

Civil Society Regulatory Frameworks in Nigeria

February 2022



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Objectives

The purpose of this research is to better understand the current landscape of civil society regulations in Nigeria, contribute to and bring knowledge to national conversations on civil society regulations and examine best practices and tools for self-regulation.

Quick Take-Aways

Total of 58 CSO/BMO Regulatory Frameworks reviewed for this assessment comprising 52 laws and policies; and 6 CSO self-regulatory frameworks



52 national and sub-national laws and policies reviewed at the national level impacting CSOs/BMOs in Nigeria

Statutory Regulations

Statutory regulations at national and sub-national levels were analysed based on their existence, opportunities, barriers, facilitators (incentives) and risks to civil society by a repertoire of measures to regulate the sector.



Formation

1. Constitution of the Federal Republic of Nigeria (1999)
2. African [Banjul] Charter on Human and Peoples Rights (1981)
3. Companies and Allied Matters Act (CAMA), Part B, Part F (2020)
4. Companies Regulations 2021
5. Nigerian Cooperative Societies Act (NCA) 2004
6. National Planning Commission Act 1993



Operations

1. Finance Act 2020
2. National Planning Commission Act 1993
3. National Financial Intelligence Unit ACT, 2018
4. Independent Corrupt Practices and other related offences Act 2000
5. Money Laundering (Prohibition) Act as Amended, 2011
6. Federal Inland Revenue Service (Establishment) Act, 2007
7. Companies and income Tax Act 2007
8. Personal Income Tax Act 1993
9. Value Added Tax Act 1993
10. Value Added Tax 2007(As Amended)
11. Tax and Levies (Approved list for collection) Decree 1998
12. National Health Insurance Scheme Act 2004
13. Financial Reporting Council of Nigeria Act 2011
14. National Housing Fund Act 1992
15. Employee Compensation Act 2010
16. Industrial Training Fund Act 2011
17. Nigeria Data Protection Regulation 2019
18. Amended Anti-Money Laundering/Combating Financial of Terrorism (AML/CFT) Compliance Manual 2013
19. Nigeria Immigration Act 1963
20. Customs and Exercise Management Act 2004
21. Nigeria Code for Corporate Governance 2018
22. Guideline on the Management of Dormant Accounts and Other Unclaimed Funds by Banks and Other Financial Institutions in Nigeria. 2015
23. Good Financial Grant Practice Standard/GFGP Standard
24. National Policy on Inclusive Volunteering 2020
25. The Nigerian Cybercrime (Prohibition, Prevention ETC.) Act 2015



Dissolution

1. Companies and Allied Matters Act (CAMA), Part A, Part F (2020)
2. Companies Regulations 2021

Tables Showing the Major Laws, Policies and Regulations Impacting CSOs / BMOs in Nigeria



Governance/Management

STATUS

CSOs/ BMOs / Professional Associations Operations

Justification

E↑	Companies and Allied Matters Act 2020, Part B and Part F	CSOs /NGOs BMOs are registering Under CAMA to become a body Corporate and to have access to incentives such as tax exemptions, ability to open and operate a bank account including the legal capacity to sue and be sued in their own name.
Rd	Nigeria Code for Corporate Governance 2016 (suspended for nonprofits)	After concerns and protests from the Faith-Based sector at its introduction in 2016, the Federal Government suspended its implementation for nonprofits.
E	Nigerian Cooperative Societies Act (NCA) 2004	Registration confers legal identity on the cooperative society without the need of registration under CAMA.
E	Chartered Institute of Taxation of Nigeria (CITN) Act 1992	Registration, training, and regulation of Tax Practitioners.
E	Institute of Chartered Accountants of Nigeria (ICAN) Act 1965	Registration, training, and regulation of Chartered Accountants.
E	The Nigerian Institute of Management (Establishment) Act, 2003	Registration, training, and regulation of Management Practitioners.
E	Securities and Exchange Commission (SEC) Code of Conduct Shareholders Associations	Regulates code of conduct for Shareholders Associations.
E	Trade Unions Act 1973	Registration and regulation of Trade Unions.
E	Legal Practitioners Act 1975	Registration and regulation of Legal Practitioners.

