



# GHANA

## AMNESTY INTERNATIONAL SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW 14TH SESSION OF THE UPR WORKING GROUP, OCTOBER-NOVEMBER 2012

### FOLLOW UP TO THE PREVIOUS REVIEW

During its first Universal Periodic Review in 2008, Ghana supported recommendations to enhance women's rights and gender equality and address violence/domestic violence,<sup>1</sup> to promote children's rights,<sup>2</sup> to strengthen judicial structures,<sup>3</sup> to eliminate harmful traditional practices including female genital mutilation,<sup>4</sup> to co-operate with the UN human rights system,<sup>5</sup> to strengthen social, economic and cultural rights,<sup>6</sup> including the right to adequate housing,<sup>7</sup> to intensify measures to combat and sanction police brutalities,<sup>8</sup> and to ratify outstanding human rights treaties.<sup>9</sup>

High levels of violence against women and girls continue to be reported throughout the country, with violence in the family thought to affect one in three women. In January 2010, the Domestic Violence and Victim Support Unit of the Police Service adopted a strategic plan aimed at improving its functioning.<sup>10</sup> However, the Unit remains under-resourced and seriously inadequate in ensuring protection and services to victims of violence. Although the Domestic Violence Act 2007 allows prosecution of marital rape, little progress has been made in the implementation of the Act.<sup>11</sup> Victims of violence are still obliged to pay the costs of their medical examination.<sup>12</sup>

Ghana has not yet harmonized the norms of citizenship for foreign spouses in line with the Convention on the Elimination of All Forms of Discrimination against Women.<sup>13</sup> Further legislative reforms are needed to ensure equal rights between women and men.

Although female genital mutilation was made a criminal offence in 1994, the practice continues, particularly in the North of Ghana.<sup>14</sup>

Ghana has made little progress in strengthening the right to adequate housing.<sup>15</sup> Despite a presidential announcement that forced evictions would no longer take place, people continue to suffer violations of their right to adequate housing.

There has been an increase in the number of police officers and there are reports of efforts to modernize forensic facilities and police equipment.<sup>16</sup> However, excessive use of force and unlawful killings by the police and security forces continue to be reported and measures to combat human rights violations committed by the police remain limited.

During Ghana's first review, recommendations were made to Ghana to decriminalize sexual activity between consenting adults; however, Ghana did not respond to these recommendations and sexual activity between consenting adults remains criminalized under Chapter 6, Article 104 of the Criminal Code, which prohibits "unnatural carnal knowledge" (defined to include consensual sexual intercourse between men). This clause has the effect of encouraging discrimination, harassment and persecution of people on the basis of their identity and consensual sexual behaviour.<sup>17</sup>

### THE NATIONAL HUMAN RIGHTS FRAMEWORK

## **REVIEW OF THE CONSTITUTION**

In January 2010, President Mills inaugurated a Constitution Review Commission to conduct a public consultation on the 1992 Constitution. The Commission presented its initial report to the President in December 2010. Although the final report has not yet been made public, a summary of the report was released in December 2011. Its recommendations include abolishing the death penalty and replacing it with life imprisonment without parole; full recognition of economic, social and cultural rights in the Constitution; and direct enforcement of decisions by the Commission on Human Rights and Administrative Justice which is to have increased powers to enable it to initiate investigations within its mandate.

Ghana ratified the International Covenant on Economic, Social and Cultural Rights in 2000, but has still not fully incorporated it into national law. Most economic, social and cultural rights are not included within Chapter 5 of the 1992 Constitution on Fundamental Human Rights and Freedoms. Some economic, social and cultural rights are included in Chapter 6 on Directive Principles of State Policy; however, to date, these directive principles have not been enforceable in the courts.

## **PROTECTION OF HUMAN RIGHTS IN THE CONSTITUTION AND NATIONAL LEGISLATION**

Amnesty International is concerned at a range of shortcomings in the Constitution and in national legislation:

Ghana retains the death penalty for a number of offences in the Constitution and in national legislation.

The Freedom of Information Bill, introduced in 2002, has still not been passed into law.

