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Cover Page: Love Alliance Nigeria Partners Shadow Report as part of the Stakeholder Report to the 45th session of the Universal Periodic Review (UPR) Working Group

1. This submission is presented as a civil society Shadow Report as part of the Stakeholder Report to the 45th session of the Universal Periodic Review (UPR) Working Group on behalf of Love Alliance partners in Nigeria.

2. The Love Alliance is a five-year programme that started in 2021 and runs until 2025 is based on an unwavering commitment to protecting, promoting and fulfilling sexual and reproductive health and rights (SRHR) globally, unifying people who use drugs, sex workers and LGBTIQ+ movements (known as key populations), and amplifying the diversity of voices in these communities.

3. The Love Alliance is composed of alliance partners GALZ, SANPUD, Sisonke, UHAI EASHRI, ISDAO, Global Network of People Living With HIV (GNP+) and Aidsfonds, and other community-led organisations that are part of local, national, regional and global movements of LGBTIQ+, sex worker, people who use drugs and people living with HIV. Together, we have a strong track record in global partnership management, grant-making including participatory grant-making, thought leadership, organisational resilience, movement building and capacity strengthening, and advocacy.

4. There are 13 grantee organisations in Nigeria that are part of the Love Alliance made up of people who use drugs, sex workers and LGBTIQ+ movements and organisations that participated in the formulation of this submission. This submission is based on the lived experiences of these key population groups, their reports on human rights and a Focus Group Discussion (FGD) about the state of key populations in Nigeria.

Love Alliance Nigeria Partners Shadow Report as part of the Stakeholder Report to the 45th session of the Universal Periodic Review (UPR) Working Group

Introduction:

1. This submission is presented as a civil society Shadow Report as part of the Stakeholder Report to the 45th session of the Universal Periodic Review (UPR) Working Group on behalf of Love Alliance partners in Nigeria.

2. This submission focuses on the rights of Key Populations, namely lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI+) people, people who use drugs and sex workers, including the impact of the ongoing criminalisation of these groups, the consequent treatment by law enforcement officials such as arbitrary arrest, detention and harassment, and the lack of access to justice and adequate health services that sex workers, people who use drugs and LGBTQI+ people in Nigeria face. The report concludes with relevant recommendations to address these human rights violations. The evidence and recommendations in this submission are based on the lived experiences, findings and recommendations of LGBTQI+ people, people who use drugs and sex workers, speaking for themselves through Focus-Group Discussions, personal testimonies and community-led monitoring of human rights violations.

The ongoing criminalisation of Key Populations:

3. LGBTQI+ people, people who use drugs and sex workers are effectively criminalised in Nigeria. The ongoing criminalisation of these groups restricts their right to dignity, access to justice, access to adequate health care, privacy, to earn a living and to love and have sexual relations with whoever they want. Criminalisation also leads to stigma and discrimination, arbitrary arrest, detention and harassment, extortion, abuse, forced evictions and sexual violations. The repeal of these laws, which are based on moralism and social control, would address these human rights violations for the most marginalised in Nigerian society.

4. There are several existing laws that directly and indirectly criminalize LGBTQI+ persons and LGBTQ+ organizations, including articles 214, 215 and 217 of the Federal Penal Code.[1] In 12 Northern States where Sharia law is practiced, LGBTQI+ persons may face the death penalty if caught.[2] The Same Sex Marriage Prohibition Act (SSMPA) signed in 2014, prescribes an up to 14-year penalty which applies across all the States including States where Sharia law is practiced. The SSMPA was enacted in 2014 which criminalises same-sex marriage and displays of affection between people of the same sex, imposing a 10-year prison sentence on anyone who "joins, manages or participates in gay clubs, societies and organizations."[3]

5. Drug use, frequenting places of drug use and the possession of drug use equipment is criminalised in Nigeria by the Dangerous Drugs Act (1935)[4] and the National Drug Law Enforcement Agency (NDLEA) Act No. 48 of 1989.[5]

6. Sections 222, 223, 224 and 225 of the Criminal Code Act[6] are interpreted to effectively criminalise sex workers in Nigeria. The Criminal Code Act provides that sex work is not a criminal offense, and that it is only an offense to keep a brothel, procure or pay for the services of a sex worker, or live off the earnings of a sex worker. However, these have been misinterpreted by law enforcement agencies to mean that sex work is illegal, which has led to a lack of respect for the fundamental human rights of sex workers. In the northern states, where Islamic Penal code is practiced, sex work is illegal.

