



**Civil Society Regulation in West Africa: Self-Regulation,
State Control or Regional Norms and Standards?**

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List of Abbreviations/Acronyms

AU	African Union
CCP-AU	Centre for Citizens' Participation in the African Union
CAMA	Company and Allied Matters Act
CCA – ONG	Comite De Coordination Des Actions Des ONG
CCOC	Civil and Commercial Obligations Code
CDD	Centre for Democracy and Development
CEAC	Coalition for an Effective African Court
CONGAD	Conseil des Organisations d'Appui au Développement
CSO	Civil Society Organisations
ECOWAS	Economic Community of West African States
ECOSOCC	Economic, Social and Cultural Council
ERN	Electoral Reform Network
FOIC	Freedom of Information Coalition
JICA	Japan International Cooperation Agency
GAPVOD	Ghana Association of Private voluntary Organisations in Development
NDTFCS	Nigeria Development Trust Fund for Civil Society Organisations
CNSC	National Congress of the Civil Society
NNNGO	Nigeria Network of Non-Governmental Organisations
NGO	Non-Governmental Organisation
PALU	Pan African Lawyers Union
POSDEV	Pan African Organisation for Sustainable Development
RADDHO	Rencontre Africaine pour la Défense des Droits de l'Homme
TANGO	The Association of Non-Governmental Organisations
TMG	Transition Monitoring Group
WABA	West African Bar Association
WACSI	West Africa Civil Society Institute
WACSOFF	West African Civil Society Forum

Abstract

Voluntary organisations, which will be referred, to in this study as Civil Society Organisations (CSOs) currently carry out their activities subject to the domestic laws where they operate. The laws include those that ordinarily regulate the registration and operation of CSOs and other laws and policies that affect the ways they operate within the society. Notable amongst these laws and policies include national constitutions, anti-terrorism laws and legislations that generally regulate freedom of information, association and expression. There is no single international statute regulating the activities of CSOs. In West Africa and other parts of the world, there have been attempts at self-regulation by CSOs which have had mixed results as experiences vary between countries. Beyond this, some countries have adopted several repressive laws aimed at stifling the growth of CSOs. The reasons for these developments are varied and subject to different interpretations. Several CSOs in West Africa and other parts of Africa lack the capacity to survive or meaningfully engage in advocacy issues without funding from Western donors. This generally affects the credibility of CSOs. Furthermore, there is also a problem of effective capacity and continuity for CSOs working in West Africa, which affects the effectiveness of the advocacy activities embarked upon by these CSOs. In some countries, CSOs are accused of acting out the scripts of opposition parties and others are seen as conduits for terrorist organisations thereby limiting their ability to operate freely.

This paper enquires into the current status of civil society regulation in West Africa and the effectiveness of each type of regulation. It seeks to answer the question whether it is self – regulation, state control or international norms and standards that applies in the regulation of CSOs in the region. The need for this inquiry cannot be underestimated. The growing demand for the regulation of CSOs at state level overlooks the fact that CSOs act as vehicles through which individuals exercise their rights to freedom of association, which is enshrined in national constitutions and protected by international human rights law. The study on the current status and effectiveness of regulation of CSOs in West Africa offers an opportunity to review the laws and policies affecting the rights and privileges of CSOs in the region and how these regulations feed into a possible global framework for the regulation of CSOs. The paper argues that the dominant form of regulation in West Africa is State regulation. However, the study recommends that CSOs operating in West Africa should explore various forms of self-regulation as a means of developing synergies of cooperation in their activities.

1.0 INTRODUCTION

This research paper discusses the regulation of Civil Society Organisations (CSOs) in West Africa. Regulation involves the process through which CSOs operate within laid down laws and policies by national governments and are accountable to their constituencies. Regulation can take the form of self-regulation, State control or the application of regional norms and standards. There have been legitimate calls for CSO accountability and transparency in carrying out their activities. However, this has been misrepresented by national governments through laws that seek to muzzle the activities of CSOs in the guise of anti-terrorism laws and other draconian legislations. Examples of such laws can be found in some countries including Ethiopia, Russia and Uganda. Several CSOs in Africa have advocated for self-regulation as opposed to the current heavy-handed state regulation that obtains in most parts of Africa (Muchabaiwa, 2011: 23). This is because state regulation at times is aimed at stifling the activities of CSOs when they are perceived as enemies of the state or part of the opposition. On the other hand, self-regulation by CSOs will involve self-introspection, re-envisioning and promotion of corporate governance. However, both self and state regulations have their merits and demerits discussed later in the paper. For instance, self-regulation has weak enforcement mechanisms while state regulation may not be in the overall interests of CSOs. These notwithstanding, CSOs in Africa have advocated for the adoption of a continental code of ethics or minimum standards for civil society operations (Muchabaiwa, 2011: 75). Regulation of CSOs is not a recent development and CSOs have had their own share of calls for the regulation of their activities. The fact that there is no international framework regulating the activities of CSOs makes it imperative to look at best practices that could ensure accountability for the activities of CSOs. It also offers an opportunity for state regulators to develop synergies of cooperation with CSOs to ensure the sustainability of their activities.. This is because CSOs are increasingly becoming endangered species as they operate in hostile environments in different parts of the world (Willebois, 2010:1; Sidel, 2010:10).

The need for an inquiry into the regulation of CSOs in West Africa cannot be underestimated as the space for CSOs to operate is gradually decreasing due to interference in their activities by national governments. This is in form of laws and policies adopted to curtail freedom of association and stringent regulations adopted to make it difficult for CSOs to operate in any given locality. However, these state sponsored regulatory frameworks overlook the fact that CSOs act as vehicles through which individuals exercise their rights to freedom of association which is enshrined in national constitutions and protected by international human rights law. The study on the current status and effectiveness of regulation of CSOs in West Africa offers an opportunity to review the laws and policies affecting the rights and privileges of CSOs in the region and how these regulations feed into a possible regional norms and standards or global framework for the regulation of CSOs.

The research paper is divided into seven parts. Part one is the introduction, which includes the objectives of the research, the methodology adopted and justification for the selected case studies. Part two discusses the right to freedom of association. Part three discusses various forms of self-regulation of CSOs in selected case studies. Part four discusses, state regulation of CSOs and part five looks at the applicable regional norms and standards of CSO

regulation in West Africa. Part six discusses the possibility of an international framework for the regulation of CSOs. Part seven is the conclusion and recommendations.

1.1 Objectives of the study

The need for regulation of CSOs cannot be underestimated. It offers CSOs the opportunity to develop accountability mechanisms, which will also enhance their legitimacy. This study intends to compliment other studies that have discussed the regulation of CSOs. However, its focus as already stated is on CSOs operating in West Africa. The study assesses the current status of civil society regulation in West Africa highlighting country-specific success stories and lessons learned. In so doing, it queries:

- a) The dominant forms of civil society regulation in West Africa and their impact on civil society effectiveness.
- b) The applicability and interplay between the regulation of civil society by self, state control or regional norms and standards in the region
- c) The effectiveness of various approaches to regulation in West Africa
- d) The import of the foregoing for a global framework of civil society regulation

1.2 Methodology and limitations of the research

The methodology adopted in this research is the review of primary and secondary materials on self, state, regional and international regulation of CSOs with particular reference to West Africa. This involves the analysis of laws, policies dealing with regulation of CSOs and interviews with specific CSO actors. In addition, I participated in a Public Hearing organized by the House of Representatives of the Nigerian National Assembly on the regulation of voluntary organisations in July 2014 and had the opportunity to discuss with Nigerian CSOs, government officials, policy makers and development partners on the regulation of CSOs in Nigeria. I also interviewed the Director of Centre for Democracy and Development (CDD), Idayat Hassan. Furthermore, limited email interviews were conducted with CSOs in The Gambia, Nigeria and Ghana. These interviews were aimed at getting information on the current status of self-regulation in the selected countries. In addition, researchers that have developed relationships with ECOWAS, the African Union (AU) and the African Commission on Human and Peoples' Rights (ACHPR) were interviewed through emails with specific reference to the regulation of CSOs by these bodies. I also participated in an international conference in Dakar, Senegal in July 2014 that afforded me the opportunity to interact with several CSOs both within and outside the continent on the regulation of civil society organisations. During my stay in Senegal, I interviewed Aboubacry Mbodji, Secretary General of Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO) on the current status of state and self-regulation in Senegal. The reasons for these interviews were to know the relationship between voluntary organisations and these inter-governmental institutions regarding the regulation of CSOs in West Africa. Although, the research deals primarily with developments in West Africa, not all the countries in the sub-region are given adequate discussion. The study examines government and self-regulatory frameworks in Ghana, Nigeria, Senegal and The Gambia. This is due to paucity of information and language difficulties encountered by the researcher dealing with data available in some non-English speaking West African countries. The paper does not review all the laws that regulate the operation of CSOs in the region but gives an overview of developments in some countries in West Africa. Furthermore, it does not undertake a country by country review of laws

that affect the operation of CSOs in West Africa. Rather, the paper selected some countries as noted above as case studies. .

