

# NIGERIA

## Philanthropy Law Report



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# NIGERIA

## PHILANTHROPY LAW REPORT

| KEY INDICATORS <sup>1</sup>   |                                  |
|-------------------------------|----------------------------------|
| POPULATION                    | 186,053,386 (2016 estimate)      |
| CAPITAL                       | Abuja                            |
| TYPE OF GOVERNMENT            | Federal Presidential Republic    |
| GDP (PURCHASING POWER PARITY) | \$1.089 trillion (2016 estimate) |
| GDP PER CAPITA                | \$5,900 (2016 estimate)          |
| GDP – REAL GROWTH RATE        | -1.7% (2016 estimate)            |

## Introduction

The legal, regulatory, and policy environment in which nonprofit organizations (NPOs) in Nigeria operate shapes their ability to obtain legal status, access resources, deliver services, and engage in advocacy, all of which are essential for civil society to flourish. The 2015 Enabling Environment National Assessment report for Nigeria<sup>2</sup> finds that NPOs operate with fairly few legal restrictions. They also face few non-legal restrictions, such as burdensome bureaucratic procedures, barriers to access funds, or difficulty in buying or leasing property. Thus the regulatory environment for NPOs is relatively supportive of philanthropic giving.

The main legal instrument governing NPOs in Nigeria is the Companies and Allied Matters Act (CAMA). Also governing NPOs are the Companies Income Tax Act (CITA); Taxes and Levies (Approved List for Collection) Act; Value-Added Tax Act and Value-Added Tax Amendment Act; Federal Inland Revenue Service (Establishment) Act; National Planning Commission Act; and Money Laundering Prohibition Act.

These laws are guided by the 1999 Constitution, as amended in 2010, which guarantees fundamental rights, including freedom of expression, association, and assembly. Nigeria's laws follow the common law tradition, but traditional or indigenous customary law and Shari'a or Islamic law also apply in some matters. Customary and Shari'a laws previously applied only to civil matters, provided all involved parties consented. However, since 1999 some states in the northern part of Nigeria have extended Shari'a, and its coverage is now mandatory for certain criminal

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<sup>1</sup> Central Intelligence Agency, *The World Factbook* (Washington, DC: Central Intelligence Agency, 2016), <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html>.

<sup>2</sup> See Enabling Environment National Assessments (EENA). *Country Report: Nigeria* (April 2015), [http://www.civicus.org/images/EENA\\_Nigeria.pdf](http://www.civicus.org/images/EENA_Nigeria.pdf). The report assesses the legal, regulatory, and policy environment for civil society and was designed by CIVICUS World Alliance for Citizen Participation and the International Center for Non-for-Profit Law (ICNL). In Nigeria, the Nigeria Network of NGOs (NNGO) conducted the research and drafted the report.

matters and social interactions.<sup>3</sup> Shari'a does not seem to affect NPOs beyond encouraging charitable giving.<sup>4</sup>

Although registration is not mandatory, organizations wishing to receive donor funding or enjoy tax exemptions and similar benefits must register or be incorporated under CAMA. Part C of CAMA specifically addresses the registration of NPOs as associations with incorporated trustees. The Corporate Affairs Commission (CAC) is the government agency statutorily established under CAMA to register and oversee NPOs. The CAC Companies Regulation, 2012, contains guidelines for the implementation of CAMA in its current form. NPOs are not widely familiar with these regulations.

Nigerians are generally a hospitable people and like to give to their communities. Especially when they are successful in their careers, Nigerians give back to society by paying for the construction of facilities such as schools, churches, mosques, town halls, hospitals, and boreholes. In addition, their giving often benefits sports, healthcare, and education or provides financial encouragement to endeavors that may otherwise be too unpopular or controversial to attract widespread public or governmental support. Although Nigeria does not have a formal philanthropic sector and can boast of only a few well-known philanthropists, giving is an important pillar of society. Even without documented evidence on the scope of giving, the *World Giving Index 2016* ranks Nigeria the sixth country in the world in terms of the number of people helping a stranger and fifty-sixth in terms of giving behavior overall.<sup>5</sup> All Nigerians benefit directly from charitable giving when they use the libraries, schools, research institutions, hospitals, performing arts centers, and civic centers that are sustained by the generous donations of the Nigerian people.

## Recent Developments

As of the beginning of 2017, there were three bills seeking to regulate the registration and activities of NPOs before Nigeria's National Assembly, all of which were sponsored by members of the opposition party. One of the bills (Non-Governmental Organizations Regulation and Coordination Bill, 2015, SB 111) was before the Senate and two (Civil Society Commission of Nigeria Bill, 2016, HB 705; Non-Governmental Organizations (NGO) Regulatory Commission Bill, 2016, HB 585) were before the House of Representatives.

The Non-Governmental Organizations Regulation and Coordination Bill, 2015 (SB 111) was introduced on October 20, 2015. The bill makes registration mandatory and seeks to establish a board to regulate and coordinate the activities of NGOs in Nigeria. The board would have the right to register NGOs; registration would be valid for five years, after which an NGO will have to reregister. Additionally, the board would be empowered to refuse registration under a number of

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<sup>3</sup> International Center for Not-For-Profit Law, "NGO Law Monitor: Nigeria," <http://www.icnl.org/research/monitor/nigeria.html>.

