

NIGERIA NETWORK OF NGOS

17th Annual Conference

NONPROFIT TAX:

Breaking the Myths,
Understanding the Facts
and Navigating the
Realities

CONFERENCE REPORT

ABOUT NIGERIA NETWORK OF NGOS

The Nigeria Network of Non-Governmental Organisations (NNNGO) is the first generic membership body for civil society organisations in Nigeria that facilitates effective advocacy on issues of poverty and other developmental issues. Established in 1992, NNNGO represents over 2000 organisations ranging from small groups working at the local level, to larger networks working at the national level.

MISSION

The mission statement of the network makes its objectives clear:

“We want to coordinate a civil society group that is inclusive and offers equal opportunity, people participation, community leadership, independence of voluntary action, reflection of linguistic and cultural diversity, choice and a genuine partnership with other sectors on a ‘best practice’ basis as a catalyst for sustainable development and poverty alleviation.”

Nigeria Network of NGOs

 151 Akowonjo Road, Egbeda, Lagos
 nnngo@nnngo.org
 www.nnngo.org

VISION

NNNGO aims to promote interconnectivity at the grassroots, provide opportunities for CSOs/NGOs/CBOs and PVOs to contribute to the advancement of national and global peace through developmental activities focused at the grassroots, whilst networking with each other and other national and international agencies, with the aim of meeting NEEDS/SEEDS/LEEDS, and the Sustainable Development Goals (SDGs) by 2030.

ACKNOWLEDGEMENT

The 2017 Annual Conference of the Nigeria Network of NGOs was made possible thanks to the generous support of the International Centre for Non-Profit Law (ICNL) Nigeria. The views and opinions expressed in this conference report do not represent the views of these organisations unless specifically stated.

We would like to thank all the speakers, regulators, discussants and participants for their contributions. Where the reports of each session use speaker and participant quotes, these are sometimes paraphrased from the exact words spoken in order to make the meaning clearer.

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ABBREVIATIONS

AML/ CFT	Anti-Money Laundering/ Countering Terrorism Financing
CAC	Corporate Affairs Commission
CITA	Companies Income Tax Amendment
DSS	Department of States and Security
EFCC	Economic and Financial Crimes Commission
FIRS	Federal Inland Revenue Service
FRC	Financial reporting Council
ICNL	International Centre for Non-Profit Law
ICPC	Independent Corrupt Practices Commission
NFIU	Nigeria Financial Intelligence Unit
NGO	Non-Governmental Organisation
NNNGO	Nigeria Network of NGOs
SCUML	Special Control Unit on Money Laundering
TIN	Tax Identification Number
VAT	Value Added Tax

CONFERENCE OVERVIEW:

Nonprofit Tax: Breaking the Myths, Understanding the Facts and Navigating the Realities

This report summarises the key points, main areas of discussion and resulting conclusions from the 2017 Annual Conference of the Nigeria Network of NGOs held on 23rd November, 2017 at the NECA House, Alausa, Ikeja Local Government Area of Lagos state.

The theme of the 17th Annual Conference was “Nonprofit Tax: Breaking the Myths, Understanding the Facts and Navigating the Realities” with a focus on the need to improve the third sector’s understanding of tax obligations including improving systems for effective regulatory compliance.

The conference had in attendance 324 participants spanning across 34 states of the federation. These participants included those from the public, private and third sector organizations as well as the media.

The intention was to ultimately move beyond discussions of “ideal situations” or mere obligations but rather explore ways to sustain the country’s economic growth and development with a sustainable means. This entailed acknowledgement of the roles of all stakeholders including governing authorities

in contributing their individual quota towards national development and financial growth through subscribing to a system where taxation is made a requirement for all organisations and enforced efficiently.

In taking this approach, the conference aimed to incorporate a strong sense of realism as to what might be possible for reformers to achieve, given particular sets of institutional capabilities and political circumstances as well as how each sector is expected to contribute in terms of knowledge and capacity.

