Corporate democracy: a panacea for job insecurity in Nigeria

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Abstract: This paper discusses employment challenges in Nigeria. The paper identifies mismanaged deregulation and privatisation of national assets, as well as corporate board opportunism, as the two major factors that have led to frequent corporate failures and increasing job insecurity in Nigeria. The paper examines the scope of employment laws in Nigeria with respect to matters relating to employment security. Owing to identified disconnect between the protection offered under employment laws and the specific contributors to job insecurity in the Nigerian context, the paper contends that the search for a solution to job insecurity must go beyond current labour laws. Since corporate failures have a significant impact on job security, the premise of this paper is that the approaches to managing business enterprises must be reconsidered. More specifically, it mainly suggests the introduction of labour representatives on corporate boards as a strategy for promoting business efficiency and protecting labour rights.

Keywords: Nigeria; corporation; employee; employee protection; employment laws; job insecurity; traditional labour rights; employment gaps; corporate governance; corporate board representation; corporate law; corporate democracy.

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1 Introduction

There is an urgent need to address the problem of job insecurity in Nigeria because of the imminent social challenges that might follow if adequate jobs are not provided for the teeming youth population. Nigeria's labour force statistics published by the National Bureau of Statistics shows that unemployment and underemployment rates, concerning young people in Nigeria aged 15–34, stood at 55% in third quarter (Q3) of 2018. This makes it imperative to find ways to address the issues that create job insecurity in Nigeria.

Many authors blame the poorly managed deregulation of the national economy in the 1980s and 1990s and the mismanagement of the privatisation of national assets (Chukwuma et al., 2016) as significant contributors to unemployment problem in Nigeria (Kalejaiye et al., 2013). There is hardly any mention in academic circles of how corporate board opportunism and mismanagement that have caused many corporations to fail in Nigeria have contributed to Nigeria's employment problem. But government report (Udo, 2020) on some failed businesses in Nigeria shows how corporate failure has exacerbated the country's unemployment problem.

While acknowledging that the public or government sector is major employers of labour, the focus in this paper is on the private sector. This is for three reasons. First, the private sector is the sector that drives the national economy. Secondly, frequent corporate failures in Nigeria have significant implication for job security. Thirdly, there is greater job security in the public sector because, unlike the public sector, the private sector is solely profit driven hence open to a myriad of market challenges. These challenges are often addressed by resort to cost saving strategies, such as restructuring, downsizing, or reengineering. All these survival strategies lead inexorably to employee redundancies (Oparanma, 2010).

Staff redundancy contributes significantly to the unemployment pool in Nigeria. Indeed unemployment in Nigeria is high; and while many factors account for this, a key contributor is corporate failures. These failures, in many cases, can be traced to corporate mismanagement (Gandolfi, 2009; Ugoani et al., 2014). Therefore, this paper argues that a pragmatic option to addressing the unemployment problem in Nigeria may be to look beyond traditional labour legislation to how corporate law could be adapted to address the problem. This is given the fact that as the primary drivers of a company's operations the employees' are important stakeholders in a company (Mallin, 2016). This is why in the past employers promised employees long-term employment, as well as an orderly and predictable patterns of promotion, to make them stay for a long time (Stone, 2006). Some companies actually provide employees with share schemes to make them feel more a part of the company (Mallin, 2016; Stone, 2006).

Despite this symbiotic relationship between Nigerian companies and their employees, there is just a single reference to employees in Nigeria's Companies and Allied Matters Act (CAMA) 2020 – the primary legislation that regulates the company and related issues in the country. The CAMA focuses on the interest of the shareholder class. This is a consequence of the shareholder primacy vision of the stock market-based corporate governance system operated in Nigeria and many developing countries that borrowed from the UK (La Porta et al., 1999; Talbot, 2013). Separation of ownership and control characterises this model (Berle and Means, 2009; Millon, 1993). This separation created the basis for conflict between shareholder and corporate managers (Berle and Means, 2009). As a result, corporate statutes focus almost exclusively on protecting shareholders

by granting them rights as well as powers to rein in corporate managers to protect their class [CAMA, (2020), ss.273, 288].

