Corporate Governance in Nigeria: The Ethical and Behavioral Imperatives

Bisi S. Olawoyin

Abstract—This paper reviews corporate governance issues in Nigeria from both its regulatory and compliance view points. It explores whether rules and regulations as contained in corporate governance codes can adequately address the issue of poor corporate governance and the resultant business failures. It carries out a deep examination of existing codes of corporate governance to determine whether the implicit interrelationship which should exist between corporate governance and ethics are clearly articulated.

The paper finds that while the Nigerian code of corporate governance contains elements of international best practices as specified in OECD, CACG and IOD documents, a number of peculiar institutional weaknesses hinder the achievement of regulatory and judicial remedies open to stakeholders who are wronged as a result of poor corporate governance. The paper thus advocates for measures that instill high ethical and moral standards in boards and management as panacea to doing what is right.

Keywords— Corporate governance, control Mechanisms, Corporate ethics.

I. INTRODUCTION

BUSINESS failures have always been part of economic history. Enterprises are known to have failed for reasons of market share, volume of turnover, asset size etc. However, a disturbing phenomenon over the last three decades or so, is instances of corporate failures due to poor corporate governance practices.

Corporate governance, often defined as the way businesses are directed and controlled, is concerned with the work of the board as the body which bears ultimate responsibility for the performance of a business. Corporate governance seeks to ensure a balance between economic and social goals of a business and also between individual and communal goals, Corporate governance framework also seeks to encourage efficient use of resources and equally require accountability for the stewardship of those resources.

These demands have led governments and their regulatory institutions across different jurisdictions to develop and codify standards of corporate governance which enterprises are expected to follow. Corporate governance guidelines and codes of best practices thus arise in the context of and are affected by differing national frameworks of law, regulations and stock exchange listings.

Prior to the global economic and financial crisis which started in 2008, evidences from various surveys had indicated that corporate governance lapses were significantly responsible for the collapse of over 70% of companies in Nigeria in the preceding two decades. Corporate failures were not limited to banks but include insurance, textiles, communications, airways etc. Executive management and boards of these institutions were alleged to have been reckless with investors funds, neglected due processes and took biased decision, conducts which negate principles of good corporate governance. In all of these instances of failures, the question of ethics or the right behavior are inherent in every board decision and action.

As Sanusi [1], the governor of the central bank of Nigeria, aptly puts it on bank failures, “the banks did not fail; they were destroyed and brought to their knees by acts committed by identifiable people”.

The general assumption seems to be that where regulation is based on prescriptions and well written codes, there ought to be stable companies with good practices of corporate governance. However, this has not been the case as several large scale business failures have been recorded, even in recent past, across several jurisdictions. This has now put to question the efficacy of codified models of corporate governance thus necessitating a revisit of ethical and behavioural issues. Posers now raised by the above scenario include: Are corporate governance failures a result of absence of regulation or more of a behavioral problem? Can reporting or disclosure requirements sufficiently deal with behavioural problems, if any?

Hence, this paper explores the nature of existing corporate governance codes, their limitations and the direction of the thinking towards improving ethical and moral standards of governance.

II. CORPORATE GOVERNANCE IN HISTORY

Corporate governance has a long history. By the beginning of the 16th century, England, which has become a major trading nation, formed a variety of regulation and regulatory authorities such as joint stock companies and the Bank of England to govern all trading activities on the platform of acceptability, efficiency, effectiveness and stakeholders’ satisfaction. The concept of corporate governance was the basic platform for these regulations and regulatory authorities and over a period of time, the concept and its practice took a
firm root for all activities.

Crawford [2], notes that since the late 1970’s, corporate governance has been the subject of significant debate in the US and around the globe. He said bold and broad efforts to reform corporate governance have been driven in the past by the needs and desires of shareholders to exercise their right of corporate ownership and to increase the value of their shares and hence wealth.

