

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 LGBTTQQIAAP+ and related activities; provide for the protection of and support for children, persons who are victims or accused of LGBTTQQIAAP+ and related activities and other persons; and related matters.

On 31st January 2021, several news media in Ghana reported the opening of an LGBTTQQIAAP+ 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 LGBTTQQIAAP+ 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 LGBTTQQIAPP+ 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 LGBTTQQIAAP+. 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 LGBTTQQIAAP+ 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.

LGBTTQQIAAP+ 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

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(Act 29), being the principal legislation on criminal offences in Ghana, prohibits incest and bestiality. Act 29 however, does not make specific reference to LGBTTQQIAAP+. This is no surprise since Act 29 was promulgated about sixty years ago when the subject of LGBTTQQIAAP+ in Ghana was far-fetched. Section 104 of Act 29, which is the most proximate reference to LGBTTQQIAAP+ only prohibits “unnatural carnal knowledge” as follows:

- “(1) A person who has unnatural carnal knowledge*
- (a) of another person of not less than sixteen years of age without the consent of that other person commits a first degree felony and is liable on conviction to a term of imprisonment of not less than five years and not more than twenty-five years; or*
 - (b) of another person of not less than sixteen years of age with the consent of that other person commits a misdemeanor; or*
 - (c) of an animal commits a misdemeanor .*
- (2) Unnatural carnal knowledge is sexual intercourse with a person in an unnatural manner or, with an animal.”*

The Supreme Court, in *Banosin v The Republic; No. J 3/2/2014 dated 8th March 2014, S.C (Unreported)*, has clarified what may amount to “carnal knowledge” in its determination that

“it is the female sex organs called the vulva and the vagina that are normally penetrated into during sexual act which can qualify to be carnal knowledge under sections 98 and 99 of Act 29.”

It is our ardent belief that the passage of the Bill to deal with LGBTTQQIAAP+ is apt considering the 2017 report of the Science Research Council, communicated at the 4th National HIV and AIDS Research Conference in Accra, which indicated that about 18.1% of people living with AIDS are gays (men sleeping with men).

Additionally, there is no specific legislation that imposes obligations on persons to promote sociocultural values in accordance with article 39 of the 1992 Constitution. Clauses (1) and (2) of article 39 provide as follows:

“(1) Subject to clause (2) of this article, the State shall take steps to encourage the integration of appropriate customary values into the fabric of national life through formal and informal education and the conscious introduction of cultural dimensions to relevant aspects of national planning.

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(2) The State shall ensure that appropriate customary and cultural values are adapted and developed as an integral part of the growing needs of the society as a whole; and in particular that traditional practices which are injurious to the health and well-being of the person are abolished.”

We believe the time is ripe for Parliament to actualise the intentions of the framers of our Constitution by providing a legal framework for the promotion of the values that define our nationhood.

One of the issues gaining currency is the increasing acceptance of same-sex marriages in some jurisdictions. The law applicable to marriages in Ghana, being the Marriages Act, 1885-1985 (CAP 127) is silent on the required sex of marriage partners. The general language of the provisions however, lends itself to the interpretation that marriage can only be between a man and a woman, each of whose gender is assigned at birth. With the increasing blurring of the concept of ‘male’ and ‘female’ as a result of the activities of the transgender category of LGBTTQQIAAP+ and the deconstruction of “male” and “female” as gender concepts, the absence of clear language on the acceptable sex of marriage partners in CAP 127 is likely to render the legislation challenging in the face of the LGBTTQQIAAP+ movement. The Bill seeks to fill this gap by enacting specific provisions on the required sex of persons who may celebrate marriage in Ghana. The purpose is to strengthen our laws to make them more robust, more encompassing and more stringent in dealing with the LGBTTQQIAAP+ activities and also provide a framework for the promotion of desirable family values and social norms in the country.

Marriage and family are recognised as concepts that have deep-rooted social and cultural connotations that may differ largely from one society to another. Several international protocols attest to the sensitive moral choices concerned with and the importance to be attached to the protection of children and the fostering of secure family environments. Article 18(1) and (2) of the African Charter on Human and Peoples’ Rights states as follows:

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“(1) The family shall be the natural unit and basis of society. It shall be protected by the state, which shall take care of its physical health and morals.

(2) The State shall have the duty to assist the family which is the custodian of morals and traditional values recognised by the community.”

Article 18(1) and (2) of the Charter is consistent with article 16 of the Universal Declaration of Human Rights, article 23 of the International Covenant on Civil and Political Rights and article 10 of the International Covenant on Economic, Social and Cultural Rights on the sanctity of families as the basic unit of society and the duty of states to preserve family and marriage as well as secure the protection of children.

The rights of states to enact legislation to protect families is also a cardinal principle in the 1978 Hague Convention on Celebration and Recognition of the Validity of Marriages. In Articles 11 and 14 of the said Convention, state-parties are entitled to refuse recognition to marriages contracted in other jurisdictions if such marriages violate local laws on bigamy, consanguinity, capacity, consent or are manifestly incompatible with public policy. Though Ghana is not a signatory to the Hague Convention, this principle of the right of states to determine the validity of marriages is a well-known principle of international law.

On the issue of advocacy and other promotional activities, there is currently no legislation that specifically criminalises advocacy for, funding of, promotion of or encouragement of LGBTTQQIAAP+ activities except the inchoate provisions in Act 29 namely, preparation for committing certain criminal offences, abetment of a criminal offence and conspiracy. This gap in the law creates opportunities for advocates of LGBTTQQIAAP+ activities to sponsor and promote the proliferation of those sexual activities. The effect of these sponsorship and promotion is that young persons are lured to assimilate the otherwise unacceptable forms of sexual expressions. Credible reports from the Coalition for Proper Human Sexual Rights and Family Values indicate instances where young persons are promised travel opportunities, allowances and other gifts to cause them to engage in or advocate for LGBTTQQIAAP+. In some instances, young persons, mostly students in colleges, are awarded “commission” for luring other young persons to join LGBTTQQIAAP+ groups.

