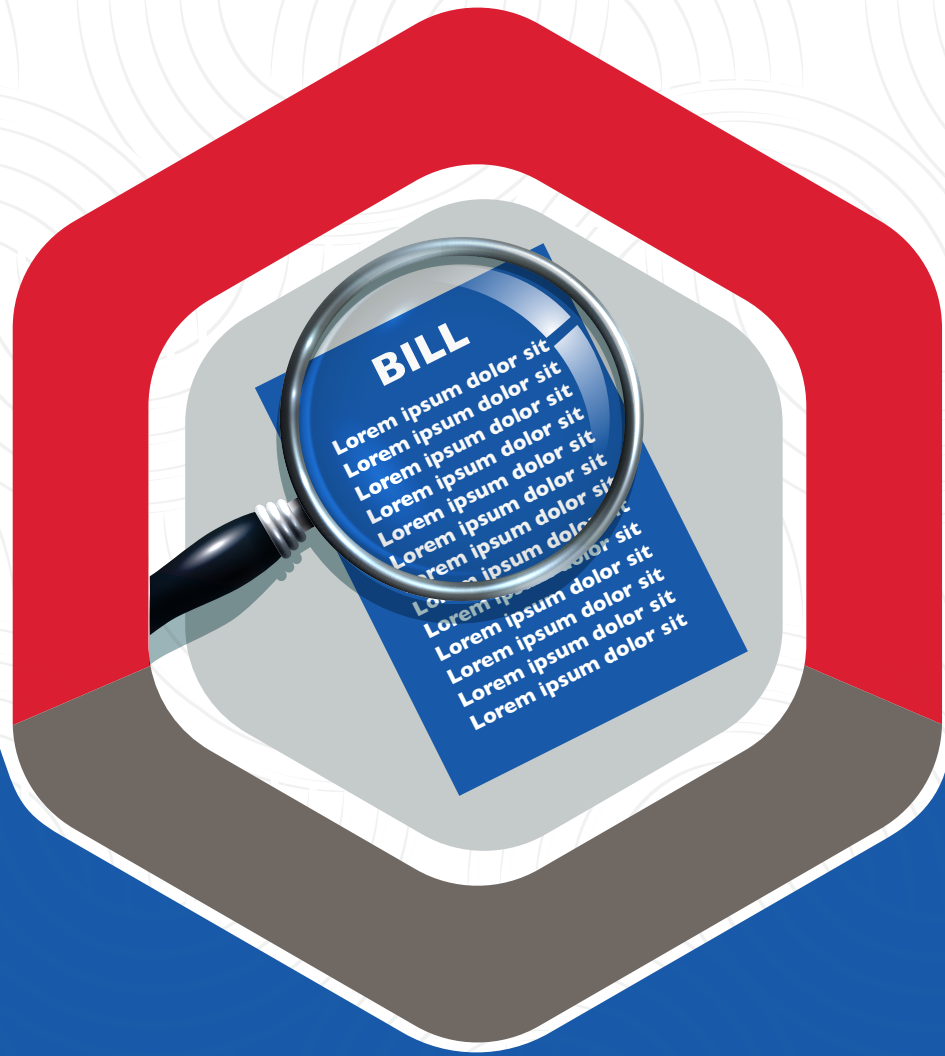




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**ANALYSIS OF PENDING
NATIONAL ASSEMBLY BILLS
ON CIVIC SPACE**

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NATIONAL ASSEMBLY BILLS
ON CIVIC SPACE



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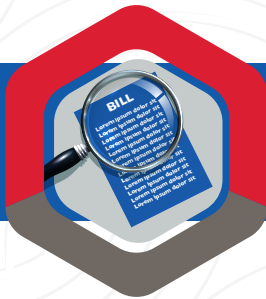
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INTRODUCTION

Non-Governmental Organisations, (NGOs) in Nigeria continue to play a vital role in humanitarian efforts, sustainable development goals and canvassing of key reforms that entrench public accountability and transparency.

While the existence of NGOs pre-dates Nigeria's colonial era, its numbers have increased since Nigeria's return to democratic dispensation in 1999 with its efforts paying off in the passage of citizen centered legislation such as the Freedom of Information Act, Petroleum Industry Act and Electoral Act among others.

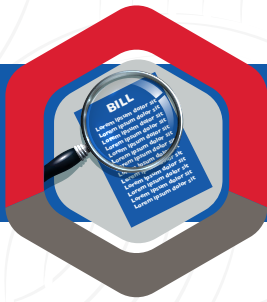
However, the increase of governance-based NGOs in recent times and mobilization in online and offline spaces, have also intensified government scrutiny on its operations through the passage of legislation/policies that crack down on civic spaces and enable its increased vigilance through open-ended terms such as public policy/national interests. In 2021 for instance increasing calls for accountability on the part of government led to the suspension of Twitter, a social media platform for a period of six months on the grounds that the medium undermined Nigeria's corporate existence. Also, prior to this occurrence, the National Assembly had passed a Companies and Allied Matters Act in 2020 that expand the powers of the Corporate Affairs Commission (CAC) on NGO operations. Powers of the CAC under the current Act include powers to conduct investigations into the affairs of NGOs, obtain court ordered suspension of trustees, appoint interim managers and impose restrictions on their financial transactions in certain circumstances.

It is noteworthy that there was limited awareness of its contents of the Companies and Allied Matters Act while under review by the National Assembly and prior to its passage. The eventual passage of the law in 2020 with provisions affecting CSO operations also revealed a gap in CSO engagement on legislative bills and its far-reaching effect on civic space if adopted without their engagement and consultation.

To address some of these issues, Policy and Legal Advocacy Centre (PLAC) with support from its USAID Strengthening Civic Advocacy and Local Engagement project commissioned a report to identify and analyze pending bills before the 9th National Assembly that have implications on civil society operations and engagement.

A perusal of the analysis indicates a number of bills currently before the National Assembly that could shrink civic spaces and their exercise of fundamental rights. The analysis also adds value to the discussions by highlighting Bills that could expand on civic spaces if passed.

It is hoped that the publication which was undertaken primarily through desk research and some key informant interviews will heighten civil society vigilance on identified Bills from the 9th National Assembly (2019-2023) that potentially affect civic space if adopted. The publication also intends to serve as a useful tool in providing recommendation/actions for civil society in follow-up engagement.



NIGERIAN PRESS COUNCIL ACT (AMENDMENT) BILL, 2019 (HB 330)

BACKGROUND OF THE BILL

The Bill to amend the Nigerian Press Council Act (HB 330) was first introduced in the House of Representatives by Hon. Odebunmi Olusegun on 18th September 2022. The Bill seeks to amend various provisions of the Nigerian Press Council Act dealing with its composition, functions and powers among others.

However, during a public hearing on the Bill by the House of Representatives in July 2021, media stakeholders under the auspices of the Nigeria Press Organisation (NPO) spoke overwhelmingly against the Bill by arguing that some of its provisions threatened press freedom and stifle free speech. The said stakeholders also argued that the Bill should be stepped down/withdrawn in view of its egregious breach to fundamental rights enshrined in Nigerian laws such as the 1999 Constitution in addition to international treaties that Nigeria is signatory to.

The Bill is currently awaiting Committee report since its referral to the House of Representatives Committee on Information, National Orientation, Ethics and Values in 2019.

STRUCTURE AND SUMMARY OF BILL'S PROVISIONS

Clause 2 of the Bill provides for an amendment to the Press Council Act so that its Council is comprised of 9 persons drawn from media organisations, society and the Federal Ministry of Information.

Proposals for the Council's constitution includes a Chairman, Executive secretary, a representative from the Nigerian Union of Journalists, (NUJ), Nigerian Guild of Editors, (NGE), Newspaper Proprietors Association of Nigeria (NPAN), two representatives of the general public; one of whom must be a woman, a representative of the Broadcasting Organisation of Nigeria and Federal Ministry of Information. This is different from extant provisions of the

current Act which requires more representatives from the NUJ, NGE and members of the public.

