

A human rights critique of Ghana's Anti-LGBTIQ+ Bill of 2021

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Summary: *The Ghanaian Parliament is currently considering the passage of a law to re-criminalise consensual same-sex conduct between adults in private. If passed into law, the Anti-LGBTQ+ Bill will usher in a 'second wave' of criminalisation of lesbian, gay, bisexual, transgender, intersex, queer (LGBTIQ+) conduct and related activity. Section 104(1) (b) of the Criminal Offences Act of Ghana already criminalises 'unnatural carnal knowledge', which targets sexual conduct between persons of the same sex. The proponents of the Bill, a group of parliamentarians, argue that homosexuals do not have rights that can be protected by law. They also argue that homosexuality is against the culture and religion of most Ghanaians and, therefore, should be criminalised. The proposed law seeks to uphold the sanctity of a so-called Ghanaian family and cultural values by criminalising the right to free speech, including academic freedom;*

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freedom of movement and association; and imposes an obligation on every Ghanaian to promote the contents of the Bill, including reporting homosexuals and homosexual activity to the police. This article argues that the foundational argument on which the Bill hinges is flawed, misconceived, and a total mischaracterisation of fundamental human rights enshrined in the 1992 Constitution of Ghana. In addition, viewed from a socio-legal, historical and anthropological perspective, the Bill is an unnecessary and misconceived exercise which, if successful, would derail the democratic gains Ghana has made over the years. Overall, the central arguments in support of the Bill fall short of the minimum threshold to limit the constitutional rights of persons in Ghana.

Key words: *constitutional rights; sexual orientation; minority rights; Anti-LGBTIQ+ Bill; 'unnatural carnal knowledge'; African traditional values; cultural rights; limitation of fundamental rights*

1 Introduction

Barring any unforeseen hitch, Ghana will join the list of African countries that either attempted but failed to or succeeded in passing legislation to re-criminalise consensual same-sex activity between adults in private.¹ This 'second wave'² of criminalisation by Ghana purportedly aims at preserving the cultural, family and religious values of Ghanaians.³ The Promotion of Proper Human

1 See the Same-Sex Marriage (Prohibition) Act 2013 of Nigeria; the Gambia Criminal Code (Amendment) Act, sec 144A, which introduces the offence of 'aggravated homosexuality'; Anti-Homosexuality Act, 2014 of Uganda, which was subsequently declared unconstitutional by the Constitutional Court of Uganda for lack of parliamentary quorum during the passage of the law. See *Ōloka-Onyangō & 9 Others v Attorney General* Constitutional Petition 8 of 2014 [2014] UGSC 14 (1 August 2014). We use the term 'sexual minority' to mean persons whose sexual preferences do not conform to the 'dominant heteronormative-heterosexual paradigm'; see E Heinze *Sexual orientation: A human right* (1995). Sexual minority is used interchangeably with the acronym LGBTIQ+ to denote lesbian, gay, bisexual, transgender, intersex and queer persons as used in international human rights law (see the Yogyakarta Principles (2007) and YP+10 (2017)).

2 JO Ambani 'A triple heritage of sexuality? Regulation of sexual orientation in Africa in historical perspective' in S Namwase & A Jjuuko (eds) *Protecting the human rights of sexual minorities in contemporary Africa* (2017) 14. Ambani argues that African countries such as Nigeria that have passed legislation after independence to re-criminalise same-sex sexual relations while colonial laws that criminalise the same conduct exist on criminal statutes exemplify a 'second wave' of criminalisation. For a general discussion on the 'second wave' of criminalisation of homosexuality in Africa, see JO Ambani 'An analysis of the second wave of criminalising homosexuality in Africa against the backdrop of the "separability thesis", secularism, and international human rights' LLD thesis, University of Pretoria, 2016 (on file with authors).

3 See the Memorandum and Preamble to the Promotion of Proper Human Rights and Ghanaian Family Values Bill of 2021.

Sexual Rights and Ghanaian Family Values Bill (Anti-LGBTIQ+ Bill) disbands existing lesbian, gay, bisexual, transgender, intersex, queer (LGBTIQ+) civil society groups and prohibits the formation of new such groups,⁴ criminalises the activities of sexual minority rights advocates⁵ and imposes an obligation on all persons and entities to report perceived homosexuals or homosexual activity to the police or community leaders.⁶ Should this Bill be passed into law, it will cement the erroneous belief among many Ghanaians that homosexuality is against the culture and religion of Ghanaians. The law will also entrench a mistaken belief that homosexuality is a Western decadence imposed upon Africans and Ghanaians by the Western world. Most importantly, the anti-LGBTQ+ Bill will erode Ghana's democratic gains, the rule of law, respect for human rights and constitutionalism achieved in the last two decades of democratic rule.⁷ As a modest contribution to the discourse on sexual minority rights, this article critiques the Bill in light of Ghana's domestic human rights protections but makes references to other regional and global human rights obligations.⁸ The article contends that the foundational arguments put forward by the proponents of the Bill, particularly in the Memorandum to the Bill, are factually inaccurate and a mischaracterisation of human rights in the 1992 Constitution of Ghana. The Bill also flouts regional and human rights obligations under the various treaties that Ghana has ratified.

The article is organised into four main parts. The first part traces the events that have triggered the debate about homosexuality in Ghana. Next, the article considers the object, scope, purpose and key aspects of the Bill. The third part dissects the arguments advanced by sponsors of the Bill, including the claim that homosexuality is against the culture and religion of Ghanaians, and challenges those arguments from a socio-legal, historical and anthropological perspective. Further, assuming that the basis for passing this law is correct, it still fails the constitutional test required to pass a law to limit the constitutional rights of individuals. We propose that, as a constitutional democracy, Ghana should protect the rights of all persons, regardless of their sexual orientation.

4 Clauses 15 & 16 of the Bill.

5 Clause 4 of the Bill.

6 Clause 5(1) of the Bill.

7 Ghana returned to democratic rule in 1992 with a Constitution that protects the rights of all persons. The 1992 Constitution has been hailed as a beacon of democracy in Africa.

8 Ghana has ratified all major human rights treaties of the United Nations and the African human rights system. The Constitution of the Republic of Ghana, 1992 ch 5 also provides for a Bill of Rights.

2 Background to the Anti-LGBTQ+ Bill in Ghana

Moral entrepreneurs⁹ had long conceived of a law to limit the activities of LGBT persons in Ghana in reaction to the perceived boldness and 'visibility' of LGBT persons to demand equal treatment before the law.¹⁰ Even though same-sex sexual relationships had existed in Ghana before colonial administrators arrived on the then Gold Coast in the 1800s and continued into the present day,¹¹ the first public debate on homosexuality being a threat to Ghanaian society took place in 2006.¹² The Gay and Lesbian Association of Ghana (GALAG) announced on the radio in 2006 that Ghana would host an international conference of gays and lesbians in the capital, Accra.¹³ This announcement was shocking to many Ghanaians because many Ghanaians either did not know of or denied the existence of LGBT persons in Ghana. This might have been shocking news to those who knew that homosexuals existed in Ghana and accepted them. Ghanaian society is highly conservative and was not prepared to accept that homosexuality has been part of Ghanaian culture since time immemorial.

Therefore, the natural reaction was that decadent Western culture was being imported into Ghana. So-called 'right-thinking' members of society – moral entrepreneurs – deemed it a duty to rise to the occasion and compel the government in power to 'quell' the insurrection of LGBT persons.¹⁴ The then Minister of National Security, Mr Kwamina Bartels, characterised the LGBTI conference

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- 9 WJ Tettey 'Homosexuality, moral panic and politicised homophobia in Ghana: Integrating discourses of moral entrepreneurship in Ghana media' (2016) 9 *Communication, Culture and Critique* 86-94. According to Tettey, moral entrepreneurs are 'individuals or organizations that assume responsibility for promoting, and/or enforcing, views and regulations that reflect their moral beliefs, with the goal of ridding society of perceived ills'.
- 10 'Bill to criminalise homosexuality coming soon – Foh Amoaning' 29 May 2018, <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Bill-to-criminalise-homosexuality-coming-soon-Foh-Amoaning-655883> (accessed 30 September 2019).
- 11 I Signorini 'Agonwole agyale: The marriage between two persons of the same sex among the Nzema of Southwestern Ghana' (1973) 43 *Journal Des Africanistes* 221-222; SO Murray 'Homosexuality and traditional sub-Saharan Africa and contemporary South Africa' 22, semgai.free.fr/doc_et_Africa_A4.pdf (accessed 26 December 2021); SO Dankwa 'The one who says I love you: Same-sex love and female masculinity in postcolonial Ghana' (2011) 14 *Ghana Studies* 223-224.
- 12 K Essien & S Aderinto 'Cutting the head of the roaring monster: Homosexuality and repression in Africa' (2009) 30 *African Study Monograph* 121.
- 13 As above.
- 14 Tettey (n 9) 94. Tettey observes: 'As Ghanaian media focus on homosexuality as a moral emergency, various stakeholders have taken up their own "moral and civil responsibility" by constructing gays and lesbians in the image of "folk devils" who need to be confronted, contained, and controlled for the public good.'

as a national security threat.¹⁵ The announcement by GALAG and the public's negative reaction prompted the government to become involved in the debate on LGBTI rights in Ghana. This has led to a culture of politicisation of LGBTI rights in Ghana, which has continued to the present, with politicians at the mercy of moral entrepreneurs and the public to pass stringent legislation to suppress the activities of homosexuals or risk being voted out of power.¹⁶

The embers of the 2006 debate on homosexuality in Ghana were rekindled in 2011 with another debate triggered by three events.¹⁷ First, a newspaper reported that approximately 8 000 homosexuals, most of whom infected with sexually-transmitted diseases, including HIV, had been registered by a non-governmental organisation (NGO) in Ghana's western and central regions.¹⁸ Second, the United Kingdom threatened to cut budget support to African countries that do not respect LGBTI rights.¹⁹ Lastly, Barack Obama, the then President of the United States of America, stated that America would use 'diplomacy and foreign assistance to ensure respect for the rights of homosexuals'.²⁰ The alleged registration of 8 000 homosexuals was a watershed moment in the Ghanaian debate on homosexuality. It showed the Ghanaian media setting an anti-LGBTI agenda to the delight of moral entrepreneurs, who then triggered the panic button to the chagrin of many Ghanaians. As Tettey observed, such agenda setting by the media is what moral entrepreneurs require to put homosexuals under siege.²¹ The statements by the UK and USA also fuelled more hostility towards homosexuals because they fed into the erroneous belief that homosexuality is a Western agenda imposed on Africans.

