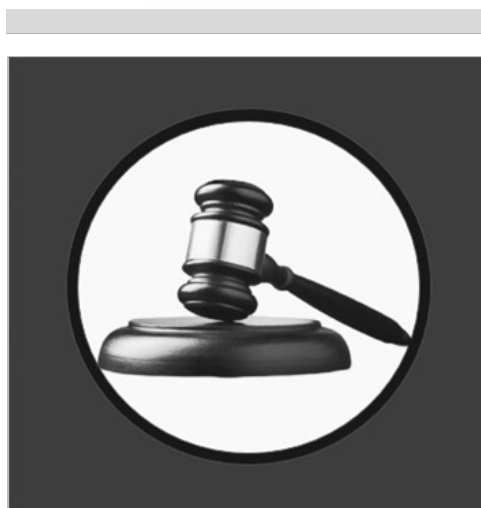


**A CRITICAL APPRAISAL OF THE
POWERS OF THE CORPORATE AFFAIRS
COMMISSION (CAC) UNDER SECTION
839 OF THE COMPANIES AND ALLIED
MATTERS ACT 2020**



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Abstract

The Companies and Allied Matters Act 2020 is considered a new dawn in corporate matters' administration because of the new innovations introduced by it. Despite these innovations, Section 839 (1) and (2) of the Act¹ is particularly criticised for the powers of suspension of incorporated trustees it conferred on the Corporate Affairs Commission. This article critically appraised the section against the backdrop of the powers of suspension, and appointment of interim managers for supervision and management conferred on the Commission. The researchers found that the Commission's discretion on its "reasonable believes" contradicts the powers conferred on the court to suspend trustees of an association. It is also the finding of this work that while the Act made provision for suspension of the trustees, it made no attempt to specify the qualification and other requirements necessary to determine the interim managers for the purpose of protecting the various types of registered organisations under the section. Similarly, the power of the Commission to suspend or remove trustees of an association which they were never part of, derogates from the rights of the members of the association and their freedom of association. The researchers recommended among other things the need to amended section 839 to absolutely confer the powers to suspend, remove and appoint interim managers on the court upon the petition of members of an association.

Introduction

On the 7th August 2020, following a series of debates and criticisms, President Muhammadu Buhari assented the Company and Allied Matters Bill, which the National Assembly recently passed into law. After the Bill's passage and assent, certain provisions of the Act, especially as it relates to incorporated trustees have been criticized as being unfounded and undemocratic. This is because the law appears to push incorporated trustees into operating in perpetual fears of having interim managers assume the control and management of its affairs.

This fear appears to be genuine as the suspension or removal of an association's trustees based on the Commission's reasonable belief as encapsulate in the new law may apparently derogate the constitutional provision of freedom of association. In this wise, the freedom of

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¹ Discussions on other subsections of section 839 of the Act relating to subsection (1) and (2) were also made.

association includes an individual's right to tailor his business in furtherance of the freedom, in a way that best soothes him without interference from the whole world, especially where such a business is not in violation of any law for the time being in force. Forcing an interim management down the throat of incorporated trustees arguably is in contravention of this freedom. More particularly that the Constitution of the Federal Republic of Nigeria 1999 (as amended) is sacrosanct on this freedom. It provides that:

Every person shall be entitled to assembly freely and associate with other Persons, and in particular he may form or belong to any political party, trade Union or other association for his /her interest: Provided this provision shall not derogate from the powers conferred upon it by this Constitution.²

The above section has enjoyed judicial blessings in a number of cases decided by superior courts of record.³ Both the law and judicial decisions clearly state that an individual has the right or power to decide on where he belongs and to associate with whomever, provided it does not offend the supreme law of the land. However, to ensure the legal sanctity of such associations, they are advised to be registered so as to enjoy all the benefits that the law provides.

One area of great concern is the likelihood of the section to create a platform for political interference. This is because developing countries such as Nigeria are not free from overbearing political interferences, often contrary to the will of the people and against their welfare. This often times is not unconnected with corrupt practices, tribalism, nepotism, negative political godfathers, partisan politics etc. Thus, the exercise of the powers under Section 839 being made subject only to the approval of the Supervisory Minister, as a political appointee of the government raises grave concern.

