



CORPORATE DEMOCRACY AND SHAREHOLDERS' RIGHTS: A COMPARATIVE STUDY OF PUBLIC COMPANIES IN NIGERIA AND SOUTH AFRICA

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ABSTRACT

Corporate democracy denotes the extent to which shareholders actively partake in corporate decision-making, influence board conduct, and hold the directors accountable for the management of corporate resources. In Nigeria, the legal frameworks governing shareholders' rights and board governance have evolved significantly with the Companies and Allied Matters Act (CAMA) 2020, the Nigerian Code of Corporate Governance (NCCG) 2018, and Securities and Exchange Commission (SEC) providing mechanisms to enhance transparency, accountability, and participation. This article examines the practical realization of corporate democracy in Nigerian public companies by appraising the strength of shareholder rights, the structure and effectiveness of board governance frameworks, and the challenges faced in enforcing democratic corporate ideals. Using a comparative lens, the paper highlights global standards from jurisdictions such as the South Africa, identifying common principles and best practices. Findings reveal that although Nigerian regulations adopt international practice, corporate democracy remains limited by weak shareholder activism, board dominance, ownership concentration, and unsatisfactory enforcement. The article proposes reforms for enhanced shareholder empowerment, improved board accountability, and stronger regulatory oversight. It examines the concept of corporate democracy in Nigeria, with a special focus on how it can promote good corporate governance, efficient corporate management and corporate sovereignty. It also investigated the distribution of powers between the factions within the company structure. Doctrinal research methodology was adopted in this research.

KEYWORDS: *Corporate Democracy, Corporate Governance, Corporate Management and Corporate Power*

1. INTRODUCTION

A company is made up of different individual with diverse interests, it is necessary to manage it with democratic principles.¹ Smythe writes that a company is a market institution and, like all market institutions, it is a social construct with important social, political, and moral implications.² Company make decision that affect the allocation of scarce economic resources, the distribution of income, domestic political outcome, and the scope of human rights. The company decides for

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¹ E S Olarinde and U Idem, 'Shareholder's Democracy under the Nigerian Company Law' [2020] (10)(5) *American Journal of Industrial and Business Management* available at <<https://www.scirp.org/journal/paperinformation?paperid>> accessed 25 December 2025.

² D J Smythe, 'Shareholder Democracy and the Economic Purpose of the Corporation' (63)(4) *Washington and Lee Law Review* available at <<https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=116>> accessed 2 December 20204.



instance how much books to buy, how much computer sets to produce, how to pay their employees retirement plans and other crucial decisions that affects all stakeholders of the company.³ Corporate democracy has become a major concern in global corporate regulation due to its role in promoting transparency, protecting investors, and ensuring the meticulous management of companies. Within this governance discourse, the concept of corporate democracy has emerged as an important component, stressing the involvement of shareholders in decisions that shape corporate direction and performance. Corporate democracy presupposes that shareholders, as residual claimants and eventual owners of the company, must possess considerable power to influence corporate governance and hold directors accountable.

Shareholder democracy is an offshoot of the "shareholder primacy" approach to corporate governance. It advocates for the increase of the participation of shareholders in management and decision-making in the company. The major idea is that shareholders should regain some of the power that was lost to directors as a result of the rise of management and the board of directors in corporate decision making.⁴

The broader agenda of shareholder democracy includes enhancing shareholders' voting power, strengthening shareholder advisory role, allowing derivative suits and stock ownership consolidation in institutional investors, and creating say-on-pay rules, shareholder advisory committees, and proxy advisory firms.

This article appraises corporate democracy in Nigerian public companies by evaluating two crucial pillars, shareholder rights and board governance structures. Shareholder rights including voting, participation in general meetings, information access, and minority protection form the mainstay of democratic corporate governance. Similarly, board governance frameworks denote how power is exercised within the company, how directors are appointed or removed, and how strategic decisions are made. Furthermore, this article adopts a comparative analytical approach, drawing lessons from corporate governance practices in other jurisdictions such as the South Africa. These jurisdictions represent models of dispersed ownership. (South Africa).

2. UNDERSTANDING CORPORATE DEMOCRACY

The word "democracy" was derived from two Greek words: "demos", meaning the people and "cracy" meaning the "government". Democracy is, therefore, simply put, the people rule, or a form of government where power resides in the people.⁵ It is government by the people, either directly or through representatives elected by the people.⁶

³ D J Smythe (n 2).