Laws Regulating CSOs Thematic Area of Work



STATUS

CSOs/ BMOs / Professional Associations Operations

Justification

E↑	Child's Right Act 2003	State re-enactment of the CRA is present in 26 states (as of December 2020).
E	Violence Against Persons Prohibition Act 2015	State adoption of the VAPP is present in 18 states (as of December 2021).

Status

E : Essential C : Compliance Rd : Redundant Rp : Repetitive D : Discretion
 ↑ : General Compliance ↓ : Low Compliance ↘ : Partial Compliance



Fundraising and Use of Resources.

STATUS

CSOs/ BMOs / Professional Associations Operations

Justification

↓	National Planning Commission Act 1993	In order to be able to import charitable goods and enjoy custom waivers and fees, nonprofits need to register with the NPC as this a pre-requisite to enjoy such benefits. However, only a fraction of NGOs /CSOs are registered with NPC since not every organisation imports charitable.
E↑	Federal Inland Revenue Service (Establishment) Act, 2007	All NGOs/CSOs/BMOs and staff obtain their Tax Identification Number. Registration with FIRS confirms the tax exempt status of a civil society organization but takes it further to issues of tax administration and compliance. The registration allows FIRS to ascertain that the transactions of organizations registering under Part B or F are truly for nonprofit purposes.
↘	Companies and Income Tax Act 2007	<p>CITA mandates CSOs/NGOs/BMOs to file annual tax returns, but many do not.</p> <p>CSOs, FBOs or CBOs are exempted from paying CITA, provided that such profits are not derived from trade or business carried on such organisations.</p> <p>The payer of income derived from sale to the NGOs must deduct Withholding Tax (WHT) from the payments.</p> <p>NGOs must deduct WHT on contracts awarded to suppliers and contractors and remit to the relevant tax authorities.</p> <p>Section 25 of CITA provides tax relief to any company making donations to an organisation listed under the fifth schedule to CITA.</p>
↘	Value Added Tax Act 1993	<p>VAT on goods purchased by NGOs for use in humanitarian donor-funded projects is at zero rate under VAT act.</p> <p>The NGO itself is not exempt from VAT where the organisation procures contracts or purchases goods that are not directly used in humanitarian donor-funded projects.</p> <p>Likewise, any service procured or consumed by NGOs is liable to VAT, except where such service is exempt under the VAT Act.</p>
E↘	Value Added Tax 2007 (As Amended)	<p>NGOs should charge VAT on all taxable goods and services supplied and remit same to the FIRS as and when due.</p> <p>In practice, anecdotal evidence shows many NGOs/CSOs/BMOs do not pay VAT as required.</p>
E↘	Tax and Levies (Approved list for collection) Decree No. 21 1998	In practice many NGOs/CSOs/BMOs do not pay taxes as required.

CSOs/ BMOs / Professional Associations Operations	Justification
<p>E ↘ Money Laundering (Prohibition) Amendment Act (MLPA) 2011 and the Terrorism (Prevention) Amendment Act (TPA 2011)</p>	<p>NGOs/CSOs/BMOs are required to obtain a SCUML Certificate before opening a bank account; file cash –based transactions reports (CBTR) – for cash transactions more than \$1,000 or its naira equivalent and currency transaction reports (CTR) for lodgements of N5m and above for individuals and N10m for corporate bodies.</p> <p>In practice, many NGOs/CSOs/BMOs do not file CBTRs or CTRs as required.</p>
<p>E ↑ Customs and Exercise Management Act 2004</p>	<p>While gifts are a source of income for civil society, it can come in the form of charitable giving or donations from overseas such as medical equipment, shoes, books, laptops etc. Such goods would require shipping (charitable shipping or shipping charitable goods).</p>
<p>E ↑ National Financial Intelligence Unit Act, 2018</p>	<p>NFIU works in coordination with SCUML to regulate the nonprofit sector on issues of Anti-Money Laundering, Counter-Terrorist Financing and Counter-Proliferation Financing (AML/CTF/CPF).</p>
<p>E Finance Act 2020</p>	<p>Individuals or persons in employment who earn monthly income not exceeding the national minimum wage (currently N30,000 per month) have been exempted from Personal Income Tax. By implication, these individuals should no longer be subject to the monthly PAYE deduction.</p> <p><i>Review of Penalties:</i></p> <p><i>Every company, including a company exempted from tax, is required to maintain books of accounts in English language for a minimum period of six (6) years after the year of assessment in which the income relates.</i></p> <p><i>Failure to provide documents on request by the FIRS is liable to a penalty of N100,000 in the first month of default and N50,000 in each subsequent month the failure continues.</i></p>
<p>E National Lottery Act 2005 and 2007</p>	<p>Lotteries and raffles are an alternative source of funding for the activities of civil society organisations globally. Lotteries are emerging in the sector in Nigeria.</p> <p>CSOs interested in raising funds through lotteries (Charity Lotteries) will have to register with the Lottery Commission and be guided by the Act.</p>



