IMPERATIVES OF A CONSTITUTIONAL MANUAL OF LAW-MAKING IN NIGERIA AS GUARANTEE AGAINST CONTROVERSIES IN LEGISLATION: CAMA 2020 AS CASE STUDY

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Abstract

This paper examined the piece of legislation known as the Companies and Allied Matters Act (CAMA), 2020 which succeeded both in name and title to a previous statute promulgated by military regime in 1990. The presentation of the 2020 statute precipitated a controversy which almost overwhelmed the huge innovations made therein to the system of corporate law and practice in Nigeria. The controversy bordered on suspected motive of the government in enacting the new CAMA 2020 especially as it relates to incorporated trustees of non-profit Organisations[1]. The controversy was fuelled in no-little way by the criticism which greeted an earlier attempt at enacting the Control of Infectious Disease Act and the rush it endured through the chambers of the two legislative houses of the National Assembly in April 2020[2]. The opposition to CAMA 2020 had shifted attention to the need to visit the framework for legislative processes in Nigeria in order to discover whether or not there is in existence a format for law-making which conforms with best practices obtaining in countries which practice constitutional democracy. The specific objectives of the paper are to critically examine whether or not there exists in the Nigerian constitution, a manual of law-making and to evaluate to what extent such a manual constitutes a safeguard against controversies such as are presented against CAMA 2020. And to appraise the extent to which law-making processes adopted by the National Assembly in Nigeria, conforms with the system of constitutional democracy. This paper adopts the doctrinal method of research and relied on primary source of information consisting the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Companies and Allied Matters Act (CAMA) 2020, and the secondary source include textbooks, journal articles and online resources. This paper concludes that the current system of legislative process adopted in Nigeria is both non-conforming to parliamentary system of government as practiced in the UK, nor with the system of constitutional democracy as witnessed in the United States thereby necessitating an urgent redress of the current legislative process in the overall interest of the nation.

Keywords: Constitutional manual, Law-making, Nigeria, Companies and Allied Matters Act 2020.

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[1] See Section 839 (1) of CAMA 2020.

[2] <https://businessday.ng/politics/article/why-criticism-swells-around-infectious-diseases-control-bill> accessed 10 September 2023

Introduction

The new piece of legislation christened the Companies and Allied Matters Act (CAMA), 2020, was a successor both in name and title to an erstwhile legislation made in 1990 (a piece of legislation promulgated during military regime in Nigeria). It is worthy of note that the 1990 statute had endured a couple of amendments until its outright repeal by the 2020 legislation. The piece of legislation enacted in 2020 was meant to fill the lacuna noticeable in the 1990 legislation, and for which the latter legislation had endured several amendments leading to a wholly new legislation which introduced numerous long-waited innovations into the Nigerian company law.

The introduction of CAMA 2020 to the public ignited the debate platforms on the pros and cons of the statute raising high hopes that the statute constitutes a prospective vehicle for economic growth in Nigeria. Diverse opinions were proffered on the utility value of the law coalescing into two major fronts. On the one hand, it has been suggested that while the positive contributions introduced by the statute into company law jurisprudence in Nigeria cannot be ignored[3], on the other hand also, interrogate the process which birthed the law and has reduced it into a controversial piece of legislation,[4] became imperative almost overshadowing the otherwise positive changes introduced into corporate law and practice generally.

Prior to the introduction of CAMA 2020 to the Nigerian public, procedure adopted for the enactment of a law meant to provide for mandatory immunization regime for Nigerian citizens during the Covid-19 pandemic, had become a butt of similar criticism. The Bill seeking to replace the Quarantine Act with another Act titled: The Control of Infectious Disease Act had been quickly rushed through the first and second reading at the House of Representatives in April 2020.[5] All these serve as pointers to the compelling need to visit the framework for legislative processes in Nigeria in order to discover whether or not such a framework exists and if it does, to enquire further on the format and whether the format is in compliance with best practices that obtain in those countries which practice constitutional democracy.

