THE RELEVANCE OF CORPORATE GOVERNANCE AND CORPORATE SOCIAL RESPONSIBILITY IN EMERGING MARKETS

BY

DR. IBRAHIM ABDULKARIM

AND

HALIMA DOMA

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1.1 Introduction

In the past the only occupations known to Nigerians were farming, hunting, fishing, and trading, which were all carried out on a small scale. With the advent of the Europeans, economic activities started to expand up to the period of the establishment of British authority over Nigeria in the 19th century. This development brought about a quick growth in business1 that continued till the early 20th century, which steered the promulgation of the first company legislation.2 This led to the economic growth of the country with agriculture taking the lead.

Promulgation of the company legislation gave companies a corporate status with a right to carry out business activities in their own names. Thus corporate venture has become one of the most popular modes of carrying on business in recent times.3 When a company is incorporated, it acquires the status of a juristic personality. It becomes a human being known to law with the capacity to enter into contracts, make business transactions, own assets and owe money to others, and it can sue and be sued in law. Human beings make decisions and arrange transactions in the company’s name4. The company in its operation engages in corporate social responsibility. This is a means by which society benefits from the company. It is a responsibility shown by a company for

* LL.M, PhD, B.L., Lecturer Department of Private Law, Faculty of Law A.B.U. Zaria.
** LL.M, B.L., Lecturer Department of Public Law, Faculty of Law, Nasarawa State University, Keffi
2 The Companies Ordinance of 1912, This Was Followed By The 1922 Company Ordinance
4 Brian Coyle. The ICSA Study In Corporate Governance (209) 6th Edition ICSA Information And Training London p.4
matters of general concern to the society in which it operates such as protection of the environment, health and safety, and social welfare. In addition to these, the company in some cases also allots certain positionsto qualified members of the host communities for employment.

This paper discusses corporate social responsibility in emerging markets. In addressing the topic of this paper, three basic issues are examined, namely: corporate governance, corporate social responsibility and emerging market. Furthermore, corporate social responsibilities that are expected from companies engaged in business in Nigeria are also critically examined. Consequently, recommendations are propounded based on the observations made in the course of this research.

1.2 Concept of Corporate Governance

The term “governance” ordinarily refers to the way in which something is governed and the functions of governing. Corporate governance therefore refers to the way in which companies are governed. It is concerned with the practice and procedure for trying to ensure that a company is run in sucha way that it achieves its objectives. Shareholders however view corporate governance as a process for monitoring and control to ensure that the management runs the company in the interest of the shareholders. In other words, the role played by the shareholders to ensure that their investments yield the maximum dividend for them can be said to be corporate governance.

Corporate governance is a complex concept but can be summarized in a simple way as follows: it is that process which is concerned with how powers are shared and exercised by different groups, to ensure that the objectives of the company are achieved. Areas of corporate governance include the rights of shareholders and other interest groups such as the workers rightfully engaged in company administration, the ways in which these rights are exercised by the directors, and how the powers in a company should be held accountable and responsible for what they do in the discharge of their duties and functions.

Corporate governance is also seen as “a system of checks and balances between the board, management and investors to produce an efficiently functioning corporation, ideally geared to produce long-term value”. In this definition corporation governance addresses the relationship between the owners of a company who are the principals, and those who manage the company's operations who are the executives hired to run the company as agents of the principals. It also encompasses the weight given to various factors in connection with the process of making strategic decisions, the adequacy and transparency of disclosure, the reliability of financial reporting and compliance with laws and regulations.

A close look at the foregoing reveals that the definition neglects the role of other stakeholders in the company like employees, customers, and the community where the company is located. However it is an obvious fact that these aforesaid stakeholders play key roles in ensuring that the company is properly managed and that their interest is recognized and protected.

