



Homosexuality in Nigeria: What is the problem represented to be? An analysis of the *Same Sex Marriage (Prohibition) Act 2013*



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Student: Silvie Vale

Supervisor: Pauline Stoltz

Program: MSc. Development and International Relations – Global Gender Studies

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Summary

Within global contemporary discourses, sexuality is perceived as a main indicator to measure equality, human rights violations, and civil and political rights. Additionally, special attention and efforts have been made in promoting non-discrimination principles on the basis of sexual orientation. However, despite global efforts to end discrimination, various countries in the world still criminalize homosexuality. Nigeria is one of these countries.

In Nigeria, same sex sexual activities are forbidden under criminal law. More recently, in 2014, was also implemented the *Same Sex Marriage (Prohibition) Act 2013* (SSMPA), which explicitly bans marriage between same sex couples and expands criminal sanctions for those who support, help or witness same sex marriages. Additionally, under the SSMPA, the establishment of and support for gay organisations is also prohibited.

In the light of the increasing understanding of homosexuality as part of human rights discourses on the one hand, and the contrasting prohibitive framework in Nigeria on the other, by employing the ‘*What’s the problem represented to be?*’ approach developed by Carol Bacchi, and a theoretical framework developed within feminist studies and Foucault’s understanding of power, this thesis considers and examines the way homosexuality is problematised in the SSMPA. It also considers the various aspects that shape the ‘problem’ of homosexuality in the latter and analyses the different effects that result from that problematisation. It further considers and addresses possible ways of disrupting that problematisation in order to shape the ‘problem’ differently.

This research reveals that the driving factor that underlies the ‘problem’ of homosexuality in the SSMPA is a ‘heterosexual imperative’ that works as a regulatory mechanism by which the idea of a ‘natural’ gender binary - ‘man/woman’ - is maintained. The SSMPA, then delegitimizes homosexuality, and same sex marriage and unions, which sustains ideals of sexual essentialism and heteronormativity.

Keywords: Gender, homosexuality, Nigeria, same sex marriage, sexuality, WPR approach

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1. INTRODUCTION— Mapping (homo)sexuality

Sexuality, is everywhere - in the media, internet, movies, wars, religion and governmental actions. Sexuality, more than an empirical variable, is an intricate social construct made of a myriad of different discourses and political battles that influence the lives of everyone.

Despite controversies, over the years, sexuality has become an important indicator to measure human rights abuses and equality, and is regarded as an indicator of “social change, emancipation and recognition of civic and political rights (Giarni, 2015, p. 50).”

Additionally, one of the main considerations that have globally commanded the talks surrounding sexuality is people’s ability for self-determination in terms of sexual orientation, and specifically, the protection of “(homo)sexual orientation” from discrimination (Roseman & Miller, 2011, pp. 323-324). Within international human rights, the right to self-determination in regards to one’s own sexual orientation is upheld in the Yogyakarta Principles¹ and in the list of sexual rights which, among others, include the rights of everyone, free of coercion discrimination and violence to have consensual sexual relations, to marry, to choose a partner, and seek a pleasurable, satisfying and safe sexual life² (WHO, 2015).

Despite extensive efforts to eliminate discrimination on the basis of sexual orientation, according to the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), 75 governments still criminalize same-sex sexual acts (Carroll & Itaborahy, 2015).

Within this context, Africa is one of the worst regions in the world, where only 19 states have legalized same sex sexual activities, while 35 states outlaw the latter (Carroll & Itaborahy, 2015). Additionally, only South Africa constitutionally prohibits

¹ The Yogyakarta Principles, were elaborated in 2006, in Yogyakarta, Indonesia, and contemplate a set of principles based on international human rights law to assert the application of a wide range of international human rights principles to gender identity and sexual orientation. In the draft of the Yogyakarta Principles, were involved 29 international human rights experts from various organisations (Yogyakarta Principles, 2007).

² Sexual rights include human rights recognized in international human rights instruments, national laws and other legal documents (WHO, 2015). For the complete list of sexual rights see WHO (2015).

discrimination on the basis of sexual orientation and recognizes same sex marriage, making it one of the most progressive states in the continent (Carroll & Itaborahy, 2015).

While, globally, every government from every country has implemented legislation that, somehow, intends to regulate sexual activities among its population, concerns arise when these laws are intended to limit and penalize certain kinds of sexual activities (Berer, 2004). This is the case of Nigeria.

Both the Nigerian Criminal Code Act and the Penal Code hold legislation that criminalize homosexual sexual activities in the form of anti-sodomy³ laws (Criminal Code Act, 1990; Penal Code, 1959). In addition, in twelve states⁴ where Sharia Law was adopted, the penalty for engaging in same sex sexual activities between men is death (Carroll & Itaborahy, 2015). Notwithstanding the already punitive law regarding homosexuality, in January 2014, came into force the “*Same Sex Marriage (Prohibition) Act 2013*” (or SSMPA - as I shall call it). The SSMPA explicitly criminalizes the marriage of same sex couples, and expands criminal sanctions for those who support, help or witness same sex marriages. Additionally, under the SSMPA, the establishment of and support for gay organisations is also prohibited.

The enactment of the SSMPA caused outrage among the international community with various human rights organisations and advocates condemning Nigeria’s new legislation and expressing their concerns for the lesbian, gay, bisexual and transgender (LGBT) population. For instance, Graeme Reid, the LGBT rights director at Human Rights Watch (HRW), said that the SSMPA “undermines basic universal freedoms that Nigerians have long fought to defend and is a throwback to past decades under military rule when civil rights were treated with contempt (Reid, as quoted in Ghoshal, 2014, para. 3).” Similarly, the United Nations (UN) human rights chief, Navi Pillay, highlighted the dangers of this law for the rights of LGBT. According to her, “[t]his draconian new law makes an already-bad situation much worse (Pillay, as quoted in OHCHR, 2014, para.4)” and “risks reinforcing existing prejudices towards members of the LGBT community, and may provoke an upsurge in violence and discrimination (Pillay, as quoted in OHCHR, 2014,

³ Typically, the anti-sodomy laws do not define with precision what should be understood by ‘sodomy’. However, usually, the sexual acts that fall within its definition include any sexual activity considered immoral or ‘unnatural’ (Weeks, 1989). Commonly, these include anal sex, oral sex and bestiality (Gupta, 2008).

⁴ These are Zamfara, Kano, Katsina, Niger, Bauchi, Borno, Kaduna, Gombe, Sokoto, Jigawa, Yobe, and Kebbi (Carroll & Itaborahy, 2015).

para.5)”. In fact, her concerns were soon backed up by a series of news reporting the increase of violence, hostility, stigma and discrimination against homosexual individuals (see Bowcott, 2014; Day, 2014; Nossiter, 2014; Schwarts et al., 2015).

Academic research on the issue has focused on the legitimacy of the SSMPA and on addressing questions of whether or not it violates the constitutional and human rights of Nigerian sexual minorities (see Adebajo, 2015; Chiroma & Magashi, 2015; Eseyin, 2015; Obidimma & Obidimma, 2013; Odiase-Alegimenlen & Garuba, 2014; Onuche, 2013). However, the problematisation of homosexuality within the SSMPA remains unquestioned.

As such, in the light of the increasing understanding of homosexuality as part of human rights discourses on the one hand, and the contrasting prohibitive framework in Nigeria on the other, this thesis aims at interrogating the problematisation of homosexuality in the latter. More specifically, it examines the way homosexuality is being problematised in the SSMPA and the conceptualizations that support that problematisation.

For this purpose, this thesis uses a new discursive lens of policy analysis presented by the Australian scholar Carol Bacchi, the ‘*What’s the Problem Represented to Be*’ (WPR) approach. The WPR approach/method is a constructivist framework, widely inspired on Foucauldian theory and discourse principles, which enables to examine the way issues become problematised. In the context of this thesis, Bacchi’s method allows to examine and to understand the ‘problem’ of homosexuality in Nigeria reflected in the SSMPA, and to consider the various aspects that shape that ‘problem’. It further enables the analysis of different effects that arise from that problematisation. Lastly, it considers possible ways of disrupting that problematisation, and shaping the ‘problem’ differently.

As complementary to the WPR method, this thesis also uses a theoretical framework developed within feminist studies and Foucault’s theory on power and sexuality, in order to better understand the ontological assumptions and power relations that underlie the SSMPA.

1.1. Research question

In this context, the main research question that this thesis proposes to answer is the following:

“How is homosexuality problematised in the *Same Sex Marriage (Prohibition) Act 2013* in Nigeria?”

Addressing this question is of importance because politics and different ways of governance directly affect various spheres of the lives of the citizens who are being governed. Policies and legislations, such as the SSMPA, are a reflection of governmental decisions and types of governance. Thus, it is crucial to understand the factors and assumptions that underlie certain political decisions directed at constraining the lives of a specific group of citizens, in order to be able to disrupt the conceptions that led to these political decisions. As duly noted by Foucault “[a] critique does not consist in saying that things aren’t good the way they are. It consists in seeing on what types of assumptions, of familiar notions, of established, unexamined ways of thinking the accepted practices are based (Foucault as quoted in Bacchi, 2009, p. xv)”.

As such, considering the current hostility towards homosexual individuals in Nigeria, by answering the proposed question, ultimately, I hope to be able to provide valuable knowledge that can further be used as a basis for delineation of actions to disrupt the current perception of homosexuality in the country, and contribute to a less discriminatory society.

2. METHODOLOGY

In the present chapter, I will follow by further elaborating on the WPR approach, as well as at other methodological considerations, including the research method and the limitations of the research. I will also draw upon the overall structure of the thesis.

2.1. 'What's the problem represented to be?' approach

Before tackling the core ideas of the WPR approach I would like to highlight the reasons behind this methodological choice.

As it will be perceptible throughout this paper, homosexual individuals in Nigeria have a clear disadvantage position within the law and within society as a consequence of the problematisation surrounding their sexual orientation. Hence, the WPR approach which “has an explicitly normative agenda” that “presumes that some problem representations benefit the members of some groups at the expense of others” and “takes the side of those who are harmed” (Bacchi, 2009, p. 44) seemed appropriate to study the question at hand.

Moreover, the WPR approach recognizes that social relations are complex and that it is necessary to perform a detailed analysis of problem representation in order to identify possible places of intervention and reduce the damaging effects (Bacchi, 2009). The issue of homosexuality in Nigeria is, indeed, complex and with various deleterious effects which should be dealt under scrutiny. Hence, this was another reason for why this approach was chosen.

Moreover, as noted by Bacchi & Rönblom (2014, p. 170) it is important to reflect on methodologies since these “create different realities”, thus, bearing political significance. As such, it is crucial to choose a methodology that does not treat categories of analysis as fixed and unchangeable (Bacchi & Rönblom, 2014). In this context, the WPR method, by drawing of Foucauldian post structural principles, provides ground to challenge taken for granted categories and perform a critical analysis to the SSMPA.

In sum, the WPR approach was chosen to carry out this study because it accounts for the complexity of social issues and allows for a critical detailed analysis of policy that

challenges taken for granted assumptions.

Core ideas - Operationalization of the WPR approach

The WPR approach, was initially developed in 1999 as presented in Bacchi's book "*Women, Policy and Politics: The Construction of Policy Problems*". Here Bacchi contends that a policy, contrary to common understanding, which sees the latter as a reaction to 'problems', is in fact a reflection of the interpretation and ways of thinking about a certain issue. Instead, she proposes that policies should be thought in terms of "how 'problems' are given a shape through the ways they are spoken about and through the 'knowledges' that are assumed in their shaping (Bacchi, 2010, p. 2)." In this initial work Bacchi applies this approach to study how the issue of 'women's inequality' is represented as a 'problem' in different policies (Bacchi, 2010).

In a revised version from 2009, "*Analysing Policy: What's the Problem Represented to Be?*" she offers a step-by-step methodology on how to apply the approach to one's own problem representations. This later work was the point of reference to carry this thesis, since it, thoroughly, explains how to use the WPR approach.

Before exploring the WPR method, it should be noted that despite of having been developed with the intent of studying policies in the Australian context, throughout her work, Bacchi does not pose any limits to the context of where it can/should be used. Furthermore, she repeatedly states that her methodology can be applied to one's own problem representation (Bacchi, 2009).

The WPR approach assumes three key premises:

- 1) We are governed through problematisations.
- 2) We need to study problematisations [...] rather than 'problems'.
- 3) We need to problematise (interrogate) the problematisations on offer through scrutinizing the premises and effects the problem representations they contain (Bacchi, 2009, p. 25).

In Bacchi's perspective, a particular policy perceives "the 'problem' to be a particular sort of 'problem'", and therefore, *creates* 'problems' rather than *fixing* existing ones' (Bacchi, 2009, p. 1). Thus, governments play an active role in shaping policy 'problems',

instead of ‘*reacting*’ to occurring ones, which denotes that “we are governed *through* problematisations (Bacchi, 2009, p. 263).”

Furthermore, as a way to understand “how governing takes place,” we have to question the problematisations within public policies by analysing the assumptions and outcomes of the problem representations they comprise (Bacchi, 2009, p. 263). Bacchi understands problematisations as “framing mechanisms” that “determine what is considered significant and what is left out of consideration” revealing the power relations that problem representations contain (Bacchi, 2009, p. 263). Moreover, according to Bacchi, governments have an advantaged position regarding the construction of ‘problems’ because their understanding is the one that ‘stick’ over other problem representations and is then “constituted in the legislation, reports and technologies used to govern and thus, come to “exist *in the real*” (Bacchi, 2009, p. 33)”. In other words, the way governments understand a particular issue becomes ‘real’ and ‘true’ within that particular society and is then represented in policy.

She argues that the importance of how a problem is represented lies on the fact that it bears an array of consequences for the way specific issues are perceived and for how people involved in the ‘problem’ representation are treated and regarded by others and by themselves (Bacchi, 2009). Hence, problem representations not only reflect forms of governance and problematisations but also have consequences in the social context for the people portrayed in the policies in question.

Additionally, for Bacchi, the problem representations uncovered in policies are developed in discourses. In turn, Bacchi stands by the Foucauldian notion of ‘discourse’ in which it is considered a socially constructed form “of knowledge that sets limits upon what it is possible to think, write or speak about a ‘given social object or practice’” and is, thus, believed to “accomplish things [...] mostly often through their truth status” (Bacchi, 2009, p. 35). Drawing on that notion, the WPR approach then provides an understanding of power in which the latter produces, constrains and relates to knowledge.

Moreover, in order to study the problematisations and scrutinize their underlying premises and effects, there are six interconnected questions that should be answered. These are the following (Bacchi, 2009, p. 2):

1. What is the ‘problem’ [...] represented to be in a specific policy?

2. What presuppositions or assumptions underlie this representation of the ‘problem’?
3. How has this representation of the ‘problem’ come about?
4. What is left unproblematic in this problem representation? Where are the silences? Can the ‘problem’ be thought about differently?
5. What effects are produced by this representation of the ‘problem’?
6. How/where has this representation of the ‘problem’ been produced, disseminated and defended? How could it be questioned, disrupted and replaced?

I will now follow by drawing on the above mentioned questions and explain what is required in each one of them.

