

Ghana

Country Conditions Report

Created by the Sexual Orientation and Gender Identity Working Group

International Human Rights Program

University of Toronto

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| Introduction |
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This Ghana Country Report provides an in-depth analysis of the socio-legal status and history of Lesbian, Gay, Bisexual, Trans, and Queer+ (LGBTQ+) people in the Republic of Ghana, current as of January 2019. Ghanaian law does not protect persons of diverse sexual orientations or gender identities. Rather, the country and its government openly enforce heteronormativity and refuse to concede to international pressures to protect LGBTQ+ persons.

Conservative conceptions of sexuality and gender are legally entrenched in the Ghanaian Constitution. In the Constitution’s equality provisions, sexual orientation is not an enumerated protected ground. A national 2011 survey confirmed that an overwhelming majority of the Ghanaian public agree with this continued lack of recognition.[[1]](#footnote-0) The government has deferred the question of whether to recognize sexual orientation as an enumerated ground to the Supreme Court of Ghana, who has not yet made a decision. Although gender is an enumerated ground, it is understood and applied in its traditional binary sense, excluding trans and gender diverse people. With no constitutional support for LGBTQ+ identities, launching legal battles to safeguard the security and livelihoods of the community have largely been futile. As a result, LGBTQ+ Ghanaians are left exposed to frequent harassment from both the public and law enforcement authorities.

In addition to a lack of constitutional protection, LGBTQ+ Ghanaians are also burdened with the active criminalization of their identities. Same-sex acts are prohibited under s. 104 of the Ghanaian Criminal Code, which punishes “unnatural carnal knowledge” as a misdemeanor with up to three years’ imprisonment. “Unnatural carnal knowledge” is generally interpreted to mean penetrative sex of an “unnatural manner,”[[2]](#footnote-1) placing emphasis on men who have anal sex with men. The legal treatment of women engaged in sexual activity is less clear. Although prosecutions under s. 104 are relatively rare, the provision nevertheless has a devastating impact on access to justice for LGBTQ+ Ghanaians. They cannot report hate crimes without fear of being criminally prosecuted for their identity. Additionally, other statutory laws further exacerbate the ostracization of LGBTQ+ Ghanaians. For example, they are systematically excluded from legal processes surrounding adoption and marriage.[[3]](#footnote-2) Overall, the written laws of Ghana force LGBTQ+ individuals to the social and economic margins of society, with very little recourse to the justice system.

This legal and social stigmatization has negatively impacted the health of many LGBTQ+ Ghanaians. In particular, men who have sex with men (MSMs) have drastically higher rates of HIV transmission than the general population because they avoid testing, disclosure, and treatment for fear of having their sexual orientation exposed. The stigma arising from their sexual orientation is compounded by the stigma arising from HIV status, in turn leading many to view HIV as divine retribution for homosexual acts. This cycle of stigmatization has become so ingrained in Ghanaian culture that identifying with the LGBTQ+ community is simply seen as un-Ghanaian.[[4]](#footnote-3) Politicians and the media frame queerness as a Western/European phenomenon of which Ghana must rid itself, adding a quasi-nationalist undertone to the homophobia that pervades the country.

| Ghanaian Legislation |
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##

***The Constitution of the Republic of Ghana,* 1992[[5]](#footnote-4)**

The Ghanaian Constitutionlists life, liberty, dignity, and criminal law protections as the fundamental rights and freedoms of individuals in Ghana. Article 12 recognizes that every person, regardless of race, place of origin, political opinion, colour, religion, creed or gender, is entitled to these rights and freedoms; sexual orientation is not an enumerated protected ground. Article 17 recognizes that all individuals are equal before the law, and that no person shall be discriminated against based on gender, race, colour, ethnic origin, religion, creed or social or economic status; sexual orientation is not an enumerated protected ground.

### Article 12:

1. The fundamental human rights and freedoms enshrined in this chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all other organs of government and its agencies and, where applicable to them, by all natural and legal persons in Ghana, and shall be enforceable by the Courts as provided for in this Constitution.
2. Every person in Ghana, whatever his race, place of origin, political opinion, colour, religion, creed or gender shall be entitled to the fundamental human rights and freedoms of the individual contained in this Chapter but subject to respect for the rights and freedoms of others and for the public interest.

### Article 17:

1. All persons shall be equal before the law.
2. A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status.
3. For the purposes of this article, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by race, place of origin, political opinions, colour, gender, occupation, religion or creed, whereby persons of one description are subjected to disabilities or restrictions to which persons of another description are not made subject or are granted privileges or advantages which are not granted to persons of another description.
4. Nothing in this article shall prevent Parliament from enacting laws that are reasonably necessary to provide –
	1. for the implementation of policies and programmes aimed at redressing social, economic or educational imbalance in the Ghanaian society;
	2. for matters relating to adoption, marriage, divorce, burial, and devolution of property on death or other matters of personal law;
	3. for the imposition of restrictions on the acquisition of land by persons who are not citizens of Ghana or on the political and economic activities of such persons and for other matters relating to such persons; or
	4. for making different provision for different communities having regard to their special circumstances not being provision which is inconsistent with the spirit of this Constitution.
5. Nothing shall be taken to be inconsistent with this article which is allowed to be done under any provision of this Chapter.

