

PRESS CONFERENCE ADDRESSING MATTERS ARISING AFTER THE SUBMISSION OF THE MEMO FROM CONCERNED CITIZENS AGAINST THE ANTI-LGBTQI+ BILL AND PARTNERING ORGANIZATIONS.

**GHANA INTERNATIONAL PRESS CENTRE
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Good morning, ladies, and gentlemen of the media,

We have invited you to this press conference to speak to developments regarding the anti-LGBTQ+ public debate. In particular, we find it necessary to make our collective views known to the public on several recurrent issues that have come up and to address deliberate distortions of our position.

1. Insults, curses, and threats have no place in a secular democratic republic

Firstly, let us state that public debates that resort to insults, curses and threats to individuals should neither be supported nor tolerated. They add nothing to the debate and do not speak well of those who issue them. They rather cloud the issues and divert attention from the serious constitutional, legal and public interest issues raised by the introduction of ‘The Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill, 2021’ in Parliament.

The insults, curses, and threats also confirm our view that the Bill, by its very contents, is stoking a crusade of cultural fanaticism, social intolerance, bigotry, and hatred that should be condemned by all well-meaning and responsible Ghanaians.

We note threats on the lives of members of our group and that of individuals who have had the courage to speak out against the obnoxious provisions in the Bill that have been issued by some traditional rulers and other supporters of the Bill. We are alarmed at these and other attempts to silence dissent to the Bill.

We also note the disturbing case of the two sisters, one of them a prominent athlete, who were attacked in their home in Achimota, as well as other attacks on persons, on suspicion of being homosexuals. None of our religious leaders nor the sponsors of the Bill have called out these barbaric incidents and condemned their perpetrators. This is particularly ironic because the Bill’s sponsors claim that they aim to protect sexual minorities against such illegal attacks.

We have observed, with dismay, the loud silence of state institutions that are constitutionally mandated to promote human rights, democratic citizenship, free speech, and responsible media, such as the Commission for Human Rights and Administrative Justice and the National Commission for Civic Education. We call on these institutions and individuals to do the right and proper thing by condemning such anti-democratic and illegal practices.

We also call on the Inspector General of Police and the Ghana Police Service to invite for questioning all those who have issued threats against members of the LGBTQ+ community and against those who have expressed opposition to the Bill.

We have noted with deep concern and alarm media reports that some traditional leaders have threatened to kill anyone caught in “gayism;” banish from their traditional areas those engaged in LGBTQ+ activities; and to perform rituals against them.

We wish to emphasize that Ghana is a democratic secular republic, and our chiefs, however revered, do not have any legitimate and constitutionally recognized power whatsoever, to expel any person from a traditional area or restrict the liberty and freedom of movement of persons in Ghana. The Supreme Court in the case of *Nana Adjei Ampofo v The Attorney-General & President of the National House of Chiefs* (Suit No. J.1/8/2008, decided on 20 July 2011), has clearly ruled that under the Constitution, chiefs and traditional authorities have no power to restrict the freedom of movement of any person in Ghana.

2. Opposition to the Bill is not advocacy for same-sex marriage

The Bill under consideration is one whose sponsors aim to jail people for being homosexual and jail those who speak in favour of LGBTQI rights or even sympathise with their activities. That is what we are opposed to.

We wish to clearly state that despite the misinformation in the public domain, neither our group nor anyone we know has introduced any Bill in Parliament to legalize same-sex marriage. Contrary to the misguided view that we are beating a retreat on this matter, we invite everyone to read our memorandum to Parliament. We stated clearly in our memo that, ‘in our view, same sex marriage is not permitted under the Marriage Act’ 1884 – 1986 (CAP 137). We further noted that, if the view was that this prohibition is not explicit enough, all that needs to be done is to simply amend the Marriage Act to make that clear. It is therefore mischievous for anyone to say that our group is for the legalization of same sex marriage, and we expect the media to challenge persons who deliberately or out of ignorance propagate such dis-information.

We have further in our media engagements distinguished between sex and marriage and how they are regulated by the state. We noted that historically, the state has treated sex as an intimate matter, and generally, where capacity, consent and privacy is established between two adults, the state will not interfere. That is why adultery, however abhorrent it may be to our moral sensibilities, or even pre-marital sex, except where it occurs with a minor, are not treated as crimes.

The distortions that some proponents of the Bill have sought to make of a 2010 decision of the European Court of Human Rights (not the World Court of Human Rights- there is no such court!), affirming the rights of states to solely determine who can get married in their jurisdictions, lends credence to the distinction that we have sought to make between sexual relations and marriage. Nowhere in that decision did the court rule that there was no human right to same sex relations! It is unfortunate that one of the sponsors of the Bill deliberately misinformed the public when he said even the European Court of Human Rights has held that homosexuality is not a human right, when he knew or ought to have known perfectly well, that this was a blatant falsehood.

