

UNIVERSITY OF GHANA

HUMAN RIGHTS AND HOMOSEXUALITY IN GHANA

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LEGON

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DECLARATION

I hereby declare that, except for references to other authors, which have been appropriately acknowledged, this dissertation is the result of an original work conducted by me under the supervision of Dr. Kumi Ansah -Koi and Dr. Lloyd Amoah. I further declare that no part of this work has been submitted anywhere else for any other purpose.

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DEDICATION

This work is dedicated to my father, Ohene-Asante Samuel. You gave me the greatest gift anyone could give another person. You believed in me.

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LIST OF ABBREVIATIONS

AAA	American Anthropological Associations
ACHPR	African Commission on Human and Peoples' Rights, Ghana
BBC	British Broadcasting Cooperation
CAT	Convention Against Torture
CEDAW	The Convention on the Elimination of all forms of Discriminations Against women
CEPEHRG	Centre for Popular Education and Human Rights, Ghana
CHRAJ	Commission for Human Rights and Administrative Justice
CHRI	Commonwealth Human Rights Initiative
CPP	Convention Peoples Party
CRC	Constitutional Review Committee
CRC	Convention on the Rights of the Child
DOVVSU	Domestic Violence Victim Support Unit
GALAG	Gays and Lesbians Association of Ghana
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBT	Lesbian, Gays, Bisexuals and Trans genders

MSMGF	Men who have Sex with Men Global Forum
NDC	National Democratic Congress
NPP	New Patriotic Party
OHCHR	Office of the United Nations High Commissioner for Human Rights
PNDC	Provisional National Defence Council
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNHRC	United Nations Human Rights Council
UNICEF	United Nations Children's Fund

ABSTRACT

This study examined the deprivation and discrimination of human rights of homosexuals in Ghana and the measures to protect their rights. An explorative qualitative research approach was considered as appropriate method for the study. Primary data from semi structured open ended interviews with ten homosexuals and individuals deeply informed of the human rights situation in Ghana and secondary data from verifiable sources were employed. Data retrieved was scrutinised using thematic analysis to identify recurrent themes from the interviews transcript before a comprehensive discussion was conducted. The study found out that homosexuals in Ghana are constantly deprived of their rights to association, movement, education, personal liberty and fair trial. The study also found out that religious beliefs, cultural orientation and limited understanding of human rights are the major causes of human rights abuse of homosexuals in Ghana. The study provided some recommendations to help protect the human rights of homosexuals in Ghana. These include the need for the president to openly condemn all threats and acts of violence against homosexuals , repeal section 104(b) of the criminal offenses Act that criminalizes adult consensual same sex conduct and the need for parliament to review chapter five of the 1992 constitution of Ghana on fundamental human rights and freedoms to include a specific prohibition of discrimination based on sexual orientation and gender identity.

CHAPTER ONE

1.0 INTRODUCTION

1.1 CONCEPTION OF HUMAN RIGHTS

Human rights have existed since time immemorial (UNICEF, 2007). Human rights development can be traced far back to the Renaissance Europe and the Protestant Reformation (UNICEF/UNESCO, 2007). The Magna Carta just like many other documents existed not as instituting human rights bonds but they instead comprised an arrangement of restricted political and legal agreements to address certain political situations (Tomasevki, 2004). However, the Magna Carta, which consisted of twelve articles, is considered to be the first record of human rights in Europe (UNICEF, 2007).

Contemporarily, the world has acknowledged the view that all human beings are entitled to and should be allowed dignified lives. It has become a common practice universally that humanities request the realization of various values that ensure their individual and collective goals (Weston, Burns, 1984). Human rights became subject of global debates subsequent to the Second World War (WW2) after millions of lives have been lost to a single war. Dismayed by the destruction of lives instigated by the WW2, members of the United Nations (UN) pledged to take measures to ensure the universal realization and respect for human rights and fundamental freedoms for all (Sills, 1968).

The concept, human rights, which has become a Post-WW2 slogan, has gained prominence across the globe after the adoption of the Universal Declaration of Human

Rights (UDHR) on December 10, 1948, by the United Nations. This was seen as a significant globally concerted efforts made to protect, promote and enforce human rights. However, 70 years since the adoption of the UNDHR, it has been reported that human rights abuses continue unabated. The world continues to witness various violations of basic rights such as discrimination, political repression, imprisonment, torture, slavery, disappearances, arbitrary arrest and killings, genocide, denial of educational opportunities, lack of medical care, poverty, to mention but few (O' Byrne, 2005). One group of people who live in perpetual fear in mostly conservative societies and have their rights continually abused globally are homosexuals due to their sexual orientation.

Globally, persecution of homosexuals started long ago. According to the United States Holocaust Memorial report, "the Nazi persecuted homosexuals as part of their so-called moral crusade to racially and culturally purify Germany." Recently, the marginalization and discrimination against them have increased tremendously. In 2011, the UN released the first-ever report on the human rights of Lesbian, Gay, Bisexual, and Transgender (LGBT) people around the world, which revealed the continuous discrimination and abuses against LGBT people. The UN High Commissioner for Human Rights upon the request of the UN Human Rights Council made public an update report in May 2015, the report titled "Discrimination and Violence against Individuals Based on their sexual orientation and Gender Identity," hammered on the impediments and progress affecting homosexuals. According to the report, governments across the globe have put in place measures since 2011 to limit violence and discrimination towards LGBT persons. However, despite this progress, "hundreds of people have been killed and thousands more

injured in brutal, violent attacks." The report further notes that, many more have been denied access to employment, housing, healthcare, education and other fundamental human rights due to their sexual orientation.

There are plethoras of serious human rights violations to which millions of people across the world are subjected solely due to their sexual orientation or gender uniqueness. Amnesty International (2014) provides an overview of examples of discrimination and of the various dangers that individuals with non-heterosexual orientation face each day. Individuals prosecuted because their private and consensual relationship is deemed to be a social danger; indeed, with homosexuality criminalized and various discrimination laws being enacted across the developing world, the human rights of homosexuals are under threat.

Currently, at least 76 states maintain laws that deem homosexuality a criminal offense providing a "fertile grounds" for the persecution of thousands of homosexuals (UNHRC, 2016). Out of these 76 countries where homosexuality is criminalized, 36 are countries in African, including Ghana.

Instances of discrimination, illegal apprehension, homophobic statements, torture, extortion, rape, threat, harassment, neglect and other ill treatment of homosexuals in Ghana have been documented by human rights organizations. Human rights defenders who are involved in the fight to protect the rights of these sexual minorities are not left out in these abuses. These human rights violations have been committed in total violation of Ghana's Constitution, Article 12 which prohibits discrimination on the basis of "sex,

race, color, ethnic origin, tribe, birth, creed or religion, social or economic standing". The United States Ambassador to Ghana, Robert Jackson in an interview said, "Statistics indicate that probably 10% of people are born gay. I think there are far more gays in Ghana than Ghanaians realize but because of societal attitudes, they keep their sexuality very private," (Ghanaweb, March 11, 2018).

Human rights abuse of homosexuals is very common in Ghana. Homophobic speeches and open support for the marginalization of homosexuals by government representatives and leaders of the various religious groups aid to propagate societal prejudice against homosexuals and even incite more revulsion. The current Ghanaian speaker of parliament Professor Mike Oquaye in February 2017 addressing leaders of the various religions assured them that the current parliamentary leadership would not accept homosexuality since the majority of Ghanaians are against it. Again, Dr. Spio-Garbrah a former Trades minister and a flag bearer hopeful of the opposition National Democratic Convention speaking on Eyewitness News at Citi FM on May 19, 2018, said homosexual rights " will not happen whether I'm President or not. I'll fight it anywhere and any day as a good Christian and I'm sure that Muslims will also have the same sense of total disgust."

According to the United States Department of States June 2014 Country Report on the human rights situation in Ghana "*LGBT persons faced widespread discrimination in employment and education, as well as police harassment and extortion attempts. There were reports police were reluctant to investigate claims of assault or violence against LGBT persons.*" According to the United States Department of States 2016 human rights report on Ghana, *gay men in prison were often subjected to sexual and other physical*

abuse. The government took no known action to investigate or punish those complicit in the abuses.

Kuukuwa Andam, a human rights lawyer, and an open bisexual and LGBT advocate on 11th February, 2015 in response to the various violations against homosexuals in Ghana told Gay Star news “*In my 5 years of working as a human rights lawyer in Ghana, I have come across cases where sexual minorities were prosecuted for ‘unnatural carnal knowledge’.* However, I am yet to come across a single case of someone being prosecuted for assaulting a gay, lesbian, bi or trans person” (Gaystarnews, 2015). Violation against homosexuals is widespread and on the ascendancy but highly under-reported and not prosecuted. Ghana has made remarkable progresses in democracy and human rights but homosexuals are constantly marginalized and discriminated against. This lays the background for this study.

1.1.1 EMERGING DEBATE ON HOMOSEXUALITY IN GHANA

1.1.1.1 Politics and homosexuality in Ghana

The subject of homosexuality cannot be debated lacking its political facet as countless of the laws and rules of the country make the practice intolerable. In 2011 the British government threatened to block aid from the UK to countries that refuse to respect the right of homosexuals (TheJournal, October 30, 2011). The British government went on to cut economic aid to Malawi by 19 million euros after the country’s court jailed two men, Stephen Monjera and Tiwonge Chimbalanga for 14 years on charges of homosexuality. (Theguardian, December 9, 2011). Ghana and many other African countries like Uganda,

Nigeria, and the Gambia poured out their disappointment on the British government and made clear their intention not to bow to their threats. The government of Ghana under the leadership of Professor Atta-Mills responded by saying that the UK's societal norms are dissimilar from that of Ghana and would not decriminalize homosexuality (Theafricancareport, Nov 4, 2011). Paul Evans Aidoo, the Western regional minister urged landlords and tenants to report suspected homosexuals for prosecution. He again employed the services of the Bureau of National Investigation and other security services to help apprehend homosexuals in the region. He said, "All efforts are being made to get rid of these people in the society." (BBC, July 22, 2011). Koku Anyidoho, the then head of communication at the Flagstaff House (seat of government), challenged the then flag bearer of the opposition NPP to come out and criticise the British Prime Minister for pushing homosexuals rights in Africa. According to him, President Mills had taken a strong position and it is expected of him to openly talk about the issue (Ghanaweb, November 13, 2011).

Upon assuming office, President Mahama has had to apologize to gay friend and activist, Andrew Solomon, a day after his information minister, Mahama Ayariga, put out apparently incorrect news about the relationship between President Mahama and Mr. Solomon (Ghanaweb, February 4, 2013). Mr. Amissah-Arthur, the former Governor of the Bank of Ghana, while being vetted for the position of Vice President, told members of Parliament Appointments Committee that media rumors suggesting he is a homosexual were nothing but a falsehood of some displeased individuals who attempted in vain to extort money from him (Ghanaweb, August 9, 2012). Mrs. Amissah-Arthur, the then

second lady and wife of vice president Amissah-Arthur, in an interview aired on joy FMs home Affairs programme in reaction to his husband's gay rumor said that "Mr. Amissah Arthur is not a gay and that they have two children so it is not possible he is a gay" (March 9, 2015). In May 2016, before the elections, Mr. Ayisi Boateng, a member of the Council of Elders of the NPP, urged Ghanaians to vote against President Mahama because he had a high profile, gay friends. He added that Ghanaians needed to vote for Nana Addo who is a God-fearing person and has never been associated with any gay community (Ghanaweb, March 22, 2016).

Most recently, speaking to Aljazeera's Jane Dutton, President Nana Akuffo Addo said Ghana's tradition and culture currently do not support the legalization of homosexuality but added that if public opinion changes in favor of homosexuality the law may be amended. After this interview, the politics of homosexuality has yet again been resurrected. Reacting to the Presidents' comment, Mr. Asiedu Nketia, the General Secretary of the Opposition NDC said on Accra based Okay FM, "I think Nana Addo is ever ready to legalize homosexuality. Per his response, he has actually opened the doors for gays to demonstrate for the decriminalization of the act. It's just unfortunate for a whole president to give such a response" (Ghanaweb, December 4, 2017).

Again Inusah Fuseini, a private legal practitioner and NDC lawmaker on Joy News file show, indicated that if Nana Addo remains president and a strong coalition of homosexuals demonstrate for their rights, Nana is likely to decriminalize homosexuality based on his comment (Ghanaweb, December 2, 2017). Also, Osei Kofi Acquah the Ashanti regional Communications Director of the CPP, on December 1, 2017, on

Kumasi-based Nhyira FM's morning show, threatened to stage a coup d 'Etat to overthrow the Nana Addo-led government if homosexuality is legalized in Ghana (Ghanaweb, December 1, 2017). Again, the National Organizer of the opposition NDC, Kofi Adams, said he was shocked Nana Addo could not boldly state the country' position on the subject "I least expected Nana Addo to give such a response. I was shocked" (Ghanaweb, November 28, 2017).

Also, Mr. Alex Kwaku Asafo, a Communications Team Member of the National Democratic Congress, in response to Nana Addo's homosexuality comment on Aljazeera, charged religious groups in Ghana to pray without ceasing because Ghana was cursed as soon as the Nana Addo government took over from the Mahama led NDC government (Ghanaweb, November 27, 2017). Again, the Odododiodoo Constituency Member of Parliament and a former Minister of Youth and Sports under the Mahama Administration, Nii Lantey Vanderpuije, said Nana Addo's position on homosexuality does not surprise him because there are people at the Flagstaff House who belong to homosexual groups. The NDC lawmaker further threatened to mention names of people in government who engage in homosexuality (Ghanaweb, November 28, 2017).

1.1.1.2 Homosexuality and religion in Ghana

Religious groups and their leaders have not been mute on the ongoing discussion of homosexuality. Since the issue became a subject of public debate, Christians and Muslim leaders have criticized homosexuality calling it a devilish act opposed to the commandments of the bible and holy Quran. In 2011, the Christian Council of Ghana

condemned homosexuality being practiced in Ghana and described it as an “unnatural and ungodly act”, and said that it is a “detestable and abominable act if passed into law in Ghana will bring the wrath of God upon the nation and the consequences will be unbearable” (Ghananewsagency, July 18, 2011). In 2006, the National Chief Imam, Sheikh Osman Nuhu Sharubutu, commended the government for outlawing a supposed homosexual meeting and urged religious leaders to back the government (GNA, September 21, 2006). The chairman of the church of Pentecost, Apostle Dr. Opoku Onyina, speaking at the 10th-anniversary service of the Pentecost University College, described homosexuality as "foolishness" and said that homosexuality is the cause of many diseases the world is struggling with nowadays (Ghanaweb, November 16, 2015). In July 2015, A Muslim Chief Imam of Takoradi, Alhaji Mohammed Awal, openly criticized homosexuality “as dirty and abominable.” At the opening prayers of Eid-ul-Fitr at the end of Ramadan, he encouraged his Muslim followers to shun the “devilish acts” of homosexuality in order not to draw the anger of Allah (Ghananewsagency, July 20, 2015). Pastor Mensah Otabil, the founder of the International Central Gospel Church and Chancellor of the Central University College in Ghana, who was once ranked as the most influential person by ETV Ghana (Mordenghana, 2016), gave a sermon relating homosexuality to “darkness”. He contended that homosexuality is senseless (Buzzghana.com). In July 2015, Nana Kwaku Bonsam, a popular Traditional Priest in Ghana, asked President Mahama to reassure Ghanaians his administration would not hide behind the principle of “civil rights” and legalize homosexuality (Ghanaweb, July 1, 2015).

Another religious leader, Reverend Stephen Wengam stated, "If homosexuality is tolerated, very soon the human race will be extinct (Thenewcivilrightsmovement, April 29, 2014). In November 2017, Reverend Wengan, who is the lead pastor of the Cedar Mountain Assemblies of God Church, in a series of the Facebook post said churches will resist any attempt to legalize homosexuality because the Bible is against it (Ghanaweb, November 28, 2017). Most Reverend Professor Emmanuel Asante, the Presiding Bishop of the Methodist Church, said that individual could not rationalize the practice of homosexuality and further said that even animals do not practice it (Ghanaweb, June 9, 2011). Also, the Presbyterian Church of Ghana, which was allied, with the United States Presbyterian Church parted ties with the USA's branch of the church after its decision to acknowledge homosexuality. "They have deviated from biblical principles," the Moderator of the Presbyterian Church of Ghana, Rev. Professor Emmanuel Martey told Joy News (Myjoyonline, March 19, 2015). Again, Dag Heward Mills, the leader and founder of the Lighthouse Chapel International, now the Mega Church, on January 23, 2016, caused controversy when he called homosexuality "unnatural" in the Grace Bible Church in Soweto, South Africa. "You don't find two male dogs, two male cats, or two male lions...even lizards, two male elephants, there is nothing like that in nature, it is unnatural, yes, there is nothing like that," he said (Myjoyonline, January 24, 2017).

General Secretary of the Christian Council, Rev. Dr. Opuni Frimpong, strongly urged politicians to stop endorsing homosexuality publicly while preaching at the Presbyterian Church of Ghana at Madina. He cautioned that politicians who would support homosexuality should consider losing the 2020 elections because Ghanaians will vote

against them (Ghanaweb, December 4, 2017). Prophet Kwabena Tawiah, founder, and leader of Church of Rabbi, in an interview with Kofi TV, said his prayers played a major role in securing the president his seat so any attempt by the president to accept homosexuality would displease the spiritual forces he works and prays with (Ghanaweb, November 27, 2017)

1.1.1.3 Human rights activism and homosexuality in Ghana

Human rights activism is the act by which people, individually or with others, campaign against the violation of human rights. Notwithstanding the prevailing negative opinions on homosexuality in Ghana, a few religious leaders, individuals and human rights bodies have come out in support of homosexual rights. In spite of the united opinion of religious leaders on homosexuality, Cardinal Peter Turkson of Ghana, speaking to reporters in Bratislava, said, “Homosexuals are not criminals” and should not be sentenced for up to life in prison. This was in response to Uganda’s anti-gay law (Catholicherald, March 4, 2014).

Again, Nana Abrewa Kwabia IV, the Queen Mother of Atimpoku in the Akwamu Traditional Area, during a book launch called on the government to legalize homosexuality in Ghana. The queen mother said “when gay marriage is legalized in Ghana, I would be happy because the population of this world is increasing by the day and that would help check that because a marriage between a man and a man would not produce children and same applies to that between a woman and woman” (Ghbase, July 7, 2015).

In an interview with Citi News, Nana Oye Lithur, a human rights lawyer said “President Mills is entitled to his opinions and he is entitled to make statements for and on behalf of Ghanaians”, she said. “We are guided by our 1992 Constitution that states that we are all equal before the law and every person in Ghana possess human right. So if we have homosexuals in Ghana once they are human beings they have human rights”. She continued: “Not even the President of Ghana can deny anybody human rights irrespective of the person’s sexual orientation, ethnic group, gender and what have you. These are guaranteed in our constitution and everybody in Ghana has an obligation to respect that constitution” (Ghanaweb, November 4, 2011).

Speaking on Morning Starr on Thursday, January 11, 2018, Rev. Asante condemned discrimination and abuse of homosexuals. He said Ghanaians should not treat homosexuals as enemies or beast because they are also human beings who have rights. (Ghanaweb, January 27, 2018). Again, eight Ghanaian men led by Sulemana Abdulai protested in Canada against the criminalization and the discrimination of homosexuals back in Ghana their country of origin. They argued that their protest is to create awareness of the plight of homosexuals in Ghana. As at August 24, 2017, more than 5000 people have signed the petition. “We are fighting for our rights. No one can ever stop us. We will continue doing what we are doing”, said Sulemana Abdulai. “They cannot scare me”, Sulemana Abdulai said (Citionline, 24th August 2017).

Also, Kwasi Kyei Darkwah, a popular Ghanaian broadcaster, known in media circles as KKD, openly declared support for his son, Darkwah Kyei- Darkwah, who opened up about being gay in a digital magazine. The renowned broadcaster noted on his Facebook

page that “Whilst the culture in which I was raised influenced me to lean towards raising my children as Asante, Christian, well-mannered, audacious, industrious, cosmopolitan and heterosexual, I do not consider it my place to pontificate, praise or condemn the sexuality any adult identifies with”. The broadcaster said, "Come joy or pain, sunshine or rain, success or failure, I will always love my son Darkwah Kyei-Darkwah". The famous media personality further praised his son for gathering the courage to declare his sexuality and encouraged other minority groups to do away with fear and hate (Myjoyonline, November 3, 2018).

Again, Prince Kwaku McDonald, a Gay rights activist and the President of the Gay and Lesbian Association of Ghana (GALAG), in May 2012 showered praises on the then United States President, Mr. Obama when the leader of the United States in an ABC interview declared his unequivocal support for homosexuals. The Ghanaian gay rights activist noted "President Obama now stands with us on the right side of history. I hope Atta Mills will use this opportunity to decriminalize sex between people of the same sex” (Ghanacelebrities, May 11, 2012).

