

## NIGERIA

### HEARTLAND ALLIANCE INTERNATIONAL SUBMISSION\* FOR THE UNITED NATIONS UNIVERSAL PERIODIC REVIEW

31<sup>st</sup> SESSION OF THE UPR WORKING GROUP, MARCH 2018

1. This submission is provided by Heartland Alliance International (HAI)<sup>1</sup>, a human rights organization that has been working in Nigeria since 2009 on HIV/AIDs programs with high-risk populations. The information and recommendations in this Universal Periodic Review (UPR) report are based on HAI's extensive work with gay men, female sex workers, and intravenous drug users in seven priority states: Akwar Ibom, Benue, Cross River, Lagos, Nasarawa, Rivers, and the Federal Capital Territory through clinics and One Stop Shops (OSSs). OSSs offer a safe and supportive environment within communities for individuals to access comprehensive HIV/AIDs prevention, treatment, and services for victims of gender-based violence in a safe and non-discriminatory environment.

#### **Introduction**

2. Nigeria has achieved significant milestones, including the passage of the HIV/AIDs (Anti-Discrimination) Act and the Violence Against Persons (Prohibition) Act. Yet Nigeria has not fully implemented these laws for the benefit of vulnerable populations, and has continued to target populations most affected by the HIV/AIDs epidemic, including gay men, female sex workers, and intravenous drug users. Of significant concern is the Same Sex Marriage (Prohibition) Act of 2014 that discriminates against same sex couples and provides a justification for discriminatory practices in the health and legal sectors on the basis of sexual identity and orientation.
3. This report demonstrates that Nigeria's discriminatory laws and practices, as well as the violence perpetrated against gay men, female sex workers, and intravenous drug users, violates Nigeria's international legal obligations. These vulnerable populations suffer several negative consequences as a result of Nigeria's discriminatory laws and practices, including torture and cruel, inhuman, degrading treatment in detention, and arbitrary arrest, detention, and abuses. This report also focuses on the reluctance of individuals to seek health services due to discriminatory treatment. These harmful laws and practices have a detrimental effect on individuals who are at high-risk for HIV/AIDs, and who fear stigmatization if they access government services. Additionally, Nigeria has not taken adequate steps to prevent transmission of HIV/AIDs.

\*The American University Washington College of Law's International Human Rights Law Clinic assisted in the research and drafting of this submission.

### **Follow Up to the Previous Review**

4. The 2013 UPR recommended that Nigeria repeal any laws that discriminate on the basis of sexual orientation or gender identity.<sup>i</sup> Nigeria did not accept these recommendations and has failed to implement any legislation in support of them. The Same Sex Marriage (Prohibition) Act criminalized same sex unions and marriage under Articles 1-3, as well as any form of gay rights advocacy or congregating under Article 4. Nigeria accepted other recommendations, including: ensuring accountability for its police officers;<sup>ii</sup> bringing detention facilities in line with international standards;<sup>iii</sup> accelerating the adoption and implementation of the Violence against Persons Prohibition Bill in compliance with CEDAW;<sup>iv</sup> improving access to healthcare;<sup>v</sup> and ensuring arrest, detention, and court proceedings comply with due process and international human rights standards.<sup>vi</sup> Nigeria has failed to implement these recommendations in law and practice.

### **Relevant International Human Rights Laws**

5. Nigeria has ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).
6. This submission relates to Articles 2, 5, and 12(c)-(d) of ICESCR; Articles 2, 5, 6, and 12 of CEDAW; Articles 6, 7, 9, 17, 19, 21, and 26 of ICCPR; and Articles 2, 4, 11, 12, 13, 14, and 16 of CAT. This submission raises issues and questions that the Human Rights Council may wish to focus on when reviewing Nigeria's compliance with the aforementioned instruments.

### **Relevant Nigerian Laws**

7. In an effort to combat the HIV/AIDs epidemic, Nigeria enacted the HIV/AIDs (Anti-Discrimination) Act and the Violence Against Persons (Prohibition) Act of 2015. Despite these progressive laws, Nigeria has not eliminated other harmful and discriminatory laws that remain within the Criminal Code, the Penal Code, the National Law and Drug and Enforcement Act, and the Same Sex Marriage (Prohibition) Act of 2014.