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[3] Udo Udoma & Belo-Osagie, 'Nigeria: 20 Innovations in the Companies and Allied Matters Act, 2020 <https://www.mondaq.com>nigeria> accessed on 11 September 2023

[4] Editorial, "CAMA 2020 controversy must be resolved" *Vanguard* (Lagos, Nigeria, September 7, 2020). <https://www.vanguardngr.com>cama-2020> accessed on 11September, 2023

[5] *Africa Report* <www.theafricareport.com> accessed on 11 September 2023

The paper is divided into five sections. Section one contains the introduction. Section two discusses the Nigerian Constitution as the groundwork of law-making power and engaging in comparative analyses of two different statutes whose enactment were mired in huge controversies in Nigeria. Section three examines in succinct terms, legislative process in the UK. Section four is an appraisal of the legislative processes in the United States of America, while section five contains the conclusions and recommendations.

The Constitution as the groundwork of law-making powers in Nigeria

In one sense, the word constitution is an abstraction for describing the systems of laws, the customs and also the conventions which make up the components of the composition and authority of the state, and these in turn regulate the workings between themselves on the one hand, and between the organs of the state and private citizens on the other hand. When described in another sense, the word constitution is taken as the document wherein the most important laws of the constitution are affirmatively stated.[6] The Nigerian constitution is a written constitution and this characteristic feature of the constitution is exemplified more in the sense that the written constitution of Nigeria is both a document that also contains the fundamental principles which concern and relate to how the government is organized, the power and authority which the various agencies of the government possess and also the rights and duties of the citizens.[7]

Virtually all civilized nation-states of the world and perhaps with the exception of a few, have written or enacted constitutions. And for these countries, their respective constitutions contain the most important laws which form the foundation of these states and these laws are binding on the courts and all persons concerned within the territorial jurisdiction of a country.[8] Even though it is an important feature of a written constitution to contain the most important laws of a country and fundamental principles which underlie the functions of governmental agencies, yet, it is practically impossible that a written constitution will contain more than a handful of selection of constitutional

[6] O Hood Phillips and P Jackson, *Constitutional and Administrative Law*, 6th ed. (1978) Sweet & Maxwell, London, p. 5.
[7] I.O. Smith, *The Constitution of the Federal Republic of Nigeria, Annotated*, 1999 Ecowatch Publishers Ltd., Lagos, p. xxix.
[8] Hood Phillips O and Jackson P, *op cit.* p. 6.

laws. It is not unlikely that supplements to these laws, will be made, albeit within constitutional limits, through amendments that are undertaken also in accordance with the appropriate stipulations in the constitution.[9]

The scope of a written constitution – which is true in the case of the Nigerian constitution – is that the constitution contains the rules which distinctly define the various organs of government especially the law-making authorities, that is, the legislature and the judiciary.[10] In the current constitution operated in Nigeria - the Constitution of the Federal Republic of Nigeria, 1999 (as amended) – the powers to legislate for the peace, order and good governance of the geographical entity known as the Federal Republic of Nigeria, both at the federal and state tiers of government has been respectively vested in the National Assembly[11] and the various legislative arm of government at the federating state levels.[12]

Further to the substantive powers to legislate granted to the legislature in the constitution, the power to make the procedural rules which will be applicable in the exercise of the substantive powers to legislate are ceded by the constitution to the legislature both at the federal and state tiers of governments in the nation.[13] The various legislative platforms at the federal and state levels, have gone ahead in compliance with enabling provisions in the Nigeria constitution to fashion rules for themselves. When juxtaposed with legislation, constitutions are oftentimes regarded as being a higher law than a piece of legislation. This is due to the fact any piece of legislation is invariably subjected to the provisions of the constitution in order to assess the consistency or not of the legislation with the constitution. Where a piece of legislation in not consistent with the constitution, such law is regarded as invalid. This is the situation in the Nigerian constitution where it is provided that "If any other law is inconsistent with the provisions of this Constitution, the Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void".[14]