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The existing legislative framework is also silent on support mechanisms for victims of LGBTTTQQIAAP+ sexual activities and persons whose biological make-up makes them prone to “questioning” their sexuality. It is clear that economic inequalities and poverty create a fertile environment for promoters of LGBTTTQQIAAP+ activities to take advantage of poor youth and lure them into these activities. Recognising these vulnerable persons as victims of the exploitation of powerful forces, there is the need to enact legislation that creates support systems for persons who are victims of lifestyle LGBTTTQQIAAP+ persons.

In 2015, the United Nations General Assembly adopted Agenda 2030, which outlined 17 Sustainable Development Goals (SDGs) to guide international development for the next decade. The global SDG indicator framework also requires member states to contextualise and complement the framework by establishing locally relevant indicators. The Bill is important for establishing and consolidating the relevant local indicators on sexual expressions in accordance with the country’s developmental needs and its social and cultural values.

The Bill aligns with the intended outcomes of the SDGs, in particular, Goal 3 which is to “*ensure healthy lives and promote well-being for all at all ages*” and Goal 5 which calls on states to “*achieve gender equality and empower all women and girls*”. The Bill also aligns with SDG Goal 10 which is to “*reduce inequality within and among countries*”. To this end, the Bill emphasises the objectives of strengthening the Ghanaian family unit as the basic unit of society, maintaining the binary gender construct of male and female as the fundamental basis for formation of family and society while at the same time working to eliminate inequalities between males and females in all areas of national development.

Furthermore, the Bill seeks to contextualise SDG 10, target 10.3 which requires states to “*ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard*”. In furtherance of target 10.3, the relevant global indicator being 10.3.1, measures the “*Proportion of population reporting having personally felt discriminated against or harassed in the previous twelve months on the basis of a ground of discrimination prohibited under international human rights*”, the Bill seeks to prohibit the abuse or harassment of persons suspected to be LGBTTTQQIAAP+.

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Additionally, in order to appropriately deal with such claims of abuse or harassment within the Ghanaian social and cultural context, and to do so in a manner that prevents societal tensions arising from a clash between LGBTTTQQIAAP+ norms, beliefs, and values and our traditional Ghanaian customs, beliefs and values, the Bill highlights the need to respect and promote Ghanaian family values as defined by customary law and enshrined in the 1992 Constitution. The Bill simultaneously extends opportunities for access to medical and psychological support to affected persons to take advantage of those opportunities and to facilitate their integration into the larger society. Ultimately the Bill will contribute to ensuring that no one is left behind and that all citizens benefit from the national development agenda.

As Sponsors of the Bill, we also recognise that groups of vulnerable persons in the LGBTTTQQIAAP+ discussion ought to receive support to address underlying biological, social and economic issues that make them prone to the rapacious activities of persons involved in LGBTTTQQIAAP+ activities. Social support systems must be established to help the vulnerable persons understand their sexuality and to access psychological or physiological support where necessary.

Furthermore, we are most concerned about the need to ensure that the overwhelming public abhorrence for LGBTTTQQIAAP+ activities is not channeled into mob justice or the meting out of instant justice to persons perceived to be participating in LGBTTTQQIAAP+ activities. By prohibiting extra-judicial treatment including verbal abuse of such persons, the Bill seeks to prevent negative social treatment. This policy is in consonance with the appeal made by the National House of Chiefs calling on Ghanaians not to take the law into their own hands by way of burning, lynching, molesting and visiting mayhem on suspected LGBTTTQQIAAP+ persons. Nananom in their statement advised the public to report such individuals to the law enforcement agencies for necessary action.

A suggestion to include specific inchoate offences related to the offences created in the Bill is jettisoned as that would amount to surplusage. By reason of subsection (10) of section 25 of the Interpretation Act, 2009 (Act 792), where an enactment creates an offence, an attempt to commit that offence is an offence under the enactment and the attempt is

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punishable as if the offence itself had been committed. Similarly, sections 20 and 23 of the Criminal Offences Act, 1960 (Act 29) create the offences of abetment and conspiracy in respect of any criminal offence; thus, the provisions should apply in respect of offences under the Bill notwithstanding the fact that the offences are created subsequent to Act 29.

Clauses 1 and 2 deal with the preliminary provisions. *Clause 1* of the Bill provides for the application of the Bill. The Bill applies to a person who holds out as a lesbian, a gay, a bisexual, a transgender, a transsexual, a queer, an ally, a pansexual, or a person of any other sociocultural notion of sex or sexual relationship that is contrary to the sociocultural notions of male and female or the relationship between male and female; a person who may be questioning that person's sexuality; a person who has a biological anomaly regarding the gender assigned to the person at birth, including intersex; a person who is involved in the promotion of, propagation of, advocacy for, support of or funding of LGBTTQQIAAP+; a person who provides or participates in the provision of surgical services to enable gender reassignment or the creation of a sexual category other than the category of a person assigned at birth, except where the surgical procedure is to correct a biological anomaly, including intersex; and any other person engaged in a sexual activity prohibited under the Bill.

Clause 2 is the interpretation *clause*. The *clause* provides for the interpretation of words used in the Bill. Given the peculiar nature of the Bill, it is proposed, despite the jurisdictional practice of placing the interpretation *clause* at the end of a Bill, to have the interpretation *clause* at the beginning, so as to aid referencing of the terms used throughout the Bill.

Clauses 3, 4 and 5 deal with proper human sexual rights and Ghanaian family values. *Clause 3* imposes a duty on every citizen and in particular, parents, guardians, teachers, churches, mosques, other religious and traditional institutions or organisations, the three arms of government, the media and creative arts industry, as well as relevant independent constitutional bodies to promote and protect proper human sexual rights and Ghanaian family values as defined in the Bill. The *clause* also requires

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the institutions specified to ensure that the values are integrated into the fabric of national planning and national life and also adopted and developed as an integral part of the growing needs of society.

Clause 4 prohibits a person from engaging in acts that undermine the proper human sexual rights and Ghanaian family values provided for in the Bill. In particular, persons must refrain from instigating, commanding, counselling, procuring, soliciting or purposely aiding, facilitating, encouraging or promoting, whether by a personal act or otherwise, either directly or indirectly, any activity that undermines the proper human sexual rights and Ghanaian family values stipulated in the Bill. A person who undermines these proper human sexual rights and Ghanaian family values commits an offence and is liable on summary conviction to a fine of not more than two thousand penalty units or a term of imprisonment of not less than two months and not more than four months.