## **Discrimination Against Gay Men, Female Sex Workers, and Intravenous Drug Users**

8. Nigerians perceive sex work, drug use, and homosexuality to be indicators of corrupt moral standards. Gay men, female sex workers, and intravenous drug users face significant societal discrimination, influenced by traditional culture as well as religious and moral values. Consequently, these individuals experience psychological and physical abuse from members of their community, including their families, neighbors, and community leaders.
9. HAI has received numerous reports of threats and abuse perpetrated by intolerant community members. Specifically, family and community members have subjected individuals who are part of these groups to verbal, physical and sexual abuse, and in some cases, have forced individuals to leave their homes.

### Discrimination Against Gay Men, Female Sex Workers, and Intravenous Drug Users in Public Health Facilities

10. Social stigma and discrimination based on sexual identity and orientation exacerbate the issues for gay men seeking medical treatment, testing, or preventative education at government-run hospitals and facilities. In 2010, the Nigerian Federal Ministry of Health conducted an Integrated Biological and Behavioral Surveillance Survey, which found that government HIV-prevention programs reached only 18% of female sex workers and 18% of gay men.<sup>vii</sup>
11. Rather than take steps to reduce and overcome stigmatization, public health staff routinely engage in conduct that contributes to stigma and shame for marginalized populations. Doctors and nurses rarely deny services outright, although health centers and hospitals have sometimes denied services to individuals if they are perceived as gay. More commonly, gay men report medical personnel treat them in a disrespectful manner and violate patient confidentiality by publicly disclosing their status, including sexual orientation, to family or community members. Often, health facilities arrange waiting rooms in such a way as to segregate HIV/AIDS positive patients, forcing those seeking services to self-identify in public spaces. HAI has received complaints from individuals about incidents of nurses calling out patients' symptoms or conditions in crowded public waiting rooms. Similarly, female sex workers and intravenous drug users suffer stigmatization and discrimination through waiting room segregation and the lack of confidentiality. In one incident, a man visited a government run clinic with his mother to seek treatment for anal warts, and in the presence of his mother, the doctor said that anal warts could only result from men having sex with men.

12. These practices put gay men at risk of abuse and violence, and discourage them from seeking necessary medical services. Consequently, many gay men avoid accessing government medical services, putting their health at risk. Alternatively, many gay men seek treatment at facilities run by non-governmental organizations or private clinics.
13. Gay men, female sex workers, and intravenous drug users' fear of discrimination, violence, and arrest prevent access to healthcare services, even when the services are available. Discrimination towards gay men, female sex workers, and intravenous drug users, lack of sensitivity, lack of harm reduction services for drug users, lack of compassionate care, and wait times make health facilities largely inaccessible to these vulnerable populations.
14. Such discriminatory practices by Nigeria violate ICESCR<sup>viii</sup> and CEDAW.<sup>ix</sup>

#### **Discriminatory Laws Against Gay Men, Female Sex Workers, and Intravenous Drug Users**

15. Nigeria's Criminal Code, Penal Code and the National Law and Drug Enforcement Act contain harmful provisions that disproportionately affect gay men, female sex workers, and intravenous drug users. The Same Sex Marriage (Prohibition) Act, that criminalizes gay men and women as a class, has negative consequences beyond the deprivation of marriage rights equal to the heterosexual population. By criminalizing gay men, Nigeria encourages state sanctioned harassment and violence against gay men, and fails to protect victims from violence perpetrated by private individuals.
16. Nigeria's laws derive from various sources, including customary law, Sharia law, and formal civil laws and legislation. The civil codes vary by region; the Criminal Code applies in the 20 southern states, and the Penal Code applies in the 16 northern states. Additionally, nine northern states apply Sharia law to the Muslim population, although it is sometimes applied to non-Muslims.
17. Under Sharia law, the penalty for homosexuality is death. HAI has responded to three cases where gay, non-Muslim men were arrested for violating Sharia law. HAI intervened on behalf of a man who was sentenced to be stoned to death for homosexual behavior. These practices violate ICCPR<sup>x</sup> and CAT.<sup>xi</sup>
18. While prostitution is not explicitly criminalized in Nigeria under the Criminal and Penal Codes, various acts related to prostitution, such as loitering in public or public solicitation for purposes of prostitution, are criminalized under different laws depending on the region. These laws impact women disproportionately, because the laws target individuals engaging in or facilitating prostitution, but not those who pay for sex. Police rely on various legal provisions to harass and

target women suspected of working in prostitution. Where Sharia law applies, female sex workers potentially face death by stoning.

