

MEDICO-LEGAL AND ETHICAL ISSUES OF NECROPHILIA: A GHANAIAN PERSPECTIVE

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ABSTRACT

In February 2018, a video of a mortuary attendant touching and fondling two dead bodies at the Bechem hospital morgue, in the Ahafo Region of Ghana, was leaked on various social media platforms nationwide. In the video, the mortuary attendant was allegedly touching and fondling the naked corpses of the late Ghanaian dancehall artiste, Priscilla Opoku-Kwarteng, popularly known as Ebony Reigns, and her friend. The video triggered public disapproval. Consequently, the Ghana Police Service and the Ghana Health Service initiated investigations into the matter. The family, and manager of the late dancehall artiste, also indicated their plans to file an action against the hospital where the video was taken. The incident gave rise to ethical and medico-legal issues such as the position of Ghanaian law on necrophilia, the legal status of a dead person, the liabilities, rights and interests of all affected parties connected to a dead person, and the ethical aspects of necrophilia within the Ghanaian society. These issues are the subject of this paper.

Keywords: Corpse, Dead body, Ethics, Ghana, Medical Law, Necrophilia.

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Introduction

In February 2018, a 50-second video showing a mortuary attendant touching and fondling two corpses at the Bechem hospital morgue in the Ahafo Region of Ghana went viral. In the video, the mortuary attendant was allegedly touching and fondling the naked corpses of the late Ghanaian dancehall artiste, Priscilla Opoku-Kwarteng, popularly known as Ebony Reigns, and her friend, Franklina Maame Yaa Teboa Nkansah (also known as Franky Kuri).²

As a country which culture expects deferential treatment of the dead, the video was met with a public expression of disapproval. Consequently, the Ghana Health Service initiated immediate investigations to ascertain the identity of the alleged mortuary attendant while the Cyber Crime Unit of the Criminal Investigations Department of the Ghana Police Service launched investigations into the matter.³ The father of the late dancehall artiste, Nana Opoku Kwarteng, and her manager, Ricky Nana Agyemang (also known as Bullet), made public statements about their intention to sue the Bechem hospital, where the video was taken, after the burial of their beloved.⁴

Although the case was not the only mortician-necrophilia incident in Ghana,⁵ it was not until the corpse of the late celebrity was subjected to necrophilic actions that the reality of necrophilia hit home for many Ghanaians. The release of the video, the consequent public outrage, and the impending lawsuit have given rise to ethical and medico-legal issues

² Linda Tenyah-Ayettey, 'Mortuary Man "Fondles" Ebony's Breasts' (*Daily Guide Africa*, 1 March 2018) <<http://dailyguideafrica.com/mortuary-man-fondles-ebonys-breasts/>> accessed 17 March 2018.

³ *Ibid.*

⁴ *Ibid.*

⁵ There are at least three marked cases of mortician-necrophiles admitting to their necrophilic acts. First, in an interview on Adom TV in February 2015, a Cameroonian mortuary attendant, Skarkur Lucas, who was hired at the Korle Bu Teaching Hospital in Ghana admitted to engaging in necrophilia 'many, many times'. He claimed that necrophilia was part of the job training. When his mental health was questioned during the interview, Lucas insisted he was mentally stable. Lucas was subsequently dismissed by his employers and is currently at large.: Lizette Borrelli, 'Mortuary Job Training in Ghana Included Sex with Corpses: The Strange Connection Between Morgue Workers and Necrophilia' (*Medical Daily*, 4 February 2015) <<http://www.medicaldaily.com/mortuary-job-training-ghana-included-sex-corpses-strange-connection-between-morgue-320712>> accessed 23 March 2018. Secondly, a former mortuary attendant revealed in an interview with Ghanaweb, that he had had sex with female corpses within the one-year period in which he worked at the mortuary. He indicated that he broke his virginity at the age of 24 with a corpse.: Ghanaweb, 'Hot Video: How I lost my virginity to a corpse' (*Adamonline*, 25 February 2018) <www.adamonline.com/ghana-news/hot-video-lost-virginity-corpse/> accessed 24 March 2018. The third record of necrophilia involves an unnamed man in his forties who confessed in an interview on Bryt FM in the Eastern Region that he had had sex with a number of female corpses for the past 10 years and counting, since he was introduced to the business of dressing corpses for burial.: Mynewsgh, 'Undertaker reveals how he sleeps with female corpses' (*Ghanaweb*, 20 April 2017) <<https://mobile.ghanaweb.com/GhanaHomePage/NewsArchive/Undertaker-reveals-how-he-sleeps-with-female-corpses-5305538>> accessed 24 March 2018.

associated with necrophilia and have further exposed the lapses on the subject within the Ghanaian legal framework.

Some of the emerging issues include ascertaining the position of the Ghanaian law on necrophilia; the legal status of a dead person in Ghana; the nature of evidence required to prove necrophilia; the liabilities of the suspected necrophile; the liabilities of facilities such as hospitals or mortuaries where necrophilic actions take place; and the nature, extent and force of rights or interests of persons affected by necrophilic actions. These issues are the subject of this article.

Ghana's laws have no express provisions that addresses all the issues raised above. At best, inferences can be made from some provisions scattered in statutes, but those statutory provisions do not sufficiently address the issues raised. Certainty of the law is one of the foundational elements of the rule of law in every nation. This article attempts to facilitate the journey towards certainty of the law on necrophilia in Ghana by engaging with existing literature and the legal framework in Ghana. It also makes recommendations on factors to be considered in enacting a robust legal framework on necrophilia. The recommendations made will be useful to stakeholders that deal with necrophilia cases including law makers, health workers, lawyers, law students and academics. The discussions and recommendations made in this paper are also intended to generate scholarly deliberations on necrophilia within the Ghanaian context, considering that there is little discussion and research on the topic in Ghana compared to other jurisdictions.

The paper is organised as follows: part two gives an overview on necrophilia, its meaning and classification. Part three looks at the ethical aspects of necrophilia. Part four discusses the medico-legal issues associated with necrophilia from the Ghanaian perspective. It also contains recommendations for legislating on necrophilia by incorporating some comparative viewpoints from selected best practices around the world. Finally, part five concludes on the issues raised and recommendations made. It concludes that specifically legislating against necrophilia is a necessary first step in addressing the menace.

