

PROMOTION OF PROPER HUMAN SEXUAL RIGHTS AND GHANAIAN FAMILY VALUES BILL, 2021

MEMORANDUM

The object of the Bill is to provide for proper human sexual rights and Ghanaian family values; proscribe LGBTQ+ and related activities; proscribe propaganda of, advocacy for or promotion of LGBTTTQQIAAP+ and related activities; provide for the protection of and support for children, persons who are victims or accused of LGBTTTQQIAAP+ and related activities and other persons; and related matters.

On 31st January 2021, several news media in Ghana reported the opening of an LGBTTTQQIAAP+ advocacy resource center in Accra. In attendance at the event were some delegates from the European Union, the Australian High Commissioner to Ghana and the Danish Ambassador to Ghana. Subsequently, the European Union, on its official Facebook, handled its advertised participation in the event and reiterated its support for all civil society organisations supporting LGBTQI+ groups.

The news was greeted with a plethora of criticism from a cross-section of Ghanaians, with several persons including the National House of Chiefs, the National Chief Imam, the Christian Council, the Catholic Bishops' Conference and the National Coalition for Proper Human Sexual Rights and Family Values calling for the resource center to be shut down and persons involved in the opening of the centre, arrested and prosecuted. The episode brought about a renewed national debate on the activities of LGBTTTQQIAAP+ persons in Ghana, with calls for such activities to be punished as they do not accord with the sociocultural values of any ethnic group in Ghana.

Further to an emergency meeting of the Governance, Health and Development Committee of the National House of Chiefs held on 26th February 2021, the National House of Chiefs issued a statement and specifically noted

"The House wants to state without equivocation that throughout history, nowhere does the Ghanaian culture subscribe to LGBTQI which is a taboo, inhuman and alien to our society...In God's wisdom, man and woman were created to fulfil the procreation of humans on earth to satisfy God's will...The symbolism for sex [and] marriage was between man and woman, as such, the idea of man marrying man and woman marrying woman is an abomination to our tradition and culture as Ghanaians..."

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The statement of the National House of Chiefs cannot be over-glossed considering the fact that Chapter Twenty-Two of the 1992 Constitution is dedicated to Chieftaincy, the institution of which is guaranteed by article 270 of the 1992 Constitution. Indeed the traditions, culture and religions of Ghanaians disavow homosexuality and all its variants.

The unitary position of the various cultures and ethnicities in Ghana regarding LGBTTQQIAAP+ activities, the unequivocal statement of H.E. President Nana Addo Dankwa Akufo-Addo at the induction of the second Archbishop of the Anglican Church of Ghana at Asante Mampong in the Ashanti Region on February 27, 2021, the comments of the Rt. Hon. Speaker of Parliament when the Australian High Commissioner paid a courtesy call on the Speaker on 1st April 2021, the Statement of the National House of Chiefs and the subsequent closing down of the resource centre are testaments of the unacceptability of LGBTTQQIAAP+ groups and their activities by the majority of Ghanaians.

It is equally worth mentioning the emphatic positions of our former Presidents. In the case of the former President John Agyekum Kuffour, he recounted to the Accra FM radio station on 3rd March, 2021 how he stood his ground and rejected the legalisation of gay rights when he was President. The former President specifically stated

"I rejected LGBT legalisation when I was President because it baffled me. It still baffles me because LGBT practice is against our culture, religion and even defies nature. No law allows such a thing in Ghana."

Additionally, the late President J.E.A. Mills is credited to have assertively communicated the position of Ghanaians on the issue of LGBTTQQIAAP+ when on 2nd November, 2011, the British Prime Minister, David Cameron, during an interactive session with the media at Osu Castle, intimated the policy of Britain to review its aid to countries that persecute homosexuals or fail to respect gay rights. The late President J.E.A. Mills intimated that

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“Let me make one thing very clear: no one can deny Prime Minister Cameron his right to make policies, take initiatives or make statements that reflect his societal norms and ideals but he does not have the right to direct other sovereign nations as to what they should do especially where their societal norms and ideals are different from those which exist in Prime Minister Cameron’s society. I, as President of this nation will never initiate or support any attempts to legalize homosexuality in Ghana. As a government, we will abide by the principles enshrined in our Constitution which Constitution is supreme. Let me also say that, while we acknowledge all the financial assistance and all the aid which has been given to us by our development partners, we will not accept any aid with strings attached if that will not inure to our interests or the implementation or the utilisation of that aid with strings attached would rather worsen our plight as a nation or destroy the very society we want to use the money to improve.”.

