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Remarks by Professor E. Gyimah-Boadi

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Honorable Minister, Honorable MPs, Excellencies, distinguished ladies and gentlemen, colleagues, friends, let me wish you a very good morning. Let me also express my gratitude to the conveners of this convention for inviting me to give remarks; and to you all for being here to participate in the deliberations that these remarks are intended to contribute to.

The emergence of CSOs/NGOs as key actors on the Ghanaian scene

We have always been aware of the state and government, with the private sector as something of their junior partner. There has also been a civil society/NGO/CBO sector, though that sector largely took a low profile, especially as it had been subsumed under the nationalist and independence movement of the 1950s, and later co-opted, repressed and/or marginalized under successive post-independence governments.

This picture of a low-key CSO/NGO sector has dramatically changed at the present time. The Civil society/NGO/CBO sector, the so called “Third Sector,” has emerged as a prominent actor in the arena of good governance and human development in the last two decades. The sector has emerged as a central player in the new paradigm of good governance and development emphasizing a tripartite partnership between an effective state/government, productive private sector, and vibrant civil society.

Thus, it has become all but impossible for any observer of the Ghanaian political and social scene today to fail to notice the huge surge in civil society/non-state/NGO activities, complimented by a vibrant independent media. It is also hard to miss the increasing diversity in the aims, philosophies, expertise, capacity and sophistication of the NGOs/CBOs that populate the land. It is impossible to ignore the vital roles they are playing to support livelihoods, and to deliver services to individuals, groups and communities. It is hard to not notice the efforts they are making to foster individual, group, community and national political, economic and social empowerment. And it is not possible to ignore their campaigns and advocacy programs to promote public accountability and anti-corruption, governmental transparency, clean government, respect for human rights, non-discrimination, and the effective and efficient delivery of services and entitlements to citizens.

CSOs/NGOs/CBOs, in their various guises and endeavors, in short, are helping to fill the huge gaps in government and private sector provisioning and to enhance citizen and citizen group engagement in self-help activities and participation in public life. These organizations are, at least in part, a major factor in the change in the complexion and texture of the Ghanaian political economy from state/government monopoly over power and livelihoods to one of growing civic pluralism. Thus, at least a modest part of the credit for Ghana’s recent well-sung achievements in democracy, good governance, and human development must be credited to CSOs/NGOs/CBOs.

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The shortcomings of the CSO/NGO/CBO sector in Ghana

Of course, I am an active member of the CSO/NGO sector in Ghana and elsewhere. You would deem it natural therefore that I appear to sing the praises of the sector. You may even regard my remarks so far as shamelessly self-serving. But I speak not only as an active player in the sector but also a student of the CSO/NGO sector in Ghana/Africa and its implications for democratic, social and economic development. From that vantage, I am well-placed to tell you about the sector's significant shortcomings and deficiencies. I am also obliged to be honest and candid about the weaknesses of the sector in the spirit of enlightened self-interest and the entailed desire to see the development of a credible framework for regulating the CSO/NGO sector.

First, the enthusiasm of many of us in the CSO/NGO sector to participate in national decision-making and governance promotion as well as our passionate advocacy for all kinds of causes is not always matched by our ability to source, analyze and present objective evidence to back advocacy. The intellectual and technocratic resources available to us as CSOs/NGOs are highly inadequate, relative to the myriad of issues that need research, monitoring and policy advocacy in Ghana's nascent democracy and on the crowded national development agenda.

Second, we are not always able to maintain our independence and objectivity in the prevailing domestic conditions of extreme political polarization and culture of political patronage. We have sometimes been unable to resist the temptation to be co-opted into partisan, sectarian and patronage networks.

And above all, our credibility and overall effectiveness have been often undermined by our inability to mount effective self-regulation and self-accountability as well as our tendency to engage in unproductive turf battles and grandstanding.

Fortunately, many of the operators in the civil society/NGO sector and its leadership are well aware of these shortcomings and are committed to finding effective means to curb the ills that plague us.