1.3 Justification for selected case studies

The study analyses the regulation of CSOs in The Gambia, Ghana, Senegal and Nigeria. A study on the regulation of CSOs in West Africa should ordinarily represent the major languages of ECOWAS member states, which include English, French and Portuguese. In addition, the study should be representative of the different forms and styles of government including the types of CSOs operating in ECOWAS countries. However, this approach raises some difficulties in terms of language difficulties in assessing materials in French and Portuguese as discussed earlier. Therefore, English and French language speaking countries are selected as case studies. A major criterion for the selection of these countries is their economic and political status in the region. Another justification is the size and number of CSOs operating in the countries. For example, Nigeria is the most populous country in Africa and recently became the largest economy in the continent. In addition, there are several CSOs operating in Nigeria with national, regional and international reach making Nigeria's selection, as a case study inevitable as there is no relationship between government regulatory frameworks and self-regulation adopted by CSOs in Nigeria. Furthermore, Nigerian legislators are discussing draft laws aimed at regulating the activities of voluntary organisations in Nigeria. The Gambia is a small ECOWAS country in terms of size and population. However, the African Commission on Human and Peoples Rights is based in Banjul making The Gambia a strategic country regarding the existence and operation of CSOs in the region. The Gambia's self-regulatory framework for CSOs is still in draft form and has not been adopted. Ghana and Senegal are celebrated democracies in the region.. Their stability, human rights credentials and availability of materials contributed to selecting them as case studies. In addition, there is currently a move by the government of Ghana to merge the self-regulatory efforts of CSOs with the new CSO policy, which presents an interesting scenario and offers a positive advantage for the relationship between government agencies and CSOs in Ghana. The next section discusses the right to freedom of association and the dominant forms of CSO regulation applicable in the region.

2.0 FREEDOM OF ASSOCIATION AND REGULATION OF CSOs

Freedom of association is a key aspect of NGO regulation. The right to free association is recognised under international human rights law. For example, article 20 of the Universal Declaration of Human Rights of 1948 recognises the right to freedom of association. In addition, article 22 of the International Covenant on Civil and Political Rights states that everyone has a right to freedom of association with others, including the right to form and join trade unions for the protection of interests. Article 8 of the International Covenant on Economic, Social and Cultural Rights also provides for the right to freedom of expression. The regulation of CSOs is a means to enable citizens to enjoy the right to freedom of association. Regulation should not lead to the disempowerment of the right to freedom of association. This is because several other international treaties provide for the right of freedom of association. These include Convention on the Elimination of All Forms of Racial Discrimination of 1965, Convention on the Elimination of All Forms of Discrimination Against Women of 1979, Convention on the Rights of the Child of 1989, Convention on the Rights of Persons With Disabilities of 2006. In addition, there are several other binding treaties dealing generally with the right to freedom of association

with particular reference to trade union activities. These are International Labour Organisation Freedom of Association and the Right to organise Convention of 1948 (no 87) and Right to Organise and Collective Bargaining Convention of 1949 (no 98). The UN has also adopted several non-binding documents that promote and protect the right of freedom of association. These include the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms of 1999, the UN Declaration on the Right to Development of 1986 and the Vienna Declaration and Programme of Action of 1993.

The promotion and protection of the right to freedom of association by the international instruments discussed above shows the importance of this right. It therefore important to state that laws made at the State level to regulate CSOs should be geared towards facilitating the right of individuals to freely associate without hindrance from national governments. Self-regulation by CSOs should also be seen as a means through which the right to freedom of association is expressed. The next section discusses different forms regulation of CSOs, which is the main thrust of this paper.

3.0 SELF-REGULATION OF CSOs IN WEST AFRICA

Self-regulation has been defined as a set of institutions in which standards and rules are set by an industry-level organization, rather than at the governmental or firm level (Gunningham and Rees, 1997:363). This means that self-regulation in relation to non-profits is driven by CSOs themselves instead of government agencies. Several government agencies define self-regulation as the practice of industry taking the initiative to formulate and enforce rules and codes of conduct with no government involvement, or with such involvement taking a very limited form, for example as observer or advisor (Black, 2001:116). However, according to Julia Black (2001: 121) “self-regulation is used to mean variously soft law, collective arrangements that may be non-legal, and/or entail no government involvement, bilateral arrangements between firms and the government, unilateral adoption of standards, the involvement of industry in rule-formation, neo-corporatist arrangements in which the collective shares in the state's authority to make decisions about standards of conduct, monitoring, and enforcement, but in which the relationship with government may vary, and/or in which those other than the persons being regulated may play a role.” This definition emphasises minimum involvement of government agencies. On the other hand, One World Trust (2010:11) defines self-regulation as the process through which two or more organisations come together to either define common norms and standards to which they can be held to account or share good practices so as to improve their accountability and effectiveness in service delivery. In addition, a common feature of CSOs self-regulation is that it is not fully mandated by government regulation. In other words, some aspects of each CSOs self-regulatory initiative are the result of voluntary participation by the sector in developing and administering common norms and standards of behaviour. Furthermore, self-regulation can involve external assessment or even control by a third party such as a peer group or watchdog, or a sufficiently independent state accredited umbrella organisation, or a governmental but arms-length body (One World Trust, 2010:11). The Gambia's Code of Conduct and Ethics defines self-regulation as efforts by individual organisations, associations or networks to develop standards or codes of behaviour and performance partly in an effort to redeem the image of the sector (as a result of public scandals

or exaggerated claims of performance), and partly to forestall potentially restrictive government regulation (TANGO's Code of Conduct and Ethics, 2012). Several CSOs in West Africa have adopted different kinds of self-regulation. These include those that use national self-regulation models, those that observe codes of conduct and those organisations that observe the voluntary clubs procedure (Gugerty, 2010:10). The emergence of different forms of self-regulation is a reaction to regulatory initiatives proposed by governments. This means that CSOs will prefer self-regulation than to be constrained by government policies that limit the exercise of the right to freedom of association (Ball and Dunn, 1995:42). What follows is a synopsis of CSOs self-regulation in selected countries in West Africa including Ghana, Nigeria, Senegal and the Gambia. It is not by any means exhaustive but should be seen as a modest review of various forms of self-regulatory initiative operating in the region.

3.1 Self-Regulation in Ghana

There was an attempt by the government of Ghana in 1993 to provide a regulatory framework for CSOs. However, the process did not materialise due to several factors including the lack of ownership of the process by CSOs. In 2000, the state collaborated with CSOs through a series of workshops, seminars and meetings to produce a policy document - Draft National Policy for Strategic Partnership aimed at regulating CSOs activities in Ghana. The policy was revised in 2004 (Modern Ghana, 2009). At a joint meeting between CSOs and the government agencies, it was agreed that the Draft National Policy for Strategic Partnership with CSOs would form the basis for sections of the law related to CSOs. In 2006/2007, the Government introduced a Trust - NGO Bill which included the regulation of CSOs. Numerous organizations came together under the platform of the Ghana Association of Private Voluntary Organizations in Development (GAPVOD) and wrote to the Ministry expressing concerns about including CSOs within the Trusts – NGO Bill (Modern Ghana, 2009).

