



**Nigeria's Compliance with the Convention for the Protection of All Persons from Enforced
Disappearance
Suggested List of Issues Relating to LGBTI Rights**

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996

22nd Session of the Committee on Enforced Disappearances

28 March 2022 – 8 April 2022

Submitted 1 December 2021

The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications.

The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. A growing number of victims fleeing enforced disappearances in Nigeria have requested legal assistance from The Advocates in applying for asylum in the United States. First-hand information from asylum-seekers about the human rights violations that they experienced in Nigeria has been used in this submission with their permission.

EXECUTIVE SUMMARY

1. Enforced disappearances of LGBTI+ people by non-State actors are prevalent in Nigeria and fail to be adequately investigated and prosecuted by State officials. Kidnapping and abduction on the basis of sexual orientation or gender identity is a serious issue that is often not reported to police because many LGBTI+ individuals fear discrimination, arbitrary arrest and detention, or being ignored by police. Under the Same Sex Marriage (Prohibition) Act, a wide range of activities associated with LGBTI+ life carry a prison sentence of ten years, disincentivizing LGBTI+ people to report incidents of enforced disappearance.

Nigeria fails to uphold its obligations under the Convention for the Protection of All Persons from Enforced Disappearance

2. Nigeria has a responsibility to prevent, investigate, and prosecute abductions by non-State actors under the Convention. LGBTI+ individuals are particularly prone to the threat of enforced disappearance by non-State actors. Given a widespread lack of acceptance for LGBTI+ individuals, kidnappers often target LGBTI+ people and exploit the vulnerabilities LGBTI+ people face, such as societal discrimination should their sexual orientation or gender identity be made public, the possibility that the State will not seriously investigate an abduction if the victim is LGBTI+, or the arbitrary arrest and detention of LGBTI+ complainants by State officials. The State's failure to investigate abductions of LGBTI+ people undermines Nigerian civil society's efforts to eliminate discrimination against LGBTI+ individuals.

Nigeria fails to prevent enforced disappearances and hold accountable non-State groups which abduct and deprive of liberty LGBTI+ individuals (List of Issues in Absence of a Report paragraph 8)

3. In the List of Issues in Absence of a report, the Committee requested information about efforts made to investigate abductions by non-State groups acting without the authorization or support of the State.¹ Nigeria has not addressed enforced disappearances of LGBTI+ individuals by non-State actors.
4. In Nigeria's third Universal Periodic Review, the State party received one recommendation that Nigeria investigate and punish perpetrators of violations of human rights, including those who abducted civilians.² Nigeria accepted this recommendation.³
5. Nigerian LGBTI+ people face a societal and legal climate which promotes human rights abuses against LGBTI+ people. LGBTI+ people face hostility and stigma in the home, their

¹ International Convention for the Protection of All Persons from Enforced Disappearance, *List of issues in the absence of the report of Nigeria due under article 29 (1) of the Convention*, (Nov. 13, 2019), U.N. Doc. CED/C/NGA/QAR/1, ¶ 8.

² Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Nigeria*, (Dec. 26, 2018), U. N. Doc. A/HRC/40/7, ¶148.172 Investigate and punish those responsible for violations of human rights and international humanitarian law, for example attacks against schools, hospitals and protected persons, humanitarian actors and their organizations, and those who committed abductions of children, civilians and humanitarian actors (Argentina).

³ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Nigeria, Addendum*, (Feb. 9, 2009), U. N. Doc. A/HRC/40/7/Add.1, 5. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/029/07/PDF/G1902907.pdf?OpenElement>.

workplaces, and the public, as well as violence by anti-gay vigilante groups.⁴ During its third Universal Periodic Review, Nigeria received 14 recommendations regarding LGBTI+ rights.⁵ Nigeria's delegation did not accept (noted) these recommendations.⁶

6. In 2014, the Same Sex Marriage (Prohibition) Act (SSMPA) came into force, which criminalized anyone who “registers, operates or participates in gay clubs, societies and organisation, or directly or indirectly makes public show of same sex amorous relationship in Nigeria.”⁷ Reliable sources report that “Arbitrary arrest and extortion by police is commonplace under the SSMPA.”⁸ Police have held LGBTI+ individuals in custody without formally charging them with any crime under SSMPA, instead demanding an extortion fee as

⁴ Human Rights Watch, “*Tell Me Where I Can Be Safe*” *The Impact of Nigeria’s Same Sex Marriage (Prohibition) Act*, by Human Rights Watch (New York, NY: Human Rights Watch, October 2016), 3. Also available online at https://www.hrw.org/sites/default/files/report_pdf/nigeria1016_web.pdf.