Where legislatures make laws that are alleged to be inconsistent with the constitution, the latter's superior nature is usually resolved in accordance with the provisions of the same constitution and

[9] Hood Phillips O and Jackson P, *op cit.* p. 6.
[10] Ibid. p. 7. See also sections 4 and 6 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[11] Section 4 (1) – ((4), Constitution of the Federal Republic of Nigeria – CFRN – 1999 (as amended).
[12] Section 4 (7) (a) – (c), Constitution of the Federal Republic of Nigeria – CFRN – 1999 (as amended).
[13] See sections 60 and 101, Constitution of the Federal Republic of Nigeria – CFRN – 1999 (as amended).
[14] Section 1 (3) Constitution of the Federal Republic of Nigeria, 1999 (as amended).

by the very organ which the constitution has ceded powers of adjudication, which in this case are the courts. Under the Nigerian constitution, judicial powers of the federation are vested in the courts[15] that are established under the constitution.[16]

In the alternative, where the legislature makes laws that are allegedly inconsistent with the constitution, recourse could be had to a political mechanism exemplified in the constitutional doctrine of separation of powers[17] or in the mechanism of politics such as party competition which will serve as a discouragement to legislatures to enact unconstitutional laws. But a third angle exists or should exist in consonance with the theoretical basis of this study geared towards the means of tracking laws that are considered as inconsistent with the constitution. This is to the effect that considering the serious business of law making in the light of their potential to act as means of orderly existence in a community and their tendencies to avoid chaos in a society.

Ancient history teaches us that the system of communal living adopted by human beings is brought into existence as a result of their readiness to compromise their innate freedom in favour of the common good of their neighbours through the compromise of the phenomenon called the government. The government in turn resort to enactment of laws, rules and regulations which ensure that citizens live in orderly environment devoid of chaos and crises. The mechanism through which these laws and or the rules and regulations are made is known as legislation, whether it is of primary or secondary status.

According to the Black's Law dictionary, the word legislation is the process of making or enacting a positive law in written form, in accordance with some type of formal procedure, by a branch of government specifically constituted to perform this process.[18] Legislation remains the most significant medium for expressing the constitutional role assigned to the legislature, that organ of government saddled with the responsibility of making or enacting laws. Legislation is of

[15] Section 6 (1) Constitution of the Federal Republic of Nigeria, 1999 (as amended).

[16] Section 6 (5) (a) – (k), Constitution of the Federal Republic of Nigeria, 1999 (as amended).

[17] The doctrine of separation of powers is established in the constitution through the establishment of the legislature, executive and judiciary as separate organs of the government, see Sections 4, 5, 6 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The object of the constitution in establishing the three organs of government is to avoid concentration of power in one hand and so that the acts of one (organ) should not be controlled by the other (organ). See *Ude v Ojechemi* (1995) 8 NWLR (Pt. 412) p. 152 at pp. 171 (paragraphs F – G) and pp. 172-173 (paragraphs H – F)

[18] 9th ed. P. 982.

antiquated origin and an ancient form of law having taken root in early Sumeria[19] and consisting of written rules of law that are ratified by and clothed with authority.

The legislature and legislation are akin to Siamese twins and an indispensable feature of all governments in the world. One is responsible for the existence of the other, while one is the product of the other. Whether or not existing as a distinct organ of government, the legislature or the legislative arm of any government is always and invariably responsible for the legislation that exist in any society or polity. In democratic governments or constitutional democracies, the law-making body otherwise called the legislature undertake this vital role in government while ensuring that other responsibilities that may be assigned to it under the constituting document or the foundational law of that society, are also rendered.

