

Joint submission by LGBTI organizations in Nigeria to the second Universal Periodic Review of Nigeria.

Human rights Council, October 2013 session

Authors:

International Centre for Advocacy on Rights to Health (ICARH)
8 Yabo Close, Garki 11, Abuja, Nigeria
Alliance_rights@yahoo.co.uk
+2348074949006

Women's Health and Equal Rights
House 8, Howson wright, Kado Estate, Abuja, Nigeria
Akudo.Wher@gmail.com
+2348098632201

Improved Youth Health Initiative
26 Ukpenu road, Ekpoma, Edo State, Nigeria
Youths2gethernetwork@gmail.com
+234805603828

The Initiative for Equal Rights
7b Adekunbi Crescent off Mojidi street off Toyin Street, Ikeja, Lagos, Nigeria
Info@initiative4equality.org
+2348125549015

Introduction and Background:

1. This submission was prepared jointly by four organizations working on human rights as they relate to sexual minorities and gender identity (SOGI) issues in Nigeria. It assesses the state of Nigerian's implementation of the last review's recommendations and gives an account of developments of human rights situation since the last UPR of Nigeria. A couple of recommendations are directed to different stakeholders at the end of the submission, with particular urges to the State.

2. Over the past four years, the human rights situation in Nigeria has been of concern due to lack of adherence of Nigerian State to international human rights instruments. Minority groups including Lesbian, Gays, Bisexuals, Transgender and Intersexual (LGBTI) individuals, suffer the severe implications of the human rights situation in the country.

3. The government of the Federal republic of Nigeria continues to move for stiffer punishments against Nigerian citizens with different sexual orientation and gender identity, by the virtue of the recommendation of the Same Sex Marriage Bill. As the latter provides for a jail term for same sex marriage, including same sex relationships in Nigeria, there has been increasing incidents of human rights violation targeted at LGBTI persons in Nigeria. The recorded violations specifically include: torture in custody, arbitrary arrest, extortion and blackmail, curative rape, discrimination and mob justice.

4. As the cases documented below indicates; LGBTI persons in custody are continually detained under extremely harsh and inhuman conditions. The general trend has been that the LGBTI community are still without access to justice even in cases of outrageous violations of their fundamental rights. It has been established that some of the perpetrators of these human rights abuses have tied their biases on the Same Sex Marriage Prohibition Bill at the National Assembly.

5. While majority of LGBTI persons will not report human rights abuses they experience due to fear of further stigmatization, below are some cases of violations of human rights on the basis of SOGI that have been recorded in the years under review. Prior to this and as far as LGBTI rights are concerned, we give a brief overview of the human rights obligations of Nigeria and assess the state of implementation of recommendations made to Nigeria by peer states in 2009.

Nigerian obligations under international human rights law

6. As far as LGBTI rights are concerned, Nigeria is party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the Convention Against Torture and other cruel, inhuman and degrading treatments or punishment (CAT). As such, it has an obligation to ensure, respect, protect and promote the human rights enshrined in these instruments to all Nigerians without any

discrimination, including on the ground of sexual orientation and gender identity.

7. However, the violations and abuses of human rights on the basis of real or perceived sexual orientation and non-conforming gender identity are common in Nigeria as the cases illustrate it below.

Legal and institutional framework

8. International human rights are guaranteed in the Constitution of Nigeria, including the principles of non-discrimination and equality before the law. However, in addition to constitutional obstacle to the judicial enforcement of economic, social and cultural rights, religious and laws continue to violate human rights principles.

9. Homosexual behavior, expression and activities, is still a criminal offence and law enforcers systematically arrest persons for same-sex sexual activities deemed ‘unnatural offence’ under Nigerian penal and criminal codes. The offence covers sexual contact with animals, homosexual relations and certain heterosexual acts of ‘unnatural’ character. Human Rights organizations explained that the crime of unnatural offence has previously emerged amid political disputes, including when an individual has tried to damage their rival's reputation. In November 2011, a bill prohibiting same-sex marriage was passed in the Senate. This bill not only affects sexual minorities but also anyone that associates with them. It clearly states in Sub-section 3 that “any person or group of persons that witness, abet and aids the solemnization of a same sex marriage or civil union or supports the registration, operation and sustenance of gay clubs, societies, organizations, processions or meetings in Nigeria commits an offence and shall be liable on conviction to a term of 10 years imprisonment”. This piece of legislation clearly violates sexual minorities’ freedom of association, right to health, right to private and family life, the right to life and right to dignity of persons. It has not yet been signed into law, but its mere existence fosters the homophobic environment and ‘legitimizes’ human rights violation on the ground of sexual orientation and gender identity in Nigeria.