⁵ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Nigeria*, (Dec. 26, 2018), U. N. Doc. A/HRC/40/7, ¶148.67 Adopt measures to combat all forms of discrimination, especially against women and lesbian, gay, bisexual, transgender and intersex persons (Italy); ¶148.71 Fight against discrimination based on sexual orientation or gender identity (France); ¶148.72 Adopt measures to combat violence and discrimination based on sexual orientation and gender identity, repealing the section of the Penal Code that criminalizes homosexuality with the death penalty, as previously recommended (Uruguay); ¶148.73 Amend and review all legislation and policies with a view to decriminalizing same-sex relations (Austria); ¶148.74 Repeal legislation that discriminates on the basis of sexual orientation or gender identity (Iceland); ¶148.75 Repeal all relevant legislation that discriminates against lesbian, gay, bisexual, transgender and intersex individuals and same-sex marriage (New Zealand); ¶148.76 Abrogate the new discriminatory legislation on sexual orientation and gender identity, which criminalizes, inter alia, consensual sexual relations between people of the same sex (Belgium); ¶148.77 Review the Violence against Persons (Prohibition) Act of 2015 in order to prohibit all types of violence without discrimination, including discrimination based on sexual orientation and gender identity (Mexico); ¶148.78 Take the necessary measures to repeal from legislation the norm that runs counter to the human rights of the lesbian, gay, bisexual, transgender and intersex community, and investigate and punish those who commit discrimination on the grounds of sexual orientation (Argentina); ¶148.79 Ensure full territorial coverage by the Violence against Persons (Prohibition) Act, especially article 37, in order to ensure that all, regardless of their sexual orientation or gender, will be able to find legal reparation for the violence they suffer (Chile); ¶148.80 Repeal the Same-Sex Marriage Prohibition Act 2013 and ensure that nobody is punished because of their sexual orientation and release all individuals held in detention because of homosexuality (Germany); ¶148.81 Release all individuals held in detention because of their real or perceived sexual orientation or gender identity (Iceland); ¶148.183 Protect the rights to freedom of association, expression and peaceful assembly for all Nigerians, regardless of ethnicity, religion, sexual orientation or gender identity (Australia).

⁶ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Nigeria, Addendum*, (Feb. 9, 2009), U. N. Doc. A/HRC/40/7/Add.1, 4-5. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/029/07/PDF/G1902907.pdf?OpenElement>.

⁷ Nigeria: Same Sex Marriage (Prohibition) Act, 2013 [Nigeria], Dec. 17, 2013. Also available online at <https://www.refworld.org/docid/52f4d9cc4.html>. Although passed in 2013, the SSMPA did not come into effect until 1st January 2014.

⁸ Human Rights Watch, “*Tell Me Where I Can Be Safe*” *The Impact of Nigeria’s Same Sex Marriage (Prohibition) Act*, by Human Rights Watch (New York, NY: Human Rights Watch, October 2016), 34. Also available online at https://www.hrw.org/sites/default/files/report_pdf/nigeria1016_web.pdf.

“bail” in order to be released.⁹ Police have subjected LGBTI+ individuals to torture and abuse while in custody.¹⁰

7. Nigerians who experience enforced disappearances by non-State actors cite the SSMPA as a primary reason for why they do not report violations to police and State authorities.¹¹ Given that the SSMPA gives police wide latitude to detain, arrest, and charge LGBTI+ individuals or those believed to be LGBTI+, individuals subjected to enforced disappearance on the basis of sexual orientation or gender identity are unable to seek assistance from the State.
8. Even when LGBTI+ individuals experience enforced disappearances for reasons other than their sexual orientation or gender identity, they may not report the incident. For example, a friend (pseudonym Musa) of a client of The Advocates reported being kidnapped by a man pretending to be a cab driver in Benin City.¹² Though Musa’s disappearance had nothing to do with him being gay, he did not go to the police following his release because he feared what the police might do to him as a gay man.
9. In line with a societal and legal climate of violence against LGBTI+ people, kidnappers have specifically targeted individuals who identify as or are suspected of being LGBTI+. Kidnappers abducted and held for ransom Chibuihè Obi, a prominent Nigerian writer, after he published an article on homophobia and violence against gay people.¹³
10. Between December 2018 and November 2019, The Initiative for Equal Rights in Nigeria documented eight instances of enforced disappearance on the basis of perceived sexual orientation or gender identity.¹⁴ Each of these reported violations were carried out by non-State actors. This report is based on self-reporting, which may mean that the number of enforced disappearances on the basis of sexual orientation or gender identity may be higher.
11. In one of the reported incidents, a gay man arranged to meet a friend he had met online.¹⁵ When he arrived, a group of young men attacked him, accusing him of trying to trick their friend into “gayness.” They took him to an unfinished building, tortured him, held him overnight, and called family members to disclose his sexual orientation to them. After threatening to kill him, the young men eventually let the gay man go.

