

# Regulating ‘God’s Business’: A Legal Analysis of Part F of Companies and Allied Matters Act, 2020

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## Abstract

*The Companies and Allied Matters Act, 2020 is the enabling law that regulates business entities and non-profits in Nigeria. The Act generated controversy among faith-based organisations and Non-Governmental Organisations in the country. While the new framework is praised as a great benefit for companies by enhancing the ease of doing business, it added clauses that are described by churches and NGOs as demanding and inflexible. Also, the Act is said to have far-reaching implications and what non-profit organisations interpreted as government impinging on religious rights. It has been argued that since the government does not support non-profit organisations as it is done in other countries, it should not regulate them to a large extent. It is put forward in this paper, non-profits and NGOs in Nigeria are exempted from tax to some degree, and that if the action or privileges of any religious organisation are being abused, the government can regulate. The paper nuanced the various provisions in Part F of the CAMA, and concluded that the Act is meant to forestall misconduct, mismanagement and fraud in non-profits and NGOs to promote public confidence in the above-mentioned organisations.*

**Keywords:** CAMA, Non-profits, NGOs, Commission, Government

## I. Introduction

This article nuances the provision of Part F of the CAMA 2020 to identify the causes of the controversy. In 2020 the National Assembly of Nigeria commissioned a review of the Company and

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Allied Matters Act (hereinafter CAMA 2020). More specifically the Senate stated that the essence of the amendment of the Act was to improve and strengthen the operation of non-profit and Non-Governmental organisations (NGOs) in Nigeria. The bill sponsored by Ibrahim Yahaya Oloriegbe, Senator representing Kwara Central, Kwara State, stated that the purpose of the amendment of CAMA is to ensure better coordination of the legal framework for charity organisations.<sup>1</sup> The Senator in his debate declared that although CAMA 2020 was a serious improvement from CAMA 1990, some provisions are deleterious and hamper the ability of non-profits and NGOs to operate effectively. He called for strict measures to address regulatory matters in connection to the registration, administration and supervision and to reinforce organisations' coordination in Nigeria.

Thus, the legal section of the National Assembly, undertook an overarching review of the whole CAMA to meet international best practices to allow for ease of doing business in Nigeria. The aim of the review was to advance the legal and regulatory framework to encourage and ensure public confidence in the existing non-profit organisations. The amendment to 11 sections of the Principal Act<sup>2</sup> generated controversy, particularly among non-profit organisations and NGOs. However, the business community acclaimed the new law for promoting the ease of doing business in the country but the non-profit community, including civil society organisations, faith-based organisations, etc. all expressed displeasure and reservations with some of the provisions that regulate non-profit organisations.<sup>3</sup>

There was a comprehensive amendment to the whole Act but the provisions under Part F of CAMA 2020 dealing with non-profit organisations, faith-based is the main focus of this paper. The above-mentioned part of the CAMA generated overwhelming disagreement, resistance, complaint and criticism from religious organizations and

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<sup>1</sup> Niyi Oyedeki, Senate Moves to Amend Companies and Allied Matters Act (CAMA) ICIR February 10 2022 [www.icirnigeria.org](http://www.icirnigeria.org) Accessed: 17 July 2022; 'Senate Passes CAMA Amendment Bill' March 2020, [www.vanguard.com](http://www.vanguard.com) Accessed: 17 July 2022

<sup>2</sup> Sections 2, 831, 838, 839, 842, 843, 844, 846, 848 and 849

<sup>3</sup> Senate Bill Proposes CAMA Amendment to Improve NGO Operations Policy and Legal Advocacy Centre. Available at <https://placng.org/Legist/senate-bill-proposes-cama-amendment-to-improve-ngo-operation> accessed: 24 September 2023

civil society such as the Christian Association of Nigeria<sup>4</sup>, the Socio-Economic Rights and Accountability Project (SERAP)<sup>5</sup> and other charitable organizations. Human Rights lawyer Femi Falana and former Chairman of the National Human Rights Commission, Chidi Odinkalu vituperates against the CAMA 2020, stating that several provisions of the Act would encourage violation of human rights.<sup>6</sup> The controversial clause is section 839 which vests power on the Corporation Affairs Commission (CAC) to suspend trustees of an association for (a) misconduct and mismanagement of the association's administration such as unlawful remuneration and reward of a person acting in the association affairs or misuse of funds, (b) to secure proper use of the associations' property towards achieving the goals of the association (c) to protect or foster public interest (d) and where the affairs of the association are being run fraudulently<sup>7</sup>. However, to effect this provision, the Act provides that the process is to be initiated by a petition to a High Court by either the Commission or one-fifth of the members of the association. The petition must be backed by reasonable evidence for the court to consider such a petition.

It has been argued that the implementation of part F of CAMA may be problematic given the vague nature of provisions, expanding government power without comparative motivation or incentives and because government accountability extremely poor in Nigeria. Hence, for the Act to be effectively enforced the regulation will depend on the level of public trust in the government. Notwithstanding this position, the government, whether accountable or not, this paper argues has the power and the duty to regulate affairs in society, more, if the activities of any organisation affect the lives, welfare and property of its citizens. The Act may not be perfect or clear, it is not cast in stone as it can be amended in future. This article focuses on the aspects of the review—incorporated trustee—appointment of interim managers in the event of fraudulent activities.

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<sup>4</sup> Rev Samson Oyekunle, 'How CAMA 2020 Touches the Raw Nerve of Christian Association of Nigeria'

<sup>5</sup> Social Economic Rights and Accountability Project (SERAP) v FGN accessed <https://guardian.ng/news/serap-sues-buhari-others-over-cama-2020/>

<sup>6</sup> Oladimeji Ramon, CAMA Contains Dangerous Provisions, Say Falana, Odinkalu' Punch Newspaper 24 September 2020 [www.punch.com](http://www.punch.com) Accessed: 1 October 2023

<sup>7</sup> Ibid p 839

Following the introduction, the rest of the paper is divided into the following sections: section 2 gives a brief background into the Companies and Allied Matters Act and the overarching reviews that have taken place, to assist this writer in nuances of the sections in focus. Section 3 explores the sections under Part F and its implications. Section 4 examines the jurisprudential basis of the role of government and provides a series of examples of the nefarious activities of churches and mosques to support the reasons why the government should deploy all apparatus to monitor the activities of nonprofit organisations. Section 5 concludes the paper.