<sup>4</sup> There is no research available that confirms this assumption.

<sup>5</sup> Charities Aid Foundation, *CAF World Giving Index 2016* (October 2016), pp. 17, 35, <https://www.cafonline.org/about-us/publications/2016-publications/caf-world-giving-index-2016>. The index describes giving behavior as helping a stranger, donating money, and volunteering time to an organization.

circumstances, including if the organization's proposed activities or procedures are not in the national interest.

Introduced on June 2, 2016, the Non-Governmental Organizations (NGO) Regulatory Commission Bill, 2016 (HB 585) passed the second reading stage on July 14, 2016, and was before the House Committee on Civil Society and Donor Parties for further legislative input at the beginning of 2017. The bill seeks to establish an NGO regulatory commission that supervises, coordinates, and monitors the activities of NGOs. The bill would also make registration mandatory and require NGOs to reregister every two years. Additionally, the bill mandates prior project approval for organizations whose activities are geared towards improving the economic, social, and cultural welfare of a target group within the country. Violations of the bill's provisions would be subject to a fine of 500,000 Naira (approximately \$1,585) or up to 18 months imprisonment, or both.

Civil society has expressed the view that the bill is unsuitable for the sector. At a public hearing held in December 2017 attended by over 150 CSOs, not even one supported the bill. A public hearing report is being developed for formal presentation before the House of Representatives. On November 3, 2017, the Human Rights Agenda Network (HRAN), which is comprised of 23 civil society organizations (CSOs), sued Nigeria's National Assembly to stop further deliberation on the NGO Regulation Bill that seeks to register and regulate CSOs. The groups have alleged that the Bill will violate their rights to freedom of expression, peaceful assembly and association, and non-discrimination as enshrined in Sections 39, 40, and 42 of the Nigerian Constitution. Among other asks, the group has requested that the court issue a judicial order to stop the National Assembly from deliberating on the Bill.<sup>6</sup>

The Civil Society Commission of Nigeria Bill, 2016 (HB 705) was introduced on June 15, 2016. A text of the bill has not yet been made publicly available.

While there is currently no information about HB 705, the two other bills have significant implications for civil society and philanthropy in Nigeria due to their creation of an additional layer of regulation in the form of a commission or board, alongside a disregard for the previous registration role fulfilled by the Corporate Affairs Commission. The civil society community is concerned that the bills would introduce unnecessary administrative bottlenecks. These bills currently enjoy moderate chances of passing through the various stages of the legislative process; however, it is expected that the bills will be merged in some form at the concurrence stage.<sup>7</sup>

Also before Nigeria's National Assembly at the beginning of 2017 is the Money Laundering (Prohibition) Act (Amendment) Bill, 2016 (HB 410). The bill seeks to provide an effective and comprehensive legal and institutional framework for the prevention, prohibition, detection, prosecution, and punishment of money laundering and other related offenses in Nigeria. The bill clearly defines what the offenses are and also provides for the protection of whistleblowers, sets limits for cash transactions, and establishes money laundering control measures. The bill provides

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<sup>6</sup> "Nigerian human rights groups sue national assembly over NGO Regulation Bill," *Sahara Reporters*, November 5, 2017, <http://saharareporters.com/2017/11/05/nigerian-human-rights-groups-sue-national-assembly-over-ngo-regulation-bill>.

<sup>7</sup> At the concurrence stage, similar bills are consolidated and merged into a single Act.

a framework to strengthen civil society’s accountability and transparency and helps to address the stereotype of NPOs being used as conduits for money laundering. It further improves the enabling environment for the financial operations of civil society and helps guarantee the judicious use of funds received.

A final recent piece of pending legislation is the Lobbying Regulation Bill, 2016 (SB 258), introduced on June 15, 2016. It seeks to establish lobbying as a profession in Nigeria and to regulate it, ultimately encouraging public participation and facilitating transparency and accountability in the law-making process. The bill defines “lobbying activities as lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research, and other background work that is intended, at the time it is performed, for use in contacts, and [in] coordination with the aim of soliciting support of the National Assembly to vote for or against a particular legislative document.” The bill seeks to create more awareness of the National Assembly’s work, to promote mobilization, and to encourage a more extensive research process in law making and policy development. Lobbyists would be registered by the Office of the Clerk of the National Assembly upon payment of a prescribed fee, with lobbying certificates renewed every year. Lobbyists would be required to file annual returns and report on their activities every year. As defined by the bill, lobbying could potentially include the activities of NPOs, but it is not entirely clear.