Human Resources

STATUS

CSOs/ BMOs / Professional Associations Operations

Justification

D	National Health Insurance Scheme Act 2004	<p>Given that civil society organisations are employers and pay wages, the National Health Insurance Scheme Act 2004 is worth considering for nonprofits having up to 10 staff in its employment.</p> <p>The use of the word “may” in the Act makes it non-binding.</p> <p>The new NHIS Amendment Bill is seeking to make the Scheme and the Sub-National Schemes mandatory.</p>
D	Pensions Reform Act 2014	<p>Only relatively few nonprofits feel it is applicable to them</p>
E↓	Employee Compensation Act 2010	<p>The Act is to “provide for an open and fair system of guaranteed and adequate compensation for all employees or their dependants for any death, injury, disease or disability arising out of or in the course of employment”.</p>
E↓	National Social Insurance Trust Fund Act 2011	<p>The Act is implemented by Nigeria Social Insurance Trust Fund Management Board</p> <p>However, as nonprofits in Nigeria have a majority of staff being volunteers and part-time employees, only relatively few nonprofits feel it is applicable to them.</p>
E↑	Nigeria Immigration Act 1963	<p>The Act grants the Minister of Interior the powers to approve expatriate quotas to foreigners wishing to come into the country to carry out any permanent work.</p> <p>International NGOs are more likely to require expatriate quotas than local ones.</p> <p>The expatriate quota application in Nigeria immediately comes after the registration of an entity in Nigeria by any foreigner seeking to migrate to Nigeria to carry out any permanent work .</p>
E	National Policy on Inclusive Volunteering 2020	<p>The policy was launched recently during the covid-19 pandemic and awareness of its existence is still low.</p>

Status

E: Essential C: Compliance Rd: Redundant Rp: Repetitive D: Discretionary
 ↑: General Compliance ↓: Low Compliance ↘: Partial Compliance

	CSOs/ BMOs / Professional Associations Operations	Justification
E	National Housing Fund Act 1992	<p>The National Housing Fund Act aims to facilitate the mobilisation of Fund for the provision of housing for Nigerians at affordable prices.</p> <p>The Act requires contribution by Nigerian workers earning an income of 30,000 Naira.</p> <p>However, as nonprofits in Nigeria have mostly volunteers and part-time employees, only relatively few nonprofits feel it is applicable to them.</p>
E↓	Industrial Training Fund Act 2011	<p>Minimum threshold for an employer to become liable under scheme has been reduced from 25 employees to a minimum of 5 or annual turnover of N50 million.</p> <p>Required contribution is 1% of payroll.</p> <p>However, as nonprofits in Nigeria have most staff being volunteers and part-time employees, only relatively few nonprofits feel it is applicable to them.</p>
E	National Drug Law Enforcement Agency Act 1989/Police Report	<p>Largely a diplomatic function / visa requirement.</p> <p>Though essential for travel to countries or regions with high incident of drug trafficking few events happening in those regions.</p>

S T A T U S	Accounting and Financial Management	
	CSOs/ BMOs / Professional Associations Operations	Justification
E↓	CBN Guideline on the Management of Dormant Accounts and Other Unclaimed Funds by Banks and Other Financial Institutions in Nigeria.	<p>Given the implication of dormant accounts to the operations of CSOs and its connection to the Part F of the CAMA, Section 845, mandating banks to inform the Commission of dormant accounts, the provisions of the Central Bank's definition and guidelines on dormant account should guide nonprofits in the operations.</p> <p>However, in practice, many NGOs/CSOs/BMOs are not aware of these guidelines.</p>
E	Good Financial Grant Practice Standard/GFGP Standard	<p>The objective is to standardize, simplify and strengthen the financial governance of grant funding.</p>



