



## PERMANENT MISSION OF GHANA

GENEVA

### SC/GE/UN.7

The Permanent Mission of the Republic of Ghana to the United Nations Office and other International Organisations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and, with reference to the latter's letter No. AL GHA 2/2021 dated 2<sup>nd</sup> June, 2021 on a Joint Communication from six Special Procedures on the alleged arrest of twenty-one (21) LGBTQ Human Rights defenders in Ghana, has the honour to forward herewith, the response from the Government of Ghana to the issues raised by the Special Procedures.

The Permanent Mission of the Republic of Ghana to the United Nations Office and other International Organisations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 13<sup>th</sup> August, 2021



**OFFICE OF THE HIGH COMMISSIONER  
FOR HUMAN RIGHTS  
GENEVA**

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RESPONSE TO ISSUES RAISED IN THE JOINT COMMUNICATION FROM  
SPECIAL PROCEDURES

1. **ADDITIONAL INFORMATION AND/OR COMMENT(S) ON THE ALLEGATIONS**

On 20<sup>th</sup> May 2021, the Police in Ho received information that a group of people were organising a conference at the Ghana Nurses and Midwifery Association Hotel in Ho for the purposes of educating and encouraging the youth on same-sex sexual activities. The Police responded accordingly, and effected the arrest of 21 suspects, comprising 16 females and 5 males, all coming from various parts of the country. Investigations further revealed that two persons of the same sex occupied a room.

The following exhibits in the possession of the suspects were retrieved:

1. Books:

a. LGBT+ and Muslim:

This is a book that teaches that having sexual intercourse with same sex is accepted in Islam.

b. Coming Out (20 copies):

This book encourages lesbians and gays to be bold and tell people about their sexual orientation.

c. My Child; My Love (20 copies):

This book encourages parents not to disturb or discourage their children with diverse sexual interest.

d. All About Trans (19 copies)

e. All About Intersex (23 copies)

f. Gender Acronyms (28 copies)

g. Hate crime (21 copies)

h. Key Watch Ghana (49 copies)

2. Mobile phones

3. Laptop computers

4. Male and female condoms

5. Ointment (sexual lubricants)

The leaders of the group, in their Police Investigation Cautioned Statements, claimed that the conference was a capacity building programme for paralegals, organized by the Ghana Health Service and Ghana AIDS Commission. Police investigation revealed, on the contrary, that both institutions had nothing to do with the conference (copies of disclaimers attached).

The suspects were taken to the Volta Regional Police Headquarters for interrogation. They refused to give their statements to the Police and insisted that they would only do so in the presence of their lawyers. The Police then detained them for their lawyers to arrive before their statements could be taken. In order not to breach the 48-hour rule provided for in the 1992 Constitution in relation to the detention of suspects, the Police arraigned the suspects on 22<sup>nd</sup> May 2021 before the Circuit Court, Ho, where they were remanded into Police custody for further investigations.

The suspects, through their legal counsel, made an oral application for bail. The Police opposed the bail application on the grounds that they were yet to take Police Investigation Cautioned Statements from the suspects. Besides, the suspects, with the exception of two of them, ~~are~~ <sup>was</sup> not resident locally. Most of them had travelled from various parts of the country, to attend the conference. The judge agreed with the submission of the Police prosecutor and remanded the suspects into Police custody and adjourned the matter to 4<sup>th</sup> June 2021 for the plea of the suspects to be taken, if any.

The suspects' lawyers subsequently repeated their application for bail in the High Court, Ho. The application was scheduled to be heard on 28<sup>th</sup> May, 2021. However, the presiding judge, who was indisposed, did not sit on that day, and the case was adjourned to 1<sup>st</sup> June, 2021.

On 1<sup>st</sup> June, 2021, the bail application was moved and argued by defence counsel and same was opposed by the prosecution. The judge declined to grant the bail on the grounds that investigations were still ongoing. The judge also took the view that the suspects do not reside in the region and that would pose a challenge for the Police in conducting investigations into the matter.

The suspects on the 4<sup>th</sup> of June 2021, which was the due date for their appearance at the Circuit Court, Ho, through their lawyers repeated their application for bail. At this stage, the prosecution having obtained statements from the suspects did not oppose the application. However, the judge adjourned the case to 8<sup>th</sup> June, 2021 to give his detailed ruling. On 8<sup>th</sup> June, 2021, the judge declined to grant bail. The suspects then repeated their bail application at the High Court, Ho which was granted.

## **2. INFORMATION ON THE LEGAL BASIS FOR THE ARREST AND DETENTION OF THE HUMAN RIGHTS DEFENDERS AND EXPLANATION ON HOW THE MEASURES ARE COMPATIBLE WITH GHANA'S INTERNATIONAL HUMAN RIGHTS OBLIGATION**

The legal basis for the arrest and detention of the suspects can be found in section 104 of the Criminal and Other Offences Act, 1960 (Act 29) which provides as follows:

*“(1) A person who has unnatural carnal knowledge*

- (a) of another person of not less than sixteen years of age or over without the consent of the other person, commits a first-degree felony, and is liable on conviction to a term of imprisonment of not less than five years and not more than twenty-five years; or
- (b) of another person of not less than sixteen years of age with the consent of that other person, commits a misdemeanour”.