It has been canvassed that corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals. This appears to encourage the efficient use of resources and equally require accountability for the stewardship of

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6 Ibid p.4
7 Ibid p.4
9 Ibid
10 Ibid
11 Apinega S.A. The Concept of Corporate Governance And Director Responsibilities Of Ethical Standard. Legal and Economic Perspective. Monogram with the Author.
those resources, and to balance as nearly as possible the interest of individuals, corporation and society.13

From the foregoing, the key elements of corporate governance that are common are: corporation (company) and the stakeholders (the principal players). A corporation is a juristic person distinct and separate from its owners and managers.14 Being an abstraction, a corporation is bound to operate through natural persons in different capacities such as directors, managers, shareholders, and employees. It is this relationship between a company and the operators and as well as the relationship among the operators themselves, that is expected to protect the interest of each party with the aim of producing beneficial outcomes. It is in this respect that corporate governance plays a key role in setting out a system by which roles and responsibilities in a company are performed properly. By the term “performed properly”, it means that the result of what the corporation does is to the benefit of the interested parties and does not do harm to the common meal. If management is about running business, governance is about seeing that it is run properly.15 Corporate governance in summary includes a procedure that will make a company operate effectively and beneficially. The procedure may involve laws, regulations, principles, and accepted business practices.

Good corporate governance is the key to the success of a company. If operators of a company do not manage the company properly, the company will collapse. For the success of a company through good corporate governance, the Companies and Allied Matters Act has made it obligatory for directors of a company to act in the best interest of the company and to avoid situations of conflict of personal interest with the company’s interest. Directors are also required to exhibit high degree of duty of care and skill in dealing with company affairs. The essence of corporate governance will be defeated if company directors do not observe the wording of the Companies and Allied Matters Act, and companies will no doubt crash. Recently Enron, one of America’s largest corporations collapsed.17 Enron’s fall, which shook Wall Street to its very core, affected the lives of thousands of employees and pension funds. To this day, many wonder how a company so big and so powerful disappeared almost overnight.18 Our answer to that is simply, “failed corporate governance”.

Other stakeholders involved in corporate governance are shareholders, who are investors in the company. They expect a fair return on their investments. In this regard, it is in their best interest that the company is run properly to safeguard the funds they have invested in the company. The Company Secretary is also a stakeholder in corporate governance. He is a high-ranking officer who ensures that the company is run well and as an employee, the company pays him salary. If the company collapses he will lose his means of income and livelihood. Apart from the major stakeholders mentioned above, there are other groups of persons who also have interest in a company and expect such interest to be protected. Their interest is affected by what the company does, and the success or otherwise of the company affects them. They are employees of the company, contractors, customers of the company and most importantly, the community in which the company operates.

14 Section 37 And 38(1) (1) Companies and Allied Matters Act (CAMA) Op. Cit
15 Apinega S.A. Op.Cit
16 Cap C20 Laws of the Federation Of Nigeria 2004
17 Enron collapsed on 2/02/2014
The community has a stake in the running of the company. The operation of the company will affect the community and its environment. The community expects companies operating in their areas to be committed to environmental standards. Where this is lacking it may give rise to pressure groups whose actions and reactions may affect the smooth running of the company.\(^{19}\)

The board of directors is the main stay of corporate governance. They are to ensure that there is good corporate governance as provided by Securities and Exchange Commission (SEC) Code of Corporate Governance in Nigeria.\(^{20}\) The board of directors determines the success or failure of a company; therefore their principal objective is to ensure that the company is managed properly and in the best interest of the other stakeholders. To ensure the attainment of this objective, the Securities and Exchange Commission developed code of corporate governance\(^ {21}\) with the aim to align with international best practices.

### 1.3 Concept of Corporate Social Responsibility

Corporate social responsibility is said to be a voluntary action taken by a company to address social and environmental impacts of its business operations and the concerns of its stakeholders.\(^ {22}\)

It is a form of corporate self-regulation by which a business ensures that it complies with the spirit of the law, ethical standards and international norms.\(^ {23}\) It entails the duty of a corporation to provide pipe-borne water, light, schools, hospitals, and even employment of qualified host communities’ indigenes.