Clause 5 imposes an obligation on a person in whose presence an offence specified in the Bill is committed to report the commission of the offence to the police, or in the absence of the police, political leaders, opinion leaders or customary leaders in the community. A person, other than the police, who receives such a report, is required to lodge a complaint with the police within seven days of receipt of the report and assist the police in the investigation and prosecution of the matter.

Clauses 6 to 11 deal with LGBTTQQIAAP+ and related activities. By *clause 6*, a person commits an offence if the person engages in sexual intercourse between or among persons of the same sex or between a man and an animal or a woman and an animal. The *clause* further prohibits a person from marrying or purporting to marry a person who is of the same sex as that person or holds out as a lesbian, a gay, a transgender, a transsexual, a queer, a pansexual, an ally, a non-binary or any other sexual or gender identity that is contrary to the binary categories of male and female. The *clause* also prohibits a person from providing or participating in any form of procedure, including surgical procedure, that is intended to create a sexual category other than the binary categories of male and female, except in the case of surgical procedures intended to correct a biological anomaly. A person who contravenes *clause 6* is liable on summary conviction to a fine of not less than seven hundred and fifty penalty units

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and not more than five thousand penalty units, or to a term of imprisonment of not less than three years and not more than five years or both.

By *clause 7*, a person commits an offence and is liable on summary conviction to a fine of not less than twenty-five penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than three months and not more than three years or both if the person, by threat or intimidation, procures another person to engage in a sexual activity prohibited under the Bill or by false pretense or false representation, procures another person to engage in a sexual activity prohibited under the Bill.

Clause 8 prohibits detention with intent to commit a sexual activity prohibited under the Bill. A person commits an offence and is liable on summary conviction to a term of imprisonment of not less than one year and not more than five years if that person detains another person with intent to cause that person to engage in a sexual activity prohibited under the Bill. A person commits an offence under *clause 9* and is liable on summary conviction to imprisonment for a term of not less than one year and not more than three years if the person keeps a house, room, set of rooms or place of any kind for purposes of a sexual activity prohibited under the Bill. The *clause* further prohibits a person who, being the owner or occupier of premises or having or acting or assisting in the management or control of the premises, induces or knowingly suffers a person to be on the premises for the purpose of engaging in an activity prohibited under the Bill. Such a person commits a felony and is liable on summary conviction to imprisonment for not less than three years and not more than six years.

Clause 10 prohibits gross indecency. The clause interpretes gross indecency as a public show of amorous relations between or among persons of the same sex, or where one or more of the persons involved have undergone gender or sex reassignment and intentional cross-dressing to portray a gender different from a gender assigned at birth to the person, with intent to engage in an act prohibited under the Bill. A person engaged in an act under *clause 10* commits a misdemeanour and is liable on summary conviction to a term of imprisonment of not less than six months and not more than one year.

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Clause 11 provides for void marriage. Under the *clause*, a marriage entered into between persons of the same sex or a person and another person who has undergone gender or sex reassignment is void. A certificate issued by a foreign authority pursuant to a marriage entered into between persons of the same sex or a person and another person who has undergone gender or sex reassignment is unenforceable in Ghana. Moreover, any certificate issued in respect of such marriage is not valid in Ghana. Also, a person who, in Ghana, administers, witnesses, abets or aids the solemnisation of a marriage or issues, aids or abets in procuring a certificate commits a misdemeanor and is liable on summary conviction to a term of imprisonment of not less than one year and not more than three years.

Clauses 12 to 16 deal with LGBTTQQIAAP+ propaganda, advocacy, support and other promotional activities. By *clause 12*, a person who, by use of media, technological platform, technological account or any other means, produces, procures, markets, broadcasts, disseminates, publishes or distributes a material for purposes of promoting an activity prohibited under the Bill, or a person who uses an electronic device, the internet service, a film, or any other device capable of electronic storage or transmission to produce, procure, market, broadcast, disseminate, publish or distribute a material for purposes of promoting an activity prohibited under the Bill commits an offence and is liable on summary conviction to a term of imprisonment of not less than five years and not more than ten years. *Clause 12* also prohibits a person from engaging or participating in an activity that promotes or supports sympathy for or a change of public opinion towards an act prohibited under the Bill commits an offence and is liable on summary conviction to a term of imprisonment of not less than five years and not more than ten years. Furthermore, a person who offers premises or any other related movable or immovable asset or provides any form of assistance for purposes of promoting a sexual activity prohibited under the Bill commits an offence and is liable on summary conviction to a term of imprisonment of not less than five years and not more than ten years.

Clause 13 prohibits propaganda of, promotion of and advocacy for activities directed at a child. Thus, a person who, by use of media, technological platform, technological account or any other means, produces, procures, markets, broadcasts, disseminates, publishes or distributes a material or information directly or indirectly directed at a child with intent to evoke the interest of the child in an activity prohibited

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under the Bill, or teach a child to explore any gender or sex other than the binary category of male or female assigned at birth commits an offence and is liable, on summary conviction, to a term of imprisonment of not less than six years and not more than ten years. Similarly, where a person uses an electronic device, the internet service, a film, or any other device capable of electronic storage or transmission to produce, procure, market, broadcast, disseminate, publish or distribute a material or information, directly or indirectly directed at a child with intent to evoke the interest of the child in an activity prohibited under the Bill or teach a child to explore any gender or sex other than the binary category of male or female assigned at birth that person commits an offence and is liable, on summary conviction, to a term of imprisonment of not less than six years and not more than ten years.

Furthermore, where a person is convicted under *clauses 12 and 13*, the owner of the media, technological platform or technological account on which the material or information is circulated, is deemed to have committed the offence unless it is proved that the owner did not consent to, or connive at, the commission of the offence and the owner did exercise the degree of reasonable diligence as ought in the circumstances to have been exercised to prevent the commission of the offence. *Clauses 12 and 13* are also intended to prohibit the glamourisation of LGBTTQQIAAP+ lifestyle by the media and creative arts industry in ways that are likely to corrupt public morals, children and the youth.