Brief History of Incorporated Trustees Prior To The Company and Allied Matters Act

2020

In Nigeria, the history of incorporated trustees can be traced back to the Land (Perpetual Succession) Ordinance No 32 of 1924. This Ordinance was made by the colonial administration

² Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 40.

³ See *Abubakar v A.G. Federation* (2007) 3 NWLR (pt. 1022) p.601; and *The Registered Trustees of Association of Tippers and Quarry Owners of Nigeria v Yusuf & Ors* (2011) LCN/4882(CA).

in Nigeria to enable the appointment of trustees of unincorporated associations and organizations who may then apply for the incorporation of the association or organisation. The essence of appointing these trustees and their subsequent application to be registered is to have perpetual succession and hold land on behalf of the association. After Nigeria attained independence in 1960, and by the designation of Ordinances, the Land (Perpetual Succession) Ordinance was re-designated as the Land Perpetual Succession Act, Cap. 98, Laws of the Federation of Nigeria 1958. This Act was later modified and incorporated as Part C of the Companies and Allied Matters Act 1990. Although the provisions of the Land (Perpetual Succession) Act regarding incorporated trustees are *in pari materia* to the provisions of incorporated trustees under the CAMA 1990, Non-Governmental Organizations with non-profit character such as clubs, political parties, churches, and cultural or old students' associations are registrable under Part C of the 1990 Act.

In 2004, the Companies and Allied Matters Act 1990 was designated as the Companies and Allied Matters Act Cap C20, Laws of the Federal Republic of Nigeria 2004. The powers to manager and regulate the affairs of the organisation so registered is the sole responsibility of the organisation. There was no interference by the government whatsoever. This freehand in operation of such organisations gave more credence to the freedom of association guaranteed under the constitution.⁴

In what appear to be the most recent revolution of the law, the 1990 CAMA, re-designated in 2004 was repealed by the Companies and Allied Matters Act 2020. The new 2020 Act provided for incorporated trustees in part F of the Act.

The Nature of Incorporated Trustees

The foundation of an incorporated trustee is when two or more trustee are appointed by a community of persons bound by nationality, religion, culture etc., to promote educational, religious, literary, sporting or any other charitable course and thus not business organizations. These appointed trustees will take further steps to register the association upon which an incorporated trustee would have been created.

⁴ CFRN (n 2)

Upon incorporation, the established body or organization enjoy legal personality status to sue and be sued in its corporate name even if the trustees become incapacitated or are dead. In *Reverend R.I. Onuekwusi v The Registered Trustees of the Christ Methodist Zion Church*,⁵ an objection was raised as to the competence of an action instituted by the Registered Trustees of the Christ Methodist Zion Church, on the ground that all the original trustees of the Church had died and therefore, it could not have instituted the action in its corporate name. The Supreme Court held Per Fabiyi, JSC, that the death of the original trustees or any of the trustees cannot deny the registered church of its corporate existence and capacity to sue, since the church, under law enjoys perpetual successions.

Incorporated trustees enjoy legal personality, a status they derived from trusteeship, entrusted to them for the purpose of non-profit making. By this arrangement, the relationship is fiducially in nature. The activities of the trustees are a very important one, because, the trustees do not only help to drive the mission and vision of an organisation, but also play instrumental roles to managing the assets they hold in trust. The process of appointing trustees could be by selection, which may be done on the basis of personal relationships or some other person recommendations.

Incorporated Trustees Under The Company And Allied Matters Act 2020

In Nigeria, the Corporate Affairs Commission (CAC) was established in 1990 vide Companies and Allied Matters Act (CAMA) {CAP 59, Laws of the Federation on Nigeria, 1990}. Its establishment was maintained in CAMA CAP C20, LFN 2004, and CAMA 2020 (later in this work referred to as the “the Act”). It is an autonomous body charged with the responsibility to regulate companies’ formation and management in Nigeria.⁶ The CAC services are categorized into three parts before the new CAMA 2020. Part A deals with incorporation and registration/administrative matters, part B deals with Business Name, and part C deals with incorporated trustees, which is now part F in the new CAMA 2020.

