Deconstructing the Nature of Ghana's Third Sector Regulatory Regime: Effect of History, Constitution and Policy Framework

By

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Signed: Edna A.Okine

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Acknowledgement

Again, I saw under the sun that the race is not to the swift, or the battle to the strong, or bread to the wise, or riches to the discerning, or favour to the skilful; rather, time and chance happen to all of them- Ecclesiastes 9:11

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Abstract

Ghana is lauded for its vibrant third sector, which is responsible for development, political activism, and social contributions. The sector evolved from pre-colonial *self-help* initiatives within ethnic- and tribal-based decentralised governance systems. It comprises traditional associations, community-based organisations, religious and church-related bodies, and modern voluntary organisations like NGOs. The number of organisations reportedly exceeds 300,000. The organisations operate freely, as afforded by Article 21(1)(e) of the 1992 Constitution, which guarantees freedom of association. However, this unconstrained practice has also resulted in adverse impacts, including underdevelopment, exploitation and deficiencies in service delivery. Such adverse effects are possible due to the sector's weak legal system and regulatory regime, which are enabled primarily by the absence of sector-specific legislation. Consequently, in 2018 and 2020, Ghana was placed on the Financial Action Task Force's (FATF) grey list and blacklist, and on the European Union's list of high-risk jurisdictions with strategic deficiencies in its Anti-Money Laundering/Countering the Financing of Terrorism regime. Legal reform was recommended, but in response, the Government introduced the National Non-Profit Organisation Policy 2020 (2020 Policy) instead of legislation. A key reason for this was the prior failure of legislative attempts due to sector protests. When examined, the protests were due to fear of suppression, a desire to co-create regulation and preserve sector autonomy. Therefore, the research's central thesis was that the sector's historical governance and the 1992 Constitution make it politically and legally challenging to enact sector legislation. To test the thesis, the study employed a doctrinal legal research method, incorporating historical and reform approaches.

Findings from Ghana's historical governance showed what the research terms a *regulatory power dynamic*, where both Government and sector actors have regulatory power and must agree for reform to be successful. This accounts for the absence of legislation and the presence of the 2020 Policy. Ghana's Constitutional jurisprudence showed that the Supreme Court interprets fundamental freedoms broadly and as inalienable, except where the Constitution impose direct limitations. Of the three possible limitations identified, the Supreme Court's literal interpretation approach of Constitutional limitations only makes Article 12(2) [public interest] a viable ground to limit the freedom of association. However, caselaw showed the judicial threshold in attaching limitations on fundamental freedoms on public interest grounds to be high. Even when legislation is agreed by the Government and sector actors, it may be struck down by the Court as unconstitutional. Therefore, the Constitution fails to appropriately strike a strong balance between the freedom of association and limitations, giving sector actors unfettered autonomy. The 2020 Policy, therefore, becomes a rational choice that helps provide regulatory reform. Analysis of its framework showed governing rules that provide a definition, coordination provisions, oversight regime and a regulator, thereby addressing some of the regulatory gaps in the system. However, these same strengths are also the Policy's weakness. Respectively, the Policy's oversight rules and its nature as a policy make its Constitutional standing and political sustainability precarious. Additionally, the effectiveness of its coordination in transparency and accountability mechanisms was found to be weak, thereby further perpetuating regulatory gaps. Therefore, a deconstruction of Ghana's third-sector regulation regime found that it lacks sector legislation, as facilitated by the 1992 Constitution and historical governance. This, in turn, explains the presence of the 2020 Policy, whose provisions are inadequate and necessitate reforms, including a purposive interpretation of Constitutional limitations, stronger oversight mechanisms, and an independent regulator.

Ultimately, this analysis of the sector's regulatory regime through a historical, Constitutional, and policy perspective is the first of its kind in Ghana. It also adds to the wider academic debate on third-sector regulation in the Global South and on the difficulties that codified Constitutional jurisdictions encounter in balancing freedoms with restrictions.

Chapter 1: Introduction: Ghana's Third Sector's Regulatory Regime

1.0 Background and Context

The proliferation of third-sector actors, such as NGOs, in Africa has long been a phenomenon. In contextualising the sheer number of these actors, Tajudeen Abdul-Raheem, the then General Secretary of the Pan-African Movement in 2000, was reported to have said that:

"They [NGOs] are as present [in Africa] as the tropical climate of the west coast of Africa, the biting sun and dry soil of the Sahel region. So pervasive is their presence that there is virtually not a single district in any part of Africa that does not have contact with them."[1]

Consequently, both positive and negative impacts have been associated with these third-sector actors,[2] making their impact widespread in all African countries, including the Republic of Ghana, the focus of the research. Geographically, Ghana is located in West Africa, along the Gulf of Guinea and the Atlantic Ocean, and shares borders with Togo, Burkina Faso, and the Ivory Coast. Its landmass is 239,567 square kilometres[3] and is one of the five formal English-speaking countries

[1] Gershon Osei, 'Self-Help Without the Self: Critique of Non-Governmental Organizational Approaches to Rural Development in Ghana' [2017]60(2) International Social Work 494,497 < https://journals.sagepub.com/doi/epub/10.1177/0020872815603783> accessed 4 September 2026

[2] Miriam Hofisi and Costa Hofisi, 'State-NGO Relations in Africa' [2013] 5 (3) ICHSS <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=2d5eb3b91e9ae0f9fa5e918b6968f6e0122feecb#page=291>accessed 4 September 2026

Yimovie Sakue-Collins, '(Un)Doing Development: A Postcolonial Enquiry of the Agenda and Agency of NGOs in Africa' (2020) 42(5) Third World Quarterly 976 <https://doi.org/10.1080/01436597.2020.1791698> accessed 4 September 2026

Julie Hearn, 'African NGOS: The New Compradors?' [2007]38(6) Development and Change 1095 <https://doi.org/10.1111/j.1467-7660.2007.00447.x> accessed 4 September 2026

Firoze Manji, Carl O'Coill, 'The missionary position: NGOs and development in Africa' [2002] 78(3) International Affairs 567 < https://doi.org/10.1111/1468-2346.00267> accessed 30 December 2025

[3] African Union, 'Republic of Ghana -2024' < https://achpr.au.int/sw/node/133> accessed 4 September 2026

in the zone.[4] According to the 2021 population census, the population was 30,832,019.[5] It is divided into sixteen local regions,[6] comprising nine major ethnic groups.[7] Economically, Ghana is classified as a lower-middle-income[8] country with abundant natural resources, including forests, cocoa, minerals, and oil, with notable gold exports.[9]

In governance, it previously had an ethnic-based tribal governance system that was autonomous, decentralised, and headed by chiefs, kings, elders, clans, and families. [10] Each tribe had its own lands, social, political, and military units, based on its customs and traditions. Osei Tutu[11] notes that communication with these leaders was an indelible part of political interactions between the chiefs and their people. Therefore, participation and *self-help* were central to these communities. For example, the Akan's *self-help* system was known as (*'nnoboa')* and consisted of voluntary groups who provided agricultural assistance in farm work.[12] The tribal governance system and *self-help* are

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[4] The other countries are Nigeria, Sierra Leone, Liberia and the Gambia due to being colonised by the British Empire. The other West-African countries as francophone speaking countries

[5] Ghana Statistical Service, 'Ghana 2021 Population and Housing Census: General Report. (Ghana Statistical Service, 2022)1 < https://census2021.statsghana.gov.gh/gssmain/fileUpload/reportthemelist/Volume%203%20Highlights.pdf> accessed 4 September 2026

[6] Ghana Ministry of Foreign Affairs, 'Various Regions in Ghana'. < https://mfa.gov.gh/index.php/about-ghana/regions/> accessed 4 September 2026

[7] Ghana Statistical Service, 'Ghana Factsheet' < https://statsghana.gov.gh/ghfactsheet.php> accessed 4 September 2026

[8] World Bank Group, 'Data for Lower middle income: Ghana' < https://data.worldbank.org/?locations=XN-GH> accessed 4 September 2026

[9] Ghana Gold Board, 'Ghana's gold export receipts reach record levels this year'6 November 2025 < https://goldbod.gov.gh/ghanas-gold-export-receipts-reach-record-levels-this-year/> accessed 4 September 2026

[10] Pierluigi Valsecchi, 'Akan Slavery in Africa and the Atlantic' *Oxford Research Encyclopaedia of African History* (2024) <https://oxfordre.com/africanhistory/display/10.1093/acrefore/9780190277734.001.0001/acrefore-9780190277734-e-915?p=emailAs6080tiUOY1E&d=/10.1093/acrefore/9780190277734.001.0001/acrefore-9780190277734-e-915> accessed 4 September 2026

Usman Abass, ' The Position of Women in the Social and Political History of Ghana' (2017) 17(2) Journal of Turkish World Studies 141 < https://dergipark.org.tr/tr/download/article-file/386821> accessed 4 September 2026

[11] John Kwadwo Osei-Tutu, 'Space' and The Marking of 'Space' in Ga History' (2000) 4/5 Transactions of the Historical Society of Ghana 55, 73 < https://www.jstor.org/stable/pdf/41406657.pdf> accessed 4 September 2026

[12] 'The state of civil society in Ghana: an assessment.' (CIVICUS Civil society Index-Rapid Assessment Report, 2020) https://wacsi.org/wp-content/uploads/2020/10/Ghana-CSI-RA-Report-N.pdf >accessed 4 September 2026

discussed further in Chapter 2. However, colonisation by the British Empire,[13] also discussed in Chapter 2, brought an end to this decentralised tribal governance system. Still, *self-help* remained. It evolved into various bodies, including traditional associations, community-based organisations(CBO), religious and church-related organisations and private voluntary organisations such as NGOs.[14] These groups contributed not only to development and religious activities but also to the fight for independence.[15] Their contributions and impact in Ghana are discussed in *section 1.2* below and further in Chapter 2's historical account.

Subsequently, Ghana gained independence in 1957, becoming the first country in sub-Saharan Africa to do so. After independence, it inherited a Western legal and governance system,[16] which gave rise to public- and private-sector institutions. In addition, the evolved *self-help* groups became Ghana's third sector.[17] They continued their development and political activities in post-independence Ghana, particularly during the period of political instability between democratic and military Governments,[18] from 1957 to 1992.[19] Ghana stabilised its democracy under the 1992 Constitution,[20] which established the current Fourth Republic, during which the third sector has grown substantially, engaging in numerous activities.[21] Yet, the growth of the third sector did not

[13] *See section 2.1.1*

[14] Lawrence Atingdui. '*Defining the Nonprofit Sector: Ghana*' (Johns Hopkins University for Policy Studies,1995)

[15] Public Records and Archives Administration Department, 'The Riots of 28th February 1948'. (Government of Ghana, Public Records and National Archives) < http://praad.gov.gh/index.php/the-riots-of-28th-february-1948/> accessed 4 September 2026

[16] David Owusu-Ansah, 'History of Ghana' *Oxford Research Encyclopaedia of African History* (2023) https://oxfordre.com/africanhistory/display/10.1093/acrefore/9780190277734.001.0001/acrefore-9780190277734-e-1360?d=/10.1093/acrefore/9780190277734.001.0001/acrefore-9780190277734-e-1360#acrefore-9780190277734-e-1360-div1-1> accessed 4 September 2026

[17] Third sector as distinguished from the public and private sector. *See section 1.1.0*

[18] Three civilian Governments and five military Governments

[19] Lawrence Atingdui, Helmut K.Anheier, S.Wojciech Sokolowski, and Emmanuel Laryea, 'The nonprofit Sector in Ghana' in Helmut and Salamon (ed), *The Nonprofit Sector in the Developing World: A Comparative Analysis* (Johns Hopskins Nonprofit Sector Series, Manchester University Press 1998*)*

[20] The Constitution of the Republic of Ghana 1992(as amended in 1996)

[21] Gordon Dugle, Bernard A. A. Akanbang and Andres Salakpi, 'Nature of Non-Governmental Organisation Involved in Local Development in the Upper West Region of Ghana' (2015) 12 (1)(2) GJDS

accompany adequate oversight and a robust regulatory regime.[22] This is not ideal, because 'any policy which increases rates of volunteering should also therefore increase levels of trust'.[23]

Without a robust regulatory regime to ensure such trust, positive outcomes are diminished, and efficient oversight becomes challenging. For example, in the author's 2016 LLM field dissertation, an investigation of the opportunities and challenges of the shea butter industry in Ghana and Uganda[24] was conducted. The findings showed a plural stakeholder system[25] in which third-sector actors were highly active in both countries. They were observed to provide key capacity-building resources for women shea nut-pickers and processors through financial, equipment, and market support, resulting in substantial socioeconomic development.[26] But some sector actors were also accused of alleged exploitation and theft of traditional knowledge from the very women's groups they worked with. At the time of the field research, both Uganda and Ghana faced the same issue: a weak third-sector regulatory system, stemming from the absence of sector legislation and resulting in insufficient oversight. In Ghana's case, reports were not limited to the shea industry but were framed as a general ailment of the third sector, with accusations of unchecked exploitation, marginalisation, and corruption.[27] However, while Uganda went on to successfully pass its *Non-Governmental Organisations Act 2016,*[28] Ghana, in contrast, still lacks a legislative framework, resulting in continuous adverse effects.

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[22] GIABA, 'Anti-money laundering and counter-terrorist financing measures – Ghana, Second Round Mutual Evaluation Report' (GIABA, Dakar,2018)56, para 177. < https://www.fatf-gafi.org/content/dam/fatf-gafi/fsrb-mer/GIABA-Ghana-MER-2018.pdf.coredownload.inline.pdf> accessed 4 September 2026

[23] John Mohan and Vicki Bolton, 'Volunteering and civic engagement: a virtuous circle, but a privileged one?' (University of Birmingham, 2019) < https://www.birmingham.ac.uk/research/tsrc/blog/volunteering-and-civic-engagement.aspx> accessed 4 September 2026

[24] Edna Ayeley Okine, 'Achieving Sustainable Development through Shea Trade: A case study of Uganda and Ghana's Shea Industry' (Master's thesis, University of Strathclyde 2017)

[25] Including intergovernmental/transnational organisations (e.g. UN) and all three institutional sectors i.e. Public (state organisations), Private (profit-making enterprises) and Third (voluntary/ non-profit).

[26] Okine (n 24) 42

[27] David Atugiya, 'NGOs and Civil Society Organisations in Ghana Needs an Independent Regulatory Body' *Modern Ghana* (Accra, 16 March 2012) < https://www.modernghana.com/news/383962/ngos-and-civil-societyorganisations-in-ghana-needs-an-indep.htm>accessed 4 September 2026

[28] The Non-Governmental Organisations Act 2016 < https://faolex.fao.org/docs/pdf/uga163576.pdf>accessed 4 September 2026

Based on this, the thesis's primary issue is that Ghana's third-sector regulatory regime is weak, mainly due to the absence of sector-specific legislation, which results in inadequate oversight. Yet, attempts to enact sector legislation have continually failed.[29] This is the crust of the issue.

The failed legislative attempts were intentional. Sector actors protested against two consecutive bills: the *Non-Governmental Organisation Bill 1995* and the *Trust and Non-Governmental Organisation Draft Bill 2007*.[30] Consequently, three key factors[31] were found to be the basis for the protest. One was that the Government failed to consult the sector before introducing the bill. Two was sector experience from historical governance creating a strong emphasis on sector autonomy and a fear of Government suppression through legislation. Three is the 1992 Constitutional protection of freedom of association under Article 21(1)(e), which allows sector operations with few limitations.[32] The scope and impact of the latter two points are discussed further in Chapters 2 and 3 respectively. Essentially, these reasons affected sector actors' willingness to accept legislation and provided grounds for them to protest Government attempts.[33]

Based on the factors, the thesis argues that historical governance and the 1992 Constitutional protection have fostered fear and apathy, while also strengthening protections for freedom of association, creating arduous legal and political challenges for the enactment of sector-specific legislation. This has been an ongoing problem since the establishment of Ghana's Fourth Republic. Therefore, in the absence of sector legislation, a Government policy, the *National Non-Profit Organisation (NPO) Policy*[34] in 2020 (hereafter the 2020 Policy or the Policy) was created as a governing framework for the sector.

The Policy provides a much-needed regulatory framework and represents the first and only reform in 35 years. However, it ultimately substitutes legislation, thereby reducing the legal robustness of sector oversight.[35] But, despite its lack of legal robustness, its significance warrants study. The extent to which its rules and institutions address sector regulatory gaps is thus explored. Ultimately, the Policy's nature as a Government tool subjects it to political will. Also, because it limits a

[29] *See section 1.6*

[30] Discussed further in See section 1.6

[31] discussed in section 1.6

[32] *See chapter 3*

[33] *See chapter 2*

[34] National Non-Profit Organisation Policy (2020) <https://wacsi.org/wp-content/uploads/2021/08/NPOS-National-Non-Profit-Organisation-Policy.pdf> accessed 4 September 2026

[35] *See chapter 4,5,6 and 7*

fundamental freedom, the same aspects that strengthen the Policy's framework also present challenges, including precarious legal standing and political sustainability. This will be shown in Chapters 4 and 5. The research, therefore, explores whether policy could be a viable alternative to legislation in the long term.

Hence, the historical, Constitutional, and policy implications of Ghana's third-sector regulatory regime are the focus of this research and the questions it aims to address. The study first examines Ghana's historical governance and the Constitutional framework to assess their influence on sector regulation and on the absence of legislation in Chapters 2 and 3. It then analyses the governance framework of the 2020 Policy, its sustainability, and its effectiveness in addressing regulatory gaps in Chapters 4, 5, 6, 7, and 8. The doctrinal legal research method is used to derive answers[36] and recommendations are made in chapter 9.

Such an exposition, examining the historical and Constitutional impacts on third-sector regulation, as well as the effectiveness of the 2020 Policy, has never been done before. This is the first significance of the research, as it is new. In particular, the research did not find any academic or sector analysis of the 2020 Policy. As the first sector regulatory reform in 35 years, this absence is remiss, but it positions the thesis as the first to do this. The research becomes more relevant when we consider the increasing academic interest in third-sector regulation in the Global South,[37] and the challenges codified Constitutional jurisdictions face in balancing freedoms with limitations, for example, Nigeria, which has a similar issue of sector actors protesting legislation.[38] This increasing interest is further highlighted in *section 1.10* below.

Finally, this chapter is the backbone of the research. It discussed key topics that readers of this thesis need to first understand about Ghana's third sector, particularly its categorisation, value to

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[36] Details of the reasoning behind the choice of methodology and its scope are discussed in section 1.9

[37] Mark Sidel and David Moore, 'The law Affecting Civil Society in Asia: Development and Challenges for Not profit and Civil Society Organisation' (International Centre for Not-for-Profit Law,, 2019) < https://www.icnl.org/wp-content/uploads/2019-Asia-Legal-Environment-Overview-final.pdf> accessed 4 September 2026

Mary Kay Gugerty, 'Shifting Patterns of State Regulation and NGO Self-Regulation in Sub-Saharan Africa in Oonagh B. Breen, Alison Dunn, Mark Sidel and Marion Fremont-Smith (eds.) *Regulatory Waves*: *Comparative Perspectives on State Regulation and Self-Regulation Policies in the Nonprofit Sector* (Cambridge University Press, 2017)

[38] Paul Carsten, 'Nigeria NGOs slam civil society bill as grave threat to freedoms' *Reuters* (Lagos, 13 December 2017) < https://www.reuters.com/article/world/nigeria-ngos-slam-civil-society-bill-as-grave-threat-to-freedoms-idUSKBN1E72CM/> accessed 4 September 2026

the country, the adverse impacts of its operations, and the implications of the legal system within which it operates. Further, main areas relevant to grounding the thesis, such as why the term third sector was chosen, identifying what form of regulation suits the sector, the position of the 2020 Policy, research problem and question, methodology, justification and research organisation, are discussed. This is done to provide context and elucidate the core arguments on which the discussions in the following chapters are built.

1.1 Understanding Ghana's Third Sector

The 1992 Constitution was drafted for several reasons, including protection against arbitrary rule and the promotion of inclusive participation. It therefore promotes political freedoms, including enfranchisement,[39] involvement in political parties, [40]and participation in the central[41] and local Government.[42] At the heart of political freedom and participation lie the Fundamental freedoms under Article 21(1), which guarantee the freedoms of speech, thought, movement, religion, information, assembly, and association.[43]

The freedom of association under Article 21(1)(e) provides the right of persons:

"…to form or join trade unions or other associations, national and international, for the protection of their interest."

This provision enhances participation by conferring legitimacy on the creation of various voluntary organisations. Although terms such as NGO and civil society are often used to describe the sector in Ghana, the range of actors extends beyond this categorisation. Little literature exists on the classification of Ghana's third sector. However, Atingdui[44] and Atingdui and others[45] are the

[39] The Constitution of the Republic of Ghana, 1992, Article 42

[40] The Constitution of the Republic of Ghana, 1992, Article 55

[41] The Constitution of the Republic of Ghana, 1992, Article 35

[42] The Constitution of the Republic of Ghana, 1992, Article 240

[43] The Constitution of the Republic of Ghana, 1992, Chapter 5- Fundamental Human Rights and Freedoms

[44] Lawrence Atingdui. '*Defining the Nonprofit Sector: Ghana*' (Johns Hopkins University for Policy Studies,1995)

[45] Lawrence Atingdui, Helmut K.Anheier, S.Wojciech Sokolowski, and Emmanuel Laryea, 'The nonprofit Sector in Ghana' in Helmut K. Anheier and Lester Salamon (ed), *The Nonprofit Sector in the Developing World: A Comparative Analysis* (Johns Hopskins Nonprofit Sector Series, Manchester University Press 1998*)*

foremost literature on this. Their work focused on sector actors involved in development activities and noted four distinct sector groups in Ghana:

1. Traditional associations: which are indigenous institutions formed with traditional mores, culture and social structures of the tribes in Ghana.[46] They include *self-help* projects in villages.
2. Community-based organisations (CBOs): which developed from traditional associations and are found in larger spaces than villages, like in towns, assemblies and municipalities. Like traditional associations, they are rooted in traditional social structure and provide a *'link between the traditional, rural society of origin and the modern urban surroundings'.*[47] They include mutual aid societies.
3. Religious and church-related organisations: they are charitable groups affiliated to churches and mosques under the Christian and Islamic religions. [48] Atingdui defined charitable organisations within Ghana's context to mean *local, national, or international organizations that offer temporary relief and social assistance.*[49] Examples include Catholic Relief Services, the National Christian Council of Ghana, the Ahmadiyya Muslim Movement, and the Ghana Muslim Representative Council.
4. Modern Voluntary Organisations: these are Private Voluntary Organisations (PVOs) and Non-Governmental Organisations (NGOs), distinct from the above three. They are secular and, in principle, separate from lineage, family, private life, and Government.[50] Though some originated within Ghana, most were introduced by international relief organisations.[51] They aim to create more permanent institutional and developmental infrastructure. They are represented across a broad spectrum, including craft guilds, chambers of commerce, professional associations, recreational clubs, youth associations, environmental groups, civil society organisations, and trade unions.[52]

[46] Atingdui and others (n 45) 161

[47] Atingdui (n 44)

[48] Atingdui and others (n 45) 164

[49] Atingdui (n 44) 6

[50] Atingdui and others (n 45) 165

[51] Atingdui (n 44) 7

[52] Atingdui (n 44) 7

According to this categorisation, Ghana has voluntary groups ranging from associations linked to trade (e.g., market women associations and farmers' unions), community development or self-help associations,[53] professional associations (e.g., the Ghana Bar Association), labour unions, think tanks, NGOs, and religious institutions.[54] This has led to a vibrant third sector engaged in socio-economic, religious, political, and environmental activities.[55] The wide range of sector actors is the reason why the term 'third sector' was adopted.

1.1.0 Why the Term 'Third Sector'?

To encompass the four groups classified above, the study adopts 'third sector' as an umbrella term, since terms such as NGOs and civil society exclude traditional associations, CBOs, and religious charities. For example, the two failed sector legislation attempts[56] fell into this blunder. Both adopted the term NGO in their titles, implying that the bills were intended only for organisations under the modern voluntary organisations group. Additionally, they did not provide a helpful definition of the term NGO. For example, in defining NGOs, section 19(1) of the *Trust and Non-Profit Making Civil Society Organisation Draft Bill* (hereafter, the Trust Bill) 2008[57] states that a non-Governmental organisation is a civil society organisation (CSO). The Trust Bill basically interchanges the term NGO for CSO and does not address the exclusionary presumption.

This exclusion is addressed in the 2020 Policy, which adopted the term Non-Profit Organisations (NPO). However, the definitional scope offered for NPO was not inclusive enough.[58] The Policy defines NPOs as organisations that primarily *mobilise and use resources.*[59] While this appears to encompass all four classifications discussed above, the Policy language and subsequent

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[53] Emmanuel Gyimah-Boadi and Kwabena Amoah Awuah Mensah, 'The Growth of Democracy in Ghana Despite Economic Dissatisfaction: A Power Alternation Bonus?' (2003) 28 Afrobarometer <https://www.files.ethz.ch/isn/98563/AfropaperNo28.pdf> accessed 4 September 2026

[54] Abadir M. Ibrahim, *The Role of Civil Society in Africa's Quest for Democratization* (Springer International Publishing Switzerland 2015)

[55] Gordon Dugle, Bernard A. A. Akanbang and Andres Salakpi, 'Nature of Non-Governmental Organisation Involved in Local Development in the Upper West Region of Ghana' (2015) 12 (1)(2) GJDS

[56] Non- Governmental Organisation bill 1995 and Trust and Non-Governmental organisation draft bill 2007.- *See section 1.6*

[57] The second failed legislative attempt. Discussed in details in section 1.6

[58] *See section 6.2*

[59] National Non-Profit Organisation Policy (2020) paragraph 2.1

parliamentary debates on providing an Act for churches[60] indicate that the Policy excludes religious organisations primarily established for religious worship. The Policy's scope, definition, and implications are further discussed in Chapters 4 and 6. But the exclusion is one of the critiques the research raises against the 2020 Policy, as well as Atingui's classification above. This is because, although some religious worship organisations in Ghana have established separate bodies to mobilise and primarily use resources for relief work, not all have done so.[61] However, this should not exclude those who haven't done so, as the very nature of religious worship organisations makes them part of the voluntary sector, as is evident in many countries.[62] Though they may create separate offshoots for relief work, those that do not cannot be categorised as non-voluntary organisations. Moreover, the first formal regulation of the third sector under British Colonial rule was enacted for missionaries,[63] indicating that religious bodies, whether primarily created for worship or relief, were classified as voluntary organisations.

Therefore, whilst this research largely follows Antingui's classification of voluntary bodies, it extends the scope of religious and church-related organisations to include worship-based religious groups. To accommodate this addition, this research adopts the term *'third sector'* instead of NGO, CSO, or NPO. It sufficiently encompasses all four sector actor categories in Ghana, characterised as organised institutions separate from the public and private sectors.

Also, in Salamon and Anheier's[64] work, although they used the term "nonprofit" to describe the third sector, they define a nonprofit as an institution in every society that has five characteristics. The characteristics are *organised, private, non-profit-distributing, self-governing and voluntary.*[65] This definition does not focus on the initial aim of the relevant bodies, i.e., the mobilisation of resources, but rather on the characteristics they embody. This broad understanding is also reflected in

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[60] *See section 6.2.2*

[61] The Church of Jesus Christ of Latter-Day Saints, 'Church Donates Hospital Equipment in Ashanti Region, Ghana' (9 August, 2023) Church Donates Hospital Equipment in Ashanti Region, Ghana (churchofjesuschrist.org) accessed 4 September 2026

[62] *See section 6.2.5*

[63] The British Colonial Administration Tax Ordinances 1922 and 1943

[64] Lester A. Salamon and Helmut K. Anheier, 'The Third World's Third Sector in Comparative Perspective' (The Johns Hopkins University Institute for Policy Studies, Working Paper of the John Hopkins Comparative Nonprofit Sector Project, 1997) 9

[65] Salamon and Anheier (n 64)9

Etzioni's[66] use and definition of '*third sector'* to mean bodies distinguished from the first (public) and second (private/profit-making) sectors. Similarly, the Northern Bridge Doctoral Training Partnership on public policy defines the '*third sector'* as an all-encompassing term denoting a range of structures and purposes that belong neither to the State (Public sector) nor to profit-making bodies (private sector).[67]

Therefore, the use of '*third sector'* is a more appropriate term to reflect the scope of all voluntary organisations in Ghana, irrespective of their aim, so long as they can be distinguished from the private and public sectors.

In summary, the research adopts the term '*third sector'* to denote organised, private, non-profit-distributing, self-governing, and voluntary institutions that are separate from the state and private sectors. The research also uses terms such as sector actors and sector organisations,[68] to mean the bodies or organisations operating within the third sector.

Having established the scope of Ghana's third sector and explained why the term was adopted, the next topic is to understand the contributions of the third sector in Ghana to contextualise its value to the country's development and to its political and socio-economic fabric.

1.2 Value of the Third Sector in Ghana

According to Woods,[69] although normative parameters established by Governments in Africa, including Ghana, are crucial to development, they are insufficient to build the necessary structures that deter political arbitrariness. Institutions such as third-sector organisations are therefore needed to foster independent associations that individuals can use to influence Government actions and

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[66] Amitai Etzioni, 'The Third Sector and Domestic Missions' (1973) 33(4) Public Administration Review 314 <https://www.jstor.org/stable/pdf/975110.pdf?refreqid=fastly-default%3A7b051b3b8bce3a9f1093fcf0f9010ce8&ab_segments=&origin=&initiator=&acceptTC=1> accessed 4 September 2026

[67] Northern Bridge Doctoral Training Partnership, 'The Public Policy Engagement Toolkit' (Northern Bridge) <http://toolkit.northernbridge.ac.uk/engagingwithpolicymakers/engagingwiththethirdsector/whatisthethirdsectorandwhatdoesitdo/ >accessed 4 September 2026

[68] This is used interchangeably.

[69] Dwayne Woods. 'Civil Society in Europe and Africa: Limiting State Power through a Public Sphere' (1992) 35(2) *African Studies Review* 77 < https://doi.org/10.2307/524871> accessed 4 September 2026

decision-making.[70] From this perspective, third-sector actors are vital to the creation of robust mechanisms that produce effective Government.

In Ghana, the third sector and the State have always moved together through the turbulent governance of the pre-colonial and independent periods.[71] Sector actors have therefore continually played significant social and political roles under the pre-colonial, colonial and post-colonial civil and military administrations. Antingui[72] argues that voluntary organisations contributed significantly to social and welfare needs, particularly as state welfare services had broken down before the 1980s reforms. Schools, healthcare, emergency relief, and political activism were the most notable services provided by third-sector actors.[73] Currently, there are reportedly more than 300,000 voluntary groups in the country.[74] This alone shows their significance in the country.

The discussion of the literature set out below highlights some of the significant contributions of third-sector actors to Ghana's development, politics, and, by extension, its society.

1.2.0 Development

The third sector in Africa has been regarded as a pro-poor development nucleus.[75] This is primarily due to Government inefficiencies in providing adequate social services. Hence, Ghana's third sector - like many across Africa - is noted as providers of welfare programmes at the local level, complementary to Government action, making their development role lauded.[76] For example,

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[70] Woods (n 69)

[71] Stephen L.Snook, Joseph R.A. Ayee, Kwame Boafe-Arthur and Ernest Aryeetey, 'Civil Society and Local Government in Twenty Districts in Ghana: Surprises, Problems and Opportunities' (1998) International Foundation for Election Systems (IFES) Project ECSELL Baseline Assessment, 15

[72] Atingdui (44)

[73] Atingdui and others (n 45) 73

[74] Commonwealth Network, 'Find National NGO expertise in Ghana' https://www.commonwealthofnations.org/sectors-ghana/civil_society/>accessed 4 September 2026

[75] Issah Justice Musah-Surugu, Justice Nyigmah Bawole and Albert Ahenkan, 'The Third Sector and Climate Change Adaptation Governance in Sub-Saharan Africa: Experience from Ghana' (2019) 30 Voluntas 312 <https://doi.org/10.1007/s11266-018-9962-5> accessed 4 September 2026

[76] Emmanuel Yeboah-Assiamah, Issah Justice Musah-Surugu, Justice Nyigmah Bawole, Suleiman Nurudeen, 'The 'Third Sector' and Poverty Reduction in Developing Societies:The Experience of Hunger Project in Selected Rural Communities of Ghana' (2015) 11(2) International Journal of Rural Management 85 < https://journals.sagepub.com/doi/10.1177/0973005215601944> accessed 4 September 2026

sector actors such as NGOs are seen to have greater potential to empower disadvantaged and marginalised groups in rural communities and to reduce their poverty levels.[77]

As such, Forkuor and Korah[78] claim that it is practically impossible to separate sector activities from rural development. In their study of NGO contributions in the Upper West Regions of Ghana, they[79] found that sector actors have contributed to several development activities such as poverty intervention programmes, including microfinance, social groups, Water, Sanitation and Hygiene (WASH), Disease Control and prevention, agroforestry, training programmes, food security project, sustainable rural water and sanitation project, rights and environmental protection, HIV-AIDS campaigns, among others.[80]

Further, according to the 2020 Policy, the Government recognises the sector as significant partners and a valuable force in promoting and consolidating sustainable development in the country.[81] This evaluation is consistent with the sector's origins in pre-colonial Ghana, where, within tribal, ethnic-based political systems and practices, *self-help* was prevalent.[82] The *self-help* groups, for example, aided their neighbours with tasks such as farm work[83] and welfare services, benefiting their communities. This practice later evolved in the British-administered Gold Coast,[84] where traditional associations and community groups influenced religious organisations, thereby contributing to social welfare infrastructure, such as schools and clinics.

These activities continued to expand and intensify after independence, particularly under Flight Lieutenant Jerry John Rawlings' Provisional National Democratic Congress (PNDC) military Government, 1986-1992, as further discussed in chapter 2. Mainly, the austerity measures of the Structural Adjustment Programme (SAP), introduced by the PNDC Government at the behest of

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[77] Assiamah and others (n 76)

[78] David Forkuor and Andrews Korah, 'NGOs and sustainable rural development: experience from Upper West Region of Ghana' (2023) 25 *Environ Dev Sustain* 351–374 <https://doi.org/10.1007/s10668-021-02057-w> accessed 4 September 2026

[79] Forkuor and Korah (n 78)

[80] Forkuor and Korah (n 78)

[81] National Non-Profit Organisation Policy (2020) paragraph 1.0

[82] *See section 2.1.0*

[83] CIVICUS, Ghana Anti-Corruption Coalition and West Africa Civil Society Institute (WACSI), 'The state of civil society in Ghana: an assessment' (CIVICUS Civil society Index-Rapid Assessment (CSI-RA Report 2006) <https://civicus.org/images/stories/Ghana%20CSI%20RA%20final.pdf> accessed 4 September 2026

[84] The Europeans named it Gold Coast, and this was used until independence when it was changed to Ghana.

the IMF, led to a decline in public expenditure and the retrenchment of many civil servants, thereby shifting the PNDC Government's policy of political radicalism toward economic realism.[85] Mohan[86] argues that this turn of events led the Government to be eager to engage third-sector actors in development efforts. Under this new approach, various sector actors were encouraged to assume duties that had previously been regarded as the exclusive domain of the State.[87] This approach was further enhanced by international donor support, which led to increased rural development programmes, such as the Programme of Action to Mitigate the Social Costs of Adjustment (PAMSCAD).[88] PAMSCAD was designed to ensure that sector actors served as the programme's implementers.[89]

Consequently, the activities of sector actors in previously exclusive domains of the State have become increasingly rampant in the fourth republic. The author observed that sector actors operate across almost all the country's industries, including health, energy, agriculture, food security, water and sanitation, enterprise, education, skills training, gender, environment, and advocacy.

1.2.1 Politics and Democracy

Beyond their role in pre-colonial tribal governance, political activities within the sector can be traced to the advent of British colonial rule, during which the Government discounted indigenous participation. This led to the creation of politically oriented associations campaigning for inclusive participation and, later, to the emergence of pre-independence movements.[90] Frimpong[91] argued that these groups sought to protect indigenous resources by struggling for indigenous interests and

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[85] Antingui (44). Also *see 2.3.2*

[86] Giles Mohan, 'The Disappointments of Civil Society: The Politics of NGO Intervention in Northern Ghana' (2002) 21(1) Political Geography 125 <https://www.sciencedirect.com/science/article/pii/S0962629801000725> accessed 4 September 2026

[87] Ian Gary, 'Confrontation, Co-operation or Co-optation: NGOs and the Ghanaian State during Structural Adjustment' (1996) 68 Review of African Political Economy 149,

[88] Gary (n 87) 158

[89] Gary (n 87) 158

[90] *See section 2.1.1.3*

[91] Kwarteng Frimpong, 'Civil society Organisations and Good Governance in Ghana' (2017) 6(9) International Journal of Development and Sustainability 956

political independence. One such group was the Aboriginal Rights Protection Society, established in 1897. It was an association of traditional authorities and elites, formed to protest the Land Bill of 1897 and the Crown Lands Bill of 1896, which the group considered a threat to the traditional land tenure system.[92] Another group, the Fanti Confederacy (1868-1874) [93] sought to protect indigenous interests. Through such activities, opportunities arose to create political parties, such as the United Gold Coast Convention (UGCC), which was notable for advocating indigenous rule and local interests. [94] The UGCC gave rise to the Convention People's Party (CPP), which won the elections for independence.

The sector's presence in the political arena grew stronger in independent Ghana, creating a unified[95] force to challenge the legitimacy of military regimes, criticise Governments, and demand change. Therefore, to keep sector interference at bay, Snooks and others[96] argue that the aftermath of coups saw the regime force sector actors into silence if not compliance. Sector actors were perceived as political threats because their resistance and advocacy of political causes through civic confrontations often led to changes in Government. For example, mounting civic pressures and strike actions by trade unions between 1978 -1979 led to the end of Colonel Acheampong-Akuffo's SMC[97] and Rawlings' AFRC[98] Military Governments, ushering in the Third Republic.[99] This occurred again between 1986 -1992 during Rawlings' PNDC military Government, which was forced to transition to the Fourth Republic.[100]

In the fourth republic, the sector's political role has become increasingly critical, particularly during elections and the transition of Government.[101] As such, during election periods, churches coordinate peace prayers, the Musicians Association of Ghana organises concerts,[102] and the Ghana Journalist Association and the Institute of Economic Affairs organise live presidential

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[92] Frimpong (n 91)

[93] Frimpong (n 91)

[94] Public Records and Archives Administration Department (n 15)

[95] See Chapter 2

[96] Snook and others (n 71) 19

[97] Supreme Military Council

[98] The Armed Forces Revolutionary Council

[99] *See section 2.2*

[100] *See section 2.2.7*

[101] *See section 2.3*

[102] Emmanuel Gyimah-Boadi, 'A Peaceful Turnover in Ghana' (2001) 12(2) *Journal of Democracy* 103 <https://doi.org/10.1353/jod.2001.0026.> accessed 4 September 2026

debates.[103] Kew and Oshikoya,[104] note that in 1999, the sector's campaign for free and fair elections and election monitoring contributed to the acceptance of the results and brought about the first transfer of power through ballot after Ghana's independence in 1957. This political stance viewed third sector actors as agents of democracy. Ghana's democratic consolidation is therefore mirrored by the sector's vibrancy and political relevance. Hence, Ibrahim,[105] argues that this politically relevant position has enabled sector institutions such as professional associations, labour unions, think tanks, NGOs, and religious institutions to help consolidate the country's democracy through actions including voter education, election monitoring, and widening electoral inclusivity.

Again, sector actors have been instrumental in the Government's political projects, for example, the National Reconciliation Project,[106] which fostered dialogue and justice for those prosecuted under Rawlings' military and civil rule. Sector actors like the Ghana Centre for Democratic Governance and Civil Society Coalition on National Reconciliation worked with the Government to successfully implement the project. [107]

As a result, the 2020 Policy[108] especially emphasises the sector's political contributions in electoral politics, local governance, and socio-economic development.

1.2.2 Funding landscape, Donors and Socio-economic contributions

Development initiatives cannot happen without funding. In Ghana's third sector, resources are drawn from domestic and international donors, with domestic funding significantly lower than

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[103] Alexander K.D. Frempong, 'Innovations in Electoral Politics in Ghana's Fourth Republic: An Analysis. In CLACSO(ed), *Democratic Innovation in the South : Participation and Representation in Asia, Africa and Latin America* (CLACSO 2008) <https://biblioteca.clacso.edu.ar/clacso/sur-sur/20120321095139/12.fre.pdf> accessed 4 September 2026

[104] Darren Kew and Modupe Oshikoya, 'Escpae from Tyranny: Civil Society and Democratic Struggles in Africa' in Ebenezer Obadare (ed) *The handbook of Civil Society in Africa* (International Society for third sector research, Springer, 2014) 12

[105] Ibrahim (n 54) 89

[106] Nahla Valji, 'Ghana's National Reconciliation Commission: A Comparative Assessment'(2006) Occasional Paper Series, International venter for Transitional Justice <https://www.ictj.org/sites/default/files/ICTJ-Ghana-Reconciliation-Commission-2006-English_0.pdf> accessed 4 September 2026

[107] Seidu Alidu and Robert Ame, 'Civil Society Activism and the Ghanaian National Reconciliation Commission: the case of the Civil Scoiety Coalition on National Reconciliation' (2012) 1(1) Transitional Justice 104

[108] National Non-Profit Organisation Policy (2020) paragraph 1.1

international funding. [109] Nonetheless, both play a key role in sustaining the activities of sector organisations.

A key source of domestic funding comes from Government partnerships in programme implementation[110] and from private sector donors. The private-sector donors, for example, create foundations to support groups as part of their social responsibility, such as the KGL group's KGL Foundation,[111] which made a grant of GHC 20,000.00 to GHC250,000.00 (US$1766-22,208)[112] available to sector actors. In addition to such foundations, the private sector also collaborate with sector actors to deliver services and projects. [113]

Private individuals also contribute through philanthropy, embedded in Ghanaian 'giving' practices such as *'Adɔyɛ'* (kindness).[114] This is often towards village and community care or projects. These donations typically occur during festivals and occasions like Christmas. In addition, a range of emerging community-based philanthropic foundations has developed in response to specific local needs, working directly with village and community groups.[115] Furthermore, indigenous forms of internal fund mobilisation, particularly savings schemes, and community labour within village associations and community groups also serve as important domestic funding mechanisms. The savings scheme is commonly known as a *susu group* such as the Asafo Company *susu* group established during colonial times.[116] However, the *susu* culture has evolved, transforming into a more formalised financial service known as Village Savings and Loans Associations (VSLAs).

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[109] Philanthropy Ghana, 'About us'< https://philanthropygh.org/> accessed 4 September 2026

[110] Martin Hushie, 'Public-Non-Governmental Organisation Partnerships For Health: An Exploratory Study With Case Studies From Recent Ghanaian Experience' (2016) 16(1) BMC Public Health 963. <https://pmc.ncbi.nlm.nih.gov/articles/PMC5020518/> accessed 4 September 2026

[111] KGL Foundation, 'About KGL Foundation' <https://kglfoundation.org/about> accessed 4 September 2026

[112] Ghana CSOs Funding Platform, 'KGL Foundation' <https://funding.helpfoundationafrica.org/2025/02/18/kgl-foundation/>accessed 4 September 2026

[113] Global Communities Ghana, ' Partnerships' < https://ghana.globalcommunities.org/partners/> accessed 4 September 2026

[114] Charles Kojo Vandyck, 'Reclaiming the heart of African Giving: Lessons from Akan Adɔyɛ' (WASCI, 2026) <https://wacsi.org/reclaiming-the-heart-of-african-giving-lessons-from-akan-ad%C9%94y%C9%9B/> accessed 4 September 2026

[115] Ben Ocra, 'Living Lineage: Stories of Community Philanthropy from Ghana' (2026) <https://johnsoncenter.org/blog/living-lineage-stories-of-community-philanthropy-from-ghana/>accessed 4 September 2026

[116] Lawrence Atingdui, *Defining the Nonprofit Sector: Ghana* (Johns Hopkins University for Policy Studies,1995) Also See 2.1.1.1

Current VSLAs is reportedly comprised of 34,112 savings groups with a combined savings value of US$15 million, drawn largely from rural communities.[117] Although not all VSLAs are organised by third sector bodies, many operate with support from NGOs or Community volunteers.[118] Unlike NGOs, the indigenous internal funding demonstrates that village associations and community groups rely more on domestic funding to provide local economic assistance and drive social development. Similarly, religious worship-based organisations such as churches generate funds domestically through tithes, offerings[119] and remittance[120] from members and the general public. They also raise funds from commercial activities including operating businesses, schools and hospitals.[121] Although domestically generated funds are modest, as compared with international financing, a key advantage is that they allow for greater local control over development priorities, which is often limited under foreign-funded initiatives. [122]

That said, international funding in Ghana's third sector is substantially higher than domestically generated funds. It was international funding that fuelled the rapid expansion of NGOs in Ghana during the World Bank and IMF Structural Adjustment Programmes of the 1986-1990s. [123] As Government capacity to provide social services declined, international donors stepped in to fill the

[117] Ghana Ministry of Finance, 'Request for Expressions of Interest-VSLA-Zone 2' <https://mofep.gov.gh/node/1473>accessed 4 September 2026

[118] Ghana Ministry of Finance (n 117)

[119] Karen Lauterbach, 'A Man's Gift Will Make Room for Him': Sources of Wealth and Legitimacy in Charismatic Christianity in Ghana' (2024) 42(2) Journal of Contemporary African Studies 296 <doi:10.1080/02589001.2024.2341621.>accessed 4 September 2026

[120] Audrey Jones, 'Faith and Finance: Making Sense of Religious Remittances in Ghana'(2025) https://www.columbiaemergingmarketsreview.com/p/faith-and-finance-making-sense-of > accessed 4 September 2026

[121] Francis Bortey, 'Taxation and the pulpit: What pastors and church owners should know' *B&FT* (17 April 2026) <https://thebftonline.com/article/taxation-and-the-pulpit-what-pastors-and-church-owners-should-know> accessed 4 September 2026

[122] *See chapters 7 and 8 for further discussion on this*

[123] Ian Gary, 'Confrontation, Co-corporation or Co-optation: NGO and the Ghanaian State During Structural Readjustment' (1996) 23 (68) Taylor and Francis, 157 < https://www.jstor.org/stable/4006246> accessed 4 September 2026

gap through NGOs.[124] Since then, Ghana has long been regarded as a 'donor darling' within the international development community.[125]

Approximately, 70- 90% of NGO operating budgets in Ghana are financed by international donors.[126] These funders range from foreign Government agencies to private donors. Major Governments contributors include UK's(now Foreign, Commonwealth and Development Office) , DANIDA[127], CIDCA,[128] KOICA,[129] former aid organisations like DFID, UKAID and USAID alongside multilateral and bilateral partners including the United Nations, European Union (EU), Organisation for Economic Co-operation and Development's (OECD) Official Development Assistance (ODA) etc.[130] Collectively, these agencies have reportedly invested billions of dollars and pounds into Ghana's development sector. For example, UKAID reported investing US$2.8 billion from 2011 in activities including economic growth, poverty alleviation and sustainable institutions.[131] ODA reportedly contributed US$1.24 billion in 2006, US$1.81 billion in 2012 and US$1.3 billion in 2013.[132] Additionally, the DFID, Denmark, the European

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[124] Gary (n87) 155

Also See 2.3.7

[125] Albert A. Arhin, Emmanuel Kumi and Mohammed-Anwar Sadat Adam, Facing the Bullet? Non-Governmental Organisations' (NGOs') Responses to the Changing Aid Landscape in Ghana' (2018) 29 Voluntas: International Solicitor for Thid Sector Research 348, 349 < https://doi.org/10.1007/s11266-018-9966-1>accessed 4 September 2026

Opoku, D. K, 'From a 'success' story to a highly indebted poor country: Ghana and neoliberal reforms' (2010) 28(2) Journal of Contemporary African Studies,155

[126] Arhin, Kumi and Adam (n 125)349

[127] Danish International Development Agency

[128] China International Development Cooperation Agency

[129] Korea International Cooperation Agency

[130] Arhin, Albert, 'Advancing post-2015 Sustainable Development Goals in a changing development landscape: Challenges of NGOs in Ghana' (2016) 26(5)Development in Practice, 555 <https://doi.org/10.1080/09614524.2016.1189513> accessed 4 September 2026

[131] Independent Commission for Aid Impact, 'The changing nature of UK aid in Ghana' (2020) <https://icai.independent.gov.uk/review/ghana/>accessed 4 September 2026

[132] United Nations Ghana, 'Ghana millennium development goals:2015 report' (United Nations, 2015) 64 <https://ghana.un.org/en/19078-ghana-mdgs-report-2015>accessed 4 September 2026

Union and the United States reportedly jointly funded £21.5 million in grants[133] under the Strengthening transparency, accountability and responsiveness programme 2011-2015.

International development organisations also fund the sector. For example, the World Bank's International Development Association (IDA) reportedly committed US $1.24 billion to Government and Civil Society[134] between 2002 to 2021. Furthermore, foreign private philanthropic organisations also contribute to the sector, including well known foundations like Gates Foundation and the African climate foundation. For example, the Gate Foundation reportedly committed US$2,070,000[135] in 2025 to support sector activities.

These figures demonstrate that billions in foreign aid flow into Ghana's economy each year, although the amount has declined over time. Arhin, Kumi and Adam[136] note that Ghana's reclassification as a lower middle-income in 2010 led to a 26% reduction in ODA between the period of 2012-2013. World bank data similarly shows that net ODA fell from US$1.8 billion in 2012 to US$1.33 billion in 2013.[137] However, aid levels rose again, reaching US$2.2 billion in 2020,[138] largely due to the Covid-19 pandemic, before dropping to US$1.57 billion[139] in 2023, which was equivalent to almost 2% of Ghana's GDP (US$80.55 billion[140] 2023) that year.

Like Ghanaian businesses, foreign businesses also contribute to the sector through their own foundations. For instance, Nexans,[141] an international sustainable electrification company,

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[133] The Independent Commission for Aid Impact (ICAI) , 'Rreport- DFID's Empowerment and Accountability Programming in Ghana and Malawi ' (ICAI, 2013) < https://icai.independent.gov.uk/html-version/dfids-empowerment-and-accountability-programming-in-ghana-and-malawi/#ref12>accessed 4 September 2026

[134] Aid Atlas, 'International Development Association to Ghana for All Sectors and Objectives During 2002-2021' <https://aid-atlas.org/profile/international-development-association/ghana/all/2002-2021?usdType=usd_commitment>accessed 4 September 2026

[135] Gates Foundation, 'Impact Investing Ghana LBG '<https://www.gatesfoundation.org/about/committed-grants/2025/11/inv-092163>accessed 4 September 2026

[136] Arhin, Kumi and Adam (n 125)349

[137] World Bank, 'Net Official Development Assistance Received (Current US$)' <Ghanahttps://data.worldbank.org/indicator/DT.ODA.ODAT.CD?locations=GH>accessed 4 September 2026

[138] World Bank (n137)

[139] World Bank (n137)

[140] World Bank, 'GDP (Current US$)-Ghana,' <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=GH>accessed 4 September 2026

[141] Nexans, .Our History <https://www.nexans.com/group/our-story/>accessed 4 September 2026

established the Foundation Nexans to provide grants for sustainable electrification.[142] Beyond formal foundations, some foreign companies support local groups directly by funding and strengthening the capacity of communities that produce the raw materials they need. A notable example is the long-standing support international cosmetic brands provide women shea butter processing groups[143] in Northen Ghana.[144] Brands like the Body Shop have helped create women cooperatives out of community groups- including the Tungteiya Shea Butter Association, Northern Ghana Community Action Fund (NOGCAF), Northern Empowerment Association (NEA), and GETRADE, and have further created a common fund NOGCAF - for community improvement.[145] LUSH similarly partners with the Ojaba Women's Shea Cooperative , supporting women in shea-butter processing and sourcing .[146] These collaborations aim to promote women's economic empowerment, secure market for their produce and contribute to the broader family and community development.[147]

Thus, the sector has many sources of fund mobilisation from both domestic and international partners, influencing the funding landscape.

1.2.3 Social and Public Interest

According to Gyimah-Boadi and Mensah, [148] the participation of various sector actors, such as professional groups, business associations, trade unions, farmers' groups, community development organisations, and self-help associations in citizen affairs is very high. Therefore,

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[142] Ghana CSOs Fundin Platform, ' Foundation Nexans' <https://funding.helpfoundationafrica.org/2025/02/18/fondation-nexans/> accessed 4 September 2026

[143] Okine (n 24)

Karen Elisabet Skytt Ansbæk, 'Prices and Poverty – Agricultural Commodities and the Position of Small-scale Producers in Global Economic Networks'(Master Thesis, Copenhagen Business School ,2005) <https://research-api.cbs.dk/ws/portalfiles/portal/58443239/prices_and_poverty_master_thesis.pdf> accessed 4 September 2026

[144] Elvis Kachi, ' How African Beauty Brands Are Empowering Local Communities' (2024) <https://beautymatter.com/articles/how-african-beauty-brands-are-empowering-local-communities> accessed 4 September 2026

[145] Ansbæk (n 143) 41

[146] Miranda Larbi, 'How Lush Is Empowering Women in Ghana to Help Themselves Through Shea butter' *Metro* (London, 8 March 2018 M) <https://metro.co.uk/2018/03/08/lush-empowering-women-ghana-help-shea-butter-7371999/> accessed 4 September 2026

[147] LUSH, 'Shea brilliance'. <https://www.lush.com/uk/en/a/shea-brilliance> accessed 4 September 2026

[148] Gyimah-Boadi and Mensah (n 53)

Lyon[149] argues that the sector has social trust as its capital. This is further supported by the closed[150] USAID's[151] civil society organisations sustainability index report, which states that public perception of Ghanaian sector actors is generally positive due to the direct benefits beneficiaries associate with their work. For example, in 2011, religious bodies, civil organisations, community groups, farmers' associations, Ghana TUC, and academics united to form the National Coalition against Privatisation of Water (NCAP-Water), which successfully campaigned against the World Bank's recommendation to privatise water supply services in Ghana.[152] Suleiman[153] noted that the NCAP-Water employed social capital, mass-mobilisation, and public-education tactics to shift public opinion against privatisation. This even led to the Accra Declaration of Water Rights.[154]

Furthermore, sector actors are recognised for their human rights activism, including organising conferences and workshops, providing refuge to refugees fleeing civil wars in Liberia and Sierra Leone, rehabilitating victims of human rights abuses, and publishing annual reports.[155] Linked to human rights are environmental activism and its impacts on livelihoods. Musah-Surugu and others,[156] in their study on the sector's contributions in climate change adaptations, notes that

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[149] Fergus Lyon, 'Trust, Networks and Norms: The Creation of Social Capital in Agricultural Economies in Ghana' (2000) 28 (4) Science Direct 663
<https://www.sciencedirect.com/science/article/abs/pii/S0305750X99001461?via%3Dihub> accessed 4 September 2026

[150] At the beginning of the research, the USAID was an operating institution. They were closed under Donald Trump's administration in 2025. Although closed, their reports remain a good resource.
Ana Faguy, ' USAID officially closes, attracting condemnation from Obama and Bush' *BBC* (London, 2 July 2025) <https://www.bbc.co.uk/news/articles/c307zq8ppj6o> accessed 4 September 2026

[151] USAID, '2022 Civil Society Organisation Sustainability Index: Sub-Saharan Africa (West Africa)' (14th ed, USAID 2023) 31

[152] Lina Suleiman, 'Civil society: a revived mantra in the development discourse. (2011) 13 Water Policy 87, 91 < https://kth.diva-portal.org/smash/get/diva2:327179/FULLTEXT01.pdf>accessed 4 September 2026

[153] Suleiman (n 152)

[154] The Accra Declaration on the Right to Water 2001. < https://www.iatp.org/sites/default/files/451_2_97679.pdf> accessed 4 September 2026

[155] H. Kwadwo Appiagyei-Atua, 'Human Rights NGOs and their Role in the Promotion and Protection of Rights in Africa' (2002) 9(3) International Journal on Minority and Group Rights 265 Published by: <https://www.jstor.org/stable/24675237> accessed 4 September 2026

[156] Musah-Surugu and others (n 75)

sector actors are engaged in climate advocacy and agenda setting, capacity building initiatives for local empowerment and direct climate change services.[157]

Ultimately, the sector's vibrancy has yielded numerous developmental, political, and social benefits. However, as argued before, the third sector's growth was not duly accompanied by adequate oversight, resulting in adverse effects.

1.3 Adverse Impacts of the Third Sector in Ghana

Since the sector offers a range of services across nearly all of Ghana's domains, including governance, health, education, environment, mining, women's and children's rights, human and animal rights, transport, energy, faith and traditional affairs, and new media,[158] its negative effects permeate many industries. Despite the positive contributions, the literature below indicates that sector actors are not always selfless in their activities, leading to marginalisation, self-interest, and exploitation. A literature review is provided below to contextualise this.

1.3. 0 Underdevelopment: Marginalisation and Duplicated Projects

Though development is one of the sector's key strengths, underdevelopment is its key weakness. Research[159] shows that, although there is a concentration of sector actors in the Northern regions of Ghana, with the primary aim of poverty alleviation, these regions remain among the poorest in the country, due in part to sector actions. Also, Osei[160] in his study on the critique of sector actors' approach to rural development, argues that to obtain funding, some sector actors commonly use inferior language to describe their beneficiaries, creating an 'inferior–superior dichotomy'. This leaves little room for the assumed inferior rural people to challenge the ideas of the assumed superior NGOs. This creates marginalisation and deep resentment within communities, as they are portrayed as inferior. Mohan[161] found a similar issue in which some sector actors turn the local

[157] Including building basic social facilities like flood drains, local weather stations etc.

[158] USAID 2022 (n 151) 29

[159] Mohan (n 86)

[160] Gershon Osei, 'Self-Help Without the Self: Critique of Non-Governmental Organizational Approaches to Rural Development in Ghana' (2007) 60(2) International Social Work 494, 502

[161] Mohan (n 86)

areas where they operate into their 'fiefdoms', reinforcing their elite status over their beneficiaries.[162] Linked to this was the finding that some sector actors often use their organisations for personal gain, leading to corruption, resource misuse, and the promotion of political agendas.[163]

The discussion of sector contributions above portrays the sector as a champion of political and democratic freedom; nonetheless, research shows that when sector actors are too closely linked to political groups, this creates significant suspicion and mistrust among their beneficiaries, making them appear biased.[164] This is corroborated by Mohan's[165] finding were an NGO director who was also a member of the local Government (District Assemblyman) was viewed by beneficiaries as promoting Government interests.[166]

Additionally, the external determination of local agendas and projects[167] by foreign funders and sector actors without the input of community members is also an issue. Bawole and Langnel's[168] research suggest that beneficiaries are treated as the end users of the project, and their views on project decisions are often not taken into account by NGOs. This results in the duplication of projects, which is tightly linked to resource misuse. In their study, Kwao and Amoak[169] also found that project duplication leads to the implementation of the wrong development interventions because the focus is on the achievement of funders' desire, which takes precedent over the community's actual needs.

All these create deep-seated marginalisation and duplication of projects, leading to underdevelopment.

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[162] Mohan (n 86)18

[163] Mohan (n 86)18

[164] Kaderi Noagah Bukari and Reginald Tang Guuroh, 'Civil Society Organizations (CSOs) and Peacebuilding in the Bawku Traditional Area of Ghana: Failure or Success?' (2013) 3(6) Research on Humanities and Social Sciences, 39 <https://core.ac.uk/reader/234673482> accessed 4 September 2026

[165] Mohan (n 86)146

[166] Mohan (n 86)146

[167] Mohan (n 86)14

[168] Justice Nyigmah Bawole & Zechariah Langnel , 'Downward accountability of NGOs in community project planning in Ghana' (2016) 26 (7) Development in Practice 920, 6
< https://www.tandfonline.com/doi/full/10.1080/09614524.2016.1210094> accessed 4 September 2026

[169] Benjamin Kwao and Daniel Amoak, 'Does size really matter? The prevalence of NGOs and challenges to development in Northern Ghana' (2022) 76(3) Norwegian Journal of Geography 149 < https://www.tandfonline.com/doi/abs/10.1080/00291951.2022.2072383> accessed 4 September 2026

1.3.1 Self-Interest and Exploitation

Reports also show that some sector actors chase after funding for their own use[170]and spend up to 80% of their funding for administrative costs and the personal use of executives.[171] Therefore, though they have social capital, the public also refer to them in disparaging terms including get rich schemes, illegitimate, fake, or husband and wife NGOs.[172] Their self-interest is also tied to their dictating of community projects and entrenching the inferior-superiority dichotomy. This makes them culturally separate from beneficiaries and arrive at needs assumptions that are often wrong.[173]

In addition, self-interest is seen more overtly in church organisations where positive social and economic contributions have gone hand in hand with exploitation. In Ghana, the 1992 Constitution guarantees the freedom to practice one's chosen religion.[174] The most recent census in 2021 showed the various religious groups in Ghana to include Christian, Islam, traditionalist and other.[175] The two dominant groups are Christians and Muslims, with the former accounting for more than seventy-one per cent of the population.[176] Churches contribute to spiritual worship, the construction of schools and hospitals, support of refugees[177] and some economic development.[178] But at the same time, they have been reported for exploitation and abuse.[179]

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[170] USAID, '2009 NGO Sustainability Index for Sub-Saharan Africa' (USAID 2010) 66 < https://resourcecentre.savethechildren.net/pdf/5846.pdf > accessed 4 September 2026

[171] Iliasu Adam, 'Ghana to Blacklist NGOs'. *BBC* (London, 25 February 2004) <http://news.bbc.co.uk/2/hi/africa/3517827.stm > accessed 4 September 2026

[172] George Bob-Milliar, 'NGOs in Ghana: Profit Making Organizations?' *GhanaWeb News*(Accra, 28 April 2005) <http://www.ghanaweb.com/GhanaHomePage/features/artikel.php?ID=80271> accessed 4 September 2026

[173] Osei (n 1) 498

[174] 1992 Constitution, Article 21(d)

[175] Statistical Service Ghana (n 5)

[176] Statistical Service Ghana (n 5)

[177] Elizabeth Wirtz and Jonas Ecke, 'The Clash and Clout of faith: refugee aid in Ghana and Kenya' [2014] 48 Forced Migration Review 40 < https://www.fmreview.org/faith/wirtz-ecke/> accessed 4 September 2026

[178] Anna-Riikka Kauppinen, 'Who is rising? Popular Critiques of the Economic Power of Mega-Churches in Ghana' [2024] 15 Global Challenges, Geneva Graduate Institute <https://globalchallenges.ch/issue/15/who-is-rising-popular-critiques-of-the-economic-power-of-mega-churches-in-ghana/> accessed 4 September 2026

[179] Lord Zinah Nartey, 'Selling Jesus for cash, the controversial practice in Ghanaian Churches' *Ghana Web News* (Accra, 7 September 2023) <https://www.ghanaweb.com/GhanaHomePage/features/Selling-Jesus-for-cash-The-controversial-practice-in-Ghanaian-churches-1840100> accessed 4 September 2026

Research[180] shows that many Ghanaians have a negative perception of churches due to perceived and or experienced financial exploitation. This was founded on the opinion that churches in Ghana are becoming more materialistic and monetised. [181]

Ultimately, without a robust regulatory regime, adverse impacts continue, and efficient control becomes challenging. Although sector actors bear responsibility for the adverse effects, these effects are not wholly attributable to them. The weakness of the legal system also plays a significant role in this. Likewise, the vibrant sector and its valuable contributions are facilitated by the legal system too. This is what we turn our attention to next.

1.3.2 Domestic and International Funding: limited transparency and power imbalance

Both sources of funding in Ghana's third sector discussed in 1.2.2 have significant adverse impacts. The key limitation associated with domestic funding relates to the substantial volume of unreported contributions made by individual philanthropists and religious worship organisations, particularly churches. These donations and fundraising activities are largely internal and informal, which restricts financial transparency.

This challenge is compounded by the fact that the Income Tax Act, 2015 (Act 896) exempts churches from taxation, meaning that funds generated by these organisations often go unreported unless organisations are registered as companies. Even then, compliance is inconsistent, the Registrar General's Department (RGD) noted that some churches failed to submit their annual reports, leading to their removal from the register in 2023.[182]

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[180] Joseph Bawa, 'Attitude and Perception of Ghanaians toward the Church: An analysis of the views of Christians living in selected Districts in the Greater Accra Region of Ghana' [2021] 51 Jornal of Religion in Africa 150, 174

[181] Bawa (n 180) 174

[182] Ghana Web, 'ORC to Strike out Names of 2,812 churches, CSOs for Not Filing Annual Returns' *GhanaWeb* (Accra, 13 April, 2023) <https://www.ghanaweb.com/GhanaHomePage/business/ORC-to-strike-out-names-of-2-812-churches-CSOs-for-not-filing-annual-returns-1748261> accessed 4 September 2026

See 6.2.1.1 for broader discussion on this

In addition, reports on the generation and use of church funds has frequently been unfavourable,[183] with concerns about exploitation and donor fatigue, highlighting the need for alternative approaches to domestic resource mobilisation.[184]

For international donors, a key adverse effect is the heavy reliance on foreign aid. Although foreign aid levels have fluctuated,[185] their contribution remains substantial. At the time of writing, a funding platform listed over 10,00 international grants available to Ghanaian organisations.[186] This reflects strong external support for development and continued investment into Ghana's economy. However, it also shows the sector's heavy dependence on foreign funding.[187] This creates a funding landscape in which international donors shape development priorities often at the expense of the true needs of local communities,[188] and further create a power imbalance[189] between funders and communities as well as funders and sector organisations.

Another adverse effect is linked to businesses that directly collaborate with community groups like the shea butter processing women group mentioned above.[190] A key concern of such collaborations, is the grey area of funding transparency this creates. This is because, much of this support is informal and known only within the communities involved. While major brands like

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[183] Nyameke Emmanuel Graham,' Paperless God and the Money Church, A Critical Evaluation Of The Activities Of The Ghanaian Pentecostal and Orthodox Churches' *Modern Ghana* (Accra 06 May 2021) <https://www.modernghana.com/news/1079492/paperless-god-and-the-money-church-a-critical.html#google_vignette> accessed 4 September 2026

Lauterbach (n 119)

[184] Iddrisu Adam Shaibu, 'Nehemiah Fundraising Strategy: A Model for the Ghanaian Church' (2021)7(2)E-Journal of Religious and Theological Studies (ERATS) 30 <https://noyam.org/wp-content/uploads/2021/02/ERATS2021721.pdf> accessed 4 September 2026

[185] Emmanuel Kumi, 'Domestic resource mobilisation strategies of national non-governmental development organisations in Ghana' (2017) 52 Bath Papers in International Development and Wellbeing <Retrieved www.bath.ac.uk/cds/ publications/bdp52.pdf.> accessed 4 September 2026

Arhin, Kumi and Adam (n 125)349

[186] Funds for NGOs,' Latest Grants and Resources in Ghana' < https://www2.fundsforngos.org/tag/funding-opportunities-and-resources-in-ghana/> accessed 4 September 2026

[187] Khaldoun AbouAssi, 'Hands in the pockets of mercurial donors NGO response to shifting funding priorities.' . (2012) 42(3) Nonprofit and Voluntary Sector Quarterly, 584 <https://journals.sagepub.com/doi/abs/10.1177/0899764012439629> accessed 4 September 2026

[188] *See Chapter 8 for the broader discussion sufficiency of sector regulation to address issues of sector accountability*

[189] See chapter 7 *or the broader discussion sufficiency of sector regulation to address issues of sector transparency*

[190] *See 1.2.1*

LUSH[191] and The Body Shop[192] publicly report their investments, many other cosmetic companies do not, creating a significant gap in funding transparency. Even in this, the exact amount LUSH and the Body Shop have invested was not found by the researcher.

In addition, rural groups often lack the capacity to verify the legitimacy of businesses or individuals purporting to offer support. This increases the risk of illegal financial flow, including potential terrorism financing highlighted in the GIABA report,[193] and even exploitation.[194] Moreover, although these partnerships can be beneficial, weak regulation can also produce a power imbalance, as the companies hold funding and market access that the women groups depend on, easily leading to adverse effects.[195] It also makes it easy for foreign and local actors to disguise themselves as philanthropists while engaging in harmful practices.

This adds to the regulatory limitations in the third sector when village and community groups are involved in such collaborations. Even when such groups are formalised into cooperatives, challenges remain. Although cooperatives in Ghana are for-profit organisations regulated under the Co-operative Societies Act, 1968,[196] many operate as social enterprises whose activities and make-up intersect with third sector work. For example, they are particularly common in rural agriculture communities,[197] where they operate as community groups for local development.

More directly, some NGOs even establish their own subsidiary cooperatives. For example, SEND Ghana created SEND Financial NGO (SENDFiNGO), which provides microfinance to beneficiary communities in the eastern part of Northern Ghana through the cooperative credit union.[198] As a result, cooperatives have become both domestic and international funding sources and a grey area in the sector's financial transparency and regulation.

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[191] Larbi (n 146)

[192] Ansbæk (n 143)

[193] GIABA (n22)

[194] Okine (n 24)

[195] *See chapter 7.*

[196] Co-operative Societies Act, 1968 N.L.C.D 252

[197] Adu-Boahen Bernice, Ebenezer Donkor, Gospel Iyioku, and Jana Mazancová, 'The Effect of Agricultural Cooperative Membership on Women's Empowerment: A Case of Rural Ashanti, Ghana.' (2025) 11(1) Cogent Food & Agriculture < doi:10.1080/23311932.2025.2538628> accessed 4 September 2026

[198] Arhin, Kumi and Adam (n 125)353

1.4 The Legal System in Ghana's Third Sector

The primary legal basis for the sector's legal system is the fundamental freedoms under Article 21(1) of the 1992 Constitution, particularly the freedom of association under Article 21(1)(e). The freedom of association is further reinforced by specific international instruments to which Ghana is a party. This includes the African Charter on Human and Peoples' Rights (ACHPR) 2017, the Guidelines on Freedom of Peaceful Association and Assembly 2017, the International Covenant on Civil and Political Rights (ICCPR) 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966. The obligations under these frameworks primarily require parties to secure fundamental rights that enable the sector's free operation and limit Government interference.

There is no specific sector legislation, but sector research done by the African Philanthropic Network (APN) and the West Africa Civil Society Institute (WACSI) [199] showed that almost every piece of legislation passed by Parliament is significant to the third sector, as they can use or rely on the provisions for their activities. Therefore, after the Constitution and international law, provisions are found in several pieces of legislation that sector actors use based on their interests and purposes. Specific ones that can be linked to sector regulation includes the, Companies Act 2019 (Act 992),[200] Income Tax Act, 2015 (Act 896) and Practice Note on Charitable Organisation under the Income Tax Act, 2015 (ACT 896), Local Government Act of Ghana, 1993 (Act 462), Trustees Act 1962 (Act 106), the Professional Bodies Registration Decree (NRCD 143) of 1976, Right to Information Act, 2019 (Act 959) and the Anti-money Laundering Act 2020(Act 1044).
As such, the sector's legal framework is reflected in Article 21(1)(e) of the 1992 Constitution, international law, and scattered provisions in other legislation.

1.4.0 Implications of the Legal System: Constitutional protection and autonomy

The principal strength of this legal system is the Constitutional guarantee of the right to form associations under the 1992 Constitution. As the highest law of Ghana,[201] the breach of Article 21

[199] West Africa Civil Society Institute (WACSI), *Rapid Assessment of the Legal Environment for Civil Society Including Philanthropic Organisations in Ghana*. (WACSI,2020)12 <https://wacsi.org/wp-content/uploads/2021/02/Ghana-Rapid-Assessment-of-The-Legal-Environment-for-Civil-Society-Including-Philanthropic-Organisations.pdf> accessed 4 September 2026

[200] Replaced the Companies Act 1963 (Act 179)

[201] See section 3.4

(1)(e) leads to judicial intervention as discussed in Chapter 3. Therefore, this legal system largely supports sector autonomy without harassment or censorship,[202] thereby simultaneously satisfying international rights on the freedom of association. The scattered legislative provisions also guide the behaviour of sector actors without directly limiting the freedom of association, facilitating sector autonomy.

1.4.1 Implications of the Legal System: Self-regulation

The absence of sector legislation and the use of legislative provisions based on interest further sector autonomy through self-regulation. This is highly valued by sector actors because it reduces the risk of Government suppression and interference, thereby supporting vibrant sector growth. According to Vibert, self-regulation creates a regulatory framework where sector actors as

"[private] bodies draw up their own regulations in order to achieve certain objectives and take full responsibility for monitoring compliance with those regulations."[203]

The actors independently create rules to control, monitor members' behaviour and induce them to conform to the rules.[204] The regulations take the form of a code of conduct, quality standards, good practices, and sector-specific technicalities. For example, the Network of Associations of Registered NGOs in Ghana and the Ghana Association of Private Voluntary Organisations in Development (GAPVOD) provide their members with collective codes and professional practices.[205] Other organisations choose their own codes, creating in-house rules and standards.[206]

Nonetheless, though self-regulation encourages autonomy, it is also a disadvantage given the large number of actors in the third sector. To put this into perspective, there are four categories of sector actors[207] operating at different levels and about 300,000[208] organisations, all of which have their own rules and standards, inevitably limiting uniformity. In addition, autonomy means the

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[202] USAID, 2019 Civil Society Organisation Sustainability Index for Sub-Saharan Africa: Ghana (11th ed. USAID, 2019)101 <https://www.fhi360.org/wp-content/uploads/drupal/documents/csosi-africa-2019-report.pdf> accessed 4 September 2026

[203] Frank Vibert, *New Regulatory Space: Reforming Democratic Governance* (Edward Elgar Publishing, 2014) 15

[204] John Alford and Janine O'Flynn, Rethinking Public Service Delivery: Manging with External Providers (Palgrave Macmillan, 2012) 158

[205] *See Section 6.4*

[206] *See section 7.8*

[207] *See section 1.1*

[208] Commonwealth Network (n 74)

organisations choose how stringent their rules are, thereby limiting effective control. The existing regulations are also voluntary, with enforcement and agreed sanctions often minimal. Public authority sanctions may be imposed only as provided by law.[209]

This undermines effective Government oversight, resulting in challenges, particularly in accountability, transparency, the lack of safeguards against exploitation, and the marginalisation of people by sector organisations.

