

## I. INTRODUCTION OF THE STAKEHOLDERS

1. This is a joint submission of [in alphabetical order] Equality Hub, One Action Foundation, and ReSista Camp—which are organizations in Nigeria focusing on LGBT rights, in collaboration with the Leitner Center for International Law and Justice and OutRight Action International.

2. **Equality Hub** campaigns and promotes activities directed at advancing the rights and wellbeing of female sexual minorities in Nigeria. We work to build a society where female sexual minorities have equal rights and equal access to economic opportunities. **One Action Foundation** aims to build a tolerant, resourceful and reliable center focused on improving the self worth of LGBTQ+ persons living in Nigeria. We offer programs, services, advocacy that span through empowerment, psychosocial, socio- economic and human rights. **ReSista Camp** aims to provide a safe space for all identities and facilitate healing, networking, community, and movement building. We provide safe spaces for difficult conversations, building the capacity of queers and gender non conforming folks, and transfer knowledge and experience existing within the community. The **Leitner Center for International Law and Justice at Fordham Law School** works to strengthen rule of law and human rights protections for vulnerable populations worldwide. In particular, in cooperation with in-country partners, the Leitner Center works with civil society organizations in a range of countries to support and empower LGBTQ populations. **OutRight Action International** seeks to advance human rights and opportunities for LGBTQ people around the world by developing critical partnerships at global, regional, and national levels to build capacity, document violations, advocate for inclusion and equality, and hold leaders accountable for protecting the rights of all LGBTQ people. Today, we partner with local LGBTQ organizations across four regions and maintain a cross-regional LGBTQ initiative at the

UN in New York. As an international LGBTQ organization with a long history of productive and trusting relationships with grassroots LGBTQ communities worldwide, we serve as a bridge between local communities and high-impact external levers of power.

3. Drawing upon the expertise and documentation of Nigeria-based organizations as the basis for analysis and recommendations, this Stakeholder Submission is respectfully submitted in advance of Nigeria’s upcoming Universal Periodic Review (“UPR”).

## II. SUBSTANTIVE OVERVIEW

4. Nigeria continues to allow the rights of its lesbian, gay, bisexual, and transgender (LGBT) population to be violated on the basis of their actual or perceived sexual orientation, gender identity or expression, despite its obligations to protect the rights of *all* individuals within its jurisdiction—obligations that are required through its status as a State Party to several international human rights conventions including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention Against Torture (CAT), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC), as well as the African Charter on Human and Peoples' Rights (ACHPR). In addition to these treaty requirements, the Nigerian Constitution itself also mandates that the fundamental rights of its residents are protected and guarantees equality for all persons<sup>1</sup> and freedom from discrimination.<sup>2</sup>

5. In 2013, despite widespread criticism from the international community, Nigeria passed the Same Sex Marriage Prohibition Act (SSMPA). Though purportedly aimed at marriage, the

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<sup>1</sup> Constitution of Nigeria (1999), § 17.

<sup>2</sup> *Id.* § 42.

SSMPA's expansive provisions serve to codify the blatant homophobia and transphobia saturating Nigerian society, leading to an increase in unchecked human rights violations and pervasive discrimination. In part, the new law states that "[a] person who enters into a same sex marriage contract or civil union commits an offence and is liable on conviction to a term of 14 years imprisonment"; "[a] person who registers, operates or participates in gay clubs, societies and organization, or directly or indirectly makes public show of same sex amorous relationship in Nigeria commits an offence and is liable on conviction to a term of 10 years imprisonment"; and "[a] person or group of persons who administers, witnesses, abets, or 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 is liable on conviction to a term of 10 years imprisonment."<sup>3</sup> These criminal penalties impermissibly impact not just marriage, but also same sex activity, and even advocacy and expression.

6. Since the enactment of the SSMPA, there has been an increase in crimes and human rights violations against LGBT individuals and their defenders, including rape, beatings, torture, arbitrary arrest, and extortion.<sup>4</sup> Because the SSMPA lends legitimacy to homophobia and condones the punishment of LGBT people, unlawful discrimination is the inevitable result. Homophobia is so widespread that discrimination manifests in all aspects of society, including healthcare, employment, education, and housing.<sup>5</sup> Even those wishing to ally with, advocate for, or simply provide equal opportunity to LGBT individuals may reasonably hesitate to do so, as

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<sup>3</sup> Same Sex Marriage (Prohibition) Act (2014).

<sup>4</sup> See *infra* Violence Against LGBT Individuals; see also The Initiative for Equal Rights, *2015 Report on Human Rights Violations: Based On Real or Perceived Sexual Orientation and Gender Identity in Nigeria*, (2015) <http://www.theinitiativeforequalrights.org/resources/2015-Report-on-Human-Rights-Violations-Based-on-Real-or-Perceived-Sexual-Orientation-and-Gender-Identity-in-Nigeria-.pdf>; Press Release, African Commission on Human and Peoples' Rights, On the Implication of the Same Sex Marriage [Prohibition] Act 2013 on Human Rights Defenders in Nigeria (Feb. 6, 2014), <http://www.achpr.org/press/2014/02/d190/>.

<sup>5</sup> See *infra* Economic, Social, and Cultural Rights.

the SSMPA renders their support illegal.<sup>6</sup> Though non-discrimination is a principle Nigeria has pledged to uphold, the SSMPA effectively legalizes discrimination and allows people to act with impunity according to arbitrary beliefs. Nigeria, in turn, offers little to no relief for the pervasive discrimination resulting from the SSMPA, in contravention of its international and domestic obligations.

