EXAMINING ESG PRACTICES IN NIGERIA'S CORPORATE ENVIRONMENT

Onyedikachi Trust Ofonye*

Abstract

The dynamics of climate change, technological advancements, population increase and goal of attainment of the Sustainable Development goals(SDG's) of the United Nations amongst others has in recent times expanded the responsibilities of business entities beyond profit-making and Corporate Social Responsibility and into a sphere whereby their impacts on the Environment better assess the value of a company, their social relationship with its stakeholders, employees and consumers and their interactions with the government. ESG Reporting has become an integral part of a company's assessment of progress and impact. This article examines the existing legal framework in Nigeria for the incorporation of ESG principles by business entities in their activities and the increasing drive by the Government and Regulatory bodies for compliance with ESG reporting and practice by companies. The article concluded that the incorporation of ESG principles in the business activities of companies and transparent ESG Reporting is pivotal to the stability and growth of businesses and the nation's economy. The article further recommended that emphasis be placed on compulsory reporting by companies and that a standard form for reporting should be adopted by the different sectors for better evaluation.

Keywords: Companies, Exchange Commission, ESG practices, ESG reporting, Securities.

1. Introduction

ESG is an acronym for Environmental, Social, and Governance Factors and at its core, ESG represents the principle that one should identify and consider environmental, social, and governance factors when making business and investment decisions[1]. ESG connotes using Environmental, Social and Governance factors to assess the sustainability of companies and countries at large. These three factors are seen as best embodying the three major challenges facing corporations and the wider society, now encompassing climate change, human rights and adherence to laws.[2] ESG practices prescribe a shift from a concentration by business on financial value to a consideration of environment and people-oriented implications of business activities. The environmental criteria examine the performance of an organisation in terms of stewardship towards the protection of the natural environment. Social criteria evaluate relationships with people - employees, host communities, and other stakeholders - for running an ethical business. Social factors include labour practices, human rights, gender diversity, community relations, etc while Governance criteria involve leadership oversight

* **Onyedikachi Trust Ofonye,** LL.B. BL., Chairman, Customary Court of Imo State of Nigeria, Onyedikachitrustamarachi@gmail.com

1 D. Chia, 'There Is No "C" in "ESG": An Illustration of ESG's Biggest Risk' *Harvard Law School Forum on Corporate Governance* (October 14, 2022) <https://corpgov.law.harvard.edu/2022/10/14/no-c-in-esg/> accessed 16 March 2024, 8.50 am.

2 Sustainable investing <https://www.robeco.com/en-int/glossary/sustainable-investing/esg-definition accessed 23 March 2024>, 8 32am.

and direction, board diversity, executive pay, audits, shareholders' rights, intellectual property protection, etc.[3]

Corporate accountability is such an important factor in the efforts to achieve the Sustainable Development Goals (SDGs) that it has been included as one of the goals. Target 12.6 of Goal 12 encourages member states to "encourage businesses, especially large corporations, to adopt sustainable practices and integrate sustainability information into their reporting cycle." The UN SDGs lay out a path for securing a sustainable, resilient, and stable operating environment for all, including businesses[4]. In the wave of heightened expectations of corporate transparency and accountability, greater requirement is being placed in the pursuit of accounting for the interrelationship between environmental, social and governance, as well as financial performance and business strategy.[5] Companies are therefore expected to operate in a manner that is socially and ethically responsible and to minimize negative impacts on the environment. They are also expected to contribute positively to the community where they operate by taking into consideration the varied needs of their stakeholders which include their investors, employees and their consumers. ESG considerations provide a useful framework for companies to measure their impact on the environment, communities they operate in, or society at large and set up new business goals that would balance profits with a deeper purpose of sustainable development.[6] Furthermore, ESG standards strengthen organizations' resilience to non-financial risks threatening business continuity such as climate change, migration, and disrupting technologies. That is because early knowledge of potential risks provides more time to adapt and develop cost-mitigating strategies.[7] Addressing environmental, social, and governance issues can be used to position an organization as a responsible business with a positive social impact. ESG considerations have apparently begun to inform every aspect of business as organizations re-appraise their purpose and performance in the light of ESG demands.

2. Concept of ESG in Corporate Practice.

The ESG position of a company is disclosed through ESG reporting and this refers to the process of transparently communicating a company's environmental, social, and governance performance to stakeholders. ESG reporting, often referred to as sustainability reporting, refers to the process of transparently communicating a company's environmental, social, and governance performance to stakeholders. The objective is to provide a comprehensive view of a company's sustainability practices, ethical considerations, and adherence to governance standards.[8] Put otherwise, sustainability reporting involves disclosing data related to the environmental, social and governance-related practices and performances of an organization.[9]

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3 PWC, Environmental Social Governance (ESG) < https://www.pwc.com/ng/en/services/environmental-social-governance.html> accessed 14 March 2024, 10.15am.

4 A. Kretkowska, 'SDGs and ESG: Why the United Nations Sustainable Development Goals Should Top Every Boardroom Agenda' < https://sustainalytics.com/esg-research/resource/investors-esg-blog/sdgs-and-esg--why-the-united-nations-sustainable-development-goals-should-top-every-boardroom-agenda> accessed 7 April 2024.

5 A. Umoren *et al*., 'Environmental, Social and Governance Disclosures: A Call for Integrated Reporting in Nigeria' *Journal of Finance and Accounting* [2015], 3, 2274.