Amnesty International a leading human rights group condemned Ghana’s authorities for conducting a medical test on the private parts of two male university students who were allegedly caught having carnal sex in a private hostel at Takoradi. The human right group noted that the test is a “torture and degradation of their human dignity”. Speaking to BBC Pidgin, Robert Amofo, Amnesty Ghana Spokesperson, said the test conducted on the genitals of the suspects amounted to human right abuse and is in violation of the Ghanaian constitution (Ghanaweb, February 5, 2018).

The Ghana Police Service is also another institution that has and is contributing to the protection of the rights of homosexuals in Ghana. Although there had been earlier reports of police brutality, harassment and extortion, there are also reports as captured by the U.S Department of States 2014 country report on human rights in Ghana, of police unwillingness to investigate claims of assault or violence against homosexuals. Contrary to the aforementioned police behavior, the Ghana Police Service in response to a letter dated, October 11, 2017 from human right watch on how they would contribute to homosexual rights protection said "the police acknowledge the fundamental human rights and freedom as contained in the 1992 constitution of Ghana...these are inculcated in the things taught to police officers at the National Police Training School Accra". In the same letter, the police made it clear in paragraph 5 that the police stations across the nation are secure locations for homosexuals to report cases. It also states that the police intelligence and professional standards Bureau (PIPS) is accessible to the community to report police misconduct in dealing with homosexuals. "Going forward, the police service will adopt more proactive steps and pragmatic approaches to ensure the protection of lesbians, gays, bisexuals and transgender individuals generally" (Humanrightswatch; in Ghanaweb, January 10, 2018).

Executive Director of International Gay and Lesbians Association, Mac-Darling Cobbinah, is another homosexual rights activist who believes in the protection of homosexuals. At a programme organized by the Commonwealth Human Rights Initiative (CHRI-Africa) in collaboration with Civil Society Organizations in 2008, the human right activist lamented that it is unfortunate that homosexuals have been relegated and

appealed to school authorities to desist from dismissing students who engage in homosexuality but should rather counsel them. He went further to condemn the criminalization of homosexuality in Ghana and assured to print materials to educate the public to accept homosexuals (Businessghana, May 2008).

1.2 STATEMENT OF THE RESEARCH PROBLEM

Homosexual relations are unlawful in 36 of Africa's 55 states, according to Amnesty International, and punishable by death in some countries. Social marginalization and discrimination of homosexuals are familiar across Africa, even in nations that do not criminalize homosexuality. However, criminalization worsens the situation not only due to potential arrest and criminal prosecution but also because it strengthens the regular inconvenience of homosexuals and acts as an official incitement to or justification of violence against such persons. It is, therefore, not surprising that there are serious and ongoing violations of the human rights of homosexuals in Ghana although Ghana has no existing law criminalizing homosexual relations.

Ghana has signed and ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), and enacted Chapter five of the 1992 Constitution of The Republic of Ghana (Amendment). This act protects rights of freedom of every person without discrimination, but it cannot be said in the case of homosexuals.

Ghana, just like any other state, is made up of people with different background. Although there is no law stating that homosexuality is wrong in Ghana, homosexuals are charged with “unnatural carnal knowledge” which common law define it as penile penetration of anything other than a vagina and which according to Ernest Abotsi, a KNUST law lecturer, is a judicial error. In a study titled ‘Global Views on Morality’; published by the Pew Research Center in 2014, it was found that 98% of Ghanaians believed that homosexuality was morally unacceptable, this being the highest percentage of all 40 countries that were included in the study.

In August 2014, police in Walewale, a farming town, and capital of the West Mamprusi District, Northern Region, arrested a 21-year-old man on suspicion of being homosexual and "recruiting" other youth to be homosexuals. Police stated, "the arrest was for the suspect's own safety since residents of the town had vowed to kill him and his entire family if he was not removed from the community".

Homosexuals are marginalized and deprived of certain rights in Ghana, which is in serious need of redress. Amnesty International and the NGO Freedom House reported in 2013 that "the persecution of sexual minorities has escalated". In situations where homosexuals or their advocates have filed complaints with the law enforcement for discrimination, harassment, blackmail, violence, and a threat to their lives, authorities have remained inactive and provided no protection to the besieged individuals and associations. The danger of arrest for homosexual behavior can discourage individuals from reporting crimes committed against them.

With these problems brought to the limelight, it is worth investigating the deprivation of homosexuals' human rights in Ghana and suggests measures to help protect these rights. It is in regard to the above conditions that this research attempts to find answers to the following research questions:

- What Rights are homosexuals deprived of in Ghana?
- How are homosexuals deprived of those rights?
- Who are the stakeholders responsible for the protection of those rights?
- How can rights of homosexuals be protected?

1.3 OBJECTIVES OF THE RESEARCH

The main aim of this research is to investigate the marginalization and deprivation of homosexuals in the Republic of Ghana and how their rights can better be protected. This would be achieved through the following specific objectives:

- Identify the rights homosexuals are deprived of in Ghana;
- Explain how homosexuals are deprived of the rights in Ghana;
- Identify some of the stakeholders responsible for the protection of rights of homosexuals in Ghana;
- Discuss possible ways of protecting the rights of homosexuals in Ghana.

1.4 SCOPE OF THE RESEARCH

The focus of this research is on the examination of human rights of homosexuals in the Republic of Ghana from 1992 to date. The research limits the year from 1992 to date because according to the freedom in the world reports, published annually by Freedom House, human rights situation in Ghana from 1972 until 2000 was among the worst in the world. Before the year 2000 other basic human rights like freedom of association, expression, and the media were restricted.

Again, this research focused on both male and female homosexuals, as the two groups are all discriminated against. This enhances the credibility of the work. Also, attention was restricted to homosexuals with a certain level of education (at least, senior high school graduates) because such individuals are more than 16 years and are more likely to give an independent view, which is free from parental influence.

1.5 RATIONALE OF THE RESEARCH

This research is important for many reasons. Firstly, it is timely because it is conducted at a time when the world's attention is on the protection of minority sexual rights. Secondly, the persecution of homosexuals by society and government is on the ascendancy but society has turned a blind eye to it. Again, the research serves as a useful reference material for a variety of users such as policymakers, the judicial and human rights institutions, the security agencies, scholars as well as students who are involved in the study of human rights in general and sexual right in particular. Finally, as with every

other research, this work adds up to the body of knowledge already available in the field of human rights especially with regards to Ghana.

1.6 ORGANISATION OF THE WORK

The study is organized into six main chapters. The first chapter is composed of the introduction of the study. The composition includes the background to the study, political and religious debate over the subject, and statement of the research problem and research objectives. It also highlights significance and scope of the study. The second chapter reviews the relevant literature on human rights as well as homosexuality. The third chapter addresses the theoretical framework, which underpins the work. The fourth chapter presents the methodology used for the study. It discusses how data is gathered and analyzed using appropriate research criterion. The fifth chapter discusses the empirical data gathered.

The final chapter presents the research summary, recommendations, and conclusions based on the outcome of the study. Some relevant details such as the interview guides, bibliography, and maps used to aid easy identification, as used by the researcher, are also attached at appropriate places.

CHAPTER TWO

2.0 LITERATURE REVIEW

2.1 INTRODUCTION

Literature review concerns the critical peruse of relevant literature in relation to a subject of study or an issue of research. It provides the researcher with knowledge on what has been said, found or neglected in an area of study. The review of literature, therefore, constitutes an important aspect of an empirical study by providing a scheme within which the researcher places and justifies his study in the context of existing ones. This chapter, therefore, provides a review of the evolution and conceptions of human rights,

2.2 THE EVOLUTION AND CONCEPTION OF HUMAN RIGHTS

The idea of 'human rights' is based on two principles: that all human life has equal value and that the equal value of all human life gives rise to equal rights. The nature of Human Rights since its proclamation in 1948 has, however, been shrouded in prolonged debate. This contention has been occasioned by opposing views on whether human rights can be considered as universal. This has often reflected in the definitions and understandings that individuals and groups render to the concept. The United Nations, for instance, defines the concept as "those rights, which are inherent in our nature and without which we cannot live as human beings". Thus, those rights that everyone by being human is entitled to and its main objective is to ensure the dignity of humankind. Harold Laski (1967, p 91) extended the contours of the concept when he opined that it concerns "those conditions of social life without which no man can seek, in general, to be himself at his

best". Thus, no man in the absence of the respect or observance of his human rights can fully develop or realize his potentials as a human. On his part, Maurice Cranston opines that Human Rights are "the universal moral right; something which all men everywhere and at all times ought to have; something of which no one may be deprived without great affront to justice, something which is owed to every human being simply because he is human". A careful consideration of Cranston definition reveals that whiles all human beings owe this entitlement which should be protected, one's enjoyment can only be called into question if by so doing it poses a great affront to others for enjoying same. By inference, the sexuality or sexual practice of an individual can only be questioned if it serves as an affront for others to enjoy same. This Osita Eze attested this when she suggested that the enjoyment of some of these rights requires some level of claims or demand. She opined "human rights represent demands or claims which individuals or groups make on society, some of which are protected by law, and have become part of "ex-lata" whilst others remain aspirations to be attained in the future." Her consideration of the concept again suggests that some of these rights came into force because of the demand placed on the society by individuals and groups. This suggests therefore that groups or individuals who have a high level of influence and trade-off would have maximum recognition and respect for the human rights.

The various understanding of human rights as pointed out earlier is a result of whether one believes it is universal considering the disparities among cultural and religious groups (Blackburn, 2011, p.7). This contention has led to two schools of thought; the universalist and the cultural relativists conception of human rights.

2.2.1 .The Universalist conception

The Universalists view is premised on the acknowledgment that all human beings, by virtue of their common humanity, are entitled to certain basic minimal rights regardless of their cultural or religious background (Zechenter, 1997, p.320). Donnelly (2003, p.10) justifies that human rights are “inalienable, self-evident and applicable to all human beings” and is based on Western philosophy and natural law. Donnelly contends further that human rights are “pre-political”, thus unchangeable and unaffected by cultural or political variation (2003 p.22). Some of the advocates for this school include the United Nations, Rhoda Howard, Maurice Cranston, and Francis Deng.

The position of the Universalist on human rights is premised on the 1948 United Nations Universal Declaration of Human Rights (UDHR) principles. The document recognizes both the inherent worth and equality of persons by virtue of being human also the enjoyment of equal rights and freedom by all persons. These rights are categorized under the theme “Dignity and Justice” and clearly outlined in the UDHR Preamble

“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,” and Article 1 (*“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”*) of the Declaration (OHCHR, 1996-2016).

Yash (1999-2000, p.1096) contends that since universality of human rights is based on the notion that human nature is universal and known by reason, then human beings are

essentially not different in any way. Donnelly, (1984) concludes that because human rights are based on the simple fact of being human and human nature possesses a universal outlook, human rights cannot be said to be relative in any sense.

The Universalists also recognize human rights as inherently “individualistic” in nature and not granted by society, religion, and tradition nor enjoyed as privileges of being part of a communal group (Donnelly, 1984). This goes to suggest that these settings cannot limit individuals’ enjoyment of their human rights.

Dworkin, 1978 cited in Zechenter, (1997, p.320) iterates that the Universalists argument on human rights is grounded on three main theories-the natural law theory, the theory of rationalism and the positivist theory. Whilst the natural law theory emphasizes that certain inalienable rights and values are granted to all human beings by God which makes them all equal, the theory of rationalism which is inextricably linked to it explicates that among the values granted by God (natural law), the capacity of every being to think rationally is pivotal. Reasoning and natural law which exist independent of culture, tradition or religion positions the individual to act rationally to advance his good. The theory of Positivism also justifies that the universality of human rights is made manifest in its worldwide acceptance and instruments ratification. The combined implication of these theories makes human rights universal because it is given to every person by God, backed by reason and is widely accepted worldwide as binding (Zechenter, 1997).

Some critiques raised against this school of thought include among other things that to say a right is universal will imply that all people equally. But based on the sense of

reason people might adopt different ways of addressing their challenges thereby designing different values. Again, the action of the lead proponent of this school, the UN, to call for separate protocols to address the needs of some particular groups in the society, affirms the conception different groups have different needs. This has been the central contestation of the opposing school of thought.

2.2.2 The cultural relativists conception

The opposition of the Cultural Relativists against Universalists notion is premised on differences in culture, traditions and religious practices of various societies across the globe. According to Langlois (2009, p.19), human rights were developed based on Western culture and therefore would be inappropriate to apply it unmodified in different cultural settings. Relativists argue that human rights put the individual above the community; a deviation of communitarian values. Since cultural relativists prioritize communitarianism over individualism, the culture of the society becomes the determiner of the nature of “human rights”.

Zechenter (1997, p. 323) highlights that universality of human rights is simply not in conformity to the diversity of cultural, traditional and religious practices found around the world. Accordingly Donnelly (2007,p.284) iterates that human rights were an integral part of traditional African and Asian societies but their cultures determined how they perceived both human rights and the human nature (Donnelly, 2007). In African societies, for instance, the concept of human rights was vested in the community (communitarian). The interest of the communal group was therefore considered vital to individual rights prioritized by Universalist.

The cultural relativists suggest that one's moral status serves as a society's determiner of human nature. For instance, some cultures or religion uses gender as a determiner of the importance of human nature. The radical cultural relativist argues, therefore, that status society rather than the "human being" concept determines how an individual is valued (Donnelly, 1984, p.404). This fact is confirmed by cries of feminist groups for equal recognition of women as granted men.

Renteln (2013) highlighting the bases of the relativist rejection of universality of rights explains that concerns of the draft UDHR posing as an ethnocentric document was expressed in 1947 by the American Anthropological Associations (AAA). Their argument was based on the fact that the drafters incorporated only western values to the neglect of other different cultures practiced around the world. This viewpoint affirms that culture plays a crucial role in the determination of rights and as such human rights cannot be taken as universally accepted values since cultures vary. Again, the refusal of the drafted to accept and rectify this anomaly during a period of “strong advocacy for human rights” is revealing of discrimination and violation of rights (Renteln, 2013).

With regards to the UDHR which the Universalist uses as a justification, the relativists argue that majority of UN members currently did not partake in its drafting, debate, and adoption as they were still under colonial rule (Bosl & Diescho, 2009). Leaders of some countries including Saudi Arabia, South Africa, and the Soviet Union had their concerns about the draft UDHR ignored (Bosl & Diescho, 2009). It again expressly ignored the guarantee for self-determination and failed to question the legitimacy of colonialism.

Again, the UDHR Article 1 provision juxtaposes against its subsequent actions appears conflictual and discriminatory. The provision reads;

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”

Whilst the provision suggests that all human beings are equal and as such should be treated equally, the UN has subsequently adopted various conventions to address concerns of some minority groups. Few among these include “The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW 1979)” and “The Convention on the Rights of the Child” (CRC 1989). This goes to suggest that the differences in needs and culture influence variation in human rights values and claims across the world.

Whilst the above contestations reveal differences in perspectives on human rights, common among the beliefs is that they are necessary for all member of society to realize their human dignity. Again, the only time that an individual should be prevented from enjoying such a right is when it is an affront to other members of society from enjoying same. Both Schools believe that the human being is endowed with a sense of reason with which he or she can decipher what is good or not. Based on these common grounds, Human Rights in this study are taken to mean those entitlements individuals place on the society to be granted them because of their human nature.

2.3 UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights (UDHR) of the United Nations was adopted in Paris on December 10, 1948, and serves as the foremost significant human rights document in the world. Its contents consisting of 30 articles were the product of various UN member states and their representatives with diverse legal and cultural settings in the world. Its provisions, therefore, bind all UN member states including Ghana.

The UDHR spells out the fundamental human rights and argues for its universal protection as the contributors factored in the various cultural and legal settings in the world. As stipulated in the declaration, all the rights and freedoms contained therein are to be enjoyed by all humans, without discrimination of any sort, such as language, color, race, sex, religion, political or other opinion, national or social origin, property, birth or other status (United Nations 2016a).

2.3.1 UDHR and LGBT rights

The rights of LGBTs in most African countries are considered as an alien practice that cannot be countenanced under any circumstance (Yeboa- Mensa, 2017). Due to this perception, the United Nations argues strongly that it is not demanding any fresh rights for the LGBT people (Yeboa- Mensa, 2017). The UN contends that the legal responsibilities of states to protect the rights of LGBTs are already enshrined in the International Laws on human rights grounded on the Universal Declaration of Human Rights and consequently approved International Human Rights Pacts (Yeboa- Mensa, 2017). The UN echoes that all people, regardless of sex, sexual orientation or gender identity, are eligible to protections enshrined in International Human Rights Law

regarding on respect of the right to life, security, and privacy as well as the right against torture, arbitrary arrest, and detention. All the categories of rights; right or freedom from discrimination and the right to freedom of expression, association and peaceful assembly (United Nations, 2016b and cited in Yeboa- Mensa, 2017).

Just like any other groups, the UN seeks tenable enjoyment of rights and freedoms for the homosexuals without any form of discrimination. This stand of the UN is however yet to be realized because in its 2011 Report on the Rights of the LGBT, the UN attests that such practice is still considered unlawful in seventy-six (76) state across the globe and in some of them such as Iran, Mauritania, Saudi Arabia, Sudan and Yemen it is punishable by death penalty (United Nations, 2011).

Yeboa-Mensa, (2017) asserts that LGBTs have frequently been objects of attack and abuse by religious radicals and groups, security personnel's, politicians, security agencies, traditional authorities, communities and sometimes-family members. Of this, lesbians and transgender women face the greater risk. It is reported that homophobic hate crimes often include a greater degree of cruelty and brutality (Yeboa- Mensa, 2017) These mistreatments precipitate the conciliation of most attacks on these victims as they desist reporting cases to law enforcement agency for fear identification which will further lead to discrimination molestation (United Nations 2011)

2.4 AFRICAN CONCEPTION OF HUMAN RIGHTS

The western writers claim that human rights are the inventions of Europe and North America (Arat, 1991). But this view has been utterly rebutted by a section of scholars.

Arguing from this viewpoint Donnelley (2007) opines that whilst the modern conception of human rights can be credited to the modern history of the West, no society can claim any historical glory to human rights values and principles. He insists that, the concept of human rights borders on the complex relationships between the individual and the state and involves the status, claims, and duties of the former in the jurisdiction of the latter. Therefore, he argues, the subject of human rights is as old as politics itself. Further, without a widely understood conception of human rights endorsed or championed by some respectable section of society, it would be difficult to assume that such society would have any regards [attitudinally] for human rights. His argument is that the idea of equal and inalienable rights that individuals have on the simple account of being human beings was missing not only in non-western traditional cultural settings but Western societies as well (Donnelly, 2007, p. 285). In the same way, Gutto (1991) thinks that the Euro-centrists' arguments about human rights are based on hollow and a historical unscientific method of inquiry. He [Gutto] adds that the African reactionary claims to human rights as colonial or imperialist machination should also be rejected as unscientific and ahistorical (Gutto, 1991,p. 6).

The African cultures have been/are still criticised widely for disrespecting the rights of individuals, mostly on the backdrop of inhumane cultural practices such as human sacrifice as well as the atrocious civil wars fought in the various states –the Rwandese genocide, the Liberian civil war, the Sierra Leonean civil/diamond war, to mention but few.

The several arguments on the subject of human rights in Africa especially by the Eurocentric scholars have been that the traditional African society did not have in place any democratic system and institutions and therefore disregarded the civil and political rights of their subjects. Again, even if there was any idea of human rights in Africa at all, it was group rights other than an individual. They opine further that, group rights turn to compete with and consequently suppress individual rights (Frempong, 2006). In the words of Dunstan Wai (cited in Jack Donnelly, 2007, p. 285) “traditional African beliefs and institutions sustained the view that certain rights should be upheld against alleged necessities of the states”.

The African scholars rebut this western claim on the fact that the traditional African societal values and norms gave better expressions to human rights than even the current ‘neo-colonial states’ structures Africa inherited. For them, Africans have their own [different] worldview regarding cosmology, ontology, and metaphysics, which find expression in how individualism is eschewed in the various African societies (see Busia, cited in Frempong, 2006). The African societies, they argue, are built on the concept of corporate brotherhood [sisterhood] and communitarianism based on the extended family system. Thus, they argue further, that the stricter sense of individualism which is at the center of modernism and human rights discourse especially as proposed by the west, is inconceivable and has no place in the collectivist African societies (ibid). That is to say that the African conception of human rights is markedly different from that of the western views.