The main speaker at the conference set out many of the key issues for discussion, with taxation acknowledged as one of the most sustainable means of income generation utilized by many developed nations; through which many economies have been built and sustained. The overarching message was that, it is contingent upon all sectors, including the civil society to abide by standards set by federal and state authorities regarding their tax obligations and this can only be achieved through provision of relevant and adequate information in this area.

AN EMERGING CONSENSUS

Discussions at the conference were wide-ranging and explored many areas of the theme related to the role of Nonprofits in ensuring that tax obligations are met and laws are upheld within the third sector.

The aim was not to produce a formal set of agreed 'conclusions' – indeed, participants were encouraged to make enquiries, get clarification in order to get adequate information on their duties to the country as organizations which do not make profits but contribute immensely towards the socio-political and economic empowerment of the nation.

An important point which was reinforced by majority of discussants and participants present was that, CSOs which form the membership of the Nigeria Network of NGOs should be commended for their impressive ability to work together; by networking for the development of the country.

Some other particular areas of discussion, points and issues did receive special focus from participants and regulators present and this formed an area of mutual interest to all present.

WELCOME ADDRESS

Speaker: Mr. Oyebisi B. Oluseyi, Executive Director, Nigeria Network of NGOs

"I welcome you all to the 17th anniversary of the Nigeria Network of NGOs. We are all so glad to have you all in the room; the big wigs in the room, members as well as friends and colleagues from all the different sectors of the federation. We are here to discuss a very serious issue which our sector has been very much concerned about; concerned in the sense that we have not had adequate and concrete information about it. There have been a lot of misconceptions owing to ignorance and lack of information about this issue and it is for this reason that the theme of the conference is **Nonprofit Tax: Breaking the Myths, Understanding the Facts and Navigating the Realities**. We hope to correct these misconceptions today and find ways to collaborate with the regulators on how to move the third sector forward while contributing to the growth and development of our dear country. Let us listen attentively as regulators take us through our obligations as citizens of the country. Thank you"

SESSION ONE

Keynote Session: Conference Notes on Tax Obligations

Speaker: Mr. Sosinmi Olusegun Olatunji, Tax Controller, Large Tax Office, Non-Oil, Lagos representing the Executive Chairman of the Federal Inland Revenue Service, Mr. Williams Babatunde Fowler.

Keynote Speech

Mr. Sosinmi Olusegun Olatunji's in his speech acknowledged the importance of Non-Governmental Organisations. He noted that these entities which are otherwise referred to as public benefit organisations play a significant role in the society; they undertake a share of responsibilities for social and developmental needs of the country thereby relieving the financial burdens which otherwise falls on the state. The underdevelopment of infrastructure and systems within the country has necessitated the need for all stakeholders to begin to look to available but dormant resources to fill these developmental gaps.

Specifically, recognized was the country's overreliance on natural resources as means of income generation for too long. It was noted that these resources, although stable at the moment, cannot be the bedrock for sustainable development in a country as large and diverse as Nigeria. The focus of the government, therefore, is on the non-oil revenue to form growth with social change which is development. Consequently, it is important to align monetary policies with fiscal policies to portray coordination and willing to make progressive change; these two policies cannot work in parallel positions.

The Federal Inland Revenue Service is concerned with tax administration and so manages taxes of corporate entities such as

NGOs; Corporate Income Tax, Education Tax, Value Added Tax, Capital Drain Tax as well as the Personal Income Tax.

For the purposes of uniformity, the medium tax office, situated at the Federal Capital Territory, Abuja has been mandated to take total charge of all NGO tax affairs. Mr. Sosinmi expressly stated that although NGOs are not taxable entities, they are required to file annual returns in order to make it easy for government to keep track of their operations.

All companies in Nigeria are liable to pay Companies Income Tax on their local and global profits accrued in Nigeria. However, section 23 exempts profits of statutorily registered organizations like charitable organisations, ecclesiastic organisations, educational or other similar organisations (NGOs) from Companies Income Tax obligations provided such profits are not derived from trade or business. While the section exempts the income by NGOs from their primary registered operations, it clearly states that if the NGO engages in any taxable activity during the period of report, it is liable to pay tax.