The subject matter of this article falls under Part F of the Act which deals with incorporated trustees. Incorporated trustees are favoured organizational structure for non-profits.

⁵ (2011) 6 NWLR.

⁶ See A. Apelegan, “Tax and Regulatory Matters a Foreign Investors Must Avert his Mind in Nigeria 2000” <<http://www.nigeria-law.org/Companies and Allied Matters Act>> accessed 28 October 2020.

From the date of registration, an incorporated trustee become a body corporate by the name described in the certificate, and shall have perpetual succession and a common seal, and power to sue and be sued in its corporate name among others.⁷

Under the Act, there are specific provisions made for incorporated trustees in terms of its formation, appointment of trustee and suspension.

Formation of Incorporated Trustees

Incorporated trustees are non-business and non-profit making organizations and by section 823 of the Act, they are formed to facilitate the acquisition of corporate personality by a community of persons bound by customs, religion, nationality or any association of person established for scientific, social developments, education among others. Incorporated trustees are the vehicle for registration of organisations or associations such as religion bodies, initiatives, educational and other purposes for the advancement for humanity. The community of persons will usually appoint some persons as their trustees whose responsibility it is to apply for, and register the body or organization.

Section 825 of the Act provides that an application for registration under section 823 shall be made in the name of the proposed corporate body which must contain the following: the words "Incorporated Trustees of"; the aims and objects of the association; and the names, addresses and occupations of the secretary of the association, if any. Attached to the application shall be two printed copies of the constitution of the association, duly signed copies of the minutes of the meeting appointing the trustees, and authorizing the application which must show the people present and the votes scored; and the impression or drawing of the proposed common seal, if any.

Although it is possible to run a non-profit organization without registration as incorporated trustees, there are key benefits that registration afford such organizations. Some of benefits include corporate legal personality, tax avoidance or non-payment of taxes except where profit is made by the organization or taxes payable on consumables such as VAT; perpetual succession, and protection of its name upon registration as no individual or group of persons can will be permitted to use the same or a similar name for the purpose of registration.

⁷ *Anyeagbunam v Osaka* (2002) 5 NWLR (Pt.657) 386.

Appointment of Trustees

The appointment of trustee(s) is usually done by the community of persons bounded by same or similar interests. These interests could be custom, religion, kinship or nationality. The community of persons could also be an association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose. By section 826 (1), a person shall not qualify to be appointed or act as a trustee if he is an infant; a person of unsound mind having been so found by a court; he is an undischarged bankrupt; or he has been convicted of an offence involving fraud or dishonesty within five years of his proposed appointment.

If the appointed trustees do not suffer any of the above disabilities, they may apply to the CAC for registration as incorporated trustees. The name of the organization, names of the trustees, date of birth, nationality, address, occupation, government-issued ID and passport photograph, are the most important details that an appointed trustee (s) need to present in such instance.

As regards the duration of period within which an appointed registered trustee can act, it should be noted that trustees can generally act for a long or short period as they choose. However, it is generally expected that whenever trustees accept their responsibility to act as such, they should do so with an intention of being a trustee for a fairly long period. This is because the name of each of the trustee is reflected on the certificate of incorporation which is an important document for the purpose of executing its objectives and carry on its activities.

Suspension of Incorporated Trustees

One major innovation is the provision of section 839 of the Act, which provides for the suspension of incorporated trustees. For the avoidance of doubt, the relevant portions of the section are reproduced below:

- (1) 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;
 - (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.

The above process or procedure for the suspension of incorporated trustees is to be initiated by either the Commission or one-fifth of the association's members via a petition to the Court and must be supported by reasonable evidence. However, in examining the said petition, the court must exercise its jurisdiction judiciously and judicially. Where upon a finding by the court, a trustee is to be suspended; the court may make the following orders:

1. Suspend any person/ employee/ officer of the association for not longer than 12 Months;
2. Appoint additional trustees for proper administration;
3. Order persons holding property on behalf of the association, not to part with it without the approval of the court;
4. Vest an association's property to an official custodian;
5. Restrict the association from engaging in transactions and making payments without the court's approval; and
6. Appointment of an interim manager to act as a Receiver and a Manager accordingly.