In the traditional African setting, the individual and group rights are intertwined. Collective rights, they argue, complement rather than compete with individual rights. In the traditional African society, the full enjoyment of individual rights is inseparably conditioned by the rights of the group to which they belong (Ankumah, 1996; in Frempong, 2006). This idea of the African philosophy of social life finds expression in the maxim "I am because we are, and because we are therefore I am" (J. S. Mbiti; cited in Cobber, 1987). Social, political, economic and cultural organization in Africa unearths the cohesiveness of the African society and the importance of kinship to our traditional lifestyle. As a people, Africans lay much emphasis on collectivism, rather than the individualistic survival of the fittest western idea. The African worldview is associated with the generic guiding principle of the survival of the entire community and a sense of cooperation, interdependence, and collective responsibility. Social and other roles are thus assigned to family members by the extended family unit. This allows the family to function as a reproductive, economic and socialization unit (Cobber, 1987). However, the individual in traditional Africa in certain instances, to the minimal, enjoyed some personal [human] rights.

It is worth noting that, all that these Africanized scholars seek to establish is the fact that, in Africa, the definition and roles assigned by our traditional norms and values are different from other cultures and these affect our worldviews, consequently our human rights conceptions.

2.4.1 Traditional African society and individual rights

In the traditional African setting, political and social systems such as the centralized Akans' there was a clear conceptual distinction between individual and group rights. This was based on their conception of the person (*onipa* in the local Akan dialect) where the individual is perceived as a union of three elements. These are the life principle (*okra*) believed to come directly from the Supreme Being via which a person's destiny is determined; the blood principle (*mogya*), inherited from the mother; and the personality principle (*sunsum*) from the father (Frempong, 2006). Out of each of these elements emanated a set of individual human rights. For example, by virtue of the *okra* every person has an inherent value owed to no earthly circumstances or authority. This afforded the individual equal opportunity to pursue his or her destiny designed by God. Life was, therefore, regarded as sacrosanct by the African (Frempong, 2006, p. 387-389). These perceptions of individual rights are evident in several maxims, proverbs, and wise sayings. For example, according to Frempong (2006), an individual who feels pressurized to act against his or her own will could invoke the maxim, which literally translates "Nobody was present when I was taking my destiny from God" (Frempong, 2006, p. 387).

Another individual right that was very key and entrenched in the traditional African system was the right to fair trial. No individual could be punished without trial. Again, no one could be subjected to any sort of sanctions without proof of wrongdoing or given a fair hearing to all parties involved (*Ibid*).

Another important example of individual rights is the right to personal property especially regarding the right to enjoy from the produce one's toil. Every individual had 'usufructuary' right to the family land. He could reduce as much of the common ancestral land to his use in terms of subsistence farming. The produce from the land became his property because he had diversified with his own toil but never the land itself (Frempong, 2006, p. 389-390).

However, as rightly argued by Mike Oquaye (2000), whilst the African system recognizes the uniqueness of every individual, it also recognizes that the individual needs the help of society. Individualism is therefore woven into the larger social and political order (cited in Frempong, 2006, p. 389). The equal worth and dignity of all can be assured only through the recognition and protection of individuals' rights as members of a group. In Africa, the awareness of human rights springs its force from community solidarity and values rather than on western conceptualization of the rights of the individual. Whilst the human right is an ideal for all people, for it to be significant for Africans, it must be understood and comprise the collective rights for social groups such as the family and the clan (Owusu-Ansah 2003; in Frempong, 2006). Even though traditional African system gives expression to individual rights: undoubtedly, there is a greater emphasis on collectivism as the main foci of human rights (Ilesanmi, 1995; Ojo, 1990; Ake, 1987; and Khushalani, 1983). The African perspectives are usually regarded as 'groupist'; implying that rights mostly ensue from one's membership to a particular group. The more obvious groups include lineages, village, occupation, gender, and age groups.

2.4.2 Traditional African society and group rights

The traditional African system was fashioned on the idea that individuals needed the help of society and that society was necessary because the individual was not an island [and sufficient] by his self (Wiredu 1990; in Frempong, 2006). Therefore, individualism was woven into the larger social edict and the political system to which they belonged. Individualistic conceptions of rights without due attention to group dynamics, values, and the ensuing enabling or limiting environment lead to a de-contextualized approach to rights (Ibid).

According to Mbaye and Ndiaye, living in Africa means, “abandoning [one’s] individual rights so as to be in peace and harmony with the living and the dead, the natural environment and the spirits that people give to life. Also, individual’s personality is thought of as bearing the imprint of social relations, such as the Kuranko of Sierra Leone, where the human personality is perceived as “the embodiment within an individual of the types of relations he or she has with others” (Piot 1999; in Bience Gawanas).

The conventional Western perspectives of human rights clash with the non-individualistic African approach though. There are some scholars who think that collectivities remain as key element even in Western as with non-western cultures. Suffice to cite Wallenstein’s (1995) assertion that in all Western societies, the enjoyments of many individual rights are dependent on group membership. Thus, Ahmed also suggests that “within a classical liberal [context], ‘rights,’ defined ‘men’ as a group that excluded women, through the very act of constituting that group as universal” (Ahmed 1996; Ibid; see also Stuart Mill’s argument of rights of women). Group membership was the foundation of many rights in

the West. Individuals outside of legally constituted and powerful groups were excluded from rights possessed by individuals.

Again, the traditional African society guaranteed rights to property such as access to land. However, this was interlinked with one's community/family as a collectivity. According to Frempong, (2006) nowhere is the collaboration between individual and collective rights better demonstrated than with regard to the right to land. The traditional system took a serious view of the right to the land because it was the most important asset and means of production. The land was understood to belong to the whole community, which included the dead (ancestors), the living and the yet unborn (descendants). Thus, the family head at the family level or the chief at the community level held land in trust for the rest of members and the sale of land was strongly forbidden. Even though every individual had 'usufructuary' right to family land and thus could reduce as much of the common ancestral land to his use in terms of subsistence farming. The produce from the land became his property because he had diversified with his own toil but never the land itself. Again, for the continued use of the land, the individual must perform certain necessary service to the authority that held it in trust (Frempong, 2006: 389-390).

2.5 THE DEVELOPMENT OF HUMAN RIGHTS IN GHANA

The development of Ghana's awareness around human rights can be separated into three periods: late colonial rule to 1966, the series of military governments from 1966 to 1992 and then the changeover to and consolidation of constitutional rule from 1993 to the present (Anyidoho, 2009)

2.5.1 Pre-independence to 1966

The anti-colonial struggle in which pro-independence front-runners evoked a range of minority rights in pursuit of their ultimate objective (the rights to self-determination) cannot be overlooked when the history of human rights in Ghana is under deliberation (Anyidoho, 2009). As explained by Raymond Atuguba in an interview on 23 December 2008 "contestations between local activists and colonial government were couched in the language of rights. They advocated for freedom of the press because they needed to use newspapers for the anti-colonial agenda; freedom of movement and freedom from arrest because they (the colonial government) were catching them and locking them up".

After independence, however, ironically, the issue of human rights became prominent again owing to their non-existence during the regime of Kwame Nkrumah whose gradual accretion of power led to the restricting of certain freedoms (Ayidoho, 2009). Notwithstanding the independence struggle, the 1960 constitution of the first republic, shadowing the colonial master's tradition, did not hold a strong position on individual rights (Quashigah, 2007; Kludze, 2008) rather it permitted power to be concentrated in the hands of the executive (Gyimah-Boadi, 2004).

2.5.2 1966- 1992

After the 1966 Nkrumah's overthrow followed by a short period of military rule, the second republic (1969- 1972) was ushered in with a fresh constitution. Unlike its predecessor the 1969 constitution contained a stronger articulation of rights (Gyimah – Boadi, 2004; Kludze, 2008) but its influence on the Ghanaian people was minimal as it was nearly instantaneously thrown-out by a military coup. The third republic constitution

suffered the same fate as its predecessor as it also survived for only three years (1979-1981) before being overtaken by the PNDC government (Anyidoho, 2009). The period of the Provisional National Defence Council (PNDC) (1982- 1992) was very vital due to its direct effect on present-day rights discourse and custom. The PNDC after assuming power promised to clean up a corrupt government and rebuild a weakened economy. Notwithstanding these decent assertions, the methods by which the government endeavored to attain these objectives included those that directly abuse rights. For instance, it is documented that the PNDC just like other military regimes committed human rights abuse, including detention and imprisonment, seizure of property, torture, public humiliation and summary executions, to mention but a few (Gyimah – Boadi, 2004). As a minority group, women were also targets, as they frequently are under military regimes; for example, Ghanaian female market traders were accused by the military government of gaining from the collapsed economy at the expense of others and were physically and economically terrorized with physical harassment and confiscation of merchandise (Manuh, 1993; Robertson, 1993). The military government again clamped down on the media through censoring both the electronic and print media, constrained freedom of association by outlawing political parties, and restricted religious freedom for instance with its prohibition on the Mormon group and Jehovah Witness (Gyimah – Boadi, 2004).

2.5.3 1993- Present

The introduction of the Fourth Republic in January 1993, foreshadowed by the 1992 constitution, denoted a significant cessation with three decades of an unstable

government in which human rights both in principle and in practices had a shaky place in national life (Anyidoho, 2009). Contemporary, issues of human rights have taken unarguably a vital position in the national discourse. This development can be attributed to a number of factors which include the embracing of a constitution that makes clear proclamations about the significance of human rights to national life and that prescribes certain instruments and legislation to implement these rights (Anyidoho, 2009).

Nevertheless, the advancement from 1993 to the contemporary has not been wholly smooth. Appiagyeyi- Atua (2009) offers a nuanced examination of the rights record of the military – turned- a civilian government of the PNDC, in light of its supervisory role over the transition back to democratic rule. Even as a military government the PNDC in terms of international rights had ratified international rights treaties such as CEDAW, CRC, and the ACHPR. When the PNDC metamorphosed into a democratic party it further ratifies ICCPR, ICESCR, and CAT (Anyidoho, 2009). Additional signifying a concern for its image domestically and overseas and possibly a genuine commitment to human rights, the NDC government from 1995 began presenting reports to international treaty bodies (Anyidoho, 2009). There is evidence to support the claim that the NDC administration was devoted to the democratic process, nonetheless, there was some amount of abuse of rights during the process. An example is the government continuous refusal to repeal the infamous criminal code on Libel. The government continued to use the code although it was unconstitutional because they were a convenient way of exercising control over the media and silencing criticism (Gadzekpo, 2008; Quashigah, 2007).

The government also had a tense relationship with CHRAJ, endeavoring to reverse CHRAJ rulings that took a disapproving view of the government activities. It is on records that the Attorney General went to the court to contest CHRAJs jurisdiction over some cases and in specific one brought against the minister of interior for human rights abuses meted out to demonstrators resulting in the death of 8 people during a match to protest the economic policies of the government in 1995 (Appiaagyei- Atua, 2009).

Thus, although the return from military rule to constitutional rule in 1993 was a remarkable moment in the history of Ghana, the change in policies and attitudes was a steady one. Gyimah – Boadi (2004) notices an improving environment for human rights in the country over the two-term tenure (8 years) of the NDC, and points to the proof of improved media freedom, the lessening of laws hampering political association and public gathering, and the increasing observance by the government to the rule of law. Civil societies at the same period were not dominant enough, the courts were unreliable in their opinion on human rights, and CHRAJ was left alone in their fight against the hegemonic movements of the government (Ibid)

The NPP government which ruled from 2000- 2008, is perceived by some people as being more rights-friendly than the previous government, and this is attributed to the latter's link with the military government (Appiaagyei- Atua, 2009).

2.6 AN UNDERSTANDING OF HOMOSEXUALITY

The term homosexuality is a broad concept that involves both men and women. Trippo (1997), asserted that homosexuality is used to describe sexual activities or behaviors

between people of the same sex or having sexual feelings toward other people of the same sex. However, this definition tends to pose some confusion in identifying homosexuals. This is because there are people who have sexual feelings towards people of the same sex but do not act on these feelings. There are also those who have sex with people of the same sex but feel that their sexual feelings are more directed to people of the opposite sex. The societal definition of homosexuality is stereotyped and carries with it negative connotations. There are people who are not sexually involved with people of the opposite sex but are usually labeled as homosexuals. For instance, men who are more feminine are often assumed to be gay, while women who are more masculine are also sometimes labeled as lesbians.

In his book *“The Homosexual Matrix”* Trippo (1977) highlighted that defining homosexuality predominantly lies in the individuals, their behavior, sexual feelings and most importantly, how they define themselves. In view of this, a book by Germond and De Gruchy (1997) titled; *“Aliens in the Household of God: Homosexuality and Christian Faith in South Africa,”* made it clear that homosexuality is a term used to mean or refer to a person who is emotionally and sexually attracted to someone of the same sex and defines himself or herself as a homosexual.

Homosexuals are classified as; gays and lesbians. In the book of Nard and Schneider (1998) titled; *“Social Perspectives in Lesbian and Gay Studies:” A reader,* highlighted that the word/ term gay was originally formulated by homosexual men and women who wanted to distance themselves from the initial negative connotation linked to the term “homosexual”. In their book, it was made known that gay was initially referred to both

male and female homosexuals but have now become particularly associated with males. The work of Nardi and Schneider (1998) further stipulates that the term gay is frequently used in a generic and adjectival sense to describe the subculture, persons, lifestyle, communities, relationships, places and situations associated with homosexuality. For instance, a homosexual club would be referred to as a gay club. Lesbian is a term formulated to refer to female homosexuals. For the purpose of this study, both lesbians and gays are collectively referred to as homosexuals.

2.6.1 An overview of homosexuality

Homosexuality has been part of human experience for centuries. Blasius and Phelan (1997) in the book titled; *“We are everywhere: A Historical Sourcebook of Gay and Lesbian Politics,”* mentioned that the term “homosexuality” was first used in the United States of America but not originated from European medical literature. In his work titled; *Queer Science*, Le Vay (1996) stated that homosexuality was a descriptive term used to mean a sexual illness. Following this illness model, homosexuality has been much debated over the past 100 years in medical and social circles. The debates led up to the conclusion that homosexuals, compared to heterosexuals, were not necessarily more predisposed to mental illness. These findings led the healthcare community to re-examine the 19th-century disease model assumption (Blasius & Phelan, 1997; Le Vay, 1996). In past years, the American Psychology Association, American Psychiatric Association, and the American Medical Association reconsidered their definition of homosexuality as a "disease" to a "normal variant" (Le Vay, 1996). This implies that they homosexuality is seen as a natural state of being to certain people (Blasius & Phelan, 1997).

Often the question "what causes homosexuality?" accompanies homosexuality-related discussions. To answer this question, a book by Gochros (1989) titled; "*When Husbands come out of the Closet*", contends that clinicians and researchers have spent considerable time and money over the years trying to learn about the causes of homosexuality. There are theories and explanations of hormonal and chemical imbalance, heredity and "different" gene structures as well as psychological factors. However, to date, there are still many debates and different views about the causes of homosexuality. In trying to condense most of the opinions about the causes of homosexuality, Le Vay (1996) wrote, "...at this point, the most widely held opinion (on the causes of homosexuality) is that multiple factors play a role" (p 99)

A book by Goldberg (1994) titled; "*When wish replaces thought: Why so Much of what you Believe is False*", describes these multiple factors as being genetic/biological, psychological, hormonal, social and early childhood experiences. He further states that the truth is that "despite all the research and all the explanations, nobody yet really knows what makes some people homosexual" (p 43) as much as there is no clear explanation of why other people are heterosexual. In addition, the work of Herdt (1997) titled; *Same Sex, Different Cultures: Explaining Gay and Lesbian Lives*, indicates that it is unlikely that such a cause will ever be found, given the incredible complexity of sexual identity development, cultural contexts of desires and relationships, and the individual differences that exist in and between people who are homosexual.

2.6.2 The concept of homosexuality in Africa

In Africa, homosexuality is seen as “*un-African*”, simply to discourage homosexuality. One of the oldest myths in African tradition is that homosexuality is evil: a sin, a disease and a crime against society and nature. The work of Moberly (1983) titled; *Homosexuality: A new Christian perspective* highlighted that, this myth is also backed and shaped by religious beliefs. As a result, these myths negatively shape social reactions to homosexuality. A book by Edwards (1994) titled; “*Erotics and Politics: Gay Male Sexuality, Masculinity, and Feminism*”, states that homosexuality has existed throughout history, in all types of societies, among all social classes and people, but their attitude to it varies.

A book by Murray and Roscoe (1998) titled; “*Boy-wives and female husband: Studies of African Homosexuality*”, for example, stated that many Africans believe that homosexuality is not African; but was brought by the colonizers, hence it is shunned. Homosexuality is named as one of the immoralities blamed on the effects of colonialism. However, the book of Luirink (2000) titled; “*Moffies: Gay Life in Southern Africa*”, argues that homosexuality has existed in Africa for centuries and further elaborates that it is not homosexuality as such that has been imported, but rather a set of far more open and visible expressions of it.

On the other hand, in relation to religion, the work of Germond and De Gruchy (1997) titled; “*Aliens in the Household of God: Homosexuality and Christian Faith in South Africa*”, argue that the introduction of missionary Christianity in Africa, brought a new way of thinking about the morality of sexual activity. The subject was encircled by

secrecy and taboos, and homosexuality was according to Luirink (2000), given a bad name by condemning it. Those who argue that homosexuality is new to Africa do so not in order to draw attention to a historical novelty, but rather to condemn it as immoral. What needs to be done instead is to accept the presence of homosexuality in Africa (Luirink, 2000).

In Africa, homosexuality is a stigma label. In other words, being called a homosexual is to be degraded, denounced, and devalued and to be treated as different (Edwards, 1994; Murray & Roscoe, 1998). Although some African leaders condemn and refer to homosexuality as being “un-African”, on the 8th of May 1996, South Africa became one of the first countries in Africa to enshrine lesbian and gay rights in its constitution. This was an effort to protect the rights of homosexuals. It was also an attempt by the South African Government to alleviate, if not to eliminate discrimination based on sexual orientation in South Africa.

On the other hand, many African countries still consider homosexuality a crime and punishable by law. As at 2012, some 36 nations within the fifty-four (54) members Commonwealth have laws banning homosexual acts. Former Gambian leader Yahya Jammeh, for instance, promised to slit the throats of homosexuals. The latest African government that has warned same-sex couples is Tanzania. At a recent rally, Tanzania's Home Affairs Minister Mwigulu Nchemba said both domestic and foreign campaigners for gay rights would now face punitive measures in the country. “Those who want to campaign for gay rights should find another country that allows those things,” Nchemba said in the capital Dodoma.

2.6.3 Homosexuality and Africa: empirical evidence

A mutual idea concerning homosexuality held by the majority of Africans is that homosexuality is unknown to the African way of life. Antonio (1997) maintains that the homosexual dialogue is engulfed with arguments that homosexuality is "un-African" and cannot be found in pre-colonial Africa.

In the book "Boy-Wives and Female Husbands: Studies of Homosexualities," Stephen O'Murray and Will Roscoe (1998) delivered a revolutionary debate and proof of the existence of homosexuality before colonization. The book reveals a number of essays emphasizing the historical occurrence of homosexual practices throughout the continent of Africa. Murray and Roscoe (1998) again maintain that homosexuality has been there both in pre-colonial and contemporary times notwithstanding numerous actions to restrain and criminalize it, which were later adopted by colonial and postcolonial administration (Murray and Roscoe, 1998).

Murray and Roscoe (1998) advanced their argument by giving examples of homosexual relations that existed among the Langi, the Iteso, the Baganda, the Banyoro and the Bahima all of which are different Ugandan ethnic groups. Murray and Roscoe (1998) further argued in reference to E.E. Evans Pritchard among the Azande of Northern Congo, that homosexuality was normal to the point that warriors paid "bride price" to the fathers and mothers of boys. This confirms the argument that the practice and existence of homosexuality were established and part of the tradition in these areas.

Murray and Roscoe (1998) also report on homosexual activities in West Africa. The Ashanti who reside in present-day Ivory Coast kept male slave concubines. These male slaves were treated like female lovers (p.91) According to Hutchinson (1861), "male concubines put on pearl necklets with gold accessories. They were executed when their masters died", (p. 129 – 30 cited in Murray and Roscoe, 1998, p. 91). Furthermore, in the early 19th century, cross-dressing and homosexual practices were common among most of the Akan tribes especially the Ashanti because the practices were recognized, although the inflows of missionary activity on the continent change this practice (Murray and Roscoe, 1998).

Paul Parin (1980) argues, "In every village, there are some men who, for neurotic reasons, do not have sexual relations with women. A number of them are known to practice occasional reciprocal masturbation with boys" (p. 204 cited in Murray and Roscoe, 1998). He claimed that bisexuality is also more common among women.

In the early 1970s, Itala Signorini (1971) also explains "age-stratified homosexuality" among the Nzema (Nzima) in Ghana (cited in Murray and Roscoe, 1998, p. 91). In addition, "the husband pays bridewealth to the male wife's parents, as he would for a female bride, and celebrates with a wedding banquet. The same incest taboos that restrict the availability of women apply and divorce requirements for male couples are the same as for male-female ones. The male wives are younger than their husbands, but usually, the difference is not generational –for example, a thirty-year-old marrying a twenty-year-old" (Signorini, 1971 cited in Murray and Roscoe, 1998, p. 91). However, Signorini (1971) also reported that Nzema men acquired, same-sex partners for "social, not sexual

consumption" and that they persistently denied practicing "sodomy" (Murray and Roscoe, 1998, p. 91).