7. Even beyond the SSMPA, the fundamental rights of LGBT individuals, many of which will be discussed below, are not being protected in Nigeria. In violation of the anti-discrimination provisions in each of the human rights conventions to which Nigeria is a State Party, the rights that are guaranteed in those conventions—e.g., rights to life;<sup>7</sup> privacy;<sup>8</sup> dignity;<sup>9</sup> freedom of association,<sup>10</sup> assembly,<sup>11</sup> and expression;<sup>12</sup> freedom from arbitrary arrest and detention;<sup>13</sup> freedom from torture, or cruel, inhuman, or degrading treatment;<sup>14</sup> and access to housing,<sup>15</sup> employment,<sup>16</sup> healthcare,<sup>17</sup> and education;<sup>18</sup>—are being systematically denied to LGBT individuals. Furthermore, in other areas beyond those rights explicitly protected under the conventions, LGBT individuals are being treated differently than other members of society and are not being given equal protection of the law, which is also required under these conventions, as well as through the Nigerian Constitution.<sup>19</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> ICCPR Art. 6.

<sup>8</sup> *Id.* at Art. 17.

<sup>9</sup> *Id.* at Art. 10.

<sup>10</sup> *Id.* at Art. 22.

<sup>11</sup> *Id.* at Art. 23.

<sup>12</sup> *Id.* at Art. 19.

<sup>13</sup> *Id.* at Art. 9.

<sup>14</sup> *Id.* at Art. 7.

<sup>15</sup> ICESCR Art. 11.

<sup>16</sup> *Id.* at Art. 6.

<sup>17</sup> *Id.* at Art. 12.

<sup>18</sup> *Id.* at Art. 13.

<sup>19</sup> Constitution of Nigeria (1999), § 42.

### III. ANALYSIS

#### a. Criminalization

8. The Human Rights Committee, as seen in their *Toonen v. Australia* decision,<sup>20</sup> found that the ICCPR’s anti-discrimination and right to equal protection of the law provisions include sexual orientation as a protected group—and that criminalization of same-sex activity was in direct contravention of the ICCPR’s right to privacy.<sup>21</sup> Likewise, Nigeria’s Constitution also protects the right to privacy.<sup>22</sup>

9. First, Section 214 of the Nigerian Federal Code Act criminalizes same-sex activity, albeit exclusively targeted at men having sex with men: “Carnal knowledge of any person against the order of nature or who permits a male person to have carnal knowledge of him or her against the order of nature is liable to imprisonment for 14 years.”<sup>23</sup> Section 217 further states, “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 is liable to imprisonment for 3 years.[sic]”<sup>24</sup>

10. However, the SSMPA’s far-reaching provisions go even further, generating gross violations of the rights of LGBT individuals and their supporters in contravention of Nigeria’s legal obligations under international human rights law. Furthermore, the adverse impact of the

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<sup>20</sup> *Toonen v. Australia* No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

<sup>21</sup> *Id.*

<sup>22</sup> Constitution of Nigeria (1999), § 37.

<sup>23</sup> Criminal Code Act (1990) § 214.

<sup>24</sup> *Id.* § 217.

SSMPA goes far beyond the effects of its plain text, as illustrated in subsequent sections.<sup>25</sup> Criminalization allows and perpetuates violence against LGBT individuals; empowers blackmailers and extortionists; legitimizes denials of access to housing, work, employment, and education; and generates violations of the rights to freedoms of expression, association, and assembly. The SSMPA has created a culture of lawlessness, where multiple codified provisions of existing law are ignored in favor of the overbroad provisions of a statute based on prejudice.

11. After the enactment of the 2014 SSMPA, the institutionalized violations of LGBT rights in Nigeria became even more blatant. In some cases, there have been reports of police arresting people suspected to be gay, taking the person’s phone and using the contact information stored in it to arrange meetings with their friends, who are then arrested as well.<sup>26</sup> Many violations perpetrated by State actors were reported over the past four years, including arrests on “homosexuality charges” (12 men in Kano, January 2016, and 21 men in Oyo, May 2016),<sup>27</sup> arrests for “allegedly attempting to conduct a wedding” (couple arrested, as well as wedding sponsors and the owner of the venue, February 2017),<sup>28</sup> arrests of men attending an HIV awareness event due to accusations that attendants were performing same-sex acts (40 men in Lagos, July 2017),<sup>29</sup> arrests for the celebration of a gay wedding (53 men, charged with “belonging to a gang of unlawful society”),<sup>30</sup> and arrests for simply attending a party associated

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<sup>25</sup> See *infra*, Violence Against LGBT Individuals; *infra*, Blackmail and Extortion.

<sup>26</sup> Leitner Center for International Law and Justice at Fordham Law School, Pen Nigeria, & Pen America, *Silenced Voices, Threatened Lives: The Impact of Nigeria’s Anti-LGBTI Law on Freedom of Expression* (Jun. 29, 2015), p.14.

<sup>27</sup> Human Rights Watch, “Tell Me Where I Can Be Safe”: The Impact of Nigeria’s Same Sex Marriage (Prohibition) Act, (Oct. 20, 2016) <https://www.hrw.org/report/2016/10/20/tell-me-where-i-can-be-safe/impact-nigerias-same-sex-marriage-prohibition-act>.

