



Rapid Assessment of the Legal Environment for Civil Society Including Philanthropic Organisations in Ghana



TABLE OF CONTENTS

LIST OF ABBREVIATIONS

ACKNOWLEDGMENT

1.0	EXECUTIVE SUMMARY	5
2.0	METHODOLOGY	6
3.0	LIMITATIONS	7
4.0	LEGAL FRAMEWORK FOR PHILANTHROPY AND CSOs IN GHANA	8
4.1	Legal and policy framework for philanthropy in Ghana	8
4.2	Legal Context for CSOs in Ghana	9
4.3	State of the NGO bill	10
5.0	STAKEHOLDER VIEWS ON THE LEGAL FRAMEWORK FOR CSOs	11
5.1	Registration of Civil Society Organisations	11
5.2	Government Oversight	13
5.3	Foreign Funding	14
5.4	International Contacts	15
5.5	Barriers to Financial Transactions	15
5.6	Tax	15
5.7	Restrictions on Engagements	16
5.7.1	Formal Platforms for Regular Participation	
5.7.2	CSOs Sustainability in Ghana	
6.0	CONCLUSIONS AND RECOMMENDATIONS	19
	REFERENCES	21

LIST OF ABBREVIATIONS

ACHPR	-	African Charter on Human and People's Rights
APN	-	African Philanthropic Network
BNI	-	Bureau of National Investigations
BOG	-	Bank of Ghana
CBO	-	Community Based Organisation
CHRAJ	-	Commission on Human Right and Administrative Justice
CIC	-	Community Interest Company
CSO	-	Civil Society Organisation
CSR	-	Corporate Social Responsibility
FIC	-	Financial Intelligence Centre
GAPVOD	-	Ghana Association of Private Voluntary Organisations in Development
GRA	-	Ghana Revenue Authority
ICESCR	-	International Covenant on Economic, Social and Cultural Rights
ICNL	-	International Centre for Not-For-Profit Law
IDEG	-	Institute for Democratic Governance
MDAs	-	Ministries, Departments and Agencies
MMDAs	-	Metropolitan, Municipal and District Assemblies
NACAP	-	National Anti-Corruption Action Plan
NGO	-	Non-Governmental Organisation
PBO	-	Public Benefit Organisation
RGD	-	Registrar General's Department
SANPORA	-	South African Nonprofit Organisation Regulatory Authority
SDG	-	Sustainable Development Goals
STAR-Ghana	-	Strengthening Transparency, Accountability and Responsiveness - Ghana
TIN	-	Tax Identification Number
ToR	-	Terms of Reference
UDHR	-	Universal Declaration of Human Rights
UK	-	United Kingdom
UN	-	United Nations
UNHR	-	United Nations Human Rights
USAID	-	United States Agency for International Development
WACSI	-	West Africa Civil Society Institute (WACSI)
WINGS	-	Worldwide Initiatives for Grant maker Support



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1.0 EXECUTIVE SUMMARY

In spite of the crucial role played by CSOs and philanthropy, and the fact that freedom of association, expression and assembly, as recognised in international and regional treaties, provide a legal basis for the protection of CSOs including philanthropic organisations, many African states have failed to protect these rights adequately and often do not provide an enabling environment for CSOs. There is therefore a need to raise awareness on the need for relevant and appropriate legislation to promote, protect or fulfill such fundamental rights for civil society organisations and philanthropy.

CIVICUS reported in 2015 that “Increasingly, funding support to African CSOs is dwindling, with African CSOs having to cut their budgets and let staff go”. Furthermore, the African Philanthropic Network (APN), adds that although the practice of philanthropy – the desire to promote the welfare of others or private initiatives for public good – is alive and active in Africa, there is a “lack of an enabling policy environment including a lack of clear tax or other incentives for more strategic and structured philanthropy” (African Grantmakers Network, 2013). Although Africans are willing to donate for good causes, CSOs and philanthropic institutions in many African countries face serious barriers that limit them from accessing or providing such resources.

This could be due to the lack of a favorable legal architecture or enabling environment which affects not just philanthropy but the activities of African civil society organisations (CSOs) in general. This is happening even though local funding is clearly an indispensable factor for a resilient civil society and for sustainable development in Africa. Evidently, a strong legal framework crafted amongst others to help facilitate the flow of local resources from private sector, interested groups and individuals, as well as governments etc., to African CSOs, would make a difference.

In the Ghanaian context, CIVICUS reported earlier in 2006, that: “There are no tax benefits for acts of individual or corporate philanthropy”, whilst noting that Ghanaians “have a culture of charitable giving and more than three-quarters of Ghana’s population donates resources to others”. This culture of charitable giving is also noted in the UNDP Ghana report on “Enabling Environment for Philanthropy in Ghana” (UNDP, 2017). However, the policy and legal frameworks for organised forms of philanthropy are lacking. It is difficult to find consistent and regularly produced information on the nature and extent of organised giving and corporate social responsibility (CSR) engagement to facilitate collaboration and ascertain impact. Quality research and data is needed to better understand the culture, practices and policies regulating local philanthropy and how it affects the sustainability of civil society organisations in Ghana.