The debate on homosexuality in Ghana in 2011 marks the starting point when moral entrepreneurs seriously started considering the passage of a law to curb the activities of homosexuals. By this time, fertile ground had been created for such a law because even though Ghana criminalises 'unnatural carnal knowledge',²² many people deemed the law inadequate. At some point, persons who had occupied the high offices of the Attorney-General and Minister of

15 Essien & Aderinto (n 12) 127.

16 EY Ako 'Towards the decriminalisation of consensual same-sex conduct in Ghana: A decolonisation and transformative constitutionalism approach' LLD Thesis, University of Pretoria, 2021 119-134 (on file with authors).

17 E Baisley 'Framing the Ghanaian LGBT rights debates: Competing decolonisation and human rights frames' (2015) 49 *Canadian Journal of African Studies* 383 390.

18 As above.

19 As above.

20 As above.

21 Tettey (n 9) 94.

22 Sec 104(1)(b) Criminal Offences Act 29 of 1960.

Justice, responsible for advising the government on legal matters, indicated that the law was unenforceable.²³ The last public debate that prompted moral entrepreneurs to table a Bill in the Ghanaian Parliament was the opening of an LGBTI office in Accra, the capital of Ghana, by an LGBTI organisation in 2021. The pomp, pageantry and officialdom that graced the occasion were as annoying as it was brazen to many Ghanaians. Moral entrepreneurs felt threatened and needed to act decisively, including threatening to burn down the LGBTI office.²⁴ Some ambassadors of foreign missions in Ghana, such as the Australian High Commissioner, were present at the opening of the LGBTI office. The public capitalised on that to emphasise that homosexuality in Ghana was Western driven, with Western donor funding.²⁵

Even though there was some debate around homosexuality in Ghana in 2012, this debate was muted. The Constitution Review Commission of Ghana (CRC) embarked on an exercise to collect information from Ghanaians, at home and abroad, on which sections of the 1992 Constitution of Ghana needed amendment. The CRC received submissions for and against the express protection of LGBTI rights in a new Ghanaian Constitution. Predictably, most Ghanaians who made submissions on the subject stated that they wanted no express protection of LGBTI rights in the new Constitution.²⁶ At the end of the exercise, the CRC recommended that the matter be left for the apex court of Ghana to decide when a person or group of persons approach the Court in sober moments.²⁷ While the decision of the CRC is yet to be acted upon, and the threat of introducing an anti-LGBTI Bill in Parliament nestled in the minds of anti-LGBTI activists, Ghana introduced new legislation that allowed members of parliament to introduce a Private Members Bill.²⁸ Hitherto, all Bills emanated from the executive.²⁹ While the executive, from the tenure of President Kufuor in 2006 to President Akufo-Addo's time in

23 'Homosexuality is not illegal – Attorney-General', <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Homosexuality-Is-Not-Illegal-Attorney-General-217527#> (assessed 28 December 2021). However, see a contrary view by another former attorney-general who claimed that the law of Ghana criminalises consensual same-sex conduct; <https://www.humandignitytrust.org/country-profile/ghana> (accessed 28 December 2021).

24 'Kwabenya Traditional Council threatens to burn down LGBTQI meeting place' *Daily Graphic* (Accra) 23 February 2021 13.

25 'Coalition calls for closure of gay, lesbian office' *Daily Graphic* (Accra) 20 February 2021 1.

26 Report of the Constitutional Review Commission of Ghana 'From a political to a developmental Constitution' (2011) 656-657.

27 As above.

28 'Parliament adopts Private Members Bill' *The Chronicle* 18 July 2020, <http://thechronicle.com.gh/parliament-adopts-private-mmembers-bill/> (accessed 28 December 2021).

29 Arts 106(2)-(4) & 108 Constitution of the Republic of Ghana, 1992.

2021, had publicly condemned homosexuality, they had all failed to introduce a law to re-criminalise homosexual relationships in Ghana.

The Anti-LGBTI Bill, a Private Members Bill, is supposedly being introduced to preserve Ghana's cultural and religious values. However, the real reason for introducing the Bill in Parliament is for politicians to obtain the favour of the electorate to stay in power. Unlike some African countries where homosexuality is used as a diversionary tactic to deflect from socio-economic hardship, Ghana is different. The debate on homosexuality in Ghana was unwittingly started by the LGBTI community with an announcement of an impending conference.³⁰ Moral entrepreneurs who felt they owed a duty to society to preserve Ghanaian 'morals' and culture instigated politicians to clamp down on this so-called 'moral decadence'. With the backing of religious leaders who command a significant following, politicians have found the LGBTI community as easy prey to launch their political careers or stay in power.³¹ The scope and contents of the Bill defy the reasoning behind the Bill, which is considered below.

3 Key aspects of the Anti-LGBTQ+ Bill

3.1 Object, scope, and purpose of the Bill

The Bill seeks to provide proper human sexual rights and Ghanaian family values.³² The meaning of Ghanaian family values includes the 'respect for the sanctity of marriage as a lifelong relationship between a man and a woman, each of whose gender is assigned at birth'.³³ It also includes the 'recognition of the nuclear and extended family as the basic unit for all Ghanaian ethnic communities as well as the recognition that the purpose of government is to protect and advance the family as the basic unit of society and to safeguard the best interest of children'.³⁴ Further, under the Bill, Ghanaian family values encapsulate the duty of parents, guardians, and teachers to 'ensure that children and young people receive equal protection against exposure to physical, emotional and moral hazards'.³⁵ The

30 For a comprehensive discussion of the causes of recriminalisation of homosexual conduct in Ghana, see Ako (n 16); EY Ako & A Odoi 'LGBTIQ+ lawfare in response to the politicisation of homosexuality in Ghana' in A Jjuuko et al (eds) *Queer lawfare in Africa: Legal strategies in contexts of LGBTIQ+ criminalisation and politicisation* (2022) 275.

31 As above.

32 Preamble to the Bill.

33 Clause 2 of the Bill.

34 As above.

35 As above.

Bill also contentiously notes that Ghanaian family values encompass the idea that gender is a social construct assigned to males and females at birth.³⁶ Also, to uphold the Ghanaian family values is to recognise that the chieftaincy institution is the ultimate source of political and traditional authority in Ghanaian ethnic communities.³⁷ Most importantly, Ghanaian family values, according to the Bill, include the duty to cherish values such as selflessness and communalism, among others.³⁸ The Bill applies to people who hold themselves out as lesbian, gay, bisexual, transgender, transsexual, queer, ally, pansexual, or a person of any socio-cultural notion of sex or sexual relationship that is contrary to the ideas of male and female or the relationship between males and females, and a person 'questioning their sexuality'.³⁹ The Bill also claims to apply to persons who have a biological anomaly, including a person that is intersex and any person involved in the promotion, propagation, advocacy for, support or funding of the LGBTTTQQAAP+-related activities.⁴⁰ Further, the Bill applies to persons who provide or participate in 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 designed to correct a biological anomaly including intersex,⁴¹ or a person who engages in sexual activity that is prohibited under the Bill.⁴²

3.2 Statutory duty to promote proper human sexual rights and Ghanaian family values

The Bill imposes a statutory obligation on every Ghanaian to promote and protect the proper sexual human rights and Ghanaian family values.⁴³ Under the Bill, the following persons/institutions have a statutory duty to promote and protect the proper sexual rights and Ghanaian family values: parents, guardians, teachers or any other educational or religious instructors; churches, mosques, or any other religious or traditional institution or organisation; the executive, judiciary, and the legislature; constitutional bodies such as the Commission for Human Rights and Administrative Justice (CHRAJ) and the National Commission for Civic Education (NCCE); the media; and the creative arts industry.⁴⁴ The Bill requires that the

