

# CIVIL SOCIETIES'

INPUT FOR REFORM OF SOCIAL  
**PROTECTION** IN GHANA



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# CIVIL SOCIETIES' INPUT FOR REFORM OF SOCIAL PROTECTION IN GHANA

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## FOREWORD

All over the world, Social Protection policies and programmes have become an important mechanism for reducing poverty and inequality. Further, social protection contributes to building an inclusive and sustainable society through interventions such as cash transfers, health insurance and social insurance. To enhance the participation of Civil Society Organisations in the ongoing review of the Social Protection (Bill 2020), the Civil Society Platform for Social Protection in Ghana, in partnership with the Friedrich Ebert Stiftung (FES) Ghana and Zambia offices, engaged in various fora to consult stakeholders on their input to the Bill.

In this publication, the author identifies gaps in the Social Protection Policy (2015) and Social Protection (Bill 2020) through stakeholder engagements with the Civil Society. Further, the author discusses the challenges with existing Social Protections programmes and a review of the legal and financial framework, complaints/appeals mechanism as well as the offences therein. Finally, the author makes recommendations on how to improve the Bill under review.

It is our hope that this publication will be useful for policy makers, politicians, trade unionists, civil society activists and other stakeholders in our quest to contribute towards a strong and comprehensive social protection system thereby building a resilient, inclusive, and sustainable society. We wish to extend our gratitude to Precious Ng'onga, the Programme Manager, Rights-based Social Protection Project at the FES Zambia office for the technical support towards the review process.

Ebow Mensah  
Programmes Coordinator  
FES Ghana



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## 1.0 BACKGROUND AND EXECUTIVE SUMMARY

Friedrich Ebert Stiftung Ghana, (FES) in collaboration with APSP and CSPSP-GH are promoting right-based social protection in Ghana and Sub-Saharan Africa, with the Social Protection Project. Strategic Goal 1 of the SDGs promotes socio-political discourse on economic development, including basic social security, poverty reduction and democratic participation. The GPSP project thus aims to promote the strengthening of social protection through legal and policy reforms in Ghana.

APSP identifies key social protection legal and policy processes, through which the APSP platforms can engage, to strengthen social protection rights and service delivery. Kenya and Ghana are currently in the process of development of new legislative framework (Ghana) and review of existing legislation on social assistance (Kenya). It is on this basis that APSP is working closely with the two platforms in these countries; - the Civil Society Platform for Social Protection (Ghana) and the Social Protection Actors Forum (Kenya). The goal of the project is to strengthen the provision of social protection programmes through the legal and policy provisions in the two countries. In line with this goal, the CSPSP-GH engaged consultants, experts, players, and stakeholders on social protection in Ghana to review the Social Protection Bill, which is yet to be tabled before Parliament in the light of research findings, data, and our history to make recommendations for consideration for possible inclusion/revision of the Social Protection Bill. This policy brief is the product of these activities and engagements.

The recommendations made in this policy brief are for a review of the Social Protection Bill on four thematic areas to achieve four key objectives as follows: (1) a strengthened legal and regulatory framework for securing accountability, co-ordination, collaboration, and protection of rights among others; (2) a more sustainable financial framework; (3) a wider and more inclusive coverage; and (4) a complaint and appeals mechanism for the protection of rights.

This policy brief is also to support civil society in their engagement with government and all other stakeholders on policy, legislation, and implementation of social protection programs.

