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Review of

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REGISTRATIONS, IN
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TO ALIGN WITH CURRENT
PRACTICES,
STREAMLINING
PROCEDURES, AND
ELIMINATING
UNNECESSARY
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REVIEW OF

*'A BILL TO HARMONISE RIVERS
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Background

The Bill to *'Harmonise Rivers State CSOs Registrations, in Relation to Modernizing such Laws to align with Current Practices, Streamlining Procedures, and Eliminating Unnecessary Registration Burdens'* which is currently before the Rivers State House of Assembly and supported by a relatively unknown network of organizations operating under the banner, *Rivers State Network of NGO's, RINNGOS*, through the *Rivers State Ministry of Budget and Economic Planning*, takes after previous attempts to regulate and stifle the civic space in Nigeria. The Bill is roughly modelled after the *Bill to Regulate the Acceptance and Utilization of Financial/Material Contributions of Donor Agencies to Voluntary Organizations* sponsored by Hon. Eddie Ifeanyichukwu Mbadiwe in 2013, and the *Bill to provide for the Establishment of Non- Governmental Organizations (NGO) Regulatory Commission* sponsored by Hon. Umar Buba Jibril in 2016. Both Bills received flak from the public over their objectives and capacity to be used as a tool to curtail CSOs and stifle the civic space. These objectives are similar to those the **Rivers State CSO Registration Bill** seeks to promote.

In democracies, the roles of civil society organizations include checking and balancing the policies of the government, supporting the participation of citizens in governance processes, engaging in advocacy for developmental causes, and promoting the welfare of citizens through the social contract. To perform these roles, it is critical that CSOs maintain reasonable levels of independence from control and censorship. The **Rivers State CSO Registration Bill** will not only frustrate the objectives of CSOs in the state but will inadvertently make them an extension of government at the state and local levels, effectively defeating the purpose of civil society organizations.

The following concerns flowing from the Bill are critical to address;

Limiting Democratic Norms

The Bill seeks to establish a law requiring registration for *"organizations which engage or seek to engage in charitable activities or for any purpose requiring the consent or approval of any state official, department or board as required by law"*. While **Section 14** states that the requirement to register is voluntary, **Section 28** makes registration in accordance with the provisions of the Bill a requirement for *"every organisation formed to engage in charitable activities or for any purpose requiring the consent or approval of any Rivers state official, department or board as required by law"*. The provisions of the Bill run directly counter to the fundamental protections for the rights to free speech, public assembly, and association provided by **Section 39(1)** of the Constitution. The rights of citizens to organize themselves into groups or associations for whatever legal purposes they choose are safeguarded by **Sections 39 and 40** of the 1999 Constitution. Additionally guaranteed are the groups' and individuals' legal rights to hold and communicate opinions. This stance has also been affirmed by Nigerian courts in a number of situations.

Furthermore, **Section 8(c)** established the Registry as an extension of the powers of the state government. It places the Registry under the Ministry of Budget and Economic Planning, and stipulates that the Registry “*is subject to the direction or control of the Ministry*”. This raises questions of independence, as well as opportunities for checks and balances. Separating civil society organizations from the government allows for a more balanced and representative system, as these groups can provide independent perspectives that may differ from that of government officials. Additionally, separating CSOs from the government allows for greater freedom of expression, allowing citizens to freely associate and organize around issues they care about. Placing the Registry under the direction and control of the Rivers State Ministry of Budget and Economic Planning is an invitation (and attempt) to shrink the civic space in Rivers State. In **Section 33** of the Bill, the state Governor is empowered to appoint the Registrar in charge of the CSO Registry. In **Section 38**, the Bill provides for the establishment of local government-level CSO Registry to be headed by an LGA CSO Registrar appointed by the local government Chairman.

