

COMPANY AND ALLIED MATTER ACT 1990-2020 AND NOT FOR PROFIT ORGANIZATIONS : A COMPARISON OF UNITED KINGDOM AND UNITED STATE OF AMERICA WITH NIGERIA

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Abstract

This research study analyzes the historic improvement of the Company and Allied Matter Act, its roles, purpose and relationship with non-governmental organizations in Nigeria, United Kingdom and the United State of America and how it administers the provisions of the Act. Exploratory research design was adopted with relevant literature as it relates to Not for Profit Organizations and the regulatory laws governing the countries under study. Findings from the research work showed that it is not practicable for the Nigeria State to exert control over religious bodies as obtained in developed countries because Nigeria is not a purely secular State and the existence of a perceptible suspicion between the two prominent religious bodies. More so, Government does not award grants to religious bodies neither does it give tax credits to tithes and special donations to religious bodies. Against the foregoing, this study hereby recommends that the idea of adopting the jurisprudence behind the regulation of NFPOs from other climes and reporting same on the CAMA 2020 is impractical and as such, our legislators need to be creative and bespoke in the formulation of policies. This can be achieved by focusing on the utilization of revenue collected by the government to better the lives of the people.

Keywords: Company and Allied Matter Act, Not For Profit Organizations, Nigeria, United Kingdom, United State of America

1. INTRODUCTION

The economic and societal involvement of the Not-for-profit sector, is largely depended on by western economies (Brown and Caughlin, 2009; Hyndman and McDonnell, 2009; Torres and Pina, 2003). According to Keating and Frumkin (2003), the improvement of applicable and operational regulatory systems is germane. Not for profit organization is an organization designed to promote or support a particular social cause or a shared point of view. In economic terms, a Non-profit organization will rather expend a huge sum of its revenue for its cause to boost its objective than sharing its income among shareholders or organizations members. Being

an extension of a nations revenue department, Not for Profit Organization are tax-exempt or charitable, this implies, they do not pay income tax on the money that they collect for their organization. Financial reporting below the required standard by not-for-profit organization has been seen as a major threat on the regulatory system and financial strength of the sector thereby endangering public confidence towards the sector (Cordery and Baskerville, 2007; Jetty and Beattie, 2009; and Leslie, 2009). For an organization to achieve financial strength, it is pertinent that they exercise transparency in information disclosure and financial reporting as these are the key things that attract investors (Barned, 2009; Keating and Frumkin, 2003 & Struthers, 2004).

Van and Heslop (2009) asserted that, the development of highly rated financial information requires the implementation of an effective regulatory system; which should address the importance of not-for-profit sector and give appropriate recommendation on how the financial reports should be prepared to give a clear, understandable and comparable view. On the contrary, in most western developed countries, charity regulation imposed on this sector are liberal with lenient measures on the quality of financial reporting standard in a bid to ease the stress of excessive imposition of the requirements of financial reporting (Cordery and Baskerville 2007; Wilkie, 2003). The current stance of the not-for-profit sector globally, calls for a wide view of its operations and regulation as it cuts across variety of national context with special focus on the development of its regulation and initiation of CAMA 2020.

Therefore, this paper was inspired based on the intrigue around the need for reform introduced by the Company and Allied Matter Act (CAMA) 2020 to restore better control and ensures that Not for Profit Organizations trustees are accountable to their contributors as compared with what is obtainable in United kingdom and United State of America.

Statement of the Problem

Most civil and common law countries extend tax benefits or preferences to organizations set up for public benefit (NGOs or charities). Tax exemptions on organization income at the state level comes in various forms, such as: tax incentives for the organization's donors, property tax or inheritance tax relief, and also VAT relief in few cases. In some countries, not-for-profits sectors are given grants or subsidies at the state level and favoritism in procuring certain government contracts. Not minding the mode it takes, the fact still remains that, preferential tax treatment or benefits from state triggers regulation.

Many governments around the globe go as far as providing other benefits to non-for-profits organization in difficult times.

Take for example, the United States non-profit sector received support from their government through (CARES Act) corona virus aid, relief and economy security act, which was enacted in March 2020. It makes provision for loans to non-profits to pay staff, rent, utilities and interest on mortgage or debt obligations. There is also provision for deferment of loan repayment, capping of interest on loans taken, improved incentives for people making charitable donations, and even availability of emergency grants and unemployment benefits. Such measures have not been adopted by the Federal or any State government in Nigeria for Not-for-Profit Organizations. Giving incentives to individuals or corporate bodies donating to non-profits are ways of motivating private philanthropy to assist public benefit activity and encourage the expansion of NGOs. In established democracies, regulations serve as a basis for securing the organization's

assets, protect the public from fraud or deceit, and ensure that the tax-exempt status is not misuse.