Clause 3 of the Bill provides for the functions of the Council. These include its regulation of print media and media related houses, the dissemination of a National Press Code and standard that guides the conduct of print media, media houses and media practitioners. The dissemination of the Code and standards is also made subject to the approval of the Minister of Information under the said clause. Other functions include the receipt of applications for the ownership and operation of print and related media houses and granting print media and other related licenses after obtaining approval by the Minister of Information. This provision would be a move away from existing provisions which place the receipt and documentation of applications in a Council which is made up of a diverse group consisting of Journalists, Guild of editors, educational institutions, the News Agency of Nigeria and the Ministry of Information among others.

Clause 5 complements provisions in clause 3 by enabling the Council to establish a National Press and Ethical Code of Conduct for media houses and media practitioner's contingent on the Minister of Information giving approval and allowing its distribution. Under extant provisions, the Code of Ethical and Professional Conduct is by the Nigerian Union of Journalists (NUJ) including powers of review from time to time to conform with media practice.

Clause 8 of the Bill provides penalties for journalists who do not comply with the decisions of the Council. For instance, journalists and body corporates who fail to direct a suitable apology or correction when reprimanded face various penalties. While a journalist faces a fine of two hundred and fifty thousand naira and suspension from practice for a period not exceeding 6 months, a body corporate is liable to pay a fine of one million naira.

Clause 12 of the Bill increases fines for persons who own, publish or print a newspaper, magazine or journal without documenting with the Council which is its governing body. While the extant Act provides for a two hundred and fifty thousand naira fine or an imprisonment term not exceeding three years, the Bill proposes an upward penalty of five million naira, an imprisonment term of three years or both to persons in breach. Different penalties however apply to news agents who face a fine of N250,000, a one-year imprisonment term or both if convicted.

This penalty is however more severe in the newspaper, journal or magazine where the news is established to be fake. In such an event, the person that carried the fake news is liable on conviction to a fine of five million naira, an imprisonment term of two years and the payment of a compensation of two million naira to the person(s), group(s), corporate body(s), government or any of its agencies whom the news was carried against. Print media houses face a higher penalty of payment of a ten million naira fine, closure of the medium used to carry the news for a period of one year or both and a compensation of twenty million naira to the person(s), group(s), corporate body(s), government or any of its agencies whom the news was carried against.

IMPACT ON CIVIC SPACE

Provisions of the Bill requiring approval of the Minister of Information (a Member of the Executive arm), before the enactment and dissemination of the National Press Code could enable the repression of the freedom of expression guaranteed under section 39 of the 1999 Constitution (as amended). The right to freedom of expression including the holding of unpopular opinions is fundamental to a democracy and a pluralistic society such as Nigeria.

It is also not clear why the Bill sought to shift the power of appeal reposed in the Council and the National Union of Journalists to the Minister without further consultation with major stakeholders.

RECOMMENDATION

Press freedom and indeed the freedom of expression remain at the heart of a viable and thriving democracy. Thus, it is important that civil society continue to exercise diligence and advocacy in preventing this Bill from moving forward.



INDEPENDENT NATIONAL COMMISSION FOR THE PROHIBITION OF HATE SPEECHES BILL (SB 154)

BACKGROUND OF THE BILL

A Bill seeking to establish an Independent National Commission for the Protection of Hate Speeches in Nigeria was presented to the Senate for first reading on 12th November 2019. The Bill which is yet to progress further than first reading received a lot of criticisms across sectors in Nigeria when it was introduced on the floor of the Senate. Various groups across the country have provided analysis on why it is not desirable that the Bill should progress even if some of the provisions might be helpful in curbing some devious acts of users of social media in Nigeria. This analysis details the provisions of the Bill and highlights the clauses that have the tendency to threaten the civic space especially those provisions denying citizens and civil society organizations their constitutional right of expression.

The stated objective of the Bill is to promote national cohesion and integration by outlawing unfair discrimination, hate speeches and the establishment of an Independent National Commission for the prohibition of hate speeches and connected matters. The Bill specifically prohibits the commission of ethnic discrimination, hate speech, harassment on the basis of ethnicity, ethnic or racial contempt and discrimination by way of victimization by individuals or corporate bodies. The Federal High Court is the court empowered with exclusive jurisdiction to try all offences of such nature under the Bill.

STRUCTURE AND SUMMARY OF BILL'S PROVISIONS

PART I

The Bill has 4 sections divided into several clauses which are Preliminary in part I, Discrimination to which Act applies (part II), Establishment of the Independent National Commission (part III) and enforcement. Under the 4 sections there are 55 clauses including a schedule at the back of the Bill.

Analysis of the Clauses

The Preliminary section provides for the short title and interpretation of what Commission, Commissioner, Discrimination, ethnic relations, ethnic grounds etc.

Part II of the Bill provides for the discrimination to which the Bill will Apply if it becomes law.

Clause 3 provides for the circumstances under which a person would be guilty of the offence of discrimination against another. It states that *a person discriminates against another person if on ethnic grounds the person without any lawful justification treats another Nigerian citizen less favourably than he treats or would treat other person from his ethnic or another group and /or that on grounds of ethnicity a person puts another person at a particular disadvantage when compared with other persons from other ethnic nationality of Nigeria. It further states in 3 (2) that a person also discriminates against. Another person if, in any circumstances relevant for the purposes of any provision, criterion or practice which he applies or would apply equally to persons not of the same race, ethnic or national origins as at other.*

However, in this clause, while ethnic discrimination was treated as an offence, there were no penalties attached to it. The implication of this is that there would be no punishment for such acts of discrimination, which does not make the provision elegant in its drafting.

Clause 4 provides for the circumstance under which a person would have been regarded to have committed an offence adjudged to be hate speech. It states in 4 (1) that *“a person who uses, publishes, presents, plays, provides, distributes and/or directs the performance of any material, written and /or visual which is threatening, abusive or insulting words or behaviour commits an offence if such person intends thereby to stir up ethnic hatred, or having regard to all the circumstances, ethnic hatred is likely to be stirred up against any person or person from such an ethnic group in Nigeria”.*

This section provides for life imprisonment and capital punishment for anyone found guilty of the offence. It states that *“Any person who commits an offence under this section shall be liable to life imprisonment and where the act causes any loss of life, the person shall be punished with death by hanging”.* For any avoidance of doubt the Bill defines in ethnic hatred in Clause 4 (3) as *“hatred against a group of persons from any ethnic group indigenous to Nigeria”.*

The implication of this provision is that any person culpable for hate speech will either be confined to life imprisonment or receive capital punishment of death by hanging. This provision was the most criticized by civil society groups because several nations especially developed countries of the

world like the United States, Denmark, Portugal etc. are jettisoning capital punishment. Civil society groups have asked that this provision be removed if the National Assembly is insistent on going ahead with the Bill. There are considerable provisions for manslaughter or murder under the criminal laws available in Nigeria and there is no need to create capital punishment under this bill for hate speech. Moreso, that other laws do not have the capital punishment for offences related to this. Also, in countries where hate speech is prohibited does not provide for penalties in the region of capital punishment.

Clause 5 of the Bill makes provision for persons who subject another Nigerian citizen to harassment based on ethnicity. It clearly states the circumstances under which an offence would have been committed under the clause, which includes unjustifiable conduct with the intention of violating the dignity of another citizen or if the person creates an intimidating, hostile, degrading, humiliating or offensive environment for the person subjected to the harassment, such person who violates the provisions of the clause will be liable and punished upon conviction with imprisonment for a term not less than five years, or to a fine of not less than N10 million or both.

