
CAPACITY BUILDING, ENFORCEMENT OF COMPLIANCE AND SUSTAINABLE DEVELOPMENT: A VIEW FROM NIGERIA'S CAC

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ABSTRACT

In all human activities, the need for capacity and use of same remains central. This places capacity in a very strategic position considering the role it plays in the process of accomplishment of every activity. All issues ranging from political culture, system of production to general societal appearance (within or without) are but predicated upon the existing peace while the ability of the system to sustain same depends solely on the prevailing installed capacity be it individual, institutional or a combination. It is essentially understandable that the peace or its absence as may be obtainable in a society is a function of the role relevant authorities' play in the process of maintaining the social order. In much the same way, regulation of both individual and corporate behavior justifies the establishment of relevant organizations such as the Nigeria's Corporate Affairs Commission whose role in the regulation of corporate organization especially through registration and incorporation. This paper intends to measure how the Nigeria's Corporate Affairs Commission (CAC) performs such functions by enforcing compliance on registered businesses, incorporated trustees and companies. This paper draws its strength from empirical data generated through a survey (using a combination of interview and questionnaire) in collecting research information from a total of 906 respondents. The paper concludes that the extent of compliance enforcement in the CAC is significant and that it has contributed to the Commission's ability to maintain corporate peace among corporate organizations on sustainable basis thereby allowing CAC to consolidate its position as a formidable company registry in the world. This paper recommends that current arrangement of enforcement be strengthened through integration of corporate concerns via a typical of a league of companies while a new tracking system be put in place (internally, externally or a combination) non compliance with which could attract prosecution by a tribunal set up for the purpose as appropriate.

INTRODUCTION

Nigeria as the world's largest black nation has had different experiences ranging from those that compel adoption of institutional reforms to grappling with security complications all pointing to weakness of the state's institutions notably the arms of government (notable the executive) manifesting in outright inability to deliver services and sustain the same. These experiences have affected Nigeria's rating in the eyes of the international community hence Nigeria defined as a disadvantaged society on the ground of a number of considerations.

In the Corporate Affairs Commission of Nigeria, enforcement of compliance was very difficult in the pre-2001 reorganization period and the same made corporate behavior very discouraging, sometimes constituting a threat to corporate existence of not only the CAC but also companies, businesses and trustees. With the change in management and introduction of the 2001 reorganization, improvements have been recorded thereby making it possible for the

Commission consolidating its position as one of the best company registries in the world. The CAC established by Companies and Allied Matters Act (CAMA) of 1990 has as part of its powers, enforcement of compliance in the interest of enhancing peaceful operation of the registered and incorporated concerns in the light of international best practices.

This paper has as its objective, the measurement of the impact of the legal/regulatory capacity and human resource quality in ensuring compliance with standards in the Commission. The paper is divided into four parts. Part one (1) introduces the paper while the second (2nd) part presents a conceptual review on issues surrounding the variables of the study. Part three (3) focuses on methodology while the last part analyzes the generated information in the light of which conclusions and recommendations are presented.

CONCEPTUAL REVIEW

Numerous literatures have been put forward by different authorities. This section intends to embark on examination of such submissions with a view to commenting on them.

Capacity Building: A Rudimentary Exploration of its Evolution

In a review of the literature, Morgan (1993) identified several distinct phases of concern with building government capacity. In the 1950s and early 1960s, when many countries were emerging from colonial status to independence, efforts focused on *institution building*, or "equipping developing countries with the basic inventory of public sector institutions...to manage a program of public investment." By the later 1960s and early 1970s, however, attentions had turned to the notion of *institutional strengthening*, focusing more on improving the operation of existing organizations and the training and performance of public sector personnel. Then, attention shifted to *development management*, which concentrated attention on the capacity to manage development programs, particularly those focused on the economic and social conditions of the poor majority, which often required considerable organizational initiative and inter-institutional coordination (Deborah, 2003). *Institutional development*, a concept that was broadened to include private sector and Non-Governmental Organizations (NGO) activities and that focused more on developing institutions with effective processes for managing change, was on the agenda during much of the 1980s. These distinct phases in the history of building capacity in developing countries, and the technical assistance projects they encouraged, have been subjected to considerable criticism over the years.

Historically, the concept evolved in 1991 from what was known as institution building (Deborah, 2003). To Schachter (1999), the term "capacity building" (or "capacity development") came into vogue in the early 1990s among international development agencies such as the World Bank and the United Nations Development Programme (UNDP).