Necrophilia

A. Meaning and Nature

Necrophilia, also called necrophilism, necrolagnia, necrocoitus, necrochlesis and thanatophilia,⁶ simply means sexual attraction to or sexual acts with dead bodies. The term *necrophilia* was first coined and used in 1850 by Joseph Guislain, a Belgian psychiatrist, in

⁶ Anil Aggrawal, 'A new classification of necrophilia' (2009) 16 *Journal of Forensic and Legal Medicine* 316.

a lecture he delivered.⁷ The root words of the term are two Greek words namely, νεκρός (*nekros*) which means 'corpse or dead' and φιλία (*philia*) which means 'love or friendship'.⁸

The 'Bible of psychiatry'⁹ - the Diagnostic and Statistical Manual of Mental Disorders (DSM) by the American Psychiatric Association categorises necrophilia as a paraphilic disorder. The classification of necrophilia as a paraphilic disorder was first introduced in the latest edition of the DSM, that is DSM-5. Previous editions of the DSM had classified necrophilia simply as a paraphilia. DSM-5 introduces a novel distinction between the terms *paraphilia* and *paraphilic disorders*, that is, while paraphilia is ascertained, paraphilic disorder is diagnosed.¹⁰ DSM-5 defines a paraphilic order as 'a paraphilia that is currently causing distress or impairment to the individual or a paraphilia whose satisfaction has entailed personal harm, or risk of harm, to others'.¹¹ A paraphilia on the other hand 'denotes any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners'.¹² Thus, while paraphilia is a precondition for having a paraphilic disorder, it is not in and of itself sufficient to warrant clinical intervention - a diagnosis.

The DSM-5 lays out a framework for ascertaining a paraphilia and assessing its strength. By the definition in the DSM-5, paraphilia is ascertained first by the existence in a person of a sexual interest that deviates from the classic epicentre of sexual arousal being, 'sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners'.¹³ Once this exclusion from normalcy in sexual interest is established, the second determinant is that the identified para-sexual interest should be 'intense and persistent'. The strength of a paraphilia is then measured based on its intensity and persistence. Due to the difficulty in assessing the intensity and persistence of a person's sexual interest (especially in the aged and medically ill persons), DSM-5 provides that the assessment should be made in relation to the normophilic sexual interests of the individual.¹⁴ Thus, the test is, a person has a paraphilia if his paraphilic sexual interest is greater than normophilic sexual interest at best, or equal to normophilic sexual interest at worst.¹⁵ This

⁷ Anil Aggrawal, *Necrophilia: Forensic and Medico-legal Aspects* (CRC Press, 2016).

⁸ *Ibid.*

⁹ Jerome C. Wakefield, 'DSM-5 proposed diagnostic criteria for sexual paraphilias: Tensions between diagnostic validity and forensic utility' (2011) 34(3) *International Journal of Law and Psychiatry* 195.

¹⁰ Michael B, 'DSM-5 and Paraphilic Disorders' (2014) 42(2) *Journal of the American Academy of Psychiatry and the Law* 191.

¹¹ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (5th edn, American Psychiatric Publishing, 2013).

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

test notwithstanding, there is a whole sphere of paraphilia, which by their nature are not 'intense and persistent' rather a preferential sexual interest.¹⁶

It is also important to note that while some paraphilias are primarily associated with the erotic activities of a person such as spanking or strangulating another person, other paraphilias are closely linked with the erotic targets of a person such as intense or preferential interest in a particular class of persons, animals or objects. Necrophilia falls under the latter - the necrophile's erotic target is a corpse.

In keeping the distinction between a paraphilia and a paraphilic disorder, DSM-5 reserves the term *diagnosis* exclusively for paraphilic disorder. A person will only be diagnosed as having a paraphilic disorder if his condition satisfies the two-pronged diagnostic criteria for paraphilic disorders.¹⁷ Criteria A focuses on the qualitative nature of the paraphilia which requires a recurrent and intense atypical sexual arousal that persists over a period of at least six months.¹⁸ Criteria B is concerned with the negative implications of the paraphilia. The paraphilia should lead to distress, impairment or harm to nonconsenting victims.¹⁹ To further clarify Criteria B, DSM-5 adds that for a negative consequence to qualify as the harm component, the distress, impairment or harm should be the 'immediate or ultimate result of the paraphilia'.²⁰ To this end, other factors that may trigger the negative consequence apart from the paraphilia such as reactive depression, anxiety, guilt, poor work history, impaired social relations, and its ilk will not suffice.²¹ The result is that, while these *other factors* may trigger a paraphilia, they do not and cannot directly trigger a paraphilic disorder. In other words, a paraphilic disorder results only from the negative consequences of a paraphilia and nothing else.

Additionally, the implication of the diagnostic criteria is that a person may have a paraphilia but not necessarily a paraphilic disorder because the paraphilia has not resulted in any harm or distress to self or others. The distinction created by DSM-5 has been criticised for its ramifications in both medical and legal circles. Medically, the distinction blurs rather than sharpens the differences between a disorder and a non-disorder as well as what amounts to psychopathologic condition and what does not.²² Legally, the DSM-5 distinction may be confusing to judges, lawyers, juries and other legal and judicial officers who may not be

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.* See also Michael (n 9).

¹⁹ APA (n 10); Michael (n 9).

²⁰ APA (n 10).

²¹ *Ibid.*

²² Michael (n 9).

conversant with the nuances of the DSM.²³ There is also the forensic ramifications of the distinction where expert testimony is required in court during cases involving paraphilias.

DSM-5 identifies three broad classes of paraphilic disorders. The first are the traditional paraphilic disorders which are relatively more common and classified as criminal offences because of their nature and consequences.²⁴ These are eight in number: voyeuristic disorder,²⁵ exhibitionistic disorder,²⁶ frotteuristic disorder,²⁷ sexual masochism disorder,²⁸ sexual sadism disorder,²⁹ paedophilic disorder,³⁰ fetishistic disorder,³¹ and transvestic disorder.³² The second class is the *other specified paraphilic disorder*. They are paraphilias that have existed for at least six months resulting in 'distress or impairment in social, occupational, or other important areas of functioning' that fall short of the full criteria of the traditional paraphilic disorders.³³ The clinician specifies the reason why the paraphilia does not meet the full criteria for the paraphilic disorders diagnostic class. Necrophilia falls under *other specified paraphilic disorder*. The third class is much like the second, except that the clinician chooses not to specify the reason that the criteria are not met for a specific paraphilic disorder. The second and third classes were formerly classified as *not otherwise specified* (NOS) paraphilias under the DSM-IV³⁴ and DSM-IV-TR,³⁵ the predecessors of DSM-5.

