



ESG AT A GLANCE: NUANCES AND OPPORTUNITIES IN NIGERIA FOR THE ENERGY, FINANCE AND INFRASTRUCTURE SECTORS.



INTRODUCTION

In recent years, Environmental, Social, and Governance (ESG) has emerged as a crucial method for assessing the sustainability and ethical practices of companies and projects across various industries. Although ESG is not a very novel concept in the sense of what it represents, however the crystallization of the term ESG is more recent and has gained popularity. Essentially, ESG evaluates a company's performance in key areas, such as environmental impact, social responsibility, and corporate governance, serving as benchmarks that measure the performance of companies based on their adherence to sustainable and responsible business practices.

This article seeks to explore the role of ESG considerations for businesses within the Nigerian landscape and across the globe, specifically focusing on the sectors of energy, finance, and infrastructural development.

UNDERSTANDING ESG IN THE NIGERIAN CONTEXT

Nigeria is one of the largest economies in Africa and attracts many foreign businesses and investors. However, Nigeria has over the years experienced series of social, environmental, and economical challenges which has put it in a state of gradual disarray. Finding a way out of these challenges would require Nigeria to adopt an approach/initiative that embraces wholesome sustainable development. One way to do this is integrating ESG principles into our everyday business and corporate interactions.

Globally, initiatives like the Sustainability Accounting Standards Board (SASB), the Global Reporting Initiative (GRI), and the Task Force on Climate-related Financial Disclosures (TCFD), amongst others are defining standards for incorporating ESG metrics into the investment process. In global energy deals, financiers are increasingly requesting ESG and climate-related disclosures. In the US, the SEC is mulling mandatory climate disclosures for all public companies due to high investor demand for the same.

Embracing ESG consideration within organizations and globally has the potential to unlock the much-needed foreign direct investment (FDI) and open Nigerian businesses to greater opportunities.

In recent times, ESG considerations have gained prominence in Nigeria, which reflects a move with the global trend towards sustainable and ethical business practices. With the growing evidence of the correlation between a culture of sustainability and long-term business success, there is mounting pressure by investors on Boards of Directors to ensure their organization addresses their environmental and social impacts. Investors and Shareholders have become more particular about the sustainability and viability of a business and projects beyond the interest of the company in itself but to the planet and the community. Thus, there is a booming requirement for transparency in ESG principle adoption and reporting. According to the Centers for Diseases Control (CDC) analysts, Nigeria's market has in recent times shown great potential for rapid industrialization, making the shift in approach to ESG considerations increasingly critical. Integrating ESG practices into our core business sectors offers numerous benefits, including improved productivity, business performance, adaptability to evolving technology or regulations, enhanced financial indicators, and the promotion of environmental sustainability.

SUSTAINABLE DEVELOPMENT IN KEY SECTORS



A. Energy Sector

The energy sector in Nigeria, which can be broken down into the power and oil & gas industries, grapples with limited access to clean energy, which has emphasized a need for diversification towards renewable sources typically aligned with ESG principles. This shift is vital for addressing environmental concerns and aligning energy practices with global sustainability goals.

It is crucial to note that simply adopting global ESG metrics wholesale might not be the most suitable strategy for Nigeria presently, and in the very near future. Nigeria's unique situation demands a contextualized approach to ESG. Unlike developed nations with established renewable infrastructure, Nigeria grapples with meeting its energy needs and still heavily relies on oil and gas for its energy needs and economic development.

This is where the recently approved Energy Transition Plan (ETP) emerges as Nigeria's tailored approach towards achieving environmental sustainability and energy security. The ETP has been described as a home-grown and multi-pronged strategy developed for the achievement of net-zero emissions in terms of the Nigeria's energy consumption, prioritizing emission reduction from environmentally destructive practices. The ETP outlines a set of crucial strategies and timelines for reducing emissions across the Energy sector.

Realizing that the Nigerian oil and gas sector accounts for a substantial amount of emissions, primarily from upstream energy activities, gas flaring and fugitive emissions, the ETP sets ambitious emissions reduction targets. The ETP aims for a 100% reduction in gas flaring by 2030 and a 95% reduction in fugitive emissions by 2060. The ETP also recognizes the critical role that the oil and gas sector plays in the nation's development and incorporates social considerations into the energy sector's transformation. The government has also taken a shift focus to the communities and social wellbeing of citizens affected by the activities of companies in the energy sector and have provided legislative measures towards the integration of social wellbeing considerations into the activities within the sector.



