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REGULATION OF NON-GOVERNMENTAL ORGANISATIONS UNDER THE COMPANIES AND ALLIED MATTERS ACT, 2020

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Abstract

The Companies and Allied Matters Act, 2020 (CAMA 2020), seems to have revolutionized the face of corporate practice in Nigeria in recent time. The sweeping reforms enshrined in CAMA 2020 will undoubtedly accelerate economic growth and rapidly promote the ease of doing business in Nigeria. In one breath, the remarkable reforms entrenched in the Act, particularly with respect to incorporation, commencement operation of companies and business names, have been widely applauded by Nigerians. On the other hand, religious bodies, associations and other incorporated trustees (ITs) have heavily condemned some provisions in the Act, especially Part F that deals with operations of ITs and in fact some associations have called for an outright amendment of section 839 of the new Act because of the enormous powers given to the Corporate Affairs Commission (CAC) to suspend, remove and install interim managers for any incorporated trustee (IT) found wanting. This work examines the legal implications of the novel provisions embedded in CAMA 2020 as it relates to regulation of ITs in Nigeria. A brief review is made of the Charities Act, 2011 of the United Kingdom (CA 2011), which appears to be the model for the controversial provisions CAMA 2020. The research methodology adopted in this article is doctrinal and comparative. This paper concludes that while accountability of ITs is desirable and expedient, the Commission should operate within the purview of the rule of law and eschew any tyrannical tendencies that will stifle legal operations of non-governmental organizations (NGOs) incorporated in Nigeria.

Keywords: Incorporated trustees, company law, church, association, charity law

1. Introduction

The Nigerian Companies and Allied Matters Act (CAMA) witnessed an auspicious day on 7 August 2020.¹ The new CAMA 2020 repealed the old CAMA² and in its stead, enacted novel provisions for the incorporation of companies, limited liability partnerships, limited partnerships, registration of business names as well as incorporation of trustees of associations, charitable bodies,³ which are generally referred to as incorporated trustees (ITs) in legal

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¹ See Andersen Tax, 'President Buhari Signs the CAMA Bill 2020 into Law' <<https://andersentax.ng>> accessed 29 August 2020.

² Cap C2 LFN 2004 (CAMA 2004).

³ See to Explanatory Memorandum to CAMA 2020. See also Part F of CAMA 2020 for the incorporation of associations.

parlance. CAMA 2020 was greeted with a lot of accolades by businessmen, legal experts and many top government officials. The rationale for this overwhelming encomium on the new legislation is attributed to the expectation that it will accelerate economic growth and radically advance the ease of doing business in Nigeria. At the initial stage after President Muhammadu Buhari assented to Act, most Nigerians were greatly impressed because of the innovative reforms enshrined in it but as the months went by, and there arose different shades of criticisms and backlash on some provisions relating to ITs.⁴ This work intends to examine the regulation of NGOs under CAMA 2020 as well as the legal implications of these sweeping reforms on the continued existence of ITs in Nigeria.

This work is divided into six parts. Part I is a general introduction of the subject matter. Part II examines the operation of Incorporated Trustees under the repealed CAMA 2004. Part III explores the sweeping reforms introduced by CAMA 2020 in respect of ITs. Part IV x-rays the regulation of NGOs and the legal implications of the innovative reforms on ITs in Nigeria, including religious bodies and associations. Part V compares the relevant provisions of CA 2011 and its influence on Part F of CAMA 2020. This part also deals with accountability of charity organizations in the UK. Part VI is a general conclusion and recommendation.

2. Operation of Incorporated Trustees under Repealed CAMA 2004

It is important that a brief overview of the legal regime in CAMA 2004 be undertaken before delving into the sweeping reforms introduced by CAMA 2020 especially as it concerns ITs now recognised under Part F.⁵ Cultural associations, religious bodies, clubs, social associations, educational bodies, sporting association, charitable bodies (like NGOs), etc could be registered as an IT under Part C of the repealed CAMA.⁶ The legal effect of registration by the Commission is the conferment of legal personality on such incorporated body.⁷ In essence, the Certificate of Incorporation confers perpetual succession and bestows on such IT the power to sue and be sued in its corporate name.⁸ It is of great importance that the appropriate IT of an association be sued otherwise

⁴ See CAMA 2020, s 839 as to the power of the Commission to suspend trustees of an association.

⁵ CAMA 2004, s 590(1).

⁶ Ibid.

⁷ Ibid s 590(2); See also *Okatta v Regd Trustees, OSC* (2008) 13 NWLR (Pt 1105-632) where the court held that an incorporated association is a different legal entity from its directors or management; s 590(1).

⁸ T Akinloye, 'Incapacitation of Incorporated Trustees and Governance of Churches and NGOs in Nigeria: A Commentary of *Omomobi v Adeoye* (2018) 9(2) *The Gravitas Review of Business & Property Law* 6.

such action is fatal.⁹ There were modalities for registration of ITs in CAMA 2004.¹⁰ For instance, infants, persons adjudged by the court to be of unsound mind, un-discharged bankrupt and persons convicted of offence bordering on fraud or dishonesty, within five years of proposed appointment as trustees, were disqualified from such appointment.¹¹

The procedure for the formation of ITs under CAMA 2004, its mode of operation and statutory requirements that must be complied with are well articulated by a learned scholar.¹² It has been opined that orthodox churches are corporation under common law.¹³ As such, it has been posited that such common law corporations which include the Anglican, Baptist, Roman Catholic churches are corporations already endowed with legal personality by force of custom and no one 'bestows' that status to the corporate body.¹⁴ Hence, it has also been argued that it may not be compulsory or essential for common law institutions to statutorily register before being vested with juristic personality.¹⁵ One of the obvious defects in CAMA 2004 was the absence of accountability clauses for ITs. Besides, the sources of funds of associations were not monitored by the Commission. In addition, the sanctions for violations of provisions enshrined in CAMA 2004 seemed rather mild. There were, however, some measures for regulating NGOs under the now repealed CAMA 2004. For example, there were efforts such as filing of Annual Returns by ITs with the Commission and tax exemptions certificate as well as Statement of Affairs of NGOs filed with the Federal Inland Revenue Service (FIRS). Nevertheless, the regulation of NGOs under CAMA 2004 was inadequate.