Necrophilia is common among gravediggers, mortuary attendants, medical orderlies and funeral parlour assistants.³⁶ There is an array of factors that motivate necrophiles including: the desire to possess an unresisting partner, reunion with a dead loved partner, conscious sexual attraction to dead bodies, loneliness,³⁷ occupational access, attempt to gain self-

²³ *Ibid.*

²⁴ APA (n 10).

²⁵ Spying on unsuspecting person(s) who are naked or engaging in sexual activity or other private actions such as undressing.

²⁶ Exposing one's genitals to an unsuspecting person.

²⁷ Touching or rubbing against a non-consenting person.

²⁸ Sexual arousal from being humiliated or beaten or made to suffer.

²⁹ Sexual arousal from physical or psychological suffering of another person.

³⁰ Sexual activity with children.

³¹ Sexual arousal from non-living objects or non-genital body parts.

³² Sexual arousal from cross-dressing.

³³ *Ibid.*

³⁴ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (4th edn, American Psychiatric Publishing, 1994).

³⁵ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (4th edn, Text Revision, American Psychiatric Publishing 2000).

³⁶ Aggrawal (n 5). See also Jonathan P. Rosman & Phillip J. Resnick, 'Sexual Attraction to Corpses: A Psychiatric Review of Necrophilia' (1989) 17 *Bulletin of the American Academy of Psychiatry and the Law* 153.

³⁷ In Ghana for example, a mortuary attendant revealed in a television interview that he resorted to having sex with dead bodies of women following rejection by other women he had proposed to.

esteem, lack of a living partner, the fear of women, belief that sex with the living is a sin, following compelling hallucinations, executing a sequence of actions that are annihilative, manifestation of multiform decadent sexual desires, and the need to continually engage in sexual activities.³⁸

B. Classification of Necrophilia

Necrophilia has been classified differently by different authors.³⁹ However, this paper makes reference to the ten-tier classification proposed by Aggrawal, a Professor of Forensic Medicine. The classes of necrophilia according to Aggrawal are as follows:

1. Class I necrophiles: role players

Class I necrophiles, also called pseudonecrophiliacs engage in sexual role play. They are sexually aroused or engage in sex when their living partner pretends to be dead. Role players, therefore, do not in actual fact have sex with dead bodies, they only have sex with persons who play dead.⁴⁰

2. Class II necrophiles: romantic necrophiles

These are bereaved people who have a hard time severing all ties with the corpse or body parts of their loved ones. They sexually relate to the mummified bodies or body parts of their loved ones. This is a mild form of necrophilia which wears off with time.⁴¹

3. Class III necrophiles: necrophilic fantasiers

Without ever touching a dead body, this class of necrophiles are sexually aroused by fantasising the act of having sex with the dead. Their fantasies are satisfied simply by being present at a funeral, a cemetery or seeing a corpse.⁴²

4. Class IV necrophiles: tactile necrophiles

This is the first class of necrophiles who actually touch the dead body. They touch the body particularly parts like the breast and genitals in a sexual manner in order to be aroused. They may also lick certain parts of the body.⁴³ This is the category under which the mortuary attendant who was captured in the Ebony video falls.

³⁸ Rosman & Resnick (n 35).

³⁹ Rosman and Resnick classified necrophilia into two broad categories: genuine necrophilia and pseudo-necrophilia. Genuine necrophilia is further classified into three categories based on the nature of acts with the corpse: necrophilic homicide; regular necrophilia and necrophilic fantasy. Pseudo-necrophile have only ephemeral sexual attraction to corpse but prefer sexual acts with the living.

⁴⁰ Aggrawal (n 5) ; Aggrawal (n 6).

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

5. Class V necrophiles: fetishistic necrophiles

Fetishistic necrophiles go a step further than tactile necrophiles by altering the body parts (such as cutting open a part of the body) or taking off body parts (such as pubic hair or nails). These body parts are used for fetish activities and may be kept by the necrophile for later sexual arousal.⁴⁴

6. Class VI necrophiles: necromutilomaniacs

Like the first five classes, necromutilomaniacs do not have sex with the corpse. Rather, they mutilate the corpse while masturbating at the same time. Some may go a step further by eating parts of the dead body in the process.⁴⁵

7. Class VII necrophiles: opportunistic necrophiles

Necrophiles under this class are ordinarily satisfied with having sex with living person. However, when the opportunity presents itself they will have sex with the dead. For example, mortuary attendants or sailors who have normal sexual relations with the living may settle for sex with a corpse purely based on ease of access.⁴⁶

8. Class VIII necrophiles: regular necrophiles

This class of necrophiles are the traditional necrophiles. They are drawn to having sex with dead bodies on a regular basis as opposed to living persons. They go to all lengths to fulfil their sexual gratification including stealing dead bodies from mortuaries or graveyards. Although they may have sex with living persons once in a while, they maintain a strong liking to the dead.⁴⁷

9. Class IX necrophiles: homicidal necrophiles

Homicidal necrophiles, also known as *violent necrophiles* or *lagnonectors* are regular necrophiles who go the extent of killing in order to satisfy their sexual desires. Most lust murders are undertaken by homicidal necrophiles.⁴⁸

10. Class X necrophiles: exclusive necrophiles

As their name shows necrophiles in this class are exclusive about their choice of sex partners - dead bodies. They cannot and are unable to engage in sexual relations with living persons.⁴⁹

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

From the above, it is apparent that there is an increasing level of abnormality as one progresses to the very last class of necrophiles. All but the first three classes of necrophiles invoke legal liabilities.⁵⁰

Ethical Aspects of Necrophilia

Ethics connotes the philosophical study of morality -what is right and what is wrong. Ethics is more often than not the underlying reason for the public disapproval of necrophiliac actions as a socio-cultural taboo.

