

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

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Abstract

The Companies and Allied Matters Act of 2020 serves as the governing law for business entities and nonprofits in Nigeria. This Act has sparked controversy among faith-based groups and Non-Governmental Organisations (NGOs) nationwide. While many commend this new framework for facilitating business operations, it has also introduced provisions that these faith groups and NGOs find demanding and rigid. Moreover, the Act is perceived to have significant implications, with nonprofits feeling it encroaches on their religious freedoms. Critics argue that since the government does not support nonprofits as seen in other countries, it should not impose such extensive regulations. This paper argues that nonprofits and NGOs in Nigeria enjoy a certain degree of tax exemption. If any religious organisation’s privileges are misused, the government is justified in its regulation. Additionally, this paper explores the various points outlined in Part F of CAMA, concluding that the Act aims to prevent misconduct, mismanagement, and fraud within nonprofits and faith organisations to enhance public trust.

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

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 Companies and Allied Matters Act (hereinafter CAMA 2020). More specifically, the Senate stated that the essence of the amendment to 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, emphasises that the purpose of the

The CAMA amendment aims to ensure better coordination of the legal framework for charitable organisations.¹ In his debate, the Senator declared that although CAMA 2020 was a significant improvement over CAMA 1990, some provisions are deleterious and hinder the ability of non-profits and NGOs to operate effectively. He called for stringent measures to address regulatory matters concerning the registration, administration, and supervision of organisations, and to enhance their coordination in Nigeria.

Consequently, the legal division of the National Assembly conducted a thorough evaluation of the entire CAMA to align it with global best practices and improve the business environment in Nigeria. This review sought to strengthen the legal and regulatory framework, aiming to build public trust in existing non-profit organisations. Amendments to 11 sections of the Principal Act² led to controversy, particularly among non-profit organisations and NGOs. In contrast, the business sector welcomed the new law for its positive impact on business operations in the country. Nonetheless, the non-profit sector, which includes civil society and faith-based organisations, voiced concerns and dissatisfaction over certain provisions affecting non-profit organisations.³

There was a comprehensive amendment to the whole Act. Still, the provisions under Part F of CAMA 2020 dealing with non-profit and faith-based organisations are the main focus of this paper. The aforementioned part of the CAMA generated overwhelming disagreement, resistance, complaints, and criticism from religious organisations and civil society, such as the Christian

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

² Sections 2, 831, 838, 839, 842, 843, 844, 846, 848 and 849

³ 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

Association of Nigeria⁴, the Socio-Economic Rights and Accountability Project (SERAP)⁵, and other charitable organisations. Human rights lawyer Femi Falana and former Chairman of the National Human Rights Commission, Chidi Odinkalu, criticize CAMA 2020, stating that several provisions of the Act would encourage violations of human rights.⁶ The controversial clause is section 839, which grants power to the Corporate Affairs Commission (CAC) to suspend trustees of an association for (a) misconduct and mismanagement of the association's administration, such as unlawful remuneration and rewards for individuals managing the association's affairs or misuse of funds; (b) ensuring proper use of the association's property to achieve its goals; (c) protecting or fostering the public interest; and (d) situations where the association's affairs are conducted fraudulently⁷. However, to enforce this provision, the Act stipulates that the process must be initiated by a petition to a High Court by either the Commission or one-fifth of the association's members. The petition must be supported by reasonable evidence for the court to consider it.

There are concerns that implementing Part F of CAMA could pose challenges due to the ambiguous language of its provisions, which enhance government authority without adequate motivation or incentives. Additionally, government accountability remains significantly lacking in Nigeria. Consequently, for the Act to be enforced effectively, it will hinge on the public's trust in the government. Despite this viewpoint, this paper argues that the government, regardless of its accountability, possesses both the authority and the responsibility to oversee societal matters, particularly when an organisation's activities impact the lives, welfare, and property of its citizens. Although the Act may lack clarity or perfection, it is not immutable and can be subject to future amendments. This article will examine the review aspects related to incorporated trustees and the appointment of interim managers in case of fraudulent activities.

Following the introduction, the remainder of the paper is organised into the following sections: Section 2 provides a brief background on the Companies and Allied Matters Act, along with the

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

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

⁶ Oladimeji Ramon, CAMA Contains Dangerous Provisions, Say Falana, Odinkalu' Punch Newspaper 24 September 2020 www.punch.com Accessed: 1 October 2023

⁷ Ibid p 839

overarching reviews that have been completed to aid this writer in understanding the nuances of the sections in focus. Section 3 delves into the sections under Part F and their implications. Section 4 investigates the jurisprudential basis of the government's role and presents examples of the nefarious activities of churches and mosques, supporting the argument that the government should utilise all its resources to monitor the activities of nonprofit organisations. Section 5 wraps up the paper.

