

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and the Working Group on discrimination against women and girls

REFERENCE:
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2 June 2021

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 42/22, 43/4, 41/12, 43/16, 41/18 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged arrest and arbitrary detention of 21 persons defending the rights of lesbian, gay, bisexual, trans and gender diverse (LGBT) persons in Ho, Ghana.**

According to the information received:

In Ghana, same-sex sexual activity falls under the definition of “unnatural carnal knowledge”, under section 104 of the Criminal Offences Act, 1960, which imposed a maximum penalty of three years' imprisonment.

On 20 May 2021, the Ghana Police Service allegedly arrested 21 human rights defenders (16 women and 5 men) who were conducting paralegal training for the protection of the human rights of sexual minorities at the Nurses and Midwives Hotel in Ho, Ghana. They were charged with “unlawful assembly”, which may entail a maximum of three years of imprisonment. According to information at our disposal, the police and media violently rushed into the venue based on the tip-off that LGBT human rights defenders were having a meeting.

On 21 May 2021, they were remanded into police custody by the Ho Circuit Court. According to the Ghana Police Service's press release on Twitter, they were arrested for the allegation of unlawful assembly. In the press release, the police mentioned that the primary investigation uncovered materials such as books and flyers titled “Hate crime”, “The LGBTQ+ Muslim”, “Gender Acronyms”, “Coming Out”, “My Child; My Love Always”, “All About Trans”, “All About Intersex”, and “Key Watch and One Love Sisters Ghana”.

Also, it is reported that the police searched the participants' hotel rooms, and the alleged presence of condoms was taken as evidence of “promotion of same-sex sexual activities”.

The detained human rights defenders have been remanded for two weeks and will appear before the Court on 4 June 2021.

While we do not wish to prejudge the accuracy of the information made available to us, we express our serious concern over the allegations of arrests and detention of the 21 LGBT human rights defenders due to their peaceful gathering for the training.

These allegations appear to be in contravention of the rights of every individual to life, liberty and security of person, freedom of opinion and expression, freedom of peaceful assembly and association, fair trial and non-discrimination, as laid down, among other things, in articles 3, 7, 9, 10, 19 and 20 of the Universal Declaration of Human Rights (UDHR) and articles 2, 9, 14, 19, 21 and 26 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Ghana on 7 September 2000, and in articles 2, 6 and 9 of the African Charter on Human and People's Rights ratified by Ghana on 1 June 1989. These rights are of universal nature and apply to everyone, irrespective of their sexual orientation or gender identity.

In view of the seriousness of the matter, we would appreciate a response on the steps taken by your Excellency's Government to respond to these allegations and to effectively protect the rights of the above-mentioned persons in compliance with international instruments, including the immediate release of the 21 human rights defenders referred above.

The Working Group on Arbitrary Detentions wishes to emphasize that the prohibition of arbitrary deprivation of liberty is absolute and universal, noting that detention for peaceful exercise of rights is arbitrary in accordance with Human Rights Council Resolution 24/5 and Human Rights Committee, General comment No. 35, Article 9, and General Comment 37 (2020) as well as the jurisprudence of the Working Group.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legal basis for the arrest and detention of the 21 human rights defenders and explain how these measures are compatible with Ghana's international human rights obligation.
3. Please indicate the measures taken to ensure that human rights defenders, including those working towards the protection from violence and discrimination based on sexual orientation and gender

identity, can 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 of any sort.

4. Please provide information in how far a private workshop is considered an assembly and why an authorization for this would be needed. Please explain if all work or private gatherings that take place in private settings need an authorization for their “assembly” and if not, please explain why this specific meeting would have needed such an authorization.
5. Please provide 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.

This communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency’s Government’s to clarify the issue/s in question.

We would like to inform your Excellency’s Government that after having transmitted this communication to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. This letter in no way prejudice any opinion the Working Group may render. The Government is required to respond separately this communication procedure and the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule
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Victor Madrigal-Borloz
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orientation and gender identity

Elizabeth Broderick
Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to offer the following observations:

Protecting freedom of expression, peaceful assembly and association

States have an obligation to guarantee to everyone the rights to freedom of expression, association, and peaceful assembly, without discrimination (articles 19 and 20 (1) of UDHR, articles 19 (2), 21, and 22(1) of ICCPR, articles 1, 2, 5 and 6 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms). Limitations on these rights that are based on sexual orientation or gender identity violated international human rights norms and standards.

The Human Rights Committee noted that States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (CCPR/C/GC/34, para. 23).

The United Nations High Commissioner for Human Rights acknowledged that LGBT defenders and supporters of related rights had been subjected to violence and harassment when convening meetings (A/HRC/19/41, para. 64). He further noted that States have obligations to protect rights to freedom of thought and expression, association and peaceful assembly without discrimination on the grounds of sexual orientation or gender identity (A/HRC/29/23, para. 18). To that end, he recommended States (i) ensure that individuals can exercise their rights to freedom of expression, association and peaceful assembly in safety without discrimination on grounds of sexual orientation and gender identity; and (ii) implement appropriate sensitisation and training programmes for police and other law enforcement personnel (A/HRC/19/41, paras. 84 (f) and (g), A/HRC/29/23, para. 78 (e)).