Clause 14 prohibits funding or sponsorship for prohibited activities. By the *clause*, a person who funds or sponsors a sexual activity prohibited by the Bill commits an offence and is liable on summary conviction to a term of imprisonment of not less than five years and not more than ten years. In line with subsections (2) and (3) of section 25 of the Interpretation Act, 2009 (Act 792), where a body corporate is convicted or an unincorporated body of persons is convicted, the principal officers of the body corporate by whatever name called, should be deemed to have also committed the offence. This provision recognises and aims at preventing the activities of highly organised and funded movements and groups that collaborate with local organisations, by the use of financial or other forms of support, to lure young and destitute Ghanaians into LGBTTQQIAAP+ activities. This also provides a justification for the absence of pecuniary penalties.

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Clause 15 seeks to disband groups, societies, associations, clubs or organisations existing before the coming into force of the Bill, whose purposes, overt or covert, are wholly or in part to promote, facilitate, support or sustain in any way, an act prohibited under the Bill. *Clause 16* also prohibits the formation, organisation, operation, or registration of LGBTTQQAAP+ associations and all acts related to the promotion of, or participation in the formation, organisation, operation or registration of such entities. Any group, society, association, club or organisation whose purpose is, wholly, partly, overtly or covertly to promote, facilitate, support or sustain an activity prohibited under the Bill is prohibited. A person culpable under *clause 16* commits an offence and is liable on summary conviction to a term of imprisonment of not less than six years and not more than ten years.

Clauses 17 and 18 deal with the protection and support for children. In *clause 17*, the Court is empowered to refuse an application for an adoption order, whether intercountry adoption or otherwise, where the applicant is a lesbian, a gay, a bisexual, a transgender, a transsexual, a queer, an ally, a pansexual, intersex, questioning or a person of any other sociocultural notion of sex or sexual relationship that is contrary to the sociocultural notions of male and female or the relationship between males and females. Similarly, the Department of Social Welfare is empowered in *clause 18* to refuse an application for fosterage where the applicant is a lesbian, a gay, a bisexual, a transgender, a transsexual, a queer, an ally, a pansexual, intersex, questioning or a person of any other sociocultural notion of sex or sexual relationship that is contrary to the sociocultural notion of male and female or the relationship between male and female. These provisions manifest the welfare principle underlying the Children's Act, 1998, (Act 560), as specifically provided in section 2 of Act 560, by preventing persons engaged in activities prohibited under the Bill from having custody of, and grooming children.

Clauses 19 to 23 deal with the protection and support for victims, accused and other persons. These provisions are included as a recognition of the distinction between lifestyle activists and persons who engage in the acts prohibited by the Bill as a result of social, cultural, financial, medical, psychological or biological reasons. This is in recognition that as minorities, these persons need the support, protection and love of the majority, to help them overcome their vulnerabilities and to give them options so they may be helped.

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By *clause 19*, a person who is a victim of a sexual activity prohibited under the Bill should not be penalised for the involvement of the person in the sexual activity. Also, the court may order a person convicted of an offence under the Bill to, in addition to the sentence imposed, pay compensation to the victim of the offence for any physical or psychological harm caused to the victim. The *clause* further provides that the court, in determining the amount of compensation to be paid by the convicted person, should take into consideration the extent of harm suffered by the victim, the degree of force used on the victim and medical and other expenses incurred by the victim as a result of the offence. Moreover, at any stage of investigation or trial of an offence under the Bill, the law enforcement officer, prosecutor or any other person involved in the investigation or trial is required to respect the right to privacy of the accused or complainant. In particular, proceedings involving children should be held *in camera*.

Clause 20 provides accused persons access to medical help or treatment. A person is to be given access to the approved medical help or treatment where the person, upon arrest, during police investigations, upon arraignment before court, in the course of trial or at any time during incarceration for the commission of an offence under the Bill, recants and makes a voluntary request to access an approved medical help or treatment. The cost for medical help or medical treatment may be borne by the person or an approved service provider, on behalf of the person.

Clause 21 provides a flexible sentencing regime for persons found liable for offences under the Bill. The court may, in addition to imposing a sentence under the Bill, make such orders as are appropriate to serve the interest of justice or secure the welfare or well-being of the convicted person if the convicted person openly recants and requests access to approved medical help or treatment and the Court is satisfied that the request of the convicted person is genuine. This positions the Bill as a social protection tool, rather than an instrument to exclude, discriminate against or victimise LGBTTQQIAAP+ persons.

Clause 22 prohibits extra judicial treatment of persons accused of offences under the Bill. A significant part of the advocacy campaign of LGBTTQQIAAP+ is against inhumane treatment of perceived

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LGBTQQIAAP+ persons by homophobic persons. A person accused of an offence or suffering from any gender or sexual identity challenge under the Bill should not be abused, assaulted or harassed whether verbally or physically. A person who abuses, assaults or harasses an accused person or a person suffering from any gender or sexual identity challenge commits an offence under the Bill and is, on summary conviction, liable to a term of imprisonment of not less than six months and not more than three years. This provision accords with the general protections provided in Chapter Five of the 1992 Constitution for persons accused of criminal offences, particularly article 15(1) which stipulates that “the dignity of all persons shall be inviolable.” By prohibiting such acts, persons accused of offences under the Bill are guaranteed fair treatment and trial and will be accorded the dignity that every citizen deserves.

Clause 23 provides for assistance for persons designated as “questioning” and “intersex” under the Bill. Under this *clause*, the Government is empowered to liaise with an approved service provider to provide assistance in the form of therapy or any other assistance relevant to the circumstance, to persons who may be questioning their sex or for a parent whose child is intersex in order to, where necessary, assist the parent realign the child to the appropriate binary designation as determined by a medical practitioner. By identifying persons designated as “questioning” and “intersex” for special treatment, the provision reflects the policy to provide support and assistance to persons who, for psychological or biological reasons may become easy prey to lifestyle LGBTQQIAAP+ persons.

Clauses 24 and *25* deal with miscellaneous provisions. *Clause 24* empowers the Minister, in consultation with the Minister for Gender, Children and Social Protection and the Minister for Health to make Regulations. *Clause 25* seeks to consequentially amend the Extradition Act, 1960 (Act 22) in the First Schedule to the effect that an offence committed under the Bill is an extraditable offence.

