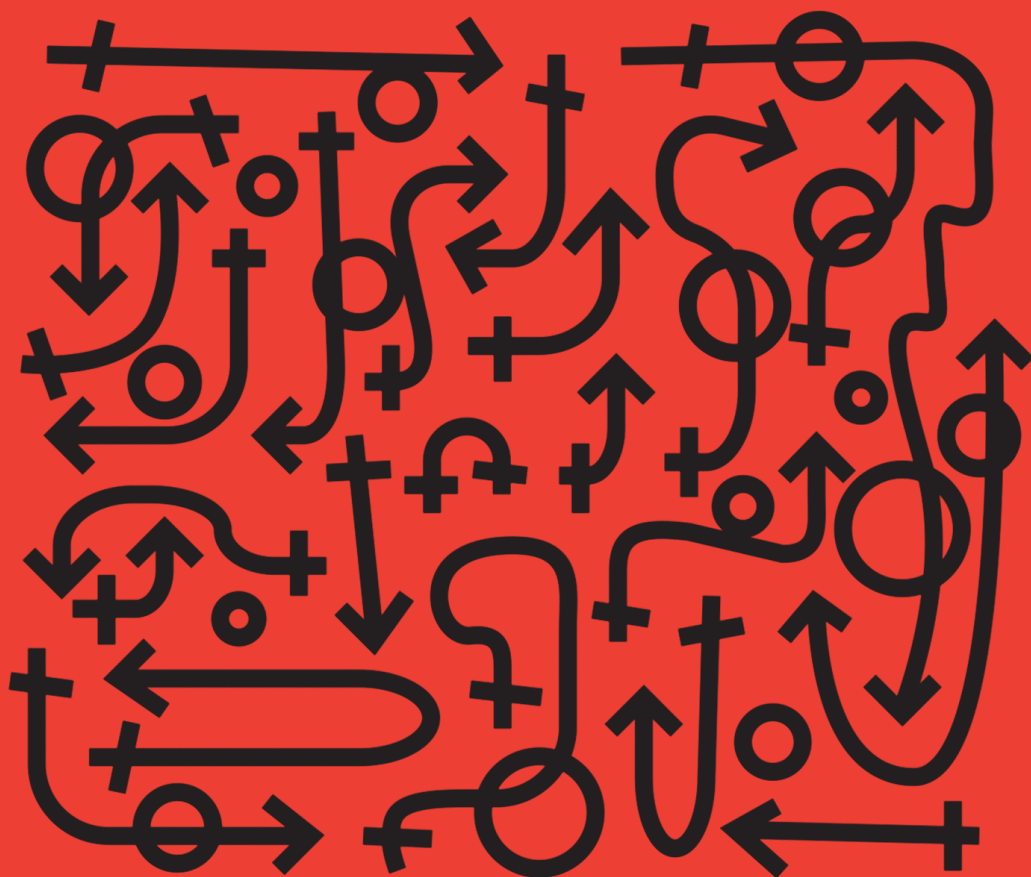


GLOBAL INFORMATION SOCIETY WATCH 2015

Sexual rights and the internet



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
AND HUMANIST INSTITUTE FOR COOPERATION WITH DEVELOPING COUNTRIES (Hivos)

Global Information Society Watch 2015

Sexual rights and the internet

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Financial support provided by

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APC and Hivos would like to thank the Swedish International Development Cooperation Agency (Sida) for its support for Global Information Society Watch 2015.



Published by APC and Hivos
2015

Printed in USA

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ISBN 978-92-95102-41-5
APC-201510-CIPP-R-EN-P-232

NIGERIA

THE BAN ON SAME-SEX MARRIAGE: DIVERTING ATTENTION FROM MASS SURVEILLANCE



Fantsuam Foundation

John Dada and Theresa Tafida
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Introduction

After decades of military rule, democracy is still in a “pilot” phase in Nigeria, and the tenets of human rights are under constant attack and the subject of debate. Many of the country’s legislators still suffer the hangover of a military, autocratic attitude and operate from a narrow conservative and religious moral compass that would not readily recognise the wide spectrum of human sexual preferences, and the rights of individuals and groups to live accordingly.

