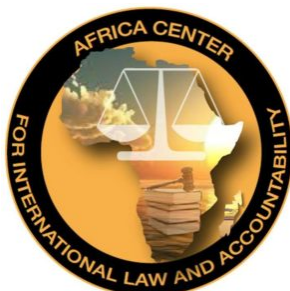




THE PERFECTOR
OF SENTIMENTS
FOUNDATION



**Human Rights Violations Against
Lesbian, Gay, Bisexual, and Transgender Intersex and Queer (LGBTIQ)
People in Ghana:**

Joint Stakeholder Report by the Working Group of CSOs...

**Submitted for consideration at the
United Nations Third Universal Periodic Review (UPR) Cycle**

by

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I. Introduction

This report is submitted for the third cycle of the UPR by Solace Brothers Foundation (SBF)¹, Perfector of Sentiments (POS) Foundation², Priority On Rights and Sexual Health (PORSH)³, Amnesty International, Ghana, Human Rights Advocacy Centre (HRAC), Center for Popular Education and Human Rights Ghana (CEPEHRG) and Society and Youth Development. It is the result of a series of Ghana human rights NGO's fora.⁴ The information contained in this document was further discussed at a pre-UPR submission workshop on 21st and 22nd March, 2017 which was attended by more than 70 civil society organizations in Accra, and validated by same on 28th March, 2017.

The purpose of this report is to direct the UPR Committee's attention to serious and ongoing violations of the human rights of lesbian, gay, bisexual, transgender, intersex and queer/questioning ("LGBTIQ") individuals by the Republic of Ghana. Ghana has signed and ratified the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC). This report will highlight recent events that illustrate the following thematic issues relating to Sexual Orientation and Gender Identity (SOGI) as they relate to the international treaties to which Ghana is a party:

- Laws criminalization of same-sex sexual conduct and the resulting arbitrary arrests and detentions, in violation of Articles 2(1), 9, 17, and 26 of the ICCPR;
- The climate of homophobia in violation resulting in the violation of Article 17 of the ICCPR
- Violent attacks motivated by the victim's real or perceived sexual orientation and a pervasive climate of homophobia, in violation of Articles 2(1), 7, 9, 17, and 26 of the ICCPR; and
- Discrimination in education, in violation of Article 17 of the ICCPR, Article 13 of the ICESCR and Articles 2(1), 16, 29(1a), 29(1b) and 29(1d) of the CRC.

At the end of the report will be suggested questions to be asked during Ghana's upcoming review session.

II. Ghana, SOGI and the Universal Periodic Review

For the second cycle, Ghana accepted two out of twelve recommendations compared to zero of three recommendations it received during the first. Those accepted were to "prevent, and ensure accountability for, acts of violence perpetrated against individuals, including on the basis of their sexuality (124.8)" and to "bring those responsible to justice in conformity with the international standards" (124.9). In the first cycle, all recommendations received concerned amending laws, decriminalizing same-sex sexual activity.⁵

¹ Solace Brothers Foundation is organization committed to working for the protection of human rights of sexual minorities in Ghana.

² POS promotes youth development human rights and social accountability.

³ (**PORSH**) is an NGO with the sole aim of seeking for rights and certain privileges in life for humanity especially the vulnerable in society.

⁴ www.posfoundation.org

⁵ See paragraph 16, 24, 50 of A/HRC/8/36 available at

For the second cycle,⁶ though Ghana continued to receive a number of recommendations relating to decriminalization (126.16, 126.17, 126.18, 126.22) (all of which Ghana has rejected), it also received recommendations relating to justice (126.23, 126.25) combating violence (126.21, 126.23); awareness-raising to fight homophobia and stigma (126.19, 126.20, 126.22) and equal protection and access to justice conferred to LGBTIQ people by the law (124.8, 124.9, 126.23).

One positive development that should be noted is the establishment in 2013 of a “Discrimination Reporting System” by Ghana’s Commission on Human Rights & Administrative Justice (“CHRAJ”). This mechanism is charged with receiving complaints, investigating them, and attempting to resolve them. According to the Complaint Form, “[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.” Complaints can be filed online, by text message, or in person at the CHRAJ offices. As of April 2016, 66 complaints had been filed, 27 of which were from LGBTIQ people. Of the 66 cases, 20 have been successfully resolved; it is not known whether any of the 27 LGBTIQ complaints are among the cases that have been successfully resolved.