II. The Background of CAMA in Nigeria

The CAMA 2020 originated from the Companies Act of 1968. The 1990 CAMA repealed this earlier act. The Companies and Allied Matters Act (Cap C20) Laws of the Federation of Nigeria 2004, derived from the 1990 law, came into force in Nigeria as a decree of the Military Government. It was modelled after the English Companies Act of 1985. For three decades, there were no significant amendments to the Act. Nigerian companies had to rely on this existing law to guide their business operations in the rapidly evolving global community. However, a significant change occurred on 7 August 2020 when President Muhammadu Buhari accepted the new legislation, CAMA 2020.⁸ This new law repealed the existing CAMA 1990.⁹ The regulation received enthusiastic commendation and approval from various quarters, including legal practitioners and organisations, due to its innovative provisions aimed at promoting corporate accountability, private sector governance, and facilitating ease of doing business in Nigeria.¹⁰ CAMA 2020 also seeks to establish firm regulatory standards and corporate governance for registered private and public companies and associations, such as charitable organisations. The private sector called for an amendment to CAMA in response to numerous global changes that impact every aspect of local markets worldwide. Thus, there is a need for public-private partnerships to ensure business sustainability and to drive changes to CAMA 1990. Furthermore,

⁸ Companies and Allied Matters Act, 2020.

⁹ 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'.

¹⁰ 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 146th position on the 2019 Report.

technological innovation in the business sector has prompted the cooperation necessary for a new law that aligns with global business practices.

Some provisions are quite vague; for instance, section 839 (1) (b) (iii) states that the Corporate Affairs Commission (CAC) can remove trustees to protect the ‘public interest.’ The question then remains: what constitutes public interest? What is the standard for determining public interest? The Act does not define public interest, which could be problematic. According to David Hundeyin, ‘the Buhari Administration or any of 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 government's aim may be far from Hundeyin’s imagination. According to Mark Sidel, the charitable sector is vital for economic and societal well-being and cannot be taken lightly.¹¹ 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.’¹² The article described how the NGO sector benefited from donor agencies by campaigning for awareness and caring for infected individuals. Daniel Smith found in his studies that NGOs purportedly established to raise awareness and address the AIDS pandemic were often created to defraud innocent donors.¹³

Several religious leaders argue that the statute is tyrannical and fails to clarify what qualifies as reasonable evidence. Among the critics is Rev. Samson Oyekunle, the president of the Christian Association of Nigeria, who views the law as a deliberate attack on Christianity in Nigeria and essentially a breach of the constitutional provision on freedom of religion.¹⁴ It has been suggested that irresponsibility on the part of the trustees warranted the amendment to Part F of CAMA, particularly regarding the ostentatious lifestyles of trustees of religious organisations. The trustees are accused of misappropriating the properties and assets of their organisations for personal use¹⁵. Some possess private jets, which contradicts the non-profit motives of charitable organisations¹⁶.

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

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

¹³ *Ibid*

¹⁴ 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.

¹⁵ Omirhobo, ‘Legal Status of Charities and NGO in Nigeria’, *Guardian newspaper* Sept 8, 2020 accessed <www.guardian/features/CAMA-2020-legal-corpus-juris/>

¹⁶ *ibid*

The reckless and overt display of wealth has been cited as one of the reasons for enhancing and regulating the activities of trustees and implementing best practices applicable in other jurisdictions like the United States of America (USA) and the United Kingdom (UK).

The CAMA 2020 was designed to rectify the issues found in the CAMA 1990. For instance, the penalties and enforcement methods were either weak or lacking, which¹⁷ hindered the Commission and other agencies from properly enforcing the law, monitoring, and overseeing religious organisations. Relevant government bodies include the Economic and Financial Crimes Commission¹⁸, the Nigerian Police Force¹⁹, and the Financial Regulatory Council²⁰. Moreover, there was a lack of adequate focus on regulating charitable organisations. A significant concern in Nigeria regarding religious organisations is the absence of accountability and subpar financial reporting, which has cultivated widespread public distrust in this sector. It is clear that effective accounting and transparent financial reporting are crucial for religious organisations to gain legitimacy in their operations and to achieve their social goals and impact²¹. Udeoji points out that incorporated trustees act as fiduciaries, meaning that trustees must perform their roles with the utmost good faith. This reinforces the need for regulations concerning charitable organisations. According to section 23 (d) of the Company Income Tax Act 2007, religious organisations enjoy tax-exempt status. Therefore, it is only natural for the government to show interest in their activities. The idea of fiduciary duty and good faith implies a trust-based role, indicating that individuals are expected to manage the community's wealth, welfare, or patrimony responsibly for its beneficiaries.