2.7 STUDIES ON HOMOSEXUALITY IN AFRICA

In his study on homosexuality in Malawi, Malamba (2012), attempted to establish factors likely to impede its acceptance. He established in his study that the cultural setting, religious and cultural beliefs as well as the political landscape were central in the determination of reactions towards the practice. This, according to him, necessitates public education, constitutional amendments, and cultural reformation and tolerance towards those engaged in the act.

Although Malamba's research is not directly on LGBTs rights, its focus on homosexuality in Malawi gives it an African setting. This grants it a similar feature to this study, which focuses on the situation of LGBTs in Ghana. His findings, therefore, provide an understanding of homosexuality in Africa, which can help guide understanding and recommendation to the Ghanaian situation.

In his study on gay rights and homosexuality in Zambia, Couvaras (2013), attempted to investigate the justification for the criminalization of homosexuality in Zambia. The result of the research indicated that there is no justifiable reason for the criminalization of homosexuality in so far as satisfying the common principle and purpose of criminalization. The work also questioned the constitutionality of criminalizing homosexuality and actually recommended the repeal of the said provision. This work will help in understanding whether the justification given for the criminalization of

homosexuality in Ghana is strong enough as Ghana's constitution is against discrimination.

Again, in her work on “Rights of LGBT in Ghana”, Yeboa- Mensa (2017), sought to find out the perception of Ghanaians living in Finland on the legalization of full rights of LGBT in Ghana, and the need for them to receive pastoral care and counseling. She established in her findings that most of the respondents due to their religious beliefs and cultural background did not want LGBT rights legalized in Ghana. This work, although was not conducted in Ghana the respondents were Ghanaians living in Finland. The findings of this study will help in understanding of the perception of Ghanaians living in Ghana given the same cultural and religious background. This work will again give an understanding of why most Ghanaians are against the legalization of homosexuality in Ghana. Although this work seeks to find out the human rights deprivation of homosexuals in Ghana, understanding the reasons Ghanaians in Finland ascribe to their revolt against LGBT rights in Ghana will give a better understanding of the violent acts against homosexuals in Ghana.

Also, in the work: "Homosexuality in perspective: A Critical Discourse Analysis of the debate on Homosexuality in Uganda", Silvetsen (2016), analyzed the debate on homosexuality in relation to the dynamics of power that existed between Uganda and the western world. The research revealed that the Ugandan authorities see the acceptance of homosexuality as a form of neo-colonialism and the imposition of western culture on Uganda. Another reason cited by this work for the resistance of homosexuality in Uganda is that it is incompatible with Christianity. This work will facilitate the understanding of

the current debate in Ghana on the origin of homosexuality and the relationship of Ghana and other western powers in terms of homosexual laws.

Additionally, in his work, “Enhancing LGBT Rights in Africa: A case study of Nigeria”, Ganiyu (2014), endeavored to investigate the hindrances to LGBT rights in Nigeria and how they can be tackled. The study uncovered that religious beliefs and the knowledge gaps on human rights are the main obstacles to LGBT rights in Nigeria. The study further suggested that bridging the knowledge gaps through human rights enlightenment would over time limit the strong religious and ideological opinions held against LGBT. The findings of this work conducted in Nigeria a West African state can be useful to a similar research conducted in Ghana because Ghana is a West African state just like Nigeria and shares similar cultural and religious beliefs.

Furthermore, in the work, “A constitutional Approach to the Decriminalization of Homosexuality in Africa: A Comparison of Kenya, South Africa and Uganda”, Mekesa (2016), examined how the rights to equality, human dignity and privacy guaranteed in the Kenyan and Ugandan constitutions can be used to construct a constitutional argument for the decriminalization of LGBT acts in the two countries. The work argued that the equality clauses in the Kenyan and Ugandan constitutions could be used as a counter-argument against the criminalization of homosexuality. In Ghana, the constitution also contains non-discrimination clauses and equality clauses just as the constitutions of Kenya and Uganda and so the work can help in a research conducted in Ghana to argue for the protection of the human rights of homosexuals through constitutional clauses.

Again, in his work, "Race, Religion, and Homosexuality: Black Protestants and Homosexual Acceptance", Lewis- Williams (2006), aimed to look at the empirical relationship between race and religion and how that relationship influences support of homosexuality. At the end of the work, Lewis- Williams (2006) established that black Protestants do not have a strong disapproval of homosexuality but religious black Protestants have a strong disapproval of homosexuality. This work gives an insight into the black race and their opinion on homosexuality and how these same black people influenced by religion will react towards homosexuality.

Also, in her work "Incorporating Homosexual Orientation and Identity within an existing Phenomenological Analysis", Nicholas (2015), sought to gain an understanding of psychological aspects of homosexuals in Eastern Cape, South Africa who were raised in Christian homes and who later became homosexuals. The research examined how these individuals managed these two identities. The work established that most of these homosexuals maintain active participation in church but pointed to the fact that the role of church authorities in their lives has reduced drastically.

2.8 HUMAN RIGHTS ABUSES AGAINST HOMOSEXUALS IN GHANA

Based on data available to the commission on Human Rights and Administrative Justice (CHRAJ), since August 2013, out of the 75 discrimination cases filed with CHRAJ, 36 of them were filed by LGBT people (Humanrightswatch, 2018). In 2015, Men Who Have Sex With Men Global Forum (MSMGF), in collaboration with The Centre for Popular Education and Human Rights, Ghana, (CEPEHRG) conducted a survey detailing the human rights abuses against sexual and gender minorities in Ghana

(Humanrightswatch, 2018). Fifty of the survey respondents reported that they have, at least, once in their stay in Ghana been subjected to abuse and discrimination due to their sexual orientation (ibid). “The kinds of incidents included harassment or intimidation in the community, causing the victim to flee for security reasons and losing access to their home and livelihood; sexual assault and abuse, resulting in physical and psychological harm; and denial of protection by the police, including certain cases in which LGBT individuals who file complaints have been subjected to extortion and arbitrarily arrested” (Humanrightswatch, 2018). “Human Rights Watch's research corroborates that LGBT people are often victims of mob attacks, physical assault, sexual assault, extortion, discrimination in access to housing, education, and employment, and family rejection on the grounds of their sexual orientation or gender identity. In an environment in which homophobic views abound, and few are willing to publicly come to the defense of LGBT people, it is easy for violence to flourish.”

Many human rights advocacy agencies have reported that the existence of "unnatural carnal knowledge" is a major contributing factor to the many human rights cases of abuse meted out to homosexuals in Ghana. They further noted that the existence of the "unnatural carnal knowledge" acts as an obstacle to access to justice, discouraging many LGBT victims of abuse from pursuing redress and contributing to a culture of impunity (Humanrightswatch, 2018).

2.9 HUMAN RIGHTS PROTECTION INSTITUTIONS IN GHANA

Generally, states have three categories of human rights duties. States must respect, protect and fulfill all human rights. The duty to respect demands states to desist from

meddling directly or indirectly with the enjoyment of human rights, and also prevent third parties from interfering in any way with the enjoyment of human rights (Terracino, 2008).

The anti-homosexual law in Ghana was inherited from their colonial rulers but the prosecution is rare if ever. Unlike several of its neighbors, Ghana has tasked two government institutions, the Ghana police service and the Commission on Human Rights and Administrative Justice to reach out to the protection of human rights of people in general and the protection of LGBT people in particular (Humanrightswatch, 2018).

2.9.1 CHRAJ

The legal grounds for the establishment of the Commission on Human Rights and Administrative Justice (CHRAJ) is stated in article 216 of the 1992 constitution (CHRAJ Ghana). The human rights promotion and protection mandate of CHRAJ is stated in the constitution. The supporting law is the Commission on Human Rights and Administrative Justice Act (Act456), 1993. Article 218 of the Constitution, mandates the CHRAJ to inter alia:

- “Investigate complaints of violations of human rights and freedoms, injustice...and unfair treatment of any person by a public officer in the exercise of his official duties “(Ibid)
- “To investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under this Constitution” (Ibid)

- “To educate the public as to human rights and freedoms by such means as the Commissioner may decide, including publications, lectures, and symposia” (Ibid)

Although CHRAJ has the mandate to investigate the violation of human rights and freedoms, this mandate is deficient as CHRAJ is a complaint-driven institution. Thus in 2007 a court presided over by “Justice Baffoe Bonnie, an Appeal Court Judge sitting as an additional High Court Judge at a Fast Track High Court, ruled that CHRAJ's decision to investigate Dr. Anane a former Roads and Transport minister based on media reportage and not on any formal complaints from an identifiable person(s) was a recipe for chaos, irrespective of the good intentions of the Commission.” (Ghanaweb, October 31, 2007). Based on this ruling CHRAJ cannot take up a case to investigate unless the case is formally reported to the institution. Homosexuals in Ghana are constantly abused but due to this limitation on the mandate of CHRAJ, the institution cannot step in to investigate human rights abuses of homosexuals unless the homosexuals report to them formally. Due to the stigma attached to homosexual practice in Ghana the victims of abuse refuse to report to CHRAJ.

Again, in cases where individuals formally report abuses to CHRAJ, the institution is limited by its inability to enforce its decision without recourse to the traditional judicial process (Asibuo, 2000). Thus, Section 18 of the Commission for Human

Rights and Administrative Justice Act (Act 456) provides that the commission is mandated to submit its findings and recommendations to the appropriate authority or department concerned after arriving at a decision on an issue and make a copy available

to the complainant (Asibuo, 2000). The commission may seek redress in any court if its recommendations are not enforced after three months (Asibuo, 2000). The commission is headed by three experienced lawyers who are qualified for appointment as high court judges but still do not have the power to prosecute or enforce their findings (Asibuo, 2000). Thus the lack of power to prosecute human rights abusers of homosexuals in Ghana has reduced the ability of the institution into fights against homophobia.

Again, as stated above CHRAJ has the mandate “to educate the public as to human rights and freedoms by such means as the Commissioner may decide, including publications, lectures, and symposia”. This mandate is also facing nagging problems due to the commission’s lack of financial autonomy and inadequate financial resources. “Even though section 21 of Commission for Human Rights and Administrative Justice Act (Act 456) provides for its administrative expenses, including all salaries, allowances, and pensions which are on the Consolidated Fund, in practice, CHRAJ cannot obtain funds without recourse to the Ministry of Finance.”(Asibuo, 2000). Due to budgetary constraints, the commission has not been able to establish offices in all the districts and even with the established one's logistics and equipment's cannot be provided (Asibuo, 2000). This situation has limited the commission ability to enlighten the public on the need to respect the human rights of a fellow citizen in general and the rights of homosexuals in general. This explains the limited understanding of human rights and the homophobic attacks on homosexuals in Ghana.

The CHRAJ since August 2013 has employed an online complaint system for claims of discrimination including on the basis of sexual orientation and gender identity (CHRAJ

Ghana). The CHRAJ accepts and processes grievances, including those filed anonymously, and accumulates and publishes the data online. The online discrimination system will enhance the protection of homosexuals in Ghana but the system is limited to only those who are technology friendly. Thus, due to the technical nature of the system, it will take a victim who has a certain level of technical training to access the system. Additionally, the operation of this system will come with financial cost because data is required to access the system and the system will be meaningless to homosexuals who live in places where Internet access is difficult.

According to CHRAJ, since 2013, 75 discrimination cases have been filed with the institution and 36 out of these 75 cases were from LGBT people (Humanrightswatch, 2013). Cephas Essiful Ansah, personnel responsible for the online discrimination reporting system at CHRAJ, in an interview with Human Rights Watch said that he attends meetings with and conducts human rights training workshops for LGBT organizations due to the consistent complaints of blackmail and discrimination (Humanrightswatch, 2017). Whereas observing that the government is unlikely to amend its official position on criminalization of unnatural carnal knowledge, Ansah clarified the CHRAJ obligation and approach:

“We are not promoting their activities, but we are protecting their human rights. This is the policy position of the Human Rights Commission and it is based on our Constitution. Our online reporting system is for LGBT people and key populations. It was established because people were only reporting to NGOs, so we had to develop an online system. At

the Commission, we are protecting their human rights –we deal with this topic from a human rights perspective, because protection is paramount” (Humanrightswatch, 2018).

Most people interviewed by Human Rights Watch confirmed that they are not ignorant of the CHRAJ mandate and that they feel relaxed to contact the establishment for legal support (Humanrightswatch, 2018)

2.9.2 The Ghana Police Service

The Ghana police have often acted suitably to human rights abuses against LGBT people, especially in cases of false allegations and blackmail of homosexuals or people who are suspected of engaging in homosexuality by members of their community (Humanrightswatch, 2018). This was confirmed by several respondents, who told human rights watch, that they had never under any circumstance been harassed by the police but rather the police service act quickly to safeguard them when they are abused (Humanrightswatch, 2018). A 22-year-old homosexual from Tamale told Human Rights Watch: *“My friends and I were constantly being harassed and threatened by youth boys. About 6 months ago, sometime in July 2016, a group of about 10 guys–youth vigilante group–came to my house. They were shouting, threatening to beat us up and kill us for being gay. They said gays are not welcomed in Tamale. The next day we went to report them to Tamale Central Police Station. The police questioned them and charged them with threats to life. They each had to pay 400 Cedis (approximately US\$90). Since then we have not been harassed by anyone”.*

According to the Ghana Police Handbook (2010), “police officers shall at all times act impartially and in accordance with existing laws, which must be enforced on all persons without discrimination”. This responsibility of the police is sometimes limited due to the lack of or inadequate training programs for the policemen. The service lack literacy programs and long-term development courses that will enhance the experience and skills needed in the protection of human rights of citizens in general and homosexuals for the matter of this work (Eyram, 2011).

According to a news report by Ghanaweb in March 2017, two men were accused of practicing homosexuality in a hotel at Mataheko in Accra. They were arrested and handed over to the Domestic Violence and Victim Support Unit of the Ghana police after the hotel staff have called the police (Humanrightswatch, 2018). The Police commander after investigation established that the statements given by the hotel workers were inaccurate, and told the media: “Even though some of us may be against homosexuality in the country as our religious beliefs infringe on that, the police do not want people to take the law into their own hands and humiliate, molest innocent persons on suspicion that they are homosexuals without proper evidence.”

Again, in his capacity as Programme Coordinator of Ghana Police AIDS Control Programme, Assistant Commissioner of Police, Jones Blantari, in May 2017, delivered a presentation at a workshop convened by Inerela- Ghana titled “Transformative Framework for the LGBT Community in Ghana.” (Humanrightswatch, 2018). Explaining the provision of the Criminal Offences Act that deals with “unnatural carnal knowledge,” Blantari concluded: “...the law as it stands now is clearly inadequate and its application

to prosecute LGBTI [people] in Ghana is just a matter of taking advantage of convenient public outrage on activities that may seem morally reprehensible.” (Humanrightswatch, 2018). Even though this is supposed to be the behavior of all policemen in the delivery of their work, some allow themselves to be influenced by their religious and cultural orientation and act contrary to their work ethics. Thus, some policemen discriminate against homosexuals in Ghana contrary to their work ethics.

In 1998, a specialized unit called the Domestic Violence Victim Support Unit (DOVVSU) within the Ghana police service was established with an extensive obligation to protect individuals from all forms of abuse by providing advice, conducting investigations and arrest and possibly, prosecution where necessary (Humanrightswatch, 2018). The DOVVSU mandate includes "to investigate all female and children related offenses; to handle cases involving domestic violence; to prosecute all such cases, where necessary, and [to perform] any other functions [as] directed by the Inspector General of Police" (Humanrightswatch, 2018). Although the establishment of this unit has contributed to the enhancement of human rights protection, it lacks a lot of equipment. Adebayo (2005) suggested that adequate and appropriate facilities such as communication, transportation, intelligence and investigative tools should be made available to the service by the government to enhance their human rights protection mandate.

2.10 LEGAL FRAMEWORK ON HOMOSEXUALITY IN GHANA

In Ghana different people and sections generally frown upon homosexuality. Following the threat by the then British Prime Minister David Cameron that aid would be cut to

countries which failed to respect gay right in November 2011, Ghana joined the public discussion on homosexuals on the continent. Ghana has no specific law against homosexuality; the arrest and prosecution of homosexuality are justified by the criminal code of 1960 (Humanrightswatch, 2017).

A rigorous examination of Ghana's modern law on homosexuality shows its affinity to the colonial laws put in place by the colonial masters (Humanrightswatch, 2018). Until 6th March 1957, Ghana was a colony of the British and this is the reason why her culture, laws and other ways of life are generally British like. On 13th March 2014, same-sex marriage act was passed by the British parliament and subsequently came to force. Regardless of the fact that the former colonial master i.e. United Kingdom has amended its laws concerning this subject, its former colonies including Ghana have not done so. The subject is treated as a western culture that has the capacity to destroy the moral fabric of African states and this has led to resistance by many African states, where Professor Atta Mills the then president of Ghana said "I, as president, will never initiate or support any attempt to legalise homosexuality in Ghana".

Ghana's 1992 constitution outlaws what is termed "unnatural carnal knowledge" in its Criminal Code, 1960 (Act 29), the amendment to 2003 Section 104 on Unnatural Carnal Knowledge states, "(1) Whoever has unnatural carnal knowledge –(a) of any person of the age of sixteen years or over without his consent shall be guilty of a first degree felony and shall be liable on conviction to imprisonment for a term of not less than five years and not more than twenty-five years; or (b) Of any person of sixteen years or over with his consent is guilty of a misdemeanor; or (c) Of any animal is guilty of a misdemeanor.

(2) Unnatural carnal knowledge is sexual intercourse with a person in an unnatural manner or with an animal” (Humanrightswatch, 2018)

"Unnatural Carnal Knowledge", is a term that is generally understood to cover sexual behavior other than the penetration of a naturally born male's penis into a naturally born female's vagina (Humanrightswatch, 2018). It is also defined by common law to involve penile penetration of anything other than a vagina and also extends to include many sexual practices of heterosexuals. Moreover, the law is also silent on female-to-female sex relationships. "Sexual intercourse with a person in an unnatural manner" is not defined and according to the U.S. Department of State, there has been extensive public debate over whether this legislation could be used to prosecute consenting adults for same-sex activity. In 2010, Ernest Kofi Abochie, a law lecturer at the Kwame Nkrumah University of Science and Technology, indicated that the Criminal Code of Ghana did not plainly deduce what homosexuality means, as the subject is not mentioned. He alleged that it was thus virtually difficult for the practice of homosexuality to be considered unlawful. The law lecturer contended that there had been a judicial error with the subject of “unnatural carnal knowledge” because of the ambiguity of the expression. Jones Blantari, Assistant Commissioner of Police, told Human Rights Watch that "the term unnatural carnal knowledge is vague, does not have any clear meaning in law, creates difficulties inconsistent interpretation and its application is used to target LGBT people." (Humanrightswatch, 2017)

The 1992 constitution of Ghana pledges fundamental human rights to all Ghanaian citizens (Humanrightswatch, 2018). Articles 17 of the Ghanaian constitution guarantees

equality before the law and forbids discrimination on grounds of “ gender, race, color, ethnic origin, religion, creed or social or economic status” (Humanrightswatch, 2018). Sexual orientation and gender identity are not listed as illegal grounds of discrimination. Additionally, Article 17 of the constitution does not include “sex” as a protected ground of non- discrimination (ibid). Nevertheless, the constitution warrants respect for human dignity, protection of personal liberty, and the right to privacy for all including LGBT people (ibid).

In January 2010, a constitutional review committee (CRC) was established to consult with the Ghanaian citizens on the status of the 1992 constitution and suggest for amendment where necessary (ibid). Under the sub-theme " equality and non-discrimination", the commission addressed two issues: "whether or not sexual orientation should be enumerated as one of the grounds for non-discrimination, and the extent to which the Constitution should recognize the rights of lesbians and gay men in Ghana”(Humanrightswatch, 2018). The Commission received a vast number of proposals supporting for the continued omission from the Constitution of sex and sexual orientation as protected grounds against discrimination and to “ensure that it is not interpreted to recognize homosexuality in Ghana” (Humanrightswatch, 2018).

Perceiving that the addition of both “sex” and “gender” in the anti-discrimination clause of the Constitution “would add to the legal arsenal of those who argue that the Constitution abhors discrimination on the grounds of sexual orientation” the Commission found that “gender” served a specific purpose: “to ensure the recognition of the natural/biological state of a woman and a man”(Humanrightswatch, 2018). Numerous

submissions also argued that section 104(1) (b) of the criminal offense act bans same-sex behavior because “natural carnal knowledge means having sex via the vagina and therefore having sex by any other means amounts to unnatural carnal knowledge, even if it is with one’s spouse” (Humanrightswatch, 2018). The commission in its final report recommended that the legality or otherwise of same-sex relationships in Ghana should be left to the supreme court to decide because the court has the ability to consider all the arguments in favor of and against the homosexuality in Ghana (Humanrightswatch, 2018).