An outstanding manifestation of capacity is the human capacity because all other non human ones and the results therein no matter how expensive, depends on the human capacity to manipulate or use them (Barney, 1991). In addition, policies are formulated to build the human capacity based on two important components. Capacity building is a broad area which addresses development at different levels of society. It deals with entities of different sizes and scope. It deals also with different stages of the development process (Policy brief, 2003). From the foregoing, it can be established that Capacity building has an institutional dimension as the size and scope of activity and of course the stages of development are taken into consideration. In a similar direction, Rickett, (2008) stresses that Capacity building seeks to improve the performance of work units' developments and the whole organizational

performance through purposeful reflection, planning and action. Capacity building is not restricted to individual component alone but assumes greater significance as the organization must acquire or consolidate it for survival and excellence (Truss, 2001).

Compliance

In general, compliance means conforming to a rule, such as a specification, policy, standard or law. Regulatory compliance describes the goal that corporations or public agencies aspire to in their efforts to ensure that personnel are aware of and take steps to comply with relevant laws and regulations. Internationally, the International Organization for Standardization (ISO) produces international standards such as ISO17799. The International Electro technical Commission (IEC) produces international standards in the electro technology area. In the United States of America, Corporate scandals and breakdowns such as the Enron case of reputational risk in 2001 have highlighted the need for stronger compliance and regulations for publicly listed companies. The most significant regulation in this context is the Sarbanes-Oxley Act developed by two U.S. congressmen, Senator Paul Sarbanes and Representative Michael Oxley in 2002 which defined significant tighter personal responsibility of corporate top management for the accuracy of reported financial statements.

Compliance in the USA generally means compliance with laws and regulations. These laws can have criminal or civil penalties or can be regulations. The definition of what constitutes an effective compliance plan has been elusive. Most authors, however, continue to cite the guidance provided by the United States Sentencing Commission in Chapter 8 of the Federal Sentencing Guidelines.

Enforcement

This represents the processing of set schedules via dispatching to execution. The latency of any type of human work force to escape under avert conditions from set demand for fulfillment with parameters of punctuality, performance and quality is compensated by procedures of enforcement, as e.g. reminders, admonition, disciplinary action, demand note and hierarchical challenge etc. in the CAC, enforcement of compliance is considered as a very sensitive responsibility that must be discharged if corporate behavior is to be regulated effectively.

Sustainable Development

In 1987, the United Nations released the Brundtland Report, which included what is now one of the most widely recognised definitions:

"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs." It contains within it two key concepts: The concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs (WCED, 2011).

'Sustainability' is a semantic modification, extension and transfer of the term 'sustained yield'. This had been the doctrine and, indeed, the 'holy grail' of foresters all over the world for more or less two centuries. The essence of 'sustained yield forestry' was described for

example by William A. Duerr, a leading American expert on forestry: “To fulfill our obligations to our descendents and to stabilize our communities, each generation should sustain its resources at a high level and hand them along undiminished. The sustained yield of timber is an aspect of man’s most fundamental need: to sustain life itself.” – a fine anticipation of the Brundtland-formula (United Nations.1987).

Methodology

This section presents the methodological aspect of the study. It guided the study in the generation of relevant research information from a sample obtained from the research population.

Research Design

This research, which has been conducted through the use of survey as a grand design, examined the service delivery response to capacity building techniques in the Nigeria’s Corporate Affairs Commission. The data generated from this population were entirely primary in nature. In addition to interviews with members of the Commission’s Management, sets of questionnaires were administered on the samples.

Research Population, Sample and Sampling Techniques

The population of this study included all employees of the Corporate Affairs Commission and all customers who have enjoyed its services in the period 2001-2008. Whereas the size of the Commission’s labor is determined to be One Thousand Five Hundred and Sixty One (1561). It has not been possible to ascertain the exact number of customers who have enjoyed the services of the Commission in the period 2001-2008 hence our resolve to use only accredited bodies as representing customers. But due to the study’s interest in the headquarters of the Commission, the staff working at the Headquarters formed the actual population hence One Thousand Two Hundred and Thirteen (1213).

From the above information, the study determined its sample to cover those who have been involved in one type of capacity building programme or another. In addition, a select number of customers, who, based on records of the Commission, participated in such capacity building programmes, were generated. According to the records, Nigeria Bar Association has One Thousand, One Hundred and Four (1104) accredited customers in the firm category; Association of National Accountants of Nigeria has Two Hundred and Nine (209) while Institute of Chartered Accountants of Nigeria has Four Hundred and Ninety Three (493) bringing to the total of One Thousand Eight and Nine (1809). The total population of the study One Thousand Two Hundred and Thirteen (1213) – staff plus One Thousand Eight Hundred and Six (1806) – Customers was therefore Three Thousand and Nineteen (3019).