As the first and sole rural-based internet service provider in our region, equitable and affordable access to the internet has always been a priority for the Fantsuam Foundation. We have a vested interest in all internet-related legislation that may affect our services or users of our services. In addition we have an information and communications technology (ICT) training programme that focuses on the country’s youth. In these sessions we provide them with the latest information on their rights as internet users and the current state of legislation affecting the internet

This GISWatch report from Nigeria looks at the recent senate bill on same-sex marriages, and considers how the timing of its release, coinciding with campaigns ahead of presidential elections in 2015, makes it look more like a populist attempt to attract attention away from the government’s widespread online surveillance of its citizens.¹

Policy and political background

In January 2014, then Nigerian President Goodluck Jonathan assented to a senate bill which banned same-sex marriage,² imposing a prison sentence on violators, including on any person or group that is deemed to have supported same-sex unions. Through this law, Nigeria has one of the most

wide-ranging and punitive legislations against lesbian, gay, bisexual and transgender (LGBT) rights in the world.³ It joins the likes of Uganda, Kenya, Ghana and Senegal in rejecting gay rights, while the Gambia has also indicated its desire to follow in their steps.

It is important to acknowledge the socio-political context of Nigeria’s new draconian law against same-sex marriage. At least two of Nigeria’s most widely spoken languages have words associated with homosexuality, and as Nigerian gay activist Bisi Alimi⁴ points out, there are several historical cultural markers that show that traditional Nigerian society has always recognised various forms of sexuality. Nigeria’s encounter and acceptance of different sexualities, therefore, pre-dates the current mass hysteria over same-sex marriage.

However, as a former colony, Nigeria inherited the anti-sodomy law⁵ from Britain. While the United Kingdom (UK) parliament has since repealed this law – as have some of its other former colonies – it is still on the Nigerian statute books.

A violation of basic human rights

In the politically charged atmosphere leading up to the 2015 presidential elections, popular opinion began to shift towards the opposition. This led to an appeal to the conservative electorate by the government in power, which knew that both Muslims and Christians would find the same-sex marriage ban appealing. Within a few days of Jonathan assenting to the bill, Nigerian law enforcement agencies started arresting people on charges of belonging to gay groups, and subjected some to a public flogging.⁶

Although the repressive tactics of the Nigerian law enforcement agents have already earned

1 Since the new government took over, there have in fact been grave revelations of impropriety by the outgoing government.

2 Kaleidoscope Trust. (2014). Nigeria: Same Sex Marriage (Prohibition) Act (Briefing). kaleidoscopetrust.com/user/library/documents/main/2014-02-nigeria.pdf

3 Sneed, T., & Welsh, T. (2014, 16 October). What’s Driving Homophobia in Africa? *U.S. News and World Report*. www.usnews.com/news/articles/2014/10/16/how-anti-lgbt-legislation-in-uganda-nigeria-and-gambia-is-shaping-africa

4 Alimi, B. (2014). Homosexuality Is Well Rooted In The Core Of Nigerian Society & Identity. *Naij.com*. www.naij.com/54704.html

5 Kirby, M. (2011). *The Sodomy Offence*. sas-space.sas.ac.uk/4824/20/02Kirby_TheSodomyOffence.pdf

6 Petesch, C. (2014, 17 January). Arrests spreading under Nigeria anti-gay law. *Associated Press*. news.yahoo.com/arrests-spreading-under-nigeria-anti-gay-law-184912984.html; and Associated Press. (2014, 6 March). Nigerian men whipped in public for having gay sex. *Daily News*. www.nydailynews.com/news/national/nigerian-men-publicly-whipped-gay-sex-article-1.1713258

international criticism,⁷ they are increasingly going unchallenged. Equally unchallenged is the violence and, at times, mob action unleashed on individuals accused or suspected of being gays or lesbians.⁸ With official backing provided by legislation, the rights of minority sexual activists continue to be disrespected, and violently threatened.

This violation of basic human rights cuts right across the country because the Muslim religious community that forms the majority in northern Nigeria accepts it. The official backing of harassment has emboldened the Muslim security outfit Hisbah, which is known for its attacks on suspected gays and lesbians.⁹ The strident voice of opposition to homosexual rights from Jonathan's religious allies has continued unabated after he left office, including as recently as July 2015 when the new President Muhammadu Buhari visited the United States (US).¹⁰

The sweeping and wide-ranging sanctions embedded in this legislation may also be a reflection of the low level of political sophistication of many of the legislators, who may have difficulties understanding the implications of the new law, relying on the interpretations of their more savvy colleagues. Anecdotal evidence has linked high-ranking political and military officials to the Nigerian gay community.¹¹ These are individuals that are clearly beyond the reach of the new law.

