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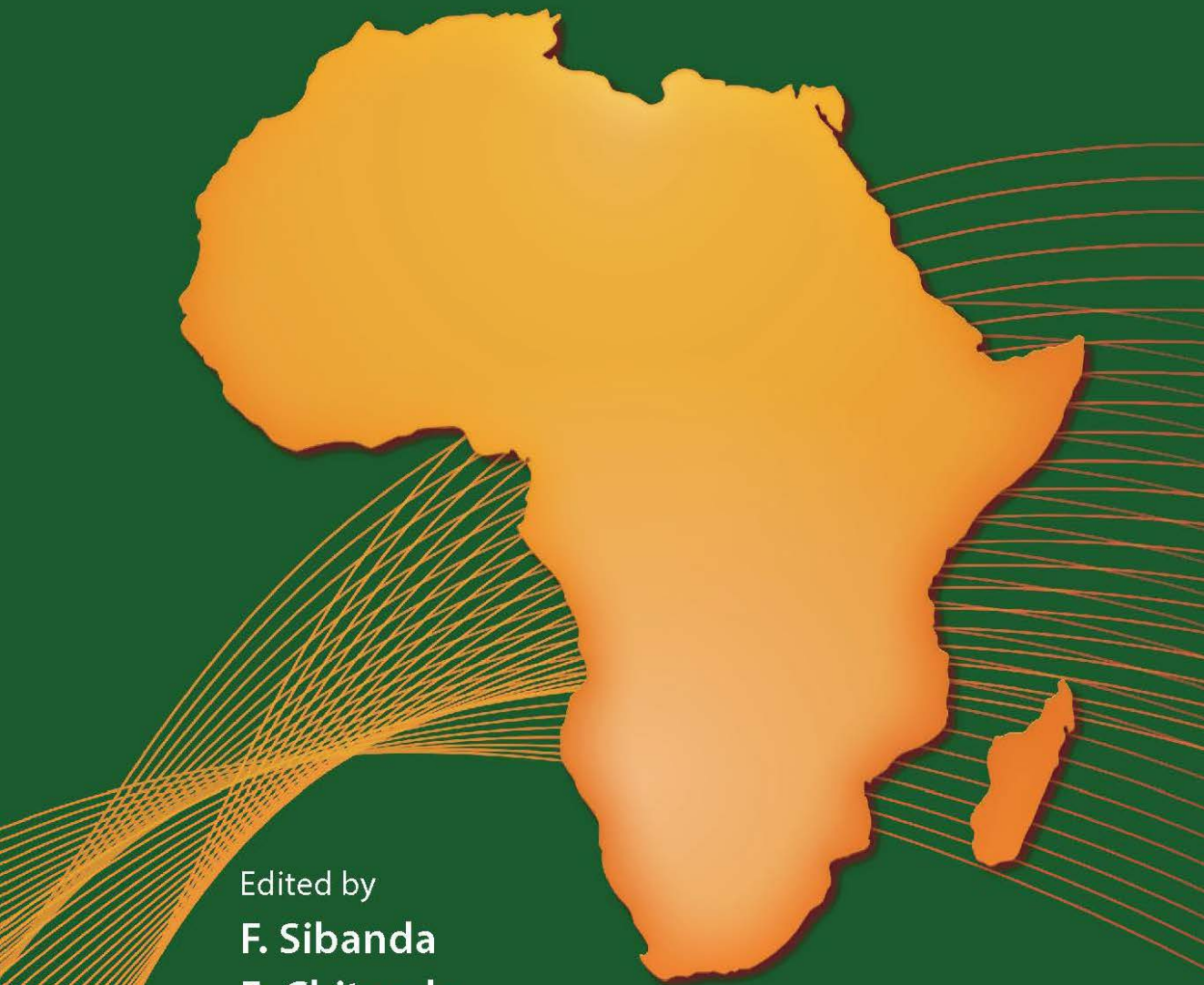

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6 State control of religious leadership in Nigeria: Spotlight on recent corporate regulatory developments

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INTRODUCTION

This chapter discusses the creation, through corporate law, of potential avenues for state control of religious leadership in Nigeria, and the current legal and civil society responses to this situation. At the centre of this discussion is the meaning and content of the concept of the right to freedom of religion. This right is well known as one of the oldest in the existing body of internationally recognised human rights, considering the prehistoric efforts of humans across the world to promote relations with divinity.[3] In Nigeria, Section 38 of the 1999 Constitution of the Federal Republic of Nigeria[4] (Nigerian Constitution) and Article 8 of the African Charter on Human and Peoples' Rights[5] (which is part of Nigerian domestic law) provide for the right to freedom of religion. The only limits of this freedom are when it "impinge[s] on the rights of others or where they put the welfare of society or public health in jeopardy",[6] in which case a law that is "reasonably justifiable in a democratic society" can be made to prevent such outcomes.[7]

