INTRODUCTION

A broad spectrum of NGOs exist in Nigeria. Prominent are community-based organisations (CBOs) which exist in and draw membership from those who live in particular geographical areas or from among people who have a more or less common ancestry, religious organisations, friendly societies and a host of professionally-run NGOs working in different thematic areas. It may be argued, in strict jurisprudential terms, that some of the bigger, older and well-established Christian religious organisations, such as the Catholic and Anglican churches ought not to be described as NGOs because they are managed and their property held in the name of an office (i.e. bishop) occupied by individuals which has perpetual succession. (The bishop is a corporation sole, a concept we have inherited as part of the common law.). It is however accepted that these religious bodies being voluntarily, not-for-profit and outside of state control qualify to be described as NGOs.

The legal framework for non-governmental organisations (NGOs) in Nigeria is defined by provisions of the Constitution of the Federal Republic of Nigeria 1999 as well as federal and state laws. Prominent among the federal enactments are Companies and Allied Matters Act 1990 (whose Part C has repealed and replaced the Lands (Perpetual Succession) Act 1924) and Companies Income Tax Act 1961. These are general enactments. Specific laws also exist to regulate specialised organisations such as trade unions, cooperative societies and political parties. Apart from the enforcing of laws that recognise and regulate these organisations, government departments in some instances require NGOs to register with them for the purpose of collaborating with or working for such departments in some programme areas.

Relatively, Nigerian NGOs are not subjected to an elaborate set of laws. The foundation laid in the colonial era was one that provided an NGO with formal state recognition, if it sought that, and allowed it great freedom of action provided it did nothing to threaten public order. The military rulers who began to emerge after independence did not trust the NGOs as much. Thus, while the colonial government worked in partnership with NGOs, especially the missionaries who, in addition to evangelism, established and ran health, educational and social welfare institutions, the military governments expropriated them of these establishments. Increased repression by the military governments led to the emergence in the late 1980s of the human rights NGOs. Human rights NGOs became special targets for refusal of legal recognition and for close monitoring and harassment. These were effected not necessarily through the enactment of new laws but simply through the arbitrary implementation of existing laws or through state-sponsored violence. Thus, a presentation of both the law and the official practice is required for a full understanding of the regulation of the NGO sector in Nigeria.

In the absence of adequate and well-intentioned laws, self-regulation is the alternative approach that presents itself to the NGO sector. Unfortunately, except for some very loose regulations or understandings introduced by some NGO networks and coalitions, no set of clear and far-reaching regulations or code of ethics has been introduced by the NGOs for themselves. A probable explanation for this is that the most virile and articulate part of the NGO sector, the human rights groups, had up to the restoration of constitutional governance in May 1999 largely operated underground and had to contend with much more compelling tasks. Be that this may, it seems that the Nigerian NGO sector should no longer defer the developing of a set of rules to regulate itself. It is noteworthy, in this regard, that the Transition Monitoring Group, the largest NGO coalition in Nigeria, is currently leading an initiative aimed at introducing, after wide consultation with other stakeholders (especially donors and the media), a Code of Standard Practice for NGOs.

PROVISIONS OF THE GENERAL LAWS

Constitution

The "right to peaceful assembly and association" is granted in section 40 of the Constitution of the Federal Republic of Nigeria 1999 in the following terms:
"Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests."

This provision is, by the Constitution itself, limited in three remarkable ways. First, by a proviso to section 40 itself, "this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which the Commission does not accord recognition." The prerogative of the electoral commission to give legal recognition to political parties and the restriction on formation of political parties are elaborated upon in section 222 of the Constitution as follows:

"No association by whatever name called shall function as a political party, unless-

a) the names and addresses of its national officers are registered with the Independent National Electoral Commission;

b) the membership of the association is open to every citizen of Nigeria irrespective of his place of origin, circumstance of his birth, sex, religion or ethnic grouping;

c) a copy of its constitution is registered in the political office of the Independent National Electoral Commission in such form as may be prescribed by the Independent National Electoral Commission;

d) any alteration in its registered constitution is also registered in the principal office of the Independent National Electoral Commission within 30 days of the making of such alteration;

e) the name of the association, its symbol or logo does not contain any ethnic or religious connotation or give the appearance that the activities of the association are confined to a part only of the geographical area of Nigeria; and

f) the headquarters of the association is situated in the Federal Capital Territory, Abuja."

In sections 221, 223, 224, 225, 226 and 227 further rules are prescribed for political parties. The effect is that the right to form political parties is heavily abridged by the Constitution and one of the issues on which there is a near-consensus in the on-going constitutional review process is the need to increase the level of citizens' participation in politics by liberalising the recognition of political parties.

The second limitation on the right to freedom of association is the provision in section 45 which permits restrictions on and derogation from certain fundamental rights (including freedom of association) by stating that nothing in the sections where those rights are spelt out "shall invalidate any law that is reasonably justifiable in a democratic society -

a) in the interest of defence, public safety, public order, public morality or public health; or

b) for the purpose of protecting the rights and freedom of other persons.

In its 1985 decision, the Supreme Court of Nigeria had occasion to demonstrate the effect of this restriction in the case of Osawe v. Registrar of Trade Unions (1985). In that case, the plaintiff applied to the Registrar of Trade Unions for the registration of a new union of non-academic staff of schools. The Registrar refused, stating that a union already exists for that category of workers, and relying on section 2(2) of the Trade Union Act 1978 which provides that "no trade union shall be registered to represent workers or employers in a place where there already exists a trade union."