Question 1 (Q1) – What is the ‘problem’ represented to be in a specific policy?

Put it simply, the aim of Q1 is to “identify implied problem representations in specific policies or policy proposals (Bacchi, 2009, p. 4).” In practice, this means that, as a first step in the application of the WPR approach, it is necessary to work backwards and clarify what dominant problem(s) representation(s) feature in the policy we want to analyse.

Question 2 (Q2) – What presuppositions or assumptions underlie this representation of the ‘problem’?

According to Bacchi, it is with this question that the “real work begins (Bacchi, 2009, p. 5).” While the task of Q1 focuses on identifying the underlying problem representation within a policy, Q2 is intended to ask “which presuppositions or assumptions underlie an identified problem representation (Bacchi, 2009, p. 5).” Thus, the purpose of Q2 is to identify and examine the ‘conceptual logics’ that construct certain problem representations (Bacchi, 2009). In turn, ‘conceptual logic’ is related to the “meaning that must be in place for a particular problem representation to cohere or to make sense (Bacchi, 2009, p. 5).” In other words, it refers to a “background ‘knowledge’ that is taken-for-granted”, including epistemological and ontological suppositions (Bacchi, 2009, p. 5).

For this to be achieved it is necessary to explore the “deep-seated cultural values” that underlie the problem representation (Bacchi, 2009, p. 5). More specifically, it is necessary to do an exercise of Foucauldian archaeology, which proposes that “it is possible to detect patterns in problematisations, revealing modes or styles of governing that shape lives and

subjectivities” i.e. ‘govern-mentality’ (Bacchi, 2012, p. 5). Moreover, by acknowledging that policies are created in discourse, and that discourse involves the conceptual logics it is required to perform a kind of discourse analysis that deeply explores the processes in which meaning is generated “through particular language uses (Bacchi, 2009, p. 7).” More specifically, it is necessary to identify and interrogate the implied or explicit binaries, key concepts and categories that operate in a certain policy (Bacchi, 2009).

Binaries refer to an “A/not-A relationship”, (e.g. nature/culture; male/female), in which “one side of the binary is considered to be excluded from the other side” with an implicit hierarchy of one being privileged and more valued than the other (Bacchi, 2009, p. 7).

On the other hand, key concepts refer to “abstract labels that are relatively open-ended (Bacchi, 2009, p. 8)”. Open-ended here is used in the sense that some concepts are based on culture or history which can make it hard to identify the roots of their creation (Bacchi, 2009).

Lastly, categories in the WPR approach, refer specifically to people’s categories (e.g. ‘youth’; ‘the homeless’). These are important in the study of policies because they influence how governance is done, as well as the way people perceive themselves and others (Bacchi, 2009).

An important point regarding the identification of the binaries, key concepts and categories is that the task demanded in WPR approach is not to simply to accept these, but to perceive how they work in creating specific meaning to problem representations.

Question 3 (Q3) - How has this representation of the ‘problem’ come about?

The aim of Q3 is to “highlight the conditions that allow a particular problem representation to take shape and assume dominance (Bacchi, 2009, p. 11).” This is done by performing two interrelated tasks: 1) reflect on the non-discursive practices (developments and decisions) that have led to the creation of the identified problem representations; 2) acknowledge that “competing problem representation exist both over time and across space” and that the ‘issue’ could have evolved substantially different (Bacchi, 2009, p. 10). In this step of the WPR approach, Foucault genealogy theory is of great use, and consists in detecting the ‘history’ of the problem representation, and trace specific moments in time when important decisions took place and directed an issue to a

certain direction (Bacchi, 2009).

Question 4 (Q4) – What is left unproblematic in this problem representation? Where are the silences? Can the ‘problem’ be thought about differently?

The task of Q4 is to reflect on and consider “issues and perspectives silenced in identified problem representations (Bacchi, 2009, p. 13).” This task requires to go back to the discourse analysis carried out in Q2. For instance, the binaries that were identified in Q2 and that “simplify complex experience” are a good starting point to explore tensions and contradictions in problem representations, and thus, point out limitations and deficiencies in the form that a specific problem is being portrayed (Bacchi, 2009, p. 13). Furthermore, as Q3 identified “competing problem representations” it also helps in recognizing the silences in the dominant problem representations (Bacchi, 2009, p. 13). Lastly, to complete the analysis required in Q4 it is also useful to draw a cross-cultural comparison in order to see how the way of perceiving a ‘problem’ is the reflection of specific contexts (Bacchi, 2009).

Question 5 (Q5) – What effects are produced by this representation of the ‘problem’?

Q5 then turns to the examination of the consequences resulting from the identified problem representations since the WPR approach assumes that some problem representations create challenges for certain groups of people more than for others (Bacchi, 2009). As such, it is necessary to turn the focus to the effects that follow specific problem representations with the help of various theoretical viewpoints, for instance feminist body theory (Bacchi, 2009). In this context, the analysis proposed in Q5 requires the examination of three interconnected and overlapping points: 1) the discursive effects; 2) the subjectification effects; and 3) the lived effects (Bacchi, 2009).

The *discursive* effects relate to the identified problem representations and the discourses and deep-seated assumptions that structure them and that limit “what can be thought or said (Bacchi, 2009, p. 15).” For instance, if specific ‘problem’ representations discard some options of social actions, then this can have harmful consequences for some groups of people. Similarly, the *subjectification* effect presumes that discourses create “subject positions” that structure social relationships and influence both the way people feel about themselves and about others, and makes groups of people “in opposition to each other” (Bacchi, 2009, p. 16). Foucault calls this “dividing practices”, and is believed to

stigmatizing minority groups, and be helpful for governments in order to influence the behaviour of the majority to act in accordance to the pretended (Bacchi, 2009, p. 16). On the other hand, the *lived* effect refers to the “real consequences in living arrangements”, i.e. the effect on the life and death of those affected (Bacchi, 2009, p. 43).

Question 6 (Q6) – How/where has this representation of the ‘problem’ been produced, disseminated and defended? How could it be questioned, disrupted and replaced?

The last question, Q6, is concerned with identifying the “practices and processes that allow certain problem representations to dominate (Bacchi, 2009, p. 19).” In other words, it requires an examination to the means used to reach the intended audience, and attain legitimacy. Furthermore, this last step of the WPR approach also addresses possible ways of resistance and disruption of the identified problem representation. This, the second exercise of Q6 is to identify possible actions to challenge the latter (Bacchi, 2009).

To conclude, it has to be noted that the WPR approach is flexible and does not mandate the use of all six questions in order to be applied. It is up to each researcher to reflect on the points that are relevant for the study at hand. For the purpose of this thesis, I decided to tackle each of the six questions in order to gain as much insight as possible about the problematisation of homosexuality in Nigeria. In this sense, every question provides valuable and complementary knowledge.

2.2. Research method and data

The method for data collection chosen to carry out this thesis was the documentary research method. The documentary method is a qualitative research method and involves the review of documents that contain information related to the issue we intend to investigate (Bailey, 1994). As this thesis deals with analysing the SSMPA through the use of Bacchi’s approach, which requires a great deal of retrospective investigation, as well as different sources of information to answer each of its six questions, this method of collecting information seems the most appropriate since it allows for the research of various sources across different fields, perspectives and times.

Documents can be described as a “discursive message that provides evidence for a state of affairs” and can be presented in written, audio, or visual forms (Scott, 2006a, pp. xx-xxi). In this thesis, the type of source that will be used is the review of written documents.

Since this thesis consists in a policy analysis, the piece of legislation of the SSMPA is the central object of this research and is the starting point of the analysis. Nonetheless, as suggested by Bacchi (2009, p.20) in order to “build up a fuller picture of a particular problem representation” it is often required to explore other related texts. In this context, the sections that relate to sodomy in the Criminal Code Act and Penal Code are also examined. The reason is that the SSMPA seems to be a complementary legislation of offences that were not covered in the previous criminal law. Furthermore, some statements available in the press, from prominent religious and government individuals in Nigeria who support the legislation are also presented, in order to provide a comprehensive understanding behind the implementation of the SSMPA.

Additionally, as it was enlightened by the explanation of the WPR method in the previous section, the stance of this specific approach is that policy has to be thought in “anthropological terms, as a cultural product (Bacchi, 2009, p. ix).” Thus, in addition to the legislation itself and the statements mentioned above, in order to provide argument and answer the different questions proposed in Bacchi’s method, this thesis includes various documentary sources from specialized research papers, reports from organisations, books, and journalistic articles published on media platforms.

Lastly, in order to guarantee the highest level of scientific refinement, the material and sources selected were based on criteria of authenticity, credibility and representativeness (Scott, 2006b). Authenticity relates to the genuine and unquestionable source of origin of the material and guarantees the quality of the data (Scott, 2006b). Credibility is concerned with the extent to which the material is ‘honest’ and undistorted (Scott, 2006b). Lastly, representativeness relates to the extent the material is “typical of its kind” and allows researcher to be able to understand the limitations of any conclusion drawn from the material (Scott, 2006b, p. 9).

2.3. Limitations & thesis outline

As every research work, this thesis has its own limitations. First, in a constructivist methodology the researcher is not outside of the knowledge production process. Thus, the study is limited by the researcher’s own perception of social phenomenon and issues.

Additionally, the documentary research method used to collect the data also has some limitations since it relies on information available on existing documents, which may

leave out information that has not been registered or that is inaccessible for the researcher (Platt, 2006).

Furthermore, the fact that Nigeria has different legislations across states, with some states governed under Federal law, some Northern states ruled under Sharia law, and some communities under customary law, also poses challenges for a precise analysis of the legislation. In the context of this thesis, however, the concern lies on the study of the SSMPA which is a Federal law, and as such, the legislation concerning homosexuality in Sharia or customary law will not be dealt with. Thus, unless mentioned otherwise, the references made to the legislation in this research are about Federal law.

Moreover, Nigeria is very heterogeneous in terms of cultural and ethnical diversity and it would be impossible to consider all of the distinct cultures and ethnicities that exist in the country and their influence in the problematisation of homosexuality. Nonetheless, when necessary, efforts will be made to account for relevant cultural aspects.

Note on terminology

Before addressing the outline of the thesis, I wish to make a few observations regarding terminology. While relationships and their meaning differ across cultures and societies, for the sake of clarity of the text, it is necessary to make a few considerations. Within the context of this thesis, 'same sex union' shall refer to some form of socially or legally recognized entity by which same sex people are bonded with each other for sexual, emotional or other affinity purposes. This definition encompasses 'same sex relationships', which are socially but not legally recognized, 'same sex marriage' and 'same sex civil unions'⁵.

Moreover, 'homosexual' refers to people who feel sexually, emotionally and/or romantically attracted to people of the same sex, while 'heterosexual' refers to people who feel sexually, emotionally and/or romantically attracted to people of the opposite sex. Here, I would like to note that I acknowledge that this categorization might reinforce the idea of two binary sexualities, however, to make sense of the argumentation and comprehensibility, I consider it necessary.

⁵ Regarding 'same sex marriage' and 'same sex civil unions', the definitions of these two concepts that will be used in this thesis, are the ones provided in the SSMPA, which will be presented further in chapter 4.

Thesis outline

This thesis is divided in seven chapters. The first chapter “Introduction – Mapping (homo)sexuality” has already been presented and focused on introducing the topic and the research question. The second chapter “Methodology” explains the methodological choices that this research entailed, including the WPR approach, research method and limitations. Chapter 3 “Theoretical concepts and considerations”, draws upon Foucault’s concepts of power and sexuality, as well as on feminist theory on gender, body and sexuality. Chapter 4 “Political and legal contextualization” provides information about the current political context and governance in Nigeria, and presents the offences regarding homosexuality featured in the SSMPA and in the criminal codes. Chapter 5 “Analysis: What is the problem represented to be?” consists in the main bulk of this thesis and includes the analysis of the SSMPA, which is divided in six sub chapters that approach each one of the six questions of the WPR method. Chapter 6 “Discussion: Homosexuality and the SSMPA” summarizes the main results and findings derived from the analysis work and addresses the research question. Finally, chapter 7 “Conclusion: Final thoughts and reflections” concludes this thesis and gives an overview of the main results and includes some final comments about the research topic.

3. THEORETICAL CONCEPTS AND CONSIDERATIONS

As it has become clear from the explanation in the previous chapter, the WPR approach is a step-by-step tool to scrutinize public policies from various overlapping perspectives. These perspectives, in turn, require the consideration of different theoretical frameworks and concepts. This chapter will focus on the theoretical considerations relevant to study the topic at hand and necessary to carry the proposed methodology. More specifically, this section will provide an overview of Foucault's understanding of power and sexuality, and will reflect upon feminist ontological and epistemological concepts.

Foucault's work is of relevance because it shows how power relations are embedded in the discursive construction of sexuality and how these can be contested. In turn, feminist theory was chosen for this thesis because it is needed to understand the underlying assumptions in the SSMPA about homosexuality, gender and sexuality. It should be noted that feminist theory within this chapter will widely reflect the work of Judith Butler, as she is one of the greatest contributors to the debates surrounding sex, gender and sexuality. Additionally, her work is widely inspired in Foucault's poststructuralism and theory of sexuality and power, and thus, offers a great complement to the WPR approach, which is based on the same line of thought.

Before developing on the theoretical concepts, one should first define what feminism is. Feminism is a term that depending on the context can be understood as a research paradigm, an ideology or a set of social movements addressing "unequal relations of power" centered around gender (Dhamoon, 2013, p. 89). In essence, feminism is concerned with "social justice" and "center[s] power, both as an organising device that represses and produces gender relations and as a site of transformation" (Dhamoon, 2013, p. 89).

For the purpose of this thesis, drawing on feminism theory is essential because it challenges common conceptions about sex, gender and sexuality that regard them as "natural givens" rather than social and political constructions (Hawkesworth, 2013, p. 33) and attempts to unveil the distinction between sex, gender and sexuality and the "power dimensions embedded in all three concepts" (Hawkesworth, 2013, p. 32). Hence, feminism theory is a valuable resource to understand and examine the presumptions associated to specific laws that are intended to regulate and constrain certain sexual

behaviors and relationships such as the SSMPA.

3.1. Foucault: power and sexuality

Rejecting sexual essentialism, in his well-known work “*The History of Sexuality*”⁶, Foucault (1978) asserts that sexuality is not a factual truth or a natural attribute of human life but produced through discourses.

His understanding of sexuality stems from his overall perception of power as productive rather than repressive. For Foucault, power is everywhere, comes from everywhere and is dispersed and embodied in knowledge, discourses and ‘regimes of truth’ (Rabinow, 1994). In turn, these ‘regimes of truth’ are created in every society according to specific values, customs and beliefs (Rabinow, 1994). As he explains:

'Truth' is to be understood as a system of ordered procedures for the production, regulation, distribution, circulation and operation of statements.

'Truth' is linked in a circular relation with systems of power which produce and sustain it, and to effects of power which it induces and which extend it. A 'regime' of truth (Foucault in Rabinow, 1994, p. 133).

Drawing on the above notion of power, Foucault (1978) argues that power operates within discourses to create sexuality as a concealed truth that must be discovered and identified, and rejects what he calls the ‘repressive hypothesis’ that sees power as a mechanism that suppresses individuals’ free sexual expression.

