

**CONTEMPORARY ISSUES IN FAMILY LAW IN NIGERIA:
THE DEBATE ON SAME-SEX MARRIAGE***

Abstract

According to a classic definition, family law refers to ‘...the body of legal principles governing the relationships of husband and wife and parent and Child...’¹ Globally however, there have been some changes to this definition. The concept of the family has been redefined in some jurisdictions to accommodate certain emerging contemporary trends. In Nigeria, contemporary issues have also emerged to alter the scope of family law. This research attempted to highlight contemporary changes in family law globally with particular emphasis to the new concept of same sex marriages. How have this impacted on Nigerian family law? Is there need for reforms within the Nigerian legal system to accommodate this new concept? Are all areas of universal reforms relevant/irrelevant within the Nigerian context? The writer concluded that Nigeria must not get carried away by global trends, but must instead focus on reforms only in so far as they are relevant to its environment, beliefs and culture.

Keywords: Same-sex marriage, Family Law, Contemporary issues, Nigeria

1. Introduction

The 6th edition of the Black’s Law Dictionary defines marriage as a ‘Legal union between one man and one woman as husband and wife.’² The 11th edition of the Black’s Law Dictionary on the other hand defines marriage as ‘The legal union of a couple as spouses.’³ The two definitions are poles apart. While the former is gender specific and restrictive, the latter is nebulous on the question of gender as it substitutes ‘man and woman’ with the ‘couples’. The traditional definition of marriage is no longer globally acceptable in the face of contemporary challenges. While some jurisdictions like Nigeria still hold on to the traditional definition, there are other jurisdictions that have accommodated new concepts in the definition of marriage. These new concepts are at variance with old definitions like the one proffered in *Hyde v Hyde*⁴ which defined marriage as ‘the voluntary union for life of one man and one woman to the exclusion of all others.’ Family law in Nigeria encompasses the received English family law, the customary family law and the Islamic family law.⁵ The old definition of family law by Kasamu and Salacuse still remains the definition of family law within the Nigerian context. The Black’s Law Dictionary in its 11th Edition however defines family law as ‘The body of law dealing with marriage, divorce, adoption, child custody and support, child abuse and neglect, paternity, assisted reproductive technology, and other domestic-relations issues.’⁶ It also defines a family as ‘A group of persons connected by blood, by affinity, or by law...’⁷ According to the Britannica by the 21st century the nature of marriage in Western countries particularly with regard to the significance of procreation and the ease of divorce had begun to change.⁸ These changes saw the Netherlands legalizing same-sex marriages on April 1, 2001. Canada (2005), France (2013), the United States (2015), and Germany (2017) all joined the list of jurisdictions which changed the traditional concept of the family.⁹ Traditionally procreation was the basic essence of a marriage and procreation is a biological impossibility with same sex couples. The law therefore allows same sex couples to adopt children and raise a family.¹⁰ Available statistics indicate that there are 594,000 same-sex couple households in the United States, and 115,000 of them have children.¹¹

Nigeria resisted the pressure to join the ranks of countries which allow same sex unions when the Same Sex Marriage (Prohibition) Act 2013 was signed by President Goodluck Jonathan in January 7, 2014.¹² This resistance however is not to imply that family law in Nigeria has remained static. There has been a plethora of judicial pronouncements that have altered some traditional concepts of family relations over the years. Indeed, from the

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¹ Kasamu & Salacuse, *Nigerian Family Law*, Buttersworth (1966) p.1

² 6th Edition P 972

³ 11th Edition P 1163

⁴ (1860) L.R 1 PD 130

⁵ Sagay I, *Nigerian Family Law Principles, Cases and Commentaries*, Malthouse Press Ltd 1999

⁶ 11th Edition p.748

⁷ Ibid p.747

⁸ Marriage <https://www.britannica.com/topic/marriage>. Accessed 4/6/2022

⁹ Ibid

¹⁰ Adah Chung; Procedures for Gay Couples Looking to Adopt <https://www.verywellfamily.com/the-basics-of-gay-adoption-26662>. Accessed 4/6/2022