When it comes to necrophilia, the central ethical question is: is necrophilia right or wrong? There is a divide as to the moral rightness or otherwise of necrophilia. Pro-necrophilia arguments proffer that, a corpse is neither a person nor does it have a moral status. A corpse also lacks the ability to consent or otherwise for which reason a corpse is nothing more than a thing.⁵¹ Thus, sexual acts with a thing is not morally wrong, even morally indifferent.⁵²

Anti-necrophilia arguments on the other hand, rely on society's respect for the dead and how their bodies are treated.⁵³ It is also evident from customs related to burial of the dead that, there is a near universal belief that a dead person continues to live, just not on this earth.⁵⁴ However, pro-necrophiles counter-argue that there is no connection between the personality of the person that once lived in the dead body and the 'decomposing cellular residue' that remains. To them, the living only respect the memory of the person but not necessarily the dead body itself. Thus, necrophilia does not degrade the cherished memory of the person's character.⁵⁵

I argue that, to the loved ones of the dead, the memory of character-dead body dichotomy of pro-necrophiles is implausible. To a dead person's loved ones, the corpse was once animated by a living person who created the memories through that body. Thus, the memories of character are inextricably connected to the dead body. To engage in sexual acts with the dead body is therefore a misdeed to the memories that they preserve about the dead and a dishonour to them. Of course, the dead body cannot express displeasure which is why the laws on necrophilia do not primarily seek to protect the *objective honour*

⁵⁰ *Ibid.*

⁵¹ Sara McKearn, 'Dead Sexy: An Essay on the Ethics of Necrophilia' (2008) 9(2) Anil Aggrawal's Internet Journal of Forensic Medicine and Toxicology <http://www.anilaggrawal.com/ij/vol_009_no_002/papers/paper002.html> accessed 24 March 2018.

⁵² *Ibid.*

⁵³ Tyler T. Ochoa & Christine Jones, 'Defiling the Dead: Necrophilia and the Law' (1997) 18 Whittier L. Rev. 539.

⁵⁴ *Ibid.*

⁵⁵ McKearn (n 50).

of the corpse, but rather the dignity and respect of the living for the *ex-human life*, and the respect that all lives deserve generally.

Also, the ethical basis that dismisses necrophilia as morally wrong is found in both the utilitarian approach and common good approach of ethics. The utilitarian approach championed by Jeremy Bentham and supported by John Stuart Mill asserts that in order to determine the moral worth of an action, consideration must be given to the 'the greatest good for the greatest number of people'.⁵⁶ Utilitarianism balances and weighs the net of the goodness of an action against the harm it will cause. By the utilitarian principle, the goodness of necrophilia (sexual gratification of a single person) is far outweighed by the harm of necrophilia (grief and dishonour to the relatives of the dead person). Hence, necrophilia is morally wrong.

The common good approach also arrives at the same conclusion. The common good approach weighs the effect of an action on the common good of the community. The approach views all persons as part of a larger community, as such each person should be mindful of how their action affects the larger group. This creates a social morality.⁵⁷ The common good approach, therefore, invites the necrophile to ask whether his actions benefit or erode the common good of respect and dignity for the dead. Since the actions of a necrophile erodes rather than builds the common good, necrophilia is wrong.

It is the aggregate of these ethical aspects discussed so far that engenders the need to critically consider the medico-legal issues of necrophilia. The next section opens the discussion of medico-legal issues from the Ghanaian perspective.

Medico-Legal Aspects

Necrophilia raises a number of medico-legal issues such as the position of Ghanaian law on necrophilia, the legal status of a dead human body, the nature of evidence in proving necrophilia, the liabilities of the necrophile and the facility preserving the body, and the nature of the rights and interests of interested parties. These issues are examined in this section.

A. The Position of the Law on Necrophilia

Currently in Ghana, there is no express provision that outlaws necrophiliac actions. The Criminal Offences Act, 1960 (Act 29) contains a general provision under section 285 that offers protection to the dead. However, it is not clear how that provision applies to necrophilia. Section 285 titled, 'Hindering burial of a dead body' states, 'a person who unlawfully hinders the burial of the dead body of a person, or without lawful authority *disinters, dissects or harms the dead body of a person*, or being under a duty to cause the

⁵⁶ Aggrawal (n 6).

⁵⁷ *Ibid.*

dead body of a person to be buried, fails to perform that duty commits a misdemeanour'. It could be argued that the language 'dissects or harms the dead body of a person' as used in section 285 could be construed to include harm caused to a corpse while having sex with it.⁵⁸ Although this is quite a stretch, assuming that were the case, then section 285 will only apply to two classes of necrophiles- fetishistic necrophiles and necromutilomaniacs- to the exclusion of all the other classes of necrophilia including regular necrophilia which is the classic case.

There is an additional layer of requirement in section 285 of Act 29 that may further exclude even fetishistic necrophiles and necromutilomaniacs in some if not all cases. That is, the harm caused to the corpse should hinder the burial of the dead body. Thus, where a fetishistic necrophile or necromutilomaniac being charged with an offence under section 285 successfully proves that his necrophilic action does not hinder the burial or was not undertaken with the intent of hindering the burial but only with the intent of satisfying his atypical sexual desires, he may be able to escape liability.

Another provision in Act 29 that could arguably come close to protecting the dead from sexual assault will be section 104 that criminalises unnatural carnal knowledge. To the extent that necrophilia is a psychosexual disorder that deviates from natural carnal knowledge, section 104 checks almost all the boxes except where it deals with consent and the object of the unnatural carnal knowledge (which must be a person or an animal). First, a dead person is incapable of consenting or otherwise. By eliminating the essential element of consent, a dead person cannot be the subject of section 104. Additionally, section 104 applies only to unnatural carnal knowledge with persons or animals. Thus, since a dead body is not a person in law, it falls outside the purview of the section.

In his comment on the leaked video, Chief Superintendent Dr. Gustav Yankson stated:

We are not arresting the men for taking shots of the dead bodies, but circulating the nudity of a dead body brought for preservation in that manner is an offence. . . . Section 281 of the Criminal Offence Act talks about offences related to obscenity and so far as you are showing the nude pictures of somebody; it is related to obscenity and it's a crime and there is the need for us to take action. The law particularly says that even if you have in your possession a nude picture, it is also an offence to circulate them.⁵⁹

The provisions on obscenity are found in sections 280 and 281 of Act 29. Section 280 makes the publication or offer for sale of an obscene book, writing or representation a

⁵⁸ In *People v. Stanworth*, 11 Cal. 3d 588, the California Supreme Court commenting in an *obiter* on a similar provision in its Health and Safety Code stated that the phrase 'wilfully mutilates' could be interpreted to apply to mutilation resulting from sexual intercourse.

⁵⁹ Tenyah-Ayettey (n 1).

misdemeanour. Section 281 further explains the offences relating to obscenity. Section 281(1)(a) which is particularly related to the Ebony video provides:

A person commits a misdemeanour who for the purposes of or by way of trade, or for the purposes of distribution or public exhibition, makes, produces, or has in his possession one or more obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films, or any other obscene objects.