<sup>28</sup> Human Rights Watch, *World Report 2017: Nigeria*, (2017) <https://www.hrw.org/world-report/2017/country-chapters/nigeria>.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

with the LGBT community (a group of girls [number unknown] were arrested in Benue State after police raided a party suspected of being attended by lesbians, January 2017).<sup>31</sup>

## **b. Violence Against LGBT Individuals**

12. The ICCPR protects the right to life for all individuals within the jurisdiction,<sup>32</sup> as does the Nigerian Constitution.<sup>33</sup> Under CAT, Nigeria also has committed to prevent torture in its jurisdiction.<sup>34</sup> Additionally, by ratifying CAT, Nigeria has agreed that “[n]o exceptional circumstances whatsoever . . . may be invoked as a justification of torture.”<sup>35</sup> In 2014, the African Commission on Human and Peoples’ Rights, meeting at its 55th Ordinary Session, also passed Resolution 275 on *Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity*, which “condemns the increasing incidence of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment and other forms of persecution of persons on the basis of their imputed or real sexual orientation or gender identity”—and “strongly urges States to end all acts of violence and abuse, whether committed by State or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.”<sup>36</sup>

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<sup>31</sup> *Police arrest group of suspected lesbians in Otukpo Benue State*, Nostrings (Jan. 14, 2017) <https://nostringsng.com/suspected-lesbians-arrested-benue/>.

<sup>32</sup> ICCPR Art. 6.

<sup>33</sup> Constitution of Nigeria (1999), § 33.

<sup>34</sup> CAT Art. 10.

<sup>35</sup> *Id.*

<sup>36</sup> African Commission on Human and Peoples’ Rights, Resolution 275, 2014.

Finally, Nigeria's Constitution also includes guarantees of dignity of the person, including freedom from torture.<sup>37</sup>

13. Despite these protections, violations of LGBT rights in Nigeria take place both at the hands of state actors and through the actions of private individuals, which is also a direct consequence of the stigmatization caused by the SSMPA. In this sense, “extortion, mob violence, arbitrary arrest, torture in detention, and physical and sexual violence”<sup>38</sup> are commonly inflicted upon people due to their real or perceived sexual orientation or gender identity, which points to a number of human rights violations. While this law may seem difficult to enforce because participants have to be caught in the act, it has created a climate where victims can be entrapped and later blackmailed, and where LGBT individuals are attacked in their homes based on their real or perceived sexual orientation or gender identity.

14. Prohibitions against torture and inhuman treatment, enshrined in Article 7 of the ICCPR and in CAT, are violated when LGBT individuals are tortured in detention, including where police have tortured individuals attempting to obtain the names of others who are also LGBT.<sup>39</sup> Moreover, violations to the right to life<sup>40</sup> are also being reported, in connection with both the torture suffered in detention and the negligence of the government to take action in the face of non-state actors' actions which threaten the life of LGBT people.

15. According to one report,<sup>41</sup> the SSMPA has effectively legitimized abuses and rights violations against LGBT people, citing “unlawful arrests” and “extortion” by police agents as becoming increasingly more frequent. Sometimes violations involve both state and non-state

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<sup>37</sup> Constitution of Nigeria (1999), § 35.

<sup>38</sup> “*Tell Me Where I Can Be Safe*”, *supra* note 27.

<sup>39</sup> Abby Olheiser, *Nigerian Police Are Already Using New Law to Round Up Gay Men*, *The Atlantic*, (Jan. 14, 2014) <https://www.theatlantic.com/international/archive/2014/01/nigerian-police-are-arresting-gay-men-being-gay/356990/>

<sup>40</sup> ICCPR Art. 6.

<sup>41</sup> *World Report 2017: Nigeria*, *supra* note 28.



actors. For example, as early as a month after the passage of the SSMPA, it was reported that fourteen men were assaulted and thrown out of their homes by the community in Gishiri, Abuja. Some people living in that community painted “homosexuals, pack and leave” with graffiti on the homes of suspected LGBT individuals, and the police then “slapped, kicked and swore at them” when they were taken to the station by the more than fifty people who had dragged them from their homes.<sup>42</sup> While clearly contrary to Nigerian law,<sup>43</sup> many of these offenses go uninvestigated and unpunished when the victim is an LGBT individual or supporter.

16. Moreover, a great number of rights violations against LGBT people pursuant to the SSMPA are conducted by the *Hisbah*, the informal religious Islamic police operating in the northern states that is responsible for the imposition of Sharia Law. Twelve northern states in Nigeria have adopted the Shari’a Law as state penal law. For example, Zamfara Shari’s penal code law (Liwat [sodomy]) in Section 130 states, “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.”<sup>44</sup> The penalty for the commission of this crime is 100 lashes for those that are unmarried, and those who are married will face death by stoning.<sup>45</sup> The law also punishes lesbianism (Sihaq) stating, “If 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 sihaq and therefore will be punished with caning which may extend to

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<sup>42</sup> “*Tell Me Where I Can Be Safe*”, *supra* note 27.

<sup>43</sup> Criminal Code Act (1990) § 357 (rape), ch. 36 (extortion), § 99 (extortion by public officers); Constitution of Nigeria (1999), § 34(1)(a) (torture), § 35 (lawful deprivation of liberty).

<sup>44</sup> Shari’a Penal Code Law (2000), Zamfara State, Nigeria, <http://www.shaimaatalla.com/vb/showthread.php?t=758>.