There is hardly a comprehensive, universally acceptable definition of the right to freedom of religion. However, sufficient for the present purpose is the definition of the right by United Nations Office of the High Commissioner Human Rights as "the right to choose what religion to follow *and to worship without undue interference*".[8] Importantly, according to 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,

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3 Mowoe KM. 2008. *Constitutional Law in Nigeria.* Lagos: Malthouse Press, 428.

4 Cap C23, Laws of the Federation of Nigeria, 2004.

5 African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986; domesticated in Nigeria by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria, 2004.

6 *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo* (2001) 10 WRN 1 SC at 41.

7 Constitution of the Federal Republic of Nigeria (CFRN), s 45(1).

8 United Nations. Office of the High Commission for Human Rights (UN OHCHR) n.d. "Human Rights Topics: Freedom of Religion" (emphasis added).

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the right to freedom of religion includes the freedom to "train, appoint, elect or designate by succession appropriate leaders" for the religious body.[9] In support, the Human Rights Committee in its General Comment No. 22[10] on Article 18 of the International Covenant on Civil and Political Rights (ICCPR)[11] on the right to freedom of religion emphasised that the right necessarily "includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers".[12] This perspective is part of the international standards on freedom of religion recognised by the UN Special Rapporteur on Freedom of Religion or Belief.[13]

To be sure, the above perspective reflects the point that state interference with the appointment of leaders in the religious circle may constitute a violation of the right to religious freedom of the faithful if that action is against their will or creed.[14] Underlying this position is the fact that the (s)election of the leadership of any religious body is often deemed a sacred and spiritual exercise, the purity of the process of which is fundamental to the nature, sustenance and flourishing of that institution and its faith. For instance, in Christianity, there is the belief that church leaders, no matter the level, are selected by God, as the Bible records God saying to his followers "*I will give you leaders after my own heart*, who will guide you with wisdom and understanding."[15] Thus, in 2020, when the Nigerian government decided to review and amend the Companies and Allied Matters Act (CAMA) 2004 in a manner that gave it the power to select or influence the selection of religious leaders in certain situations, it was reasonably foreseeable that this action would draw the ire of some religious institutions in the country – and it did.

In light of the above, this chapter ultimately aims to determine whether the provisions of the new CAMA on the appointment of religious leaders constitutes undue interference with people's right to freedom of religion, and thus a violation of the right. In this pursuit, the chapter critically examines the extent to which the recent changes to CAMA encroach on the right of religious bodies to determine

9 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, G.A. res. 36/55, 25 November 1981, art 6(g).

10 United Nations Human Rights Committee (UN HRC). General Comment No. 22 (48) (art 18), Freedom of thought, conscience or religion. UN Doc. CCPR/C/21/Rev.1/Add.4, 48th sess, 28 September 1993.

11 International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

12 UN HRC, General Comment No. 22 (n 10), para 4.

13 United Nations Office of the High Commissioner for Human Rights (UN OHCHR). n.d. "Special Rapporteur on Freedom of Religion or Belief: International Standards". Online at: https://www.ohchr.org/en/special-procedures/sr-religion-or-belief/international-standards

14 Gunner G. 2023. "Religious Freedom as a Human Right", in Bhuiyan MJH and Zoethout CM (eds) *Freedom of Religion and Religious Pluralism.* Leiden: Brill, 70, 97.

15 Bible, Jeremiah 3:15 (The Living Bible version) (emphasis added).

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their leaders, the rationale behind the affected legal provisions of this statute, the reaction by civil society, especially religious bodies, to this situation, and the recent position of the Nigerian court on the relevant provisions of the new law.