36 As above.

37 As above.

38 As above.

39 Clause 1 of the Bill.

40 Clause 1(d) of the Bill.

41 Clause 1(e) of the Bill.

42 Clause 1(f) of the Bill.

43 Clause 3(1) of the Bill.

44 Clause 3(2) of the Bill.

foregoing persons/institutions collectively ensure that the proper human and sexual rights and Ghanaian family values are integrated into the fabric of national life.⁴⁵ They are also enjoined to make conscious efforts to introduce the proper human sexual rights and Ghanaian family values into relevant aspects of national planning.⁴⁶

3.3 Prohibition against undermining proper human sexual rights and Ghanaian family values

The Bill prohibits all persons from undermining the Ghanaian family values. Also, individuals are prohibited from soliciting, procuring, counselling, facilitating or promoting any act that undermines the Ghanaian family values and proper sexual human rights.⁴⁷ The Bill imposes criminal sanctions on any act that undermines the Ghanaian family values and proper sexual human rights. A person may be convicted to a fine or a prison term of not less than two months and not more than four months for undermining the Ghanaian family values.⁴⁸ Furthermore, under the Bill, persons in whose presence an act prohibited by the Bill is committed must report the incidence to a police officer, a political leader, or customary authorities of the area where the offence was committed.⁴⁹

3.4 Prohibition of LGBTQ+ activities and related offences

Under the Bill, it is a criminal offence for a person to engage in sexual intercourse with persons of the same sex, an animal or objects.⁵⁰ Sexual intercourse is defined in the Bill to occur

where a person penetrates the anus or mouth of another person with the penis of that person or contraption; or a person by use of any object or contraption, penetrates or stimulates the vagina or anus of another person; or a person by use of penis or any other object or contraption penetrates the anus or other bodily opening of an animal.⁵¹

Also, under the proposed law, it is a crime for a person to undergo gender or sex reassignment.⁵² It is also a crime for a person to marry or purport to marry persons of the same sex or a person that has undergone gender reassignment.⁵³ Most significantly, the Bill

45 Clause 3(3)(a) of the Bill.

46 Clauses 3(2)(b) & (c) of the Bill.

47 Clause 4(1) of the Bill.

48 Clause 4(2) of the Bill.

49 Clause 5(1) of the Bill.

50 Clause 6(1)(a) of the Bill.

51 Clause 6(3) of the Bill.

52 Clauses 6(1)(b) & (c) of the Bill.

53 Clause 6(1)(c) of the Bill.

imposes criminal sanctions on any person who marries an animal or openly identify as a lesbian, transgender, transexual, queer, pansexual, ally, non-binary or any other gender identity contrary to the binary categories of male and female.⁵⁴ Any person who commits an LGBTIQ+-related offence, according to the provisions in the Bill, commits a second degree felony and is liable on summary conviction to a fine, not less than 750 penalty units and not more than 5 000 penalty units or a term of imprisonment of not less than three years and not more than five years or both.⁵⁵

3.5 Prohibition of gross indecency and void marriage

Clause 10 of the Bill criminalises gross indecency. The Bill defines 'gross indecency' as a public display of affection or amorous display of affection between persons of the same sex or persons who have undergone gender reassignment or intentional cross-dressing to portray a different gender other than that assigned at birth.⁵⁶ A person who wilfully commits a grossly indecent act commits a misdemeanour is liable, on summary conviction, to a term of imprisonment of not less than six months and not more than one year.⁵⁷ One vital feature of the Bill is the prohibition of same-sex marriages conducted in Ghana or any other jurisdiction. According to clause 11 of the Bill, any marriage certificate issued or marriage entered into by persons of the same sex or a person who has undergone gender or sex reassignment is void.⁵⁸ Further, a person who administers, witnesses, solemnises or aids a same-sex marriage or marriage involving a person that has undergone gender or sex reassignment commits an offence and is liable on summary conviction to a term of imprisonment of not less than one year and not more than three years.⁵⁹

3.6 Prohibition of propaganda and advocacy of LGBTIQ+ activities directed at a child, and funding or sponsorship

Clause 12 of the Bill provides that any person who, through social media, technological platform or technological account, among others, promotes any LGBTIQ+ activities commit an offence and, on conviction, is liable to a term of imprisonment not less than five years

54 Clauses 6(1)(d) & (e) of the Bill.

55 Clause 6(2) of the Bill.

56 Clause 10(2) of the Bill.

57 Clause 10(1) of the Bill.

58 Clauses 11(a) & (b) of the Bill.

59 Clause 11(3) of the Bill.

and not more than 12 years.⁶⁰ Also, any person who participates in any activity that promotes or supports LGBTQ+ activities commits an offence and on summary conviction, is liable to not less than five years and not more than ten years imprisonment.⁶¹ It also is a criminal offence for a person to participate in or support any activity that seeks to change public opinion towards an act prohibited by the Bill.⁶² Further, the Bill prohibits any advocacy on technological or media platforms that seeks to directly or indirectly evoke a child's interest in any activity prohibited by the Bill.⁶³ Under the Bill, both the user and the owner of the platform on which a material or information is circulated commit an offence. However, owners of media and technological platforms may be excluded from criminal liability if they did not consent or connive to commit the offence and the owner exercised reasonable diligence to prevent the commission of the offence.⁶⁴ The Bill also makes it a criminal offence to sponsor LGBTQ+ activities by any person, including corporate and unincorporated entities. Any person, body corporate and unincorporated entities that sponsor LGBTQ+ activities commit an offence and, on conviction, are liable to imprisonment for a term of not less than five years and not more than ten years.⁶⁵

3.7 Disbandment of LGBTQ+ groups, associations, clubs, or organisations and prohibition of an adoption order or grant of fosterage

The Bill applies retrospectively to dissolve or disband any group, society, association, club or organisation that existed before the coming into force of the Bill and of which the purpose is to partly, overtly or covertly promote, facilitate, support or sustain in any way acts prohibited under the Bill.⁶⁶ Also, a person is prohibited from directly or indirectly forming, operating or registering, or participating in an activity to support or sustain a group, association or organisation of which the purpose is to partly, overtly/covertly, promote facilitate or support an act prohibited under the Bill.⁶⁷ A person whose actions contravene the Bill commits an offence and is liable on summary conviction to imprisonment for a term not less than six years and not more than ten years.⁶⁸ Also, a court is

60 Clause 12(1)(a) of the Bill.

61 Clause 12(2)(a) of the Bill.

62 Clause 12(2)(b) of the Bill.

63 Clause 13(1) of the Bill.

64 Clause 13(2) of the Bill.

65 Clauses 13(3) & 14(1) of the Bill.

66 Clause 14(2) of the Bill.

67 Clause 16(1) of the Bill.

68 Clause 16(2) of the Bill.

prohibited from granting an application for an adoption order to an LGBTIQ+ person or any person whose gender is contrary to that of a male or female as assigned at birth.⁶⁹ Similarly, the Department of Social Welfare is precluded from granting an application for fosterage where the applicant is an LGBTIQ+ person or whose gender is contrary to the socio-cultural ideas of male and female as assigned at birth.⁷⁰

3.8 Protection of victims of prohibited sexual activities, access to medical treatment and flexible sentencing of a LGBTIQ+ person

The Bill provides that victims of sexual activities prohibited by the Bill must not be penalised.⁷¹ In addition to a sentence, a court may order a convicted person to compensate a victim for any psychological or physical harm.⁷² In determining the quantum of payment, the court is required to take into account the degree of medical expenses, the degree of force and extent of damage suffered by the victim.⁷³ The Bill also prescribes that persons involved in the investigation processes, such as law enforcement officers, are to respect the privacy of accused and the victim.⁷⁴ Where the complainant or victim is a child, the Bill prescribes that the proceedings must be held *in camera*.⁷⁵ A court may also order a victim to undergo therapy provided by an approved service provider.⁷⁶ Where during the investigation or trial process an accused person recants or makes a voluntary request to access medical help or treatment, such request must be granted.⁷⁷ However, the recanting must be genuine and the cost of the medical treatment shall be borne by the accused or any other person acting on behalf of the accused.⁷⁸ The Bill imposes criminal sanctions on persons who verbally or physically abuse, assault, or harasses a person accused of a LGBTIQ+-related offence.⁷⁹

69 Clause 17 of the Bill.
 70 Clause 18 of the Bill.
 71 Clause 19(1) of the Bill.
 72 Clause 19(2) of the Bill.
 73 Clauses 19(3)(a) to (c) of the Bill.
 74 Clause 19(4) of the Bill.
 75 Clause 19(5) of the Bill.
 76 Clause 19(6) of the Bill.
 77 Clause 20(1) of the Bill.
 78 Clause 20(2) of the Bill.
 79 Clauses 22(1)(a) & (b) of the Bill.

4 Debate and analysis/response to the argument advanced by the sponsors of the Bill

Upon a careful reading of the Bill and the Memorandum accompanying the Bill, some arguments are recurrent. These arguments are to the effect that (i) LGBTIQ+ activities are contrary to the public morals of Ghana and that the majority of Ghanaians do not approve of such acts because of their religious beliefs; (ii) LQBTIQ+ activities trigger grave public health concerns; and, most importantly, (iii) LGBTIQ+ activities are alien to Ghanaian and African culture and are an imposition by morally-depraved Western countries. Because of a combination and an interconnectedness of these claims the sponsors of the Bill assert that LGBTIQ+ activities must be criminalised. Other strands of argument include the claim that gay and lesbian rights are not human rights and, thereby, are not protected under the 1992 Constitution of Ghana. This article critiques the main arguments advanced by the sponsors of the Bill and as contained in the Memorandum to the Bill.