## 2.0 INTRODUCTION

Social protection is increasingly considered globally as a human right. It has a basis in Ghana's 1992 Constitution and is secured by several international and regional treaties, protocols and conventions of the United Nations and the African Union that Ghana is party to. Social Protection also features prominently in the Sustainable Development Goals (SDGs), which call on their signatories to "implement nationally appropriate social protection systems" and "achieve substantial coverage of the poor and the vulnerable" by 2030. Ghana therefore has a national and international obligation to provide social protection for its most vulnerable people. Moreover, social protection has proven a worthy endeavour by any nation for its sustainability and as an invaluable investment in its human capital. Furthermore, Social Protection has been found to contribute to building an inclusive society, securing social cohesion, citizenship building, promoting human capital and achieving equitable and sustainable development. In addition, there is broad consensus that an effective Social Protection system will be key to attaining the sustainable development goals (SDGs) on poverty, inequality, hunger, and food security, as well as the health and education related goals within the SDGs (UNICEF, 2019). It is therefore encouraging that Ghana has a draft Social Protection Bill (2020), which will hopefully be laid before parliament and be passed into law after the relevant parliamentary processes. Once adopted the law will provide a legal, regulatory, and financial framework to secure social protection for Ghana's most vulnerable population.

This policy brief is a review of the Social Protection Bill (2020), (the "Social Protection Bill"). The review which adopted a methodology of clause-by-clause analysis provides recommendations to be considered for inclusion in the Social Protection Bill 2020, to secure a more workable legal framework, a more sustainable financial framework, more accountability of duty bearers and better legal protection for vulnerable people in Ghana.

*Social protection is increasingly considered globally as a human right. Ghana therefore has a national and international obligation to provide social protection for its most vulnerable people.*

### 3.0 SUMMARY OF REVIEW OF THE SOCIAL PROTECTION BILL IN THE LIGHT OF RESEARCH FINDINGS ON THE OVERVIEW OF SOCIAL PROTECTION IMPLEMENTATION IN GHANA

Ghana's experience in social protection extends from pre-colonial, colonial, and post-independence periods albeit in varying degrees. For example, while there was no state support for social protection during the pre-colonial and colonial times, (leaving social protection to the extended family and community), attempts at state social protection started from 1957, (after independence).

#### 3.1 The Positives

Some of the commendable social protection initiatives that governments have developed post-independence include the Free Senior high School (SHS) programme, the Metro Mass Transit buses, National Health Insurance Scheme, the Livelihood Empowerment against poverty programme (LEAP), all of which have benefitted various vulnerable groups in the country. Another commendable step towards strengthening social protection in Ghana is the development and adoption of a Social Protection Policy which has defined social protection floors for Ghana among other things. Figure 1 states Ghana's present social protection flagship programs. The existing practices and social safety nets must be commended, maintained, strengthened, and revised, (upon review of challenges), to further consolidate and strengthen social protection in Ghana.

*Ghana's experience in social protection extends from pre-colonial, colonial, and post-independence periods albeit in varying degrees.*

#### 3.2 The Challenges

A review of the implementation of social protection since independence reveals the following underlying challenges:

1. Multiplicity of laws, programs, and institutions with ineffective co-ordination/collaboration resulting in further fragmentation, overlaps and contradictions and problems with targeting beneficiaries in some cases.
2. Lack of alignment and different measures.
3. Lack of accountability frameworks for holding duty bearers accountable, securing entitlements, filing complaints/appeals, among others.

Several surveys and research findings recommended a comprehensive Social Protection Policy and a Social Protection Law to tackle the above-identified implementation challenges, and, to provide more effective legal and financial framework for social protection among others. A Social Protection Policy was eventually prepared and approved, (the Social Protection Policy, 2015), and a Social Protection Bill drafted.

### **3.3 Findings on Review of Social Protection Bill (2020)**

Our review of the Social Protection Bill in the light of available data and research findings reveal the following:

#### **a. Legal and Regulatory Framework**

Social protection programs and social assistance programs are often organizationally complex, involve multiple government actors, systems, and processes, are multi-sectoral, and involve local governments, among other players.

A good legal and regulatory framework is therefore essential to the effective functioning of the system and serves to avoid overlaps, duplications, multiplicity, or gaps. Legal and regulatory frameworks are also essential for establishing the roles and responsibilities of the different actors involved in designing, administering, delivering, and enforcing social protection systems, and there should be consequences for breach of roles. Appropriate legal and institutional/regulatory frameworks are thus of paramount importance to the realization of the right to social security.