Ghana has yet to make any recommendations regarding SOGI as compared to South Africa, Madagascar and Ethiopia. Ghana’s voice is therefore largely absent in advocacy for rights relating to SOGI, but it is not too late for it to pioneer leading discussion. From Ghana’s acceptance of two recommendations during the second cycle compared to none during the first, two conclusions can be drawn: the first suggests “there is an evolution of thinking” as stated by His Excellency Mr. Sammie Eddico, Ambassador to Ghana⁷ during the 41st Meeting of the 32nd Regular Session of the Human Rights Council on June 30th, 2016. This is why he abstained from voting to establish an independent expert on protection against violence and discrimination based on SOGI.⁸ The second is that there is increased international attention paid to human rights abuses committed against people based on SOGI. This is reflected in the increased volume and diversity of recommendations made, providing Ghana with the room to make incremental changes to legal and customary norms relating to members of the LGBTIQ community.

III. Laws Criminalising Same-Sex Sexual Conduct, Leading to Arbitrary Arrests and Detention:

Chapter 6 Section 104 of Ghana’s Criminal Code (1960) is used to threaten, arrest and punish individuals for engaging in same-sex sexual conduct. It states the following:

- “(1) Whoever has unnatural carnal knowledge–
- (a) of any person of the age of sixteen years or over without his consent shall be guilty of a first-degree felony and shall be liable on conviction to imprisonment for a term of not less than five years and not more than twenty-five years; or
 - (b) of any person of sixteen years or over with his consent is guilty of a misdemeanor; or

http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/GH/A_HRC_8_36_Ghana_E.pdf

⁶ See A/HRC/22/6 <http://www.refworld.org/docid/50f91dec2.html>

⁷ ILGA-ARC International 2016 pp.98 http://ilga.org/downloads/SOGI_Resolution_Vote_compilation.pdf

⁸ Ibid

(c) of any animal is guilty of a misdemeanor.

(2) Unnatural carnal knowledge is sexual intercourse with a person in an unnatural manner or with an animal.”⁹

Subsection (1)(b) of Section 104 of Ghana’s Criminal Code criminalizes consensual “unnatural carnal knowledge” but does not define what is and what is not natural. Ghanaian legal institutions and law enforcement often interpret “unnatural carnal knowledge” to mean same-sex sexual conduct. This targets and discriminates against individuals based on their perceived or self-identified SOGI while providing no avenue for legal recourse and protection.

Obligations

Reviewing countries recommended that Ghana decriminalize same-sex sexual activities between consenting adults (126.16, 126.17, 126.18, 126.22). To date Ghana has made few strides to take concrete action in the legislature to do so.

Ghana has a legal obligation to respect and ensure non-discrimination and equality under the law as per Article 2(1) and 26 of the ICCPR. As per the ICCPR which Ghana has both signed and ratified, any discrimination based upon attributes such as race, color, sex and “other status” is prohibited. Article 17 Section 1 of the ICCPR states that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”¹⁰ Section 2 specifies that: “[e]veryone has the right to the protection of the law against such interference or attacks.”¹¹ Finally, Article 9(1) of the ICCPR affirms that everyone has the right to liberty and that “[n]o one shall be subjected to arbitrary arrest or detention.”¹²

Recommendations:

As Subsection (1)(b) of Section 104 of Ghana’s Criminal Code the is in violation of the articles of the ICCPR, we therefore recommend the following:

- Accept recommendations 126.16, 126.17, 126.18, 126.22 to decriminalize same sex sexual conduct by repealing Chapter 6, Section 104, Subsection (1)(b) of the Ghana Criminal Code.
- Produce laws that both protects people from sexual abuse equally regardless of sex, gender and SOGI
- Remove any ambiguity from laws that allows state officials criminalize consensual same-sex activity through discriminatory interpretation.

IV. Climate of Homophobia

General prevalence of homophobia

Homophobia directed to lesbians, gays, bisexual, and queer/questioning people is highly prevalent in Ghana. For transgender, transsexual and intersex people, the social climate is such individuals keep their gender identity almost completely hidden. Additionally, those who speak out about Human Rights violations perpetrated against people that are LGBTIQ are also targets of homophobia. As per

⁹ CRIMINAL CODE Act 29, Ch. (6), § 104 (Ghana).