⁴ J Daiz-Granados, 'Corporate Democracy; Shareholder Franchise: Stakeholder Democracy' available at <<http://doi.org/10.1007/97>> accessed 25th December, 2025.

⁵ Olarinde and Idem (n 1).

⁶ B A Garner, (eds) *Black's Law Dictionary* (9th Edn, West Thompson Reuters, 2009) 497.



The democratic principles are reliant on majority decisions, in all its deliberations, while at the same time protects the interest of the minority groups.⁷ In corporate democracy, members or shareholders of a company who through their resources the company was established and, the owners of the company are regarded as the electorate while the board of directors forms the executive arm of the government of the company.⁸ The memorandum and articles of association are considered as the company's constitution. When shareholders through the provisions of company's constitution which provide for annual elections of directors, vote upon basic changes if needs be is said to form the basic concept of shareholder's democracy.⁹ However, as in civil democracy corporate government has its own problems which tend to make people believe that shareholder's suffrage is fiction and not reality.

Two organs of the company have been saddled with the power to make corporate decisions: the board of directors and the general meeting of shareholders. What decisions each of these bodies may make and, what power is allocated to each, is a disputed matter. Some argue that the company's decision process must prioritize shareholders because the company must serve the interests of this group.¹⁰ Others believe that the board of directors should be the major corporate decision-making organ because they are best positioned to steer the course of the company.¹¹ The concept of "shareholder democracy," while acknowledging that boards of directors play an active role in the corporation's decision-making process, holds that shareholders should retain some power over the company including increased decision-making.

The concept of "shareholder democracy" suggests a political similarity between the state and the company. The idea is that in the same way that people are entitled to a vote in a democratic society to determine the direction of the country, shareholders should be entitled to vote in a company to determine the course of the company.¹² It is a concept that evokes the idea that directors, just as elected politicians, ought to be constrained by the will of the voters, in the case of the corporation, the shareholders.¹³

Some scholars have argued that because shareholder democracy has become an integral and growing part of a broader democratic process, undermining shareholder democracy is like undermining the democratic process in our society as a whole.¹⁴ Therefore, democratic principles

⁷ Olarinde and Idem (n 1).

⁸ *ibid.*

⁹ *ibid.*

¹⁰ G Hayden and M T Bodie, 'Shareholder Democracy and the Curious turn Towards Board Primacy' [2010] (51)(6) *William and Mary Law Review*, 2071.

¹¹ *ibid.*

¹² M J Duffy, 'Shareholder Democracy or shareholder plutocracy Corporate Governance and the plight of Small Shareholders' [2002] (25)(2) *University of New South Wales Law Journal*, 53.

¹³ *ibid.*

¹⁴ J H Matheson and V Nicolet, 'Shareholder Democracy and Special Interest Governance' [103] (4) *Minnesota Law Review*, 649.



and processes which characterize democracies elsewhere ought to be applied and extended into other contexts, including the company.¹⁵

Other authors have differentiated the "democratic" systems of the company and the state. Differentiating factors include, first, that not every stakeholder has a vote in the corporation, whereas all adults have a vote in a democratic society.¹⁶ Unlike shareholders, voters in a democratic society have equal voting powers.¹⁷ In the company, some shareholders may hold significant blocks of shares and so have inordinately large voting rights. The mobile nature of the right to vote differentiates "democracy" in a company and states.¹⁸ In a company, shareholders can sell their shares, transferring voting rights and duties to purchasers.

A second justification relates to agency problems and the potential conflict of interests that may arise between shareholders and board. Directors are regarded as agents of shareholders and they are expected to act in consonance with shareholders' interests.¹⁹ Should they pursue their own interests in opposition to those of the shareholders. Shareholder democracy attempts to reduce this issue by involving shareholders more intimately in review, opinion, and decision-making.²⁰ Third, there is a normative argument: it is argued that as the company's owners, shareholders are entitled to have greater participation in governance. Since shareholders are the owners of the corporation, they and not the directors are entitled to control the company.²¹

Criticisms of shareholder democracy are mainly based on efficiency arguments. From an efficiency perspective, shareholder democracy is an inappropriate approach because, collectively, shareholders cannot manage the corporation efficiently.²² Board primacy advocates argue that the successful management of company rests upon a clear and significant separation of powers between the shareholders as owners and the directors as managers.²³ Other criticisms are based upon the possibility that some shareholders may be seeking to advance their own personal or political interest. Some share the view that shareholder empowerment will benefit some shareholders more than others, also that the interests of some shareholders such as hedge funds are opposed to the interests of the company's stakeholders more broadly,²⁴ further that activist shareholders with only

¹⁵ J H Matheson and V Nicolet (n 14).