On October 16, 2016, the Financial Reporting Council (FRC) released the Code for Corporate Governance for Not-for-Profits in Nigeria. The Code is intended to extend corporate governance, i.e., measures to protect stakeholders’ interests from corruption, to NPOs and is the outcome of a directive that was given to the Steering Committee of the National Code of Corporate Governance on November 29, 2013 by the Minister of Trade and Investment.<sup>8</sup> This development occurs on the heels of an existing narrative that suggests that civil society is a conduit for money laundering and terrorism financing, as well as the belief among some that NPOs do not have good corporate governance practices around stakeholder accountability. The Code is accessible online; it has been in draft form since 2015 and has been the subject of a series of debates and consultations.

| <b>INTERNATIONAL RANKINGS</b>               |             |                                     |
|---|-------------|-------------------------------------|
| <b>RANKING BODY</b>                         | <b>RANK</b> | <b>RANKING SCALE (BEST – WORST)</b> |
| <b>UN HUMAN DEVELOPMENT INDEX</b>           | 152         | 1-188                               |
| <b>FOREIGN POLICY: FRAGILE STATES INDEX</b> | 13          | 178-1                               |
| <b>CAF WORLD GIVING INDEX</b>               | 56          | 1-145                               |
| • <b>HELPING A STRANGER</b>                 | 15          |                                     |
| • <b>DONATING MONEY</b>                     | 91          |                                     |
| • <b>VOLUNTEERING TIME</b>                  | 47          |                                     |
| <b>HUDSON PHILANTHROPIC FREEDOM INDEX</b>   | 54          | 1-64                                |

<sup>8</sup> “FRC Releases National Code of Corporate Governance,” Financial Reporting Council of Nigeria, <http://www.financialreportingcouncil.gov.ng/news-center/frc-releases-draft-national-code-of-corporate-governance/>.

# Relevant Laws

## Constitutional Framework

The Constitution of Nigeria, which was enacted in 1999 and amended in 2010, makes provision for the rights of Nigerians to associate, assemble, and express themselves freely. Section 39 guarantees the right to receive and impart information, and Section 40 guarantees the right to peaceful assembly and association. Section 45 permits these rights to be restricted in the interests of defense, public safety, public order, public morality, or public health or to protect the rights and freedoms of others.

## National Laws and Regulations Affecting Philanthropic Giving

Table 1 lists the national laws and regulations affecting philanthropic giving in Nigeria.

**Table 1. National Laws and Regulations Affecting Philanthropic Giving in Nigeria**

| TITLE OF LAW<br>REGULATION   | YEAR<br>ENACTED | DESCRIPTION   | LINKS TO LAW OR<br>REGULATION |
|--|-----------------|---|-------------------------------|
| <b>FRAMEWORK LAWS</b>  |                 |   |                               |
| <b>COMPANIES AND<br/>ALLIED MATTERS ACT<br/>(CAMA), CAP. C20</b>           | 1990            | Establishes the Corporate Affairs Commission, which is charged with responsibility for registering and regulating NPOs                                      | <a href="#">English</a>       |
| <b>TAX LAWS</b>  |                 |   |                               |
| <b>COMPANIES INCOME<br/>TAX AMENDMENT<br/>ACT (CITA), No. 11</b>           | 2007            | Amends the Companies Income Tax Act of 1990   | <a href="#">English</a>       |
| <b>FEDERAL INLAND<br/>REVENUE SERVICE<br/>(ESTABLISHMENT)<br/>ACT 2007</b> | 2007            | Establishes the Federal Inland Revenue Service (FIRS), which is charged with assessing, collecting, and accounting for revenues accruable to the government | <a href="#">English</a>       |
| <b>VAT (AMENDMENT)<br/>ACT</b>   | 2007            | Amends the Value-Added Tax Act, No. 102, 1993   | <a href="#">English</a>       |

|  |      |  |                |
|--|------|--|----------------|
| <b>TAXES AND LEVIES (APPROVED LIST FOR COLLECTION) DECREE No. 21</b>                           | 1998 | Establishes a list of taxes, levies and fees collectible by the various tiers of government in Nigeria   | <u>English</u> |
| <b>VALUE-ADDED TAX ACT, No. 102</b>  | 1993 | Provides a framework for the imposition of Value-Added Tax on certain goods and services and provides for the administration of the tax and related matters                                | <u>English</u> |
| <b>PERSONAL INCOME TAX ACT (PITA), No. 104</b>   | 1993 | Establishes a legal framework for income tax on individuals, communities, families, and executors and trustees, and provides for the assessment, collection, and administration of the tax | <u>English</u> |
| <b>LAWS OF GENERAL APPLICATION</b>   |      |  |                |
| <b>MONEY LAUNDERING (PROHIBITION) ACT (ML[P]A) (As AMENDED), No. 11, 2011, AND No. 1, 2012</b> | 2011 | Repeals the Money Laundering Prohibition Act of 2004 and enhances the scope of money laundering offences and customer due-diligence measures   | <u>English</u> |
| <b>NATIONAL PLANNING COMMISSION ACT</b>  | 1993 | Establishes the National Planning Commission to determine and advise on policies that will best promote national unity and sustain the Nigerian nation                                     | <u>English</u> |
| <b>CRIMINAL CODE ACT, CHAPTER 77</b>   | 1990 | Establishes a code of criminal law   | <u>English</u> |

## Analysis

### Organizational Forms for Nonprofit Organizations

When individuals come together lawfully to pursue an agreed purpose, they have the choice of a wide range of legal forms, including companies limited by guarantee, associations with incorporated trustees, unincorporated associations, co-operatives, and traditional organizations,



which are similar to friendship societies and include town unions and other mutual-benefit organizations.

