

Human Rights Violations Based on Sexual Orientation and Gender Identity in Nigeria

A Shadow Report on Nigeria's Compliance with the African Charter on Human and Peoples' Rights

Submitted for consideration at the 56th Session of the African Commission on Human and Peoples' Rights

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Prepared by

Advocates for Behavioural Change (ABC)

African Men for Sexual Health and Rights (AMSHeR)

Initiative for the Advancement of Humanity (IAH)

International Centre for Advocacy on Rights to Health (ICARH)

International Centre for Reproductive Health and Sexual Rights (INCREASE)

Legal Defense and Assistance Project (LEDAP)

The Initiative for Equal Rights (TIERs)

Women's Health and Equal Rights Initiative (WHER)

Center for International Human Rights of Northwestern University School of Law

Heartland Alliance – Global Initiative for Sexuality and Human Rights (HA – GISHR)

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I. Introduction

This shadow report on human rights in the Federal Republic of Nigeria is a collaborative work of Advocates for Behavioural Change (ABC), African Men for Sexual Health and Rights (AMSHer), Initiative for the Advancement of Humanity (IAH), International Centre for Advocacy on Rights to Health (ICARH), International Centre for Reproductive Health and Sexual Rights (INCREASE), Legal Defense and Assistance Project (LEDAP), The Initiative for Equal Rights (TIERs), Women's Health and Equal Rights Initiative (WHER), the Center for International Human Rights of Northwestern University School of Law and Heartland Alliance – Global Initiative for Sexuality and Human Rights (HA – GISHR). This report is submitted to the African Commission on Human and Peoples' Rights ("African Commission" or "Commission") for its consideration during its 5th periodic review of Nigeria's compliance with its obligations under the African Charter on Human and Peoples' Rights ("African Charter" or "Charter"). The purpose of this report is to direct the Commission's attention to serious violations of Charter rights against sexual minorities in Nigeria.

Nigeria ratified the African Charter on Human and Peoples' Rights on 22 June, 1983.¹ The African Commission will consider Nigeria's periodic report on its implementation of the African Charter during the 56th Ordinary Session of the Commission, scheduled to take place from 21 April to 7 May, 2015.²

The Nigerian government affirmed in its 5th periodic report to the African Commission, for the period of 2011 to 2014, that it "is committed to the progressive realization of the basic rights and freedoms of individuals and groups as well as their duties enshrined in the African Charter on Human and Peoples' Rights through legislative, policy, judicial, administrative and budgetary measures."³ However, Nigeria's report ignores its human rights practice on issues related to violations of Charter rights against lesbian, gay, bisexual and transgender ("LGBT") persons in the country.

As will be shown in this report, individuals in Nigeria frequently suffer serious violations of rights protected under the African Charter based on their real or perceived sexual orientation and gender identity, including:

- * Violent attacks based on the victims' actual or perceived sexual orientation or gender identity, violating the rights to bodily integrity (Art. 4), freedom from torture and cruel, inhuman or degrading punishment and treatment (Art. 5), security of the person (Art. 6), and, in the most extreme case, the right to life (Art. 4);

¹Ratification Table: African Charter on Human and Peoples' Rights, AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS, *available at* <http://www.achpr.org/instruments/achpr/ratification/>.

² Nigeria, AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS, *available at* <http://www.achpr.org/states/nigeria/>.

³ Nigeria's 5th Periodic Country Report: 2011-2014 on the Implementation of the African Charter on Human and Peoples' Rights in Nigeria, THE FEDERAL MINISTRY OF JUSTICE, *available at* http://www.achpr.org/files/sessions/14th-ec/state-reports/5th-2011-2014/staterep5_nigeria_2013_eng.pdf.

- * Violations of the rights to non-discrimination (Art. 2), equality (Art. 3), and equal protection of the law (Art. 3);
- * Violations by State and private individuals of the duties of respect, tolerance and non-discrimination (Art. 28), and of the corresponding State duty “to promote and ensure through teaching, education and publication” public understanding of these important duties (Art. 25);
- * Arbitrary arrests, in violation of the right to liberty (Art. 6);
- * Violations of the rights to freedom of association (Art. 10) and assembly (Art. 11);
- * Violations of the rights to health (Art. 16) and education (Art. 17).

In assessing Nigeria’s compliance with its Charter obligation to all individuals, regardless of their real or perceived sexual orientation or gender identity, particular attention must be paid to provisions of Nigeria’s criminal law that have grievous effects on the Charter rights of sexual minorities. Nigerian law criminalizes and provides severe punishments for (1) same sex sexual conduct; (2) any public showing of a same sex amorous relationship; (3) living together in a romantic relationship, whether or not formally married; and (4) participating in or otherwise supporting “gay clubs, societies, organisations, processions or meetings.”⁴ These provisions, in and of themselves, constitute violations of Charter rights, as will be discussed below. Additionally, they lead both directly and indirectly to violations of other Charter rights. They lead directly to arbitrary arrests and denials of the rights of association and assembly. They lead indirectly to countless rights violations, because they contribute to a climate of homophobia that encourages private as well as state actors to victimize individuals based on their real or perceived sexual orientation and gender identity because they are perceived as criminals rather than as human beings entitled to respect, freedom from violence, tolerance and non-discrimination.

Because of the serious detrimental impact of these criminal law provisions, they will be set out in detail at the outset of this report. Thereafter, violations of Charter rights against Nigerians and other individuals based on their real or perceived sexual orientation and gender identity will be examined. This report will conclude with questions and suggested recommendations to be made to Nigeria to promote greater compliance with its Charter obligations. We hope the African Commission will find the information and suggestions in this report useful in examining the situation of human rights in Nigeria.

⁴ Same Sex Marriage (Prohibition) Act, 2013, *available at* https://allout-production-site.s3.amazonaws.com/allout-200-Nigeria_Same_Sex_Marriage_Prohibition_Law_2014.pdf.

II. Relevant provisions of Nigerian criminal law

A. Criminalization of same sex sexual conduct

Chapter 21 of the Nigerian Criminal Code criminalizes “Offenses against Morality.” Sections 214 and 215 of this Chapter make “carnal knowledge of any person against the order of nature” a felony punishable by fourteen years’ imprisonment.⁵ This is the language traditionally used to penalize same-sex sexual activity. Additionally, Section 217 of the Criminal Code states:

“Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures a 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.”⁶

Punishment can be even more severe in Nigeria’s twelve northern states, which have adopted Sharia law. In those states, adults convicted of engaging in same-sex sexual activity may be subject to execution by stoning.⁷

In Northern Nigeria, where Shari’a law is being implemented in 12 states, consenting homosexual conduct between two adults is punishable by lashes, 1-year imprisonment or death, depending on the marriage status of the person on trial. Section 131 of the Sharia Penal Codes in these states stipulate:

“Whoever commits the offence of sodomy shall be punished:

- (a) Canning of 100 lashes if unmarried, and shall also be liable to imprisonment for the term of 1 year
- (b) If married with stoning to death (rajm)”⁸

B. Same Sex Marriage (Prohibition) Act, 2013

The Same Sex Marriage (Prohibition) Act, 2013, was enacted by Nigeria’s National Assembly in December 2013 and signed into law by the President on 7 January 2014. Although the law’s title refers to “Same Sex Marriage,” the scope of the law is much broader. In addition to prohibiting same sex marriage, it states that “[t]he Registration of gay clubs, societies and organisations, their sustenance, processions and meetings is prohibited.”⁹ Additionally, “[t]he public show of same sex amorous relationship directly or indirectly is prohibited.”¹⁰

⁵ Criminal Code Act (1990) Cap. (21) §§214-15 (Nigeria).

⁶ *Id.* at §217.