This is indeed, the spirit in which GAPVOD, G-RAP and other NGO/CSOs have been cooperating with government authorities (the Ministry of Manpower, Youth and Employment and the Attorney General's Office) in the efforts to develop a credible and an enabling regulatory framework for CSO/NGO operations in Ghana.

It is the same spirit that has informed the choice of theme for this Golden Jubilee Year edition of the G-RAP Convention: "Achieving an enabling legislative and regulatory framework for NGO/CSOs in Ghana: An agenda for good governance in Ghana's 4th Republic."

For me and for most my colleagues in the CSO/NGO sector, we are in no doubt that the CSO/NGO sector in Ghana needs to be regulated. We do fully endorse in principle the efforts of the Attorney General, the Ministry of Manpower, Youth and Employment and indeed the Government to come up with legislation and policy guidelines to regulate CSOs/NGOs in Ghana.

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The 50 Million Ghana Cedi Question is by what process should such legislation be developed, and most importantly, what should be the content of such legislation? On these questions, Honorable Ministers, MPs, Distinguished Ladies and Gentlemen, I am afraid we have many serious concerns. I will therefore like to use this opportunity to highlight some of the concerns we have about the Draft Trusts and Non-Profit Making Civil Society Organizations Bill proposed by the Government of Ghana.

Concerns with the process of crafting legislation to regulate CSOs/NGOs

It will be recalled that with hardly any consultation, the Rawlings-National Democratic Congress government introduced a bill to regulate NGOs/CSOs in 1993. Not surprisingly that draft bill was widely criticized as harmful to the effective functioning and growth of NGOs/CSOs in the country. The bill was eventually withdrawn, leaving NGOs/CSOs largely unregulated. The NDC government appeared to have learnt its lesson from this experience. It consulted some prominent NGOs/CSOs before formulating a new draft policy aimed at regulating NGO activities in the country – the Draft National Policy for Strategic Partnership with NGOs/CSOs. Not surprisingly, that draft policy document enjoyed better support in the NGO/CSO community.

The Kufuor-New Patriotic Party administration released a revised version of the 2000 draft policy document in 2004, which appeared to enjoy the broad support of the NGO/CSO community. In fact, a broad consensus had emerged between the Government (represented by the Ministry of Social Welfare and the Attorney General's Office) and CSO/NGO leaders on using the revised Draft National Policy for Strategic Partnership with NGOs/CSOs as the basis for a future legislation to regulate CSOs and NGOs in Ghana.

Unfortunately, some of this spirit of collaboration and consultation has been lost. The CSO/NGO community was dismayed and disappointed in 2006 when the Government returned to the CSO/NGO regulation agenda not with an NGO/CSO Bill but a Trusts Bill, which included the regulation of NGOs/CSOs and which did not reflect the letter and spirit of the Draft National Policy for Strategic Partnership with NGOs/CSOs 2004. Despite the concerns expressed by CSOs/NGOs (under the umbrella of the Ghana GAPVOD) about this development, the Government went on in 2007 to formulate Draft NGO Policy Guidelines (2007) to be attached as subsidiary legislation to the proposed Trust legislation. This alarming development prompted the NGO/CSO group to send another letter to the Ministry requesting that a hold be placed on the process, while the community reviewed the policy guidelines in detail and refined its position.

While acknowledging that the current draft bill is an improvement on the previous draft, we remain uncertain as to what real impact our petitions and suggestions have made on the Government and the drafters of the proposed legislation, particularly when there are signs that the government plans to lay the bill before Parliament during this meeting of Parliament.

For the avoidance any doubt, it needs to be emphasized here that we do not doubt the good intentions of the government. But we have other reasons to be worried. Despite considerable progress in Government-Civil Society partnership in Ghana's 4th Republic, it remains true today that a culture of partnership between government and the private sector/civil society/non state actor is poorly developed. Mutual suspicion and mistrust persist. We must

therefore endeavor to reduce rather than deepen such negative gaps. The process of arriving at a credible and enabling CSO/NGO legislation and regulatory framework is a good place to start. The process must adequately reflect the principles of mutual trust and consultation.