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 above, and upon an order of the court, it may suspend or remove such trustees accordingly.

A Critique Of The Powers Of Suspension Under The Act

Duplicity of the Powers of Suspension

Section 839(1) provides that the Commission may by order suspend the trustees of an association and appoint an interim manager or managers upon reasonable believe that there is misconduct or mismanagement or fraud or the need to protect the association's property. This subsection apparently confers the power of suspension on the commission as no mention of the 'court' is made. The grounds for such a suspension are clear and have been reproduced in detail above. To buttress the unequivocal conferring of the powers to suspend on the Commission, subsection (7) of the same section 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 any trustee who has been responsible for or privy to the misconduct or mismanagement or whose conduct contributed to or facilitated it. By paragraph (b) of subsection (7) the order of the court is only needed after the suspension or removal has been made by the Commission to establish a scheme for the administration of the association. While in one breadth, subsection (1) confers the power to suspend on the Commission, subsection (2) clearly confers the same power of suspension on the court by the use of the word SHALL. The word 'SHALL' is mandatory and the suspension can only happen on the order of the court upon a petition filed by the Commission. In *Onochie v Odogwu*,⁸ the Supreme Court held that the word 'shall' is used to express a command of what is legally mandatory to be observed. It is therefore confusing what the intention of the Act regarding suspension of trustees is in this section, and therefore it is unclear on whose authority the suspension will be done. However, if we are to assume that pursuant to subsection (2), the Commission is to file a petition, whereon the court will make the order of suspension, it is rather a duplicity of function for the Commission to make an order pursuant to an order the court has already made.

Absence of the Duration of Suspension

Outside the seemingly duplicity of the powers of suspension conferred on both the Commission and the court, subsection (1) and (7) which jointly provided for the suspension or removal of a trustee, never made any provision for the duration of the suspension period. It is argued that

⁸ [2006] 6 NWLR (Pt.975) 65.

stating the suspension period or process that will determine the duration of suspension is necessary. For instance, section 839 (6) (a) of the Act provides that A court of competent jurisdiction may, upon the petition of the Commission or members of the association order or suspend any person, officer, agent or employee of the association from office or employment, provided that such suspension does not exceed 12 months from the date of the order or suspension. It is therefore noteworthy that without a specific period of suspension provided by the Act, abuse and arbitrariness is inevitable as the commission can suspend the trustees of an association indefinitely. Where a trustee is outrightly removed pursuant to subsection (7), subsection (8) provides for a replacement of the trustee so removed by an order of the court. It is again unfortunate that no duration is provided for within which such a replacement is made or the period within which to commence the process of replacement.

Discretionary ‘May’ in the Powers of Suspension

In subsection (1) of the Act, suspension by the Commission is empowered by the use of the word ‘MAY’ which simply means the exercise of discretionary powers of the Commission. This means the Commission may or may not suspend the trustees. Where it does, the powers can be said to have been rightly exercised. It is rather surprising that the subsection employed the word ‘May’ in the face of reasonable believe that there is a misconduct, mismanagement, fraud, or the need to protect the property of an association. However, what appears to be most appropriate to do where there are reasonable grounds to believe that the overall interest of the association will be jeopardised by any unlawful dealings, the process for the suspension of the trustees should commenced forthwith without any discretion.

Likely Infringement of the Freedom of Association

It is rather surprising that the Commission which never took part in the coming together of person exercising their rights of freedom of association under section 40 of the constitution⁹ would be vested with the powers of interfering with the activities of the association. The right to challenge the running or operations of an association should be strictly vested in those who formed the association as provided for instance, in subsection (2) where one-fifth of the members of an association can file a petition against their trustees. Empowering the Commission to

⁹ CFRN, 1999 (as amended).

interfere with the operation of an association without the support of the members of the affected association, may not go without legal challenge. For instance, those who may be negatively impacted by a decision of the Commission on its volition to suspend or remove trustees pursuant to the provision of section 839, may challenge such a decision in court, in view of its perceived inconsistency with section 40 of the constitution.¹⁰ And the court can declare any of the subsections of section 839 void for its inconsistency with the constitution, while retain other provisions. This is because, there are instances where the courts have declared certain sections of a statute void and of null effect without necessarily making a declaration as to the validity of the entire law. For instance, in the case of *Labour Party v INEC & A.G Federation*,¹¹ the Federal High Court (per Kolawole J) declared sections 140 (2) and 141 of the Electoral Act (as amended) as null and void for being inconsistent with sections 134 and 179 of the 1999 Constitution as amended.