⁷ Bureau of Democracy, Human Rights, and Labor, *2008 Human Rights Report: Nigeria*, U.S. DEPT. OF STATE, available at <http://www.state.gov/j/drl/rls/hrrpt/2008/af/119018.htm>.

⁸ Section 131 of the Sharia Penal Code adopted across the 12 states.

⁹ Same Sex Marriage (Prohibition) Act, 2013 at § 4(1), available at https://allout-production-site.s3.amazonaws.com/allout-200-Nigeria_Same_Sex_Marriage_Prohibition_Law_2014.pdf.

¹⁰ *Id.* at § 4(2).

This law criminalizes any of the following acts:

1. Entering into a same sex marriage or civil union. Under the law:

“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.”¹¹

2. Living together with a same sex partner, even without marriage or a civil union. Under the law, “same sex marriage” is defined to mean:

“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.*”¹²

Civil unions are defined, under the law, to include:

“any arrangement between persons of the same sex to live together as sex partners,” including arrangements to live in a “caring partnership,” a “significant relationship,” or a “stable union.”¹³

Accordingly, even if individuals do not enter into a formal marriage or civil union, by living together, whether as a couple or as roommates to save money, they can become subject to the criminal penalty of 14 years imprisonment.

3. Administering, aiding or abetting, or even merely witnessing a same sex marriage or civil union. Under the law:

“A person or group of persons who administers, witnesses, abets or aids the solemnization of a same sex marriage or civil union . . . in Nigeria commits an offence and is liable on conviction to a term of 10 years imprisonment.”¹⁴

4. Registering, operating or participating in a “gay” organization. Under the law:

“A person who registers, operates or participates in gay clubs, societies and organisation . . . commits an offence and is liable on conviction to a term of 10 years imprisonment.”¹⁵

5. Supporting the registration, operation, or sustenance of “gay” organisations, processions or meetings. Under the law:

¹¹ *Id.* at § (5)1.

¹² *Id.* at § 7 (emphasis added).

¹³ *Id.*

¹⁴ *Id.* at § 5(3).

¹⁵ *Id.* at § 5(2).

“A person or group of persons who . . . 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.”¹⁶

In response to the enactment of the Same Sex Marriage (Prohibition) Act, the African Commission’s Special Rapporteur on Human Rights Defenders in Africa, Mrs. Reine Alapini-Gansou, issued a press release noting that she “is deeply concerned about the consequences this law may have on sexual minorities who are already vulnerable as a result of social prejudice.”¹⁷ She continued:

“The Special Rapporteur is concerned by some provisions of the Act, in particular Sections 4(1) and 5(2) which prohibit and provide for penalties against defenders of the rights of lesbian, gay, bisexual and transgender (LGBT) people. These provisions undermine the work of human rights defenders and are against any public debate on this crucial issue.

The Special Rapporteur is concerned by the increase, following the enactment of the law, in cases of physical violence, aggression, arbitrary detention and harassment carried out against human rights defenders dealing with sexual minority rights issues.

The Special Rapporteur strongly condemns such acts which are a violation of the right to life, physical integrity, and freedom of expression and assembly of human rights defenders.”¹⁸

III. Violations of the African Charter

A. Article 4 (Life and Bodily Integrity), Article 5 (Freedom from torture and cruel, inhuman or degrading punishment and treatment), and Article 6 (Security of the Person)

Article 4 of the African Charter proclaims that “human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.”¹⁹ Article 5 recognizes the right to “the respect of the dignity inherent in a human being” and prohibits “[a]ll forms of degradation” including torture and cruel, inhuman or degrading punishment and treatment.²⁰ Article 6 protects the right to security of person.²¹

This Commission has previously underscored the breadth of the Article 5 prohibition of torture and cruel, inhuman or degrading punishment and treatment. As the African Commission has explained, Article 5 prohibits “not only cruel, but also inhuman and degrading treatment . . . [which] includes not only actions which cause serious physical or psychological suffering, but which humiliate or

¹⁶ *Id.* at § 5(3).

¹⁷ Special Rapporteur on Human Rights Defenders in Africa, Press Release on the Implication of the Same Sex Marriage [Prohibition] Act 2013 on Human Rights Defenders in Nigeria, 5 Feb. 2014, *available at* <http://www.achpr.org/press/2014/02/d190/>.

¹⁸ *Id.*

¹⁹ African (Banjul) Charter on Human and Peoples’ Rights, art. 4, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *available at* <http://www.achpr.org/instruments/achpr/> (hereinafter African Charter).

²⁰ *Id.* at Arts. 5, 6.

²¹ *Id.* at Art. 6.

force the individual against his will or conscience.”²² This prohibition “is to be interpreted as widely as possible to encompass the widest possible array of physical and mental abuses.”²³ This broad interpretation of what behaviour is prohibited is consistent with the Human Rights Committee’s interpretation of the correlative provisions under the International Covenant on Civil and Political Rights (“ICCPR”). The Human Rights Committee’s General Comment No. 20 established that the purpose of the prohibition against torture and cruel, inhuman or degrading treatment is to “protect both the dignity and the physical and mental integrity of the individual.”²⁴

The African Commission recently has condemned violations of these important Charter rights on the basis of real or perceived sexual orientation or gender identity. In May 2014, this Commission adopted Resolution 275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity.²⁵ In adopting this Resolution, this Commission noted that it was “[a]larmed that acts of violence . . . continue to be committed on individuals in many parts of Africa because of their actual or imputed sexual orientation or gender identity.”²⁶

Unfortunately, Nigeria is one of the countries in Africa where such acts of violence are being committed by both State and private actors. These violations have increased in the toxic atmosphere created by the recent passage of the Same Sex Marriage (Prohibition) Act, 2013. Examples include the following:

In January 2013, three Nigerian men from Ekwe village in Imo state were allegedly caught engaged in same-sex sexual activity. A group of young villagers rounded up the men, subjected them to a severe beating, stripped them naked, and paraded them through the community while they were “bound together like animals.”²⁷ An individual who admitted to taking part in the mob violence recalled, “On that Sunday morning, I was one of those who were beating the boys. They brought a curse on our land. Two of them were caught having sex near the town hall. They confessed to their ‘crime’ and also mentioned the names of others who are also engaged in homosexuality. We rounded all of them up and gave them the beating of their lives. They were seven in number. . . . [T]hey are now too ashamed to move freely in the community.”²⁸

²² *Curtis Francis Doebbler v. Sudan*, para 36 [Communication 236/2000 – 16th Annual Activity Report] available at http://www.achpr.org/files/activity-reports/16/achpr32and33_actrep16_20022003_eng.pdf.

²³ *Id.* at para. 37.

²⁴ Human Rights Committee, Gen. Comment 20, Art 7 (Forty-fourth session, 1992), Compilation of Gen. Comments and Gen. Recommendations Adopted by Human Rights Treaty Bodies, ¶ 2, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994) available at <http://www1.umn.edu/humanrts/gencomm/hrcom20.htm>.

²⁵ 275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity, African Commission on Human and Peoples’ Rights, May 2014, available at <http://www.achpr.org/sessions/55th/resolutions/275/> (hereinafter Resolution 275).

²⁶ *Id.* (emphasis added).

²⁷ Int’l Gay and Lesbian Human Rights Comm’n, *Investigative Report on the Alleged Parading of Three Men Accused of Homosexuality in Ekwe Imo State, Nigeria* (25 Jan., 2013); Nnenna Ibeh, *Imo police investigates gay practise by three manhandled men*, PREMIUM TIMES (18 Jan., 2013), available at <http://www.premiumtimesng.com/news/115782-imo-police-investigates-gay-practise-by-three-manhandled-men.html>.

²⁸ *Investigative Report on the Alleged Parading of Three Men Accused of Homosexuality in Ekwe Imo State*, *supra* note 22.