Corporal punishment remains legal in the prison system. Section 44 of the Prisons Service Decree permits “fifteen strokes of a light cane” for male prisoners over the “apparent age” of eighteen years.

Article 13 of the Constitution, which guarantees the right to life, also provides for much wider grounds for the use of lethal force than is permissible under international standards, including to effect a lawful arrest or to prevent the escape of a person lawfully detained; for the purposes of suppressing a riot; or in order to prevent the commission of a crime by that person. While the use of force and firearms may sometimes be permissible when making an arrest or preventing a person from escaping, the provisions of Article 13 of the Constitution are impermissibly broad and do not require the existence of an imminent or grave threat of death or serious injury and have a more lenient standard of necessity than that required by international standards, such as the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (paragraphs 5 and 9).

Ghana’s laws do not provide adequate protection against forced eviction and the authorities have failed to put in place adequate safeguards to prevent people from being forcibly evicted in violation of their human rights. There is no reference to housing rights in the Constitution.

## **UNIVERSAL JURISDICTION AND CRIMES UNDER INTERNATIONAL LAW**

While some crimes under international law are defined as crimes under Ghanaian law,<sup>18</sup> other such crimes including war crimes defined in international humanitarian law applicable during non-international armed conflict, crimes against humanity; ‘other acts’ of genocide (such as conspiracy, direct and public incitement, attempt and complicity); extrajudicial execution; enforced disappearance and aggression, are not defined as crimes under Ghanaian law. In any event, the definitions of crimes under national law should be as broad as the definitions set out in the Rome Statute of the International Criminal Court (to which Ghana is a party), but whenever international treaties (such as Protocol I) or customary law contain stronger definitions than those in the Rome Statute, these definitions should be incorporated into Ghanaian law.

While the courts are able to exercise universal jurisdiction over certain crimes,<sup>19</sup> they are not empowered so far to exercise universal jurisdiction over crimes against humanity, torture, extrajudicial executions and enforced disappearance.

## **THE DEATH PENALTY**

Ghana is abolitionist in practice, although it retains the death penalty in law and continues to sentence people to death. At the end of 2011, 138 people were on death row, including four women. No executions have been carried out since 1993.

## **THE HUMAN RIGHTS SITUATION ON THE GROUND**

### **ACCESS TO JUSTICE AND PRISON CONDITIONS**

Court procedures continue to be subject to long delays. Access to legal aid is inadequate and some prisoners spend years awaiting trial. In many prisons, overcrowding is severe, sanitation is inadequate, food and medical care are scarce and many prisoners rely on family members and outside organizations for additional food, medicines and other necessities. Skin diseases, tuberculosis, malaria, hepatitis and HIV are prevalent; however, the prison health system is over-stretched, under-equipped and unable to provide adequate medical care.

Some reforms have been introduced to tackle overcrowding. The Justice for All programme, introduced in 2007 to reduce the number of prisoners awaiting trial, brings judges in to prisons to conduct hearings with untried prisoners. A new 2,000-prisoner capacity prison, inaugurated in 2011, received its first prisoners in 2012. While these measures may ease the overcrowding problem, political will and increased resources are needed for such reforms to have a meaningful effect.

### **HOUSING RIGHTS**

Approximately 4.8 million people live in slums in Ghana - 45 per cent of the country's urban population. In Accra, which has an estimated population of 4.5 million people, approximately one third of the city's residents live in slums. These slum communities, where residents live, work and raise their children, are characterized by grossly inadequate living conditions, lack of basic services, overcrowding and insecurity of tenure. Insecurity of tenure leaves people vulnerable to forced eviction.

Since 2008, hundreds of people have been forcibly evicted from their homes. Forced evictions compound the country's housing shortage and have left many people homeless and destitute. Thousands remain under threat of forced eviction, which is often carried out without adequate prior consultation or notice and with no compensation or alternative accommodation. In May 2010, hundreds of people were forcibly evicted from their homes in "Abinkyi slum" in Kumasi. The residents were given just two weeks' notice and were not offered any alternative accommodation or compensation.

In Old Fadama, the biggest informal settlement in Accra, up to 79,000 people live without security of tenure. The Metropolitan Assembly in Accra has repeatedly announced plans to demolish the settlement; however, in September 2011, President Mills publicly committed not to forcibly evict the people living in Old Fadama, and said that discussions were ongoing to relocate people.