According to Owolabi S, A and Awoniyi O, the Act provides that the Commission may suspend trustees of a charitable organisation 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 an

¹⁷ 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

¹⁸ Economic and Financial Crimes Commission, 2004.

¹⁹ Nigerian Police Force (Establishment Act), 2020.

²⁰ Financial Reporting Council Act No. 22 of 2003.

²¹ 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'

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 Commission²².

III. Part F of CAMA 2020 and Concerns

The provision in section 839 of CAMA 2020 empowers the Commission to investigate and suspend trustees unilaterally. Grounds for removal may include misconduct, mismanagement of the association's funds, or fraud by the trustee (s). The suspension targets the trustees of any association registered as an Incorporated Trustee, such as general overseers of churches, leaders of mosques, and executive directors of NGOs, among others. The process commences with a petition to the court, initiated by the Commission or one-fifth of the association's members, and must be supported by reasonable evidence.²³ After careful consideration, the courts may issue various orders, including: first, the suspension of any person or officer of the association for no longer than 12 months²⁴; second, the appointment of additional trustees for appropriate administration²⁵; entrusting the association's property to an official custodian²⁶; prohibiting the holder of the association's property from parting with it without a court order²⁷; preventing debtors from making payments to the association²⁸; stopping the association from conducting any transactions or making payments without court approval; and the appointment of an interim manager to act as Receiver and Manager.²⁹

The appointment of an interim manager is noteworthy. With the assistance of the CAC, the Court will define the powers, duties, and functions of the interim manager under the close oversight of

²² 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

²³ Section 839 (2) CAMA 2020

²⁴ Section 839 (6) (a) CAMA 2020

²⁵ Ibid (b)

²⁶ Ibid (c) (i-iii)

²⁷ Ibid (d)

²⁸ Ibid (e)

²⁹ Ibid (f) and (g)

the Commission. The CAC also establishes rules regarding the interim manager's functions, powers, and payments and reports. It is important to note that all provisions regarding the appointment of an interim manager require the approval of the Minister responsible for Trade. This section raised significant concerns among NGOs, allowing the government to interfere extensively with the association's operations and hinder the constitutional right to freedom of association. This section is akin to the UK Charities Act 2011, which allows trustees to be suspended and an interim manager to be appointed. The orders issued by the Court in Nigeria are *in pari materia* with those in 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'³⁰ make an order. It further provides that, regarding misconduct and mismanagement, there is a clearly defined standard that must be followed; that is, there is satisfaction on the Commission that a person committed a wrongful act or failed to take reasonable steps to oppose conduct or encourage it.³¹ The Australian Charities and Not-For-Profit Commission Act 2012 allows directors or trustees to be suspended or removed. 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.³² Sections 842 and 848 (2) state that nonprofit organizations, under the new law, must submit annual returns to the Commission.³³ The Act also grants the Commission the authority to merge nonprofit associations if it perceives a benefit.³⁴ Paragraph ii of section 831 is clear; it provides: 'any two or more associations having the same trustees shall be treated as a single association.' In other words, the Commission may initiate a merger if there are multiple

³⁰ Section 17 UK Charities Act 2011

³¹ Section 76 A UK Charities Act 2011

³² section 841 (1) CAMA 2020

³³ Ibid section 845 (1)

³⁴ Section 831 (i) and (ii) CAMA

associations with the same trustees. However, whether the merger would still occur if the associations have differing objects and purposes is unclear. To find the answer, we examine paragraph (i). Section 831 states that, without prejudice to section 849 of the Act, the Commission may direct that an association be considered part of an already registered association. However, the Act does not specify when an association will be treated as part of the existing registered association. Simply having the same trustees is not sufficient to justify a merger. The trustees should voluntarily decide to merge and then apply to the Commission for approval of the Merger.

Another significant provision of CAMA 2020 that caused apprehension among nonprofit organisations is section 842.³⁵ This section empowers the CAC to direct a bank to transfer credits from a dormant account of a nonprofit organisation to another account. However, the Commission will first request that the association provide its account activities. If the association fails to respond, the Commission can then transfer the funds to another relevant association after the dissolution of the original organisation. Nonetheless,³⁶ according to section 843 (b), the CAC can revoke the transfer order when satisfactory account activities are provided to the Commission. This clause is not automatic, as subsection 6 of the above section states 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 review the process followed by the Commission before endorsing such a transfer of funds from one association to another.