In some European countries, tax or fiscal authorities are responsible for the regulation of non-profits/NGO, since they are responsible for determining the requirements by which an organization is exempted from tax. The system of managing charities free from political interference was worked out by the charity commission for England and Wales. Experienced professionals run this commission and perform duties beyond oversight such as advisory support services to charities to hearten good practices with the purpose of not just making them accountable but relevant and effective.

In Nigeria, registered NGO under CAMA do not benefit the extensive tax incentives enjoyed by non-profits registered in other jurisdictions. Registered NGOs are exempted from corporate tax; more so, companies that make donations to such organizations involved in philanthropic activities can get a tax deduction of not more than 10% of the sum profits accrued to the company for that year. Unfortunately, unlike many other countries, Nigerian laws do not provide for similar deductibility of donations made by individuals. For instance, persons donating to their churches or to a charitable cause cannot get tax deductions on their donation. Nigerian laws also do not provide property tax relief for NGOs and no evidence to show that NGOs receive grants from the government. In addition, any profit accrued to NGOs in the course of their work is taxable, including profit made from assets disposed.

Helen and Christine (2010) carried out a comparative analysis on five jurisdiction, looking at their regulatory system and processes with special focus on their strength and weaknesses in ensuring that the not-for-profit sector enjoys appropriate accounting guidance. Findings from the academic literature revealed that not much attention was paid on the relationship between not-for-profit regulation and accounting regulation. Thus, this paper addresses the aforementioned, thereby providing an up to date evidence of developments in accounting regulations as it relates to not-for-profit organization with special focus on selected developed countries and Nigeria evidence. This will be the main contribution of this paper. In essence the main objective of this study is to provide a comparative analysis of company and allied matter act 1990 through 2020 as it relates to religious organizations in Nigeria with what is obtainable in United Kingdom and United State of America, considering the recent enactment of CAMA 2020 and the nascent issues on religious bodies. The paper is also structured with the aim of identifying the areas of consensus and gaps for future research work. The specific objectives are:

- i. To know the history of CAMA and accounting regulatory bodies in United Kingdom and United State of America and features of their evolving institutional context as it relates to religious organizations in international and national level
- ii. To examine the features and performance of regulatory bodies in the countries under study with special focus on the aims values and activities,
- iii. To evaluate the effects of the activities of CAMA and religious organization as it relates to study
- iv. To relate the effect of the findings from the study for development policy and practice.

2. LITERATURE REVIEW

Non Governmental Organizations

Non governmental organizations(NGOs) are widely known as a voice of civil society. Civil society in this context is simply referred to as the “third sector” of the society, completely different from government and business. They are aggregate of non-governmental organizations and institutions, independent of the government that and foster the will and interest of the citizen. Civil society in a more general sense could imply: freedom of speech, independent judiciary and so on that makes up a democratic society. The emergence of regulatory framework is not peculiar to a particular country but cut across all board. Relationships between the Government and Non governmental organizations in the past and now from research evidences has experienced a lot of set backs and varying degrees of opposition. Considering the multiplicity of NGOs constituencies, structure, size, specialization, strategy, ideology, agenda, power and source of funding, it might be difficult to describe an average NGO.

The roles of Non Governmental Organizations

NGOs enable citizens to work together voluntarily to promote social values and civic goals, which are important to them. They promote local initiative and problem solving; through their work in a broad array of fields – environment, health, poverty alleviation, culture & the arts, education and so on. NGOs follow up on the role of governments in proffering adequate response to the needs of the less privileged sections of the population. It is also important to note that those who come together as members of NGO are clearly aware of the sacrifice that comes with it, with interest being at stake in most cases. Methods put in place by this body to gain public voice and drive governmental change are as follows: campaign, advocacy, lobbying and so on. The success of the aforementioned is subject to governments view on the identified, thereby putting in place measures for implementation and recommendations where needed. The need for the governments to regulate the activities of the NGOs has given rise to a lot of tensions which exist between both parties; as such, appropriate measures should be put in place to monitor and evaluate the activities of this body. Although the government has the responsibility to ensure financial probity of NGOs considering the mode with which funds are raised for voluntary contribution, it is also pertinent to note that, except the investigation of the activities of an NGO culminate to criminal charges, the enforcement of any evaluation recommendation is the sole responsibility of the trustees; in this case the United Kingdom government itself does not have the machinery to force.