3. Novel Reforms for ITs under CAMA 2020

The inadequacy and lapses in CAMA 2004 led to a number of innovations in CAMA 2020. Some of these reforms are geared towards promoting the ease of doing businesses in Nigeria particularly for companies and business names. For incorporated trustees the new provisions seem to aim at promoting accountability, transparency and minimizing any form of corruption by trustees. One of the new provisions enshrined under CAMA 2020 empowers the Corporate Affairs Commission with the duty of classifying the associations that

⁹ See the case of *Dairo v The Registered Trustees of the Anglican Diocese of Lagos* (2017) LPELR 42573 (SC).

¹⁰ CAMA 2004, ss 591, 593, 594, 595.

¹¹ *Ibid* s 592(1).

¹² IE Ekwo, *Incorporated Trustees: Law and Practice in Nigeria* (Lexis Nexis, 2007).

¹³ A Emiola, *Corporation Law* (Emiola Publishers, 2005) 99-100.

¹⁴ IA Akinloye, 'Dairo v Registered Trustees of the Anglican Diocese of Lagos (2017) LPELR – 42573 SC: An Evaluation of the St Saviour's Church (Miscellaneous) Act, 1991 and its Implication for the Legal Status of the Anglican Diocese of Lagos' (2019) 8(1) *Oxford Journal of Law and Religion* 1-7.

¹⁵ *Ibid*. See also Emiola (n 13).

intend to register under Part F.¹⁶ In the classification of associations, such decision must comply with the aims and object of the association.¹⁷ It is submitted this provision will reduce the multiplicity of associations with similar objects and it will bring about easy identification of association specialized in a given area of strength.

Quite interestingly CAMA 2020 now permits two or more associations with similar aims and objects to merge under terms and conditions as Commission may prescribe by regulations.¹⁸ It is assumed that the rationale for merger of association with similar aims and objects is to save a distressed association from total collapse. Although there could be a number of reasons for mergers,¹⁹ the author thinks the merger of associations under Part F is to protect a sinking association.

Another unique innovation enshrined in CAMA 2020 is the mandatory requirement that the trustees of an association shall submit a bi-annual statement of affairs of the association to the Commission.²⁰ It is submitted that this provision will promote accountability and probity of trustees in any association. For any default in complying with the submission of bi-annual statement of affairs, the trustees are liable to penal sanction.²¹ The regulation of NGOs by CAMA 2020 has generated a lot of criticisms from the religious leaders in Nigeria. In particular, section 839 of CAMA 2020 provides thus:

- (1) The Commission may be order suspend the trustees of an association and appoint an interim manager or managers to manage the affairs of an association where it reasonably believes that –
 - (a) there is or has been any misconduct or mismanagement in the administration of the association;
 - (b) it is necessary or desirable for the purpose of –
 - (i) protecting the property of the association,
 - (ii) securing a proper application for the property of the association towards achieving the objects of the association, the purpose of the association of that property or of the property coming into the association.
 - (iii) public interest; or
 - (c) the affairs of the association are being run fraudulently.

The above section has been heavily criticized by Non-governmental Organisations in Nigeria and many religious leaders. The legal consequences of this section and many other controversial provisions in CAMA, 2020 shall be examined in great detail in Part V of this work. Another relatively new

¹⁶ CAMA 2020, s 824.

¹⁷ Ibid.

¹⁸ See CAMA, 2004; s 849.

¹⁹ N Dimgba and others, Law and Practice of Mergers and Acquisition in Nigeria <<http://ssrn.com/abstract=2652362>> accessed 01 September 2020.

²⁰ CAMA 2020, s 845(1).

²¹ Ibid s 845(2).

provision is the power given to the Commission to direct the transfer of credits in dormant account of an association upon notice by the bank of such dormant account and upon the expiration of fifteen days' notice by the Commission to the association to provide details of its activities.²² Where the association fails to respond satisfactorily, the Commission can then exercise this power enshrined in the law.²³ Again, this section has also received serious backlash from NGOs in Nigeria.²⁴

It is submitted that, this section is aimed at curtailing any form of mismanagement of financial resources of an association and it is also targeted at ensuring that dormant monies belonging to an association are put to proper use. However, it seems this provision will whittle the powers and liberty of an association to save money in a bid to execute capital project of the association. This section also confers enormous power on the Commission although the Minister of Trade and Investment must approve the action taken by the Commission before such powers are exercised.²⁵ In the event that any association account ceases to be dormant, the bank which maintains the association's account must notify the Commission.²⁶ The Commission under CAMA 2020 does not condone secrecy or non-disclosure by bank as to the status of dormant account kept by an association.²⁷ This provision is directed at promoting accountability and transparency.