Non-specified Qualification of Interim Managers

Where interim managers are to be appointed, the law did not specify the qualification, religion, or ethnic background of the interim managers given that some of these Organisations have specific and peculiar natures. Once the trustees of any association are suspended, the Commission or the court with the assistance of the Commission can appoint interim managers. This could raise problematic situations especially if the association is a religious or educational body. For instance, if the trustees of a Church are suspended, a Muslims can be appointed as managers or members of the managers. Similarly, where the trustees of a Mosque are suspended, Christians can also be appointed as managers or as part of the interim managers for the Mosque. Another likely area of problem is the possibility of appointing an interim manager who is not well schooled for and educational association on account of his political, or socio-cultural affiliations to the powers that be. This is critical in view of the fact the minimum level of qualification required to hold political office in Nigeria is a secondary school certificate. More so, appointments in Nigeria are mostly politically motivated and one can rightly foresee a situation where an unschooled or a secondary school

¹⁰ Ibid.

¹¹ (2011) LCN /4781 (CA).

certificate holder will be appointed manager of an educational organisation of a tertiary institution's standard.

The Commission: A Judge in its Own Case

Of grave concern, is what the present researchers consider the most offensive aspect of section 839. Subsection 3 of the section provides that 'upon the hearing of the petition and the appointment of the interim manager, the Court, with the assistance of the Commission, may make provision with respect to the functions to be performed by the interim manager or managers appointed by the order.' This provision is rather surprising since the Commission is a party to the proceeding in initiated the petition for the suspension. It is therefore awkward for the Commission to assist the court it can be regarded as an interested party.

No Provision for Fair Hearing

The powers of the Commission to suspend is not checked by the need to ensure fair hearing at the commission's level to give room for explanations to be given by the trustees to be affected. In Australian for instance, although the Charities and Not-for-Profits Commission Act 2012 provides for the suspension of incorporated trustees, the law provides for the Commission to issue a 'SHOW CAUSE' reasonable notice to the trustees to be suspended, giving them an opportunity to make representations stating or showing why they should not be suspended accordingly. The law provides in Division 100, particularly in 100-10 (4) that before a responsible entity (trustee) can be suspended, the Commissioner must give a written notice (a show cause notice) to the registered entity and the show cause notice must (a) state the grounds on which the Commissioner proposes to suspend the responsible entity; and (b) invite the registered entity to give the Commissioner, within 28 days after the day the notice is given, a written statement showing cause why the Commissioner should not suspend the responsible entity. The only exception to this is where in appropriate circumstances, the Commission is revoking the registration of the entity.

Transfer of Funds in Dormant Accounts

Section 842 of the Act the Act obligates banks to notify the Corporate Affairs Commission where the account of NGOs or Non-Profit organisations is dormant. Dormancy under the Act

entails cases where no transactions other than payments into an account have been made within five years prior to notification. Once such a notice has been issued, the dormant account cannot be re-activated without the knowledge of the Commission. One argument that tilts to the necessity of the above provision is perhaps the allegation that association accounts have in the past been used to fund elections, drug trafficking and other illegal acts. The understanding of dormancy in that part of the Act includes an account which only receives payment. This is contrary to the traditional understanding of dormancy which refers to a situation where there are no transactions whatsoever on the account. Although the provision of this section appears attractive and well-thought-out, dormancy should be interpreted in situations where there is no transaction whatsoever in the account of the association.

