THE AFRICAN CENTRE FOR LEADERSHIP, STRATEGY & DEVELOPMENT

(Centre LSD)

THE CASE FOR CIVIL SOCIETY ORGANISATIONS (CSO) SELF-REGULATION

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TABLE OF CONTENTS

1. INTRODUCTION

The challenge of development is arguably one of the greatest challenges that has dominated world history. Human beings have always been concerned about how to improve their condition of living and better confront the forces of nature and the environment. Over the years, a lot of progress has been made on how to deal with the challenges of development and improve the standard and condition of living of human beings.

Development theorists and practitioners are agreed that partnership among government, private sector and civil society is the most effective way to achieve sustainable economic and social benefits and the sustainable development goals.[1]

Meanwhile, it has been recognised that the three sectors: Government, private sector and civil society have great roles to play in the development of society and that this needs to be done in partnership.[2] But it must be understood that **the three sectors have different motivations, approaches and experiences.** The motivation for government is provision of services to all citizens; the motivation of the private sector is profit while the motivation of civil society is the protection of specialised groups and the vulnerable (the poor, persons with disability, persons living with HIV/AIDS, women, children, trafficked persons etc).

The approach of government is utilisation of bureaucracy with emphasis on the political rather than the economic and rational. Therefore, decision making is dominated by administrative or satisficing decision-making approaches rather than rational decision-making approaches. The approach of the private sector is dominated by economics and market forces influenced by

supply and demand. The approach of civil society is to target special groups such as the poor and advocate for grants and subsidies.

The experiences of the three sectors are also different. In government, we have experienced inefficiency in providing services and poor performance of public enterprises even in sectors where the private sector is making huge profits. In the private sector, we have seen that the private sector has been unable to become the engine of growth in Africa. Instead, they have remained parasitic and dependent on government contracts. In the civil society, we have seen documented experiences of the poor and vulnerable; the commitment, knowledge and resilience of the poor with several good examples of pilots that are never scaled up.

The challenge of the trisector model is that the motivation, approaches and experiences of the three sectors are changing with time. Across the world, there is elite capture of government, and the motivation is no longer primarily the provision of services to citizens. Similarly, there is increasing number of charlatans and criminals masquerading in the civil society sector thereby spoiling the good work of genuine CSOs. The approach of government is changing with increasing partnership with the private sector known as Public-Private Partnership (PPP). The approach of civil society is changing with inclusion of economic models and private for-profit organisations engaging in core civil society work.

The inefficiency experienced by government in providing services and poor performance of State-Owned Enterprises (SOEs) is

challenging the main focus of government. The experience of private sector with privatisation in Nigeria in asset striping and inability to invest and turn around privatised companies is challenging the role of private sector as engine of growth in Africa. In the civil society, we have seen resilience of committed organisations despite working in a challenging environment and constriction of the civic space.

With the failure of government and the focus of the private sector on profit, there is increasing role for civil society organisations across the world. Some civil society organisations are now controlling large budgets and some unscrupulous individuals are masquerading as civil society organisations engaging in criminal activities including terrorism and money laundering. This is increasing the call for regulation of CSOs. However, government regulation of CSOs more often than not result in clamp down of advocates of transparency and accountability necessitating the need for CSO self-regulation.

In this Policy Brief, we make a case for CSO Self- Regulation in Nigeria. But first we explicate the concepts of CSO and Self-Regulation and discusses the constriction of civic space which makes the case for self-regulation compelling.