Legal Frameworks models for who, at the institutional level, will manage the design, implementation and operation of the Social Protection programmes include:

- i. The relevant social development ministry, the finance ministry, and the local government minister, (inter-sectoral/inter-ministerial);
- ii. Employ an executive agency like the office of the President or prime minister; or
- iii. Establish an external body with the overall organisation and co-ordination of social protection.

*Several surveys and research findings recommended a comprehensive Social Protection Policy and a Social Protection Law to tackle the above-identified implementation challenges, and, to provide more effective legal and financial framework for social protection among others.*

It is imperative that the choice of model in the Social Protection Bill must consider our past and the identified challenges of politicisation, overlapping, contradictions, and multiplicity, in deciding the model that is more likely to secure a stronger legal framework. A review of the Bill, (clauses 4, 14-27)- shows that Ghana intends to adopt model (i), as it is the Ministry for Gender, Children and Social Protection that is to provide leadership for the development of policy, implementation, overall co-ordination, and technical support for social protection initiatives under this Bill. There is also the inter-ministerial Co-ordinating Committee for Social Protection, (pursuant to the Local Government Act), Social Protection Intersectoral Technical Committee, Regional Monitoring to be done by the Department of Social Protection established pursuant to the Local Governance Act, District Social Protection Implementation Team and Social Welfare Department, each with designated roles.

It is our finding that this framework will be ineffective in addressing the identified challenges of politicisation, (as the Minister is necessarily a political appointee and the inter-ministerial co-ordination committee consists largely of political appointees, (pursuant to section 204(2), Local Government Act, 2016 (Act 936)). Secondly, the inter-ministerial co-ordinating committee has designated roles under the Local Government Act, 2016b (Act 936) in addition to their roles under their various ministries. It is therefore not practical that they will be able to effectively carry out the roles reserved for them under the Social Protection Bill in a manner that addresses the challenge of a weak legal framework for social protection, particularly as there is no mechanism to hold them accountable should they fail to meet or carry out the obligations stated in the Social Protection Bill. Furthermore, the requirement of quorum for the meetings of this Inter-Ministerial Committee is also quite onerous, (a quarter of the total membership is required to form a quorum, (clause 17(2))).

The model thus adopted by the Social Protection Bill does not effectively address the identified challenges of politicisation and a weak legal framework in the implementation of social protection programmes. I therefore recommend below, option c, (i.e., the establishment of an external body to oversee and co-ordinate social protection implementation in Ghana).

*Legal and regulatory frameworks are also essential for establishing the roles and responsibilities of the different actors involved in designing, administering, delivering, and enforcing social protection systems, and there should be consequences for breach of roles.*

*I therefore recommend below, option c, (i.e., the establishment of an external body to oversee and co-ordinate social protection implementation in Ghana).*

## **b. Financial Framework**

Social Protection is State responsibility. An efficient and effective Social Protection system demonstrates a government's commitment to invest in its people, and forms a contract of mutual obligations, where citizens and residents pay taxes to the State and receive benefits and services in return. This strengthens trust and solidarity between society and the State. The state therefore must identify sources of sustainable financing for social protection programs.

Some of the options for Social Protection financing are:

- i. Invest between 1-2% of GDP;
- ii. Re-allocating public expenditures/Re-Prioritise. Examples, review any subsidies that disproportionately benefit the more affluent, while those living in poverty tend to benefit the least, review small social protection and poverty reduction programmes, often fragmented and overlapping in nature, and replace these with more inclusive social protection schemes for increased efficiency and reduced spending, etc.;
- iii. Fighting illicit financial flows. Ghana is reported to have lost at least \$20 billion cumulative gross illicit flows from trade mis-invoicing alone, between 2002 to 2018;
- iv. Taxation options, such as
  - a. Increase tax revenue (not recommended for Ghana as the formal sector is already overtaxed).
  - b. Effective operationalisation of the tax credit system under section 100 of the Income Tax Act, 2015 (Act 896), (recommended).
  - c. taxation of mining and natural resource, etc
- v. Put a special levy of about US\$30 on air tickets to Ghana to be used as funding for SP projects.

