



# OPEN GOVERNANCE SCORECARD COUNTRY REPORT: GHANA

GHANA INTEGRITY INITIATIVE IS A NON-POLITICAL NON PROFIT CIVIL SOCIETY ORGANISATION LEADING THE FIGHT AGAINST CORRUPTION IN GHANA. GII IS THE LOCAL CHAPTER OF TRANSPARENCY INTERNATIONAL

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## Executive Summary

The Open Governance Scorecard provides an assessment of Ghana's performance in the three pillars of open governance – Transparency, Participation and Control and Oversight. Crucially, the results also include Ghana's performance in both in-law and in-practice indicators.

The overall performance standards is not impressive. There are still many gaps in many areas of Ghana's open governance regime which need to be addressed by updating existing legislation, enacting new ones and creating the necessary supporting institutions to ensure that legislation is enforced in practice to achieve the desired goals. Sorely missing is a law on access to information which is a central part of the scorecard assessment. Ghana does not yet have such a law and that impacts negatively on other areas of open governance performance. Without a freedom of information law, along with a lack of legal obligation to proactively publish information, a major determining factor in transparency is blotted out since citizens are not able to access vital information to uncover improprieties in the administration.

While these gaps persist in Ghana's open governance regime, it does appear that the country may not have the political appetite to undertake reform measures to improve the situation. This is because in spite of eagerly signing on to become a member of the Open Government Initiative (OGP) in 2011 it does not show sufficient enthusiasm that it will carry through the programme. It has a National Action Plan on the OGP initiative but the cabinet has not yet approved it, raising questions over how deep the commitment is.

The results of Ghana's scorecard assessment show the level of performance in both in-law and in-practice to meet open governance standards.

### Transparency

Ghana's performance in transparency is the weakest of the three pillars of open governance in both law and practice. This stems largely from the lack of freedom of information legislation. The 1992 Constitution provides free access to information to all citizens but the constitutional guarantee has not yet been secured by law. A draft bill of freedom of information has been submitted to parliament for well over three years now but the legislature has not yet even debated on the bill for it to proceed to the stage in the process.

### Participation

Ghana's performance in the participation pillar is not very encouraging either. Participation is slightly stronger than its legal framework, but the fact is that the overall picture is that of a performance which needs substantial improvement. It can be done by passing legislation which would enshrine the right to participate in law, a more secure way of guaranteeing citizens' participation right in the decision-making process, than the current practice of leaving it open to government policy. Participation is guaranteed at the local government level where citizens take part in decision-making related to service delivery and budgetary issues but similar participation at the national level is lacking because no platforms have been created to allow citizens take part in decision-making.

### Control & Oversight

Ghana scores better in control and oversight in both in-law and in in-practice; however, there is an important number of conditions not met in comparison to the open governance standards. Its in-law performance is a little stronger than that of in-practice, indicating that its control and oversight regime has concerns which need to be addressed. Ghana has a whistle blowers law in place which encourages citizens to report malpractices whether they occur in the private or public sector.

However, people are still reluctant to inform on malpractices both due to fear of reprisals and ignorance of the existence of the law.

Ghana has a sound procurement system which is fairly open to scrutiny by citizens insofar as they have the resources and capacity to monitor it. The procurement process is given a lot of publicity; biddings are regularly published in newspapers and the Public Procurement Authority actively publishes all documents on its website. One concern is that, in spite of the publicity given to the process, it is not followed up by similar publicity when the bidding process ends and the winners are selected so citizens are left in the dark as to who the winners are and the basis on which they were selected. Another concern; however, is lack of conflict of interest and lobbying legislation which makes the political system open to abuse.

### Recommendations for openness

For Ghana to improve on its open governance regime, we provide here a short list of what needs to be done, focusing on what we consider as priority areas.

The first obvious action is for the government to approve the freedom of information bill since it is a key determining factor in transparency.

The right to participate should be codified in a body of legislation in order to concretely give legal backing to citizen's right to participate in decision-making both at the local and national level. A central authority to oversee participation should be established so that citizens who have grievances over participation can have somewhere to turn to secure redress.

Ghana is making great progress in its information communication technology (ICT) policy. It has launched a portal where citizens can have access to government databases and information. Citizens are actually invited to choose their preferred datasets to be included. But it is still worth recommending that the government should establish an institution to oversee that the government's open data policy is implemented judiciously.

## Introduction & Background

Open governance is achieved through citizens' access to public information and by their participation in government. Open governance requires that policies are in place to promote transparency, accountability and participation, and that the right tools exist to implement these policies.

This edition of the *Open Governance Scorecard* adds to the 'in-law' scorecard that was published by Ghana Integrity Initiative in March 2014. Now for the first time we can combine an 'in-practice' assessment to the previous analysis of Ghana's legal regime for open governance.

This, now complete, *Open Governance Scorecard* allows organisations and experts with an interest in assessing the conditions for openness to identify whether standards of open governance (both in-law and in-practice) are met in their country. The scorecard can help governments, civil society groups and other key stakeholders, including members of the public, to assess the legal rights and obligations that underpin open governance and the actual practice of open governance. This information will allow advocates to make recommendations and governments to pursue reforms.

The scorecard has been developed by Transparency International (TI), together with other expert organisations working in this field. To date, five Transparency International National Chapters have piloted the scorecard: Ghana, Indonesia, Peru, Ukraine and the UK. The pilots took place between February 2014 and March 2015

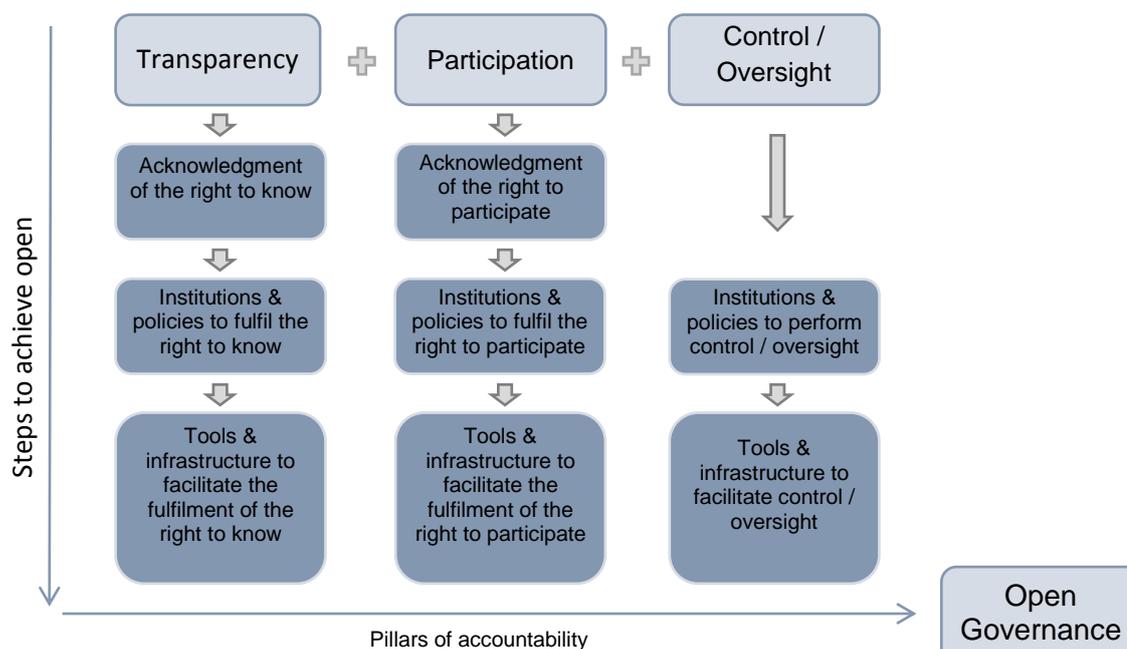
The Ghana *Open Governance Scorecard* has been completed by Linus Atarah with support from Vitus Adaboo Azeem.