By a combined reading of sections 280 and 281(a), therefore, the mortuary attendant together with the person who took the video may be charged with obscenity, which is a misdemeanour and nothing more. Thus, in the Ebony video case, the law may have offered some grounds on which the family of the deceased may obtain some form of justice however insufficient. Nevertheless, a number of questions arise that expose the shortcomings of the law had the events gone the other way. Consider the situation where, the video was not taken by an identifiable third party (for which the mortuary attendant will be complicit), but was instead retrieved from a CCTV camera installed at the mortuary during a routine check by the hospital officials. Will section 281 create liability enough to criminally charge the mortuary attendant? Clearly not. Assuming there was no video at all, and the mortuary attendant had been caught in the act by a third party who immediately reported the matter to the police. Will the law as it stands now be capable of creating a liability? Consider also the scenario where, the family rather makes reports of suspected necrophiliac actions to the police and a forensic pathologist subsequently confirms those suspicions, under what legal provisions will the family file an action in court, and which law will the alleged mortuary attendant be answerable to? In all these scenarios, the Ghanaian law falls short because it creates no criminal liability.

The 1992 Constitution of Ghana clearly states that, 'no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it is prescribed in a written law'.⁶⁰ There is a range of necrophiliac actions that should elicit prosecutorial action but cannot be prosecuted due to this constitutional requirement since there is statutory definition and penalty for them. Consequently, an alleged necrophile will walk away a free man leaving the family and friends of the deceased with the acute traumatic memory of abuse and desecration for the rest of their lives with no hope of attaining justice. To address the lapses in the law, the Constitution 1992 provides the cure - define the offence of necrophilia and assign a penalty for it. The paper attempts to address some of the legal lapses within the Ghanaian context through a comparative analysis of selected jurisdictions that have codified necrophilia as an offence.

⁶⁰ 1992 Constitution of the Republic of Ghana, art. 19 (11).

B. The Legal Status of a Dead Person

Is a dead person a person? Certainly not. If not, then what is the place of a dead person in law? At best, a dead person can be described as an *ex-person*.⁶¹ This is because personality is acquired at birth and lost at death. In law, a person is regarded as a natural or artificial being with rights and duties,⁶² hence the maxim, *actio personalis moritur cum persona*, which means a personal right of action dies with the person. Dead persons are therefore not susceptible to duties neither are they the subject of rights because they do not have personality. It is for this reason that, any provision that does not make express mention of 'dead person', 'dead (human) body', 'corpse' or similar term cannot be considered as applicable to the dead. In other words, a provision that is intended to apply to the dead or dead persons must explicitly state so.

In the eyes of the law, dead persons are quasi subjects before the law.⁶³ Thus, the law gives effect to the wishes of the dead without according them any rights.⁶⁴ Three main areas associated with the dead that are amenable to legal control are matters related to the estate, reputation and corpse of the dead person.⁶⁵ Regulating necrophilia borders on the reputation and corpse of the dead person.

If dead persons are not persons before the law, what exactly are they? Are they the subject of property? There is a common law no-property rule which pre-dates the 20th century. The no-property rule has it that a dead human body is not the subject of property in law as such a corpse cannot be owned or be the subject of property rights.⁶⁶ In English law, the no-property rule was referred to in *Williams v. Williams*⁶⁷ where the Chancery per Kay J held that there can be no property in a dead human body for which reason a man could not dispose of his body by will. Kay J referred to Erle J's dictum in *R v. Sharpe*⁶⁸ that, '[o]ur law recognises no property in a corpse, and the protection of the grave at common law, as

⁶¹ Ian Kennedy & Andrew Grubb, *Medical Law*. (3rd edn, Butterworths, 2000).

⁶² Kritanjali Sarda, 'Legal Status of Dead Persons' (2017) *The World Journal of Juristic Polity* 1.

⁶³ *Ibid.*

⁶⁴ In instances where the law seemingly confers rights on the dead, such as is seen in the Domestic Violence Act 2007 (Act 732), s. 6(5), those rights were accrued to the dead person during his lifetime to be given effect upon death rather than rights that are directly conferred on the dead to be exercised on his behalf by the living.

⁶⁵ Sarda (n 61).

⁶⁶ Kennedy & Grubb (n 60).

⁶⁷ (1882) 20 Ch D 659. This case involved a deceased person who indicated in a codicil to his will that one, Miss Eliza Williams, should deal with his body in the manner described in a private letter sent to her within three days or so soon thereafter his death. Contrary to this instruction, the family of the deceased buried him. Ms. Williams later obtained a license to disinter the body which she sent to Italy and burnt. Ms. Williams then demanded from the executors payment of costs incurred for following the instruction of the deceased. The reimbursement by the executors was also part of the testator's instructions.

⁶⁸ (1856-57) Dears & Bell 160.

contradistinguished from the ecclesiastical protection to consecrated ground, depends upon this form of indictment'.⁶⁹

English law recognises an exception to the no-property rule when it comes to the right to possession for the purposes of burial or cremation.⁷⁰ Persons who may have the right to possess include, executors, administrators, next of kin or close relatives of the deceased. It must be noted that, the right to possession under English law is strictly for purposes of burial or cremation and no other purposes such as obtaining evidence to support a potential action.⁷¹

At the beginning of the 20th century, the Australian High Court by its decision in *Doodeward v. Spence*⁷² introduced another exception to the no-property rule. Griffith CJ stated that the no-property rule applied to corpses except where lawful exercise of work or skill has been performed on the corpse in which case the person who carried out that work will acquire a right to retain possession of the corpse. Griffith CJ added that, after the corpse is buried, it forms part of the land in which it is buried, and the right of possession goes with the land.⁷³

Scots law, however, recognises proprietary rights in a corpse until the corpse is buried, cremated or disposed of.⁷⁴ Thus, under Scots law, a corpse can be the subject of any property offence such as stealing.

In Ghana, a corpse is not regarded as property in customary law and so not a subject of inheritance. However, the control and authority over the corpse vests absolutely in the extended family of the dead person for purposes of organising a burial befitting the social standing of the deceased.⁷⁵ Whether Ghanaian statutory law recognises the no-property rule or not is not clear. However, inferences from the Criminal Offences Act demonstrate that Ghanaian law is hostile to the no-property rule. Section 123 of Act 29 indicates that a thing '*whether living or dead*, and whether fixed to the soil or to a building or fixture, or not so fixed' can be the subject matter of stealing fraudulent breach of trust, robbery, extortion, or defrauding by false pretence. The section further provides that it is not necessary to prove ownership in proceedings relating to the property offences mentioned.