Another concern for non-profit organizations is who holds the ultimate and higher authority between the Minister and the Court in determining what constitutes satisfactory evidence. Additionally, when can an account be legally classified as dormant, and how can justice be achieved if there is no judicial process before the Commission takes such action? If the Minister approves the transfer of funds and the association is aggrieved, it is fair to allow the association to approach the court.

The inclusion of this clause seems intended to counter claims that nonprofit accounts were previously misused for funding terrorism and other illegal activities. This view aligns with

³⁵ Section 842 (1-6) CAMA 2020

³⁶ Ibid (2) (a)

CAMA's definition of dormancy, which specifies that a dormant account only accepts deposits. Furthermore, it seeks to avert the misuse of the association for money laundering purposes. Nonetheless, with existing anti-money laundering regulations and financial disclosures established by the Economic and Financial Crimes Commission (EFCC) for NGOs, the CAMA clause appears redundant. CAMA borrows its interpretation of dormancy from the UK Charities Act, which empowers the Commission to mandate transfers from dormant accounts to active charitable organisations. The responsibility for these transfers lies with banks, the Bank of England, and firms licensed to accept deposits under the Financial Services and Markets Act 2000 or European Economic Area (EEA) firms.³⁷

IV. Basis for Government Regulation

The jurisprudential basis for the role of government and administrative authorities, specifically the Corporate Affairs Commission (CAC), in promulgating a set of rules to control, guide, and restrict the behaviour of non-governmental organisations (churches and mosques), is to achieve accountability, transparency, and good governance.³⁸ The enforcement of this law will rely on the principles of legal formalism.³⁹ Thus, John Austin defined law as ‘a command set either directly or indirectly by a sovereign individual or body to a member or members of some independent political society in which his authority is supreme.’⁴⁰ Austin further asserts that sanctions must back the law.⁴¹ Additionally, legal positivist principles suggest that law and morality should be kept separate in any legal analysis.

Nevertheless, such a rigid isolation between law and morals is impossible, as moral principles are essential for a norm to attain the status of a legal norm.⁴² For instance, when the actions of a particular group, although not sanctioned by law, cause harm to the larger society, the authority should be able to regulate such unethical conduct. As Hart observed, rules should be identified to

³⁷ Section 109 (3) UK Charities Act 2011

³⁸ CAMA 2020

³⁹ Raymond Wacks, *Understanding Jurisprudence; An introduction to Legal Theory*, Oxford University Press 6th ed (2017) p193

⁴⁰ Jeremy Bentham, *On Laws in General* ed HLA Hart (Athlon Press, London, 1970) (The collected Works of Jeremy Bentham, general ed JH Burns)

⁴¹ Herbert Lionel Adolphus Hart, *The Concept of Law*, Leslie Green OUP Oxford, 25 Oct 2012 law p15.

⁴² Matthew H Kramer, *Where Law and Morality Meet* (Oxford University Press, Oxford 2004) 17

prescribe standards of behaviour. For example, no trustee of a charitable association shall convert the trustee's property into personal property, and every trustee shall be personally liable if they misappropriate the association's funds or engage in fraudulent activities. It can be argued that the foundation of legal arguments and jurisprudential debates by churches and mosques is that the government should not regulate religious institutions because their function in society is to promote spiritual and moral growth. The Christian Association of Nigeria argued in a suit that the law was unconstitutional.⁴³

Instructively, the concept of regulation refers to the rules that structure the behaviour of individuals within a given context.⁴⁴ Additionally, regulation serves as a tool for establishing a standard of behaviour that fosters an orderly society, ensures accountability, and imposes a duty on independent members of society to obey the law. Several scholars, religious groups, and legal practitioners have expressed diverse views and reactions regarding Part F of CAMA 2020, specifically sections 839, 845, and 846 on the topic.

Owolabi and Awoniyi believe that the erosion of public assurance, trust, and confidence necessitates government regulation of non-profit organisations, including religious associations.⁴⁵ They assert that, recently, religious organisations have been characterised by recurring cases of misconduct, dishonesty, embezzlement, illicit appropriation of resources, mismanagement, inefficiency, religious fanaticism, and financing of terrorism.⁴⁶ They identify poor financial reporting and a lack of transparency in accounting as two key issues within religious organisations. The authors conclude that religious organisations in Nigeria are not adequately regulated compared to practices in the United Kingdom and the USA. Furthermore, the current state of accounting and financial reporting is dismal.

