



**#NGOBILL3: LEGAL ANALYSIS OF THE PROPOSED
ACT TO ESTABLISH THE CIVIL SOCIETY
REGULATORY COMMISSION AND FOR
CONNECTED PURPOSES**

Policy Briefing Paper 010

FEBRUARY 1, 2020

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Introduction:

A new legislative proposal, HB. 712 & 673, has scaled through first reading in the Nigerian House of Representatives. Sponsored by Senator Abass Tajudeen, the bill seeks “**An Act to Establish the Civil Society Regulatory Commission and for Connected Purposes**”, hereinafter known as **#NGOBILL3**, recognizing that this is the third major attempt to introduce a bill that will impose additional regulatory measures on non-governmental organizations (NGOs) operating in Nigeria.

#NGOBILL3 promises to increase public confidence in civil societies by:

- Promoting awareness and understanding of their operations to the public.
- Promoting compliance by civil society constitutionees with their legal obligations in exercising control and management of the administration of their civil societies.
- Promoting effective use of civil society resources and enhancing accountability of civil societies to donors and beneficiaries and the general public.

Functions of the Civil Society Regulatory Commission include: (Section 8a-h)

- Determine whether institutions are or are not civil societies, including determining whether public collection certificates be issued to any civil society, and remain in force, in respect of public charitable connections.
- Encourage and facilitate better administration of civil societies, giving advice and guidance with respect to the administration of civil societies as it considers appropriate. This advice or guidance may take form or be given in a manner the Commission considers appropriate such as through – any of this advice or guidance may relate to civil societies generally, any class of civil societies or any particular civil society.
- Identify and investigate misconduct in civil societies, including taking remedial or protective actions in response to misconduct in the administration of any civil society.
- Maintain an accurate and up-to-date register of civil societies.
- Obtain, evaluate and disseminate information in connection with the performance of any of the Commission’s functions.
- Give information, advice or make proposals to any Federal or State Ministry, Department or Agency on matters relating to the Commission’s functions.
- Comply, so far it is reasonably practicable, with any request made by appropriate organisations for information or advice on any matter relating to any of its functions.

Duties and Powers of the Commission (Part IV of the Bill):

- i. Sections 13, 14 15 of the Bill gives the Commission the power to register, and by order published in the Official Gazette, to remove the name of a civil society that in its opinion has ceased to exist after the Commission has satisfied itself that the civil society has actually ceased to exist. Only 2 out of the 19 members of the Commission will come from the civil sector. (Section 2 (2) a-g))



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- ▶ **NB:** First off, there is no criteria for determining whether an organization has ceased to exist. This determination is based solely upon the discretion of the Commission that is not fully representative of civil society.
 - ▶ The Corporate Affairs Commission (CAC) already regulates and supervises the formation, incorporation, management and winding up of companies. Entrusting the CSO Regulatory Commission with this same task will lead to regulatory overlap, with multiple agencies at the federal level, actively engaged in duplicated responsibilities. Take note that Section 608 of the Companies and Allied Matters Act (CAMA) 1990, as amended, already provides for the procedure for the dissolution of a corporate organisation which is by a court order.
- ii. The Bill states that the onus is on the constitutionees/trustees of the NGO to satisfy the Commission that it has not ceased to exist.
NB: There is no clear framework or criteria for determining whether an NGO has ceased to exist, and this burden is shifted to the NGO operators. The standard of proof is also unknown. From that uncertainty springs discretionary power so wide, and can be exercised without accountability, with little or no oversight.
- iii. Section 16 empowers the Commission to give a direction requiring the name of a civil society to be changed, within such period as is specified in the direction, to such organization to be changed, within such period as is specified in the direction, to such other name as the constitutionees may determine with the approval of the Commission.
- ▶ **NB:** The Corporate Affairs Commission already has the statutory mandate to approve name of all corporate entities prior to registration. Section 30 of CAMA provides for prohibited and restricted names. Section 31 provides for the procedure to change the name of an organisation.
 - ▶ At the initial application stage, corporate names forwarded for registration may be denied if the CAC thinks the proposed company name is too similar to that of any pre-existing company, or conflicts with that of a company, or with a business name or trade mark registered in Nigeria. (See Section 676(a) of CAMA) There is no need to replicate this function.
 - ▶ Not only that, the Special Control Unit Against Money Laundering (SCUML) is responsible for the establishment and maintenance of comprehensive database of DNFI's and their financial transactions to support tactical, operational and strategic analysis as well as policy options in combating money laundering and financing of terrorism.
- iv. Section 20, 21, 22 of #NGOBILL3 grants the Commission the powers to obtain evidence, search warrant and execution of search warrant for either general or particular purposes.
- ▶ **NB:** The Bill does not define the terms, 'general or particular purposes for inquiries'. It is also unclear whether this applies to criminal investigations and prosecutions. Again, this provision grants the Commission wide discretionary powers to demand and