4.1 Homosexuality is not a human right

One argument advanced by the sponsors of the Bill is that gay and lesbian rights are not human rights. This argument gives the impression that the 1992 Constitution does not protect the rights of sexual minorities. Chapter 5 of the 1992 Constitution provides elaborate provisions on individuals' fundamental rights and freedoms. These rights include human dignity;⁸⁰ freedom of association;⁸¹ equality and freedom from discrimination;⁸² freedom of assembly;⁸³ the right to personal liberty;⁸⁴ the right to privacy;⁸⁵ the right to life;⁸⁶ freedom of the media;⁸⁷ and academic freedom.⁸⁸ These fundamental rights and freedoms in the 1992 Constitution serve as the cornerstone of Ghana's democracy.⁸⁹ As such, the rights and freedoms in the 1992 Constitution are highly upheld and cherished, especially when considering the egregious political past of Ghana,

80 Art 19 Constitution of the Republic of Ghana, 1992.

81 Art 21(3) Constitution of the Republic of Ghana, 1992.

82 Art 17 Constitution of the Republic of Ghana, 1992.

83 Art 21(d) Constitution of the Republic of Ghana, 1992.

84 Art 14 Constitution of the Republic of Ghana, 1992.

85 Art 18 Constitution of the Republic of Ghana, 1992.

86 Art 13 Constitution of the Republic of Ghana, 1992.

87 Art 21(a) Constitution of the Republic of Ghana, 1992.

88 Art 21(b) Constitution of the Republic of Ghana, 1992.

89 *Edusei v Attorney General (No 2)* [1998-1999] SCGLR 753; *Tehn Addy v Electoral Commission* [1996-1997] SCGLR 589; *Mensimah v Attorney General* [1996-1997] SCGLR 676; *New Patriotic Party v Inspector General of Police (IGP)* [1993-1994] 2 GLR 354.

which was characterised by abuse, neglect, and a lack of respect for the fundamental human rights of individuals.⁹⁰ In addition to Chapter 5 of the 1992 Constitution one finds the Directive Principles of State Policy (DPSP) (Chapter 6). The DPSP embody the objectives that government, citizens and state institutions, including parastatal institutions, must strive to achieve.⁹¹

The legal potency and justiciability of the DPSP had been uncertain.⁹² However, the Supreme Court of Ghana settled those doubts as to the fact that all provisions in the 1992 Constitution are justiciable unless there are strong indications providing otherwise.⁹³ Both Chapters 5 and 6 of the 1992 Constitution operate to protect all persons in Ghana, including vulnerable persons such as children, women and persons with disabilities. Even though the 1992 Ghanaian Constitution does not explicitly mention the rights of LGBTIQ+ persons, its scope cannot be constricted to exclude sexual minorities such as gay and lesbian persons – the 1992 Constitution is unequivocal that it applies to and protects all persons in Ghana. Reflecting on the scope and applicability of the rights in the 1992 Constitution, Ako states:⁹⁴

Apart from making it clear that constitutional rights are the entitlement of every person, the 1992 Constitution also contains a relevant clause

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- 90 H Jeff 'Human rights and democracy in Ghana: The record of the Rawlings' regime' (1991) 90 *Africa Affairs* 407-415; M Oquaye 'Human rights and the transition to democracy under the PNDC in Ghana' (1995) 17 *Human Rights Quarterly* 557-571; E Gyimah-Boadi & D Rothchild 'Rawlings, populism, and the civil liberties tradition in Ghana' (1982) 12 *A Journal of Opinion* 64-69. See generally D Simpson 'Violations of human rights in the seventies' in FE Dowrick (ed) *Human rights, problems, perspectives and texts* (1979) 132; W Tordoff *Governments and politics in Africa* (1984); CEK Kumado 'Forgive us our trespasses: An examination of the indemnity clause in the 1992 Constitution of Ghana' (1993-1995) 19 *University of Ghana Law Journal* 83; K Frimpong & K Agyeman-Budu 'The rule of law and democracy in Ghana since independence: Uneasy bedfellows?' (2018) 18 *African Human Rights Law Journal* 244; TE Coleman 'Contractual freedom and autonomy in commonwealth Africa: Theoretical foundations and practical perspectives' LLD thesis, University of Johannesburg, 2020 (on file with authors).
- 91 M Mhango 'Separation of powers in Ghana: The evolution of the political question doctrine' (2014) 17 *Potchefstroom Electronic Law Journal* 2703 2727; PA Atupare 'Reconciling socio-economic right and Directive Principles with a fundamental law of reason in Ghana and Nigeria' (2014) 71 *Harvard Human Rights Journal* 71 95; NT Okyir 'Towards progressive realisation of socio-economic rights in Ghana: A socio-legal analysis' (2017) 25 *African Journal of International and Comparative Law* 91-100; TE Coleman 'Reflecting on the applicability and impact of the Fourth Republican Constitution of Ghana on the concept of contractual freedom and autonomy' in M Anton (ed) *Liber Discipulorum für Michael Martinek* (2021) 64.
- 92 *New Patriotic Party v Attorney General (31st December Case)* [1993-1994] GLR 35; *New Patriotic Party v Attorney General (CIBA case)* [1997] SCGLR 279.
- 93 *Ghana Lotto Operators Association & Others v National Lotteries Authority* [2007-2008] SCGLR 1088.
- 94 EY Ako 'Domesticating the African Charter on Human and Peoples' Rights in Ghana: Threat or promise to sexual minority rights?' (2020) 4 *African Human Rights Yearbook* 99 117.

that ensures that apart from constitutional rights, other rights that exist in other democracies intended to uphold the dignity of the human person are also applicable. This provision states that in addition to the rights in the Constitution, 'others not specifically mentioned which are considered to be inherent in a democracy and intended to secure the freedom and dignity of [hu]man[kind]', are not excluded. This provision means that in interpreting the fundamental human rights provisions in the 1992 Constitution of Ghana, the Supreme Court, which is the only court empowered to do so, must take cognisance of international human rights law and foreign law.

The Bill restricts the following rights in the 1992 Constitution: the right to life; freedom of association; freedom of expression; freedom of speech; the right to equal treatment, the right to human dignity; freedom from discrimination; freedom of assembly; the right to demonstrate; and the right to personal liberty, among others. The limitation of these rights has triggered academics to criticise the Bill. Indeed, one argument often touted by the sponsors of the Bill is that homosexuality is not a human right and that the 1992 Constitution does not make provisions for such requests. While it is true that the 1992 Constitution does not explicitly provide for same-sex rights, it is false for one to claim that same-sex choices cannot be subsumed under some other rights in the 1992 Constitution. For instance, the 1992 Constitution provides that the dignity of all persons shall be inviolable. The 1992 Constitution also provides for the personal liberties of individuals to be respected. Furthermore, the Constitution provides for the respect for the right to life. Quite apart from constitutional rights infringements, the Bill also violates similar rights in regional and global human rights treaties that Ghana has ratified. Ghana is a state party to or has signed all major international human rights instruments in the United Nations (UN) and the African human rights systems.⁹⁵ For instance, Ghana is a state party to the International Covenant on Civil and Political Rights (ICCPR) and therefore is bound to respect the decisions of the Human Rights Committee, which states that discrimination on grounds of sexual orientation violates the rights to dignity, privacy and non-discrimination in ICCPR.⁹⁶ Ghana also is a member of the

95 Ghana has signed or ratified every major international human rights treaty of the African and United Nations systems except the Second Optional Protocol to ICCPR and the interstate communication procedure under the international convention for the protection of all persons from enforced disappearance, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=67&Lang=EN. In Africa, see <https://au.int/en/treaties/1164>.

96 Communication 488/1992, *Toonen v Australia*, UNHR Committee (31 March 1994) UN Doc CCPR/C/50/D/488 (1992); *G v Australia* Communication 2172/2012 CCPR/C/119/D/2172/2012 28 June 2017; *C v Australia* Communication 2216/2012 CCPR/C/119/D/2216/2012 1 November 2017; *Kirill Nepomnyashchiy v Russian Federation* Communication 2318/2013CCPR/C/123/D/2318/2013 23 August 2018.

Human Rights Council (HRC) and has recently concluded its fourth Universal Periodic Review on 24 January 2023, where it engaged meaningfully with the members of the HRC on ways to end the recriminalisation of consensual same-sex conduct and the violation of the rights of sexual minorities.⁹⁷ Emerging from the constitutional rights and international human rights analysis is the protection of personal liberty and human dignity.