Furthermore, aside from the trustee's duty to submit bi-annual statement of affairs, there is also an obligation imposed by the Commission which requires the trustees of an association to ensure that accounting records and statement of accounts are properly kept.²⁸ These accounting records of the association must be preserved by the association for six years from the date on which they were made.²⁹ Once again, it is submitted that all these provisions discussed above, are enshrined to enhance the credibility, transparency and probity of associations incorporated in Nigeria. This is quite commendable as these novel provisions

²² SERAP writes Buhari, wants controversial CAMA law revised reported in Premium Times, August 23, 2020 Press release , <<https://www.premiumtimesng.com/news/more-news/4/03/5-serap-writes-buhari-wants-controversial-cama-law-reviewed.html>> accessed 02 September, 2020.

²³ CAMA 2020, S 842(1)(2)(3). See also Olaniwu and Ajayi, 'Companies and Allied Matters Act, 2020: Snapshot of the Amendments to the Act' <www.olaniwunajayi.net> accessed 02 September 2020.

²⁴ SERAP (n.22).

²⁵ CAMA 2020, s 842(6).

²⁶ Ibid; S.843(a)(b).

²⁷ CAMA 2020, s 844(1); See also, R. Islam 'Banker's Reference and the Bank's Duty of Confidentiality under Common Law Reappraised' (2016) 4 *Jahangirnagar University Journal of Law*.

²⁸ CAMA 2020, s. 846(1) (2) 8(3).

²⁹ Ibid. s 847.

were not entrenched in CAMA 2004. These innovations could bring stability and promote efficiency in the operations of registered trustees in Nigeria.

4. Regulation of NGOs and the Legal Implications of Reforms Relating to ITs under CAMA 2020

Some provisions in CAMA 2020 hold grave consequences for the continued existence of incorporated trustees in Nigeria. The sections implicated in restrictions of liberty of incorporated trustees are sections 839, 842, 843 and 844. Each section will be examined seriatim and the far reaching legal consequence of each section will also be considered. The section that has received the most severe backlash is section 839. One of the implications of section 839 of CAMA 2020 is that it could generate or foist insecurity of tenure for the trustees of an association. This can be severe if the Commission in the exercise of its powers enshrined in the above section removes the Founder of the NGO or the General Overseer of a Church. This could lead to a decline or massive reduction in the population of the congregation or in the membership of NGOs. In order to reveal the startling impact of section 839 of CAMA 2020, it is important to reproduce some parts of this section and appraise the far reaching consequences. The said section provides as follows:

- (1) The Commission may by order suspend the trustees of an association and appoint an interim manager or managers to manage the affairs of association where it reasonably believes that –
 - (a) there is or has been any misconduct or mismanagement in the administration of the association;
 - (b) it is necessary or desirable for the purpose of –
 - (i) protecting the property of the association,
 - (ii) securing a proper application for the property of the association towards achieving the objects of the association, the purposes of the association of that property or of the property coming to the association,
 - (iii) public interest; or
 - (c) the affairs of the association are being run fraudulently.
- (2) The trustees shall be suspended by an order of Court upon the petition of the Commission or members consisting one-fifth of the association and the petitioners shall present all reasonable evidence or such evidence as requested by the Court in respect of the petition.

Suspension of trustees of an association and the subsequent appointment of interim manager(s) must fall under any of grounds highlighted above and must be backed by an order of Court pursuant to petition from the Commission or members comprising one-fifth of the association and such must be based on evidence that can be objectively proven.³⁰ It appears that the procedure for suspending trustees of an association and appointing interim managers under section 839(1)(2) is in accordance with the cardinal principle of fair hearing as

³⁰ See CAMA 2020, s 839(1)(a)(b)(2).

entrenched in the 1999 Constitution of Federal Republic of Nigeria (as amended).³¹

In spite of the foregoing, the above section will likely disrupt the security of tenure (office) of the trustees of any religious bodies or association. The age-long tradition in some NGOs or Nigerian Churches is that the founder is always part of the trustees and may not be removed or suspended by the other trustees. Most time, the founder of a Church can name his successor during his lifetime or after the demise of the founder, a new leader is appointed by the Church.³² It has been observed that there could be dispute if the founder of a Church does not appoint his successor before his demise.³³ Since section 839 promotes suspension of trustees and appointment of interim managers by the Commission, it then follows that the tenure of most trustees could be transient as they can be removed, replaced contrary, to the security of tenure or permanence in office which most trustees of NGOs enjoyed before the enactment of CAMA 2020. In putting a fatal blow to trustees' security of tenure, CAMA 2020 provides that:

Where, at any time after the Commission has made an enquiry into the affairs of the association, it is satisfied as to the matters mentioned in subsection (1), it may suspend or remove –

(a) any trustee who has been responsible for or privy to the misconduct or mismanagement or whose conduct contributed to or facilitated it³⁴

The above section gives the Commission wide power to suspend or remove any trustee without recourse to Court Order. This could make the Commission extremely powerful and could lead to abuse of power by removing or suspending trustees abruptly and arbitrarily.³⁵ This does not augur well for security of trustees' tenures. The Vice President, Prof. Yemi Osibanjo while commenting on CAMA, 2020 in respect of Incorporated Trustees, obviously observed that the problems that they (trustees, pastors) may have in ensuring that the processes are not abused in such a way as to compromise the entire organization.

³¹1999 CFRN (as amended) s 36.

