



The Council for Global Equality

Advancing an American Foreign Policy
Inclusive of Sexual Orientation and Gender Identity

June 30, 2023

William Shpiece
Chair of the Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Written Comments of The Council for Global Equality on Ghana's Eligibility for Benefits under the African Growth and Opportunity Act

Dear Mr. Shpiece:

On behalf of the Council for Global Equality (CGE), please accept these comments in response to the May 11, 2023 request for public comments by the African Growth and Opportunity Act (AGOA) Implementation Subcommittee of the Trade Policy Staff Committee, chaired by the Office of the U.S. Trade Representative, in connection with the review of the eligibility of Sub-Saharan African countries to receive AGOA benefits.

I. Description of Council for Global Equality

CGE is a Washington-based advocacy coalition that brings together international human rights and intersex activists, foreign policy experts, philanthropists, and corporate officials to encourage a clearer and stronger American voice on human rights concerns impacting lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) communities around the world.

CGE's member organizations support and amplify our advocacy agenda in Washington and globally. CGE's institutional members include many of the most prominent organizations working to promote human rights and LGBTQI+ equality in the United States and overseas. Among its missions, CGE seeks to increase support for foreign LGBTQI+ organizations as vital contributors to U.S. national interest through the development of free and vibrant civil societies abroad.

These comments were prepared with the assistance of CGE's pro bono counsel for international trade matters, Zachary Simmons and Chris Forsgren of Steptoe & Johnson LLP.

II. LGBTQI+ Rights in Ghana

It is well documented that LGBTQI+ persons in Ghana experience discrimination in several forms. According to the U.S. Department of State 2022 Human Rights Report on Ghana, the Ghanaian penal code criminalizes the act of “unnatural carnal knowledge,” defined as “sexual intercourse with a person in an unnatural manner or with an animal,” which covers persons engaged in consensual same-sex male relationships.¹ Police have reportedly used this law to harass the LGBTQI+ community through detention, extortion, and arbitrary arrest, as well as to “out” members of the LGBTQI+ community in order to humiliate and alienate them.² Moreover, Ghanaian law does not explicitly prohibit discrimination based on sexual orientation and gender identity. Consequently, LGBTQI+ persons face widespread discrimination in education and employment. Evictions, divorce, loss of employment, extortion, denial of financial services, public humiliation, and community ostracism are common.³

Additionally, civil society and activist groups have reported that police were resistant to investigating claims of assault or violence against LGBTQI+ persons.⁴ LGBTQI+ survivors were also reportedly hesitant to report incidents of abuse due to the stigma intimidation, and the perceived negative attitude of some police toward LGBTQI+ persons.⁵ Furthermore, attacks by private citizens on LGBTQI+ persons are common and growing in number, and these attacks were sometimes shared on social media to further humiliate and ostracize LGBTQI+ persons. Such harassment has forced many members of the Ghanaian LGBTQI+ community to relocate from their homes or sever familial relationships.⁶

Of particular concern is the consideration of an anti-LGBTQI+ draft bill in the Ghanaian parliament, the so-called “Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill, 2021” (2021 Family Values Bill).⁷ Although the bill is still under review by a parliamentary committee and may yet be amended, as originally introduced, the bill would criminalize the existence of LGBTQI+ Ghanaians as well as allies of the community who advocate on their behalf. For example, the bill would criminalize, with up to five years in prison, identifying as a LGBTQI+ person, as well as having a same-sex relationship or intercourse.⁸ It

¹ U.S. Department of State, “2022 Country Report on Human Rights Practices: Ghana”, at 20.
https://www.state.gov/wp-content/uploads/2023/03/415610_GHANA-2022-HUMAN-RIGHTS-REPORT.pdf

² *Id.*

³ *Id.* at 21.

⁴ *Id.* at 20.

⁵ *Id.*

⁶ *Id.*

⁷ Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill, 2021. A draft of the bill, as originally introduced, is available at: <https://cdn.modernghana.com/files/722202192224-0h830n4ayt-lgbt-bill.pdf>

⁸ Emmanuel Akinwotu, “Explainer: what makes Ghana’s anti-gay bill so extreme?”. *The Guardian* (Aug. 3, 2022).
<https://www.theguardian.com/global-development/2022/aug/03/explainer-what-makes-ghana-draft-anti-gay-lgbtq-bill-so-extreme>.

would also criminalize marrying or intending to marry someone who has had gender reassignment surgery, any public display of affection between people of the same sex, and dressing in a way perceived as different from the wearer's biological sex.⁹ Additionally, the bill would allow for the prosecution of LGBTQI+ "allies," whether individuals or advocacy and support groups, who would face up to five years in prison if convicted. Finally, the bill would impose a requirement for anyone who is made aware of conduct prohibited under the bill to report such conduct to the police, or otherwise face criminal sanctions themselves.¹⁰