CAMA 2020 AND ITS IMPACT ON RELIGIOUS LEADERSHIP: UNDERLYING CURRENTS AND REACTIONS

On 7 August 2020, Nigerian President Muhammadu Buhari, signed the newly enacted CAMA 2020 into law.[16] This law repealed and replaced the old CAMA 2004, which had been unamended for decades. The goal of this new law was to address the lapses and shortcomings in the old one by introducing modern provisions that would, among others, enhance the ease of doing business and strengthen corporate governance in Nigeria.[17] CAMA 2020 not only regulates business entities, but non-business entities as well. And to operationalise some of its general provisions, the Companies Regulations 2021 were made under CAMA 2020 by the CAC.[18]

Part F of CAMA 2020 (from sections 823 to 850) regulates incorporated trustees, which are non-business entities. It provides: "Where two or more trustees are appointed by any community…or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, they may, if so authorised by the… association" apply to the Corporate Affairs Commission (the Commission) "for registration as a corporate body".[19] Interestingly, the law also stresses that, when registered, it is "the trustees [that] shall become a registered corporation".[20] And being a body corporate, the trustees acquire: "(*a*) perpetual succession; (*b*) a common seal if they so wish; (*c*) power to sue and be sued in its corporate name as such trustees; and (*d*)… power to hold and acquire, and transfer, assign or dispose of any property, or interests therein belonging to, or held for the benefit of such association, … for the purposes of such… association".[21] While anyone can be appointed as a trustee by the association, CAMA 2020 prohibits the appointment as trustees of infants, persons of unsound mind, undischarged bankrupts and anyone convicted of an offence involving fraud or dishonesty in the last five years.[22] The law also recognises the right of incorporated trustees to replace or appoint additional trustees using their internal mechanisms.[23]

16 Companies and Allied Matters Act, 2020 (CAMA 2020), Federal Republic of Nigeria Official Gazette, No. 3, 2020.

17 Odeyinde O. 2021. "Appraisal of Companies and Allied Matters Act, 2020", *Bells University of Technology Journal of Management Science* 1(1):116-117.

18 Federal Government of Nigeria, Corporate Affairs Commission. 2021. "Companies Regulations, 2021".

19 CAMA 2020, s 823(1).

20 CAMA 2020, s 823(2).

21 CAMA 2020, s 830(1).

22 CAMA 2020, s 826(1).

23 CAMA 2020, s 834.

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The above provisions demonstrate the key leadership role of trustees in any organisation, including those of a religious nature. In the repealed CAMA, as well as CAMA 2020, the provisions show that the matter of appointing and removing trustees was largely the business of the respective organisations. The law only contained minimal and clear prescriptions to guide organisations in carrying out this function, all of which are within the purview of what every "reasonable man" would accept as necessary guidelines – such as the prohibition of the appointment of persons of unsound mind as trustees. However, CAMA 2020 introduced a new – and, indeed, controversial – provision empowering the Commission not only to suspend trustees, but also to appoint interim manager(s) in their place over such organisations in certain situations. The provision in issue is Section 839, of which Subsection (1) thereof provides that:

> The Commission may by 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;[24]
>
> (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.

Particularly, the Commission may, following its findings from an inquiry into the affairs of an association, "remove or suspend… any trustee who has been responsible for or privy to the misconduct or mismanagement or whose conduct contributed to or facilitated it".[25] Generally, these new powers bestowed on the Commission are exercisable with the approval of the minister (responsible for trade[26]),[27] and on the back of a court order issued in response to a petition filed by the Commission against trustees in any incorporated trustee and supported by reasonable evidence.[28] However, it appears from Section 839(7)(a) that the Commission has the power to "remove or suspend" any trustee caught by Subsection 1, but not to

24 According to CAMA 2020, s 839(5), "The reference in subsection (1) to misconduct or mismanagement extends to the employment for— (*a*) the remuneration or reward of persons acting in the affairs of the association, or (*b*) other administrative purposes, of sums which are excessive in relation to the property which is or is likely to be applied or applicable for the purposes of the association."

25 CAMA 2020, s 839(7)(a).

26 CAMA 2020, s 868(1) (defining "minster" to mean the minister responsible for trade).

27 CAMA 2020, s 839(11) (requiring approval).

28 CAMA 2020, s 839(2).

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appoint new or interim managers in their place without reference to the court. This view is supported by Regulation 28 of the Companies Regulations 2021, which operationalises Section 839 on the "suspension of trustees without reference to the courts. On the appointment of interim trustee(s), Regulation 30 of the Companies Regulations 2021 requires the Commission to appoint, over an affected religious organisation, a person of that religion if only one manager is appointed; where more than one is to be appointed, the "majority" shall be persons of that religion,[29] thus allowing for irreligious or persons of a different religion to be appointed as a manager of the affected religious body. In addition, Section 839(4) provides that the interim manager(s) shall perform their functions under the supervision of the Commission.

