MEMORANDUM TO SELECT COMMITTEE ON THE CONSTITUTIONAL, LEGAL AND PARLIAMENTARY AFFAIRS ON THE:

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

Introduction

The LGBT Bill currently before Parliament is a major step backwards for democracy, inclusiveness, the protection of minorities and the vulnerable in society, and of fundamental human rights in Ghana. Under the grand sounding banner of '***proper human sexual rights and Ghanaian family values'*** the Bill seeks to send the country back centuries into the past. Its language of 'recant and treatment' echoes the middle ages of Europe where the state and the Church, driven by misguided notions of heresy and witchcraft, hunted down innocents in the name of God and religious values. Blinded by religious zealotry and intolerance, the theocratic State and its Church forced innocent vulnerable persons to 'recant' their religious beliefs and burnt nonconformists at the stakes in the misguided belief that their gruesome murder would, somehow, purge their souls of evil.

And, just as the Bill seeks to do in modern day Ghana, individuals and neighbours then were encouraged, and even placed under a duty, to report and expose 'witches' to the authorities so they could be apprehended and burnt. Any sympathizers were suspect, just as how the LGBTQ+ Bill would criminalize those who support or express sympathy for, or provide a sactuary or safe haven for LGTBQ+ persons. This is how the word 'witch-hunt' came into the English vocabulary.

With all due respect, the provisions of the LGBTQ+ Bill, are not becoming of the Parliament of our Republic. Our Parliament, celebrated rightfully, as a critical player in Ghana's much-lauded constitutional democracy, ought not to become party to a fanatical crusade of intolerance and extremism in the 21st century.

The Bill violates the right to inviolability of the person. It violates virtually all the key fundamental freedoms guaranteed under the Constitution, namely the right to freedom of speech and expression; the right to freedom of thought, conscience and belief; the freedom to practice any religion and to manifest such in practice (which includes the freedom not to practice any religion); the right to assemble, including the freedom to take part in processions and demonstrations; the freedom of association and the right to organize- in

essence the fundamental human rights guaranteed under Article 21 of the Constitution. In addition, the provisions of the Bill violate the dignity and inviolability of every person, guaranteed under Article 15; it violates the principle of equality before the law, and the right to freedom from discrimination on grounds of gender, race, colour, ethnic origin, religion, creed or social economic status, guaranteed under Article 11, as well as the right to privacy guaranteed under Article 18 of the Constitution. In short, the provisions of the Bill are so egregious in their violation of the fundamental human rights and freedoms guaranteed under the Constitution that it beggars belief that it could be introduced as a Bill in the House of Parliament.

i. Preliminary Procedural unconstitutionality

Even before we address the substantive provisions of the Bill, there is the need to draw attention to a preliminary and fundamental procedural defect of this Bill, as a private members' Bill. We count ourselves among those that have long argued and advocated that Article 108 not be read, as it had been throughout the history of the 4th Republic, to preclude the introduction of a Private Member's Bill. We believe that Article 108, as written, allows room for and was never intended to deny Members of Parliament the opportunity to initiate legislation in their own name by means of a Private Member's Bill. But merely because Article 108 can and must be read properly to allow MPs the opportunity to introduce a Private Member's Bill does not mean that any and every Bill that is introduced as a Private Member's Bill qualifies as such. Article 108 (a) (ii) of the Constitution of the Republic prohibits Parliament from proceeding on any private members' Bill that "in the opinion of the person presiding, **makes provision for the imposition of a charge on the Consolidated Funds or other public funds of Ghana**". To be sure, Article 108 (a), uses the words "in the opinion of the person presiding". This, however, does not give the person presiding a *carte blanche* to form any opinion s/he fancies without regard to the content or impact of the Bill in question. The opinion of the presiding person, as to whether or not the Bill imposes a charge on the Consolidated Funds or other public funds of Ghana, cannot be and is not intended to be a merely subjective opinion, not controlled by, or subject to, any objective consideration or facts. Such a rendition of Article 108 (a) (ii) would make it practically ineffective and defeat the constitutional purpose and intendment of the makers of the Constitution. . It would, in effect, turn the limited allowance that Article 108 impliedly makes for a private member's bill into an open and unrestricted invitation for any matter to be addressed legislatively by means of a private member's bill, without any regard whatsoever to the scale or enormity of its fiscal impact on the public treasury. Such a reading of Article 108 (a) (ii) would not comport with the intent of the Framers, which is that those bills that seek to impose substantial budgetary costs on the State must be reserved for the Executive to introduce. On the contrary, where,

as in the provisions of the present Bill, the State is made to assume extensive policing duties and expend substantial policing resources to implement a law and to bear the cost of medical and psychiatric treatment of LGBTQ+ persons who purportedly recant upon arrest and agree to treatment, it is obvious that the Bill is designed to impose and, indeed, would impose significant charges on the Consolidated Fund or other public funds of Ghana"-