<sup>45</sup> *Id.*

fifty lashes and in addition be sentenced to a term of imprisonment which may extend to 6 months.”<sup>46</sup>

17. In January 2017, it was reported that the Hisbah Corps conducted a mass arrest of over 50 men who were attending a birthday party in the Kano state,<sup>47</sup> and although the majority of them were released without charges, the release was only made upon payment of bail. As another example, in April 2017 it was reported that one man and his three friends in Gombe state had their home broken into because the neighbors suspected they were gay. These neighbors called the *Hisbah* who threatened to break down their door if not allowed entry. After the men opened the door, they were stripped down, beaten, and injured before being handed over to the police. In other instances, a 35-year-old man was sentenced to death by stoning in Upper Sharia Court in Kebbi State after being alleged to have engaged in sex with an underage boy<sup>48</sup>; another 50-year-old man was sentenced to death by stoning in a sharia court after he allegedly confessed to engaging in homosexual acts.<sup>49</sup> According to a Human Rights Watch Report, since 2010 “at least ten people have been sentenced to death by Shari’a courts; dozens have been sentenced to amputation; and floggings are a regular occurrence in many locations in the north.”<sup>50</sup>

### **c. Blackmail and Extortion**

18. According to the Nigerian Criminal Code Act, any person who demands anything from a person through extortion is guilty of a felony and liable to imprisonment for up to three to 14

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<sup>46</sup> *Id.* § 134-35.

<sup>47</sup> Carl Collison, *Mass arrest of Nigerian ‘gay’ men*, Mail & Guardian, (Sept. 6, 2017) <https://mg.co.za/article/2017-09-06-00-mass-arrests-of-nigerian-gay-men>.

<sup>48</sup> Kabir Dogon-daji, *Sharia Court Sentences Homosexual to Death by Stoning*, allAfrica, (Sept. 27, 2001) <http://allafrica.com/stories/200109270122.html>.

<sup>49</sup> *Death sentence for homosexual act in Nigeria*, afrol News, (July 8) <http://afrol.com/articles/16722>.

<sup>50</sup> Human Rights and Islamic Law in Northern Nigeria, “Political Shari’a?”. <https://www.hrw.org/report/2004/09/21/political-sharia/human-rights-and-islamic-law-northern-nigeria>

years.<sup>51</sup> Yet flagrant extortion and blackmail against LGBT persons in Nigeria is rampant. The enactment of the SSMPA has further promoted attacks, intimidation and abuse against the LGBT community. In one reported survey, 54 percent of the respondents said that they had experienced threats and harassment online.<sup>52</sup>

19. State parties must protect people within their jurisdiction from harassment, injury, and arbitrary detention, and ensure access to justice for all. In a clear departure from its obligations, Nigeria has failed to protect members of LGBT community who are regularly targeted by anti-gay vigilantes, colleagues in the workplace, romantic partners, friends and relatives, and even police officers who demand money, personal belongings, and sexual favors in exchange for their silence.<sup>53</sup>

20. In one example, a woman reported that she was blackmailed both by her colleague for money and by her boss for sexual favors.<sup>54</sup> Upon refusing to cooperate, she was finally exposed and fired, forcing her to flee to a different city.<sup>55</sup> Another Nigerian lesbian was forced to undergo

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<sup>51</sup> Nigeria Criminal Code Act (1990) § 408 (“Any person who, with intent to extort or gain anything from any person - (1) accuses or threatens to accuse any person of committing any felony or misdemeanor, or of offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of any felony or misdemeanor; or (2) threatens that any person shall be accused by any other person of any felony or misdemeanor, or of any such act; or (3) knowing the contents of the writing, causes any person to receive any writing containing any such accusation or threat as aforesaid; is guilty of a felony, and if the accusation or threat of accusation is of (a) an offence for which the punishment of death or imprisonment for life may be inflicted; or (b) any of the offences defined in Chapter 21, or an attempt to commit any of such offences; or (c) an assault with intent to have carnal knowledge of any person against the order of nature, or an unlawful and indecent assault upon a male person; or (d) an attempt to commit the offence of rape, or an assault with intent to commit the offence of rape, or an unlawful and indecent assault upon a woman or girl; or (e) a solicitation or threat offered or made to any person as an inducement to commit or permit the commission of any of the offences aforesaid; - the offender is liable to imprisonment for fourteen years. In any other case the offender is liable to imprisonment for three years. It is immaterial whether the person accused or threatened to be accused has or has not committed the offence or act of which he is accused or threatened to be accused”).

<sup>52</sup> *Not dancing to their music: The Effects of Homophobia, Biphobia and Transphobia on the lives of LGBT people in Nigeria*, Bisi Alimi Foundation, 19 (Jan. 2017) <http://www.bisialimifoundation.org/wp-content/uploads/2016/02/Not-dancing-to-their-music-main-copy.pdf>.

<sup>53</sup> Ryan Thoreson & Sam Cook, *Nowhere to Turn: Blackmail and Extortion of LGBT People in Sub-Saharan Africa*, International Gay and Lesbian Human Rights Commission (2011) <https://www.outrightinternational.org/sites/default/files/484-1.pdf>.

<sup>54</sup> *Id.* at 50.