⁹ Human Rights Watch, “*Tell Me Where I Can Be Safe*” *The Impact of Nigeria’s Same Sex Marriage (Prohibition) Act*, by Human Rights Watch (New York, NY: Human Rights Watch, October 2016), 36. Also available online at https://www.hrw.org/sites/default/files/report_pdf/nigeria1016_web.pdf.

¹⁰ Human Rights Watch, “*Tell Me Where I Can Be Safe*” *The Impact of Nigeria’s Same Sex Marriage (Prohibition) Act*, by Human Rights Watch (New York, NY: Human Rights Watch, October 2016), 36. Also available online at https://www.hrw.org/sites/default/files/report_pdf/nigeria1016_web.pdf.

¹¹ Human Rights Watch, “*Tell Me Where I Can Be Safe*” *The Impact of Nigeria’s Same Sex Marriage (Prohibition) Act*, by Human Rights Watch (New York, NY: Human Rights Watch, October 2016), 3. Also available online at https://www.hrw.org/sites/default/files/report_pdf/nigeria1016_web.pdf.

¹² Interview with client of The Advocates for Human Rights, Minneapolis, Nov. 22, 2021.

¹³ Strudwick, Patrick, *A Nigerian Writer Who Was Kidnapped After Writing About Homophobia Has Been Released*, BuzzFeed, June 5, 2017 <https://www.buzzfeed.com/patrickstrudwick/a-nigerian-writer-who-was-kidnapped-after-writing-about>.

¹⁴ The Initiative for Equal Rights, *2019 Human Rights Violations Report: Based on Real or Perceived Sexual Orientation and Gender Identity in Nigeria*, by The Initiative for Equal Rights (Nigeria 2019), 17. Also available online at <https://theinitiativeforequalrights.org/wp-content/uploads/2019/12/2019-Human-Rights-Violations-Reports-Based-on-SOGI.pdf>.

¹⁵ *Ibid.*, 20.

12. A Nigerian client of The Advocates, who has applied for asylum in the United States due to fear of persecution because of his sexual orientation, described the kidnapping of LGBTI+ people as a “regular phenomenon.”¹⁶ Included in his asylum case was the testimony of his friend (pseudonym Manny), who in 2012 had been kidnapped and threatened because of his LGBTI+ identity. Manny was contacted on WhatsApp by someone named Henry (pseudonym). While Manny acted cautiously to protect his own safety, Henry claimed to have known him through Manjam, a gay dating site, and used this false connection to appear innocuous. They chatted on WhatsApp and eventually Henry pressured Manny into meeting in-person at a bar. A nearby bush fire prompted them to relocate to Henry’s house to avoid the soot. At the house, two men stole Manny’s phone, questioned why he was there, stripped him naked, and beat him. They accessed Manny’s phone and called family members, telling his mother and other family members that he was a gay man and that they would kill him if the family did not pay a ransom. The abductors continued to beat him, searched his belongings, stole some of his property, and threatened to kill him. Manny was released after two days when his family paid the ransom. He developed post-traumatic stress disorder (PTSD) and insomnia from physical and verbal abuse as well as from the kidnappers revealing to his family that he was gay. Manny did not report the abduction to police for fear of further persecution on the basis of his sexual orientation.

Suggested questions for the Government of Nigeria:

- What efforts is the State Party taking to eliminate arbitrary arrests and detentions of individuals arrested under the Same Sex Marriage (Prohibition) Act (SSMPA) and to clearly define what behaviors constitute a direct or an indirect “public show of same sex amorous relationship?”
- What efforts is the State Party taking to guarantee that police and other State actors do not engage in corrupt acts such as extortion or accepting bribes related to arresting and detaining individuals under the pretense of SSMPA?
- What efforts is the State Party taking to ensure that the police do not commit acts of violence against individuals in detention under SSMPA for real or perceived sexual orientations?
- What efforts is the State Party taking to publicly condemn all acts of mob violence by both police and vigilante groups against LGBTI+ organizations, societies, clubs, and activities?
- What efforts is the State Party taking to uphold the rule of law and prosecute anti-LGBTI+ vigilante groups for incidents of violence and other criminal activities?
- What efforts is the State Party taking to prevent enforced disappearances by non-State groups of persons suspected to have LGBTI+ identities?
- What efforts is the State Party taking to encourage the prosecution and conviction of non-State and State actors who have kidnapped, held for ransom, or otherwise forcibly disappeared individuals?
- What, if any, efforts are the State Party taking to guarantee that all individuals, including LGBTI+ individuals, can report crimes committed against them, including enforced disappearance?

¹⁶ Interview with client of The Advocates for Human Rights, Minneapolis, Nov. 18, 2021.

- What efforts is the State Party taking to create a database for persons who remain unaccounted for or have been forcibly disappeared?