## About Open Governance

Transparency International's *Open Governance Scorecard* is a dashboard with an extensive set of indicators to assess whether basic conditions are met to foster open governance around three pillars: transparency, participation and oversight. These three pillars put together contribute to accountability, responsiveness and efficiency of governments. Jointly, they can transform the relationship between citizens, politicians and public officials. The conditions enabling open governance through transparency, participation and oversight lead to specific accountability outcomes.

In order to achieve open governance, transparency, participation and oversight need to be implemented in a country; they need to be transformed from concepts into actions. The roadmap to achieve open governance consists of three key steps: 1) transparency and participation must be recognized as human rights; 2) the institutional architecture, policies and practices must exist to fulfil these rights and achieve perform control and oversight; 3) these policies and practices must be supported by the necessary tools and available infrastructure.

Figure 1 – Open Governance Framework



### About the open governance scorecard

The *Scorecard* is a dashboard with an extensive set of indicators to assess whether basic conditions are met to foster open governance around three pillars: (1) transparency, (2) participation and (3) control and oversight. The dashboard is based on a group of 35 open governance standards that adapt many of the principles already developed in the open government movement. To facilitate assessment of what conditions need to change to advance open governance, and to gauge progress once minimal conditions have been met, we developed a set of indicators, based on the state of the art discussions and instruments for assessing transparency, participation and control and oversight. The indicators are designed as a scorecard that includes in-law indicators and subset of in-practice indicators.

The specific objectives of the scorecard are:

- i. To identify gaps in the laws hindering transparency, accountability and participation.
- ii. To explore diverse methods for assessing whether legal provisions and openness standards are met in practice.
- iii. To identify what factors prevent the identified good practice, and propose adjustments to policy, rules and governmental practice.
- iv. To provide specific information to formulate advocacy asks, and support advocacy strategies broadly.
- v. To provide a tool to track progress in promoting open governance in each country in the medium and long term.

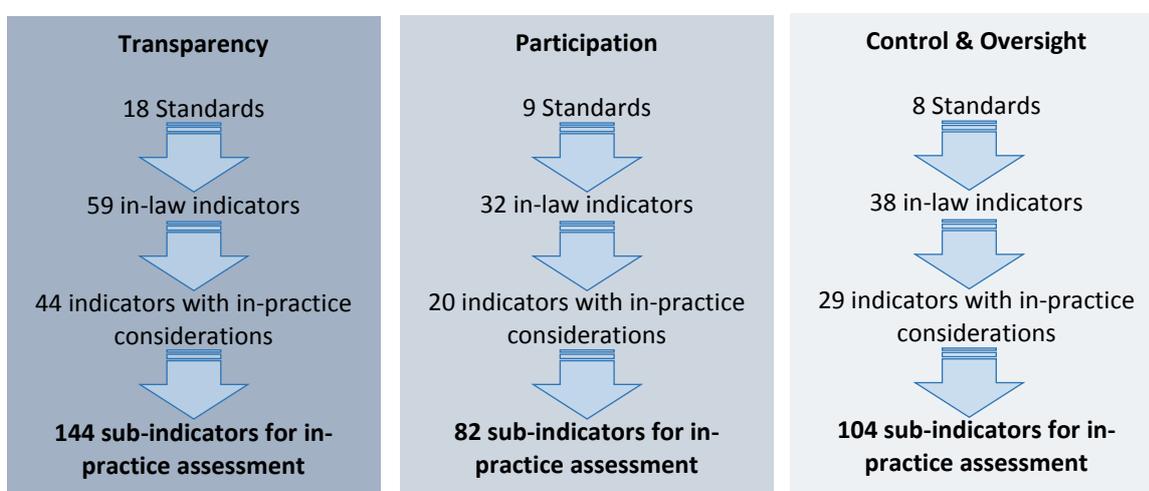
In developing the indicators, we have used and make extensive reference to various instruments including the right to information legislation rating developed by Access Info Europe and the Canadian Center for Law and Democracy; the Global Integrity Report; the World Bank's Public

Accountability Mechanisms Initiative; and the Organization for Economic Cooperation and Development (OECD) Indicators for measuring openness in government (developed by Involve).

The Open Governance Scorecard is based on a group of open governance *standards* that adapt many of the principles already developed by the open government movement. To facilitate assessment of what conditions need to change to advance open governance, and to gauge progress once minimal conditions have been met, we developed a set of *indicators* based on the state of the art discussions and instruments for assessing and promoting accountability.

The resulting set of indicators is designed as a *scorecard* that includes 129 in-law indicators, and 93 in-practice *indicators* that break down into 330 questions. In total, the scorecard is composed of 459 questions.

Figure 2 – Open Governance Scorecard: dimensions, standards and Indicators



The Open Governance Scorecard gathers information on:

- *Legal provisions* – the rules on open governance established in diverse legal instruments.
- *System arrangements* – how do institutions and branches interact between themselves and with citizens to facilitate oversight.
- *Institutional mechanisms* – processes through which a government branch / agency discloses information, facilitates participation or complies with oversight provisions.
- *Disclosure practices* – specific actions that provide public information.

### Methodology<sup>1</sup>

The scorecard developed by Transparency International tests whether basic conditions are met that foster open governance. We developed indicators to test whether specific standards of open governance are met, and we populate the scorecard using questions that can be answered by an advocacy organization or researcher, with expert and practitioner support, and by interviewing the government authorities responsible for the conditions under exploration.

Because the scorecard assesses whether basic conditions are met, it does not use survey information, composite quantitative indicators for a particular result or aggregation methods for

<sup>1</sup> For the full methodology paper please refer to the Open Governance Scorecard Methodology.

comparing within each system. The indicators are questions that can be easily answered by an advocacy organization or researcher with minimal guidance and in-country support as long as there is access to the relevant legal framework to assess whether the legal and regulatory provisions considered by each indicator exist and there is access to specific information warranting systems, institutions and practices.

An indicator can take three values following standard scorecard methodology:

- Basic condition is met;
- Basic condition target is partially met;
- Basic condition target is not met.

Where the question refers to a specific legal provision or practice which has no plausible intermediate answer the condition will either be met or not met. Where an indicator is only partially met, the scorecard asks for further information to discover why. Where a researcher considers condition to be met, they are to indicate the source and include a citation. Where the condition is only partially met or not met, researchers are to provide commentary. All sources and commentary are open and can be easily accessed so interested parties can revise and comment on the indicator assessment.

