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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the situation of human rights defenders.

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) Health (2002-7) G/SO 214 (107-9)
NGA 4/2013

13 June 2013

Excellency,

We have the honour to address you in our capacities as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolution 15/18, 16/4, 15/21, 15/22, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning a bill to prohibit same sex marriages that was adopted on 30 May 2013 by the House of Representatives and that would, if enacted, discriminate against lesbian, gay, bisexual and transgender (LGBT) persons and unduly restrict the rights to freedom of association, peaceful assembly and expression of groups defending LGBT rights if passed into law. The bill, a version of which has already been adopted by the Senate, was the subject of an allegation letter sent to your Excellency's Government on 20 December 2011 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the situation of human rights defenders. We regret that to date no response has been received from your Excellency's Government to the communication in question.

According to the information received:

On 30 May 2013, Nigeria's House of Representatives unanimously approved a bill that would criminalize same sex marriage ceremonies, any public displays of

affection between same sex couples and all LGBT rights activism in the country. Nigeria already criminalizes consensual same-sex sexual conduct; and in northern parts of the country, where Sharia law is observed and enforced by the courts, the death penalty may be applied. It is reported that the bill will now be referred back to the Senate to harmonize it with the version approved by the Senate on 29 November 2011 before going to the President for his signature.

It is alleged that the bill contains a broad definition of the term “same-sex marriage” as it includes all suspected same-sex relationships and targets not only those who are suspected of practicing same-sex relationships, but also anyone who “registers, operates or participates in gay clubs, societies and organizations” or those who “witness, aid or abet” such relationships.

It is alleged that if passed, the bill may put a wide range of people at risk of criminal sanctions. Not only may those suspected of practicing same-sex relationships be targeted by the bill, but also anyone who denounces discrimination based purely on a person’s actual or presumed sexual orientation or gender identity.

If enacted, the bill, which provides for up to 14 years of imprisonment for those suspected of engaging in same-sex relationships, would contradict universally recognized human rights law, including the right not to be arbitrarily or unlawfully subject to interference with one’s privacy and family (article 17 of the International Covenant on Civil and Political Rights (ICCPR)) and the right to be treated equally before the law and to be entitled without any discrimination to equal protection of the law (article 26).

By seeking to impose up to ten years imprisonment and a severe fine on anyone who “registers, operates or participates in gay clubs, societies or organizations” or “witnesses”, “aids” or “abets” same-sex relationships or even “supports the registration, operation and sustenance of gay clubs, societies, organizations, processions or meetings”, the bill also unduly restricts the rights to peaceful assembly and of association (Article 21 of the ICCPR stipulates “The right of peaceful assembly shall be recognized”; and Article 22 states that “Everyone shall have the right to freedom of association with others”). If the law is adopted, lesbian, gay, bisexual and transgender individuals, as well as those perceived as belonging to any of these groups, and those that bring support to them will be prevented from associating or assembling freely. The bill, if brought into law, could also penalize any human rights defenders and activists who would seek to stand up for the rights of lesbian, gay, bisexual or transgender people in Nigeria.

It is alleged that the bill may also have a far-reaching effect on a wide range of associations working in related fields, including for instance those who provide psychosocial support to LGBT people, those who advocate for human rights for all without discrimination, and those working to prevent transmission of HIV.

Should this information be corroborated, serious concerns are expressed that the aforementioned proposed legislation would unduly limit the free exercise of the rights to freedom of association, peaceful assembly and opinion and expression. Concerns are further expressed that obstacles may be put in place to prevent human rights defenders and activists defending LGBT rights, to peacefully advocate for dissenting views and exercise their legitimate rights. Concerns are also expressed that this legislative move may contravene your Excellency's Government commitment when it stated, at the occasion of the debate of the 2009 Universal Periodic Review of Nigeria, that "as citizens, all Nigerians have their fundamental rights guaranteed by the Constitution."