It is therefore a legitimate concern of any country or people to insist on the establishment of substantive law which will birth a specific procedure of law-making in the particular polity. Having such transparent procedure will inevitably lead to the legislature being accountable to the people and thereby avoiding the pitfalls which an obscure procedure of law-making may engender. This paper therefore examines next, two different pieces of legislation, one of the two being aborted in the embryonic stage of its formation due to the fact that members of the public, especially the critical press, received a hint on its formation and thereby mobilized public opinion against its promulgation and the other even though escaped the notice of members of the public, yet the critics of the statute were unyielding on the necessity of excising the offensive part from principal statute.

The controversy on the Control of Infectious Diseases Bill (CIDB) (2020)

The energy in which the opposition by a section of the Nigerian populace unleashed against the Control of Infectious Diseases Bill (CIDB) was engulfed had not subsided when the Companies and Allied Matters Act (CAMA) 2020 was introduced into the body of laws governing the Nigerian legal system as a newly enacted statute. The opposition to the CIDB was fuelled by the suspicion of members of the Nigerian public that the Bill contains certain provisions which has abundant

[19] Sumer (or Sumeria), site of the earliest known civilization, located in the southernmost part of Mesopotamia, between the Tigris and Euphrates rivers, in the area that later became Babylonia and is now Southern Iraq, from around Baghdad to the Persian Gulf. <www.britannica.com> accessed 30 December 2020

capacity to derogate from the fundamental rights of citizens as guaranteed under the Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as amended) and when eventually passed into law, has the potential of *inter alia* interfere with these rights guaranteed in the constitution.[20]

Some of the examples cited for opposing the crystallization of the bill into a full statute were its similarity with the Infectious Disease Act, 1977 of Singapore, a country categorized among nations with history of dictatorship and that any statute that has a tinge of dictatorship will be incongruous in a democratic country like Nigeria.[21]

Indeed, certain aspects of the proposed CIDB contains provisions for the declaration of a health emergency in a manner convenient to the president and this was considered as investing in the president, absolute powers to unilaterally decide on what affects the entire nation without recourse to and inputs of the moderating influence and oversight powers exercisable by other democratic institutions such as the Senate and the House of Representatives and even the judiciary.[22]

The arguments in opposition to the bill went further that even during emergency periods, the Nigerian constitution contains specific and stringent provisions (s. 305) which compels the president to take certain steps before declaring a state of emergency in the whole or any part of the country and further that even where the president declared a state of emergency, the constitution as the fundamental law of the country, and the judiciary as the third arm of government are not suspended.[23]

Other provisions considered as draconian in the bill include the power to carry out mandatory medical examination or treatment of persons suspected to be carriers or have contacted infectious diseases (s. 6); the vesting of enormous powers on the Director-General of the Nigeria Centre for Disease Control (NCDC), to requisition in writing addressed to an owner of a vessel or occupier of a premise to cleanse or disinfect his vessel or premise "in the manner required by the DG" (s. 10); power conferred on the DG to declare any premise an isolation area for the purpose of preventing the spread or possible outbreak of an infectious disease (s. 15); and power of the DG

[20] <https://www.michaelmaschambers.com/insight-page.php?i10&a=examination-of-the-control-of-infectious-diseases-bill-2020 > accessed 13 September 2023
[21] Ibid.
[22] Ibid.
[23] Ibid.

to order the owner or occupier of a building to abate the crowd clustered in his building without the DG being precluded from exercising his powers (s. 16) notwithstanding any appeal by an aggrieved person pending before the Minister (of Health). Under section 23, an enforcement officer, police officer or any authorised officer has the latitude to arrest and confine bodily, any person that the officer finds on any street or public place suspected to be suffering from any infectious disease.[24]

All the foregoing provisions of the bill were considered both derogatory and contemptuous of the fundamental and natural rights possessed by all human beings and *a fortiori* Nigerians, and these rights have been held both sacrosanct and inviolable by international community and they have been preserved in international conventions and treaties such as the 1948 Universal Declaration of Human Rights (UDHR), the International Covenants on Civil and Political Rights (ICCPR) and the African Charter on Human and People's Rights (ACHPR). These rights have also found their way into the letters of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