B. Infrastructural Sector

Infrastructure, which is often regarded as the backbone of civilization, stands at a critical crossroads in the face of the rising global challenges in Nigeria. Recognizing the significance of ESG in healthcare, power, water, sanitation, transport, and telecommunications is crucial for the infrastructural sector. Integrating ESG principles at every stage, from planning to implementation, is essential for building a resilient and sustainable future for Nigeria.

A shift to sustainable infrastructure, takes away the focus from just building more projects for profit to building projects that reduces environmental impact, maximizes resource efficiency, and improves resilience to climate change, which in the long run will ensure fair community benefits. Incorporating ESG principles across the entire infrastructure lifecycle promotes a future where progress and sustainability go hand in hand.



C. Finance Sector

ESG also aims to promote sustainability within the financial sector. Globally, this has led to the development of the concept of sustainable banking, ESG investing and sustainable finance instruments. In line with this global emphasis on ESG, the Nigerian banking sector has established its own guiding principles – the Nigerian Sustainable Banking Principles (NSBP) launched in 2012. These nine core principles provide a framework for Nigerian banks, discount houses and development finance institutions to integrate social and environmental considerations into their decision-making processes. The NSBP covers areas like environmental and social risk management, financial inclusion, and human rights, all with the aim of fostering a sustainable financial sector that contributes positively to Nigeria's economic development.

While initiatives like the NSBP showcase a commitment to ESG values, financial institutions in Nigeria still must endeavor to embed sustainability into their business models, adapt to evolving regulations and meet stakeholder expectations in a dynamic market.

In discussing ESG in finance, there is the growing phenomenon of ESG investing. Investors are increasingly applying ESG principles in the evaluation of material risks and opportunities in a business or project. ESG investors seek to ensure that companies and projects that these companies carry on are responsible stewards of the environment, good corporate citizens and are led by accountable managers. Financial institutions

now drive innovation by crafting financial products aligned with sustainability goals that project companies must use in a manner that meets criteria as 'green', 'social' or a mix of two. Various sustainable finance instruments, such as green bonds, green facilities, social impact bonds, and sustainability-linked loans, provide unique opportunities for investors to align their portfolios with ESG principles, offering numerous benefits for those prioritizing sustainable and responsible investment strategies. Beyond the green and social aspects of ESG investing, financial inclusion is also gaining traction as an ESG index. It ensures that financial products and services are accessible to all, empowering individuals and communities. This can be achieved through microfinance initiatives, mobile banking solutions, and expanding access to credit for underserved populations. Financially inclusive companies are not only promoting social good but are also unlocking new market opportunities and fostering economic growth. By integrating financial inclusion into ESG analysis, investors can support companies that are driving positive social change while potentially enhancing their long-term returns.

With the increasing call for ESG transparency and reporting in the energy and infrastructure sector, companies who align themselves with this move and integrate these ESG principles into their businesses and projects in Nigeria are a step closer to accessing financing.

ESG REGULATORY LANDSCAPE IN NIGERIA

While there is yet any comprehensive and codified regulation on ESG principles in Nigeria, Nigerian regulators are now emphasizing the importance of adopting ESG practices, not just as a compliance issue, but as part of the culture and strategy of businesses. Thus, there are general/specific legislations that make provisions for ESG integration into business practices in Nigeria. A quick analysis of these legislations would

spotlight the requirements that businesses and projects in Nigeria are required to adopt to ensure that these are in compliance with ESG principles. These legislations include:

a. The Paris Agreement 2015: The Paris Agreement which was signed in 2015 (the "Agreement") serves as a cornerstone international agreement for tackling climate change globally. Nigeria, a signatory to the Agreement, is committed to reducing greenhouse gas emissions and fostering sustainable development, aligning with the Agreement's goals of keeping global warming well below 2 degrees Celsius. This international commitment forms the bedrock for domestic policies like the Climate Change Act (CCA) of 2021.