3. Homosexuality is not a threat to procreation and the reproduction of the human species

Some of the views expressed in support of the Bill argue that homosexuality constitutes an existential threat to procreation and the survival of the human species. These are outlandish claims for which there is no scientific basis. Those who suggest that the proposed anti-LGBTQ+ legislation would somehow promote procreation should explain to us what they propose should be done to men and women who choose to be celibate, such as Catholic priests and nuns, or who are unable to give birth, or decide not to have children. Is the existence of such persons to be criminalized, just as the Bill in clause 6 criminalizes anyone who holds himself/herself out as a member of the LGBTQ+ community or an “ally”? Ladies and gentlemen of the media, these hyperbolic and diversionary fears are nothing but scare mongering, propagated simply to arouse hysterical animosity towards members of the LGBTQ+ community. They expose the untenable and extremist foundations of the provisions of the Bill.

4. The Ghanaian state has no right to criminalize behaviour based on a particular religion’s doctrine

The notion that homosexuality should be criminalized based on religious doctrine is as misguided as it is unconstitutional. We have stated very clearly that we respect the right of every person to practice any religion of his or her choice, as guaranteed under Article 21 (1) (b) of our Constitution. Indeed, we shall resist any attempt to criminalize or otherwise interfere with any person’s right to practice the religion of his/her choice. However, the Constitution clearly and categorically prohibits any attempt to impose on any person in Ghana the religious beliefs, dogma, and tenets of another religion. That is why it is constitutionally impermissible to criminalize LGBTQ+ activities on the ground that they are contrary to the commandments of God, Allah or any religious deities. The religious are encouraged and even enjoined to comply with the values and tenets of their religion. That is an individual choice. What we are saying is that the secular Ghanaian State has no business legislating for Ghana any religious doctrine, dogma, or commandment.

We respectfully ask the Traditional, Christian, and Islamic lobby for the Bill why they are not advocating for the passage of a law that criminalizes adultery and fornication? These “transgressions” against religious doctrine are far more prevalent than same-sex practices and have a greater negative impact on families and society.

5. It is not un-Ghanaian, anti-Ghanaian or unpatriotic to campaign in favour of human rights, protection of the vulnerable and social minorities in our society

It is disingenuous to discredit opposition to the Bill as being informed by foreign interests. This denies the agency and legitimacy of domestic voices which are dissenting to the bigotry upon which the Bill is based and suggests that only those in favour of the Bill should qualify to be regarded as “real Ghanaians.” We may do well to remember that some of the civil society voices calling for the protection of LGBTQ+ rights today have, in the past, championed other human rights that were not necessarily grounded in our culture or tradition, such as freedom of association

and free media. They have also been active in successful campaigns against female genital mutilation, trokosi and witch camps that others had defended as culturally sanctioned; and have spoken for minority rights in Christian mission schools. It is a sad irony that proponents of this anti-democratic Bill include individuals whose political careers have benefitted from the democratic culture that these civil society actors championed, sometimes at the peril of their lives and liberty.

It is noteworthy that an MP who is a key proponent of the Bill has attacked the *Daily Graphic* for publishing an advertiser's announcement in opposition to the Bill. This attempt to silence opposing voices and deprive Ghanaians of their right to free speech is indicative of the epidemic of intolerance that motivates proponents of the Bill and demonstrates the slippery slope to political intolerance that the Bill represents. It is in direct contravention of Article 165 of the constitution which provides "All state-owned media shall afford fair opportunities and facilities for the presentation of **divergent views and dissenting opinions.**" It also reveals the extent to which proponents of the Bill are championing a moral panic and false societal crisis which thrives on disinformation, for which reason free speech represents an existential threat.

6. Protection of minority rights is a crucial tenet of democracy

A common chorus that has greeted any critique of the provisions of the Bill is that most Ghanaians are opposed to LGBTQ+ practices and that in a democracy, the will of the majority must prevail. This viewpoint unfortunately involves a misconception of democracy. While the majority generally prevails in a democracy, a fundamental and important principle of democracy is the protection of minority groups from the dictatorship of the majority. That is why the Constitution guarantees certain rights to all persons, whether or not they belong to the majority, and further protects minorities by prohibiting discrimination against them. Thus, the fact that most people want a certain Bill to be passed into law, is not a sufficient ground for its passage.

