

# THE NON-GOVERNMENTAL ORGANIZATIONS REGULATORY BILL

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CANARY  
REVIEW



## INTRODUCTION

The Non-Governmental Organizations Regulatory Commission (Establishment) Bill, 2016 (“the Bill”), is one of the 1716 bills currently pending in the 8th National Assembly. The Bill seeks to provide for the establishment of a Non-Governmental Organizations Regulatory Commission of Nigeria (“the Commission”) for the supervision, co-ordination and monitoring of Non-Governmental Organizations (NGO), Civil Society Organizations (CSO), and Community Based Organizations (CBO).

Upon presentation, the Bill was met with disquiet by individuals and organizations within and outside Nigeria, with concerns that the said bill will constrain the operations of NGO’s, and impede on the rights of peaceful assembly within the Country. However, the National Assembly has maintained that the bill is proposed to foster improved accountability and transparency in NGOs, CSOs, and CBOs.

## HIGHLIGHTS OF SALIENT PROVISIONS

### ESTABLISHMENT OF NGO REGULATORY COMMISSION

Principally, the bill seeks to establish the Non-Governmental Regulatory Commission of Nigeria (“the Commission”) with statutory obligations to supervise, co-ordinate, and monitor the activities of NGOs in Nigeria.<sup>1</sup> In addition, the bill seeks to establish the Nigerian Council of Voluntary Agencies (“the Council”), a collective forum of all the voluntary agencies under the proposed Act.<sup>2</sup> The self-regulated Council shall develop and adopt a Code of Conduct to facilitate self-regulation by NGOs.<sup>3</sup>

The Commission shall be governed by a Governing Board (“the Board”) consisting of a Chairman, representatives from Federal Ministries and select individuals as may be nominated by the Nigerian Council of Voluntary Agencies.<sup>4</sup>

### REGISTRATION OF NGO/CSO

Pursuant to the bill, all Non-Governmental Organization (NGO) shall be required to register as an Organization, and be issued accordingly with a Certificate of Registration.<sup>5</sup> Registration under this head, shall subsist for an initial period of 2 (two) years from the date of issue of the Certificate of Registration, after which the NGO shall be required to make an application for renewal.<sup>6</sup>

The bill proposes to proscribe unlawful, and an offence for any person to operate a NGO in Nigeria, without registration and certification under the proposed Act and any persons found culpable under the said Act, shall be liable to pay a fine of ₦500, 000.00 (Five Hundred Thousand Naira) or be imprisonment for 18 (eighteen) months or both. In addition, any persons so convicted shall be disqualified from holding an office in any Non-Governmental Organization for a certain period.<sup>7</sup>

<sup>1</sup> Section 1 of the Non-Governmental Organizations Regulatory Commission (Establishment) Bill, 2016

<sup>2</sup> Section 35 of the Non-Governmental Organizations Regulatory Commission (Establishment) Bill, 2016

<sup>3</sup> Section 36 of the Non-Governmental Organizations Regulatory Commission (Establishment) Bill, 2016

<sup>4</sup> Section 2 of the Non-Governmental Organizations Regulatory Commission (Establishment) Bill, 2016

<sup>5</sup> Section 11 and 13 of the Non-Governmental Organizations Regulatory Commission (Establishment) Bill, 2016

<sup>6</sup> Section 17 of the Non-Governmental Organizations Regulatory Commission (Establishment) Bill, 2016

<sup>7</sup> Section 24 of the Non-Governmental Organizations Regulatory Commission (Establishment) Bill, 2016

Furthermore, the Board shall have statutory powers to refuse registration of an organization, and/or cancel or suspend the certificate of an organization. Post registration, should the Board have reason to believe that a registered organization has, for any reason, ceased to exist, it may publish in the Gazette a notice calling upon such organization to furnish it with the proof of its continued existence. The Board shall have powers to strike off the register the name of any organization which fails to provide proof of its existence within 30 (thirty) days from the days of such notice.<sup>8</sup>

### PROJECT MONITORING AND EVALUATION

In accordance with the mandate of the Commission to monitor and evaluate NGO Projects, all projects formulated by an organization for implementation in Nigeria shall be approved by the relevant Ministry and registered with the Commission before implementation. Whereas, there is a possibility of variation of project estimates from registration to implementation stage, the promoting organization shall ensure that the variation is promptly communicated to the relevant Ministry for approval and copied to the Commission.<sup>9</sup>