6 UNDP, *ESG: From Challenges to Opportunities* (January 16, 2024) < www.undp.org/belarus/stories/esg-challenges-opportunities > accessed 23 March 2024.

7 *Ibid*.

8 B. Agbakoba-Onyejianya & E. Agheriario, 'ESG Reporting and Disclosure Obligations: Legal Requirements and Best Practices 2024' < https://ESG Reporting and Disclosure Obligations: Legal Requirements and Best Practices > accessed April 7 2024

9 D.M. Hossain, 'Environmental, Social and Governance (ESG) Reporting: An Overview' <https://www.researchgate.net/publication/372108266_Environmental_Social_and_Governance_ESG_Reporting_An_Over

Given the recent projected awareness of Government and business entities of ESG principles and the need for companies to integrate these principles in their business activities, ESG reporting has become imperative to assess the level of compliance of business entities with the ESG objectives. To prosper over time, every company must not only deliver financial performance but must now also show how it makes positive contributions to society.

By disclosing this information, companies demonstrate their commitment to responsible business practices and enable stakeholders to make informed decisions.[10] As ESG practice awareness continues to grow among companies, sustainability (ESG) issues create significant opportunities and risks for businesses, and should therefore be integrated into their strategy-setting process and risk management. For companies, sustainability refers to the creation of economic value with the consideration of the interests of various stakeholders, including employees, customers, local communities and the environment.[11]

Companies that perform better with regard to ESG issues can increase shareholder value by, for example, properly managing risks, anticipating regulatory action or accessing new markets, while at the same time contributing to the sustainable development of the societies in which they operate. Moreover, these issues can have a strong impact on reputation and brands, an increasingly important part of company value. Thus, instead of focusing on single issues, successful companies have learned to manage the entire range of ESG issues relevant to their business, thereby achieving the best results in terms of value creation.[12]

It is likely that ESG issues will have an even greater impact on companies' competitiveness and financial performance in the future.[13] Ultimately, successful investment depends on a vibrant economy, which depends on a healthy civil society, which is ultimately dependent on a sustainable planet. Consequently, business entities have a clear self-interest in contributing to better management of environmental and social impacts in a way that contributes to the sustainable development of global society.[14] Unlike internal controls and accounting which operate under an externally-driven, rules-based framework, ESG represents an attempt by companies to self-regulate their conduct.[15] It has become practice for the progress and future of a business entity to be measured by it compliance with EGR principles and reporting.

Companies must benefit all of their stakeholders, including shareholders, employees, customers, and the communities in which they operate.[16] It has become clear in recent times

view_Environmental_Social_and_Governance_ESG_Reporting_An_Overview#full-text > accessed March 16. 12.40pm.

10 SAP, 'What is ESG reporting?' (August 14, 2024) <https://www.sap.com/resources/esg-reporting-guide#:~:text=At%20its%20core%2C%20ESG%20reporting%20is%20the%20disclosure,practices%20to%20stakeholders%2C%20including%20investors%2C%20customers%2C%20and%20regulators> accessed Oct 23 2024, 11.04am.

11 KPMG, 'ESG: A view from the top The KPMG, CLP and HKICS Survey on Environmental, Social and Governance (ESG)' (September, 2018) <https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2018/09/esg-a-view-from-the-top.pdf > accessed March 22 2024, 10.59am.

12 Who cares wins: connecting financial markets to a changing world (English). Washington, D.C. : World Bank Group<http://documents.worldbank.org/curated/en/280911488968799581/Who-cares-wins-connecting-financial-markets-to-a-changing-world> 1.

13 *Ibid*

14 *Ibid*

15 E. Pollman, "The Making and Meaning of ESG" (October 31, 2022). U of Penn, Inst for Law & Econ Research Paper No. 22-23, European Corporate Governance Institute - Law Working Paper No. 659/2022, Harvard Business Law Review. < https://ssrn.com/abstract=4219857> accessed 23 March 2024

16 A M Scott, 'From Promise to Reality: Do Businesses Really Care About the SDG' (2018) <https://www.pwc.com/gx/en/sustainability/SDG/sdg-reporting-2018.pdf> accessed 23 October 2024, 11.14 am.

that sustainability reporting raises public knowledge of corporate initiatives and actions in relation to their environmental impact, social impact, and governance and as such stakeholders which include regulators, employees, investors, and local communities are able to make informed decisions as to the relationship they intend to forge with the businesses.

The increasing demand by government for detailed disclosure, increased pressure from investors, supplier, competition in labour markets and the host communities where the companies are situated has also necessitated the need for sustainability reporting. The lack of disclosure makes it impossible for investors to value companies accurately and make informed decisions.

Sustainable Reporting enables firms to achieve progress in vision and strategy thereby reduce the cost of compliance with regulatory requirements, it also gives firms a competitive advantage in terms of investment, contracts and markets opportunities, building trust with their stakeholders, improving internal management procedures and system in decision making[17]. The quantity and quality of companies' reporting on ESG issues has increased rapidly in recent years as investors and other stakeholders are demanding more transparency from companies about their ESG impact. Reporting rates for companies issuing environmental, social or sustainability reports tend to be highest in countries with large corporations like the USA, Japan, Germany, France and UK than in Africa and particularly Nigeria where EGS issues are still gaining grounds and reporting practices are no longer restricted to sectors with a high environmental impact in but also in non-industrial sectors[18]. The rating framework published by Analysts' Data Services and Resources, a data and research company, analysed the environmental, social, and governance practices of companies as published on their websites show that Access Holdings, Dangote Cement, GlaxoSmithKline Consumer Nigeria, PZ Cussons and AxaMansard Insurance were the top five companies that got the highest Environmental, Social, and Governance (ESG) rating for 2023.[19]

3. Position of EGS Reporting in Nigeria

The need for increased reporting on ESG issues must be emphasized even as efforts by the Government and Regulators to improve compliance and instil integration of ESG factors in the activities of companies cannot be successful without adequate disclosure on these matters by companies.[20] Sustainability reporting efforts worldwide are getting prominence and being acknowledged by the relevant stakeholders, hence, Nigeria is not an exception in the introduction of sustainability reporting in the business community with particular reference to the oil and gas and financial sectors in view of their substantial contributions to the economic development of the nation.