GAPVOD is an association established in 1980. The regulatory reform introduced by GAPVOD was in 1995 and is known as Ghana Standards for Excellence, a form of Voluntary Club (Gugerty, 2010:7). Several other CSOs have joined GAPVOD to campaign for a self-regulatory framework in Ghana. For example, the Ghana NGO/CSO Standards for Excellence is an innovative partnership project seeking to promote self-regulation among CSOs operating in Ghana. The main objectives are to demonstrate that NGO/CSO community is able and disposed to voluntary self-regulation (POSDEV, 2007). In addition, it is aimed at promoting organizational and institutional learning within organizations in Ghana (POSDEV, 2007). It helps to ensure transparency, accountability and good governance in the operation of CSOs by voluntary self-regulation while improving the quality and sustenance of services provided by CSOs to the Ghanaian public (POSDEV, 2007). Despite the existence of the voluntary club, there is no sector wide code of ethics that regulates the activities of CSOs in Ghana and only members of GAPVOD adhere to the Ghana Standards for Excellence (USAID, 2012:65).

The Ghana Standards Project seeks to establish minimum standards defined by voluntary organisations and imbibing the principles of good and ethical practice. The pilot stage of the project obtained funding from international organisations like InterAction, in the United States States of America and The Commonwealth Foundation in the United Kingdom. The project has attracted support from WACSI in printing 1000 copies of the Standards for

distribution to all stakeholders in Ghana (Modern Ghana, 2009). The methodology used in assessing the organisations is through meetings and interviews. The organisations are assessed on various criteria including their legal status, governance structure, conflict of interest, financial accountability, resource mobilisation, CSOs autonomy, human resources, NGO/CSO work and Public Affair and public Policy (Modern Ghana, 2009)

In addition to the standard for excellence, the Draft National Policy for Strategic Partnership spells out the relationship between CSOs and the Government of Ghana. The objectives of the policy includes the creation of an enabling legal, institutional and democratic environment for CSOs to operate independently and contribute effectively to national development; the establishment of a framework for consultations on issues that affect the effective governance of CSO activities in the non-profit sector and how to resolve them; the promotion of collaboration between Government, CSOs and other stakeholders to improve relations and enhance the pursuit and attainment of individual and collective national development goals (Draft National Policy, 2004). However, there are indications that the government regulatory agency plans to partner with GAPVOD and other CSOs in Ghana to develop a sector-wide regulatory framework that combines both government and self-regulatory instruments (B-Dankwa, 2014).

3.2 Self-Regulation in Nigeria

The Nigeria Network of NGOs (NNNGOs) was established in 1992 while the self-regulatory reform initiated by NNNGOs was established in 2001 known as the Code of Conduct for NGOs in Nigeria (NNNGO, 2001). The code of conduct was adopted on 29th November 2012 at the 12th Annual General Meeting of the NNNGO in Lagos Nigeria. Around 800 CSOs in Nigeria have subscribed to the code of conduct (Oluseyi, 2014). The preamble to the code of conduct states that CSOs are guided by the laws governing the activities of CSOs in Nigeria while the code of conduct provides the principles for actions of non-governmental organisations aimed at increasing the reliability of the organisations and the non-profit sector in the society. However, the effectiveness of the Code of Conduct adopted by NNNGOs is seriously in doubt and the number of CSOs involved in the process is limited to a considerable extent (USAID, 2012:114). This is because the Code Conduct is not generally known outside Lagos. In fact, it has not been mentioned, referred to or referenced by CSOs during current discussions on the regulation of CSOs in Nigeria proposed by the government (Idayat Hassan 2014). Furthermore, there are several coalitions and networks involved in accountability issues that are not members of the NNNGO. These include Transition Monitoring Group (TMG), Freedom of Information Coalition (FOIC) and Electoral Reform Network (ERN). All these coalitions have members throughout Nigeria. However, despite the existence of the code of conduct produced by NNNGOs there is little or no evidence of self-regulation of CSOs in Nigeria (USAID, 2012:102). Perhaps, CSOs in Nigeria see state regulation as the ultimate form of regulation and therefore have failed to develop synergies of cooperation by engaging with the efforts of the NNNGOs. It might also be argued that lack of awareness is a major issue with the code of conduct adopted by members of the NNNGO.

In addition to the activities of NNNGOs, there is currently an advocacy group in Nigeria led by CSOs working on development issues campaigning for the adoption of the Nigerian

Development Trust Fund for Civil Society Organisations Bill 2014. Article 4 of the NDTFCS Bill proposes enhancing sustainable partnership between the Nigerian government and civil society organisations for the eradication of poverty and its causes and the promotion of other aspects of sustainable development goals. This will involve the establishment of a Nigerian Development Trust Fund for CSOs (NTDFCS) Management Agency or Board. The Agency is to report to the Nigerian Presidency. The CSOs to benefit from the trust fund are CSOs engaged in humanitarian services and actions that enhance the dignity of the deprived and vulnerable of the Nigerian society and faith based or voluntary organisations engaged in social development, peace building and other humanitarian services. Article 9 of the NDTFCS Bill mandates the Agency or Board to receive all moneys, grants, donations from the federal, state and local governments, local and international donors meant for the funding of developments project to be undertaken by civil society organizations. In addition, the Agency or Board is to disburse or pay out moneys from the Fund to support programmes approved by the Agency or Board or the President as the case may be.

The Agency or Board is expected to create, arouse and sustain the interests of federal, state, local government including Nigerians and the international communities on the activities of these CSOs by ensuring the promotion, improvement and general welfare of the hungry, vulnerable, weak and sick in Nigeria. In addition, the Agency or Board will work towards the empowerment of women and the girl-child. The Agency or Board will also promote consultations, dialogue and share experience on development projects with relevant federal, state and local agencies and organisations. The Agency or Board will exercise control over the operation and management of the trust fund for the purposes of ensuring accountability and effective application of the trust fund to the objectives set out in the bill. The Agency or Board will cooperate with federal, state and local government councils and other agencies of government to identify, fund and execute projects embarked upon by each organisation under the bill. The Agency or Board has the power to enter into contractual relations with a view to carrying into effect the objectives of the bill. In addition, the Agency or Board will carry out projects or programmes aimed at meeting the development needs of poor communities in Nigeria. The Agency or Board will also sensitise Nigerians on the need for a healthy living and environmental cleanliness. Furthermore, the Agency or Board will disseminate available information to increase public awareness, influence and visibility of the nature of socio-economic and political governance vis-à-vis the work of CSOs in Nigeria.

Article 10 of the NDTFCS Bill grants the proposed government agency or board enormous powers, which is unprecedented in the history CSO-government relationship in Nigeria. The Agency or Board has the power to plan, monitor, evaluate, develop and determine criteria and procedures for granting money from its funds to any organization for carrying out its project. The Agency or Board has the power to liaise with international organizations on the practices of collaborating with them to effectively promote the objectives of the fund. The Agency or Board has the responsibility of ensuring that funds disbursed to organisations to undertake projects for the good of Nigerians are expended on those projects only. In addition, the Agency or Board has the power to make it mandatory for any organization which benefits from moneys disbursed from the Fund to submit reports on all projects undertaken and audited accounts for the financial year. In addition, the Agency or Board has the power to organise fund-

raising activities, manage the registration and cancellation of registration of any organization registered with the trust fund and seeking to benefit from the trust fund as well as right of appeal. In addition, the Agency or Board is responsible for the allocation of an agreed percentage of monies accruing to the trust fund to any activities, which it may from time to time determine.

The Bill as presented to CSO stakeholders is very problematic and subject to abuse if adopted in its current form. For example, the interpretation section is currently undeveloped and has to be integrated into the body of the Bill. In addition, the Bill intends to take over the registration and administration of CSOs in Nigeria without making any effort to harmonise its contents with already existing legislations that regulate the activities of CSOs. The powers of the Agency or Board are discriminatory, as it does not give CSOs the necessary autonomy to pursue activities without undue interference from the government. The Bill does not promote self-regulation among CSOs and gives a government body the power to register and deregister CSOs. The Bill also limits the ability of CSOs to raise funds for their activities. It is obvious that the Bill needs a lot of revision to be acceptable to CSOs. It is also surprising that a Bill championed by CSOs seeks to confer powers on a government agency to the detriment of the CSOs in Nigeria.