10. The National Human Rights Commission has been under-resourced and its lack of compliance with Paris Principles ranked it from ‘A’ to ‘B’ status. Therefore, it is with no surprise that the Commission has not performed well in terms of protection of human rights for all, including sexual minorities.

11. Despite the political commitment expressed through the 2004 National Plan of Action on the Promotion and Protection of Human Rights, its translation into reality is yet to be seen on the ground. The Nigerian government has shown some interests in the provision of health services for MSM as captured in the HIV/AIDS National Strategic Framework of the National Agency for the Control of AIDS (NACA) as well as some State Action Committees on AIDS (SACAs) but the implementation of the policies has been restricted in a Nigeria where homosexuality is still considered as a crime.

12. The lack of independence of judiciary and the continuous criminalization of homosexuality in Nigeria, remain serious factors that drive the violations of human rights of persons on the ground of sexual orientation and gender identity. Equally, the sharia laws enforced in some northern states are in total contradiction with basic principles of human rights that guarantee protection for all including sexual minorities.

The state of implementation of the recommendations of the 2009 UPR of Nigeria

13. The previous universal periodic review of Nigeria was held in February 2009. As far as LGBTI rights are concerned, the main recommendations made to Nigeria were as follow:

- The Nigeria's President and National Assembly should not approve the "Same Gender Marriage Bill";
- Nigeria must eliminate all existing legislation that discriminates based on gender and sexual orientation;
- The State must take measures to recognize and protect the rights of sexual and gender minorities;
- And take measure that the law prohibiting same-sex marriages be abrogated.

14. None of these recommendations was implemented by Nigeria, as discrimination is still a reality through legislation and practice. In November 2011, Nigeria's Senate approved a Bill that would harshly crack down on gay rights, including outlawing gay marriage and banning public displays of affection between homosexual couples. The Bill has since stalled.

15. A couple of recommendations were also made with regard to discrimination against women (see paragraphs 16 to 19 of the Report of the Working Group of UPR) and they further apply to lesbians, bisexuals and transgender Nigerians. But again, none of them was implemented and the situation of sexual minorities rather worsened over the past years.

Developments of the human rights situation of LGBTI people in Nigeria since March 2009

16. Over the past four years, people suffered serious violations of human rights on the basis of sexual orientation or gender identity. An exhaustive account of violations is neither desirable nor appropriate in such a limited submission. Only emblematic cases are accounted for below to illustrate a pattern of violations of human rights in Nigeria on the ground of SOGI. They include cases of judicial trials and sentencing, mob justice, and community exclusions, homophobic violence and physical aggressions, attacks against LGBTI human rights defenders, etc.

a. Arbitrary arrests and detentions, judicial trials and sentencing

17. Arrests of persons on the basis of real or perceived homosexuality are common in Nigeria. It is not rare to be arrested because of un-conventional dressing, walk or any other basis that may arise due to suspicion of being a gay.

No later than 21 September 2012 in a magistrates court in the capital Abuja, a Nigerian actor B.C. has been sentenced to three months in prison for "unnatural offence" after allegedly admitting to having sex with a man.

18. The case of three persons undergoing a trial on the basis of sexual orientation describes how sexual minorities can be denied access to justice using adjournment:

On 1 April 2012 Three persons were arrested at *Areal Shopping complex* (in Abuja) and were remanded at *Keffi* imprisonment after a first court appearance on 4 April 2012.

One of the accused persons Mr. *Oy*, said: "I was at my friends office to check jamb result that Sunday when the security guy passed by and saw my friend who was testing the cloths he brought from the market and he raised alarm immediately that we are homosexuals, after which he reported the us to the chairman of the complex who got us arrested and we were remanded in the police cell for 3 days."

The two other persons *D.* and *G.* were bailed at the police cell and were able to provide a family representative who stood in as surety and were granted on bail so that they can always come to court from home. Mr *Oy*. whose relatives are not based in Abuja was returned back to the prison for lack of surety.