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HON SAMUEL NARTEY GEORGE

MP for Ningo-Prampram

Date: 29th June, 2021

HON DELLA ADJOA SOWAH

MP for Kpando

Date: 29th June, 2021

HON EMMANUEL BEDZRAH

MP for Ho West

Date: 29th June, 2021

HON JOHN NTIM FORJOUR

MP for Assin South

Date: 29th June, 2021

HON ALHASSAN SAYIBU SUHUYINI

MP for Tamale North

Date: 29th June, 2021

HON RITA NAA ODOLEY SOWAH

MP for La Dadekotopon

Date: 29th June, 2021

HON HELEN ADJOA NTOSO

MP for Krachi West

Date: 29th June, 2021

**PROMOTION OF PROPER HUMAN SEXUAL RIGHTS AND
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ROCKSON-NELSON DAFEAMEKPOR
MP for South Dayi

Date: 29th June, 2021

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

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5. Duty to report

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A
BILL

ENTITLED

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

AN ACT 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.

PASSED by Parliament and assented to by the President

Preliminary Provisions

Application

1. This Act applies to a person
(a) who holds out as

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- (i) a lesbian;
 - (ii) a gay;
 - (iii) a bisexual;
 - (iv) a transgender;
 - (v) a transsexual;
 - (vi) a queer;
 - (vii) an ally;
 - (viii) a pansexual; or
 - (ix) a person of any other sociocultural notion of sex or sexual relationship that is contrary to the sociocultural notions of male and female or the relationship between males and females;
- (b) questioning the sexuality of that person;
 - (c) who has a biological anomaly including a person who is intersex;
 - (d) involved in the promotion of, propagation of, advocacy for, support or funding of LGBTTTQQAAP+;
 - (e) who provides or participates in the provision of sex or gender reassignment, surgical procedure or any other procedure intended to create a sexual category other than the sexual category of a person assigned at birth except where the procedure is intended to correct a biological anomaly including intersex; or
 - (f) who engages in a sexual activity prohibited under this Act.

Interpretation

2. In this Act, unless the context otherwise requires,

“ally” means a non-queer person who

- (a) supports or advocates for the queer community, or
- (b) is an individual within the LGBTTTQQAAP+ community and identifies with another member of the community;

“approved medical help” includes psychiatric service, psychological service, psycho-social counselling service and any other service provided to a person engaged in, involved in or associated with a sexual activity prohibited under this Act to enable the person

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overcome any biological or psychological challenge related to a sexual activity prohibited under this Act;

“approved medical treatment” includes endocrinological service, medical service, surgical service or any other service provided to a person engaged in, involved in or associated with a sexual activity prohibited under this Act to enable the person overcome any biological, psychological or emotional challenge related to a sexual activity prohibited under this Act;

“asexual” means an individual who generally does not have sexual desire or attraction to any group of persons but does not include a celibate;

“bi-sexual” means a person who is attracted to persons who are of the same sex as that person and to persons who are of the opposite sex;

“child” means a person below the age of eighteen years;

“creative arts industry” includes cultural sites, visual arts, traditional cultural expressions, performing arts, music, publishing and literary arts, audio visual, new media, design and creative services and research and record keeping;

“gay” means a man who is primarily attracted to men and engages in sexual activities with men;

“gender” means the binary sex categories of male and female assigned at birth, and the behavioural, cultural and psychological traits typically associated with either sex, but does not include transgender, gender non-conformity or non-binary categories;

“Ghanaian family values” include

- (a) respect for the sanctity of marriage as a life long relationship between a man and a woman, each of whose gender is assigned at birth;
- (b) the recognition
 - (i) of the nuclear and extended family as the basic unit for all Ghanaian ethnic communities; and
 - (ii) that the ultimate purpose for the role of Government in protecting and advancing the family as the

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basic unit of society is to safeguard and promote the best interest of children;

- (c) the obligation of parents, guardians and teachers to ensure that children and young persons receive special protection against exposure to physical, emotional and moral hazards;
- (d) the recognition of chiefs and the chieftaincy institution, as established by customary law and the Constitution, as the ultimate source of traditional political authority and leadership and as the custodians of the customs, traditions and customary laws, rules and precepts that underpin Ghanaian ethnic groups and communities;
- (e) the recognition in Ghanaian ethnic groups, of 'gender' as a social construct to only male and female humans each of whose gender is assigned at birth; and
- (f) the duty to uphold the cherished societal ideals of selflessness, communalism and good neighbourliness, hardwork, discipline, truthfulness, compassion towards the weak and vulnerable, the acquisition of wealth through hardwork and genuine entrepreneurship and every customary ideal that will help establish a free and just Ghanaian society and nation;

“intersex” means a person whose sexual anatomy or chromosomes does not fit the traditional markers of “male” or “female” assigned at birth;

“lesbian” means a woman who is primarily attracted to women and engages in sexual activities with women;

“LGBTQA+” includes Lesbian, Gay, Bisexual, Transgender, Queer, Ally and any other sociocultural notion of sex and sexual relationship that is contrary to the sociocultural notion of male and female assigned at birth;

“LGBTQQIAAP+” includes Lesbian, Gay, Bisexual, Transgender, Transsexual, Queer, Questioning, Intersex,

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Ally, Asexual, Pansexual and any other sociocultural notion of sex and sexual relationship that is contrary to the sociocultural notion of male and female assigned at birth;

“Minister” means the Minister responsible for Religious Affairs and Culture;

“pansexual” means a person who engages in a sexual or romantic activity with persons of any gender identity or expression including persons who do not fit into the binary sex categorisation of male and female;

“proper human sexual rights” means the right of a person

(a) with the binary sex categorisation of male and female assigned at birth to the

(i) physical, emotional and psychological wellbeing and enhancement; or

(ii) healthy growth and development of the person especially where the person is an adolescent or a youth;

(b) to positive educational and instructional materials, activities and actions relating to the reproductive health of an adolescent or youth whose gender is assigned at birth, for purposes of preparing the adolescent or youth for adult hood and parenthood but does not include