<sup>55</sup> *Id.*

an exorcism ritual by a pastor involving physical and sexual assault after her family found out about her relationship with another woman. Eventually, her mother asked her to provide “compensation” for her sexuality by buying her a house and giving her a part of her salary every month.<sup>56</sup>

21. Again, in some cases, the police also work collaboratively with vigilantes; officers sometimes arrest and detain LGBT and perceived LGBT individuals with the intention of extorting money.<sup>57</sup> Police mostly act on anonymous tips made by locals and then threaten LGBT individuals with exaggerated charges, intimidate them to make false confessions, and detain them beyond the legally permissible period of 24-48 hours until they pay large bribes. For example, one news report stated that a 24-year-old gay university student was entrapped by a man he had started speaking with on a social network. The man brought three police officers with him dressed in civilian clothes. The student had to spend three days in jail before his father bribed the police with \$900 for his release.<sup>58</sup> Another two men living in Lagos were arrested for holding hands in public; they had to bribe the police officers with \$139 to avoid being charged in court.<sup>59</sup> As another example, one woman who had just come out to her family was brutalized by her elder brother, resulting in a broken arm as well as psychological trauma; she did not report this to the police because she feared more violence and discrimination.<sup>60</sup> Another gay man from Rivers State in Nigeria was accosted by three men on his way back from work who said he looked like a homosexual and threatened to report him if he did not handover his phone, laptop

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<sup>56</sup> *Id.* at 51.

<sup>57</sup> Philip Obaji Jr., *Hunting Down Gays in Nigeria*, The Daily Beast (Nov. 4, 2016) <https://www.thedailybeast.com/hunting-down-gays-in-nigeria>.

<sup>58</sup> Norimitsu Onshi, *U.S. Support of Gay Rights in Africa May Have Done More Harm Than Good*, N.Y. Times (Dec. 30, 2015) <https://www.nytimes.com/2015/12/21/world/africa/us-support-of-gay-rights-in-africa-may-have-done-more-harm-than-good.html>.

<sup>59</sup> Communication with human rights defenders in Nigeria to Equality Hub on reported cases of violations.

<sup>60</sup> *Id.* (Mar. 8, 2018).

and other personal items; he handed them over to avoid being exposed.<sup>61</sup> In Sokoto State, another man, after refusing to hand over extortion money, had his sexual orientation exposed to his friends and was subsequently paraded half naked on the street and then battered.<sup>62</sup> Owing to a clear lack of support structures and heavy stigmatization, after exposure many members of the LGBT community are then forced to leave the city or even the country, putting them at risk of losing their livelihoods, severely hindering their socio-economic development, and adding to their physical and mental hardships.

22. Considering the growing culture of impunity, during Nigeria's last UPR cycle, several States made recommendations that Nigeria end impunity for violations of the human rights of LGBT persons.<sup>63</sup> However, instead of combating impunity, Nigeria has validated existing prejudices by perpetuating anti-gay narratives and not prosecuting violators.<sup>64</sup> Furthermore, by allowing and even facilitating such extortion to occur without any accountability, Nigeria is denying LGBT individuals equal protection of the law and right to privacy in direct contravention of its own laws and its obligations under the ICCPR.<sup>65</sup>

#### **d. Economic, Social and Cultural Rights**

23. Nigeria is obligated under the ICESCR to ensure the rights to work,<sup>66</sup> healthcare,<sup>67</sup> education,<sup>68</sup> and housing.<sup>69</sup> The ICESCR further provides that states must guarantee these rights

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<sup>61</sup> *Id.* (Sept. 8, 2017).

<sup>62</sup> *Id.* (Date Unknown).

<sup>63</sup> *See infra*, Reiterate Recommendations from Second Cycle (2013) UPR on LGBT

<sup>64</sup> "Tell Me Where I Can Be Safe", *supra* note 27.

<sup>65</sup> Art. 26 (Equal Protection), Art. 6 (Right to Life), Art. 17 (Right to privacy).

<sup>66</sup> *Id.* at Art. 6.

<sup>67</sup> *Id.* at Art. 12.

<sup>68</sup> *Id.* at Art. 13.

<sup>69</sup> *Id.* at Art. 11.

“without discrimination of any kind.”<sup>70</sup> The Committee on Economic, Social and Cultural Rights has recognized that both sexual orientation and gender identity are protected under the non-discrimination provisions.<sup>71</sup>

- *Right to Health*

24. Article 12 of the ICESCR affirms the right of everyone to enjoy the highest standard of physical and mental health. The Committee on Economic, Social, and Cultural Rights (“CESCR” or “Committee”) has called on States parties to take a number of essential steps to achieve full realization of this right, including the creation of conditions which would assure appropriate medical services. In Nigeria, the members of the LGBT community face institutionalized homophobia and discrimination.<sup>72</sup> They are routinely discriminated against on the basis of their sexual orientation and/or gender identity, making it difficult for them to access healthcare services. For example, one man complaining of pain reported that he was banished by the staff at a government hospital, who explicitly told him that “they do not treat homosexuals.”<sup>73</sup> Denying LGBT individuals access to healthcare and related information in turn leads to a negative impact on Nigeria’s progress made towards HIV eradication.<sup>74</sup>

25. Social stigmatization, validated by the SSMPA, exacerbates the problem. In one reported survey, 56 percent of the respondents said that LGBT people should not have equal rights,

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<sup>70</sup> ICESCR Art. 2.

<sup>71</sup> See CESCR, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights, UN Doc. E/C.12/GC/20 (June 10, 2009).

<sup>72</sup> Wana Udobang, *The exorcism was over in 15 minutes but nothing changed: LGBT life in Nigeria*, The Guardian, (Feb. 21, 2017) <https://www.theguardian.com/global-development-professionals-network/2017/feb/21/from-exorcism-to-acceptance-lgbt-life-in-nigeria>.