2. CONCEPTUAL CLARIFICATIONS: CSO AND SELF-REGULATION

a. Civil Society

The concept of civil society (including NGOs) has been variously described by scholars as imprecise, ambiguous, controversial, nebulous and one of the key words of this epoch.[3] Some scholars have contended that the rise of civil society is associated with

strategies of rolling back the state and has contributed to de-legitimising post-colonial nationalism and re-enforcing neo-liberal theories of the separation of State and society. This is probably why civil society assumed more significance with the end of the cold war in the late 1980s and early 1990s. Civil society plays very crucial roles. Many scholars have expounded on the roles of the civil society. According to Keane, civil society has two main functions: precautionary against the State-to balance, reconstruct and democratize it, and advocating, expansion of liberty and equality in civil society itself.[4] In a similar vein, it has been pointed out that increased role for civil society is seen as a way of assuring accountability through more efficient service delivery and of putting pressure on political rulers- thus creating "participation" and "empowerment" in terms of giving voice to people's demand for influence and welfare.[5] According to Shils, the idea of civil society has three main components:

> The first is a part of society comprising a complex of autonomous institutions-economic, religious, intellectual and political- distinguishable from the family, the clan, the locality and the State. The second is a part of society possessing a particular complex of relationships between itself and the State and a distinctive set of institutions which safeguard the separation of State and civil society and maintain effective ties between them. The third is a widespread pattern of refined civil manners.[6]

In African countries, as a result of combination of a lot of factors, the State is increasingly incapable of maintaining law and order and providing for the welfare of citizens. As a result, great expectations are being placed on the civil society to promote

participation, empowerment, transparency, accountability and good governance. As noted above, there is no agreement among scholars on the conceptualization of the term civil society. In this paper, we adopt Diamond's conceptualization of civil society as "the realm of organized social life that is voluntary, self-generating, (largely) self-supporting, autonomous from the State".[7] . Civil society therefore encompasses professional organizations, town development unions, trade unions, ethnic organizations, student associations e.t.c. In this conceptualization, civil society include NGOs which are non-profit organizations formed by certain persons who have some vision and mission to pursue and elicit the support of others to pursue usually on specific issues such as environment, human rights, women's rights, democracy, development, debt, children's rights, rights of the disabled e.t.c. In this copnceptualisation, NGOs are a subset of civil society organizations. This is in tanden with the position of the UN which refers to "the accreditation and participation of civil society, including NGOs."[8] But in this policy brief, we will use CSOs and NGOs interchangeably.

b. Self-Regulation

Self-regulation is a scheme promoting a set of values developed by civil society for civil society. Self-regulation is intended to influence the governance, behaviours and practices of participating organisations and applied consistently.[9] CIVICUS has identified five different modalities of self-regulation:

    i. Working Groups: A collection of CSOs organise themselves to discuss their own transparency and accountability, share best practices and direct new initiatives.

ii. Information services: The CSOs are required to publish a specific set of required data relevant to accountability and transparency. This can also serve as a directory of CSOs.

iii. Awards: A competitive process is put in place where CSOs are given awards on excellence, innovation or good practice.

iv. Code of Conduct or ethics: CSOs agree on a set of standards to guide their behaviour and practices and operations including governance, accountability, fund raising etc.

v. Certification or accreditation: CSOs are certified or accredited after evaluation against a set of standards and norms.

CIVICUS has developed ten key principles to guide the development of a strong, credible and sustainable self-regulation scheme:

1. Establishing the self-regulation initiative must be a civil society-led process.

2. Motivation and commitment of members are crucial.

3. All stakeholders must be involved in the process from the beginning.

4. A flexible self-regulation initiative will attract a diverse group of organisations, irrespective of size, focus and type.

5. Diversified resources are a prerequisite for the sustainability of a self-regulation initiative.

6. Using information and Communication Technologies (ICT) can increase participation of stakeholders.

7. Working in networks facilitates and encourages the implementation of self-regulation mechanisms, mutual learning and problem solving.

8. Members must seek to provide high quality and accurate information during reporting to benefit from learning and recommendations.

9. A compliance system is needed for monitoring and enforcement of a self-regulation initiative.

10. A peer review mechanism can provide credible information about the implementation of the framework.

As we shall show later, in the last four decades, the number, responsibilities, activities and resources available for CSOs have increased tremendously. As a result, CSOs have come under increased scrutiny and criticism by both enemies and members of civil society itself. The legitimacy of civil society has been challenged as unelected. Transparency issues have been raised and they have been accused of lack of accountability. As CIVICUS has documented, the efforts towards greater legitimacy, transparency and accountability have led to the creation and development of self-regulation initiatives.

