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APPRAISAL OF THE CHALLENGES OF INCORPORATING EDUCATIONAL INSTITUTIONS AS NON-PROFIT ORGANISATION.

Dr. Matthew Izuchukwu Anushiem, Ph.D*
Dr. Uchenna Maryjane Anushiem, Ph.D **
Chidinma Blessing Nwakoby***

ABSTRACT

The role of education in national development cannot be overemphasized, yet Nigeria faces persistent educational deficits, with UNESCO estimating that the country accounts for approximately 15% of the global out-of-school population as of 2023. In an effort to expand access, many educational institutions seek incorporation as non-profit organizations, a model expected to enhance credibility, attract funding, and promote public service objectives. However, the incorporation process under the Companies and Allied Matters Act (CAMA) 2020 is fraught with significant challenges. Regulatory bottlenecks, burdensome compliance requirements, governance inefficiencies, limited financial autonomy, and growing public mistrust hamper the operational success of non-profit educational entities. This paper appraises the key challenges confronting the incorporation of educational institutions as non-profit organizations in Nigeria. It identifies the gaps between statutory ideals and practical realities as a pressing problem affecting the growth of the sector. Using doctrinal and analytical research methods, the study interrogates legal frameworks, relevant case law, and practical experiences to propose strategies for reforming the regulatory environment and strengthening the operational sustainability of educational non-profits in Nigeria.

Keywords: Challenges, Incorporation, Educational Institutions, Non-Profit Organisation, Nigeria

* Dr. Matthew Izuchukwu Anushiem, LLB, BL, LLM, PhD is an Associate Professor of Law in the Department of Human Rights Law, of Law, Nnamdi Azikiwe University, Awka Anambra State Nigeria. E-mail: mi.anushiem@unizik.edu.ng, Tel: 08032641757

** Dr. Uchenna Maryjane Anushiem, BA, LLB, BL, LLM, PhD is a Lecturer1 in the Department of Commercial and Property Law, Faculty of Law, Chukwuemeka Odumegwu Ojukwu University, Igbariam Campus,Anambra State Nigeria. E-mail: um.anushiem@coou.edu.ng, Tel: 08062139786.

*** Chidinma Blessing Nwakoby LL.B, BL, LL.M, Ph.D in view, is a Lecturer in the department of Public and Private Law, Faculty of Law, Chukwuemeka Odumegwu Ojukwu University, Anambra State. Phone No: 07062983239. Email: cb.nwakoby@coou.edu.ng and nwakobychidinma@gmail.com.

Introduction

Education remains a cornerstone for sustainable national development, and in Nigeria, the rapid expansion of private educational institutions has significantly complemented government efforts. In recent decades, private educational providers have increased markedly, with the National Bureau of Statistics (NBS) reporting that private schools constitute about 35% of all registered educational institutions in Nigeria as of 2023.[1] Many of these institutions seek non-profit status under Part F of the Companies and Allied Matters Act 2020 (CAMA 2020), drawn by the associated benefits of tax exemptions, public trust, and institutional longevity. Despite these advantages, the process of incorporating educational institutions as non-profit organizations presents notable challenges that impede their optimal functioning and growth.

Historically, Nigeria's regulatory framework for non-profit organizations evolved to promote accountability and transparency, but bureaucratic hurdles have persisted. Under CAMA 2020, institutions intending to incorporate as companies limited by guarantee must satisfy stringent requirements, including the approval of the Attorney General of the Federation.[2] This has often resulted in delays and administrative bottlenecks. A 2022 report by the Corporate Affairs Commission (CAC) indicated that less than 20% of applications for incorporation as non-profits were processed within the standard six-month timeframe.[3] For educational providers keen on rapid commencement, this sluggishness can frustrate investments and dampen enthusiasm. The financial implications of incorporation further exacerbate the challenges. Educational institutions seeking non-profit status must incur considerable legal, administrative, and operational costs during incorporation and post-incorporation compliance. This burden is especially heavy for start-up schools and community-based educational initiatives, which often operate on limited budgets. The Nigerian Economic Summit Group (NESG) found that over 40% of new non-profit educational institutions failed to sustain operations beyond their fifth year, citing regulatory and financial difficulties as primary causes.[4]

