

March 22, 2006

His Excellency Olusegun Obasanjo  
President of the Republic  
The Presidency  
Aso Rock  
Abuja  
Nigeria

Dear President Obasanjo,

As human rights organizations based in Nigeria, on the African continent, and internationally, we write with deep concern over a proposed bill that would introduce criminal penalties for relationships and marriage ceremonies between persons of the same sex as well as for public advocacy or associations supporting the rights of lesbian and gay people. The legislation proposed by Minister of Justice Bayo Ojo not only contravenes internationally recognized protections against discrimination, as well as the basic rights to freedom of expression, conscience, association, and assembly, but also undermines Nigeria's struggle to combat the spread of HIV/AIDS.

### **Proposed law violates fundamental freedoms under the Nigerian Constitution**

The broad and sweeping provisions of this proposed legislation could lead to the imprisonment of individuals solely for their actual or imputed sexual orientation in a number of ways, including for consensual sexual relations in private, advocacy of lesbian and gay rights, or public expression of their sexual identity. Anyone imprisoned under this law would be a prisoner of conscience. We urge you to disavow this proposal which contradicts fundamental freedoms under the Nigerian Constitution, international human rights law and standards, including the African Charter on Human and People's Rights.

On January 19, 2006, Minister Ojo presented to the Federal Executive Council an "Act to Make Provisions for the Prohibition of Relationship Between Persons of the Same Sex, Celebration of Marriage by Them, and for Other Matters Connected Therewith." While the Council reportedly approved the bill, it has not yet been submitted to the National Assembly. According to a draft of the bill, the law would provide five years imprisonment for any person who "goes through the ceremony of marriage with a person of the same sex," "performs, witnesses, aids or abets the ceremony of same sex marriage," or "is involved in the registration of gay clubs, societies and organizations, sustenance, procession or meetings, publicity and public show of same sex amorous relationship directly or indirectly in public and in private." Anyone, including a priest or cleric, aiding or abetting such a union would be subject to the same prison term. The draft bill would also prohibit the registration of gay organizations, any public display of a "same sex amorous relationship," and adoption of children by lesbian or gay couples or individuals. In addition, the draft bill would invalidate same sex relationship formally entered into or recognized in foreign jurisdictions.

As you are undoubtedly aware, chapter 42, section 214 of Nigeria's criminal code penalizes consensual homosexual conduct between adults with fourteen years' imprisonment. Furthermore, Sharia penal codes, as introduced in northern Nigeria since 1999, continues to criminalize what is termed as 'sodomy', see for example Chapter III "Hudud and Hudud related offences", Part III "Sodomy (Liwat)", Section 128-129 of the Kano State Shari'a Penal Code Law 2000. Reinforcing this already-draconian provision with new legislation is not merely redundant, it also displays a clear intent to codify and intensify prejudice based on sexual orientation. Moreover, by criminalizing acts of peaceful expression or association in defense of lesbian and gay rights, the bill would strike at the fundamental freedoms enjoyed by all individuals in Nigeria's long-vigorous civil society.

## **Proposed Law Contravenes International Law**

The proposed law undermines fundamental freedoms protected under international law.

The African Charter on Human and Peoples' Rights affirms the equality of all people. Its article 2 states: "Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status." Article 3 promises every individual equality before the law. And 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 International Covenant on Civil and Political Rights (ICCPR), to which Nigeria acceded without reservations in 1993, protects the rights to freedom of expression (article 19), freedom of conscience (article 18), freedom of assembly (article 21) and freedom of association (article 22). It affirms the equality of all people before the law and the right to freedom from discrimination in articles 2 and 26. In the landmark 1994 case of *Toonen v Australia*, the United Nations Human Rights Committee, which monitors states' compliance with the ICCPR, held that sexual orientation should be understood to be a status protected from discrimination under these articles. States cannot abridge the enjoyment of human rights on the basis of sexual orientation. The UN Human Rights Committee has since urged states not only to repeal laws criminalizing homosexuality but also to enshrine the prohibition of discrimination based on sexual orientation into their constitutions or other fundamental laws. Discrimination on the basis of sexual orientation is also prohibited under other international human rights treaties to which Nigeria is a state party.

This law, if passed, would seriously restrict essential freedoms as well as the activities of human rights defenders and members of civil society. The United Nations Declaration on Human Rights Defenders holds, in its article 5, that "everyone has the right, individually and in association with others, at the national and international levels: a) to meet or assemble peacefully; b) to form, join and participate in non-governmental organizations, associations or groups." Article 7 of the declaration affirms that "Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance." Indeed, the Special Representative of the U.N. Secretary General on Human Rights Defenders has specifically called attention to the "greater risks... faced by defenders of the rights of certain groups as their work challenges social structures, traditional practices and interpretations of religious precepts that may have been used over long periods of time to condone and justify violation of the human rights of members of such groups. Of special importance will be... human rights groups and those who are active on issues of sexuality, especially sexual orientation." ("Report of the Special Representative to the Secretary General on human rights defenders," UN Doc. E/CN.4/2001/94 (2001), at 89g)

## **Consequences for Nigeria's struggle against HIV/AIDS**

While the prevailing pattern of HIV transmission in Nigeria, as elsewhere in the continent, is overwhelmingly heterosexual, the government will only damage its own prevention efforts by driving populations already suffering stigma for their sexual conduct still further underground—not only making it more difficult for outreach and education efforts to reach them, but potentially criminalizing civil society groups engaged in that vital work. Nigeria's AIDS prevention programs have already been distinguished by their neglect of the particular risks facing men who have sex with men (MSM). This bill would put major barriers in the path of effective prevention efforts.

Laws criminalizing homosexuality can also act as a licence to torture and ill-treatment. By institutionalizing discrimination, they can act as an official incitement to violence against lesbians and gay men in the community as a whole, whether in custody, in prison, on the street or in the home. By stripping a sector of the population of their full rights, they also deprive lesbian and gay victims of human rights violations of access to redress while the abusers are allowed to continue abusing others with impunity.

This proposed legislation flies in the face of Nigeria's obligations to the rights, and well-being, of its people. Under international human rights law, the Federal Republic of Nigeria has the obligation to promote and protect the human rights of its population, without distinction of any kind. We urge you, as President of the Federal Republic of Nigeria, to act in accordance with Nigeria's legal obligations under international human rights law and withdraw this bill.

Please reply to Scott Long, Director, Lesbian, Gay, Bisexual and Transgender Rights Program, Human Rights Watch, 350 Fifth Avenue, 34th floor, New York, NY 10018-3299 (tel: 212-216-1297).

Sincerely,

Africa Action  
United States

National Black Justice Coalition  
United States

African Human Rights Organization  
Cameroon

Support Project in Nigeria  
Nigeria

Alliance Rights  
Nigeria

University of Pretoria - Centre for Human Rights  
South Africa

Amnesty International  
International Secretariat  
United Kingdom

CC: National Human Rights Commission  
Minister of Justice  
Nigerian Mission to the United Nations  
Nigerian Embassy to the United States

Center for Democracy and Development  
Nigeria

Centre d'Etudes et de Recherche en Droits de  
l'Homme - Démocratie et Justice Transitionnelle  
Democratic Republic of Congo

Civil Liberties Organization  
Nigeria

Global Rights  
United States

Human Rights Watch  
United States

International Gay and Lesbian Human Rights  
Commission  
United States

International Commission of Jurists  
Switzerland

International Service for Human Rights  
Switzerland

Legal Defense and Assistance Project  
Nigeria