¹¹ LGBT Adoption Statistics <https://www.lifelongadoptions.com/lgbt-adoption/lgbt-adoption-statistics>

¹² Magaji Chiroma & Awwal Magashi; ‘Same Sex Marriage Versus Human Rights: The Legality of the Ati-Gay and Lesbian Law In Nigeria’ <https://www.ccsenet.org/journal/index.php/ilr/article/view/43026>. Accessed 4/6/2022

1932 case of *Edet v Essien*¹³ and other classic cases like *Mariyama v Sadiku Ejo*¹⁴ *Mojekwu v Mojekwu*¹⁵ one may safely say family law has been far from static in Nigeria. There have been changes within the Nigerian context that have occurred over the years, especially because of the repugnancy doctrine which customary law is subjected to.

The passage of the Child's Rights Act (2003) which guarantees the rights of all children in Nigeria, is another indicator that family law in Nigeria has not been static. It has been adopted into law by 24 out of 36 states of Nigeria.¹⁶ The law affords more protection for children within the family, and expands their rights in society in general by offering more protection against exploitation and abuse. The Child's Rights Act has been termed as anti-culture, anti-tradition and anti-religion because it defines a child as a person below 18 years of age, and by implication forbids child marriage, while in Islam, puberty is a determining factor in a (girl) child's readiness for marriage.¹⁷ Other religious concerns against the acceptance of the Child's Rights Act include children's right to freedom of religion, differences in the inheritance rights of male and female children, and the Shariah's prohibition of adoption, in favour of kafalah, which distinguishes between biological and non-biological children.¹⁸

From the above concerns, one may reason that there are genuine fears on the implication of the changes the Child Rights Act heralds. The fears may be misplaced, but they are genuine. Indeed, proponents of same sex unions easily dismiss the concerns of people who are against it, and give the impression that it is proper to impose a new law upon a society without first addressing their concerns, and perhaps explaining to them how the new law seeks to improve their lot. They fail to understand Africa's resistance to the concepts, and they often dismiss the resistance as a sign of backwardness. Msibi for instance argues that '...homophobia is not only publicly approved by African leaders, but relies on unsubstantiated claims of an imposed homosexual identity, contradictory ideas on morality, and the use of outdated laws...these claims represent a facade that serves to entrench patriarchy and heteronormativity as legitimate and fixed in African societies.'¹⁹

2. Same Sex Couples

Top on the list of contemporary issues in family law across the globe is the debate on same sex marriages. While marriage has traditionally been defined as a union between a man and a woman, it is now the case in some jurisdictions that marriage is legally accepted as a union of two people regardless of gender. Therefore, a man may marry another man, and the union of the two can be a subjected of family law; divorce, nullity, judicial separation, restitution of conjugal rights, custody, maintenance, adoption and sundry matters. This scenario is legally possible in countries like Netherlands, Canada, France, and Germany among others. Western human rights activists, scholars, and politicians have worked to advance homosexual rights in Africa. They have tended to frame their arguments in liberal, universalist terms.²⁰ South Africa is the first African country to pass legislation recognizing same sex unions.²¹ This however has been said to have not changed the 'vicious homophobic' negative attitudes of South Africans towards same sex relationships.²² Nigeria on the other hand is one of many African countries that have refused to view same sex relationships as a civil rights issue. The only forms of marriage recognized under Nigerian law are customary marriage, Islamic marriage, and marriage under the Marriage Act. These marriages are strictly heterosexual in nature. Same sex relationships/marriages remain criminal in Nigeria.