Thus, the separation of ownership and control is the basis for the focus of directors' stewardship in the interest of shareholders; but shareholders are not the only group that deserve the attention of company managers. It is argued that the interest of labour needs to be protected under CAMA as well. This is presently not the case. The rights available to a Nigerian employee are those rights granted in employment laws. He has no enforceable right under CAMA. This paper also questions the adequacy of the protection offered the Nigerian worker under employment laws, especially with regard to job security. Thus, labour statutes are interrogated below to determine their scope and adequacy as it relates to the protection of labour in Nigeria.

This paper is divided into five parts including this introduction. Section 2 interrogates Nigeria's employment laws while Section 3 critiques the laws and sets out the trajectory for a model employment regulation in Nigeria. Section 4 makes a case for the participation of employee representatives on corporate boards. Section 5 concludes the paper.

2 Legal frameworks for the protection of employees in Nigeria

The Labour Act (LA) 1974 is the primary legislation that regulates employment relationships in Nigeria. There is however a plethora of other ancillary labour legislation in the country (Emiola, 2008), one of which is the Factories Act (FA) 1987. There is also the Employees Compensation Act (ECA) 1987, which governs employee claims for industrial injury. Also, the Trade Union Act (TUA) 1973 and the Trade Dispute Act (TDA) 1976 deal with some aspects of labour issues. The LA 1974 and the other ancillary legislation are interrogated below to highlight their regulatory scope. However, the interrogation will be limited to the LA 1974, the FA 1987 and the ECA 2010 because they are the principal legislations that deal with core labour issues (Ladbury and Gibbons, 2000).

2.1 The Nigerian Labour Act 1974

The Nigerian LA focuses primarily on junior and lower-level employees by virtue of Section 91 of the LA which excludes "any person exercising administrative, executive, technical or professional functions as (sic) public officer or otherwise" from the definition of a worker. The higher-level workers' relationship with employers is governed by the specific service contracts entered into by the parties. The merits and demerits of regulations under service contracts are outside the scope of this inquiry, but it suffices to note that service contracts are based on the negotiation between employers and employees (Emiola, 2008).

Apart from the focus of the LA on lower-level employees, there is also a predominant focus of the LA on core labour issues such as terms of employment and wages, remuneration, leave and national holiday, hours of work, termination of appointment, and voluntariness of labour. The LA also recognises the rights of parties to bring an employment contract to an end. According to Section 11, either party to a contract of employment may terminate the contract after giving due notice as prescribed by the act, or after paying a certain sum in lieu of notice.

Apart from the right to bring a contract of employment to an end as provided under Section 11, LA grants an employer the power to declare a worker redundant under Section 20. Redundancy is defined under Section 20(3) as involuntary and permanent loss of employment caused by an excess of manpower. The procedure for bringing a contract of employment to an end under Section 20(1) is specified in Paragraphs (a)–(c) of the LA. Labour redundancy is a significant contributor to the overflowing unemployment pool in Nigeria, and it is one of the critical issues addressed in this paper.

2.2 The Factories Act 1987

One of the primary obligations of an employer in a contract of employment is to ensure the safety of his employee in the course of employment (Emiola, 2008). In Nigeria this obligation is imposed by the FA 1987. The FA is the only legislation in Nigeria enacted to promote health, safety and security of workers in the workplace and several provisions in the FA are directed towards achieving this objective. For example, the director of factories and inspectors appointed under Section 64 have the responsibility to monitor and ensure that the requirements for factory premises as specified in the act are complied with. As a result, inspectors also appointed in accordance with the provisions of Section 64 have the power to "enter, inspect, and examine, by day or by night, a factory, and every part thereof …" for the purposes of executing the act. Any obstruction of inspection is an offence that is punishable upon conviction with the payment of fines not exceeding ₦1,000 [FA, (1987), s.65(5)]. To ensure compliance, inspectors are further empowered under Section 66 to "prosecute, conduct or defend before a court any charge, information, complaint…". Section 69 provides for a variety of offences with respect to non-compliance; proceedings for addressing cases of non-compliance and penalties for persons found guilty.

