

Comments of Development Initiatives Network (DIN) regarding the Exposure Draft of the Not-for-Profit Organizations Governance Code

Opening:

1. We commend the Federal Government for its strong commitment to the promotion of effective corporate governance in public and private bodies in Nigeria and for the enactment of an enabling law for a national-level body, the Financial Reporting Council (FRC), which will assess, coordinate and provide guidance on matters pertaining to corporate governance in Nigeria.

2. We are also aware that under the auspices of the FRC, the Steering Committee for the Development of the National Corporate Governance Code has extended its work to include the development of a Code of Corporate Governance for not-for-profits.

Comments:

3. We are seriously concerned about the lack of representation of not-for-profits in the composition of the members of the Steering Committee because based on the information currently posted on the FRC's website, none of the 18 members are representatives or advocates for not-for-profits.

The membership breakdown is as follows: Organized private sector – 3; Public sector/regulators – 9; Professional associations – 3; Academia – 1; Representatives of women – 2; Representatives of not-for-profits – 0.

Thus, the unfortunate conclusion is that this Governance Code has certainly not originated from or been developed by or with not-for-profits or with a broad base of their inputs. This is a fundamental shortcoming.

4. We recognize three major attributes of extending the National Corporate Governance Code to not-for-profits. These are:

- i. increasing public confidence and acceptance of Nigerian not-for-profits by all levels of government, funders, benefactors, beneficiaries and the wider public.
- ii. presenting best practices or benchmarks for achieving accountability and transparency in the activities and operations of Nigerian not-for-profits regardless of whether or not they have an incorporated or registered status.
- iii. helping to foster well-managed, professionalized and effective Nigerian not-for-profits and therefore minimizing scenarios in which maladministration, fraudulent practices or activities inimical to national stability or security, for example, money laundering, terrorism financing, can emerge.

5. However, some aspects of the Governance Code are problematic, in particular, making its application mandatory and imposing sanctions for non-compliance. In other words, the adoption of a rules-based, normative approach as opposed to a principles-based approach.

6. We are of the opinion that a rules-based, normative approach will effectively constitute the FRC as the new national regulator for not-for-profits despite the fact that there are existing statutory bodies, for example, the Corporate Affairs Commission (CAC), with an express and exclusive mandate to register and regulate not-for-profits and enforce public accountability requirements enshrined in the Companies and Allied Matters Act as amended.

7. That such an assumption of regulatory or enforcement powers by the FRC is not supported by the wording of the relevant sections of the FRC Act that deal with corporate governance and neither are they supported by the enforcement provisions in the FRC Act, which expressly do not apply to incorporated not-for-profits such as companies limited by guarantee that routinely file returns with the CAC and the Federal Inland Revenue Service (FIRS).

8. That the FRC cannot and should not use subsidiary legislation under the guise of introducing this Governance Code to confer itself with powers that definitely fall outside the scope of its enabling law.

9. Also, from a stylistic view point, it is difficult to extract from the current layout and format of the Governance Code what are its key principles and the guidelines for effective implementation.

Recommendations:

9. The Governance Code must be compliant with existing legal and regulatory requirements for not-for-profits in Nigeria and in this regard refer to the statutory roles and functions of bodies such as the CAC, FIRS and the Economic and Financial Crimes Commission (EFCC).

10. The Governance Code should be principles-based and applied on a “comply or explain” basis. This means that not-for-profits will either comply with its provisions or explain why they are not able to do so given their particular circumstances. Not-for-profits will also be enjoined to publicize compliance with the Governance Code in their annual reports and other information resources or channels such as websites.

11. A rules-based or normative approach to corporative governance is not the only answer to the weakness, poor quality or lack of independence of governance structures of some Nigerian not-for-profits. We believe that self or collective regulation can be equally helpful.

12. For this reason, the FRC, through its Directorate of Corporate Governance, should be in the vanguard of improving the quality of governance of not-for-profits by organizing nationwide board/governance and educational programmes since many funders and benefactors are not interested in funding such activities.

13. In addition, the FRC should promote collective regulation by encouraging not-for-profits to establish and participate in networks through which the development, monitoring and evaluation of governance practices and standards can be pursued.

14. Finally, capacity building and organizational development have internal or administrative costs, which tend not to be fully appreciated or recognized under the funding priorities of funders and benefactors. Therefore, not-for-profits are compelled to raise the needed resources for this important work through self-financing, for example, from for-fee services and other income generating activities.