Status

E : Essential C : Compliance Rd : Redundant Rp : Repetitive D : Discretionary
 ↑ : General Compliance ↓ : Low Compliance ↘ : Partial Compliance


	CSOs/ BMOs / Professional Associations Operations	Justification
E	Financial Reporting Council of Nigeria Act 2011	The FRC develops and publishes accounting and financial reporting standards in the preparation of financial statements of public entities in Nigeria, and for related matters. In practice, many NGOs/CSOs/ BMOs do not file CBTRs or CTRs as required.
E	Independent Corrupt Practices and other related offences Act 2000	Nonprofits must have policies against corruption, fraud, and a gift policy. The Act provides for offences and penalties, investigation, seizure, and arrest. The scope of the Act covers any legal entity artificial or otherwise recognized by CAMA or created under the authority of law in Nigeria.

S T A T U S	Technology and Communication	
	CSOs/ BMOs / Professional Associations Operations	Justification
E	Nigeria Data Protection Regulation 2019	Anecdotal evidence suggests that very few CSOs are aware of the impact of NDPR or GDPR to their operations. Nonprofits were not the targets of regulators (NITDA or EU regulators) and it could take some time for the NDPR which was issued in 2019 to establish the regulatory mechanism to enforce the policy.
Ct	The Nigerian Cybercrime (Prohibition, Prevention ETC.) Act 2015	CSOs have flagged Section 24 and 38 of the Act as problematic. Section 24 is seen as cyber stalking and has been repeatedly used to harass and persecute journalists and critics. Section 38 provides the duties of a service provider vis-a-vis data retention and contains provisions that are vague and borderline unconstitutional. CSOs have approached the Supreme Court to remove these sections from the ACT due to concerns regarding their constitutionality.



STATUS		<h2>Citizen Participation</h2> 	
STATUS		CSOs/ BMOs / Professional Associations Operations	Justification
E ↑	1999 Constitution		<p>Section 40</p> <p>“Every person shall be entitled to assembly freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any association for the protection of his interests”.</p>
E ↑	Electoral Act 2010		<p>Section 12 provides for all citizens of Nigeria aged 18 years old to be registered to vote; regular voter registration exercises have been taking place in Nigeria.</p>

STATUS		<h2>Access to Government Data</h2> 	
STATUS		CSOs/ BMOs / Professional Associations Operations	Justification
↓	Freedom of Information Act (2011)		<p>Many states not accepting the FOIA in their jurisdiction and have not enacted their state-level FOI laws.</p>

STATUS		<h2>Engagement in Policy and Governance Processes</h2> 	
STATUS		CSOs/ BMOs / Professional Associations Operations	Justification
E ↓	Nigeria Open Government Partnership (OGP), National Action Plan II (NAPII) (2019–2022)		<p>At the national level, OGP introduces a domestic policy mechanism through which the government and civil society can have an ongoing dialogue.</p> <p>Only 14 out of 36 state governments have adopted the OGP in their states (2020).</p>

CSOs/ BMOs / Professional Associations Operations	Justification
E ↓ Whistle Blowing Policy	Nigeria does not have any specific or comprehensive whistleblowing legislation despite several bills presented over the years to the National Assembly.

Sub-National Regulations

In its present form, one of the first states with a statutory registration process for NGOs at the sub-national level is Borno operating under the Borno State Agency for Coordination of sustainable Development and Humanitarian Response (BACSDAHR).

We tracked 9 states during our review, largely sector-specific regulations covering civil society organisations working in the areas of women empowerment, youth development and children including those performing social service functions were seen across the 36 States of the Federation.

Sokoto State Regulatory Policy on NGOs and Donor Partners.

The law demands for NGOs, CSOs, CBOs, Clubs and Association to operate legally in the state, they must register with the State Ministry for Social Development.