The right to personal liberty and human dignity mirrors an individual's autonomy (personal autonomy). Also, underlying the right to life is the dignity of an individual.⁹⁸ Personal autonomy refers to the ability of an individual to have the independence and capacity to follow their self-legislated actions, flowing from the individual's capacity to reason – what Kant refers to as practical reason.⁹⁹ Indeed, individuals have the innate ability to make rational decisions and self-legislate their actions without external control.¹⁰⁰ An individual can ascribe unto themselves some kind of agency that is not subjected to the cause and effect of external forces.¹⁰¹ Therefore, a person is endowed with the practical reason to determine the impact of their

- 97 See <https://www.ohchr.org/en/hr-bodies/upr/gh-index> for a list of documents and questions submitted by Ghana. In 2017 Ghana moved away from its hostile position in 2008 and 2012 on the subject of homosexuality and 'supported' the recommendations made by the HRC. See Human Rights Council 'Universal Periodic Review – Ghana Third Cycle Date of consideration: Tuesday 7 November 2017 – 14:30-18:00', <https://www.ohchr.org/EN/HRBodies/UPR/Pages/GHIndex.aspx> (accessed 10 July 2020); see also Report of the Working Group on the Universal Periodic Review Ghana A/HRC/37/7 (26 December 2017), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/367/88/PDF/G1736788.pdf?OpenElement> (accessed 10 July 2020).
- 98 See E Wicks 'The meaning of "life": Dignity and the rights to life in international human rights treaties' (2012) 12 *Human Rights Law Review* 199; C McCrudden 'Human dignity and judicial interpretation of human rights' (2008) 19 *European Journal of International Law* 655; R Steinmann 'The core meaning of human dignity' (2016) 19 *Potchefstroom Electronic Law Journal* 1. See also *Navtej Singh Johar & Others v Union of India, The Secretary of Law and Justice* (Writ Petition 76 of 2016) where the Supreme Court of India stated that life without dignity is nothing.
- 99 GF Gaus 'The place of autonomy within liberalism' in J Christman & J Anderson (eds) *Autonomy and the challenges to liberalism: New essays* (2005) 282-283; L Zagzebski 'Intellectual autonomy' (2013) 23 *Philosophical Issues* 244-244; E Wilson 'Is Kant's concept of autonomy absurd?' (2009) 26 *History of Philosophy Quarterly* 159; J Waldron 'Moral autonomy and personal autonomy' in J Christman & J Anderson (eds) *Autonomy and challenges to liberalism* (2005) 307; K Dodson 'Autonomy and authority in Kant's Rechtslehre' (1997) 25 *Political Theory* 93-94-95; S Roehr 'Freedom and autonomy in Schiller' (2003) *Journal of History of Ideas* 119-120.
- 100 I Kant *The groundwork for the metaphysics: Edited and translated by AW Wood* (2002) 53-54 (Ak 4:436). See also CF Rostbøll 'Kantian autonomy and political liberalism' (2011) 37 *Social Theory and Practice* 341-342; JP Christman *The inner citadel: Essays on individual autonomy* (1989) 14; G Dworkin *The theory and practice of autonomy* (1988) 48; M Schroeder 'Scope of rational autonomy' (2013) *Philosophical Issues* 297-303; RS Taylor 'Kantian personal autonomy' (2005) *Political Theory* 602-610-612.
- 101 HE Allison *Kant's theory of freedom* (1990) 13-14; M Gass 'Kant's causal conception of autonomy' (1994) 11 *History of Philosophical Quarterly* 53-70.

choices on their lives.¹⁰² The ability of a person to make choices inheres in that person as a matter of existence and thereby is not conferred by the political society. Most importantly, underlying the right to life is the dignity and autonomy of an individual. Even in a cultural and communal setting, an individual has the freedom to make choices that reinforce their individuality. Essentially, the choices of individuals are inextricably intertwined with their right to life, human dignity, and personal liberty. Hence, same-sex persons embracing their sexuality is an expression of their humanness and is firmly anchored in the right to human dignity.¹⁰³ The criminalisation of the expression of humanness of same-sex persons is akin to taking away their human dignity – what Shaw describes as ‘dignity-taking’.¹⁰⁴

4.2 Most Ghanaians are against homosexuality because of religious beliefs

Faith-based institutions have been the main actors advocating the criminalisation of LGBTIQ+ activities in Ghana. The Memorandum to the Bill provides that the architects behind the Bill comprise Christian and para-Christian bodies; institutions such as the Ghana Pentecostal and Charismatic Council; the Coalition of Muslim Organisations of Ghana; the Catholic Bishops’ Conference; and Advocates for Christ, among others. The overall objective, according to the Memorandum, is to ensure that the sovereignty of Ghana is respected and protected. On the grounds of their religious beliefs, most Ghanaians express utter rejection of homosexual practices as those practices do not conform to the tenets of faith and respect for public morality. Some churches, such as the Church of Pentecost of Ghana, have cautioned members of parliament that vote against the Bill that their members will vote them out of power. The church’s position is veiled in the need to achieve a moral society. The architects of the Bill, especially the faith-based organisations, argue that homosexual acts are contrary to God’s natural law of sexual intercourse between a man and a woman.

¹⁰² Kant (n 100) 58 (Ak 4:441). See also D Pereboom ‘Kant on transcendental freedom’ (2006) 73 *Philosophy and Phenomenological Research* 537–540-541; PE Kleingeld ‘Kant on the unity of theoretical and practical reason’ (1998) 52 *Review of Metaphysics* 311–314-317; BK Powell ‘Kant and Kantians on “the normative question”’ (2006) 9 *Ethical Theory and Moral Practice* 535–536.

¹⁰³ Ako (n 94) 111.

¹⁰⁴ A Shaw ‘From disgust to dignity: Criminalisation of same-sex conduct as dignity-taking and the human rights pathways to achieve dignity restoration’ (2018) 18 *African Human Rights Law Journal* 113–117.

Hence, the sponsors of the Bill argue that since most Ghanaians disapprove of homosexual activities, it necessitates the criminalisation of consensual same-sex relationships. That argument in and of itself is reminiscent of the political concept of rule by majority and, indeed, the very structure of Ghana's democracy is one of majoritarian rule, that is, rule by the majority. However, some checks within the constitutional framework of Ghana ensure that the rights of all persons, including the vulnerable and minority groups, are protected. Suffice it to say, the argument advanced by the sponsors of the Bill indicates that whatever the majority supports must be upheld, in which case the rights of minorities are somewhat relegated to the background. A majoritarian rule may sometimes be problematic, especially in instances where the majority is monstrous and does not regard the rights of the minority in society. Several scholars and political thinkers have highlighted the dangers of majoritarian rule, especially in the case of a tyrannical majority. For instance, Alexis de Tocqueville, one of the influential political thinkers, expressed concerns about the 'tyranny of the majority'.

When he travelled to the United States of America in 1831, Alexis de Tocqueville observed that public opinion was an overwhelming force in American politics.¹⁰⁵ However, he questioned whether public opinion (preponderant views by the majority) is always motivated by the right reasons. He specified: 'I regard as impious and detestable the maxim that in matters of government most of a people has the right to do everything, and nonetheless I place the origin of all powers in the will of the majority. I am in contradiction with myself.'¹⁰⁶ As such, with 'tyranny of the majority' the majority imposes unjust laws upon the rights of individuals that cause 'freedom to be in peril'.¹⁰⁷ De Tocqueville accordingly called for democracies to avoid the 'tyranny of the majority'. Therefore, laws must have due regard for the rights and freedoms of the minority in society. Today, many democracies have evolved to include the rights of minorities, including the fight against slavery in most Western countries. Democracies have evolved to the point where there is a fight for equal treatment in many

105 A de Tocqueville *Democracy in America* (1835) trans HC Mansfield & D Winthrop (2000). See, generally, J Epstein *Alexis de Tocqueville: Democracy's guide* (2006); J Elster *Alexis De Tocqueville: The first social scientist* (2009); K Herb & O Hidalgo *Alexis de Tocqueville* (2005).

106 De Tocqueville (n 105) 240, also quoted in PC Kissam 'Alexis de Tocqueville and American constitutional law: On democracy, the majority will, individual rights, federalism, religion, civic associations and originalist constitutional theory' (2007) 59 *Maine Law Review* 36 52; JT Schleifer *The Chicago companion to Tocqueville's democracy in America* (2012) 90; CW Suprenant 'Minority oppression and justified revolution' (2010) 41 *Winter* 442; E Zoller *Introduction to public law* (2018) 175; T Nyirkos *The tyranny of the majority: History, concepts and challenges* (2018) 83.

107 De Tocqueville (n 105) 239-242.

countries. Hence, legislative power must be exercised in a manner that does not subjugate or undermine the rights of minority groups in society. In this way the dangers associated with the 'tyranny of the majority' will be avoided.

The sponsors of the Bill aver that the disapproval of homosexual acts flows from the religious beliefs of most Ghanaians. It is worth noting that Ghana is not a religious state. The 1992 Constitution of Ghana does not create a religious state or society. Also, unlike some constitutions, such as the Federal Constitution of Nigeria of 1999¹⁰⁸ and the Constitution of the Republic of Kenya of 2010,¹⁰⁹ which explicitly prohibit the creation of a religious state, the Constitution of Ghana does not expressly provide for that. Suffice it to say, the reference to 'God' in the Preamble to the 1992 Constitution is not indicative of creating a religious or Christian society, as proclaimed by some sponsors of the Bill. Indeed, due cognisance must be taken of the views expressed by Archer J (as he then was) in *Osam-Pinanko v Lartey & Another*,¹¹⁰ where the learned judge averred that 'there is no established religion in Ghana recognised as the religion of the State. The courts of Ghana apply the laws of the country and not what the Christian Bible teaches.'¹¹¹ This decision, by extension, includes other holy books that serve as the basis for religious lives and activities, Ghana being a secular state. Accordingly, the teachings/dogmas and faith of any religion cannot be superimposed on the generality of Ghanaians as accepted national doctrines or principles. While the religious argument remains the strongest against homosexual conduct because the overwhelming majority of Ghanaians belong to the Christian and Muslim faiths, there are opportunities to use religion as a tool for tolerance and acceptance of LGBTIQ+ persons. The Christian and Muslim religions, which are dominant in Ghana, both advocate tolerance, forgiveness and love towards everyone.¹¹²

4.3 Homosexuality as a spreader of HIV in Ghana

Another aspect of the argument advanced by the proponents of the Bill is that the activities of LGBTIQ+ persons evoke grave health concerns, especially regarding the spread of sexually-transmitted diseases. According to the proponents of the Bill, considering

¹⁰⁸ Art 10 Constitution of the Federal Republic of Nigeria, 1999.