Not every group must register. However, organizations must register or be incorporated under CAMA if they wish to receive donor funding or enjoy tax benefits and exemptions. NPOs seeking to obtain legal status through registration most frequently chose to become associations with incorporated trustees or companies limited by guarantee. Both of these forms are governed by Part C of CAMA and are handled by the CAC. The choice of legal form is determined by the objective of the NPO.

The purpose of a company limited by guarantee must be the promotion of commerce, art, science, religion, sports, culture, education, research, charity, or a similar area. The income and property of the company must be applied solely to promote the company's purpose. The company may have members or trustees. Social-enterprise NPOs, which are growing in number in Nigeria, are usually companies limited by guarantee.

An association with incorporated trustees is an organization of persons that appoints one or more trustees. An association must also apply its income and property to promote its stated purpose. There are two types of associations. In the first type, trustees are appointed by a community of persons bound together by custom, religion, kinship, or nationality. In the second type, trustees are appointed by a body or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting, or charitable purpose. Most churches, mosques, and town associations register as the first type of association, while traditional NPOs, professional associations, and foundations are typically the second type.

As of May 2015, 78,112 NPOs were registered with the CAC. More than 31,000 of these organizations are listed on the CAC's publicly accessible electronic database.<sup>910</sup>

## Registration of Domestic Nonprofit Organizations

Section 40 of the Nigerian constitution guarantees the freedom of association for all Nigerians. Therefore people who wish to come together to found an NPO generally face no restrictions, provided, according to CAMA, that the purpose for which the organization is formed and the procedures that it uses to carry out its activities are not illegal.

The trustees of both a company limited by guarantee and an association are expected to be identified prior to registration and are therefore regarded as founding members. Since trustees and directors are fiduciaries holding positions of trust and responsibility, minors under the age of eighteen, persons whom a court has found to be of unsound mind, persons undergoing bankruptcy proceedings, and persons convicted within the previous five years of an offence involving dishonesty cannot be registered as trustees or directors of an NPO. CAMA is silent about

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<sup>9</sup> The reason that only half of the registered NPOs are listed on the database may be because of limited capacity on the part of the CAC to capture all data in electronic format, as paper had been used previously. Some paper applications may have been lost or damaged, while the paperwork of other NPOs may be difficult to locate.

<sup>10</sup> The CAC database can be accessed at <http://publicsearch.cac.gov.ng:8080/comsearch/test.php>.

the minimum or maximum number of individuals required to form an NPO. However, for administrative purposes and ease of decision making, many NPOs choose an odd number of founding trustees.

NPOs seeking to register must submit the following documents to the CAC:

- Evidence of the availability of the name of the organization and a request to reserve it. Prohibited names include any name that is similar to an existing or reserved name or to a registered trademark or business name, except with the consent of the owner; any name that is offensive, undesirable, or misleading; and any name that is contrary to public policy. A form for this purpose may be downloaded from the CAC website.<sup>11</sup>
- A duly completed Incorporated Trustees Application Form, signed by the chairman, company secretary, president, founder, or solicitor of the new organization, and showing the address of the organization and an impression or drawing of the proposed common seal. This form may be downloaded from the CAC website.<sup>12</sup>
- Extracts of the minutes of the general meeting at which trustees are appointed and special clauses are adopted into the constitution or bylaws. The extracts should list all members present, record their vote, and be signed by the chairman and secretary.
- Two copies of the organization's constitution.
- A notice of the application to register as published in one local and one national newspaper, or a copy of the notices certified by the National Library. The notices should state the name and principal objectives of the association and the full names of proposed trustees. They must invite objections to the application, which must be filed within twenty-eight days of the notices' publication.
- A declaration form for each trustee, sworn to in writing in the High Court, along with a photocopy of the information page of each trustee's passport or national identity card. In the case of an illiterate trustee or officer of the organization, an illiterate jurat, or document certified by a judicial officer, should be presented along with the individual's thumbprints.
- A separate document listing the address of the association.

In addition, fees amounting to approximately \$150 must be paid to reserve the organization's name and to register. These fees are generally paid when the application to register is filed. The law does not require minimum capitalization as part of registration.

Section 674(b) of CAMA is clear about the permissible purposes or aims of organizations wishing to incorporate. "The aims and objects of the association . . . must be for the advancement of any religious, educational, literary, scientific, social, development, cultural, sporting, or charitable purpose, and must be lawful." Although CAMA does not list the protection of rights or democracy promotion as among the permissible aims and objectives of an NPO, in recent years this provision has been interpreted broadly, and most NPOs focused on human rights are considered as having

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<sup>11</sup> This application form may be found at [http://new.cac.gov.ng/home/wp-content/uploads/2013/11/cac\\_01.pdf](http://new.cac.gov.ng/home/wp-content/uploads/2013/11/cac_01.pdf).