Moreover, operational rigidity imposed by the regulatory framework presents challenges to innovation and adaptability. The statutory requirement that non-profit institutions cannot distribute profits among founders or trustees, though essential for accountability, sometimes discourages private investors who wish to recoup their investments.[5] This creates tension between altruistic motives and pragmatic financial considerations in Nigeria's educational sector.

Another critical problem is the limited capacity of regulatory agencies to monitor and support non-profit educational

[1] NBS, Education Data 2022 Report (2023) 14.

[2] Companies and Allied Matters Act 2020, Part F, s 26(5).

[3] CAC, 'Annual Statistical Report' (2023) available at <https://www.cac.gov.ng/annual-statistical-report-2023/ accessed on 23 April 2025, 19.

[4] NESG, 'Educational Institutions Sustainability Report' (2023), available at <https://nesgroup.org/reports/educational-institutions-sustainability-2023/> accessed on 23 April 2025, 28.

[5] Companies and Allied Matters Act 2020, s 826(b).

institutions post-incorporation. Cases abound where regulatory neglect or poor guidance leads to mismanagement and eventual collapse of some institutions. For instance, a 2023 Afrobarometer survey reported that 31% of Nigerians expressed distrust in private educational non-profits due to concerns over financial mismanagement and lack of regulatory oversight.[6]

This research therefore seeks to appraise the challenges associated with incorporating educational institutions as non-profit organizations in Nigeria. It aims to identify the specific legal, administrative, financial, and operational barriers faced by stakeholders. Employing a doctrinal and empirical methodology, this work will analyse existing statutes, case law, and statistical data to present a nuanced understanding of the issue. Through critical analysis, the study will offer insights into how Nigerian law and policy can better accommodate and support educational institutions operating within the non-profit framework, ultimately strengthening the sector's contribution to national development.

Appraisal of the Challenges of Incorporating Educational Institutions as Non-profit Organization

Here are the challenges of incorporating educational institutions as Non-Profit Organizations:

1. Bureaucratic Delays and Administrative Bottlenecks

A primary obstacle in incorporating educational institutions as non-profit organizations in Nigeria is bureaucratic delay and administrative bottlenecks. Although the Companies and Allied Matters Act (CAMA) 2020 introduced reforms such as electronic registration and allowed incorporation under Part F for Companies Limited by Guarantee, the requirement for obtaining the Attorney-General's consent remains a major setback.[7] Studies reveal that processing an application for a non-profit incorporation can take between six months and two years.[8]

The Corporate Affairs Commission (CAC) 2023 Annual Report showed that 65% of pending applications for Companies Limited by Guarantee were delayed because of slow consent processes.[9] Such delays discourage educational entrepreneurs, stifle innovation, and ultimately deprive communities of timely educational interventions. Nigeria's cumbersome procedures also deter foreign donors who prioritize swift, predictable regulatory environments.[10]

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[6] Afrobarometer, 'Public Perception Survey on Educational Institutions' (2023), available at <https://www.afrobarometer.org/publications/public-perception-survey-educational-institutions/> accessed on 23 April 2025, 22.

[7] Companies and Allied Matters Act 2020, Part F, s 26(5).

[8] World Bank, 'Doing Business in Nigeria Report' (2023), available at <https://www.worldbank.org/en/programs/doing-business/nigeria> accessed on 23 April 2025, 14.

[9] Corporate Affairs Commission (n.3) 22

[10] African Development Bank, 'Nigeria Economic Outlook 2022' (2022), available at <https://www.afdb.org/en/documents/nigeria-economic-outlook-2022> accessed on 23 April 2025, 22.