1.4.2 Implications of the Legal System: Lack of coordination

The state of the legal system also means a lack of coordination. The scattered legislative provisions are a weakness of the legal system, as laws are not enforced strictly but rather at the discretion of organisations. Apart from indispensable laws pertaining to crimes, such as in tax and money-laundering, sector actors mostly select which laws to operate under based on their interests. For example, whether to be registered as a company or not and thus come under the Company Act. As a result, the number of operating organisations is difficult to determine. Since provisions are applied on an ad hoc basis, this breeds a lack of awareness of the law, leading to deficiencies in the regulatory regime.

Furthermore, in the absence of a sector legislative framework, there is no legal definition of sector actors and no mechanism for coordination. The legal system is therefore insufficient and uncoordinated, and it lacks the necessary codified standards of rights and obligations found in sector legislation. For example, *Uganda's Non-Governmental Act 2016*,[210] includes provisions pertaining to registration, self-regulation, administration of organisations, a board, reporting oversight, a regulator, offences and penalties, dissolution, etc.

1.4.3 Implications of the Legal System: Absence of Legislation and Inconsistency with other Ghanaian sectors

The sector's legal system creates inconsistencies across the three main sectors, as all key national sectors in Ghana have specific sector legislation(s) that regulates them. The public sector is regulated under various Acts, including the Public Services Commission Act 1994, the Public Utilities Regulatory Commission Act 1997, and the Local Government Act (2016). The private sector is also overseen by several Acts that regulate the various industries within it. These include

[209] Vibert (n 203) 15

[210] The Republic of Uganda, The Non-Governmental Act 2016.

the Companies Act 2019, the Trademarks Act 2004, the Banks and Specialised Deposit-Taking Institutions Act 2016, and the Fisheries Act 2002. Even the media[211] is governed by the National Media Commission Act 1993. These examples not only prove that legislation is a necessary requirement to govern sectors but also indispensable. Without sector legislation, third sector governance in Ghana is inconsistent with other sectors, creating a gap in the national legal system. Sector legislation is necessary to provide adequate oversight that balances rights and responsibilities and is an indispensable measure in building a strong regulatory regime.

1.4.5 Implications of the Legal System: Non-Fulfilment of AML/CFT Obligations and Limited Transparency and Accountability Mechanisms

The weakness of the legal system affected Ghana's AML/CFT[212] obligations. In 2018 and 2020, Ghana was placed on the Financial Action Task Force's (FATF) grey and blacklist and the European Union's list of high-risk jurisdictions with strategic deficiencies in its AML/CFT regime[213] respectively. This was in response to investigations carried out on the strength of Ghana's third sector in tackling terrorist financing by the Economic Community of West African States' (ECOWAS) Inter-Governmental Action Group Against Money Laundering (GIABA).[214] The GIABA report, among other things, found limitations in the third sector's legal and supervisory regime.[215] Findings showed that the sector lacked sufficient transparency and accountability mechanisms. It was largely unregulated, with weak registration mechanisms and provided little information on the size and the number of sector organisations. The report also highlighted diminished accountability with little obligation to ensure traceability of owners and beneficiaries. Because of this, the sector was shown to be vulnerable to terrorism financing. The GIABA report,

[211] Which is considered the fourth sector

[212] Anti-Money laundering and Combating of Financial Terrorism

[213] Republic of Ghana Ministry of Finance, 'Ghana removed from European Union (AMLCFT) Regime' (*Ministry of Finance* 19 January 2022) https://mofep.gov.gh/press-release/2022-01-19/Ghana-removed-from-AMLCFT-regimes> accessed 4 September 2026

[214] GIABA (n 22)

[215] GIABA (n 22) 57-58

therefore, recommended that Ghana revise and adopt best practices for robust regulation in its third sector[216] including enacting legislation.

But, in response to the recommendation, the Government, in 2020, introduced and implemented the aforementioned 2020 Policy[217] along with the *Directives for the Management of Non-Profit Organisations (NPOs) Operations in Ghana,*[218] instead of sector legislation. This action was baffling because while the 2020 Policy provided a framework and removed Ghana from the blacklists, it only partially satisfied the GIABA recommendation,[219] necessitating sector legislation.

1.5 The Need for Sector-Specific Legislation

At this point, it is clear that Ghana's third sector requires legislation, and its absence is inexcusable. The adverse impacts and weaknesses of the legal system have necessitated a robust regulatory regime founded on legislation to address them as they mainly exist due to the absence of legislation. Consistent with this thought is the findings from Kwao and Amoak[220] study where the issue of project duplication was found to be linked to inadequate coordination and regulation. The lack of proper regulation makes decreased oversight easier, and the mismatch between community needs and sector actors' desires.[221] Thus, regulation itself contributes to the negative impact of sector activities on the country. The problem with church exploitation, especially of pastors of one-man churches, prompted Parliament to consider regulating churches through legislation, but this failed.[222] Thus, exploitation and marginalisation are linked to the lack of an effective transparency

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[216] GIABA (n 22)121 [Recommendation 8]

[217] National Non-Profit Organisation Policy (2020)

[218] Directives for the Management of Non-Profit Organisations in Ghana (2020) < https://wacsi.org/directives-for-the-management-of-non-profit-organisations-operations-in-ghana/ > accessed 4 September 2026

[219] Institute of Democratic Governance Ghana, 'Safeguarding Civic Space through and enabling NPO Legislation in Ghana' (IDEG, Policy Dialogue, December 2023) <https://www.youtube.com/watch?v=oH0JV6QQQh8> accessed 4 September 2026

[220] Kwao and Amoak (n 169)156

[221] Kwao and Amoak (n 169)156

[222] *See section 6.2.3*

mechanism and to implementation failures stemming from reduced oversight, prompting the need for sector legislation.

Moreover, the vast number of sector actors means they permeate various industries, many of which lack internal measures to regulate them. For example, in the observation made in the author's LLM field dissertation of the shea butter industry mentioned previously.[223] Therefore, calls have been made for greater transparency in sector funding,[224] increased awareness of sector cooperation with local Government, increased oversight to reduce exploitation,[225] and criminal activities such as money laundering. [226]To address such issues, legislation is needed to regulate.

There are many forms of regulation, with self-regulation as discussed above being one of them. However, one of the most suitable for a legislation-backed regulation is command-and-control regulation.[227] By adopting command-and-control regulation, sector legislation will be strongly encouraged, as it provides a form of regulation backed by the force of law as the primary measure of control. Legislative authority further pre-empts policy, courts, and regulatory bodies responsible for ensuring compliance.[228] Therefore, compliance will be strictly monitored through process requirements, the possible presence of police, and strong penalties and sanctions for breaches.[229]

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[223] Okine (n 24)

[224] The Ghana Philanthropy Forum, *The NGO Tax Regime and The Enabling Environment for Philanthropy in Ghana.* (The Ghana Philanthropy Forum, 2018) < https://search.issuelab.org/resource/the-ngo-tax-regime-the-enabling-environment-for-philanthropy-in-ghana.html#:~:text=The%20NGO%20Tax%20Regime%20%26%20the%20Enabling%20Environment%20for%20Philanthropy%20in%20Ghana,-Dec%2013%2C%202018&text=Ghana%20has%20a%20vibrant%20culture,time%20of%20declining%20global%20support. > accessed 4 September 2026

[225] Seth J. Bokpe, 'Bill to regulate NGOs in the offing' *Graphic Online* (Accra, 28 November 2018) <https://www.graphic.com.gh/news/general-news/ghana-news-bill-to-regulate-ngos-in-the-offing.html > accessed 4 September 2026

[226] Salomey Appiah-Adjei, 'IDEG calls for regulation on activities of CSOs and NGOs' *Graphic Online* (17 June 2019) <https://www.graphic.com.gh/news/general-news/ghana-news-ideg-calls-for-regulation-on-activities-of-csos-ngos.html> accessed 4 September 2026

[227] Robert Baldwin, Mark Cave and Martin Lodge, Understanding Regulation: Theory, Strategy and Practice (Oxford University Press, 2011) 107 <https://academic.oup.com/book/7235> accessed 4 September 2026

[228] Baldwin and others (n 227) 107

[229] Alford and O'Flynn (n 204) 158

Because of its authoritative nature, it could protect the public and discourage behaviour deemed harmful or offensive.[230]

This approach is precisely what other African countries, such as Uganda,[231] Malawi, Rwanda and Zimbabwe[232] who have enacted legislation to regulate their third sectors. In addition, to address vulnerability to terrorism financing across all sectors in Ghana, the Government enacted the Anti-Money Laundering Act 2020 (Act 1044). This raised the question of why sector legislation was not also enacted alongside it, particularly given the sector's adverse effects, weaknesses in the legal system, and AML/CFT obligations. The only conclusion is that such an approach is difficult. Consequently, the failed third sector legislative attempts in the past attest to this view.

1.6 Failed Legislation Attempts

Like many African countries in the 1990s,[233] the then National Democratic Congress (NDC) Government sought to regulate the third sector after years of deregulation. They introduced the *Non-Governmental Organisation (NGO) Bill* in 1995. The NGO Bill was meant to '*control and coordinate NGO activities*[234] and provide a legal framework that the sector lacked.

Despite this seemingly favourable implication, sector actors were against the bill. This was primarily due to experiences of historical sector suppression and the guaranteed freedom of association under the 1992 Constitution. In terms of historical experience, the *NGO Bill* 1995 was introduced by the NDC Government, which evolved from the PNDC military Government, which highly restricted the sector, with some actors even jailed.[235] Its PNDC law 221 in 1984 was used to suppress and co-opt sector actors into the Government agenda. The NGO bill also included a provision mandating sector registration with an advisory council composed of Government appointees who would grant or deny registration. This provision was similar to

[230] Baldwin, Cave and Lodge (n 227) 108

[231] Republic of Uganda, Non-Governmental Act 2016

[232] Malawi Non-Governmental Organizations (Amendment) Act 2022

Republic of Zimbabwe, Private Voluntary Organisations Amendment Act, 2025

Rwanda (Organic Law No. 55/2008 of 10/09/2008 governing Non-Governmental Organizations (NGOs).

[233] Hofisi and Hofisi (n 2)

[234] Gary (n 87) 162

[235] Gary (n 87)156

PNDC Law 221, which effectively denied certain sectors the right to operate and compelled others to align with the Government agenda.

With the shadow of the Government's past action and PNDC law, the NGO Bill was seen as a renewed way for the Government to control the sector. The Integrated Social Development Centre (ISODEC), a Ghanaian NGO,[236] argued

'... The bill is not an innocent attempt to help NGOs liase better with themselves and Government. On the contrary it is a mechanism designed to get them to fit in with Government's designs'[237]

In addition, Article 21(1)(e) and Article 37(2)(a) allow free operation and disallow State interference in the enjoyment of the fundamental freedoms. This gives sector actors broad autonomy. The NGO bill was therefore seen as unconstitutional on several grounds.[238] Further, the NGO bill was unilaterally drafted by the NDC Government and then circulated to the sector actors[239] without consultation, which greatly dissatisfied them.[240] This move was regarded as a direct attack on sector autonomy. Moreover, the NGO Bill was said to provide a narrow definition of NGOs which discounted any organisation that sought to provide accountable governance. ISODEC argued that

"The definition of NGOs in terms of welfare, non-partisanship, and political involvement, are vague enough as to seek to preclude NGOs from questioning central Government policy as part of their efforts to deliver welfare ."[241]

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[236] Integrated Social Development Centre, 'History'.< https://isodec.org/our-history/> accessed 4 September 2026

[237] ISODEC, 'Focus on the NGO Bill'. (1995) Public Agenda Accra

ISODEC, 'The Non-Governmental Organisation Bill: A Muzzling Instrument in the Making in Institutional Capacity Building Programme for Northern Ghana Network for Development' (Report of 2nd Planning Workshop, 1-3 June 1995)

[238] Gary (n 87) 162

[239] Mary Kay Guagerty, 'The Emergence of Non-profit Self-Regulation in Africa' [2010] 39 Nonprofit and Voluntary Sector Quarterly 1087, 1105.

[240] Benson Chinedu Olugbuo, 'Civil Society Regulation in West Africa: Self-regulation, State Control or Regional Norms and Standards?' (2014) 4(2) WACSeries Quarterly Monograpgh,12
< https://wacsi.org/wp-content/uploads/2020/10/8.-Civil-Society-Regulation-in-West-Africa.pdf.> accessed 4 September 2026

[241] ISODEC (n 237)

The NGO definition, therefore, further substantiated the claim that the NGO Bill sought to reintroduce historical suppression and limit the freedom of association guaranteed under the 1992 Constitution. Sector actors, therefore, organised campaigns, seminars, press conferences, television debates, publications, etc[242] in protest of the NGO bill. Consequently, local sector actors' persuasion and the warning of large international NGOs threatening to leave Ghana[243] resulted in the Government dropping the NGO bill.

The second sector-legislative attempt was via the *Trust and Non-Profit Making Civil Society Draft Bill 2006/2007* (Trust Bill). The New Patriotic Party (NPP) Government introduced the Trust Bill, which was designed to provide a regulatory framework for public and private trusts, as well as NGOs and CSOs. This time, the Government wasn't linked to a previous military Government, but the bill still failed to pass.

The reasons for its failure again concerned sector autonomy. In 2000, the NPP, which succeeded the NDC, in collaboration with sector actors, developed an operational document for the sector through a series of workshops, seminars, and meetings. The document was revised and introduced as the Draft National Policy for Strategic Partnership with NGOs [244] (hereafter Draft Policy). The Government sponsored the Draft Policy, interGovernmental and some sector organisations,[245] with the agreement that it would form the basis of regulating the sector.[246] The Draft Policy's strategic goal was to foster Government/sector collaboration and create a framework for ongoing consultation. To this end, it primarily aimed at

"Enabling legal, institutional and democratic environment for NGOs to operate independently and contribute effectively to national development"[247]

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[242] Gary (n87) 162

[243] Mohan (n 86) 17

[244] National Consultative Group (NCG), Draft National Policy for Strategic Partnership with NGOs 2004. < https://www.icnl.org/wp-content/uploads/Ghana-document-IJNL-Volume-3-Issue-3.pdf> accessed 4 September 2026

[245] Draft Policy 2004, p. 4 and 5

[246] Olugbuo (240) 12

[247] Draft Policy 2004, p.7

To achieve its aim, the Draft Policy established a regulator[248] to provide accreditation, recommend sector organisations for tax exemptions, advise the Government sector, etc. In addition, the Draft Policy redefined NGOs as Civil Society Organisations (CSOs), provided a registration mechanism, tax-exemption rules, funding and accountability framework. However, a definite accountability measure was not stated; the Draft Policy only mentioned that an appropriate criterion and system will be developed.[249] It envisaged a regulatory system realised through coordinated effort, where there was going to be a

"Facilitation of the development of NGO networks to enhance co-ordination of their participation in the implementation of the policy and evaluation of its outcomes monitoring and co-ordination of their activities, and improve transparency and accountability practices"[250]

This provision made it clear that the Draft Policy was meant to facilitate collaboration in regulation development. However, the Draft Policy was not implemented. Instead, the Government introduced the Trust Bill unilaterally, which undermined sector autonomy and echoed attempts at Government interference and suppression.

Another issue was the regime it created. While the Trust bill also created a regulator (section 2), provided regulatory mechanisms (section 4) and tax exemptions, it ultimately placed the sector under a trust regime. Although sector actors could choose the legal status of a company limited by guarantee or trust, this is merely a registration tool to provide legal status. The trust regime was seen as separate from the characteristic development of the sector. Atuguba,[251] argued that the Trust Bill created a framework that would use a trust regime for the entire sector, and as such, organisations that are not registered as Trusts will be required to meet the standards of trust too. Based on the issue of autonomy and the trust regime, sector actors argued that the Trust Bill was repressive and stifled growth.[252] They argued that they preferred a regulatory framework that

[248] The first in the history of the sector.

[249] Draft Policy 2004, p.10

[250]Draft Policy 2004, p.7 – In the Policy strategy

[251] Raymond A. Atuguba, 'Summary of Issues Surrounding the Draft Trust and Non-Profit Making Civil Society Organizations Act, 2007, the Draft Organizations (Registration) Regulations, 2007 and the Draft NGO Policy Guidelines, 2007' (2007)

[252] SDG Philanthropy Platform, 'Enabling Environment for Philanthropy in Ghana' (SDG Philanthropy Platform, United Nations Development Programme,2017) 54 < https://siafrica.online/wp-content/uploads/2022/12/3.pdf> accessed 4 September 2026

promoted sector growth in line with their developmental contributions and not a tool for repression. Therefore, under the Ghana Association of Private Voluntary Organisations platform, many sector organisations united and wrote to the sector ministry about their concern of the Trust Bill.[253] Because of the strong protest, the Trust Bill also failed.

The two failed sector-legislation attempts highlight that the fear of suppression from past experiences and the Constitutional protection of the freedom of association form the underlying basis for sector-legislation rejection. It also shows that sector legislation requires the acceptance of both Government and sector actors. This explains why, when Ghana was blacklisted for deficiencies in its AML/CFT obligations,[254] as discussed in *section1.4.5,* the Government chose policy over legislation even though it only partially fulfilled the recommendation. It also demonstrates the significance of the successful implementation of the 2020 Policy and its intended outcomes. Among the challenges raised in the enactment of sector legislation, the 2020 Policy appears to be the most rational choice for providing a regulatory framework for the sector.

1.7 The Approach of Policy in Place of Legislation

Regulation has many uses and a wide range of meanings.[255] From a governance perspective, one key use is to coordinate relational behaviours to align individuals and groups with societal aspirations.[256] This, Vibert, defines as an "*attempt to alter or influence behaviour through the promulgation and enforcement of rules of behaviour*".[257] Therefore, behavioural change, informed by societal needs and aspirations, underpins regulation. However, regulation is also a commodity which is desired or not. Through the lens of economics, Posner sees regulation as a "*product allocated in accordance with basic principles of supply and demand . . . supplied to those who value it the most.*"[258] Therefore, regulation

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[253] Modern Ghana, 'Setting Standards for NGOS/CSOs' *Modern Ghana* (Accra, 6 February 2009) https://www.modernghana.com/news/201651/setting-standards-for-ngocsos.html#google_vignette

[254] Republic of Ghana Ministry of Finance, 'Ghana removed from European Union (AMLCFT) Regime' (*Ministry of Finance* 19 January 2022) <https://mofep.gov.gh/press-release/2022-01-19/Ghana-removed-from-AMLCFT-regimes> accessed 4 September 2026

[255] Barack Orbach, 'What is Regulation?' (2012) 3(1) Yale Journal on Regulation <https://www.yalejreg.com/bulletin/what-is-regulation/>accessed 4 September 2026

[256] Vibert (n 197) 13

[257] Vibert (n 197)

[258]Richard A. Posner, 'Theories of Economic Regulation' (1974) Bell Journal of Economics and Management Science 335 < https://www.jstor.org/stable/3003113> accessed 4 September 2026

is a commodity that seeks to serve the needs of interested parties. Where parties do not value it or want it, regulation becomes redundant. However, because a commodity is often not an end in itself but a means to achieve an end, external influences may prompt the creation of regulation. Therefore, Alford and O'Flynn define regulation as an

"*Imposition of obligation on individuals or organisations to comply with rules promulgated by the state in order to promote the achievement of some public purpose.*"[259]

Accordingly, even where some parties do not value regulation, the state, for the benefit of the public, will promulgate it with varying degrees of weight and means to control behaviour.

So, despite the sector actors' obvious apathy toward Government regulation, the Government devised an alternative regulatory mechanism through the 2020 Policy. Like regulation, public policy aims to influence change identified as problems or issues recognised by the Government and society.[260] Therefore, Ward and others[261] see public policy as the execution of political power used to represent, account for, and legitimise political decisions.[262] In this, the 2020 Policy is not created in a vacuum but represents the Government's legitimate power and decision. In a similar view, Ransom's conceptualisation of public policy sees it as

"a distinctive and formal purpose for …Governments to codify and publicise the values which are to inform future practice and thus encapsulate prescriptions for reform"[263]

Public policy, therefore, becomes the expression of Government solutions and reforms. This reform states the Government's position and intention[264] which then objectifies a course of action planned by the Government.[265] Hence, the 2020 Policy is the Government's primary instrument,

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[259] Alford and O'Flynn (n 204) 157

[260] Anke Hassel, 'Public Policy' (2015) International Encyclopaedia of the Social and Behavioural Sciences 569 <https://www.sciencedirect.com/science/article/abs/pii/B978080970868750 29X> accessed 4 September 2026

[261] Ward S.C, Bagley C, Lumby J, Hamilton T, Woods P and Roberts A, 'What is 'policy' and what is 'policy response'? An illustrative study of the implementation of the leadership standards for social justice in Scotland' (2016) 44 (1) Education Management, Administration and Leadership 43

[262] Ward and others (n 261)

[263] Stewart Ranson, 'Theorising Education Policy'. (1995) 10 (4) Journal for Education Policy 427

[264] Janet Hughes, 'Explaining Government policies on GOV.UK.' (GDS, 2012) <https://gds.blog.gov.uk/2012/11/13/explaining-gov-policy-gov-uk/> accessed 4 September 2026

[265] British Ecological Society, 'An Introduction to Policy in the UK. Policy' (British Ecological Society, 2017) <https://www.britishecologicalsociety.org/wp-content/uploads/2017/05/An-introduction-to-policymaking-in-the-UK.pdf> accessed 4 September 2026

entangled with social issues and regulation. The 2020 Policy therefore satisfies the need for regulation, which it outlines as a creation for 'an enabling environment for NPOs [sector actors] to strive in their development agenda, institutional and legal frameworks'[266]

In creating this enabling environment, the 2020 Policy is meant to impose controls on sector actors through registration requirements, conduct and operational rules. This is similar to the command-and-control regulation recommended above, but is limited in its lack of legislative authority to enforce provisions in court. Punitive measures can only be Government sanctions, some of which may be even illegal, as shown in chapters 3,4 and 5.

Nonetheless, the 2020 Policy outlines 10 direct obligations for sector actors, including an obligation to clarify their mission statement, objectives, beneficiaries and conformity to national development priorities.[267] Also, as a commodity, the 2020 Policy's main outcome is to meet Ghana's AML/CFT obligations. As such, paragraph 4.5.1 of the 2020 Policy notes the Policy's role to protect and reduce the sector's potential for terrorist financing in respect of international law.[268]

In all, the 2020 Policy influences necessary changes by providing coherent, effective operations, sector monitoring and stakeholder participation.[269] In detail, the Policy rationale[270] seeks to:

- Create a plan in the absence of a national coordination framework.
- Create a coherent and comprehensive overall framework for guiding the operations of different actors in the sector.
- Produce a coordinated policy and regulation framework that informs professional practice and reduces the vulnerability of NPO abuse.
- Guide the operations of NPOs to reduce existing duplications and inefficiencies in the design and implementation of interventions at the national and local (Metropolitan Municipal District Assemblies) levels.
- Guide the enhancement, collaboration, efficiency, and effectiveness of sector actors in the delivery of their services.

[266] National Non-Profit Organisation Policy (2020) paragraph 1.0

[267] National Non-Profit Organisation Policy (2020) paragraph 2.1

[268] National Non-Profit Organisation Policy (2020) paragraph 4.5.1

[269] National Non-Profit Organisation Policy (2020)iv

[270] National Non-Profit Organisation Policy (2020) paragraph 1.2

- Provide a framework that strengthens the NPO sector partnership for improved service delivery.
- Be in line with other developed and developing countries to create a legal framework on NPOs' financial and non-financial reporting as obligatory.
- To improve data on NPOs and their operations by reducing the issue of multiple registrations and payments of fees at different levels, which impacts registration and formalisation.

Additionally, the 2020 Policy sets out a definition, establishes new registration processes, creates the National Non-Profit Organisations Secretariat as sector regulator, outlines tax rebate and creates a national review body as a platform for sector actors.[271]

However, these are not the primary reasons for its successful implementation. Based on the factors identified in the failed legislation attempts, the most obvious reason for the 2020 Policy's successful implementation is that it is not legislation. As compared to legislation, it is fuelled by Government power, lacks legal enforcement through the courts and is possibly short-term.[272] It therefore satisfies the sector's aversion to legislation and the fear of Government using it to suppress them. This characteristic of the 2020 Policy is why the research argues that the Policy was not made in the absence of legislation but instead of it.

Another main reason why the 2020 Policy was successfully implemented was that it situates itself within Article 21(1)(e) of the Constitution[273] and therefore assumes a position of promoting the enjoyment of the freedom of association. Also, the Policy was made through a collaborative effort. The Policy highlights collaboration as an important step in regulation reform by noting the failed Trust Bill and stating that because the Government went against the agreed Draft Policy, it led to sector protest.[274] So, the 2020 Policy was generated from the Draft Policy in addition to further dialogue with relevant sector stakeholders.[275]

Furthermore, despite its significance, the 2020 Policy remains a substitute for legislation. Ultimately, regulation is an attempt to alter or influence behaviour through the promulgation and

[271] *See Chapters 4, 6 and 7*

[272] *See Section 5.6*

[273] National Non-Profit Organisation Policy (2020) paragraph 1.5

[274] National Non-Profit Organisation Policy (2020) paragraph 1.1

[275] National Non-Profit Organisation Policy (2020) paragraph 1.0

enforcement of rules. [276] So even though the 2020 Policy could bring some change of behaviour, it is less legally robust, especially when the aim of the regulation is to impose an obligation.[277] Third sector regulation reform in Ghana, therefore, requires a legal backing through legislation to increase the effectiveness of imposed obligations through judicial enforcement. This was why the command-and-control form of regulation was recommended above. Nonetheless, the failed attempts show the challenge in realising this goal. Seemingly, the implication of historical governance and the 1992 Constitution is too strong to achieve this. Also, perhaps substituting legislation for Policy was the only rational option the Government could take to create a framework at last.

This, therefore, justifies the research study founded on the questions below.

1.8 Research Question

Because of the absence of sector legislation and the substitution of the 2020 Policy, the central thesis is that the sector's historical governance and freedom of association under the 1992 Constitution make it politically and legally challenging to have sector legislation. This also accounts for the presence of the 2020 Policy and the weakness of its regulatory framework. Therefore, the research question posed is:

In what ways have historical governance, the 1992 Constitution, and the 2020 Policy affected Ghana's third-sector regulatory regime?

This question guides the following research objectives:

1. Identify and analyse the historical reasons behind sector apathy towards legislation and the basis of sector actors' power to protest legislative attempts.

2. Question whether the 1992 Constitution strikes an appropriate balance between the protection of the freedom of association and limitations.

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[276] Vibert (n 197)

[277] Alford and O'Flynn (n 204) 157

3. Examine the regulatory framework of the 2020 Policy and its sustainability

4. Explore the extent to which the 2020 Policy addresses sector coordination, transparency and accountability gaps.

5. Offer possible recommendations to offset identified constraints.

By addressing these objectives, the thesis satisfies its key aim of advancing understanding of the nature of Ghana's third sector's regulatory regime, what shapes it, and its consequences. The research method below is used to derive answers.

1.9 Methodology

According to Bhat,[278] research denotes an attitude of critical interrogation in search of new questions and answers applied to changing conditions. Inquiries arising from such interrogations target societal and ideological needs. In the above discussions, the research highlights the absence of sector legislation and failed attempts as gaps in Ghana's third-sector regulatory regime. The absence of such legislation calls into question the viability of the 2020 Policy, despite its being the first framework implemented in the sector's history, created to improve sector governance.

Considering Bhat's view from above, the 'new' question the thesis interrogates is the extent to which historical governance, the 1992 Constitution, and the 2020 Policy have affected Ghana's third sector's regulatory regime. This question targets the ideological need to understand the legal regime of Ghana's third sector. With this understanding, we can draw conclusions about the nature of third-sector regulation in Ghana and the possible reforms that meet societal needs.

However, while the answer to the research question is important, the method used to arrive at the answer is even more so. Research methods are the techniques available to researchers for collecting evidence,[279] subjected to research strategies.[280] To this end, the thesis adopts a qualitative doctrinal legal research methodology, combined with historical and reform-oriented approaches.

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[278] Bhat P. Ishwara, *Idea and Methods of Legal Research* (online edn, Oxford Academic, 2020)
< https://doi.org/10.1093/oso/9780199493098.001.0001> accessed 4 September 2026

[279] Matt Henn, Mark Weinstein and Nick Foard, A *Critical Introduction to Social Research* (2nd edn, Sage 2006) 10

[280] Henn, Weinstein and Foard (n 279)

The empirical research method was also considered in the research to obtain broader information and to offset limitations inherent in the doctrinal method, as discussed in *section 9.10*. However, this was later found to be unnecessary, since the key aim of the research is to interrogate historical developments, the 1992 Constitution, and the 2020 Policy. Any additional information needed to clarify points, such as the accountability measures employed by sector actors, as discussed in Chapter 8, was obtained from existing literature. Therefore, the doctrinal method alone was sufficient for the analysis. It enabled a deeper analytical discourse grounded in historical accounts, the 1992 Constitution, case law, the 2020 Policy, and other secondary sources. Empirical methods could be applied later in further studies, as recommended in Chapter 9.

1.9.0 Doctrinal legal research

Doctrinal legal research is a research approach concerned with the formulation of legal 'doctrines' through the analysis of legal rules.[281] The analysis employed in doctrinal legal research is intended to be a detailed, technical commentary and a systematic exposition of the context of said legal rules.[282] The applied form is most commonly used in academic legal research, as opposed to pure doctrinal research.[283] Chynoweth[284] explains that applied doctrinal legal research concerns itself with 'the systematic presentation and explanation of particular legal doctrines and is therefore referred to as the 'expository' tradition in legal research'.

In choosing an applied doctrinal research method, a normative assessment of the law is made with the intention of discovering and developing legal doctrines in answer to the question 'what is the law?'[285] Often, what the law is found within the legal body of legislation and case law. When we ask where the law is found in Ghana's third sector, the answer begins with the 1992 Constitution and provisions scattered in various legislations. In addition, since the 2020 Policy sets out the sector's new cohesive framework, its analysis clarifies the governing regime of the third sector. [286]

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[281] Paul Chynoweth, 'Legal research' in Les Ruddock and Andrew Knight(ed) *Advanced Research Methos in the Built Environment* (Wiley-Blackwell 2008)29

[282] Michael Salter and Julie Mason, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research* (Pearson 2007) 49

[283] R. Card, 'The legal scholar, The Reporter' (2002) 25 Newsletter of the Society of Legal Scholars, 5

[284] Chynoweth (n 281)29

[285] Chynoweth (n 281)29

[286] National Non-Profit Organisation Policy (2020) paragraph 1.4 and 1.6

The identification of the 1992 Constitution, scattered provisions in other legislation, and the 2020 Policy framework is the first of the two-part process required for doctrinal research.[287] Once this is done, the second part is the synthesis of the law, which applies techniques such as description, deductive logic, inductive reasoning and analogy[288] of which description and analogy is the most important in this research?

Therefore, the research employs a doctrinal legal research approach grounded in Constitutional provisions, case law, and policy, complemented by secondary materials for critical evaluation. This is done to capture the complexities of Ghana's third-sector regulatory regime and to emphasise how the law interacts with societal needs. This approach enables an internal legal discussion of the law, a strength of doctrinal research. Conversely, a critique of doctrinal research is that it often cannot, in and of itself, provide a complete statement of the law in any given situation,[289] in this case, the absence of sector legislation. An analysis of failed legislative/reform attempts helps mitigate this disadvantage and provides a broader picture of the governing system. Therefore, the reasons for the absence of legislation are as significant as the legal system and the 2020 Policy.

1.9.1 Historical research approach

One reason for the absence of sector legislation identified is historical governance. An exposition of this requires a historical research approach. The historical method concerns the ways of producing historical knowledge—how the past is accessed; how sources are seen, analysed, inferred from, or made sense of; and how the past is converted into history through the process of signification.[290]

At this point, it is pertinent to mention that the thesis is not pure historical research. This method is employed solely to understand the historical factors of governance, regulatory reform, and their effects. Therefore, the study only uses the two main steps applied in historical research. The first

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[287] T Hutchinson and N Duncan, 'Defining and describing what we do: doctrinal legal research' (2012) 17(1) *Deakin Law Review* 83 <https://www.austlii.edu.au/cgi-bin/viewdoc/au/journals/LegEdDig/2013/41.html#> accessed 4 September 2026

[288] Hutchinson and Duncan (n 287)

[289] Chynoweth (n 281)

[290] Ishwara (n 278)

step is to identify a problem as a question.[291] The research problem is the absence of sector legislation, and the question derived from our main question is: What are the implications of historical governance for the third sector's regulatory regime? This question is the legal issue for the historical analysis.

The second step is to develop a possible answer, proposition or hypothesis[292] which is tested using literal or empirical sources. Therefore, in answer to the question above, the proposed hypothesis is that:

'Historical governance has created a political status quo where sector-specific legislation requires both Government and sector actors' acceptance for it to be successful.'

The research draws on primary and secondary literature to test this hypothesis. This allows us to further understand the nuances of regulatory reform in the sector. However, Hutchinson[293] argues that 'good' quality doctrinal research goes well beyond description, analysis, and critique. It invariably suggests ways the law processes, or the administration of the law, could be amended and improved.[294] This is where a reform-oriented approach is needed.

1.9.2 Reform-oriented approach

This approach evaluates the adequacy of existing rules and identifies recommended changes for any rules found wanting.[295]

The main aim of reform-oriented research is to recommend changes. The recommendations help address the challenge of the law as applied in society, but remain limited within the confines of doctrinal legal research by examining the law's sufficiency.

Therefore, after ascertaining the implications of historical governance, the 1992 Constitution, and the 2020 Policy for the regulatory regime, a reform-oriented approach is used to recommend changes where appropriate.

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[291] F.L. Whitney, *The Elements of Research* (Prentice Hall, 1946)3–5

[292] Ishwara (n 278)

[293] Terry Hutchinson, 'The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law' (2015) 3 ELR ,13 <https://repub.eur.nl/pub/79849/ELR-D-15-00007.pdf> accessed 4 September 2026

[294] Hutchinson (n 293)

[295] Hutchinson (n 293)

1.9.3 Sources of Information

Considering the methodology parameters, the research used primary and secondary sources to support the arguments made. The primary sources were the Ghanaian 1992 Constitution, relevant Acts, International law on freedom of assembly and association, case law, the 2020 Policy, sector bill and draft policies. Secondary sources used include academic books, articles, doctoral dissertations, organisational reports, news reports, conference recordings, and information from the websites of the Secretariat, sector organisations, and Government ministries.

To provide evidence of sector codes on accountability in Chapter 8, the study employed non-probability and purposive sampling to identify organisations with accessible websites. This approach was appropriate given the desk-based nature of the research, time constraints, and the objective of achieving some diversity in the data, to strengthen the analysis.

Using non-probability sampling, three (3) organisations Care International, Catholic Relief Services, and WASCI were selected because of their distinct characteristics as an international NGO, a faith-based organisation, and an umbrella body, respectively. The researcher had prior knowledge of these organisations through earlier research and personal networks. Their websites were easily located by entering the organisation names into the Google search engine. To broaden the sample, twenty organisations were chosen from the Secretariat's list of compliant organisations and Google was used to find their websites. Those found with websites did not add to the desired diversity and so a generic Google search of 'third sector organisations in Ghana' and 'NGOs in Ghana' was made. This produced a list of organisations and platforms, out of them five additional organisations were purposively selected, of which three were finally included in the analysis based on their operational scope and to enhance representation. The researcher had no prior knowledge of these three organisations and intentionally chose them to help reduce bias. This brought the total number of organisational codes of conduct examined to six (6).

The selection process did not aim to produce a broad representation of the entire sector; such an endeavour would have been impossible given the sector's breadth, the desk-based methodology, and the time constraints of the research. Instead, the organisations were chosen to reflect variation in organisational type, size, and operational scope, providing helpful examples of sector practice, rather than a comprehensive view. This does not constitute a significant limitation as the entire thesis engages in different aspects with the four main categories of third-sector actors, offering broad insights to the sector's regulatory landscape, historical development, and operational

practices. The selected organisations therefore serve as practical examples within a broader analytical framework of the thesis capturing the diversity of the sector.

1.10 Research Justification

The concern of how voluntary organisations are governed across jurisdictions has gained the attention of both sector actors and academics like Sidel and Moore,[296]Kelly,[297]ICNL,[298]Gugerty[299] and Sidel.[300] In Africa, third sector regulatory research previously arose during the deregulation era when many countries shifted from Government to self-regulation.[301] This was mainly due to experiencing some form of participatory hindrances due to autocratic civil and military Governments. Also, the new wave of Constitutional and democratic governance in the 1990's saw few regulatory coordination mechanisms at the disposal of Governments to influence sector activities.[302]

Therefore, the sector was mostly self-regulated to reduce the potential of Government suppression and garner more support from the international community. Self-regulation was also a prerequisite

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[296] Mark Sidel and David Moore, *The law Affecting Civil Society in Asia: Development and Challenges for Not profit and Civil Society Organisation* (International Centre for Not-for-Profit Law,, 2019) < https://www.icnl.org/wp-content/uploads/2019-Asia-Legal-Environment-Overview-final.pdf> accessed 4 September 2026

[297] Luke Kelly, *Legislation on non-Governmental organisations (NGOs) in Tanzania, Kenya, Uganda, Ethiopia, Rwanda and England and Wales.* (UK Department for International Development, 2019) < https://www.gov.uk/research-for-development-outputs/legislation-on-non-Governmental-organisations-ngos-in-tanzania-kenya-uganda-ethiopia-rwanda-and-england-and-wales> accessed 4 September 2026

[298] ICNL, 'Ngo Laws in Sub-Saharan Africa' (2011) 3(3) Global Trends In Ngo Law < https://www.icnl.org/wp-content/uploads/global-ngo-law_trends3-3.pdf> accessed 4 September 2026

[299]Mary Kay Gugerty, 'The Effectiveness of Ngo Self-Regulation: Theory and Evidence from Africa' (2008) 28 Wiley, Online, Public Admin. Dev. 105–118

Mary Kay Gugerty, 'Shifting Patterns of State Regulation and NGO Self-Regulation in Sub-Saharan Africa in Oonagh B. Breen, Alison Dunn, Mark Sidel and Marion Fremont-Smith (eds.) *Regulatory Waves*: *Comparative Perspectives on State Regulation and Self-Regulation Policies in the Nonprofit Sector* (Cambridge University Press, 2017)

[300] Mark Sidel, 'Civil Society Regulation and Space in Asia and the Turn Against Politics' (2015) 1618 Legal Studies Research Series

[301] Gugerty (n 299)

[302] Gugerty 2017 (n 299) 1088

to reduce the risk of arbitrary control at the time. Gugerty[303] noted two waves and reasons for self-regulation on the continent. One was to forestall perceived threats of intrusive Government standards, and the other was to complement inappropriate regulatory measures.[304] Nonetheless, in recent years, many African countries have been introducing sector legislations again, especially in East Africa.[305] West African countries like Nigeria and Ghana lag in this reform.

The call for a sector legislation framework in Ghana by sector actors,[306]policy institutions,[307] Government and academics have gone unaddressed. This research is the first in Ghana to contextualise the reason for this. It provides the historical, Constitutional, and policy justification for the absence of sector legislation. It also contributes to the understanding of the jurisdictional contours of Ghana's third sector's regulatory framework and why it is so, rather than what it ought to be. From this, we can clarify the regulatory foundation of the sector within its indigenous context.

In addition, this research is also the first to note the importance of the 2020 Policy within this unique system as well as analyse the new regime it creates. The research, therefore, outlines the internal strengths and gaps of the 2020 Policy's reform. Although such an internal approach creates a possibility of treating the law as a self-contained system of legal norms in isolation from external social and economic contexts, it allows for an in-depth look at national legal arrangements to achieve a deeper understanding, not merely a wider understanding. This will help provide jurisdiction context on its own and for subsequent comparison. Where such comparative studies take place, this research will help reduce detachment and scepticism about taking the values of Ghana's system into another legal system, [308] like Nigeria, which also lacks sector legislation.

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[303] Gugerty (n 299)

[304]Ada Okoye Ordor, 'The Non-Profit Sector in the Context of Law in Development in Africa' (2014) 58(1) Journal of African Law 45 < https://www.cambridge.org/core/journals/journal-of-african-law/article/nonprofit-sector-in-the-context-of-law-in-development-in-africa/D2A7DE4BD489537F66A954219DDDE320> accessed 4 September 2026

D Harding, *From Global to Local: Issues and Challenges Facing NGOs* (Olive Information Service,1994) 22.

[305] Malawi Non-Governmental Organizations (Amendment) Act 2022

Republic of Zimbabwe, Private Voluntary Organisations Amendment Act, 2025

Rwanda (Organic Law No. 55/2008 of 10/09/2008 governing Non-Governmental Organizations (NGOs).

[306] Bokpe (n225)

[307] Appiah-Adjei (n 226)

[308] Jonathan Hill, Review: 'Comparative Law: Law Reform and Legal Theory' (1989) 9(1) Oxford Journal of Legal Studies <https://academic.oup.com/ojls/article-abstract/9/1/101/1408937>accessed 4 September 2026

In all, the research advances the understanding of Ghana's third sector regulation and the factors that affect it. It also explains why Ghana remains stagnant in introducing sector legislation, though East African countries have introduced it. Further, it rationalises why Ghana has only partially satisfied its obligation under the Financial-Action-Task-Force (FATF) in creating a robust third sector regulatory regime.

Finally, it contributes to the discourse on the challenges faced by codified jurisdiction when it implements or intends to implement laws relating to entrenched Constitutional provisions. It further contributes to the broader academic discussion of the challenges of balancing freedom of association with limitations on third-sector regulation in the Global South. This is especially relevant for countries with codified Constitutions and a history of sector suppression, such as Nigeria,[309] which seek regulatory reform. The research thus advances academic knowledge of Ghana's third sector's regulation on a wide and narrow scope.

1.11 Organisation of Thesis

The research is organised under nine (9) chapters. Chapter 1 provides a broad discussion of topics and issues that readers approaching this research for the first time need to know about Ghana. It therefore contextualises the third sector in Ghana, its actors, their positive and negative contributions, and the limitations of the sector's legal system due to the absence of sector-specific legislation. The discussion showed that sector actions are not wholly altruistic, resulting in adverse effects enabled by a limited regulatory system. But, instead of sector legislation to address the impact, the 2020 Policy was introduced as a regulatory framework. The thesis, therefore, argues that the absence of sector legislation is undesirable and has been facilitated by historical governance and the 1992 Constitution, which make it challenging to establish a robust legal framework. Thus, accounting for the 2020 Policy.

Based on this, the sector's historical governance and its impact on sector legislation are discussed in Chapter 2. The main argument was that the evolution of the sector and the political climate created a *regulatory power dynamic* in which both the Government and sector actors can dictate regulation. However, because the parties hold different notions of what regulation entails, agreement on regulatory reforms through legislation has been elusive. This has led to two failed

[309] Carsten (n 33)

legislation attempts, one failed Policy Draft and a pending draft NPO bill. Nonetheless, the first agreed-upon and implemented reform was the 2020 Policy, whose significance is now unquestionable. Its nature as a policy and its position as a collaborative instrument satisfied the two main political conditions required for sector regulatory reform.

While historical factors provide the political benchmarks to be satisfied for regulatory reform, the Constitutional protection of freedom of association provides the legal benchmark. This is shown in Chapter 3. As a fundamental freedom, Article 21(1)(e) is interpreted broadly as inalienable except where direct limitations are placed by the Constitution. Of the three Constitutional limitations, only Article 12(2) provides a viable basis for public interest. However, the Supreme Court's literalist interpretation of Constitutional limitations, coupled with its broad interpretation of freedom of association, has led to public-interest claims being rejected on two occasions. Ultimately, the Constitution fails to strike a strong balance between the freedom of association with limitations, thereby restricting viable grounds for sector legislation.

Given the effects of historical governance and the 1992 Constitution on the enactment of sector legislation, the 2020 Policy is even more significant. Thus, Chapter 4 outlines its governance rules and institutions. The Policy emphasises the freedom of association, recognising both positive and adverse effects of the sector. Based on this, its provisions set out Government duties to strengthen the enjoyment of freedom and impose obligations to limit adverse effects. Therefore, it maintains the scope of the sector's legal system but introduces new provisions on sector definition, sector regulator, rules on registration and licencing, as well as accountability and transparency mechanisms with punitive measures. However, a key issue is the punitive power it gives the Secretariat to close down offending sector organisations, which is unconstitutional and may jeopardise it if judicially scrutinised.

Chapter 5 examines its standing and sustainability and found its Constitutional standing to be precarious. It cites Article 37(1) to impose obligations on the sector and thus limit the enjoyment of the freedom of association. Perhaps it did so to sidestep the difficulties of applying Article 12(2). But even so, Article 37(1) is found under Chapter 6 of the Constitution, the justiciability of which is contentious. Therefore, the Policy's obligation of sector actors could be found unconstitutional. Its political sustainability is also precarious, given its status as Government policy. Ghana's winner-takes-all political system often entails the incumbent Government doing away with the former Government's policies. With a new Government elected in December 2024, the Policy

may be replaced. Nonetheless, AML/CTF obligations as well as the difficulty in agreeing on sector regulation reform may save the Policy.

Therefore, as the only regulatory framework, its effectiveness in addressing key sector regulation gaps is essential. Chapter 6 examines the Policy's coordination framework and found that the Policy aims to coordinate Government and sector actors in effective service delivery to reduce deficiencies and unify codes. However, its definition of sector actors excludes '*religious worship-based* organisations like churches' and, as such, creates a regulatory divide that is inconsistent with current practices in Ghana, international practice, and the definition of development. Also, the absence of the Local Government Acts in the Policy reduces Government and sector collaboration in effective service delivery at the local level. Further, its self-regulation uniformity mechanisms were found to be inadequate in implementation and thereby maintained the status quo of a lack of uniform self-regulation codes.

Its framework limitation will also be seen in its transparency and accountability mechanisms, discussed in chapters 7 and 8, respectively. As will be demonstrated, compared with the previous system, the 2020 Policy presents improved mechanisms for identifying owners and for financial and activity reporting. However, the financial and activity reporting mechanisms were limited by being linked to licence renewal and their inaccessibility to the public. The Secretariat's capacity in ensuring enforcement is also discussed in Chapter 6 and found to be lacking. The accountability framework is tied to the weak reporting system and the discretion of sector actors. Though reviewed sector codes showed some level of accountability rules, in practice, this is more towards funders, leaving beneficiaries marginalised in the accountability process.

The research ends with chapter 9 by summarising the key arguments and findings, which are then used to outline a series of recommendations. Sector regulation reform is challenging, especially in the creation of a sector-specific Act. But in the absence of legislation, sector regulation could be made more robust by effectively addressing sector gaps. Based on this finding, this research it recommends that the 2020 Policy, or future Policy reform, must;

1. Move from regulation collaboration to regulation co-production to improve sector actor trust towards regulation

2. Encourage Constitutional reform or purposive interpretation of Constitutional limitations to allow legal justification of obligations.

3. Review the 2020 Policy to expand the NPO definition to include religious worship-based organisations

4. Encourage the Secretariat to move from a Government Institution to an independent body to improve sector trust and independence and promote Ghana's Freedom of Information Act as the Secretariat's duty.

5. Create a fundraising regulator for improved oversight on funding use.

6. Facilitate and unify standards and codes based on the classification of the sector.

7. Remove Secretariat's power to close down organisations as a punitive measure

Chapter 2: The Effect of Historical Governance on Third Sector Regulation in Ghana

2.0 Introduction

The central argument of the thesis is that the absence of legislation in Ghana's third sector is influenced by historical governance and the 1992 Constitution. These two factors make it politically and legally challenging to enact legislation and also account for the presence of the 2020 Policy. The research aim, therefore, was to examine the influence and impact of the historical governance, the 1992 Constitution and the 2020 Policy on the sector's regulatory regime. This chapter begins with an examination of Ghana's historical governance of the sector.

The chapter explores Ghana's political history by providing a chronological account of the political climate from pre-colonial, colonial and post-independent Ghana. Within this context, it outlines the evolution of sector actors, how they were regulated and the regime it created. At the end, the analysis considers the implications of the regime on sector regulation, political barriers that affect the enactment of legislation and its consequences on regulation reform.

Although the thesis offers an understanding of Ghana's third sector's regulatory regime, this chapter acts as the foundation; it builds on Chapter 1 and connects to the discussions in all the following chapters.

2.0.0 Key Findings

The discussion and analysis revealed that, for the most part, the sector was mostly self-regulated with minimal Government involvement and interference. This was the predominant situation from pre-colonial Ghana well into the country's Third Republic, creating a traditional or customary autonomy. Government interventions, when they happened, were mostly driven by political motives than legal ones. Nevertheless, it could be argued that the legal actions taken were also aimed at backing political agendas. Therefore, laws made with the sector in mind were largely limited to registration, tax rebates as incentive regulation, and some Constitutional provisions to safeguard rights. The sector was therefore regulated by a few legal rules, maintaining its traditional autonomy. Political interference involved co-opting the Government's agenda and banning and

cracking down on sector actors whom the Government deemed politically deviant, with varying degrees of severity.

However, the legal and political regulation of the sector intensified during the dictatorial Fifth Military Government, known as the Provisional National Defence Council (PNDC). Politically, the sector was banned, suppressed, and co-opted under threat of being jailed. Legally, the PNDC Government introduced suppressive laws, notably PNDC Law 221 of 1981, which banned and closely monitored all religious and church-related organisations, thereby stifling the sector. Interestingly, in all Government regimes, the sector lacked specific sector-legislation to govern it, aside from the PNDC Law 221, which suppressed and co-opted it. Therefore, the sector learnt to fear sector-legislation, and the Government reinforced its use of sector actors to serve vested interests facilitated through politics and the law. This meant that both parties held different views on the form, use, and content of sector regulation.

But in a turn of events, the IMF's structural adjustment programme in the 1980's meant the Government had no choice but to rely on sector actors for key service delivery. The sector thus leveraged its development efforts to negotiate deregulation. This revealed the regulatory authority of sector actors, who relied on their developmental efforts, historical autonomy, and fear of suppression to determine their own regulation.

When the PNDC Government transitioned Ghana into civilian rule, under the 1992 Constitution, which ushered in Ghana's Fourth Republic, enshrined the freedom of association under Article 21(1)(e) as an entrenched fundamental freedom to prevent suppression and enhance autonomy. This strengthened the sector's regulatory power, as Government initiatives could be rejected on the basis of the freedom of association. This situation means that both the Government and sector actors now have the power to dictate sector regulation and must agree on reform for it to succeed. The thesis termed this situation *as 'regulatory power dynamics*. The consequence of the *regulatory power dynamics* is that the Government, by virtue of its State authority, could introduce measures for sector regulation, and sector actors, due to their historical autonomy, developmental contributions, and Article 21(1)(e), have the power to accept or reject such advances.

Ultimately, this situation creates a political barrier to sector regulation, evidenced by the failed sector-legislative attempts, the absence of sector legislation and the precarious fate of the draft 'NPO bill'. However, this political barrier can be overcome when both parties agree on regulation, as demonstrated by the successful implementation of the 2020 Policy. Details of this finding are explored below.

2.1 Evolution and Development: The Third Sector and Autonomy

The discussion starts with the emergence of *self-help* in pre-colonial tribal areas and traces its evolution under British colonial Gold Coast, to understand how the third sector originated and the initial methods used for governance. This provides perspective on the sector's long-standing autonomy and its view of regulation.

2.1.0 Self-help in the Pre-Colonial Era

Governance in Ghana did not start out as a centralised political system but was decentralised under autonomous tribal territories made up of various tribes and kingdoms,[1] governed by their own customs and traditions. They were headed by their chiefs/kings, elders, clans, and families.[2] Some of the major tribes were the *Akan, Mole Dagbani, Ewe, Ga-adangbe (Ga states), Gonja etc*[3] which still exist today. Their personalised political systems were ethnic-based nation-states centred on chieftaincy. The chieftaincy systems were symbolised by stool, skin or sword[4] and provided socio-political and military units.

All the tribes and communities within the territory had their own governing systems,[5] with the two major ones being types of acephalous and cephalous political systems. The former was the distribution and decentralisation of power among clans based on lineage. The clans oversaw specific duties for community interests, including mediating disputes, enforcing rules and engaging

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[1] David Owusu-Ansah, 'History of Ghana' *Oxford Research Encyclopaedia of African History* (2023) <https://doi.org/10.1093/acrefore/9780190277734.013.1360> accessed 4 September 2026

[2] Pierluigi Valsecchi, 'Akan Slavery in Africa and the Atlantic' *Oxford Research Encyclopaedia of African History* (2024) <https://doi.org/10.1093/acrefore/9780190277734.013.915> accessed 4 September 2026

Usman Abass, ' The Position of Women in the Social and Political History of Ghana' (2017) 17(2) Journal of Turkish World Studies 141 < https://dergipark.org.tr/tr/download/article-file/386821> accessed 4 September 2026

[3]Institute of Local Government Studies (ILGS), *A Guide to District Assemblies in Ghana* (Friedrich-Ebert-Stiftung Ghana, 2016)

[4] James Anquandah, 'The people of Ghana: Their Origins and Culture' (2013) 15 Transactions of the Historical Society of Ghana' <https://www.jstor.org/stable/43855009> accessed 4 September 2026

[5] Institute of Local Government Studies (n 3)

in welfare projects. The latter were centrally[6] led communities. For example, Anquandah's[7] archaeological study on the evolution of Ghana as a historical society noted that for centuries, governance in the *Akan* tribe was exercised around the King, Queen, nobility, and court officials. But this in no way discounted the participation of the people, as they were very central to how they were governed. An example of a developed cephalous political system with the king as leader but centred around the people was the *Ga-Adangbe* State.

2.1.0.0 Participation in Precolonial Ghana: The Ga-Adangbe State

The state was king led, but divided into six main traditional areas [8](Gamashi, Osu, La, Teshi, Nungua and Tema all headed by independent *Mantsemei*(Kings). These six kings represented the six territories of the state and formed a State Council with the *Gamashi* King selected as its leader and the Ga state King. But unlike the Ashanti Kingdom, where the King reigned supreme, Osei Tutu,[9] notes that the Ga King was seen only as a custodian. The power to rule was vested in the people, and as such, during enstoolment ceremonies, libation is poured with these words:

'…We have given King … to the Ga people so that they may walk together until death. May we walk with him until dusk…'[10]

This political system of a custodian king was highlighted in the Municipal Corporation Ordinance (MCO) 1924 dispute between the Ga Mantse (King) and *Asafoi* during British colonial rule. The *Asafoi* were members of established military companies (*Asafoiatsɛmɛi*) formed by the Ga community whose role was to maintain law, order and just governance.[11] The MCO enacted by the British colonial Government aimed to reconfigure the political and social foundations of the indigenous Ga political culture.[12] The Ga *Manste* (King) had agreed to the MCO whilst the *asafoi* rejected it. As a result, the Asofoi deposed the King for betraying the people who had enstooled him. According to the *asafoi*

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[6] Often a King

[7] Anquandah (n 4)

[8] A. A. Amartey, *Omanye Aba* (Presbyterian Press, 1985)

[9] John Kwadwo Osei-Tutu, 'Space' and The Marking of 'Space' in Ga History. (2000-2001) 4-5 Transactions of the Historical Society of Ghana 55, 70 < https://www.jstor.org/stable/pdf/41406657.pdf> accessed 4 September 2026

[10] Marion Kilson, 'Antelopes and Stools: Ga Ceremonial Kingship' (1983 78 (3/4) Anthropos 411 <https://www.jstor.org/stable/40460640> accessed 4 September 2026

[11] Osei-Tutu (n 9)

[12] Osei -Tutu (n 9)70

"*The Stool [king's throne] of Accra belongs to the Asafoatsemei [captains] and Manbii [people)]. The Mantse [king] is merely a caretaker. A Mantse reigns, never rules. A Mantse [King]is not responsible for the actions of his people.* ***If his people ask him to do something, he has only to do it"***[13] [emphasis added]

Based on this notion of governance, the Ga State's political structure was understood to be founded on consensus and participation, in which leaders were required to submit to the voice of the people. Therefore, the Ga State Council consisted of the King, the Speaker, and the Chief Priest (Nai Wulomo), who also served as the State's spiritual leader. Followed by the village/ Townhead mantse (chiefs) who governed the clans, organised based on duties and differentiated by names, religious affiliations, ritual tasks and roles in the community. After this, were Families headed by wise leaders (both male and female), followed by the Houses made up of people with common ancestors.[14] Within this form of participatory governance, members of the entire community played a role in promoting the general welfare and ensuring accountability.



Fig 1 Ga State Political Structure *(researcher's illustration)*

2.1.0.1 Notion of Self-Help

Regardless of the type of political system, social integration was central to pre-colonial communities, facilitated through various means. *Self-help* was one such mechanism. For example,

[13] Osei-Tutu (n 9) 70

[14] Daniel Tetteh Osabu-Kle, *The Ga People and Homowo Festival* (Carleton University, 2010) <https://carleton.ca/africanstudies/wp-content/uploads/Ga-People-and-Homowo-Festival.pdf> accessed 4 September 2026

the Akan's *self-help* system was known as (*'nnoboa') and consisted* of voluntary groups who provided agricultural assistance in farm work.[15] The Ga tribe's *self-help* did not have a particular name/structure but consisted of various activities, including women's economic groups, who were notable for providing social welfare.[16] In addition, the *self-help* groups were consulted and brought into discussions on community development. Osei Tutu[17] notes that communication with the political heads was an indelible part of political interactions between the chiefs and their people.

Overall, these *self-help* groups were central to governance and development. They often interacted with the leaders, including the King, through a system of public meetings. In terms of regulation, the supervision of the groups was based on general community norms and taboos, and mainly on internal regulation.

Therefore, self-help functioned within traditional political systems, with power and autonomy guided by traditions and mores, and with little interference from the ruler(s). The *self-help* system was translated to British colonial Ghana as traditional associations to meet new community needs in a changed political system.

2.1.1 Evolved Self-Help in Colonial Gold Coast: Traditional, Community and Religious Groups

Although not the first foreigners to visit the tribal territories, [18] European countries, beginning with the Portuguese, arrived as merchants in the late fifteenth century. This was followed by the Dutch, German, Spanish, British (mid-16th century), French and Swedish.[19]

The territory was then named the Gold Coast due to the abundance of natural resources and the use of gold.[20] Consequently, the Europeans established settlements, engaged in gold and ivory

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[15] CIVICUS, 'The state of civil society in Ghana: an assessment.' (CIVICUS Civil society Index-Rapid Assessment Report, 2020) <https://wacsi.org/wp-content/uploads/2020/10/Ghana-CSI-RA-Report-N.pdf> accessed 4 September 2026

[16] Abass (n 2)

[17] Osei- Tutu (n 9) 73

[18] Carthaginian and Phoenician sailors had supposedly traded in gold with the locals before the Europeans

[19] Colonial Office, *Annual Report on the Gold Coast for the Year 1947 (*His Majesty's Stationery Office, 1948) 103,109 < https://dn720705.ca.archive.org/0/items/b31410182/b31410182.pdf> accessed 4 September 2026

[20] Colonial Office (n 19) 103

trade with coastal tribes,[21] ushering in international trade in natural resources and later human beings as slaves.[22] Overtime the Portuguese and English gradually extended their dominance and control over the Gold Coast as they built forts and increasingly penetrated other parts of the territory.[23] Not reconciled by the encroachment, the new territorial formation, or the foreign control, the Gold Coast was marred by wars mainly between the British and local tribes[24](especially the Ashantis).[25] By the nineteenth century, the British successfully gained the Gold Coast[26] as a Crown Colony when the African Continent was formally partitioned into various 'territorial countries' during the Scramble for Africa[27] at the Berlin Conference.[28] It was divided into three parts: the Gold Coast colony, the Ashantis and the Northern territories. The Togoland area was only incorporated into the British colonial territory at a later time, as illustrated in Fig 2 below.

[21] Colonial Office (n 19) 110

The Fanti's signed the treaty mainly to gain protection against the Ashanti Kingdom who sought to gain access to the sea by conquering the Fantis

[22] John Lewis Authur, 'Role of Public Participation in Achieving Development Agenda of Developing Countries: The Case of Communities Affected by Surface Mining of Gold in The Asutifi District of the Brong Ahafo Region of Ghana'. (2009)1(4) African Journal of History and Culture (AJHC) 060 <https://academicjournals.org/journal/AJHC/article-full-text-pdf/08D886C40985> accessed 4 September 2026

[23] The Europeans divided the Gold Coast territory into four areas: the Gold Coast Colony, Ashanti, Northern Territories and Togoland under the United Kingdom Trusteeship. Their first contact was with the people living in the coastal areas, including the Ga and the Fantis of Gold Coast Colony, with whom they signed treaties and had control. They then penetrated the Ashanti Kingdom and Northern territories.

[24] Colonial Office (n19) 62

[25] Ghana Independence Bill *HC Deb 11 December 1956, vol 562, col 229-326* < https://api.parliament.uk/historic-hansard/commons/1956/dec/11/ghana-independence-bill> accessed 4 September 2026

[26]Colonial Office (n 19) 7

[27] Walter Rodney, 'How Europe Underdeveloped Africa' (Howard University Press, 1982,) 140

[28] Saul David, 'Slavery and the Scramble for Africa' *BBC* (London, 17 February 2011) < https://www.bbc.co.uk/history/british/abolition/scramble_for_africa_article_01.shtml> accessed 4 September 2026

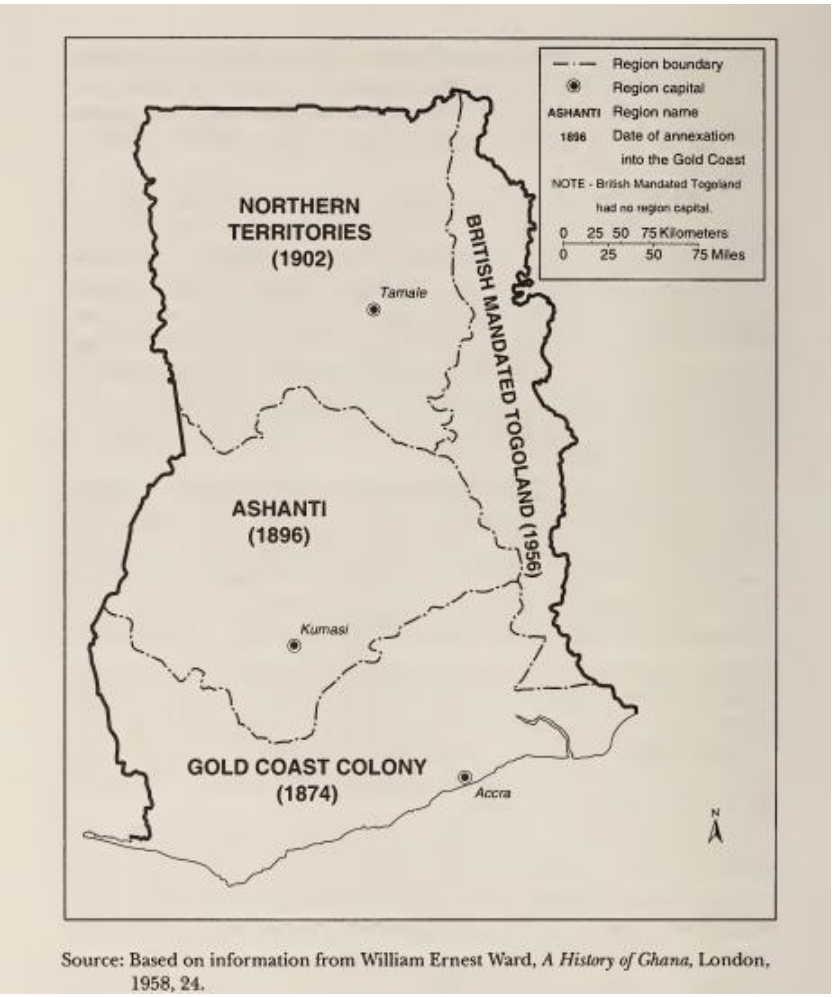


Fig 2 The Administrative Divisions of the Gold Coast, mid-1950s *(from Berry)*[29]

2.1.1.0 British Colonial Rule

The British consolidated power in the Gold Coast colony through a bond with the Fanti tribe in 1844, which acknowledged British authority and the trial of criminal offences under British law.[30] This marked the formal introduction of British governance, using English law and the political system in the Gold Coast. Other bonds were later signed with other tribes, including the *Ga-Adangbe* in Accra[31] and the Ashanti Kingdom.

Thus, the British Colonial Government centralised the administration of the territories under the Governor, who administered the Gold Coast on behalf of the Crown. In 1850, a codified

[29] LaVerle Bennette Berry and Library of Congress, Federal Research Division, *Ghana: a country study* (Federal Research Division, Library of Congress, 1995) 16

[30] Colonial Office (n 19) 180

[31] Accra was later made the capital of the colonial administration.

Constitution was introduced, formally establishing a Westminster model, creating Executive and Legislative Councils and the Courts.[32] The Councils' main duties were to vote on taxes and recommend laws upon the approval of the Governor.[33] The courts enforced English laws and held the legislative council accountable through judicial review.[34] However, State institutions lacked representation and operated without local participation or input.[35] Although the traditional stools and skins were preserved, their powers were largely eradicated and absorbed into the centralised Government. Pre-existing tribal rules and practices were also decimated and gradually set aside or subordinated to English law, yet *self-help* was retained.

2.1.1.1 Traditional and Community Groups

Since pre-existing communities were structured tribally, local development and community affairs were still enshrined in traditions legitimating the traditional authorities.[36] As such, even though governance became centralised, community members remained reliant on the general welfare, grounded in their unique customs. The *self-help* system remained and evolved first into traditional village associations and then into Community groups in newly formed towns, becoming instrumental in community projects. For example, the Asafo company, an indigenous traditional group, started as a traditional association and then transformed into a community group in the Central Region of the Gold Coast. [37] With its growth, it became known for traditional savings and credit (susu group), which exists to date. [38] Moreover, the traditional and community groups were primarily embedded in traditional culture and structure,[39] linking members to their rural society of origin. For example, the mentioned *Asafo* Company was based on membership linked to lineage, age and occupation.[40]

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[32] Colonial Office (n 19) 180

[33] LaVerle and Library of Congress, (n 29)18

[34] C.K Kumado, 'Judicial Review of Legislation in Ghana Since Independence' (1977) 5(2) National Black Law Journal, 213 < https://escholarship.org/content/qt1df0c35b/qt1df0c35b.pdf?t=nrwo7y> accessed 4 September 2026

[35]Rodney (n 27) 11

[36] Rodney (n 27) 10

[37] Lawrence Atingdui, *Defining the Nonprofit Sector: Ghana* (Johns Hopkins University for Policy Studies,1995)

[38] Atingdui (n 37)

[39] Atingdui (n 37)

[40] Atingdui (n 37)

Consequently, with the British colonial administration exercising cohesive control over services,[41] the traditional associations and community groups' *self-help* activities became increasingly distinguishable from State operation. Over time, the groups became established in cities and the capital. Notable groups included the *Asafo Native Affairs Group 1909*, the *Aborigines Right Protection Society (1897-1930s)*,[42] *Co-operative Societies of Ghana*, *1927 and the Ayobulo Society of the North*. [43] These groups undertook economic, social and political activities.

2.1.1.2 Missionaries and Religious Charity

The arrival of the Europeans also brought missionaries to the Gold Coast, who set up churches. Inspired by British charity welfare and the local *self-help* system, the missionaries, like the traditional and community groups, were involved in social activities and slowly developed organs of church assistance by building schools, clinics, etc.[44] To facilitate the projects, the missionaries and Muslims set up distinct branches for charitable work,[45] separating worship activities and welfare activities to arguably increase acceptance. Although Government assistance and interference were minimal, religious welfare groups (missionaries) collaborated with the colonial administration, communities, and traditional groups to construct key infrastructure. [46]

2.1.1.3 Discrimination and Rise of Political Activism

At this point, the voluntary institutions were represented by traditional associations, community groups, churches, mosques and religious welfare groups, all privately owned and managed.[47] Activities geared toward political inclusion gradually increased because the British colonial

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[41] Rodney (n 27) 11

[42] Kwabena O. Akurang-Parry, 'Untold Difficulties: The Indigenous Press and the Economic Effects of the First World War on Africans in the Gold Coast' (2006) 34(45) African Economic History, <https://www.jstpr.org/stable/25427026> accessed 4 September 2026

[43]Lawrence Atingdui, Helmut K.Anheier, S.Wojciech Sokolowski, and Emmanuel Laryea, 'The nonprofit Sector in Ghana' in Helmut K. Anheier and Lester Salamon (ed), *The Nonprofit Sector in the Developing World: A Comparative Analysis* (Johns Hopskins Nonprofit Sector Series, Manchester University Press 1998*)* 167

[44] Antingdui and others (n 43) 379

[45] Antingdui and others (n 43) 379

[46] Antingdui and others (n 43) 380

[47] George Bob-Milliar, 'NGOs in Ghana –Profit Making Organisations?' *Ghanaweb News* (28 April 2005 <https://www.ghanaweb.com/GhanaHomePage/features/NGOs-In-Ghana-Profit-Making-Organisations-80271> accessed 4 September 2026

Government was not representative. Indigenous public participation was not welcome, and traditional authorities were mainly used to reduce conflict between English laws and traditional systems. Although the Native Jurisdiction Ordinance of 1883 gradually incorporated some Chiefs into mainstream governance with delegated administrative powers, this was intended to facilitate indirect rule.[48] Only powerful traditional chiefs deemed loyal were selected to play a role, and 'disloyal' ones were exiled.[49] The selected chiefs were then able to filter the colonial administration's control to the people via indirect rule. This resulted in British laws and customs being afforded legitimacy by the people.

Moreover, formal education introduced for most of the general population was designed to teach three main subjects: reading, writing, and arithmetic. MacBeath [50] argued that the formal education system was mainly designed to facilitate trade and foster colonial values of British superiority. That form of education contrasted with traditional education, which aimed to create a fully equipped person who participated in the community.[51] The limited educational system, therefore, weakened local capacity and offered no clear opportunities for empowerment or structures for understanding the new governance system and participation. [52] Steps to influence central Government actions were met with force. An example was the incident known as the riots of 28th February 1948. Veterans who fought for the British Empire in the Burma War marched peacefully to Christiansburg Castle in Accra, carrying a petition calling for war benefits and improved treatment, as they were neglected by the Government after the war. In response, the Colonial Chief police opened fire on them, killing three officers.[53]

This increased dissatisfaction with the political system and the desire for self-governance. Some educated elites, therefore, created and used community groups with a political focus to champion this cause. Notable groups included the United *Gold Coast Convention* (UGCC)[54] and the Fante

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[48] Rodney (n 27)11

[49] ILGS (n 3) 11

[50] John MacBeath, *Living with the Colonial Legacy: The Ghana Story* (The Centre for Commonwealth Education Report 3, 2010) 5 <https://www.educ.cam.ac.uk/centres/archive/cce/publications/CCE_Report_No3-Ghana_LivingTheColonialLegacy.pdf> accessed 4 September 2026

[51] MacBeath (n 50) 6

[52] Authur (n 22) 062

[53] Public Records and Archives Administration Department, 'The Riots of 28th February 1948'. (Government of Ghana, Public Records and National Archives) < http://praad.gov.gh/index.php/the-riots-of-28th-february-1948/> accessed 4 September 2026

[54] Public Records and Archives Administration Department (n 53)

Confederation, the Aborigines Rights Protection Society, which were very vocal about governance and indigenous participation. Other non-political groups also engaged in political activities, like the farmers' association, which protested the cocoa prices set by the colonial administration. There were also lawyers, academics, businessmen, and trade associations participating in political activities and recognised as the fathers of civil society in Ghana.[55]

Consequently, a series of Constitutional changes altered the political landscape with incremental participation of indigenous people in Government. When a general election for independence became imminent, some community groups like the UGCC rebranded themselves as political parties. After a yes vote, the country was granted independence, and Ghana was created[56] in place of the Gold Coast[57] on 6th March, 1957 under the Ghana Independence Act,1957 and the Ghana Independence Constitution, 1957.

2.2 Third Sector Regulation in Colonial Gold Coast

Due to its development trajectory and political climate, the third sector was largely self-regulated. The British colonised the Gold Coast from 1891 to 1957,[58] and though the English legal system was introduced and indirect rule helped facilitate it, there were nonetheless two legal regimes co-existing. One governed the relationship among the natives, and the other, the relationship between the colonial administration and the natives.[59] Therefore, Atingdui,[60] argued that the English law established in Britain differed from that introduced in colonial Africa. In terms of third sector

[55] Akosua Darkwa, Nicholas Amponsah and Evans Gyampoh, 'Civil Society in a Changing Ghana: An Assessment of the Current State of Civil Society in Ghana' (CIVICUS, the World Bank and GAPVOD, 2006) 20 < https://www.issuelab.org/resources/19686/19686.pdf> accessed 4 September 2026

[56] Ghana Independence Bill: Clause 1, Provision for the Fully Responsible Status of the Gold Coast under the Name of Ghana HC Deb 18 December 1956, vol 562 col 105-381105.

The Ghana (Constitution) Order in Council,1957.