⁶⁹ *Ibid.*

⁷⁰ Sarda (n 61).

⁷¹ Kennedy & Grubb (n 60).

⁷² (1908) 6 CLR 406 (HC of A). The court had to rule on the status of a two-headed baby which was still born.

⁷³ *Ibid.*

⁷⁴ Kennedy & Grubb (n 60). See also Jonathan Brown, 'Theft, Property Rights and the Human Body-A Scottish Perspective' (2013) 1 Journal of Medical Law and Ethics 43.

⁷⁵ *Neequaye and Another v. Okoe* [1993-94] 1 GLR 538.

The express mention of a 'thing...dead' implies that corpses may be the subject of property offences such as stealing in Ghana. This is regardless of whether the corpse is buried or not as seen in the words 'whether fixed to the soil...or not'.⁷⁶ From the foregoing, it is apparent that there are some proprietary rights in dead human bodies in Ghana both pre and post-burial or disposal. This gives rise to the question, who then owns the dead body? The law says there is no need to prove ownership.⁷⁷ The Ghanaian law requires no proof of ownership because a dead body is deemed to be under public protection, hence, its regulation under criminal law. Ghanaian law therefore seems to reflect Byles J's obiter in *Foster v. Dodd*⁷⁸ that, '[a] dead body belongs to no one, and is, therefore, under the protection of the public...but, whether in ground consecrated or unconsecrated, indignities offered to human remains in improperly and indecently disinterring them, are the grounds of an indictment'.⁷⁹

Sarda, however, finds the notion of proprietary rights in corpses disquieting because it reduces necrophilia to an act of vandalism and not a sexual attack against a person.⁸⁰ Consequently, it is suggested that, in specifically criminalising necrophilia, the Ghanaian law frames it as a sexual offence rather than an act of vandalism. In doing so, another question that emerges is, what is the nature of the rights, interests and liabilities of all parties involved in cases of necrophilia? The next section addresses this question.

C. Nature of Rights, Interests and Liabilities

In cases involving dead persons, interested parties are likely to be the executors, administrators, spouses, children, next of kin and other close relatives. Their legal rights in relation to the dead person will generally include the following: the right to possession for purposes of burial, disposal or other lawful purpose,⁸¹ the right to oppose disinterment,⁸² the right to oppose autopsy⁸³ or organ donation, and the right to seek remedy for mutilation of the body.⁸⁴

Where necrophilia is criminalised the right to seek remedy for sexual abuse of a corpse will arise. According to Ghana's criminal procedure rules, all prosecution of criminal offences is initiated and conducted by the Attorney General or persons authorised by the Attorney General.⁸⁵ Thus, private citizens cannot initiate criminal actions. Complainants, that is

⁷⁶ Act 29, s. 123.

⁷⁷ *Ibid.*

⁷⁸ (1866) LR 1 QB 475.

⁷⁹ *Ibid.*

⁸⁰ Sarda (n 61).

⁸¹ See Neequaye (n 74). See also s.1 of Anatomy Act 1965 (Act 280).

⁸² This right to oppose is subject to the authority of the Coroner to order exhumation of a dead body where necessary: s. 9 of Coroners Act, 1960, Act 18.

⁸³ Sections 2, 3 & 4 of Anatomy Act 1965 (Act 280).

⁸⁴ Sarda (n 61).

⁸⁵ 1992 Constitution, art. 88.

private citizens, who have interests in criminal matters, are merely witnesses whose interests are submerged into the dominant interest of the Republic.⁸⁶ Therefore, the above-named interested parties will be complainants who do not possess prosecutorial powers but will principally and invariably be witnesses. The accused person will be criminally liable for necrophilia if found guilty. Laws criminalising necrophilia are also informed by the need to protect and preserve the respect, esteem and good memories that the interested parties, particularly the family, have about their beloved deceased one. This posture of the law is influenced by the maxim *de mortuis nil nisi bonum* which means of the dead (say) nothing but good. The law thus, considers these interested parties as passive subjects of the abuse of the corpse whose rights and interests should be protected.

Apart from criminal liability, additional rights to seek civil remedies within the Ghanaian framework may arise where an alleged necrophiliac action occurred in a facility such as cold storage facilities for human remains, mortuaries, hospitals, funeral homes, crematoria, columbariums, mausoleums, cemeteries and hearses. In such cases, the interested parties can personally initiate civil action as plaintiffs. The defendants in such civil suits will usually be the facility as well as the owner, manager and/or other supervising officer who may be liable jointly or severally. Possible grounds for the liability of such defendants may be for negligence in hiring, retaining and/or supervising the alleged necrophile-employee.⁸⁷

D. Proof of Necrophilia: Nature of Evidence

Necrophilia is a very difficult offence to prove and proving some classes of necrophilia are more difficult than others. For example, tactile necrophiliac actions are more difficult to prove than regular necrophiliac actions because the pool of evidence from which relevant evidence can be obtained in the former is smaller than in the latter. The complex web of proving necrophilia is based on the fact that evidence is obtained through a forensic-medico-legal investigation in three main areas: the crime scene, the dead body and the suspect.⁸⁸ The nature of evidence to be solicited in these three areas varies with the class of necrophilia in question. The crime scene of a tactile necrophilic act may not have much relevant evidence except for surveillance cameras, while at the crime scene of a fetishistic, necromutilmaniac or homicidal necrophilic act, blood marks, hidden body parts, DNA evidence, or even an offensive stench may be found. The scope of this article is not to detail the peculiarities of each of these evidentiary matters. This subsection only highlights the evidentiary issues

⁸⁶ *Mbrah v. Johnson* [1973] 2 GLR 213.

⁸⁷ In *Gonzalez v. Sacramento Memorial Lawn*, No. 286770 (Cal. Super. Ct. Apr. 21, 1982) a female mortuary attendant confessed to committing about 40 necrophilic actions prior to stealing the body of the plaintiff's son. The mortuary was held liable for negligence in hiring, retaining and supervising the mortuary attendant who has a history of paranoid schizophrenia.

⁸⁸ Aggrawal (n 6).

that are likely to come up during court proceedings for necrophilia cases as a preliminary guide for Ghanaian courts, judges, lawyers and other stakeholders in the future.