¹⁰⁹ Art 8 Constitution of the Republic of Kenya, 2010.

¹¹⁰ [1967] GLR 380.

¹¹¹ *Osam-Pinanko v Lartey & Another* [1967] GLR 380 382-385.

¹¹² PA Amoah & RM Gyasi 'Social institutions and same-sex sexuality: Attitudes, perceptions and prospective rights and freedoms for non-heterosexuals' (2016) 2 *Cogent Social Sciences* 1.

the increase in the percentage of persons with HIV in Ghana, homosexual acts will exacerbate those health concerns. They cite a report by the Science Research Council of Ghana, which provides that approximately 18,1 per cent of persons living with HIV are gay persons (men who have sex with men). Accordingly, prohibiting homosexual acts will lead to a decline in HIV infections in Ghana. The logical deduction from the argument is the question as to the extent to which the criminalisation of homosexual activities affects or inhibits the spread of HIV in Ghana. The proponents of the Bill failed to advance any argument that shows that ascribing penal sanctions on consensual same-sex reduces the spread or control of HIV infections in Ghana. A claim that the spread of HIV infections is driven by men who have sex with men, thereby necessitating its criminalisation, must be followed by a logical question as to the proof that there is a causal link between the criminalisation of consensual same-sex and the control of the spread of HIV infection in Ghana. The sponsors of the Anti-LGBTIQ+ Bill have not established such a causal link. As Murray and Viljoen point out, the preponderance of HIV infections occurs through unprotected heterosexual sex.¹¹³ Be that as it may, the question that remains unanswered by the sponsors of the Bill is how ascribing penal sanctions to same-sex relationships will reduce, inhibit or control HIV infections in Ghana.

Regarding the link between the criminalisation of sexual conduct and HIV infections, the overwhelming majority of research suggests that the decriminalisation of (homosexual) sexual conduct reduces the incidence of HIV infections.¹¹⁴ In the context of Ghana, the UN Special Rapporteur on the Right to Health has noted that the criminalisation of sex between persons of the same sex reinforces stigma and discrimination against such vulnerable groups.¹¹⁵ The Special Rapporteur further noted that Ghana should 'decriminalise

113 R Murray & F Viljoen 'Towards non-discrimination on the basis of sexual orientation: The normative basis and procedural possibilities before the African Commission on Human and Peoples' Rights and the African Union' (2007) 29 *Human Rights Quarterly* 86 96-97.

114 World Health Organisation *The World Health Report 2004: Changing History 1* (2004); UNAIDS, 2006 Report on the Global AIDS Epidemic, http://data.unaids.org/pub/GlobalReport/2006/2006_GR_CH02_en.pdf; A D'Adesky *Moving mountains: The race to treat global AIDS 164-66* (2004); The Foundation for AIDS Research, Issue Brief 4, HIV Prevention for Men who Have Sex with Men (June 2006), http://www.amfar.org/binary-data/AMFAR_PUB-LICATION/download_file/46.pdf; Resolution on AIDS Prevention in Africa, adopted 48th ordinary session, Council of Ministers, OAU Doc CM/Res.1165(XLVIII) (1988); Report of the Secretary-General on the Follow-Up of OAU Declarations on HIV/AIDS in Africa - Doc CM/207 9(LXVII), OAU Council of Ministers, 68th session, OAU Doc CM/Dec.423(LXVIII) (1998).

115 Report of the Special Rapporteur on the Right to Health A/HRC/20/15/Add 1 Human Rights Council, 10 April 2012.

sex work and men having sex with men'.¹¹⁶ The basis of Ghana's Anti-LGBTIQ+ Bill is in sharp contrast to research reports and the recommendations of the Special Rapporteur, which are based on empirical evidence on the ground in Ghana, and therefore is untenable.

4.4 Homosexuality alien to Ghanaian and African culture

The centre of gravity of the argument advanced by the proponents of the Bill is that homosexuality is an abomination, a taboo and alien to Ghanaian and African culture. Indeed, one of the main reasons advanced regarding the limitation of the rights of persons by the sponsors of the Bill is anchored in the idea of promoting Ghanaian and African cultural values.¹¹⁷ As the sponsors provide, 'we believe it is ripe for Parliament to actualise the intentions of the framers of the Constitution by providing a legal framework for the promotion of values that define our nationhood'.¹¹⁸ The intention referred to is with regard to article 39(1) of the 1992 Constitution, which enjoins 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 cultural dimensions to relevant aspects of national planning'.¹¹⁹

Article 39(2) provides that 'the state shall assume 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 the traditional practices which are injurious to the health and wellbeing of the person are abolished'.¹²⁰ The sponsors of the Bill re-echo this position by referencing the African Charter on Human and Peoples' Rights (African Charter) on the primacy of the family as the basic unit of society and that the state must assist the family, which is the custodian of morals and traditional values recognised by the community.¹²¹ The position of the sponsors of the Bill supposedly is corroborated by claims by the National House of Chiefs that homosexual practices are alien to African and Ghanaian cultures. In line with the claims that homosexual activities are contrary or alien to Ghanaian values, the proponents aver that 'our intention is to propose a bipartisan Private Member's Bill to proscribe the practices of and advocacy for the LGBTTQIAAP+ in line with

¹¹⁶ Report (n 115) para 60(b).

¹¹⁷ Memorandum to the Bill 1.

¹¹⁸ Memorandum to the Bill 16.

¹¹⁹ Art 39(1) Constitution of the Republic of Ghana, 1992.

¹²⁰ Art 39(2) Constitution of the Republic of Ghana, 1992.

¹²¹ Memorandum to the Bill 6-7.

our customs and values of people'.¹²² Other arguments advanced by the sponsors of the Bill include the claim that states have an obligation in line with the right to self-determination to protect their cherished values. The sponsors of the Bill accordingly aver that 'in a vastly globalised world, where the threat of the infiltration of foreign culture is vastly present, states rely on the right to self-determination to preserve their socio-cultural values by enacting legislation to minimise the effect of the unacceptable foreign influence'.¹²³ Further, the sponsors of the Bill argue that the content of the Bill will be in line with the UN Sustainable Development Goals (SDGs), especially SDG3 and SDG5.¹²⁴

To claim that homosexuality is alien to African and Ghanaian culture is to propose that same-sex relationships are an occurrence that is unknown in Africa. Indeed, some scholars have refuted the claim that homosexuality is alien to African society. Also, some scholars have posited that the reliance on traditional African values as a conduit not to respect or afford the protection to fundamental human rights of individuals is unjustified.¹²⁵ Epprecht reveals that pre-colonial African societies embraced and accepted same-sex relationships.¹²⁶ Commenting on the historical regulation of same-sex relationships in Africa, Ambani also highlighted the acceptance of same-sex relationships/orientation in some parts of pre-colonial Africa.¹²⁷ Ngwena further asserts that same-sex relationships are part of our 'Africanness'.¹²⁸ According to Ako, even though pre-colonial African societies

valued heterosexual relationships that produced children that continued the generations of people, it still accepted and valorised consensual same-sex relationships as a significant part of society for purposes of war, abundant farming yield and the expression of the diverse nature of humanity.¹²⁹

Hence, some pre-colonial African societies ascribed value to same-sex relationships for certain reasons, such as expressing our Africanness and humanity.

122 Memorandum to the Bill 3.

123 Memorandum to the Bill 13-4.

124 Memorandum to the Bill 8.

125 A El-Obaid & K Appiagyei-Tuah 'Human rights in Africa: A new perspective on linking the past to the present' (1996) 41 *McGill Law Journal* 819.