Irrespective of the subjective opinion of the presiding person that permitted this private members' Bill to be laid before Parliament, the Bill, in fact, imposes a charge on "the Consolidated Funds or other public funds", and, by the express terms of Article 108, cannot lawfully be introduced in or acted upon by Parliament as a private members' Bill. Accordingly, the introduction of this LGBTQ+ Bill as a private members' Bill in Parliament, irrespective of the Bill's merits or demerits, constitutes a direct and gross violation of Article 108 (a) (ii). Given the charges that the Bill seeks to impose on the Consolidated Funds and or any other public funds of Ghana, the only and constitutionally permissible means by which such a bill ought to have been introduced was in the words of Article 108 (1) "**by or on behalf of the President of the Republic**". We therefore urge the Select Committee on Constitutional, Legal and Parliamentary Affairs to do the right and proper thing by themselves, Parliament and the people of Ghana by advising Parliament that it cannot proceed with the Bill, given the Bill's manifest unconstitutionality.

ii. Highlights of the Bill –violations of the key fundamental human rights provisions of the Constitution.

The Bill in its memorandum quotes with approval the view expressed by the National House of Chiefs that being LGBTQ++ is a "**taboo and inhuman,"** under Ghanaian culture. That statement, with respect, stigmatizes the being and identity of LGBTQ+ persons **as inhuman.** It thereby denies the humanity and identity of LGBTQ++ persons. This constitutes an assault on their humanity and directly violates Article 15 (1) of the Constitution which provides that "**The dignity of all persons shall be inviolable**". Further, such stigmatization violates Article 15 (2) (b) of Constitution which provides that "**No person shall, whether or not he is arrested, restricted or detained, be subjected to any other condition that detracts or is likely to detract from his dignity or worth as human being**". By stigmatizing LGBTQ++ people as inhuman, the Bill reinforces hatred for LGBTQ++ persons, as persons who have no place in our society and deserve to be destroyed. This thereby subtly gives extremists licence to take the law into their own hands to attack or lynch LGBTQ++ persons.

This is so, in our respectful view, notwithstanding the pious provisions in the Bill that purport to protect the rights of LGBTQ++ persons from people taking the law into their hands and attacking them, by criminalizing such acts.

The Bill in Clause 2 criminalizes LGBTQ+ sexual activities, and any person holding himself out as an LGBTQ+ person on the pain of imprisonment for not less than three years or more than five years, or to a fine of not less than 700 penalty units or 6,000 penalty units or both.

a) *Criminalizing expression, advocacy, promotion of, solidarity with, and support for LGBTQ++ persons and activity, and the right of LGBTQ++ persons to organize, to assemble or demonstrate*

In seeking to promote what it refers to as 'proper human sexual rights and Ghanaian family values' and norms, the Bill in clause 12 goes to the extreme of criminalizing and prohibiting ideas, views, and expressions promoting or advocating support for LGBTQ++ practices, including films, broadcasting of LGBTQ+ comments or opinions on the internet, text messages that express support or sympathy for, or solidarity with, LGBTQ+ identity, cause, views, and activities. In the result, under Clause 12 of the Bill, any person who advocates the recognition of, solidarity with, or promotes LGBTQ+ rights or causes, even if the person is not a LGBTQ++ person, commits an offence which on summary conviction is liable to imprisonment for not less than five (5) years or more than ten (10) years. **This paradoxically means that under the Bill, even this current memorandum to Parliament would be a criminal offence punishable upon conviction by a term of not less than five years and not more than ten years.** This is so, even though it is a contradiction in terms and makes absolutely no sense for Parliament to invite varied views from citizens on a Bill that seeks, should it become law, to criminalize the very views supporting or advocating LGBTQ++ rights and causes! Unfortunately, this is precisely what the Bill does.

Clause 12, accordingly, directly violates Article 21 (1) (a) of the Constitution, which provides thus:

> "All persons are entitled to freedom of speech and expression, which shall include the freedom of the press and other media."

Clause15 of the Bill seeks to disband groups, associations, and organizations, while Clause 16 prohibits, as a criminal offence, the formation, organization, or registration of any LGBTQ++ groups and any activity to support or sustain any such group, organization, or association. Anyone who does so is liable upon summary conviction, to imprisonment

for a term of not less than six years and more than ten years. Clause 15 of the Bill is clearly in direct contravention of Article 21 (1) (e) which provides that:

> "All persons shall be entitled to freedom of association, which shall include freedom to form or join trade unions and other associations, national and international, for the protection of their interest".

But that is not all. By criminalizing any activity to sustain or support LGBTQ++ organizations or association, the Bill directly criminalizes the right of LGBTQ++ and their supporters to take part in demonstrations and processions in support of LGBTQ++ causes, in flagrant violation of the fundamental freedom to assemble, including the right to take part in processions and demonstrations as guaranteed under Article 21 (1) (d) of the Constitution.

The Bill founds its rationale in criminalizing the right to assemble, associate, to process, to express or promote views in support of LGBTQ++ rights on the premise that "*[o]nce 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*". The Memorandum cites as examples the Vigilantism and Related Offences Act, 2019 (Act 999), which proscribes the formation of groups for the furtherance of the interests of group members by use of threat of violence or intimidation, and the Cybersecurity Act, 2020 (Act 1038), that permits reasonable restrictions or interference in the enjoyment of the right to privacy of home, property, correspondence or communication.