According to Foucault (1978), the 18th and 19th centuries marked a turning point in the understanding of sex and sexuality in Western societies. These became matters discussed in the political sphere and started influencing and controlling the lives of the populations who were being governed. He argues that the development of the ‘*Scientia Sexualis*’, i.e. sciences of sexuality, led to a pursuit of ‘truth’ of sex (Foucault, 1978). Furthermore, discourses within the sciences of sexuality perceived sex as a biological and psychological instinct linked to identity, with profound implications on the behaviour of

⁶ Foucault’s *History of Sexuality* is made of three volumes that comprise the study of sexuality in Western countries. The first volume, published in 1976, and later in 1978 in an English version, is *The Will of Knowledge*. The two additional volumes *The Use of Pleasure* and *The Care of the Self*, were first published in 1984.

people, both sexually and socially. Consequently, people became categorized into healthy people with 'normal' sexual instincts, and pathological individuals with sexual deviances, e.g. homosexuals. Sexual behaviour then became measured in terms of what was 'normal' and what was a deviance from the 'normal'. At this point, political mechanisms were in place to sanction and control 'deviant' behaviours, e.g. homosexual activities, excused in concerns for society and the 'deviant' individuals themselves.

Foucault (1978), further asserts that in contemporary societies people are agents in building the categories and classifications in discourses of normalcy since they are compelled to see themselves within a specific category, e.g. as deviant homosexuals, and reveal the 'truth' about their identities. This, consequently reproduces these very categories.

Nonetheless, in Foucault's conception of power there is room for contestation and resistance in discourses. As he asserts:

Discourses are not once and for all subservient to power or raised up against it [...] Discourse transmits and produces power; it reinforces it, but also undermines and exposes it, renders it fragile and makes it possible to thwart it (1978, pp.100-101).

Thus, as "power and knowledge are joined together" in discourse, the same way discourses create identity categories, they also allow individuals to contest their position in society and speak for themselves (Foucault, 1978, p. 100).

In sum, sexuality is a social construct with embedded power relations that create categories and bear implications for society. Power, within sexual discourses, has the potential to construct a 'truth' about sexuality, e.g. naturalizing heterosexuality while portraying homosexuality as a 'deviance', and making people live according to that 'truth'. Most importantly, it makes people believe that the 'truth' is natural and is what that should be followed and accepted. Thus, sexual discourses operate as a structured way of social control that normalizes certain identities and 'rejects' others, but as everything made through discourses, 'truths' are not fixed and stable and can be resisted and contested.

3.2. Sex, gender and sexuality

Known as 'sexual dimorphism', sex has often been understood as a "fixed oppositeness",

a biological division that differentiates people between male and female (Hawkesworth, 2013, p. 34). This sexual essentialism belief posits the attribution of specific characteristics to female and male excused in biological configurations such as chromosomes, hormones, gonads, external genitalia and other body characteristics such as hair, breasts, etc. (Hawkesworth, 2013).

Additionally, this naturalization of sex dictates that the latter is what determines the gender of a person, which naturally develops into male and female and provides ground to segregate “social [gender] roles and responsibilities, legal status, as well as divisions of power and opportunity” (Hawkesworth, 2013, p. 33). This perspective also contends that the only ‘normal’ and accepted form of sexuality is heterosexuality, while other kinds of sexuality, including homosexuality, are seen as deviant and abnormal (Lind, 2013).

However, feminist scholars contest sexual essentialism and argue that “it is not possible to draw a clear dividing line even between male and female” since both share certain specificities, such as testosterone and estrogen (Devor as quoted in Hawkesworth, p.34). Thus, feminist scholars coined the term ‘gender’ to refer to culturally constructed features related to masculinity and femininity (Hawkesworth, 2013). Feminists then contend that psychological and behavioural distinctions are caused by social factors rather than biology.

Judith Butler, in her acclaimed book *Gender Trouble*, originally from 1990, attempts to disrupt the essentialism position of sex, gender and sexuality, and argues that the naturalness of these concepts are “constituted through discursively constrained performative acts that produce the body through and within the categories of sex” (2002, pp. xxviii-xxix). Or in other words, they are the products of power and discourse. Accordingly, she asserts that gender is a performance, a ‘doing’ that is naturalized through the “stylized repetition of acts” rather than a ‘being (Butler, 2002, p. 179). As she suggests,

Consider gender, for instance, as a *corporeal style*, an ‘act’, as it were, which is both intentional and performative, where ‘*performative*’ suggests a dramatic and contingent construction of meaning (Butler, 2002, p. 177).

Gender is the repeated stylization of the body, a set of repeated acts within a highly rigid, regulatory frame that congeal over time to produce the appearance of substance, of a natural sort of being

(Butler, 2002, pp. 43-44).

Gender is then the “discursive/cultural means” by which the ‘natural’ sexed body is constituted and established “as ‘prediscursive,’ prior to culture, a politically neutral surface on *which* culture acts” (Butler, 2002, p. 11). Thus, genders can be “neither true nor false, but are only produced as the truth effects of a discourse of primary and stable identity (Butler, 2002, p. 174).” Thus, the body has no ontological meaning besides the acts and performances that compose its reality (Butler, 2002).

Moreover, contrarily to the sexual essentialism assumption seen above, Butler contends that it is not sex that determines the binary gender, but instead, it is gender that “designates the apparatus of production whereby sexes are established (Butler, 2002, p. 11).” She further argues that what regulates this binary is the “obligatory frame of reproductive heterosexuality (Butler, 2002, p. 173).” As she explains,

the heterosexualization of desire requires and institutes the production of discrete and asymmetrical opposition between “feminine” and “masculine,” where these are understood as expressive attributes of “male” and “female” (Butler, 2002, p. 23).

Consequently, this “heterosexual matrix (Butler, 2002, p. 45)” in which “sex, gender and desire are aligned” and conceptualized in discourse as being natural (Coole, 2013, p. 180) renders impossible the ‘existence’ of other identities that do not derive from the ‘natural’ sex and that do not ‘follow’ from either sex or gender (Butler, 2002). This leads to the non-heterosexual kinds of sexuality being seen as deviant and governed accordingly, for instance by reserving the right to marry for heterosexual couples (Lloyd, 2013).

In sum, in Butler’s view, gender is “the process that constructs the internal coherence of sex, (hetero)sexual desire, and (hetero)sexual practices” and that “produces a notion of presocial body shaped by culture” (Hawkesworth, 2013, p. 44). Thus, for Butler what produces the binary female/male gender are discourses and practices embedded in a set of power relations regulated by a heterosexual imperative.

3.3. Body, sexuality and heteronormativity

Bodies have been often excluded from the sphere of politics as they can be perceived as a personal issue and unrelated to political science. However, bodies are at the centre of

the political system with the role of signalling status and power (Waylen at al., 2013). Furthermore, the arenas of power are designed to favour the associated features of heterosexual male bodies of dominant race and ethnicity, while violence regulates the limits of accepted sexualities, as abnormalities from the heterosexual norm, racial orders, and accepted forms of femininity and masculinity (Waylen at al., 2013).

In this context, even though bodies can be influential sources and symbols of “power and privilege” they can also cause “subordination and oppression” (Waylen at al., 2013, p. 162). Moreover, bodies are also subject of knowledge. From them we derive certain assumptions that lead us to see some bodies as authoritative knowledge, while seeing ‘other’ bodies as unfitting for the pursuit of knowledge, e.g. female racialized bodies (Waylen at al., 2013). In this sense, as suggested by Butler “the hierarchy of bodies shapes and is shaped by our processes of knowledge production (Waylen at al., 2013, p. 162).”

Here again, Butler’s work is of relevance for the understanding of body theory and its related sexed/gendered bodies and the power relations embedded in them. As seen in the previous section, Butler posits the body at the centre of her conception of gender, in which the latter is corporeally enacted and in which the sexed body is an effect of gendered perceptions regulated by a compulsory heterosexual gender binary. In her later work, from 1993, – *Bodies that Matter* – Butler moves her focus from the gender as a bodily performance to the materiality of the sexed body. In other words, she moves her focus from the corporeal styles to the matters of the flesh, and analyses how the dominance of heterosexual hegemony materializes bodies, sex and gender.

According to Butler the materiality of the sexed body is a construction mobilized by the cultural norm of ‘sex’, and which requires a citation of that norm which then creates material effects (Butler, 1993). In this sense, sex “not only functions as a norm, but is part of a regulatory practice that produces the bodies it governs, that is, whose regulatory force is made clear as a kind of productive power (Butler, 1993, p. 1)”. In other words, the citational materialization of the body implicates the restricted premise of a bodily norm. In turn, these regulatory norms of sex that materialize the sexed body, “materialize sexual difference” in order to strengthen the ‘heterosexual imperative’ (Butler, 1993, p. 2).

This display of power that is central in Butler’s argument provides a useful theorization of subjectivity. By being linked to the heterosexual imperative, the materialization of the

body is limited by the “boundaries of bodily life where abjected or delegitimated bodies fail to count as ‘bodies’ (Butler, 1993, p. 15) .” Consequently, this creates

‘unlivable’ and ‘uninhabitable’ zones of social life which are nevertheless densely populated by those who do not enjoy the status of the subject, but whose living under the sign of the ‘unlivable’ is required to circumscribe the domain of the subject (Butler, 1993, p. 3).

Thus, it allows specific “sexed identifications” and prevents and/or “disavows other identifications” (Butler, 1993, p. 3). This then pertains that the creation of a subject involves the “identification with the normative phantasm of ‘sex,’” in which there is a repudiation that creates a “domain of abjection, a repudiation without which the subject cannot emerge (Butler, 1993, p. 3).” In other words, the heterosexual imperative divides bodies in legitimated subjects – bodies that matter - (i.e. those who follow the law of binary heterosexual sex), while excluding others – bodies that do not matter - (i.e. those who challenge the norm, e.g. homosexuals) from the status of subjects, in which the subject depends on the exclusion of the abject to be legitimated. In this sense, and as seen in the previous section, sexuality, is a kind of power that can both be productive (i.e. by creating legitimate subjects), and repressive (i.e. by banishing non-heterosexual to the position of abject).

From here, we can turn to the concept of heteronormativity. Heteronormativity contends that structures, institutions and actions contribute to the normalization of the dominant kind of heterosexuality as “universal and morally righteous (Lind, 2013, p. 191).” Accordingly, heteronormativity relates to the way political and legal institutions, societal norms and cultural traditions subscribe the systematization of a “hegemonic, normative heterosexuality” that discriminate both in “material and symbolic ways (Lind, 2013, p. 191)”. Furthermore, it comprises complex expectations, requirements and constraints that support “hierarchies of difference grounded on the presumed naturalness of heterosexuality (Hawkesworth, 2013, p. 39).” Thus, heteronormativity can be said to be a form of social control, a political system that privileges heterosexuality and produces and preserves the male/female binary and sexual dimorphism, while marginalizing those who do not fit the heterosexual norm expectation.

Here the concept of homophobia is also relevant. Homophobia can be defined as the “terror of love for the same sex (Hawkesworth, 2013, p. 39)” and the “irrational fear of

or hatred toward lesbians, gay men, and bisexuals (Lind, 2013, p. 191)”. Homophobia creates a tension between homosexual and heterosexual individuals and operates as a strong instrument of social control. This is due to the fact that it holds the coercive power of heterosexuality “to keep gays and lesbians closeted” and exclude them from “representations of love” (Hawkesworth, 2013, p. 39). More severely, it can lead to physical violence and even the death of homosexual individuals by aggressive homophobes (Hawkesworth, 2013). This can be equated to a micro technique of power that “produce[s] normalized and disciplined bodies (Hawkesworth, 2013, p. 39).”

In sum, this section has shown how the body is used as a site for the naturalization of ‘sex’, creating certain ‘subject’ identities that include those who comply with the gender norms and the compulsory heterosexuality, while creating ‘abject’ identities that include those to whom identity does not derive from the naturalization of sex. Additionally, it has introduced the concepts of heteronormativity and homophobia.

4. POLITICAL AND LEGAL CONTEXTUALIZATION

In this chapter I will, briefly, shed light on the current political context and governance, in Nigeria. In addition, I will expand on the Nigerian legislation concerning homosexuality, namely, the SSMPA and the anti-sodomy laws in the Criminal Code Act and Penal Code.

4.1. Political context and governance in Nigeria

Nigeria is a Federal Republic with a presidential system in which the Constitution upholds the separation of power between the three branches of the government (i.e. executive, legislative and judiciary). The present Nigerian Constitution is the fourth since the country's independence, and pronounces Nigeria as a secular state. The Constitution, includes human rights provisions that incorporate economic, cultural, social, political and civil rights, including personal freedom (Dada, 2012). In turn, the focus on human rights in the Constitution was acknowledged by and predicted on the need to ease the concerns of oppression of the hundreds of ethnic minorities that exist in the country by the major groups (Dada, 2012; Izugbara, 2004).

Furthermore, Nigeria is a former British colony that gained independency in 1960 (Sampson, 2014). In the post-colonialism era, Nigeria was left with a secular governmental regime under the influence of British secular system, which at the time sound acceptable from the southern Christian region but was opposed from the Northern Muslim (Sampson, 2014). Until today, this incongruity remains one of the weaknesses of Nigeria to become a truly secular state (Sampson, 2014). Islam and Christianity are, currently, the most prominent religious groups in the country, however other kinds of religious beliefs exist, some resulting from the fusion of tribal traditions with Islam and Christianity (Sampson, 2014).

Moreover, while the country's Constitution proclaims freedom of religion and intends to separate state issues from religious doctrine, it also creates and recognizes "executive and judicial institutions with religious biases (Sampson, 2014, p. 312)". This has resulted in several judicial systems built on religion, secularity and traditions (Sampson, 2014, p. 312). For instance, the system of criminal law in Nigeria is comprised by two criminal codes, namely the Criminal Code Act, and the Penal Code (Mwalimu, 2007, p. 38). These,

in turn, apply to the Southern states, and the Northern states, respectively (Mwalimu, 2007, p. 38). Apart from these, some Southern states are ruled under Islamic Sharia law rather than Federal law, while some communities follow customary law. In this context, despite of the Constitution stating the secularity of the governance, due to the role that religion had in the early formation of the state, it has been difficult to distinguish religious disputes from political and ethnical ones (Akwara & Ojomah, 2013). Part of the country's population, particularly Muslims, still believe that the Nigerian state will not be completely formed until the whole country is Islamized (Akwara & Ojomah, 2013; Sampson, 2014).

Additionally, Nigeria has been often criticized for having a high degree of inequality, poverty (Daudaa, 2016, p. 8) and illiteracy (UNICEF, 2013), and a high political instability prompted by large corruption, defective governance and a “cyclical legitimacy crisis” (Omololu, 2007, p. 28). Regarding the latter point, since its post-colonial independence, Nigeria's governance has faced several challenges rooted in matters related to ethnical issues, corruption, civil war, military intervention, and political malfeasance (Brown G. M., 2013, p. 179).