¹⁶ M J Duffy (n 12).

¹⁷ *ibid.*

¹⁸ M J Duffy (n 12)

¹⁹ L A Bebchuck, 'The Myth of the Shareholder Franchise' [2007] (93)(3) *Virginia Law Review* 675.

²⁰ *ibid.*

²¹ Matheson and Nicolet, (n 14).

²² R Garrett, 'Attitude on Corporate Democracy: A Critical Analysis' [1956] (51)(3) *Northwestern University Law Review* 310.

²³ *ibid.*

²⁴ L M Fairfax, 'The Future of Shareholder Democracy' [2008] (84)(4) *Indiana Law Journal*. 259.



short-term interests may seek, and bring about, significant changes that may harm the prospects of some of the company 's long-term goals.²⁵

Shareholder democracy is promoted through various strategies designed to give shareholders more power and control. Shareholder democracy first has focused on shareholders' voting power. Enhancing shareholders' voting power increases the authority of this corporate body as well as the company. Shareholder democracy seeks to enhance shareholder's voting power by reducing corporate management's control of the proxy machinery, the management's power to recommend candidates for nomination to the board and its relationships with significant shareholders who will delegate their voting rights or support the management's recommendations.²⁶

3. ENFORCING THE RIGHTS OF THE SHAREHOLDERS IN NIGERIA

Shareholders are the essence of any public company but their role becomes limited mere to get monetary benefit. their participation in administration of company is never encouraged by the management. It is the responsibility of the company to provide all necessary information and to encourage participation of shareholders in the affairs of the company.²⁷

It is assumed that shareholder in public company should take a more active interest in the affairs of their company. Management should provide shareholders with more information to guide them in exercising voting rights. Corporate democracy advocates that the management should give them the fair opportunity to be a part of the administrative process wherever required. The public company is built upon the investment of shareholders, they should be free to express their opinion in company since their participation is important to maintain corporate governance.²⁸

It is observed that the role of shareholders in most administrative process in public company is limited to casting of vote. The shareholders cannot get across their opinions because of strong board of directors and their managers in public company. Shareholders have become powerless. The corporate structure in Nigeria allows only a formal role for shareholders on corporate governance. Eventually the idea of corporate democracy is marginalized in public companies. This underscores the observation of Lord Denning M.R as follows:

...It sometimes happens that public companies are conducted in a way which is beyond the control of the ordinary shareholders. The majority of the shares are in the hands of two or three individuals. These have control of the company's affairs. The other shareholders know little and are told little. They receive the glossy annual

²⁵ Matheson and Nicolet, (n 14).

²⁶ L M Fairfax, (n 24)

²⁷ V Sonule and B Ronald, 'The Eclipse of Corporate Democracy in India' *International Journal of Humanities and social Science Invention* (1017) (6)(7) available at www.ijhssi.org accessed on the 18th January 2026.

²⁸ *ibid.*



reports. Most of them throw them into the waste paper basket. There is an annual general meeting, but few of the shareholders attend. The whole management and control are in the hands of the directors. They are a self-perpetuating oligarchy and are the guardian of the company, the question is asked: *quis custodiet Ipsos custodies?* Who will guard the guards themselves?²⁹

The objective of corporate democracy is to build up an environment of trust and confidence amongst those having competing and conflicting interest to enhance shareholder value and protect the interest of other stakeholders by enhancing the corporate performance and accountability.³⁰

Many modern promoters of corporate democracy contend that conventional forms of corporate governance typically represent only the interests of the shareholders against the background of other critical voices on shareholder orientation. The conventional model of shareholder-oriented corporate governance rests on basic premises like corporate decisions mainly affect shareholders and contracts matter in corporate governance. These assumptions are based on the idea that other stakeholders, such as employees, suppliers, and debtors, can secure their interests through contracts that fix the return on their investment in the firm, whereas shareholders cannot.³¹

They further argue that if other stakeholders are no longer satisfied with these cooperative deals, they can simply leave the company and make use of an exit strategy. The critics of corporate democracy argue, however, that shareholders are often let down by the board of directors. This is the most essential link in the chain of corporate democracy is hopelessly weak.³²

Multi-owner businesses with no single controlling shareholder have always had to select managers (here including the board of directors) to avoid the excessive costs and inconveniences of personal consultation. The selection of managers in company is ultimately a function of majority shareholder. It should also demonstrate the intelligence of shareholder democracy. Shareholders are assigned many rights in corporate governance, but they are unable to exercise their rights in most situations.³³

In Nigeria, shareholders in public companies display an immense indifference as far as the management of company's affairs is concerned. Public voting in corporations, which has so confused the public on the issue, is merely a cheap way of determining who holds the requisite number of shares and only incidentally who shall be the managers. This is the basis for the currently

²⁹ *Northwest Holst Ltd. v Department of Trade & Ors.* (1978) 3ALL ER 280

³⁰ V Sonule and B Ronald, (n 28).