***Criminal Code,* 1960; amended 2003[[6]](#footnote-5)**

The Criminal Code defines “Carnal Knowledge” as sexual penetration. “Unnatural Carnal Knowledge,” is defined as sex “in an unnatural manner,” and is prohibited as a misdemeanor.

### Section 99 – Evidence of Carnal Knowledge

Whenever, upon the trial of any person for an offence punishable under this Code, it is necessary to prove carnal knowledge or unnatural carnal knowledge, the carnal knowledge or unnatural carnal knowledge shall be deemed complete upon proof of the least degree of penetration.

### Section 104 – Unnatural Carnal Knowledge

1. Whoever has unnatural carnal knowledge—
	1. 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
	2. of any person of sixteen years or over with his consent is guilty of a misdemeanour; or
	3. of any animal is guilty of a misdemeanour.
2. Unnatural carnal knowledge is sexual intercourse with a person in an unnatural manner or with an animal.

## ***Criminal Procedures Act*, 1960; amended 2003[[7]](#footnote-6)**

A “misdemeanour” is punishable by imprisonment not exceeding 3 years and involving hard labour, unless specified by the court, or a fine to substitute imprisonment at the discretion of the court.

### Section 296—General Rules for Punishment.

(4) Where a crime, not being a crime mentioned in sub-section (5), is declared by any enactment to be a misdemeanour and the punishment for the crime is not specified, a person convicted thereof shall be liable to imprisonment for a term not exceeding three years.

(6) A term of imprisonment shall be with hard labour unless, in the case of a sentence of less than three years, the Court otherwise directs.

### Section 297—Rules Relating to Fines.

(1) Where a person is convicted of any felony or misdemeanour or any offence punishable by imprisonment (other than an offence for which the sentence is fixed by law) the Court may, in its discretion, sentence him to a fine in addition to or in lieu of any other punishment to which he is liable.

## ***Marriages Act,* 1985[[8]](#footnote-7)**

No statutory provision explicitly prohibits same-sex marriage. However, various provisions throughout the *Act* define marriage as between a man and a woman.

Section 26—Method of registration

1. The certificates shall then be detached from the register, and one shall be given to the man and the other to the woman’s wali.

## ***Matrimonial Causes Act,* 1971[[9]](#footnote-8)**

Section 13 states that there are reasons outside of those listed in the statute that may render a marriage void. Given that same-sex acts are criminalized, same-sex marriages would likely be void.

### Section 13—Nullity

1. Any person may present a petition to the court for a decree annulling his marriage on the ground that it is by law void or voidable (in this Act referred to as "a decree of nullity”).
2. In addition to any other grounds on which a marriage is by law void or voidable, a marriage shall, subject to subsection (3), be voidable on the ground—
	1. that the marriage has not been consummated owing to the willful refusal of the respondent to consummate it; or
	2. that at the time of the marriage either party to the marriage was of unsound mind or subject to recurrent attacks of insanity; or
	3. that the respondent was at the time of the marriage pregnant by some person other than the petitioner; or
	4. that the respondent was at the time of the marriage suffering from an incurable venereal disease in a communicable form.
3. The court shall not grant a decree of nullity in a case falling within paragraphs (b), (c) or (d) of subsection (2) unless it is satisfied that—
	1. the petitioner was at the time of the marriage ignorant of the facts making the marriage voidable; and
	2. proceedings were instituted within a year from the date of the marriage; and
	3. marital intercourse with the consent of the petitioner has not taken place since the petitioner discovered the existence of the facts making the marriage voidable.
4. Nothing in this section shall be construed as validating a marriage which is by law void but with respect to which a decree of nullity has not been granted.

## ***The Children’s Act*, 1998[[10]](#footnote-9)**

No statutory provision explicitly prohibits LGBTQ+ individuals from fostering children. However, given the criminalization of same-sex acts, LGBTQ+ individuals are unlikely to meet the s. 62 “high moral character” requirement for fostering. Adoption is generally restricted to married couples, which would exclude same-sex couples from adopting. Single individuals may only adopt in special circumstances, which is likely to preclude LGBTQ+ persons. These special circumstances appear to be based on the perceived best interests of the child.

### 62. Person who can foster –

Any person above the age of twenty-one years of high moral character and proven integrity may be a foster-parent to a child.

### 66. Application for adoption –

1. An application for an adoption order may be made jointly by a husband and his wife to adopt a child.
2. An application for an adoption order may be made by the mother or father of the child alone or by either of them jointly with a spouse.
3. An application for an adoption order may be made by a single person subject to the provisions of this Sub-Part except that this shall only apply to a citizen of Ghana and with due regard to the best interest of the child.