[57] BBC On this Day, '1956: Gold Coast To Get Independence' <http://news.bbc.co.uk/onthisday/hi/dates/stories/may/11/newsid_2524000/2524453.stm>accessed 4 September 2026

[58] Atingdui (n 37) 8

[59] Atingdui (n 37) 15

[60] Atingdui (n 37) 15

regulation, Britain at this time had the preamble to the Charitable Uses Act of 1601[61] which, according to *Morice v The Bishop of Durham*[62] formed a legal definition for charities. Also, a board of Charity Commissioners was appointed in 1853[63] to provide oversight. The Gold Coast Colony, by contrast, had no such law or institution for sector governance. Therefore, the sector was entirely self-regulated until the introduction of the Income Tax Ordinance 1943. [64]

Ongoing economic development created a need for a coherent legal system. Thus, the first colony-wide law, the Income Tax Ordinance in 1943, was introduced to impose tax on all income arising or received in the Gold Coast from trades, businesses, professions, employments, investment income, property and pensions.[65] Arguably, the taxed sources did not appear to include income from voluntary organisations, suggesting they were indirectly exempted. However, because some community groups were based on occupation and trade, they would have been subject to taxation. Nevertheless, even if they were not technically exempt, voluntary groups still benefited from the 1943 Ordinance, as it provided funding for nonprofit activities.[66] Still, the groups that gained the most were the missionaries and their affiliated charitable organisations, as the designated non-profit activities to be funded included projects on education, medical care, social welfare, and general improvement, undertaken mainly by the missionaries.[67]

These provisions, and any possible exemptions, could be regarded as incentive regulation that provides tax rebates for nonprofit activities. Incentive regulation, as its name suggests, is where wealth is deployed as an instrument to regulate.[68] Here, the regulated is incentivised to produce a particular action and rewarded for it. Alternatively, those who do not seek to exhibit the positive behaviour are financially 'punished'. [69] Consequently, the 1943 Income Tax Ordinance incentivised the performance of non-profit activities and indirectly financially 'punished' groups that were

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[61] Gareth Jones, *History of the Law of Charity, 1532-1827* (Cambridge University Press, 1969)120

[62] Morice v Bishop of Durham (1804) 9 Ves 399

[63] Select Committee on Charities, *Stronger Charities for Stronger Society* (HL 2016-17, 133) para 24 < https://publications.parliament.uk/pa/ld201617/ldselect/ldchar/133/13305.htm#_idTextAnchor014> accessed 4 September 2026

[64] Colonial Office (n 19) 29

[65] Colonial Office (n 19) 29

[66] Atingdui (n 37) 16

[67] Atingdui and others (n 43) 388

[68] Robert Baldwin, Mark Cave and Martin Lodge, *Understanding Regulation: Theory, Strategy and Practice* (Oxford University Press, 2011) 113 < https://doi.org/10.1093/acprof:osobl/9780199576081.001.0001> accessed 4 September 2026

[69] Baldwin, Cave and Lodge (n 68)113

politically focused, as they did not engage in such funded activities. It did not directly regulate, nor provide rules for the formation, entrance and supervisory oversight for transparency and accountability. In the absence of such a law, this was left to the sector actors themselves.

Later, the increase in religious charitable activities, especially that of the missionaries, led to another ordinance in 1947,[70] which was the first actual law that sought to regulate and legally recognise sector actors directly. It combined a level of command-control[71] and incentive regulation by mandating the registration of voluntary groups and exemption from import tax.[72] But while all groups were required to register with the Government, import tax exemptions only applied to Catholic, Anglican and Presbyterian churches.[73] Nevertheless, the 1947 Ordinance did not provide a definition, control formation, nor sector oversight, only sector entrance(registration) and tax. Thus, the sector was still largely self-regulated.

Consequently, legal control of the sector was minimal, giving sector actors the power to create their own standards of practice and reemphasise their autonomy. Since Ghana inherited most of its governance model from British Colonial rule, its sector governance framework unquestionably influenced how subsequent Governments managed the sector and how sector actors perceived and responded to regulation after independence.

2.3 Post-Independence: Government Regimes, Regulation and Suppression

Having established the sector's development and autonomy in pre-colonial times, and noting its limited legal interference during the colonial era, this section outlines the gradual shift from this

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[70] Atingdui (n 37) 15

[71] Baldwin, Cave and Lodge (n 68) 107-108

This form of regulation is backed by the force of the law as the main measure of control. Because of its authoritative nature, it is often used for highly significant issues including public protection and disengaging behaviour that is found harmful or offensive. Therefore, compliance is strictly monitored and a breach which comes with strong penalties and sanctions which are often enforced by police or courts and thereby prohibiting certain forms of conduct, demand some positive actions and lays down conditions for entry into a sector.

[72] Atingdui (n 37) 15-16

[73] N.A Cox-George, 'Studies in Finance and Development -- The Gold Coast (Ghana) Experience 1914-1950' (London: Dobson, 1974) cited in Lawrence Atingdui, *Defining the Nonprofit Sector: Ghana* (Johns Hopkins University for Policy Studies,1995) 16

stance after independence. It examines the civil and military governance systems prior to the Fourth Republic, during which the sector was co-opted and suppressed to varying degrees. This experience demonstrated that post-independence Governments viewed sector regulation primarily as a means of serving their own interests. Conversely, sector actors did not welcome this, as they were accustomed to being autonomous and subsequently used their consolidated 'development power' to negotiate deregulation under the Fifth Military Government. From this, we observe the perspectives of both the Government and sector actors, the laws enacted, and how these shape the sector's regulatory regime.

After independence, the 1957 Independence Constitution maintained the Westminster governance model, with Queen Elizabeth II as head of state, represented by an appointed Governor-General, a Prime Minister, Parliament, and the Courts.[74] The Judiciary under the Constitution had the right to administer justice, with the Supreme Court vested with the power to decide all proceedings on questions of Constitutionality.[75] With a majority of 72 seats out of 104 in Parliament won, the Convention People's Party (CPP), separated from the UCGG and led by Dr Nkrumah, became Ghana's first Government and Prime Minister, respectively.[76] The Queen's position as head of state changed in 1960 after Ghana became a republic under the Constitution of the Republic of Ghana, 1960.

2.3.0 The First Republic: CPP and the third sector

Under the 1960 Constitution, President Nkrumah gained extensive powers. The most controversial provision was Article 55, which gave him the power to dissolve Parliament and to rule by decree if he chose to.

As he leaned towards socialist ideologies,[77] Nkrumah amended the Constitution, banning the multi-party system. He created a one-party state with all powers vested in him. Under this political regime, the third sector's autonomy, which had developed during the pre-colonial and colonial eras, was curtailed. Most politically inclined community groups that developed in colonial Ghana,

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[74] Ransford Edward Van Gyampo and Emmanuel Graham, 'Constitutional Hybridity and Constitutionalism in Ghana' (2014) 6(2) Africa Review 138, 144 < https://www.proquest.com/docview/1561739102?sourcetype=Scholarly%20Journals> accessed 4 September 2026

[75] Ghana Independence Constitution,1957, Article 31(5)

[76] House of Commons Sitting (n 56)

[77] La Verle and Library of Congress (n 29) 6

such as farmers' associations and the Trade Union Congress, were co-opted into the State machinery. The one-party system effectively barred those who transitioned into political parties. This resulted in Nkrumah's Government being marred by arbitrary laws, including imprisonment and exile of opposition members.

Nonetheless, non-political traditional associations and community groups, to some extent, thrived under Nkrumah through the Government's creation of local Governments under the Local Government Act 1961 (Act 54).[78] Though this law was not directed at sector actors, it allowed them opportunities to collaborate with the newly established local Government who lacked funding.[79] Post-World War II reforms further brought opportunities as Nkrumah developed a series of National Development Plans on socio-economic initiatives. This was primarily executed under the local Government in collaboration with traditional organisations, including traditional associations. [80] This encouraged more self-help initiatives by formal and informal local voluntary organisations promoting the idea of self-reliance. Projects included the construction of schools, clinics, feeder roads, etc. Using foreign assistance, some voluntary groups also provided electricity to some areas,[81] furthering their development power.

Like the Colonial administration, regulation came in the form of incentive regulation under the "Non-profit Making Taxation Ordinance 1960 and Income Tax Ordinance 1961, which extended tax exemptions under the Colonial 1947 Ordinance to most voluntary activities, including that of

'*Ecclesiastical or charitable organisations, indigenous institutions and friendly societies, the Christian Council of Churches, the Muslim Council, the Red Cross, social welfare organisations, as well as non-profit sporting and recreational establishments*'[82]

However, professional organisations such as those formed by elites in the colonial period, including trade unions, were not specifically mentioned. When the Trustees (Incorporation) Act of 1962 was enacted, it provided legal status to voluntary organisations that chose to register as such. Therefore, any religious, educational, literacy, scientific, sports, social or charitable purpose could be incorporated to hold land, and to have perpetual succession through a trust. This meant

[78] ILGS (n 3) 13

Kwame Ahwoi, *Local Government and Decentralisation in Ghana* (Unimax Macmillan, 2010) 282

[79] Sarah Buerkwor Kpentey, 'Local Government and Participation in Ghana'. (2019) 2(2) Academic Review of Humanities and Social Sciences 168

[80] Atingdui and others (n 43) 171

[81]Atingdui and others (n 43) 171-172

[82] Atingdui (n 37) 15

that for the first time, voluntary organisations could act as legal bodies and own properties. However, the laws excluded political interest groups, created a divide and suppressed any organisation with political notions, especially those that called for accountable Government.

Though developmental infrastructure increased, Nkrumah's Government was seen as a dictatorship with limited Constitutional checks and balances. Even the Supreme Court, with judicial review authority under Articles 41(2) and 42(2)[83] of the 1960 Constitution, were disinclined to enforce their 'power' over the Government.[84] The Supreme Court, therefore, limited itself to questions of Constitutionality and nothing more.[85]

Overall, in the absence of sector-specific legislation, the sector was still largely self-regulated. When placed on a spectrum, legal interference by Nkrumah's' Government was limited to tax rebates and trust law. Political interference, though, was high due to sector co-optation into State development projects, for example, the Ghana Trade Union Congress (TUC).[86] In addition, politically centred groups were suppressed to achieve Government interests. In 1966, the National Liberation Council (NLC)overthrew Nkrumah's Government via coup d'etat ending Ghana's first republic.

2.3.1 The First Military Government: NLC and the Third Sector.

The National Liberation Council (NLC) justified the coup as the liberation of citizens from Nkrumah's dictatorship and set aside the 1960 Constitution. It governed through decrees, which were seen by the courts as legitimate. In the case of *Republic v Chairman, Commission of Enquiry (State Fishing Corporation, Accra),*[87] Edusei J. at the High Court held that

"…the National Liberation Council may occupy a dual capacity in that it has powers to enact decrees which have the force of an Act of Parliament, and it also occupies an executive position such as the deposed President occupied. . . if the Council exercises its legislative function by

[83] The Republic of Ghana Constitution 1960, Article 55

[84] *See Section 3.1 - Re Akoto* were the Supreme Court failed to strike down a law that infringed on human rights

[85] Kumado (n 34) 213

[86] Abadir M. Ibrahim, *The Role of Civil Society in Africa's Quest for Democratization* (Springer International Publishing, 2015) 87

[87] Republic v Chairman, Commission of Enquiry (State Fishing Corporation, Accra) [1967] C.C.124

promulgating decrees, I am of the view that the ultra vires doctrine cannot be used to question the validity of a decree"[88]

Despite this statement, a decree was only valid if passed through the outlined procedures. This procedure was simply numbering the decree and publishing it in a gazette.[89]

Under the NLC, though minimum efforts were taken to improve local Government,[90] Nkrumah's Trustee Act was maintained. Also, like Nkrumah, they created a new tax law which exempted religious organisations, charitable societies, cooperatives and public trusts from income tax. Apart from this, the NLC hardly regulated the sector. As a result, new voluntary organisations not linked to established traditional associations, community groups and religious bodies were set up. An example was the *Amasachina* in 1967, created by students at the University of Science and Technology, aimed at promoting development through grassroots action and *self-help* activities.[91]

So, like Nkrumah's regime, the sector was only legally regulated via trust and tax. But, unlike Nkrumah's regime, the sector regained much of its autonomy as it was not co-opted nor suppressed.

In 1969, NLC appointed the representative assembly who created a new Constitution establishing the Second Republic.

2.3.2 The Second Republic: PP and the Third Sector

Afraid of Presidential dictatorship, the 1969 Constitution[92] was partly modelled after the British system. It established a ceremonial President, Prime Minister, and a bicameral Parliament. The People's Party (PP) and their leader, Dr Busia, won the majority of seats in Parliament. In addition, rights were provided for the first time in the 1969 Constitution.[93] It afforded the freedom of movement, assembly, association, forming political parties and was enforced by the courts. Therefore, in the case of *People's Popular Party v Attorney- General,*[94] the High Court held that the

[88] Republic v Chairman (n 87)

[89] Republic v Director of Prisons [1968]2G&G.374

[90] Kpentey (n 79) 175

[91] Atingdui and others (n 43) 166

[92] The Constitution of the Republic of Ghana, 1969

[93]The Constitution of the Republic of Ghana, 1969, Chapter 4, Article 12

[94] People's Popular Party v Attorney- General [1971] 1 G.L.R. pp.138-152

Police Service had abused their discretionary power when they denied a permit for a political party to hold a protest around the British and French embassy who were at the time supplying arms to the South African apartheid regime.

Building on newly formed groups like the *Amasachina* in 1967, the political climate and the freedom of association allowed an increase in foreign relief bodies and their funded groups, creating private voluntary organisations and non-Governmental organisations (NGOs).[95] This added to the existing traditional, community and religious groups. But there was still an absence of sector legislation, which meant the sector was still largely self-regulated. Whilst there was seemingly no sector co-optation, Dr Busia's PP Government closed-down sector groups that were co-opted by Nkrumah.[96] This was done irrespective of the freedom of association and suppressed those who had political links to the First Republic. Therefore, even in this liberal environment, political suppression of some sector actors still existed.

Economic problems caused by the austerity measures imposed by the PP on advice from the IMF led to another coup in 1972 by the National Redemption Council (NRC), ending the Second Republic.

2.3.3 The Second Military Government: NRC/SMC I and the Third Sector

The National Redemption Council (NRC) ushered in Ghana's second military Government. In contrast to the NLC, the NRC did not outline a plan to resume Constitutional rule. Arguably, since both a far-right and a far-left civilian Government failed, the logical recourse was to try a proper military Government. This view drew public support, and as such, the NRC, after three years, rebranded itself and created a wholly military Government- the Supreme Military Council (SMC) in 1975. The SMC Government consisted entirely of military officers who oversaw the ministries and departments.

Unlike in the NLC, the case of *Ofosuamaah*[97] established that the courts could rely on both the suspended Constitution and the military proclamation as guidelines to determine the validity of a decree.[98] Therefore, the freedom of assembly and association under the 1969 Constitution was

[95] Atingdui and others (n 43) 166

[96] Ibrahim (n 86)

[97] Republic v Military Tribunal [1973] 2G.L.R. 227

[98] Republic v Military Tribunal [1973] 2G.L.R. 227

technically still effective. Also, Supreme Military Council Decree 5, recognised non-profit organisations as a "public character", exempting their income from taxation if such income were not derived from business activities.[99] Further, Supreme Military Council Decree 116, amended the Income tax exemptions and created the Income Tax Decree of 1975.

Like its predecessors, sector governance included tax rebates and to an extent the 1969 Constitutional provision on free association. However, due to unresolved economic challenges, there was increasing public dissent, which was stifled through restricting forms of public participation. So again, politically inclined sector groups faced restrictions.

The regime, like its predecessors, punished independent and opposing sector actors and rewarded loyalists.[100] For example, supporters like the Kumasi Youngsters Club, Ghana Peace and Solidarity Council, Organisers Council, Ghana Bakers' Association, Fishermen's Association, National Union of Ghana Students, F'enden Church and National Christian Ministries Union were allowed to freely operate and were provided financial and political support.[101]

To stop opposing voices, the SMC proposed a Union Government, which was approved by a national referendum in 1978, a process marred by demonstrations and rigged results. However, before the Union Government was established, officers within the SMC overthrew the SMC chairman in a coup in 1979. They did this over worsening economic issues and rising political pressures and formed SMCII.

2.3.4 The Third Military Governance: SMC II and the Third Sector

With the Union Government botched, opposition increased, leading to SMCII's promise to hand over power to an elected Government. To facilitate this, the ban on political parties and political activities was lifted.[102] This reduced the suppression of politically inclined groups. Political criminals from both Nkrumah and Busia's administrations were also released.

But, in another turn of events, five weeks before the national elections, another group of military officers led by Flight Lieutenant JJ Rawlings attempted to overthrow SMC II. Though unsuccessful

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[99] Atingdui (n 37) 16

[100] Emmanuel Gyimah-Boadi, 'A Peaceful Turnover in Ghana' (2001) 12(2) Journal of Democracy 103 https://doi.org/10.1353/jod.2001.0026 accessed 28 August 20025

[101] Ibrahim(n 86)

[102] Atingdui (n 37)

and imprisoned, military sympathisers to Rawlings' cause regrouped and successfully overthrew SMC II a month later, before the elections.

2.3.5 The Fourth Military Government: AFRC and the Third Sector

The justification for the fourth coup was to restructure Ghana's governance to include the alienated youth in politics. The SMC I and II leaders were executed by the Armed Forces Revolutionary Council (AFRC). This resulted in two main opposing political groups in the country, one in favour of the AFRC and the other in favour of Constitutional rule. [103]The latter view prevailed, resulting in national elections proceeding as planned. This Government did not stay long in power, and therefore there weren't identified changes in sector regulation found. The AFRC relinquished power to the elected People's National Party (PNP), ushering in the Third Republic under the 1979 Constitution.

2.3.6 The Third Republic: PNP and the Third Sector

The 1979 Constitution[104] this time was moulded after the US Presidential system. The Government was led by the President, the Vice President, the elected legislature, and the courts.[105] The Constitution also guaranteed fundamental human rights, including freedom of assembly and association.[106] However, sector legislation remained absent, and the sector was therefore largely self-regulated.

To limit threats to the Third Republic, the AFRC and associates were ordered into retirement. However, they retained strong support, and even when they relinquished power, they did so on conditional terms. Rawlings announced that he was "monitoring" the Government on the 'good of the people' standard, formulated by the AFRC. [107]

Unsurprisingly, Rawlings considered the PNP to have failed to meet this standard. Partly because of the PNP's conflicting ideology, which caused division within its administration, Rawlings carried out another coup in 1981, ending the third republic after just three months.

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[103] Atingdui (n 37)

[104] The Constitution of the Republic of Ghana, 1979

[105] Gyampo and Graham (n 74)

[106] The Constitution of the Republic of Ghana, 1979, Chapter 6, Article29

[107] Gyampo and Graham (n 74)

2.3.7 The Fifth Military Government: PNDC and the Third Sector

Rawlings branded this military Government as the Provisional National Defence Council (PNDC). The PNDC was the longest-serving Government Ghana had ever had, under both military and civilian rule. It was also the most violent and created a 'culture of silence' that permeated the country. Unlike the SMC I and II military Governments, where the courts could rely on aspects of the suspended Constitution, the 1979 Constitution was entirely suspended.[108] Instead, Rawlings ruled through Government policies and decrees known as PNDC laws. PNDC Law 42, according to Quaye[109] gave the regime unfettered, limitless, and absolute discretionary powers to determine and dispose of the rights of Ghanaians.

Thus, the PNDC Government created its own public tribunals, imposed death penalties, torture, solitary confinement, detained people indefinitely without trial[110], suppressed newspapers[111] and political activism. Caught in the middle of these suppressions were sector actors whose autonomy was drastically reduced. Some faced direct Government suppression and intimidation, while others were co-opted to fulfil Government interest, losing their independence and assertiveness. [112] Many sector actors were thus jailed for their political views, criticism and non-alignment with the PNDC Government.[113]

Further, Rawlings viewed NGOs,[114] and almost all third sector groups, especially religious organisations, as potential threats to his Government.[115] Therefore, PNDC Law 221 of 1981 was

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[108] Edward Opoku-Dapaah, 'Ghana 1981-1991: A Decade of Forced Repression and Migration' (1992) 11(3) Refuge: Canada's Journal on Refugees 8 < https://refuge.journals.yorku.ca/index.php/refuge/article/view/21627/20300> accessed 4 September 2026

[109] Mike Quaye, 'Human Rights and the Transition to Democracy under the PNDC in Ghana' (1995) 17(3) Human Rights Quarterly 556, 562< https://www.jstor.org/stable/762394> accessed 4 September 2026

[110] PNDC Law 4

[111] PNDC Law 211

[112] Kwame Boafa-Authur, 'Fighting for Survival: The State of Grass-root Civil Society Organisations in Post-Transition.(1997)25 (1) UFAHAMU A Journal of African Studies 3, 5 <https://escholarship.org/content/qt7qb980p0/qt7qb980p0_noSplash_340a3d147fe044cf686734cafd5074f1.pdf> accessed 4 September 2026

[113] Ian Gary, 'Confrontation, Co-orporation or Co-optation: NGO and the Ghanaian State During Structural Readjustment' (1996) 23 (68) Taylor and Francis, 157 < https://www.jstor.org/stable/4006246> accessed 4 September 2026

[114] Any form of non-Government affiliated voluntary group

[115] Darkwa, Amponsah and Gyampoh (n 55)22

especially introduced to ban and closely monitor all religious and church-related organisations. [116] As a result, there were several assaults on churches[117] and their assets seized.[118] They were required to register with the Government to operate, and reportedly, out of 1,736 applications made by religious bodies, 957 were approved, 735 queried,30 pending, and 14 denied.[119] The law also required other non-banned sector actors to reapply for registration and official recognition at the PNDC Secretariat and the National Revenue Secretariat for tax exemptions on imports. These measures imposed severe Government suppression and interference on the sector's existence, operations, and activities.

Interestingly, despite PNDC Law 221 being a suppressive law, it was the first sector legislation, although it did not apply to all sector actors. With this experience, sector actors learnt to view sector legislation as a repressive tool, and the Government, like some of its predecessors, demonstrated that it regarded the sector as a means to achieve its interests. The PNDC Government took this a step further by creating its own associations, which, though voluntary, were Government-owned. For example, it introduced Committees[120] that served as stakeholders for local interest groups and carried out community projects like the voluntary groups. Rawlings' wife also created the *31st December Women's Movement,*[121] which provided economic stability for women and educational services for their children. So, on one hand, the PNDC extremely interfered with sector actors, but on the other, promoted its own associations and encouraged the growth of those linked to the Government. For example, the *31st December Women's Movement* replaced the preexisting *National Council for Women and Development*.[122]

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[116] Atingdui and others (n 43)173

[117] Baffour Agyeman-Duah, 'The Politics of the PNDC' (1987) 25(4) The Journal of Modern African Studies 613 <https://www.jstor.org/stable/160947> accessed 4 September 2026

[118] Canada: Immigration and Refugee Board of Canada, '*Constitutional Democracy and the Fourth Republic*' (1992) <https://www.refworld.org/reference/countryrep/irbc/1992/en/20582> accessed 4 September 2026

[119] Canada: Immigration and Refugee Board of Canada (n 118)

[120] Workers' Defence Committees (WDCs), People's Defence Committees (PDCs), Citizens' Vetting Committees (CVCs), Regional Defence Committees (RDCs), and National Defence Committees (NDCs)

[121] Cindy Pressley Davis and Kwame Badu Antwi-Boasiako, 'Nana Konadu Agyeman-Rawlings and the 31st December Women's Movement' In Felix Kumah-Abiwu and Sabella Ogbobode Abidde (eds) *Jerry John Rawlings* (Springer, Cham, K.B. (2022) < https://doi.org/10.1007/978-3-031-14667-1_12> accessed 4 September 2026 Ruth Evans, Africa Perspective: 31st December Women's Movement' *BBC News* (London, 17 October 1997) < https://www.bbc.co.uk/programmes/p034s5sg> accessed 4 September 2026

[122] Quaye (n 109) 566

However, the World Bank and IMF structural adjustment programmes in the 1986-1990s created a gap in the provision of social services. The country faced challenging socio-economic conditions due to the programme, unstable political climate and mismanagement.[123] The Government had to rely on sector actors to provide welfare assistance. This led to a rise in NGOs undertaking development projects, as many received funding from international donors. Gary[124] argued that this move pitted the NGOs against the Government and aimed to weaken the Government's authority. Yet, as the Government became increasingly reliant on NGOs to provide essential services, there was little it could do. As NGO capacity grew, the Government could not dismiss them, leading to the solidification of the sector's substantial development power in Ghana.

With a view to sector legislation being a suppressive tool, the sector leveraged its 'development power' and historical autonomy and called for sector deregulation and limitation of Government interference. Sector actors, especially international donors and internal-pro democracy forces[125] placed intense pressure on the Government. In the face of the threat of losing valuable resources and services, PNDC Law 221 was set aside, and the sector was deregulated, restoring sector autonomy and strengthening the effectiveness of local Government.[126]

Overall, this regime dramatically altered the regulatory scope of the third sector. It established its first legislative framework, albeit limited to a specific group, and was subsequently suppressed, legally and politically co-opted, and, for the first time, saw the introduction of Government-owned voluntary groups. The sector learnt to fear regulation and sector legislation, which resulted in complete deregulation of the sector.

Like its predecessors, the PNDC later transitioned Ghana into democratic rule. In 1991, the PNDC proposed a 1-year transitional period, and following a 1992 referendum, a Constitution was approved for the Fourth Republic. To facilitate elections as required by the Constitution, the ban on political parties and activities was lifted. Remarkably, the PNDC rebranded itself as a political party- the National Democratic Congress (NDC) headed by Rawlings. The NDC won the

[123] Gary (n 113) 155

[124] Gary (n 113)

[125] Gyampo and Graham (n 74)

[126] Nicholas Awortwi, 'The Past, Present and Future of Decentralisation in Africa: A comparative case study of Local Government Development Trajectories of Ghana and Uganda' (2010) 33(12-13) International Journal of Public Administration. <https://www.tandfonline.com/doi/abs/10.1080/01900692.2010.514451> accessed 4 September 2026

general elections, becoming Ghana's first President in the Fourth Republic. Thus, some of the political and legal structures under the PNDC were modified and incorporated into the Fourth Republic.

Ultimately, the PNDC Government arguably had the most significant effect on third-sector regulation, from suppression to deregulation and the creation of the 1992 Constitution.

2.4 The Fourth Republic and the Third Sector: Constitutional Protection

The Fourth Republic is the longest regime in Ghana's history. It has held nine (9) general elections and transferred civilian power five times, solidifying Ghana's democracy. Governance-wise, although the 1992 Constitution established a multiparty system, the National Democratic Congress (NDC) and the New Patriotic Party (NPP) dominate the political landscape. Since 1992, voting patterns have switched between them every eight years,[127] inadvertently creating a two-party system. While this is not an entirely positive outcome, it has helped safeguard Constitutional rights. But, Arendt, [128] also argued that while a two-party system helps guarantee civil liberties, it does not necessarily enable the citizen to truly participate in Government. The best option for the citizen is to be represented by the two parties; whether their interests are fully addressed is another matter.

Nonetheless, this is an improvement over the cycle of military and civilian Governments following independence. Yes, the power struggle is still fierce, and elections are often marred by some violence and accusations of rigged elections, but this has been resolved at the Supreme Court[129] instead of through a coup.

Having learnt from its history, sector autonomy is sustained under Article 21(1)(e) of the 1992 Constitution, which guarantees and entrenches freedom of association. [130] Although freedom of association was also provided in the Second and Third Republic Constitutions, the right was

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[127] So far, most electorates vote each party into office for two terms. NDC governed from January 1993-January 2000, then the NPP from January 2000- January 2008, then the NDC from January 2008-January2016 and again the NPP from January 2016-January 2024 and now NDC from January 2025 …

[128] Hannah Arendt, *On Revolution* (Penguin Books, 1963) 278

[129] Akufo-Addo v Mahama and Another [2013] GHASC 137

Mahama v Electoral Commission [2021] GHASC 1

[130]The Constitution of the Republic of Ghana, 1992, Article 290 (1)

expanded under the 1992 Constitution, thereby constraining Government interference. Thus, in addition to Article 21(1)(e), Article 37(2)(a) restricts the State from interfering with the freedom of association.

This was substantiated in the case of *New Patriotic Party v Attorney General* (CIBA Case),[131] where the Supreme Court declared that laws that required sector actors to register with Government agencies were unlawful. In this case, Section 4 of the Council of Indigenous Business Association (CIBA) Act 1993 required trade associations to register with the Council of Indigenous Business Associations. This was challenged as unconstitutional, and the Supreme Court agreed. It held that the law constituted State interference with the enjoyment of freedom of association and was therefore inconsistent with the Constitution.[132] The judicial position in ensuring the fundamental freedom, including association, and their interpretive position on the enjoyment and limitations of these freedoms are discussed in Chapter 3. Essentially, the case reduced the likelihood that a law like PNDC Law 221 would ever be used to suppress the sector again.

The ruling, therefore, gave a strong indication that freedom of association was highly safeguarded and inalienable.[133] As the case was heard four years into the Fourth Republic, it provided a legal benchmark for the Government's and sector's position regarding the enjoyment of freedom of association under the republic. In addition, sector actors also rely on international freedom of association and assembly frameworks, which support Constitutional freedoms[134] and reinforce their rights. Therefore, under the Fourth Republic, legal and political suppression of the sector is significantly reduced, thereby enabling free operation and giving rise to the vibrant industry described in Chapter 1. It successfully culminates the sector's historical governance, ushering in the legal system shown in Chapter 1.

The third sector's legal system under the Fourth Republic, therefore, comprises the 1992 Constitution, international law, and scattered provisions in other legislation on registration, taxation, cooperation with Local Government, and, more recently, terrorism financing.[135]

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[131] New Patriotic Party v Attorney-GENERAL (1996-97) SCGLR 729 (CIBA Case)

[132] The case and its implication on the legal standing of the 2020 Policy is discussed in detail inn section 3.6.1

[133] *See chapter 3 and 5* on the courts position in balancing the freedom of association with limitations.

[134] *See chapter 1.5 and chapter 4*

[135] *See section 1.5*

However, as already identified in Chapter 1, the sector still lacks sector-specific legislation, and attempts to this end have failed. Based on the historical account, this situation is unsurprising. The minimal sector regulation, limited to registration, tax and cooperation with the local Government and later the suppressive PNDC Government and LAW 221, contextualises the sector apathy and fear towards legislation. It is therefore understandable that they favoured deregulation in the late 1980s.

Also, the absence of sector-specific legislation after independence in most of the regimes undoubtedly followed the colonial administration's example. Therefore, as will be shown further in Chapter 3, the 1992 Constitution was enacted primarily to safeguard sector autonomy rather than to regulate it, thereby contributing to the weak legal system identified in Chapter 1. Consequently, the absence of sector legislation is largely attributable to historical governance, which is further analysed below.

2.5. Effect of Historical Governance on Third Sector Regulation: *The Regulatory Power Dynamics*

Historical governance structures, from pre-colonial to the Fourth Republic, advance our understanding of Ghana's third-sector regulatory regime. From the historical account, the research reveals a regulatory system where both Government and sector actors influence regulation. The research terms this system as *regulatory power dynamics*. Three points are discussed below to explain it.

2.5.0 Government's Regulatory Power

The collapse of the decentralised pre-colonial tribal governance system gave rise to a top-down Westminster governance model in which the Government is granted State authority and legitimacy to govern. La Verle, therefore, argued that postcolonial Ghana inherited a State machinery evolved under British colonialism with an emphasis on a strong centralisation of power and top-down decision making."[136] Therefore, the Government's authority derives from State power, enabling it to regulate and govern, whether it be a civilian or military Government.

[136] La Verle and Library of Congress (n 29)

Under the Fourth Republic, the Central Government retains absolute power, governed by the law and regulation. Article 11 of the 1992 Constitution[137] states that the laws of Ghana include Orders, Rules, and Regulations made by the executive. This signifies the Government's authority and regulatory power.

2.5.1 Third Sector's Regulatory Power

Whereas the State backs the Government's regulatory power, sector actors derive theirs from their traditional/customary autonomy, developmental services, and Articles 21(1)(e) and 37(2) of the 1992 Constitution. Sector autonomy is from self-regulation, enabled by pre-colonial governance and the minimal laws adopted by post-independence Governments up until the PNDC era.[138] Atingui corroborates this, noting that until the PNDC era in the 1980s, the sector was lightly regulated, with minimal restrictions.[139] Even the PNDC restrictions were ultimately removed through deregulation. As a result, self-regulation has continued for centuries. From the arrival of Europeans to the PNDC period, sector self-regulation continued for over five hundred years, establishing a form of customary or traditional autonomy for sector actors that signified their regulatory authority.

Further, their significant developmental contributions to social welfare, especially as the State welfare service broke down,[140] strengthen the regulatory power. Schools, healthcare and emergency relief were all notable services provided by sector actors.[141] The strength of this regulatory power was demonstrated when it was leveraged for sector deregulation in the PNDC era.

Additionally, the 1992 Constitution further strengthens this power under Articles 21(1)(e) and 37(2), thereby legally ensuring sector autonomy and constraining Government interference. This position was established in the *CIBA* case, enabling the sector to legally challenge Government regulation.

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[137] The Constitution of the Republic of Ghana, 1992, Article 11

[138] *See section 2.2*

[139] Atingdui and others (n 43)

[140] Atingui (n 37)

[141] Atingdui and others (n 43)73

The sector thus continuously leverages its customary autonomy, development work, and the 1992 Constitution against or in support of Government regulation, thereby shaping how it is governed.

2.5.2 Regulation must be agreed

Based on the first and second notions, the third point is that the Government views regulation as a means to advance its interests, whereas sector actors regard it as an infringement on their autonomy. Therefore, for the most part, both parties adopt different approaches to the form, use, and content of regulation. Hence, when they disagree on a regulatory initiative, meaningful reform cannot happen. This explains the absence of sector legislation. However, when they do agree, reform occurs, as evidenced by the 2020 Policy.

The positive outcome of this *regulatory power dynamics* is that the turbulent historical experience of sector suppression, banning and co-optation for Government interest is significantly reduced. However, a negative outcome is that sector legislation is seen as a disadvantage despite wider societal changes, international obligations, or genuine Government intentions, creating a political barrier and making regulatory conflicts unavoidable.

2. 6 Expression of the Regulatory Power Dynamics: Legislation Conflicts

The *regulatory power dynamics* between the Government and third-sector actors, as expressed in regulatory conflicts, are discussed in this section. The need for agreement and collaboration between the parties is particularly evident in the two legislative attempts.

As shown in chapter 1, attempts to create sector legislation via the Non-Governmental Organisation Bill (NGO bill) in 1995 and the Trust and Non-Proft Making Civil Society Organisation Draft Bill ('Trust Bill') in 2008 both failed.

In both instances, the Government used its regulatory power to introduce the bills, prompting sector actors to protest. Reasons sector actors gave for their objection to the NGO bill included the bill's unilateral drafting, without sector consent or consultation.[142] Therefore, the sector saw it

[142] Mary Kay Gugerty, 'The Emergence of Non-profit Self-Regulation in Africa' (2010) 39(6) Nonprofit and Voluntary Sector Quarterly 1087, 1105 < https://journals.sagepub.com/doi/10.1177/0899764010372972> accessed 4 September 2026

as a direct attack on its autonomy. It was also rejected because it required sector actors to register with an advisory council. Since the NDC Government introduced this bill, it was seen as Government interference [143] tantamount to PNDC Law 221 and the CIBA Law. In addition, sector actors regarded the NGO bill as controlling, suppressing political activities, a mechanism designed to co-opt them into the Government's agenda[144] and unconstitutional. [145] Therefore, local sector actors' persuasion and the threat of large international NGOs leaving Ghana,[146] resulted in the Government dropping the NGO bill.

As for the Trust Bill, although it was not regarded as a suppression tool at the level of the NGO bill, it sought to shift the sector to a purely trust-based regime, which was inconsistent with the notion of sector development.[147] While it created a Commission (section 2), a Board for Trusts and Civil Society to ensure and enforce accountability (section 4), and provided tax exemptions, it still failed. It did not help that it was also unilaterally drafted by the Government, raising concerns about sector autonomy and fear that the legislation would be used to suppress them. Therefore, many sector organisations band together and wrote to the sector ministry about their concern of the Trust Bill.[148] Supposedly, in 2010, another NGO bill was drafted and submitted to the Cabinet for consideration, but it was stalled and never introduced.[149]

The failure of the NGO and Trust Bills evidenced the *regulatory power dynamics* and consequent regulatory conflict. Although the Government could introduce bills, the sector could also reject them, underscoring that for reform to be successful, the input and acceptance of sector actors are

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[143] Gary (n 113)

[144] ISODEC, 'Focus on the NGO Bill Public Agenda Accra

The Non-Governmental Organisation Bill: A Muzzling Instrument in the Making' in 'Institutional Capacity Building Programme for Northern Ghana Network for Development: Report of 2nd Planning Workshop, 1-3 June 1995.

[145] Gugerty (142)

[146] Giles Mohan, 'The disappointments of civil society: the politics of NGO intervention in northern Ghana.' (2002) 21(1) Political Geography,125 <https://oro.open.ac.uk/4141/ > accessed 4 September 2026

[147] Raymond A. Atuguba, 'Summary of Issues Surrounding the Draft Trust and Non-Profit Making Civil Society Organizations Act, 2007, the Draft Organizations (Registration) Regulations, 2007 and the Draft NGO Policy Guidelines, 2007' (2007)

[148] Modern Ghana, 'Setting Standards for NGOS/CSOs' *Modern Ghana* (Accra, 06 February 2009) <https://www.modernghana.com/news/201651/setting-standards-for-ngocsos.html#google_vignette> accessed 4 September 2026

[149] National Non-Profit Organisation Policy (2020)2

key requirements. The sector will not accept rules unilaterally drafted by the Government.[150] Interestingly, this was avoided in the creation of sector policies.

2.7 Expression of the Regulatory Power Dynamics: Policy Collaborations

In addition to the bills above, two Government Policies were also introduced. The first was the Draft National Policy for Strategic Partnership with NGOs [151] (Draft Policy) in 2004, which was created after the NGO bill. The second was the 2020 Policy[152] introduced after the Trust Bill.

2.7.0 Draft National Policy for Strategic Partnership with NGOs 2004

Having learnt from the NGO bill's failure, the NPP proposed a policy in place of legislation and sought sector actors' collaboration. Through a series of Government and sector-collaborated workshops, seminars and meetings, a policy document was created in 2000.[153]

However, nothing was done with it until 2004, when it was revised and introduced as the Draft Policy. It was sponsored by the Government, interGovernmental and sector organisations,[154] and was agreed to be the basis for sector regulation.[155] The Draft Policy's strategic goal was therefore aimed at fostering Government/sector collaboration to create a framework for ongoing consultations for sector governance.[156]

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[150] Benson Chinedu Olugbuo, 'Civil Society Regulation in West Africa: Self-regulation, State Control or Regional Norms and Standards?' (2014) 4(2) WACSeries Quarterly Monograpgh,12 < https://wacsi.org/wp-content/uploads/2020/10/8.-Civil-Society-Regulation-in-West-Africa.pdf.> accessed 4 September 2026

[151] National Consultative Group (NCG), Draft National Policy for Strategic Partnership with NGOs 2004. < https://www.icnl.org/wp-content/uploads/Ghana-document-IJNL-Volume-3-Issue-3.pdf> accessed 4 September 2026

[152] National Non-Profit Organisation Policy (2020)

[153] Draft Policy 2004

[154] Draft Policy 2004, p.4 and 5

[155] Olugbuo (150) 12

[156] Draft Policy 2004, p.7

To achieve its aim, the Draft Policy established a regulator[157] (The National Commission) which, among other things, was meant to provide accreditation, recommend sector organisations for tax exemptions and advise the Government on sector governance. In addition, it redefined NGOs as Civil Society Organisations (CSOs), provided a registration mechanism, tax exemption rules, funding and an accountability framework. With respect to accountability, a definite measure was not stated, but a plan to create an appropriate criterion and system was.[158] It envisaged a regulatory system realised through coordination, evaluation, monitoring and improved transparency.[159]

Despite the collaborative nature of the Draft Policy, it read vaguely with little strict language or obligatory measures, possibly as an incentive for sector acceptance. This is the disadvantage of incentive regulation, where increased interaction between the regulator and the regulated may lead to regulation capture. [160] Regulation capture often leads to measures satisfying the wants of the regulated, and sector actors in Ghana desire to preserve their autonomy as much as possible.

Ultimately, it was accepted by the sector mostly because it was a collaborative effort and possibly because it was a policy and not legally binding, with elements of suppression and co-optation. It showed the workings of the *regulatory power dynamics* without legislative conflict. However, for reasons unknown, the Government did not implement the Draft Policy. This showed that a failure of reform does not lie solely with sector rejection; the Government can also sabotage reform.

2.7.1 The National Non-Profit Organisations (NPO) Policy 2020

After the NPP returned to power in 2016, it revisited the Draft Policy and initiated new collaborative efforts with the sector. This led to the introduction of the 2020 Policy and subsequently the Directives for the Management of Non-Profit Organisations in Ghana (2020).[161]

As was briefly shown in Chapter 1 and is further developed in Chapter 4, the 2020 Policy sets out a definition, establishes new registration processes, creates the National Non-Profit Organisations

[157] The first in the history of the sector.

[158] Draft Policy 2004, p.10

[159]Draft Policy 2004, p.7 – In the Policy strategy

[160] Ernesto Dal Bo, 'Regulatory Capture: A Review'[2006]22(2) Oxford Review of Economic Policy 203 <https://academic.oup.com/oxrep/article-abstract/22/2/203/334718?redirectedFrom=fulltext> accessed 4 September 2026

[161] Directives for the Management of Non-Profit Organisations in Ghana (2020) < https://wacsi.org/directives-for-the-management-of-non-profit-organisations-operations-in-ghana/> accessed 4 September 2026

Secretariat as sector regulator, outlines tax rebates, and proposes a national review body for sector actors to unify codes.[162] This time, the implementation was swift, and the Secretariat started its operations in 2020.[163]

Thus, the 2020 Policy succeeded where its predecessors failed. The most obvious reason for this was that it was a collaborative effort which the Government implemented. The 2020 Policy notes that dialogue with relevant stakeholders in the sector accounted for the development and creation of the Policy.[164] Most significantly, the Policy also notes the other failed attempts, including the Draft policy, which was agreed to guide the sector. It explains that because the Government went against this agreement, it led to sector protests when the Trust bill was introduced.[165] This attests to the *regulatory power dynamics* where both Government and sector actors must be involved in regulation formulation. As to the aggregate weight given to the parties' inputs, this is not clear. However, the 2020 Policy's collaboration process could give some indication.

2.7.2 The 2020 Policy Formulation Collaboration

According to the Minister for Gender, Children and Social Protection,[166] the 2020 Policy was a "co-operation and collaboration between Government and NPOs … appropriately demonstrated during the consultative process in formulating the National NPO Policy. Various stakeholders were consulted and provided their input."[167]

This section examines the collaboration process for developing the 2020 Policy, with particular attention to shared inputs from Government and sector actors.

2.7.2.0 Participation Mechanisms and Collaboration Process

The 2020 Policy notes five adopted participatory mechanisms:

- Interview of selected stakeholder institutions, individuals and groups

[162] *See chapter's 4 and 5* for Details of the governing rules and institutions and their implication

[163] Obviously, this had a lot to do with Ghana being blacklisted under the FATF

[164] National Non-Profit Organisation Policy (2020) para 1.0

[165] National Non-Profit Organisation Policy (2020) para 1.1

[166] Sector Minister

[167] National Non-Profit Organisation Policy (2020) iv

- Focus group review meetings with key stakeholders
- Development of a revised the Draft Policy
- Wide circulation of Draft Policy among stakeholders
- National validation workshop with the technical committee to finalise the policy [168]

Altogether, the 2020 Policy used direct and discursive mechanisms in its collaboration process, facilitated by the sector Ministry, which established two groups:

1. The National consultative group made up of Government Institutions, NGOs, INGOs and Development Partners.

2. The National technical committee was also made up of Government and sector actors.

The process started with a review of the Draft Policy 2004 as the baseline agreement, which was sent to the national consultative group, who, through discussion and dialogue, established the Policy's priority areas. The priority areas were then sent to the national technical committee, which set the policy parameter and organised workshops attended by relevant Government institutions, sector stakeholders, civil society organisations, academia and research institutions[169] who made inputs on the Policy parameters.

There were therefore three input stages: first by the national consultative group, second by the national technical committee and third by the sector and wider stakeholders. As both Government and sector representatives were involved at each of the three stages, it is assumed that inputs were made equally by both parties. Though the input stages were diverse, the value of this process lies in the stage sector input that made it meaningful.

2.7.2.1 When Sector Input Occurred

According to Ghana's National Development Planning Commission's guidelines for policy formulation,[170] stakeholder engagement should happen at the early stage of the policy process so

[168] National Non-Profit Organisation Policy (2020) para1.3

[169] National Non-Profit Organisation Policy (2020) para 1.3

[170]National Development Planning Commission, 'Ghana's National Development Planning Commission's Guidelines for Policy Formulation' (2020)34 < https://www.ndpc.gov.gh/media/Guidelines_for_Public_Policy_Formulation_in_Ghana_Final_Nov20201.pdf> accessed 4 September 2026

that participation is meaningful and not just a tick-box exercise. As shown in Fig 3, stakeholder consultation must be the third priority after identification of an issue and policy option.

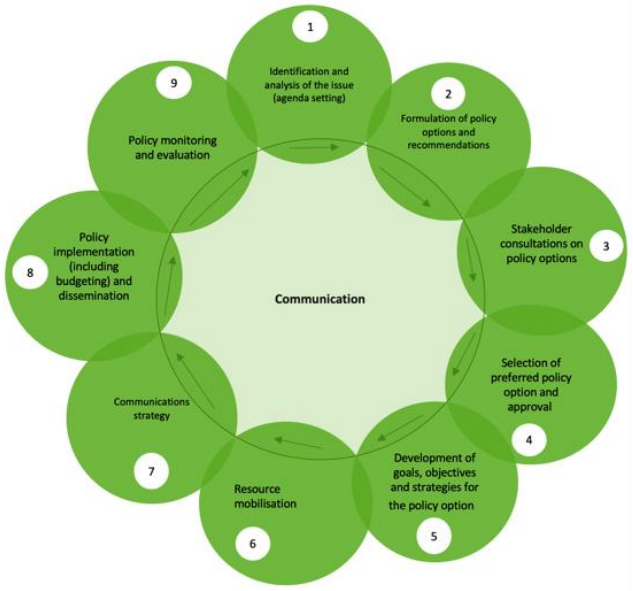


Fig. 3: Public Policy Formulation Process (*form National Development Planning Commission*)[171]

The 2020 Policy points to stakeholder input taking place in the early part of the process, and hence making the inputs valuable. It deepens the argument that participants voice, especially that of sector actors, helped shape the 2020 Policy and reduced the possibility of Government dominance. It supports Nabatchi and Leighninge's, [172] view that participation happens when the needs, concerns, interests and values of people are integrated in the decisions.

Overall, the 2020 Policy's participation mechanism suggests that, although Government agencies had discretion over the process, it enabled direct, open, and broad participation in policy formulation. However, one of the grey areas in the process was the number and identities of the sector participants. It raised the question of who was involved and, therefore, whose view was added.

2.7.2.2 Who was consulted and Collaboration Gaps

The above discussion shows that the policy formulation included Government and sector actors. However, knowledge of who was consulted in the policy process is key because it shows whether

[171] National Development Planning Commission (n 170) 34

[172] Tina Nabatchi and Matt Leighninge, *Public Participation for 21st Century Democracy* (John Wiley & Sons, Inc., Hoboken, New Jersey, 2015) < https://onlinelibrary.wiley.com/doi/pdf/10.1002/9781119154815.fmatter> accessed 4 September 2026

the wide consent and concern of the governed have been integrated or not. Wengert,[173] gives an example that if a public agency wants to make artificial rain, the person whose land the rain falls on must be consulted, not his neighbour. In excluding the 'right' people and 'including' the wrong people, participation becomes disproportionate, creating non-representation, resulting in a reduction of ownership and potential infringement of rights.

Review of the 2020 Policy shows a lack of identity and affiliation disclosure of the participants in the consultation stages. The research also could not find any information outside the Policy concerning the participants who represented the sector at the national and sub-level. This shows a lack of transparency in the collaboration process and questions the legitimacy of sector buy-in. Simply put, it is not clear whether the right people were consulted. The lack of transparency also denotes Government manipulation, especially since the national consultative group and national technical committee, which set the priority area, policy parameters and organised the stakeholder workshops, were established by the Ministry of Gender, Children and Social Welfare. This shows gaps in the collaborative process and that it may not have been as inclusive as suggested.

But it could be counter-argued that the lack of sector protest validates the collaboration process. However, it may also be that the actors who had the capacity to protest[174] were part of the consultation process, and those who did not were silenced by the general acceptance.

Another negative indication from this collaborative process was the policy parameters[175] presented at the third consultation stage. Although this helped streamline the process, it also points to restrictions on views that could impact meaningful participation and dialogue. Like the identity of the sector participants, details of the parameters were not mentioned nor found by the research, which again points to a lack of transparency.

Finally, a review of the Draft Policy 2004 shows significant similarities with the 2020 Policy. This insinuates two conflicting things. The first is that participants were restricted to only provide inputs that validated the Draft Policy 2004, and therefore their inputs did not matter, suggesting Government manipulation. The second is that since the Draft Policy 2004 was largely agreed upon

[173] Norman Wengert, 'Citizen Participation: Practice in Search of a Theory' (1976) 16 (1) Nat Resources J 23 < https://digitalrepository.unm.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=3054&context=nrj > accessed 4 September 2026

[174] Resources and power

[175] National Non-Profit Organisations Policy (2020) 3

by sector actors, the similarity presented reflects the ideals of sector actors and decreases the assumption of Government manipulation.

Ultimately, the lack of sector protest of the Policy is the strongest acceptance and indication that these negatives do not matter. But an argument can be made that sector collaboration was not the only indication of acceptance. The 2020 Policy, not being a bill, may be another indicator, as the NPO bill drafted from the 2020 Policy has failed to be accepted.

2. 8 Expression of the *Regulatory Power Dynamics*: Draft NPO Bill

Following consultations on the 2020 Policy, the need for a bill/legislation to provide legal backing for the 2020 Policy was highlighted.[176] Therefore, the national technical committee, in addition to drafting the 2020 Policy, was also tasked to simultaneously develop the Non-Profit Organisation Bill (NPO bill).[177]

The draft NPO bill therefore has similarities with the 2020 Policy in its outline of general principles for sector actors (clause 1-7), establishment of Non-Profit Organisation Secretariat (Clause 17-25), creation of a Non-Profit Organisation Fund (clause 48-55) and licence for sector actors (clause 28-42). Apart from this, the draft NPO bill also includes the types of sector actors (clauses 8-16), privileges of sector actors (clauses 26-27), the Secretariat enabling the dispute resolution process (clauses 43-46), and miscellaneous provisions (clauses 56-74).[178]

To enable sector acceptance, the Secretariat is tasked with consulting the sector actors on the draft NPO bill. One such event was boycotted by sector actors on the basis that the draft NPO bill had restrictive provisions that stifled operations.[179] Sector actors interviewed mentioned that once the bill passes, the Government could use the law and Secretariat to frustrate sector actors who oppose the Government when renewing their licence.[180] Also, the appointment of Board members meant

[176] National Non-Profit Organisations Policy (2020) para 1.3

[177] Non-Profit Organisations Secretariat, 'Draft Non-Profit Organisations Bill: An Overview. (2021)4 <https://www.kingdomequipnetwork.org/wp-content/uploads/2017/02/ERS-4-Non-Profit-Organization-Secretariat.pptx> accessed 4 September 2026

[178] Non-Profit Organisation Secretariat, 'Draft Non-Profit Organisations Bill' (n 177) 15

[179] Emelia B. Addae, 'CSOs boycott NPO draft bill validation workshop over restrictive provisions. (12 October 2023, Ghana New Agency) <https://gna.org.gh/2023/10/csos-boycott-npo-draft-bill-validation-workshop-over-restrictive-provisions/> accessed 4 September 2026

[180] Addae (n 179)

to govern the Secretariat by the President was challenged as a form of Government interference and political dominance. The draft NPO bill was therefore regarded as a potential means of suppressing sector actors.

What is interesting here is that these provisions are in the accepted 2020 Policy. So why was the 2020 Policy accepted, and the draft NPO bill validation event boycotted? The possible answer is the fear of legislation and its legal power. Consequently, while sector actors, as part of a collaborative effort, may accept a policy, they may reject a bill even if they are consulted.

At the time of writing, there was no indication of sector acceptance of the draft NPO bill. The consultation process that began in 2021 is still ongoing, with sector views being noted. [181] As to whether this would be translated into the final draft, that is yet to be seen. It is not even certain that, after all the consultation processes, sector actors will not protest it when introduced. Ultimately, they have their customary autonomy, development power and the 1992 Constitution on their side, which they can wager against the Government's regulatory power.

2.9 Conclusion

From the historical account, the growth of the sector and its legal regulation co-existed with the evolution of the country and its governance. The pre-colonial tribal communities had their own governance systems with participation at the heart of it. Within this system, *Self-help* was introduced and was primarily managed by the members resulting in 'self-regulation.' Though the British colonial empire centralised governance, self-help evolved into the Newly fashioned Gold Coast creating the current third sector. Because the British Colonial administration governed the sector with minimal legal regulation, limited to registration and tax, self-regulation persisted. Consequently, successive Governments after independence largely followed this approach only adding collaboration with the local Government to the regulatory system. This progressively developed the sector as one with limited legal interference from Government entrenching sector autonomy. Government and sector actor friction was largely political and towards politically inclined voluntary groups.[182] There was also some level of regulatory segregation in the colonial

[181] Comfort Sena Fetrie-Akagbor, 'CSOs in Northern Zone Hold Consultation on draft NPO bill' *Ghana news Agency* (Accra, February 2025) Ghana news agency < https://gna.org.gh/2025/02/csos-in-northern-zone-hold-consultation-on-draft-npo-bill/> accessed 4 September 2026

[182] Atingdui and others (n 43)158

period, where the administration gave tax rebates to only the missionaries. Furthermore, the regimes after independence, like the CPP and PNDC, co-opted and suppressed organisations for their own interests.

The PNDC military Government also intensified the suppression by creating a repressive environment with added legal restrictions. Nevertheless, the structural readjustment programme made sector actors indispensable to the country's development. Sector actors therefore leverage their 'development power' against Government regulation leading to sector deregulation. This and the transition to the Fourth Republic under the 1992 Constitution created what the research calls *regulatory power dynamics* between the Government and sector actors.

Now, both Government and Sector actors have regulatory power to shape regulation formulation. With this regulatory *power dynamics,* Government can initiate *negative or positive regulation* and sector actors can accept or reject such advances based on their customary autonomy, developmental services and freedom of association guaranteed under Article 21(1)(e).

Therefore, in contextualising the nature of third sector regulation and reform in Ghana, the *regulatory power dynamics* have established a regulation status quo where both the Government and sector actors have proportional power to dictate the direction of regulation. This is evidenced by regulation stagnation, the failed reform attempts and the successful implementation of the 2020 Policy. It proves that for any reform to be successful, both parties must collaborate. However, the fragile position of the draft NPO bill also means that collaboration is not the only factor that needs to be addressed. The fear of Government suppression and co-optation facilitated by legislation also needs to be acknowledged, and this is why regulation co-production is recommended in Chapter 9

Overall, this chapter advances our understanding of the influence of historical governance on third sector regulation and reform. But even though the 1992 Constitution is a factor substantiating the sector's regulatory power, it goes beyond this. The next chapter considers the effect of the 1992 Constitution in balancing the freedom of association with adequate limitation.

Chapter 3: Effects of the 1992 Constitution on Third Sector Regulation in Ghana

3.0 Introduction

Chapter 2 showed that the sector's historical governance had created a situation that the research termed a *regulatory power dynamic*, in which both Government and sector actors possess regulatory power and must agree for reform to succeed. Without an agreement, regulation becomes stagnant. The research notes this as the political barrier to sector legislation, evidenced by its absence and the presence of the 2020 Policy. Further, Chapter 2 showed the source of the *regulatory power dynamic* to come from State power for the Government, customary autonomy, developmental services and the 1992 Constitution for sector actors.

But the freedom of association guaranteed under Article 21(1)(e) goes beyond strengthening the regulatory power of sector actors. In fact, this is an incidental outcome. The main purpose of Article 21(1)(e) is to ensure a Constitutional freedom against State power, especially owing to Ghana's eventful governance and history. This is where the legal challenge to the sector's regulation lies. An effective regulatory regime requires an imposition of 'obligation on individuals or organisations to comply with rules promulgated by the State to promote the achievement of some public purpose".[1] Without such obligations, enjoyment is unfettered. But since the Constitution provides the freedom of association, limitations imposed must come from it to be valid.

So, the question is whether the 1992 Constitution strikes an appropriate balance between the protection of the freedom of association and limitations. The research argues that it does not. It hypothesises that the 1992 Constitution itself creates a legal barrier which makes robust regulation, especially through legislation, challenging. To test this, this chapter discusses Ghana's Constitutional jurisprudence on rights and obligations allowed for the freedom of association.

[1] John Alford and Janine O'Flynn, *Rethinking Public Service Delivery: Manging with External Providers* (Palgrave Macmillan, 2012) 157

3.0.0 Key Findings

The findings show that the scope of Article 21(1)(e) does not impose caveats for the enjoyment of the freedom of association. As such, the Supreme Court has interpreted the freedom broadly and as inalienable, except where direct limitations are placed by the Constitution itself. Three direct limitations of the fundamental freedoms were identified. First is Article 21(4), but this only applies to the freedoms of movement, thought and expression and does not limit the freedom of association. Next is Article 31, which allows abrogation of rights in a state of emergency. However, its scope of limitation is strict and has never been triggered before. Besides, it can only be used in situations of State emergencies and not as the basis for imposing sector obligations in their day-to-day operations. Finally, Article 12(2) weighs the enjoyment of a person's rights against the enjoyment of others and public interest, but its application has a high threshold. Even though the definition of public interest is broad, when its application involves the fundamental freedoms, the courts interpret it narrowly.[2] This reflects the Supreme Court's approach of broadly interpreting the fundamental freedoms while narrowly interpreting limitations.

Essentially, only Article 12(2) offers a viable ground to impose sector obligations based on public interest. However, the Supreme Court's literal interpretation of limitations, coupled with its broad interpretation of the freedoms, has seen public interest rejected on two occasions. The consequence is that, while the Constitution allows for a wider enjoyment of unfettered rights, it does not allow much room for restrictions or obligations even in the presence of severe disadvantages. This is the problem most countries with codified Constitutions face when dealing with possible laws that interfere with the enjoyment of Constitutional rights.[3] Even if political barriers are overcome and legislation passed, judicial scrutiny might deem limitations unconstitutional and invalid. Ultimately, this chapter finds that the 1992 Constitution allows minimal to no balance between the freedom of association and limitations thereof.

The details of the findings are shown below.

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[2] Abass v Accra Metro Assembly Miscellaneous Civil Cause No. 1203 of 2002.

[3] An example is the famous ongoing complex debates in the United Sates regarding its Constitution's second amendment on the right to bear arms versus gun laws despite the multiple shooting incidents.

3.1 Fundamental Freedoms in Ghana

Fundamental freedoms in Ghana were not expressly protected until the Second Republic. Both the 1957 Independence Constitution and 1960's Constitution (1st Republic) lacked such provisions. The 1960 Constitution, in particular, facilitated dictatorial rule, [4] leading to laws like the contentious Preventive Detention Act of 1958 (PDA). This law allowed Government officials to detain people on subjective evidence based on state security concerns. The controversy of the law even led to a significant case.

In *Re Akoto & 7 Others*[5] *(Re Akoto),* the plaintiff, Mr Akoto and seven others were detained without trial under the PDA. Mr Akoto raised a claim against his arrest on the basis that the law was arbitrary, discriminatory and went against human rights. However, the Supreme Court in deciding the case looked to the English case of *Liversidge v Anderson*[6] and the orthodox English Constitutional view of Parliamentary Sovereignty.[7] The court then ruled that it had no authority to enquire into Mr Akoto's detention because the discretionary powers given to the President to detain Mr Akoto were created by statute (the PDA). Unless it could be found that the discretionary powers were exercised in bad faith,[8] the court had to enforce the law. Barring reliance on English Constitutional law, the key reason for the decision was that Article 42(2) of the 1960 Constitution limited the Supreme Court's power to set aside Acts of Parliament. [9] Most importantly, there was a lack of express protection of fundamental rights in the 1960 Constitution.[10] So, even if the court

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[4]Ransford Edward Van Gyampo and Emmanuel Graham, 'Constitutional Hybridity and Constitutionalism in Ghana' (2014) 6(2) Africa Review 138, 144 < https://www.proquest.com/docview/1561739102?sourcetype=Scholarly%20Journals.> accessed 4 September 2026

[5] Re *Akoto & 7 Others* [1961]2 GLR 523, SC

[6]Liversidge v Anderson [1942] A.C. pp.206-283

[7] Asante Fordjour, 'The Re Akoto and The Supreme Court Revisited.' (2013) The OmanbaPa Research Group, Justice Ghana < https://justiceghana.com/blog/law-justice/the-re-akoto-and-the-supreme-court-revisited/> accessed 4 September 2026

[8] Kwadwo B. Mensah, 'Legal Control of Discretionary Powers in Ghana; Lessons from English Administrative Law Theory' (1998) 14(2) Afrika Focus

[9] C.K Kumado, 'Judicial Review of Legislation in Ghana Since Independence'. (1977) 5 (2) National Black < https://escholarship.org/content/qt1df0c35b/qt1df0c35b.pdf > accessed 4 September 2026

[10] Gyampo and Graham (n 4) 144

wanted to set aside the PDA, they could not, as it was enforceable law in the absence of Constitutional safeguards.

This decision was juxtaposed with *Ware v Ofori Atta*[11] which was held under the 1957 Independence Constitution. Though the Independence Constitution also lacked human right safeguards, the Supreme Court still ensured the protection of rights. In this case, the Supreme Court held that an Act of Parliament (Statute Law (Amendment)(No.2) Act 1957), which was concerned with the custody of stool property, directly affected traditional functions and Chief privilege and therefore was invalid.

The two cases demonstrated that without Constitutional safeguards for human rights, courts are able to ensure customary rights are protected. But their decision could be influenced by the political sensibilities of the Government. Therefore, Fordjour,[12] argued that the Supreme Court's decision in Re *Akoto* was influenced by the CPP Government who essentially disregarded any form of human rights through the promulgation of arbitrary laws and actions. Although the Supreme Court could have used the case to legally curb such arbitrariness, there seemed to be little legal standing, judicial and political will to do so. The only indication of the human rights protection at the time was the President's verbal declaration of honouring human rights which the Supreme Court ruled was not law.[13]

Yet, even if the Supreme Court wanted to rule in favour of Mr Akoto, Kumado,[14] argued that the wording of Article 42(2) of the 1960 Constitution did not give the Supreme Court the power to declare legislation and executive actions as null and/or void. This approach is similar to the Constitutional position in the UK, where judges cannot strike down an Act of Parliament. In cases of human rights contravention, they can only issue a declaration of incompatibility.[15] For that reason, although counsel for Akoto had asked the Supreme Court to declare the PDA invalid on the grounds of excessive use of power, the Court could not do so, even if it had wanted to. So, where one saw the Supreme Court's ruling as cowardice,[16] the PDA was enforceable law in the absence of Constitutional safeguards.

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[11] *Ware v Ofori Atta* [1959] DLHC2066

[12] Fordjour (n 7)

[13]Fordjour (n 7)

[14] Kumado, 1977 (n 9)

[15] Human Rights Act 1998, s.4

[16] Kumado, 1977 (n 9)

The ruling in *Re Akoto*, therefore, compelled human rights protection in the 1969 Constitution (2nd Republic). Subsequent actions of military Governments[17] which overthrew the second and third republic Governments also prompted the need for further expressed safeguards in the 1979 Constitution (3rd Republic) and the 1992 Constitution (4th Republic). By far, the most extensive safeguards are found in the 1992 Constitution.

3.2 The 1992 Constitution and Fundamental Freedoms

The 1992 Constitution[18] came into force on 7th January 1993, providing a charter for democratic governance for the Fourth Republic. Under Article 1(2), the Constitution declares that it is

'*The supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall to the extent of the inconsistency, be void."*[19]

The 1992 Constitution, therefore, established a governance system that assigns and limits power, and defines the processes and procedures used by State institutions to govern. This governance structure is also founded on citizen participation and [20] lessons learnt from historical governance.[21]

Owing to the British colonial legacy and the need to protect rights, the 1992 Constitution models itself after aspects of the British Constitution and the United States of America's Constitution.[22] It therefore establishes a Presidential democracy with an Executive, a unicameral Parliament, and a Judiciary as the three primary institutions of the State. The President leads the executive[23] with its cabinet. The legislature is made up of 275 elected members of Parliament,[24] and an independent

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[17] LaVerle Bennette Berry and Library of Congress, Federal Research Division, 'Ghana: a country study' (Federal Research Division, Library of Congress, 1995)

[18] The Constitution of the Republic of Ghana, 1992 (as amended in 1996)

[19]The Constitution of the Republic of Ghana, 1992, Article 1(2)

[20] Kofi Kumado, 'Fundamental Human Rights in the 1992 Constitution' in Peter Mayer and Dennis Vormawor, *TUC and Human Rights* (Friedrich-Erbert-Foundation, 1995)

[21] *See chapter 2*

[22] Berry LaVerle and Library of Congress, 'Ghana, A Country Study' (Library of Congress, 1995)217

[23] The Constitution of the Republic of Ghana, 1992, Article 57

[24] The Constitution of the Republic of Ghana, 1992, Article 93

Judiciary is charged with enforcing the laws and scrutinising the executive and Acts of Parliament through judicial review.[25]

In protecting rights, Article1 (1) of the Constitution states that

"*The Sovereignty of Ghana resides in the people of Ghana in whose name and for whose welfare the powers of Government are to be exercised in the manner and within the limits laid down in this Constitution"*[26]

So, at the heart of the 1992 Constitution, citizen rights are reflected under Fundamental freedoms (Article 21), Enfranchisement (Article 42), Political Parties (Article 55), Participating in Government (Article 35) and Participation in local Government (Article 240). These rights and freedoms are founded on the rule of law embodied by Ghana's legal system, which recognises Acts of Parliament, Common law, Customary laws, and Acts/Decrees in existence before the coming into force of the 1992 Constitution.[27]

Specifically, Chapter 5[28] of the 1992 Constitution prescribes eighteen major individual rights, including seven fundamental freedoms.[29] To further protect the fundamental freedoms, the Constitution entrenches them under Article 290 (1). Amendments[30] are allowed, but the process is lengthy, costly and complicated, requiring advice of the Council of State, public notice, Parliament scrutiny and a national referendum of seventy-five per cent of voters' approval. Therefore, since its creation, the 1992 Constitution has only been successfully amended once in 1996. Other attempts proved unsuccessful.[31] In addition, Articles 31-32,[32] which provide specific instances in which the President can abrogate rights in an emergency, are so rigorous that they have never been triggered.

To further prevent a weak Supreme Court as in Re *Akoto*, the 1992 Constitution gives the Supreme Court original jurisdiction over all matters relating to the enforcement and interpretation of the

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[25] The Constitution of the Republic of Ghana, 1992, Chapter 11(the Judiciary)

[26]The Constitution of the Republic of Ghana, 1992, Article 1 (1)

[27] The Constitution of the Republic of Ghana, 1992, Article 11

[28] The Constitution of the Republic of Ghana, 1992, Articles 12 to 33

[29] The Constitution of the Republic of Ghana, 1992, Article 21 (1)(a)-(g)

[30] The Constitution of the Republic of Ghana, 1992, Article 290(2)-(6)

[31] Mawuse Vormawor, 'Constitutional reform in non-conflict contexts: Ghana's experience' (Constitution Net, 2014) < https://constitutionnet.org/news/constitutional-reform-non-conflict-contexts-ghanas-experience> accessed 4 September 2026

[32] The Constitution of the Republic of Ghana, 1992, Articles 31 and 32

Constitution.[33] This power includes the authority to make a declaration on the Constitutionality of a law or decision. Where it makes a declaration, it invalidates the offending law and or action, and it becomes a criminal offence if the President or public official refuses the court's judgement.[34] Article 33 also gives the High Court jurisdiction over the fundamental rights and the power to issue writs and orders to enforce them, with a right of appeal to the Supreme Court. Under these Constitutional protections, and with the shadow of *Re Akoto*, Government interference with the enjoyment of the fundamental freedoms is highly restricted.

Consequently, one of the fundamental freedoms is that of association under Article 21(1)(e), which affords third sector actors' legitimacy and freedom to operate. However, as noted by Mohan, 'any policy which increases rates of volunteering should also therefore increase levels of trust'.[35] In the absence of obligations that could increase trust, the sector has been marred by problems. Challenges of exploitation,[36] lack of transparency and accountability, [37] incompliance with AML/CFT[38] obligations,[39] *regulatory power dynamics* and their effects, especially the absence of legislation, weaken the sector.

This issue raises the question of the absoluteness of Constitutional rights. Kumado[40] argued that the framers of the 1992 Constitution answered this question under Article 12, which shows that the rights *guaranteed… are fluid, dynamic and not absolute and static*'[41] and therefore living. It is meant to address societal needs and changes. Hence, the key question is not whether Constitutional rights

[33] The Constitution of the Republic of Ghana, 1992, Article 130(1)(2)

[34] The Constitution of the Republic of Ghana, 1992, Article 2(1) and(4)

[35] John Mohan and Vicki Bolton, 'Volunteering and civic engagement: a virtuous circle, but a privileged one?' (University of Birmingham, 2019) < https://www.birmingham.ac.uk/research/tsrc/blog/volunteering-and-civic-engagement.aspx> accessed 4 September 2026

[36] David Atugiya, 'NGOs and Civil Society Organisations in Ghana Needs an Independent Regulatory Body' *Modern Ghana* (Accra, 16 March 2012) < https://www.modernghana.com/news/383962/ngos-and-civil-society-organisations-in-ghana-needs-an-indep.html > accessed 4 September 2026

[37] GIABA, 'Anti-money laundering and counter-terrorist financing measures – Ghana, Second Round Mutual Evaluation Report' (GIABA, Dakar,2018)57-58<https://www.fatf-gafi.org/content/dam/fatf-gafi/fsrb-mer/GIABA-Ghana-MER-2018.pdf.coredownload.inline.pdf> accessed 4 September 2026

[38] Anti-Money Laundering and Combating of Financial Terrorism

[39]GIABA (n37)121

[40] Kumado (1995) (n 20)8

[41] Kumado (1995) (n 20)8

should be limited, but whether they could be.[42] In this regard, Kumado,[43] further explained that the provisions of Chapter 5 make allowances for the rights to be limited under 12 major reasons. These include judicial intervention; national security; the rights of others; treatment or quarantine purposes; the prevention of crime; immigration or extradition; cultural or social exigencies; economic considerations; state emergencies; the defence of the Constitution and the interests of public safety, defence, public order, or public health.

These limitations, however, do not apply wholly to each right. They apply in varying degrees depending on the right in question. This determines the scope of each right, with respect to the extent of enjoyment and the limitations. Analysing the scope of freedom of association and its limitations clarifies how the 1992 Constitution balances its enjoyment and its corresponding impact on third-sector regulation.

3. 3 Third Sector Enjoyment of the Freedom of Association: Article 21(1)(e)

All Ghanaians and residents have the right to enjoy the fundamental freedoms. The third sector is created by exercising the freedom of association. Article 21(1)(e) is the basis on which sector organisations derive their existential legitimacy and autonomy. It provides all persons with the:

"…freedom of association, which shall include freedom to form or join trade unions or other associations, national and international, for the protection of their interest."[44]

This provision allows the free establishment, joining and operation of associations. Moreover, while Article 21(1)(e) specifically grants sector legitimacy, the entire scope of Article 21(1) also pertains to the sector by supporting its operations. For example, when combined with the freedom of assembly subsection (d), it satisfies the scope of freedoms International human rights law [45] deem to facilitate a vibrant voluntary sector. Subsections (a), (b), (c), (f) and (g) of Article 21(1) also provide the associations with an operating scope where they can exercise free speech,

[42] Kumado (1995) (n20)8

[43] Kumado (1995) (n 20)9

[44]The Constitution of the Republic of Ghana, 1992, Article 21(1) (e)

[45] For example, the Guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples' Rights (African Commission) 2017 < https://achpr.au.int/index.php/en/soft-law/guidelines-freedom-association-and-assembly-africa > accessed 4 September 2026

expression, thought, conscience, belief, practice any religion, information, and movement. Further, because of its entrenched and stringent amendment requirement, Article 21(1) is effectively permanently protected, thereby preserving the operation of sector actors unreservedly.

What is noteworthy is that the content of Article 21(1)(e) does not impose any obligation on the enjoyment of the freedom. In fact, under Article 37(2)(a) Government interference in the enjoyment of the freedom of association is restricted. This was given effect in the *New Patriotic Party v Attorney General* (CIBA Case), [46]discussed in Chapters 2 and 4. So, Article 21(1)(e) joined with 37(2)(a) basically provides a relatively carte blanche provision. With such guaranteed freedom, sector actors have not had a need for sector legislation to secure legitimacy for their operations. They essentially can operate freely with or without specific legislation and or policy. Joined with the experience of suppression and co-optation in historical governance,[47] shown in Chapter 2, sector actors have been apathetic and guarded against any regulation reform that may seek to limit their autonomy and freedom.[48] This sentiment has been highly supported by the Supreme Court.

3.4 Third Sector Enjoyment of the Freedom of Association: Judicial Protection

In adjudicating cases concerning the fundamental freedoms, the Supreme Court has largely adopted a liberal interpretive approach, allowing almost unfettered enjoyment of rights.

In *Appiagyei-Atua & 7 others vs The Attorney General* (Restrictions Act case),[49] the judges noted that, there is an established principle of Constitutional interpretation which requires the fundamental rights to be interpreted broadly, liberally, generously and expansively. This is done in line with the Constitution's spirit and history, to promote and enhance human rights rather than diminishing them.[50] This principle was developed in key notable cases.