This implies that organisations exempt from tax payment include NGOs registered and engaged in charitable or educational activity, those which are of public character, statutory or registered friendly societies whose profits

are not derived from trade or business, cooperative societies registered under any enactment whose profits are not derived from any trade carried out by that society,

sports companies, whose profits are only expendable for such purpose and trade unions registered under the Trade Union Act whose profits are not derived from trade.

The Role of NGOs

As organisations which are resident and operational in Nigeria, NGOs are subject to rules guiding operations of all organizations within the country and so are expected to register under all the relevant agencies which coordinate their affairs. NGOs must be registered by the CAC as indicated by the Companies and Allied Matters Act as well as obtain a tax-payer's identification number (TIN) after registering with the relevant tax authorities.

In addition to this, NGOs must file tax returns annually or risk the payment of a fine of twenty-five thousand naira (#25,000) as penalty. Although as nonprofit organisations, NGOs are not required to pay Company, Income or Withholding Taxes, they are required to pay Pay As You Earn (PAYE) tax on each employee of the organisation. Individuals who establish and run NGOs must also pay Personal Income tax in the state in which they are resident.

NGOs must sight verified tax clearance certificates from potential contractors and vendors before awarding contract. It is important that all NGOs prepare payment schedule to obtain a credit note from the bank as soon as payments are made. NGOs to prepare a schedule that will include names and addresses of vendors/contractors, their tax payer identification number (TIN) , the nature of the activity, the gross amount involved, the Withholding Tax rate applied, Withholding Tax deducted and the period covered.

NGOs are also required to maintain proper records of transactions carried out by their organisation; organisations' documents, articles of incorporation, constitution charter, bye-laws, minute books, property records, receipts, disbursement journals, payrolls, journals, bank documents were pointed out as relevant records.

SUB-SESSION I

Discussion

Questions were raised as to whether a group registration could be considered by the FIRS in view of the large number of unregistered Non-Governmental Organisations who are willing to carry out registration in adherence to the law. In response, Mr. Sosinmi said if the Network can rise up to the challenge of making an official request at the Federal Capital Territory and guarantee that integrity of all its members, a group registration could be allowed. He maintained that every NGO within the group would need to all items on the requirement list in order to be provided with a unique individual TIN.

Another participant raised the issue of amnesty being granted to NGOs that are defaulting in their tax obligations due to ignorance. The appeal was made in the light of lack of adequate information and sensitization in the area of taxes which nonprofits had been subjected to in times past. Mr. Sosinmi explained that there is an ongoing programme to that effect; Voluntary Income and Asset Declaration Scheme which is intended to run till the following year. This scheme is targeted at both existing and new entities which are expected to fill and submit a waiver form which would be provided by the FIRS. This waives all returns, interest and penalties incurred by these organisations in the past.

A question was raised to inquire the mechanisms put in place by FIRS to ensure that fraudulent practices and criminal activities perpetrated with the civil society are

detected and the culprits, brought to book. Mr. Sosinmi acknowledged that despite the backing of the federal and state governments in the administration of its duties, the FIRS still experiences limitations in some areas. He noted however, that the service collaborates with law enforcement agencies; ICPC, EFCC and DSS promising that systems are being put in place to administer and also look out for frauds and other crimes.

A participant made a case for what was perceived as the “outrageous” nature of the penalty for noncompliance; the #25,000 fine was noted to be too exorbitant in comparison with that of CAC which stands at #5,000. Mr. Sosinmi disagreed with this notion saying that the essence of a penalty is to ensure compliance. He noted that since the penalty is avoiding by simple compliance, it is therefore contingent upon individuals and entities involved to walk within the ambits of the law and desists from violations which could result in penalties.

An issue was also raised regarding the kind of taxes expected to be paid by schools run as charity while also making a case for the requirement of audited accounts by the FIRS. The participant inquired if management’s accounts could be allowed in lieu of audited accounts as the latter is an added expense for which many organisations struggle to meet. Mr. Sosinmi responded that, as public characters, educational institutions are not expected to pay taxes. He explained that public

educational institutions are exempt from paying all forms of taxes as well as VAT on their educational materials. He stated however, that a clear distinction is needed to be made regarding what constitutes educational services and profitable ventures. On the issue of audits, he said that an entity is allowed to submit a management account to the FIRS but this will only be regarded as a draft pending the time an auditor's account will be submitted.

