

**THE ASSESSMENT OF THE LEGAL ENVIRONMENT FOR CIVIL  
SOCIETY INCLUDING PHILANTHROPIC ORGANISATIONS IN  
GHANA**

**DRAFT UPDATED REPORT SUBMITTED TO  
STAR GHANA & AFRICAN PHILANTHROPIC  
NETWORK**

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### **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 Organization
CHRAJ	-	Commission on Human Right and Administrative Justice
CIC	-	Community Interest Company
CSO	-	Civil Society Organization
CSR	-	Corporate Social Responsibility
FIC	-	Financial Intelligence Centre
GAPVOD	-	Ghana Association of Private Voluntary Organizations 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 Organization
PBO	-	Public Benefit Organization
RGD	-	Registrar General's Department
SANPORA	-	South African Nonprofit Organization 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

## 1.0 BACKGROUND

The World Bank stated in its March 2005 research paper (Issues and options for Improving Engagement between the World Bank and Civil Society Organizations) that civil society “refers to the sphere outside the family, the state and the market. It excludes for-profit businesses, although professional associations or business federations may be included. The research paper notes that: “There has been a deliberate shift away in the last few years from use of the term NGO, or Non-Governmental Organizations, which refers more narrowly to professional, intermediary and non-profit organizations which advocate and/or provide services in the areas of economic and social development, human rights, welfare and emergency relief. Instead, the World Bank noted in the same research paper that it “has begun to, reach out more broadly to CSOs, including not just NGOs but also trade unions, community-based organizations, social movements, faith-based institutions, disabled persons’ organizations, charitable organizations, media, research centers, foundations, student organizations, professional associations and many others”.

International frameworks such as the 8 Principles for Civil Society Organization (CSO) Development Effectiveness (2011), the Paris Declaration on Aid Effectiveness (2005), the AAA—Accra Agenda for Action (2008), or more recently the New Deal (2013) have acknowledged the vital role played by civil society actors and their functions in developing and fragile national environments. For example, Water aid UK provided over 1.3 million people with safe drinking water in 2017/18, (Water Aid, 2018) whilst in El Salvador, the government passed a law in 2017 banning environmentally and socially harmful metal mining practices, mainly as a result of civil society action since 2004 (CIVICUS, 2018). In 2019, CARE and partners worked in 100 countries to reach 68 million people directly through 1,036 projects and initiatives (CARE Annual Report, 2019).

These examples clearly underscore the critical role CSOs play in supporting the social, economic and political development of nations. This includes work done in research, policy dialogue and advocacy and interventions to promote transformative change globally by addressing underlying causes of poverty or raising new issues and perspectives on issues that bedevil humanity.

However, questions about civil society’s value, legitimacy and accountability are increasing. Reasons for this include:

- As the numbers and influence of CSOs increase, they are attracting greater public scrutiny, leading to calls for greater accountability;
- Recent CSO scandals, such as that of Oxfam whose aid workers in Haiti reportedly engaged in sexual misconduct after the 2010 earthquake, and attempted to cover this up,
- A tough funding climate which has compelled some CSOs to ‘follow the money’ rather than focus on their core mandates as well as
- Money laundering and terrorist financing related concerns.

These and other factors have triggered discussions around legal frameworks for the operation of civil society in many countries and in particular on the African continent.

## 2.0 INTRODUCTION

In spite of the crucial role played by CSOs and the fact that freedom of association, expression and assembly, as recognized in international and regional treaties, provides a legal basis for the protection of CSOs including philanthropic organizations, 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 organizations.

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).

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). Consequently, although Africans are willing to donate for good causes, CSOs and philanthropic institutions in many African countries, including Ghana, 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 organizations (CSOs) in general. This situation persists, even though local funding is clearly an indispensable factor for a resilient civil society and for sustainable development in Africa. Evidently, legal frameworks 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.

To change the current situation, research and education is critical, that is if citizens and civil society in different jurisdictions are to have a better understanding of what has been achieved in nations where legal frameworks are available and the risks that CSOs are exposed to where there is none and if they are to work towards a more effective enabling environment. If civil society is provided with appropriate information, it will be strengthened to more effectively engage with government and other key stakeholders to demonstrate how supporting CSOs to invest in public goods, immensely complements and brings benefits to government. “This is a case where more knowledge, really is more power” and where underscoring the “win-win” rewards, can actually encourage all parties to work towards a more suitable legal framework to govern activities.

It is in this context that the West Africa Civil Society Institute (WACSI) and APN commissioned the assessment of the legal environment for CSOs and philanthropy in Ghana in 2020 and within which STAR Ghana and APN have decided to have the original report updated under the Giving for Change (GfC) program in 2021. The GfC program sets out a bold vision for transforming how “development is done” by focusing specifically on promoting the recognition and importance of domestic resources in increasing local ownership, unlocking agency and strengthening communities’ ability to claim entitlements from different actors, especially government. GfC focuses on 3 interwoven domains: Domain 1: unlock the collective power of local communities, represented by Civil Society Associations (CSAs), community organisations, movements, informal groups and human rights defenders, to express their opinion through community philanthropy, Domain 2: influencing in-country national

state and societal actors (government, emerging philanthropists, individual donors) to support community philanthropy by creating favourable conditions to promote the power of domestic philanthropic giving. as a form and driver of expression of opinion and Domain 3: challenge and change the existing practices of international foundations, INGOs and bi- and multilateral donors in working with southern CSAs, so that they put community philanthropy at the heart of their funding policy and to focus (more) on brokering, diplomacy and technical expertise roles. This revised assessment therefore focuses on updating and rearranging the existing findings of the 2020 Assessment Report of the Legal Environment for Civil Society Organizations (CSOs) including philanthropy support organizations (PSOs) in Ghana;andcaptures new laws or policies that impact the space, incorporates a legal assessment of Fundraising/Resource Mobilization in Ghana and rearranges information into five (5) key policy areas namely: Registration, Taxation, Fundraising, Oversight and Accountability and Policy Engagement, in order to(i) have a good understanding of the legal framework associated with CSOs and philanthropic support organizations in Ghana andto (ii) analyse existing options for how GfC and other actors can engage in Ghana.

## **2.1 Methodology**

The update was done by collecting primary data from (10) key informantsincluding officials of the Ministry of Finance, Bank of Ghana, Ghana Revenue Authority, Financial Intelligence Centre, National Development Planning Commission, Attorney Generals Department, Parliament, Registrar Generals Department and Consumer Protection Unit, In addition secondary data covering 9 new laws and 4 new national policies that could potentially impact activities in the CSOs and philanthropic space was reviewed.

While the original assessment employed the mixed method or pragmatic approach to field research involving combining qualitative and quantitative data to integrate statistics with text allowing for triangulation of the data, (Creswell, 2003), in this instance a purely qualitative approach was utilized. Primary data was collected from eleven (11) key informants targeted as experts from the key stakeholder institutions already indicated. This was adopted as a result of the limited data collection period, which made it challenging to collect sufficient quantitative data.

In the original assessment, 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 prioritization needs of decision makers.

Using qualitative tools according to Patton M.Q. (Patton, 1990) 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 latter tool was adopted as it has been used for similar studies in other African countries and would facilitate comparative studies. Comments repeated or emphasized by at least ten (10%) of respondents

were pulled out for further discussion. The tool originally 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. On this occasion the tool was used to focus on just five (5) key issues areas: (i) Registration, (ii) Taxation, (iii) Government Oversight & Accountability, (iv) Fundraising, (v) Policy Engagement.

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 organizations), 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 as part of the process of developing the initial assessment, 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.

The initial assessment was presented and subjected to validation by forty five (45) stakeholders (Appendix 5) through a workshop and the feedback obtained was incorporated. Ultimately sixteen (16) key CSO informants and thirty-one (31) general CSO respondents representing different organizations across twelve (12) regions of Ghana, participated in the initial assessment (Appendix 2 and Appendix 3). While eleven (11) key public sector informants/experts participated in this subsequent update.

## **2.2 Limitations**

1. Time and resources limited the scope of this assessment update, whereas for the original assessment:
2. Although there were several CSOs, including faith based organizations, foundations etc. engaged in activities that qualify them as philanthropic, very few like the Ghana Philanthropy Forum, formally identify and project themselves as philanthropy organizations and were willing to be interviewed. The concept of philanthropy does not appear to be very well understood or have taken root and been embraced nationally.
3. 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.
4. 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.

### **3.0 FINDINGS**

Various UN and International Declarations, Conventions and Laws, recognize and legitimize 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. These include:

#### **3.1 UN Declarations, Conventions and International Legal Frameworks**

##### **Universal Declaration of Human Rights**

The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly at its third session on 10 December 1948 as Resolution 217 (United Nations, 1948). It is binding on “all countries of the world”, including Ghana. These rights are declared in the document as being “inalienable” and therefore cannot be lost or taken away, even though quite often rights can, and often are, violated. Articles 20 and 23 of the UDHR, state:

##### Article 20

1. Everyone has the right to freedom of peaceful assembly and association;
2. No one may be compelled to belong to an association.

##### Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration, ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

It is in fulfillment of the UDHR, that Chapter 5 of Ghana’s 1992 constitution covers such Fundamental Human Rights and Freedoms. Article 21(1) a- g, (Ghana Constitution, 1992) states that:

##### Article 21:

(1) All persons shall have the right to:

- (a) freedom of speech and expression, which shall include freedom of the press and other media;
- (b) freedom of thought, conscience and belief, which shall include academic freedom;
- (c) freedom to practice any religion and to manifest such practice;
- (d) freedom of assembly including freedom to take part in processions and demonstrations;
- (e) freedom of association, which shall include freedom to form or join trade unions or other associations, national or international, for the protection of their interest;
- (f) information, subject to such qualifications and laws as are necessary in a democratic society;
- (g) freedom of movement which means the right to move freely in Ghana, the right to leave and to enter Ghana and immunity from expulsion from Ghana.

In spite of the UDHR and in particular, Article 21 (1) e of the Ghanaian constitution which highlights the “freedom to form or join trade unions or other associations, national or international, for the protection of their interest”, CSOs have not been supported by the Government of Ghana, to collectively define the kind of unions, associations etc. that protect their interests, and this underscores the current urgent need, to develop a legal framework and environment that facilitates the activities of CSOs in Ghana.

It is noteworthy that Article 71 of the UN charter states that “the Economic and Social Council will make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate national organizations after consultation with the Member of the United Nations concerned”. This has allowed NGOs to support the UN as advisers, observers, monitors, etc. and is worth emulating at the state level.

Three (3) notable insights for the Ghanaian context can be picked from the process of developing the UDHR as well as the UDHR itself:

1. That the American Government through the State Department recognized that there were these other pertinent “associations” within and beyond the public and private sector, with expertise that could offer valuable advice to the American delegation going to the Conference on International Organizations in which the United Nations Charter was drafted. That the US State Department asked and assigned leaders of these associations to act as consultants to the government delegation, with remarkable results in terms of pushing through the UDHR in general and in crafting the chapter on Human Rights in particular.
2. That not surprisingly therefore, in the context of the substantive involvement of “associations” at the time, the freedom to assemble and associate, is clearly enshrined and covered in the UDHR as global rights which all countries must extend to their people. Ghana has reflected this in its constitution and can go further to enhance this through a specific law for CSOs.
3. That the UDHR went on further to recognize and provide these other kinds of “associations”, (including Civil Society Organizations) which are neither governments nor member states a permanent consultative role, leading to greater participation in the UN’s activities. Criteria for recognition, categorization and for participation were therefore established.

A legal framework that identifies, recognizes, harnesses and provides permanent platforms for associations and in our context CSOs to contribute their experience to shaping policy and accelerating development in Ghana will be beneficial for nation building.

Furthermore, international and continental covenants and charters such as the International Covenant on Economic, Social and Cultural Rights, and the African Charter on Human and Peoples Rights place importance on economic rights and freedom of association, which accrue to and support the interests of CSOs worldwide and which have been recognized by the Government of Ghana.

## **International Covenant on Economic, Social and Cultural Rights**

The right of individuals and organizations to freely form and or join any economic group or groups is also guaranteed under Article 8 of International Covenant on Economic, Social and Cultural Rights (ICESCR) (United Nations, 1976), to which Ghana became a signatory on 7th September 2000. It states that;

1. The States Parties to the present Covenant undertake to ensure:
  - a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
  - b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
  - c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
  - d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention

Article 8 clause 1 of the ICESCR underscores the right for different sector groups, organizations or associations to aggregate and form umbrella groupings or trade unions that facilitate their economic rights and interests. This right for sector groups like CSOs to self-determine the nature of the overarching group they will belong to and to function freely except for restrictions relevant to a democratic society is relevant as discussions continue on the need for establishing a legal framework covering the activities of CSOs in the Ghanaian context.

## **African Charter on Human and Peoples Rights (ACHPR)**

Ghana acceded to this charter on 24th January 1989, about 30 years ago. Articles 10, 11 and 15 respectively of the ACHPR (African Union, 1986), state:

### Article 10

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligations of solidarity provided for in Article 29, no one may be compelled to join an association.

## Article 11

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the Safety, health, ethics and rights and freedom of others.

## Article 15

Every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work.

Like the ICESCR, the African Charter also promotes amongst others, freedom of association, freedom of assembly and the right to work.

## **Declaration of Human Rights Defenders**

“Human rights defender” (United Nations, 2004) is a term used to describe people who, individually or with others, act to promote or protect human rights. In some countries individuals and organizations that advocate for and defend human rights concerns are well protected. Unfortunately, in other states, such human rights defenders are at great risk of reprisals. State governments are reportedly more frequently involved in perpetuating such reprisals against human rights defenders than any other actors and this is the primary motivation behind the adoption of the declaration on human rights defenders and the establishment of the mandate of the Special Representative of the Secretary-General on human rights defenders under General Assembly Resolution A/RES/53/144.

Although the Declaration by itself is not a legally binding instrument, it contains a series of principles and rights that are founded on human rights standards as enshrined in other international instruments that are legally binding—such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. There was a consensus adoption of the Declaration by the UN General Assembly, reflecting a very strong commitment by States to its implementation.

The Declaration highlights the need to support and protect human rights defenders in the context of their work. The Declaration emphasizes existing rights in a way that makes it easier to apply them to the activities of human rights defenders. Specifically, it outlines:

- (a) Rights and protections accorded to human rights defenders Articles 1, 5, 6, 7, 8, 9, 11, 12 and 13,
- (b) The Duties of States: Articles 2, 9, 12, 14 and 15 make particular reference to the role of States.
- (c) The responsibilities of everyone: Articles 10, 11, 18, 21 and 22 outline responsibilities for everyone to promote human rights, to safeguard democracy and its institutions and not to violate the human rights of others. Article 11 makes a special reference to particular professions that can affect the human rights of others, and is relevant for police officers, lawyers, judges, etc.
- (d) The role of national laws: Articles 3 and 4 outline the relationship of the Declaration to national and international law, with a view to assuring the application of the highest possible legal standards of human rights.

The relevance of this declaration is the acknowledgement that, often CSOs by nature of their work may find themselves articulating opposing views and opinions to that of the state and therefore there

is a critical need to put in place legislation that protects such Human Rights defenders from partisan political and other interests that may hinder their work. Governments have an important role in understanding the risks that CSOs face and in mitigating the barriers that limit CSO activities. Considering this in developing legislation for Ghana would serve to promote the public good.

### **3.2 Case Studies of Foreign Legal Frameworks covering CSOs**

#### **UNITED KINGDOM**

A case study review of the United Kingdom (UK), shows that in 2011, the U.K Charities Act was enacted, titled Charities Act 2011. The Charities Act (United Kingdom, 2011) seeks among other things to help in:

- the prevention or relief of poverty;
- the advancement of education;
- the advancement of religion;
- the advancement of health or the saving of lives;
- the advancement of citizenship or community development;
- the advancement of the arts, culture, heritage or science;
- the advancement of amateur sport;
- the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- the advancement of environmental protection or improvement;
- the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage;
- the advancement of animal welfare;
- the promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance services;

The Charities Act 2011 defines a charity as a body or trust established for a charitable purpose and provides a benefit to the public. The Act also covers: other purposes that are not captured by these stated objectives, but are recognized as charitable purposes.

Critically the legal framework governing nonprofit organizations (also referred to as nongovernmental organizations or NGOs) in England & Wales, which is a common law, non-federal jurisdiction, has five (5) forms of not-for-profit, nongovernmental organizations (NPOs). These include:

- (i) Company limited by guarantee (including community interest companies [CICs] which can also be incorporated as companies limited by shares),
- (ii) Unincorporated association,
- (iii) Trust,
- (iv) Registered society (formerly known as an industrial and provident society), and (v) Charitable incorporated organization.

Any entity set up as one of these five (5) NPO forms, excluding CICs, can qualify as a charity. This is substantively much better arrangement than what is found in the Ghanaian context where the

Companies Act, 2019 (Act 992) only provides one legal form (company limited by guarantee) to cover all CSOs. This has been a major area of concern.

#### **CANADA**

Canada enacted its “Canadian-Not-For profit Corporations Act” in 2009 and it came into full force in October 2011. The purpose of this Act (Government of Canada, 2011) is to allow the incorporation or continuance of bodies corporate as corporations without share capital, including certain bodies corporate incorporated or continued under various other Acts of Parliament, for the purposes of carrying on legal activities and to impose obligations on certain bodies corporate without share capital incorporated by a special Act of Parliament.

Under the Government of Canada’s, Civil Society Partnerships for International Assistance Policy Implementation Plan, Objective 6 focuses on establishing more “equitable, predictable, flexible and transparent funding mechanisms” for CSOs locally and internationally. (Government of Canada, 2017)

#### **SINGAPORE**

Charities Act was enacted in October, 2007 (original Enactment: 1994). This is an Act (Republic of Singapore, 1994) to make provision for the registration of charities, the administration of Charities and their affairs, the regulation of charities and institutions of a public character, the regulation of fund-raising activities carried on in connection with charities and other institutions and the conduct of fund-raising appeals, and for purposes connected therewith. Regulations for fund-raising activities by CSOs is an important learning point that can be adopted for the Ghanaian context.

Key insights from these foreign case studies which can add value to Ghana’s efforts to develop a legal framework, include:

1. The five (5) different categories of non-profits organizations or non-governmental organizations in the case of England and Wales in the UK, as compared to one broad framework in Ghana which lacks any categories.
2. The provision of equitable, predictable, flexible and transparent funding mechanisms as found in the case of Canada, and
3. The need to have regulations covering fundraising activities in the sector, as noted in the case of Singapore and which is extremely critical for promoting philanthropy in Ghana.

