



Stakeholder submission of Commonwealth Human Rights Initiative (CHRI) for the 2013 Universal Periodic Review of Nigeria

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## Commonwealth Human Rights Initiative (CHRI) stakeholder submission for the Universal Periodic Review of Nigeria (2013)

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1. This UPR stakeholder submission for Nigeria includes information on the following areas: cooperation with UN human rights mechanisms, core international human rights instruments and their monitoring bodies; freedom of information; policing; prisons; media freedom; and the criminalisation of same-sex conduct.
2. **Co-operation with UN human rights mechanisms**
3. At the last UPR session, a number of states recommended that Nigeria should extend an open invitation to the Special Procedures of the UN Human Rights Council. Nigeria stated that it would continue to co-operate and support the council in all aspects of its mandate including visits to Nigeria by all mandate holders. Nigeria also accepted the recommendation to extend an open invitation to the Special Procedures of the UN Human Rights Council. No open invitation has yet been extended.
4. Recommendation:
  - a. The Government of Nigeria should immediately extend an open invitation to all special procedures of the UN Human Rights Council
5. **Core international human rights instruments and their monitoring bodies**
6. During its last review, Nigeria accepted recommendations to fast track the process of accession to a number of international human rights instruments to which it is not yet a party.
7. Of the international human rights instruments Nigeria was recommended to ratify, Nigeria did not ratify the Second Optional Protocol of the ICCPR, which abolishes the death penalty. It has also not ratified the first Optional Protocol to ICCPR or the Optional Protocol to the ICESCR.
8. Nigeria has completed some of its reporting requirements under international human rights instruments but has failed to satisfy all of the requirements. The country has completed 19 rounds of reporting under ICERD, but the 2008 report is still overdue. It has completed one round of reporting under ICESCR, although the 2000 report is overdue. Nigeria has submitted its 2002 report under CAT in 2012 but the 2006 report is still over due.
9. Recommendations:
10. In light of the above information, CHRI recommends that Nigeria:
  - a. Ratify the Optional Protocol to the ICCPR, the second Optional Protocol to the ICCPR, and the Optional Protocol to the ICESCR.
  - b. Urgently submit the three reports to the UN treaty bodies which are overdue and commit to meeting deadlines in relation to future reports.
11. **Freedom of information**
12. President Goodluck Jonathan signed the Freedom of Information Act (FOI Act) in 2011.<sup>1</sup> Some sections of Nigerian civil society have expressed unhappiness with the way that the FOI Act 2011 has been implemented<sup>2</sup>. Since the enactment of the Act, there have been no successful requests of information to any government agency.<sup>3</sup>
13. Recommendation:
14. CHRI recommends that Nigeria:
  - a. Ensures that the Freedom of Information Act 2011 is implemented at all levels; and that all government agencies should comply with the provisions of the law.

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<sup>1</sup> "Nigeria: Reality of the Freedom of Information Act", All Africa, Daily Trust, 17 September 2012: <http://allafrica.com/stories/201209170161.html> as on 22 February 2013

<sup>2</sup> "Nigeria: Reality of the Freedom of Information Act", All Africa, Daily Trust, 17 September 2012: <http://allafrica.com/stories/201209170161.html> as on 22 February 2013.

<sup>3</sup> "Nigeria: Reality of the Freedom of Information Act", All Africa, Daily Trust, 17 September 2012: <http://allafrica.com/stories/201209170161.html> as on 22 February 2013.

## 15. **Police**

16. During its 2009 review, Nigeria accepted recommendations on police accountability and reform.<sup>4</sup> It agreed to adopt comprehensive legislation on extrajudicial executions and torture by the police, including measures assuring legal application.<sup>5</sup>

17. In February 2010, President Goodluck Jonathan pledged to reform and hold the police services to account for extra-judicial killings. By the end of the reporting period, there was little action taken on the pledge that could be independently validated.<sup>6</sup>

18. In April 2010, police were asked to explain the disappearance of six men from police custody. The men were arrested in 2009. There had been no sightings of them since their arrest and their families believed that they had been victims of extra-judicial killings.<sup>7</sup> In late 2009, media reports alleged that at least seven men, who had been buried in a mass grave, had been killed extra-judicially as they had previously been arrested and paraded in front of the media.<sup>8</sup> This directly conflicted with the police's assertion that all those killed were armed robbers who had been killed in legitimate shoot outs.<sup>9</sup>

