



# Enabling Environment National Assessment (EENA) Country Report: Nigeria

April 2015



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## Executive Summary

This report is the result of an assessment of the enabling environment for civil society organisations in Nigeria. It focuses primarily on six mandatory dimensions:

1. Formation : How easy it is to start an NGO
2. Operation: How CSO activities are carried out
3. Access to resources: Financial viability of CSOs
4. Expression: Freedom of expression
5. Peaceful Assembly: Right to protests and strike
6. Government - CSO Relations

And one optional dimension which is Taxation: CSOs and taxes. For decades civil society and many organisations that fill the space between the state and the market have increased considerably. This increase has further raised the profile of civil society organisations in Nigeria. As a result of growing trends of insecurity in the country, the government is shifting its focus to issues around civil society regulation.

Statutorily the main legal instrument governing the formation of civil society organisations in Nigeria is the 1990 Companies and Allied Matters Act (CAMA), Cap. C20, Laws of the Federal Republic of Nigeria 2004. Additionally, the following laws also govern the operation of CSOs in Nigeria:

- Companies Income Tax Act (CITA) 2007
- Taxes and Levies (Approved List for Collection) Act 1998
- Value Added Tax Act (1993) and VAT Amendment Act (2007)
- Federal Inland Revenue Service (Establishment) Act 2007 and
- National Planning Commission Act.

The operation of CSOs remains guided by the Companies and Allied Matter Act (CAMA) 2004 and the Companies Income Tax Act (CITA) 2007. Governance matters relating to the work of CSOs are set out in CAMA while issues around financial management operations and reporting are dealt with by CITA.

Traditionally, CSOs are funded from different sources ranging from individual donations, foreign donors and foundations, their own income generating activities and corporate philanthropy. The most reliable resource in this respect is individual donations. At present, two restrictive Bills are tabled at the Nigerian National Assembly seeking to regulate how CSOs receive funding and how they operate.

The 1999 Constitution guarantees the right of citizens to freedom of expression including on the internet. Open criticism of government policies and practices are tolerated to a certain degree with CSOs being aware of their rights to freedom of expression.

The right to hold public meetings and form associations without interference by the government (Freedom of Assembly) is also guaranteed by the Nigerian Constitution. The Same Sex Marriage Prohibition Act, 2014 signed into law by President Jonathan, bans the sustenance, processions and meetings of LGTBI clubs and societies in Nigeria.

In the last few decades, the relationship between the state and civil society has been turbulent. With the advent of democracy in 1999 and till date, CSOs are only permitted to engage in the political (electoral) process by monitoring the outcomes of elections as electoral observers and are prohibited from making any donation or gift to a political party or from making any gift or donation for any political purpose. Within the context of the tax laws, earned income of a CSO is the income accrued via grants, subscriptions, donations, gifts, endowments etc. and not from business or investments of any kind.

## I. Introduction

Civil society and the many organisations that fill the space between the state and the market have increased considerably in the last 20 years. We have witnessed what has been called a “global associational revolution” or a massive upsurge of organized private, voluntary activity in virtually every region of the world.<sup>1</sup>

Nigeria has witnessed unprecedented growth and expansion in the sector of Non-Governmental Organisations (NGOs) within the last decade and the enormous contribution NGOs can make to society is being increasingly recognised. Indeed civil society organisations are increasingly playing an active role in the social, economic and political spheres of Nigeria and have continued to engage and dialogue with all actors (government, private sector, multilateral organizations) within the development ladder.

Alongside this, there is a growing national concern on the part of government, NGOs and citizens to safeguard NGOs against misuse; for example to prevent funds for criminal purposes being fraudulently diverted through NGOs. As a result of these various different factors, there is great interest in laws relating to NGOs in Nigeria. The Nigerian National Assembly has recently developed Bills on NGO legislation and regulation.

In recent years civil society organisations in many countries around the world have been faced with restrictive laws and policies, reinforcing the backlash against civil society. This trend has found fertile ground in Africa and the number of restrictive laws on the continent is on the rise. The push-back against civil society has taken on a particular flavour and form in Africa.

This trend arguably stems from the historical role that civil society played in ridding the continent of politically oppressive colonial and apartheid regimes, and the fear that similar citizen action is a threat to current less democratic regimes. Thus, many laws enacted or proposed in the region are intended to maintain tight government oversight and control over the activities and structure of civil society organisations

One of the many factors affecting how conducive the overall environment is of civil society and all organisations making it up is the legal framework. The legal, regulatory, and policy environment in which Civil Society Organisations (CSOs)<sup>2</sup> operate is key to their ability to register, operate, access resources, and effectively engage in advocacy, all of which are key to civil society’s ability to flourish and be successful.

Moreover, the laws and regulations that govern CSOs and the ways in which they are implemented, which form part of civil society’s ‘enabling environment’, potentially shape a host of other significant factors as well: a CSO’s ability to communicate and associate with others, to engage in peaceful assembly, to seek tax exemptions, to engage in philanthropy, and to access information.

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<sup>1</sup>ICNL, UNDP (2009). The role of legal reform in supporting civil society: An introductory primer. Accessed via: [http://www.undp.org/content/dam/undp/documents/partners/civil\\_society/publications/2009\\_UNDP\\_The-role-of-legal-reform-in-supporting-civil-society\\_EN.pdf](http://www.undp.org/content/dam/undp/documents/partners/civil_society/publications/2009_UNDP_The-role-of-legal-reform-in-supporting-civil-society_EN.pdf)

<sup>2</sup> ‘CSO and “NGO” are used interchangeably throughout this report to describe not-for-profit organizations.



All of these factors, as well as the relationship between CSOs and their government, help to define the nature of civil society's enabling environment within a particular country.<sup>3</sup>

This assessment carried out by the Nigeria Network of NGOs (NNNGO), follows the Enabling Environment National Assessment (EENA) methodology, developed jointly by CIVICUS and the International Center for Not-for-Profit Law (ICNL). It aims to assess the current health of civil society's enabling environment in Nigeria in an accurate and objective way and to provide a step-by-step guide to thoroughly characterise the nature of the enabling environment for civil society at the national level.

Locally driven and rooted in primary data collected and validated through a national consultation, the EENA aims to serve as a springboard for civil society in Nigeria to improve its legal and enabling environment, to advocate for its rights and to strengthen itself.

The Enabling Environment National Assessments (EENA) is part of the Civic Space Initiative, implemented by CIVICUS in partnership with the International Center for Not-for-Profit Law (ICNL), ARTICLE19, and the World Movement for Democracy, with support from the Government of Sweden.

## **Dimensions**

As part of the assessment, six mandatory dimensions and one optional dimension are included in this report. The mandatory dimensions are:

### **(1) Formation**

The assessment aims to understand how easy it is for civil society organisations to form and what the requirements for formation are, including the laws and regulations that guide their formation. With the wide range of guarantees related to the freedom of association enjoyed by civil society organisations in Nigeria, it is important to assess the process and procedures for registration, the documentation that is required and the legal and non-legal barriers that CSOs face when they constitute themselves.

### **(2) Operation**

How a civil society organisation carries out its activities and the environment within which this is done is an integral part of its existence. Under this dimension, we assessed whether or not CSOs in Nigeria operate freely and the degree of governmental interference in their operation. The assessment focused on the laws and policies that directly govern the operation of CSOs, the type and frequency of reports that CSOs are required to submit, the existence of government audits and the process for dissolution of CSOs.

### **(3) Access to Resources**

Financial viability is identified as one of the biggest challenges for CSOs in Nigeria. Due to limited sources of funding, CSOs are struggling to preserve their financial sustainability. It is imperative for the Nigerian civil society sector to know if CSOs can access resources freely and without restrictions. Particular attention was given to the legal access of CSOs to different types of resources; laws and/or regulations that

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<sup>3</sup>Enabling Environment National Assessment Research Guide developed by CIVICUS and ICNL, 2015

prohibit CSOs from distributing profits, the existence of philanthropy in the country, the availability of government funding, restrictions and barriers to international funding and what happens to the assets of CSOs upon its dissolution, amongst others.

#### **(4) Expression**

The Nigerian constitution guarantees freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference. The assessment focused on how CSOs can effectively express particular opinions - particularly those CSOs critical of government policies. Laws, international treaties and regulations were also analyzed, including on whether they are aiding or hindering CSOs to express their opinions freely.

#### **(5) Peaceful Assembly**

Every person under the Nigerian constitution is entitled to assemble freely and associate with other persons, and in particular may form or belong to any political party, trade union or any other association for the protection of his/her interests. This report assesses how CSOs are able to assemble and organise assemblies in practice, the laws and regulations on protests, how aggressive/violent demonstrators are dealt with in the law and in practice, and the degree of internet freedom.

#### **(6) Government-CSO relations**

The relationship between the state and civil society in Nigeria has been rather problematic throughout the course of history. Years of military rule, national security concerns amidst high profile and growth of the civil society sector along with mutual distrust and suspicion continued to make state-civil society relations troublesome. Our focus in this dimension is to discover if CSOs engage with the government in meaningful ways, their participation in the electoral process and public policy, institutionalised opportunities for CSOs to participate in the decision-making process and the nature of the relationship between the Government and CSOs.

Considering the misconceptions around CSOs and tax in Nigeria, **taxation** was chosen as an optional dimension as this is deemed relevant for the civil society sector certainly at a time when regulatory tax agencies in Nigeria have started clarifying and raising awareness on issues of taxation and the Nigerian NGO sector. Included in this assessment are: the taxes which are imposed on CSOs, tax and regulatory requirements on CSOs that engage in economic activities, the tax exemptions available for CSOs, the financial sustainability of CSOs and laws and regulations that would affect the taxation of CSOs.

## **II. Methodology**

This assessment is based on a variety of research methods carried out between November 2014 and April 2015. The assessment team was led by a researcher with a legal background and was assisted by three additional staff members of NNNGO with extensive experience in the legal environment of CSOs. This research was conducted in English. The methodology and research guidelines were jointly developed by CIVICUS and the International Center for Not-for-Profit Law (ICNL)<sup>4</sup>, and assisted the research team in implementing the assessment in Nigeria. The

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<sup>4</sup>The EENA is part of the Civic Space Initiative, implemented by CIVICUS in partnership with the ARTICLE19, International Center for Not-for-Profit Law (ICNL), and the World Movement for Democracy, with support from the Government of Sweden.

research guide has a set of questions (factual and perception) questions per dimension which were carefully analyzed in the context of Nigeria and adapted where relevant.