## **II. The Background of CAMA in Nigeria**

The CAMA 2020 has its origin in the Companies Act of 1968. It was repealed by the 1990 CAMA. The Companies and Allied Matters Act (Cap C 20) Laws of the Federation of Nigeria 2004, 1990 law came into force in Nigeria as a decree of the Military Government. It was styled after the English Companies Act 1985. For three decades there was no noteworthy amendment to the Act. Nigeria companies had to, essentially rely on the three decades old law to guide their business operation in the fast-evolving global community. However, there was a change on 7 August 2020 when President Muhammadu Buhari accepted the new legislation, CAMA 2020.<sup>8</sup> Thus, the new law repealed the three decades extant CAMA 1990.<sup>9</sup> The regulation received enthusiastic commendation and approval from several quarters, legal practitioners and organizations because of the innovative provisions which are meant to promote corporate accountability, private sector governance, and ease of doing business in Nigeria.<sup>10</sup> CAMA 2020 also seeks to institute firm regulatory standards and corporate governance for registered private and public companies, and associations such as charitable organizations. The private sector demanded an amendment to

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<sup>8</sup> Companies and Allied Matters Act, 2020.

<sup>9</sup> CAMA 1990 The statement signed by the Special Adviser to the President on the Media and Publicity, Femi Adesina reads: 'The President action on this important piece of legislation, therefore, repealed and replaced the extant Companies and Allied Matters Act, 1990, introducing after 30 years, several corporate legal innovations geared toward enhancing ease of doing business in the country'.

<sup>10</sup> World Bank Ease of Doing Business, Nigeria ranks 131 out of 190 countries on the World Bank Doing Business Index, moving up 15 places from 146<sup>th</sup> position on the 2019 Report.

CAMA because there are so many changes going on globally, which essentially affect every aspect of the local market in all countries. Hence, the need for public-private partnerships for business sustainability, to bring changes to the CAMA 1990. Again, technological innovation in the business sector had precipitated cooperation for a new law that aligns with global business practices.

Some of the provisions are quite vague, for instance, section 839 (1) (b) (iii) provides that the Corporate Affairs Commission (CAC) can remove trustees to protect the 'public interest'. The question then remains, what amounts to public interest? What is the measure for the determination of public interest? The Act did not define what public interest means, as such this could be problematic. According to David Hundeyin, 'the Buhari Administration or any its successors can now legally take over Amnesty Nigeria., SERAP or any similar organisations it has previously antagonised openly if their definition of 'public interest' means 'the government must not be embarrassed.' However, the aim of the government may be far from Hundeyin's imagination. According to Mark Sidel the Charitable sector, for economic and societal well-being is vital and cannot be taken lightly.<sup>11</sup> Pressure for NGO reform has been building over the years. In July 2004, Tell Magazine ran a cover story on the lucrative nature of the AIDS industry, titled 'Feeding Fat on AIDS'.<sup>12</sup> The paper described how NGO sectors were benefitting from donor agencies by campaigning for sensitisation and caring for infected people. Daniel Smith found in his studies that NGOs found to create awareness and address the AIDS pandemic were only formed to defraud innocent donors.<sup>13</sup>

Several religious leaders contend that the statute is tyrannous and provides no sufficient explanation as to what constitutes reasonable evidence. Among the critics is Rev Samson Oyekunle, the president of the Christian Association of Nigeria, who perceived the law as a deliberate war on Christianity in Nigeria and in essence

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<sup>11</sup> Mark Sidel, *The Nonprofit Sector and the New State Activities* 100 Mich L Rev 1312, 1313 (2002)

<sup>12</sup> Cited in Daniel Jordan Smith, *AIDS NGOS and Corruption in Nigeria* 18 Health Place 475 (2012)

<sup>13</sup> *Ibid*

breach of the provision of the constitution on freedom of religion.<sup>14</sup> It has been argued that irresponsibility on the part of the trustees warranted the amendment to Part F of CAMA, for instance, the issue of the obvious ostentatious exuberant lifestyle of trustees of religious organizations. The trustees are accused of converting the properties and assets of the organization for personal use<sup>15</sup>. Some own private jets, contrary to the non-profit motives of charitable organizations<sup>16</sup>. The incautious and apparent display of wealth formed one of the reasons to improve and regulate the activities of trustees to put in place best practices applicable in other jurisdictions like the United States of America (USA) and the United Kingdom (UK).

The CAMA 2020 tried to fill in the gap in the CAMA 1990. For example, the penalties and institutions for enforcement were weak and absent,<sup>17</sup> therefore, both the Commission and other agencies were not able to enforce the law, monitor and provide oversight functions on religious organizations. These government authorities include the Economic and Financial Crimes Commission<sup>18</sup>, the Nigerian Police Force<sup>19</sup> and the Financial Regulatory Council<sup>20</sup>. Also, little attention was paid to the regulation of activities of charity organisations. In Nigeria, one of the obvious and recognizable issues of religious organizations is the lack of accountability and poor quality financial reporting which created a high level of public distrust of the sector. There is no doubt that proper accounting and transparent financial reporting are significant ways by which religious organizations can achieve legitimacy in their activities, and operations and the realization of their social impact and objectives<sup>21</sup>. According to Udeoji incorporated trustees

<sup>14</sup> Samson Oyekunle; "How CAMA 2020 Touches The Raw Nerve of CAN", Thisday live (August 30, 2020) link < <https://www.thisdaylive.com/index.php/2020/08/30>> accessed Oct 20, 2022.

<sup>15</sup> Omirhobo, "Legal Status of Charities and NGO in Nigeria", *Guardian newspaper* Sept 8, 2020 accessed <[www.guardian/features/CAMA-2020-legal-corpus-juris/](http://www.guardian/features/CAMA-2020-legal-corpus-juris/)>

<sup>16</sup> ibid

<sup>17</sup> Owolabi S A and Fatoke T V, 'Company and Allied Matter Act 1990 – 2020 and Not for Profit Organizations: A Comparison of United Kingdom and United States of America with Nigeria', *International Journal of Research Publications IJRP* 2020, 64 (1), 59 -70

<sup>18</sup> Economic and Financial Crimes Commission, 2004.

