



**SOUTHERN AFRICA
LITIGATION CENTRE**

**Joint Stakeholder Submission to the
United Nations Human Rights Council**

**3rd Cycle
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The Federal Republic of Nigeria**

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Joint Stakeholder Submission on Nigeria – November 2018 UPR Session

Joint Stakeholder Submission to the UN Human Rights Council Nigeria UPR November 2018

1. INTRODUCTION

- 1.1 This submission was prepared by Lawyers Alert, and the Southern Africa Litigation Centre (SALC).
- 1.2 Lawyers Alert is a civil society organisation that is non-partisan and non-profit. It consists of lawyers and other professionals committed to the entrenchment of democracy, rule of law and socio-economic development of residents of Nigeria with particular emphasis on women. It was founded in 2000, and became operational in 2002. It is registered according to the laws of Nigeria and Benue State and headquartered in Makurdi, Benue State. Its vision is the entrenchment of democracy in Nigeria. Its mission is the empowerment of the citizenry, especially women, through knowledge of their rights and accessible means of enforcing same in a secure environment.
- 1.3 SALC is a regional human rights organisation based in Johannesburg, South Africa. SALC was established in 2005 as a non-profit organisation to promote and advance human rights and the rule of law in Southern Africa through strategic litigation, research, capacity strengthening, training and advocacy. It works in the following thematic areas: women's land and property rights; freedom of expression; health rights; international criminal justice; prisoners' rights; rights of marginalised groups, including persons with disabilities, sex workers and lesbian, gay and transgender persons.
- 1.4 As part of an Africa Regional Global Fund Grant on HIV, TB and Malaria aimed at removing legal barriers to health care, SALC and Lawyers alert have partnered on certain public interest litigation cases in Nigeria.
- 1.5 The information contained in this Report emanated from Lawyers Alert and SALC's own research and cases in Nigeria.

2. THE NATIONAL HUMAN RIGHTS FRAMEWORK

A. Ratifying and domesticating key international documents

- 2.1 Accepted recommendations from the previous UPR on Nigeria include to sign and ratify the Optional Protocol on the ICESCR and the Optional Protocol to the Convention on the Rights of the Child on the communications procedure; to bring national legislation in line with the Rome Statute and to fully domesticate various human rights instruments. However, Nigeria has not ratified many other important human rights instruments listed below in the recommendations.

Joint Stakeholder Submission on Nigeria – November 2018 UPR Session

Recommendation 1

- (a) We recommend that Nigeria should take steps to ratify all outstanding human rights treaties, including the Slavery Convention and its amending Protocol, the Optional Protocol and Second Optional Protocol to the ICCPR, and accept individual complaints procedures through ratifying the Optional Protocol to the Convention on the Rights of the Child and the Optional Protocol to the ICESCR.

B. Domestic legislative framework

- 2.1 The Constitution of the Federal Republic of Nigeria is the supreme law of Nigeria.¹ Chapter IV establishes a range of civil and political rights that are enforceable by individuals, binding all persons and organs of State. While Chapter II of the Constitution details economic and social rights as Fundamental Objectives and Directive Principles of State Policy, these rights are not justiciable in terms of section 6(6)(c) of the Constitution, despite the duty of all persons and organs of state under section 13 to “conform to, observe and apply” these provisions.
- 2.2 The Federal Republic of Nigeria, in its 6th Periodic Country Report to the African Commission on Human and Peoples’ Rights, acknowledged that the right to life and dignity includes taking positive measures to provide adequate health facilities for all, and includes the right to a clean, poison free, pollution free and healthy environment.

Recommendation 2:

- (a) Nigeria should ensure all human rights, including economic and social rights are justiciable, domestically.