¹⁰ *Covenant*, *supra* note 3, art. 17(1).

¹¹ *Ibid.* at art. 17(2).

¹² *Ibid.* at art. 9(1).

recommendation 124.8, Ghana has accepted to “take steps to **prevent** and ensure accountability for, **acts of violence perpetrated** against individuals, **including on the basis of their sexuality**.”¹³ This section will illustrate the social climate that normalizes homophobia and associated violent acts, due to the perceived notion of illegality of homosexuality caused by the ambiguous nature of the Criminal Code. Disdain and resentment against the LGBTIQ community have grown in recent years and often lead to the violence discussed in Section III.¹⁴

News reports in Ghana perpetuate the myth of homosexuality as a cult-like behaviour. For example, the October 2014 article *I Was Introduced into Gayism by My Class Teacher*, published by the online news publication *News Ghana*, warns of “an underworld of child recruitment into homosexuality,” in which homosexuals “are constantly on the prowl for somewhat unsuspecting minors that they can lure astray.”¹⁵ According to the author, “[o]ur children in secondary schools and everywhere are clearly massively exposed,” necessitating “a deliberate massive response.”¹⁶

Due to fears about being ostracized and abused physically, verbally and emotionally, most LGBTIQ individuals in Ghana feel forced to hide their identities.¹⁷ “*I’m a lesbian and I have accepted myself. I have been abused a number of times, people have said a lot of hurtful words to me but that will not stop me from being who I am,*” said one anonymous interviewee quoted on December 11, 2015 in *News Ghana*.¹⁸ However, she explained, “In this country we are not allowed the right to reveal our real identity.”¹⁹

Media sources in Ghana often condone abusive treatment of LGBTIQ persons in Ghana. For example, on March 23, 2016, George Sydney Abugri published a widely-circulated opinion piece in the Ghanaian news source, *Graphic Online*, that argued that “all humans must conform” to natural law.²⁰ In this way, Abugri promoted the biased, faith-based logic that the only way to deal with homosexuality is to eliminate it.²¹ He suggested that LGBTIQ persons be forced to receive “psychological help” to “conform” to heteronormative social structures.²²

Homophobic Statements and Promotion of Criminalizing Same-Sex Sexual Conduct by Public Officials and Religious Leaders

Homophobic statements and public support of the criminalization of same-sex sexual conduct by public officials and religious leaders perpetuate societal prejudices against LGBTIQ individuals. They further encourage more hate speech, hate crimes, and discrimination by both state and non-state actors. Homophobia and the promotion of criminalising same-sex sexual conduct violate Articles 2(1) and 26 of

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¹⁴ UK Operational Guidance Note: Ghana, *supra* note 13, at p. 19.

¹⁵ *I Was Introduced into Gayism by My Class Teacher*, NEWS GHANA (Oct. 31, 2014), available at <http://www.newsghana.com.gh/introduced-gayism-class-teacher/>.

¹⁶ *Ibid.*

¹⁷ *Gay Community in Ghana Speak Out*, NEWS GHANA (Dec. 11, 2015), available at <http://www.newsghana.com.gh/gay-community-in-ghana-speak-out/>.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Gays in Ghana: Taking the Noisy Quarrel to the Scottish Parliament*, GRAPHIC ONLINE (March 23, 2016), available at <http://www.graphic.com.gh/features/opinion/60702-gays-in-ghana-taking-the-noisy-quarrel-to-the-scottish-parliament.html#sthash.KcLO9WC8.xiqq>.

²¹ *Ibid.*

²² *Ibid.*

the Covenant as they pertain to equality and non-discrimination.