With adequate information, civil society will be strengthened to engage with government and other key stakeholders more effectively on a suitable legal framework to govern its activities. While there is no magical formula for determining whether engagement on a legal framework for CSOs will be worthwhile, the APN and the West Africa Civil Society Institute (WACSI) seek to generate more information, on existing national legal frameworks and to lay out the most important considerations relating to this issue, in order to guide local institutions to analyse them for action. It is in this context that WACSI and APN commissioned this assessment on the legal environment for CSOs and philanthropy in Ghana. One of its rationale is to help improve understanding amongst CSOs, government and other stakeholders on philanthropy in Ghana.

2.0 METHODOLOGY

The mixed method to field research was adopted for this assessment as it appeared to be the most suitable. This method of combining qualitative and quantitative data helps to integrate statistics with text and supports triangulation (Creswell, 2003). Primary data was collected from sixteen (16) key informants mainly from relevant stakeholder institutions, including officials of regulatory institutions such as the Attorney General’s Department, Department of Social Welfare, Commission for Human Rights and Administrative Justice, and civil society leaders in Ghana whose expert knowledge and opinion on the legal environment for CSO activity was sought using purposive sampling. In addition, a stratified convenience sampling was conducted targeting a minimum of thirty (30) CSOs across the 16 regions of Ghana to obtain a geographically diverse and informed set of views. This approach was adopted to help capture the perspectives of CSOs in Ghana on the subject matter, from their own experiences and in their own words and to potentially meet the prioritisation needs of decision makers.

Using qualitative tools according to Patton M.Q. (Patton, 1990) also allows the researcher to explore not just “what” people think about issues like the legal environment of CSOs in Ghana but also “why” they think so and to codify their recommendations. The data was gathered through open-ended and conversational communication, using a slightly modified WINGS/ICNL (Worldwide Initiatives for Grant maker Support/ International Centre for Not-For-Profit Law) tool or interview guide. This tool was later adopted as it is being used for similar studies in other African countries and would facilitate comparative studies. Comments repeated or emphasised by at least ten (10%) of respondents were pulled out for further discussion. The tool focuses on seven (7) key issue areas namely (i) Registration, (ii) Government Oversight, (iii) Foreign Funding, (iv) International Contacts, (v) Financial Transactions, (vi) Tax and (vii) Restrictions on Policy Engagements. Two (2) additional areas of focus were added by the consultant, to cover key contextual issues. These are (i) Participation, and (ii) Sustainability. The tool is divided into three parts to:

1. Gather information on the state of the legal environment, and how it currently affects civil society (including philanthropic organisations), the key players, and important factors to consider when deciding whether to engage on enhancing the legal environment;
2. Map the issues that civil society is facing based on priority in addressing them, as well as how long it will take to resolve the issues and the complexity of the required solution. This will help in seeing where there might be relatively easily attainable successes and where there is a need to prepare for a long-term engagement that will require more resources; and
3. Identify where there are allies who could support civil society engagement and potential openings to reach decision makers. This would assess the strength of the opportunities for engagement based on these factors.

Secondary data on the topic was also reviewed including information relating to international, regional and local laws, policies and related research on the subject matter. A list of these is provided in the “References” section. Ethical principles of autonomy, beneficence, and justice in implementing research activities were observed to ensure that the safety and rights of each respondent were upheld.

3.0 LIMITATIONS

1. While there are several CSOs, including faith based organisations, foundations etc. engaged in activities that qualify them as philanthropic, very few like the Ghana Philanthropy Forum, formally identify and project themselves as philanthropic organisations and were willing to be interviewed. The concept of philanthropy does not appear to be very well understood by everyone. And little to no information exists on organized philanthropy in the country.
2. Getting CBOs that were identified in each region to respond to the assessment tool was challenging. Many indicated that they were not formally registered and therefore did not feel qualified to respond to the assessment questions.
3. COVID-19, and the ensuing lock-down period, made it physically impossible to conduct face to face interviews with some key respondents. Unfortunately, some of the targeted respondents were subsequently not available for scheduled phone interviews.



4.0 LEGAL FRAMEWORK FOR PHILANTHROPY AND CSOs IN GHANA

Various Laws in Ghana, recognise and legitimise the roles of CSOs, particularly their critical role in promoting the rights of citizens, to the extent that they indicate that CSOs and their activities ought to be promoted and protected. And as previously indicated, there is an absence of a formal legal framework for philanthropy and the need to develop an appropriate enabling policy environment for philanthropy is increasing.

4.1 Legal and policy framework for philanthropy in Ghana

Philanthropy in Ghana is not a new phenomenon and the country has a vibrant culture of personal giving and charitable contributions particularly through faith-based organizations. Philanthropic giving by diverse individuals, social and communal groups, and formal institutions, forms the bedrock of Ghanaian culture, whilst providing for the most basic social and economic needs of many of its people. The most common form of philanthropy is informal and unofficial giving practiced mostly by individuals as opposed to institutions. But such informal giving very difficult to track in volumes with reliable data because it is guided by cultural notions of making giving intentionally unconstructive, unofficial and private. Therefore, it is not reflected in any organized system.

Organised and modern philanthropy, which has more potential and opportunities, is somehow newer in the Ghanaian context. But to harness, direct, and properly situate it in national development discourse, stakeholders need more comprehensive, evidence-based, and systematic information. It is difficult to find consistent and regularly produced information on the nature and extent of organised philanthropy engagement to facilitate collaboration and ascertain impact. The policy and legal frameworks for organised forms of philanthropy are lacking.

