

July, 2017

NON-GOVERNMENTAL ORGANIZATION REGULATORY COMMISSION OF NIGERIA (ESTABLISHMENT) BILL, 2016

OBJECTIVE OF THE BILL:

The objective of the Bill is to establish a body (The Commission) responsible for the supervision, coordination and monitoring of Non-Governmental Organizations and Civil Society Organizations in Nigeria, with the aim of enabling them accomplish their various missions in a transparent manner and be accountable for their operations.

NUMBER OF CLAUSES/PARTS

The Bill has 8 parts and 58 clauses, a schedule and an explanatory memo

CONTENTS

The Bill has the following contents: -

- Establishment of the Commission, its Governing Board, staffing and funding of the Commission
- Objectives, powers and functions
- Registration and Licensing of Non-governmental Organizations
- Establishment of Nigeria National Council of Voluntary Agencies (to be comprised of the first 100 registered NGOs under the Act once it is passed) to regulate the conduct of NGOs. This part is titled 'Self-Regulation by The Non-Governmental Organizations'.
- Transitional Arrangements requiring a transitional registration of up to 6 months for NGOs to register from the commencement of the Act, and for already operational ones to obtain a certificate.

IMPLICATIONS OF THE BILL

1. Definition of CSOs

The Bill defined a CSO as ‘an independent, non-profit making, non-political and charitable organization, with the primary objective of enhancing the social, cultural and economic well being of communities (and the operation of that organization does not have a religious, political or ethnic bias)’. An NGO under the Bill is defined as a private voluntary grouping of individuals or associations, not operated for profit or for other commercial purposes but which have organized themselves nationally or internationally for the promotion of social welfare, development, charity or research through mobilization of resources.

The Bill fails to recognize that CSOs/NGOs could also earn income that they feed back into their funding purse for self-sustenance. Also the definition falls short of other groups that make up NGO/CSO like faith-based, philanthropists, labour union, traders’ union, pressure groups, etc. Without a comprehensive definition, it is unclear which exact groups that the Commission would regulate.

2. NGO/CSO Renewable Registration

The Bill provides in Clause 11(1) that every NGO shall be registered with the Commission in the manner specified under the Clause. It further requires that this registration shall be renewable every 24 months (2 years); with powers provided to refuse registration where the Commission in its wisdom “is satisfied that the NGO’s proposed activities are not in the national interest”.

NGOs/CSOs are registered under Part C of the Companies and Allied Matters Act (CAMA) so would be required to pass through another registration process to be able to operate. This provokes thoughts on whether the NGOs/CSOs would be required to pay to the Commission a registration fee and what would be the fate of NGOs if after registration with the CAC, the Commission disapproves their registration.

Where a project is a multi-year project and after 24 months, the CSO/NGO is denied renewal, what happens to the life of the project is the question to ask. The NGOs would have already fulfilled the registration requirements under the law and registering with the Commission would constitute double registration as they would have been properly registered under the law after fulfilling the relevant conditions for registration.

3. Cancellation of NGO Operations

The Bill provides under Clause 18 that the Board can automatically terminate or suspend a certificate of registration of an NGO where renewal is not granted. The renewal terms may be varied at the discretion of the Commission. NGOs are registered with the Corporate Affairs Commission (CAC) and are required by the Bill to register the second time with the Commission; but where the Commission cancels the registration, does it negate the registration with the CAC?

There is no provision for a refusal of registration to be questioned by an NGO/CSO except by an appeal made to the Minister of Interior, who is responsible for supervising the Board. The Bill makes it an offense for anyone to operate an NGO in Nigeria without registration with the Commission, with a penalty upon conviction, of 18 months imprisonment or N500,000 or both. Is the fine going to be paid with donor funds (since funds granted to NGOs are pre-approved) since the NGO was not registered with the Commission?

Where a fine is imposed, the Commission could be entitled to a portion of that fine being paid to cover its operations. What percentage represents "a portion"? Any person convicted of this offence, will in addition to the fine and prison term be disqualified from holding office in any NGO for a period of 10 years. If the head of an organization is banned, will the NGO automatically stop operations pending the end of the 10-year ban on the head of the organization? What happens to donor funds committed prior to the 10-year suspension?

4. Approval of NGO projects

Projects and activities of NGOs are subject to the approval of the relevant Ministry and registered with the Commission (Clause 26(1)). Variations to the project activities must be communicated to the Minister for approval. Donors approve projects because they fall within their focal or thematic areas for funding. Therefore the projects do not need further approval by the Commission. Donors also register with the National Planning Commission, which already has documentations of the donor activities in the country. Furthermore, donor organisations approve projects according to their own objectives for intervention, to which CSOs/NGOs that bid for grants adhere.