3. CONSTRICTION OF CIVIC SPACE

Different scholars have defined civic space in different ways. It has been defined as "the public spaces where citizens can freely exercise their human rights."[10] It has also been defined as the set of legal, policy, institutional and political conditions non-governmental actors need to access information, express themselves, associate, organise and participate in public life.[11] The term has also been used to describe those human rights which facilitate the ability of individuals and groups to participate in the polity and governance of their country.[12] It is the freedom and means to speak, access information, associate, organise, and participate in public decision making.[13] Civic space is essential to the healthy functioning and development of any society and it is a precondition for accountable governance and social justice.

In the past two decades, there is a global trend of constriction of the civic space. There is a global clamp down on civil society which has deepened and accelerated in recent years.[14] Studies show that the civic space has been shrinking in Africa in the last decade.[15] In Nigeria, at the return of civil rule in 1999, the civic space expanded. As from 1999, government engaged civil society in increasing measures. Civil society representatives were included in some constitutional and legal bodies such as the Police Service Commission and NEITI. President Olusegun Obasanjo had summit exclusively with civil society between 1999 and 2007. President Goodluck Ebele Jonathan had summit with civil society between 2010 and 2015. But Buhari's eight years saw the decline in engagement with civil society. In the last decade, there is documented evidence of attempts by federal and state governments in Nigeria to silence activists and dissenting voices

while imposing restrictive measures, laws, and policies to disrupt the legitimate operations of civil society organisations and human rights defenders.[16] The governments make deliberate and consistent efforts to weaken or silence institutions or individuals demanding political accountability or challenging official impunity.

Meanwhile, research has shown that closing civic space affects development outcome by enabling land and natural resource grabbing, abuse of labour or other rights of marginalised and disempowered groups and hampering economic growth and inclusive development.[17]

It is important to recognise the emergence of some actors within the civic space which has been called "uncivil society" who are the "terrorists, criminals, drug dealers, traffickers in people and others who undo the good works of civil society....(and) thrive in countries with weak laws and institutions."[18] Although these groups exist outside government and private sector, they cannot be regarded as civil society properly so called. They are criminal organisations, and the appropriate response is prosecution and not regulation.

4. CSO GOOD GOVERNANCE AND ACCOUNTABILITY
Good Governance of CSOs

The literature on good governance is very rich. Good governance entails the respect for the rule of law, ensuring effective delivery of public goods and services, participation of all (men and women) in decision making process, institutional effectiveness and

accountability.[19]   The issue of institutional effectiveness is very germane to developing countries and CSOs. As Ndulo has pointed out, institutional effectiveness involves respect for the rule of law on the part of all actors; independence and capacity of all actors; mechanism for self regulation and external oversight; transparency and accountability of oversight bodies and mechanism for active participation in decision making; the extent and degree of decentralised structures and decision making; gender representation in all spheres of decision making; and effective delivery mechanism and capacity.[20] In CSO management, good governance will entail having effective board that is managed professionally with policy and oversight functions over management, an empowered management that utilises good management practices that empowers staff with authority and responsibility; good and functioning systems and processes including financial procedures, personnel policy, fund raising policy, procurement policy and conflict of interest policy and have mechanisms of accountability including internal and external audit; and complaints and grievance mechanism.

CSO Accountability
Various scholars have defined CSO accountability in various ways. To Hari Srinivas, accountability for CSO essentially means empowered and responsible staff and managers who have authority and responsibility for decision making, can improve delivery of CSO 's aims and objectives and can improve management of human and financial resources. But for Danilo Songco, there are three dimensions of accountability in relation to CSOs namely transparency, legitimacy and performance.

