

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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GHANA: ANTI-LGBTI BILL STIRS UP HATRED, PERSECUTION AND DISCRIMINATION

The Ghanaian Parliament and the government should immediately withdraw the proposed Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill 2021 from consideration. This Bill gravely contravenes the principles of equality and non-discrimination, the rights to freedom of expression, association and privacy, and the prohibition of torture enshrined in the 1992 Constitution of Ghana and international human rights treaties ratified by the country. More specifically, it denies LGBTI persons their inviolable human dignity, guaranteed to all persons under section 15 of the country's Constitution.

After a first reading on 2 August, Ghana's Parliament is expected to consider the Bill for adoption in October 2021. This highly divisive and discriminatory Bill is being considered in a context of already existing discrimination, intolerance and criminalisation against LGBTI people. Under Ghana's Criminal Code, consensual same-sex sexual relations are criminalized. LGBTI people are also subjected to hate speech and threats, and live in a climate of fear, hostility and intolerance¹.

The Bill encourages hatred and intolerance and promotes persecution against people on the basis of their real or perceived sexual orientation and gender identity simply because they do not or cannot conform to dominant social and gender norms. If passed into law, it intends to impose restrictions and criminal penalties against a range of people, including LGBTI people and anyone who expresses support or sympathy towards LGBTI people. It also places a positive obligation on everyone in Ghana to report any conduct perceived to be of an 'LGBTI nature' to the police, or to a list of people in the community in the absence of the police.

The proposed law would impose a penalty of up to five years imprisonment for being LGBTI and a penalty of up to ten years imprisonment for anyone who engages or participates "in an activity that promotes, supports sympathy for, or a change of public opinion towards an act prohibited under the Bill". This vague and overbroad provision potentially places anyone in Ghana at risk of being accused under the Bill, and creates an environment of hostility, discrimination, and active stigmatizing of people who are LGBTI or perceived to be such; or anyone linked to them socially, through family, professionally, or otherwise.

Human rights defenders or anyone registering, operating or participating in an activity to support an organisation working on LGBTI people's rights could face up to 10 years of imprisonment. The Bill also criminalizes any production and dissemination of so called LGBTI "propaganda" with imprisonment between 5 to 10 years.

These provisions are in clear violation of the Ghanaian Constitution which universally protects all persons' rights to freedom of association and expression. It also contradicts the 2014 Resolution of the African Commission on Human and Peoples' Rights which calls on State Parties "to ensure that human rights defenders 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 minorities²".

¹ Ghana: Authorities must end discrimination against LGBTI people and LGBTI rights activists, AFR 28/3768/2021
<https://www.amnesty.org/en/documents/afr28/3768/2021/en/>

² African Commission on Human and Peoples' Rights, Resolution 275(LV)2014 on protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity, 12 May 2014,

The Bill encourages deeply harmful practices such as medical interventions on intersex children to “realign” the child to an “appropriate binary designation”. These non-emergency surgeries and medical interventions fail to protect the human rights of children, including the right to a private life and right to the highest attainable standard of health. Amnesty International calls on the government of Ghana to ensure that no child is subjected to non-emergency, invasive and irreversible treatment.

The Bill also promotes conversion therapy, which is a very dangerous practice that causes great psychological distress and harm to the recipient, and can constitute torture or cruel, inhumane and degrading treatment or punishment thereby engaging Ghana's international responsibility³.

The Bill restricts transgender people from accessing gender affirming treatment, thereby violating their right to the highest attainable standard of health, which is protected under international human rights law, including by the UN Covenant on Economic, Social and Cultural Rights (CESCR, Article 12)⁴.

The Bill, if enacted into law, also places medical professionals at risk of criminal penalties, namely between three to five years imprisonment for providing medical services for gender affirmation procedures. This is deeply worrying because it makes it impossible for transgender people from accessing the gender affirming care they need from health professionals.

According to a group of experts from the UN special procedures who made a common analysis of the Bill, it “describes a system of State-sponsored discrimination and violence of such magnitude that its adoption (...) would appear to constitute an immediate and fundamental breach of State's obligations under international human rights law⁵”.

Amnesty International calls on the Parliament and the government of Ghana to withdraw the Bill from consideration. At a time when other countries around the world, including Angola and Gabon are lifting discriminatory laws targeting people for their real or perceived sexual orientation, Ghana must not go in the opposite direction. The Ghanaian authorities are encouraged to protect equality and non-discrimination and other fundamental human rights of all people in Ghana.

<https://www.achpr.org/sessions/resolutions?id=322>

³ The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has recommended that States ‘ban the practices of “conversion therapy”’ and ‘take urgent measures to protect children and young people from practices of “conversion therapy”’. Practices of so-called “conversion therapy”. Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity <https://undocs.org/A/HRC/44/53>.

⁴ The Committee on Economic, Social and Cultural Rights, which monitors the implementation of the CESCR, has stated: “The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.” Transgender people should be able to obtain legal gender recognition through quick, accessible and transparent procedures and in accordance with their own perceptions of gender identity.

⁵ UN Special Procedures, Analysis of the draft bill presented to the Ghanaian government, 9 August 2021 <https://ghana.un.org/sites/default/files/2021-08/Public%20-%20200L%20GHA%2003.08.21%20%283.2021%29.pdf>