But such analysis, with respect, misconceives the law-making process and the justification for limitations in such circumstances. In the context of the Vigilantism and Cybersecurity laws, the prohibited acts are matters that directly and objectively threaten public order, public safety, material public interest, human life, and financial and economic interests. It is these weighty considerations that lead to criminalizing any right to associate to promote or advocate or express support for these activities that manifestly and materially have harmful consequences for the individual, society and social wellbeing. It is the scale of harm that justifies such restrictions. In the instant situation, the sponsors of the Bill have not provided a shred of evidence demonstrating any substantial harm that LGBTQ++ activities pose to society that provides a reasonable justification for such high-handed restrictions of fundamental human rights.

The sponsors of the Bill seek in the Memorandum to the Bill to justify the far-reaching encroachment on fundamental human rights on the ground that "***such rights or freedoms by their very nature are not absolute. The Constitution prescribes reasonable restrictions that are necessary for public health, order or safety***". That is conceptually

correct. But the burden the sponsors then assume is to demonstrate that, indeed, the provisions of the Bill are reasonably necessary for the protection of a legitimate public interest or individual right. Unfortunately, the sponsors fail astonishingly to provide any empirical evidence to support this assertion, except though appeals to so-called African cultural values and religious values which they claim the overwhelming majority of Ghanaians subscribe to. What this viewpoint singularly misconceives is that protecting fundamental human rights does not simply mean protecting the beliefs and interests of the overwhelming majority. **It also means protecting the rights and freedoms of minorities and historically vulnerable groups, such as LGBTQ++ persons.** In fact, the Constitution, speaking through Article 21(4) (e), rightfully disapproves of actions, including those done under the guise of exercising some right or freedom of a majority, that "incites hatred against other members of the community," which is precisely what this Bill does. Instead of this Bill, what Article 21(4) (e) implicitly urges and expects Parliament to do is enact laws that protect vulnerable and unpopular minorities, fellow members of our community, from being targeted for hatred by a majority or another section of the community.

b) Criminalizing housing of LGBTQ++ persons

Clause 10 of the Bill makes it a criminal offence punishable on summary conviction by a **term of imprisonment of not less than three years or more than five years** for a person (even if s/he is a friend, family member, or even a sibling or a parent) to keep a house for the purpose of hosting LGBT+ persons, where s/he knows that they are LGBTQ+. So a sister cannot house a brother she knows to be a LGBTQ+ person, in the event that person receives visits from LGBTQ+ associates and lovers. Nor can a mother house a son or daughter, if she is aware of his/her LGBTQ++ identity, and allows her daughter or son with such identity to receive his/her lovers or even LGBTQ+ friends in that house. The Bill seeks to make any such act of filial or parental love pregnant with possible criminal liability. Landlords are also to beware, on the pain of prosecution and imprisonment, knowingly renting out premises to LGBTQ++ persons.

These provisions echo George Orwell's '1984', with 'Big Brother' looking over our shoulders to ensure that we all, even in the deep and inner recesses of our bedrooms, comply with a certain prescribed view of "proper human sexuality," even in the most intimate and private relationship between adults. As it is only possible to know what is going on in a house suspected to be a home for LGBTQ+ persons by resorting to all manner of devices to intrude into the private and intimate spaces of those persons placed under suspicion, the Bill,

essentially, invites the police and neighbours to engage in acts that endanger and violate the privacy and property rights of such persons.

Honourable members of the Select Committee, with respect, nothing could be more intolerant and beyond the pale than these provisions of the Bill that seek to override the freedoms that Ghanaians have fought for over the decades and won at the costs of our lives and liberty.

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d) The defence of Ghanaian cultural values

On the question of Ghanaian cultural and traditional values, the sponsors of the Bill conveniently refuse to acknowledge that not all of our cultural and traditional 'values' can stand up to the demands of inclusiveness, diversity, and fundamental rights within a democratic republic such as Ghana. For instance, traditional Ghanaian values do not fully accept persons with disability as persons having full and equal rights as those without disability. The custom and values of some communities, especially in the past, considered twins as an abomination, with the result that they, by custom and tradition, had to be killed as evil, just like how the Bill's sponsors consider LGBTQ++ persons inhuman and as evil. The infamous witch camps in northern Ghana where vulnerable women and old ladies are, even to date, banished for unproven allegations of witchcraft, are a product of our culture and tradition. There is also the *trokosi* cultural phenomenon, in the Volta Region, where very young girls are given away to the god or spirit represented by a priest or priestess for the 'sins' of other family members, and become virtually enslaved for the rest of their lives. Even until recently, the notion of gender equality was largely alleged to be repugnant to African or Ghanaian cultural values. These are all cultural beliefs and practices based on traditional norms and values. Indeed, in parts of Eastern Africa, albinos are targeted and murdered because of their pigmentation, based on similar false cultural beliefs!