3. PROMOTION AND PROTECTION OF HUMAN RIGHTS

A. Sexual and Reproductive Health and Rights

- 3.1 A July 2017 Report by Lawyers Alert,² has highlighted pervasive violations of sexual and reproductive health and rights in Nigeria, particularly of marginalised persons including sex workers³ and persons of same-sex sexual orientation.⁴

¹ Section 1 of the Constitution of the Federal Republic of Nigeria, 1999.

² Lawyers Alert in partnership with Amplify Change (2017) *Lawyers Alert Findings on Sexual Reproductive Health Rights SHRH Violations in Nigeria*, available at: <http://www.lawyersalertng.org/resources/LAWYERS%20ALERT%20FINDINGS%20ON%20SRHR%20%20%20%20VIOLATIONS%20IN%20NIGERIA%201.pdf>, accessed 7 March 2018.

³ Lawyers Alert in partnership with Amplify Change (2017) *Lawyers Alert Findings on Sexual Reproductive Health Rights SHRH Violations in Nigeria*, available at: <http://www.lawyersalertng.org/resources/LAWYERS%20ALERT%20FINDINGS%20ON%20SRHR%20%20%20%20VIOLATIONS%20IN%20NIGERIA%201.pdf>, accessed 7 March 2018, at p 5.

⁴ Lawyers Alert in partnership with Amplify Change (2017) *Lawyers Alert Findings on Sexual Reproductive Health Rights SHRH Violations in Nigeria*, available at:

Joint Stakeholder Submission on Nigeria – November 2018 UPR Session

3.2 We further remain concerned by the practice of incarcerating caregivers with infants in contravention of article 14(1) of the Convention of the Rights of the Child, rules 49 and 51 of the UN Minimum Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, and article 30 of the African Charter on the Rights and Welfare of the Child. Lawyers Alert is currently involved in a case where an expectant mother was remanded in custody in May 2017 and subsequently delivered and nursed her baby in circumstances contrary to the best interests of the child.⁵

3.3 We welcome the passing of the Violence Against Persons (Prohibition) Act of 2014 and particularly its prohibition of harmful widowhood practices and harmful traditional practices.⁶ We further welcome the wide definitions of domestic relationship,⁷ domestic violence⁸ and rape.⁹

3.4 The Violence Against Persons (Prohibition) Act recognises forced marriage as a harmful traditional practice and we further welcome the government's recent national strategy to end child marriage by 2030. We, however, remain concerned about the high rates of child marriage and the need to address the various underlying factors that contribute to early marriages.¹⁰

<http://www.lawyersalertng.org/resources/LAWYERS%20ALERT%20FINDINGS%20ON%20SRHR%20%20%20%20VIOLATIONS%20IN%20NIGERIA%201.pdf>, accessed 7 March 2018, at p 6.

⁵ Summary of case available at: <http://www.lawyersalertng.org/details.php?recordID=18>, accessed 23 March 2018.

⁶ “[H]armful traditional practices” means all traditional behaviour, attitudes or practices, which negatively affect the fundamental rights of women, girls, or any person and includes harmful widowhood practices, denial of inheritance or succession rights, female genital mutilation or female circumcision, forced marriage and forced isolation from family and friends.

⁷ “[D]omestic relationship” means a relationship between any person and a perpetrator of violence constituted in any of the following ways:

- (a) they are or were married to each other, including marriages according to any law, custom or religion;
- (b) they live or have lived together in a relationship in the nature of marriage, although they are not or were not married to each other;
- (c) they are the parents of a child or children or are the persons who have or had a parental responsibility for that child or children;
- (d) they are family members related by consanguinity, affinity or adoption;
- (e) they are or were in an engagement, dating or customary relationship, including actual or perceived romantic, intimate or sexual relationship of any duration; or
- (f) they share or recently shared the same residence.