Relying on the provisions of the 1979 Constitution which are the same as the 1999 Constitution provisions under discussion, the Supreme Court held that while the provision of the Trade Unions Act infringed the right to freedom of association, it was nonetheless saved as a law reasonably justifiable in the interest of public order which, according to the court, will be jeopardised if the proliferation of trade unions is not discouraged. It is respectfully submitted that this decision is erroneous. In the light of the increased awareness of human rights in Nigeria in the one and half decades since the decision was reached, it is doubtful if the Supreme Court will return the same verdict were the case to come before it.
today. The conclusion that public order is necessarily endangered without trade union monopoly is disproved by the history of the trade union movement in the United Kingdom where there is no trade union monopoly and from whose trade union movement that of Nigeria has been patterned. Trade union monopoly is an anachronistic practice which flourished in the socialist countries where it was used as a mechanism for ensuring convenient state control of the labour force. It has no place in an open society. Trade union monopoly is a direct infraction of freedom of association as freedom of association necessarily implies the freedom of dissociation. Further still, trade union monopoly is recognised by the International Labour Organisation (ILO) as a practise that is in breach of the ILO Convention No. 87 on Freedom of Association and Protection of the Rights to Organise; and as Nigeria has adhered to this Convention, a regime of trade union monopoly is in breach of Nigeria's international law obligations. Generally, however, while it is not inconceivable that, even in peace time, it may be necessary to enact laws to contain or otherwise interfere with associations that threaten public safety or public order or public morality, the cause of liberty requires that we remember always that the security of tenure of an incumbent government is not synonymous with the need for public safety or public order, and that morality may be relative.

The third constitutional limitation on the right to freedom of association is contained in the Code of Conduct for Public Officers which is in Part I of the Fifth Schedule to the Constitution. It provides that "A public officer shall not be a member of, or belong to or take part in any society the membership of which is incompatible with the functions or dignity of his office." It shall be the duty of the Code of Conduct Tribunal to ascertain if, in a case brought before it, there has been a breach of this ambiguous and dangerously-elastic provision.

The Constitution empowers the federal legislature, to the exclusion of the states, to legislate on the "Incorporation, regulation and winding up of bodies corporate, other than cooperative societies, local government councils and bodies corporate established directly by any law enacted by the House of Assembly of a State." Accordingly, the general regulation of NGOs can only be by federal law. Various state laws (e.g. in respect of taxes) can nevertheless affect the conduct of affairs of NGOs. The Constitution does not contain any other provisions that deal specifically with NGOs.

Types of Organisation

Many types of organisations are allowed under Nigerian law. These include CBOs, friendly societies, social clubs, women's groups, youth clubs, religious organisations, cultural associations, professional associations, trade unions, political parties, cooperative societies and specialised professionally-run NGOs which work in various thematic areas. CBOs are of two types: the first type is established by people who live together in a given geographical area, e.g. a housing estate or a village, and the second is established by people who trace their origin to a particular village or town or district. In the second type, there can be branches or chapters anywhere in Nigeria and abroad that people of that stock live together in a sufficient number. While CBOs of the first type are usually concerned with the maintenance of security and basic infrastructure in its area, those of the second type ensure that the blood ties are not forgotten and that the welfare of the place of origin is promoted. CBOs are usually run by elected executives. There are periodic -often monthly - meetings of the members. Some have women and youth wings.

Friendly societies include masonic and other lodges, and are part of our colonial heritage. They are headed by an elected "master" who must have passed through certain stages in the order. They hold regular meetings, dressed in their uniforms, often in purpose-built halls. They promote the welfare of members and often make substantial donations to charity. Most of them are open to men alone. While friendly societies are European in origin, social clubs are more autochthonous and are sometimes open to both sexes. They are also run by elected officers sometimes with their own secretariats located in club premises. Women's groups promote the interest of their members and engage in charitable activities. Youth clubs, including Boys Scouts and Girl Guides, provide leadership training and education and encourage community service. Religious organisations are structured in a wide variety of ways and in addition to religious ministrations often provide educational, health and welfare facilities. Cultural associations vary from, for instance, associations that promote classical music to associations that promote the culture of particular Nigerian communities (and which, therefore, may easily be confused with a typical CBO).
All the above types of organisations are usually not professionally-run by full time staff.

There is an increasing number of professionally-run NGOs in various subject areas. These organisations may be membership or non-membership and are usually run by full time staff headed by an Executive Director and assisted by volunteers. These organisations arguably represent the cream of the NGO sector. Although they are smaller in number than the other types, they are much more prominent.

In a limited category of cases, Nigerian law abridges freedom to form or join associations. Under the Criminal Code, which is applicable in the Southern states of Nigeria, it is an offence to form or join or manage an "unlawful society." (Similar provisions exist under the Penal Code which is applicable in the Northern States.) "Unlawful Society" is defined in section 62 (2) of the Criminal Code as follows:

"A society is an unlawful society -

i) if formed for any of the following purposes -

(a) levying war or encouraging or assisting any person to levy war on the Government or the inhabitants of any part of Nigeria; or

(b) killing or injuring or encouraging the killing or injuring of any person; or

(c) destroying or injuring or encouraging the destruction or injuring of any property; or

(d) subverting or promoting the subversion of the Government or its officials; or

(e) committing or inciting to acts of violence or intimidation; or

(f) interfering with, or resisting, or encouraging interference with or resistance to the administration of the law; or

(g) disturbing or encouraging the disturbance of peace and order in any part of Nigeria; or

ii) if declared by an order of the President to be a society dangerous to the good government of Nigeria or of any part thereof."

There is no doubt that the outlawing of these types of societies is basically necessary for the preservation of social order. However, the definition of "unlawful society" in s. 62(2) is somewhat supererogatory and offensive. The subversion of an official of the Government ought not to be an unlawful object; the ruin or downfall of a corrupt or oppressive Government official is clearly in the public interest. Again, it is not only dangerous but also inconsistent with the constitutional guarantee of freedom of association, for s.62 (2)(ii) to empower the President by order to declare a society unlawful presumably without establishing objective grounds for reaching his conclusion, and which order may not be subject to judicial review. In these respects, the definition may be altered by the courts - if and when the issue is litigated. Nonetheless, it is noteworthy that under Nigerian law, citizens are free to form associations except the associations that fall within a narrow category that is forbidden.