An Expert Advisory Panel (EAP) (**See annex 1 for list of EAP members**) made up of selected individuals with particular experience and expertise related to CSOs and its legal environment and the local context, advised the research team on the optional dimensions to be included in the research, and reviewed the Country Report and Advocacy Plan. The Panel’s expertise provided a final check on the accuracy and veracity of the Report and Plan.

The key research methods adopted through the assessment were:

- Desktop research: literature review of key documents: laws, regulations, policies, published studies;
- Focus Group Discussions (FGD) involving employees and heads of CSOs, lawyers assisting CSOs and government, all drawn from a multitude of sectors;
- Individual (one-on-one) interviews conducted in English (in-person and by telephone) with key stakeholders;
- A national validation workshop (National Consultation), gathering stakeholders of civil society in Nigeria

The following table summarises the number of persons canvassed by the assessment:

<b>Research method</b>	<b>Target population/stakeholder</b>	<b>Actual Number</b>
FGD	Employees and heads of CSOs, lawyers assisting CSOs drawn from multitude of sectors	19
One-on-one interviews	Non-governmental organisations, regulatory agencies, donors,	25
National Consultation	Non-governmental organisations from the 6 geo-political zones of Nigeria	35
<b>Total people</b>		79

Close to 80 people from the NGO sector and stakeholders from the six geo-political zones of the country were consulted. The assessment drew participants for the focus group, one-on-one interviews and national consultations from the over 1,800 NGOs within the membership of the Nigeria Network of NGOs, and over 400 NGOs in the directory of Nigerian NGOs listing NGOs that are not members of the Network.

In this regard, the researchers are confident that views presented in this report, were canvassed from a broad range of actors within the civil society sector in Nigeria. It should be noted that both established and newly formed NGOs were consulted.

An inception meeting was held on 22<sup>nd</sup> January, 2015 with the Expert Advisory Panel (EAP) to ensure a common understanding of the role and tasks of the EAP. This was followed by the process of selecting the optional dimensions, based on the context in Nigeria. At a later stage, the EAP has been involved in reviewing the country report and making critical inputs and comments. Colleagues at CIVICUS and ICNL also provided NNNGO with valuable inputs.

The national workshop (the National Consultation), which held on 22<sup>nd</sup> April, 2015 served both as a platform for consultation of the sector and as a way to validate the research findings and the action plan to improve the enabling environment for civil society in Nigeria.

The interviews have been organised based on the seven dimensions assessed. As agreed with the interviewees, we are presenting the findings anonymously. We used the term ‘CSO’ and ‘NGO’ interchangeably to describe not-for-profit organizations. We used the terms ‘assessment’ ‘research’ and ‘study’ interchangeably to describe the enabling environment national assessment. Quotations from research participants are presented in italics.

### **III. Formation**

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#### **Overview**

This section of the report discusses the formation of civil society organisations; it focuses primarily on the registration and other processes involved, legal and non-legal barriers and the perceptions of CSOs on the regulatory framework. The registration of CSOs is guided by the 1990 Companies and Allied Matters Act (CAMA). According to Cap. C20, Laws of the Federal Republic of Nigeria, the Corporate Affairs Commission (CAC) is charged with the responsibility of implementing this law.

CSOs wishing to incorporate have to apply to the Commission, which reviews the application, publishes it in the national dailies for public objection/comments and assents to or rejects the registration based on the discretion of the Commission. Organisations wishing to be incorporated have two options in terms of legal entities: 1.) Associations with incorporated trustees and 2.) Incorporation as a company limited by guarantee.

While restrictions on certain forms of purpose were witnessed in the past, the situation has changed considerably with the explicit prohibition of the formation of certain rights based CSOs such as Lesbian, Gay, Bisexual Transgender and Inter sex (LGBTI) focused CSOs. The registration fee for a CSO is \$121 (20,000 Naira) and could take between 2 and 3 months to be finalized. Registration centers are available in all the 6 geo-political zones<sup>5</sup> and states, but the Commission is perceived as lacking the necessary resources (funding and staffing).

#### **Analysis of findings**

As a republic, the basic law guiding the Nigerian state is the 1999 Constitution (as amended in 2010). The main legal instrument governing the formation of civil society organisations is the 1990 Companies and Allied Matters Act (CAMA), Cap. C20, Laws of the Federal Republic of Nigeria 2004.

Although not every group or association must register, organisations wishing to enjoy the benefits of receiving donor funding and accessing tax benefits and exemptions must register or be incorporated under CAMA. As of May 2015, 78,112 NGOs are currently registered with the Corporate Affairs Commission (CAC), the agency of Government statutorily established under CAMA to register CSOs. More specifically, Part C (also called incorporated trustees) of the CAMA guides the registration of CSOs in Nigeria.

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<sup>5</sup>The six geo-political zones are South-South, South-West, South-East, North-Central, North-East, North-West

**CAMA Part C, 673 (1):** *Where one or more trustees are appointed by any community of persons bound together by custom, religion, kinship or nationality or by anybody or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, he or they may, if so authorised by the community, body or association (hereinafter in this PART of this act referred to as ‘the association’)* apply to the commission in the manner hereafter provided for registration under this Act as a corporate body.

Additionally, the following laws also govern the operation of CSOs in Nigeria:

- Companies Income Tax Act (CITA) 2007;
- Taxes and Levies (Approved List for Collection) Act 1998;
- Value Added Tax Act (1993) and VAT Amendment Act (2007);
- Federal Inland Revenue Service (Establishment) Act 2007; and
- National Planning Commission Act.

Section 40 of the Nigerian Constitution guarantees the freedom of association for all Nigerians. Therefore, it is generally assumed that there are no restrictions on those who wish to come together to found a CSO, provided (according to CAMA) that the purpose for which the organisation or group is formed or procedures that it uses in carrying out its activities are not illegal.

However minors, persons of unsound mind (having been found so by a court), undischarged bankrupts and those convicted within the previous five years for an offence involving dishonesty cannot be registered as trustees or directors of a NGO. Trustees or directors hold a position of trust or responsibility for the benefit of the NGO, they are expected to have been constituted prior to registration of the organisation and therefore are regarded as founding members.

For CSOs seeking legal entity status, the two most frequent options are associations with incorporated trustees and incorporation as a company limited by guarantee. Both of these forms of registration are governed by CAMA (Part C) and are handled by the Corporate Affairs Commission (CAC). A company limited by guarantee is formed for the promotion of commerce, arts, science, religion, sports, culture, education, research, charity or other similar purposes. The income and property of the company is applied solely towards the promotion of its purposes.

The law (CAMA) is silent on the minimum or maximum number of individuals required to form a CSO. However, several interviewees have noted that for administrative purposes and ease of decision-making through voting many CSOs have chosen odd numbers of people when forming their organisations. Age has also been considered with persons above 18 years legally permitted to form a CSO.

An association with incorporated trustees appoints one or more trustees (founding members) and pursues registration under Part C of the CAMA. There are two types of associations with incorporated trustees. The first type occurs where trustees are appointed by a community of persons bound together by customs, religion, kinship or nationality, the second type arises

where trustees are appointed by a body or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose.<sup>6</sup>

In order to register or incorporate, CSOs (**See annex 2 for CSO registration requirements**) must obtain an application form wherein the organisations aims and objectives are to be stated, the names, addresses and occupation of the secretary and trustees of the association if any. Attached to the application will be two printed copies of the constitution of the association, duly signed copies of the minutes of the meeting appointing the trustees and authorizing application showing the people present and votes scored, and the impression or drawing of the proposed common seal (Emblem or rubber stamps).

The application must be signed by the person submitting it - usually the company secretary, lawyer and president or founder. The Commission may request for evidence or verification of the statements and particulars in the application at its own discretion. There are no limits to this discretion and the Commission can request as many documents as possible in this regard.

If the Commission is of the opinion that the application meets sections 674, 675 and 676 of CAMA (see below), then the application will be published in a prescribed format in two daily newspapers (one of which must be a national newspaper), circulating in the area where the organization is to be situated. The advertisement will ask for objections (if any) to the registration of the organization.

Section 673 (1) of CAMA: Where one or more trustees are appointed by any community of persons bound together by custom, religion, kinship or nationality or by anybody or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, he or they may, if so authorized by the community body or association (hereinafter in this PART of this Act referred to as ‘the association’), apply to the Commission in the manner hereafter provided for registration under the PART of this Act as a corporate body.

(2) Upon being registered by the Commission the trustee or trustees shall become a corporate body in accordance with the provisions of section 679 of this Part of this Act.

Section 674 (1) Application under section 673 of this Act shall be in the form prescribed by the Commission and shall state:

(a) The name of the proposed corporate body which must contain the words ‘Incorporated Trustees of...’

(b) The aims and objects of the association which must be for the advancement of any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose and must be lawful;

(c) The names, addresses and occupation of the secretary of the association if any.

(2) There shall be attached to the application:

(a) Two printed copies of the constitution of the association;

(b) Duly signed copies of the minutes of the meeting appointing the trustees and authorising the application, showing people present and the votes scored;

(c) The impression or drawing of the proposed common seal.

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<sup>6</sup> Section 673 of CAMA

(3) The application shall be signed by the person making it.

(4) The Commission may require such declaration or other evidence in verification of the statements and particulars in the application and such other particulars, information and evidence, if any, as it may think fit.

(5) If any person knowingly makes any false statement or gives any false information for the purpose of incorporating trustees under the PART of this Act, he shall be guilty of an offence and liable on conviction to imprisonment for one year or fine of ₦ 100.

Section 675 (1): A person shall not be qualified to be appointed as a trustee if:

- (a) He is an infant;
- (b) He is a person of unsound mind having been so found by a court; or
- (c) He is an undischarged bankrupt; or
- (d) He has been convicted of an offence involving fraud or dishonesty within five years of his proposed appointment.

(2) If a person disqualified under paragraph (c) or (d) of subsection (1) of this section acts as a trustee he shall be liable to a fine of ₦ 50 for every day during which he so acts.

Section 676: The constitution of the association shall in addition to any other matter:

- (a) State the name or title of the association which shall not conflict with that of a company, or with a business name or trade mark registered in Nigeria;
- (b) The aims and objects of the association; and
- (c) Make provisions, in respect to the following:-
  - (i) Appointment, powers, duties, tenure of office and replacement of the trustees;
  - (ii) The use and custody of the common seal;
  - (iii) The meetings of the association;
  - (iv) The number of members of the governing body, if any, the procedure for their appointment and removal, and their powers and;
  - (v) Where subscriptions and other contributions are to be collected, the procedure for disbursement of the funds of the association, the keeping of accounts and the auditing of such accounts.