The complaints against specific parts of CAMA 2020

The narratives in respect of the CIDB (2020) permeated the public discourse in Nigeria and had not abated when the Companies and Allied Matters Act, (CAMA) 2020 was introduced. The initial euphoria with which the piece of legislation known as CAMA 2020 was greeted, hailed the statute as both revolutionizing corporate law and practice in Nigeria and aligning corporate law with international best practice. However, the ecstasy would sooner wane when the full import and total ramifications of the provisions governing certain aspects of the statute in relation to "incorporated trustees" hit the full consciousness and understanding of the critics.

The provisions which govern the system of incorporated trustees in Nigeria are found in Part F of CAMA, 2020[25]. However, of all the twenty-eight (28) under that Part, the most offensive to critics of the statute on the accusation of its meddlesomeness usually refer to section 839 (1) thereof of the Act, which provides that "The (Corporate Affairs) Commission may by order suspend the

[24] Ibid. <https://www.michaelmaschambers.com/insight-page.php?i10&a=examination-of-the-control-of-infectious-diseases-bill-2020 > accessed 13 September 2023

[25] Sections 823 – 850 CAMA, 2020.

trustees of an association and appoint an interim manager or managers to manage the affairs of an association where it reasonably believes that…." These provisions in the new statute were considered *ad hominem,* and targeted against specific religious section of the country. This was not the situation which prevailed under the 1990 statute which the current one under consideration repealed.[26]

Under CAMA 1990 the management and control of an association registered as an incorporated trustee was vested absolutely in the trustees - who are deemed as a body corporate vested with powers to "hold and acquire, transfer, assign or otherwise dispose of any property or interest therein belonging to, or held for the benefit of such association as they might have done without incorporation"[27]- and also in the constitution[28] which is an integral of the documents to be filed by an association applying for registration as an incorporated trustees under CAMA 1990.

It was therefore not surprising that the new law was greeted with so much vehement opposition which resulted in a welter of litigations aimed at upturning that aspect of the new CAMA 2020 as being unconstitutional and very recently the Federal High Court, Abuja, while delivering judgment on an originating summons filed before the court for the interpretation whether sections 839, 842-848 and 851 of CAMA, 2020 infringed on the constitutional right to freedom of thought, conscience and religion of the plaintiff as contained under section 38 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), granted the prayer as requested and the court held that the powers granted to the Corporate Affairs Commission to regulate and administer Incorporated Trustees in Nigeria under those sections which virtually made up the entire provisions under Part F of the CAMA, 2020 infringed on the plaintiff's right to conscience and religion under section 38 and freedom of peaceful assembly and association under section 40 of the Constitution and therefore declared the offensive sections of the CAMA, 2020 as null and void.[29]

Also more recently, the Federal High Court, Abuja in a suit commenced through an originating summons filed by the Registered Trustees of the Christian Association Nigeria – CAN - also

[26] Section 869 CAMA, 2020.
[27] Section 596 CAMA, 1990 (as amended).
[28] Section 593 CAMA, 1990 (as amended).
[29] https://www.premiumtimesng.com/news/top-news/594574-court-nullifies-sections-of-cama-2020.html8 accessed on 15 September, 2023.

restrained the Corporate Affairs Commission from exercising the powers vested in the Commission under section 839 (1) CAMA, 2020 to suspend or appoint trustees of the Christian Association of Nigeria and the churches. The court held that the provisions of sections 17 (1), 839 (1) and (7) (a), 842 (1) and (2), 851 and 854 of the Companies and Allied Matters Act, 2020 and Regulations 28, 29 and 30 of the Companies Regulations (CR), 2021 were not applicable to CAN and the churches, including mosques as religious bodies.[30]

Legislative process in the United Kingdom (UK)

The historical link between the UK and Nigeria will make a comparative evaluation of law making in the former very revealing of what lessons the latter country had imbibed from the relationship. It is trite knowledge that English law with its established components of common law, doctrines of equity and statutes of general application which were applicable in England as at the cut-off date, formed part of Nigerian law. What is however not clear is the extent to which the procedure for law-making in the England, impacted the country known as Nigeria.