While **Section 14** of the Bill states that the registration of CSOs under the law is “*voluntary*”, this assurance is not convincing. Why waste the time of the Rivers State House of Assembly on a law that will not carry the effect of sanctions? Especially given the fact that the proposed law does not solve any problem currently experienced by CSOs in the state. The reality is that there is an undertone of hidden repercussions for CSOs who jettison registration. This concealed threat becomes more pronounced in **Section 19** which states that once a CSO is registered, it is now recognised and its “*functionality for the purpose of recognition in the state shall begin.*” This inadvertently means that the failure to register will deny ‘unregistered’ organizations of government recognition, which could in turn result in the refusal of government agencies and even private sector organizations doing business with the government to share information or extend any level of cooperation. In simple terms, the import of this provision is that only CSOs permitted and approved by the state government would have the opportunity to function effectively and efficiently in the state.

Is registration then truly voluntary if functionality and recognition are dependent on it?

Duplicating Existing Functions and Creating Bottlenecks

The bill states in **Section 7** that its objective is to eliminate unnecessary burdens, yet, it requires CSOs who are already registered under the Corporate Affairs Commission, and who also comply with the filing of annual returns to again undergo the rigorous process of fresh registrations under a different body.

If CSOs submit returns to both the CAC and the proposed Registry as stated in **Section 56(b)**, it is simply a duplication of the functions of the CAC and defeats the so-called intended purpose of the bill to make the operations of CSOs easier. The Companies and Allied Matters Act 2020 prescribes the mode for reporting annual returns as well as other financial reports associated with incorporated trustees under which CSOs fall. *See Sections 845-848 of CAMA 2020.*

Furthermore, if the Bill aims to eliminate and prevent CSOs from paying multiple fees and levies, it makes this Bill of no necessity as the fees and levies to be paid by any CSO is already stated by law, particularly in the CAMA, as it applies to companies, businesses, and incorporated trustees like NGOs. If this Bill is passed, it will achieve the opposite of its objectives, as extra levies and payments (apart from that required by the CAC) would have to be made to the registry. In fact, a special provision is made in **Section 10** and captioned, "*Fees and other amounts payable to the Registry*". The Commissioner of the Ministry of Budget and Economic Planning is empowered to impose fees payable to the Registry by CSOs to fund the work of the Registry or to use the Register or other materials kept by the Registry. The Bill provides no frameworks for determining these payments and leaves same to the discretion of the Commissioner. In simple terms, CSOs will be mandated to fund the functionality of the Registry by paying an amount to be determined by an appointee of the State Governor, the Commissioner for Budget and Economic Planning of Rivers State.

The Bill also empowers the Registry to "*impose charges of such amounts as it considers reasonable in respect of registration renewal...*". This provision will NOT "***prevent and protect CSOs in Rivers State from multiple fees and levies.***" It will rather create additional fees while empowering the government to impose fees with fiat. Flowing from this is an arbitrary framework for determining payment since the section leaves the renewal open to exploitation resulting from a unilateral determination of renewal fees.

Privacy and Information Management Concerns

Section 11, particularly (c) of the Bill gives the Registry and the State government overriding powers to monitor (and possibly censor) every activity of CSOs or risk deregistration. In stating the content of the register with regards to individual organizations, the Bill stipulates that the register must contain '*information concerning the nature, activities and purposes of the organisation*' as well as "*must contain...such other particulars of, and such other information relating to, every such organisation as the Registry deems fit.*" Through this provision, the rights of human rights defenders and NGOs have already been compromised. It means that CSOs are obligated to provide EVERY information required by the Registry. This will compromise their source of information for advocacy work, including plans and strategies. This is in clear violation of the right to privacy as enshrined in **Section 37** of the Constitution of Nigeria.

Restriction of Civic Causes

Section 12, which is tagged "Objects of registration," lists the "objects," that is, what is to be the purpose of every CSO to be registered. It states, "*the objects of the CSOs must be for the advancement of any religious, educational, literary, scientific, social development, cultural, sporting or other charitable purposes not herein mentioned and MUST BE LAWFUL*". This provision undermines the evolving nature of rights, including the duties of CSOs. The section's goal is to make it clear that a CSO's purpose must be lawful in order for it to be registered. It then means that anything outlawed cannot be advocated for. For example, the Petroleum

Industry Act says that where there is sabotage or vandalism to petroleum installations or designated facilities within a host community, that community shall forfeit, to the extent of the cost of the repairs, its entitlement under the Host Communities Development Trust (HCDT) (**Section 257 (2)**). It follows that any NGO seeking to advocate against this “lawful” provision will be deregistered or asked to change its purpose or object of formation. In simple terms, any advocacy by a CSO against any issue of contested legality will earn the advocating CSO an automatic deregistration (imagine the fate of organizations advocating for LGBTQ rights against existing LGBTQ laws). The presence of ambiguity in the provision, therefore, violates the freedom of expression as guaranteed by **Section 39** of the Constitution, and is likely to be used against CSOs. That something is made law, does not make it right, and the duty of CSOs is to critique such laws/policies and advocate for their repeal or amendment.