3.3 Self-Regulation in Senegal

The Conseil des Organisations d'Appui au Développement (CONGAD) is the main coalition of CSOs in Senegal. The association was established in 1982 and introduced a regulatory reform program in 1993. The regulatory reform initiative was adopted in 1995 and the name of self-regulation program is CONGAD's Code of Ethics which is a form of code of conduct for Senegalese based CSOs (Gugerty, 2010:8). CONGAD has also initiated the development of a framework agreement between CSOs and the government of Senegal. The cordial relationship between CONGAD and CSOs has impacted positively on the relationship between CSOs and the Senegalese government. It does not seem as if CONGAD's Code of Ethics has wide application in Senegal. This is because voluntary organisations in Senegal easily identify with government laws that regulate their activities (Aboubacry Mbodji, 2014). This means that voluntary organisations look up to government for guidance and pay less attention to self-regulatory initiatives in Senegal. This is also evident in other West African countries that have been discussed in the study. The Senegalese code of conduct adopted by CONGAD has a very weak regulatory power. This is because CSOs are not required to make public commitments to adherence and they rarely develop mechanisms through which violations of the code might be heard and adjudicated (Gugerty, 2009: 13). However, after a long period of deteriorating relations between the government and CSOs in Senegal, it appears things are beginning to change for the better. This is because CONGAD has initiated a new framework-agreement for CSO-government relations in Senegal (USAID, 2012:124). The relationship has resulted in the creation of a commission with equal representation by the government and CSOs, and the creation of three technical commissions representing both members and non-members of CONGAD (USAID, 2014:125). The draft framework agreement includes new provisions for cooperation to be managed by the Prime Minister's office. This will involve regular harmonization meetings between CSOs and local government officials, a quarterly meeting between the Prime Minister and the inter-ministerial commissions charged with reviewing registration requests, investment programs, and headquarters agreements, and an annual

meeting with the President, in which a delegation representing CONGAD's members as well as non-member. In addition CSOs would be required to present a monitoring report on the implementation of the framework agreement between CSOs and the government of Senegal (USAID, 2014:125).

3.4 Self-Regulation in the Gambia

The Association of NGOs (TANGO) established in 1983 is the main CSO association and currently has seventy-five members including local and international NGOs and Community Based Organisations (USAID, 2012:54). The regulatory reform initiated by TANGO was initially introduced in 1996. The initiative did not get considerable attention. The self-regulatory framework was reintroduced in 2003 and is called the CSO Code of Conduct and Ethics which is intended to set standards for CSOs in The Gambia (Gugerty, 2010:7). The code of conduct and ethics aims to serve several purposes. These include ensuring transparency and accountability in the operation of member organisations through voluntary self-regulation (TANGO's Code of Conduct and Ethics, 2012:11). The also aims to improve the quality of services provided by member organisations by helping them to adopt high standards of conduct and ethical practice and to develop efficient decision-making processes (TANGO's Code of Conduct and Ethics, 2012:11). Furthermore, the code will help CSOs in The Gambia to improve communication between the NGO community and the various stakeholders (TANGO's Code of Conduct and Ethics, 2012:11). Also the code of conduct and Ethics will improve the performance of the member organisations by encouraging the exchange of innovative experiences among them, and learning from proven best practices (TANGO's Code of Conduct and Ethics, 2012: 11).

Article 5 of TANGOs draft Code of Conduct provides that 'Members raise funds from outside the organisation by seeking voluntary financial support from foundations, corporations, individual donors and governments in order to fund their operational and programme costs and thereby reach their objectives. As a recipient of such funds, it is incumbent on the member organisation to be open and transparent, be accountable to the donor, use the funds responsibly and according to the intent of the donor, and allow funding individuals and organisations to be able to have an insight into the project at all times'. This means that funds generated by CSOs should be managed in a transparent and accountable manner. In addition the Code of Conduct provides for a Management Committee responsible for enforcement and compliance with the provisions of the Code of Conduct (TANGOs Code of Conduct, 2012). Some of the sanctions that can be meted out for non-compliance are (1) deference of graduation of an associate member to full membership status or that of an observer to associate status; (2) suspension of the particular organisation's membership, or (3) termination the membership of such member (TANGOs Code of Conduct, 2012). One issue that is not clear with the Code of Conduct is the relationship between the code and the government legislations regulating CSOs in The Gambia. It may be important to make this connection in the code.

TANGO's Code of Conduct and Ethics is yet to be approved by the membership (Madi Jobarteh, 2014). In addition, the Code of Conduct is an internal document of TANGO specifically produced for the regulation its members. It has nothing to do with the national legislation. In fact the national legislation, which is the NGO decree discussed under State regulation, has its own code of conduct (Madi Jobarteh, 2014). Some benefits accrue to

members who subscribe to the Code of Conducts and Ethics. For instance, the Code of Conduct aims to set values and standards for CSOs in The Gambia. The Code will help CSOs to improve their operations, management and governance and become more transparent, accountable and efficient. Furthermore, subscribing to the Code of Conduct can earn a CSO an improved status and profile. TANGO would use this to also recognize and award CSOs, which would be shared with partners (Madi Jobarteh, 2014). The USAID Report confirms that TANGO is very influential in The Gambia and coordinates several activities in collaboration with government agencies (USAID, 2012:54). However, it does not seem that the draft code of conduct was produced in collaboration with the government regulatory agency. Rather it is an internal arrangement between CSOs and championed by TANGO. In addition, although CSOs are free to operate in The Gambia, several of them avoid confrontation with the government in human rights issues. In conclusion, self-regulation remains a challenge for CSOs in the Gambia. While many organizations have codes of conduct and internal regulations, these are not usually fully enforced (USAID, 2012: 59). It is hoped that TANGOs code of conduct and ethics for its members will set the standards for management, governance, and operations in order to ensure effectiveness, efficiency, transparency, accountability and performance of CSOs in the Gambia (USAID, 2012:59).

3.1.1 A critique of self-regulation

There are legitimate concerns that CSOs may not regulate themselves effectively. This is because issues of legitimacy of authority and bias may be raised against the CSOs involved in self – regulatory activities. For instance, despite obvious attractions including the fact that self-regulation can serve as a vehicle for ‘internal democracy’ for CSOs, the possibility of achieving success through peer monitoring is a major challenge. This is because the incentives for enforcement and compliance are generally weak. In addition, although CSOs may prefer self-regulation as opposed to government regulation, the reality is that the non-availability of effective enforcement mechanisms results in non-compliance with self-regulatory frameworks

Availability of funding is a major factor limiting self-regulation of CSOs. This is because most CSOs rely on foreign funding to exist. It may be difficult for CSOs charged with monitoring the compliance of self-regulation to survive on grants that deal solely with self-regulatory projects. This is because donors may not necessary support CSOs that subscribe to self-regulation. Furthermore, most western donors insist on getting evidence of registration and compliance with government regulatory frameworks to fund national CSOs. Therefore, there is no incentive for CSOs to embark on self-regulation when compliance with government regulations exerts pressure on their existence and possibility of securing funds from donors.

Another debilitating factor is that most self-regulatory frameworks lack effective monitoring and evaluation strategies. Self-regulations depend on peer pressure and objectivity. However, these alone cannot guarantee effectiveness and result oriented partnerships. Another issue affecting self-regulation is that some CSOs revolve around individuals and there is lack of continuity when these leaders are no longer available to continue working with the organisations. The lack of effective succession plans may affect any self-regulatory framework subscribed to by the CSOs concerned. These limitations notwithstanding, self-regulation still offers CSOs the possibility of self-appraisal which enhances service delivery to the populace.

3.1.2 The case for self-regulation

As earlier noted, self-regulation operates in different models. It may be an arrangement between CSOs without any form of input from government agencies. Alternatively, there may be a form of coordination between government establishments and CSOs. In other words, self-regulation can operate either as a substitute for or a complement to government regulation (Gugerty, 2008:107). However, as this research shows, the dominant form of regulation is government regulation with its limitation to the freedom of association and attendant consequences on the rights of individuals to freely associate using CSOs as vehicles of expression and instruments of association (Charnovitz, 2005:13). According to Gurgety (2008:108) “[a] self-regulation regime could in principle be constructed from any combination of standards and enforcement mechanisms. Empirically, three forms of CSO self-regulation appear to be most common: the national self-regulation ‘guild’, the voluntary ‘club’ and the voluntary code of conduct. Each form produces a particular kind of public good through a specific set of institutional mechanisms.” A major argument in this research is a case for self-regulation in the ECOWAS region. This is because self-regulation is aimed at developing mechanisms that shapes or constrains organisations’ behavior in order to provide a signal of organizational quality to key stakeholders (Darnall and Carmin, 2005:71). It is argued that self-regulation offers CSOs in West Africa a safe net for the consolidation of their activities. This is because self-regulation has several benefits. For example, it raises standards across the CSO sectors and helps attract funding because it is a form of regulation, which some donors find attractive to support. In addition, it helps in building public trust and defines a clear set of principles and stakeholders. In some instances, self-regulation helps weed out ‘bad apples’ and protects the sector from those with other interests that detrimental to the activities of CSOs. Furthermore, self-regulation enables the sector to share good practice and learn from each other. Finally, it pre-empts government regulation and enables CSOs to take responsibility for their actions (Kode and Poskitt, 2011).

