

Statement on the UPR Pre-Session on Nigeria

November 2023, Geneva

This statement is delivered on behalf of Nigeria Network of NGOs and Small Media Foundation two nongovernmental organizations based in Nigeria and London working to ensure Nigeria's commitment to fundamental freedoms associated with association, expression, and assembly.

Open source, evidence-based desk research was conducted by both organizations, earlier and ongoing work of the Nigeria Network of NGOs on freedom of association also served as a corer stone for this statement.

The submission focuses on enabling environment for the operations of civil society organisation and the ability of citizens to freely express themselves offline and online.

Issue 1: Civil Society Enabling Environment

Italy recommended for the Nigerian government to *“Protect and promote freedom of expression, association and peaceful assembly in order to create a safe and favourable environment for human rights defenders, journalists and civil society”*.

The review of the 30-year-old Companies and Allied Matters Act (CAMA) in 2020 specifically the Part B and Part C which govern the formation and dissolution of nonprofit organizations received mixed reactions amongst civil society organisations and citizens. An advocacy for the review of the Part C was led by civil society. Some sections of the law such as section 839 among others were of concern to some of civil society organisations. Whereas these concerns are being addressed through a civil society-legislative engagement process which saw the National Assembly and civil society working together to reform such sections. Two court cases though now appealed have also sought to provide clarity on the interpretation of the contentious sections while providing leverage for civil society¹. Deepened regulatory engagement with the Corporate Affairs Commission has also brought about improvements in nonprofit regulations. Consultations with civil society led to the development of the nonprofit dissolution law.

A review of the anti-money laundering and countering of terrorism financing laws removing nonprofits as designated non-financial institutions² has reduced the burden of reporting and blanket regulation of all civil society organisations under the AML/CFT regime. A recently completed National Risk Assessment³ for the nonprofit sector has set in motion a targeted but risk-based regulation of the civil society sector in Nigeria in line with the recommendations of the Financial Action Task Force.

A code of corporate governance for nonprofits suspended in 2017⁴ because of public outcry is now up for discussions and consultations. This time around, the code is going through a multi-stakeholder approach with civil society and government as co-creators. The code has adopted the international best practice of “adopt or explain”.

¹ <https://www.thecable.ng/court-strikes-out-nine-sections-of-cama-2020-over-rights-violations> and <https://www.premiumtimesng.com/news/596203-cama-2020-how-court-judgment-whittles-down-cacs-power-over-charity-religious-organisations.html>

² <https://punchng.com/ngos-laud-removal-of-non-profits-from-money-laundering-terrorism-acts/>

³ <https://www.scuml.org/wp-content/uploads/2023/02/FINAL-REPORT...Terrorist-Financing-Report-Jan-18-2-min.pdf>

⁴ <https://punchng.com/breaking-a-deboye-fg-suspends-code-corporate-governance/>

This progress needs to be consolidated with ease of compliance. It is still difficult for civil society organisations especially small nonprofits to complete their post incorporation obligations using the newly developed online portal by the Corporate Affairs Commission. Challenges still remain with the ability of civil society organisations to register online with SCUML though this comes with mixed reactions as issues of affordability and accessibility of technology have come up and growing cases of unclaimed certificates.

The emergence of sub-national regulations without legal basis is growing across the 36 States of the Federation bringing unnecessary burden on nonprofit actors with administrative provisions subject to arbitrary abuse. A military Decree (12) of 1974 is the closest legal framework that exists in some States⁵.

Unregistered associations (organisations registered at the State level and not with Corporate Affairs Commission) still lack the ability to use banking services. While one of the legally permissible restrictions on freedom of association is the ability of the State to incentivize registrations through access to banking services, in matured democracies unregistered associations have been supported with regulatory provisions allowing them access to the use of banking services.