2. High Costs of Incorporation and Compliance

Despite being non-profits, the financial burden associated with incorporation remains high. The CAC's 2022 Schedule of Fees estimates that incorporation for a Company Limited by Guarantee costs upwards of ₦300,000, excluding hidden costs like legal fees and mandatory newspaper publications.[11] In a country where the World Bank reports the 2022 per capita income as approximately $2,085, these costs become prohibitive for grassroots actors.[12] NESG's 2023 study revealed that 47% of educational non-profit founders abandoned incorporation mid-way due to cost constraints. [13] Furthermore, annual returns, external audits, and the maintenance of a board of trustees involve recurring expenses that non-profit institutions find difficult to bear.[14]

3. Complex Regulatory Framework and Overlapping Oversight

The Nigerian non-profit regulatory environment is notoriously complex. Incorporators must engage with multiple regulators: the CAC, the Federal Ministry of Education, state education ministries, and specialized bodies like the National Universities Commission (NUC). [15] Compliance obligations often overlap or contradict. For instance, an institution might obtain CAC registration but still be required to secure fresh operational approvals from the State Ministry of Education and undergo periodic inspections.[16] Theories of regulatory burden indicate that when regulatory demands are incoherent, non-compliance rates inevitably rise.[17]

4. Limited Awareness and Capacity Among Founders

Founders of educational non-profits often lack adequate understanding of regulatory requirements. According to CAC's 2023 compliance audit, only 38% of applicants met legal requirements at first attempt[12]. Common mistakes include misclassifying the nature of the organisation, wrong constitutional drafting, and non-compliance with governance structures. Nigeria also lacks a robust pro bono legal culture compared to countries like South Africa or Kenya, where civil society provides registration support. [18] Without technical guidance, many founders either abandon formalisation efforts or operate in precarious legal states.

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[11] CAC, 'Schedule of Incorporation Fees' (2022) available at <https://www.cac.gov.ng/schedule-of-fees/> accessed on 23 April 2025, 5.

[12] World Bank, 'World Development Indicators 2022' (2022) available at <https://databank.worldbank.org/source/world-development-indicators> accessed on 23 April 2025, 43.

[13] NESG (n.4) 22

[14] CAMA 2020, Part F, s 832(a).

[15] Federal Ministry of Education, Policy Guidelines on Private Education Providers (2022) available at <https://education.gov.ng/policy-guidelines-on-private-education-providers/> accessed on 23 April 2025, 11.

[16] NUC, 'Handbook for Private Universities' (2023) available at <https://nuc.edu.ng/handbook-for-private-universities-in-nigeria/> accessed on 23 April 2025, 7.

[17] Baldwin, Cave and Lodge, *Understanding Regulation: Theory, Strategy, and Practice* (Oxford University Press 2012) 87.

[18] EO Ezeani, 'Leadership Failures in Nigerian Non-Profit Sector' (2022) *Journal of African Leadership Studies* Vol 5(1) 12.

5. Financial Sustainability Challenges Post-Incorporation

Non-profit educational institutions face strict restrictions on profit distribution. CAMA mandates that surpluses be reinvested into achieving institutional objectives.[19] While noble in intent, this restriction hinders institutions' ability to raise equity capital, a key instrument for long-term financial sustainability. According to the World Bank's 2022 educational development report, 30% of Nigerian educational non-profits folded within five years of establishment due to unsustainable financial models.[20]

6. Distrust and Public Perception Issues

Trust is the lifeblood of non-profit institutions. However, misappropriation scandals involving prominent NGOs have cast doubt on the sector generally. The 2023 Afrobarometer survey found that only 54% of Nigerians trusted non-profit educational institutions.[21]

From a Social Capital Theory perspective, once trust declines, it severely hampers an organization's ability to mobilize resources and public goodwill.[22] Without greater transparency, including open disclosure of financial records and participatory governance practices, educational non-profits will continue to struggle.