<sup>73</sup> The Violations of Human Rights on the Basis of Sexual Orientation and Gender Identity in the Federal Republic of Nigeria under the African Charter of Human and Peoples’ Rights, A Shadow Report to African Commission on Human and Peoples’ Rights, 50th Session, October and November, 2011 Banjul, The Gambia, 18, [https://www.heartlandalliance.org/gihr/wp-content/uploads/sites/12/2016/02/achpr\\_nigeria.pdf](https://www.heartlandalliance.org/gihr/wp-content/uploads/sites/12/2016/02/achpr_nigeria.pdf).

<sup>74</sup> Sheree R. Schwartz et al, *The Immediate Effect of the Same-Sex Marriage Prohibition Act on Stigma, Discrimination, and Engagement on HIV Prevention and Treatment Services in Men Who have Sex with Men in Nigeria, Analysis of Prospective Data from the TRUST cohort*, (Jun. 1, 2015) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4481876/>.

including access to social services like health care, education and housing.<sup>75</sup> This has resulted in further isolation and a higher suicide rate amongst the LGBT population, particularly lesbian, bisexual and transgender individuals, and those who are HIV positive.<sup>76</sup>

- *Right to Work*

26. Article 6 of ICESCR requires States parties to take appropriate measures to protect every individual's right to work. Moreover, the CESCR has stated that this right is essential for realizing other human rights and is an inherent part of human dignity.<sup>77</sup> The Committee interprets this right to include the right to freely choose and accept work, including the right not to be deprived of work unfairly.<sup>78</sup> However, since the last UPR cycle, many members of the community have either been fired or fear that they will be fired if their identity is exposed.<sup>79</sup> It also makes them more vulnerable to threats of extortion and blackmail, and public disclosure of their identity hinders the possibility of future employment somewhere else.<sup>80</sup>

27. In 2016, Vice President of the Nigerian Football Federation claimed that “lesbianism is destroying teams” and that lesbians should be removed from the league.<sup>81</sup> This was not the first time women faced homophobia in the Nigerian national football team; as far back as June 2011, Dilichukwu Onyedinma, Chair of the Nigerian Women Football League and a member of the Nigerian Football Federation Executive Committee, stated, “Any player that we find that is

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<sup>75</sup> The Initiative for Equal Rights, *Social Perception Survey on Lesbian, Gay and Bisexual Rights*, (Jan. 2017) <https://www.africaportal.org/publications/social-perception-survey-lesbian-gay-and-bisexual-rights/>

<sup>76</sup> Sayali Kirtani, “*There is Nobody to Run to*”: *The LGBT Community in Nigeria*, MEDIUM (Jun. 7, 2017) <https://medium.com/@tbafoundations/there-is-nobody-to-run-to-the-lgbt-community-in-nigeria-5bfb60965a10>.

<sup>77</sup> CESCR, ICESCR General Comment No. 18, *The Right to Work*, U.N. Doc. E/C.12/GC/18, para. 1, (Feb. 6, 2006).

<sup>78</sup> *Id.* at para 4.

<sup>79</sup> Leitner Center et al, *supra* note 26.

<sup>80</sup> *Id.*

<sup>81</sup> Ismael Akwei, *Lesbianism blamed for poor performance of Nigeria's women football team*, africanews (June 14, 2016) <http://www.africanews.com/2016/06/14/lesbianism-blamed-for-poor-performance-of-nigeria-s-women-football-team/>.

associated with lesbianism is disqualified.”<sup>82</sup> Coach Eucharia Uche also went on record to say that she had forced players off the team due to their sexual orientation.<sup>83</sup> Despite this public abuse of the rights of LGBT individuals, Nigeria has not attempted to address the issue of discrimination of people based on their perceived sexual orientation or gender identity.

- *Right to Housing*

28. Article 11 of the ICESCR recognizes the right of everyone to an adequate standard of living which includes housing. It requires states to take appropriate actions to ensure the full realization of this right. The committee has interpreted this right to also protect against unlawful forced evictions.<sup>84</sup> The Nigerian Constitution guarantees and protects its citizens’ right to privacy in their homes and telephone conversations.<sup>85</sup> Despite this, the unlawful eviction of LGBT persons from their homes is extremely prevalent. As one example, a gay man reported that he was forcefully evicted by his landlord’s daughter when she read a correspondence between him and his boyfriend.<sup>86</sup> Another study reported 83% of Nigerians would not accept a LGBT family member, suggesting that if an LGBT person living with family decides to come out or is outed, they will be evicted from the family home.<sup>87</sup>

- *Right to Education*

29. Article 13 of the ICESCR recognizes the right of everyone to education, which must be “directed to the full development of the human personality and the sense of its dignity.” Article 28 of the Convention on the Rights of the Child (CRC) also recognizes this right, which must be

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<sup>82</sup> *Nigeria FA faces Fifa inquiry over ‘ban on lesbians’*, BBC News (Mar. 7, 2013) <http://www.bbc.com/sport/football/21699882>

<sup>83</sup> Conor Gaffey, *Nigerian Official Caught Up in Women’s Football ‘Lesbianism’ Row*, Newsweek, (June 14, 2016) <http://www.newsweek.com/nigerian-official-caught-womens-football-lesbianism-row-470305>

<sup>84</sup> CESCR, ICESCR General Comment 7, The Right to Adequate Housing, U.N. Doc. E/1998/22, para. 1, (May 20, 1997).