While a handful of Laws and Regulations make specific provisions for filing of report relating solely to ESG compliance by companies, most Nigerian companies are reporting their ESG

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17 A. Abdullahi and U. Makama, 'sustainable reporting in Nigeria' Al-Hikmah Journal of Arts & Social Sciences Education (2021) 3 143 <https://www.researchgate.net/publication/361861320_SUSTAINABILITY_REPORTING_IN_NIGERIA> accessed October 23 2024 at 11. 10am.

18 K. Ans; V.D. Veen, M. Hay; and D. Wennink, 'KPMG International Survey of Corporate Sustainability Reporting(2002)<https://www.researchgate.net/publication/254746739_KPMG_International_Survey_of_Corporate_Sustainability_Reporting_2002 accessed 17 March 2024

19 <https://businessday.ng/companies/article/these-five-firms-got-highest-esg-rating-in-2023/> January 3, 2024 accessed 23rd March, 2024

20 Who cares wins: connecting financial markets to a changing world (English). Washington, D.C.: World Bank Group <http://documents.worldbank.org/curated/en/280911488968799581/Who-cares-wins-connecting-financial-markets-to-a-changing-world> accessed 23rd March, 2024

activities through various channels, such as annual reports, CSR and ESG reports.[21] Globally, over the past three decades, sustainability/ESG reporting has been largely voluntary. However, today, the trend is that of adopting mandatory and regulated sustainability reporting, and the reporting landscape is poised to change drastically.[22] To achieve sustainable development and reporting, the Nigerian government and Sector Specific Regulators are utilising formal regulations to nudge companies and investors to increasingly incorporate ESG principles and requirements into their business practices and investment decisions. This target aims for the private sector's contribution to sustainable development to be accounted for with the same frequency, thoroughness, and importance as an organization's financial performance.[23] High levels of environmental uncertainties, pressures from several external stakeholders to communicate and maintain corporate transparency of an organisation's activities, as well as link corporate reports with business strategy and risk, resulted in the formation of the International Integrated Reporting Council (IIRC) in 2010. This body was set up by the Prince of Wales Accounting for Sustainability Project, the Global Reporting Initiative and the International Federation of Accountants to design a framework which would present a comprehensive report of a company's business performance from both financial and non-financial perspective.[24] The IR framework consists of eight elements which should be presented in an integrated report. These include: organisational overview and external environment, governance, business model, risks and opportunities, strategy and resource allocation, performance, future outlook and lastly basis of presentation.

Prior to the emergence of the IR framework, Nigerian companies in line with existing laws has adopted several elements of the IR framework in their reporting even without a formal referencing to ESG practices. Among the eight content elements required to be included in an integrated report; over half of these elements are currently incorporated in the annual reports of Nigerian quoted companies.[25] Thus, in adopting the IR framework, Nigerian quoted companies would only be required to increase the disclosure contents of certain aspects of their corporate report to conform to the requirements of the IR framework.

In recent times, the government and sector-specific regulators have developing strategies and regulations aimed at improving comparability, transparency and credibility of corporate reports from Nigeria. The Nigerian Government in ensuring the compliance of corporations with reporting enacted the Financial Reporting Act, 2011. The Act in section 1 established the Financial Reporting Council of Nigeria which functions include amongst others, develop and publish accounting and financial reporting standards to be observed in the preparation of financial statement of public interest entities and to monitor compliance with the reporting requirements specified in the adopted code of corporate governance.[26] The Council also has powers to enforce and approve enforcement of compliance with accounting, auditing,

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21 Oluwakemi Abimbola, 'Access Holdings, Dangote Cement top ESG ranking' Punch Newspaper (January 1 2024) <https://punchng.com/access-holdings-dangote-cement-top-esg-ranking-report/ >accessed March 16 2024, 12.15pm.

22 KPMG, 'Big Shifts, Small steps 2022 survey of sustainability reporting in Nigeria' (2023), <https://assets.kpmg .com/content/dam/kpmg/ng/pdf/2022-survey-of-sustainability-reporting-in-nigeria-updated.pdf> accessed 7 April 2024.

23 Global Reporting Initiative, *The GRI Standards: A Guide for Policy Makers* (2021) <https://www.global reporting.org/media/nmmnwfsm/gri-policymakers-guide.pdf > accessed 23 October 2024.

24 I.E. Udofia et al., 'The Integrated Reporting (IR) Framework Implementation in Nigerian Listed Companies.' *Global Journal of Accounting* (2020) 6(1), 1-11.