7. Ineffective Post-Incorporation Monitoring

While CAMA mandates annual returns and compliance checks, enforcement is weak. CAC's 2023 internal review revealed that less than 10% of educational non-profits were subjected to post-registration audits within three years.[23] This regulatory laxity emboldens mission drift, financial mismanagement, and undermines donor confidence. Monitoring mechanisms must be strengthened to ensure that legal compliance translates into organizational accountability.

8. Politicization and Government Interference

Political interference remains a major challenge. Educational non-profits sometimes face subtle pressures to align with political interests at state or federal levels. Failure to comply may result in unnecessary delays during regulatory approvals or denial of operational licenses.[24] Such politicization undermines independence and weakens public confidence. UNESCO has noted that government interference in non-profit education across Africa frequently derails core mandates.[25]

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[19] CAC, 'Annual Compliance Report' (2023) available at <https://www.cac.gov.ng/annual-compliance-report-2023/> accessed on 23 April 2025, 32.

[20] B Adetayo, 'The Legal Environment for Non-Profits in Nigeria' (2022) *Nigerian Bar Journal* Vol 48(2) 90.

[21] CAMA 2020, Part F, s 832(a).

[22] CAC, (n.19) 30.

[23] World Bank, 'Education Infrastructure Development in Nigeria: Challenges and Opportunities' (2022) available at <https://www.worldbank.org/en/topic/education/publication/education-infrastructure-nigeria-2022> accessed on 23 April 2025, 44.

[24] Afrobarometer (n.6) 27

[25] RD Putnam, *Bowling Alone: The Collapse and Revival of American Community* (Simon & Schuster 2000) 67.

9. Inadequate Tax Incentives

While Section 23 of the Companies Income Tax Act exempts non-profits from income tax, accessing these benefits remains cumbersome.[26] The Federal Inland Revenue Service (FIRS) often requires extensive documentation before granting tax-exempt status, a process fraught with delays and inconsistencies. Moreover, educational non-profits rarely enjoy property tax waivers, making it financially burdensome to acquire land or build infrastructure.[27] In contrast, in jurisdictions like Ghana and Rwanda, tax incentives for educational non-profits are streamlined, promoting their rapid growth.[28]

10. Donor Fatigue and Dependency Syndrome

Non-profit educational institutions are highly dependent on grants and donations, which are inherently volatile. Donor fatigue — a situation where funding sources gradually dry up — is becoming a serious threat. Reports from the Nigerian Philanthropy Forum (2023) indicate that grant cycles are becoming shorter, and foundations are demanding higher transparency and impact proof. [29] Institutions without diversified income streams — such as moderate tuition, consultancy services, or auxiliary businesses — risk collapse once major funding partners withdraw.

11. Fragmented Data and Poor Sector Coordination

Nigeria lacks a centralized, up-to-date database of educational non-profit organizations. Consequently, institutions work in silos, duplicating efforts and wasting scarce resources. [30] The absence of reliable sector-wide data also hampers research, donor interventions, and policy reforms. In contrast, countries like South Africa maintain comprehensive, open-access registries that strengthen coordination among non-profit educational actors [31]

12. Weak Internal Governance Structures

Many educational non-profits suffer from internal governance weaknesses. CAC's 2023 compliance inspection revealed that 40% of organizations lacked functioning Boards of Trustees. [32] Strong internal governance, including periodic trustee meetings, transparent accounting practices, and conflict-of-interest policies, is critical for sustainability. Without it, even well-meaning institutions may falter under the weight of mismanagement or founder syndrome.[33]

13. Challenges from Digital Technology

[26] Corporate Affairs Commission, Internal Compliance Review (2023) available at https://www.cac.gov.ng/internal-compliance-review-2023/, accessed on 23 April 2025, 32.

[27] Omodia SM, 'Politics and the Challenges of Sustainable Development in Nigeria' (2020) African Research Review Vol 14(2) 200.