### **HUMAN RIGHTS OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE**

Ghana's Constitution guarantees freedom from discrimination, in line with the International Covenant on Civil and Political Rights, Article 2 of which guarantees non-discrimination on the grounds of sex. However, discrimination on the grounds of sexual orientation persists in Ghana.

Human rights abuses against individuals suspected of same-sex relations also continue. On 20 July 2011, the Western Region Minister ordered the security forces to arrest all gay men and lesbians in the west of the country, and called on landlords and tenants to report anyone they suspected of being gay or lesbian.

### **HUMAN RIGHTS VIOLATIONS BY THE POLICE AND SECURITY FORCES**

Excessive use of force and unlawful killings by the police and security forces continue. In February 2011, the police were accused of firing indiscriminately in an attempt to restore order in the Buduburam refugee camp. One person was reported to have been killed. The police also regularly shoot and kill suspected armed robbers. In June 2011, the UN

Committee against Torture expressed concern about impunity for brutality and excessive use of force by the police, and concern about the authorities' admission that torture was likely to be taking place in detention centres.

## RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

### **Amnesty International calls on the government of Ghana to:**

*Follow up to the previous review:*

- Ensure that the Domestic Violence and Support Unit is adequately resourced and able to provide protection and services to victims of violence;
- Fully implement national legislation to eradicate domestic violence, including the 2007 Domestic Violence Act;
- Ensure that victims of violence are not obliged to pay the costs of their medical examinations;
- Harmonize norms of citizenship for foreign spouses in line with the Convention on the Elimination of All Forms of Discrimination against Women;
- Protect the human rights of lesbian, gay, bisexual and transgender people and to amend the Criminal Code to repeal the provision that criminalizes sexual activity between consenting adults;
- Ensure that effective and prompt investigations are carried out into all allegations of domestic violence and female genital mutilation, and that those responsible are brought to justice.

*Ratification of international human rights treaties and protection of human rights in the Constitution and in national legislation:*

- Ratify the International Convention for the Protection of All Persons from Enforced Disappearances;
- Ratify the Convention on the Rights of Persons with Disabilities and the Optional Protocol;
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
- Ratify the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and permit international inspection of all places of detention in Ghana;
- Amend Article 13 of the Constitution to ensure the grounds permitting the use of lethal force are in line with international standards, including the requirement of the existence of an imminent or grave threat of death or serious injury;
- Pass the Freedom of Information Bill;
- Abolish the death penalty (see also below);
- Incorporate the provisions of the International Covenant on Economic, Social and Cultural Rights into national law and recognize these rights as legally enforceable rights;
- Include reference to housing rights in the Constitution, and enact legislation to protect against forced eviction;
- Expunge corporal punishment from the Prisons Service Decree.

*Universal jurisdiction and crimes under international law:*

- Define the following as crimes under Ghanaian law: war crimes defined in international humanitarian law treaties applicable during non-international armed conflict; crimes against humanity; "other acts" of genocide (such as conspiracy, direct and public incitement, attempt and complicity); extrajudicial execution; enforced disappearance; aggression, and all other war crimes outlined in the Rome Statute not already defined as crimes under Ghanaian law;
- Empower the national courts to exercise universal jurisdiction over crimes against humanity, torture,

extrajudicial executions, and enforced disappearances.

*The death penalty:*

- Abolish the death penalty as recommended by the Constitution Review Commission;
- Pending abolition of the death penalty, take the following steps as a matter of urgency:
  - Establish an official moratorium on the use of the death penalty, with a view to abolition;
  - Commute without delay all death sentences to terms of imprisonment;
  - Ensure that any person previously sentenced to death, subsequent to commutation, is removed from special prison facilities, especially from death row, and transferred to regular institutions of detention appropriate for the age of the offender and the offence committed;
  - Ensure that the most rigorous internationally recognized and constitutional standards for fair trial are respected in capital cases;
  - Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at abolishing the death penalty.