According to Richard\(^ {24}\) Corporate social responsibility entails five elements viz:

- **Employment**: that a corporation in the course of employment owes as a matter of duty to ensure diversity in the workforce, and provision of suitable condition.
- **Environment**: the corporation should minimize the impact of products and processes on the quality of land, air, water and ecosystem that make up the environment;
- **Human Rights**: that the corporation should ensure to uphold basic human rights wherever the company operates. Accordingly, issues such as child labour, sexual harassment, discrimination etc should be discarded, as these practices would amount to disservice to the host community.
- **Communities**: that the corporation should maximize its impact positively through support for and involvement in the community development activities where the company operates.
- **Business relationship**: that the company should operate fairly as regards suppliers and customers.

If the above five elements are employed negatively or abused, it will certainly amount to disservice to the host community and the essence of corporate social responsibility will be defeated in the long run.

### 1.4 Emerging Market

\(^{19}\) Niger Delta of Nigeria is a good example where the environment has been polluted by oil companies operating in the area, as a result of which youths had engaged in violent attack on oil companies operating in their areas

\(^{20}\) Section 2.3 of the SEC Code of Corporate Governance in Nigeria, 2011

\(^{21}\) The First Code of Corporate Governance was in 2003 followed by the 2011 Version, which is considered to be an improved version.


\(^{24}\) Richard Smerdon The Author Of *A Practical Guide To Corporate Governance*
An emerging market describes a nation with an economy that is progressing towards becoming more advanced, usually by means of rapid growth and industrialization\textsuperscript{25}. An emerging market has some characteristics of a developed market\textsuperscript{26}, but does not meet the required standards (i.e. market efficiency and strict standards in accounting and securities regulations) to be a developed market\textsuperscript{27}. Investors for the prospect of high returns seek emerging markets, as they often experience faster economic growth. For instance, while mature economies like England and the United States are often expected to grow around +3% annually, emerging economies have the potential to expand much faster\textsuperscript{28}. This growth translates to superior corporate profitability and impressive gains for investors. However, investments in emerging markets also come with risks due to political instability, regulatory changes, and currency fluctuations.

Nigeria is an emerging market because it fits into the description of estimating demands of emerging markets\textsuperscript{29}. For a country to qualify as an emerging market, it must have unique commercial environments. Though, it may have limited reliable data, limited market research firms, and limited trained interviewers as consumers in such a country may consider surveys as an invasion of privacy.

1.5 Corporate Governance and Corporate Social Responsibility in an Emerging Market.

Companies operating in Nigeria do so freely without any law tying them to provide for corporate social responsibility to the communities in which they operate.\textsuperscript{30} For example, the oil companies operating in the Niger Delta of Nigeria, and the cement companies that operate in the north central Nigeria, do not owe any legal obligation to their host communities to provide for corporate responsibility such as provision of schools, portable water, roads, hospitals, or electricity. In the area of oil operation, the relevant legislation e.g. Petroleum Act,\textsuperscript{31} does not specifically provide for corporate social responsibility as a legal obligation on oil companies to build schools, hospitals, good roads, pipe borne water, or electricity in the area of their operation for the benefit of the host community. The law rather seems to be more focused on environmental protection.\textsuperscript{32}

This absence of law on corporate social responsibility seriously short changes host communities in oil producing areas, cement producing areas, and other industrial areas in Nigeria from laying legal claims when a company does not provide any social amenity to their host community in the form of corporate social responsibility. If they were to do so they would be caught flat footed, as there is no statutory provision to rely on.

However of recent several companies, especially oil companies whose activities are more devastating on the host communities have devised some methods of tying corporate social responsibility to their company as an obligation. For example the contract between Nigeria National Petroleum Corporation (NNPC) and Statoil Nigeria Ltd\textsuperscript{33}, made provision for corporate social responsibility in form of educational services to be rendered to the members of host communities to train and educate them for all job classification with respect to petroleum operation in accordance with the Petroleum Act, and also to patronize their locally produced goods and services provided they are of standard specifications.