### **3.3 Case Studies of Regional/African Legal Frameworks for CSOs**

#### **UGANDA**

In 2016, the Government of Uganda enacted the CSO law titled “The Non-Governmental Organizations ACT, 2016”. The Act (Republic of Uganda, 2016) seeks among other things to (i) establish an administrative and regulatory framework within which organizations can conduct their affairs. (ii) Promote and require organizations to maintain high standards of governance, transparency and accountability. (iii) Promote the development of strong organizations and to facilitate the formation and effective function of organizations for public benefit purposes. (iv) Promote and strengthen the capacity of the non-governmental organizations sector that is suitable and able to deliver services professionally. (v) Promote the development of self-regulation among organizations. (vi) Provide an enabling environment for organizations. (vii) Promote and develop a charity culture that is voluntary, non-partisan and relevant to the needs and aspirations of the people

of Uganda. This current Act came to replace the previous one which was considered to be restrictive to CSO's operations in Uganda.

The active promotion of self-regulation and a charity culture under this law are areas of interest that the NGO law development process in Ghana can consider.

## **KENYA**

In January 2013, Kenya passed into law a detailed NGO law titled the “Public Benefit Organizations (PBO) Act, 2013”. This repealed the 1990 NGOs Co-ordination Act. Key highlights include: it allows for the existence of different forms of CSOs, provides a framework for Government to partner PBOs at all levels, promotes voluntary self-regulation by PBOs in determining standards, certification and adherence to professional codes of conduct, establishes an independent dispute tribunal to deal with grievances, prescribes minimum governance standards including financial transparency and reporting, and outlines a rigorous process for selecting members of the PBO regulatory body. Between 2013 and 2015, there were reportedly four attempts by Government to amend the PBO Act, 2013, through proposals that were taken to Parliament. Civil society successfully prevented these initiatives by lobbying and engaging in spirited campaigns. Observers indicate that the new law would make it easier for NGOs to operate, if implemented, (USAID, 2019). Unfortunately, as of February 2019, the PBO Act had still not been operationalized through declaring an implementation date. That is even though CSOs have continued to urge the Government to do so. The evidence suggests that Government lacks the political will (ICNL, 2019), and that this unwillingness, is rooted in civil societies active role during the 2007 - 2008 post-election violence, where it campaigned for a resolution that examined not just the immediate causes of violence, but also structural failures that paved the way for the conflict and slide to the brink of civil war. Civil society was instrumental in asking for international mediation and the intervention of the ICC, which the then Presidential candidate Uhuru Kenyatta and ally William Ruto rejected and then mounted an anti-ICC campaign. The Jubilee coalition of these candidates, attacked civil society in its election manifesto, which promised to “Introduce a Charities Act to regulate political campaigning by NGOs, to ensure that they only campaign on issues that promote their core remit and do not engage in party politics”(Tom Lantos Human Rights Commission, 2015). Things were made worse when a civil society organization, the Africa Centre for Open Governance (AfriCOG) filed an election petition in the Supreme Court challenging the process by which Uhuru Kenyatta and William Ruto were declared winners of the elections in 2013. Once the Government was confirmed, it attempted to amend the PBO Act to have fresh registration of all Public Benefit Organizations, to establish a foreign funding cap of 15% etc., which civil society worked to prevent.

Kenya's PBO Act 2013 and its implementation hitches reinforces earlier points, and highlights a number of additional new points of interest. This includes providing a legal framework that facilitates: (i) Partnerships between Government and CSOs at all levels, (ii) establishes an independent dispute resolution mechanism, as well as (iii) creates a rigorous selection process for appointing members of the regulatory body, amongst others. The Kenyan experience also establishes the sensitivities around election related matters and in particular, electoral or voter education initiatives and the real or perceived potential for political campaigning by CSOs and the eventual negative impact on State – CSO relations. It provides a caution that should be considered in other country contexts.

## **SOUTH AFRICA**

South Africa has a CSO law which is known as the “Non-Profit Organization Act, 1997”. The Act (Republic of South Africa, 1997), seeks to (i) encourage and support nonprofit organizations in their contribution to meeting the diverse needs of the population of the Republic by creating an

environment in which nonprofit organizations can flourish, (ii) establish an administrative and regulatory framework within which nonprofit organizations can conduct their affairs, (iii) encourage nonprofit organizations to maintain adequate standards of governance, transparency and accountability and to improve those standards, (iv) create an environment within which the public may have access to information concerning registered nonprofit organizations, (v) and promote a spirit of co-operation and shared responsibility within government, donors and amongst other interested persons in their dealings with nonprofit organizations.

Overtime, this Act was unable to fully provide the enabling legal and regulatory environment for CSOs in South Africa as expected. Areas of weaknesses that were highlighted through a policy summit organized by the Department of Social Development, include: (i) the procedures governing the formation of NPOs, (ii) reporting requirements, (iii) enforcement mechanisms, for example clarifying the roles and responsibilities of different agencies and other stakeholders within the regulatory framework, (iv) lack of transparency and accountability within the sector taking into consideration the diverse nature of the NPOs, as well as the need for promoting self-regulation to increase accountability and transparency. In order to address the latter major concern as well as other issues, the policy summit proposed the formation of a body called South African Nonprofit Organization Regulatory Authority (SANPORA).

Laws and policies are not static and therefore overtime there is a need for structured reviews to keep such frameworks responsive to the needs of citizens and targeted groups. The South African case study in addition to consolidating governance, transparency and accountability, also underscores the value of considering and establishing legal review processes to promote the rights and fulfill the aspirations of citizens.

## **ETHIOPIA**

Ethiopia has recently established a more liberal law to govern CSO activities. The new Organization of Civil Societies Proclamation (CSO Proclamation) was reportedly passed March 12, 2019. It is viewed as being less restrictive than the 2009 legislation it replaces. It allows NGOs more scope for activities, except voter education and political lobbying, as well as to obtain funding from abroad. Registration is still mandatory, and the regulating agency still has powers of investigation.

While the limitations on obtaining funding from abroad in the Ethiopian example, is not aligned with international best practice for promoting the civic space, the limitations on voter education and political lobbying are points worth noting.

At the regional level, Ghana can once again learn from these country experiences in a number of ways:

1. Foremost is the overwhelming evidence of the value of having legal frameworks to streamline and facilitate non-profit or CSO activities.
2. In the case of Uganda, a self-regulatory arrangement was considered in the law, as well as the need to promote and develop an indigenous charity culture.
3. In the Kenyan case study, the Public Benefits Organizations Act 2013, promotes an independent CSO regulatory body, with a rigorous regulatory body membership selection process. The Act also establishes an independent dispute tribunal, provides a more transparent PBO registration process, espouses minimum governance standards for financial transparency and reporting, emphasizes certification and professional codes, and articulates specific ways in which government will support and partner CSOs at all levels. A caution about

- CSOs engaging in voter or electoral education is also highlighted by this country experience and it underscores the value of providing strict guidelines if CSO voter education is allowed.
4. South Africa highlights for us the need to craft a law that enforces adequate standards of governance, transparency and accountability amongst CSOs. A law that promotes reporting and in particular public access to information on CSOs. The CSO law should also encourage government, donors and other interested persons to see nonprofit organizations as partners with a shared responsibility for development and finally the case study emphasizes the need to plan for law reviews after implementation has happened for a while.
  5. In the case of Ethiopia, an interesting point is the fact that the scope of activities specifically excludes certain activities such as political lobbying and voter education, obviously to protect the civil society sector from being tagged, influenced or captured by partisan political interests. This portion of their law aligns with addressing the risks that were observed in the Kenyan experience.

### **3.4 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 a number of 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 Organizations in Development (GAPVOD) “an umbrella civil society organization” 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 out-dated.

### **3.4.1 Current State of the NGO bill**

STAR Ghana and Oxfam provided funding for two (2) experts to review the draft NGO bill (2019), introduced by the current government. They were to do so considering all the previous drafts and the needs of the sector. The experts were to advise and provide a road map on the way forward. However, this process was eventually over run by the urgent need to have a policy in place as outlined by the Inter-Governmental Action Group against Money Laundering in West Africa which had faulted Ghana for failing to comply with Anti-Money Laundering and Counter Terrorism Financing obligations.

To prevent a situation where Ghana became blacklisted, the Non-Profit Organizations policy, directives and secretariat was established in 2020 under the Ministry of Gender, Children and Social Protection (MoGCSP) to cater for the need for Ghana to fulfill its international obligations.

The Attorney Generals Department is still working on the NGO bill, specific timelines within which this process will be completed is uncertain.