2012 July	When Ghana's Constitution Review Commission recommended that Ghana's Supreme Court decide on "whether the country should legalize same-sex acts," ²³ tribal leaders, government officials and even members of the Commission openly criticized the suggestion, calling homosexuality "un-African" and "morally repugnant." ²⁴
2013, February	The President of Ghana, John Dramani Mahama, stated, "Homosexual conduct which is unnatural carnal knowledge of one person or another is criminal and punishable by the laws of Ghana." ²⁵
2015, July	A Muslim Chief Imam of Takoradi, Alhaji Mohammed Awal, publicly condemned homosexuality "as dirty and abominable." ²⁶ At the opening prayers of Eid-ul-Fitr at the end of Ramadan, he encouraged his Muslim followers to shun the "devilish acts" of homosexuality ²⁷
2016, February	Pastor Mensa Otabil, leader of one of Ghana's largest churches and the chancellor of a Central University College in Ghana gave a sermon associating same sex marriage "with darkness. [He] ...call[ed] on Christians to "overcome the darkness." In 2015, one news outlet ranked him as the most influential person in Ghana. ²⁸ Consequently news reports of his Valentine's Day sermon elicited a torrent of hateful comments directed at LGBTIQ persons. "HOMOSEXUALITY IS AN ABOMINATION," one comment began, "If they want to marry what they love then soon they will marry their pets (dogs, cats, horses.)" ²⁹
2016, February	At a press conference in Accra about the Regional Episcopal Conference of West Africa, Conference President Cardinal Theodore Sarr urged Africans not to accept homosexuality. ³⁰ He argued that to accept it is to allow the culture of the West to infringe upon Africa. ³¹
2017, February	The speaker of the parliament of Ghana stated at the Royal House Chapel: "It is unfortunate that people have become so liberal that they will want to liberalise Christianity...even priests are approving of homosexuality and allowing a man and a man [to] marry, a woman and a woman [to] marry and these are manifest abominations. The Parliament of Ghana will find its way

²³ Littauer, *supra* note 73.

²⁴ *Ibid.*

²⁵ *Socio-Political Situation, supra* note 30; *President Mahama speaks: Homosexuality is Criminal*, GHANA WEB (Feb. 1, 2013), available at <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=263862>.

²⁶ GNA, *Homosexuality is dirty and abominable-Chief Imam*, MODERN GHANA, (July 18, 2015), available at <https://www.modernghana.com/news/630606/homosexuality-is-dirty-and-abominable-chief-imam.html>.

²⁷ *Ibid.*

²⁸ *Otabil Is Most Influential Ghanaian*, STARRFM (Feb. 16, 2015), available at <http://www.starrfmonline.com/1.1998160>.

²⁹ *Same-sex Marriage 'Doesn't Make Sense'*, *supra* note 81.

³⁰ *Africa Won't Accept Homosexuality – Catholic Bishops*, MODERN GHANA (Feb. 22, 2016), available at <https://www.modernghana.com/news/676425/africa-wont-accept-homosexuality-catholic-bishops.html>.

³¹ *Ibid.*

clear in strengthening the laws to ban homosexuality as they exist. As for this, may God forbid that it becomes a Ghanaian culture (sic)...I trust that with your kind of insistence, the Parliament of Ghana...will find its way clear in strengthening the laws to ban homosexuality as they exist.”³²

Obligations

As per the second cycle, Ghana accepted one recommendation to take measures to prevent acts of violence (124.8) and noted recommendations received to raise public awareness to fight homophobia (126.20) and social stigma (126.21).

Section 208(1) of Ghana’s Criminal Code prohibits any person from publishing or reproducing “any statement, ...which is likely to cause fear and alarm to the public or to disturb the public peace, [while] knowing or having reason to believe that the statement, rumour or report is false.”³³

When influential religious and political figures call the right to equal access to state recognized unions “manifest abominations,” it wrongfully diabolifies members of the LGBTIQ community. In addition, the voices of LGBTIQ people are absent in the majority of public discourses that concern them because the hostile homophobic environment in which these discourses occur make it almost impossible to deliver counter narratives. Furthermore, it is distressing when even the Head of State falsely calls homosexuality (and thus sexual minorities themselves) criminal, and punishable by law because it transforms LGBTIQ citizens into enemies of the state. This therefore sends dangerous messages that make sexual and gender minorities susceptible to vigilante justice while placing them outside of the protection of the actual justice system.

Recommendations:

We therefore recommend the following:

- Include members of the LGBTIQ community in the strategic implementation of recommendation 124.20 made during the second cycle of Ghana’s Periodic Review
- Accept recommendation 126.20, 126.21 from the second cycle of Ghana’s Periodic Review.
- Enforce Section 208(1) of Ghana’s Criminal Code to discourage false statements that cause fear and alarm towards people based on SOGI.
- Produce state-endorsed media representations that allow sexual and gender minorities to depict themselves more accurately.

