AMNESTY INTERNATIONAL NIGERIA

MEMORANDUM SUBMITTED TO THE SENATE ON COMPANIES AND ALLIED MATTERS ACT (AMENDMENT) BILL, 2022 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)

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Opportunity for Legislature to remove repressive provisions in CAMA 2020 and secure human rights

Amnesty International Nigeria (AIN) welcomes the opportunity to provide comments on the Companies and Allied Matters Act (Amendment) Bill, 2022 (SB904) [CAMA Bill 2022] which would amend the Companies and Allied Matters Act 2020 [CAMA 2020].

This memorandum highlights the proposed amendments in the CAMA Bill 2022 and its effects on human rights and the operations and independence of associations in Nigeria. Amnesty International opposes some provisions in Part F of the CAMA 2020, as some of the measures contained are ill-conceived, disproportionate, unnecessary, and discriminatory. Therefore, Amnesty International welcomes the proposed deletion of sections 831, 842, 843 and 844 from the CAMA 2020. Notwithstanding these proposed amendments, Part F of CAMA 2020 still contains overly broad powers and vague provisions and provides for an excessive degree of state control and interference in the activities of any association.

Some of these provisions have not been remedied by the proposed CAMA Bill, 2022, and they still impose impermissible restrictions on human rights, including the rights to freedom of expression, peaceful assembly and association.

Amnesty International hereby urges the National Assembly to immediately remove the offending provisions highlighted in this memorandum from the legislation in its proposed amendment. Some points worth highlighting are as follows:

Repressive provisions under the guise of Monitoring. Under the Act, associations may face continuous and potentially intrusive monitoring by the state. By section 839(1) of the CAMA (Amendment) Bill, 2022, the Commission or one-fifth of members of an association may apply at the Federal High Court, through a motion on notice, for an order to suspend the trustees of an association and appoint an interim manager or managers to manage the affairs of an association where there is demonstrable evidence that there is “misconduct, mismanagement, and fraud” in the association, or on the basis of undefined “public interest.” The combined effect of these repressive provisions is the risk that associations may resort to more cautious policies and practices, and a degree of self-censorship in the discharge of their mandates, to avoid controversial or politically sensitive issues, even if they touch on human rights and the public interest.

Section 839(3) of the CAMA (Amendment) Bill, 2022 provides that the Court with the assistance of the Commission will define the functions, powers and remuneration of the interim manager, and nature of reporting of the activities of the association. To illustrate the intrusive nature of these provisions further, by the provision of Section 39(11) the Minister of Trade, a political appointee, has the sole power to approve this exercise of vague and arbitrary powers and discretion by the Commission. There
is no provision under Section 839(1) for judicial oversight or challenge to the Registered-General's decisions. Neither is there any provision for recourse to any administrative remedial action.

Under section 845 of the CAMA (Amendment) Bill, 2022, any association that fails to submit an annual statement of affairs to the Commission will face a daily penalty for its trustees. Under Section 465(5) the Commission is granted wide powers to determine the financial year of any association. Further, under section 850[2][e], authorities can arbitrarily and unilaterally withdraw, cancel or revoke the certificate of registration of any registered association, without any legal justification whatsoever.

The Corporate Affairs Commission is a non-independent body, whose leadership is appointed solely by the President. Many of the Commission's powers are also subject to the approval of the supervisory minister, appointed by the President. In sum, the Commission can use the above highlighted provisions to, on flimsy pretexts, conduct investigations into the affairs of independent associations, suspend trustees including by court orders which may be obtained exparte, appoint interim managers and restrict financial ability of any association. The provisions effectively hand administration of independent associations to the Nigerian authorities. The provisions fail to meet the stringent requirement of necessity and proportionality, that would help to avoid the potential for arbitrary application. The provisions also contain sweeping measures of a preventive nature that if implemented would suppress the enjoyment of the rights to freedom of expression, peaceful assembly and association, and will do a disservice to the ability of associations to contribute to debates of public interest, the rule of law, and to hold authorities to account in cases of violations of human rights.

These punitive and intrusive provisions also fail to meet the “quality of law requirement,” since the wide discretion afforded to the authorities to intervene in the independence, operations and work of association, engendered by insufficiently precise provisions, does not satisfy the standard of foreseeability. As such, the provisions would disproportionately interfere with the rights of people to freely associate, and to exercise other human rights, as these kinds of provisions can give authorities a free hand to target certain associations.

Specifically, Amnesty International urges the National Assembly to immediately repeal sections 839, 845 and 850 of CAMA 2020 and other similar provisions and bring these provisions into conformity with the Nigerian Constitution of 1999 (as amended), and the country’s international human rights obligations and commitments, including under the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples’ Rights.