Several scholars and commenters have welcomed these new provisions that empower the Commission to suspend or remove trustees and appoint interim manager(s). Some posit that the true essence of the provisions is to "protect 'associations' from malfeasance and maladministration on the part of its trustees".[30] Others have argued that:

> business exigencies favor this provision of the law. While ITs [incorporated trustees] are not business entities, it will be unwholesome to disregard the pecuniary risks associated with their operations. Trustees of an IT have fiduciary obligations to the organization and by the fundamental principles of the doctrines of equity, they are acting in the interest of other entities, who for proper and effective administration are not involved in the daily operation of the organization. Like [Abegdo] has rightly pointed out, power corrupts and absolute power corrupts absolutely and to simply commit the administration of an organization into the care of an entity without a means to check their excesses may be an ineffective practice and enthronement of tyranny.[31]

However, those provisions have also drawn sharp criticisms from members of the civil society, especially religious organisations, with churches, in particular, being at the forefront of the critique. Notable Christian leaders in Nigeria – such as Pastor Enoch Adeboye of the Redeemed Christian Church of God (RCCG), Bishop David Oyedepo of the Living Faith Church (LFC), Reverend Stephen Panya Baba of the Evangelical Church Winning All (ECWA) and the Roman Ambassador and head of the Catholic Church in Nigeria, the Most Reverend Antonio Filipazzi, among others – reject Section 839 of CAMA 2020, arguing that it potentially undermines religious leadership and, consequently, the right to freedom of religion as guaranteed by the

29 Companies Regulations 2021, regs 30(1)(h) and (2).

30 Chidi HE and Chimnecherem OG. 2022. "Regulation of Incorporated Trustees in Nigeria: The Jurisprudential Arguments", *International Journal of Private and Property Law* 123, 132.

31 Dada FO, Ojo-Solomon RO, and Eyongndi DT. 2023. "Comparative Appraisal of Nigeria's Companies and Allied Matters Act 2020 With Some Selected Jurisdictions", *OUS Law Journal* 2(1):51, 63 (citing Agbedo O. 2020. "Who is Afraid of the Law of CAMA?" *The Guardian*, 29 August).

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Nigerian Constitution.[32] This was to be expected, as similar provisions in the now-abandoned Nigeria Non-Governmental Organisations (NGOs) Bill, that sought to give government control of the leadership of religious bodies (defined therein as NGOs), were roundly rejected by churches and other religious bodies in the public hearing of the bill in 2017 as a potential infringement on their religious and other rights.[33] More importantly, the Christian Association of Nigeria (CAN) – the leading Christian umbrella organisation in Nigeria, comprising numerous Christian denominations, and aiming to promote and advance Christianity in the nation and the religious interests of its members, also considered those new powers of the Commission to be unduly intrusive of their constitutional religious rights. CAN President, Reverend Samson Ayokunle, noted in a statement:

> The leadership of… (CAN) rejects out rightly… [CAMA 2020] that was assented to by President Muhammadu Buhari recently. The law, to say the least, is unacceptable, ungodly, reprehensible, and an ill-wind that blows no one any good. It is a time bomb waiting to explode… The satanic section of the controversial and ungodly law is Section 839 (1) & (2) … *We are not against the government fighting corruption. But we completely reject the idea of bringing the Church under the government's control*. The government cannot control the Church because of its spiritual responsibilities and obligations. This is why we are calling on the Federal government to stop the implementation of the obnoxious and ungodly law until the National Assembly exempts religious institutions from it… [H]ow can a non-Christian head of Government Ministry be the one to determine the running of the church.[34]

The emphasis in CAN's statement above suggests that the general rejection of Section 839 by the Christian community in Nigeria does not stem from their unwillingness to be transparent and accountable in their dealings, but the arguably aggressive and unlawful approach taken by the new provisions. Reiterating this point, the Catholic Archbishop of Lagos, Most Reverend Alfred Adewale Martins stated that "the Catholic Church has no problem about transparency and accountability", but "[r]emoving a Board of Trustees [of a church] and replacing it with government's own is a serious violation of religious freedom".[35] The same point was made by the public relations officer of God's Kingdom Society (GKS), a church headquartered in Delta State, who went on to reveal that "GKS has been submitting annual

32 See Eyoboka S 2020. "Pastor Adeboye, ECWA President Reject CAMA", *Vanguard,* 25 August; "CAMA ACT 2020: Beware of divine KARMA •Muslim, Christian leaders warn FG", *Nigerian Tribune,* 23 August 2020.

