cooperation with five other NGOs.³²⁷ The report is updated annually, and the latest

323 TIERS - The Initiative for Equal Rights (3.2016), p.10

324 Human rights lawyer (9/10.2019)

325 NHRC - National Human Rights Commission in Nigeria (no date): website, <http://www.nigeriarights.gov.ng/>, accessed 14.6.2016

326 NGO active in the field of MSM, Abuja (17/11/2015)

327 TIERS - The Initiative for Equal Rights (3.2016); the NGOs that contributed to the report were *Advocate for Grassroots Empowerment* - AGE; *Access to Good Health Initiative* - AGHI; *Access to Health and Rights*

was published in December 2019. Seven other NGOs collaborated on this report.³²⁸ Other data are also collected. An international organisation working in the field of health and development research stated that it had itself conducted a stocktaking of the size and needs of a local MSM community in a Nigerian city. The focus was on HIV/AIDS. During the study, data on 5,000 MSM were collected at MSM meeting points.³²⁹

Conclusion

Local NGOs collect information on human rights violations against members of sexual minorities. An example of a comprehensive data collection of this kind is the annually updated human rights report published by TIERS and collaborating NGOs.

7.2.2. Immediate reactions to human rights violations

Some NGOs operate hotlines for members of sexual minorities. They can use the hotline if they have problems or if they want to report human rights violations.³³⁰ A Nigerian journalist and activist told the 2019 FFM that little progress had been made in raising awareness (information about phone numbers of lawyers or hotlines).³³¹ A Western embassy stated that people may not know who to turn to (hotlines).³³² Another Western embassy stated: *"If you are in trouble at least a friend of your friend will know who to call or who knows an NGO."*³³³ A local NGO on the other hand stated: *"If you are arrested, you call for help. The relevant phone numbers are known. Organisations make sure that there are funds that people don't end up in jail."*³³⁴ WHER, a local NGO active in the WSW sector, states that it has a hotline, which is also published on Facebook, Instagram and the organisation's homepage, and that it is well known, even in some rural areas.³³⁵

An international organisation active in health and development research stated to the

Development Initiative - AHRDI; International Centre for Advocacy on Rights of Health - ICARH; Improved Sexual Health and Rights Advocacy Initiative - ISHRAI; some of the names of these NGOs reflect the strategy of locating sexual minority representation in the health sector, which is less controversial in public. See also 4.3.1

328 TIERS - The Initiative for Equal Rights (12.2019); the collaborating NGOs were: Dynamic Initiative for Healthcare and Human Rights (DIHHR), Hope Alive Health Awareness Initiative (HAHAI), Initiative for the Advancement of Humanity (IAH), Women's Health and Equal Rights Initiative (WHER), International Centre on the Right to Health (ICARH), Access to good health initiatives (AGHI), Improved Male Health (IMH)

329 International organisation active in health and development research, local staff, Kaduna (19.11.2015)

330 An example of this is TIERS in Lagos. The NGO claims to operate a free 24-hour hotline. See: TIERS - The Initiative for Equal Rights (3.2016), p.22; see also: NoStringsNG (26.3.2016): Toll Free Help Lines for LGBT Persons In Nigeria, Launched! <http://nostringsng.com/toll-free-help-lines-for-lgbt-persons-in-nigeria-launched/>, accessed on 30.6.2020

331 Nigerian journalist and activist (9/10.2019)

332 Western Embassy A (9/10.2019)

333 Western Embassy B (9/10.2019); the Embassy stated that members of sexual minorities, especially in Lagos, know very well who to call. In rural areas, on the other hand, it is quite possible that someone does not know any relevant organisation.

334 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

335 Representative of the local NGO WHER active in the WSW sector (9/10.2019)

2015 FFM that there is a network of human rights lawyers for MSM who are usually contacted in case of arrest. These lawyers respond immediately and ensure that the person concerned is released on bail.³³⁶ A diplomatic source dealing with the issue stated that sexual minority organisations would in any case try to support an arrested MSM.³³⁷ A human rights lawyer in Abuja confirmed that bail negotiations with the police for the release of MSM accounted for 90 percent of his work in this area. He said he was already known at some police stations and the police were cooperating.³³⁸ Another human rights lawyer, however, pointed out the problem that many arrested MSM were unaware of their rights and did not know how to react.³³⁹

A Nigerian journalist and activist explained to the 2019 FFM that the Bisi Alimi Foundation, for example, provides support and organises lawyers. As soon as a lawyer is called in, the harassment by the police usually ends, the arrested persons are released, and the proceedings run aground.³⁴⁰ In the case of the party in Lagos (for which charges were brought under the SSMPA, see 3.3.2) a human rights lawyer was very quickly called in by TIERS.³⁴¹ Some detainees, however, are not given the chance to call anyone.³⁴²

Conclusion

Some NGOs operate hotlines or provide telephone numbers for emergencies. Most sources assume that people in police custody, for instance, know who to call for support. Support is provided primarily for the purpose of bailing out.