³²IA Akinloye, 'Human Flourishing, Church Leadership and Legal Disputes in Nigerian Churches' in MC Green (ed) *Law, Religion and Human Flourishing in Africa* (African Sund Media, 2019) 25-41.

³³*Owodunmi v Registered Trustees of Celestial Church of Christ* (2000) 10 NWLR (Pt 675) 315; See also *Rev Paul Emeka v Rev Chidi Okoroafor and Others* (2017) LPELR-41738 SC.

³⁴See CAMA 2020, s 839 (7)(a).

³⁵Y Akinpelu, 'Osinbajo to Churches: Concerns about CAMA can be Resolved through Legislative Amendment' reported in *Premium Times*, August 28, 2020 <<https://www.premiumtimesng.com/news/more-news/411228-osinbajo-to-churches-concerns-about-cama-can-be-resolved-legislative-amendment.html>> accessed 29 August 2020.

Corollary to the foregoing consequence of section 839 of CAMA 2020 is that it could breed room for ‘stranger’ to pollute the doctrine and core values of an association. Since section 839 gives the Commission the power to suspend trustees and appoint interim manager(s) for the association, it is very much possible that a ‘misfit’ or a ‘stranger’ who is not grounded in the doctrinal teaching of a church or mosque could be appointed as interim manager(s)³⁶ of a religious body/association thereby causing distortions in core values or sound spiritual teaching of an association. The Vice President also acknowledged this fact when he said that:

The concern of the Churches is that it could lead to a situation where practically anybody could be appointed as a trustee to oversee the Church and a Church or a Mosque is a spiritual organization and if you do not share the same faith with the Church or Mosque, you may be the wrong person and if a wrong person is appointed, you may create more trouble for the organization.³⁷

There is a high possibility that a wrong person could be appointed as interim manager(s) under section 839 because the word ‘Interim Manager(s)’ was not defined under CAMA, 2020.³⁸ Assuming the word ‘interim manager(s)’ connotes person of same faith or person who shares the same ideology as the association then the problem could have been partly resolved.

Another repercussion of section 839 is that it can lead to instability, disintegration and total collapse of the association if not well managed. This consequence is possible because CAMA 2020 now empowers the Commission³⁹ to unilaterally remove trustee of association without recourse to any form of court order justifying such removal.⁴⁰ In Nigeria, there are many members of religious bodies who worship in churches because of the profound respect for the Founder who in most cases doubles as trustees. Members of such religious body or even NGOs could disintegrate if their Founder were removed or suspended abruptly by the Commission. In extreme cases, the association may even collapse completely if the Commission removes the Founder of an NGO or a General Overseer of a Church without recourse to court order or fair hearing.

In vehement opposition to CAMA 2020, the Social Economic Rights Accountability Project (SERAP) believes by seeking to suspend and remove trustees and appoint interim managers for associations, government seems to want to place itself in a position to politicize the mandates of such association and to undermine the ideas that the right to freedom of association and related rights are supposed to be protected in a democratic society.⁴¹ SERAP frowns at the incursions posed by the provisions of CAMA, 2020 particularly those

³⁶ Ibid.

³⁷ Ibid.

³⁸ CAMA 2020, s 868.

³⁹ CAMA 2020, s 839(7).

⁴⁰ Ibid.

⁴¹ SERAP (n 22).

relating to Part F because it is assumed that these sections will adversely affect the rights and smooth running of the association.

In addition, SERAP also asserts that the government granting itself the powers to suspend and remove trustees of legally registered associations and to also take control of their bank accounts⁴² constitute an effective restraint on human rights. It is submitted that permitting the Commission to take control of bank accounts of association pursuant to sections 842, 843 and 844 of CAMA 2020 would significantly impact on the rights of the association, its sustainability, and operations and would adversely affect civil, cultural, economic, political and social rights in general. Granted that the primary reasons for introducing these novel provisions include curtailing fraud, mismanagement, corruption, money laundering by different associations, however, in a bid to forestall these societal ills, legal restrictions imposed should be stipulated within the confine of the law bearing in mind the fundamental rights of Nigerians as enshrined in the 1999 CFRN as amended).⁴³ In firm opposition to the application of CAMA, 2020, it was reported that SERAP had even served the Commission a pre-action notice⁴⁴ in preparation of instituting legal action should the Nigerian government persist and insist on enforcing the provisions of the new CAMA.⁴⁵

There has also been a barrage of criticisms against CAMA 2020 especially on section 839 relating to the power of the Commission to suspend, remove trustees of association and appoint interim manager(s) in place of the suspended trustee.⁴⁶ It is submitted that, this section also usurps the internal powers of incorporated trustees. In the registration process, applicant seeking to incorporate a NGO or religious body is bound to file a constitution. The said constitution contains internal mechanism for removing or suspending trustees. The author thinks this should suffice. Surprisingly, section 839(7) of CAMA, 2020 gives the Commission an overly broad and discretionary power to suspend and remove trustee singly based on an inquiry alone without recourse to any court order. This section calls for an amendment.

The Pentecostal Fellowship of Nigeria also contended that sections 839, 842, 844 of CAMA, 2020 among other provisions could leave the door open to abuse, denial of fair hearing, arbitrariness and dubious use of power by the

⁴² CAMA 2020; ss 842, 843 and 844 gives the Commission (CAC) the power to direct transfer of credits in dormant bank.

⁴³ 1999 CFRN (as amended) chaps II and IV.

⁴⁴ CAMA 2020, s 17(2).

⁴⁵ SERAP (n 41).