Regulating the non-governmental sector in United Kingdom

The scope and scale of United Kingdom charity law is indeed daunting. Over the years, the reform of legislation has been prompted by abusive practices of organizations, especially in the field of fundraising from the public for purposes which were found not to be charitable. The administration of charities is now governed by the Charities Acts of 1992 and 1993. The 1992 Act has been overtaken by the 1993 Charities Act, a consolidation Act which replaces the Charities Acts of 1960, 1985 and parts of the Charities Act of 1992. These laws are supplemented by a welter of subsidiary legislation, plus European Community directives and regulations. To register as a charity in the UK, one has the choice of either registering as an 'unincorporated' or a 'corporate' organization. Companies, industrial provident societies or royal charter bodies all falls under corporate Organization. On the other hand, unincorporated

associations include societies, clubs, trusts or friendly societies. The major difference between corporate or unincorporated organizations is that the former has a legal existence independent of its members while the latter has no separate legal existence apart from its members.

Provisions of CAMA as it is applicable to religious organizations

CAMA 2020

By virtue of section 839 of CAMA 2020 it 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 there has been any misconduct or mismanagement of the association, or where the affairs of the association are being run fraudulently or where it is necessary or desirable for the purpose of public interest. It also suggests that the powers of the commission override that of our courts. Conclusion is that petitioners do not need the court to suspend trustees. All they need to do is appeal to the belief and desires of the Registrar General or the supervising Minister.

Section 823 (1) recognizes the appointed trustees by a community of persons bound by custom, religion, kinship or nationality. Section 839(7) provides that after an enquiry into the affairs of the association, if the commission is satisfied as to the matters in subsection (1) (where you have the ambiguous and dictatorial clauses like “reasonably believes”, “deem it necessary or desirable”, “public interest.”) it may suspend and remove any trustee. What is clear from the provisions of CAMA (1990) as discussed above is that there exists a link between external accountability mechanisms of religious organizations accountability (CAC) and the internal mechanisms of religious organizations accountability (the board and management) especially their effectiveness and efficiency given that the CAC is empowered by CAMA (1990) to ensure that the regulations that set-up the board and management and their functions are followed by the TIA.

3. THEORETICAL FRAMEWORK

Accounting regulation research came up with variety of explanatory theories. Theories and mechanisms of regulation generally fall into several categories. Exhibition of some of these theories will proffer insight and interaction to the framework. Thus, this paper adopts stakeholder theory thereby providing the underlining of the study.

3.1 Stakeholders theory

Stakeholders’ theory emphasizes the level of responsibility of a business towards its stakeholders and shareholders respectively. According to Sanda, Mikailu and Garba (2005), stakeholders’ theory sees the firm as a link between shareholders and management on one part and government, creditors, employees, shareholders and other stakeholders on the other part. This theory forecast beyond shareholders and manager’s relationship, thereby considering sets of stakeholders such as: suppliers, customers, employees and local communities. Thus, stakeholders’ theory opined that more attention should be drifted to include other stakeholders such as government and creditors as against traditional management shareholders relationship;

adding that the key to a manager's survival is success, this can only be achieved if the company is well managed than anyone would have done (Pandey, 2010). Stakeholder theory therefore posits that every organization strives towards its going concern and as such it becomes imperative to create value for all its stakeholders to achieve this course; it is also expected of a firm to fulfill its legal and ethical responsibility to the society, government and customer in a bid to attain long term sustainability value for the organization.

Economic theory of regulation

Stigler (1971) gave a clearer view on the assumption of capture theory, which was further improved into economic theory of regulation using public choice concept. Economic theory of regulation posits that regulation is economic goods whose allocation is governed by the laws of demand and supply (Posner, 1974). On the demand angle, the proponents of economic regulation theory contended that corporate interests prevail more in the market than groups that comprises politicians and consumers, based on the assumption that industry possess more information (Peltzman, 1976, p.212). On the supply perspective, the economic regulatory model affirms that, in as much as the demand from groups that are politically effective is higher than is opposition, then regulation is made available by policy maker (Rahman, 1992, p.115). As against public interest theory, economic regulation theory opines that market inefficiencies are not completely corrected by state intervention, unlike capture theory, that adopt the notion which states that regulation exists to foster the economic interests of politically effective groups (Stigler, 1971).

It was argued that the demand for, and the supply of, regulation followed a five stage cyclical process over time, which was constantly disrupted by crisis. This cycle stage was proposed by Mitnick (1980) as follows: (a) the access stage, deliberation of issues; (b) the decision stage, when proposals are decided; (c) implementing stage; (d) administration of regulation stage; (e) the impacts stage, assessment of the effects of regulation and suggestion of necessary modification by regulatory agency. Mitnick added that regulation change over time is a manifestation of the changing interests of politically effective groups.