The crime scene is where the alleged necrophiliac action took place. A myriad of locations can be the crime scene among which may include, a cemetery or graveyard, hospital, mortuary, funeral home, hearse, the suspect's home, the dead person's home, vehicle and so on. These locations will have to be searched by the police or other crime scene specialists for evidence in the nature of surveillance cameras, trash cans or sewers, pornographic material, cell phone messages, photos, skulls and in some cases witnesses from the surroundings of the crime scene.⁸⁹

The dead body will also have to be examined by specialists such as forensic pathologists, DNA experts and serologists to aid in obtaining relevant evidence. Where the dead body has injuries for instance, a histopathological examination has to be conducted to determine if the injuries were antemortem or post-mortem.⁹⁰ This will usually be followed up with a histochemical examination to determine the age of the injury.⁹¹ In cases involving tactile necrophile, a touch or trace DNA test will have to be conducted to ascertain a match with the DNA profile of the suspect.⁹² For regular necrophiliac acts, examinations to determine hymen tears and anal dilatation will be necessary, so will vaginal, oral and rectal swabs from the corpse to identify the suspect's semen. The clothing of the dead body and its immediate surroundings may also have traces of the suspect's semen and ought to be checked. Other evidence may be obtained from examining breast swabs, fingerprints and lip prints.⁹³

The suspect may also be assessed psychologically to determine if he/she suffers from a paraphilia or paraphilic disorder by a forensic psychologist. The belongings of the suspect may also be searched as part of the investigations and his/her criminal record investigated.

Due to the multidisciplinary nature of necrophilia, it will require the collaborative efforts of all investigators and experts -legal, medical and forensic - in order to establish a good case for it. Also, evidence in necrophilia cases cuts across almost all categories of evidence including circumstantial evidence, expert evidence, scientific evidence and character evidence. Regardless of the source, type or nature of evidence the ground rules remain that for the evidence to be admissible, it must be relevant by making the existence of the alleged necrophiliac act more probable than it would be without the evidence.⁹⁴

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ Evidence Act, 1975 (NRCO 323), ss. 51(2) and 179.

Nonetheless, the courts still reserve the discretion to exclude relevant evidence if its probative value is substantially outweighed by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.⁹⁵ Relevant evidence may also be excluded by the court where there is a risk that admission of the evidence will create substantial danger of unfair prejudice or substantial danger of confusing the issues.⁹⁶ In civil actions, the courts may also exclude relevant evidence where a stay of the risk is not possible or appropriate, that admission of the evidence will unfairly surprise a party.⁹⁷

E. Recommendations for Legislating Against Necrophilia in Ghana

Quite a number of countries, including Ghana, have no laws specifically criminalising necrophilia. There are few jurisdictions having laws that could partially pass for laws against necrophilia, and even fewer that have specific laws that directly criminalise it. Of the few nations that have laws on necrophilia, most do not specifically use the term 'necrophilia' but use language that describes necrophiliac actions. In the United States, a few states make express mention of the term 'necrophilia'.

In order to adequately draw up a model law against necrophilia in Ghana, an exploratory research of the nature and language of the laws in other jurisdictions must be conducted to create legal provisions that will be appropriate for the Ghanaian environment and culture. Thus, the remainder of this sub-section considers the laws against necrophilia in India, South Africa, New Zealand, Brazil, Sweden, UK, France, Canada and the United States. These nine countries are among the best practices worldwide when it comes to legislating against necrophilia. By a comparative analysis, lessons are drawn from the selected jurisdictions and the requisite legal transplant carried out to draft a proposed Ghanaian legislation.

In India, the only law related to necrophilia is in the Indian Penal Code on trespassing on burial places. It provides that:

Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person are likely to be wounded, or that the religion or any person is likely to be insulted thereby, commits any trespass in any place set apart from the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.⁹⁸

⁹⁵ Evidence Act, s. 52.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ Indian Penal Code, s. 297

The Indian law is limited because it criminalises necrophilia only to the extent that the offender trespassed the burial place, dug up the grave or otherwise, and had sex with the corpse. Thus, all other necrophiliac actions that are not preceded by trespassing of a burial place do not fall within the ambit of the law.⁹⁹

South Africa's law on the other hand is more specific and directly criminalises sexual act with a corpse. Their Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 prohibits a person from 'unlawfully and intentionally' committing 'a sexual act with a corpse'.¹⁰⁰ Although the clarity of this provision is commendable it leaves out a whole sphere of necrophiliac actions that do not necessarily involve sexual intercourse such as tactile necrophilia, fetishistic necrophilia and necromutilomania.

In other jurisdictions which have laws that criminalise necrophilia, necrophiliac actions are captured under the bigger umbrella of 'abuse' of a corpse or 'indignity' to a corpse. This categorisation is preferable as it includes all forms of necrophilia without exclusion and prevents piecemeal legislation of other matters that amount to a violation of corpses. For example, New Zealand's Crimes Act 1961 states, '[e]very one is liable to imprisonment for a term not exceeding 2 years who improperly or indecently interferes with or offers any indignity to any dead body or human remains, whether buried or not'.¹⁰¹ Similarly, the Criminal Code of Canada, 1985 also makes it an indictable offence to improperly or indecently interfere with or offer 'any indignity to the dead human body or its remains whether buried or not'.¹⁰² It further makes the accused liable to a term of imprisonment not exceeding five years. Similarly, the French Penal Code, makes necrophilia a crime punishable by a term of imprisonment of not less than one year and not more than two years with a fine.¹⁰³ The Brazilian Penal Code (Federal Decree Law No. 2.848) also prohibits abuse to a cadaver. The penalty for the violation is detention from one to three years and a fine.¹⁰⁴ The Swedish Penal Code also prohibits abuse of a corpse or grave.¹⁰⁵ The United Kingdom makes necrophilia a crime under of its Sexual Offences Act, 2003 punishable by a term of imprisonment not exceeding two years.¹⁰⁶

In the United States, the criminalisation of necrophilia is left to individual states to determine as there is no federal law regulating the matter. Majority of the states make necrophilia an

⁹⁹ Sarda (n 61).

¹⁰⁰ See Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, s. 14.

¹⁰¹ Crimes Act 1961, s. 150(b). The provision is titled, 'Misconduct in respect of human remains'.

¹⁰² Criminal Code of Canada, 1985, s. 182.

¹⁰³ French Penal Code, art L225-17.