In the UK, a country whose constitution is largely unwritten, an examination of the sources of parliamentary procedure will reveal a category of four distinct sources and these are respectively: *practice*, that is, the unwritten part of procedure; *standing orders* and *ad hoc* resolutions; *rulings* from the Chair, that is, by the Speaker of the House, or Chairman of Committees; and lastly, *Acts of Parliament*, which regulate certain aspects of the procedure of both Houses, that is, the House of Commons and the House of Lords.[31]

In respect of practice as a source of parliamentary procedure, what constitutes practice of the House is determined by examining the precedents of the House according to the records of the Journal.[32] Before the advent of the *Standing Order* option in 1833, the practice before then was established solely in order to enhance and encourage debate. In respect of standing orders, these are passed by resolutions of the House, in the ordinary way. Standing orders by their nature are meant to last

[30] https://dailypost.ng/2023/03/21/cama-act-court-stops-cac-from-suspending-appointing-can-churches-trustees/ accessed on 15 September, 2023.

[31] Hood Phillips O and Jackson P, *op cit.* p. 200.

[32] According to the 9th edition of the *Black's Law dictionary*, a Journal is a book or record kept, usually daily, as of the proceedings of a legislature or the events of a ship's voyage. Also termed *log*; *logbook*. P. 915.

beyond the end of the session, which is the duration of the term of a legislature sequel to proclamation. But where there is no express provision that standing orders are to last beyond the end of the session, they are in turn terminated by prorogation.[33]

Where standing orders relate to public business, their main purpose is discovered in its prospects of being able to speed up debate. There are also sessional orders and when passed these are operative only during the session for which it was meant. And a resolution or an *ad hoc* order operates only for the particular occasion it meant to govern. A standing or sessional order and an ad hoc order can operate to suspend a standing or a sessional order.[34] An order expressly made, whether standing or sessional, has the potential of overruling a rule of practice.[35]

Ruling from the chair as a source of parliamentary procedure relates to the function of the Speaker (of the House of Commons/Lords) or Chairman (of a committee). The exercise of this function by the Speaker is mainly interpretative and declaratory and also has to do with the application of *Practice* and *Standing Orders* in any circumstances that may arise. Lastly, Acts of Parliament as a source of legislative procedure may exist for the purposes of modifying parliamentary procedure but these are few. Acts of Parliament possesses overriding authority over the orders of both Houses or either of them.[36]

From the parliamentary procedure sources in the UK examined above, five procedural steps of legislative process which must be covered - from the presentation of the Bill to its signing into law - are easily discernible in that jurisdiction and these are as follows: the decision to legislate: which is one of the legislative processes in the UK that begins with the formulation of a legislative programme by the government. The legislative programme is an integral part of the decision to

[33] This the art of putting off to another day, especially, the discontinuance of a legislative session until its next term. Under civil law, prorogation is the extension of a courts or judge's jurisdiction by consent of the parties to a case that it would otherwise be incompetent to hear. *Black's Law dictionary*, 9th edition. P. 1341. According to learned author Hood Phillips O and Jackson P, *op cit.* at p. 131, prorogation terminates a *session* of Parliament. It is effected by command of the Queen – acting by convention on the advice of the Cabinet – such command being signified to both Houses either by the Lord Chancellor (in the Queen's presence or by commission) or by proclamation. In either case the date for the new session is stated, but statutes enable the Crown by proclamation to accelerate or defer the next meeting of a Parliament that stands prorogued. The interval between two sessions is called a recess. Prorogation may be preceded by the signification of the Royal Assent to Bills that have passed both Houses, and the Queen's Speech surveying the work of past session.