\textsuperscript{25} Definition of emerging market economy by Investopedia< www.Investopedia.com> accessed 7/5/16
\textsuperscript{26} Financial infrastructure such as banks, stock exchange, a unified currency; and regulatory body
\textsuperscript{27}www.emergingmarkets.org 12/04/2016 at 10:30p.m
\textsuperscript{28} Emerging Market Economy <www.investinanswers.com/financial -dictionary> accessed 7/5.16
\textsuperscript{29} Ibid
\textsuperscript{30} Oil Companies in Niger Delta, Cement Manufacturing Companies in North Central Nigeria, companies engaged in solid minerals extractions, etc.
\textsuperscript{31}Petroleum Act Cap. P10 Laws of the Federation of Nigeria 2004
\textsuperscript{32}Petroleum Drilling Act Cap. NESREA Act, NESREA Regulation No. 66, 2009 R (S)
\textsuperscript{33}KyukaU.A.Op.Cit
In as much as we commend the attempt made by the Statoil Nigeria Ltd, to provide what may be loosely termed a corporate social responsibility, the area in which they can render assistance is not comprehensive. The basic amenities are apparently absent, as Statoil Ltd did not provide for schools, water, and light; which would be more beneficial to the host community.\(^\text{34}\)

In as much as there is no clear cut legal provision for corporate social responsibility, the Companies and Allied Matters Act (CAMA)\(^\text{35}\) in Section 38 indirectly provides for activities of companies to extend to corporate social responsibility thus:

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\text{Except to the extent that the company’s memorandum or any enactment otherwise provides, every company shall, for the furtherance of its authorised business or objects have all the powers of a natural person of full capacity.} \quad \text{36}
\]

By virtue of this provision, companies can act in human capacity to do all that is within its objects as long as it does not offend the memorandum or any enactment whatsoever. It can be argued that provision of social responsibility such as road construction, pipe-borne water, electricity etc will certainly not offend any enactment. So by this companies are encouraged to engage in social responsibility. It is in this regard that American Supreme Court held that a business corporation is regarded as an economic institution, which has a social service as well as a profit making function.\(^\text{37}\)

It should be noted that sub- section (2) of section 38 categorically prohibits donation or gifts of any of the company’s property or funds to a political party or political association or for any political purpose. It can be safely assumed that gifts, or donations may be made to the employees, the community or the state where the company operates provided the directors of the company act in good faith and due diligence in accordance with the words of the proviso to section 63 sub-section 4 of the Companies and Allied Matters Act.\(^\text{38}\)

Corporate governance brings about meaningful corporate social responsibility to the host community. The board of directors ensures that the presence of the company is positively impacted on the host community. Absence of corporate social responsibility may likely result to bad corporate governance because a host community may protest violently against the company which may result to hampering the smooth operations of the company. Many communities in the Niger Delta have experienced environmental pollution and environmental degradation as a result of the operation of oil companies in one form or the other. For Example, in 2008 and 2009 Shell Petroleum Company was reported to have polluted the Bodopeople’s river through oil spillage destroying their means of livelihood\(^\text{39}\). Also in January 2011, it was reported that Agip’s facility through oil spill and fire destroyed property and affected the environment of the communities of Emago-Kugbo and Otuaabagi of Rivers State.\(^\text{40}\)

In the past, the youths of the Niger Delta had severally engaged in violent attack on oil companies operating in their areas. In some instances the attacks resulted in suspension of all activities of the oil companies, thereby leading to a loss of revenue by the companies. This would not have been the case if the companies were actively engaged in providing social services to those

\(^{34}\) Ibid

\(^{35}\) Companies and Allied Matter Act Cap C20 Laws of Federation of Nigeria, 2004

\(^{36}\) Section 38(1) of the CAMA Ibid

\(^{37}\) Smith Manufacturing Co. v. Barlow (1963) 346 US 861


\(^{40}\) Oil Spills.justiceinnigerianow.org. Accesased on 5/10/2012
communities. Thus, corporate social responsibility should be seen as a fundamental part of the normal running of the business. 41

1.5 Imperative of Corporate Social Responsibility in Emerging Markets

It is material that this question is raised and addressed at this point: Why should corporate citizens provide certain services to the community and members of the community in which they carry out their business? The following answers will justify the reason for the question.