<sup>19</sup> Nigerian Police Force (Establishment Act), 2020.

<sup>20</sup> Financial Reporting Council Act No. 22 of 2003.

<sup>21</sup> Owolabi S.A, Fatke, T. V, "Company and Allied Matters Act 1990 -2020, and not for profit organisations: A comparison of United Kingdom and United States of America with Nigeria'

are fiduciaries which implies that the trustees in discharge of their duties should do so in utmost good faith. This further justifies the need for regulation of charitable organizations. The provision of the Company Income Tax Act 2007 section 23 (d)<sup>22</sup>, religious organizations are tax-exempt. It is, thus, natural that Government should be interested in their activities. Fiduciary and discharge of good faith repose a position of trust, a presumption that the person can be entrusted with the wealth, welfare or patrimony of the community and beneficiaries.

According to Owolabi S, A and Awoniyi O, the Act provides that the Commission may suspend trustees of a charitable organization after conducting a full enquiry and granting the trustees a fair opportunity to respond to any allegation of wrongdoing. The commission may also suspend the trustees if they have failed, refused or neglected to remedy any fault it uncovered based on enquiry. This implies that the wording of the Act is not impulsive. On the contrary, the Act provides affirmatively that the Commission shall not suspend a trustee except the trustee or trustees have been notified of the allegation, failed to respond and or ratify the fault, infraction or allegation within 30 days or such other period as may be extended by the Commission<sup>23</sup>.

### **III. Part F of CAMA 2020 and Concerns**

The provision of section 839, CAMA 2020 empowers the Commission to unilaterally investigate and suspend trustees. The grounds for removal could be misconduct, mismanagement of the association's funds or fraud by the trustee (s). The suspension is directed at the trustee of any association that is registered as an Incorporated Trustee, like general overseers of churches, leaders of Mosques, and Executive Directors of NGOs, etc. The process is commenced through a Petition to the Court, and this is done by the

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<sup>22</sup> Company Income Tax, 2007 section 23 (1) provides that there is an exemption to the provisions of section 9 (1) (a – g) on categories of income chargeable of (d) the profits of any company formed for the purpose of promoting sporting activities or charity where such profits are not derived from a trade or business carried on by such association

<sup>23</sup> Owolabi C.A, Awoniyi. O, "Company and Allied Matters Act 1990 -2020 And Not For Profit Organizations: A Comparison of United Kingdom and United State of America with Nigeria" *International Journal of Research Publications* (2020), 64 (1), 59-70: doi:10.47119/IJRP1006411120201529

Commission or one-fifth of the members of the association and the process is supported by reasonable evidence.<sup>24</sup> After careful consideration, the Courts may make the following orders such as: first, suspension of any person, or officer of the association for no longer than 12 months<sup>25</sup>; second appoint more trustees for appropriate administration<sup>26</sup>; entrusting the property of the association to an official custodian<sup>27</sup>; the holder of property of the association is not to part with it without the Court order<sup>28</sup>; debtor not to make payments to the association<sup>29</sup>; to stop the association from conducting any transaction or make payment without court approval and appointment of an interim manager to act as Receiver and Manager.<sup>30</sup>

Worthy of mention is the appointment of an interim manager. The Court, with the aid of the CAC, is to lay down the powers, duties and function of the interim manager under the close monitoring of the Commission. Also, the CAC is to make rules about the functions, powers and payment of the interim manager and report accordingly. It is worthy of note that the whole of the sections relating to the appointment of an interim manager is subject to the approval of the Minister in charge of Trade. The section was of serious concern to NGOs as it permitted the government to interfere extensively with the workings of the association and impede the constitutional right of freedom of association. The section is comparable with the UK Charities Act 2011, which provides that trustees can be suspended and in their stead appoint an interim manager. The orders to be made by the Court in Nigeria are *in pari materia* with the Charities Act.

The main difference between CAMA and the Charities Act is the method of commencing the suspension and the person responsible for making the order. The Charities Act states that ‘the Commission may of its own’<sup>31</sup> make an order. It further provides that about misconduct and mismanagement, there clearly defined

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<sup>24</sup> Section 839 (2) CAMA 2020

<sup>25</sup> Section 839 (6) (a) CAMA 2020

<sup>26</sup> Ibid (b)

<sup>27</sup> Ibid (c) (i-iii)

<sup>28</sup> Ibid (d)

<sup>29</sup> Ibid (e)

<sup>30</sup> Ibid (f) and (g)

<sup>31</sup> Section 17 UK Charities Act 2011



standard that must be followed, that is there is satisfaction on the part of the Commission that a person committed a wrongful act or failed to take reasonable steps to oppose conduct or encourage it.<sup>32</sup> The Australian Charities and Not-For-Profit Commission Act 2012, provides for suspension or removal of directors or trustees. Under their law, once a trustee is removed, he cannot be appointed to act in another association. For instance, in Australian law, the Commission has the power to issue a 'show cause' to request a notice giving reasons for the suspension and ask the nonprofit to show cause why they should not be suspended.

(a) ***The Provisions on Account***

The Commission requires banks to notify it if any nonprofit association account becomes dormant.<sup>33</sup> Sections 842 and 848 (2) provide that nonprofit organizations by the new law are to pay annual returns to the Commission.<sup>34</sup> The Act also grants the Commission powers to merge nonprofit associations if it sees the advantage of doing so.<sup>35</sup> Paragraph ii of section 831 is clear, it provides: 'any two or more associations having the same trustees be treated as a single association' In other words, if the associations are more than one and have the same trustees, then the Commission may move to merge them. However, is not clear, if the associations have dissimilar objects and purposes, would the merger still happen? Paragraph (i) is examined to find the answer. Section 831 provides that without any prejudice to section 849 of the Act, the Commission may direct an association to be treated as forming part of an already registered association.' The Act did not state when an association will be treated as being part of the registered association in existence. Having the same trustees is insufficient to warrant the ordering of a merger. The trustees should merge on their own free will and then apply to the Commission for the merger to be approved.