Clause 6 provides for instances where an offence of ethnic and racial contempt has been committed. It states that any person who knowingly utters words to incite feelings of contempt, hatred, hostility, violence or discrimination against any person, group, or community based on ethnicity or race. Anyone found liable for committing this offence upon conviction will be sentenced to imprisonment for a term not less than five years, or to a fine of not less than Ten million naira, or to both.

The implication of this is that any utterance that is inciteful, hostile, violent and discriminatory to any person, group or community is now criminalized and will be punishable by imprisonment or fine if it is adjudged as discriminatory and hateful to others. It means that hateful ethnic and racial utterances will be criminalized in the country if the Bill scales through.

Clause 7 provides for discrimination by way of victimization. It states that “a person victimizes another if in any circumstance relevant for the purpose of the Bill, the person does any act that is injurious to the well-being and esteem of another person by treating the person to less favorably than, in those circumstances, such person treats or would treat other persons, and does so by reason that the person treats or would treat other persons, and does so by reason that the person victimized” has made a complaint under the Bill, otherwise done anything under or by reference, given evidence or information in connection with proceedings brought by any person against any

other person under the bill or by reason that the person who has violated the provisions of the bill knows that the persons victimized intends to do any of those things, or suspects that the person victimized has done, or intends to do, any of them.

In addition, in sub clause 2 of the same clause 7, it states that a person who subjects or threatens to subject another person to any detriment because the other person, or a person associated with the other person has made a complaint against any person, has brought any other proceedings under this Act against any person, has given evidence or information, or produced a document in connection with the Bill in relation to any person. It prohibits persons from making false allegations or giving false statements or misleading the Commission with false allegations. It also forbids the obstruction and hindrance of the work of a commissioner or staff of the Commission in the performance of their lawful duties or the usage of any insulting language towards a Commissioner, Member of staff of the commission or the secretary of the Commission.

The bill proposes penalty for the violation of any of the provisions of the clause. It proposes a fine of two million naira or imprisonment for a term not less than twelve months or both.

The implication of this clause is that false allegations and misrepresentation of facts by persons will be penalized, and it is not encouraged. This provision will check unsubstantiated allegations and spurious allegations that will waste the time of the Commission in investigating. Also, the provisions places restrictions on persons who tries to hinder the work of the Commission or verbally assault the Commissioner, its staff and secretary in the cause of the performance of their duties. All these behaviours are forbidden by the clause and penalties are proposed in circumstances of violations.

Clause 8 provides for offences committed by body of persons and where the body of persons is a body corporate, it states that all the Directors, Trustees and Officer of the body corporate shall be deemed to be guilty of the offence and where the body of persons is a firm, every partner of that firm shall also be deemed to be guilty of that offence. However, it did not state any further penalties different from the ones indicated in other clauses where an offence is established.

The implication of this, is that body corporates and firm's ought to always ensure that the act of anyone person or its representatives does not run contrary to the provisions of the law as the entirety of their Trustees, Boards and leadership of the corporation or firm will be held liable. This will be done by lifting the veil of the company or firm and revealing owners and interested persons in the organisation.

PART III

Clause 9 provides for the establishment of a Commission to be known as “Independent National Commission for the Prohibition of Hate Speeches” which shall be a body corporate with perpetual succession and with the capability of suing and being sued. It can also acquire, hold, or dispose of movable and immovable property; Borrow and lend money. **(Clause 9 (1) & (2))**

In addition, the Commission will have its headquarters in Abuja but may establish branch offices in each of the States of the Federation in Nigeria. It also provides that the Commission may hold its sittings at any place in Nigeria. It further provides for the composition of the Commission, powers and functions of the Commission, Qualification, Term of Office of 3 years and eligibility for re-appointment for one further term of three years. **(Clauses 10 – 14)**

The Chairperson, the Commissioners and the Executive Secretary is required to subscribe before the Chief Justice of the Federation the Oath of Office or affirmation as set out in the first schedule of the Bill. **(Clause 15)**

The bill further provides for the processes and qualifications for the appointment of the Officers of the Commission as well as processes for the appointment of a new Chairperson or Commissioner if the office becomes vacant. It also provides for the circumstances under which the Chairperson and Commissioner may be removed from office by the President as well as processes for the filling of the vacancy. **(Clauses 16- 18)**

Clause 19 provides for the objects and functions of the Commission which is majorly facilitation and promotion of harmonious peaceful co-existence within the people of all ethnic groups indigenous to Nigeria and more importantly to achieve this objective by ensuring the elimination of all forms of hate speeches in Nigeria and to advise the government of the Federal Republic of Nigeria on all aspects thereof. In subsection 2 of the same clause, it provides further without prejudice to the generality of the subsection (1) of Clause 19 that the Commission shall promote the elimination of all forms of hate speeches against any person (s) or ethnic group indigenous to Nigeria (19(2a) and discourage persons, institutions, political parties and associations from advocating or promoting discrimination or discriminatory practices through the use of hate speeches as well as promote tolerance , understanding and acceptance of diversity in all aspects of national life and encourage full participation by all ethnic communities in social, economic, cultural and political life of other communities as well as promote respect for religions, cultural, linguistic and other forms of diversity in a plural society (19(2e)

Furthermore, the bill provides the Commission with the powers to summon witnesses and pay for the expenses of the person summoned like a High Court summons on a criminal trial.

(Clause 21 - 23)

Clause 29 protects the officers of the Commission from personal liability against any claim brought against them while they were carrying out their duties in good faith for the Commission. However, **Clause 30** states that the provision of **clause 29** does not relieve the Commission of the liability to pay compensation for damage to any person arising from any injury sustained by any person for any personal or proprietary interest of the person as a result of the exercise of any power conferred by this Act.

Clause 31 -36 provides for the funds of the Commission, its annual estimates, Accounts and Audit as well as investments of funds and annual reports.

PART VI – ENFORCEMENT

Complaint and Compliance Procedure

The final part of the bill (Part VI) provides for Complaint and Compliance procedure. It provides for the procedure for lodging complaints before the Commission by any person or corporate body alleging that another person or body of persons whether corporate or unincorporated have breached the provisions of the Bill – **Clause 37 (1-3)** and in **sub clause 4**, it provides that in order to complain to the commission under the section, it is not necessary for the alleged contravention to relate to the complainant. This means that a third party can complain to the commission even if the offence was not committed against the person or body corporate.

Clause 38 prescribes the mode of complaint which include a written complaint by hand, facsimile or other electronic transmission or post , setting out the alleged contravention after which the Commission shall notify the respondent in writing as soon as it receives the complaint.

Clause 39 and 40 prescribes the circumstances under which the Commission may decline to entertain complaints that it regards as being frivolous, vexatious, misconceived or lacking in substance; or involves a subject matter that would be better dealt with by a court or a subject matter that has been adequately dealt with by a court and; relates to an alleged contravention that took place more than twelve (12) months before the complaint was lodged. The commission may decline to entertain a complaint, and if it does then it must notify both

the complainant and the person who was alleged to have contravened the provisions of the Bill in writing within forty-five (45) days after receipt of the complaint. However, before declining to entertain a complaint, the Commission may, by written notice invite any person to attend before the commission or any of its officers to discuss the subject matter of complaint as well as produce any documents specified in the notice.

In addition, **Clause 42**, the National Assembly may refer any matter it considers an issue of important public policy whether or not a complaint has been lodged or the commission has considered the complaint, or the complaints is in the process of being conciliated. However, the National Assembly cannot be a party to the matter unless joined by the Commission.