Therefore, it is important to develop an appropriate infrastructure to foster what is known as the enabling environment for philanthropy. Beyond the legal and policy frameworks, there are many additional factors that interact with policy and the legal system to affect giving. This could include the cultural and socio-political environment, existing administrative and fiscal decentralization policies, progressive tax schemes, appropriate social and productive infrastructure and the existence of mechanisms for monitoring and collaboration supported by an open-door policy within the public sector for inputs from philanthropy. All of these elements are relevant for philanthropy to operate effectively in Ghana.

However, in Ghana, a comprehensive legal framework for philanthropic giving is still in the very infant stages of development. There is no distinction between a CSO, an NGO or a philanthropic organization and no identifiable body of legislation dealing specifically with philanthropy and charitable giving. Entities have to register as individual trusts or companies limited by guarantee, which become the vehicle for charitable donations.

Even though, the manifesto of the political party in power (National Patriotic Party (NPP) stated that it will 'create the enabling legislative and economic environment for philanthropy to blossom and promote a new era of giving, knowing that a prosperous Ghana makes it easier for individuals and organisations to support civil society'. There is no dedicated state or sectoral regulatory framework for philanthropy in Ghana. Successive efforts to create a civil society policy have been abandoned over disagreements between the civil society community and the government, most recently in 2006-2007. However, the Ghana Aid Policy and Strategy (2014- 2017) has committed to engaging philanthropic organizations and other like-minded stakeholders to help deliver the government agenda. The operations of development actors in the reformed national development cooperation architecture, as

well as the implementation of new transparent guidelines to enhance engagement, must be closely reviewed.

In general, philanthropy is well-placed to make a critical contribution to civil society sustainability by increasing domestic resourcing which is much needed in this time of declining global support. Therefore the current legal and institutional framework needs to be transformed to support philanthropy and encourage increased partnerships between philanthropic organizations, CSOs, private and public sector development stakeholders.



Ms. Nana Asantewa Afadzimu (WACSI's Executive Director) and Ms. Stigmata Tenga (APN's Executive Director) during their Opening Remarks at the Validation Workshop organized in Accra.

4.2 Legal Context for CSOs in Ghana

A STAR-Ghana Political Economy Analysis of Civil Society in Ghana (2013), indicated that “the legal and regulatory environment in Ghana provides civil society room to function”. This position was affirmed by the 45 respondents in this assessment. In general, “most CSOs are registered as companies limited by guarantee under the Companies Code, Act 179 of 1963, as voluntary associations under the Trustees Act 1962 (Act 106), or as professional bodies under the Professional Bodies Registration Decree (NRCD 143) of 1976” (Star Ghana, 2013). However, there is currently no specific law in place that facilitates the activities of CSOs and nurtures the development of the civil society space.

Almost every piece of legislation passed by parliament is of significance to the civil society space in Ghana, but the following amongst others indicate specific roles or obligations for civil society actors:

- Political Parties Act, 2000 (Act 594)
- Whistle-blower Act, 2006 (Act 720)
- Income Tax Act, 2015 (Act 896)
- Local Governance Act, 2016 (Act 936)
- Companies Act, 2019 (Act 992)
- Right to Information Act, 2019 (Act 959)

In the past, Ghana has made several attempts at establishing a law to cover CSO activities, none of which have been successful. These efforts date as far back as 1993, (Modernghana, 2016) when the first regulatory framework was introduced but withdrawn when its effectiveness was questioned. Subsequently in 2000, the state worked with CSOs through various fora to develop a draft National Policy for Strategic Partnerships designed to regulate CSO activity in the country. This document was revised in 2004. In 2006, when Government attempted to introduce a Trust Bill which also covered regulation of CSOs, the Ghana Association of Private Voluntary Organisations in Development (GAPVOD) “an umbrella civil society organisation” mobilised and expressed concerns about this idea (Modernghana, 2016) leading to it being dropped.

In 2010, a further attempt was made to have an NGO bill drafted but this was also not completed. It is noteworthy that subsequently the Inter-Governmental Action Group against Money Laundering in West Africa faulted Ghana for failing to comply with Anti-Money Laundering and Counter Terrorism Financing obligations. That is under the Financial Action Task Force 40+9 recommendations. To address this, a National Committee for developing an NGO bill was established in 2017.

The Action Group scored Ghana very low in its compliance with international anti-money laundering provisions, particularly because of the lack of in-country regulation covering NGOs and the likelihood that NGOs could be used as vehicles for money laundering. The National NGO committee is composed of NGOs and Public Sector Agencies and in addition an NGO secretariat was set up at the Institute for Democratic Governance (IDEG) to support its work. This committee began work on reviewing and pulling together previous drafts. These efforts predate the draft NGO bill (2019), which was introduced by the current Government and which is currently under review.

In recognition of the urgent need to have a law in place, the National Security apparatus of Ghana, gave an initial deadline of December 2020 to the Social Welfare department to have the NGO law in place. Subsequently however, the Attorney General and the Financial Intelligence Centre have both written (February 2020) to the Social Welfare department to have this law in place by the end of July 2020. This is in view of a pending UN country visit and review in September 2020. Failure to have the law in place by then, is likely to get Ghana blacklisted with serious ramifications for the country.

At the moment therefore, the draft National Policy on Strategic Partnerships with NGOs, developed by the National Consultative Group in 2000 and revised in 2004, is arguably the only policy document, agreed to by all parties, that formally provides a framework for the relationship between the state and NGOs in Ghana and it is obviously outdated.