In March 2012, three months after the publication of the Commission’s report, former Justice Yaonansu Kpegah, appealed the Supreme Court to pronounce that homosexuality is not a human rights subject and sexual orientation should not be included in the anti-discrimination clause. According to Ghanaian media, Kpegah further requested the Court to “declare that under the country's customary law, which is an integral part of the laws of Ghana, acts of homosexuality are an abomination and, 'indeed, a taboo and are unacceptable as a natural and normal way of life in any decent society”. The court adjourned the matter indefinitely, without providing reasons. No further action was taken on the recommendation of the Commission and the Supreme Court has yet to issue any decision on the matter.

2.10.1 Application of the law

According to the US Department of state, as of 2014, there existed no report that the "unnatural carnal knowledge" legislation had been used to prosecute adults for same-sex activity. Sulley Ali- Gabass a Ghanaian national who had been charged in July 2015 with

"defiling" on several occasions a boy under 16 years of age was sentenced for 25 years imprisonment after being found guilty. However, he was convicted only under section 101 (2) (Defilement of child under 16 Years of Age) of the criminal code of Ghana but was freed of the charge for "unnatural carnal knowledge" because of the fact that that law only comes into operation when the victim is at least 16 years.

Again, the Amasaman District Magistrate Court remanded Benjamin Ashitey, 23 and Gideon Kporzu, 26, on September 2015 into police custody after they were arrested for allegedly having anal sex in a classroom. ASP Sebastian Adigiya, the Amassaman District crime officer told daily guide they had been charged with "unnatural carnal knowledge". An update information of this case revealed that the men are yet to be prosecuted (Ghanaweb, September 21, 2015).

2.11 THE CONTRIBUTION OF MY STUDY

The issue of human rights, which became significant in the world after the world war two accompanied by the introduction of various documents is developing, with discussions among several actors in the international system. Much of the human rights discussion in Africa focuses on first generation rights which include, among other things, the rights to life, freedom of speech, freedom of religion and voting rights. The review indicated that human rights are a highly debatable subject with some scholars considering it to be universal while others perceive it to be relative.

Although a growing discourse, existing literature and scholarly papers till date have rarely focused on the human rights protection of homosexuals in the African continent.

The few existing works of literature have looked at homosexuals' rights from the perspective of peoples perception without taking their human rights into consideration as seen in a country like Ghana where the violation of human rights of homosexuals is on the ascendancy. This revelation confirms the need for a study to fill this gap and add to the body of knowledge.

CHAPTER THREE

3.0 THEORETICAL FRAMEWORK

3.1 INTRODUCTION

A theory is often stated as “a linked set of propositions or ideas that simplify the complex reality so that we can describe events that have happened, explain why they happened, and predict what might happen in the future “ (Kaufman 2013, p.31).

Barnett (2004) asserts that one of the main difficulties that confront society is how to ensure that individuals pursue their happiness in a manner that does not affect others enjoyment of same. This constitutes the crux of libertarians argument as they attempt to ensure social order or orderly coexistence where every member of society lives and peruse his/her happiness satisfactorily. Some of the proponents of the theory include John Locke, Adam Smith, Friedrich Hayek, James Buchanan, Herbert Spencer, Jan Narveson, Robert Nozick and J. S Mill.

This study, therefore, adopts Libertarianism which is defined as "a political philosophy that affirms the rights of individuals to liberty, ... and considers the protection of individual rights the primary role for the state" as a theory to help underpin discussions (Stanford Encyclopedia of Philosophy (SEP), 2014,p.1). The core of the theory is, therefore, the "freedom" of the individual (Lehto, 2015). The freedom as expounded in libertarian thought and used in this study is “negative freedom”. It does not imply the total absence of influence on the individual by others in society or immune from social

construction or actions based on reason but that should not be coercion or without the consent of the individual. As Morimura (2007) asserts, it is natural that since people live in societies, they could be influenced by others by taken heed of their reactions likewise they could also influence others. Such a phenomenon, other than forceful disapproval is considered a legitimate action by libertarians, in a society (Morimura, 2007,p.5).

The theory as adopted in this study is more of Justice seeking than moral approval. Although libertarianism is widely viewed as a theory of “moral permissibility”, it also almost appropriately represents a theory of “justice”. This is justified on the basis that it concerns both the “moral duties that we owe others” and “the morally enforceable duties that we have” (SEP. 2014,p.1). Again, unlike in religious studies where permissibility is based on morality, libertarianism is much of political where justice is the basis for acceptance (Barnnet, 2004). Libertarianism as a doctrine on justice other than on individual’s wellbeing and happiness of the individual presupposes that each person should be free in deciding on the nature of happiness or human good on personal matters like religion, hobbies or interest (Morimura, 2007). Government and society, therefore, have no role in decisions of individuals regarding the kind of life they aspire or are living.

To attain this fit, liberalists have attempted to explain human nature and regulations on human actions that could be deemed appropriate or otherwise. Among some of the contributors to Libertarian project include John Locke and J.S. Mill.

John Stuart Mill arguing in his 1859 classical work "On Liberty" suggested that the individual should be free to engage in any activity that is not injurious to other members of the society nor prevents them from enjoying same. He posited that:

The liberty of the individual must be thus far limited; he must not make himself a nuisance to other people. But if he refrains from molesting others in what concerns them, and merely acts according to his own inclination and judgment in things which concern himself, the same reasons which show that opinion should be free, prove also that he should be allowed, without molestation, to carry his opinions into practice at his own cost. (Mill, 1859, p.53)

Questioning the idea of truth and appropriateness, J.S. Mill quips that individuals possess varied opinions on what is true and so defies the concept of "truth". The imperfection of truthfulness of ideas then requires that people should be free in their exercise of opinions and there should be free scope provided by society to accommodate diverse modes of practical life. Therefore "that in things which do not primarily concern others, individuality should assert itself".

Human happiness, which is a key ingredient of individual and social progress would get stunted if acceptance is based on traditions or customs rather than peoples character (Mill, 1859). Thus, liberals especially the perfectionists argue that people need room to grow and to identify practices that suit their unique nature (Gaus, 2009). The denial of this opportunity will constrain their development and consequently the development of the society.

Libertarians are also of the conviction that individuals and their choices are at the center of ethical life. They contend therefore that social life is a necessary condition for complete development (Gaus, 1983a, Kymlicka, 1991). Thus, the development of a society is dependent on the self- realization or flourishing of the individuals in the society. Any actions(s) that impact negatively on the individual and their choices are detrimental to the social fabric.

Libertarian unlike communitarian places the individual and her choices at the center of ethical life: liberalism is understood as a theory of ethical individualism. Thus, they view development as asocial; while they recognize social life as necessary for complete development (Gaus, 1983a; Kymlicka, 1991), the individual and her self-realization or flourishing is considered as an ultimate value, and individuals are not so deeply embedded in society as to make their choices a reflection of social history or culture (Sher, 1997).

3.2 THE CORE ASSUMPTIONS OF THE THEORY AND HOW THEY UNDERPIN THIS STUDY

Libertarianism just like any other political theory has some basic assumptions that underscore its position in explaining human nature and human behavior. Below is a discussion of these core assumptions as enumerated by Barnett (2004) and how they underpin this study.

First, libertarians recognize “the existence and value of individual persons”. To them, all human beings though are humans but are not and cannot be the same in terms of their

thinking and preferences (Barnett, 2004). This was explained by Nozick (1974,p.309) when he narrated that, "People are different. They differ in temperament, interests, intellectual ability, aspirations, natural bent, spiritual quests, and the kind of life they wish to lead. They diverge in the values they have and have different weightings for the values they share," even including one and his parents. He retorts thereafter that with these variations in human beings, could a single kind of lifestyle, be adopted by all? The definite no response has served as grounds on which libertarians argue that human beings, because of their variations should be free to live their own kind of life and no any other person, government, society or association should attempt to impose on the individual how he/she must live (Morimura, 2007). This assumption by the liberalists suggests therefore that every human being in any society should not be restricted in pursuits or actions by society or government just on the grounds of nonconformity, unethical or immoral.

This assumption implies therefore that the actions of persons with diverse sexual orientations such as homosexuals should be accommodated in society. All individuals should be allowed to live their sexual life manner influenced determined by themselves based on their personal traits. This difference and right of the individual should, therefore, be recognized and adhered to in every society.

A second assumption is that every person has the ability to live and pursue happiness. According to Libertarians, every individual in society is endowed with the sense of reason to decipher what or not is good for him/her. This reason coupled with the fact that people get satisfaction from different sources should present every individual to

determine a way that better suits him/her and grants the happiness so desired. Unlike communitarians who oppose individuality or individual freedom in favor of social construction as the determinants of meaningful values and identity, libertarians as moral individualists do not find any differences between individual and their communities. Again, they refute the claim of a moral conception of happiness connection a virtuous life. Thus, happiness has nothing to do with what is acclaimed as virtuous (Morimura, 2007) but if ones' pursuit of happiness turns to violate the rights of others, then his could be condemned for acting badly but could only be forcibly coerced only by acting unjustly (that is, contrary to natural rights) (Barnnet, 2004,p.18). This by the context of this study suggests, therefore, that persons should be allowed to pursue their happiness without any restrictions from other individuals or the society.

Again, libertarians reject the idea of a better-preferred lifestyle above all others for everyone in a society. Unlike the moral theorists, libertarians propose that there is not a single lifestyle that could be considered as superior and more acceptable for all persons due to their differences. They argue that all members of a society have personal freedom which can be used as they so desire in as much as it is a harmless activity and not only on the ground of virtuousness or valuableness (Barnnet, 2004). Although Libertarians are not necessarily against the value of traditions and communities, they will only remain valuable insofar as they are found by the individuals to be valuable (Morimura, 2007,p.5). On these grounds, traditions or customs are insufficient grounds to coercively prevent persons from practicing their sexual life that they deem appropriate.

In addition to the above, libertarians recognize that people live in societies with others and that the actions of one may have both positive and negative effects on others. Libertarians, unlike religious theorists, do not seek to establish a universal and comprehensive answer to how persons ought to behave but when the use of force would be deemed justified. While, they are not oblivious of more ambitious morality, they argue that immorality alone cannot be an adequate justification for the use of force against one's will (Barnnet, 2004,p.19). This is in contrast with religious theorists' assumption that "force is justified whenever human conduct is found to be bad or immoral" (Barnnet, 2004,p.19). Libertarians conclude therefore that members of society can live in a close-knit community without privacy or identifying themselves with any group so long as their actions do not harm others (Morimura, 2007,p.4) and their actions can influence others likewise others influencing them but without coercion (Rosenberg, 2009). This assumption suggests therefore that the treatment of homosexuals in society should not be based on morality but on whether they are justified on the "harm principle" and the attempt to influence their abandonment of such practices should not be coercive in nature.

Finally, libertarians maintain that it is possible to find conditions or ground rules that would provide all or nearly all persons living in society the opportunity to pursue happiness without depriving others of the same opportunity (Barnett, 2004). This assumption is the central advocacy opinion of John Stuart Mill in his defense of liberalism (Rosenberg, 2009). In his *laissez-faire* approach to thought, discussion, and individuality Mills assumes a stance of cordial existence. According to him, the "tyranny

of the majority" has often sought to oppress the weaker and politically less involved groups. Thus, certain groups of persons may not fit the normal mode of cultural or religious practices of a regime and as a result, could be vilified. Even where such groups are not subjected to extermination, their desire and opinions that differ from the majorities are often stifled. This attempt seeks to discourage all new perspectives unknown and alien to the accepted opinions of the majority. It is on this basis that Mill contends that

“Protection...against the tyranny of the magistrate is not enough; there needs protection also against the tyranny of prevailing opinion and feeling, against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them; to better the development and, if possible, prevent the formation of any individuality not in harmony with its ways, and compel all characters to fashion themselves upon the model of its own.” (Mill 1978, pp. 4-5).

According to Mill, intervention in the person stands justified if it poses a serious threat to others. Because most people live according to their innocuous opinions and preferences, the only justification that will warrant a prevention of one from advancing his interest is when such action prevents others from enjoying or advancing their own good. He states that *"the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others...[h]is own good, either physical or moral, is not a sufficient warrant"* (p. 9). This "harm principle" principle according to libertarian should stand as the guiding principle for members of any civilized society.

Applying this assumption to the study, it does imply that homosexuals can only be prevented from engaging in such acts if substantial evidence is produced in an affirmation that their actions serve as a threat to others enjoying same. Whether or not the generally thinks it is in conformity with the societal norm or not has no any basis of merit. The state, therefore, has the obligation to employ this principle of harm as it protects each citizen to go about his or her normal innocuous activities.

Summing the assumptions of the theory, SEP., (2014,p.1) quips it establishes the liberty of individuals to pursue lifestyles that best suits them with a protection against any interference from other persons or government. Thus, the idea of individuals being responsible for their own life to live is very central.

Libertarianism just as any other moral and political theories have not gone uncontested. One of the criticisms against the theory is that it offers too much protection from interference and not enough attention to the immediate consequences of their principles (e.g., whether people's basic needs are met, their lives go better, or equality is promoted) SEP. (2014,p.1).

Again, Conservative Jonah Goldberg argued that the excessive personal freedom on issues such as sex norms and drug war championed by libertarians encourages dangerous and irresponsible behaviors (Goldberg, 2001). Thus, they consider the same issues that liberalist term as “victimless crimes” and so should not warrant government intervention as threats to society. But Goldberg’s usage of children to demonstrate how debilitating it will be to grant absolute freedom is problematic. To him, good character is only fostered

by limiting freedoms and channeling energies into more productive sectors. This supposes therefore that “adults” who can decipher what is good for them should be given absolute freedom.

This critique, therefore, has no any major consequential effect on this study's adoption of liberalism as the issue under consideration focuses on how justified such action would be.

CHAPTER FOUR

4.0 METHODOLOGY

4.1 INTRODUCTION

This chapter presents and discusses the procedures for the conduct of the investigation in this study. Research methodology defines the strength of a research work. It is that aspects of a research that offers insight into the decisions that researchers make on the cases being studied, how the information for understanding the phenomenon are gathered and the modules and strategies employed in analyzing the data gathered. Kothari (2004,p.4) quips that the process presents the systematic way of addressing a research problem and provides an understanding of how "research is done scientifically". Singh (2006,p.79) also avers that it refers to that aspect of research work that provides "the systematic procedures by which the researcher starts from the initial identification of the problem to its final conclusions". It therefore presents and serves as the roadmap that guides the conduct of the researcher throughout a research endeavor.

4.2 PHILOSOPHICAL WORLDVIEW

Philosophical worldviews in research are one of the often neglected but important aspects of empirical research. This is because every research is grounded on some underlying philosophical assumptions about what comprises 'valid' research and which research method(s) is/are suitable for the advancement of knowledge in a study. Despite the different names including worldview, paradigm, epistemologies or ontologies that researchers turn to give it, the concept basically refers to the "basic beliefs that guide

action” (Guba, 1990,p.17). These belief according to Creswell (2009), impacts on the methods that researchers settle on in the conduct of their studies. He suggests further that there are four paradigms; postpositivism, constructivism, advocacy/participatory and pragmatism. The postpositivism or scientific inquiry holds that there is some absolute truth of knowledge that needs to be established and so often adopt quantitative methods (Phillips & Burbules, 2000). The constructivists contrast this view by arguing that the human actions affect social issues and because human beings are dynamic, there cannot be absolute truth.

The social constructivism is employed in this study. As indicated earlier the proponents of this paradigm assume that human beings always seek to understand a phenomenon that is happening around them. The varied nature of these issues results in individuals also employ complexities of views and often results in subjective conclusions. This worldview favors the adoption of the open-ended questions that give the researcher the laxity to enquire and understand what people do and/or say in their life.

The more open-ended the questioning the better, as the researcher listens carefully to what people say or do in their life settings. Often these subjective meanings are negotiated socially and historically. Constructivist, believe that knowledge is subjective and influenced by the interactions that the individual has with his/her environment. Thus, the historical and cultural beliefs and settings of an individual influence how he views the objective views. Researchers, therefore, should consider that true knowledge is developed by focusing on specific contexts, historical and cultural settings and the personal interpretation of issues by individuals.

In his discussions on constructivism, Crotty (1998) identified three main assumptions:

1. Human beings construct meanings and interpretation of their world. This influences the usage of open-ended questions to help the participants exercise their views. Human beings construct meanings as they engage with the world they are interpreting.

2. The sense that humans make of the world is based on “their historical and social perspectives”. Thus, culture helps define the meaning that individuals give to the world in which they live. This is better attained by qualitative research approach as the context and setting allows the individual to visit or confront people and gather information necessary for understanding the phenomenon. Their personal experience and background influence the shaping and interpretation of what the process and findings.

3. Basically, meanings of a phenomenon are always social constructs "arising in and out of interaction with a human community". Thus, the understanding of people about the world is generated through inductive reasoning. Thus, people read and make meanings out of the situations being experienced or happening. This process, therefore, favors the adoption of the qualitative research approach which allows the researcher or inquirer generate inductive meaning from the data gathered from the field.

This paradigm is apt for a study of this sort that seeks to delve into an issue that has cultural connotations and individuals understanding of what is best for him/her. The issues concerning the conflicting intersect and a deeper understanding of why they happen and how they can be understood through the constructivist paradigm.

4.3 RESEARCH APPROACH

A research approach according to Creswell (2014,p.30) involves the “plans and the procedures for research that span the steps from broad assumptions to detailed methods of data collection, analysis, and interpretation”. It involves the adoption of a plan that will effectively aid the understanding of a topic under study. This determination is made based on several considerations some of which includes the nature of the problem under consideration, philosophical assumptions and the specific desired research methods desired for the study (Bryman & Burgess, 1999, p. 45 and Creswell, 2014). Yin (1994) adds that the nature of research questions, how actual behavioral elements are controlled and whether the focus is on historical or contemporary issues are considerations in selecting a research approach. Generally, there are three research approaches often employed by researchers in the quest to establish an understanding of a phenomenon. These are the qualitative approach, quantitative approach and the mixture of the two (mixed method approach) (Aramatunga, Baldry, Sarshar & Newton, 2002 Creswell, 2014). Whilst the qualitative approach relies on the use of words and observations to explain a phenomenon and describe people's natural situations, the quantitative attempts to place emphasis on numbers or figures that represent opinions or ideas and the mixed method combines both to build on the strengths and mitigates their weaknesses (Aramatunga et al, 2002).

The main distinction between the qualitative and quantitative approaches is how they conceive the nature of knowledge; the understanding of the world and ultimate purposes of the research. The terms also explain the research methods i.e. how data is collected and

analyzed and the presentation and generalizations that can be drawn from the data. Although each of these approaches has their strengths and weaknesses, McGrath (1982) asserts none provides an ideal solution and so demands that researchers make certain compromises when adopting them. But it is worth noting, contrary to McGrath view, however, that the impact of the weaknesses of the study of certain topics would be minimal. This study, therefore, favors the adoption of the qualitative approach.

Strauss and Corbin (1998) aver that qualitative research implies a "research that produces findings not arrived at by statistical procedures or other means of quantification." It aims at discovering the underlying motives of human behaviour. To Yin, (2011, p. 8) the qualitative approach attempts to providing "the meaning of people's lives under real-world conditions, and has the ability to represent the views and perspectives of participants in a study". Thus, it seeks to establish the real-life experience of people and what precipitate it from the point of view of the participants. Creswell (2014) concurs with this when he quipped that the approach focuses on "exploring and understanding the meaning individuals or groups ascribe to a social or human problem". Denzin and Lincoln (2010) conclude therefore that the approach seeks to "understand the meaning of human action by describing the inherent or essential characteristics of social objects or human experience (cited in Lindlof and Taylor, 2010, p. 23). Thus, it focuses on explaining and exploring those inherent issues that precipitate the manifestation of events and phenomenon. Creswell (2009,p.5) avers that this often occasions its adoption of inductive strategies as it focuses on "individual meanings and complexities of situations".

Researchers who favor the approach argue that it is the best approach to adopt when very little is known about the problem or issue to be discussed or explored and the dimensions characteristics are clouded in uncertainties. (Domegan & Fleming, 2007 p.24). This makes this approach ideal for this study as issues under considerations as it is characterized by conflicting views. Whiles the issues of homosexuality at one breath are considered as a cultural one, it also has human rights connotations.

According to (Van Mane 1977 cited in Aramatunga, et al, 2002,p.22) the approach offers a better understanding of the meaning that individuals appropriate to issues and processes that guide their "lives, perceptions, assumptions, prejudgments and presumptions". This makes the approach much appropriate for this study of this nature as it seeks to establish understanding on the manifestation of the homosexual lifestyle and a call for the guaranteeing their rights. The approach is therefore appropriate to help establish this manifestation of this phenomenon and ways by which it can be mitigated.

