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BEYOND PROFIT: CORPORATE SOCIAL RESPONSIBILITY AS A VEHICLE OF DEVELOPMENT IN NIGERIA.

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Abstract.

Traditionally, a business is formed for the sole aim of profit. Hence, all its activities are geared towards the profit motive. However, a business does not exist in isolation but rather as part of a society, thus, there is an increasing argument in favor of businesses taking more interest in what happens in the society as responsible members of the society. Besides, sometimes in the course of pursuing the profit motive, businesses interfere negatively with the society thereby causing harm to other stakeholders. Yet, the idea of businesses behaving in a socially responsible way has been more or less regarded as a charitable or philanthropic cause in Nigeria. This paper justifies the need for businesses to be socially responsible and argues that there is a need for more definite regulation of corporate social responsibility activities in Nigeria as the international trend is moving from the philanthropic point of view to a mandatory and regulated approach.

Introduction

Business corporations are important actors on the world stage as they continue to play an increasing role in national and the world economy. In fact, they are a major instrument for the promotion of the capitalist enterprise worldwide.¹ Generally, they are formed with the main aim to make profit.² As the saying goes, “*the business of business is business*”. However, the realities of the changing times no longer support this position as corporations are gradually being required to consider the interest of other stakeholders in addition to the profit motive. A business does not exist in isolation. Its quest for profit is achieved through the medium of producing goods and services to meet the needs of the society in which it exists. Thus, there has been an increasingly global call for corporations beyond its profit motive, to contribute towards the development of the society in which it exists.³ In essence, corporations

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¹ Linus Ali, *Corporate Criminal Liability in Nigeria*, Malthouse Law Books, 2008, p.25

² The words “companies”, “businesses” and “corporations” are used interchangeably in this paper

³ The United Nations through the UNCTAD recognises the importance of corporate social responsibility to sustainable development. See <http://unctad.org/en/pages/DIAE/Corporate-Social-Responsibility.aspx> accessed on 22nd May, 2018.

should engage in actions that foster social good beyond the interest of the business.⁴ This is because the society is seen as a stake holder in the affairs of the company since it can be affected by the actions of the company.

Besides, businesses often in its pursuit of profit negatively interfere with the society causing harm to the society which often times constitutes violations of the law. This negative impact can be summarized to be in two folds both human and environment. The human factor could be in the form of substandard goods and services which causes danger to the physical, mental, social and psychological well-being of the consuming public.⁵ In fact, there has been series of global incidences of death caused by activities of businesses. From the BP American refinery explosion which killed fifteen people in 2005, the famous Herald of Free Enterprise collapse in the UK and the massacre of more than one thousand people in Dhaka, Bangladesh in 2013 where a garment factory collapsed are some of the examples of the consequence of negative interference with the consuming public and the society as a whole.⁶ Nigeria has had its fair share of deaths and injury caused as a result of activities of business. More than eighty children were killed in 2009 when a pharmaceutical company used a toxic substance in the manufacturing of a teething drug.⁷ As stated, in 1996, Pfizer Incorporated Limited conducted a clinical drug trial in Kano State, Nigeria which killed and severely injured some children⁸

Environmental degradation caused by factors like oil spillage, chemical usage e.t.c. is an example of negative interference with the environment. The oil producing region of Nigeria has suffered from poverty, infrastructural challenges and strife; perhaps as a result of environmental degradation in terms of oil, water and soil pollution.⁹ In fact, the activities of companies can be held to have a link with climate change.