4.3 State of the NGO bill

Currently STAR Ghana and Oxfam have provided funding for two (2) experts to review the draft NGO bill (2019). They are to do so considering all the previous drafts and the needs of the sector. The experts will be expected to advise and provide a road map on the way forward. However, in view of the outstanding stages for the NGO bill to be passed, including having to host a national consultation, conducting a validation meeting, sending the bill to cabinet and then to parliament, it appears unlikely that the bill will be passed before July 2020 without an emergency call, for urgent attention and swift action.

The current draft NGO bill (2019) makes provision for an office of the Administrator General, as an independent body to oversee the activities of trusts, non-governmental organisations and any other non-profit civil society organisations. The head of the independent body, the Administrator-General will perform the functions of the Public Trustee and the Administrator-General under the Administrator of Estates Act and take over the role of the Department of Social Welfare which currently registers non-governmental organisations. There will therefore be one body to deal with these entities to streamline the operations of non-governmental agencies and improve on efficiency.

Furthermore in compliance with the United Nations Security Council Resolution 1373, which enjoins United Nations member states to enact laws against the financing of terrorism and any other acts supportive of terrorism, the bill prohibits the use of trusts and non-governmental organisations to finance terrorists and other criminal acts.

The bill is divided into three (3) parts. Part one is on the creation and management of trusts and charitable trusts. Part two deals with registration and regulation of non-governmental organisations, while part three deals with the Central Registration Authority, the Office of the Administrator-General.

Specific concerns on this draft bill relate to its focus on Trusts like the 2006 draft NGO bill and the disinterest by a majority of NGOs in coming under that type of legal arrangement. The 2019 draft NGO bill brings both Trusts and Charities under a single Administrator General. The feeling is that the format will not be effective and that the current bill has to provide more benefits to NGOs.



Mr. Edem Kwami Senanu (Lead Assessor) during the presentation of his preliminary findings at the Validation Workshop organized in Accra

5.0 STAKEHOLDER VIEWS ON THE LEGAL FRAMWORK FOR CSOs IN GHANA

The overview of working environment as expressed by thirty-one (31) CSOs including NGOs, CBOs, and Associations across twelve (12) regions of Ghana on the seven (7) assessment areas have been summarised below:

- CSO Registration
- Government Oversight
- Foreign Funding
- International Contacts
- Barriers to Financial Transactions
- Taxation
- Restriction on Policy Engagement

5.1 Registration of Civil Society Organisations

Registration of CSOs in Ghana involves multiple steps, generally described by respondents (Table 2) as cumbersome, tiring as well as expensive particularly by CBOs in this assessment. This conclusion aligns with the Civil Society Index findings (CIVICUS, 2006) on the state of civil society in Ghana which reported that “As far as the legal environment is concerned, the CSI stakeholders agree that the registration procedures for CSOs are undermined by inconsistencies that make the whole process cumbersome, time-consuming and drain the already limited financial resources of most organisations”. CSOs attributed the cumbersome nature to a lack of adequate coordination and it affects all types of CSOs including philanthropic organisations such as Faith Based Organisation, and Community Foundations.

CSOs are required to register with the 1. Registrar-General's Department, by law and additionally with the 2. District Assembly, to obtain a certificate from 3. Social Welfare, and finally need to get a 4. Tax Identification Number (TIN) from Ghana Revenue Authority (GRA). There is also the issue of annual renewals with Social Welfare that CSOs have to contend with. The renewal process begins at the District, through the Regional to the National level and many of the smaller CSOs and those in rural areas do not have the resources to go through the process successfully. Decentralisation of this service is still an issue and the attempt to introduce online registration has not worked out as it was expected.

The Social Welfare registration requirement after completing with the Registrar General's department includes:

- Registrar General's Certificates (Certificate of Incorporation, Certificate to Commerce Business, Regulations and the Business Particulars Form 3B)
- Application letter on Organisation letterhead addressed to the Director, Department of Social Welfare
- Constitution
- Any Brochure/ Publication
- History of NGO, Achievements and Future Plans

Prior to being registered by the Social Welfare department, the CSO needs to be recognised by the relevant District Assembly and to be provided with a letter of recommendation. This letter is required to trigger the Social Welfare department registration process. The following are required by Assemblies before they process a recommendation:

- Four (4) copies each of the Registrar General's Departments (RGD) certificates
- Three (3) introductory and request letters on letterhead to be addressed to the Director of the Department of Social Welfare and
- An additional letter addressed to the Metropolitan, Municipal or District Chief Executive

Respondents to this survey, particularly representatives of national level CSOs do not think that the Social Welfare registration is necessary or backed by law. The process involves CSOs providing confirmation from District Assemblies that they have permission to work in their jurisdiction, and for the District Assembly to recommend certification by the Social Welfare department. They noted that this process could be made simpler if the present successful model of having a Ghana Revenue Authority desk at the Registrar Generals Department was replicated with a Social Welfare department desk for NGOs to pick and fill the required forms. A one stop shop for CSO registration is therefore highly desirable.

