

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: AL
NGA 4/2014:

18 July 2014

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **a proposed Bill to Regulate the Acceptance and Utilization of Financial/Material Contribution of Donor agencies to Voluntary Organizations and for Matters Connected Therewith (hereinafter the "proposed Bill")**, which unduly restricts the right to freedom of association.

According to the information received:

On 2 July 2014, the House Committee on Civil Society and Donor Agencies held a public hearing at the House of Representatives, to discuss the proposed Bill. The hearing was attended by several stakeholders, which criticized the provisions unduly restricting the right to freedom of association.

1. Prohibition to receive foreign funds without registration

Section 2 of the proposed Bill prohibits any voluntary organization from "accept[ing] any foreign financial/material contribution except with the permission of the Independent Corrupt Practices and other related Offences Commission". Under section 3 of the proposed Bill, "[a]ll voluntary organizations [with] cultural, economic, educational, religious or social programs" are prohibited from accepting financial contributions from foreign donor agencies unless such voluntary organization "registers with the Independent Corrupt Practices and other Related Offences Commission", "agrees to receive such contribution through one of the branches of a Nigerian Bank", and provide the Independent Corrupt Practices and other Related Offences Commission with

“information [...] as to the amount of such financial contribution received, the source, amount, purpose and the matter in which such contribution will be utilized.”

Concerns are expressed as the above provisions of the Bill are not in compliance with the right to freedom of association which can be restricted only under very specific circumstances. In addition the list of civil society organizations included in section 3 is of concern as it contravenes the principle of non-discrimination among associations.

Moreover, we are concerned that the section 3 allegedly excludes voluntary associations from the right to appeal restrictive decisions preventing them from receiving funds from international donors.

2. Obligation to receive funds via a Nigerian bank

Section 3 determines that all voluntary organizations can receive foreign funds if they “[agree] to receive such contribution through one of the branches of a Nigerian Bank”.

Concerns are expressed as this requirement seems to be unnecessary and without a definition of “a Nigerian bank” its implementation may be left open to discretionary and arbitrary interpretations.

3. Reasons for the prohibition of accepting or using foreign funds

Under section 5, the Independent Corrupt Practices and other Related Offences Commission “[m]ay prohibit any voluntary organization from accepting any financial foreign contribution if it considers that such contribution is likely to affect: (i) the sovereignty and integrity of Nigeria; (ii) adverse diplomatic relation of any foreign country; (iii) religions harmony of Nigeria; (iv) a likely source of money laundry”. As such, under these reasons, the Independent Corrupt Practices and other Related Offences Commission can, by a court order, prohibit voluntary organizations “from withdrawing, transferring or otherwise dealing with such money in any form.”

Concerns are expressed that the language used in section 5 is broad and could be interpreted arbitrarily and discretionarily leaving a high degree of uncertainty about the application of the law. In addition this provision would not allow civil society organizations to predict when they can rely on foreign funds and programme their activities accordingly.

4. Inspection

Section 3 determines that voluntary organizations must provide the Independent Corrupt Practices and other Related Offences Commission “within such time and

in such a manner as may be prescribed, information [...] [about] the amount of such financial contribution received, the source, amount, purpose and the matter in which such contribution will be utilized.” Section 7 determines that “all voluntary organizations shall maintain in such form and in such manner as may be prescribed: (a) an account of any foreign contribution received by it, (b) a record as to the manner in which such financial contribution has been utilized and the yearly balance sheet submitted by the ICPC” Under section 8, the Independent Corrupt Practices and other Related Offences Commission has the right to “inspect any account or records maintained by such voluntary organizations and thereupon any such authorized officers shall have the right to enter with a warrant upon any premises at any reasonable hour for the purposes of inspecting the said account and record”.

Concerns are expressed about the vague and complex financial reporting requirements set in the Bill which might leave unnecessary discretion to the Independent Corrupt Practices and other Related Offences Commission and might impose a disproportionately onerous burden on voluntary organizations, particularly small organizations with restricted budgets, often unable to contract third party services to handle and maintain complex financial files.

5. Timeframe for Seizure of Accounts

Section 9 determines that if after the investigation of “an account or record [...] the authorized officer has any reasonable cause to believe that any provision of this proposed Bill or of any other law has been or is being contravened, he may seize the such account or record” for a period of up to four months before bringing the procedure to Court.