*Access to justice and prisons:*

- Extend invitations to the UN Special Rapporteur on torture and the African Commission Special Rapporteur on Prisons and Conditions of Detention to visit Ghana in the near future;
- Immediately commit to rectify over-crowding in prisons and ensure that prison conditions meet international standards, including the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules);
- Ensure all detainees have access to a lawyer of their choice, including through the implementation of an enhanced legal aid system that reaches all regions of Ghana;
- Review cases to assess how long remand prisoners have been in pre-trial detention, with a view to ending the imprisonment of those who have been held for a time commensurate with normal sentences for their crime.

*Housing rights:*

- Enact and enforce a law prohibiting forced evictions;
- Amend the Constitution to protect housing rights and ensure that economic, social and cultural rights can be enforced by the courts;
- Develop and adopt guidelines for evictions in line with the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement and international human rights law.

*Human rights of lesbian, gay, bisexual and transgender people:*

- Ensure thorough and impartial investigation into all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity and bring to justice those responsible in accordance with international standards of fair trial;
- Take effective measures to end the climate of homophobia.

*Human rights violations by the police and security forces:*

- Instruct the security forces to always act in compliance with international human rights law and to respect the right to life and the prohibition of torture and other cruel, inhuman and degrading treatment;
- End impunity for human rights violations by the police by ensuring that all reports of human rights violations by members of the security forces are fully and impartially investigated, and that those suspected of involvement in human rights violations are suspended from active duty and brought to justice.

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<sup>1</sup> Report of the Working Group of the Universal Periodic Review of Ghana, 29 May 2008 (A/HRC/8/36) recommendations 68.1 (France, Switzerland, United Kingdom, Hungary, Algeria), 68.2 (Czech Republic, Italy), 68.3 (Czech Republic), 68.4 (Czech Republic, Switzerland), 68.5 (Mexico, Canada, Slovenia, Ireland, Austria), 68.9 (Hungary, the Netherlands, Austria), 68.18 (Slovenia) and 68.22 (Brazil).

<sup>2</sup> A/HRC/8/36, recommendation 68.6 (Finland, Italy, Switzerland).

<sup>3</sup> A/HRC/8/36, recommendation 68.4 (Czech Republic, Switzerland).

<sup>4</sup> A/HRC/8/36, recommendation 68.5 (Czech Republic, Mexico, Canada, Slovenia, Ireland, Austria).

<sup>5</sup> A/HRC/8/36, recommendations 68.7 (Hungary) and 68.8 (Hungary).

<sup>6</sup> A/HRC/8/36, recommendation 68.14 (Cuba).

<sup>7</sup> A/HRC/8/36, recommendation 68.22 (Brazil).

<sup>8</sup> A/HRC/8/36, recommendation 68.17 (Switzerland).

<sup>9</sup> A/HRC/8/36, recommendations 12 (Mexico) and 13 (Mexico, UK, Netherlands).

<sup>10</sup> A/HRC/8/36, recommendation 68.2 (Italy).

<sup>11</sup> A/HRC/8/36, recommendation 68.2 (Czech Republic, Italy).

<sup>12</sup> A/HRC/8/36, recommendation 68.3 (Czech Republic).

<sup>13</sup> A/HRC/8/36, Recommendation 68.18 (Slovenia).

<sup>14</sup> A/HRC/8/36, recommendation 68.5 (Czech Republic, Mexico, Canada, Slovenia, Ireland, Austria).

<sup>15</sup> A/HRC/8/36, recommendation 68.14 (Cuba).

<sup>16</sup> A/HRC/8/36, recommendation 68.17 (Switzerland).

<sup>17</sup> A/HRC/8/36, paragraphs 16 (Czech Republic), 24 (Romania) and 50 (Slovenia).

<sup>18</sup> Grave breaches and other violations of the Geneva Conventions and Protocol I and some other war crimes in Article 8 of the Rome Statute are defined as crimes under Ghanaian law.

<sup>19</sup> National courts are able to exercise universal jurisdiction over the following crimes: (i) some crimes under international law, including: slavery, trafficking in women & children, violations of the Geneva Conventions, and genocide; and (ii) some crimes under national law of international concern, including: narcotics trafficking; piracy; hijacking; and interference with international communications systems.