2.3 The Employee Compensation Act 2010

The ECA is the legislation that governs employees' claims for industrial injury in Nigeria (Emiola, 2008). It is a social welfare scheme that generally seeks to ensure compensation for Nigerian workers injured in the course of work. The crux of the Act is a fair system of guaranteed and adequate compensation. In furtherance of its objectives as stated in Section 1, the ECA provides for the establishment of Employee Compensation Fund (the fund) into which shall be credited all moneys, funds and contributions from employers.

The fund is managed by the National Social Insurance Trust Fund Management Board (the Board), an agency established under the National Social Insurance Trust Fund Act (1993, No. 3). Employers are the major contributors to this fund, and they are under obligation to contribute a percentage of their monthly payroll into the Fund. The Federal Government of Nigeria is also a contributor to the fund as it is required to provide a take-off grant as provided in Section 56(2). As a social welfare scheme designed for the benefit of employees, contribution from employees into the fund is prohibited.

In order to ensure steady contribution from employers, the board is empowered under Section 33 to "assess employers in such manner, form and procedure as the Board may, from time to time determine for the due administration of the ECA". Since employers are required to contribute a percentage of their monthly payroll the act requires them to keep adequate payroll. To ensure that employers comply with their obligations under the ECA, "[a]ny person authorised by the board may examine the books and accounts of any

employer as the Board deems necessary for administering the Act" [ECA, (2010), s.53(1)]. Officers of the Board are also granted powers to enforce the obligations imposed on employers under Section 39 of the ECA.

Given the plethora of legislation dealing with labour relations and issues concerning the safety of the workplace as discussed above, it would appear that the Nigerian worker is sufficiently protected under Nigerian labour laws and ancillary regulations. A critique of the legislation discussed above is undertaken below to assess their adequacy as it concerns addressing 21st century labour matters in the country.

3 A critique of Nigeria's labour laws and a trajectory for new employer/employee relationship in Nigeria

Given the plethora of legislation and related labour regulations in Nigeria, it would appear from casual observation that employment-related problems are comprehensively addressed in the country. Despite the seeming broad coverage of Nigerian labour laws, some authors believe that labour legislation in Nigeria does not sufficiently address employee rights (Obi-Ochiabutor, 2002). This paper agrees with this view but argues that the authors' narrow focus on labour issues, strictly defined, and labour legislation leaves out other considerations that may directly impact the protection of employees. This is because mismanagement of a company may have a far more significant effect on job security and related labour issues than the abuse of the rights protected under the laws. Mismanagement is major factor responsible for the high unemployment figure in Nigeria as published by the National Bureau of Statistics.

The National Bureau of Statistics third quarter 2018 report put the number of unemployed persons in the labour force at 20.9 million persons. Many of the persons in this category are workers laid off from failed Nigerian corporations or persons declared redundant as a result of ongoing restructuring in ailing corporations. Whether a business is restructured to save it from imminent collapse or the business eventually fails, the consequence for the Nigerian worker is the same – job loss. Mismanagement by corporate board and key management staff is always at the core of business restructuring and corporate failures in Nigeria (Ugoani et al., 2014). Business restructuring-induced staff redundancy and corporate failures are some of the factors that promote job insecurity in Nigeria. The LA does not deal with issues of corporate management and corporate failure, but it regulates staff redundancy.

There are, however, identifiable gaps in the redundancy provisions under the LA. LA defines redundancy as involuntary and permanent loss of employment caused by an excess of manpower. One of the factors that cause an excess of manpower is low productivity. When this happens management will typically resort to restructuring to meet shareholder expectation.

This works directly in favour of shareholders benefit and against the interest of labour (Froud et al., 2000). Redundancy provisions under Section 20 do not deal with a situation where an employer simply decides to close shop. The Nigerian employer holds all the advantages in matters of staff redundancy. The employer is merely required to inform the trade union or workers representative, use his best endeavours to negotiate redundancy payments and adopt the 'last in, first out' principle, without any provision for monitoring how this is carried out at such a critical time in the employees' life.