In Clause 43, the Commission is empowered to refer complaints for conciliation and where conciliation fails, it must notify both the complainant and the respondent in writing. However, if the commission decides to hear a complaint after the parties involved have furnished all evidence they intend to rely on, the Commission may either find the complaint or any part of it proven and issue a compliance notice or decline to take any further action in the matter. The compliance notice issued would require the recipient of the notice to comply with the content of the notice and inform the Commission of the steps taken to comply with the requirements stipulated in the notice. If a complaint is not proven the Commission may dismiss same in its entirety or any part of it.

The Federal High court shall have exclusive jurisdiction to try offences under the Bill once it becomes an Act.

HOUSE OF REPRESENTATIVES VERSION

The Bill also has a House of Representatives version which seeks to give effect to the provision of Chapter IV of the Constitution of the Federal Republic of Nigeria (as amended), particularly section 39 which guarantees freedom of expression and the press. It further states that its objectives is to promote tolerance and reconciliations among Nigerians by prohibiting hate speeches and provide stiffer punishment for offenders.

While the Senate Bill has 55 clauses, the House of Representatives version has only 9 clauses and does not have a lot of details as to processes of the Commission. It provides for the offences and the penalties that will accrue to the perpetrators once the Bill becomes a law.

The House of Representatives version included words spoken while giving a sermon or public talk during a religious gathering service, or ritual and festivities; or distributes, shows, or plays a recording of visual images or produces or directs a programme with the intention to incite or propagate war, civil disorder and violence commits an offence. These are specifics not stated in the Senate version. The House of Representatives version also recommends a 1,000,000 million naira or imprisonment for a term not exceeding three years or to both such fine and imprisonment. While the Senate version recommends 10,000,000 and five-years' imprisonment or both. However, the Senate version also recommends death penalty for the offence of hate speech where the action of the offender causes the loss of life of another.

Also, in the House of Representatives version, the Bill seeks to punish institutions and group of persons found guilty of the offence proposed in the Bill as sought in the Senate Bill. The House bill also prohibits the use of self-help by any person, institution or group in enforcing any violation of the provisions of the Bill and any person found guilty of resorting to self-help will be liable on conviction to a fine of two million or imprisonment for a term not less than five years or both and if it is an institution or group of persons they are liable to a fine not exceeding ten million and naira in addition to the proscription of the group or institution.

Proscription of groups and institutions are not provided for in the Senate version on conviction of any offence under the Bills

Another area of divergence with the Senate Bill by the House Bill is the complaint procedure while the Senate vests the power in a Commission, the House confers the Nigeria Police and the National Human Rights Commission with the power to receive complaints and deal with the complaints. In other words, the House of Representatives Bill does not seek the establishment of a Commission rather the criminalization and punishment of hate speech in Nigeria. The House Bill further provides that the National Human Rights Commission should investigate in conjunction with other appropriate security agencies and submit its findings to the office of the Attorney General for prosecution. This is also a departure from the provisions in the Senate version that vests all the power in the Commission on Hate Speech sought to be established by the Bill.

In addition, the House Bill provides for the Court to award damages or compensation to the victim of the crime under the Bill and vests jurisdiction in the Federal and State High Courts including the High Court of the Federal Capital Territory.

In summary, it should be noted that while the Senate Bill is more detailed as to the establishment,

powers and functions of the Commission sought to be established for the investigation and prosecution of hate speech, the House version only provides for the offence of hate speech and seeks to domicile the punishment of the offence with the Nigeria Police, National Human Rights Commission and the office of the Attorney General of the Federation and State for the prosecution of the offence with the jurisdiction for prosecution in the various Federal and State High Courts. Also, the penalties in the Senate Bill is more extreme (death Penalty) than in the House Bill, though the House Bill has higher amount of fines compared to that of the Senate.

IMPACT ON CIVIC SPACE

The bill provides for the establishment of a Commission to promote national cohesion and integration by outlawing unfair discrimination and prohibit and punish hate speeches in Nigeria. While it is understandable that in recent times with the influx of several social media platforms and the anonymity opportunities of registering on such platforms without the true identities of owners of accounts being disclosed if the user chooses then it is quite possible for some mischievous persons to take advantage and spread fake news and spread hate on spurious unfounded allegations, it is still a Constitutional right of citizens to freely express themselves and not be suppressed from speaking up against injustice or bad behavior in the society. However, government has the duty to ensure peace and stability in the country and can do that by creating regulations to deal with abuse of rights by citizens but such powers to make laws or regulations affecting the fundamental rights of citizens should not be misused. Since the country operates a democratic system of government, laws which tend to abridge the fundamental rights of citizens require proper consultations with the citizens before such Bills are proposed in the legislative houses.

Laws are made to ensure peace in the society and to ensure that every individual citizen or group of persons or institutions respect the rights of others and that when there is an infringement there are consequences for such actions. It is not for the sake of witch-hunting perceived enemies or group of persons who dare to ask questions or make bold to demand accountability in the society.

The punishment of death penalty proposed in the Bill is extreme. Citizens, especially civil society decried the inclusion of death penalty as a form of punishment in the bill. Conviction and payment of fines are punitive and good enough deterrence to curtail the abuse of the freedom of expression.

Also, the wordings of the Bill are very broad and contain provisions which appear to generalise

every insulting or abusive word on a particular ethnic group or persons as hate speech. There is a thin line between hate speech and offensive speech since not all forms of offensive speech can be categorised as a hate speech. The description of hate speech in relation to the Bill should have been restricted to some extreme circumstances, for instance, a statement made with the intention of inciting tribal wars and causing a division of the country, statements that clearly indicates imminent danger or injury on certain people etc. If the Bill is enacted into law in its current form, it may imply that even comedians who crack sarcastic ethnic related jokes can be construed as guilty of the offence of hate speech by ethnic affiliations offended by the direction of the jest. It would clearly be problematic for the government to devise modalities for enforcing the provisions of the Bill without causing civil unrest among the various factions of Nigeria's ethnic groups. The consequences of unbridled powers or rights is grievous and should be checked but with measures that does not cause a greater harm.

Civil society groups are one of the most vocal groups in the country that in most cases represent the larger interest of the citizens as representatives in the legislature does, but civil society groups are more prone to government and its agencies crackdown both in military and civilian regimes because of their advocacy strategies to get government to be more transparent and accountable in its processes. This demand for accountability is what endangers the work of civil society in most of its advocacy efforts especially if the policies of government or its operations and interpretations of the laws are not properly and sincerely executed. It is this area of divergence of opinion that breeds hatred between government agencies and civil society and the situation has been that civil society gets punished by regulations which continues to stifle their participation in governance. What civil society use the most is voice and data, and these are the two items that is affected by this Bill which might further stifle the civic space if not properly legislated on by the legislature.

Furthermore, the implication for internet users is more pronounced as against the platforms used for such infractions on social media where these infractions are mostly committed. Some internet platforms forbid the use of certain promotional messages on governance which they term political but allow the use of some words that are offensive to others which they do not sanction or disallow on their sites for as long as they are not petitioned on them. Government agencies and its cronies can sometimes troll individuals they perceived as being too critical of their administration on those platforms thereby impugning the character of such individuals without just cause. Such platforms should have some measure of regulations to discourage the use of their space for hate speech.

Similarly, the generalization of what constitute hate speech might be wrongly applied to situations where citizens or civil society groups are making demands with hashtags that some might find offensive. A categorization of offences and what constitutes hate speech might be more useful. For instance, in clause 5, what is “unjustifiable conduct” could have different connotations for different people.

RECOMMENDATIONS

It is the duty of the legislature to ensure that laws and proposals for amendments of laws comply with international best practice especially as espoused in the House Bill and that death penalty as proposed in the Senate Bill be expunged from the Bill as there are provisions in other laws like the Criminal Code, penal code and the Administration of Justice Act on the procedure for punishing grievous offences committed by one person against another in the country.

