

National
Consultation
Report



National Consultation & Input on Nonprofit Regulation: Statutory and Self-Regulation



FOREWORD

There have been lots of debates within and outside the nonprofit sector on regulations. Every year the sector has witnessed increased interest in strengthening and improving regulatory compliance, yet there is the need to find the balance between statutory regulation and self-regulation for the operations of nonprofits.

The questions on the mind of many nonprofit leaders, stakeholders and the general public is; “how do we regulate the activities of nonprofits without restricting their operations? How do we safeguard fundamental principles that ensure access to resources and sustain public trust? Is there a nexus between statutory regulation and self-regulation? How does the nonprofit sector ensure that it stays true to its objectives and appropriately regulates itself? When is self-regulation or statutory regulation most effective?”

The nonprofit sector has the responsibility to set standards of practice and to engage regulators in evolving both statutory and self-regulatory frameworks that are nationally acceptable along global best practices and norms, whilst acknowledging regional peculiarities.

Important values that have served as a foundation for many nonprofits, in recent years, are those around transparency and accountability. In recent years, critical stakeholders from government, private sector, media, academia, and citizens amongst others have challenged the sector’s integrity and its ability to self-regulate without strict regulations from government.

They have argued that with the massive cases of corruption, money laundering and terrorism financing faced by the country including the scale of operations of the nonprofit sector and sheer size of its resources, it is both impossible and possibly illegitimate for the sector to guarantee its own transparency. They argue that the nonprofit sector does not have the right mix of supervision and regulatory environment that can curtail its excesses and vulnerabilities.

In 2016, the 8th Assembly introduced three bills to regulate the civil society sector. These raised concerns amongst citizens and citizen organisations leading to a series of debates (bit.ly/What_We_Heard_NGOBILL) for and against the bills both online and offline including a public hearing (bit.ly/Public_Hearing_ShadowReport) organised by the House of Representatives. This sparked real interest and cautious optimism in nonprofit regulation.

At the same time, we saw fear and heard loud skepticism about the intention of the bills, its proponents, what the commission would do, how it would work and whether or not it would actually improve the regulatory environment for nonprofits in the country. Many wondered why existing regulations have been left unimplemented and unstrengthened as opposed to new forms of regulations.

Sector players are seizing the moment and considering what improvements the nonprofit regulatory environment needs. To achieve these, we have spent the last six months holding online and in-person consultations to hear more (and re-validate what we have heard previously between 2016 and 2018) about what nonprofit organisations think regarding statutory regulation and self-regulation, using the following guiding questions to spark a healthy debate:

1

What new forms of laws would you like to see for civil society?

We spoke to and heard from more than 831 organisations from 36 states. The people who have engaged with us have been from diverse backgrounds.

They include executive directors, program managers, grassroots organizers, finance managers, project officers, volunteers, interns, academics with interest in civil society and everyday people who are interested in or have benefited from the activities of nonprofits.

Their expertise, time, thoughts, questions and concerns have been helpful in developing this report.

We are publishing, today, the final report summarising the comments, thoughts and feedback received to-date from our consultations with the nonprofit community. We have listened and taken onboard all submissions and varying viewpoints as we move to use these suggestions in our work and for the consideration of all stakeholders in developing effective regulations that can ensure the health and accountability of the nonprofit sector.

2

How can we develop a governance code that can drive nonprofit self-regulation in the country?

Some of what we heard include:

- First and foremost, nonprofits across the country are not opposed to regulation, important to them are regulations that ensure that civil society can thrive, maintain and enhance public trust and confidence in the Nigerian nonprofit sector.
- Equally important to the sector are the details on how existing legislation and new ones can strengthen fundamental freedoms such as freedom of association and assembly, fundraising, data protection and right to privacy; cross-border fundraising; taxation; transparency, accountability and oversight; and registration, licensing and permission.
- ***Nonprofits want self-regulatory and statutory regulatory frameworks. They would like to see better coordination amongst existing regulatory agencies and a national code of conduct. This code of conduct should create codes of practice and ethical standards to provide guidance on how nonprofits should operate and generally outline grievance procedures on how entities that violate the codes and standards will be disciplined.***

To be clear: we will not be able to agree with everyone on what an ideal civil society law or code of conduct should look like or how it should be operationalised. This is the beauty of the sector- its diversity and plurality of opinions. We do however believe that the best way to start walking the talk on nonprofit regulations is to focus conversations around a draft statutory regulation and self-regulation organically developed from this report.