⁸ “domestic violence” means any act perpetrated on any person in a domestic relationship where such act causes harm or may cause imminent harm to the safety, health or well-being of any person;

⁹ 1. (1) A person commits the offence of rape if-

- (a) he or she intentionally penetrates the vagina, anus or mouth of another person with any other part of his or her body or anything else;
- (b) the other person does not consent to the penetration; or
- (c) the consent is obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false and fraudulent representation as to the nature of the act or the use of any substance or additive capable of taking away the will of such person or in the case of a married person by impersonating his or her spouse.

¹⁰ C Male and Q Wodon, “Basic profile of child marriage in Nigeria” Health Nutrition and Population Global Practice, Knowledge Brief, March 2016.

Joint Stakeholder Submission on Nigeria – November 2018 UPR Session

Recommendation 3:

- (a) Nigeria should ensure that health services, including sexual and reproductive health services are provided to patients without discrimination on any grounds.
- (b) Guidelines should be developed for magistrates around bail and sentencing to ensure that caregivers are not incarcerated with their babies or forced to give birth in detention where the offences are bailable and where alternatives to custodial sentences are available.
- (c) Nigeria should ensure that the Violence Against Persons (Prohibition) Act is effectively implemented, including by providing appropriate training to law enforcement officials and ensure that the Act also comes to the aid of persons who have suffered violence as a result of their sexual orientation, gender identity, HIV status or perceived occupation as a sex worker.
- (d) Nigeria should ensure that all states have taken concrete steps to implement the minimum age of marriage in line with the Child Rights Act of 2003.

B. The Rights of People Living with HIV

3.5 In fulfilment of its human rights obligations, Nigeria has enacted the HIV/AIDS (Anti-discrimination) Act 2014 which aims to protect the rights and dignity of all persons living with and affected by HIV.¹¹ The Act prohibits discrimination on the basis of a person's HIV status¹² and is comprehensive in its inclusion of a range of behaviours in specifying conduct that would amount to discrimination, including pre-employment HIV testing and conducting HIV testing without the free and informed consent of the person tested.¹³ The Act binds both State and private actors and all employers.¹⁴

3.6 However, discrimination against and violations of the rights of people living with HIV persists.¹⁵ The 2011 *People Living with HIV Stigma Index: Nigeria* documented pervasive discrimination including denial of accommodation and loss of employment.

3.7 In 2012 the High Court of Lagos delivered a judgment on the dismissal of a nurse based on her HIV status.¹⁶ The judgment recognised the unlawfulness of HIV testing without informed consent and held that conducting HIV testing without pre- and post-test counselling constitutes unlawful negligence.

¹¹ Section 1.

¹² Section 3.

¹³ Section 9.

¹⁴ Sections 2 and 29.

¹⁵ Network of People Living with HIV and AIDS in Nigeria (2011) *The People Living with HIV Stigma Index: Nigeria*, available at: http://www.stigmaindex.org/sites/default/files/reports/Nigeria%20StigmaIndex%20final_HighRs.pdf, accessed 8 March 2018.

¹⁶ Case available at: <https://www.escri-net.org/caselaw/2012/georgina-ahamefule-v-imperial-medical-centre-dr-alex-molokwu-suit-no-id16272000>, accessed 23 March 2018.