³¹ *ibid.*

³² *ibid.*

³³ *ibid.*



popular claim that so-called "stakeholders" should have a real voice in how the company conducts its affairs.

In theory, shareholder meetings lie at the heart of corporate democracy, when a shareholder does attend a shareholder meeting, he will find that it is not the open forum for discussion that he might have expected. The process of nominating candidates for the position of director is completely undemocratic. The management has far more powers than shareholders in electing their own body. In practice companies generally don't ask shareholders who they want to run; instead they tell them who is running. The tendency for companies to nominate "celebrities" for the position of director hampers public interest.³⁴ The protection of shareholders by the legal system is essential to corporate governance. The most rudimentary prediction of the legal approach is that investor protection enhances the development of financial markets in the Country. We could categorize the main reasons for the lack of shareholder activism in Nigeria. Most investors in Nigeria are focused on short term gains. They are only interested in dividends. Active participation in governance is not their fundamental. Shareholders typically retain control of companies by owning a significant ownership stake in companies.

3.1 Corporate Governance in Nigeria

In Nigeria, the Companies and Allied Matters Act (as amended) 2020 is the major regulatory statute for the operation of companies. It provides some mechanisms for good corporate governance such as appointment of directors by the company,³⁵ removal of directors by ordinary resolution,³⁶ duties and liabilities of directors,³⁷ provisions for disclosures by the directors³⁸ and provisions for auditors and audit committees.³⁹

CAMA also provided for the participation of shareholders in some corporate decisions with a view to achieve good corporate governance. While the managerial control of the company is on the board of directors,⁴⁰ some corporate decisions cannot be taken without the resolution of members in general meeting. Some matters cannot be delegated to the company's directors or its agents but must be taken by members in general meeting.⁴¹ for example; to change the name of the company, to change the business⁴² and object of the company, to increase the capital of the company, to reduce

³⁴ V Sonule and B Ronald, (n.28)

³⁵ CAMA 2020 s 272,273

³⁶ CAMA 2020 s 288

³⁷ *ibid* s 305,306,308

³⁸ *ibid* s 303

³⁹ Y H Bhadms, *Bhadms on Corporate Law Practice* (5th edn. Chenglo Ltd 2021) 149.

⁴⁰ CAMA 2020, s 87(3)

⁴¹ *Aerobell Nigeria Ltd v Fidelity Bank* (2018) LPELR-45338 (CA)

⁴² CAMA 2020, s 51.



the capital of the company,⁴³ to convert or re-register the company⁴⁴ and to merge with other companies.

The members in the general meeting is also reserved with the powers to ratify certain corporate decisions. Special resolution of the general meeting is required to approve the acquisition by the company of the shares that it intends to purchase.⁴⁵ The approval of the general meeting is required for the appointment of a new director to fill casual vacancy by the board of directors.⁴⁶ General meetings of members may also be required to remove a company's directors or auditors before the expiration of their term.⁴⁷ Meetings are also used to approve payments to directors for loss of office⁴⁸ or the removal of the secretary of a public company on a non-fraudulent ground.⁴⁹ Members in general meeting are also required to approve certain types of contracts, such as contracts with a company director, substantial property transactions, loans to directors⁵⁰ or contracts with directors beyond five years, will require the approval of the members in general meeting.⁵¹

Members in general meetings appoints the directors,⁵² Similarly, members would be required to appoint auditors⁵³ and liquidators during a member's voluntary winding up.⁵⁴ General meetings are avenues for disclosing information and rendering account to members for accountability and transparency purposes. Several matters are ordinarily required to be laid before the members in general meeting. They include reports by director, auditors and financial statement.⁵⁵ These documents enable shareholders to exercise oversight over the directors. They also enable them to have broad knowledge of the extent of director's stewardship while allowing them raise questions and seek clarity on crucial issues. But it is not clear if members have statutory rights to speak and raise questions on general matters relating to the company, albeit they may speak at resolutions to be passed at meeting.