To this end, the government must necessarily allow enough time to widely disseminate the current draft legislation among key stakeholders, the NGO community and the public at large to promote debate, dialogue and reflection on it and to inform the final draft bill before it is tabled in Parliament.

Concerns with the content of the Draft Trust Legislation

First, the proposed legislation appears to be mixing apples and oranges by mixing Trusts and NGOs/CSOs/CBOs and by seeking to regulate all of them under a single Trust/NGO legislation. At best, that works for only one subsection of the CSO/NGO sector: those NGOs/CBOs that focus on delivery of services to individuals, groups and communities, i.e. self-help, relief and development oriented NGOs/CSOs. Such legislation is hardly appropriate for regulating nearly all the others, especially those CSOs and NGOs engaged in research and advocacy campaigns to foster prudent management of the national economy, effective human rights and environmental protection, accountable, responsive and responsible government as well responsible private sector. A draft Trust/NGO legislation which conceptualizes NGOs largely (in the old fashion Victorian England fashion) as self help and social service charities is simply not well placed to regulate the myriad of other NGOs/CSOs, including the burgeoning policy research think-tanks.

At any rate, there are very few Public or Private Trusts in Ghana. It is therefore misplaced to craft legislation to regulate them together with the over 3000 NGOs in Ghana. It is also something of a misnomer to call legislation which is serving largely to regulate NGOs, Trust legislation.

Second, the draft Trust/NGO Legislation will impose onerous burdens on NGOs. The application process spelt out in the proposed legislation is likely to mire NGO registration in red tape, and even more ominously, applications would be unduly dependent on the goodwill of the Social Services sub-committees of District Assemblies.

Moreover, the Trust Commissioner provided for in the draft legislation is loaded with so much trust-regulation responsibilities that real questions must be raised about the time and resources she/he would be able to commit to NGO regulation and development. The brunt of an overburdened Trust Commissioner and NGO regulator would be borne not by the Government but mainly by CSO/NGO applicants.

The proposed registration fee of \$500,000 for international NGOs is prohibitive and inequitable. It would simply disqualify all but the well-endowed though not necessarily well-intentioned organizations. The civil society field could be dominated by international organizations representing only politically and economically powerful interests.

Third, and more alarmingly, the proposed legislation threatens to undermine NGO autonomy and violate the constitutional right to freedom of association. It requires for instance that the objectives, target beneficiaries and other details must be in conformity with the development

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policies prescribed by the Board (2 (1) Eligibility criteria). Subjecting the operations of individual NGO to the dictates of a central NGO board or any other entity is likely to undermine NGO creativity and indeed efficiency.

On the whole, the proposed legislation places sweeping powers and control of CSOs/NGOs in the hands of government.

We are truly concerned that the NGO regulatory structures would be overwhelmingly dominated by the state and government, in a context where there is poor separation between state and government and between state/government and ruling party; and where even technocratic and bureaucratic relations tends to be personalized and political patronage is rife. For example, clause 17 of the Trust and Non-Profit Making Civil Society Organizations Bill 2007 grants powers to the Board of the Trust Commission created under the bill to investigate activities of NGOs or Trusts where – “it is considered expedient in the public interest to do so.” The Board can also refuse or cancel the registration of an NGO or charitable trust where it has received information from the security services that the applicant or NGO is likely to engage in terrorist or criminal activity under clause 42 or request the Auditor-General to conduct an audit of an NGO in the public interest under clause 48. The Trust Commissioner can also apply to the Courts to fill a vacancy in an NGO under clause 46.