Perhaps the National Assembly can build on the House version of the Bill and make it better, but no legislation should prevent the exercise of the fundamental rights of citizens when such rights are exercised with utmost care and discretion. Legislations should create law and sanctity in the society and not cause chaos as the Bill may tend to do if passed in the version in which it has been presented.



PROTECTION FROM INTERNET FALSEHOODS AND MANIPULATION AND OTHER RELATED MATTERS BILL, 2019 (SB 132)

BACKGROUND OF THE BILL

The Internet Falsehoods and Manipulations and Other Related Bills was introduced in the Senate on 5th November 2019 and passed second reading on 20th November 2019 after which it was referred to the Committee on Judiciary, Human Rights and Legal Matters.

Popularly described as the ‘social media bill’, the Bill contains provisions seeking to prevent the transmission of false statements/declaration of facts in Nigeria through the internet and on social media platforms such as Facebook and Twitter, SMS and MMS and contains sanctions for erring offenders.

Under the Bill, the Police or any other law enforcement agency (depending on the specific provision) can order the removal or corrections of false statements that are published online and can direct the Nigeria Communications Commission (NCC) to order internet service providers to block access to online sites and accounts that transmit same.

Although the Bill was withdrawn on the floor of the Senate after a widely attended public hearing with CSOs and stakeholders, the Bill still offers a prime example of the importance of exerting due vigilance on Bills.

STRUCTURE AND SUMMARY OF BILL’S PROVISIONS

Clause 1(a) of the Bill prevents transmission of false statements/declaration of facts in Nigeria and enables measures to be taken to counter the effects of such transmission

Clause 1(b) of the Bill suppresses the financing, promotion and other support of online locations that repeatedly transmit false statements/declaration of facts

Clause 1(c) of the Bill enables measures to be taken to detect, control and safeguard against uncoordinated inauthentic behaviour and other misuses of online accounts and bots

Clause 1(d) of the Bill enables measures to be taken to enhance disclosure of information concerning paid content directed towards a political end- clause 1(d)

Clause 1(e) of the Bill provides for the sanctioning of offenders- clause 1(e)

Clause 3(1) of the Bill provides for the territorial applicability of the Bill as extending to deliberate acts by any person within or outside Nigeria to transmit certain statement of facts in Nigeria. In addition, it defines prohibited statement of facts to include false statements of fact or statements that are likely to be prejudicial to the country's security, public health, public safety, public tranquillity or finances, prejudice Nigeria's relations with other countries, influence the outcome of an election or referendum- incite feelings of enmity, hatred towards a person or ill will between a group of persons; or diminish public confidence in the performance or exercise of any duty, function or power by the government.

Clause 4 and 5 of the Bill provide penalties for the prohibition of transmission of false declaration of fact. For instance, under clause 4 of the Bill, persons who make or alter bots (software application that are programmed to do certain tasks) for the purpose of transmitting or enabling another's transmission of false statements of fact face a fine not exceeding N200,000, three years imprisonment or both. Clause 5 also penalises transmitting false declarations **to one or more end users depending on whether it is carried out by individuals or other means. Where an individual is found guilty of the provision, he/she is liable to a** fine not exceeding N300,000 a three years imprisonment term or both- clause 5(3)(g). In any other instance, a fine not exceeding N10million.

Clause 7 and 8 of the Bill provide for a **correction regulation and stop transmission regulation respectively. Clause 7 of the Bill defines a correction regulation** is one issued to a person who has transmitted a declaration to issue a correction notice stating that a declaration made by them is false or to specify where the stated fact may be found. **A correction regulation is slightly different from a stop transmission regulation which is described under clause 8 of the Bill** as requiring a person who transmitted a false declaration of fact to stop transmitting the subject by a specified time and transmit a correction notice or publish the correction in the newspaper or other printed publication. The Police is given powers under the Bill to issue a correction regulation and stop transmission regulation.

Clause 13(1) and (2) allows for an appeal to the High Court by any person who has received an Order/Regulation with the qualification that the applicant has applied to the Police for a variation or cancellation and the said request was refused.

Clause 17 of the Bill provides for a **Targeted Correction Regulation** that can be issued to an internet intermediary that provided the medium by which a false declaration of fact is being transmitted in Nigeria.

Clause 18 provides for a **Disabling Regulation which mandates an** internet intermediary to disable access to a subject material provided on or through its service that contains a false declaration by a specified time

Clause 19 provides for a **General Correction Regulation** which may require a prescribed internet intermediary/ any such other person to transmit a correction notice to end users.

Clause 23 provides for an Access blocking order that can be issued to internet intermediaries that fail to comply with issued regulations. The Access blocking order takes the form of the police/law enforcing agency directing NCC to order an Internet Service Provider (ISP) to disable access to the online location where the statement was published. The provider can incur fines between N 1 million and N 10million for failure to comply. Internet Service Providers (ISPs) that fail to comply can face criminal charges and a fine of up to N10million- clause 12(4)

Section 27 of the Bill allows “online locations” where three or more different false statements have been transmitted to be proscribed as a “declared online location” by the Police/law enforcement agency (Police). A declaration of such online locations could lead to access to the declared online location being suspended. It may also lead to restrictions being placed on the transmission of paid content on digital advertising on such platforms – clause 28, 29 and 32. Individuals face a fine not exceeding N 500,000, a 3 months imprisonment term or both for non-compliance -clause 27 (6)(a). However, a fine not exceeding N 5million is applicable in cases other than an individual, – clause 27(6)(b).

IMPACT ON CIVIC SPACE

The Bill has huge ramifications that could threaten the fabric of Nigeria's democracy and the achievement of its outlined fundamental objectives that are aided by the deployment of technology such as social media tools which facilitate citizen participation and engagement with their elected representatives in the 21st century.

For instance, although the right to freedom of expression is guaranteed under **section 39 of the 1999 Constitution (as amended)** provisions of the Bill such as contained in clause 3(1) of the Bill attempt to limit this right on undefined grounds such as "public health, public safety, public tranquility, friendly relations with other countries or its potential to influence the outcome of an election or diminish public confidence in the performance of any duty or function of the Government or State" without any further elaboration in the Bill. It is also noteworthy that the said grounds appear to fall outside the purview of **section 39(3) of the 1999 Constitution** which allow for an abrogation to the right to freedom of expression in very limited circumstances.

Section 39 of the 1999 Constitution (as amended) is replicated below:

39. (1) *Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.*
- (2) *Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions: Provided that no person, other than the Government of the Federation or of a State or any other person or body authorised by the President on the fulfilment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for, any purpose whatsoever.*
- (3) *Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society –*
- (a) for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematographic films; or*
 - b) imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.*

There are also problems with the provisions which allows individuals who have a **Correction Regulation or a Stop Transmission Regulation**) to appeal to the High Court only after first applying to the Law Enforcement Department to vary or cancel the Part 3 Regulation who must have refused the application in whole or part. This is a loophole that can easily be exploited to deny access to justice in an event that Law Enforcement **decide to remain silent** on an issue by **technically neither refusing the application in whole or in part**. The gravity of this situation is further exacerbated by the absence of a time frame for law enforcement to vary or cancel an application under the Bill.

The “infallibility” of a Part 3 and Part 4 Regulation is further highlighted under clauses 13(6), 15(3), 24(7) which stress its continued enforceability regardless of whether an application to Law Enforcement/the Courts has been made for a variation/cancellation. It also creates a role for the police as both an arbiter and enforcer of the Bill’s provisions who decide what constitutes false statements and the medium for their regulation. This contradicts one of the principles of natural justice that no one should be a judge in his own case (*nemo iudex in causa sua*).

Its provisions also contain the potency of killing the current evolution of the social media as a veritable tool for information in the public space.

RECOMMENDATIONS

While the Bill has been withdrawn, CSO advocacy on the step down on the Bill provides useful lessons on the power of collaboration, consensus and the role of CSOs as protectors of civic space. This approach should be emulated in the event of future similar Bills in the National Assembly /State House of Assembly.