<sup>85</sup> Constitution of Nigeria (1999), § 37 (“The privacy of citizens, their homes, correspondence, telephone conversation and telegraph communications are hereby guaranteed and protected”).

<sup>86</sup> Schwartz et al, *supra* note 74.

<sup>87</sup> The Initiative for Equal Rights, *supra* note 75.



based on equal opportunity. However, the stigmatization of LGBT individuals throughout Nigerian society, validated by the SSMPA, as well as the lack of action by the government in the face of human rights violations of LGBT individuals, causes an untenable situation in schools for children who are LGBT or are perceived to be LGBT. One study from 2017, in fact, reports that 56% of those polled support denial of LGBTQI individuals access to education.<sup>88</sup>

30. Homophobic bullying in Nigerian schools has proved to be a serious impairment to adequate access to education. There has also been a failure to provide comprehensive and inclusive education on sexual orientation and gender identity in school systems. In some interviews with LGBT students in Nigerian universities,<sup>89</sup> respondents explained that they suffer constantly with bullying “from fellow students...and that accepting it was preferable to complaining to school authorities, who would then suspend them or expel them for homosexuality or even report them to their families”<sup>90</sup>—raising concerns of resulting isolation and possible mental health issues. One woman who shared her experience of suspension and bullying from school said that she was sent to church for 8 days to “cure the gay” and almost committed suicide as a result. In another example, as recently as March 2018, it was reported that a 25-year-old university student in Ilorin, Nigeria was beaten after his roommate found messages he exchanged with a male friend<sup>91</sup>; unfortunately, he had to relocate to another location to continue his education and avoid further attacks. Finally, it is important to note that the bullying that is allowed to occur with impunity—and the resulting stigmatization—likely have

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<sup>88</sup> *Id.*

<sup>89</sup> Kehinde Okanlawon, *Homophobic bullying in Nigerian schools: The experiences of LGBT university students*, 14 *Journal of LGBT Youth* 51-70 (2017) <https://www.tandfonline.com/doi/full/10.1080/19361653.2016.1256244>.

<sup>90</sup> Mike Daemon, *14 Nigerian university students talk about being gay on campus*, 76 *Crimes* (Sept. 29, 2017) <https://76crimes.com/2017/09/29/14-nigerian-university-students-talk-about-being-gay-on-campus/>

<sup>91</sup> *Student beaten because roommate thinks he's gay*, nostrings, (Mar. 22, 2018) <https://nostringsng.com/student-beaten-roommate-gay/>.

other unforeseen consequences, such as factors connected to the higher percentages of unemployment in the LGBT community, as well as higher levels of poverty and homelessness.

**e. Violations of Freedom of Expression, Association, and Assembly**

31. Articles 19, 21, and 22 of the ICCPR protect the freedoms of expression, association, and assembly, respectively. Nigeria's Constitution also protects freedom of expression,<sup>92</sup> and the right to peaceable assembly and association.<sup>93</sup> The United Nations High Commissioner for Human Rights also issued a groundbreaking report in 2015 analyzing how violence and discrimination based on actual or perceived sexual orientation or gender identity violates a wide range of international human rights laws. This report calls on states to repeal laws that punish individuals on the basis of their sexual orientation or gender identity and restrict freedom of expression, association, and assembly.<sup>94</sup>

32. SSMPA, criminalization and discrimination in Nigeria against LGBT individuals directly infringe these rights. Although the LGBT community has long faced discrimination, violence, and criminalization, the SSMPA has a much more direct and broad impact on individuals and groups who are—or are perceived to be—LGBT, allies, friends, family members, and anyone else who expresses the belief that LGBT rights are human rights. The enforced silence imposed by this law also violates the rights of LGBT persons to physical security, freedom from arbitrary detention, equal protection of the law, and access to housing, health care, education, and the right to live with dignity; most of all, it prevents advocates from challenging the illegality of the SSMPA.

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<sup>92</sup> Constitution of Nigeria (1999), § 39.

<sup>93</sup> *Id.* § 40.

<sup>94</sup> Discrimination and Violence Against Individuals Based on Their Sexual Orientation and Gender Identity, U.N. Office of the High Comm. for Human Rts., U.N. Doc. A/HRC/29/23 (2015), para. 79.

33. In a joint Leitner Center, Pen Nigeria, and Pen America report, one interviewee noted “that the law has made LGBT people “very conscious of how they express themselves in public spaces,” and that LGBT individuals are now forced to refrain from speaking or acting in a way that may draw suspicion—even in the private sphere.<sup>95</sup> Publishing LGBT content online and in print media poses significant challenges. The same interviewee explained, “If we want a website that talks about sexual orientation and gender identity, we can’t find a local host for it because the Nigerian Communications Commission has a problem with it...<sup>96</sup>[; w]e’ve gone to print to say we want our issues put in the newspaper so people can get a view of what we are asking for, and people turn us away and say no, we can’t publish this. We can’t even speak out to criticize how the media reports on LGBT issues in this country—some people discuss this in a very un-objective way, and we can’t even challenge it.”<sup>97</sup> Finally, some interviewees also reported hearing rumors that the government was looking into surveillance systems to monitor online activity, and expressed concern that those systems may eventually be used to target the LGBT community.<sup>98</sup>

34. The SSMPA clearly violates the guarantees of freedom of expression, assembly, and association, in contravention of the human rights treaties to which Nigeria is a State Party, as well as the Nigerian Constitution, which states that “every person shall be entitled to assemble freely and associate with other persons and in particular may form or belong to any particular party, trade union or any other association for the protection of his interests.”<sup>99</sup> Again, the SSMPA validates and reinforces cultural bias towards LGBT individuals. For example, one study showed that 94% of respondents strongly disagreed that homosexuals should be allowed to

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<sup>95</sup> Leitner Center et al, *supra* note 26, at 13.