Another significant provision of CAMA 2020 that caused apprehension among nonprofit organizations is section 842.<sup>36</sup> The

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<sup>32</sup> Section 76 A UK Charities Act 2011

<sup>33</sup> section 841 (1) CAMA 2020

<sup>34</sup> Ibid section 845 (1)

<sup>35</sup> Section 831 (i) and (ii) CAMA

<sup>36</sup> Section 842 (1-6) CAMA 2020

section empowers CAC to give direction to the bank to transfer credits from a dormant account of a nonprofit organization to another account, but first, the Commission will request that the association furnish it with its activities, if the former fails to respond, then the latter become empowered to transfer the fund to another relevant association after the dissolution of the association.<sup>37</sup> However, by section 843 (b) the CAC can revoke the order for fund transfer when satisfactory account activities are furnished to the Commission. This clause is not automatic as subsection 6 of the above section provides that ‘the Commission shall only exercise its power under this section in respect of any association with the approval of the Minister.’ In other words, the Minister must carefully go through the process followed by the Commission before endorsing such a transfer of funds from one association to another.

Another unease for non-profit organizations is the question of who has the ultimate and higher authority between the Minister and the Court to determine what constitutes satisfactory evidence. Also, when can an account be legally described as dormant and how would justice be achieved if no judicial process is followed before the Commission carries out such action? If the Minister approve the transfer of funds and the association is aggrieved, it is fair to allow space for the association to approach the court.

It is perceived that the clause was inserted to respond to the accusations that nonprofit accounts had been used in the past to finance terrorist and illicit activities. This perception is bolstered by the definition of dormancy in CAMA, which stipulates that a dormant account is the one that only receives money. It is also to prevent the use of the association for laundering of finance. However, the provision of anti-money laundering regulations and financial disclosures by the Economic and Financial Crimes Commission (EFCC) for NGOs make the clause in CAMA unnecessary. CAMA adopted the UK Charities Act’s meaning of dormancy. In the Charities Act, the Commission can order a transfer from a dormant account into another functioning charity organization. The burden is on banks, the Regulatory Bank of

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<sup>37</sup> Ibid (2) (a)

England, those allowed to account to receive deposits under the Financial Services and Market Act 2000 or European Economic Area (EEA) firms.<sup>38</sup>

#### **IV. Government Regulation of Non-Profit Organisation**

The jurisprudential basis of the role of government and administrative authorities, in this case, the Corporate Affairs Commission (CAC) to promulgate a set of rules that will control, guide and restrict the behaviour of non-government organizations (churches and mosques) is to achieve accountability, transparency and good governance.<sup>39</sup> Enforcement of this law will rely on the principles of legal formalism.<sup>40</sup> Thus, John Austin defined law ‘as a command set either directly or circuitously by a sovereign individual or body to a member or members of some independent political society in which his authority is supreme.’<sup>41</sup> Austin further asserts that the law must be backed by sanctions.<sup>42</sup> Also, legal positivism principles provide that Law and morality should be separated in any analysis of law. Nevertheless, such cut-and-dried isolation between law and morals is impossible as moral principles are requisite for a norm to attain the position of a legal norm.<sup>43</sup> for instance, when the action of a particular group, although not sanctioned by law constitutes harm to the larger society, then authority should be able to regulate such unethical conduct. As observed by Hart, rules should be identified to prescribe standards of behaviour. For example, no trustee of a charitable association shall convert the trustee’s property as his personal property and every trustee shall be personally liable, if they loot the association’s money or engage in fraudulent activities. It can be argued that the foundation of the legal argument and jurisprudential debate by the churches and mosques is that religious institutions should not be regulated by the government

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<sup>38</sup> Section 109 (3) UK Charities Act 2011

<sup>39</sup> CAMA 2020

<sup>40</sup> Raymond Wacks, *Understanding Jurisprudence: An introduction to Legal Theory*, Oxford University Press 6<sup>th</sup> ed (2017) p193

<sup>41</sup> Jeremy Bentham, *On Laws in General* ed HLA Hart (Athlon Press, London, 1970) (The collected Works of Jeremy Bentham, general ed JH Burns)

<sup>42</sup> Herbert Lionel Adolphus Hart, *The Concept of Law*, Leslie Green OUP Oxford, 25 Oct 2012 law p15.

<sup>43</sup> Matthew H Kramer, *Where Law and Morality Meet* (Oxford University Press, Oxford 2004) 17

because their function in society is to promote spiritual and moral growth. The Christian Association of Nigeria in a suit argued that the law as unconstitutional.<sup>44</sup>

Instructively, the concept of regulation points to the rules that structure the behaviour of individuals within a given context.<sup>45</sup> In addition, regulation is a tool for creating a standard of behaviour that helps to create an orderly society, ensure accountability and place a duty on independent members of the society to obey the law. Several scholars, religious groups and legal practitioners have expressed diverse views and reactions on Part F of CAMA 2020 specifically sections 839 845 and 846 on the topic.

Owolabi and Awoniyi, are of the view that the erosion of public assurance, trust and confidence was accountable for the need for the government to regulate non-profit organizations including religious associations.<sup>46</sup> They assert that lately religious organizations are marked with recurring cases of misconduct, dishonesty, embezzlement, illicit appropriation of resources, mismanagement, inefficiency, religious fanaticism and financing of terrorism.<sup>47</sup> He identified poor financial reporting and transparent accounting as two key problems of religious organizations. The authors concluded that religious organizations in Nigeria are not properly regulated compared to the practices in the United Kingdom and the USA. Also, the current state of accounting and financial reporting is appalling.