It must be stated however that when the activities of businesses constitute a violation of the criminal law, these are regarded as crimes and thus results in criminal prosecution and subsequent sanctions as prescribed by the relevant laws. For example,

⁴ In fact, the United Nations launched UN Global Impact programme in 2000 which is the world's largest voluntary corporate citizenship initiative. It tries to bring together UN agencies, government, labour and civil together with businesses by developing ten principles for business activities. See <http://www.csrwire.com/members/12044-united-nations-global-compact> accessed on 22nd May, 2018. See generally, www.unglobalcompact.org

⁵ For example, a clinical drug trial conducted by Pfizer Incorporated Limited in Kano, Nigeria caused the death of eleven children and several others permanently disabled in 1996. See www.bbc.co.uk/news/world-africa-14493277 posted on 11th August, 2011, accessed on 7th January, 2013

⁶ Akanbi, Khairat Oluwakemi, The Legal Framework for Corporate Liability for Homicide: The Experience in Nigeria and the United Kingdom (2014) 22IIUMLJ 117

⁷ See *Adeyemo Abiodun v. F.R.N* (Unreported) Suit No SC/531/2016 and *Egbe Austin Eromosele v. F.R.N* (Unreported) Suit No SC/529/2016.

⁸ See the case of *Abdullahi v. Pfizer Inc.* 562F.3d 163 (2d Cir 2009). Also, there has been a series of plane crashes over time in Nigeria which has caused the death of thousands of people and which ofcos is traceable to the activities of companies.

⁹ Hakeem Ijaiya Challenges of Corporate Social Responsibility in the Niger Delta Region of Nigeria. Afe Babalola University Journal of Sustainable Development, Law and Policy (2014) 3.1 p.61

the subsequent prosecution following the toxic teething drug saga led to the winding up of the company and imprisonment of responsible officials.¹⁰ Also, the 2001 killing of a family of four in Scotland by a gas explosion was also prosecuted because the explosion was caused by the negligence of the gas company.¹¹ The focus of this paper is not on the criminal activities of corporations which by virtue of its corporate citizenship confers on it the responsibility to comply with the law. As stated, this is already taken care of under various criminal legislations. Rather, the focus is on the moral burden on corporations to take into consideration the interest of other stakeholders in the society in its quest for profit.

Corporate Social Responsibility

Corporate social responsibility can be described as the process which seeks to embrace responsibility for the corporation's actions and encourage a positive corporate impact on the environment, its employees, consuming public and the society as a whole.¹² Corporate social responsibility is often regarded as "corporate citizenship" and its justification lies in the fact that a corporation is regarded as a person in the eyes of the law with rights, duties and liabilities; thus it is expected to behave like a responsible member of the society. Also, as a stakeholder in the society, its activities affect the society and thus, it should contribute to the development and sustainability of the society. The World Business Council for Sustainable Development defines corporate social responsibility as the continuing commitment by businesses to behave ethically and contribute to the economic development and the quality of life of its host community and the society as large.¹³ Therefore, corporate social responsibility entails companies integrating social and environmental concerns in their business operations on a voluntary basis.
https://en.wikipedia.org/wiki/Corporate_social_responsibility

The idea of corporate social responsibility suggests that businesses have some additional responsibility beyond their responsibility to investors and the responsibility to comply with the law. Thus, they are required to take into consideration the needs of other stakeholders like consumers, employees, suppliers, the local community, governments and other interest groups.¹⁴ Corporate social responsibility can thus be summed up as taking care of consumers by providing good quality goods and services; taking care of its employees by putting in place good labour practice which

¹⁰ See Adeyemo Abiodun (supra) where the Supreme Court affirmed the decision of both the Lagos High Court and the Court of Appeal. See <https://leadership.ng/2018/04/05/my-pikin--sipreme-court-jails-2-over-poisonous-drug/> accessed on 23rd May, 2018. Similarly, there is a machinery in the United Kingdom to prosecute companies whose activities causes the death of a person which is the Corporate Manslaughter and Corporate Homicide Act 2007

¹¹ Transco P.L.C v. H.M Advocate (2003)G.W.D 28-1039, (2004)S.L.T, 995. See also Akanbi, K. O. The Legal Framework for Corporate Liability for Homicide: The Experience in Nigeria and the United Kingdom. IIUM LJ, Vol. 22, No 1, 2014.

¹² See generally https://en.wikipedia.org/wiki/Corporate_social_responsibility accessed on 24th May, 2018

¹³ <http://www.gaea.bg/about-GAEA/Corporate-social-responsibility.html> accessed on 23rd May, 2018

¹⁴ Ijaiya p.63

will enable them to thrive and maximize their potentials; taking care of the needs of government by ensuring a safe environment through an ideal usage of physical and natural resources to complement the efforts of government towards achieving good governance. Therefore, corporate social responsibility seeks to strike a balance between the profit motive and responsible behavior.