Indeed, the Social Welfare Department itself expressed the view that there is no clear law currently backing its registration/certification of CSOs and notes that "the current requirement to get certification from the Social Welfare department has simply evolved out of practice. Initially because the Welfare Department was responsible for the vulnerable and so entities working with the vulnerable were linked to it". It is noteworthy that the Local Government (Departments of District Assemblies) (Commencement) Instrument, 2009 which seeks to operationalise the decentralised departments at the district level LI1961 (2009), sections 8 (1) and (2) (d) does state that:

8. (1) The Social Welfare and Community Development Department shall assist the Assembly to formulate and implement social welfare and community development policies within the framework of national policy. (2) The Department shall..... (d) Facilitate the registration and supervision of non-governmental organisations and their activities in the district;

This responsibility of the Social Welfare and Community Development departments as captured in the Local Government sub-legislation is not reflected nor appear to be consolidated or backed by the Companies Act, 2019 (Act 992). Indeed the lack of a formal legal relationship between the Social Welfare department and the Registrar General's department in the first instance and the lack of an expressly stated provision in Act 992 empowering or obligating the Social Welfare department to facilitate registration is deserving of attention together with addressing the shuffling of the Social Welfare department from the ambit of one Ministry to another. Ideally the department should have a fixed Ministry it reports to by law. The fact is that the lack of a well-thought through and established law has resulted in a chaotic sector, with some CSOs confused about what is actually required to be fully registered. There are currently no minimum membership requirements, for CSOs or other limiting requirements. Interestingly the fees that are charged for CSO registration etc. are established and reviewed under the Matrimonial Causes Act and these were recently reviewed in 2014 and 2019. While the Register General's Department has timelines, it targets with respect to processing different types of registration requests, no timelines have been documented at the Social Welfare level.

The Companies Act, 2019, Section 8 on Companies Limited by guarantee states from section 8 (1-4) that:

- (a) A company limited by guarantee shall not be incorporated with the object of carrying on business for the purpose of making profits other than making profits for the furtherance of its objects.
- (b) Where a company limited by guarantee carries on business for the purpose of making profits, other than for the furtherance of the objects of the company, the officers and members of that company who are cognizant of the fact that the company is so carrying on business, are jointly and severally liable for the payment and discharge of the debts and liabilities of the company incurred in carrying on that business, and the company and those officers and members are each liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the company carries on that business.
- (c) The total liability of the members of a company limited by guarantee to contribute to the assets of the company in the event of the company being wound up shall not at any time be less than the amount of money specified in the application required for incorporation.
- (d) Where in breach of subsection (3) the total liability of the members of a company limited by guarantee is at any time, less than the amount specified in the application required for incorporation, every director and member of the company who is cognizant of the breach is liable to pay to the Registrar an administrative penalty of five hundred penalty units.

Clearly the current law frowns upon CSOs engaging in any profit-making ventures that are not channeled back into the objectives of the CSO. Some CSOs have reportedly refused registration knowing that they will be or are running afoul of the law or believing that Government will use their registration details, as a basis to get them taxed.

In general, CSOs noted that while a private company limited by guarantee is a form of business structure often used by non-profit organisations, social enterprises, clubs, churches, community projects, membership based organisations and various charities to serve social, church, community, charitable, and other non-commercial causes, the framework is very broad and covers many categories. Consequently, it does not allow for specific interventions or policies targeted at improving recognition or the sustainability of NGOs in Ghana. Respondents also articulated the need for a more rigorous assessment of entities that qualify to become different types of CSOs and that maintain this status annually in order to provide assurances that support tax and other reliefs.

In terms of prioritisation, a majority of CSOs interviewed (58%) said that they had a concern with the CSO Registration process in Ghana, making it the third most prominent issue out of the nine (9) issues assessed in this study. In appendix 4, the root cause is analysed as being the absence of a targeted law and the impact of the ensuing lack of registration clarity, was assessed as high.

5.2 Government Oversight

Currently no specific comprehensive oversight “supervisory” or monitoring arrangements exist for the CSO sector in Ghana. Once registered no institution or agency is tasked to monitor what activities are undertaken and to report on CSO activity, except for the annual reports that have to be filed with Registrar General and the Social Welfare department. There are no intrusions or inspections and the evidence suggests as respondents noted (Table 2, Question 2), that the CSO sector has not really been a priority for Government and therefore no strategic thought has been given to working or collaborating with the sector.

With over 30,000 limited by guarantee registrants reported by the Registrar General’s department in 2017 and with over 8000 of these registered with the Social Welfare Department, the Social Welfare department indicates that it does not even have the human nor financial resources to monitor these entities. The department currently has six (6) staff at the head office handling CSO matters for this very large constituency and generally needs more staff.

As noted earlier, the Inter-Governmental Group against Money Laundering and the Financial Intelligence Centre emphasised the need to have a law regulating the NGO space in place, subsequent to the very low rating Ghana received in relation to anti-money laundering systems. This has triggered a strong current interest in ensuring that an NGO or better still CSO law is established.

While there is no evidence of Governments past or current intruding on CSO activity, recently, Parliament expanded its oversight on Ministries, Departments and Agencies as well as Metropolitan, Municipal and District Assemblies, to cover CSOs. Specifically in respect of the definition of a standing committee, the proposal is for it to mean “a committee appointed under article 103 of the constitution which is charged with the function of investigation and inquiring into activities and administration of ministries, departments and agencies of government, parliament, judiciary and CSOs.