In view of the above, the Commission shall have the statutory powers to obtain quarterly reports of the details of funded programs and a disclosure of the sources of such funds. However, the registration of a project before the sourcing of funds may be waived on request by the organization to the Commission, where such waivers are granted, the organization shall, within 14 (fourteen) days of sourcing the funds, advise the commission of the quantum of the funds and the applauded project utilization of the funds.<sup>10</sup>

<sup>8</sup> Section 20 of the Non-Governmental Organizations Regulatory Commission (Establishment) Bill, 2016

<sup>9</sup> Section 26 of the Non-Governmental Organizations Regulatory Commission (Establishment) Bill, 2016

<sup>10</sup> Still tracing the Section of the Non-Governmental Organizations Regulatory Commission (Establishment) Bill, 2016

### PERMITS, DUTIES, AND TAXES

As stated in the Bill, the Board shall have statutory powers to receive and consider applications for work permits in respect of prospective employees of a registered Non-Governmental Organization and make recommendation to the Comptroller of Immigration for the issuance of the permit of the applicant NGO.<sup>11</sup> Further to this provision, Expatriates whose term of employment has expired with one organization shall not be employed by another organization under the same work permit.

In addition, all applications for duty waiver, including permit clearance from organizations shall only be granted by the Ministry of Finance, upon recommendation by the Commission. The commission in exercise of its discretion shall ensure that the duty waiver conforms with the contents of the project registration list and the pre-shipment document as submitted to the Commission.<sup>12</sup>

More so, all organizations under the Act shall be required to comply with the provisions of the taxation and labour laws of Nigeria. All organization shall submit with their renewal application form, a tax clearance certificate issued by the Federal Inland Revenue Service (FIRS).<sup>13</sup> Where an organization is involved in income generating activities, the organization would be required to declare details of the activities and the income to the FIRS for a certificate of exemption and failure to secure the certificate will adversely affect the re-registration possibilities of such organization with the Commission.

<sup>11</sup> Section 19 of the Non-Governmental Organizations Regulatory Commission (Establishment) Bill, 2016

<sup>12</sup> Section 31 of the Non-Governmental Organizations Regulatory Commission (Establishment) Bill, 2016

<sup>13</sup> Section 33 of the Non-Governmental Organizations Regulatory Commission (Establishment) Bill, 2016

## OBSERVATIONS

The definitions of NGOs and CSOs are ambiguous and may be subjected to a plethora of interpretations as the Bill only defined the organizations to be regulated to mean “private voluntary groups not operated for profit”. This fails to consider that some Non-for-Profit organizations make income to be re-invested into their cause. The Bill does not state specifically classes of organizations which may be included in the Bill including but not limited to faith-based, philanthropists, labor union, traders’ union, and/or pressure groups making it vague and unascertainable the organizations the bill proposes to regulate.

Furthermore, it is noteworthy that the Corporate Affairs Commission (CAC) is the Commission presently currently charged with registration of NGO’s in Part C of the Companies and Allied Matters Act 1990, and the Bill does not attempt to repeal the said Act. This would suggest that NGO’s may be subjected to public bureaucracy in regulatory compliance to various government agencies and ministries in a bid to comply with regulatory complexities, which could in effect limit the effectiveness of the essential services that NGO’s provide. It would be appropriate if a one-stop-shop can be created for registration and regulation of the Organizations.

Worthy of concern, is the statutory discretionary powers the bill proposes to donate to the Commission to refuse registration where the Commission “is satisfied that the NGO’s proposed activities are not in the national interest”. Concerns are that these provisions

could potentially impede the fundamental human rights of free speech and freedom of association. Some NGOs causes are principally transparency and accountability in Governance and are often in the fore front of criticism of Government, who often feel threatened by their activities. The powers donated in this clause may potentially become abused by the Commission to delist critical NGOs at the Government/Commissions sole discretion.

## CONCLUSION

In consequence, International missions and NGO’s may find Nigeria’s regulatory environment hostile and their inclusive value could be eroded to neighboring African countries who welcome their philanthropic activities with less bureaucracy. The rigidity and transferability of the employment of expatriate volunteers and professionals, could potentially limit the efficiency of NGO expatriates within Nigeria. Many NGO’s by their nature are in a chain of partnership with other NGOs with similar objectives. The prevention of transfer of human capital and value would gravely constraint the activities of these organizations.

Non-Governmental Organizations in Nigeria are persistently saddled with a broad range of socio-political and economic challenges with in their operations in Nigeria. The establishment of the Non-Governmental Organizations Regulatory Commission of Nigeria, a Commission with very broad mandates and powers could threaten and constraint Non-Governmental Organizations operations in Nigeria.

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