But the fact that these are part of Ghanaian and African cultural and traditional norms and values do not make them acceptable in modern Ghana, in a free and democratic Republic. They are clearly unacceptable. And that is why Article 39 (2) provides as follows:

> "39 (2). The State shall ensure that **appropriate** customary and cultural values **are adopted and developed** as an integral part of the ***growing*** needs of the society as

a whole, and **in particular, practices which are injurious to the health and wellbeing of the person are abolished**". [Emphasis added]

Again, the Bill singularly fails to understand that matters of culture and societal values are best protected and promoted by education and cultural engagement, rather than the crude and blunt blade of criminal law. It is for this reason that, for example, Article 39 (1) of the Constitution places a duty on the State "to 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 the cultural dimension to relevant aspects of national planning." It does not direct that the State should pass laws to impose certain cultural values on Ghanaians, much less sectarian cultural, or religious values.

It should therefore be apparent to all, especially the sponsors of the LGBTQ+I Bill, that while we must cherish those aspects of our culture and values that enhance our being, knowledge, freedoms and livelihood as a people, and promote empathy and inclusiveness, we should be quick to jettison those that inhibit us, impose cruel and unjustifiable restrictions and hardships on minorities and vulnerable groups, and evince a singular lack of empathy for one another. Indeed, Article 39 (2) enjoins us to ensure that cultural practices and values that are injurious to the well-being of the person are abolished! The fact that the memorandum to the Bill rather cites Article 39 in support of the oppressive and inhumane provisions of the Bill, with respect, betrays a total misconception of the scheme of values our Constitution upholds.

An appeal to Ghanaian cultural values and traditional norms, as a basis for the Bill, is by itself, therefore, **neither a necessary nor sufficient justification** for a Bill that is undoubtedly **driven by a totalitarian and authoritarian ethos, and religious fundamentalist and extremist notions**. Such an appeal is no justification for a Bill that seeks to impose on the proud people of Ghana a decidedly *sectarian and monolithic view* of '**proper human sexual** (sic!) **rights.**

Misplaced cultural nationalism

The promoters of the Bill seek to whip up their misguided version of Ghanaian cultural nationalism by raising the scare that LGBTQ+ rights are alien to Ghanaian culture and tradition, and are being promoted by a morally depraved West. In the first place, it is Ghanaian LGBTQ++ persons who are fighting for social tolerance and acceptance, having suffered in the obscurity of darkness and social exclusion for years. Secondly, it is simply not true that LGBTQ+ tendencies and inclinations are foreign to Ghanaian or African societies. Indeed, there are historical records of Ancient Egypt that suggest and indicate

that homosexuality existed as early as the 5th Dynasty, that is, around 2,380 BCE/BC. Mural representations in the tomb of two male manicurists depict a relationship that may be considered the earliest historical record of a homosexual relationship between Niankhkhnum and Khnumhotep, who were chief manicurists of the Pharaoh and other royalty. Other references to homosexuality/lesbianism in Ancient Egypt can be found in a specific text of the female author of the Egyptian" *Book of the Dead*", written in 970 BCE/BC thus: *"I never had sex with a woman in the temple",* suggesting that she had sex with women outside the temple. While we do not use these records to suggest that homosexual and lesbian practices, to the extent that they existed in Ancient Egypt, were the same in nature and extent as they exist in modern society, these historical allusions indicate the need for anti-LGBTQ++ warriors to be more questioning of their dogma that such practices are alien to Africa and African societies, and are solely the product of decadent western imperialist cultural onslaught.

Indeed, as a matter of fact, LGBQT persons have been a well-known 'secret' in Ghanaian families and society for a long time, and not just the product of any external advocacy. We are all aware of the familiar references to 'male' individuals who display distinct roles and habits of women, who are sometimes openly referred to as, for example, *Kodjo besia' or 'Kwesi besia"*, depending on the day on which he was born. It is also not a secret that as far back as the 1960s, if not earlier, some pairs of girls in female secondary schools developed close sexual relationships known as '*supi', a practice that continues today.* These are well known homegrown facts, and not western inspired.

e) Promoting Goals 3 and 5 of SDGs

It is a complete fallacy and misreading of Goal 3 of the UN's SDGs for the Bill's sponsors to state in the memorandum to the Bill that the Bill will "*ensure healthy lives and promote well-being for all at all ages"*, when the Bill rather stigmatizes LGBTQ++ persons as inhuman and seeks to criminalize their very existence and make life a living hell for them. In the same vein, the Bill is in no way related to Goal 5 of SDGs, which is "*to achieve gender equality and empower women and girls*". These references to the SDG goals simply expose the lack of understanding of the import of these goals and reinforce the authoritarian ethos that informs the Bill, in contrast to the SDGs that are inclusive and pledge '**to leave no one behind**', including LGBTQ+I persons.