Therefore, we recommend the Nigerian Government:

- a. As part of the ease of doing business focus of the Nigerian government, prioritise civil society organisation's ability to register and comply with statutory regulations. Add metrics on how easy it is for small nonprofit organisations to fulfil their post incorporation duties as part of the ranking metrics for the Corporate Affairs Commission, Special Control Unit on Money Laundering and Federal Inland Revenue Service.
- b. Sustain ongoing engagement and outreach by regulators to the civil society sector through adequate allocation of resources for regulatory engagements, education and awareness on regulations and support for small nonprofits.
- c. Repeal Decree 12 of 1974
- d. Mandate the Special Control Unit on Money Laundering to conduct a targeted National Risk Assessment of Unregistered Associations and use such to evolve regulations that can safely allow them use of banking services in close cooperation with the Central Bank of Nigeria to further their vision and mission.

Issue 2: Expression

During the third cycle of the UPR in November 2018, Nigeria received 290 recommendations, accepted 240 and noted 50 recommendations. Two of the recommendations were specific to freedom of opinion and expression while no specific recommendation was related to online rights. A ban on Twitter in June 2021 after President Muhammadu Buhari's tweet was deleted by Twitter on account that his post violated community standards prevented access to the platform for 7 months except through Virtual Private Networks (VPNs).

Under section 24 of the Cybercrime Act 2015, law enforcement officers are empowered to arrest journalists and bloggers on grounds of cyberstalking. On 27 March 2023, Agba Jalingo, a journalist and publisher of an online medium- *CrossRiverWatch*, was charged under Section 24 (1)b of the Cybercrimes for his publications deemed insulting and remanded at the Kuje Custodial Center by Justice Zainab Abubakar of a Federal High Court in Abuja⁶. Similarly, In March 2023, Chude Nnamdi, a Twitter social media influencer was arrested by the police in

⁵ <https://nnngo.org/civic-space-scan/>

⁶ <https://tribuneonline.ng.com/journalist-jalingo-remanded-for-allegedly-insulting-gov-ayades-in-law/>

Onitsha, Anambra state and taken to Abuja on cyber stalking allegations⁷. It was alleged that his activities online contravene the provisions of the Cybercrimes Act. On April 20, 2023, he pleaded not guilty, but was granted 10-million-naira (Appx 12,883 USD) bail by a Federal High Court on a one-count charge of cyber stalking⁸. The Cybercrime Act is under review by the National Assembly and has undergone public hearing as of November 22, 2023.

We recommend that:

- a. The Nigerian Government repeal section 24 of the Cybercrime Act.
- b. Ensure that the internet, including social media and other digital communication platforms including websites, remain open, accessible, and secure across Nigeria (in respect of the ECOWAS Court ruling).

Issue 3: Shrinking Civic Space

Canada recommended that the Nigerian Government should “*Ensure that the fundamental rights to freedom of association and peaceful assembly are respected and protected for all Nigerians without distinction of any kind and in accordance with the Constitution.*”

Following civil society advocacy, the government of Nigeria included in its 2nd Open Government National Action Plan (NAP II) commitments to civic space which were seen as promising and necessary for keeping civic space open⁹. The commitment focuses on developing an enabling environment for citizen and citizen organisations to associate and assemble to influence and inform public policy, everyone regardless of ethnicity, religion, political or other opinion, state or status is guaranteed the right to freely express their opinion on government policies and programmes, and safeguard against undue supervision of CSOs. It also includes digital surveillance within the context of civic space. However, the commitments could not be fully implemented owing to lack of funding and low civil society interest. The commitment has now been rolled over into NAP III which runs from 2023 to 2025¹⁰.

Considering this situation, we recommend:

- a. Allocate resources in the 2024 budget and fully release same for the full implementation and monitoring of the civic space component of NAP III.

⁷ <https://www.thecable.ng/police-chude-nnamdi-social-media-influencer-was-arrested-for-cyberstalking>

⁸ <https://thenationonlineng.net/alleged-cyberstalking-court-admits-social-media-influencer-to-n10m-bail/>

⁹ <https://www.opengovpartnership.org/wp-content/uploads/2021/11/Civic-Space-Fact-Sheet.pdf>

¹⁰ https://ogpnigeria.gov.ng/files/public/documents/OGP_NIGERIA_NAP_3_1699263007.pdf