V. Violence Based on Real or Perceived Sexual Orientation and Gender Identity

The severe lack of protection from physical attacks against LGBTIQ individuals in Ghana violate rights protected by Articles 7 and 9 of the ICCPR. Article 7 protects against “torture and cruel, inhuman or degrading treatment” whereas Article 9 ensures “security of person.” Ghana’s obligation to the ICCPR is to ensure the protection of these rights by promoting compliance while preventing, investigating, prosecuting, punishing, and remedying any violation. Ghana has not complied with these obligations.

³²Kobina, Welsing. “Amend Ghana’s laws to ban homosexuality – Oquaye. StarrFM Online (Feb. 20, 2017) available at <http://starrfmonline.com/2017/02/20/amend-ghanas-laws-ban-homosexuality-oquaye/>

³³ Ghana Criminal Code, Act 29. 208(1) Publication of False News. Available at <http://www.wipo.int/edocs/lexdocs/laws/en/gh/gh010en.pdf>

2012 March	A group of young men from the Ga-Mashie Youth for Change, armed with “canes, cutlasses, stones, and broken bottles,” attacked a birthday party in the Jamestown neighborhood of Accra. The attackers claimed that the party was really a wedding between two women. According to a witness, the attackers beat some of the women at the party, stripped them naked, and stole their phones and money. ³⁴ The attack was reported to the police but the only individuals arrested were some of those attending the party. ³⁵ The Jamestown LGBTIQ community was under threat for several days and some community members had to go into hiding from the police. Not one of the attackers was ever arrested or investigated. ³⁶
2014 August	A mob in Walewale threatened to lynch a 21-year-old male student for wearing women’s clothes and having sex with men. The police responded by arresting him. ³⁷ The mob threatened to kill him and his family if “released locally.” ³⁸
2014 December	Residents of Libya Quarters at Madina Zongo in Accra conducted a manhunt targeting a young man accused of being homosexual. ³⁹ Malam Shaibu, an Islamic cleric at Madina Zongo, stated, “We shall burn [him] to death” because “Islam abhors homosexuality.” ⁴⁰ The leader of the manhunt, Shehu Munkaila Iddrisu, told the Daily Guide in an interview, “[w]e shall burn or bury him alive to serve as a deterrent to others who may entertain any thoughts of engaging in homosexuality.” ⁴¹ The mob severely beat members of the young man’s family and set fire to a motorbike that they believed belonged to him. ⁴²
2015 March	A group of women suspected of being lesbians were “shit-bombed and pelted with stones” during a party in Teshie in the Greater Accra region. ⁴³ The attackers suspected the party was an engagement ceremony for two of the women present. One anonymous victim recalled: “They threw stones and [feces] at us, but I don’t understand their anger, isn’t [it] the right of the individual to decide what they want to do with themselves?” ⁴⁴ Nevertheless,

³⁴ Jonathan Migneault, *Clash Over Gay Rights in Accra*, JOURNALISTS FOR HUMAN RIGHTS (Mar. 26, 2012), <http://www.jhr.ca/blog/2012/03/clash-over-gay-rights-in-accra/>. See also Prince Kweku, *Report: Socio-Political Situation of LGBTIQ People in Ghana, 2013* (Mar. 14, 2014), available at <http://www.amsher.org/report-socio-political-situation-LGBTIQ-people-ghana-2013/> [hereinafter *Socio-Political Situation*].

³⁵ *Clash Over Gay Rights in Accra*, *supra* note 30; *Report: Socio-Political Situation of LGBTIQ people*, *supra* note 30; Interviews with participants by Stefano Fabeni, Executive Director, Global Initiatives for Human Rights of Heartland Alliance.

³⁶ Interviews, *supra* note 31.

³⁷ Colin Stewart, *Ghana student faces anti-gay threats, so police arrest him*, 76 CRIMES (Aug. 27, 2014), available at <http://76crimes.com/2014/08/27/ghana-student-faces-anti-gay-threats-so-police-arrest-him/>; see also Zoure Stephen, *Gay Man Arrested*, PEACE FM (Aug. 25, 2014), available at <http://news.peacefmonline.com/pages/social/201408/212045.php>.

³⁸ *Ghana student faces anti-gay threats*, *supra* note 17.