Evidence consists of the following sources of information:

- Legal and regulatory framework (for in-law indicators)
- Direct test (only applicable for accessing specific documents and proactively published information).
- In-depth interview with responsible government authorities to obtain evidence of the condition tested when information is not easily available.
- In-depth interview / focus groups with organizations and specialists to obtain specific evidence of problems in the realization of the condition tested.

Finally, the completed scorecard is corroborated through a validation meeting which is held at the end of the research period. This meeting brings together a series of stakeholders, including government officials, experts, academics and civil society organizations to comment on the results of the assessment.

### Acknowledgements

In developing the Open Governance Scorecard indicators, we have used and made extensive reference to various instruments including the right to information legislation rating developed by Access Info Europe and the Canadian Center for Law and Democracy; the Global Integrity Report; the World Bank's Public Accountability Mechanisms Initiative; and the Organization for Economic Cooperation and Development (OECD) Indicators for measuring openness in government (developed by Involve).

Special thanks are owed to Helen Darbishire, Maya Forstater, Nathaniel Heller, Julia Keseru, Babacar Sarr, Stephanie Trapnell, Johannes Tonn, Victoria Anderica, TI Secretariat staff and national chapters for their input and advice in the development of the standards and scorecard.

## How open is Ghana's governance system?

This report does not offer a comprehensive analysis of the results of Open Governance in Ghana. What is presented here is an overview of the research findings, directing where the pitfalls are and suggesting recommendations in areas which need attending to in order to meet the open governance standards. The completed scorecard is downloadable at:

<http://tighana.org/insights/research/>

Ghana signed up to Global Open Government Partnership Initiative (OGP) in 2011, pledging to place in the necessary institutional and legal reforms in order to make Ghana government more open. However, since signing up to the OGP, Ghana's own cabinet has not yet approved the government's National Open Government Action Plan. Failing to approve the document means it would not gain recognition as national document and, the current and future governments will have no obligation to implement whatever legal and institutional reforms are needed to advance towards a more open country.

There is no separate budget specifically allocated to implement the Open Government Partnership's commitment; rather government expects each institution to put forth its own resources to achieve their commitments. But the institutions are facing obvious difficulties in attracting extra financial resources to carry out the task.

The performance of **transparency** is the weakest in Ghana's open governance regime. The primary cause for this is lack of an access to information legislation; the draft bill is still waiting for parliamentary approval. Given that there is no legislation on access to information it is almost impossible to effectively obtain government information through requests from communities, citizens, civic organizations and sectoral agencies.

Yet there is something to be said about transparency in Ghana. There is a sound procurement system albeit with short-comings in certain areas, it provides opportunity for citizens to examine procurement documents through a very active proactive publication practice by the Public Procurement Authority (PPA). The PPA publishes all bids on its website and even provides prior information on future bidding opportunities; such information is helpful because it allows for adequate preparation by potential bidders<sup>2</sup>.

All government procurements are published in the newspapers. However, one pitfall is that the system is unable to ban someone from future procurements bid because of previous violation. Legislation in that area needs to be updated. Also in spite of the effort taken to provide lot of publicity on the procurement process, no announcement is made on winners so ordinary people may not understand what other factors are taken into consideration to determine successful bidders.

The 1992 Constitution of Ghana does not explicitly acknowledge **participation** as a right, nevertheless citizen participation in public affairs is one of the *Directive Principles of State Policy* which provides participation sound constitutional support and creates a mandate for participation beyond elections.<sup>3</sup>

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<sup>2</sup> <http://www.ppaghana.org/>

<sup>3</sup> Chapter 6 section 35 (d) of 1992 Constitution states: make democracy a reality by decentralizing the administrative and financial machinery of government to the regions and districts and by affording all possible opportunities to the people to participate in decision-making at every level in national life and in government. See <http://www.politicsresources.net/docs/ghanaconst.pdf>

Although participation is not explicitly fleshed out through specific legislation, it is incorporated in several key legal instruments. The decentralisation policy has created structures at the local government which allow citizens to participate in decision-making concerning service delivery and budgetary decisions. But at the national level there are no such platforms to involve citizens in decision-making.

In principle, budget formulation is supposed to be done in consultation with wide-ranging stakeholders, but in practice the only time most people hear of the budget is when it is being submitted to parliament. Attempts to involve civil society organizations and local communities in consultation and participation are usually in connection with implementing donor-driven projects, where such processes usually come as part of a package from donors.

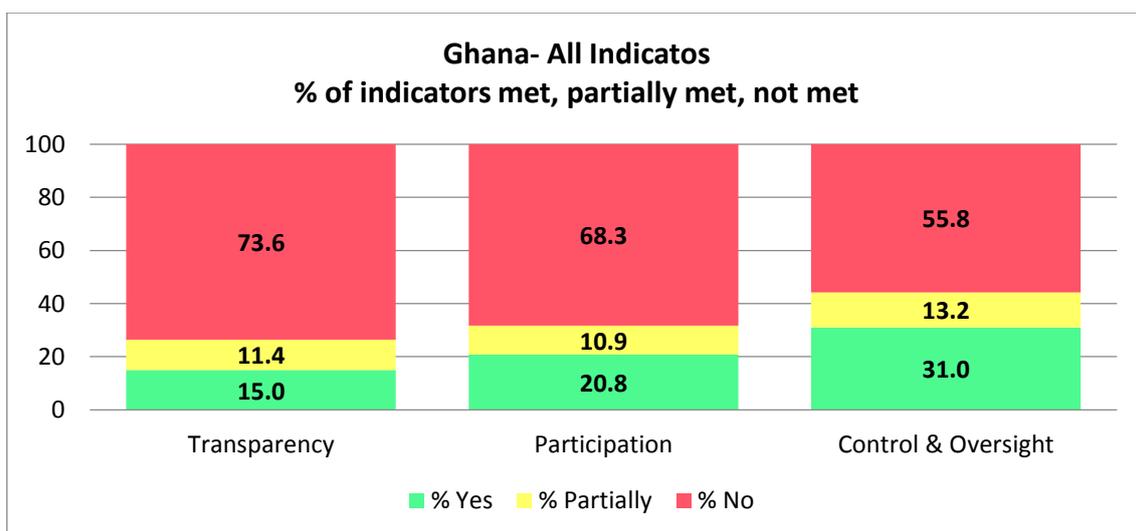
The **control and oversight regime** in Ghana has sound basis because the constitution guarantees the independence of a supreme audit institution from the executive and has wide powers to audit public expenditure across the entire public sector. A Commission on Human Rights and Administrative Justice (CHRAJ) is also created under the constitution to investigate claims related to human right abuses, acts of corruption and other administrative abuses from government authorities.

But the weaknesses in that pillar of open governance is the lack of laws governing conflict of interest and lobbying, even to the extent that legislators very often do not distinguish actions that advance their personal interests at the expense of the public good<sup>4</sup>

## Overall findings

Judging from the scores measuring performance in the three pillars of open governance, Control and Oversight stands out as the best performing part of Ghana’s open governance regime, while transparency is the weakest. The poor performance in transparency is due largely to lack of a Freedom of Information Law.

