

Advancing Towards A More Effective Stakeholder Engagement By Multinational Companies In Nigeria

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Abstract

Sustainable Governance is a concept whereby companies integrate social and environmental concerns in their business operations and their interactions with their stakeholders on a voluntary basis. Stakeholder engagement and reporting on non-financial issues, which allows the company to demonstrate that it understands the concerns of the society and explains how it is addressing them with its social and environmental policies is currently incoherent, haphazard and without regulation in Nigeria. The on-going social upheavals in the Niger Delta Region of Nigeria is an attestation of failure of effective stakeholders' engagement by the Multinational Companies (MNCs). This paper examined the concept of stakeholder engagement as a solution to these conflicts, its importance to sustainable corporate governance and the global practice and standards. This paper further appraised the adequacy of the current laws, regulations, policies and practice for regulating stakeholder engagement by MNCs in Nigeria, a mandatory legal, more effective disclosure regime and regulations of stakeholder engagement is advocated.

Keywords- Corporate social responsibility, sustainable governance, sustainable reporting, multinational companies.

Introduction

There is a global acceptance and consensus on the Brundtland Report for the World Commission on the Environment and Development's², definition of Sustainable development as,

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‘development that meets the needs of the present without compromising the ability of the future generations to meet their own needs.’³ Sustainability has emerged as a concern for the economic, social and environmental issues as it relates to the way and manner companies are managed and controlled.⁴ Generally, Sustainability or Sustainable Corporate Governance is an aspect of Corporate Social Responsibility (CSR) concerned with the management of companies in a sustainable way that ensures that the company continues in the long-term without using the resources at its disposal in such a way as to destroy the company and or generally make it impossible to continue the business⁵. CSR is therefore an exercise of social concern and responsibility by companies beyond merely managing the company strictly for profit maximisation. It is gradually transforming the traditional ‘profit driven corporations’ to stakeholder value-oriented entities.⁶ We must admit that the ability to make substantial profit for its incorporators and ability to equally be instrument of oppression and destruction is inherent in the corporate entity⁷.

² Report of the World Commission on Environment and Development; Our Common Future. The Commission set up by the United Nations General Assembly was chaired by GroHerlem Brundtland and submitted on 20 March 1987. Available at <http://www.un-documents.net/our.common-future.pdf>.

³ Ibid. Chap. 2. Page 41.

⁴ Adrian Cadbury Committee Report titled, ‘ Financial Aspects of Corporate Governance ‘. The committee was set up in May 1991 by the Financial Reporting Council United Kingdom. (FRC), the London Stock Exchange , and the Accounting Profession. The aim of the Committee was to investigate the British corporate Governance system and to suggest improvements to restore investors’ confidence in the market. The report was released in December 1992 and its recommendations on the Code of Best practice was accepted and applied to the UK listing Rules and company reporting from 30 June 1993 available at <http://www.ecgi.org/codes/documents/cadbury.pdf>.

⁵McBarnet, D. 2009. Corporate Social Responsibility beyond law, through law, for law. *University of Edinburg School of Law working paper* No. 3, at 18

⁶Bergum, A. 2015. Corporate Social Responsibility ; reflecting Australian legal approaches to human rights. *Company Lawyer* 36. 9. 279-287.

⁷Calvano, L. 2008. Multinational corporations and local communities: a critical analysis of conflict. *Journal of Business Ethics* 82. 793-805.

Sustainability movement has gradually arisen worldwide to re-determine and re-focus the corporate entity⁸, determine its purpose as and to ensure that the company becomes a responsible citizen of the community where it is located⁹. There has been a lot of conflicts and disputes between communities and other stakeholder groups with Multinational Companies (MNCs)¹⁰ and other big companies operating in Nigeria due to the negative impacts of their activities on the environment and stakeholders generally, ranging from environmental degradation, to crude exploitation of resources without regard for the development of the community or environment and human rights abuses¹¹. MNCs refers to those companies that operate across national boundaries such companies are variously referred to as multinational companies, multinational enterprises, transboundary companies, Transnational corporations or supranational entities. In this paper MNCs will be used to refer to all such companies. This paper is also relevant to all big companies employing large number of labour and impacting on the community where they are located. Calvino¹² explained that in spite of CSR concerns, when the interests of the MNC's are in conflict with that of the community where they are located especially when it affects profit maximisation and social interests, the company's

⁸Haugh, H. and Talwar, A. 2010. How do corporations embed sustainability across the organisation. *Sustainability in Management Education* 9. 3. 384-396.

⁹Altman, B. 1998. Transformed corporate community relations: a management tool for achieving corporate citizenship. *Business and Society Review*. 102-103. 43-51.

¹⁰ For a brief history on the entry of Multinational companies to the Nigerian Oil Industry see, Amao, O. 2008. Corporate social responsibility, Multinational Corporations and the Law in Nigeria: controlling Multinational companies in host states. *Journal of African Law* 52. 68-81.

¹¹ Okoh, R. 2005. Conflict Management in the Niger Delta Region of Nigeria: A Participatory Approach. *Africa Centre for the Constructive Resolution of Disputes*. Available at <http://www.accord.org.za/ajcr-issues/%EF%BF%BCconflict-management-in-the-niger-delta-region-of-nigeria/>. Accessed on 30-10-2017.

¹² Calvino, H. 2008. Multinational Corporations and local communities: a critical analysis of conflict. *Journal of Business Ethics*. 82.793-805.

financial interests will always take precedence¹³, this is notwithstanding the impact on the stakeholders¹⁴. There must be a better way of engaging and resolving the conflicts legally for the benefit of all concerned. This paper will analyse concept of stakeholder engagement, assess the existing legal framework for stakeholder engagement in Nigeria drawing some lessons from the South Africa, United Kingdom (UK) and global standards and propose a mandatory stakeholder engagement regulations and practice by companies operating in Nigeria as a viable process for resolving the conflicts.

Origin of conflicts between the MNCs and stakeholders

Nigeria is a former British colony, the country gained independence in 1960 prior to which the country was subject to British rule, laws and control. Though a German company¹⁵ was the first company to commence prospecting for mineral resource in Nigeria but the Anglo- Dutch company, the Shell D'Arcy (a consortium of Iranian Oil Company (later British Petroleum) and Royal Dutch Shell) was granted a sole concessionary right over the whole country's resources in 1938. Oil was discovered in commercial quantity in Oloibiri field in January 1956 while the second discovery was made at Afam. Shell British Petroleum commenced Oil exports from Nigeria in 1958(later to be nationalised by Nigeria and renamed African Petroleum). With a view to expand the resource base of the economy more rapidly, more multinational companies were licenced by the Government, these includes, Texaco Overseas Nigeria Petroleum Company Unlimited, Gulf Oil Company(now Chevron) Societe Africaine des Petroles (SAFRAP) (later became Elf Nigeria Limited in 1974) Tennessee Nigeria Limited and a host of others. From 1961, as

¹³ Palacios, J. 2004. Corporate Citizenship and social responsibility in a globalised world. *Citizenship Studies* 8. 4. 383-402.

¹⁴ Deva, S. 2006. Sustainable good governance and corporations : an analysis of asymmetries. *Georgetown International Environmental Law Review*.18. 707-750.