The United States Supreme Court recognized the right of same sex couples to marry in *Obergefell v Hodges*.²³ The Court's decision in *Obergefell* according to Siegel was possible not simply because public opinion changed, but also because the struggle over the courts helped change public opinion and forge new constitutional

¹³ (1932) 11 N.L.R 47

¹⁴ (1961) N.R.N.L.R 81

¹⁵ [1997] 7 NWLR 283

¹⁶ Child Rights National Human Rights Commission <https://www.nigeriarights.gov.ng/focus-areas/child-rights.html>. Accessed 4/6/2022

¹⁷ Why the Child Rights Act Still Doesn't apply throughout Nigeria <https://theconversation.com/why-the-childs-rights-act-still-doesnt-apply-throughout-nigeria-145345>. Accessed 4/6/2022

¹⁸ Ibid

¹⁹ Thabo Msibi, The Lies we have been Told About Homosexuality in Africa *Africa Today* Vol. 58, No. 1 (Fall 2011), pp. 55-77 (24 pages) <https://www.jstor.org/stable/10.2979/africatoday.58.1.55>. Accessed 4/6/2022

²⁰ Nicholas Kahn-Fogel; Western Universalism and African Homosexualities

https://lawrepository.ualr.edu/cgi/viewcontent.cgi?article=1002&context=faculty_scholarship. Accessed 4/6/2022

²¹ Andrew Mickleburg; LGBTQ Minorities and Queer Politics in East and Southern Africa

<https://www.oxfordbibliographies.com/view/document/obo-9780199846733/obo-9780199846733-0216.xml>. Accessed 4/6/2022

²² ibid

²³ 576 U.S. 644 (2015)

understandings.²⁴ The U.S. Supreme Court in the case of *United States v Windsor*²⁵ struck down a federal legislation which defined marriage as a union between a man and a woman. The Court reasoned that this legislation placed same sex couples at a disadvantage. Similarly in *Hollingsworth v Perry*²⁶ after lower courts ruled that the ban on same-sex marriage was an unconstitutional violation of the right to equal protection under the law, the Supreme Court ruled that same-sex marriage opponents did not have standing to intervene as they could not demonstrate that they were harmed by the decision.

According to Dugmore, 76 countries in the world still criminalize same-sex relationships and behaviour, and 38 of these countries are African. He further informs us that the overwhelming majority of people who live in Africa strongly disapprove of homosexuality.²⁷ Dugmore in an attempt to make a case for same sex marriages in Africa argues his case thus:

Dozens of studies show that same-sex practices in pre-colonial Africa were not generally taboo in the way that colonial administrations codified them. Many traditional societies in Africa, and elsewhere, developed ways of ordering and tolerating [same-sex attractions and behavior]... Many tolerated some same-sex relationships among men, particularly in age-related cohorts or military units. Large numbers of men practiced some same-sex activities while asserting their heterosexuality in other spheres of life. Among women, many different African societies record marriage or other kinds of recognized relationships between women, as well as different forms of cross-dressing and role-swapping... Only during the height of colonisation were precise definitions of sexual orientations developed and proscribed behaviours punished. The British in particular brought in legislation because they thought 'native' cultures did not punish 'perverse' sex enough. Like so many other colonial era laws based on Victorian prejudices, these laws should have been repealed as part of the decolonisation process. But, on liberation, most English-speaking colonies did not repeal colonial-era 'sodomy' or 'crime/vice against nature' laws.²⁸

Unfortunately, Dugmore offers the reader very little or no direct empirical evidence of the many African societies where same sex relationships were considered normal. It would have been more appropriate to specifically cite those societies, and when the studies were conducted. Also though a woman could marry another woman in some African societies, this was never intended to be a romantic union. Rather, the practice was for purposes of procreation. A female who felt her father did not have male heirs, could marry another female into her father's family for procreation. The offspring of this union were here father's children regardless of the existence of a biological father. One may also point out in spite of the pressures of colonialism, Christianity and Islam, African traditional practices and religion are still prevalent in many parts of the continent. In the face of this reality, the argument that the criminalization of same sex unions in Africa is a direct result of colonization must fall flat.