We acknowledge that this in itself is a complex and difficult issue- one which requires a lot of patience. It is expected that there will be pushbacks from within and outside civil society; we are expecting to take all views and opinions into consideration and learn from them.

We are aware of the tremendous responsibility we have as a Network to fairly represent the nonprofit sector and that the views expressed in this report may not necessarily capture the thinking of the entire Nigerian nonprofit landscape in terms of reach; however we are confident that it is reflective of the sectors views on regulatory frameworks for nonprofits.

Our task from this consultation was to work with everyone leading a nonprofit (or those with interest) and other critical stakeholders (government, private sector, donors, philanthropists, multilaterals etc.) in building an enabling environment that protects fundamental freedoms associated with our operations, that ensures we thrive while maintaining a high level of public trust in our work across the country.

INTRODUCTION

The Consultation in context

Nonprofit organisations across the country are bringing hope to needy communities and are using evidence from their work to shape public policy. Their operations and activities are also having impact on the economy as they are employers of labour and tax paying entities though their revenues (i.e grants) are tax exempted.

Nonprofits derive their legal status from statutory regulations as incentive, for attracting external funding and tax exemption, however they are not required to formally register if for the most part they do not need these incentives as their work is guaranteed under the freedom of association and assembly principles enshrined in the Nigerian constitution.

In Nigeria the legal framework regulating the formation and operations of civil society organisations is the Part C of the Companies and Allied Matters Act (CAMA) 2004. The Act provides a framework for how civil society organisations are formed, governed and wound up.

The responsibility for nonprofits to be organised, transparent and accountable in their operations is immense. This is exercised through sets of governing documents and policies expected to be enforced by a board or steering committee. Nearly all nonprofits have in place a system for holding itself accountable to its stakeholders.

The effectiveness of this system has been a subject of technical, political and scholarly discourse in recent times.

In the last 8 years nonprofits have come under strong criticism with regards to their accountability and impact given the growing trend of terrorism and the vulnerability of the sector to money laundering and terrorism financing necessitating a series of bills proposed by the National Assembly during the 7th and 8th Assemblies however, these bills met with opposition from the civil society sector leading to their eventual death.

Following a security meeting between the Army and the leadership of the National Assembly, the nonprofit sector was upset again when the House of Representatives in September 2019 resolved to “investigate the activities of nonprofits and also determine their sources of funding¹” while also noting that the NGO Bill may be revisited.

Though these moves are a threat to civic space, in recent years, a few nonprofits have seen the increased legislative interest in nonprofit regulations as an opportunity to engage more meaningfully and to jump start conversations on what an ideal regulatory framework for the sector should be.

While debate on the bills continued amongst all stakeholders specific contents, proposals and pieces of suggested alternatives became controversial, revealing gaps in understanding of the ways of workings of nonprofits and the complex nature of regulating civic space.

¹<https://www.premiumtimesng.com/news/headlines/354099-just-in-nigerian-lawmakers-to-revisit-ngo-regulatory-bill-speaker.html>

The question of how this would be designed, what it would govern as well as its sustainability sits within the broader discussion of whether the sector is effectively regulated as of today, over/under-regulated or should be self-regulated.

There is the need to find answers to these questions and also gauge the pulse of the sector on the issues of statutory regulation and self-regulation.

The issue of money laundering and terrorism financing has underpinned the discussion around transparency and accountability within the activities and operations of nonprofits as it is currently practiced in Nigeria today.

The sector only recently became more aware of the connections between its work, money laundering and terrorism financing when the Nigeria Network of NGOs (NNGO) started engaging and raising awareness on Financial Action Task Force's (FATF) Recommendation 8.

Nonprofits have responded, calling for better regulation and strengthening of existing regulations and corresponding agencies.

Ensure fundamental principles and freedoms around fundraising, data protection and right to privacy; cross-border fundraising; taxation; transparency, accountability and oversight; and registration, licensing and permission are guaranteed and respected.

For example during the public hearing on Bill HB585, the majority of participants attending favoured a self-regulatory framework along with existing regulations for the sector. The sector as a whole however isn't clear on what the self-regulation, decision making structures and enforcement mechanisms would look like.

There have been several proposals suggesting a quasi-regulatory framework- combining both statutory regulation and self-regulatory regulation.