Arbitrary and Vindictive Penalties

The penalties listed against CSOs that default in submitting annual reports are more destructive than restitution-al. While the CAC provides that failure to file annual returns would attract penalty fees of N5,000 - 10,000 (**Section 845(2) CAMA 2020**) depending on whether it is a company or an incorporated trustee, this Bill states that once an organisation fails to comply with the requirement of filing an annual report (i.e., **Section 25**), the CSO will be deregistered and derecognized (**Section 26**). This provision is arbitrary and does not in any way show that the Bill is intended to improve the climate of CSO operations in Rivers State.

Section 31 of the Bill gives the Registry the power to arbitrarily deregister organizations. The first paragraph states that *"the registrar shall remove any organization which it **no longer deems to be a civil society organization** as indicated through its annual reports."* This paragraph, construed literally, means that the Registry can leverage any information contained in an organization’s annual report as a basis to remove it from the CSO register because it deems it unfit to continue to be a CSO. The Bill does not provide for any kind of engagement with the affected organizations before removal. It places sole and arbitrary powers on the Registry, without any participatory or collegiate process for deregistration. Organizations who believe they have been wrongly treated are advised in Section 57 to seek redress in court! The CSO is first removed and then directed to the court to seek redress. Knowing the rather lengthy court processes in Nigeria, the Registry effectively has the power to hamper the critical activities of NGOs for prolonged periods.

A Tool for Arbitrary Interpretation

In **Section 31**, the Bill allows the removal of registration on the grounds of criminal activities or purposes prejudicial to the *public welfare or good order in Nigeria*. This leaves room for ambiguous interpretation. Such broad-based provisions have a high propensity to be used arbitrarily against critical organizations. Making "public welfare" a ground for deregistration is first against the constitution and against the laws of legal drafting that require laws to align

with superior existing legislation. Public welfare can be anything in the eyes of anyone. It could be used as a tool to witch-hunt CSOs who are gaining strong ground in opposing government policies. Paragraphs (d) and (e) in particular could have ambiguous interpretations. A clear illustration is when a CSO organizes a protest of individuals against government regulation. That act could be construed as a disruption or "*prejudicial to good order in Nigeria*," thereby risking removal from the register.

A similar sentiment plays out in **Section 37(d)**, which proposes a memorandum of understanding to be signed between CSOs and the government for whatever reason.

Role and ‘Recognition of RINNGOS’

Section 58 of the Bill declared RINNGOS "*the leading network in the proposing and the passing of this Law and its objectives*" and proposes to reward it with being "*the lead in the implementation of the Open Government Partnership Project*" in the whole of Rivers State, "*the lead consult for the implementation of the research and innovation hub for policy design, reform and implementation*" and "*the lead representatives of CSOs at high-level political gatherings, Conference of parties, etc.*" The proposed CSO leadership award to RINNGOS is irrespective of their capacity or otherwise, or of the credibility or track record of organizations already working in the space. RINNGOS is expected to simply replace them in what seems an ‘NGO coup d’état’.

Conclusion

The proposed law poses a serious threat to the existence and free operation of CSOs in Rivers State. From the duplication of laws, burdensome administrative procedures, flagrant violation of the Constitution, and award of control powers over CSOs to the state government, the CSO Registration Bill does not seem to solve or tackle any issue of pressing concern. In the face of growing global human rights repression concerns and the continuous shrinking of the civic space, the Rivers State CSO Registration Bill will only aid in restricting the operational environment and capacity of civil society organizations while adding no value to achieving the role of CSOs.

Recommendations

The Bill in its entirety should be rejected.