



UPR Submission - Ghana

March 2017

Human Rights Watch welcomes the opportunity to make a submission regarding the Ghanaian government's compliance with its international obligations and the recommendations made during its previous Universal Periodic Reviews (UPR) in 2012 and 2008. This submission focuses on Human Rights Watch's current work in Ghana: concerns about child labor in Ghana's artisanal gold mines; the rights of persons with mental disabilities; Lesbian, Gay, Bisexual and Transgender (LGBT) Rights; as well as Ghana's membership of the International Criminal Court (ICC).

1. Child Labor in Artisanal Gold Mines

Child labor in mining has been outlawed for almost two decades. During the 2012 UPR, Ghana committed to ensuring that businesses in the mining sector pay due regard to human rights issues in their operations. Ghana also recognized the Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework as a useful tool to tackle business-related human rights abuses.¹ Additionally, Ghana accepted recommendations to take urgent measures to eradicate child labor and child trafficking, implement the legal framework prohibiting child labor more effectively, fully implement the Ghana Child Labour Monitoring System, and link these efforts with programs to promote remediation.²

More recently, the government of Ghana has undertaken steps that could help reduce hazardous child labor in mining. In 2016, the government Minerals Commission informed Human Rights Watch that it had instructed mining inspectors to include child labor in their quarterly reports. In addition, parliament ratified the Minamata Convention on Mercury, which limits the use of toxic mercury in artisanal gold mines.

Yet, despite these government commitments, child labor continues to be a serious problem in the country, including in artisanal gold mines.

Human Rights Watch has conducted field research into the use of children in gold mining in Western, Central, Brong Ahafo, and Ashanti Regions of Ghana between 2013 and 2016. For our June 2015 report titled [Precious Metal, Cheap Labor: Child Labor and Corporate Responsibility in Ghana's Artisanal Gold Mines](#), researchers visited 10 artisanal and small-scale gold mining and processing sites, and interviewed over 160 people, including 44 child miners between the ages of 9 and 17.³ In March 2016, researchers documented further cases of child labor in artisanal gold mines in Ashanti and Brong Ahafo regions.⁴

¹ UN Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Ghana," A/HRC/22/6, December 2012, para. 69.

² Ibid., para. 125.51-125.55.

³ Human Rights Watch, *Precious Metal, Cheap Labor: Child Labor and Corporate Responsibility in Ghana's Artisanal Gold Mines*, June 2015, <https://www.hrw.org/report/2015/06/10/precious-metal-cheap-labor/child-labor-and-corporate-responsibility-ghanas>.

⁴ ZDF, "Goldkinder: Der Konflikt um wertvolle Mineralien," November 8, 2016, <https://www.zdf.de/dokumentation/37-grad/goldkinder-manfred-karremann-zum-konflikt-um-wertvolle-100.html> (accessed March 16, 2017); Juliane Kippenberg (Human Rights Watch), "Child Labor in Our Smart Phones and Watches—And What the OECD Should Do About It," commentary, *L'Obs*, May 9, 2016, <https://www.hrw.org/news/2016/05/09/child-labor-our-smart-phones-and-watches-and-what-oecd-should-do-about-it>.

Human Rights Watch's research found that thousands of children work in Ghana's artisanal and small-scale gold mines in hazardous conditions. Most children are aged between 15 and 17, but younger children work in mining as well. Children pull the gold ore out of shafts, carry and crush loads of ore, and process it with toxic mercury. Mercury, which is particularly harmful to children, attacks the central nervous system and can cause lifelong disability, including brain damage. Higher levels of mercury exposure may result in kidney failure, respiratory failure, and death. Children and adults have limited and sometimes false information about mercury, and usually do not know its risks or how to protect themselves properly from this toxic metal. Children have also been injured and killed in mine collapses. Many children who work in mining are enrolled in school, and some work specifically to cover school-related costs, but attend school irregularly. Others have dropped out of school.⁵

Artisanal and small-scale gold mining is poorly regulated in Ghana. The majority of mines operate without mining licenses, which are costly and difficult to obtain. Labor, environment, and other regulations are often not enforced. In addition, Ghanaian law allows the use of mercury for artisanal gold mining. Mercury is available in gold trading shops and provided by gold traders to child laborers. Ghana's child labor inspections are not systematic, and government institutions dealing with child labor and protection are inadequate.⁶

Furthermore, the Ghanaian government-owned gold trading company, the Precious Metals Marketing Company, has no procedures to determine whether children have been involved in producing the gold it purchases. It provides trading licenses to about 700 individual buying agents and trading companies without obliging traders to use any human rights criteria, including regarding child labor, when purchasing gold. The government Minerals Commission provides export licenses without requiring human rights monitoring.⁷

In late 2016, the International Labor Organization (ILO) started a program on child labor in artisanal gold mining in Ghana, with support from the U.S. government, and in coordination with the government of Ghana.⁸ This program could help strengthen government responses to child labor in Ghana's mines.