⁴³ Encyclopedia Britannica accessed <<https://www.encyclopediabritannica.com>>

⁴⁴ 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)

⁴⁵ Ibid

⁴⁶ Ibid at p 40

Noel Udeoji examined the position of the law regarding Incorporated Trustees and the Companies and Allied Matters Act 2020 in general. He believed that most trustees hardly comply with the association's rules. As a result, many are rich in the wealth of the association that they hold in trust for the people⁴⁷. While acknowledging the provisions of Part F of CAMA 2020 in regulating incorporated trustees, the author raised the issue of the absolute power and 'reasonableness' vested in the Corporate Affairs Commission by Section 839 as an affront to the court's powers.⁴⁸ He observed that if a general overseer of a church organisation decides to purchase a private jet, the association members must be able to say how the decision was made and question the opportunity cost of such an expenditure⁴⁹. Bear in mind that the only accountability tool is the record sent to CAC in compliance with section 846.⁵⁰

The Policy and Legal Advocacy Centre (PLAC) analysed the regulation of non-profits registered as incorporated trustees under part F of the new CAMA. The paper questioned the independence and trustworthiness of the Commission and government in regulating Incorporated Trustees. It claimed that the intent and purpose of the much-vilified Non-Government Organisation Regulatory Commission Bill 2016, clause 26 (2), was imported into the new law⁵¹. 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, as per sections 23 and 25 of the Companies Income Tax Act (CITA)⁵². Based on this, they consent to the government regulating the affairs of churches and mosques. Finally, the paper doubts the operability of the new law and predicts it will meet with public resistance.

In their examination of how stakeholders' corporate governance models influence the performance and longevity of Non-Governmental Organisations in Nigeria, Ngozi O. Odiaka and colleagues

⁴⁷ Noel N. Udeoji, 'Incorporated Trustees and the Companies and Allied matters Act (CAMA) 2020: Position of the law,' *IJOLACLE* 2 (2020)

⁴⁸ See section 839 (1-11)

⁴⁹ Ibid p35

⁵⁰ Section 839 (1-5)

⁵¹ 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)

⁵² Company Income Tax Act CITA 2007 section 23 & 25

highlight corruption as a significant obstacle for these entities⁵³. They contend that faith-based organisations resist government regulation and oversight due to trustees' reluctance to embrace accountability, honesty, and transparency, a point emphasised by Sarah Light⁵⁴. The regulation of non-profits, as stipulated in the Trustees (Incorporation) Act of 1952⁵⁵, is primarily intended to foster transparency, good governance, and the advancement of religion and education. The case of *Income Tax Special Purposes Commissioners v Pemsel* underscores that the core charitable objectives are religion and education⁵⁶.

(a) CAMA and Protection of Welfare

The concept of law is as old as humanity, according to Aristotle.⁵⁷ He further explained that the state exists for the good of the people and that the government's role is to serve them. St. Thomas Aquinas, an Italian Roman Catholic theologian and prolific scholar, stated that for law to be just, positive law must be virtuous, necessary, proper, clear, and promote the common good.⁵⁸ Society generally perceives religious organisations as established to help make believers pious, peaceful, and moral. This suggests that religious organisations are social institutions and mechanisms that promote good behaviour. Thus, effective organisational regulations will be essential for realising the broad objectives of religious associations⁵⁹. Section 839 (7) and other innovative provisions of Part F of CAMA 2020 constitute written rules that guide the operation of religious organisations. The rule in CAMA 2020 states that registered Incorporated Trustees shall be classified by CAMA based on the object of the association. For instance, any incorporated trustee promoting religion shall be classified as a faith-based organisation.

⁵³ 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)

⁵⁴ 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>>

⁵⁵ Trustees (Incorporation) Act of 1952

⁵⁶ *Income Tax Special Commissioners v Pemsel*, 1891

⁵⁷ Stephen Everson, *Aristotle: The Politics*, Cambridge Text on the History of Political Thought, (Cambridge University Press, London 1988)

⁵⁸ 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

⁵⁹ Noel Udeoji, 'Incorporated Trustees and the Companies and Allied Matters Act (CAMA) 2020; The Position of the Law'. *IJOLACLE* 2 (2021)

Furthermore, it states that the registered trustees are responsible for holding the property and assets of the association in its best interest. The trustees are expected to wisely manage the association's funds to further the goals specified in its constitution. It also mandates the submission of audited accounts and financial statements to the Commission⁶⁰. Under the Act, religious associations are prohibited from compensating members, trustees, or governing council members with wages, except for reimbursements for expenses incurred while fulfilling the association's duties⁶¹. Should any member breach these regulations, either the Commission or one-fifth of the members can report the issue to the Corporate Affairs Commission for an investigation.⁶² If the Commission discovers any misconduct, malpractice, or wrongdoing in the inquiry, it will give the member 15 days to explain and correct the mistake⁸. In cases involving fraud, the Commission will suspend the trustee and appoint an interim manager⁶³, as directed by the court.