In essence, when all the fanciful justifications, supposedly grounded in culture, tradition and religion, are stripped of their beguiling clothes and adornments, what is left of the high

sounding “Bill for the Protection of Proper Human Sexual Rights and Family Values” is ***stigmatization, bigotry, intolerance, repression, authoritarianism, violation of the fundamental human rights of LGBQT+ persons, false piety, cruelty to, and lack of empathy for, them***.

f) Binary and unscientific categories of male and female as the only categories of sex

Clause 10 of the Bill decrees as “grossly indecent act” and prohibits, on the pain of imprisonment for three months or one year, upon summary conviction, the public show of any amorous relations with or among persons of the same sex; or public show of affection among persons where one or more of them have undergone gender or sex realignment, or public show of affection between or a person intentionally cross-dressing to portray that person is of a gender different from what the sponsors refer to as ‘the gender assigned at birth’ with intent to engage in any act prohibited under the Bill!.

It is clear that the Bill is grounded on the unscientific and speculative notion that a person’s sex is determined at birth and that sex is either male or female. While this may be a notion encouraged by some religion, any gynecologist, medical doctor, or biological scientist knows that a person’s gender is not always determined at birth, nor is it necessarily binary by nature. The natural world is full of surprises that may shock the uninformed. In our respectful view, this fact alone undermines the very foundations upon which the Bill is built. Indeed, there are recurrent provisions in the Bill which implicitly admit and concede to the reality that persons may be born at birth who do not fit into the arbitrary binary alternatives of male or female, which the Bill seeks to impose on Ghanaians. This is demonstrated in clauses of the Bill that make exception to the binary alternatives in the case of “*surgical procedures intended to correct a biological anomaly*”, such as in Clause 1 (e); in Clause 2 of the Bill which defines ‘intersex” as ‘‘*an individual whose sexual anatomy or chromosomes does not fit the traditional markers of "female" or "male" assigned at birth”; and.* Clause 6 (f) (ii) which accepts a departure from the decreed binary alternatives “*in the case of correcting a biological anomaly, including intersex*.”

Interestingly, the Bill proposes the Minister for Religious Affairs and Culture as the responsible officer for ensuring the medical treatment of persons. This demonstrates the religious fundamentalist extremism driving the Bill, making the Bill reminiscent of that of states such as the Taliban-ruled Islamic Emirate of Afghanistan!!

g) Threat to Ghanaian family and family values

The Bill, however, argues that LGBTQ+ activities threaten the heterosexual family unit as the foundation of society and that permitting LGBTQ+ activities to flourish is a threat to society and even the human species. The proposers of this far-reaching claim have not provided any data or evidence to suggest that there is such a threat, beyond a resort to some dogmatic religious tenets and so-called Ghanaian family values.

First of all, what constitutes the Ghanaian family unit is hardly uniform or static. For example, the nuclear family unit or household, comprising two married heterosexual partners and their biological children, though increasingly common among elite or middle-class urban Ghanaian can hardly be said to represent the Ghanaian cultural norm. To many, particularly outside the urban elite enclaves, the family is still reckoned, for example, in "extended" family or polygamous terms, with the nuclear family of the urban elite regarded as foreign. Single parent-headed households are also quite prevalent, as are various other permutations and combinations

Any serious discussion of, or concern for, maintaining Ghanaian family values we submit, ought, in our respectful view, first to begin with addressing the rampant issue of pregnancy of young women and teenagers out of wedlock, and the abandonment, after the act, of such young women by their male partners. That is what clearly undermines Ghanaian family values. According to data from the Ghana Health Service District Information Management System, **between 2016 and 2020, about 555,575 teenagers aged 10 to 19 years, are said to have gotten pregnant**. 13,444 teenagers between the ages of 10 and 14 got pregnant, while some 542,131 teenagers aged 15 to 19 years got pregnant during the same period. On average, a little over 112,800 teenagers got pregnant annually over the five years! These are real data clearly showing the real threat to Ghanaian family values and the family as a basic unit of Ghanaian society, not the unsubstantiated threat purportedly posed by LGBTQ++ persons. Equally, extra-marital relationships tend to undermine the family as a unit and family values.

h) LGBTQ++ persons and children

In its attempt to demonize LGBTQ++ persons, provisions of the Bill seek to associate LGBTQ++ persons with pedophilia, when the Memorandum to the Bill has not provided any material or evidential link between LGBTQ++ activities and the abuse of minors. It needs to be clearly stated that the law prohibits on the pain of grave punishment any sexual relationship with a child, whether heterosexual or homosexual. Sexual abuse of children is sexual abuse of children, and the law bans this, irrespective of the sex of the person. It is

thus unfair and stigmatizing of LGBTQ++ persons for the Bill to state and imply that there is something peculiar to LGBTQ++ persons that gravitate them towards sexual abuse of minors, when the overwhelming majority of cases of child sex abuse and defilement are by heterosexual persons. What is striking, nut unsurprising about this aspect of the Bill's denunciation of LGBTQ++ persons is that the sponsors provide absolutely no data or evidence for demonizing LGBTQ++ persons as pedophile by nature. It is nothing more than a scare-mongering tactic to arouse undeserved and unproven ill-will against LGBTQ++ persons.