Graph 1 – All indicators

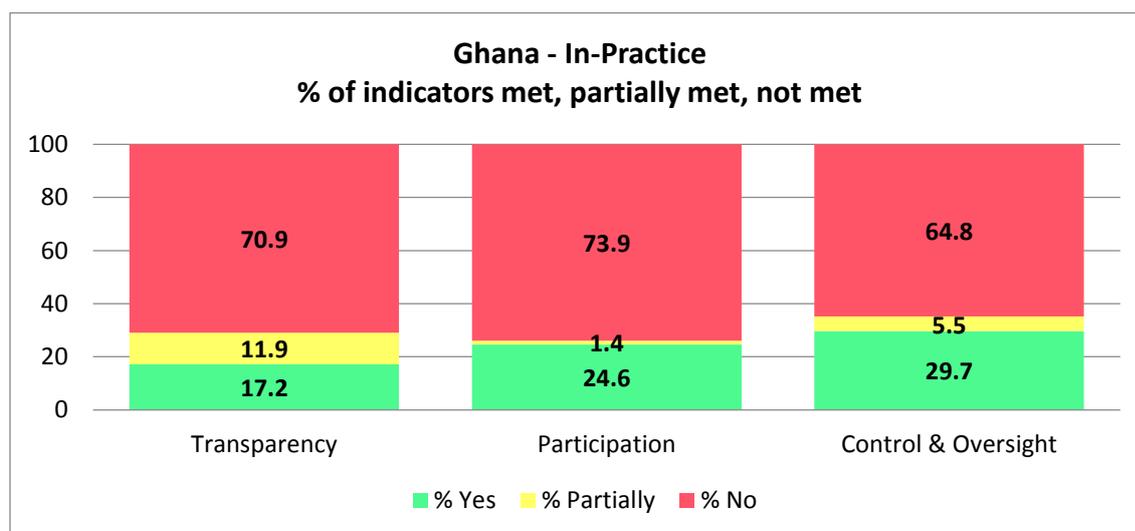


Source: own elaboration.

The overall performance of Ghana is slightly better in open governance in-practice than in what actually is prescribed in the law in relation to citizen’s rights to participate and access information.

<sup>4</sup> The Majority Leader in Parliament made a revelation last year widely reported in the media, that some members of parliament receive monies from outside influences in exchange for advancing their interests in parliamentary debates

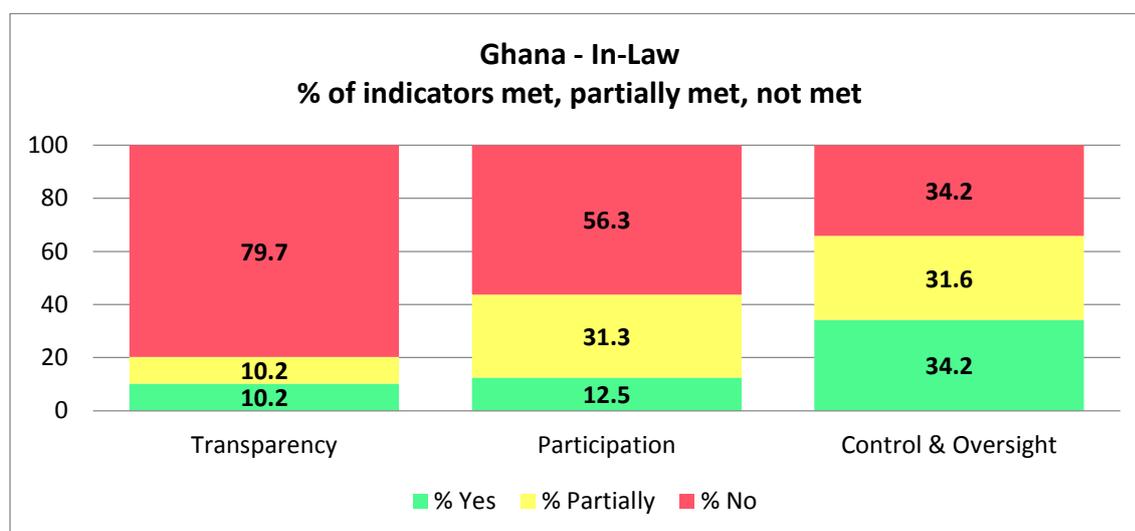
Graph 2 – In-practice indicators



Source: own elaboration.

This discrepancy is in part explained by the uneven nature of the legal framework. While acknowledging key rights, it lacks the legal and institutional mechanism for their realisation. For instance, participation is given recognition in the constitution but there is no coherent body of legislation to realize this in practice.

Graph 3 – In-law indicators



Source: Own elaboration.

There is a robust mandate for accountability because of the central role of the supreme audit institution which is granted wide powers to carry out audits in the public sector. The Auditor-General's annual report is a hard-hitting document which pulls no punches on any government institution found to have misappropriated funds. But the institutional mechanisms to act on the Auditor-General's report are weak; the supreme audit institution is unable to conduct a follow-up operation to ensure its recommendation have been implemented. Audit Implementation Committees (ARICs) legally mandated to be established in all ministries have either been mostly ignored or, are ineffectual to enforce the recommendations and so its recommendations largely go unimplemented

The Freedom of Information Law is an important part of the scorecard since free access to information is the foundational determinant of transparency and openness in governance, its absence in Ghana has significant impact on in-law indicators.

There are a few good practices of citizen participation in decision-making at the local government level, even though participation is not enshrined in a body of legislation that would extend it across the national level.

Finally, it is important to stress that an entirely new set of regulations is necessary to ensure parliamentary transparency, which is especially important because information on Parliament's expenditures is difficult to access. Its administrative structure is not made available to the public. There are some key provisions for transparency in the Judicial branch, stemming from the constitutional principle of making all court proceedings open, and the judiciary has been very proactive in promoting transparency and accountability by creating conditions to access judicial information, including the publication of schedules, basic administrative staff information and concluded court cases.

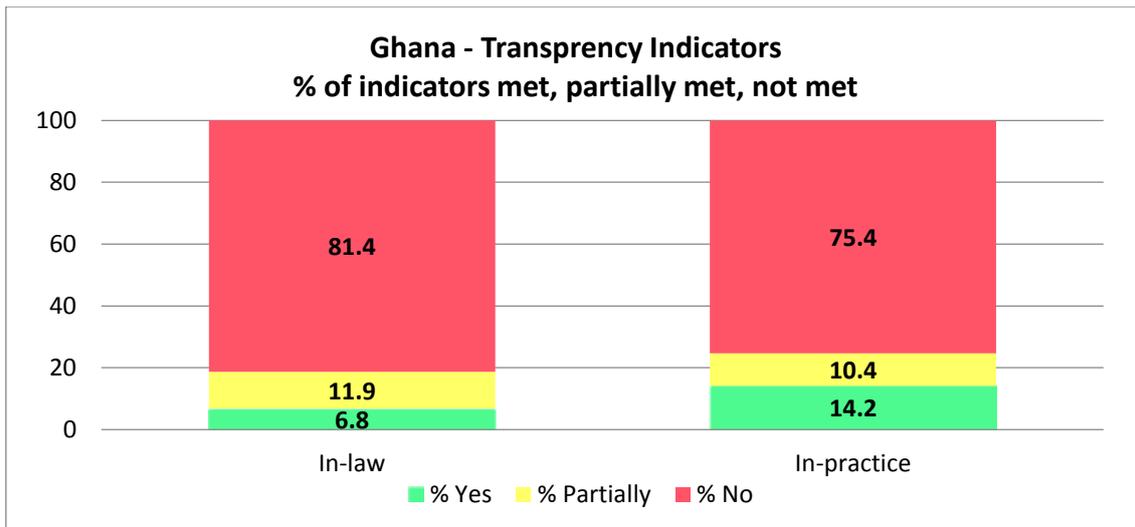
All branches should publish information proactively; proactive publication should be discussed at length, and be the basis for a national conversation on the scope, and reach of transparent government. There are many details of administrative, organizational budgetary and process information missing in all branches.