⁴⁶ S Oamen, 'Our Reservations against CAMA by PFN' *The Nations* (28 August 2020) <<https://www.google.com/amp/s/thenationsonlineng.net/our-reseration-against-cama-by-pfn/amp>> accessed 29 August 2020.

Commission.⁴⁷ The fear entertained under section 839(1)(2)(3) may not be justified because this subsection provides for fair hearing before any order of court is obtained to suspend trustee.⁴⁸ One of the real snags in CAMA, 2020 is section 839(7)(a) which empowers the Commission upon enquiry into the affairs of the association to suspend or remove any trustee culpable of misconduct or mismanagement even with no recourse to the court.⁴⁹ This could make the Commission wield enormous powers in determining who survives as trustees and could also make trustees of association act, and live in fear of the overbearing power conferred on the Commission. The author submits that a flexible control of NGOs is preferable instead of exerting strict regulation of NGOs, it should be done on a case by case scenario considering the peculiarity of the NGO in question and freedom of association of the NGO.

4.1 Regulation of the Operations of NGOs in Nigeria under Some Proposed Bills and Some Extant Laws

As to the regulation of NGOs in Nigeria, some Nigerian Bills were proposed by the legislature to checkmate the operation of NGOs in Nigeria. For instance, the National Assembly had made two unsuccessful attempts to regulate NGOs in Nigeria.⁵⁰ The first attempt was in 2013 when the 'Bill to Regulate the Acceptance and Utilization of Financial/Material Contributions of Donor Agencies to Voluntary Organisations' was then sponsored by one of the legislators in the 7th National Assembly. The second effort was the Bill meant to provide for the Establishment of NGOs Regulatory Commission which was then referred to as the NGO Bill, 2016. This Bill did not see the light of the day before the dissolution of the 8th Assembly. Some cardinal features of the 2013 Draft NGO Bill include provision for prior permit to NGOs from the Independent Corrupt Practices and Other Related Offences Commission (ICPC) before the NGO could accept funding from foreign donors.

Again, NGOs were under obligation to submit periodic information to the ICPC on the manner which the funds were utilized.⁵¹ Similarly, the proposed Bill, by virtue of section 5(1)(a)(i)&(ii) provided wide and broad powers for the regulation of NGOs because the ICPC could refuse the approval to receive

⁴⁷ Ibid; See also, CAMA CHAOS, 'CAN Mulls Legal Actions, Briefs Top Lawyers' *Vanguard* (23 August 2020) <<https://www.google.com/amp/s/www.vanguardngr.com/2020/08/cama-chaos-can-mulls-legal-action-brief-top-lawyers/amp/>> accessed 4 September 2020.

⁴⁸ CAMA 2020, s 839(1)(2)(3) provides for an order issued by Court after hearing of the Commission's petition.

⁴⁹ Ibid s 839(7)(a).

⁵⁰ See B Maigari and JI Coady, 'Nigeria NGO Which Way Forward Self-Regulation or Government Regulation' (2016) <<https://www.researchgate.net/publication/339697381>> accessed 7 April 2021.

⁵¹ See for instance, section 2 of the Bill to Regulate the Acceptance and Utilization of Financial/Material Contributions of Donor Agencies to Voluntary Organisations, 2013.

funding for an NGO if it thought that the funding was likely to affect the sovereignty and integrity of Nigeria or adverse diplomatic relationship of any foreign country. This 2013 Draft NGO Bill also permitted the ICPC to obtain court orders restraining the NGO from withdrawing, transferring or making use of any monies it deemed was not obtained with its approval.⁵² The ICPC could also render the bank account of NGOs unusable because it could seize the account of an NGO for four months even without necessarily commencing legal action in court for proper determination.⁵³ It is submitted that all these provisions in the Draft 2013 NGO Bill expanded the scope of oversight control of NGOs and this might likely stifle the smooth running of NGOs in Nigeria if there were implemented.

The 2016 Draft NGO Bill also made some vital provisions with respect to regulating the activities of NGOs in Nigeria. For instance, section 11 of the proposed Bill required all NGOs to be registered with the NGO Commission established under the Bill before they could operate in Nigeria. Surprisingly, section 13(1) of the proposed Bill gave wide powers to the NGO Commission to receive, approve or refuse registration of NGO, if it pleased. Therefore, it is submitted that it almost made it difficult to freely associate with others. This provision will certainly infringe on the right to freedom of association enshrined in the 1999 Constitution of the Federal Republic of Nigeria (as amended). Quite disheartening, the 2016 Draft NGO Bill did not recognize the registration of NGO under CAMA 2020 because an unregistered NGO which was refused registration under the NGO Commission could not operate in Nigeria despite the fact that such NGO had been duly registered by CAC.⁵⁴ Similarly, the Bill provided for refusal of registration based on national interest.⁵⁵ It is submitted that this ground of refusal is rather ambiguous and overbearing.

The Financial Reporting Council of Nigeria (FRCN) also made some regulatory interventions in respect of the National Code of Corporate Governance (NCCG) for Not-for-Profit Organisations operating in Nigeria.⁵⁶ Paragraph 7.2 of NCCG, clearly provides that the NCCG was empowered to regulate charitable bodies, churches, philanthropic organizations and all NGOs in Nigeria. In particular, paragraph 9 of the NCCG required a Founder or Leader to cease to occupy any of the three governance positions of Chairmanship of the Board of Trustees, the Governing Board or Council and the Headship of the Executive Management (or their governance equivalent) simultaneously from 16 October 2016. It is submitted that this paragraph of NCCG is aimed at

⁵² Ibid, s 3.