24 https://nirco.icanig.org/background-information

25 M. O. Adelowotan & E.U. Ini, 'Consequences of Implementing Integrated Reporting in Nigeria Using A DOI Approach: Array' Acta Universitatis Danubius Economica, (2021) 17(3) <https://dj.univ-danubius.ro/ index.php/AUDOE/article/view/980> accessed March 19 2024.

26 Financial Reporting Act 2011, s 8

corporate governance and financial reporting standards in Nigeria.[27] The Financial Reporting Act appears to apply only to public entities and not companies. The Federal Government of Nigeria through the Financial Reporting Council of Nigeria in 2011, mandated the adoption of the International Financial Reporting Standards (IFRS) for quoted companies from January 1, 2012.[28]

The Institute of Chartered Accountants of Nigeria at its Governing Council Meeting of 26 February 2018 constituted Nigeria Integrated Reporting Committee (NIRC) to kick start Integrated Reporting activities in Nigeria.[29] The Nigeria Integrated Reporting Council (NIRC) which is a national coalition of regulators, investors, companies, Financial Reporting Council, the accounting profession and NGOs is aimed amongst others to promote communication about value creation as the next step in the evolution of corporate reporting.[30] The Financial Reporting Council (FRC) of Nigeria and the Nigeria Integrated Reporting Committee (NIRC) have taken a significant step towards ensuring effective and seamless implementation of sustainability reporting in Nigeria. The memorandum of understanding (MoU) signed on Friday, March 8, 2024, in Abuja, marks a pivotal moment in the journey towards advocating for sustainable corporate reporting practices in the country.[31]

Furthermore, the Financial Reporting Council (FRC) of Nigeria, International Sustainability Standards Board (ISSB) and Nigeria Exchange Group Regulation Limited (NGX Reg Co) launched the two ISSB Sustainability Disclosure Standards, IFRS S1 & S2 on Monday June 26, 2023, making Nigeria the first African Country to adopt the International Sustainability Standards Board (ISSB) standards[32]. The standards are designed to meet the needs of all companies, not just the most sophisticated. They provide a clear idea of what companies need to report to meet the needs of global capital markets – providing investors with globally comparable information.[33] IFRS S1 sets out the general requirements for a complete set of sustainability-related financial disclosures and requires an entity to disclose information about all sustainability-related risks and opportunities that could reasonably be expected to affect the entity's prospects.[34] IFRS S2 requires an entity to disclose information about its climate-related risks and opportunities that is useful to primary users of general purpose financial reports in making decisions relating to providing resources to the entity[35].

The Nigerian Code of Corporate Governance, 2018 made pursuant to Section 73 of the Financial Reporting Council of Nigeria Act, 2011 requires the board of a Company to ensure that the Company's annual report includes a corporate governance report that provides clear

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27 *Ibid, s 7(2)(a)*

28 I.E. Udofia *et al*., 'The Integrated Reporting (IR) Framework Implementation in Nigerian Listed Companies' *Global Journal of Accounting* (2020) 6(1) 1-11.

29 NIRC Background Information, <https://nirco.icanig.org/background-information> accessed March 19 2024 at 12.49pm.

30 <https://nirco.icanig.org/nirc#:~:text=The%20Nigeria%20Integrated%20Reporting%20Council,the%20 evolution%20of%20corporate%20reporting > accessed March 19 2024 at 12.49pm.

31 *S. 11*

32 FRCN, 'FRC, ISSB & NGX Regulation Limited Launch IFRS S1 & S2 Sustainability Disclosure Standards in Nigeria'(July 5, 2023) <https://frcnigeria.gov.ng/2023/07/05/frc-issb-ngx-regulation-limited-launch-ifrs-s1-s2-sustainability-disclosure-standards-in-nigeria/ accessed April 2, 2024.; Iheanyi Nwachukwu, 'Nigeria becomes First African Country to Adopt IFRS S1, IFRS S2 Standards' Business Day (June 27, 2023) <https://businessday.ng/news/article/nigeria-becomes-first-african-country-to-adopt-ifrs-s1-ifrs-s2-standards/> accessed April 2, 2024.

33 T. Adepoju 'ISSB Standards are now Live, KPMG, (June 26 2023) <https://kpmg.com/ng/en/home/insights/2023/07/issb-standards-are-now-live.html> accessed April 5 2024 at 2.00am

34 EY, 'Applying IFRS Sustainability Disclosure Standards Introduction to IFRS S1 and IFRS S2 (December 2023) <ey-applying-introduction-to-ifrs-s1ands2-december-2023.pdf > accessed April 15 2024.

35 *Ibid*

information on the Company's governance structures, policies and practices as well as environmental and social risks and opportunities.[36] The Company's corporate governance report should include the following: highlights of sustainability policies and programmes covering social issues such as corruption, community service, including environmental protection, serious diseases and matters of general environmental, social and governance (ESG) initiatives[37].

In order to ensure incorporation of sustainability reporting by companies, the Nigerian Stock Exchange Sustainable Development Guidelines approved by the Securities and Exchange Commission requires listed companies to submit a Sustainability report to the Exchange within the period allowed for the submission of the Companies' Annual Returns. The report is to contain a comprehensive description of the listed company's management overview and of economic, environmental, social and governance risks and opportunities. Such sustainability information and data could be included in the Company's annual report or other financial report.[38] More so, the NSE also encourages reporting companies to consider getting their reports assured or independently verified against international standards in order to increase the credibility of the report by establishing that the information is accurate.[39] The guidelines also highlight nine principles and corresponding core elements that constitute the indicators of responsible business practice and outline the fundamentals of implementing the guidelines and enable businesses to go beyond compliance and embrace sustainability as part of their ethics.[40] The guidelines became effective on January 1, 2019, and is mandatory for companies listed on the premium board of the Exchange.