Public Interest Theories of Regulation

According to this theory, the regulation of firms or other economic actors contributes to the promotion of the public interest. Noll (1989a) stated that the theory of public interest assumes that politician's actions are driven towards public interest and the availability of information on the cost and benefits of regulation the more complex public interest theories of regulation take the costs of regulatory intervention into account. The more a regulator intervenes in the private operation of the firm, the higher the intervention costs will be. The public interest theories of regulation thus basically assume a comparative analysis of institutions to have taken place to efficiently allocate scarce resources in the economy. In summary, the public interest theories of regulation depart from essentially three assumptions: the prevalence of a market failure, the

assumption of a ‘benevolent regulator’ or, alternatively, an efficient political process and the choice of efficient regulatory institutions.

4. EMPIRICAL REVIEW

The empirical literature is structured in line with the countries under study, developed countries and Nigeria’s evidence.

Joannie & Assem (2014) explored on Accountability.org an online disclosure by United State Nonprofits. About 200 websites of United State non-profits rated in the chronicle of philanthropy 2010 was examined using an accountability index developed by the study. Findings revealed that not much informations were disclosed by non-profits that are related to religion, this implies that religious bonding aid trust and minimizes self disclosure incentives

Helen and Christine (2010) carried out a comparative analysis on five jurisdiction, looking at their regulatory system and processes with special focus on their strength and weaknesses in ensuring that the not-for-profit sector enjoys appropriate accounting guidance. Findings from the academic literature reveals that not much attention was paid on the relationship between not-for-profit regulation and accounting regulation.

Saunah et al (2013) examined the annual reports of 100 non-profit-organization duly registered with the registry of society under the charity and religious umbrella. Study showed differences in the reporting practices of the charity and religious segment of non-profit organizations. The overall findings stated that the NPOs do not follow the laid down rules as provided by its governing body and ROS on information disclosure. This indicate a need to put in place strong enforcement by the regulatory bodies to ensure and strengthen compliance to laid down rules.

Marybel et al (2016) examined the status of comparative research of NPOs. 110 articles published in philanthropic and third sector journals in the last 10 years was reviewed, findings revealed that practical constraints of the comparative research practice influence NPO research. Findings revealed that the regulation of NPOs development and activities are the major focus of comparative research on NPOs; while the adopted analytic frameworks are civil society, social capital and welfare regimes.

Omobolaji (2011) explored on accountability in faith based organizations. Performance of measures which embodied the accountability of FBOs in developing countries was evaluated with special focus on Nigeria.

Result findings showed that measures put in place to monitor the accountability of FBOs to their stakeholders and for stakeholders to hold FBOs accountable has been weakend by political and structural inadequacies that emanates from the week nature of the Nigerian state and legislation gaps that addresses external accountability mechanisms. In the same vein, PLAC (2020) analyzed the regulation of Not for Profits Organizations registered as incorporated trustees under ‘Part F’ of CAMA Act (2020) findings revealed that there is a general consensus that lack of transparency and decline in trust can lead to lower rates of compliance with rules and regulations. This implies that in as much as the intentions of government remain in doubt, attempts to expand regulatory practices without corresponding government accountability will be met with public resistance. Study recommended openness and participatory inclusion as critical

factors, in addition is the avoidance of Government interference to enable the success of laws and public policies.

Francie (2007) examined non-profit governance in the United States: Findings on the performance and accountability from the first national representative study. The study focus majorly on the relationships between the public policy environment and non-profits sector. Study stated that the impact of public policy extends beyond legislative proposals aimed specifically at non-profits. Further findings also revealed that efforts to strengthen non-profit governance have insufficiently dealt with the fact that many non-profits are experiencing difficulty finding board members, which is one of the major factor associated with lower levels of board engagement.

Cristina, Ortega and Rodriguez (2020) examined the antecedents and dimensions of the transparency of information disclosed by non-profit organizations (NPOs). Important questions relating to the study were addressed from international perspective. Results highlighted lack of transparency legislation in the third sector, which results to the adoption of voluntary disclosure of information policies by NPOs to improve stakeholder's credibility view of the entity. Study recommended the following in order to achieve sustainable development: peace, governance of institutions, corruption reduction and transparency.

6. METHODOLOGY

The study established a comparative analysis of what has been before CAMA 2020 and now, with special focus on religious organizations in Nigeria, United Kingdom and United States of America. Exploratory research design was adopted with relevant literature as it relates to not for profit organizations and the regulatory laws governing the countries under study.