The Paris Agreement's influence on Nigeria's ESG landscape is multifaceted;

- i. **International Cooperation:** The Agreement fosters collaboration on climate change mitigation and adaptation strategies. This collaboration facilitates knowledge sharing, technology transfer, and potential financial support for implementing Nigeria's climate goals.
- ii. **Transparency and Accountability:** The Agreement necessitates submitting Nationally Determined Contributions (NDCs)¹, outlining emission reduction targets and adaptation plans. This transparency mechanism fosters accountability and promotes continuous improvement in climate action.

b. The Petroleum Industry Act (PIA), 2022: The PIA makes provisions for various environmental sustainability principles. Some of these core ESG provisions include:

- i. **The Environmental Management Plan:** The Act requires petroleum licensees carrying out either upstream or midstream operations to submit to the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) or Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA), as the case may be, an environmental management plan for projects that require environmental impact assessment.
- ii. **Host Community Development Trust:** This provision of the Act is to foster for sustainable development and environmental protection by oil companies in the upstream sector. The Act provides that every company carrying out upstream operations in community must incorporate a host community development trust for the benefit of these host communities. Failure to comply with this provision is a ground for license revocation under the Act.

- iii. **Contribution to the Environmental Fund:** As a pre-condition to the grant of a license, prospective licensees are required to make a contribution of a prescribed amount to an environmental remediation fund established by the NUPRC or NMDPRA, as the case may be, for the rehabilitation and management of the adverse effects associated with the activities of the licensees.
- iv. **Gas Flaring:** the PIA stipulates fines against petroleum licensees who flare gas, except in the case of emergency where an exemption has been granted by NUPRC or where such flaring is permitted under any applicable regulation.
- v. **Abandonment, Decommissioning and Disposal:** The Act requires licensees intending to abandon or decommission wells, structures, utilities, etc, to comply with industry standards issued by NUPRC and NMDPRA. The licensees are also required to submit and abandonment and decommissioning programme setting out the method to be employed in line with international best practices.

c. Climate Change Act (CCA), 2021: The CCA which was passed shortly after COP26 aims for low greenhouse gas emissions and sustainable economic development by propagating the integration of climate change mitigation and adaptation into Nigerian businesses. Some requirements of the CCA include:

- i. **Climate Change Officer:** The CCA requires every organization including MDAs to have a designated Climate Change Officer who is required to send the report of their implementation of climate change actions to the National Council on Climate Change (NCCC).
- ii. **Emission Reduction Measure:** private entities with 50 employees and above are required to put measures in place to achieve annual emissions reduction targets in accordance with the Nigeria Climate Change Action Plan.
- iii. **Climate Change Performance Obligations:** a private entity will also be required to prepare reports on the status of its performance of climate change obligations for certain periods, when required to by the NCCC.
- iv. **Fines and penalties:** a private entity that does not comply with its climate change mitigation and adaptation obligations exposes itself to the risk of fines and charges, which will ultimately be paid into the Climate Change Fund.

d. Environmental Impact Assessment Act (EIAA) 2004: The Act aims to establish a process for considering the environmental impacts of proposed projects before approval is granted. Some requirements of the EIAA include:

- i. The Act requires that before any Project is authorized, such project must put into consideration the environmental effects, by applying to the Agency in writing and where required, submitting an environmental impact assessment report.

- ii. Where a company carries on a project without the approval of the Agency, following the submission of the environmental impact assessment, the Agency has the right to invoke the power of the court against such company and project.

e. Nigerian Code of Corporate Governance (NCCG) 2018: The Code adopts international best practices in providing corporate governance guidelines for all companies operating within Nigeria.

f. Nigeria Data Protection Act (NDPA) 2023: This Act provides for the compliance of organizations carrying on business in Nigeria with best practices in the processing of personal data. The Act also makes strict provisions around cross border data transfers and required audits.

The NDPA also provides that organizations that do not comply with these provisions will be liable to minimum fine of 2 million naira or 2% of the company's annual gross revenue (whichever is greater) and a maximum fine of 10 million naira or 2% of the company's annual gross revenue (whichever is greater).

g. SEC Guidelines on Sustainable Financing Principles for the Nigerian Capital Market 2021: The Nigerian Securities and Exchange Commission (SEC) issued a Guideline on Sustainable Financing Principles for the Nigerian Capital Market in 2022. These guidelines aim to emphasize the importance of adopting ESG practices within the capital market, not just for compliance, but as part of a company's culture and strategy. Here's how the SEC Guidelines are propelling ESG considerations in the capital market -

- i. **ESG Integration:** The guidelines encourage capital market participants to consider ESG factors when evaluating investment opportunities, managing risks, and developing investment products. This promotes financing for sustainable projects and businesses.
- ii. **Enhanced Disclosures:** The guidelines require regulated entities to report on their efforts towards implementing ESG principles. This transparency allows investors to make informed decisions based on a company's ESG performance.
- iii. **Sustainable Capital Market Development:** The guidelines aim to create a more sustainable capital market ecosystem by encouraging long-term economic growth alongside environmental protection and social development.