If there is an objection, the grounds for such will be submitted to the Commission within 28 days of the date of the last of the publications in the newspapers. Objections are considered by the Commission and may require explanation or further information from the objectors and applicants and may uphold or reject the objections as it considers fit and inform the applicant accordingly.

If after 28 days no objection is made or where the objection is received and rejected, the Commission may assent to or deny the application. Where an application is approved by the Commission a certificate of incorporation is issued to the organization in the prescribed form. A certificate of incorporation, when granted, is a prima facie evidence that all the requirements in respect of the incorporation has been complied with and the date of incorporation mentioned in the certificate will be the date the organization was incorporated.

Within the law, there is no minimum capitalization requirement to register CSOs. Grounds for rejecting a CSOs application for registration is left to the discretion of the Commission and are not listed. While applications may be rejected based on objections from the general public, the

law is not clear on what could constitute reasons for objections that will make the Commission to reject an application.

Reflecting on their own experience, newly registered CSOs interviewed suggested that ‘applications may be rejected based on falsification of documents’<sup>7</sup>, if trustees or founder(s) are people of questionable character found guilty by a court and organisations whose aims and objectives are not deemed for the advancement of any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose and when the objectives are found not to be lawful.

CSOs interviewed described how in the past CSOs were not allowed to form because they have the advancement of human rights as their purpose. ‘The Corporate Affairs Commission also frowned at including democracy as part of your organization’s name; instead they preferred the use of the word development’<sup>8</sup>.

Respondents in the focus group discussion noted however that the situation is different now, in their opinion what they think is currently more important to the regulators is for organisations to meet the registration requirements. One respondent observed that ‘staff members of the regulatory body (CAC) at times do not understand the purpose of some NGOs and for that reason it takes a while for such registrations to be assented to’ as the Commission will have to ask extra questions or request additional documents that can aid their work in assenting to such applications.

CAMA is clear on what the purpose (aim) of organizations wishing to be incorporated should be under section 674 (b), ‘the aims and objectives of the association which must be for the advancement of any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose and must be lawful’.

The CAMA does not list rights protection or democracy promotion as part of the aims and objectives a CSO must have in order to be incorporated. Focus group discussions have revealed that human right CSOs no longer have difficulties registering. Restricting the formation of CSOs to certain objectives is considered one of the weaknesses of CAMA, as it leaves room for the regulator – the Commission - to use this as a basis for rejecting the registration of CSOs.

Registration of gay clubs, societies and LGBTI organisations is prohibited under the Same Sex Marriage (Prohibition) Act signed into law in January 2014. No society or organisation with unlawful purpose(s) can be registered in any event, de facto barring the registration of LGBTI organisations.

There is no set procedure for CSOs to appeal decisions on registration by the Commission under CAMA. However we have seen CSOs challenging the refusal of the Commission to make decisions on their application by applying for an order of mandamus<sup>9</sup> to compel the Corporate Affairs Commission to take a decision. There is however no fixed time for deciding on an application.

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<sup>7</sup>Interview with an executive director in Lagos, 18 February 2015

<sup>8</sup>Interview with Executive Director of a NGO in Lagos, 13 February 2015

<sup>9</sup>Order of mandamus is an order from a court to an inferior government official ordering the government official to properly fulfill their official duties or correct an abuse of discretion.- <https://www.law.cornell.edu/wex/mandamus>, accessed on 18th



CSOs are not required to regularly renew their registration. Fees for registering a CSO under the subsidiary regulations under CAMA is US\$ 121 (20,000 Naira) while the approximate cost of registering a CSO could be between USD\$ 909 and USD\$ 3,030, according to one interviewee. This includes the costs related to hiring a lawyer or chartered secretary (to assist with the registering process), publication in national newspapers and other costs.

There is no fixed time for processing applications; however, name reservation can be done for up to a period of six months. On the average applications may take up to 3 months or more in terms of processing time. Staffing and funding are a major challenge for regulatory agencies such as the Corporate Affairs Commission (CAC).

Registration centers are available in all the six geo-political zones, the process can also be done electronically at <http://services.cac.gov.ng/>. Focus group participants and one interviewee<sup>10</sup> however worried that ‘the need for physical verification of documents and fear of hacking makes the online registration a challenge’.

Participants interviewed and those participating in the focus group discussions agreed that to some extent favouritism and corruption exists within the system as in most cases ‘only lawyers and chartered secretaries accredited by the Commission can file applications successfully’<sup>11</sup>.

In the opinion of one interviewee ‘an accredited lawyer is essential in the process of registration with CAC to avoid being surcharged or duped’<sup>12</sup>.

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<sup>10</sup>Interview with a programme manager of a NGO in Abuja, 13February 2015

<sup>11</sup> Interview with founder and president of a NGO in Port Harcourt, 21 February 2015

<sup>12</sup>Ibid

## Assessment Matrix (FORMATION)

<b>Dimensions Formation</b>	<b>Factual Questions</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
	What legal instruments (laws, regulations, decrees, etc.) currently govern(s) the formation of Civil Society Organizations (CSOs)			
	Who is legally permitted to serve as a CSO founder? Who is excluded from serving as a founder?			
	What minimum number of individuals is required to form a CSO? What are the requirements of membership?			
	What procedures are required to register/incorporate a CSO?			
	Is there a minimum capitalization requirement to register a CSO?			
	What are the specific grounds for rejecting a CSO's application for registration/incorporation? Are such grounds sufficiently detailed?			
	Must CSOs adhere to certain categories of purpose before being allowed to form; or are some CSOs with certain agenda (human rights protection or democracy promotion, for example) forbidden from forming?			
	Can registration decisions be appealed? If so, how frequently are registration decisions appealed? What are the results?			
	What documentation is required for a CSO's incorporation/registration?			
	Are CSOs required to regularly renew their registration?			
	What registration fees are required?			
	What is the approximate cost to register a CSO, and how long does the process typically take?			
	Are there draft laws or regulations that if adopted would restrict or alternatively ease formation of CSOs?			
	Is the entity responsible for registering CSOs sufficiently funded and staffed?			
	Is registration easily accessible? E.g., are there sufficient locations/centers around the state for registering CSOs, or is the process all done electronically?			
	What non-legal and/or non-governmental barriers, such as slow or ineffective bureaucracies, inability to access funds, or difficulty buying/leasing property, affect the formation of CSOs?			
	To what extent is there a perception of excessive discretion, favouritism (political, ethnic, religious, etc.), and/or corruption in the registration process?			

## **IV. Operation**

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### **Overview**

Operation of CSOs remains guided by the Companies and Allied Matter Act (CAMA) 2004 and the Companies Income Tax Act (CITA) 2007. Governance matters relating to the work of CSOs are set out in CAMA while issues around financial management operations and reporting are dealt with by CITA. Though CSOs are not required to inform the government of their meetings, under CITA and CAMA, CSOs are mandated to file annual returns and reports to both Federal Inland Revenue Service (FIRS) and Corporate Affairs Commission (CAC). CSOs are expected to make publicly available the following information: information relating to their accounting year, the CSOs annual report, official address, list of trustees and management team, constitution and bank name amongst others. Challenges have been identified with requests for Trustees tax certificates by FIRS and Banks in the course of filing annual returns to FIRS or opening bank accounts. Nigerian CSOs are not mandated to align their activities with national plans but the government can lawfully terminate or dissolve CSOs. CSOs can voluntarily be dissolved when their objectives have been met or become unlawful.

### **Analysis of findings**

For the operation of CSOs, the Companies and Allied Matter Act (CAMA) and Companies Income Tax Act (CITA) provide an overarching guideline on some operations of CSOs. CAMA provides CSOs with information on the characteristics of a Trustee; details of what should be included in the constitution of a CSO, use of funds and remuneration for Trustee and staff members and procedures for dissolution of the CSO. Under CITA, CSOs can apply to the President of Nigeria for an order to exempt them from taxation on their income or profit, no matter the source of the income. CITA also governs the financial operations of CSO and guides them in the filing of annual financial returns and performance activity report to the Federal Inland Revenue Service (FIRS).

Further to this, the Special Control Unit on Money Laundering (SCUML) of the Economic and Financial Crimes Commission (an agency of the government leading the fight against money laundering and terrorism financing through the Money Laundering Prohibition Act, 2004) also mandates designated non -financial institutions such as CSOs to report funding support received in the excess of \$1000.

CSOs are not required to notify the government of their meetings. They are required by law to notify the Corporate Affairs Commission of changes to their Board and to provide minutes of the annual general meeting or resolutions of meetings where such decisions are taken, which must be duly certified (signed) by the trustees.

Periodic reports are to be submitted to both the Commission and FIRS. CSOs are expected to not earlier than 30 June or later than 31 December each year, (other than the year in which it was incorporated) submit to the Commission a return showing, among other things, the name of the corporation, the names, addresses and occupation of the Trustees, and members of the council or governing body, particulars of any land held by the corporate body during the year

and of any changes which have taken place in the constitution of the association during the preceding year”.<sup>13</sup>

For FIRS, CSOs are required to file annual financial returns 18 months from the date of incorporation or not later than 6 months after the year end of its accounting period (whichever is earlier in time) and 6 months after the year end for established organisations. CSOs are also to file their performance activity reports as detailed in Section 55 (1) & (2) of CITA.

Aside the above, there is no other known periodic reports to be submitted to public authorities. CSOs can however be subjected to audits and inspections if it is suspected by the authorities that the CSO is involved in business activities that are against the objects or the purpose for which the organisation was established. CSOs are allowed to develop economic activities that provide extra income however such profits derived from economic activities are subject to income tax.

CSOs are required to publicly disclose the following information:

- Accounting year
- Bank name
- Constitution
- Charters and by laws
- Articles of Incorporation
- Business address
- All information required in an audited account in line with the Financial Reporting Council Standards. These include: statement of income and expenditure, assets, payroll records among others.
- List of names of Trustees including senior management staff.

According to persons interviewed, it was observed that ‘FIRS and Nigerian banks request tax certificates of individual Trustees of the CSO’<sup>14</sup>. This new administrative requirement affects the operation of CSOs as Trustees may lose interest in serving on the Board of a CSO since many Trustees may not have access to their tax certificates as they are not processed in sufficient time by FIRS, as was indicated by participants in the focus group discussions. Finding the time within their already busy schedule to chase their tax certificates only for the purposes of being on the Board of a CSO is a burden for Trustees and would-be Trustees.