*An efficient and effective Social Protection system demonstrates a government's commitment to invest in its people, and forms a contract of mutual obligations, where citizens and residents pay taxes to the State and receive benefits and services in return.*

A combination of the above options may be used in a social protection financing framework.

### **What is the financial framework in the Bill?**

The Social Protection Bill establishes the Social Protection Fund, (the "Fund") whose object is to provide funding for social protection and consolidate the revenue streams for social protection in Ghana. The sources of the Fund are monies approved by parliament, donations and grants, and internally generated funds from projects and enterprises under the Ministry for Gender, Children and Social Protection, (clause 38 of the Bill).

It is our considered view that although an improvement to the existing financial framework for social protection, the sources of funding in clause 38 of the Bill will not provide sustainable financing for social protection in the light of Ghana's history of insufficient budget allocations to ministries, agencies, authorities and other governmental entities. We will therefore recommend below an addition of some social financing options.

### **c. Review of Complaint/Appeals Mechanism**

The Bill does not contain an appeals/ complaint mechanism. If Social Protection is a right rather than "favour", there should be a legal mechanism for one to assert/vindicate their right in the event of unlawful exclusion. This must be an internal procedure in addition to external procedures such as the Commission on Human Rights and Administrative Justice (CHRAJ) and the courts.

### **d. Review of Offences**

Making a false or misleading statement, false representation, failure to disclose material facts, inducing an authorised person or otherwise fails to comply with this Act, is an offence and makes one liable on summary conviction to a fine of not less than 100 penalty units and not more than 200 penalty units, or a prison term of not less than 6 months and not more than 12 months.

We take the view that the probability that a vulnerable person who benefits from Social Protection on account of false statements will be able to pay fine of 100 penalty units is minimal. The effect thus is that such person will most likely end up with a custodial sentence, which is unreasonable. We recommend below other forms of punishment for consideration and inclusion in the Bill.

## **4.0 KEY POLICY RECOMMENDATIONS**

Our recommendations are as follows:

### **1. On legal framework**

- i. We recommend the establishment of an independent body, preferably an authority to implement, co-ordinate all programs, monitor and evaluate, hold accountable, resolve/address internal complaints/appeals. Although this option will require more financing to achieve, it would be simpler, more workable, and cheaper to implement in the long term. This option, if well designed, will address identified challenges such as: politicisation, fragmentation, weak/ineffective complaint mechanism, overlapping, contradictions, etc discussed above. It will also offer a stronger legal framework.

*We recommend the establishment of an independent body, preferably an authority to implement, co-ordinate all programs, monitor and evaluate, hold accountable, resolve/address internal complaints/appeals*

*Appointments to this body must be on open, transparent, and on competitive basis. We also recommend a non-partisan recruitment process which will include CSO representation and gender parity, while applying an approach that complies with article 195 of the 1992 Constitution.*



Appointments to this body must be on open, transparent, and on competitive basis. We also recommend a non-partisan recruitment process which will include CSO representation and gender parity, while applying an approach that complies with article 195 of the 1992 Constitution.

2. On financial framework

- i. Section 100 of Act 896 allows a person who has donated or contributed to a worthwhile cause to claim a deduction, (for tax purposes) that is equal to the contribution and donation made by that person during that year. Government approved worthwhile causes include: approved charitable organizations; a scheme of scholarship for an academic, technical, professional, or other course of study; development of any rural area or urban area; sports development or sports promotion; and any other worthwhile cause approved by the Commissioner-General.
- ii. We recommend a strategy document for the effective operationalisation and regulation of section 100 in a manner that co-ordinates private sector CSR projects for social protection.
- iii. Government may consider taxation on mining and natural resource extraction or dedicate a percentage of the heritage fund to fund social protection in Ghana.
- iv. We recommend that Ghana consider investing a percentage of GDP in social protection.
- v. We recommend the exploration of a minimal levy on remittances to Ghana from outside the jurisdiction to fund social protection.
- vi. We recommend the dedicated fighting of illicit financial flows and re-investing some of these recoveries for social protection.