In March 2013, an intersex individual in Sapele-Warri was lynched by a mob but for the intervention of a few sympathetic individuals in the community. The police and other security agents would not intervene simply because they were informed that he is a hermaphrodite (intersex) and a cursed person. Members of the mob “stripped him naked, and prodded his genitalia until the above mentioned individuals intervened and took the man into protective custody.”

In November 2013, at least 8 persons were brutally beaten and extorted by some youth members of a community in Oyigbo town near Port Harcourt on the alleged campaign to cleanse the land of “homosexuality.” The aggressors didn’t stop at assaulting and extorting these 8 men they proceeded by parading them to the police station where they were detained for 4 days each and forced to make incriminating confessions and admissions. They were subsequently bailed for no less than ₦40,000.00 each. As if that was not enough, the press was invited, who took pictures of the victims and wrote a very derogatory publication captioned ‘Day Oyigbo youths arrested pastor, politician for homosexuality’²⁹

In December 2013, three men were arraigned before the Magistrate Court seating at Port Harcourt. They were made to appear before the magistrate Odiki Dan-Kalio on the charge of conspiracy to commit unnatural offences. At the mentioning of the case, the Court declined jurisdiction and was disposed to remand the accused persons to the custody of the police until the next adjourn date being 29 January 2014.³⁰

Those men arraigned and charged with conspiracy and unnatural offences in December 2013 were on 20 May 2014 made to take pleas and were granted bail. But the magistrate and prosecutor made the fulfillment of the bail condition difficult due to the nature of the offence. This could be deciphered from the fact that other persons granted bail by the same Court on the same day satisfied their bail conditions and all went to their respective homes yet these three men could not return home because the magistrate and prosecutor found reasons to disqualify all their sureties. They were remanded to prison custody and left to suffer there even after they were granted bail. Some of them are still in prison custody to this day.³¹

In January 2014, Mubarak Ibrahim was publicly whipped 20 times in northern Nigeria after pleading guilty of sodomy committed 7 years before. He was also ordered to pay ₦5,000. Judge Nuhu Mohammed stated that he did not sentence Ibrahim “to death” because the ‘crime’ was committed a long time ago and he showed “great remorse.”³²

On 12-13 February, 2014 in Gishiri Village, in the Federal Capital Territory (Abuja), a young man identified as Pastor Blaze led a mob of over 50 people against persons suspected to be homosexuals

²⁹ Incident documented by IAH-HRD in November, 2013; see also The Nations Newspaper publication of 15 November, 2013.

³⁰ Incident documented by IAH-HRD in December, 2013.

³¹ Monica Mark, *Nobody thinks I'd dare show my face here—inside a Nigerian sharia court*, THE GUARDIAN NIGERIA (29 Jan. 2014) available at <http://www.theguardian.com/world/2014/jan/29/anti-gay-violence-nigeria-sharia>.

³² *Man whipped 20 times in Nigerian Islamic court for one act of gay sex*, THE GUARDIAN NIGERIA, (16 Jan. 2014) available at <http://www.theguardian.com/world/2014/jan/16/man-whipped-nigeria-sharia-court-gay-sex-act>. (emphasis added).

at midnight for two consecutive nights. During the unprovoked security incident, 14 gay men and one family member suspected to be homosexual were brutally attacked.³³ The mob used weapons, some of which were identified as machetes, nail-studded clubs, wires, whips, shovel, broken furniture and other weapons, and stormed the homes of the victims in the middle of the night.³⁴ The assailants broke into their houses through the windows and doors at about 01:00am each nights and severely beat the individuals suspected of being homosexuals, all while chanting “We are working for [President] Jonathan” and that they were “cleansing the community” of gays.³⁵ The mob ordered the victims to vacate from Gishiri village and threatened to kill all of them should they return.

Six victims of the mob (five gay men and a suspected family member) were badly beaten and could not escape the unprovoked raid. They were arraigned before the local police station in the village and transferred to the Mabuchi police station in heavily fisted handcuffs.³⁶ The police officers continued the mob’s work by insulting, humiliating, threatening, and physically abusing the detainees. The officers at Mabuchi police station ordered the men, who had been previously dragged out of their sleep, to pull down their trousers and display their anus and genitals.³⁷ The victims followed the orders of the police officers in their fearful and helpless situation. One of the detained victims reported that he was forced to show the Mabuchi officers his penis while they mocked him, saying that they “haven’t seen a homosexual penis before.”³⁸ Another reported that the police said that the allegedly homosexual detainees would be jailed for 21 years and that they were “the one[s] spreading HIV.”³⁹ One victim reported a repeat threat from the infamous Pastor Blaze, who ordered him to move out of the village or risk being killed.⁴⁰ Another victim reported that he refused to answer the mob when they banged at his door, but they broke the doorframe and discovered that he was hiding inside his room for safety. They dragged him out before he was beaten and arraigned before the police.

After the mob attacks were over, the homes of the affected persons were defaced with homophobic graffiti, including a specific warning which stated “[h]omosexuals, pack and leave.”⁴¹ The fourteen men have since abandoned their homes and businesses, and are rendered homeless, for fear of further attacks.⁴² Over one year after the unprovoked security incidents, the perpetrators of the hate crime remains unpunished.⁴³

On 1 March, 2014, a human rights defender of ICARH was interrogated and violently beaten by two police officials when he attempted to investigate the case of three individuals arbitrarily arrested on

³³ Adam Nossiter, *Mob Attacks More Than a Dozen Gay Men in Nigeria*, THE NEW YORK TIMES (15 Feb. 2014) available at http://www.nytimes.com/2014/02/16/world/africa/mob-attacks-gay-men-in-nigerias-capital.html?_r=1 (hereinafter *Mob Attacks*); Incident documented by ICARH, 7 Feb. 2014.

³⁴ *Mob Attacks*; See also ICAHR Report of Mob Justice in Gishiri Village, Human Rights Unit, Abuja (14 Feb. 2014).

³⁵ See ICAHR Report of Mob Justice in Gishiri Village, Human Rights Unit, Abuja (14 Feb. 2014).

³⁶ *Id.*

³⁷ *Id.*

³⁸ Incident reported to ICARH, 2 Feb. 2014.

³⁹ ICAHR Report of Mob Justice in Gishiri Village, Human Rights Unit, Abuja (14 Feb. 2014).

⁴⁰ Incident documented by ICARH, 6 Feb. 2014.

⁴¹ Adam Nossiter, *Mob Attacks More Than a Dozen Gay Men in Nigeria*, THE NEW YORK TIMES (15 Feb. 2014) available at http://www.nytimes.com/2014/02/16/world/africa/mob-attacks-gay-men-in-nigerias-capital.html?_r=1.

⁴² ICAHR Report of Mob Justice in Gishiri Village, Human Rights Unit, Abuja (14 Feb. 2014).

⁴³ Incident documented by ICARH, 17 Feb. 2015.

the basis of their suspected sexual orientation. The human rights defender suffered a head and jaw injury and his clothes were ripped into pieces while he was trying to discharge his duties.⁴⁴

In March 2014, four young men were convicted of engaging in same-sex conduct by an Islamic court. They alleged that they were beaten by law agents to force them to confess. The men were sentenced to 15 strokes and an additional one-year imprisonment if they were not able to pay a fine of ₦20,000. The judge stated he gave a more lenient punishment because the men “promised that the homosexual acts occurred in the past and that they had since changed their ways.”⁴⁵

In June 2014, in Northern Nigeria a man named Hamza⁴⁶ was communicating with another individual presumed to be a friend via instant message. After a few months of exchanging messages, the online friend with an unknown criminal intention asked to meet Hamza in person. The alleged friend then conspired with a vigilante group and notified the (Shari’a Police) Hisbah of the upcoming meeting. Upon his arrival, the group of vigilantes swarmed into the building, dragged him outside, and stated they would release him only if he would testify against other men he knew to be homosexuals. He agreed and was later brutalised and left in a gutter barely conscious.⁴⁷

On 9 September 2014, in the Kabusa village of Abuja, a victim reported having been severely beaten by a mob who perceived him to be of a different sexual orientation.⁴⁸ According to the victim’s account, he was invited to the home of a male friend on the pretence of having a brief discussion with him. Upon arrival, he was constrained to face a strange pattern of extortion. The lead perpetrator of the incidence called in a mob, which beat the victim and dragged him naked into the street. Additionally, the mob stole the victim’s Samsung phone, two SIM cards, and ₦2,000. Members of the organised mob said that they would keep the victim’s possessions and threatened to post his naked pictures on Facebook unless the victim paid them ₦50,000. The victim narrowly escaped the mob.