Findings however reflect that the accused persons were a subjected to torture and imprisonment due to long time suspicion linked to sexual orientation and gender identity and were not caught in any form of sexual act. They were also beaten with building materials and cutlass by some of the laborers working inside the complex. The accused persons were also threatened to be taken to a TV station if they refuse to accept the allegations. The accused persons however reported back to court on 02/Jul/2012 with no legal representation. The case has been systematically adjourned to 4 April, 4 June, 2 July, 20 August, 16 October 2012 and 14 January 2013. A hearing is expected on 11 March and the accused persons may be sentenced to imprisonment if they plead guilty. In the mean time the third person has been also released on bail. It is not excluded that on 11 March another adjournment be ordered.

19. In addition to the denial of access to justice, some other cases prove the inapplicability of mitigating circumstances to sexual minorities in the Nigerian judicial system:

On 22nd March 2012, two men reported to have been arrested and jailed on the basis of sexual orientation in Abuja. Unlike many similar incidences that happen on daily basis, the news was later reported by a local newspaper as follows:

'An Upper Area Court sitting in Mararba, Nasarawa State, on Wednesday, has sentenced two men, Ifeanyi Benedict Ahah and Rabiu, to two years in jail each, without bail – both found guilty of unnatural tendencies or having intercourse with each other.

The pair were sentenced yesterday by Judge Mariga Abdullahi, and ordered to pay a fine of N 5,000 each at the beginning of their sentence. Just before the sentence was passed, Mr. Rabi'u pleaded for leniency, saying that he is married with six children. Ifeanyi, on his own part, pleaded the court to forgive him. He claimed to be repentant and promised not to go into the act anymore if pardoned.

The Judge, however, insisted that the law must take its course, saying that the sentence was passed in hope that it will serve as a deterrent to others involved in such unnatural acts”.

b. Mob justice

20. The cases of mob justice are common in Nigeria. The following case illustrates the state of affairs:

On 18 June 2012 a 60-year-old man *H.B.* alleged to be a homosexual was lynched by angry mob in Yelwa Ward in Yola (in a Northern State). The victim was suspected to have subjected a 20-year-old boy *Sh.* to indecent acts for years, which has left him with a strange sickness. He admitted of having canal knowledge with the young boy over four years to the *Sh.*'s family.

Piqued by the shocking revelations, the father of the boy alongside irate youths pounced on the confessed homosexual. He was beaten to a state of coma and abandoned by the roadside. Police from the Jimeta Division headquarter took the suspected homosexual to the Yola Specialist Hospital where he died before medical care.

Adamawa State police Command Spokesman Nemuel Yoila (ASP) confirmed the incident, but he however disclosed that the matter has not yet been officially reported to the headquarters from the Divisional Headquarters.

21. Similarly, three men reported a case of attack and loss of property at *Durumi* community Abuja in December 2012. Three men had been attacked in their home the previous night of which two persons sustained physical injuries. According to one of the victims;

“We were sleeping in the room yesterday, when I had a knock on the door at about 2 am. I quickly woke the other two boys that live with me and inform them that I heard a knock at the door. When we asked to know who was at the door, the person identified himself as ‘Pastor’ I opened and asked him to come in. At that point they broke in and attacked us with knives. We escaped and ran away, but later found out that they had burnt down our properties when we came back the following morning”.

The victims reported the incidence to a community based organization and later filed a report at a nearby police station. None of the perpetrators were even interrogated.

c. Homophobic attacks and physical aggressions, including sexual abuses

22. Cases of aggression are the daily life of LGBTI persons in Nigeria:

i) On 7 June 2012 an incident attracted the attention of the media. Two final year university students were caught kissing each other and were expelled from Covenant University, Canaanland Ota, Ogun State (western Nigeria). The University owned by one of Nigeria's largest churches, Winner's Chapel, condemned these two ladies saying it was against their faith and religion. A day after the incident, the University Administration officer who spoke with "Hope for Nigeria" said that the students' activities and unquenchable desire for other ladies was disturbing and embarrassing to the University. Unfortunately these students were shown no mercy as their pictures were taken and published in the newspapers and over the internet with a tag that boldly said "*You are a Lesbian, But Out of our Campus*" This incident was a clear infringement of these women's right to education, and right to privacy.