Obligations: ILO Convention No. 182; Convention on the Rights of the Child (CRC) articles 19, 28, and 32; International Covenant on Economic, Social and Cultural Rights (CESCR) articles 7, 10, 12, 13.

Recommendations:

- Enforce the ban on child labor in mining by ensuring that labor inspectors and district and community child protection committees have an adequate mandate and resources to conduct on-site inspections and otherwise monitor child labor;
- Improve access to education by ensuring free access to primary and junior high schools, and making sure that Ghana's Livelihood Empowerment against Poverty (LEAP) cash transfer program or other social protection initiatives reach families of vulnerable children in mining areas;

⁵ Human Rights Watch, *Precious Metal, Cheap Labor*.

⁶ *Ibid.*, p. 10.

⁷ *Ibid.*, p. 9.

⁸ https://www.dol.gov/ilab/projects/summaries/GlobalGoldMining_FY15.pdf

- Formalize artisanal and small-scale gold mining by developing a comprehensive strategy to permit a simpler and quicker procedure to obtain a mining license, and provide technical support to such miners to help increase household income;
- Prevent, test, and treat mercury exposure by implementing the Minamata Convention on Mercury, introducing mercury-free gold processing methods to mining communities, and boosting health system capacity to address mercury exposure;
- Establish a due diligence procedure at the government's Precious Minerals Marketing Company (PMMC) to identify child labor and other human rights risks in the supply chain, and require human rights due diligence from companies applying for a trading or export license at the Minerals Commission.

2. Disability Rights

In its last UPR review in 2012, the Ghanaian government supported several recommendations to address abuses against people with disabilities (recommendations 125.84 to 125.90), accepting to improve its domestic legal framework to protect the rights of persons with disabilities, develop policy measures and infrastructure, conduct community sensitization, and take measures for the oversight of psychiatric hospitals and prayer camps (spiritual healing centers).

In 2013, Ghana took a positive step by establishing the Mental Health Authority, a body empowered *inter alia* to raise funds for mental health and monitor mental health facilities across the country. Ghana has embarked on decentralizing its mental health system by creating Regional and District Mental Health Sub-Committees and providing mental health care closer to communities, in regional and district hospitals.

In spite of these measures, according to a 2016 follow-up report by the United Nations expert on torture⁹ and follow-up interviews with representatives of local mental health advocacy organizations,¹⁰ conditions in psychiatric hospitals and prayer camps have not significantly improved since Human Rights Watch extensively documented a range of abuses in 2012.¹¹ People with psychosocial disabilities with real or perceived psychosocial disabilities continue to be forced to live in psychiatric hospitals and prayer camps, often against their will and with little possibility of challenging their confinement.¹² Psychiatric hospitals remain overcrowded and unsanitary.¹³

⁹ Human Rights Council, Follow up report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his follow-up visit to the Republic of Ghana, A/HRC/31/57/Add.2, February 25, 2016, para. 62. http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A_HRC_31_57_Add_2_Eng%20only.pdf (accessed March 7, 2017).

¹⁰ Human Rights Watch telephone interview with a representative of a non-governmental organization, March 8, 2017.

¹¹ Human Rights Watch, "Like a Death Sentence": Abuses against Persons with Mental Disabilities in Ghana, (New York: Human Rights Watch, 2012), <https://www.hrw.org/report/2012/10/02/death-sentence/abuses-against-persons-mental-disabilities-ghana>.

¹² Human Rights Watch, "Like a Death Sentence": Abuses against Persons with Mental Disabilities in Ghana. Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Mission to Ghana, A/HRC/25/60/Add.1, March 5, 2014, para. 68-81, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-60-Add-1_en.doc (accessed March 7, 2017).