1.5.1 The Need for Private Companies to Contribute to the Development of the Host Community

The development of any nation cannot be left in the hands of government alone especially when private companies operate profitably in a community. Their presence must be felt by way of impacting in the community where they operate, through the provision of social welfare scheme to the people. This may be done by provision of hospitals, roads, schools, building of community markets, motor parks, and pipe-borne water. If these services are provided by private companies, the government will not need to provide the same, but will rather concentrate on other aspects of development. This will really assist the government because government alone cannot be everywhere.

1.5.2 The Spirit of Togetherness With the Host Community

When private companies contribute to the development of a host community from the huge profit they make, they will have the sense of belonging. They feel as if they are part and parcel of the community. The host community will also have the same feeling and will strive at all cost to protect the interest of the company. For example in my village there is a site where Royal Ceramic Company excavates clay sand for the production of titles, wash hand basin toilet fittings etc. Royal Ceramic Company constructed roads, drilled boreholes and built a clinic for our community. The community members are happy with the company and will not like to see anything bad happen to the company. This is sense of oneness.

1.5.3 Reduction of Over Dependence on Government for Employment

The moment a private company commences business operations in a particular place, the first set of beneficiaries of labour or employment are usually members of the host community. All categories of workers are mostly from the host community. For example, security men to guard the business premises and equipment are in most cases from the host communities. In some big organizations, there are certain positions that are reserved for members of the host community.

1.5.4 Preservation of Social Security

When a private company provides employment, good roads, schools and electricity to their host community, the youth in the area will be meaningfully engaged hence they will have no time to get involved in social vices such as stealing, raping, robbery, kidnapping, rather they will be engaged in healthy competition amongst themselves.

Similarly if the company is shutdown it can have catastrophic effect on the economy of local community. It will cause a recession, as there will be rise in unemployment. Other business outfits that depend on the company will also collapse, and eventually there will be a rise in crime rate and other vices associated with poverty.42

1.6 Compartments of Corporate Social Responsibility

41 Apinega S.A. Op cit p.16
42 Akujobi A.T.. Ibid P.215
Corporate social responsibility can be classified in many perspectives. In other words it can be channeled towards many areas. These may include services to the community and to the employees of the company. Corporate social responsibility is not restricted solely to the community; it can also be rendered in other areas and would still qualify as corporate social responsibility.

1.6.1 Corporate Social Responsibility to the Community

The apex of corporate social responsibility is rendered to the community in which the company operates. This is driven from the fact, and on the point of humanitarian believe that it would be an act of inhumanity for a company to gain resources of the community in which they operate without giving back to the community something tangible and useful. Obviously, companies that operate within a particular community especially the oil companies make huge profit and cause tremendous discomfort to the inhabitants and the community in which they operate. They cause environmental degradation, huge economic loss, and health hazards to the community members. It would be an act of wickedness to ignore such communities without dropping any part of the huge profit made by the company to assist the community and its members.

It is based on the foregoing, that companies are encouraged to give and donate resources towards the betterment of the community in which they operate. It is on this point of discussion that companies build schools, hospitals, clinics, markets, electricity, pipe-borne water, provision of scholarship to both the community and members within the area they operate.

Not quite too long ago that the Managing Director of a famous oil company operating in the Niger Delta of Nigeria claimed to have spent over nine billion naira on community development projects. In addition to this, under the Niger Delta AIDS response (NDAR) project, SPDC works with host communities, National and State agencies for control of AIDS to control the spread of the virus in the region. It is interesting to note that the role of the oil giant in the project is to finance the project by purchase of retroviral drugs and organize public awareness campaigns. Due to the importance of corporate social responsibility, the Federal Government established the Niger Delta Development Commission (NDDC) to inter-alia bring development to the host communities of Niger Delta hub of the Nigerian economy. NDDC has brought many developmental projects to the host communities of the oil producing states. For example in 2014-2015 many developmental projects were being executed by the NDDC ranging from youth empowerment scheme, postgraduate foreign scholarship, and agricultural credit scheme, to road projects worth billions of naira.