The sample of Three Hundred and Sixty Three 363 Respondents was drawn from all departments and sections of the Commission this represented thirty percent (30%) of the employee population. The same Thirty percent (30%) was observed in determining the sample out of every department or unit’s population. In addition, respondents from the following bodies of accredited customers thus: Nigerian Bar Association (NBA), Association of National Accountants of Nigeria (ANAN), and Institute of Chartered Accountants of Nigeria (ICAN) were sampled. Here NBA had Three Hundred and Thirty One (331) , ANAN had Sixty Two (62) and ICAN had One Hundred and Forty Eight (148) hence a total of

Five Hundred and Forty One (541) respondents from the categories representing 30% of accredited customers. This brings the total sample to Nine Hundred and Six (906). Systematic sampling technique was used in the determination of respondents. All levels (junior, intermediate and senior cadres) were exhausted in order to ensure good coverage or representation of the population.

Table 3.1 : Representing Population, Sample and Percentage of Customers Put Against the Population

S/NO	Accredited Customer by Association	population	Size of Sample 30%	Percentage of Membership put Against Population	Percentage %of Individual Sample
1	Nigerian Bar Association	1104	331	61.1	61.2
2	Association of national Accountants of Nigeria	209	63	11.6	11.5
3	Institute Of Chartered Accountants of Nigeria	493	148	27.3	27.3
Total		1806	542	100	100

Source: Author`s computation of the sample of accredited customers by Population, sample size and percentage, 2010.

The percentage 30 has been chosen by this study because of its statistical significance as it will represent the population. In addition, the higher the sample, the more accurate the results. (Saunders, Lewis .and Thornhill, 2009).

Data Collection Instruments and Methods of Data Analysis

The instruments used for this study were structured questionnaires and interviews. Thirty (30) questions were generated from the research questions for the purpose of obtaining first-hand information from the respondents. Data collected from the field were summarized and analyzed through SPSS computed /cross tabulated frequencies and percentages.

Data Analysis

This section presents and analyzes the data generated from the field. Analysis of the data is based on evidence collected from the administration of a research questionnaire and interview schedule.. The benchmark used by the study was the 2001 re-organization.

Table 4.1 Impact of the 2001 re-organization that adopted the reforms on the services of the Corporate Affairs Commission

Category of Respondents	Computerization of the process of registration and incorporation	improved human resource development	customer /stakeholder satisfaction	introduction of new services (one-day incorporation)	increased revenue for the commission	Total
ANAN	11	11	21	8	10	61
CAC Staff	45	73	100	64	46	328
ICAN	43	26	33	15	21	138
NBA	50	43	39	26	19	177
Total	149	153	193	113	96	704

Source: Field work, 2010.

The 2001 re-organization which was later enlarged to cover enhancement of ICT infrastructure, Decentralization of operations, Sensitization of the public and Development of Human Resource, was not without corresponding impact as indicated in the questionnaire, every aspect of the solicited response(s) constituted the response of all categories of respondents albeit not without a degree of variation between and among the responses. From the responses obtained from the field, it can be deduced that the reforms have impacted more significantly on customer/stakeholders satisfaction and improved human resource development as exhibited by respondents' endorsement of b and c alternatives respectively. This order, in terms of significance, satisfied the quest for unfolding how the said reforms affected both staff and customers of the Commission and same affected the process of enforcement of compliance.

Table 4.2 Respondents agreement as to whether exerting compliance on registered companies is very important in order to ensure proper practice of corporate governance and service delivery.

Category of Respondent	Strongly agree	Agree	Fairly agree	I do not agree	Undecided	Total
ANAN	18	17	12	8	5	60
CAC Staff	91	107	82	25	27	332
ICAN	57	42	17	14	9	139
NBA	87	49	24	7	12	179
Total	253	215	135	54	53	710

Source: Field work, 2010.

A significant number of respondents have expressed strong agreement with the assertion that exerting compliance by the commission on registered companies will have an encouraging impact on practice of corporate governance and service delivery. This is evident as contained in table 5.16 above where Two Hundred and Fifty Three (253) respondents constituting Thirty Six percent (36%) out of Seven Hundred and Ten (710) endorsed strongly agree. Of the Two Hundred and Fifty Three (253), Ninety One (91) representing Thirty Six percent (36%) of the answer category are the staff of the Commission). Congruent to the literature reviewed, the conditions under which resources are valuable are context dependent (Barney, 1991, 2001; Conner, 1991; Priem & Butler, 2001 a). The value of a certain resource is determined in relation to such conditions as organizational strategy and external environments (Priem & Butler, 2001a). Resources also need to be rare to provide competitive advantage; otherwise valuable resources only provide competitive parity (Barney, 1991). By implication, the need for the commission to create more awareness in its on-site inspections of companies which compel companies to display their signboards, RC Numbers and other regulations stipulated by CAMA, has also been endorsed by the respondents adding that there was need for the council and the CAC to collaborate more on the issue of corporate governance The compliance arrangement should be well documented for reference as well future decisions in the Commission. In the Corporate Affairs Commission, employees or the accredited customers should have access to records of companies, businesses as well as trustees.