On 31 October, 2014, Tonye⁴⁹ an employable adult was walking down his street in Borikiri, Port Harcourt, when he was attacked by a mob. The security incident began to build up when the helpless man was interrogated about why he is a homosexual. Without any interest to receive an answer from the victim, the mob proceeded to attack him with broken wood and other available weapons. Another gay man who witnessed the life-threatening incident called the victim’s friends for help. The mob recognised the friend who made rescue effort calling for help and began to beat him due to his attempt to save the victim. Tonye was pronounced dead two days later due to internal bleeding.⁵⁰

In November 2014, a 19-year-old woman was lured to Oshodi, Lagos, robbed, raped and blackmailed. The young woman was invited by another woman who was based in Lagos for a visit on the 6th of November, 2014. At about 1 a.m., the victim was notified by her host that it was a set-

⁴⁴ Incident documented by ICARH, 1 April 2014.

⁴⁵ *Four men whipped in Nigeria court after being convicted of gay sex*, THE GUARDIAN NIGERIA (6 Mar. 2014) available at <http://www.theguardian.com/world/2014/mar/06/four-men-whipped-nigeria-court-gay-sex>.

⁴⁶ The name has been changed for security purposes.

⁴⁷ Monica Mark, *Nobody thinks I’d dare show my face here—inside a Nigerian sharia court*, THE GUARDIAN NIGERIA (29 Jan., 2014) available at <http://www.theguardian.com/world/2014/jan/29/anti-gay-violence-nigeria-sharia>.

⁴⁸ Incident reported to ICARH, 1 Sept. 2014.

⁴⁹ The name has been changed for security purposes.

⁵⁰ Incident reported to HRO-IAH, 6 Nov. 2014.

up adding that she was being used by some men to lure LGBT individuals as to be so they can be raped, blackmailed and extorted for money. The victim was raped by five men. A sixth man did not participate in the act, however, he helped her get one of her phones, which the perpetrators had collected earlier. The perpetrators also collected the sum of ₦10,000 and other valuables from her. The sixth man, smuggled her out of danger and told her to bring an additional ₦50,000 so that they would not attack her again. The victim was referred to an LGBT friendly community clinic in Lagos, where she received post-rape care. However, the victim, who is presently pregnant because of the violence, does not want to take the matter further.⁵¹

On 24 February 2015, a man on his way back to church was stopped by a member of the Nigerian Police Force who asked him to identify himself and why was walking/acting “like a woman.” The man told the officer that he was just returning to church with his bible and a diary he used to write sermons. The police officer requested to see his phone. His refusal for his phone to be unlawfully checked earned him some ruthless beating from the officer, whom then asked the victim to sit on the floor, which he did but still held onto his phone. A member of the church pleaded for the man’s release, but to no avail. The victim was taken to the police station and was detained for no cause only because he behaved or acted “like a woman.”⁵²

Horrific as these examples are, they fail to convey the full magnitude of the violence against individuals on the basis of their real or perceived sexual orientation or gender identity in Nigeria. This situation is coupled with the further criminalization of the LGBT population by the authorities, as such creating fear and reducing access to justice for the already marginalized population in the country. Despite the daily occurrence of violence, the majority of rights violations occur in the villages and regions that are not easily accessible to human rights defenders. Given the stigma and fear present in Nigeria, it is believed that incidents of violence are greatly underreported.

Organizations and other human right defenders who work to protect the rights of the marginalized “gay” population are formally declared criminal and are punishable with 10 years’ imprisonment. This stands and its multiplying effect if not brought under control will have a negative impact on the criminalization of persons working on issues considered to be controversial and thus will limit access to justice and enjoyment of basic rights.

The deteriorating human rights situation poses grave consequences on the protection of Nigerians at-risk of violence. To this end the Commission’s role in using its protective mandate to prevent untimely death of Nigerians on the basis of imputed or real sexual orientation or gender identity is of great importance.

In Resolution 275, this Commission strongly condemned acts of violence targeted against sexual minorities and “strongly urge[d]” States to:

“end all acts of violence and abuse, whether committed by State or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real

⁵¹ Incident reported to TIERS, Nov. 2014.

⁵² Incident reported to WHER.

sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.”⁵³

We respectfully urge this Commission to ask Nigeria what concrete steps it will take to comply with the mandate of Resolution 275.

B. Articles 2 and 3 (Rights to Non-Discrimination, Equality, and Equal Protection of the Law) and Article 28 (Obligation of Respect, Tolerance and Non-Discrimination), together with Article 1 (obligation to adopt legislative measures to give effect to Charter rights and Article 25 (obligation to promote and ensure respect for rights and understanding of duties through teaching, education and publication)

Article 2 of the African Charter provides that all individuals “shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the presented Charter” without discrimination of any kind, including on the basis of sex or any other status.⁵⁴ Article 3 of the African Charter guarantees that every individual “shall be equal before the law” and “shall be entitled to equal protection of the law.”⁵⁵ Article 28 of the Charter further provides that “[e]very individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.”⁵⁶

The African Commission has underscored the importance of equality and non-discrimination in *Purohit and Moore v. The Gambia*, as follows:

Articles 2 and 3 of the African Charter basically form the anti-discrimination and equal protection provisions of the African Charter. Article 2 lays down a principle that is *essential to the spirit of the African Charter* and is therefore necessary in eradicating discrimination in all its guises, while article 3 is important because it guarantees fair and just treatment of individuals within a legal system of a given country. These provisions are non-derogable and therefore must be respected in all circumstances in order for anyone to enjoy all the other rights provided for under the African Charter.⁵⁷

As this Commission has emphasized, the right to equality is of particular importance because “equality, or the lack of it, affects the capacity of one to enjoy many other rights.”⁵⁸

The African Charter’s guarantees of equality and non-discrimination extend to sexual minorities. The African Commission made this explicit in *Zimbabwe Human Rights NGO Forum v. Zimbabwe*:

⁵³ Resolution 275, *supra* note 20.

⁵⁴ African Charter, Art.2

⁵⁵ *Id.* at Art. 3.

⁵⁶ *Id.* at Art. 28.

⁵⁷ *Purohit and Moore v. The Gambia* (2003), para 49, AHRLR 96 (ACHPR 2003), [Communication No. 241/2001, Sixteenth Activity report 2002-2003], available at <http://www.escr-net.org/docs/i/401249> (italics in original).

⁵⁸ *Legal Resources Foundation v. Zambia*, para. 63, [Communication 211/98 - 14th Annual Activity Report: 2000-2001], available at <http://www1.umn.edu/humanrts/africa/comcases/211-98.html>.

Together with equality before the law and equal protection of the law [as provided for by article 3 of the Charter], the principle of non-discrimination provided under article 2 of the Charter provides the foundation for the enjoyment of all human rights. . . . [E]quality and non-discrimination “are central to the human rights movement.” The aim of this principle is to ensure equality of treatment for individuals irrespective of nationality, sex, racial or ethnic origin, political opinion, religion or belief, disability, age or *sexual orientation*.⁵⁹

This was reaffirmed by Resolution 275.⁶⁰ By condemning human rights violations targeting sexual minorities, the African Commission has reaffirmed that the African Charter’s commitment to equality and non-discrimination extends to LGBT individuals.

