

Submission in the UPR review of: Nigeria

Legal and Statutory framework:

Nigeria maintains **criminal sanctions against consensual same-sex activity**. Nigeria's *Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria 1990* provides:

Section 214. "Any person who-

- (1) has carnal knowledge of any person against the order of nature; or
- (2) has carnal knowledge of an animal; or
- (3) permits a male person to have carnal knowledge of him or her against the order of nature;

is guilty of a felony, and is liable to imprisonment for fourteen years."

Section 215. "Any person who attempts to commit any of the offences defined in the last preceding section is guilty of a felony, and is liable to imprisonment for seven years. The offender cannot be arrested without warrant."

Section 217. "Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another 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. The offender cannot be arrested without warrant."

Section 352. "Any person who assaults another with intent to have carnal knowledge of him or her against the order of nature is guilty of a felony, and is liable to imprisonment for fourteen years."

Section 353. "Any person who unlawfully and indecently assaults any male person is guilty of a felony, and is liable to imprisonment for three years. The offender cannot be arrested without warrant."

We also note that several Northern Nigerian states have adopted Islamic Sharia laws, criminalizing sexual activities between persons of the same sex. The maximum penalty for such acts between men is death penalty, while the maximum penalty for such acts between women is a whipping and/or imprisonment. These laws differ from the federal law, as most of these prohibit also sexual relations between women.

The states which have instated such laws are¹:

Bauchi (2001), Borno (2000), Gombe (2001), Jigawa (2000), Kaduna (2001), Kano (2000), Katsina (2000), Kebbi (2000), Niger (2000), Sokoto (2000), Yobe (2001) and Zamfara (2000).

Here is an example of one of these Penal Codes:

Zamfara State of Nigeria - Shari'ah Penal Code Law, 2000 (entered into operation on 27th day of January, 2000.)

CHAPTER VIII

Sodomy (Liwat)

Section 130. Sodomy defined

"Whoever has carnal intercourse against the order of nature with any man or woman is said to commit the offence of sodomy: Provided that whoever is compelled by the use of force or threats or without his consent to commit the act of sodomy upon the person of another or be the subject of the act of sodomy, shall not be deemed to have committed the offence."

¹ The year in bracket refers to when the law was adopted

Section 131. Punishment for Sodomy

"Whoever commits the offence of sodomy shall be punished: -

- (a) with caning of one hundred lashes if unmarried, and shall also be liable to imprisonment for the term of one year; or
- (b) if married with stoning to death (rajm).

EXPLANATION: Mere penetration is sufficient to constitute carnal intercourse necessary to the offence of sodomy."

Lesbianism (Sihag)

Section 134. Lesbianism defined

"Whoever being a woman engages another woman in carnal intercourse through her sexual organ or by means of stimulation or sexual excitement of one another has committed the offence of Lesbianism."

Section 135. Punishment for Lesbianism

"Whoever commits the offence of lesbianism shall be punished with caning which may extend to fifty lashes and in addition be sentenced to a term of imprisonment which may extend to six months.

EXPLANATION: The offence is committed by the unnatural fusion of the female sexual organs and or by the use of natural or artificial means to stimulate or attain sexual satisfaction or excitement."

Gross Indecency

Section 138. Acts of Gross Indecency

"Whoever commits an act of gross indecency upon the person of another without his consent or by the use of force or threats compels a person to join with him in the commission of such act shall be punished with caning of forty lashes and shall also be liable to imprisonment for a term of one year and may also be liable to fine: Provided that a consent given by a person below the age of fifteen years to such an act when done by his teacher, guardian or any person entrusted with his care or education shall not be deemed to be a consent within the meaning of this section."

Nigeria's international human rights obligations:

Criminal provisions against consensual same-sex activity have been found to constitute a **clear violation of international human rights law**.

In *Toonen v Australia*, the **UN Human Rights Committee** in March 1994 confirmed that laws criminalizing consensual same-sex activity violate both the right to privacy and the right to equality before the law without any discrimination, contrary to articles 17(1) and 26 of the International Covenant on Civil and Political Rights.²

The Committee further considered that such laws interfere with privacy rights, whether or not they are actively enforced, and "run counter to the implementation of effective education programmes in respect of HIV/AIDS prevention" by driving marginalised communities underground.