19. A report by the Open Society Justice Initiative released in 2010 detailed numerous ways in which Nigerian police torture suspects to extract confessions, including: beating, rape, mental torture, sleep deprivation and shooting both legs.<sup>10</sup> In an incident in 2009, cited by the Nigerian Bar Association, six men were arrested by the police for robbery and confessions were extracted by spraying tear gas into their eyes.<sup>11</sup> An Anti-Torture Bill remains at the Committee stage in Parliament.<sup>12</sup>

20. At the last UPR, Nigeria accepted a recommendation to create a board of independent inspectors examining the behaviour of police officers. Oversight mechanisms are vital to create police accountability and transparency, all of which facilitates improved standards of policing.

21. Recommendations:

22. CHRI recommends that Nigeria:

- a. Takes all necessary measures including the enactment of legislation to prevent extra-judicial killings and torture by all security forces including the police, .
- b. Works to ensure the successful functioning of an effective and independent police oversight mechanism.

## 23. **Prisons**

24. Overcrowding, poor sanitation, lack of food and essential medical supplies are reported as concerns in Nigeria's prisons.<sup>13</sup> CHRI has been told that the use of unregulated remand by magistrates was the primary reason that prisons in Nigeria were congested, and that if all remand prisoners were released then the prisons would be decongested quickly.<sup>14</sup>

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<sup>4</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review of Nigeria (2009) A/HRC/11/26

<sup>5</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review of Nigeria (2009) A/HRC/11/26

<sup>6</sup> "Nigeria police killings must be investigated," Amnesty International, 12 February 2010: <http://www.amnesty.org/en/for-media/%20press-releases/nigeria-police-killings-must-be-investigated-20100212> as on 22 February 2013.

<sup>7</sup> Amnesty International, "Nigeria must urgently investigate disappearance of six from police custody", 14 April 2010: <http://www.amnesty.org/en/news-and-updates/nigeria-must-urgently-investigate-disappearance-six-police-custody-2010-04-14> as on 22 February 2013.

<sup>8</sup> "Police and Vigilante Killings Out of Control", AfrikNews, 9 December 2009: <http://www.afrik-news.com/article16612.html> as on 22 February 2013.

<sup>9</sup> "Police and Vigilante Killings Out of Control", AfrikNews, 9 December 2009: <http://www.afrik-news.com/article16612.html> as on 22 February 2013.

<sup>10</sup> "Criminal Force – Torture, abuse, and extrajudicial killings by the Nigeria police force", Open Society Justice Initiative, 2010: <http://allafrica.com/download/resource/main/main/idadtcs/00020133:ca1fc169adf8765a6fee823ead6b52ad.pdf> as on 22 February 2013.

See also: "NBA faults police over torture", Vanguard, 24 October 2008: at <http://allafrica.com/stories/200810240471.html> as on 22 February 2013.

<sup>11</sup> "Criminal Force – Torture, abuse, and extrajudicial killings by the Nigeria police force", Open Society Justice Initiative, 2010:

<http://allafrica.com/download/resource/main/main/idadtcs/00020133:ca1fc169adf8765a6fee823ead6b52ad.pdf> as on 22 February 2013

<sup>12</sup> "Nigeria Bill to Outlaw Torture Before National Assembly Says NHRC Boss", This Day, 17 July 2009 at <http://allafrica.com/stories/200907170570.html> as on 22 February 2013.

<sup>13</sup> "What is life worth in prisons", This Day, 13 April 2010: at <http://allafrica.com/stories/201004130883.html> as on 22 February 2013.

<sup>14</sup> Email correspondence with a Nigerian lawyer working on police reform, 2010 in Commonwealth Human Rights Initiative Report, "Easier Said Than Done", 2010: [http://www.humanrightsinitiative.org/publications/hradvocacy/ESTD\\_2010/Full\\_report\\_with\\_Annexure\\_III.pdf](http://www.humanrightsinitiative.org/publications/hradvocacy/ESTD_2010/Full_report_with_Annexure_III.pdf) as on 22 February 2013.