### 67. Restrictions on making adoption orders –

1. An adoption order shall not be made unless the applicant or, in the case of a joint application, one of the applicants –
	1. is twenty-five years of age and is at least twenty-one years older than the child; or
	2. is a relative of the child and is twenty-one years of age.
2. A male applicant shall only be granted an adoption order if the application is in respect of his son or the court is satisfied that special circumstances warrant the order.
3. An adoption order shall not be made for a child unless –
	1. the applicant and the child reside in Ghana but this shall not apply if the applicant is a citizen of Ghana resident abroad;
	2. the child has been continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of the order; and
	3. the applicant has notified the Department of his intention to apply for an adoption order for the child at least three months before the date of the order.
4. Except as provided under section 66 an adoption order shall not be made to authorise more than one person to adopt a child.

## ***Constitution Reform Commission of Ghana Report*, 2011**[[11]](#footnote-10)

The Constitution Reform Commission of Ghana (CRC) found that a majority of Ghanaians surveyed do not want homosexuality included as a constitutionally-protected ground. The Commission deferred the issue of LGBTQ+ rights to the Supreme Court which has yet to make a decision on the matter.

### D. Findings and Observations (p. 656)

123. The Commission finds that during its consultations, the overwhelming number of submissions received on the subject was in favour of non-recognition of the right to sexual orientation for homosexuals.

### E. Recommendations (p. 657)

129. The Commission recommends that the legality or otherwise of homosexuality be decided by the Supreme Court if the matter comes before the Court.

| Canadian Jurisprudence |
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## ***Immigration and Refugee Board Decisions***

### 1. [RAD File No. TB7-01973, [2017] R.A.D.D. No. 230, [2017] D.S.A.R. no 230](https://advance.lexis.com/api/document/collection/cases-ca/id/5SM9-DV91-JJD0-G267-00000-00?cite=RAD%20File%20No.%20TB7-01973%2C%20%5B2017%5D%20R.A.D.D.%20No.%20230&context=1505209)

**Holding**: The claim was denied. The appellant was found to not be a convention refugee nor a person in need of protection. The Refugee Appeal Division (RAD) believed that the appellant fabricated his story of events shortly after arriving in Canada.

* The appellant was a Muslim citizen of Ghana appealing the decision of the Refugee Protection Division (RPD) denying his claim for refugee protection.
* The appellant conducted advocacy work for the LGBTQ+ community. He also intervened in the attack of a gay man in the streets by a group of young Muslim men.
* The next day, he found his windshield broken and later received threatening calls; it was unclear whether these were the vigilantes.
* He was later issued a student visa with the intention of attending a refugee study course at a university in Toronto. When in Toronto, he received messages from his wife that men had attended his home looking for him, that there were rumours spreading that he was gay, and that he was accused of rape.

The RPD found that the critical event requiring his refugee status was his intervention of the attack of the gay man However, the lack of corroborating statements from witnesses of the attack or the appellant’s friends led the RPD to question his credibility. Additionally, the RPD suspected that the appellant lied about the events in question as his problems in Ghana began on the same date that he signed his visa application and got his windshield repaired. Assessing the decision of the RPD and without any new evidence, the RAD found that the appellant fabricated his story after he arrived in Canada.

### 2. [RAD File No. TB7-11834, [2017] R.A.D.D. No. 115, [2017] D.S.A.R. no 115](https://advance.lexis.com/api/document/collection/cases-ca/id/5RDM-8WF1-JGPY-X30T-00000-00?cite=RAD%20File%20No.%20TB7-11834%2C%20%5B2017%5D%20R.A.D.D.%20No.%20115&context=1505209)

**Holding**: The claim was denied. The appellant was found to not be a convention refugee nor a person in need of protection. The RAD believed that the appellant could receive state protection in Ghana and did not adequately prove otherwise.

* The appellant is a citizen of Ghana and appealed the RPD’s decision to his claim for refugee protection.
* He fears that he will be beaten or killed if he returns to Ghana because he supports LGBTQ+ rights. Specifically, he is protective of his gay brother and his brother’s gay friends from religious vigilante groups who continually harassed and assaulted them.
* The appellant was arrested for a brief period of time on an unrelated charge during which his brother was killed by a vigilante group. He confronted the group and was severely beaten.

The RPD denied the claim for refugee status on the basis that the appellant did not rebut the presumption of state protection. While the appellant argued that he cannot seek protection from state authorities as he is a supporter of homosexuality, the RAD noted that prominent public figures have made statements in support of LGBTQ+ rights and police have even extended assistance to some LGBTQ+ people. The RAD found no errors in the RPD finding.

The appellant sought to provide further evidence, including an affidavit from his cousin. However, this new evidence was deemed inadmissible as it does not comply with ss 110(4) of the *Immigration and Refugee Protection Act,* which states thatthe appellant can only present evidence that arose after the rejection of their claims or that they could not have been reasonably expected to have presented at the time of rejection. Although the appellant stated that he did not have a way to contact his cousin before, the RAD required further information about why he could not contact him, why he did not have contact with his cousin, and what efforts he had made to contact his cousin prior to the RPD decision.