³⁹ *Manhunt for Gay Muslim*, DAILY GUIDE (Dec. 18, 2014) [hereinafter *Daily Guide*]; Finish Immigration Service, *Status of LGBTIQI People in Cameroon, Gambia, Ghana and Uganda*, at p. 57 n. 350 (Dec. 3, 2015), available at http://www.migri.fi/download/64428_Status_of_LGBTIQI_people_in_Cameroon_Gambia_Ghana_and_Uganda_3.1_2.2015.pdf?e3a49d609249d388 [hereinafter *Finish Immigration Service*]. Libya Quarters is an apartment complex at the junction in Madina. Accra is commonly referred to as “Zongo.”

⁴⁰ *Manhunt for Gay Muslim*, *supra* note 34; Finish Immigration Service, *supra* note 34, at p. 57.

⁴¹ *Manhunt for Gay Muslim*, *supra* note 34; Finish Immigration Service, *supra* note 34, at p. 57.

⁴² *Manhunt for Gay Muslim*, *supra* note 34.

⁴³ Emmanuel Tornyi, *Lesbians Shit-Bombed and Stoned*, PULSE (Mar. 4, 2015), available at <http://pulse.com.gh/news/cruelty-lesbians-shit-bombed-and-stoned-id3538287.html>.

⁴⁴ *Ibid.*

	the attackers have vowed to continue the attacks “until homosexuality is completely eliminated from the area.” So far, “scores” of lesbians in the area have been attacked. ⁴⁵
2015	<p>The LBGTIQ community in the Nima area of Accra was terrorized by a homophobic vigilante gang called “Safety Empire,” whose stated aim is to “wage a crusade against homosexuality.”⁴⁶ The leader of this group, who goes by various names including Sulley Fuseini and Doya Dundu,⁴⁷ referred to himself on one of his Facebook pages as “The Gay Slayer.”⁴⁸ According to reports, Fuseini and his gang would attack their victims after Fuseini had lured them on Facebook under the guise of asking them on a date. Upon a victim’s arrival, Fuseini and his gang would strip, beat, and humiliate him. Videos of these attacks were posted on social media, further humiliating the victim and causing fear in the LGBTIQ community.⁴⁹</p> <p>In one such incident, on August 14, 2015, Sulley Fuseini led the “Safety Empire” mob to brutally attack a man they accused of being gay. The victim was stripped naked and whipped mercilessly with belts, sticks, and sharp metal. The attackers videotaped the attack.⁵⁰</p> <p>In another incident, on September 4, 2015, Fuseini and his gang attacked a victim with boiling water, causing burns to the victim’s face.⁵¹ Following this attack, Fuseini was apprehended.⁵² However, after three months in detention, Fuseini was released on bail and allowed to return to the Nima neighborhood where he and his gang had carried out their attacks.⁵³</p>
January 2016	A mob of students at Opoku Ware Senior High School in Kumasi attempted to lynch three male students who were accused of having “engaged in homosexuality.” ⁵⁴ The attackers, who were prevented from carrying out the attack by some of the teachers at the school, had been armed with clubs, machetes and stones. ⁵⁵ The school responded to this situation by

⁴⁵ *Ibid.*

⁴⁶ *Gay Gets 100 Lashes for Attempting Recruit Another Man Over*, NEWS GHANA (Aug. 16, 2015), <http://www.newsghana.com.gh/gay-gets-100-lashes-for-attempting-recruit-another-man-over/>; Linda Tenyah Ayettey, *Nima Gay Attacker Arrested*, DAILYGUIDE (Sept. 18, 2015), available at <http://dailyguideafrica.com/nima-gay-attacker-arrested/>.

⁴⁷ Colin Stewart, *Ghana arrests reputed leader of violent anti-gay gang*, 76 CRIMES (Sept. 18, 2015), available at <http://76crimes.com/2015/09/18/ghana-arrests-reputed-leader-of-violent-anti-gay-gang/>.

⁴⁸ Colin Stewart, *Warning: Violent homophobe active in Ghana*, ERASING 76 CRIMES (Aug. 15, 2015), available at <http://76crimes.com/2015/08/15/warning-violent-homophobe-active-in-ghana/>.

⁴⁹ *Ghana arrests reputed leader of violent anti-gay gang*, *supra* note 42; *Warning: Violent homophobe active in Ghana*, *supra* note 43.

⁵⁰ *Nima Gay Attacker Arrested*, *supra* note 41; *Ghana arrests reputed leader of violent anti-gay gang*, *supra* note 42; *Gay Gets 100 Lashes*, *supra* note 41.