In so doing, the African Commission is in accord with other international and regional human rights bodies. This is consistent with Article 60 of the African Charter, which provides that “[t]he Commission shall draw inspiration from international law on human and peoples’ rights” and “various instruments adopted within the Specialised Agencies of the United Nations of which the Parties to the present Charter are members.”⁶¹ The African Commission has decided several cases in part by relying upon jurisprudence from other regional human rights bodies.⁶² The case of *Law Office of Ghazi Suleiman v. Sudan*, in particular, has highlighted the relevance of Article 60 in applying jurisprudence from the European Court of Human Rights and the Inter-American Court of Human Rights.⁶³ Accordingly, international human rights treaties, including the ICCPR, can provide further guidance on the interpretation of Articles 2 and 3 of the African Charter.

Article 2(1) of the ICCPR contains language analogous to Articles 2 and 3 of the African Charter, stating that “[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind,” including on the basis of sex or other status.⁶⁴ Article 26 of the ICCPR affirms that, “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”⁶⁵ Article 26 also highlights the prohibition of any discrimination and the guarantee of “effective protection” against discrimination on the basis of any ground, including sex or other status.⁶⁶

The U.N. Human Rights Committee (“HRC”) has declared that “non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic

⁵⁹ *Zimbabwe Human Rights NGO Forum v. Zimbabwe* (2006), para 169, AHRLR 128 (ACHPR 2006) available at http://www.achpr.org/files/sessions/39th/comunications/245.02/achpr39_245_02_eng.pdf (emphasis added).

⁶⁰ Resolution 275, *supra* note 20.

⁶¹ African Charter, at Art. 60.

⁶² For example, *Curtis Francis Doebbler v. Sudan* [Communication 236/2000 – 16th Annual Activity Report] applied jurisprudence from the European Court of Human Rights.

⁶³ Communication 228/1999 – 16th Annual Activity Report at para. 48-50, available at http://www.achpr.org/files/sessions/33rd/comunications/228.99/achpr33_228_99_eng.pdf.

⁶⁴ International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171, art. 2(1), available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁶⁵ *Id.*, at Art. 26.

⁶⁶ *Id.*

and general principle relating to the protection of human rights.”⁶⁷ In *Toonen v. Australia*, the HRC interpreted “sex” in Articles 2(1) and 26 of the ICCPR to include sexual orientation, and thus concluded that a domestic law criminalizing private, same-sex sexual relations between consenting adults was discriminatory and in violation of these articles.⁶⁸ Additionally, the U.N. Working Group on Arbitrary Detention has held that arrests for consensual same-sex conduct are *per se* human rights violations.⁶⁹

As the preceding discussion demonstrates, the rights to non-discrimination, equality and equal protection of the law, and the duties of respect, tolerance, and non-discrimination, lie at the very heart of the African Charter. Appropriately, therefore, the Charter imposes particular obligations on State Parties in order to ensure respect for these rights and compliance with these duties. These obligations are found in Articles 1 and 25 of the Charter. Article 1 requires State Parties to “adopt legislative or other measures to give effect” to the “rights, duties and freedoms enshrined in” the Charter.⁷⁰ Article 25 obligates State parties:

“to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.”⁷¹

Through these provisions, the Charter requires State parties to take affirmative steps to ensure the realization of non-discrimination, equality, respect and tolerance.

Nigeria has failed to comply with these obligations.

1. Criminal penalties targeting LGBT individuals

The criminal law provisions described in Section II of this report discriminate against sexual minorities and deny them equality and equal protection of the law. Further, by contributing to the pervasive climate of homophobia, these laws undermine the Nigerian public’s compliance with the duty to treat others with respect, tolerance, and non-discrimination.

Thus, rather than adopting legislative or other measures to give effect to the Charter rights to equality and non-discrimination, as required by Article 1 of the Charter, Nigeria has adopted legislation that is overtly discriminatory against sexual minorities. And instead of promoting public understanding of the duties of respect, tolerance, and non-discrimination, including towards sexual minorities, as required by Article 25, these criminal provisions fan the flames of hatred and contempt.

⁶⁷ Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 26 (1994), *available at* <http://www1.umn.edu/humanrts/gencomm/hrcom18.htm>.

⁶⁸ *Toonen v. Australia*, Communication No. 488/1992, par. 8.7, U.N. Doc CCPR/C/50/D/488/1992 (1994) *available at* <https://www.humanrightsgov.au/human-rights-explained-case-studies-complaints-about-australia-human-rights-committee>.

⁶⁹ Report of the Working Group on Arbitrary Detention, E/CN.4/2004/3, 15 December 2003, para. 73, *available at* <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/170/72/PDF/G0317072.pdf?OpenElement>.

⁷⁰ African Charter, Art. 1.

⁷¹ *Id.* at Art. 25.

These criminal penalties deny individuals the equal protection of the law on grounds of their real or perceived sexual orientation or gender identity for the additional reason that they discourage the reporting of violence and other crimes and they make these individuals vulnerable to extortion and blackmail. For example:

In June 2012, a 22- year-old girl in her final year of school was expelled from Covenant University, a private Christian school, on the grounds of lesbianism which was reported across Nigerian blogs. The blogs reported that an unnamed University Administration officer said that the “student’s activities and unquenchable desire for other ladies was disturbing and embarrassing to the University.” He regretted the decision but said that sexual orientation and exploits do not give a Faith based University like Covenant, a good name.⁷²

In January 2013, a bar owner in Kado-Kuchi reported an employee for the theft of ₦35,800 and an electric generator. After the employee was arrested, his friends retaliated on the bar owner by announcing that he was gay. The bar was forced to close as a result.⁷³

In February 2013, a single mother in her early 30s reported an incident she was experiencing with her employer. She was employed at a private secondary school in Abuja. Earlier in that month she had thrown a birthday party for her daughter and invited her friends and colleagues. The following week she was called to the principal’s office and was told of rumors the principal had heard about two women being seen kissing in a room at her house during her daughter’s birthday party. The principal questioned the woman about the incident, inquired about her sexual orientation, and asked deeply personal questions about her husband (whom she was separated from). The young woman vehemently denied being aware of what was being rumored. She reported being very afraid for her job. The incident eventually passed over without any other negative repercussions, but she continues to be afraid for her job security and lives with the discomfort that her personal life is under closer scrutiny at her workplace.⁷⁴

In March, 2013, a man was living with his boyfriend and the relationship became turbulent. When the boyfriend violently attacked and verbally abused the man, he asked the boyfriend to leave. The boyfriend refused to leave, and threatened the victim that he would report him to the police for his homosexuality if the victim continued to try to force the boyfriend to vacate the house.⁷⁵

On 24 April, 2013, a victim reported an account of extortion of ₦10,000 by someone he met on social media. According to the victim, he was threatened to pay ₦20,000 or else he would be reported to the police for his homosexuality. Having paid the perpetrator the sum of ₦10,000, the perpetrator stole his two phones and demanded an additional ₦50,000. When the case was reported to the police, both the victim and the perpetrator were charged with having committed an “unnatural offense.”⁷⁶

⁷² Among different sources, the incident was denounced on Nigeria Daily News.

⁷³ Incident documented by ICARH, 3 April, 2013.

⁷⁴ Incident documented by WHER.

⁷⁵ Incident documented by ICARH, 9 May 2013.

⁷⁶ Incident documented by ICARH, 24 April 2013.