Table 4.3 Respondents awareness of any records (documented) of compliance arrangement and evaluation as regards the operation of registered and incorporated companies.

Category of Respondent	Records are available	Records are not available	Records are available but we do not have access to them	Records are online but we are not computer literate	I am not aware of any records	Total
ANAN	19	8	10	12	11	60
CAC Staff	75	23	77	97	53	325
ICAN	24	20	33	29	26	132
NBA	44	23	30	39	32	168
Total	162	74	150	177	122	685

Source: Field work, 2010.

Records are available as indicated by the responses gathered from the field where One Hundred and Sixty Two (162) respondents representing Twenty Four percent (24%) of the Six Hundred and Eighty Five (605) respondents. Only Thirty Two (32) respondents did not answer this question. The responses in the table above reveal that records can be located in the Commission as Records Management Unit formerly File room is the custodian of these records as all queries given to companies are kept in this unit. The records can be referred to for the purpose of enforcement as they provide information as to which company complies and doesn't. based on such records, the Commission was able to conclude that as part of its on-going effort to sanitize the business environment and ensure strict compliance with the provisions of the Companies and Allied Matters Act, 1990 (CAMA), the Corporate Affairs Commission has concluded arrangements to strike off another batch of 38,582 companies from the Register of Companies in accordance with section 525 of CAMA.

The Commission has noted with dismay that despite our earlier letters and advertisements, calling on Directors of companies, Proprietors of Business Names and Trustees of Incorporate Trustees to file their Annual Returns, so far only about thirty two thousand and forty eight (32,048) out of three hundred and nine eight thousand, four hundred and fifty three (398,453) have responded by filing their Returns. This led to striking off of the Fifteen Thousand, Four Hundred and Nine (15,409) as discussed in table 5.19 below.

The Corporate Affairs Commission in Nigeria, in order to reaffirm its regulatory (enforcement of compliance) role, recently gave a directive for all Limited Liability Companies in Nigeria to comply with the provisions of Section 293 of the Companies and Allied Matters Act (CAMA), Cap C20, Laws of the Federation of Nigeria (LFN) 2004, by appointing Company Secretaries to handle the administrative affairs of the company. The directive is a notice from the office of the Registrar, for all concerned companies to comply. The move for all intents and purposes seems to be part of the efforts by the CAC to check the challenges of compliance in regulating businesses in Nigeria. However, with the flagrant breach of this provision that has existed as far back as when CAMA, came into force in (1990), we cannot help but wonder why CAC has just woken to its responsibilities, what it hopes to achieve with this directive and how it hopes to enforce it.

Table 4.4 Respondents stand as to any monitoring mechanism that is used to track companies.

Category of Respondent	Yes	No	I do not know	Uncertain	5	Total
ANAN	19	8	23	7	1	58
CAC Staff	76	87	113	45	1	322
ICAN	41	34	38	24	0	137
NBA	58	53	37	22	2	172
Total	194	182	211	98	4	689

Source: Field work, 2010.

The registered companies are tracked by the monitoring mechanism of the Commission. This statement is supported by the responses expressed in the table above. In spite of Twenty Nine (29) respondents' refusal to answer the question, One hundred and Ninety Four (194) respondents have attested to the existence of monitoring mechanism by means of which the companies are tracked. Filing Annual Return is a major mechanism used in monitoring the companies. Here, the result of this monitoring leads to queries to company while non-satisfactory response to the queries will qualify a company for an appropriate disciplinary measure which may range from suspension to de-registering/striking off as the case may be. The practice is that where a company refuses to answer the said queries, it will be reminded in writing. If it (the company) fails again, the Commission will publish in National dailies with a view to attracting compliance of the company with the rules set by the Commission. If the company doesn't comply, the Commission will strike the company off. The company stands re-enlisted if it obtains a court order but failure to do that will result in gazette of the said disciplinary measure which rules out possibility of re-enlistment. In addition, the power of investigation of the affairs of companies given to the Commission under the Act is the most useful and effective in the overall management and promoting good corporate governance practice in our registered companies.