Ethnical diversity has, particularly been influential in the fragilization of Nigeria's democracy, mostly due to the fact that the wide array of different ethnic groups in the country prompt social disputes over resources. These disputes, concealed under religion, are used as a mechanism of “internal colonization” which in turn hampers the development and strengthening of the state's democracy (Akwara & Ojomah, 2013). The clashes between politics and religion date from before the establishment of Nigeria as a state. Religion was what fuelled past invasions to the territory and was the forerunner of British colonialism that occupied southern territories, exploiting resources, eradicating traditions and socio-cultural customs, and introducing Christianity (Akwara & Ojomah, 2013).

However, despite the challenges the country's governance has faced, a recent election, early this year, marked a new dawn for Nigeria's democracy. For the first time, a President was elected at the ballot box, peacefully (The Economist, 2015). Muhammadu Buhari, who is a former military dictator, defeated Goodluck Jonathan, and is now the new President (The Economist, 2015). The results cheered up the Nigerian population who considered Goodluck's governance a failure. His governance was unsuccessful in

defeating the Islamist extremist group Boko Haram that has been active in the Northern-East region of the country in the last years, and most of all, he was unwilling to address the prevalent issue of corruption (The Economist, 2015). In fact, one of reasons given to Goodluck's initiative in signing the SSMPA was his desire to gain popularity among the population in the light of corruption scandals during his governance (Reid, 2015) and his lack of action in solving the security threats imposed by Boko Haram (Okewo, 2014).

4.2. Legislation and criminal offences regarding homosexuality in Nigeria

Bellow, I follow by presenting the legislation and criminal offences portrayed in the SSMPA, and in the Criminal Code Act and Penal Code.

The SSMPA can be traced back to 2007, when the Federal Executive Council sent it (a bill at the time) to the National Assembly for 'urgent action', which had drafted it following manifestations for same sex marriage in the course of the International Conference on HIV/AIDS (ICASA), in 2005 (Obidimma & Obidimma, 2013). That year, the bill was not passed into law. However, in 2011, after major opposition against homosexual practices in the country, the Senate passed the SSMPA, followed by the House of Representatives in 2013, and finally by the former President Goodluck in January 2014, when it officially came into force (Obidimma & Obidimma, 2013).

Back in 2011, when the act was first approved, Senator Domingo Obende contended that:

We as a country need to act very fast for this trend not to find its way into our country. [...] Same sex marriage cannot be allowed on moral and religious grounds. The Muslim religion forbids it. Christianity forbids it and the African traditional religion forbids it. It should not be allowed because it will lead to a breakdown of the society (Gender Across Borders, 2011, para. 3).

While President Goodluck did not provide an official statement regarding the enactment of the SSMPA, the presidential spokesman, Reuben Abat said that the SSMPA is "a law that is in line with the people's cultural and religious inclination. So it is a law that is a reflection of the beliefs and orientation of Nigerian people. [...] Nigerians are pleased with it (AP, 2014, para.19)." A public survey from 2013, carried out by the Pew Research Center (2013), revealed that 98% of Nigerian citizens believe that homosexuality should not be tolerated. Additionally, various prominent leaders within the country demonstrated their support for the SSMPA. Prior to the act was passed, David Mark, the President of

the Senate, stated that the SSMPA was “irrevocable” and “we will not compromise on this” (Egube, 2013, para.6). Instead, Nigeria has to “prove to the rest of the world, who are advocates of this unnatural way that we Nigerians promote and respect sanity, morality and humanity (Egube, 2013, para.6).” Similarly, in January 2014, the President of the Christian Association of Nigeria stated that

“[w]e call on all those talking about human rights and international conventions to remember that there is always a limit to certain rights and that those who go out of their ways to overstep the limits now know the consequences of their actions. [...] Human rights without limit are recipes for the destruction of any society. The culture and morality of a people must be taken into cognizance because it is important to remember that culture and morality are intricately linked with each other. By the beliefs of most Nigerians, same sex marriage is offensive to us as a people (Stewart, 2014, para.10).

In July 2015, Nigeria’s President Muhammadu Buhari’s Special Adviser on Media and Publicity contented that “[s]odomy is against the law in Nigeria, and abhorrent to our culture (The Guardian, 2015, para. 4).” Moreover, that same month, John Cardinal Onaiyekan, the Catholic Archbishop of Abuja Diocese stated that “even if people don’t like us for it, our church has always said homosexuality is unnatural and marriage is between a man and a woman. [...] There is no question of the Catholic Church changing its positions on this matter (Vanguard, 2015, para. 9)”.

Moreover, the controversy and discussions surrounding same sex marriage in Nigeria is a recent phenomenon. It was only recently that public debates about the issue emerged, while no legal recognition of same sex relationships were ever granted in the light of the widely hatred opinion regarding homosexuality in the country (Obidimma & Obidimma, 2013). On the contrary, the criminal law already prohibited same sex sexual relations prior to the enactment of the SSMPA (Obidimma & Obidimma, 2013).

I will now follow by presenting the aforementioned legislation regarding homosexuality in detail, both from the SSMPA and the criminal law, including the Criminal Code Act and Penal Code, since both contain provisions regarding sodomy, which is perceived as including same sex sexual acts.

Offences in the SSMPA

The SSMPA prohibits same sex marriage in Nigeria and makes void any marriage contract or civil union issued abroad, and any benefits that derive from the latter shall not be recognized by any court of law. It also outlaws the solemnization of a marriage contract or a civil union in any places of worship, including churches and mosques. As it reads in the SSMPA⁷:

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.
2. (1) A marriage contract or civil union entered into between persons of same sex shall not be solemnized in a church, mosque or any other place of worship in Nigeria.
- (2) No certificate issued to persons of same sex in a marriage or civil union shall be valid in Nigeria (Same Sex Marriage (Prohibition) Act, 2013).

The SSMPA also makes clear that only marriages and civil unions between men and women are recognized in Nigeria. It further prohibits the registration and maintenance of gay organisations, societies and clubs, as well as the “public show of same sex amorous relationship directly or indirectly (Same Sex Marriage (Prohibition) Act, 2013).” As stated bellow:

3. Only a marriage contracted between a man and a woman shall be recognized as valid in Nigeria.
4. (1) The Registration of gay clubs, societies and organisations, their sustenance, processions and meetings is prohibited.

⁷ See ‘Appendix A’ for the original and full text of the *Same Sex Marriage (Prohibition) Act 2013*.

(2) The public show of same sex amorous relationship directly or indirectly is prohibited (Same Sex Marriage (Prohibition) Act, 2013).

Moreover, any violation of the above mentioned offences makes a person liable to be charged with criminal offences and liable to a prison sentence:

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 organisation, or directly or indirectly makes public show of same sex amorous relationship in Nigeria commits an offence and is liable on conviction to a term of 10 years imprisonment.

(3) A person or group of persons who administers, witnesses: abets or aids the solemnization of a 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 (Same Sex Marriage (Prohibition) Act, 2013).

The SSMPA defines ‘marriage’ as the “legal union entered into persons of opposite sex in accordance with the Marriage Act, Islamic Law or Customary Law” and ‘same sex marriage’ as the “means to 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 (Same Sex Marriage (Prohibition) Act, 2013).” In turn ‘civil union’ is defined as the

“arrangement between persons of the same sex to live together as sex partners, and includes [...] (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 (i) stable unions (Same Sex Marriage (Prohibition) Act, 2013).”

A witness is defined as a “person who signs or witnesses the solemnisation of the marriage (Same Sex Marriage (Prohibition) Act, 2013).” It should be noted that the SSMPA does not define what should be understood as gay clubs, societies and organisations. Neither

does it specify what “public show of same sex amorous relationships directly or indirectly” clearly means and what should be considered as such.

Offences in the Criminal Code Act and in the Penal Code

Chapter 77 of the Criminal Code Act (1990), under the ‘Offences against morality’, in §214, §215 and §217, criminalizes same sex sexual relations as “carnal knowledge against the order of nature”:

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.

217. Any male person who, whether in public or private, commits any act of gross indecency 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 (Criminal Code Act, 1990).

The term ‘carnal knowledge’ “is used in defining an offence, it is implied that the offence, so far as regards that element of it, is complete upon penetration (Criminal Code Act, 1990).” However, it does not define what should be understood as ‘gross indecency’.

In turn, the Penal Code (1990), in §284, criminalizes homosexual acts, between both men and women, as ‘unnatural’ offences. These are read as:

284. Whoever has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine. EXPLANATION. Mere penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section (Penal Code, 1990).”

Additionally, it also prohibits male cross-dressing in §405:

“Vagabonds. Definition includes at 405(2)(e) ‘any male person who dresses or is attired in the fashion of a woman in a public place or who practices sodomy as a means of livelihood or as a profession (Penal Code, 1990).”

“Whoever is convicted as being a vagabond shall be punished with imprisonment which may extend to two years or with fine which may extend to four hundred and fifty naira or both (Penal Code, 1990).”

Both the Criminal Code Act (1990) and the Penal Code (1990) use the terms “against the order of nature” to outlaw same sex sexual relations, however neither exactly defines what should be understood by that definition.

5. ANALYSIS: What is the problem represented to be?

I shall now turn to the analysis of the SSMPA as proposed in the methodology. As such, this chapter will cover all six questions presented in Bacchi's approach and apply them to the topic of this research.

5.1. What is the problem represented to be in the SSMPA? (Q1)

Recalling the explanation provided of Q1 earlier in this thesis, it requires that we analyse what is ought to change by the policy and work backwards to identify what the 'problem' is constituted to be.

The focus of the SSMPA and what it proposed to change is, essentially, concerned with:

- Outlawing same sex marriage and civil unions in Nigeria, and determining void any same sex marriage or civil union recognized in a foreign country;
- Defining marriage as being, exclusively, between a man and a woman;
- Making illegal gay clubs, societies and organisations;
- Prohibiting the public display of same sex amorous relationships;
- Establishing criminal sanctions for any person who violates the above mentioned provisions;

Drawing on these points, it seems that, predominantly, the problem that is represented to be in the SSMPA is the legitimization of same sex unions⁸ and public support and abet for same sex unions and homosexuality.

First, there is an obvious effort in the representation of same sex relationships as illegitimate, while stressing that a marriage and a civil union can only be valid if between a man and a woman. The way homosexual unions have been framed in the SSMPA is about how to restrain them from being legitimized and socially accepted, while also focusing in preventing public abet and support for same sex unions. Thus, one of the crucial points of this law is that it constructs power relations by identifying marriage

⁸ It should be noted that I consider same sex unions as being covered under the SSMPA (not only legal marriage and civil unions) due to the fact that the definition of civil unions, as presented in the subsection 'Offences in the SSMPA' in chapter 4.2., includes adult independent relationships, caring partnerships, any significant relationships or stable unions, which in turn can be understood as any romantic relationship between same sex people.

between men and women, i.e. heterosexual relationships, as the only legitimate kind of relationship, while concurrently marginalizing other relationships, such as same sex/homosexual relations.

This problem representation has additional discursive implications. While existing criminal legislation regulated sexual acts between individuals, little attention had been given to the role of public action and support to same sex unions. More specifically, the legislation regarding homosexuality in the Criminal Code and the Penal Code targeted only those involved in same sex sexual activities, while leaving out external actors who might be aware of the occurrences. In contrast, in the SSMPA, the issue of homosexuality is repositioned as a matter of public concern and relevant to all members of Nigerian society. This posits someone who knows about a same sex union as a supporter agent who is contributing to the existence of the latter, and hence, liable to suffer criminal repercussions. Put it simply, it marked a departure from regulating what happens between people sexually, in the intimacy sphere, to an issue that concerns everyone.

Furthermore, as policy makers denote that same sex unions are illegitimate they proclaim a normative agenda regarding the type of ideal society that Nigeria should be. In this specific case, one in which same sex unions/homosexuality does not, or should not exist.

Here, the central issue remains on the meaning ascribed to same sex unions, and in how this framing works in reproducing a heterosexual ideal that marginalizes 'non-traditional' relationships. These elements then provide a point of departure to turn to Q2, for a critique of the deep-seated cultural assumptions that constitute the problem representation in the SSMPA.

5.2. What assumptions underlie this representation of the problem? (Q2)

What is proposed in Q2 is the analysis of how the SSMPA was discursively created, in order to enquire the underlying conceptual logics.

As a first step, it is necessary to identify the main assumptions that feature in the problematisation on the selected legislation. To complete this exercise, it is useful to recall some of the statements made about the SSMPA by governmental figures in Nigeria, in order to draw a clear picture of the underlying assumptions in the latter.

Senator Obende stated that “[w]e [...] need to act very fast for this trend not to find its way into our country. [...] Same sex marriage cannot be allowed on moral and religious grounds (Gender Across Borders, 2011, para. 3).” Similarly, the presidential spokesman contended that the SSMPA “is in line with the people's cultural and religious inclination. [It] is a reflection of the beliefs and orientation of Nigerian people (AP, 2014, para.19).” David Mark, the President of the Senate also stated that Nigeria has to “prove to the rest of the world, who are advocates of this unnatural way that we Nigerians promote and respect sanity, morality and humanity (Egube, 2013, para.6).”

What the above mentioned statements highlight is that the driving assumption in the SSMPA regarding same sex marriage is that it is immoral, unnatural, and against cultural and religious norms. In order to understand the ontological premises that drive this assumption it is necessary to recognize the implicit and explicit binaries, keywords and categories and examine how these form the problems represented in the SSMPA.

As seen in Q1 and in the statements above, one of the main points of the SSMPA was to legitimize marriage as being, exclusively, between a man and a woman. Here, the first binary is identified: ‘man/woman’. Additionally, looking both at the criminal codes, which frame same sex sexual acts as being “against the order of nature (Criminal Code Act, 1990; Penal Code, 1990)”, and at David Mark’s statement above who portrays same sex marriage as ‘unnatural’, another binary that emerges and that should be examined is: ‘natural/unnatural’. Given the context of the discourses, it can be assumed that the word ‘unnatural’ refers to sexuality, thus the binary refers more specifically to ‘natural sexuality/unnatural sexuality’.

Moreover, a specific understanding of marriage underlies the SSMPA. Hence, the concept of ‘marriage’ will be considered as an important keyword in the analysis that follows. Lastly, assumptions regarding homosexuality also underpin the discourses around same sex marriage. Thus, the category ‘homosexual’ or ‘gay’, as used in the SSMPA, will also be considered in the study of the conceptual logics.

Binaries - man/woman’ & natural sexuality/unnatural sexuality’

Now that the binaries are identified, it is vital to reflect on their nature and on the reasons that sustain these complementary opposite terms. For this purpose, a useful starting point is to explore the gender organisation in Nigerian society to offer a broader picture of the

binary 'man/woman'.

As previously stated, Nigeria is a very culturally diverse country, hence with various normative sub-social organisations. However, there are similarities across them, including the gender role division (Omadjohwoefe, 2011). The attribution of specific roles according to one's perceived gender is a common and evident occurrence in Nigeria. Usually, men are the ones who head the household, who make decisions and who provide status to the family (Ofoha, 2004; Omadjohwoefe, 2011). On the contrary, women are often seen as the 'weak' and 'second' sex (Ofoha, 2004; Omadjohwoefe, 2011). Likewise, Nigeria has been characterized as a traditional and patriarchal society where women are "dominated by men" and are seen as "an inferior commodity" in relation to men (Makama, 2013, p. 115). Additionally, women are believed to be the ones who should take care of the housework, while simultaneously being discriminated, for example in the access to education, and victimized through violence (Makama, 2013).