The Commission is empowered under Clause 26(2) to monitor the activities of an NGO and also bunch NGOs into sectors with standing committees reviewing their activities; with NGOs required to meet at least quarterly to discuss "pertinent issues". CSOs can independently convene meetings to discuss their activities and mode of operation on their own. They do not require specially created standing

committees to convene periodically. In addition, Donors also coordinate the activities that they fund and have mechanisms built into every project on variations to project activities and reporting.

5. Funds Disclosure

Clauses 25(c) and 29(1) require that funds pledged by donors must be disclosed before the commencement of the project implementation, along with the mode of disbursement and transfers from overseas donors must be channeled through the “normal banking system”. The International Cooperation department of the National Planning Commission (NPC) is charged with managing bilateral cooperation and assistance programmes from which some donor-funded NGOs receive funds and receives audited annual financial reports of NGOs as part of its functions. Sharing financial reports with the Commission will constitute duplication of function by two government bodies.

6. Unscheduled Visits (Monitoring)

The Commission is also empowered under the Bill to pay unscheduled visits to the NGOs and witness ‘randomly selected activities of field operation without notice to the organization.’ The aim of the monitoring is to ascertain that the implementation is in accordance to project/work plan. Donors that fund NGOs in tranches already track the projects to ensure that they are in line with the work plan intermittently before releasing funds. When a line item is not met, the next tranche will not be released. There is therefore no reason for additional monitoring by the Commission.

7. Reporting

The valuation report and program reports of NGOs are required to be supervised by the relevant ministry with a completion report approved by the Commission “after seeking views of the beneficiaries”. The project reports of NGOs are submitted to the donors according to the project agreements. The Commission does not fund NGOs, therefore should not request for project reports of NGOs.

8. Transfer of Assets Through the Commission

Clause 29 (3) requires the assets transferred to build the capacity of the NGO should be done through the Commission, which will identify the operation criteria. NGO activities are approved by the donor organization, which provides funding and approve the assets that the organization needs to acquire. Assets purchased by donor funds are constantly updated in a register that is checked constantly by the donors who provide the funds. Furthermore NGO project contracts have inbuilt in them means of return of assets to donors at the end of every project. Not-for-profit organisations return their assets to donors who provided the funds for the

procurement of such assets and who retains the ownership of the assets, but only transfer possession in the Not-for-profit organization for the duration of the project. The Donor organisations have the prerogative of disposal at the end of every project. Further scrutiny of the assets by the Commission is unwarranted.

9. Assets Disposal

The Bill under Clause 29(6)(b) requires the assets of the NGO or CSO to be 'surrendered to the government as trustee for the people of Nigeria', without specifically mentioning the Commission as the government agency. This Clause leaves it open for any interpretation of the term "government agency" that will take custody of the assets. The Bill is also silent on what the fate of the assets would be; whether the government agency will start using the assets or auction them off to the public or distribute to institutions. Disposal of assets of a project is the prerogative of the donor organisations that retain ownership of the assets but only transfer possession for the period of the project implementation to the NGOs. As NGOs are non-profit making organizations free of government interference but subject to comply with the rules of registration with the Companies and Allied Matters Act (CAMA), as it is the case in Nigeria, they require no further government intrusion.

10. Government Support

The Bill states in Clause 30(2) that the government may provide relevant financial and institutional support to organizations in the form of duty waivers, tax allowances and any other facilities, to enable them develop, reinforce and sustain their organizational capacity for more effective delivery service. This is already in existence; certain international organizations that have memorandum of understanding (MoU) with the government of Nigeria already have waivers. The Bill providing that the Commission can grant waivers will constitute another duplication of roles.

11. Nigerian National Council of Voluntary Agencies

The Bill creates Nigerian National Council of Voluntary Agencies made up of the first 100 NGOs to register with the Commission to develop a Code of Conduct to facilitate self-regulation of NGOs. Irrespective of how new an organization is, if they register as part of the first 100 before more experienced NGOs, they can constitute a code of conduct for NGOs in Nigeria. If the proposed Commission proposes to regulate the activities of CSOs/NGOs there is really no need for additional self – regulation.

ANY SIMILAR EXISTING BILL

A similar Bill is titled “ Civil Societies Regulatory Commission (Establishment) Bill 2016” (HB 579) sponsored by Hon. Agbedi Frederick Y., which has now been withdrawn

Other similar Bills are the Civil Society Regulatory Commission of Nigerian (HB 705) sponsored by Hon. Diri Douye; and Non Governmental Organizations Regulation Bill (SB 111) sponsored by Senator Duro Samuel Faseyi

CONCLUDING ISSUES

The Bill has several worrying aspects. It fails to acknowledge the existing legal regime under which NGOs operate including Constitutional provisions under Chapter IV of the 1999 Constitution (as amended) as well as Part C (Incorporated Trustees) of the Companies and Allied Matters Act (CAMA)

The Bill grants unquestionable powers to the Executive arm of government to restrain, constrain and limit non-governmental initiatives and charitable efforts in Nigeria.