### 3. [RAD File No. TB7-07212, [2017] R.A.D.D. No. 161, [2017] D.S.A.R. no 161](https://advance.lexis.com/api/document/collection/cases-ca/id/5SB6-JF91-JP4G-602F-00000-00?cite=RAD%20File%20No.%20TB7-07212%2C%20%5B2017%5D%20R.A.D.D.%20No.%20161&context=1505209)

**Holding**: The claim was denied. The appellant was found to not be a convention refugee nor a person in need of protection. The RAD believed that the appellant lacked credibility due to the ingenuine nature of new evidence provided.

* The appellant was a bisexual citizen of Ghana whose sexual orientation had been discovered.
* He was beaten and stabbed by members of the community in Ghana, and later fled to the United States of America.
* He came to Canada after his claim in the United States of America was rejected.

The RPD denied the appellant’s claim on the basis that the evidence he produced was found to be not credible and the attack he suffered was implausible. The appellant submitted new evidence for his appeal which consisted of video clips, letters from family members and doctors, copy of Ghanaian birth certificate and voter identity card and photographs.

The RAD found that the new evidence was not credible. The video clips which showed death threats made against the appellant were clips from Facebook and the file information indicated that the videos were created12 days after the negative RPD decision. Further, the RAD found that it was unlikely that people would allow themselves to be videotaped admitting to potential murder. Additionally, the letters submitted were from individuals who had an interest in the outcome of the claim and were not accepted as reliable independent evidence. The birth certificate also appeared to be fraudulent in contrast with birth certificates provided in the National Documentation Package (NDP).

### 4. [RAD File No. TB7-12947, [2017] R.A.D.D. No. 227, [2017] D.S.A.R. no 227](https://advance.lexis.com/api/document/collection/cases-ca/id/5SM9-DV91-JJD0-G260-00000-00?cite=RAD%20File%20No.%20TB7-12947%2C%20%5B2017%5D%20R.A.D.D.%20No.%20227&context=1505209)

**Holding**: The RAD referred this matter back to the RPD for redetermination by a different panel. The RPD discredited the appellant’s birth certificate because of discrepancies surrounding how he obtained it. However, the RAD determined that the discrepancies were a product of illiteracy and confusion, which was sufficient to refer the case back to the RPD.

* The appellant was a bisexual man whose sexual orientation had been discovered in Ghana.
* He was attacked and beaten by members of the community who had previously killed his partner.
* He fled to the United States of America, but his asylum claim was denied.
* He later filed for protection in Canada.

The RPD gave no value to any of the documents provided by the appellant because they contained various discrepancies and the RPD deemed that the appellant’s explanation for the discrepancies was unreasonable. The RPD also determined that there was a lack of credible information as to how his birth certificate was obtained.

On appeal however, the RAD found that the appellant was functionally illiterate due to his lack of formal education and his inability to read and write. Additionally, they noted that the appellant may not fully appreciate the importance of the accuracy of written information and spoke to the difficulties with testifying through an interpreter. These difficulties were illuminated as the appellant appeared to be confused when questions were asked and was unable to verify the forms that were filled for him. In reference to his birth certificate, the RAD stated that close attention indicated that the appellant’s recollection of how he attained his birth certificate was accurate.

## ***Federal Court of Canada Decisions***

### 1. *Mohammed Kamal Deen Ilias v. Canada (Citizenship and Immigration)*, [2018] 2018 FC 661, 2018 CarswellNat 3797.

**Holding**: The application for judicial review was dismissed. The appellant was found to not be a convention refugee nor a person in need of protection. The RAD believed that the appellant lacked credibility and did not have a well-founded fear of persecution on the grounds of a risk to his life, or of the risk of cruel and unusual treatment or a danger of torture upon return to Ghana.

* The appellant was a citizen of Ghana appealing the decision of the RPD denying his claim for refugee protection.
* The appellant was a homosexual who feared that he would be beaten or killed if he returned to Ghana.
* Upon learning of the appellant’s homosexuality, his uncle hired a gang to threaten him.
* The appellant was beaten, cut with knives, stripped, tied up, and threated to be burned.
* He fled to Brazil, made an unsuccessful refugee claim in the United States of America, and now makes a claim in Canada.

The RPD found that on the balance of probabilities, the appellant was likely not a homosexual because the refugee claim made in the United States of America was made on political opinion rather than sexual orientation. Additionally, the date inconsistencies between the appellant’s United States of America asylum documents and the Canadian refugee application damaged his credibility. Additionally, neither the photos of the attack nor the “Wanted” posted appeared genuine. The RAD found no error in the RPD’s finding.

The appellant sought to provide further evidence, consisting of affidavits, letters and a Brazilian visa. This new evidence was deemed inadmissible as it did not comply with s. 110(4) of the *Immigration and Refugee Protection Act,* which states thatthe appellant can only present evidence that arose after the rejection of their claims or that they could not have been reasonably expected to have presented at the time of rejection. The federal court refused to review this decision.