¹⁵ German Bitumen Company. See Omorogbe, Y. 1987. The legal framework for the production of petroleum in Nigeria". *Journal of Energy and Natural Resources Law* 15. 273-291 at 274.

many as can meet the conditions are still being licenced¹⁶. Currently there are eighteen multinational companies licenced to explore for Oil in Nigeria. Oil resource and exports became the major source of income for Nigerian economy representing about 85% of the Gross Domestic Product and 95% of National earnings¹⁷. The MNCs were given full and unrestricted control of the operations without any serious attempt to regulate their activities¹⁸ this resulted in oil exploitation by the MNCs without regard to the environment¹⁹ and social impact of their activities on the people living within the region²⁰. The effect had been a total destruction of the environment and rendering fishing and farming which is the mainstay of the people impossible²¹ due to extensive oil spills and Gas flaring .

The situation seems beyond the control of the Government and there arose agitations and conflicts from the people that MNCs must exploit the resource in a sustainable and responsible manner. The agitations started as a peaceful protests to later develop into armed conflicts with the formation of armed groups like Movement for the Emancipation of the Niger Delta (MEND)²² and other groups and the consequence

¹⁶Steyn, M. 2003. *Oil politics in Ecuador and Nigeria: a perspective from environmental history in the struggles between ethnic minority and national governments*. (PhD thesis submitted to the Faculty of Humanities (department of History) University of Free State, Bloemfontein, South Africa.

¹⁷Ogri, O. 2001. A review of the Nigerian petroleum industry and the associated environmental problems, *The Environmentalist* 21 .11-21.

¹⁸Wurthmann, G., 2006. *Ways of using the African oil boom for sustainable development*, African Development Bank, Tunis.

¹⁹Ite, A. E., and Ibok,U. 2013. Gas Flaring and Venting Associated with Petroleum Exploration and Production in the Nigeria's Niger Delta *American Journal of Environmental Protection*. 1 .4. 70-77.

²⁰Eweje, G., 2006. Environmental Costs and Responsibilities Resulting from Oil Exploitation in Developing Countries: The Case of the Niger Delta of Nigeria *Journal of Business Ethics* 69 .1. 27-56.

²¹Amadi, A.Abbey, S.and Nma., A. 1996. Chronic effects of oil spill on soil properties and microflora of a rainforest ecosystem in Nigeria . *Water, Air, and Soil Pollution* 86. (1-4). 1-11.

²²<https://www.cfr.org/backgrounder/mend-niger-deltas-umbrella-militant-group>. Accessed on 14-11-2017.

was the blowing of Oil pipes on a massive scale²³. The Government instead of intervening to look into the cause of these conflicts sided with the MNCs and provided armed security for them to continue the environmentally degrading practices, when this failed the Government offered amnesty²⁴ to the agitators and various other incentives which were only stop gap and temporary measures.²⁵ Other MNCs in other sectors of the economy do not fare better. There are MNCs operating in the Textile, Liquor and Soft drinks, chemical, mining and virtually in all areas of the economy which not only exploit the improperly substandard laws and regulations, with serious deficiency of enforcement mechanisms to continue to behave irresponsibly and out of control. The laws especially the labour, human rights protection, and environmental protection laws are skewed against the stakeholders and leaves only option of physical confrontations between the stakeholders and the companies²⁶.

What is Stakeholder Engagement

Greenwood²⁷ describes stakeholder engagement as, ‘practices the organisation undertakes to innovate a stakeholder’s positive manner in organisational activities’. While Global Corporate

²³Newsom, C. Conflict in the Niger Delta” more than a local affair. US Institute of Peace , Special Report , available at https://www.usip.org/sites/default/files/Conflict_Niger_Delta.pdf accessed on 14-11-2017.

²⁴ Africa News, <http://www.africanews.com/2017/05/08/nigeria-almost-triples-budget-for-niger-delta-militants-amnesty/>. Accessed on 14-11-2017

²⁵Nwankwo, B. 2015. The Politics of Conflict over Oil in the Niger Delta Region of Nigeria: A Review of the Corporate Social Responsibility Strategies of the Oil Companies. *American Journal of Educational Research* 3 .4. 383-392

²⁶Amaeshi, K., Adi, B. et.al. CSR in Nigeria: western mimicry or indigenous practices .*ICCSR Research Paper Series*. Available at <http://195.130.87.21:8080/dspace/bitstream/123456789/1091/1/39-Corporate%20Social%20Responsibility%20%28CSR%29%20in%20Nigeria%20western%20mimicry%20or%20indigenous%20practice.pdf>. Accessed on 14-11-2017.

²⁷Greenwood M. 2007.Stakeholder Engagement : beyond the myth of corporate responsibility . *Journal ofBusiness Ethics*. 74.315-327.

Governance Forum²⁸ explains the concept stakeholder engagement thus;

The broader practice of 'stakeholder engagement' emerged in the 1990s as it became clear that companies needed to be aware of a wide variety of stakeholders affected by or affecting their operations and to build long-term relationships of constructive engagement. Besides shoring up corporate reputation, this approach has been shown to help companies activate and manage risks more effectively as well as to identify new business opportunities by tapping unique stakeholder perspectives. 'Engagement' as opposed to "top down" management, is often characterised by dialogue-a two-way process in which stakeholders are not merely consulted or listened to, but the company makes a sincere attempt to respond to stakeholder concerns in seeking to determine shared values around areas or issues of mutual interests or common concern²⁹.

Stakeholder engagement is important to sustainable governance and CSR of companies. It is appropriate for companies to have an understanding of the importance of its stakeholders to its short and long term survival. Stakeholders (consumers, suppliers, regulators and community) are essential for the corporate success and it stands to reason that for its survival and success the company must engage productively with them for many reasons-

²⁸ Global Corporate Governance Forum is an International Finance Corporation multi-donor trust fund facility located within IFC Advisory Services.

²⁹ Global Corporate Governance Forum. 2009. Stakeholder engagement and the Board: integrating best governance practices. https://www.ifc.org/wps/wcm/connect/19017b8048a7e667a667e76060ad5911/FINAL%2BFocus8_5.pdf?MOD=AJPERES. Accessed on 17-11-2017. At page 6.

1. To understand the issues of concern to the stakeholders and at the same time to communicate the issues of concern to the company.
2. It is essential in reaching the goals of the company. Its objectives and plans can only be successful within the framework of well-regulated and focussed stakeholder engagement forum.
3. Stakeholder engagement has been described by Phillips³⁰ as the 'involvement of stakeholders in a mutually benefitting scheme that marks a person or group as a stakeholder and merits them additional consideration due to any human being'. In ideal terms, stakeholder engagement will take the 'Rawlinson form of a mutually beneficial and just scheme of cooperation'. This depicts that the company and the stakeholders no matter their stratification stand to gain from engaging with each other in order to seek ways to solve problems and resolve differences. In practice, however, it may not always be the case that the parties are standing on the same pedestal or that engagement will resolve all issues and fears and concerns, but it creates an avenue to bring each side to the same level for discussion.
4. Stakeholder engagement helps to internalise rather than externalise conflicts between stakeholders and the company. Where there is no opportunity for positive engagement parties will tend to resolve issues through other external means, by either going to court, seeking government intervention, using the mass media to expose and tarnish the image of the company in a bid to run them down and instead of resolution of conflict, may lead to the winding up of the company which may not be the initial intention of the parties.³¹

³⁰ Phillips, R. 1997. Stakeholder theory and a principle of fairness. *Business Ethics Quarterly* 1.51-66.

³¹ Frooman, J. 1999. Stakeholder influence strategies. *Academy of Management Review*.24. .2.191-205; Freeman, M.1970.*Strategic Management: A Stakeholder Approach*. Boston: Pitman.