While CSOs are not mandated to align their activities with governmental priorities as defined in national plans, donors often align their funding to the country’s national plans and priorities. In practice this often means that activities of CSOs receiving support from such donors are technically aligned to the implementation of the national plans of Nigeria. Two new Bills (Foreign Contribution and NGO Regulatory Agency Bill) now under discussion in the National Assembly include requirements mandating CSOs to align their activities with government plans and the approval of relevant Ministries before implementation of projects.

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<sup>13</sup>Section 690 (1) of CAMA

<sup>14</sup>Interview with programme manager of a NGO in Ibadan, 20 February 2015

The government can lawfully terminate or dissolve a CSO on the grounds of unlawful practices and practices contrary to public policy. According to the Nigerian *Criminal Code Act 1990*, societies or organisations are deemed unlawful if formed for the purpose of ‘interfering with, or resisting, or encouraging interference with or resistance to the administration of law’. For example the Jamaatuu Ahlis-Sunna Liddaawati Wal Jihad (otherwise known as Boko Haram) and Jama’atu Ansarul Muslimina Fi Biladis Sudan had their activities proscribed on the 24 May 2013 for carrying out terrorist activities, whereas the organization was set up for religious advancement.

A CSO can voluntarily be dissolved by provisions of Section 691 (1) under CAMA. “A body corporate formed under this PART of this Act may be dissolved by the court on a petition brought for that purpose by the governing body or council or one or more trustees or members of the association constituting not less than fifty per cent of the total membership or the Corporate Affairs Commission”. The grounds on which the organization can be dissolved are stated in Section 691 (2) of CAMA: “the grounds on which the body corporate may be dissolved are:

- a) That the aims and objects for which it was established have been fully realised and no useful purpose would be served by keeping the corporation alive;
- b) That the body corporate is formed to exist for a specified period and that period has expired and it is not necessary for it to continue to exist;
- c) That all aims and objects of the association have become illegal or otherwise contrary to public policy and;
- d) That it is just and equitable in all the circumstances that the body corporate be dissolved”.

There are no non-legal grounds cited by the government to terminate or dissolve a CSO in Nigeria. The level of oversight government has over CSOs is perceived as light in Nigeria. The focus group discussions confirm that the legal and administrative requirements for CSOs to operate are in some cases considered loose while other respondents have noted that some of the requirements can be a burden - especially for smaller NGOs.

Bureaucratic delays and transparency issues on the part of regulatory agencies are some of the challenges mentioned by focus group discussion participants who experience it as impediments to the productive operation of CSOs. One interviewee noted that there should be a “platform for CSOs and regulatory agencies to engage in good faith”<sup>15</sup>.

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<sup>15</sup>Interview with an executive director of a NGO in Lagos, 19 February 2015

## Assessment Matrix

<b>Dimension</b>	<b>Factual Questions</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
<b>Operation</b>	What law(s) directly govern(s) the operation of CSOs? Do any other laws affect or influence the operation of CSOs?			
	Are CSOs required to notify the government of any meetings? If so, of each meeting or only key meetings? Are they required to notify the government of the list of candidates for the board of directors? Of the results of elections?			
	Are CSOs required to submit periodic reports to the government? What kind of reports – e.g. activity or financial reports –, and how often?			
	Are CSOs required to periodically report to the government for any other reasons? What reasons and how often?			
	Are CSOs subject to government audits or inspections? How often, and what types?			
	What types of information are CSOs required to publicly disclose?			
	What administrative requirements affect the operation of CSOs?			
	Are CSOs mandated to align their activities with governmental priorities as defined in national development plans?			
	On what grounds is the government legally permitted to terminate or dissolve a CSO? Is there an opportunity to appeal this decision?			
	On what grounds can a CSO be voluntarily dissolved?			
	Are there draft laws or regulations that if adopted would restrict or alternatively ease formation of CSOs?			
	<b>Perception Questions</b>			
	What level of oversight does the government have over CSOs? Extensive, moderate, or light?			
	In practice, do the legal and administrative requirements referred to above act as impediments to the productive operation of CSOs? Are they helpful to the daily operation of CSOs?			
	Are there non-legal grounds, that in practice, the government uses or cites to terminate or dissolve a CSO? In practice, how have such terminations been conducted: according to the law or otherwise?			
	Is there a history of state harassment of CSOs for allegedly not adhering to administrative and/or legal requirements? Is there a history of state harassment of CSOs for other reasons or in general?			

## V. Access to Resources

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### Overview

Traditionally, CSOs are funded from different sources ranging from individual donations, foreign donors and foundations, their own income generating activities and corporate philanthropy. The most reliable resource in this respect is the individual donations. At present two restrictive Bills are tabled at the Nigerian National Assembly seeking to regulate how CSOs receive funding and how they operate. Current laws in place prohibit CSOs from distributing its profits or providing inappropriate benefit to officers i.e. Trustees. The legal framework also includes procedures for distribution of assets once a CSO dissolves. Philanthropy is witnessed most in the sectors of sport, health and education motivated majorly by altruistic reasons and a need to give back to the society. The majority of Nigerian CSOs do not have the necessary capacity to fundraise.

### Analysis of findings

CSOs often struggle to secure the resources needed to operate effectively and efficiently. In Nigeria CSOs have legal access to funding from the following sources:

- Individual donations
- Donor funding from international agencies: foreign donor, governments, multilateral agencies, international CSOs
- Income generating activities
- Foundations
- Donations from corporations

Although there are non-legal barriers such as lack of capacity to fundraise hindering the access of CSOs to the various sources of funding available, not all sources of funding are reliable. In assessing the strength and sustainability of different sources of funding for CSOs, a 2012 report (Civil Society Index -Rapid Assessment -Nigeria)<sup>16</sup> conducted by the Nigeria Network of NGOs (NNGO) found that government support to CSOs was considered the least reliable (92.0% of survey respondents), corporate donations the most threatened (15.3% of survey respondents), and individual donations the most important (23.4% of survey respondents) and most reliable (41.5% of survey respondents).

Currently, there are no legal barriers hindering access to any of the above potential sources of funding. Additionally, the financial sustainability of CSOs does currently not depend on government oversight or approval. The previously mentioned Foreign Contributions and NGO Regulatory Agency Bill, if passed, will hinder CSOs from accessing funding from international agencies such as multilateral institutions, foreign donor governments and international CSOs.

The Foreign Contributions Bill requires prior approval before CSOs can receive foreign funds and has made registration a pre-requisite for accepting foreign funding. Furthermore, the Bill seeks to make the Independent Corrupt Practices and Other Related Offences Commission, the regulatory authority of all CSOs to monitor the utilisation of all monies received from donor agencies for the purpose of engendering transparency, integrity and accountability. All CSO

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<sup>16</sup> Civil Society Index-Rapid Assessment Report (CSI-RA) for Nigeria, 2013

projects must be approved by the Boards and line ministries, before they can be implemented. Mandatory re-registration of CSOs every two years, and broad oversight on the work of NGOs, are some of the regulations proposed in the Non-Governmental Organisation Regulatory Agency Bill.

NNNGO provided empirical input and facilitated a review of both the Foreign Contribution and NGO Regulatory Agency Bills along international standards, treaties and norms with a view to advocate for a Bill that is fit for Nigerian CSOs and in line with international standards. Momentum gathered by the Nigerian National Assembly on the Bills waned owing to the analysis of the Bills submitted by the Nigeria Network of NGOs (NNNGO) and other civil society actors, indicating how these Bills threaten civic space in Nigeria.

Added to this is the political climate since the election year 2015 was around the corner; proponents of the Bill were busy with their re-election bid. Though momentum on both Bills has waned due to the elections, which took place in March 2015, further movement on the Bill is expected from June 2015.

In the current legal framework there are provisions that prohibit CSOs from distributing profits or otherwise providing inappropriate private benefit to officers, directors or other insiders. Section 686 of CAMA states that income and property of CSOs will be applied solely for the promotion of the objects of the organization as set forth in its constitution and “no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus, or otherwise by way of profit to any of the members of association”.

Section 686 of CAMA: Payment of reasonable services rendered by “an officer or servant of the body in return for any service actually rendered to the body or association is allowed under the law ‘with the exception of ex-officio members of the governing council, no member of a council of management or governing body, or any officer of the body paid by fees and ‘no remuneration or other benefit in money or money’s worth shall be given by the body to any member of such council or governing body except payment of out-of-pocket expenses or reasonable and proper rent for premises demised, or let to the body or reasonable fee for services rendered. Contravention of this law attracts refund of such ‘income or property so misapplied to the association’”.

Section 691 (4) of CAMA provides CSOs with procedures for dissolution and distribution of assets “in the event of a winding-up or dissolution of the corporate body there remains after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the association, but shall be given or transferred to some other institutions having objects similar to the objects of the body, such institutions to be determined by the members of the association at or before the time of dissolution” .In cases where the above cannot be enforced, Section 691 (5) of CAMA states that “the remaining property shall be transferred to some charitable object”.

Government funding is not available to CSOs in Nigeria and donor funding is not known to support the full range of CSO programming and activities in the areas of core funding, while some level of funding is available for policy development and advocacy they still do not support the full range of costs necessary to implement such.

The standards for assessing both foreign and domestic sources of funding are the same though some international funders may require log frames as part of the application process that are



often not required by local funders. No bilateral or multilateral agreements are in place in Nigeria that affect foreign donor's ability to donate and establish partnership with CSOs.

Traditionally, philanthropy is witnessed mostly in the sectors of sport, health and education motivated majorly by altruistic reasons and the need to give back to the society. Philanthropic activities of incorporated corporate organizations to Nigerian CSOs engaged in ecclesiastical charitable, or educational activities of a public character, or to any of the bodies listed the fifth schedule to the CITA (Companies Income Tax Act), may claim tax relief of donations of up to 10% of their annual profits however individual philanthropists do not receive any tax relief or benefits for donations to Nigerian CSOs.

During focus group discussions, respondents focused on identifying what discourages and encourages philanthropy. Participants noted that transparency and accountability, progress and impact reporting encourage a culture of giving, while misuse of funds, lack of documentation and impact reporting through effective monitoring and evaluation discourages philanthropy.

Despite most CSOs having received training and/or technical assistance, a recent CSO study in Nigeria<sup>17</sup> found that 86% of CSOs in the survey responded that they need capacity development in the areas of fundraising, confirming our findings from interviews and focus group discussions on the need for capacity of CSOs to raise funds and the need to diversify funding even though individuals and corporations regularly donate to CSOs.