There have been efforts in the Nigeria's banking industry, to advance the idea of sustainability and to get banks to support the achievement of the Sustainable Development Goals (SDGs) by the launch of the Nigeria Sustainable Banking Principles (NSBPs) by the CBN. The Nigerian Sustainable Banking Principles consist of nine guidelines for banks in implementing sustainability in their operations. The principles cover environment and social (E&S) risk management, mitigation of the bank's E&S footprints, promotion of human rights, women empowerment, financial inclusion, E&S governance, capacity building, collaborative partnerships, and reporting. The principles also include specific sector guidelines for risk assessment in the high-risk sectors of oil and gas, power, and agriculture.[41]

Section 24(1)(b) of the Climate Change Act[42], mandates a private entity with over 50 employees to designate a Climate Change Officer or an Environmental Sustainability Officer, whose responsibility is to submit to the Secretariat of the National Council for Climate Change, through the State Director, annual reports on the entity's efforts at meeting its carbon emission reduction and climate adaptation plan.

36 Section 28.1

37 28.2(l)

38 The Nigerian Stock Exchange Sustainable Development Guidelines, 2018 s 4

39 ibid

40 Temitope Oloko: 'Corporate Sustainability Compliance in Nigeria: Challenges and Prospects' *International Review of Law and Jurisprudence* (2022) 4 (1) 54-64.

41 CBN, 'Implementation of Banking Sustainable Principles by Banks and Discount Houses and Develolment Financial Institutions in Nigeria' Circular (September 12 2012) <https://www.cbn.gov.ng/out/2012/ccd/circular-nsbp.pdf> accessed April 5 2024 at 12.05pm.

42 2021

In a report on a survey carried out by KMPG based on data from a research population of top 100 registered companies in Nigeria by revenue,[43] showed that Nigeria's sustainability reporting rate decreased by 7% between 2020 (85%) and 2022 (78%). The decline is mostly attributable to a change in the list of Nigerian N100 companies with the highest revenues; some companies that appeared on the 2022 N100 list did not disclose their sustainability performance, as contrasted to companies that were on the 2020 N100 list. Though there was a decline in Nigeria's sustainability reporting rates from 2020 to 2022, data shows that since 2015, Nigeria's reporting rate was always significantly greater than the global average (particularly from 2015 to 2020).[44] When compared with their counterparts in other parts of the world, 35 countries that participated in the KPMG global survey, including Canada, China, the United Kingdom, and the United States, recorded an increase in their reporting rates between 2020 and 2022. South Africa (the current African sustainability reporting champions) has always had higher sustainability reporting rates than Nigeria. Moreso, South Africa's sustainability reporting rates have always exceeded 90% in the past 10 years, a trend that was also observed in the United Kingdom. This may be explainable as companies on the Johannesburg Stock Exchange in South Africa are mandated to report on sustainability. Thus, sustainability reporting and financial reporting are integrated in business operations in South Africa.

It is anticipated that there would be a lift in sustainability reporting in Nigeria as a result of two key factors. First, the trend toward mandatory sustainability reporting is growing and secondly, the introduction of non-financial reporting regulations would also catalyse sustainability reporting in the future.[45] An analysis of 50 companies' annual and sustainable report for the periods of 2015 to 2020 revealed that sustainability reporting in Nigeria varies among companies based on size, internationality, ownership structure, profitability, age, leverage, and the type of auditor and that companies in the oil and gas sector (energy) disclose higher sustainability accounting information in Nigeria, followed by the banking sector and the industrial sector. This is not surprising, as companies in industries with a high environmental footprint are keener to communicate their effort to responsible economic actors and achieve legitimacy [46]

4. Legal Framework for ESG Compliance in Nigeria

There is currently no legislation in Nigeria specifically making provisions for ESG regulations, reporting and compliance by business entities. However, a consideration of existing Laws in Nigeria applicable to different sectors of business operations reveals that EGG compliance and reporting has been contemplated in most sector-specific legislations before the recent swell of interests in ESG practices and reporting. A number of laws, at the Federal and State levels as well as sector-specific Regulations make provisions that are in line with ESG related practices. Some of these Legislations are:

i. Chapter II of the Constitution of the Federal Republic of Nigeria[47], makes extensive provisions relating to the duty of the State and its individuals in ensuring social and natural justice in the society. Particularly, Section 17(1) thereof prevents the

[43] KPMG, 'Big Shifts, Small steps 2022 survey of sustainability reporting in Nigeria' (2023), <https://assets.kpmg.com/content/dam/kpmg/ng/pdf/2022-survey-of-sustainability-reporting-in-nigeria-updated.pdf> accessed April 7 2024.

[44] *Ibid*

[45] *Ibid*

[46] I.M. Ikpor et al., 'Drivers of Sustainability Accounting and Reporting in Emerging Economies: Evidence from Nigeria' *Sustainability* 2022 14(7) < https://www.mdpi.com/2071-1050/14/7/3780 > accessed April 7 2024.