In respect of level of prioritisation, Government Oversight was ranked 5th with about 42% of the total respondents indicating that this was an issue of concern. This lower ranking than expected can be linked to two (2) comments that were repeatedly made, “Self-regulation is safer!”, “an independent body with more CSOs represented than government should be established” (Table 2, Issue 2), which is the general tone taken by NGOs and “We do not want Government interfering in our work.”, “If you are not registered, nobody bothers you.” (Table 3, issue 2). Which is the posture of CBOs. The idea of Government Oversight is therefore not appealing to a majority of CSOs. The NGOs are cautiously thinking through and concerned about the model to be used, while the CBOs feel that, there are no adverse ramifications emanating from the status quo.

The root cause of the current absence of Government Oversight was analysed as being the lack of a law, and the impact ranked as high under Appendix 4, Issue 2.

5.3 Foreign Funding

The prevailing sentiment is that nationalist growth in the West is affecting funding flows to developing countries and the dwindling global development resources means that most local CSOs are struggling to raise foreign funding for their activities. The declaration by the Government of Ghana that the country had achieved middle-income status, and reflected by the World Bank in 2016, coupled with the

current Ghana beyond Aid agenda, has further negatively influenced the availability of foreign funding for CSOs here. Nonetheless foreign funding remains an important source of income for CSOs.

In general, however, no restrictions to receiving foreign funding were reported except for the anti-money laundering considerations captured under Act 874 which states that:

Section 1 of Act 749 amended:

1, The Anti-Money Laundering Act, 2008 (Act 749) referred to as the principal enactment is amended by the substitution for section 1, of

“Money Laundering”

1. (1) A person commits an offence of money laundering if the person knows or ought to have known that property is or forms part of the proceeds of unlawful activity and the person
 - (a) converts, conceals, disguises or transfers the property
 - (b) conceals or disguises the unlawful origin, disposition, movement or ownership of rights with respect to the property or
 - (c) acquires, uses or takes possession of the property.

Consequently, CSOs in Ghana do not need government approval to receive foreign funds and no limitations to obtaining such funds were reported by respondents. Indeed, any such policy could undermine the capacity of CSOs to hold Government accountable, which is not in the best interest of the nation. Now, Government gets to know about the activities of CSOs through their audited accounts that are submitted annually to the Registrar Generals department, Social Welfare department and the Ghana Revenue Authority.

Not surprisingly therefore, eighty-four percent (84%) of respondents indicated that this was not a major issue of concern. Key informants reported that the Financial Intelligence Centre (FIC) has also developed a banking sector account tracking system to monitor and prevent the use of CSOs to mobilise and transfer funds that are not intended for charitable purposes. Limitations relating to receiving foreign funds was ranked as the eighth issue of concern and the impact was assessed as low.

5.4 International Contacts

Similarly, respondents also noted that there was no indication that having international contacts, makes one a pariah or becomes a basis for further scrutiny or unwanted visits by Government agencies or representatives. The worst imaginable scenario was that one would be labeled as being the mouthpiece of the opposition. An overwhelming 96.77% of interviewees felt that this was not a challenge in the Ghanaian context. This was ranked as the ninth issue of concern and the impact assessed as low.

5.5 Barriers to Financial Transactions

Specific concerns were highlighted (Table 2 and Table 3) by respondents relating to restrictions on financial transactions including:

- (i) Not being able to cash more than GHS5,000 on a cheque, makes it difficult for CSOs to organise any events, whose logistical value exceeds this amount;
- (ii) The twenty percent (20%) tax for non-Ghanaian resource persons affects the ability to attract relevant expertise.
- (iii) There is a three (3%) tax or charge on dollar transactions in your own account. This affects resources available for implementation of activities.
- (iv) The BOG regulation indicating that you can only cash out foreign currencies in the cedis equivalent and not in the foreign currency affects CSOs. For example, when executing payment for a team member who is not a Ghanaian and who typically has a contract in dollars.

- (v) There are also limitations if the task to be executed by the CSO is outside Ghana and foreign currency is required for travel and other logistical needs outside Ghana.

These barriers often result in delays to funds transfers and in some cases rejections by foreigners being engaged for work. Barriers to financial transactions was ranked as the seventh issue of concern and its root cause was identified in Appendix 4, Issue 3 as being the laws that are in place. Impact was assessed as medium.

5.6 Tax

CSOs reported that there is little to show that their work is essentially public goods. At the moment, everything that CSOs use resources to buy is taxed, with no differentiation between them and the tax regime for profit making entities. This situation is different from what pertains in other jurisdictions where CSOs are recognised as partners in development and receive some tax waivers (Table 2, Question 6 and Table 3 Question 6). Tax waivers are also extended in other countries to Philanthropy Organisations that give funds to CSOs, because of the public good nature of their services. There are countless examples of CSOs who have received free items to distribute to the poor and yet have been requested to pay taxes on these items once they arrived in Ghana.

Clearly to build an effective philanthropy sector, a policy that provides incentives is required. CSOs pay income taxes and withholding taxes on services procured. Although withholding taxes can be used to defray some of the corporate taxes at the end of the year, by the current law, CSOs come under companies limited by guarantee and do not pay corporate taxes. Therefore, they have no opportunity of claiming back their withholding taxes. Respondents also indicated a need for a legal regime and model that recognises the not for profit nature of CSOs, prescribes taxes that are lower and enable CSOs to be compliant with local tax laws (Table 2 and 3, question 6), whilst ensuring that they remain sustainable.