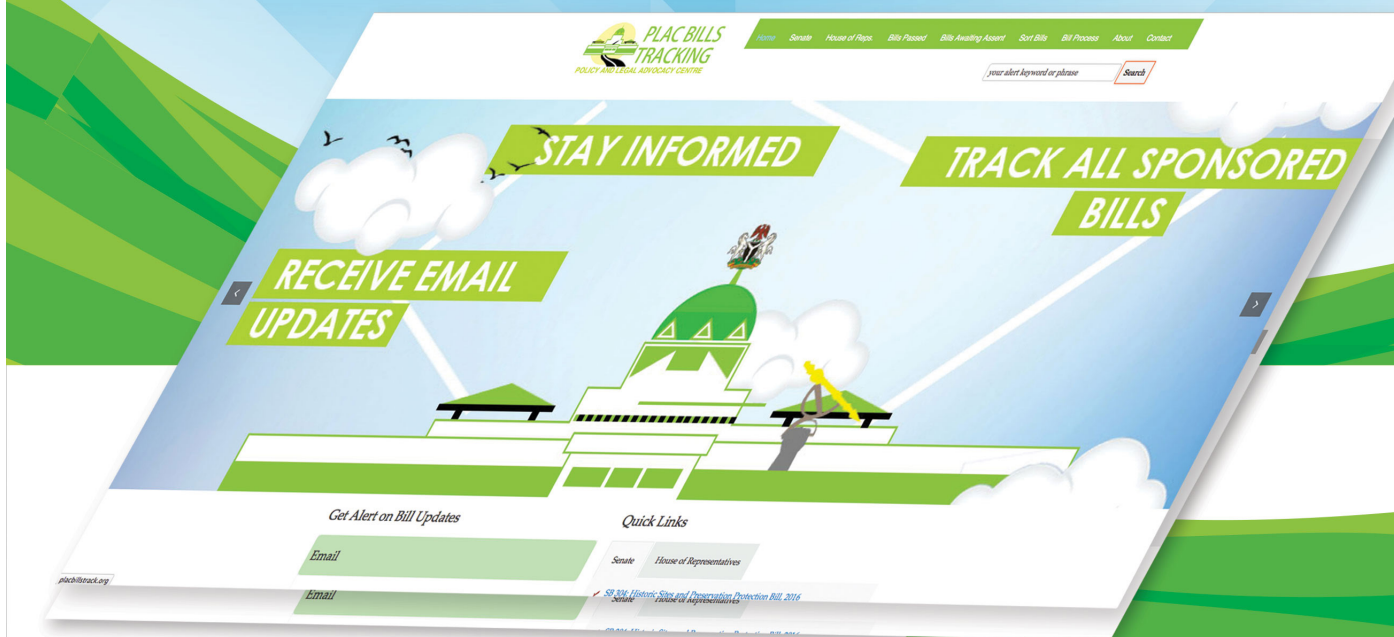
There is no doubt that the first victims of the Bill would be NGOs that are traditionally active in the area of ensuring accountability and transparency of government to its citizens, particularly in the area of Human Rights, Rule of Law, Governance and management of State resources.

In addition, the provisions of the Bill deviate from any known requirements of running a non-profit, non-governmental entity that is free from government control. Likewise, all the problems and challenges that the Bill seeks to curb as well as checks and balances it seeks to provide are currently available in different dimensions by the government and funding partners.

Moreover, another Bill before the House of Representatives titled “Improved Aid Effectiveness, Accountability and Co-operation for Donor, Recipient Bill”, sponsored by Hon. Ochiglegor Idagbo, which proposes to harmonize and align all aid delivery to Nigeria provides for the strengthening of the National Planning Commission (NPC) to make guidelines and procedures to ensure a measurable and continuous improvement in aid delivery. Strengthening the NPC would improve its efficiency and in turn their service delivery to NGOs/CSOs; hence there would be no need for another regulatory commission

Finally, since the government is trying to cut down on cost of governance, another agency or commission that would duplicate the work of existing agencies of government will only increase the cost of governance.

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About PLAC

Policy and Legal Advocacy Centre (PLAC) is a non-governmental organization committed to strengthening democratic governance and citizens' participation in Nigeria. PLAC works to enhance citizens' engagement with state institutions, and to promote transparency and accountability in policy and decision-making processes.

The main focus of PLAC's intervention in the democratic governance process is on building the capacity of the legislature and reforming the electoral process. Since its establishment, PLAC has grown into a leading institution with capacity to deliver cutting-edge research, policy analysis and advocacy. PLAC receives funding support from donors and other philanthropic sources.

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