Ireland in a paper described Africa as '...one of the world's most homophobic areas.' He blames what he terms Africa's homophobia to '...conservative religious beliefs, delayed political and economic development and resistance to globalization, political leadership strategies, and the legacy of colonialism... a British colonial past, a large Muslim population, and the absence of economic freedom and openness.'²⁹ These generalizations ignore the fact that Africa also has a large Christian population that is equally against same sex unions.

Advocates of same sex unions have claimed that the passage of the bill prohibiting same sex unions in Nigeria ...was immediately followed by extensive media reports of high levels of violence, including mob attacks and extortion against LGBT people. Human rights groups and United Nations officials expressed grave concern about the scope the law, its vague provisions, and the severity of punishments...increase in cases of physical violence, aggression, arbitrary detention and harassment of human rights defenders working on sexual minority issues.³⁰

²⁴Reva B. Siegel; Same Sex Marriage and Backlash; Constitutionalism Through the Lens of Consensus and Conflict https://cadmus.eui.eu/bitstream/handle/1814/41324/MWP_LS_2016_04.pdf?sequence=1. Accessed 4/6/2022

²⁵ <https://www.britannica.com/event/United-States-v-Windsor>, Accessed 4/6/2022

²⁶ t 570 U.S. 693 (2013)

²⁷ Harry Dugmore, Why Anti-gay Sentiment Remains Strong in Much of Africa <https://theconversation.com/why-anti-gay-sentiment-remains-strong-in-much-of-africa-42677>. Accessed 4/6/2022

²⁸ Ibid

²⁹ Patrick R. Ireland; A Macro-Level Analysis of the Scope, Causes and Consequences of Homophobia in Africa <https://www.cambridge.org/core/journals/african-studies-review/article/abs/macrolevel-analysis-of-the-scope-causes-and-consequences-of-homophobia-in-africa/600B7E070AC273291EAD10966E47BBC5>. Accessed 4/6/2022

³⁰ The Impact of Nigeria's Same Sex Marriage (Prohibition) Act <https://www.hrw.org/report/2016/10/20/tell-me-where-i-can-be-safe/impact-nigerias-same-sex-marriage-prohibition-act>. Accessed 4/6/2022

It is doubtful whether the said mob attacks are real because the report does not give the date or location of the attacks. The report goes ahead to quote thus; ‘Basically, because of this law...the police treat people in any way that they please. They torture, force people to confess, and when they hear about a gathering of men, they just head over to make arrests.’ According to the report the above statement was made by a person it identifies as ‘Executive Director of an Abuja NGO, October 2015.’³¹ Another Nigerian is quoted by the report as saying; ‘Vigilante groups have added homosexuality to their ‘terms of reference.’ These groups are organized by community members, given authorization by the community to maintain some sort of order and ‘security.’ The report identifies this person as ‘Executive Director of a Minna, Niger State NGO, October 2015.’³²

This writer does not find any credibility in the above report. The sources of the report are not mentioned, and no reasons are advanced for failing to name the executive directors who are quoted in the report. It appears to be an attempt to paint Nigerians as people who are intolerant of personal choices, and have no respect for privacy and personal freedoms, and by so doing create a link between Nigeria’s anti same sex marriage laws and human rights. While this writer is not aware of any available statistics on the subject matter of same sex relationships in Nigeria, there appear to be gross exaggerations in many reports that claim it is prevalent. There is however no gainsaying the fact that Nigerians appear not ready to accommodate same sex marriages as part of family law. A recent research in North America examined the ideological underpinnings of religious opposition to same-sex marriage by taking into account two distinct aspects of conservative ideology. The work concluded that resistance to change was more important than opposition to equality in explaining religious opposition to same-sex marriage.³³ This study may explain the attitude of the typical Nigerian towards same sex unions. Indeed advocates of same sex unions imagine that religious beliefs can easily be swept under the carpet in the name of change. While they try to portray same sex unions as a civil rights issue, they easily forget that there are those who are against the idea because it is forbidden by religion. Kahn-Fogel opines that given Africa’s history of colonial rule and subjugation, the move by western liberals to introduce same sex legislation in African countries is being interpreted as an attempt to ‘manipulate and subjugate African minds and bodies.’³⁴ It is a fact that in western countries, top people in government have come out to openly declare themselves as gay people.³⁵ In Africa on the other hand, it remains largely a closet affair which carries with it a lot of stigma. While so much has been said about the safety concerns of gay people in Nigeria, not much is said about the shame of identifying oneself as gay in Nigeria. A legislation legalizing same sex unions in Nigeria is not likely to take away the stigma. It is hard to fathom a scenario where two highly placed Nigerian men will decide to publicly announce themselves as a couple. Western liberals must therefore understand that people, cultures, and opinions differ. The typical African mind cannot comprehend how it is acceptable for one man to marry another man, and reprehensible for one man to marry two or more women. Africans are usually at the receiving end when the topic for discussion is superstitious beliefs. In trying to pass same sex unions as natural, the advocates are yet to come up with any empirical proofs. Studies have been conducted and no convincing evidence has been discovered for this behavior.³⁶