In the notion of patriarchy above, power is viewed as a relationship of domination, of power over women exercised by men (Lloyd, 2013). Instead, in accordance to the methodology adopted in this thesis, a useful exercise is one that interprets this social organisation in a post structural thinking, in which power is seen as productive. As such, we should view Nigeria's social organisation as gendered power relations produced by the performances of womanhood and manhood based on accepted norms of what a 'man' and 'woman' are. In this sense, 'man' and 'woman', as placed in the SSMPA, relate to social expectations and accepted performances. At this point, it is useful to look at feminist theory in order to understand the underlying conceptual logics.

According Butler (1988, p. 527) gender is "real only to the extent that it is performed" and since there is no objective ideal or an 'essence' inherent to gender, notions of 'man' and 'woman' rely on performances to exist and to be maintained. In this sense, when a man heads the household and assumes a position of authority in the family, as described above, he is performing the gender 'man' through the repetition of acts regulated by the naturalized notion of sex and gender, in the same way that a woman who makes the household shores and takes care of the children is performing the gender 'woman'.

To better understand this point, we can look at the prohibition of men to dress in women's clothing, as featured in the Penal Code (1990). As Butler suggests (2002), the dressing of

a person works as the materialization of the sexed body. The same way a newborn is gendered by being addressed as a 'she' or a 'he', throughout time this gendering process is repeated to strengthen the notion of a naturalized sex and gender. Likewise, the dressing of a person works in the service of the materialization of the sexed body since it uniformizes bodies into binary fixed categories of gender, in which men and women dress distinctively from one another, which then creates a perception of 'natural' distinct genders.

Here, it is appropriate to reflect on the criteria that makes a type of sexuality to be considered 'natural', while others are seen as 'unnatural'. First, we should notice how the concepts of man and woman are used to legitimize marriage as "only a marriage contract between a man and a woman shall be valid in Nigeria" and to define the very concept of marriage as the "legal union entered between persons of opposite sex" (Same Sex Marriage (Prohibition) Act, 2013), 'opposite sex' being man/woman. By relating marriage to the union of men and women there is an implicit expected opposite sex sexual attraction which is based on the notion of a natural sex/gender, as seen above. This, consequently, becomes problematic due to the fact that relating sexuality to nature leads to an inevitable measurement and evaluation of sexuality and identity through a binary lenses of natural versus unnatural. This framework of exclusivity always posits one concept against the other, wherein heterosexuality is conceived as the 'natural' kind of sexuality, and homosexuality as the 'unnatural' one (Butler, 2002).

Thus, in order to maintain the present gender organisation prevalent in Nigeria there is the need of linear gender performances that do not disturb the culturally created notion of a 'natural' sex and gender. Hence, the featured binary 'man/woman' underlying in the SSMPA works not only to produce a notion of compulsory heterosexuality in relation to relationships (i.e. marriage) but simultaneously works to maintain the very notions of manhood and womanhood which intrinsically rely on the performance of a compulsory heterosexual and 'natural' sexual attraction in order to exist.

Drawing on the above, we can argue that the concepts of 'man' and 'woman' in Nigeria and that underpin the SSMPA are based on sexual essentialism ideals about gender that position 'sex' as the determinant variable of the latter, and from which pre-defined behaviours and gender roles are expected to naturally unfold according to one's naturally born gender. Accordingly, depending on whether someone is identified as male or female,

he or she is expected to feel a natural sexual attraction to the opposite sex, whereas those who do not are labelled as having an ‘unnatural’ sexuality.

Keyword - ‘marriage’

In Nigeria, marriage is seen as an expression of love, since responsibility and caring for the spouse, children and the family is valued over public demonstrations of love, such as kissing or holding hands (Falola, 2000). Furthermore, marriage is “one of the most important social customs” in the country as it is through it that “kinship is formed, the lineage is maintained and expanded, and new household units are created” (Falola, 2000, pp. 118-119).” In fact, reproduction is so praised in Nigerian society that many people see it as the central purpose of marriage (Falola, 2000).

Here we should pause and reflect on the implications of these understandings regarding marriage and family. By positioning a reproductive character of kinship in the conception of marriage, it renders impossible the existence of other notions of marriage and family composed by two men or two women where biological reproduction between the couple is not viable. The power relations entailed in this notion of marriage then work as a productive mechanism that frames what is an acceptable family, a ‘true’ family, and that provides status to those who fall within that framework while marginalizing same sex couples who do not uphold the norm. In turn, the SSMPA, works as a regulator of the norm, since by prohibiting marriage between same sex couples it is guaranteeing any possible disruptions of the accepted norm of what marriage is and the concept of family that constitutes it.

In order to examine the rationale behind the concept of marriage in Nigeria it is also helpful to recall Butler’s (2002) heterosexual matrix. The heterosexual matrix conceptualizes desire and relationships within a framework where heterosexuality is mandatory in order to produce the naturalization of gender binaries. Drawing on this notion, marriage is reserved to opposite sex couples, who follow identities that are conceptualized from the naturalization of sex, which implies a natural sexual attraction for the opposite gender. As seen above, perceptions about gender and sexuality in Nigeria derive from sexual essentialism ideals. Consequently, the discourse about marriage is also aligned with these ideals. Hence, marriage works as the institutionalization of heteronormativity, ‘controlling’ and reproducing the binaries discussed above. Moreover,

the procreation character associated to marriage works to enhance the notion of a natural sex and a natural sexual attraction, by placing biology at the centre of the purpose of marriage.

In sum, the concept of marriage in the SSMPA is a social construct characterized by the juxtaposition of the idea of a ‘natural’ sex and gender and its supposedly ingrained heterosexual attraction that works in the service of reproduction. In turn, through marriage and family this reproduction system of kinship is maintained by the establishment of another gendered generation that is expected to replicate the latter, rejecting the possibility for alternative forms of unions and families.

Category - ‘homosexual’

It should be remembered that within the WPR method, categories are to be thought in terms of people’s categories. Exploring the category ‘homosexual’ is relevant since same sex sexual acts and relationships occur in different cultural contexts as a subject of gender and sexual regulation. However, despite of the act *per se* to be similar, the social implications are often significantly different.

Foucault provides a genealogical analysis of the ‘creation’ of the concept ‘homosexuality’ and the related term ‘homosexual’. Foucault explains how the term ‘homosexuality’ as a category only emerged in the 19th century, in Western countries, with the introduction of sexuality in the scientific sphere (Foucault, 1978)⁹. At the time, this categorization moved homosexuality from a perception of sinful actions guided from religious moral claims to a “species” - a pathology that should be restrained and regulated. As stated by Foucault:

“Homosexuality appeared as one of the forms of sexuality when it was transposed from the practice of sodomy onto a kind of interior androgyny, a hermaphroditism of the soul. The sodomite had been a temporary aberration; *the homosexual was now a species* (Foucault, 1978, p. 43).“

From this moment on, notions of immorality and sinfulness were intertwined with scientific theory that traced the “boundaries against and within which homosexuals had to define themselves (Weeks, 1989, p. 104).” Thus, this classification and ontological stance of homosexuality led the individual to be seen by others and encouraged to see

⁹ These developments occurred alongside the new discourses on sexuality from the 18th and 19th century explored in the chapter “Foucault: power and sexuality”.

himself as *homosexual*.

Presently, in Western countries, homosexuality, and homosexual individuals have been depathologized and within predominant discourses, homosexuality is perceived as a legitimate inborn sexual orientation. The term ‘gay’ employed in the SSMPA, only emerged as an alternative concept to ‘homosexual’ in the 1960’s (Spargo, 1999)¹⁰.

Hoad (2007) contends that the concept of homosexuality was brought to Africa through non-governmental organisations (NGO’s) and Western media. Using Bacchi’s terms, it is a ‘travelling idea’ and as such, contextual factors matter for the understanding of the concept. Thus, it is crucial to understand the meaning of the ‘homosexual’ and ‘homosexuality’ within the specific context of Nigeria.

Within the criminal codes and the SSMPA, the word ‘homosexual’ does not explicitly appear. However, looking at the way same sex sexual acts are portrayed in the criminal codes, as offences “against the order of nature” (Criminal Code Act, 1990; Penal Code, 1990) it is perceivable that people who engage in such acts, i.e. homosexuals, are not seen as individuals with a legitimate inborn homosexual identity, but rather as ‘deviants’ from what is ought to be ‘normal’ and who consciously behave and act as a result of a choice, and as such, should be punished. Thus, tacitly, homosexuality, and specifically, notions of the ‘homosexual’ operate in the SSMPA, as if it concerned a deviant group of people, who engage in unnatural and immoral sexual activities and relationships, rather than people who have inherent and valid human desires and feelings.

As Foucault (1978) contends, identity categories, such as ‘homosexual’ are used as tools of regulatory regimes to normalize certain categories, while marginalizing others. In this specific case the ‘homosexual’ is the marginal identity. Thus, similarly to the binaries and keyword explored previously, the categorization of sexual identities works in the service of the oppression of the population by the power structures that define what is normal and acceptable. Hence, the representation of homosexual behaviour as in the SSMPA, ultimately, operates as a gatekeeper of the sole legitimization of marriage between people of opposite sex. The SSMPA then becomes productive in instituting control by striking fear of punishment, while preventing homosexuality to become a legitimate sexual

¹⁰ Prior to this, in the 19th century, ‘gay’ was commonly used to refer to women who were considered to have a ‘dubious’ reputation (Spargo, 1999).

orientation.

5.3. How has this representation of the problem come about? (Q3)

Q3 of the WPR method asks us to perform a genealogy of the problem representations identified in the SSMPA. As highlighted in Q1, the predominant problem represented in the SSMPA is the legitimization of same sex unions and public support and abet for same sex unions and homosexuality. In turn, Q2 revealed that the latter is based on sexual essentialism notion about gender and sexuality, which assume homosexuality as an ‘unnatural’, immoral and counter-cultural activity.

It should be noted that within the scope of this thesis it is not possible to perform a detailed genealogy, and as such, only crucial and relevant points in time that contributed to the current problematisation will be highlighted. In this section, I will then trace the historical roots of the ‘problem’ representation in the SSMPA. For this purpose, I will present evidence on the influence of colonialism in the current problematisation of homosexuality that underpin the SSMPA.

Genealogy – Colonialism and the Western legacy of anti-sodomy laws

Western colonialism from centuries ago has been given as one of the main reasons for the homophobia, Christian morality and hostile legislation regarding homosexuality in Africa (Epprecht, 2013). Here, it should be recalled that Nigeria is a former British colony. As such, we should look, more specifically, at the influence that Britain had in its colonies, and specially, in Nigeria, regarding homosexuality.

British colonialism and its associated laws against same sex activities have been considered some of the most pervasive and widespread in the criminal codes of former colonies (Gupta, 2008). A recent study points out to the fact that former British territories are more prone to have legislation that criminalize same sex conducts than colonies from other states and other countries in general (Han & O’Mahoney, 2014). Indeed, prior to the spreading of laws criminalizing homosexuality by Britain, most of its colonies were not concerned with homosexuality, and in some of them it was even recognized and accepted (Braun, 2013). In the specific case of Nigeria, there are various accounts of same sex relationships and gender identities, prior colonialism, that go beyond the binaries

identified in Q2 and that hold the SSMPA¹¹.

The British colonial laws on homosexuality were widely influenced by the Roman Catholic Church (Gupta, 2008). The British legal system was secularized in the sixteenth century, but the reminiscence of the Roman law was still visible in the mid-nineteenth century when the legislations were updated (Gupta, 2008). The result was the criminalization of same sex sexual activities in Britain and its colonies across Asia and Africa but under the label of secular laws (Gupta, 2008).

Meanwhile, Britain decriminalized homosexuality in 1967, but these laws remain in most of its former colonies in Africa (Gupta, 2008). This is due to the fact that by the time of the decriminalization, most British colonies had gained their independence and the homophobia brought by colonialism was already strongly rooted (Braun, 2013). Thus, many of the criminal codes from former British colonies still mention laws against same sex activities (Gupta, 2008), including Nigeria.

Colonial sodomy laws were not only concerned with behavioural uniformization but with ‘reforming’ the colonized and ‘protecting’ the colonizers “against moral lapses” (Gupta, 2008, p. 86). In this context, indigenous sexualities, in Nigeria, including homosexual acts, were portrayed as “primitive and crude” and were subjected to hostile judgment by British colonizers (Izugbara, 2004).

Moreover, during the colonial period, in Nigeria, heterosexual marriage was the only accepted and ‘natural’ form of marriage, and colonized people who wanted to be perceived as ‘civilized’ had to behave like Europeans (Izugbara, 2004). Consequently, local alternative forms of sexuality and gender conducts were marginalized and suppressed (Izugbara, 2004). As the analysis of the previous questions has revealed, this is still perceivable nowadays in the SSMPA, and in the remaining anti-sodomy laws.

Furthermore, inspired in Foucault’s account of power, Nandy (1983) argues that after the first type of colonialism, i.e. the conquer of land, came the less direct form of colonialism which was concerned with colonizing the cultures, the minds and the selves of the indigenous people. This more subtle form of colonialism was, in turn, motivated by colonizers beliefs that indigenous populations lacked and needed order and to be civilized

¹¹ These will be further explored in Q4, as silences and alternatives to the current ‘problem’ representation in the SSMPA.

(Nandy, 1983). As an example, when Britain settled in Nigeria, the colony schools that educated colonized children had, mostly, single-sex classes where boys and girls learned how to have the proper behaviour according to their gender, including the distinct tasks and knowledge that each was expected to perform and acquire, i.e. leadership skills and toughness for boys, and domestic skills for girls (Izugbara, 2004). This gender differentiation in behaviours and expectations is still visible in Nigeria, as observed in Q2.

Moreover, a specific point that clearly demonstrates the influence of Britain in the current legislation on homosexuality is the wording used to criminalize same sex sexual acts as stated in the Nigerian Penal Code and Criminal Code Act. The British law, more specifically, the Section 377, which was established in 1860 into the Indian Penal Code, and then spread across colonies, criminalized same sex sexual acts under “Unnatural offences” (Gupta, 2008, p. 18). It read “Section 377: Unnatural offences – Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished [...] (Gupta, 2008, p. 18).” Recalling the legislation previously presented, both the Nigerian Penal Code (1990) and Criminal Code Act (1990) ban sodomy, as acts “against the order of nature”.

The SSMPA does not use this wording since it refers to the prohibition of marriage rather than sexual activities, but as it was seen in Q2 the underlying assumptions in the SSMPA are implicitly based on the same ontological principles that consider same sex sexual acts ‘unnatural’. This fact, together with the facts presented above, show how the problem representation in the SSMPA has its historical roots in British colonialism.

