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Legal appraisal of corporate governance and gender diversity on Nigeria's corporate board

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Abstract
This study examined the legal appraisal of corporate governance and gender diversity in Nigeria's corporate boards. In spite of gender disparity recognized internationally and attempt to solving it, gender diversity in the corporate world in Nigeria does not seem to have captured it. Thus, this study investigated why Nigerian corporate boardrooms are not gender balanced, explored the effects of corporate governance on gender diversity and how Nigerian corporate boards can become composed with regards to gender diversity.
The study was anchored on the feminist philosophy of law which is considered apposite as its theoretical frameworks. This research adopted the qualitative, descriptive research design as the most appropriate to effectively carry out this study. Thus, since it was explorative and majorly qualitative in nature, data was be obtained from secondary sources. Sources were collected from relevant textbooks, journal articles and e-resources from the internet. Data were content analyzed.
Studies revealed that despite the global trends, facts, access to equal opportunities, international laws and codes launched, there are still impediments of having women occupy top executive boardroom positions in Nigeria. Further study found that there is an institutional discrimination implemented in the Nigerian corporate structure that is preventing greater representation of women in the boardroom.
This paper therefore concluded that a gender diversified corporate boardroom is a balanced board, essential for a good and ethical business sense, because recruitment of more women will bring diverse opinion on board. This means that there is the need to do a lot in Nigeria to effect a positive and unchallengeable change in the legal and social framework that promotes participation in the formal sector. Finally, the study recommended that shareholders, stakeholders and non-governmental organizations (NGOs) should make the latest FRC's Code, a primary legislative mandatory quota, as a legal measure and sanction in order to combat the issue of boardroom gender diversity in Nigeria.

Keywords: balanced boardrooms, boardroom gender diversity, business enterprise, capital market, corporate governance

Introduction

This paper focuses on gender diversity in corporate governance which is one of the best practices on corporate boards, and it is an international issue (Groening, 2019) [11]. This is evident based on numerous studies geared toward improving global boardroom gender diversity from Africa, Asia, Australia, Canada, Europe, and the United States of America (Lewellyn, 2019; Luanglath, Ali & Mohannak, 2019) [13, 17]. According to Lord Davies, 'If you are a chief executive officer and you do not have gender diversity… as a top issue, then you have been asleep at the wheel' (Lord Davies Report, 2014) [16]. In Nigeria, the Securities and Exchange Commission ("SEC") and the Central Bank of Nigeria ("CBN") seeks to align with present realities and worldwide best practices for good corporate governance, predominantly to re-establish investor's confidence. The *raison d'etre* for the above assertion is as stated on the preamble to the Codes, (and on SEC's website) which seeks to depict Nigeria's constant update with international best practices to strengthen her corporate governance practices. And also in line with the foreign policy objective in section 19 (c) of the Constitution of the Republic of Nigeria, Third Alteration Act (1999 as amended).

Boardroom diversity is a prospect to endorse heterogeneity by considering crucial factors such as gender, ethnicity, belief, sexual orientation, race, age, educational background, socio-economic grouping, professional qualifications, abilities or in-capabilities of the directors. Conversely, gender diversity is concentrated on a proportionate ratio between the sexes. Essentially, the focus of this study is boardroom gender diversity.

There is an international benchmark on the composition of gender on corporate boards (Aluchna & Aras, 2018). However, in Nigeria it is perceived that there is not much revival as realized internationally. In essence, the statement of the problem therefore is that in spite of gender disparity recognized and attempt to solving it, gender diversity in the corporate world in Nigeria does not seem to have captured it. This study aims to translate reviewed literatures and international best business practices in order to review and proffer suggestions for the improvement of gender diversity on Nigeria's corporate boards. Supplementary international debate, including an analysis of several key instruments of board diversity such as Corporate Governance Codes, the Cadbury Report, and Davies Report will be utilized. Whilst these reports and codes of practices are not compulsory and primarily focused on gender, they have played a significant hand in the debate thus far. The issue of gender diversity in corporate boardroom is a topical, recurrent and an ongoing global issue.

Theoretical Framework

This study will be anchored on the theoretical framework known as the feminist philosophy of law.