Justice Benjamin Cardozo of the US Supreme Court averred that 'the law, like the traveler, must be ready for the morrow, it must have a principle of growth.'⁶⁴ Several social and institutional issues and problems prompted Parliament to make these rules. There are issues of a lack of accountability and transparency, including the mismanagement of the association's funds, trustees' conversion of the association's funds and assets for personal use⁶⁵. Trustees pay salaries, bonuses, and allocate profits to members, trustees, and the governing council⁶⁶. On moral grounds, some trustees of religious organisations fail to promote acceptable ethical values, religious virtues, and exemplary behaviour in their personal lives. Thus, the rules depict the social issues that prompted the government, through the sub-legislation of the Corporate Affairs

⁶⁰ Supra section 845

⁶¹ Section 838 (1) (b) CAMA 2020

⁶² Ibid section 839 (2)

⁸ Ibid section 842 (2)

⁶³ Ibid section 839 (6)

⁶⁴ 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

⁶⁵ Noel N. Udeoji, 'Incorporated Trustees and the Companies and Allied Matters Act (CAMA) 2020: Position of the law'. *IJOLACLE* 2 (2021)

⁶⁶ *ibid*

Commission, as enacted by lawmakers, to address. The following subsection will discuss the specific social issues that prompted the enactment of this legislation.

(b) The Logic of Regulating Non-Profit

The question remains whether the government should regulate non-profits or NGOs.⁶⁷ This question arises because the government does not fund churches and mosques. The immediate answer is likely due to the benefits or subsidies supplied by the government. Common and civil law countries grant tax exemptions to organisations established for the public's benefit. State benefits include tax incentives on an organisation's income, benefits for the organisation's donors, and exemptions from property or inheritance taxes. However, under CAMA, non-profits and NGOs do not receive extensive tax benefits. NGOS registered in Nigeria are exempt from corporate tax, and companies that donate to such organisations, including those engaging in philanthropic efforts, can claim a tax-deductible donation of no more than 10% of their total earnings. Unlike many other countries, Nigerian laws do not allow for the deductibility of individual contributions. For instance, individuals donating to their churches, mosques, or any other charitable cause cannot claim tax deductions for their donations.

Additionally, there is no provision for property tax relief for NGOS, and there is minimal evidence indicating that NGOS receive grants from Federal or state governments. In contrast, in developed nations, governments provide significant support to nonprofits during difficult times. For example, the US non-profit sector received aid from the government through the Coronavirus Aid, Relief and Economic Security Act (CARES Act), enacted in March 2020. There have been no comparable measures taken in Nigeria, as indicated above. Countries that extend substantial benefits to non-profits and NGOs also maintain effective oversight. However, despite the lack of significant support for non-profit organisations in Nigeria, due to how Nigerian pastors have misused their privileges, both domestically and abroad, there is a clear need for stricter regulations.

⁶⁷ Non-profit organisations are diverse and include Civil Society Organisation (CSOs), Non-Government organisations (NGOs), Faith Based Organisation (FBOs), Community Based Organisations (CBOs), Academic Institute, non-government owed Libraries and Museums, Churches and Mosques, etc.

In 2012, Sahara Reporters exposed that Mr. Tobi Adegboyega swindled Racheal Daniel out of £110,000. Similarly, BBC Panorama investigated this pastor's deceit of his congregation. In response, the British government promptly mandated the immediate closure of Salvation Proclaimer Ministries Limited, commonly known as SPAC Nation. The pastor was recognised for his designer attire, extravagant gold jewellery, and luxury cars. Consequently,⁶⁸ he was compelled to resign, with church operations handed over to Samuel Akokhia and Damy Balogun.⁶⁹ Following a five-year investigation into the finances of the UK branch of Christ Embassy, established by Chris Oyakhilome, the Charity Commission charged the church's board of trustees with multiple frauds, including an illegal payment of N827 million to closely affiliated entities. The Commission found that the church had mismanaged its finances, made arbitrary payments, lacked adequate documentation of decision-making processes, and engaged in widespread misconduct. As a result, the trustees were suspended, and interim managers were appointed in accordance with the Charity Act 2011.⁷⁰