Arbitrary arrest, detention and harassment of Key Populations by law enforcement officials:

7. The Violence Against Persons Prohibition Act of 2015 in Nigeria[7] prohibits all forms of abuse and excessive use of force by law enforcement agents against any individual upon arrest. However, representatives from LGBTQI+, sex workers and people who use drugs groups all reported that the greatest abuse and harassment they face in Nigeria are from law enforcement officials.[8]

8. For example, the LGBTQI community continues to be subject to violence, aggression, blackmail, extortion and kidnapping. In 2021 and 2022, there were several mass arrests in different parts of the country, and in the past several years, there has been a significant spike in cases of illegal stop-and-search operations, unlawful detentions, extortion, and targeted abuse and arrests based on perceived sexual orientation and gender identity and expression by law enforcement officers.[9]

9. As outlined in Drug Harm Reduction Advocacy Network Nigeria (DHRAN) submission to the 45th session of the Universal Periodic Review (UPR) Working Group, "the people who use drugs in Nigeria continue to routinely experience arbitrary arrests and abuse by law enforcement agencies and have reported instances of police officers frequently raiding drug hotspots and areas where drugs are sold and used, primarily for their own personal financial gain through exploitation and extortion of those involved.[10] Among the various types of abuse faced by people who use drugs at the hands of the police, physical abuse is the most common.[11] There have been reports of rape at the hands of law enforcement officers, particularly among women who use drugs as documented by community-based organisations."[12]

10. Female sex workers also face arbitrary arrest, rape as a bail condition, extortion, theft, and false accusation from law enforcement agents who regularly invade their privacy, destroy personal properties and wrongfully stop and search them. Law enforcement agents also display abuse of power in the form of beatings, public harassment, planting evidence during unwarranted searches, and confiscation of sexual and reproductive health commodities.[13] These arrest continue, even though selling sex is not an offence in Nigerian law (although keeping a brothel is). As held by Federal High Court, Abuja, on 18th of December, 2019 in the case of Constance Nkwocha & 15 others v. Honourable Minister of the Federal Capital Territory & 5 Ors., with Suit No. FHC/ABJ/483/2017.[14]

11. One sex worker group spoke of the success of involving local law enforcement in their activities to address the stigma and discrimination faced by sex workers. This involved training law enforcement on the rights of sex workers, the link between the criminalisation of sex workers and human rights abuses and how it impacts their lack of access to justice and healthcare; and inviting law enforcement to join all the sex worker meetings and community activities. This resulted in the police setting up a helpline that sex workers can call when facing human rights abuses by clients, law enforcement and brothel owners and law enforcement having seen "the humanity in sex workers."[15]

12. At least 82 cases of torture, ill treatment and extra-judicial execution by SARS between January 2017 and May 2020 by the notorious Special Anti-Robbery Squad (SARS), despite anti-torture legislation passed in 2017. The victims of the police unit, set up to fight violent crimes, are predominantly male between the ages of 18 and 35, from low-income backgrounds and vulnerable groups.[16] Tens of thousands of young people mobilised through social media and staged

demonstrations calling for the abolition of the federal Special Anti-Robbery Squad (SARS).[17]

Lack of access to justice for Key Populations:

13. Due to the effective criminalisation of LGBTQI+ people, people who use drugs, it is impossible for them to report cases of assault, sexual violence, extortion, bribery, or any crime that is committed against them, because it would expose them as being from these groups and could result in detention and legal repercussions. This means that key populations have no protection in society, and are made more vulnerable to further abuse, extortion, mob violence, bribery, extortion and kidnapping.

14. It is reported that it is often law enforcement who are leading these human rights violations. When a person from a key population reports a violation, law enforcement uses this information to extort or bribe key populations, arbitrarily arrest them on spurious claims, and keep them in detention for a long time without legal representation.[18] This results in key populations in Nigeria not reporting crimes committed against them to law enforcement. Other mechanisms for redress such as legal aid or the Human Rights Commission are not accessed by key populations because of the criminalisation, stigma and discrimination that key populations face.