Feminist Philosophy of Law

This theory is attributed to key prominent authors such as Racheal Speght (1597); Olympe de Gouge (1748) and Mary Wollstonecraft (1794). All human beings have equal worth and the entitlement of such ought to be equal treatment under the law. Feminist theory has advanced over time with crucial themes and concerns such as liberty, equality, difference, dominance, globalization and diversity. Contemporary theorists draw from the international human rights theory amongst others in addressing their goal of development and contextual analysis.

Feminism is about parity between genders as it reflects the role of women and their proper place in the world. There is the need for gender equality and authorization of women in the society (Raven, 2018). Thus, this theory is crucial in buttressing this study especially pertaining to the underrepresentation of women on corporate board of directors. Feminist theory in the legal structure, evidently recognizes the prevalent effect of patriarchy and masculinist norms of gender diversity on corporate boards.

In modern societies, gender disparity is apparent as power is shaped with severe shortcomings and bias. This theory is fundamental as it focuses on the issues of the intersections of sexuality and recommend changes to correct exploitation, restriction and gender injustices. The feminist challenge is basically how to admit certain differences without embedding stereotypes (Minow, 1991). The feminist philosophy of law theory supports this study that corporate board room should not be male dominated, rather it should be diversified.

Boardroom Gender Composition

Nigeria ranks in a downward trend of 133 (0.621) among the bottom positions, out of 149 countries survey globally (World Economic Forum, 2018) [24]. In the case of Nigeria, the advancement of gender diversity on corporate boards is likened to that of a snail's pace in directorship positions (Deliotte, 2016). This means that we need to do a lot in Nigeria to effect a positive and unchallengeable change in the legal and social framework that promotes participation in the formal sector.

Furthermore, reported studies of male and female percentage of directors on the 190 Nigerian Stock Exchange companies presented informs that there is a lack of gender diversity on Nigeria's corporate boardrooms (Lincoln & Adedoyin, 2012; Nnabuife, Okaro & Okafor, 2015; WIMBIZ 2012) [14, 18]. The survey depicts the Nigerian corporate board structure as a major 'gentlemen's club' where the women have been marginalized.

Chart 1: Graphical Illustration (by Researchers) of the latest report of Boardroom Gender Diversity Of Listed Companies on Nigerian Stock Exchange
Restructured from the tables in Ezinma Nnabuife, Sunday Okaro and Gloria Okafor, 'Gender Diversity on Corporate Boards, Evidence from the Nigerian Capital Market' (2015)

Nevertheless, the studies that have surveyed the Nigerian Stock Exchange listed companies have similar results that indicates an apparent underrepresentation of corporate boardroom diversity. The studies presents that the level of the ratio of men to women participation at the boardroom is poor. These studies depict that gender diversity is an issue worth probing based on the fact that the growth and attention it has received is not satisfactory.

Challenges of gender diversity

Nigeria by virtue of her traditional and African attitude is a masculine society, this inherent patriarchy has relegated women as second place and to the background whilst the men thrive and dominate (Chigbu, (2019). More so, there are certain cultural sentiments or stereotypes that a woman cannot break kola; be seen and not heard; belongs only to the kitchen and the other-room which the researchers speculates to be deeply embedded in this issue of gender diversity on corporate boards (Eniola & Akinola, 2019; President Buhari, 2016).

Moreover, women seeking top boardroom positions face persistent hurdles to their success, such barriers include leadership bias, rigid workplace policies and structures, unequal opportunities and gender pay gaps, inequalities in the home and family responsibilities (Andrews, 2019). A logical example is the job of a senior executive board of director which might incur extra time and international travels which some mothers might not be able to afford. Therefore, this research is focused on the development of measures that have and could be implemented to tackle the lack of gender diversity on Nigeria's corporate boards.

Effects of gender diversity on corporate governance

Good corporate governance is essential for a smooth and ethical business operation and it also checkmates the corporate board of directors' actions regarding company's management. Apart from the recently Financial Reporting Council's ("FRC") launched code of corporate governance which specifically made provisions regarding gender diversity, the previous SEC's Codes merely made reference to general board composition without specifically stating 'gender diversity'. This study is further inclined by the FRC Codes towards enhancing gender diversity on Nigeria's corporate boards. Nonetheless, the FRC Code has no legal obligation as it is a 'Comply or Explain Code'. The researchers argue that the shareholders, stakeholders and non-governmental organizations (NGOs) could make the Code mandatory. Thus, this study seeks to bridge that gap by examining the possible measure and or sanction to combat the issue of gender diversity on Nigeria's corporate boards.