This brief genealogy shed light on the institutionalization process that created an hegemonic ‘truth’ about accepted gendered behaviours and sexualities and that through time naturalized the concepts of ‘man’ and ‘woman’, and ‘natural’ and ‘unnatural’ sexualities identified in Q2. It also shows how power relations were in play during colonialism in shaping social structures and in influencing people to accept what was considered proper and ‘normal’ by portraying some acts as sinful and criminalizing them, while reinforcing the acceptance of other acts and norms. Presently, this colonial legacy of gender binary and mandatory heterosexuality is so rooted that similar discourses are used to legitimize laws such as the SSMPA.

5.4. What is left unproblematic in this representation of the problem? (Q4)

So far, the analysis of the SSMPA has focused on identifying the underlying problem representations within the latter (Q1), explore its conceptual logics (Q2), and examine its genealogy (Q3). In this section, I will continue by examining Q4, which directs attention to the gaps and silences, and to the tensions and contradictions within the problem representation at hand. Lastly, Q4 also requires a cross-cultural comparison in order to show the contingency of problem representations.

Silences and alternatives

As denoted earlier, the ‘problem’ that is represented to be in the SSMPA is concerned with the (de)legitimization of same sex unions, which are seen as ‘unnatural’, ‘immoral’, and against Nigerian culture. In turn, these are based on sexual essentialism ideals that mandate a heterosexual sexuality and that posits a reproductive function to marriage.

First, the exclusion of homosexuality from Nigerian culture, leaves unproblematic and silenced the past and present diversity of gender and sexual identities that are part of the country’s culture. For instance, Drewal (1992) points out that, prior to colonialism, homosexuality and transgender behaviour were present in the Yoruba kingdom, in Southwestern and Northern Nigeria. Similarly, Amadiume (1987) shows that same sex marriages between women occurred in the Igbo tribe in Eastern Nigeria. She tells the story of Ifeyinwa Olinke, who lived in the nineteenth century. Ifeyinwa was married to a man, who was economically less prosperous than her. As a symbol of her success and social status she became a ‘female husband’ to nine wives, and took the responsibilities of a ‘real’ husband, such as supporting her wives.

Presently, marriages between women still occur in Igbo tribes, mostly by widows who do not had a male child, and then marry women to have children to continue the lineage of their past husbands (Zabus, 2013). The wives, in turn, have male lovers with whom they have children, preferably sons, to give to the ‘female husbands’ who will carry the past husbands’ name (Zabus, 2013).

Moreover, while religious leaders in Nigeria use arguments based on religious morality to support the SSMPA, Neil (2009) shows how same sex sexual acts, in the country, are

established in traditional religious practices. Within the Hausa community, in Northern Nigeria, there are “members of a spirit possession cult among the Hausa in northern Nigeria practices cross-dressing and take the passive role in homosexual intercourse (Neil, 2009, p. 54)”.

Likewise, Gaudio (2009) provides the example of the *yan dauda*, a group of men who behave like women in the Hausa Muslim community, and who defy the expected gender norms and sexuality. *Yan dauda* have sex with men and, often have male partners, whom they call husbands. Within the relationships *yan dauda* partake the role of what traditionally would be the role of a woman, while their partners are expected to be ‘real’ husbands and provide *yan dauda* with gifts and money.

At this point, it should be noted that the very existence of a term – *yan dauda* – to identify and describe men who engage in sexual activities and relationships, with other men among the Hausa community, indicates both a silence and an alternative to traditional gender norms and heteronormativity vindicated in the SSMPA. It also refutes allegations that homosexuality is not part of the Nigerian culture.

Furthermore, the aforementioned accounts not only show that same-sex sexual activities and unions are, indeed part of the Nigerian culture, but also challenge the rigid gender binary supported by heteronormative legislation. And while we can argue that, mostly, the examples portrayed above are still based on a gender role binary, for example women who take wives are seen as ‘female husbands’ and *yan dauda* ‘play’ the role of women and are not seen as equivalent to other men, it also shows the fluidity in the construction of notions of gender in Nigeria, in which gender roles, gender conceptualizations and power are fluid and may shift. In Butler’s (2002) terms, the ‘gender troubles’ exemplified above contravene the idea of a ‘natural’ gender and its heterosexual imperative, and provide examples of alternative performances that disrupt the gender norms implied in the SSMPA.

This leads us to the binaries identified in Q2. These fail to acknowledge and silence the fact that, as the examples above show, gender and sexuality are not fixed nor stable categories but rather social constructs (Butler, 2002; Foucault, 1978), which can also be identified as a silence.

Regarding the concept of marriage, which as shown in Q2 is intrinsically linked to

reproduction and kinship, leaves unproblematic and silenced families and kinship relations that do not derive from biological ties. For instance, in Nigeria, it is not uncommon for heterosexual couples who cannot have biological children to resort to adoption to constitute family (Falola, 2000). As Weston (1991) argues, kinship and family do not, necessarily, have to be linked to biological reproduction and determined by blood, but can, alternatively, be chosen and created. Likewise, through adoption, same sex couple could also have the ability to constitute a family.

Tensions and contradictions

First, the discourses used against homosexuality and that support the SSMPA, such as “same sex marriage is offensive to us as a people (Stewart, 2014, para.10)”, “[sodomy is] abhorrent to our culture (The Guardian, 2015, para. 4)” and “[the SSMPA is] a law that is a reflection of the beliefs and orientation of Nigerian people (AP, 2014, para.19)” are erroneous. These statements imply a union and homogeneity of beliefs and principles in Nigeria as if the latter was uniform with no space for diversity. Nonetheless, as noted earlier in this thesis, Nigeria is composed by hundreds of different ethnical groups and cultures, hence we should ask: how can it be defined what is inherent to the Nigerian ‘people’ and culture? Who are the Nigerian ‘people’ and who, exactly, gets to decide what is part or not of the Nigerian culture, when it seems to be a multitude of different traditions, customs and values, in which some include same sex sexual activities and alternative gender identities in their traditional practices, as seen above?

Additionally, the Nigerian government rejects same sex sexual acts and same sex unions as it is implied to be a western import that clashes with Nigerian values. In this context, by positing homosexuality as being ‘un-Nigerian’, there is a clear strategy of relating same sex relationships with Western traditions and an implicit liberation from Western influence. However, when looking at the origin of the criminalization of homosexual acts in the country, we can see that it is actually a heritage of Western countries, more specifically from the British colonial ruling. Hence, there is an evident contradiction in the discourses about the Nigerian culture used to support the SSMPA.

Furthermore, Eseyin (2013) and Obidimma & Obidimma (2013) highlight that the SSMPA also breaches several constitutional rights, including the rights to freedom of thought, conscience and religion, the right to personal and private life, as well as the right

to freedom of association since it also bans gay organisations and societies. In this context, since constitutional rights in Nigeria are “supreme and any law which is inconsistent with its provisions shall be null and void (Dada, 2012, p. 43)”, there is also a questionable doubt concerning the validity of the SSMPA.

By including customary law in the definition of marriage, the SSMPA also gives rise to questions about whether it also bans marriages and unions performed under customary traditions, such as the ones performed in Igbo and Hausa tribes seen above, which under constitutional law have the rights to maintain their own traditions (Eseyin, 2015). In which case, it infringes the very Nigerian culture that it is ought to protect.

Moreover, according to the statements from governmental and religious leaders, seen previously, the SSMPA reflects the views of Nigerian citizens. However, the law itself contradicts this affirmation. By prohibiting gay organisations in the country, as well as people’s support for same sex unions, it implies that there is a substantial public support for the latter, otherwise legal provisions would not be necessary.

Cross-cultural comparison

As mentioned in the introduction, South Africa is the most advanced country in Africa when it comes to legislation regarding homosexuality. In fact, it is one of the countries with the most inclusive constitutions in the world regarding the protection of sexual minorities.

Similarly to Nigeria, South Africa is an ex-British colony. Its former anti-sodomy laws, also based in Roman law, were implemented earlier when occupied by the Dutch, and remained during British ruling (Gupta, 2008).

In 1996, South Africa became the first country in the world to constitutionally prohibit discrimination on the basis of sexual orientation, upon the adoption of the new post-apartheid Constitution (Brown T. , 2014). Consequently, in 1998, the Constitutional Court declared the anti-sodomy laws unconstitutional, which resulted in the decriminalization of same sex sexual acts (Reddy, 2006). Additionally, in 2006, same sex marriage became legal in the country (Brown T. , 2014).

In the context of this thesis, the relevance in showing the contingency of the ‘problem’ of homosexuality and the different postcolonial developments between South Africa and

Nigeria, lies on the potential lessons that can be learned from the fight for equality in South Africa, which might further prove to be useful and applicable in Nigeria to disrupt the current ‘problem’ and shape the views on homosexuality differently. It should be noted, that I will only refer to the most relevant points that contributed to the change of the legislation from criminalizing homosexuality to protecting sexual minorities.

The changes in the legislation were the result of a strong fight for equal right and non-discrimination. One of the pivotal factors in the overall victory for equality in South Africa was the focus on constitutional protection rather than lobbying for the repeal of discriminatory laws against homosexual people (Brown T. , 2014). In fact, a rhetoric of ‘identity politics’ was placed at the centre of the discourses for equal rights (Reddy, 2006; Santos, 2013). These discourses, which asserted that a person’s identity as a gay man or as a lesbian woman made them particularly exposed to marginalization and violence, were crucial in building a bridge between the struggle for non-discrimination on the basis of sexual orientation and a wider fight for human rights (Santos, 2013). These discourses of marginalization were then successful in making the state acknowledge that anyone had the right to a life free of discrimination, regardless of sexual orientation, resulting in the constitutional protection mentioned above. Interestingly, gay rights groups lobbied alone in the introduction of homosexual rights in public discourses, as well as in calling for equality and non-discrimination, with no international organisations involved, nor the African Union, which had not yet been established at the time (Brown T. , 2014).

Moreover, after the introduction of sexual orientation in the equality section of the Constitution it also became easier for gay groups to fight for their rights since it allowed them to take action without having to face any legal challenges (Brown T. , 2014). Thus, after the constitutional protection of sexual minorities, gay rights groups asked for the repeal of the anti-sodomy laws using, once again, discourses of non-discrimination, rights to privacy and equality, ultimately resulting in the repeal of these laws (Santos, 2013).

Additionally, another contributor factor for the success of the fight for equality was the anti-racism struggle that was, simultaneously, going on in the country. This was due to the fact that the discourses of gay rights groups were being paralleled with discourses based on anti-discrimination and anti-sexism from the struggle against racism, which resonated a strong ‘equality for all’ rhetoric (Brown T. , 2014).

It should be noted, however, that despite its liberal legislation, homophobia is still widespread in the country. As noted by Massoud (2003, p.301), the “government created a gap between its tolerant laws and the conservative social attitudes of its citizens”.

The above example of South Africa shows that contrarily to what is currently happening in Nigeria, the government in the former has acknowledged the complexity of sexual and gender identities, and has designed legislations that do not ‘force’ people to fit within specific accepted and hegemonic categories. It seems that this was greatly due to the way lobbyists and activists framed the problem not as a matter of ‘gay rights’ but rather one of non-discrimination and equality for all. Most importantly, this example shows the power of oppositional discourses and their potential in shifting the way governments problematise a certain issue, which then results in a change in legislations. Simultaneously, it also exemplifies the role of the state in empowering certain discourses over others. Drawing on Massoud’s (2003) statement above, in the turn of the legislation homosexuality was not homogenously accepted in the society. This suggests, that the government was a key player in ‘listening’ the oppositional discourses and in framing the ‘problem’ in a way that acknowledged non-discrimination on the basis of sexual orientation as a matter of citizenship. Had the state problematised the issue differently, the current legal framework in South Africa could be significantly different. Certainly, this brief account leaves out many important points and factors that contributed for the change of the problematisation and legislation. Nonetheless, it is a good case to see how contingent and unstable problem representations are.

5.5. What effects are produced by this representation of the problem? (Q5)

Recalling the explanation of Q5, it requires the assessment of the SSMPA in three different and overlapping effects: discursive effects, subjectification effects and lived effects.

Discursive effect

The goal here is to identify the ‘truths’ created in the discourses within the SSMPA. First, as seen above in Q2, homosexual individuals are seen as ‘deviant’. Hence, these are portrayed as part of the ‘problem’ due to their inability to follow the accepted gender norms and ‘natural’ sexuality. Consequently, this hinders the opportunity to discuss their

constitutional rights since they are not seen as part of the Nigerian culture or morally worthy. Additionally, it also produces same-sex relationships as illegitimate and reinforces the idea of a ‘natural’ sex/gender binary and heterosexual imperative.

The SSMPA also implies that opposite sex couples have a ‘natural’ right to marriage and family, whereas homosexual individuals are bounded to a future without a family as they do not reflect what is ‘natural’ and do not hold the ability of procreation.

Moreover, by including provisions that sanction those who support or aid same sex unions, and by forbidding gay rights societies and the support for these, the SSMPA also connects the ‘problem’ of homosexuality with public support. Hence, it not only portrays homosexual themselves as the ‘problem’, but also those who accept and help them.

Additionally, voices that argue against the SSMPA and that support the rights of sexual minorities are being silenced due to the prohibition of gay rights societies and support for these. This oppression of opposing voices, consequently, hampers the opportunity for the emergence of other ‘truths’ apart from the hegemonic truth that rejects homosexuality and that sees it as unnatural and alienated from the Nigerian culture.

All of the above show how the SSMPA, works, in multiple ways, in constraining alternative ‘problem’ representations, which work in the service of producing an unique truth about the ‘problem’ of same sex unions and homosexuality.

Subjectification effects

Here, subjectification effects concern the way subjects are constructed within the problem representations of the SSMPA. Looking at the various discussions carried out so far, it is possible to highlight the following subjectification effects.

First, as suggested by Foucault (1978), discourses create identity categories. It is visible how the ‘problem’ representation underlying the SSMPA create a category of ‘deviant’ people who engage in ‘unnatural’ and criminal sexual acts and that do not hold the right to have their sexual and amorous relationships legitimized.

Furthermore, since these ‘deviant’ people, who do not perform the accepted and ‘natural’ gender and the heterosexual imperative that it entails, cannot be seen as ‘real’ ‘men’ or ‘women’. Employing Butler’s (1993) body theory, these ‘deviant’ people are then

deemed to be excluded from the position of subjects, to be placed as ‘abjects’. In turn, this works in the service of legitimizing the identities and subject positions of heterosexual individual subjects who follow gender norms and reproduce heteronormativity and who could not emerge without the repudiation of (homosexual) abjects. Unequivocally, this rejects and disavows homosexual identities. Hence, within the ‘hierarchy of bodies’ (Hawkesworth, 2013), homosexual abjects are marginalized and stigmatized and perceived as second-class citizens, since they are not viewed as ‘legitimate’ sources of knowledge. This stigmatization of homosexual people then serves as a “warning to the rest of society of the effects of stepping out of the line” (Weeks, 1995, p. 55).

This shows how the SSMPA and the ‘problem’ representation of homosexuality works a regulatory system that produces “parameters of personhood” (Butler, 2004, p. 56) and that normalizes categories of oppressive political and social structures (Butler, 2002) that ‘reward’ people who perform the accepted behavioural norms with a legitimate subject position, and ‘punish’ others by banishing them to an ‘abject’ position.