The lack of monitoring could work against an employee because an employer who does not want to pay redundancy allowance could simply terminate the workers' employment and pay the employees for only their contractual notice period (Ogunniyi, 1991). There is also no statutory minimum guaranteed redundancy payment because the Federal Government Circular No. 2/1988, which provides for the rates of redundancy benefits to be paid to officers who have served for certain number of years do not have statutory force (Ogunniyi, 1991). This is why this paper argues that the Act does not address employment protection. Other ancillary labour legislation do not offer much with respect to employee protection. There are identifiable gaps in the FA too. The main objective of the FA is to promote safety in the work-place but the Act did not provide for efficient mechanisms for addressing problems of non-compliance. Successful prosecution of the contravention of any provisions of the Act attracts a mere ₦500 ($1:00) fine or imprisonment for a term not exceeding three months [FA, (1987), s.70].

In view of the above, it will be difficult to ensure compliance with the FA. Non-compliance with the act exposes employees to avoidable injuries which could make them unfit for employment. It is acknowledged that an injured employee could assess compensation under the ECA. It could also be argued that the failure of the company may not necessarily affect the compensation due to the employee because the employee compensation Fund for workers is saved with the Nigerian Social Insurance Trust Fund (NISTF). However, the fund is available only to compensate for all employees and their dependents for death, injury, disease or disability arising out of or in the course of employment. More importantly, the compensation payable under the ECA does not include compensation for loss of employment.

It is argued that the focus of Nigerian labour legislation on core labour issues makes them inadequate for addressing all labour related issues because unemployment is without doubt a typical labour issue. Corporate failures are a significant contributor to unemployment problem in Nigeria. These failures, in many cases can be traced to corporate mismanagement. Therefore, because of the effect of corporate board misconduct and associated business failures on labour, a more pragmatic option may be to create a situation where such corporate misconducts that create corporate failures and other negative outcomes that affect labour are minimised. A new corporate governance structure that incorporates labour representation on corporate boards may be one way to achieve this. This will help to address many aspects of corporate board misbehaviour as well as promote compliance with existing labour statutes.

A few examples of failed and liquidated businesses in Nigeria is discussed below to underscore the importance of the proposed corporate governance structure as a strategy for addressing corporate failures and promoting employee welfare in Nigeria. This discussion focuses on two sectors of the economy – the banking and the aviation sectors. The main reason for the focus on the two sectors is that there are available data on failed business for both sectors.

According to a report by the Nigerian Deposit Insurance Corporation (NDIC), a total of 45 banks failed and have been liquidated in Nigeria since the 1990s. In addition, 154 Microfinance Banks and other financial institutions failed during the same period (Famuyiwa, 2019). It is important to add that many banks have also been taken over by the Central Bank of Nigeria, and their managing directors/CEOs and key management staff arrested for fraud during this period (Adeniyi, 2011). Some of these banks have been restructured, while others have been acquired by other banks. This exercise also resulted in the loss of jobs. The aviation sector is another sector that has recorded many defunct

businesses. A total of 27 airlines failed in the sector and were liquidated since the 1990s (Adeboye and Musa, 2019). Mismanagement has been identified as the major reason for the failure of most of these liquidated companies (Ugoani et al., 2014).

It is in view of the above that this paper argues that it will be more meaningful for those for whom the LA and other ancillary legislation were enacted to protect, to participate at the level of the decision-making process where the decisions that negatively impact their interests is made. What is more, the relationship between labour and the company is explored below to underscore the reasons that some jurisdictions have made the employer/employee relationship a matter regulated under corporate law.

4 Minimising corporate failures and promoting job security in Nigeria: a case for employee representation on corporate boards in Nigeria

Labour has been identified as the first casualty when a company is restructuring, and the solely most affected group in the case of complete failure of the company (Gandolfi, 2009; Ugoani et al., 2014). It is to hedge against mismanagement and corporate board opportunism that this paper proposes a new corporate governance structure that will grant employee representatives participatory right on corporate boards in Nigeria. There are two main reasons why it is in the interest of labour to ensure business profitability. First is that security of employment is not guaranteed under the LA or any legislation in Nigeria. Secondly, employees have multiple stakes in a corporation.

