



Nigeria Network of Non-Governmental Organisations

(No.7977 Established in October 1992)

Email: nnngo@nnngo.org Website: www.nnngo.org

NIGERIA

151, Akowonjo Road,
Egbeda, Lagos,
Nigeria.
Tel: 01 8131961
0802 836 7748
0803 348 3421

ENGLAND

92 Ashridge Way
Morden SM4 4ED
Tel: 0208 545 0098
Mob: 07930 714 810

Office of the Executive Director

June 24, 2014

N-14-24

MEMORANDUM FOR THE HOUSE COMMITTEE ON CIVIL SOCIETY AND DONOR AGENCIES

FROM: Oyebisi Babatunde Oluseyi
Executive Director
Nigeria Network of NGOs

All registered members of Nigeria Network of NGOs (numbering 1.700 as at 24th June 2014)

SUBJECT: Nigeria Network of NGOs' (NNNGO) preliminary comments on a Bill for an Act to regulate the acceptance and utilization of financial/material contribution of Donor Agencies to Voluntary Organization and for matters connected therewith, 2013 (HB520).

On the 23rd of June, the Nigeria Network of NGOs received a copy of the Bill for an Act to regulate the acceptance and utilization of financial/material contribution of Donor Agencies to Voluntary Organization and for matters connected therewith, 2013. The Bill seeks to make the Independent Corrupt Practices and Other related Offences Commission (ICPC), the regulatory authority of all Voluntary organizations to monitor the utilization of all monies received from donor agencies for the purpose of engendering transparency, integrity and accountability in our national life.

In response to the call for submission of memoranda by the House Committee on Civil Society and Donor Agencies, this memorandum provides the position of the Nigeria Network of NGOs and its members. The Nigeria Network of NGOs (NNNGO) is the first generic membership body for civil society organizations in Nigeria that facilitates effective advocacy on issues of poverty and other developmental issues. Established in 1992, NNNGO represents over 1700 organizations ranging from small groups working at the local level, to larger networks working at the national level. NNNGO champions a sector that is accountable, independent and truly representative of giving a voice to the common man.

As you will be aware voluntary organisations and social enterprises make an important contribution to the Nigerian economy and our society, as well as providing employment. The services provided by voluntary organisations, community groups, and social enterprises play a key role in ensuring that individuals and communities are well equipped to deal with structural changes in the nation's economy, providing support to vulnerable groups, or supporting communities to develop. Voluntary organizations complement government's efforts.

Many of the lessons we have learned in our work as a Network and experience from National Associations in different parts of the world revealed that a Bill such as the one being proposed serves to restrict our civic space. For example the 2013 State of Civil Society Report published by Civicus indicated that "threats to civil societies is rising in many countries further shrinking and restricting the space in which these organizations can operate and contribute to public life".

"In recent years, waves of repression including restrictive legal framework, administrative burdens in relation to registration and more subtly, funding restrictions under the guise of checking money laundering and probable terrorism funding is a more recent development in which authorities seek to stifle the activities of NGOs and other civil organizations".

Between 12pm on June 23rd and 12pm on June 25th, we consulted with our members via the internet, telephone and through face to face meetings to review the proposed bill. We further consulted our colleagues in different parts of the world through the Affinity Group of National Associations (AGNA) and the International Center for Non- for-Profit (ICNL).



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Using feedbacks provided, the Nigeria Network of NGOs now presents its preliminary position as follows:

1. We are grateful for the interest the House Committee on Voluntary Organization and Donor Agencies has shown in ensuring that foreign aid is judiciously used by voluntary organizations in Nigeria. Transparency and accountability in the use of resources (be it from donor, private or individual sources) is the responsibility of both voluntary organizations and government- a duty we owe the people whose issues we understand and seek to constantly present to all stakeholders within the development ladder.
2. However we are concerned that the proposed Bill is in conflict with our rights as enshrined in international standards set in Article 22 of the International Covenant on Civil and Political Rights (ICCPR) which Nigeria acceded to on the 29th of July 1993. Article 22 states: *"Everyone shall have the right to freedom of association with others... No restrictions shall be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others."*
3. The right to seek use and receive resources – human material and financial – from domestic, foreign and international sources is an essential element of the freedom of association guaranteed by international law. This has been affirmed by the UN Special Rapporteur on the Freedom of Peaceful Assembly and Association in his report presented on 23 April 2013 to the UN Human Rights Council- Section III (para 8-42) A/HRC/23/39. (See http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf for a copy of this report).
4. The UN Special Rapporteur on Freedom of Peaceful Assembly and Association in his report reaffirmed international norms establishing the right of organizations to access resources, including foreign funding. Analyzing Article 22 of the ICCPR, as well as other international conventions, the UN Special Rapporteur stated that given that "the ability to seek, secure and use resources is essential to the existence and effective operations of any association," any "funding restrictions that impede the ability of organizations to pursue their statutory activities constitute an interference with article 22. He concluded that "the right to freedom of association not only includes the ability of individuals or legal entities to form and join an association but also to seek, receive and use resources – human, material and financial – from domestic, foreign, and international sources.
5. Further, the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms adopted by the UN General Assembly on 8 March 1999 affirms that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means- Article 13 A/RES/53/144. (See <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement> for a copy).

Among the most concerning provisions of the Bill are the following:

- **Prior Approval for Foreign Funding (Section 2)**

The draft Bill imposes undue restrictions on the right of voluntary organizations to receive funds from foreign sources. Voluntary organizations and individuals who wish to receive foreign funding must obtain prior approval from the Independent Corrupt Practices and other Related Offences Commission (hereinafter "Commission") before they may do so. If an organization is found to have obtained any foreign funds in contravention of the bill, the government may obtain a court order prohibiting such voluntary organization from "withdrawing, transferring or otherwise dealing with the money in any form" and its leaders may face imprisonment for up to two years.



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Requiring prior approval for foreign funds is a violation of international law, including Article 22 of the International Covenant on Civil and Political Rights (ICCPR), and the UN Declaration on Human Rights Defenders. The UN Special Rapporteur has explicitly cited requirements that organizations receive prior approval before accepting foreign funding as problematic under international law. In practice, excessive restrictions on foreign funding for organizations can have a negative effect on the development of civil society, which relies on diversified sources of funding. We recommend revising the draft law provisions on foreign funding to remove the prior approval regime. We recommend that the Bill require, at most, that organizations notify the government in their periodic reports of any foreign funds received.

Furthermore, the Bill's overbroad provisions to deny permission to obtain foreign contributions create scope for the exercise of subjective executive discretion by the Independent Corrupt Practices and other Related Offences Commission. An application to receive foreign contributions from international sources can be denied by the Commission if it believes such contribution is "likely to affect" the sovereignty and integrity of Nigeria, adverse diplomatic relation of any foreign country or religious harmony in Nigeria. These are extremely broad grounds, open to multiple interpretations and can be invoked upon the formation of an opinion that there is likelihood that an act may be committed without an act actually having been committed. Moreover, they do not adhere to the strict grounds outlined in the ICCPR on the basis of which freedom of association can be restricted.

- **Registration a Pre-requisite for Accepting Foreign Funding (Section 3)**

Under Article 22 of the ICCPR, "freedom of association is a right, and not something that must first be granted by the government to citizens." The UN Human Rights Committee, which monitors implementation of the ICCPR, has recognized this principle on multiple occasions, making clear that mandatory registration of civil society organizations is not allowed under Article 22 of the ICCPR.

Accordingly, an individual cannot be required to register an organization in order to exercise his or her right to associate. Similarly, under Article 10 of the African Charter on Human and Peoples' Rights, "Every individual shall have the right to free association provided that he abides by the law." The African Commission on Human and Peoples' Rights, interpreting this language in *Civil Liberties Organization v. Nigeria*, made clear that "freedom of association is... first and foremost a duty for the State to abstain from interfering... There must always be a general capacity for citizens to join, without State interference, in associations." (See African Commission on Human and Peoples' Rights - Communication No 101/93, 1995, paragraph 15).