i) Religious Beliefs and LGBTQ+I practices

It is a given that some Christians and Muslims may find LGBTQ activities offensive and may detest them. That may be well within their rights, as persons with strong religious views, though such attitude does little in promoting a diverse, tolerant and inclusive society, in which the interests of minorities and vulnerable groups, including LGBTQ persons, are deserving of equal respect. But can we imagine what would happen to our democratic republic, if we started imposing as the law of the land the religious dogmas and tenets and edicts of one or the other dominant or ascendant religious community? Let it be stated without equivocation that ***ours is a secular democratic republic, not a theocratic Christian or Islamic Republic or an African traditional monarchy or chiefdom.*** In other words, while it allows Christian, Islamic, African traditional and other religious beliefs and practices to exist in harmony with one another as fundamental rights, **our Constitution rightfully forbids the imposition of a religious dogma, whether Christian or Islamic or traditional on Ghanaians. Our Constitution, in Article 18 (1) (b) and (c) guarantees and embraces religious diversity, while guarding the freedom of people not to be bound by any particular religious belief or dogma: thus:**

> **"***.Article 18 (1) (b). All persons shall have the right to -*
>
> *(b) freedom of thought, conscience and belief, which shall include academic freedom;*
> *(a) freedom to practice any religion and to manifest such practice*

Accordingly, our Constitution affirms and protects the right of Ghanaians and other residents of, or visitors to, Ghana to be free to practice any religion of their choice or to be *agnostics* or, *even, atheists*.

From this perspective and the perspective of criminalizing free speech and expression, assembly and the right to free association, from the perspective of violation of the right to freedom from discrimination and the right to human dignity, the LGBTQ++ Bill constitutes an existential threat to the republic and its core values as set out in the Preamble, Chapter

Five on Fundamental Human Rights, and Chapter 6 on Directive Principles of State of Policy of the Constitution of the Republic. It constitutes **a flagrant violation of these guaranteed rights and freedoms.**

Even from a Christian viewpoint, the crusade against LGBTQ++ persons as inhuman and evil ought to be considered within the context of what Christ would have done in response to LGBTQ++ persons. Christ's message was/is that we should love our neighbor and not be judgmental and promote the hate and bigotry that many self-styled Christians exhibit and seek to impose on Ghanaian society. Little wonder, that as recently as June 2021, Pope Francis, head of the Roman Catholic Church, favourably compared the work of a US Catholic priest affirming LGBTQ+ Catholics, to that of Jesus. (See: https://www.washingtonpost.com/religion/2021/06/27/pope-francis-affirming-letter-LGBTQ+-gay-catholics/

j) The Role of the World Congress of Families

Ghanaians and Africans are all too familiar with the reaction of military or other authoritarian regimes to demands for representative democratic systems of governance and their response that it is an attempt by the West to impose a foreign system. These same regimes however continue to receive foreign aid from the same West. This bears an uncanny resemblance to the actions of the main proponents of the LGBTQ++ Bill, the Coalition for Proper Human Sexual Rights and Family Values, who decry foreign impositions. Yet it is undeniable that the Coalition has, in fact, collaborated with, and received considerable assistance from, the western, global anti-gay and anti-abortion network, the self-titled *World Congress of Families*. Indeed, it is no secret that this *World Congress of Families* organized a regional conference in Accra in October/November, 2020, in collaboration with the very National Coalition for Proper Human Sexual Rights, which has hypocritically spearheaded the anti-western propaganda. The self-styled *World Congress of Families* has been active in promoting the passage of similarly repressive anti LGBTQ++ laws in Nigeria, Cameroon, Uganda and elsewhere in Africa, in Eastern Europe, and in Latin America. It thus lies ill in the mouth of the sponsors of the Bill to raise the scare-monger of foreign interference in Ghanaian cultural values and sovereignty, when they have been beneficiaries of assistance from a western-inspired global network sponsored by American Christian far right conservatives/extremists. There is nothing original or homegrown about this Bill. It takes its inspiration from Western right-wing crusaders and follows a template used in recent years in such places as the Russian Federation, Moldova, and Hungary.

j) Is There A Compelling Policy Rationale For This Bill?

There can be no doubt, as we have demonstrated, that the Bill constitutes an impermissible invasion of the inviolability and human dignity of the person and, freedom of expression and thought, freedom of assembly, including the right to organize and take part in processions and demonstrations and the right to protection against discrimination on grounds of gender, race, ethnic origin, religion, creed or social and economic status. These rights are at the very heart of our constitutional architecture. It is indisputable that, without these rights, Ghana's democracy would be meaningless. It is accordingly our respectful view that any law that seeks to restrict and repress these rights in specific instances must meet the very high standard of "***necessity***" and "***reasonableness***" in the defence of life, property, the rights of others, public safety, or public health or public interest generally. Any such law must be reasonably justifiable in terms of the core values of the Constitution. If it fails to meet this test, it is unconstitutional.

It is our view that the provisions of the LGBTQ+ Bill are, in their totality, egregious in their violations of the fundamental human rights guaranteed under the Constitution, and worse still do not meet ***the reasonably justifiable threshold*** for restrictions of such rights. The criminalization of LGBTQ+ persons, their identity, associations and allies, rather than promoting public health, can only drive such persons into the shadows, where they will have no access to public health or health education. No compelling public interest is served by this attempt to drive LGBTQ+ persons underground and render them social outcasts and second-class citizens. . Accordingly, the provisions of the Bill, if passed into law, would be unconstitutional, null and void.