Employees' stakes in a company is well explained in the following words by Christine Mallin: "[t]he employees of a company have an interest in the company because it provides their livelihood in the present day and, at some future point, employees will often also be in receipt of pension provided by the company's scheme" [Mallin, (2016), p.75]. This makes it apposite to consider the interest of employees in corporate decision making, and some authors have in fact argued that new modes of regulation must take into account the power dynamics of the employment relationship risks (Vosko et al., 2014). This is why employees' protection under corporate statute is canvassed here as the primary legislation that regulates relationships among corporate participants. This will help to bridge the information gap between different groups in the 'corporate forest', especially given the current scholarship view that downsizing is good business (Froud et al., 2000; Gandolfi, 2009). Some continental European jurisdictions have long recognised the important stake that employees' have in the corporations and provided for their participation in corporate governance.

For employee participation in corporate governance, the German 'co-determination' regime discussed below is usually the common reference point in Continental Europe (Bonanno, 1976–1977). The co-determination is not peculiar to Germany, as other Continental European jurisdictions such as France, Belgium, Norway, and Sweden also practice variants of it (Bonanno, 1976–1977). The Japanese system also permits the participation of other stakeholder groups including the employee group, under the *keiretsu* system (Groenewegen, 1997). The German system is discussed below to identify the basis for, and the mode of its operation. This will help to highlight its strength and weaknesses and how its principles could be usefully adapted in the Nigerian context.

4.1 Company regulation in German and the codetermination system

The German system of worker co-determination is regulated by the Co-determination Act of 1951 and the Works Constitution Act of 1952, which provide for a two-tier board system comprising of a supervisory board and a management board. The former act provides that one-half of the supervisory board of corporations in the coal, iron and steel industries (referred to as the 'montan' industries) be composed of equal numbers of employee and shareholder representatives. The latter Act on the other hand, applies to all other industries and provides that one-third of supervisory board members be made up of employee representatives. These two co-determination regimes are classified as parity and non-parity co-determination models (Gorton and Schmid, 2000).

A later statute, the Co-determination Act of 1976 extends the parity requirement beyond the so-called 'montan' industries, to all German corporations employing more than 2,000 persons [s.1 Law of May 1976, (1976) BGBI 1 1153]. The 1976 law applies to all German private corporations (GmBHs) with more than 500 employees, and to all stock corporations (AGs). The Act provides for employees to constitute one-half of the supervisory board for companies that employ over 2,000 employees or one-third of the supervisory board for companies that employ less than 2,000 but more than 500 employees.

The co-determination is a regime enacted to protect the interests of German employees, but the regime also serves the interest of the company in several respects. The part that the employees play under the co-determination system underpins the regimes' importance as a regime for protecting the interest of employee group. First, employee group representatives are elected from among the employee group with a mandate to serve on both the supervisory board and the management board. Secondly, an employee representative is also appointed to the management board as a personnel director (Bonanno, 1976–1977). More importantly, two different bodies are responsible for the appointment of supervisory board members under the co-determination regime. The shareholders appoint their representatives, while labour is strictly responsible for appointing employee representatives on the supervisory board (Codetermination Act, s.9).

There are several provisions in the 1976 Act that give labour a strong voice in a German corporation. First, the appointment into the management board requires approval by a two- thirds majority of the supervisory board. Secondly, the labour representative on the management board, the so-called personal director (*Arbeitsdirektor*), may only be appointed or removed upon the approval of a majority of the employee representatives on the supervisory board. Thirdly, the supervisory board also oversees the activities of the management board and approves important board decisions as provided by the by-laws of the company concerned (Schregle, 1978).

It is important to note that although positions on the supervisory board may be shared equally between workers representatives and their shareholder representatives' counterparts, when there is a tie in the voting of the supervisory board the shareholder-elected chairman of the board has a casting vote to break the deadlock (Schregle, 1978). However, the position of the shareholder-elected chairman on the supervisory board does not necessarily diminish the influence of workers' representatives on a German corporate board. The equal representation on the supervisory board and the requirement of a super majority for the approval of the management board ensures that labour maintains a strong voice in the management of a German corporation.