### 2. *Jeffrey Bright v Canada (Citizenship and Immigration)*, [2017], 2017 FC 281, 2017 CarswellNat 725.

**Holding**: Application for judicial review dismissed. The court upheld the decision of the RAD.

* The appellant alleged that he was assaulted because of his sexual orientation. He also alleged that his partner was killed.
* He came to Canada to make a refugee claim.
* The application was dismissed due to a lack of credible evidence, which was overturned by the RAD.
* The Minister of Citizenship claimed that the RAD ignored contradictions in the evidence.

The RPD dismissed Bright’s claim for refugee status. First, The claimant was unable to establish his true identity which impaired his ability to make a credible basis of claim. Having no credible basis of claim under the IRPA means that there was no credible or trustworthy evidence on which the applicant could receive a favourable decision under s. 110(2)(c) of the IRPA.

The RPD carefully analyzed the various contradictions and omissions; not only was his identity unknown, but he also failed to establish that he was gay, that he had a gay partner, that he was a pastor, and that he resided in Ghana in 2015 when the alleged events occurred. On that basis, the court upheld the decision of the RPD, resulting in the appellant’s deportation to Ghana.

### 3. *Deri v. Canada (Citizenship and Immigration)*, [2016] 2 FCR. 115

**Holding:** Application for judicial review dismissed. The RAD reasonably held that it did not have the discretion to admit additional evidence of discrimination against HIV-positive individuals. The RAD agreed that the RPD’s finding that the original evidence did not show a level of discrimination sufficient to support a claim.

* The appellant fled to Canada in September 2013.
* The appellant made an application for asylum for fear of persecution based on his LGBTQ+ identity and HIV-positive status.
* Initial basis of claim stated that his father’s relatives threatened to kill him after he refused to take the chieftaincy of his tribe.
* His claim was amended to include that he is bisexual and feared the reaction of his community.
* He was later diagnosed with HIV and amended his claim to include fears of persecution after receiving death threats from his wife’s family.

At his RPD hearing, he stated that he was homosexual and that he had contracted HIV from his male partner of several years. He submitted into evidence three articles about stigma against HIV-positive individuals. The RPD rejected his claim. The RPD found that the discrimination the appellant may face due to his HIV status was not of a sufficiently punitive or persistent nature to amount to persecution. The RPD further found that the appellant was not credible regarding his claim based on his sexual orientation, as this was not initially disclosed in his BOC and there was no mentioned of his HIV status in the communications between him and his partner.

On appeal, the appellant submitted four new pieces of evidence related to the stigma faced by HIV positive individuals in Ghana. The RAD found that all the evidence was available before the RPD’s rejection of the claim and that he could have reasonably been expected in the circumstances to present it. The RAD substantially agreed with the RPD’s findings and concluded that the appellant was a heterosexual man who had been diagnosed with HIV after his arrival in Canada. The RAD found that the appellant did not present sufficient evidence that the treatment he would face in Ghana would rise to persecution based on his HIV status.

The Federal Court considered two issues: whether the interpretation of the IPRA s. 110(4) was correct and correctly applied, and whether the RAD unreasonably concluded that the evidence regarding discrimination against HIV individuals did not amount to persecution. The court found that the RAD’s interpretation of the evidentiary statute was reasonable, and that it was not within the RAD’s discretion to admit the evidence because it did not arise after the rejection of the claim and was reasonably available at the time of the claim. The evidence was also substantially similar to the evidence before the RPD. The Federal Court found that the RAD considered all the admissible evidence in its totality and found that the documentary evidence did not rise to the level of persecution. The RAD’s treatment of the articles was reasonable. The court therefore dismissed the application for judicial review.

| Ghanaian Jurisprudence |
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There is no domestic legislation or international treaty to which Ghana is a party that explicitly protects the rights of LGBTQ+ persons or persons of diverse gender orientations in Ghana. For this reason, victims of anti-LGBTQ+ crimes cannot launch legal challenges or complaints.

| International Law |
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## ***UN Treaties***

| Treaty | Date of Signature | Date of Ratification |
| --- | --- | --- |
| ICCPR | N/A | 1993 |
| ICCPR – First OP | N/A | Not Ratified |
| ICCPR – Second OP | N/A | Not Ratified  |
| ICESCR | N/A | 1993 |
| ICESCR – First OP | N/A | Not Ratified |
| CAT | N/A | 1994 |
| CAT – First OP | N/A | Not Ratified |

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## ***Universal Periodic Review*, 2017**[[12]](#footnote-11)

Ghana rejected all recommendations of the Universal Periodic Review made on the human rights situation specific to LGBTQ+ persons in Ghana. These recommendations were the following:

* + Decriminalize same-sex relations between consenting adults;
	+ Promote tolerance about same-sex relations and combat homophobia;
	+ Combat violence, stigmatization, and discrimination towards persons based on their sexual orientation;
	+ Eliminate the crime of “unnatural sexual relations” and adopt measures to eradicate discrimination motivated by sexual orientation and gender identity;
	+ Ensure that the constitutional guarantee of equality and dignity are applied to LGBTQ+ persons. Ensure thorough and impartial investigation into all allegations of attacks and threats against individuals targeted because of their sexual orientation of gender identity; and
	+ Train police, first responders, the justice system, and social services officials to respect and fully protect the human rights of LGBTQ+ persons.