⁵³ Ibid, s 9.

⁵⁴ The 2016 Draft NGO Bill; s.13.

⁵⁵ Ibid, s 15.

⁵⁶ J Onele, 'The Financial Reporting Council of Nigeria and Her Misguided Regulatory Approach: A Classic Example of How Not to Be a Regulator' (2017) 1(1) *UNILAG Law Review* 1-21.

curtailing the enormous power which some Heads of NGOs possess. One of the most contestable provisions of NCCG was probably paragraph 9.3 which stated that:

where the Founder or Leader had occupied all or any of the three governance positions referred to in the preceding paragraph for more than twenty (20) years as from 10 October, 2016, or was aged seventy (70) years or above from the same date, the Founder or Leader may only be considered for advisory or spiritual role by creating a Board of Trustees for which the original Founder or Leader can become the first or Life Chair and no more.

From a careful analysis of the foregoing, it seemed paragraph 9.3 of the NCCG was directed at removing all long standing Founders or Leaders who had occupied the position of Founder or Leader or any of the positions of Chairmanship of the Board or Council and the Headship of the Executive Management from 16 October 2016. Many NGOs and religious bodies frowned at the provisions enshrined in FRCN because it also had the possibility to stifle the smooth operations of NGOs. FRCN 2011 provided basis for the regulation of NGOs under its objectives stated in FRCN Act. It is in pursuance to the Act that the FRCN Codes were established. It is contended that FRCN contemplated the regulation of all Not-for-Profit Organisations in Nigeria. But it appeared that this has not been implemented. In fact, the FRCN Codes were suspended.

5. Relevance of CA 2011 to the Administration of ITs under CAMA 2020

In respect smooth administration and control of ITs in Nigeria, Charities Act 2011 of the UK (CA 2011), shares a lot of similarities with Part F of CAMA 2020. However, there are also a number of differences between the two statutes. The relevance and similarities of CA 2011 in relation to some provisions enshrined in Part F of CAMA 2020 are highlighted in the following paragraphs. This is in a bid to show the gaps in the new CAMA. It is important to examine the definition of ‘charities’ under CA 2011 and the spheres which the definition covers.

5.1 Conceptual Appraisal of ‘Charity’ under CA 2011

Under the above legislation, ‘charities’ means an institution which is established for charitable purposes only, and falls within the subject in the control of the High Court in the exercise of its jurisdiction with, respect to, charities.⁵⁷ The meaning of ‘charitable purpose’ is properly described under CA 2011. For any charity to qualify for registration, it must fall within the coverage of “charitable purpose” under CA 2011.⁵⁸ A purpose falls within charitable purpose if it features or falls within any of the purposes described below:⁵⁹

- (a) the prevention or relief of poverty;
- (b) the advancement of education;

⁵⁷ CA 2011, s 1(1)(a)(b).

⁵⁸ Ibid s 2(1)(2).

⁵⁹ Ibid s 3(1).

- (c) the advancement of religion;
- (d) the advancement of health or the saving of lives;
- (e) the advancement of citizenship or community development;
- (f) the advancement of the arts, culture, heritage or science;
- (g) the advancement of amateur sport;
- (h) the advancement of human rights, conflict resolutions or reconciliation of the promotion of religious or racial harmony or equality and diversity;
- (i) the advancement of environmental protection or improvement;
- (j) the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage;
- (k) the advancement of animal welfare;
- (l) the promotion of the efficiency of the armed forces of the crown or of the efficiency of the police, fire and rescue services or ambulance services.

In summary, all the entities, purposes, persons, bodies, groups, associations enshrined under Part F of CAMA, 2020 are almost synonymous with the term ‘charitable purpose’ under CA 2011. In Nigeria, some changes were introduced to the tax regime under the Finance Act, 2020. The Federal Inland Revenue Service (referred to as the FIRS) also issued two information Circulars dated 31 March 2021 specifying the rules that would guide its tax liability of NGOs in Nigeria. Before the enactment of the Finance Act, 2020, NGOs were exempted from taxes which were not derived from activities of a commercial nature.⁶⁰ One of the circulars entitled, the Guidelines on the Tax Treatment of Non-Governmental Organisations. The Guidelines state that tax exemption would not apply where non-profit entities derive their incomes or gains from activities of a commercial nature. It also required NGOs to file their tax returns as at when due by ensuring compliance with applicable tax procedures and maintaining accurate accounting records. Other liabilities of NGOs under the Guidelines include: registration with the FIRS for listing under the Fifth Schedule to the Companies and Income Tax Act (CITA) for the purpose of eligibility to receive tax-deductible donations under section 25 of CITA and registration with FIRS for tax purposes among others. Section 823(1) of CAMA 2020 provides for the incorporation of trustees of different forms of charitable organisations which is also similar with those organization recognized in CA 2011. As such, the term ‘incorporated trustees’ in Nigeria can also be likened to the term ‘charity’ under CA 2011. Some salient provisions of CA 2011 deserve to be considered because they share a lot of similarities with some provisions of Part F of CAMA 2020.

⁶⁰ See the Companies Income Tax Act; s 26(1)(a).