Yet it is obvious that with such an emotive issue at play, it will be easier to divert national attention away from the lacklustre performance of the Nigerian legislature.¹²

Diverting attention from mass surveillance

Nigeria has gradually moved towards a less tolerant society. As the Nigerian economy grew due to its oil exports, so did the level of corruption, so much so that the country is now recorded among the most corrupt countries in the world.¹³ This is, in part, reflected in unlawful attempts at mass surveillance, both by the national government and at least one of the state governments.¹⁴ There seems to be an appetite for a multiplicity of legal instruments aimed at invading citizens' privacy, with little recourse for individual protection. For example, although the Nigerian Senate has passed the Cybercrime Bill (2013)¹⁵ into law, the Nigeria Communications Commission insists on the Lawful Interception Bill,¹⁶ which basically duplicates the Cybercrime Bill with additional bureaucratic hurdles added. As reported in our previous GISWatch report,¹⁷ the public seldom considers these concerns as something that can affect their personal lives and privacy.

The promulgation of the draconian law on same-sex marriage was obviously a populist move by an outgoing government that still had its eyes on winning the next elections in the country. Such emotive issues that appeal to the electorate's religious bias have often been used, with the resultant cycles of violence in Nigeria. But it still remains a trump card for the politicians and they deploy it under the guise of meeting the demands of their people. So, on the one hand, while the government institutes illegal mass surveillance of its people, it offers them homophobic legislation with the other, diverting their attention from the governance issues that are at stake.

7 Whitehead, E. (2015, 4 June). Nigeria urged to investigate military war crimes. *Al Jazeera*. www.aljazeera.com/news/2015/06/nigeria-urged-probe-military-war-crimes-150603134418815.html; and Nossiter, A. (2015, 3 June). Abuses by Nigeria's Military Found to Be Rampant in War Against Boko Haram. *The New York Times*. www.nytimes.com/2015/06/04/world/africa/abuses-nigeria-military-boko-haram-war-report.html?_r=0

8 Tatchell, P. (2007, 29 August). Nigeria's anti-gay witch-hunt. *The Guardian*. www.theguardian.com/commentisfree/2007/aug/29/nigeriasantigaywitchhunt; and Ross, W. (2014, 6 February). Nigerian gay people being hunted down. *BBC News*. www.bbc.com/news/world-africa-26065392

9 Ibid.

10 See: Shiklam, J., & Ejifom, R. (2015, 20 July). CAN, Group Urge Buhari Not to Succumb to Pressure on Same Sex-marriage as He Meets with Obama. *This Day Live*. www.thisdaylive.com/articles/can-group-urge-buhari-not-to-succumb-to-pressure-on-same-sex-marriage-as-he-meets-with-obama/215107; Broadhurst, C. (2015, 20 July). Nigerian anti-gay activists fear Obama pressure on Buhari during US visit. *RFI*. www.english.rfi.fr/africa/20150720-us-nigeria-same-sex-marriage-lgbt-buhari-visit; and Godwin, A. (2015, 20 July). Don't allow Obama force you to accept same-sex marriage - Redeemed pastor warns Buhari. *Daily Post*. dailypost.ng/2015/07/20/dont-allow-obama-force-you-to-accept-same-sex-marriage-redeemed-pastor-warns-buhari

11 The Street Journal. (2012, 12 March). Revealed: How Nigeria's Prominent Businessmen Recruit Homosexual Partners! *The Street Journal*. thestreetjournal.org/2012/03/revealed-how-nigeria%E2%80%99s-prominent-businessmen-recruit-homosexual-partners; and Sessou, E. (2012, 30 June). More people are secretly practising homosexuality in Nigeria. *Vanguard*. [vanguardngr.com/2012/06/r-e-v-e-a-l-e-d-more-people-are-secretly-practising-homosexuality-in-nigeria](http://www.vanguardngr.com/2012/06/r-e-v-e-a-l-e-d-more-people-are-secretly-practising-homosexuality-in-nigeria)

12 Jimoh, M.A., & Onochie, B.C. (2015, 4 June). Senate dumps own rules, passes 46 bills in 10 mins. *The Guardian*. www.ngrguardiannews.com/2015/06/senate-dumps-own-rules-passes-46-bills-in-10-mins; and Ogunmade, O. (2015, 4 June). Senate Mocks Lawmaking, Passes 46 Bills Without Legislation in 10 Minutes. *This Day Live*. www.thisdaylive.com/articles/senate-mocks-lawmaking-passes-46-bills-without-legislation-in-10-minutes/211156

13 Paradoxically, the oil wealth has also witnessed an increased impoverishment of the majority of Nigerians (Poverty Index, 2014, data.worldbank.org/country/nigeria) and the resultant recourse to faith healing and prosperity preachers.