In addition, the proposed legislation must be within the limits laid down in the Constitution; it must not conflict with the provisions of the Constitution, particularly the fundamental rights guaranteed under the Constitution for all persons irrespective of whether they are in the majority or minority. That is why Article 1 (1) provides as follows:

"Article 1 (1) The sovereignty of Ghana resides in the people of Ghana in whose name and for whose welfare the powers of government are to be exercised ***in the manner and within the limits laid down in this Constitution.***"

Thus, the exercise of the powers of government, for example, by Parliament in passing laws is only lawful if done "**in the manner and within the limits laid down**" in our Constitution. Accordingly, where Parliament seeks to pass a law based on the demands of the overwhelming majority, that law must still be "**within the limits laid down in the Constitution.**" Anything outside those limits, however popular, is unconstitutional and by Article 1 (2) "shall, to the extent of that unconstitutionality, **be void.**"

7. Legislation that empowers religious extremism poses a potential national security threat

Anyone who is aware of developments in our sub-region, especially in Mali, Burkina Faso, and Northern Nigeria, should know that Ghana faces very serious national security threats from the activities of religious extremists in those countries. Security experts and our National Security apparatus have on many occasions warned against these threats and called for vigilance from society. In such a context, to promote a Bill that mobilizes fundamentalist and extremist religious views unwittingly gives political and ideological space for fundamentalists to seize the public space quietly and imperceptibly as a first step towards any destabilizing agenda. We advise our religious leaders and the sponsors of this Bill to tread carefully, lest they let the proverbial genie out of the bottle.

8. Homosexuality does not pose a public health threat

In an attempt to find a public health justification for the Bill, the memorandum to the Bill throws out a claim that 18.1% of persons living with HIV/AIDS are men who have sex with other men. Indeed, a leading proponent has claimed that this makes them 18 times more likely to contract HIV/AIDS, when this has not been compared to anything else! In the first place, the 18.1% is not a percentage of all people living with HIV/AIDS, as some of the main spokespersons for the Bill have misinformed Ghanaians. The 18.1% in fact refers to the percentage of a limited number of men who have sex with men who were tested and screened in a survey by the Ghana Aids Commission.

Leaving aside the incorrect inferences from these statistics, we wish to stress that the higher prevalence rates of HIV/AIDS and other sexually transmitted infections (STIs) among men who have sex with men, and commercial sex workers, for example, has much to do with the fact of having multiple sexual partners. This is a risk that also occurs among heterosexual persons who engage in risky sexual behaviors. Given this reality, the appropriate public policy intervention is not a law that singles out LGBTQ+ persons or their activities for criminalization. Rather, it is to ensure that all potentially sexually active persons, LGBTQ+ or heterosexual, are provided adequate and appropriate education on responsible sexual behaviour, as well as access to sound medical advice and care. Criminalization has been shown to be an ineffective tool in efforts to reduce transmission of STIs and HIV/AIDS and is decidedly counter-productive. Being inclusive reduces stigma and discrimination against the LGBTQ+ community, as it allows its members to access appropriate medical care, education, and support that will, in turn, promote the health and well-being of the wider population. Thus, contrary to what the sponsors of the Bill and their supporters claim, far from this Bill promoting public health and safety, if passed into law, it will undermine the progress that medical doctors and specialists and CSOs in the field have made over the years.

9. Homosexuality is not a mental disorder

The sponsors of the anti-LGBTQ+ Bill and some religious groupings have suggested that homosexuality is a mental disorder that can be corrected by so-called “**conversion therapy**”. “Conversion therapy” is in reality a dangerous pseudo-scientific treatment which has been described as “a form of torture” and medically not proven to be effective. Indeed, the UN Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity, has called for the worldwide banning of ‘conversion therapy’. We accordingly urge the Select Committee on Constitutional, Legal and Parliamentary Affairs to seek expert professional opinion, including that of the Ghana Psychology Council, established under The Health Profession Regulatory Bodies Act, 2013, (Act 857) whose object is to “secure in the public interest the highest standards in the training and practice of psychology”.

We also wish to repeat our position that sexual orientation and identity are not strictly binary. For example, there are intersex people who do not fit the binary categories of male and female, and who are born with physical characteristics viewed as both male and female. It is therefore simply not true that every person is born either male or female.

10. Human Rights are inherent in all democracies; they are not derived from “nature”

In our view, the human rights of LGBTQI persons regarding their sexual orientation and identity need not be derived from any innate “nature”. Their rights are rather founded on a historically recognized political rights held by all people living in democracies.