15. Other human rights violations that are becoming common in Nigeria is when LGBTQI+ people are '*kitoed*'. *Kito* is when an LGBTQI+ person is deceived by someone who pretends to also be a LGBTQI+ person to either extort, blackmail, expose or violate a person. The victim's trust is slowly gained and then they are turned against once the perpetrator has enough evidence to be able to expose and blackmail them. This has led to the murder, robbery and violation of LGBTQI+ people in Nigeria on a large scale.[19] These cases go unreported because of the stigma associated with being *'kitoed'* and because law enforcement will know that the person is LGBTQI+. The lack of access to justice for *kito* means that perpetrators continue these human rights violations with impunity. There is also increased evidence of extensive practice of conversion practices in the country, where specific forms of violence are conducted against LGBTQI+ persons in a bid to change their sexual orientation or gender identity.[20]

Lack of access to Key Population-friendly healthcare services:

16. The criminalisation of LGBTQI+ people, people who use drugs and sex workers negatively impact their right to health care, firstly because they are afraid to access healthcare due to stigma and discrimination in health facilities as a result of their criminalised status, and secondly, because there are no healthcare services tailored to their specific needs available. This exacerbates health disparities and violates their right to equal access to healthcare. Key populations often have unique health challenges related to their identities or behaviours, such as higher rates of HIV, mental health issues, or specific sexual health and reproductive health needs. Neglecting these needs denies them their right to the highest attainable standard of health and exacerbates health inequities. The criminalisation of key populations also results in inadequate investment in health services for key populations, denying them of their right to the highest attainable health.

17. According to UNAIDS, HIV prevalence among sex workers is 8-fold higher in Nigeria and Ghana, than the rest of the population. HIV prevalence is 17% among brothel based sex workers, and 15% among non-brothel based female sex workers, 25% of MSM and 11% among people who inject

drugs. Higher HIV prevalence is evidence of unequal access to HIV prevention and treatment, and greater barriers to access - including violence and stigma.[21]

18. There are no public key population-friendly services available to people from these groups. All key population-friendly healthcare is delivered by non-governmental organisations (NGOs) or key populations themselves, and are often only available in very few large cities, excluding the majority of key populations in Nigeria. This results in key populations not seeking healthcare services and delaying preventive services and screenings for their health, due to fear of ill-treatment in public facilities. This creates health problems that could have been avoided if key populations felt safe and respected in public facilities. LGBTQI+ people, people who use drugs and sex workers shared numerous incidents of being humiliated and shunned by health care workers or even having health care services refused for them on the basis of their identity.[22]

19. LGBTQI+ people, people who use drugs and sex workers are also not provided care that is tailored to their needs. For example, transgender people in Nigeria are denied access to gender-affirming healthcare and from appropriate reproductive care. Transgender individuals face obstacles in accessing necessary healthcare, including gender-affirming treatments such as hormone therapy. Denying or restricting access to these services infringes upon their right to the highest attainable standard of health.

20. There is also no Opioid Substitution Therapy (OST) available in Nigeria for people who use drugs. Although the National HIV and AIDS Strategic Framework for 2021-2025 of Nigeria recognises people who use drugs as a key population and supports the provision of harm reduction services, including Needle and Syringe programs and OST,[23] these are yet to be implemented in Nigeria. Harm Reduction services are not widely available for people who use drugs to reduce the harms of their drug use. Out of 37 states in Nigeria, only 7 states have Needle and Syringe programs (NSP) aimed at reducing infectious disease spread through drug use injecting equipment sharing. The NSP is delivered by people who use drugs and funded through the Global Fund Against Tuberculosis, AIDS and Malaria Country Grant. There is no public health facility or Government funded program offering harm reduction and is not covered in the National Health Insurance Scheme. Naloxone for overdose management is also not available in communities and is restricted to public health facilities only,[24] despite evidence that it should be available at community level to prevent people who use drugs from overdosing and dying.

21. Sex workers also have specific health needs such as prevention of sexually transmitted infections, sexual and reproductive health care and mental health services. The lack of sex-worker friendly health care services put them at greater risk of developing health problems, denying them their right to the highest standard of health.

Closing Civil Society Space:

22. Due to the criminalised nature of key populations, key population organisations and their members are severely challenged in doing their work, and face human rights violations such as illegal surveillance and privacy infringements and threats to their safety and security, and are also not allowed the right to meaningfully participate in decision-making about policies, laws and programmes that affect their lives.