14 Omanovic, N. (2014, 20 October). Nigerian government under fire for expansion of surveillance programs. *Privacy International*. <https://www.privacyinternational.org/?q=node/372>

15 <https://www.pinigeria.org/download/cybercrimebill2013.pdf>

16 www.ncc.gov.ng/index.php?option=com_docman&task=doc_download&gid=328&Itemid

17 Dada, J., & Tafida, T. (2014). Online surveillance: Public concerns ignored in Nigeria. *Global Information Society Watch 2014*. www.giswatch.org/en/country-report/communications-surveillance/nigeria

Conclusions

The preference of the previous Nigerian government for illegal mass surveillance does not bode well for the free expression of sexualities online. In the current climate, social media has been used to lure and track individuals who are suspected of being sexual minorities. With more people taking to social media, and with the government's unfettered access to people's communications, the privacy of Nigerian citizens is being compromised.

The ostensible reason for the multi-million dollar investment in eavesdropping equipment¹⁸ by the Nigerian government was the worsening security situation in the country. The irony is that this situation has visibly become worse since the procurement of this equipment.

The ban on same-sex marriage is expected to be counterproductive to Nigeria's struggle against a high HIV/AIDS prevalence.¹⁹ The stigma being whipped up against homosexuals will not make it any easier for those who are HIV-positive to seek treatment. Since the bill came into being, reports say the number of people provided with HIV prevention services has dropped by up to 70%.²⁰

A cross-cutting issue that persists in Nigeria is the high cost and unreliability of internet access. Online commerce and relationships flourish when access is affordable and reliable. The fact that this is not the case may, paradoxically, work to the advantage of the hardliners, because limited access means fewer internet users, and fewer people to censor, including the LGBT community.

Many LGBT people in Nigeria have gone underground. However, some have found solace abroad, particularly in the UK and US, where they are able to be themselves without fear of breaking the law.²¹

The lesbian and gay community in Nigeria have a Facebook page,²² where they also host the Nigerian Lesbian and Gay Foundation online.

Action steps

The following advocacy steps are suggested for Nigeria:

- Nigerian civil society organisations must recognise the harsh economic climate that pushes many citizens to seek solace in religion. Civil society must be the watchdog that ensures that the Nigerian government meets its obligations to citizens through an equitable distribution of the national wealth.
- It is important to ensure that there is concerted international pressure to repeal draconian laws that negate the fundamental human rights of individuals as enshrined in the Nigerian constitution. This kind of pressure has already been successfully applied by the US in the reversal of the anti-gay law in Uganda.²³
- International support is also necessary to promote a stable democracy in Nigeria, ensuring that it respects all the international treaties to which it is signatory.
- Nigeria is just coming out of a 16-year political system that was dominated by one party. For the first time, an opposition party has taken over the mantle of leadership. The high expectations of the populace hinge on security, combating pervasive corruption and economic development. This may be the first time Nigeria is getting such a chance to be led by a party that comes in with a clear programme of action. This new party will need all the support it can get locally and internationally. Nigerian civil society are already providing this support, and already the UK, US and G7 have all indicated the same. While the reversal of the law on same-sex marriage may not take place immediately, Nigerians can hope that the new government will give it due attention eventually.

18 Ogala, E. (2013, 25 April). Jonathan awards \$40million contract to Israeli company to monitor computer, Internet communication by Nigerians. *Premium Times*. www.premiumtimesng.com/news/131249-exclusive-jonathan-awards-40million-contract-to-israeli-company-to-monitor-computer-internet-communication-by-nigerians.html

19 Punch. (2014, 15 June). Nigeria's high HIV/AIDS prevalence rate. *Punch*. www.punchng.com/editorials/nigerias-high-hiv-aids-prevalence-rate