Lived affects

Lived affects are concerned with the impact that ‘problem’ representations within policies have on people’s everyday lives (Bacchi, 2009). The target of the SSMPA is, first and foremost, people who have or wish to have same sex unions. Furthermore, it also targets people and gay organisations that support same-sex activities and unions.

First, since the enactment of the SSMPA there has been an increased number of arrests, homophobia, stigma and violence towards homosexual individuals. For instance, a few weeks after the enactment of the law, a mob attacked and beaten gay individuals after hauling them from their homes (Nossiter, 2014). Another group of vigilantes claimed to have detained more than twenty homosexuals and delivering them to the police (Day, 2014). Moreover, around two weeks after the law came into force, news reports already accounted the arrest of dozens of homosexual men across the country by the authorities (Bowcott, 2014). In rural areas with low access to communication services, many homosexual people face violence without even having the potential for reaching for help (Ifekandu, 2015).

As a consequence of this hostile environment, another lived effect was the diaspora of

Nigerian LGBT who fled to other regions in Nigeria or to other countries in pursuit of security (Ifekandu, 2015).

The SSMPA also had implications in the access to health services since health care providers are reluctant in providing HIV/AIDS treatment care due to the provision in the law that condemns those who support same sex unions (The Economist, 2014). Similarly, it also fosters fear among homosexual individuals to seek medical care and socialize with other homosexuals (Schwartz et al., 2015). The ‘problem’ representation within the SSMPA also impacted the psychological health of LGBT individuals who feel compelled to conceal their identities under fear of consequences (Bass & Lee, 2015).

Additionally, the SSMPA lays further challenges to the subsistence of local organisations that help Nigeria LGBT, mostly due to the absence of legal recognition itself, which leads to a lack of physical and political spaces, limited access to funding, lack of social sensitivity towards LGBT issues and weak civil society infrastructure (Armisen, 2015). There was also a considerable decrease of gay-friendly places, including bars, nightclubs and residential homes, etc., that have been closed down and raided either by the police or local residents who oppose homosexuality (Ifekandu, 2015).

It also became harder for news and media agencies to report and discuss LGBT related issues due to fear of prosecution under the provisions of the SSMPA (Bass & Lee, 2015). Similarly, several LGBT people have lost their jobs and housing due to the suspicion over their identity by employers, co-workers and landlords who also fear the SSMPA (Bass & Lee, 2015).

Some provisions within the SSMPA are not clear, which has already led to arbitrary arrests¹² (Abimboye, 2015). For instance, the act outlaws gay societies and “public show of same sex amorous relationships”, however, these are not clearly defined within the law (Same Sex Marriage (Prohibition) Act, 2013).

Lastly, by prohibiting gay organisations, the SSMPA also endangers the rights to freedom of association, and expression, which consequently, undermines democratic values in the country.

¹² The Queer Alliance, a Nigerian LGBT NGO, reported that, during the year of 2014, dozens of arbitrary arrests of homosexual people had already occurred (Abimboye, 2015).

5.6. How is this representation of the problem produced, disseminated and defended? How could it be questioned, disrupted and replaced? (Q6)

In this chapter I will identify the ways the problem representation in the SSMPA is being produced, disseminated and defended. Additionally, I will identify current forms of resistance to the ‘problem’, and identify possible ways to question, disrupt and replace the problem representation.

Publicizing (anti)homosexuality – Production, dissemination and defence

The pivotal factors for the production, dissemination and defence of the problem representation of homosexuality as being something ‘unnatural’ and ‘immoral’ have been the media, religion, education, academic research, and the policy itself.

First, the development of new technologies and media, in Nigeria, has been a double edge sword. If in one hand it was used as a “radical power” for the “dramatization of private concerns” and “facilitated public discussion of homosexuality”, they have also had the role of spreading contentious sex-related material (Obadare, 2013, p. 205). More precisely, the liberalization of the media, together with the Nigerian film industry facilitated the “demonization of male homosexuality” by featuring content that univocally depict homosexuality as a devil possession (Obadare, 2013, p. 206).

Additionally, newspapers have also been the site for the production, dissemination and defence of the problem representation. Consider, for instance, the following headlines from popular newspapers in Nigeria, which portray homosexuality as an undesirable identity:

- “Devil introduced lesbianism, homosexuality to destroy marriage – cleric” (*Vanguard*, 27 December 2015)
- “How homosexual behaviour promotes disorders – Experts” (*Vanguard*, 20 January 2014)
- “Protecting children from the scourge of homosexuality” (*Vanguard*, 22 March 2014)
- “Gays are not our brothers” (*Tribune*, 15 August 2015)

Regarding religion, the portrayal of same sex unions and sexual activities as unnatural and immoral has been produced and disseminated both by prominent local religious leaders, and by foreign Christian missionaries (Kaoma, 2012; Aliyu, 2015). As an

example, a very popular Nigerian Anglican fellowship with thousands of followers has led campaigns on social media platforms advocating against homosexuality (Ifekandu, 2015).

Moreover, in educational institutions in the country, boys and girls, are, often, portrayed as having different qualities and roles (Izugbara, 2004; Ofoha, 2013). Boys and girls are taught to play separate games, and girls who wish to play boys' games are not considered 'good' girls (Izugbara, 2004; Ofoha, 2013). This gender segregation, consequently, socializes children into two rigid gender oppositions, hence, reinforcing the idea of two distinct natural genders. In turn, this produces the idea that marriage should be between people of opposite sex, and any others sexualities and relationships are unnatural and undesirable.

Moreover, while this paper focuses on challenging the current problematisation of homosexuality in the SSMPA and in Nigerian society in general, other social scientists invest in methodologies that argue in support of the current criminalization of homosexuality and same sex unions (see Chiroma & Magashi, 2015; Odiase-Alegimenlen & Garuba, 2014; Onuche, 2013). Consequently, these also contribute for the production, dissemination and defence of the current problematisation of homosexuality and same sex unions in the country.

Lastly, the SSMPA itself, by regulating and criminalizing same sex unions and public support for the latter, has played the role of reinforcing the 'problem' representation of homosexuality.

Current forms of resistance and possible actions to question, disrupt and replace the 'problem' representation

According to Foucault (1978, p. 95), "where there is power there is resistance", and power is everywhere. Drawing on this notion, there are, currently, several forms of resistance to the 'problem' of homosexuality as it is in the SSMPA.

The internet and social media platforms have been the major site of contestation and resistance of the 'problem' representation. For instance, local and international Nigerian public figures, such as artists and writers, have expressed their discontents in their online social networks about the current situation of homosexuality in the country (Ifekandu,

2015). Similarly, Nigerian LGBT in the country and in diaspora have been using online platforms and social media to support each other, and to contest and fight for their rights (Bass & Lee, 2015). LGBT people and groups have also created blogs and websites¹³, and made documentaries¹⁴ to raise awareness about the current situation propelled by the SSMPA (Bass & Lee, 2015; Okanlawon, 2015).

Additionally, Nigerian NGO'S have also published books and reports as a way to resist the 'problem' representation in the SSMPA (Okanlawon, 2015). Lastly, the local organisations in support of LGBT people that are emerging in spite of the prohibitive legislation (Armisen, 2015) and others that have fought through the years to keep helping Nigerian LGBT¹⁵ (Okanlawon, 2015), also represent a form of resistance.

Lastly, it should be noted that these are only some examples of forms of resistance and certainly, many more exist. The most important point here, is that these examples show alternative ways of thinking about the 'problem' within Nigeria apart from the 'dominant' one represented in the SSMPA.

Apart from the forms of resistance above, drawing on the analysis of the six questions of the WPR approach, others possible actions aimed at disrupting and shaping the 'problem' of homosexuality differently can be identified.

First, noted in the example of South Africa, is the fact that laws alone not always have the potential to change the 'problem' representation in the overall society. Thus, a pressing issue lies on the conceptual logics that underpin the 'problem' representation within the overall society. In this context, a discursive strategy that creates alternative 'truths' from the hegemonic one that rejects homosexuality is crucial to disrupt the heteronormative stereotypes and expectations and decrease the prejudices and hatred towards people who engage in same sex unions and sexual activities. In this point, local organisations can be useful in promoting unbiased campaigns and educational programs that focus on informing people about sexuality, democratic values of equality and non-

¹³ For example, the No Strings podcast, is the first Nigerian LGBT podcast that weekly shares stories about local LGBT (Bass & Lee, 2015).

¹⁴ 'SAGBA' and 'Veil of Silence' are two examples of documentaries produced by Nigerian LGBT (Okanlawon, 2015).

¹⁵ As an example, the House of Rainbow, a Christian Nigerian organisation, provides counselling, training programs and education to LGBT people (Okanlawon, 2015).

discrimination, and human rights principles.

Moreover, following the lessons from the South African, sexual minorities, also have the power to empower themselves through discursive strategies that produce new knowledge. Thus, a possible strategy to disrupt the ‘problem’ representation of homosexuality could then be based on grassroots campaigns targeted at constitutional rights, based on discourses of marginalization, equality, privacy, and non-discrimination for all, rather than a ‘gay rights’ approach. These discourses could also be aligned with a broader fight for human rights. While the African Court on Human and Peoples' Rights (ACtHPR) had not yet been established during the South African fight for equality, presently, it might be a possible venue for contestation and pressuring the state to comply to the principles of equality and non-discrimination.

Considering the argument that homosexuality is against Nigerian culture, another possible strategy to question the ‘problem’ would be to make strong efforts to expose the homophobic legacy of British colonialism, and shatter claims that giving equal rights to homosexual individuals constitutes a menace for Nigerian culture and morality.

Additionally, as the ‘problem’ of homosexuality is placed within a ‘heterosexual imperative’ (Butler, 2002, p. 45) that regulates the gender performances that produces the idea of a ‘natural’ sex and sexuality, any person willing to challenge the behavioural gender expectations has the potential to disrupt the current problem representation.

6. DISCUSSION: The SSMPA and (homo)sexuality

The urge of Bacchi's approach is to see how a specific policy or legislation shapes a problem. This thesis wished to employ her method to explore its potential in uncovering and shredding understanding about the way homosexuality is being problematised in the SSMPA. Here I will press out and discuss the main findings revealed by her questions explored above, based on the theoretical framework chosen to carry out this study. I will also address the research question that this thesis proposed to answer: "How is homosexuality problematised in the *Same Sex Marriage (Prohibition) Act 2013* in Nigeria?" Lastly, I will make some comments on the implications of the findings for past and future research on the topic.

Drawing on the analysis performed above, a relevant finding is that the 'problem' of homosexuality in the SSMPA rests on binaries - man/woman; natural sexuality/unnatural sexuality; moral/immoral - which in turn underlie specific ontological understandings about gender and sexuality. In considering the problem representation of homosexuality it is then crucial to address the type of society that it is supporting, as well as the ideological principles that it is producing. These bear significant consequences on how discourses on homosexuality are established as a way to vindicate certain identities while limiting and 'banishing' others.

The Nigerian approach to same sex unions, and specifically to homosexuality is made possible in a society that favours two identities, i.e. man/woman, that are fixed and stable, and where the conceptual logics not only support the ban of same sex unions and homosexuality and make it a 'logical' decision, but simultaneously works in the service of reproducing the conceptual logics that support it in the first place.

Moreover, the efforts to maintain the binaries above echo a sexual essentialism position that places biology and one's born sex as determinants of gender roles and sexuality. However, since genders, such as 'man' and 'woman', do not unfold naturally from a person's sex but are rather socially constructed through discourses and performances (Butler, 2002), in this mix, the Nigerian state has the role of delegitimizing homosexuality and same sex unions, and sanction any contradictory behaviour from the norm, in order to preserve the ideology where sex, gender and sexuality are 'naturally' aligned. This perspective then prevails and is produced and made available within discourses and

practices that portray homosexuality as ‘unnatural’, ‘immoral’ and against the country’s culture.

In turn, this problematisation is rooted in the ‘moral panics’ of British colonialism which implemented their behavioural ideals, which consisted in gender roles segregation and heterosexuality as the only acceptable form of sexuality and relationship. Through legislation (i.e. anti-sodomy laws) and socialization mechanisms (e.g. education) British colonialism shaped the local society according to what, seems as well, gender essentialism ideals, produced and maintained through a heterosexual matrix that still prevails in the country. This has been maintained through heteronormative structures and discourses, for instance by gender roles segregation (i.e. gender performances), by placing reproduction and family as the central purpose of marriage or by maintaining the anti-sodomy laws that prohibit homosexual sex, which then reproduce and regulate the gender binary and sustains the idea of a ‘natural’ sex, gender and (hetero)sexuality, as seen above.

These discourses and problematisation are not without implications. At its most immediate homosexual individuals are considered ‘deviants’ and are placed in the positions of ‘abjects’ in order to make available a subjective position for homosexual individuals who comply with the gender norms. Additionally, by prohibiting any support for same sex unions and gay organisations, the SSMPA, is not only affecting homosexual individuals, but simultaneously it is ‘silencing’ opposing discourses and ‘forcing’ and pressuring everyone leaving under the expected and accepted norms to submit into certain ideals of gender, sexuality and morality, under the ‘threat’ of being seen as ‘abjects’, or as criminals and supporters of the ‘unnatural’ and ‘immoral’ form of sexuality. This pressure, then leads to discrimination, homophobia, stigma and violence as means to draw the line and limit people to adopt a posture and behaviours considered acceptable and favourable to the normative ideas portrayed in the SSMPA, which ultimately, attempts to ‘discipline’ and ‘normalize’ ‘deviant’ bodies and behaviours (Hawkesworth, 2013).

This shows how the SSMPA reproduces an old oppressive ideology of different power structures but also creates new power relations by compelling all members of society to regulate homosexual unions and activities.

These discourses, however, are not without silences, tensions and contradictions, making

them unstable and providing potential points of disruptions and the emergence of alternatives to the ‘problem’. With respect to silences, these mainly derive from the unacceptance of same sex activities as part of Nigerian history and culture where it is clearly the opposite. In addressing this issue the state has created the SSMPA under arguments of ‘protecting’ the Nigerian culture from the ‘unnatural’ and ‘immoral’, however, this bears a tension and contradiction since by doing it is affecting the very culture that is intended to protect and it is supporting an oppressive legacy brought by Western colonialism. This creates another silence vested in the fact that the SSMPA is based and supported by ideals of gender and sexuality that are fixed and stable but as it is clear by now, these concepts are constructed in discourses and do not unfold naturally, neither are there one objective ‘truth’ about them. These tensions and contradictions have not, so far, destabilised the problem representation of homosexuality in the country due to a combination of power relations within society that promote and sustain it, e.g. media, religion, and education. Nonetheless, the fragility is there, as the possibility of disruption.

As the example of South Africa shows, oppositional discourses can question, disrupt and replace problematisations, and gain recognition in the government and the legal sphere. In Nigeria it is clear that several forms of resistance are already in place, which potentially, can result in a shift of how the ‘problem’ of homosexuality is perceived in the country and by the government.

The above shows how the government in Nigeria, with the enactment of the SSMPA, has been a central player in empowering specific understandings of the ‘problem’ of homosexuality, and in shaping and making available certain subjective positions and legitimizing certain discourses over others.