(i) any material on comprehensive sexuality education or any other variant of comprehensive sexuality education by whatsoever name called; or

(ii) any matter pertaining to sexual orientation and gender identity or reproductive sexual rights as defined to include the promotion of LGBTTQQIAAP + tendencies and behavioural activities or conduct among children, adolescents and youth; and

(c) under the customary law of a particular ethnic community, relating to the puberty rites of passage of an adolescent or youth whose gender is assigned at birth;

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- “queer” means an all-inclusive identity of the various identities or variations that constitute the LGBTTTQQIAAP+ community;
- “questioning” means the process engaged by a person by the use of social media or other means to explore or discover the sexual orientation, gender identity or gender expression of the person;
- “sex” means the binary categories of male and female assigned at birth and excludes any non-binary category;
- “sexual activity” used in relation to an offence under this Act means an act prohibited under paragraph (a) of subsection (1) of section 6 of this Act;
- “marriage” means a customary law union, a union by ordinance or a Mohammedan union between a man and a woman each of whose gender is a gender assigned at birth;
- “transgender” means a person whose gender identity differs from the sex of the person at birth; and
- “transsexual” means a person who voluntarily
- (a) commences a medical process including surgery or hormonal manipulation; or
 - (b) undergoes a medical process including surgery or hormonal manipulation to permanently change the gender identity of the person.

Proper Human Sexual Rights and Ghanaian Family Values

Duty to promote proper human sexual rights and Ghanaian family values

3. (1) Each citizen shall promote and protect the proper human sexual rights and Ghanaian family values specified in section 2 of this Act.

(2) Without limiting subsection (1), the following persons or institutions shall, within the jurisdiction of the persons or institutions, promote and protect the proper human sexual rights and Ghanaian family values specified in section 2 of this Act:

- (a) a parent;
- (b) a guardian;
- (c) a teacher or any other educational or religious instructor;

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- (d) a church, a mosque or any other religious or traditional institution or organisation;
 - (e) the Executive;
 - (f) the Legislature;
 - (g) the Judiciary;
 - (h) relevant independent constitutional bodies including the Commission for Human Rights and Administrative Justice and the National Commission for Civic Education; and
 - (i) the media and the creative arts industry.
- (3) The institutions referred to in subsection (2) shall collectively
- (a) ensure that the proper human sexual rights and Ghanaian family values are integrated into the fabric of national life;
 - (b) make conscious effort to introduce the proper human sexual rights and Ghanaian family values perspectives to relevant aspects of national planning; and
 - (c) ensure that the proper human sexual rights and Ghanaian family values are adopted and developed as an integral part of the growing needs of society.

Prohibition against undermining proper human sexual rights and Ghanaian family values

4. (1) A person shall not

- (a) undermine the proper human sexual rights and Ghanaian family values specified in section 2 of this Act; or
- (b) directly or indirectly, instigate, command, counsel, procure, solicit, or in any other manner purposely aid, facilitate, encourage or promote, whether by a personal act or presence or otherwise, an act that undermines the proper human sexual rights and Ghanaian family values.

(2) A person who contravenes paragraphs (a) or (b) of subsection (1) commits an offence and is liable on summary conviction to a fine of not less than one thousand penalty units and not more than two thousand penalty units or a term of imprisonment not less than two months and not more than four months.

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Duty to report

5. (1) A person in whose presence an offence is committed under this Act shall report the commission of the offence to a police officer, or in the absence of a police officer to a political leader, opinion leader or the customary authorities of the community in which the offence is committed.

(2) A leader or authority to whom a report is made under subsection (1) shall

- (a) within seven days of the report ensure that the report is lodged at the nearest police station; and
- (b) assist the police in the investigation and prosecution of the matter.

LGBTQQIAAP+ and Related Activities

Prohibition of LGBTQQIAAP+ and related activities

6. (1) A person commits an offence if the person

- (a) engages in a
 - (i) sexual intercourse between or among persons of the same sex;
 - (ii) sexual intercourse between a man and an animal or a woman and an animal; or
 - (iii) pansexual activity;
- (b) marries or purports to marry a person who is of the same sex as that person;
- (c) knowingly marries or purports to marry a person who has undergone gender or sex reassignment, except in the case of a person who has undergone a surgical procedure to correct a biological anomaly, including intersex;
- (d) marries or purports to marry an animal;
- (e) holds out as
 - (i) a lesbian,
 - (ii) a gay,
 - (iii) a transgender,
 - (iv) a transsexual,
 - (v) a queer,
 - (vi) a pansexual,
 - (vii) an ally,
 - (viii) a non-binary, or

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- (ix) any other sexual or gender identity that is contrary to the binary categories of male and female;
- (f) provides or participates in the provision of
 - (i) a surgical procedure for sex or gender reassignment; or
 - (ii) any other procedure that is intended to create a sexual category other than the sexual category of a person assigned at birth except in the case of correcting a biological abnormality including intersex; or
- (g) undergoes
 - (i) a surgical procedure for sex or gender reassignment; or
 - (ii) any other procedure that is intended to create a sexual category other than the sexual category of the person assigned at birth except in the case of correcting a biological abnormality including intersex.

(2) A person who commits an offence under paragraph (a), (b), (c), (d), (e), (f), or (g) of subsection (1) commits a second degree felony and is liable on summary conviction to a fine of not less than seven hundred and fifty penalty units and not more than five thousand penalty units or to a term of imprisonment of not less than three years and not more than five years or both.

- (3) For purposes of this section, “sexual intercourse” occurs where
- (a) a person penetrates the anus or mouth of another person with the penis of that person or other contraption; or
 - (b) a person, by use of any object or contraption, penetrates or stimulates the vagina or anus of another person; or
 - (c) a person, by use of the penis of the person or any other object or contraption, penetrates the anus or other bodily opening of an animal

for sexual gratification.

Procuration

7. A person who

- (a) by threat or intimidation procures another person to engage in a sexual activity prohibited under this Act; or

- (b) by false pretense or false representation procures another person to engage in a sexual activity prohibited under this Act

commits a misdemeanour and is liable, on summary conviction, to a fine of not less than twenty-five penalty units and not more than five hundred penalty units or a term of imprisonment of not less than three months and not more than three years or both.