¹⁰⁴ See article 212 of the Brazilian Penal Code.

¹⁰⁵ See section 16 § 10 of the Swedish Penal Code.

¹⁰⁶ See section 70 of the Act. Prior to 2003, necrophilia was not a crime although it was considered as a public nuisance to expose a naked corpse in public. See *R v. Clark* [1883] 15 Cox 171.

offence.¹⁰⁷ There are four states that expressly mention 'necrophilia' in their statutes, Arizona, Georgia, Rhode Island and Hawaii.

In Arizona, the law provides, '[i]t is unlawful for a person to engage in necrophilia'. The provision further states that a person engages in necrophilia by having sexual intercourse or sexual contact with a dead human body. The terms 'sexual intercourse' and 'sexual contact' are also explained. 'Sexual contact' is defined as any direct or indirect touching, including oral contact, fondling or manipulating of any part of the genitals, anus or female breast by any part of the body or by any object.¹⁰⁸ 'Sexual intercourse' is defined to mean penetration into the vulva or anus by any part of the body or by any object or masturbatory contact with the penis or vulva.¹⁰⁹

In Georgia, necrophilia is an offence punishable by imprisonment of not less than one and not more than ten years.¹¹⁰ The law states that a 'person commits the offense of necrophilia when he performs any sexual act with a dead human body involving the sex organs of one and the mouth, anus, penis, or vagina of the other'.¹¹¹

In Rhode Island, the law provides that 'any person who performs the act of first degree sexual assault upon a dead human body shall be guilty of the crime of necrophilia'.¹¹² The sentence for necrophilia in Rhode Island is the same as that of Georgia with the additional option of a fine not exceeding US\$ 10,000.00.

In Hawaii, although the language of the law does not expressly mention necrophilia, rather abuse of a corpse, the commentary on the law reads, 'this section prohibits any sort of outrageous treatment of a human corpse, including sexual contact (necrophilia)...'.¹¹³

From the above, it can be realised that while some jurisdictions place necrophilia in the same category as sexual offences, others place necrophilia under offences related to dead bodies. For example, the South African Criminal Law Amendment Act, places the offence of necrophilia under Chapter two which is on sexual offences. Similarly, Georgia's law on necrophilia is captured under Chapter six on Sexual offences. In the Canadian Criminal Code, necrophilia falls under nuisances in part five of the Code titled, 'Sexual Offences, Public Morals and Disorderly Conduct.' The Crimes Act of New Zealand classifies necrophilia as 'Crimes against public welfare' under part seven of the Act which is broadly titled, 'Crimes against religion, morality and public welfare'. Conversely, Arizona places necrophilia under

¹⁰⁷ Necrophilia is legal in states such as Louisiana, North Carolina, Oklahoma and Kansas.

¹⁰⁸ Arizona Revised Statutes, Title 32 §32-1364(E).

¹⁰⁹ *Ibid.*

¹¹⁰ See § 16-6-7 of the 2010 Georgia Code, Title 16.

¹¹¹ *Ibid* at § 16-6-7(a).

¹¹² See §11-20-1.2 of the 2012 General Laws.

¹¹³ See §711-1108 of 2012 Hawaii Revised Statutes.

the general classification of 'Crimes against the dead' while Rhode Island places necrophilia under its chapter on 'Graves and Corpses'. I propose that in legislating against necrophilia in Ghana, the offence should be inserted under Chapter six of the Criminal Offence Act, 1960 which is on Sexual Offences. This suggestion is premised on the nature of necrophilia as a sexual act. The Criminal Offence Act of Ghana as it stands now, already regulates other offences related to the dead, such as actions that hinder burial under section 281. Other offences related to the handling, desecration and disposal of dead bodies are regulated in other statutes such as the Coroner's Act,¹¹⁴ Mortuaries and Funeral Facilities Act,¹¹⁵ Anatomy Act,¹¹⁶ and the Health Institutions and Facilities Act.¹¹⁷ The only foreseeable gap in the law related to the dead at the moment is with regards to necrophilia. It is recommended that an amendment be made to insert necrophilia in Chapter six of Act 29.

Bearing in mind the constitutional requirement under article 19(11) for an action to constitute a crime in Ghana, the proposed provision below defines necrophilia as an offence and assigns a penalty to it.

A BILL OF THE PARLIAMENT OF THE REPUBLIC OF GHANA

ENTITLED

THE CRIMINAL OFFENCES (AMENDMENT) BILL, 20XY

A BILL to amend the Criminal Offences Act, 1960 (Act 29) to prohibit necrophilia as part of the sexual offences.

The Criminal Offences Act, 1960 (Act 29) is amended as follows:

- (a) by the insertion of section 104A 'Necrophilia'
- (1) Necrophilia means having sexual contact or carnal knowledge of a dead human body whether buried or not.
 - (2) A person who engages in necrophilia commits a criminal offence and is liable on summary conviction to a term of imprisonment of not less than one year and not more than three years or to a fine not exceeding three hundred penalty units or to both.
 - (3) Without prejudice to subsection (2) of this section, where a person accused of necrophilia is proved to be diagnosed with a paraphilic disorder or mental

¹¹⁴ 1960 (Act 18).

¹¹⁵ 1998 (Act 563).

¹¹⁶ 1965 (Act 18).

¹¹⁷ 2011 (Act 829).

derangement, the special verdict provided for by the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) shall apply.

(4) In this section:

(a) 'sexual contact' means direct or indirect touching, including oral contact, masturbatory contact, fondling or manipulating of any part of the genitals, anus or female breast by any part of the body or by any object.

(b) 'sexual intercourse' means carnal knowledge under s. 99 of this Act.

Concluding Remarks

There is very little discussion on necrophilia in Ghana although the act is not alien to the Ghanaian society. The law is also silent on necrophilia. It has, therefore been the purpose of this article to initiate the needed discourse on necrophilia, its ethical and medico-legal aspects, as well as making a case for an amendment to the Ghanaian criminal law to cover the offence. The paper further drafted a sample amendment legislation that could serve as a model for future legislative actions concerning necrophilia. Once criminalised, the interdisciplinary nature of necrophilia will impose an obligation on medical experts such as pathologists, to report all possibilities of necrophiliac acts when it becomes connotative during their examinations of cadavers. Criminalising necrophilia will protect the respect and dignity deserving of the living relatives of the dead. It will also expose accused necrophiles who, apart from facing the law, may receive the needed mental and psychological treatment as the courts may direct.

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