Another argument in favor of the approach is that it helps provide a better and deeper meaning and understanding of social problems (Tewksbury, 2009). This argument premises on the basis that the approaches primarily offers to provide a complete appreciation of how people "understand, experience and operate within milieus that are dynamic and social in their foundation and structure" (Tewksbury, 2009,p.3). The qualitative approach, therefore, helps to elucidate problems with insufficient or hidden data than when a quantitative approach is adopted. It offers an opportunity for data that would have gone hidden if statistical coding that is determined by the researcher were used. It is obvious that because of the safety of homosexuals they are not able to make

open their claims and because of the Ghanaian society's abhorrence towards homosexuality, the authority is not able to come clear on their rights. The adoptions of this approach would, therefore, help provide an in-depth perspective of all participants so as to establish where there are a disconnection and possible mitigation measures.

To add to the above is the ability of the approach to help offer an understanding of how the impact of individual's behaviors, beliefs, opinions, emotions, and relationships influences their judgments. This provides a basis to apply textual description in a study (Mack et al, 2005). This makes the approach ideal for a study of this kind in a Ghanaian community where there is widespread condemnation of an act some view as a right.

Although the approach is effective in gaining a deeper understanding on complex issues in social research, Mack, et al, (2005) argue that the often limited sample sizes usually renders its results inappropriate for generalization. This school of thought believes one importance of research is to help offer a generalization of the issue been looked at. This possibility they argue is impaired by the fact that qualitative research often adopts small samples that are not representative enough of the general view of the respondents. Whilst this argument appears cogent, the focus of some studies is to establish a deeper understanding rather than an opportunity for generalized findings. Thus, this study seeks to establish a deeper understanding of the nature of homosexual rights, how they are safeguarded in Ghana and the way forward. Again, moreoften than not, an entire population cannot be adopted for a study of any of the approaches. Adopting appropriate sampling techniques and the justifications of such approach can ensure the validity of results.

Another argument often levelled against the approach is that it is cumbersome, rigorous as well as time-consuming and expensive to employ. Whilst this is obvious especially when the study is for academic fulfilment and the student has limited resources; time and finance, propriety cannot be compromised.

The qualitative approach is also the ideal for considering an issue with a constructivist worldview where the meaning of a phenomenon is sought from participants (Creswell, 2014). This enables an understanding of the cultural and individual understanding and influences on the issue under consideration. This suggests that for a study on homosexuals' rights and protections, that has cultural underpinnings and diverse individual opinions, proper understanding can only be established when participants can share their views and experiences. These reasons outlined above serves as the justification for preferring the qualitative approach in this study.

4.4 RESEARCH DESIGN

Research design constitutes the entire processes spanning the gathering of data to analyzing data in a study. Research design can be understood as the rational or strategy of a research that gives direction on how the study is to be conducted (Creswell, 2014). It gives an account of how all the key parts of the research study coordinates to address the research questions with a focus on the selection of “subjects, research sites, and data collection procedures” (McMillan and Schumacher, (2001).

According to Mouton (1996, p. 175), it helps to "plan, structure and execute" the research to maximize the "validity of the findings". Yin (2003) posits that "colloquially a research

design is an action plan for getting from here to there, where 'here' may be defined as the initial set of questions to be answered and 'there' is some set of (conclusions) answers" (p. 19).

According to Creswell, (2014), there are different research designs often employed under the three main research approaches (qualitative, quantitative and mixed method). De Vaus and de Vaus, (2001) suggest that generally research designs can be grouped into four categories; the experimental, longitudinal, cross-sectional and case study. The experimental is explained to consider intervention and control whiles the longitudinal deals with the study of various units over time. The cross-sectional and case study designs focus on the differences that exist between different independent variables and an exhaustive contextual analysis of a case or series of cases respectively. Whiles all these designs present their distinct strengths in helping to understand and answer research problems, the case study design is preferred in this study as it is the most appropriate for its discussions and for obtaining appropriate results.

A case study in research design refers to the type of design "in which the researcher explores in depth a program, an event, an activity, a process, or one or more individuals. The case(s) are bounded by time and activity..." (Creswell, 2003,p.15). Cohen and Manion (1995,p. 106) explain it as that strategy by which the researcher studies the characteristics of an individual unit. Its aim is to offer a deeper examination of the various issues that occur within a unit (Biggam, 2008,p. 233). This implies that in case studies, opportunities for close observation of phenomenon are provided. To this end, Yin, (2003) asserts that when the question of "when" and "how" becomes central to an

inquiry, then the case study design becomes necessary. This is his view becomes more obvious when the behavior of the object of study cannot be manipulated and contextual conditions need to be covered to understand a phenomenon. By implication, the adoption of the case study will allow for a deeper probing into reasons why the human rights of homosexuals in Ghana have been under threat and how such an issue could be addressed.

4.4.1 The study population

According to Ritchie and Lewis, (2003), the first stage in designing a sample is the identification of what exactly is going to be studied. This involves the parent stock (population) from which a researcher is to study. Harrison, (2001,p.19) defines a research population as "a group, which shares characteristics to which we apply an explanation". In this context, a research population could be composed of students, artisans, nursing mothers or drug dealers. Kothari (2004,p. 14) posits further that the term denotes "all the items under consideration in any field of inquiry". Thus, a research population denotes the cluster of items within the milieu of a specific inquiry. Such items possess some common features that make them distinctive. Singh, (2006,p.82) therefore concludes that the term refers to "the entire mass of observations, which is the parent group from which a sample is to be formed". Thus, a population represents the cluster characterized by distinctive features and from which a sample is selected for a study.

In deciding a population Ritchie and Lewis, (2003,p.88) suggest that the perspectives are noted when composing a study population involves, "first specifying the characteristics of the 'collective' units required and then specifying those of the individual(s) required within them". The multi-stage design is employed in the designation of the population.

The population of this study is the law enforcement and protection agencies, and homosexuals in Ghana. The common feature among this group is that the rights of all Ghanaians including homosexuals are to be promoted and safeguarded by the law enforcement agencies. The components of the population are therefore the institutions of state that are responsible for the protection of human rights. These include the Ghana police service and the Commission on Human Rights And Administrative Justice.

4.4.2 Research sample

A research sample refers to a subset of a research population. (Lunsford & Lunsford 1995,p.105) defines a sample as "a small subset of the population that has been chosen to be studied". Singh (2006) suggests that research is guided by inductive thinking and as such researchers often base their observations on specificity (the sample) to make a statement on the generality (the population). Thus, the impossibility of considering an entire population due to various reasons in most research cases create the need for a portion of the generality to be selected as a representation. This is done through the process of sampling, "the method, criteria, and procedures used to select subjects for study" (Lunsford & Lunsford, 1995,p.106).

The sampling process provides an opportunity for researchers to make the research economical whilst the validity and accuracy of its findings are not compromised (Singh, 2006).

Deductively, a sample is that fractional part of respondents chosen to contribute to a study. Some of the elements worth considering when designing a procedure to sample

items for study include the type of universe, sampling unit, sampling size, parameters of interest, and budget Kothari (2004). The most basic characteristics of a valid sample according to Kothari, (2004,p.56) true representativeness, with a minimum margin of error, are economically feasible and control systematic biases. These indexes are, however, contingent on the type of sampling technique employed by the researcher.

The sample for this study is composed of two groups of people. The first is the officers of the lawmaking and enforcement institutions and agencies in Ghana. These institutions include the police, law courts, legislature, and ombudsman. The choice of this group is explained by the fact that they are the institutions responsible for the promulgating of laws as well as interpreting them in Ghana. The legality or criminality of the citizen's sexual life can, therefore, be dependent on their actions and inactions. They are the crop of people who also understand and can interpret the legal basis of the right claims by homosexuals, an element central for addressing the research questions.

The homosexuals are considered because they are at the center of the issue being studied. They understand and have experienced societal castigations and maltreatment and as such are better positioned to give an accurate account of the nature and extent of homosexuals' ordeals. Again, individuals who are involved in the act can only best tell justification of their action. Their convictions and considerations will, therefore, be central to attaining the research objective.

4.4.3 Sample size

The size of a sample constitutes an important element in empirical research. This aspect of a research attracts the attention of readers and audience because it is that which provides authentication of the true representativeness or otherwise of the research results. Thus, the results of a study can only be considered convincing if the sample taken from the population is capable of revealing a true nature of the entire population.

The most common challenge in the composition of research samples, however, is the decision on "what" should be considered as the true and valid representation with large populations. This is compounded by the desire of audience and readers for huge and convincing sizes against researcher's ability to provide such due to time and financial constraints. May, (2011) dispels this concern by positing that large populations necessarily does not require large sample size but

In considering a sample size, the researcher must consider some general propositions if it is to be accepted. De Vaus, (2002,p.80) contends that the core of these proposals is "the degree of accuracy [so] required for the sample" and "the extent to which there is variation in the population with regards to the key characteristics of the study". Thus, the researcher must ensure that the size so proposed or adopted is capable of generating a result that would fairly satisfy or represent the true nature of the population.

The sample size adopted for this study is 14. The composition of this size includes 10 homosexuals; there was an expert interview of staff of CHRAJ, a private legal

practitioner, and human right activist, and police officers to meet the objective of how their rights would better be protected.

4.4.4 Sampling technique

Sampling techniques are the approaches that researchers adopt in their quest to select a study sample. The sample techniques employed by researchers can generally be grouped under either *probability* or *non-probability* sampling methods. The differences between the two are the nature of recruitment strategies used.

The probability method refers to the method that presents a fair chance for all respondents to be selected and as such makes it possible to calculate the odds. The method provides the likelihood for each element to be included in the sample (Field, Pruchno, Bewley Lemay & Levinsky, 2006). Thus, each member of the population has the same chance of being selected as a sample (Seltiz, Wrightsman, & Cook, 1976 cited in Field et al, 2006:567). It supports a “representative sampling plans” because random selection is often employed in the process of constituting the sample. This form of selection prevents biases in the selection process and enables the calculation of the probability for selecting each element in the population (Pedhazur & Schmelkin, 1991). Examples of this technique include Simple Random Sampling (SRS), Stratified Sampling, Cluster Sampling, Systematic Sampling and Multistage Sampling (that is, a combination of the above methods in stages).

The non-probability, on the other hand, refers to the technique influenced by the researcher's discretion and determined by a designed or pre-conceived index. Field, Pruchno, Bewley Lemay & Levinsky, 2006,p.567) quips that it refers to “both samples of convenience (e.g. accessible, volunteer) as well as to more purposive methods of selection (e.g. Judgement sampling, quota sampling)”. The method thus allows the researcher to determine which respondent should be included and so makes the measurement of odds impossible. Examples of this technique include convenience, haphazard, purposive, snowballing, and heterogeneity sampling. This study adopts the purposive and snowballing sampling technique to achieve its aim

Purposive sampling is a non-probability technique that features a deliberate or purposive and deliberate attempt by the researcher in the selection of items for a sample. In this type, the researcher remains the supreme determiner of who is chosen as a respondent (Kothari, 2004,p. 59) and is often favored in qualitative studies. Although it has been

criticised as being vulnerable to researcher bias, it, however, allows the researcher to determine who is qualified considering the issue under discussion to provide appropriate answers to the questions. Any technique other than this may result in selecting respondents who may not be able to respond to the questions appropriately. Purposive selection is therefore appropriate as it helped the researcher select people who are abreast with human rights issues in Ghana and as such can respond appropriately to the research questions. The justification of purposive sampling is therefore because of the technical nature of the issues discussed. The central concern of the study, borders on the rights of a

minority group that can only be responded to appropriately by people with legal prowess or expertise in human rights.

The snowballing was also used in gathering the homosexuals for the study. Snowballing where a researcher is referred to another person who is capable of also providing valuable contributions of the issues been looked at by a respondent. Although critics say the technique might lead to the respondent talking to people of the same kind, that is rather a strength than a weakness in this study. This is because of the criminality and the society abhorrence of homosexual practices shy individuals involved from public view. This makes them unknown to the public but well known to their colleagues who are also engaged in the practice. Snowballing, therefore, provided an opportunity for the researcher to be referred to other potential respondents.

4.4.5 Sources of data

A source of data primarily refers to places where data for the study were obtained. The study used both primary and secondary data. Primary data was sourced from interviews with the respondents. The interview guide featured both open-ended and close-ended questions. The open-ended questions provided an opportunity for the respondents. It helped incorporate new perspectives that initially had not been considered by the researcher. The close-ended, on the other hand, helped keep the interviewee within the spectrum of the study and aided and ensure easy verification and attestation of views/claims. The researcher guided by supervisors designed the interview guides and tested its face and content validity through pilot tests. The weaknesses that were revealed

by the pilot tests were then subsequently rectified before adopting and administering it for the study.

The secondary data for the study was also sourced from journals and reports on human rights and cultural values. These documents were accessed from Internet websites, journal article Portals (Google Scholar, Science Direct, Business Times), the University of Ghana library (Balme library), and the University of Ghana Department of Political Science Library.

4.4.6 Data gathering instruments

The study made use of interview guides as instruments for data gathering. An in-depth interview is an instrument for gathering primary data for qualitative studies. According to Harrison (2001) interview is "an encounter between a researcher and a respondent, where the respondent's answers provide the raw data". Interviews are encounters between a researcher (interviewer) and his respondents (interviewees) where with the directions of an interview guide the researcher solicits for information on an issue. It involves an oral-verbal stimulus and oral-verbal response (Kothari, 2004,P. 97). This instrument remains appropriate for gathering data on the qualitative aspect of the study.

Some arguments against this instrument are that it is both time consuming, rigorous and expensive to employ. Despite this nature, however, its ability to help provide an in-depth understanding of the salient issues in a study is enormous. This is more so because of the provisions it grants for specificity and clarity to be advanced by both respondents and

interviewees during an engagement. A designed open-ended interview guide was used as an interview guide.

The interview was guided by both open-ended and semi-structured questions. This preference was chosen because it helped the researcher delve much into the issues as the respondents were given many opportunities to say whatever they deemed necessary to be heard. The Semi-structured questions have also helped with capturing the perceptions, emotions, and expectations of the interviewees.

4.4.7 Data gathering procedures

The researcher before the data collection, sent letters to the various institutions and firms to seek for permission and considerations for the study. The Attorney Generals, department, the Police headquarters, human rights advocacy groups, and private legal practice and/or their firms were among the institutions served. Emails and phone calls were also placed to some identified homosexuals for their permission and contribution to the study.

After permission was granted, appointments were scheduled with the participants for an interview session. Places where the respondents would not feel intimidated and insecure were agreed on for the conduct of the interview. During the interview session, the researcher remained well composed and the relevant questions to solicit adequate responses to the questions to the study.

4.4.8 Method of data analysis

The data gathered from both primary and secondary sources were analyzed using qualitative data analysis approaches. They were subjected to critical contextual analysis based on both the major and minor themes developed.

The recordings from the interviews were transcribed. The transcribed data were presented according to the thematic areas that were generated. Subsequently, a qualitative content analysis was employed, and the major and minor themes developed and discussed. The qualitative content analysis was used because it is the ideal approach for describing systematically, the meaning of qualitative materials (Schreier, 2012). Through its adoption, the various themes were succinctly constructed and analyzed. Conclusions were thereafter drawn in the context the objectives and findings of the study.

4.5 RELIABILITY AND VALIDITY

One issue in research that has witnessed lots of controversy in qualitative research is the place of reliability and validity (Golafshani, 2003). According to Joppe, (2000), reliability refers to the extent to which results are consistent over time and an accurate representation of the total population under study. Generally, validity is an indication of how sound your research is. Stenbacka, (2001) suggests that reliability can and is only possible in quantitative research, which tries to explain other than quantitative whose main objective is to provide a deeper understanding of a phenomenon. In his rebuttal to this assertion, Patton, (2002) notes that reliability and validity is a central concern for researchers adopting any of the research methods. This according to Lincoln and Guba (1985,p.290) remains the only means by which the researcher can persuade his/her

audience to pay attention to the findings. Thus, it will be impossible for readers or audience of a research work to accept its findings if it does not establish a convincing reliability and validity character.

On this basis, the researcher took all the necessary steps to help ensure maximum reliability and validity of this study. Some of these steps include the fact that the questions for the study were structured to focus on the key areas and all investigations and analyses conducted within the designed theoretical frame and major themes and questions. The reliability and validity were never compromised as appropriate steps were taken to ensure its maximum realization.

4.6 ETHICAL ISSUES

The researcher never compromised with ethical principles guiding research in Social science. This was duly observed as introductory letters from the Head of Department, Political Science, University of Ghana, were sent to the appropriate institutions and firms and individuals ahead of time. All other official arrangements with the respondents were later made through phone calls and/or email messages. Timeliness was also a key consideration as the researcher arrived at the premises of the various institutions or places designated for the interview ahead of time. The researcher also maintained self-controlled posture and never got intimidated throughout the interview hours.

The interviewees were well informed of the fact that the study was mainly for academic purpose and came not with any material benefits for their participation. They were also alerted of the fact that they maintained the right to stop the interview process if they

deemed it necessary. The confidentiality of their contribution was also spelled out to them.

After the interviews were transcribed, the respondents were given an opportunity to review the transcripts. This was to ensure the data was a true reflection of their original position. Both emails and phone calls were later placed to thank the respondents for their participation and contributions to the study.

4.7 LIMITATIONS OF THE RESEARCH

The researcher encountered several challenges before, during, and after the conduct of interviews. Among the challenges encountered concerned the identification of homosexuals to interview, a situation caused by their fear of safety. Again, getting some of the respondent to honor the interview request also became a challenge as they often complained of lack of time due to their busy schedules. This subsequently led to the cancelation of some appointments initially made. Another major issue that challenged the study was insufficient funds and time on the part of the researcher. Thus, the researcher was constrained by time and finance which if were available could have ensured a broader sample size.

CHAPTER FIVE

DATA PRESENTATION, ANALYSIS, AND DISCUSSION

5.1 INTRODUCTION

This Chapter presents the data gathered from the field notes. It presents the data as gathered from the interviews which set the stage for analyses geared towards addressing the research questions and obtaining the overall research objective of the study.

The chapter set the stage for the discussion by providing a synopsis of the various issues regarding human rights and homosexuality. The data gathered from the in-depth interviews are then discussed within the context of general human rights provisions and the cultural setting of Ghana.

The discussions are done under themes and sub-themes that emerged after transcription and reading of the interviews. The themes under which the issues are discussed below;

5.2 HUMAN RIGHTS PROTECTION IN GHANA

The 1992 constitution of Ghana is replete with provisions that seek to ensure maximum guarantee and protection of human rights. These provisions, largely in chapter five, stipulate the various fundamental human rights due to all citizens. It provides in article 12(2) for instance that "Every person in Ghana, whatever his race, place of origin, political opinion, colour, religion, creed or gender shall be entitled to the fundamental human rights and freedoms of the individual contained in this Chapter but subject to respect for the rights and freedoms of others and for the public interest." (Ghana 1992

Cont. chapter). These rights are expected to be respected and upheld by the institutions of government.

Some of the major provisions that guarantee the liberties of individuals' acts include articles 14, 15, 21 and 24. The article 14 stipulates the personal liberty due to every citizen. It states that "Every person shall be entitled to his personal liberty and no person shall be deprived of his personal liberty except in ... cases and in accordance with a procedure permitted by law" (Ghana 1992 Const. article 14(1)). In furtherance of its bid to ensuring the guarantees for liberties, the constitution provides again in Article 21 and 26, the acceptable cultural and religious practices by citizens. The article 26, for instance, guarantees citizens the right to practice any religion and cultural practices without any hindrance from either the state or individuals so far as such practices do not dehumanize and are not injurious. Summing these provisions, Article 15 enjoins the state, individuals or groups to desist from subjecting someone to "torture or other cruel, inhuman or degrading treatment or punishment or any other condition that detracts or is likely to detract from his dignity and worth as a human being." (Ghana 1992, Article 15 (2a,b)). Some general fundamental human rights such as freedom of association, assembly, and movement have also been granted to individuals in Article 21.

These provisions are in sync with the various provisions in international human rights documents such as the UDHR and the APHPR. Although these provisions seek to guarantee liberty on an equal measure as stipulated in Article 14, some legal frames appear with regards to the practices of some minority groups appears to contradict the vision of the framers. For instance, although article 21 and 26 guarantee citizens the

rights to practice cultures that are not injurious or dehumanizing, LGBT practices is often not considered ideal. Even though, it is not clearly outlawed in any document, it is often roped under the "unnatural carnal knowledge" provision in the criminal code. This has therefore rendered the practices of LGBTs in Ghana of being neither legal nor illegal and so, to a large extent, is discriminatory against the group. It further exposes them to lots of danger in cultural settings that find the practice abhorrent.