### 3.4.2 Key Stakeholders views on the Legal Environment (CHRAJ, Parliament, Social Welfare, CSOs)

Thirty-one (31) CSOs including NGOs, CBOs and Associations across twelve (12) regions of Ghana were interviewed as general respondents using the modified WINGS/INCL tool to assess the Legal Environment. Responses were collated and those that were emphasized or repeated by at least 10% of respondents have been summarized in the following four (4) tables:

**Table 1 – Prioritisation of CSO Issues**

Question No:	Is this an Area of Concern/Challenge?								TOTAL
	YES				NO				
	NGOs	CBOs	ASS	Total	NGOs	CBOs	ASS	Total	
1. CSO Registration	12	5	1	18 (58.1%)	10	1	2	13 (41.9%)	31
2. Govt. Oversight	8	3	2	13 (41.9%)	13	3	1	17 (54.83%)	31
3. Foreign Funding	5	0	0	5 (16.12%)	17	6	3	26 (83.8%)	31
4. International Contacts	1	0	0	1 (3.22%)	21	6	3	30 (96.77%)	31
5. Financial Transactions	3	1	1	5 (16.12%)	19	5	2	26 (83.87%)	31
6. Tax	9	2	0	11 (35.48%)	13	4	3	20 (64.51%)	31
7. Restriction on Policy Engagement	11	2	1	14 (45.16%)	11	4	2	17 (54.83%)	31
8. Formal Spaces for Participation	12	4	3	19 (61.29%)	10	2	0	12 (38.70%)	31
9. Sustainability	21	5	3	29 (93.5%)	1	1	0	2 (6.45%)	31

N = 31

**Table 2 – NGO Specific Concerns/Challenges**

Question No:	Specific Concerns/Challenges
1.CSO Registration	<ul style="list-style-type: none"> <li>■ The process is cumbersome</li> <li>■ There are delays</li> <li>■ The process is expensive</li> <li>■ Social Welfare registration is not legal</li> </ul>
2.Govt. Oversight	<ul style="list-style-type: none"> <li>■ Government does not recognise/care about CSOs</li> <li>■ Often NGOs experience a high level of monitoring by GRA and SSNIT</li> <li>■ There is a low level of interest or monitoring of the activities we implement by Government and its agencies</li> <li>■ Self-regulation is safer than allowing Government to supervise</li> <li>■ An independent body with more CSOs represented than government should be established</li> </ul>
3.Foreign Funds	<ul style="list-style-type: none"> <li>■ No government approval is required to receive foreign funds</li> <li>■ There are delays in the release of foreign funds received by some banks</li> </ul>
4.International Contacts	<ul style="list-style-type: none"> <li>■ NGOs do not experience any challenges related to having international contacts</li> <li>■ If your activities are suspicious then the BNI and other investigative agencies will get involved</li> </ul>
5.Financial Transactions	<ul style="list-style-type: none"> <li>■ The GHS 5000 limit on over the counter withdrawals makes implementing projects/events difficult.</li> <li>■ Twenty (20%) tax for non-Ghanaian resource persons is high.</li> </ul>
6.Tax	<ul style="list-style-type: none"> <li>■ Payment of tax for volunteers is a challenge</li> <li>■ Getting exemptions involves a long bureaucratic process.</li> <li>■ BoG policies have led to our funds being locked in the closed banks</li> <li>■ CSOs should not be taxed at the same level as others</li> </ul>
7.Restriction on Policy Engagement	<ul style="list-style-type: none"> <li>■ It is difficult to access information from public institutions, let alone engage them.</li> <li>■ NGOs are allowed to make inputs during policy engagements, but these inputs are not usually reflected</li> <li>■ The contribution of Smaller CSOs is not usually sort nor considered</li> <li>■ Big CSOs often hijack policy engagement processes</li> </ul>
8.Formal Spaces for Participation	<ul style="list-style-type: none"> <li>■ The SDGs platform exists and it enhances our participation</li> <li>■ Assemblies call us for quarterly review and budget planning meetings</li> <li>■ Government should create regular platforms and bring CSOs on board</li> </ul>

	<ul style="list-style-type: none"> <li>■ Government should indicate what actions they have taken on CSO recommendations in follow up meetings or platforms.</li> </ul>
9.Sustainability	<ul style="list-style-type: none"> <li>■ Government should facilitate more funding opportunities for CSOs</li> <li>■ There is a need for capacity building on fund raising, engaging stakeholders/duty bearers etc.</li> <li>■ Private sector should be able to partner with CSOs in promoting development.</li> <li>■ CSOs need to be more transparent and accountable in their activities and reporting</li> <li>■ The Bank of Ghana should assess the status of financial CSOs</li> <li>■ MMDAs should not only be interested in the physical projects of CSOs but also show interest in projects that focus on behaviour change</li> <li>■ CSOs have vast experience in relation to community based projects and other areas of expertise that government can leverage on</li> <li>■ Government should actively work with CSOs to monitor their activity implementation</li> </ul>

**Table 3 – CBO Specific Concerns/Challenges**

Question No:	Specific Concerns/Challenges
1.CSO Registration	<ul style="list-style-type: none"> <li>■ The registration process is challenging</li> <li>■ The process is expensive so many CBOs have not registered</li> </ul>
2.Govt. Oversight	<ul style="list-style-type: none"> <li>■ We do not want Government interfering in our work. So oversight is not necessary.</li> <li>■ If you are not registered, nobody bothers you. So oversight is not a concern.</li> </ul>
3.Foreign Funding	<ul style="list-style-type: none"> <li>■ There are no challenges with foreign funding so there is no concern or comment.</li> </ul>
4.International Contacts	<ul style="list-style-type: none"> <li>■ There are no challenges with foreign funding so there is no concern or comment.</li> </ul>
5.Financial Transactions	<ul style="list-style-type: none"> <li>■ The banking system is not flexible or tailored to support CSO activities.</li> </ul>
6.Tax	<ul style="list-style-type: none"> <li>■ There should be some tax waivers for CSOs</li> </ul>
7.Restrictions on Policy Engagement	<ul style="list-style-type: none"> <li>■ Policies are top-down, they hardly engage us on policy matters.</li> </ul>
8.Formal Spaces for Participation	<ul style="list-style-type: none"> <li>■ The SDGs platform allows us to participate</li> <li>■ Other similar platforms with government are required.</li> </ul>
9.Sustainability	<ul style="list-style-type: none"> <li>■ Government should stop appointing CSO representatives as board members of state institutions. It can compromise them.</li> <li>■ All the CSO registration and renewal processes should be put online</li> </ul>

**Table 4 – Associations Specific Concerns/Challenges**

Question No:	Specific Concerns/Challenges
1.CSO Registration	<ul style="list-style-type: none"> <li>■ The registration process is cumbersome</li> <li>■ There are delays in the registration process</li> <li>■ We have not registered</li> </ul>
2.Govt. Oversight	<ul style="list-style-type: none"> <li>■ There are no challenges with government oversight so there is no concern or comment.</li> </ul>
3.Foreign Funding	<ul style="list-style-type: none"> <li>■ There are no challenges with foreign funding so there is no concern or comment.</li> </ul>
4.International Contacts	<ul style="list-style-type: none"> <li>■ There are no challenges with international contacts so there is no concern or comment.</li> </ul>
5.Financial Transactions	<ul style="list-style-type: none"> <li>■ There are no challenges with financial transactions so there is no concern or comment.</li> </ul>
6.Tax	<ul style="list-style-type: none"> <li>■ There are no challenges with taxes so there is no concern or comment.</li> </ul>
7.Restriction on Policy Engagement	<ul style="list-style-type: none"> <li>■ We are engaged to an extent on policy issues</li> <li>■ Sometimes the inputs of the CSOs are not reflected after such engagements</li> </ul>
8.Formal Spaces for Participation	<ul style="list-style-type: none"> <li>■ The Assembly invites CSOs for budget reviews</li> </ul>
9.Sustainability	<ul style="list-style-type: none"> <li>■ Youth Associations should be regularly engaged by Local Government to support community mobilisation.</li> </ul>

### 3.4.3 Registration of Civil Society Organizations

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 organizations”. CSOs attributed the cumbersome nature to a lack of adequate coordination and it affects all types of CSOs including philanthropic organizations such as Faith Based Organization, 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, now taken over by the Non-Profits Organizations secretariat and finally they need to get a 4. Tax Identification Number (TIN) from Ghana Revenue Authority (GRA). There is also the issue of annual renewals 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. Decentralization of this service is still an issue and the attempt to introduce online registration in the past has not worked out as well as was expected.

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 organizations, social enterprises, clubs, churches, community projects, membership based organizations 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. In this context, CSOs proposed that Government should consider providing a legal status for social enterprises and hybrid NGOs that conduct some profitmaking activities. 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 prioritization, 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 originally assessed in this study. In appendix 4, the root cause is analyzed as being the absence of a targeted law and the impact of the ensuing lack of registration clarity, was assessed as high.

### 3.4.4 Taxation

CSOs reported that there is little recognition that the goods and services they provide are essentially of a public goods nature. 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 recognized 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 Organizations that give funds to CSOs, because of the public good nature of their services. CSOs emphasized a need for a legal framework that facilitates their ability to mobilize resources in and outside Ghana. They also suggested a need to consider providing tax exemptions/reductions for CSOs who are in good standing and have filed all their returns. 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 recognizes 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 Income Tax Act, 2015 (Act 896) under Section 97, vests the authority to grant approval to an entity as a “Charitable Organisation” for income tax purposes in the Commissioner-General of the Ghana Revenue Authority. Under its Practice Note Number: DT/2016/002, Date of Issue: 6<sup>th</sup> October, 2016, the GRA has indicated that income accruing to or derived by a charitable organisation is exempt from tax. However, the exemption from tax does NOT apply to business income accruing to or derived by the charitable organisation. To qualify for consideration by the Commissioner-General as a Charitable Organisation, an entity must be appropriately registered by the relevant public Agency (e. g. Registrar-Generals Department, Department of Social Welfare, Ministry of Youth and Sports, Environmental Protection Agency etc.) and must be established to operate as a: (i) charitable institution of a public nature; (ii) religious institution of a public nature; (iii) body of persons formed for the purpose of promoting social activities or sporting activities; or (iv) registered sporting club.