33 Sesan G. 2017. "NGO Bill: Christian, Muslim Clerics Kick", *Vanguard,* 23 September; "Controversial NGO Bill Unanimously Rejected at Public Hearing", *Ripples Nigeria,* 13 December.

34 Jannamike L. 2020. "CAN Rejects CAMA, Labels it Ungodly Law", *Vanguard,* 20 August (emphasis added).

35 Eyoboka S. 2020. "CAMA: Church Leaders Tackle Government", *Vanguard,* 21 August.

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audited reports of her accounts even before this government came to power"[36] – a demonstration of transparency that goes beyond the accountability requirement for incorporated trustees in the repealed CAMA. To further buttress this point, CAMA 2020 introduces new accountability tools – such as the requirement for trustees to submit to the Commission a biannual statement of affairs and an annual audited statement of accounts of the association[37] – which have gone unchallenged by churches and other religious bodies. In other words, as it appears, their grouse is not with accountability to—but undue control by—the government of religious bodies registered as incorporated trustees under CAMA.

Apart from the above criticisms that object to Section 839 on legal grounds, other non-legal factors underlie the reaction of churches in Nigeria to that provision. The Christian community in Nigeria fears that, considering the broad and vague nature of Section 839(1), it could easily be used by government officials to unjustly undermine and witch-hunt churches, especially those that publicly and frequently call the government to account.[38] In fact, the Nigerian government has increasingly shown its irritation at criticisms of its (in)activities by religious leaders in the country. On one of many occasions, the Catholic Bishops' Conference of Nigeria (CBCN) warned the government not to "focus energy, time and resources (on) any form of propaganda against religious leaders who disagree with (their) performance".[39] To be sure, even Freedom House, in its recent report on Nigeria, noted that "the government has also embarked on crackdowns against religious groups that have questioned its authority".[40] This issue becomes all the more important in the context of the emergence of the church in Nigeria as a major force and factor in the country's political and electioneering space.[41] The fact that CAMA 2020 was signed into law, with the provision in issue, by the administration of former President Buhari – whose election into office was stiffly fought against and sharply criticised by the generality of the Christian body in the country[42] – further fuels the concerns of the church regarding the true intentions behind Section 839 and its primary target. The feeling amongst many is that, if the government of the day sees that it does not enjoy the favour of the church, it might use Section 839 as an "offensive weapon" to silence the church.

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36 Eyoboka, "CAMA: Church Leaders Tackle Government".

37 CAMA 2020, ss 845 and 848(2).

38 Chijioke CO. 2021. "State Control of Religion in Nigeria: The Dilemma of a Secular State", *Global Journal of Politics and Law Research* 9(1):1,10.

39 Okakwu E. 2021. "Catholic Bishops to Buhari: Stop Blackmailing Critics, Address Insecurity, Unemployment", *Premium Times,* 8 May.

40 Freedom House. 2024. "Freedom in the World 2024: Nigeria". Washington, DC: Freedom House.

41 Adetiba F. 2022. "Nigerian Church and the 2023 General Elections", *Premium Times*, 8 October.

42 Ojo EO. 2020. "The Religious Factor in Nigeria's 2019 Presidential Election", *Journal of African Elections* 19(1):136-155.

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Nevertheless, government officials and some scholars have asked church leaders to be calm regarding Section 839, citing the fact that even an advanced country like the United Kingdom has for many years retained a similar provision in its Charities Act that applies to churches and other religious bodies.[43] To this, the Chairman of the Lagos Chapter of the Pentecostal Fellowship of Nigeria (PFN), the umbrella body for Pentecostal churches in Nigeria, Bishop Sola Ore reacted thus: "[I]t is easy to compare Nigeria with the UK when it suits the government. *But the question is, is the government in Nigeria behaving the way the UK government is behaving*? Nobody is saying the church is afraid of scrutiny… But then we can't allow undue meddlesomeness in the way the church is being run."[44] In other words, assuming one accepts the constitutionality of Section 839, there are still strong doubts about the maturity of the Nigerian government to responsibly exercise the wide powers granted in that provision to the same extent that the U.K. government would. This fear is not unfounded for two key reasons: (1) Nigeria's corruption perception index of the public sector has remained poor over the years (compared to the U.K.'s), with the country scoring a meagre 25 per cent, thus ranking 145 out of 180 countries in 2023;[45] and (2) in terms of religious freedom, as well, the country ranks poorly compared to the U.K. On the latter point, in 2023, Freedom House rated Nigeria's religious freedom as 1 out of 4 points,[46] while the United States Commission for International Religious Freedom (USCIRF) in a 2024 report, rated Nigeria amongst the countries with the worst religious freedom status, implicating even its judiciary in the infractions.[47]