Equally frightful is the power vested in the Ministry of Manpower to approve and monitor projects under clause 7 and 8. The provisions in the proposed legislation such as paragraph 6 on “project formulation and implementation”, paragraph 7 on “registration of projects”, paragraph 8 on “details of programs”; and paragraph 9 on “monitoring and evaluation of projects” of the NGO Policy Guidelines (2007) confirm the extent of intrusion and control Government seeks to have on NGO activities in the country. For example, paragraph 8(2) says that “A project shall not be implemented unless it has been approved by the relevant Ministry and registered with the Board” This means that an NGO that decides to undertake a project to vet the financial accountability of the MMYE or say the National Youth Employment Program, as part of its accountability promotion and advocacy program, must first get approval from the Minister for MMYE before it embarks on the project. Secondly it must be monitored by the MMYE throughout the project period.

It is equally worrisome and totally unjustified that paragraph 10 of the Guidelines mandates that “assets transferred to build the capacity of an organization [NGO] should be done through the Board which will identify the operation criteria”.

We recognize that the Ministry has made a good faith effort to address concerns about the over-domination of Governing Board by government appointees in its recent draft of the bill. We are also pleased that civil society representation on the Board has been increased to five on the nine member board. But we are concerned about the provision that the 3 representatives of religious bodies would be nominated and appointed by the President, and the two representatives from secular NGOs would be nominated by the Minister [MMYE] and appointed by the President.

There are other worrying provisions related to the governance of the Commission. It is provided, for example, in clause 23 that “The Minister may give policy directives in writing

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to the Commission and the Commission shall comply, but shall not give a directive in respect of an individual case or concerning an individual person.” These provisions would severely compromise the independence of the Governing body.

(It is worth noting that NGOs/CSOs mobilized to thwart the passage of the 1993 NGO Bill chiefly because they objected to the creation of a National Council on NGOs/CSOs headed by a Minister of State and dominated by Government appointees with the power to micro-manage NGOs/CSOs and to de-register NGOs/CSOs who refused to cooperate with Government.)

Concluding remarks

Of course, it is understandable for anyone to assume that the concerns I raise about the proposed NGO legislation are self-serving concerns on the part of a self-interested civil society operator and his cohorts. But I also raise them as someone involved in various international schemes/instruments/projects that attempt to grade African nations on democracy and good governance. I can say with all the authority at my command that the passage of stifling legislation and establishment of restrictive NGO regulatory framework would be self-destructive. The country risks losing the benefits it derives from the creativity, energy and enthusiasm of NGOs. In short, and to use the popular cliché, the legislation will throw away the (NGO) baby with the bathwater.

It is also worth pointing out that the relatively liberal environment in which the media and civil society have been operating is also a big part of the reason why Ghana’s scores on international governance and human development rankings have been decent. Ghana is guaranteed to suffer a downgrading in its current Freedom House ranking as a liberal democracy. It may even lose its relatively good scores on “voice and accountability” in the (Mo) Ibrahim Governance Index, the World Bank-Kauffman Governance Index and the Millennium Challenge Account. Indeed, Ghana’s reputation as a champion of democratic governance excellence would be unnecessarily tarnished by passing this legislation un-amended and in its current form. It would be putting Ghana in the unflattering and unedifying company of Zimbabwe, Uganda and the growing list of countries that are passing illiberal and retrograde NGO/CSO legislations in an era of democracy and good governance in Africa and contrary to the tenets of NEPAD/APRM.

We must by all means find a way to reduce the current state of anarchy and nearly non-regulation of NGOs. We must pass legislation to create an enabling framework to regulate and empower Ghana’s proliferating NGOs/CSOs. But we must at all costs avoid passing legislation and establishing a regulatory framework that is pernicious and predatory (such as the recent law in Kenya that imposes restrictions on public opinion surveys). And we must do it through a process of adequate consultation and consensus-building. And such legislation and regulatory framework for CSOs/NGOs in Ghana must be consistent with the ethos of democratic governance we say we are committed to.

Thank you for your attention. And let me wish all of us productive deliberations over this important matter.