Under the Companies and Allied Matters Act (CAMA) 1990, companies as recognised by law as juridical entities. "Companies" include trading companies, usually limited by shares, and not-for-profit organisations which choose to and are incorporated as companies limited by guarantee. As for associations, societies and other organisations by whatever name called, if they appoint trustees and pursue registration under Part C of the CAMA (to be discussed shortly), "the trustees or trustees shall become a body corporate" and shall have perpetual succession and the power to sue and be sued on behalf of the organisation. The law does not distinguish between NGOs that provide a public benefit and those that merely serve their members' private or mutual interests. Religious organisations except for those who operate as corporation sole, are not regulated by a separate law; the overwhelming majority of these bodies are registered under Part C of CAMA. Political parties are separately regulated by the Constitution and other laws. Trade unions are likewise regulated under separate laws.
Most organisations in Nigeria need not be registered before they can be recognised in law as existing, even if not as bodies corporate. For an NGO, registration may be obtained through one of two options - either as a company limited by guarantee (which confers the status of a body corporate on the NGO itself) or the incorporation of trustees (by which the trustees or trustees of the NGO, rather than the NGO itself, obtain(s) the status of a body corporate). Both are regulated by the Companies and Allied Matters Act 1990 (CAMA) and registration is with the Corporate Affairs Commission, Abuja, Nigeria. Section 26(1) of CAMA provides:

"Where a company is to be formed for promoting commerce, art, science, religion, sports, culture, education, research, charity or other similar objects, and the income and property of the company are to be applied solely towards the promotion of its objects and no portion thereof is to be paid or transferred directly or indirectly to the members of the company except as permitted by this Act, the company shall not be registered as a company limited by shares, but may be registered as a company limited by guarantee."

The CAMA further makes it an offence for a company limited by guarantee to distribute its profits. Nigerians as well as foreigners can set up such a company. There is also nothing in the law that precludes non-natural persons legal persons from becoming founders or members of such companies, just as they can be members or shareholders in for-profit companies (which are categorised in CAMA as companies limited by shares). The procedure for the registration of a company limited by guarantee is as follows: The proposed name has to be cleared at the Corporate Affairs Commission as being "available" for use (i.e. a certification that the name or any closely resembling it has not been used already and that there is no other objection on policy ground to the use of the name), obtaining of the consent of the Attorney General of the Federation, preparation and execution of the memorandum and articles of association as well as completion of application forms, stamping of forms and memorandum and articles of association, filing of the documents with the Corporate Affairs Commission, issuing of certificate.

It must be noted that very few organisations are registered as companies limited by guarantee, largely because promoters and their professional advisers are very reluctant to go through the bureaucracy of applying for the consent of the Attorney-General who may in his absolute discretion with-hold consent. If the honest intention of the legislature is really to encourage the establishment of companies limited by guarantee, the requirement of the obtaining of the consent of the Attorney-General should be dispensed with or the grounds for with-holding of consent clearly defined and a period of time specified within which the Attorney General must signify a decision to with-hold consent on a stated ground or be deemed to have given consent. Indeed, it is infact tidier to completely dispense with the requirement of the obtaining of the consent of the Attorney General.

Incorporation of trustees is provided for in Part C of CAMA. Section 673 provides as follows:

(1) Where one or more trustees are appointed by any community of persons bound together by customs, religion, kinship or nationality or by any body or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, he or they may if so authorised by the community, body or association … apply to the Commission in the manner hereafter provided for registration … as a corporate body.

(2) Upon being registered by the Commission, the trustee or trustees shall become a body corporate...."

The registration of incorporated trustees is also handled by the Corporate Affairs Commission in the Nigerian Federal Capital Territory of Abuja. Nigerians and foreigners can be registered as trustees. Even in the absence of a specific statutory preclusion, non-natural legal persons are not known to have been registered as trustees; the practice is that such non-natural legal person would simply nominate a natural person to represent its interest as a trustee. It is noteworthy that one or more trustees may be registered to represent the organisation and, similarly, that there is no requirement of a minimum number of members of the association. Thus, both organisations the membership of which is open to the public at large and those whose membership is restricted may be registered. There is no requirement of capital or minimum capital for the organisation. An umbrella organisation of NGOs can apply for the registration of its trustees just like an individual NGO.
To apply for the registration of incorporated trustees is to tread a long path full of bureaucratic discretion, enormous expenses and uncertainty. Under section 674 of CAMA:

“(1) Applications … shall be in the form prescribed by the Commission and shall state - 

(a) the name of the proposed corporate body which must contain the words “Incorporated Trustees of …”,

(b) the aims and objectives of the association which must be for the advancement of any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, and must be lawful;

(c) the names, addresses and occupations of the secretary of the association, if any.

(2) There shall be attached to the application 

(a) two printed copies of the constitution of the association;

(b) duly signed copies of the minutes of the meeting appointing the trustees and authorising the appointing the application, showing the people present and the votes scored;

(c) the impression and drawing of the proposed common seal.

(3) The application shall be signed by the person making it.

(4) The Commission may require such declaration or other evidence in verification of the statements and particulars in the application and such other particulars, information, and evidence, if any, as it may think fit.”

Presumably relying on the wide powers given to it by s. 674(4), the Commission requires that a police clearance must be obtained in respect of all the organisation and the trustees named in the application. This is a way of ensuring that persons identified as opponents of the government are not allowed to be registered as trustees of NGOs.

If the Commission is satisfied that the application is in the prescribed format and that the trustees are qualified (as prescribed in s. 675) and the organisation’s constitution contains provisions (prescribed in s. 676), the applicants will advertise the application inviting objections, if any, in two daily newspapers circulating in the area where the organisation is situated; at least one of the newspapers shall be a national newspaper. (Those not qualified to be appointed as trustees are infants, persons of unsound mind, undischarged bankrupts and persons convicted of any offence involving dishonesty within a period of five years of the proposed appointment. The organisation’s constitution shall, among other things, state the organisation’s name and aims and make provisions in respect of the trustees, meetings, governing board, finance and accounts.) Any objections to the incorporation of the trustees must be made within twenty-eight days of the last of the publications. The Commission may require the applicant “to furnish further information or explanation, and may uphold or reject the objections as it considers fit and inform the applicant accordingly.”

By s.678, if “after the advertisement, no objection is received within the period specified … or, where any objection is received, and the same is rejected, the Commission, having regard to all the circumstances, may assent to the application or with-hold its assent.”