3. Non-Binary People and Transgender Rights

Generally human beings are born either male or female. It has also been claimed that ‘...some people don't neatly fit into the categories of ‘man’ or ‘woman,’ or ‘male’ or ‘female.’ For example, some people have a gender that blends elements of being a man or a woman, or a gender that is different than either male or female. Some people don't identify with any gender. Some people's gender changes over time.’³⁷ It is further claimed that people whose gender is not male or female **are** non-binary beings. Other terms that describe them are genderqueer, agender, **or** bigender.³⁸

³¹ Ibid

³² Ibid

³³ Jojanneke Van der Toorn et al; In Defense of Tradition: Religiosity, Conservatism and Opposition to Same Sex Marriage in North America <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5665159/>. Accessed 4/6/2022

³⁴ Nicholas Kahn-Fogel op cit

³⁵List of First LGBT Holders of Political Office

https://en.wikipedia.org/wiki/List_of_the_first_LGBT_holders_of_political_offices#References. Accessed 4/6/2022

³⁶Sarah Reardon; Massive Study Finds no Single Genetic Cause of Same Sex Sexual Behaviour

<https://www.scientificamerican.com/article/massive-study-finds-no-single-genetic-cause-of-same-sex-sexual-behavior/>.

Accessed 4/6/2022 See also Bill Sullivan; Stop Calling it a Choice: Biological Factors Drive Homosexuality <https://theconversation.com/stop-calling-it-a-choice-biological-factors-drive-homosexuality-122764>. Accessed 4/6/2022.

This paper argues that there may be biological factors responsible for homosexual behavior, though the author provides no conclusive proofs to back up the assertion

³⁷National Center For Transgender Equality: Understanding Non-Binary People: How to be Respectful and Supportive

<https://transequality.org/issues/resources/understanding-non-binary-people-how-to-be-respectful-and-supportive>. Accessed 4/6/2022

³⁸ Ibid

It is said that non-binary is ‘...an umbrella term, encompassing many gender identities that don’t fit into the male-female binary...someone who doesn’t identify with the sex that was assigned at birth (trans) and also has a gender identity that can’t be categorized as exclusively male or female (non-binary)...A non-binary person who doesn’t identify as trans may partially identify with the sex assigned at birth, as well as have a gender identity that can’t be categorized as strictly male or female.’³⁹

The concept of the non-binary presupposes that gender is ‘assigned’ to human beings at birth. It also presupposes that sex is ‘assigned’ at birth.⁴⁰ A person may grow up and feel he/she does not fit into the category of male or female. Such persons have the right to be genderless; a right which the National Center for Trans-gender Equality urges other people to respect and support.⁴¹ In making a case for respect and support for non-binary people, the center advocates thus;

You don’t have to understand what it means for someone to be non-binary to respect them...Use the name a person asks you to use...Try not to make any assumptions about people’s gender...If you’re not sure what pronouns someone uses, ask...Advocate for non-binary friendly policies...Understand that, for many non-binary people, figuring out which bathroom to use can be challenging...Talk to non-binary people to learn more about who they are. There’s no one way to be non-binary. The best way to understand what it’s like to be non-binary is to talk with non-binary people and listen to their stories.⁴²

