

ACTION GROUP ON FREE CIVIC SPACE

COMPANIES AND ALLIED MATTERS ACT, CAMA, 2020

**Memorandum Submitted at the Public Hearing
on the Amendments to CAMA 2020**

to the

**Senate Committee on Trade and Investments;
and Diaspora and NGOs**

MARCH 2022

AGFCS: Standing Together to Defend the Civic Space

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INTRODUCTION

On August 7, 2020, President Muhammadu Buhari assented to the amendments to the Companies and Allied Matters Act (CAMA) passed by the National Assembly. The presidential assent repealed and replaced the extant Companies and Allied Matters Act, 1990, after 30 years, introducing new legal provisions geared toward strengthening corporate governance processes in Nigeria. Responding to numerous concerns by stakeholders, especially from the religious, non-profit and civil society communities regarding certain provisions of the amended CAMA, the Senate Committees on Trade and Investment, and Diaspora and Non-Governmental Organizations (NGOs) is now calling for a Public Hearing on the “**Bill to amend the Companies and Allied Matters Act, 2020 to strengthen the operation of NGOs in Nigeria and their compliance with the provisions of this Act and for Other Matters Connected therewith**” (SB 904). This memorandum presents the position of the **Action Group on Free Civic Space**, a loose network of over 100 organizations working together to defend the civic space in Nigeria, highlighting key concerns in the bill that affect non-profit entities, while proffering recommendations to inform future legislative reviews.

MAJOR OBSERVATIONS

1. **CAMA 2020 establishes a new form of eminent domain:** The recently-added provisions appear to be fixated on enlarging governmental powers to suspend and remove the trustees of an association, thereby taking over the administration or management the association’s property and bank credits. This is deeply worrying.
2. **Interference with the freedom of association and assembly:** By interfering with the rights of associations to associate and self-govern freely, Sections 838, 839 and 842 of CAMA 2020 contradict constitutionally-protected freedoms, particularly the freedom of association.
3. **Roles duplication and regulatory overlap:** The new functions of the Corporate Affairs Commission (the Commission) duplicate the roles of existing regulatory agencies charged with uncovering and punishing financial crimes such as the Special Control Unit Against Money Laundering (SCUML) and the Economic and Financial Crimes Commission (“EFCC”).
4. **High cost of compliance:** Compliance with the new rules will be onerous, time-consuming and possibly ineffective.

ISSUE 1: CAMA 2020 ESTABLISHES A NEW FORM OF EMINENT DOMAIN: AGFCS recommends a review of Section 839 regarding the Suspension of trustees, appointment of interim manager. This section vests the Commission and the courts with the power to suspend the trustees of an association and appoint interim manager(s) to take over the administration of the body. The entirety of S. 839 (6) represents a new form of eminent domain. The excessive fixation on sacking an association’s trustees and taking over the administration or management of an associations property and bank credits is deeply worrying. Empowering the

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Commission to vest the association's property in the hands of an official custodian, or order debtors to discharge their liabilities in an interest-yielding account held by the Commission for the benefit of the association, and to restrict the association's transactions, essentially take away property rights just as much as an eminent domain does. The only difference is that the CAMA provisions allow the government, through the Commission, to evade the just compensation requirement through the trick of appointing interim managers. Such an arrangement "would pervert the constitutional provision . . . and make it an authority for invasion of private right under the pretext of the public good" (Goldwater Institute 2016).

ISSUE 2: INTERFERENCE WITH THE FREEDOM OF ASSOCIATION AND ASSEMBLY: Sections 838, 839 and 842 of CAMA 2020 are inconsistent with 43 and 44 of the 1999 Nigerian Constitution which guarantees the right to acquire and own property and to freely use and enjoy such property without interference. These provisions are punitive in nature and confer excessive powers on the government to overly restrict or interfere with NPO operations in the country. They collectively deny registered associations the opportunity to use their internal controls to take corrective actions when their activities go off track, in order to self-correct or redress any perceived or actual wrongs. External intervention through the Commission should only be initiated as a last resort where internal mechanisms have been inefficient in dealing with corporate governance issues. Also, most associations have a minimum of five trustees, three or four trustees can effectively administer the organization if one or more trustees(s) is removed, obviating the need to impose interim managers on an association.

What Section 839 has done is to empower the Commission to override the terms and conditions espoused in the memorandum or constitution of an association, which represents the collective agreement of the members for the running of the association. These registered objects are toothless and relegated where the Commission can unilaterally discard them (in the public interest) and take over the affairs of an association, including imposing new trustees and managers, without the consent of the members of the association.