A group of leading United Nations human rights experts has concluded that the 2021 Family Values Bill seeks to establish a system of state-sponsored violence targeting the LGBTQI+ community.¹¹ According to their analysis, "the proposed law promotes deeply harmful practices that amount to ill-treatment and are conducive to torture, such as so-called 'conversion therapy' and other heinous violations like unnecessary medical procedures on intersex children, and so-called corrective rape for women."¹² The experts go on to note that "the draft legislation appears to be the result of a deep loathing toward the LGBTQI+ community. It will not only criminalize LGBTQI+ people, but anyone who supports their human rights, shows sympathy to them or is even remotely associated with them."¹³

III. AGOA Eligibility

Section 104 of the AGOA defines several eligibility criteria that Sub-Saharan African countries must meet in order to receive trade preferences. Among such criteria, a country may "not engage in gross violations of internationally recognized human rights." Ghana's pending 2021 Family Values Bill, if enacted into law, would violate this AGOA eligibility criterion.

International human rights law is guided by the fundamental principles of universality, equality, and non-discrimination.¹⁴ Ghana's 2021 Family Values Bill would violate these fundamental principles and the instruments that enshrine them through criminalizing consensual same-sex conduct, perpetuating violence against and marginalizing LGBTQI+ individuals, and denying LGBTQI+ individuals and organizations the freedom of association and expression. In particular:

⁹ *Id.*

¹⁰ *Id.*

¹¹ United Nations, "Ghana: Anti-LGBTI draft bill "a recipe for violence" – UN experts", United Nations Human Rights Office of The High Commissioner (Aug. 12, 2021), <https://www.ohchr.org/en/press-releases/2021/08/ghana-anti-lgbti-draft-bill-recipe-violence-un-experts?LangID=E&NewsID=27378>.

¹² *Id.*

¹³ *Id.*

¹⁴ Universal Declaration of Human Rights (UDHR), Article 1.

- by criminalizing consensual same-sex conduct, Ghana would, through the 2021 Family Values Bill, violate individuals' rights to be free from discrimination¹⁵, of equality and equal protection under the law¹⁶, and rights to be protected against arbitrary detention and unreasonable interference with privacy.¹⁷
- by perpetuating violence against LGBTQI+ individuals, including by failing to investigate and punish this form of violence, Ghana would, through the 2021 Family Values Bill, fail to protect individuals' rights to life, liberty, and security of person.¹⁸
- by denying LGBTQI+ individuals and organizations the freedom of association and expression, Ghana would, through the 2021 Family Values Bill, violate the rights to freedom of expression, association, and peaceful assembly, without discrimination.¹⁹

IV. Conclusion

In sum, the Ghana's 2021 Family Values Bill, as currently drafted, would clearly render Ghana ineligible for AGOA benefits if enacted. Although the Ghanaian President has recently signaled that some provision of the bill may be softened,²⁰ its pending consideration in the Ghanaian parliament is nonetheless cause for grave concern considering its draconian treatment of LGBTQI+ individuals. Should Ghana enact the 2021 Family Values Bill (or similarly harsh legislation) into law during the current AGOA eligibility review cycle, Ghana would no longer meet AGOA's eligibility criteria and its benefits under AGOA must be revoked. Accordingly, CGE urges USTR to closely monitor the status of the 2021 Family Values Bill during the current review period in reaching its determination on Ghana's AGOA eligibility.

Thank you for the opportunity to comment on this very important issue and your consideration of these comments. If you have any questions or would like additional information, please do not hesitate to contact the undersigned.

Respectfully submitted,



Mark Bromley
Council Co-Chair



Julie Dorf
Council Co-Chair

¹⁵ UDHR, Article 2; International Covenant on Civil and Political Rights (ICCPR), Articles 2(1), 26.

¹⁶ UDHR, Articles 2, 7; ICCPR, Articles 2(1), 26.

¹⁷ UDHR, Articles 2, 9, 12; ICCPR, Articles 2(1), 9, 17.

¹⁸ UDHR, Articles 3, 14(1); ICCPR, Articles 6, 9.

¹⁹ UDHR, Articles 19, 20(1); ICCPR, Articles 19(2), 21, 22(1).

²⁰ Nimi Princewill, "Ghana's president softens country's stance on draconian anti-LGBTQ bill as Kamala Harris visits." CNN (March 29, 2023). <https://www.cnn.com/2023/03/29/africa/ghana-softens-lgbtq-stance-intl/index.html>.