It is argued that from a human rights perspective, gender options should be optional. To insist that every person is either male or female is a violation of the rights of non-binary persons. This postulation though a biological fallacy, is said to be a human right. This is a difficult concept to grasp or accept given the fact that it has no foundation in science or reality. Gender and sex are not ‘assigned’ at birth; rather they are determined by scientific characterizations. Being born either male or female is based on the presence of either the male or female genitalia. The gender of a baby at birth is not a philosophical or cultural question. It is determined by scientific characterization. The concept of a non-binary person verges on philosophy. It is an unscientific and unsubstantiated biological fiction. That notwithstanding the European Court of Human Rights ruled in a 2002 decision – addressing the transition between female and male genders, not non-binary identities – the ‘conflict between social reality and law’ that arises when the government does not recognize a person’s gender identity constitutes ‘serious interference with private life.’⁴³ There is a struggle for the actualization and recognition of a third gender; the X gender. Non-binary persons argue that their official documents identify them as either male or female, and that infringes upon their rights.⁴⁴ When two non-binary persons decide to marry therefore, they would prefer a third column where they can fill in their gender as X.

Closely allied to the non-binary persons are those who consider themselves transgender. According to an American Psychology Association (APA) website ‘Transgender is an umbrella term for persons whose gender identity, gender expression or behavior does not conform to that typically associated with the sex to which they were assigned at birth. Gender identity refers to a person’s internal sense of being male, female or something else; gender expression refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice or body characteristics.’ A transgender person may be born male, but he inwardly feels like a woman, and wants the freedom to live and express himself in ways that are feminine. The APA insists that Sex is assigned at birth, while gender refers to the socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for boys and men or girls and women. These influence the ways that people act, interact, and feel about themselves. While aspects of biological sex are similar across different cultures, aspects of gender may differ.⁴⁵ To them sex is assigned at birth, while gender is a product of socialization. There are claims that a legal definition of whether someone is male or female based solely and immutably on the genitals they are born with is likely to discriminate against people on the basis of their gender identity.⁴⁶

³⁹ Mere Arams; What Does it Mean to Identify as Non-Binary <https://www.healthline.com/health/transgender/nonbinary>. Accessed 4/6/2022

⁴⁰Waleed M. Sweileh; Biometric Analysis of Peer-Reviewed Literature in Transgender Health (1900-2017) <https://bmcinthealthumrights.biomedcentral.com/articles/10.1186/s12914-018-0155-5>. Accessed 4/6/2022

⁴¹ National Center for Transgender Equality; op cit

⁴² Ibid

⁴³ Neela Goshal; Transgender, Third Gender, No Gender: Part 2 <https://www.hrw.org/news/2020/09/08/transgender-third-gender-no-gender-part-ii>. Accessed 4/6/2022

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ US Proposal for Defining Gender has no basis in Science <https://www.nature.com/articles/d41586-018-07238-8> Accessed 4/6/2022

The definition of gender proffered above attempts to draw a wide gulf between gender and sex order to achieve a certain objective; that a person's sex may differ from his/her gender. It is largely a postulation based on passion, devoid of careful observation and testing of facts. The reality is that gender and sex can be used interchangeably, if one follows the principles of strict interpretation. We can use the term male gender or female gender to distinguish a boy from a girl. From a sociological point of view however, one may distinguish between gender roles and sex roles. Whereas sex roles are essentially biologically determined (ensuring successful reproduction and forming the basis of sexual division of labor, in which women are associated with childrearing), gender roles (behavior that is considered 'masculine' or 'feminine') are culturally determined.⁴⁷ In essence the distinction between sex and gender appears to be merely academic, because assuming but not conceding that the distinctions hold water, why can't non-binary or transgender persons agree to be identified by their sex? They do not want to be tagged as man or woman, boy or girl, male or female. Ordinarily one would think that if the problem of the non-binary person is gender and not sex, then they would accept to be described as non-binary male or non-binary female. Of all the many articles and papers that make a case for non-binary gender reviewed by this writer, none could come up with the characteristics that define this gender.