According to Lisa Jordan, accountability is the obligation to report one's activities to a set of legitimate authorities.[21] According to her, CSOs have three types of accountability. The first is the effectiveness of NGOs as a social service delivery agent in terms of the quality and quantity of services delivered. The second is the independence and reliability of organisational structures of CSOs including composition of boards, financial accounting, management structures, compensation policies, personnel policies etc. The third are legitimacy issues in terms of the representative status of CSOs, the relationship to the community served and the value base of the NGOs.

Issues in CSO Accountability

The public debate about accountability of CSOs gained currency in recent time when The Economist posed the now famous question: Who guards the guardians? and wrote:

> The increasing clout of NGOs, respectable and not so respectable, raises an important question: who elected Oxfam, or, for that matter, the League for a Revolutionary Communist International? Bodies such as these are, to varying degrees, extorting admissions of fault from law-abiding companies and changes in policy from democratically elected governments. They may claim to be acting in the interests of the people — but then so do the objects of their criticism, governments and the despised international institutions. In the West, governments and their agencies are, in the end, accountable to voters. Who holds the activists accountable?

Several issues have been raised concerning the accountability of CSOs. It has been argued that CSOs constituted an unelected few activists who wield a lot of influence setting standards, influencing policies and proposing solutions to public problems. CSOs have also been accused of carrying out functions which are traditionally meant to be performed by the state. Furthermore, it has been pointed out that the size and scale of operations of CSOs is becoming bigger rivalling governments and government agencies yet without accountability to the public. For instance, the Nature Conservancy operates a $3 billion budget in 30 countries.[22] In addition, there has been issues with the salary of senior officials. In Netherlands, journalists made an issue of the salary of a senior CSO official who commanded more money than the Prime Minister.[23] Finally, there is also the issue of mismanagement of funds, conflict of interests, lack of transparency and sheer corruption.

It must be emphasized that despite these accountability issues being raised, CSOs as a sector enjoy high levels of public trust in many countries higher than corporations, churches and government.[24] As Kumi Naidoo has pointed out, "some high profile scandals involving non-profit organisations have attracted public attention and done serious damage to the overall credibility of civil society groups."[25] For countries that are universally known to be very corrupt, the issue of financial accountability is key. In one study, over 100 Philippine organisations were asked about their finances and only 10 percent responded.[26]

CSO Accountability

In order to ensure NGO accountability, several mechanisms have evolved. These include operational capacity of the staff, management structure, performance measurements, accounting practices and legal obligations.

Similarly, several tools have been created to improve accountability including annual reports, financial accounts, performance assessments, quarterly reports, independent evaluations, audits, oversight boards, conflict of interest policies, complaints and grievance mechanisms etc.

It has been documented that different types of CSOs rely on different mechanisms of accountability.[27] Membership CSOs are principally accountable to members and rely on election, reform and dues as accountability mechanism. On the other hand, non-membership organisations are principally accountable to donors and use performance assessments, laws and self-regulation as principal accountability mechanisms. Networks and coalitions are expected to be accountable to organisational members. However, some organisations such as ActionAid International practice both vertical accountability to donors and downward accountability to the communities with whom she works.

Kumi Naidoo has identified four mechanisms of accountability of CSOs:[28]

> a. **Self-regulation mechanism** such as voluntary (or certified) compliance with code of ethics of conduct. National NGO networks in a dozen countries have

undergone thorough participatory processes to articulate the standards expected of NGOs, ranging from transparent governance structures to hiring practices and communications policies. The idea behind such self-regulation mechanisms is that the sector itself should be actively engaged in promoting a certain set of values and norms as part of maintaining a public reputation for professionalism and high ethical behaviour. One of the main criticisms levelled at self-regulation approaches is the 'non-enforceability' of such mechanisms; however certain models, such as the one adopted in the Philippines, involve a certification process whereby teams of evaluators are empowered to grant or revoke certification to CSOs.

b. **Governing boards**, comprised of individuals external to the organisation, that are selected by and operate according to clearly defined and transparent procedures. The specific tasks of governing boards vary, but they are generally intended to act as guardians of the interests of the organisation's membership or constituency, while also ensuring that the organisation operates in a way that is in compliance with both statutory obligations and in accordance with its own mission and values.

c. **Standards for disclosure and public reporting**, are determined in some countries by national legislation, but are adopted by CSOs in other contexts on a voluntary basis. Vehicles such as annual reports, organisational or project evaluations, strategic plans based on external assessments, and regular

communications (newsletters, updates, briefs) can provide channels for public access to information about the organisation's work, financial status, governance structure and operational impact.

d.   **Consultative and participatory mechanisms**, that allow for the meaningful involvement of diverse constituencies (including beneficiaries) in the organisation's work, from project planning to evaluations.