The root cause of these experiences (Appendix 4, Issue 4) was also identified as gaps in the existing law, which do not appropriately recognise the roles that CSOs play. This issue was ranked as the sixth issue of concern by 35.48% of general respondents and the impact assessed as high.

5.7 Restrictions on Engagements

In general, although no specific restrictions have reportedly been placed on CSOs regarding their involvement in policy issues, it was noted that Governments past and present have not appeared eager to engage CSOs, on such issues. On occasion when such engagements have occurred, respondents indicated that, the ideas shared may not be taken into consideration, or having a strong opinion could lead to you being labelled anti or pro government. Although there are examples of very good collaborative efforts between CSOs and Government, as in the instance of developing the National Anti-Corruption Action Plan (NACAP), these examples are few and in-between, underscoring the need for substantive improvement in respect of State – CSO engagements on policy issues. One of the ways to improve this is through reviewing and strengthening the partnership framework between the State and CSOs as well as implementing the National Popular Participation Policy Framework as required.

Respondents called for better engagement and taking on board of recommendations and suggestions from civil society. NGOs noted that it is “difficult to access information from public institutions, let alone engage.” And further stated that “You are allowed to make an input, but your inputs are not usually reflected”. On the other hand the key observation from CBOs was that “Policies are top-down, they hardly engage us”, whilst the comments by Associations mirrored those of the NGOs “We are engaged to an extent” but “Sometimes the inputs of the CSOs are not reflected”.

These limitations to engaging on policy issues were ranked as the fourth most important concern by forty six percent (46%) of general respondents (Table 1). Its root cause similar to the lack of regular participation platforms is the poor implementation of existing law and the impact is high.

5.7.1 Formal Platforms for Regular Participation

There are reportedly hardly any formal regular platforms for participation. The Government of Ghana, its Ministries, Departments and Agencies (MDAs) engage CSOs generally on thematic areas, as and when deemed necessary and often these efforts are tokenistic and not driven by an understanding that MDAs as well as Metropolitan, Municipal and District Assemblies (MMDAs) are under obligation to provide regular formal platforms, channels and spaces to work with CSOs according to Article 35 (6) (d) of the national constitution, which states as follows:

(6) The State shall take appropriate measures to....

(d) make democracy a reality by decentralising the administrative and financial machinery of government to the regions and districts and by affording all possible opportunities to the people to participate in decision making at every level in national life and in government;

In spite of the existence of a National Popular Participation Policy Framework 2016, that obligates and provides guidelines on how MDAs and MMDAs ought to develop popular participation action plans and then establish permanent participation platforms and guidelines for regularly engaging key stakeholders including relevant civil society organisations, CSO respondents indicated that the guidelines for engagement by the state are not in place and there are hardly any regular engagements.

The absence of regular participation platforms was ranked as the second priority concern by 61.2% of Civil Society respondents. The root cause was analysed (Appendix 4, form 5) as being poor implementation of the existing laws. Comments made include: “Government should create regular platforms and bring CSOs on board”, “Government should demonstrate that they have acted on CSO recommendations during follow up meetings or platforms!” Clearly, CSOs have a keen interest in more and better engagement platforms, channels and spaces being facilitated by government. Ultimately this interest is targeted at delivering substantive results for Ghanaians. The impact of a lack of permanent and regularly held participation platforms was ranked as high (Appendix 4, form 5).

5.7.2 CSOs Sustainability in Ghana

The UN recognises CSOs as representing the voice of the people. Similarly, any state that wants to achieve people driven development or to promote participation, inclusivity and ownership of national development processes by its citizens, cannot leave out CSOs.

Almost ninety four percent (94%) of general respondents (Table 1) said “Sustainability” was their major concern, and therefore it was ranked as the number one priority issue on the minds of CSOs and their representatives and its impact was assessed as high (Appendix 4, form 6).

Sustainability concerns have risen sharply in the last decade as a result of two (2) national level policy decisions/events, which respondents indicated have affected the sector’s operational environment:

1. On July 1, 2011, Ghana moved from being a low-income to lower middle-income country, according to World Bank country classifications. (World Bank, 2011). This categorisation and transition had legal implications and immediately resulted in some bilateral development partners such as Denmark and Switzerland etc. being compelled to reassign funding that was originally targeted directly at the social services sector in Ghana and that supported the activities of civil society actors.

2. On 6th March 2018, the President during his Independence Day speech laid out a “Ghana Beyond Aid” policy, (Republic of Ghana, 2018) which laudably seeks to reduce dependency on foreign aid. However the potential adverse effect is that it sent strong signals to development partners indicating an increasing disinterest in receiving foreign aid and therefore further restricted the opportunities for civil society representatives who have been engaging and attempting to access funds for activities.

Respondents to this assessment noted that governments in general, have failed to recognise the importance and impact of the civil society sector on the Ghanaian economy, or to appreciate the key complementary roles it plays and ultimately to fashion policies that support its activities. The governments of most developed countries such as Norway, Sweden, Denmark, Canada etc. recognise and directly support their civil society sector and in addition provide international development aid to other developing countries like Ghana. Aligned with this, respondents generally believe that government policies should not have the net result of limiting or denying funding for civil society activities. Instead civil society should be able to receive government and bi-lateral support as well as other types of support. As a result, engagements and mechanisms to make this possible should be facilitated by government.