4.0 STATE REGULATION OF CSOs IN WEST AFRICA

The enforcement of the right to freedom of association is currently discharged by states. This means that it the responsibility of states to develop rules and regulations that allow for the enjoyment of the right to freedom of association. However, recent developments have shown that states at times do not create enabling environment for the effective enjoyment of these rights. Furthermore, there are prohibitive issues that militate against CSOs enjoying the rights as provided under international human rights law. The history of NGOs in West Africa show that they are most times seen as members of the opposition and this is reflected in the regulatory laws enacted by states to control their activities (Mamattah, 2014: 143). This can be contrasted with the current relationship between the UN and CSOs, which is more of an informal arrangement, which has resulted in most decisions concerning CSOs to be decided at the national level. This situation of things is not different from what is obtainable in West Africa as CSOs are regulated through state laws.

4.1 State Regulation in Ghana

The right to freedom of association is provided under article 21(e) of the Ghana Constitution of 1992, which provides that citizens have the right to freedom of association, which includes freedom to form or join trade unions or other associations, national or

international, for the protection of their interest (Article 19, 2001: 23). The legal framework governing CSOs in Ghana is the Companies Code of 1963 (Act 179). The law enables non-profits to register as companies limited by guarantee while members of the organisation act as guarantors (USAID, 2012: 61). There are generally two steps in the registration of CSOs in Ghana. The first step is to get a certificate to commence business and incorporation at the Registrar General's Department under the Ministry of Justice and Attorney General. However to operate as an NGO in Ghana, it has to be registered at the Department of Social Welfare under the Ministry of Employment and Social Welfare, either as a local or international NGO (JICA, 2011).

The Government of Ghana in 2007 proposed a Draft Bill for Trust and Non-Profit Making Civil Society Organizations which is to provide for the establishment of the Trust Commission and more clearly delineate the powers and duties of trustees and for the registration of non-governmental organisations in Ghana (Draft Trust and NGO Bill, 2007). The aim of the Bill is to establish a Trust and NGO Commission that will regulate the activities of trustees and CSOs in Ghana. Section 2 of the Trust Bill provides that the object of the Trust Commission is to regulate trusts and nongovernmental organisations. Section 4 of the Trusts Bill provides for the functions of the proposed Board for Trusts and CSOs in Ghana. The Bill provides that the Board: (a) shall register trusts and non-governmental organisations; (b) shall maintain a register of trusts and non-governmental organisations and submit quarterly returns of the registration to the Ministry; (c) shall oversee the activities of trusts and non-governmental organisations; (d) shall investigate the activities of a trust or a non-governmental organisation where it is considered expedient in the national interest to do so; (e) shall provide the procedure for the resolution of disputes among trusts and non-governmental organisations; (f) may register testate and intestate estates; (g) shall advise Minister on policy matters regarding nongovernmental organisations; (h) shall promote effective working relationships between the government and non-governmental organisations; (i) shall ensure that trusts and non-governmental organisations fulfil their accountability obligations; (j) shall require trusts and non-governmental organisations to submit periodic reports on their activities to the Commission; (k) shall review the policy on non-governmental organisations when necessary; (l) shall develop a code of conduct for non-governmental organisations; (m) shall promote the formation of non-governmental organisations in the best interest of national development; and (n) shall perform any other function in furtherance of the object of the Commission (Trust Bill, 2006).

Apart from the regulation of CSOs, the Commission will also have the power to develop a code of conduct for CSOs in Ghana. This means that CSOs and government regulatory agencies can enter into a partnership to develop a code of conduct, which meets the minimum requirements of both government and CSOs. Section 19 (1) of the Trust and NGO Bill provides that a non-governmental organisation is a civil society organisation formed to pursue purposes that are not for profit but orientated towards public benefit.

The Trust-NGO Bill states that non-governmental organisations may be national or international, secular or faith-based. Furthermore, the Trust Bill states that CSOs may operate across sectors or districts to provide service to the deprived, underprivileged and the general public. The Trust Bill provides for the privileges of CSOs in Ghana. Section 20 states that CSOs

registered under the Bill; (a) qualifies for access to public funds for development which may be from external development partners and the Government of Ghana; (b) may benefit from tax exemption and customs duty waiver determined by the Minister in consultation with the Minister of Finance.

One problem with the bill is the merger in the administration of trusts and CSOs (Atuguba, 2007). In addition, it does not take into consideration, the existence of the National Draft Policy for Strategic Partnership with CSOs (G-RAP RAO Annual Convention Communiqué, 2007). The regulation of CSOs is a specialised area and should not be lumped together with the administration of trusts. This is because the administration of trusts will likely impact on the activities of CSOs as they will be required to meet the rules and regulations provided under the Trust Bill. The provision that deals with developing a code of conduct for CSOs should be explored further. The question that the Trust and NGO Bill does not answer is the institution responsible for drafting the code of conduct. It may seem that the answer lies in the recent directive by the Government of Ghana that the codes of conduct or standards of excellence produced by CSOs as self-regulatory frameworks should be aligned with government objectives and policies (B-Dankwa, 2014). This means that it will be the responsibility of CSOs to develop self-regulatory mechanisms while the Government of Ghana provides the necessary legal backing and enabling environment for monitoring, evaluation and enforcement.

4.2 State Regulation in Nigeria

In Nigeria, the bill of rights in the Nigerian Constitution of 1999 and the directive principles of state policy offer constitutional basis for the rights of CSOs operating in the country (Okoye, 2006: 72). For example, Section 40 of the Nigerian Constitution provides for the freedom of association by stating that “[e]very person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests: Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.” Nigerian CSOs are regulated through several laws including the Nigerian Constitution of 1999; Company and Allied Matters Act (CAMA) of 2004; Companies Income Tax Act (CITA) of 2004; Taxes and Levies (Approved List for Collection) Act 1998; Value Added Tax Act of 1993; Value Added Tax Amendment Act of 2007; Federal Inland Revenue Service (Establishment) Act of 2007; Personal Income Tax Act of 2011; National Planning Commission Act of 1993; Prevention of Terrorism Act of 2011; Money Laundering (Prohibition) Act of 2011; Banking and other Financial Institutions Act (1991) and Central Bank of Nigeria Anti-Money Laundering/Combating the Financing of Terrorism Regulation of 2009 (ICNL, 2014).

The CAMA is not restricted to the registration of CSOs only but deals with both profit making businesses and nonprofit companies. CSOs in Nigeria can be registered as either incorporated trustees or companies limited by guarantee. For an NGO to be registered as a company limited by guarantee, the consent of the Attorney-General of the Federation has to be obtained. This is a big challenge for CSOs as it takes time to obtain this consent and at times, the registration of an CSO is delayed due to the inability of the Attorney-General’s office to issue

the consent in due time. It should be noted that CSOs in Nigeria are exempted from paying taxes on grants received for their activities. However, profits made in the cause of business are taxable. For instance CLEEN Foundation, a foremost Nigerian CSO paid 17 million naira in taxes on income from book sales and rent of assets in 2012. The Staff of CSOs in Nigeria is levied Pay-As-You-Earn taxes while companies that make donations to CSOs are entitled to tax deductions (USAID, 2012: 109). There is no synergy between government and private regulation of CSOs in Nigeria. As earlier stated, the regulation of CSOs in Nigeria by government is not correlated with the code of conduct developed by NNGOs. Despite these laws that regulate CSOs in Nigeria, government is still seeking for means and ways to further reduce the space within which voluntary organisations operate in Nigeria.

On the 2nd of July 2014, the House Committee on Civil Society and Donor Agencies organised a one-day Public Hearing on a Bill for an Act to Regulate the Acceptance and Utilization of Financial/Material Contribution of Donor Agencies to Voluntary Organisation and for Matters Concerned Therewith, 2013. Voluntary organisations were unanimous in rejecting the Bill arguing among other things that Independent Corrupt Practices and Other Offences Commission is not mandated to regulate voluntary organisations but government institutions. In addition, it has been argued that the sole aim of the Bill is to incapacitate voluntary organisations in Nigeria (Punch Newspapers, 2014).