It has been alleged that the idea of corporate social responsibility dates back to the Quakers in the 17th and 18th century where the business philosophy was not profit driven but driven by the urge to add value to the society.¹⁵ Thus, it evolved as a form of moral or philanthropic initiative. Thus, it is still regarded as mainly voluntary and philanthropic in its practice in Nigeria.

Why Should Corporations be Socially Responsible? Why CSR

A major reason is that the company is regarded as a person in the eyes of the law. It is a rights and duties bearing entity, distinct from its owners, independent and free to make its own decisions including the decision to do right or wrong as evident by sections 37 of the Companies and Allied Matters Act¹⁶, Cap C20, Laws of the Federation of Nigeria. Specifically, section 38 provides:

“Except to the extent that the company’s memorandum and article otherwise provides, every company shall for the furtherance of its authorised objectives have all the powers of a natural person of full capacity.”

Thus, the law recognises that a company is a member of the society so it behoves on it therefore to be a responsible member of the society. The company should in the course of achieving its profit motive, take into consideration the effect of its activities on the society since as a member of the society; it is a party to the social contract in the society.¹⁷ Furthermore, the company is really the creation of the society through the instrumentality of the law. It is the law by a fiction that gives legal recognition to a company. The company only exists in the contemplation of the law.¹⁸ It actually does not exist in the physical world. For example, sections 18 and 19 of CAMA provide rules for forming a company and if such steps are not followed, a company cannot be deemed to have been formed. In essence, it is the law that creates the company for the

¹⁵ Kenneth M. Amaeshi, Bongo C. Adi, Chris Ogbechie and Olufemi O. Amao Corporate Social Responsibility (CSR) in Nigeria: western mimicry or indigenous practices? No 39-2006 ICCSR Research Paper Series, ISSN 1479-5124, p.5

¹⁶ Cap C20. LFN 2004

¹⁷ Linus Ali, pp 56-57 cited in Akanbi, Khairat Oluwakemi and Ariyoosu Dauda Adeyemi “Corporate Criminal Liability: Imperatives of Criminalising Corporate Wrongs” University of Ilorin Law Journal (2014)UILJ VOL.9, P197

¹⁸ According to Salmond, a person in law is any being which the law regards as capable of rights and duties whether a human being or not. See generally, LLB Jurisprudence and Legal Theory 4th Edition. HLY Publications, 1993.

society and confer on it some privileges. Thus, there is a moral obligation on the company to help work for the good of the society.

Another rationale for corporate social responsibility can be traced to the failure of government to discharge most of its obligations.¹⁹ This has led the people to expect of corporate social responsibility. For example, multi-national oil and gas firm Shell BP has a scholarship programme for exceptional students in Nigerian universities in some specific fields. Over time, thousands of students perhaps unable to access non-existent government scholarships have sought refuge in Shell scholarship schemes. If education was subsidised by the government, the pressure on Shell scholarship might not be much. In fact, in 2014, \$14.8 million was invested in scholarships by the Shell Petroleum Development Company (SPDC) and Shell Nigeria Exploration and Production Company (SNEPCo). Every year, thousands of Nigerian undergraduates write aptitude tests to join the ever growing list of students which Shell Nigeria supports in Nigerian Universities.²⁰ Therefore, CSR can be used to solve some of the socio-economic developmental problems of Nigeria.²¹ In fact, it has been argued that CSR in Nigeria need not follow the standard practice of the west but rather should reflect the peculiar needs of the Nigerian society.²²

Also, companies should indulge in corporate social responsibility initiatives because it is in the long term interest of the company. This is because a company needs a healthy environment in order to thrive. As stated, "*a healthy business and a sick environment are hardly compatible.*" Thus, it is in the best interest of the company to contribute to a healthy society. Although, corporate social responsibility can affect the immediate profit motive of a business because the business is forced to sacrifice part of its profit for societal good; yet, not indulging in CSR can still affect the profit in the long term because the business reputation of the company can be affected which can lead to a consumers' boycott, employees leaving for greener pastures and even government can make policies unfavourable to the business.²³