5. Greenwood³² explained that,
... organisational stakeholders engagement practices may exist in many areas of organisational activity including public relations, customer service, supplier relations, management accounting and human resource management. In this context engagement may be seen as a mechanism for co-operation, as a mechanism for accountability, as a form of employee involvement, and participation as a method for enhancing trust, as a substitute for true trust, as a discourse to enhance fairness, as a mechanism for corporate governance³³.

There is a global quest for sustainable development, in this era of climate change, environmental concerns, and high societal expectations, stakeholder engagement will help the company in looking beyond its enclaves for a better understanding and knowledge in resolving its daily challenges. It is the better option for companies to cooperate with their stakeholders and form partnerships to overcome these challenges.

6. The enormous challenges being faced by today's managers will need innovations and enhanced internal capacity and capabilities not only to resolve the issues and challenges, but also for evaluating the 'processes, procedures and systems that facilitate effective stakeholder engagement to integrate relational knowledge and facilitate sustainable development³⁴. In this sense, stakeholder engagement should be addressed from the management as well as from legal perspectives. Stakeholder engagement from management point of view is described as 'communication, negotiating, contracting and managing

³² Greenwood, M. 2007. Stakeholder engagement : beyond the myth of corporate responsibility. *Journal of Business Ethics* 74.3.327.

³³ Ibid.

³⁴ Biandi, V., Iraldo, F, Meredith, S. 2002. Achieving sustainability through innovation: the role of SMEs. *International Journal of Technology Management*. 24.5.612-626.

relationships with stakeholders and motivating them to behave in ways that are beneficial to the organisation and its stakeholders³⁵ Stakeholder engagement may therefore be approached from different angles to resolve challenges, accomplish policies and enhance management to succeed with contrasting motives.

Stakeholder engagement and sustainable reporting

Sustainable Reporting (SR) or corporate sustainable reporting (CSR) is voluntarily³⁶ disclosing or reporting on the company's activities to stakeholders³⁷. SR provides an avenue for stakeholders to assess the behaviour of the company in respect of its economic, social and governance obligations.³⁸ It is an important tool in shaping stakeholder engagement as it is essential for shaping stakeholder decisions in engagement process.³⁹ It is a formidable screening weapon for responsible investment,⁴⁰ it has been explained through a study conducted by Klerk and de Villiers⁴¹ that financial information and SR combined explains market valuation of the shares of a company. That SR positively and significantly co-related with the market value of equity of companies.⁴²

In Nigeria, Companies and Allied Matters Act (CAMA 2004) was enacted in 1990 prior to which companies were regulated by the Companies Act 1968. The 1968 Act was based

³⁵Tushman, M. and O'Reilly, C. 2002. *Winning through innovation*. Boston: Havard Business School.

³⁶ Some jurisdictions now require mandatory report on sustainability indicators.

³⁷ Harrison, J and St. John, C. 1996. Managing and Partnering with external stakeholders. *Academy of Management Executive*. 10.2. 46-60.

³⁸Aina, K. 2017. Sustainable Reporting- Panacea for growth and development. *The Gravitas Review of Business and Property Law* 8.40-55.

³⁹Klerk, M and Villiers, C. 2012. The relevance of corporate responsibility reporting: South African experience. *Meditori Accountancy Research*. Vol. 20.1. 21-38.

⁴⁰Aina, K. 2016. Regulatory framework for responsible investment in Nigeria. *Ahmadu Bello University Law Journal* 36. 32-40.

⁴¹Op.cit. at p.4.

⁴²Dhaliwal, D and Tsango, O., and Yang, Y. 2001. Voluntary non-financial disclosure and cost of equity capital: the initiation of corporate social responsibility. *The Accounting Review* 86. 1. 59-100.

on and substantial copy of the 1948 Companies Act of England. The process for the review of the law commenced when the Government set up a Law Review Commission to review the Act. The report of the Law Review Commission formed the basis of the CAMA1990 now 2004. The Law Reform Commission in arriving at the current law, took into consideration the position of the law in various jurisdictions and tried to fashion out a distinctly Nigerian Company Law, unfortunately, the law in many respects even as at 1990 fell far short of the global standards and failed to take into consideration emerging trends in the international community. In the area of reporting and disclosure, the CAMA 2004 made ample provisions on financial reporting. For example, sections 334-378 of the Act. The law provides for the mandatory disclosure, preparation and mode of approval of financial report for the year. Section 334 provides that directors shall prepare 'financial report' for the year. The report is to include the following ;Statement of the accounting policies, the balance sheet as at the last year, a profit and loss account; or in the case of a company not trading for profit, an income and expenditure account for the year, notes on account, the auditor's report, a statement of the source of application of fund, a value added statement for the year.

The company having subsidiaries must also present the financial accounts of all its subsidiaries⁴³ there is no specific mention of sustainable report or sustainability reporting in the CAMA 2004. However, there are certain aspects of the act that requires that the directors report on the 'value added statement, the wealth created by the company during the year and its distribution among various interest groups such as the employees, the government, creditors, proprietors and the company'.⁴⁴ Could this provision be interpreted as a mandatory report on SR? I think not. In the first place, the section did not

⁴³ Section 336(1) CAMA 2004 provides ' if at the end of a year a company has subsidiaries, the directors shall as well as preparing individual accounts for that year , also prepare group financial; statements being accounts or statements which deals with the state of affairs and profit and loss of the company and the subsidiaries'. However this is subject to section 336(4)(b) CAMA 2004.

⁴⁴ Section 335(4) CAMA 2004.

mention sustainable report, so it cannot be a SR requirement, secondly, the purpose of the disclosure is to ascertain how the corporate 'wealth' or profits are distributed and not a disclosure or report on non-financial indicators, the distribution of wealth is within a financial reporting requirement. This provision do not mention major groups of stakeholders like suppliers, customers or the community but only specified groups who may have shared in the wealth of the company. This provision certainly is not a requirement for sustainability report ⁴⁵. Further, there cannot be a distribution of wealth to stakeholders except for what is contractually agreed by the parties under their contract of engagement. The government does not and is not expected to share any wealth with a company except through collection of taxes and other levies which is not a sharing of wealth but the company complying with the law.

Section 342(5) CAMA 2004 provides further that in preparing the director's report, the directors must report on matters relating to employment, training, and advancement of disabled persons, the health, safety and welfare of the employees of the company and the involvement of employees in the affairs, policy and performance of the company. It will seem that though stakeholder engagement is not expressly mentioned here, the provision will expect some form of engagement by the company with the employees in the 'affairs, policy and performance' of the company. If the law expects a report regarding employee involvement in the formulation of policy and performance, it certainly expects that some form of stakeholder engagement should be carried out by the company. Unfortunately, the provision is not regulated⁴⁶, or enforceable, and only involves the employees; other groups of stakeholders are left out, which also shows that this section does not envisage a report on any properly regulated stakeholder engagement by the company. Sections 335 and 342 seem to recognise some stakeholder groups, but the sections are not exactly referring to stakeholder engagement or sustainable

⁴⁵Aina, K. 2016. Imperatives for a shift to sustainable governance by Nigerian companies. *Journal of Corporate Governance* 8. 2. 1752-1776.

⁴⁶ By giving details on how employees could be involved in the 'affairs, policy and performance of the company'

reporting. The sections cannot be enforced or complied with in the first place because it lacks rationality, basis, purpose and direction. It is difficult to report on these items as a function of sustainability report.

