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Nigeria: Treatment of homosexuals by society and government authorities; recourse and protection available to homosexuals who have been subject to ill-treatment (2008 - August 2009)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

Homosexual acts are illegal in Nigeria (US 25 Feb. 2009, Sec. 5; BBC 10 Apr. 2008). Few people are openly homosexual in Nigeria (US 25 Feb. 2009, Sec. 5; UN 14 Apr. 2008). An uncorroborated article from the United Nations (UN) Integrated Regional Information Networks (IRIN) notes the existence of a few clubs that accept gays in Abuja; however the article also reports that homosexuals tend to be discrete, noting that in Nigeria "[b]eing gay means becoming invisible" (ibid.).

Legislation

Under Chapter 21 of Nigeria's Criminal Code, entitled "Offences Against Morality," homosexual acts between men are illegal and may be punished by jail terms of up to 14 years (Nigeria 1990, Chap. 21, Art. 214 (3), Art. 217; HRW 2009; US 25 Feb. 2009, Sec. 5). Officials from the Legal Defence and Assistance Project (LEDAP), a Nigerian legal rights non-governmental organization (NGO), cited in a 2008 report produced by a joint fact-finding mission from the United Kingdom (UK) and Denmark, indicated that

Nigerian law does not clearly define sodomy, and the law on sodomy covers other types of non-conformist sexual behaviour or acts, which are all regarded as "sodomy". Under the law on sodomy, nobody can be convicted without a confession. No one has been convicted for sodomy under common law as sodomy is hard to prove. (UK/Denmark 29 Oct. 2008, Sec. 5.1)

In the 12 northern states that have adopted Sharia law, men convicted of homosexual conduct may be sentenced to death (HRW 2009; ILGA May 2009, 32; US 25 Feb. 2009, Sec. 5). The states which have adopted Sharia laws are Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe and Zamfara (ILGA May 2009, 32; UK/Denmark 29 Oct. 2008, Sec. 5.3). According to information obtained from Nigerian gay rights groups by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), female to female sexual acts are illegal in the 12 northern states which have adopted Sharia law (ILGA n.d.). The maximum punishment for such acts are whipping and/or imprisonment (ibid.).

Information on whether death penalty sentences have been carried out could not be found among the sources consulted by the Research Directorate. According to the LEDAP officials quoted in the joint British/Danish report,

[b]etween 2003 and 2007, 20 people [were] charged under the homosexuality provisions of Shari'a law, although not all have been convicted. Between 10 and 12 people have been sentenced to death by stoning, but these sentences have not been implemented, as they have been overturned on appeal by the federal courts. (UK/Denmark 29 Oct. 2008, Sec. 5.4).

Treatment by Society and Authorities

Sources describe violence aimed at gay, lesbian, bisexual and transgender people as regular (AI 2009) and "frequent" (HRW 26 Jan. 2009). EDGE, a Boston-based news site for the gay community which published an article about Nigerian homosexuals describes Nigeria as being noteworthy in the "virulence and violence [directed towards] gay men [and] lesbians" (EDGE 17 Apr. 2008). Activists say homosexuals in Nigeria sometimes face violence from their own family members (BBC 11 Mar. 2009; Edge 17 Apr. 2008).

EDGE reports that a man in Lagos was attacked and killed by a gang claiming "they were 'cleansing' Lagos of homosexuals" (EDGE 17 Apr. 2008). EDGE also notes a case where a gang of boys in Port Harcourt raped five lesbians saying that they were "'curing' them of homosexuality" (ibid.). In addition, there have been allegations that gay activists in Nigeria have been the targets of death threats and assaults (BBC 31 July 2008; ibid. 10 Apr. 2008; *Leadership* 23 Apr. 2008; UK Gay News 21 Mar. 2008).

In an interview with the British Broadcasting Corporation (BBC), activist Davis Mac-Iyalla discussed how he was forced to leave Nigeria because of death threats directed at him (31 July 2008). Mac-Iyalla is open about his sexuality and he participated in the founding of the Nigerian branch of "Changing Attitude", an Anglican group that campaigns "for the full inclusion of lesbian, gay, bisexual and transgendered people in the life of the Church" (BBC 31 July 2008). UK Gay News reports that in March 2008 the unnamed leader of the Port Harcourt branch of Changing Attitude Nigeria was attacked at the funeral of Mac-Iyalla's sister, reportedly by attackers targeting him for his sexuality and activism (UK Gay News 21 Mar. 2008).

