THE APPLICATION OF THE DOCTRINE OF QUI FACIT PER ALIUM PER SE AND CORPORATE CRIMINAL LIABILITY IN NIGERIA

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ABSTRACT

Imputation of criminal liability on a company for the action of its directors, managers and other influential employees has assumed a new dimension in Nigeria's administration of criminal justice. Activating the concurrence of *actus reus* and *mens rea*, which are the major elements of criminal liability was the early hurdle that courts had to scale. Corporate civil liability would be easier to prove because the standard of evidence is less stringent than in criminal process, *qui facit per alium facit perse*. The principle of legality *vis-à-vis* Nigeria's legislations, especially the weakness of Nigeria's Penal Code, has made it easy for corporate offenders to get a "slap on the wrist" punishment in the face of grievous offence against the economy. The paper adopted a library-based and comparative approach to analyse the position of law, as relates to corporate criminal liability in Nigeria, it explains how corporate bodies have been taking advantage of the loopholes in Nigeria's criminal justice system. The paper concludedby making far-reaching and beyond borders suggestions to strengthen the law against this existential threat to the life wire of the Nigerian economy and global relevance.

Keywords: Actus Reus; Mens Rea; Corporate Criminal Liability; Legislation; Plea Bargain

If a person has no conscience, it's called being a sociopath. If a corporation has no conscience, it's called capitalism.[1]

1.0 INTRODUCTION

Historically, the concept of corporate criminal liability has evolved in most civil law and common law systems due to political and socio-economic realities. Most countries civil and administrative laws are permissive of sanctions for erring corporations. Imputing criminal liability on corporations, however, has generated continuous controversy. Arguments have been raised about the adaptability of the principles of criminal law with the legal entity of a corporation. The main controversy was based on the legal fiction that a corporation, without a body and soul, was incapable of satisfying criminal *mens rea* or to act in *propria persona*. Also, that corporate criminal liability would violate the concept of individual criminal punishment.[2] With the advent of super-structured and ultra-rich multinational establishments, the arguments in support of corporate criminal liability is pungent. The goals of corporate criminal liability are not different: retribution, rehabilitation, predictability, clarity and

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1 Quentin R. Bufogle, *Corporation* <tumblr.com/post/123240195168/if-a-person-has-no-conscience-its-called-being-a-sociopath>accessed on 31 October, 2023.

2 Leigh, L.H., "The Criminal Liability of Corporations and Other Groups: A Comparative View" (1982), 80 *Mich. L. Rev.* 1508, 1509.

fairness.[3] These goals have influenced more countries to promulgate laws that regulate corporate criminal liability.

In ancient law, the maximum of *qui facit per alium facit per se*[4] was well established. Under *qui facit per alium facit per se*, a corporation is a legal "person" fully responsible for consequences or benefits of the action of every entity within its chain of agency, as far as such entity acted within the scope of respective authority. The principle, however, does not apply in criminal law.[5] The concept of corporate criminal liability evolved in the 12th – 14th centuries under the Romanic law, it recognized that corporations have their own will power. The common law, based on judicial decisions and legislative acts, did not embrace the Roman concepts. It was decided by Chief Justice Holt that only members, not corporations, could be criminally liable.[6] More so, corporations, being exclusively granted by the crown, were very few in number.[7] The 16th and 17th centuries witnessed the emergence of more corporations with much impact on socio-economic developments. With this popularity, there was also a challenge to control their negative excesses.[8] These exigencies led to the recognition of corporations as different entities from their members. The courts, in 1840, made considerable contribution to English law by imposing liability on corporation for strict liability offences.[9] The courts, soon after, adopted the theory of vicarious liability from the law of torts with the introduction of corporate criminal liability.[10] Lord Bowen introduced the corporate criminal liability concept to coerce corporation.[11] The turning point was 1944, when the English High Court of Justice in three landmark decisions, imputed *mens rea* of employees as that of the company itself to make a corporation directly liable for criminal acts.[12]

1.1 The Anthropomorphic Analysis

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3 Khanna V.S., "Corporate Criminal Liability: What Purposes Does It Serve?" (1996); 109 *Harv. L.R.* 1477, 1509.

4 "He who acts through another, acts himself".

5 What does '*qui facit per alium facit per se'* mean? <www.answers.com/Q/What_does_'Qui-facit-per-alium-facit-per-se' mean> accessed 10 October 2023.

6 In an action against the city of Cheronea, the city was found not guilty. See Florin Streteanu & Radu Chirita, *Raspunderea Penala a Persoanii Juridice*, Rossetti (ed.), (2002) 7 at 34, citing C.Wells, *Corporations and Criminal Responsibility* (Claredon Press, 1993) 36.