NON-GOVERNMENTAL ORGANIZATION REGULATORY COMMISSION OF NIGERIA (ESTABLISHMENT) BILL, 2016 (HB 585)

BACKGROUND OF THE BILL

The Non-Governmental Organization Regulatory Commission of Nigeria (Establishment) Bill, 2016 was introduced by Honourable Umar Baba Jubril on 2nd June 2016 and passed second reading on the 14th of July 2016 before its referral to the Committee on CSOs and Development Partners.

Some of the objectives of the Bill include to establish a body (The Commission) responsible for the supervision, coordination and monitoring of Non-Governmental Organizations and Civil Society Organizations in Nigeria. The Commission is also expected to ensure the transparency and accountability of NGOs as well as supervise their operations.

However, after a well-attended public hearing on the Bill where civil society groups canvassed against its passage, the Bill stalled at Committee stage till the expiration of the 8th Assembly in July 2019. A further revisit of the Bill was nevertheless mentioned at the start of the 9th Assembly by the Speaker of the House of Representatives, Rt. Hon. Femi Gbajabiamila after a meeting with security agencies.

While no further action has been taken on the Bill since the Speaker's pronouncement, this analysis intends to refresh readers with the contents of its provisions and implications on civic space to sustain due vigilance.

STRUCTURE AND SUMMARY OF BILL'S PROVISIONS

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

Summary of Bill's Provisions

Clause 1 of the Bill establishes a Non-Governmental Regulation of Nigeria Bill with a corporate headquarters in Abuja.

Clause 2 of the Bill establishes a Governing Board for the Commission consisting of a Chairman and 18 other Members drawn from the Ministries of Interior, Justice, Youth, Health, Water Resources, Agriculture, Non-Governmental Organisations and Nigeria's six geo-political zones among others. The Chairman and Members of the Commission shall be appointed by the President on the recommendation of the Minister of Interior and confirmed by the Senate. Under clause 4, they shall also hold office for a renewable four-year term. Members of the Board shall also be paid salaries in accordance with the rates that are approved by the Revenue Mobilisation, Allocation and Fiscal Commission.

Clause 6 of the Bill provides for powers of the Board which include the power to manage and superintend the affairs of the Commission, make rules for the effective running of the Commission and receive, disburse and account for the funds of the Commission among others.

Clause 8 of the Bill provides for the functions of the Board which include the maintenance of the register of national and international NGOs in Nigeria and coordinating their work. Other functions include receiving and discussing the annual reports of NGOs, advising the government on the activities of NGOs and their role of development in Nigeria, providing policy guidelines to NGOs to harmonise their activities into Nigeria's development plan and receiving, discussing and approving the Code of Conduct prepared by the Council for self-regulation of Non-Governmental organisations and their activities in Nigeria.

Clause 10 provides the Board with the power to establish a documentation centre on Non-Governmental Organisations and such other information as may be necessary for the understanding and promotion of the contribution of Non-Governmental Organisations to national development.

Clause 11 provides the procedure for the registration and licensing of non-governmental organisations. Under the said procedure, applications are to be made by the Chief Executive Officer of an NGO to the Executive Secretary of the Commission. The application for registration must specify information such as its officers, its head office and postal address, the sector of the organisation, its location, the proposed average annual budget, duration of activities, sources of funding, national and international affiliation and certificates of incorporation and such other information that the Board may prescribe.

Clause 12 provides for the registration of application to be accompanied by fees while clause 13 provides for the issuance of a certificate of registration to all registered NGOs registered within three months of their registration. Under clause 13(4), NGOs that are not registered cannot operate in Nigeria nor benefit from facilities available by the Government. Also, importantly only registered NGOs can be recognised as body corporates with rights to sue, acquire property, enter contracts or carry out functions that can be lawfully done or performed by a body corporate.

Clause 15 allows the Board of the Commission to refuse an application for registration on grounds of national interest or if the applicant has given false information in its application for registration.

Clause 16 provides for the renewal of registration requirements in accordance with established procedures including the periodic submission of relevant documentation. Documents required for submission include a summary of the final donor project narrative and financial reports, external project audits requested by a donor and the most recent audit. The request for renewal must be made at least one month before the expiration of the current registration certificate. However, where there is an avoidable delay to submit the renewal forms, a fee may be charged for late application.

Clause 17 provides for the registration of NGOs every two years. Failure to renew leads to the deletion of the NGO from the register. NGOs are also expected to commence the renewal process of their registration before the expiration date of their certificate lapses.

Clause 18 enables the Board to cancel or suspend a certificate if the terms for registration have been violated. A notice of cancellation or suspension shall however be served and take effect within 14 days after the date of its notice.

Clause 19 allows the Board of the Commission to receive and consider applications for work permits in respect of prospective employees of a registered NGO and make recommendations to the Comptroller General for the issuance of permits.

Clause 20 allows the Board to strike off any organisation that fails to furnish proof of its existence within 30 days of the notice. Organisations aggrieved may appeal to the Minister of Interior within 60 days from the decision after which a final decision by the Minister shall be made within 30 days.

Clause 22 makes any organisation established by a State or group of states for the purposes of welfare, research, relief, health or any development assistance ineligible for registration.

Clause 24 prohibits the operation of NGOs for welfare, research, health, agriculture, education and industry without a registration and certificate. Persons convicted shall be liable to pay a fine not exceeding five hundred thousand naira or an imprisonment term of eighteen months or to both. Persons convicted of an offence under the Bill are also disqualified from holding an office in any NGO for a period of upto ten years.

Clause 25 provides direction as to how projects by NGOs should be implemented. For example, it provides for the full participation of specific target groups, the approval and collaboration of relevant Ministries, compliance with relevant financial legislation, direct support to project beneficiaries and limiting the administrative costs to bare essentials.

Clause 26 provides for the approval of projects by a relevant Ministry and the Commission before its implementation. **Clause 27** also provides for details of the programmes of each project such as the type of activities undertaken, its beneficiaries, number of personnel implementing the project and list and value of items that will be imported to be included and approved by applicable Ministries and the Commission. **Clause 28** provides that it is the responsibility of the Commission to monitor and evaluate the programmes of an organisation including the submission of its completion and progress reports.

Clause 29 mandates organisations to submit the details of the funds pledged by donors for project implementation. These include the amount of money pledged, the sources of funding, details of donors, assets transferred to build the capacity of an organisation. It also states that the assets owned by organisations through purchase or acquisition with donor funds are the property of Nigerian people who are their beneficiaries. The provision also prevents an

organisation from disposing assets and keeping relevant proceeds in the event of a closing-down of its operations. Where this happens, an organisation is expected to surrender its assets to the Government as trustees to the Nigerian people. However, donors may choose to redirect their assets after a formal request by their overseas head office to the Commission.

Clause 30 enables the Government to provide the relevant financial and institutional support to organisations through duty waivers, tax allowances and any other facilities that enable them to develop, reinforce and sustain their organisational capacity for more effective service delivery. This is further corroborated by clause 31 which gives the Ministry of Finance power to approve the duty waivers and recommend approval after its applications have been scrutinized by the Commission. Organisations are also expected to submit a renewal application with a tax clearance certificate issued by the Federal Inland Revenue Service under clause 33.

Clause 35 provides for a Nigeria National Council on Voluntary Agencies which is a collective forum for all voluntary agencies registered under the Bill.

Clause 36 enables the Council to develop and adopt a Code of Conduct that could facilitate self-regulation by NGOs and any such matters that may be of national interest. The Code of Conduct shall be adopted by not less than two thirds of the registered agencies and not less than three quarter of the voting members present. However, the Code of Conduct must receive approval by the Board who must also ensure its consistency with Nigeria's national and foreign policies as well as its legislation. It is a responsibility of the Nigeria National Council under this provision to prescribe the rules and procedure for the audit of NGOs for submission to the Board.