7.2.3. Legal aid and assistance from a lawyer

There are special organisations and individual lawyers who deal with legal cases of vulnerable population groups (e.g., sexual minorities, prostitutes, female victims of violence). The NGOs Lawyers Alert and LEDAP have formed the Coalition of Lawyers for Human Rights (COLAHR). This coalition is present in 23 federal states in Nigeria. During the 2015 FFM, a human rights lawyer added that there were still too few lawyers to cover the whole country.³⁴³

According to a Western embassy, interviewed by the 2019 FFM, some police officers

336 International organisation active in health and development research, Abuja (20.11.2015)

337 Diplomatic source B (19.11.2015)

338 Representative of the Lawyers League for Minorities (16.11.2015)

339 Human rights lawyer (16.11.2015)

340 Nigerian journalist and activist (9/10.2019)

341 Western Embassy A (9/10.2019)

342 Nigerian journalist and activist (9/10.2019)

343 Representative of the Lawyers League for Minorities (16/11/2015); Human rights lawyer (16/11/2015) The Lawyers League for Minorities was founded in 2012 and consists of a group of twelve lawyers who handle cases of human rights violations. The organisation considers itself a legal aid NGO for vulnerable groups (e.g. prostitutes, MSM, drug addicts).

voluntarily notify human rights lawyers, such as those of the organisation TIERS, if MSM or WSW were detained. A lawyer would then be provided.³⁴⁴ The local NGO WHER, which is active in the WSW area, states that currently no lawyer of the organisation is available "in house". Community-friendly lawyers would be contacted as needed.³⁴⁵

A human rights lawyer told the 2015 FFM that he is providing business cards to the MSM community and that contact details are available on websites. In general, the system of mutual legal assistance was well known within the MSM community.³⁴⁶ According to an international organisation active in health and development research, MSM have a network that participates in bail negotiations - usually successfully.³⁴⁷

According to a human rights lawyer, if a case of an MSM is indeed brought to court, several NGOs will intervene. The human rights lawyer explained that his NGO, which handles cases for MSM *pro bono*, is known to sexual minority organisations.³⁴⁸ Some organisations active in the field of MSM also have their own lawyers who offer legal assistance.³⁴⁹ An NGO active in the field of MSM in Kaduna said that in the northern parts of the country, traditional leaders would also play an important role in terms of mediation and legal assistance, as their influence is usually respected locally.³⁵⁰

Conclusion

Some lawyers and associations provide legal assistance to members of sexual minorities. Among other things, this assistance is provided for a bail out from police custody. If a case goes to court, there is usually (legal) intervention by NGOs.

7.2.4. Relocation and emergency accommodation

A human rights lawyer told the 2015 FFM that an MSM who can afford to move can escape persecution or harassment in one specific city by moving to another.³⁵¹ A Nigerian journalist and activist confirmed this to the 2019 FFM. On the one hand, large cities offer a certain anonymity, and on the other hand there are no national arrest warrants on this issue. A move from e.g., Lagos to Abuja would mean an end

344 Western Embassy B (9/10.2019)

345 Representative of the local NGO WHER active in the WSW sector (9/10.2019)

346 Human rights lawyer (16.11.2015)

347 International organisation active in health and development research, Abuja (20.11.2015)
However, a human rights lawyer expressed concern about who should pay bail for an MSM if the family did not. Human rights lawyer (16.11.2015); On the other hand, the NGO TIERS reveals in a report that it spent over 600,000 naira in one month to bail out people suspected of being gay. See: 76 Crimes/STEWART (5.1.2016)

348 Representative of the Lawyers League for Minorities (16.11.2015)

349 Representative of the Lawyers League for Minorities (16.11.2015)

350 NGO active in the MSM sector, Kaduna (19.11.2015)

351 Representative of the Lawyers League for Minorities (16.11.2015)

to persecution.³⁵² A local NGO describes the move as a first step: "*The first thing they do is move. You move from where everybody knows you. And that move is possible, they can move to find more anonymity, they move to towns. They stay with friends.*"³⁵³ A local human rights lawyer stated that in case of arrest it would be necessary to move away. This does not necessarily mean moving to another city, and a change of area or district may be sufficient.³⁵⁴

An NGO active in the field of MSM in Kaduna told the 2015 FFM that the MSM community is very mobile - including moving to other cities.³⁵⁵ A diplomatic source dealing with the issue stated that MSM will try to find shelter within the community. This is particularly true for larger cities.³⁵⁶ An NGO active in the field of MSM in Abuja stated that MSM can contact networks and organisations to obtain support and/or shelter. Another possibility is that an MSM who feels threatened is 'referred' to a network in another city.³⁵⁷ Two sources explained that there are cooperation and links between networks in different cities. If an MSM is persecuted in one city or feels threatened there, the network there can refer him or her to another network in another city.³⁵⁸ The new network would help the newcomer to integrate into the new environment.³⁵⁹ Several sources confirmed that some networks also operate safe houses where MSM can stay for several months.³⁶⁰ For WSW, too, there are facilities where women with immediate security risks can be accommodated.³⁶¹