In 2008, a trial began concerning 18 men arrested for allegedly dressing up as women, contrary to Sharia Law (BBC 15 Feb. 2008). The 18 men, who were arrested in Bauchi in August 2007, had originally been accused of sodomy and taking part in a "gay wedding", but the charges were later dropped to "vagrancy" (BBC 11 Mar. 2009; US 25 Feb. 2009, Sec. 5; BBC 4 Mar. 2008; BBC 15 Feb. 2008). As of March 2009, the case was still pending with the men free on bail (US 25 Feb. 2009, Sec. 5).

The BBC reported in March 2008 that, in a separate instance, a man was convicted and sentenced to 18 months in jail for cross-dressing in the southern, non-Sharia state of Lagos (BBC 4 Mar. 2008). Some sources report that authorities in Nigeria are trying to link cross dressing to homosexuality (IGLHRC 15 Feb. 2008; BBC 4 Mar. 2008). In the northern states of Nigeria there is a tradition of "Dan Daudu" men who live and dress like women (UN 14 Aug. 2008), which according to the BBC is not related to sexual preferences (BBC 15 Feb. 2008). Historically, there has been cultural acceptance of this practice despite the contradiction with traditional Islamic teaching (UN 14 Aug. 2008; BBC 15 Feb. 2008).

In September 2008, several members of the House of Rainbow Metropolitan Community Church, a gay-friendly church based in Lagos, were "harassed" by the public and police (HRW 2009; US 25 Feb. 2009, Sec. 5). According to Human Rights Watch (HRW), the harassment began when several national newspapers published personal information about church members and the pastor in articles critical of the church (HRW 26 Jan. 2009). The church's activities were disrupted and Rev. Jide Macaulay, the Church's pastor, was forced to leave the country due to concerns for

his safety (ibid.; UK Gay News 16 Feb. 2009).

In a report addressed to the Working Group of the UN Human Rights Council as part of the Universal Periodic Review of Human Rights, the Nigerian government reported that "[s]exual minorities are not visible in Nigeria" (Nigeria 5 Jan. 2009, Para. 76). In February 2009, while addressing the UN Human Rights Council Working Group to present Nigeria's report, Nigerian Minister of Foreign Affairs Ojo Madueke declared that despite its best efforts, his government had been unable to find any gay, lesbian or transgender persons to consult on homosexual rights issues (*Pink News* 16 Feb. 2009; *Vanguard* 14 Feb. 2009; UK Gay News 16 Feb. 2009).

Some Muslim and Christian leaders have found common cause in condemning homosexuality on religious and moral grounds (*Daily Trust* 16 Mar. 2009; EDGE 17 Apr. 2008; *Leadership* 8 Aug. 2008; *Pink News* 19 Jan. 2009). Religious groups and leaders have issued public condemnations of homosexuality (*Daily Trust* 27 Apr. 2009; ibid. 16 Mar. 2009; AFP 12 Mar. 2008). Representatives of the Nigerian Anglican Church have denounced both homosexuality and the concept of same-sex marriage and have also publicly expressed strong support for a proposed law prohibiting Same Gender Marriage (*This Day* 12 Mar. 2009; *Pink News* 16 Mar. 2009).

According to Amnesty International (AI) and Amnesty International USA, in 2008 several men and women were accused of engaging in consensual same-sex sexual practices and detained (AI 2009; Amnesty International USA 28 Jan. 2009). According to EDGE, people accused of homosexual acts are "frequently" detained; however authorities rarely take action to defend homosexual victims of attacks (EDGE 17 Apr. 2008).

Same Gender Marriage (Prohibition) Bill

In 2008, members of Nigeria's House of Representatives introduced a bill that would outlaw same-sex marriage as well as establish criminal penalties for witnessing or assisting same-sex marriages (AI 2009; HRW 26 Jan. 2009). The Same Gender Marriage (Prohibition) Bill sets a three-year jail term for entering into a same-sex marriage and a five-year jail sentence for assisting or witnessing a gay marriage (AFP 12 Mar. 2009; Amnesty International USA 28 Jan. 2009).

The bill was passed by the Lower House of Parliament in January 2009 (HRW 26 Jan. 2009; Metropolitan Community Churches 21 Jan. 2009; *Pink News* 19 Jan. 2009) and was referred to Parliamentary committees for study and public consultation (HRW 26 Jan. 2009; *Pink News* 26 Jan. 2009). A previous attempt to pass similar legislation, the Same-Sex Marriage (Prohibition) Act of 2006, did not come to a vote (HRW 26 Jan. 2009; *Pink News* 19 Jan. 2009; UK/Denmark 29 Oct. 2008, Sec. 5.9) before elections (Amnesty International USA 28 Jan. 2009; UK/Denmark 29 Oct. 2008,).

