Assessing the Relationship between the Nigerian Companies Act and Corporate Social Responsibility in Nigeria

By:

Ibukun Iyiola-Omisore

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The blog post examines corporate social responsibility ('CSR') regime under the Nigerian Companies and Allied Matters Act 1990 (CAMA). It argues that CSR regime under CAMA is ineffective. In an era of financial crises alongside widening income disparities, and environmental problems linked to companies operating in developing countries like Nigeria, calls for greater CSR are increasing rapidly around the world. CSR involves the integration of social and environmental concerns by businesses in their business operations and engagement with their stakeholders).[1] The exploration of oil has transformed Nigeria's economy into the largest in Africa and 80% of its citizens live on less than $2 a day. According to the World Bank, of the world's 736 million extreme poor in 2015, 368 million half of the total world's poor population live in 5

countries India, Nigeria, Democratic Republic of Congo, Ethiopia and Bangladesh.

CSR is largely viewed as a voluntary concept. However, the adverse effect of companies' operations on the environment which causes the loss of livelihood of fisherfolks and farmers has brought attention to the role of corporate law in encouraging businesses to contribute to social and economic development.

The CAMA is 'the primary corporate law legislation in Nigeria'. The CAMA, unfortunately, is premised on a shareholder-centric model and it 'adopts the traditional primacy model of corporate governance, whereby corporate responsibility towards stakeholder groups like the local communities and suppliers, is very limited.[2] CSR initiatives are thus only organised voluntarily by companies operating in Nigeria.

In addition, the combined effects of section 279(4) and (9) of the CAMA show limited support for CSR in Nigeria, particularly community engagement. Sec 279 provides that company directors owe duties only to the company and thus have no legal responsibility or capacity to embark on any other duty apart from their duty to the company. Unfortunately, directors have interpreted the term 'interests of the company' to mean that of shareholders alone. This myth of shareholder primacy in Nigeria may obstruct CSR practice especially as the community is not explicitly mentioned as interests to be considered by directors. Therefore, directors may continue to focus on shareholders' interests without little or no regard to community affected by companies' operations. A viable solution may be to mandate corporate responsibility towards the community and ensure that the corporate law clearly recognises this interest, particularly in vulnerable areas which has led to high poverty rate due to loss of livelihood from the pollution of farmland.

Mandatory CSR ensures that every company engages in sustainable business practices and creates an even platform for measuring/accessing compliance.[3] Developing countries such as India have incorporated CSR provisions into their corporate law. India is similar to Nigeria with regard to their high population and poverty rates. The motivation for mandatory CSR in India is based on the belief that the private sector should assist the government in fostering

economic growth that is inclusive, reduces inequality and ensures that wealth is more evenly distributed among the Indian population.[4]

Section 135 of the India's *Companies Act 2013* ('Companies Act') mandates companies of a certain size to spend 2% of their profit on CSR activities. The CSR activities covered under the Companies Act include; contributing to the economic development of local communities by donating to social and economic development projects established by the government, relating to the improvement of poverty, education, health, human rights, environment, social business and employment.[5] Where a company board fails to spend the stipulated amount, the company will be penalised for not providing an explanation for their CSR expenditure. The Companies Act affect over 16,237 businesses with an estimated flow of approximately 200 billion Indian Rupees (INR) (approximately 2.6 billion euros) annually into the economy every year.

However, the enforceability of this CSR provision is debatable as it is likely to be ineffective in promoting CSR practice in the long-term. It has been drafted to encourage the philanthropic model of CSR instead of guaranteeing sustainable contributions to the community. For example, companies may pay the stipulated 2% expenditure to CSR projects to avoid sanctions or to use it as a public relation mechanism without ensuring the continuity of the projects initiated in the community. Umakanth submits that CSR goes beyond mere spending and should also enhance socially responsible and sustainable business practices.[6]

Such issues notwithstanding, the introduction of the CSR in India's Companies Act is considered a welcome development and is seen as a medium to improve the lives of members of the community that Nigerian policy makers can learn from. In September 2019, the Indian government expanded the scope of CSR spending to cover incubators. According to the official statement, CSR can be spent on incubators that are "making contributions to public funded universities, IITs, national laboratories and autonomous bodies…engaged in conducting research in science, technology, engineering and medicine aimed at promoting SDGs [sustainable development goals)"**.** By so doing, CSR spending can be used to promote research and economic development and provide an enabling environment for start-up companies to thrive, creating innovative

ways to promote social and economic development.

In conclusion, the current attention to sustainability challenges in Nigeria presents a good opportunity for policy makers to review the extant company legislation in Nigeria and incorporate CSR provisions suitable to the nation's cultural and economic context. The aim of CSR regulation is to use the market economy to finance and achieve sustainable development.[7] The purpose of the company should be redefined to serve all the constituents, not only the community, but also employees, customers and investors. The Nigerian Companies Act should reflect this, drawing lessons from India to reduce the inequalities affecting Nigeria today. However, the federal government has taken steps to amend the CAMA 1990 which is to be replaced by the *Companies and Allied Matters Act (Repeal and Re-enactment) Bill* 2018 (the Bill). I have reviewed the 2018 bill as part of my doctoral research, and I observed that there are no provisions adressing the regulation of CSR in Nigeria, this is an important gap that can still be addressed before the bill is passed into law. One hopes that the Nigerian parliament will cease this opportunity to incorporate best practices in CSR in the 2018 Bill.

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[1] Chaudhury, Suman Kalyan, Sanjay Kanti Das, and Prasanta Kumar Sahoo. "Practices of corporate social responsibility (CSR) in banking sector in India: An assessment." *Research Journal of Economics, Business and ICT* 4 (2012).

[2] Amodu, Nojeem. "Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria." *Journal of African Law* 61, no. 1 (2017): 116

[3] Olufemi Amao, "Corporate Social Responsibility, Multinational Corporations and the Law in Nigeria: Controlling Multinationals in Host States" (2008) 52 J Afr Law 83 at 96.

[4] Afsharipour, Afra, and Shruti Rana. "The emergence of new corporate social responsibility regimes in China and India." *UC Davis Bus. LJ* 14 (2013): 175, p. 210

[5] Indian Companies Act, 2013 Schedule VII of the Act

[6] Afsharipour, Afra, and Shruti Rana. "The emergence of new corporate social responsibility regimes in China and India." *UC Davis Bus. LJ* 14 (2013): 175, p. 210

[7] Ray, Subhasis. "Linking public sector Corporate Social Responsibility with sustainable development: lessons from India." *RAM. Revista de Administração Mackenzie* 14, no. 6 (2013): 112-131. P.113

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