[47] 1999 (as amended)

exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community and Section 24(d) makes it a duty on every citizen and in the present terms, companies, to make positive and useful contribution to the advancement, progress and well-being of the community where he resides.

ii. The Nigerian Oil and Gas Industry Content Development Act 2010, which overall objective is to enhance the level of participation of Nigerians and Nigerian companies in the country's oil and gas industry requires that Nigerians be given the first consideration for employment and training in any project executed by any operator or project promoter in the Nigerian oil and gas industry.[48] Companies within the Oil and Gas sectors are also required by the law to employ only Nigerians in their junior and intermediate cadre or any other corresponding grades designated by the operator or company[49]

iii. The holder of an exploration licence is required by the Nigerian Minerals And Mining Act[50], to conduct exploration activities in an environmentally and socially responsible manner[51] and to maintain and restore, the land that is the subject of the licence to a safe state from any disturbance resulting from exploration activities, including, but not limited to filling up any shafts, wells, holes or trenches made by the title holder, and in compliance with applicable environmental laws and regulations[52]

iii. *Section 2(1)* of the Environmental Impact Assessment Act[53], prevents both the public or private sector of the economy from undertaking or embarking on or authorising projects or activities without prior consideration, at an early stage, of their environmental effects[54].

iv. The Nigerian Climate Change Act, (CCA) requires private entities with 50 or more employees to put in place measures to achieve the annual carbon emission reduction targets in line with the National Climate Change Action Plans.[55] Public entities are not left out as the Act makes it mandatory for MDAs to establish a climate change desk to be supervised by an officer not below the Directorate cadre, who shall be responsible for ensuring integration of climate change activities into their core mandate. Furthermore, the Ministry responsible for Finance, Budget, and National planning shall ensure that all budget proposals submitted by MDAs have been properly vetted and costed for climate change considerations, and that adequate allocation is provided for them under appropriate sub-heads in the annual budget[56]

v. The Central Bank of Nigeria(CBN) Consumer Protection Regulations issued by the CBN pursuant to the powers conferred on the Governor by the Banks and Other Financial Institutions Act, 2020[57] makes extensive provisions relating to the protection of customers from unfair and exploitative treatment by institutions licensed by the banks, unethical and predative treatment of customers, encourage transparency by

48 *S 28*
49 *S 35*
50 2007
51 *S. 61(1)(b)*
52 *S. 61(1)(d)*
53 1992
54 *S. 2*
55 *S. 22(1); 24(1)(a)*
56 *S. 21*
57 *S. 56*

institutions in their dealings, prohibiting inadequate or misleading information, and failure to disclose material information, access to free, fair, timely, transparent access to complaint resolution mechanisms all aimed at protecting customers of institutions licenced by the CBN.

vi. The Nigerian Sustainable Banking Principles for Banks, Discount Houses and Development Finance Institutions, approved by the Bankers Committee and which came into effect on 26th September, 2012[58] covers guidelines for Banks, Oil and Gas, Agriculture and Power sectors and which all Banks, Discount Houses and Development Finance Institutions are directed to adopt and implement stipulates in Principles 1 and 2 thereof stipulates that Banks and other Financial Institutions are to integrate environmental and social considerations into decision-making processes relating to their business activities to avoid, minimise or offset negative impacts of their business operations on the environment and local communities in which they operate and where possible, promote positive impacts. Principle 6 requires the said institutions to implement robust and transparent Environmental and Social Governance practices.

vii. The Companies and Allied Matter Act[59] in encouraging the promotion of integration of ESG principles by companies prohibits the formation of a company for an unlawful purpose[60] and places responsibility on Directors of Companies to conduct the affairs of the Company in a transparent manner and to have regard to the impact of the company's operations on the environment in the community where it carries on business operations[61]. The requirement of publishing annual returns as well as Directors' report and other Financial Reports of the company are all aimed at meeting the responsibilities of corporate entities to the environment and other stake holders including the government.

viii. The Securities and Exchange Commission (SEC) has set out quite a number of regulations to guide operators of the Nigeria Capital Market in complying with ESG requirements. These guidelines are aimed at achieving a balance in the pursuit of economic prosperity while ensuring environmental protection and social development. Principle 1 of the Guidelines for the Sustainable Financial Principles for the Nigerian Capital Market issued by SEC in April, 2021 requires entities to embed Environmental, Social and Governance (ESG) considerations into their operations and decision-making processes to avoid, minimize or offset negative impact.

ix. Principle 26 of the Nigerian Code of Corporate Governance requires the board to give heed to sustainability issues, including environment, social, occupational, and community health and safety.

x. Chapter III of the Petroleum Industry Act[62], makes extensive provisions for the development of Host communities by the holder of an interest in a Petroleum Mining lease or a petroleum prospecting licence whose area of operations is within or appurtenant to a community.

58 CBN (n. 42)
59 2020
60 s 18(3)
61 s 305
62 2021

xi. The National Environmental Standards and Regulations Enforcement Agency established by the National Environmental Standards and Regulations Enforcement (Agency) (Establishment) (NESREA) Act[63], has a wide range of responsibilities aimed at the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology, including coordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines. The agency is required to promote private sector compliance with environmental regulations other than in the oil and gas sector. [64]

xii. The Labour Act, Factories Act, Employee Compensation Act, National Minimum Wage Act[65], Pension Reform Act[66], the National Employment Policy, Labourt Act all have commendable provisions requiring employers of Labour to imbibe EGS principles in their relations with employees. More so, the judiciary through the National Industrial Court has made giant strides in the employment sector through its decisions requiring employers to comply with international best practices in their employment contracts and to desist from unfair labour practice.[67]

It is clear therefore that there exist, prior to the emphasis being placed on ESG practice compliance by companies, that ESG principles forms an integral part of almost all sector-specific laws already in force. Most of the laws considered above and some others were enacted without a consideration of the formal concept of ESG in mind, they nevertheless fall within the ambit of ESG consideration and are in line with ESG principles and consequently are binding on the business entities to which they relate. What is required therefore is a focus on ensuring implementation and compliance by business entities with already existing laws and further amplifying awareness of the need to integrate such practices in the company's activities in line with the laws. There needs to be a shift by way of amendment from the voluntary wordings of some of these laws and regulations to ensure mandatory compliance by business entities with ESG practices.