According to the proposed law, projects to be implemented by CSOs must be approved by government. The text of the proposed legislation states that CSOs will be required to provide "additional information" as requested by the Board during registration but does not clarify what this "additional information" would be. Also, the State Ministry requires an annual report of activities of CSOs and CBOs.

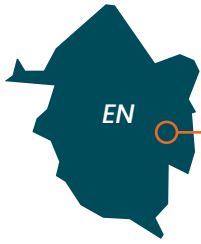
Nasarawa state laws on registration of NGOs and business names in the state.

The Ministry for Women Affairs regulates CSOs in the state.

Kogi State Ministry of Women Affairs and Social Development Mandate 1995

CSOs are mandated to be registered and regulated by the Social Welfare Ministry.

BA: BAUCHI BO: BORNO BE: BENUE EN: ENUGU KG: KOGI
 NA: NASARAWA KT: KATSINA RI: RIVERS SO: SOKOTO



-The State Ministry of Gender and Social Development has an established law (Children and Young Persons Law, Cap. 21, 2004) under which all civil society organisations in Enugu State are registered.

-Rangers Management Corporation Law, Cap 132, 1991 and Enugu State Sports Council Law, Cap72,1991 mandates the Ministry of Youth and Sports to regulate and register youth-focused and sports CSOs/NGOs.

Enugu State Citizens Rights and Mediation Centre Law, Cap 45, 2000; Administrator General /Public Trustees, CAP 5 Laws of Enugu State 2004 mandate CSOs and NGOs especially those working on justice reforms and human rights issues to identify with the Ministry in the form of registration. (There was an attempt by the Enugu State House of Assembly to propose an NGO Regulation Bill in 2019 during the heat of debate for the nationwide attempt by the National Assembly Abuja but it was later resisted by the Civil society community in Enugu State and the intent was withdrawn.)

Self-Regulatory Frameworks in Nigeria

Six Self-Regulatory Modalities identified by the National Technical Committee on CSO Self-Regulation at a national consultation on self-regulation held in Abuja November 17, 2021, after the various regional consultation meetings with CSO sub-national networks in October and November 2021.

A hybrid model including elements of the following six models has been proposed for the sector in Nigeria:

WORKING GROUP



CSOs organise themselves to discuss their transparency and accountability, share best practices and direct new initiatives.

INFORMATION SERVICES



A CSOs directory - Initiatives which require participating organisations to publish a specific set of required data that is relevant to accountability and transparency.

AWARDS



Given in recognition of achievement in transparency and accountability practices through a competitive process.

CERTIFICATION SCHEMES



Evaluate an organisation's governance, programmes and practices against a set of standards and norms defined and established by a group of organisations and present a seal of certification or accreditation after proof of adherence.

CODES OF CONDUCT/ETHICS



A set of standards which is defined and agreed on by a group of CSOs as a guide to their practices including governance, accountability, safe guarding & sexual harassment, diversity & inclusion policies etc.

SELF-ASSESSMENT

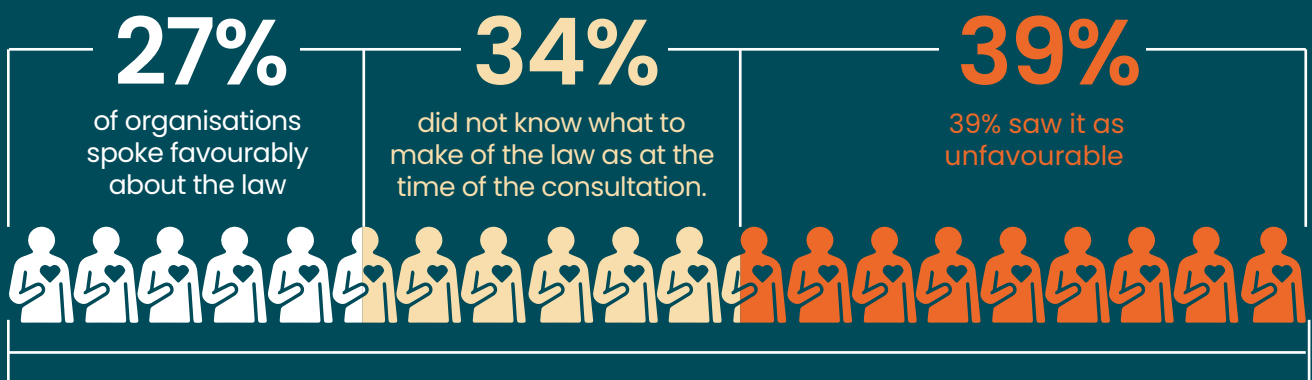


Provides framework for reflection about organisational trajectory.

