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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

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

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

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

REFERENCE: AL G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) Health (2002-7) G/SO 214 (107-9)
NGA 1/2014

13 January 2014

Excellency,

We have the honour to address you in our capacities as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolution 24/7, 16/4, 24/5, 24/6, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention to information we have received concerning **the Same Sex Marriage (Prohibition) Bill, 2011**.

This bill has been the subject of an allegation letter sent to your Excellency's Government on 20 December 2011 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the situation of human rights defenders. It was also subject of an allegation letter sent to your Excellency's Government on 13 June 2013 by the aforementioned Special Rapporteurs and the Working Group on arbitrary detention. We regret that to date, no response has been received from your Excellency's Government to these two communications.

Upon approval, the final text of the Bill has not yet been made public. Therefore, the following comments are based on a draft version of the Bill and have been made without the possibility to compare it to the official and final version of the Bill.

According to information received:

The Senate approved a revised version of the Same Sex Marriage (Prohibition) Bill, 2011, on 18 December 2013. According to our information, the Bill is currently before the President for his consideration.

Allegedly, the Bill still retains the majority of the provisions that were subject of the aforementioned allegation letters, including the ten years imprisonment to anyone who “registers, operates or participates in gay clubs, societies or organizations” (article 5. (2)) or who “supports the registration, operation and sustenance of gay clubs, societies, organizations, processions or meetings” (article 5. (3)).

The Government of Nigeria is requested to give due consideration to the elements raised in the allegation letter dated 13 June 2013 and to provide answers to the questions raised therein. For reference, the full allegation letter is included as an attachment to this letter.

Serious concerns are expressed that the aforementioned proposed legislation would unduly limit the free exercise of the rights to freedom of association, assembly and opinion and expression. Concerns are further expressed that obstacles may be put in place to prevent human rights defenders and activists defending the human rights of LGBT persons, to peacefully advocate for dissenting views and exercise their legitimate rights. Concerns are also expressed that the bill might have an intimidating effect on a wide range of associations working in related fields, including for instance those who provide psychosocial support to LGBT people, those who advocate for human rights for all without discrimination, and those working to prevent transmission of HIV.

Detention as in the proposed Nigerian legislation is in violation of international law according to the long-standing jurisprudence of the Working Group on Arbitrary Detention.

We would also like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 17 of the International Covenant on Civil and Political Rights (ICCPR), which provides that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation”; and article 19 which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers,

either orally, in writing or in print, in the form of art, or through any other media of his choice.”

With regards to the criminalization of anyone who “supports the registration, operation and sustenance of gay clubs, societies, organizations, processions or meetings”, we would like to refer to article 21 of the ICCPR which provides that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others”; and article 22 which provides that “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

In this connection, we would like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

In his report to the Human Rights Council, the Special Rapporteur on the rights to freedom of association and of assembly emphasized that “the rights to form and join an association is an inherent part of the right to freedom of association [...] International human rights law stipulates that everyone has the rights to freedom of association [...] The right to freedom of association obliges States to take positive measures to establish and maintain an enabling environment. It is crucial that individuals exercising this right are able to operate freely without fear that they may be subjected to any threats, acts of intimidation or violence [...] Associations pursuing objectives and employing means in accordance with international human rights law should benefit from international legal protection. Associations should enjoy, inter alia, the rights to express opinion, disseminate informational, engage with the public and advocate before Governments and international bodies for human rights, for the preservation and development of a minority's culture or for changes in law, including changes in the Constitution”. (A/HRC/20/27, para. 53, 54, 63, 64).

With regard to the potential negative impacts that this Bill can have on the work of people who defend the human rights and freedoms of LGBT individuals, we wish to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that “everyone has the right individually or in

association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

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

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

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

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

With regard to article 7 of the Declaration on human rights defenders, the Special Rapporteur on the situation of human rights defenders has stated that the right to develop and discuss new human rights ideas is enshrined in the Declaration on Human Rights Defenders as an important provision for the ongoing development and articulation of human rights. Article 7 provides for the right to discuss and advocate for human rights ideas and principles that, in some contexts, are perceived as new or unpopular because they address human rights issues that might challenge tradition and culture. In this

connection, the Special Rapporteur has encouraged States to do the necessary to guarantee the principle of pluralism and recognize the right of defenders to promote and advocate for new human rights ideas or ideas that are perceived as new. She has further encouraged States to take additional measures to ensure the protection of defenders who are at greater risk of facing certain forms of violence and discrimination because they are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes, including about sexual orientation and gender identity.

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

With regard to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, we would like to reiterate that article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Nigeria is a party since July 1993, includes an obligation on the part of all States parties to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially the most vulnerable or marginalized sections of the population, without discrimination. Furthermore, article 2 of the ICESCR requires States to guarantee that all rights enunciated in the Covenant will be exercised without discrimination of any kind.

In this connection, we wish to draw the attention of your Excellency's Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which provides that the right to health is closely related to, and dependent upon, the realization of other human rights including non-discrimination, privacy and right to information (para.3). The Committee reiterates the Covenant's prohibition of any discrimination in the realization of the right to health on the grounds of national or social origin, sexual orientation, health status (including HIV/AIDS), and civil, political, social or other status (para.18). The principle of non-discrimination applies to all aspects of the right to health and constitutes an immediate obligation (para.30). With regard to the freedoms enjoyed under the right to health, the Committee, in its General Comment No. 14, underscores the right to control one's health and body, including sexual and reproductive freedom. Furthermore, all health facilities, goods and services must be respectful of medical ethics and culturally appropriate, as well as being designed to respect confidentiality and improve the health status of those concerned (para.12).

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

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

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

Given the seriousness and urgency of the allegations, we would like to inform your Excellency's Government that we might consider issuing a press release on the issues contained herein.

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

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

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Chair-Rapporteur of the Working Group on Arbitrary Detention

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