CAN IN COURT: JUDICIAL RESPONSE TO SECTION 839 OF CAMA 2020

The protest of the churches in Nigeria against Section 839 did not end with press statements and newspaper interviews. In 2022, CAN filed legal action against the Commission and the relevant minister, giving rise to the case of *Registered Trustees of CAN v. The CAC and The Minister of Industry, Trade and Investment* (*CAN v CAC & Anor*).[48] The plaintiff, by implication, sued on behalf of itself and the churches in Nigeria which it represents, as it is allowed to do by virtue of its constitution

43 United Kingdom Public General Acts. 2011. Charities Act 2011, ch 25. See also HE Chidi and Okara GC. 2020. "Suspension and Appointment of Interim Managers for Incorporated Trustees under the Companies and Allied Matters Act 2020: Lessons from the United Kingdom", *RSMOJ – Journal of Law and Practice* 1(1):194-206.

44 Eyoboka, "CAMA: Church Leaders Tackle Government".

45 Transparency International. 2024. "Our Work in Nigeria". Berlin: Transparency International. Online at: https://www.transparency.org/en/countries/nigeria.

46 Freedom House, "Freedom in the World 2024: Nigeria".

47 United State Commission on International Religious Freedom (USCIRF). 2024. *2024 Annual Report*. Washington DC: USCIRF, May, 36-37.

48 *Registered Trustees of CAN v. The CAC and The Minister of Industry, Trade and Investment* (*CAN v CAC & Anor*). Unreported, Suit No. FHC/ABJ/CS/84/2022, 21 March 2023.

https://doi.org/10.52779/9781991260888

registered with the Commission.[49] Among several provisions of CAMA which it sought the court to render void for their infringement on some provisions of the Nigerian Constitution, the plaintiff asked the court to declare the core of Section 839 null and void for being inconsistent with their right to freedom of religion, among other rights.[50]

The court largely agreed with the plaintiff that its case succeeded on the merit. However, The court noted that it could not grant the generic relief sought by the plaintiff – which was to render Section 839 null and void – as the circumstances of the present case touched on its own unique interest, whereas the affected provisions are applicable to other (non-religious) organisations registered under Part F of CAMA 2020.[51] On the substantive issue, the court first held that Section 839(1) (7)(a) and (10) of CAMA 2020 and Regulations 28, 29 and 30 of the Companies Regulations 2021, which empowers the Commission to suspend or remove trustees upon its determination that the trustees are liable for any misconduct, mismanagement or fraudulent act in relation to the association, were "not applicable to religious organizations [such] as the plaintiff and the churches [it represents]" as they violate their constitutional rights to approach the court and to fair hearing under Sections 4(8) and 36(1) of the Nigerian Constitution.[52] This is because the affected provisions of CAMA and the Companies Regulations 2021 arrogated to the Commission powers already conferred exclusively on the judiciary by the Nigerian Constitution to determine such matters.[53]

Further agreeing with the plaintiff, the court held that, indeed, the implementation of Section 839 would likely undermine the plaintiff's right as a religious organisation and that of the churches that constitute its membership. Thus, the court declared the Section 839(1), (7)(a) and (10) of CAMA 2020 and the complementary Regulations 28, 29 and 30 of the Companies Regulations 2021 as "not applicable to religious organizations [such] as the plaintiff and the churches [it represents] as they violate the right to worship guaranteed by section [38] of the [Nigerian Constitution]".[54] Underlying this decision is the view of the court that the church is an ecclesiastical being, and each church is characterised by its own distinct dogma, creed and disposition. On this ground, the court further reasoned, it would be impossible for one church to administer another, and certainly impracticable for a church to be administered by secular authority, such as an interim manager.[55] Moreover, it is was the view of the court that to suspend trustees and appoint interim managers

49 *CAN v CAC & Anor*, 28-30.

50 *CAN v CAC & Anor*, 31.

51 *CAN v CAC & Anor*, 73.

52 *CAN v CAC & Anor*, 74.

53 See CFRN, ss 6(1) and (6)(b), 257(1), 272(1), among others, on the powers and jurisdiction of the court in Nigeria. See also *CAN v CAC & Anor*, 36-38.

54 *CAN v CAC & Anor*, 74.

55 *CAN v CAC & Anor*, 68.