Noel Udeoji examined the position of the law for Incorporated Trustees and the Companies and Allied Matters Act 2020 generally. He held the view that most trustees hardly comply with the laws of the associations. As a result, many are rich in the wealth of the association that they hold in trust for the people<sup>48</sup>. While acknowledging the provisions of Part F, CAMA 2020 in regulating

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<sup>44</sup> Encyclopedia Britannica accessed <<https://www.encyclopediabritannica.com>>

<sup>45</sup> Owolabi S.A. and Awoniyi O. 'Comparative Study of Financial Reporting Regulation of Not for Profit Organizations in Nigeria with United Kingdom and United States of America', *International Journal of Multidisciplinary and Current Educational Research (IJM CER)* Issn:2582-7027 Vol 2. Issue 6 p. 39-47 (2020)

<sup>46</sup> Ibid

<sup>47</sup> Ibid at p 40

<sup>48</sup> Noel N. Udeoji, 'Incorporated Trustees and the Companies and Allied matters Act (CAMA) 2020: Position of the law,' *IJOLACLE 2* (2020)

Incorporated trustees the author raised the issue of absolute power and ‘reasonability’ vested in the Corporate Affairs Commission by, section 839 as an affront to the powers of the court.<sup>49</sup> He observed that if a General Overseer of a church organization decides on the purchase of a private jet, the members of the association must be able to say how the decision was taken and question the opportunity cost of such an expenditure<sup>50</sup>. Bear in mind, that the only accountability tool is the record sent to CAC in compliance with section 846.<sup>51</sup>

The Policy and Legal Advocacy Centre (PLAC), analyzed the regulation of non-profits, registered as incorporated trustees under part F of the new CAMA. In the paper, it questioned the independence and trust of the Commission and government in the regulation of Incorporated Trustees. It claimed that the intent and purpose of the much-vilified non-Government Organization Regulatory Commission Bill 2016 clause 26 (2) was imported into the new law<sup>52</sup>. It condemned the fact that there was no public hearing of the bill before it was passed into law. The advocacy group agrees that incorporated trustees enjoy incentives from the government because the associations are tax-exempt according to sections 23 and 25 of the Companies Income Tax Act (CITA)<sup>53</sup>. It is based on this reason that they consent that the Government should regulate the affairs of churches and mosques. Finally, the paper doubts the operability of the new law and predicts it will meet with public resistance.

Ngozi O. Odiaka et al in the impact of stakeholders’ model of corporate governance on the effective performance and sustainability of Non-Governmental Organizations in Nigeria identified corruption as a major challenge of Non- Governmental organizations and in his opinion, it has hindered the realization of charitable objectives<sup>54</sup>. They further argued that the resistance by faith-based organizations

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<sup>49</sup> See section 839 (1-11)

<sup>50</sup> Ibid p35

<sup>51</sup> Section 839 (1-5)

<sup>52</sup> Policy and Legal Advocacy Centre (PLAC), ‘Analyzing The Regulation of Non Profits, Registered as Incorporated Trustees Under ‘Part F’ of the New CAMA’ Sept, (2020)

<sup>53</sup> Company Income Tax Act CITA 2007 section 23 & 25

<sup>54</sup> Ngozi O. O., Et al, ‘The Impact of Shareholders Model of Corporate Governance to the Effective Performance and Sustainability of Non – Government Organizations in Nigeria’, Nnamdi Azikiwe University Awka, *Journal of Commercial and Property Law* ISSN 2736-0342 <https://journal.unizik.edu.ng/index-php/jcpl> accessed October 18 (2020)

towards government regulation and oversight is due to the unwillingness of the trustees to be accountable, honest and transparent. According to Sarah Light<sup>55</sup>. The need to regulate non-profits as provided in the Trustees (Incorporation) Act of 1952<sup>56</sup>, is essentially to ensure transparency, good governance, promotion of religion and education. In the case of *Income Tax Special Purposes Commissioners v Pemsel*, the two most important tenets of charitable purposes are religion and education<sup>57</sup>.

(a) ***CAMA and Protection of Welfare***

The concept of law is as old as man according to Aristotle.<sup>58</sup> He further explained that the state exists for the good of the people and that the government's role is to serve the people. St Thomas Aquinas, an Italian Roman Catholic Theologian and prolific scholar said that for law to be just, positive law must be virtuous, necessary, useful, clear and for the common good.<sup>59</sup> The general perception of the society is that religious organizations are established to help make the believers pious, peaceful and moral. This implies that religious organizations are seen as social institutions and mechanisms that foster good behaviour. Thus, effective regulations of organizations will be essential to realizing the broad objectives of religious associations<sup>60</sup>. Section 839 (7) and other innovative rules of Part F of CAMA 2020 constitute written rules that guide the operation of religious organizations. The rule in CAMA 2020 states that registered Incorporated Trustees shall be classified by CAMA depending on the object of the association. For example, any incorporated trustee with the object of promoting religion shall be classified as a faith-based organization. Also, it provides that the

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<sup>55</sup> Sarah Light 'The Role of the Federal Government in Sharing Economy. *Cambridge Handbook on the Law of the Sharing Economy* (Nector Davidson, Michele Finck, and John Infranca, eds., Cambridge University Press (2018) <<https://thepolicycircle.org>>

<sup>56</sup> Trustees (Incorporation) Act of 1952

<sup>57</sup> *Income Tax Special Commissioners v Pemsel, 1891*

<sup>58</sup> Stephen Everson, *Aristotle: The Politics*, Cambridge Text on the History of Political Thought, (Cambridge University Press, London 1988)

<sup>59</sup> St Thomas Aquinas (1224 – 1274) *Summa Theologica*. Trans J. G. Dawson p 91. [https://www.documentacatholicaomnia.eu/03d/1225-1274,\\_Thomas\\_Aquinas,\\_Summa\\_Theologiae\\_%5B1%5D,\\_EN.pdf](https://www.documentacatholicaomnia.eu/03d/1225-1274,_Thomas_Aquinas,_Summa_Theologiae_%5B1%5D,_EN.pdf)

<sup>60</sup> Noel Udeoji, 'Incorporated Trustees and the Companies and Allied Matters Act (CAMA) 2020; The Position of the Law'. *IJOLACLE 2* (2021)

trustees so registered shall hold the property and assets of the association for the interest of the association. The trustees shall apply the funds of the association judiciously towards the promotion of the objects as outlined in its constitution. Also, it provides for the submission of audited accounts and statements to the Commission<sup>61</sup>. The Act provides that religious associations should not pay members or any of its trustees or governing council wages except for a refund for expenses incurred in the course of carrying out the association's job<sup>62</sup>. If any member or the association violate any of these rules, the Commission or one-fifth of its members would report the misconduct to the Corporate Affairs Commission for investigation.<sup>63</sup> If the commission found any misconduct, malpractice or wrongdoing after investigation, it would grant the member 15 days to explain and correct the error<sup>8</sup>. Where there is fraud, the Commission on the directive of the court shall suspend the trustee and appoint an interim manager<sup>64</sup>.