<sup>96</sup> *Id.* at 14.

<sup>97</sup> *Id.* at 16.

<sup>98</sup> *Id.* at 15.

<sup>99</sup> Constitution of Nigeria (1999), § 40.

have meetings as a group or have the right to assembly.<sup>100</sup> The human rights violations resulting from these laws affect everyone, threatening free expression and creative freedom, as well as the rights to free association and assembly for all groups.<sup>101</sup> Laws that ban the expression of one's own identity, or support for others who do so, stifle democratic debate and the free exchange of information and opinions.

#### IV. SUMMARY & RECOMMENDATIONS

35. Despite the Nigeria's constitutional guarantees and international law obligations, discrimination remains institutionalized in families, communities, and in the behaviour of government officials, such as police, and many health care workers and educators. Nigeria rejected all LGBT related recommendations made by other states in the last UPR cycle [listed below], reporting that “[t]he issue of sexual orientation did not enjoy consensus within the United Nations human rights system, and all attempts to integrate sexual orientation into existing universally recognized human rights had so far failed[;] the overwhelming majority of Nigerians objected to same-sex relationships, on the basis of their deeply held religious, cultural and moral beliefs, against which no government could successfully legislate.”<sup>102</sup> Instead of ending discriminatory practices, the Nigerian government enacted the SSMPA, which clearly contravenes its international human rights obligations.

36. In 2017, 210 violations were reported in 20 states by 32 state actors and 168 non-state actors, showing an increase from 2015; there were also 10 cases where state and non-state actors colluded to negatively affect lives of LGBT individuals. There were 32 cases of invasion of

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<sup>100</sup> Schwartz et al, *supra* note 74.

<sup>101</sup> *Toonen*, *supra* note 20.

<sup>102</sup> Rep. of the Working Group on the U.P.R: Nigeria, U.N. Doc. A/HRC/25/6 (Dec. 16, 2013) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/190/10/PDF/G1319010.pdf?OpenElement>.

privacy, 68 cases of blackmail and extortion, and 48 cases of battery and assault.<sup>103</sup> The SSMPA continues to validate and reinforce discrimination and cultural bias. In fact, one poll shows that 91% of Nigerians do not think people are born with an LGBT identity, and a majority still support the SSMPA; furthermore, 61% agree that LGBT should not have equal access to public services such as healthcare, housing and education.<sup>104</sup> Finally, the SSMPA's violations of freedom of expression, aside from essentially criminalizing LGBT identity, also make it virtually impossible to advocate against the SSMPA itself.

***Reiteration of recommendations from Second Cycle (2013) UPR on LGBT [all rejected by Nigeria]:***

- Amend and review all legislation and policies, including the Same-Sex Marriage Bill, with a view to decriminalize LGBTI persons (Austria);
- Revise laws discriminating against LGBTI persons, including refraining from signing into law any new legislation criminalizing LGBTIs (Czech Republic);
- Establish policies and procedures that protect the human rights and security of all Nigerians including LGBT persons, their families and associates (United States of America);
- Ensure the universality of human rights, safeguarding and protecting human rights of all Nigerians irrespective of gender, age, sexual orientation, gender identity or religious affiliation (Sweden);
- Ensure that no legislation discriminates between men and women, and enact legislation to prevent violence against people based on sexual orientation (Canada);

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<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

- Take steps to ensure that the human rights of all citizens are protected, regardless of their religion, sexual orientation or gender identity (Australia);
- Consider the adoption of the necessary measures to eradicate discrimination on the grounds of sexual orientation (Argentina);
- Release all persons imprisoned or detained on the grounds of their sexual orientation or gender identity (Austria);
- Repeal all provisions that give rise to discrimination based on sexual orientation or gender identity (France);
- Adopt measures to combat discrimination against persons on the grounds of their sexual orientation or gender identity, and decriminalize sexual acts between consenting adults of the same sex, in order to bring its legislation in line with the Second Optional Protocol to the Covenant on Civil and Political Rights (Uruguay);
- Expressed concern about the Anti-Same-Sex Marriage Bill, and asked how Nigeria would guarantee such rights, since they were recognized in the Constitution. And recommend amending article 12 of the Constitution to facilitate the automatic incorporation in the internal legal system of international conventions it has signed up to in the area of human rights (Spain).

***Our Recommendations for UPR Third Cycle (2018):***

- Repeal all laws, policies and practices that result in discrimination on the basis of sexual orientation and gender identity;
- Establish policies and procedures that protect the human rights and security of LGBT persons, their families, and associates;

- Undertake legislative and policy measures that address the homophobic environment and promote acceptance of homosexuality and diverse gender identities;
- Ensure the rights to freedom of expression, association, and assembly;
- End impunity of violations of human rights of LGBT persons;
- In accordance with *Resolution 275 of the African Commission on Human and Peoples' Rights on protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation and gender identity*, investigate all cases of violence suffered on the basis of perceived or real sexual orientation and gender identity;
- Release all persons detained or imprisoned based on their actual or perceived sexual orientation or gender identity;
- Arrange trainings for police officers, judges, media and other law enforcers on sexual orientation and gender identity issues; and
- Publish a report on the progress of implementation and developments on LGBT issues