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<sup>17</sup>Despard, M.R.,Nafziger-Mayegun. R. N., Adjabeng, B. (February 2015).Capacity-Building and Financial Sustainability Needs of Non-Governmental Organizations in Three Sub-Saharan African Countries: an Explanatory Study. UNC School of Social Work. Accessed via: [http://www.academia.edu/11810919/Capacity-Building\\_and\\_Financial\\_Sustainability\\_Needs\\_of\\_Non-Governmental\\_Organizations\\_in\\_Three\\_sub-Saharan\\_African\\_Countries\\_An\\_Exploratory\\_Study](http://www.academia.edu/11810919/Capacity-Building_and_Financial_Sustainability_Needs_of_Non-Governmental_Organizations_in_Three_sub-Saharan_African_Countries_An_Exploratory_Study)

**Assessment Matrix**

<b>Dimension Access to Resources</b>	<b>Factual Questions</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
	Which financial resources do CSOs have legal access to: State funds? Earned income? Donations? Foreign donor funding? Other?	Green		
	What legal barriers hinder access to each of these potential sources of funding?	Green		
	Do laws and/or regulations prohibit CSOs from distributing profits or otherwise providing inappropriate private benefit to officers, directors, or other insiders	Green		
	Upon dissolution or termination, what happens to a CSO’s assets? What laws and/or regulations affect distribution of assets upon dissolution?	Green		
	Are there draft laws or regulations that, if adopted, would restrict – or, alternatively, ease – CSOs access to resources? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.			Red
	What non-legal and/or non-governmental barriers hinder access to each of the potential sources of funding for a CSO?		Yellow	
	How reliable is a CSO’s access to legally permissible funds? And how freely available are these funds?	Green		
	How much does a CSO’s financial sustainability depend on government oversight and approval?	Green		
	How effectively does the legal and policy framework support the mobilization of local resources?		Yellow	
	Does government and donor funding support the full range of CSO programming and activities, including e.g., innovation, core funding, policy development and advocacy?			Red
	What type of source of funding are CSOs most dependent on?	Green		
	What is the perceived reliability of different sources of funding? (or what source of funding is more reliable for CSOs)		Yellow	
	Are you seeing any recent changes in the funding environment at the national level? What are the impacts of any changes on CSOs?		Yellow	
<b>Government funding</b>	Is government funding currently available for CSOs? If so, is it available for any type of CSO or are there special types of CSOs that are supported by government?			Red

<b>International funding</b>	Are there different standards/requirements for accessing foreign sources of funding versus domestic sources of funding?			
	What are legal barriers to accessing and using foreign resources by a CSO, if any? E.g. Is there government notification or oversight required to acquire foreign funding? Are there additional reporting requirements when using foreign funding?			
	Are there bilateral or multilateral agreements in place that affect foreign donors' ability to donate and establish partnerships with CSOs? If yes, what kind of agreements are they (statement of medium to long term commitment to a relationship; funding framework, etc.)			
<b>Perception Question</b>	What non-legal barriers to receiving foreign funds exist in practice?			
	Has the overall state of governance and rule of law in the country affected donor's contribution to CSOs? If so, how?			
<b>Philanthropy</b>	What are the laws and/or regulations specifically addressing philanthropy?			
	Are tax exemptions available to those who engage in philanthropy?			
	Are CSOs permitted to be the recipients of both corporate and individual philanthropy?			
<b>Perception</b>	Does the legal and regulatory framework encourage philanthropy? If so, how? If not, how?			
	Is there a philanthropic tradition? What encourages it? What discourages it?			
	Do CSOs regularly fundraise from the domestic public or corporations? Do CSOs have fundraising capacity? Or capacity to diversify their funding?			
	Do individuals regularly donate to CSOs?			
	Do corporations regularly donate to CSOs?			

## VI. Expression

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### Overview

The 1999 Constitution guarantees the right of citizens to freedom of expression including on the internet. There are indications that the Nigerian government has an internet surveillance system in place which monitors the internet communication of over 62 million Nigerians using the internet. There is a growing concern that the current course of action by the Nigerian government will restrain civil society organizations and journalists that are critical of government policies and by extension vocal dissenting citizens who wish to freely express their opinion. Nigeria's vibrant and active media sector came under renewed assault in 2013 as the government lashed out at media targets probing its ineffectual war against terrorism and multiple scandals involving high-level public corruption. Open criticism of government policies and practices are tolerated to a certain degree of comfort with CSOs being aware of their rights to freedom of expression.

### Analysis of findings

Nigeria has ratified the International Covenant on Civil and Political Rights (ICCPR) guarantee the right to freedom of expression, which guarantees in its article 19 of the freedom of expression. The Nigerian Constitution adopted on May 29, 1999 and amended in May 2010 enshrines in Chapter IV of the Constitution fundamental rights, including the freedoms of association and assembly. Section 39 guarantees the right to receive and impart information. Section 40 guarantees the right to peaceful assembly and association. Section 45 permits these rights to be restricted in the interests of defence, public safety, public order, public morality or public health or to protect the rights or freedom of others. The Constitution also guarantees freedoms of expressions and of the press.

Section 39 (1) specifically states that “every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference”. According to statistics released by a market research and statistics specialist, digitXplus, 62.4 million Nigerians had access to the internet in 2013.

There is however a threat to the internet freedom enjoyed by Nigerians through monitoring and surveillance of the government. The Federal Government of Nigeria is alleged to have awarded a \$40 million internet surveillance contract. Nigeria has ratified the following key international agreements/treaties:

<b>Treaty</b>	<b>Year Ratified</b>
International Convention on Civil and Political Rights (ICCPR)	1993
International Covenant on Economic, Social, and Cultural Rights (ICESCR)	1993
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	1967
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	1984
Optional Protocol to the Convention on the Elimination of Discrimination Against Women	2004
Convention on the Rights of the Child (CRC)	1991
Convention on the Rights of Persons with Disabilities (CRPD)	2010

**Culled from, Nigeria: Making a case for internet freedom published by Paradigm Initiative Nigeria.**

On 25 April 2013, a Nigerian online newspaper, Premium Times, reported that the Nigerian government had signed \$40 million contract with Israel-based Elbit Systems to monitor internet communication in Nigeria. Provisions in Nigeria's 2013 budget proposal setting aside \$61.9 million for a "Wise Intelligence Network Harvest Analyzer System", among others, also confirms government's intention to commence Internet monitoring and surveillance. Nigeria was shown to be among the latest set of countries to have joined the league of 36 nations that have an active Finfisher Command and Control servers. Finfisher, as described by the distributing company, has but one purpose to help governments with Information Technology intrusion and remote monitoring solutions including spying on the private Internet activity of their citizens.

Recently, the Nigerian Communications Commission also released the draft Lawful Interception of Communications Regulations. The draft has been met with stern criticism from civil society and Nigerian ICT journalists who have also described it as an attempt to retroactively jury-rig a regulatory framework around surveillance activity via secondary legislation, which is not subject to the scrutiny of the National Assembly.<sup>18</sup>

There is growing concern that the current course of action by the Nigerian government will restrict civil society organizations and journalists that are critical of government policies and by extension vocal opposition citizens who wish to freely express their opinion, which will be seen as an enemy of the administration. This is a potential barrier to the ability of CSOs to openly express their opinions particularly on matters critical of government policies. Invariably this act will lead to self-censorship on the part of citizens, journalists and CSOs.

In section 392 of the Penal Code, "whoever defames another shall be punished with imprisonment for a term which may extend to 2 years or with fine or with both. Section 375 of Criminal Code provides that any person who publishes any defamatory matter is guilty and liable for imprisonment for one year, and any person who publishes any defamatory matters knowing it to be false is liable to imprisonment for two years.

Under the Nigeria Criminal Law, sedition is defined under section 50 (1) of the Criminal Code (applicable to southern 14, geris) defines a seditious publication as a publication having a seditious intention. And section 50 (2) defines seditious intention as an intention:

- (a). to bring in hatred or contempt or to excite disaffection against the person of the Head of the Federal Government, the Governor of a State, or the Government or Constitution of Nigeria or a State as by law established or against the administration of justice in Nigeria or,
- (b). to excite Nigerians to attempt to power the alteration, after wise than by lawfully means, or any other matter in Nigeria as by law established, or
- (c). to raise discontentment or disaffection among the inhabitants of Nigeria, or
- (d). to promote feelings of ill-will and hostility between different classes of the population of Nigeria.

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<sup>18</sup>Nigeria: Making A Case For Enduring Internet Freedom: <https://www.pinigeria.org/download/pinbrief001.pdf>. Information accessed on 28th April 2015

A resounding response from the focus group discussions and interviews confirmed that open criticism of government policies and practices are tolerated to a certain degree. “Freedom of expression is available but what happens after the expression is what cannot be guaranteed<sup>19</sup> as was stated by an interviewee. During the military era, Nigeria had a history of arresting and killing those openly critical of government policies however this has not been the case since the democratic era started 16 years ago. Some journalists have been subject to harassment by state agents, certain state governments have been known to attempt to pressure and harass some journalists. In such cases journalists have the right to challenge the government in court.

For example, as reported in the Freedom of the Press 2014 report published by Freedom House, in October 2012, a high court ruled that police had violated the fundamental human rights of Desmond Utomwen, a correspondent for *The News* magazine and the daily *PM News*, when they assaulted and detained him as he attempted to cover a peaceful protest outside a private bank in Abuja in 2009. The court awarded Utomwen 100 million naira (\$638,000), the largest legal settlement in any Nigerian case involving a journalist.

What this assessment has not been able to ascertain is how informed individuals are when it comes to understanding their rights to expression. Focus group participants stated that the political culture does not openly support these rights fully though they are not suppressed.

