

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27/Add.3, 19 June 2012

Nigeria: Alleged restrictions on the rights to freedom of association and of peaceful assembly of groups defending lesbian, gay, bisexual, and transgender (LGBT) rights

228. JAL 20/12/2011. Case no. NGA 5/2011.

State Reply: None to date.

Excellency,

We have the honour to address you in our capacities as 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 General Assembly resolution 60/251 and to Human Rights Council resolution 16/4, 15/21, 15/22, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the Same-Gender Marriage Bill that may discriminate and unduly restrict the rights to freedom of association and of peaceful assembly of groups defending Lesbian, Gay, Bisexuals and Transgender (LGBT) rights. Similar issues have been raised in the urgent appeal addressed to your Excellency's Government by the Special Rapporteur on the situation of human rights defenders on 10 April 2006.

According to the information received:

On 29 November 2011, Nigeria's Senate passed the "Same-Gender Marriage" Bill. It is reported that the approval of the House of Representatives is pending before the President is able to sign it into law. It is alleged that if passed the "Same-Gender Marriage" Bill would have further adverse implications on LGBT people in Nigeria.

It is alleged that the Bill contains a broad definition of the term "same-sex marriage" as it includes all suspected same-sex relationships and targets not only those who are suspected of practicing same-sex relationships, but also anyone who "registers, operates or participates in gay clubs, societies and organizations" or those who "witness, aid or abet" such relationships.

It is alleged that if passed, the Bill may put a wide range of people at risk of criminal sanctions. Not only may those suspected of practising same-sex relationships be targeted by the Bill, but also anyone who denounces discrimination based purely on a person's actual or presumed sexual orientation or gender identity.

If passed, the Bill, which provides for up to 14 years of imprisonment for those suspected of engaging in same-sex relationships, would contradict universally recognized

human rights law, including the right not to be arbitrarily or unlawfully subject to interference with one's privacy and family (article 17 of the ICCPR) or the right to be treated equally before the law and to be entitled without any discrimination to equal protection of the law (article 26).

By seeking to impose up to ten years imprisonment and a severe fine on anyone who "registers, operates or participates in gay clubs, societies or organizations" or "witnesses", "aids" or "abets" same-sex relationships or even "supports the registration, operation and sustenance of gay clubs, societies, organizations, processions or meetings", the Bill may also unduly restrict the rights to peaceful assembly and of association (Article 21 stipulates "The right of peaceful assembly shall be recognized"; and Article 22 states that "Everyone shall have the right to freedom of association with others"). If the law is adopted, lesbian, gay, bisexual and transgender individuals, as well as those perceived as belonging to any of these groups, and those that bring support to them will be prevented from associating or assembling freely. The Bill, if brought into law, could also penalize any human rights defenders and activists who would seek to stand up for the rights of lesbian, gay, bisexual or transgender people in Nigeria.

It is alleged that the Bill may also have a far-reaching 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.

Should this information be corroborated, serious concerns are expressed that the aforementioned proposed legislation may unduly limit the free exercise of the right to freedom of association and of peaceful assembly. Concerns are further expressed that obstacles may be put in place to prevent human rights defenders and activists defending LGBT rights, to peacefully advocate for dissenting views and exercise their legitimate rights. Concerns are also expressed that this legislative move may contravene your Excellency's Government commitment when it stated, at the occasion of the debate of the 2009 Universal Periodic Review of Nigeria, that "as citizens, all Nigerians have their fundamental rights guaranteed by the Constitution."

While we do not wish to prejudge the accuracy of these allegations, we wish to remind your Excellency's Government that Nigeria, as a State party to the International Covenant on Civil and Political Rights (ICCPR), has a duty to guarantee equal protection before the law and to prohibit discrimination on any ground. The words "or any other grounds" in article 26 ICCPR have been interpreted to include sexual orientation. The right to freedom from discrimination on grounds of sex is also recognized in article 2 of the African Charter on Human and Peoples' Rights, which was ratified by Nigeria in 1983, and which has become part of Nigeria's national laws under the 1990 Ratification and Enforcement Act. The African Commission, in outlining that the aim of the principle in article 2 is to ensure equality of treatment for individuals, listed sexual orientation as one of the grounds of prohibited discrimination.

We also wish to call to your Excellency's Government's attention the common provisions stipulated under article 21 and 22 of the International Covenant on Civil and Political Rights, where the rights to freedom of peaceful assembly and association are

recognized, and whereby "(n)o restrictions may be placed on the exercise of this right other than those which are prescribed by 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". Such permissible restrictions, however, can only justified in a democratic society for achieving one of the abovementioned purposes and shall not be arbitrarily invoked to prevent dissenting views from exercising their legitimate rights.

We would like to refer your Excellency's Government to the Human Rights Council resolution 15/21 recognizes that "exercising the rights to freedom of peaceful assembly and of association free of restrictions, subject only to the limitations permitted by international law, in particular international human rights law, is indispensable to the full enjoyment of these rights, particularly where individuals may espouse minority or dissenting religious or political beliefs." Moreover, and in line with operative paragraph 1 of the same resolution, we call on your Excellency's Government "to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, 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."

With regard to the effects of the proposed Bill on the work of human rights defenders as well as their position in society, we would like 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".

With regard to article 7 of the Declaration on human rights defenders, the Special Rapporteur on the situation of human rights defenders has stated (A/66/203, paras. 56-61 and 112-114) 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 of human rights. This includes the right to discuss and advocate for human rights ideas and principles that are not necessarily new but that, in some contexts, may be perceived as new or unpopular because they address 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 or 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.

Furthermore, we would like to bring to the attention of your Excellency's Government 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.

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 19 of the ICCPR, 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."

We are also concerned that the Bill's alleged criminalization of the registration, operation and participation in gay clubs, societies and organization, as well as sanctions against persons supporting those activities, will have a detrimental impact on the efforts to combat the spread of HIV in Nigeria, which has the world's third-largest number of people living with HIV. It has been shown that criminalization of vulnerable populations, including LGBT people, makes HIV and AIDS prevention, treatment and education efforts less accessible to these groups. While decriminalization combined with efforts to address stigma and discrimination against those vulnerable populations constitutes a far more effective approach to HIV prevention.

In connection to the allegations and concerns described above, we urge your Excellency's Government to take all necessary measures to guarantee that the right to freedom of association and of peaceful assembly is upheld. We also encourage your Excellency's Government to adopt the necessary measures to ensure that defenders, activists and civil society organizations can carry out their human rights work in a free and safe environment.

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 Nigeria's obligations under international human rights law and standards, particularly with regard to the rights to freedom of peaceful assembly and of association.
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.

Observations

229. The Special Rapporteur regrets that no reply has been received from the Government of Nigeria to the allegation letter sent during the reporting period. He considers responses to his communications as an important part of the cooperation of Governments with his mandate, and urges the authorities to provide as soon as possible detailed responses to all the concerns he raised in his communication.

230. The Special Rapporteur underlines that the rights of peaceful assembly and of association are key for individuals espousing minority or dissenting views or beliefs. He therefore urges States to refrain from adopting legislations that can hamper the legitimate work of civil society, notably of those espousing minority or dissenting views or beliefs. He recommends to the Government to revise the Same-Gender Marriage" Bill to ensure it complies with international human rights law. He is available to provide any technical assistance the Government might require in this regard.