Likelihood of Political Interference in the Regulation of Incorporated Trustees

Finally, subsection (11) subjects the exercise of the Commission's powers under section 839 in respect of any association to the approval of the Minister who is a political appointee. This inherently breeds room for political interference and it is capable of turning the Commission into an easy to use political tool against associations who rightly stand up to the government of the day.

Tax Issues from Government's Regulation of Incorporated Trustees in Nigeria

There are more questions than answers as to why the Nigeria government would insist on regulating the operations of non-profits or NGOs in the manner the 2020 Act has done. Is the interest general to NGOs or specific to houses of worships as many contend? While such a discussion cannot be accommodated here, it is necessary to state that if the interest is on houses of worship, it is unjustifiable, in view of the nature of its funding and operation. The Government has not done much for these associations. In Most civil and common law nations, government usually extend tax benefits to organizations set up for the interest of the general public. This usually comes in the form of tax exemptions, tax incentives for the organization's donors and sometimes exemptions from VAT. Unfortunately, Nigerian laws do not in any way provide deductible donations usually made by individuals. Furthermore, there is no property tax relief for NGOs neither are there any grants to such NGOs, thereby making their profits taxable.¹²

¹² Companies Income Tax Act, Section 23.

The Gaps on Who Determines the Functions of the Interim Managers

Section 839 seems to confer concurrent powers on both the court and the Commission on determining the powers and duties of the interim managers without necessarily delineating the circumstances in which it could be done by these authorities. While subsections (3) and (4) vests these powers on the court with the assistance and supervision of the Commission, subsection (10) vests the power to make provision for regulations in respect of the functions, powers, and remuneration of the interim managers on the Commission. This conflict of roles by these authorities appears to be problematic. If a situation were to arise where both authorities make concurrent but conflicting provisions for the powers and duties of the same interim managers, a dilemma of which to follow would have arisen on the part of the interim managers.

The Commission's Preparedness to Implement Section 839

Over the years, the Commission's customers and users of its various services have made series of complaints regarding the poor service experiences they had, both on the internet and at its physical offices. There has been a number of peaceful protests at the Commission's Headquarters by customers over the substandard and abysmal mode of services provided by the Commission. These complaints were in respect of specific services of the Commission such as 'Name Reservations' which ordinarily would take a few hours, but spans a period of three to four weeks. Similarly, registration of companies and incorporated trustees spans longer periods than expected, thereby making the process of doing business with the Commission uneasy for customers.

Given the above, it is questionable whether the Commission is sufficiently equipped to undertake the additional responsibility of being actively involved in the operations of incorporated trustees. Will it be effective in dealing with the enormous challenges of following up on, and supervising the various constitutions and other corporate documents of the numerous associations registered under it? Will the commission be able to do its job effectively as to justify the grounds of reasonable believe on which trustees can be suspended?

Corporate Matters And Trust Deficit In Nigerian

In civilized societies of the world, corporate affairs matters are highly sensitive and require thorough management and supervision. It is said that trust is the foundation upon which both the public and private sectors are built. Although it can safely be argued that the provision of section 839 of the Act on suspension of trustees and appointment of interim managers of associations is obtainable in developed climes such as the United Kingdom and Australia, the socio-political milieu of developing nations and their challenges are quite different. It is therefore advisable that laws should be imported or domesticated with caution. There are deep concerns and mistrust between government and the civil society in Nigeria. Many of the policies and laws implemented by the government are motivated by factors other than for the wellbeing of Nigerians. Civil society groups such as the Socio-Economic and Accountability Project have had course to challenge most decisions of the Nigerian government affecting the average citizen of the country by virtue of this mistrust. By this, the government may lack the legitimacy of trust from Nigerians to implement the innovations of section 839 of the CAMA.

It is important to state that there are factors that promotes this distrust. they include massive cases of corruption, arbitrariness in governance, lack of respect for the judicial system, tribalism and Nepotism, human right abuses, difficulty in accessing justice, and government's lack of forthrightness in dealing with insecurity. This is clearly noted in civil society's attitude and response to government laws and policies especially where extensive powers are overreached. Examples include the civil society and civil society groups' responses and criticisms of the Hate Speech Bill, and Control of infectious Disease Bill among many others.

