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Nigeria: Anti-LGBT Law Threatens Basic Rights

(Abuja, January 15, 2014) – The Same-Sex Marriage (Prohibition) Bill signed into law on January 7, 2014, by President Goodluck Jonathan of Nigeria is a sweeping and dangerous piece of legislation, Human Rights Watch said today. The law criminalizes public displays of affection between same-sex couples and restricts the work of organizations defending gay people and their rights. President Jonathan should immediately repeal the draconian law.

The law imposes a 14-year prison sentence on anyone who “[enters] into a same-sex marriage contract or civil union,” and a 10-year sentence on individuals or groups, including religious leaders, who “witness, abet, and aid the solemnization of a same-sex marriage or union.” It imposes a 10-year prison sentence on those who “directly or indirectly make [a] public show of [a] same-sex amorous relationship” and anyone who “registers, operates, or participates in gay clubs, societies, and organizations,” including supporters of those groups.

“This law criminalizes the lives of gay and lesbian people, but the damage it would cause extends to every single Nigerian,” said Graeme Reid, Lesbian, Gay, Bisexual, and Transgender (LGBT) rights director at Human Rights Watch. “It undermines basic universal freedoms that Nigerians have long fought to defend and is a throwback to past decades under military rule when civil rights were treated with contempt.”

The Nigerian Senate approved the bill on November 29, 2011, and the House of Representatives passed it on its third and final reading in May 2013. A “harmonization committee” finalized the bill in December, preparing the way for President Jonathan’s signature.

The new legislation could lead to imprisonment solely for a person’s actual or imputed sexual orientation. People could face charges for consensual sexual relations in private; advocacy of LGBT rights; or public expression of their sexual orientation or gender identity. The terms “same-sex marriage” and “civil union” are so broadly defined in the law that they include virtually any form of same-sex cohabitation.

“The law is so vague that it is likely to lead to the arbitrary arrest of gay people, while facilitating extortion and blackmail of vulnerable groups by members of Nigeria’s notoriously corrupt security services,” Reid said. “This law threatens to further marginalize an already stigmatized population, driving them underground and imperiling their rights and their health.”

Mainstream human rights organizations in Nigeria could be threatened for opposing the law, and have said they fear speaking out about it. Funders or supporters of LGBT rights and related work in Nigeria could also face increased scrutiny under the law, Human Rights Watch said.

Nigeria has the world’s third-largest number of people living with HIV/AIDS, and its National Agency for the Control of AIDS has recognized the need to target vulnerable groups in HIV/AIDS outreach efforts, including people who engage in same-sex conduct. The law will hinder their efforts by criminalizing those who conduct outreach to LGBT groups. By banning undefined “gay meetings,” it could also criminalize programs funded by

major donors that provide education on HIV prevention and health for men who have sex with men.

The law contradicts fundamental freedoms under international human rights treaties and standards, which the Nigerian Constitution also guarantees. The Nigerian Constitution, under section 40, guarantees that: "Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union, or any other association for the protection of his interests." Section 17 affirms that "every citizen shall have equality of rights, obligations, and opportunities before the law."

The African Charter on Human and Peoples' Rights similarly guarantees the right to freedom of expression (article 9), freedom of association (article 10), and freedom of assembly (article 11), and the equality of all people (articles 2 and 3). Its article 26 prescribes that: "Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding, and reinforcing mutual respect and tolerance." The African Commission on Human and Peoples' Rights stated in 2006 that the guarantee of equal protection extends to sexual orientation.

The International Covenant on Civil and Political Rights (ICCPR), to which Nigeria acceded without reservations in 1993, also guarantees the rights to information and to freedom of expression (article 19), freedom of assembly (article 21), and freedom of association (article 22). The ICCPR affirms the equality of all people before the law and the right to freedom from discrimination (articles 2 and 26). The United Nations Human Rights Committee, which monitors states' compliance with the ICCPR, concluded in 1994 that sexual orientation should be understood to be a status protected from discrimination under these articles, and ruled that laws criminalizing consensual, private same-sex sexual acts are a violation of the right to privacy guaranteed in the ICCPR.

The criminal code, in effect in southern Nigeria, and the penal code, in northern Nigeria, already impose up to a 14-year prison term for anyone who has "carnal knowledge" or "carnal intercourse" with any person "against the order of nature." As Human Rights Watch documented in a 2008 report, these laws are Victorian-era provisions that remained after the end of British colonial rule. Sharia penal codes, introduced in northern Nigeria since 1999, criminalize "sodomy" with caning, imprisonment, or death by stoning. Same-sex marriages or civil unions are not recognized in Nigeria, Africa's most populous nation, and there is no move to legalize same-sex unions.

For nearly 30 of its first 54 years since independence in 1960, Nigeria was ruled by successive military dictatorships. Human rights and democracy activists were arrested, media freedom was restricted, and due process rights were suspended. Nigeria returned to civilian rule in 1999.

"This is the most repressive law restricting these fundamental rights since the end of military rule," Reid said. "If the government can strip one group of its freedoms, then it can legislate away the rights of others."

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