In Nigeria, the position of the Codes of Corporate Governance is on the same footing in terms of sustainability reporting and stakeholder engagement. There is no deliberate or conscious effort to improve on the CAMA 2004, or properly regulate stakeholder engagement and sustainable reporting. The only Code that mentioned sustainability issue is the Securities and Exchange Commission Code of Corporate Governance (SEC Code) which only directs that Public listed Companies should pay adequate attention to the interests of 'stakeholders such as its employees, host community, the consumers and the general public'⁴⁷. The Board is also enjoined to report annually on the nature and extent of its social, ethical, safety, health, environmental policies and practices. It is my view that the standard of reporting and disclosure in the Nigerian law and Codes of Corporate Governance are too low, and does not regulate or direct any form of responsible behaviour that can be assessed, monitored or independently audited. There is no role for stakeholders in the Nigerian corporate law except that the board of directors may have 'regard for their interests'. The regime is absolutely unenforceable because the codes are voluntary in compliance, though 'comply or explain' enforcement regime has been adopted, but as regards stakeholder engagement there is nothing to comply with. Having no specificity and coherent directions, having no enforcement or penalty for non-compliance and no mode or regulation for stakeholder engagement, with no key performance indicators (KPI) for assessments and measurements. The Nigerian law is yet to adopt the worldwide move towards stakeholder engagement for its companies.

⁴⁷Securities and Exchange Commission Code of Corporate Governance (SEC Code 2011) available at <http://sec.gov.ng/>.accessed on 15-11-2017.

Position in the United Kingdom

As Williams and Conley⁴⁸ explained, that 'convergence on stakeholder thinking has been paralleled by the emergence of the global corporate social responsibility (CSR) movement' The development of CSR and particularly stakeholder engagement in corporate governance is a worldwide matter, because of its demands that companies take more interest in broader issues that pertains to long-term sustainable growth, rather than short-term wealth maximisation that will leave stakeholders and the community at a loss, which engenders irresponsible use of resources and environmental destruction.

Though the UK had for years embraced the shareholder maximisation of profits without regard for the interests of stakeholders. The change came with the Companies Act 2006. This was after wide consultations and the reports of eminent Committees on Corporate Governance.⁴⁹The Operating and

⁴⁸ Williams, C. and Conley, S. 2005. An emerging third way-The erosion of the Anglo-American shareholder construct. *Cornell International Law Journal*38.2. 493-551.

⁴⁹ Cadbury committee was constituted in 1991 by the accountancy profession .In 1992, the committee issued its report which was incorporated into a code of Best practice for preserving auditor independence and enhancing the supervisory role of the non-executive directors. The recommendations were also incorporated into the LSE's Listing Rules. This was followed by the Greenbury Committee which was to look into executive pay. The Greenbury Committee recommended the importance of shareholder participation in the remuneration function and 'a philosophy of full transparency' including detailed disclosure of director's remuneration in the annual reports. The committee produced its Code of Best Practice which was also incorporated into the LSE's listing Standards. This was fully reviewed in 1998 by the Hampel Committee . The Hampel Committee report led to the publication of the combined code and another addition to the Listing Rules. The LSE also added to the listing requirements a provision that companies should describe in their annual reports their corporate governance arrangements and this is to enable stakeholders determine whether the company is complying with the Principles of Good corporate Governance, as well as to 'comply or explain non-compliance' with the provisions of the Code of Best practice. The combined Code issued by the Financial Reporting Council(FRC) sets the standards of good practice in relation to good corporate governance . The Hampel Committee report was followed by the Turnbull Committee .the Turnbull Report amongst other recommendations broadened corporate governance in UK by the recognition of an internal control mechanism to address a wide range of

Financial Review (OFR) has been replaced by Strategic Report⁵⁰ a more extensive reporting regime with more reporting requirements which compliments section 172 of the CA 2006.

By virtue of section 414c on SR regulations, the purpose of the strategic report was to inform the members of the company and help them assess how the directors have performed their duty under section 172 (duty to promote the success of the company). The report must contain amongst other things, an analysis of the company's business using financial indicators and where appropriate, analysis using other key performance indicators, including information relating to environmental and employee matters.⁵¹ It also provides that for quoted companies, the strategic report must, 'to the extent necessary for an

issues including legal, health, safety and environmental regulation and business probity issues.

In 1998, the Company Law Review (CLR) and the CLR Steering Group (CLRSG) was set up. The CLRSG extensively discussed and later proposed the Enlightened Shareholder Value approach to the corporate purpose in UK. and abandoned the shareholder primacy approach that was being practiced and the pluralist stakeholder approach that was also proposed. In 2001 the CLRSG adopted the ESV model. It agreed that the primary purpose of company should be to make profit, but the period of assessment should be the long-term. This was to be supplemented by an Operating Financial Report (OFR) to be prepared by the company. The OFR is to 'provide a review of the business, its performance, plans and prospects and information the directors judge necessary for an understanding of the business, such as relationships with employees, suppliers and customers, environmental and community impact, corporate governance and management risks. The working committee was later asked to devise means of identifying what will be material to the OFR and they stated as a starting point, that, 'the view put forward in the (company law review) that the primary role of directors is to promote the success of the company for the benefit of its shareholders as a whole but that this duty can only be discharged effectively when directors look at long-term as well as short-term issues and when all the factors affecting the company's relationships and performance are taken appropriately into account. This implies an appreciation of the implications of a wide range of the social and ethical environmental and economic impacts'.

⁵⁰In 2013. See The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013. Available at <http://www.legislation.gov.uk/uksi/2013/1970/contents/made>. accessed on 14-11-2017.

⁵¹The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013. In accordance with sections 473(3), 1290 and 1292.

understanding of the development, performance and or position of the company's business, include –

- a. The main trends and factors likely to affect the future developments, performance and position of the company's business, and
- b. Information about-
 - i. Environmental matters (including the impact of the company's business on the environment,
 - ii. The company's employees, and
 - iii. Social, community and human rights issues Including information about any policies of the company in relation to those matters and the effectiveness of these policies'⁵².

Since 2005, all European Companies must include both financial and non-financial reports, this will involve the use of non-financial indicators that are relevant to the business which includes relevant information relating to environmental and employee matters⁵³. Clearly the strategic report and guidelines with the Section 172 of the Companies Act if properly implemented 'will have the effect of requiring many large companies to produce more social and environmental information , potentially leading to more sustained thinking about stakeholders interests'⁵⁴

South Africa

In South Africa, appreciable progress had been made in the area of CSR and particularly impactful stakeholder engagement regulation in the country's corporate governance development. The King Code had become a reference point to emulate in the Continent of Africa and beyond.⁵⁵The King Code IV report and code are further developments to the previous King Codes. It further deepened the focus of the code which is based on the

⁵²We must note the EU Modernisation Directive which also gave similar direction. Directive 2014/95/EU.EU Modernisation Directive available at <http://www.pwc.com/gx/en/corporate-reporting/archive/publications/assets/eu-modernisation-directive.pdf>.

⁵³Multerat, R. 2003. Corporate social responsibility: a European perspective . *Miami-Florida European Union Center of Excellence*. 13. 6.1-22.

⁵⁴William, C and Conley, J. op.cit.p. 523.

⁵⁵ See introduction to the Nigerian SEC Code .