5.3 HUMAN RIGHTS PROTECTION INSTITUTIONS IN GHANA

The guarantee of human rights does not end at legal provisions but also their implementation (promoting and protection). To ensure this, the constitution has in Article 12(1) tasked the state's machinery including the arms of governments and other state institutions to uphold them. This role has consequently been given out to the various state human rights protection institutions such as the Police, CHRAJ and the formal law courts.

5.3.1 The Commission on Human Rights and Administrative Justice (CHRAJ)

Established in 1992, CHRAJ is the fulfillment of the constitutional provision, article 216 of the 1992 constitution of Ghana. Its mandate as stated in the constitution and the establishing legislation (CHRAJ, 1993 Act 456), include the protection and promotion of human right. The Commission on Human Rights and Administrative Justice Act, (Act456), 1993. A further elaboration on its mandate provided for in Article 218 of the 1992 Constitution include the responsibility to;

- “Investigate complaints of violations of human rights and freedoms, injustice...and unfair treatment of any person by a public officer in the exercise of his official duties.”
- “Investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under this Constitution.”
- “Educate the public as to human rights and freedoms by such means as the Commissioner may decide, including publications, lectures, and symposia.”

CHRAJ, therefore, poses as a legal body to carry out investigations and education of citizens on issues of human rights violation and protection.

Whilst this mandate is central to the enhancement of human rights attainment in Ghana, it is also instructive to note that the complaint-driven nature of its powers limits its effectiveness. Although CHRAJ has the mandate to investigate the violation of human rights and freedoms, this mandate is deficient as CHRAJ is a complaint-driven institution. Thus, in the absence of a complaint from an identifiable person or organization, the commission cannot investigate any claim. This was affirmed in 2007 by the ruling of Justice Baffoe Bonnie, an Appeal Court Judge as CHRAJ intended to investigate Dr. Anane a former Roads and Transport minister on grounds of media reportage (Ghanaweb, 2007). This loophole makes the commission less likely to address the plights of minority groups such as homosexuals in Ghana who face a lot of stigmas when known. Thus, although homosexuals are often abused in Ghana (Humanrightswatch, 2018), they

often will not owe up to report their ordeal. An amendment of the powers of the Commission in this regard is therefore required.

Again, the mandate of the Commission to educate the public on issues of human rights, conflicts with that of the National Commission for Civic Education (NCCE). Thus, although the NCCE has that broader mandate to educate citizens on all issues in the state, to grant two institutions same role without any roadmaps will either lead to duplication or negligence. Notwithstanding, the existence of the two institutions, evidence abound that most Ghanaians are not abreast with their political rights which are mostly trumpeted by politicians than the other rights. This unfortunate turn of events according to Asibuo (2000) is occasioned by the commission's lack of financial autonomy. He argues that the budgetary constraints have limited the commissions from establishing district offices, a situation which further constraints access. These he explains underscore the limited understanding on human rights and high homophobic attacks in Ghanaian communities.

Furthermore, CHRAJ's lack of prosecutorial powers has further dwindled the trust and zeal of people such as homosexuals who have been abused to run to. As affirmed by Asibuo (2000), the commission lacks the mandate to enforce its decision without recourse to the traditional judicial process. Thus, as provided in the CHRAJ Act (Sec.18), the commission upon arriving at a conclusion on a matter must refer same with its emendations to the appropriate authority or department concerned and copy the complainant. It may then proceed to seek redress in any court if the recommendations are not enforced after three months (Asibuo, 2000). This gap of prosecution could present a huge mark of deficiency in its quest to protect the rights of minority groups like

homosexuals whose practices are considered highly repugnant. This is affirmed in the 2018 Human Right Watch report, as most homosexuals confirmed their awareness of the existence and mandate of CHRAJ but were reluctant to it for any legal support.

One of the strategies that have been adopted by the Commission to address this menace is their "Online Complaint System for claims of Discrimination employed in 2013 (CHRAJ website). This system is programmed to receive complaints from people who have been abused but want to stay anonymous and still seek justice. This system according to CHRAJ receives and process the information for action and a generated code is given to the complainant who can through that follow the state of the case. This they are very optimistic will reduce victims' decision to stay in silence.

Although this strategy is commendable owing to its vision, the challenge, however, is that it requires one to be technologically inclined to use. Owing to the records to illiteracy and low level of ICT knowledge in Ghana, it will be near impossible to fully realize its vision. Whiles this stays on there is the need to design a more robust, inclusive and friendly to use systems for complaints.

5.3.2 The Ghana Police Service

The Ghana police service according to Chapter 15 of the 1992 constitution is the body responsible for ensuring peace and internal stability. Thus, as provided for in article 200 (3) the Service is equipped to "perform its traditional role of maintaining law and order".

Although the Ghana Police service is a human rights protection institution, some of its men turn to violate the rights of citizens especially homosexuals. They often blackmail

and extort monies from LGBTs when allegations are leveled against them. Confirming this the Human Rights Watch Reports in its 2018 edition noted that, several of their respondents have indicted police personnel of extorting monies from them (Humanrightswatch, 2018). In one of the interviews, a 22-year-old homosexual from Tamale told Human Rights Watch:

"My friends and I were constantly being harassed and threatened by youth boys. About 6 months ago, sometime in July 2016, a group of about 10 guys–youth vigilante group–came to my house. They were shouting, threatening to beat us up and kill us for being gay. They said gays are not welcomed in Tamale. The next day we went to report them to Tamale Central Police Station. The police questioned them and charged them with threats to life. They each had to pay 400 Cedis (approximately US\$90). Since then we have not been harassed by anyone".

This phenomenon confirms the Country of Origin Information (COI) 2016 reports Claim that, one of the ordeals of homosexuals in Ghana and Africa in general, is extortions by law enforcement agencies.

According to the Ghana Police Service Handbook (2010), "police officers shall at all times act impartially and in accordance with existing laws, which must be enforced on all persons without discrimination". Whiles this is required of all police officers, some of them fail because of either limited knowledge or the quest to satisfy personal interest. The former has further been affirmed by Eyram, (2011) when he observed that

inadequate refresher courses for police in human rights have always posed challenges to their duty as human rights protection officers.

This, according to Jones Blantari, Assistant Commissioner of Police, who was once the Programme Coordinator of Ghana Police AIDS Control Programme, is often due to the unclear nature of the law on the practice. He noted that although all policemen in the delivery of their work are required to show professionalism, some allow themselves to be influenced by their religious and cultural orientation and act contrary to their work ethics. Thus, some policemen discriminate against homosexuals in Ghana contrary to their work ethics.

To strengthen the effort of the police to combat violence, a specialized unit; the Domestic Violence Victim Support Unit (DOVVSU) was created in 1998. The mandate of this unit included among other things protecting individuals from all forms of abuse by providing advice, conducting investigations and arrest and possibly, prosecution where necessary (Humanrightswatch, 2018). Although its mandate is geared mostly towards home abuses, its activities enhance the general human rights space in the country. The inadequate equipment that has over the years dented its capacity to deliver should be addressed (Adebayo (2005).

5.4 THE PROTECTION OF LGBTs RIGHTS IN GHANA

The study employed in-depth interview as an instrument for gathering data. The following people were interviewed for the study. Dr. Isaac Annan (Director of Human Rights, CHRAJ), ten Homosexuals in Ghana (H1, H2, H3, H4, H5, H6, H7, H8, H8, H9

and H10), a legal practitioner, Mrs. Mavis Andoh (LP), Two Police Officers, The Crime Officer of James Town Police station (PCO) and Station Commander of East Legon Police station (PSC).

5.4.1 The general state of human rights in Ghana

The debate on whether Ghana has made major strides in its human rights credentials, witnessed among people of diverse interests also manifested among various professional. Although the respondents generally agreed there were markable improvements in the human rights observation in Ghana, there were equally disparities with regards to the various groups' rights.

Attributing the feat to the education that people receive on television and radio, and some active institutions, most of the homosexuals noted people have become aware of their rights and how to access them. H1 retorted on this "there has been a vast improvement in human rights. If not, people will not be able to accumulate wealth and build several houses without being quarried" (Field note, 2018). They, however, lamented that the rights of people especially those whose activities contradict societal norms and values have not witnessed equal protection. Using themselves as example, they lamented how their decision to live their lives has made them objects of attacks and they seem not to be getting any backing.

Both Dr. Annan and the Police officers (PCO and PCS) expressed similar sentiments on the current state of human rights in Ghana. Dr. Annan for instance whiles acknowledging some improvements in Ghana's Human Rights scape opined that improvements are rift

with regards to political and civil rights. He continued that Ghana as a democratic country has failed in terms of social, economic and cultural rights. He noted,

"Homosexuality falls under social and cultural rights, but the average Ghanaian's understanding of human right is that I am free to join any political party and that is it. Due to this limited understanding of human rights in Ghana, politicians go around and promise people certain rights but rights in themselves are entitlements that people demanded". So human rights understood in the Ghanaian perspective on the right to vote and freedom of expression have improved but when you look at the broader picture, we have failed" (Field note, 2018).

These assertions as advanced by the respondents are in consonance with the findings of the 2018 Human Rights Watch Report on LGTs in Ghana. But the intriguing question here is what informs citizens' understandings on political rights against other rights such as cultural and social. The answer may lie in the fact that politicians benefit directly from citizens in-depth knowledge of political rights. On the contrary, they stand disadvantaged if citizens become aware of their social and cultural rights and start to demand them.

5.4.2 Awareness of human rights and places to seek redress when abused

This question sought to establish the level of awareness of their rights and where redress could be sought when abused. Most of the homosexuals proved awareness of their rights as humans and as such can engage in what pleases them. They basically construed that human right is that right that one has as an individual. According to one of the

respondents' human right "is the right I have as a human being on this earth that no one can infringe on" (Field note, 2018).

One thing made evident in the data is that most of the homosexuals were aware of and believed in the practicality of political and economic rights than social and cultural rights. Thus, they generally are abreast with the right to vote, own property, association and freedom to move but expressed skepticism on their realization. Although their activity is centered on rights on sexuality, which comes under the social right, they appear to exhibit little understanding on such right. This may be due to the understanding of the average Ghanaian on what is a human right as intimated earlier by Dr. Annan.

The depth of knowledge of these respondents on Human Rights can be attributed to the fact that most of them are secondary school leavers and can read and write. The social studies syllabus for SHS in Ghana treats topics on rights and responsibilities. Again, as attested by the respondents, the education through radio, television, internet sources and friends has equipped them with lots of information on their rights as human beings.

The police officers equally expressed in-depth knowledge of human rights and how one could seek redress when abused. This is not quite surprising as obtaining such knowledge is part of their training modules and doctrines.

With regards to the places of seeking redress when rights are abused, most of the homosexuals were well informed. The mostly identified that they can fall on to seek redress is the Police and CHRAJ. They, however, did not consider these as avenues too useful since going there will further aggravate one's plight by exposing you to the public.

The Director of Human Rights at CHRAJ confirmed this when he noted that the stigma attached to the homosexuality has often scared off those abused to file a report with the Commission. He furthered that the phenomenon has been ameliorated by the creating of online complain platforms (Field Report, 2018). The Police Officer also confirmed this when he iterated

“They (homosexual) do not report Human Rights abuse here frequently. Even the few that do come to report later come to withdraw the case from the police with the excuse that they have resolved to settle it at home. Those who will go far may decide not to follow the case again and when you need them to testify in court, they won’t turn up” (Field note, 2018)

Whiles these assertions confirm the findings of LGBTs plight in Ghana by the Human Right Watch 2018 report, an attempt to address it using an online reporting platform will do little if anything at all to salvage the situation. Firstly, this platform may not be of importance to those that are not technology friendly. Again, even granted one uses it, subsequent investigations would require that he or she comes out as an accuser/plaintiff.

5.4.3 Reasons for engaging in homosexual practice

Responses by homosexuals regarding why they engage in such practice generated interesting observations. This question has been of concern and generated a varied response in literature. Scholars such as Herdt (1997) had concluded on the impossibility of such common reasons being found given the different cultural contexts and individual differences. It was revealed that most of those engaged in the practice started it during

their Senior High School days. Whiles, there were some minor precipitants; the general causative factors were financial challenges and curiosity.

5.4.3.1 Peer influence

Some of the respondents attributed their engagement in the practice to influence from their peers. They opined how their colleagues who were engaged in the practice often narrated their experiences and the progress and satisfaction they gained. Those words greatly influenced their curiosity to also venture into the act. Recounting on this, H6 quipped, “My friends through clubbing introduced me into the practice. I never knew but I realized I was into it. We use to go to nightclubs together and when we got there you could see lots of people engaged in that. I eventually had to also try it and by the time I realized I was deep into it” (Field note, 2018)

5.4.3.2 Financial challenges

Most of the homosexuals recounted that but for financial constraints, they may not have involved themselves in the act. Narrating how he had to succumb to a senior’s request upon helping him with money to settle his debts in school, H5 cited monetary factor as what influenced him. The relationship according to him got sterner thereafter and his senior did refer others to him as clients. He added that even though they eventually completed school, but the relationship has continued, and the senior and other partners still visit him.

Asked whether they will abandon the act in the future especially if their financial needs could be met, they provided varying responses. Whiles some are categorical that if they

can meet their financial needs, they will consider stopping the practice, other attest they have never considered stopping as an option. The H6 iterated on this;

“There is a lot of money in there especially when you get someone who is rich. You could get someone give you GHC2000 for a day's service. Because of this, it has never pricked my mine of stopping” (Field Note, 2018)

Some have quipped that although they may have entered through peer or monetary influence, they have come to accept that as a lifestyle. They find pleasure in and are prepared to stay in it. The respondents do not appear diphase by the nature of the treatment they will be given by the society. The curtailment of their rights does not present any limitation or frustration, for considering the abandonment the practice.

These findings attest to Goldberg (1994) assertion that although the factor underlining the practice is varied and complex, however, social and early childhood experiences play a significant part. Thus, societal influences like financial constraints and peer pressure, which have been identified among the homosexuals in Ghana, as prime factors.

5.4.4 Abuse of rights of homosexuals in Ghana

According to Mrs. Andor, no law in Ghana's constitution criminalizes homosexuality, but the criminal code's provision on “unnatural carnal knowledge”. Despite this, the literature and media reportage seem to suggest some level of unacceptance of the practice and abuse of those engaged in it.

The question on this, therefore, sought to establish the kind and form of abuses that suspected homosexuals go through in Ghana. Responding to this question all the

homosexuals interviewed sounded unanimous as they lamented on their ordeals. According to them, because the Ghanaian society frowns on the act, practicing it exposes one to all kinds of dangers and societal ridicule. H1 noted that he had to deny of ever engaging in the act when he was suspected and subsequently apprehended. He quipped:

“I was rushed on and assaulted when I was noticed to be one. Although it is true that I practice it, I had to deny to save my life. In our neighborhood, if you don't hide but make yourself known you could be beaten or even killed “(Field note, 2018).

The H5 also recounted an assault on him by some people when he attempted to intervene in settling a misunderstanding that had ensued between two guys. He narrated;

"I attempted intervening in a fracas by two guys, but they suddenly turned on me and molested me. Although the issue should not have been taken to that extent on any normal day, because they knew me to be a homosexual, they molested and ridiculed me" (Field Note, 2018)

Another of abuse according to a section of the homosexuals is from the police. According to H1, H2, H3, H5 and H7, the police often extort money from them whenever they are accused and sent to the police station. Except for one, all the homosexuals have had experience of being arrested by the police. This came at the back of they being suspected to have engaged in such acts and molested by community members. The police upon arrest, extorted monies from them to free them. A respondent, H2, retorted, "a friend who was arrested some days back did not have any relative coming to rescue him. He,

therefore, had to pay his way out with some of the money he had gathered" (Field note, 2018).

The Police Crime Officer (P1) on this argued that whiles he could not debunk the allegation completely because there are bad nuts among the police. However, by the code of ethics of the police service and by his own conduct, such incidence has never occurred. He furthered that such accused under his care are kept and released when there is some level of calm on the issue.

In addition to the above, the abuse has manifested in name-calling and been incessant taunting by the public. The homosexuals have also recounted how the public has fingered them and ridiculed when they step out. This phenomenon according to them has subsequently occasioned them being glued to their rooms. Thus, they are not able to go into the public because of the kind of treatment they are likely to receive. One of them who visited his client in Kasoa recalls how he was assaulted and nearly beaten upon suspicion. This unfortunate ordeal was, however, averted by the prompt arrival of the police to pick him up to the police station. Another respondent, H3, also allayed that when one passes through the public; you could virtually hear people talking about you. A lesbian also accounted for similar incident contributing to her changing school.

“Upon suspicion that I was involved in such activity in school, all my mates were withdrawing from me. When the issue got to the headmistress she called my school mother and myself, but we denied. But because the accusation continued spreading, I couldn't stand it but lie to my mother to change the school” (Field note, 2018).

Commenting on this, Dr. Annan said it amounted to an unfortunate incident fomented by the lack of knowledge of the general populace on what human rights really is. He argued that most people turn to justify some rights and downplay others because of misconceptions.

On her part, Barrister Andor forwarded that homosexuals have been discriminated against in almost all aspects of life. The community sees them as people that no one needs to associate with. Substantiating this claim, she cited how someone she battled to get reinstated was dismissed from his work on suspicion that she was a lesbian.

Although most of the homosexuals interviewed attested to an improvement in the respect for human rights in Ghana, they iterated that homosexuals' rights have not been accorded same. They argue that the right to free movement, association and education of homosexuals has often been denied them. Commenting on this, the two Police officers affirmed this by stating that because the general Ghanaian society frowns on the act, homosexuals are often harassed. Thus, according to P1, although practicing homosexual is not a criminal offense but records of attacks on persons suspected to be engaged in the practice as reported at the station keep on rising.

5.4.5 The debate on the legalization of homosexuality

The general abhorrence of the practices of LGBTs in the Ghanaian culture, the silence of the constitution on the act and the desire of LGBTs to engage in the act without any intimidation have generated degrees of debates. Justifying their stands on religious and cultural grounds, the clergy, politicians and traditional leaders have publicly registered

their disagreement in sanctioning the practice of LGBTs. This debate was flamed further when the president, Nana Akufo-Addo, in his interview with Aljazeera, mentioned that Ghana could be on the road to legalizing the practice if there is some massive push for it. This statement whether misconstrued or well interpreted, was met with the furry of those who interpreted it to mean the president's desire to legalize the practice.

One of the leading campaigners is the speaker of the legislative house of Ghana, Peter Mike Oquaye. He is on record to have stated how inhumane the practice is and as such could not be given any legal backing. Threatening to quit his position if the house advanced any attempt to legalize the act, both sides of the house have unanimously sent a signal of non-acceptance of any consideration to legalizing the practice. It is against this background that the respondents' views were sought on whether or not to legalize the practice.

5.4.6 The LGBTs view on legalization

The LGBTs' provided a varied opinion on this issue. While a majority believed that the practice was a way of life that one chooses to live and so need to be protected by law of the land, some argued that with the cultural and religious setting of Ghana, it would not be wise to make that decision.

Substantiating their claims, those in favor of the legalization argued that the practice was a way of life that one chooses to live and so need to be protected by law of the land. The H8, for instance, noted that such a move would help them go about their lives without any fear of attack and intimidation. He quipped "because this is how I am, so if I will get

a government willing to legalize it and make me free to practice it, why not?" (Field Note, 2018). On the contrary, those against the move intimated that the practice is not a good practice and is because of financial challenges that they eventually got themselves into it. On this basis, a respondent asserts that;

"When you do it after a while you begin to feel guilty within yourself. I will not support any attempt at legalizing the practice. Even though there are human rights, but with a Christian country like Ghana, I won't support it" (Field Note, 2018). Thus, the LGBTs in Ghana are divided on the issue of legalization and while those for it are citing human rights as a basis, those against it are basing it on cultural and religious reasons. This appears to depict the general Ghanaian conversation around the issues as conveyed in the 2018 Human Rights Watch Report on Ghana.

5.5 THE HUMAN RIGHTS PROTECTION AGENCIES (CHRAJ AND GHANA POLICE SERVICE)

The agencies on the question of whether they are for or against the legalization of homosexuality in Ghana, the agencies argued that because they are mandated to protect the rights of citizens, they do not have any stance on whether or not it should be legalized. Dr. Annan, for instance, stated that

“CHRAJ as a human rights institution has the duty to protect the rights of human beings. So far as you are a human being, we must protect you. We do not discriminate on any grounds. In CHRAJ Mission Statement, we made it clear that we will promote, protect

and enforce the fundamental human rights and freedoms for all persons in Ghana including homosexuals and per law establish” (Field Note, 2018).

Their concern was, however, on the silence of the constitution on the matter. They suggest that there should be a clear roadmap by the state on whether or not the act is acceptable or not. This they claim will make their work easier and clear the conscience of citizens as well.

