

In March 2015, the Committee on Economic Social and Cultural Rights (CESCR) **recommended** (para.12) that The Gambia adopt non-discrimination legislation in line with its obligations under the Treaty (Art. 2(2)), and in line with its general Comment 20. It also urged the State to repeal or amend all legislation that could “result in discrimination, prosecution and punishment” to people based on SOGI, and to “take all the necessary steps to combat and prevent discrimination” for LGBT people.

In July 2015, the **CEDAW** Committee urged “... the State party to repeal the provisions of the Criminal Code on “unnatural offences” and “aggravated homosexuality”, end the arbitrary detention of lesbians and provide them with effective protection from violence and discrimination and provide appropriate training to law enforcement officials”.

In its significant report on The Gambia (February 2016), Human Rights Watch **observes** that section 144A ‘Aggravated homosexuality’, “is taken literally verbatim from section three of Uganda’s **Anti-Homosexuality Act**, which was later overturned by Uganda’s Constitutional Court in August 2014 on technical grounds”. It is **also clear** that The Gambia is increasingly embracing Islamic law in its governance practices, which will lead to further erasure of the rights of sexually diverse people in a country where they are **already** vilified, suspected and targeted in a climate of political unsteadiness.

## GHANA

**Criminal Code, 1960 (Act 29), as amended to 2003.**

### **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**

**[UNNATURAL CARNAL KNOWLEDGE]**

“(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 misdemeanour; or
- (c) 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.”

### **Article 296(4) of the Criminal Procedural Code**

“A misdemeanour shall be liable to imprisonment for a term not exceeding three years.”

In December 2012, the Working Group on Ghana’s 2<sup>nd</sup> cycle UPR **reported** the State’s delegation as follows: “Concerning whether Ghana will end its policy of non-equal treatment of homosexuals and lesbian, gay, bisexual and transgender (LGBT) people in general (Germany) and how Ghana will apply the principle of non-discrimination in relation to the issue of homosexuality, (the Netherlands), the delegation emphasised that Ghana does not have a policy of non-equal treatment of its citizens. The Constitution entrenches the fundamental principles of non-discrimination and equality. It also guarantees the freedom of religion and the rights of persons to practise that religion. The Constitution also provides for the legislature to enact laws that further the social cohesion and economic development of the people”.

Although Section 104 of Act 29 is understood to apply to males only, there have been media reports of **mob attacks** on lesbians. Incidents of violence and responses to that violence have been **recorded** in Ghana, and the social hostility is described in an October 2015 **Shadow Report** to the UN Human Rights Committee (HRCee), while an overview of LGBT life in Ghana to early-2014 is **described** in Being LGBT in West Africa. Information to February 2016 is **contained** in the

UK Home Office's 'Country Information and Guidance Ghana: Sexual orientation and gender identity'. Fears of a 'backlash' following the Ghanaian Prime Minister's visit to Scotland in March 2016, where he was pressurised by activists, have been expressed.

In August 2016, the HRCee's **Concluding Observations** (paras. 43 and 44) expressed concern at the "discrimination, intimidation and harassment" directed at LGBT people, as well as at the State's laconic response that same sex sexual activity falls under Section 104. The HRCee recommended the law be revised and efforts to address discrimination be instituted.

## GUINEA



**Penal Code** of 1988.

### Article 325:

**[ACT AGAINST NATURE]**

"Any indecent act or act against nature committed with an individual of the same sex will be punished by six months to three years of imprisonment and a fine of 100,000 to 1,000,000 Guinean francs.

If the act was committed with a minor under 21 years of age, the maximum penalty must be pronounced.

If the act was consummated or attempted with violence, the guilty will suffer the penalty of imprisonment for period of 5 to 10 years".

The atmosphere within which nascent LGBT organising has been happening in the recent period is both **volatile** and **hostile**. Amnesty's 2015/2016 **report** on Guinea notes: "[a]t least three people were arrested because of their perceived sexual orientation. Two men were arrested on 22 April in Conakry. In May, the Tribunal of Mafanco sentenced them to three months' imprisonment".

In its 2<sup>nd</sup> cycle UPR in January 2015, Guinea 'noted' two recommendations from Italy and Argentina to remove discriminatory measures based on SOGI, including criminalisation. The State's delegation appeared not to have made any comment regarding SOGI.

## KENYA



**Penal Code** (as amended by Act No. 5 of 2003).

### Section 162

**[AGAINST ORDER OF NATURE]**

"Any person who:

- (a) has carnal knowledge of any person against the order of nature; or
- (b) has carnal knowledge of an animal; or
- (c) permits a male person to have carnal knowledge of him or her against the order of nature, is guilty of a felony

is liable to imprisonment for fourteen years:

Provided that, in the case of an offence under paragraph (a), the offender shall be liable to imprisonment for twenty-one years if—

- (i) the offence was committed without the consent of the person who was carnally known; or
- (ii) the offence was committed with that person's consent but the consent was obtained by force or by means of threats or intimidation of some kind, or by fear of bodily harm, or by means of false representations as to the nature of the act."

### Section 163

**[ATTEMPTED ACTS AGAINST THE ORDER OF NATURE]**

"Any person who attempts to commit any of the offences specified in section 162 is guilty of a felony and is liable to imprisonment for seven years."