

FACTSHEET – UPR 2017, GHANA
3rd Cycle of the Universal Periodic Review
Sexual Orientation and Gender Identity



Cycle 1:

Ghana received 3 SOGI recommendations and noted them all:

0 (0%) Accepted, and 3 (100%) Noted

All focused on amending laws to decriminalize same-sex sexual activity between consenting adults (Czechia, Slovenia, Romania).

Cycle 2:

Ghana received 12 SOGI recommendations. It accepted 2 and noted 10.²

2 (17%) Accepted and 10 (83%) Noted

Two Accepted:

2 Concerned prevention against, and justice applied, to acts of violence against people based on SOGI (Canada, Belgium)

Ten Noted:

4 Concerned amending laws through strategies like decriminalization (France, Slovenia, Czechia, Spain)

2 Concerned with combating homophobia (Slovenia, Belgium),

1 Concerned with combating violence, stigmatization, and discrimination (Portugal)

1 Constitutional non-discrimination (Norway)

1 to Consider the report of the High Commissioner on SOGI, and determining which recommendations can sync with governmental policies (Netherlands)

1 On training police, first responders, the justice system and social services to respect and fully protect the rights of all Ghanaians including members of the LGBT community (US)

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For this cycle, we believe that recommendations should focus on equal protection in accordance to already existent national and international law, rather than push for new legislation to decriminalize same-sex relations.

NATIONAL FRAMEWORK

Ghana has been reluctant to address human rights (HR) abuses based on SOGI. In its 2012 UPR, the government did not mention anything regarding SOGI.³ This is puzzling since it had 3 recommendations in the 1st Cycle and 12 recommendations in the 2nd cycle (2 of which it accepted) regarding SOGI.

One positive development is the 2013 establishment of a “Discrimination Reporting System” by Ghana’s Commission on Human Rights & Administrative Justice (CHRAJ). This mechanism receives complaints online, via SMS, or in person, investigates them, and attempts to resolve them. According to them, “[a]ny person who believes he/she has experienced discrimination on the basis of HIV status, gender identity or sexual orientation may report an incident through the CHRAJ stigma and discrimination reporting portal.”⁴ As of April 2016, 66 complaints had been filed, 27 of which were from LGBTIQ⁵ people. Of the 66 cases, 20 have been successfully resolved, though it is not known whether and how many of the 27 LGBTIQ complaints are among the cases that have been successfully resolved.

KEY ISSUES

Ambiguity of the Law: Section 104⁶ of Ghana’s Criminal Code criminalizes consensual “unnatural carnal knowledge” (penetrative sex) but does not define what *natural* and *unnatural* knowledge is. The political elite, the police and religious leaders interpret it in such a way to persecute LGBTIQ persons. This gives a perceived legal argument, and moral duty, for spreading homophobia; **it criminalizes actions and identities of LGBTIQ persons without any clear legal basis for doing so.** This results in the violation of international treaty obligations⁷ as well as many fundamental rights enshrined in chapter 5 of Ghana’s constitution.⁸ **In the majority of cases, HR violations infringe upon privacy, education, and even violence and murder.**

¹ “Report of the Working Group on the Universal Periodic Review.” Human Rights Council. Geneva, May 29, 2008. <http://www.refworld.org/docid/485b962e0.html>.

² “Report of the Working Group on the Universal Periodic Review.” Human Rights Council. Geneva, December 13, 2012. <http://www.refworld.org/docid/50f91dec2.html>.

³ Working Group on the Universal Periodic Review. “National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21,” August 10, 2012. http://www.refworld.org/topic_50fbce51b1_50fbce5208_506d5e612_0,,GHA.html

⁴ See <http://drs.system.chraighana.com/>

⁵ Lesbian, Gay, Bisexual, Transgender, Intersex and Queer.

⁶ Republic of Ghana. Criminal Code, 1960 (Act 29), § 99 and 104 (1960). <http://www.wipo.int/edocs/lexdocs/laws/en/gh/gh010en.pdf>.

⁷ The International Covenant on Civil and Political Rights (ICCPR) <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>; The International Covenant on Economic, Social and Political Rights (ICESCR) <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>; and the Convention on the Rights of the Child (CRC) <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

⁸ Parliament of Ghana. The Constitution of the Republic of Ghana (Amendment) Act, Pub. L. No. Act 527 (1996). <http://www.wipo.int/edocs/lexdocs/laws/en/gh/gh014en.pdf>.



Invasion of Privacy: On 19 March 2017, a hotel clerk witnessed two men having sex. He photographed and filmed as he assaulted and humiliated them. He posted and circulated the footage throughout social media. Media agencies sensationalized the case, lauded the aggressor and labelled the two survivors “culprits.”⁹ Days later, the names of the survivors were released while the name of the hotel was withheld and protected.¹⁰ **There were 5 HR violations in this case.** This demonstrates the lengths that people may go to “apprehend” those suspected of being gay, lesbian or bisexual. This infringed upon the right to privacy as enshrined in Art.17§1 of the ICCPR and Art.18§2 of the Ghanaian constitution. Violating the right to privacy, especially with digital recording and social media, paves the way for unlawful attacks on honour and reputation, a violation of Art.17§1 of the ICCPR. It also denies survivors respect for human dignity, owed to them by Ghana’s constitution (Art.15§1&2). Such a lack of regard for Art.15 of the constitution subjects LGBTIQ people of cruel and degrading treatment, in violation of Art. 7 of the ICCPR.