First, is the aforementioned *New Patriotic Party v Attorney General* (CIBA Case)[51] where the Council of Indigenous Business Association (CIBA) law 1993 required certain trade associations to register

[46] New Patriotic Party v Attorney-General [1996-97] SCGLR 729 (CIBA Case)

[47] *See Chapter 2*

[48] *See Chapter 2*

[49] Appiagyei-Atua & 7 others vs The Attorney General [2023] GHASC 32 (Restriction Act case)

[50] *Restriction Act case* [29]

[51] New Patriotic Party v Attorney-General [1996-97] SCGLR 729 (CIBA Case)

with a newly created Council of Indigenous Business Association. The plaintiff, an opposition party, argued that this requirement signified Government interference in the enjoyment of the freedom of association and was therefore unconstitutional. The Supreme Court agreed, ruling that the Constitution does not require the enjoyment of the freedom of association to be subject to licensing.

Second, was the case of *Mensima & others v Attorney- General,*[52] where section 3(1) of the Manufacturing and Sale of Spirits Regulation, 1962(LI 239) required distillers of *akpeteshie* (Ghanaian local Gin) to belong to a registered distillers co-operative society. The plaintiff argued that the provision contravened Article 21(1)(e) as they were essentially being compelled to join a co-operative against their will. The Attorney General argued that the provision was a reasonable limitation in the protection of public interest and health. However, Acquah JSC stated that "The essence of freedom of association is the liberty or lack of compulsion on the individual to form or join an association".[53] Therefore, the Supreme Court ruled in favour of the plaintiff on the basis that the provision negated the plaintiff's freedom of association and was therefore unconstitutional.

Essentially, the Supreme Court's judgements create a legal position that the freedom of association is meant to be enjoyed broadly. So, any law that seek to curtail this would face strong judicial scrutiny. This approach is applied to all the fundamental freedoms including assembly and expression.

Therefore, in *New Patriotic Party v Ghana Broadcasting Corporation* (GBC case),[54] The plaintiff argued that the Ghana Broadcasting Corporation's refusal to allow it to appear on television to comment on the Government's budget proposal constituted a breach of its freedom of expression. The Supreme Court unanimously agreed with the plaintiff and declared the action of the defendant to be against the Constitutional provisions.[55]Notably, Justice Aikins, commented that the

'Constitutions of this country dating as far back as 1969 contain provisions to ensure freedom of expression of the individual, i.e. [the] freedom to hold and to receive and impart ideas and information without interference, and [the] freedom from interference with his correspondence.'[56]

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[52] Mensima & others v Attorney- General [1996-97] SCGLR 676

[53] Mensima (n 52) 715

[54] New Patriotic Party v Ghana Broadcasting Corporation [1993-94] 2 GLR 354 (GBC case)

[55] *GBC case* [376]

[56] *GBC Case* [376]

Likewise, in New *Patriotic Party (NPP) v Inspector-General of Police (*IGP case*)*[57] the plaintiff was continually stopped and imprisoned by the police for going on demonstrations without a police permit. This was a requirement under the Public Order Decree 1972 (NRCD 68). The plaintiff argued that Article 21(1)(d) did not subject freedom of assembly to Police permit and therefore the Public Order decree was unconstitutional. Again in a unanimous verdict, the Supreme Court held that the requirement for police permit contravened Article 21 (1)(d) and therefore unconstitutional.

These cases support the notion that the fundamental freedoms are inalienable, read broadly[58] and almost unfettered, allowing sector actors a wide margin of enjoyment without restrictions.

However, the courts do in some cases consider that the fundamental freedoms have limitations which puts a boundary on the broad interpretation.

3.5 Boundaries of Broad Judicial Interpretation of the Fundamental Freedoms

In the *IGP* case,[59] the Supreme Court especially argued that the fundamental freedoms are inalienable and may not be curtailed or derogated except where the Constitution allows, like in public emergencies. Therefore, in *Mensima,*[60] Acquah JSC, explained that the 1992 Constitution does pose limitations on the fundamental freedoms and the court's duty when adjudicating on cases of Constitutional inconsistency is to determine whether valid limitations exist. The court's adjudication process is two-fold. First, it determines whether, on the face of the Constitutional provision, the alleged law is, indeed, inconsistent.[61] This is a question of whether the law has breached the fundamental freedoms. If it hasn't, the plaintiff fails in his suit; if it has, the court proceeds to the next stage. The second question is to determine whether, excluding the inconsistency, the law can be justified on any of the limitations in the Constitution.[62] This speaks to the specific Constitutional limitations placed on the freedom. So, if said law can be justified under the Constitutional limitations, it remains valid, and if not, it becomes unconstitutional.

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[57] New Patriotic Party (NPP) v Inspector-General of Police [1993-94] 2 GLR 459 SC (IGP case)

[58] *IGP case* [508]

[59] *IGP case* [508]

[60] Mensima (n 52)

[61] Mensima (n 52) 715

[62] Mensima (n 52) 715

Consequently, in *Gorman & Others v The Republic,*[63] Ocran JSC, argued that despite the Constitutional and judiciary weight imposed on safeguarding the fundamental freedoms, they are not 'a catch-all defence of the rights. He stated that '…the Constitution adopts the view of human rights that seeks to balance the rights of the individual as against the legitimate interests of the community. While the balance is decidedly tilted in favour of the individual, the public interest and the protection of the public are very much part of the discourse on human rights in our Constitution.' [64]

Indeed, in the *Restrictions Act* case,[65] the Supreme Court noted examples of relevant statutes that place limitations on fundamental freedoms. These include Public Order Act 1994 (Act 491), Electronic Communications Act, 2008 (Act 775), Immigration Act, 2000 (Act 573), Anti-Terrorism Act, 2008 (Act 762), Security & Intelligence Agency Act 2020 (Act 1030), Vigilantism and Related Offence Act, 2019 (Act 999), Public Health Act 2012 (Act 851)and Criminal And Other Offences Act 1960 (Act 29).[66] Ultimately, limitations from these laws are applicable because they have a Constitutional basis.

So, in *Republic v Independent Media Corporation of Ghana (Radio eye* case*),*[67] the Supreme Court held that a law that required licencing for a media company to operate was valid. This was because the Constitution subjected Article 162(Freedom and independence of media) to Article 164[68] which requires the court to balance public interests against implicated rights carefully. The court's ruling was therefore meant to ensure essential regulatory measures and limitations for the healthy establishment and operation of broadcasting services.[69]

However, the limitation was not directly towards the freedom of expression. Article 165 is careful to note that *"For the avoidance of doubt, the provisions of this Chapter shall not be taken to limit the enjoyment of any of the fundamental human rights and freedoms guaranteed under Chapter 5 of this Constitution*."[70]

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[63]Gorman & Others v The Republic AHRLR 141 (GhSC 2004)

[64] *Gorman* [806]

[65] *Restriction Act case*

[66] *Restriction Act case* [23]

[67] Republic v Independent Media Corporation of Ghana [1996-97] SCGLR 258 (Radio-eye case)

[68] Artcle164-The provisions of Articles 162 and 163 of this Constitution are subject to laws that are reasonably required in the interest of national security, public order, public morality and for the purpose of protecting the reputations, rights and freedoms of other persons.

[69] *Radio Eye* [283]

[70] The Constitution of the Republic of Ghana, 1992, Article 165

This suggests that although legitimate limitations can be readily applied to other rights, they are more difficult to apply to fundamental freedoms. This is evidenced by *cases discussed above* in which the Supreme Court rejected all limitations, including registration and restrictions, on public-interest grounds.

3.6 Implication of Judicial Interpretation on Third Sector Regulation

From the discussion above, three main points about the effect of the Constitution on sector regulation reform could be made.

The first is the strictness with which the Supreme Court upholds the fundamental rights and enjoyment of the freedom of association. The *CIBA* and *Mensima* cases show that requirements to do something to enjoy the right were unconstitutional. The limitation of the freedom of association, even for good reasons, could be deemed unconstitutional. Therefore, even if the two proposed sector Bills mentioned in Chapters 1 and 2 had passed, obligatory provisions that subjected the freedom to anything would be likely held to be unconstitutional following CIBA and *Mensima*. Hence, regulations can only seemingly outline rights rather than impose obligations.

However, limitations are valid when the Constitution itself permits them. This can be direct or indirect, making up the second and third points, respectively.

3.6.0 Indirect Limitation of the Freedom of Association.

The indirect way is through limitations imposed on other rights linked to fundamental freedoms. The case of *Radio eye* showed that a valid limitation placed on the right to free press can indirectly affect the freedom of expression. For example, such indirect limitation can be found in the third sector's use of the Companies Act 2019. It indirectly subjects the freedom of association to company law. The rules regarding the formation of a company limited by guarantee and the obligation to submit accounts to the Registrar General's Department are imposed on sector actors who apply for this legal status. Because it is indirect and voluntary, it is not considered a limitation on the freedom of association.

Another example of an indirect limitation on the freedom of association is linked to the enjoyment of the freedom of assembly via the Public Order Act, 1994 (Act 491), which succeeded the Public Order Decree 1972 following the *IGP* case. Following the IGP case, the Public Order law was amended. Where the 1972 Decree required a permit, which was held as unconstitutional, the 1994 Act requires Police notification. Section 1 states that

any person who desires to hold any special event in any public place shall ***notify*** *the police of his intention not less than 5 days before the date of the special event*[71]

So, organisations seeking to, for example, go on demonstration must notify the Police in writing and submit the letter to an officer not below the rank of Assistant Superintendent.[72] Although such a notification may be regarded as interfering with the enjoyment of the freedom of assembly and association, from a legal standpoint, a permit is not the same as a notification. A permit denotes seeking permission to exercise the right, whereas a notification is informing the appropriate body of the intention to exercise said right.

But, Quashigah[73] argued that, although the 1994 Act changes the requirement from a permit to notification, it imposes a prior restraint that is essentially unconstitutional insofar as it restricts freedom of assembly, as the Constitution does not require such a restriction.

In addition, the Act does not entirely remove the limitations on the exercise of the right to assembly. Instead of the Police denying the exercise of the right, the Act grants this power to the Courts. Section 4 of the Act allows the Police to request organisers to postpone or move the event to another venue if there is a reasonable belief that it could impact public safety, health, lead to violence, disrupt essential services, or violate the rights of others. If the organisers refuse, the Police can apply for a prohibition order from any judge or Tribunal chairman.[74]

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[71] Public Order Act,1994, s.1

[72] Public Order Act 1994, s. 3 and 2

[73] E. K. Quashigah, 'The Constitutional Right to Freedom of Assembly and Procession in Ghana in the Light of the Decision in the Public Order Case and the Public Order Act' (1996-1999) 20 U Ghana LJ 1 <https://heinonline.org/HOL/LandingPage?handle=hein.journals/unghan20&div=5&id=&page=>accessed 4 September 2026

[74] Public Order Act 1994, s. 6

Although the Public Order Act does not limit the absolute enjoyment of freedom, it allows the Police to decide where and when it is exercised, and the courts accept this indirect limitation, especially when granting a prohibition order.

Therefore, sector regulation can draw on provisions in other legislation, and this would not be regarded as a direct infringement on freedom of association. This justifies the scope of the sector's legal system shown in Chapter 1. It also explains why sector research[75] mentioned in Chapter 1, indicated that nearly every piece of legislation enacted by Parliament is important to the third sector without being seen as an infringement.

The direct limitations are specific Constitutional provisions allowing restrictions on the fundamental freedoms in particular situations. The *IGP case* identifies three direct limitations on fundamental freedoms:

1. **Article 21(4)-** Court orders and safeguarding people against unpatriotic actions and community hatred.
2. **Article 31**- The abrogation of freedoms and rights during State emergencies.
3. **Article 12(2)-** Ensuring freedoms are subjected to those of others and public interest.

Consequently, although the Courts apply a liberal interpretation to the enjoyment of fundamental freedoms, they do so while considering potential Constitutional limitations. Nonetheless, the fact that they adopt a broad, generous, expansive, and liberal interpretation of the enjoyment of the fundamental freedoms also means they apply a narrow and strict interpretation to the limitations.

3.7 Direct Limitation of the Fundamental Freedoms: Article 21(4)

Article 21(4) prescribes five (5) limitations on the fundamental freedoms. Subsections (a)-(d) are concerned with restricting movements in cases of crime, public safety and immigration purposes. Subsection (e) allows the imposition of restrictions to safeguard the public against propaganda messages that lead to unpatriotic actions and hate crimes. But, whereas 21 (4) (a)-(d) is specific to

[75] West Africa Civil Society Institute (WACSI), *Rapid Assessment of the Legal Environment for Civil Society Including Philanthropic Organisations in Ghana*. (WACSI,2020)12 <https://wacsi.org/wp-content/uploads/2021/02/Ghana-Rapid-Assessment-of-The-Legal-Environment-for-Civil-Society-Including-Philanthropic-Organisations.pdf> accessed 4 September 2026

movement, subsection (e) is silent on what freedom it attaches to. As such, it could be arguably applied to all the freedoms, including association.

But, the restrictions are invoked only through legal instruments, namely, court orders or legislation. For example, subsection (a) provides that:

"Nothing in, or done under the authority of, a law shall be held to be inconsistent with, or in contravention of, this Article to the extent that the law in question makes provision for the imposition of restrictions by, ***order of a court****…"*[76] [emphasis added]

In terms of legislation, laws such as the Criminal Offences Act 1960 (Act 29), the Criminal Offences Amendment Act 2012 (Act 849), the Prisons Service Act 1972 (NRCD 64) and the Immigration Act 2000 (Act 573) are used.

However, while subsections (a)-(d) have been consistently used as the basis for court orders and legislation that restrict movement, no measures were taken under subsection (e) until the Imposition of Restriction Act 2020, which faced significant criticism.

3.7.0 Article 21(4) and the Imposition of Restrictions Act, 2020

Like many countries, Ghana during the Covid-19 pandemic sought to reduce infection rates by imposing restrictions on movement and physical gatherings. Since this action would limit fundamental freedoms, the President instructed the Attorney General to present a Bill to Parliament. The Bill granted him the authority to impose restrictions on fundamental freedoms through Executive Instruments (EIs). Parliament quickly passed the bill within five days by voice vote, and it received Presidential assent. The Imposition of Restrictions Act 2020 (Act 1012) (*hereafter Restrictions Act*) was thus enacted.[77]

Because it sought to limit fundamental freedoms, the *Restrictions Act* was founded on Article 21(4)(c), (d), and (e).[78] Based on this, the President issued several EIs that included bans on travel, quarantining, isolating, and restricting various public and social activities. These included travel,

[76] The Constitution of the Republic of Ghana, 1992, Article 21 (4)(a)

[77] For example, Restrictions (Coronavirus Diseases (COVID-19) Pandemic) (No.16) Instrument,2020 (E.I.395) which was even used in an attempt to prevent a campaign in the case of The Public vs the High Court (probate &Administration 2), Accra Ex Parte: Elizabethe Darko [2021] GHASC 183

[78] Restrictions Act, s. 2(1)

funerals, workshops, political rallies, private parties, public and social gatherings, nightclubs, drinking pubs, in-person meetings, religious activities such as church worship, mosque prayers, shrine visits, crusades, conventions, etc. There were also school and University closures, as well as city lockdowns in Accra, Tema, Greater Kumasi, and Kasoa. Arguably, while the restrictions sought to limit movement, they also affected other freedoms.

Therefore, Ghanaian constitutional law lawyers, including *Appiagyei*-Atua,[79] Addadzi-Koom,[80] and Bachiesichang[81] questioned its legality, scope and the excessive powers it gave the President to create EIs that limited fundamental freedoms without Parliamentary oversight.

Appiagyei-Atua[82] argued that the restrictions did more than limit freedom of movement. It affected the freedom of expression and assembly in the suspension of rallies and demonstrations. The right to education in the closure of schools. The freedom of religion in the suspension of churches, mosques and shrine gatherings. It also indirectly restricted freedom of association and assembly by suspending religious gatherings, in-person conferences, meetings, and workshops.[83] The EIs, therefore, directly and indirectly impacted almost all the fundamental freedoms.

Although the lockdown measures under the *Restrictions Act* aligned with international law[84] and practices at the time, Ghanaian Constitutional jurisprudence regarded them as unlawful because the restrictions exceeded the powers granted under 21(4)(c), (d), and, in particular, (e).

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[79] Kwadwo Appiagyei-Atua, 'Emergency without a State of Emergency: Effect of Imposition of Restrictions Act, 2020 on rights of Ghanaians.' *Joy News Online* (Accra, 2 April 2020) <https://www.myjoyonline.com/emergency-without-a-state-of-emergency-effect-of-imposition-of-restrictions-act-2020-on-rights-of-ghanaians/> accessed 4 September 2026

[80] Maame Efua Addadzi-Koom, 'Quasi-state of emergency: assessing the constitutionality of Ghana's legislative response to Covid-19' (2020) 8(3) The Theory and Practice of Legislation 311 <https://doi.org/10.1080/20508840.2020.1777648> accessed 4 September 2026

[81] King Bachiesichang, 'The Law and The Lockdown' *Modern Ghana* (Accra, 7 April 2020) <https://www.modernghana.com/news/994018/the-law-and-the- lockdown.html> accessed 4 September 2026

[82] Kwadwo Appiagyei-Atua, 'Emergency without a State of Emergency: Effect of Imposition of Restrictions Act, 2020 on rights of Ghanaians.' *Joy News Online* (Accra, 2 April 2020) <https://www.myjoyonline.com/emergency-without-a-state-of-emergency-effect-of-imposition-of-restrictions-act-2020-on-rights-of-ghanaians/> accessed 4 September 2026

[83] Appiagyei-Atua (n 82)

[84] International Covenant on Civil and Political Rights, Article 4(1) and African Charter on Human Rights, Article 127

Additionally, Addadzi-Koom argued that the procedural enactment of the *Restrictions Act* by voice vote was illegal.[85] He also noted that although Article 21(4)(c)-(e) permitted restrictions on freedoms in cases of public security, safety, and especially health, the pandemic was an emergency. Therefore, the President should have triggered Article 31.[86] This would have declared a state of emergency and allowed the imposition of restrictions on freedoms without the need for the *Restrictions Act*. However, if both the Restrictions Act and Article 31 would result in an imposition on freedoms, why was the instrument used relevant?

Bachiesichang answered this question by noting that whilst the lockdown measures arising from the *Restrictions Act* were in line with international law,[87] the *Restrictions Act* itself was bad law in Ghana. It had fewer safeguards for checking executive action and protecting citizens compared to Article 31 and its related Emergencies Powers Act 1994 (Act 472). For example, the Emergency Powers Act and Article 31 required consulting the Council of State before declaring a state of emergency. They also had strict time limits on how long an emergency instrument could last which was overseen by Parliament. On the other hand, section 2(1) of the *Restrictions Act* states that the President may act on the advice of a relevant authority body. The wording and the use of 'may' and 'relevant body' indicate that the President has the discretion to select the relevant body and decide whether to consult with them, thereby diminishing executive oversight.

However, this did not mean that the *Restrictions Act* lacked safeguards entirely. *Section 2 (2)* mandated restrictions to specify the applicable individuals, geographical areas, duration, circumstances leading to the restrictions, and other relevant matters related to achieving the Act's objectives. However, this did not offer sufficient safeguards, as the time limit provision, for example, only applied to individuals EIs. Therefore, the President could perpetually issue one EI after another, continually restricting freedoms without Parliament's oversight, thus granting himself unchecked powers. This would essentially affect the practice of Separation of Powers beyond the Constitution's intent.

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[85] Addadzi-Koom (n 80)

[86] Constitutional provision for emergencies. *See section 3.8*

[87] Article 4(1) Convention on Civil and Political Rights, Article 4(1) and African Charter on Human Rights, Article 127

Moreover, the scope of the *Restrictions Act* meant limitations could be applied to freedoms in all situations, including emergencies, without triggering Article 31. Therefore, Appiagyei-Atua[88] noted that the Restrictions Act essentially usurped the powers of Parliament and the Constitution.

Furthermore, whereas the EIs created under the *Restrictions Act* were time-bound,[89] the Act itself was not. Breaches also incurred punitive measures, including sanctions such as fines and imprisonment for up to four years.[90] This would effectively grant the executive arbitrary powers, contravening the Constitution's mandate to safeguard fundamental rights and freedoms and undermining the rule of law. Aside from the hypothetical situation, the first EI was issued before the Act came into force, thereby creating a retrospective law,[91] which actually violated the rule of law.

The author agreed with the arguments against the *Restrictions Act*, particularly given the nature of the Covid-19 virus. Its impact affected public health through contact and air transmission, so most restrictions focused on physical gatherings and movement. However, strictly reading, only Article 21(4)(c)-(d) allowed viable restrictions on movement related to public safety, public health, essential services, and entry into Ghana for non-citizens. The provision cannot be interpreted as restricting other freedoms, such as association.
Also, Article 21(4)(e) relates to protecting the public from unpatriotic teachings and actions, as well as hate crimes, which were outside the circumstances posed by Covid-19 pandemic.

Overall, the key argument against the Restrictions Act was that the EIs it created limited fundamental freedoms, [92] out with the scope of prescribed limitations. Furthermore, it usurped Article 31 emergency powers without triggering them. Consequently, Professor Appiagyei-Attua and other Constitutional lawyers challenged its validity before the Supreme Court. This was a notable case in recent Ghanaian Constitutional law jurisprudence.

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[88] Appiagyei-Atua (n 82)

[89] Imposition of Restrictions (Coronavirus Disease (COVID-19) Pandemic) Instrument, 2020 (E.I. 64) lasted for three weeks

[90], Imposition of Restrictions Act, 2020, s.6

[91] Bachiesichang (n 81)

[92] Appiagyei-Atua (n 82)

3.7.1 Validity of the Impositions of Restrictions Act 2020: Restrictions Act Case

In *Kwadwo Appiagyei-Atua & 7 others vs the Attorney General,*[93] the plaintiffs petitioned the Supreme Court to 1) make a declaration on the proper interpretation of Article 21, 2) a declaration that Article 21(4) (c)-(e) may not be used to suspend fundamental freedoms during public emergencies, and 3) that the *Restrictions Act* was unconstitutional and therefore void. The seven Supreme Court judges heard the case and held the *Restrictions Act* to be null and void.

In their ruling, they emphasised that fundamental freedoms are too valuable to be left entirely at the discretion of any individual or institution. Therefore, it was necessary to evaluate the impact of the *Restrictions Act* on fundamental freedoms. The judges cited Amua-Sekyi JSC in the IGP case, who had argued that fundamental rights could be limited only in wartime, during a state of emergency, and under s. 21(4).
They therefore argued that the fundamental freedoms under Article 21(1) are subject to limitations under subsection (4). However, according to the IGP case, restrictions under Article 21(4) were specific to certain situations, which were:
'…interests of the sovereignty and integrity of Ghana, national security, public order, decency or morality, contempt of Court, defamation or incitement to an offence'[94] including criminal law.

Therefore, in interpreting Article 21(4), they concluded that it did not impose limitations on fundamental freedoms in the event of emergencies; only Article 31 did. It also did not authorise emergency measures to be taken by the executive alone."[95] They stated that the 'taking of measures in the event or eminence of an emergency in one body, i.e., the Executive, [was] inconsistent with Articles 21, 31 and 32 of the Constitution'.[96] This rendered the *Restrictions Act* unconstitutional, null and void.

Moreover, the foundation for the *Restrictions Act* were unconstitutional. Subsections (a)-(d) could only limit movement, whilst subsection (e) does not limit all freedoms except speech, thought, religion and only in cases of teaching and propagation of unlawful doctrines by speech or writing.[97] This corrected the notion that the subsection (e) limitation applied to all fundamental freedoms.

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[93] *Restrictions Act case*

[94] *IGP case* [483]

[95] *Restrictions Act case* [36]

[96] *Restrictions Act case* [36]

[97] *IGP case* [472-473]

As in other cases interpreting fundamental freedoms, the Supreme Court adopted a literalist and narrow interpretive approach to Article 21(4) limitations. Therefore, the judges unanimously ruled that the *Restriction Act* was unconstitutional.

3.7.2 Implication of Article 21(4) on Third Sector Regulation

The Supreme Court's judgment in the *Restrictions Act* case supported the discourse in *section 3.7.0* above. The ruling meant that, although Article 21(4) permits limitations on Article 21(1), these were restricted to specific circumstances defined by the Constitution and judicial interpretation.[98]

In adopting a literalist interpretive approach, the Supreme Court held that Article 21(4) was not intended to restrict fundamental freedoms during public emergencies,[99] and the freedoms it limited did not include the freedom of association. Therefore, sector regulation cannot rely on Article 21(4) to impose obligations on sector actors.

However, the Supreme Court observed that, in addition to Article 21(4), Articles 31 and 32 also serve as valid limitations on the freedoms protected by Article 21(1). The Court argued that this served as the cornerstone of the rule of law in public emergencies.[100] So, perhaps the appropriate measure during Covid-19 would have been to trigger Article 31. However, this may also have been unconstitutional because it sets a high threshold for its triggering.

3.8 Abrogation of Fundamental Freedoms: Article 31

Articles 31 and 32 provide the scope for the emergency derogation regime. Article 31 deals with emergency powers and the rules for triggering them. Article 32 pertains to persons detained under the emergency law; therefore, only Article 31 is discussed in the thesis.
Although the Supreme Court made it clear that emergency powers could be exercised only under Article 31, the triggering mechanism empowers the President to restrict all Chapter 5 rights and, therefore, is frightening. Hence, the rules and procedures to trigger it are strict.

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[98] *Restrictions Act case* [28]

[99] *Restrictions Act case* [29]

[100] *Restrictions Act case* [28]

The procedures include the President first issuing a proclamation of a State Emergency on the advice of the Council of State,[101] approved by Parliament and published.[102] After the publication, the facts and circumstances leading to it must be made known to Parliament immediately. Parliament must then decide within 72 hours whether the Proclamation should remain in force or be revoked. Even if Parliament decides it remains, it automatically ceases to be in effect after seven days beginning on the day of publication unless a majority of Parliament votes otherwise.[103] But, an approved Declaration of Emergency cannot last indefinitely; it has a time limit of 3months. [104] The three-month limit could be extended by Parliament if it so chooses, but only one month at a time.[105] This procedure keeps both the President and Parliament in check and limits the probability of the misuse of this power and the derogation of fundamental rights perpetually.

Furthermore, the Declaration of Emergency applies only to parts of Ghana facing such emergencies. Most importantly, the emergency must fall within the scope of Article 31(9), which defines emergencies as situations involving natural disasters, actions by individuals or entities that deprive communities of essentials, or threats to public safety, national defence, public order, and vital services. Although this definition is broad, not every emergency qualifies. The Covid-19 scenario below illustrates how challenging it is to meet these criteria.

3.8.0 Triggering Article 31: the Covid-19 Pandemic

The definitional scope of Article 31 (9) can be regarded as a two-part test. The '*natural-disaster and the person-or-body test'* and the '*protection of life test'*.

Starting with the *protection of life test*, the Covid-19 pandemic was shown to deprive lives. In Ghana, the World Health Organization (WHO) recorded between 3rd January and 13th June 2020 161,841 infections and 1,445 [106]deaths. Even though the lives lost were not comparable to other countries

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[101] The Constitution of the Republic of Ghana, 1992, Chapter 9, Article 89(1) There shall be a Council of State to counsel the President in the performance of his functions.

[102] The Constitution of the Republic of Ghana, 1992, Article 31(1)

[103] The Constitution of the Republic of Ghana, 1992, Article 31(4)

[104] The Constitution of the Republic of Ghana, 1992, Article 31(5)

[105] The Constitution of the Republic of Ghana, 1992, Article 31(6)

[106] World Health Organisation. Coronavirus Diseases Covid-19. <https://www.who.int/health-topics/coronavirus#tab=tab_1> accessed 4 September 2026

like the UK, Spain and the US, the death count in other countries showed that if it was not managed well, including enforcing lockdown measures, cases may increase and result in many deaths. Additionally, given the virus's transmissibility, it was necessary to ensure public safety, public order, and the continuity of essential services, such as healthcare. Therefore, the *protection of life test*, which is also linked to public safety and essential services, would have been satisfied.

The real problem was with the *natural disaster, and the person-or-body test* as the cause of Covid-19 was a virus. The WHO defines a natural disaster as "catastrophic events with atmospheric, geologic and hydrologic origins", which includes tsunamis, earthquakes, etc.[107] This definition does not include viruses, which the WHO concluded Covid-19 was.[108] Also, Covid-19 was not a person or body of persons, nor was it used as a weapon by a person or body. So, the *natural disaster and person or body test* could not have been satisfied. Therefore, Covid-19 did not fall within Article 31(9) definition, failing the requirement to trigger Article 31.

However, Addadzi-Koom[109] argued that the word 'include' in Article 31(1) means that the circumstances triggering Article 31 are wide in scope and not narrow. By narrowly interpreting the provision, he argued that it took away the Constitution's nature as a living document. This means that other possible circumstances, including Covid-19 could have been read into it. He also argued that even if Article 31 could not be triggered, the *Restriction Act* was still not necessary since the Government could have relied on the Emergency Powers Act, 1994 (Act 472). The Emergency Act provides the broad framework for taking measures that are reasonably justifiable in dealing with emergencies.

But while his point of narrow interpretations may be convincing, the second point is not. This is because the Emergency Powers Act 1994 was created to give effect to the terms of Articles 31 and 32. If the circumstances of Covid-19 failed to satisfy Article 31(9) and trigger Article 31, then the Emergency Powers Act could not be relied on either.

In addition, though the Supreme Court had noted the *Restrictions Act* to be unconstitutional, they did not mention that Article 31 should have been triggered instead. Based on the literal

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[107] World Health Organisation. Communicable Diseases Following a Natural Disaster. (WHO, Technical Paper, 2016) <https://www.who.int/publications/i/item/communicable-diseases-following-natural-disasters> accessed 4 September 2026

[108] World Health Organisation (n 106)

[109] Addadzi-Koom (n 80)

interpretation approach they applied in the *Restrictions Act* case, it is likely that triggering Article 31 would have amounted to the same end as the *Restrictions Act*.

Whilst this raises concerns of the limitation of the 1992 Constitution in addressing 21st-century emergencies not related to natural disasters or persons, the strictness of Article 31 keeps both the President and Parliament in check. It limits the potential abuse of powers that could derogate the fundamental freedoms. Triggering Article 31 is so serious that it is akin to recreating the events of *Re Akoto* [110] which is strongly guarded against. Therefore, since the enforcement of the 1992 Constitution, no Government has ever triggered Article 31. Governments have mostly relied on the Public Order Act,1994, to curb the exercise of some fundamental freedoms in circumstances that they deem to require the protection of public safety.[111]

3.8.1 Implication of Article 31 on Third Sector Regulation

The implication of Article 31 implementation as a ground to impose obligations on sector actors is limited to emergencies. If it could not even be theoretically triggered during the Covid-19 pandemic, it would hardly be suitable for sector regulation on the basis of sector regulatory deficiencies like exploitation and lack of oversight.

Additionally, unless the conditions specified in Article 31(9) are satisfied, Article 31 cannot be invoked, and restrictions on the sector cannot be enforced.
This, consequently, discounts it as a viable ground for limiting the freedom of association and establishing laws that impose obligations based on it. Essentially, Articles 21(4) and 31 are designed to ensure that the 1992 Constitution 'remains the ultimate authority in determining the extent to which fundamental human rights and freedoms may be restricted in times of emergency or other exceptional circumstances'[112]

This only leaves Article 12(2).

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[110] Justice Date-Bah,' Emergency Powers In Emerging Democracies: The Case Of Ghana' (2019) Commonwealth Lawyers Association. < https://www.commonwealthlawyers.com/wp-content/uploads/2019/09/B10-Samuel-Date-Bah.pdf. > accessed 4 September 2026

[111] As shown in the *IGP case*

[112] *Restrictions Act case* [28]

3.9 Public Interest Limitations: Article 12(2)

Article 12(2) essentially subjects the enjoyment of freedoms *to respect for the rights and freedoms of others and for the public interest*."[113]

In a civil case of Rita *Kriba v Arica World Airlines (AWA)*[114], the Court of Appeal stated that Article 12(2) contains the only legally acceptable basis for refusing to uphold the fundamental human rights and freedoms of an individual.[115] Therefore, in *Gorman,*[116] the court emphasised the importance of balancing rights and obligations, as reflected in provisions like 12(2), which are part of the limitation regime on fundamental freedoms outlined in Chapter 5 of the Constitution.

When read with Article 21(1), Article 12(2) holds that the exercise of the freedoms, including those on association, is subject to:

1. The rights and freedoms of others. For example, an association that is created to kidnap people would not be allowed, as it would hinder the enjoyment of other freedoms, especially movement.
2. Public interests.

Although the first qualifier is straightforward, the question of what constitutes public interest is somewhat elusive. According to Wheeler,[117] the term public interest is challenging to define. Citing the Commonwealth Freedom Bill, Wheeler notes that one of the committee's comments on public interest[118] was that:

'Public interest is a phase that does not need to be, indeed could not usefully be defined.... Yet it is a useful concept because it provides a balancing test by which any number of relevant interests may be weighed one against another. …the relevant public interest factors may vary from case to case – or in the oft quoted dictum of Lord Hailsham of Marylebone, 'the categories of the public interest are not closed**.'**[119]

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[113] The Constitution of the Republic of Ghana, 1992, Article 12(2)

[114] Rita Kriba v Arica World Airlines (AWA) [2023] GHACA 19

[115] *AWA*[19]

[116] *Gorman* per Ocran JSC at [806]

[117] Chris Wheeler, 'The Public Interest, We Know it's important but do we know what it is?'(2006) 48 AIAL Forum <http://www5.austlii.edu.au/au/journals/AIAdminLawF/2006/2.pdf> accessed 4 September 2026

[118] Wheeler (n117) 14

[119] Wheeler (n 117)14

As such, the term public interest is intentionally often used to allow for a wide range of circumstances. This is in line with the Constitutional definition of public interest under Article 295 which includes

'any right or advantage which enures or is intended to enure to the benefit generally of the whole of the people of Ghana'

This broad scope permits the imposition of certain obligatory limitations on the enjoyment of rights. In the case of Civil *and Local Government Staff Association of Ghana (CLOSSAG) vs the Attorney General and 2 others (GLOSSAG case),*[120] the plaintiff, who had filed his nomination to contest in Parliamentary primaries for the opposition party, was found to have breached the code and law of civil servants in regard to the overt display of political affiliation. The defendant had argued that Article 12(2) meant that rights guaranteed under the Constitution were not absolute but, rather, subject to a limitation test so far as the rights of other persons and the larger public interest are affected. [121] The plaintiff, in contrast, argued that their visible involvement in political parties does not equate to public interest and therefore their right was not subjected to said limitation.

The Supreme Court in judging the case, noted that the interpretation of Article 21(2) poses two points:

'i. Fundamental human rights and freedoms are subject to respect for the rights and freedoms of others and for the public interest

ii. The public interest is not defined in any particular way and is founded on the overall benefit of the people of Ghana. Thus, its interpretation and application are necessarily situational and environmental'[122]

Based on this, the Supreme Court agreed that the prima facie, Constitutional rights and freedoms are to be enjoyed fully but subject to the limits which the Constitution itself places thereon, in the terms of Article 12(2).[123] The Supreme Court held that the preservation of overt impartiality by civil servants who must be perceived as serving the people and not parties was in the public

[120] Civil and Local Government Staff Association of Ghana (CLOSSAG) vs the Attorney General and 2 others 2017 [2017]GHASC 18

[121] *CLOSSAG* case [10]

[122] *CLOSSAG case*[14]

[123] *CLOSSAG case* [12]

interest. Therefore, though a person had the right to contest for election for a political party, they could not do this while being a member of the civil service or local Government service.

The judgment, to an extent, showed that what is in the public interest could be applied broadly, but also situationally. In addition, there needs to be a legitimate justification. In the *AWA*[124] case, the airline (AWA) had argued that their discriminatory action of not allowing a woman on crutches on board the flight was for the purpose of protecting public interest under Article 12(2). The High Court had agreed with the defendant, but on appeal, the Court of Appeal overturned the decision on the basis that, without a legitimate justification, discriminatory conduct, even based on 12(2), was invalid.[125]

Therefore, the Supreme Court in the *CLOSSAG* case showed public interest to be broad, even extending to civil servants being seen as impartial. However, the AWA case showed that without a legitimate justification, Article 12(2) could not be applied.[126]

3.9.0 Implication of Article 12(2) on Third Sector Regulation

Out of the three Constitutional limitations, Article 12(2) is the strongest basis to limit the freedom of association and provide grounds for valid legislation and regulation reform. However, though public interest could be applied broadly, this depends on the circumstances, and the limitation must have a legitimate justification.

Yet, it is also noted that the cases discussed, especially the CLOSSAG case, were not in relation to a fundamental freedom. The narrow interpretation of fundamental freedom limitations means the courts will likely apply a narrow and strict approach when interpreting Article 12(2) in relation to the freedom of association. Public interest may not be easily applied, as evidenced by *CIBA* and *Mensima*, where the Supreme Court rejected public interest and public safety as reasons to limit freedom of association, respectively.

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[124] *AWA* case

[125] *CLOSSAG case* [20]

[126] *CLOSSAG case* [20]

Building on the above discussions, the thesis now definitively addresses the question of whether the 1992 Constitution strikes a balance between freedom of association and its limitations. The conclusion, outlined below, is no.

3.10 Does Article 21 (4), 31 and 12(2) Balance Freedom of association with limitations?

Overall, the Supreme Court's literal and narrow interpretation of limitations against the broad interpretation of the fundamental freedoms means that among the three Constitutional limitations, only Article 12(2) provides a basis to balance freedom of association with a limitation. The *Restriction Act* case shows that Article 21 (4) cannot apply to the freedom of association.[127] *Restriction Act* case[128] further shows that Article 31 can only be used for emergencies. Therefore, only in Article 31(9) definition of emergencies could sector actors be restricted and obligations imposed. Yet, the Covid-19 scenario shows that Article 31 is not easily triggered.

This leaves Article 12(2), which could allow sector legislation, and a robust regulation regime based on public interests. The broad definition of public interest, as seen in CLOSSAG, suggests that the example of sector challenges of exploitation, marginalisation and international obligations mentioned in Chapter 1 could fall within this scope.

However, the right considered in CLOSSAG was not a fundamental freedom. Noting the narrow and literal interpretation courts apply to the fundamental freedoms, public interest may not be read as broadly. This argument is supported by *CIBA* and *Mensima*, cases. So even 12(2) limitations may fail to justify sector-specific legislation to impose an obligation. This point is further substantiated when we review the 2020 Policy, which chose to justify its imposition of limitations not under any of the three limitations but under Article 37(1), a contentious provision due to the validity of its justiciability. This is discussed in Chapter 5 when the sustainability of the 2020 Policy is considered.

Based on this, the thesis concludes that the 1992 Constitution does not strike an appropriate balance between the enjoyment of the freedom of association and viable limitations. Therefore,

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[127] *Restrictions Act case* [28]

[128] *Restrictions Act case* [28]

even if the political barrier, facilitated by the *regulatory power dynamic*, is overcome, the 1992 Constitution would pose a legal barrier to any obligation, even on public-interest grounds.

3.11 Conclusion

In conclusion, this chapter shows that it is indeed challenging for sector legislation to be enacted under the 1992 Constitution. Due to the challenges of Ghana's historical governance, the 1992 Constitution was designed to place great weight on the fundamental freedoms. The Supreme Court, in the spirit of this, also duly protects it by applying liberal interpretation to the enjoyment of the freedoms. The only boundary to this interpretation is where the Constitution itself limits the fundamental principles directly and indirectly. The research found only three direct limitations on the fundamental freedoms. The first is under Article 21(4), which provides limitations via court order in specific situations, including public safety and safeguarding people from unpatriotic teachings. Even these limitations are only linked to the freedoms of movement primarily, rather than association. This means that sector regulation cannot be based on Article 21(4) because it doesn't allow any room for limiting the freedom of association.

The second limitation is found under Article 31 of the Constitution. Though this applies to all the freedoms, including association, it is limited to only situations where a State of emergency is declared. It effectively gives the President the power to make rules that abrogate all the fundamental freedoms legally. However, triggering Article 31 is very difficult. This limits its applicability to address current regulation gaps.

The third is under Article 12(2), which allows the freedoms to be limited based on protecting the rights of others and in the public interest. Jurisprudence in this area shows that the term public interest is quite broad and can include several situations. This gives room for sector regulation to be founded on it. The criteria for standing on this provision is that limitations based on public interest must be reasonable and legitimately justifiable. Without this, any action or law that seeks to limit the fundamental rights based on Article 12(2) would be found in contravention of the Constitution.

Nevertheless, the use of this provision on the freedom of association may be difficult as the freedom is interpretated broadly. Therefore, as seen in *Mensima* the court struck down a law which limited the freedom of association on the basis of public safety.

In all, this chapter provides the baseline for the Constitutional barriers presented in Ghana's third sector regulation reform. Where a regulation satisfies the political barrier, facilitated by *regulatory power dynamics* between the Government and sector actors, it must then face the legal barrier owing to Constitutional constraints. This makes the creation of the 2020 Policy a rational substitute. The next chapter, therefore, outlines the governance rules and institutions created under the Policy.

Chapter 4: The 2020 Policy Framework

4.0 Introduction

The discussion in Chapters 2 and 3 makes it clear that enacting sector-specific legislation for the third sector is a daunting challenge, facing political and legal barriers that are not easily resolved. Therefore, the National Non-Profit Organisation (NPO) Policy 2020[1] (*hereafter 2020 Policy*) is a significant option. It, and the accompanying Directives for the Management of Non-Profit Organisations (NPOs) Operations in Ghana 2020[2] (*hereafter the Directives of Operations*) form the policy framework that governs the sector.

To this end, the 2020 Policy's main objective is to create an enabling environment that supports the independent sector's operations and contributes effectively to national development.[3]

This chapter discusses the conception of the 2020 Policy as a Government instrument mandated by the Constitution. Next, the Policy's governing rules and institutions are outlined and analysed. The governing rules represent the Policy's regulatory guidelines for sector actors, and the governing institutions look at the bodies tasked with providing sector oversight. Finally, the implications of the created rules and institutions are discussed.

4.0.0 Key Findings

The findings show that the Policy's framework largely maintains the sector's legal system, noted in Chapter 1. However, the Policy affirms sector autonomy while also outlining sector obligations. But the obligatory rules are not situated on the ground of public interest under Article 12(2) rather under Article 37(1). This provision has never been used before as a limitation on the fundamental freedoms of association. It obligates the State to ensure the ideals of Chapter 5, including the fundamental freedoms, and further requires the State to direct policies toward equal enjoyment

[1] National Non-Profit Organisation Policy (2020) <https://wacsi.org/wp-content/uploads/2021/08/NPOS-National-Non-Profit-Organisation-Policy.pdf> accessed 4 September 2026

[2] Directives for the Management of Non-Profit Organisations in Ghana (2020) < https://wacsi.org/directives-for-the-management-of-non-profit-organisations-operations-in-ghana/> accessed 4 September 2026

[3] National Non-Profit Organisation Policy (2020)

and obligations. It therefore does not directly limit the freedom of association but asks the State to affirm rights and use policies to ensure that rights are enjoyed equally and with obligations.

The Government therefore affirms the freedom of association in the Policy, and outlines obligatory rules mainly on sector registration, licence and effective service delivery, overseen by a created Non-Profit Organisations Secretariat (*hereafter the Secretariat*) as regulator. The Secretariat is placed at the centre of the Policy's framework, with the power to issue operational licence, require financial and activity reporting, maintain a database of adhering organisations, and penalise offending organisations. Although these obligatory rules and the Secretariat's task seemingly strengthen regulatory oversight, they are also the framework's weakness.

The main issue is that the freedom of association becomes subject to registration and licence requirements and is therefore unconstitutional when viewed through the lens of the Supreme Court's judgement in the cases of *CIBA* and *Abass* discussed in Chapter 3.

Additionally, it saw that the punitive measures attached to licencing, particularly the threat of closing offending organisations and criminal prosecution, impede the free exercise of Article 21(1). Though the punitive measures are understandable, it shows the 2020 Policy's failure to appropriately balance transparency and accountability regulation with the Constitution and even international law. For example, Article 55 of the Guidelines on Freedom of Association and Assembly in Africa prohibits criminal sanctions provisions in FoAA laws except where present in the criminal code.

Further, the 2020 Policy's definitional scope is limited as it discounts '*religious worship-based*' organisations from the framework, despite them being part of Ghana's third sector.

Finally, the Policy has strong Government dominance as the Secretariat is a Government agency and not an independent body. Though overseen by a Board made up of persons from both Government and the Sector, the President's powers to appoint the Chairperson and nominate these persons carry the risk of Government interference, which is not desirable to sector actors. The President's power becomes more problematic when merged with the Secretariat's power to issue a licence, refuse a licence and penalise non-adherence.

To perhaps balance this, the 2020 Policy obligates the creation of the National Platform of sector actors to play a peer-review and monitoring function, primarily by coordinating and framing self-regulation codes, strengthening relations, and promoting dialogue among sector actors, the Secretariat, and other stakeholders. But its implementation is unclear and therefore ineffective.

4.1 Government Conception of the 2020 Policy

The aim of public policy is to influence change needed for identified problems or issues recognised by the Government and society.[4] In the context of Ghana's third sector, the main identified regulatory issues included scattered rules, lack of accountability and transparency, as well as the absence of a coordinated framework for the sector. Therefore, the 2020 Policy was developed to create and or influence changes that address these gaps by providing legal coherence, effective operations, sector monitoring and stakeholder participation.[5]

Due to the absence of sector legislation, the primary rationale of the 2020 Policy is to create a plan in the absence of a national coordination structure. For this reason, it sets out a framework to guide operations, inform professional practice, reduce sector abuse and increase efficiency in the delivery of services at local levels.[6] It also aims to improve sector registration data and to make financial and non-financial reporting practices obligatory, in line with international practice.[7] Actions pursuant to these aims help address the sector's regulatory gaps and effect the changes desired by society and the Government. Therefore, the 2020 Policy and, in fact, any public policy becomes the execution of political power used to represent, account for, and legitimise political decisions.[8]

It is also 'a distinctive and formal purpose for Governments to codify and publicise the values which are to inform future practice and thus encapsulate prescriptions for reform.'[9] Thereby making it an expression of the Government's position and intention,[10] which objectifies a course

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[4] Anke Hassel, 'Public Policy' (2015) International Encyclopaedia of the Social and Behavioural Sciences 569 < https://doi.org/10.1016/B978-0-08-097086-8.75029-X > accessed 4 September 2026

[5] National Non-Profit Organisation Policy (2020) iv

[6] National Non-Profit Organisation Policy (2020)

[7]National Non-Profit Organisation Policy (2020)4

[8] Ward S.C, Bagley C, Lumby J, Hamilton T, Woods P and Roberts A, 'What is 'policy' and what is 'policy response'? An illustrative study of the implementation of the leadership standards for social justice in Scotland' (2016) 44 (1) Education Management, Administration and Leadership 43 < https://journals.sagepub.com/doi/abs/10.1177/1741143214558580> accessed 4 September 2026

[9] Stewart Ranson, 'Theorising Education Policy'. (1995) 10 (4) Journal for Education Policy 427 < https://www.tandfonline.com/doi/abs/10.1080/0268093950100408> accessed 4 September 2026

[10] Janet Hughes, 'Explaining Government policies on GOV.UK.' (GDS, 2012) https://gds.blog.gov.uk/2012/11/13/explaining-gov-policy-gov-uk/ accessed 4 September 2026

of action and solution.[11] Hence, the 2020 Policy is the Government's governing tool, entangled with notions of social issues, solutions, and State power. This makes the Government and public officials the primary actors in its formulation.[12]

This power is especially mandated by Article 36(5) of the 1992 Constitution, which appoints the President as the provider of public policies.[13] These policies are to be organised in short- and medium-term goals outlined in the Coordinated Programme of Economic and Social Development Policies (*hereafter Coordinated Programme*).[14] Since 1992, Governments in Ghana have created more than two hundred public policies[15] under this provision. The 2020 Policy was introduced in the year of the Coordinated Programme 2017-2024[16] presented by former President Addo-Dankwa to Parliament in 2017. The Coordinated Programme 2017-2024 highlighted the need to maintain

'a stable, united and safe country to deepen… public accountability; enhance public sector management and service delivery; and promote the rule of law and peaceful coexistence of all segments of society'.[17]

Hence, it mentioned the Constitutional vision for Government and sector actors to collaborate to establish fairness, a benefit for society and the welfare of citizens.[18] It also included the Government's intention to review import duties and all forms of tax and levies payable by sector

[11] British Ecological Society, 'An Introduction to Policy in the UK. Policy' (British Ecological Society, 2017) <https://www.britishecologicalsociety.org/wp-content/uploads/2017/05/An-introduction-to-policymaking-in-the-UK.pdf> accessed 4 September 2026

[12] National Development Planning Commission, *Public Policy Formulation in Ghana: Guidelines 2020* (National Development Planning Commission, 2020)9

[13] The Constitution of the Republic of Ghana, 1992, Article 58(1) of the 1992 Constitution invests: "Executive authority… in the President …exercised in accordance with the provisions of the Constitution".

[14] National Development Planning Commission, 'Policies and Acts'. <https://www.ndpc.gov.gh/resource_and_publications/policy> accessed 4 September 2026

[15]National Development Planning Commission, (n 14)

[16] Nana Addo Dankwa Akufo-Addo, 'The Coordinated Programme of Economic and Social Development Polices 2017-2024: An Agenda for Jobs: Creating Prosperity and Equal Opportunity for All'. (Presented by the President of the Republic of Ghana to the 7th Parliament of the 4th Republic, 20 October 2017) <https://faolex.fao.org/docs/pdf/gha174137.pdf> accessed 4 September 2026

[17] Nana Addo Dankwa Akufo-Addo (n 16) xiv

[18] Nana Addo Dankwa Akufo-Addo (n 16) xiv

actors.[19] Although the Coordinated Programme did not explicitly state a plan to develop the 2020 Policy, it served as its basis after Ghana was placed on the FATF blacklist.

The policy formulation is thus spearheaded by the President, assisted by various groups including the Cabinet, the Attorney General, the National Development Planning Commission and the Civil Service. The cabinet determines the general policy,[20] and the Attorney General evaluates and advises the Government on whether policies conform to legal and Constitutional provisions. [21] The National Development Planning Commission[22] advises on developmental planning, policies and strategies[23] while the civil service[24] assists in formulation, research, implementation, review and monitoring.[25]

In line with this process, the 1992 Constitution only validates policies that are made in the name of the President and signed by the relevant Minister.[26] Consequently, the 2020 Policy was drafted and presented to the cabinet under the Ministry of Gender, Children and Social Protection (sector ministry) and after approval, authenticated by the sector minister.[27] This established its authenticity and Government approval.

4.1.0 Implication of the Policy as a Government Instrument

As a Governmental instrument, it is enforced by political will and, as such, has only a political effect, not a legal one. Because of this, its sustainability, as will be shown in Chapter 5, is sustained by the executive will and political manifestos of incumbent Governments.

Only provisions in the 2020 Policy that reference prescribed law in existing legislation, such as the Companies Act 2019 and the Anti-Money Laundering Act 2020, could give rise to legal sanctions

[19] Nana Addo Dankwa Akufo-Addo (n 16)108

[20] The Constitution of the Republic of Ghana, 1992, Article 76(2)

[21] The Constitution of the Republic of Ghana, 1992, Article 88

[22] The oversight body for the creation of national development policies and more

[23] The Constitution of the Republic of Ghana, 1992, Article 86 and 87

[24] The Constitution of the Republic of Ghana, 1992, Article 190

[25] Civil Service Act 1993 (PNDCL 327) S. 2 and 3

[26] The Constitution of the Republic of Ghana, 1992, Article 58(4) and (5)

[27] National Non-Profit Organisations Policy (2020) iv

by the courts when breached. Nonetheless, since it is a Government Policy upon which the Government takes action, it is subject to judicial review.

4.2 The 2020 Policy's Governing Rules

In accordance with the sector's legal system, the 2020 Policy identifies Constitutional and international law as the basis of its regulatory framework. Under paragraph 1.5,[28] the Policy situates itself under Articles 21(1) and 37(1)(2)(a)(b) and (3) of the 1992 Constitution, as well as international laws on the freedom of association, assembly and human rights that Ghana is signatory to.

Article 21(1), as previously mentioned, provides the fundamental freedoms from which sector actors derive their existential legitimacy. Essentially, subsections ***d*** and ***e*** form freedoms of association and assembly, which in international human rights law[29] concerns rights that facilitate the creation and operation of voluntary organisations. Also, international law on the Guidelines on Freedom of Association and Assembly in Africa (GFAAA) requires the development of frameworks to protect association rights.[30] The Policy thus reinforces the laws that sector actors rely on to freely operate[31] and as such maintains one of the key aspects of the sector's legal system.

It also highlights the Government's authority to oversee the sector by using Articles 37(1)(2)(a)(b) and (3) to show the Government's mandate to facilitate the enjoyment of the freedoms. Article 37(1) in particular obligates the Government to

[28]National Non-Profit Organisations Policy (2020) Paragraph 1.5

[29] For example, the Guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples' Rights (African Commission) 2017. < https://achpr.au.int/index.php/en/soft-law/guidelines-freedom-association-and-assembly-africa> accessed 4 September 2026

[30] Guidelines on Freedom of Association and Assembly in Africa. Fundamental principles I

[31] West Africa Civil Society Institute (WACSI),' Rapid Assessment of the Legal Environment for Civil Society Including Philanthropic Organisations in Ghana'(WACSI,2020),12 <https://wacsi.org/wp-content/uploads/2021/02/Ghana-Rapid-Assessment-of-The-Legal-Environment-for-Civil-Society-Including-Philanthropic-Organisations.pdf> accessed 4 September 2026

"endeavour to secure and protect a social order founded on the ideals and principles of freedom, equality, justice, probity and accountability as enshrined in chapter 5 of this Constitution and in particular…direct its policy towards ensuring that every citizen has equality of rights, obligations and opportunities before the law."[32]

This gives the Government permission to create policies that balance rights equally and with obligations. This is arguably the main Constitutional basis of the 2020 Policy. Without Article 37(1), the Policy can only ensure rights without Government interference and, as such, cannot prescribe obligations on sector actors. For example, Article 37(2)(a), which the Policy also situates itself on, only provides State authority to enact appropriate laws to assure the enjoyment of rights, effective participation and mobilisation of funds to support development work.[33] Further, Article 37(2)(b) and (3) concerns the protection of human rights and freedoms to be guided by international instruments of human rights and Government collaboration.

Interestingly, the 2020 Policy did not situate itself on public interest under Article 12(2), which in Chapter 3 was shown to be the main viable ground for freedom of association limitation. Therefore, Article 37(1) becomes more significant as it adds a 'new' limitation on the freedom of association. But the wording of the provision does not impose direct limitations. Rather, it affirms Chapter 5 ideals, including the freedom of association, but obligates the State to create policies to balance the right with obligations. This is very interesting because Government could seemingly circumvent the challenge of applying Article 12(2). However, in the instance where Bamford-Addo J.S.C discussed Article 37(1) in a Supreme Court case, it was to enforce the rule of law and protect rights rather than impose obligations.[34] Therefore, the use of Article 37(1) as a provision that allows Government the authority to attach obligations to the fundamental freedoms remains to be seen. More importantly, as will be showing Chapter 5, its justiciability is precarious, thereby threatening its enforcement and the sustainability of the 2020 Policy.

Nonetheless, this provision enables the creation of the 2020 Policy and its framework, which ensures freedom of association with obligations outlined below.

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[32] The Constitution of the Republic of Ghana, 1992, Article 37(1)

[33] The Constitution of the Republic of Ghana, 1992, Article 37(2)(a)

[34] Joseph Sam v the Attorney General 2000 (unreported) <https://kuclawstudentsunion.com/wp-content/uploads/2024/09/JOSEPH-SAM-v.-THE-ATTORNEY-GENERAL.htm>accessed 4 September 2026

4.2.0 Policy Values

Paragraph 1.6 outlines seven guiding principles for an enabling sector environment, on which the Policy's provisions are based. They are:

1. Respect for fundamental human rights and freedoms (social, cultural, and religious beliefs and practices) exercised responsibly.
2. Freedom of association and independence of individuals and NPOs within the overall framework of the law.
3. Voluntarism and respect for diversity within the NPO sector.
4. The right and management of NPOs to be consistent with the laws of Ghana.
5. Strengthening partnerships for development.
6. Dignity, mutual respect, and trust underpinned by open dialogue, transparency, and accountability.
7. Gender equity and equality.

In context, these values could be regarded as the sector's code of practice and contain the rights and duties of sector actors and the Government. This conforms with sector self-regulation practices where organisational values inform conduct, as will be shown in Chapter 8.[35] Consequently, the values are reflected in the Policy's provisions. For example, value two on respecting sector independence is reflected under paragraph 2.1, which reemphasises sector autonomy.

4.2.1 Sector Autonomy.

Paragraph 2.1 states that:

'A Non-Profit Organisation shall be independent of Government and of the private sector and shall have its status recognised by the Government at all times, provided that the organisation shall operate within the law'.[36]

Being independent of the Government and private sector defines the third sector as distinct from both, and also entails engaging in activities that are not subject to them. As shown in Chapter 2, sector autonomy is customary and strictly guarded by sector actors. This provision, therefore, restricts possibilities of Government co-optation and suppression. It follows Article 21(1)(e),

[35] *See section 8.6*

[36] National Non-Profit Organisation Policy (2020) Paragraph 2.1

allowing free creation and operations of associations and further reflects Article 37(2)(a), where the State is obliged to make laws, especially those that allow for the rights to form associations free from Government interference.

However, the provision emphasises that this is subject to the laws of Ghana. As a result, though the provision preserves autonomy, it directly places it within the scope of current and future laws. This explains why, although sector actors may have autonomy, they must, for example, comply with registration laws to be recognised by the Government.

4.2.2 Definition

Paragraph 2.1,[37] names sector actors as Not-for-Profit Organisations (NPOs) and sets out the definition of what bodies are regarded as such. This comes under what the Policy notes as its 'legal' environment framework.[38] It defines NPOs as

"A not-for-profit, non-Governmental legal person or association or organisation voluntarily established, that primarily engages in mobilising and use resources for purposes such as charitable, religious, cultural, educational, social or communal purposes or for carrying out of other types of not-for-profit purposes and public good in the public interest"[39]

The definition creates three components for an organisation to be an NPO. They are:

1. Legal person or voluntarily established association/organisation
2. Primary generation and use of income
3. Public interest purposes

Of the three components, the scope of point three is straightforward. It denotes purposes including charitable, religious, cultural, educational, social, communal, other types of not-for-profit purposes and public good, representing a wide range of interests which abide by Article 21(1)(e). Therefore, only points 1 and 2 are further discussed below.

[37] National Non-Profit Organisation Policy (2020)5

[38]National Non-Profit Organisation Policy (2020) Paragraph 1.0

[39] National Non-Profit Organisation Policy (2020) Paragraph 2.1

4.2.3 Legal Identity and Government Recognition

In Ghana, organisations get a legal person status via registration with the Registrar of Companies and under the trust regime. The 2020 Policy under paragraph 2.2 maintains the incorporation rules under the Companies Act, 2019 (Act 992) as the primary registration vehicle.

4.2.3.0 Registration Process

Paragraph 2.2 (a)(b) and (c) obligate organisations that want to be recognised by the State to register with the Office of the Registrar as a Company Limited by Guarantee under the Companies Act, 2019 (Act 992).

Like most company law in common law jurisdictions,[40] the Companies Act separates the third sector from private sector organisations by barring companies limited by guarantee to operate solely for business purposes. As such, section 8(1) of the Companies Act 2019 provides that 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.*'[41]

Organisations that breach this will have officers and members jointly and severally liable to pay fines to the Registrar and for debts incurred by the business.[42]

In addition, the Policy offers an alternative registration process for Community-Based Organisations (CBOs)/grassroots organisations and all others who do not wish to be incorporated. Their registration is with the Metropolitan, Municipal and District Assemblies (MMDAs) in their operational areas.[43] Although this registration does not provide a legal identity to the organisations, it provides Government recognition.

Furthermore, the Policy obligates organisations to obtain a licence as part of the registration process. While registration with the Office of the Registrar is part of the old regulatory regime, licencing is a new rule.

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[40] James McNeill QC (ed), A Practical Guide to Charity Law in Scotland. (W Green, 2016)

[41] Companies Act 2019, s.8(1)

[42] Companies Act 2019, s.8(2)

[43] National Non-Profit Organisational Policy (2020) Paragraph 2.2

4.2.3.1 Licence

Following registration, paragraph 2.2 requires organisations to obtain a licence from the Secretariat and submit an annual audited financial statement within three months after the end of the financial year.[44] There are two licence procedures, one for CBOs and the other for incorporated organisations. CBOs and grassroots organisations receive licences from their MMDA, which is responsible for maintaining a register of registered CBOs and grassroots organisations. This register is then submitted along with the CBOs' annual reports to the Secretariat.[45] Incorporated organisations, on the other hand, must directly apply for a licence from the Secretariat.[46]

Punitive measures are attached to non-registration and failure to apply for a licence. Again, paragraph 2.2 states that:

'An organization or institution that fails to register and or apply for a licence shall be closed down or subjected to a fine as determine by the Secretariat or the NPO Act'.[47]

This provision aims to enforce oversight through licences issued by creating a central register with biometric data of owners, board members and directors. Consequently, through the registration and licence process, an organisation satisfies the first requirement of the NPO definition. It also represents oversight mechanisms for accountability and transparency, dissolution and effective use of resources.[48]

4.2.4 Primary Generation of Resource and Use

The definition notes that organisations are primarily intended to generate income for use. They do this independently or with Government assistance. Paragraph 2.4 of the 2020 Policy states that sector organisations can mobilise resources from domestic and international entities, including individuals, businesses, and private foundations, to financially support interests. Recognising the fiscal pressures the sector faces, the Government aims to mitigate financial constraints through

[44] National Non-Profit Organisational Policy (2020) Paragraph 2.2.

[45] National Non-Profit Organisational Policy (2020) Paragraph 2.2.

[46] National Non-Profit Organisational Policy (2020) Paragraph 2.2.

[47] National Non-Profit Organisational Policy (2020) Paragraph 2.2.

[48] National Non-Profit Organisation Policy (2020) Paragraph 1.4

developmental contributions.[49] So, under paragraph 3.2, the Government may provide support for organisations in the form of duty waivers, tax allowances and any other facilities. This is to enable sector actors to develop, reinforce and sustain their organisational capacity for more effective service delivery.[50]

Per the *Directive for Operations*, import duty waivers are facilitated by the Ministry of Finance in accordance with Article 174 of the 1992 Constitution. However, just like tax rebates, this is upon the recommendation of the Secretariat and the Sector Ministry. The Secretariat scrutinises the applications sent to the Ministry of Finance and is only approved upon the recommendation of the sector ministry. The criterion for recommendation is that the organisation has to be in good standing. The Policy further emphasises the Government's commitment to collaborate with stakeholders, including development partners, to improve NPOs' resource access and create an enabling environment to sustain them. This includes enabling local philanthropy to develop and thrive in activities such as social justice, social protection, and social accountability.[51]

Furthermore, the Policy highlights the use of funds in a legal manner. Paragraph 2.6 obligates NPOs to

"keep all records relevant to the operations of the NPO for a period of not less than five (5) years in accordance with the Anti-Money Laundering Act, 2008 (Act 749), and also collaborate with all domestic and foreign competent authorities in the investigation, prosecution and sharing of information in compliance with the Anti-Money Laundering Act, 2008 (Act 749)."[52]

Overall, the provisions on resource generation and use link to some legislative provisions in the sector's legal system, and continuous use of incentive regulation via tax rebates. The provisions also reflect collaboration between the Government and the sector.

4.2.5 Collaboration Relationship

In the forward, the sector Minister states that the Policy is a collaboration of the sector and the Government.[53] This is supported by the Policy's introduction, which states that the legal

[49] National Non-Profit Organisational Policy (2020) Paragraph 2.5

[50] National Non-Profit Organisation Policy (2020)7

[51] National Non-Profit Organisation Policy (2020)6

[52] National Non-Profit Organisation Policy (2020) Paragraph 2.6

[53] National Non-Profit Organisation Policy (2020) iv

framework aims to improve Government and sector collaboration,[54] in recognition of the sector's socio-economic development contributions.[55] To this end, the Policy aims to increase collaboration[56] and gives the sector ministry the responsibility to represent sector interests in Parliament and Government forums.[57]

Dialogue then becomes one of how sector organisation opinion is fed to the sector-Ministry to facilitate their representation in the above platforms. Therefore, the Policy further tasks the Secretariat to strengthen dialogue and regular interactions between NPOs and other stakeholders at all levels of national and local governance[58] and especially for the Secretariat's district office to liaise between CBOs and the Secretariat.[59]

In addition, the Policy obligates the Government to

'Facilitate partnerships between international and local NPOs in the implementation of programmes nationwide to encourage collaboration'.[60]

However, when analysed, this provision is vague and sets a promise rather than definitive ways in which sector actors are meant to access public agencies and collaborate with them. The *Directive for Operations* is also silent.

4.2.6 Internal Governance

The Policy also promotes sector internal governance. Paragraph 2.6(a)-(j)[61] obligates sector actors to:

- Outline a clear mission statement, purpose, objectives, targeted beneficiaries, and constitution in conformity with national development policies.

[54] National Non-Profit Organisation Policy (2020) 1

[55] National Non-Profit Organisation Policy (2020) Paragraph 3.2

[56] National Non-Profit Organisation Policy (2020) 4

[57] National Non-Profit Organisation Policy (2020)10

[58] National Non-Profit Organisation Policy (2020) Paragraph 3.7

[59] National Non-Profit Organisation Policy (2020) Paragraph 3.11(4)

[60] National Non-Profit Organisation Policy (2020) Paragraph 3.2

[61] National Non-Profit Organisational Policy (2020) Paragraph 2.6

- Have an easily identifiable office, an accessible postal address, an organisational bank account with at least two signatories, names of their donors, beneficial owners, directors and external auditors.
- Have a clearly delineated administrative structure and transparent accounting system that is auditable and from which annual accounts can be compiled for audit.
- Share activity-related reports with the Government, other relevant organisations, beneficiaries and any other interested parties.
- Have a governing board or its equivalent, policy-making body.
- Where it is a foreign organisation, submit copies of the certificate of registration of its parent body with the relevant authority to operate in the country.
- Collaborate with all domestic and foreign competent authorities in the investigation, prosecution and sharing of information in compliance with the Anti-Money Laundering Act, 2008 (Act 749)
- Keep all records relevant to the operations of the NPO for a period of not less than five (5) years in accordance with the Anti-Money Laundering Act, 2008.
- Provide for the disposal of its assets upon dissolution as per the Companies Act, 2019.

The rule for organisational governance is further reiterated under the *Directive for Operations,* which obligates the setting up of an oversight body, for example, a board or a steering committee.[62] This is meant to provide structure for the sector organisations and that fall within international practices. Organisations are also meant to maintain information on their objectives and activities, including "person(s) who own, control or direct their activities, such as senior officers, board members and trustees"[63]

The *Directive for Operations* also demands that sector actors include targeted beneficiaries and organisations, groups of persons in their beneficiary pool and produce a correct and complete information database. This information is intended for sharing with donors and partner agencies. To reduce the risk of terrorism financing, the *Directive for Operations* further obligates sector organisations to perform due diligence of partners even before they work with them.[64]

[62] Directives for the Management of Non-Profit Organisations in Ghana (2020)2

[63] Directives for the Management of Non-Profit Organisations in Ghana (2020) 4

[64] Directives for the Management of Non-Profit Organisations in Ghana (2020) 5

Overall, the governing rules maintain the legal system but introduce obligations primarily in registration, licencing, and financial reporting, based on the NPO's definition of scope. Policy values, collaboration, and sector autonomy are reemphasised to strengthen the regulatory regime.

4.3 Implications of the Governing Rules: Issues and Challenges

The governing rules highlight strengths of the 2020 Policy, such as aligning with Constitutional provisions, safeguarding sector autonomy, providing a definition, and ensuring transparency and accountability mechanisms. Nonetheless, these key strengths also create corresponding issues that pose challenges to the framework. The issues identified are deficiencies in legal standing, registration, definitional scope, the licencing fit-for-purpose test, punitive measures, AML/CFT obligations, incentive regulation, funds regulation, and human rights protection.

4.3.0 Legal Standing

In essence, by situating the Policy under Articles 21(1) and 37(1)(2)(a)(b), and (3), the Government in no uncertain terms presents the Policy as Constitutionally sound in safeguarding the freedom of association and limiting enjoyment through obligations. However, as shown in Chapter 3, the main limitations of the freedom of association are under 31 in State of emergency situations and 12(2) on public interest grounds. Using Article 37(1) as a basis for imposing obligations opens a new avenue for Constitutional limitations on freedom of association. While Article 37(1) seems to give the Government room to impose limitations, it is under the Directive of State principles whose justiciability is contentious. This may very well render the 2020 Policy's obligatory provisions without legal standing. This argument is further explored in Chapter 5, which discusses the Policy's legal sustainability.

4.3.1 Registration

Although sector actors have long created legal identity under company and trust laws, there was no law mandating this. The Policy's provision requiring registration under the Companies Act and CBO registration with MMDAs can therefore be seen as restricting the freedom of association.

This would be unconstitutional, considering the *CIBA*[65] and *Mensima*[66] cases, where the Supreme Court found laws subjecting the freedom of association to registration and joining a cooperative unconstitutional.[67] If applied, the Policy's registration and licence provisions is unconstitutional and therefore invalid.

In addition, sector research commissioned by the African Philanthropic Network (APN) and the West Africa Civil Society Institute (WACSI) on Ghana's legal environment in 2020, prior to the creation of the 2020 Policy, found sector registration to be cumbersome, tiring, and expensive.[68] The main issue concerned the steps and the institutions involved. To register, an association must first register with the Registrar-General's Department, then obtain certificates from their District Assemblies, followed by registration with the Department of Social Welfare and finally with the Ghana Revenue Authority (GRA) for a Tax Identification Number (TIN).
The Department of Social Welfare facilitated the registrations on behalf of the Ministry of Gender, Children and Social Protection the oversight agency of the sector, whose role seem minimal in that regard, and so sector actors found registration unnecessary and cumbersome.[69]

Consequently, the registration process of the 2020 Policy streamlines the procedure with punitive measures to facilitate adherence. The *Directive for Operations* also allows appealing to an arbitration committee where an organisation does not agree with the sanctions imposed.[70]

But in Chapter 7, the research found that the registration mechanism has many challenges due to the Secretariat's inadequate capacity of the Secretariat.[71] Moreover, the GIABA report noted that in 2016, three thousand five hundred and seventy-four (3,574) organisations registered as guaranteed companies with the Registrar Generals' Department[72] and six thousand eight hundred and sixty (6,860) registered with the Department of Social Welfare.[73] The report used these

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[65] New Patriotic Party v Attorney-General [1996-97] SCGLR 729 (CIBA Case)

[66] Mensima & others v Attorney- General [1996-97] SCGLR 676

[67] *See section 3.4*

[68] WACSI (n 30)12

[69] WACSI (n 30)12

[70] This point is discussed further in Chapter 7.

[71] At the time of working on this chapter on 18th January 2023, the Secretariat's website page that had information on registers NPOs was not working.

[72] GIABA, 'Anti-money laundering and counter-terrorist financing measures – Ghana, Second Round Mutual Evaluation Report' (GIABA, Dakar,2018)94 < https://www.fatf-gafi.org/content/dam/fatf-gafi/fsrb-mer/GIABA-Ghana-MER-2018.pdf.coredownload.inline.pdf> accessed 4 September 2026

[73] GIABA (n 68) 57

statistics to show the inadequacy of the third sector registration system. But when compared to the Secretariat's reported registrations, of about 1600 organisations, the old registration mechanism did better, and the sanctions are ineffective. This is ironic as sector actors found that process cumbersome. It calls into question the Secretariat's relevance and capacity to ensure registration enforcement.[74]

Also, since the definition excludes '*religious worship-based organisations* like churches and mosques,[75] the number recorded are not a reflection of the number of sector organisations. The *religious worship-based* organisations do not have to apply for licence and operate freely making the rules for licence and sanctions unfair and divisive.

4.3.2 Definitional scope

Though the definitional scope is a much-needed provision, broad and allows the pursuit of wide interests according to Article 21(1)(e), the wording 'primary mobilisation of funds for development' suggests that only sector actors formed with the primary goal of fund mobilisation come under the Policy. This effectively excludes organisations whose primary goal is not fund mobilisation, like religious worship-based organisations, including churches and mosques. This is discussed further in Chapter 6, which found that the Policy's definition divides sector regulation, weakening regulation coordination.[76] As a consequence, beneficiary exploitation by nefarious pastors, for example, is left unresolved.

4.3.3 Licence: Fit- for-Purpose Test

Like registration, the licence provision is likely unconstitutional and creates Government dominance. In the application process, the Secretariat issues a three-month provisional licence to the applicant, with the final licence given upon a satisfactory outcome of the fit and proper test.'[77] This process is problematic on four accounts.

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[74] *See section 7.4*

[75] *See section 4.32*

[76] This is further explored in chapter 6.

[77] Directives for the Management of Non-Profit Organisations in Ghana (2020)3

The first is that registration is used to subject the enjoyment of the freedom of association to licencing and a fit and proper criteria, not Constitutionally mandated under Article 21(1)(e).

Second is that the scope of this fit and proper test is not defined by the Directive for Operations nor the 2020 Policy. Though the grounds for licence refusal: (i) the organisation being a public agency, (ii) Government control over members of the organisation and (iii) the Secretariat considers it expedient in the public interest to do so;[78] could be used to ascertain this, it is not conclusive.

Third is that, though the reason for licence refusal on public interest grounds may be logical, it may not be Constitutional.[79] At least to ensure its effect, the 2020 Policy should have situated itself within Article 12(2) to provide some semblance of legitimacy. But, even if it had done so, an action in the public interest requires legitimate justification, which the Courts are strict about.

Fourth is that, because the *Directive for Operations* subjects sector operations to a licence and the Secretariat has the power to refuse applications based on its own considerations, the Secretariat effectively has unfettered powers. It could interfere or suppress sector actors with similar effects to the PNDC Law 221 in 1984.