Mandatory registration is thus a violation of the ICCPR and the African Charter. As previously mentioned, the right to freedom of association includes the right "to seek, to receive and use resources – human, material and financial – from domestic, foreign, and international sources." Consequently, establishment of a formal legal entity, such as an association, should not be required in order for individuals to exercise their rights to associate, which includes the right to accept foreign funding to pursue their activities. We recommend that the draft law clearly protect the right to associate and to receive funding without formation of a legal entity

- **Duplication of Duties-Financial Reporting Requirements (Sections 3 & 7)**

The draft Bill requires a voluntary organization to maintain accounts and records for the funds it received. In general, it is appropriate for registered organizations to provide an annual financial report to government authorities (e.g. Corporate Affairs Commission, Federal Inland Revenue Service etc) detailing this information. However, Article 3(iii) of the draft Bill also requires a voluntary organization to provide to the Commission information about the amount of financial contributions received; and the sources, amount, purpose and the manner in which such contribution will be utilized.



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A voluntary organization must provide this information “within such time” and “in such manner as may be subscribed.” Article 3 (iii) adds an undefined and unnecessary layer of government supervision, placing unnecessary burden on voluntary organizations. We see this Bill as a duplication of duty within government agencies and recommend eliminating this Bill so that voluntary organizations only have to provide an annual financial report to relevant agencies already charged with this responsibility.

As a Network, we believe that the Bill is unnecessary as CSOs are already subjected to various legislative requirements in place in the country part of which is the recent registration of NGOs with the Special Control Unit on Money Laundering of the EFCC.

As CSOs we contribute in myriad ways to national life. We help ensure the representation of wide range of voices, in particular those of the vulnerable and marginalised in governance and contribute substantially to development. In many instances, as CSOs we have taken responsibility for the actual delivery of services besides being at the forefront of advancement of key social, political, economic and environmental justice agendas.

We also play a critical role in ensuring the accountability and transparency of our sector as civil society actors and that of our colleagues in the public service. In order to perform the above functions, our sector needs to be assured a degree of independence and freedom from unwarranted interference. Provisions of the Foreign Contributions (Regulation) Bill create scope for breaching the independence and autonomy of the civil society sector.

If legislated, the Foreign Contributions (Regulation) Bill 2013 will breach international law commitments made by the Government of Nigeria to protect the freedom of association. It will also violate the obligation to create an “enabling environment” for civil society undertaken by Nigeria at the 4th High Level Forum on Aid and Development Effectiveness held in Busan, Korea, from the 29 November-1 December 2011.

As we continue these discussions, we hope that the House Committee on Voluntary Organization and Donor Agencies will meet with the leadership of Voluntary Organizations to learn from them what self regulatory measures they have put in place in order to ensure transparency and accountability of their work.

At the Nigeria Network of NGOs, we have in place a code of conduct for our members which guide the work of our members. Through the NNNGO Code of Conduct for NGOs, we are promoting and administrating high ethical and effective development practice amongst our members. The Network is working independently with its members to undertake a review of the future of the work of NGOs in relation to legitimacy, transparency and accountability with a view to putting in place systems, policies and procedures that can aid effectiveness and efficiency of our work as a sector.

We encourage the House Committee on Voluntary Organization and Donor Agencies to in the spirit of protecting our civic space and right to access resources including our freedom of association discontinue the enactment of this bill.

We are eager to meet with the leadership of the House Committee on Voluntary Organization and Donor Agencies to discuss and consider globally accepted standards and steps aimed at strengthening our accountability and increase our corporation as a sector in ensuring our nation’s development.

If you have any questions regarding this Memorandum please send them to Oyebisi Babatunde Oluseyi, (seyi@nnngo.org), Executive Director, Nigeria Network of NGOs or Barrister Ayo Adebuseyi (ayo@nnngo.org), Secretary General, Nigeria Network of NGOs.