3. We recommend that under the banner and leadership of the external body that we recommend to be established, (see recommendation 1), the free Senior High School programme, ("Free SHS") be linked with scholarship secretariat to enable scholarships and loan schemes to be given to brilliant but need students who excel after free SHS, but who fall within the social protection coverage. This is to enable them access tertiary and professional education in Ghana and for the development of the human capital in Ghana.

*We recommend that under the banner and leadership of the external body that we recommend to be established, (see recommendation 1), the free Senior High School programme, ("Free SHS") be linked with scholarship secretariat to enable scholarships and loan schemes to be given to brilliant but needy students who excel after free SHS, but who fall within the social protection coverage.*

*We recommend that any social protection being offered by existing sectoral bodies like the Northern and Coastal Development Authorities etc be interlinked with the external body we recommend to be set up to make for adequate alignment, monitoring and evaluation.*

4. We recommend for the Bill to contain comprehensive provisions that cover and interlink all social protection programs rather than the current state of the Bill which expressly notes that some social protection programs are outside the supervision of the Ministry, (see clause 6(b)). Figure 2 contains the programs that are outside the mandate of the Ministry.
5. We recommend that any social protection being offered by existing sectoral bodies like the Northern and Coastal Development Authorities, etc be interlinked with the external body we recommend to be set up to make for adequate alignment, monitoring and evaluation.
6. We recommend that the Bill be revised to include both internal and external complaint/appeals mechanism. There should be a right of appeal on exclusion from coverage, and there must be an internal mechanism to address such complaints, while the external mechanism may be CHRAJ or the Courts. On this, we recommend the establishment of an appeals tribunal.
7. Custodial sentence for persons who receive social protection on account of false information is unreasonable, and probably causes more harm than good. We therefore recommend the inclusion in the law, of other acceptable types of punishment such community service as punishment for such offences.
8. The scope of coverage under the Bill currently pays limited attention to some key vulnerable groups such as persons with disability, women, vulnerable persons living with HIV/AIDS, women and children at witches camps, the urban poor among others, with particular emphasis on acknowledging and addressing gender disparities that entrench poverty and vulnerabilities.

*There should be a right of appeal on exclusion from coverage, and there must be an internal mechanism to address such complaints, while the external mechanism may be CHRAJ or the Courts.*

*We recommend the inclusion of the residents of the witches' camps as a vulnerable group. This allows a focus on their human rights as a group.*

We recommend the inclusion of the residents of the witches' camps as a vulnerable group. This allows a focus on their human rights as a group.

We also recommend that the scope of coverage be extended to include the caregivers of beneficiaries especially persons with disabilities and aged persons.

## 5.0 CONCLUSION

The goal for social protection must aim at lifting people out of poverty and making of them productive citizens. It means protecting our most valuable resource – the human resource. We do this through laws and policies which reflect learning from our own history, challenges, context, and the experiences of others.