Section 104 (2) of Act 29 defines unnatural carnal knowledge as follows:

*“Unnatural carnal knowledge is sexual intercourse with a person in an unnatural manner or with an animal.”*

Natural carnal knowledge has also been defined by the Supreme Court of Ghana, in the case of *Banosin v The Republic; No. J 3/2/2014* dated 8<sup>th</sup> March 2014, S.C. (Unreported), as follows:

*“it is the female sex organs called the vulva and the vagina that are normally penetrated into during sexual act which can qualify to be carnal knowledge under sections 98 and 99 of Act 29 ...”*. Any other form of sexual intercourse is by implication unnatural.

In the present case, the activities encouraged and promoted by the suspects were at variance with the provisions of Act 29 outlined above.

The intelligence picked up by the Police was to the effect that the suspects were organizing a conference at the hotel to educate and encourage the youth on same-sex relationship or activities. When the Police got to the hotel, the conference was in session with the suspects actively participating. The Police then retrieved the exhibits named above and took the view that there were reasonable grounds to effect the arrest of the suspects.

The Ghana Police Service, like any other Police force in the world, has the mandate to effect the arrest of any person reasonably suspected to have committed a crime, to be committing a crime, or about to commit a crime.

Section 10 (2) of the Criminal Procedure Act, 1960 (Act 30) provides as follows:

*“A police officer may arrest without warrant a person whom the police officer suspects on reasonable grounds:*

- (a) *of having committed an offence;*
- (b) *of being about to commit an offence, in order to prevent the commission of the offence”.*

Ghana is of the view that holding a conference to promote, educate, encourage, entice and lure the youth to engage in same-sex sexual activities is an affront to the criminal laws of Ghana. Such persons are therefore liable to be arrested.

Ghana is a signatory to several international human rights protocols on the rights of persons, which includes rights of suspects of crime, and would not do anything to undermine Her obligation to these human rights protocols. It is imperative to note that Chapter Five of the 1992 Constitution of the Republic of Ghana has adequately incorporated most of these human

rights protocols. It must however be noted that being a signatory to these international human rights laws does not prevent Ghanaian law enforcement agencies from enforcing Ghana's criminal laws to maintain law and order. Detaining suspects of crime for the purpose of investigation is done in every jurisdiction, and such detention cannot be considered to be an abuse of the rights of those suspects.

### **3. MEASURES TAKEN TO ENSURE THAT HUMAN RIGHTS DEFENDERS CARRY OUT THEIR HUMAN RIGHTS ACTIVITIES, INCLUDING THE EXERCISE OF THEIR RIGHTS TO FREEDOM OF EXPRESSION, PEACEFUL ASSEMBLY AND ASSOCIATION IN A SAFE AND ENABLING ENVIRONMENT WITHOUT FEAR OF THREATS OR ACTS OF INTIMIDATION AND HARASSMENT**

First of all, it is important to state that the police did not arrest the suspects as human rights defenders, but as suspects of a crime.

Chapter Five of the 1992 Constitution guarantees and protects the rights of persons, which includes their rights to freedom of expression, peaceful assembly and association.

Article 21 of the 1992 Constitution guarantees the general fundamental freedoms of all persons living in Ghana. It provides that all persons shall have the right to:

*"(a) freedom of speech and expression, which shall include freedom of the press and other media;*

*(b) freedom of thought, conscience and belief which shall include academic freedom;*

*(c) freedom to practice any religion and to manifest such practice;*

*(d) freedom of assembly including freedom to take part in procession and demonstration;*

*(e) freedom of association which shall include freedom to form or join trade unions or other associations national and international for the protection of their interest".*

It is very clear from these provisions of the 1992 Constitution that the suspects' rights to associate and freely express themselves in matters that do not constitute criminal offences are guaranteed. However, since unnatural carnal knowledge is a crime under the laws of Ghana, no person can claim the right to associate, promote and encourage others to engage in these activities hence their arrest.

### **4 (A) INFORMATION ON HOW FAR A PRIVATE WORKSHOP IS CONSIDERED AN ASSEMBLY AND WHY AN AUTHORIZATION WOULD BE NEEDED**

Any meeting, whether held in a public or private place, which is aimed at committing or encouraging the commission of a criminal offence under the laws of Ghana is an unlawful assembly.