Despite the strong labour representation on German corporate boards there is hardly any doubt that the German co-determination regime has had a profoundly positive impact on productivity in the German economic system (Thelen and Turner, 1998; Boyer, 2005; Boneberg, 2010) as well as on industrial relations in the country (Thelen and Turner, 1998; Bonanno, 1976–1977). The effective participation of labour in the governance of German corporations provides an ideal ground for an industrial relations system based on cooperation (De Silva, 1998; Klikauer, 2002). Thus, the trust between labour and management which is engendered as a result of the involvement of labour in the management of German firms is considered a major factor responsible for organisational stability in German corporations (De Silva, 1998). This is particularly important in today's globalised environment where the knowledge, creativity and skill of labour is required to survive intense global competition in which organisational flexibility is considered a key factor (Fahlbeck, 1998; Stone, 2006). It is instructive that German and Japanese corporations have been adjudged as being more successful than those in other industrialised jurisdictions in achieving this flexibility (De Silva, 1998; Boyer, 2005).

The importance of co-determination as a strategy for promoting cooperation within the enterprise cannot be overemphasised. Bringing labour within the management structure and making their interests an integral part of the company satisfies the underlying idea of co-determination, which is to provide a rational means of handling and settling disputes at the enterprise level (Boyer, 2005; De Silva, 1998). This is especially important to the discussion here, given that we have identified the participation of workers at board level as a strategy for promoting ultimate employee welfare through responsible corporate decision-making. The participation of labour at the corporate board level in Nigeria will bridge the information gap that currently exists between labour and management of Nigerian companies.

However, unlike the German system that is bank-centred, which is said to offer the system the viability of a long term employment relationship based upon the cumulativeness of firm-specific investment in worker skills (Boyer, 2005), Nigeria operates the Anglo/American stock market-based system (La Porta et al., 1999; Talbot, 2013). This system is reputed to be shareholder focused with little or no reference to other stakeholders (French et al., 2017; Griffin et al., 2017). The exclusive focus of the system on shareholders have been criticised by many authors. In fact, some argue that that it represents the "superficial analogy of the seventeenth century between contributors to a joint stock and members of a guild …" [Chayes, (1966), p.41], which no longer reflects the current reality (Blumberg, 1993).

The exclusive focus on the shareholder group has also been challenged from another perspective because, as some argue, shareholders are not necessarily the only corporate constituency that have economic interest in a company. Labour and other corporate constituencies', such as creditors, "make essential contributions and have an interest in an enterprise's success" [Blair and Stout, (1999), p.250]. As the discussion below will show employee representation on corporate boards as a means for addressing the challenge of job insecurity in Nigeria may also contribute to fixing the problem of mismanagement and corporate board misbehaviour and thereby promote enterprises' success in the Nigerian economic and corporate environment.

4.2 Labour co-determination and the Nigerian corporate governance system

The premise of this paper is a new corporate governance structure in Nigeria that will give a voice to labour at the corporate board level. A similar corporate governance system has had relative success in Germany and other jurisdictions that operate variants of labour co-determination (Boyer, 2005; De Silva, 1998; Thelen and Turner, 1998). But Nigeria is a different jurisdiction. It operates a different corporate governance system. Hence, the rest of this paper is dedicated to analysing how we can draw on the principles of co-determination to introduce labour representatives into corporate boards in Nigeria without undue diminution of wealth for shareholders or society (Sheehy, 2005–2006).

Since corporate governance is the "system by which companies are directed and controlled" [The Financial Aspects of Corporate Governance (Cadbury Report), 1992; Institute of Directors, The King Report on Corporate Governance, 1994], it follows that the method by which labour interest could be effectively represented at the corporate board level should necessarily be within the province of corporate governance. This makes it imperative to understand how Nigerian corporations are governed. As stated earlier, Nigeria operates the stock market-based system, which focuses on shareholder wealth maximisation (La Porta et al., 1999; Talbot, 2013).

The exclusive focus by the system on shareholders stems from the separation of ownership and control of the corporation under the system. This separation created the potential for shareholder and managerial interest to diverge (Berle and Means, 2009). It is based on this perception of potential conflict and given the importance of shareholders as providers of capital that corporate law was focused (especially in the common law jurisdictions) on the duties of managers to protect the property of the owners and maximise profits in their interest (Parry, 2005).

