



GYANDOH ASMAH & CO.
CONSTITUTIONAL • OIL & GAS • CORPORATE • PROPERTY LAWYERS

TO: MR.
FROM: KUUKUWA ANDAM
SUBJECT: RE: A - ASYLUM APPLICATION
DATE: FRIDAY, 7TH MARCH, 2014

QUESTION PRESENTED

Will A [redacted], a gay man, face persecution and legal sanctions if he returns to Ghana?

SHORT ANSWER

Yes, A [redacted] will face persecution and legal sanctions if he returns to Ghana. Under Ghanaian Law, same-sex intercourse between two men is a crime. Therefore, A [redacted] can be prosecuted, convicted and sentenced to up to three years of imprisonment if he engages in homosexual activities in Ghana. Moreover, human rights activists have documented several incidents of physical and sexual assaults, blackmail and homophobic attacks perpetrated against LGBTs in Ghana. Thus, as a gay man, A [redacted] could fall victim to such assaults. Finally, due to the fact that A [redacted] comes from a devout Muslim community, he could face persecution from the community since the head of Ghana's Muslim community has consistently stated that sexual minorities should be wiped out from society.

FACTS

A [redacted] is a Ghanaian gay man living in the United Kingdom. He was born into a devout Muslim family in Ghana, where he spent his formative years. A [redacted] hails from [redacted], in

A [redacted]'s family has severed ties with him since they discovered that he is gay, on the basis that Islam abhors homosexuality and as such, A [redacted] is perpetuating evil and bringing disgrace and calamity upon his family because he is gay. A [redacted] is currently in a same-sex relationship and applying for asylum.

DISCUSSION

Ghana's Law on Homosexuality

Ghanaian law is derived from diverse sources including the Constitution, statutes, rules of common law and equity and customary law rules of the different ethnic groups in Ghana.¹ Thus, Ghana's law on homosexuality is a composite of provisions extracted from different sources of law.

Ghana's Criminal Code² criminalizes same-sex intercourse between two men. Section 104(1)(b) of the Criminal Code provides:

- (1) *Whoever has unnatural carnal knowledge—*
(b) *of any person of sixteen years or over with his consent is guilty of a Misdemeanor...*³

The phrase “unnatural carnal knowledge” is defined in Section 104(2) of the Criminal Code as “*sexual intercourse with a person in an unnatural manner or with an animal.*”⁴

Clearly, this provision is quite vague on what specifically amounts to having “sexual intercourse” in an “unnatural manner.” Therefore, in enforcing this provision, the Ghanaian courts have traditionally utilized the common law interpretation of “unnatural carnal knowledge” namely; penile penetration of any bodily orifice except the vagina. This interpretation effectively criminalizes anal sex and fellatio and it also criminalizes penetrative sexual activities between two men.

Since the offence of unnatural carnal knowledge is a misdemeanor⁵, a person convicted of the offence is liable to be imprisoned for up to three years.⁶ An Accra Circuit Court sentenced four gay men to be imprisoned for two years each for committing “unnatural carnal knowledge” and “indecent exposure.”⁷ They were arrested while picking up a package containing photographs depicting them engaged in homosexual activities.⁸

Some legal experts have asserted that Article 17 of Ghana's 1992 Constitution safeguards the rights of LGBTs because it provides that all persons shall be “equal before the law” and that no person shall be discriminated against on grounds of “gender, race, colour, ethnic origin, religion, creed or social or economic status.”⁹ However, the Supreme Court of Ghana has not yet ruled on

¹ Article 11 of the 1992 Constitution of the Republic of Ghana

² Criminal Code, 1960 (Act 29)

³ Ibidem Section 104(1)(b)

⁴ Section 104(2) of the Criminal Code, 1960 (Act 29)

⁵ Section 104 of the Criminal Code Ibidem

⁶ Section 296(4) of the Criminal Procedure Code, 1960 (Act 30)