25. In January 2010, a riot broke out in a Nigerian prison, reportedly due to poor conditions and overcrowding.<sup>15</sup> In addition to overcrowding, a 2008 report released by human rights groups found that at some point during detention up to 80% of prisoners were subject to beatings or torture.<sup>16</sup>

26. In November 2008, a local NGO reported that 97 of the Port Harcourt Maximum Security Prison's inmates were underage.<sup>17</sup> There were also reports that on every prison visit, prison guards were extorting family members of prisoners.<sup>18</sup>

27. Recommendations:

28. CHRI recommends that Nigeria:

- a. Immediately tackles the backlog of prisoners who have been detained without trial or beyond the end of their sentences. The Government should also address the improper use of remand by magistrates.
- b. Improves juvenile justice to be in compliance with the International Convention on the Rights of the Child; including by ensuring separate detention facilities for persons under 18 years of age.

## 29. **Freedom of expression and media freedom**

30. Following two separate incidents in which three journalists were murdered in April 2010, protests were staged by journalists who were reportedly angry at the impunity with which their colleagues were killed.<sup>19</sup> In the first incident, two journalists with a Christian newspaper were allegedly killed by Muslim rioters while on their way to the city of Jos, which was experiencing unrest at the time. The other journalist was killed in his home by unknown assailants who did not take anything from his house.<sup>20</sup>

31. Around the time of the murders, the Nigerian Union of Journalists reported that eight of its members had received death threats and at least one was being followed by men purporting to be "security officials." Four different journalists who covered the dismissal of Nigeria's Electoral Commission Chairman also received death threats worded identically.<sup>21</sup>

32. At the last UPR session Nigeria accepted recommendations to ensure that freedom of expression is respected and that journalists should be able to work without suffering harassment and without fear.

33. Non-journalists have also suffered from harassment as a result of the exercise of their right to free expression. In July 2009, a group of secondary school pupils were arrested and detained by police for protesting the Kogi State Government's indifference to the demands of their school teachers, who were undertaking strike action<sup>22</sup>. According to media reports, one student was killed by police gunfire which was being used to disperse the protests by the school children.<sup>23</sup>

34. The Civil Liberties Organisation also stated, during the reporting period, that it considered an attack on three human rights activists in Rivers State who were allegedly assaulted and detained for several hours before being released without charge to be calculated "attempts to stifle voices of dissent in the state."<sup>24</sup>

35. Recommendations:

36. CHRI recommends that Nigeria:

- a. Adopts all necessary measures to protect the freedom of expression in conformity with its National Constitution and international human rights standards.

<sup>15</sup> "Riot in Kaduna prison over congestion", This Day, 23 January 2010: <http://allafrica.com/stories/201004130883.html> as on 22 February 2013.

<sup>16</sup> "Nigeria: Waiting for the Hangman", Legal Defence Assistance Project and Amnesty International Joint Report, October 2008.

<sup>17</sup> "97 under-aged persons in Port Harcourt prisons", Leadership, 20 November 2008: <http://allafrica.com/stories/200811200516> as on 22 February 2013.

<sup>18</sup> "Extortion at prison gates – C-G orders investigation", Daily Trust, 23 January 2009: <http://allafrica.com/stories/200901230388> as on 22 February 2013.

<sup>19</sup> "NUJ Protests Journalists' Murder", This Day, 4 May 2010: <http://allafrica.com/stories/201005040322.html> as on 22 February 2013.

<sup>20</sup> "Three journalists killed in Nigeria", Committee to Protect Journalists, 26 April 2010: <http://cpj.org/2010/04/three-journalistskilled-in-nigeria.php> as on 22 February 2013.

<sup>21</sup> "In Nigeria, 4 journalists receive death threats", Committee to Protect Journalists, 30 April 2010: <http://cpj.org/2010/04/innigeria-4-journalists-receive-death-threats.php> as on 22 February 2013. See also "Journalists at the mercy of gunmen", Daily Independent, 3 May 2010: <http://allafrica.com/stories/201005040175.html> as on 22 February 2013.