It is clear that meetings and exercise of voting rights are crucial for achieving good corporate governance.⁵⁶ But the extent to which members utilize their power may differ in practice owing to the size and the complicities of each public company. It should be observed that the purpose of

⁴³ CAMA 2020, s 131.

⁴⁴ *ibid* s 71.

⁴⁵ *ibid*, s 184(1)(b).

⁴⁶ *ibid*, s 274 (2).

⁴⁷ *ibid* s 288, 409.

⁴⁸ *ibid* s 297, 298.

⁴⁹ *ibid* s 333(3)(b).

⁵⁰ *ibid* s 296(2)(b).

⁵¹ *ibid*, s 293.

⁵² *ibid*, s 271.

⁵³ *ibid*, s 401.

⁵⁴ *ibid*, s 621.

⁵⁵ CAMA 2020 s 382, 386.

⁵⁶ R C Nolan, *The Continuing Evolution of Shareholder Governance* (2006) 65 CLJ 92.



meetings sometimes is defeated because of the wide dispersal of membership in publicly listed companies. Members may not be able to utilize their powers or exert themselves effectively.⁵⁷

The directors tend to be disproportionately powerful relative to the dispersed shareholders in public companies. This situation influences the directions of meetings and determines their outcome. For instance, the directors make all the necessary arrangement before meetings. In addition, they set the agenda, determine venues for the meeting, prepare resolutions and conduct proceedings. This gives the directors wide control over the general meeting itself. The show of apathy and inactiveness on the part of dispersed shareholders of publicly listed companies and attitudinal patterns have also weakened the effectiveness of general meetings for publicly dispersed companies.⁵⁸ Consequently, rather than serve as a check on the powers of management, dispersed shareholders of public listed companies tend to rubber-stamp the board's policy and scarcely take time to understand crucial information relating to the corporation, engage with management, actively utilize their voting powers.

This factors such as shareholder dispersion, and the fact that dispersed shareholders may have a relatively smaller percentage of shares, may have made the exercise of voting powers in the advancement of corporate governance largely illusory or impracticable. Thus, it is understandable that a small shareholder may not attend a company's AGM because of cost issues. He may consider that attending meetings at a considerable distance from his place of residence may be costly and time wasting. It is for instance unrealistic to expect a person whose shares are worth only 30, 000 to attend a general meeting held at Abuja if he resides in Lagos.

The enactment of the Nigerian Code of Corporate Governance (NCCG) 2018, and the enhancement of regulatory oversight by the Securities and Exchange Commission (SEC) also brought about considerable transformation in corporate governance in Nigeria. These reforms were driven by lingering governance failures, corporate collapses, weak board performance, and shareholder marginalization. The question, however, remains whether these frameworks effectively facilitate corporate democracy in practice. The company owes its origin to the funds subscribed by the shareholders and therefore, the relationship on which the company is founded, and which governs its actions is that between owners and managers.⁵⁹

The Nigerian Code of Corporate Governance 2018, made by the Financial Reporting Council of Nigeria (FRCN), although not enforceable, complements statutory requirements by providing principles that promotes the interest of the shareholders, board efficiency and ethical governance. As a link between stakeholders and the company, the Code mandates the board to exercise oversight

⁵⁷ P Subai, *Company Law in Nigeria* (Dok consult and Research, 2023) 234.

⁵⁸ D Nelson 'The Dilemma of the Shareholders under the Nigerian Company Law' [2015] (37) *Journal of Law, Policy and Globalization* 90.

⁵⁹ F Ajogwu, *Corporate Governance in Nigeria: Law and Practice* (2nd edn. CLDS Publishing 2020) 106.



and control to ensure that management act in the best interest of the shareholders and other stakeholders while sustaining the prosperity of the company.⁶⁰

Corporate governance is dependent mainly on the board of Directors, its role and management activities. therefore, the Board of Directors plays a fundamental role in ensuring satisfactory compliance with the code of corporate Governance and determining the impart it has on the general day-to-day operations of the company. the board is largely supposed to oversee the company on behalf of the shareholders and ensure the adequate protection of the interest of other stakeholders. This task can only be attained through the creation of a system that allows for transparency, upholds integrity and enhance prosperity. Board members also have a crucial duty to ensure that the risk management systems are properly in place. however, the roles and responsibilities of the board vary depending on the nature and type of business the corporation operates, as well as, relevant laws that are applicable.⁶¹

Because the power to appoint directors lies with the members at the general meeting of the company.⁶² The members are at liberty to elect or reject a person put forward by the Board of director at the annual general meeting. Consequently, it is important that the members have every piece of information that would inform their decision to either elect or reject a proposed director by the board of directors.