Joint Stakeholder Submission on Nigeria – November 2018 UPR Session

- 3.8 Unfortunately the practice of non-consensual HIV testing and dismissal on the basis of HIV status persists. In March 2017, a coalition of lawyers working on the rights of persons living with HIV, including Lawyers Alert, raised concerns about the biased attitude of a judge in a matter where a father was claiming custody of his child on the basis of the mother's HIV status.¹⁷ Lawyers Alert has since filed an appeal in this case¹⁸ and is also involved in another similar matter where the mother's custody is challenged on the basis of her HIV status.¹⁹
- 3.9 We are further involved in a case before the Abuja Industrial Court, where Mr. X was compelled by his employers to undergo an HIV test. Based on the results, the defendants terminated his employment in January 2015. Lawyers Alert obtained a court order granting anonymity to the plaintiff in recognition of his right to confidentiality and privacy and the matter is ongoing.²⁰
- 3.10 Lawyers Alert has also intervened in other similar matters, including a case where a school nurse was refused employment on the basis of her HIV status,²¹ and a case where two students were denied accommodation in university hostels because of their HIV status.
- 3.11 A 2017 Report by Lawyers Alert confirms high rates of violations of sexual and reproductive health and rights of people living with HIV. This includes verbal and emotional abuse, violations of housing rights, forced medical testing, violations of employment rights, confidentiality breaches and discrimination in educational settings, amongst others.²²
- 3.12 The continuation of these practices violate the rights of people living with and affected by HIV to freedom from discrimination,²³ privacy,²⁴ and to dignity,²⁵ amongst others. Nigeria is obliged to “ensure that a person's actual or perceived health status is not a barrier to realising the rights under the [ICESCR]”,²⁶ which includes the rights to work under article 6 and to an adequate standard of living under Article 11 of the ICESCR, amongst others.

¹⁷ Press release available at: <http://www.hivjustice.net/news/nigeria-on-zero-discrimination-day-coalition-of-lawyers-for-human-rights-strongly-denounce-judicial-hiv-stigma-in-ongoing-child-custody-case-press-release/>, accessed 23 March 2018.

¹⁸ Summary of case available at: <http://www.lawyersalertng.org/details.php?recordID=15>, accessed 23 March 2018.

¹⁹ Summary of case available at: <http://www.lawyersalertng.org/details.php?recordID=16>, accessed 23 March 2018.

²⁰ Summary of case available at: <http://www.lawyersalertng.org/details2.php?recordID=17>, accessed 23 March 2018.

²¹ Summary of case available at: <http://www.lawyersalertng.org/details.php?recordID=14>, accessed 23 March 2018.

²² Lawyers Alert in partnership with Amplify Change (2017) Lawyers Alert Findings on Sexual Reproductive Health Rights SHRH Violations in Nigeria, available at:

<http://www.lawyersalertng.org/resources/LAWYERS%20ALERT%20FINDINGS%20ON%20SRHR%20%20%20%20VIOLATIONS%20IN%20NIGERIA%201.pdf>, accessed 7 March 2018, at p 9.

²³ UN Human Rights Committee (HRC), Concluding observations of the Human Rights Committee: Republic of Moldova, 4 November 2009, CCPR/C/MDA/CO/2, available at: <http://www.refworld.org/docid/4afc28752.html> [accessed 10 October 2014] at para 12.

²⁴ Section 37 of the Nigerian Constitution protects the right to privacy.

²⁵ Section 34 of the Nigerian Constitution protects the right of “every individual” to “respect for the dignity of the person”.

²⁶ Id at para 33.

Joint Stakeholder Submission on Nigeria – November 2018 UPR Session

Recommendation 4:

- (a) Nigeria should take steps to ensure the effective implementation of the HIV/AIDS (Anti-Discrimination) Act including by training of health care workers and disseminating information to the general public around equality and the need to protect the rights of the persons affected.
- (b) Nigeria should ensure that healthcare workers at State and private health facilities are fully informed of their duties not to subject persons to coercive or non-consensual HIV testing and not to discriminate.
- (c) Nigeria should ensure justice and remedies are accessible, effective and sufficient when violations of the Act occur. This calls for the country to investigate and punish perpetrators and keep records of the developments in terms of increase or decrease in case relating to violation of the rights of the victims to help design programs and intervention policies.