<sup>22</sup> "Group Blasts Police Brutalization of Pupils in Kogi", Vanguard, 5 August 2009: <http://allafrica.com/stories/200908060270.html> as on 22 February 2013.

<sup>23</sup> "Group Blasts Police Brutalization of Pupils in Kogi", Vanguard, 5 August 2009: <http://allafrica.com/stories/200908060270.html> as on 22 February 2013.

<sup>24</sup> "Enough of the attacks on activists", This Day, 20 April 2010: <http://allafrica.com/stories/201004200337.html> as on 22 February 2013.

- b. Protect the freedom of journalists to report, work and criticise the government without any fear or threat.

### 37. **Criminalisation of same-sex conduct**

38. The Criminal Code Act, 1990, Section 214 makes “carnal knowledge of any person against the order of nature” a felony carrying the punishment of imprisonment for 14 years. Any attempt of this act carries a penalty of 7 years imprisonment (Section 215).<sup>25</sup> Section 217 of the Criminal Code also criminalises any act or attempt of “gross indecency” between men, whether in public or private, with a punishment of 3 years imprisonment<sup>26</sup>
39. In some northern states of Nigeria, Islamic Sharia law applies. Under this Sharia Law, sodomy is a crime and punishable by the death penalty. Sexual conduct between women is also a crime, punishable with up to 6 months imprisonment and 50 lashes.<sup>27</sup>
40. In November 2012<sup>28</sup>, the House of Representatives unanimously passed a second reading of the Same-Sex Marriage (Prohibition) Bill.<sup>29</sup> The Bill had been passed by the Senate in 2011. The Bill is reportedly undergoing a review by the Committee of the Whole House before it is put before a final vote and then sent to the President for approval to sign the Bill into law.<sup>30</sup>
41. The Bill, if passed, would further entrench discrimination against persons based on their real or perceived sexual orientation. The Same-Sex Marriage (Prohibition) Bill proposes 14 years imprisonment for persons that enter a same-sex marriage contract.<sup>31</sup> It also bans the registration of “gay clubs, societies and organisations”<sup>32</sup> and any person that participates in such clubs or organisations is liable to a 10 year prison term.<sup>33</sup> Any person or group that “witness, abet and aids” a marriage or the registration and/or sustenance of gay clubs or organisations is liable to 10 years imprisonment.<sup>34</sup>
42. Lesbian, gay, bisexual and transgender (LGBT) rights defenders in Nigeria already face harassment and abuse.<sup>35</sup> There are concerns that such legislation will target and criminalise NGOs working on HIV/AIDS or human rights defenders working on the rights of sexual minorities.
43. The Bill has also fuelled homophobic statements by political and religious leaders.<sup>36</sup> In 2011, after the Senate passed the Bill, Islamic scholar, Malam Abdulkadir Apaokagi, called for the death penalty for homosexuals, claiming that they

<sup>25</sup> Criminal Code Act, Chapter 77: Laws of the Federation of Nigeria, The Federal Republic of Nigeria, 1990. Section 214, Section 215, Section 217: <http://resourcedat.com/wp-content/uploads/2012/08/Nigerian-Criminal-Code.pdf> as on 22 February 2013.

<sup>26</sup> Criminal Code Act, Chapter 77: Laws of the Federation of Nigeria, The Federal Republic of Nigeria, 1990. Section 214, Section 215, Section 217: <http://resourcedat.com/wp-content/uploads/2012/08/Nigerian-Criminal-Code.pdf> as on 22 February 2013.

<sup>27</sup> Philip Ostien, ed., Draft Harmonised Sharia Penal Code Annotated, Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook: Vol. IV, (Spectrum Books Limited, 2007), pp. 69-70, 71: <http://www.sharia-in-africa.net/pages/publications/sharia-implementation-in-northern-nigeria.php> as on 22 February 2013. See also Lucas Paoli Itaborahy, “State sponsored homophobia: A world survey of laws criminalising same-sex sexual acts between consenting adults” ILGA report (2012).