Justice Benjamin Cardoso of the US Supreme Court averred that 'the law like the traveller, must be ready for the morrow, it must have a principle of growth.'<sup>65</sup> Several social and institutional issues and problems prompted parliament to make these rules. There are issues of lack of accountability and transparency including mismanagement of funds of the association.<sup>66</sup> Trustees conversion of association's fund and assets to personal use<sup>67</sup>. Trustees pay salaries, and bonuses and allocate profits to members, trustees and the governing council<sup>68</sup>. On moral grounds, some trustees of religious organization leaders' personal lives do not promote acceptable high moral values, religious virtue and exemplary behaviour. Thus, the

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<sup>61</sup> Supra section 845

<sup>62</sup> Section 838 (1) (b) CAMA 2020

<sup>63</sup> Ibid section 839 (2)

<sup>8</sup> Ibid section 842 (2)

<sup>64</sup> Ibid section 839 (6)

<sup>65</sup> Cited in Michael Mchugh SC, *The Law, Like The Traveller, Must be Ready for the Morrow*, Barnews 2020, <https://barnews.nswbar.asn.au/summer-2020/the-law-like-the-traveller-must-be-ready-for-the-morrow/> Accessed: 2 October 2023

<sup>66</sup> Olusegun Obansanjo, 'The Role of the Church in the Fight Against Corruption in Nigeria', Premium Times April 8 2017 accessed <  
<https://opinion.premiumtimesng.com/2017/04/08/the-role-of-the-church-in-the-fight-against-corruption-in-nigeria-by-olusegun-obansanjo/>>

<sup>67</sup> Noel N. Udeoji, 'Incorporated Trustees and the Companies and Allied Matters Act (CAMA) 2020: Position of the law'. *IJOLACLE 2* (2021)

<sup>68</sup> *ibid*

rules depict the social issues that prompted the government through sub-legislation of the Corporate Affairs Commission as enacted by lawmakers intend to solve. The next subsection will deal with the specific social issues that prompted the legislation.

*(b) The Logic of Regulating Non-Profit*

The question remains whether the government should make rules for non-profits or NGOs.<sup>69</sup> The question is asked because the churches and mosques are not funded by the government. The ready answer would be because of the benefits or subsidies received from the government. Common and civil law countries grant tax exemption to organisations due to the fact they are set up for the public benefit. State benefits come in the areas of tax exemption on an organisation's income, tax incentives for the organisation's donor, property tax or inheritance tax relief. However, under CAMA non-profit/NGOs do not benefit from extensive tax. NGOs registered in Nigeria are exempt from corporate tax and companies that donate to such organisations including philanthropic activities can receive a tax-deductible donation of not more than 10% of the total gain of the company in question.<sup>70</sup> Dissimilar to several other countries, Nigerian laws make no provision for the deductibility of donations given by individuals. For example, persons donating to their churches or mosques or any other charitable cause cannot receive tax deductions based on their donations, no provision for property tax relief for NGOs and hardly any evidence to show that NGOs are given grants from the Federal or state governments. But government, especially in advanced countries provide extensive benefit to non-profits in hard times. For example, the US non-profit sector received aid from their government via the Coronavirus Aid, Relief and Economic Security Act (CARES Act), signed into law in March 2020. There is no substantial step as the above taken in Nigeria. The countries that have granted significant benefits to non-profits and NGOs can have effective control. However, even though there is no

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<sup>69</sup> Non-profit organisations are diverse and include Civil Society Organisation (CSOs), Non-Government or-organisations (NGOs), Faith Based Organisation (FBOs), Community Based Organisations (CBOs), Academic Institute, non-government owed Libraries and Museums, Churches and Mosques, etc.

<sup>70</sup> Section 23 and 25 of the Companies Income Tax Act (CITA)



significant support for nonprofit organisations in Nigeria, because of the ways Nigeria pastors have abused their privileges both at home and abroad, there is a need for stringent.

In 2012, it was reported by Sahara Reporters that Mr Tobi Adegboyega defrauded Racheal Daniel of £110,000. Also, BBC Panorama reported about the same pastor defrauding his members. The British Government moved swiftly and ordered the immediate closure of the Salvation Proclaimer Ministries Limited, commonly known as SPAC Nation. The pastor was known for putting on designer attire, bold gold jewellery and a choice car.<sup>71</sup> The pastor was made to step down and the affairs of the Church were handed over to Samuel Akokhia and Damy Balogun.<sup>72</sup> The Charity Commission, after a five-year investigation into the finances of the UK branch of Christ Embassy, founded by Chris Oyakhilome, indicted the church's board of trustees of a wide range of frauds including illegal payment to the tune of N827 million to entities closely related with it. The Commission incriminated the church of poor management of the organization account, arbitrary payment, insufficient recording of its resolution-making process and extensive misconduct. The trustees were suspended and interim managers were appointed according to the Charity Act 2011.<sup>73</sup>

In Nigeria, the prosperity churches are believed to be profit-making ventures. The main misgiving about the prosperity of churches for those within and outside the church is that they are the centre of corruption.<sup>74</sup> The churches are registered by CAC as provided in the CAMA of 1990, revised in 2004 and the new CAMA 2020 issued by CAC.<sup>75</sup> As mentioned above CAC is saddled with the duty to regulate non-profit organizations. Upon proper

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<sup>71</sup> Sahara Reporters, British Government Shuts SPAC Nation, Church of Popular US-based Nigerian Pastor Tobi Adegboyega, Over Alleged 1.9 Million Fraud, 17 June 2022 [www.saharareporters.com](http://www.saharareporters.com) accessed: 27 September 2023