## Transparency

Transparency has the largest number of indicators in the scorecard assessment. It has 60 in-law indicators and 143 in-practice sub-indicators. Transparency in open governance is determined by the two types of tests, the right of access to information underpinned by an existence of Freedom of Information Law, and whether government agencies, parliament, the judiciary and the executive proactively publish documents in accessible format for citizens.

Ghana's in-practice transparency indicators show better performance than its in-law indicators. It meets 14.7 per cent of the conditions for transparency, partially meets 10.4 of the conditions but fails to meet 75.4 per cent of the conditions. For the in-law indicators it meets only 6.8 per cent of standards, partially meets a little under 12 per cent (11.9) of the conditions but fails to meet 81.4 of the conditions.

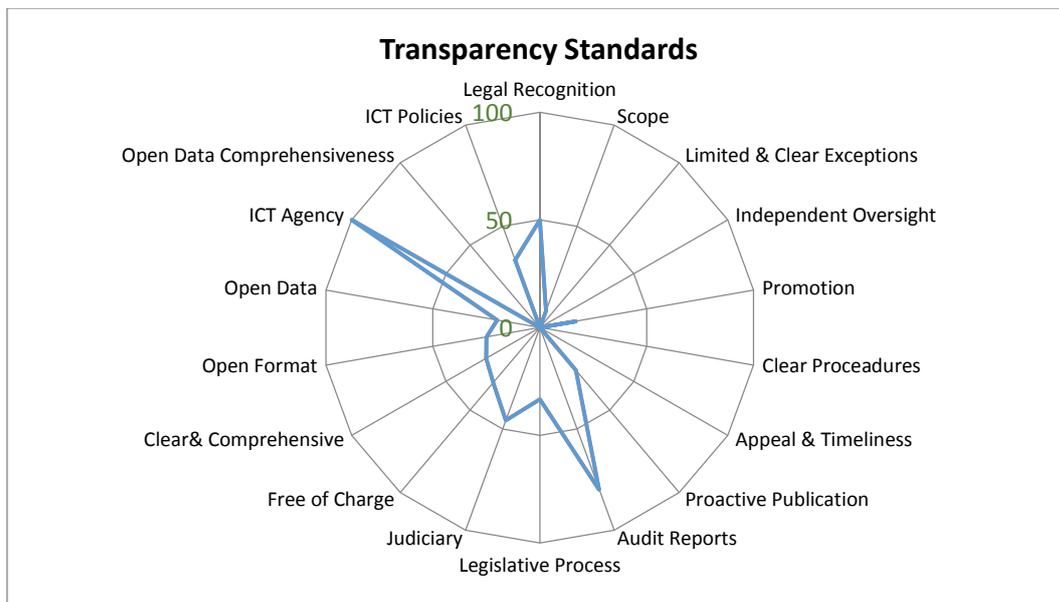
Graph 4 – Transparency Indicators



Source: own elaboration

This is largely due to the lack of Freedom of Information Law and the fact that there is no legal requirement for government ministries and other agencies to proactively publish documents. In the in-law assessment, six indicators test whether government departments are legally mandated to proactively disclose information on their administration, structure and spending, among other issues.

Graph 5 – Transparency Standards



Source: own elaboration.

The in-practice scorecard tests what information is actually published by government departments and creates 58 in-practice sub-indicators from the six in-law indicators which test the standards for transparency. As a result from the lack of a legal requirement to proactively publish information, civil servants are left with the discretionary powers on what information they should allow access to, or if they should allow access at all.

**Lack of Freedom of Information legislation.** One major setback for transparency in Ghana—possibly the major causal factor – for its weak transparency performance, is that the lack of freedom of

information law backing a right to access to information, a right which is recognized in the 1992 Constitution even though it does not create the institutional conditions for making access to information applicable in practice. A first draft Freedom of Information bill was submitted to Parliament since 2011 but the legislature has not yet acted, i.e., debate on the bill and move the process forward.

Following strong criticisms from right to information campaign groups and human rights activists, the second draft bill now with the parliament has made amendments to correct inadequacies in the earlier draft bill, with much satisfaction among civil society groups. Provisions have been made for a Commissioner of Information to whom citizens can now turn to with their complaints. Previously long appeal timelines in the bill have also been shortened. Nevertheless parliament has not yet debated on the bill and so it is still unclear when it would be approved and passed into law. This delay appears to stem from lack of political will. Yet the lack of freedom of information law negates government's efforts been made in other policy areas to promote a transparent and open government. For instance, the government does not yet have an open government data (OGD) policy in place. It is the passage of the freedom of information bill into law that would serve as foundational legislation upon which OGD policies and strategies would be based on, according to information gathered from National Information Technology Authority (NITA), the agency set up to oversee its overall ICT policy. Indeed, a freedom of information legislation would obviate the urgency for an OGD policy because the law will embed several provisions for open data<sup>5</sup>.

**The Legislature.** In Ghana parliamentary proceedings are open to members of the public who can observe from the public gallery, so on that score the public is provided access to live discussions of the important issues concerning how the country is ran. But committee sittings, the most important arena where bills are given detailed dressings are still done behind closed doors. However, once a draft bill is approved at the committee level and tabled in parliament it becomes a public document<sup>6</sup>.

To a limited extent, the legislative process is fairly transparent. Even though the legislature does not publish preparatory analysis and background information on proposed bills coming before the House, information of proposed bills are public, with timeliness for citizens to make an input. It is helpful because citizens and other interest groups will have some time to lobby committee members and other members of parliament.

In principle citizens can have access to these draft legislations but it is only recognised advocacy groups like CSOs and lobby groups who have particular interest in certain bills that can enjoy the opportunity. Indeed, draft bills are often published in the newspapers and citizens invited to provide their input, if they so wish before a certain deadline. The flip side is that ordinary people who do not have adequate information on parliamentary procedure would have to overcome formidable parliamentary bureaucracy in order to acquire them.

The *Hansard*, which contains verbatim reports of proceedings in parliament is a public document but the legislature does not make readily available some of its documents public. The Parliament publishes the *Order Paper* which is a paper published each sitting day, which lists the business of the House for that day, presents motions, expected resolutions and bills under consideration and amendment proposals for these bills. But the *Standing Orders* which indicates all legislative proceedings is available to the public but is not free. Also inaccessible are administrative information

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<sup>5</sup> Interview with officials of NITA. February 9, 2015

<sup>6</sup> <http://library.fes.de/pdf-files/bueros/ghana/10506.pdf>

about detailing other categories of Parliamentary staff and their salary scales, and the budget of Parliament.