The alternative legislation is a Bill which provides for the establishment of a non-governmental organization regulatory agency for the supervision, coordination and monitoring of CSOs in Nigeria. The Bill, which is a private member Bill and sponsored by several members of the House of Representatives, provides for the establishment of a regulatory agency for CSOs and CSOs in Nigeria. Section 31 of the Bill provides for a Code of Conduct to be developed by the proposed agency to facilitate self-regulation by CSOs on matters relating to their activities, funding programmes, foreign affiliations, national security, training the development of national manpower, institution building, scientific and technological development and such other matters as may be of national interest. In addition, the Bill provides that the Code of Conduct shall prescribe the responsibilities of the organizations, which, once approved by the Board, shall be construed as legally binding obligations under Nigerian law. While the decision of the House Committee on Civil Society and Donor Agencies on the Foreign Contribution Bill is being awaited, CDD a foremost CSO in West Africa has commenced discussions with voluntary organizations and development partners in Nigeria on the synergies that can be developed in proposing a legal framework that recognises the importance of state and self-regulatory models for CSOs in Nigeria (Idayat Hassan, 2014).

4.3 State Regulation in Senegal

In Senegal, the right to freedom of association is provided in articles 8 and 12 of the Senegalese Constitution of 2001. The legal framework regulating CSOs in Senegal is Decree No 96-103 of 8 February 1996 amended by Decree No 2010-1490 of 2010. The amendment increased the control which government has over CSOs. For instance, the law transferred the oversight of CSOs to the Ministry of Interior (USAID, 2012:122). Other amendments include annual financial reviews to be submitted by CSOs and a review of sources of funding conducted by the Ministry of Finance and Economy (USAID, 2012: 122). Several other laws regulate the

activities of voluntary organisations in Senegal including Basic Law No. 65-60 of July 21, 1965, establishing the Penal Code; Law No. 68-08 of March 26, 1968, establishing the Civil and Commercial Obligations Code (CCOC), which in 1968 took the place of the French Law of July 1, 1901 on Associations, which remained in effect after Senegal gained independence in 1960; Law No. 76-040 of January 16, 1976, on Associations with Goals of Popular Education, Sport, and Culture; Decree No. 76-199 of February 17, 1976, Setting the Conditions for Granting the Recognition of Public Utility to Associations; Law No. 79-02 of January 4, 1979, Anticipating the Dissolution of any Association whose Activities Harm Public Order; Law No. 81-77 of December 10, 1981, on Racial Discrimination, Anticipating the Dissolution of any Association whose Activities are in whole or in part Devoted to Practicing Social, Ethnic, or Religious Discrimination or Inciting such Practices; Law No. 84-37 of May 11, 1984 (ICNL, 2014).

There is a difference between registration of local CSOs and international NGOs based in Senegal. While CSOs are regulated by the basic laws regulating their activities, international NGOs operating in Senegal enter into agreements with the government on their activities and modes of operation (Aboubacry Mbodji, 2014). In addition, voluntary organisations are required to develop an investment program which is reviewed by another inter-ministerial commission with civil society representatives and then approved by the Ministry of Finance and Economy and the Ministry of the Interior. This is to enable them get tax exemptions (USAID: 2012: 121). CSOs in Senegal generally operate without interference from the government and the Senegalese legal system is tolerant of CSOs as long as they operate within the ambit of established legal frameworks. However the amended of the organic law regulating CSOs has put a strain on the ability of CSOs to effectively partner with government in their activities. As earlier noted, there are several laws regulating the activities of CSOs in Senegal. However, despite these laws, the Senegalese government favours CSOs as long as they obey laws and regulations. On the other hand international CSOs have had a difficult time in Senegal getting tax exemptions which results in eighteen percent increase in operational costs when tax exemption applications are not processed in time (USAID:2012:123).

4.4 State Regulation in the Gambia

In The Gambia, article 25 of the Constitution provides for the right to freedom of association which include 'freedom to form and join associations and unions, including political parties and trade unions' (The Gambia Constitution 1997). Voluntary organisations in the Gambia are regulated by two main laws. These are the Companies Act of 1955 and the NGO Decree 81 of 1996. CSOs are required to register with the Ministry of Justice to access benefits accruable to those with such status in accordance with the provisions of Companies Act of 1955 (USAID, 2012: 54). In other to be granted an NGO status, the organisation must register with the NGO Affairs Agency set up by the NGO Decree of 1996. Although this requirement does not provide any clear benefits, it has stringent regulations and can only be pursued two years after acquiring CSO status (USAID, 2012: 54). In addition, the NGO Decree 81 of 1996 requires all CSOs in the Gambia to re-register in every two-year period.

Section 4 of the NGO Decree provides that the NGO Affairs Agency shall serve as an administrative link between the Government and non-governmental organisations operating in The Gambia. In addition, the Agency is mandated to advise the Government on all matters

relating to non-governmental organisations. The Agency implements the Gambia's National Policy on non-governmental organisations and processes and grants clearance certificates to prospective CSOs prior to their incorporation under the Companies Act. The Agency also ensures the compliance of CSOs with the provisions of the protocol of accord and the CSO code of conduct. However, TANGO which is the foremost NGO in the Gambia leading self-regulatory efforts is not aware of the existence of this protocol of accord and code of conduct for CSOs (Jobarteh, 2014). The Agency also facilitates monitors and evaluates the activities of CSOs in the communities. In addition, the NGO Agency is saddled with the responsibility to liaise with TANGO to ensure that the contributions of CSOs impacts positively on the socio-economic activities of the Gambia.

The NGO Agency prepares and implements the institutional and human resources development for CSOs in The Gambia. The Agency also prepares and publishes a directory of CSOs in The Gambia bi-annually and prepares and implements programmes relating to education and communications as guides to CSOs operating within such areas. Section 6 of the NGO Decree establishes the Executive Board of NGOs which is the policy making authority of the NGO Agency. In addition, the Board supervises the management of the Agency. Section 7 of the NGO Decree provides for the composition of the Board which is by appointment and representations. CSOs are presented by two members comprising of one local and one international member of TANGO. In addition two members representing community groups and professional associations are members of the Board. Section 8 provides that the major function of the NGO Board is to formulate the National Policy on CSOs to be implemented by the NGO Agency.

One obvious limitation of the law is that it was enacted by a military government. This means that the level of participation of CSOs in the process is highly limited. In addition, Section 10 of the Decree makes it compulsory for CSOs to obtain a certificate of clearance of the NGO Agency before they can be registered under the Companies Act as charitable organisations. This provisions clearly restricts and the rights and privileges of CSOs in The Gambia. Furthermore, Section 11 of the Decree provides that all existing CSOs prior to the coming into force of the Decree are to re-apply to the Agency for registration under the Decree. This means that the NGO Agency has the power to stop an existing CSO from functioning if the CSO fails to obtain a certificate of registration. Despite these limitations, it seems the relationship between CSOs and the NGO Agency has remained cordial. There is currently an NGO Bill 2010 which is aimed at bringing the legal framework guiding CSOs in the Gambia to be consistent with the 1997 Constitution (USAID, 2012: 54). However, the NGO Bill is yet to become law as at the time of writing. Article 18 of the Bill gives the government the power to close down any CSO that does not conform to the development agenda of the government of Gambia. In addition, CSOs whose activities are detrimental to the government, peace and stability of the Gambia can easily be closed down (USAID, 2012: 54).

4.1.1 The advantages and disadvantages of State regulation

State regulation of CSOs can effectively muzzle the activities of voluntary organisations in West Africa. The recent Bill before the Nigerian parliament to regulate CSOs is a clear example State regulation aimed at limiting Nigerian CSOs from receiving foreign assistance. In addition, State regulation can infringe on the constitutional rights of individuals and organizations thereby closing the space enjoyed by individuals and organisations under a democratic dispensation. Despite some of the issues that have been discussed above as the limiting factors of State regulation, it is argued that there are still benefits of national regulation of non-profits. The availability of rules and regulations that govern the operation of CSOs helps legitimate organisations in no small measure. This is because, without state regulation and control of CSOs, it may be difficult for a state to know the CSOs existing in the country. Therefore, regulation through registration is a way of ensuring that terrorist organisations are not allowed to operate as legitimate CSOs.