Principle 12 and 12.3 a-f of the Nigerian Code of Corporate Governance 2018 recommends as follows:

A written, clearly defined, rigorous, formal and transparent procedure serves as a guide for the selection of Directors to ensure the appointment of high quality individual to the board.

Shareholders should be provided with biological information of proposed Directors to guide their decision. Such information should include; name, age, qualification, country of primary residence and the ownership interest represented, if any;

Whether the appointment is for ED, NED, or INED, and any proposed specific area of responsibility or Board Committee role, if any;

Work experience and occupation, current directorship and appointments, direct and/ or indirect shareholding in the company and /or its subsidiaries and any other relevant information.

⁶⁰ Nigerian Code of Corporate Governance 2018, 1 (it shall hereinafter be referred to as Code 2018).

⁶¹ F Ajogu, (n 59).

⁶² CAMA 2020, s 273(1)



The above stated provisions of the Nigerian Code of Corporate Governance 2018 are a bolster to corporate democracy in Nigeria. General meetings are very important in the implementation of Corporate Governance Principles in line with international best practices. General meetings are platforms for the Board to engage shareholders to facilitate greater understanding of the company's business, governance and performance. It provides the shareholder with opportunity to exercise their ownership rights and express their views to the board on any area of interest.⁶³ The code recommends that the General meeting should be conducted in an open manner allowing for free discussions on all issues on the agenda. Sufficient time should be allocated to shareholders, particularly minorities, to participate fully and contribute effectively at such meetings.⁶⁴

In order to maintain corporate responsibility within the company, it is recommended that the chairman of all Board committees and of the Statutory Audit Committee should be present at General Meetings of the Company to respond to shareholders' inquiries.⁶⁵ This would also test and demonstrate the level of expertise of the chairmen. The Code also recommends that the venue of a general Meeting should be accessible to shareholders, to ensure that shareholders disenfranchised on account of the choice of venue.⁶⁶ The SEC regulates capital market activities and enforces governance standards for public companies. Relevant mechanisms available are disclosure of material information to shareholders, mandatory compliance with corporate governance codes for listed companies. penalties for directors who breach fiduciary duties or fail to disclose conflicts of interest, Guidelines for shareholder meetings and electronic voting mechanisms.

3.2 Shareholders Democracy in South Africa

Corporate powers in South Africa are primarily governed by the Companies Act 71 of 2008 (as amended), which outlines the legal framework for the formation, operation, and governance of companies. It also defines the framework within which companies operate, outlines the roles, responsibilities, and powers of various corporate organs. These powers are distributed among shareholders, directors, and executive management, creating a system of checks and balances intended to promote good governance and accountability.⁶⁷

In South African corporate law, the power to manage a company is primarily vested in the board of directors,⁶⁸ with shareholders having a significant, although, indirect influence. The board is responsible for directing the business and affairs of the company, including delegating authority to committees, management, or other parties. The shareholders on the other hand through their voting

⁶³ Nigerian Code of Corporate Governance 2018, 21.

⁶⁴ *ibid* Principle 21.1.

⁶⁵ *ibid* Principle 21.2.

⁶⁶ *ibid* principle 21.3.

⁶⁷ Companies Act of South Africa 2008 (as amended), s 71.

⁶⁸ *ibid*, s 66 (1).



power, can influence the election of directors, propose changes to the company's memorandum of incorporation and ultimately remove the director from the office.⁶⁹

The executive powers of the company under the South African corporate law lies in the board of director because it is saddled with the power to manage the company's business and affairs, exercising all powers and performing all functions.⁷⁰ The board of directors holds central management authority and act as primary decision-making body for corporate strategy and oversight. In managing the business and affairs of the company the board of director owes the company fiduciary duties and duty of care, skill and diligence.⁷¹ Delegation of authority to executive management. They have a duty to act in good faith and in the best interest of the company and must avoid conflict of interest.⁷² The board has the oversight to establish board committee (audit, remuneration) ensuring compliance with financial and governance standard.