19. Lagos has yet another set of civil laws. Section 142 of the Criminal Code of Lagos is the only code to explicitly criminalize prostitution; in contrast, the Criminal Code only goes so far as to criminalize brothels, which are prohibited under Section 225B. Police also utilize loitering laws, such as Section 249 of the Criminal Code and Sections 405 and 406 of the Penal Code. These laws are used to arrest and harass women suspected of working in prostitution when they congregate in public places, such as on the streets, outside brothels, and in hotels. The law and the way it is applied discriminates against women and violates Nigeria's obligations under CEDAW.<sup>xii</sup>
20. The National Drug Law Enforcement Agency Act gives the National Drug Law Enforcement Agency (NDLEA) agents extensive powers to investigate and arrest persons suspected of committing any crime related to drug use, including the manufacturing, importation, or possession of illegal substances. Under the Act, illegal drug use, Section 11, and drug possession, Section 19, carry a minimum sentence of fifteen years. Nigeria's laws and their implementation violate ICCPR.<sup>xiii</sup>

#### Under- and Unenforced Protective Laws

21. Nigeria took the positive step of passing the Violence Against Persons (Prohibition) Act of 2015. This law does little to extend protections to gay men, female sex workers, and intravenous drug users as vulnerable populations. HAI has received numerous reports that these vulnerable populations do not alert authorities to abuses and assaults committed by police because they do not believe the officers' actions would be addressed. Along with receiving numerous reports from gay men, female sex workers, and intravenous drug users, HAI staff have experienced violence and harassment from local gangs. Police often delay responding to reports of harassment by local gangs when the incidents involve gay men, female sex workers, or intravenous drug users. In several instances involving assaults by local gang members, these vulnerable populations have been further victimized when police arrested them rather than the gang members. Nigeria is failing to protect vulnerable persons at risk of discrimination and violence.

Discriminatory Law Enforcement Efforts Targeting Gay Men, Female Sex Workers, and Intravenous Drug Users

22. Local and federal police discriminate against marginalized individuals, subjecting them to higher rates of arrest, detention, investigation, and prosecution. HAI frequently responds to complaints that such individuals are arrested without warrants. Under sections 215 and 217 of the Criminal Code, a lawful arrest requires that a judge or magistrate issue a warrant that includes details such as the suspected crime and the name of the person to be arrested. While the Criminal Code requires a warrant to make arrests for violating these laws in southern Nigeria, authorities routinely fail to obtain warrants prior to arrest. Disregard by police for proper procedure contributes to arbitrary arrests, detention, and abuse of marginalized populations, violating ICCPR<sup>xiv</sup> and CEDAW.<sup>xv</sup>

**Torture and Cruel, Inhuman and Degrading Treatment Targeting Gay Men, Female Sex Workers, and Intravenous Drug Users**

23. Article 34 of the Nigerian Constitution guarantees individuals' freedom from torture, inhuman or degrading treatment; however, police arrest and detention procedures do not guarantee these rights for gay men, female sex workers, and intravenous drug users.
24. HAI has received numerous reports from gay men, female sex workers, and intravenous drug users that at the time of arrest and detention, police engage in abusive treatment, including beatings, slapping, shoving, kicking, and sexual assault during arrest and detention. These acts meet the definition of torture and cruel, inhuman, and degrading treatment under CAT.<sup>xvi</sup>
25. Police officers routinely demand sexual favors from women suspected of prostitution in exchange for release from detention or avoidance of criminal charges. Women who resist this pressure are beaten, physically and sexually assaulted, raped, and verbally abused by the officers. They also risk criminal charges and prolonged detention. Due to fear of retaliation, women rarely report such abuses to authorities, however, they report these incidents to HAI during treatment.
26. The NDLEA Act requires agents and police to arrest individuals found in possession of, or using, illegal narcotics. Police sometimes fabricate charges when they suspect someone is using illegal drugs, but they are unable to find any evidence. HAI has received reports from intravenous drug users that they were arrested by NDLEA agents under the pretext of other crimes, such as theft, and then were harassed, abused, and physically attacked by officers. After the arrests, individuals reported that they were kept in isolation or forced into rehabilitation



without charges filed against them in court. HAI received reports that officers arrested individuals on non-drug related charges, such as vagrancy. Officers then attacked or physically abused individuals, chaining them in their cells or placing them in prolonged solitary confinement for weeks or months. The aforementioned practices violate CAT,<sup>xvii</sup> CEDAW,<sup>xviii</sup> and ICCPR.<sup>xix</sup>