It is clear that an application for registration of incorporated trustees may be rejected for failure to comply with any of the application requirements or for any reason whatsoever. To the extent that the law gives such wide powers to the Commission to act in a manner that can hardly be questioned, the law falls short of civilised standards. No specific provision is made for appeal against such rejection. But an application for judicial review can be brought under the common law rules. Some human rights NGOs have had their applications rejected. Prominent among these is the Civil Liberties Organisation, one of the oldest Nigerian human rights NGOs, which applied for registration in 1989 (under the Land (Perpetual
Succession) Act which was amended and re-enacted as Part C of CAMA); on the verge of the issuance of a certificate of registration, the Commission cancelled the already-typed-out certificate and informed the applicant that it had withheld assent. At that time, the affected organisation was one of those in the vanguard of the struggle against military dictatorship. The effect of this is that, especially in the years of military rule when aggrieved persons could not count on an intimidated judiciary, many human rights NGOs stood no chance of being registered. The pro-establishment attitude of the Commission has not entirely changed even after two years of civil rule.

Given the tortuous procedure, it is easy to appreciate that it takes nothing less than six to nine months to effect a registration of incorporated trustees. The process is known to drag for years. It is also expensive. Although there is an official fee of N10,000 (about US$95), when you add the cost of newspaper advertisements, printing of a constitution, making of a seal and other expenses, applicants spend hardly less than N150,000 on the registration process.

**NGO Register**

There is no general NGO register in Nigeria. The Corporate Affairs Commission maintains a register of all incorporated trustees and companies it has registered and this may be inspected by a member of the public upon payment of a search fee. Defunct organisations are, however, not purged from the register. The Commission does not maintain a listing of organisations that were denied registration or sanctioned. To the extent that it does not list the many NGOs, some of which are big and vibrant, it cannot be considered a general register.

**GENERAL POWERS**

Under Nigerian law, it is registration or lack of it that largely determines the powers of an NGO. Where an organisation has incorporated trustees registered under CAMA, the trustees on behalf of the organisation are empowered to “contract in the same form and manner as an individual”. This includes the power to “hold, acquire and transfer” any property on behalf of the association. An organisation registered as a company limited by guarantee is in its own right a full-fledged legal person that can do anything in law in its own name. Unregistered NGOs, however, cannot in law do anything in their own names. They can act through their (unregistered) trustees or other officers who may in their name act as representatives of the organisation. In that representative capacity its trustees can acquire and transfer property on behalf of the organisation. As for bank accounts, the practice is a liberal one: both registered and unregistered organisations are able to operate bank accounts in their names. An exception to this is a company that purports to be a limited liability company (for-profit company limited by shares); it has no legal capacity whatsoever. In practice, no public authority raises issues of capacity against organisations. Such issues are usually raised by defendants to lawsuits commenced by the organisation. Beneficiaries or intended beneficiaries of particular programmes have not been known to go to court to seek remedies against an NGO in Nigeria. In principle, however, nothing stops such persons under the exceptions to the common law doctrine of privity of contract which are applicable in Nigeria from suing an NGO where the benefit to be provided by the NGO is pursuant to a contract entered into by the NGO and, say, a donor.

**Membership Organisations**

There are no special statutory provisions for membership organisations whereby the rights and duties of the members are provided for. Applicable rules in this regard derive from the constitution of the organisation and the principles of the common law. The general pattern in Nigeria is not simply for a professional society to be given statutory authority to regulate admission into the profession and the conduct of its members. It is rather for a body consisting of several members of the profession and representatives of certain Government departments to be given such authority. This is the arrangement for the regulation of members of the legal profession (pursuant to the Legal Practitioners Act) and the nursing profession (pursuant to the Nursing and Midwifery Act).
III. GOVERNANCE

Nigerian law does not contain elaborate provisions for the governance of NGOs. In respect of organisations with incorporated trustees, CAMA provides as follows. The organisation “may appoint a council, or governing body which shall include the trustees and may … assign to it such administrative and management functions as it deems expedient” (s. 684). This means that where a governing body, by whatever name called is appointed, the trustees must be members. It is also provided that the powers of the trustees under the Act “shall be exercised subject to the directions of the association, or of the council or governing body.” This provision, it is submitted, is a rather curious one in that the authority of the trustees is subordinated not only to the association itself but also to the authority of other appointees (members of the governing body) who appear to be lower in status than the trustees.

Apart from the trustees and board members, NGOs with incorporated trustees may employ salaried staff. Under s. 686(2), the right of the organisation to remunerate its employees for services is affirmed. In respect of members of the organisation’s governing board, s. 686(2) further provides:

"(a) With the exception of ex-officio members of the governing council, no member of a council of management or governing board shall be appointed to any salaried office of the body, or any office of the body paid by fees; and

(b) 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 repayment of out-of-pocket expenses or reasonable and proper rent for premises demised, or let to the body or reasonable fee for services."

Accordingly, no member of the governing council shall be appointed to either a staff position or to any other position in the organisation (i.e. including positions on the board) which entitle the holder to any payment of fees. However, a member of a governing board may be paid “a reasonable fee for services rendered.” That is the important distinction. Out of pocket expenses are easy to deal with, especially where there is an agreed scale or a per diem system. Reasonable rent is also not very difficult to ascertain in the open market. For the purpose of ensuring that probity is in fact ensured, it seems desirable to adopt the following practices which are not provided for in the statute: One, wherever possible, a scale of fees for professional or other charges due to any one or more board members should be worked out in advance and made accessible to the organisation’s members and other stakeholders. Two, wherever possible, contracts -especially for supply of goods - should be exposed to open competitive bidding to contractors who have no connection with the organisation.