ii) In July, 2012, a video of 3 Nigerian women were circulated in the cyber space, these three ladies caught in the act by some of young men. These men came into their room and forced the lesbian ladies to have sex again as they made a video. When the men in question were satisfied, they began to flog these ladies brutally with their belts. They even decided to flog the 'Butch' amongst the ladies last and hers was worst as they repeatedly uttered these words "*She's the man right?*"

iii) In April 2012 **H.W.** was attacked with weapon by homophobes at a wine bar in *Wurukum Benue* State. The attack, which led to victim's loss of left eye, was perpetrated by a group of 5 men who came into the bar and accused **H.W.** of possessing some homosexual traits. According to anonymous source, "on the evening of that event, **H.W.** was asked if he has the permission to come into the wine bar, while waiting for the bar attendant and was brutally attacked on the head as he was about to respond to the boys." His left eye was seriously damaged and was rushed to Jos Teaching Hospital for urgent optical treatments. The perpetrators of this aggression were neither prosecuted for their actions, nor did they pay the medical expenses.

iv) Mr **R.** reported to have been attacked brutally by unknown persons in *Wuye* District, adjacent to Finance Junction, Abuja on 11 December 2011. The incident was made known by the nurse of the MARPS clinic on 12 December 2011 where the victim received medical treatment.

R. stated that he was attacked in *Hausa* on his way to the market where he intended to buy meat for his canteen business on Monday 12 December 2012. According to the victim, "the two boys were talking about same sex marriage in *Hausa*. Suddenly, they blocked my way and asked why I walk like a lady. I couldn't really give them any

answer. One of them further asked if I didn't see them. One of them collected my purse, which made me struggle with them; they beat me up and attacked other people. Some customers who use to patronize my small food business rescued me. However, I suffered from fracture and other physical injuries". None of the attackers in this situation were prosecuted till date.

d. LGBTI human rights defenders under threat in Abuja

23. Advocating for human rights for LGBTI persons is a risky undertaking in Nigeria. Activists are permanently under threat and their safety depends on non-disclosure to the public. On 26 December 2011 an openly gay and human rights activist J.A. was interrogated by 3 hefty men while transiting through *Durumi* (Abuja) at about 7:30 pm few weeks after making a televised presentation of a Public Health critique of the Same Sex Marriage Prohibition Bill at the Nigerian National Assembly on 31 October 2011. He said:

"I was on my way to Areal (Abuja) on a Keke NAPEP (tricycle) that night and I decided to walk down to the Junction close to Clitonia hotel in search of another tricycle, since the previous driver said that he could not continue to Areal due to lack of passengers.

On my way down to the junction, I came across three huge and unfamiliar men who were able to identify me as *J.A.* I was instructed to stop of which I obeyed. Two of the three men called me *J.A.* without asking to know what my name was and I continued walking since I began to sense some dangers. They repeatedly called me by my full name as published by the media during the national public hearing organized by the Nigerian Senate. Suddenly two of the three men dragged me from my waist by through my belt while the third guy held my hand and attempted dragging me towards a dark corner of the road. Then I begin to ask what my offence was if any. At this point the three persons broke the suspense; and asked if I know anything about gay, while the two others insisted that 'he is the one' 'stupid gay rights activist' 'we go kill you today', so I began a lone struggle and tried calling for help.

A passerby who was yet to understand what the situation to which I was interrogated came to my rescue and a small pool of crowd began to gather at point of the incident in front of *Intercontinental Estate*. I felt threatened and immediately chattered the next available taxi to my friend's house. That is how I was able to escape". The case was however not reported to the police for strategic reasons.

24. On 25 May 2012, the same activist nearly escaped from an imminent aggression:

" I went to *Areal shopping complex* with an intention of buying a new phone. I was at the Nokia shop inside the market when a chubby man with a cat designed

tribal mark walked into the shop and began a discussion with other customers about the statement of the American president on same sex marriage. I refused to join the discussion since the environment sounded potentially unfriendly but was rather listening to the conversation while negotiating for a better phone price.

While negotiating the price for a new phone, the anti-gay man turned and saw me right inside the shop and immediately, he began to raise awareness that I was the homosexual who had the audacity to show my face at the national assembly as a homosexual, and a gay rights activist. I immediately asked him if I had offended him by any means, but there was no adequate response to my question, rather he continued to introduce me to the small audience inside the shop.