<sup>28</sup> “Nigeria law makers approve bill criminalizing same-sex marriage,” Jurist, 14 November 2012: <http://jurist.org/paperchase/2012/11/nigeria-house-approves-bill-criminalizing-same-sex-marriage.php> as on 22 February 2013; “No to Gays and Lesbians,” PM News, 19 November 2012: <http://pmnewsnigeria.com/2012/11/19/no-to-gays-and-lesbians/> as on 22 February 2013; “Nigerian lawmakers move ahead on anti-gay bill,” Daily Nation, 14 November 2012: <http://www.nation.co.ke/News/africa/Nigerian-lawmakers-move-ahead-on-anti-gay-bill/-/1066/1619634/-/13067v/-/index.html> as on 22 February 2013.

<sup>29</sup> Same Sex Marriage (Prohibition) Bill, 2011, Federal Republic of Nigeria: <http://www.scribd.com/doc/74807203/Nigeria-Same-Sex-Marriage-Bill-final> as on 22 February 2013.

<sup>30</sup> “Nigeria pushes ‘jail the gays bill,’ Scoop, 6 December 2012: <http://www.scoop.co.nz/stories/WO1212/S00068/nigeria-pushes-jail-the-gays-bill.htm> as on 22 February 2013.

<sup>31</sup> Section 5(1) Same Sex Marriage (Prohibition) Bill, 2011, Federal Republic of Nigeria: <http://www.scribd.com/doc/74807203/Nigeria-Same-Sex-Marriage-Bill-final> as on 22 February 2013.

<sup>32</sup> Section 4(1) Same Sex Marriage (Prohibition) Bill, 2011, Federal Republic of Nigeria: <http://www.scribd.com/doc/74807203/Nigeria-Same-Sex-Marriage-Bill-final> as on 22 February 2013

<sup>33</sup> Section 5(2) Same Sex Marriage (Prohibition) Bill, 2011, Federal Republic of Nigeria: <http://www.scribd.com/doc/74807203/Nigeria-Same-Sex-Marriage-Bill-final> as on 22 February 2013.

<sup>34</sup> Section 5(3) Same Sex Marriage (Prohibition) Bill, 2011, Federal Republic of Nigeria: <http://www.scribd.com/doc/74807203/Nigeria-Same-Sex-Marriage-Bill-final> as on 22 February 2013.

<sup>35</sup> ‘Nigeria: Defending Human Rights: Not everywhere, not every right’, International Fact-finding mission report, The Observatory for the Protection of Human Rights Defenders, April 2010: [http://www.omct.org/files/2010/05/20688/nigeria\\_mission\\_report.pdf](http://www.omct.org/files/2010/05/20688/nigeria_mission_report.pdf) as on 22 February 2013.

<sup>36</sup> “No going back on criminalizing same-sex marriage in Nigeria-David Mark,” Premium Times, 7 January 2013: <http://premiumtimesng.com/news/114085-no-going-back-on-criminalizing-same-sex-marriage-in-nigeria-david-mark.html> as on 22 February 2013; “Same-sex marriage remains prohibited- Mark,” Punch, 8 January 2013: <http://www.punchng.com/news/same-sex-marriage-remains-prohibited-mark/> as on 22 February 2013.

were worse than murderers.<sup>37</sup> In January 2013, a Nigerian Pastor called homosexuality “evil” and warned that in 20 years, it would “wipe out the human race.”<sup>38</sup>