Another participant also questioned the nature of taxes filed by organisations which

do not receive grants but self-fund. Mr. Sosinmi explained income accrued to the NGOs as including; grants, subscriptions, donations, endowments and fundraising from well-meaning members of the public or donor agencies. Therefore, a self-funded NGO receives funding from a donor individual. It is important to note that the organisational entity is separate from the individual who establishes and self-funds it. This means that the NGO will account for sources of income by filing its returns while the Founder pays Personal Income Tax on his person.

SUB-SESSION II

Goodwill Messages

CORPORATE AFFAIRS COMMISSION (CAC)

Speaker: Mr Livinus Irem, Assistant Director Incorporate Trustees.

Mr. Livinus Irem's presentation pointed to the fact that the Companies and Allied Matters Act (CAMA) is the legal framework for the registration, management and the regulation of trustees of associations namely the clubs, the social developmental bodies, the cultural, sporting, educational, religious and scientific, organisations and other NGOs established for charitable purposes under part C of CAMA. Part C of CAMA created the incorporated trustees department within the CAC, a department that is instrumental to your creation and regulations.

He noted that the CAC aligns with the FIRS in terms of tax regulations because the FIRS is the authority particularly mandated to these purposes.

Upon registration, the organisation is created as a corporate entity which means the members are entirely and wholly different from the body corporate. The trustees however form the soul of the organization; that explains why the certificate of registration from the CAC embodies the

names of those trustees; they in fact constitute the organisation.

It is this overriding philosophy of the NGO not being a business venture that drives that status such that regardless of the status upon which this organisation is founded, it cannot engage in profit making or trade.

Thus, an organisation's operations will be guided by what CAMA says by virtue of section 607 which talks on annual returns:

“The trustees of the organisation shall not earlier than 30th June or later than the 31st December of each year or the year of registration, submit to the CAC a return showing amongst others, the name of the organisation, the address and names of the trustees or the governing body, the particulars of the land held or any other properties purchased by the organization during the year. It will also include any changes undergone by the organization during this year.”

Subsection 2 of this section provides a penalty of #5 for each day the trustees fail to comply with this subsection. In addition to the above, the commission's companies' regulation 2012 made pursuant to section 609 of CAMA provides that the assessment of annual returns shall be at a flat rate of #5000.

Another relevant section is section 603 of the CAMA which guides against the use of the

assets and income of the organisation for any other means but the purpose of achieving the organization's primary objective. This shows that the trustees have a duty towards the property; the duty of custody, the duty of care, appropriation and diligence. In the event of dissolution of the association, nothing shall be taken by the association's trustees; instead all the assets will be transferred to an organisation having similar or same aims and objectives with the one that is being contemplated dissolve.

Section 605 of CAMA provides that subject to Act and the Constitution of the association, a corporate body may contract in the same manner as an individual. An association registered under the Act, being a corporate body can invest in shares of companies and carry investment activities like an individual. However, any profit and income acquired by such entities is subject to tax and can be applied to promote the objectives of the organization.

Mr. Irem in his presentation noted that, some of the challenges recorded in Nigeria are due to some NGOs especially faith-based organizations who engage in taxable trade and businesses under the cover of religious activities; they establish schools, supermarkets, printing and publishing outfits, radio stations, cable and television licenses.

This is at odds with the objectives disclosed to the CAC at the point of registration; the intent is often difficult to infer and presents

difficulties for the commission at the point of monitoring and evaluation.

Following from the tax penetration level here, there are increasing numbers of NGOs that do not file annual returns with the CAC. The question is not how much or whether they are due but that the law is not being complied with.

As a commission, the CAC has tried to sensitize NGOs on their tax obligations at the point of registration, ensure the correctness of particulars and addresses submitted by

those registering, and push for enabling laws and regulations that the BVN innovation in the bank is introduced in the commission. Arrangements are also being made to link with other government agencies; the commission is using its monitoring and regulation powers to monitor compliance. We have also done a lot, in partnership with you to ensure sensitization, education of the NGOs as it related to tax payment that it is a constitutionally imposed obligation.