The new CAMA, particularly section 839 contains delicate and sensitive provisions that require caution and thorough care to avoid abuse by the Commission, government and politicians. It should be noted that in corporate management and supervisions, there will be distrust if the government or any of its organs conducts itself in a manner that shows lack of transparency. The survey in 2020 by Edelman Trust Barometer shows that the Nigerian

government is the most mistrusted institution. The private sectors CEOs, and NGOs received higher trust ratings.¹³

Conclusion And Recommendations

Section 839 is one of the new innovations of the new CAMA 2020. It has been criticized for its over-reaching implications and many corporate associations and NGOs are already clamouring for its being expunged from the act or amended few months after its passage into law. The Commission is vested with so much power of supervision and suspension of trustees in such a way that it guarantees an unhealthy interference with the very essence and nature of the operations of such associations. It is arguable that such interferences contravene the freedom of association guaranteed in the nation's constitution.

No doubt, NGOs and other organisations such as religious bodies have been held to do much in positively impacting the lives of Nigerians. These they do through community programmes and empowerments, micro-credit programmes, poverty alleviation programmes, human rights awareness and advocacy among others. It is therefore necessary to give effect to their freehand operations that birth these developments.

In view of the foregoing, the following are hereby recommended:

1. There is need to amend section 839 (1) and (7) of the Act to remove the power of the Commission to suspend the trustees of an association and make such powers subject to the order of the court. This will remove the likely conflict in the powers of suspension. The section should be amended to specify the duration of suspension even where it is done on the order of the court. Where it impracticable to specify, the duration within which the process for the review or the vacation of the suspension should be provided for.
2. The discretionary 'May' in subsection (1) of the Act should be replaced with a mandatory 'shall' so that where the Commission has reasonable believe that that there is a misconduct, mismanagement, fraud, or the need to protect the property of an association, the Commission will be Obligated to take steps accordingly. In such

¹³ The Guardian, '2020 Edelman trust barometer reveals Nigerians still distrust government, place trust in CEOs' *The Guardian* (Business News, 24 July, 2020). <<https://guardian.ng/business-services/2020-edelman-trust-barometer-reveals-nigerians-still-distrust-government-place-trust-in-ceos/>> accessed 5 November 2020.

- circumstances, the Commission should give notice to the trustees to show cause why a petition for their suspension or outright removal should not be filed before the court.
3. In order to retain and sustain the freedom of association guaranteed in the Nigeria's Constitution, it is necessary to make section 839 (2) which empowers one-fifth of the members of an association to file a petition against their trustees the only basis for commencing the process of removing the trustees of their association. Where members do not take any step to file a petition, it should be deemed that they are comfortable with the current arrangement that guarantees their right of freedom of association. This is because member of an association should be at the fore of protecting their interest.
 4. There is the need for the law to state some sort of criteria based on the objectives and activities of an association in determining and appointing interim managers. This is to avoid situations where in a bid to solve a problem, more issues are created by the appointment of interim managers who may be incapacitated to manage the affairs of the association because they would not fit into the objectives of the association.
 5. There is the need to amend Section 844 (2) (a) of the Act which provides that an account is dormant if no transaction, other than payments made into the account, or a transaction which the bank holding the account has itself caused to be effected, within the period of five years immediately preceding the date when the Commission is informed. This is to bring it in conformity with the real definition of dormancy which refers to a situation where there are no transactions whatsoever on the account.
 6. Section 839 (11) which subjects the exercise of the Commission's powers under section 839 in respect of any association to the approval of the Minister who is a political appointee should be expunged. This is because it has the capacity engender political interference.
 7. The Commission should be well equipped in terms of facilities and manpower in order to enhance its productivity and service delivery. There may be the need to have a special department in the Commission whose sole responsibility will be to attend to issues relating to incorporated trustees.
 8. There is need for an amendment of the Act to provide for fair hearing at the commission's level, upon receipt of complains from members of the association,

before a petition is filed at the court. Where upon investigations of any incorporated trustees, a trustee is found culpable, the trustee should be given the opportunity to be heard. Their suspension based on “reasonable belief” should not constitute the only yardstick to filing a petition.