Under the Nigerian corporate law regime (the CAMA), decision-making powers is shared between the corporate board and the shareholders [CAMA, (2020), s.305]. The law also grants the shareholders some authority to oversee certain aspects of the board's activities and the power to discipline the board [CAMA, (2020), ss.305(5), 288]. However, the power of oversight granted the shareholders has not significantly prevented abuse and corporate opportunism by corporate boards in Nigeria and other stock market-based jurisdictions (Adeniyi, 2011; Bloomfield, 2013). It is with the aim of providing additional check on corporate boards so as to prevent mismanagement and corporate board opportunism that labour representation on corporate boards is suggested in this paper for Nigeria.

4.1.1 Labour representation on corporate boards in Nigeria and possible implications

Some authors have criticised the idea of conceptualising corporations' responsibility to a wider social concern as a recipe for confusion (Berle, 1932; Dine, 2005; Emiola, 2008). Akintunde Emiola stated that the call for workers' participation in corporate administration – generally referred to by some scholars as corporate democracy, has not been thoroughly tried even in advanced industrial states of Western Europe and North America (Emiola, 2008). He argues that none of the proponents of labour directorship has categorically established the basis of the claim on behalf of workers to a right to membership of a company's board of directors (Emiola, 1995). The first hurdle, he

claims, is "woven around capital in a free market economy and the right of investor to manage his investment for his own benefit" [Emiola, (2008), p.9].

Arguments such as the one by Emiola miss the point. First, under the stock market-based system operated in the UK and our reference jurisdiction, Nigeria, the authority to manage the affairs of a company resides in the board of directors not the shareholders [CAMA, (2020), ss.305(4), 244]. Yes, investors (shareholders) elect the board of directors [CAMA, (2020), s.273(1)] and exercise some oversight functions but the directors' authority to manage the affairs of the company while acting according to the law is not subject to the authority of shareholders. This has been confirmed as long ago as 1906 in the English case of *Automatic Self-Cleansing Filter Syndicate Co. Ltd v Cunningham* [(1906), 2 Ch. 34] where Greener LJ stated that the power granted the board cannot be interfered with by the shareholders.

Thus, contrary to Emiola's view that the shareholder manages his investment for his own benefit, in Nigeria, it is the board that manages the affairs of the business for the benefit of the company and its shareholders [CAMA, (2020), s.309]. The idea of 'corporate democracy' proposed here is for labour to be part of management to prevent corporate board opportunism which has become a major problem and has led to the collapse of major corporations even in advanced industrial jurisdictions (Armour and McCahery, 2006; Bloomfield, 2013). This does not affect the investors' right of ownership. The parity representation in the German system discussed above makes room for shareholder appointed chairman of the board to have a casting vote when there is a tie. The purpose is to avoid a deadlock in the decision-making process. Such safety provisions will be necessary for the proposed system in Nigeria to guarantee shareholders' interest.

In addition, the rights granted shareholders under the stock market-based system provide an opportunity for them to look after their economic interest. As stated earlier, labour has economic interest in a corporation too. Satisfying the various interests in a corporation depends on the success of the corporation itself. Corporate failure is damaging to both shareholders and labour. One envisaged advantage of labour representation is that bringing labour on board will provide added monitoring opportunity for the benefit of shareholders and other stakeholders. It is noteworthy that despite all the rights and powers granted shareholders in corporate statutes and sundry regulations, many commentators doubt that shareholders could meaningfully exercise control over corporate boards under the stock market-based system in view of their dispersion (Bainbridge, 2009; Berle and Means, 2009; Blair and Stout, 1999).

Some commentators argue that unlike shareholders, employees are involved in the corporation's day-to-day activities, and they have relatively better access to information about the firms operations (Blair and Stout, 1999). This is the basis for their classification as corporate insiders with some determinative power of the direction of the corporation (Hill, 1998). As insiders, they are in a better position than the shareholders to monitor corporate board members more effectively. Therefore, a key purpose for having labour representatives on corporate boards is to provide added monitoring advantage rather than to share in corporate profit.

The idea of accommodating other stakeholder interests is not entirely new because, as Benedict Sheehy has forcefully argued, "[w]hether one chooses to look at European corporations with their two tiered boards, or employee, creditor, and environmental liabilities placed on directors in Anglo-modelled corporations, one finds that corporations have successfully incorporated the conflicting concerns of their various constituent

stakeholders in the supposedly exclusive shareholder model" [Sheehy, (2005–2006), p.223].

