

# TEN IDENTITY-BASED DISCRIMINATION

END DISCRIMINATION ON GROUNDS OF GENDER IDENTITY OR  
SEXUAL ORIENTATION

10.1 LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE

10.2 NATIONAL LAWS

10.3 INTERNATIONAL LAW AND STANDARDS

10.4 RECOMMENDATIONS

**“Sexual minorities are not visible in Nigeria, and there is no officially registered association of gay and lesbians... the issue was brought up at the Forum, and the views of more than 90 per cent of the participants was that Gay-Lesbian relationship or same-sex marriage was not a human rights issue in Nigeria.”**

**Nigeria national report submitted in accordance with paragraph 15(A) of the annex to UN Human Rights Council Resolution 5/1**

## 10.1 LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE

Human rights abuses against individuals suspected of same-sex sexual conduct or non-conventional gender identity continue to take place in Nigeria. The Nigerian government has obligations under international human rights standards to promote, respect and protect the human rights of its population without distinction of any kind, including on the basis of sexual orientation or gender identity.

Homophobia and transphobia regularly result in violence against lesbian, gay, bisexual and transgender people and the authorities have proved unable or unwilling to provide sufficient protection. In 2008, a pastor of a church in Lagos attended by many lesbian, gay, bisexual or transgender people had to flee the country after several newspapers criticized the church. The police harassed several of the church members.

On 9 February 2009, at the 4th Session of the UN Universal Periodic Review (UPR), the Nigerian government stated that it was not aware of any “Lesbian, Gay and Transgender group” in Nigeria. The government underlined however that “as citizens, all Nigerians have their fundamental rights guaranteed by the Constitution.”

The use of laws to imprison individuals for consensual same-sex relations in private or on the basis of their gender identity or expression is a violation of Nigeria’s international human rights obligations.

## 10.2 NATIONAL LAWS

The right to freedom from discrimination is recognized in section 42(1) of the 1999 Constitution: “A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person – (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject”.

Chapter 42, section 214 of Nigeria’s Criminal Code penalizes consensual same-sex sexual conduct between adults with 14 years’ imprisonment. Shari’a penal codes criminalize “sodomy”, in some states with the death penalty. In 2008, several adult men and women were detained on charges of engaging in consensual same-sex sexual practices. Amnesty International considers the use of “sodomy” laws to imprison individuals for consensual same-sex relations in private to be a violation of human rights, including the rights to privacy, to freedom from discrimination, to freedom of expression and association. These rights are protected in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The National Action Plan for the Promotion and Protection of Human Rights in Nigeria, published by the Federal Government of Nigeria in 2006, states that the Nigerian Constitution guarantees freedom from discrimination: “A citizen of Nigeria is protected against any unfair discrimination, directly or indirectly, by the state or any person on the basis of one or more grounds, including: Gender, Sex...”. It further states that: “Inequality and discrimination exists on the basis of: Physically challenged person, HIV/AIDS, Sexual orientation, Age, Youth.”

## 10.3 INTERNATIONAL LAW AND STANDARDS

- The UN Human Rights Committee urges 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.
- 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 guarantees every individual equality before the law. Further, 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 ICCPR 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 UN Human Rights Committee, monitoring states’ compliance with the ICCPR, held that sexual orientation should be understood to be a status protected from discrimination under these articles. States cannot curtail the enjoyment of human rights on the basis of sexual orientation.

- The right to freedom from discrimination is also recognized in the African Charter on Human and Peoples’ Rights, ratified by Nigeria in 1983 and which has become part of Nigeria’s national laws. Article 2 of the African Charter 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, colour, 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 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 has said that: “Together with equality before the law and equal protection of the law, the principle of non-discrimination provided under Article 2 of the Charter provides the foundation for the enjoyment of all human rights... The aim of this principle is to ensure equality of treatment for individuals irrespective of nationality, sex, racial or ethnic origin, political opinion, religion or belief, disability, age or sexual orientation.”

- The ICCPR affirms the equality of all people before the law and the right to freedom from discrimination in articles 2 and 26. The UN Human Rights Committee has said that the protections afforded in articles 2 and 26 extend to freedom from discrimination on the basis of sexual orientation, saying: “in its view the reference to ‘sex’ in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation.”

- The Committee on Economic, Social and Cultural Rights has repeatedly addressed the impact of sexual orientation discrimination on the enjoyment of economic, social and cultural rights. This has usually been done in consideration of Article 2 of the ICESCR, indicating that this Committee, like the Human Rights Committee, considers that “sexual orientation” can be read into the Covenant’s non-discrimination provisions. The Committee on Economic, Social and Cultural Rights has asserted: “Guarantees of equality and non-discrimination should be interpreted, to the greatest extent possible, in ways which facilitate the full protection of economic, social and cultural rights.”

- Article 17 of the ICCPR states: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”

## 10.4 RECOMMENDATIONS

Amnesty International calls on the National Assembly to:

- Review all legislation which could result in the arrest, detention, prosecution and punishment of people solely for their sexual orientation or gender identity. This includes laws explicitly criminalizing consensual sexual conduct between people of the same sex or with transgender individuals; public order legislation used as a pretext for prosecuting and punishing people solely for their sexual orientation or gender identity; and laws



banning the “promotion” of homosexuality which can be used to imprison lesbian, gay, bisexual and transgender individuals and human rights defenders.

- Legislate to prohibit and eliminate prejudicial treatment on the basis of sexual orientation, consensual sexual relations or gender identity at every stage of the administration of justice.
- Domesticate the International Convention on the Elimination of All forms of Racial Discrimination.
- Urge the President to release immediately all individuals imprisoned solely on the basis of their sexual orientation or gender identity.