In any event, if the fear and anxiety of the sponsors of the Bill is that the ambiguity in the Marriage Act 1884 – 1986, (CAP 137), as to whether marriages under this legislation, whether Christian, Mohammedan or customary are confined to only heterosexual couples, this does not call for the Bill and its repressive totalitarian provisions. That lacuna, if any, can easily be filled by amending the law. Furthermore, section 104 (1) (c).of the Criminal Offences Act, 1960, (Act 29) already makes it a criminal offence for a person to have "unnatural carnal knowledge" of an animal. The tactic of tagging along provisions on sexual assault of animals with a Bill seeking to criminalize LGBTQ++ persons and activities, ominously stigmatizes them and unfairly suggests that bestiality is an activity associated with LGBTQ+ persons, requiring specific provisions to prohibit them. The sponsors of the Bill, once more, have provided not even a scintilla of evidence in proof of this wild supposition. Similarly, there is no need whatsoever for Clause 6 (1) ii) of the Bill which criminalizes keeping a brothel for LGBT activities. This is because there is sufficient provision under the Criminal Offences Act that criminalizes the keeping of a brothel, whether

for heterosexual or other sexual activities, as a crime. Similarly, Clause 7 of the Bill that seeks to make it a crime for any LGBTQ++ person, by threat or intimidation, or by false pretense or false representation, to procure another to engage in sexual intercourse, is already catered for under section 107 (e) and (f) of the Criminal Offences Act, (Act 29). This again reveals the zealots' determination of the sponsors of the Bill to stigmatize and demonize LGBTQ++ persons. Further, Clause 8 of the Bill makes it an offence to detain another person with the intent of engaging in an act prohibited under the Bill. Even if it is argued that the provision on rape or defilement do not contemplate homosexual acts, the relevant section of the Criminal Offences Act can easily be amended to include such acts, if that were the concern of the sponsors.

Finally, we have demonstrated that the alleged threat to Ghanaian family values and the family as a basic unit of society upon which the Bill is founded has not been supported by any empirical data, and is nothing more than scare-mongering. In the circumstances, Parliament ought not to give this obnoxious Bill currency, much less pass it into law.

k) ***The Bill violates a number of International Human Rights Instruments and Norms that Ghana has assented to, sworn to, or committed to.***

Just as the Bill violates Ghana's constitutional provisions on fundamental human rights, it also violates a number of key international human rights instruments and norms, including Articles 1 and 2 of the Universal Declaration of Human Rights, and Article 7 of the International Covenant on Civil and Political Rights on protection against torture, cruel, inhuman and degrading treatment and punishment; Article 17 on arbitrary interference with privacy, correspondence and home; Article 18 on freedom of thought, conscience, and religion; Article 19 on the right to "*hold opinions without interference"* and the right to freedom of expression; Article 21 on the right to freedom of peaceful assembly; Article 22 on the freedom of association, including the right to form or join a trade for the protections of his interests; and Article 26 on the right to equal treatment before the law and *to protection against discrimination on any ground* such as race, colour, sex, language, religion, political or other opinion. Quite clearly, the provisions of the Bill flagrantly violate all these fundamental civil and political rights of International Human Rights Instruments that Ghana has acceded to. Parliament should be wary lest it becomes the vehicle for Ghana's breach of these fundamental provisions of international human rights law.

In its 2018 report to the Human Rights Council on its 37th Session, the United Nations Independent Expert against Violence and Discrimination based on Sexual Orientation and Gender Identity concluded as follows:

> *"..the rising number of hate crimes based on sexual orientation and gender identity correlates with a steep rise in ultraconservative political and religious groups using their platforms to promote bigotry, dehumanize persons on the basis of sexual orientation, gender identity or expression, and foster a stigma and intolerance among constituencies. Such discourse sometimes is used* ***as a means to bolster popularity*** *and detract attention from pressing economic and internal political problems, ….in the last Universal Review period for Ghana (AHRC/37/7, the recommendations in paragraph 146.59 (which enjoyed the support of Ghana) state that Ghana should "[take the steps necessary to protect lesbian, gay bisexual, transgender and intersex people from violence and discrimination on the basis of their sexual orientation and gender identity."*

On 28th July 2021, the Speaker of the ECOWAS Parliament, Sidie Mohammed, in an interview with TV3, advised that Ghana should be cautious in passing the Bill because of its implications in promoting insecurity and undemocratic principles.

The African Commission on Human and Peoples and Human Rights, in its Resolution 275 of 12th May 2014, condemns systematic attacks by State and non-state actors against persons on the basis of their imputed or real sexual orientation or gender identity, while in addition making discrimination against LGBTQ++ persons a violation of their fundamental human rights.