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<sup>19</sup>Interview with an executive director in Lagos, 22 February 2015

**Assessment Matrix**

<b>Dimension: Expression</b>	<b>Factual Question</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
	What laws affect a CSO’s ability to freely express their opinions? What rights are guaranteed under the existing legal framework, including the constitution, with respect to expression, including access to the Internet?	Green		
	Which international treaties have been ratified that affect the ability to publicly express oneself? What treaties have been ratified that affect the right to access the Internet?	Green		
	What laws and/or regulations regulate the content of expression? What restrictions are placed on this content (i.e., restrictions for national security, “fighting words”, commercial speech, and obscenity)?	Green		
	Are there time, place and manner restrictions placed on expression?		Yellow	
	What legal barriers, if any, hinder a CSO’s ability to openly express its opinions, particularly on matters critical of government policies?	Green		
	Are there draft laws or regulations that, if adopted, would restrict – or, alternatively, ease – CSOs’ freedom of expression? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.			Red
	What non-legal barriers hinder a CSO’s ability to openly express its opinions?	Green		
	Is open criticism of government policies and practices tolerated? What, historically, has been the reaction of the government to such open criticism?		Yellow	
	Are individuals and CSOs aware of their rights with respect to expression? Does the political culture openly support these rights? Or are they actively suppressed regardless of legal protections?		Yellow	

## **VII. Peaceful Assembly**

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### **Overview**

Since coming into force in 1990, the Public Order Act has been the subject of litigation, several sections of the Public Order Act being rejected as invalid by the Court of Appeal ; the Court’s decision, however, has not yet been translated into legislative changes. The Same Sex Marriage Prohibition Act, 2014 signed into law by President Jonathan bans the sustenance, processions and meetings of LGTBI clubs and societies in Nigeria. Notification for licenses when planning protests is no longer required. Should event organizers notify the police of their event, it is solely for the purpose of arranging police protection. Unlawful possession of offensive weapons and missiles during protests is an offence subject to 12 months imprisonment. Although the government cannot be clearly linked directly; they have often been involved in what looks like government-led violence or aggression against peaceful demonstrators, activists and/or strikers when actions of the police and other law enforcement agencies are critically analysed in such instances and which can be traced to the political interest of the government in power.

### **Analysis of findings**

The 1990 Public Order Act provides the police powers to regulate and stop assemblies, meetings and processions. From time to time the Nigerian police have attempted to use its powers under this Act to restrict the right of Nigerians to hold public meetings and assemblies however with the constitutional guarantees of freedom of association and assembly the powers of the police in this regards have been successfully challenged in courts. The Public Order Act defines an assembly to be “a meeting of five or more persons” and a public meeting to “include any assembly which the public or any section thereof is permitted to attend, whether on payment or otherwise, including any assembly in a place of public resort for the propagation of any religion or belief whatsoever, of a religious or anti-religious nature but, notwithstanding any other provision of this act, does not include:

- a) Any regular religious service conducted in a mosque, church or any building or other structure customarily used for lawful worship of any description;
- b) Any charitable, social or sporting gatherings;
- c) Any meeting convened by a department of any government in the Federation or any other body established by law for its own purposes; or
- d) Any lawful public entertainment”.

Whereas section 40 of the Nigerian Constitution guarantees the right to peaceful assembly and association, section 45 of the same Constitution permits these rights to be restricted in the interests of defence, public safety, public order, public morality or public health or to protect the rights or freedom of others.

Since coming into force in 1990, the Public Order Act has been the subject of litigation. In 2007, the Court of Appeal rejected several sections of the Public Order Act as invalid; the Court’s decision, however, has not yet been reflected in legislative changes.



Additionally, the 2014 Same Sex Marriage Prohibition Act, signed into law by President Jonathan, bans the sustenance, processions and meetings of LGBTI clubs and societies in Nigeria.

Before the Court of Appeal quashed some section in the Public Order act, CSOs planning a strike or protest, according to Section 2 of the Public Order Act have to apply for a licence. This application is addressed the Governor, and should be done not less than 48 hours prior to the event and “if such Governor is satisfied that the assembly, meeting or procession is not likely to cause a breach of peace, he shall direct any superior police officer to issue a license, not less than 24 hours thereto, specifying the name of the licensee and defining conditions on which the assembly, meeting or procession is permitted to take place; and if he is not satisfied, he shall convey his refusal in like manner to the applicant within the time hereinbefore stipulated” however such licence or permit is no longer needed.

In the lead judgment delivered by Justice Adekeye of the Court Appeal in 2007, the Honourable Judge held: *“The Public Order Act should be promulgated to compliment Sections 39 and 40 of the Constitution in context and not to stifle or cripple it. A rally or placard carrying demonstration has become a form of expression of views on current issues affecting government and the governed in a sovereign state. It is a trend recognized and deeply entrenched in the system of governance in civilized countries – it will not only be primitive but also retrogressive if Nigeria continues to require a pass to hold a rally. We must borrow a leaf from those who have trekked the rugged path of democracy and are now reaping the dividend of their experience.”*<sup>20</sup>

In his contribution Mohammed JCA (Justice of the Court of Appeal) said:

*“In present day Nigeria, clearly a Police Permit has outlived its usefulness. Certainly in a democracy, it is the right of citizens to conduct peaceful processions, rallies or demonstrations without seeking and obtaining permission from anybody. It is a right guaranteed by the 1999 Constitution and any law that attempts to curtail such right is null and void and of no consequence.”*<sup>21</sup>

Given the judgments of the Court of Appeal cited above, notification is no longer required. Event organizers can still notify the police for the purpose of arranging police protection. The Act is silent on the time, place and manner that individuals or groups are allowed to assemble, strike, protests or otherwise publicly (and peacefully) express their views. Section 1 of the Public Order Act empowers the State Governor to prescribe the route by which and the times at which any procession may pass. This section has not been contended in any court and is therefore one of the surviving sections of the Act.

The Act in Section 8 makes provisions for dealing with unlawful possession of offensive weapons and missiles during assemblies and public gatherings. Such person will be guilty of an offence and subjected to imprisonment for 12 months without the option of a fine. In practice, as gathered from one-on-one interviews and focus group discussions, aggressive demonstrators are either tear-gassed or shot at using live or rubber bullets in order to disperse or arrest them, subject to the scale of the protest. When arrested they are sometimes beaten and subjected to detention without trial within the stipulated 24 hours of the law.

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<sup>20</sup>NGO Law Monitor published by the International Council for Not-for-Proft Law

<sup>21</sup>NGO Law Monitor published by the International Council for Not-for-Proft Law

During focus group discussions, a participant narrated his ordeal during the January 2012 fuel subsidy protest in Ojota, Lagos State. The participant explained how the police and soldiers beat protesters with force, arrested and kept protesters in detention for more than 24 hours, before they were set free on bail. It took the intervention of the Nigerian Bar Association for those arrested to be released.

**Case Study: #BringBackOurGirls Protests(ICNL's NGO Law Monitor: Nigeria):**

Two weeks after the abduction by Boko Haram of more than 270 schoolgirls from the Federal Government Girls College at Chibok in Borno State (which with neighbouring Yobe and Adamawa States in northeastern Nigeria has been under a State of Emergency since May 2013) on the night of 14 April, 2014, some concerned citizens began to gather daily at 3pm at the Unity Fountain in Abuja to express their concern at the apparent indifference of the authorities to the fate of the girls and to demand action by the government.

Under the general appellation 'Women for Peace and Justice' and the twitter slogan/hashtag #BringBackOurGirls, the campaign spread across Nigeria with marches and demonstrations in several major Nigerian cities, but with particular focus at the Unity Fountain. Despite complaints from the Presidency that the protests were sponsored by the opposition APC party in a plot to bring down the Jonathan administration, the National Police Force (NPF) generally facilitated the operations of the #BringBackOurGirls marchers. Organizers informed the authorities of their intentions to hold rallies, and the NPF provided logistical support, including diverting traffic where required.

Nonetheless, on 28 May, 2014 "thugs" who were rumoured to be sponsored by the government attacked protesters, smashing their chairs and snatching their bags and mobile phone handsets. There was not appropriate police intervention to restrain or arrest the attackers. The rumours were that the thugs received 3,000 naira (approximately \$18.50) each and arrived in government buses, which, in addition to the lack of police response to their aggression and the wife of the President's orders to arrest leading protesters, is why the thugs are seen as being government-sponsored. The thugs operated under separate hashtag #ReleaseOurGirls, which is a name intended to be directed at Boko Haram, who kidnapped the schoolgirls, rather than the government for its perceived inaction. Some of thugs later admitted to having been paid 3,000 naira after meeting a team of Ministers and Special Advisers to the President, and said that they were transported to the Unity Foundation to replace the #BringBackOurGirls protesters.

Meanwhile, in a program broadcast live on the Nigerian Television Authority on 27 May, a participant in a panel discussion said, "Mr. President, Bring Back Our Girls," to which the government spokespersons on the panel responded by shouting her down and insisting "It is RELEASE Our Girls," and accused her of "being APC". The Minister of Information later alleged that 90% of the #BringBackOurGirls protesters were APC members. On 2 June, the Commissioner of Police for the Federal Capital Territory (FCT) of Abuja, CP Joseph Mbu, issued a statement in which he declared that all protests connected with the abducted Chibok schoolgirls were banned with immediate effect. Following strong condemnation of this attempt to restrict the right to freedom of assembly, the Inspector-General of Police stated that Mbu's statement was merely advisory considering the security challenges in the country, and that no ban had been issued. However, the #BringBackOurGirls protesters challenged CP Mbu's statement in court, and on 4 June, the High Court of the FCT ruled that the NPF had no power to ban rallies and protests.

Though the Government cannot be directly linked, they have often been involved in what looks like government-led violence or aggression against peaceful demonstrators, activists and/or strikers. To some extent groups who gather to openly criticize the government through protests, strikes or other forms of peaceful demonstrations have been tolerated. The government has in some cases also used the excuse of security to clamp down on protesters as was the case of the protest on the removal of fuel subsidy in January 2012.

Initially, police protection was available to protesters. However - as the protest gathered nationwide momentum, the police withdrew its protection under the guise that there were intelligence reports indicating plans by Boko Haram to hijack the protests in order to bomb more cities; hence the police and armed forces resorted to a show of force.

**Assessment Matrix**

<b>Dimension:</b>	<b>Factual Questions</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
<b>Peaceful Assembly</b>	What laws address the rights to peaceful assembly, including domestic legislation/regulations and international treaties to which the country is a signatory?			
	Are there limits placed on who can assemble? Are groups with certain agendas or orientations forbidden from assembling?			
	Are individuals or CSOs planning a strike/protest required to seek permission or notify the government in advance of the strike/protest?			
	Are there limits on the time, place and manner that individuals or groups can assemble strike, protest or otherwise publicly (and peacefully) express their views?			
	How are aggressive/violent demonstrators dealt with in the law and in practice?			
	Are there draft laws or regulations that, if adopted, would restrict – or, alternatively, ease – individuals and/or CSOs right to peacefully assemble? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.			
	<b>Perception Questions</b>			
	Is there a history of government-led violence or aggression against peaceful demonstrators, activists and/or strikers?			
	In practice, are groups who gather to openly criticize the government through protest, strike or other form of peaceful demonstration tolerated?			