Against this backdrop, since 2017, NNGO started documenting conversations on the nonprofit regulatory framework, and a shadow report developed http://bit.ly/Public_Hearing_ShadowReport and have gone to hold carefully curated online and in-person consultations to gather thoughts, opinions and voices of nonprofit organisations across the country on statutory regulation and self-regulation.

Early feedback gathered between 2017 and 2018 ranged from considered skepticism to cautious optimism, and raised fundamental questions about the purpose, scope, operationalization, and impact of regulations on the sector.

In 2019, the feedback is now more on the optimism side, the question then is what does this optimism mean for nonprofit regulation?

The National Consultation



From across all states of the federation, spectrum and background, the overarching theme remained the same: “effective regulations are a welcome development”.

Using a structure of 2 core questions:

a.) What new forms of laws would you like to see for civil society?

b.) How can we develop a governance code that can drive nonprofit self-regulation in the country? The Network provided the opportunity for nonprofit organisations across the country to share their comments and thoughts on these 2 questions via online (curated Whatsapp Chat, polls, email feedback, moderated discussion boards, Facebook) and in-person consultations conducted during NNNGO workshops in Enugu, Imo, Lagos, Abuja and Kaduna.

These questions were presented as starting points for interested parties and stakeholders to discuss and exchange ideas on nonprofit regulations while offering potential suggestions and promising ideas for developing a draft civil society law and code of conduct for the sector including contributing to the policy development process for nonprofit regulatory frameworks.

NNNGO began convening online consultations on the NGO Bills in February 2017 through telephone consultations reaching 454 organisations. We captured 44 oral submissions by organisations attending the public hearing organised by the House of Representatives on the subject of regulation in December 2017 during the public hearing on Bill HB585 (bit.ly/Public_Hearing_ShadowReport) and began capturing online conversations and debate on the Bill and nonprofit regulation related conversations in March 2018.

From 2019 June, NNNGO launched its official in-person and online consultation process which ran until November, consisting of one-day, 25-84 person workshops in 5 States, 3 days curated Whatsapp group conversation with 153 organisations, feedback were also received through the email nnngo@nnngo.org, moderated discussion boards on the NNNGO website at www.nnngo.org and Facebook @nnngo. 225 organisations from 26 States attended the workshops focused on nonprofit regulations.

Altogether these included people from multiple backgrounds and roles in the nonprofit sector (e.g. executive directors, finance directors, programme managers, interns, volunteers, academics, project officers and others). NNNGO also sought feedback from organisations not on our mailing list through other networks and coalitions.

What new forms of laws do we need in the Civil Society?



“ We have to find a law that helps us to ensure that our relationship with government and its agencies are managed properly in the best interest of nonprofits

“ Laws that help us regulate some of relationships with government

“ We need a body that can manage all the activities of nonprofits so that we will be able to know who is doing what and at what point in time

“ The new law should put in place a body that regulates all NGOs in the country and perhaps make annual appropriation to the agency by that our work will be more effective and transparent through that agency

“ We do not need any law, there is no law that we need that we do not already have. What we need is implementation

“ I agree that we need to amend some certain laws for example those bordering on taxes

“ Let us strengthen the laws we have and actually learn them instead of coming up with new laws every time

“ In Nigeria we do not need any new law... which law again? No we don't need any laws

“ Any new law for the sector needs to take into consideration pensions and labour laws

“ We need laws that supports social entrepreneurship or those that allow nonprofits to also run as an enterprise or company in order to allow for sustainability

“ Can we have our laws reviewed in such a way that it can accommodate nonprofits as paid service delivery consultants to government while also preserving their independence

“ We need looking-forward pieces of legislation that encourage and support CSOs to operate effectively and in a transparent manner

What new forms of laws do we need in the Civil Society?



“ We have to think about how CSOs can make themselves accountable and there has to be some coordination mechanism for this

“ So much has been said about regulating the sector which people feel it's a no-go area because we have to remain the third force where we can engage freely and push for reforms in government. It is also critical that we should also self-regulate so that we can say this is our minimum standard for which we know we will not compromise

“ We need a law or standard on nonprofit overheads, one which specifies a certain amount be given by donors to cover overhead costs

“ A regulation around multiple registrations is needed. It is observed that some people open multiple NGOs (8 in this case)

“ We need regulation that captures ease of registration, relationship between government and civil society transparency

“ The regulation must also ensure that the sector itself becomes accountable and transparent with legitimacy derived from this

“ We are not scared of regulation, in a sane society if all policies are being implemented, nobody will be crying but they don't. I don't know how we want to do it

“ Any new regulation must take into account the size and classification of nonprofits by their activities and operations

“ Our tax regulations are too ambiguous. It needs to be made clear and decentralised

“ We need effective collaboration between government and CSOs for an effective regulatory framework

“ Laws that guarantee CSOs' right to access resources and recognize donations as one of their income sources

“ Financial service providers and other service providers do no limit fundraising activities through their policies and practices

What new forms of laws do we need in the Civil Society?