A director of a company is not allowed to use the position of director, or any information obtained while acting in the capacity of a director to gain an advantage for the director, or for another person other than the company or a wholly-owned subsidiary of the company; or to knowingly cause harm to the company or a subsidiary of the company; and communicate to the board at the earliest practicable opportunity any information that comes to the director's attention, unless the director reasonably believes that the information is immaterial to the company; or generally available to the public, or known to the other directors; or is bound not to disclose that information by a legal or ethical obligation of confidentiality.⁷³

Shareholders as the owners of the company, their powers are generally exercised through general meeting. They have powers to appoint and remove directors.⁷⁴ They are saddled with the power to approve major transactions.⁷⁵ The members in the general meeting has powers to amend the memorandum of incorporation (MOI) and they receive dividends. Although, they do not have the powers to interfere in day-to-day management, which is reserved for directors.⁷⁶

The shareholders ownership and oversight role are exercised primarily through voting at general meetings.⁷⁷ While directors manage the company, shareholders can vote on key decisions like mergers, amendments to the memorandum of incorporation (MOI), and appointment/removal of

⁶⁹ Companies Act of South Africa 2008 (as amended), s 71.

⁷⁰ *ibid*, s 66(1).

⁷¹ *ibid*, s 76 (2).

⁷² *ibid*, s 75.

⁷³ *ibid*, s 71 (2).

⁷⁴ *ibid*, s 71.

⁷⁵ *ibid*, s 112-115.

⁷⁶ *Sasol Ltd v Lambert and others* (2002) 2 SA 21 (SCA).

⁷⁷ Companies Act of South Africa 2008 (as amended), s 61.



directors.⁷⁸ Shareholders cannot usurp powers specifically delegated to directors under the Act or memorandum of incorporation (MOI).⁷⁹ The executive management are appointed by the board and operate under the authority delegated to them. they have the responsibility of implementing board strategy, day-to-day operation, financial and operational decision making. The executive cannot override decisions of the board or shareholders unless explicitly empowered by the memorandum of incorporation or board resolution.

The memorandum is the founding document of a company and plays a critical role in defining how powers are allocated. It may limit or expand the authority of directors.⁸⁰ It serves as the constitution of the company. The South African corporate framework uses several mechanisms to ensure no single entity holds excessive power. Shareholders right to remove directors,⁸¹ directors' duty to prevent abuse of power, statutory remedies like derivative action and oppression remedies,⁸² role of independent director (as per King IV), oversight by regulators like the Companies and Intellectual Property Commission (CIPC).

The distribution of corporate powers in South Africa reflects a balance between shareholder oversight and director autonomy, with statutory checks to ensure accountability. The Companies Act remains the central authority, supplemented by case law and internal governance documents like the MOI.

4. CHALLENGES TO CORPORATE DEMOCRACY IN NIGERIA

Despite legal and regulatory reforms, several factors hinder the realization of corporate democracy in Nigeria: Many public companies are dominated by a few majority shareholders, limiting the influence of minorities. Shareholders often fail to exercise their rights due to low awareness, cost of enforcement, or fear of reprisals. Directors, particularly executive directors with extensive control, may dominate decision-making, reducing checks and balances. Regulatory and judicial enforcement mechanisms are often slow, costly, or inefficient, weakening accountability.

Nigeria has established a robust legal and regulatory framework to promote corporate democracy. CAMA 2020, the NCCG 2018, and SEC regulations provide shareholders with rights and boards with accountability obligations. However, practical challenges such as concentrated ownership, low activism, and enforcement gaps limit the effectiveness of these reforms. In many emerging markets, including Nigeria, corporate democracy is weakened by concentrated ownership structures, board dominance, low shareholder activism, and weak enforcement of corporate governance laws.

⁷⁸ Ibid, s 66(1).

⁷⁹ *Peel v Hamon J&C Engineering (pty) Ltd* (2013) 2 SA 33 (GSJ).

⁸⁰ Companies Act of South Africa 2008 (as amended), s 15 and 16.

⁸¹ Ibid, s 71.

⁸² Ibid, s 165.



Corporate democracy cannot exist without enforceable shareholder rights. Where shareholders lack control or boards act without accountability, managerial entrenchment undermines democratic governance. Conversely, empowered shareholders foster transparency, discipline, and ethical conduct. Corporate democracy in Nigerian public companies reflects the extent to which shareholders can exercise their rights and the effectiveness of board governance frameworks. Despite progressive legislation, several challenges limit meaningful shareholder participation and board accountability.

It is true that Nigerian law grants shareholders voting rights on major corporate matters. However, practical exercise of these rights is often hindered because Annual General Meetings are sometimes poorly attended due to lack of awareness, logistical challenges, or low interest among retail investors. Proxy voting mechanisms exist but are underutilized and hijacked by the directors thereby reducing overall shareholder influence. Minority shareholders have legal remedies under CAMA 2020 for oppressive or prejudicial conduct. However, the enforcement of these remedies through courts is slow and expensive, discouraging litigation. Majority shareholders often dominate decision-making, marginalizing smaller investors.