23. Key population organisations and their members experience surveillance, monitoring, or privacy breaches by authorities or other state actors. Surveillance and privacy infringements violate the right to privacy, confidentiality, and the protection of personal information. These violations can create an environment of fear, erode trust, and deter individuals from seeking

services.[25] Key population groups reported arbitrary arrests of community members who are organising programmes around key population rights and access to health services during community activities. The reasons given for the arrest are vague and community members often languish in detention for long periods of time with law enforcement misrepresenting the cases.[26]

24. Key population organisations and their staff may face threats to their safety and security, including harassment, violence, or intimidation. These threats can come from various sources, including authorities, community members, or other organisations. Such threats violate the right to life, security, and freedom from violence, impeding the ability of key population organizations to carry out their work effectively and safely.[27]

25. The criminalisation of key populations results in the exclusion of key populations from decision-making processes related to their healthcare. This lack of meaningful participation denies them the right to participate in decisions directly affecting their health and well-being. It is essential to ensure the active involvement of key populations in health planning, policy development, and program implementation to uphold their rights to participation and self-determination investing in key population organizations contributes to the overall strengthening of health systems.

26. The 'anti-gender movement', a well-funded transnational coalition of conservative activists and civil society organizations working to counter political and social gains made by local and international feminists and LGBTQI+ movements are gaining momentum in the region and are seen in the increased evidence of extensive practice of conversion practices in the country.[28] This undermines and reverses the gains made by key populations in fighting for their rights and access to healthcare. Anti-terrorism and emergency security measures are also often used to close key population meetings or to unlawfully arrest or detain individuals from key populations.[29]

Recommendations:

27. Utilise all legal mechanisms to challenge discriminatory laws and policies that contribute to the marginalisation and vulnerability of key populations and repeal all laws related to being an LGBTQI+ person, a sex worker or a person who uses drugs. This should include:

a) Decriminalising consensual adult same-sex relationships and explicit decriminalization of the Same-sex Marriage Prohibition Act (SSMPA).
b) Decriminalise sex work fully by repealing sections 223 of the Criminal Code and related legal sanctions, including the legalization of running of brothels.
c) Amending the Labour Act of 1990 to recognize sex work as work and allow appropriate regulations and protections received by other workers in Nigeria.
d) Amendment of the National Drug Law Enforcement Agency (NDLEA) Act to decriminalise drug use and drug possession for personal use with a set threshold and review drug policies, shifting from punitive approaches to harm reduction strategies including access to drug treatment and harm reduction services.
e) Reform laws and policies to protect the rights and dignity of key populations focusing on decriminalization and ensuring access to healthcare and support services.
f) Domestication of international treaties such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the Maputo Protocol.
g) Instruct law enforcement officials and the army to end their practice or arresting, harassing, raiding or otherwise acting outside of the law. Support and integrate the evidence based training

programmes mentioned in paragraph 11.

28. Strengthen existing mechanisms for the implementation of laws and policies and other commitments that uphold the integrity of human persons including the Violence against Persons Prohibition Act (VAPP) of 2015 to apply to all states in Nigeria and to all persons. The anti-torture Act of 2017 should come into force to check abuses against key populations by law enforcement officers. Enact legislation to protect the rights of key population individuals and facilitate access to justice for victims of attacks while establishing legal aid clinics or pro bono services to provide free legal representation to victims, ensuring their rights are protected, and perpetrators are held accountable.

29. Investigate arbitrary detentions, assaults and other human rights violations against key populations and provide effective remedies to the victims while ensuring that law enforcement and security forces personnel receive training on the rights of people who use drugs and the importance of ensuring their access to justice. Enhance their capacity to respond to attacks effectively, including training police officers and other relevant personnel on human rights, hate crime recognition, and appropriate investigation procedures.

30. Intensify efforts to eliminate the incidence of stigma and discrimination faced by LGBTQI+ persons, sex workers and people who use drugs by training and re-training health care providers on providing non-discriminatory healthcare services, including health services tailored specifically to key population needs; as well as sexual reproductive health services for LGBTQI+ people and sex workers, harm reduction services, opioid substitution therapy and overdose treatment within communities for people who use drugs.

31. Ensure meaningful involvement of key populations and sexual and gender minorities at all levels of decision-making in the development and implementation of policies and programs that target them. Participation of young people must be recognized through formal national-level country coordinating mechanisms.

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