Deprivation of Education: In January of 2016, a mob of students armed with clubs, machetes and stones, attempted to lynch three male students at Opoku Ware Senior High School in Kumasi, accused of having “engaged in homosexuality.” The school expelled the three victims.¹¹ **There are 8 HR violations in this case.** It shows the degree to which LGBTIQ people are not guaranteed an education and can be removed from school, unjustly compromising their future. The public dimension of these expulsions violates their general right to privacy (Art.17§1, ICCPR; Art.18§2, Constitution of Ghana) as the aggressors and school allowed for the unlawful attack on honour and reputation (Art.17§§1), as well as right to privacy guaranteed to children as enshrined in Art. 16§1&2 of the CRC. The deprivation of education on the basis of SOGI infringes on the right to equal access to education as stated in Art. 13§1 of the ICESCR, Art.28§1 of the CRC and Art.25§1 of the Ghanaian Constitution.

Violence and Death: In December 2014, residents at Madina Zongo district of Accra staged a manhunt of a man accused of being homosexual. “We shall burn [him] to death” because “Islam abhors homosexuality,” said manhunt head, Abdullai Jibril. “We shall burn or bury him alive to serve as a deterrent to others who may entertain any thoughts of engaging in homosexuality.” The mob severely beat members of the man’s family and set fire to a motorbike that they believed belonged to him.¹² **There are 2 HR violations in this case.** The climate of normalized homophobia¹³ in communities, schools and in religious spaces provides the justification (and in some cases the perceived necessity) to perpetrate violent and deadly crimes against people based on SOGI. Violence such as public lynchings stand in direct violation of the right to life, enshrined in Art. 6§1 of the ICCPR and art.13§1 of the Constitution of Ghana, necessitating police intervention. **Furthermore, HR advocates who speak against violence and homophobia become targets of violence and discrimination, silencing and preventing them from defending LGBTIQ HR protection.**

Asymmetry of the Law: Legal recourse is withheld from survivors or victims of discrimination and violence on the basis of their perceived SOGI. Often, they themselves are subjected to arbitrary arrests. The constitution entrusts Ghanaian authorities with the responsibility to regard all persons as equal before the law (art.17§1) and therefore prohibits discrimination (§2). The principle of equal protection under law is enshrined in art.26 of the ICCPR. Furthermore, all articles contained in the CRC, ICCPR and ICESCR must be applied to all Ghanaians as stated in article 2 of every treaty mentioned. Ghana’s routine disregard for its own constitution, as well as the 3 international treaties it signed and ratified undermines the legitimacy of Ghana’s laws, legal institutions and corresponding normative practices.

RECOMMENDATIONS

1. The Ghana Education Service should provide clear national guidelines to prevent discrimination directed towards students on any grounds including SOGI.
2. Provide mechanisms for effective redress whenever a student faces discrimination, including legal action unhampered by limitations based on financial capacity of the child, nor the family.
3. **Protect against violence and discrimination** by speeding up the implementation of recommendation 124.8 (cycle 2), to ensure accountability for acts of violence, including on the basis of their SOGI.
4. **To increase the current resources of the existing “Discrimination Reporting System,”** to improve the system and implement complementary systems of reporting and redress.
5. Implement recommendation 124.9 (Cycle 2) to ensure that complete and impartial investigations are fully conducted without prejudice into allegations of attacks and threats against persons based on their sexual orientation and gender identity. Finally, bring those responsible to justice in conformity with local laws and international standards.
6. Guarantee the speedy implementation of recommendation 124.3 (Cycle 2) to ensure that local law enforcement and auxiliary personnel comport themselves in accordance to HR treaty obligations. Include members of the LGBTIQ community in the strategic implementation of recommendation 126.20 (Cycle 2). Mainstream training programs for law enforcement to achieve this goal.

⁹ See Ba’ Article “Shocking: Two Men Caught Bonking in a Hotel Room” (21 March, 2017) <http://ashaimanonline.com/shocking-two-men-caught-bonking-hotel-room-photos/>

¹⁰ See Tenyah-Ayettey’s article “The sex was acted” (23 March 2017) from <http://dailyguideafrica.com/the-sex-was-acted/>

¹¹ Daily Graphic, 20 January 2016. <https://www.modernghana.com/news/669124/three-opoku-ware-shs-students-suspended-for-alleged-homosexu.html>

¹² Reported 2 April 2015 <http://www.reportghananews.com/muslim-youth-from-madina-hunt-for-gay-suspect/>

¹³ Pew Placed Ghana second last to Nigeria when asked “should society accept homosexuality.” (Khout et al 2013) For more please see <http://assets.pewresearch.org/wp-content/uploads/sites/2/2014/05/Pew-Global-Attitudes-Homosexuality-Report-REVISED-MAY-27-2014.pdf>.