5.2 Similarities between the UK Charities Act and CAMA, 2020

The Charity Commissions (CC) in England is responsible for registering, encouraging and facilitating the better administration of charities.⁶¹ CC is empowered to remove any institution which it no longer considers as a charity and any charity that has ceased to exist.⁶² In the same vein, in Nigeria, CAC also has the statutory power to dissolve a corporate body under Part F⁶³ if the purpose for which it was formed had expired and it is unnecessary for it to continue to exist. This power is also exercisable by the Commission where all the aims and objects of the association have become illegal or otherwise contrary to public policy.⁶⁴ One of the similarities between the two statutes is that under section 46 of CA 2011, CC has general powers to institute inquiries with regard to charities or a particular charity or class of charities for any particular purposes.⁶⁵ Similarly, section 839(7) gives CAC the power to conduct an enquiry into the affairs of the association. But it is not as elaborate and effective as the provisions enshrined in CA 2011. In the UK, an inquiry may be conducted by CC *suo moto* or it may appoint a person to conduct the inquiry and receive the report.⁶⁶ CC is also empowered to request for relevant documents, execute search warrants and publish the results of inquiries.⁶⁷

In the *Inquiry Report of Kingsway International Christian Centre*,⁶⁸ CC among other conclusions observed that the conflicts of interest between the ex-trustee and the decision making trustees were not properly managed. It also noted that there was mismanagement in the administration of the charity. Therefore, the inquiry appointed interim manager pursuant to section 76(3)(g) of CA 2011 so as to work alongside the existing trustees of the charity in the day to day running of the charity. The Commission also gave a restitution order to minimize the loss of this charity.

In *Charity Commission v Thrift Urban Housing Limited*,⁶⁹ CC succeeded in winding up the charity in question. One of the main grounds relied upon to show that it was just and equitable to wind up Thrift included mismanagement of charity money, non-existent or missing records, and breaches of the Companies Act, 2006 including inconsistent information, failure to keep proper accounting records, confusion, aliases and forgery of signatures. In the case of

⁶¹ CA 2011, ss 15 and 16.

⁶² Ibid s 34.

⁶³ CAMA 2020, s 850.

⁶⁴ Ibid. See also, *Bhadmus on Corporate Law Practice* (Chenglo Limited, Enugu, 2009) 539.

⁶⁵ See CA 2011, s 46(1).

⁶⁶ Ibid s 46(3).

⁶⁷ Ibid ss 47, 48, 49, 50 and 52.

⁶⁸ Registered Charity Number 1102114.

⁶⁹ [2019] EWHC 1403 (Ch).

Charity Commission v Raymond Wright and Susan Wright,⁷⁰ the court made a finding of contempt of court against the respondents, Mr and Mrs Wright, trustees of Darren Foundation, for failure to comply with the Commission's direction made pursuant to section 47 of CA 2011 to supply evidence and documentation to assist with the Commission's inquiry.

Furthermore, under section 839(1) of CAMA 2020, CAC has the power to suspend trustees and appoint of interim manager(s) in the event of mismanagement of an association. It is important to state that section 76(1) of CA 2011 is almost synonymous with the Nigerian corporate law. For the avoidance of doubt, it provides thus:

...where, at any time after it has instituted an inquiry under section 46 with respect to any Charity, the Commission is satisfied-

- (a) that there is or has been any misconduct or mismanagement in the administration of the charity, or
- (b) that it is necessary or desirable to act for the purpose of-
 - (i) protecting the property of the charity, or
 - (ii) securing a proper application for the purposes of the charity of that property or of property coming to the charity

When the above situation arises, CC may of its own motion do one or more of the following:

- (i) by order suspend any person who is a trustee, charity trustee, officer, agent or employee of the charity from office or employment pending consideration being given to the person's removal;
- (ii) by order appoint such number of additional charity trustees as it considers necessary for the proper administration of the charity
- (iii) by order appoint (pursuant to section 78) an interim manager, to act as receiver and manager in respect of the property and affairs of the charity.⁷¹

It should be emphasized that the Charity Commission may still make some other far reaching orders in a bid to regulate the administration and operation of any charity. *Samson Ochieng v The Charity Commission for England and Wales*,⁷² was an appeal against a Commission order disqualifying Mr Ochieng from being a charity trustee for a charity and management position, for a period of eight years in relation to any charity. The Commission disqualified Mr Ochieng based on the findings of mismanagement and or misconduct in the administration of a charity. The appellate Tribunal upheld the Commission's findings of mismanagement and or misconduct and further found that the period of disqualification to be reasonable and proportionate. As such, the appeal was dismissed.⁷³

⁷⁰ [2019] EWHC 3375 (ChD).

⁷¹ See CA 2011, s 76(3).

⁷² CA/2019/0017.

⁷³ See also *Phelps v Charity Commission for England and Wales*, CA/2019/0004.

In addition, section 843 of CAMA 2020 places some restrictions on dormant accounts of an association. Similarly, CC is also empowered to give directions about dormant bank accounts of charities.⁷⁴ Some of the directions which CC can order include: the transfer of the amount standing to the credit of the charity to such other account as specified in the CC's direction,⁷⁵ freezing of the charity's account among others. In *ICRI Ltd v Charity Commission*⁷⁶ the Commission ordered freezing of a bank account. The appeal was against the Commission's decision which objected to the discharge of an order requiring Barclays Bank Plc to part with the property which it held in two third party bank accounts; thereby protecting charity funds belonging to Enfield Island Village Trust (the Trust). The appeal was bought in the name of the third party ICRI Ltd which was connected to the Trust by virtue of having the same director. The appellate Tribunal dismissed the appeal and upheld the Commission's directive.