Gender stereotypes are daily being eroded as women have ventured into spheres that were hitherto reserved for men. There are women who serve in combat units of the armed forces who have by their services broken gender barriers. They nonetheless still identify as female, and that does not take anything away from them. Of course there are societies that have made more progress in terms of gender than others, but the non-binary or transgender fiction does not in any way amount to progress. One cannot fathom how non-binary or transgender rights can be placed on the same pedestal with women's rights. While women's rights are a struggle for equality regardless of the condition of a person's birth, non-binary or transgender rights are a struggle to propagate non-scientific ideas. There are ideas that are not convincing and difficult to justify. The existence of a non-binary gender and transgender are fine examples.

4. Reactions to Polygamy in Western Countries

In every country in North America and South America, polygamy is illegal, and practice is criminalized. In the United States, polygamy is illegal in all 50 states. All of Europe and Oceania, except for the Solomon Islands, do not recognize polygamist marriages.⁴⁸ However France for instance appears to have a polygamy problem as it has been reported that the country has between 150,000 and 400,000 people live in polygamous households, in which a man is married to more than one woman.⁴⁹ A report by the BBC quotes a German Minister of Justice as saying that Germany will not recognize polygamy.⁵⁰ The minister is reported as telling immigrants that 'No-one who comes here has the right to put his cultural values or religious beliefs above our law.'⁵¹ The point must be stressed that if it was the Nigerian Minister of Justice that had uttered these same comments while referring to same sex unions, non-binary or transgender persons, western liberals would have readily called for his crucifixion, and labeled him as intolerant. The Deputy Minister for Justice in Sweden in a 2017 press release was quoted as saying; 'Polygamous marriages should not be recognized in Sweden and we need to review the existing legal loophole that makes it possible. Polygamous marriages undermine gender equality and, according to the UN, it can have serious emotional and financial consequences.'⁵² According to the press release, the incidence of polygamous marriages in Sweden had risen, due to a higher number of asylum seekers with no previous ties to Sweden. It therefore sought for legislation and instructed an inquiry chair to present proposals on how foreign polygamous marriages can be prevented from continuing in Sweden. The Inquiry Chair was tasked with explaining the legal consequences that may arise when a foreign polygamous marriage is not allowed to continue in Sweden and how to avoid unreasonable consequences for the people concerned.⁵³ Denike views the anti-polygamy sentiment in North America as '...elucidating certain racist and nationalist formations that are implicit in the historical valorization and enforcement of heterosexual monogamy...the white supremacist and heteronormative

⁴⁷ Thesaurus.Com Sex Roles/Gender Roles <https://www.dictionary.com/browse/sex-roles-gender-roles>. Accessed 4/6/2022

⁴⁸ Countries Where Polygamy is Legal 2021 <https://worldpopulationreview.com/country-rankings/countries-where-polygamy-is-legal>. Accessed 4/6/2022

⁴⁹ France's Polygamy Problem <https://www.dw.com/en/frances-polygamy-problem/a-1664241-1> see also Andreas Molzer; Polygamy in the European Union https://www.europarl.europa.eu/doceo/document/E-6-2005-4761_EN.html which estimates the figure as between 10,000 and 30,000. Accessed 4/6/2022

⁵⁰ Germany polygamy: Minister says migrants must abide by the law <https://www.bbc.com/news/world-europe-36537305>. Accessed 4/6/2022

⁵¹ Ibid

⁵² New Rules Against Foreign Polygamous Marriages <https://www.government.se/press-releases/2018/07/new-rules-against-foreign-polygamous-marriages/>. Accessed 4/6/2022