Submission by the UN High Commissioner for Refugees for the Universal Periodic Review[[13]](#footnote-12)

* The United Nations country team stated that some particularly vulnerable and marginalized groups, such as lesbian, gay, bisexual, transgender and intersex persons needed special support and protection.
* Ghana needs to take more steps to protect these vulnerable groups.
* The United Nations country team indicated that homosexual sex between consenting adults had not been decriminalized in Ghana.
* Sexual minorities often choose to avoid the justice system. Abuse of lesbian, gay, bisexual, transgender and intersex prisoners was a concern, exacerbated by prison overcrowding and reluctance to report abuse for fear of reprisals and further stigmatization.

***Regional Treaties***

*African (Banjul) Charter on Human and Peoples’ Rights*[[14]](#footnote-13)

This document makes no reference to sexual orientation or gender identity as protected grounds against discrimination. The preamble and Part 1 Article 2 include ‘sex’ as a protected ground.

|  Governmental Reports |
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Please refer to the Immigration and Refugee Board’s National Documentation Packages.[[15]](#footnote-14)

| Non-Governmental Reports |
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##

## Solace Brothers Foundation et al, *Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBTQ+) People in Ghana: A Shadow Report* (2016)[[16]](#footnote-15)

* Criminalisation of same-sex sexual conduct and arrest/detentions.
	+ Ghana’s Criminal Code and their Covenant have conflict, but criminalisation is still present.
* Violent attacks are performed because of the victim’s actual or even perceived sexual orientation. Climate of homophobia has increased in recent years (increased death threats and persecution).
* Homophobia is common with media and public figures leading to further prejudice against LGBTQ+ individuals by promoting hate speech and crimes.
	+ Results in no free expression of sexual orientation or gender identity, a requirement to keep it hidden.
* Discrimination in education is also present based on real or perceived sexual orientation.

## CCPR-Centre, *Civil Society Report on the Implementation of the ICCPR in Ghana* (2016)[[17]](#footnote-16)

* The constitution offers a general framework for protecting its. citizens from discrimination but is silent on specific LGBTQ+ rights
* It has been reported that several judges and officials in Ghana discriminate against LGBTQ+ victims of violence, which is likely to decrease reporting of such incidents.
* Civil Society Groups (including Human Rights Advocacy Center) has begun hosting trainings for law enforcement agents on LGBTQ+ rights but the State has not taken any actions.
* New presence of LGBTQ+ advocacy groups has been created, supporting a dedicated hotline for those who seek assistance from paralegals with knowledge about LGBTQ+ rights. This has been faced with extreme opposition by the public and is constantly threatened.
* Government has engaged in several awareness events aimed at decreasing discrimination and stigma attached to individuals with HIV/AIDS, but this is not directed towards the LGBTQ+ community.

## Kaleidoscope Trust, *Speaking Out – The Rights of LGBTI People Across the Commonwealth* (2015)[[18]](#footnote-17)

* Chapter 6, Section 104 of the Ghanaian Criminal Code criminalises male, consensual same-sex sexual acts as “unnatural carnal knowledge.” The penalty for violation of Section 104 is a misdemeanour penalty resulting in between one and three years imprisonment. Under Section 99 of Chapter 6, “unnatural carnal knowledge” shall be “deemed complete upon proof of the least degree of penetration,” meaning only homosexual acts—not sexual orientation—are criminalised in Ghana.
* In Ghana, Muslim and Christian traditional religious leaders speak out in public against homosexuality. According to a 2013 attitudes survey, 96% of Ghanaians feel society should not accept homosexuals (third highest of surveyed countries).
* Social stigma and homophobia exist at the second highest rate in the continent.

| Media |
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## “Hundreds of Gay People to be ‘Treated for Homosexuality’ at Camp in Ghana”, Josh Jackman, PinkNews, 21 August, 2018[[19]](#footnote-18)

* 400 people were expected to take part in a conversion camp involving ‘traditional medicine’ and evangelical teachings.
* Participation was allegedly voluntary.
* The camp was operated by The National Coalition for Proper Human Sexual Rights and Family Values (NCPHSRFV), which vocally opposes LGBTQ+ rights.
* NCPHSRFV previously accused international calls on Ghana to decriminalize homosexuality as a Western plan to reduce Africa’s population.
* There are plans to petition the government to include ‘conversion therapy’ in Criminal Code.

## “Ghana President Says He Will Never Oversee Same-Sex Legislation”, Abdur Rahman Alfa Shaman, Africa News, 30 April, 2018[[20]](#footnote-19)

* President Nana Akufo-Addo stated that his administration will never support legislation for same-sex marriage.
* Akufo-Addo responded to opposition party’s criticism of his soft position taken on same-sex marriage in an interview held earlier that year with Al-Jazeera.
* In that interview, Akufo-Addo commented that although Ghana doesn’t currently have the political coalition necessary to make changes, and that homosexuality would likely be decriminalized at some undefined point in the future.