The Special Rapporteur on the rights to freedom of peaceful assembly and of association emphasised that the rights to freedom of peaceful assembly and of association play a key role in empowering individuals belonging to groups most at risk (including LGBT people) to claim other rights and overcome the challenges associated with marginalisation. Such rights must therefore not only be protected, but also facilitated. It is the responsibility of all stakeholders to ensure that the voices of individuals belonging to groups most at risk are heard, and taken into account, in compliance with the principles of pluralism of views, tolerance, broadmindedness and equity (A/HRC/26/29, para. 72). In this regard, he called upon States to: (i) ensure that no individual belonging to a group most at risk is criminalised for exercising his/her rights to freedom of peaceful assembly and of association, nor is subject to threats or use of violence, harassment, persecution, intimidation or reprisals; (ii) ensure that any restrictions on the rights of freedom of peaceful assembly and of association, for individuals belonging to groups most at risk, are prescribed by law, necessary in a democratic society and proportional to the aim pursued, and do not harm the principles of pluralism, tolerance and broadmindedness; (iii) provide individuals belonging to groups most at risk exercising their rights to freedom of

peaceful assembly and of association with the protection offered by the right to freedom of expression; (iv) ensure that administrative and law enforcement officials are adequately trained in relation to the respect of the rights of individuals belonging to groups most at risk to freedom of peaceful assembly and of association, in particular in relation to their specific protection needs; and (v) ensure that individuals belonging to groups most at risk who are victims of violations and abuse of their rights to freedom of peaceful assembly and of association have the right to a timely and effective remedy and obtain redress (Ibid., paras. 74 (a), (b), (d), (e) and (g)).

The Special Rapporteur on the situation of human rights defenders highlighted that defenders promoting the rights of LGBT persons are often the target of numerous attacks and the lack of any protection under the law or in practice exacerbates the vulnerability of those defenders (A/70/217, para. 65-66). Therefore, he recommended that States adopt the following measures: (i) do more to disseminate the work of defenders and to support their work through campaigns and specific communication and information activities that pay tribute, in particular, to the contributions made by certain categories of defenders, such as the rights of LGBT persons, and (ii) provide State agents, especially those who are in direct contact with communities of defenders, with the necessary training regarding the role and rights of defenders and regarding the Declaration on human rights defenders (Ibid., paras. 93 (a) and (i)).

Prohibition of arbitrary arrest and detention

Article 9 of the ICCPR provides that no one shall be subjected to arbitrary arrest or detention, and that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. The Human Rights Committee and the Working Group on Arbitrary Detention have clarified multiple times that detention on discriminatory grounds, including based on sexual orientation and gender identity, is per se arbitrary and violates the ICCPR (CCPR/C/GC/35, A/HRC/22/44 and Opinion No. 14/2017 of the Working Group on Arbitrary Detention). In addition, arrest or detention is arbitrary when it constitutes a punishment for the legitimate exercise of the rights guaranteed by the Covenant, including freedom of opinion and expression, freedom of assembly, freedom of association, freedom of religion and the right to privacy (CCPR/C/GC/35).

We also recall that persons deprived of their liberty shall have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension. We further recall that incommunicado detention lacks any valid legal basis and is inherently arbitrary as it places the person outside the protection of the law.

Non-discrimination based on sexual orientation and gender identity

Sexual orientation and gender identity are prohibited grounds of discrimination under international law. The criminalisation of sexual relations between consenting adults has been condemned as violating international human rights norms enshrined in treaties to which Ghana is party, including the ICCPR, the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (ratified by Ghana on 7 September 2000), the International Covenant on Economic, Social and Cultural Rights (ratified by Ghana on 7 September 2000), the Convention on the Elimination of All Forms of Discrimination against Women (ratified by Ghana on 2 January 1986), the Convention on the Rights of the Child

(ratified by Ghana on 5 February 1990). Human rights treaty bodies and the former High Commissioner for Human Rights have repeatedly called for such discriminatory laws to be repealed (A/HRC/29/23, A/HRC/19/41).

On the basis of international human rights norms and standards and the work of the United Nations human rights treaty bodies and special procedures, the United Nations High Commissioner for Human Rights emphasised that States have an obligation to, among other things, revise criminal laws to remove offences relating to consensual same-sex conduct and other offences used to arrest and punish persons on the basis of their sexual orientation and gender identity or expression, and to ensure that anti-discrimination legislation includes sexual orientation and gender identity among prohibited grounds from discrimination (A/HRC/29/23, paras. 78 (a) and (c)).

In this vein, we would like to recall Concluding Observations of 9 August 2016 of the Human Rights Committee, in which it was highly concerned about reports that LGBT persons are subjected to discrimination, intimidation and harassment and about the impunity enjoyed by the perpetrators of such acts (CCPR/C/GHA/CO/1, para. 43). The Committee further noted with concern that same-sex sexual activity falls within the definition of “unnatural carnal knowledge, under section 104 of the Criminal Offences Act, 1960, and is considered a misdemeanour if it is between two consenting adults” (Ibid.). In light of this, the Committee urged Ghana to take the steps necessary to protect LGBT persons against all forms of discrimination, intimidation and violence. The Committee also urged Ghana to amend section 104 of the Criminal Offences Act, 1960, to ensure that sexual relations between consenting adults of the same sex are not considered a misdemeanour and not punishable by law (Ibid., para. 44).

We also believe it is pertinent to refer to the last Universal Periodic Review of Ghana (A/HRC/37/7), drawing particular attention to the recommendations in paragraph 146.59, which state that Ghana should: “Take the steps necessary to protect lesbian, gay, bisexual, transgender and intersex persons from violence and discrimination on the basis of their sexual orientation and gender identity” (which enjoyed the support of Ghana).