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obtain information, including confiscating information items, arresting and placing individuals of organisations under oath to reveal information about their organization. Apart from the risk of arbitrary exercise of this power, this sort of discretion usurps both judicial functions and the role of the criminal administration of justice systems—such as the Nigerian Police and the Economic and Financial Crimes (EFCC)—already in place in the country. Furthermore, it is inconsistent with constitutional provisions that guarantee citizens' rights to privacy, the freedom of conscience, expression and association, and legal protection against torture, inhuman and degrading treatment.

- ▶ Besides, the Special Control Unit Against Money Laundering (SCUML) already monitors and supervises the activities of Designated Non-financial Institutions (DNFIs), which includes NGOs. They already conduct periodic offsite and onsite inspection visits to DFNIs and takes necessary enforcement actions to ensure they comply with anti-money laundering (AML) and countering financing of terrorism (CFT) legal regimes.
 - ▶ It is important to mention that both S7. & Part C of CAMA 1990, as amended, empowers the CAC to regulate the winding up of companies...and arrange or conduct an investigation into the affairs of any company where the interests of the shareholders and the public so demand.
 - ▶ Instead of the use of extra-legal including coercive means to obtain information about financial or governance operations of organizations, Section 607 (1) of the amended CAMA (2004) already provides for mandatory filing of returns of civil society organisations. Subsection (2) imposes a fine for non-compliance.
 - ▶ Beyond the challenges, especially the wastage of scarce resources, associated with regulatory overlap, entrusting roles already performed by CAC and SCUML to an additional regulatory body is tantamount to over-regulation of the civil society sector.
- v. Section 24 (1) and (2) of #NGOBILL3 further gives 'incidental powers' to the Commission to do anything which is calculated to facilitate the performance of the Commission's functions and general duties. The Bill also grants the Commission to, without prejudice, direct specified action to be taken or direct application of a civil society's property –

NB: The power 'to do anything' is not only ambiguous, but also dangerously wide. There is a potential opportunity for misuse and a danger to liberty.



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Offences and Penalties

Section 44 of #NGOBILL3 criminalises the operations of non-profit organisations or persons who run a civil society without registering with the Commission. Violators of any of the offences are subject, upon conviction, to imprisonment for a term not exceeding twenty-four months, or a fine not exceeding N500,000.00 or both such fine and imprisonment.

NB: This law does not state whether the registration with the CAC, SCUML and National Planning Commission will be abolished. If not, the requirement for additional registration will be adding a fourth line of registration for NGOs to operate. This will constitute excessive and brazen over-regulation of the sector. This stipulation and consequent penalty violate the freedom of association which allows persons to organically exist and organise in various ways to promote charitable interests.

Conclusion: #NGOBILL3 contains five major concerns:

1. It grants unrestrained discretionary powers to the proposed regulatory body, the CSO Regulatory Commission. There is a potential opportunity for misuse and a danger to liberty.
2. The proposed CSO Regulatory Commission duplicates the function of CAC, SCUML and the National Planning Commission.
3. The Commission's powers to obtain evidence, search warrant and execution of search warrant for either general or particular purposes, usurp both judicial functions and the role of the criminal administration of justice systems already in place in the country —such as the Nigerian courts, the Nigerian Police, CAMA and the Economic and Financial Crimes (EFCC).
4. Beyond the challenges, especially the wastage of scarce resources, associated with regulatory overlap, entrusting roles already performed by CAC and SCUML to an additional regulatory body is tantamount to an over-regulation of the civil society sector.
5. The Commission's search-and-arrest powers undermine human rights protections guaranteed by the Nigerian 1999 Constitution, particularly citizens' rights to privacy, the freedom of conscience, expression and association, and legal protection against torture, inhuman and degrading treatment.

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