

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a bold, serif font, centered between two horizontal blue bars.

NEW YORK  
CITY BAR

January 6, 2012

His Excellency Goodluck Jonathan  
President of Nigeria  
State House  
Abuja, Nigeria

Dear President Jonathan:

I write on behalf of the Association of the Bar of the City of New York (the “Association”) to express our opposition to the Same Sex Marriage Prohibition Bill passed by the Senate on November 29, 2011 (the “Bill”) and introduced into the House of Representatives on December 6, 2011. In the Association’s view, the Bill, which goes farther than prohibiting same sex unions to generally criminalize homosexual conduct and advocacy, threatens the fundamental rights and freedoms of individuals who are lesbian, gay, bisexual and transgender (“LGBT”) and Nigerian organizations that support LGBT rights.<sup>1</sup>

The Association is an independent non-governmental organization with more than 23,000 members in over fifty countries. The Association has a long history of dedication to human rights. The Association’s Committee on African Affairs monitors and responds to legal and policy developments in Africa. The Association’s Committee on Lesbian, Gay, Bisexual and Transgender Rights addresses legal and policy issues as well as employment rules and procedures in legal institutions and in the court system affecting lesbians, gay men, bisexuals and transgender individuals. Similarly, the Committee on Sex and Law addresses issues relating to the effect of the factor of gender in the formulation and operation of law and social policy. Additionally, broad-based international affairs and legal issues are monitored and reported on by the Council on International Affairs. Each of these committees has expressed strong concern about the pending Bill.

Same-sex marriages and civil unions are not recognized by law in Nigeria and, according to Nigerian human rights defenders, no group in Nigeria has asked for this

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<sup>1</sup> Same Sex Marriage (Prohibition) Bill, 2011 (SB. 05); *see also* Camillus Eboh, “Nigeria’s Senate Passes Controversial Anti-gay Bill,” Reuters, Nov. 29, 2011, <http://www.reuters.com/article/2011/11/29/ozatp-nigeria-antigay-bill-idAFJ0E7AS0D520111129>; Ola Awoniyi, “Nigeria Slams Critics, Hustles Anti-gay Bill through Parliament,” Mail & Guardian Online, Dec. 8, 2011, <http://mg.co.za/article/2011-12-08-nigerias-antigay-bill-forced-through-despite-opposition>.

right.<sup>2</sup> Nonetheless, the Bill seeks to impose 14-year prison sentences on individuals who have entered into such partnerships.<sup>3</sup> The only conclusion to be drawn from the criminalization of private activity not recognized by Nigerian law is that the Bill's drafters seek to send a message to LGBT individuals: that their status will not be tolerated by the State. We are deeply concerned that legislating discrimination against LGBT individuals legitimizes acts of violence by both private and public actors and further marginalizes the victims of such discrimination.

In addition to criminalizing any same-sex union, the Bill criminalizes civil society organizing in connection with gay rights and "public show of same-sex amorous relationship[s]."<sup>4</sup> As set forth in the Bill: "[a]ny person who registers, operates or participates in gay clubs, societies and organisation[s] or directly or indirectly make[s] public show of same-sex amorous relationship in Nigeria commit[s] an offence and shall each be liable on conviction to a term of 10 years imprisonment."<sup>5</sup> This provision violates numerous rights protected by international law, including the rights to freedom of expression and freedom of association. Further, the language of the prohibition is so vague and overbroad that it could be utilized to silence any individual or organization – including most human rights organizations and many foreign partners – that support the rights of LGBT individuals.