On 31 May, 2013, another victim suffered threats and extortion by a perpetrator for whom he had provided accommodation. According to the victim, the perpetrator stole his household electronics and a sum of ₦80,000. When the victim contacted the perpetrator about his stolen items, he was threatened to be reported to the police if he did not “cooperate.” The victim refused to report the robbery to the police for fear of further victimization.⁷⁷

In January, 2014, immediately after passage of the Same Sex Marriage Prohibition Act, a young woman in her 20s who resided in Abuja reported an incident in which her housemates requested that she and her girlfriend moved out of the house they all shared because of rumors in the neighborhood. The housemates cited the recently passed Act, stating because there is a provision which criminalizes the aiding and abetting of same sex relationships, the housemates were at risk of arrest and imprisonment if they allowed the young woman and her girlfriend to continue to live in the house they shared. They threatened that if the young couple did not move out, they would disclose their sexual orientation and relationship to the police, who would arrest and imprison them. The woman preferred to move out of the house as she could not take the risk of being further “outed” by her roommates and being arrested or extorted by the police.⁷⁸

On 16 January, 2014, in Enugu State, a staff of Radio Nigeria Enugu was ambushed, beaten, called derogatory names like homo, omeka nwayi (effeminate man), ola nwoke (man fucker) and his devices (laptop, phones) and money was taken away. The event occurred at about 10pm close to the man’s house while he was on his way back from work. The victim wasn’t let go until a car approached the scene and the victim’s attackers fled the scene⁷⁹.

On 28 January, 2014, two individuals were caught in intimacy in the privacy of their home, they were both dragged out and forced to perform sexual intercourse in public in the presence of a mob in Port Harcourt, Rivers State; the sexual act was recorded and circulated on social media. The victims had to flee the community due to stigma and fear of their lives⁸⁰.

In another instance, on 31 August, 2014 in Alimosho area, Lagos, some hoodlums brutally attacked a known gay man with machetes and other weapons alike, based on the fact that the local gay community did not pay them for “protection.” The attackers even dared the victim to report the case to the police. The victim did not report the case to authorities out of fear of being further victimized.⁸¹

These examples illustrate the dangerous consequences of the climate of fear and homophobia that is exacerbated by the criminal provisions that target sexual minorities.

2. Statements Inciting Homophobic Act in Nigeria

⁷⁷ Incident documented by ICARH, 31 May 2013.

⁷⁸ Incident documented by WHER.

⁷⁹ Communication with an affiliate organization, 17th January 2014.

⁸⁰ <http://www.234pulse.com/2014/02/video-of-gay-men-caught-in-portharcourt-forced-to-masturbate-and-have-sex-in-public-video/> ; <http://ynaija.com/mob-forces-gay-couple-to-have-sex-in-public-in-rivers-pictured/>

⁸¹ Communication with one of the victims, 3rd of September 2014

In 2011, Eucharia Uche, coach of the national women's football team the Super Falcons, said that her team performed better after she had rid it of lesbians.⁸² When FIFA objected to this ban, Alhaji Ahmed Shuaibu Gara Gombe, former Chairman of Gombe State Football Association, said that gay and lesbian individuals are part of an "alien culture" and that FIFA was wrong to insist that they be allowed to play on the Nigerian team.⁸³

In March 2013, Dilichukwu Onyedinma, Chair of the Nigeria Women Professional League and a member of the Nigerian Football Federation (NFF) Executive Committee, told the Nigerian press that lesbians would no longer be allowed to play in Nigeria's professional leagues.⁸⁴ At the Annual General Assembly of the Women's League Body, she stated, "Any player that we find is associated with it [lesbianism] will be disqualified. We will call the club chairmen to control their players, and such players will not be able to play for the national team."⁸⁵

The widespread homophobia and discrimination against the LGBT community have also permeated the political atmosphere in Nigeria. During the election between President Goodluck Jonathan (of the Peoples Democratic Party (PDP)), and Muhammadu Buhari (of the All Progressives Congress (APC)), the issue was raised in order to discredit the other candidate. The Media Director of the PDP Presidential Campaign Organization, Femi Fani-Kayode, claimed that Buhari had secretly considered a deal with Western governments to repeal the Same-Sex Prohibition Act passed by President Jonathan, as well as to legalize same-sex marriage, should he be elected as President.⁸⁶ He expressed "utter shock and consternation" that Buhari would even consider the alleged offer, and claimed that "the overwhelming majority of the Nigerian people find same-sex marriage and, indeed, homosexuality repugnant and unacceptable."⁸⁷

C. Article 6 (Arbitrary arrest and detention)

Article 6 of the African Charter affirms that "[e]very individual shall have the right to liberty" and declares that "no one may be arbitrarily arrested or detained."⁸⁸ The U.N. Working Group on Arbitrary Detention has held that arrests for consensual same-sex conduct are *per se* human rights violations.⁸⁹ The same is true of arrests for exercising the rights to freedom of association and assembly.

⁸² *Nigeria Ban Lesbians from Women's League & National Team*, INSIDE WORLD SOCCER (5 Mar. 2013), available at <http://www.insideworldsoccer.com/2013/03/nigeria-ban-lesbians-from-womens-league-national-team.html>.

⁸³ Orkula Shaagee, *Nigeria: Fifa Should Not Impose Immorality On Nigeria – Gombe*, ALLAFRICA (18 Mar., 2013), available at <http://allafrica.com/stories/201303181260.html>.

⁸⁴ *Nigeria Asked to Explain Lesbian Ban*, FOX SPORTS (7 Mar., 2013), available at <http://msn.foxsports.com/foxsoccer/world/story/fifa-writes-to-nigerian-fa-over-lesbian-ban-030713>.

⁸⁵ Chris Maduewesi, *Lesbians Will Not Represent Nigeria – Dilichukwu Onyedinma*, ALLSPORTS (4 Mar., 2013), available at <http://allsports.com.ng/2013/03/04/lesbians-will-not-represent-nigeria-dilichukwu-onyedinma/> (bracketed text in original).

⁸⁶ Azimazi Momoh Jimoh, Abuja, *PDP alleges deal by Buhari, West to legalise same sex marriage*, THE GUARDIAN NIGERIA, (11 Mar., 2015), available at <http://www.nguardiannews.com/2015/03/pdp-alleges-deal-by-buhari-west-to-legalise-same-sex-marriage/>.

⁸⁷ *Id.*

⁸⁸ African Charter, Art. 6.

⁸⁹ Report of the Working Group on Arbitrary Detention, E/CN.4/2004/3, 15 December 2003, para. 73, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/170/72/PDF/G0317072.pdf?OpenElement>.

The provisions of Nigeria's criminal law discussed in Section II, above, violate Article 6 by authorizing long terms of imprisonment for activities which cannot legitimately be criminalized.

In September 2012, a Nigerian court ordered a three month sentence for actor Bestwood Chukwuemeka, who pled guilty to sodomy. Chukwuemeka asked the court for mercy, stating he had been under the influence of alcohol. The sentencing magistrate asserted Chukwuemeka's sentence sent a message to the public not to use alcohol as an excuse to commit crimes.⁹⁰

In May 2013, three men perceived to be homosexuals were arbitrarily arrested and remanded in the custody of the Nigerian police in Bwari. The men were pressured by police officers to confess to the allegations against them regarding their perceived sexuality and were compelled to allow police to search for items that were used to label them as gay. Prior to the conviction of the victims, a human rights defender was denied the opportunity to give food to the arrested victims at about 08:30pm due to homophobic prejudice of the police officers on duty.⁹¹

In late December 2013, about 60 individuals were arrested in Bauchi by the religious police (Hisbah) during a birthday party based on the allegation that they wanted to establish a "gay organization."⁹² While most of the arrested persons were released in the following days, many were reportedly beaten while in police custody to disclose the names of other "gay suspects."⁹³ At least one of them confessed under duress to have performed a same sex sexual act and was convicted to 20 cane strokes and a fine of the equivalent of about 50USD⁹⁴.