**The Judiciary.** There are some key provisions for transparency in the Judicial branch, stemming from the constitutional principle of making all court proceedings open, and the judiciary has been very proactive in promoting transparency and accountability by creating conditions to access judicial information, including the publication of schedules, basic administrative staff information and concluded court cases.

But the judiciary, just like the legislature, does not publish information about its administrative structure. It is very difficult to access information on the expenditure profile of the judiciary because its budgets are not published. For instance, section 21 of the public procurement law (2003), Act 663<sup>7</sup> requires public institutions – including the judiciary, of course – to prepare procurement plans with guidance from the Public Procurement Authority. However, these procurement plans which detail sources, types of procurement and expenditure are not available to the public. Instead they are deposited at the Ministry of Finance, the Audit Service and the Public Procurement Authority's office and only made available on request<sup>8</sup>.

However this lack of transparency may have been compensated by Ghana's vibrant news media, especially the private FM radio stations. The media operate in an atmosphere entirely free of coercion and can publish or broadcast any information, unless specifically prohibited by law. And they sometimes scoop stories. Politicians frequently respond to invitations to appear on live radio discussions which are usually frank, informative, lively and funny. But there is a limit to the extent of how much a liberal communication atmosphere can replace a body of legislation and practices which guarantee citizens freedom to access government documents and to challenge policy decisions crafted in secret.

## Participation

There is no explicit "right to participate in policy process" enshrined in the 1992 Constitution. Such a right cannot be found in Chapter 5 of the Constitution which outlines Fundamental Rights and Freedoms. However, Chapter 6 which deals with *Directive Principles of State Policy* does contain a clause which states that the state is obligated to allow "participation in the development process", which in a strictly legal sense, is not the same as "participate in policy process"; it is subject to legal interpretation.

Nevertheless citizens can participate in decision-making through a number of channels provided for in the government's decentralisation policy. Community water boards exist at the local level where citizens can participate in decisions related to water service delivery. Similarly people can participate in district health committees whose existence are actually mandated by law.

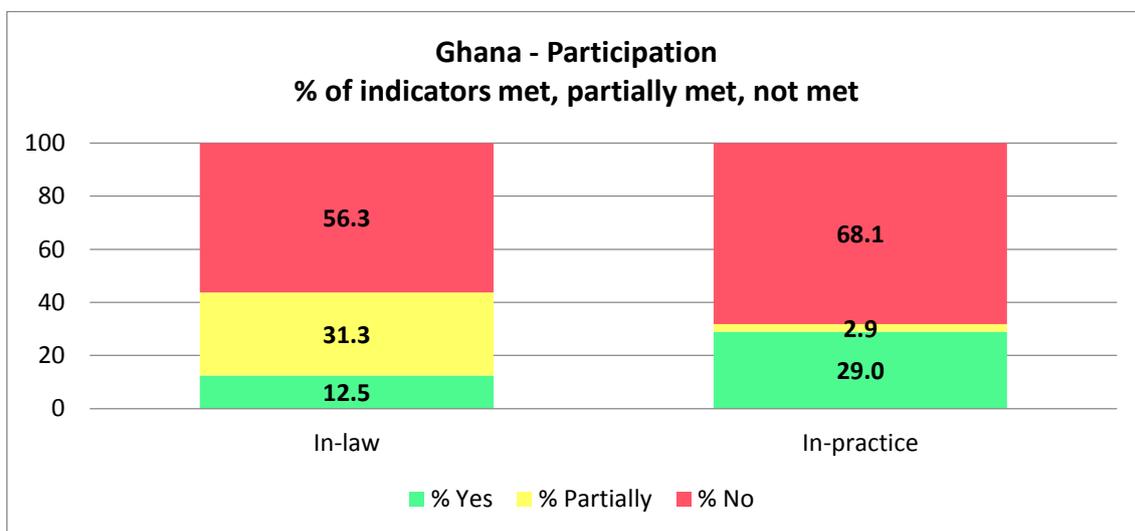
Also, in principle, the Metropolitan, Municipal and District Assemblies (MMDAs) allow citizens to participate in budget formulation but there is lack of active participation due to a number of factors including lack of provision of timely information and of specialist knowledge in financial issues due to widespread non-literacy.

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<sup>7</sup> <http://www.ppaghana.org/documents/Public%20Procurement%20Act%202003%20Act%20663.pdf>

<sup>8</sup> This information was shared via a telephone exchange between the researcher and officials at the Public Procurement Authority. April 7, 2015

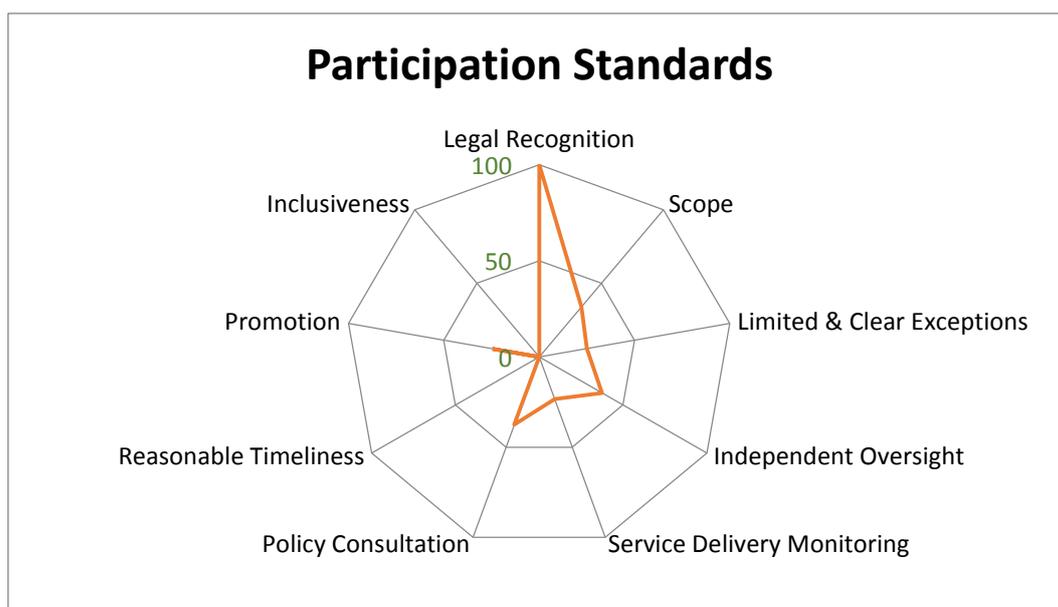
Graph 6 – Participation Indicators



Source: own elaboration

From our assessments, Ghana’s performance in the participation pillar of open governance is weak at both in-practice and in-law. In-practice participation scores meets 29 per cent of the standards, partially meets just under three per cent of the standards (2.9 per cent) and fails to meet 68.1 per cent of the conditions. While in the in-law assessment, it meets 12.5 per cent of the open governance standards, partially meets, 31.3 per cent but fails to meet 56.3 per cent of the conditions.