5.0 REGIONAL NORMS AND STANDARDS AND CSO REGULATION IN WEST AFRICA

There is currently no regional framework for the regulation of CSOs in West Africa (Adjolohoun, 2014). ECOWAS as a regional body is mainly interested in the economic and political stability of its member states (Ebobrah, 2009: 61). There are several CSOs involved in different activities in West Africa. However, there is no database that lists the number of CSOs working in the region. In addition, several CSOs in the region are not involved in the activities of ECOWAS. CSOs that are involved do same not for the sake of self-regulation, rather to ensure the participation in the work of ECOWAS. Participation in the activities of ECOWAS is mainly through a coalition of CSOs called the West African Civil Society Forum (WACSOF). The aim of WACSOF is to provide a platform for CSOs to compliment the efforts of ECOWAS towards deepening regional integration and fostering stability and development in West Africa (WACSOF, 2014).

The transformation of the Organisation of African Unity to the AU has opened a space for CSO participation in the activities of the AU. Although there are several networks and coalitions of NGOs operating in the African continent, it is difficult to point out a single network or coalition leading the struggle for self-regulation of their activities. It will be recalled that the United Nations Economic Cultural and Social Council has Observer Status for CSOs participating in the activities of the UN. This is not seen as a means of regulation by the UN as there is currently no international framework regulating the conduct of CSOs at the international level. In addition, the AU has Observer Status procedure for NGOs to participate in its affairs. This procedure cannot be called regional regulation but a means to participate in the activities of the AU. However, an argument can be made about the regulation provided by the Economic, Social and Cultural Council (ECOSOCC) of the AU, which regulates the participation of CSOs in the activities of the AU through the Code of Ethics and Conduct for African Civil Society Organizations. The Code of Ethics and Conduct applies to that engage with the AU and does not have a general application in Africa. However, it serves as a template for the self-regulation of CSOs in Africa including those in West Africa. Bhekinkosi Moyo (2009:275) argues that ECOSOCC's Code of Ethics and Good Conduct is a mechanism to reduce the autonomy of s while exposing their vulnerabilities to State control. However, it is argued that ECOSOCC's Code

of Ethics and Good Conduct offers CSOs in Africa an opportunity to utilise the legal framework as a means of self-regulation. The African Charter on Human and Peoples' Rights was adopted in 1981 in The Gambia. Article 10 of the African Charter recognises the right to freedom of association. In addition, the Charter established the African Commission on Human and Peoples' Rights, which monitors human rights violations in the continent. One problem that has militated against the effective operation of the African Commission is the advisory nature of its decisions and lack of enforcement (Wachira and Abiola, 2006:467; Wachira, 2008:11). This limitation and pressures from CSOs led to the adoption of the Protocol to the African Charter establishing the African Court to complement the efforts of the African Commission in the promotion and protection of human rights in the continent (Udombana, 2000: 46). However, the African Commission does not regulate the activities of CSOs (Ayinla, 2014). CSOs with Observer Status at the African Commission are allowed to participate in the open sessions of the Commission. As at May 2014, there are 465 CSOs in Africa that have been granted Observer Status by the African Commission (ACHPR, 2014). Having an Observer Status with the ACHPR has nothing to do with CSO representation in the ECOSOCC of the AU (Ayinla, 2014). From the foregoing, it is submitted that CSOs with regional reach can play catalyst roles by ensuring that minimum norms and standards are observed by both national and regional CSOs either through self-regulation or regional norms and standards. A discussion of this issue is necessary to develop the proposal. It is argued that the emergence of regional CSOs should have value added benefits to CSOs both at the national and regional levels. In addition, it is argued that CSOs with regional reach should support self-regulation programmes of CSOs at national and regional levels. It is acknowledged that campaigning for self-regulation or developing regional norms and standards is not the primary responsibilities of these CSOs. However, supporting the call for self-regulation and developing regional norms as standards feeds into the larger picture of the campaign for the freedom of association. It is argued that there are regional CSOs in Africa that should be leading the call for self-regulation or the development of regional norms and standards but these CSOs have failed to utilise this model of engagement.

For example, as already stated, WACSOFF facilitates the participation of CSOs in West Africa in the activities of ECOWAS. Its objective is more of advocacy activities rather than regulation. The Coalition for an Effective African Court cannot be said to be regulating the activities of CSOs in Africa as its objective is strictly to promote the establishment of an effective African Court. Its objective is more of advocacy rather than regulation. West Africa Civil Society Institute (WACSI) is a regional organisation that aims to strengthen the capacity of CSOs in West Africa. Its objective is more of capacity building rather than regulation of CSOs (WACSI, 2014). Centre for Citizens' Participation in the African Union (CCP-AU) facilitates the participation of CSOs in Africa in the activities of the AU. Its objective is more of facilitating participation rather than regulation of African based CSOs (CCP-AU, 2014). The West African Bar Association (WABA) was established in 2004 in Abuja, Nigeria to supplement the work of ECOWAS by promoting rule of law, fundamental human rights and democracy in the region (Modern Ghana, 2014). WABA does not regulate the activities of CSOs in the region. Pan African Lawyers Union (PALU) is the umbrella association of African Legal Practitioners and Law Societies. It brings together the continent's five regional and fifty-four national Lawyers' Associations, as well as individual lawyer-members. The mission of PALU is to work towards the development of the law and legal profession, the rule of law, human rights and socio-economic

development of the African continent, including through supporting African regional integration (PALU, 2014). However, despite these responsibilities, PALU is not involved in the regulation of CSOs working in Africa. In practice however, there are few exceptions that can be noted. Though not expressly stated in their mandates, some CSOs carry out various forms of advocacy aimed at improving self-regulation of CSOs. For example, WASCI collaborated with GAPVOD on the Ghana standards and tries to inculcate certain values through its various engagements with CSOs in West Africa.

5.1 The merits and demerits of regional norms and standards

Regional norms and standards can serve as templates for states and CSOs in developing legal frameworks that recognize the importance of self and state regulations. In addition, regional norms and standards can assist regional organisations to reach out to more CSOs in the region. However, one problem with developing regional norms and standards is the possibility of acceptance and operationalization by CSOs already confronted with several legislations from the state. Another difficult issue is how the regional framework will be monitored and by whom? Furthermore, it is also difficult to know whether CSOs will prefer regional regulatory frameworks developed by inter-governmental organisations like the AU and ECOWAS or frameworks developed by regionally based CSOs. Despite these limitations, the possible merger of national and regional regulatory frameworks can serve as a tonic for international norms and standards in the regulation of CSOs. This idea is discussed in the next section having in mind the role of the UN in the process.

6.0 TOWARDS AN INTERNATIONAL FRAMEWORK FOR THE REGULATION OF CSOs

As already discussed, some CSOs in West Africa have developed different self-regulatory models. This paper argues that self-regulation by CSOs at the national and regional levels should be pursued as positive options in the campaign to open the democratic space available to CSOs to carry out their activities. Beyond what is obtainable at the national and regional levels, it is necessary to explore the current status of CSO regulation and the possibility of replicating self-regulation at the international level through minimum standards for self-regulation of CSOs. This is because there is currently no set of UN guidelines that outlines and safeguards the rights and obligations of CSOs. This development has led to states having different interpretations on the application of the right to freedom of association to CSOs operating in different jurisdictions. The reason for this is well-known. The UN has been slow in making concrete steps in developing effective relationships with CSOs. For example, in February 2003, the former Secretary-General of the UN, Mr Kofi Annan established the Panel of Eminent Person on UN Relations with Civil Society. The panel chaired by the former President of Brazil, Henrique Cardoso issued a report in June 2004, which recommended among other things, the institutionalisation and deepening of relationships between the UN and CSOs (UN, 2004). Subsequent developments following the release of the report are discussed next.

6.1 The Cardoso Report on the UN and CSOs

The Cardoso Report proposed that “the General Assembly should permit the carefully planned participation of actors besides central Governments in its processes” (UN, 2004). The report also advocated for an open door policy in the process of accrediting CSOs for UN

meetings by advocating for greater “access of civil society organisations beyond the Economic and Social Council forums” (UN, 2004). The Cardoso Report (UN, 2004) further recommended that the “United Nations should establish a fund to enhance the capacity of civil society in developing countries to engage in the United Nations processes and partnerships” (UN, 2004). The report further proposed that “Member States should encourage, through the forums of the United Nations, an enabling policy environment for civil society throughout the world and expanded dialogue and partnership opportunities in development processes” (UN, 2004).