## “Ghana Man Seeking Asylum Sits Two Years in Detention”, Jason Buch, San Antonio Express News, 9 March, 2018[[21]](#footnote-20)

* A homosexual Ghanaian man was detained in the United States of America for two years as he attempted to secure asylum.
* He fled Ghana after his partner was attacked and tortured by Safety Empire, a violent anti-LGBTQ+ group vigilante group which he claimed was is backed by police.
* Safety Empire set fire to his family’s home, beat his uncle, and stabbed him.
* The leader of the mob that attacked him was arrested, but was also quickly released on bond and the charges were downgraded to burglary.

## “‘One guy took a cutlass:’ Gay Women at Greater Risk of Violence in Ghana,” Verity Bowman, The Guardian, 10 January, 2018[[22]](#footnote-21)

* Report by Human Rights Watch finds Ghanaian women more likely than men to be persecuted because of sexual preferences.
* Lesbian couples are often ostracized from family, work, and communities, and are threatened with violence, starvation, and being forced into prostitution.
* One incident occurred in which a group of 20-25 people attacked a lesbian couple, burning one with a piece of hot steel and cutting the other’s face with a cutlass.
* The mob forced them from the community on threats of further injury.
* Criminalization of homosexuality prevents access to justice.

## “Ghana: Campaigners Demand Decriminalization of Homosexuality after Spike in anti-LGBT Violence,” Ryan Butcher, The Independent, 8 January, 2018[[23]](#footnote-22)

* Following release of Human Rights Watch Report which found that anti-LGBTQ+ violence is on the rise, campaigners call for decriminalization of homosexuality.
* While Ghana’s anti-LGBTQ+ laws rarely result in persecution, the report ties extra-legal violence by police and public to criminalization.
* Current laws are incompatible with Ghana’s constitutional guarantees of equality before the law, respect for human dignity, and right to privacy.
* Current laws are also incompatible with 2014 African Commission on Human and Peoples’ Rights, ratified by Ghana, which called on African governments to prevent and punish anti-LGBTQ+ violence.

## “‘These are our Rights’: Ghana’s LGBT Community Finally Finds Solace,” Chris Matthews, The Guardian, 11 February, 2016[[24]](#footnote-23)

* Established in 2012, the Solace Brothers Foundation is an LGBTQ+ advocacy group in Ghana that aims to enhance LGBTQ+ persons’ access to human rights in Ghana.
* They work through the most common abuses that LGBTQ+ persons face and educate paralegals on how to fight them.
* These paralegals are dispersed across the country to provide assistance.
* The group can be accessed by the public at any time to provide support and legal information.
* Founders say the group started as a means to fight homophobia and other types of discrimination.

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**“Key populations and human rights in the context of HIV services rendition in Ghana” (2017)[[25]](#footnote-24)**

* Criminalization of “unnatural carnal knowledge” (homosexual activity) and sex work in Ghana leads these populations to avoid HIV/AIDS related education and services for fear of social stigmatization and criminal punishment.
* By sanctioning LGBTQ+ discrimination, Ghana has failed to honour its ratification of various international human rights declarations and conventions, including a commitment to not discriminate in its response to the HIV/AIDS epidemic.
* Health institutions should employ harm reduction strategies (focusing on completely non-judgmental mitigation of risk) to men who have sex with men (MSMs) and sex workers.
* Local estimates show that key populations (including MSMs and sex workers) exhibit an HIV prevalence that is ten-fold that of the general population.
* Solution 1 – abolitionism: Ghana should repeal all rights-limiting laws that are counterproductive to HIV prevention through their targeting of key populations (MSMs, sex workers).
* Solution 2 – instrumentalism (preferred): health institutions should immediately adopt harm reduction practices as instruments to procure HIV services in stigma-free environments to key populations.

Various key populations in Ghana are disproportionately affected by the HIV/AIDS epidemic, including MSMs and sex workers. Since key populations interact with the general population, discrimination against key populations in the provision of HIV services exacerbates prevalence in the general population as well. Although Ghana has signed on to various international human rights instruments preventing discrimination in HIV response efforts, it nevertheless continues to discriminate against key populations. The ideal solution, abolitionism, would be to repeal all rights-limiting laws that target key populations and thus are counterproductive to HIV prevention. The UNHRC recommended this in 2009, but thus far all attempts at repeals have failed. This goal is unrealistic in the short term because of the tremendous political opposition to LGBTQ+ protection throughout the government. Therefore, the preferred immediate action is for Ghanaian health institutions to implement harm-reduction-oriented practices (drop-in clinics, outreach workers, etc.) that procure HIV services to key populations without concern of social stigmatization or legal persecution. These practices focus on health realities, not the social activity that led to those realities; in doing so, they promote the health of stigmatized key populations such as MSMs and sex workers, and in turn promote the health of the general population.

**“Homosexuality, moral panic, and politicized homophobia in Ghana: interrogating discourses of moral entrepreneurship in Ghanaian media” (2016)[[26]](#footnote-25)**

* Politicized homophobia, combined with moral entrepreneurship, produces influential circuits of social, moral, and political power
* This power is then deployed to elicit particular forms of subjectivity against same-sex orientation and the LGBTQ+ community.
* The media in Ghana stimulates and sustains homophobia, which provides a platform for politicians to mobilize antipathy toward the LGBTQ+ community.