Graph 7 – Participation Standards



Source: own elaboration

At the National level, there is participation in principle through policy councils and governing boards, from the Council of State, which directly advises the president, to sectoral boards including Health,

Education, Security (including policing), Environmental Protection, Natural Resources and Energy policy. Although the creation of independent governing bodies in which there is sectoral, civic organizations and private sector representation is good in principle, the fact that most of these spaces are only open through Presidential appointments detracts from the intention and mission of creating spaces for broad deliberation. In addition, exclusive focus on governing bodies makes participation in policy implementation and evaluation more difficult, and less likely.

The sectoral boards created and filled up by government and party operatives should have their membership open to civil society actors and to more stakeholders. A similar thing should be done in the advisory boards of sectoral ministries which provide capacity-building to the minister and his advisors. The decisions taken in these bodies are for protecting, broadly defined, public resources and so should concern other sectors of the citizenry as well. They should be given mandatory membership to enable them contribute their perspective.

The government has sought to correct this imbalance by a proclamation in its National Action Plan for the Open Government Initiative that would review the composition of the Audit Report Implementation Committees (ARICS) – legally mandated committees created to ensure the implementation of the Auditor-General Annual Report but which are largely dysfunctional – to include civil society representatives and independent professionals<sup>9</sup>.

Even though there are no specific legal or constitutional rights to participate or be consulted in Ghana, the government does allow limited consultation with stakeholders and civil society organisations in some occasions, especially, in implementing donor-driven projects. Participation is also allowed in principle at the local government level in the district assemblies in decisions related to service delivery. Nevertheless there is hardly any reporting of citizen's participation in such processes thereby raising questions about the meaningfulness of such exercise since it is not known to what extent citizen's participation has contributed in influencing a government's decision in one way or the other.

Broad civil participation in Ghana, however, does bring up a few concerns which needs to be addressed to meet the minimum standards in its performance in the participation pillar of open governance.

**Inadequate information and time for consultation.** For participation to be fruitful citizens need to be adequately informed in a timely manner and provided access to the necessary documentation and background information and analysis so they can have a proper understanding of the policy issues. It is only when this is done that citizens would be able to provide informed input and inject quality into the participation process. But in Ghana the law does not make for proactive publication so citizens usually lack access to official documents prior to consultation in participatory process, even if they are not classified as confidential. This situation is a carry-over effect from the prevalent culture of non-existent obligations to publish under freedom of information.

The government can be credited with open-mindedness in its willingness to listen to, and co-operate with civil society groups in some areas in the decision-making process. However, CSOs have little leeway to substantially influence policy since in many instances, it is difficult to reverse decisions already taken at the cabinet level.

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<sup>9</sup> <http://www.opengovpartnership.org/blog/nicholas-adamtey/2015/03/03/independent-progress-report-released-ghana-open-government>

Not being shrouded in law, the fate of participation process is left to political winds of fortune. Citizens cannot defend their right to be consulted and participate in decision-making process by reference to the law, and that certainly is not the best. Citizens' participation rights should be secured in law so they can have recourse to the law whenever they have grievances related to improper application of the law.

**Lack of direct citizen engagement.** In the few instances that participation in governance takes place, the predominant approach is through civil society organisations, stakeholder representatives, traditional rulers and elders. Hardly is there direct citizen engagement at the grass-root level. For instance, during the consultation phase in the drafting of Ghana National Action Plan of the Open Government Partnership Initiative, the process was supposed to have taken place throughout the country using that approach but upon a closer examination the consultation actually leaves out ordinary people and only limited to big and influential urban-based CSOs, individuals and a sprinkling of influential private sector interest groups. The information presumably would seep through to the rest of the population but in reality people down the lower echelons of society remain untouched and policy objectives fail to achieve to give the desired results.

## Control and Oversight

The control and oversight section of the scorecard is composed of 38 in-law indicators and 104 in-practice indicators. These in-practice indicators test a variety of measures designed to ensure public sector integrity. With respect to overseeing government expenditure and pointing out misappropriations of government funds, the supreme audit institution, the Auditor-General, has robust constitutional and legal mandate to carry out audits across the entire public sector and issue recommendations actions to be taken. One pitfall, however, is that it has no powers to issue sanctions and its recommendations often end up not implemented. For instance, in a research commissioned by the Ghana Integrity Initiative (GII) local chapter of Transparency International to look into how recommendations by the Auditor-General's annual reports are implemented, showed little evidence of compliance across five ministries in the period between 2009 and 2011.

"Although a key objective of this project (the research) was to ascertain the extent to which audit report findings and recommendations have been implemented, this could not be verified beyond verbal assurances from key officials that actions have been taken", says lead author of the research. He goes further to say, "this is because it is not the normal practice of the Auditor-General to ascertain whether actions had been taken on their audit recommendations of the previous year, therefore the Auditor does not have any records on actions taken".

A key factor in the failure of some ministries to implement the Auditor-General's report is the failure to comply with a key section of the Audit Service Act, 2000 (Act 584) which requires bodies and organisations that are subject to the Auditor-General's audit establish Audit Implementation Committees (ARICs). The ARICs are to ensure that the Auditor-General's recommendations are implemented in the departments. But between 2009 and 2011 only few of these ARICs were established in the five ministries surveyed.

"From discussions, it was apparent that the Ministries, Departments and Agencies (MDAs) generally did not attach particular importance to the role of the ARICs between 2009 and 2011", says the GII commissioned report published last year<sup>10</sup>.

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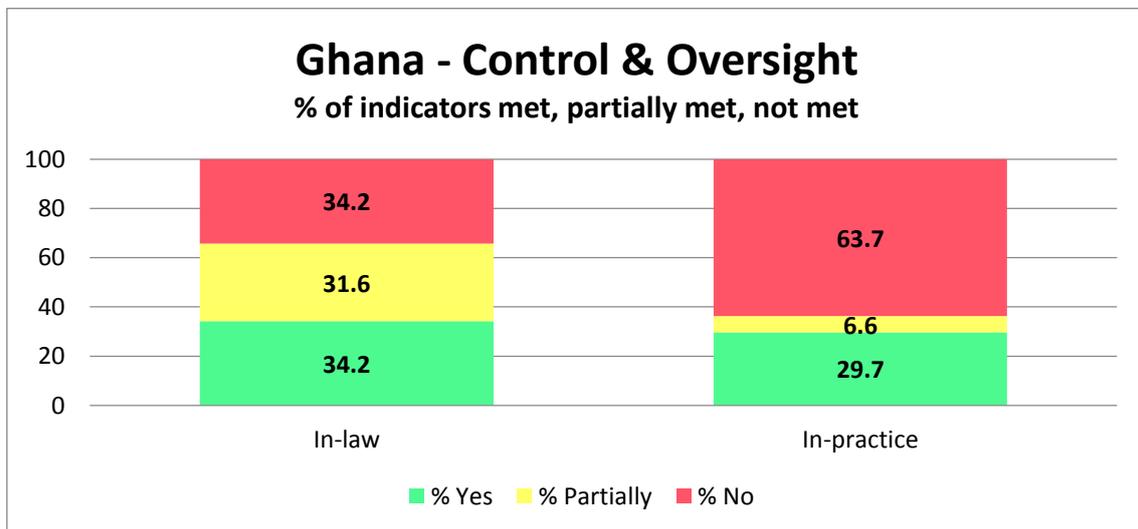
<sup>10</sup> Ghana Integrity Initiative: Show me the money. Accra, November, 2016 (p.9)

So to a large extent the inability to enforce legislation is part of a bigger problem that affects open governance performance in Ghana, no wonder the indicators show higher in-law scores than in-practice.