⁵¹ *Nima Gay Attacker Arrested*, *supra* note 41.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Three Opoku Ware SHS Students Suspended for Alleged Homosexuality*, GRAPHIC ONLINE (Jan. 19, 2016), available at <http://www.graphic.com.gh/news/general-news/56588-three-opoku-ware-shs-students-suspended.html>.

⁵⁵ *Ibid.*

| expelling the three intended victims.⁵⁶

Obligations:

Of relevant second cycle recommendations accepted, Ghana agreed to prevent and ensure accountability for violence perpetrated based on SOGI (124.8, ensure complete and impartial investigations and bring those found responsible for attacks to justice (124.9). Ghana noted recommendations to combat the climate of homophobia pervasive in Ghana (126.19, 126.20); combat violence (126.20), discrimination (126.21, 126.22) ensure equal protection under the law (126.23) and train police, first responders, members of the justice system and social service officials to protect the rights of LGBTIQ persons.

The highlighted stories of violence based on perceived or lived SOGI demonstrates Ghana's negligence to protect its LGGBTIQ citizens from a number of human rights violation. The asymmetrical distribution of adequate redress and justice due to prejudiced attitudes directed at LGBTIQ, held by law enforcement persons is in violation of ICCPR 2(1). The illegal arrest of survivors of violence themselves rather than the victimizers is in violation of article 26 of the ICCPR guaranteeing "equal protection of the law." This is also in violation of 17(1) and 17(2) of the ICCPR, which prohibits and provides equal protection against arbitrary arrests.

Recommendations:

We therefore recommend the following:

- **Protect against violence and discrimination.** Take measures to prevent further hate crimes, hate speech, and discrimination based on sexual orientation or gender identity. Ensure that any crimes motivated by sexual orientation or gender identity are promptly investigated, prosecuted, and punished, and that the victims are provided appropriate remedy
- Speed up the implementation of recommendation 124.8, in order to ensure accountability for, acts of violence perpetrated against individuals, including on the basis of their sexuality
- Implement recommendation 124.9 to ensure that complete and impartial investigations are fully conducted without prejudice into allegations of attacks and threats against persons based on their SOGI and bring those responsible to justice in conformity with local laws and international standards.
- Guarantee the speedy implementation of recommendation 126.3 to ensure that local law enforcement and auxiliary personnel comport themselves in accordance to human rights treaty obligations.

VI. Discrimination in Education

Article 2(1) of the ICCPR states that each State Party to the it must "respect and ensure to all individuals" the rights recognized in the Covenant without any discrimination. Article 26 prohibits discrimination in every field and requires equality for all persons before the law.

Unfortunately, in Ghana, LGBTIQ students have been excluded from schools, and LGBTIQ rights advocates and educators who teach about sexual health have been subjected to violent attacks and hostility.

⁵⁶ *Three Opoku Ware SHS Students Suspended, supra* note 50; *Gay Students Would Have Polluted Others – Owass Headmaster*, GHANA WEB (Jan. 20, 2016), available at <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/Gay-students-would-have-polluted-others-Owass-Headmaster-409262?ref=ghanacelebrities.com>.

The following incidents illustrate how discrimination in education is still an evident reality in Ghana:

In April 2013, 19 students at Opoku Ware Secondary High School in the Ashanti regional capital of Kumasi were expelled for “practicing homosexuality.”⁵⁷ The students were additionally accused of meeting secretly to plan ways to persuade other students to engage in homosexual acts.⁵⁸

Not long before the 19 expulsions at Opoku Ware SHS, 34 female students were expelled from Wesley Girls Senior High School in Kumasi for “engaging in lesbianism.”⁵⁹

In January 2016, three male students at Opoku Ware Senior High School in Kumasi were expelled for having allegedly “engaged in homosexuality.”⁶⁰ The headmaster of the school, Dr. Alexis Frimpong Nimoh, defended the decision to expel the students on the grounds that “the students posed a threat to their colleagues,” in that they “would have convinced others to become gays if they had not been expelled.”⁶¹ He also claimed that the students had help from the outside to influence others to join them: “We didn’t want them to pollute others into it. You see this is something that they initiate others into, and they are very powerful and when you trace you would see that they have influence from outside.”⁶²

Expelling students who are suspected of being gay or lesbian can have a devastating impact on these young people. It prevents these students from achieving success in future careers that require higher education. It also subjects the students to potential abuse by outing them to parents who might punish them for their identification by the school as homosexual.