In addition, Practice Note Number: DT/2016/003, Date of Issue: 6<sup>th</sup> October, 2016 was issued by GRA to give clarity on the determinants of a worthwhile cause and to provide guidance to taxpayers, tax practitioners, staff of the Ghana Revenue Authority and the general public on the processes and procedures by which a person who makes a contribution or a donation to a worthwhile cause can make a claim for a deduction from the person’s income for such contribution or donation, with specific reference to Sections 2, 97 and 100 of the Act, in order to achieve consistency in the administration of the law

Furthermore, a number of new laws including the Energy Sector Levy (Amendment) Act, 2021 (Act 1064), the Penalty and Interest Waiver Act, 2021 (Act 1065), Income Tax (Amendment) Act, 2021 (Act 1066), the Financial Sector Recovery Levy Act, 2021 (Act 1067), the COVI-19 Health Recovery Levy Act, 2021 (Act 1068), have come on board since 2020 and impact on the CSO space.

The Energy Sector Levy (Amendment) Act, 2021 (Act 1064) has introduced an Energy Sector Recovery and Sanitation and Pollution Levy to be imposed on some specified petroleum products. This will have an indirect effect on the general public and CSOs because an adjustment in the Energy Sector Levy affects the price of fuel, which goes to affect everything else and the poor and the vulnerable bear the brunt of the rippling effect.

The Penalty and Interest Waiver Act, 2021 (Act 1065) seeks to waive penalties and interests that profit making businesses have to pay on their accumulated tax arrears dues to the effects of COVID19 pandemic on businesses. This law may not directly benefit CSOs because they are not for profit organizations. However, CSOs stand to gain some relief indirectly, if the profit making organizations they support or that provide them with good and services for their activities receive these penalty and interest waivers.

Income Tax (Amendment) Act, 2021 (Act 1066) was introduced to provide a rebate to some selected industrial sectors and suspend the quarterly instalment payment by some other categories of taxpayers including self-employed persons etc. The Act was meant to cushion small scale businesses. This in a way will benefit businesses that receive direct and indirect support from CSOs to recover from the shocks of COVID 19.

The Financial Sector Recovery Levy Act, 2021 (Act 1067) was introduced in the wake of the financial sector reforms and has affected the profit margins of financial institutions. Since CSOs interact with the financial services sector for their transactions, this levy may affect them. In addition, some financial sector organizations engage in humanitarian activities either through setting up their own foundations or directly supporting charity works of some not for profit organizations. Therefore, any tax that affect their profit may have a rippling effect on the entities they support.

The COVID-19 Health Recovery Levy Act, 2021 (Act 1068) has been introduced to raise funds from general goods and services as well as imports. The imposition of this tax means that the cost of goods and services and import duties will go up. The Act does not provide any exception for not for profit entities. The introduction of this levy has resulted in an increase in the cost of goods and services which may affect the budget of CSOs making it extremely difficult for them to carry out their activities as planned. Secondly, most CSOs deal with the poor and vulnerable in society and these taxes that affect general good and services also have a direct impact on these groups and by extension affect CSOs who provide support for these groups.

In general, CSOs proposed that Governments need to formally recognize that CSOs complement the state through delivering public goods, adopting a partnerships policy that enables Government to work with CSOs to execute National Development activities at all levels of governance and that Governments should work to reduce bureaucratic processes that impede the work of CSOs as well as consider giving visibility and financial assistance to CSOs.

The root cause of these experiences (Appendix 4, Issue 4) was also identified as gaps in the existing law, which do not appropriately recognize the roles that CSOs play. The impact of this issue was ranked as high.

### 3.4.5 Fundraising

CSOs typically raise funds internationally through writing proposals to development partners and funding institutions and locally through philanthropic businesses, organizations and individuals. Nationalist growth in the West has affected 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 lower middle-income status, in July 2011 and reflected by the World Bank in 2016, coupled with the current Ghana beyond Aid agenda, instituted in March 2018, have further negatively influenced the availability of foreign funding for CSOs in Ghana by sending strong signals that as a country we were becoming increasingly disinterested in receiving foreign aid. This has therefore restricted the opportunities for civil society actors to access funding for their activities in country.

Beyond underscoring that governments in general, have failed to recognize the importance and impact of the civil society sector on the Ghanaian economy, respondents proposed that ultimately, governments need to fashion policies that support their activities. This was proposed in the context that the governments of many developed countries including Norway, Sweden, Denmark, Canada etc. recognize and directly support their civil society sector and in addition provide international development aid to other developing countries including Ghana. Aligned with this, respondents indicated 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 assistance. As a result, engagements and mechanisms to make this possible should be facilitated by government.

In general no restrictions to receiving foreign funding were identified except for the anti-money laundering considerations. Specifically, it is important to note that, Ghana enacted a new Anti-Money Laundering Act, 2020 (Act 1044) on the 29th of December 2020. This Act consolidates previous laws relating to the prohibition of money laundering. Money laundering usually involves **the illegal process of making large amounts of money produced through criminal activities, such as terrorist funding or drug trafficking activities, appear to have been produced from legitimate sources.** The money from the criminal activity is considered dirty, and the process "launders" it to make it look clean.

Act 1044 addresses the gaps in the old Anti Money Laundering Act, 2008 (Act 749) and aligns Ghana's anti money laundering laws with international standards. As a result, the Act has made significant changes to the governance and administrative structure of the Financial Intelligence Centre (FIC); and expanded the scope of unlawful activities and the oversight of accountable institutions and imposes strict sanctions on persons who engage in money laundering. the Act also imposes stringent sanctions for various money laundering infractions in the form of fines and imprisonment, consequently any individual who commits money laundering is now liable on summary conviction to a fine not less than 100% and not more than 500% of the proceeds of the crime, while for corporate entities, a fine of not less than 300% of the proceeds of the crime will be applied.

The law has implications on the sources of funding for CSOs and requires CSOs to be knowledgeable and vigilant about what constitutes an offence and to avoid the offence of money laundering which now includes persons who assist in the commission of any of the unlawful activities described under the Act including the offences of fraud, bribery and corruption, human trafficking, counterfeiting currencies, insider trading, environmental crimes, robbery, piracy, and smuggling, these are areas that CSOs work in.

In general, 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 actually undermine the capacity of CSOs to hold Government accountable, which is not in the best interest of the nation. At the moment, 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.

On the other hand, local fund raising as previously highlighted is low. CSOs and Philanthropists seem to be oblivious in general about the importance of having a legal framework that facilitates philanthropy and unaware about tax exemptions that currently exist for giving to “worthwhile causes” as provided in the GRA policy practice note number: DT/2016/003 and do not appear to be actively pursuing the “charitable organization” status as provided for under GRA policy practice note number: DT/2016/002. Consequently, in spite of the culture of charitable giving in Ghana and the fact that local funding is critical for a resilient civil society and sustainable development, not much local fundraising is happening to support CSO activities. The passage of the Private Members Bill law in 2020 however provides opportunity for civil society to promote and pursue laws that address this.

With regard to whether receiving foreign funding or having international contacts results in greater scrutiny or potential punitive actions from public sector entities, respondents noted that there was no indication that receiving foreign funds or having international contacts, makes one a pariah or becomes a basis for further scrutiny or unwanted visits by Government agencies or representatives. Related to this, key informants noted that the Financial Intelligence Centre (FIC) has developed a banking sector account tracking system to monitor and prevent the use of CSOs to mobilize and transfer funds that are not intended for charitable purposes. An overwhelming 96.77% of interviewees felt that this was not a challenge in the Ghanaian context.

With regard to financial sector arrangements, that could impact fundraising activities, respondents highlighted concerns (Table 2 and Table 3) relating to restrictions on financial transactions including:

- (i) Not being able to cash more than GHS5,000 on a cheque, which makes it difficult for CSOs to organize any events, whose logistical value exceeds this amount;
- (ii) The twenty percent (20%) tax for non-Ghanaian resource persons, affects CSOs 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 or for other logistical needs outside Ghana.

These barriers often result in delays to funds transfers and in some cases foreigners reject work related requests for their services. Impact was assessed as medium.

#### **3.4.6 Oversight & Accountability**

Previously there was no specific comprehensive oversight “supervisory” or monitoring arrangements for the CSO sector in Ghana. Once registered no institution or agency was tasked to monitor what activities were being undertaken and to report on CSO activity, except for the annual reports that

had to be filed with Registrar General and the Social Welfare department. There were no intrusions or inspections and the evidence suggested as respondents noted (Table 2, Question 2), that the CSO sector had not really been a priority for Government in the past, however that is changing and currently since 2020, the Non Profit Organizations Secretariat is a state agency established to take over the registration and monitoring role of the Social Welfare Department and has the responsibility for regulating and empowering the NPO sector in Ghana. It has been established under the auspices of the Ministry of Gender, Children and Social Protection and in the context of the Non-Profit Organizations Policy 2020 and the Non-Profit Organizations Directives 2020. In addition, the Attorney General's department is working on a draft Non-Profit Organizations bill which will further address issues in the CSO space. Community, National and International Non-Profit Organizations are required to register with the secretariat and be formally licensed to operate.

With over 30,000 limited by guarantee registrants reported by the Registrar General's department in 2017 and with over 8000 of these originally registered with the Social Welfare Department, the new NPO office has its monitoring work seriously cut out and will need to very well resourced.

As noted earlier, the Inter-Governmental Group against Money Laundering and the Financial Intelligence Centre emphasized 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 triggered the strong interest in developing the Non-Profit Organizations Policy, 2020 and in crafting the Non-Profit Organizations bill which is being sponsored by the Ministry of Gender, Children and Social Protection.