Domestic and international human rights organizations and observers have decried the bill, expressing concerns that it will further stigmatize homosexuals and worsen the climate of violence and intolerance towards them (*Pink News* 28 Jan. 2009; Amnesty International USA 28 Jan. 2009; HRW 26 Jan. 2009; *This Day* 12 Mar. 2009).

The organizations opposing the bill include AI (BBC 11 Mar. 2009), the Nigerian Bar Association Human Rights Institute, the European Parliament's Intergroup on gay rights (*Pink News* 28 Jan. 2009), the Nigerian National Human Rights Commission (ibid. 26 Jan. 2009), HRW (HRW 26 Jan. 2009), Queer Alliance, Global Rights (*This Day* 12 Mar. 2009), BAOBAB for Women's Human Rights, Sexual Minorities Against AIDS in Nigeria (SMAAN) (AFP 12 Mar. 2009), Changing Attitude Nigeria, the Coalition

for the Defense of Sexual Rights in Nigeria (*Daily Trust* 12 Mar. 2009) and the Independent Project for Equal Rights (TIP) (UK Gay News 7 Mar. 2009).

In March 2009, homosexual rights activists and representatives of domestic and international human rights groups testified against the bill at a joint public hearing of relevant committees of the Nigerian National Assembly (AFP 12 Mar. 2009; BBC 11 Mar. 2009; *Daily Trust* 12 Mar. 2009; *This Day* 12 Mar. 2009). However, according to media reports, an "overwhelming" number of people, including religious leaders, were present to voice their support for the bill (*Daily Independent* 12 Mar. 2009; *This Day* 12 Mar. 2009; *Daily Trust* 12 Mar. 2009). Some supporters of the bill denounced the opportunity that was given to homosexuals by letting them have a public forum to express and justify themselves openly (*Daily Trust* 16 Mar. 2009). In a 25 March 2009 editorial, the Abuja-based *Daily Trust* gave strong support to the bill and denounced the gay rights activists, calling on elected officials to ban "all forms of gay activism" as well and stating: "[l]et their march on the National Assembly be the last gay assembly to be witnessed in Nigeria."

If a third reading of the bill succeeds, it will require approval by the Senate and Nigerian President Yar'Adua (HRW 26 Jan. 2009; *This Day* 27 Jan. 2009; *Pink News* 26 Jan. 2009). Further information on the status of the bill or when it could be under consideration for approval could not be found among the sources consulted by the Research Directorate.

Protection and Support Services

Information on protection offered by government institutions could not be found among the sources consulted by the Research Directorate. According to the *Amnesty International Report 2009*, authorities have proven "unable or unwilling to provide sufficient protection" (AI 2009). However, the report of the joint British/Danish fact finding mission quotes a spokesperson for the Nigerian NGO Civil Liberties Organisation who stated that

... homosexual acts or behaviour were tolerated in Nigeria, as long as they were carried out discreetly and in private, but homosexuals would be arrested for offending public decency if they showed affection in public. He added that violent attacks against homosexuals were not a common occurrence in Nigeria. He further stated that the public have little confidence in the police who are perceived to be inefficient and corrupt, but believed that they would provide protection for homosexuals threatened with violence for being homosexual. (UK/Denmark 20 Oct. 2008, Sec. 5.8)

However, the same report also quotes the spokesperson for Global Rights who stated that

violence against homosexuals is widespread, and that societal disapproval of homosexuality meant that, even if a bribe was offered to the police to drop sodomy charges, at least 65% of such charges and prosecutions would go ahead. (UK/Denmark 20 Oct. 2008, Sec. 5.8)

In its report to the UN Human Rights Council, the Nigerian government notes that "there is no officially registered association of gay and lesbians" (Nigeria 5 Jan. 2009, Para., 76; *Pink News* 16 Feb. 2009). According to IRIN, at least ten support groups for gays and lesbians have been formed in Nigeria including Alliance Rights Nigeria (UN 14 August 2008). The UK/Denmark fact-finding report lists four groups that advocate for sexual rights: Alliance Rights, the International Centre for Reproductive Health and Sexual Rights (Increase), the Centre for Youth Policy Research and Advocacy (Cyprad) and the Support Project in Nigeria (SPIN) (UK/Denmark 20 Oct. 2008, Sec 5.10). The fact-finding mission notes that rights organizations take low-key approaches due to prevailing societal hostility (ibid.).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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