Detention with intent to commit prohibited sexual activity

8. A person who detains another person with intent to cause that person to engage in a sexual activity prohibited under this Act commits an offence and is liable, on summary conviction, to a term of imprisonment of not less than one year and not more than five years or both.

Keeping a brothel for a prohibited sexual activity

9. (1) A person who keeps a house, room, set of rooms or any other movable or immovable asset for purposes of a sexual activity prohibited under this Act commits a second degree felony and is liable, on summary conviction, to a term of imprisonment of not less than three years and not more than six years.

(2) A person who, being the owner or occupier of premises or any other movable or immovable asset or having or acting or assisting in the management or control of the premises, induces or knowingly allows a person to be on the premises for the purpose of engaging in a sexual activity prohibited under this Act, commits a second degree felony and is liable, on summary conviction, to a term of imprisonment of not less than three years and not more than six years.

Prohibition of gross indecency

10. (1) A person who wilfully commits a grossly indecent act commits a misdemeanour and is liable, on summary conviction, to a term of imprisonment of not less than six months and not more than one year.

(2) For purposes of this section, "grossly indecent act" means

- (a) public show of amorous relations between or among persons of the same sex;
- (b) public show of amorous relations between or among persons

where one or more of the persons have undergone gender or sex reassignment; or

- (c) intentional cross-dressing to portray that the person is of a gender different from the gender assigned at birth with intent to engage in an act prohibited under this Act.

Void marriage

11. (1) A marriage entered into by the following persons is void:

- (a) persons of the same sex, or
- (b) a person who has undergone gender or sex reassignment.

(2) A certificate issued by a foreign authority pursuant to a marriage under subsection (1) is unenforceable in Ghana.

(3) A person who

- (a) administers, witnesses, abets, solemnises or aids the solemnisation of a marriage under subsection (1); or
- (b) issues or aids or abets in procuring a certificate in respect of a marriage under subsection (1)

commits a misdemeanor and is liable on summary conviction to a term of imprisonment of not less than one year and not more than three years.

LGBTTQQIAAP+ Propaganda, Advocacy, Support and Other Promotional Activities

Prohibition of propaganda of, promotion of and advocacy for activities prohibited under this Act

12. (1) A person who,

- (a) through media, technological platform, technological account or any other means produces, procures, markets, broadcasts, disseminates, publishes or distributes; or
- (b) uses an electronic device, the internet service, a film, or any other device capable of electronic storage or transmission to produce, procure, market, broadcast, disseminate, publish or distribute a material for purposes of promoting an activity prohibited under this Act commits an offence and is liable, on summary conviction to a term of imprisonment of not less than five years and not more than ten years.

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(2) A person who engages in or participates in an activity that promotes or supports

(a) sympathy for an act prohibited under this Act; or

(b) a change of public opinion towards an act prohibited under this Act

commits an offence and is liable on summary conviction to a term of imprisonment of not less than five years and not more than ten years.

(3) A person who offers premises or any other movable or immovable asset or provides any form of assistance for purposes of promoting an activity prohibited under this Act commits an offence and is liable, on summary conviction, to a term of imprisonment of not less than five years and not more than ten years.

(4) Where a person is convicted under subsection (1), the owner of the media, technological platform or technological account on which the material or information is produced, procured, marketed, broadcasted, disseminated, published or distributed under subsection (1) is deemed to have committed the offence unless it is proved that the owner

(a) did not consent to, or connive at the commission of the offence; and

(b) exercised the degree of reasonable diligence as ought in the circumstances to have been exercised to prevent the commission of the offence.

(5) Where

(a) a body corporate is convicted under subsection (1), (2) or (3) of this section, subsections (2), (3), (4), (5) and (6) of section 25 of the Interpretation Act, 2009 (Act 792) shall apply; or

(b) an unincorporated body of persons is convicted under subsection (1), (2) or (3) of this section, the principal officers of the body of persons, whatever name called, shall be deemed to have also committed the offence.

Prohibition of propaganda of, promotion of and advocacy for activities directed at a child

13. (1) A person who,

(a) through media, technological platform, technological

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account or any other means produces, procures, markets, broadcasts, disseminates, publishes or distributes; or

- (b) uses an electronic device, the internet service, a film, or any other device capable of electronic storage or transmission to produce, procure, market, broadcast, disseminate, publish or distribute

a material or information directed at a child whether directly or indirectly with intent to

- (c) evoke the interest of the child in an activity prohibited under this Act; or

- (d) teach the child to explore any gender or sex other than the binary category of male or female;

commits an offence and is liable, on summary conviction, to a term of imprisonment of not less than six years and not more than ten years.

(2) Where a person is convicted under subsection (1), the owner of the media, technological platform or technological account on which the material or information is produced, procured, marketed, broadcasted, disseminated, published or distributed under subsection (1) is deemed to have committed the offence unless it is proved that the owner

- (a) did not consent to, or connive at the commission of the offence; and

- (b) exercised the degree of reasonable diligence as ought in the circumstances to have been exercised to prevent the commission of the offence.

(3) Where

- (a) a body corporate is convicted under subsection (1) of this section, subsections (2), (3), (4), (5) and (6) of section 25 of the Interpretation Act, 2009 (Act 792) shall apply; or

- (b) an unincorporated body of persons is convicted under subsection (1), (2), (3) or (4) of this section, the principal officers of the body of persons, whatever name called, shall be deemed to have also committed the offence.

(4) For purposes of section 12 and this section,

“media” includes radio, newspaper and television;

“owner” means the legal owner or operator of the media, technological platform or technological account and, where

the media, technological platform or technological account is owned by more than one person, includes every joint owner;

“technological account” includes facebook account, twitter account, Instagram account and any other social media account; and

“technological platform” includes websites, facebook, twitter, Instagram and other social media applications and sites.

Prohibition of funding or sponsorship for prohibited activities

14. (1) A person who funds or sponsors an activity prohibited under this Act commits an offence and is liable, on summary conviction, to imprisonment for a term of not less than five years and not more than ten years.