5. The Prospects of ESG Reporting in Nigeria

Save for some recent Regulations/legal frameworks,[68] ESG reporting has been largely seen as a voluntary act by business entities. This is more so as the provision for compliance with the same has mostly been suggestive. However, even as the Government has begun the recognize and emphasize the role of sustainability reporting and compliance by companies of ESG principles, it is projected that this would act as a push factor for more regulatory support for sustainability reporting in Nigeria. Companies tend to report their positive contributions to the environment and society while neglecting the negative impact on the society and the environment, including the negative effect of the same on the business itself. Companies should report both their positive and negative impact of their business on ESG factors and

63 2007
64 s 7,8
65 2019
66 2014
67 Constitution, s. 254C(1)(f)
68 The Climate Change Act, 2021; The Nigerian Stock Exchange Sustainability Reporting in Nigeria, 2018

how these areas affect their business as it gives a holistic view of the company's progress on ESG practices.[69]

For the purposes of ESG reporting and implementation, various laws and regulations have provided for punishments in terms of fines for failure of companies to adhere to ESG requirements and reporting modalities. However, many stakeholders, particularly investors, users of an entity's general purpose external reporting and regulators, to name a few, are concerned about the reliability of sustainability reporting. As a result, the demand for assurance on sustainability reporting has increased and companies in Nigeria are complying with the same, as they retain independent firms to evaluate their reports on ESG practices. In emerging economies, pension and financial sector regulators, stock exchanges, central banks, and relevant ministries in some cases partnering with international organisations have been developing their own guidelines and supervisory requirements. They aim to enhance transparency and encourage action toward greater sustainability in their own markets, enhance market stability and facilitate economic and social development.[70]

6. Challenges of ESG Reporting in Nigeria.

However, in developing countries like Nigeria, notwithstanding the effort of governments, institutions and organizations in ensuring compliance with sustainability reporting practice in companies, several firms are yet to adopt it, as there is a lack of uniformity in the reporting framework. Although a number of regulatory organizations have drawn attention to particular reporting obligations for sectors, at the moment, Nigeria has no standardized reporting system for sustainable practices.[71]The existence of different reporting standards by different organization makes it difficult for the harmonization and unified evaluation of sustainable reports for different sectors and ultimately for use by the government to access the nations ESG/SDG goals.

More so, many firms and users are not adequately prepared for the adoption of the existing framework or fully aware of the concepts.[72] The assurance rate of ESG reports of Nigerian companies stand at 25% which is lower than the global average.[73] Therefore, with the inherent risk of greenwashing, the need for assured sustainability reports would be crucial to ensure transparency and stakeholder confidence in sustainability non-financial disclosures.[74] Assurance creates trust and reliability in ESG reporting.

Furthermore, it appears that there exists inadequate reporting knowledge amongst most small and medium companies. Emphasis is laid on the big firms while the small firms are neglected.

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69 Aminu Abdullahi and Umah Makama, 'Sustainability Reporting in Nigeria' *Al-Hikmah Journal of Arts and Social Sciences Education* (2021) 3(1) 143-151. <https://www.researchgate.net/publication/361861320_SUSTAINABILITY_REPORTING_IN_NIGERIA > accessed April 12 2024.

70 D.M. Hossain, 'Environmental, Social and Governance (ESG) Reporting: An Overview' (2023) <https://www.researchgate.net/publication/372108266_Environmental_Social_and_Governance_ESG_Reporting_An_Overview_Environmental_Social_and_Governance_ESG_Reporting_An_Overview#full-text > accessed March 16. 12.40pm.

71 Oduware Uwadiae 'Promoting Sustainability Reporting in Nigeria' (2020) <https://www.researchgate.net/publication/363712283_Promoting_Sustainability_Reporting_in_Nigeria > accessed March 16, 3.00pm.

72 *Ibid*

73 KPMG (n 43)

74 *Ibid*

The cost of producing ESG reports are also a challenge to sustainability reporting amongst smaller business entities. This is so as these smaller entities would most likely need to hire independent help with the required knowledge and expertise to prepare these reports.

7. The Relationship between CSR and ESG

ESR and CSR are so similar that they can be taken to represent the intention of the other, more so because both concepts revolve around the same legal framework. Both principles ensure that their operations are ethical, safe and delivering positive impact wherever possible. Just like the objectives of ESG practice, CSR also considers environmental, social and consumer factors in determining the policies and operations of the companies.