The Association joins other civil society organizations ("CSOs"), as well as the United States, United Kingdom and other governments, in expressing alarm that the Bill, if enacted, would impermissibly discriminate against LGBT individuals, who already suffer extreme marginalization in Nigeria, as well as violate freedom of expression and freedom of association for the individuals and CSOs that promote LGBT rights and offer HIV and AIDS services to the LGBT community.<sup>6</sup>

The Association believes that the Bill violates Nigeria's obligations under international and regional law. Nigeria has ratified and is legally bound to implement, among other key human rights treaties, the International Covenant on Civil and Political Rights ("ICCPR") and the African Charter on Human and Peoples' Rights ("ACHPR").<sup>7</sup> Notably, the ICCPR, ACHPR and Nigerian Constitution enshrine the principles of non-discrimination and equal protection of the law, as well as protection of the right to life,

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<sup>2</sup> See Dorothy Aken'Ova, "Nigerian Human Rights Defenders Condemn 2011 Same Sex Marriage Prohibition Act," Behind the Mask.org, Sept. 30, 2011, <http://www.mask.org.za/nigeria-human-rights-defenders-condemn-2011-same-sex-marriage-prohibition-bill/>.

<sup>3</sup> Bill § 5(1).

<sup>4</sup> *Id.* § 5(2).

<sup>5</sup> *Id.*

<sup>6</sup> See, e.g., Amnesty Int'l, "Nigeria urged to Halt Bill Banning Same-sex Relationships," Nov. 29, 2011, <http://www.amnesty.org/en/news/nigeria-urged-halt-bill-banning-same-sex-relationships-2011-11-29>; see also Mfonobong Nsehe, "Obama Fights Nigerian Anti-Gay Bill, Threatens to Cut Off Aid," Forbes, Dec. 9, 2011, <http://www.forbes.com/sites/mfonobongnsehe/2011/12/09/obama-fights-nigerian-anti-gay-bill-threatens-to-cut-off-aid/>; Christian Purefoy & Faith Karimi, "Nigerian Senate Passes Anti-gay Bill, Defying British Aid Threat," CNN.com, Nov. 30, 2011, [http://articles.cnn.com/2011-11-30/africa/world\\_africa\\_africa-gay-rights\\_1\\_gay-rights-british-aid-anti-gay-rhetoric?\\_s=PM:AFRICA](http://articles.cnn.com/2011-11-30/africa/world_africa_africa-gay-rights_1_gay-rights-british-aid-anti-gay-rhetoric?_s=PM:AFRICA).

<sup>7</sup> Nigeria ratified the ICCPR on 29 July 1993 and the ACHPR on 22 June 1983.

freedom from torture and cruel, inhuman or degrading treatment or punishment, freedom of expression, and freedom of association.<sup>8</sup>

Moreover, the Association is concerned that the enforcement of the proposed legislation would infringe on the right to privacy of those charged with an offense under the law. The Association fears that the law could be used to probe into the private lives of people who are gay or merely perceived to be gay, as well as to expose the accused to physical and psychological harm. It is the Association's firm belief that, subject to time-tested limitations such as polygamy and incest, all adults, regardless of their sexual orientation, should enjoy the right to express their affections in private without state interference.

The Association abhors the criminalization of homosexuality, the draconian penalties contemplated by the Bill, and the exclusion of LGBT people from full and equal participation in Nigeria's democracy. For this reason, we call upon the Government of Nigeria to immediately oppose the Bill. We will also ask President Obama and the United States Government to continue to forcefully condemn the criminalization of homosexuality in Nigeria.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. W. Seymour', with a long horizontal flourish extending to the right.

Samuel W. Seymour  
President

cc: Hon. Secretary Hillary Clinton  
State Department

Hon. Terrence McCulley  
U.S. Ambassador to Nigeria

Hon. Adebawale Ibidapo Adefuye  
Nigerian Ambassador to the United States

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<sup>8</sup> The principle of non-discrimination is found in Article 2(1) of the ICCPR, Article 2 of the ACHPR and Article 42 of the Nigerian Constitution. Equal protection of the law is guaranteed in Article 26 of the ICCPR and Article 3(2) of the ACHPR. The right to life is enshrined in Article 6(1) of the ICCPR and Article 4 of the ACHPR. Freedom from torture and other cruel, degrading and inhuman treatment or punishment are protected by Article 7 of the ICCPR and Article 5 of the ACHPR. Freedom of expression and freedom of association are guaranteed by Articles 19 and 22 of the ICCPR and Articles 9 and 10 of the ACHPR. The right to privacy is protected by Article 17 of the ICCPR.