Section 37 provides a transitional period of six months for all NGOs to register and obtain a certificate under the Act. Under clause 38, the first hundred NGOs to register shall constitute the Nigeria National Council on Voluntary Agencies that shall develop and adopt a Code of Conduct for NGOs.

Clause 40 provides for a five-year renewable tenure for an Executive Secretary who among others shall ensure compliance with provisions of the Bill.

The explanatory memorandum of the Bill defines 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 is also defined under the memorandum of the Bill 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.

IMPACT ON CIVIC SPACE

The Bill has several worrying aspects. For instance, 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 the incorporation of Trustees (NGOs) which is currently being done under Part F of the Companies and Allied Matters Act (CAMA).

Also, in providing for the definition of NGOs and CSOs, it fails to include faith-based, philanthropists, labour union, traders' union, pressure groups, etc. Without an appropriate definition, it is unclear which exact groups the Commission seeks to regulate.

It also contains problematic provisions such as those requiring NGOs to renew their certificate of registration every 24 months which is more burdensome to the current registration process under the Companies and Allied Matters Act which is done once. Linked to this are other issues such as the Bill's grant of powers to the Board, (whose membership is dominated by the Executive arm) to refuse applications for registration of NGOs, remove their names from the NGO register and approve their project activities and donor funds. These powers could be used to restrain, constrain and limit non-governmental initiatives and charitable efforts in Nigeria.

The Bill's dual registration process of NGOs through the establishment of a Board and automatic entry into the Nigerian National Council of Voluntary Agencies also appears to add a deliberate layer of surveillance. This is in consideration of some of the functions of the Council such as the development of a code of conduct that facilitate self-regulation by NGOs as well as the prescription of the rules and procedure for the audit of NGOs for submission to the Board.

RECOMMENDATIONS

The brunt of the NGO Regulatory Bill which contains several restrictions for NGOs fails to recognize the contributions of CSOs working in different sectors such as human rights, democracy, good governance, corruption, women's rights and its contributions to governance and the consolidation of Nigeria's democracy.

The Bill also leaves many gaps and questions such as whether it is to operate side by side the existing Corporate Affairs Commission which currently registers Incorporated Trustees/ NGOs and whether there is a hierarchy for registration where registration is accepted by one body but not the other.

Also, the requirements of the Bill containing registration, licensing, submission of project details and activities may also lead to a crackdown on civic spaces particularly for CSOs/NGOs critical of government delivery.

Given these, civil society must continue to exercise vigilance to prevent a turn back on the yields of democracy and expressions of fundamental rights through resisting the passage of this Bill.



COMPANIES AND ALLIED MATTERS ACT (AMENDMENT) BILL, 2022 (SB 904)

BACKGROUND OF THE BILL

The Companies and Allied Matters Act (Amendment) Bill, 2022 was introduced in the Senate by Senator Yahaya Ibrahim Oloriegbe on 1st February 2022 after February 2022 and read for the second time on 9th February 2022 before its referral to the Senate Committee on Trade and Investment, NGOs and Diaspora who held a public hearing on the Bill.

The Bill seeks to strengthen provisions of the Companies and Allied Matters Act (CAMA) 2020 which expands the power of the Corporate Affairs Commission (CAC) from the prior Act that was enacted in 1990. Amendments in the Bill seek to address powers of the CAC under the 2020 Act from merely registering incorporated trustees or non-profits/non-governmental organisations (NGOs) to now include conducting investigations into their affairs, obtaining court ordered suspension of trustees, appointment of interim managers and pose restrictions on their financial transactions.

The Bill seeks to strengthen the participation of non-governmental organisations in Nigeria by addressing these bottlenecks in the legal framework and reflecting their invaluable contributions to society and guidance on how to facilitate their operations and compliance.

STRUCTURE AND SUMMARY OF BILL'S PROVISIONS

The Bill has 13 clauses and an explanatory memorandum.

Clause 2(2)(b) of the Bill provides for the inclusion of non-governmental organisations in the Board of the Corporate Affairs Commission, which is the regulatory body charged with the registration of incorporated trustees otherwise known as non-governmental bodies under the Act. This would be a departure from extant provisions of the law which require membership

of the CAC Board to consist of a Chairman, Registrar-General of the Commission, a representative of the business community, legal profession, accountancy profession, Institute of Chartered Secretaries and Administrators, Nigerian Association of Small and Medium Enterprises, the Manufacturers Association, Securities and Exchange Commission and Federal Ministries of Industry, Trade and Investment, Justice and Finance.

Section 3 of the Bill seeks to delete section 831 of the Companies and Allied Matters Act, 2020 which among others provides that any two or more associations having similar trustees can be treated as a single association for the purposes of the Act.

Clause 5 of the Bill seeks to amend section 839 of the Act to amend the process a trustee of an association can be suspended and the time frame that an interim manager can manage the affairs of the association to a period of six months.

Clause 6 of the Bill seeks to delete sections 842 of the Companies and Allied Matters Act, 2020 which provides the procedure for the dissolution of an association that has a dormant account and fails to respond satisfactorily to the Corporate Affairs Commission on its activities. Powers of the Commission under the extant provision include the power to direct a bank to transfer the aggregate amount standing in the said account into the account of one or more different associations.

Clause 7 of the Bill seeks to delete section 843 of the Companies and Allied Matters Act, 2020 which prevents banks from reactivating dormant accounts which it has issued directives (see clause 6) to promptly notify the Commission where it believes that an account has ceased to be dormant before making the transfer of funds to another association under section 842.

Clause 8 of the Bill seeks to delete section 844 of the Companies and Allied Matters Act, 2020 which prevents banks from using its obligation to secrecy and any other restriction on disclosure from information on the status of dormant bank accounts to the Commission.

Clause 9 of the Bill seeks to amend section 845(1) of the Companies and Allied Matters Act, 2020 by providing for the annual submission of the statement of affairs of the association. This position is different from extant provisions of the Act which require the bi-annual submission of the statement of affairs of the association. Passage of this amendment will also restore the status of reporting to the position in the earlier 1990 Act.

Clause 11 of the Bill seeks to amend the language of section 848(1) of the extant Act which requires that an association submit its return between 30th June to 31st December each year. Under the proposed amendment, associations are to submit their return no later than 31st December each year.

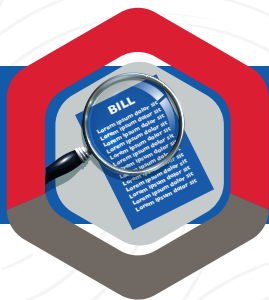
IMPACT ON CIVIC SPACE

The new provisions in Part F of CAMA seem to be copied from the UK Charities Act 2011 without regard to the set-up and operations of the Nigerian CAC vis-à-vis the UK Charities Commission, an independent body solely dedicated to charities, accountable to the Parliament, and whose mode of appointment of its board/ leadership is advertised and competitive. For instance, the CAC is an executive body whose leadership is appointed by the President without legislative approval. It also operates under a supervising Minister of Trade who appoints board members representing only for-profit or business interests. The new proposals will therefore seek to reflect non-profit interests on the CAC board through its representative.

Also, while NGO regulations exist in other common law jurisdictions such as the United Kingdom, Australia, United States and Kenya, and civil law jurisdictions in Europe due to tax reliefs and State benefits, their ultimate objective is to encourage philanthropic activities for the benefit of society, not to produce a chilling effect in the sector. This position appears to be different in Nigeria with the advertisement of the new CAMA solely as a breakthrough on ease of doing business without regard to the consequences for the non-profit sector including the additional provisions for its reporting and tighter scrutiny/surveillance of accounts. The Bill if passed will hopefully address these issues and better position CSOs/NGOs to comply with the legal framework.