(2) Where

- (a) a body corporate is convicted under subsection (1), subsections (2), (3), (4), (5) and (6) of section 25 of the Interpretation Act, 2009 (Act 792) shall apply; or
- (b) an unincorporated body of persons is convicted under subsection (1), the principal officers of the body of persons, whatever name called, shall be deemed to have also committed the offence.

Disbandment of LGBTTQQIAAP+ group, society, association, club or organisation

15. Any group, society, association, club or organisation in existence before the coming into force of this Act, whose purpose whether partly, overtly or covertly, is to promote, facilitate, support or sustain in any way an act prohibited under this Act is disbanded.

Prohibition of LGBTTQQIAAP+ group, society, association, club or organisation

16. (1) A person shall not directly or indirectly

- (a) form, organise, operate or register;
- (b) promote the formation, organisation, operation or registration of; or
- (c) participate in an activity to support or sustain

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a group, society, association, club or organisation whose purpose whether partly, overtly, or covertly, is to promote, facilitate, support or sustain an act prohibited under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to imprisonment for a term of not less than six years and not more than ten years.

Protection and Support for Children

Prohibition of adoption order for LGBTTQQIAAP+ persons

17. The Court shall not grant an application for an adoption order whether intercountry adoption or otherwise if the applicant is

- (a) a lesbian;
- (b) a gay;
- (c) a bisexual;
- (d) a transgender;
- (e) a transsexual;
- (f) a queer;
- (g) an ally;
- (h) a pansexual;
- (i) intersex;
- (j) questioning; or
- (k) a person of any other sociocultural notion of sex or sexual relationship that is contrary to the sociocultural notions of male and female or the relationship between males and females, each of whose gender is assigned at birth.

Prohibition of grant of fosterage for LGBTTQQIAAP+ persons

18. The Department of Social Welfare shall not grant an application for fosterage where the applicant is

- (a) a lesbian;
- (b) a gay;
- (c) a bisexual;
- (d) a transgender;
- (e) a transsexual;
- (f) a queer;

- (g) an ally;
- (h) a pansexual;
- (i) intersex;
- (j) questioning; or
- (k) a person of any other sociocultural notion of sex or sexual relationship that is contrary to the sociocultural notions of male and female or the relationship between males and females, each of whose gender is assigned at birth.

Protection and Support for Victims, Accused and other Persons

Protection of victims of prohibited sexual activities

19. (1) A person who is a victim of a sexual activity prohibited under this Act shall not be penalised for the involvement of the person in the sexual activity.

(2) The Court may order a person convicted of an offence under this Act to, in addition to the sentence imposed, pay compensation to the victim of the offence for any physical or psychological harm caused to the victim.

(3) The Court, in determining the amount of compensation to be paid by the convicted person, shall take into consideration

- (a) the extent of harm suffered by the victim;
- (b) the degree of force used on the victim; and
- (c) medical and other expenses incurred by the victim as a result of the offence.

(4) At any stage of investigation or trial of an offence under this Act, the law enforcement officer, prosecutor, judicial officer, medical practitioner or any other person involved in the investigation or trial shall respect the right to privacy of the accused and complainant.

(5) Where the complaint relates to a child, proceedings shall be held *in camera*.

(6) The Court may, in addition to an order made under this Act, order the victim of an offence under this Act to undergo therapy provided by an approved service provider where the Court determines that the victim is traumatised by the sexual activity.

Access to medical help or treatment by accused

20. (1) A person who

- (a) upon arrest;
- (b) during police investigations;
- (c) upon arraignment before court;
- (d) in the course of trial; or
- (e) at any time during incarceration

for the commission of an offence under this Act recants and makes a voluntarily request to access an approved medical help or an approved medical treatment, shall be granted access to the approved medical help or approved medical treatment.

(2) The cost for an approved medical help or medical treatment under subsection (1) shall be borne by the person or any other person, including an approved service provider, on behalf of the person.

Flexible sentencing

21. The Court, in addition to imposing a sentence under this Act, may make such orders as appropriate to serve the interest of justice or secure the welfare or well-being of the convicted person if

- (a) the person convicted openly recants and requests access to an approved medical help or approved medical treatment, and
- (b) the Court is satisfied that the request of the convicted person is genuine.

Prohibition of extra judicial treatment

22. (1) A person commits a misdemeanor if the person, whether verbally or physically, abuses, assaults or harasses, a person

- (a) accused of an offence under this Act; or
- (b) suffering from any gender or sexual identity challenge including LGBTTTQQIAAP+ or any other variant of a sexual identity challenge.

(2) A person who commits a misdemeanor under subsection (1) is liable to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than six months and not more than three years.

(3) Despite subsections (1) and (2), the use of a graphic description of the behavioural pattern of a person engaged in an activity prohibited under this Act

- (a) for purposes of education or instruction; or
- (b) in response to any form of advocacy or activism does not constitute abuse, assault or harassment.

Assistance for questioning and intersex persons

23. The Ministry shall liaise with an approved service provider to provide assistance,

- (a) in the form of therapy or any other assistance relevant to the circumstance, to a person who may be questioning the sexuality of that person; or
- (b) for a parent whose child is intersex in order to, where necessary, assist the parent realign the child to the appropriate binary designation as determined by a medical practitioner.

Miscellaneous Provisions

Regulations

24. The Minister may, in consultation with the Minister responsible for Gender, Children and Social Protection and the Minister responsible for Health, by legislative instrument, make regulations to

- (a) regulate an approved service provider; and
- (b) provide for
 - (i) the support of victims of sexual activities prohibited under this Act;
 - (ii) assistance for persons questioning their sexuality;
 - (iii) assistance for intersex persons; and
 - (iv) the effective and efficient implementation of this Act.

Consequential amendments

25. The Extradition Act, 1960 (Act 22) is amended in the First Schedule by the addition of the following after the paragraph for “Cybercrime and cyber offences”:

*Promotion of Proper Human Sexual Rights and
Ghanaian Family Values Bill, 2021*

“LGBTQQIAAP+ offences

An offence under the Promotion of Proper Human Sexual Rights and Ghanaian Family Values Act, 2021 (Act.....).”.

*Promotion of Proper Human Sexual Rights and
Ghanaian Family Values Bill, 2021*

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