Names were later published by local media. As a consequence, on 30 January 2014, two Bauchi Islamic courts were forced to suspend the trials of 10 of this group of young men because the courts feared that mobs would attempt to abduct the suspects and "subject them to Taliban-style jungle justice."⁹⁵ In fact, a mob attacked seven defendants by throwing stones at them in the courtroom, causing their hearing at the Unguwar Jaki Upper Sharia Court in Bauchi to be adjourned. The police then had to use teargas to disperse the mob. The Court would not publicize the new trial date or permit bail for the men because "they risk losing their lives at the hands of an angry mob if they are released on bail."⁹⁶

In January, 2014, a trans person reported having been arrested and detained by police based on gender identity. The victim was aware that the police had been searching for her, so the victim reported to the police station. The police released the victim only after she paid ₦25,000.⁹⁷

⁹⁰ Monica Mark, *Nigerian Court Jails Actor for Homosexuality under Colonial Law*, THE GUARDIAN (21 Sept. 2012) available at <http://www.theguardian.com/world/2012/sep/21/nigeria-court-jails-actor-gay-offence>.

⁹¹ Incident reported to ICAHR.

⁹² See below, p. 21.

⁹³ Michelle Faul, *Dozens arrested for being gay in Nigeria*, Associated Press, 13 January 2014.

⁹⁴ Communication with a rights activist, 14 November 2014.

⁹⁵ *Bauchi Sharia courts suspend trial of gay suspects amid fears of mob violence*, NIGERIAN WATCH (30 Jan.2014) available at <http://www.nigerianwatch.com/news/3776-bauchi-sharia-courts-suspend-trial-of-gay-suspects-amid-fears-of-mob-violence>.

⁹⁶ *Id.*

⁹⁷ Incident documented by ICARH, 3 Jan. 2014.

On 6 February 2014, in Bauchi State, the Islamic police, or Hisbah, hunted down perceived homosexuals after a newspaper reported that an “association of homosexuals” had formed in the state, listing the alleged members by name. The Hisbah launched a sting operation, leading to the arrest of nine alleged gay men.⁹⁸

In Awka, Anambra State, on 15 January, 2014, six persons were arrested without charge and kept in custody for three days in Nneni Police Station on grounds of their alleged sexual orientation. They were later released after having forced to pay a bribe of ₦15,000⁹⁹.

On 15 January 2014, at Agugu Police Station, Ibadan, Oyo State, two alleged gay men living in the local community were arrested on the suspicion of their sexual orientation. The two individuals were detained without charge and later release on bail when they parted with a sum of ₦20,000 each¹⁰⁰.

In January 2015, Faruk Maiduguri and eleven others were arrested by the Hisbah in the city of Kano for allegedly planning a “gay” wedding. The Hisbah received information from Maiduguri’s family that he was planning a wedding disguised as a birthday party.¹⁰¹ Aminu Daurawa, the head of the Hisbah, stated that the men “looked and acted feminine,” and Mohammed Yusuf Yola, a Hisbah spokesman, stated “they really looked gay, and the way they behaved was gay.”¹⁰² Maiduguri denied the allegations and affirmed he was indeed planning his 18th birthday party. Ten individuals were later released “after their parents signed a statement saying they would keep their children away from such activities.”¹⁰³ It is unknown whether the remaining two individuals were released or charged with a crime.

On 22 January, 2015, three policemen accosted a man and searched him, including his mobile phone. The police saw some suggestive messages he exchanged with his friend and concluded that he was gay, and certainly having sex with the friend. The man was arrested and taken to Pedro Police Station in Lagos and detained for about 3 hours. He was later released after he paid ₦15,000 as bail, even though bail is supposed to be free according to the law.¹⁰⁴

D. Articles 10 and 11 (Freedom of association and assembly)

Articles 10 and 11 of the African Charter guarantee the rights to freedom of association and assembly. Article 10(1) states: “Every individual shall have the right to free association provided

⁹⁸ Will Ross, *Nigerian gay people being hunted down*, BBC NEWS (6 Feb. 2014) available at www.bbc.com/news/world-africa-26065392.

⁹⁹ Communication with an affiliate organization, 16th January 2014.

¹⁰⁰ Communication with a rights activist, 17th January 2014.

¹⁰¹ Murtala Muhammed, *Caught in the act...!*, The Guardian Nigeria (26 Jan. 2015) available at <http://www.nguardiannews.com/2015/01/caught-in-the-act/>.

¹⁰² *Sharia police arrest 12 men accused of planning to wed in Nigeria’s Kano*, REUTERS (27 Jan. 2015) available at <http://www.reuters.com/article/2015/01/27/us-nigeria-gay-idUSKBN0L02MA20150127>; *Sharia police arrest 12 in Nigeria over ‘gay wedding’*, MAIL & GUARDIAN (27 Jan. 2015) available at <http://mg.co.za/article/2015-01-27-Sharia-police-arrest-12-in-nigeria-over-gay-wedding>.

¹⁰³ *Sharia police arrest 12 men accused of planning to wed in Nigeria’s Kano*, REUTERS (27 Jan. 2015) available at <http://www.reuters.com/article/2015/01/27/us-nigeria-gay-idUSKBN0L02MA20150127>.

¹⁰⁴ Incident documented by TIERS, 22 Jan. 2015

that he abides by the law.”¹⁰⁵ Article 11 states: “Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.”¹⁰⁶

LGBT individuals in Nigeria are denied freedom of association and assembly by Nigeria’s Same Sex Marriage (Prohibition) Act, 2013. Under this law, “[t]he Registration of gay clubs, societies and organisations, their sustenance, processions and meetings is prohibited.”¹⁰⁷ Participation in such organisations is criminalized: “A person who registers, operates or participates in gay clubs, societies and organisation . . . commits an offence and is liable on conviction to a term of 10 years imprisonment.”¹⁰⁸ Additionally, “[a] person or group of persons who . . . 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.”¹⁰⁹ These provisions criminalize and impose severe penalties for activities that must be protected under Articles 10 and 11 of the African Charter.

The Special Rapporteur on Human Rights Defenders in Africa, Mrs. Reine Alapini-Gansou, has expressed her concern about the above-cited provisions. In her words, “These provisions undermine the work of human rights defenders and are against any public debate on this crucial issue.”¹¹⁰

In Resolution 275, the African Commission noted that it was “**alarmed** at the incidence of violence and human rights violations and abuses by State and non-State actors targeting human rights defenders and civil society organisations working on issues of sexual orientation or gender identity in Africa.”¹¹¹ It “**call[ed] on** State Parties to ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities.”¹¹² Nigeria should be urged to heed this call by repealing its criminal sanctions against persons who participate in LGBT organizations, meetings and assemblies.

Other African countries have recognized the LGBT community’s right to freedom of association and assembly. For example, in November, 2014, Botswana’s High Court ruled that LGBT rights groups must be allowed to formally register their organizations.¹¹³ The High Court’s ruling underscored that the rights to freedom of association and freedom of assembly are important societal values.¹¹⁴

One example of the denial of the freedom of association occurred in Bauchi State between December 2013 and January 2014. Eleven men were arrested by the Hisbah and charged with

¹⁰⁵ African Charter, Art.10(1)

¹⁰⁶ *Id.* Art. 11.

¹⁰⁷ Same Sex Marriage (Prohibition) Act, 2013, § 4(1).

¹⁰⁸ *Id.* § 5(2).

¹⁰⁹ *Id.* § 5(3).

¹¹⁰ Special Rapporteur on Human Rights Defenders in Africa, *supra* note 16.

¹¹¹ Resolution 275, *supra* note 20 (emphasis in original).