CAMA 2020 and CAMA (Amendment) Bill 2022, Violate the Nigerian Constitution and International Human Rights Law. Sections 39 and 40 of the Nigerian Constitution of 1999 (as amended) guarantee the rights to freedom of expression, peaceful assembly, and association. Several human rights treaties including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples’ Rights also contain similar provisions. According to the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, these rights form the basis of the full enjoyment of other rights, as they enable the exercise of several civil, political, economic, cultural, and social rights.

Nigerian Constitution and international human rights law allow for certain restrictions to these rights but any laws that have the effect of restricting the rights must meet the specific international standards of legality, proportionality, and necessity to be permissible. Several of the provisions of Part F of CAMA 2020 fail to meet these basic standards.

Article 22 of the International Covenant on Civil and Political Rights (ICCPR) provides:

(1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. (2) No 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. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.¹

To comply with these provisions, states must ensure that any interference by authorities genuinely pursue one of the limited reasons allowed for such restriction, which are listed above, namely national security, public safety or public order, public health or morals and the protection of the rights and freedoms of others. Even when it is demonstrated that a measure regulating or interfering with the right to association pursues a legitimate aim, the measure must respond to a pressing social need and be proportionate in pursuit of its aim. Measures restricting the work of independent associations, including by imposing administrative burdens, must be as unobtrusive as possible, with due regard to the significance of the interests at stake.

Terms such as “national security” and “public safety” refer to situations involving an immediate and violent threat to the nation or to its territorial integrity or political independence. Restrictions on the right to freedom of association can also be imposed in order to maintain “public order” (ordre public). Public order in this sense can relate to the rules that ensure the peaceful functioning of society. Article 22(2) ICCPR allows restrictions for the protection of rights and freedoms of others, meaning that if an association has aims that threaten the rights of others, there can be grounds to limit its freedom. Any “advocacy of national, racial or religious hatred is prohibited under Article 20(2) ICCPR.

However, as noted, any restrictions to freedom of association must meet the thresholds standard of proportionality and being “necessary in a democratic society.” In applying a limitation, a state is to use no more restrictive means than are required for the achievement of the purpose of the limitation. For example, the dissolution of an association will be considered as the severest type of restriction on freedom of association and may be imposed only when lesser measures of restriction are insufficient.

The UN Human Rights Committee, the body established to overseen the implementation of the International Covenant on Civil and Political Rights has stated in its General Comment 31: “Where such restrictions are made, states must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.”

Similarly, the African Commission on Human and People’s Rights has stated that “in regulating the right to association, competent authorities should not enact provisions which will limit the exercise of the freedom.”

Furthermore, article 29 of the Guidelines on Freedom of Association and Assembly in Africa, 2017 provides: “States shall respect, in law and practice, the right of associations to carry out their activities, without threats, harassment, interference, intimidation or reprisals of any kind.” Article 33 states that: “The oversight powers of the authorities shall be carefully delimited, so as not to infringe on the right to freedom of association.”

¹ See also the African Charter for Human and Peoples’ Rights, which provides in Article 11 that: “Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided by the law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.” Apart from the International Covenant on Civil and Political Rights, the right to freedom of association is also guaranteed under article 10 of the African Charter on Human and Peoples’ Rights; article 8 of the African Charter on the Rights and Welfare of the Child; article 15 of the Convention on the Rights of the Child, 1989; article 7(c) of the Convention on the Elimination of All Forms of Discrimination Against Women, 1979; and article 29 of the Convention on the Rights of Persons with Disabilities, 2006. Nigeria has ratified all of these human rights treaties.
Conclusion

Human rights cannot be realized without a thriving, safe and open civil society space, which is free from excessive state controls, interference, and from discrimination. The work of independent associations including civil society organisations is a vital check on those in power and silencing them has consequences for everyone’s human rights. States are prohibited from adopting measures which restrict the civic space and the work of independent associations.

There are numerous independent associations in Nigeria of different sizes, the CAMA 2020 as it stands has the potential to create unnecessary and expensive burden of reporting on especially smaller organisations who provide services to the community voluntarily with limited resources.

Nigerian authorities have legal obligations to respect the rule of law and create a safe and enabling environment within which an independent and robust civil society can help build and maintain an effective human rights protection system. The authorities must through the proposed CAMA (Amendment) Bill 2022, immediately withdraw the repressive provisions of the CAMA 2020. The National Assembly must respect, protect, promote, and fulfil the rights of all independent associations to defend human rights including the rights to freedom of expression, peaceful assembly and association.

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