Nigerian MobilOil Producing Unlimited is also a key player in the area of corporate social responsibility. They have equally provided similar corporate social services and developmental projects in their host communities. These include provision of scholarship grants, and oil spill palliative-projectsworth 1.27 billion naira in Eket communities. The foregoing no doubt exhibit the importance of corporate social responsibility by companies to their host communities in an emerging market. Telecommunication companies are not left out in corporate social responsibility. For example the MTN Nigerian Foundation was established for the purpose of focusing MTN Nigeria’s efforts in terms of its corporate social responsibility initiatives to help reduce poverty and foster sustainable development in Nigeria. The foundation focuses on three major areas, which are education, health, and economic empowerment. On 10th September 2015, the Chairman of

44 Kyuka U.A. Op.Cit P.41
45 See Guardian Newspaper 9th August, 2009 P.17
46 NDDC Was Established In 2000 Under President Obasanjo Administration
47 <www.addc2015developmentalproject.com> accessed 22/4/16
48 <www.sundiata post.com/2016/04/08/ni-27bn-oil-spill-palliative-mobile.com> accessed 22/04/16
49 <www.foundation.mtnonline.com> accessed 23/04/16
MTN Foundation (MTNF), Mr. Pascal Dozie was reported to have disclosed that since inception of MTNF, it has spent a whopping sum of N11.5 billion on 344 community projects. The MTNF was incorporated in July 2014 to offer sustainable and focused channel through which MTN Nigeria would drive its corporate social responsibility initiatives in all 36 states of the federation including the Federal Capital Territory.

1.6.2 Corporate Social Responsibility to the Government.
Companies operating within the country have a duty to comply with laws guiding their operations in all honesty. In the course of carrying out their daily operations they should ensure to maintain the basic standard expected of them by the government as responsible corporate citizens. They should pay their taxes and truly declare income over the year. They should not hide their true profit or under declare their profit so as to evade payment of tax. This practice is very popular amongst some companies.

A corporate citizen should bear true allegiance to the government and should ensure it does not carry out any activity or activities that will infringe the federal government policy. For example it should not carry out activities that will pollute the environment, or cause any harm or injury to the people or the government.

1.6.3 Corporate Social Responsibility to the Staff.
Companies should also provide certain social responsibility towards their staff, who work round the clock to ensure the success of the company. Without human staff, a company cannot function at all. Therefore companies should ensure that they provide good working environment for their staff, provision of training and continuing education, scholarships to the children of their staff and good provision of welfare packages for their staff. This will make them happy and make more and better impute for the growth and development of the company.

1.7 Conclusion
Corporate social responsibility in an emerging market is a corporate tool that can be employed to address peculiar areas of social and economic needs of the country. Government alone cannot address challenges such as poverty alleviation, infrastructural development, education, and health care provision. Companies operating within a particular area can give as their contribution to the community from which resources are being drained. Communities that host production companies are like the goose that lays the golden eggs, therefore it would be most honourable and fair that those companies that collect the eggs should give something in return to the goose. It is on basis, that it would be morally, socially, politically, and legally justified that corporate social responsibility should be seen as a matter of obligation on all companies operating in Nigeria to discharge to the community in which they operate. It was observed in the paper that most giant companies operating in Nigeria discharge their corporate social responsibility to their host communities. Cases of Shell Petroleum Development Company, Mobil Oil Production Unlimited, and MTN Nigeria, which are few examples discussed in the paper, have spent billions of naira to address corporate social responsibility to their host communities.

To achieve the goal of corporate social responsibility there is the need for government to clearly set out the agenda for social responsibility by way of laws and regulations that will encourage companies to conduct themselves responsibly. The laws should seek to create a standard for social responsibility by corporate organizations that is consistent with international best practices.

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50 Leadership News online<www.leadership.ng/business/45984/csr-mtnfoundation> accessed 23/04/16
51 Vanguard Newspaper online<www.vanguardngr.com/2013/05/pacedsetting-corporate-social-responsibility> accessed 22/4/16
52 See Rivers State Board of Internal Revenue v. Nigeria Agip Oil Company Ltd Suit O: Phc/81/2006 (Unreported)