According to Hilary Clinton, "Women are the largest untapped reservoir of talent in the world" (Viet Nam New, 2017). Notwithstanding, "Nigeria has one of the lowest percentage of women sitting on Boards of Public Quoted Companies and State Owned Enterprises" (WIMBIZ, 2012). Female graduates are as prosperous as fellow male students at University yet they seldom make it to top executive board positions (Almac, 2018) [1]. Fundamentally, female underrepresentation especially at senior positions undermines the level of governance, impact, reputation and the overall corporation's performance (Sener & Karaye, 2014) [21]. Boardroom gender diversity also enhances effective problem-solving, creativity and increases decision-capacity (Ye Dai, Gukdo & Ding, 2018). It also affects directors' attendance behavior and the number of scheduled corporate board meetings (Liu, 2018) [15]. The dramatic increase in the number of female graduates in business related degrees is not proportionately translated into the increase of female representation on corporate board management (National Centre for Education Statistics, 201

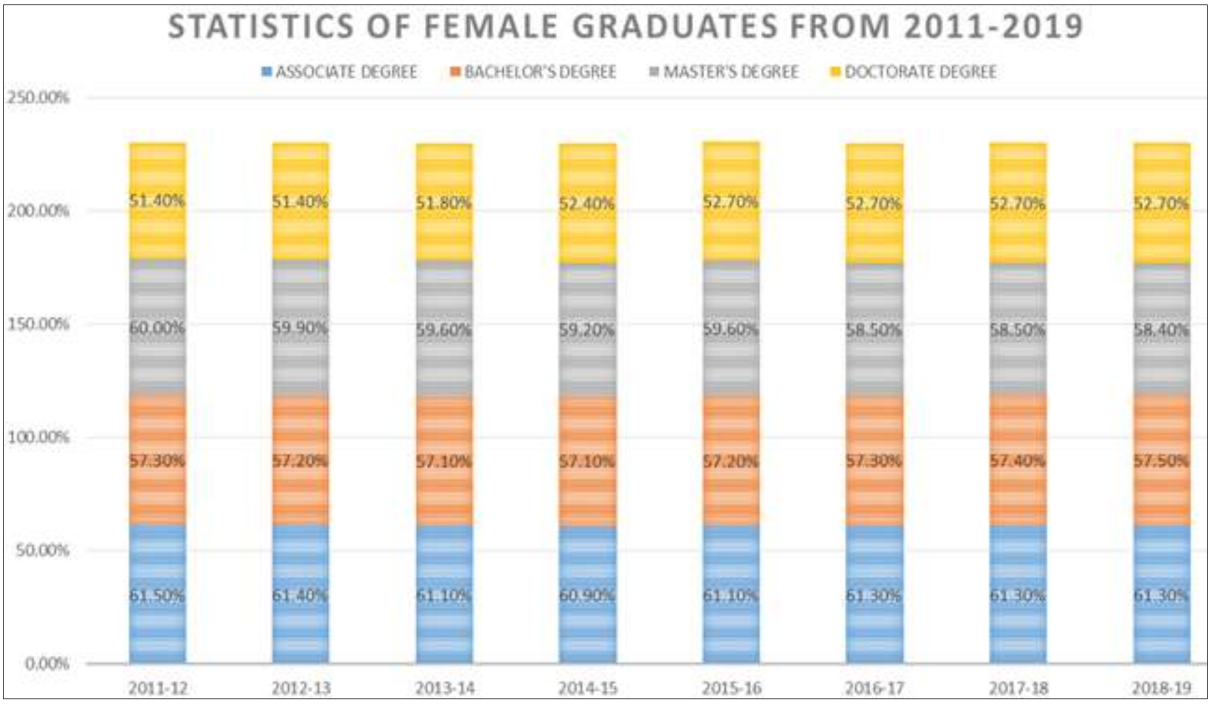

Chart 2: Graphical Illustration (by Researchers) Statistics of Female graduates from 2012-2019, Restructured from table 318.10 of National Centre for Education Statistics.