Besides, when a society is bedevilled by the challenges of lack of adequate infrastructure, unemployment and the attendant crime rates and illiteracy, it will be difficult if not impossible for companies to thrive in such environment. For example, in the last decade, there were security concerns in the Niger delta region of Nigeria which included kidnapping by unemployed and frustrated youths parading as militants, pipeline vandalisation, bombing of gas plants etc. All these affected the operations of multinationals in that area. More recently, economic recession and near collapse of infrastructure had pushed a lot of manufacturing countries out of Nigeria

¹⁹ This is especially true for a country like Nigeria where basic infrastructures are either non-existent or inadequate.

²⁰ <https://www.shell.com.ng/sustainability/communities/education-programmes.html> accessed on 23rd May, 2018

²¹ Amaeshi, Adi, et al, p.19

²² ibid

²³ Ananaba Ugwuanyanwu and Chukwuka Ekene "Corporate Social Responsibility and Its Implementation in Nigeria: Problems and Prospects. Global Journal of Human Resource Management March 2016 vol.4, No2 . p.64.

to neighbouring African countries. For example, United Airlines and Iberia Airlines cut off routes to Nigeria.²⁴ As at August, 2016, it was reported that Nestle Nigeria, had a ninety four percent drop in profits.²⁵

Lastly, Nigerians or Africans, perhaps its human nature itself; people are mostly driven by sentiments. Therefore, a company that has a reputation of giving back to the society will most likely be patronised than one who does not. This is more because of the technology driven age where there is more access to information. Thus, consumers now demand more and hold corporations to a higher standard. Hence, through corporate social responsibility, a company can improve its business reputation, build new relationship and win new consumers and public support.

Challenges of Effective and Efficient Corporate Social Responsibility

The idea of companies channelling its energy to solve societal problems through the machinery of corporate social responsibility is not without some challenges. One of which is that the company is primarily formed to make profit. By sacrificing some of its hard earned profits to serve the society, it will be compromising its focus of shareholders wealth maximisation. The shareholders' immediate need is profit so the company is in a dilemma if it decides to sacrifice part of this profit for the society as engaging in CSR will be at a cost to the business.

Consequently, another challenge will be determining which takes priority as there are conflicting needs of the different stakeholders. The needs of the consumers of the products who wants cheap and quality products; the needs of the employees who wants a higher pay and a generally safe work environment and the needs of the society which is asking for contributions to its infrastructural and human development. Thus, the company is under pressure to balance its shareholders' wealth maximization motive and the CSR need of societal wealth maximization. However, it has been suggested²⁶ that all stakeholders do not have equal stake in the company as there are different levels of influence, thus, there might be the need to prioritise the need of some stakeholders over others. CSR itself is about balancing the needs of all the stakeholders in a business.²⁷

Another challenge is that the government²⁸ has not done much to provide a viable business climate. Lack of stable electricity, bad roads, access to foreign exchange and insecurity are some of the challenges which a business will face in Nigeria. Thus, businesses might not find it encouraging sacrificing their hard earned profit to help the government do its work. This is because the company/business already feels let down by the government.

²⁴ <http://guardian.ng/news/14-airlines-close-shop-in-nigeria-amid-forex-hike/> Aug.8,2016 accessed on 21st May, 2018.

²⁵ <http://www.vanguardngr.com/2016/10/nestle-nig-plc-prospects-of-recovery> accessed on 21st May, 2018

²⁶ Ananaba Ugwunwanyi and Chukwuka Ekene, p.64

²⁷ *ibid*

²⁸ Successive Nigerian governments

Also, a company is not necessarily equipped to handle social services and may not have the necessary expertise and thus, may have to get the expertise at an extra cost. Another argument against CSR is that a reduced profit may affect the global competitiveness of the company. However, as argued earlier, a healthy business cannot survive in a sick environment. Corporate social responsibility is a proactive method and ultimately it is in the best long term interest of the company to help work for the good of the society.