4.3.4 Punitive measures

Also, where a sector actor fails to register and or apply for a licence, it may be closed down or subjected to a fine as determined by the Secretariat or the NPO Act.[80] Since there is no NPO Act and the draft NPO bill is still undergoing consultation, this power is left in the hands of the Secretariat. This punitive measure creates a non-negotiable arrangement which essentially contravenes Article 21(1)(e). It makes unlicenced and 'unregistered' organisations 'illegal' with a threat of being closed. This gravely contradicts Article 21(1)(e) and the Supreme Court's rulings that the freedom of association cannot be limited except where the Constitution itself poses limitations.[81]

To complicate matters, the licence is to be renewed annually with issuance subject to the submission of annual audited and unaudited (CBOs) financial statements, operational report,

[78]Directives for the Management of Non-Profit Organisations in Ghana (2020) 3

[79] *See section 3. 9 and section 5.5*

[80] Directives for the Management of Non-Profit Organisations in Ghana (2020) Paragraph 2.2

[81] *See section 3.6*

payment of the renewal fee, record of any changes in its mandate (where applicable) and tax clearance certificate. [82] Though this follows international practice and does provide measures to ensure accountability and transparency, it also limits the freedom of association, which again contravenes article 21(1)(e). Unless a strong case can be made that it falls within the prescribed limitations of the Constitution. Further, sector organisations have a timeline of one month before the expiration and three months afterwards to apply for a renewal. Failure to do so will be met with sanctions including revocation of licence, suspension of its licence, withdrawal of tax waiver, blacklisting, fine and criminal prosecution."[83]

The sanctions, though aimed at compelling compliance, also contravene the Constitution and even international law, especially in the issuing of fines and criminal prosecution. Article 59(b) of the GFAAA,[84] states that

'Monetary penalties shall be avoided to the extent possible. Where associations have failed to comply with a particular state requirement, the remedy shall be compliance with that requirement. Prior to the imposition of sanctions, a warning shall be issued and a reasonable period of time in which to comply with the regulations in question, provided, where circumstances so allow'.[85]

This provision, to some extent, is adhered to, as the *Directive of Operations* gives a three-month grace period to submit audited reports in the licence renewal process. The issue is that the sanctions that could be applied are not limited to fines. It is shown in Chapter 7 that sanctions are administered at the discretion of the Secretariat. Therefore, failure to submit audited accounts after the grace period may result in any of the sanctions, including being asked to close. But Article 58 of the GFAAA provides that:

'suspension or dissolution of an association by the state may only be applied where there has been a serious violation of national law, in compliance with regional and international human rights law and as a matter of last resort'[86].

[82] Directives for the Management of Non-Profit Organisations in Ghana (2020) 6

[83] Directives for the Management of Non-Profit Organisations in Ghana (2020) 6

[84] Guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples' Rights (African Commission) 2017 (n 28)

[85] Guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples' Rights (African Commission) 2017, Article 59(b)

[86] Guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples' Rights (African Commission) 2017, Article 58

For all intents and purposes, failure to register for a licence does not amount to a serious violation of national law. In addition, Article 55 of the GFAAA frowns on criminal sanctions. It provides that:

'all criminal sanctions shall be specified within the penal code and not elsewhere. Civil society shall not be governed by provisions of criminal law different from the generally applicable provisions of the penal code'.[87]

This clearly contradicts the scope of the *Directive for Operations* and basically limits criminal prosecution to the breaking of criminal law of which failure to register for licence is not included. Therefore, despite the possibility that the sanctions may help increase adherence and thereby transparency, it breaches international law.

Additionally, the punitive measure associated with licencing creates Constitutional complications. When analysed within the context of Article 21(1) and even the two viable limitations, the punitive measures, especially closing down an organisation for failure to register for a licence or to renew, could be potentially unconstitutional.

4.3.5 AML/ CFT Obligations

The recommendations from the National Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) Risk Assessment of Ghana[88] stated the need to create regulatory laws with enforcement and sanction powers to supervise the sector. It also recommended that sector actors be obligated to submit financial reports annually to reduce terrorism financing risk because the sector was found to be a fertile ground for this.

While these recommendations rightly point out the gaps in third sector governance and its risk to terrorist abuse, their recommendations largely shaped the content of the 2020 Policy.

Paragraph 4.5.1(a) outlines that to prevent and combat terrorism financing abuse of vulnerable and at-risk sector organisation Government aims to:

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[87] Guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples' Rights (African Commission) 2017, Article 55

[88] National Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) Risk Assessment of Ghana (Financial Intelligence Centre of, 2018) 102 < https://fic.gov.gh/National-Anti-Money-Laundering-Countering-the-Financing-of-Terrorism-Risk-Assessment-of-Ghana.pdf> accessed 4 September 2026

"Adopt clear policies to promote accountability, integrity, and public confidence in the administration and management of NPOs"[89]

This puts into context why the *Directive for Operations* punitive measures were created, even if it could be potentially unconstitutional.

Also, paragraph 4.5.1 of the 2020 Policy states that the NPO definition was mainly for the purpose of making sure that Ghana satisfied its AML/CFT obligations.[90] Further, the Policy mentions that the definition was meant to capture organisations within the third sector who posed a risk and fell within the FATF's definition. What is interesting is that the (AML/CFT) Risk Assessment highlights sector organisations at threat of increased terrorism financing, to include those who provide welfare support and places of worship.[91] This exacerbates the deficiencies of the definition in addressing sector regulatory gaps.

4.3.6 Regulating the Use of Funds

In the use of funds, sector actors, apart from the submission of reports to the Secretariat, are not regulated. Paragraph 2.4 provides that sector organisations are autonomous and have the right:

'to mobilise resources from domestic and foreign organisations/entities, including individuals, businesses and private foundations.'[92]

Therefore, personally mobilised funds are not sufficiently scrutinised. Also, after registration and licencing, sector actors qualify for privileges, including tax relief and exemptions as the tax laws may provide from time to time.[93] This is an indirect funding mechanism provided by the Government to decrease the organisation's transaction cost, specifically. But while tax exemptions are applied for with a recommendation from the Secretariat,[94] it is not regulated after it is received.

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[89] National Non-Profit Organisation Policy (2020)13

[90] National Non-Profit Organisation Policy (2020)12

[91]National Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) Risk Assessment of Ghana (2018) 110

[92] National Non-Profit Organisation Policy (2020) Paragraph 2.4

[93]National Non-Profit Organisation Policy (2020) Paragraph 2.3

[94] National Non-Profit Organisation Policy (2020) Paragraph 2.3

The provision does not also outline what accounts as a transaction cost. Ultimately, the Secretariat determines what this is. The Secretariat has the responsibility to make recommendations.[95]

The Directive for Operations requires sector organisations with income-generating activities to declare their activities and income to the Ghana Revenue Authority for an exemption certificate under the Companies Act 2019 (Act 992). The Commissioner-General of Ghana Revenue Authority can revoke approved waivers if the sector organisation provides false information, submits contradictory forms, or misrepresents facts itself.[96]

4.3.7 Incentive regulation

Barring the potential of the punitive measure being unconstitutional, the 2020 Policy provides additional incentives to register for licence. It attaches licence to accessing Government support like tax rebates. But the Policy in no uncertain terms clarifies that this is not an obligation for the Government, but rather a discretion. Therefore, under Paragraph 2.3, the Policy outlines that only registered organisations will qualify for this 'privilege'.

This privilege is not automatic upon registration. Registered sector actors must apply through a 'relevant state agency' and the Secretariat. The Secretariat particularly holds the authority to recommend organisations to the state agencies for exemptions from customs duties and related taxes on essential goods imported.[97] Consequently, if the Secretariat does not accept applications or make recommendations, the organisation will not be allowed tax exemptions.

To qualify for the Secretariat's recommendation, paragraph 2.2 states that a registered organisation must be licenced with the Secretariat to qualify for access to the Government benefits.[98] This qualification is also contingent on the organisation having been in operation for a minimum of three months, having submitted within three months of the end of the financial year their annual financial statement, reports and updates.[99] After this, the Secretariat is obligated to submit to the sector Ministry a list of licenced sector actors every quarter.[100]

Though the submission of financial reports is consistent with the practices of the third sector regulation in other countries, its link to whether an organisation receives tax exemptions gives a

[95]National Non-Profit Organisation Policy [2020] Paragraph 2.3

[96] Directives for the Management of Non-Profit Organisations in Ghana (2020) 5

[97] National Non-Profit Organisation Policy (2020) Paragraph 2.3, p.6

[98]National Non-Profit Organisation Policy (2020) 5

[99]National Non-Profit Organisation Policy (2020) Paragraph 2.2 (i)(ii)

[100]National Non-Profit Organisation Policy (2020) Paragraph 3.14

lot of power to the Secretariat. However, noting the weak oversight of the sector, it seems this was intentionally done to incentivise sector actors to report their finances in order to improve transparency in the system.

4.3.8 Sector Autonomy

The Secretariat's function of establishing standards for code uniformity may affect sector autonomy in self-regulation through prescribing its own standards and code of conduct. Moreover, the 2020 Policy under paragraph 3.2 acknowledges that sector actors have been re-examining and evaluating their work, redefining their roles, who they serve and are accountable to, and endeavouring to function more effectively and efficiently. With the Secretariat charged to establish standards, the advantage is that it may provide uniformity of standards, guidelines and code of conduct in this area. The disadvantage is that it may reduce the scope of self-regulation, especially since the Policy's peer review and national platform created for sector actors to define and coordinate their own codes is yet to be realised.[101]

4.3.9 Human Rights within the Policy

Though most of the Policy's values under paragraph 1.6 include human rights and are reflected in the Policy's provisions, not all are directly translated. For example, the value of the respect of human rights has no direct Policy provision obligating stakeholders to fulfil human rights objectives. Nonetheless, an argument can be made that the Policy, by virtue of its subject matter, sets out the scope of enjoying the right to Assembly and Association. Further, the Policy under 1.5 highlights international law Ghana is bound by, including the International Covenant on Civil and Political Rights (ICCPR) 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, Universal Declaration of Human Rights (UDHR) and the Africa Charter on Human and Peoples Rights (ACHPR).

On the other hand, an argument can also be made that by not supporting the international obligations with policy-specific provisions, the weight of the human rights protections lacks substance, especially in interactions with beneficiaries.

[101] *See section 4.4.3*

4.4 The 2020 Policy: The Governing Institutions

Having established the governing rules, this section discusses the Policy's institutional governance. It outlines the role of the sector ministry, local Government and the created Non-Profit Organisation Secretariat that serves as the main institutional regulator.

4.4.0 Sector Ministry

Though the Policy's institutional framework centres around the newly created Non-Profit Organisation Secretariat (*hereafter Secretariat*), it is not an independent body but rather an extension of the Ministry of Gender, Children and Social Protection, which oversees the sector.[102] The sector Ministry used to mainly regulate via the Department of Social Work, which mostly registered sector organisations. But paragraph 3.2[103] extends the sector Minister's function to include:

1. Responsibility to create a conducive environment for non-profit organisations.

2. Promotion of NPO participation in policy and programs formulation, implementation to ensure that NPO inputs are adequately mainstreamed into national development framework and regulation strategies.

3. Providing support to organisations, in the form of duty waivers, tax allowances and any other facilities to enable them to develop, reinforce and sustain their organisational capacity for more effective service delivery.

4. Facilitating partnerships between international and local sector organisations in the implementation of programmes nationwide to encourage collaboration

5. Responsibility for resourcing the Secretariat to function effectively and efficiently.

Therefore, the sector Ministry is now meant to provide a conducive operational environment, promote Government and sector collaboration in policy making, provide funding support and facilitate collaboration with wider stakeholders.[104] It is also in charge of the Secretariat and its

[102] Sector Ministry

[103]National Non-Profit Organisation Policy (2020) Paragraph 3.2

[104] National Non-Profit Organisation Policy (2020) Paragraph 3.2

human resource capacity.[105] The Secretariat in turn provides the sector Ministry with information on sector organisation registration and licence, as well as its own budgeting and planning. This information is then disseminated by the sector Ministry to all other stakeholders. Therefore, the *Directives of Operation* explain that the Secretariat's place is within the administrative structures of the sector Ministry, which plays the key role of facilitating and monitoring sector operations.[106]

4.4.1 The Secretariat

As the implementation arm of the sector Ministry, the Secretariat's main role is to achieve the 2020 Policy's objectives by being responsible for its implementation in strategic partnerships.[107] The Secretariat is therefore tasked to create and work within an established framework with an effective coordinating mechanism that will facilitate durable partnerships with the NPO community. [108]

Paragraph 3.8 outlines the Secretariat's functions, which start with creating

'a coherent institutional framework to enhance the operations of NPOs at the National, Regional and MMDA levels and improve the monitoring and co-ordination of the participation of NPOs in national development."[109]

The Secretariat is therefore at the centre of the implementation of the Policy's objective.

To achieve its aim, the Secretariat is headed by the Director, who is appointed by the Chief Director of the sector Ministry. The Secretariat Director's role is to report, inform and direct the Sector Ministry of the ongoing in the sector. The core powers of the Secretariat are linked to its functions, which are liaising with the sector Ministry, granting licence, monitoring, evaluating and forming strategic partnerships.[110] In detail, paragraph 3.13 (a)-(h) states that the Secretariat's duties are to:

- Advise the sector minister on policy and the promotion of the non-profit sector.
- Licence sector organisations.
- Establish standards, guidelines and codes of practice for the Secretariat.

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[105] National Non-Profit Organisation Policy (2020) Paragraph 3.3

[106] Directives for the Management of Non-Profit Organisations in Ghana (2020) 2

[107] National Non-Profit Organisation Policy (2020) 9

[108]National Non-Profit Organisation Policy (2020) 8

[109] National Non-Profit Organisation policy (2020) Paragraph 3.8

[110] National Non-Profit Organisation policy (2020) Paragraphs 3.2 and 3.4

- Administer the Non-Profit Organisations Fund.
- Monitor the activities of Secretariat to ensure observance of the provisions of this Policy.
- Ensure the promotion of Secretariat in the public interest and the observance of high standards of accountability, transparency and compliance with law.
- Be a liaison between the Sector and the Government.
- Perform other functions related to the object of the Policy.

4.4.1.0 Advise the Minister

Advising the sector minister is mostly the job of the Secretariat's governing Board set up for this purpose, and the promotion of the sector [111] by submitting proposals for policy making and appropriate legislation on Secretariat.

In addition, the Board is not only charged with advising the Minister but also obligated under paragraph 3.9 to ensure implementation of policy formulations, effective performance of the Secretariat, approve guidelines and plans for the Secretariat's governance and operations.

4.4.1.1 Licence

As mentioned in section 4.2.3, the licence is a new rule under the Policy informing a process by which the Secretariat grants an organisation authorisation to operate as an NPO.[112] The Secretariat facilitates this through its dual registration process.[113] The incentive for a licence is Government recognition, access to Government benefits and avoidance of punitive measures, all administered by the Secretariat.

This function and power allow the Secretariat to discharge its duties and provide transparency in the sector. However, as discussed above, the penalty attached to this may be viewed as an infringement of Article 21 and international law, and therefore, the power of the Secretariat in this respect could be challenged.

[111]National Non-Profit Organisation Policy (2020) Paragraph 3.9(3)

[112] National Non-Profit Organisation Policy (2020) Paragraph 2.2

[113] National Non-Profit Organisation Policy (2020) Paragraph 2.2.(a)-(b)

4.4.1.2 Fund administration

The Secretariat's funding is Governmental, internal and external. Government funding comes through its allocated resources to the sector Ministry. Specifically, the Secretariat's planning and budgeting is integrated into the annual budgeting and performance management frameworks of the Sector Ministry.[114] Internally, it generates funds from licence and registration fees paid to it. It also generates external funds through stakeholder grants. These funding streams are meant to be used and managed by the Secretariat.

4.4.1.3 Monitor Policy Adherence.

Structurally, the 2020 Policy creates the Secretariat as a decentralised body headed by a director chosen by the Chief Director of the Sector Ministry with the support of personnel also selected by the Chief Director.

To monitor adherence, the Secretariat has a regional office which performs the functions of the Secretariat at the regional level based on the direction of the Secretariat Director. It also has a District office to help register CBOs. The district office therefore monitors CBO activities to ensure Policy observance, ensures CBOs observe high standards of accountability, transparency and compliance with the law, liaises with CBOs with the Secretariat and achieves the Policy's objective.

4.4.1.4 Observation of accountability and transparency

The Secretariat's main mechanism for ensuring accountability and transparency is through its licence function. Through applying for a licence, the Secretariat becomes aware of sector organisations collating information on the type, location, and areas of operation. In addition, renewal of the licence is subject to the submission of annual financial and activity reports. The submission of financial and activity reports reflects international practice for ensuring transparency and accountability.

[114] National Non-Profit Organisation Policy (2020) Paragraph 4.4

4.3.1.5 Establishing Standards

The Secretariat is obligated to "establish national implementation standards, working closely with local Government to deliver quality services in the districts and communities.[115] It therefore works with the sector Ministry as its parent body and key public agencies, including local Government.

4.4.2 The Secretariat: Collaboration with Government Agencies

In working with the local Government, paragraph 3.5 charges the Secretariat to coordinate with:

- The Ministry of Local Government and Rural Development (MLGRD) to implement the 2020 Policy at Metropolitan, Municipal, Districts and Assemblies.
- The Department of Social Welfare and Community Development (DSWCD) is to serve as a focal point for local-level implementation.
- The Office of the Head of Local Government Service (OHLGS) to ensure regulation of sector activities and investments at the local level.

These collaborations are meant to be linked to the Secretariat's function of registration, licencing, planning and information sharing with the sector Ministry[116] who in turn disperses the information to wider stakeholders. Fig 4 below provides a representation of the Policy's institutional framework and collaboration.

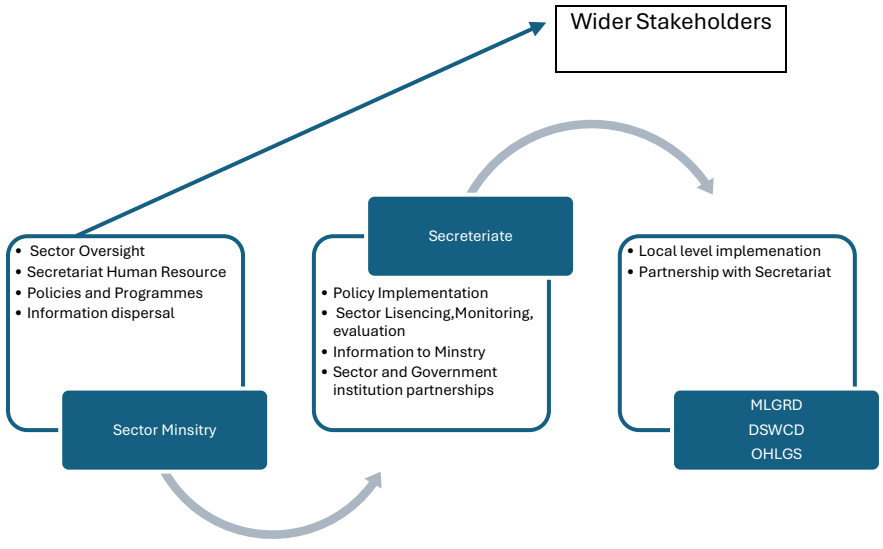


Fig 4: The Government Institutions Governing the Sector *(Researcher's illustration)*

[115] National Non-Profit Organisation Policy (2020) Paragraph 3.4

[116] National Non-Profit Organisation Policy (2020) Paragraph 3.3

The institutional framework, therefore, creates a multilevel system, especially at the local level, in implementing the 2020 Policy for the overall aim of sector oversight. Since most sector organisations operate at local level, this model can ensure effective sector adoption.

4.4.3 Sector Self-Governing Body

Under paragraph 3.6, the 2020 Policy gives recognition to the development and policy input contribution of the sector and as such is required to contribute to the Policy's implementation and as such establishes the Sector Peer Review Framework. Paragraph 3.7 requires the establishment of a national platform serving as a peer review mechanism, which is meant to provide four functions in the coordination and participation in national policymaking.

Essentially, the National Platform is a body meant to serve a peer review and monitoring function. It acts as a self-regulatory system which is aimed at enhancing peer review mechanisms, coordination, and participation in national policymaking dialogues.

In addition to this the National Platform is meant to

- Develop effective working relationships with the Secretariat.
- Frame a code of conduct and quality standards to enhance peer review by the Secretariat.
- Build their organisational and technical capacity to influence national development policymaking and implementation.
- Strengthen dialogue and regular interactions between Secretariat and other stakeholders at all levels of national and local governance.

This is in line with the 2020 Policy's approach of wanting its implementation process to be participatory and consultative.[117] It goes further to balance Government regulatory power through the Secretariat's functions continuing the co-creation of sector regulation.

[117]National Non-Profit Organisation Policy (2020)11

4.5 Implication of the Governing Institutions: Issues and Challenges

The institutional framework of the 2020 Policy centres around the Secretariat, which acts as the sector's regulator. It is created under the sector Ministry and dependent on the Government to resource it. It primarily plays an oversight role, mainly through the issuance of a licence to monitor sector activity and consolidate sector numbers. Its functions include advising the sector minister on policy, standards, fund management, and liaising between Government and sector actors.

It also meant to work with local Government departments to implement the 2020 Policy. However, like the governing rules, the implications of the institutional governance are not wholly positive. It raises corresponding issues and challenges identified below. The problems identified include institutional collaboration, the Secretariat's power and Government dominance.

4.5.0 Institutional Collaboration

Though the institutional partnership helps multilevel and collaborative implementation, it may also hinder it. This is because even though the three institutions have specific roles in the implementation process, the 2020 Policy give little detail about how the roles are to function. For example, the MLGRD's role is to make sure implementation is realised at the MMDAs, but what this should look like is not made clear. More confusing is the appointment of the DSWCD as the focal point for implementation and the OHLGS as regulator of sector organisation activities and investments at the local level, which arguably intersects with the Secretariat's role.

This intersection at best can mean increased oversight, strengthening the Policy's objective in providing a coherent institutional framework to improve monitoring and coordination by the Secretariat in national development."[118] At worst, it may lead to confusion of who does what, thereby reducing the Policy's coherent ambition. However, despite any possible confusion that may arise, the Policy categorically makes the Secretariat the main regulatory institution and placed at the centre of the Government collaboration. These Government agencies are meant to work and feed into each other at the local levels to implement the 2020 Policy.

[118] National Non-Profit Organisation Policy (2020) Paragraph 3.8

4.5.1 Secretariat and Collaborative Monitoring and Evaluation

The 2020 Policy recognises a participatory and evidence-based monitoring and evaluation system, aiming to develop and implement the system through participatory mechanisms. Paragraph 4.2 [119] states that:

"An elaborate participatory and evidence-based M & E system will be developed and implemented to ensure that the arrangement is all-inclusive, and all inputs, processes and outcomes of implementation are adequately tracked, and the required feedback provided and utilised"[120]. *[*Also], *(M & E) of the NPO Policy will be embarked on at various levels and through the collaboration of Government, the NGOs, Society Organisations, academic and research institutions."*[121] *[*NPO community stakeholders] *"will be encouraged to establish their own monitoring and evaluation mechanisms as part of the overall M & E system to enable them adequately evaluate progress of implementation of the NPO Policy and also ascertain how development partners are contributing to the socio-economic development of the country"*[122].

This monitoring and evaluation participatory approach is supposed to involve a collaboration of the Government, NGOs, Civil Society Organisations, and academic and research institutions at all levels. These groups and other stakeholders in the sector are meant to create individual systems to be part of the overarching monitoring and evaluation system established by the Secretariat, which will issue quarterly reports on this. This would enable an adequate evaluation of the 2020 Policy's implementation and sector activities in relation to the country's socio-economic development agenda.

However, the research could not find the Secretariat's activities, nor the quarterly monitoring and evaluation mechanism, even though the 2020 Policy (M & E) was meant to operate at various levels and through the collaboration of all stakeholders.

[119] National Non-Profit Organisation Policy (2020) Paragraph 4.2

[120] National Non-Profit Organisation Policy (2020) Paragraph 4.2

[121] National Non-Profit Organisation Policy (2020) Paragraph 4.2

[122] National Non-Profit Organisation Policy (2020) Paragraph 4.2

4.5.2 Collaboration with Local Government

Collaboration is meant to happen at the national level but also at the MMDAs. However, when analysed, this provision is vague and sets a promise rather than definitive ways in which sector actors are meant to access public agencies and collaborate with them. The *Directive of Operation* is silent on this and as will be shown in Chapter 6, the absence of a provision mandating collaboration at the local level results in a gap in the Policy's framework. Though, this gap is key the Policy's collaboration mechanism is not entirely without merit especially its monitoring and evaluation provisions.

4.5.3 The Secretariat's Governance

The Secretariat is essentially a Government institution lacking independence, furthering the notion of Government dominance in the regulation environment. Its overseeing Board[123] entrenches the idea of Government interference. To allow for representation and policy influence, the Board is made-up of a seven-member representative body from the Government, Secretariat, and sector actors. The Government and Secretariat representatives are the chairperson appointed by the President, the Executive Secretary of the Secretariat and a rotational representative whose position must not be below a director.[124] Sector organisations representatives are four persons, three females and one person with disability to be nominated by the National NPO Forum and appointed by the President.

Therefore, though the Secretariat's Board is seemingly diverse, the appointments are to be made by the President by virtue of Article 70 of the 1992 Constitution. Although this can be argued as giving legitimacy to the Board, it also gives an opportunity for interference from the President.

Granted, the representatives are to be nominated by their heads of their institutions, but the 2020 Policy does not say whether the President is bound to accept each nomination. The President's discretion to accept or deny nominees gives the Presidency indirect control over membership to the Board and by virtue of their action in terms of policies proposed.

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[123] National Non-Profit Organisation Policy (2020) Paragraph 3.9(3)

[124] National Non-Profit Organisation Policy (2020) Paragraph 3.8

The rotational representatives are from the sector Ministry, the Ministry of Finance, the Office of the registrar of companies; the Ministry for Local Government and Rural Development; the Office of the Attorney General and the Ministry for Health or Education

4.5.4 Secretariat Power

The Secretariat's power to close an organisation for failure to register for licence is problematic and breaches Article 21. In addition, as will be highlighted in Chapter 7, the Secretariat's lack of capacity to ensure smooth licences renewal and transparency. Also, the accountability mechanism is mainly vertical from sector organisations to the Government through financial reporting.

Also, though the Secretariat has a record of organisations in good standing and those not in good standing, Chapter 7 notes that the criteria for this are not transparent, which gives the Secretariat immense discretionary power. Furthermore, at the time of writing, the list could no longer be found on the Secretariat's website[125] which is a further indication of the Secretariat's capacity in ensuring its transparency and accountability mechanism is effective.

4.6 Conclusion

Overall, the 2020 Policy in comparison to the old regime sets out a cohesive regulatory framework. The rules and institutional provisions address key gaps in sector regulation by providing a definition, a regulator, transparency, accountability, and collaboration mechanisms.

However, the same aspects that strengthens the Policy's framework also presents its weakness, such as, it precarious legal standing to impose obligations. The rules on registrations and licence as well as Government interference through the Secretariat may be legally challenged. This calls into question the Policy's legal standing and political sustainability, both of which are discussed in the next Chapter.

[125] Non-Profit Organisation Secretariat of the Republic of Ghana < https://npos.mogcsp.gov.gh/npos-in-good-standing/ > accessed 4 September 2026

Chapter 5: The 2020 Policy's Standing and Sustainability

5.0 Introduction

From Chapter 4's discussion, it is clear that for the Policy's obligations to be maintained, they must be Constitutionally justified. This drives the next discussion towards the Policy's standing. The question of standing is a Constitutional matter that scrutinises the Policy's authority to impose obligations based on Article 37(1), on which it situates itself. As Article 37(1) is a Directive of State Policy, the main issue is its justiciability.

In addition to standing, the Policy's nature as a Government instrument maintained and enforced by political will, calls into question its sustainability. The issue of sustainability is thus, a political question discussed within Ghana's winner-takes-all political system, where incumbent Governments often do away with previous policies at will.

This chapter, therefore, analyses the Policy's standing and sustainability to determine whether the framework could be maintained. The chapter is divided into two broad discussions, one, on the Policy's standing and two, on its sustainability.

5.0.0 Key Findings

The discussions show the legal validity of the 2020 Policy to be precarious. Article 37(1), which allows for the imposition of obligations, is under Chapter 6 of the 1992 Constitution, whose justiciability has been contentious.

In the first instance, the Supreme Court's judgment on the *31st of December* case held that the Constitution's Chapter 6 provisions were justiciable. In the second instance in the *CIBA case*, they reversed this judgment and held Chapter 6 provisions to be not justiciable, unless they are an integral part, read in conjunction with or interpreted as rights within other enforceable rights. In the third instance in the *Lotto case*, they reversed the judgment again, holding Chapter 6 provisions to be justiciable in and of themselves because the entire Constitution is justiciable, but this could be rebutted. In fact, in the last case, the Supreme Court held that judges would have to be imaginative and flexible when considering the justiciability and enforcement of Chapter 6 provisions.

Therefore, based on the *Lotto case*, we can conclude that Article 37(1) is justiciable, providing a valid basis for the Policy's obligations. However, the Supreme Court's ruling showed that this could be rebutted, which is a likely outcome as its enforcement leads to an infringement on a fundamental freedom. This conclusion is justified under three arguments.

The first is that even though Chapter 6 justiciability rulings were inconsistent, the judgments in every case sought to curtail Government power to restrict interference with democracy and the freedom of association. This shows the Supreme Court's consistent position in restraining Government interference on fundamental freedoms. Second, the *CIBA* case effectively determined the scope of Article 21(1)(e) to include Article 37(2)(a), which categorically restrains Government interference in the exercise of the freedom of association. As the 2020 Policy also situates itself on Article 37(2)(a), it could be used to rebut Article 37(1). Third, even where the obligations are allowed, the punitive measures enforced by the Secretariat - especially the power to close down organisations - are a flagrant disregard of Article 21(1)(e), which the Supreme Court will not look favourably on. Therefore, there is a strong chance that if judicially challenged or scrutinised, the Policy's obligations and punitive measures would be invalidated, making its standing precarious.

Its political sustainability is also an issue, as the findings showed that the 2020 Policy is meant to be a transitional instrument towards sector legislation. It is also affected by the short-term nature of policies and especially Ghana's winner-takes-all governance system, as a new Government took office in 2025. All these mean the Policy's sustainability is also indeterminate. However, the research also argues that the Policy may be politically sustained due to the difficulty in creating regulatory reform, as discussed in Chapter 2 and its partial fulfilment of Ghana's FATF obligations.

Therefore, the Policy stands a chance of being maintained. Still, this is until a sector bill is agreed on by the Government and sector actors, and legislation in accordance with viable Constitutional limitations is enacted, which, according to Chapters 2 and 3, is almost impossible.

The details of this discussion are presented below.

5.1 2020 Policy Obligations and Constitutional Basis

As shown in Chapter 4, the 2020 Policy is mainly concerned with governing rules and institutions that ensure sector rights and corresponding responsibilities.[745] The governing rules recognise the freedom to form associations[746] allowing its enjoyment through an enabling environment, tax rebates, fund mobilisation, and [747] autonomy[748] thereby giving effect to Articles 21(1)(e). Linked to these rights are attached obligations. For example, access to tax rebates requiring registration, licence, and submission of financial and activity reports. [749] In all, the Policy makes three key demands of sector actors.

First, is the obligation to create and make clear in-house structures, including identification of office, beneficiaries, owners, donors, administration structure and governing board.[750] Second, is the requirement to register, submit registration certificates,[751] financial and activity reports to the Secretariat for a licence. This requirement comes with Government recognition and punitive measures, including fines and closure, exercised by the Secretariat, which is overseen by the sector Ministry and Board.[752] Third, is to collaborate with law enforcement and keep records in pursuance of the Anti-Money Laundering Act,2008 (Act 749).

The third obligation is the least problematic, as it does not directly infringe on the freedom of association but rather a dictate on financial transactions, which are subject to criminal law. According to the *Radio eye*[753] case, such limitations have a sound Constitutional basis. However,

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[745] National Non-Profit Organisation Policy (2020) Paragraph 2.1 <https://wacsi.org/wp-content/uploads/2021/08/NPOS-National-Non-Profit-Organisation-Policy.pdf> accessed 4 September 2026

[746] National Non-Profit Organisation Policy (2020) Paragraph 1.5

[747] National Non-Profit Organisation Policy (2020) Paragraph 2.3

[748] National Non-Profit Organisation Policy (2020) Paragraph 2.4

[749] *See Section 4.1.5.0*

[750] Directives for the Management of Non-Profit Organisations in Ghana (2020)2 < https://wacsi.org/directives-for-the-management-of-non-profit-organisations-operations-in-ghana/> accessed 4 September 2026

[751] For foreign organisations

[752] National Non-Profit Organisation Policy (2020) Paragraph 3.8-- The board is headed by a chairperson appointed by the President, representatives from the sector Ministry, Ministry of finance, Office of the registrar of companies, Ministry responsible for Local Government and Rural Development, Office of the Attorney General, Ministry of Health or Education three member from sector organisations and the Executive Secretary of the Secretariat. Thus, the board is made up of seven Government officials and three from the sector actors. But the Policy further noted that all the members to the board will be appointed by the Head of Institutions and appointed by the President.

[753] *Republic v Independent Media Corporation of Ghana* [1996-97] SCGLR 258 (Radio-eye case). *See 3.3.2*

the first and second obligations are problematic. Though the first is related to the creation of in-house rules, the requirement of identifiable offices, postal address, bank accounts, etc., may create barriers for small group structures like traditional associations that operate in villages, thereby limiting their free association. The most problematic obligation is the second, which subjects the enjoyment to registration, a licence and punitive measures against the scope of Article 21(1)(e). Government interference is also increased as licence and punitive measures are facilitated by the Secretariat, which is a Government body.

Though these obligations seek to address sector regulation gaps of oversight, Chapter 3 makes it clear that the Constitution and the Supreme Court highly guard the fundamental freedoms. Because the 2020 Policy is not only concerned with ensuring rights but also prescribing responsibilities on an entrenched fundamental freedom, it must have Constitutional standing. Without this, it becomes inconsistent with Article 21(1) (e), and upon judicial scrutiny, the Supreme Court may declare it unconstitutional.[754] This will result in the Policy being invalidated, as failure to do so will amount to a high crime, and in the case of the President and Vice-President, they will be removed from office.[755]

To establish a legal basis, the 2020 Policy under paragraph 1.5[756] situates itself on four Constitutional provisions. Article 21(1) (a-e), Article 37 (1), (2) (a) (b), and (3). Article 21(1), as already mentioned, provides the fundamental freedoms from which sector actors derive their existential legitimacy, particularly Article 21(1)(e) on the freedom of association. Articles 37(2)(b) and (3) concern the protection of human rights. Article 37(1) obligates the State to:

"…Direct its policy towards ensuring that every citizen has equality of rights, obligations and opportunities before the law."[757]

It gives the Government the permission to create policies that outline rights and impose obligations to facilitate the equal enjoyment of the fundamental freedoms, thereby, justifying the 2020 Policy. However, Article 37(2)(a) is arguably inconsistent with Article 37(1) because, though it obligates the State to enact appropriate laws to assure the enjoyment of rights, it categorically states that the rights of people to form their own associations must be free from State

[754] The Constitution of the Republic of Ghana, 1992, Article 2 (2) and (3)

[755] The Constitution of the Republic of Ghana, 1992, Article 2(4)

[756] National Non-Profit Organisation Policy (2020) Paragraph 1.5

[757] The Constitution of the Republic of Ghana, 1992, Article 37(1)

interference.[758] So, where rules are created, they must secure the enjoyment of the fundamental freedoms free from Government interference. This provision was given effect in the *CIBA*[759] case, which ruled a law subjecting the freedom of association to registration was unconstitutional. Article 37(2)(a) therefore falls between Article 21(1)(e) and Article 37(1). It supports the former by ensuring free enjoyment, and goes against the latter as impositions of obligations are State interference. This makes the standing of the Policy uncertain, unless Article 37(1) is justified as a valid qualification on the operating scope of Articles 21(1)(e) and 37(2)(a) based on ensuring equal enjoyment of freedoms.

Though this could circumvent the challenges of applying the three main Constitutional limitations on the freedom of association, the question of whether Article 37(1) provides sufficient justification to impose obligations that address the regulatory gaps[760] is raised.

5.2 Justification of the 2020 Policy Obligations: Articles 21(4), 31 and 12(2)

Even though there are limitations on a fundamental freedom, the Policy's obligations and sanctions are essentially meant to ensure accountability and transparency. But, as shown in chapter 3, the only way Government action emanating from the Policy could be valid is if they fall under the three limitations, which, on the face of it, they do not. Articles 21(4) and 31 are immediately made irrelevant.

Still, an argument could be made under Article 12(2) on the basis of protecting the rights and freedoms of others. The disadvantages of sector marginalisation, exploitation and theft of traditional knowledge mean an intrusion on property,[761] economic,[762] cultural, [763]women,[764] children, and[765]disabled persons[766] rights. The obligations' effect of ensuring transparency and

[758] The Constitution of the Republic of Ghana, 1992, Article 37(2)(a)

[759] New Patriotic Party v Attorney-General [1996-97] SCGLR 729 (CIBA Case)

[760] National Non-Profit Organisation Policy (2020) Paragraph 2.6

[761] The Constitution of the Republic of Ghana, 1992, Article 20 -Where traditional knowledge is regarded as such

[762] The Constitution of the Republic of Ghana, 1992, Article 24

[763] The Constitution of the Republic of Ghana, 1992, Article 26

[764] The Constitution of the Republic of Ghana, 1992, Article 27

[765] The Constitution of the Republic of Ghana, 1992, Article 28

[766] The Constitution of the Republic of Ghana, 1992, Article 29(4)

accountability means that the freedom of association would be subjected to these rights and thereby protected against sector actors.

Also, in applying the Constitutional definition of public interest [767](benefit of the whole people of Ghana) and the *CLOSSAG*[768] case, we can further argue that the obligations benefit people, especially beneficiaries from adverse actions of sector actors.

However, according to the *AWA*[769] case, there must be a legitimate justification for public interest to be applied. In this case, the court concluded that the defendant's argument of disallowing the plaintiff on board the plane on the possibility that other passengers in an emergency would be affected by the plaintiff's diminished mobility was not a legitimate justification. The court noted that there was no indication of a plane malfunction, and even if there was, the plaintiff's absence from the plane would not save the passengers. The plaintiff's presence or absence will not make a major difference in the situation.

So, to establish public interest within the 2020 Policy's obligations, we must determine how the limitation benefits the public, if at all. The question asked to this effect is:

Whether the obligations imposed on sector actors to have a clear in-house structure and submit financial and activity reports prevent the public from exploitation, marginalisation and theft of traditional knowledge?

The answer to this question is no. This answer is based on two reasons. One, is the Policy's enforcement mechanism. Without legal backing and court enforcement, actions of public agencies arising from the Policy can only be backed by executive and political power. This means that adherence is minimal[770] and will not change the overall situation. Two, is the findings from analysing the effectiveness of the Policy's transparency and accountability mechanisms, as will be shown in Chapters 7 and 8. The results showed that the 2020 Policy had insufficient beneficiary accountability, and the Secretariat's enforcement measures on transparency were lacking. These

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[767] The Constitution of the Republic of Ghana, 1992, Article 295-

'any right or advantage which enures or is intended to enure to the benefit generally of the whole of the people of Ghana'

[768] Civil and Local Government Staff Association of Ghana (CLOSSAG) vs the Attorney General and 2 others 2017 [2017]GHASC 18

See 3.6

[769] Rita *Kriba v Arica World Arlines (AWA)* [2023] GHACA 19

See 3.6

[770] See section 7.3.0, which shows only 1040 organisations in the Secretariat's database, with some not in good standing, which means they have not submitted their financial and activity reports.

gaps show that the obligations are not effective measures in protecting the public and therefore fall short of a legitimate justification for public interest. If the obligations were in the form of legislation, maybe the outcome would be different.

Also, the Secretariat's power to shut down organisations for non-adherence is a flagrant derogation of the freedom of association. As shown in Chapter 3, only by triggering Article 31 can there be derogation of freedoms, and since such circumstances do not apply in the 2020 Policy, the shutting down of organisations will be out of the executive power as seen in the *Restrictions Act* case[771].

Finally, the most obvious indication that the Policy does not fall within Articles 31 and 12(2) limitations is their absence from the Policy's standing under paragraph 1.5. When considering the absence of 12(2) in particular, it either means that the cabinet and Attorney General determined the Policy could not fall within it, or that the Policy had better standing on 37(1).

5.3 Justification of Policy Obligations: Article 37 (1)

In full, Article 37(1) provides that:

"The **State shall endeavour to secure and protect a social order** founded on the ideals and principles of **freedom, equality, justice, probity and accountability** as enshrined in Chapter 5 of this Constitution; and in particular, the ***State shall direct its policy towards ensuring that every citizen has equality of rights, obligations and opportunities before the law***"[772] [emphasis added]

The first half deals with the State securing Chapter 5 provisions ideals and the second half gives the state an obligation to direct policies that ensure equal rights, obligations and opportunities. Article 21(1)(e) provides for the freedom to form and join associations in pursuit of interests. Beneficiaries are therefore counted as participants in the enjoyment of this freedom since they join and or benefit from the associations. Therefore, if they face exploitation and marginalisation from the activities of the association's creators/owners, this could be considered as an unequal enjoyment. Thus, where the State directs policies that impose rights, obligations and opportunities, it levels the playing field.

[771] Appiagyei-Atua & 7 others vs The Attorney General [2023] GHASC 32 (Restriction Act case)

[772] The Constitution of the Republic of Ghana, 1992, Article 37(1)

In effect, the second half looks to have a similar outcome as Article 12(2) where limitations are allowed to balance the exercising of freedoms. But whereas 12(2) directly limits the freedoms to safeguard other people's rights and public interest, 37(1) is meant to ensure equality, exercised through rights and obligations.

In reference to the freedom of association, we can say that the provision obligates the Government to create policies with rights and obligations that ensure equality within the ideal of Article 21(1)(e). This is why the 2020 Policy captioned sector responsibility as 'obligations'. Arguably, the second half of 37(1) contradicts with Article 37(2)(a).[773] But read together, Article 37(1) can be regarded as a qualifier of Article 37 (2)(a), providing scope for the level of State interference necessary for equal enjoyment of the freedom of association. As a qualifier of 37(2)(a) its extents to 21(1)(e) as well. But a literal interpretation of 37(1) means Government action arising from the 2020 Policy obligations must only be seen as facilitating equal enjoyment and not limitations.

But the most important issue in relying on Article 37(1) is its justiciability. Like 37(2)(a), 37(1) is found under Chapter 6's Directive of State Principles of Social Policy, whose justiciability and enforcement have been contentious. Without it being enforceable, the Government and, by virtue of the 2020 Policy, cannot point to a legal standing for any obligations imposed.

The starting point of Chapter 6 jurisprudence is from the opinion of the Committee of Experts on the Constitution, 1992.

5.3.0 Committee of Experts Opinion on Chapter 6 provisions

As shown in chapter two, the 1992 Constitution was created to end Rawlings' Provisional National Defence Council's (PNDC) 11-year military rule and transition Ghana into democratic governance.[774] It was drafted by the Committee of Experts,[775] before being reviewed by the Constituent Assembly and voted on in a national referendum. In their proposals for the draft

[773] Which disallows State interference in the enjoyment of the fundamental freedoms

[774] *See Chapter 2*

[775] Institutional Repository of the Parliament of Ghana, 'Report of the Committee of Experts (Constitution) on proposal for draft Constitution of Ghana presented to the PNDC'. (1991) < https://searchworks.stanford.edu/view/1971716> accessed 4 September 2026

Constitution, the Committee of Experts highlighted that the Directive Principles of State Policy (*hereafter Directive Principles*) were, by tradition, not justiciable.[776] To them, the Directive Principles

'Enunciate a set of fundamental objectives which a people expect all bodies and persons that make or execute public policy to strive to achieve.'[777]

The Directive Principles were therefore added to the Constitution to provide

'A sort of barometer by which the people could measure the performance of the Government.'[778] Further, they note that,

'…the Directive Principles were a guidance of Parliament, the President, the Council of Ministers, Political Parties and other bodies and persons in the making and applying public policy for the establishment of a just and free society. The principles should not, of and by themselves, be legally enforceable by any court.'[779]

When the 1992 Constitution was passed, the Directive Principles were introduced as Articles 34 to 41 under Chapter 6. So, if the Committee of Experts' opinion were to be applied, Articles 34 to 41 are not legally binding, enforceable and only serve as a guide.

The contention is that, the 1992 Constitution does not emphatically say that Chapter 6 provisions are not justiciable. Therefore, the justiciability of Chapter 6 became a question for the Supreme Court to answer.

5.4 Justiciability of Chapter 6 Jurisprudence

So far, the Supreme Court has adjudicated on three cases involving the justiciability of Chapter 6 provisions and in all three, it has had varying views.

[776] Institutional Repository of the Parliament of Ghana (1991) Paragraph 95

[777] Institutional Repository of the Parliament of Ghana (1991) Paragraph 95

[778] Institutional Repository of the Parliament of Ghana (1991) Paragraph 95

[779] Institutional Repository of the Parliament of Ghana (1991) Paragraph 96

5.4.0 31st December Case

The first was the case of *New patriotic Party v Attorney General* (*31st December case*).[780] In the case, the then President JJ. Rawlings, who had won the general election under his civilian political party, the National Democratic Congress (NDC), established 31st December as a public celebration day. This date marked the day his PNDC military Government came into power through a coup d'état. The plaintiff sought the Supreme Court to make a declaration that the action of the Government to celebrate 31st December amounted to the glorification of coup d'états and therefore inconsistent with the Constitution. They invoked Articles 35(1) and 41(b), which essentially provided that Ghana is a democratic country, and citizens should uphold the Constitution. The Attorney General, on the other hand, responded that the Articles forming the basis for the plaintiff's arguments were under Chapter 6 and therefore not justiciable, and legally binding.

The question before the Supreme Court included whether these Articles were justiciable or not. Nine justices sat on the case, and the ruling was 5-4 with the majority ruling for the plaintiff. Justice Adade, who wrote for the majority, argued that Chapter 6 of the Constitution is justiciable on the basis that the whole Constitution is justiciable. He argued that if any part was non-justiciable, the Constitution itself must say so, and that he had not seen any part of the Constitution that states this. He added that,

'The evidence to establish the non-justiciability must be internal to the Constitution,1992, not otherwise, for the simple reason that if the proffered proof is external, it adds words to the Constitution.'[781]

To him, the views of the Expert Committee and the later Constituent Assembly 1991 (which further reviewed the Constitution,) were not carried into the Constitution[782] and therefore external opinions, making Chapter 6 provisions justiciable.

The minority judgement presented by Bamford Addo JSC, on the other hand, adopted the intention of the Committee of Experts in stating that the Articles were not justiciable but rather served as a guide.[783] To her, the judiciary is only meant to be guided by Chapter 6 when interpreting the Constitution.

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[780] New Patriotic party v Attorney-General 1993-94 GLR 35 (31st December case)

[781] *31st December Case* (n 36) 66

[782] *31st December Case* (n 36) 67-69

[783] *31st December Case* (n 36)149

Although the judgment in the *31st December* case appeared to solidify, albeit narrowly, the Constitutional law on the justiciability of Chapter 6 provisions, the nine judges did not all address the issue of justiciability. Only Justice Adade and Bamford Addo JSC directly addressed it, and therefore it was unclear whether the other judges, subscribed to their view and reasoning.[784] Hence, the jurisprudence on the matter was not yet settled.

5.4.1 CIBA Case

The second judgement was on the previously mentioned CIBA Case.[785] The plaintiff sought the Supreme Court to declare that the Council of Indigenous Business Association (CIBA) law 1993 void as it contravened of Articles 21(1), 35(1), 37(2) and 37(3) of the 1992 Constitution. As already discussed above, Article 21(1) ensures the fundamental freedoms. Article 37(2) and (3) sets out that the Government should endeavour to secure the enjoyment of the freedoms without interference and in consideration of human rights. In the case, section 4 of the CIBA Act required certain associations, mostly trade associations[786]to compulsorily register with the established Council of Indigenous Business Associations (*hereafter the Council*). The Council was administered by representatives from each of the trade associations, representatives of the Ministry of Social Welfare, the Executive Secretary and the National Treasurer appointed by the Minister of Social Welfare in consultation with the Council. The Council was empowered by the CIBA Act to, among other things, monitor and oversee these trade associations. Thus, the plaintiff argued that the Council, by virtue of its role to register, monitor and oversee these trade associations, as well as make this registration compulsory, interfered with the enjoyment of the freedom of association. This made the law incompatible with Article 21(1) and 37(2) and 3 of the Constitution.

Because Article 21(1) is silent on preventing Government interference, and Article 37(2) is the main carrier of this rule, the Attorney General, despite the judgment from the 31st December,

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[784] Peter Atudiwe Atupare, 'Reconciling Socio- economic Rights and Directive Principles with a Fundamental law of Reason in Ghana and Nigeria' [2014] 27 Harvard Human Rights Journal,96 <https://journals.law.harvard.edu/hrj/wp-content/uploads/sites/83/2014/07/V27_Atupare.pdf >accessed 4 September 2026

[785] New Patriotic Party v Attorney-General (1996-97) (CIBA Case)

[786] Including Ghana National Association of Garages, National Drinking Bar Operators Association, Ghana Hairdressers and Beauticians Association, Ghana National Tailors and Dressmakers Association, Federation of Ghana Jewellers, National Association of Traditional Healers, Federation of Market Women etc. found in schedule 4 of the CIBA Act

argued that Chapter 6 provisions were not legally binding. The Supreme Court again had to address the justiciability of Chapter 6.

This time, all the judges addressed the issue of justiciability and quite strongly, too. The majority ruled contrary to the *31st December* case and stated that Chapter 6 provisions were not justiciable. Atuguba JSC, for the majority, argued that the principles under Chapter 6 were not justiciable but rather indicated the spirit of the Constitution.[787] He noted that Article 34(1) of the Constitution made it clear that the principles only come in to 'guide' when applying or interpreting the Constitution.

Ampiah JSC also, for the majority, took the position of the Committee of Experts and argued that it did not think the framers of the Constitution intended for Chapter 6 to be enforceable by court action. Instead, the Constitution has made specific provisions in other parts of the Constitution for the 'obedience and enforcement' of Chapter 6 rights. Therefore, Chapter 6 provisions are not justiciable by themselves. In applying this, he said that in the case,

'the right which the plaintiff seeks to protect by this action is contained in article 21(1(e) of the Constitution… adjudication of this issue would have to be guided by the State Policy' [chapter 6 provisions]'[788] Therefore, the scope of Article 21(1) is meant to be interpreted through the guidance of relevant Chapter 6 principles'

Sophia Akko JSC supported the opinion that Chapter 6 provisions were an interpretative tool alone. She noted that the provisions under Chapter 6 were the ultimate litmus paper to test the Constitutional propriety and legality of every enactment and conduct. To her,

'As far as the Courts are concerned, the principles are intended to serve as an aid to the construction or interpretation of the Constitution... and all other laws. Thus, when an action is brought under article 21(1) … this court, in determining the issue, may fall upon the principles as an aid and guide… Where it is intended that specific principles are to be justiciable, they have been specifically stipulated in other parts of the Constitution as substantive articles … the Directive[s]…present a mixed bag of justiciable and non-justiciable issues. It is therefore my opinion that, as with the whole chapter 6 of the Constitution… article 35, 37(2) are not of and by themselves justiciable.[789]

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[787] *CIBA case* (n 41)440

[788]*CIBA case* (n 41) 410

[789]*CIBA case* (n 41) 461

Essentially, Sophia Akko JSC's judgment means that all chapter 6 provisions are not justiciable in and of themselves, but some become justiciable when they serve to guide the interpretation of enforceable substantive rights.

Bamford Addo JSC, who was in the minority in the 31st December case, this time delivered the leading judgement for the majority, providing clarification for when Chapter 6 provisions become enforceable. She notes three instances where they become enforceable:

'[1]where some provisions of the directive principles form an **integral part** of some of the enforceable rights, whether because they qualify them or can be held to be rights in themselves. In those instances, they are themselves justiciable also… [2]where those principles are **read in conjunction** with other enforceable provisions of the Constitution… by reason of the fact that the courts are mandated to apply them, they are justiciable… [3]where any provision under chapter 6… dealing with the directive principles **can be interpreted** to mean the creation of a legal right, i.e. a guaranteed fundamental human rights as was done in article 37(2) of the Constitution. [R]egarding the freedom to form association they become justiciable and protected by Constitution 1992'[790] [emphasis added]

The Supreme Court's conclusion was that Chapter 6 provisions were not justiciable. However, some of its provisions could be justiciable when they form an integral part of enforceable rights, read in conjunction with said enforceable rights or interpreted as to mean a creation of legal rights. Therefore, in the *CIBA* case, the Supreme Court enforced Article 37(2) as an integral part of 21(1) and found the provision under the CIBA Act to be unconstitutional, ruling for the plaintiff.

5.4.2 Abass Case

Subsequently, the High Court case of *Abass v Accra Metro Assembly*,[791] showed that Chapter 6 provisions could be altogether ignored. In the case, the plaintiff raised an action against the Accra Metropolitan Assembly on the basis that the Assembly's evacuation of squatters without providing

[790] *CIBA case* (n 41) 394-398

[791] Abass v Accra Metro Assembly Miscellaneous Civil Cause No. 1203 of 2002.

resettlement was inconsistent with Articles 12(1),[792]13,[793]15,[794] 23, [795] 25, [796]and 33.[797] The judge Appau J, rejected the claim by connecting the legal duty of the Assembly to resettle occupants to those who owned property. To him, the plaintiffs were squatters and therefore had no formal right to land. What is relevant for our discussion here is that the judgment did not even consider the justiciability of Article 33; it was simply ignored. It was not clear why they ignored it. It is suggested that it was either the judge found the CIBA judgement to be definitive, or that the High Court wasn't too concerned about the justiciability of Chapter 6, leading to the third case.

5.4.3 Lotto Case

The third Supreme Court case was *Ghana Lotto operators & others vs National Lottery Authority (2007*).[798] In the case, section 4 of the National Lotto Act 2006 (Act 722) gave exclusive lotto operation to the Lottery Authority and made it unlawful for private persons or entities to operate lotto business in the country. The plaintiffs raised a case in the Supreme Court that section 4 of the Lotto Act was inconsistent with Article 36[799] of the Constitution.

This time, there wasn't an added enforceable Article or right attached to the Chapter 6 provision in question. Therefore, according to *CIBA* it should be non-justiciable. But, in a unanimous judgment, the Court enforced Article 36 as a legal right on its own. Data-Bah JSC, leading the majority, took the position of the *31st December* case. He argued that the starting point in understanding Chapter 6 justiciability is based on the presumption that all the provisions under the 1992 Constitution were justiciable. But he also somewhat took the judgment in *CIBA* by stating that the justiciability presumption could also be rebutted. The basis of his argument was that there

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[792] Respect of fundamental rights by stat institutions and organs

[793] Right to life

[794] Human dignity

[795] Recognition of right to just, fair and reasonable administration decision making

[796] Equal educational opportunities

[797] Judicial enforcement of fundamental rights

[798]Ghana Lotto operators & others vs National Lottery Authority (2007-2008) 2 SCGLR 1008 (Lotto case)

[799] The State shall, in particular, take all necessary steps to establish a sound and healthy economy whose underlying principles shall include

…

(b) affording ample opportunity for individual initiative and creativity in economic activities and fostering an enabling environment for a pronounced role of the private sector in the economy…

may be particular provisions in Chapter 6 which do not lend themselves to enforcement by a court. The very nature of such a particular provision would rebut the presumption of justiciability in relation to it.

Unlike the CIBA *case*, Date-Bah JSC did not provide instances where such rebuttals might occur but insinuated that such a rebuttal could be found in the Constitution. In light of this, he argued that Article 34, which mentions the Directive principles as a guide, must be read broadly. Because to him, the changing international law landscape means

'The rights set out in chapter 6, which are predominantly the so-called Economic, Social and Cultural rights (ESC rights), are becoming, by international practice and the domestic practice in many jurisdictions, just as fundamental as the rights in Chapter 5. The enforceability of these ESC rights is a legitimate purpose for this court to seek to achieve through appropriate purposive interpretation'[800]

The case, therefore, held Article 36 to be legally binding and not merely a matter of conscience for successive Governments. So, where a Government acts or enacts legislation which is in flagrant disregard of Article 36, the Court has the jurisdiction to strike it down. The case also concluded that all Chapter 6 provisions are legally binding unless otherwise determined by the courts.

This means that determinations will be made on a case-by-case basis, which, according to Date Bah JSC

'In the absence of a documentation that a particular provision does not lend itself to enforcement by courts … the enforcement by this court of the obligations imposed in chapter 6 should be insisted upon would be a way of deepening our democratic and the liberty under law that it entails … This court will need to be flexible and imaginative in determining how the provisions of the chapter 6 are enforceable.'[801]

This imaginative and flexible manner will, in effect, create more inconsistency in the jurisprudence, but also offer an opportunity for the judges to determine which provisions should be upheld or not. This essentially is what they have been doing in their judgments so far. Consequently, the current jurisprudence is that all Constitutional provisions are justiciable unless proven otherwise.

[800] *Lotto case* (n 54)1106-1107

[801] *Lotto case* (n 54)1106-1107

5.5 Implications of Chapter 6 Justiciability: Article 37(1) and the 2020 Policy's Standing

The three Supreme Court cases present the possible position of the justiciability of Article 37(1). The judgment per the *Lotto* case sets the presumption that all the provisions of the Constitution have effect. Ultimately, Article 37(1) is justiciable but can be rebutted if it does not lend itself to enforcement by the courts. Currently, no case has concluded on the justiciability of Article 37(1), so its rebuttal is not certain. However, a test for chapter 6 provision rebuttals can be found in the case of *Child Rights International v the Attorney General.*[802] When discussing the rebuttal of Chapter 6 provisions, the Court concluded that

'Although parts of chapter 6 of the Constitution 1992 may be justiciable, it would depend upon the ability of the plaintiff to demonstrate that the applicable provisions in his particular case fall into the category of the "justiciable."[803] Also, in such litigations

'It is not sufficient to refer to the provisions without explaining in specific terms what conduct, or omission of the litigants, falls within' it.[804]

This places the burden of proof on the party wanting to rely on the Chapter 6 provision. It also suggests a high justification threshold. In this case, the claimant's reliance on Article 37 to hold the Government accountable for not taking urgent steps to protect children against moral and physical hazards failed to satisfy the justification threshold required. Therefore, Article 37 was not given effect.

In applying this test to the 2020 Policy, the Government must demonstrate that Article 37(1) is justifiable in relation to 21(1)(e) in imposing obligations. The Government could argue that obligations for licence and submission of reports promote transparency and accountability, which ensures equal enjoyment of the freedom of association by sector actors and beneficiaries. However, an argument against this is that the obligations come with sanctions that limit and abrogate the freedom of association. If we apply the strict interpretation of the *Restrictions* case,[805] Article 37(1) cannot be applied to limit and or abrogate fundamental freedoms, only ensure equality. Therefore, the research argues that the obligations are likely to be rebutted on three grounds. They are: Judicial position, the CIBA case and the Secretariat's punitive powers.

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[802] Child Rights International v the Attorney General (J1/16/2022) [2024] GHASC 6

[803]Child Rights International v the Attorney general (n104)20

[804] Child Rights International v the Attorney general (n104)27

[805] *Restrictions case* (n 27)

5.5.0 Judicial Position

Even though the *31st December, CIBA* and *Lotto* rulings were inconsistent, the judgments in every case sought to curtail Government power. In the *31st December* case,[806] Ghana had finally transitioned into a democratic country, with the Government in power being the transformed PNDC military Government.[807] By ruling that Chapter 6 provisions were justiciable, it terminated the Government's desire to celebrate the coup d'état, helping solidify democratic rule and the power of the Supreme Court.

Likewise, in the *CIBA* case, the Government in power was still the transformed PNDC military Government, which had previously suppressed third sector organisations.[808] Article 21(1)(e) was especially created to avoid a repeat of this, but was silent on preventing interferences. By ruling that Chapter 6 provisions were not justiciable unless certain instances apply and determining that those circumstances applied in the case, the Supreme Court was able to enforce Article 37(2), which prevented State interference. This helped maintain the enjoyment of fundamental freedom free from possible further interferences by successive Governments.

In the *Lotto* case, though the Government had changed, private lotto operators had been in business for years, and the executive actions basically resulted in a Government monopoly enabled by the National Lottery Authority. This meant private individuals were out of a job. The public repercussion would have been excessive, so the Supreme Court ruled that all Constitutional provisions were justiciable unless proven otherwise, thereby enforcing Article 36 as a right, in and of itself.

Therefore, the Supreme Court judgements effectively controlled Government powers and preserved the country's democratic standing and people's enjoyment of the fundamental freedoms.

Consequently, since Article 37(1) does not curb Government power but extends it through the imposition of obligations, it stands the chance of being rebutted. This is highly likely, especially when Article 37(1) is viewed within the lens of historical suppression of the sector, broad interpretation of Article 21(1)(e) and the court giving effect to Article 37(2) in *CIBA*. This conclusion is supported by *Mensima*[809] where Acquah JSC argued that

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[806] *31st December case* (n80)

[807] *See Section 2.4*

[808] *See Section 2.3.7*

[809] Mensima & other v Attorney- General [1996-97] SCGLR 676

"The essence of freedom of association is the liberty or lack of compulsion on the individual to form or join an association".[810] In his analysis, so far as rules restrict people in their enjoyment of free association, they infringe on their rights.[811]

Still, Date-Bah JSC's ruling in the *Lotto* case showed Chapter 6 provisions represented the changing international law landscape, where Economic, Social and Cultural rights (ESC rights) are legitimate and enforceable through purposive interpretation.[812]

If this opinion stands, Article 37(1) could be regarded as a right on its own, free from any rebuttals. It would justify Government initiatives that balance the freedom of association with obligations in line with international standards. Therefore, the justiciability of Article 37(1) could be justified under the 2020 Policy's position as a fulfilment of International FATF obligations.[813] Further to this, by not allowing legitimate rules that ensure equal enjoyment of rights, beneficiaries will continue to be marginalised, exploited, and their traditional knowledge stolen without any recourse. Indeed, recommendations made in Chapter 9, suggest the Supreme Court shift from narrow to purposive interpretation of limitations to allow equal enjoyment.

Nonetheless, the Supreme Court show in the *Restrictions Act*,[814] *CIBA*,[815] *Mensima,*[816] *GBC,*[817]*IGP* [818] *and Gorman & Others v The Republic,*[819] cases discussed in Chapter 3[820] that the fundamental freedoms are very important. They are the foundation which dictates the fabric of Ghanaian democracy. They are to be enjoyed broadly and are alienable meant to avoid situations like *Re Akoto.*[821] Limitations where they apply are few and read narrowly, especially where they give the Government interfering powers. Since, Article 37(1) enforcement, could not only infringe the freedom of association but all Chapter 5 provisions, the Supreme Court is likely to rebut it.

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[810] *Mensima* (n 65) 715

[811] *Mensima* (n 65) 717

[812] *Lotto case* (n 54)1106-1107

[813] See 5.7.0 for discussion on the position of international obligation in Ghana

[814] Appiagyei-Atua & 7 others vs The Attorney General [2023] GHASC 32 (Restriction Act case)

[815] New Patriotic Party v Attorney-General [1996-97] SCGLR 729 (CIBA Case)

[816] Mensima & others v Attorney- General [1996-97] SCGLR 676 (n 65)

[817] New Patriotic Party v Ghana Broadcasting Corporation [1993-94] 2 GLR 354 (GBC case)

[818] New Patriotic Party (NPP) v Inspector-General of Police [1993-94] 2 GLR 459 SC (IGP case)

[819]Gorman & Others v The Republic AHRLR 141 (GhSC 2004)

[820] *See Section 3.5*

[821] Re *Akoto & 7 Others* [1961]2 GLR 523, SC

5.5.1 CIBA Case

In addition to the judicial position, the *CIBA* case presents the likely outcome of the 2020 Policy obligations. The case essentially enforced Article 37(2)(a) as the scope and qualifier of 21(1)(e), thereby banishing any form of Government interference. By standing on Article 21(1)(e) and 37(2)(a), the Policy's requirement for sector actors to register and apply for a licence from the Secretariat[822] becomes Constitutionally inconsistent. Government action facilitating a licence, especially the fit-for-purpose test and punitive measures identified in Chapter 4 would be ultra vires.

Article 37(1) can therefore be rebutted on the basis that the scope of Article 21(1)(e) is more inclined towards Article 37(2)(a) than Article 37(1). However, a counterargument could be inferred from Sophia JSC's point in the *CIBA* case. She stated that:

'…in the interpretation of any law or in the determination of the Constitutionality of any law or action of any person, the final determination is whether the spirit of the Constitution, as encapsulated by the principles, has been fulfilled'[823]

Therefore, Article 37(1) is arguably consistent with the spirit of the Constitution under Article 12(2), which permits limitations on fundamental freedoms on public interest grounds. Nevertheless, given the Supreme Court's narrow interpretation of limitations including Article 12(2), this argument is unlikely to stand. Especially, since it appears that the Government avoided situating the Policy under Article 12(2) due to the difficulty of satisfying its criteria. *Mensima*[824] is evidence of this, where the Supreme Court even refused the grounds of public safety to impose limitations on Article 21(1)(e).

5.5.2 Secretariat Power and Sanctions

Finally, even where Article 37(1) is enforced, it supports the Secretariat's power to licence, monitor, and oversee the sector, as in CIBA, thereby justifying Government interference. Moreover, the Secretariat's power even includes sanctions and the power to shut down organisations permanently.[825] This power is a blatant disregard for Article 21(1)(e), especially since its

[822] NPO Policy, (2020) paragraph 2.2.

[823] CIBA case (n 41) 461

[824] *Mensima* (n 65)

[825] NPO Policy (2020) paragraph 2.2- *An organisation or institution that fails to register and or apply for a licence shall be closed down or subjected to a fine as determined by the Secretariat or the NPO Act.*

enforcement is not overseen by Parliament nor the courts, giving the executive immense influence over the sector. It also creates a new circumstance for the derogation of freedom of association beyond prescribed Constitutional limitations. As shown in Chapter 3, only Articles 31 and 32 could derogate fundamental freedoms in a national emergency supervised by Parliament.[826] Since the 2020 Policy is not legislation, exercised by the Secretariat not the President, nor functions in an emergency, this powers are illegal.

In conclusion, the *Lotto* case and the obiter of Date-Bah JSC in the *31st December* case on the need to follow international standards validate Article 37(1) and the obligations imposed in the 2020 Policy. Nonetheless, the three arguments, particularly the Secretariat's power to shut down organisations, suggest that its rebuttal is highly plausible.

This make its legal standing precarious, which is the case for its political sustainability discussed below as well.

5.6 Political Sustainability of Policies in Ghana

Unlike legislation, which tends to endure, policies are more dynamic. Policies are more adaptable over time through reviews and or political change. Policies, therefore, can emerge at different times in a political cycle influenced by Government manifestos, thematic policies or even legislation.[827] Ranson[828] therefore argues that despite the political legitimacy and solutions public policy brings, the form and substance can challenge the practice and traditions of organisational(sector) workings that may create conflict.[829] This is because policies stress ideals that change due to public opinion. Therefore, the nature of policies is future-oriented, dynamic and proactive. This understanding of policy can be regarded as an advantage, as it helps align with societal ideals and values, especially

[826] The Constitution of the Republic of Ghana, 1992, Article 31 and 32

[827] British Ecological Society, 'An Introduction to Policy in the UK. Policy' (British Ecological Society, 2017) <https://www.britishecologicalsociety.org/wp-content/uploads/2017/05/An-introduction-to-policymaking-in-the-UK.pdf> accessed 02 September 2025

[828] Stewart Ranson, 'Theorising Education Policy'. (1995) 10 (4) Journal for Education Policy 427 < https://www.tandfonline.com/doi/abs/10.1080/0268093950100408> accessed 4 September 2026

[829] Ranson (n 84)

since policy is essentially contested by diverse interest groups struggling to acquire influence over purposes and resources.

Conversely, its advantage can also mean that it becomes temporary. The short-term trait of policy creates an issue for the sustainability of the 2020 Policy. In other circumstances, the evolution of policy may be advantageous. But this is not the case in Ghana, given the stagnation of regulatory reform resulting from the *regulatory power dynamics* between Government and sector actors. Moreover, if done away with before a sector legislation is enacted, the sector regulation framework will decline. If the new Government wants to create another reform, this will be further subject to the *regulatory power dynamic*, leading to a delay or even failure.

Also, when this short-term nature of policy is coupled with Ghana's winner-takes-all system, the 2020 Policy is not likely to be sustained for long. This is because policies, by virtue of their being created and enforced by the executive, wholly rely on political will to sustain them. In 2024, the NPP Government who created the 2020 Policy were voted out of office.[830] With a change of administration comes a new policy area and focus, leaving the 2020 Policy at the mercy of the incumbent NDC Government.

5.6.0 Ghana's Winner-takes-all (WTA) System

As seen in Chapter 2, based on lessons learnt from turbulent historical governance, the 1992 Constitution has several safeguards, including disallowing a one-party State. The Constitution declares Ghana as a multiparty system, enabled by Article 55, which legitimises political parties[831] as the first medium that ensures plural and democratic representation. This is followed by general Presidential and Parliamentary elections. But this system has also created a winner-takes-all political environment.

In conceptualising winner-takes-all politics in Ghana, Gyampo defines it as

[830] Electoral Commission Ghana, 2024 Presidential Election Results. < https://ec.gov.gh/2024-presidential-election-results/> accessed 4 September 2026

[831] The Constitution of the Republic of Ghana, 1992, Article 55 (1)

'a state capture or the partisan monopolisation of state resources, facilities and opportunities, as well as the exclusion of political opponents from national governance'[832].

This essentially creates political party dominance where the victorious party consolidates its power by exacting compulsory retirements, dismissals, terminations of appointments, cancellation and withholding of entitlements, as well as wanton seizure of state properties in the care of the previous administration.[833] The previous administration then becomes the opposition party and receives no role in governance, irrespective of the number of votes received in the elections or the number of people they represent.[834] The WTA system is further enabled by the vast power the Constitution gives to the President, especially in appointments and the influence over Parliament and policies.

In terms of policies, we saw in *section 4.1* of the thesis that the President is vested with all executive power and has the freedom and even the obligation to shape policies once in power. Further, the power of appointments means the President has influence in all three institutions. For example, Article 78(1) demands that the majority of the President's Ministers and cabinet come from Parliament, who are all appointed by the President. The President also has overall power in major appointments, including the head of the Ghana Electoral Commission and other Commission heads. Further, the President has the power to appoint the Chief Justice of the judiciary.

Consequently, after gaining executive control and influence over the Judiciary, the President captures Parliament through party majority and ministerial appointments, which help reduce Parliament's oversight on the Government and enable the smooth push of the Government's agenda in Parliament. [835] Thus, the power of the President and the 'capturing' of the State by his party and the executive leads to party monopolisation. Hence, the WTA system ends up creating an environment for fierce competition in the acquisition of Presidential power. This has marred elections and even resulted in two major court cases[836] at the Supreme Court, where both the NDC and NPP sought to overturn the election results.

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[832] Ransford Edward Van Gyampo, 'Dealing with Ghana's Winner-Takes-All Politics: the Case for an Independent Parliament' [2015] 42 (2) The African Review: A Journal of African Politics, Development and International Affairs63 <https://www.jstor.org/stable/45341706 > accessed 4 September 2026

[833] Gyampo (n 88)

[834] Enoch Randy Aikins, 'Winner takes all: The Bane of Ghanaian Politics' *Graphic Online* (Accra, 23 April 2022) <https://www.graphic.com.gh/news/politics/winner-takes-all-the-bane-of-ghanaian-politics.html> accessed 4 September 2026

[835] Gyampo (n 88)

[836] Akufo-Addo v Mahama and Another [2013] GHASC 137 and Mahama v Electoral Commission [2021] GHASC 1

So, within the WTA system, the President and his party become the most powerful body in Ghana as they essentially capture all power. They use this power in many ways, including the influence and change of policies as they please. Governments promote their own policies and even undo the predecessor's programmes in order to win political favour. Reforms are therefore considered as a show of power and a quest for political recognition rather than in the interest of development.[837]

Therefore, Ayee's[838] study of the NPP and NDC manifestos notes that upon taking office, the executive relies mainly on their manifestos and or interests to govern the country instead of the National Development Plans. This results in unequal development and policy disruptions.[839] A key example of such disruptions is found in the education sector.

5.6.1 WTA Policy Disruptions: Example from the Educational Sector

The Fourth Republic has seen more major educational policy reforms than at any time in Ghana's history since independence. Prior to the Fourth Republic, there were only two major education reforms in 1975 and 1987[840] respectively. After this, each Government administration created its own policy reform, leading to the educational system becoming a revolving door of reforms influenced by partisan objectives.

In the first administration, the NDC, having reformed the system in 1987 under its predecessor's PNDC military Government, continued to govern the sector under the 1987 reform. The 1987 policy, among other provisions, reduced the pre-university school length from 17 years to 12 years by replacing the A and O levels system with primary, Junior and Senior Secondary School

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837 Ghana Web, 'Ghana Has too many educational reforms fraught with inconsistencies-Prof Opuku- Agyeman' *Ghana-web General News* (Accra, 19 July 2019) <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Ghana-has-too-many-educational-reforms-fraught-with-inconsistencies-Prof-Opoku-Agyemang-764989> accessed 4 September 2026

838 Joseph RA Ayee, 'Manifestos and elections in Ghana's Fourth Republic' [2011] 18 (3) South African Journal of International Affairs 367 < https://www.tandfonline.com/doi/abs/10.1080/10220461.2011.622951> accessed 4 September 2026

839 As such there has been a call for manifestos to be reflective of the national development plan since there have been many discontinued projects due to the fixed practice of a change in Government every eight years since 1992

840 Maxwell A. Aziabah, *The Politics of Educational Reform in Ghana: Understanding Structural Persistence in the Secondary School System* (Springer International publishing, 2018) 47-48

structures.[841] The reform also introduced two new national exams, i.e. the Basic Education Certificate Examination (BECE), and the Senior Secondary School Certificate Examination (SSSCE).