<sup>12</sup> The Incorporated Trustees Application Form may be found at [http://new.cac.gov.ng/home/wp-content/uploads/2013/11/cac\\_it\\_form\\_001.pdf](http://new.cac.gov.ng/home/wp-content/uploads/2013/11/cac_it_form_001.pdf).

a social, development, or charitable purpose. However, the registration of clubs for gay persons or societies and organizations focused on lesbian, gay, bisexual, transgender, and intersex (LGBTI) issues is de facto prohibited under the Same-Sex Marriage (Prohibition) Act of 2014, since no society or organization with an unlawful purpose may be registered.

After receiving an application to register, the CAC may, at its own discretion, request evidence or verification of the information provided in the application. There is no limit to the CAC's ability to request more information or documentation.

If the CAC is of the opinion that the application meets Sections 674, 675, and 676 of CAMA, then a notice of the application to register is published in a prescribed format in two daily newspapers circulating in the area where the organization is to be located. One of these newspapers must be national. The advertisement must ask for objections to the registration of the organization, to be submitted to the CAC within twenty-eight days of the final date of publication of the notices. The CAC will consider all objections and may request explanations or further information from both the objector and the applicant. The CAC may uphold or reject the objection as it sees fit and will inform the applicant accordingly.

If, after twenty-eight days, no objection is made, or an objection, if received, has been rejected, the CAC may assent to or deny the application to register. The CAC may reject an application at its own discretion and need not provide written justification for its decision. Although applications may be rejected based on objections from the public, the law is not clear about other reasons that the CAC might reject an application. If the application is approved, the CAC will issue a certificate of incorporation in a prescribed format showing the date of incorporation and the corporation number assigned to the organization. The certificate of incorporation is prima facie evidence that all requirements for incorporation have been met. A searchable public database of registered organizations is available on the CAC website.<sup>13</sup>

Depending on the objectives for which an organization is formed, a prospective NPO intending to engage in activities that involve government ministries, departments, or agencies may need to satisfy separate, defined registration requirements of those entities before or after registering with the CAC. For example, an NPO that supports development by digging boreholes for water might need to seek registration with a relevant state or federal authority, in part to facilitate communication with government officials. Similarly, an NPO wishing to engage in election observation must seek registration with the Independent National Electoral Commission (INEC). The staff or, in the case of a membership-based organization, the members of an NPO that is registered with INEC would probably be issued some kind of identification document enabling them to enter and move freely in locations such as ballot collation centers, which otherwise would be closed to the public. If INEC refuses to register the NPO, it would not mean that the organization ceases to exist or that its individual members could not engage in election observation, provided they do so in accordance with the rules generally applicable to such an activity. Registration with a government ministry, department, or agency is not to be confused with incorporation by the

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<sup>13</sup> For the CAC database, see <http://publicsearch.cac.gov.ng:8080/comsearch/test.php>.

CAC, which is the only registration that confers legal personality, and many NPOs carry out their activities without seeking to be placed on a ministry's list of "approved" NPOs.

In practice, some NPOs do not regard registration as a straightforward procedure. Favoritism or corruption within the system can play a role, and only lawyers and chartered secretaries accredited by the CAC are permitted to file applications. An NPO has no formal appeal process if the CAC seems to deny its registration unfairly, although it is free to challenge the CAC's decision in court.

Registration is most likely to be granted to organizations seeking to advance religious, educational, literary, scientific, social, development, cultural, sporting, or charitable purposes. Human rights organizations may find it difficult to register, especially if they are critical of government activities. In recent years, organizations with names that include the words "rights" or "human rights" have been rejected for registration unless they change those words to "initiative."

## Registration of Foreign Nonprofit Organizations

Foreign NPOs are incorporated in the same manner and must comply with the same rules and registration procedures as domestic NPOs. This means, among other things, that they must conduct name searches and are prohibited from registering a name that could be interpreted as belonging to a Nigerian government body, even though it may be acceptable in their home countries. For example, the word "national" in the name of a foreign NPO is usually not permitted.

The CAC and the National Planning Commission are the governmental authorities responsible for registering and supervising foreign NPOs and branches of foreign organizations working in Nigeria. A foreign NPO that does not meet the requirements to incorporate under CAMA may still operate in Nigeria if it executes a bilateral agreement with the relevant line ministry, then registers with the National Planning Commission, and pays any relevant fees. Once the bilateral agreement is signed, the foreign NPO has legal personality in Nigeria. However, this status comes at the price of fairly extensive control over the foreign NPO's operations. The ministry may appoint members to its board, approve its hiring of key personnel, and approve its budget, as the essence of the bilateral agreement is that the foreign NPO becomes a quasi-consultant to the line ministry.

All types of foreign organizations may establish branches in Nigeria provided they have legal personality and work towards the objectives identified for domestic NPOs in Part C of CAMA. Registration fees and name searches are also imposed in connection with an application to register a foreign branch. There are no limitations on the permissible purposes that a foreign NPO or branch may undertake, as they are guided by same laws guiding their domestic counterparts. However, as with domestic organizations, foreign NPOs working lawfully to advance a religious, educational, literary, scientific, social, development, cultural, sporting, or charitable purpose are likely to be registered more easily than those that work on human rights or are critical of a sitting government.