CSOs further noted that the state can fulfill its role in promoting sustainability of the sector by:

1. Formally recognising that CSOs complement the state through delivering public goods,
2. Providing tax exemptions/reductions for CSOs who are in good standing and have filed all their returns.
3. Developing a legal framework. That makes it easier for CSOs to mobilise resources.
4. Providing a legal status for social enterprises and hybrid NGOs that conduct some profit-making activities.
5. Adopting a Partnerships policy that enables Government to work with CSOs to deliver activities linked to the National Development plan at all levels of governance.
6. Working to reduce the bureaucratic processes that impede the work of CSOs,
7. Considering financial assistance to CSOs and giving visibility to CSOs,
8. Not victimising CSOs nor encroaching on the Civic Space and giving room for dissenting voices and
9. Depoliticising national systems and processes, so that CSOs can operate freely.

In addition, it was noted that CSOs need to recognise that relying on donor funding is not sustainable and therefore they need to cultivate other revenue streams. For example, they need to consider how their specific knowledge areas of expertise can be utilised for delivering services that generate in-flows to aid sustainability. What assets do they have and how can these be rented etc. to generate additional income for sustainability? CSOs must also therefore develop internal sustainability plans. In Appendix 4 issue 6, the root cause was analysed as being the absence of a law that promotes sustainability and the impact as high.

It is also noteworthy that parliament was considering a Corporate Social Responsibility (CSR) Bill in 2019, but this is not reflected in the 2020 list of bills to be considered. The CSR bill provides another opportunity for CSOs to engage and advocate for tax incentives for corporate entities where such funding is channeled to civil society.



6.0 CONCLUSIONS AND RECOMMENDATIONS

1. There is a compelling legal basis from the UN and other international declarations, covenants and legal frameworks supporting the oversight, protection, and promotion of the activities of CSOs, in all countries.
2. There is an urgent need for Ghana to ensure policy and legal compliance for the oversight of the CSO sector, in order not to be blacklisted internationally.
3. Significant work has already been done in drafting NGO bills in the past and these should be factored into the current review on the way forward and in crafting a suitable CSO bill, in tandem with the global shift in focus from NGOs to CSOs.
4. In addition, from the case studies of legal frameworks in other jurisdictions, the CSO bill should:
 - Cater for different categories or types of non-profits organisations
 - Provide transparent funding mechanisms
 - Promote philanthropy and an indigenous charity culture
 - Include regulations governing fundraising activities
 - Establish an independent CSO regulatory body
 - Ensure a harmonised and transparent registration process that easily identifies, registers and renews licenses for CSOs
 - Protect CSOs from partisan political and other interests that may hinder their work.
 - Indicate minimum governance standards
 - Highlight CSO reporting and how the public can access information on CSOs
 - Limit CSO involvement in political and electoral activities

5. In order of priority, the top five (5) issues of concern that CSOs raised relating to the legal environment in this assessment are 1. Financial sustainability, 2. Participation, 3. Registration, 4. Restrictions on Financial Transactions and 5. Government Oversight.
6. The formulation of a national framework to support philanthropy should be a priority and new forms of giving, including relatively new approaches such as impact investing and venture philanthropy should be promoted through development of new regulations and incentives.
7. To address the priority issues, Appendix 4 part 2 has a priority matrix categorising these issues as short, medium and long term concerns whilst part 3 of Appendix 4 identifies and highlights key allies, influencers or change makers in each instance, who ought to be engaged and potentially partnered to conduct public policy advocacy on these priority issues.
8. CSOs expressed great concerns regarding how they will sustain their work and noted that Government has a responsibility to facilitate and fashion policies that support the sector's activities.
9. To address participation concerns, it is imperative that Government fulfills its obligation under Article 35 (6)(d) of the constitution and in accordance with the National Popular Participation Framework to ensure that MDAs, MMDAs etc. provide permanent participation platforms for CSOs to contribute their experience to shaping policy and accelerating development in Ghana.
10. CSOs expect that any laws or policies that are developed should not impede or restrict their activities but ought to facilitate and consolidate the services they provide. Therefore, there is a need to engage further with government to amend the Companies Act to include additional categories. The current Companies Act is limiting in having only two classes of registration and needs to be expanded to give tax breaks and return to impact investors, corporate organisations and hybrid models that perform types of CSR.
11. It is evident that introducing and promoting structured philanthropy through the CSO bill as well as using other laws and policies would greatly benefit the Ghana beyond Aid agenda.
12. The remaining timeframe for passing the CSO/NGO bill (4 months) is so short that there is an urgent need to engage in advocacy to quickly pass this bill and to get the key actors including the Social Welfare Department, Attorney General's Department, Ministry of Gender, Children and Social Protection, the Review Committee, NGO bill secretariat and other civil society actors on board to fast track the process.
13. While working at passing the CSO bill, it will also be prudent to quickly dust, review and upgrade the National Policy on Strategic Partnerships with NGOs, developed by the National Consultative Group in 2000 and revised in 2004. Getting this document upgraded and endorsed by cabinet, while working on completing and passing the CSO bill, will provide comfort that in the event that parliament is unable to pass the CSO bill before September 2020, Ghana will not be blacklisted.
14. CSOs should seize the opportunity to advocate in support of the Corporate Social Responsibility (CSR) Bill and in particular encourage tax incentives for corporate entities to channel funds to other social causes.
15. Developing greater collaboration between philanthropy and academic centres is required to develop tools, approaches and research on development impact and performance management.

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