In respect of organisations registered as companies limited by guarantee, the general rules of company law which are supplemented by the provisions of articles of association apply. The organisation has a separate legal personality, and the capacity to employ and pay staff, the right to pay fees to directors etc. In such organisations, the very detailed provisions of CAMA (see sections 263 to 292) settle several matters including the duties and responsibilities of directors, quorum and voting rules, and the extent of directors’ personal liability. Constraints of space will not permit a complete enunciation of these provisions. But the highlights include that the director has very far-reaching fiduciary duties and is expected to avoid conflicts of his duties and other interests. It is provided that “Unless the articles otherwise provide, the quorum necessary for the transaction of the business of directors shall be two where there are not more than six directors but where there are more than six directors, the quorum shall be one third of the number of directors…. ” It is also provided that each director shall be entitled to one vote, that any question arising at any meeting shall be decided by a simple majority of votes and that in the case of an equality of votes, the chairman shall have a second or casting vote.

In organisations that have incorporated trustees, its officers, their powers and internal relationships with other officers and organs, quorum, voting and proceedings at meetings generally are as prescribed by the organisation in its constitution.

All these rules for internal governance may be enforced at the suit of a member or officer of the organisation. Third parties, including public authorities, would usually lack the locus standi to bring such action.
It must also be noted that in NGOs not registered as companies limited by guarantee and not having incorporated trustees, it will be its constitution or rules that will settle the question of governance and without any obligation to comply with the statutory requirements that have just been discussed.

IV DISSOLUTION, WINDING UP, AND LIQUIDATION OF ASSETS

The status of an NGO (registered or unregistered, and if registered under which category?) determines how the dissolution, winding up and liquidation of assets may be conducted. In an unregistered association, the constitution or bye laws probably would provide for this; in the absence of such provision, the courts may invoke their equitable jurisdiction to enforce any fair terms of dissolution and liquidation of assets.

An organisation with incorporated trustees may be dissolved, as provided by s. 691 (1) of CAMA,

“by the court upon a petition brought for that purpose by -

a) a governing body or council; or

b) one or more trustees; or

c) members of the association consisting not less that fifty per cent of the total membership;

d) the Commission

(2) The grounds on which the body corporate may be dissolved are -

a) that the aims and objects for which it was established have been fully realised and no useful purpose would be served by keeping the corporation alive;

b) that the body corporate is formed to exist for a specified period and that period has expired and it is not necessary for it to continue to exist;

c) that all the aims and objects of the association have become illegal or otherwise contrary to public policy; and

d) that it is just and equitable in all the circumstances that the body corporate be dissolved.

(3) At the hearing, all persons whose interest or rights may, in the opinion of the court, be affected by the dissolution shall be put on notice.

(4) 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.

(5) If effect cannot be given to the provisions of subsection (4) of this section, the remaining property shall be transferred to some charitable object.”

Considering that the dissolution process will be pursued in court, it goes without saying that any order or finding may be subjected to the usual appeal process for review.

As for organisations that are registered as companies incorporated by guarantee, the general rules laid down in CAMA for the winding up of companies apply but, in addition, s. 26 (9) also applies. The subsection provides that:
“If, upon the winding-up of a company limited by guarantee, there remains after the discharge of all its debts and liabilities any property of the company, the same shall not be distributed among the members but shall be transferred to some other company limited by guarantee having objects similar to the objects of the company or applied to some charitable object and such other company or charity as shall be determined by members prior to the dissolution of the company.”

Detailed and general rules for winding up of companies are contained in sections 401 to 536 of CAMA. The company may be wound up voluntarily or by the court upon application by any of the following: the company itself, a creditor, the official receiver, a contributory (i.e., every present and past member) or the Commission. In any event, creditors are entitled to be heard and their interests fully taken into account. Any party affected by the findings or orders made by the court can file an appeal.

V REGULATION

Registered NGOs, be they companies limited by guarantee or incorporate trustees, are regulated by the Corporate Affairs Commission (CAC) pursuant to the provisions of CAMA. NGOs that are companies limited by guarantee are obliged, like other companies, to submit annual returns each year to the CAC (s. 370, CAMA). By s. 373 of CAMA, the annual returns of a company limited by guarantee “shall be in the form prescribed in the Tenth Schedule” to CAMA “or as near to it as circumstances permit.” Also, the returns shall be accompanied with “a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered” with CAC under the CAMA.

The form prescribed in the Tenth Schedule is designed to elicit the following information: name of the company, registered office of the company, particulars of indebtedness, particulars of directors and secretaries as well as copies of its accounts duly certified by a director and the secretary. The returns shall be filed within forty-two days after the annual general meeting for the year. Failure to file the returns within the stipulated period is, by s. 378 of CAMA, made an offence punishable by a fine of N1,000 in the case of a public company and N100 in the case of a private company.

Annual reports submitted to CAC are deposited in the company’s file and the file may be inspected by members of the public upon the payment of a prescribed fee (which has been increased from time to time but has remained modest).

The submission of annual returns by NGOs with incorporated trustees is provided for in section 690 of CAMA:

(1) The trustees of the corporation shall not earlier than 30th June or later that 31st December each year (other than the year in which it is incorporated), submit to the Commission a return showing, among other things, the name of the corporation, the names, addresses and occupations of the trustees, and members of the council or governing body, particulars of any land held by the corporate body during the year, and of any changes which have taken place in the constitution of the association during the preceding year.

(2) If the trustees fail to comply with subsection (1) of this section they shall be liable to a fine of N5 for each day during which the default continues.”

CAC has been very lax in the enforcement of these requirements. Indeed, they are in most cases not complied with and the penalties are not enforced. From the practice of CAC, the only consequence of failure to file annual returns is that no new transactions (such as the filing of documents showing new transactions) can be effected until the file is updated by the filing of the returns that have fallen due and the payment of a penalty. The failure to enforce may be due to personnel shortages or even the poor economics of it (Do the token fines justify expending so much money in efforts to reach and perhaps prosecute the wrongdoers?) - two possible explanations that are not very plausible as more persons can be hired and more income generated from increased fines.
Unregistered NGOs are not under any special regulatory regime. Their activities are simply subject to the ordinary principles of law, especially of the law of contract.

VI FOREIGN ORGANISATIONS

There are no special rules for the regulation of foreign NGOs in Nigeria. The position is rather that an NGO registered outside Nigeria must again go through a registration process in Nigeria if it wishes to secure the benefits of registration in Nigeria, otherwise it is in the same position as an unregistered Nigerian NGO. This is also applicable to any foreign private donor agency that wishes to establish a representative office in Nigeria.