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.

Another important intervention, in the context of oversight and accountability of CSOs, is the Data Protection Commission established in January 2020 which then launched a new registration and compliance software based on the Data Protection Act, 2012. This piece of legislation was enacted by the Parliament of the Republic of Ghana to protect the privacy and personal data of individuals. It is expected to regulate the way personal information is obtained, kept, utilized or disclosed by persons who control data and those who process same. It does so by requiring such data controllers or processors to comply with specific data protection principles. Non-compliance with provisions of the law attracts either civil liability or criminal sanctions or even both, depending on the kind of infraction. The law establishes a Data Protection Commission responsible to ensure compliance with its provisions and to keep the Data Protection Register. It is mandatory for institutions including CSOs who collect any form of data to register with the commission and to pay a fee every 2 years varying from GHS 120, through GHS 900, to Ghs1800.00. The actual amount is dependent on the number of staff and the kind of data they collect, etc. In addition, institutions are required to have a data protection policy in place and this must align with the 8 data protection principles of accountability, lawfulness of processing, specification of purpose, compatibility of further processing with purpose of collection, quality of information, openness, data security safeguards, and data subject participation.

Compliance means that CSOs will have to spend money on registration, policy development and on training staff.

In respect of level of prioritization, 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 comprehensive oversight was analyzed as being the lack of a law, and the impact ranked as high under Appendix 4, Issue 2.

### **3.4.7 Policy Engagement**

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 decentralizing 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 organizations, 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 policy engagement platforms was ranked as the second priority concern by 61.2% of Civil Society respondents. The root cause was analyzed (Appendix 4, form 5) as being poor implementation of the existing laws. Comments made include: “Government should create regular policy engagement 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 policy engagement platforms, channels and spaces being facilitated by government. This is something that the newly established Non-Profit Organizations secretariat can take up. Ultimately this interest is targeted at delivering substantive results for Ghanaians.

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 policy 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 far 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 policy engagements 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”. The impact of a lack of permanent and regularly held policy engagement/ participation platforms was ranked as high (Appendix 4, form 5).

#### **4.0 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. 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 the proposed NPO bill.
3. In addition, from the case studies of legal frameworks in other jurisdictions, the eventual NPO/CSO bill should:
  - Cater for different categories or types of non-profits organizations including hybrids and social enterprises.
  - Provide transparent funding mechanisms
  - Promote philanthropy and the indigenous charity culture
  - Include regulations governing fundraising activities
  - Establish an independent CSO regulatory body
  - Ensure a harmonized 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 campaigning activities
4. To have the priority issues listed in 3 adequately dealt with in the law, CSOs should engage constructively and regularly with the Ministry of Gender, Children and Social Protection which is the sector ministry sponsoring the NPO bill and the NPO secretariat.

5. The NPO secretariat should also consider facilitating regular policy engagement and compliance platforms bringing on board the Tax Policy Unit of Ministry of Finance as well as the FIC and other key stakeholders to support activities in the CSO space including providing education on new laws, such as the anti-money laundering, data protection laws and on tax waiver provisions etc.
6. To phase how the identified priority issues are tackled, Appendix 4 part 2 has a priority matrix categorizing 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.
7. 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.
8. To address policy engagement 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 policy engagement/ participation platforms for CSOs to contribute their experience to shaping policy and accelerating development in Ghana.
9. 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.
10. It is evident that introducing and promoting structured philanthropy through the proposed NPO bill, which will cater for CSOs as well as reflecting this in other key laws and policies would greatly benefit the Ghana beyond Aid agenda.
11. CSOs should also seize the opportunity to advocate in support of the Corporate Social Responsibility (CSR) Bill and in particular encourage other tax incentives for corporate and other entities to channel funds to social and public causes.

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**APPENDIX 1 - NEW SOURCES OF INFORMATION (2021)**

AREA	NO:	LAW/POLICY
REGISTRATION	1	The Anti-Money Laundering Act 2020 (Act 1044)
	2	Cybersecurity Act 2020 (Act 1038)
	3	Corporate Insolvency and Restructuring Act 2020 (Act 1015)
	4	Securities and Exchange Commission Corporate Governance Code 2020
	5	Ghana's Digital Services and Payments Platform 2021
TAXATION	1	Penalty and Interest Waiver Act, 2021 (Act 1065)
	2	COVID-19 Health Recovery Levy Act, 2021 (Act 1068)
	3	Financial Sector Recovery Levy Act, 2021 (Act 1067)
	4	Energy Sector Levy (Amendment) Act, 2021 (Act 1064)
	5	Income Tax (Amendment) Act, 2021 (Act 1066)
OVERSIGHT & ACCOUNTABILITY	1	The Data Protection Commission established in January 2020 launched a new registration and compliance software and announced an amnesty in October 2020.
POLICY ENGAGEMENT	1	The introduction of opportunities for Private Member Bills in parliament
FUND RAISING/ RESOURCE MOBILIZATION	1	Bank of Ghana Policy on Crowdfunding 2020

**APPENDIX 5 - TARGETED STAKEHOLDER INSTITUTIONS& RESPONDENTS (2021)**

NO:	INSTITUTION	NAME	Title	Contact
1	Attorney Generals Department	Godfrey Dame	Attorney General	Available
2	Attorney General's Department	Mavis Amoah	Chief State Attorney	0244420040
3	Attorney General's Department	Frederica Illiasu	Chief State Attorney	0244643936
4	Ministry of Finance	Michael Ayesu	Coordinating Director	0501322681
5	Ministry of Finance	Wonder Adetor	Senior Economist	0264383253
6	Ministry of Finance	Daniel Nuer	Head of Tax Policy Unit	0244180880
7	Bank of Ghana	Kwame Oppong	Head of Fintech	0555550726
8	Data Protection Commission	Hilda Odua Sowah	Accreditation & Certification Officer	0203842488
9	Parliament	Sena Atsu	Deputy Director - Legislative Drafting Unit, Office of Legislative Drafting & Legal Services	0201785064
10	National Development Planning Commission	Jonathan Azasoo	Director and Head Development Planning	0244763067 0264763067

11	Financial Centre	Intelligence	Emil Meddy	Compliance Officer	0244230934
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**APPENDIX 2: ISSUES ANALYSIS**

**PART 1 ISSUE FORM # 1 REGISTRATION**

Describe the issue.	1.1 Registration of CSOs in Ghana involves multiple steps, generally described as cumbersome. 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 now Non Profits Organizations Secretariat and finally need to get a 4. Tax Identification Number (TIN) from Ghana Revenue Authority. There is also the issue of annual renewals that CSOs have to contend with. The renewal process begins at the District, through the Regional to the National level. Many of the smaller CSOs and those in rural areas do not have the resources to go through the process successfully
Is the root of the issue in the text of the law or in the way the law is implemented?	2.1 The root is the lack of a law to streamline the process, detailing what is required and who is responsible to make it better coordinated, deliver world class service standards and ultimately provide less expensive services to CSOs.
Describe the impact, including the severity of the impact, of this issue.	3.1 The impact is that CSOs including Philanthropy organizations, (i) Spend a long time running around to get registered, it also results in (ii) Registration being expensive and (iii) Many CSOs operating without a legal status. Often smaller CSOs in remote areas are not financially capable of spending resources to follow through the renewal process in particular from the district level, through regional to the national level. The impact is high.
How does this issue affect philanthropy organizations? Does this overlap with the interests of other CSOs?	4.1 Philanthropy organizations including Faith Based Organizations (FBOs), Community Foundations and Corporate Organizations are affected, because they are CSOs themselves and other CSOs they expect to fund or build capacity for, spend a lot of time to get their certification sorted out and this negatively impacts their philanthropy activities.
Who might be interested or invested in addressing this issue?	5.1 All types of CSOs (grassroots organizations, umbrella organizations, service provider organizations, advocacy organizations, and philanthropy organizations), populations that rely on CSOs for services, legislators from areas that rely on CSOs to conduct services, local government officials in areas that rely on CSOs to conduct social services, and the registration authority that process re-registration requests.

Is this issue linked to other types of repression in the overall environment?	6.1 The cumbersome registration process is not linked to any repression in the overall Ghanaian environment at the moment.
Have there been previous efforts to address this? If so, what happened? Has anything changed?	7.1 Yes there have been previous efforts to address registration, most were unsuccessful till recently when at least the Non-Profits Organizations Policy 2020 was passed. Currently there is also a renewed effort to address this through on-going efforts to produce a Non-Profit Organizations law.
Are there particular features of the local or national environment to consider?	8.1 8.2 The global COVID 19 pandemic and its impact on social and economic situations that affect citizens and the need to facilitate actions by CSOs that largely help to reduce its negative impact.

**PART 1 ISSUE FORM # 2 OVERSIGHT**

Describe the issue.	2.1 There is no specific law providing comprehensive oversight and detailing processes and monitoring arrangements for the CSO sector, although a Non Profits Organization Policy was recently established in 2020. Currently the Non-Profit Organizations secretariat has been tasked with registration and some monitoring of CSOs, but CSOs still find the processes as cumbersome. This is a result of the lack of a comprehensive Legal Framework for oversight and monitoring.
Is the root of the issue in the text of the law or in the way the law is implemented?	2.2 The root is a lack of an existing law to provide oversight in a manner that facilitates and nurtures the growth of the CS sector in Ghana. So the text of the law itself is not available.
Describe the impact, including the severity of the impact, of this issue.	3.2 The impact is that there is lack of clarity on what is required for CSOs to be compliant and there is disagreement amongst parties on what constitutes the Registration process in Ghana. The impact is rated as high.