The relationship between CSR and ESG lies in the fact that CSR relates to the idea that companies/corporations have a moral responsibility to voluntarily integrate environmental, social, and governance (ESG) improvements into their business operations for the benefit of shareholders, other stakeholders, society as a whole, and the environment.[75] While CSR relates mostly to the concept that the management of a business must be able to give back to the development of its workforce and local communities whereat it is situate, ESR covers a broader aspect of a company's sustainability practices. The main difference between ESG and CSR lies in their approach and intent. ESG is rooted in the idea that addressing environmental, social, and governance issues will enhance a company's long-term financial performance and shareholder value. It's about making the business more resilient and sustainable for the future, considering the direct impacts of ESG issues on the company's financial health. CSR, conversely, is seen more as a moral obligation or a way to give back to society. It is traditionally perceived as a cost to the company – an investment in goodwill that may not directly contribute to the bottom line, but improves the company's reputation and standing in the community. While CSR initiatives can certainly affect a company's public image and potentially its long-term success, they are generally not integrated into a company's core business model in the same way as ESG factors.[76] While CSR and ESR can be described as having a synergetic relationship,[77] ESG uses CSR in such a way that ESG practices transfers the Corporate Social Responsibility of Companies from the area of pure philanthropy to a specific set of numbers that can be used by both investors and consumers in understanding the company's philanthropic, social and internal practices.[78] However, there is a recent emphasis on sustainability reporting, induced by global forces as the focus gradually shifts from Corporate Social Responsibility to more holistic sustainability and ESG reporting. [79]

8. Conclusion/Recommendations

To prosper over time, every company must not only deliver financial performance but also show how it makes a positive contribution to society. The current corporate regime which is

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75 Elizabeth Pollman, "The Making and Meaning of ESG" (October 31, 2022). U of Penn, Inst for Law & Econ Research Paper No. 22-23, European Corporate Governance Institute - Law Working Paper No. 659/2022, Harvard Business Law Review < https://ssrn.com/abstract=4219857 > accessed March 16 2024.

76 Humperdinck Jackman, 'ESG Pro, 'ESG and CSR: Two lanes on the Sustainability Highway' ESG Pro < https://esgpro.co.uk/how-is-esg-different-from-csr/ >assessed 24th March, 2024

77 Magdalena Kaźmierczak, A Literature Review on the Difference Between CSR and ESG (2022) Scientific Papers of Silesian University of Technology Organization and Management, No 162: 281-283. <https://managementpapers.polsl.pl/wp-content/uploads/2022/12/162-Ka%C5%BAmierczak.pdf> accessed April 19 2024.

78 *Ibid*

79 Who cares wins: connecting financial markets to a changing world (English). Washington, D.C. : World Bank Group <http://documents.worldbank.org/curated/en/280911488968799581/Who-cares-wins-connecting-financial-markets-to-a-changing-world 04-37665.global.compact_final (unepfi.org)

powered by ESG integration lays emphasis on the need for companies to benefit all of their stakeholders, including shareholders, employees, customers, and the communities in which they operate.[80]

The place of ESG reporting and compliance has come to stay in corporate practice in Nigeria. Corporate reporting will continue to evolve with the changing business environment and stakeholder expectations. It is laudable that the Government and Sector-Specific Regulatory bodies have appreciated the need for the integration of ESG principles and reporting into legislations and regulations. Governments and companies have apparently understood that Business entities have the skills and capacity to influence a broader community of stakeholders, far beyond the financial bottom line and to derive the nation's attainment of Sustainable Development goals, hence the insistence on sustainability compliance and reporting. To maintain good long-term company performance and project themselves as responsible corporate citizens, business entities in Nigeria must pay enough attention to sustainability concerns, including environmental, social, occupational, and community health and safety as these factors contribute to the economic development of the Country.

The progress of the nation on the Sustainable Development Goals of the United Nations can also be assessed from the reports of corporations on these issues. The importance of ESG practices in the Nigeria cannot be overstated, especially in light of growing concerns over climate change, social inequality, and corporate accountability. A widespread ESG reporting by private companies helps the government better measure private financial contribution to the achievement of SDGs and as such, integrating ESG practices in company activities are beneficial not just to the company but to the sustainable development of the nation. Embracing ESG principles not only mitigates risks associated with environmental degradation, social unrest, and governance failures but also creates opportunities for innovation, value creation, and competitive advantage in a rapidly changing global economy.

To make profitable progress in ESG reporting, there is need for the adoption of sector-specific reporting standards. At the moment, there a quite some reporting standards being used by different companies in Nigeria and this makes for difficulty in uniformity in reporting and objective comparison of the reports of companies. There is also the need for corporations especially small and medium companies to be educated on the need and modes of reporting. Compulsory independent assessment of the reports of companies must also be considered to ensure transparency in reporting and reliability of data. Punishments for breach of ESG principles or reporting rules must be enforced as this would deter further neglect of the same and promote compliance. Voluntariness of incorporating ESG principles in business activities and report must be eradicated if progress is to be made in ESG reporting. The Laws requiring integration of ESG principles must be clear and in mandatory terms and in addition, there is need for government monitoring of these business entities to ensure compliance with the laws and regulations. Companies must ensure that their boards are composed of directors with the right knowledge and expertise to understand ESG risks and opportunities, and oversee how management is handling these sustainable issues. Depending on the business, the board should consider including ESG expertise as one of the criteria for selecting members. This will benefit the board and by extension, the companies through continuous learning about the key ESG issues. More so, emphasis on ESR reporting must not be laid on companies alone. The government institutions must also be incorporated in the schedule for ESG reporting and compliance.

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[80] Larry Fink 'Larry Fink's Letters to CEO's: A sense of Purpose' 2018 <https://seekingalpha.com/article/4137819-larry-finks-2018-letter-to-ceos-sense-of-purpose>accessed April 19 2024