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## Nigeria: Same Sex Bill Negates Nigeria's Obligations to Fundamental Human Rights

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**TAKE ACTION!****03 May 2006****AI Index: AFR 44/013/2006**

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The Nigerian Federal government is introducing legislation that, if passed, would introduce criminal penalties for relationships and marriage ceremonies between persons of the same sex as well as for public advocacy or associations supporting the rights of lesbian and gay people, in contravention of Nigeria's obligations under international and regional human rights law.

The broad and sweeping provisions of this proposed legislation could lead to the imprisonment of individuals solely for their actual or imputed sexual orientation in a number of ways, including for consensual sexual relations in private, advocacy of lesbian and gay rights, or public expression of their sexual identity. Anyone imprisoned under this law would be a prisoner of conscience.

### **The Proposed Legislation**

On 19 January 2006, Minister of Justice Bayo Ojo presented to the Federal Executive Council an "Act to Make Provisions for the Prohibition of Relationship Between Persons of the Same Sex, Celebration of Marriage by Them, and for Other Matters Connected Therewith." According to a draft of the bill, the law would provide five years imprisonment for any person who "goes through the ceremony of marriage with a person of the same sex," "performs, witnesses, aids or abets the ceremony of same sex marriage," or "is involved in the registration of gay clubs, societies and organizations, sustenance, procession or meetings, publicity and public show of same sex amorous relationship directly or indirectly in public and in private." Anyone, including a priest or cleric, aiding or abetting such a union would be subject to the same prison term. The draft bill would also prohibit the registration of gay organizations, any public display of a "same sex amorous relationship," and adoption of children by lesbian or gay couples or individuals. In addition, the draft bill would invalidate same sex relationship formally entered into or recognized in foreign jurisdictions.

The bill received its first reading in the Senate on 11 April 2006 at which the provisions were widened further still. It is now proposed that any individual who witness, celebrates with or supports couples involved in same-sex relationships would also be subject to a prison term.

### **Consequences of the Proposed Legislation**

Even before the bill has been passed or even submitted to the National Assembly for consideration, reports from human rights activists in Nigeria suggest that some individuals are

already interpreting the draft legislation as a signal that the government will not prosecute people who assault or otherwise intimidate LGBT individuals. This may lead to a situation of impunity for attacks on LGBT individuals.

Laws criminalizing homosexuality may also act as a "licence" to torture and ill-treatment. By institutionalizing discrimination, they can act as an official incitement to violence against lesbians and gay men in the community as a whole, whether in police custody or prison, on the street or in the home. By stripping a sector of the population of their full rights, laws which criminalize homosexuality also deprive lesbian and gay victims of human rights violations of access to redress. These laws also risk to allow those who have abused LGBT individuals to escape justice, and potentially to continue to abuse others with impunity.

This bill would also impede effective HIV/AIDS prevention efforts. While the prevailing pattern of HIV transmission in Nigeria, as elsewhere in the continent, is overwhelmingly heterosexual, the government will damage its own prevention efforts by driving populations already suffering stigma for their sexual conduct still further underground – not only making it more difficult for outreach and education efforts to reach them, but potentially criminalizing civil society groups engaged in that vital work. Nigeria's AIDS prevention programs have previously been criticized by their neglect of the particular risks facing men who have sex with men (MSM).

### **Existing Laws against LGBT People in Nigeria**

Chapter 42, section 214 of Nigeria's criminal code penalizes consensual same-sex sexual conduct between adults with fourteen years' imprisonment. Furthermore, *Sharia* penal codes, as introduced in northern Nigeria since 1999, continues to criminalize what is termed as "sodomy"<sup>1</sup>. Amnesty International considers the use of "sodomy" laws to imprison individuals for consensual same-sex relations in private is a grave violation of human rights, including the rights to privacy, to freedom from discrimination, to freedom of expression and association, which are protected in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Reinforcing these existing provisions with new legislation displays an intent to codify and intensify prejudice based on sexual orientation. Moreover, by criminalizing acts of peaceful expression or association in defense of LGBT rights, the bill would strike at the fundamental freedoms enjoyed by all individuals in Nigeria's long-vigorous civil society.

### **Proposed Law Contravenes International and Regional Human Rights Law**

The proposed law contradicts fundamental freedoms under the Nigerian Constitution and international and regional human rights law and standards.

The African Charter on Human and Peoples' Rights affirms the equality of all people. Its article 2 states: "Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status." Article 3 guarantees every individual equality before the law. Further, its article 26 prescribes that "Every 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."

The International Covenant on Civil and Political Rights (ICCPR), to which Nigeria acceded without reservations in 1993, protects the rights to freedom of expression (article 19), freedom of conscience (article 18), freedom of assembly (article 21) and freedom of association (article 22). It affirms the equality of all people before the law and the right to freedom from discrimination in articles 2 and 26. In the landmark 1994 case of *Toonen v Australia*, the United Nations Human Rights Committee, which monitors states' compliance with the ICCPR,

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<sup>1</sup> See for example Chapter III "Hudud and Hudud related offences", Part III "Sodomy (Liwat)", Section 128-129 of the Kano State Shari'a Penal Code Law 2000.

held that sexual orientation should be understood to be a status protected from discrimination under these articles. States cannot curtail the enjoyment of human rights on the basis of sexual orientation. The UN Human Rights Committee has since urged states not only to repeal laws criminalizing homosexuality but also to enshrine the prohibition of discrimination based on sexual orientation into their constitutions or other fundamental laws. Discrimination on the basis of sexual orientation is also prohibited under other international human rights treaties to which Nigeria is a state party.

This law, if passed, would seriously restrict essential freedoms as well as the activities of human rights defenders and members of civil society. The United Nations Declaration on Human Rights Defenders holds, in its article 5, that "everyone has the right, individually and in association with others, at the national and international levels: a) to meet or assemble peacefully; b) to form, join and participate in non-governmental organizations, associations or groups." Article 7 of the declaration affirms that "Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance." Indeed, the Special Representative of the U.N. Secretary General on Human Rights Defenders has specifically called attention to the "greater risks... faced by defenders of the rights of certain groups as their work challenges social structures, traditional practices and interpretations of religious precepts that may have been used over long periods of time to condone and justify violation of the human rights of members of such groups. Of special importance will be... human rights groups and those who are active on issues of sexuality, especially sexual orientation."<sup>2</sup>

This proposed legislation is contrary to Nigeria's obligations to all people in Nigeria. Under international human rights law, the Federal Republic of Nigeria has the obligation to respect, promote and protect the human rights of its population, without distinction of any kind. The proposed legislation not only contravenes internationally recognized protections against discrimination, rights to freedom of expression, conscience, association, and assembly, but also undermines Nigeria's struggle to combat the spread of HIV/AIDS.

## **WHAT YOU CAN DO**

**Please send letters, in English or your own language:**

- Urge the authorities to act in accordance with Nigeria's legal obligations under international and regional human rights law and withdraw this bill;
- Reminding the authorities that all people are equal before the law and that they are obligated to ensure that the human rights of every individual in Nigeria is fully respected, regardless of their sexual orientation or gender identity;
- Stating that anyone imprisoned or detained solely for their real or perceived sexual orientation or gender identity should be released immediately and unconditionally. This includes those detained for same-sex sexual relations between consenting adults in private and those held for advocating LGBT rights.

At the end of your letters, ask for their response to the concerns you have raised.

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<sup>2</sup> Report of the Special Representative to the Secretary General on human rights defenders," UN Doc. E/CN.4/2001/94 (2001), at 89g.

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