¹³ Human Rights Council, Follow up report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his follow-up visit to the Republic of Ghana, A/HRC/31/57/Add.2, February 25, 2016, para. 68.

As noted by the Special Rapporteur on Torture: “Rampant human rights abuses continue with impunity at prayer camps, including the non-consensual admission and “treatment” of children and adults, inhumane practices amounting to torture, such as shackling, prolonged chaining and restraint, and mandatory fasting.”¹⁴ He goes on to report about his visit to one prayer camp in October 2016:

The delegation discovered a locked building where rows of male patients were chained to the walls and floors of their concrete cells, which were laid out like cattle stalls. Although employees refused to unlock the building, the Special Rapporteur was able to communicate with persons inside through the locked metal grates. Those inside pled for their release, with one individual reporting having been chained and locked-away for 4 months, and another for two weeks. Another person was found chained to the ground just outside the building, fully exposed to the sun and other elements. The Special Rapporteur recalls that these practices unequivocally amount to torture even if committed by non-State actors under conditions in which the State knows or ought to know about them.¹⁵

Efforts to step up mental healthcare provision and protect the rights of persons with psychosocial disabilities have been stalled in part by a lack of sufficient funding for staffing and infrastructure. In October 2016, Accra Psychiatric Hospital decided to temporarily close the outpatient department and suspend the admission of new cases due to a shortage of essential supplies such as gloves, disinfectants, and stationary. The following month, nurses at the hospital went on strike, protesting the Government’s failure to provide basic supplies and medication, until the government agreed to release some funds.¹⁶

Lack of progress is also due to the delay of passage of the Legislative Instrument, required to make the 2012 Mental Health Act fully operational and to generate funds for mental health through the Mental Health Fund. In addition, the Mental Health Act still presumes the incapacity of persons with psychosocial disabilities, thus limiting their ability to make decisions about where they live and what treatment they receive.

The Mental Health Authority has started to train mental health professionals, conduct awareness-raising on mental health, and engage with prayer camp leaders to prevent abusive practices.¹⁷ However, some of the Authority’s most important mandates are still not implemented. For example, the visiting committees in charge of conducting monitoring of psychiatric hospitals and prayer camps, and the Mental Health Tribunal, mandated to receive complaints over abuse in mental health facilities, have yet to be established.

Human Rights Watch is concerned about initiatives to prevent human rights abuses in prayer camps that fall short of their objective. For example, in an effort to prevent chaining of people in Nyakumasi prayer camp, concrete “units” or “rooms” have been built to hold people with psychosocial disabilities instead of shackling them to trees or exposing them to mosquitoes, sun or rain. In instances where people exhibit aggressive behavior, they may be placed in chains.¹⁸ As noted by the Special Rapporteur on

¹⁴ Ibid, para. 71.

¹⁵ Ibid, para. 72.

¹⁶ “Accra Psychiatric hospital under pressure to re-open OPD,” *Citi fm Online*, October 3, 2016, <http://citifmonline.com/2016/10/03/accra-psychiatric-hospital-under-pressure-to-re-open-opd/> (accessed March 9, 2017). Phone interview with local mental health advocate, March 8, 2017.

¹⁷ Human Rights Council, Follow up report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his follow-up visit to the Republic of Ghana, A/HRC/31/57/Add.2, February 25, 2016, para. 63, 67. Human Rights Watch phone interviews and emails from local mental health advocates, March 2017.

¹⁸ Phone interview with local mental health advocate, March 8, 2017. Meeting with senior mental health officials, Accra, May 2015.

Torture, “While the need to develop alternatives to chaining is paramount, the seclusion and isolation of persons in cells would not improve their treatment or conditions”.¹⁹

Ghana has shown commitment to strengthen its mental health system and taken positive steps to address the abuses experienced by persons with psychosocial disabilities. However, much remains to be done to ensure that persons with disabilities receive the support they may need in conditions that respect their rights and dignity.

Recommendations:

- Enact laws banning inhumane practices including chaining and prolonged restraint, mandatory fasting in prayer camps, and treatment without free and informed consent, save for exceptional circumstances in emergencies;
- Pass the Legislative Instrument to the Mental Health Act;
- Amend the Mental Health Act to bring it in line with the Convention on the Rights of Persons with Disabilities, including recognition of people with psychosocial disabilities’ right to legal capacity;
- Set up the Mental Health Review Tribunal and visiting committees, and start regular monitoring of psychiatric hospitals and prayer camps;
- Strengthen efforts to raise awareness about mental health and disability in the community and to train mental health professionals;
- Ensure adequate funding for mental health, and improve the infrastructure in psychiatric institutions, including by reducing overcrowding and ensuring adequate supply of food, medication, and other basic supplies.