44. The animosity towards homosexuality has meant that LGBT persons in Nigeria are more vulnerable to discrimination, harassment and violence. In 2011, the International Gay and Lesbian Human Rights Commission (IGLHRC) published a case-study on the blackmail and extortion that Nigerian lesbian and bisexual women face from family, friends, lovers and colleagues.<sup>39</sup>
45. There have also been prosecutions using the Criminal Code. In March 2012, two men were sentenced to 2 years imprisonment and faced a fine for same-sex activity.<sup>40</sup> In September 2012, Bestwood Chukwuemeka, was sentenced to 3 months imprisonment for sodomy.<sup>41</sup>
46. Under Article 17 of ICCPR, Nigeria has a responsibility to protect individuals against “arbitrary or unlawful interference” with their “privacy, family, home or correspondence”. Laws banning same-sex conduct have been found by the Human Rights Committee to be in breach of Article 17.<sup>42</sup> Article 26 affords individuals “effective protection against discrimination on any ground” and the right to “the equal protection of the law”. The Human Rights Committee has held that state parties “should guarantee equal rights to all individuals and protect the right to equality before the law regardless of their sexual orientation”.<sup>43</sup> It has also previously held that criminalisation is incompatible with both the right to privacy and equality before the law.<sup>44</sup> The criminalisation of same-sex sexual conduct by Nigeria is therefore incompatible with Nigeria’s obligations under the ICCPR.
47. Nigeria also has an obligation under Article 12 of the ICESCR to promote “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. The criminalisation of same-sex conduct interferes with the realisation of this right and the Committee on Economic, Social and Cultural Rights has held that the criminalisation of same-sex conduct has the effect of “nullifying or impairing the equal enjoyment or exercise of the right to health”.<sup>45</sup>

#### 48. Recommendations

CHRI recommends that Nigeria:

- a. Ensures that the Same-Sex Marriage (Prohibition) Bill is not legislated in contravention of international human rights standards and Nigeria’s international obligations
- b. Imposes a moratorium on arrests and prosecutions for consensual adult same-sex conduct
- c. Embarks on a process for the repeal of Sections 214, 215 and 217 of its Criminal Code Act 1990 that criminalises same-sex conduct between consenting adults
- d. Prevents harassment, abuse and violence against persons based on their real or perceived sexual orientation while holding perpetrators accountable
- e. Promotes and facilitates constructive dialogue on decriminalisation of same-sex conduct, sexual orientation and gender identity with government ministries, civil society actors, religious leaders and other relevant stakeholders.

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<sup>37</sup> “Islamic scholar seeks death penalty for homosexuals”, Daily Times Nigeria, 5 December 2011: <http://dailytimes.com.ng/article/islamic-scholar-seeks-death-penalty-homosexuals> as on 22 February 2013.

<sup>38</sup> “Gay marriage could end humanity”, Nigerian pastor says, VOA News, 24 January 2013: <http://www.voanews.com/content/nigeria-pastor-says-gay-marriage-could-end-humaiity/1590151.html> as on 22 February 2013.

<sup>39</sup> Unoma Azuah, “Extortion and Blackmail of Nigerian Lesbians and Bisexual Women”, Nowhere to Turn: Blackmail and Extortion of LGBT People in Sub-Saharan Africa, Eds. Ryan Thoreson and Sam Cook. International Gay and Lesbian Human Rights Commission, 2011. pp. 46-59: <http://www.ighrc.org/binary-data/ATTACHMENT/file/000/000/484-1.pdf> as on 16 July 2012.

<sup>40</sup> “Two homosexuals earn two years imprisonment”, Leadership, 22 March 2012: <http://leadership.ng/nga/articles/19917/2012/03/22/two-homosexuals-earn-two-years-imprisonment.html> as on 22 February 2013.

<sup>41</sup> “Nigeria actor sent to prison over gay sex”, The Raw Story, 21 September 2012: <http://www.rawstory.com/rs/2012/09/21/nigerian-actor-sent-to-prison-over-gay-sex/> as on 22 February 2013; “Mixed feelings trail imprisonment of Nollywood actor over gay”, The Vanguard, 22 September 2012: <http://www.vanguardngr.com/2012/09/mixed-feelings-trail-imprisonment-of-nollywood-actor-over-gay/> as on 22 February 2013.

<sup>42</sup> The Human Rights Committee in *Toonen v Australia* held that the criminalisation of same sex conduct was incompatible with a state party’s obligations under Article 17.

<sup>43</sup> Human Rights Committee (May 2007) Concluding observations of the Human Rights Committee: Chile, U.N. Doc. CCPR/C/CHL/CO/5, paragraph. 16.

<sup>44</sup> Human Rights Committee (May 2007) Concluding observations of the Human Rights Committee: Barbados, U.N. Doc. CCPR/C/BRB/CO/3, paragraph. 13.

<sup>45</sup> Committee on Economic, Social and Cultural Rights (August 2000) General Comment No. 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/2000/4, , paragraph. 18.