

GAMBIA

**Criminal Code 1965, as amended in 2005****Article 144: Unnatural offences****[AGAINST ORDER OF NATURE]**

“(1) 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 any person to have carnal knowledge of him or her against the order of nature;
- is guilty of a felony, and is liable to imprisonment for a term of 14 years.

(2) In this section- “carnal knowledge of any person against the order of nature” includes-

- (a) carnal knowledge of the person through the anus or the mouth of the person;
- (b) inserting any object or thing into the vulva or the anus of the person for the purpose of simulating sex; and
- (c) committing any other homosexual act with the person.”

[ATTEMPTED UNNATURAL OFFENCE]

Gambia's Criminal Code states that a “person who has carnal knowledge of any person against the order of nature ... or permits any person to have carnal knowledge of him or her against the order of nature” commits a felony known as an “unnatural offense”, and on conviction is punishable by a fourteen-year prison term. An attempt to commit an “unnatural offense” is also a felony, on conviction, punishable by seven years of imprisonment.

Article 147(2) (as amended by the 2005 Act)**[GROSS INDECENCY]**

“Any female person who, whether in public or private, commits any act of gross indecency with another female person, or procures another female person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with herself or with another female person, whether in public or private, is guilty of a felony and liable to imprisonment for a term of five years. Section 147(3) further specifies that act of indecency includes any homosexual act.”

On 25 August 2014, the Parliament approved the **Criminal Code (Amendment) Act 2014**, which punishes ‘aggravated homosexuality’ with imprisonment for life. The Act came into effect on 9 October 2014 and includes the following article:

144A. Aggravated homosexuality**[SERIAL OFFENDER]**

“(1) A person commits the offence of aggravated homosexuality where the –

- (a) person against whom the offence is committed is below the age of eighteen years;
- (b) offender is a person living with HIV;
- (c) offender is a parent or guardian of the person against whom the offence is committed;
- (d) offender is a person in authority over the person against whom the offence is committed;
- (e) victim of the offence is a person with disability;
- (f) offender is a serial offender; or
- (g) offender applies, administers or causes to use by any man or woman any drug, matter this with intent to stupefy or overpower him or her, so as to enable any person to have unlawful carnal connection with any person of same sex.

(2) A person who commits the offence of aggravated homosexuality is liable on conviction to imprisonment for life.”

Although The Gambia received and rejected (‘noted’) 12 recommendations regarding decriminalisation and non-discrimination based on SOGI at its 2nd cycle UPR process in October 2014, the State made no reference to this issue. Gambia's 3rd UPR will be in April 2019.

In February 2015, the Committee on Rights of the Child **entreated** (at para. 29) The Gambia to, “[e]nsure that children who belong to LGBTI groups and children from LGBTI families are not subjected to any form of discrimination, and repeal the legal provisions criminalizing homosexuality”.

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.



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 2nd 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