RECOMMENDATIONS

The Companies and Allied Matters Act (Amendment) Bill, 2022 should be canvassed by CSOs as its provisions will expand on civic space and reduce the burdensome requirements currently contained under PART F of CAMA, 2020.



DIGITAL RIGHTS AND FREEDOM BILL, 2019

BACKGROUND OF THE BILL

The Digital Rights and Human Nigerian Press Council Act (Amendment) Bill, 2022 was introduced in the House of Representatives in July 2019 by Mohammed Tahir Monguno who sought to improve on a prior version of the Bill that was passed by the 8th Assembly in 2018. However, the President declined the Bill in 2019 for covering too many technical subjects leading to the revised version of the Bill in the 9th Assembly in 2019. The Bill was read for the second time in November 2019 after which it was referred to the Committee of the Whole for the House of Representatives.

The Bill seeks to protect internet users from infringement of their fundamental freedoms and to guarantee human rights of digital platforms and /or Digital media. Benefits of the Bill include strengthening citizens rights to the internet, provision for due process where access to data is granted to governmental agencies and the provision of a clear definition of digital terms such as protection of personal data among others.

STRUCTURE AND SUMMARY OF BILL'S PROVISIONS

The Bill is divided into six parts and has 19 clauses. It also has an explanatory memorandum.

Clause 1 of the Bill state its objectives which include the promotion of the freedom of expression, assembly and association online. It also guarantees data privacy in a digital age and guarantees the application of human rights offline and the digital environment online and guarantee application of the human rights which apply online. It also equips the judiciary with the legal framework to protect human rights online where infringement occurs.

Clause 3 prevents the unlawful interference of the online privacy of any person. It also protects privacy rights by providing for the rule of confidentiality to one's personal data. Other notable rights under clause 3 include the right to digital assets such as passwords, digital receipts, bank accounts or anything a user has access to primarily in the digital space that is inheritable to be managed and owned by his heirs or next of kin. It however provides for certain exceptional circumstances where a State may limit the right to privacy, for instance, for the purposes of administration of criminal justice or prevention of crime. Measures falling within the exceptional circumstances must also be necessary and proportionate.

Clause 4 allows for the anonymous use of the internet with a view to exercising civil and political freedoms and without discrimination or censorship. It also prevents the restriction of access to the internet except where it is needed to safeguard a major public interest and is necessary, proportional and grounded in law. Clause 6 (5) also prevents the government from using or compelling intermediaries to undertake censorship on their behalf.

Clause 5 prevents the freedom of the right to opinion and expression on the internet from being restricted except where provided for under the 1999 Constitution, the Freedom of Information Act, 2011 and any other relevant legislation. Right to freedom of opinion is also in clause 6 of the Bill.

While clause 6 adds to clause 5 by providing for the freedom of expression in communication materials such as books, newspapers, pamphlets, posters and banners in digital format and online as well as in audio-visuals, electronic and internet-based modes of expression. However, it also adds by providing for the protection of professional journalists, bloggers and citizen journalists who contribute to public debate and public opinion on the internet. It also prevents the use of legislation to censor criticism and debate concerning public issues. Restriction of the freedom of expression is prevented in all forms except where the restriction is prescribed by law and is necessary in a democratic society to protect those interests.

Clause 6 also goes on to describe what could constitute restrictions on freedom of expression. These include justification on grounds of protection of copyright interests without a genuine purpose and demonstrable effect, filtering, website blocking and removing any other technical or legal limits on access to content as well as protection on the grounds of national security or countering terrorism without legitimately demonstrating its justification. It prevents censorship allowing the total or partial banning of web pages and in the resort to the complete disconnection from the internet network. It also prohibits hate speech.

Where however a conflict arises between the principles contained in the Bill and any domestic, regional or international human rights standard, the right of access to information takes precedence.

Clause 7 guarantees the freedom of information online including the use and reuse of government held data and information. It also imposes an obligation on public bodies to share all information produced with the support of public funds. It also prioritises access to persons with disabilities and other persons belonging to minority groups, rural groups and the urban poor who may face barriers accessing the internet. In addition, it prevents the blocking of the internet and extensive filter systems that block access to the internet arbitrarily.

Clause 8 guarantees the right to peaceful assembly and association online and allows organisers and participants of peaceful assemblies have the right to access the internet at all times without interference.

Clause 12 guarantees an e-governance system enabled by free flow and access to information and in a way that citizens and businesses interact with government representatives. It also mandates government to utilise social media to reinforce democratic processes, drive efficiency, innovation and expose corruption.

Clause 13 provides penalties for persons and body corporates in breach of its provisions. For instance, persons who carry out unlawful, unauthorized and undue interference with the online privacy of any person face a five-year imprisonment term with an option of a fine of no less than one million naira or to both. However, a five-million-naira fine is applicable in the case of a body corporate.

Penalties are also provided under this clause for persons who publish hate speech online that advocate regional, racial or religious hatred that could cause discrimination, hostility or violence. Persons guilty of this offence are liable to an imprisonment term of one year or to a fine not less than one million. However, in the event such a publication results in loss of lives or destruction of property, a person shall face an imprisonment term of not less than seven years, or a fine not less than five million naira or to both a fine and imprisonment term. An increased fine of not less than ten million naira in addition to compensating the victim in a sum determined by the court is applicable where it is a body corporate that is in breach.

Clause 15 vests jurisdiction on the Bill in the Federal and State High Court while clause 17 gives the National Human Rights Commission the power to give full effect to the provisions of the Bill

IMPACT ON CIVIC SPACE

The Digital Rights Bill and Freedom Bill provides a legal framework for the protection of digital rights, and online freedom in line with global emerging trends which increasingly utilise online platforms for freedom of expression and the dissemination of information. Apart from its wide right to access the internet, it provides affirmative action for minority groups, the rural and urban poor to access the internet which is commendable and empowers citizens to make the right choices through civic education and e-learning methods.

Also more practically and in the wake of Nigeria's suspension for a period of six months in 2021, the Bill will discourage internet shutdowns and restrictions which may have huge ramifications for Nigeria's democracy. In 2021 for instance, internet shutdowns were deployed in the run-up to contested elections in Uganda, the Republic of the Congo, Guinea, Togo, Eswatini, Sudan, Niger, Senegal and Burkina Faso for example as a means of suppressing citizen protests in favour of civilian democracy, participation and good governance.

While Nigeria has not had an internet shutdown, the government's ban of Twitter in 2021 for six months highlights that this reality could be made possible. Thus, the Digital Rights Bill will discourage such occurrences.

RECOMMENDATION

The approach undertaken by the Digital Rights and Freedom Bill to protect digital rights and online spaces subject to clearly laid down circumstances safeguards against abuse and encourages the expansion of civic space in Nigeria. It also provides a more suitable alternative to other Bills such as the Internet Falsehood Bill for instance that which sought to limit and penalise the use of social media in certain circumstances. Following this, the Digital Rights Bill is recommended and should be prioritised by CSOs in view of its relevance, innovation and bulwark against government excesses or arbitrary abuse



CONCLUSION

An analysis of some of the pending Bills before the National Assembly indicate concerns requiring civil society's sustained monitoring of its Bill progression chart and legislative procedure that could provide ramifications on civil society space. Others such as the Internet Falsehoods and Manipulation Bill which were introduced by the 9th Assembly but later withdrawn also provide useful lessons on the power of advocacy and collaboration by civil society in preventing the curtailment of its fundamental rights and freedoms.

Lastly, the Companies and Allied Matters Act Amendment Bill and the Digital Rights and Freedom Bill provide alternatives to the existing legal framework by reflecting the contributions of CSOs/NGOs as collaborative actors in development and Nigeria's democracy.

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 process.

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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