

RAO CONVENTION 2007

ACHIEVING AN ENABLING LEGISLATION AND REGULATORY FRAMEWORK FOR NGOs/CSOs

AN AGENDA FOR GOOD GOVERNANCE IN GHANA'S FOURTH REPUBLIC

Concept Note

Background

The Government of Ghana in 1993 attempted to introduce an NGO bill to regulate NGOs/CSOs which was found to be unfavourable for the effective functioning and growth of NGOs/CSOs in the country. Consequently, the bill was withdrawn. In 2000, Government collaborated with NGOs/CSOs through a series of workshops, seminars and meetings to produce a policy document – *Draft National Policy for Strategic Partnership with NGOs/CSOs* – to regulate NGO activities in the country. The first document was released in 2000 and revised in 2004.

At a joint meeting, between NGOs/CSOs, the Ministry and the Legislative drafter from the Attorney General's Department, it was agreed that the *Draft National Policy for Strategic Partnership with NGOs/CSOs* would form the basis for sections of the law related to NGOs/CSOs. In 2006, the Government introduced a *Trust Bill* which included the regulation of NGOs/CSOs. Numerous organizations came together under the platform of the Ghana Association of Private Voluntary Organizations in Development (GAPVOD) and wrote to the Ministry expressing concerns about including NGOs/CSOs within the Trusts Bill. The Government, however, went on to further formulate the *Draft NGO Policy Guidelines 2007* document, which is meant as subsidiary legislation for the Trust Bill. This, combined with the President's mention of passing this legislation in the last State of Nation Address, affirms Government's determination to have the law passed in its present state despite NGO/CSO concerns.

In view of these developments, on 11th May 2007, the concerned NGO/CSO sent another letter to the Ministry requesting a hold on the process, while the community reviews the policy guidelines in detail and builds broad consensus on their position. They group further submitted an NGO Joint Position Paper in June 2007. The current draft has been considered by the Ministry's technical committee but the Ministry is yet to share its views with the NGO community. Meanwhile, there are obvious signs that the government wishes to lay the bill before Parliament when it resumes on the 23rd of October this year.

Concerns about the Trust/NGO Bill 2006 and the NGO Policy Guidelines 2007

The principal flaws with the current drafts of Trust/NGO Bill 2006 and the NGO Policy Guidelines 2007 have been identified as follows:

1. Current drafts undermines NGO autonomy and violates the constitutional right to freedom of association

This is manifested among others, in the excessive powers granted to the Trust Commission Board under clause 15 of the bill to register or deregister NGOs as well as the unfettered discretion to investigate NGOs when it is expedient to do so and in the public interest. Further, the Trust Commissioner can fill NGO management vacancies when they become unoccupied. Other provisions in the draft regulations also grants powers to the Ministry to approve NGO projects and determine the deployment of capacity building resources allocated to NGOs.

2. The coupling of Trust and NGO Legislation in the current draft will place onerous duties on NGOs that have a real likelihood of stifling NGO contribution to democracy and national development.

At a superficial level there is a nexus between NGOs and Trust but the principles of common law trusts as has developed under English law is not akin to NGO fiduciary duties. The end result of treating an NGO as a trust is to subject the operation of an NGO to onerous duties that will stifle NGOs and severely restrict their ability to contribute to the development agenda. The coupling of these two constructs becomes even more problematic when the bill artificially operationalises the merger by applying trust provisions to NGOs. Further, this artificial coupling of trust and NGO constructs has rendered the bill substantially and administratively biased towards trusts and creates an inherent administrative and oversight weakness. For example, this bias is reflected in the fact that apart from clauses 9-13 deal with specifically NGOs/CSOs; the rest of clauses from 14-117 deals substantially with Trusts with very few passing references to NGOs/CSOs. Even the chief administrator is conveniently referred to as the Trust Commissioner.

3. Narrow conceptualization of NGOs/CSOs undermines the principles of recognition and collaboration agreed upon under the *Draft National Policy for Strategic Partnership with NGOs/CSOs 2004 Revised*

The provisions of the Trust Bill show that they are premised on a mistaken perception of what NGOs/CSOs are, their diversity, what they do, the challenges they face and the appropriate options for their regulation. NGOs/CSOs in Ghana vary enormously according to their purpose, philosophy, sectoral expertise and scope. An examination of the Trust Bill reveals that NGOs/CSOs and CBOs are still conceived of as self-help, relief and development oriented groups working solely and directly to assist government agencies to fulfill their social service obligations to the citizenry. This was true in Ghana until the mid-1990s. NGOs/CSOs in Ghana have experienced a major shift in focus, character and importance for over a decade and a half now. They concentrate not only on self-help and livelihood projects, but also on campaigns and advocacy projects for accountability, transparency, non-discrimination and other issues that promote good

governance, respect for human rights and the delivery of the right levels and right quality of social services. The targets of these actions are not only government but also the private sector operatives such as mining, timber and industrial fishing companies.

G-RAP –RAO Convention 2007

The development of a credible and enabling legal and regulatory framework for NGOs is the cornerstone of any governmental policy aimed at maximizing the full potential of NGOs to contribute to national development. Unfortunately, successive governments since 1993 have only sought to assert state control over the activities of NGOs under the pretext of regulation thereby undermining the constitutional right to free association and stifling the development agenda of NGO regulation. Despite the many interventions and ongoing negotiations with the government till date, the concerns identified in the current drafts to regulate NGOs have not been dealt with satisfactorily.

The G-RAP –RAO Convention is a platform for bridging gap between policy research and advocacy and the policy and decision making processes of the State. Through dialogue on pertinent issues affecting NGO-State relations as well as the growth and development of NGOs/CSOs but particularly research and advocacy organizations, the Convention has served as an annual status check for G-RAP NGO community and NGO community as a whole.

There is the need to heighten the current advocacy for a credible NGO regulatory framework, it is expected that a focus of the G-RAP RAO Convention on the Trust/NGO Bill 2006 and the Draft Policy Guidelines 2007 will achieve three important objectives

1. Further illuminate, inform and educate the promoters of the bill, government, the media and the general public of the harmful impact of the proposed laws in its current phase.
2. Create another platform and opportunity to broaden the stakeholder consultation among NGOs at both national and local levels in understanding the dangers posed by the draft laws and to mobilize stakeholders for action.
3. Help facilitate a quick resolution of the current impasse between the NGO community and government and lead to a successful passage of a credible law for NGOs in Ghana.

The 2007 G-RAP RAO Convention will be dedicated solely to the Trust/NGO Bill 2006 and the Draft Policy Guidelines 2007 under the theme

Achieving an Enabling Legislation and Regulatory Framework for NGOS/CSOs An Agenda for Good Governance in Ghana's Fourth Republic

The Convention is scheduled for November 22-23, 2007 at the M-Plaza Hotel in Accra.