In Ghana, there is a charged climate and discourse toward same sex orientations and the LGBTQ+ community generally. In a recent Pew Research Center Poll (2014), 98% of Ghanaians considered same sex orientations to be abhorrent, an affront to their cultural values and traditions, and an existential threat to the imperatives of procreation and cultural integrity. Often, local and global incidents and issues that aren’t necessarily related to sexuality are reported in the media in a way that negatively implicates homosexuality, often associating the non-sexual issue with morally ‘risky behaviors’ such as anal sex and analyzing the effective management of that behavior. Ghanaian media often taps into the cultural disdain for the LGBTQ+ community, creating a moral panic which generates a homophobic onslaught from strong regulatory regimes. This is often appropriated by political actors for partisan advantage. Overall, the combination of media and political support plays a significant role in the amplification of the framing of homosexuality as a threat to the social order and facilitates the denigration of members of the LGBTQ+ community as the embodiments of that threat.

**“Framing the Ghanaian LGBT rights debate: competing decolonization and human rights frames” (2015)[[27]](#footnote-26)**

* Opponents of LGBTQ+ rights have co-opted decolonization and human rights frameworks to be anti-LGBTQ+.
* Opponents of LGBTQ+ rights use a corruption framework, which see same sex acts as ‘colonialist’ and ‘unAfrican’.
* Same sex acts were seen as a colonial import that corrupted “African” values, so removing them is necessary to decolonization.
* This contrasts international human rights frameworks which support LGBTQ+ people by criticizing colonial taboos and proposing that decolonization requires repealing anti-LGBTQ+ colonial-era laws.
* A variety of political and religious leaders support the opposing views of LGBTQ+ rights, strengthening the view the LGBTQ+ rights are inherently ‘unAfrican’.

Overall, the opponents of LGBTQ+ rights have often appropriated, challenged and sometimes dominated the use of decolonization and human rights principles to reinforce an anti-LGBTQ+ agenda. LGBTQ+ rights and same sex orientations have been termed colonialist and un-Ghanaian, with LGBTQ+ individuals being called ‘deviants’ that offend the core cultural sensibilities of Ghana. This is starkly inverse to the UN’s international conception of human rights frameworks, which claim that diversity is of great value, and that colonial-era laws dehumanizing and criminalizing LGBTQ+ people must be repealed in order to achieve decolonization. Making these fundamental human rights frameworks largely unavailable to LGBTQ+ advocates in Ghana has made advancing their rights incredibly difficult. Homophobic and transphobic views, which have support from a variety of leaders and media outlets, also make their way into the political sphere, where government officials and religious leaders have suggested that LGBTQ+ identities and culture will result in moral decline, social decay and the loss of Ghanaian culture. There is also the view that pressure from the Western world to support LGBTQ+ rights means that these donor countries are using their aid as a tool to corrupt Ghanaian society. This belief further strengthens the view that LGBTQ+ rights are ‘un-Ghanaian’.

**“The association of HIV stigma and HIV/STD knowledge with sexual risk behaviors among adolescent and adult men who have sex with men in Ghana, West Africa” (2015)[[28]](#footnote-27)**

* HIV prevalence among MSMs is triple that of the general population.
* Young men are particularly at risk due to less frequent condom use.
* Ghana’s colonial era anti-sodomy laws promote the belief that HIV is punishment for same-sex behaviours.
* There is an assumption that all MSMs are or soon will be HIV+, increasing homophobic violence regardless of their actual HIV status.
* HIV is socially understood as punishment for engaging in same sex behaviors.
* Generally, younger men have less knowledge compared to older men, but it is well established that HIV and STD knowledge are insufficient to reduce HIV risk behaviors.
* The stigma toward same-sex behaviours prevents self-reporting by MSMs, making accurate HIV research difficult.

There is a higher prevalence of HIV in Ghanaian men who have sex with men compared to the general population. There is a high level of HIV stigma towards men who have sex with men, regardless of their actual HIV status. In Ghana, HIV risk is influenced by the intersection of a variety of factors, such as psychological (HIV knowledge), biological (untreated STDS, cognitive development), environmental (HIV stigma, institutionalized homophobia), and behavioral (sexual behavior, condom use) factors. All of these present obstacles for HIV prevention and HIV stigmatization within the LGBTQ+ community. Men who have sex with men perceive that many in their local communities hold prejudicial beliefs against people living with HIV, especially HIV positive men who have sex with men. This discourages many from utilizing clinical prevention services. Overall, the stigma of HIV is a major issue, which complicates HIV prevention and treatment among Ghanaian men who have sex men. This makes research very difficult; little is known about HIV knowledge, stigma and sexual behavior in Ghanaian men who have sex with other men because the stigma prevents accurate self-reporting and the exploration of causal relationships among HIV/STD knowledge, HIV stigma, and sexual behaviors.

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