5.   THE NIGERIAN OPERATING ENVIRONMENT

The operating environment of CSOs in Nigeria is hostile, harsh to survival and sustainability. The normal organisation cycle of inception, growth, maturity and decline is very short in Nigeria. Many civil society organisations that were thriving in the 1980s such as the Civil Liberties Organisation (CLO) and Committee of Defence for Human Rights (CDHR) have declined in visibility, relevance and impact. Many others that were formed in the early 2000s on return to civil rule are either stagnant or struggling. Very few civil society organisations are over 20 years in Nigeria and are doing well.

However, there is poor public perception of CSOs in Nigeria. Many Nigerians think that CSOs get easy money from donors without any form of legitimacy, transparency and accountability. They feel that CSO leaders travel around the world with easy money without any form of accountability. This is why from time to time, legislators introduce "NGO bill" to control and regulate CSOs. This perception is completely false. The driving force for NGO bill in Nigeria from time to time is ignorance by many Nigerians using the

worst examples of "uncivil society" as the norm rather than the exception. The response of civil society is usually massive mobilisation against the bill. After defeat of the bill, the sector goes back to business as usual without strategic attempt to deal with the challenges of the sector such as addressing the ignorance and misconception of the sector by citizens; declining capacity within the sector; absence of code of ethics and self-regulation for the sector and presence of bad eggs and political jobbers who take on partisan issues in the name of the sector. There are strict financial policies and guidelines that govern the CSO sector. CSOs are more accountable than the government and private sector in Nigeria. Meanwhile, CSOs are subjected to several regulatory framework in Nigeria including but not limited to the following:

I.   CAC- Annual filling to Corporate Affairs Commission
II.   FIRS – Federal Inland Revenue Service
III. FCTIRS or State IRS
IV.   SCUML- Special Control Unit Against Money Laundering
V.   NHIS- National Health Insurance Scheme
VI.   NSITF-Nigerian Social Insurance Trust Fund
VII. NHF- National Housing Fund
VIII.   FRC- Financial Reporting Council
IX.   PENCOM- National Pension Commission

All of these are in addition to strict reporting requirements and guidelines from donor agencies including external audit. Indeed, the CSO sector in Nigeria is overregulated. In spite of this over-regulation, there is a section of the population that want more regulation of CSOs. The aim of the people is to strangulate the CSO

sector mainly as a result of ignorance of the operation of CSOs. In a bid to respond to this challenge, there are a group of CSO practitioners who think that the best way is to have an "NGO bill" that is initiated by CSOs. This is what led to the Non-Profit Organisation (NPO) bill to register NPOs, host a public directory of registered non-profits and ensure compliance by all non-profits. This idea will be counterproductive. It is not addressing any mischief that is not covered by the Companies and Allied Matters Act (CAMA). It has the potential of being hijacked as members of the Board and Commission to be set up will be appointed by government. Moreover, there is hardly any bill that goes to the National Assembly without amendment or alteration before passage. It is possible that the final NPO bill that will be passed will be fundamentally different from the one prepared by CSOs. What CSOs in Nigeria need is self-regulation so that genuine and authentic CSOs will be differentiated from "uncivil society". I am confident that enemies of civil society who bring NGO bill to emasculate civil society will never succeed if we mobilise against them any time it happens. We have many allies in the National Assembly who will never support the emasculation of civil society under their watch. More importantly, CSO self-regulation will improve the professionalism of CSOs and improve compliance with statutory obligations. The purpose of self-regulation in Nigeria includes the need to restore public trust in civil society; ensure civil society's responsibility to engage and impact positively; ensure civil society is accountable to other stakeholders and protect the civic space in Nigeria from shrinking and undue interference.[29]