‘Stakeholder Inclusive Approach’ to corporate governance and integrated reporting, sustainability and Corporate Citizenship as mechanism for proper regulation of the corporate governance in South Africa. The Code ‘advocates integrated thinking which takes account of the connectivity and interdependencies between the range of factors that affect an organisation’s ability to create value over time. Integrated thinking underpins all the following- seeing the organisation as an integral part of society and thus as a corporate citizen, the stakeholder inclusive approach, Sustainable development; and Integrated reporting⁵⁶

The Code specifically sets out to regulate and give directions to stakeholder /company relationships and engagement. In section 5.5 the code provides that ‘ In the execution of its governance role and responsibilities, the governing body should adopt a stakeholder inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the organisation over time. The recommended guidelines include;

1. Assumption of responsibility for the governance of stakeholder relationships by setting the direction for how stakeholder relationships should be approached and conducted in the organisation. The stakeholder relationships and engagement process and procedures are properly articulated, including the identification of material stakeholders and how they should be treated. Further, the code provides for companies to report on stakeholder relationships and on the particular arrangement in place for managing the relationships.⁵⁷ Key areas of focus, actions taken to monitor the effectiveness of stakeholder management and how the outcomes were addressed and other future areas of focus⁵⁸.
2. The Johannesburg Stock Exchange (JSE) also has as part of its listing rules and disclosure requirements in a bid to promote strong corporate governance by companies operating in South Africa, disclosure on the

⁵⁶ See King IV Report op.cit. p.24.

⁵⁷Part 5.5, para. 5(a)- (d)King IV.

⁵⁸ Ibid.

extent to which they comply with the principles of the Code of Corporate Governance on an 'apply and explain' compliance regime basis. The JSE had since 2004 insisted on Environmental Social Governance (ESG) disclosures as part of its Sustainable Responsible Investment disclosures which has become a corporate culture in South Africa.

3. The plan to continue in this trend has tremendously helped the corporate terrain in South Africa to further develop the stakeholder engagement and management issues to enhance its CSR and reap the tremendous benefits of stakeholder engagements in South Africa.

It is hereby recommended that Nigeria should urgently adopt similar measures and practice on stakeholder engagement .

Regulation and Enforcement of Stakeholder Engagement by MNCs Operating in Nigeria

From the analysis above, it is obvious that Nigerian Government efforts in regulating CSR and stakeholder engagement and management had been so insignificant and meaningless. The Codes of Corporate Governance for the various sectors⁵⁹ and the suspended Financial Reporting Council of Nigeria Code of Corporate Governance⁶⁰ do not make any serious attempt to regulate ESG reporting and stakeholder engagement. The current position is totally undesirable and inimical to growth and development. The lack of regulation in this area is a substantial threat to economic development of the country⁶¹.The almost total lack of regulation on CSR and stakeholder engagement is the root cause of various cases of misunderstanding and conflicts⁶²

⁵⁹Codes of Corporate Governance in Nigeria.

⁶⁰ FRC Code of Corporate Governance available at

<https://drive.google.com/file/d/0BxB1-bqcIt35aXVjMEY3c2NyYnc/view>. Accessed on 14-11-2017.

⁶¹Aina, K. 2017. Sustainable reporting-panacea for growth and development. *The Gravitas Review of Business and Property Law* 8.40-55.

⁶²Adewumi A and Olatubosun A. 2005. Stakeholder participation in the Niger Delta Region: the potential contributions of the ILO Convention 169. *Journal of Sustainable Development ,Law and Policy.* 6. 129-144.

between the stakeholders and companies (especially MNCs)⁶³ operating in Nigeria⁶⁴. Ite⁶⁵ identified massive poverty in the Niger Delta region of Nigeria and Government's inability to develop the region as the root cause of the disturbances and conflicts between the communities and the oil companies operating within the region. 'This is predicated on the increasing national and international perceptions that the oil companies in Nigeria are massively exploiting their host communities in the Niger Delta but giving little or nothing in return to the people'⁶⁶In justifying the position and actions taken by Shell Company in the region Ite reported that Shell Company had spent a total of \$336.8 Million on community development projects and payments to the community. However, the major reason why there is no appreciable result for all the money spent by the company is mainly due to the one sided efforts of determining the focus of attention without significant stakeholder engagement in the management of CSR funds⁶⁷. Shell like most of the MNCs operating in Nigeria had tried series of approaches to CSR engagements with its stakeholders⁶⁸ including partnerships with other development partners to implant CSR objectives without success.⁶⁹.

Empirical studies conducted by experts on the activities of MNCs and their impact on stakeholders have discovered that all the so called initiatives that is claimed to have been done

⁶³ Briscoe A. 1977. Why should we control multinational companies .*Trent Law Journal*..1-1-8.

⁶⁴ See Calvino, L. 2008. Multinational corporations and local communities: a critical analysis of conflict .*Journal of Business Ethics*82.m 793-805

⁶⁵ Ite, U. 2007. Changing times and strategies: Shell's contribution to sustainable community development in Niger Delta, Nigeria .*Sustainable Development Journal*.15.1-15.

⁶⁶ Guardian 2002.Ibori, Senator unhappy with Oil firms. 31 August 2016.

⁶⁷ Harrington, A. 2011. Corporate Social Responsibility , Globalisation, the Multinational Corporation, and Labor: an unlikely alliance. *Alabama Law Review*. 75. 483-510

⁶⁸ In the case of Shell Company see SPDC report available at <http://www.shell.com.ng/media/2017-media-releases/global-nigeria-forum.html> accessed on 14-11-2017.

⁶⁹ Finlayson, C. 2003. 'The business case for sustainable development: the Shell experience'. A keynote address delivered at the 2003 Commonwealth Business Forum Abuja , Nigeria.

seems to have gone down the drain. For instance, the research carried out by Christopher Percival⁷⁰ demonstrates that Shell “integrates triple bottom line thinking into solutions that it offers and is seen as shifting the embeddedness of the company’s sustainable development approach from being a ‘license to operate’ to license to grow” , the problem faced by MNCs in Africa generally is that they adopt and implement their own vision of CSR not because of concerns for ESG objectives but in most cases because of fear of consequences to their business operations, and so adopting and implementing their version of CSR activities are done as mere palliatives to enable them continue their operations and exploitation. In this wise CSR and stakeholder engagement is practised in a haphazard, disorganised and uncoordinated manner if practiced at all. The result is that all individual efforts do not yield any tangible result⁷¹. Duba⁷² in assessing the position in South Africa (this is also true for the Nigerian situation) explained that MNCs concentrate on funding the same type of social activity because the decisions to fund CSR projects are mainly by the management of the company without regard for the needs of the community. CSR cannot be entirely effective and impactful without stakeholder engagement with the target stakeholders.

Legal Regulation and Enforcement

The total lack of regulation contributed to the lax level of adoption of CSR and stakeholder engagements by MNCs. However, all the MNCs operating in Nigeria and other parts of Africa have their headquarters in Europe, Asia and America and are regulated by the laws of their home countries and International organisations with singular focus on sustainability. The Global Reporting Initiatives (GRI)⁷³ has

⁷⁰ Percival, C. 2003. Towards a process view of the business case sustainable development: Lessons from experience of BP and Shell .*The Journal of Corporate Citizenship* 9. 117-132.

⁷¹ Sullivan, L. 1983. The mobilisation of Multinational companies in South Africa. *Law and Policy in International Business*..15.2. 427.443

⁷² Duba, V. 1994. Multinational companies: make ye straight their path. *The South African Law Journal* 111. 178-191 at 189.