Drawing on Foucauldian understanding of power and sexuality, it can then be argued that the implementation of the SSMPA, is part of a system of power that produces and sustains a ‘truth’ within discourses of sexuality and that naturalizes opposite sex unions and sexual activities, while rejecting any deviance that does not corroborate that ‘truth’. In this context, it appears that the SSMPA is part of a form of social control intended to empower a hegemonic heterosexual national identity, while simultaneously ‘obliging’ all Nigerian citizens to live according to that ‘truth’ and internalize it as the ‘natural’ and righteous one. Additionally, due to its legal character, the SSMPA has a ‘truth’ status than renders it legitimate over alternative discourses that oppose it.

Furthermore, the problematisation of homosexuality within the SSMPA, and the implementation of the latter was possible as part of a whole social structure that is built upon the same conceptual logics, as seen above, which together form a 'regime of truth' with different power relations embedded, which constraint what can be done, expected and thought in Nigerian society. The SSMPA, then works a regulatory mechanism of the hegemonic discourses of 'truth' on (homo)sexuality and works in the service of maintaining the gender essentialism ideals based on the binaries identified above, therefore, sustaining the heterosexual matrix.

So how is homosexuality problematised in the 'Same Sex Marriage (Prohibition) Act 2013'?

The core question of this thesis has been to examine and uncover the way homosexuality is problematised in the SSMPA. Noted above was the complexity of power relations that contribute to the current problematisation of homosexuality in the SSMPA. Here, I will try to provide a short and concise answer to this question. This should not however, be regarded as detached from the analysis and discussion above.

The discourses concealed under the SSMPA allow homosexuality to be framed and represented as a particular problem, more specifically, as an unnatural and immoral form of sexuality that should not be allowed, and those who practice it are seen as 'deviants' and rendered to an 'abject' position. As seen above, these are based on specific ontological understandings about gender and sexuality, that place one born 'sex' as the determinant of gender, and which rely on specific gender performances and on a heterosexual imperative in order to maintain the 'naturalness' of sex and gender. This then places (homo)sexuality in binaries of natural/unnatural and moral/immoral, in which heterosexuality is seen as the legitimate natural and moral sexuality and homosexuality as its opposite

From a discursive point of view at least, the problematisation of homosexuality in the SSMPA is simple and clear. By prohibiting same sex unions and public support for same sex unions and gay organisations it will eradicate homosexuality from Nigerian society, since it is expected that the threat of legal hazards will stop people from 'practicing' homosexuality and refrain them from supporting or being in same sex unions. As a result, the notion of a 'natural' sex, which is regulated by the heterosexual imperative, is

maintained, and in turn, the binary and fixed identities remain intact. Thus, the ‘problem’ of homosexuality in the SSMPA is then placed within a ‘regime of truth’ where the ‘truths’ (i.e. conceptual logics) about the unnaturalness and immorality of homosexuality are linked in a circular connection of power relations that produce and sustain it. The image below attempts to exemplify this process.

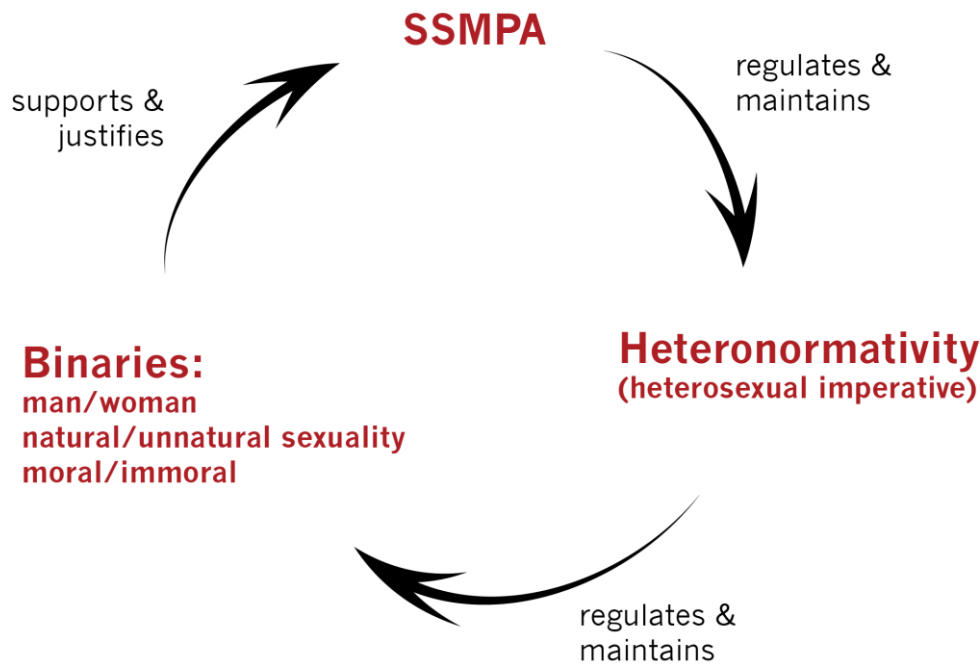


Image 1 – SSMPA within the ‘regime of truth’ that ‘rejects’ and delegitimizes homosexuality. Source: Self-elaboration based on the study findings and on Foucauldian and feminist theory.

The power relations in the image show how the SSMPA rejects and delegitimizes homosexuality, which unequivocally validates heterosexuality as the only acceptable form of sexuality. In turn, heteronormativity and the sexual imperative regulate and maintain the binaries that are used in discourses to justify the enactment of the SSMPA in the first place. Put is very simply, homosexuality *has* to be delegitimized in order to sustain the very notions of a ‘natural’ sex/gender/sexuality, i.e. the heterosexual matrix, which would otherwise be disrupted.

Implications of the findings for past and future research

The results presented above trouble previous research on same sex marriage in Nigeria, which asserts that the “whole idea of same-sex marriage couples is about adult pleasure

desires and nothing more” which “could be achieved without seeking the instrumentality of the law to gain recognition” (Odiase-Alegimenlen & Garuba, 2014, p. 31)”. The way the ‘problem’ is constituted in the SSMPA has stripped away homosexual individuals of their identity and subjectivity and has ‘forced’ them to live as ‘abjects’ at the margins of their own society (see Q5). Thus, legal rights and state recognition of same sex unions and homosexuality are fundamental for homosexual individuals to hold a place in society, not for reasons of pleasure or desire but as a matter of agency, subjectivity and citizenship.

Additionally, the results also indicate that morality is not the primary reason for why homosexuality and same sex unions are prohibited in the country as suggested by Onuche (2013). Instead, morality is rather one more instrument of power relations to regulate and constrain certain behaviours in favour of maintaining a heterosexual matrix.

In considering future research directions, this thesis has shown how the concept of ‘sexuality’, and more specifically ‘homosexuality’ as an object of study is not linear nor can it be studied superficially. The meanings ascribed to these concepts are context specific and are ‘built’ upon different ontological/conceptual logics. Thus, it is crucial to always question and problematise how these are formed and sustained when attempting to understand and study certain social phenomenon related to them. Regarding the specific case of Nigeria, this thesis provides a useful ontological background about the issue of homosexuality in the country for future research directions that wish to expand on the topic.

7. CONCLUSION: Final thoughts and reflections

The impetus of this thesis has been to consider the problematisation of homosexuality in Nigeria, more specifically in the *Same Sex Marriage (Prohibition) Act 2013* (SSMPA), through the ‘what’s the problem represented to be approach’ and within a feminist and Foucauldian theoretical framework.

This study shows how specific understandings of gender and sexuality shape the way homosexuality is perceived, which consequently, result in different legal frameworks. In the specific case of Nigeria, homosexuality is framed within discourses that place ‘sex’ as the determinant of a gender binary man/woman, which requires an opposite sexual attraction to support the naturalness of ‘sex’ and gender. Consequently, sexuality is also placed within a binary of natural/unnatural and moral/immoral, in which heterosexuality is perceived as the legitimate moral and ‘natural’ form of sexuality. Hence, at its most immediate, the SSMPA is being used as a way to institutionalize heteronormativity and ensure that a fixed heterosexual gender identity is maintained.

This tells us that while at the global level, there is an increasing understanding of homosexuality as a legitimate form of sexuality, framed within human rights discourses, in Nigeria this is not the case. Homosexual individuals are being discriminated by oppressive power relations and placed at the margins of subjectivity, while being regulated through violence and laws such as the SSMPA.

However, several forms of resistance are in place in Nigeria, both by LGBT groups and individuals who are challenging the hegemonic discourses. Since everything created through discourses is not fixed nor immutable, these have the potential to eventually provoke a change in the way gender, sexuality, and specifically homosexuality are perceived in the country, which could result in the repeal of the SSMPA and the anti-sodomy laws. In several countries where, presently, sexual minorities enjoy equal rights, homosexuality was once illegal, which shows how problems and problematisations are unstable and changeable.

Ultimately, the above demonstrates how understandings of gender and sexuality are context specific and cannot be generalized nor transferred from one context to another. These concepts have to be studied and questioned bearing in mind the underlying

knowledge and power relations that construct and sustain them. Additionally, it is important to acknowledge the crucial role that the state plays in empowering certain discourses while suppressing others, and the various effects that different problematisations can cause in people's lives and in society.

By way of concluding, I wish to draw attention to the fact that wishing for the abolition of the SSMPA and the anti-sodomy laws in Nigeria, is not only a matter of giving people the right to sexual intimacy and amorous relationships without legal constraints. What is at play, is people's ability to live a life that is not driven by fear, repression and power structures that discriminate and marginalize. It is a matter of recognition that people have the right to their individuality and to their personhood, and above all, it is a matter of enabling people to be legitimate subjects in their own societies, regardless of whom they love, or with whom they have sex with.

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Appendix A



Clerk to the National Assembly
FEDERAL REPUBLIC OF NIGERIA

Three Arms Zone, P.M.B 141, Garki - Abuja
T Office No.09-8700332, E-mail: maikasuw@yaho.com

NASS/CNA/115/VOL.31/24

30th December, 2013

The President
Commander-in-Chief of the Armed Forces
Federal Republic of Nigeria
Presidential Villa
ABUJA

OFFICE OF THE
PRESIDENT
07 JAN 2014
RECEIVED

SAME SEX MARRIAGE (PROHIBITION) ACT, 2013

In consonance with the provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria, 2004, I wish, with due respect to forward to Your Excellency the authenticated copies of the Same Sex Marriage (Prohibition) Bill, 2013 for your consideration and assent.

2. After Your Excellency's assent, one copy of the signed Bill should be retained in your office while the other two are to be returned for our further action, please.
3. With my highest regards.

SALISU A. MAIKASUWA, OON, mni, FNIM, FFPN
Clerk to the National Assembly

I CERTIFY, IN ACCORDANCE WITH SECTION 2 (1) OF THE ACTS AUTHENTICATION ACT, CAP. A2, LAWS OF THE FEDERATION OF NIGERIA 2004, THAT THIS IS A TRUE COPY OF THE BILL PASSED BY BOTH HOUSES OF THE NATIONAL ASSEMBLY.



SALISU ABUBAKAR MAIKASUWA, OON, mni
CLERK TO THE NATIONAL ASSEMBLY

30th

DAY OF DECEMBER, 2013

SAME SEX MARRIAGE (PROHIBITION) ACT, 2013

EXPLANATORY MEMORANDUM

This Act prohibits a marriage contract or civil union entered into between persons of same sex, and provides penalties for the solemnisation and witnessing of same thereof.

SAME SEX MARRIAGE (PROHIBITION) ACT, 2013

ARRANGEMENT OF SECTIONS

Section:

1. Prohibition of marriage or civil union by persons of same sex.
 2. Solemnization of same sex marriage in places of worship.
 3. Recognized marriage in Nigeria.
 4. Registration of homosexual clubs and societies.
 5. Offences and penalties.
 6. Jurisdiction.
 7. Interpretation.
 8. Citation.
-

SAME SEX MARRIAGE (PROHIBITION) ACT, 2013

A BILL

FOR

An Act to prohibit a marriage contract or civil union entered into between persons of same sex, solemnization of same; and for related matters.

[] Commencement.

ENACTED by the National Assembly of the Federal Republic of Nigeria:

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.

Prohibition of marriage or civil union by persons of same sex.
- (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.
2. (1) A marriage contract or civil union entered into between persons of same sex shall not be solemnized in a church, mosque or any other place of worship in Nigeria.

Solemnization of same sex marriage in places of worship.
- (2) No certificate issued to persons of same sex in a marriage or civil union shall be valid in Nigeria.
3. Only a marriage contracted between a man and a woman shall be recognized as valid in Nigeria.

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

Registration of homosexual clubs and societies.
- (2) The public show of same sex amorous relationship directly

or indirectly is prohibited.

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.

Offences and Penalties.

(2) A person who registers, operates or participates in gay clubs, societies and organisation, or directly or indirectly makes public show of same sex amorous relationship in Nigeria commits an offence and is liable on conviction to a term of 10 years imprisonment.

(3) A person or group of persons who administers, witnesses, abets or aids the solemnization of a 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.

6. The High Court of a State or of the Federal Capital Territory shall have jurisdiction to entertain matters arising from the breach of the provisions of this Act.

Jurisdiction.

7. In this Act:

Interpretation.

“marriage” means a legal union entered into between persons of opposite sex in accordance with the Marriage Act, Islamic Law or Customary Law;

“Court” means High Court of a State or of the Federal Capital Territory;

“same sex marriage” means the 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;

“witness” means a person who signs or witnesses the solemnisation of the marriage; and

“civil union” means any arrangement between persons of the

same sex to live together as sex partners, and includes such descriptions as:

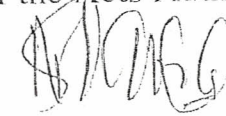
- (a) adult independent relationships;
- (b) caring partnerships;
- (c) civil partnerships;
- (d) civil solidarity pacts;
- (e) domestic partnerships;
- (f) reciprocal beneficiary relationships;
- (g) registered partnerships;
- (h) significant relationships; and
- (i) stable unions.

8. This Act may be cited as the Same Sex Marriage (Prohibition) Act, 2013. Citation.

SCHEDULE TO THE SAME SEX MARRIAGE (PROHIBITION) BILL, 2013

SHORT TITLE OF THE BILL	LONG TITLE OF THE BILL	SUMMARY OF THE CONTENTS OF THE BILL	DATE PASSED BY THE SENATE	DATE PASSED BY THE HOUSE OF REPRESENTATIVES
<p align="center">SAME SEX MARRIAGE (PROHIBITION) BILL, 2013</p>	<p>An Act to prohibit a marriage contract or civil union entered into between persons of same sex, solemnization of same; and for related matters.</p>	<p>This Act prohibits marriage contract or civil union between persons of same sex and provides penalties for the solemnization and witnessing of same.</p>	<p>17th December, 2013</p>	<p>17th December, 2013</p>

I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria, 2004.



SALISU ABUBAKAR MAIKASUWA, OON, mni
 Clerk to the National Assembly
 27th Day of December, 2013



DR. GOODLUCK EBELE JONATHAN, GCFR
 President of the Federal Republic of Nigeria
 27th Day of December, 2013/2014

I ASSENT.