However, after coming into power, the NPP considered the 1987 framework a failure and set up a Commission to review the system. But, against the Commission's recommendation, they implemented a different system, especially for secondary school education, changing the duration from 3 years to 4 years in 2007. The Commission had instead recommended a 3-year system supported by increased resources. Yet, due to the NPP's neoliberal ideologies and supposedly wanting the educational system to be more accessible and richer[842] they made the change. Core course contents were also revised in the fulfilment of political interest.

When they returned to office in 2008, the NDC, having promised in their manifesto to reverse the 4-year system immediately, set out to do this and reformed the system back to a 3-year term in 2010.[843]This undoubtedly affected students and parents, as the 2012 Senior Secondary Certificate Exams had cohorts from the 4-year and 3-year systems sitting in the same exams. This action produced strong arguments about the quality and stability of secondary education and the capacity of universities to admit a double portion of students.

Taking office in 2016, the NPP Government, this time, did not change the study years but instead, instituted a free Secondary School system based on their campaign promises. The reform this time was based on three elements: improved learning outcomes, enhanced accountability and equity at all levels of the education sector.[844] The issue with this was that the free secondary school system was hurriedly implemented without much preparation by way of resources, infrastructure and capacity. Therefore, the Secondary school infrastructure couldn't sustain and keep up with the policy. This led to a rotation of study terms, where one student group went to school, and the others stayed home.

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[841] Paul Acheampong Boakye, '*Explaining Education Reforms in Ghana: An Institutional and Ideational Perception'* (Doctoral thesis, University of Saskatchewan, 2019)

[842] Boakye (n 97)

[843] Boakye (n 97)

[844] Republic of Ghana Ministry of Education, 'The Ghana Education Reform Agenda' (2018-2030) < https://whedafrica.org/index.php/2022/01/31/the-ghana-education-reform-agenda/> accessed 4 September 2026

In reviewing the reform policies, the former minister of education under the NDC administration Prof Opoku- Agyeman criticised the education reforms as not being based on sound policy making, resulting in a system fraught with inconsistencies, persistent adjustments requiring sober reflection.[845]

These haphazard policy reforms show the instability the WTA system can create.

5.7 Implication of Winner-Takes-all on the 2020 Policy

As shown in Chapter 2, the Fourth Republic has seen the dominance of the NDC and NPP Governments, who have very different approaches to third sector regulatory reform. Following the voting pattern, the NDC in January 2025 took office after the NPP were voted out after eight years. Based on the WTA system, the NDC will likely seek to change the 2020 Policy according to its interests.

Even if this does not happen, paragraph 4.3[846] of the 2020 Policy calls for a policy review. It provides that

"The NPO Policy will be reviewed after every Five (5) years or when the urgency arises to respond to emerging issues which would have a strategic impact on the sector. The Programmes and projects which will be developed and implemented from the policy will also be reviewed frequently taking into account feedback from monitoring and evaluation reports. Major reviews will be undertaken regularly to ensure consistency with the implementation of the National Development Planning Commission (NDPC) planning and budgeting processes."

The advantage of this is that the review is meant to be participatory and may address some of the gaps highlighted in this thesis. However, this reform is meant to be undertaken by the Policy Planning, Monitoring and Evaluation Directorate of the Sector Ministry in collaboration with the Secretariat and the sector minister, who will then advise the Cabinet of the approach to take. The main responsibility lies with the Secretariat, which is responsible for the review and revision. So, though it is meant to be collaborative, Government influence seems greater than that of sector

[845] Ghana web (n 93)

[846] National Non-Profit Organisations Policy (2020) Paragraph 4.3

actors. The review can therefore disrupt and destabilise the ownership and acceptance by sector actors and create another regulation stagnation.

Nonetheless, due to the Policy being a response to an international obligation, this may hold the Government in check, and the 2020 Policy will not be easily changed.

5.7.0 Winner-takes-all against International Obligation

As discussed in Chapter 1, Ghana is a member of the Financial Action Task Force, which sets international standards to prevent illegal activities that harm society[847] and one of the main aims of the 2020 Policy is to fulfil international obligations under FATF.

In the case of *Banful and Another v Attorney General and another*[848] the Supreme Court held that for international law to come into effect in the country, it requires ratification from Parliament supported by more than half of the votes of the members. This judgement was further supported in the case of The *Republic* v. *High Court (Commercial Division) Accra (Ex Parte Attorney General; Interested Parties: NML Capital Limited & the Republic of Argentina)*. The court noted that in Ghana, customary international law is part of domestic law by virtue of the common law. However, ratified treaties need to be incorporated into domestic law via legislation.

For example, the Anti-Money Laundering Act 2020 was created in fulfilment of FATF recommendation 8, as such essentially ratifies international obligations under legislation. In support of the Act, the 2020 Policy also acts as a safeguard to reduce the risk of terrorism financing in the absence of legislation. Consequently, in its review of Ghana's efforts in reducing financial terrorism risks, the GIABA[849] investigators referenced the 2020 Policy and the Directive for Operations as the key instruments helping to implement recommendation 8. Therefore, an incumbent Government without introducing a new policy or legislation will not easily do away with it upon the threat of failing international commitments. This has been the case in Climate Change regulation in Ghana.

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[847] Financial Action Task Force. < https://www.fatf-gafi.org/en/home.html> accessed 4 September 2026

[848] Banful and Another v Attorney General and another [2017] GHASC 21

[849] GIABA, 'Anti-money laundering and counter-terrorist financing measures – Ghana, Second Round Mutual Evaluation Report' (GIABA, Dakar,2018)121< https://www.fatf-gafi.org/content/dam/fatf-gafi/fsrb-mer/GIABA-Ghana-MER-2018.pdf.coredownload.inline.pdf> accessed 4 September 2026

Like the third sector, the Climate Change regime in Ghana does not have direct legislation despite being a party to the Climate agreements.[850] Related provisions are scattered under the Environmental Protection Agency Act 1994(Act 490) and the Petroleum (Exploration and Production) Act 2016 (Act 919), with the main regime supported by two policies. They are the National Climate Change Adaptation Strategy 2011 and the National Climate Change Policy 2013. These two Policies have survived two general elections and one change of Government administration. There also seems to be no political intention to do away with it, nor is it affected by the short-term nature of policies or the WTA system.

The sustainability of the Climate Change policies thus provides another side to understanding the effects of the WTA system on policies. From this we can conclude that while ordinary policies will be easily subjected to the wilful interests of Governments, policies that seek to fulfil international obligations might be exempted. As such, it is possible that despite the short-term nature of policies, the review provision and especially the WTA system, the 2020 Policy may well be kept until sector legislation is enacted.

Another reason that may preserve the 2020 Policy is the difficulty in sector regulation reform due to the *regulatry power dynamics* discussed in Chapter 2. Still, where the FATF obligations may seek to further improve the 2020 Policy, the *regulatory power dynamics* may result in further stagnation.

Therefore, the 2020 Policy would likely be sustained by the incumbent Government until a sector Bill is agreed by Government and sector actors. Even if such a significant moment arrives, the enacted legislation must have obligations founded on viable Constitutional limitations to survive. Both instances according to Chapters 2, 3 and this chapter shows this to be improbable.

5.8 Conclusion

In conclusion, the 2020 Policy situates itself under Article 21(1), 37(1), (2)(a)(b) and 3 as its legal standing to regulate the sector. Article 37 (1), particularly allows Government to make policies that facilitate equal enjoyment of the freedoms. The issue is that it is found under Chapter 6 of the Constitution, whose justiciability was contested.

[850] Ghana has ratified the UN Framework Convention on Climate Change in December 1995, the Kyoto Protocol in May 2003, and the Paris Agreement in September 2016

The Supreme Court have heard three cases ; *31st December, CIBA, and Lotto* on this issue with varying judgments. In the first case, the court found that the Chapter 6 provisions were justiciable because all provisions under the constitution are enforceable. In the second case, the court ruled that they were not justiciable due to the intention of the committee of experts who drafted the constitution. For the provisions to be justiciable, they must be linked with another Constitutional right which gives them effect. In the absence of this, they remain unenforceable in and of themselves. In the third case, however, the court ruled that they were justiciable unless rebutted. This judgement is the current judicial position on the issue. Therefore, sector regulation imposing obligations could be made under Article 37(1), but is subject to rebuttal. This puts the said regulation in a precarious position, making Government action that impose obligations challengeable.

Also, the Supreme Court cases on the justiciability of chapter 6 provisions, whilst inconsistent, always choose to limit Government powers. Therefore, even if the Article 37 provisions are enforceable and as such confirm the legal standing of the 2020 Policy provision, the powers given to the Secretariat, especially to shut down organisations, will be deemed unconstitutional against Article 21(1)(e).

In addition to the Constitutional validity issue, the 2020 Policy also faces sustainability issues, especially due to Ghana's winner-takes-all system, which places all administrative power into the hands of the President and his party. This often results in new administrations doing away with the old administration's policies. Therefore, it is possible that the incumbent NDC Government will do away with the Policy. But evidence from the climate change regime shows that where a Policy is tied to the fulfilment of international law and there is an absence of legislation, the policy will not be easily subjected to the winner-take-all system.

Finally, the difficulty in regulatory reform in the third sector due to the *regulatory power dynamics* between the Government and sector actors may also help preserve the 2020 Policy until legislation takes its place. Hence, in the absence of a judicial claim against the Government on the lawfulness of the Policy, or the NDC Government doing away with it, it remains operational. The next chapter therefore discusses it effectiveness.

Chapter 6: The Effectiveness of the 2020 Policy's Coordination Framework

6.0 Introduction

Although the legal standing and political sustainability of the 2020 Policy are precarious, it remains the sector's first and only regulatory framework.[1] Therefore, besides discussing its scope and sustainability, assessing its effectiveness in addressing sector regulation gaps demonstrates the extent to which it strengthens the sector's regulatory regime.

Key impacts of the absence of sector legislation on the regulatory regime were shown in Chapter 1 to include a lack of a coordinated framework, limited transparency and accountability mechanisms.[2] Although these deficiencies are not definitive, they represent the foremost sector challenges.[3] They are also the main reasons that propelled the 2020 Policy's creation, which is to enhance the operations of sector actors by improving monitoring and coordination.[4] Consequently, monitoring within the Policy's context primarily concerns transparency and accountability, whereas coordination focuses on facilitating effective collaboration and uniformity.[5] The measure of the Policy's effectiveness discussed in this thesis, therefore, focuses on its coordination, transparency and accountability provisions. This chapter addresses the first, and Chapters 7 and 8 address the last two, respectively.

In analysing the effectiveness of the coordination framework, the chapter discusses three core issues identified in Chapter 4. One is the implication of the definition adopted by the Policy. Two, the cohesiveness of the framework in the inclusion of legislative provisions that make collaboration effective. Three, the mechanism used for unifying self-regulation codes. The key findings are shown below.

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[1] At this time of writing

[2] GIABA, 'Anti-money laundering and counter-terrorist financing measures – Ghana, Second Round Mutual Evaluation Report' (GIABA, Dakar,2018)94 < https://www.fatf-gafi.org/content/dam/fatf-gafi/fsrb-mer/GIABA-Ghana-MER-2018.pdf.coredownload.inline.pdf> accessed 4 September 2026

[3] National Nonprofit Organisations Policy (2020) paragraph 3.1

[4] National Nonprofit Organisations Policy (2020) paragraph 3.1

[5] National Nonprofit Organisations Policy (2020)1

6.0.0 Key Findings

Ultimately, the thesis found all three coordination measures to be limited and, as such, do not solve the coordination challenges in the regulatory regime. They essentially maintain the status quo and do not go far enough to bring meaningful change.

First, the definition applies only to sector organisations that are primarily engaged in mobilising funds for development processes. This discounts '*religious worship-based organisations'* like churches and mosques, which are not primarily set up for fund mobilisation. The definition, therefore, creates two regulatory regimes for the sector. Such a situation was created even though *religious worship-based* organisations have the same regulatory concerns, including diminished oversight, beneficiary marginalisation and exploitation. An attempt to enact legislation to regulate them - especially one-man churches - was also protested, showing evidence of *regulatory power dynamics* identified in Chapter 2 here, too. The finding indicates that the wording in the definition that causes this separation could be traced to academic literature, PNDC law and the 1992 Constitution. However, current practices in the country, international practice, and the definition of development render such a divide archaic, irrelevant, and troublesome.

Second, though the Policy's coordination is focused on improved local service delivery to reduce service delivery deficiencies, it failed to refer to the Local Government Acts. The Local Government Acts are the key laws that facilitate Government-sector relations in service delivery at the local level. By not emphasising them, the Policy discounts their relevance and thereby reduces awareness among sector actors and Local Government. This essentially maintains conditions that enable project duplication and ineffective design of service delivery.

Finally, the Policy's aim of coordinating self-regulation codes into uniform rules and practices was also found lacking. Consequently, the Policy's coordination framework is inadequate to strengthen the sector's regulatory regime. The basis for these finding are shown below.

6.1 Coordination Issues and the 2020 Policy's Provisions

The Policy's coordination objective is mainly hinged on facilitating effective collaboration and uniformity.[6] This is based on the outlined Policy rights and responsibilities shared mostly by the Government and sector actors for efficient service delivery.[7]

The first aspect of the coordination provisions is based on the parties. From Chapter 4, we find the Government to be represented by public institutions, including the Ministry for children, gender and social welfare and three local Government agencies, with the Secretariat at the centre. Sector actors, on the other hand, are categorised by the Policy as non-profit organisations (NPOs). Therefore, sector-Government collaboration under the Policy is meant to only happen between the identified Government agencies and organisations defined as NPOs.

The second aspect of the collaboration provisions is about the rights and responsibilities of the parties in effective service delivery. Key issues of service delivery identified by the Policy, which require strong Government and sector collaboration, are challenges of duplication, inefficiencies in project designs and implementation of interventions, especially at local levels.[8]

The third aspect is effective collaboration, which requires uniformity of rules, particularly sector codes of conduct. The Policy thus creates a national platform to facilitate uniformity of sector codes and conduct.[9]

Improving sector coordination by addressing these aspects is reasonable, as the lack of sector actor definition, duplicated local projects, and diverse sector codes create disruptions in service delivery and have been long-standing issues. Therefore, the coordination provisions are the key efforts the Policy charts to strengthen sector regulation. Nevertheless, the analysis of the Policy's attempt shows minimal improvement and even entrenches sector regulation challenges, making the coordination framework unsuccessful.

[6] National Nonprofit Organisations Policy (2020)1

[7] National Nonprofit Organisations Policy (2020) paragraph 1.5 and 2.6

[8] National Nonprofit Organisations Policy (2020) paragraph 1.2

[9] National Nonprofit Organisations Policy (2020) paragraph 3.7

6.2 Coordination Parties: Definition of Non-profit Organisations

The Policy categorises sector actors as NPOs, thereby limiting collaboration to those within this category. This is emphasised by the *Directive for Operations*, which states that the Policy applies only to NPOs.[10] As shown in Chapter 4, the definition of NPO comprises three elements. They are (1) not-for-profit legal persons/voluntary associations, (2) primarily set up to generate and use resources (3) for public interest purposes.[11]

Though the definition is broad and seemingly includes the practices of all sector organisations in Ghana, the corresponding issue raised against it is its limitation to a particular group of sector actors.[12] These are voluntary organisations that primarily engage in mobilising and using resources, particularly for development work. The use of resources for development work is emphasised in the Policy's introduction, which recognises NPOs as significant partners and a valuable force in sustainable national development.[13] The development rhetoric runs throughout the 2020 Policy and lauds sector actor activities congruent to it, including:

"*Social Protection, economy, governance, trade, gender, human rights, environment, advocacy, participatory development, information technology, finance, security,*[14] *"healthcare, food security, housing, microcredit and social services."*[15]

The Policy's coordinated framework is therefore only concerned with sector actors who primarily mobilise resources for political and socio-economic development.*"*[16] This effectively discounts voluntary organisations that do not do this. This mainly affects groups that the research terms as *'religious worship-based'* organisations like churches, mosques and traditional religious groups whose primary purpose is to provide 'spiritual services' and not to mobilise funds[17] for development.

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[10] Directives for the Management of Non-Profit Organisations in Ghana (2020)2 < https://wacsi.org/directives-for-the-management-of-non-profit-organisations-operations-in-ghana/> accessed 4 September 2026

[11] National Nonprofit Organisations Policy (2020) paragraph 2.1. Also *See section 4.2.2*

[12] *See section 4.4.2*

[13] National Nonprofit Organisations Policy (2020)1

[14] National Nonprofit Organisations Policy (2020) 1

[15] National Nonprofit Organisations Policy (2020) 2

[16] National Nonprofit Organisations Policy (2020) 2

[17] At least the genuine ones.

When this is compared to the types of sector actors discussed in Chapter 2,[18] the 2020 Policy is found to discount key sector groups. This distinction is problematic because it effectively divides the sector and creates a regulatory gap between voluntary groups who primarily mobilise resources for development and '*religious worship-based*' organisations. However, this problem may not be entirely the fault of the Policy and its drafters, but rather of academic literature, historical governance, and, to some extent, the 1992 Constitution.

6.2.0 Justification for the NPO Definition

Starting with academic literature, Chapter 1 showed the sector categorisation of Atingdui, and Atingdui and others.[19] Their research mapped the evolution of the sector, laws and politics in precolonial[20] times, the colonial Gold Coast, independent Ghana, up until the beginning of the Fourth Republic. From this, they identified the sector to be made up of traditional associations, community-based organisations, religious and church-related organisations and NGOs/Civil society organisations[21] which the thesis used to guide its discussions in Chapters 1 and 2.

Although the thesis acknowledges and uses this categorisation, it identified an issue with the definitional scope they gave to religious and church-related organisations. From their perspective, religious and church-based organisations primarily comprise charitable groups affiliated with Christian and Islamic worldviews, as well as groups that combine African and Christian beliefs and syncretic sects.[22] They later go on to define charitable organisations as:

"local, national or international organisations that offer temporary relief and social assistance"[23]

In this context, religious and church-related organisations were seen as offshoots of colonial missionaries, African churches, and Islamic mosques, created to provide social services such as education, health care, emergency relief, and development assistance. Therefore, the churches and mosques in and of themselves were not seen as charitable organisations; rather, only their relief

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[18] *See Section 2.1 and 2.2*

[19] Lawrence Atingdui. '*Defining the Nonprofit Sector: Ghana*' (Johns Hopkins University for Policy Studies,1995) Lawrence Atingdui, Helmut K.Anheier, S.Wojciech Sokolowski, and Emmanuel Laryea, 'The nonprofit Sector in Ghana' in Helmut K. Anheier and Lester Salamon (ed), *The Nonprofit Sector in the Developing World: A Comparative Analysis* (Johns Hopskins Nonprofit Sector Series, Manchester University Press 1998

[20] Though much attention was not paid to this

[21] *See section 1.2*

[22] Atingdui and other (n 19)164

[23] Atingdui and other (n 19) 165

arms were considered as such. Consequently, the examples they used under this category were organisations they called Christian and Islamic charities, including:

Catholic Relief Services, National Christian Council of Ghana, the Presbyterian Relief Society (legacy of the Basel mission), the Evangelical Lutheran Church of Ghana, the Chartable Mutual Society of the Pentecostal church and organisations related to the Methodist and the Anglican churches, groups linked to African churches, the Muslim Koran Study Association, the Ahmadiyya Muslim Movement and the Ghana Muslim Representative Council.[24]

They therefore separated religious organisations in Ghana into two categories. Those who primarily do 'relief' work and those who do not. Using the Catholic Church in Ghana as an example, the church is not considered a charitable organisation by this definition, but only its development arm, the Catholic Relief Services, is. Despite both groups being non-Governmental and non-profit providers of societal needs.

This ultimately creates a separation within third sector regulation, justified by the PNDC military Government's action, as discussed in Chapter 2. At the time, in addition to the PNDC Government's restriction on sector actors across the board, it also enacted the Religious Bodies (Registration) Law 1989 to specifically control '*religious worship-based*' organisations.[25] It could be argued that Atindui's classification was shaped by this very act.

The separation continued into the 1992 Constitution, where Article 21(1) separates the freedoms of association and religion.[26] On one hand, this could be seen as the protection of two different rights, but on the other hand, it emphasises the difference between associations and '*religious worship-based*' organisations. In addition, the Constitution furthers this notion under Article 37(2)(b), where it states that:

The State shall enact appropriate laws to assure-

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[24] Atingdui (1995)6 (n 19)

[25] Particularly churches.

[26] The Constitution of the Republic of Ghana, 1992, Article 21(1)(c)-freedom to practice any religion and to manifest such practice.

The Constitution of the Republic of Ghana, 1992, Article 21(1)(e)-freedom of association, which shall include freedom to form or join trade unions or other associations, national and international, for the protection of their interest.

"the enjoyment of rights of effective participation in development processes including rights of people to form their own associations free from state interference and ***to use them to promote and protect their interests in relation to development processes****, rights of access to agencies and officials of the State necessary in order to realise effective participation in* development processes; ***freedom to form organizations to engage in self-help and income generating projects; and freedom to raise funds to support those activities"***[27][emphasis added]

The provision stresses associations to mean organisations that further developmental goals through the generation of income. As shown in Chapters 4 and 5, the Constitutional basis of the Policy includes Article 37(2)(b) and Article 21(1). Therefore, when read together within the context of the sector's definitional scope, the presumption is that '*religious worship-based*' organisations are not part of the intended associations to be formed under Article 21(1)(e). Rather, they are a practice of religion under Article 21(1)(c).

Therefore, the academic categorisation, the PNDC law, and the 1992 Constitution seemingly condone the definitional limitation and the separation of NPOs adopted by the 2020 Policy. However, reliance on Article 37(2)(b) to create such a definition is risky due to its precarious justiciability as shown in Chapter 5. Though Article 37(2)(b) was ruled to be justiciable in the CIBA[28] case, this was within the context of disallowing State interference in the enjoyment of the freedom of association. The Supreme Court's interpretation was not for the purpose of highlighting the divide between religious worship and development organisations. Therefore, if the court is asked to interpret it within the definitional context of limiting the organisations that fall within Article 21(1)(e) to development organisations alone, its justiciability in this regard may be enforced or rebutted.[29]

Further, this divisive approach does not reflect current practices in Ghana. By virtue of their worship, modern '*religious worship-based*' organisations increasingly carry out relief projects themselves and not through an established development arm. For example, the Central Gospel

[27] The Constitution of the Republic of Ghana, 1992, Article 37(2)

[28] New Patriotic Party v Attorney-General [1996-97] SCGLR 729 (CIBA Case)

[29] Ghana Lotto operators & others vs National Lottery Authority (2007-2008) 2 SCGLR 1008 (Lotto case)
The Supreme Court held that Chapter 6 provisions are justiciable but could be rebutted if it does not lend itself to being enforced.

Church led a charity walk raising funds for mental health,[30] the Church of Jesus Christ of Latter-day Saints donated hospital equipment,[31] and some churches even donated 100,000 Ghana cedis each towards the building of a National Cathedral, which was a Government initiative.[32] In addition, some churches have been known to make donations during celebrations such as Church anniversaries, Christmas and Easter, including those that have *'religious relief-based'* organisations.

When we go by the 2020 Policy's definition, the organisations themselves are not NPOs, and their 'charitable' actions do not make them NPOs, as they were not created to primarily mobilise funds as a main duty. This creates a ridiculous system and problematic occurrence, allowing nefarious organisations to fall under the regulatory radar. Since the justiciability of Article 37(2) is inconclusive, the Constitution cannot be said to wholly justify such an approach to sector regulation.

In addition to this, the research advances two key reasons why such an approach is unacceptable. One, the regulatory issues and nature of the *'religious worship-based'* organisations follow the same limitations as 'development-based' organisations. Two, international practices and the definitional scope of 'development' now includes religious worship and therefore *religious worship-based* organisations are part of the development umbrella, making such distinctions redundant. These points are expanded below.

6.2.1 Limited Regulation of 'religious worship-based' Organisations

Before the 2020 Policy, the sector as a whole, including *'religious worship-based'* organisations, was without a regulatory framework. The Religious Bodies (Registration) Law 1989, mentioned above,

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[30] Graphic Online, ICGC donates 'Life Walk's' GH¢200,000 proceeds to psychiatric hospitals in Ghana. *Graphic Online* (Accra, 28 March 2022) < https://www.graphic.com.gh/news/general-news/icgc-donates-gh-200-000-to-psychiatric-hospitals-in-ghana.html> accessed 4 September 2026

Abubakar Ibrahim, 'ICGC donates GH¢300K to Mental Health Authority at Life Walk 2025' *Joy Online* (Accra, 22 March,2025) <https://www.myjoyonline.com/icgc-donates-gh%C2%A2300k-to-mental-health-authority-at-life-walk-2025/#google_vignette> accessed 4 September 2026

[31] The Church of Jesus Christ of Latter-Day Saints, 'Church Donates Hospital Equipment in Ashanti Region, Ghana' (The Church of Jesus Christ of Latter-Day Saints , 2023) < https://news-gh.churchofjesuschrist.org/article/church-donates-hospital-equipment-in-ashanti-region--ghana> accessed 4 September 2026

[32] Citi Newsroom, 'National Cathedral: See how much churches have donated towards project' Cit Newsroom (Accra, 30 June,2022) < https://citinewsroom.com/2022/06/national-cathedral-see-how-much-churches-have-donated-towards-project/> accessed 4 September 2026

was invalidated by deregulation because it imposed strict limitations on freedom of worship.[33] Therefore, according to Asiedu

"Every religious organisation in Ghana is autonomous, and the State does not directly or indirectly participate or otherwise determine the governance of any religious grouping"[34]

As a result, religious worship-based organisations have lacked adequate state oversight, just as the 'development' sector actors have. The only way they come under Government oversight is when they register as companies or trusts, which, as already noted, is discretionary.

6.2.1.0 Registration of 'Religious worship-based' organisations.

Like other sector actors*, religious worship-based* organisations gain Government recognition through registering as a company limited by guarantee under section 7(2)(b) of the Companies Act 2019, linked to the Registrar General's Department. This provides possible tracing as the registration requires the submission of a minimum of two directors/executive members (pastor/Imam), a minimum of one subscriber (1 member), a secretary, a signed declaration and a consent letter from a certified auditor by the Institute of Chartered Auditors.[35]

All persons stated above are also expected to provide their personal tax identification numbers, email and postal address.[36] However, registration is possible with one member. While this reduces limitations on the freedom of religion, it also shows how easy one can register a church. But as limited guarantee companies, they are also meant to submit annual returns, which helps in their financial monitoring.

Religious worship-based organisations also have the option to register as trusts under the Trustees (Incorporation) Act 1962 (Act 106). This gives trustees the right to hold immovable properties in

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[33] *See chapter 2*

[34] Samuel Kwame Adibu Aseidu, *Religion in Contemporary Legal Systems: An Overview of the Legal and Regulatory Framework for the Practice of Religion and Faith in Ghana* (International Centre for Law and Religious Studies, 2010)8

[35] Office of the Registrar of Companies, Registration Services: Public Company Limited by Guarantee. < https://orc.gov.gh/index.php/services/registrations/incorporation-of-company-public-limited-by-guarantee> accessed 4 September 2026

[36] James Quansah, 'Church Registration Tips' *Modern Ghana* (Accra, 19 September, 2020) < https://www.modernghana.com/news/1030721/church-registration-tips.html> accessed 4 September 2026

trust for their religious bodies with the power to sue and be sued.[37] Like registration under the Companies Act, this brings them under Government supervision and especially the courts.

In the case of *Trustees of the Saviour Church of Ghana vs Essien*[38] the court intervened in the control and use of assets. The defendant had split from the church but wanted to use the assets, which the trustees did not allow. The court held that it would be unjust to impose a restraint on the defendant by an interim injunction. Since there was no evidence that the defendant's mode of worship was injurious to the church's reputation or that the church headquarters, assets and other properties were used for purposes other than for worship purposes.*"*[39]

Also, in the case of *Chief Tsokosi and others vs Alhaji Abbas and others*[40] the court intervened in the electoral process for a Chief Imam. They refused a request for an injunction to be placed on the first defendant, whose election declaration and installation were argued to be invalid by the plaintiff.[41]

Though the two cases were about internal disputes, they showed judicial intervention, maintaining some semblance of oversight that reduced marginalisation and unfairness. But such supervision and scrutiny provided by registration is limited. Ultimately, registration is discretionary and subject to the will of the organisation. Churches, mosques and traditional religious worship organisations can be set up and carry out activities without registration, based on the freedom of religion and assembly under Article 21(1)(c) and Article 21(1)(d) respectively. Either way, registration does not always mean effective oversight.

6.2.1.1 Limitation of Registration

As registration is discretionary, data shows that most indigenous '*religious worship-based*' organisations do not register with the office of the Registrar General[42] or as a trust, leaving them unregulated. In addition, registration does not always provide adequate tracing of individuals, as

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[37] Asiedu (n 34)

[38] Trustees of the Saviour Church of Ghana vs Essien (1984-86) 1GLR 265

[39] Asiedu (n 34)

[40] Chief Tsokosi and others vs Alhaji Abbas and others (1972) 1GLR 257

[41] Asiedu (n 34)

[42] U.S Department of State, Ghana the constitution and other laws and policies (2009-2017) <https://2009-2017.state.gov/documents/organization/171616.pdf> accessed 4 September 2026

allegations suggest that some pastors do not use their identifiable church names during registration, making it difficult for the Government to monitor them.[43]

Also, financial reporting has been an issue. The Office of the Registrar General Department (RGD) increasingly complain about the lack of submitted reports. This led to the removal of some churches that had defaulted in submitting annual reports[44] from the register in 2023.

This action by the RGD, to some extent, saw the punishment of organisations that defaulted in providing their reports. But, considering the Constitutional freedom of religion, the removed churches were not adversely affected as they only lost their registration and were not closed. This even meant more limited Government supervision and increased self-regulation.

6.2.1.2 Self-regulation of religious worship-based organisations

The '*religious worship-based'* organisations largely self-regulate as independent organisations or under coalition associations/groups, just like the rest of the sector organisations. Their coalitions are, however, more established, comprising bodies including the Christian Council of Ghana, Ghana Pentecostal and Charismatic Council, Ghana Catholic Bishops' Conference, the Coalition of Gospel Churches and Ministers, the National Association of Charismatic Churches, etc.

Acceptance of regulation under these councils or coalitions is discretionary and voluntary. The Christian Council of Ghana, for example, regulates 29 churches[45] with a mission statement to strengthen the capacity in joint action and common interest.[46] Although its governing rules are very few, it requires applicants to submit documents including the church constitution, background, certificate of registration, reference, support letter, location, branches and the list of the executive board.[47] From this, the Council promotes some level of transparency. However, this is limited as it does not require financial accounting or activity reports. Rather, the council allows

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[43] Quansah (n 36)

[44] Ghana Web, 'ORC to Strike out Names of 2,812 churches, CSOs for Not Filing Annual Returns' GhanaWeb (Accra, 13 April, 2023)< https://www.ghanaweb.com/GhanaHomePage/business/ORC-to-strike-out-names-of-2-812-churches-CSOs-for-not-filing-annual-returns-1748261> accessed 4 September 2026

[45] Christian Council of Ghana, 'The membership of C.C.G' < https://www.christiancouncilofghana.org/Pages/Member-Churches.php> accessed 4 September 2026

[46] Christian Council of Ghana, 'Mission Statement' < https://www.christiancouncilofghana.org/Pages/Vision.php> accessed 4 September 2026

[47] Christian Council of Ghana, 'Membership: Mode of Application' <https://www.christiancouncilofghana.org/Pages/Become-A-Member.php> accessed 4 September 2026

its members to be responsible for decisions of their own faith and doctrine, which includes financial management. Membership ceases upon voluntary withdrawal, suspension or expulsion.[48] But, it is not clear what actions lead to the latter two, as this information was not available on their website.

This example shows that though the councils or coalitions do provide some form of regulation, it is restricted. Also, the membership of these bodies is a minuscule part of the entire population of *religious worship-based* organisations. Ghana is reportedly said to have ten thousand churches that are largely unregistered and unaffiliated with the coalition groups.[49]

Further, the Internal Revenue Act 2000 (Act 592), section 10(1) (d), exempts

"*income accruing to or derived by an exempt organisation other than income from any business";* and exempted organisations are defined under section 94 as *"religious, charitable, or educational institution[s] of a public character".*

Therefore, *'religious worship-based* organisations freely operate without much supervision or taxation, whether they are small bodies with 15 members or mega churches with thousands of members. The tax exemption, autonomy and Constitutional freedom increase self-regulation with little to no barriers. This has led to the infamous 'one-man' churches, individually founded, owned and managed.[50] They have increased in number over the years, largely unregistered and unaffiliated with the coalition councils[51] leading to allegations of exploitation.

6.2.2 One-man churches and Exploitations

In 2016, two Christian councils- the Ghana Catholic Bishops and the Christian Council in a press conference highlighted the lack of accountability and control of some church groups, resulting in exploitation.[52] This issue was especially attributed to the one-man churches. Though exploitation allegations are made about almost all church denominations in Ghana, reported violations of the

[48] Christian Council of Ghana, 'Membership' < https://www.christiancouncilofghana.org/Pages/Things-To-Know.php> accessed 4 September 2026

[49] Seth Tweneboah, Religion, Human Rights, and the Parliamentary Regulation of "One-Man Churches" in Ghana (2023) 65(1) Jo*urnal of Church and State* 25, 29 < https://doi.org/10.1093/jcs/csac074> accessed 4 September 2026

[50] Tweneboah (n 49)29

[51] Tweneboah (n 49)29

[52] Tweneboah (n 49)

one-man churches are the biggest. The actions of these churches are often ridiculous, illegal and borderline insidious. They are accused of sexual assault, violence, fraud and fear mongering.

One of the most horrendous accusations was when a founder and leader of a one-man church stomped on a pregnant woman's belly in the name of spiritual deliverance.[53] He also took off his belt in front of his congregation and severely beat his 14 and 19-year-old adopted children for having premarital sex and getting pregnant. In a viral video, the girl, unable to bear the beating, attempted to escape but was held by two other pastors, after which the pastor instructed them to also use their belts to flog the couple.[54] These actions received both local and international condemnation, which called for his arrest. Consequently, this Bishop and two of his pastors were arraigned before an Accra Circuit Court (Domestic Violence and Gender Based Division), charged with assault under sections 4 and 6 under the Domestic Violence Act 2007 (Act 732). In court, the prosecution narrated that Obinim[the Bishop] said the victim was in the process of aborting the pregnancy; therefore, the Holy Spirit had directed him (Obinim) to chastise the (teenagers) in the presence of the congregation.[55]

The bishop and his pastors pleaded not guilty and were granted bail of 10,000 Ghana cedis.[56] Later, they changed their plea to guilty with an explanation. Obinim was fined 4,800 Ghana cedis or, in default, six months in prison. His two pastors were fined 3,600 each or, in default, four months in prison and asked to sign a bond of good behaviour for 12months.[57] Owing to the fact that this

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[53] Starfmonline, 'Arrest Obinim Immediately – Amnesty International Demands,' *Modern Ghana* (Accra, 18 August 2016) < https://www.modernghana.com/news/712908/arrest-obinim-immediately-amnesty-intl-demands.html> accessed 4 September 2026

MyJoyOnline, 'Human rights groups gang up against Obinim; demand his arrest' *Modern Ghana* (Accra, 19 August 2016) < https://www.modernghana.com/news/713056/human-rights-groups-gang-up-against-obinim-demand-his-arres.html> accessed 4 September 2026

[54] Emmanuel Ebo Hawkson, "Obinim Charged with Physical Abuse of 2 Teenagers," *Graphic Online* (Accra, 11 November 2016) < https://www.graphic.com.gh/news/general-news/obinim-charged-with-physical-abuse-of-2-teenagers.html> accessed 4 September 2026

[55] GhanaWeb, 'Obinim's video tape shown in court' *GhanaWeb (*Accra, 18 February 2017) < https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Obinim-s-video-tape-shown-in-court-511291> accessed 4 September 2026

[56] Ghana Web (n 55)

[57] GhanaWeb , 'Obinim Convicted' *GhanaWeb* (Accra, 27 September, 2018) < https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Obinim-convicted-688366> accessed 4 September 2026

was a domestic case, the penalty was lenient. There were no charges for his action against the pregnant woman, and he went unscathed despite being accused of many wrongdoings. This shows the insufficiency of the court and police to hold him and other religious leaders accountable for their misdeeds.

But other actions, such as the end-of-year television prophecy, which often proclaim the death of leaders, have been closely monitored. In 2022, the Ghana Police Service, ahead of 31st December, warned against illegal communication of a supposed prophecy that causes risk of harm. However, this action generated discussions about the freedom to express religion and Government interference. Yet, the Superintendent of the Public Affairs Department of the Ghana Police Service responded that:

'… If you have a prophecy, prophesy but if it puts me in danger, puts my life at risk then I have a concern and the law protects me. As much as you have freedom to express your belief, I also have the right to live in dignity as I please'.[58]

Finally, the Police response to the doomsday prophecy reduced such utterances, proving that Government oversight, empowered and enforced by the Police and courts, could reduce exploitation and bring a level of justice for victims. Ultimately, the actions of one-man churches made the Government consider legislation to regulate them, but this was protested by churches just like the sector's action against the NGO and trust bills.

[58] Ghanaweb, 'We never banned pastors from giving prophesies- Ghana Police Services' *Ghanaweb* (Accra, 4 January 2023) < https://www.ghanaweb.com/GhanaHomePage/NewsArchive/We-never-banned-pastors-from-giving-prophecies-ndash-Ghana-Police-Service-1689950#:~:text=So%20the%20police%20has%20no%20issue%20with%20anybody%20prophesying.&text=She%20continued%20that%2C%20these%20prophets,and%20the%20law%20protects%20me.> accessed 4 September 2026

6.3 Parliament's Attempt to Legislate 'religious worship-based' Organisations.

In 2019, Parliament debated the possible regulation of churches to restrain the seemingly unfettered right of '*religious worship-based*' organisations due to their increasingly negative actions.[59] Many Parliamentarians made submissions on whether to regulate or not.[60]

Notably, the then MP for Ablekuma Central expressed the exploitation of people by some one-man churches. He argued that:

"… if one is not careful and draws the attention of some pastors, they would only quote that the Bible says that 'touch not my anointed and do my prophet no harm'. Meanwhile they are touching people and destroying people's lives… you would see a sixty-year-old man, or a woman being asked to carry a fifty-kilogramme bag of cement in the name of deliverance. Mr. Speaker, bottled water is being sold in the churches for GH¢2,000.00 or GH¢3,000.00 in the name of healing. Meanwhile, this same person cannot even get GH¢200.00 to go to Korle-Bu [the national teaching hospital] to find out what is wrong with him or her. Mr. Speaker, it is time that this House would take a decision to see how best it would be able to clamp down on some of these churches".[61]

The then MP of Okaikwei South also expressed the need for regulation by stating that:

"we [Parliament] should also look at a situation where we could regulate the activities of the various religious bodies in order not to create any conflict or confusion amongst them… Mr Speaker, it is only regulation that would keep the boundaries for us to ensure that the various religious organisations that we have live in peace and in harmony"[62]

In a dissenting view, the then MP of Ningo Prampram argued that, though there are charlatan pastors, Parliament should not overlook the contributions of churches to the nation's development and a move to regulate churches would have significant impacts.[63] He argued that

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[59] Ghana Web, 'Parliament to decide on regulation of churches' *Ghana Web* (Accra, 10 September 2019) < https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Parliament-to-decide-on-regulation-of-churches-779788 > accessed 4 September 2026

[60] Jude Duncan, 'Some MPs call for regulation of 'one-man churches' *Citi Newsroom* (Accra, 29 May, 2019) < https://citinewsroom.com/2019/05/some-mps-call-for-regulation-of-one-man-churches/> accessed 4 September 2026

[61] Ghana Parliamentary Debates, *The Regulations of Churches in Ghana*, 29 May 2019, col.90 (99-100) < https://www.parliament.gh/docs?type=HS> accessed 4 September 2026

[62] Ghana Parliamentary Debates (n 61) (2019) paras 109-110

[63] Duncan (n 60)

[63] Duncan (n 60)

"*I would like to urge this House to tread with a certain level of caution. The reason is that we are guided by the Constitution of this country, and Article 21 (1) enjoins and entitles everybody to freedom of religious expression… we admit and accept the fact that there are some people we could call charlatans, who might be bringing the Christian faith or church business into disrepute. I have always maintained that there is a difference between a church and church administration. We can choose to pass legislation that would govern church administration; however, any move to have the State move into the regulation of religion and religious expression, for me, may be a step too far… We must be minded about the work that religious bodies have done — the schools and hospitals"*[64]

After the debate, the Speaker asked the joint Committees of Youth, Sports and Culture, and the Constitutional, Legal and Parliamentary Affairs to make recommendations on possible regulation of churches within a month[65].

This did not sit well with the '*religious worship-based*' organisations, especially the churches, who strongly protested such an attempt. They made Constitutional, political and religious arguments against possible regulation.

The Ghana Charismatic Bishops' Conference, for example, cited the PNDC law 221 and argued that the proposed regulation would be arbitrary and would suppress freedom of religion.[66] They also stated the action as biased since the other sector actors were not regulated through legislation, and blamed Government failures as the reason people patronise churches, and that they should solve the development problems first.

Another coalition, the Ghana Pentecostal and Charismatic Council, also argued that faith-based issues were not within the remit of Parliament and that the churches were competent enough to regulate themselves without Government interference.[67]

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[64] Ghana Parliamentary Debates (n 61) (2019) paras 105-106

[65] Duncan(n 60)

[66] Mabel Aku Baneseh, "Charismatic Bishops' Conference against Legislation of Churches," *Daily Graphic*, (Accra, 06 June , 2019) < https://www.graphic.com.gh/news/general-news/ghana-news-charismatic-bishops-conference-against-legislation-of-churches.html> accessed 4 September 2026

[67] Tweneboah (n 49)36

The general overseer of a one-man church popularly known as Prophet Computer had called the attempt to legislate evil and warned that regulation should be left to the Christian council and that the wrath of God would fall "upon the country if the Government forcefully closed churches.[68]

Nonetheless, not all the church coalition protested the legislation attempt. The general overseer of the Evangelical church of Ghana and the Pastors of the College of Theology and Mission in Accra agreed that the one-man churches needed regulation. The former renewed calls for this, and the latter argued that this will bring sanity to the system.[69]

But, the series of protests was so strong that a bill was never produced. Like the other failed legislation attempts due to protest, this action shows the *regulatory power dynamics* and Constitutional constraints.

6.3.0 Regulatory Power Dynamics and Constitutional Constraints: 'Religious Worship-Based' Organisations

The protest of the legislation attempt highlighted the fear of churches being suppressed based on historical governance. They also wanted to safeguard autonomy, reduce interference and enforce Constitutional rights.

As discussed in Chapter 2, the Religious Bodies (Registration) Law of 1989 (PNDC 221) was highly restrictive. It mandated the registration of *religious worship-based* organisations and subjected their operation to the Government[70] certification and endorsement. To qualify for the certificate, the organisation had to present a copy of their constitution, name, occupation and addresses of trustees, location of organisation headquarters, evidence of numerical strength, place of worship and suitability of activity, financial statement, etc. The organisation had to have a minimum of 500 members, which categorically disqualified many churches, leading to their closing.[71]

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[68] Emmanuel Tornyi, 'It's Evil to regulate the church- Parliament told' *The Pulse* (Accra, 3 June , 2019) < https://www.pulse.com.gh/articles/news/local/its-evil-to-regulate-the-church-parliament-told-2024080623325551827> accessed 4 September 2026

[69] Ghana Web, 'Parliament to decide on regulation of churches' *Ghana Web* (Accra, 10 September 2019) < https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Parliament-to-decide-on-regulation-of-churches-779788> accessed 4 September 2026

[70] National Commission of Culture upon the approval of the Religious Affairs Committee

[71] Baneseh (n 66)

This historical suppression, the freedom of association and continuous development contributions, as noted by the MP of Ningo Prampram gave the churches power to veto Parliament's initiative, and thus highlight the existence of *regulatory power dynamic* here too.

Further, deregulation and the 1992 Constitution invalidated the PNDC law under the provisions in Article 21(1) and especially Article 26(1), which provides that

Every person is entitled to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion ***subject to the provisions of this Constitution***. [emphasis added]

This provision does not mean unregulated enjoyment. The wording 'subject to the provisions of this Constitution' implies that the freedom may be limited. However, as shown in Chapter 3, the fundamental freedoms apart from movement have very limited circumstances in which they could be constrained. The courts interpret the freedoms broadly and the limitations narrowly. Applicable Constitutional limitations would only be found under Article 31 in emergencies and Article 12(2) for public interest. Article 31 will not be applicable in this instance, but 12(2) might be. Yet, as argued in chapter 3, for this to happen, there is a need for a strong legitimate interest. This was perhaps why the coalition argued that the Government was biased. According to Tweaneboa, the wording 'subject to the Constitution' meant that:

"… the freedom to enjoy one's religious rights is not absolute, and at any point in time, the state deems fit, this right can be taken away… A key argument of the Coalition, therefore, was that they were competent and capable of addressing any issues of church concern. This call came against the backdrop of the concerns that they have been unjustifiably discriminated against due to their low numerical strength in the country.'"[72]

Hence, the arguments advanced against the intention to legislate were not necessarily against regulation but to remove the Constitutional basis for a limitation on the freedom of religion.

As such, the *regulatory power dynamic* and Constitutional constraints show '*religious worship-based*' organisations to have the same view towards regulation as the wider sector. The 2020 Policy, therefore, could have expanded its definition scope to unify the system, eliminating the argument of bias. Separating religious worship and developmental organisations does not provide any regulatory advantage. Instead, it makes regulation more complicated and difficult.

[72] Tweneboah (n 49)36

Finally, such separation is not in line with international practice and the current definition of development.

6.3.1 Religious worship as Part of the Development Process and International practice

The UN right to development defines development as a

"a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom"[73]

The direct interpretation of the provision does not seem to include religious worship as part of the development process. But indirectly, religious worship can be included as part of a social process. The notion that religious worship is a social process is growing. Research on this by the (then) UK's Department for International Development(replaced by the Foreign Commonwealth and Development Office)[74] found that countries with people participating in faith-based practices have their worldview shaped by their religion, whose values they use to define human well-being. Furthering this view James,[75] argue that aid agencies are increasingly seeing the benefits of working with faith-based organisations as focal points of the community, as it has been noted that religious leaders and institutions are often the most trusted. [76] With this perspective in mind, the study of Haustien[77] on the historical interlinkages of development

[73] United Nations Declaration on the Right to Development, General Assembly Resolution 41/128 of 4 December 1986

[74] Department for International Development, 'Faith Partnership Principles: Working effectively with faith groups to fight global poverty' (DFID, 2012) < https://assets.publishing.service.gov.uk/media/5a78d16ced915d07d35b2ab1/faith-partnership-principles.pdf> accessed 4 September 2026

Department for International Development, 'Department for International Development was replaced by Foreign, Commonwealth & Development Office'. UK Government <https://www.gov.uk/Government/organisations/department-for-international-development > accessed 4 September 2026

[75] Rick James, 'Religion and Development' (2016) 35 GSDRC, Professional Development Reading Pack < https://gsdrc.org/wp-content/uploads/2016/03/Religion-and-development_RP.pdf> accessed 4 September 2026

[76] James (n 75)

[77] Jorg Haustein, 'Development as a form of Religious engineering? Religion and Secularity in Development Discourse'(2020) 51(1) Religion 19 < https://www.tandfonline.com/doi/abs/10.1080/0048721X.2020.1792049> accessed 4 September 2026

and religion through colonial and slavery eras looks at development as 'religious engineering'.[78] Therefore, religion could be said to be a component of development and a fabric of the social factor in sustainable development.

Even if the argument that religion is a composite of development is disregarded, the fact is clear that international practice does not distinguish *'development'* organisations and '*religious worship-based'* organisations in their third sector legislation. Both are seen as charitable organisations, whether their primary activity is worship or development. For example, the Charities and Trustee Investment (Scotland Act 2005) under section 7 defines charitable purposes to include the advancement of religion, similar to the Charities Act 2011 for England and Wales.[79]

From the Scottish perspective, McNeil argues that:

"the provision of public worship can provide benefits by enhancing spiritual well-being and a sense of spiritual and moral solidarity."[80]

With this understanding, religious advancement includes both worship and other activities that reflect the practice of that faith and therefore Ghana's definitional scope of non-profit, charitable organisation or even development must be allowed to include religious worship.

Ultimately, the distinction created by the 2020 Policy's NPO definition does not properly coordinate the sector and thereby sustains the gap in sector regulation, weakening the regulatory regime.

6.4 Coordinating Sector and Local Government Relations

In addition to the actors, the 2020 Policy's coordination framework is about rights and responsibilities that facilitate collaboration to offset identified deficiencies in service delivery at the local level. These include challenges of duplicated projects, inefficiencies in project designs and implementation.[81]

[78] Haustein (n 77)

[79] National Non-profit organisation Policy (2020) Paragraph 3.1

[80] James McNeil QC (ed), *A practical Guide to Charity Law in Scotland.* (W. Green 2016) 4

[81] National Nonprofit Organisation Policy (2020)1

One reason for this challenge is limited knowledge of legal obligations. As mentioned in chapter 1, the absence of a legislative framework has seen the sector rely on provisions in various legislations, which they pick and choose from. This has created a lack of holistic awareness of common legal obligations, which is why the Policy also notes its creation as providing a cohesive sector framework.

To create a common awareness of key legal obligations, the 2020 Policy integrates Constitutional, legislative provisions and international law. The Constitutional provisions of Article 21(1) (a)-(e) and 37 (1)(2) and (3) show the Constitutional rights and obligations for Government and sector actors. International laws on the Freedom of Assembly and Association highlight international obligations that emphasise sector freedom and legitimacy. Legislation provisions referring to the Companies Act, Tax Act and Anti-money laundering Act, inform on registration, tax rebates and financial terrorism offences.

However, not all the Constitutional and legislative provisions pertaining to the sector are found in the Policy. For example, Articles 31 and 12(2) of the 1992 Constitution and many legislative provisions are missing. This reduces awareness of key Constitutional limitations and legal rights and obligations. One right missing, for instance, is the provision of the Trust Act as an alternative registration avenue to create legal identity. This indirectly forces organisations to register as companies limited by guarantee and discounts those registered as trusts. In addition, key legal obligations under the Local Government Act 1993 and Local Government Act 2016 (hereafter Local Government Acts) that afford effective service delivery at the local level are also missing.

The failure of the Policy to include the Local Government Acts is problematic as it serves as the basis for Government and sector collaboration at the local level. Without this, the Policy's coordinated framework practically retains the previous system that allows the deficiencies in service delivery at the local level.

6.4.0 The Collaboration Provisions in the Local Government Acts

The Local Government Act 2016, section 12(5) –(8) obligates the District Assembly to

"co-ordinate, integrate and harmonise the execution of programmes and projects under approved development plans for the district and other development programmes promoted or carried out by Ministries, Departments, public corporations and other statutory bodies and non-Governmental organisations in the district"[82]

Further to this, the District Assembly is charged with duties including.

[Acting] *in co-operation with the appropriate public corporation, statutory body or non-Governmental organisation. Public corporations, statutory bodies and organisations shall co-operate with a District Assembly in the performance of their functions.*[83]

These obligations are further strengthened by section 8, which refers any conflict between a District Assembly and NGOs in the application of the above obligations to be referred to the Regional Co-ordinating Council for resolution.

These provisions basically dictate sector-local Government collaborations in project and programme execution, making it an obligation and not a discretionary provision to ignore. If for nothing at all, because the 2020 Policy sets itself as a cohesive framework, it should have included the Local Government Acts. By not doing this, it weakens the regulatory cohesiveness of the reform. Also, since it aims to increase collaborations across the various stakeholders, the absence impacts the effective implementation of its collaboration intention to a large extent.

6.4.1 Absence of Local Government Acts: Effects on Local Service Delivery

Even though the Policy alludes to sector-local Government collaborations, the responsibility for collaboration actioned under it is mainly found in paragraph 3.9, which outlines duties for the Ministry of Local Government and the Head of Local Government Services to monitor sector actions and the implementation of the 2020 Policy.[84] It is assumed that the monitoring and implementation process involves the participation of sector actors. But how this is achieved, and the part-sector actors play, is not even clear. Most importantly, monitoring and implementation of the 2020 Policy does not constitute collaboration in the execution of programmes and projects.

Obviously, the absence of the Local Government Acts in the Policy does not necessarily mean the legislation fails to exist or cannot be enforced. The main issue is the missed opportunity to increase

[82] Local Government Act 2016 (Act 936) s.12(5)

[83] Local Government Act 2016, s.12(6)b

[84] National Nonprofit Organisation Policy (2020) Paragraph 3.9

awareness of the legal obligations and reduce the lack of knowledge and deficiencies in service delivery. According to Bawole,[85] both local Government and sector actors in Ghana are often unaware of the legal obligations under the Local Governments Acts. This in turn has had a huge impact on sector-local Government relations, service delivery deficiencies, ineffective use of resources and unnecessary projects.[86]It also creates lackadaisical and discretionary project collaborations.[87]

The absence of the Local Government Act in the Policy therefore weakens the Policy's coordination framework and at best maintains the status quo of duplicated projects and at worst, deteriorates it. This furthers the development gaps and produces marginalisation, exploitation and lack of accountability. In addition to affecting duplicated projects, the absence also enhances limitations of local project support, insufficient local participation and political power imbalance.

6.4.1.0 Limited support for local projects and participation of Chiefs

The Constitution's political objectives under Article 35 (6) (d) suggest a democratic reality created through

"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".[88]

Decentralisation is therefore meant to provide better response, equity and participatory development by bringing the Government closer to citizens through decision-making and participation in local activities.[89] Based on this, Article 240 of the Constitution creates a decentralised system of local Government, local participation and local development through citizens and organised groups. To facilitate this, Subsection 2(a) requires Parliament to

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[85] Justice Nyigmah Bawole, 'Local Government and Ngo Relations in Ghana: The Paradoxes, Rhetoric and The Isomorphic Forces' (Doctor of Philosophy (PhD, University of Manchester 2013)183-184 < https://pure.manchester.ac.uk/ws/portalfiles/portal/77566204/FULL_TEXT.PDF> accessed 4 September 2026

[86] National Non-profit Organisation Policy (2020)2

[87] Bawole (n 85)

[88] The Constitution of the Republic of Ghana, 1992, Article 35 (6) (d)

[89] Sarah B. Kpentey, 'Local Government and Participation in Ghana' (2019) 2(2) Academic Review of Humanities and Social Sciences 168

"enact appropriate laws to ensure that functions, powers, responsibilities and resources are at all times transferred from the Central Government to local Government units"[90]

This is the foundation of the Local Government Acts, Civil Service Law 1993 (PNDCL 327), District Assemblies Common Fund Act 1993 (Act 455) and National Development Planning Commission Act 1994 (Act 480). The Local Government Acts are at the centre of the above, emphasising collaboration of Government and sector actors in project implementation. It supports community groups and members, chiefs and various households[91] to create *self-help* projects outside the official structures of Local Government.

The *self-help* projects are often under the auspices of organised local groups and the traditional authorities. Facilitating *self-help* projects is one of the main avenues in which most traditional authorities can participate in governance after their powers were stripped by colonial rule, as discussed in Chapter 2. Also, Article 278 (1) of the 1992 Constitution further bars chiefs from participating in party politics, and even if a chief stands as an independent candidate, Article 278 (2) stipulates that they must abdicate.

Hence, *self-help* projects are one of the ways local groups and their Chiefs create their development. However, there is often an issue with funding the projects and community access to the District Common Fund (DCF) is sometimes difficult. Research by Gyebi[92] On the use of the DCF in the Juaben Municipality, it was found that whiles 60% of self-help projects were initiated, 55% were not funded by DCF. This is because local Governments often use the DCF for their own political agendas.

Therefore, without emphasis and awareness of the Local Government Acts obligating project collaborations and dispute resolution, local access to funding remains challenging, and the participation of Chiefs is limited.

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[90] The Constitution of the Republic of Ghana, 1992, Article 240 (2)(a)

[91] Albert Ahenkan, N.J Bowole and K.A Domfeh , 'Improving Citizens' Participation in local Government Planning and Financial Management in Ghana: A stakeholder Analysis of the Sefwi Wiawso Municipal Assembly' (2013) 3(2) Journal of Public Administration and Governance 191, 208 < https://www.macrothink.org/journal/index.php/jpag/issue/view/178> accessed 4 September 2026

[92] Francis Gyebi, 'A study into the Utilization of the District Assemblies' Common Fund IN New Juaben Municipality' (2013) 4(11) Research Journal of Finance and Accounting 98, 101 < https://scispace.com/pdf/a-study-into-the-utilization-of-the-district-assemblies-2vcx9c3ijp.pdf> accessed 4 September 2026

6.4.1.1. Limitation of local participation

The absence of sector-related provisions in the Local Government Acts further reduces meaningful citizen participation. Ayee argues that,[93] local Governments often make it challenging for many local people and key stakeholders like traditional authorities, third sector actors and the private sector to participate.[94] For example, in development planning, stakeholders are allowed to actively participate in public hearings. Section 4 (1) of the National Development Planning (System) Act, 1994, provides that :

"A District Planning Authority shall conduct a public hearing on any proposed district development plan and shall consider the views expressed at the hearings before adoption of the proposed district development plan [and] *"a report on the public hearing shall be attached to the proposed district development plan by the District Planning Authority*", making information accessible to the public.

Despite this provision, many of the structures needed to facilitate participation at the National Planning Committee are not available. Issues including not publicising meeting dates, limited resources from the District Assembly for hearings, and limited time for participants to contribute, have led to local inability to influence development plans.[95] Therefore, Ahenkan, Bowole and Domfeh[96] argue that constraint in participation has more to do with lack of access, information and incentives than lack of interest by citizens, as when given the opportunity, locals are willing to participate.

This issue could be reduced by emphasising the Local Government Acts and the obligations they impose.

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[93] Joseph R.A Ayee and N. Amponsah, 'The District Assembly and Local Governance: Reflections on the 2002 Local Elections' in Nicholas Amponsah and Kwame Boafo-Arthur (eds), *Local Government in Ghana, Grassroots Participation in the 2002 local Government Elections* (Department of Political Science, 2003)

[94] Ayee, and Amponsah (n 93)179

[95] Ayee, and Amponsah (n 93)

[96] Ahenkan, Bowole and Domfeh (n 91)

6.4.1.2 Local Government Power

The absence of the Local Government Acts in the 2020 Policy further raises a political issue of power. Without strong emphasis and effective implementation of section 12 (5)-(8), the power relations between local Government and sector actors are skewed. The Policy's mandate for local Government to monitor the sector under paragraph 3.9[97] could impose arbitrary control instead of collaboration. This may widen the distrust and fear of suppression that sector actors have towards the Government. Particularly, since this provision technically adds more power to the local Government's already existing executive and legislative powers. Because the District Assemblies are often regarded as an arm of the President, as he has the Constitutional power to appoint them, it easily creates room for the Government to arbitrarily interfere with sector operations.

Within the context of a winner-takes-all system discussed in Chapter 5, this can lead to sidelining sector actors that do not conform to the Government's desires. Also, local Governments, in exercising their executive and legislative powers, can create measures that become barriers for sector operations in the name of monitoring them. This, in turn, can further widen distrust and sector excuses for regulation reform stagnation and protest of sector legislation attempts.

Essentially, the inclusion of the Local Government Acts in the 2020 Policy will not have completely solved the problems in local Government service delivery and participation. But, it would have reemphasised Government-sector collaboration obligations, especially that of the Government. Therefore, like the NPO definition, the absence of the Local Government Acts retains the status quo and does not strengthen collaboration in local service delivery.

6.5 Policy's Coordination: Unifying Self-regulation Codes of Conduct

The two arguments above show the Policy's limitations in addressing the separation of sector actors and deficiencies in service delivery at the local level. Unfortunately, the uniformity of sector codes is also limited.

[97] National Nonprofit Organisation Policy (2020)9

The rationale for regulation is to coordinate behaviour and practice, enabling effective action and the sharing of ideas.[98] However, the absence of sector legislation increased the opportunities for self-regulation, which is private and discretionary based on the in-house and network values, standards and codes, creating a plethora of rules across the sector. To put this into perspective, even the minimal number of 1686 sector organisations registered with the Secretariat[99] represents local, national and international organisations all having their own codes of conduct.[100] This shows the sheer number of self-regulation rules. In addition, the organisations that have received a licence from the Secretariat represent a fraction of existing sector organisations in Ghana. The 2020 Policy itself reports that there are about 30,000 active organisations registered as Companies Limited by Guarantee with the Office of the Registrar alone.[101]

Self-regulation in the sector is also represented by network standards, associational and in-house codes. The network standard is communal, where members together create or adhere to common rules, for example, the Ghana Association of Private Voluntary Organizations in Development's (GAPVOD) *Standard for Excellence*. The Standard for Excellence is a type of voluntary club for collective action. Its main objective is to show that sector actors can collectively self-regulate and promote organisational learning that ensures good governance in operation and service delivery.[102] But, this form of self-regulation still remains voluntary, though the club provides participants with a signal of quality in exchange for compliance with certain standards.[103] However, for it to work, participants need to be identified, monitored, and adherence enforced.[104] Without this, any supposed collective action intended is weak.

The sector also has codes of conduct as part of associations and their individual in-house policies. The former typically do not establish strong screening mechanisms; they are passive in nature and

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[98] R. Baldwin and M. Cave, *Understanding Regulation: Theory, Strategy and Practice* (Oxford University Press,2011) 6

[99] Non-Profit Organisation Secretariat Republic of Ghana, 'Compliance Status: Updated list 28th November 2025' <https://npos.mogcsp.gov.gh/compliant-status/>accessed 4 September 2026

[100] Examples of accountability and transparency codes are discussed in Chapter 7

[101] National Non-Profit Organisation Policy (2020)1

[102] Mary Kay Gugerty, 'The Emergence of Non-profit Self-Regulation in Africa' (2010) 39(6) Nonprofit and Voluntary Sector Quarterly 1087 < https://journals.sagepub.com/doi/10.1177/0899764010372972> accessed 4 September 2026

[103] Gugerty (n 102)1090

[104] Gugerty (n 102)

sponsored by associations.[105] For example, the West Africa Civil Society Institute (WACSI) has a core value to improve operational and institutional standards.[106] The latter is often based on in-house values and policies. For example, the Catholic Relief Ghana's code of ethics provides protection of children and the vulnerable, harassment, non-discrimination, confidentiality, drug use, etc.[107] By virtue of the sheer number of sector actors in Ghana, there may be thousands of individual codes of conduct, thus limiting uniformity.

Self-regulation, whether via networks, associations, and individual codes, thus affects collective action and requires institutionalised mechanisms for effective coordination. Therefore, the 2020 Policy seeks to coordinate and serve as a guide for sector operation and thereby reduce unprofessional practice and abuse.[108] The 2020 Policy's mechanism to unify self-regulation is through the creation of a National Platform,[109] and Peer Review monitoring and evaluation.[110] Nonetheless, while this aims to create standardisation of codes and professional conduct that sector actors are to follow, it is limited.

6.5.0 Effects of the Self-regulation consolidation mechanisms

Of the two mechanisms, one is an expectation, and the other's implementation is reliant on sector actors. Paragraph 3.6 provides that sector actors are expected to form the Peer Review body to strengthen, among other things, codes of conduct, ethics and good practice.[111] The wording of the provision suggests that this is essentially an expectation of sector actors. As to whether they do this or not seems immaterial. The research did not find any indication of the Peer Review body on either the Secretariat's website or sector organisation websites. The obligation to establish the National platform to frame a code of conduct and quality standards[112] on the other hand it is more

[105] Gugerty (n 102)

[106] West Africa Civil Society Institute (WACSI), 'Who we Are' <https://wacsi.org/who-we-are/> accessed 4 September 2026

[107] Catholic Relief Services, 'Code of Conduct and Ethics (Catholic Relief Services, 2022) https://www.crs.org/sites/default/files/2025-03/code_of_conduct_ethics_redacted_2022_-_v.7.3.2_en.pdf accessed 4 September 2026

[108] National Nonprofit Organisation Policy (2020)1

[109] National Nonprofit Organisation Policy (2020) Paragraph 3.7

[110]National Nonprofit Organisation Policy (2020) Paragraph 3.6

[111] National Nonprofit Organisation Policy (2020) Paragraph 3.6

[112] National Nonprofit Organisation Policy (2020) Paragraph 3.7

forceful. The Policy's wording does not suggest an expectation but a command. Nonetheless, this, too, at the time of writing, was not found. The research did not find any indication that this has been established. So, despite the expectation and obligation imposed, without the establishment of the National platform and the Peer review body, there is no change to the lack of uniformity of codes in the sector.

Therefore, while the 2020 Policy does provide measures for self-regulation cohesion, the wording and lack of implementation, result in deficiencies of institutionalised measures to increase collective regulation. On the one hand, this maintains and increases opportunities for sector autonomy, which sector actors value. But on the other hand, it weakens sector cohesion and the 2020 Policy's coordination framework. Gugerty,[113] notes that because self-regulation does not operate with the force of law, it presents critical challenges of collective action for participants.

Arguably, the plethora of sector organisations will make the consolidation of all the rules difficult. Perhaps, if implemented, the National Platform can frame many of these rules, but the sheer number of organisations will present a challenge of which code of conduct to reject and preserve. Also, since the Policy did not outline a hierarchy for the rules, an issue is presented as to which rule to follow where there is a conflict, for example, between the National Platform rules or in-house/network/association codes. So, perhaps maintaining the current structure may be a necessary evil. However, this does not help resolve the issue of limited regulatory uniformity and shows the Policy's coordination framework to be weak and ineffective.

6.6 Conclusion

Overall, the 2020 Policy provides three main measures to effectively coordinate the sector. They are the fostering of collaboration between Government and sector actors, ensuring effective service delivery, and promoting uniformity in self-regulation.

This chapter showed that the definitional scope of NPOs is limited to sector actors primarily involved in mobilising funds for development and ,as such, excludes those who do not. For example, churches and mosques forming part of *'religious-worship-based'* organisations are ignored. This not only contradicts international practice but also internal structures, as they are part of the third sector, and churches in particular have similar regulatory constraints as NPOs.

[113] Gugerty (n 102) 1089

Further, the absence of the Local Government Acts from the 2020 Policy maintains the gaps in sector actor and local Government relations. This results in limited redress of the issue of deficiencies in local service delivery, like duplicated projects and even participation.

Finally, the Policy's mechanism to improve uniformity in sector codes of conduct is vague. It is ineffective in wording and implementation, thereby maintaining the previous status quo of limited uniformity in codes due to self-regulation. While the Policy framework discusses sector coordination, its provisions do little to address this, leading to minimal redress of coordination challenges. In addition to collaboration mechanism are transparency and accountability. The next chapter discusses the effectiveness of the Policy's transparency measure.

Chapter 7: The Effectiveness of the 2020 Policy's Transparency Mechanisms

7.0 Introduction

In chapter 6, the analysis showed that whilst the 2020 Policy provides a coordinated framework, this is limited and does not sufficiently address the gaps in the system. This chapter moves to analyse the 2020 Policy's transparency mechanisms in addressing oversight limitations. Due to the absence of legislation, the transparency arrangements in the sector were minimal and mostly relied on sector actors' discretion. This led to limited identifiability of sector actors, public and Government distrust and vulnerability to terrorism financing. These issues, therefore, necessitated robust transparency mechanisms that require sector actors to be transparent and open about their activities and finances to foster trust, credibility, and meaningful collaboration.

Limited transparency is a major regulatory gap that added to Ghana being blacklisted for vulnerabilities in terrorism financing. Therefore, the extent to which the Policy addresses this determines the extent to which it strengthens the third sector's regulatory regime. The chapter thus highlights the transparency issues, the scope of the Policy's mechanism and its effectiveness.

7.0.0 Key Findings

The discussion shows that, unlike the coordinated framework, the transparency mechanisms of sector registration, licencing and submission of financial and activity reports have been implemented with some sector actors actively adhering to the rules. But this is limited, as many have not complied. Also, like the coordinated framework, the transparency mechanisms are lacking in effectiveness due to the Policy relying on sector actors to be truthful about their spending. This measure is problematic as some sector actors were shown to be corrupt and divert funds for their own projects outside the funders' goals. The Secretariat's capacity to enforce the transparency mechanism is also called into question, as it discounts full public disclosure of sectors partly due to its limited capacity.

As a result, although the 2020 Policy introduces new transparency measures, they result in only minor modifications to the regulatory regime and are insufficient to significantly enhance the sector's regulatory framework.

7.1 The Issue of Transparency in Ghana's Third Sector

Over the years, public demand for institutions to show their commitment to clarity and openness about their actions and spending[1] has continually increased. Transparency is defined as the mechanism and process that shows the degree of openness in the governance of institutions to promote satisfaction and public trust.[2] In Ghana, Government corruption and allegations of mismanagement[3] is a contentious issue that has increased public distrust. In finding solutions to this problem, third sector actors are identified as key players in championing Government transparency.[4] This regard for third sector actors as agents of transparency is not limited to their relations with Government but extends to the private sector as well.[5] However, though third sector actors are seen as advocates of transparency in the public and private sectors, their own sector lacks adequate levels of clarity and openness, especially in their finances and projects.

This has resulted in several adverse effects in the sector, including corruption, concession to political influences,[6] allegations of illegal practices,[7] exploitation, marginalisation and "hit and run" tendencies.[8] When we add the GIABA[9] report's evaluation that the sector has diminished

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[1] Lauren Pluss, 'The need for transparency in the third sector' (SCVO, 7 July 2016) https://scvo.scot/p/12828/2016/07/07/the-need-for-transparency-in-the-third-sector accessed 4 September 2026

[2] Vincent Ekow Arkorful, Nurudeen Abdul-Rahaman, Hidaya Sungjun Ibrahim and Vincent Ansah Arkorful, 'Fostering Trust, Transparency, Satisfaction and Participation Amidst COVID-19 Corruption: Does the Civil Society Matter:- Evidence from Ghana' (2022) 22 Public Organisation Review,1191 <https://link.springer.com/article/10.1007/s11115-021-00590-w> accessed 4 September 2026

[3] Arkorful and others (n 2)

[4] Arkorful and others (n 2)

[5] Nelson Oppong, 'Negotiating Transparency: NGOs and Contentious politics of the Extractive Industries Transparency Initiative in Ghana' (2017) 13(1) Contemporary Social Science 58 < https://www.tandfonline.com/doi/full/10.1080/21582041.2017.1394483> accessed 4 September 2026

[6] Arkorful and others (n 2)

[7] Salomey Appiah-Adjei, 'IDEG calls for regulation on activities of CSOs, NGOs' *Graphic Online* (Accra, 17 June 2019) < IDEG calls for regulation on activities of CSOs, NGOs - Graphic Online> accessed 4 September 2026

[8] David Atugia, 'NGOs and Civil Society Organisations in Ghana needs an independent regulatory body' *Modern Ghana* (Accra, 16 March 2012) https://www.modernghana.com/news/383962/ngos-and-civil-societyorganisations-in-ghana-needs-an-indep.html accessed 4 September 2026

[9]The Inter-Governmental Action Group against Money Laundering (GIABA), 'Anti-money laundering and counter-terrorist financing measures – Ghana, Second Round Mutual Evaluation Report' (GIABA,2018) <

oversight, limited obligations in ensuring traceability of owners and beneficiaries, weak registration mechanisms and vulnerability to financial terrorism [10] then the situation becomes dire.

This issue can be traced to the liberal environment created by the 1992 Constitution and the consequence of historical Governance which has stagnated regulation reform.[11] But, it must be noted that the sector's transparency issue and effects are not because of a total absence of a transparency mechanism, but rather a lack of a robust one. Chapter 1's discussion on the sector's legal system[12] showed that while there were some sector transparency measures, they were inadequate.

Ultimately, the research identified three main factors that had affected sector transparency the most. They were sector actor discretion, limited transparency law, an onerous registration process and a lack of a central database.

7.1.0 Sector Actors' Discretion

Basically, the system placed most of the burden of transparency on sector actors. But even though most sector organisations have in-house transparency systems, they were found to be deficient.[13] Essentially, to employ effective transparency measures, one must have the ability to withstand scrutiny, but this has not been the case, as sector actors are often unwilling to disclose their finances.

Also, Ghana has had a substantial inflow of direct funding from international donors over the years to address socio-economic challenges. Thus, many sector organisations are created to take advantage of the financial opportunity with philanthropy as a means to an end. In such a situation, beneficiaries are exploited for the ends of some self-seeking third-sector actors. Though not all

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https://www.fatf-gafi.org/content/dam/fatf-gafi/fsrb-mer/GIABA-Ghana-MER-2018.pdf.coredownload.inline.pdf> accessed 4 September 2026

[10] GIABA (n 9) 125

[11] *See Chapters 2 and 3*

[12] *See Chapter 1*

[13] Ernest L. Okorley and Edmund E. Nkrumah, 'Organisational Factors influencing sustainability of local non-Governmental organisations: Lessons from the Ghanaian Context' (2012) 39(5) International Journal of Social Economic 330 < https://www.emerald.com/insight/content/doi/10.1108/03068291211214190/full/html> accessed 4 September 2026

sector actors are opportunistic, there are many that are. This is supported by evidence of widespread poverty in Ghana's Northern Region despite the many poverty alleviation organisations found there.[14] Obviously, the lack of poverty alleviation cannot solely be accounted for by sector organisations; however, they are one of the major contributors. For example, findings from Kwao and Amoak[15] showed that many NGO activities in Northern Ghana were not aligned with beneficiary needs, Government initiatives, and national development policies. Therefore, where sector actors are opportunistic, their interests often do not align with those of their beneficiaries, resulting in persistent conditions such as poverty despite their presence and projects.