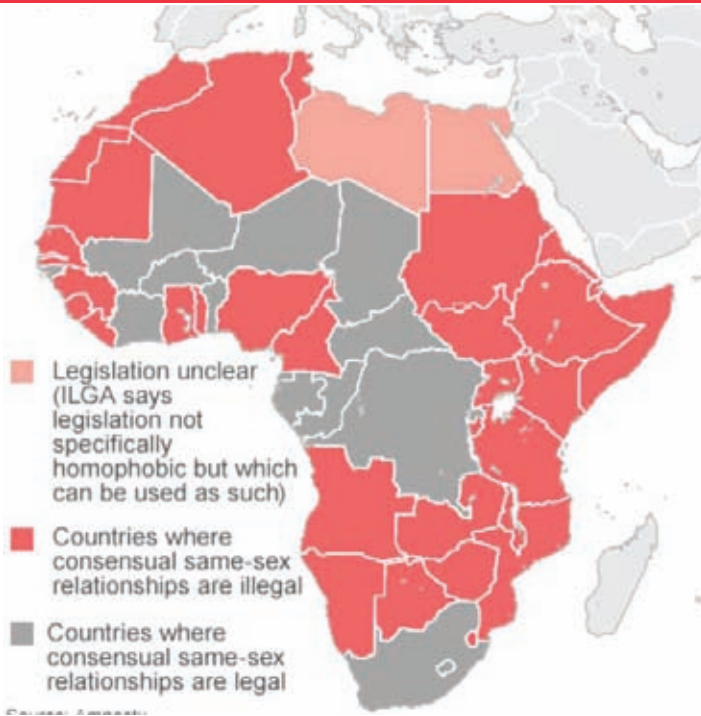
20 Stewart, C. (2014, 9 July). With Nigeria's anti-gay law, HIV care drops 10%-70%. *Erasing 76 Crimes*. 76crimes.com/2014/07/09/with-nigerias-anti-gay-law-hiv-care-drops-10-70/; and Senzee, T. (2014, 17 July). Nigeria's Antigay Law Thwarts HIV Prevention Efforts. *Plus*. www.hivplusmag.com/treatment/world-news/2014/07/17/nigerias-antigay-law-thwarts-hiv-prevention-efforts

21 Ilesanmi, Y. (2014, 28 June). LGBT Rights activists demonstrates at Nigerian Centenary Awards, UK. Nigerian LGBTI in Diaspora Against Anti-Same Sex Laws. <https://nigerianglbtindiaspora.wordpress.com/>; and De Bode, L. (2014, 5 March). Exiled from home, Nigeria's gay community builds new life in US. *Al Jazeera*. www.america.aljazeera.com/articles/2014/3/4/exiled-from-homenigeriasgaycommunitybuildsalifeinnewyorkcity.html

22 Nigerian Gay and Lesbian Foundation. <https://www.facebook.com/pages/Nigerian-Gay-and-Lesbian-Foundation/286257818076265>

23 Deutsche Welle. (2014, 1 August). Uganda Constitutional Court strikes down anti-homosexuality law. *Deutsche Welle*. www.dw.com/en/uganda-constitutional-court-strikes-down-anti-homosexuality-law/a-17826296

Gay rights in Africa



Source: Human Rights Campaign/Human Rights First

Sexual rights and the internet

The theme for this edition of Global Information Society Watch (GISWatch) is sexual rights and the online world. The eight thematic reports introduce the theme from different perspectives, including the global policy landscape for sexual rights and the internet, the privatisation of spaces for free expression and engagement, the need to create a feminist internet, how to think about children and their vulnerabilities online, and consent and pornography online.

These thematic reports frame the 57 country reports that follow. The topics of the country reports are diverse, ranging from the challenges and possibilities that the internet offers lesbian, gay, bisexual, transgender and queer (LGBTQ) communities, to the active role of religious, cultural and patriarchal establishments in suppressing sexual rights, such as same-sex marriage and the right to legal abortion, to the rights of sex workers, violence against women online, and sex education in schools. Each country report includes a list of action steps for future advocacy.

The timing of this publication is critical: many across the globe are denied their sexual rights, some facing direct persecution for their sexuality (in several countries, homosexuality is a crime). While these reports seem to indicate that the internet does help in the expression and defence of sexual rights, they also show that in some contexts this potential is under threat – whether through the active use of the internet by conservative and reactionary groups, or through threats of harassment and violence.

The reports suggest that a radical revisiting of policy, legislation and practice is needed in many contexts to protect and promote the possibilities of the internet for ensuring that sexual rights are realised all over the world.

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2015 Report

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