Technical Issues in Donor Agencies Regulatory Commission Bill HB 1568
This report analyses various issues in the Donor Agencies Regulatory Commission Bill HB 1568 and makes recommendations that the law should be dropped.

The importance of civil society is reflected by the significant grants and donations made to them by different stakeholders and actors within the development ladder ranging from individuals—everyday Nigerians, corporate organisations, philanthropists, foundations, and multilateral organisations.

There has been significant legislative interest relating to civil society regulations since the 6th Assembly. These regulatory attempts though pushed back by civil society focused on narratives such as national security, prevention of terrorism financing, corruption, and lack of regulations.

While the issues framed by these narratives are relevant and of concern to the civil society sector to balance regulation against proper protection of institutions within civil society, none of these issues have been investigated or evidenced.

We are mindful of the challenges of corruption across all spheres of life, money laundering and terrorism financing concerns in different parts of the world.

Our review concerns various technical issues in Bill HB 1568, particularly section 8. Whilst technical, they are important and have very practical consequences for rights relating to freedom of association—the right of civil society organisations to have access to resources.

The civil society sector thrives on the rule of law. The objective of any law to regulate activities relating to or that may affect civil society must be to inspire and increase public trust and confidence in the activities and operations of organisations within civil society. Given their important role, the law should both protect and properly regulate them.

Our review is to further this objective by removing unnecessary or inefficient regulations while safeguarding the public interest in ensuring that civil society organisations across the country are properly run.

In July 2023, we had a review meeting with civil society organisations with the aim of reviewing and revising the provision of HB 1568 by contributing their comments, perspectives, and expertise on each section of the bill. Consultees were supportive of the project and eager to engage in the details of our recommendations.

There was a clear sense that Bill HB 1568 is unnecessary and that there are existing laws that deal with issues and concerns that the Bill seeks to address.

Consultees commented on the need for balance between various competing interests, bias, stereotypes, motivations, lack of respect for the role of civil society in a democracy, call for accountability in the use of public funds, rising profile of civil society organisations among others and proper protection of civil society. No doubt there are going to be tensions and difficulties in how this balance is reached.

The meeting revealed a general consensus on some issues and a range of views on others. It elicited different viewpoints which were helpful in formulating our recommendations. A report of the meeting is attached.
For this review, we adopted the UN Special Rapporteur on the rights of freedom of assembly and association’s definition of donor in his report to the 53rd session of the Human Rights Council as "any natural and legal persons that voluntarily makes a gift of property, donation or grant to civil society associations.

Donors can be domestic, foreign, or international, as well as of public or private nature, including individuals; charities; foundations; governments; corporations and international organizations (including United Nations funds and programmes).

Section 8– Functions of the Commission

We see this Bill as an attempt by its proponents to invoke the principle of aid effectiveness (harmonization of donors and accountability to partners) to dictate priorities and control plans and access of CSOs to resources. However, this does not comply with the requirement of a "democratic society" listed in Art. 22 ICCPR: in fact, States that restrict funding in the name of aid effectiveness violate the key democratic principles of pluralism, tolerance, and broadmindedness.

Specifically, our comments are as follows:

The Functions of the Commission shall be:

(a) To determine whether an organization is entitled to be regarded as a donor agency.

Our Comment:
The powers of the Commission in determining whether an organisation is “entitled to be regarded as a donor agency raises” raises suspicion as to the motive of this Bill. Our concern is what happens if the Commission decides that an organisation is not “entitled to be regarded as a donor agency”? This provision is a hindrance to the rights of associations to freely access human, material, and financial resources.

The section will pose an intentional and severe burden on donor agencies providing support to civil society organisations in the country. This provision if allowed would negatively affect the financial sustainability of civil society organisations. The provisions also have implications for philanthropy, multilateral, and bilateral relationships.

For example, within the context of the definitions of donor as used in this review, a Foundation supporting democratic governance or open government initiatives may be declared ineligible by the Commission as a donor agency especially where in the law and its interpretation no provision is made for the definition of “donor agency”.

The determination of eligibility, which would mean an application or registration by entities is a deliberate attempt to unduly restrict funding to the civil society sector.