A local NGO as well as a Nigerian journalist and activist confirmed these "referrals" to the 2019 FFM.³⁶² Organisations would refer cases between cities. According to the local NGO, there are several safe houses, for example in Minna in Niger State (capacity 12), Abuja (2), Lagos (3) and Makurdi in Benue State (4).³⁶³ The Nigerian journalist and activist stated that there are referrals between Lagos, Abuja and Port Harcourt, for example.³⁶⁴

Conclusion

352 Nigerian journalist and activist (9/10.2019)

353 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

354 Human rights lawyer (9/10.2019)

355 NGO active in the MSM sector, Kaduna (19.11.2015)

356 Diplomatic source B (19.11.2015)

357 NGO active in the field of MSM, Abuja (17/11/2015)

358 Representative of the Lawyers League for Minorities (16/11/2015); NGO working in the field of MSM, Abuja (17/11/2015)

359 NGO active in the field of MSM, Abuja (17/11/2015)

360 Human rights lawyer (16.11.2015); Representative of the Lawyers League for Minorities (16.11.2015); NGO active in the field of MSM, Kaduna (19.11.2015); NGO active in the field of MSM, Abuja (17.11.2015); The MSM NGO said that, depending on circumstances, new arrivals are placed in temporary shelters for between one and six months.

361 Representative of the local NGO WHER active in the WSW sector (9/10.2019)

362 Representative of local NGO C working in the field of sexual minorities (9/10.2019); Nigerian journalist and activist (9/10.2019)

363 Representative of the local NGO C working in the field of sexual minorities (9/10.2019)

364 Nigerian journalist and activist (9/10.2019)

Members of sexual minorities can free themselves from a direct risk situation by moving to a (different) city or district. Community networks and NGOs support people in this step. In some cities there are also safe houses/shelters run by NGOs. Sometimes people at risk are "referred" from one city to another.

7.3. Family

Several sources stated to the 2015 FFM that an MSM who outs himself risks being rejected or disowned by his family. Parents and family may stop giving any aid.³⁶⁵ A Nigerian journalist and activist told the 2019 FFM that coming out to the family was very risky. MSM and WSW risk being abandoned by the family or sent to "spiritual" places for "healing".³⁶⁶ A local NGO confirmed the practice of taking especially younger family members to churches, for example to eliminate the homosexuality of their own child through prayer, or where the child itself undergoes "*conversion therapy*".³⁶⁷ This also applies to WSW. The local NGO WHER, which is active in the WSW sector, explains: "*Besides that [accepted cases among the Igbo, see 2.2], it would be difficult for that person to be accepted. She might be accepted; but it also might get ugly - involving violence, send her away, religious correction facilities - 'you are possessed', locking her up... People fear what they don't understand.*"³⁶⁸

Rarely are homosexual family members accepted, and they tend to be more easily accepted in educated families. There is no difference between WSW and MSM in this respect.³⁶⁹ A Western embassy stated that social persecution begins within the family: "*Their own family turns on them.*" Another Western embassy stated that people who come out as homosexual risk violence from the family or are excluded - even from financial support.³⁷⁰ According to a 2015 report by NOI Polls Limited in collaboration with TIERS, 87% of Nigerians surveyed said they would not accept a homosexual family member.³⁷¹ According to a local NGO, this figure is improving; in 2019, the percentage was only 60%. In practice, there seems to be significantly more support from family members. At least the family would now more often not react and not use violence against homosexual family members. "*That too is progress!*"³⁷²

365 NGO working in the field of MSM, Abuja (17/11/2015); NGO working in the field of MSM, Kaduna (19/11/2015)

366 Nigerian journalist and activist (9/10.2019)

367 Representative of the local NGO C (9/10.2019) active in the field of sexual minorities; according to another source, these "therapies" should be described as "harmful practice". These are mainly carried out in churches and less in Islamic areas. Western Embassy B (9/10.2019)

368 Representative of the local NGO WHER active in the WSW sector (9/10.2019)

369 Nigerian journalist and activist (9/10.2019)

370 Western Embassy D (9/10.2019)

371 NOI Polls Limited/TIERS (5.2015), p.4; in geographical terms, the highest values were achieved in North Central and South-South with 15%, followed by South-West with 13%. See: NOI Polls Limited/TIERS (5.2015), p.7

372 Representative of the local NGO C (9/10.2019) working in the field of sexual minorities, based on the survey published by TIERS: Vivid Rain/TIERS (6.2019)

If family members and close friends are informed about a person's sexual behaviour and accept it, it is much easier for MSM to deal with or avoid abuse and ill-treatment. This is especially true in cases of blackmail: "*Those who [are] out to the most important people in their lives - especially families - [are] in a significantly better position to confront blackmailers and deal with threats*".³⁷³

Conclusion

It can still be risky to come out to the family as homosexual. This can lead to rejection, confinement, violence or conversion therapy. However, the rejection of homosexual family members decreases and at the same time their acceptance increases.

373 IGLHRC - International Gay and Lesbian Human Rights Commission (2011), p.11

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Representative of the international NGO E (9/10.2019): Abuja, interview Human rights lawyer (9/10.2019): Abuja, interview

Representative of the local NGO C working in the field of sexual minorities (9/10.2019): Abuja, interview

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