Over the past three decades, corporate directors’ duties have been expanded greatly beyond their traditional legal responsibility of duty of loyalty to the corporation and its owners. By mid 1990’s, the concept and practice of corporate governance had become a public debate due to waves of dismissal of CEO’s of corporation like IBM, Kodak etc. There was also a wave of institutional shareholders activism meant to ensure corporate governance value. Wikipedia also holds that in 1977, the Eastern Asia financial crisis saw the economies of Thailand, Indonesia, South-Korea, Malaysia and the Philippines severely affected by the exits of foreign capital after the collapse of huge assets. The lack of corporate governance mechanism in these countries highlighted the weakness of the institutions in their economics.

In the early 2000’s massive bankruptcies and criminal malfeasance of Enron and worldcom as well as corporate debacles of AOL, Arthur Andersen etc led to increased shareholder and government interest in corporate governance. All these put together, gave rise to the widespread practice of corporate governance across the globe for it is a settled fact that positive effects of corporate governance on different stakeholders is ultimately, a strengthened economy. Hence the commonly accepted principles of corporate governance which must be adhered to should include:

- Right and equitable treatment of shareholders
- Interest of other stakeholders
- Role and responsibility of board of directors
- Integrity and ethical behavior
- Disclosure and transparency.

To make these principles very effective, certain mechanisms have been designed such as internal control procedures, internal audit, balance of powers etc.

III. CORPORATE GOVERNANCE IN NIGERIA

The regulatory framework of corporate governance is a global phenomenon. But while there are universal codes for regulating the practice of corporate governance, there also exists national codes based on local needs and the unique characteristic of each country. However, regardless of whether the code is global or national, the regulatory framework of corporate governance can be viewed from two broad perspectives viz; voluntary and mandatory.

Wilson [3], observes: in Nigeria, as in most developed countries, observance of the principles of corporate governance has been secured through a combination of voluntary and mandatory mechanisms. In 2003, the Artedo Peterside committee set up by the Securities and Exchange Commission (SEC) developed a code of best practice of public companies in Nigeria. The code is voluntary and is designed to entrench good business practices and standard for board of directors, auditors, CEO’s etc of listed companies including banks.

Mandatory corporate government provisions are contained in companies and allied matters act [4], banks and other financial institution act [5], investment and securities act [6], and the security and exchange act [7].

Drawing from the trio of Organisation for Economic Cooperation and Development (OECD), Commonwealth Association for Corporate Governance (CACG), and Institute of Directors (IOD)’s codes, Nigeria has developed codes for the practice of good corporate governance which reflect some of the elements of OECD and other global codes. These include:

1) Separating the roles of the CEO from those of the board chairman
2) Prescription of non-executive and executive directors on the board
3) Improving the quality and performance of board membership
4) Introducing merit on criteria to hold top management position
5) Introduction of transparency, due process and disclosure requirements.
6) Transparency on financial and non-financial reporting
7) Protection of shareholders rights and privileges
8) Defining the composition, roles and duties of the audit committee. (Wilson) op cit.

A. Shortcomings of model of corporate governance relying on rules and regulations.

It has become evident, not only in Nigeria, but worldwide that there have been various challenges in the process of implementing these codes. The Nigerian experience was aptly summarized by the Central Bank of Nigeria in its code of corporate governance for banks in Nigeria. Post consolidation [8]. The challenges identified are not limited to banking sector but cut across other financial institutions and business corporations in general. They include:

Technical incompetence of board and management.
Boardroom squabbles and relationship among directors
Squabbles arising from knowledge gaps and relationship between management and staff
Increased level of risks
Ineffective integration of entities
Poor integration and development of ICT system
Inadequate management capacity
Insider dealings
Rendition of false returns
Continued concealments
Ineffective board/statutory audit committee.
Inadequate operational and financial controls
Absence of robust risk management system
Discriminatory disposal of surplus asset.
Non transparent and inadequate disclosure of information
The various acts and codes meant to strengthen corporate
governance provide judicial remedies for breach of directors’
duties. These remedies include.
Action to recover secret profit
Action in damages and compensation
Restoration of company’s property
   - Winding up proceedings on just and equitable grounds
   - Relief on the ground that the affairs of the company are
     being conducted in an illegal or oppressive manner
   - Application to Corporate Affairs Commission to
     investigate company’s affairs.
A major obstacle in obtaining the above reliefs is that
enforcing them lies with the courts. Nigerian courts remain
slow and expensive and not effective in resolving commercial
disputes. While the courts remain slow, inefficient and
expensive, shareholders are hesitant to use the courts and as a
result the directors continue to act with impunity.