The Cardoso Report is regarded as a controversial report and has been criticised for its lack of insight into the workings of the UN, the role CSOs and lack of diplomatic approach in its recommendations (Willets, 2006:309). In his response to the Cardoso Report, the UN Secretary – General issued a report which tried to balance the controversial issues suggested by the Cardoso Report and practical issues that needed to be addressed by the UN in relation to the interests of CSOs and UN Member States (Rossi, 2008:5). In playing down the furore generated by the Cardoso Report raised by different UN Member States, the UN Secretary-General stated unequivocally that “the United Nations is and will remain an intergovernmental organization at which decisions are taken by its Member States” (UN Secretary General’s Report, 2004). However, the Secretary - General recognised that there was need for CSOs to contribute in the business of the General Assembly of the UN. He also reiterated the need for the UNSC to engage the CSOs in outreach activities (UN Secretary General’s Report, 2004). He further agreed on the need for the UN to expand its consultation methods to accommodate different constituencies to enhance the quality and depth of policy analysis and actionable outcomes (UN Secretary General’s Report, 2004).

The UN General Assembly discussed the UN –CSOs relationships in October 2004 while reacting to reports of the UN Secretary-General and Cardoso Panel. Several Member States expressed their interest in enhancing the participation of CSOs in the activities of the UN. These include for example The Netherlands, Canada, New Zealand, Brazil, Switzerland, South Africa, China and Mongolia. However, other Member States like the United States, India and Iran expressed reservations about opening up the UN to greater CSO participation and need for the UN to retain its intergovernmental nature. The meeting ended with a proposal for further consultation by Member States on the issue (UN Reform, 2004). As a result of this development, the UN Secretary-General omitted his recommendations and the proposals by Cardoso Report in relation to increasing the participation of NGOs within the UN in his report which set out a wide range of proposals discussed during the 2005 World Summit (UN Secretary-General, 2005). A commentator argues that the UN Secretary-General’s report only contained language on general advantages of engaging into partnerships with CSOs and the private sector while stressing the importance for the UN General Assembly to engage more actively with CSOs (Ingrid Rossi, 2008:5). This means that currently, there is no clear defined relationship between the UN and CSOs. In addition, the proposals by the UN Secretary-General and the Cardozo Report have been left to gather dust at the UN Plaza in New York.

6.2 Is there need for an international regulatory framework for CSOs?

There is currently no existing legal framework to regulate the activities of SCSOs at the international level. An argument has been made for a three-prong process in developing an international framework for the regulation of CSOs. This will involve the Human Rights Committee of the International Covenant on Civil and Political Rights (ICCPR) developing General Comments on Article 22 of the ICCPR. In addition, the Special Rapporteur on the freedom of association and of expression is encouraged to develop guidelines on the right to freedom of association with particular reference to CSOs. It is also suggested that the UN should start a process that will look at the viability of having an international framework for the regulation of NGOs (Silber and Olugbuo, 2014). It is conceded that this might not be achieved in the nearest future. However, the need to start discussions on this proposal cannot be underestimated as state regulation of CSOs is becoming less friendly and accommodating. It is further conceded that there are problems associated with this suggestion. For instance, a major issue is that international regulation of CSOs may end up benefiting national governments and not CSOs. In addition, CSOs do not have the same priorities and concerns, which might limit the acceptability of any international framework aimed at regulating nonprofits globally. Furthermore, there is no guarantee that a global framework will improve the status of CSOs where states have enacted legislations limiting their existence and space for activism. The possibility of CSO participation in the process cannot be guaranteed and the outcome may likely not reflect the wishes of CSOs around the globe. What this means is that we are left with the status quo, which is a weak self-regulatory system, stifling state laws that reduce the ability of CSOs to carry out their activities effectively and an international community that does not have an effective framework for the regulation of CSOs. Another issue that needs to be explored is the role of donors in regulating CSOs. However, one limitation of this type of regulation is the fact that donors prefer to deal with CSOs that are registered with government agencies. This presupposes a proposition that donors may be inclined to supporting state regulation more than self-regulation. However, this development does not stop donors from supporting initiatives aimed at self-regulation.

7.0 CONCLUSION AND RECOMMENDATIONS

From the foregoing, it can be concluded that CSOs used as case studies are regulated mostly by states. Although there are pockets of self-regulation, national governments have better organised forms of regulation. This finding is not unexpected. Governments have the economic and political means to enforce rules and regulations affecting CSOs. In addition, self-regulation by CSOs is as a result of threats by government agencies to regulate and monitor their activities. However, this paper proposes a blend of different models for the regulation of voluntary organisations in West Africa. This is because self-regulation is an emancipation tool and should not be seen as a form of control on the activities of CSOs (One World Trust, 2010:26). In addition, when NGOs rely only on state regulation, there is the tendency that rules and regulations that suppress their rights to freedom of association may be employed by government agencies to limit the activities of CSOs. This is because the use of formal regulation by national authorities can be detrimental to strengthening accountability when used repressively to limit the space for NGOs in public policy and governance (One World Trust, 2010:26). In addition, it is necessary to develop synergies of cooperation between self and state regulations as long as the end result is aimed at accountability, transparency and opening of

space for CSOs to carry out their activities without undue hindrances. Effective regulation of CSOs can be achieved by enhancing transparency and accountability to constituencies and target groups including ordinary citizens where CSOs operate. In addition, there is need for effective succession plans within CSOs to avoid the perpetuation of individual leadership styles by CSO leaders. Furthermore, there is need to identify and promote good practices and model laws that encourage self-regulation.

In conclusion, the dominant form of civil society regulation in West Africa is state regulation and its impact on CSO effectiveness is far-reaching. However, it is argued that self-regulation can assist CSOs in West Africa to develop synergies of cooperation among themselves. Therefore, a case for self-regulation of CSOs is made in the paper. It has to be recalled that self-regulation involves more than two organisations and some of the organisations mentioned above can form the nucleus of such an endeavour. Some CSOs at the international level have established self-regulating frameworks to govern their activities. However, several African based NGOs are not participating in these self-regulating institutions. An example is the International Non-Governmental Organisations Accountability Charter of 20 December 2005. This scenario has to change. Self-regulation as already noted earlier in this study has its advantages and should be fully explored. CSOs have not found their voice in the utilisation of self-regulation as a means of accountability and transparency. Despite the existence of state laws that regulate the activities of CSOs at the national level, it is important for CSOs to establish voluntary self-regulatory codes of conduct to enhance accountability and service delivery (Open Society Institute, 2005:95). Based on the above discussions, the following recommendations are made:

- a. National CSOs in West Africa should continue to explore means of engaging in self-regulation. This can be among CSOs or in collaboration with government agencies. This will lead to transparency and accountability within CSOs and greater autonomy in their activities if there is a buy-in by government agencies.
- b. The possibility of government partnering with CSO in government-CSO self-regulation model should be explored. This means that CSOs will have the opportunity to regulate their activities to an extent. This if fully implemented can be mutually beneficial to both government establishments and NGOs thereby enhancing freedom of association. For example, if the draft code of conduct and ethics developed by TANGO derives its powers from the NGO Decree, this can be seen as a partnership between the Gambian NGO agency and TANGO in the consolidation of self-regulation in the country. In addition the Ghanaian regulatory agency and GAPVOD are currently partnering to produce sector-wide regulatory framework.
- c. The successes recorded by CSOs through self-regulation can also be replicated at the regional and global levels. This is because there are currently no formal regulations at both the regional and international levels. Self-regulation at both regional and international levels can help in opening the space for CSOs to operate freely.

- d. CSOs at national and regional levels in West Africa should consider adopting and implementing self-regulation models with benchmarks and enforcement mechanisms. This will increase accountability, transparency and effectiveness of CSOs in service delivery.
- e. Regional CSOs should support national and regional efforts aimed at self-regulation. Although it is acknowledged that this may not be their primary responsibility, adding their voice to this important advocacy project is recommended.
- f. The possibility of an international framework to regulate the activities of csos should be pursued. This will complement the current status of state regulation and hopefully open the space for greater CSO self-regulation.

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