## Nonprofit Organization Activities

**Political Activities and Lobbying.** The law does not specifically ban all political purposes or political activities by NPOs. However, under Part C of CAMA, NPOs are expected to operate in a non-partisan manner and may not nominate, endorse, or oppose candidates for public office or support or oppose political parties. NPOs are permitted to engage in the electoral process only as election observers or providers of voter education. Section 38(2) of CAMA explicitly prohibits NPOs from making gifts or donations to political parties or for any other political purpose.

NPOs are allowed to participate in public-policy research and advocacy and to campaign, advocate, and lobby for legislation. Provided their activities are carried out in a lawful manner, NPOs face no barriers, legal or non-legal, to conducting advocacy work. Unregistered organizations may lobby and advocate, since they are protected by the guarantee of freedom of association contained in the Nigerian constitution. NPOs may lobby members of parliament to support or oppose proposed legislation and may mobilize citizens to communicate with their legislators about proposed legislation. There is no law that limits the amount of money that an NPO may spend on lobbying and other legislative activities.

**Economic Activities.** Although the principal purpose of an NPO may not be commercial in nature, NPOs are allowed to conduct income-generating activities. There are no limitations on permissible income-generating activities, and NPOs do not necessarily have to conduct their economic activities through a for-profit subsidiary. Very few NPOs conduct business or trade, however. Those that do so mainly pursue activities in areas related to their main purposes, such as consultancies for the government to raise public awareness about a particular issue.

**Prohibition on Distribution of Income or Assets/Private Inurement.** NPOs are prohibited by law from distributing profits or otherwise providing inappropriate private benefit to officers, directors, or other insiders. Section 686 of CAMA states that the income and property of NPOs shall be applied solely to the promotion of the objectives of the organization as set forth in its constitution and “no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus, or otherwise by way of profit to any of the members of the association.” Section 686 of CAMA also states that payment to “an officer or servant of the body in return for any service actually rendered to the body or association is allowed under the law.” However, “with the exception of ex-officio members of the governing council, no member of a council of management or governing body, shall be appointed to any salaried office of the body, or any office of the body paid by fees” and “no remuneration or other benefit in money or money’s worth shall be given by the body to any member of such council or governing body except payment of out-of-pocket expenses or reasonable and proper rent for premises demised, or let to the body or reasonable fee for services rendered.” Contravention of this law can result in a demand for a refund by the CAC of such “income or property so misapplied to the association.”

There are no other legal rules governing financial transactions or self-dealing between NPOs and their directors, officers, employees, or the family members of these insiders. However, as a matter

of practice, organizations are expected to have conflict-of-interest policies as part of their governance procedures to guide them on issues of self-dealing.

**Government Supervision.** Four government bodies have the statutory authority to supervise NPOs:

1. The **CAC**, established under CAMA. The CAC is responsible for overall supervision of NPO registration and operations. Its broader responsibilities include the regulation and supervision of the formation, incorporation, registration, management, and dissolution of companies, business names, and incorporated trustees
2. **Federal Inland Revenue Service (FIRS)**, established by the Federal Inland Revenue Service (Establishment) Act No. 13, 2007. FIRS oversees taxation, controls and administers the different taxes and laws specified in the act's first schedule and other laws and regulations, and accounts for all taxes collected.
3. **Special Control Unit against Money Laundering (SCUML)**, which was established as a specialized unit of the Federal Ministry of Industry, Trade, and Investment by the Federal Executive Council of Nigeria (Decision No. EC 286) in September 2005. SCUML oversees issues related to money laundering and monitors and supervises the activities of designated non-financial institutions under the framework for anti-money laundering and combatting the financing of terrorism.
4. **National Planning Commission (NPC)**, established by the National Planning Commission Act, 1993. The NPC monitors and regulates the activities of NGOs and NPOs in Nigeria.

Section 690(1) of CAMA requires NPOs to submit periodic reports to the CAC and FIRS. An NPO's annual return to the CAC should show, among other things, the name of the corporation; the names, addresses, and occupations of trustees and members of the council or governing body; the particulars of any land held by the corporate body during the year; and details of any changes to the organization's constitution effected during the year. The report must be submitted no earlier than June 30 and no later than December 31 each year, other than in the year in which the NPO was incorporated. The annual financial return to FIRS is due eighteen months after the date of incorporation (or not later than six months after the end of the first fiscal year, whichever is earlier) and thereafter six months after the end of each fiscal year. NPOs are also expected to file performance activity reports with FIRS, as detailed in Section 55(1) and (2) of CITA.

## Termination, Dissolution, and Sanctions

The government may involuntarily terminate or dissolve an NPO for unlawful practices or practices contrary to public policy. According to the Criminal Code Act, 1990, societies or organizations are deemed unlawful if they are formed for the purpose of "interfering with, or resisting, or encouraging interference with or resistance to the administration of law." For example, the organizations Jama'atu Ahlis Sunna Lidda'awati wal-Jihad (better known as Boko Haram) and Jama'atu Ansarul Muslimina Fi Biladis Sudan (also known as Ansaru) were originally set up for religious advancement and were proscribed in 2013 because of their terrorist activities.