No special rules exist for the regulation of the receiving of grants from foreign agencies, whether or not the agency has an office in Nigeria.

VII MISCELLANEOUS

Mergers and split-ups

There are no specific statutory provisions regulating mergers and split-ups of NGOs. It appears however, that if the members of an NGO decide to pursue a merger or split-up they can indeed creatively utilise the existing provisions. In respect of an NGO with incorporated trustees, the members can, with a merger or split up in view, vote to dissolve the organisation on the ground that (as allowed by s. 691(2) (d) ) "it is just and equitable in all the circumstances" to do so. They can then (as allowed by s. 691(4) )vote to transfer the property, or an agreed part of the property, of the organisation to the new organisation - which must obtain a fresh incorporation - representing a fusion or merger of two or more former organisations. The same process can be used to facilitate a split-up. What is clear however is that the existing law does not contemplate the phenomenon of NGO mergers and split-ups.

Investments

There are statutory provisions for the regulation of the investing of the property or funds of NGOs. There is however the Trustee Investments Act 1957 which encourages, but does not compel, trustees to invest in some specified types of securities (e.g. government securities, shares and debentures issued by quoted companies). The permissive character of this Act is underscored by the provision of its s. 3 :

" (1) Without prejudice to the enabling provisions of any other law, a trustee may under the powers of this Act invest in any of the securities specified ...

(2)The power conferred by subsection (1) of this section shall be exercised according to the discretion of the trustee, but subject to any consent or direction required by the instrument, if any, creating the trust or by the law with respect to the investment of the trust funds."

These provisions apply to organisations with incorporated trustees. It seems clear, therefore, that Nigerian law is content to leave it to such organisations and their benefactors (who give them endowments) to decide on how the funds and property of the organisations may be invested. An organisation may make the relevant provisions in its constitution or may, in its meetings, from time to time take decisions on the matter.

As for organisations registered as companies limited by guarantee, the Memorandum of Association usually makes provisions on the investment of the funds and property of the organisation. The directors
and other officers of the company are obliged to act in accordance with the provisions of the Memorandum of Association (s. 41 (1) of CAMA). Again, it is up to the company in its meetings, and provided it does not breach any law or its own Memorandum of Association, to take further decisions in this respect at any time. Nothing in the general law stops NGOs from investing abroad.

In respect of political or legislative activities, nothing stops NGOs from engaging in legislative or public policy advocacy or even in endorsing candidates for public office. One important restriction, on the part of NGOs that are companies limited by guarantee, is seen in s. 38(2) of CAMA:

“A company shall not have or exercise power either directly or indirectly to make a donation or gift of any of its property or funds to a political party or political association, or for any political purposes; and if any company, in breach of this subsection makes any donation or gift of its property to a political party or political association, or for any political purpose, the officers in default and any member who voted for the breach shall be jointly and severally liable to refund to the company the sum or value of the donation or gift and in addition, the company and every such officer or member shall be guilty of an offence and liable to a fine equal to the amount or value of the donation or gift.”

VIII TAX LAWS

It is the character of an organisation, especially fact of registration and type of activities embarked upon, that determine the tax laws applicable to particular NGOs in Nigeria. Under the CITA, a "company" is defined as "any company or corporation (other than a corporation sole) established by or under any law in force in Nigeria or elsewhere". Section 9 of CITA imposes a tax on "the profits of any company accruing in, derived from, brought into or derived in, Nigeria" in respect of any trade or business, rent or any premium arising from use of a property; dividends, interest, discount, charges or annuities; fees, dues and allowances for services rendered; and any other source of annual profits.

Section 19 exempts from tax fourteen types of income the first seven of which are as follows:

"(a) the profits of any statutory or friendly society, in so far as such profits are not derived from a trade or business carried on by such society;

(b) the profits of any company being a cooperative society registered under any enactment or law relating to cooperative societies, not being profits from any trade or business carried on by that company other than cooperative activities solely carried out with its members or from any share or other interest possessed by that company in a trade or business in Nigeria carried on by some other persons or authority;

(c) the profits of any company engaged in ecclesiastical, charitable or educational activities of a public character in so far as such profits are not derived from a trade or business carried on by such company;

(d) the profits of any company formed for the purpose of promoting sporting activities where such profits are wholly expendable for such purpose…;

(e) the profits of a company being a trade union registered under the Trade Unions Act in so far as such profits are not derived from a trade or business carried on by such trade union;

(f) interest received by a company from the Federal Savings Bank;

(g) dividend derived by a company from another company incorporated in Nigeria …"
Accordingly, except to the extent that they receive any profit derived from trade or business, most registered NGOs are exempt from tax. In other words, NGOs to which these provisions apply can engage in trade or business provided that they will enjoy tax exemption only in respect of their income from outside of trade or business. Unregistered NGOs do not enjoy this exemption. Most registered NGOs, it appears, can persuade the tax authorities that they come within the purview of paragraphs (a) or (c) or (d) above. If they can, the exemption is automatic. If they cannot, they may still be able to apply to the National Council of Ministers for an order under section 19(2) exempting them from all or any profits from any source. In respect of exemption from state and local income taxes, the applicable state law or local government bye law may provide for exemption for an NGO. For instance, under section 32 of the Cooperative Societies Law 1936 (Lagos State), the State Commissioner may by notice reduce or remit any stamp duty or fee for registration of instrument payable by all or any cooperative society. In respect of value added tax (VAT), the Value Added Tax Act 1993 by its section 3 and Schedule, exempts certain goods and services from payment of VAT. The exempted goods are:

1. medical and pharmaceutical products,
2. basic food items,
3. books and educational materials,
4. newspapers and magazines,
5. baby products,
6. commercial vehicles and commercial vehicle spare parts,
7. fertiliser, agricultural and veterinary medicine, farming machinery and farming transportation equipment,
8. all exports.