At this point his argument began to draw the attention of a bigger size of crowd explaining to them in abusive language that I did not only appear at the national assembly, but he has seen me on BBC. I therefore left the environment to avoid any form of homophobic attack”.

e. Aggression, community ban and attempt of killings over alleged homosexuality^[3]

25. In September 2011, in Durumu-2, Durumi community, *S.* and *H.* were beaten to near death on the ground of their sexual orientation and gender identity. The incident started their neighbors who had a long-term suspicion of their sexual orientation.

According to *H.* “I came back from town that afternoon when found my properties in flame right in front of the house, everything in the house down to our pots and stove was on fire. I was neither able to ask questions nor fight back on the incidence. One of my neighbors *Uche* identified me and I was beaten up. They almost killed me. *S.* quickly rushed down to retrieve some items when he received the news from a friend in the same community on arrival; he got his own take of the beating on arrival. There was no specific action, to which we were accused, but we were paraded on the street half-dressed and people began shouting ‘homosexual’ ‘gay’ ‘homo’ pointing at us. That was when I realized that we were attacked based on the information they have about our sexual orientation”

The crowd took the two victims to the chief’s palace and demanded that they should be killed. Responding to their concerns, the chief of *Durumi* community banished the two alleged homosexuals from *Durumi* community and warned them never to return or face stiffer penalties. ICARH’s investigations revealed that the two victims had quarreled with each other within the compound, which resulted into exchange of abusive languages including sexual related insults the previous night. None of the neighbors were prosecuted and the properties lost were not recovered.

26. On 23 December 2012, a 26-year-old law student was nearly killed on the ground of homosexuality at Ovonemo Street, near Okere Ugborikoko road, Polokor area of Delta state.

The victim explained that he was visiting Ovonemo to see a friend whom he met via social media with the intention to socialize with other friends in the area. He met with the ‘friend’ who took him to visit other friends at the building where he was beaten and humiliated by the boys:

“My friend who invited me asked one of them to collect my phone and my wallet. One of the boys said ‘we go beat homosexual comfort for your life today!’ They explained to me that they had accidentally killed some people in similar attempt, adding that I have to obey every single instruction if I must leave alive. After a while the beating continued. I was beaten for the second time by the five individuals and was further threatened to be killed. They asked me if I have more valuables to surrender, so I gave them the car key and my school identity card. At this point I had sustained a waist and head injuries.

I was released by the notorious gang having been identified as a member of a well-known family in the state and a law student at one of the Nigerian universities. My keys and school identity card were however returned to me.

I wouldn’t want to report the case to the police as the situation might resort into finding out that I’m gay. My other concern was that my family will do everything possible to investigate the matter and I wouldn’t want to risk losing their supports on the basis of my sexual orientation”

Conclusion and recommendations

27. All of the above reports have their roots in the criminalization of homosexuality in the Nigerian statute book (the Nigerian Criminal Code) and the different factors that nurture a homophobic environment.

28. A legislative process being strongly connected to religious values has undermined the Nigerian obligation under section 4 of the 1999 Federal Constitution to protect and promote fundamental human rights of all citizens. A widespread impunity for authors of abuses of human rights makes the human rights situation in Nigeria of grave concern.

29. Although civil society organizations in Nigeria continue to seek for the protection of fundamental human rights of all citizens, including sexual minority populations, their work is carried out under uncertain and risky conditions. The Nigerian government has therefore a large vacuum to fill in ensuring that the fundamental human rights of every Nigerian citizen, including sexual minority populations, are fully protected.

30. In light of the above, the following recommendations are made:

- a. Nigeria must bring its legislation in compliance with its international human rights obligations; repeal all laws, policies and practices that result into discrimination on the basis of sexual orientation and gender identity, including the Penal Code and other legislation which prohibit consenting adult same-sex relations and marriage;**
- b. Nigeria must release all detainees condemned or being prosecuted on the ground of sexual orientation or gender identity; it must also end impunity by prosecuting authors of violations of human rights of LGBTI persons, including police responsible of sexual abuses against lesbian, cross-dressers and transgender women;**
- c. Nigeria must undertake legislative and policy measures that address homophobic environment and promote acceptance to homosexual and diverse gender identities;**
- d. The government must initiate a National debate on homosexuality with the view of raising public awareness of diverse sexual orientations and gender identities; undertake a national education and sensitization campaign on issues of sexual rights and gender diversity, including trainings for police officers, judges, media and other law enforcers.**