### FIGURE 1: GHANA'S CURRENT FLAGSHIP SOCIAL PROTECTION PROGRAMMES

**Ghana's current flagship social protection programmes include:**

1. **Livelihoods Empowerment Against Poverty (LEAP):** provides cash transfers to poor households and linking LEAP benefits to other social protection services and programmes such as income generating activities and support better livelihoods.
2. **Labour Intensive Public Works (LIPW):** to create employment opportunities for the rural poor, and climate change mitigation, through the rehabilitation of community assets, including feeder roads, small earth dams and dugouts
3. **National Health Insurance Exemptions:** Intended to ensure equity in healthcare coverage; enhance access by the poor to services; and protect the poor and vulnerable against financial risk.
4. **The Ghana School Feeding Programme:** the Ghana School Feeding Programme aims to provide social assistance, promote school enrolment and attendance, enhance nutrition and promote local production.
5. **The Education Capitation Grant:** the Capitation Grant for Basic Schools was initiated in 2005 to provide funding for nonsalary expenditure in public schools on the basis of enrolment
6. **Free Senior High School Policy:** the government of Ghana in 2017 switched policy to a free senior high school policy to reduce poverty by finally eliminating the financial burdens parents face in paying their children's fees.

### FIGURE 2: PROGRAMS THAT ARE OUTSIDE THE MANDATE OF THE MINISTRY.

1. Livelihood Empowerment Against Poverty
2. Labour Intensive Public Works
3. School Feeding Programme
4. National Health Insurance Exemption 5. Basic Education Capitation Grants

<sup>11</sup> Ghana is the only country in the world that exiles women accused of witchcraft to camps outside of their communities, (i.e. witches camps). These women are largely poor and vulnerable.

## **ABOUT FRIEDRICH-EBERT-STIFTUNG (FES)**

The Friedrich-Ebert-Stiftung (FES) is the oldest political foundation in Germany with a rich tradition dating back to its foundation in 1925. Today, it remains loyal to the legacy of its namesake and campaigns for the core ideas and values of social democracy: freedom, justice and solidarity. It has a close connection to social democracy and free trade unions.

FES promotes the advancement of social democracy, in particular by:

- Political educational work to strengthen civil society
- Think Tanks
- International cooperation with our international network of offices in more than 100 countries
- Support for talented young people
- Maintaining the collective memory of social democracy with archives, libraries and more.

## **ABOUT THE AFRICA PLATFORM FOR SOCIAL PROTECTION (APSP)**

The Africa Platform for Social Protection (APSP) is a pan African network of organizations operating at grassroots, national and regional levels, with a commitment to promoting and strengthening the social contract between states and citizens. To achieve this, the APSP promotes active engagement of National Platforms in the shaping of Social Protection policies, programs, and practices in Africa. APSP has established 27 platforms to engage at the national level.

As a pan-Africa NGO, APSP works with governments, private sector, development agencies, research institutions and grassroots communities in Africa by designing, testing and delivering appropriate poverty alleviation models to the poor and underserved communities through social protection programs.

APSP creates partnerships with civil society & other organizations to engage with Government & International Development Agencies (IDAs) to develop & Implement innovative social protection strategies & programmes that make a difference in poor and vulnerable households in Africa.

APSP exists to strengthen civil society engagements with state and non state actors for effective service delivery in Social Protection.

## **About the Civil Society Platform for Social Protection Ghana (CSPSP-GH)**

The Civil Society Platform for Social Protection (CSPSP-GH) is a network of organizations that seeks to foster partnerships with civil societies, national and international organisations to complement Government's efforts in the development and implementation of innovative Social Protection policies, strategies and programmes in order to create an equitable and inclusive society for all Ghanaians.

### **ABOUT THE AUTHOR**

Clara Beerli Kasser-Tee is founder and head of Chambers at Kasser Law Firm, Lecturer at the University of Ghana School of Law, (UGSoL) and Board Member of CDD Ghana. She has publications on Institutional Assessment, Oil and Gas Law, Taxation, Business Law, and Anti-Corruption among others. Clara has, among other things, developed a concept to improve tax collection in Ghana, using existing facilities such as the courts, which has been approved by the Ghana Judicial Service and the Ghana Revenue Authority. She has also worked with both the private and public sectors on policy reforms and institutional development.

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The goal for social protection must aim at lifting people out of poverty and making of them productive citizens. It means protecting our most valuable resource – the human resource. We do this through laws and policies which reflect learning from our own history, challenges, context, and the experiences of others.