Any new law must be clear, strictly necessary and proportionate to the interests protected

How do our lottery laws encourage fundraising for the sector

The regulation must also ensure that the sector itself becomes accountable and transparent with legitimacy derived from this

New forms of laws must recognize and protect the right to privacy of CSOs, their donors and beneficiaries

Preferential tax treatment and tax exemptions to a broad range of CSOs must be captured by new laws

Our tax laws must encourage philanthropy by providing meaningful tax benefits for individual and corporate donors along with clear procedures



How can we develop a governance code that can drive nonprofit self-regulation in the country?

“

I agree we need to find a way to self-regulate, for us to have self-regulation it has to be an agreement between all of us that binds us. The only unifying NGO in Nigeria now is NNNGO

“

A code of conduct is good but it has to be backed by legislation, otherwise it won't be impactful

“

I think we should be careful when we say we want to approach the national assembly, the NASS is trying to legislate us and control civic space and the space is shrinking

“

If we say we now want the National Assembly to now have law that regulates the civil society, we are saying the National Assembly should enact the NGO Regulatory Commission

“

A standard that ensures Banks involve CSOs when addressing the risks related to anti-money laundering and countering terrorism financing (AML/CTF) and respect the right of CSOs to access financial services and conduct fundraising

“

I am in support of a peer review mechanism, we should note that legitimacy is earned through membership and membership is supported through legitimacy

“

I have been in many fora where this issue of self-regulation has been raised. I think we should subscribe to a code of conduct

“

Our sector is a difficult sector and we need a common balance and the common balance I think is a code of conduct

“

There should be sanity in the operations of NGOs and sincerity in project management



We need a regulatory requirement platform endorsed by big sector players for ease of compliance




Code of conduct must include data privacy and rights to privacy



Government and CSOs should develop specialized financial channels for CSOs with limited financial access, such as CSOs operating in high-risk areas or during humanitarian crises



Let us agree on the set of requirements, I mean the basic standard that meets present statutory regulations and our code of conduct, then we generate a platform that can access compliance and issue badges. When done we can ask donors through advocacy to ensure that those with the badges are the one being funded



Research into what statutory regulations and self-regulation

In parallel with the consultation process, NNNGO undertook desk research to study the body of knowledge that exists globally on statutory regulations and self-regulation models.

NNNGO's research identified the different relationship between statutory and self-regulatory frameworks then went on to explore their pros and cons including what hybrid models would look like and elements of self-regulation.

This research found that there is no perfect system for regulating the nonprofit sector and that all systems have tradeoffs and require customisation based on operational peculiarities and overall objectives.

In essence, we found that there is no magic wand for evolving an effective regulatory framework that will address all constituencies within the nonprofit family in all conditions hence the need to constantly review and retool the laws on an ongoing basis based on implementation realities and prevailing conditions.

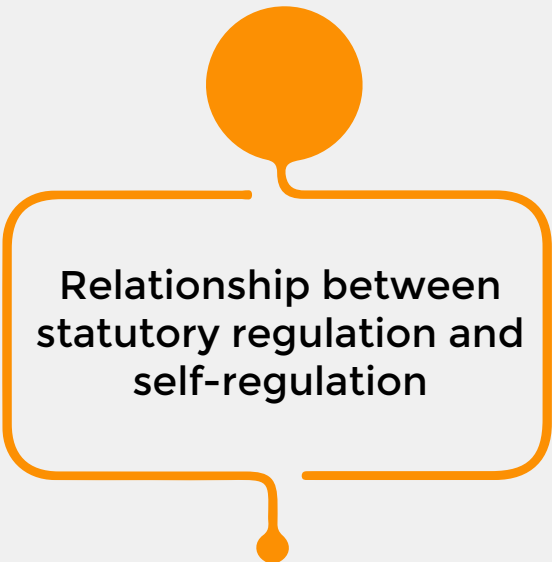


From our research, an enabling environment for nonprofits will be a balanced system of regulation by the state and self-regulations of the sector. While the state can easily regulate registrations, operations and monitor to some extent, the use of resources and governance, ethics, practice and values can better be regulated through self-regulatory systems.