[28] UNESCO, State of Education Report for Sub-Saharan Africa (2022) 52.

[29] Companies Income Tax Act (CITA) Cap C21 LFN 2004, s 23(1)(c).

[30] Nigerian Economic Summit Group (NESG), 'Report on Non-Profit Financing Challenges' (2023) available at <https://nesgroup.org/reports/educational-institutions-sustainability-2023> accessed on 23 April 2025, 52

[31] Ghana Revenue Authority, Tax Handbook for Charitable Organisations (2021) 17.

[32] Nigerian Philanthropy Forum, Annual Report (2023) 19.

[33] NESG, Sector Coordination Challenges Report (2023) 22.

Digital technology presents both opportunities and challenges for educational non-profits. Institutions that fail to leverage technology for virtual learning, administrative efficiency, and fundraising risk obsolescence. However, many non-profit founders lack digital skills or access to affordable digital infrastructure. [34] Furthermore, cybersecurity risks like data breaches threaten donor privacy and institutional credibility. [35] Incorporating digital innovation into governance, program delivery, and fundraising strategies is no longer optional for educational non-profits; it is essential for survival and relevance.

Conclusion

The incorporation of educational institutions as non-profit organizations in Nigeria, while laudable, faces systemic challenges that limit its potential. Bureaucratic delays, high incorporation costs, regulatory complexity, founder ignorance, financial fragility, public distrust, and weak monitoring mechanisms all combine to create an environment where educational non-profits struggle to thrive. If left unaddressed, these challenges will continue to stifle innovation, reduce educational access for disadvantaged groups, and erode public confidence in non-profit educational providers.[36]

Recommendations

However, there are practical paths forward. Firstly, the Attorney General's consent requirement for Companies Limited by Guarantee should be either eliminated or subjected to strict timelines to reduce bottlenecks.[37] Secondly, incorporation costs must be subsidised for educational institutions serving marginalised populations, possibly through grants or legal aid programmes. This approach aligns with Nigeria's commitments under the Sustainable Development Goal 4 on inclusive and equitable quality education.[38]

Furthermore, regulatory bodies like the CAC, NUC, and the Federal Ministry of Education should establish harmonised compliance platforms to reduce duplication and ease regulatory fatigue. [39] Capacity-building programmes for founders, supported by professional legal associations and civil society groups, can also bridge the current knowledge gaps. [40] Importantly, non-profit educational institutions themselves must institutionalise transparency measures such as annual public reporting, stakeholder consultation, and participatory governance, to rebuild public trust and social capital.[41]

Finally, the government must invest in strengthening post-incorporation monitoring mechanisms, including risk-

[34] Nwachukwu C, 'Digital Disruption and the Non-Profit Sector in Africa' (2022) TechAfrica Review Vol 3(4) 54.

[35] Cybersecurity Nigeria, Annual Cyber Threat Report (2023) 25.

[36] NESG, Educational Institutions Sustainability Report (2023) 45.

[37] Companies and Allied Matters Act 2020, Part F, s 26(5).

[38] United Nations, 'Sustainable Development Goals Report' (2022) 59.

[39] NUC, Handbook for Private Universities (2023) 18.

[40] B Adetayo, 'The Legal Environment for Non-Profits in Nigeria' (2022) *Nigerian Bar Journal* Vol 48(2) 93.

[41] RD Putnam, *Bowling Alone: The Collapse and Revival of American Community* (Simon & Schuster 2000) 78

based audits and continuous compliance assessments, to ensure that non-profit educational institutions adhere to their founding objectives. [42] Only through a holistic strategy that addresses these interconnected challenges can Nigeria unlock the full transformative potential of non-profit educational institutions to democratise education, foster innovation, and promote inclusive national development. The future of educational access, equity, and innovation in Nigeria may well depend on getting this balance right.

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[42] CAC, (n.26) 21

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