The graph above validates the fact that over the last eight years, there has been general increase in the number of female graduates. Conversely, there is a very limited gender diversity indicated by the underrepresentation of female on corporate boards. This implies that corporate boards fail to draw from the widest pool of available talents, which calls for an evaluation on how Nigerian corporate boards can achieve a gender parity.

Review of corporate law and governance in Nigeria

There are numerous laws and codes of corporate governance in Nigeria both general, sector targeted and the amalgamation of statutory framework and subsidiary legislation (Calkoen, 2017) [4].

The most prominent are

Primary Legislations

1. Companies and Allied Matter Act, Cap C20 Laws of the Federation of Nigeria (2004);
2. Investment and Securities Act 2007 ("ISA");
3. Financial Reporting Council of Nigeria Act No 6, 2011;
4. Bank And Other Financial Institution Act ("BOFIA");
5. Central Bank of Nigeria Act, 2007;
6. Insurance Act, Cap. 117 Laws of the Federation of Nigeria, 2004

Subsidiary Legislations

1. SEC's Best Practice Code of Corporate Governance Practice 2003.

2. The Central Bank of Nigeria's Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006;
3. The Nigerian Communications Commission Code of Corporate Governance for the Telecommunications Industry 2014;
4. The National Insurance Code of Corporate Governance for the Insurance Industry 2009;
5. The Pension Commission Code of Corporate Governance for Licensed Pension Operators 2008

However, the Companies and Allied Matter Act ("CAMA") is the principal law, the grundnorm of corporate law in Nigeria. SEC Code of Corporate Governance for Public Companies 2011; The Code of Corporate Governance for Banks and Discount Houses, and the Guidelines for Whistle-Blowing 2014 and other specific sector codes regulates Nigeria Corporate governance. CAMA regulates *interalia*, corporate structure, governance and management of companies. However, the *lacuna* in these laws and Codes is that they do not reflect 'gender diversity' in their entire voluminous Acts and Codes. Until, the most recently launched Code of FRC, which has no legal obligation as it is a "comply or explain" code.

Corporate board gender diversity should not be jurisdiction restricted, hence, this paper considers whether or not, the applicability of the code will be sufficient enough to effect a change that is not challengeable in Nigeria. The researchers evaluates whether or not, mandatory quota is the best way to combat the issue of gender diversity on Nigeria bearing in mind that, this should not just be a matter of "Just do it". Rather, it is reckoned that it should be beyond a gender number game by truly altering the directorship positions in top management positions and effect a change in the (cultural background) Nigerian sphere.

Corporate boardrooms are the most important decision makers in an organization in charge of appointment and dismissal of executive directors (Section 244 of CAMA, 2004; *Bernard Longe v. First Bank of Nigeria Plc. 2010*). The board of directors may be shareholders, and they are responsible for directing and running the daily activities of a corporation (Section 63 CAMA, 2004; *Prest v. Petrodel Resources Ltd & Others 2013*). These activities ranges from approving major strategic and financial decisions, such as merger and acquisitions to other major changes in capital structure (Sections 279, 334 of CAMA; Sections 62, 137 of ISA, 2007; *U.T.C. (Nig.) Plc. V. Philips 2012*).

In accordance with the preceding significant purposes of the corporate boards being the alter ego and the heart of the company, it is imperative to examine how a gender balanced board can enhance the overall decision making in corporate entities. It is argued that a gender diversified boardroom enhances pellucidity, improved corporate governance compliance; "having at least one female on the board of directors can mitigate the risk of bankruptcy, foster accountability and safeguard more effective communication amongst corporate boards and stakeholders" (Gul, Srinidhi & Anthony, (2011); Sila, Gonzalez & Hagendorff (2015) [22].

According to Jill Ader, "Companies have come to the realization that in this time of disruption and change, the 'traditional' perspective on governance is no longer sufficient. New voices are needed - and many of those are women" (Egon Zender, 2018). In addition to the above, empirical research portrays that corporations with a higher female representation surpasses in terms of return in sales, overall performance, stock price informativeness, earning quality, invested capital and an enriched long-term corporate management (Dai, Byun & Ding, 2018; Gao, 2018) [9]. Therefore, corporate board gender diversity is beneficial for a positive business sense, and it is at the core of this revelation that the study concentrates on the assessment of boardroom gender diversity on corporate boards in Nigeria.