Statutory regulation is the role of the state and involves the enactment of laws by the legislature, executive orders, decrees or administrative rulings by the executive arm of government.

Self-regulation is sector-led and involves a set of standards and processes to ensure compliance with voluntarily agreed standards or codes of practice.

The process of developing the code is independent of the state (government) and subscription to the code is voluntary respecting, the fundamental freedoms around association.



Relationship between statutory regulation and self-regulation


Self-regulation frameworks may include codes of conduct, ethics or practice, accreditation processes, certification processes, information services, working groups and others. Depending on the sector's maturity and interest, self-regulation can follow two approaches:

- a.) "Low entry" schemes and
- b.) Excellence models.

The low entry scheme works by engaging all nonprofits willingly subscribing to the standards or code to comply with flexible minimum standards for transparency and accountability on nonprofit governance, finances, fundraising, organisational integrity, management practices, human resources, gender, diversity, disability, program, emergencies and disaster response, security, sexual abuse, safeguarding, public education and advocacy, in-kind support/material assistance, public policy and others.

The excellence model is more stringent as the name implies, setting higher standards for nonprofits subscribing to it. Usually this model is used in holding organisations that are well-established, adequately funded and prominent to account.

For example, an NGO with a budget or spending of 5million Naira or less will be expected to comply with flexible minimum standards whereas those above this ceiling can be subjected to more stringent measures. Both the low entry scheme and the excellence model can be carried out through compliance mechanisms which may include self-assessments, peer reviews or independent assessments by third parties.



Relationship between statutory regulation and self-regulation



Can either work without the other

Throughout the consultation, self-regulation seemed to be the preferred option amongst civil society organisations and this is consistent with our findings when we explored what the options are across the globe. The question then is, can either work without the other? In answering this question, we considered bodies of work already done by The Philanthropy Centre, European Center for Not-for-Profit Law Stichting (ECNL) and International Center for Not-for-Profit Law (ICNL) and concluded that ***neither (statutory regulation nor self-regulation) works fully on its own.***

We came to this submission after considering the roles and processes involved in evolving and enforcing both statutory regulations and self-regulatory frameworks. For example, while government can register nonprofits and obtain information on how their money is received and spent including determining tax exemptions, it is not able to fully regulate the sector's behavior (practice, ethics and standards), whereas self-regulation focuses on higher standards of ethics and practice.

The process of developing each can only be led independently, however, inputs can be sought from all stakeholders. In this case, statutory regulation remains a government driven process with only the third sector in the driving seat for processes relating to self-regulation.

Although the aim of both the statutory and self-regulatory frameworks centers on ensuring that the sector can: thrive, build public trust, increase transparency and accountability, protect the sector, with the main objective being facilitating and enabling nonprofit activities in the country; either of the frameworks should not unduly constrain, restrain, or prohibit their activities in a way that is damaging to the sector and/or its beneficiaries.

In developing self-regulations, our findings revealed that the process is led by membership networks, coalitions and associations in consultation with their membership. The code or standards when finalised is voluntarily adopted with each organisation publicly stating its adoption on their public documents as a demonstration of their commitment to the agreed-upon values, beliefs and principles. Annually, a report stating how the code or standard has been implemented organisation-wide will be sent to the network or association secretariat which would review it through a select committee and provide comments. A peer review process can also be set up to validate the report.

Findings from our desk review show that the following elements contribute to an effective self-regulation system:

Adequate funding to establish and manage the model

An independent complaints and appeals process, centered around appropriate duty of care.

Clear, easily accessible written standards

Voluntary subscription

Public awareness of the self-regulatory mechanism including “how-to”/ guides on implementing the standards.

Transparency regarding the process especially around adoption, sanctions or penalties.

Enforce mechanism including penalties for non-compliance

An independent regulatory committee or body that is accountable to the regulating entities with clear terms of reference and governance model.

Can we co-regulate?

Our findings threw up this question; if neither can work without the other, can we co-regulate or create a hybrid system? We found that both statutory regulations and self-regulations have their strengths and weaknesses. Statutory regulation may pose a threat when its purpose is to serve only the regulator rather than the interest of the public. The voluntary nature and lack of formal mechanisms for enforcement make the self-regulation system weak.