Obligations

The wave of, and lack of recourse for, the expulsions that students face on the basis of SOGI is not only a direct violation of articles 2(1) and 26 of the ICCPR and Article 13 of the ICESCR, but also violates articles 1, 2, 16 and 29(b) of the Convention on the Right of the Child, to which Ghana was the first of 196 countries to sign (29 January, 1990) and ratify (5, February 1990).

Recommendations

- Provide clear national guidelines to prevent discrimination directed towards students on any grounds, including sexual orientation and gender identity.
- Prohibit any discrimination by a school official towards students based on SOGI
- Provide mechanisms for effective redress whenever a student faces such discrimination, including

⁵⁷ 19 ‘homosexual’ students of Opoku Ware SHS sacked, GHANAWEB (April 16, 2013), available at <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/19-homosexual-students-of-Opoku-Ware-SHS-sacked-271155>.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Three Opoku Ware SHS Students Suspended for Alleged Homosexuality*, GRAPHIC ONLINE (Jan. 19, 2016), available at <http://www.graphic.com.gh/news/general-news/56588-three-opoku-ware-shs-students-suspended.html>; *Gay Students Would Have Polluted Others*, *supra* note 52. As noted in Section III, above, prior to being removed from the school, these students were the target of a mob of students that wanted to lynch them.

⁶¹ *Gay Students Would Have Polluted Others*, *supra* note 52.

⁶² *Ibid.*

legal action unhampered by limitations based on financial capacity of the child, nor the family.

Conclusion

The abuse of rights of LGBTIQ persons are in serious need of redress. Amnesty International and the NGO Freedom House reported in 2013 that violence against the LGBTIQ community was prevalent⁶³ and that “the persecution of sexual minorities has escalated.”⁶⁴ In this report we have used media analyses as evidence that individuals in Ghana are often arrested based on conduct relating to their SOGI, compounding marginalization (hate speech educational discrimination and acts of violence), even though identities and majority of acts related to SOGI are not in direct violation of Ghanaian laws. By criminalizing same sex sexual activity, section 104(1)(b) of Ghana’s Criminal Code violates the privacy, honour and reputation of individuals based on their (perceived) SOGI of the affected individuals which is protected by the ICCPR. The discriminatory acts perpetrated by the police also violate the prohibitions against arbitrary arrests.⁶⁵

The fact that Ghana is a party to the ICCPR, the ICESCR and the CPR and has allowed for the institutional and systematic disregard of its obligations to these international legal instruments (as well as those that are local) when it pertains to LGBTIQ persons is deeply alarming.

Incidents highlighted demonstrate the ways that laws foster the homophobic climate, which allows for arbitrary and unlawful arrests and violent physical attacks against LGBTIQ individuals in Ghana. We urge Ghana to respect its obligations to the international and local laws that govern it. Only then can it have legitimacy on the international stage.

VII. Suggested Questions to be Asked at Ghana’s Review Session

1. On what basis, can the state justify the continued criminalization of same-sex conduct in the absence of any clear legal authority?
2. What measures is Ghana taking to decriminalize, in practice, same-sex sexual conduct?
3. What steps is Ghana taking to address violence, arbitrary arrest and discrimination against LGBTIQ people because of their sexual orientation or gender identity

⁶³ Amnesty International, Annual Report 2013: Ghana (May 23, 2013), *available at* <http://www.amnestyusa.org/research/reports/annual-report-ghana-2013>; *see also* UK Operational Guidance Note: Ghana, *supra* note 13, at p. 17.

⁶⁴ Freedom House, *Countries at Crossroads: Ghana* (Sept. 20, 2012), *available at* http://www.freedomhouse.org/report/countries-crossroads/2012/ghana#_edn2; *see also* UK Operational Guidance Note: Ghana, *supra* note 13, at p. 17.

⁶⁵ Freedom House, *Freedom in the World 2013: Ghana* (May 23, 2013), *available at* <http://freedomhouse.org/report/freedom-world/2013/ghana>; *see also* United Kingdom Home Office, Operational Guidance Note: Ghana, at p. 19 (Nov. 12, 2013) (guidance for purposes of asylum decisions), *available at* <http://www.refworld.org/pdfid/528370ed4.pdf> [hereinafter *UK Operational Guidance Note: Ghana*].