In addition, there is a growing acknowledgement of the benefits of other stakeholders contribution to shareholders. A systematic analysis of the organisation of large German companies shows that German industrial relations are compatible with the practice of shareholder value (Boyer, 2005). In fact, the recognition and the general attention paid to other stakeholders in corporate law statutes, both nationally and internationally (du Plessis et al., 2015), points to growing consensus that other stakeholders contribute to enterprises' success. As du Plessis et al. pointed out, even though in the strict legal sense corporations remain directly accountable to shareholders, there is no doubt that recognition of stakeholder concern is not only good for business, but politically expedient and morally and ethically just.

As stated earlier, the stock market-based corporate governance model does not accommodate other interests other than the interest of shareholders. However, the frequent corporate failures and corporate scandals in recent decades have brought about a resurgence of corporate governance debate. This has put directors in the spotlight (Bloomfield, 2013). Even though economic matters dominate the corporate governance debate and the emerging reforms that have been put in place to address the problem in many jurisdictions, there is a noticeable increase in the consideration of the interest of labour and other stakeholders.

In the UK, there has been a gradual shift away from the 'shareholder supremacy' view with the recognition that there are other stakeholders in the corporation whose interests should be taken into account while considering the interest of the shareholders. Two main strategies are adopted to achieve this – the 'enlightened shareholder value' (ESV) and enhanced disclosure requirements. The limitation on space will not permit a discussion of the strategies in detail, but it suffices to make a few points about the ESV in the UK Companies Act 2006 (UK CA, 2006). The theory maintains that the interest of shareholders is the principal obligation of directors and requires that directors pursue shareholders' interests; but, in doing so, they are to have regard to the other stakeholders.

The point in this paper also is that directors should have regard to the interest of labour while attending to the interest of Nigerian shareholders. However, it is to ensure that due regard is paid to the interest of labour that this paper argues that labour representatives should be accommodated at the corporate board level to protect and promote that interest. As noted earlier, corporate board opportunism is a major cause of corporate failures and corporate scandals in Nigeria that has created intractable employment challenges in the country. Therefore, the presence of labour on corporate board is also canvassed as a strategy for providing an additional check on corporate managers to minimise value reducing conducts. This will potentially improve business profitability and maximise shareholder value. By promoting the interest of the company and the shareholders the proposed system will also promote job security. More importantly, it will prevent the impending social crisis that threatens Nigeria with more than half of the country's workforce unemployed.

5 Conclusions

One major point that this paper share with the current employment law scholarship is that there is a gap in workers' rights protection under the current employment regimes in

Nigeria. There is almost a consensus among current scholarship that labour laws in Nigeria do not meet International Labour Organisation (ILO) standards. This has been attributed to the general lack of institutional capacity in the country. Despite the criticisms, the review of the LA and ancillary labour laws in Nigeria shows that some core employment issues are relatively well addressed.

However, in addition to the gap which current employment law scholarship attributes to deficient institutional capacity, the current labour laws focus almost exclusively on a few core labour issues. This paper argues that this exclusive focus on some core labour issues fails to address other fundamental issues of major concern, such as job insecurity which is caused in part by corporate failures in Nigeria. It is argued that putting in place strategies to deal with corporate insider opportunism and mismanagement of Nigerian companies will, to a large extent, solve the problem of job insecurity and related issues in the employment market.

As a result, it is suggested that accommodating labour representatives on corporate boards will provide an additional monitoring mechanism and a veritable check on corporate executives and thereby help to minimise corporate insider opportunism. The way to achieve this is to review the current narrow focus of Nigeria's corporate legal regime – i.e., the exclusive focus on the duty of corporate boards' to the shareholders of companies – by making the interest of labour part of the responsibility of corporate boards. Bringing labour on board to protect and promote their own interest would be one way to promote ultimate employee welfare and address the problem of job insecurity in Nigeria.

Developing a corporate legal framework to accommodate the interests suggested in this paper requires a more detailed treatment than the time and space allowed for this research. Therefore, further research is recommended. This is necessary to identify, more clearly and precisely the normative basis for the suggested legal framework as well as the appropriate basis for incorporating labour interest in a way that will also ensure adequate protection for those who contribute capital.

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