7. DISCUSSION OF FINDINGS

Being a service organization, religious organizations are answerable to their founder, domestic service regulators and their beneficiaries. These principals have at their disposal mechanisms for ensuring accountability. An assessment of CAMA 1990 as it relates to religious organizations reveals that the act lacks the capacity to hold religious organizations accountable due to political and structural inadequacies birthed from the weak nature of the Nigerian state and variance in the enabling legislations for each mechanism as compared to United State of America and United Kingdom.

Appropriate information's that are useful on sources and amounts of funding available to religious organizations, their internal processes, the services they provide, the quality and scope of their service delivery and financial activities are not provided by the mechanism. This lack of useful information deprives the stakeholders the ability (donors, state and clients) to participate in the activities of religious organizations and to hold them responsible through withdrawal of funding (donors) or by protesting (voice). One of the major problem Nigeria governments is facing, is the lack of resources to monitor and enforce legislation designed to regulate not for profit organizations. What this implies is that, laws can never anticipate change nor encompass all dimensions of an issue. It is really unjustifiable looking at the components of CAMA 2020, in relation to a country where the taxes collected are not accounted for and inquiries through the Freedom of Information Bill are usually infuriated. It is agreed that NGOs and religious

organizations are major sources of hope for the oppressed and various empirical evidence has shown that lives have been touched by NGOs, but no evidence indicating the utilization of collected revenues in the lives of average Nigerians. The freedom of association as guaranteed by the constitution is hallowed and should not be manipulated in a nation like Nigeria. Without mincing words, findings from empirical reviews as it relates to the research study, has clearly proven that United Kingdom Charity Commission and the United States internal revenue service represents a government that has shown integrity in the implementation of its budget and provision of basic amenities to its people.

8. CONCLUSION AND RECOMMENDATION

The findings from this research work shows that it is not practicable for the Nigeria State to exercise control over religious bodies as obtained in developed countries for the following reasons; Nigeria is not a purely secular State. The Muslim North is not extremely secular as the South. While reading carefully through the Constitution of the Federal Republic of Nigeria, one would clearly notice that the constitution itself has been defined to be secular, partially secular, non-secular and multi-religious. Experts asserted that the mutual competitions and the vagueness of the constitution are responsible for the indecisive secular parochial approach. Despite the fact that we claim to be secular, yet, we hold on to the sectarian opportunities that we absurdly enjoyed from a state that is expected to have no connection with religious organization. There is a perceptible doubt between the two prominent religions bodies. considering the religion of the political leadership of Nigeria, application of the regulation of religious bodies could generate tension, in the sense that, an attempt to curb the influential resistance of members of religious bodies or government usually transit to a state of insecurity.

According to Kukah (1993) the effect of religion in a country like Nigeria is presumed to have had a lot of negative impacts, considering the display of politics and religion in an attempt to gain political hold on the population. Over the years religion has been used by the Nigerian oligarchy as an instrument to power. This act is gradually taking a new shape as the influence of oligarchy in some states is facing off.

In conclusion, the government does not award grants to religious bodies neither does it give tax credits on tithes and special donations to religious bodies.

Tax benefits and incentives enjoyed by non-profits registered NGOs in Nigeria under CAMA act cannot be compared with what is obtainable in many other jurisdictions where NGOs are exempt from corporate tax and companies that make donations to organizations involved in philanthropic activities also get a tax deductible donation not exceeding 10% of the total profits of that company for that year. Unlike many countries, Nigerian laws do not provide for similar deductibility of donations made by individuals and profits made by NGOs while executing their work. For instance, persons making donations to a church or a charitable cause is not entitled to tax deductions, same measure is applicable to the sale of an office equipment or building.

Nigerian laws do not provide property tax relief for NGOs and there is no proof stating that NGOs take grants from the government.

Against the foregoing, this study hereby recommends that the idea of copying the jurisprudence behind the regulation of NGOs from other climes and pasting same on the CAMA 2020 is counter-productive- and our legislators need to rise above copying and be creative and bespoke in the formulation of policies. This can be achieved by focusing on the utilization of revenue collected by government to better the lives of the people.

9. SUGGESTION FOR FURTHER STUDIES

Researchers should widen the scope of the study to other jurisdiction to derive further ideas into alternative regulatory space and also investigate wider regulatory mechanisms. Records of new developments in the jurisdiction under study should be carefully examined for a better analysis of current interactions and changing nature of the various regulatory bodies and not-for-profit regulatory space.

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