⁷³ <https://www.globalreporting.org/Pages/default.aspx>

developed international best standards⁷⁴ which are scientifically set to ensure the best standards of behaviour by companies all over the world⁷⁵. The GRI platform thus provides companies with the facility to present their non-financial Key Performance Indicators (KPIs). It also measures the level of compliance by the companies with the measurement index. Most of the MNCs in Africa are on the platform. All the MNCs also file their reports for their subsidiaries in their home countries where reporting and disclosure is mandatory and higher standards of behaviour are required. The King Code IV has adopted the GRI standard and platform for companies operating in South Africa to comply with. In Nigeria, there is no such reference to standard, and so companies operating in Nigeria do not have any standard of behaviour to comply with. I hereby submit that in the absence of legal or regulatory direction indicating the standard of behaviour, the MNCs ought to comply with the global standards as presented by the International organisations as well as the more strict standards set by their home countries or place of control of their organisations in their dealings and operations in Nigeria⁷⁶.

United Nations Global Compact

The United Nations Global Compact is a UN initiative formed to encourage corporate organisations to imbibe the ideals of sustainability. UN Global Compact believes that sustainability is an imperative for business to operate and survive in today's world. Companies must take seriously the companies environmental, social and governance practices, that the well-being of workers, communities and the planet is inextricably tied to the health of the business'. Global Compact had published its ten principles and is believed to serve as

⁷⁴ The GRI Standards represent global best practice for reporting publicly on a range of economic, environmental and social impacts. Sustainability reporting based on the Standards provides information about an organization's positive or negative contributions to sustainable development

⁷⁵ Sydner, A. 2007. Holding Multinational Corporations accountable: is non-financial disclosure the answer *Columbia Business Law Journal*. 2017.2. 565-613 at 574.

⁷⁶ Eaton, P. 1997. The Nigerian Tragedy, Environmental Regulation of Transnational Corporations, and the Human Right to a Healthy Environment. *Boston University International Law Journal*. 15 261-5.

universal principles for corporate behaviour and sustainability. The Global Compact had successfully set the standard for sustainable practice and behaviour for companies by providing the templates to adopt in terms of stakeholder engagement and sustainable reporting disclosures⁷⁷.

OECD Initiatives

The Organisation for Economic Cooperation and Development (OECD) established since 1961 and comprising thirty five most developed economies of the world had been at the fore front of globally developing the culture of sustainable governance amongst the companies operating in the member nations, and since these companies are not only operating in these countries, they are also leading investors in developing countries participating in all aspects of manufacturing and extractive industries and they contribute to the economy of countries they are located. The OECD therefore seeks to promote ‘policies that will improve the economic and social well- being of people around the world’ by ensuring that these companies observe the best practices in their corporate dealings . The OECD as part of its drive for sustainability published a Code of corporate governance which made ample provision on sustainability and stakeholder engagement and disclosures. In its chapter IV on the role of stakeholders in corporate governance, the general principle provides that, ‘The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active cooperation between corporations and stakeholders in creating wealth, jobs and the sustainability of financially sound enterprise’. The code explains the vital role being played by stakeholders as ‘resource providers’, and identifies them as investors, employees, creditors, suppliers and other stakeholders.’ The code emphasise the long-term value of the contributions of stakeholders to the long term success of the corporation.

The code encourages stakeholder participation and engagement in formulating policies with access to ‘relevant,

⁷⁷The EU CSR strategy and directive is based on the Global Compact initiatives .

sufficient and reliable information regularly in order to fulfil their responsibilities'. They should be allowed to communicate their concerns to the companies in an atmosphere of mutual trust and understanding. Chapter V of the Code enjoins the companies to ensure that 'timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company. The OECD also published Guidelines for Multinational Enterprises which is a set of recommendations for companies based in the member countries, the set of recommendations inculcates the code and are geared towards responsible business conduct in the global context. The identified stakeholder groups includes, shareholders, local communities, special interest groups, governments and society at large. This is to 'improve public understanding of enterprises and their interactions with society and the environment'. The MNCs can no longer claim that they only comply with Nigerian law and regulations on sustainability matters which are very low or non-existent⁷⁸. The international norms and standards (some discussed above) are now important reference points that can no longer be ignored.⁷⁹

They are also subject to the international imperatives and standards which are binding on them by virtue of their membership of these organisations, either directly or through their home countries who are members of these international organisations. While they are part of the problem, MNCs can also be part of the movement towards greater justice whether internally based on 'best practices' or by external pressure and governance in the form of public cooperation structures or state action⁸⁰.

⁷⁸ See Business day of 16 March 2017 available at <https://www.businessdayonline.com/the-coke-story-what-it-is-not/> accessed on 05-11-2017.

⁷⁹ Symposium. 2001. The Multinational Enterprise as a Global corporate citizen. *New York Law School Journal of International and Comparative Law* 21. 1-40.

⁸⁰ McClintock, B. 1999. The multinational corporation and social justice: experience in supranational governance. *Review of Social Economy* 57.4. 507-522.

Stakeholder Engagement: Mandatory or Voluntary Obligation

CSR had always been seen as a voluntary concept⁸¹. The major reason for neglect of CSR legal regulation and mandatory compliance had been the ‘beyond the scope of positivist legal scholarship’⁸² idea of most jurisdictions. But CSR is now being recognised worldwide with significant norms drawn from international public soft laws⁸³ some have called for more legal scrutiny of CSR⁸⁴ but majority still believe it is a self-regulatory and voluntary concept⁸⁵. The European Commission defines CSR as ‘[A] concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis’⁸⁶ The Commission emphasised that the concept is voluntary and it covers ‘how enterprises interact with their internal and external stakeholders (employees, customers, neighbours, non-governmental organisations, public authorities, etc.)’⁸⁷ The codes of corporate governance and most definitions of the concept acknowledges that the concept is to be adopted

⁸¹ See for instance the definition of CSR by the European Commission.

Supra.

⁸² See Zerk, J. 2006. *Multinational and corporate responsibility: limitations and opportunities in international law*. Cambridge :Cambridge University Press.

⁸³ Sheehy, B. 2012c. Understanding CSR: an empirical study of private self – regulation. *Monash University Law Review* 38. 2. 103-127.

⁸⁴ Horrigan, B. 2007. 21st Century Corporate Social Responsibility Trends - An Emerging Comparative Body of Law and Regulation on Corporate Responsibility, Governance, and Sustainability. *Marque Journal of Business Law*. 4 . 85.

⁸⁵ Sheehy, B. 2015. Defining CSR: Problems and solutions. *Journal of Business Ethics* 131 . 3 . 625-648.

⁸⁶ European Commission Green Paper 2001 “Promoting a European Framework for Corporate Social Responsibility”, COM(2001)366 Final Aug 25, 2006

⁸⁷ The Commission has recently published (22 March 2006) a new communication on CSR entitled “Implementing the Partnership for Growth and Jobs: Making Europe a pole of excellence on CSR” (COM(2006)136 final) The communication also acknowledges the impact of stakeholders in the management of companies and that it continues to attach utmost importance to dialogue with and between all ‘stakeholders’, and recognises that “without the active support and constructive criticism of non-business stakeholders, CSR will not flourish.”

by companies and implemented willingly without any instrument of coercion or enforcement.⁸⁸ The Codes of Corporate Governance in Nigeria⁸⁹ had been a mixture of either voluntary (SEC Code) or mandatory (CBN Code). Whether it is voluntary or mandatory the underlying fact is that they are made to be complied with and the regulators are to ensure compliance. Though CSR has both economic and legal components, but the voluntariness and enforcement will depend on whether it is enshrined in a written law or not. Where they are properly stated in an enactment then it must be obeyed or the company will face the consequences as stipulated in the law. In India the CSR obligations are properly regulated and stated in the Companies Act 2013⁹⁰ which makes compliance mandatory. In Italy, for instance, Article 41 of the Italian Constitution provides a basis for social responsibility by corporations by underlining how economic activities should be undertaken if it conflicts with social usefulness or in any way that it brings any form of damage to human security, freedom and dignity. In France, on 15 May 2001, France enacted a law called 'New Economic Regulation (Novelles Regulations Economiques NRE). Article 116 thereof introduced a mandatory requirement for companies to report on 'triple bottom line' reporting for all companies trading on the stock exchange (the Bourse de Paris). The article requires the companies to provide detailed information about non-financial matters such as labour, with detailed information about working hours, and overtime, gender matters, labour relationships and collective bargaining, health and safety etc. Social disclosures are also to include detailed information on the use of natural resources, water, noise, pollution and emission, environmental management systems and risks. The information must be disclosed in the annual Reports of the company and prior to which the report must have been tabled and approved at the Board and General meeting of the

⁸⁸Carrol, A. 1991. The pyramid of Corporate Social Responsibility: toward the total management of organisational stakeholders. *Business Horizons* .34. 4.39-48

⁸⁹Discussed above.