Table 4.5 Number of companies that have been de-registered due to non-compliance after the 2001 reforms

Category of Respondent	100 - 1,000	2,000 - 4,000	4,000 - 5,000	5,000 and above	I have no idea	Total
ANAN	17	8	11	9	11	56
CAC Staff	69	64	95	57	40	325
ICAN	32	29	28	23	26	138
NBA	39	44	35	28	15	161
Total	157	145	169	117	92	680

Source: Field Work, 2010.

Investigation of the affairs of the companies is potent and quite useful in protecting investors and preventing impropriety in the management of corporate enterprise. Under section 157 of the Companies Act 1968, the Minister of Trade had power to order investigations. This power which is now exercisable by the Commission is much improved under the new Act where also, the requirement of security (from a member) for payment of the cost of investigation is now abolished and company's application for investigation is no longer by special resolution. Formerly, an application may be refused if the Minister was satisfied that sufficient facts were known to the applicants to enable them assert rights by themselves. Inspectors may now examine on Oath witnesses other than officers and agents of the

company and need not as before, seek an order of court to administer oath to them. Section 314 of the Act provides that the Commission may appoint one or more competent inspectors to investigate the affairs of a company and to report on same in such manner as the Commission may direct.

The number of companies de-registered by the Commission due to non-compliance especially after the introduction of the 2001 re-organization is high. According to responses in the table above, the affected companies range from Four Thousand (4000) to Five Thousand (5000) as indicated where One Hundred and Sixty Nine (169) respondents representing Twenty Five percent (25%) have endorsed alternative C. Other ranges are also endorsed but the alternative C is numerically more superior. The Thirty Seven (37) respondents who did not the question at all might have decided not to answer because of personal reasons but a good number of the respondents have also claimed that they have no idea. The most important thing is for there to be correspondence between the information in the table and any official publication in the form of a gazette. In this respect, there appears to be a discord as what is officially stated in the CAC News is that Fifteen Thousand Four Hundred and Nine (15,409) companies have been deregistered implying the would be correctness of alternative D which suggest Five Thousand and above. The recorded responses under this response category indicate One hundred and Seventeen percent (117) respondents representing seventeen percent (17%) of the total responses that concur with the official figure. This also shows the productivity of compliance procedures and activities in the Commission.

CONCLUSION

From the foregoing analysis, the paper concludes thus

The enforcement of compliance arrangement in the Corporate Affairs Commission plays a significant role in ensuring the practice of corporate governance and service improvement. The Commission's action (de-listing or de-shelving) corporate citizens that do not comply with the Commission's requirements such as statement of affairs based on which annual returns are paid has been partly responsible for the rating that the Commission has been receiving especially from international organizations such as the International Organization for Standardization (ISO). Enforcement was almost absent in the pre-reorganization era for, many companies had no registration talk less of complying with any condition thereof.

Finally, sustainable unity is achievable through the practice of corporate governance predicated on effective monitoring and enforcement of compliance by the regulatory frameworks as well as bureaucracies a typical of the Corporate Affairs Commission

RECOMMENDATIONS

In line with the conclusion drawn above, the following is hereby proffered thus:

Compliance arrangement should be strengthened through partnership with registered and incorporated business concerns. This can be achieved by encouraging such companies to form leagues while the CAC exploits such leagues in monitoring all companies under the leagues. Here, such leagues should be provided in the revised CAMA so that relationship as well as manner in which it holds will be addressed to ease the process of litigation in an event of non-compliance or any unwanted development. A new tracking system (electronic or manual) capable of identifying corporate concerns that do not comply with the Commission's expectation must be put in place. This may be a consultancy outfit sourced from outside or a CAC specialized unit mobilized by the Commission. It may be referred to external

intelligence or Corporate Citizens Monitoring unit suggesting that the Commission's manpower is mobilized to work outside and report as appropriate. In the assignment of such responsibility, the unit (be it outsourced or otherwise), the Companies and Allied Matters Act of 1990 must address both powers and sanctions of the unit or internal rules and regulations be made explicit so that interpretation will not generate complications capable of jeopardizing the process of capacity building as well as enforcement of compliance. Regardless of the alternative used, the mobilized unit(s) must have investigative powers in addition to power to facilitate prosecution of erring companies, trustees or business names as the case maybe. In effect, non compliance with the Commission's standards should be tried by a tribunal whose powers to fine and or in collaboration with the Commission, delist an erring company must be ensured. This will have positive implication especially where the enforcement (consultant or external intelligence unit as may be appropriate) is compensated based on productivity hence payment based on number of non compliance reported or number of compliance enforced). Here, corporate governance will facilitate annual return by corporate citizens and make the Commission more productive as a sole player in the registration of companies in Nigeria.

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