Additionally, in-house transparency measures will not be enough for robust Government or public scrutiny, thereby affecting relations with beneficiaries and the Government, which is predicated on transparency.[16] Consequently, Bowale and Hossain[17] found sector actors and Government relations to be strained due to insufficient transparency. Bawole and Hossain,[18] argues that one of the main areas of contention is Government distrust of sector actors due to the unwillingness of some sector actors to share and disclose financial information.[19] This furthers the suspicion of sector organisations being a front for money-making as well as accusations of sector actors lacking enough transparency to facilitate meaningful collaborations.

7.1.1 Limited Transparency Law

The only legal rules that facilitate transparency in the sector are limited to provisions under the Companies Act 2019 and the Trustee (Incorporation) Act 1962 (Act 106). The former ensures organisations' traceability, disclosure of financial accounting and auditing.[20] The latter ensures

[14] Benjamin Kwao and Daniel Amoak, 'Does size matter? The prevalence of NGOs and Challenges to development in Northern Ghana' (2022) 76(3) Norwegian Journal of Geography, 149 <https://www.tandfonline.com/doi/abs/10.1080/00291951.2022.2072383> accessed 4 September 2026

[15] Kwao and Amoak (n 14)

[16] Justice Nyigmah Bawole and Farhad Hossain, 'Marriage of the Unwilling? The Paradox of Local Government and NGO Relations in Ghana' (2015) 26 VOLUNTAS: International Solicitor for Third Sector Research 2061, 2079 <https://link.springer.com/article/10.1007/s11266-014-9503-9> accessed 4 September 2026

[17] Bawole and Hossain (n 16)

[18] Bawole and Hossain(n 16)

[19] Bawale and Hossain (n 16)142

[20] Companies Act 2019, *Part M: Registered Office, Publication of Name and Annual Returns; Part N: Accounts and Audit*

traceability and information of trustees.[21] Despite this, the laws are insufficient. Firstly, these provisions are the bare minimum of transparency requirements, and secondly, they only apply to sector organisations that choose to have the legal personalities of companies limited by guarantee or trusts. Those who are not registered under these regimes are left to their own whims. The law essentially allows sector actors further discretion on how and what transparency systems to adopt, if at all. Whereas this promotes autonomy, it also weakens the regulatory regime. In addition, even sector actors registered as companies have been found not to adhere to the transparency requirement. Because of this, the Registrar General threatened to withdraw some sector actors from the register several times[22] owing to non-compliance.

7.1.2 Onerous Registration and Lack of a Central Database

Before the 2020 Policy, the sector Ministry[23] required sector organisations to register with the Department of Social Welfare (DWS). However, a survey by WACSI[24] found this registration process to have many discrepancies, including the lack of adherence and multiple levels of registrations[25] which was especially unpopular with sector actors. This was because registration requirements were both at the national and local levels. Locally, an organisation must identify and apply for a certificate from all relevant District Assemblies in which it operates. They must submit four copies of Registrar General's Department certificates, three introductory/request letters addressed to the Director of Social Welfare and another letter to the Metropolitan, Municipal or District Chief Executive. Afterwards, they register at the national level.[26] They would use the certificate to apply for registration with DWS, with an added Certificate of incorporation if they

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[21]Companies Act 2019, section 6

[22] Modern Ghana News, ' Many NGOs To Be Delisted' *Modern Ghana* (Accra, 9 August 2004) < https://www.modernghana.com/news/60695/many-ngos-to-be-delisted.html> accessed 4 September 2026

Ghana Web, 'ORC to Strike out Names of 2,812 churches, CSOs for Not Filing Annual Returns' GhanaWeb (Accra, 13 April, 2023)< https://www.ghanaweb.com/GhanaHomePage/business/ORC-to-strike-out-names-of-2-812-churches-CSOs-for-not-filing-annual-returns-1748261>accessed 4 September 2026

[23] Ministry of Gender, Children and Social Welfare.

[24] West Africa Civil Society Institute (WACSI), *Rapid Assessment of the Legal Environment for Civil Society Including Philanthropic Organisations in Ghana.* (WACSI,2020)12 <https://wacsi.org/wp-content/uploads/2021/02/Ghana-Rapid-Assessment-of-The-Legal-Environment-for-Civil-Society-Including-Philanthropic-Organisations.pdf> accessed 4 September 2026

[25] Gordon Dugle, Bernard A.A. Akanbang and Andrew Salakpi, 'Nature of No Governmental Organisations Involved in Local Development in the Upper West Region of Ghana' (2015) 12(1)(2) Ghana Journal of Development Studies 142 < https://www.ajol.info/index.php/gjds/article/view/125128> accessed 4 September 2026

[26] WACSI (n 24)12

are companies, an application letter, any publications, and the history of the organisation. They then register with the Ghana Revenue Authority (GRA) for a Tax Identification Number (TIN). When an organisation is already registered under the Companies or Trustees Act, this added registration process is costly, time-consuming and onerous.[27]

Therefore, the multiple registration process made sector actors disregard registration at the DWS,[28] especially when the source of the DWS's power to register was called into question. Personnel at the DWS reportedly did not even know where their power to register came from and attributed it to customary and evolved practices.[29] Consequently, regulation under the Local Government (Departments of District Assemblies) (Commencement) Instrument, 2009, sections 8 (1) and (2) (d)[30] was found to provide that power. Remarkably, despite these multiple registrations, there was still no central database of registered organisations, leading to discrepancies and further diminishing transparency.

7.2 Solutions for Robust Transparency

In all, sector discretion, limited laws and inadequate Government measures show the gaps and key areas that, when improved, will strengthen sector transparency and, by extension, the regulatory regime. The obvious solution is sector legislation, but as shown in Chapter 2 that may be difficult to achieve.[31] In the absence of this, decreasing sector discretion, promoting adherence to existing laws, simplifying the registration process and providing a sector database would suffice.

Although sector actors seek to maintain autonomy, they may be willing to accept such measures as they increasingly desire a robust transparency framework. This is because, after Ghana was reclassified as a middle-income country in 2015, aid flow declined, necessitating that third-sector

[27] WACSI (n 24)12

[28](WACSI (n 24)12

[29] WASCSI (n 24)12

[30] Local Government (Departments of District Assemblies) (Commencement) Instrument, 2009 sections 8 (1) and (2) (d) facilitate the registration and supervision of non-Governmental organizations and their activities in the district

[31] Due to the regulatory power balance between sector actors and Government.

actors reposition themselves to attract funders.[32] Dwindling aid further increased in 2025 due to USAID being closed[33] and ODA[34] dropping aid by 17 per cent, thereby altering the funding landscape and intensifying competition. Therefore, sector actors may increasingly seek to develop credibility-building strategies to enhance their favourability with funders, which is predicated on transparency. Consequently, in the study of Arhin and others[35] sector actors interviewed noted that the sector is in an era where

'[they] cannot compromise on accountability and transparent systems. [They therefore] want to send a clear message that [they] meet these principles at all times so as to maintain … credibility in the eyes of whoever wants to support [them] achieve[their] mission and vision."[36]

Therefore, any reform must establish robust transparency that encourages beneficiaries' trust, Government collaboration, credibility and organisational sustainability. From this perspective, the 2020 Policy's transparency mechanism is analysed.

7.3 The 2020 Policy's Transparency Mechanism

In creating a robust transparency framework for the third sector, most countries that have sector legislation often start with the creation of a regulatory body, a sector register, and requirements to submit accounts and activity reports to the regulator. For example, the Charities and Trustee Investment (Scotland) Act 2005 created the Scottish Charity Regulator (OSCR), the Charity Register, which obligates charities to keep proper accounting records and prepare annual financial statements, including activity reports submitted to OSCR.[37]

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[32] Albert A. Arhin, Emmanuel Kumi and Mohammed-Anwar Sadat Adam, 'Facing the Bullet? Non-Governmental Organisations'(NGOS') Response to the Changing Aid Landscape in Ghana' (2018) 29 VOLUTAS: International Solicitor for Thid Sector Research 360 < https://link.springer.com/article/10.1007/s11266-018-9966-1> accessed 4 September 2026

[33] Ana Faguy, ' USAID officially closes, attracting condemnation from Obama and Bush' BBC (London, 2 July 2025) <https://www.bbc.co.uk/news/articles/c307zq8ppj6o> accessed 4 September 2026

[34] OECD, Cuts in official development assistance: OECD prjections for 2025 and the near term, (20205) OECD Policy brief < https://www.oecd.org/en/publications/2025/06/cuts-in-official-development-assistance_e161f0c5/full-report.html>accessed 4 September 2026

[35] Arhin and others (n 32)356

[36] Arhin and others (n 32)356

[37] Charities and Trustee Investment (Scotland) Act 2005, sections 2 and 44 respectively.

Chapter 5 showed that the 2020 Policy follows this international practice by establishing the Secretariat as regulator, an obligation for the Secretariat to keep a register and a requirement for sector actors to submit financial and activity reports. However, analysis of the operation of these measures was found to be inadequate.

7.3.0 The Central Register

Sector actors are now obligated under paragraph 2.2 of the 2020 Policy to apply for an annual licence and registration with the Secretariat. Per the June 2024 compliant list, the Secretariat's website showed a database of 1040 organisations made up of foreign, national or local organisations.[38] The database shows the organisations' names, addresses and area of operation, improving traceability. This scope of information is similar to international practice.[39] The number of organisations on the list increased to 1686 in the updated compliant list issued on 28th November 2025.[40]

However, the licence form LF-2[41] is a 13-page document that collects more information than this. In addition to names, addresses and operational areas, sector actors must provide information on their type of membership base, constitution, strategic objectives, values, mission, programme areas, organisational structure and leaders' information, particulars of beneficiaries and governing policy (if formed), assets like vehicles, number of staff, etc.[42] But this information is not accessible to the public and cannot be found in the database.

Also, whereas the process is more streamlined than the previous system, the LF-2 form requires the submission of letters, a copy of the national ID or passport, passport pictures, information on

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[38] Non-Profit Secretariat, Republic of Ghana, 'Compliance Status: Updated list 23rd June 2024'. < https://npos.mogcsp.gov.gh/compliant-status/> accessed 4 September 2026

[39] Charities and Trustee Investment (Scotland) Act 2005, section 3

[40] Non-Profit Organisation Secretariat Republic of Ghana, 'Compliance Status: Updated list 28th November 2025' <https://npos.mogcsp.gov.gh/compliant-status/>accessed 4 September 2026

[41] Non-Profit Organisation Secretariat (NPOS) and Ministry of Gender, Children and Social Protection Republic of Ghana, 'Form LF2: Application for Licence of Non-Profit Organisations in Ghana' < https://npos.mogcsp.gov.gh/wp-content/uploads/2024/10/Non-Profit-Organisations-Licence-Form.pdf> accessed 4 September 2026. *See Appendix 2*

[42] Non-Profit Organisation Secretariat (n 41)
Ministry of Gender, Children and Social Protection, Application for Licence of Non-Profit Organisations in Ghana' <https://npos.mogcsp.gov.gh/wp-content/uploads/2024/10/Non-Profit-Organisations-Licence-Form.pdf>accessed 4 September 2026

incorporation documents, and copies of the constitutions, which reduces registration discrepancies.

However, many organisations are not in this database. For example, the Registrar General's Department in 2019 reported the registration of 7037 companies limited by guarantee.[43] Although not all companies limited by guarantee identify as sector actors, a large proportion do. This means more than 5000 sector actors registered as companies have not registered with the Secretariat. If we add those who are trusts and those who do not have legal forms, the Policy's database is an inadequate representation of operating sector organisations, thereby inefficient.

7.3.1 Submission of Financial Reports

After obtaining a licence, Paragraph 2.2 (c) obligates licenced organisation to:

"(ii) submit ***an annual audited financial statement three (3) months*** *after the expiration of the financial year.*

(iii)Submit updates on the above items whenever changes occur.[44]

This rule is straightforward, following international practice where sector organisations are required to submit audited financial records annually to the regulator. But where some countries are generous in their submission timeline,[45] Ghana's is stricter. It also makes a distinction on the reports submitted by Community-based Organisations (CBOs) and incorporated bodies.

In the *Directive for Operations*, its Corporate Governance rules[46] mentions that:

NPOs incorporated under the Companies Act, 2019 (Act 992) shall submit an annual audited financial statement by a certified accountant, whereas the Community-Based Organisations [CBOs] shall submit an annual financial statement.[47]

CBOs can therefore have their financial statements audited by any person or organisation, while a certified accountant must audit incorporated organisations. This accounts for CBO's size and

[43] Registrar-General's Department, 'Summary Transactions Statistics 2019'. <https://rgd.gov.gh/report.html >accessed 4 September 2026

[44] National Non-Profit Organisations Policy 2020

[45] For example, the Charities Accounts (Scotland) regulations 2006, Section 5 allows for a maximum of 9 months

[46] Directives for the management of Non-Profit Organisations (NPOs) Operations in Ghana (2020)4

[47] Directives for the management of Non-Profit Organisations (NPOs) Operations in Ghana (2020)4

resource capacity, [48] but this does not mean the system is lax towards CBOs. Paragraph 2.6(c) of the 2020 Policy stipulates that (all)sector actors must:

c. have a clearly delineated administrative structure and transparent accounting system that is auditable and from which annual accounts can be compiled for audit;

d. present a copy of the audited statement of account of the year;

The Policy therefore seeks to ensure that all sector actors have credible in-house accounting systems used as the basis for financial reports, thereby reducing the likelihood that CBOs present discrepant reports.

7.3.1.0 Discretion in Financial Reporting: Solutions and Limitations

However, since the accounting system is at the discretion of the organisations, financial discrepancies may not be totally avoided. But the Policy provides under 2.6 (b) for all sector organisations to have an identifiable address, bank account with two signatories, the names of their donors, beneficial owners, directors and external auditors[49] which can assist investigations where discrepancies are identified.

In addition, the *Directives for Operations*[50] rules on transparency and accountability stipulate that:

1. NPOs shall receive all financial resources through the banking or financial system.

2. Disbursement of funds to beneficiaries shall be made through the banking or financial channel except in extreme circumstances, which may require cash.

3. Where cash is used for disbursements, an NPO shall maintain a detailed internal record of cash transactions.

By restricting cash transactions, the bank account will show the entire organisational spending, increasing financial transparency.

Even so, the bank account may not necessarily show the exact spending of sector actors as third sector actors have been identified as having several weaknesses, including 'lack of experienced manpower, limited financial assistance and corruption'.[51] In Okorley and Nkrumah's[52] research it was noted that sector actors do not always use funding for what it is precisely meant for. Most

[48] CBOs are local, small and have limited capacity

[49] National Non-Profit Organisations Policy (2020) Paragraph 2.6 (b)

[50] Directives for the management of Non-Profit Organisations (NPOs) Operations in Ghana (2020)

[51] Okorley and Nkrumah (n 13)

[52] Okorley and Nkrumah (n 13)

scenarios feature the case of 'robbing Peter to pay Paul'. Interestingly, the research also found fund diversion to be key to organisational survival. Okorley and Nkrumah,[53] documents a respondent admitting to fund diversion due to being overworked and underpaid, as well as for financing projects outside the funder's goal. They[54] therefore, argued that some sector actors take a long view and strive hard to hit the right note with donors in language and style to create a small space in which to promote their own development ideas inconsistent with funders' goals. Hence, sector actors who rely on external funding may use "buffering strategies to reduce financial transparency and divert funds into their mission and their core activities. Though their research notes that this method is also used in corrupt practices to conceal fraud, they argue that there should be a distinction between the proverbial bad and good practices.

Nevertheless, from the perspective of transparency, the outcome is the same. Whether for altruistic or bad reasons, fund diversions reduce transparency and highlight why sector actors may deter probes into their work, leading to the submission of misleading financial reports.

The 2020 Policy provision seeks to weaken such practices as the *Directives for Operations'* rules on Transparency and Accountability (4)reads:

"NPOs receiving foreign contributions or foreign economic assistance shall appropriately utilise these financial resources on the agreed terms and conditions"[55]

But ultimately, the Secretariat will not be privy to all details of what a sector actor and donor agrees and so the implementation of this rule may be difficult. In addition to this implementation difficulty, the *Directive for Operations* rule on Corporate Governance (5) provides that:

NPOs shall have appropriate internal control measures in place to ensure that all funds are accounted for and are spent in a ***manner that is consistent with the purpose and objectives of the NPO's stated mandate***.

This internal control is largely at the discretion of sector organisations. So long as the financial reports show that funds are used within the mandated objectives of the organisation, the Secretariat will not necessarily probe into it.

[53] Okorley and Nkrumah (n 13)

[54] Okorley and Nkrumah (n 13)

[55] Directives for the management of Non-Profit Organisations (NPOs) Operations in Ghana (2020)5

Ultimately, whilst the 2020 Policy's rules on financial transparency aim to ensure that reports are submitted and that they reflect the correct expenditure, they do not safeguard against corruption, as the provision intended to monitor fund diversion may be difficult to implement.

7.3.1.1 Financial Reporting and Licence

As already discussed in Chapter 5, the 2020 Policy ties the requirement for financial report submission to the renewal of the licence. An organisation is not meant to submit a report in the initial application for a licence, but when applying for annual renewal. Therefore, while paragraph 2.6 establishes a general obligation for organisations to submit financial reports, it is qualified by paragraph 2.2, which requires the submission of financial and activity reports only from organisations that already have a licence.

The *Directive for Operations* rule on Renewal of Licence[56] states that:

(2) An NPO seeking to renew its licence shall submit;

a. an annual audited (NPOs) and unaudited (CBOs) financial statement, where applicable, and an operational report

b. a proof of payment of the renewal fee

c. a record of any changes in its mandate (where applicable)

d. a tax clearance certificate

This means that those who do not apply for a licence are not required to submit their audited financial report. For those who are licenced, the financial report is the basis for renewing their licence. The Local Government processes the registration for a licence for CBOs and the Secretariat for all other organisations. The Local Government is meant to keep and submit an annual report of the registration to the Secretariat. Under the licence process outlined by the 2020 Policy, paragraph 22(c)(iii) subsection (c) mandates the Secretariat to have a register of the beneficial owners, Board Members and Directors of the registered NPOs, including their biographical data.

However, the Secretariat website does not have a section to view the financial or activity reports. Arguably, the public can contact the Secretariat directly for information, but this limits transparency to those who call rather than to all. Additionally, the public can request reports under the Right to Information Act 2019, but discussions under section 8.4.3 of the thesis indicate that

[56] Directives for the management of Non-Profit Organisations (NPOs) Operations in Ghana (2020)3

the process is not straightforward and can be expensive. Therefore, the transparency frameworks appear to be designed solely for the Government and discount public disclosure and potential funders who may seek more information about an organisation. The most the public and funders can access is the organisation's identification and the Secretariat's indication of its 'standing' with them. Even then, the 28th November 2025[57] updated list fails to show the compliant status column.[58] Instead, the list shows the dates a licence was issued to an organisation and when it expires.[59] This leaves the decision about an organisation's status to the public based on the expiration date. Even this is problematic, as the list is updated annually, so one cannot determine whether an expired licence has been renewed.

7.3.2 Submission of Activity Reports

The 2020 Policy Paragraph 2.6(e) obligates sector actors to

"Share activity-related reports with the Government, other relevant organisations, beneficiaries and any other interested parties"[60]

Further, Paragraph 3.10 impresses upon this by obligating:

"NPOs shall submit to the NPO Secretariat annual operational reports … about their activities. CBO shall submit annual operational report …"[61]

This rule also seems straightforward and may result in the Secretariat having a database of the activities of sector actors. But this is also not made accessible to the public.

Further, the *Directive of Operations* rules on corporate governance states that:

(3) NPOs shall maintain information on: a. the purpose and objectives of their stated activities; and b. the identity of the person(s) who own, control or direct their activities, including senior officers, board members and trustees.[62]

So, where a project has negative impacts, in-house reports can be evaluated, and the responsible party traced. The key issue is that not all organisations are truthful about their activities and may

[57] Non-Profit Organisation Secretariat (n 40)

[58] *See Picture 5 under section 8.4.2*

[59] See Picture 5 below

[60] National Non-profit Organisations Policy (2020) Paragraph 2.6(e)

[61] National Non-profit Organisations Policy (2020Paragraph 3.10

[62] Directives for the management of Non-Profit Organisations (NPOs) Operations in Ghana (2020)4

not keep records of this. Also, like financial reporting, the activity reporting is subject to licence renewal, and where an organisation does not renew their licence, this transparency system becomes insufficient.

7.4 The Regulator

As shown in Chapter 5, paragraphs 3.4 and 3.8 of the 2020 Policy established the Secretariat as the main institutional oversight body of the sector. In terms of transparency, it licence, creates the central database, receives financial and activity reports and applies punitive measures for non-compliance.

7.4.0 Licence and Central Database

The Secretariat periodically displays a compliant list of organisations, which, though limited, informs the public and donors of the credibility of organisations. It shows the three traceability indicators of organisations, which are name, address and operational area.

7.4.1 Applying Sanctions

The list of organisations not only shows registered/licenced organisations but also the compliance status of sector actors in adhering to the obligations under the 2020 Policy. The list has organisations in good and not-in-good standing. As of the list update on 28th June 2024, there were only 58 organisations not-in-good standing[63] which was less than the previous year. This is most likely due to the Secretariat growing in prominence. Whilst this is helpful in showing the credibility of organisations, the list is arbitrary because it does not clearly state the reasons or the degree of infraction of the organisations not-in good standing. According to the Directives of Operations,

sanctions shall be applied to non-compliant NPOs where the NPO:

a. provides misleading, false information, or false declarations with intent to deceive;

b. fails to renew its licence within the stipulated time required;

[63] Non-Profit Organisation Secretariat(n 38)

c. fails to submit an annual audited financial statement and operational report in the case of an incorporated entity or an annual financial statement and operational report in the case of a Community based Organization;

d. undertakes an activity in violation of any Laws and Regulations in Ghana;

For the above failures, sanctions imposed may include revocation of licence, suspension of its licence, withdrawal of tax waiver, blacklisting, fines and criminal prosecution.[64]

Therefore, it is assumed that organisations not in good standing are blacklisted for breaching any of the actions in 1(a)-(d), which are all transparency requirements apart from (d). So, though the website does not tell us about the exact infraction, the *Directive for Operations* indicates that organisations blacklisted most likely did not meet the transparency requirements. However, as already mentioned above, the 28th November 2025 update lacks the status column, therefore making it challenging to determine where sanctions are applied.

In addition to the list, the Secretariat also suspends licences. Between 2022 and 2023, the Secretariat's website had a running notice of the suspension of an organisation. The notice read:

"The licensure of TEENPREG an NPO operating in the Central Region (AAK District) has been SUSPENDED. All individual and organisations are to Suspend their collaboration with TEENPREG till further notice…"[65]



Picture 1: Secretariat Public Notice of organisation suspension (from the Secretariat)[66]

Since the operation of the Secretariat and until the time of writing,[67] this was the first and only notice of suspension of licensure. The suspension may also be for transparency violations as the *Directives of Operations* under the section of Renewal of Licence (4) states that: *Failure to renew a licence within three months of expiry will amount to suspension of licence.*

[64] Directives for the management of Non-Profit Organisations (NPOs) Operations in Ghana (2020)6

[65] Non- Profit Organisation Secretariat, 'Home: 8 September 2023'. <https://npos.mogcsp.gov.gh/> (accessed 9 November 2023)

[66] Non-Profit Organisation Secretariat (n 65)

[67] 5 years

However, noting the other sanctionable activities discussed above, this claim is not definitive, especially since the notice runs from 2022-2023. The lack of information as to why TEENPREG was suspended, and organisations that are not in good standing, call into question the transparency of the Secretariat in applying sanctions. This makes the imposition of penalties discretionary and arbitrary and can lead to sector actors and the public lacking confidence in the Secretariat's database.

7.4.2 Appealing Sanctions

Where the Secretariat intends to impose sanctions, the *Directive for Operations* rules on Sanctions states that organisations will be notified thirty days in writing before a sanction is imposed. Hence, an organisation will be aware of its breach and take steps to rectify it, including appealing the Secretariat's decision. The NPO Board is meant to set up an Arbitration Committee to address such issues, after which they must report to the NPO Board their recommendations.[68]

Therefore, organisations that receive sanctions notices have the right of appeal. This measure creates fairness and gives organisations the right to make their case. However, it is not clear whether any organisation has made use of this as there is no information or report on the website.

Notwithstanding the challenges, the transparency system created under the 2020 Policy does improve the sector's level of transparency in providing a uniform system with punitive measures. However, the Secretariat's capacity may be limited.

7.4.3 Secretariat's Capacity in Safeguarding Transparency Mechanism

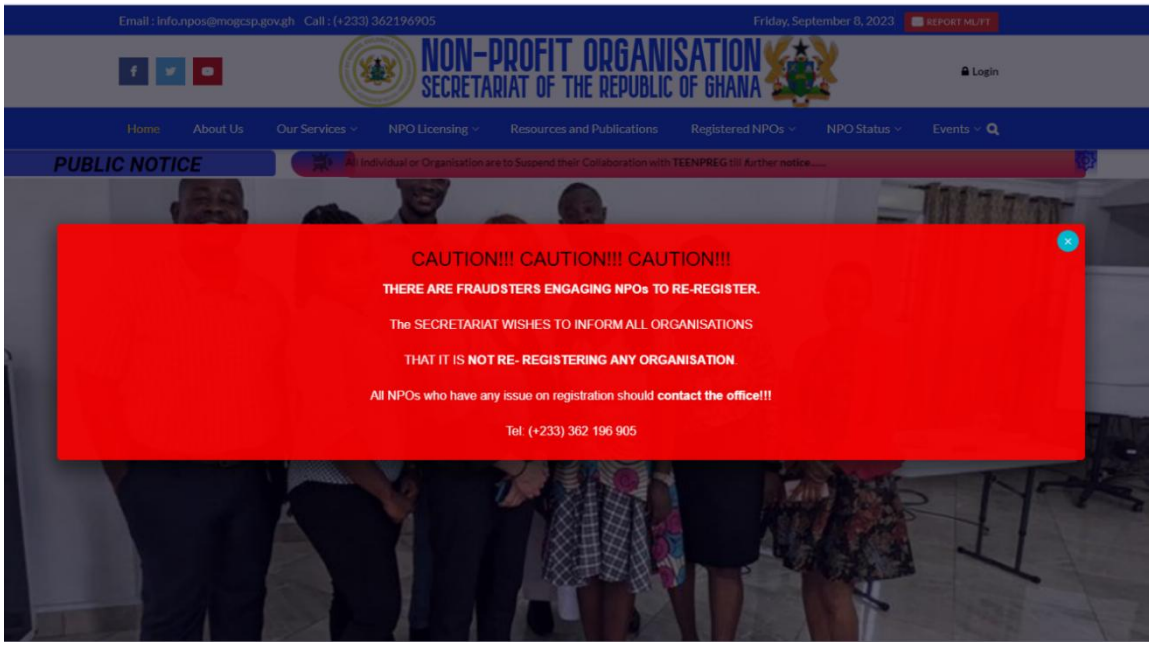
Again, between 2022 and 2023, the Secretariat's website showed another notice, this time cautioning sector actors of fraudulent registers. The notice read:

"CAUTION!!! CAUTION!!! CAUTION!!!

THERE ARE FRUDSTERS ENGAGING NPOs TO RE-REGISTER. THE SECRETARIAT WHISHES TO INFORM ALL ORGANISATIONS THAT IT IS NOT RE-REGISTERING ANY ORGANISATION. All NPOs who have any issue on registration should contact the office…"[69]

[68] Directives for the management of Non-Profit Organisations (NPOs) Operations in Ghana (2020)6

[69] Non-Profit Organisation Secretariat (n 65)



Picture 2: Secretariat's Caution of Fraudulent re-registration (from the Secretariat)[70]

This notice posed two issues, the first is that the notice ran for about a year, and during this time, the Secretariat did not register any organisation or renew licences. Even though paragraph 2.6 of the 2020 Policy obligates sector actors to keep the Secretariat updated on activities, this is done through licensure and reports. In the absence of licence registration and renewal, the transparency system was effectively halted.

The second issue was of fraudsters taking advantage of the system. In not addressing the issue quickly, sector actors may lose trust in the secretariat, especially when sensitive information like financial records is breached. This reduces trust in the Secretariat's capacity to handle and prevent such occurrences. Also, organisations that may otherwise rely on the Secretariat to boost their credibility may be disappointed when the donor organisations they want to impress do not find them in the Secretariat's database. Sector actors may therefore lack confidence in the Secretariat and ignore Government measures in favour of inadequate internal systems.

Finally, a review of the Secretariat shows limited manpower in facilitating an effective transparency system. In 2023, the Secretariat reported having a small team of nine individuals. When compared to the known and unknown number of sector actors, this does not bode well in facilitating an effective transparency system.

[70] Non-Profit Organisation Secretariat (n 65)



Picture 3: The Secretariat's Profile in 2023 (From the Secretariat)[71]

In fact, between the months of August 2022 and July 2023, the website was down and could not be accessed. Therefore, any information on the Secretariat's activities and information on sector organisations was inaccessible. In 2025, the Secretariat's website removed employee data, making it hard to determine if their capacity has grown.

7.5 Conclusion

Compared to the previous transparency structure, the 2020 Policy presents an improved and uniform mechanism which creates a central register, regulator and requirement to submit annual financial and activity reports to the Secretariat. However, the central register is limited due to minimal compliance of sector actors. Likewise, though the requirement of submitting financial reports and activities improves transparency, it is affected by the disproportionate number of sector actors on the register. Also, its subjection to licence renewal means that where licence renewal is paused, it effectively halts financial and activity report submissions. In addition, the

[71] Non-Profit Organisation Secretariat (n 59)

Secretariat's scrutiny of submitted reports may be challenged by practices of fund diversions, and so reports may not show a true representation of finances or activities.

Whilst there are sanctions for providing misleading reports, the action that warrants it is not clear, marring the mechanism's own transparency. The application of the punitive measures seems discretionary and calls into question the Secretariat's own transparency and capacity to oversee the transparency system.

This and the issue of fraudsters usurping and registering organisations as agents of the Secretariat can further lead to distrust in the Secretariat. In addition, evidence shows that the Secretariat lacks capacity in enforcing the transparency mechanism. Therefore, despite the 2020 Policy's aim to create a favourable transparency environment, its mechanism is insufficient.

The discussion of the effectiveness of the 2020 Policy finishes with the analysis of the accountability measure in the next chapter.

Chapter 8: The Effectiveness of the 2020 Policy's Accountability Mechanism

8.0 Introduction

This chapter concludes the analysis of the 2020 Policy's adequacy by highlighting the strengths and gaps in its accountability mechanisms. Similar to transparency, the lack of legislation has impacted the sector's accountability arrangements through limited Government oversight. As a result, sector actors mainly concentrate on accountability to funders and specific Government institutions, as set out by their internal rules. Accountability to beneficiaries is often absent because they are seen as passive stakeholders who accept handouts. This situation worsens the marginalisation and exploitation of beneficiaries within the third sector. Therefore, as in the discussion on transparency, this chapter examines the Policy's accountability mechanisms and their effectiveness.

8.0.0 Key Findings

The discussion shows that, like transparency, the 2020 Policy's main accountability mechanism is through registration and licence. This measure denotes upward accountability towards the Government. In addition to the existing practise of focusing on funder accountability, upward accountability therefore becomes the main measure used by sector actors. From the licence applications, the Secretariat publishes a list of compliant organisations which the public and beneficiaries can view. However, the information provided is minimal. It only includes the name, the operating region, and the licence renewal and expiration dates. The organisations' financial or activity reports are not added. Although one may technically request it under Ghana's Right to Information Act 2019, the process is unclear and costly.

Therefore, beneficiaries do not benefit from this measure. Most importantly, the 2020 Policy does not categorically require sector actors to be accountable to their beneficiaries. Hence, downward accountability to beneficiaries is mainly left to the discretion of sector actors. This maintains the status quo, in which sector actors prioritise donor interests over beneficiaries. Therefore, the accountability measures provided by the 2020 Policy are ultimately insufficient. This conclusion is similar to the two previous analyses in that, although the 2020 Policy offers new measures, these are wholly lacking. Thus, the 2020 Policy's accountability measures bring minimal changes to the old regime and do not go far enough to strengthen the sector's regulation framework.

8.1 The Issue of Accountability in Ghana's Third Sector

It is well established that a lack of or ineffective accountability can lead to negative effects. Therefore, accountability issues and practices have been written about by academics and organisations, such as Ebrahim, on its concept[1] and practice[2] as well as the United Nations in its development dossier. [3]

In Ghana, third-sector accountability is understood in two ways. First, they provide a public service by holding the Government accountable. Therefore, Arkoful and others[4] found that sector actors consistently help reduce corruption by participating in Government initiatives and advocating for accountable Government practices. Second, is their responsibility to their stakeholders by virtue of their services. Although they are lauded for the first accountability service, they are found lacking in the second. This is shown in the GIABA report's[5] evaluation, which highlighted the

[1] Alnoor Ebrahim, 'Making Sense of Accountability: Conceptual Perspectives for Norther and Southern Nonprofits' (2003) 14 (12) Non Profit Management and Leadership <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=ad1b9067aacbc3b1a326b95bf00229618a619279 > accessed 4 September 2026

[2] Alnoor Ebrahim, 'Accountability in Practice: Mechanisms for NGOS' (2003) 31(5) World Development <https://www.sciencedirect.com/science/article/pii/S0305750X03000147?via%3Dihub> accessed 4 September 2026

[3] Jem Bendell, 'Debating NGO Accountability' (2006) United Nations Development Dossiers UN Non-Governmental Liaison Service <https://www.gdrc.org/ngo/accountability/NGO_Accountability.pdf >accessed 4 September 2026

[4] Vincent Ekow Arkorful, Nurudeen Abdul-Rahaman, Hidaya Sungjun Ibrahim and Vincent Ansah Arkorful, 'Fostering Trust, Transparency, Satisfaction and Participation Amidst COVID-19 Corruption: Does the Civil Society Matter:- Evidence from Ghana' (2022) 22 Public Organisation Review,1191 <https://ideas.repec.org/a/kap/porgrv/v22y2022i4d10.1007_s11115-021-00590-w.html > accessed 4 September 2026

[5] The Inter-Governmental Action Group against Money Laundering (GIABA), 'Anti-money laundering and counter-terrorist financing measures – Ghana, Second Round Mutual Evaluation Report' (GIABA,2018) < https://www.fatf-gafi.org/content/dam/fatf-gafi/fsrb-mer/GIABA-Ghana-MER-2018.pdf.coredownload.inline.pdf> accessed 4 September 2026

sector's weak accountability.[6] In addition, both Ghanaian news media[7] and the BBC[8] report on sector actors' exploitation and self-enrichment schemes that take advantage of their beneficiaries.

Some sector actors do not even prioritise the needs of their beneficiaries and instead categorise all rural communities as having similar economic and social needs.[9] This results in the execution of the same projects across multiple locations, with little regard for the distinct needs of the communities.[10] Sector activities, therefore, often discount beneficiary views and participation, leading to their marginalisation. Additionally, data from the researcher's LLM dissertation indicate allegations of theft of traditional knowledge and know-how by some sector actors, with no prospect of accountability.[11] This is why the public sometimes disparagingly describes the altruism of some sector actors as fake or 'get-rich' schemes. It also, prompted the creation of the 2020 Policy[12] which aims to provide oversight and enable sector accountability. The extent to which it does so effectively is analysed below.

8.2 Approach to Third Sector Accountability in Ghana

First and foremost, the definition of accountability is quite challenging. A simple understanding of the word is either being 'held responsible' by others or 'taking responsibility' for one's actions.[13]

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[6] GIABA (n 5) 125.

[7] George Bob-Miller, 'NGOs in Ghana-Profit Making Organisations?' *Ghana Web News* (Accra, 28 April 2005) < https://www.ghanaweb.com/GhanaHomePage/features/NGOs-In-Ghana-Profit-Making-Organisations-80271> accessed 4 September 2026

[8] Iliasu Adam, 'Ghana to blacklist NGOs' *BBC* (London, 25 February 2004) <https://www.ghanaweb.com/GhanaHomePage/features/NGOs-In-Ghana-Profit-Making-Organisations-80271> accessed 4 September 2026

[9] Gershon Osei, 'Self-help Without the Self: Critique of Non-Governmental Organizational Approaches to Rural Development in Ghana' (2017) 60(2) International Social Work 494, 499

[10] Gershon (n 9), 499

[11] Edna Ayeley Okine, 'Achieving Sustainable Development through Shea Trade: A case study of Uganda and Ghana's Shea Industry' (Master's thesis, University of Strathclyde 2017)

[12] National Non-Profit Organisation Policy (2020) <https://wacsi.org/wp-content/uploads/2021/08/NPOS-National-Non-Profit-Organisation-Policy.pdf>accessed 4 September 2026

[13] Andrea Cornwall, Henry Lucas, and Kath Pasteur, 'Introduction to Accountability through Participation: Developing Workable Partnership Models in the Health Sector' (2009) 31(1) IDS Bulletin 1, 3 < https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1759-5436.2000.mp31001001.x >accessed 4 September 2026

Although this is easily understood, it becomes somewhat complicated in practice. For example, one of the accountability measures used by the Ghanaian third sector is durbar celebrations. The images this conjures are of people being merry rather than being held responsible, making the practice, definition, and concept of accountability widely elusive.

A second issue is that, due to the simple understanding and even sometimes the complications involved in defining it, some authors of accountability literature leave it to readers to define it themselves. They either assume readers know what accountability means and therefore fail to define it in their works, or, when they do explain it, offer an abstract, composite concept with a range of possible meanings.[14] This produces varied definitions and understanding of accountability, based mainly on disciplinary perspectives.

For example, the legal perspective of accountability is seen through the lens of an "obligation to meet prescribed standards of behaviour or an obligation to disclose information about one's actions."[15] Legal accountability, therefore, emphasises rules, with the threat of legal action serving as a deterrent or a punitive measure when obligations are not met.

On the other hand, accountability from a public affairs perspective is grounded in the 'principal-agent' theory, in which the principal (the public/citizens) appoints agents (public agents/Government) to carry out functions/ agendas on their behalf.[16] The agents are therefore accountable to the principal for actions taken. This perspective is emphasised as a Constitutional principle that dictates legitimate and democratic governance, which can be done right or wrong.[17]

In contrast to the public affairs perspective, the economic perspective situates itself within market principles. The focus is on who accountability is directed towards, considering the power dynamics involved.[18] Hence, in discussing accountability, it becomes less about what it is and more about whom it is directed toward.

Although varied, these definitions shape our understanding that accountability mechanisms are employed from the perspective adopted. However, if the perspective adopted does not fully align

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[14] Ebrahim (n 2)

[15] Bamforth Nicholas and Peter Leyland, 'Introduction: Accountability in the Contemporary Constitution' in Nicholas Bamforth, and Peter Leyland (eds), *Accountability in the Contemporary Constitution* (Oxford Academic, 2014) <https://doi.org/10.1093/acprof:oso/9780199670024.003.0001>accessed 30 December 2025

[16] Ebrahim (n 2)

[17] Nicholas and Leyland (n 15)

[18] Ebrahim (n 1) 195

with the situation on the ground, accountability in practice becomes inappropriate, causing harm rather than any benefit. As such, accountability obligations and responsibilities are intended to be structured around the question of who is accountable. To whom? For what? And how?[19]

Interestingly, Ebrahim[20] argues that the economic perspective, which views accountability as a matter of competing interests, is more representative of third-sector accountability practice. This notion is convincing because the public appoints neither business organisations nor third-sector organisations to act on their behalf. Rather, businesses and third-sector organisations provide their services voluntarily for an outcome such as money or altruism. Their accountability considerations are therefore not toward the public but rather toward those who have the power to sustain their interests.

In Ghana, the four main stakeholders of third-sector organisations include donors, Government, employees, and beneficiaries,[21] each with distinct yet competing interests and power. Donors are often found at the top of the accountability focus. This is because research shows that only 10 per cent of the total budgets of sector actors in Ghana are generated internally; 80-90 per cent comes from external donors.[22] Though USAID has been closed[23] and ODA[24] has dropped aid to 17 per cent, thereby changing the funding landscape, their previous donations remain significant. For example, the USA's Ambassador's Special Self-help Program reportedly distributed more than $2.2

[19] Bendell (n 3) 1

[20] Ebrahim (n 1)

[21] Ernest Okorley, Josephine Deh and Rebecca Owusu, 'A Ghanaian Case Study of Strategies of Ensuring Accountability by Non-Governmental Organisations'. (2012) 14 (7) Journal of Sustainable Development in Africa < https://jsd-africa.com/Jsda/Vol14N7-Winter2012A/PDF/A%20Ghanaian%20Case%20Study%20of%20Strategies.Ernest%20Okorley.pdf> accessed 4 September 2026

[22] Emmanuel Kumi, 'Aid Reduction and NGDOs' Quest for Sustainability in Ghana: Can Philanthropic Institutions Serve as Alternative Resource Mobilisation Routes?' (2019) 30 Voluntas: International Journal of Voluntary and Nonprofit Organsaiitons1332 < https://link.springer.com/article/10.1007/s11266-017-9931-4>accessed 4 September 2026

[23] Ana Faguy, ' USAID officially closes, attracting condemnation from Obama and Bush' BBC (London, 2 July 2025) <https://www.bbc.co.uk/news/articles/c307zq8ppj6o>accessed 4 September 2026

[24] OECD, Cuts in official development assistance: OECD prjections for 2025 and the near term, (20205) OECD Policy brief < https://www.oecd.org/en/publications/2025/06/cuts-in-official-development-assistance_e161f0c5/full-report.html>accessed 30 December 2025

million in support of community projects in Ghana.[25] In addition, numerous grants are available for sector actors in Africa[26] and Ghana, ranging from $10,000 to $5 million.[27] Therefore, accountability considerations are primarily directed towards funders,[28] given their resource power. While it is apt to argue that it is only right for third-sector organisations to 'pay their pipers', a sole focus on funders accountability reinforces Western dominance.[29]

After funders, are accountability measures toward Government agencies, such as the Ghana Revenue Authority for tax. However, full accountability to relevant Government agencies must be facilitated by legal regulation for it to work properly. Without the backing of law or Government enforcement measures, accountability towards Government is often weak. This explains why sector actors had previously refused to register with the Department of Social Welfare and questioned their legal authority to require registration.[30]

Among the stakeholders, beneficiaries are seen as recipients of services,[31] therefore, accountability considerations towards them often come last because they lack resources and legal power to require robust accountability. It must be argued that not all organisations place beneficiaries last,[32] some require consultation with beneficiaries prior to projects. Nonetheless, according to findings,[33] such situations are limited and often do not last. When we combine the sector's accountability

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[25] U.S Embassy in Ghana, 'Ambassador's Special Self-Help Program' https://gh.usembassy.gov/ambassadors-special-self-help-program/ >accessed 4 September 2026

[26]Charity Excellence Framework, 'World Funding Organisations - Funds for NGO Projects In Africa' <https://www.charityexcellence.co.uk/grant-funds-for-ngos/>accessed 4 September 2026

[27] Funds for NGOs. < https://www2.fundsforngos.org/tag/funding-opportunities-and-resources-in-ghana/>accessed 4 September 2026

[28] *See section 8.6 below*

[29] Dorothea Hilhorst,Samantah Melis, Rodrigo Mena and Roanne van Voorst, 'Accountability in Humanitarian Action'. (2021) 40 Refuge Survey Quarterly 363,375 https://academic.oup.com/rsq/article/40/4/363/6448557 >accessed 4 September 2026

[30] West Africa Civil Society Institute (WACSI), *Rapid Assessment of the Legal Environment for Civil Society Including Philanthropic Organisations in Ghana*. (WACSI,2020)12 <https://wacsi.org/wp-content/uploads/2021/02/Ghana-Rapid-Assessment-of-The-Legal-Environment-for-Civil-Society-Including-Philanthropic-Organisations.pdf>accessed 4 September 2026

[31] *See Section 8.6*

[32] *See Section 8.6*

[33] *See Section 8.6*

considerations towards their stakeholders, with the economic perspective of accountability the deficiencies found in the GIABA report makes sense.

Yet, evidence shows that the natural response to increased sector activities is increased public interest for oversight and regulation.[34] In Ghana, NGOs alone grew from 80 in the mid-1980s to around 4463 in 2009,[35] although sector actors reportedly amount to 300,000,[36] the actual number remains unknown. Therefore, the public desire for increased scrutiny is ripe. This changes the situation on the ground, making reliance on the economic perspective alone inconsistent with evolving issues. Rather, accountability in practice should duly shift from a pure consideration of interests to beneficiary/public scrutiny irrespective of power. This approach is indicative of the public affairs perspective.

In addition to sector actors' misdeeds, 21st-century threats like terrorism financing obligates Government to employ robust deterrence measures and sanctions. The enactment of the Anti-money laundering Act 2020 signifies Ghana's move towards this approach. This further changes the situation and shifts the notion of third sector accountability from primarily focusing on 'interest' considerations towards obligations, based on the legal perspective.

Therefore, Ghana's third-sector accountability measures must be an amalgamation of the three disciplinary perspectives, taking into account the changing landscape and requirements. This approach is represented below in fig 5.

[34] Ebrahim (n 1)191

[35] USAID, '2010 Civil Society Organisation Sustainability Index: Sub-Saharan Africa (West Africa)' (2011)

[36] Commonwealth Network, 'Find National NGO expertise in Ghana' https://www.commonwealthofnations.org/sectors-ghana/civil_society/>accessed 30 December 2025

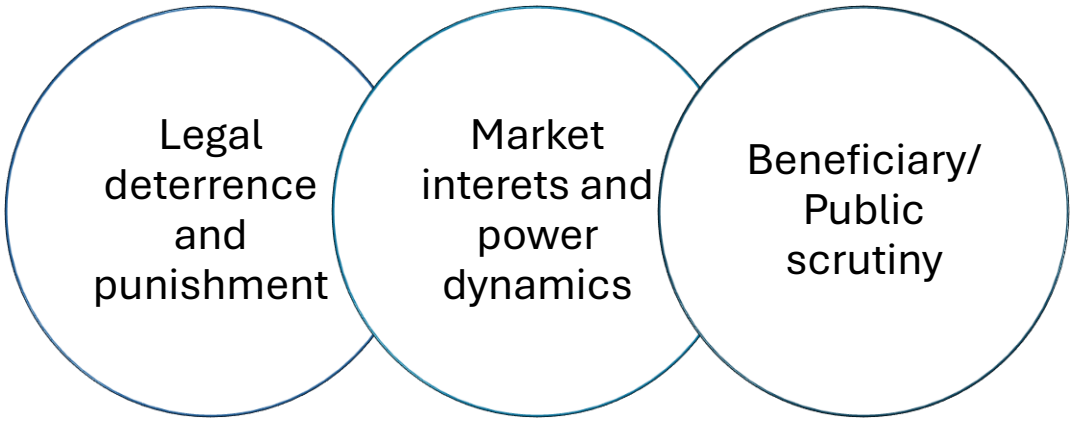


Fig 5- Amalgamation of the three disciplinary perspectives for third sector accountability in Ghana. *(Researcher's illustrations)*

This method is supported by Ebrahim's[37] observation that the nature of accountability arises from both social construction and the plural accountability changes that organisations face continuously. Hence, changes in society and research such as this must shape our understanding of what third-sector accountability in practice should look like in Ghana. Based on the discussion above, the research takes the position that the changing landscape requires third-sector accountability to consider beneficiaries, the Government and donors equally in the accountability process. Therefore, the subsequent discussion focuses on how the 2020 Policy's accountability mechanism affects this change, if at all. To this end, the following section discusses the types of accountability practices adopted and their implications.

8.3 Forms of Accountability Mechanisms

Awuah-Werekoh[38] notes that, despite the absence of a standard definition, most view accountability as a relationship where one gives accounts of their behaviour, and another judges said account. Simply put, accountability takes place in a relational context. Third-sector actors account for their actions to their stakeholders, and stakeholders, in turn, receive and evaluate these

[37] Ebrahim (n 1) 194

[38] Kwasi Awuah-Werekoh, 'Accountability Systems of Non-Governmental Organisations (NGOs): Case Study from Ghana'. (Doctoral Thesis PhD, University of Birmingham, 2014)36 <https://etheses.bham.ac.uk/id/eprint/5829/>accessed 4 September 2026

actions. Whom accountability is towards dictate the type of accountability mechanism employed. The types of accountability measures therefore include upward, lateral, downward, and holistic.

Upward accountability focuses on stakeholders who control the access and use of key resources, which have immediate impacts on sector organisations.[39] These stakeholders control resources and possess power, capacity, and authority. They are, therefore, often donors/funders who have financial power and sometimes the Government, which may allocate some financial or non-financial resources. In Ghana, major funders of third-sector projects include foreign development agencies [40] like Department for International Development (replaced by Foreign, Commonwealth and Development Office (FCO), Danish International Development Agency (DANIDA), Korea International Cooperation Agency (KOICA), European Union etc. There are also individual funders; international organisations such as the World Bank, UNICEF, and FAO; foundations such as the Gates Foundation; as well as corporate and community foundations.[41]

Because of their resource power, the advantage of upward accountability is its ease of enforcement. Essentially, compliance and adherence are enforced through stakeholders withholding resources using blacklisting or threats to pull funding. The disadvantage, though, is that accountability is on a short-term basis, monitoring the success or impacts of isolated campaigns to meet funders objectives.[42] It prioritises the 'powerful' and consequently ignores the less powerful, who are often the beneficiaries. Upward accountability only makes sure that activities are in line with the reasons for resource allocation, thereby paying less attention to beneficiary views. Therefore, it is seen as a narrowly functional and external oversight. If this approach is applied in consideration of the changing accountability requirements set out above, beneficiaries will lose out.

In contrast, downward accountability focuses on stakeholders who are receivers of services (beneficiaries). Unlike stakeholders in the upward accountability process, they have little power and cannot demand enforcement. Ebrahim[43] argues that sector actors therefore implement downward accountability measures because of "felt responsibility". As such, this accountability

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[39] Brendan O'Dwyer and Jeffrey Unerman, 'Enhancing the Role of Accountability in Promoting the Rights of Beneficiaries of Development NGOs' (2010)40 (5) Accounting and Business Research 251

[40] USAID used to be one but now closed by the Trump administration

[41] Government of Ghana, 'Risk Assessment of Not-For Profit Organisations (NPOs) in Ghana' (2022)9 <https://npos.mogcsp.gov.gh/wp-content/uploads/2024/10/ML.TF-RISK-ASSESSMENT-FOR-NPOs-2.pdf>accessed 4 September 2026

See 1.2.2 for an overview of the funding landscape

[42] Ebrahim (n 2)

[43] Ebrahim (n 2) 814

mechanism is discretionary and often aims to achieve community participation. Its advantage is that, it enhances responsiveness and legitimacy. [44] The mechanisms often used include feedback, meetings and needs assessment. In Ghana, mechanisms also include durbars where sector actors inform the community and leaders about their activities. However, due to the lack of power to ensure accountability, the beneficiaries' level of participation is at the mercy of the organisation, and this is its key disadvantage. Though this approach better suits the changing landscape, it is difficult to implement if funders are not on board and can threaten the sustainability of sector actors.

Lateral accountability is compared with the hierarchical forms of accountability, which operates upward and downward within organisational structures. While upward and downward accountability are relatively straightforward reflecting obligations toward external stakeholders [45] in a vertical hierarchy, lateral accountability is less clearly defined in practice. Christensen and Ebrahim[46] observe that both lateral and downward accountability in practice are often a result of organisational felt responsibility, using less formalised mechanisms making them more difficult to operationalise. Even so, downward accountability is nonetheless clearer on which stakeholders are owed such an obligation to. It is not so clear with lateral accountability, it depends on the organisation's vision.

Although Christensen and Ebrahim[47] do not provide a categorical definition of lateral accountability, their study identifies the organisational actors toward whom it is directed. These include staff, board members, volunteers and community partners as envisaged in the organisation's mission.[48] Mechanisms they found used to realise lateral accountability included staff meetings and performance reviews, director support for staff, volunteer training, training

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[44] Ronelle Burger and Dineo Seabe, 'NGO Accountability in Africa', in Ebenezer Obadare (ed), *The handbook of Civil Society in Africa* (Springer, 2014) 80

[45] Jugen Willems 'Accountability and transparency: cornerstones of civil society governance' In Gemman Donnelly-Cox, Micheal Meyer, Filip Wijkstrom (ed) Research Handbook on Nonprofit Governance (Edward Elgar Publishing Limited, 2021)53 https://www.google.co.uk/books/edition/Research_Handbook_on_Nonprofit_Governanc/wDhUEAAAQBAJ?hl=en&gbpv=1&dq=conceptual+definition+of+lateral+accountability&pg=PA51&printsec=frontcover accessed 31 August 2026

[46] Rachel A. Christensen and Alnoor Ebrahim, 'How Does Accountability Affect Mission? The Case of a Nonprofit Serving Immigrants and Refugees'(2006)17(2) Nonprofit Management and Leadership, 195, 196 < https://onlinelibrary-wiley-com.ezproxy.herts.ac.uk/doi/epdf/10.1002/nml.143 > accessed 31 August 2026

[47] Christensen and Ebrahim (n 46)

[48] Christensen and Ebrahim (n46)199

provided to other agencies, focus groups with partner organisations, and participation in community associations.[49] This suggests that lateral accountability operates both towards stakeholders within and outside the organisation.

However, Crack[50] defines lateral accountability more narrowly as an internal accountability mechanism, describing it as '*responsibilities that an NGO has as its mission and to the people that are part of the organisation, including staff, volunteers and members*.'[51] In practice, this form of accountability is exercised by governing bodies and executives through staff meetings, performance appraisals, and training opportunities.[52] Harrison, Murray and Conforth[53] similarly view these practices as internal measures, noting that they involve sharing information with stakeholders who are strategically, tactically, or operationally engaged in organisational processes.[54] But they did not explicitly label this as lateral accountability.

Furthermore, lateral accountability is described as synonymous to horizontal accountability and internal partnerships, [55] indicating that it extends beyond internal organisational accountability. On its own terms, horizontal accountability is defined as a peer or mutual accountability, referring *to 'responsibilities that NGOs have to work with their counterparts to raise accountability standards across the sector'*.[56] It is typically realised through voluntary self-regulation mechanisms including peer regulation, certification initiatives, standards and accountability clubs and organisational code of conduct.[57] This understanding aligns with Willems'[58] notion of lateral transparency and

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[49] Christensen and Ebrahim (n 46)199

[50] Agela Crack, 'NGO Accountability' , In Thomas Davies(ed) ' Routledge Handbook of NGOs and International Relations' (Routledge, 2019) <https://www.taylorfrancis.com/chapters/edit/10.4324/9781315268927-43/ngo-accountability-angela-crack >accessed 31 August 2026

[51] Crack (n 50) p626

[52] Christensen and Ebrahim (n 46)

[53] Yvonne Harrison, Vic Murray and Chris Conforth, 'Perceptions Of Board Chair Leadership Effectiveness In Non-Profit And Voluntary Sector Organisations' (2013)24(3), Voluntas: International journal of voluntary and Nonprofit Organizations, 688
<https://oro.open.ac.uk/32520/2/Perceptions_of_board_chair_leadership_effectiveness.pdf>

[54] Harrison, Murray and Conforth (n 53)

[55] B O'Dwyer and R Boomsma, "The Co-Construction Of NGO Accountability: Aligning Imposed And Felt Accountability In NGO-Funder Accountability Relationships"(2015) 28(1) Accounting, Auditing and Accountability Journal 36 <https://doi.org/10.1108/AAAJ-10-2013-1488>

[56] Crack (n 50)0 628

[57] Crack (n 50)628

[58] Willems (n 45) 54

accountability, which concerns accountability among network partners who collectively establish standards to ensure shared accountability toward donors, beneficiaries, employees, media, and volunteers.[59] These networks consist of complementary or similar organisations engaged in trans-organisational regulation or collective accountability, coordinating their efforts through monitored codes of conduct.[60] Such codes become central instruments of network governance.

This raises the question of whether lateral accountability should be understood as an internal mechanism, a form of peer-based regulation, or both. The answer appears to lie in internal accountability failures within the sector. High-profile cases such as the sexual misconduct of Oxfam staff in Haiti[61] have exposed the limitations of relying solely on internal processes. In response, lateral accountability in practice has expanded beyond internal mechanisms to encompass shared, network-based approaches that emphasise collective regulation and strength-based accountability. This broader conception may reflect an effort to address internal deficiencies and represent the wider conception of what lateral literally means.

In Alyhr and Blumenthal's study on the broader conception of lateral relations, they define lateral accountability simply as accountabilities that contrasts with the vertical and hierarchical forms.[62] Meaning accountability measures encompassing all initiatives that are directionally adjacent to those found in the vertical hierarchy. Therefore, it creates a merger of internal and horizontal accountability, creating two strands of lateral accountability, which they note as internal *lateral accountability* and *external lateral accountability*. The former concerns accountability measures focusing on the interactions between different internal units within an organisation and the later focuses on inter-organisational aspect which they regard as more novel.[63] The external lateral accountabilities is thus similar to the definition of horizonal/ shared accountability which Kraus and Lindholm observed as

[59] Willems (n 45) 54

[60] Willems (n 45) 54

[61] Crack (n 50) 627

[62] Niklas Alyhr and Jacob Blumenthal, 'Understanding Lateral Relations between and within Organizations the Role of Accountability and Control' (Masters thesis Stockholm School of Economics, 2014)14 <https://arc.hhs.se/download.aspx?MediumId=2298 > 31 August 2026

[63] Alyhr and Blumenthal (n 62)14

'… *actors expressed accountability towards norms developed within an inter-organisational setting such as the need for all actors to modify their behaviour and timing to suit one another from time to time*'[64]

Consequently, understanding lateral accountability as both an internal and inter-organisational measure aligns with Christensen and Ebrahim's findings and offers a more coherent conceptualisation of the term, regardless of which strand an organisation adopts at a given moment. In creating a stronger beneficiary accountability practice in Ghana, lateral accountability could be a good approach since most volunteers are themselves beneficiaries. Also, an inter-organisational code that require stronger internal and beneficiary accountability, could be better enforced through existing self-regulation network codes.[65] However, organisations rarely pause to consider the conceptual basis of their accountability mechanisms, and therefore, may not fully operationalise lateral accountability, placing beneficiaries at a disadvantage. This lack of reflection is one reason holistic accountability may offer a more suitable approach for the sector.

Holistic accountability seeks to mainly combine downward and upward accountability.[66] Holistic accountability thus focuses on downward accountability with upward accountability as a subset. It considers the impact third sector organisations actions have, or can have, on a broad range of other organisations, individuals and the environment. Beneficiary accountability is placed at the heart of this, leading to enhanced participation and multiple stakeholder considerations.[67] In essence, beneficiaries are seen as significant.

The benefit of the holistic and downward accountability measure is therefore used to analyse the effectiveness of the 2020 Policy's accountability mechanism. Furthermore, Weisband and Ebrahim's four factors of accountability become helpful indicators in identifying how effective the 2020 Policy accountability provisions are. The four factors are Transparency,

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[64] K, Kraus and C, Lindholm, 'Accounting in Inter-Organisational Relationships Within the Public Sector', In H, Håkansson, K, Kraus and J, Lind, J (Eds.), *Accounting in networks* (Routledge, 2010)270

[65] *See 6.5 and below at 8.5.0*

[66] Gloria Agyemang, Brendan O'Dwyer, Charles Antwi Owusu and Jeffrey Unerman, 'NGOs in Ghana: accountabilities, performance and motivations' in Pauline Weerman and Ioannis Tsalavoutas(eds), *The Routledge Companion in Accounting in Emerging Economies.* (Routledge, 2019*)* < The Routledge Companion to Accounting in Emerging Economies | Pauline (taylorfrancis.com)>accessed 4 September 2026

[67] O'Dwyer and Unerman (n 39)

Answerability/Justification, Compliance and Enforcement/Sanctions.[68] Transparency deals with collecting and making information accessible. Answerability deals with the provision of clear reasoning for decisions and actions taken or not. Compliance deals with a combination of monitoring and evaluation through reporting. Enforcement deals with the imposition of sanctions for shortfalls in non-compliance, justifications and or transparency.[69]

8.4 The 2020 Policy Accountability Provisions

The 2020 Policy states that ensuring sector accountability is one of the recognised needs of the sector.[70] Therefore, the *Directives of Operations*[71] states that the Policy was created;

'in the spirit of promoting …accountability and integrity within the NPO Sector and taking necessary steps to foster confidence in the public …'[72]

The main thing to note is that the promotion of accountability is for the benefit of the public. So, the Policy mentions that Government interest in managing the sector is due to public finance and public accountability issues.[73]

Despite this statement, the Policy and the *Directives of Operations* do not explain or define their scope of accountability. However, the Policy does mention the key players in the accountability process to be the Government, the sector actors themselves, funders/donors and beneficiaries who are meant to work in a collaborative effort.[74] Thereby inferring to the possible adoption of different types of accountability measures such as upward, downward, lateral and even holistic.

It also highlights the GIABA report and situates accountability as a public issue, especially due to the increasing number of sector actors.[75] This alludes to seeing accountability as a right and not

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[68] Edward Weisband and Alnoor Ebrahim, 'Introduction: forging global accountabilities' in Alnoor Ebrahim and Edward Weisband (eds), *Global Accountabilities: participation, Pluralism and Public Ethics.* (Cambridge University Press, 2007) 6

[69] Weisband and Ebrahim (n 68)

[70] National Non-Profit Organisation Policy (2020) 1 and 3.

[71] Directives for the management of Non-Profit Organisations (NPOs) Operations in Ghana (2020)

[72] Directives for the management of Non-Profit Organisations (NPOs) Operations in Ghana (2020) 1

[73] National Non-Profit Organisation Policy (2020) 1

[74] National Non-Profit Organisation Policy (2020) 8

[75] National Non-Profit Organisation Policy (2020) 1

concentrating on only interest and power in the accountability considerations. Thus, the Policy notes that one of its key guiding principles is to ensure such accountability efforts. To this end, it obligates the Government, specifically the Secretariat, to provide oversight and sector actors to create appropriate codes of conduct.

8.4.0 Government Oversight

Highlighting the issue of the country's anti-money laundering initiative, one of the approaches of the Government, according to the 2020 Policy, is to adopt clear accountability policies to promote integrity, and public confidence in the administration and management of NPOs.[76] Even though the Policy is not an Act, it is a regulatory framework that situates itself within the Constitution and therefore may arguably have some weight. It is further backed by executive authority, which shifts its accountability measures slightly into the legal perspective of rules, compliance and sanctions.

The Policy, therefore, mandates that the Secretariat shall;

'Ensure the promotion of NPOs in the public interest and the observance of high standards of accountability, transparency and compliance with law'[77] as well as 'monitor the activities of NPOs in order to ensure observance of the provisions of this Policy [including the accountability provision]'.[78]

It also adds that the District offices of the Secretariat shall do the same in relation to CBOs.[79] The Policy thus gives the Secretariat the power to demand and ensure accountability. These provisions enable the Secretariat and its District offices

1. To receive accountability from sector organisations
2. To monitor the sector organisation accountability process to make sure requirements are met
3. To ensure accountability.

[76]National Non-Profit Organisation Policy (2020) 13

[77] National Non-Profit Organisation Policy (2020) para 13.3 (f)

[78] National Non-Profit Organisation Policy (2020) para 13.3 (e)

[79] National Non-Profit Organisation Policy (2020) para 13.11(2)(3)

The three points above essentially makes accountability a sector and public interest issue. Therefore, it is inferred that the Government also owes the public an obligation to be accountable to them in this endeavour. This is represented in fig 6 below

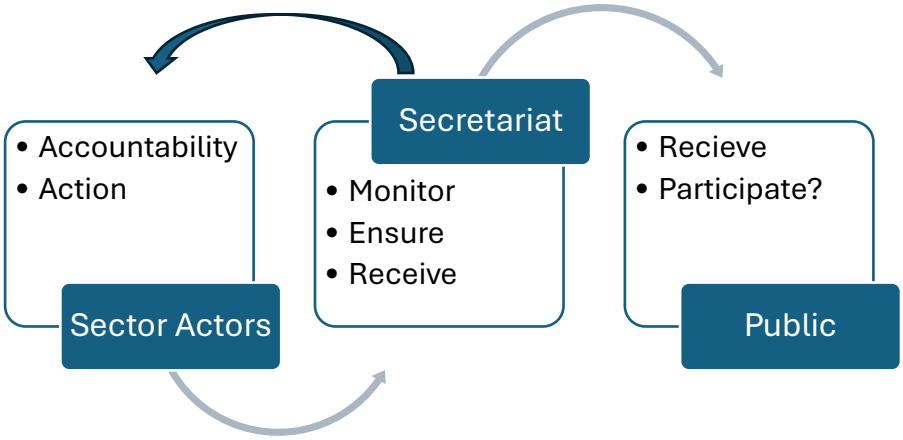


Fig 6 Secretariat accountability mandate (*Researcher's illustrations)*

Despite the Secretariat's mandate, the Policy does not make clear the mechanism for sector accountability towards the Government and the Secretariat's measures towards the public. Nonetheless, due to the connected issue of public finance, FAFT recommendations and the Policy's intention to reduce risk,[80] it is logical to say that the Policy's accountability mechanisms are through the submission of annual reports to the Secretariat.

This inference is further corroborated by the *Directives of Operations* rules on transparency and accountability, which obligate sector actors to receive and disperse financial resources through the banks, to keep records of cash use and to use foreign grants according to the terms and conditions.[81] In addition, the *Directives of Operations* require sector actors to have clear accountability policies[82] to be eligible for licence, which demands the submission of annual financial and activity reports licence renewals.

[80] National Non-Profit Organisation Policy (2020) para 4.5. (a)

[81] Directives for the management of Non-Profit Organisations (NPOs) Operations in Ghana (2020) 6

[82] Directives for the management of Non-Profit Organisations (NPOs) Operations in Ghana (2020) 3

8.4.1 Implications of the 2020 Policy's Accountability: Sector actors to the Government

When Weisband and Ebrahim's[83] four factors of accountability are applied to the Policy's accountability mechanisms, we find some levels of transparency as sector actors are required to submit financial and activity reports to the Secretariat for a licence. Yet, this is subject to compliance.

In monitoring compliance, the Secretariat website displayed a list of organisations either in good standing or not,[84] showing their monitoring capacity. However, as discussed in Chapter 7, the criterion for the positioning of the organisations on the list is unclear. Further, an updated compliant list issued on 28th November 2025[85] even made away with the 'good-standing or not' columns. Instead, the list shows the dates a licence was issued to an organisation and when it expires.[86] This makes the monitoring very rudimentary.

Moreover, the compliant organisations shown were 1686. [87] This number, compared to the Registrar General's Department's list of 7037 organisations registered as companies limited by guarantee, shows in *section 7.3.0*, means licence compliance is minimal.

All this makes sector accountability towards the Government weak despite the threat of sanctions, including blacklisting, suspension and tax waiver withdrawal.[88] The inability of the sanctions to create the desired effect is due to weak enforcement. This conclusion is supported by GIABA's fourth follow-up report,[89] which did not find evidence of the Secretariat's supervision and enforcement of sanctions over non-compliance. Accountability enforcement can therefore be said to be either weak or non-existent, which may be because the rules are derived from policy and not legislation.

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[83] Weisband and Ebrahim (n 68)

[84] Non-Profit Organisation Secretariat, Republic of Ghana, 'Compliance Status: Updated list 28th June 2024' <https://npos.mogcsp.gov.gh/compliant-status/> accessed 14 July 2025

[85] Non-Profit Organisation Secretariat, Republic of Ghana, 'Compliance Status: Updated list 28th November 2025' <https://npos.mogcsp.gov.gh/compliant-status/>accessed 30 December 2025

[86] See Picture 5 below

[87] Non-Profit Organisation Secretariat Republic of Ghana (n 85)

[88] Directives for the management of Non-Profit Organisations (NPOs) Operations in Ghana (2020)6

[89] The Inter-Governmental Action Group against Money Laundering (GIABA), Anti-money Laundering and Counter-terrorist Financing Measures- Ghana, Fourth Follow-up Report. (GIABA, 2021) 3 <https://www.fatf-gafi.org/content/dam/fatf-gafi/fsrb-fur/GIABA-FUR-Ghana-2022.pdf.coredownload.inline.pdf>accessed 30 December 2025

This leaves us with answerability, where the financial and activity reports submitted could be regarded as some form of answerability mechanism to the Government. However, within the understanding that transparency, compliance and enforcement are weak by virtue of the minimal number of organisations licenced, we can logically say answerability is also limited.

Overall, when we apply Weisband and Ebrahim's four factors of accountability, the research shows that despite the Policy's provision of enabling accountability, the results are weak.

8.4.2 Implications of the 2020 Policy's Accountability: Government to the Public

In terms of the Secretariat's obligation to the public, the list of compliant organisations reflects some level of accountability. But this is subject to how transparent the list is, which has been shown to be problematic.[90] So, even though the public can easily access this list, it is not a true indication of effective accountability. In addition, the list is quite bare; as of 28 June 2024, it only had columns for organisation name, type, category, district, region, areas of operation, licence issue and expiry date and status, as shown in pictures 4 and 5 below.

Non-Profit Organisations Compliance Status

The public is strongly advised to engage only with NPOs that are in good standing.

Updated on Friday 28th June, 2024

Search:

Name of NPO: Search by Name of NPO | Type of NPO: Search by Type of NPO | Category: Search by Category

District: Search by District | Region: Search by Region

Show 20 entries Search:

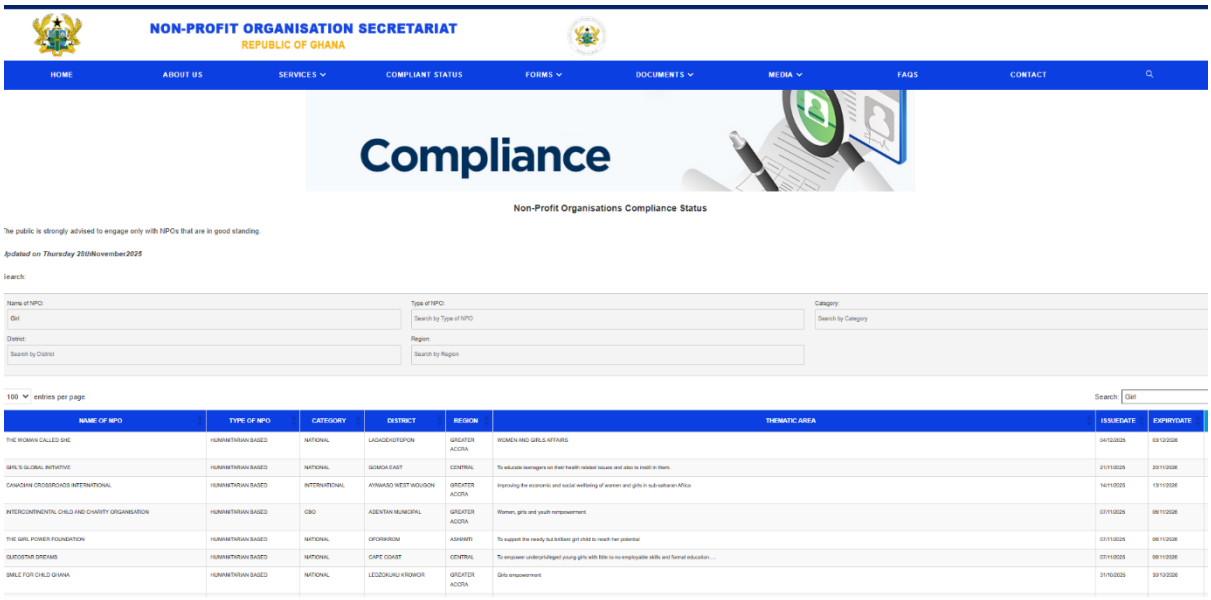
NAME OF NPO	TYPE OF NPO	CATEGORY	DISTRICT	REGION	THEMATIC AREA	ISSUEDATE	EXPIRYDATE	STATUS
21ST Century Global Education & Learners LBG	Humanitarian Based	National	New Juabeng	Eastern	To promote 21st Century mind and body skills based on a 7-C global framework. To analyze performance needs,creative professional develpoment and training solutions based on the stakeholders mission,visions,goals and objectives.	12/01/2024	11/01/2025	In Good Standing
3 Bridges International	Humanitarian Based	National	Ledzokuku Krowor Municipal	Greater Accra	To Bridge Between the Chinese Culture with Africa through Teaching Chinese Language and Musical instruments.	12/01/2024	11/01/2025	In Good Standing
4 CORNERS IMPACT	Humanitarian Based	NATIONAL	Shai Osuduku	GREATER ACCRA	To support the less privilege in society through education, Health, Water, Sanitation, Skill training, Mentorship and career growth.	19/12/2023	18/12/2024	In Good Standing
Aban Center for Global Policy	Humanitarian Based	National	Ayawaso West	Greater Accra	To provide a plateform for youth to share their ideas,engage in dialogue and collaborative solutions to challenges facing the youth.	15/03/2024	14/03/2025	In Good Standing

Picture 4- Secretariat Compliance Status 28 June 2024 *(from Secretariat)*[91]

[90] *See Section 7.4.1* on how the Secretariat applies sanctions

[91] Non-Profit Organisation Secretariat (n 84)

Updated list as of 28th November 2025[92] in picture 5 below shows the status column removed. Instead, the list shows the dates a licence was issued to an organisation and when it expires.[93] Therefore, the public must determine on their own which organisations seem compliant or not, based on the expiration date. Also, since the list is likely updated annually, such a conclusion may be incorrect as an organisation may have renewed their licence while the website information hasn't caught up.



Picture 5- Secretariat Compliance Status 28 November 2025 *(from the Secretariat)*[94]

Additionally, although this gives you initial information about the sector actors, it does nothing else. Submitted financial and activity reports are not made available to the public. Previously, the public had to trust the judgment of the Secretariat's scrutiny showing which organisations are in good standing, now they have to trust their own judgment based on minimal information.