The exempted goods are

1. medical services
2. services rendered by Community Banks, People's Bank and Mortgage Institutions
3. plays and performances conducted by educational institutions as part of learning,
4. all exported services.

The effect is that NGOs are not, as organisations, exempt from payment of VAT since the tax is not on persons but goods and services supplied. Whether or not they will pay VAT depends on the goods or services they buy or sell. The tax is computed at a flat rate of 5% on the value of all taxable goods and services.

By virtue of s. 5 and the Second Schedule to the Customs, Excise Tariff, Etc, (Consolidation) Act 1988, certain goods are exempted from import duty. Of these, two categories are noteworthy. The first is goods accepted by the Finance Minister "as necessary and appropriate for equipping the members (including their officers) of a voluntary organisation which is non-profit making, enjoys international recognition, and is approved by the Minister where he is satisfied that adequate arrangements have been made for the legitimate use of the goods are necessary and appropriate for the successful prosecution of the aims and objectives of the organisation." The second is goods approved by the Finance Minister "for donation to charity where he is satisfied that the goods are provided or donated on humanitarian grounds and if the donor is: 1) an established body recognised by the Government of the country of the place of establishment; 2) or a person or body approved by the Federal Government of Nigeria or approved by a person authorised by the Government in that behalf." Import duty exemption can only be enjoyed in these instances if the NGO is able to persuade the Finance Minister. It is not open to any organisation that is not the darling of officialdom. No statutory procedure is prescribed for claiming this exemption. There are
also no rules to prevent the possible abuse of the exemption through the resale of the goods imported duty-free.

Tax benefit, in form of an allowable deduction, is available to any Nigerian company that makes a donation to any of a more or less closed category of Nigerian funds and institutions. By section 21 and the Fifth Schedule to CITA, "for the purpose of ascertaining the profits or loss of any company" the amount of any donation made by that company to any of the Nigerian funds and institutions specified in the Fifth Schedule shall be deducted. The institutions include any government-recognised educational institution, any government-owned hospital and several NGOs including the Boys Scouts, Girl Guides, Christian Council of Nigeria, Islamic Education Trust and the Nigerian Society for the Deaf and Dumb. The Finance Minister is empowered to amend the listing in the Schedule "in any manner whatsoever." No legal limits are placed on the amount of donation that may be made by a company to an organisation.

On capital transfer tax in respect of endowments or gifts inter vivos or on death, Nigerian law offers no relief to NGOs. There seems to be no statutory provision that exempts an NGO's earnings on endowments from taxation. There seems also to be no statutory provision that precludes an NGO from investing an endowment in majority ownership of business. Dividends accruing from such investment are taxable under s. 19 of CITA. The Capital Transfer Tax Act 1979 is the applicable law. There is however an exemption from capital gains tax for gains accruing to

"(a) an ecclesiastical, charitable or education institution of a public character;

(b) any statutory or registered friendly society;

(c) any co-operative society registered under the Cooperative Societies Law of any state; or

(d) any trade union registered under the Trade Unions Act,

in so far as the gain is not derived from any disposal of any assets acquired in connection with any trade or business carried on by the institution or society and the gain is applied purely for the purpose of the institution or society as the case maybe." (section 27 of the Capital Gains Tax Act 1967). It appears from this provision that the "ecclesiastical, charitable or educational institution of a public character" need not be a registered one, with the result that an unregistered NGO can claim exemption from capital gains tax under the paragraph.

Taxes on real estate are determined by state legislation and local government bye-law. In Lagos State, for instance, under the Entertainment Tax Law of Lagos State there is an exemption for places of entertainment owned by NGOs. Section 5 of the law provides as follows

1. Tax under this Law shall not be charged on any payment for admission to a place of entertainment if the Director-General on application to him in writing is satisfied -

   (a) that the net proceeds are to be devoted to philanthropic or charitable purposes; or

   (b) that the entertainment is of a wholly educational character; or

   (c) that the entertainment is provided for artistic, literary or scientific purposes by a society, institution or committee not conducted or established for profit; or

   (d) that the entertainment is an agricultural, horticultural or poultry exhibition held under the auspices of a society or association approved by the Executive Council; or

   (e) that the entertainment is provided by or on behalf of a school or other educational institution, and
i) the school or institution is not conducted or established for profit, and

ii) the entertainment is provided for the sole purpose of promoting some object or for the benefit of the school or institution.

2. Application for approval of the Director-General shall be in writing addressed to him in his official capacity and -

(a) if the application relates to subsection (1) (a) above the Director-General may call for a detailed statement of account and may challenge any item of expenditure which in his opinion is inadmissible, and

(b) if the application relates to subsection (1) (b) above and is rejected by the Director-General the applicant may appeal in writing to the Executive Council whose decision shall be final.

Although the decision of the Executive Council is stated to be final, by the rules of common law and by our Constitution that does not suffice to oust the jurisdiction of the court for the purpose of judicial review.

Also, under the Local Government Law of Lagos State, exemption from assessment for and payment of tenement rates is given for premises occupied by "charitable institutions" and educational institutions certified by the State Commissioner responsible for education to be non-profit making."

Commercial/ Economic Activities

To what extent can Nigerian NGOs engage in commercial or economic activities? For unregistered NGOs, there is no restriction: they may fully engage in these activities. The clear terms of s. 26 (1) of CAMA, in requiring that a company limited by guarantee apply its income and property "solely towards the promotion of its objects", which must be the promotion of "commerce, art, science, religion, sport, culture, education, research, charity or other similar objects," imply that an NGO registered as such cannot engage in commercial or economic activities. NGOs with incorporated trustees are not under a similar statutory bar. They may therefore engage in these activities. If they choose to go into these areas, there is no statutory provision that stops them from doing business directly or through a for-profit subsidiary. Income from such activities are subject to tax and there are no tax rules, in this respect, which distinguish between commercial or economic activities related or unrelated to the core objects of the NGO.

Reporting

There are no special rules for tax reporting by NGOs, just as there are no substantiation rules for contributions received by NGOs. Foundations are not subject to separate rules because of their endowments. There are no statutory limits on the administrative expenses that an NGO may incur. As an accounting practice, rather than a statutory requirement, NGOs report on the basis of fund accounting and receipts and expenditures rather than a balance sheet and statement of profit and loss - especially where the organisation is not engaged in commercial or business activities.