In Nigeria, prosperity churches are frequently perceived as profit-oriented organisations. The main concern regarding these churches, from both congregants and outsiders, is their role as hubs of corruption.⁷¹ These churches are registered with the CAC in accordance with the CAMA of 1990, which was revised in 2004, and the new CAMA 2020 issued by the CAC.⁷² As noted earlier, the CAC oversees the regulation of non-profit organisations. Once a church is properly registered, it gains legal recognition, ensures continuous legal succession, and allows for the acquisition, holding, assignment, disposal, and transfer of assets. For example, after its incorporation, the well-known church Christ Embassy is officially recognised as the Incorporated Trustees of Christ Embassy. However, churches like Christ Embassy and the Redeemed Christian Church of God

⁶⁸Sahara 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 accessed: 27 September 2023

⁶⁹ Ibid

⁷⁰ Nicholas Ibekwe, UK Govt's Probe Uncovers Massive Fraud in Oyakhilome's Christ Embassy 24 December 2019, <https://www.premiumtimesng.com>

⁷¹ 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

⁷² 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

(RCCG) possess significant financial power, enabling them to undertake activities that openly violate the CAMA. Reports suggest that RCCG has an extensive network of commercial interests, which includes real estate investments, private universities, and offering soft loans to individuals.⁷³

Born-again Christians face pressure from their pastors to tithe, presenting the giver as a client entitled to expect rewards, though the timing of these rewards remains uncertain. Churches have evolved into representations of a ‘moral economy of corruption’ Due to internal and external factors. Scholars note that patrons may appear corrupt to outsiders, but members perceive them as offering valuable opportunities to those⁷⁴ who depend on them. Many observers have acknowledged the lack of a universally accepted definition of corruption. After the Cold War, however, the IMF and the World Bank characterised corruption as the misuse of public resources for personal benefit. As a result, many African nations associate corruption mainly with governmental and bureaucratic issues, viewing the private sector as separate from these concerns.⁷⁵ Neoliberal policies predominantly influence anti-corruption measures that advocate for good governance.⁷⁶ This narrow focus on individual state transactions overlooks the broader web of corruption that involves business, politics, and the nonprofit sector, which isn't unique to Africa. In Nigeria, faith-based organisations are not required to disclose details about their operations, which complicates efforts to assess their scope. Notably, the actions of the Nigerian Financial Crimes Commission against churches in Nigeria have gained media attention. In one instance from 2019, Pentecostal pastors in Rivers State tricked a family into paying 000,000, falsely claiming the pastor was a contractor, and using misleading prophecies to convince them to give up their money.⁷⁷

⁷³ 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

⁷⁴ Bayart Jean-Francois, *The State in Africa: The Politics of the Belly* (Longman Publishing Group, 1993) 2

⁷⁵ 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>

⁷⁶ Katarova Elitza, *The Social Construction of Global Corruption: From Utopia to Neoliberalism* (Palgrave Macmillan, Cham 2018)

⁷⁷ 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/>

In 2018, a pastor was arrested in Lagos for defrauding a church member of 85,000,000 naira. It was alleged that he buried animals on church property to boost his wealth.⁷⁸ The corruption associated with Pentecostal prosperity stems from ineffective governance, which disconnects it from the welfare of the community it is meant to support.⁷⁹ Dr. Emmanuel Agomoh, chairman of the Abia State chapter of the Christian Association of Nigeria (CAN), voiced his concerns about the actions of some Pentecostal pastors. He disclosed that more than 70 per cent of churches in the area engage in commercial activities. He highlighted that some pastors claim to be Jesus, and up to 60 per cent of rituals are practised and perpetuated by these Pentecostal leaders. Agomoh recounted the story of a woman whom a pastor had used to fake various disabilities- such as deafness, muteness, blindness, and paralysis- during a miracle service; however, she received no compensation afterwards, leading her to report the incident to Dr. Agomoh, the president of CAN's Abia Chapter. He expressed his frustration that CAN does not have the resources to take action against misbehaving pastors.⁸⁰

Recently, some pastors in both Nigeria and the UK have been accused of misusing funds from their organisations. For instance, in 2011, Forbes magazine named Bishop David Oyedepo, the founder of Winners' Chapel, as Nigeria's wealthiest pastor⁸¹. Enoch Adeboye, the leader of the Redeemed Christian Church of God, owns a Gulfstream GIV (N707EA), but it is unclear whether his personal wealth is separate from church finances. Furthermore, Oritsejafar, the former national president of the Christian Association of Nigeria (CAN), stated that his Bombardier Challenger 601 aircraft was a gift from his congregation. Prior to the introduction of CAMA 2020, there were insufficient regulations governing the investigation and punishment of trustees in religious organisations, underscoring the need for this new legislation. A lingering concern remains about whether this law will be enforced effectively, particularly given Nigeria's track record of poor implementation. Nevertheless, Nigeria could draw insights from other regions to improve enforcement comprehensively.