An NPO may dissolve voluntarily under Section 691(1) of CAMA, which states that “A body corporate formed under this PART of this Act may be dissolved by the court on a petition brought for that purpose by the governing body or council or one or more trustees or members of the association constituting not less than fifty per cent of the total membership or the Corporate Affairs Commission.” The grounds for dissolution, according to Section 691(2) of CAMA, are that the aims and objects for which the organization was established have been fully realized, the organization was formed to exist for a specified period and that period has expired, or the aims and objectives of the organization have become illegal or otherwise contrary to public policy.

Section 691(4) of CAMA sets forth procedures that NPOs must follow for dissolution and the distribution of assets. If “in the event of a winding-up or dissolution of the corporate body there remains after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the association, but shall be given or transferred to some other institutions having objects similar to the objects of the body, such institutions to be determined by the members of the association at or before the time of dissolution.” In cases where this provision cannot be effected, Section 691(5) of CAMA stipulates that “the remaining property shall be transferred to some charitable object” on the decision of the CAC or a competent court of law.

Short of termination, there are no other known sanctions that the government can impose on NPOs. However, an NPO may be subject to audits and inspections if, under Part C of CAMA and relevant tax laws, the authorities suspect that it is involved in business activities that are against the purpose for which it was established.

## Charitable or Public Benefit Status

All NPOs registered under CAMA have charitable status. As such, they enjoy exemptions from income tax. In addition, any goods purchased for use in donor-funded humanitarian projects are zero rated for value-added tax (VAT) under the Value-Added Tax Act, as amended—which is to say, that they are taxable for VAT purposes, but with a tax rate of zero.

An NPO directs its application for a tax-clearance certificate to the integrated tax office where it was registered and files its tax returns. The office processes the application and issues the tax-clearance certificate if the NPO is found to be qualified. If the integrated tax office finds the NPO unqualified, it must provide reasons in writing within two weeks of the application.

Corporate donors benefit from tax deductions for their donations. Section 25(3) of CITA provides that any company making donations to an organization listed under CITA’s fifth schedule shall enjoy tax deductions not exceeding 10 percent of the total profits of that company for that year, as ascertained before any deduction of such donations is made and provided they are not of a capital nature.

## Local and Cross-Border Funding

There are no laws or rules governing an NPO’s ability to seek local funding. Decision No. EC 286 (2005) of the Federal Executive Council of Nigeria established SCUML, which carries out the

statutory responsibility of the Ministry of Industry, Trade, and Investment to monitor and supervise designated non-financial institutions for evidence of money laundering and the financing of terrorism. Operationally, SCUML is domiciled in the Economic and Financial Crimes Commission. NPOs are required to have in place anti-money laundering policies that guide their financial transactions, and they can be liable for sanctions if they take part in money-laundering schemes. NPOs must report the receipt of donations of more than \$1,000 given in cash to SCUML within one week. They are also required to submit electronic weekly reports of cash-based transactions to SCUML, although compliance with this rule is weak to non-existent. NPOs have noted that the mandatory weekly reports to SCUML have the potential to impede or discourage philanthropy, since detailed information about donors must be included in the reports, which makes anonymous donations impossible.

Domestic donors are not subject to funding limits, vetting requirements, or other special restrictions when providing non-cash donations to either domestic or foreign NPOs (although instances of the latter are rare). Donors giving more than \$1,000 in cash to an NPO are flagged for routine background checks by SCUML or the Financial Intelligence Unit to verify the source of their funding.

Domestic NPOs are permitted to operate internationally, and there are no restrictions on either an NPO's use of domestically sourced funding to carry out activities abroad or the amounts they may transfer abroad for their activities. However, the purpose of the funds must be declared when they are transferred abroad as part of normal banking procedures, and the bank may share this information with SCUML. There are no restrictions on an NPO's ability to receive donations or other forms of support from outside the country.

Whether locally or internationally sourced, all funds received by NPOs must be independently audited and reported to both the CAC and FIRS as part of their annual returns. The exemption of NPOs from income tax does not remove their obligation to file returns regularly.

NPOs are not subject to limitations on their affiliations with foreign persons or organizations, provided such organizations are lawful and are not affiliated with terrorist groups.

## Tax Law

Organizations that engage in philanthropy under CAMA are considered charity organizations, and their excess income (derived from grants, subscriptions, donations, gifts, endowments, and so forth) over expenditures is exempt from corporate tax. According to Section 23 (1) of CITA, all NPOs are generally tax exempt, provided they do not have profits derived from any trade or business. Similarly, Section 23 (c) of CITA and Section 19, Para 13, Third Schedule of PITA provide that the profits of any company or institution engaged in ecclesiastical, charitable, benevolent, or educational activities of a public character are exempt from income tax provided such profits are not derived from a trade or business conducted by the organization. Foreign NPOs operating in Nigeria are exempt from income tax and are eligible for exemptions from other taxes under double-taxation treaties.



