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Nigeria: 'Same Gender Marriage (Prohibition) Bill' violates Constitution

Amnesty International, Human Rights Watch and Nigerian human rights non-governmental organizations (NGOs) are deeply concerned by the 'Same Gender Marriage (Prohibition) Bill 2008', currently before the Nigerian National Assembly. The Bill would introduce criminal penalties for marriage ceremonies between persons of the same sex as well as for persons witnessing or helping to formalize such a marriage. This is in contravention of the Nigerian Constitution and inconsistent with Nigeria's obligations under international and regional human rights treaties which the country has ratified. We therefore urge the National Assembly not to pass the Bill.

Under Nigeria's criminal code and penal code, consensual same sex conduct between adults is already punishable: chapter 42, section 214 of Nigeria's criminal code provides a sentence of fourteen years' imprisonment for 'carnal knowledge against the order of nature.'

This Bill aims to outlaw, including through criminal sanctions, marriages between persons of the same sex or gender and does not recognize the union of people of the same sex married outside Nigeria. Provisions in the Bill violate sections 37, 38, 40 and 42 of Nigeria's Constitution and the analogous provisions of the African Charter on Human and Peoples' Rights (i.e. articles 2, 3, 11, and 28) and the International Covenant on Civil and Political Rights (ICCPR) (i.e. articles 2, 18, 19, 21, 22, and 26).

The Bill singles out one group of people to be deprived of rights that all people enjoy as guaranteed by the 1999 Constitution and international human rights treaties to which Nigeria is a state party. In particular, the Bill violates the right to freedom from discrimination as recognized in section 42, 1, of the 1999 Constitution:

A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person –

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject

The Bill defines "Same Gender Marriage" as "the coming together of persons of the same sex with the purpose of leaving together as husband and wife or for other purposes of same sexual relationship." Under the Bill, any person who "entered into a same gender marriage contract" would be subject to up to three years imprisonment. This is in contravention of section 37 of the Nigerian Constitution, which guarantees the right to freedom of private and family life and to freedom of association. The expansive clause extending the definition of "Same Gender Marriage" to other same sexual relationships, could lead to arbitrary arrests on the basis of allegations about sexual orientation, rumours of sexual behaviour or objection to gender presentation.

Another clause provides a sentence for any person who "witnesses, abet and aids the solemnization of a same gender marriage" of five years' imprisonment and/or a possible fine of N2,000 [US\$14]. Any priest, cleric or other religious actor found to have aided or abetted such a union would be subject under this new law to a prison term. Such measures violate the right to freedom of conscience and freedom of religion as recognized in section 38 of the Nigerian constitution. State intervention in the decisions of religious bodies is in breach of their freedom of

religion or belief, as protected by Article 18 of the ICCPR. A state should not obligate, nor prevent, a religious institution to conduct a marriage ceremony between individuals of the same sex. Nigeria acceded to the ICCPR without reservations in 1993.

A group of people who witness such a marriage could, according to the draft Bill, be sentenced to a fine of N50,000 [US\$340]. The higher penalties for anyone convicted of witnessing, aiding or abetting a marriage, suggests a further implication of this Bill – the targeting of lesbian, gay, bisexual and transgender people, organizations and events. This violates the freedom of association as recognized in section 40 of the Nigerian Constitution.

The Bill, if passed, could lead to the imprisonment of individuals solely for their actual or imputed sexual orientation or gender identity on the basis of assumptions or allegations about their consensual sexual conduct between adults in private. In addition, we fear that the Bill may allow for homophobic and transphobic individuals or groups to target lesbian, gay, bisexual and transgender people, organizations and events and suggests a further implication of the Bill –to incite hatred and specific acts of discrimination, harassment or violence against anyone suspected of being lesbian, gay, bisexual or transgender.

According to the Federal Government in their National Report to the UN Universal Periodic Review (UPR) – which is due to examine Nigeria's report at its next session in February 2009, – *“Sexual minorities are not visible in Nigeria, and there is no officially registered association of gay and lesbians. ... The laws of Nigeria recognize marriage as a relationship between a man and a woman. However, like every democracy, those who want a change in the existing laws have to come out and lobby for the change they desire.”* However, if this Bill is passed, it could seriously restrict essential freedoms as well as the activities of human rights defenders and members of civil society, such as the freedom of association as recognized in section 40 of the Nigerian Constitution. Without the protection of fundamental freedoms, it is impossible for activists to form organizations and campaign for the human rights of lesbian, gay, bisexual, same-sex practicing and transgender people, or even to meet in public. If this Bill is passed, it can be dangerous for them to meet even in private.

The Nigerian government has an obligation to promote and protect the human rights of its population without distinction of any kind, including sexual orientation or gender identity. As a member of the UN Human Rights Council, Nigeria is required to uphold the highest standards in the promotion and protection of human rights of all people regardless of their sexual orientation. We therefore urge the National Assembly not to pass this Bill.

Signed:

Amnesty International, United Kingdom
Centre for Democracy & Development (CDD), Nigeria
Centre for Environment, Human Rights and Development (CEHRD), Nigeria
Centre for Law Enforcement Education (CLEEN Foundation), Nigeria
Changing Attitude Nigeria, United Kingdom
Civil Liberties Organisation (CLO), Nigeria
Civil Society Legislative Advocacy Centre (CISLAC), Nigeria
Girls' Power Initiative (GPI), Nigeria
Global Rights, United States
House of Rainbow Metropolitan Community Church (HRMCC), Nigeria
Human Rights Law Service (HURILAWS), Nigeria
Human Rights Monitor (HRM), Nigeria
Human Rights Watch (HRW), United States
International Center for Advocacy on the Right to Health (ICARH), Nigeria
International Centre for Reproductive Health and Sexual Rights (INCREASE), Nigeria
International Resource Network for Africa, United States
Legal Defence and Assistance Project (LEDAP), Nigeria
Legal Resources Consortium (LRC), Nigeria
Metropolitan Community Churches (MCC), United States
Nigerian Humanist Movement, Nigeria

Partnership for Justice (PJ), Nigeria
Prisoners Rehabilitation and Welfare Action (PRAWA), Nigeria
Socio-Economic Rights & Accountability Project (SERAP), Nigeria
The Independent Project for Equal Rights, Nigeria
Women Advocates Research and Documentation Centre (WARDC), Nigeria
Youths 2gether Network, Nigeria

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