⁹⁰See Section 135 and Sch. VII of the Indian Companies Act 2013.

company. This law requires reporting on 32 social environmental and governance indicators. In year 2012, the law was further updated by GenelleII , Article L225-102-1 of 2012 which now requires up to 42 KPIs covering environmental, social and environmental , social and governance categories. All listed companies are required to report on their ESG indicators, while unlisted companies are also required to report if they exceed some defined thresholds. The law covers all important indices for sustainability and will give the stakeholders the opportunity to engage with their companies. The law also provides that Multinational Companies (MNCs) with headquarters in France should make the disclosures covering their subsidiaries in other countries. They are required to produce reports at stakeholder's requests; the report is required to be verified by independent third party who must attest to its validity. The UK position is now virtually mandatory⁹¹. In Netherlands and Germany the Codes of Corporate Governance has been enshrined in the Companies Acts⁹². Whether it is a soft law or hard law the point is that all soft laws were made pursuant to a hard law that empowers the authority that issued such soft laws to issue them, it certainly should command appropriate compliance. Ashley Santner⁹³ has argued after analysing the effect of the OECD MNE guidelines that soft law could be as effective as hard law. Fowler⁹⁴ is of the view that there are now substantial numbers of soft laws that has set the international standard that must be recognised and complied with by MNCs⁹⁵. In circumstances where the Code of corporate governance are without any legal or

⁹¹Given the combined effect of Section 172 CA 2016, the Combined Code and Strategic Reports by directors. See above.

⁹²Wymeersch, E. 2006. The enforcement of corporate governance codes. *Journal of Corporate Law Studies*. 6.113-138.

⁹³Santner, A. 2011. A soft law mechanism for corporate responsibility : how the updated OECD guidelines for multinational enterprises promote business for the future. *George Washington International Law Review* 43.375-388.

⁹⁴Fowler, R. 1995. International environmental standards for Transnational corporations. *Environmental Law*. 25. 1. 1-30.

⁹⁵ See UNCTAD World Investment Report 2017 available at http://unctad.org/en/PublicationsLibrary/wir2017_en.pdf. Accessed on 16-11-2017.

regulatory mandate it will remain largely voluntary but even if made without legal authority but has been included in a regulator's directive like the Listing Rules of the Stock Exchange it is necessarily mandatory for all companies listed in the exchange. However most MNCs do not list their companies in the local stock exchanges and therefore are outside the regulatory direction of the Exchange regulatory powers . Carroll Archie⁹⁶ identified five legal components of CSR obligations, which companies must comply with, these are to- (a) perform in a manner consistent with expectations of government and the law; (b) comply with various Federal, state and local regulations; (c) be a law abiding citizen; (d) fulfils all legal obligations;(e) provide goods and services that at least meet minimum legal requirements.

The legal aspects of the responsibilities are predictable, well organised and determined capable of being enforced by all stakeholders, fully participatory process and totally transparent. There is need for a compulsory stakeholder engagement law and regulations in Nigeria. Compulsory stakeholder engagement by companies will guarantee compliance, uniformity, consistency and enforcement across all corporate organisations without discrimination or partiality⁹⁷. It will guarantee transparency, the blame game on contributing to development efforts by government or lack of consultations will shift to enforcement and regulator's responsibilities, leading to reduction of conflicts between the stakeholders and the companies. Of course laws have their own short comings as well, the process of drafting and enacting the law takes a long time within which time new developments may have rendered the law obsolete and useless⁹⁸. However with good drafting which ought to recognise the current position and anticipate new developments, tie the law to international standards and developments recognising that standards are being reviewed continuously at the international level. It is important to

⁹⁶Carrol, A.op. cit. p.40.

⁹⁷Fowler, R. 1995. International environmental standards for Transnational corporations. *Environmental Law*.25. 1. 1-30 at 27-29.

⁹⁸Arnstein, S. 1969. A ladder of citizen participation. *Journal of American Institute of Planners*.35.4.216-224.

recognise that voluntary adoption of stakeholder engagement process has never worked in regulating the activities of MNCs and other companies in Nigeria⁹⁹. A comprehensive law regulating stakeholder engagement and non-financial reporting is of urgent necessity¹⁰⁰

The law must take into consideration the global best practices and standards. It must also take into consideration the standards being set by international organisations¹⁰¹. In order to avoid setting lower standards, the law must adopt the standards in the home country of the MNCs¹⁰² concerned whichever is stricter¹⁰³.

Evolving a Culture of Stakeholder Engagement in Nigeria

Stakeholder engagement should be understood as a communication between the company and its stakeholders on the plans, policies and objectives of the company and the stakeholder expectations, balancing, resolving, prioritising, negotiating and understanding these concerns, after properly assessing the material report and disclosures by the company in a transparent and cordial manner, arriving at a decision that will ensure a long-term profit and sustainability of the company. The short-term profit maximisation drive is the hallmark of shareholder primacy theory, profit only motive, without regard for stakeholder expectations or ESG concerns is not sustainable. The result had always been employee agitations for higher wages, communal conflicts and unrests, as they will seek for environmental protection for their community, and

⁹⁹Amodu, N. 2017. 'Regulation of corporate social responsibility in corporate Nigeria'. *Journal of African Law*. Vol.61.1.105-130.

¹⁰⁰ A bill was presented on establishment of a CSR commission before the National Assembly but did not pass the second reading. The bill itself was deficient in many material particular and the sponsor lacks the basic understanding of the concept. Available at http://www.femiamao.com/files/CSR_BILL.pdf. Accessed on the 23-10-2017.

¹⁰¹Niewenkamp, R. 2013. The OECD Guidelines for Multinational Enterprises on responsible conduct. *DQ*. 171-175

¹⁰²Fowler, R. 1995. International environmental standards for Transnational corporations. *Environmental Law*.25. 1. 1-30.

¹⁰³Mulchinsky, P. 2007. *Multinational enterprises and the law*.2nd Ed. Oxford: Oxford University Press.

other stakeholder groups will fight for their expectations from the company which they believe is their legitimate rights until either the company responds positively or is forced to close down. However, the limitations to full stakeholder engagement culture and policies are enormous. Corporate Sustainable Governance is almost unknown within the Nigerian corporate circles as the short term profit pursuit still substantially dominates the thinking of most Boards of Directors. They still see declaration of huge profits as a sign of success rather than sustainable decisions that will sustain the enterprise in the long-term. It is worrisome that business people still reward short-term decisions and ignore the global preference for reward for companies that embrace long-term sustainability. It is without doubt and backed by empirical research that sustainable business culture that inculcates stakeholder engagement strategies creates long-term survival and progress for all stakeholders and engenders development and success¹⁰⁴.