IX COMPLIANCE

The legal rules applicable to NGOs are not very well known and understood. Given the very lax record of enforcement, it is not easy to ascertain the true extent to which the rules are complied with. It is however believed that the rules are not widely complied with. It is not common knowledge that any study on compliance by NGOs with the law has been conducted. There is no perception that NGOs have been used to avoid taxes, in part because the Nigerian tax authorities have (outside of the petroleum sector)
been much less than diligent in their duties, and have therefore not been able to ascertain the tax
tendencies of NGOs. Politicians and government officials are known to have used NGOs to gain political
mileage. There is, however, no popular belief that they have used NGOs to derive financial benefit except
may be the usual financial benefits that go with occupying public office in an atmosphere of very little
public accountability.

No legal provisions exist for specially dealing with an NGO that has violated the tax laws, perhaps
because NGOs are yet to earn the special attention of the taxman.

X GOVERNMENT FUNDING

Government funding of NGO activities in Nigeria has been regulated not by statutory enactments but
policy decisions adopted by government from time to time. Up to the early 1970s in various states of
Nigeria, Government provided matching grants or grants-in-aid to organisations, such as missionaries,
who ran schools, hospitals and social welfare institutions. Most of these institutions were taken over by
the state in the 1970s, thus bringing to an end such funding. The various state governments from time to
time in their absolute discretion provide funds for such organisations as the Boys Scouts, the Girls Guides
and the Legions. These donations are, of course, usually solicited. They are also hardly given pursuant to
contracts with the organisations.

While a privatisation programme was embarked upon by the Federal Government of Nigeria and by some
state governments in the first half of the 1990s, and a second phase of the programme is currently being
implemented by the Federal and again some state governments, there is still substantial opposition to
privatisation. The programmes have however focussed, so far, on government-owned enterprises and
have not affected schools, hospitals and other social institutions. Notably, however, the poor state of
state-owned schools and hospitals (a number of which had been taken over from missionaries and other
private organisations) has continued to lend support to demands for the return of these institutions to their
original owners. In a number of states (including Lagos, Edo, Plateau and Rivers) firm decisions have
been taken to effect these returns. Also, in respect of some schools, old students' associations are
demanding to take over the schools and run them themselves. How they plan to do that is yet to be fully
unfolded. However, no such handover has been agreed to even in principle.

Accordingly, the privatisation of these institutions are being considered in Nigeria in the narrow context of
return to the original owners and the organisations that are in the fore-front of the agitation for return are,
predictably, the original owners themselves. On the other hand, those in the fore-front of the opposition to
return of these institutions to the original owners are the teachers and their union. The conditions of
service, including pension rights, that the teachers enjoy under state ownership is said to be better in
most cases that what the missionaries had offered. Notably, therefore, in those states where some of
these institutions are being returned, the government usually undertakes to continue to support the
payment of mission schools teachers, to allow teachers the option of remaining in the service of the state
rather than the missionaries, and to guarantee the pension rights of those teachers that choose to
transfer their service to the missionaries. These exercises have been embarked upon without special
legal forms or procedures.

Traditionally in Nigeria, the wives of the President and Governors have engaged in charity work. These
activities by First Ladies were modest efforts, uninstitutionalised and largely associated with national or
other anniversaries. From the late 1980s, however, a rash of state-supported organisations were set up
by First Ladies at both Federal and State levels. Public funds (in an atmosphere of very little
accountability) were generously given by government to these organisations and government contractors
tried to out-do each other in the fund-raising programmes of these organisations. Predictably, once the
founding first lady left office, the entire organisation collapsed. With the restoration of civil rule since May
1999, these organisations still emerge but do not receive as much state funds and do not carry on with
the vanity and hullabaloo of their predecessors.

XI CONCLUSION
The most important legal issues confronting the NGO sector in Nigeria are the need to ensure that more organisations are fully brought within the jurisdiction of the regulatory agency, the strengthening of the capacity of the regulatory agency while also making it less bureaucratic and arbitrary, and the need to encourage self-regulation by the NGO sector itself.

Since it is registration that brings NGOs into the ambit of the regulatory authority of the CAC, it is important to reform the law and practice on registration so that an NGO may cheaply and expeditiously be registered. To say this is not to derogate from the prerogative of an organisation, for whatever reason, not to seek registration as this prerogative seems to be an important element of the freedom of association. Ways of encouraging NGOs to register include curtailing the wide discretionary powers given to CAC to withhold registration of incorporated trustees, dispensing with police clearance for trustees (which is not just subjective but also easily-abused) and putting in place measures to ensure that NGOs can be quickly and inexpensively registered. The procedure for registration of companies limited by guarantee needs to be reformed by either the elimination of the requirement of the consent of the Attorney General or the specifying of (a) the period within which the Attorney General must signify a withholding of consent on one or more specified grounds, or be taken to have given consent; and (b) the grounds on which consent may be withheld.

Even with all the most appropriate of statutory provisions, if the capacity of CAC as an institution is not strengthened, the law reform process will have achieved nothing in practice. CAC must be able to keep track of NGOs but ensuring that they file annual returns, that the returns are scrutinised and any irregularities identified and dealt with. CAC must also become more transparent and accountable. It must shed its wide discretion, its capacity for arbitrariness.

Finally, without prejudice to these suggested legal and institutional reforms, the NGO sector itself must take the initiative to develop and put in place a framework of rules for self-regulation. As the watchdog of the rest of society, the NGOs must itself be able to introduce, observe and enforce rules aimed at ensuring compliance with best practice. The main advantage of self-regulation is that the rules it introduces will usually not be draconian, as the NGOs make the rules for themselves. Accordingly, they will be under greater moral pressure to comply. Self-regulation does not foreclose the application of general laws as, for instance, the breach of a rule against misappropriation of members' or donors' funds will not merely end with sanctions prescribed in the regulation but may also result in prosecution by the state.