Commenting on this issue, Mrs. Andor quipped that currently there is no any specific laws against homosexuality in Ghana but it is frowned upon by the criminal code’s conception of unnatural carnal knowledge. She intimated that although there is currently a case pending in the Supreme Court for a declaration on whether or not homosexuality is a criminal act, the parliament has vowed not to give its backing.

She further noted that the spectacle should not only stop at the legalization but also consider the broader claim of homosexual’s right, which will eventually include their sexual rights. According to her the provision of article 17 of Ghana’s constitution which states that “All persons shall be equal before the law” and clause 2 further states that “A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed, or social or ethnic status” (Field note, 2018). Although she conceded that the provision was not categorical on homosexuality, but the mention of "All Persons" carries it along.

Although on personal grounds, most of the people in this category expressed negative sentiments against LGBT, but on professional grounds they have indicated a high level of

tolerance. This gives a clear indication that the human rights protection institutions in Ghana are ready to stand by the law no matter what it stipulates on the issue of LGBTs in Ghana.

A conclusion of the above depicts the role that religion, culture, mass media, politics etc, plays in the legitimization of such practices in Ghana. This phenomenon is, however, not peculiar to Ghana but extends to the African continent as affirmed by Malamba (2012) in his study on obstacles to the acceptance of LGBTs lifestyle in Malawi. This further affirms that any major strides in the protection of human rights of LGBTs in Africa in general and Ghana in particular, revolve around these factors. Any attempt to witness any progress will have to target at influencing these factors.

5.6 HOW TO ENHANCE THE PROTECTION OF HOMOSEXUALS' HUMAN RIGHTS

From the above discussion and literature, evidence abounds on the violation of the rights of LGBTs in Ghana. This influences the question on how to curtail it by enhancing their protection. Most of the respondents find the solution to this predicament on public education, clear stance of the state on the legality or otherwise of the practice and clear constitutional provisions on the act.

5.6.1 The intensification of public education on human rights

All the respondents but one believed that people (Ghanaians) have not really understood the concept of human rights. Thus, they tend to believe that some of the rights are more

important than others and some people are more qualified to enjoy their rights than others.

Dr, Annan lamenting this situation stated further how such an unfortunate phenomenon is impeding the work of human rights protection agencies. He argues that the general populates are only often aware of the rights of the powerful in the community since they have the capacity to file a lawsuit against offenders. But these mindsets must be abused and the only way to attain this effectively is through the effective sensitization and education of people on the consequences of abusing someone. This recommendation is in sync with Malamba's (2013) assertion that practices such as homosexuality only stands a chance of being accepted in African communities if the people are well educated on their rights and that of others.

5.6.2 The declaration of a national stand on the LGBT practice

One of the pillars of every democratic system is clarity. This reflected in the submissions of the majority of the respondents. They posited that the state should be ready to take a definite stand on the issue of rights of LGBTs. Although most of the respondents favored a favorable decision for LGBTs, they held the opinion that any decision taken will have its benefits and regrets. In whichever instance, they think it will settle many issues. Mrs. Andor suggested;

"The country should state her position on LGBTs. Many African countries like South Africa, Uganda, and Zimbabwe have openly and clearly stated their position on LGBT. South Africa, for instance, has legalized it so it makes it easy for lawyers to refer to the

laws in defense of LGBT in South Africa, but this cannot be said about Ghana. Due to the homophobic nature of the country towards LGBT, judges and most lawyers are biased when dealing with LGBT cases." (Field note, 2018)

Such a clear position offers healthy contestations and grants victims of abuse the locus and impetus to challenge their abusers. This recommendation affirms Malamba's (2012) assertion that a national stance on homosexuality is critical in any democratic dispensation.

5.6.3 The clear constitutional provision on the rights of LGBTs

According to Dr. Annan and Mrs. Andor and the police officers (PCO, PSC), there is no specific provision in the constitution or any substantive legislation that addresses the issue of LGBTs. They are therefore of the view that the trail should not stop at just taking a national stance but that should be backed by the rectification of a bill or the amendment of the criminal code's provision on unnatural canal knowledge or amendment of the national constitution. Mrs. Andor, for instance, iterated that "the silent nature of our constitution on homosexuality is one of the reasons for the continuous human rights abuse of LGBTs" (Field note, 2018). This exposition validates Malamba's (2012) call for the ratification of laws delineating the nation's stand on homosexuality as a remedy to LGBTs plight.

5.7 CONCLUSION

The chapter discussed the data as gathered from both text and interviews. The analyses revealed the current human rights situation in Ghana. It again established the

appropriateness of the doctrines of the human rights protection agencies in Ghana. It further unveiled the perspectives of the respondents on the nature of the liberal atmosphere for LGBTs in Ghana. The chapter similarly presented the suggestions of the respondents on whether or not homosexuality should be legalized and how the human rights of homosexuals in Ghana could be enhanced. These findings would serve as the basis for conclusion and recommendations in the ensuing chapter.

CHAPTER SIX

SUMMARY OF FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

6.1 Introduction

This chapter presents a summary of the findings drawn from chapter five. The findings were generated by comparing what the respondents of the study confessed and what is in the literature and reports by news outlets. Conclusions are thereafter drawn from the exercise, which will then serve as the basis for the general understanding and recommendations. The chapter again details recommendations for the various topical issues to the appropriate authorities, institutions, and individuals. These recommendations are tailored towards improving the protection of rights of LGBTs in Ghana.

6.2 SUMMARY OF FINDINGS

The summary of findings has been discussed under various headings. The headings are based mainly on the research questions derived from the research objectives. Among the objectives that the study sought to attain are; identification of the rights that homosexuals are deprived of in Ghana, explaining how homosexuals are deprived of those rights, identify the stakeholders responsible for the protection of rights of homosexuals in Ghana, and discuss possible ways of protecting the rights of homosexuals in Ghana.

6.2.1 Which rights are homosexuals deprived of in Ghana?

The meanings of human rights, its origin and conceptions have extensively been discussed in chapter two and four. The study established that cultural settings have

always influenced the understanding of people on what rights are. Thus, there are different conceptions of rights; the African conception is built on communalism while the western conception is on individualism. The concept, however, has a central idea, which refers it to the fundamental rights that an individual citizen of a society has by virtue of his nature as a human being. Thus, despite the differences in cultural settings, there are some freedoms that are seen inalienable for an individual to live a dignified life. The study established that these rights are replete in the UDHR, which Ghana is a signatory.

The study again established that in accordance with the dictates of the UDHR, Ghana is committed to observing these rights. Thus, rights such as life, association, personal liberty, and movement have all been provided for in the constitution of Ghana. Despite these provisions, the study has established that homosexuals in Ghana experience massive abuses in that regard. They are constantly denied the right to enjoy these rights either by groups, individuals or state institutions. Prominent among these rights often abused are the rights to exhibit a cultural practice, the right of association, movement, personal liberty and fair trial and the right to education.

6.2.1.1 Right to exhibit a cultural practice

With regards to the right of cultural practices, the constitution provides in article 21 and 26, that a citizen commands the rights to exhibit any acceptable cultural practices. Such practice per the provision could only be curtailed when it dehumanizes or is injurious. The study, however, established that although homosexuality could not be placed under

any of these two exceptional conditions, it is still not permitted and suspected individuals are often mishandled.

6.2.1.2 The right of association

Another right that homosexuals are often abused of is the right to association. Although the constitution has guaranteed in Article 21 the right to form an association to advance an interest of the group, the formation of associations by homosexuals has often been met with violence. They have often been attacked if news of their meetings is known. The study has established that an association of that kind is considered an affront to the wellbeing of the society, which will result in divine misfortune, if allowed to exist.

6.2.1.3 The right to free movement

In addition to the above is the abuse of the right to free movement. While free movement has been guaranteed in various international human rights protocols as well as the constitution of Ghana, homosexuals in Ghana do not enjoy this. The study has established that the movement of an individual becomes limited if he/she is known or suspected to be homosexual. Thus, abuses in the form of physical violent attack, insults, ridiculing and despising are meted out to them any time they are in public.

6.2.1.4 The right to personal liberty

To add to the above is the issue of personal liberty. Even though homosexuals as citizens have the right to personal liberty as stipulated in article 14 of the 1992 constitution, they have often been denied this without any recourse to the law. The study has established

that individuals suspected to be homosexuals are laid off from their jobs. They are also often arrested by community members and treated as criminals and could be lynched if the police fail to intervene.

6.2.1.5 The right to a fair trial

Again, although every citizen has the rights to fair trial in a competent court of jurisdiction, homosexuals in Ghana have limited chance of enjoying this right. Thus, due to the general adherence of the practice in the Ghanaian cultural and religious setting, homosexuals often do not get the sympathy of lawyers and judges. The study has established that the police and judiciary often do not tend to protect homosexuals due to the religious and cultural beliefs.

6.2.1.6 The right to education

Although the constitution of Ghana provides for the right to education of Ghanaians without discrimination, the research found out that homosexual in Ghana are constantly discriminated and denied of this right. On the 31st of May 2018, two Nkawia Senior High School students were sacked for allegedly practicing homosexuality. Also, on December 14, 2016, two alleged gay students were dismissed from Pope John's Senior High School. Again, on April 16, 2013, 19 students were sacked from Opoku Ware Senior High School for allegedly engaging in homosexual activity. All these examples were confirmed by some of the homosexuals interviewed.

6.2.2 Who are the stakeholders responsible for the protection of rights of homosexuals in Ghana?

Generally, rights are entitlements that must be claimed and there could be attempts by individuals or state to deny citizens of such privileges. This has created the need for a conscious effort to protect these rights against violation. States have this mandate owing to the social contract with the citizens and mainly institutions created for such purpose by the state carry out such role.

The study has established that in Ghana, the rights of citizens and the institutions responsible for the maximum realization of those privileges are provided for in the 1992 constitution. The constitution, therefore, mandates the various machinery of government to protect these rights, which ranges from political, social, economic to cultural.

Upon a peruse of the constitution of Ghana, other legal documents, and relevant literature, the study has established the Ghana Police service and the Commission on Human Rights and Administrative Justice (CHRAJ) as the constitutionally mandated bodies to carry out this task.

6.2.2.1 The Commission on Human Rights and Administrative Justice (CHRAJ)

The Commission was established in 1993 as a fulfillment of Article 216 of the 1992 constitution of Ghana. Its mandate includes receiving complaints on human rights violations and investigating the complaint as well as educating citizens on their rights.

The study established that the existence and mandate of the Commission are fairly known among Ghanaians in general and homosexuals in particular. While acknowledging its importance, the study revealed that the Commission's mandate of protecting Human Rights has faced some nagging challenges and called into question by minority groups. Thus, although the homosexuals have attested its importance as a human rights protection institution, its structures and mode of functioning makes it problematic to assess.

The study revealed some bottleneck challenges to the effectiveness of the Commission as a human rights protection institution in Ghana. These include the restriction of the commission's mandate to complaint driven, its lack of prosecutorial powers and the fear of victims of abuse to be made public if they use the Commission.

6.2.2.1.1 The fear of publicity of Victims of abuse identity

The study revealed that although most of the homosexuals in Ghana are aware of the mandate of the Commission, they shy away from using it because of the fear of publicizing their identity. This they think is more injurious to them than suffer the abuse in silence. The research has established that this reason, which owes its justification from the high homophobic attitude in Ghana is at the core of homosexuals' lack of interest in assessing the Commission's services.

The study further revealed the widespread of this notion and the awareness of the Commission on such concerns. In its bid to address the challenge the Commission instituted an online complaint system. This innovation although is welcoming one, the high rates of illiteracy in general and low ICT knowledge, its effectiveness is doubtful.

6.2.2.1.2 The commission's lack of prosecutorial powers

The study has revealed that the Commission has no powers to prosecute. Its mandate stops at investigation after which it is expected to submit its findings and recommendation to an appropriate authority for action. The study has revealed that this lack of enforcement capacity and long process involved dwindles the interest of homosexuals in assessing the Commission's services.

6.2.2.1.3 Ineffective in its role of educating citizens on their human rights

The study further established that the Commission is mandated to educate citizens on their rights. Even though this role has been duplicated as another state institution, the NCCE is to ensure same, there are still deficits in human rights knowledge. This has been occasioned, as per the study established, by the lack of financial capacities and equipment.

6.2.2.2 The Ghana Police Service

The study has also identified the Ghana Police Service as one of the stakeholders in the protection of homosexuals' rights in Ghana. The mandate of the service generally is to protect every citizen against abuse of any kind. In this purview, homosexuals are citizens and are entitled to their protection.

Per the mandate of the service, they are supposed to protect all citizens indiscriminately, based on existing laws. The study has, however, revealed a disparaging discrimination of some of the service officers against homosexuals in Ghana. This blip, although unacceptable, has been occurring as confirmed both in chapter two and four of this study.

The underlying reasons that occasions this phenomenon as confirmed by the study is the lack of a definite law on homosexuality in Ghana

The lack of a national and legal position on LGBT in Ghana has left a gaping hole and allowed human rights protection officers to act based on their religious and cultural beliefs. This most often has not inured to the benefit of homosexuals since any friendly treatment by an official is often interpreted to mean his/her endorsement of the act, which is widely considered unwelcomed. This situation has therefore often resulted in officers blackmailing and extorting monies from suspected or identified homosexuals.

6.3 CONCLUSION

The central question that directed this study attempted to answer how the human rights of homosexuals in Ghana be protected.

This question was to be addressed by assessing the conception, constitutional provisions on fundamental human rights and the state of human rights protection and promotion in Ghana. To carry out this task, the study adopted Libertarianism as a theoretical framework and assumed that any action of an individual, which does not threaten or deny others from enjoying the liberties, warrants the protection of the state.

The interviews and documents analyzed revealed that the 1992 constitution, which is replete with all strands of fundamental human rights, has non-discrimination as the focal of human rights administration. The study revealed an appreciable level of awareness among Ghanaians in general and homosexuals in particular. Much of the awareness,

however, is on the political and a few economic rights to the detriment of socio-cultural rights.

The study also revealed wanton abuses of the human rights of homosexuals in Ghana notwithstanding the various constitutional provisions. It further establishes those rights of LGBTs mostly abused to include their right to exhibit cultural practice of their choice despite the fact that it is not dehumanizing or injurious, the right to free movement, association, and the right to personal liberty.

The study again established that the above phenomenon is occasioned by various factors, which includes the conception of rights held by Ghanaians, the religious and cultural beliefs of most Ghanaian communities view the practice as alien and abhorrent. Other factors, identified through the findings of the study are the lack of clear stance of the state on LGBT rights and the absence of a definite and concise law on the practice. Thus, it has been established by the study that due to this silence, homosexuals in Ghana do not often get the courage to press for their rights if they are being abused. Any progress in the protection or promotion will, therefore, require a definite stance on the practice by the state and a clearly promulgated law to that effect.

In addition to the above, the study has also established that the protection of the rights of homosexual in Ghana rests wholly on the state. The state has subsequently mandated certain institutions to carry out these responsibilities. Among the identified institutions in Ghana charged with this responsibility are the Commission on Human Rights and Administrative Justice (CHRAJ) and the Ghana Police Service. Respondents including

homosexuals have some knowledge on their rights; most of it was on their political rights.

According to the study's findings, CHRAJ is mandated to receive complaints and investigate any human rights violations against all citizens including homosexuals. It again is mandated to educate all citizens on their rights. The study revealed that although homosexuals in Ghana are aware of CHRAJ and its mandate, they are often reluctant to access it when abused. The underlying factors for this phenomenon include the long processes that the case may go through, CHRAJ's lack of prosecutorial powers and the unpreparedness of homosexuals to make their identity public. The study again revealed that the attempt by CHRAJ to whip up interest in victims of human rights abuse including abused homosexuals with its online complaining system has not yielded many results because of illiteracy and low ICT knowledge among victims.

The study further revealed that the Ghana Police Service although a human rights protection agency has not dealt satisfactorily with the protection of homosexuals in Ghana. The findings of the study establish unprofessional conducts such as blackmailing and extortion of monies from homosexuals by police personnel. This conduct per the findings is fomented by the indefinite provisions on LGBT practice in Ghana thereby leading officials to measure their actions based on religious and cultural beliefs other than legality.

The study consequently revealed that glaring abuse of homosexuals' rights in Ghana. This phenomenon has been occasioned by the various factors that have been summarized.

6.4 RECOMMENDATIONS

Based on the findings and conclusions drawn from the discussions above, several recommendations have been drawn. These recommendations are captioned and channeled to various institutions, individuals, and authorities. Among these is the president, the parliament of Ghana, the Inspector General of Police and the Commission on Human Rights and Administrative Justice.

Firstly, there is the need for the President of the state who is a lawyer and a known human rights activist to openly condemn all threats and acts of violence against homosexuals including homophobic statements made by public officials. This act will set a standard for all public officials and citizens for the promotion and protection of human rights in general and the rights of homosexuals in particular. Again, the President should recommend an all-inclusive regulation that outlaws all forms of discrimination including those based on sexual orientation and gender identity.

Secondly, the President should provide enough budgetary allocation to human rights protection institutions like the Ghana Police Service and the Commission on Human Rights and Administrative Justice to boost their human rights education campaigns. This will help the institutions to mitigate some of the many problems hindering them in the promotion and protection of human rights in Ghana.

Also, parliament should repeal section 104(b) of the criminal offenses Act that criminalizes adult consensual same-sex conducts. This criminal Act serves as the justification for the mistreatment and abuses of homosexuals by both the security services

and the citizenry in general. This Act also hinders homosexuals from reporting cases of abuse against them for fear of being arrested. Again, Parliament should review chapter five of the 1992 constitution of Ghana on fundamental human rights and freedoms to include a specific prohibition of discrimination based on sexual orientation and gender identity.

Additionally, the Inspector General of Police should assure that police stations are safe locations for homosexuals to report cases of abuse and initiate swift, independent and effective investigations of deeds of violence against homosexuals. Also, refresher courses on human rights should be put in place to ensure that all police officers conform entirely to the Ghana Police Service standard operating procedure and also adhere to the constitutional provisions on respect to human dignity and non-discrimination while performing their duties with regards to providing homosexual victims of abuse protection from homophobic attack.

Furthermore, the Commission on Human Rights and Administrative Justice (CHRAJ) should launch a national public education campaign about rights protection, legal remedies, and social services available for victims of violence and discrimination particularly as they relate to sexual orientation and LGBT rights. Also, the Commission should consider the organization of symposia and workshops for the Police, non-governmental organizations, the judiciary, media, health practitioners and religious leaders on human rights and sexual orientation and gender identity issues.

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APPENDICES

APPENDICE 1: INTERVIEW GUIDE FOR HOMOSEXUALS IN GHANA

1. What do you know about human rights?
2. Have you ever suffered any form of abuse due to your sexual orientation?
3. Please give details of the circumstances: what happened, where, when, for how long, how many times and who did it?
4. Do you know anyone who had suffered from such abuses? Was it at the same time or on different location?
5. Were the people who did this government officials or private individuals?
6. What were the consequences of these abuses (personal, family, friends, job, or any other position? Are these consequences still affecting you?
7. Do you know if any remedies were available at the time that you could pursue to complain about these abuses? Do you know anyone who could assist you to seek redress?
8. Did you report the issue to the police or other law enforcement agencies or ask for help from any other institution?
9. What was their reaction? Were they hostile or supportive?
10. Were they effective in helping you to seek redress to your satisfaction?
11. Do you think homosexuality should be legalised? Why?

APPENDICES 2: INTERVIEW GIUDE FOR CHRAJ

1. Discussion about the general human rights situation in Ghana?
- 1.discussion about the current debate about homosexuality in Ghana?
2. What are your views about homosexuality?
- 3.describe the institutions experience relating to homosexuality?
4. Have cases been brought up to CHRAJ?
5. What is the institutions stance on homosexuality?
6. What has the institution done in protecting the rights of homosexuals?
7. Should homosexuality be accepted in Ghana?

APPENDICE 3: INTERVIEW GIUDE FOR THE POLICE SERVICE

1. Can you describe the general situation around human rights in Ghana?
2. What is the role of the police service in relation to rights protection?
3. Describe the current debate around homosexuality?
4. What are your views on homosexuality in Ghana?
5. What is the institutions stance on homosexuality?

6. Have there been any instances where somebody have been accused and arrested for practising homosexuality?
7. How was the case handled? / What would be your response if such a case is brought here?
8. What is the institutions stance on this issue?
9. What steps have been taken as far as human rights protection of homosexuals are concerned?
10. Should homosexuality be legalised in Ghana?

APPENDICE 4: INTERVIEW GUIDE FOR PRIVATE LAWYER

1. Describe the current human rights situation in Ghana?
2. What is the frequency of human rights situations brought to you?
3. What are your views on homosexuality in Ghana?
4. What does the laws of Ghana say about homosexuality?
5. What is the relation
6. Has there been any instance where a client has been accused of homosexuality? If no, what would be your response to such an accusation/
7. Should homosexuality be accepted in Ghana?
8. What role do you think lawyers like you should play to address human rights abuse in general and homophobic in particular?