The current Sustainable Reports practice in the annual reports of Nigerian companies does not indicate any understanding of the underlying purpose and relevance to stakeholder engagement and the bottom-line¹⁰⁵. There is no criteria for quantification of the KPI (no regulation for determining a consistent KPI in the first place), the mode, determination of standards of measurements acceptable to stakeholders, understandable, trusted and helpful in determining the appropriate compliance level is yet to be properly ascertained or defined in Nigeria unlike in South Africa and other advanced countries¹⁰⁶ that had adopted the

¹⁰⁴Puri, P. 2010. The future of stakeholder interests in corporate governance. *Canadian Business Law Journal*48.3 . 427-445.

¹⁰⁵ For example see The Annual Report by Unilever Nigeria available at https://www.unilever-ewa.com/Images/financialstatementfull-year-ended-31-december-2015_tcm1283-480443_en.pdf. There is no report on Sustainability. Contrast with Unilever Global available at <https://www.unilever.com/investor-relations/annual-report-and-accounts/>. Accessed on 14-11-2017.

¹⁰⁶ See the position in France, Canada, European Union, Australia.

global standards and other sustainability index¹⁰⁷ measurement platforms¹⁰⁸.

The Companies operating in Nigeria must be made to understand that they operate with public consent; therefore their policies must be targeted towards ensuring not only the success of their companies but also that all the stakeholders exist in an atmosphere of clean environment, development and progress¹⁰⁹. Stakeholder engagement entails cooperation of all parties concerned (stakeholders and company) working together to achieve sustainable success for the company¹¹⁰. This will involve some form of investment by the companies in human development towards understanding the issues involved with a deliberate policy of educating themselves and adopting sustainable culture, the company will then be able to appreciate the issues involved and the implications for the company and other stakeholders in taking this approach.

¹⁰⁷ For instance, Dow Jones Sustainability Index available at <https://eu.spindices.com/indices/equity/dow-jones-sustainability-world-index>. Accessed on 01-11-2017; JSE socially responsible investment index available at <https://www.jse.co.za/services/market-data/indices/socially-responsible-investment-index>; FTSE4 Good index Series available at <http://www.ftse.com/products/downloads/FTSE4Good-brochure.pdf>. Accessed on 01-11-2017; Bitc Corporate Responsibility Index available at <https://www.bitc.org.uk/services/benchmarking/cr-index> accessed on 01-11-2017; GRI Sustainability Framework op.cit.

¹⁰⁸ In 2014, the Nigerian Stock Exchange (NSE) with the Convention on Business Integrity (CBI) launched a Corporate Governance Rating System (CGRS) designed to rate companies listed on The Nigerian Stock Exchange based on their corporate governance and anti-corruption culture, thereby improving the overall perception of and trust in Nigeria's capital markets and business practices. Though this is not a sustainability rating or index system unfortunately it was never made operational. See, <http://www.nse.com.ng/mediacenter/pressreleases/Pages/NSE-CBi-Launch-Corporate-Governance-Rating-System.aspx>. Williams- Elegbe, S. 2017. Corporate Governance rating systems as a means of targeting corporate misconduct in Africa: the Nigerian example. *Journal of Comparative Law in Africa*. 4.1-23.

¹⁰⁹ Ite, A., Ibok, U. et al. 2013. Petroleum Exploration and Production: Past and Present Environmental Issues in the Nigeria's Niger Delt. *American Journal of Environmental Protection*. 4. 78-90.

¹¹⁰ Korten, D. 1995. *When corporations rule the world*. West Hertford, CT :Kumarian Press:.

Nigeria should urgently introduce a combination of both mandatory and regulatory legal framework on stakeholder engagement and CSR standards that will give regulatory direction and standard for companies to comply with¹¹¹. This must involve defining and adopting the corporate governance approach that will be suitable for the corporate governance goals and aspirations for the country. The regulators should also give direction by developing a culture of sustainable reporting and stakeholder engagement geared towards conflict resolution and development of the companies and stakeholders alike. Nigerian investment laws must be examined and amended to inculcate stakeholder engagement practice as a screening condition for investors and especially institutional investors; this will be a great incentive for adopting stakeholder engagement as a fundamental practice by the companies. Another area of concern is that the Banks do not factor in their credit policies long-term decisions favouring long-term profitability and sustainability. Such decisions are never supported by the credit policies of Banks and other financial institutions. The regulatory authorities like the Central Bank Of Nigeria has failed to give direction on this probably because there is no enabling law or regulation to support the implementation of stakeholder engagement regulation in the Nigeria. The Banks must be encouraged to change their policies and the Central Bank of Nigeria as a regulator should set in motion process to amend the Banks and other Financial Institutions Act and the Code of Corporate Governance for Banks and other Financial Institutions to make regulations on stakeholder engagements that accord with International standards and national aspirations.

Conclusion

The different approaches to corporate governance particularly the shareholder primacy theory which is the adopted theory in Anglo-Nigerian company law, has been abandoned by English

¹¹¹ Deva, S. 2006. Sustainable good governance and corporations: an analysis of asymmetries. *Geo. International Environmental Law Review* 18. . 707-750.

law after much deliberations and discussions by different sets of experts to embrace the Enlightened Shareholder Value approach. It is critical that Nigeria reconsiders its position and adopt a more progressive and accommodating theory that will be appropriate for sustainable governance and development. The Government have lost colossal sums of revenue from the incessant conflicts between MNCs and their communities especially the oil producing areas. Many theorists have come up with different solutions that have failed to effectively stop these conflicts. It is suggested in this paper that a good way out is for the MNCs in fact, all companies operating in Nigeria to engage with their stakeholders by communicating, interacting and discussing with them in order to effectively solve the challenges facing the parties. Stakeholder engagement is an aspect of CSR and sustainable corporate governance which defines CSR not as a philanthropic one way gesture of giving to stakeholders to quieten them but an interaction that makes the corporate enterprise a successful sustainable business with long term plans acceptable to all stakeholders. Sustainable Reporting is an important aspect or component of stakeholder engagement as it enables stakeholders to assess the corporate plans and objectives which really form a basis for engagement by stakeholders. Most countries of the world have amended their laws to adopt a progressive theoretical basis for stakeholder engagements by companies. International efforts by international organisations and regional efforts have also been very significant advancements in formulating and prescribing standards for national codes of corporate governance to adopt. There is no regulation or law that regulates or prescribes a standard of behaviour for MNCs on CSR or stakeholder engagement or non-financial reports which leave the companies with no option than to devise their own interpretation of sustainable governance and report. This position is most unacceptable and is the source of the conflicts with the stakeholders. There is urgent need for a law on stakeholder engagement which will regulate the process of stakeholder engagement in Nigeria and also make the process mandatory. The mandatory regulation and enforcement of stakeholder engagement will ensure a standard of behaviour which is enforceable, transparent and affords equal treatment for all

companies. The ‘comply or explain’ regime of compliance can no longer be feasible under a mandatory compliance regime as the regulatory coverage is almost non-existent. It is an all-encompassing move, this will entail a combination of both mandatory and regulatory reorganisation and amendments of relevant legislations which will include, a complete regime of reporting on non-financial reporting and its third party external validation, developing a comprehensive set of KPIs which will guide the report by companies and adoption or developing a measurement index that will take into consideration the peculiarities of different industrial sectors of the economy. The banking sector should be refocussed to accommodate long term investment credit decisions in place of short term profit maximisation while investment laws should also be amended to give prominence for sustainable decisions.