126 M Epprecht 'Bisexuality and the politics of normal African ethnography' (2006) 48 *Anthropologica* 187 190-192.

127 Ambani (n 2) 23-24.

128 C Ngwena *What is Africanness? Contesting nativism in race, culture, and sexualities* (2018).

129 Ako (n 94) 106.

Furthermore, in some parts of Northern Nigeria, academic works reveal the existence of the *Yan Daudu* system of the Hausa people. In the *Yan Daudu* system, 'men who are more or less exclusively homosexuals (not always, but often transvestite or at least effeminate males) have sexual relationships with men not culturally distinguished from other men'.¹³⁰ The *Yan Daudus* were engaged in procuring, cooking and prostitution. Indeed, Pittin argues that there is a close link between *Yan Daudus* and prostitution.¹³¹ Also, in Buganda (now Uganda), Kabaka Mwanga II is recorded to have executed men who served as his sexual objects.¹³² Thoonen explains that the sexual predilections displayed by Kabaka Mwanga II were a common expression in pre-colonial African societies.¹³³ In addition, several historical accounts and scholarly works revealed that same-sex relationships existed during the pre-colonial era in Ghana.¹³⁴ During his research among the people of Nzema to investigate the pattern of residence and kinship, Signorini discovered a unique form of marriage known as *agonwole agyale* (friendship marriage). The Nzema culture distinguished this from *agonwole kpale* (marriage between different sexes – a relationship with the husband or wife

- 130 FA Salamone 'Hausa concept of masculinity and the 'Yan Daudu' in L Ouzgane & R Morrell (eds) *African masculinities: Men in Africa from the late nineteenth century to the present* (2005) 80. See generally RP Gaudio *Allah made us: Sexual outlaws in an Islamic African city* (2009); SO Murray 'Review: Allah made us: Sexual outlaws in an Islamic African city by Rudolf Pell Gaudio' (2010) 39 *Language in Society* 696; SO Murray & W Roscoe (eds) *Boy-wives and female husbands* (1998); L Zilman, JL Davis & J Raclaw (eds) *Queer excursions: Rethorising binaries in language, gender, and sexuality* (2014); MM Wilcox *Queer religiosities: An introduction to queer and transgender studies in religion* (2021); R Pittin *Women and work in Northern Nigeria: Transcending boundaries* (2002); VO Ayeni 'Human rights and the criminalisation of same-sex relationships in Nigeria: A critique of the Same Sex Marriage (Prohibition) Act' in S Namwase & A Jjuuko (eds) *Protecting the human rights of sexual minorities in contemporary Africa* (2017); SO Murray 'Gender-defined homosexual roles in sub-Saharan Islamic cultures' in SO Murray & W Roscoe (eds) *Islamic homosexualities: Culture, history and literature* (1997) 222; GG Bolich *Transgender, history and geography* (2007); RP Gaudio *Men who talk like women: Language, gender and sexuality in Hausa Muslim society* (1996).
- 131 R Pittin 'Marriage and the alternative strategies: Career patterns of Hausa women in Katsina city' PhD thesis, School of Oriental and African Studies, University of London, 1979.
- 132 J Blevins 'When sodomy leads to martyrdom: Sex, religion, and politics in historical and contemporary contexts in Uganda and East Africa' (2011) 17 *Theology and Sexuality* 51-54; N Hoard 'Arrested development or the queerness of savages: Revisiting evolutionary narratives of difference' (2000) 3 *Postcolonial Studies* 133-155; R Rao 'Re-membering Mwanga: Same-sex intimacy, memory and belonging in post-colonial Uganda' (2015) 9 *Journal of Eastern African Studies* 1-19; EF Nabutanyi '(Un)complicating Mwanga's sexuality in Nakisanze Segawa's the triangle' (2020) 26 *A Journal of Lesbian and Gay Studies* 439.
- 133 JP Thoonen *Black martyrs* (1941) 168.
- 134 Dankwa (n 11) 223; WF Mohammed 'Deconstructing homosexuality in Ghana' in SN Nyeck (ed) *Routledge handbook of queer African studies* (2020) 167; N Ajen 'West African homoeroticism: West African men who have sex with men' in SO Murray & W Roscoe (ed) *Boy-wives and female husbands* (1998) 129; SO Dankwa 'It's a silent trade: Female same-sex intimacies in post-colonial Ghana' (2009) 17 *Nordic Journal of Feminist and Gender Research* 192.

of the male or female partner).¹³⁵ *Agonwole agyale* is a type of marriage between persons of the same sex.¹³⁶ This type of marriage is considered the noblest expression of friendship. Signorini explains that *agonwole agyale* is a 'sublimation of a deep feeling which is of considerable value as a factor of social cohesion in Nzema culture and which is recognised by that society and expressed through institutions of growing complexity according to the intensity of the sentiments involved'.¹³⁷

Suffice it to say that pre-colonial Ghanaian societies had elaborate laws that characterised sex and sexual relations that were offensive to society. However, pre-colonial Ghanaian societies did not ascribe any penal sanction to consensual same-sex relationships.¹³⁸ The criminalisation of same-sex relationships and sexual activities is attributed to the promulgation of the Criminal Ordinance 12 of 1892 by the British colonial government.¹³⁹ The Criminal Code Ordinance criminalised 'unnatural carnal knowledge'. This provision was carried into the current legislation on criminal law in Ghana, the Criminal Offences Act 29 of 1960. Therefore, it is safe to say that the imposition of penal sanctions on consensual same-sex relationships is a remnant of colonial law and not because African and Ghanaian cultural societies prohibited same-sex relationships or because homosexuality was alien to Ghanaian or African culture. Accordingly, it is suspect for the National House of Chiefs and the sponsors of the anti-LGBTIQ+ Bill to claim that homosexual acts are alien to African and Ghanaian culture and values without due regard to historical and anthropological studies on the subject matter.

The sponsors of the Bill, in justifying the limitation of rights of LGBTIQ+ persons, refer to articles 18(1) and (2) of the African Charter, which provides:¹⁴⁰

- (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.

135 Signorini (n 11) 221.

136 As above.

137 As above.

138 See, eg, JM Sarbah *Fanti customary laws: A brief introduction to the principles of the native laws and customs of the Fanti and Akan sections of the Gold Coast with a selection of the cases thereon decided in the law courts* (1968); RS Rattray *Ashanti law and Constitution* (1929).

139 WB Griffith (ed) *Ordinances of the Gold Coast Colony and the rules and orders thereunder in force* (1903); JS Read 'Ghana: The Criminal Code, 1960' (1962) 11 *International and Comparative Law Quarterly* 272.

140 Memorandum to the Bill 6-7.

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

While it is true that the African Charter protects the family as a basic unit of society, it is equally essential to wholly assess the protection afforded to sexual minorities in the Charter. Ghana has not yet domesticated the provisions of the African Charter. The Charter makes provision for the protection of traditional African values. It is not clear which values are uniquely African since traditional African societies have several values and ethics. That notwithstanding, some scholars aver that African values include the expression of our humanness, non-discrimination, and respect for the dignity of others.¹⁴¹ Also, the very nature of African traditional societies, being communitarian, evokes the idea of the prohibition of hate under African traditions and cultures. Generally, in many African countries African values/ethics are embodied in maxims and proverbs.¹⁴² For instance, in Southern Africa the ethical value of ubuntu exists to underscore the communal nature of individuals in a traditional African society.¹⁴³

The value of ubuntu was explained by the South African Constitutional Court in *S v Makwanyane*¹⁴⁴ in the following manner by Mokgoro J:¹⁴⁵

The value of *ubuntu* which metaphorically expresses itself in *umuntu ugunmuntu ngabantu* envelops the key values of group solidarity, compassion, human dignity, conformity to basic norms and collective unity ... it denotes humanity and morality. Its spirit emphasises respect for human dignity, marking a shift from confrontation to conciliation.

Also, in *Port Elizabeth Municipality v Various Occupiers*¹⁴⁶ the South African Constitutional Court explained that the

spirit of *ubuntu*, part of a deep cultural; the heritage of most of the population, suffuses the whole constitutional order. It combines

¹⁴¹ K Quan-Baffour 'The wisdom of our forefathers: Sankofaism and its educational lessons for today' (2008) 7 *Journal of Educational Studies* 25.

¹⁴² T Metz 'An African egalitarianism: Bringing community to bear on equality' in G Hull (ed) *The equal society: Essays on equality in theory and practice* (2015) 186-187. See generally K Gyekye *An essay on African philosophical thought: The Akan conceptual scheme* (1987); P Ikuenobe 'African tradition, philosophy, and modernisation' (2010) 30 *Philosophical Papers* 245.

¹⁴³ M Letseka 'African philosophy and educational discourse' in P Higgs et al (eds) *African voices in education* (2000) 186. See also LG Mpedi 'The role of religious values in extending social protection: A South African perspective' (2008) 28 *Acta Theologica* 105 111-115; D Tutu *No future without forgiveness* (1999) 35; TE Coleman 'Reflecting on the role and impact of the constitutional value of ubuntu on the concept of contractual freedom and autonomy in South Africa' (2021) 24 *Potchefstroom Electronic Law Journal* 9-17.

¹⁴⁴ 1995 (3) SA 391.

¹⁴⁵ *Makwanyane* (n 144) para 308.

¹⁴⁶ 2005 (1) SA 217.

individual rights and communitarian philosophy. It is a unifying motif to the Bill of Rights, which is nothing if not structured, institutionalised and operational declaration in our evolving new society of the need for human interdependence, respect and concern.¹⁴⁷

The notion of dignity is an essential part of traditional African values. Gyekye avers that even though traditional African society is mainly communitarian, it does not exclude certain innate qualities of an individual, such as the dignity of the person.¹⁴⁸ The notion of human dignity, which mirrors a person's instrumental worth, remains a cardinal part of African culture and is codified in the constitutions of most African countries.¹⁴⁹ The respect for the dignity of others, which is valued as a vital part of traditional African values, includes the respect for the inherent choices and orientation of an individual, including the right to relate to and choose one's partner. As Ako rightly puts it, 'the respect for person's dignity requires a duty to respect a person's most intimate, innate, and private domains of their life, which includes the right to relate and choose one's partner'.¹⁵⁰

It is conceded that the African Charter does not provide for sexual minority rights. However, Murray and Viljoen indicate that this omission is because certain terminologies, such as sexual orientation, were not utilised during the period the Charter entered into force.¹⁵¹ Suffice it to say, one must not lose sight of subsequent resolutions adopted by the African Commission on Human and Peoples' Rights (African Commission) to protect minority rights in Africa. For instance, Resolution 275 of the African Commission embraces and 'specifically condemns the situation of systematic attacks by states and non-state actors against persons based on their imputed or real sexual orientation or sexual identity'.¹⁵² It therefore is unfathomable

147 *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 para 37.