SPECIAL CONTROL UNIT ON MONEY LAUNDERING (SCUML) Speaker: Mr. Daniel Iseh, Zonal Coordinator, SCUML, Lagos.

In his speech, Mr. Daniel Iseh noted that, in today's world, the non-profit sector has gained prominence as a key promoter of sustainable development, veritable partnership with government in delivering of social services and most importantly, as a precursor of social change.

However, the enormous public trust the sector enjoys, its network of global operations, the exposure of its operations to high cash transactions has deemed it necessary for these operators to be careful so that criminals will not have access to vast opportunities that abide in the sector.

In response to these, the FATF under the Recommendation 8, directed that countries should review the adequacy of laws and regulations that relate to the entities that can

be abused or relate to the financing of terrorism. To this extent, countries must ensure that non-profits cannot be used by terrorist organizations posing as legitimate entities or to be exploited for money laundering.

These laws mandate nonprofits to put in place measures to mitigate the aforementioned vulnerabilities that criminals might seek to exploit for their craft, these obligations include establishing internal control system, effective customer/donor due diligence measures, maintaining proper records and ensuring proper AML/CFT training for employees/volunteers.

While these obligations are requisites of the law, they are built around the shared values of transparency and sound corporate

governance geared towards the growth of the sector on sustainable basis, endearing donor confidence and building a trusted relationship with government and the general public.

Notwithstanding the availability of this robust legal and institutional framework to combat the threat of money laundering and terrorist financing within the sector, the role of stakeholder's collaboration is fundamental because while SCUML and other

governmental agencies may have the competence to ensure AML/CFT supervision, nonprofits themselves are the first line of defense against these criminals. Mr. Iseh noted that the SCUML is steadfast in its mandate to ensure full compliance with domestic AML/CFT laws by international standards and by providing the needed support and guidance through continued engagements with networks and coalitions like the NNNGO.

FINANCIAL REPORTING COUNCIL (FRC)

Speaker: Mr. Olumuyiwa Ajibade, Principal Manager, Directorate of Inspections and Monitoring representing the Executive Secretary of the Financial Reporting Council, Mr. Daniel Asakpokai.

Mr. Olumuyiwa Ajibade's speech touched on the work done by the FRC in recognition of the important role played by NGOs noting that the Federal reporting Council has prioritized NGO related issues in its regulatory functions.

In June 2011, the Nigerian Accounting Standards Board, the predecessor body of the FRC issued a statement of accounting Standards No. 32 which dealt with accounting by nonprofits. The objective was to provide the much-needed guidance to NGOs in the provision of financial statements that are credible and reliable for the purpose of decision making by stakeholders including donors.

The FRC worked on a code of corporate governance tailor-made to the needs of nonprofits. Acknowledging that the code was currently on suspension, Mr. Ajibade said the FRC under its new leadership will soon revisit the code of corporate governance for NGOs engaging all stakeholders in the process and of course one of them is this network.

It is therefore imperative that we constantly collaborate towards sustaining transparency and accountability towards the development of our economy and society. Participants were assured of the council's commitment to the protection of investors and other stakeholders' interest.

ANNEX A

Agenda

Event Name	Start time	End time
Registration and Annual Conference Networking Lounge	08:00am	10:00am
Welcome Address <i>Mr. Olufemi Lijadu, Chairman, BOT, NNNGO</i>	10:00am	10:10am
Keynote Presentation: Nonprofit Tax: Breaking the Myths, Understanding the Facts and Navigating the Realities. <i>Mr. Williams Babatunde Fowler, Executive Chairman, Federal Inland Revenue Service</i>	10:10am	10:40am
Q and A	10:40am	11:00am
NETWORKING, TEA BREAK & EXHIBITION		
Goodwill message from regulators <ul style="list-style-type: none">- Corporate Affairs Commission- Special Control Unit on Money Laundering- Financial Reporting Council- Nigerian Financial Intelligence Unit	11:00am	12:20pm
NETWORKING/LUNCH AND EXHIBITION		