⁵³ Ibid

logic...conditions the widespread disdain toward polygamy, and that renders it fundamentally different from familial configurations that are associated with national identity.’⁵⁴

On the one hand therefore is Africa where family law does not recognize same sex unions as legal, but recognizes the marriage of one man to two or more women. On the flipside are western nations that remain staunchly opposed to polygamy, but liberally open to same sex unions. The African is not only expected to embrace same sex unions, it is expected that allied matters like non-binary and transgender rights must be accommodated by the African mind. While western countries present same sex marriage, non-binary and transgender recognition as human rights issues, they remain intolerant that polygamy may as well fit into the human rights philosophy. Yet Africans remain the focus of accusations of intolerance by those who themselves are unwilling to tolerate practices that do not agree with their principles.

5. Observations

Within the Nigerian context, legal marriage remains the union between a male and a female(s). The justification for changing this definition has not yet arisen. The biological fiction of a non-binary or transgender person must be dismissed as myth in the absence of concrete scientific evidence. This research observed the uncanny ability of western liberalism to create a myth and bully people into accepting it as a reality, using outright manipulation or blackmail. Western liberals prevent dissenting opinions by conjuring labels for dissenters. Honest questions concerning the morality or legality of same sex unions are labeled as homophobia, those who dare to ask the questions are labeled as homophobic.⁵⁵ It has also been elevated to the level of hate speech.⁵⁶ A scientific inquiry into the propriety or otherwise of the non-binary or transgender is condemned as transphobia.⁵⁷ These are trick terminologies aimed at gagging the discourse. It is presented as a factual and scientific reality that there are non-binary human beings. It is also claimed that same sex attraction is a natural phenomenon, so the law of the land should allow couples to marry, whether they be man and man or woman and woman. Ordinarily these claims ought to be subjected to frank discussion and open scrutiny even by those who hold contrary opinions, or those who have researched the topic and come out with different results should be allowed to have their say. Truth and facts do not fear challenges and criticism. According to Simone writing for the *Scientific American*, sex is not binary, and there are more than two genders.⁵⁸ Ellessor regards biological sex as a myth.⁵⁹ This research found their attempts at presenting scientific evidence unimpressive. Most of the justifications are more fanatical than scientific. There is no homosexual gene or non-binary hormone that has been shown to exist in humans.

6. Conclusion

Nigerian family law is firmly anchored on the religion, culture and generally accepted way of life of its people. Culture is dynamic, and with the passage of time certain cultural practices have either undergone changes, or been proscribed. There are however other practices which though undesirable, still persist. As Nigerians strive to build a better society where there is equality for all people before the law, care must be taken not to duplicate every innovation from western countries in the name of change. Some of the innovations are either absurd, or difficult to comprehend. This research finds no merits in recommending same sex unions for Nigeria. The researcher is not swayed by the fiction of non-binary or transgender persons. Unless there is scientific proof, Nigerians do not have a duty to accept same sex unions as a norm. Family law in Nigeria should continue to accord recognition to only marriages between a man and a woman or women.

⁵⁴ Magaret Denike; The Racialization of White Man’s Polygamy, *Hypatia* Vol. 25, No. 4 (FALL 2010), pp. 852-874 (23 pages) <https://www.jstor.org/stable/40928660>. Accessed 4/6/2022

⁵⁵ Isidora Stakic; Homophobia and Hate Speech in Serbian Public Discourse: How Nationalist Myths and Stereotypes Influence Prejudice against LGBT Minority https://www.equalrightstrust.org/ertdocumentbank/ERR7_isidora.pdf. Accessed 4/6/2022

⁵⁶ Ibid

⁵⁷ Transphobia <https://www.merriam-webster.com/dictionary/transphobia>. Accessed 4/6/2022

⁵⁸ Simone D Sun; Stop Using Phony Science to Justify Transphobia <https://scientificamerican.com>. Accessed 4/6/2022

⁵⁹ Kim Ellessor; The Myth of Biological Sex, <https://forbes.com>. Accessed 4/6/2022