148 K Gyekye 'Person and community in African thought' in K Wiredu & K Gyekye (eds) *Person and community: Ghanaian philosophical studies* (1992) 102; Coleman (n 134) 1-24.

149 See, eg, Constitution of the Republic of South Africa, 1996, sec 1; Constitution of the Republic of Ghana, 1992, art 15; Constitution of the Republic of Kenya, 2010, art 28; Constitution of the Federal Republic of Nigeria, 1999, art 34; Constitution of the United Republic of Tanzania, 1977, arts 9 & 12; Constitution of the Republic of Namibia, 1990, the Preamble and art 8.

150 Ako (n 94) 110. Also see the decision of the High Court of Botswana in *Letsweletse Motshidiemang v Attorney General & Lesbians Gays and Bisexuals of Botswana (Amicus Curiae)* MAHGB – 000591-16; *National Coalition for Gay and Lesbian Equality v Minister of Justice* 1999 (1) SA 6 (CC); T Esterhuizen 'Decriminalisation of consensual same-sex acts and the Botswana Constitution: *Letsweletse Motshidiemang v Attorney General* (LEGAIBIBO as *Amicus Curiae*)' (2019) 19 *African Human Rights Law Journal* 843.

151 Murray & Viljoen (n 113) 86.

152 African Human Rights Commission 275 Resolution on Protection Against Violence and Other Human Rights Violations Against Persons on the Basis of their Real or Imputed Sexual Orientation and Gender Identity – ACHPR/Res. 275 (LV) 2014, <https://www.achpr.org/sessions/resolutions?id=322> (accessed 20 November 2021). See also *Zimbabwe Human Rights Forum v Zimbabwe*

that the sponsors of the Bill referenced some provisions of the African Charter and created the impression that, from a regional perspective, respect for the rights of sexual minorities is detested when the African Commission embraces the rights of sexual minorities by explicitly condemning violence against people because of their gender identity or sexual orientation. Also, the sponsors of the Bill rely on article 39 of the 1992 Constitution as the basis to restrict the rights of LGBTIQ+ persons in Ghana. Article 39 of the 1992 Constitution provides:

- (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.
- (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 and that traditional practices which are injurious to the health and well-being of the person are abolished.
- (3) The State shall foster the development of Ghanaian languages and pride in Ghanaian culture.
- (4) The State shall endeavour to preserve and protect places of historical interests.

The view of the sponsors of the Bill that article 39 of the 1992 Constitution can operate to limit the rights of LGBTIQ+ persons is misconceived and a mischaracterisation of the essence of the constitutional provision. This is because article 39 of the 1992 Constitution provides a straightforward procedure for the government when integrating customary values into national life and planning through formal and informal education. Article 39 of the 1992 Constitution does not at any point require legislation (particularly of a criminal nature) as a procedure to integrate cultural values into national planning and national life, let alone to serve as a tool to limit the rights of others. One example that falls within the scope of article 39 of the 1992 Constitution is for the state to incorporate appropriate cultural dimensions into the educational curriculum in Ghana. Therefore, it is inconceivable that the sponsors of the Bill purport to give effect to article 39 of the 1992 Constitution through criminal legislation, even though the Constitution prescribes a procedure upon which the cultural objectives of the state can be realised.

(2006) AHRLR 128 (ACHPR 2006); *Bissangou v Republic of Congo* (2006) AHRLR 80 (ACHPR 2006); *Purohit & Another v The Gambia* (2003) 96 (ACHPR 2003).

5 Do the arguments advanced in the Bill meet the threshold required to limit constitutional rights?

Thus far, this article has reflected on the key arguments advanced by the proponents of the anti-LGBTIQ+ Bill and ascertained whether those arguments from a legal, constitutional, historical and anthropological perspective justify the limitation of the rights of LGBTIQ+ persons. Conceptually and jurisprudentially, there is a convergence regarding the claim by the proponents of the Bill and this article that human rights are not absolute. However, any limitation of such rights must meet the required constitutional threshold. Suffice it to say, the 1992 Constitution contains certain limitation clauses. For instance, in terms of the right against discrimination, the Constitution empowers Parliament to enact laws that are reasonably necessary to provide:

- (a) for the implementation of policies and programmes aimed at redressing the social, economic or educational imbalance in the Ghanaian society;
- (b) for matters relating to adoption, marriage divorce, burial, devolution of property, on death or other matters of personal law;
- (c) for the imposition of restrictions on the acquisition of land by persons who are not citizens of Ghana or on the political and economic activities of such persons and for other matters relating to such persons; or
- (d) for making different provision for different communities having regards to their special circumstances, not being provision which is inconsistent with the spirit of this Constitution.¹⁵³

Also, the enjoyment of fundamental rights is accompanied by certain constitutional obligations. Article 41 of the 1992 Constitution provides, among other things, that

the exercise and enjoyment of rights and freedom are inseparable from the performance of duties and obligations, and accordingly, it shall be the duty of every citizen to respect the rights, freedoms and legitimate interests of others, and generally refrain from doing acts detrimental to the welfare of other persons.¹⁵⁴

The 1992 Constitution does not provide an elaborate framework within which fundamental rights can be restricted, except the general limitation that the enjoyment of fundamental human rights is 'subject to respect for the rights and freedoms of others and for the public interest',¹⁵⁵ which is similar to the provision in the African

¹⁵³ Art 17(4) Constitution of the Republic of Ghana, 1992.

¹⁵⁴ Art 41 Constitution of the Republic of Ghana, 1992.

¹⁵⁵ Art 12(2) Constitution of the Republic of Ghana, 1992.

Charter.¹⁵⁶ The limitation structure in the Ghanaian Constitution and that of the African Charter has been discussed extensively elsewhere.¹⁵⁷ Therefore, this article will not belabour the point. Suffice it to say, however, that we agree with scholars on this point that a person cannot be denied the enjoyment of rights in the Ghanaian Constitution or the African Charter merely because of their sexual orientation. The South African and Kenyan Constitutions provide an elaborate framework for limiting fundamental human rights that is worth emulating and reflecting.¹⁵⁸

In South Africa, for instance, fundamental human rights can be restricted within the framework provided in section 36 of the Constitution of South Africa of 1996. Section 36 of the 1996 South African Constitution provides:

The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including –

- (a) the nature of the right;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relation between the limitation and its purpose; and
- (e) less restrictive means to achieve the purpose.

Similarly, the 2010 Constitution of Kenya provides:

A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including –

- (a) the nature of the right or fundamental freedom;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and

¹⁵⁶ Art 27(2) African Charter on Human and Peoples' Rights.

¹⁵⁷ In the case of Ghana, see Ako (n 16) 166-170. See also Ako (n 94). For the analysis on the African Charter, see Murray & Viljoen (n 107). See also the Ghanaian cases of *Ahumah Ocansey v The Electoral Commission and the Centre for Human Rights and Civil Liberties v The Attorney-General* [2010] SCGLR 575; *Republic v Tommy Thompson Books Limited (No 2)* [1996-1997] SCGLR 575; *Charles Ayuune Akurugu v The Attorney-General* No HR/00039/2015 (29 March 2017), where the Oakes test and proportionality test was applied to determine the contours of restricting protected rights.

¹⁵⁸ Sec 36 Constitution of the Republic of South Africa, 1996. See also Constitution of the Republic of Kenya of 2010, art 24.

- (e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

The point worth stressing is that not every reason can be relied upon to limit individuals' fundamental rights and freedoms. It even becomes problematic where the reasons advanced are factually inaccurate and a complete mischaracterisation of the law. The reasons advanced by the sponsors of the Bill must meet a threshold that justifies the restriction of the rights of individuals because of their sexual orientation. In sum, considering the factual inaccuracies, coupled with the inability of the sponsors of the Bill to advance sufficient reasons/justifications as the basis for the criminalisation of LGBTIQ+ activities in Ghana, this article takes the position that the Bill does not meet the threshold required to limit the fundamental rights in the 1992 Constitution of Ghana.

6 Conclusion

This article appraised Ghana's new Anti-LGBTIQ+ Bill of 2021. It discussed the scope, object, and essence of the Anti-LGBTIQ+ Bill and briefly reflected on Ghanaian family values as provided by the Bill. The article further discussed the statutory obligation on Ghanaians to respect the values enshrined in the Bill and other related issues. It also analysed the key arguments in the Memorandum to the Bill. The article argued that the main arguments advanced by the sponsors of the Bill are factually inaccurate and a mischaracterisation of the provisions in the Constitution of the Republic of Ghana of 1992. Also, the article argued that the claims and arguments heralded by the sponsors of the Bill do not reach the threshold required to limit the rights of LGBTIQ+ persons in Ghana and under the 1992 Constitution of Ghana.