⁷ Joe Bradford Nyinah, (Friday, August 8, 2003); *Four Homosexuals Jailed 2 years each* Daily Graphic: - No. 148893, Cover Page

⁸ Ibidem

⁹ Abigail Bonsu, *Oye Lithur must be rejected- Presby Moderator*, <http://graphic.com.gh/news/general-news/9148-oye-lithur-must-be-rejected-presby-moderator.html>, this is the view expressed by Prof. Ken Attafuaah, a Ghanaian criminologist.

the issue of gay rights and specifically, on whether Article 17 of the Constitution can be interpreted as safe-guarding gay rights.

In 2012, a retired Justice of the Supreme Court of Ghana, Justice Yaonusu Kpegah, filed an application asking the Supreme Court to disregard homosexuality as a human rights issue because it was “a taboo and unacceptable.”¹⁰ However, this matter was never heard in court and the plaintiff did not prosecute his case.

Several organizations have been formed to advocate for strict laws to be passed, specifically criminalizing homosexuality since other African countries (example, Nigeria and Uganda) have recently done so. The Coalition for Proper Human Family and Sexual values has been formed to pressure the government to pass laws criminalizing homosexuality and this coalition comprises several influential groups in Ghana including the Christian Council of Ghana, the Ghana Catholic Bishops Conference, the Ghana Pentecostal and Charismatic Council, the Muslim Council and traditional authorities (chiefs and queen mothers).¹¹ Ghana’s law does not recognize same-sex civil partnerships or same-sex marriages.

Social, Political and Religious Attitudes towards homosexuality in Ghana

Social Hostility

A survey conducted by Pew Research Center showed that 96 percent of Ghanaians believe that homosexuality should be rejected by society.¹² According to Mac-Darling Cobinnah, founder of Gay and Lesbian Association of Ghana (GALAG), the first LGBT organization in Ghana, the Government of Ghana was reluctant to register GALAG when it was formed because most Ghanaians are not in favor of an organization being formed to advocate for gay and lesbian rights.¹³ Thus, he had to change the name of his organization to Center for Popular Education and Human Rights (CEPHERG) for security reasons and to enable him freely access funding from local sources.¹⁴ Since forming CEPHERG, he has received several death threats and has had to shut down the CEPHERG office and travel to a neighboring country to avoid being killed.¹⁵

Mac-Darling Cobinnah has interviewed several Ghanaian LGBTs who have shared personal experiences of being blackmailed, as well as being sexually and physically assaulted, oftentimes with the collusion of the police.¹⁶

¹⁰ <http://edition.myjoyonline.com/pages/news/201203/83959.php>

¹¹ Emelia Enin Abbey, *Declare Position on Homosexuality*, <http://graphic.com.gh/news/general-news/14473-declare-position-on-homosexuality.html>

¹² *The Global Divide on Homosexuality*, <http://www.pewglobal.org/files/2013/06/Pew-Global-Attitudes-Homosexuality-Report-FINAL-JUNE-4-2013.pdf>

¹³ *Ghana’s LGBT Struggle*, <http://www.leglobaliste.com/2012/12/19/ghanas-lgbt-struggle-death-threats-stigma-and-hope-for-change/>

¹⁴ *Ibidem*

¹⁵ Mac-Darling Cobinnah, *Testimonies of Human Rights Defenders*, <http://www.frontlinedefenders.org/node/2033>

¹⁶ Mac-Darling Cobinnah, *Because of You: Blackmail and Extortion of Gay and Bisexual Men in Ghana*

In Tamale, a city in Northern Ghana, the chief and residents have threatened to lynch anyone found to be gay or lesbian in what they have named as a “house to house cleansing.”¹⁷ Lesbians and gay men were assaulted by a mob in Jamestown, a suburb of Accra, when they organized a party.¹⁸ No one was arrested for these assaults.¹⁹