Corruption is also a challenge that can affect the practice of corporate social responsibility in Nigeria. This is because corruption is a cankerworm that has eaten deep into the fabrics of the Nigerian society spanning every sector of the country. This is beyond rhetoric as the country has persistently been listed amongst the corrupt countries in the world²⁹. According to Transparency International's Corruption Perception Index, 2016 Nigeria ranked number 136 out of 176 countries with an abysmal 28%³⁰ and ranked 148 in 2017.³¹ Thus, there is the likelihood that when resources are allocated for CSR, it might not be channeled appropriately by those in charge. This fact may also discourage companies from pursuing CSR goals.

Also, some companies might hide under CSR to do brand advertising. There is nothing wrong in advertising. In fact, it is a right of every business to conduct advert within a regulated framework. However, the obvious motive of CSR is to help or give back to the society not to see an immediate increase in its profits or patronage. For example, a company can organize youth empowerment scheme/talent hunt which on the face of it seems to be a form of CSR but which ultimately is a form of advertisement of the company so that at the end of the day, the benefits accruing to the society is very small compared to the benefits to the company in the form of increased sales and patronage. Therefore, there is the tendency that companies use CSR for Public Relations purposes and not necessarily to impact the society. Perhaps, the most important challenge to the practice of CSR in Nigeria is that there has been no legal framework for its enforcement. Presently, the National Assembly has a Bill for the establishment of the Corporate Social Responsibility Commission which has the mandate to create a standard for social responsibility based on international best practices. The Bill in section 5 lists the functions of the Commission as including integrating social responsibility in Nigerian trade policies taking in to consideration the World Trade Organization rules and policies. Its mandate also includes classification of corporations with a view to determine appropriate social behavior for each category. The Commission is also expected to motivate corporations towards being socially responsible and it creates a benchmark of 3.5% of gross annual profit as the minimum to be expended on CSR in a year, it also hope to enforce labour practices that are up to the international standards. Thus, the Bill seeks

²⁹ Akanbi Khairat Oluwakemi Corporate Criminal Liability as a Catalyst for Effective Anti-Corruption War in Nigeria, KIU Journal of Humanities, 2018, 3 (1) ISSN 2415-0843, p95 available online@ <http://www.ijhumans.com/ojs/index.php/kiuhums/announcement/view/7>

³⁰ See generally www.transparency.org/cps

³¹ https://www.transparency.org/news/feature/corruption_perceptions_index_2017#table accessed on 21st May, 2018

through the Commission to hold corporations accountable not only to the shareholders, but also to its employees, consumers, government and the society as a whole which is really at the core of corporate social responsibility. However, there are challenges to the final passage of the Bill as there has been opposition to it from the organized private sector and some other stakeholders.³² A major criticism of the Bill is that through regulation, it loses its voluntary nature. However, the international trend is moving from voluntary towards a more regulated concept. Besides, the peculiarity of the Nigerian State makes regulation imperative. Thus, it is argued that the Bill is a step in the right direction. A legal framework for CSR will go a long way as CSR can be a viable option to complement the efforts of government in the provision of social and physical amenities.

Finally, insecurity is a challenge to CSR as it discourages business in its entirety and the few companies that exist are only interested in immediate short term profits and not long term goals. Similarly, the government should increase its infrastructural drive as an enabling environment for business can also improve CSR. The changing realities of our times have shown that the expectations and roles of companies have moved from the traditional role of making profit to contributing to solving societal problems.

Conclusion

In this paper, the idea of Corporate Social Responsibility was reviewed. The paper reviewed the rationale for the concept as well as the challenges of effective and efficient Corporate Social Responsibility in Nigeria. The paper's conclusion is that notwithstanding the challenges, the idea is useful as a tool for economic reengineering and development.

³² See Ijeoma Nwagwu The CSR bill and doing business in Nigeria, published March 24, 2016 Business Day, <http://www.businessdayonline.com/the-csr-bill-and-doing-business-in-nigeria/> accessed on 24th May, 2018