Another remedy to prevent bad corporate governance is
through the oversight function of regulatory authorities. Hence
agencies such as US-SEC, the secretary of state in the UK and
in Nigeria, Securities and Exchange Commission (SEC), and
corporate affairs commission (CAC) and the Central Bank of
Nigeria (CBN) are meant to perform such oversight. However,
these bodies hardly launch any inquisitorial raids on corporate
bodies. Where they do, the penalties usually meted out to
companies found liable for any breach do not deter, hence
directors can afford to risk non-compliance with relevant laws.

Beyond this, France et al [9], point out that laws regulating
companies are ambiguous, that juries have a hard time
grasping and sophisticated financial concepts ……; hence, well counseled executives have plenty of tricks for
distancing themselves from responsibilities.

These shortcoming/challenges thus underscore the
imperative of instilling ethical principles and standards in the
boards, management and employees. As eminent psychologist
Robert Sternberg [10], aptly puts it, ““rules and regulations
aren’t the answer, there is always a loophole to be found and
the focus becomes navigating the system rather than doing
what is right. We need leaders with strong moral compass”.

IV. ROLES OF ETHICS IN CORPORATE GOVERNANCE

Ethical principles are universal standards of right and wrong
prescribing the kind of behavior that an ethical company or
person should and should not engage in. These principles
provide a guide to making decisions and they also establish
criteria by which those decisions are judged by others.

Ethical people and companies often do more than they are
required to do and less than they are allowed to do. The law
tells us what we can’t do (prohibition) and sometimes what we
must do (mandates). It does not answer the bigger question of
what should we do?

It must be appreciated that compliance with laws is only a
part of ethics. Boards, management and employees must go
beyond the law and internalize the virtues of good morals. As
President Theodore Roosevelt said “to educate the mind
without morals is to educate a menace to the society”.

Ethical standards may be expressed in a company’s formal
conduct requirement or contained in generally stated principles
that guide a company’s preferred conduct or behavior. A
number of corporations have put in place a code of ethics for
their employees to conduct themselves in particular manner
while doing business.

Codes of ethics are required to
   - Define acceptable behavior
   - Promote high standards of practice
   - Provide a benchmark for self evaluation
   - Establish a framework for professional behavior and
     responsibility.
   - Michael Josephson [11], enunciates the following
     principles that a code of ethics must deal with:
     - Honesty in communication and actions
     - Integrity
     - Promise keeping
     - Loyalty within the framework of other ethical principles
     - Fairness
     - Caring
     - Respect for others
     - Obeying the law
     - Commitment to excellence
     - Leadership
     - Reputation
     - Accountability

It is thus generally accepted that strong moral and ethical
standards will strengthen corporate governance.

V. SUMMARY AND CONCLUSIONS

There is no doubt that issues of best practices in corporate
governance will continue to dominate discourse in
management literature for years to come. It is also important to
appreciate that the principle of separate legal entity of
corporation in law did not intend total extrication of the
importance of human behavior in the management of these
entities. As Arjoon [12], cautions, ““the tendency to over
emphasise legal compliance mechanisms may result in an
attempt to substitute accountability”” for ““responsibility” and
may also result in an attempt to legislate morality.

Hence, while efforts are continuously being made to
strengthen laws and regulations about corporate governance,
conscious efforts must also be made to instill high ethical
standards. Corporate governance and ethics are both
needed for enterprises development. Company executives can
no longer afford to pretend that business is not bound by any
ethics other than simply abiding by the law. The thinking that
business should make as much profit within the framework of
the legal system cannot stand in the face of several business
failures where directors are paying lip service to technical
compliance with regulations.
REFERENCES