There have been reports about the homophobic behavior of some Ghanaian families, including a father who tried to poison his gay son to death in Kumasi leading to his son fleeing from home²⁰ and the family of a murdered gay man who refused to accept the police report and co-operate with investigations because they said the report tarnished their family name by stating that their son was gay.²¹

Political and Religious Sentiments

Ghanaian Political and Religious leaders have not been assertive about protecting the rights of LGBTs. Instead, they often issue homophobic statements. President Mills, the immediate past president of Ghana stated that he would resist any attempt to repeal laws criminalizing homosexual activities in Ghana.²² President Mahama, the current president of Ghana has also stated that he will execute the laws of Ghana which criminalize homosexuality.²³ Paul Aidoo, Ghana’s Western Regional Minister issued a statement asking for all LGBTs to be arrested and for people to report any sexual minorities they know.²⁴

Religious leaders have been very intolerant of sexual minorities. The Chief Imam has consistently issued homophobic statements including stating that homosexuality will cause the destruction of Ghana and should never be accepted²⁵ and asserting that homosexuality is a social canker which must be stamped out of society.²⁶ The Christian Council of Ghana, the association of Christian Churches, has supported the statement of the Chief Imam and urged the government not to soften its stance on homosexuality.²⁷

¹⁷ *Angry Tamale Youth, Chief Threaten to Lynch Homosexuals*, <http://www.ghanaherald.com/angry-tamale-youth-chief-threaten-to-lynch-homosexuals/>

¹⁸ *Vigilante Gang in Jamestown, Mass Gay Assault*, <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=232494>

¹⁹ Ibidem

²⁰ *Bigx Ghana, Kumasi: Dad Threatens Gay Son with Death*, <http://omgghana.com/kumasi-dad-threatens-gay-son-with-death/>

²¹ *‘Gay’ Man Killed in Suyani*, <http://news1.ghananation.com/latest-news/312464-%E2%80%98gay%E2%80%99-man-killed-in-sunyani.html>

²² *President Mills Speaks to the Press: Ghana Will Never Legalize Homosexuality*, <http://www.gbcghana.com/index.php?id=1.334000.1.637987>

²³ *President Mahama Declares Stance: Homosexuality is Criminal*, <http://edition.myjoyonline.com/pages/news/201302/100815.php>

²⁴ *Paul Evans Aidoo’s Ghana Gay Spy ‘Promotes Hatred’*, <http://www.bbc.com/news/world-africa-14250170>

²⁵ *National Chief Imam Condemns Homosexual Practices*, <http://www.modernghana.com/news/334186/1/national-chief-imam-condemns-homosexual-practices.html>

²⁶ *National Chief Imam’s New Year Message to Ghanaians*, http://ipasec.org/news/?news_id=152c572084cd19

²⁷ *Christian Council Supports Chief Imam Condemnation of Homosexuals*, <http://www.gbcghana.com/1.1650607>

ANALYSIS

With regards to Ghanaian law on homosexuality, it is obvious that if A returns to Ghana, as a gay man, he is likely to be imprisoned for homosexual activities. Additionally, if he decides to return to Ghana with his current partner, he can never enter into a civil partnership with him or marry him because Ghanaian law does not recognize same-sex civil partnerships or marriage.

Moreover,

Further, as indicated in the Pew Research Study above, about 96 percent of Ghanaians are homophobic and would like homosexuals to be rejected. Due to the wide-spread homophobia in Ghana, LGBTs are prime targets for assaults, blackmail and other attacks and the police are not proactive in protecting sexual minorities or arresting perpetrators of these offences.

CONCLUSION

Members of the LGBT community in Ghana consistently encounter diverse forms of discrimination, assault and attacks. They are stigmatized and persecuted and gay men are imprisoned for homosexual activities. As a gay man, A is most likely to be incarcerated or persecuted for his sexual orientation if he returns to Ghana.

SIGNED:



**KUUKUWA BENTSIWA ANDAM (MISS)
ASSOCIATE ATTORNEY**