South Africa, Mozambique, Sao Tome and Principe (2012) and Cape Verde (2004), as well as Lesotho (2012) and Seychelles (2016) in Africa have all abolished colonial penal legislation criminalizing homosexuals. The Angolan National Assembly passed a new penal code that abolished criminalizing homosexual relationship, while making attacks on persons because of their sexual orientation as well as discrimination against people on the basis of their sexual orientation a crime punishable by not more than two years imprisonment. It came into effect in February 2021.

The affirmation of the rights of LGBTQ++ persons as human rights is not only by legislation. African courts have also upheld the right of LGBTQ++ persons to protection against discrimination and the enjoyment of their fundamental human right to human dignity and the

right to organize and to advocate LGBTQ++ rights. Thus, in ***Eric Gitari v NGO Board & 4 others*****, [2015**], the Kenyan High Court in Nairobi upheld the rights of LGBTQ++ persons to assemble, noting at paragraph 104 of the judgment thus:

> **"*As a society, once we recognise that persons who are gay, lesbian, bisexual, transgender or intersex are human beings...however reprehensible we may find their sexual orientation, we must accord them the human rights which are guaranteed by the Constitution to all persons, by virtue of their being human, in order to protect their dignity as human..*"**

Again in ***Attorney General of Botswana v. Rammoge & 19 Others*****,** the Court of Appeal of Botswana (the highest court in Botswana) upholding the decision of the High Court affirming the right of an organization by the name Lesbians, Gays and Bi-sexuals of Botswana ("LEGABIBO") to register an LGBTQ++ organization stated as follows":

> ***"Members of the gay, lesbian and transgender community, although no doubt a small minority, and unacceptable to some on religious or other grounds form part of the rich diversity of any nation and are fully entitled in Botswana, as in any other progressive state, to the constitutional protection of their dignity"*.**

The above examples are, in our respectful view, persuasive judicial decisions and legislation in Africa that we urge the Parliament of the Republic of Ghana to give serious consideration to, and reject the "*Promotion of Proper Sexual Human Right and Family Values Bill, 2021*'.

Conclusion

As far back as November 1992, in the seminal judgment of the Supreme Court of Ghana in **NPP v. IGP,** affirming the right of the people to assemble, demonstrate and process against the repressive Pubic Order Decree 1972 (NLCD 68), Amua-Sekyi JSC, as if anticipating these dark days that our Republic is threatened with today, stated in a compelling and deeply insightful dicta at pages 470 to 471 of the Ghana Law Reports 2 [1993 – 1994] GLR, his opinion as follows:

> "In countries that practice true democracy, supporters and opponents of every conceivable cause are given freedom to associate and express their views. In the end, some have succeeded and their unpopular demands have eventually become majority

wishes and have been recognized. The examples are the anti-slavery groups in eighteenth century England and nineteenth century America and the suffragettes of both countries at the beginning of this century. Today, in these countries those who favour and those who oppose abortion may assemble and hold demonstrations and processions in support of their cause, while in the less tolerant societies one may be permitted and the other banned. In this country it would be unthinkable for any police officer to grant homosexuals a permit to hold a demonstration in support of so-called gay rights, but I ask, if in nineteenth century England the supporters of child labour had been prevented from stating their case, would its evil consequences have ever been recognized? **In this day and age, it is necessary for us to see that consent not force is the basis of a just society, and that it is not for the government or our neighbor to tell us what to think or feel or do**? [Emphasis added].

"Most of the restrictions on our liberties which after years of repression we have come to accept, are inconsistent with democratic norms. Except in a time of war, when a state of emergency has been declared, **it cannot be right for any agency of the executive to suppress the free expression of any opinion, however unpopular that opinion may be**. The believer in absolutism, the anarchist, those who oppose equal rights for women – **yes lesbians and homosexuals too** - are all entitled to the free expression of their views, and the right to assemble and demonstrate in support of those views. Once the state takes for itself the power to license association, assemblies and processions, it resorts to support of the status quo, and the only way of changing the prevailing state of affairs is by use of force." [Emphasis added]

We urge the Parliamentary Select Committee on Constitutional, Legal and Parliamentary Affairs, to heed these prescient and liberating words of Amua-Sekyi JSC from the past, in order not to create a society where the state through legislation imposes one view of "**proper human sexual rights"** (sic!) as the only acceptable one in our free Republic, and where dissenting views and expressions are criminalized and suppressed. What the Bill envisages is the very opposite of the words '**freedom and justice**' that emblazon our coat of arms. The Bill ought, with respect, to be firmly rejected by the Parliamentary Select Committee on Constitutional, Legal and Parliamentary Affairs, and by Parliament as a whole.

Respectfully submitted,

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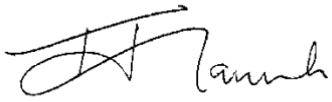

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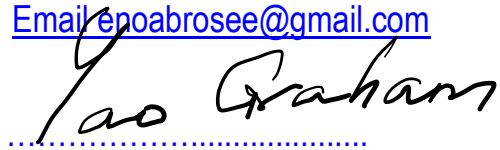

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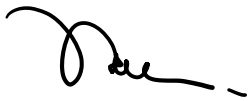

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