<p>How does this issue affect philanthropy organizations? Does this overlap with the interests of other CSOs?</p>	<p>4.2 The lack of a Legal Framework for Oversight affects the legal status and credibility of CSOs including Philanthropy organizations as well as organizations that ordinarily could have been supported by Philanthropy Organizations. It limits the ability of Philanthropy Organizations to work with CSOs, particularly if there is a dispute on their status.</p>
<p>Who might be interested or invested in addressing this issue?</p>	<p>5.2 All types of CSOs, the Registrar General's department, the Not for Profit Organizations Secretariat, the Ministry for Gender, Children and Social Protection, the National Security, the Financial Intelligence Centre, Attorney General's Department, MMDAs</p>
<p>Is this issue linked to other types of repression in the overall environment?</p>	<p>6.2 The absence of oversight or a comprehensive oversight &amp; monitoring arrangement has been linked to the cancellation of Tax Waivers, which some CSOs consider as unfortunate and repressive.</p>
<p>Have there been previous efforts to address this? If so, what happened? Has anything changed?</p>	<p>7.2 Yes there have been previous efforts to address Oversight or having an Overarching Legal Framework which were unsuccessful because the policy development processes came to a standstill. Currently there is a renewed effort to establish a Non Profit Organizations law. A policy in this regard was established in 2020.</p>
<p>Are there particular features of the local or national environment to consider?</p>	<p>8.2 The global COVID 19 pandemic and its impact on social and economic situations that affect citizens and need to facilitate actions by CSOs that largely help to reduce its negative impact.</p>

**PART 1 ISSUE FORM # 3 TAX**

Describe the issue.	1.3 An apparent lack of adequate Tax Reliefs. CSOs reported that there is little to show that their work is essentially public goods. At the moment, everything that NGOs 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 recognized as partners in development and receive some tax waivers.
Is the root of the issue in the text of the law or in the way the law is implemented?	2.3 The root of the issue lies in poor education on existing Tax Laws and waivers as well as the lack of a comprehensive one stop shop philanthropy law that captures all the potential benefits exhaustively. Unfortunately, revenue collection agencies do not recognize the work of CSOs as public goods which complement Governments efforts and therefore are unwilling to grant them tax waivers.
Describe the impact, including the severity of the impact, of this issue.	3.3 The impact is that resources that would otherwise be available for CSOs to reinvest in providing public goods and services are spent and lost to the sector. The impact is high.
How does this issue affect philanthropy organizations? Does this overlap with the interests of other CSOs?	4.3 The lack of knowledge on and failure to take advantage of existing Tax reliefs, and failure to publicize such waivers, negatively affects the services of both Philanthropy organizations and other CSOs, who are unwilling to expend their resources when it will be taxed.
Who might be interested or invested in addressing this issue?	5.3 All types of CSOs, CSO coalitions and alliances, the Bank of Ghana, the Ministry of Finance, the Ghana Revenue Authority, Financial Intelligence Centre, Banks in Ghana, NPO Secretariat, Parliament,
Is this issue linked to other types of repression in the overall environment?	6.3 Some respondents noted special audits that the GRA sometimes suddenly decides to conduct and often this appears to have targeted CSOs that are vocal on policy issues.
Have there been previous efforts to address this? If so, what happened? Has anything changed?	7.3 There were some general discussions held on the issue of special audits led by GAPVOD but no concrete collective actions have been taken.
Are there particular features of the local or national environment to consider?	8.3 The global COVID 19 pandemic and its impact on social and economic situations that affect citizens provides a strong context for why Government should partner and support CSOs to continue to deliver relief. The passage of the Private Members Bill law, affords a unique opportunity for civil society to work with legislators to get various laws in place.

**PART 1 ISSUE FORM # 4 FUNDRAISING**

Describe the issue.	1.4 Unlike other jurisdictions where a well-defined philanthropy law, establishes processes to be followed and benefits to be gained that facilitate local fundraising and enable CSOs to easily receive and benefit from charitable groups and organizations as well as individuals keen on given to specific causes, Ghana does not have a comprehensive law covering local fundraising.
Is the root of the issue in the text of the law or in the way the law is implemented?	2.4 The root of the issue lies both in the lack of a comprehensive law covering fundraising and philanthropy.
Describe the impact, including the severity of the impact, of this issue.	3.4 The impact is high, the capacity of CSOs to sustain themselves depends very much on their ability to engage in local fundraising. A well defined legal framework would greatly facilitate resource mobilization for CSOs.
How does this issue affect philanthropy organizations? Does this overlap with the interests of other CSOs?	4.4 The lack of a legal framework to facilitate fundraising and philanthropy affects Philanthropic organizations engaged in funding and resourcing CSOs, as well as affect CSOs in general.
Who might be interested or invested in addressing this issue?	5.4 All types of CSOs, the Bank of Ghana, the Ministry of Finance, the Ghana Revenue Authority, Financial Intelligence Centre, Banks in Ghana, NGO bill Secretariat, the proposed regulatory body for CSOs.
Is this issue linked to other types of repression in the overall environment?	6.4 The barriers to financial transactions are not linked to any types of repression in the overall environment.
Have there been previous efforts to address this? If so, what happened? Has anything changed?	7.4 No known previous collective efforts to address the issue of barriers to financial transactions with Government was captured during the research work.
Are there particular features of the local or national environment to consider?	8.4 The global COVID 19 pandemic and its impact on social and economic situations that affect citizens provides a strong context for why Government should partner and support CSOs to continue to deliver relief. The passage of the Private Members Bill law, affords a unique opportunity for civil society to work with legislators to get various laws in place.

**PART 1 ISSUE FORM # 5 POLICY ENGAGEMENT**

Describe the issue.	1.5 There are reportedly hardly any formal regular platforms for policy engagement or participation. The Government of Ghana, its Ministries, Departments and Agencies engage CSOs generally in discussions on some thematic areas. That is, as and when they deem this necessary and often these efforts are tokenistic and not driven by an understanding that MDAs as well as 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. When CSOs are invited to participate, contributions are often not implemented.
Is the root of the issue in the text of the law or in the way the law is implemented?	2.5 The root is in the implementation of the law, where MDAs and MMDAS do not recognize or fulfill the law or their obligation to establish permanent platforms for CSO participation and policy engagement..
Describe the impact, including the severity of the impact, of this issue.	3.5 The impact is that the nation does not benefit from the research, knowledge and skills of the CSO sector in a coherent and consistent manner, as would be ideal. The impact is high.
How does this issue affect philanthropy organizations? Does this overlap with the interests of other CSOs?	4.5 The lack of permanent participation or policy engagement platforms makes it difficult for the views and concerns of CSOs and philanthropy organizations to be heard. This overlaps with the interest of other CSOs as well.
Who might be interested or invested in addressing this issue?	5.5 All types of CSOs, CSO coalitions and alliances, Inter-Ministerial Coordinating Committee, Attorney Generals Department, Parliament, National Development Planning Committee, Ministry of Finance, Ghana Revenue Authority
Is this issue linked to other types of repression in the overall environment?	6.5 The lack of Permanent Participation Platforms for regular engagement is not linked to any types of known repression in the overall environment?
Have there been previous efforts to address this? If so, what happened? Has anything changed?	7.5 No known previous collective effort to address the issue of a lack of permanent participation platforms with Government was recorded.
Are there particular features of the local or national environment to consider?	8.4The global COVID 19 pandemic and its impact on social and economic situations that affect citizens and the need to facilitate actions by CSOs that largely help to reduce its negative impact. The passage of the Private Members Bill law, affords a unique opportunity for civil society to work with legislators to get various laws in place.

**PART 2 – PRORITY MATRIX**

	<b>SHORT-TERM</b> <i>May be addressed relatively quickly and with limited complications, for example through education and dialogue</i>	<b>MEDIUM-TERM</b> <i>May require additional time and be more complex to address, for example through changes to administrative guidance</i>	<b>LONG-TERM</b> <i>May require significant time and be quite complex to address, for example through changes in the legal framework</i>
<b>HIGH PRIORITY</b> <i>Very seriously impacting the operation of civil society</i>	<p>The Lack of education on existing Tax Reliefs, very significantly affects the operations and sustainability of civil society.</p> <p>The NPO secretariat is in a position to create platforms for the tax policy unit of Ministry of Finance to educate its members. Engaging stakeholders to get a resolution can involve additional time.</p>	<p>The cumbersome Registration process for CSOs and Philanthropy Organizations, significantly impacts CSOs operations and could require time to resolve.</p> <p>The lack of Government Oversight/a comprehensive legal framework, affects the categorization and operations of CSOs. The NPO law can cater for this but may require additional time to complete.</p> <p>The need to encourage government to have a more comprehensive law that facilitates resource mobilization/ local fundraising by civil society actors and acts of philanthropy may require additional time. There is opportunity to take advantage of a Private Members Bill (PMB) now to do this.</p>	
<b>MEDIUM PRIORITY</b> <i>Significantly impacting the operation of civil society</i>		<p>The lack of Permanent Platforms for CSO Policy Engagement /participation, greatly affects the work of CSOs, making it necessary for them to constantly fight to be heard or to get results on issues of public importance, which should not be the case. Engaging MDAs and MMDAs to fulfill the law could take some time.</p>	
<b>LOW PRIORITY</b> <i>Impacting the operation of civil society</i>			

### PART 3 - Registration

DESCRIBE THE ISSUE: - CSOs have to follow a very cumbersome and lengthy process for Registration.