International human rights law and standards amply recognize the freedom to access resources as part of the right to freedom of association. Article 22 of the International Covenant on Civil and Political Rights (ICCPR) protects all activities of an association including activities directed at accessing resources or funding, subject to restrictions consistent with ICCPR Art. 22(2). This includes the freedom to seek, receive, and use resources from natural and legal persons, whether domestic, foreign, or international, without prior authorization or other undue impediments – including from individuals, associations, foundations and other civil society organizations, foreign Governments and aid agencies, the private sector, the United Nations and other entities. Consequently, undue limitations on associations' freedom to access funding violate states' obligations under Article 22 of the ICCPR.13 . (2)

The African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly, paras. 37–38 also amply recognized that freedom of association protects the right of associations to seek, receive, and use financial resources.

(b) Shall take institutional reform processes needed to work with the organizational constraints of donor agencies.

Our Comments: This section is ambiguous. Organisational constraints encountered by donors in our opinion remain an internal affair and they should have the right to make use of their mechanisms, systems, and processes in addressing this without interference.

Setting up a Commission to “take institutional reforms processes needed to work with the organisational constraints of donor agencies” is a waste of taxpayer’s resources as the Bureau of Public Sector Reforms could easily assume this mandate if and when such challenges arise.

(c) To ensure that such funds and resources as generated are used for the purpose with which it was intended and not wasted by inadvertent administrative errors or mistakes.

Our Comments: While we agree that States have obligations to ensure the efficient use of funds and resources, again internal mechanisms of donor agencies such as internal and external audits, oversight of relevant agencies of government are sufficient to address these concerns.

Though the issues this provision seeks to address are valid, it does not merit the establishment of a Commission. For example, donors already have mechanisms for reporting serious incidents or mistakes including independent investigations such reports are also made publicly or can be requested by interested parties.

(d) Complementary long-term, flexible and “hand-on” aid modalities and instruments have been required to address institutional blockages.

Our Comments: No comment

(e) Ensure efficient execution of any agreement or memorandum of understanding entered between agencies, government and international partners.

Our Comments: This function is unnecessary and does not require the establishment of a Commission as the memorandum of understanding (MoU) already has clauses around efficient execution which can be ensured through Board or governance oversight of such donor agencies including governance arrangements embedded in the MoU upon full execution by both parties.

2- General principles and guidelines on ensuring the right of civil society organizations to have access to resources. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule*
(f) Ensure compliance with the provisions of this Bill

Our Comments: No comment.

(g) Perform such other duties as may be directed by the President, from time to time, and as are necessary or expedient to ensure the efficient performance of the functions of the Commission under this Bill.

Our Comments: This provision of the Bill arrogates powers to the President and is subject to abuse as they are not precise and sufficient to allow the Commission to decide how to implement such directives hence there is the concern that this directive conferring unfettered or sweeping discretion of the Commission and President. To be lawful any “directive” by the President must only protect those interests enumerated in the Nigerian constitution around national security or public safety, public order (ordre public), the protection of public health or morals, or the protection of the rights and freedoms of others.

The Human Rights Committee, general comment No. 37 (2021) on the right to peaceful assembly (art.21), para. 42 noted that to invoke “interests of national security” States must demonstrate that “restrictions are necessary to preserve the State’s capacity to protect the existence of the nation its territorial integrity or political independence against a credible threat or use of force.

Recommendations

Our recommendations are inspired by the General principles and guidelines on ensuring the right of civil society organizations to have access to resources.

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule.

Legislators

a We recommend that the Bill should be dropped, and its consideration discontinued.

b In place of this Bill, review existing regulations to expand the enabling environment for civil society organisations to freely access, receive and use funds.

c Establish formal and transparent mechanisms to allow civil society organizations to petition for or against new legislation and regulation that impacts the associations’ access to funding.

d Genuinely, proactively, meaningfully, and constructively engage with a broad representation of civil society actors to support a more conducive environment for associations’ right to access resources.
Help improve the legal and institutional environment for association's right to access resources, including by supporting efforts to carry out legal reforms, strengthening institutions and promoting dialogue between different stakeholders at the national or local level.

Integrate the issue of closing civic space and undue restrictions on civil society’s right to access resources into staff training and senior leadership briefings.

Seek to understand the nature of the existing state of civic space and undue restrictions to association's access funding. Engage in periodic consultations and dialogue with abroad representation of civil society organizations in order to understand the adverse effects of restrictions on receiving and using funds and devise ways to overcome them.

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