Other regulatory frameworks include the Harmful Waste (Special Criminal Provisions) Act the Nigerian Stock Exchange's Sustainability Disclosure Guidelines, the Nigerian Sustainable Banking Principles, Nigerian Sustainable Finance Principles Guidelines for the Nigerian Capital Market, and the National Environmental Standards and Regulations Enforcement Agency Act (NESREA).

ESG INTEGRATION CHALLENGES IN NIGERIA

1. Inadequate Regulations in Nigeria:

The regulatory landscape for ESG in Nigeria lacks a comprehensive and dedicated framework, setting it apart from developed economies. Unlike well-established guidelines in those economies, Nigeria faces a regulatory gap characterized by fragmented and dispersed rules across various laws. This fragmentation creates ambiguity, making it challenging for investors and companies to confidently navigate the ESG terrain.

Addressing these challenges requires the establishment of a comprehensive regulatory framework and a clear and mandatory reporting standard.

2. Greenwashing:

Greenwashing is the deception of organisations that misrepresent their ESG integration commitments by representing that they adopt eco-friendly or environmentally sustainable practices. Greenwashing has the potential to devalue sincere attempts at sustainability, mislead consumers and investors, and support the continuation of unsustainable behaviors. Greenwashing can impede the attainment of environmental objectives and undermine confidence in companies and establishments in Nigeria, where the implementation of ESG principles is still in its early stages.

3. Mitigating the Adverse Effects of Oil Spillage:

In Nigeria, being an oil-producing nation, a constant concern for ESG proponents revolves around mitigating the adverse impacts of oil spillage on the environment. This concern extends to managing climate change risks, fostering adaptation to a low-carbon economy, addressing human capital management challenges, ensuring community engagement and consumer protection, promoting gender diversity and inclusion in the workplace, and deliberating on corporate purpose to serve the interests of stakeholders.

CONCLUSION

In conclusion, Nigeria remains an untapped territory in the integration of ESG in businesses. The appetite of investors is now channeled towards the sustainability of a project beyond the interest of the company but to the planet and community. In aligning with this global trend, Nigeria can leverage practical ESG principles which conforms with its unique economic realities. The integration of ESG into projects and business presents significant opportunities for both investors and companies. Employing sustainable methods and ethical corporate conduct can help organizations reduce risks, increase their long-term value, and draw in funding from investors that care about social responsibility. ESG integration can also result in lower costs, increased stakeholder engagement, and enhanced operational efficiency. Adopting ESG principles can promote good change, encourage innovation, and build a more resilient and inclusive economy for coming generations as Nigeria works toward sustainable economic development.

Most importantly for businesses is that ESG integration saves the company from heavy penalties and fines from regulators.

ABOUT STREN & BLAN PARTNERS

Stren & Blan Partners is a full-service commercial Law Firm that provides legal services to diverse local and multinational corporations. We have developed a clear vision for anticipating our clients' business needs and surpassing their expectations, and we do this with an uncompromising commitment to Client service and legal excellence.

THE AUTHORS



OZIOMA AGU

Partner

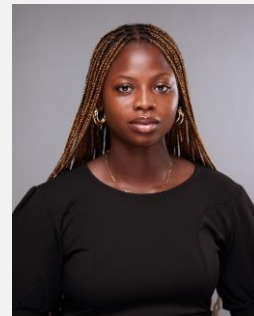
ozioaagu@strenndblan.com



CHIZITEREIH E OTI

Associate

chizitereiheoti@strenndblan.com



KOLAJO ONASOGA

Associate

kolajoonasoga@strenndblan.com

Stren & Blan Partners

+234 (0)702 558 0053

4 Princess Folashade Ojutalayo Cl, Lekki

Phase 1, 106104, Lagos

www.strenandblan.com

contact@strenandblan.com

[@strenandblan](https://www.instagram.com/strenandblan)

