The terms by which we are recognized as human are socially articulated and changeable. And sometimes the very terms that confer “humanness” on some individuals are those that deprive certain other individuals of the possibility of achieving that status, producing a differential between the human and the less human.

– Judith Butler, *Undoing Gender* (p. 2)

5. THE SAME-SEX MARRIAGE (PROHIBITION) ACT IN NIGERIA

*A Critique of Body Policing*

On January 7, 2014, the will of the majority prevailed over the fundamental rights of sex, gender, and sexual minorities in Nigeria as the former President, Goodluck Ebele Jonathan, signed a bill prohibiting same-sex marriage into law. From its legal label, the ‘Same Sex Marriage (Prohibition) Act, 2014’ (SSMPA) appears to merely prohibit the legal recognition of persons considered to be of the same sex (between a woman and a woman or between a man and another man) seeking to be married. However, this law is targeted at forcing all Nigerians to align with compulsory heteronormativity and a sex and gender binary or otherwise lose their ‘humanness,’ social recognition, and any form of rights. The law defines sex, gender, and sexuality in ways that allow Nigerian legislature to condemn, repress, prohibit, and silence the minority bodies (Foucault, 1990). It typifies the legal construction of homophobia, hegemonic masculinity, and body-policing in Nigeria, which only existed subtly prior to SSMPA.

With blanket provisions that not only penalize same-sex marriage and unions with fourteen years of imprisonment but also criminalize all direct and indirect public display of or support for “same sex relationships, gay clubs, societies, and organizations, processions, or meetings with ten years’ imprisonment” (LFN, 2014), SSMPA denies what Paula Ettelbrick describes as “the affirmation of gay identity and the validation of many forms of relationships” (Eskridge & Hunter, 2009, p. 1098). In addition to denying the
right of marriage to people of the same sex, who may or may not be interested in a legal union, SMMPA represents a tactical criminalization of all persons of lesbian, gay, bi-sexual, trans-sexual, trans-gender, queer, intersex, or asexual (LGBTQIA) persons in Nigeria. It denies them the right to privacy, liberty, freedom of association, freedom of expression, and freedom of assembly that the Nigerian constitution guarantees for other citizens. This chapter provides a socio-legal analysis of SSMPA in Nigeria and demonstrates that SSMPA denies justice to all bodies that question the normative construction of sex, gender, and sexual binaries.

This chapter is divided into three major parts. Part 1 introduces and critiques the SSMPA as a legal sanction of a sex and gender binary, and compulsory heterosexuality in Nigeria. It also offers a critical analysis of some of the rationale given in support of SSMPA, revealing how the LGBTQIA community in Nigeria is criminalized based on merely cultural, religious, moral, political, and colonial sentiments. Part 2 provides an assessment of SSMPA as a legal document, revealing it as conflicting with international law, contradicting constitutional provisions, and containing ambiguous, open-ended, and double-bind legal provisions. Part 3, which is the final section, focuses on the some of the negative impact of SSMPA on the LGBTQIA community while also evaluating the implication of such impact on Nigeria as a country. This section reveals SSMPA as a major setback for any human rights, social justice, and democratic gains that Nigeria has attained since independence in 1960, and especially since the inception of democratic governance in 1999.

**PART1: A CRITIQUE OF SOME OF THE RATIONALES FOR SSMPA**

**SSMPA and the Construction of Sex and Gender Binary**

Biological sex has been proven to exist on a spectrum of categories that cannot be pegged under male and female (Chase, 1999; Fuasto-Sterling, 1993, 2000; Gold, 2001). The scientific discovery of other sets of chromosomes (46XX, 46XY, 45X, 45Y, 47XXX, 47XYY or 47XXY) in addition to the female (46XX) and male (46XY) chromosomes (“Genomic Resources,” n.d.) proves Alice Domural Dregger right that “anatomy is not going to tell us for sure what sex is all about” (p. 20). Although most nations, despite the biological evidence, continue to construct sex in a male/female binary, Nigeria is using the SSMPA to further enforce this binary by forcing everyone to align with female/male sex for the purposes of marriage or civil union. SSMPA completely ignores the existence of intersex people.