<sup>72</sup> Ibid

<sup>73</sup> Nicholas Ibekwe, UK Govt's Probe Uncovers Massive Fraud in Oyakhilome's Christ Embassy 24 December 2019, <https://www.premiumtimesng.com>

<sup>74</sup> Daniel Jordan Nigeria's Prosperity Gospel' Pentecostal Churches May Reinforce Inequality 26 May 2021, <https://blogs.lse.ac.uk/africaatlse/2021/05/26/nigeria-prosperity-gospel-pentecostal-churches-may-reinforce-inequalities-corruption/> Accessed: 28 September 2023

<sup>75</sup> Ukah Asonzeh, Obeying Caesar to obey God: The Dilemmas of Registering of Religious Organisation in Nigeria' in: Coertzen, Pieter M Christian Green and Len Hansen, (eds) Law and Religion in Africa: The Quest for the Common Good in Pluralistic Societies Stellenbosch: SUN Press 2015) pp 309-329

registration of a church, it becomes legal and ensures perpetual legal succession and it can acquire, hold, assign, dispose and transfer assets. On completion of incorporation, for example, the full name of the famous church, Christ Embassy, is known in law, Incorporated Trustees of Christ Embassy. Yet churches such as the Christ Embassy, and the Redeemed Christian Church of God (RCCG) have the unbelievable financial muscle, which allows them to take on activities in flagrant disobedience of CAMA. It has been reported that the RCCG has a massive network of commercial interests, holding real interest, private universities, and granting soft loans to individuals.<sup>76</sup>

The born-again Christians are made by their pastors to give a tithe, depicting the giver as a client with an absolute right to expect rewards, without knowing when the reward would come.<sup>77</sup> As a result of internal and external connections, the churches have become an embodiment of a ‘moral economy of corruption’ according to scholars the patron only appears corrupt to a third party, while they are seen by the members as providing great opportunities to dependents.<sup>78</sup> Several observers have demonstrated that there is no clear definition of corruption.<sup>79</sup> However, the IMF and the World Bank, after the Cold War conceptualized corruption as appropriation of public resources for personal gain. As a result, many African countries have come to equate corruption with government and bureaucratic challenges, and the private sector has nothing to do with

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<sup>76</sup> Ukah Asonzeh, ‘God Unlimited: Economic Transformations of Contemporary Nigerian Pentecostalism’ in Obdia Lionel and Dona C Wood, (eds) *The Economic of Religion: Anthropological Approaches* Bingley: Emerald, PP 187-216 2011

<sup>77</sup> Coleman Simon ‘Between Faith and Fraudulence? Sincerity and Sacrifice in Prosperity Christianity’ in: Amanda van Eck Duymaer van Twist, eds *Minority Religions and Fraud, In Good Faith*, London Ashgate Publishing, (2014) pp, 73-89; Premawardhana Devaka, ‘Transformational Tithing: Sacrifice and Reciprocity in a Neo-Pentecostal Church’ *Nova Religio*, 15 (4) 85-109; Popular Tales of Pastors, Luxury, Frauds and Corruption: Pentecostalism, Conspicuous Consumption and the Moral Economy of Corruption in Nigeria Vol 5 (4)2012, 52-71 <https://doi.org/10/1525/nr.2012.15.4.85>

<sup>78</sup> Bayart Jean-Francois, *The State in Africa: The Politics of the Belly* (Longman Publishing Group, 1993) 2

<sup>79</sup> de Sardan JP Oliver, ‘A Moral Economy of Corruption in Africa?’ *Journal of Modern African Studies* 37 (1) (1999) 25-52; Pierce Stephen *Moral Economies of Corruption: State Formation and Political Culture in Nigeria* (Duke University Press, DC 2016); Smith Daniel Jordan A *Culture of Corruption: Everyday Deception and Popular Discontent in Nigeria* (Princeton University Press, Oxfordshire 2010)

it.<sup>80</sup> Anti-corruption effort such as the promotion of good governance is dominated by neoliberal policies.<sup>81</sup> The problem is that intense focus on individual dealings of the state excludes the wider network of corruption. These webs include business, politics and nonprofit sectors, which are not only peculiar to Africa. Faith-based organizations are not required in Nigeria to make information available concerning their enterprises, thus it is problematic to establish the extent of their activities. Indeed, the Nigerian and Financial Crimes Commission's operation against churches in Nigeria has made newspaper headlines. In 2019, Pentecostal pastors in River State deceived a family into paying 25, 000,000 under the pretense that he was a contractor. False prophecies were used to make the family part with the money.<sup>82</sup>

A pastor was arrested in Lagos in 2018 for defrauding a member of 85,000,000 naira. Rumour had it that he buried animals in the church to increase his wealth.<sup>83</sup> The corruption of Pentecostal prosperity is poor governance and therefore disconnecting it from the welfare of the community that they are meant to serve.<sup>84</sup> Dr Emmanuel Agomoh, chairman of, the Abia State chapter of the Christian Association of Nigeria (CAN) raised an alarm about the activities of some Pentecostal pastors. He disclosed that more than 70 per cent of churches in the state are into business enterprises. He notes that some of the pastors claim they are Jesus, and 60 per cent of rituals are facilitated and perpetuated by Pentecostal pastors. Agomoh narrated a story of a woman who was used by a pastor to fake different disabilities ranging from deaf, dumb, blindness and cripple during the time allotted for a miracle, however, the woman was not paid by the end of the various miracle sessions and so she

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<sup>80</sup> Wedel Janin R Rethinking Corruption in an Age of Ambiguity, *Annual Review of Law and Social Science* 8 453-498 (2012) <https://doi.org/10/1146/annurev.lawsocsci.093008.1315582012>

<sup>81</sup> Katzarova Elitza, *The Social Construction of Global Corruption: From Utopia to Neoliberalism* (Palgrave Macmillan, Cham 2018)

<sup>82</sup> Azubuike Victor N25 Million Scam Arrests Fraudulent Pastor in Part *Harcourt Daily Post* 29 July 2019, <https://dailypost.ng/2019/07/29/n25million-scam-efcc-arrest-fraudulent-pastor-port-harcourt/>