Potential Changemaker or Ally	Power to Influence	Degree of Interest	Extent Knowledge of	Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Legislators from areas that rely on CSOs to extend social services	High	High	General understanding of the problem, but do not know details	Provide stories and data from CSOs and affected individuals in their area; provide	Relationship with grassroots organization in relevant districts; Contacts with	Relationships with and trust of legislators; Hard data and concrete stories from CSOs	7
Non Profit Organizations Secretariat	High	High	Deep understanding of the problem, because they are at the heart of it.	Keeping the unit in the loop on efforts to get the process simplified	There is a strong relationship between the current Leadership at the NPO secretariat & Civil Society	Reports from CSOs on how this has affected them	7
Attorney Generals Department	High	High	General understanding of the challenge at hand.	Briefing Session with hard evidence to explain the situation	Contacts with Attorney Generals	Relationships with and trust of legislators; Hard data and concrete stories from affected CSOs etc	7

### PART 3 –Oversight & Accountability

DESCRIBE THE ISSUE: There is no specific law providing comprehensive oversight and detailing processes and monitoring arrangements for the CSO sector, although a Non Profits Organization Policy was recently established in 2020.

Potential Changemaker or Ally	Power to Influence	Degree of Interest	Extent of Knowledge	Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Ministry of Gender Children and Social Protection	High	High	Very Good understanding of problem,	Provide stories and data from CSOs and affected individuals in their area	Relationships with grassroots organizations in relevant districts; Contacts with Ministry	Relationships with and trust of legislators; Hard data and concrete stories from	7
Non Profit Organizations Secretariat	Medium	High	Deep understanding of the problem, because they are at the heart of it.	Keeping the Secretariat in the loop on efforts to get the process Simplified	There is a strong relationship between the current Leadership of the NPO secretariat and Civil Society	Reports from CSOs on how this has affected them	9
Attorney Generals Department	High	High	Deep understanding of the challenge at hand.	Briefing Session with additional information to explain the situation	Attorney General' has already shown an interest in this matter	Reports on the work done and way forward	7

### PART 3 - Fundraising

DESCRIBE THE ISSUE: 1.4 Ghana lacks a well-defined philanthropy law, that facilitates local fundraising and enables CSOs to easily receive and benefit from charitable individuals, groups, and organizations.

Potential Change maker or Ally	Power to Influence	Degree of Interest	Extent of Knowledge	Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Ministry of Finance	High	High	General understanding of the problem, but may not be aware of the level of the impact	Provide in depth information/report with examples of the impact	There is a Deputy Minister assigned to supervise the passage of the NGO bill. That is an Opportunity	Credible reports and evidence from CSOs on how this has affected them	7
Private Sector Association of Ghanaian Industries, Private Enterprise Foundation	High	High	Deep understanding of the challenge at hand.	Engagement with these groups with hard evidence to explain the situation and to get their by in and agree on a way forward	Private Sector is generally experiencing the same situation and that provides opportunity	Evidence of the impact, which they are also experiencing	9

**PART 3 - Tax**

DESCRIBE THE ISSUE: 1.3 An apparent lack of adequate Tax Reliefs. CSOs reported that there is little to show that their work is essentially public goods and so everything they bring in is taxed. Similar Philanthropy Organizations are affected.

Potential Change maker or Ally	Power to Influence	Degree of Interest	Extent of Knowledge	Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Ministry of Finance	High	High	General understanding of problem, but do not know details	Provide stories and data from CSOs and Philanthropy Organizations; provide examples of laws in other countries that support the CSO sector and Philanthropy Organizations.	Relationship/engagement with the Deputy Minister	Relationships with and trust of legislators H; and data and concrete stories from CSOs	5
Ministry of Gender Children & Social Protection	Medium	High	General understanding of problem, but do not know details	Provide stories and data from CSOs and Philanthropy Organizations; provide examples of laws in other countries that support the CSO sector and Philanthropy Organizations.	Relationships with CSOs	Credible Reports on how this has affected CSOs	7
Legislators whose areas are serviced by CSOs etc	High	High	General understanding of the challenge at hand.	Provide stories and data from CSOs and Philanthropy Organizations; provide examples of laws in other countries that support the CSO sector and Philanthropy Organizations	Relationships with CSOs	Credible Reports on how this has affected CSOs	9

## PART 3 – Policy Engagement

### DESCRIBE THE ISSUE:

1.5 There are reportedly hardly any formal regular platforms for CSO policy engagement or participation. The Government of Ghana, its Ministries, Departments and Agencies engage CSOs generally in discussions on some thematic areas. That is, as and when they deem this necessary

Potential Changemaker or Ally	Power to Influence	Degree of Interest	Extent of Knowledge	Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Legislators from areas that rely on CSOs to extend social services	High	High	General understanding of problem, but do not have enough information	Briefing on the constitutional requirements, the Popular Participation Policy Framework and examples from other jurisdictions.	Relationships with grassroots organizations in relevant districts; Copies of the Popular Participation	Relationships with and trust of legislators; Hard data and concrete examples of benefits to be gained.	7
Public Sector Commission	Medium	High	General understanding of problem, but do not have enough information	Briefing on the constitutional requirements, the Popular Participation Policy Framework and examples from other jurisdictions.	Copies of the Popular Participation Framework Policy for Ghana and examples from other jurisdictions	Reports from CSOs on how will benefit them.	7
Inter-Ministerial Coordinating Committee	High	High	General understanding of the challenge at hand.	Briefing on the constitutional requirements, the Popular Participation Policy Framework and examples from other jurisdictions.	Copies of the Popular Participation Framework Policy for Ghana and examples from other jurisdictions	Hard data, copies of the constitution and policy framework and concrete example of benefits to be gained.	7

**APPENDIX 8****PARTICIPANT LIST**  
**Validation Workshop - Assessment of the Legal Environment for CSOs & Philanthropy in Ghana**

No:	FIRST NAME OF PARTICIPANT	SURNAME OF PARTICIPANT	ORGANIZATION	TYPE OF INSTITUTION / ORGANIZATION
1	Nana Asantewa	Afadzinu	West Africa Civil Society Institute	CSO
2	Chamrid	Kpadonou	West Africa Civil Society Institute	CSO
3	Omolara	Balogun	West Africa Civil Society Institute	CSO
4	Jimm	Fomunjong	West Africa Civil Society Institute	CSO
5	Nana Ekua	Awotwi	West Africa Civil Society Institute	CSO
6	Jennifer	Donkoh	West Africa Civil Society Institute	CSO
7	Hadi	Alhassan	West Africa Civil Society Institute	CSO
8	Christian	Elongue	West Africa Civil Society Institute	CSO
9	Nancy	Kankan Kusi	West Africa Civil Society Institute	CSO
10	Karen	Chalamilla	Africa Philanthropy Network	Network
11	Karen S.	Sai	Institute for Democratic Governance	NGO
12	Ugonna	Ukagwe	CSO's PLATFORM Secretariat On SDGs	NGO
13	Annabelle	Azu	Gender Centre	NGO
14	Josiane	Sombo	West Africa Network for Peace-Building	NGO
15	Alima	Toure	Heart First Aid Africa	NGO
16	Walter	Mawuli Gle	Community Focus Foundation Ghana	NGO
17	Eben	Botchway		CSO
18	Ben	Ocra	Ghana Philanthropy Forum	NGO
19	Selorm	Segbedzi	Alpha Primus	Consultancy
20	Ivy	Antwi	Youth Bridge Foundation	CSO
21	Gloria	Hiadzi	Ghana Independent Broadcasters Asscn.	CSO
22	Gloria	Dei-tutu	Society For Women & Aids In Africa	NGO
23	Millicent	Boatsi	Netright	NGO
24	Priscilla	Asamani	YES-Ghana	NGO
25	Richard	Opoku	Special Attention Project	CSO

26	Frank B	Dankwa	Ghana Association of Private Voluntary Organizations in Development (GAPVOD) h	Platform
27	Dominic	Kulariba	Curious minds	CSO
28	Kingsley	Amoah	Defence Network for Democracy	CSO
29	Moses A.	Mireku	African Youth Improvement Foundation	NGO
30	Amin	Larry	Youth Movement for African Unity	NGO
31	Ethel Anne	Komlaga	Center for Transformational Leadership in Africa	INGO
32	Samuel	Harrison Cudjoe	Ghana Anti-Corruption Coalition	NGO
33	Korsi	Senyo	African Centre for Peacebuilding	NGO
34	Frederick	Ofori	GFD	NGO
35	Akushika	Quarshie	Women and Children Network Development Foundation	NGO
36	Kwadwo	Owusu	Christian-Aid	NGO
37	Vitus Adaboo	Azeem	Bongo Soe Famabase (BSF) consult	NGO
38	Rebeca	Duah	ABAK Foundation	CSO
39	Hamza	Tijani	OXFAM	INGO
40	Kofi	Owusu Amankwah	CSO's PLATFORM Secretariat On SDGs	NGO
41	Stigmata	Tenga	Africa Philanthropy Network	Network
42	Sitsofe	Ansi	Women, Media and change	CSO
43	Adjoa	Sarkwah	OXFAM	INGO
44	Samuel Thompson	Essel	Satessel	Consultancy
45	Wilma	Osei	Third World Network -Africa	NGO