Aside from the similarities between both legislations especially in respect of the administration of charities, CA 2011 differs in many aspects when compared with CAMA 2020 on the same subject matter. CA 2011 is far broader in scope and it covers a number of different issues which Part F of CAMA 2020 does not incorporate. Quite remarkably, CC publishes annual reports of its investigations, achievement and its activities.⁷⁷ Moreover, the enforcement mechanism enshrined in CA 2011 is much more effective unlike what operates under CAMA 2020. So it is really doubtful if the docility of CAC will not affect the proper enforcement of CAMA 2020.

5.3 Criticisms of the Charity Commission (CC)

In spite of the remarkable feats of CC,⁷⁸ there are a number of lapses observed in the Commission's operations. Sometime in 2013, the Commission was heavily criticized by the UK National Audit Office.⁷⁹ The manner in which the Commission handled some high profile cases also led to the publication of several critical reports on the work of the Commission.⁸⁰ Most of the criticisms against CC were centred on its poor compliance and enforcement as well as its

⁷⁴ CA 2011, s 107.

⁷⁵ Ibid s 107(2).

⁷⁶ CA/2018/0014.

⁷⁷ See for instance, see Charity Commission 2012-13 *Report on Tackling Abuse and Mismanagement of Charity* and Charity Commission *Annual Report 2019-2020* (APS Group, UK, 2020) 1-47.

⁷⁸ See the Charity Commission Strategy for Dealing with Fraud, Financial Crime and Financial Abuse of the Charity Sector; See also The Charity Commission's Policy on Restitution and the Recovery of Charitable Funds Misappropriated or Lost to Charity in Breach of Trust, Policy Paper, 2013.

⁷⁹ The UK National Audit Office Report titled, *The Regulatory Effectiveness of the Charity Commission*: HC 813, 2013-14 Session 926 (Crown Stationary, UK, 2013).

⁸⁰ D. Morris, 'The Charity Commission for England and Wales: A Fine Example or Another Fine Mess?' (2016) 91(3) *Chi Kent L Rev* 965-990.

perceived reluctance to use available powers, and its seeming lack of focus on dealing with serious wrongdoing.⁸¹ The criticism became very severe when it was apparent that CC was unable to regulate tax evasion involving charities.⁸² It was also observed that CC was politicized and so could not act independently as it was subject to the dictate of the appointing political party.⁸³ The ineffectiveness of CC was also due to a sudden decline in the Commission's budget and gross underfunding.

Hence, there was a need for a holistic reform and strict adherence to the tenets of charitable accountability.⁸⁴ So in a bid to resolve the problems that bedevilled CC, the British Parliament enacted the Charities (Protection & Social Investment) Act, 2016. This Act introduced new powers which enabled the Commission to consider disqualifying an individual from holding the position of charity trustee where some fundamental requirements are not fulfilled. Accordingly in the *Cup Trust*,⁸⁵ the Commission made an order under section 181A of the Charities (Protection and Social Investment) Act 2016 to disqualify Mountstar (PTC) Limited (Mountstar) from being a charity trustee for a period of fifteen years. The decision was taken after the Commission found that Mountstar as trustee, was responsible for misconduct and/or mismanagement in the administration of the charity; that Mountstar, as trustee was unfit to be a charity trustee; and that it was desirable to make the disqualification order in the public interest so as to protect public trust and restore confidence in charities.

6. Conclusion and Recommendations

Ever since the enactment of the Charities (Protection and Social Investment) Act, 2016, CC has been very effective. It is hoped that the innovations enshrined in CAMA 2020 will also spur CAC to efficiency and restore transparency as well as accountability of ITs registered in Nigeria. In this regard, CAC has to be astute in regulating the operation and administration of ITs in Nigeria. While CAC is commended for taking some bold steps⁸⁶, however a lot of lessons can still be garnered from the way and manner CC administers the charity legislations in England. For optimal efficiency of CAC, it is recommended that a separate legislation should be specifically enacted for

⁸¹Morris (n. 80).

⁸² See the *Cup Trust* [2016] EWHC 876 (Ch). This was a former registered charity that the charity trustee used for tax avoidance. See also the House of Commons, Committee on Public Accounts: *Charity Commission: The Cup Trust and Tax Avoidance, Seventh Report of Session 2013-14* (The Stationery Office Ltd, London, 2013) 3-14.

⁸³R Mason, 'Charities Should Stick to Knitting and Keep out of Politics, Says MP, reported in UK Guardian on 3 September, 2014.

⁸⁴JJ Fisherman, 'Charitable Accountability and Reform in the Nineteenth Century England: The Case of the Charity Commission' (2005) 80 (723) *Chi Kent L Rev* 723.

⁸⁵[2016] EWHC 876 (Ch).

⁸⁶See the *Corporate Affairs Commission v United Bank for Africa Plc and Ors*, (CA/L/443A/2014); [2016] NGCA 76 (30 March 2016).

smooth operation and administration of ITs in Nigeria. The present position under CAMA 2020 is that companies, limited partnership, business names and charities are all regulated under one single Act. This may not augur well for effective administration of ITs in Nigeria. A special Commission different from CAC, should be set up for proper administration of various charities in Nigeria. In this regard, CAC should concentrate on the regulation of business entities under CAMA while a special charity commission should be established to focus only on regulating the activities and operations of ITs in Nigeria. The reason adduced for the creation of a special charity commission is because CAC seems to be overwhelmed by the activities of the business entities thereby leaving little room for proper administration of ITs in Nigeria. The author submits that establishing a specialized charity commission in Nigeria bring about efficiency in the incorporation, administration and regulation of ITs in Nigeria.