The different strengths associated with both regulatory mechanisms can complement and strengthen each other. For example, can the enforcement strength of statutory regulations help address the voluntary nature of the self-regulatory framework by making the annual reporting on the code or standard a post registration requirement?

Co-regulation seems to be the paradigm shift that is needed to get nonprofit regulations right once and for all. A model (hybrid) that combines statutory regulation and self-regulation based on the sector's evolution and practice with both government and civil society working out mechanisms for implementation and enforcement as the new normal. The United Kingdom and Australia provide a good model for learning in this regards.

We note that there is the need for further research on existing statutory regulations and self-regulation with a view to ascertaining the nexus, relations, and role each can play in addressing all stakeholders concern around the work of nonprofits across the country. Outcomes of such research would allow a holistic approach to creating an enabling environment that supports nonprofit growth.

Conclusion

This report has presented the findings of a consultation process involving both online and in-person methods from a range of nonprofit organisations across the country. A wide array of priorities, options, improvements, and ideas about an effective nonprofit regulatory framework were described, comprising the opinions of 831 respondents and participants in total.

Overall several common regulatory priorities emerged, with the need for a regulatory framework, having a one stop agency or legal framework, strengthening of existing regulations and need for self-regulation being consistent themes across the consultation data.

In the case of “having a one stop agency of legal framework”, common call for caution emerged throughout the consultation. Nevertheless, it is striking to note that while respondents understand the need for a harmonized law and regulatory platform they are skeptical about having a commission as some participants noted that the sector might be “playing into what the government wants” that is, the setting up of a commission.

A shift from the former rhetoric that emphasises the importance of self-regulation over statutory regulation towards having both seems to be emerging uniformly across the conversations held.

Data from the consultation also provide important broader indications and potential ideas for a new civil society law and code of conduct for the sector. In particular it demonstrates the need for laws that safeguard fundamental freedoms relating to nonprofit formation and operations.

Developing such will require all critical stakeholders to invest concerted efforts and resources in evolving a law that supports nonprofits to thrive. The need for greater representation of the civil society community is consultations such as this, as well as increased involvement in shaping laws and policies affecting them have also been further confirmed by the findings of this consultation.

The dawn of a new decade (2020-2030), 9th National Assembly and new year represent important opportunities for civil society, government and other stakeholders as does the formation of a working group focused on issues highlighted in this report. Together these offer valuable opportunities to address the need for greater effective regulation that was emphasised by the participants of this consultation process.

This report has only been possible thanks to the effort, acuity and honesty of a diverse group of experts who took the time to respond and engage in conversations around our consultation questions. But developing a law or code of conduct for the sector is the work of years and not months.

The issues raised during the consultation and discussed in this report are not exhaustive nor could they be. This is only a first step, the design, review and consultations on the draft law and code of conduct are important next steps in keeping the momentum already garnered as well as an attempt to strengthen the regulatory environment for the activities of civil society organisations.

NNNGO finds itself in a historically unique position where it cannot claim to speak for the entire sector and yet is the only Network and voice for improving the regulatory environment for the operation of nonprofits in the country. As NNNGO continues to build on its work, it will need and will look for the continuing input of the wider civil society community that has provided feedback and those interested in this report.

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About us

The Network is charged with the objective of identifying, registering, coordinating, building capacity and mobilizing civil society organizations to promote interconnectivity and bring equity, justice, peace, and development to grassroots communities throughout Nigeria, including the implementation of the Sustainable Development Goals (SDGs).

The Nigeria Network of NGOs (NNNGO) is the first generic membership body for civil society organizations in Nigeria that facilitates effective advocacy on issues of poverty and other developmental issues. Established in 1992, NNNGO represents over 2,633 organizations ranging from small groups working at the local level, to larger networks working at the national level.

Our membership includes over 20 national organizations and over 250 membership organizations focusing on different thematic areas of development, all of whom work to support a diverse range of membership communities across the nation. In total our outreach to the third sector in Nigeria is estimated to be in the excess of 5000 which includes both members and affiliates at national and global levels.

NNNGO champions a sector that is accountable, independent and truly representative of giving a voice to the common man.

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Our debt of gratitude is owed to all those who provided their candid thoughts and feedback as part of our national consultation on nonprofit regulation. We hope that this report stands as a testament to the interest of nonprofits, stakeholders, government and the general public to support a stronger, more transparent and accountable civil society sector. This consultation would not have been possible without the support of the European Union.

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