One causal factor in the poor enforcement of legislation is failure to finance government institutions. The Commission on Human Rights and Administrative Justice (CHRAJ), for instance, relies heavily on foreign donors to carry out some of its programmes. Also, the National Media Commission (NMC) created in good faith to advance media freedoms, hasn't had a budget for two years, no wonder it is unable to bring sanity into the Ghanaian media operating environment. The list could go on interminably.

The (CHRAJ) also has a strong constitutional mandate which provides it with a fair amount of political independence from the executive. The creation of CHRAJ serves as a check on government excesses and can take up investigations of human rights abuses filed by citizens. But again, the influence of CHRAJ are limited because it is not granted powers to prosecute cases.

Graph 8 – Control & Oversight Indicators

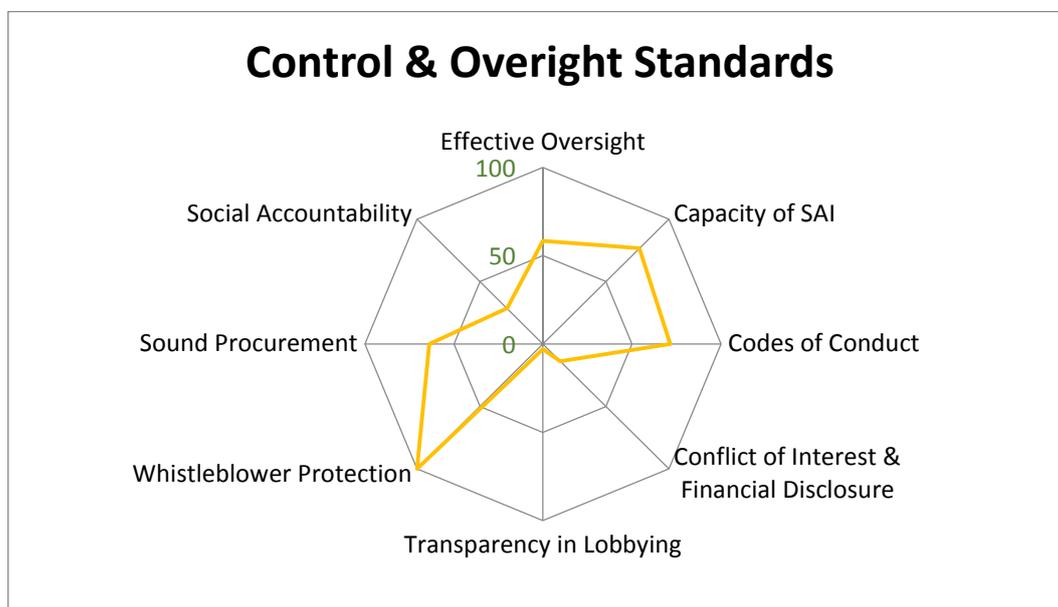


Source: own elaboration

The Ghana in-law control and oversight score meets 34.2 per cent of performance standards (Green) partially meets 31.6 % (Yellow indicators) and fails to meet 34.2 per cent (Red) of the indicators. For the in-practice control and oversight indicators, Ghana meets 29.7 per cent of the indicators, partially meets 6.6 % and fails to meet 63.7 per cent of the performance indicators. So clearly, Ghana's in-law performance in control and oversight is stronger than what it achieves in practical implementation of the laws and regulations.

What accounts for the large number of failed in-practice indicators has to a large extent, to do with a weak legal regime governing both conflict of interest and lobbying.

Graph 9 – Control & Oversight Standards



Source: own elaboration.

In spite of the strong institutional mechanism offered by CHRAJ and the Auditor- General, this is not complemented by robust legislation in other areas to place the control and oversight regime in Ghana on a solid ground to stand. There are no laws governing conflict of interest, which ripples across to negatively impact on procurement decisions and award of contracts. A similar thing applies to lobbying. There are no laws governing lobbying and there is no central register for lobbyists; the legislation does not require it either. Indeed, the Majority Leader in Parliament gave a startling revelation last year that some members of parliament do openly canvass for outside interests during parliamentary proceedings, after allegedly having received payment<sup>11</sup>.

**Whistle blowers law with no bite.** Ghana has had a whistle blowers law in place since 2006, but it remains largely unutilized because people are reluctant to reveal privileged information for fear of reprisals. It is also inhibited by a range of socio-cultural factors which do not encourage such acts. And equally important is that there is no sufficient financial incentives to compensate whistle blowers given the unpleasant consequences that sometimes follow from such acts.

## Conclusions and Recommendations

Our research shows that Ghana’s performance in all of the three pillars of open governance is not particularly impressive. Ghana is making important progress in its Open Data Initiative. It has established an Open Government Data Portal – an important dimension of open governance ([www.data.gov.gh](http://www.data.gov.gh)) – collects and publishes large datasets in machine readable formats from government agencies. Citizens, civil society groups and other stakeholders can contribute to decision-making of which datasets they require.

<sup>11</sup> <http://graphic.com.gh/news/politics/19211-parliament-takes-serious-view-of-bagbin-s-claim.html>

But there are still many gaps to be addressed in many areas of its governance regime which requires passing legislation as well setting up institutions in order create a more openness. In particular, lack of free access to information is an issue which sticks out like a sore thumb and therefore needs urgent attention. Freedom of information gives particular substance to transparency and openness. The right to participation, too, needs to be strengthened with legislation. The existing practice is unsatisfactory because without any body of legislation backing the right to participate, leaves it open to political whims of succeeding governments. While the policy of a sitting government may be to foster participation, that of an in-coming administration may choose to place participation on the back burner. But if it is enshrined in law people can take legitimate legal action to seek redress over their grievances.

In offering recommendations GII would like to consider areas in the Open Governance regime that need priority attention while not belittling the importance of other areas. We find no need to present a long list of recommendations. Given the current slow pace accomplishments of the Ghana Open Government Initiative, more recommended actions might just shackle the government's feet further.

1. The government should make determined effort to ensure the passing of the freedom of information law and all the necessary institutional mechanisms required to provide adequate protection for citizens' constitutional rights.
2. The right to participate should be securely codified in legislation, so that citizens have legal refuge to run to in an event of grievances, giving participation rights, a real meaning.
3. An institution should be established with responsibility to provide guidelines and regulations on the creation and maintenance of government data. An open data commissioner would design a standard for creating, storing and publishing government data. The data commissioner would also be in charge of creating rules and regulations on a consistent practice of proactive publication by government departments and backed by an enforceable monitoring and sanction regime to ensure a consistent proactive disclosure across the entire public sector.
4. The government appears to have no appetite in driving forward the Open Government Partnership Initiative. The Internal Review Mechanism of the OGP has done a review of the Ghana OGP programme and found that many commitments have still not been met in the implementation process. The OGP is equally an important governance reform process and should be given equal political backing and commitment and providing additional resources to carry through with the implementation.

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