3. Lesbian, Gay, Bisexual and Transgender (LGBT) Rights

Despite numerous recommendations from UN member states, the Republic of Ghana has failed to repeal provisions of the Criminal Code that criminalize adult consensual same sex conduct. In January and February 2017, Human Rights Watch conducted in-depth research in Accra, Tamale, Kumasi, and Cape Coast on the human rights abuses against LGBT people and interviewed 119 individuals who identify as LGBT.

Our preliminary findings show that the criminalization of adult consensual same-sex conduct, in terms of section 104(1)(b) of the Criminal Code, which prohibits ‘unnatural carnal knowledge’ (widely interpreted to mean same-sex conduct) contributes to a climate in which violence and discrimination against LGBT people is widespread. The law gives tacit state approval for discrimination against LGBT people including in access to health services, employment, housing, and education, and facilitates blackmail and extortion, which are pervasive according to our preliminary research findings.

The law also fuels a social environment in which there is pervasive violence against LGBT people. Interviewees informed us that they are routinely subjected to brutal violence perpetrated by family members. There have also been reported incidents of violent public beatings in Kumasi and Accra in

¹⁹ Human Rights Council, Follow up report. Human Rights Watch phone interviews and emails from local mental health advocates, March 2017.

particular. Informants also report being fired from work, evicted from their homes, rendered homeless, and subject to extortion due to their sexual orientation or gender identity.

For lesbian and bisexual women, violence inflicted by family members is particularly brutal, with many facing ostracism from their family, entering into forced marriage, or relying on sex work as a means of survival. Of particular concern is the unreasonable delay in concluding the case against Sulley Fuseini, alleged to have led a mob attack against a man suspected of being a homosexual in Nima, Accra in August 2015. Following five court appearances, the accused was released on bail, and since March 2016, has not appeared before court. Human Rights Watch is also concerned about statements made by senior political leaders that are likely to add fuel to an already homophobic environment. For example, on February 20, 2017, the Speaker of Parliament 'called for an amendment to Ghana's laws to completely ban homosexuality and make it illegal.'²⁰

Recommendations:

- Ensure that complete and impartial investigations are conducted into allegations of attacks and threats against persons based on their sexual orientation or gender identity and bring those responsible to justice in conformity with the provisions of the Criminal Code, 1960, recommendations set out in ACHPR Resolution 275: Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed sexual orientation and gender identity²¹ and relevant international human rights standards;
- Conduct training programs for law enforcement officials and all role-players in the criminal justice system and social services officials to respect and fully protect the human rights of all Ghanaians, including lesbian, gay, bisexual and transgender individuals subjected to family violence;
- Repeal section 104(1)(b) of the Criminal Code.

4. International Criminal Court membership

Ghana ratified the Rome Statute of the International Criminal Court (ICC) in 1999. Human Rights Watch welcomes Ghana's intervention at the ICC's annual meeting of members in November 2016, which stated: "Ghana has been and will continue to be a strong supporter of the Court and its activities." The affirmation—which also urged against withdrawals from the court—was timely following South Africa, Burundi, and the Gambia's announced withdrawals in October, and South Africa and Gambia have since rescinded their notifications of withdrawal.

Recommendations:

- Ghana should take steps to further demonstrate its commitment to the ICC by implementing the treaty through national legislation, including by incorporating provisions to cooperate promptly and fully with the ICC, and to investigate and prosecute genocide, crimes against

²⁰ Mike Oquaye, "Amend Ghana's laws to ban homosexuality" *GhanaWeb*, February 27, 2017, <http://mobile.ghanaweb.com/GhanaHomePage/NewsArchive/Amend-Ghana-s-laws-to-ban-homosexuality-Mike-Oquaye-511934> (accessed March 9, 2017).

²¹ 275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity, <http://www.achpr.org/sessions/55th/resolutions/275/>.

humanity, and war crimes before its national courts in accordance with the definitions of these crimes under the Rome Statute.