⁷⁸ 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>

⁷⁹ Ibid Coleman at 48

⁸⁰ 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

⁸¹ Forbes Magazine June 2011, 'Five Richest Pastors in Nigeria' accessed at < <https://www.forbes.com> > mfonobongnsehe > 2011/06/07>

In South Africa, the Commission for the Promotion and Protection of Cultural, Religious, and Linguistic Communities initiated a national investigation into the commercialisation of religion and the abuse of people's belief systems, prompted by public complaints; Chris Oyakhilome was invited to participate. Unhappy with this invitation,⁸² the applicant filed a request for interim relief to prevent the Commission from bringing criminal charges against him under section 41 of the Commission for the Promotion and Protection of the Right of Cultural, Religious, and Linguistic Communities Act.⁸³ The court granted part of the application, highlighting a jurisdiction where the government effectively supervises the activities of religious organisations. In 2013, Cameroon President Paul Biya ordered the closure of 100 Pentecostal churches due to various harmful activities that caused division and fatalities within families.⁸⁴

Conversely, a petition from Kola Kareem and Moji Oguntoyinbo faced resistance in Nigeria. The Economic and Financial Commission called on Evelyn Joshua to prevent the misappropriation of church funds following the passing of the general overseer. Nevertheless, the Federal High Court in Lagos affirmed Evelyn Joshua's position as a church trustee in the case of the Incorporated Trustees of the Synagogue Church of All Nations v. Evelyn Joshua.⁸⁵ As mentioned earlier, CAMA 2020 section 839 (1) (c) stipulates that the Commission may, through an order, suspend and appoint an interim manager when the association's operations are fraudulent. It is undeniable that a religious organisation operating under false and fraudulent principles cannot fulfil the aim of promoting religion and the welfare of the community.

⁸² *Chris Oyakhilome v The Commission for The Promotion and Protection of Cultural, Religious and Linguistic Communities*

⁸³ *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

⁸⁴ 'Fraud, Fake Miracle: Cameroon Shuts Down 100 Pentecostal Churches 16 August 2013, available at www.pointblanknews.com accessed: 28 September 2023

⁸⁵ *Kola Kareem and Moji Oguntoyinbo v the Incorporated Trustees of the Synagogue Church of All Nations Suit No: FHC/L/CP/1109/2021*

V. Conclusion

This paper explores key sections of Part F of CAMA 2020. It examines the reasons why the government needed to regulate the affairs of non-profit organisations effectively. The argument is supported by evidence of non-profit regulation in other regions and provides several examples of misconduct, mismanagement, and fraud occurring in churches. There is no doubt that Part F of CAMA 2020 generated controversy. Churches disapproved of the Act, describing it as undue interference with religious rights. The critique of the new provision focused on the fact that the Act allowed CAC officials to take over a church, mosque, or NGO by appointing a general overseer or imam based on a reasonable belief of misconduct, mismanagement, or fraud.

The revised CAMA 2020 aims to enhance and simplify the business environment in Nigeria, aligning it with global best practices. However, civil societies, churches, and mosques view CAMA as burdensome and oppressive in this pursuit. This concern is intensified by Section 839 (a) of CAMA, which only enforces penalties for misconduct or mismanagement in the management of association funds, aiming to protect and preserve property to fulfil its goals. According to Section 839 (2), at least 20 per cent of an association's trustees must sign a petition before it is presented in court. The Act's provisions are designed to promote discipline and order in the management of churches, mosques, and non-governmental organisations (NGOS). As mentioned earlier, the government cannot ignore evident corruption and harmful actions against citizens. These organisations enjoy tax-exempt status due to their contributions to society. While government support may not match that of developed nations, they are entitled to regulate social activities that could adversely impact society. However, creating a law is one thing, and enforcing it is another. Effective enforcement of the Act will eliminate confusion and build public trust in non-profit organisations in Nigeria.