If an NPO engages in any trade or business, the profit derived from it will be subject to income tax as stipulated in CITA. FIRS defines trade as “the business of buying and selling or bartering goods and services.”<sup>14</sup> Thus while NPOs are exempt from paying taxes on income derived from their primary registered activities, they are liable for income tax on their commercial activities, such as a business or trade. In other words, the income that an NPO accrues via foreign and domestic grants, subscriptions, membership dues, donations, gifts, endowments, and so forth is not taxable, while the income coming from trade and business, which is known as unrelated business income, is taxable. NPOs must also pay income tax on passive income (that is, income received on a regular basis, with little effort required to maintain it, such as from dividends, rent, royalties, or interest), investment income, and capital gains tax if they dispose of their assets at a profit.

NPOs pay VAT on goods and services consumed, except those purchased exclusively for donor-funded humanitarian projects or activities, which are zero rated under the Value-Added Tax Act, as amended. NPOs must deduct pay-as-you-earn tax from employees’ salaries to remit to the appropriate tax authority. In addition, they must deduct withholding tax on payments made to contractors and suppliers and remit them to the appropriate tax authority, along with a schedule of deductions.

Local taxes, fees, and charges (such as a tax on parking or a fee for garbage collection) apply to NPOs as to other individuals and companies, even though the tax affairs of organizations registered under Part C of CAMA are administered by FIRS and, as such, are governed by federal legislation.

As personal income tax is a function of residence, NPO staff members pay tax to the state board of internal revenue where they reside. Withholding tax on rent and consultancy services awarded to individuals is also remitted to the state as opposed to the federal government.

A donation by any company to an NPO listed under the fifth schedule of CITA is tax deductible, according to Section 25(3) of CITA, provided the donation does not exceed 10 percent of the

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<sup>14</sup> FIRS relies on indicators known as “badges of trade” to determine whether an activity fits the definition of trade. They include (1) a profit-seeking motive (an intention to make a profit supports the definition of trade but is not in itself conclusive); (2) the number of transactions (systematic and repeated transactions support the definition of trade, and an isolated transaction may also constitute trade, as its one-off nature in no way invalidates an activity as constituting trade); (3) the nature of the asset (if the asset is of such a type or amount that it can only be turned to advantage by a sale, it may support the definition of trade); (4) the existence of similar trading transactions or interests (transactions that are similar to those of an existing trade may themselves be trading); (5) changes to the asset (if the asset was repaired, modified, or improved to make it more easily saleable or saleable at a greater profit, it may support the definition of trade); (6) the way in which the sale was carried out (if the asset was sold in a way typical of trading organizations, it may support the definition of trade); (7) the source of finance (if money was borrowed to buy the asset and the funds could only be repaid by selling the asset, it may support the definition of trade); (8) interval of time between purchase and sale (assets that are the subject of trade will normally, but not always, be sold quickly); and (9) method of acquisition (an asset that is acquired by inheritance or as gift is less likely to be the subject of trade).

company's total profits for the year, as calculated before the donation is made and is not of capital nature.

Individual givers do not obtain tax deductions for their donations. There is no limit on the amount that they may designate to charities by way of inheritance.

All NPOs registered under CAMA must maintain accurate records of employees and proper books of account. They have the obligation to register with FIRS and file tax returns every year. It is relatively easy for NPOs to take advantage of tax benefits provided that they carefully follow the procedures for filling annual returns with FIRS. To obtain a tax exemption, an NPO applies annually for a tax clearance certificate at the integrated tax office at which it is registered and files its tax returns. If the integrated tax office finds the NPO to be qualified, it will issue the tax-clearance certificate. If denied the certificate, the NPO receives an explanation of the reasons in writing within two weeks of the application. There is no provision for appealing such a decision. Not-for-profit companies, such as social enterprises and foundations engaging in economic or commercial activities, may apply to the president of Nigeria for an order to exempt them from taxation on their income or profits, no matter what the source.

Overall, tax regulations are poorly enforced, as the government has limited enforcement capacity. In addition, the tax laws governing NPOs are not clear, and NPOs receive conflicting information about their tax status. According to the 2014 Civil Society Index Rapid Assessment for Nigeria,<sup>15</sup> two-thirds of NPOs do not pay pay-as-you-earn tax and more than one-half of organizations have a generally poor understanding of the tax regime. Although FIRS has disseminated circulars clarifying the taxes that NPOs must and need not pay, the tax law remains confusing to many NPOs.

## News and Events

“FRC Releases National Code of Corporate Governance.” Financial Reporting Council of Nigeria. <http://www.financialreportingcouncil.gov.ng/news-center/frc-releases-draft-national-code-of-corporate-governance/>.

Oluseyi, Oyebisi Babatunde. “How Not to Hold NGOs Accountable.” Best Naira News. <http://news.bestnaira.com/posts/view/how-not-to-hold-ngos-accountable>.

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<sup>15</sup> “Civil Society Index—Rapid Assessment Country Report: for Nigeria,” p. 28, <http://civicus.org/images/stories/Nigeria%20CSI%20RA%20final.pdf>.

This Philanthropy Law Report was prepared by the International Center for Not-for-Profit Law in partnership with Oyebisi Oluseyi of the Nigeria Network of NGOs and issued in March 2017. It was updated again to reflect changes as of December 2017. The views expressed herein are those of the authors and reflect the authors' understanding of laws and regulations currently in effect in Nigeria, as well as best international practice, and does not constitute a legal opinion or advice.