C. The Rights of Sex Workers

- 3.13 The sale of sex is not a crime in Nigeria. Criminal offences relating to sex work however include procurement, brothel keeping, and someone else living on the earnings of a sex worker.²⁷ Offences which are often used to target sex workers, often without any evidence to support arrest, include the offences relating to being a rogue and vagabond,²⁸ and persistently loitering for the purpose of prostitution.²⁹ Since it is not a crime to be a sex worker, any person suspected of being a sex worker has the right to dignity, privacy and the rights attendant upon arrest and detention.
- 3.14 However, female sex workers experience high rates of verbal, emotional and physical abuse, violations of their rights to privacy, unjustified detention, and violations of their sexual and reproductive health rights.³⁰
- 3.15 The ECOWAS Community Court of Justice in October 2017 gave judgment in a case which challenged the practice of the Abuja Environmental Protection Board to forcefully arrest and abuse women who they suspect of being sex workers.³¹ The court held that there was no evidence that the plaintiffs were conducting themselves in a manner that would violate the provision relating to a common prostitute behaving in a disorderly or indecent manner of persistently importuning or soliciting persons for the purpose of prostitution.³² The court noted that the real

²⁷ Section 225A of the Criminal Code.

²⁸ Section 250 of the Criminal Code.

²⁹ Section 249 of the Criminal Code.

³⁰ Lawyers Alert in partnership with Amplify Change (2017) Lawyers Alert Findings on Sexual Reproductive Health Rights SHRH Violations in Nigeria, available at: <http://www.lawyersalertng.org/resources/LAWYERS%20ALERT%20FINDINGS%20ON%20SRHR%20%20%20%20VIOLATIONS%20IN%20NIGERIA%201.pdf>, accessed 7 March 2018 at p 7-8.

³¹ *Dorothy Chioma Njemanze and 3 Others v Federal Republic of Nigeria*, ECW/CCJ/JUD/08/17, available at: http://www.courtecowas.org/site2012/pdf_files/decisions/judgements/2017/ECW_CCJ_JUD_08_17.pdf, accessed 23 March 2018.

³² Page 37 of judgment.

Joint Stakeholder Submission on Nigeria – November 2018 UPR Session

reason for the arrest was that the women were outside at late hours of the night, and that there was no law prohibiting women from staying outside at night. The court held that the State's failure to investigate the plaintiffs' allegations and hold accountable those responsible for the alleged acts was in violation of its obligation under international law to protect their rights.³³ The court further held that the actions of the Abuja Environmental Protection Board, Nigeria police and Nigeria military constitute gender-based discriminatory treatment and cruel, inhuman and degrading treatment in violation of international and regional human rights treaties.

3.16 Unfortunately this practice continues. Currently, we are supporting a case before the Abuja Federal Court in which the rights of 16 women were violated in a similar manner by the Abuja Environmental Protection Board, Nigeria Police and Nigeria Army in February 2017.³⁴ Members of the Joint Task Force of Abuja broke into the apartments of 52 women, unlawfully searching them and their rooms, arresting, torturing and detaining them pending the arrival of a mobile court judge. The case is ongoing.

3.17 The Abuja Environmental Protection Board is also frequently implicated in practices where vendors or persons with disabilities are rounded up in sweeping exercises in violation of a range of rights and criminal procedure.³⁵

Recommendation 5:

- (a) Nigeria should take steps to protect marginalised persons from discrimination and abuse, including by the police, military and Abuja Environmental Protection Board. Where training on human rights is conducted with these authorities, such training should include sensitisation that marginalised groups' rights must be respected, including sex workers, vendors and persons with disabilities.
- (b) Nigeria should put in place mechanisms that facilitate fluid communication between police authorities and persons with disabilities to ensure that such persons are able to ascertain their rights including through provision of sign language, assistance in mobility and psychological treatment for victims as well as adequate reparation and post-counselling for persons with mental disability needing such assistance when they come into contact with police authorities.

D. The Rights of Lesbian, Gay, Bisexual and Transgender Persons

3.18 Section 214 of the Criminal Code prohibits carnal knowledge against the order of nature (anal penetration). The offence relates to both consensual and non-consensual acts and imposes imprisonment of 14 years. Section 217 of the Penal Code further prohibits any act of gross indecency between men in private or public and can lead to imprisonment of 3 years. Individuals presumed to be gay continue to be rounded up and charged under these offences, including a

³³ Page 40 of judgment.