<sup>83</sup> Oladele David EFCC, *Police Storm Lagos Church, Arrest Pastor Over Scam* Legit, November 05 2018 <https://www.legit.ng/1202014-efcc-police-storm-lagos-church-arrest-pastor-scam.html>

<sup>84</sup> *Ibid* Coleman at 48

reported to CAN president, Abia Chapter, Dr Agomoh. He lamented that CAN is not equipped with the means to sanction erring pastors.<sup>85</sup>

Some pastors in Nigeria and the UK have been accused of diverting organization funds in recent times. For instance, Bishop David Oyedepo, founder of Winners' Chapel was named in 2011 by Forbes magazine as being the richest pastor in Nigeria<sup>86</sup>. Enoch Adeboye of the Redeemed Christian Church of God, owns a Gulfstream GIV (N707EA). The source of personal wealth has not been established separately from the church funds. Also, on the issue of gifts from adherents, Oritsejafor ex-national president of the Christian Association of Nigeria (CAN) said his Bombardier Challenger 601 aircraft was given to him as a gift<sup>87</sup>. Before the enactment of CAMA 2020, there was weak regulation to investigate and penalize trustees of religious organizations, hence the need for the new law. The question remains if this law will be enforced, as Nigeria is known for weak implementation of laws but it can take a leave from other jurisdictions and ensure full and proper enforcement.

In South Africa, the Commission for The Promotion and Protection of Cultural, Religious and Linguistic Communities, following complaints from members and the public commenced a national investigation 'into the commercialization of religion and abuse of people's belief systems; Chris Oyakhilome was invited. Displeased with the invitation for investigation,<sup>88</sup> the applicant brought an application seeking interim relief to interdict the respondent Commission from laying a criminal charge against him in terms of section 41 of the Commission for the Promotion and Protection of the Right of Cultural, Religious and Linguistic

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<sup>85</sup> Nigeria Christians Condemn Fraudulent Activities of Pentecostal Pastors News Ranger 28 September 2023 available at <https://newsrangers.com/nigeria-christians-condemn-fraudulent-activities-of-pentecostal-pastors> accessed: 28 September 2023

<sup>86</sup> Forbes Magazine June 2011, 'Five Richest Pastors in Nigeria' accessed at < <https://www.forbes.com> > mfonobongsehe > 2011/06/07>

<sup>87</sup> Forbes Magazine, 'Wealthy Nigerians, Pastors Spend \$225m in Private Jets' (2011) < <https://www.forbes.com> > mfonobongsehe >

<sup>88</sup> *Chris Oyakhilome v The Commission for The Promotion and Protection of Cultural, Religious and Linguistic Communities*

Communities Act.<sup>89</sup> The court upheld part of the application but the South Africa case illustrates a jurisdiction where the government effectively regulates a religious organisation's activities. In 2013, Cameroon President Paul Biya ordered the closure of 100 Pentecostal churches because of the wide range of nefarious activities leading to division and death in families.<sup>90</sup>

On the contrary, a petition brought by Kola Kareem and Moji Oguntoyinbo was resisted in Nigeria. The Economic and Financial Commission invited Evelyn Joshua to stop the looting of the church funds after the demise of the general overseer. However, at a Federal high court in Lagos in the matter between the Incorporated Trustees of the Synagogue Church of All Nations v Evelyn Joshau, the court upheld Evelyn Joshua as a trustee of the church.<sup>91</sup> As discussed above CAMA 2020 section 839 (1) (c) provides that the Commission may by order suspend and appoint an interim manager where the affairs of the association are being run fraudulently. It is incontrovertible that a religious organization administered based on a false and fraudulent premise, cannot rightly achieve the objective of the association which is to promote the religion and welfare of people in the community.

## V. Conclusion

This paper explored some key sections of Part F of CAMA 2020. It examines the reasons why the government needed to effectively regulate the affairs of non-profit organisations. The argument was supported by evidence of non-profit regulation in other climes and provided several examples of misconduct, mismanagement and fraud promoted in churches. There is no doubt, that Part F of CAMA 2020 generated controversy. Churches disapproved of the Act for they described it as undue interference with religious rights. The focus of the critique of the new provision was that the Act made it possible for CAC officials to take over a

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<sup>89</sup> *Oyakhilome and Another v Commission for the Promotion and Protection of Cultural, Religious and Linguistic Communities (2015/42575) [2015] ZAGPJHC 299 (7 December 2015)* <https://www.saflii.org/za/cases/ZAGPJHC/2015/299.html> Accessed: 2 October 2023

<sup>90</sup> 'Fraud, Fake Miracle: Cameroon Shuts Down 100 Pentecostal Churches 16 August 2013, available at [www.pointblanknews.com](http://www.pointblanknews.com) accessed: 28 September 2023

<sup>91</sup> *Kola Kareem and Moji Oguntoyinbo v the Incorporated Trustees of the Synagogue Church of All Nations Suit No: FHC/L/CP/1109/2021*

church, mosque or NGO, likely to appoint a general overseer, Imam on a reasonable belief of misconduct, mismanagement or fraud.

The amended CAMA 2020 tried to improve and boost the ease of doing business in Nigeria generally to bring the country to speed with the best practices accepted globally. However, in attempting to achieve this, CAMA is perceived as onerous and oppressive by civil societies, the Churches and mosques. The fear is inflated because section 839 (a), CAMA, only punishes when there is misconduct or mismanagement in the administering of the association funds and protects and preserves the property to achieve its objectives. Section 839 (2) is unequivocal that 20 per cent of members of the trustees of the association have to sign a petition before a court of law. The provisions of the Act are meant to instil sanity and discipline in the management of the affairs of churches and mosques or NGOs. Government as discussed above cannot remain unconcern in matters relating to blatant corruption and conduct that are harmful to citizens. These organisations are accorded tax-free because of the value addition to the society. The support from the government may not be as much as in advanced countries but they have every right to regulate all social activities that may hurt society. However, it is one thing to enact a law and another thing to implement it. The enforcement of the Act will clear any ambiguity and reinforce the confidence of the people in non-profit organisations in Nigeria.