## VIII. Government CSO-Relations

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### Overview

In the last few decades the relationship between the state and civil society has been turbulent. With the advent of democracy in 1999 and till date, CSOs are only permitted to engage in the political (electoral) process by monitoring the outcomes of elections as electoral observers and are prohibited from making any donation or gift to a political party or from making any gift or donation for any political purpose. Provided activities are carried out lawfully, there are no conditions, legal or non-legal barriers for doing advocacy work in Nigeria. It should be noted that CSO representatives sit on some government committees as part of requirements by law, although they have not succeeded in promoting cooperation and communication between government and civil society. The space for public consultation on government policies since Nigeria's return to democracy has at most times been externally defined and monitored by donors and multilateral organizations. There is no regular communication between CSOs and the government making full transparency and accountability for development priorities, strategies, plans and actions by government difficult. While civil society might be idealized as a spontaneous and independent movement, sometimes CSOs could be characterized as dependent on government for legal structure and recognition.

### Analysis of findings

In the last few decades the relationship between the state and civil society has been turbulent. With long years of military rule ending in 1999, the return to democracy being enjoyed in Nigeria now was fought for by civil society with human rights CSOs in the vanguard against the military dictatorship in Nigeria. During the military era, human rights CSOs faced series of crackdowns while legal requirements and procedures for the registration of CSOs were toughened. The relationship between CSOs and government started on this foundation.

With the advent of democracy in 1999 and till date, CSOs are only permitted to engage in the political (electoral) process by monitoring the outcomes of elections as electoral observers and are prohibited from making any donation or gift to a political party or from making any gift or donation for any political purpose.<sup>22</sup> CSOs by provision of this law are expected to be non-partisan and are not allowed to nominate or endorse candidates for public office or oppose political parties/candidates.

CSOs are by a large extent allowed to participate in public policy activities and are allowed to advocate (campaign) and lobby for legislation. Provided activities are carried out lawfully, there are no conditions, legal or non-legal barriers for doing advocacy work in Nigeria. There are at present no institutionalized opportunities for CSOs to participate in the decision making process although there are open hearings, consultations and multi-stakeholder working groups which are at best tokenistic.

During the Obasanjo administration from 1999 to 2007, there was an institutionalized process for consulting CSOs, in the form of the Office of the Special Adviser to the President on CSOs. The Office has since 2007 ceased to exist.

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<sup>22</sup>Section 38 (2) of CAMA

It should be noted that CSO representatives sit on some government committees as part of requirements by law, although they have not succeeded in promoting cooperation and communication between the government and civil society. This can be partly attributed to the fact that appointment into such committees is done by government and not by civil society themselves hence whoever is appointed often has issues of credibility with civil society. The failure of civil society to hold whoever is appointed by the government to represent the sector accountable and to use such platforms for engagement is another challenge.

Proposals in the National Conference report submitted to President Jonathan on 21 August 2014 recommended the enactment of a “civil society consultation act” to inter alia<sup>23</sup>:

1. Formalize some level of civic power within the three tiers of government in Nigeria;
2. Strengthen the link between citizen rights to participate in governance and actual participation itself;
3. Mandate that government put in place structures and programs for consulting and dialoguing with citizen organizations;
4. Define the level of civil society representation and participation in public regulatory bodies;
5. Provide in clear terms the way in which government must involve civil society in drawing up the budget and implementing it;
6. Provide for an annual General Assembly between government and civil society or an annual National Conference between civil society and government;
7. Provide for Town Hall Meetings between civil society and Chairmen of Local Councils; and
8. Provide for periodic evaluation of both official and unofficial spaces of citizen participation in governance. This will be with a view of reinforcing both models and getting the best out of them.

President Jonathan inaugurated the National Conference on March 17, 2014 with Hon. Justice Idris Legbo Kutigi as Chairman, Professor A. Bolaji Akinyemi as Deputy Chairman and Dr. (Mrs.) Valerie-Janette Azinge as Secretary. The President described it ‘as a historic National Conference which promises to be another significant landmark in our efforts to strengthen national unity and consolidate democratic governance in Nigeria’<sup>24</sup>.

The proposals submitted in the National Conference report which will require legislation. With President Jonathan on his way out and the instalment of a new government under President Muhammadu Buhari since May 2015, civil society is waiting to see what will become of these proposals since All Progressives Congress - President Buhari’s party - () did not support the convocation of the National Conference.

There is limited space available for CSO participation in the formulation of policies of agencies of the government that affect the livelihoods of citizens. . These limited spaces are subject to participation of CSOs at government organized workshops and conferences. It could also be said that the relationship between CSOs and the state is always in a state of flux, ranging from cooperative to conflicting to nonexistent, depending on the context and issues involved. The relationship has been most antagonistic at times when the government has lacked legitimacy.

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<sup>23</sup>NGO Law Monitor published by the International Council for Not-for-Profit Law

<sup>24</sup>Presidential address during the inauguration of the 2014 National Conference on 17 March 2014

Even the space for public consultation on government policies since Nigeria's return to democracy has often been externally defined and monitored by donors and multilateral organizations.

The civil society -rapid assessment index (CSI-RA) conducted in Nigeria in 2013 asked CSOs how they would assess CSO relations with government in general. Comments included that "the government tried to shield information from CSOs to prevent them playing a watchdog role". There was also more understanding and collaboration compared to the past antagonistic relationships, although others characterized the relationship as still poor, and some felt that CSOs' strategies should also be called into question.

There are more interactions between CSOs and the government at the federal level, than there are at the state and local level as confirmed from our interviews with civil society actors. This suggests a need to prioritize the development of more constructive spaces at these different levels for participation and engagement between civil society and government in the areas of policy development, implementation and monitoring and evaluation.

There is no regular communication between CSOs and the government, making full transparency and accountability for development priorities, strategies, plans and actions by government difficult. Where possible the opinions of CSOs are taken into account by the Executive and National Assembly when drafting legislations, such consultations are held during public hearings which in most cases are not timely.

During discussions on the European Union's Economic Partnership Agreements (EPA), civil society organisations were consulted by the Federal Government of Nigeria. At that meeting civil society expressed concerns on EPA and their concerns were taken on board, presented to the President who refused to sign on to EPA.

The only mechanism available to CSOs to dispute or appeal certain government decisions at the central or local level will be through the courts. The Socio-Economic Rights & Accountability Project (SERAP), a Nigerian NGO, has dragged the Federal Government of Nigeria to court on issues of corruption and welfare of internally displaced persons amongst others. The reliability and effectiveness of this has been tested in the few instances available and has shown to be a genuine process for CSOs to voice their dissent to particular government decisions. Though very few NGOs have used the court to voice their dissent, in practice we have seen this producing fairer results.

Mixed response from respondents in interviews and focus group discussions suggest a lack of consensus on how the government perceives the role of civil society. Sometimes CSOs are viewed as a source of legitimacy and stability for the government, while other times perceived as a repository of resistance against the government and a threat to its agenda. Civil society is often described both as developing in partnership with the government and as substituting for the failings of the government. While civil society might be idealised as a spontaneous and independent movement, sometimes CSOs could be characterised as dependent on government for legal structure and recognition..

Assessing the capacity of CSOs to participate in a broad range of public policy initiatives and activities, focus group discussion participants rated the capacity of CSOs as low, though they are not restricted by non-legal barriers to a narrow range of circumscribed activities.

They however agreed that there have been significant changes in the relation between civil society and government in the last two years especially in the areas of NGO registration.

CSOs are of the opinion that registration is now decentralised (the Corporate Affairs Commission now has its offices spread across the country) as much as possible and that the government is starting to understand the role of CSOs as much as possible even though government engages with CSOs only when convenient. It is yet to see how global events or processes in the last two years have affected state-civil society relations at the national level.

Processes such as the aid effectiveness debate are not popular amongst CSOs nor within the government. “This may be connected with the fact that not many Nigerian CSOs are aware of the debate and the few that do, do not necessarily understand its import to the work of CSOs and its relationship with the government”<sup>25</sup>.

Relationships between CSOs and the government are not as strong as many in CSOs would like to see. While there is a general increase in the level of understanding and collaboration, mutual suspicion and distrust still exists. There is a need for both sides to revise their approaches and build mutual understanding and trust.

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<sup>25</sup>Interview with a CSO Network in Lagos, 22 February 2015



## Assessment Matrix

<b>Dimension</b>	<b>Factual Questions</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
<b>Government CSO-Relations</b>	To what extent are CSOs permitted to engage in the political (electoral) process? E.g., are they permitted to nominate candidates for public office? Support or oppose political parties/candidates? Fundraise for political parties/candidates? If so, under which conditions?			
	To what extent are CSOs allowed to participate in public policy activities? Are they allowed to advocate (campaign) and lobby for legislation? If so, under which conditions?			
	What are legal / institutionalized opportunities for CSOs to participate in the decision-making process? E.g., are there open hearings, consultations, multi-stakeholder working groups?			
	To what extent are there compacts, liaison officers, committees, or other similar mechanisms to promote cooperation and communication between government and civil society?			
	Are there draft laws or regulations that, if adopted, would inhibit – or, alternatively, ease – government-CSO relations? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands			
	In general, what is the nature of the relationship between the Government and CSOs? Contentious? Harmonious? Somewhere in the middle?			
	Is there regular communication between CSOs and the Government? How can the quality of the dialogue between the Government and CSOs be characterized?			
	Are the opinions of CSOs taken into account when drafting legislation, or more generally, anywhere in the legislative process?			
	Are there timely consultations with civil society organisations in order for them to impact government decisions?			
Is there full transparency and accountability for development priorities, strategies, plans and actions by government?				

	Do CSOs have a mechanism to dispute or appeal certain government decisions at the central or local level? Is this mechanism a reliable, genuine and effective way for CSOs to voice their dissent to particular government decisions? In practice, has this mechanism been successfully utilized by CSOs to produce a fairer result?			
	Does the Government view CSOs as partners and allies in their own work, or as potential threats to their agenda?			
	Are CSOs capable of participating in a broad range of public policy initiatives and activities, or are they restricted by non-legal barriers to a narrow range of circumscribed activities?			
	Have there been any significant changes in relations between civil society and the government in your country in the last two years? If so, please describe these.			
	Have any global events or processes in the past two years affected state-civil society relations at the national level? If so, how? (i.e. The Aid effectiveness debate, etc.)			