In any event, it is our view that the “nature argument” is irrelevant. For example, the Constitution guarantees the right to information, but that is not because the right to information grows from the very nature of being human: It is a fundamental human right that has become historically recognized in every democracy. Equally, the right to demonstrate and go on processions is clearly not derived from our nature as human beings: It is a historical human right that has become recognized through struggles and the human experience. The freedom of the press and other media guaranteed in article 21 (1) (a) of our Constitution is not derived from our nature as human beings: It is rather the product of the development of technology and historical struggles. And so, it is with the right to sexual orientation and identity.

The argument that our Constitution does not specifically mention sexual identity or orientation, and therefore that homosexuality is not a right guaranteed under the Constitution, can only be sustained *if one ignores* the unambiguous provisions of Article 33 (5) of the Constitution, which provides as follows:

“The rights and duties, declarations and guarantees relating to the fundamental human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned which are considered to be inherent in a democracy and intended to secure the dignity of man.”

11. Children should be protected from sexual abuse, no matter the perpetrator

We agree wholeheartedly that children should be protected from sexual abuse and assault, and we stated so unequivocally in our memorandum. This protection of children applies to abuse and assault from both heterosexual and homosexual persons. Neither should be tolerated under any circumstances. The evidence available from media reports and crime statistics from the Ghana Police Service shows overwhelmingly that heterosexual abuse of children is the far more common offense; indeed, it could be described as a horrible epidemic in our society. So, let us enforce our laws criminalizing sexual abuse and assault of children and minors, and impose more stringent punishments as necessary, while creating better public awareness against such practices. There is, however, no basis to single out homosexuals and fan hatred and opprobrium against them, as if they were the main predators and pedophiles, when the records prove otherwise.

12. The proposed legislation will not solve any problem; it only stigmatizes a segment of the population; and poses a threat to the rights of Ghanaians

Ladies and gentlemen of the media and freedom-loving Ghanaians, we conclude by stating very clearly **that neither our group nor the LGBTQ+ community has sought to introduce any Bill legalizing anything as some media reports and commentators seek to portray.** It is rather some members of Parliament who have introduced an anti-LGBTQ+ Bill in Parliament which our memorandum is responding to.

This dangerous bill takes away every Ghanaian's democratic rights, whether you are for or against gay rights. Here are some reasons why:

1. The Bill is driven by an ethos of hate, bigotry, intolerance, and extremism. Its provisions, if they became law, would constitute a gross violation of the constitutional rights of LGBTQ+ persons and those who may show sympathy for their activities in any way.
2. If passed, it will become a law that is above even the Constitution! This is because, while the Constitution can be amended, this Bill, by preventing any advocacy in respect of LGBTQ+ activities, effectively makes it impossible to amend any of its provisions. Indeed, the Bill in clause 12 (2) (b), specifically prohibits activities that ***“promote or support ... change in public opinion towards an act prohibited under this Act”***. This means this very press conference would become a criminal offense, with a potential jail term of up to 10 years.
3. The Bill places onerous duties on all parents and guardians and seeks to impose on them what values they must teach their children and wards. It even imposes a duty on judges to comply with the contents of this unconstitutional Bill should it become law!
4. The Bill, should it become law, would increase stigmatization of, and hatred for members of a vulnerable minority. It would indeed expose LGBTQI persons to abuse, threats and violence, as we are already beginning to experience in several communities across Ghana. It would also make precarious their rights to employment, housing, health care and freedoms generally. This can only increase the social stresses this minority faces daily.
5. This bill also violates our existing system of criminal jurisprudence, which requires that there should be both a mental state and an act to constitute a crime. For example, even if an armed robber declares in public that he is an armed robber, the police cannot arrest and prosecute him for simply making that statement or holding that view. But under clause 6

(1) (e) and (2) of the anti-LGBTQ+ Bill, if a person simply holds himself out as being of “any other sexual or gender identity that is contrary to the binary of male or female”, s/he would be committing a second-degree felony and be liable on summary conviction to a term of imprisonment of three to five years!

In sum, we want to stress that this Bill is unconstitutional and has no place in a secular democratic Republic, and that there is no legitimate justification for it to be passed into law. Indeed, it is neither necessary to protect any legitimate public interest, nor does it promote the constitutional rights of Ghanaians. Moreover, it is not reasonable or proportionate to the (non-existent) mischief it (purportedly) seeks to cure and does nothing to promote so-called “proper” family values.

It is incurably defective.

We accordingly call upon Parliament to reject it in total.

STATEMENT ISSUED BY:

CONCERNED CITIZENS AGAINST ANTI-LGBTQI+ BILL

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HUMAN RIGHTS ADVOCACY CENTRE

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