International approach for boardroom gender diversity

Several countries have taken a drastic and active measures such as legally binding mandatory quotas, a law approved for mandating a specific percentage of gender in boardrooms, to address the lack of gender parity on corporate boards (Leszczynska, 2018) [12]. Through mandatory quotas, countries such as Austria, Belgium, France, India, Israel, Italy, Malaysia, Netherlands, Norway, Portugal and Spain have achieved significant progress, even though the tides have not fully turned, the trends are quite clear (Egon Zehnder, 2018) [8].

Chart 3: Graphical Illustration (by Researchers) of Countries with Mandatory Quotas, Restructured from the table in Egon Zehnder, 2018 [8] Global Board Diversity Tracker

From the graph above, there is no total parity of 50% yet, considerable progress is evident as listed firms in these countries now have more women in boardrooms.

The United Kingdom's approach for boardroom gender diversity

Boardroom gender diversity is a contemporary issue largely due to recent attempts to increase diversity within the United Kingdom's Financial Time Stock Exchange ("FTSE 100") boardrooms (FRC, 2018). The United Kingdom ("UK") through corporate governance report and codes adopts a voluntary target ratio of 33% set for the year 2020 and continuously strives to achieve the target ratio (Hunt, Prince, Dixon-Fyle & Yee, 2018). Otherwise, the UK corporate boards must give details in their annual reports, the reasons for non-compliance and the necessary procedures to be taken in consideration to the targeted ratio and in order to effect compliance (Gordon, 2018) [10]. With the advent of Lord Davies Annual Reports, the UK has made tremendous progress on corporate boards with the voluntary led approach. However, despite the considerable improvements that has been made thus far, boardroom gender diversity continues to be revolution rather than an evolution, a somewhat controversial and unsettled area. According to World Economic Forum (2017), "only 58% of the gender gap in economic opportunities has been closed around the world. As the economic gender gap has been reduced by only 3% in the past 10 years, it will take another 118 years to vanish completely".

Nigeria's approach for boardroom gender diversity

Arguably, Nigeria does not seem to have been able to effectively combat this global issue of gender diversity on corporate boards. Although, the paths taken by the FRC, CBN and SEC are evident, nonetheless, there has not been any remarkable change on this issue compared to the progress being made internationally. Hence, the essence of this study, the legal appraisal of corporate governance and gender diversity in Nigeria's corporate boards.

In Nigeria, recently the Financial Reporting Council issued the Nigerian Code of Corporate Governance 2018, which aims to boost the integrity of and positively redefine public perception of the Nigerian Business Environment. Essentially, it reflects that the corporate board of directors are required to have a charter stipulating their responsibilities. In addition, diversity including gender, knowledge, skill, experience, culture and age should be an important consideration in board composition. This is manifest in the provisions of the Code 2 Principle 2, Code 2.4, 7.1, 9.3, 21, 2.5, 23.2 (b) and 24.2.1, Nigerian Code of Corporate Governance (2018) Financial Reporting Council of Nigeria. However, the Nigerian Code of Corporate Governance does not operate like the legal mandatory quotas, it is a 'comply or explain' corporate governance practice code with no legal sanction or penalty whatsoever.

Conclusion

The corporate scandals and the economic crisis increased attention towards areas such as gender diversity in corporate governance (Nielsen & Huse, 2010). Globally, the issue of gender diversity is constantly being combated drastically through voluntary led quotas and legal mandatory quotas. However, the greater concern is that, there is no drastic measure to the same effect in Nigeria. This is an important topic because it is considered to be one of the ways in which corporate performance and governance of a company can altogether be improved through gender diversity. A gender diversified corporate boardroom is a balanced board essential for a good and ethical business sense, because recruitment of more women will bring diverse opinion on board. This means that we need to do a lot in Nigeria to effect a positive and unchallengeable change in the legal and social framework that promotes participation in the formal sector.

Recommendations

The researchers recommends that shareholders, stakeholders and non-governmental organizations (NGOs) should make the latest FRC's Code, a primary legislative mandatory quota, as a legal measure and sanction in order to combat the issue of gender diversity on Nigeria's corporate boards. Also, there is a need to call for greater works into this global issue of gender diversity so that solutions may be formulated to tackle it on Nigeria's corporate boards. And finally, the development and implementation of flexible measures of work-life balance is essential to assist women on corporate boards to function efficiently and successfully combine work and life in general.

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