¹¹² *Id.*, para. 3 (emphasis in original).

¹¹³ Elizabeth LaForgia, *Botswana court allows LGBT rights group to formally register*, THE JURIST (15, Nov. 2014) available at <http://jurist.org/paperchase/2014/11/botswana-court-allows-lgbt-rights-group-to-formally-register.php>.

¹¹⁴ *Id.*

belonging to a gay organization in Bauchi state. The arrests were prompted by a rumor that gay activists were getting paid by outside sources to promote same-sex marriage in the country. The men were beaten to confess that they were part of a gay organization.¹¹⁵ Although the men signed a confession that they did belong to a gay organization, some retracted their statements in front of the judge.¹¹⁶ The judge suspended the procedures and released the men on bail for ₦35,000 after riots broke out near the courthouse.

On 7 December 2014, members of the Department of State Services from the State Security Services (SSS) shut down the commemoration of the World AIDS Day event by an Abuja based organization providing lifesaving clinical support to Men who have Sex with Men living with HIV/AIDS. During the incident, the armed security agents shot severally into the air to disperse the participants out of the event premises, causing several individuals to incur injuries as they escape the life-threatening situation¹¹⁷.

E. Article 16 (Right to Health)

Article 16 of the Charter affirms that “[e]very individual shall have the right to enjoy the best attainable state of physical and mental health. States parties to the present charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick”¹¹⁸

The UN Committee on Economic, Social and Cultural Rights, in its General Comment No. 14, states that the right to health is “an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health.”¹¹⁹ These determinants include “access to health-related education and information, including sexual and reproductive health”¹²⁰

With the promulgation of the Same Sex Marriage Prohibition Act, 2013, organizations providing lifesaving health care services to key affected population, including Men who have Sex with Men, fear reprisal and prosecution by authorities.¹²¹ This law has a direct impact on LGBT persons’ access to health care.

Persons with different sexual orientation and living with HIV now fear to hold support group meetings for Men who have Sex with Men living with HIV as a result of fear of risking imprisonment subject to Section 5 of the Same Sex Marriage Prohibition Act. The current situation undermines the position of Nigeria in the global HIV burden; Nigeria presently has the second

¹¹⁵ Communication dated November 14, 2014, on file with the authors.

¹¹⁶ Michelle Faul, *Dozens Arrested for Being Gay in North Nigeria*, ASSOCIATED PRESS (13 Jan., 2014), available at <http://www.sltrib.com/news/justice/1353194-155/gay-law-nigeria-aids-arrested-bauchi>.

¹¹⁷ Interview with a participant, April 5, 2015.

¹¹⁸ African Charter, Art. 16.

¹¹⁹ Committee on Economic, Social and Cultural Rights General Comment No. 14, para. 11, (2000) E/C.12/2000/4 available at http://www.nesri.org/sites/default/files/Right_to_health_Comment_14.pdf.

¹²⁰ *Id.*

¹²¹ Same Sex Marriage (Prohibition) Act, 2013, (5) §1

largest number of people living with HIV/AIDS in the world (with over 3.1 million persons living with HIV and thus account for not less than 10% of the global HIV burden);¹²²

Between December 2013 and May 2014, the demand for provision of health care by Men who Have Sex with Men decreased on the average by 36% ¹²³across five states due to fear of stigma and discrimination by health care providers, which most times is fueled by societal prejudice and the compounding forces of morality and ethical issues.

F. Article 17 (Right to Education)

Article 17(1) of the Charter states that “[e]very individual shall have the right to education.”

The UN Committee on Economic, Social and Cultural Rights, in its General Comment No. 13 highlights that “[t]he prohibition against discrimination enshrined in article 2(2) of the [International] Covenant [on Economic, Social and Cultural Rights] is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination.”

On 3 April, 2013, a young man in Nassarawa state reported a threat he received from a schoolmate who contacted him on social media and falsely represented himself as a homosexual male. With the intention to cause harm and put the education of his target victim at risk. The schoolmate collected all of the conversations between himself and the victim and then turned them over to the school authorities. Following the false pretence, the schoolmate extracted information from the victim and published it on social media, before presenting it to the school authorities. The victim was forced to appear before his school’s disciplinary committee and as such, suffered severe consequences which specifically affected his education.¹²⁴

The adoption of the Same Sex Marriage (Prohibition) Act, 2013 has significant consequences on the enjoyment of the right to education of individuals on grounds of their perceived sexual orientation or gender identity.

As an example, on 17 January 2014 nine girls between the age of 19 and 25 were expelled from the Federal College of Education (Technical) Gusau, Zamfara by the school disciplinary committee on allegation of being lesbians as some other students in their hostel accused them of a gender non-conforming behavior. The nine students were in their second year. During the fact-finding by domestic NGOs it was found out that the school authority had not informed any of the nine students

¹²² <http://photos.state.gov/libraries/nigeria/487468/pdfs/DecemberHIVFactSheet.pdf>

¹²³ *SSMPA Implication on Human Rights and HIV Prevention Services*, THE INITIATIVE FOR EQUAL RIGHTS, (21 Jul., 2014), available at <http://www.theinitiativeforequalrights.org/ssmpa-implication-on-human-rights-and-hiv-prevention-services/>.

¹²⁴ Incident documented by ICARH, 24 April, 2013.

of the allegations; they were rather summoned by the office of student affairs for questioning as regards to their behaviors with other student in the hostel and their performance in class without any direct question about their sexual orientation. Later, the school authority presented the result of their investigation to the guidance and counselling department.¹²⁵

¹²⁵ Incident reported by an affiliate organization, 18 August, 2014.

IV. Suggested Recommendations for the Government of Nigeria

1. The Government of the Federal Republic of Nigeria should amend the Federal Criminal Code §§ 214 – 217 and the above mentioned section of the Sharia Penal Code, and should repeal the Same Sex Marriage (Prohibition) Act 2013 in order to decriminalize private, consensual, adult, same-sex sexual activity and the registration of and participation in LGBT organisations since the law criminalises several basic rights and, contrary to the title of the law, does not exclusively speak to same sex marriages.
2. The government of the Federal Republic of Nigeria should enforce the non-discrimination and equal protection provisions of the African Charter.
3. The government of Nigeria should take measures to prevent violent attacks against individuals and prevent untimely death of persons in Nigeria for their real or perceived sexual orientation or gender identity, in compliance with the African Commission's Resolution 275.
4. The government should implement extensive trainings to the police and other security agencies on sexual orientation and gender identity issues, and should put in place procedures to ensure the full investigation and prosecution of all acts of violence.
5. The government should establish a disciplinary system for police officers and other security agencies who fail to investigate or prosecute acts of violence based on real or presumed sexual orientation or gender identity.

V. Proposed Questions for the Government of Nigeria

1. What steps the government intends to take to reconsider his position and repeal the Same Sex Marriage (Prohibition) Act, 2013, given its impact on the increased number of human rights violations, as well as its inherent inconsistency with international, regional and domestic human rights provisions?
2. What steps does the government intend to take to protect individuals from harassment, violence, and discrimination on account of their real or perceived sexual orientation or gender identity and in violation of their rights to life, bodily integrity, dignity, and equality, in light of the numerous documented cases of violence?
3. What steps does the government intend to take to ensure that individuals are not arbitrarily arrested and detained, nor subjected to cruel, inhuman and degrading treatments and punishments, including corporal punishments, because of their presumed or real sexual orientation or gender identity?
4. What steps the government does intend to take to repeal Section, 215, 214 and 217 of Federal Penal Code and Section 131 of the Sharia Penal Code, given their inconsistency with international and regional human rights law?
5. How will the government ensure that sexual minorities are able to access essential health services and HIV/AIDS prevention programs and reduction in national HIV response without fear of MSM and other sexual minority persons being arrested?