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over the affairs of church would "conflict with the sacerdotal order of its divine administration and desecrate same".[56]

FURTHER THOUGHTS ON SECTION 839 AND PATHWAYS FORWARD

The decision of the court above is a welcome development. As earlier clarified, the freedom to choose religious leaders is an essential aspect of the right to freedom of religion, provided for under the ICCPR, as duly recognised by the relevant UN bodies. Having ratified the ICCPR in 1993 and provided for the same religious right in its Constitution, that official interpretation of the scope of the said right is ordinarily applicable to Nigeria.[57] Section 839 arguably went against that standard by attempting to usurp, or at best, unduly share, in the power of religious bodies to choose their leaders.

Furthermore, as earlier alluded to, CAMA 2020, similar to the repealed one, already has an impact on the selection of trustees by religious bodies by virtue of its provision in Section 826 on those who cannot be appointed as trustees. There has been no complaint against that provision, and it was not in issue in the case discussed above. Perhaps, this is because the provision appears generally reasonable, unambiguous and non-invasive. It also seems to fit broadly within the ambits of the constitutional limits to the right to freedom of religion which, as stated earlier, is when it encroaches on the rights of others or threatens public safety, order, morality or health the welfare, in which case a law that is "reasonably justifiable in a democratic society" can be made to curtail it. However, the conditions for the removal of trustees under Section 839 are not of a similar character to the inoffensive Section 826; rather, much of it is ambiguous, arguably unreasonable and unduly invasive in nature. In essence, Section 839 created an opportunity for religious bodies to be unjustly undermined with the backing of the law.

For example, Section 839(1)(b) which authorises the Commission to remove a trustee and appoint an interim manager(s) if it believes it is "necessary or desirable" for protecting the association's property or properly applying it towards achieving the objects of the association, or for public interest, is problematic from several perspectives. On the one hand, it is objectionable that it makes light of the human rights of others – including the right to freedom of religion – by empowering the Commission to interfere with the same if it is merely "desirable" to do so, and not because there is a dire need for such interference. In this light, the provision is contrary to the spirit of the constitutional exceptions to the right to freedom of religion and others, as it envisages only serious and urgent situations as being the only proper justifications for curtailing such rights. In other words, it is improper and unconstitutional for the fundamental right to religious freedom to be curtailed for non-fundamental reasons. On the other hand, imposing an interim manager for such reasons as the proper application of the property of a religious body towards

56 *CAN v CAC & Anor, 68.*

57 For the status of ratification of the treaty, see: https://indicators.ohchr.org

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achieving its objectives—or for any reason at all, is a manifestation of the lack of understanding of the dynamics and operations of a religious institution like the church. For example, such details as the place and timing of the application of the property of a church is, as they say, often an outcome of a direct instruction from God relayed to the leadership of the organisation spiritually. How then—scholars in this field have asked – can an "outsider" effectively fit into such a system?[58] It is for such reasons that the court called the administration of churches by secular authorities and others "impracticable".[59]

Also of specific concern is Section 839(7)(a) which authorises the Commission to remove or suspend, among others, a trustee who is merely "privy" to misconduct or mismanagement by other trustees, even if such did not participate in, facilitate or in fact deliberately conceal the misconduct or mismanagement. Not only is it awkward and unfair to penalise a person for merely possessing the knowledge of a fact, but such a provision is also not in accordance with Section 45(1) of the Nigerian Constitution, which only admits, for the purpose of limiting the right to freedom of religion, "any law that is reasonably justifiable in a democratic society". Section 839(7)(a) arguably fails this constitutional reasonability test, and the provision of government agencies with such sweeping and unreasonable powers does nothing but fuel the suspicion and distrust which the church has for the government in relation to their affairs and wellbeing.

Importantly, the court in *CAN v CAC & Anor* highlighted the challenge of seeking to regulate religious bodies under an instrument like CAMA, or the anomaly of lumping them together with other non-governmental organisations with educational, scientific, social, development, sporting, chartable and similar objectives under the umbrella term of "association" in Part F of CAMA 2020,[60] for the purpose of treating them in the same manner.[61] In the considered view of the court, this approach is inadequate, especially considering the distinct objective and unique approaches of religious bodies like the church, in relation to other types of associations. This may account for why the loudest voices against Section 839 has been the churches, who are also the only ones to have taken legal action against it; indeed, the consequence of that provision on the essence and rights of religious bodies is different from its impact on other forms of association. The awkwardness in seeking to register and regulate religious bodies like churches in this manner, becomes more apparent when one considers, for instance, that the powers of the Commission under the questionable Section 839 can only be exercised with the approval of the minister for trade.[62] One wonder why the minister of trade should

58 Chimezule O. 2022. "The Overbearing Power of Corporate Affairs Commission in Nigeria regarding Incorporated Trustees – Judiciary to the Rescue", *Ife Business Law Review* 4:18,23.