In defining an unlawful assembly, section 201 (1) of Act 29 provides as follows:

*“For the purpose of this chapter, there is an unlawful assembly when three or more persons assemble with the intent to commit an offence, or having assembled with an intent to carry out a common purpose, conduct themselves in a manner likely to cause persons in the neighbourhood reasonably to fear that the persons so assembled will commit a breach of the peace, or will by the assembly needlessly and without a reasonable occasion provoke other persons to commit a breach of the peace”.*

The key elements of this offence are that:

- (1) Two or more people assemble with the intent to commit a criminal offence; and
- (2) The persons so assembled conduct themselves in a manner likely to cause persons in the neighbourhood reasonably to fear that the persons assembled will commit a breach of the peace, or will by the assembly, needlessly and without a reasonable occasion, provoke other persons to commit a breach of the peace.

Due to the materials retrieved from the suspects, it is quite clear that the conference was intended to educate, promote and encourage same-sex sexual intercourse, which amounts to unlawful assembly. Indeed, a witness from the hotel indicated that the suspects paired themselves with two persons of the same sex in the hotel rooms they occupied. This was done obviously with the intent to commit the act of unnatural carnal knowledge.

Additionally same-sex sexual intercourse is abhorred by the Ghanaian society. The actions of the suspects, in participating in a workshop in a hotel where two persons of the same sex occupied a room and educating the participants on same-sex sexual intercourse, were enough to provoke persons in the neighbourhood to commit the breach of the peace. If the Police had not intervened, aggrieved persons in the neighbourhood could have been provoked without a reasonable cause and invaded the hotel to end the workshop, which could have resulted in the breach of the peace.

#### **4 (B) EXPLANATION OF WHETHER ALL WORK OR PRIVATE GATHERINGS THAT TAKE PLACE IN PRIVATE SETTINGS NEED AUTHORIZATION FOR THEIR “ASSEMBLY”, AND IF NOT, EXPLANATION OF WHY THIS SPECIFIC MEETING WOULD HAVE NEEDED SUCH AN AUTHORIZATION**

The suspects were not arrested because they organized a workshop without authorization. A group of persons who organize a workshop to discuss or educate participants on an activity that does not constitute a criminal offence or is not likely to result in the breach of the peace do not need to notify the police. This particular workshop was organised to educate the participants to engage in an activity, i.e. unnatural carnal knowledge, which is a criminal offence under Ghanaian law. In fact, even if they had sought and obtained permission to hold this workshop and the police later realized that the organizers did organize the workshop to educate the participants on an unlawful act, the organizers and the participants would have been arrested and prosecuted for unlawful assembly.

The legal interpretation of an unlawful assembly does not mean that the persons who assembled did not obtain permission before assembling.

No one is required by any law in Ghana to obtain permission before holding a workshop. However, no one is allowed to hold a workshop, whether with or without permission, which is aimed at promoting, encouraging or educating people on the commission of crime or to engage in acts that constitute a criminal offence under the laws of Ghana.

#### **5. INFORMATION ON THE MEASURES UNDERTAKEN TO ENSURE FAIR TRIAL, RIGHTS AND GUARANTEES OF DUE PROCESS TO ALL DEFENDANTS, IN PARTICULAR THE RIGHT TO ACCESS TO THEIR LAWYERS**

Fair trial, which includes access to lawyers by suspects and accused persons, is guaranteed under the Constitution of the Republic of Ghana, and every public officer is enjoined by law to abide by that Constitutional provision.

Article 19 (2) (c) of the Constitution provides:

*“a person charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty”*

Also, Article 19 (2) (d) states:

*a person charged with a criminal offence shall be informed immediately in a language that he understands, and in detail, of the nature of the offence charged;*

Article 19 (2) (f) further provides that:

*“a person charged with a criminal offence shall be permitted to defend himself before the court in person or by a lawyer of his choice”.*

Since the arrest of the suspects, the Police have not done anything to inhibit the rights of the suspects to fair trial or access to counsel of their choice. On the day of the arrest of the suspects, when the Police demanded to take their Police Investigation Cautioned Statements, the suspects declined to give their statements, stating that they would only do so when their lawyers were present. The Police acceded to their request and only took their cautioned statements in the presence of their lawyers. The Police also brought them before the court timeously within the stipulated forty-eight hour rule under Article 14 (3) of the Constitution.

It must also be put on record that in all the bail applications the suspects filed, they were represented by lawyers of their choice. In fact, when they lost the first bail application at the High Court on 1<sup>st</sup> June, 2021, they changed those lawyers who argued that application and instructed another set of lawyers to file the subsequent bail application for them.

Fair trial and being represented by counsel of their choice are the constitutional rights of the suspects that no one can take from them. The suspects are at liberty to engage counsel of their choice to represent them in the case without interference from anybody.

## COMMENTS AND CONCLUSION

The Government of Ghana wishes to take this opportunity to thank the Working Group for the issues raised in their joint communique. The Government further wishes to reiterate that Ghana is a signatory to several international human rights instruments with the view to protect, respect and fulfil the fundamental human rights and freedoms of all persons, including LGBT+ and human rights defenders. The State will not in any way arbitrarily arrest and detain anyone without due cause.