## **Recommendations**

- Eliminate sections 11(d) and 19 of the National Drug Law Enforcement Agency Act to decriminalize drug use and replace those sections with rehabilitation programs for drug users and reduce sentences for drug possession.
- Ensure equal access to quality healthcare services and ensure confidentiality and privacy for all patients regardless of their HIV/AIDs status or status as a gay man, female sex workers, or intravenous drug user.
- Train and sensitize doctors, nurses, and staff at government health facilities and detention facilities confidentiality, privacy, and non-discrimination in health service delivery for gay men, female sex workers, and intravenous drug users for all to combat discriminatory practices.
- Create policies and conduct awareness raising programs to dispel fears, hatred, and prejudice against gay men, female sex workers, and intravenous drug users within communities.
- Repeal the Same Sex Marriage (Prohibition) Act.
- Fully enforce the HIV/AIDs (Anti-Discrimination) Act, especially with regard to medical and legal settings, and protect gay men, female sex workers, and intravenous drug users from any form of discrimination or harassment by both police officers and medical personnel, and ensure that these vulnerable populations have access to equal treatment, care, and confidentiality.
- Adopt laws and policies to combat discrimination against persons on the grounds of their sexual orientation or gender identity, and decriminalize sexual acts between consenting adults of the same sex, to bring its legislation in line with the Second Optional Protocol to the Covenant on Civil and Political Rights.
- Pass implementing legislation for all ratified Human Rights Treaties and Covenants, as recommended by multiple states in the 2013 UPR for Nigeria.
- Train police on international human rights standards that includes sensitization to gender issues.

- Establish a safe reporting and monitoring system to encourage victims of police abuse to come forward without fear of retaliation.
- Ensure that detainees can communicate with and receive visits from their lawyers, family members, and other concerned parties.
- Review conditions in detention facilities, including the behavior of police officers working in them, and develop options for the improvement of the prison system.

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<sup>i</sup> See A/HRC/25/6, sect. II, paras. 138.1-138.10.

<sup>ii</sup> See A/HRC/25/6, sect. II, paras. 135.71 and 135.121.

<sup>iii</sup> See A/HRC/25/6, sect. II, para. 135.106.

<sup>iv</sup> See A/HRC/25/6, sect. II, para. 135.24.

<sup>v</sup> See A/HRC/25/6, sect. II, para. 135.135.

<sup>vi</sup> See A/HRC/25/6, sect. II, paras. 135.113 and 135.118.

<sup>vii</sup> Nigeria, Federal Ministry of Health, Integrated Biological and Behavioral Surveillance Survey (2010).

<sup>viii</sup> United Nations, Treaty Series, vol. 993, No. 14531, Arts. 2, 5 and 12.

<sup>ix</sup> United Nations, Treaty Series, vol. 1249, No. 20378, Arts. 2, 5 and 12.

<sup>x</sup> United Nations, Treaty Series, vol. 999, No. 14668, Arts. 6, 7, 9, 17, 19 and 26.

<sup>xi</sup> United Nations, Treaty Series, vol. 1465, No. 24841, Arts. 12 and 14.

<sup>xii</sup> United Nations, Treaty Series, vol. 1249, No. 20378, Arts. 2, 5 and 6.

<sup>xiii</sup> United Nations, Treaty Series, vol. 999, No. 14668, Arts. 9, 17 and 26.

<sup>xiv</sup> United Nations, Treaty Series, vol. 999, No. 14668, Arts. 9, 17, 19, 21 and 26.

<sup>xv</sup> United Nations, Treaty Series, vol. 1249, No. 20378, Art. 2.

<sup>xvi</sup> United Nations, Treaty Series, vol. 1465, No. 24841, Arts. 2 and 16.

<sup>xvii</sup> United Nations, Treaty Series, vol. 1465, No. 24841, Arts. 2, 4, 11, 12, 13, 14 and 16.

<sup>xviii</sup> United Nations, Treaty Series, vol. 1249, No. 20378, Art. 2.

<sup>xix</sup> United Nations, Treaty Series, vol. 999, No. 14668, Arts. 7 and 9.