³⁴ Summary of case available at: <http://www.lawyersalertng.org/details.php?recordID=13>, accessed on 23 March 2018.

³⁵ See for example news articles on the AEPB: <http://allafrica.com/stories/201312160274.html>; <http://allafrica.com/stories/201308191413.html>, accessed 23 March 2018.

Joint Stakeholder Submission on Nigeria – November 2018 UPR Session

case where 28 people were charged under section 214(3) in July 2017 in the Yaba Magisterial District in Lagos State.

- 3.19 The Same Sex Marriage (Prohibition) Act of 2013 has created additional criminal offences targeted at persons based on their sexual orientation. The Act was signed into law in January 2014. Whilst same-sex marriages were always prohibited in terms of civil law, it now attracts a criminal penalty of 14 years imprisonment.³⁶ The Act also criminalises any person who registers, operates or participates in gay clubs, societies and organisations and imposes a penalty of 10 years imprisonment.³⁷ Generally, it criminalises same sex relationships and conduct in Nigeria.
- 3.20 This legal environment perpetuates violence and rights violations against lesbian, gay, bisexual and transgender (LGBT) persons, including high rates of reported violations of sexual and reproductive health and rights.³⁸
- 3.21 The new law has had a significant negative impact on lesbian, gay, bisexual and transgender individuals.³⁹ A study conducted between March 2013 and August 2014 showed that there was a significant increase in fear in seeking healthcare services by men who have sex with men after the law was passed.⁴⁰

Recommendation 6:

- (a) Nigeria should repeal the Same Sex Marriage (Prohibition) Act and decriminalise consensual same-sex sexual acts.
- (b) Nigeria should create an enabling environment for LGBT individuals, human rights defenders and organisations to exercise their constitutional rights to freedom of association and expression. This includes providing legislative framework that protects same-sex couples, removing legal and practice barriers for registration of organisations working for or on behalf of lesbian, gay, transgender and bi-sexual people.
- (c) Nigeria should ensure that human rights defenders working on sexual orientation and gender identity work in an enabling environment that is free of stigma, reprisals, or criminal or

³⁶ Section 5(1).

³⁷ Section 5(2).

³⁸ Lawyers Alert in partnership with Amplify Change (2017) Lawyers Alert Findings on Sexual Reproductive Health Rights SHRH Violations in Nigeria, available at: <http://www.lawyersalertng.org/resources/LAWYERS%20ALERT%20FINDINGS%20ON%20SRHR%20%20%20%20VIOLATIONS%20IN%20NIGERIA%201.pdf>, accessed 7 March 2018, at p 6.

³⁹ Human Rights Watch (2016) “Tell me where I can be safe”: The impact of Nigeria’s Same Sex Marriage (Prohibition) Act, available at <http://www.hrw.org>.

⁴⁰ SR Schwartz et al, “The immediate effect of the Same Sex Marriage Prohibition Act on stigma, discrimination, and engagement on HIV prevention and treatment services in men who have sex with men in Nigeria: Analysis of prospective data from the Trust cohort” *The Lancet*, Vol 2 July 2015.

Joint Stakeholder Submission on Nigeria – November 2018 UPR Session

prosecution as a result of their human rights protection activities.⁴¹ To this end, in addition to other mechanism, Nigeria should consider enacting a human rights defenders law/statute making provision protection of human rights defenders, and particularly those working on the subject of sexual orientation and gender identity in the country.

- (d) Nigeria should ensure that Human Rights Desks at police stations provide a safe environment for marginalised persons, including LGBT persons or sex workers, to report police abuses and that the complaints are investigated without undue delay.

⁴¹ Resolution 275/2014 of the African Commission on Human and Peoples' Rights: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity, <http://www.achpr.org/sessions/55th/resolutions/275/>, accessed on 23 March 2018.