We further recommend the deletion of Section (S. 842) of CAMA 2020. Under the new CAMA, the Commission may dissolve an association with dormant bank accounts and transfer the amount standing to their credit to another or other associations. This provision interferes with the rights of members of an association to freely dispose of their assets upon dissolution. It also changes the rules that govern how owners can use or dispose of their property.

ISSUE 3: ROLES DUPLICATION AND REGULATORY OVERLAP ~ The Commission's power to investigate fraud, misconduct and mismanagement of an association, suspend the trustees of an association and appoint interim manager(s) to take over the administration of the body, are quasi-judicial responsibilities. These functions duplicate the roles of existing regulatory agencies charged with uncovering and punishing financial crimes such as the Special Control Unit Against Money Laundering and the Economic and Financial Crimes Commission ("EFCC"), established under the Economic and Financial Crimes Commission (Establishment) Act, 2004. The functions of the EFCC includes the investigation of all financial crimes including money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud,

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contract scam, etc.; and to enforce any other law or regulations relating to economic and financial crimes, including the Criminal and Penal Codes. Empowering the CAC to petition the courts to establish the guilt of any trustee(s) on account of fraud or misconduct, and order the removal of trustees on account of financial fraud, overlaps with the regulatory functions of the EFCC.

ISSUE 4: ONEROUS AND HIGH COST OF COMPLAINE: We recommend that non-profit organizations should only file annual returns to the Commission where they submit financial statements detailing inflows and spending within a fiscal year, among other information. The requirement for trustees to submit a bi-annual statement of affairs of the association, and keep accounting records that sufficiently explain their transactions and disclose their financial position for six years, may only increase the cost of compliance and paperwork rather than efficiency of charitable operations. This is because detailed particulars of an organization's financial transactions are filed with SCUML and the Nigerian Financial Intelligence Unit (NFIU) on a weekly or monthly basis depending on whether they are (cash transaction reports) CTRs, suspicious transaction reports (STRs) etc as the case may be. NPOs also pay and file personal income or withholding tax remittances to the state or Federal Inland Revenue Service on a monthly basis as the case may be. Non-profit organizations, especially NGOs interface with commercial banks regularly where they are required to furnish regular information regarding inflows and outflows transacted on their accounts.

In addition to the regulatory overlap, the duplicity of regulatory functions shall result in multiple reporting obligations to different entities. Increased reporting to multiple agencies means a higher workload for registered associations and non-profits in particular, requiring additional resources to ensure daily operations match regulations correctly. For many entities, especially the smaller non-profits, compliance with the plethora of reporting obligations to multiple entities can be burdensome as considerable time and resources are expended on satisfying legal requirements than on their actual humanitarian work.

CONCLUSION

The Action Group on Free Civic Space lauds the efforts of the Commission to introduce legal reforms aimed at easing the processes for running the affairs of corporate bodies, and tackling corporate governance challenges internally and externally. However, the duplicity of roles and overlapping regulatory powers hampers the development of democratic processes by encouraging the waste of scarce public funds, weakening and disrupting the operations of registered non-governmental entities. It is on this basis that we recommend the review and deletion of the sections of CAMA detailed above.

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BY THE UNDERSIGNED ORGANIZATIONS

1. ACCOUNTABILITY LAB NIGERIA
2. BUILDING BLOCKS FOR PEACE FOUNDATION
3. BRAINBUILDERS YOUTH DEVELOPMENT INITIATIVE
4. DATAPHYTE | THE INTERACTIVE
5. CENTRE FOR COMMUNITY EMPOWERMENT AND POVERTY ERADICATION (CCEPE)
6. CENTER FOR JUSTICE, EMPOWERMENT AND DEVELOPMENT
7. ENTREPRENEURSHIP INITIATIVE FOR AFRICAN YOUTH (EIFAY)
8. ERITAL FOUNDATION
9. FOUNDATION FOR ENVIRONMENTAL RIGHTS, ADVOCACY & DEVELOPMENT (FENRAD NIGERIA)
10. OPEN ARMS INITIATIVE FOR SUSTAINABLE DEVELOPMENT
12. INSTITUTIONAL AND SUSTAINABLE DEVELOPMENT FOUNDATION
13. ISLAMIC INITIATIVES FOR HUMAN RIGHTS PROTECTION
14. SPACES FOR CHANGE
15. RULE OF LAW AND ACCOUNTABILITY ADVOCACY CENTRE (RULAAC)
16. RAINBOW WATCH AND DEVELOPMENT CENTRE
17. RURAL AND URBAN DEVELOPEMENT INITIATIVE
18. VISIONSPRINGS INITIATIVE
19. WORLD IMPACT DEVELOPMENT FOUNDATION (WIDEF)
20. WOMEN AFRICA