59 *CAN v CAC & Anor* (n 48) 68.

60 CAMA 2020, s 823(1).

61 *CAN v CAC & Anor*, 71.

62 CAMA 2020, ss 839(11) and 868.

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be involved to this extent in matters implicating religious rites and rights, and whether this trade official has the competence or interest in handling such issues.

Thus, the beginning of the solution to this quagmire may not lie far from the court's suggestion that:

> [I]t is high time to have a separate and specialized legislation, to deal with the registration, operation and regulation of religious associations and churches or in the alternative, further amend Part F CAMA to separate the registration, operation and regulation of religious organizations and churches from the general classification as "association in order to treat them as distinct entities from the other entities mentioned in S. 823 (1) of CAMA 2020. It is the quest for corporate legal personality and its attributes that makes religious associations and churches to register under Part F of the CAMA 2020, and nothing else.[63]

In following any of these suggested approaches, the government must ensure it avoids provisions that are ambiguous, unreasonable and unduly invasive in nature, such as those in CAMA 2020 discussed above and frowned at by the court. To provide effective regulation for religious institutions, the government must build trust with, rather than antagonise them.[64] The most fundamental way to achieve this, is to cooperate with and effectively involve religious bodies in the design and deployment of any proposed regulation affecting them. Indeed, it is trite that the participatory approach of the governed and the government work closely together to achieve an objective, will facilitate better "understanding and tolerance", induce "modifications of values and opinions", reduce "bias and mistrust"and increase "confidence and trust".[65] And to stress the importance of this, a former Deputy Senate President of Nigeria at a recent international conference on "Law Reform and Law-making Process in Nigeria", conceded that:

> If we must get better laws, then we must first endeavour to get the law-making processes right and in tandem with global best practices. If we must also get our law-making processes right, then, we must necessarily… enrich interface between it [the legislature] and other critical stakeholders such as the…civil society, etc… It serves the general interest of the polity if inputs are made into laws while they are in the making rather than practically ambushing them in the courts… If we must tag our laws as people's laws, it is only reasonable and moral for the process to be a [sic] truly people-driven.[66]

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63 *CAN v CAC & Anor*, 71.

64 Beierle TC. 1998. "Public Participation in Environmental Decisions: An Evaluation Framework Using Social Goals". Discussion Paper 99-06. Washington: Resources for the Future, 7.

65 Wengert N. 1976. "Citizen Participation: Practice in Search of a Theory", *Natural Resources Journal* 16(1):26-27.

66 Ekweremadu I. 2012. "Opening Address". Delivered at the International Conference on Law Reform and Law-making Process in Nigeria, held in Abuja, Nigeria, on 16 July 2012 (cited in Etemire U and Sobere NU. 2020. "Improving Public Compliance with Modern

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CONCLUSION

This chapter assessed the impact of Companies and Allied Matters Act (CAMA) 2020 and its complementary Companies Regulations 2021 on religious bodies and their right to freedom of religion. It finds that Section 839 of CAMA 2020 and the relevant provisions in CR 2021 operationalising that provision of CAMA, encroach on the right to freedom of religion of religious institutions registered under Part F of CAMA 2020 as incorporated trustees. This outcome emerges under the backdrop of the fact that a necessary corollary of the right to freedom of religion is the right of religious people and institutions to choose their leaders without undue interference by external parties, including governments and their agencies. This principle of non-interference is recognised by the UN legal system, which is applicable to Nigeria. This chapter has also highlighted the fact that it is scarcely the fact that the rejection of the said provision by religious bodies arises from their unwillingness to be transparent and accountable. Rather, apart from the legal inadequacy of that aspect of CAMA 2020, religious bodies in Nigeria fear, given the government's antecedents in trying to trying to suppress religious bodies that criticise its actions and omissions, that Section 839 may in fact be used, not as a measure of transparency and accountability, but as a tool of warfare against nonconformist religious bodies, if that were not the original purpose of including the provision in the new CAMA in the first place. Fortunately, the offensive provisions of the CAMA 2020 and the Companies Regulations 2021 have been disactivated in relation to religious bodies like churches, as the court in 2023 held them to be contrary to the right to freedom of religion, among other rights.

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