

MEMORANDUM

To: The Clerk to the Committee
Committee on Constitutional, Legal and Parliamentary Affairs
Office of Parliament
Osu-Accra

From: COALITION FOR SUPPORT - GHANA

Date: 28th September 2021

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

Introduction

We are Ghanaian-led Human Rights not for profit organisations working to better the lives and human rights of people living in Ghana. We submit this memorandum to express our concern at how the Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill, 2021 (the Bill) would significantly limit our work and ability to better the lives of our communities and make us more vulnerable to violence, arbitrary arrest and harassment. This submission discusses these concerns below and recommends the following to address these concerns:

1. Comprehensive and non-discriminatory protection of human rights defenders from violence, harassment and arbitrary arrest, including providing for effective remedies in cases of violence, harassment and arbitrary arrest.
2. Ensures human rights organisations are free to pursue a wide range of activities, including expressing opinions, disseminating information, engaging with the public and advocating before government and other bodies without discrimination, harassment and arbitrary arrest.
3. Establishes a human rights-centric approach to the prevention of HIV transmission and treatment, care and support to people living with HIV, including the protection of sexual and reproductive health and rights without discrimination.

The Bill's broad restrictions on expression, assembly, information and association undermine the work of human rights organisations

The Bill restricts our ability to engage in human rights advocacy; conduct information, education and awareness-raising activities; and provide services through its broad criminalisation of a wide range of activities. This criminalisation is not only broad, but vague, making it difficult for us to plan our activities as it is unclear which activities are prohibited and which are permitted under the Bill. The lack of clarity and the breadth of the criminalisation has a chilling effect on all human rights-related activities not only those specifically related to LGBTTTQQAAP+.

The Bill under a number of provisions, including articles 4, 6, 10, 12, 13, 14, 15, 16, and 17, among others, broadly restricts the rights to expression, assembly, association and information through criminalising human rights advocacy on issues related to LGBTTQQAAP+, non-discrimination, health and social services, among others. It criminalises the work of teachers, journalists and media organisations, lawyers and legal organisations, health care workers, and other human rights defenders. For example, under article 4 of the Bill would criminalise a social services organisation that sought to provide free, safe housing for homeless youth if by chance one of the people they provided housing to happened to be LGBTTQQAAP+ and a healthcare organisation that sought to provide the general public information on how to prevent HIV and other sexually transmitted diseases.

This broad criminalisation undermines Ghana's constitutional and human rights obligations. The rights to free expression, association, assembly and information are guaranteed under article 21 of the Constitution of Ghana. This is reaffirmed under articles 19, 21, and 22 of the International Covenant on Civil and Political Rights (ICCPR) and article 9, 10, and 11 of the African Charter on Human and Peoples' Rights both of which have been ratified by Ghana. Countries have to take effective steps to protect these rights and must provide an effective and prompt remedy when such rights have been violated.¹

Human Rights law recognises the important role that human rights organisations play in a democratic society. The Human Rights Committee (HRC), tasked with monitoring compliance with the ICCPR, has stated "that the existence and functioning of a plurality of associations, including those which peacefully promote ideas not favorably received by the government or the majority of the population, is one of the foundations of a democratic society."² The Special Rapporteur on Association has highlighted the particular import of NGOs with respect to marginalised populations, stating that "restrictions on and exclusions from the exercise of the rights to freedom of peaceful assembly and of association have the consequence of reinforcing marginalization. The ability to exercise the rights to freedom of peaceful assembly and of association constitutes a key component in the empowerment of marginalised communities and individuals."³

Given the critical work we do, we should be free to pursue our work, including providing critical services, disseminating information, engaging with the public and advocating before the government and other bodies without fear of criminalisation.⁴

¹ Human Rights Committee. General Comment No. 31 (CCPR/C/21/Rev.1/Add.13), 2004, para. 15.

² African Commission on Human and Peoples' Rights. *Jeong-Eun Lee v Korea* (1119/2002), para 7.2.

³ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/26/29), 2014, para 15.

⁴ *Id.* at para 64.

Broad restrictions on expression and association places human rights defenders at risk of violence, arbitrary arrests and harassment

The lack of clarity and breadth of the activities prohibited under the Bill also increase the likelihood that human rights defenders and our communities will be subjected to violence, arbitrary arrest and harassment from law enforcement and others. Following of the passage of a similar bill in Nigeria, human rights defenders reported high levels of arbitrary arrests by police and the increase in extortion from law enforcement. In addition, mainstream organisations providing services to men who have sex with men were raided by law enforcement disrupting the work of the organisations and compounding existing fear amongst staff.⁵

In response to concerns at the high levels of violence human rights defenders face, the African Commission on Human and Peoples' Rights adopted a resolution calling on countries to ensure that human rights defenders are able to work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities.⁶ The Special Rapporteurs on Freedoms of Peaceful Assembly and Association and on Human Rights Defenders have highlighted that human rights defenders working on the human rights of LGBTI people are at particular risk of threats and attacks based on their work and should not be criminalised but rather receive adequate protection from the State from such threats and attacks based on their human rights work.⁷ The United Nations Secretary-General has also expressed concern at reprisals and intimidation against human rights defenders and their families for their advocacy to protect the human rights of LGBT people.⁸

Conclusion

It is clear that to effectively address the needs of Ghanaians, including marginalised populations, such as LGBTTQQIAAP+, a human rights approach is needed.⁹ To do this, the Bill needs to be amended to align with Ghana's legal obligations under its Constitution and its commitments under international and regional treaties.

⁵ Human Rights Watch. "Tell Me Where I Can Be Safe": The Impact of Nigeria's Same Sex Marriage (Prohibition) Act (October 2016) available at https://www.hrw.org/sites/default/files/report_pdf/nigeria1016_web.pdf.

⁶ Resolution 275 of the African Commission on Human and People's' Rights on protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity (ACHPR/Res.275), 2014.

⁷ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/26/29), 2014, para. 74; Reports of the Special Rapporteur on the situation of human rights defenders (A/HRC/31/55) 2016, para. 27.

⁸ Report of the Secretary-General on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights (A/HRC/39/41), para. 81.

⁹ Global Commission on HIV and the Law. *HIV and the Law: Rights, Risks and Health* (2012).

PETITIONING ORGANIZATIONS

1. Queer Ghana Educational Fund
2. LGBT+rights Ghana
3. Rightify Ghana
4. CEPEHRG
5. OHF Initiative
6. Courageous Sisters Ghana
7. Hope Alliance Foundation
8. One Love Sisters Ghana
9. Alliance for Dynamics Initiative
10. Sisters of the Heart
11. Key Watch Ghana
12. Glorious Interfaith Initiative
13. Alliance for Equality and Diversity
14. Interfaith Diversity Network of West Africa
15. Humanist Association of Ghana
16. Interfaith Alliance Ghana
17. Frontline Human Rights and Protection Centre