[34] Hood Phillips O and Jackson P, *op cit.* p. 201.

[35] Ibid.

[36] Ibid. at p. 202.

legislate and consists of the proposal of the Bill that the government will place before the Parliament for consideration in that session.[37]

Next is the preparation of the Bill stage and this is tracked from the time a Bill received a slot in the legislative programme after the decision to legislate has been affirmed, the next stage in the legislative process, is the preparation of the Bill stage. This is the stage where the department of government responsible for the drafting of the Bill, will convene a team to coordinate the preparation and passage of the Bill through Parliament and oftentimes, other departments apart from the one sponsoring the Bill, will volunteer inputs to the Bill with a view to improving its content.

After this stage comes the stage known as the parliamentary stages. This stage is where government ensures strict adherence to parliamentary programme of and by the two houses. Notwithstanding where a Bill begins its first towards being made a legislation – whether in the House of Commons or in the House of Lords – it is the responsibility of the government to ensure that each of the Houses possesses a balanced programme of legislation for consideration during each legislative session. And lastly, the obtaining the royal assent and matters related to the Bill which are to be addressed in the future. None of the stages of law-making in the UK is shrouded in secrecy and more importantly, the provisions for strict adherence to these stages are further assured by enacting them in Acts of Parliament which gives these stages both the force of law and the higher status of a legislation.

Legislative process in the United States of America

For countries with a written constitution, both the enabling provisions which identifies the organ responsible for law making, together with the legislative procedure for making laws by the respective organ of law-making, are contained therein. This is the situation in the US, but the Nigerian constitution does not cover the same scope covered by the US constitution. Whereas in the US constitution, both the name of the organ responsible for law making and the procedure to be adopted in making the law, are separately provided for, the same is not true about the Nigerian

[37]<https://www.gov.uk/guidance/legislature-process-taking-a-Bill-through-parliament> accessed on 12 September 2023

constitution which though names the organ responsible for law making, but is silent on the procedures to be applied in making the laws or what is better known as legislative procedure.

The legislative process in the Unites States of America (hereinafter US), is not radically different from what obtains in the United Kingdom (hereinafter, the UK), and this is not too surprising on account of the colonial link between the two countries, similar to the situation between Nigeria and the UK. As a result of the foregoing, the examination of the UK legislative process in this article should suffice for our purposes.

But this course of event will not be advisable for the compelling reason that, from the beginning of the democratic form of government in Nigeria in 1979 to date,[38] Nigeria had bided goodbyes to the parliamentary system of government bequeathed to Nigeria by her former colonial masters, the UK and having looked the way of the US with the adoption of the latter's presidential system of government, it is expedient to consider the legislative process in the US and then find out how far Nigeria had kept faith with that system.

The core of law-making process in the United State of America, is patterned after numerous steps of the country's federal law-making progression which is one basic outline of a unified process taking its beginning from a suggested idea for a legislative process and culminating in the end result of the idea as a publication in the form of a statute. The procedure is there in the public domain also in the form of a statute for which members of the American public can use as a checklist to monitor the advent of a statute in terms of its compliance with the earlier advertised processes.

The earlier statute outlining the law-making process the public access to having an informed understanding of the law-making process. The reason for allowing public access to the statutory procedure is the desire to achieve an end which will be protective of the community. This protective regime is exemplified in the ample opportunity provided to all sides of an opinion not only to be heard, but also to present counter views or opinions to a proposed piece of legislation.

Beyond the fact that for a proposal to become law in the United States, it has to be considered and approved by both Houses of Congress, a step regarded as an outstanding advantage of a bicameral

[38] The governance system adopted by Nigeria in the Second Republic (which began in 1979) was the presidential system patterned after the US presidential system model and this is what is being practiced till date.

legislative system, the open and full discussion provisions under the US Constitution represented by the opportunity given to stakeholders for a no-holds-barred debate oftentimes results in a notable involvement of a bill by amendment before it is proceeded with to give it a legal clothing of a statute.