Companies are required to provide financial statements and reports to shareholders. In practice, disclosure is inconsistent, and timely information is sometimes unavailable, limiting shareholders' ability to make informed decisions. Institutional investors and proxy advisory services are less active compared to developed markets. Cultural factors, low investor education, and the fear of retaliation against dissenting shareholders reduce activism.

4.1 Lessons for Nigeria

- i.** South Africa has clear legal duties and liability for breach, and strong focus on ethics and integrity (King IV), Nigeria should improve awareness and enforcement of directors' fiduciary duties and establish more rigorous director training and ethical leadership programs.
- ii.** Balance between shareholders and board powers: - In South Africa, powers are well distributed; shareholders can hold directors accountable, but board retain autonomy to manage the company. Nigeria should reinforce the separation of powers between shareholders and directors to prevent shareholder interference in daily management while preserving accountability.
- iii.** Codified and practical governance: - in South Africa King IV operates "apply and explain" principle, promoting thoughtful application over box-ticking compliance. Nigeria could evolve from the comply or explain approach to a more robust "apply and explain" model to promote substance over form.
- iv.** Stakeholder inclusivity: - South Africa corporate governance includes considering the interest of employees, communities, regulators, and the environment. Nigeria should shift



- focus from shareholder primacy to stakeholder inclusivity to foster long-term sustainability and trust.
- v. Institutional strengthening: - In South Africa institution like the Company and Intellectual Property Commission (CIPC) play a strong role in enforcement and oversight. Nigeria should enhance the operational independence and funding of CAC, SEC and related agencies to endure effective oversight and timely sanctions.
 - vi. Mandatory governance structure for public companies: - In south Africa, certain governance committees (audit, remuneration, social and ethics) are mandatory for public companies.
 - vii. Codification of fiduciary duties: - like South Africa's Companies Act, Nigeria should codify the fiduciary duties of directors with enforceable penalties for breach.
 - viii. Adopt principle-based governance: - King IV's flexible, principle-based approach encourages ethical and performance- driven governance, in contrast to Nigeria's largely compliance -based model. This can enhance corporate sustainability and reputation.
 - ix. Director training and certification: - South Africa emphasizes director education and continuing development; Nigeria can institutionalize this through certification and ongoing compliance training.
 - x. Nigeria stands to benefit greatly by adopting and adapting elements of South Africa's corporate governance system. A shift from rule-based to principles-based regulation, greater board independence, and a strong focus on ethics and accountability can transform Nigeria's corporate landscape. While contextual differences must be respected, aligning with international best practices, as seen in South Africa, will boost investor confidence corporate integrity in Nigeria.

5. CONCLUSION

Corporate persons, however, do not act independently of the human persons who incorporate, operate, and make strategic decisions for them. they are fictional entities and, as such, require human persons to make decisions about acquiring rights and duties. A company is a legal vehicle steered by someone. Hence the possibility of divergent interest and views within the administration of a company. This may take the shape of struggling for control and or outright contest for control of the affairs of the company. It also raises the issue of who has managerial control of the company. Whether the board of directors or the shareholders in general meeting. Corporate democracy is a similitude and offshoot of corporate governance which is a key driver of business prosperity in any clime. Managing the company using the indices of democratic principles is a critical factor that has determined the success or otherwise of business. It provides the structure that works for the benefit of all stakeholders.



6. RECOMMENDATIONS

1. **Board Independence:** - Nigeria should enforce minimum independence requirements for non-executive directors and mandate periodic board evaluations to ensure objectivity and accountability.
2. **Shareholder Empowerment:** - Nigeria should promote investor education on voting rights and AGM participation and encourage institutional investors to actively engage in corporate governance.
3. **Transparency and Disclosure:** - Nigeria should promote timely and comprehensive financial reporting and Standardize disclosure of conflicts of interest, executive remuneration, and board performance.
4. **Streamline Enforcement Mechanisms:** - Nigeria should establish fast-track judicial or arbitration processes for shareholder disputes and enhance SEC capacity to monitor compliance and impose penalties effectively.
5. **Foster a Culture of Corporate Democracy:** - Nigeria should encourage ethical leadership and stakeholder engagement and reward companies that demonstrate exemplary governance practices.
6. **Leverage Technology:** - Nigeria should implement electronic voting systems for AGMs to enhance shareholder participation and utilize digital platforms for transparent communication between boards and shareholders.