While we do not wish to prejudge the accuracy of these allegations, we wish to remind your Excellency's Government that Nigeria, as a State party to the International Covenant on Civil and Political Rights (ICCPR), has a duty to guarantee equal protection before the law and to prohibit discrimination on any ground. In *Toonen vs. Australia*, decided in 1994, the Human Rights Committee stated that "the reference to 'sex' in articles 2, paragraph 1, and 26 of the ICCPR is to be taken as including sexual orientation." Since then, in numerous Concluding Observations, the Committee has urged State parties to guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation. The right to freedom from discrimination on grounds of sex is also recognized in article 2 of the African Charter on Human and Peoples' Rights, which was ratified by Nigeria in 1983, and which has become part of Nigeria's national laws under the 1990 Ratification and Enforcement Act. The African Commission, in outlining that the aim of the principle in article 2 is to ensure equality of treatment for individuals, listed sexual orientation as one of the grounds of prohibited discrimination (Twenty-First Activity Report of the African Commission on Human and Peoples' Rights, para. 169 (EX.CL/322 (X))).

With regard to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, we would like to refer your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). This includes an obligation on the part of all States parties to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially the most vulnerable or marginalized sections of the population, without discrimination. Furthermore, article 2 of the ICESCR requires States to guarantee that all rights enunciated in the Covenant will be exercised without discrimination of any kind.

We wish to draw the attention of your Excellency's Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which provides that the right to health is closely related to, and dependent upon, the realization of other human rights including non-discrimination, privacy and right to information (para.3). The Committee reiterates the Covenant's prohibition of any discrimination in the realization of the right to health on the grounds of national or social origin, sexual orientation, health status (including HIV/AIDS), and civil, political, social or other status (para.18). The principle of non-discrimination applies to all aspects of the right to health and constitutes an immediate obligation (para.30). With regard to the freedoms enjoyed under the right to health, the Committee, in its General Comment No. 14, underscores the

right to control one's health and body, including sexual and reproductive freedom. Furthermore, all health facilities, goods and services must be respectful of medical ethics and culturally appropriate, as well as being designed to respect confidentiality and improve the health status of those concerned (para.12).

In his report to the Human Rights Council, the Special Rapporteur on the right to health points out criminalization of same-sex conduct also has an adverse effect on the ability of individuals to access appropriate health facilities, goods and services due to the stigma attached to criminalization (A/HRC/14/20, paras 17-18).

We also wish to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations;

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; and

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful

means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

With regard to article 7 of the Declaration on human rights defenders, the Special Rapporteur on the situation of human rights defenders has stated that the right to develop and discuss new human rights ideas is enshrined in the Declaration on Human Rights Defenders as an important provision for the ongoing development and articulation of human rights. Article 7 provides for the right to discuss and advocate for human rights ideas and principles that, in some contexts, are perceived as new or unpopular because they address human rights issues that might challenge tradition and culture. In this connection, the Special Rapporteur has encouraged States to do the necessary to guarantee the principle of pluralism and recognize the right of defenders to promote and advocate for new human rights ideas or ideas that are perceived as new. She has further encouraged States to take additional measures to ensure the protection of defenders who are at greater risk of facing certain forms of violence and discrimination because they are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes, including about sexual orientation and gender identity.

We would also like to recall resolution 17/19 of the Human Rights Council, where the Council expressed grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity.

Furthermore, we would also like to refer your Excellency's Government to the following provisions of the ICCPR:

- article 17, which provide that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation”;

- article 19, which provides 1) “[e]veryone shall have the right to hold opinions without interference,” and 2) “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”;

- article 21, which provides that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others”;

- article 22, which provides that “[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”; and

- article 26, which provides that “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

In this connection, we would like to further refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

1. Is the information alleged in the summary accurate?
2. Please provide the full details of the aforementioned bill and explain how its provisions are in accordance with Nigeria’s obligations under international human rights law and standards, particularly with regard to the rights to freedom of peaceful assembly, association and expression.
3. Please indicate what measures have been taken to ensure that human rights defenders, activists and civil society organizations can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.
4. Please indicate any consultation undertaken, including with civil society on this bill.

We would appreciate a response within sixty days. Your Excellency’s Government’s response will be made available in a report to the Human Rights Council for its consideration.

In connection to the allegations and concerns described above, we urge your Excellency’s Government to take all necessary measures to guarantee that the rights to freedom of association, peaceful assembly and expression are upheld. On these grounds, we urge your Excellency’s Government not to sign the legislation in question into law.

Please accept, Excellency, the assurances of our highest consideration.

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