## **IX. Optional Dimensions**

### **X. Taxation**

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#### **Overview**

All CSOs are required to file annual financial returns to Federal Inland Revenue Service (FIRS) 18 months from date of incorporation or not later than 6 months after the year end of its first accounting period. CSOs are subject to FIRS periodic monitoring and audits if there are suspicions of indulgence in business activities as going against the objectives for which the CSO was established. Within the context of the tax laws, earned income of a CSO can be the income accrued via grants, subscriptions, donations, gifts, endowments etc. and not from commercial activities or investment of any kind. Goods purchased for the use in humanitarian (donor funded) projects are zero-rated; however, some incomes are not completely exempted from tax. Local taxes, fees or charges are applicable to CSOs like every individual and company. All CSOs are categorized as “non-governmental organizations”- a term used by the administrators for administrative purposes; hence they stand to enjoy various tax relief’s designed by the provisions of the tax laws.

#### **Analysis of findings**

All CSOs are required to file annual financial returns to FIRS, 18 months from date of incorporation or not later than 6 months after the year end of its first accounting period, whichever is earlier and 6 months after the year end for established organisations. This is detailed in Section 55 (1) & (2) of Company Income Tax Act (CITA). They are also expected to file their performance activity reports.

CSOs are subject to FIRS periodic monitoring and audits of indulgence in commercial activities are suspected - going against the objectives for which the CSO was established. By FIRS audit standard, every taxable entity is expected to be tax audited at regular interval.

CSOs need to make the following information publicly available:

- a. Accounting Year
- b. Bank name
- c. Constitution
- d. Charter
- e. Articles of Incorporation
- f. Business address
- g. All information required in an audited Account in line with the Financial Reporting Council standards. These include; Statement of income and expenditure, Assets, payroll record among others.

The above listing is not exhaustible depending on the CSOs activities.

Those who engage in philanthropy by provisions of Companies and Allied Matters Act (CAMA), 1990 are charity organisations. Excess of their income (derived from grants, subscriptions, donations, gifts, endowments etc.) over expenditure are exempted from Companies Income Tax 2007.

Within the context of the tax laws, earned income of a CSO is the income accrued via grants, subscriptions, donations, gifts, endowments etc. and not from commercial activities or investment of any kind.

In line with Section 23 (C) of CITA, “the profits of any company engaged in ecclesiastical, charitable or educational activities of a public character **in so far as such profits are not derived from trade or business** carried on by such company” are exempted from paying companies income tax.

However, CSOs are not exempted from all taxes. Individual employees pay personal income tax via the PAYE (Pay as You Earn) mechanism and Value Added Tax (VAT) on consumption – although CSOs are allowed to claim refund on VAT after due certification by FIRS.

Goods purchased for use in humanitarian (donor funded) projects are zero-rated. This means that CSOs are subject to VAT but allowed by tax laws to claim refund from FIRS if certified that the consumption is for sole purpose of the CSOs.

Local taxes, fees or charges are applicable to CSOs just as every individual and company. Although tax affairs of all organizations registered under Part C of CAMA are administered by FIRS, as such, they are governed by federal legislation. However, the personal income tax is a function of residence of individuals and so the tax is paid to the State Board of Internal Revenue of the State where staff of the CSO officially resides. Withholding tax<sup>26</sup> on rent and consultancy services awarded to individuals is also remitted to the State as opposed to the Federal State.

While the section referenced above exempts CSOs from paying taxes on the income derived from their primary registered operation, it also clearly states that if the CSO engages in any taxable activity during the period of the report, it is liable to paying income tax. The income generated from such economic activity is regarded and known as Unrelated Business Income.

As for the tax and regulatory requirements for CSOs, the CSO must first isolate the incomes realized from such economic activities from total income, and subject it to Companies Income Tax as well as Education Tax, a tax of 2% of assessable profits as is levied on all companies incorporated in Nigeria.

The Education Tax is viewed as a social obligation placed on all companies in ensuring that they contribute their own quota in developing educational facilities in the country. All CSOs are categorised as “non-governmental organisations” by FIRS; and stand as such to enjoy various tax relief’s designed by the provisions of the tax laws.

The National Assembly is charged with the responsibility of making laws for the country while the Federal Inland Revenue Service is the agency in charge of implementation and enforcement of the tax laws. At present, there are no draft laws or regulations concerning CSOs brought to the notice of FIRS.

There is no record of taxation being used by the state as a form of repression of CSO practices neither is the financial sustainability of CSOs affected by taxes, duties and/or fees.

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<sup>26</sup>Withholding tax is a government requirement for the payer of an item of income to withhold or deduct tax from the payment, and pay that tax to the government.

Focus group discussion participants were of the opinion that the current tax legislation facilitates CSOs financial sustainability. Additionally, the majority of CSOs (67%) - according to the 2013 CSI-RA for Nigeria –do not pay tax (PAYE), and 53.3% do not understand the tax regime for CSOs in Nigeria. The tax regulations for CSOs are not enforced thoroughly as the government has a low enforcement capacity.

**Assessment Matrix**

<b>Taxation (Optional Dimension)</b>	<b>Factual Question</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
	What taxes are imposed on the income of CSOs? Do they affect their earned income, grants, investments, or purchased goods and services?			
	Are CSOs subject to VAT and customs taxes?			
	Are CSOs subject to local taxes, fees or charges, in addition to federal taxes? Are any other level of taxes imposed (regional or state taxes, for example)?			
	What are the tax and regulatory requirements on CSOs that engage in economic activities?			
	Are tax exemptions granted to all CSOs? Are only certain categories of CSOs granted tax exemptions?			
	Are there draft laws or regulations that, if adopted, would affect the taxation of CSOs? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.			
	Have taxes been used by the state as a form of repression of CSOs practices? If yes, how so?			
	Is CSOs financial sustainability affected by taxes, duties and/or fees? Does tax legislation facilitate or impede CSOs in achieving sustainability in their finances?			
	To what extent are the tax laws/ regulations enforced? Are taxes regularly paid? What is the capacity of the government to enforce tax payments?			

## Conclusion

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The findings in this report clearly demonstrate that the regulatory environment for CSOs in Nigeria is relatively enabling. The environment within which CSOs operate remains relatively free from both legal and non-legal restrictions when compared with other African countries and across the world. This however does not imply that there are no challenges or changes to be made.

The report has given substance to some of the challenges in the formation and operation of CSOs, internet freedom, peaceful assembly, capacity of CSOs, taxation, and CSO-government relations amongst others. The nature of these challenges raises a number of tough questions. How do you address a problem where there is no adequate data? How do you appeal to citizens to give to CSOs when there are no incentives? On what basis does one appeal to government for leniency on tax avoidance by CSOs, since CSOs should know better? What role can or should civil society coalitions and international organizations play?

In the light of our findings, this report makes a number of recommendations:

### **Making CAMA and other laws more responsive to CSO formation and governance**

The top priority of Nigerian CSOs must be to make CAMA and other laws more responsive to the registration need of CSOs. CAMA must be reviewed with a view to including provisions in the Act on a number of procedural safeguards to include:

- A reasonable, fixed time period for governmental review of registration applications;
- Where possible a rule of presumptive registration if the government fails to act within the fixed time period;
- Clear, objective grounds for denial of registration ;
- The requirement of written notice to the applicant of the decision or denial;
- The right to appeal the denial of registration at an independent court;
- Prescription of agreed internal governance rules and requirements by both CSOs and government for internal accountability and responsibility, hereby raising public trust in the transparency and accountability of CSOs.

A comprehensive legal framework for CSOs should be developed through an enabling CSO law that complies with international standards and good regulatory practices.

### **Transparency as a shared goal**

The transparency and accountability of CSOs should, ideally, be a shared goal of government and CSOs, donors and beneficiaries of CSOS. The law has a role to play in setting standards of accountability and transparency without restricting the recognized rights of CSOs. CSOs must be encouraged to comply with reporting requirements by the Corporate Affairs Commission and the Federal Inland Revenue Service. An enabling legal environment framework in Nigeria should be developed to encourage voluntary self-regulation which will set and follow higher standards of conduct and performance. Common ground amongst a cross-section of CSOs will need to be reached in order to have stronger dialogue with government. There is the need to strengthen the capacity of CSOs to self-regulate themselves rather than for

the government to have an extended oversight role where it might have to spend critical resources.

### **Initiate a legal reform process**

With several Bills and recommendations on CSO regulation in Nigeria, it is important for a joint cross-sector advisory/working group to be set up under the auspices of the National Planning Commission to facilitate and evolve the institutional framework in which CSOs function in Nigeria. International actors will play a critical role in supplying technical assistance to the process and in coordinating input from the donor community.

### **Developing capacity**

The capacity of CSOs needs to be built on awareness raising techniques, use of technologies, fundraising, media and protection of civic space through law reforms. The legal, organisational and advocacy capacities of local leaders and organisations should be built as this is fundamental to strengthening the environment for civic activity.



## **Annex 1: List Expert Advisory Panel (EAP) Members**

- Dr. Patrick Tolani, Chief Executive Officer, Charity Aid and Development Foundation;
- Victor Nosegbe, Programme Manager, Inner City Mission for Children;
- Hephzibah Olaleye, Programme Manager, The Real Woman Foundation;
- UfuomaAshogbon, Executive Director, Fair Life Africa.

## Annex 2: CSO Registration Requirements

1. Approved and valid availability.
2. Application letter (on letter head) addressed to Registrar General and signed by Secretary and Chairman or Solicitor to the association.
3. Typed application form stating the following:
  - Aims and objectives of the association (enclosure A).
  - Provision for the appointment, and number of Trustee, tenure of Trustees, method of filling vacancies and appointment of auditors (enclosure B).
  - Full names, permanent addresses, occupations, passport photographs and signatures of Trustees (enclosure D).
  - The proposed title of THE INCORPORATED TRUSTEE OF ..... (Enclosure E).
  - Common seal of the association bearing the approved name (enclosure F).
  - Rule for the use and custody of common seal (enclosure G).
  - Special clause i.e. Appendix A to be completed signed and dated by the chairman and secretary.
4. Extract of minute of General Meeting appointing Trustees and adopting the special clause into the constitution.
5. Publication of notices in two (2) newspapers one local and one national.
6. Two printed copies of the constitution.
7. Incorporated Trustees declaration form with passport photograph of each Trustee, signed by them and declared at the High Court or other superior Courts.
8. Payment of the Statutory Fees.

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