Conclusions and Recommendations

Considering the importance of legislation in a democracy therefore, it is becoming increasingly imperative that searchlight be beamed on the process and procedure for law-making in order to ensure that the process is shorn of all obscurity, that the process is transparent and that it is publicly advertised such that every desiring citizen can see and track its operations. Transparent law-making processes and procedures which permit public participation – whether directly or otherwise – will inexorably give birth to the enactment of laws that are popular, acceptable and capable of building confidence in the society.

It may now be taken for granted and an established fact that the processes of law making by the Nigerian legislature at all tiers of government do not in any way resemble what obtains both in the UK and the US, and therefore anyone willing to interrogate the procedure is bound to look for information in areas other than the schedules of the constitution as well as in a piece of legislation at the Federal level.

Currently, a diligent seeker for a manual of law making by the national legislature in Nigeria, will have to do more to find any procedure in a formal and legal repository beyond the current booklets which is patently shorn of any formalization and legislation-backed platform which contain the procedural steps formally establishing acceptable law-making process. Indeed, the documents which govern law-making in Nigeria by the Senate[39] and House of Representatives[40] chambers are

[39] See section 4 (1) and chapter V Part 1 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) for the provisions establishing the Senate and both vesting legislative powers in the Senate as well as providing for its composition.

[40] Similar provisions establishing the House of Representatives and both vesting legislative powers in the House as well as providing for its composition are contained also in section 4 (1) and chapter V Part 1 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) for the provisions both vesting legislative powers in the Senate as well as providing for its composition.

respectively known as the "Senate Standing Orders, 2015 as amended" and the "Standing Orders of the House of Representatives".

Both documents are not known to have undergone any serious formalization processes neither do they bear any credential of promulgation beyond being respectively expressed to have been "published by the authority of the Senate of the Federal Republic of Nigeria" and "Ordered to be printed by the House of Representatives, Abuja". It is surprising that the National Assembly

The recommendation of this article will therefore be an intentional attempt by Nigeria ensure that the procedure for law-making in the country at the two tiers of governments at the federal and state levels, should be contained in a Schedule to the Constitution of the Federal Republic of Nigeria. Where this is achieved, the procedural steps expressed in the constitution will enjoy the doctrine of the supremacy of the constitution as contained in the current constitution.[41] At the very least, law-making procedures at the federal and state levels of governments in Nigeria should be expressed in an Act, that is a direct piece of legislation made by the National Assembly, or in a Law, which is a direct piece of legislation made at the various federating states levels.

Anything short of this, such as the two documents of the National Assembly referred to as the respective standing orders of both the Senate and House of Representatives and containing procedure of law-making in Nigeria, together with similar documents at the various states in the federation, will be unacceptable. To permit this remiss, will be tantamount to giving in to obscurity, exclusivity, secrecy and whimsical order of legislating in Nigeria resulting in the harvest of legislation which are surreptitiously dumped on the polity with telling and devastating effect on the populace.

If an open-access approach had been taken as the minimum standard of law-making in Nigeria, through the promotion of the culture and tradition of publicity of the procedural steps of law-making through the vehicle of a legislation, or the inclusion of the law-making processes as a schedule supplement to the Constitution, similar to what obtains both in the UK and US examples, then the controversy dogging the new Companies and Allied Matters Act, 2020 would have been avoided together with the prospects of similar statutes in the immediate and distant futures.

[41] Section 1 (1) and (3), Constitution of the Federal Republic of Nigeria, 1999 (as amended).

The pathway leading to the enactment of the statute in question, would have been paved with open and rigorous debates by all stakeholder especially the aspects regarded as new and allegedly "controversial" and repressive provisions made as new introductions to the incorporated trustees' aspect of the piece of legislation.