The UN Human Rights Committee has affirmed this position on many occasions, either urging States to repeal laws which criminalize consensual same-sex activity or commending them for bringing their legislation into conformity with the Covenant by repealing such provisions.³

This position is consistent with other **regional and national jurisprudence**, including decisions of the European Court of Human Rights⁴ and of the Constitutional Court of South

² *Toonen v Australia*, CCPR/C/50/D/488/1992, April 4, 1994.

³ See Human Rights Committee Concluding Observations: United States of America, A/50/40, October 3, 1995; Cyprus, CCPR/C/79/Add.88, April 6, 1998; Ecuador, CCPR/C/79/Add.92, August 18, 1998; Chile, CCPR/C/79/Add.104, March 30, 1999; Lesotho, CCPR/C/79/Add.106, April 8, 1999; Romania CCPR/C/79/Add.111, July 28, 1999; Australia, A/55/40, July 24, 2000; Egypt, CCPR/CO/76/EGY, November 28, 2002; Kenya, CCPR/CO/83/KEN, March 28, 2005; United States of America, CCPR/C/USA/CO/3, September 15, 2006; Barbados, CCPR/C/BRB/CO/3, May 11, 2007; Chile, CCPR/C/CHL/CO/5, May 18, 2007.

Africa,⁵ as well as with the core commitments to equality and non-discrimination enshrined in the *African Charter of Human and Peoples' Rights*.

States' international obligations to respect the human rights of all persons, irrespective of sexual orientation and gender identity, were recently articulated in the "***Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity***". The Principles were developed and unanimously adopted by a distinguished group of human rights experts, from diverse regions and backgrounds, including Africa. These experts included judges, academics, a former UN High Commissioner for Human Rights, UN Special Procedures, members of treaty bodies, members of civil society and others.

Principle 2 of the Yogyakarta Principles affirms the right of all persons to equality before the law without discrimination on the basis of sexual orientation or gender identity, and specifically confirms the obligation of States to "repeal criminal and other legal provisions that prohibit or are, in effect, employed to prohibit consensual sexual activity among people of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity."

Principle 6 of the Yogyakarta Principles affirms the right of all persons, regardless of sexual orientation or gender identity, to the enjoyment of privacy without arbitrary or unlawful interference, and confirms States' obligation to "repeal all laws that criminalise consensual sexual activity among persons of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity."⁶

The **UN High Commissioner for Human Rights** has welcomed the Yogyakarta Principles as a "timely reminder" of the basic tenets of universality and non-discrimination, and noted that "respect for cultural diversity is insufficient to justify the existence of laws that violate the fundamental rights to life, security and privacy by criminalizing harmless private relations between consenting adults."⁷

Recommendation:

We therefore recommend that the Human Rights Council, in its upcoming review, urge Nigeria to bring its legislation into conformity with its international human rights obligations by repealing all provisions which criminalise consensual same-sex activity.

This information is submitted jointly by:

- **ILGA** (International Lesbian and Gay Association), a global federation of over 600 lesbian, gay, bisexual, transgender and intersex ("LGBTI") groups in over 90 countries;
- **ILGA-Europe**, an NGO with ECOSOC consultative status that is recognized by the EU, COE and OSCE;
- **Pan African ILGA**, which brings together LGBTI activists from 20 countries in Africa and recently elected a board with representatives from all five African regions (Northern, Western, Central, Eastern and Southern): Algeria, Morocco, Senegal, Nigeria, Rwanda, Uganda, Kenya, Namibia, Mozambique and South Africa.
- **International Gay and Lesbian Human Rights Commission**, a non-profit NGO with an African regional office which seeks to secure the full enjoyment of the human rights of all people and communities subject to discrimination or abuse on the basis of sexual orientation or expression, gender identity or expression, and/or HIV status;
- **ARC International**, an NGO with a full-time presence in Geneva which engages with the UN Human Rights Council and related mechanisms to advance respect for human rights, including on the grounds of sexual orientation and gender identity.

⁴ *Dudgeon v United Kingdom, Series A no. 45.*, 1981; *Norris v Ireland*, 1991; *Modinos v Cyprus*, 1993.

⁵ *National Coalition for Gay and Lesbian Equality and another v Minister of Justice and others*, 1998.

⁶ Available in all 6 UN languages at: www.yogyakartaprinciples.org

⁷ Statement of UN High Commissioner for Human Rights, Launch of the Yogyakarta Principles, 7 November, 2007, United Nations, New York.