Concerns are expressed at the excessive timeframe to bring the procedure to a court of law, which may de facto prevent an organization from functioning. Similar concerns are expressed at the absence of a right to appeal such decision.

6. Criminal Liability

Section 11 reads “Whoever accepts or assists any person, voluntary organization in accepting any foreign financial contribution in contravention of any provisions of this proposed Bill or any rule made thereunder shall be punished with imprisonment for a term of two years.” Section 12 holds liable “every person who, at the time the offence was committed, was in charge of and as responsible to, the voluntary organization.” Furthermore, section 13 provides that if the offence is proved any “director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly”

Grave concerns are expressed that the possibility for punishment by imprisonment for two years in case of any violations of the proposed Bill imposes a

disproportionate sentence and that the proposed Bill does not discern over the persons' knowledge of or involvement with the conduct of the financial matters of the voluntary organization concerned.

7. Definition of Voluntary Organizations

In Section 14, the proposed Bill defines voluntary organizations as “an association of individuals whether incorporated or not, it includes any other organization by whatever name called.”

Concerns are expressed that the definition of voluntary organizations contained in the Bill is broad and imprecise, making it difficult to foresee all the types of organizations which may the Bill would cater for.

In connection to the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

Moreover, as it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned allegations.
2. Please provide the full details of the aforementioned draft Bill and explain how its provisions are in accordance with Nigeria's obligations under international human rights law and standards, particularly with regard to the right to freedom of association.
3. Please provide details of remedy measures in place for organizations temporarily prevented from accessing their funds
4. Please indicate what measures your Government intends to take, in the lead up to its adoption, to ensure that the final draft law is compliant with relevant international human rights standards.

We would appreciate a response within 60 days.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Frank La Rue

Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Maina Kiai

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst

Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, reference is made to articles 19 and 22 of the International Covenant on Civil and Political Rights, which guarantees the right to freedom of opinion and expression and to the right to freedom of association with others. Article 22(2) stipulated that “[n]o restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”

Human Rights Council resolution 24/5 is also relevant in this case as it highlights, inter alia, the States’ obligation to respect and fully protect the right of all individuals to associate freely, online as well as offline, and to take all necessary measures to ensure that any restrictions on the free exercise of this right are in accordance with their obligations under international human rights law.

Reference is also made to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, articles 1 and 2 of the Declaration state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels. Furthermore, each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Article 13 (b) and (c) stipulates that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedom, through peaceful means.

In addition, Human Rights Council resolution 22/6 is pertinent as it calls upon States to “respect, protect and ensure the right to freedom of association of human rights defenders and, in this regard, to ensure, where procedures governing the registration of civil society organizations exist, that these are transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and avoid requiring re-registration, in accordance with national legislation, and are in conformity with international human rights law”.

The reports of the Special Rapporteur on the rights to freedom of assembly and association are also particularly relevant as they provide further guidance on the standards applicable to the above case.

In relation to access to funds and requirements for such access, States must “ensure that associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from

individuals; associations, foundations or other civil society organizations; foreign Governments and aid agencies; the private sector; the United Nations and other entities”, as indicated by the Special Rapporteur (A/HRC/23/39, para. 82(b)). Also, according to the Special Rapporteur, the obligation for associations to route funding through state channels; to report on all funds received from foreign sources and how these are allocated or used [...]; to obtain authorization from the authorities to receive or use funds [...]; all constitute human rights violations.” (A/HRC/23/39, para. 36).

Concerning the prohibition of discrimination, the Special Rapporteur stated that the right to freedom of association refers to “any groups of individuals or any legal entities brought together in order to collectively act, express, promote, pursue or defend a field of common interests” and equally protects “civil society organizations, clubs, cooperatives, NGOs [non-governmental organizations], religious associations, political parties, trade unions, foundations or even online associations...” (A/HRC/20/27, paras. 51 and 52).

With regard to inspection, the Special Rapporteur indicated that “[...] the right of independent bodies to examine the associations’ records as a mechanism to ensure transparency and accountability [...] should not be arbitrary and must respect the principle of non-discrimination and the right to privacy as it would otherwise put the independence of associations and the safety of their members at risk.” (A/HRC/20/27, para. 65).