Perception of Civil Society to Regulations

Nigeria Network of NGOs consulted with the civil society community on statutory and self-regulation for 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 nonprofits think regarding statutory regulation and self-regulation.

Many respondents iterated the importance of ensuring that regulations affecting the civil society aid rather than impede its growth.



A total of 217 responses received between August 13 and September 8, 2020

We found a disproportionate understanding amongst CSOs on the implications of the new amendments to their work. While the new additions to the law are not unwelcomed, some seem to have little or no appetite for the law.

Barriers, Facilitators and Opportunities for CSO Regulation



BARRIERS

Weak collaborative and ineffective educative approach

taken by regulators especially Corporate Affairs Commission and Federal Inland Revenue Service including lack of the use of incentives to encourage good behaviours and use of powers to enforce laws in matters of misconduct has ultimately damaged relationship between civil society and them.



FACILITATORS

Decline in public trust and confidence in CSOs comes top as one of the key facilitators or incentives for civil society regulations. Increasingly, the public is questioning the transparency of large entities within the sector and calling for regulations [What we heard on Part F of CAMA].

Increased appetite for self-regulation driven largely by the need for civil society to provide an alternative to governments' seemingly increased call for statutory regulations in recent times.

Compliance with existing regulations (on registration) continues to be driven -by fundraising requirements and access to banking services. For example, while few donors will waive "company registrations" or registration with the Corporate Affairs Commission, an important requirement to access funds will be a bank account in their name. Whereas to open a bank account, a registration certificate with both the Corporate Affairs Commission, Special Control Unit on Money Laundering and Tax Identification Number from Federal Inland Revenue Service is required.



OPPORTUNITIES

Civil society organisations in Nigeria have the opportunity of seizing the momentum on the call for more transparency and accountability on their part **to strengthen trust and confidence** in their activities as this is critical to its success and existence.

The implementation of CAMA and its challenges provide an opportunity for the sector to work with regulators to ensure CSOs face minimal **red tape** and that they have enough time and resources to serve the community.

Conclusion



Presently, there is an oversupply of laws impacting on the operations of civil society and an undersupply in its awareness among operators in the sector and implementation on the part of regulators.

It must be acknowledged from the outset that civil society regulation especially those around the sector's accountability and transparency are hot topics both within civil society and at the political level. Agreed, effective regulation is important for reassuring the public of the civil society sectors legitimacy thereby inspiring and maintaining trust in their operations. The role of regulators overseeing the registration and behaviour of civil society organisations should be to give confidence to the public, donors, government and private sector and support improvement.



Recommendations



Regulators, legislature, and civil society should consider a one-stop shop for regulating the operations of civil society organisations in ways that promotes ease of registration and compliance (post incorporation activities) including overall effectiveness and efficiency of the sector.



There are at present many civil society networks and coalitions at the national and sub-national level ranging from generic and thematic or subsectors. The networks and coalitions should play a role in championing, representation and advocacy on reforms that are necessary to improve the regulatory environment for civil society including engaging in conversations around a minimum standard and best practices on transparency and accountability.



Regulators should enhance their ability to share information that would support collective goals of promoting transparency and accountability compliance in the sector. While all regulations identified in this report have an agency of government responsible for their implementation, their inter-agency information sharing procedures have largely proven unworkable leading to more burden for civil society.



Self-regulation initiatives in the civil society sector should seek synergies with the regulation process at the national and sub-national levels by developing indicators for a monitoring system and voluntary reporting mechanism. Members must pay attention to the implementation and enforcement of existing self-regulatory mechanisms.



A dialogue between regulators, legislature, civil society, and the public at the national and sub-national levels on regulations for the sector would help ensure that all stakeholders are well informed about statutory and self-regulation processes and that any action from government builds on, rather than duplicate or overregulate the sector.



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 Nigeria Scale

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