6.   THE WAY FORWARD

As noted above, the role of CSOs in society is amplified by the ascendancy of neo-liberalism which has rolled back the state and the inability of the government to deliver services especially to the poor and excluded. But as we have argued elsewhere, civil society is not meant to take over the role of the state but to promote active citizen involvement or everyday democracy and the effectiveness of the state.[30] The World Alliance for Citizen Participation, CIVICUS aptly captures the role of civil society in its three major objectives of promoting civic existence, civic expression and civic engagement, CIVICUS popular three E's.[31] Promoting civic existence involves defending people's fundamental rights to organize and act collectively towards the public good. Promoting civic expression entails strengthening the capacities of civil society organizations to freely amplify the voices of ordinary people and promoting civic engagement requiring fostering interaction between citizens, their associations and other institutions to ensure that public institutions reflect the will of the people and are accountable to them.

There is no doubt that CSOs are crucial to the development of Nigeria. They were the major and consistent force that opposed military rule which led the former military ruler, Gen. Ibrahim B. Babangida and the military institution to step aside in 1994. They have continued to be the voice of the voiceless especially because of the emasculation of political opposition and weakening of the labour movement. According to Gary Johns, in some regards, NGOs have become the official opposition in many societies.[32] This is true to a very large extent in Nigeria. In addition, CSOs in Nigeria are the only ones in the tripartite (with government and the

private sector) that are interested in normative issues that are germane for peace, harmony and development of society such as free, fair and credible elections, gender equality and social inclusion, transparency and accountability, ethics, environmental protection, women rights, children rights, human rights, impact of climate change etc. This is why it is necessary to expand the civic space and create an enabling environment for CSOs to operate without hindrance.

The issues of CSO legitimacy, transparency and accountability are real all over the world. It is amazing that CSOs who are in the forefront of advocacy for good governance, accountability, workers rights, decent work are sometimes perpetrators of what they advocate against especially from the "uncivil society". In our view, there are only two options available- more regulation by government or self-regulation. There are differing views on the extent to which government should regulate CSOs. In a country like Nigeria where politics and governance are still dominated by professional politicians, government additional regulation of CSOs will be suicidal. The only real option open to CSOs is self-regulation.

There are examples of self-regulation initiatives that we can learn from. In Nigeria, in the early 2000s, Transparency International in Nigeria prepared a code of conduct for NGOs in Nigeria. But the adoption by NGOs was very poor and the process fizzled out. In the Philippines, the caucus of Development of NGO networks (CODE-NGO) established a code of conduct for Development NGOs in 1991. The code was signed by over one thousand NGOs. In 1998,

the Philippine Council for NGO Certification was established by seven of the biggest NGO coalitions and the certification was recognised by government. In 2002, eleven INGOs namely ActionAid International, Amnesty International, CIVICUS World Alliance for Citizen Participation, Consumers International, Greenpeace International, Oxfam International, the International Save the Children Alliance, Survival International, International Federation Terre des Hommes, Transparency International and World YWCA adopted the International Non-Governmental Organisation Charter. The charter sets out core values and operating principles for International NGOs including good governance, transparency and accountability, good management practices and ethical fundraising. CIVICUS has developed a guide to Self-regulation initiatives. The self-regulation movement has grown large across the globe in the last two decades.

In the last one decade, there has been a lot of efforts to improve the operating environment and self-regulation initiatives in Nigeria. Already a guide for CSO regulation in Nigeria has been produced. Additionally, some structures such as the CSO Accountability and Transparency Initiative (CATI), CSO National Self-Regulatory Council and Technical Committee on Civil Society Legislative Engagement have been formed. What we need to do is to up our game in terms of improving the environment of operations and operationalise the Nigerian Self-regulation initiatives.

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