Civil Society Organisations, including the National Coalition for Proper Human Sexual Rights and Family Values which is an amalgamation of Christian and para-Christian bodies, religious bodies including the Ghana Pentecostal and Charismatic Council, the Coalition of Muslim Organisations, Ghana, the National Chief Imam’s Office, the Catholic Bishops’ Conference, the Advocates for Christ, non-religious bodies, the National House of Chiefs and opinion leaders in Ghana, have condemned the advocacy activities of persons in support of LGBTTQQIAAP+ and have further called on Government to strengthen the laws of the country and resist attempts by any entity, whether local or foreign, to misinterpret or worse of all, rewrite our laws to disregard the cherished culture and social values of Ghanaians. The sovereignty of this country must be respected and protected. Among the multi-religious faiths and various traditional and customary values across the country, an overwhelming consensus is established on the position of the nation in utter rejection of the practices of and advocacy for the LGBTTQQIAAP+ group in conformity with the customary law and tenets of faith and respect for public morality.

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Subsequent to the opening of the LGBTTTQQIAAPP+ advocacy resource centre on 31st January 2021, we submitted a Statement to the Rt. Hon. Speaker of Parliament on the subject and on his admission of the Statement, we, on 5th March 2021, read the Statement on the floor, expressing concern about the activities and advocacy of persons who identified as LGBTTTQQIAAPP+. We equally expressed concern about the effects of such activities on Ghanaian culture and family values. In our Statement, we indicated our intention to propose a bipartisan Private Member's Bill to proscribe the practices of and advocacy for LGBTTTQQIAAPP+ in line with our customs and values as a people.

In fulfilment of our intention, several stakeholder engagements were held to propose a Bill for introduction in Parliament. The contributions of the National Coalition for Proper Human Sexual and Family Values and many other Civil Society Organisations have culminated in the preparation of the Bill.

LGBTTTQQIAAPP+ activities threaten the concept of family and the associated value systems that are central to the social structure of all ethnic groups in Ghana. The concept of family for Ghanaians has always been a unit of society initiated by marriage between a man and a woman, each of whose gender is assigned at birth. Globalisation and its attendant acculturation are supposed to augment the strength and values of states and not to compromise the cultural and moral values therein. The right of states to self-determination is a peremptory rule of international customary law that recognises the sovereignty of states and their power to make laws to protect their values and identity, provided that the laws do not infringe on fundamental human rights. Indeed Article 2(4) of the UN Charter recognises the principle of sovereignty and equality of its member states. In that regard, all member states are required to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations. In a vastly globalised world where the threat of the infiltration of foreign cultures is ever-present, states rely on the right to self-determination to preserve their socio-cultural values by enacting legislation to minimise the effect of unacceptable foreign influence.

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The Bill gives consideration to the issue of whether or not prohibiting LGBTTTQQIAAP+ persons from forming associations, groups and organising people in any form for the purpose of advocating for and promoting the rights of LGBTTTQQIAAP+ persons constitutes an infringement of the fundamental human right of freedom of speech and expression or assembly or whether it constitutes discriminatory treatment, which are guaranteed in Chapter Five of the 1992 Constitution, particularly in articles 12(2), 17(1) and 21(1)(a) and (d). It must be noted that such rights or freedoms by their very nature are not absolute. The 1992 Constitution prescribes reasonable restrictions that are necessary for public health, order or safety.

As a first step, one must separate the prohibited acts from the right to engage in their advocacy. One would invariably conclude that once the acts are prohibited under the Bill as being injurious to public health and safety, any association, group, meetings or organisation of persons for the purpose of promoting the prohibited acts would also be unlawful.

It is this reasoning that provides justification for Parliament to enact legislation such as the Vigilantism and Related Offences Act, 2019 (Act 999) which proscribed the formation of groups for the furtherance of the interests of group members by use of threat of violence or intimidation.

Once it is determined that the object or purpose of the group is unlawful, there can be no right of assembly or association in respect of the object or purpose. Similarly, the Cybersecurity Act, 2020 (Act 1038), which was passed recently by Parliament permits reasonable restrictions or interference in the enjoyment of the right to privacy of home, property, correspondence or communication. Such interference is justified as reasonably necessary for public safety or the economic well-being of the country, for the protection of health or morals and the prevention of disorder or crime or for the protection of the rights of freedoms of others.

State regulation of sexual behaviour is founded on the principle that certain sexual expressions such as sexual intercourse with a close relative, with or without the consent of the other party, are inimical to public health or public morality. In that vein, the Criminal Offences Act, 1960