Further, neither the 2020 Policy, *Directives of Operation*, nor the Secretariat's website provides a process or mechanism for the public to apply for the financial and activity reports. Even the process to report a sector organisation's misdeeds is unavailable. Arguably, the public can call,

[92] Non-Profit Organisation Secretariat (n 85)

[93] Non-Profit Organisation Secretariat (n 85)

[94] Non-Profit Organisation Secretariat (n 85)

email or visit the Secretariat with such concerns, but the absence of laid down procedures means institutional failures and limited public awareness.

Nevertheless, because the Secretariat is a public agency, the public can request information under Ghana's Right to Information Act 2019 (Act 989) (*hereafter RTI*). However, there are two problems presented. One is inadequate information as the Secretariat only has a small number of organisations registered with them, and according to the rules only those who renew their licence must submit financial and activity reports. Two has to do with barriers in the RTI itself.

8.4.3 Implications of the 2020 Policy's Accountability: Right to Information Act 2019

Section 3(1) of the RTI obligates public institutions to compile and publish an information manual every 12 months. The manual, according to section 3(2), must include the institution's organisational structure, division, contacts of their information office/officers, arrangements and procedures for the public to seek amendments of their information. The most relevant rule for our purpose is 3(2)(b) which obligates the manual to include a;

'a list of the various classes of information which are prepared by or are in the custody or under the control of each public institution'.

As the Secretariat is under the Ministry of Gender, Children and Social Protection, a review of its 2023 information manual did in fact include the Secretariat. However, apart from highlighting that the Secretariat is responsible for regulating and empowering the NPO sector, as well as a list of its activities, which is largely a summary of the functions of the Secretariat as outlined in paragraph 3.13 of the Policy, it provides no further information.[95] Noting the minimal information in the manual, it only serves as a directory for the public to know who to contact for information. The advantage of the application form is that it helps access information at the Ministry without being cumbersome.[96] However, access to the information is not free. Section 75(1) of the RTI on fees and charges states that;

[95] Ministry of Gender, Children and Social Protection, 'Right to Information Manual 2023'. (2024) < https://www.mogcsp.gov.gh/media/press-releases-reports-speeches/ >accessed 30 December 2025

[96] Included in the Appendix

'An applicant seeking access to information under this Act shall pay the fee or charge approved by Parliament in accordance with the Fees and Charges (Miscellaneous Provisions) Act, 2009 (Act 793)'

Under the Fees and Charges (Miscellaneous Provisions) Act 2022 (Act1080), the Right to Information Commission, which sits as the overseeing body of the RTI, published a fees list in 2022. The charges include a charge of 0.27 Ghana cedis for every A4 photocopy, 0.38 Ghana cedis for an A4 print, 1.28 Ghana cedis for a transcript of visual images, 1 Ghana cedi for an audio record, with the highest charge being 3.50 Ghana cedis for a copy of visual images.[97]

To put this amount into perspective, the national daily minimum wage in 2025 was 19.97 Ghana cedis.[98] Although the charges limit free access to information, depending on the type of information and quantity, access may not be expensive for the public. That said, a global price increase means that most will not willingly spend to access information if they are only curious. Those financially constrained but may want to be informed of a sector actor's finances or activity, like rural beneficiaries, may be at a disadvantage.

Nonetheless, section 75(2)(c) waives charges on reproduction of information which is in the public interest. This means that if one can make the argument that sector actors' information held by the Secretariat is in the public interest, they might access it for free. But this may not be straightforward as the RTI did not define what the criteria for public interest was.

So, whilst the 2020 Policy does obligate the Secretariat to promote and ensure accountability for public interest and confidence, the limited information, lack of process to access information and the payment barrier of the RTI mean Secretariat accountability to the public is weak.

Even so, the 2020 Policy does not rely only on Government structures to ensure accountability. It also obligates sector actors to develop in-house accountability mechanisms.

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[97] Republic of Ghana Right to Information Commission, 'Fees and Charges (Miscellaneous Provisions) Act, 2022 (Act 1080)'. (Press Release, 7 October 2022) < https://rtic.gov.gh/fees-and-charges-miscellaneous-provisions-act-2022-act-1080/>accessed 4 September 2026

[98] Ghana Employers Association, ' NTC Concludes Negotiations on National Daily Minimum Wage for 2025' (21 February, 2025) < https://ghanaemployers.com.gh/ntc-concludes-negotiations-on-national-daily-minimum-wage-for-2025/>accessed 4 September 2026

8.4.4 Implications of the 2020 Policy's Accountability: Self-regulated Accountability

The Policy rationale observes that,

'Given the importance of NPOs in the socioeconomic and political development of the country, there is a need to regulate and enhance self-regulation, transparency and accountability of NPOs and establish modalities for interaction among NPOs and between NPOs, the State and other stakeholders'.[99]

It also notes that the Government recognises the need to not only collaborate with sector actors but to extend this to other key stakeholders including funders and beneficiaries.[100]

Therefore, considering that for many years sector actors themselves have been re-examining and evaluating their work, redefining their roles, who they serve and are accountable to, and endeavouring to function more effectively and efficiently, [101] the 2020 Policy obligates them to develop their own in-house accountability processes. They are meant to do this by having clear mission statements outlining their purpose, objectives and target beneficiaries.[102] As mentioned above, the *Directive for Operations* also obligates sector organisations to have clear policies to promote accountability, integrity and public confidence.[103] In addition, the sector activity reporting should include multiple stakeholders involving the Government, other relevant organisations, beneficiaries and any other interested parties.[104]So, though the Secretariat does not publish sector reports submitted to it, it does require the sector actor to report their activities to their beneficiaries.

Whether the reporting should be done at the beginning or end of the project, and whether activities should contain beneficiary inputs, is not provided. What is clear, though, is that the obligation does not include financial reporting. This is remiss of the Policy considering allegations of sector actors enriching themselves at the expense of beneficiaries. Sharing financial reports directly to beneficiaries may be sensitive, but this is the main reason why the Secretariat should make available financial reports to enable those who may want to audit them do so freely.

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[99] National Non-Profit Organisation Policy (2020) Paragraph 1.2

[100] National Non-Profit Organisation Policy (2020) 8

[101] National Non-Profit Organisation Policy (2020) 8

[102] National Non-Profit Organisation Policy (2020) 6

[103] National Non-Profit Organisation Policy (2020) 3

[104] National Non-Profit Organisation Policy (2020) 7

In addition to in-house policies and reporting, the 2020 Policy obligates the Peer Review Body to strengthen accountability and transparency expressed in codes of conduct, ethics and good practices.[105] In essence, the obligation for both sector organisations and the review body to create their own accountability rules makes the accountability structure similar to the pre-2020 Policy regime, with the exception of two changes. The first are the Government oversight provisions via the Secretariat. The second is the creation of the peer review body and national platform, which aims to unify sector codes, including accountability rules. These two changes do not significantly make any impact, because, as shown above, the financial and activity reporting is weak. Chapter 6 also shows that the Peer review body plus national platform is non-existent.

Also, despite the Policy mentioning that the accountability process should extend to beneficiaries, no safeguards are provided to protect beneficiaries from sector activities that may cause harm. There is only a generic provision under risk management in the *Directive for Operations* that states that 'NPOs shall not indulge in any activities that infringe on the laws of Ghana'.[106] This restricts harm to escalated actions that may be tort or criminal law breaches. Regard is not given to the fact that the vulnerability of some beneficiaries mean they are not in a position to escalate issues. Harmful actions like marginalisation, exploitation[107] and or theft of traditional knowledge, like in many countries[108] are not actionable under Ghanaian law. Section 125 of Ghana's Criminal Offences Act 1960 (Act 29) defines stealing as dishonest appropriation of a 'thing' which means something physical. Ghanaian intellectual property law is also limited to Copyright Act, 2005 (Act 690); the Patents Act, 2003 (Act 657); the Trademarks Act, 2004 (Act 664); the Industrial Designs Act, 2003 (Act 660); and the Protection Against Unfair Competition Act, 2000 (Act 589) which does not enforce traditional knowledge.

Ultimately, the freedom given to organisations in largely shaping their accountability mechanism is indicative of either an unconscious omission or preservation of sector autonomy. While autonomy is important, we have discussed that inappropriate accountability can cause damage instead of good. So, understanding the in-house accountability practices can help determine the weight sector actors give towards beneficiary accountability.

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[105] National Non-Profit Organisation Policy (2020) 9

[106] Directives for the management of Non-Profit Organisations (NPOs) Operations in Ghana (2020)4

[107] Apart from sexual exploitation or abuse

[108] David R. Downes, 'How Intellectual Property Could Be a Tool to Protect Traditional Knowledge' (2000) 25 Colum J Envtl L 253

8.5 Self-Regulated Accountability: In-House Codes and values

Since this is a desk-based study, the researcher first used non-probability sampling to select organisations with websites due to the ease of accessing information. From the list, of organisations found, the researcher then purposely selected Care International, Catholic Relief Services and WASCI because of their distinct characteristics, of being international, religious and an umbrella organisation, respectively.

Next to increase the number of organisations examined and allow more diversity, five more organisations were again purposively sampled, and out of them three were chosen based on their operational scope. The findings showed that all six sector organisations had some information on their websites about their codes of conduct, ethics, and values that pointed to their in-house accountability measures.

8.5.0 Codes of Conduct

Inclusion (Ghana) is a national umbrella NGO for persons with intellectual and developmental disabilities, their parents/caregivers, and local NGOs.[109] Its website emphasised accountability as a shared vision and responsibility.[110] Under its transparency and accountability section, it highlights the need to maintain trust with its stakeholders, including members, funders, the Government, the general public and beneficiaries. Being truthful about its funds and accounting, making full disclosure of all information to those who have a right to know, etc. Compliance is said to be policed by staff and members with the threat of disciplinary action, including termination, as well as Police involvement where corruption and breach of law is found.[111]

Happiness Project Ghana,[112] provides relief and development assistance. Its website shows a set of commitments to it outlines towards its beneficiaries. These include protection of beneficiaries

[109] Inclusion Ghana, 'Code of Conduct' (2022) <https://inclusion-ghana.org/wp-content/uploads/2024/07/Inclusion-Ghana-Code-of-Conduct.pdf >accessed 4 September 2026

[110] Inclusion Ghana (n 109) 3

[111] Inclusion Ghana (n 109) 6

[112] The Happiness Project Ghana, 'Code of Conduct' (2022) <https://www.thehappinessprojectghana.com/wp-content/uploads/2022/05/Code-of-Conduct.pdf>accessed 30 December 2025

in programmes, rejection of sexual harassment, exploitation and abuse towards women, children and other vulnerable beneficiaries. There is also respect toward culture and practices, and awareness creation of beneficiaries' rights.

Ashanti Development[113] is a registered UK charity that operates in Ghana by raising funds, funding and implementing community development in villages. It charges staff and volunteers not to exchange anything for assistance that is due to beneficiaries in its code of conduct. Specifically, the exchange of money, employment, goods, services, food, sexual favours or other forms of humiliating, degrading, exploitative behaviour either in-person or online is prohibited. But no punitive measures were found on the website where there was a breach. It mentions that its code is developed from international and UN standards.[114] Unlike the other websites, their page also had their annual reports from 2017 to 2019 for public access. However, it was noted that the website was renewed in 2024, but the annual reports were not updated.

Catholic Relief Services of Ghana[115] works to tackle poverty through the provision of projects like health, access to water, and farm production. It charges its employees, affiliates, and Board of Directors to be aware of the agency's Code of Conduct and Ethics. It emphasises the worldwide Catholic Relief Services'(CRS) commitment to the highest standards of personal integrity, moral conduct, ethics, and accountability to those they serve. It has rules on privacy, children and vulnerable adults' protection, non-discrimination, etc. Under its transactions and procurement code of conduct and ethics,[116] it remarks on the importance of performing due diligence in all their transactions and procurement to maintain a good reputation. Also, the code noted CRS as a requirement for accountability to beneficiaries, partners, and donors. However, the research found that whilst this shows the standard envisaged, it does not give details of what this highest standard is and the scope of its inclusion of beneficiary inputs or reporting.

West Africa Civil Society Institute (WACSI)[117] is an umbrella organisation with the aim of reinforcing civil society capacity, core values, operational and institutional standards, had even less

[113] Ashanti Development, 'Safeguarding Code of Conduct'. <https://ashantidevelopment.org/safeguarding-code-of-conduct/>accessed 4 September 2026

[114] The name of the standard was not mentioned.

[115] Catholic Relief Services, 'CRS In Ghana'.< https://www.crs.org/where-we-work/africa/ghana >accessed 30 December 2025

[116] Catholic Relief Services, 'Code of Conduct and Ethics' (August, 2022) <https://www.crs.org/our-work/research-publications/code-conduct-and-ethics >accessed 4 September 2026

[117] West Africa Civil Society Institute, 'Who We Are' < https://wacsi.org/who-we-are/>

information. A code of conduct guidance wasn't found. However, under their ethics, there was a one-line commitment to accountability, which reads:

'We abide by the highest ethical standards of transparency, accountability, mutual respect and integrity'. The scope of this highest standard was not mentioned.

Contrarily, Care International,[118] had a more detailed accountability code outlining what its highest standard meant. It defined accountability as being held responsible for their actions, hearing the perspectives of others, actively making changes based on what is heard and explaining their actions. To ensure this, it subscribes to international standards, including the Core Humanitarian Standard on Quality and Accountability.[119] Under this code are nine commitments which present its organisations with measurable accountability actions as shown below in Fig 7.



Fig 7 Core Humanitarian Standard on Quality and Accountability: nine commitments *(from Care International)*[120]:

[118] Care International, 'Accountability at Care International' < https://www.care-international.org/about-us/accountability-and-transparency>accessed 4 September 2026

[119] Core Humanitarian Standard, 'Core Humanitarian Standard on Quality and Accountability' (2nd edition,2024) <https://www.corehumanitarianstandard.org/_files/ugd/e57c40_f8ca250a7bd04282b4f2e4e810daf5fc.pdf>accessed 4 September 2026

[120] Core Humanitarian Standard (n 119) 6

Overall, the six organisations reviewed had at least a statement about their purpose, objectives and target beneficiaries. Most of the codes had clear rules in relation to children and sexual exploitation. They also referred to accountability in some capacity or standard. Of the three organisations asserting to have high accountability standards, only one showed a detail of what this entailed. Again, apart from one, the mechanisms for accountability, especially in relation to beneficiaries, were not shown. There was also no visible evidence to show that the accountability policies/code were implemented, apart from one organisation that published its annual reports on its website. But the website showed this was only up till 2019. Though the information was not found, it may be that the website information was not updated

In addition, only two had punitive measures in case of a breach, according to the website. With such discretion, it is clear that accountability measures applied will differ across the board. But despite the seemingly patchwork of codes, when we apply Weisband and Ebrahim's four factors, we can at least see some transparency in the presentation of their codes. Compliance, enforcement and answerability, though, could not be ascertained through the codes. So, the most immediate issue becomes whether these codes of conduct are duly followed since the website offers little information about this.

8.5.1 How to determine Sector Accountability in Practice

To find the actual accountability practice as opposed to information scope of codes of conduct, inquiries need to made of the organisations' staff, board and beneficiaries. This would require the use of empirical research methods using data gathering tools like interviews, focus group discussions and observations of the organisation's practices. This is outside the thesis' methodology of doctrinal research. While the method could have been adjusted to accommodate the use of combined research methods, the research limitations discussed in Chapter 9 showed this to be impossible due to financial and time constraints.

However, the lack of an empirical focus at this stage does not detract from the research as existing empirical works done on accountability practices of sector actors in Ghana was found. The researchers did a literature search on empirical research on the topic and chose six (6) studies from doctoral and published research to have a wider scope of information from different types of authors. From this, we can examine the accountability practices of some sector actors. Though the reviewed organisations do not match those whose code of conduct were previously analysed,

the information provides a glimpse into how the sector operates. Research using empirical methods is later recommended in the concluding chapter as further study.

8.6 Accountability Practices: Review of Case Study Research

When researching the accountability performance of sector actors in Africa, Burger and Saebe argue that it is very demanding for sector actors to ensure accountability.[121] They attribute this to the typically large and diverse stakeholder communities that sector actors have to satisfy. As such, sector actors are faced with more complicated and fragmented accountability relationships than other organisations. Based on the accountability issues discussed and having already analysed sector accountability to the Government, we will focus on beneficiary accountability facilitated through downward accountability in this section.

According to Agyemang and others [122] There are two main approaches to downward accountability in third sector practice in Ghana. The first is community consultation and dialogue meetings held at the beginning of projects to enable beneficiary input in design and planning. The second is participatory review during the project execution and conclusion, which encourages beneficiary reflection on the impact of the project. This second mechanism is highly engaging, and active participants provided both negative and positive comments.

A study by Okorley and others[123] focused on two Ghanaian NGOs, Action Aid- Ghana and Catholic Action for Street Children, found the key stakeholders in their accountability practices to be donors, the Government, beneficiaries, staff and peer/other organisations. Donors were defined as organisations and individuals who directly sponsor or contribute financial and non-financial resources to support the organisation's activities.[124] Okorley and others found that the

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[121] Burger and Seabe (n 44) 79

[122] Agyemang and others (n 66)

[123] Ernest L. Okorley and Edmund E. Nkrumah, 'Organisational Factors influencing sustainability of local non-Governmental organisations: Lessons from the Ghanaian Context' (2012) 39(5) International Journal of Social Economic 330 < https://www.emerald.com/insight/content/doi/10.1108/03068291211214190/full/html>accessed 4 September 2026

[124]Okorley and others (n 123) 50

sector actors attached the greatest accountability considerations towards donors due to their sponsoring of the organisation. Donors typically require reports on the principles and values applied in project implementations, as well as how funds were used.[125] The Government played an overseeing role and thus required legal accountability. At the time of the study, the organisations noted the legal requirements to be registration, financial management, audit and annual report[126] to be submitted to the Department of Social Welfare, Internal Revenue Service and the Registrar General Department.[127] Beneficiaries were represented by individuals, families, youth groups, children and the district assembly. The staff were the Director, department heads and subordinates. The peers were other NGOs and agencies with which they collaborate or are closely connected.

The accountability mechanisms found to be employed towards these stakeholders were periodic reports (financial, evaluation, programme). There were also meetings, durbars, project sites, periodic registration, memoranda, e-mails, presentations, pictures, newsletters, minutes, use of accountability notice board, appraisal forms, sponsorship packages, flyers, posters and trainings. In terms of frequency, the study found that reports were issued monthly, quarterly and annually and were the main mechanism used. The mechanisms of meetings and review sessions were mainly towards staff and took place bimonthly and annually. Mechanisms towards beneficiaries like durbars were far less frequent, happening once every two years. Therefore, though these mechanisms showed accountability diversity, it was more skewed towards donors, followed by staff and then the Government. Beneficiaries were thus marginalised in the accountability process. Hence, we see repeated upward and lateral accountability and limited downward accountability.

This finding of beneficiary marginalisation in the accountability process is further corroborated in Awuah-Werekoh's[128] doctoral thesis. The thesis focused on accountability systems of NGOs in Ghana, which, among other things, investigated the accountability mechanism of a Ghanaian NGO and its project subsidiaries as a case study.[129] The research found that although the organisation engaged in both downward and upward accountability processes, it was very skewed towards donors/funders. From the onset, the projects that they implement are conceptualised by

[125] Okorley and others (n 123) 50

[126] Okorley and others (n 123) 51

[127] This was before the implementation of the 2020 Policy where the legal requirement for reporting placed on the sector was based on how the organisation was formed for example under company or trust law.

[128] Awuah-Werekoh (n 38)

[129] The name of the NGO was withheld due to confidentiality reasons. A pseudonym KKP was used instead

donors who set out their aim and parameters, which the organisation implements.[130] Donors do not involve beneficiaries in the project plan. Thus, the project objectives, activities and project partners are marked by the funders.[131]

Consequently, the fear of losing the contracts means that the organisation must implement the donors' goals even where projects do not match beneficiary needs.[132] In such situations, the organisation becomes an implementation machine of the will and objectives of the donors, and so accountability is primarily towards them, thereby marginalising beneficiaries. Next, the organisation sends detailed monthly, quarterly, bi-annual and annual reports on a full range of topics, including finance and activities, to the funders. There are also quarterly review meetings and unannounced auditing and monitoring from the donors. This is then supplemented with the submission of annual reports to the relevant Government agencies. On the other hand, downward accountability towards beneficiaries is limited because, whereas donors are considered as the lifeblood of the organisation, beneficiaries are regarded as the receivers and therefore have little power to demand thorough accountability as funders.[133]

Awuah-Werekoh[134] argues that this action further marginalises beneficiaries in the accountability process. They are not really involved in project decisions but only informed.[135] Beneficiaries, in turn, do not like this position. Awuah-Werekoh's research found that beneficiaries felt they should be consulted with from project conceptualisation to completion.[136] However, this was not the case. To reduce antagonising beneficiaries, the organisation selects volunteers from the community who are able to make some inputs in the project implementation. But any acceptable input must be within the set parameters of the funders. In addition, there were also some levels of community involvement in project implementation through the creation of community structures and a community-based project management committee. Despite this, Awuah-Werekoh argues that these actions were not really towards accountability considerations but only to 'ensure that projects are implemented effectively in the sight of donors rather than to serve as an accountability

[130] Awuah-Werekoh (n 38)156

[131]Awuah-Werekoh (n 38) 160

[132] Awuah-Werekoh (n 38)158

[133]Awuah-Werekoh (n 38)175

[134] Awuah-Werekoh (n 38)176

[135]Awuah-Werekoh (n 38) 177

[136]Awuah-Werekoh (n 38) 178

mechanism'.[137] Moreover, organised community review meetings were found to be a waste of time because input from the community was never taken on board due to funding parameters and budget.

One might argue that Okorley and others, as well as Awuah-Werekoh's research, were conducted in 2012 and may not reflect current situations, especially when considering the creation of the 2020 Policy. However, this is not the case, as found in another doctoral thesis by Mohammed,[138] carried out in 2021. Mohammed's[139] research examined NGO accountability perception of beneficiaries of drinking water projects carried out by different sector organisations in the Upper East Region, Upper West Region, and Northern Region of Ghana.[140] Unlike Awuah-Werekoh's findings, Mohammed found varying levels of beneficiary involvement at the start of the project. In some cases, some sector actors had a community needs assessment stage, which involved beneficiaries in project conceptualisation. This was followed by community leaders like elders and queen mothers[141] being contacted to negotiate project locations.[142] In other instances, some sector actors simply presented their plans to the community without prior discussions. Depending on organisations' accountability, intention workshops were used for beneficial involvement and durbars to present community plans. But, irrespective of how the projects began, the research found that the organisations were seen not as 'lord over' the beneficiaries but pushed for some levels of collaborative relationships. Mohammed thus noted that the overall perception of beneficiaries was that the organisations were accountable due to the initial community entry process. Yet, such sector- beneficiary contact was short-lived as the research found that whilst the initial interactions were active and healthy, they did not last.[143] In addition, although the organisations showed some social and cordial relationships with beneficiaries, there were three main accountability gaps. One, accounting to donors rather than citizens. Two, non-disclosure of financial information related to water facilities. Three, power imbalances to the extent that

[137]Awuah-Werekoh (n 38) 180

[138] Abdul-Nashiru Mohammed, 'Citizens' Perspectives on Accountability of NonGovernmental Citizens' Perspectives on Accountability of NonGovernmental Organizations Providing Drinking Water in Northern Ghana Organizations Providing Drinking Water in Northern Ghana'. (PhD thesis Walden University, 2021) < https://scholarworks.waldenu.edu/dissertations/11100/>accessed 4 September 2026

[139] Mohammed (n 138)

[140] Mohammed (n 138) 49

[141]Mohammed (n 138) 78

[142]Mohammed (n 138) 77

[143]Mohammed (n 138)84

beneficiaries felt they were not in control and could not question the NGOs.[144] This showed accountability disparity due to power and interests. Participants commented that
"There is a cordial social relationship with communities, but because communities are always at the receiving end, they see NGOs as donor instead of partners in Development." The participant concluded rather strongly that "it's rare to find communities questioning NGOs."[145]

So, even though Mohammed's research saw better arrangements in project conceptualisation than in Awuah-Werekoh's research and took place almost ten years later, the sector practice still marginalised beneficiaries. Even where there are seemingly stronger beneficiary accountability processes, the outcomes are not necessarily favourable.

In Agyemang and others[146] analysis of the ACCA NGO Project in Ghana found that the project implemented a good beneficiary mechanism, specifically, focus group meetings. The research thus assessed the effectiveness of the beneficiary interactions and found that the mechanism allowed beneficiaries to review and criticise the organisation's work. Based on this, Agyemang and others concluded that the method offered an effective opportunity to engage beneficiaries. Despite this positive assertion, the research also found issues that could have affected the outcome of the accountability process. One was a weak or limited beneficiary's negotiation power to move the project in the way they wanted. Therefore, even though they presented their views, it was not necessarily taken on board. The second was the exclusion of negative or differing opinions of beneficiaries from project reports to donors, especially if the focus group was a requirement of donors. The organisations feared that they might lose their funding if the real needs or comments of beneficiaries were reported, as it might impact funders' aims and reasons for resource allocation. This fear was, in turn, seen in the beneficiary's context as they too feared sharing their true views for fear of losing out on projects or resources. The fourth was a lack of time for beneficiaries to fully participate and understand the project implications. The fifth was that the beneficiary accountability process was viewed as less significant than upward accountability mechanisms.
Also, other technically deemed information may not be shared with the beneficiaries, especially financial reports, with the excuse that the beneficiaries are financially illiterate. The most significant point was that the process was highly dependent on the sector actor themself. Whether within the self-regulatory code or mandated by donors. This placed the presence or lack of the

[144]Mohammed, 2021 (n 138) 92

[145] Mohammed, 2021 (n 138)86

[146] Agyemang and others (n 66)

beneficiary accountability process squarely within the powers of funders and thereby marginalised beneficiary stakeholders. Such a situation is essentially to be expected due to the reliance of sector actors on external funding. It creates a power imbalance which affects the accountability process and relations, especially where the stakeholders' interests are different.

Evidence from the reviewed research findings above shows that these fragmented accountability relationships within the Ghanaian context affect beneficiaries more. Okorley and othersfindings in Table 1[147] below shows that sector actors find it more challenging to ensure accountability to beneficiaries than donors.[148]

Conditions	Mean level of challenge
Meeting staff demand for accountability	2.56
Rendering account on ideology	2.47
Knowledge and skill for ensuring accountability	2.44
Meeting beneficiaries demand for accountability	2.31
Collection and reporting qualitative data	2.19
Using existing policy provision to ensure accountability	2.07
Collection and reporting quantitative data	1.94
Making accountability operational	1.88
Determining what to report on	1.81
Reporting impact or outcome	1.75
Assessing the organisation's accountability	1.63
Lack of standard on how accountability should be done	1.63
Meeting donors demand for accountability	1.63
Reporting on output	1.44
Agreement on how accountability should be done	1.40
Compliance information demand by donors	1.38
Average Mean	**1.91**

Scale: 1= Not challenging, 2= slightly challenging; 3 = moderately challenging; 4=highly challenging; and 5 = extremely challenging

Source: Case study data.

Picture 6: Challenges in ensuring accountability *(from Okorley and others)*[149]

The table shows that whereas accountability challenges did not meet the extreme mark, beneficiaries' demand for accountability scored a mean of 2.31. Even though the finding shows

147 Okorley and others (n 123)

148 Okorley and others (n 123)

149 Okorley and others (n 123)

this to be marginally better than staff accountability, it is far worse in comparison to donor accountability of 1.38, reflecting their accountability code of conduct.

Therefore, Bahoa and Ayub[150] in their research on accountable governance of NGOs in three countries, including Ghana, found that even though a beneficiary accountability mechanism did exist in Ghanaian organisations, it was limited in practice. The Ghanaian organisation was found to successfully present an accountable front on their website, but lacked governance reporting, criteria and rules of funding projects and independent communities to support this.[151]

Essentially, the existence of accountability mechanisms may not yield desired outcomes.[152] Therefore, despite the 2020 Policy's aim to strengthen the regulatory regime, reliance on sector mechanisms and practice does not bode well for the accountability system. First, there is the issue of diverse accountability code of conduct, second is the lack of details in many of them, and third is the implementation practice that values funder accountability over beneficiaries.

8.7 Conclusion

The accountability mechanism of the 2020 Policy makes both the Secretariat and the sector actors responsible for ensuring it. The Secretariat receives annual financial and activity reports and consolidates a compliant status list for the public. However, the scope of information presented to the public is inadequate. Access to the submitted reports could offer greater public accountability; however, the Secretariat lacks such a mechanism. To get access to the information, the public could use the Right to Information Act 2019, which requires information to be shared, but the barrier of the process and fees limit this.

In addition, the 2020 Policy obligates sector actors to be accountable towards the Government via the submission of annual financial and activity reports. It also obligates them to create internal accountability mechanisms but is silent on how they should do this. Evidence suggests that whilst most sector actors do have codes of conduct that highlight accountability measures, in practice, this is more geared towards funders than beneficiaries. As a result, whilst beneficiaries can rely on

[150] Farhan Ahmed, Salman Bahoo and Arslan Ayub, 'Accountability, Governance and Structure of Non-Profit Organisations: Evidence from Ghana, South Africa and Zimbabwe'. (2019) 13(2) New Horizins 19

[151] Ahmed and others (n 150) 30

[152] Ahmed and others (n 150) 53

criminal law where there is a crime, issues including the misuse of funds, marginalisation and theft of traditional knowledge go unpunished.

Overall, despite the 2020 Policy's aim to create a favourable accountability environment, its mechanisms are in effective in strengthening the sector's regulatory regime.

Chapter 9 concludes the thesis argument.

Chapter 9: Conclusion: Summary and Recommendations

9.0 Introduction

This chapter concludes the thesis by summarising the main issues and findings. Based on this summary, seven recommendations are presented to address the identified gaps in Ghana's third-sector regulatory system to strengthen its framework. Although the recommendations are sound, the chapter also argues that implementing some of them is challenging due to Constitutional constraints and the risk of regulatory capture. The discussion concludes by outlining the research's limitations and how they were addressed and providing suggestions for future research.

9.1 Summary of Research Issue

Ghana's 1992 Constitution affords fundamental freedoms under Article 21(1) to all Ghanaians and residents. Subsection (e) particularly provides for the freedom of association. This is the basis for third-sector legitimacy and autonomy to form or join trade unions and other associations, freely and in accordance with their interests. When combined with the freedom of assembly, it satisfies the scope of rights that international human rights law deems necessary to facilitate a vibrant voluntary sector. Yet, though the sector actors operate freely, exploitation has become synonymous with their practice.[1] The research identified the absence of sector-specific legislation as the primary reason for this. This absence is inexcusable, given that all key national sectors in Ghana have sector-specific legislation. Furthermore, the absence of legislation affected Ghana's AML/CFT obligations, as the industry was found to lack a robust legal and supervisory regime.[2] This was due to its weak registration mechanisms, diminished accountability, and limited

[1] David Atugiya, 'NGOs and Civil Society Organisations in Ghana Needs an Independent Regulatory Body' *Modern Ghana* (Accra, 16 March 2012) < https://www.modernghana.com/news/383962/ngos-and-civil-societyorganisations-in-ghana-needs-an-indep.htm> accessed 4 September 2026

[2] GIABA, 'Anti-money laundering and counter-terrorist financing measures – Ghana, Second Round Mutual Evaluation Report'(GIABA, Dakar,2018)57-58 < https://www.fatf-gafi.org/content/dam/fatf-gafi/fsrb-mer/GIABA-Ghana-MER-2018.pdf.coredownload.inline.pdf> accessed 4 September 2026

traceability of owners and beneficiaries. To solve this, sector legislation was recommended.[3] Yet, instead of sector legislation, the Government at the time introduced and implemented the National *Non-Profit Organisation (NPO) Policy (2020 Policy*), along with the *Directives for the Management of Non-Profit Organisations (NPOs) Operations in Ghana*[4].

This action was puzzling because, although the policies provided a reformed framework and removed Ghana from the Financial Action Task Force's (FATF) grey and blocklist, as well as the European Union's list of high-risk jurisdictions with strategic deficiencies, they only partially satisfied AML/CFT obligations.[5] However, the research concluded that this was a rational decision to remove Ghana from the grey and backlist in the meantime, as previous attempts at sector legislation had repeatedly failed due to sector protests. First was the Non-Governmental Organisation Bill (NGO bill) introduced in 1995. Second was the *Trust and Non-Profit Making Civil Society Organisation Draft Bill 2006/2007* (Trust Bill). In both attempts, historical suppression and the 1992 Constitution were the significant factors cited by sector actors as grounds for their rejection. Therefore, the thesis hypothesised that historical governance and the 1992 Constitution have created a system in which robust third-sector regulation is challenging. To prove this notion, the research examined the implications of historical governance and the 1992 Constitution. Additionally, although Parliament did not make the 2020 Policy, its significance as the first reform in over 30 years warrants analysis to assess its effectiveness. Therefore, in addition to the historical and Constitutional examination, the research analysed the framework created by the 2020 Policy. The doctrinal legal research method was adopted for the analysis because it offered a systematic expository analysis of Ghana's historical governance, Constitutional jurisprudence, and the 2020 Policy.

[3] GIABA (n 2)121

[4] Directives for the Management of Non-Profit Organisations in Ghana (2020) < https://npos.mogcsp.gov.gh/information-and-services/> accessed 4 September 2026

[5] Institute of Democratic Governance Ghana, 'Safeguarding Civic Space through and enabling NPO Legislation in Ghana' (IDEG, Policy Dialogue, December 2023) <https://www.youtube.com/watch?v=oH0JV6QQQh8 > accessed 4 September 2026

9.2 Summary of Research Findings

Six key findings from the research are summarised below.

9.2.0 Regulatory Power Dynamic[6]

Chapter 2 presents the proof of historical governance implications by examining regulatory initiatives from pre-colonial tribal governance, colonial, and independent governance up to the Fourth Republic. Findings showed the emergence of what the research termed a *regulatory power dynamic* between the Government and sector actors, in which both parties now have the capacity to dictate regulation. The Government's regulatory power derives from the State, whereas the sectors derive from historical autonomy, development services, and the 1992 Constitution. Therefore, in contextualising the nature of the third-sector regulatory formulation and reform in Ghana, both the Government and sector actors have the power to dictate the direction of regulation. This idea is supported by failed reform attempts, in which sector actors rejected bills proposed solely by the Government, as well as by the success of the 2020 Policy, in which both Government and sector actors participated. It demonstrates that for any reform to succeed, both parties must collaborate. However, because the two have different notions of regulation, regulatory stagnation is unavoidable even in cases of collaboration. This is due to their power imbalance and the sector's fear of legal suppression, Government interference, co-optation, and infringement of autonomy, facilitated by legislation. These factors constitute the daunting conditions that all reforms must address to succeed.

9.2.1 Constitutional Imbalance of Freedom and Limitations[7]

But chapter 3 showed that even where Government and sector actors agree on a regulation, the 1992 Constitution can invalidate obligatory provisions. The research found that this was because the Constitutional provisions allow little to no balance between freedom of association and its limitations. This makes a robust regulatory regime challenging, as obligations cannot be imposed without Constitutional backlash. Given Ghana's history, the Constitution has been designed to place significant weight on the fundamental freedoms set out in Chapter 5. Thus, the Ghanaian Supreme Court apply a liberal interpretation of the fundamental freedoms, including association.

[6] *See Chapter 2*

[7] *See Chapter 3*

Obligations that seek to limit the enjoyment of the fundamental freedoms must fall within the permissible Constitutional limitations, namely Articles 21(4), 31, and 12(2).

Even when applying these limitations, the Supreme Court adopt a literal, narrow interpretation to minimise restrictions. Hence, of the three limitations, only Article 12(2), on public-interest grounds, could be applied to restrict the freedom of association in non-emergency situations. According to the Supreme Court's interpretation, Article 21(4) does not apply to freedom of association, and Article 31 applies only in State emergencies and is difficult to trigger. However, even Article 12(2) is challenging to use. Although it requires that limitations serve the public interest and be justified, previous Government's attempts to regulate the sector on public-interest grounds were rejected by the Supreme Court as unduly restricting freedom of association. This leaves little room to balance rights with limitations, and as a consequence, robust sector regulation is forfeited.

9.2.1 The 2020 Policy Regime[8]

Thus, the *dynamics of regulatory power* and the potential for Constitutional backlash help explain both the absence of sector legislation and the significance of the 2020 Policy. It is the first accepted regulatory framework in over 30 years. Chapter 4 sets out the Policy's legal and institutional framework, which serves as a step toward creating a coherent legal environment for the sector. The legal and institutional provisions address key gaps in the industry, including sector definition and the designation of a Secretariat as the regulator. Obligatory and punitive rules that ensure transparency and accountability through required registration and licensing are also key strengths of the Policy.

However, the research also found that these same strengths pose the Policy's key challenges. First, the definition excludes religious worship-based organisations, thereby creating a disproportionate regulatory regime. Second, the Secretariat is a Government institution, and its power to close offending organisations heightens sector distrust and may give rise to Constitutional claims. Third, the requirement of registration and licensing may itself contravene Article 21(1)(e), as it subjects the enjoyment of freedom of association to registration, which the Supreme Court has held

[8] *See Chapter 4*

unconstitutional.[9] Therefore, though significant, the Policy's framework is simultaneously problematic.

9.2.3 Precarious Standing and Sustainability of the 2020 Policy[10]

Despite the weakness of the obligation provisions, Chapter 5 found that to circumvent the difficulty of complying with the three main Constitutional limitations, the Government placed the 2020 Policy under Article 37(1). Article 37(1) does not directly limit freedom of association; rather, it affirms that rights must go with obligations, thereby validating obligations imposed on the sector. However, the justiciability of this provision is contentious, as it is part of the Directives of State Principles under chapter 6, which the Supreme Court has, in some instances, held to be justiciable and, in others, not. In its most recent judgment on Chapter 6's justiciability, the court held that it is justiciable but subject to rebuttal.[11]

Therefore, the policy obligations would be Constitutional unless the Supreme Court decided otherwise. This affects the standing of the Policy as judicial scrutiny may make all obligatory provisions invalid.

Beyond its Constitutional standing, the research found that the 2020 Policy is also threatened by political sustainability, as its enforcement entirely relies on the executive's discretion. This is problematic because Ghana's winner-takes-all governance system has often led to the abandonment of initiatives and policies of previous Governments. This may mean the disposal of the 2020 Policy by the incumbent NDC Government, which did not create it. However, the research also argued that the difficulty of finalising an agreed framework, together with Ghana's AML/CFT obligations, reduces the likelihood that it will be disregarded, thereby prolonging the process until sector legislation is enacted.

[9] New Patriotic Party v Attorney-General [1996-97] SCGLR 729 (CIBA Case)

[10] *See Chapter 5*

[11] Ghana Lotto operators & others vs National Lottery Authority (2007-2008) 2 SCGLR 1008

9.2.4 Weak Coordination Framework of the 2020 Policy[12]

However, we cannot regard the 2020 Policy as a successful undertaking, even if it is not Constitutionally challenged and withstands political difficulties. This is because the Policy was found to be weak in the three areas evaluated. The first is its coordination provisions discussed in Chapter 6. Its coordination framework falls short in both its definitional scope and its coordination rules.

Because the definitional scope excludes religious worship-based organisations, challenges arising from their harmful practices are not addressed within the Policy's framework. This creates a disproportionate regulatory regime that perpetuates exploitation within the sector. Additionally, given the sector's work in local areas, local collaboration is necessary to improve sector efficiency. However, the omission of highlighting the Local Government Acts 1993 and 2016, which facilitate such cooperation within the Policy's framework, undermines the Policy's rhetoric of coordination and collaboration. It makes no changes to ongoing issues of limited Government support for local projects and duplication, despite explicitly mentioning this problem. Thereby failing to contribute to improving local service delivery.

9.2.5 Limited Capacity and Enforcement of Transparency Measures[13]

In addition, Chapter 7 found the 2020 Policy to be limited in its mechanisms for transparency. Although the Policy ensures transparency through the Secretariat's central database listing licenced organisations, this is ineffective, as the list offers only a superficial glimpse of openness. The public can only see which organisations are registered with the Secretariat and the operational areas in which they operate. Their members, accounts and direct beneficiaries are not added. Therefore, there is no practical way to scrutinise them if one is not part of the Secretariat. Furthermore, when organisations are found wanting by the Secretariat, the list updates them to indicate that they are not in good standing. However, the criteria or rationale for this are not disclosed, further undermining the transparency mechanism. Moreover, the Secretariat lacks the capacity to ensure compliance, resulting in a minuscule number of licenced organisations.

[12] *See Chapter 6*

[13] *See Chapter 7*

9.2.6 Ignored Beneficiary Accountability[14]

In terms of accountability, Chapter 8 shows that the 2020 Policy's mechanism obligates accountability only to the Government through the submission of reports. Measures of accountability to other stakeholders, especially beneficiaries, are left to the discretion of sector actors. Considering the allegations of beneficiary exploitation, marginalisation and theft of traditional knowledge, this position basically maintains the previous status quo. The research found that whilst sector actors have in-house codes that demonstrate their intention and commitment to accountability, these were highly focused towards funders, with little regard for beneficiaries. Moreover, the Secretariat does not make public the reports submitted by sector actors. Whilst it may be possible for concerned persons to request access under Ghana's Right to Information Act, 2019, this is uncertain, as the Secretariat has no rules governing such requests, and even if it did, access would be subject to fees that local beneficiaries may be unable to afford.

Overall, Ghana's historical governance and the 1992 Constitution's inability to balance fundamental rights with limitations affect the robustness of sector regulation. In addition, although the 2020 Policy is significant and provides the first framework in the fourth republic, it does not strengthen the regulatory regime. Its nature as a policy and the gaps in the framework, along with possible Constitutional and sustainability limitations, create ongoing challenges. To strengthen the sector, further reform is required.

9.3 *Recommendation 1*: Regulation Co-production

The first practical way to strengthen the sector's regulatory regime is through the enactment of sector legislation, because although the 2020 Policy provides reform, its Constitutional and political stability is precarious. Nonetheless, since one cause of the absence of legislation is sector protest stemming from a lack of trust, there is a need to ensure strong sector-Government partnerships in regulation first. This could be done through regulation co-production.

9.3.0 What Co-production would look like

Although historical governance has created a *regulatory power dynamic* in which both Government and sector actors hold regulatory power, the Government retains primary authority to create,

[14] *See Chapter 8*

control, sustain, and enforce regulation. Even when sector actors are consulted, the fear of Government suppression remains ever-present. The regulation collaboration process must therefore move from consultation to co-production.

The concept of regulation is seen as a social process founded in legal and political negotiations.[15] Negotiations are often conducted by Government agencies, politicians, private actors, citizens, and groups. During the regulatory enactment process, stakeholders may provide input and engage in activities such as participating in consultations, as was done in the creation of the 2020 Policy. But when the regulation is co-produced, inputs go beyond consultation to active participation.

Therefore, co-production is defined as the *"inputs and activities of citizens[stakeholders] that affect the quality of services delivered."*[16] The concept of co-production is about partnership geared towards service delivery, knowledge and governance. Since its inception,[17]It has garnered interest and has been conceptualised within four key disciplines: public administration, business, science and technology studies, and sustainability science.

The four disciplines outline the significance of co-production for the parties involved and the desired outcome. In public administration, co-production refers to the production of public services in collaboration between public agencies and citizens.[18] In business, it concerns the

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[15] Thomas A. Byer, 'Public Participation in Regulatory Decision-Making' (2013) 37(2) Public Performance and Management Review 263, 263 < DOI: 10.2753/PMR1530-9576370204> accessed 4 September 2026

Elinor Ostrom, Roger B. Parks, Gordon O. Whitaker and Stephen L. Percy , 'The Public Service Production Process: A Framework for Analysing Police Service' (2005) 7(1) Policy Studies Journal 381 < https://www.researchgate.net/publication/229781180_The_Public_Service_Production_Process_A_Framework_for_Analyzing_Police_Services> accessed 4 September 2026

Elinor Ostrom, "Community Organization and the Provision of Police Services". (Sage, Beverly Hills, CA., 1973)

[18] Ostrom and others (n 18)

Daniel H. Cole and Micheal D. McGinnis (ed), "Elinor Ostrom and the Bloomington School of Political Economy: Volume 3, A framework of Policy Analysis". (Lexington Books, London, 2017)111

Micaela Mazzei, Simon Teasdale, Francesca Calò and Micheal J. Roy, 'Co-production and the third sector: Conceptualising different approaches to service user involvement' (2019) Public Management Review <https://doi.org/10.1080/14719037.2019.1630135> accessed 4 September 2026

Tony Bovaird, "Beyond Engagement and Participation: User and Community Co-production of Public Services (2007) Public Administrative Review 846 <https://onlinelibrary.wiley.com/doi/10.1111/j.1540-6210.2007.00773.x> accessed 4 September 2026

productivity between companies and consumers.[19] In science and technology, it is about creating an enabling environment through inventions and how we live.[20] In sustainability science, knowledge is shared between researchers and stakeholders.[21] Combined, we find that co-production yields benefits in service delivery, productivity, an enabling environment, and research.

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[19] Christopher Lovelock and Robert Young, 'Look to Consumers to Increase Productivity,' (1979) 57(3) Harvard Business Review 168

Michael Etgar, 'A descriptive model of the consumer co-production process' (2008) 36 Journal of the Academy of Marketing Science 97-108

Lance A. Bettencourt, Amy L. Ostrom, Stephen W. Brown and Robert I. Roundtree, 'Client Co-production in Knowledge-Intensive Business Services' (2002)44(4) California Management Review 102

[20] Thomas. S. Kuhn, *The Structure of Scientific Revolutions* (University of Chicago Press, 1962)

H.M Collins, 'Introduction: stages in the empirical programme of relativism' (1981)11(1) Social Studies. Science 3 < https://www.jstor.org/stable/284733> accessed 4 September 2026

Sheila Jasanoff, *States of Knowledge: The Co-production of Science and the Social Order* (Routledge, 2004)

I. Hacking, *The Taming of Chance* (Cambridge University Press, 1990)

Clark A. Miller and Carina Wyborn, 'Co-production in global sustainability: Histories and theories' (2020) 113 Environmental science and Policy 88 < https://www.sciencedirect.com/science/article/pii/S1462901117306366> accessed 4 September 2026

Robert Lusch and Stephen L. Vargo, *The Service-dominant logic of marketing: Dialog, debate and directions* (N.Y.M.S Sharpe, 2006)2

Hans Harbers(ed), *Inside the Politics of Technology: Agency and Normativity in the Co-production of Technology Society* (Amsterdam University Press, 2005)

[21] Clark A. Miller and Carina Wyborn, 'Co-production in global sustainability: Histories and theories

Sandra van der Hel, "New Science for Global Sustainability? The Institutionalisation of Knowledge co-production in Future Earth' (2016) 61 Environmental Science and Policy 165 <https://www.sciencedirect.com/science/article/pii/S1462901116300636> accessed 4 September 2026

Karin Bäckstrand, 'Civic Science for Sustainability: Reframing the Role of Experts, Policy-Makers and Citizens in Environmental Governance' (2003) 3(4) Global Environmental Politics 24, 36 <http://sciencepolicy.colorado.edu/students/envs_5100/backstrand.pdf> accessed 4 September 2026

Miller and Wyborn (n 23)

When brought into the third sector, actors are already constantly engaging with the Government and their beneficiaries in service delivery. Therefore, Pestoff[22] Sees third-sector organisations as both service providers and service users involved in the planning and design of service delivery. These relationships, especially with the Government, have the potential to create institutionalised co-production, converging on democratised governance in which decision-making power, authority, and control over service delivery are shared. [23]

Furthermore, if regulation is viewed as a service, regulation co-production refers to the inputs and activities of stakeholders that affect the quality of the regulation delivered. Already, both Government and sector actors have distinct areas in which they produce regulations in Ghana. Sector actors produce operational codes of conduct, and Government oversight systems and rules. But both places have respective limitations, for example, disorganised codes of conduct and limited buy-in of Government initiatives. Bringing these roles together to create an institutionalised co-produced regulation system is beneficial. It enables the formulation of mutual regulatory mechanisms and shared oversight of compliance by both parties. Both the regulator and the regulated monitor compliance, thereby giving the regulated a direct role in enforcing the regulation.

Moreover, Clark and Carina[24] explain that numerous research communities and practitioners' analysis, design and initiatives have adopted the language of co-production, each with a different definition. While this may be a disadvantage in certain instances, it provides an advantage for Ghana's third sector in creating its own co-production system, particularly in addressing concerns about legislation. Therefore, Ghana's third-sector regulatory regime could be purposefully structured to include co-production, in which sector actors and Government agencies collaborate, rather than merely consult, to co-produce regulation from formulation to enforcement. It will promote a sense of balanced power, thereby creating a stronger system in the absence of legislation and even more so for the creation of legislation. With a balance of power, trust in the Government may increase, enabling stronger accountability and transparency mechanisms. However,

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[22] Victor Pestoff, 'Co-production and third sector social services in Europe: Some concepts and Evidence' (2012) 23 International Journal of Voluntary and Non-profit Organisations 1102 <https://link.springer.com/article/10.1007%2Fs11266-012-9308-7> accessed 4 September 2026

[23] Philipp Horn, Paola Alfaro d'Alençon, and Ana Claudia Cardoso (ed), *Emerging Urban Spaces: A planetary Perspective* (Springer, 2018)70

[24] Miller and Wyborn (n 23)

continuous engagement with sector actors may also lead to regulatory capture, in which regulation is used to serve the needs of the regulated rather than the public interest.

9.4 *Recommendation 2*: Constitutional Reform

Even if regulation co-production occurs, any initiative, especially legislation, risks being Constitutionally invalidated because of the insufficient balance between freedom of association and limitations. Therefore, to allow Constitutional sustainability of regulations, Constitutional reform of Article 21(1)(e) is required. Just as specific limitation provisions are placed on the freedom of movement and thought within Article 21(1), the same could be done for association. Considering historical suppression of the sector, the limitation could be specific, for example, in registration, transparency of accounts and accountability towards beneficiaries. Punitive measures could be implemented by the courts, rather than by the Government, through court orders. Nonetheless, such a reform is near impossible.

9.4.0 Difficulty in Constitutional Reform

Since its creation, the 1992 Constitution has been amended only once in 1996. All other attempts have proved unsuccessful.[25] This is mainly because amendments are highly politicised.[26] Two notable attempts are worth mentioning. One was in 2008, when the NDC Government organised a Constitutional Review Commission to consult the public and recommend changes to the Constitution. In 2010, the Commission published a report with its recommendations. However, the NPP, in opposition, opposed the Commission's report because its members were not representative and that the Commission's consultation process was not transparent. So, the reform attempt failed.

[25] Mawuse Vormawor, 'Constitutional reform in non-conflict contexts: Ghana's experience' (2014) <https://constitutionnet.org/news/Constitutional-reform-non-conflict-contexts-ghanas-experience> accessed 12 March 2025> accessed 4 September 2026

[26] Stephen K. Asare and H. Kwasi Prempeh, 'Amending the Constitution of Ghana: Is the Imperial President Trespassing?' (2010) African Journal of International and Comparative Law < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1614365> accessed 4 September 2026

In 2020, Constitutional Reform was revisited during the general election campaign due to concerns about the effectiveness of local Government. Ghana's decentralised system aims to facilitate local participation in development processes. [27] However, real power in the regional districts resides with the District Chief Executives (DCEs), whom the President appoints. Because they are appointed, accountability is limited, as DCEs are perceived as primarily serving Presidential interests rather than local needs. This has been an ongoing issue, as appointments instead of elections are perceived to curtail effective local participation. So, before the December 2020 elections, this issue was at the forefront of debates. As such, both the NPP and NDC political parties proposed Constitutional reform. The NPP's proposal sought to amend an entrenched Constitutional provision to address the issue. They therefore called for a referendum to secure its passage. However, the referendum was cancelled due to a '*lack of adequate public knowledge and broad-based consensus on the reforms'*.[28] Politics, therefore, played a significant role in the direction of reform, and the divergent views on the mode of reform led to the attempt's failure. Notably, these proposed amendments concerned provisions less significant than the fundamental freedoms. Therefore, if those attempts were unsuccessful, it is doubtful that any attempt to amend Article 21(1)(e) would succeed. In addition to political disagreements, sector actors will not agree to this, as it would be perceived as a threat to their autonomy and could enable potential Government suppression.

9.5 ***Recommendation 3*: Purposive Interpretation of limitations.**

In the absence of such Constitutional reform, the only viable solution to balance freedom of association with limitations lies with the courts. There must be a shift from a literalist and narrow interpretation of limitations to a purposive interpretation to allow appropriate Constitutional standing for obligatory rules. This recommendation is based on Date-Bah JSC's argument in the *Lotto* case.[29] He argued that the international legal landscape is changing, thereby making economic,

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[27] Albert Ahenkan, N.J Bawole and K.A Domfeh, ' Improving Citizens' Participation in Local Government Planning and Financial Management in Ghana: A Stakeholder Analysis of the Sefwi Wiawso Municipal Assembly'(2013) 3(2) Journal of Public Administration and Governance 191 < https://doi.org/10.5296/jpag.v3i2.3782> accessed 4 September 2026

[28] Institute for Democratic Governance, 'Ghana Speaks: Reconstructing Local Government and Multiparty Constitutional Democracy' (2021) Lecture and Panel discussion.

[29] Ghana Lotto operators & others vs National Lottery Authority (2007-2008) 2 SCGLR 1008, Date-Bah JSC's at paragraphs 1106-1107

social, and cultural rights increasingly legitimate and enforceable, necessitating purposive interpretation of limitations to balance rights and responsibilities. This approach would facilitate the easy application of Article 12(2) and even strengthen the justiciability basis of Article 37(1). However, a shift from a narrow to a purposive interpretation of limitations may also prove difficult, as it could create a precedent that affects other fundamental freedoms, thereby weakening their intensity. This the courts would not allow.

9.6 *Recommendation 4*: 2020 Policy Review

However, even purposive interpretation may not fully safeguard the 2020 Policy's obligatory provisions, as Article 37(1) may still be held non-justiciable, thereby rendering the 2020 Policy invalid. Therefore, the third recommendation is to review the 2020 Policy, ideally through co-production, to remove problematic provisions and strengthen its Constitutional sustainability. For instance, the rule that grants the Secretariat the authority to close organisations must be removed. Fortunately, the 2020 Policy makes provision for a review after every five (5) years or when the urgency arises to respond to emerging issues which would have a strategic impact on the sector.[30] 2025 marks the end of the Policy's fifth year and presents an opportunity to address key offending areas in the policy.

However, because this review will be conducted under the NDC Government, which did not create the Policy, it is possible that the Policy may be eliminated during the review process and replaced with an alternative. But without sector agreement, any new initiative is likely to fail, especially if it is a bill. This will leave the sector without a framework, especially given the uncertainty surrounding the adoption of the NPO bill.

9.7 *Recommendation 5*: Funding Regulator

With or without the review of the 2020 Policy, there is a need to strengthen the sector's financial transparency and accountability system. In the absence of a legislative framework, a financial institution is an apt solution. Therefore, the fifth recommendation is to create a third sector funding regulator. This body would have the remit of wholly monitoring any type of funding and support connected to the entire sector, from traditional associations and community groups to religious bodies and NGOs. It would also follow international practice, such as that of the

[30] National Non-profit Organisations Policy (2020) Paragraph 4.3

Fundraising Regulator overseeing charitable fundraising in England, Wales and Northern Ireland.[31] The Fundraising Regulator is an independent non-statutory body set up to promote standard of fundraising practice, including consultation with the public, investigating and receiving complaints, making available a public directory and helping individuals manage their contact with charities.[32] It also publishes guidelines with the Charity Commission to increase public protection.[33] The reasons requiring such an institution in Ghana may be different from that which led to the creation of the Fundraising Regulator,[34] however, lessons could be learnt from it and tailored to the issues of limited funding transparency in Ghana's third sector.

The key issues of limited funding transparency identified in the research included domestic donations particularly from private philanthropy and religious-worship based organisations going mostly unreported.[35] Also, funding grey areas creating vulnerabilities to illegal and terrorism financing arising from international businesses collaboration/support with village/community groups and cooperatives.[36] The Secretariat's limited capacity in strengthening the sector's transparency framework[37] and the Constitutional barrier.

Based on these limitations and noting the role the Fundraising Regulator plays, the Ghanaian third sector funding regulator could also be created as an independent non-statutory body. The benefit of this is that it would reduce Government interference and increase trust. It being non-statutory

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[31] The Fundraising regulator, 'home'. <https://www.fundraisingregulator.org.uk/> accessed 4 September 2026

[32] Practical Law, 'Fundraising Regulator' < https://uk.practicallaw.thomsonreuters.com/w-016-0729?transitionType=Default&contextData=(sc.Default)> accessed 4 September 2026

The Fundraising Regulator, ' What We do' https://www.fundraisingregulator.org.uk/about-us accessed 4 September 2026

[33] UK Government , 'Regulators join forces to remind the public of their responsibilities when fundraising' (Charity Commission, 2026) https://www.gov.uk/government/news/regulators-join-forces-to-remind-the-public-of-their-responsibilities-when-fundraising accessed 4 September 2026

[34] Wide spread concerns in the UK on how charities contact donors and potential donors

The Fundraising Regulator, ' Who We Are: Our History'< https://www.fundraisingregulator.org.uk/about-us> accessed 4 September 2026

[35] As exemplified by the Shea butter processing women's group,

See 1.2.2 and 1.3.2

[36] See 1.2.2 and 1.3.2

[37] GIABA's follow-up report which did not find evidence of the Secretariat's supervision and sanction over non-compliance showing its limited effectiveness and transparency mechanism. See chapter 7.8.1

The Inter-Governmental Action Group against Money Laundering (GIABA), Anti-money Laundering and Counter-terrorist financing measures-Ghana, Fourth Follow-up Report. (GIABA, 2022) 3

will also circumvent delays and reduce the fear of Government suppression. On the point of its role, its main objective would be to, one, create a standard for donor practice especially from domestic sources which is less developed than the international funding landscape. Two, receive and investigate complaints from beneficiaries on financial exploitation relating to the use and donation of funds/capacity. Three, work with communities to investigate donors and businesses seeking collaborations to source materials. Four, encourage sector actors to upload their financial statements and publish a directory allowing the public to request financial reports. Five, consolidate and provide a better financial overview of the sector.

This role would complement the work of the Secretariat and address the transparency regulation deficiencies without triggering unconstitutional conduct in the requirement of registration or licencing. Also, there would be increased oversight and data consolidation from domestic donations, providing guidelines and investigating complaints for public protection especially of rural groups on verifying legitimacy of donors. Lastly, it remit would cover all sector actors which would help bridge the regulatory divide between religious-worship based organisations and the wider sector.

However, this would not be easily realised. A key disadvantage in making it independent of Government would be resource and capacity limitation. Without registration or licencing mandate, a key revenue source is forfeited. Government could be lobbied to provide resources without playing a role, but it's being non-statutory would likely subject it to Government whim. Also, the Secretariate might view it as a threat to their work, which might affect support as collaboration with the Secretariat and wider Government agencies would be needed for the institution to be effective. Further, sector actors may not be willing to sign up to upload financial records, some may even lack the capacity to do so, making public scrutiny limited.

Conversely, increasing the capacity of the Secretariate to perform these functions by creating a sub-team within it, may be a viable alternative. However, it would not address the capacity issue, may increase distrust and be subjected to the Secretariat's Constitutional and political standing which remains precarious. Perhaps, an independent sector regulator may reduce these limitations.

9.8 *Recommendation 6*: Independent Sector Regulator.

The fear of Government suppression, the limited improvement of transparency and accountability framework discussed could be linked to the Secretariat's status as a Government institution. Therefore, the sixth recommendation is the establishment of an independent or quasi-

independent third sector regulator, not wholly tied to the Government. The Secretariate could be phased into such an independent body, or a new body could be created. This would improve sector trust as Government interference would be minimum, and would follow international practice, such as in Scotland, where the charities' regulator[38] is independent of Government. An independent body would further reduce the possibility of an incumbent Governments changing or making -away with it, as enabled by the winner-takes-all system.[39]

Moreover, an independent regulator could be easily held accountable by the public and sector actors, furthering trust. As a Government institution, any criticism would be politicised, and required changes within the Secretariat would demand lobbying Government personnel or agencies and engaging with the pressure and complications of Ghanaian politics. An independent body would reduce this and be seen as entirely working for the sector and the public interest creating stronger mechanisms to handle public complaints. For example, the National Insurance Commission (NIC) in Ghana[40] is the regulatory and supervisory body for the insurance sector. Though created by statute it is an independent regulator which is seen as balancing competitive market and public protection.[41]

That said, a key issue in establishing an independent regulator might be its funding. Most regulatory institutions in Ghana are linked to the Government to provide resources, and an independent body may be expected to wholly fund itself which might be problematic. For example, one of the NIC's sources of revenue are the licencing applications. However, as noted in chapters 3,4 and 5 though the Secretariate also generate revenue through licencing, this might be regarded as unconstitutional, unless the Supreme Court allows[42] it through purposive interpretation or the Constitution is amended[43] which is difficult.

Further, the NIC regulates a segment of the private sector which is not heavily reliant on donations as the third sector is, making resource mobilisation apart from Government equally challenging. While donors could be brought in to help fund the body, it may likely replace Government

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[38] The Office of the Scottish Charity Regulator (OSCR), About OSCR. <https://www.oscr.org.uk/about-oscr> accessed 4 September 2026

[39] discussed in 5.6.0

[40] National Insurance Commission, 'About the Commission' <https://nic.gov.gh/about>accessed 4 September 2026

[41] National insurance commission (in 40)

[42] *See 9.5*

[43] *See 9.4.0*

interference with that of international funders. Thereby, entrenching the power-imbalances created by donors from top to bottom and further tilt the sectors accountability system towards upwards accountability as discussed in chapter 8.

9.9 *Recommendation 7:* Sector Uniformity

Noting the similarity of religious-worship based organisations to the wider third sector, exploitation of one-man churches and the evolved definition of development identified in chapter 6, the current sector actor definition provided by the 2020 Policy is insufficient. Therefore, the seventh recommendation is to create an inclusive sector definition that encompasses all third sector organisations, regardless of whether they are created primarily for development purposes, would improve consistency.

This will not only merge the divisive view of the sector but also create bridges that can increate oversight on churches without creating a separate legislation. Churches will therefore not feel targeted. The new definition will also encourage donors, researcher and government to have a comprehensive view of all voluntary bodies in Ghana creating a more comprehensive analysis of what regulation is best starting from this thesis. Unlike the other recommendations the implementation of this recommendation could be achieved without legalisation nor constitutional amendments.

Additionally, greater emphasis on the Local Government Acts within the regulatory framework would reduce project duplication and improving both sector uniformity and service delivery. Overall, based on the research issue and identified gaps, these recommendations would strengthen Ghana's third-sector regulatory system. However, the study also noted limitations in the research process.

9.10 Change of Research Scope

From my LLM dissertation, I identified weaknesses in Ghana's third-sector regulatory regime, particularly the absence of sector-specific legislation and limited oversight. Therefore, my initial aim was to identify best practices for analysis to strengthen Ghana's third-sector regulatory regime. Consequently, I sought to do a comparative analysis between Ghana and Scotland. I chose Scotland because both my LLB and LLM studies were done here, giving me an understanding of the Scottish governance and legal system. I had also worked with local Scottish charities, and

through that experience, I identified practices that would be beneficial to Ghana's regime. I initially planned to examine the scope of the Charities and Trustee Investment (Scotland) Act 2005 and to interview charities to analyse both legal and operational practices. From this, I would derive lessons to address oversight and accountability gaps in Ghana's third-sector regime.

However, this aspect came to a standstill during the Covid-19 pandemic and subsequent lockdown. I therefore turned my attention to researching Ghana's third sector. As the research progressed, it became clear that a comparison without a contextual understanding of the nature of Ghana's third-sector regime would lead to an erroneous conclusion about how the regime should strengthen itself. Therefore, I decided to forgo the comparison research at this stage and focus on a jurisdictional analysis of Ghana. Based on the findings presented, this approach was an excellent decision. The analysis allowed me to put into perspective the historical, Constitutional, policy and sector practices that shape the regulatory regime. It also highlights the areas that require reform to strengthen Ghana's third-sector governance. It does not mean that lessons from other jurisdictions are no longer needed, as the recommendations above note that evaluating Scotland's independent regulator and England's fundraising regulator can offer valuable insights into how Ghana can establish such institutions and the benefits and potential challenges that accompany this.

9.11 Research Limitations

With the change in research focus, one of the main challenges I faced was limited time and access to relevant documents on Ghana, both in terms of availability and location. Some of the resources required me to be in Ghana to find where and how to locate them, particularly regarding the formulation process for the 2020 Policy. For example, in chapter 2, when discussing how the 2020 Policy was formulated, I could not find the number of sector actors consulted or the Government's criteria for selecting participants. Since the 2020 Policy is primarily an executive instrument, political influence and bias were assumed to be present. Information on the consultation methodology could have clarified the degree of bias. In addition, the Policy mentions that during the consultation process, the Government provided participants with the policy parameters. This information could have provided baseline data on whether any consultation inputs outside the parameters were added to the Policy.

However, I did not have the funding to travel to Ghana for an extended period, and emails and calls to the Secretariat were unproductive. Nonetheless, although the information provided by the 2020 Policy was limited in some areas, it did not materially affect the analysis required to advance the research argument.

Finally, I had planned to add an empirical aspect to the thesis by collating the views of Ghanaian sector actors on the 2020 Policy. This would have provided further clarity on the level of acceptance of the 2020 Policy. However, Covid-19 and its subsequent effects, as well as financial and time constraints, precluded this. Nevertheless, since the research's primary goal is to provide a foundational analysis of the nature of Ghana's third-sector regulatory regime, the lack of an empirical account does not detract from the research. Instead, it provides a strong foundational understanding of the nature of Ghana's third sector and opportunities for further study, including empirical research.

9.12 Further Research

An empirical study is recommended as the first further study in this area to add practical contextual analysis, particularly of sector actors' views on the 2020 Policy. Views of sector actors, the Government, and the judiciary could also provide insight into the suitability of the recommendations, particularly those on regulatory co-production, Constitutional reform, and purposive interpretation of limitations attached to the fundamental freedoms.

Second, while East African countries have enacted sector legislation, Nigeria, like Ghana, still lacks such legislation. Sector actors have also protested suggested bills.[44] This creates an opportunity to evaluate the hypothesis regarding the historical and Constitutional implications for Nigeria's third-sector regime, too. It would make both an in-depth analysis of Nigeria's position and a comparison with Ghana, contextualising the nature of this sector regulation in English-speaking West African countries.

Third, analysis of historical and Constitutional positions could be further applied to jurisdictions in Africa that lack sector legislation. Most African countries have a shared experience of tribal

[44] Paul Carsten, 'Nigeria NGOs slam civil society bill as grave threat to freedoms' *Reuters* (Lagos, 13 December 2017) < https://www.reuters.com/article/world/nigeria-ngos-slam-civil-society-bill-as-grave-threat-to-freedoms-idUSKBN1E72CM/> accessed 4 September 2026

governance breakdown, colonialism, independence, and post-independence power struggles. Such an analysis would provide a baseline in understanding third-sector governance in Africa.

Fourth, the recommendations identified above, were intentionally presented as compact overviews to serve as signposts for further studies. Particularly recommendations 5 and 6 provides an opportunity to research independent institutional regulation structures for Ghana's third sector and whether this might be feasible in Ghana's case.

Finally, a comparative analysis of weak and strong third-sector regulatory regimes is proposed, as lessons learned could serve as catalysts for regulatory reform.

9.13 Conclusion

The research shows that the absence of sector legislation in Ghana's third sector creates regulatory difficulties that undermine oversight and accountability structures. Nonetheless, this problem is not easily resolved as it stems from both historical and Constitutional issues. Policy reform serves only as a temporary measure, as evidenced by an examination of Ghana's historical governance and Constitutional jurisprudence. Although the findings reveal gaps in the system, they also identify opportunities to effect change that will strengthen it.

Some of these changes are highlighted in the recommendations above, and while some may take time to be realised, others are nearly impossible to achieve. Still, this does not detract from the research nor its recommendations. In fact, the thesis achieves its primary goal, which is to advance understanding of the factors that shape the regulatory regime of Ghana's third sector and of the impact of using policy rather than legislation. This action is thus rational. Although it is a sensible choice, the examination of the 2020 Policy also reveals inherent weaknesses that must be addressed to strengthen the regulatory regime. Thus, in the absence of sector legislation, policy becomes the future of third-sector regulatory reform in Ghana and the position that other countries facing similar constraints could take.

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Appendix 1: Administrative Map of Ghana



A map of Ghana with its regions[1]

[1] Ghana Statistical Service, Ghana 2021 Population and Housing Census: General Report. < https://census2021.statsghana.gov.gh/gssmain/fileUpload/reportthemelist/Volume%203%20Highlights.pdf>

Appendix 2: Application for Licence Form LF-2

Form: LF-2

NON-PROFIT ORGANISATION SECRETARIAT (NPOS)

MINISTRY OF GENDER, CHILDREN AND SOCIAL PROTECTION

REPUBLIC OF GHANA

APPLICATION FOR LICENSING OF NON-PROFIT ORGANISATIONS IN GHANA

Date Submitted	Time Submitted	Reference No.

PART I

{Kindly go through the notes before you proceed to fill the Form}

1. This form is to be completed by any organisation seeking licensing under the Non-Profit Organisation Policy (2020) and Directives for the Management of the Non-Profit Organisations Operations in Ghana (2020). Applicants are therefore advised to obtain and familiarize themselves with the Non-Profit Organisation Policy 2020 and Directives for the Management of the Non-Profit Organisations Operations in Ghana (2020).
2. Application for licensing will be submitted to the Head, Non-Profit Organisation Secretariat (NPOS), P.O. Box MBO 186 Ministries-Accra; **Digital Address: GA-110-4673**
3. The following documents must be attached to the Licensing Form before submission: -
   - i) Application letter requesting for Licensing
   - ii) Each official must complete the Form; Personal details of the three top officials in the prescribed form, see (Part III 1-3)
   - iii) A banker's draft indicating the licensing fees payable through the existing Department of Social Welfare procedure as specified in the Fees and Charges Act.
   - *iv)* A copy of any National ID for Ghanaian nationals and a Bio Page of International Passport for other nationals;
   - v) Two recent colour passport-size photographs on a white background (2x2 inches) of the all Officials.
   - vi) For entity registered in Ghana, copies of Registrar General documents, and for entity registered in a jurisdiction outside Ghana a copy of Certificate of Incorporation in Ghana, a notarized certificate of registration from that jurisdiction and an MoU with the requisite Ministry;
   - vii) A constitution and a copy of resolution of the proposed organisation authorizing the filing of the application;
   - viii) A location of the office, digital address, and postal address of the proposed organisation (LoF-3) signed by the three top officials of the proposed organisation;
4. No organisation will be allowed to operate as a Non-Profit Organisation in Ghana without a license issued by the NPOS;
5. This form is for the purpose of licensing only (*other issues e.g. application for work permit, tax and duty exemptions will be handled separately)* but processed through the NPOS.
6. By filing these forms, the officials confirm and certify that they have read and understood the conditions and further confirm that the information they have given is true to the best

Appendix 3: Application for Renewal of Licence Form LF-3

Form: RLF-3

NON-PROFIT ORGANISATION SECRETARIAT (NPOS)

MINISTRY OF GENDER, CHILDREN AND SOCIAL PROTECTION

REPUBLIC OF GHANA

APPLICATION FOR RENEWAL OF LICENSING OF NON-PROFIT 'ORGANISATIONS IN GHANA

Date Submitted	Time Submitted	Reference No.

PART I

{Kindly go through the notes before you proceed to fill the Form}

1. This form is to be completed by any organisation seeking to renew its licensing under the Non-Profit Organisation Policy (2020) and Directives for the Management of the Non-Profit Organisations Operations in Ghana (2020). Applicants are therefore advised to obtain and familiarize themselves with the Non-Profit Organisation Policy 2020 and Directives for the Management of the Non-Profit Organisations Operations in Ghana (2020).
2. Application for renewal of licensing will be submitted to the Head, Non-Profit Organisation Secretariat (NPOS), P.O. Box MBO 186 Ministries-Accra; **Digital Address: GA-110-4673**
3. The following documents must be attached to the Licensing Form before submission: -
   - i) Application letter requesting for renewal of Licensing
   - ii) A banker's draft indicating the renewal of licensing fees payable through the existing Department of Social Welfare procedure as specified in the Fees and Charges Act.
   - iii) Fill change of key management personnel form (where applicable)
   - *iv)* A criminal background report (Police Report) from the Ghana Police Criminal Investigation Department (CID) (where applicable) *(Pick an application for request of Police Clearance from the NPOS upon submission of your renewal of licensing documents)*
   - v) A letter of consent authorizing the Non-Profit Organisation Secretariat or its designated agent to conduct criminal background checks;(where applicable)
   - vi) A copy of any National ID for Ghanaian nationals and a Bio Page of International Passport for other nationals;(where applicable)
   - vii) Two recent colour passport-size photographs on a white background (2x2 inches) of the proposed three top Officials; (where applicable)
   - viii) A change of the office, digital address and postal address of the proposed organisation (CoA-4) signed by the three top officials of the proposed organisation; (where applicable)
   - ix) Submit an annual audited financial statement, and an operational report
   - x) a record of any changes in its mandate (where applicable)
   - xi) a tax clearance certificate
4. The renewal forms shall be submitted at least one month before the expiration of the licence.

1

LF-3[2]

[2] Non-Profit Organisation Secretariat (NPOS) and Ministry of Gender, Children and Social Protection Republic of Ghana, 'Form LF3: Application for Renewal of Licensing of Non-Profit Organisations in Ghana' <https://npos.mogcsp.gov.gh/wp-content/uploads/2024/10/Non-Profit-Organisation-Renewal-Form.pdf> accessed 15 September 2025