



NEW YORK
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March 9, 2007

Honorable Senator Ken Nnamani
President of the Senate
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Via email: knnamani@nassnig.org

Honorable Senator Ibrahim Mantu
Deputy President of the Senate
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Honorable Senator Nnamani and Honorable Senator Mantu:

I write on behalf of the Association of the Bar of the City of New York (the "Association") to express our concern over the bill pending before the National Assembly for legislation entitled "The Same Sex Marriage (Prohibition) Act" (the "Same Sex Bill") which would ban organizations that advocate for lesbian, gay, bisexual or transgender ("LGBT") equality and criminalize any such activity, and would ban same sex marriage and criminalize participation in any same sex marriage ceremony. This bill is discriminatory and contrary to Nigeria's obligations under international law to ensure freedom of speech, association and assembly. The Association respectfully appeals to your regard for human rights principles shared around the world and urges you to oppose this bill and to encourage your colleagues in the Senate to do the same.

The Association is an independent non-governmental organization of over 22,000 lawyers, law professors, judges and government officials, principally from New York City but also from throughout the United States and 50 other countries. Founded in 1870, the Association has a long history of dedication to human rights, notably through its Committee on International Human Rights, which investigates and reports on human rights conditions around the world, including the United States. The Association also follows legal and policy developments in Africa through its African Affairs Committee.

The Same Sex Bill, if passed, would prohibit marriage between persons of the same sex anywhere in the Federal Republic of Nigeria, including specifically a ban on marriages performed in places of worship, and would ban the adoption of children by persons in same sex relationships. The bill goes well beyond a prohibition on marriage and would also prohibit the registration of "Gay Clubs, Societies or organizations" by government agencies as well as any "Publicity, procession and public show of same sex amorous relationship through the electronic or print media physically, directly, indirectly or otherwise".

In addition, the Same Sex Bill would provide for criminal penalties of up to five years imprisonment for any person who participates in a same sex marriage ceremony or performs or witnesses such a ceremony and “[a]ny person who 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.”

It has been reported that the bill has proceeded without adequate public notification and debate and that several civil society organizations were initially turned away from hastily announced hearings that took place 14 February 2007 in the House of Representatives. The Association has learned that the Same Sex Bill has since been introduced in the Senate and has passed through first and second readings without the benefit of public hearings. This bill would criminalize a wide range of activities and restrict freedom of speech and association and the Association is very concerned that it may be passed without adequate opportunity for democratic participation.

The legislation conflicts with Nigeria’s obligations under several international agreements. Several provisions of the Same Sex Bill restrict freedom of speech, association, and assembly, infringe freedom of conscience and discriminate against a portion of the population and conflict with Nigeria’s obligations under the International Covenant on Civil and Political Rights (the “ICCPR”) to which Nigeria acceded in 1993 and the African Charter on Human and Peoples’ Rights (the “African Charter”) which Nigeria ratified in 1983.

First, the proposed Same Sex Bill explicitly discriminates against gay, lesbian, bisexual and transgender persons, denying them the equal protection of laws concerning marriage and singling them out for criminal penalties for public or private activities that are in any way related to “same sex amorous relationships.” Article 3 of the African Charter states, “Every individual shall be equal before the law.” Article 26 of the ICCPR states: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.” The U.N. Human Rights Committee, which is charged with interpreting the ICCPR and monitoring states’ compliance, stated in its decision in *Toonen v. Australia* that sexual orientation is a protected status under the ICCPR’s anti-discrimination provisions.

Second, the Same Sex Bill infringes the rights of freedom of expression, association, assembly and religion that are protected under the African Charter in Articles 8, 9(2), 10(1) and 11 and under the ICCPR in Articles 18(1), 18(3), 19(1) and (2) and 21. (See the Appendix for excerpts of these articles.) The bill not only prohibits same sex marriage, but it takes the extraordinary step of imposing criminal penalties, including imprisonment on (i) any person (including clergy) who participates in or “performs, witnesses, aids or abets” a same sex marriage ceremony, and (ii) any person who is involved directly or indirectly in the registration of any organization that might be considered a “gay club, society or organization” or in a public or private meeting or public show concerning same sex amorous relationships. The latter provision is of particular concern because it appears to criminalize essentially all activities of persons who would advocate for equal rights for LGBT persons or engage in educational activities (including HIV/AIDS prevention) that recognize same sex relationships -- effectively banning all groups concerned with LGBT issues and authorizing the imprisonment of their members.

The Association also notes that the Declaration on Human Rights Defenders, adopted by consensus by the United Nations General Assembly in 1999, is relevant in interpreting Nigeria’s obligations with respect to provisions of the Same Sex Bill that would restrict the ability of individuals and organizations to advocate on issues concerning gay, lesbian, bisexual or transgender persons.

Finally, the Association is deeply concerned by reports that since the Same Sex Bill was introduced in the National Assembly in January 2006 there have been increased levels of homophobia resulting in homophobic attacks and the expulsion of certain cadets from the national military academy. Such reports support the statement by four independent U.N. experts released on February 23, 2007 expressing fear that “the proposed law will make persons engaging in, or perceived to be engaging in, same sex relationships in Nigeria more susceptible to arbitrary arrests, detention, torture and ill-treatment and expose them even more to violence and attacks on their dignity” resulting in “the denial of opportunities and conditions necessary for the enjoyment of economic, social and cultural rights.”

In light of Nigeria's international obligations and out of concern for those who would suffer if this bill were to pass, the Association respectfully requests that you vigorously oppose the Same Sex Bill and take all steps within your power to terminate consideration of it in the National Assembly.

Thank you for your time and attention to this important issue.

Very truly yours,

A handwritten signature in black ink that reads "Barry Kamins". The signature is written in a cursive, flowing style.

Barry Kamins

Appendix

Excerpts from the relevant provisions of the African Charter are set forth below:

- Article 8: “Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.”
- Article 9(2): “Every individual shall have the right to express and disseminate his opinions within the law.”
- Article 10(1): “Every individual shall have the right to free association provided that he abides by the law.”
- Article 11: “Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.”

Excerpts from the relevant provisions of the ICCPR are set forth below:

- Article 18(1): “Everyone shall have the right to freedom of thought, conscience and religion.”
- Article 18(3): “Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”
- Article 19(1) and (2): “1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”
- Article 21: “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”

Cc:

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