7 See Kathleen Brickley, *Corporate Liability of Corporations* (2nd ed., 1992) 64.

8 Ibid, 69.

9 Breach of statutory duty, strict liability for omissions – nonfeasance. See *Regina v Birmingham & Gloucester R.R. Co.*, (1842) 3Q. B 223 and strict liability for actions – malfeasance. See *Gt. North of England R.R. Co.*, (1846) Q.B. 315.

10 See Kathleen Brickley, "Corporate Liability of Corporations" (2nd ed., 1992) 65.

11 See *Regina v Tyler*, 173 Eng. Rep. 643 (Assizes 1838).

12 *DPP v Kent and Sussex Contractors Ltd*, (1944) 1 All E.R. 119 (Where a director used a false document); *Moore v Bresler* (1944) 2 All ER 515 (tax evasion), *R.vI.C.R. Haulage Ltd*, (1944) K.B. 551 (common law conspiracy).

In 1972, the *alter ego*[13] doctrine was introduced in relation to criminal liability of corporations. The *alter ego* doctrine is now recognized under the "identification theory".[14] Lord Denning's metaphor in an earlier case[15] was a reference:

> A company may in many ways be likened to a human body. It has a brain and a nerve centre which controls what it does. It also has hands which holds the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the directing mind and will of the company, and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such.

Lord Reid further emphasized this theory in *Tesco Supermarkets Ltd v Natrass*[16]:

> …where a limited company is the employer difficult question do arise in a wide variety of circumstances in deciding which of its officers or servants is to be identified with the company… I must start by considering the nature of the personality which by a fiction the law attributes to a company. A living person has a mind which can have knowledge of intention or be negligent and he has a hand(s) to carry out his intentions. A corporation has none of these; it must act through living persons, though not always one or the person (same) … then the person who acts or speaks is not acting or speaking "for" the company. He is acting or speaking "as" the company and his mind which directs his acts is the mind of the company…

Lord Reid concluded in his judgment that:

> It must be a question of law whether once the facts have been ascertained, a person in doing particular things is to be regarded as the company or merely a company's servant or agent. In that case any liability of the company can only be a statutory or vicarious liability.

It was established that directors and managers may be identified as the directing mind and will of the company controlling what it does. Their guilty mind is the "*mens rea*" of the company which may be prosecuted for an offence perpetrated by them representing the company. The Chamber of the Lords[17] made a vivid comparison between the corporation and the human mechanisms, qualifying them as "different individuals representing different organs and functions of the juristic person".[18]

2.0 THE RESPONDENT SUPERIOR THEORY VERSUS THE

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13 See *Tesco Supermarket Ltd v Natrass*, (1972) A.C. 153.

14 Harding C., *Criminal Liability of Corporations – United Kingdom*, in" LA Criminalisation Du Comportament Collectif: Criminal Liability of Corporations" 369, 382 (H de Doelder & Klaus Tiedemann (eds), Kluwer Law Int'l 1993) 370.

15 *H. L. Bolton Engineering Co. Ltd v T.J. Graham & Sons Ltd.*, (1957) 1 Q.B. 159 at 172.

16 *Supra.*

17 *Tesco Supermarket Ltd v Natrass (Supra)*.

18 The directors and managers represent the brain, intelligent and will of the corporation.

IDENTIFICATION THEORY

This paper is hinged on the superior and identification theories, with each theory intrinsically linked with the principle of corporate criminal liability. The confluence of these theories are relevant to a broader understanding of the said principle.

2.1 The New Look Corporation

The argument that corporations are legal fictions, unlike human beings who are true subjects of law, has been dented by the role of incorporations in the social, economic and juridical life of the modern society. Corporations now have a legal personality; can own property and possess their distinct rights and obligations.[19] The American Supreme Court decided that corporations have capacity for moral judgments and opinion, therefore, availed a right of expression.[20] Under the English Law, corporations are capable and liable to any crime with the exception based on the principle *lex non cogit ad impossibilia*.[21] Criminal liability of a juristic person does not extend to crimes punished only by imprisonment i.e. murder and treason.[22] Corporations cannot also commit incest, perjury or rape.[23] It has, however, being held that corporations can be sued for manslaughter.[24]

2.2 Argument Against Corporate Criminal Liability

The criticisms of corporate criminal liability are centred on the *actus reus* element of a crime, the *ultra vires* theory and the *mens rea* element. However, these arguments have been distilled with more modern arguments and theories. It was opined by critics that the *actus reus* element of a crime cannot be ascribed to corporations.[25] The acts, however, of individuals representing or acting on behalf of the corporations is ascribed to the said corporations:

> [i]mposing criminal liability on a corporate entity requires resort to the principles of respondent superior, rather than individual responsibility, which is the hallmark of the criminal law.[26]

In addition, the "representatives are not personally liable for acts within the scope of the powers granted them, but the corporation is held liable for them". Corporations are therefore liable for the act or omission of any individual acting on their behalf in the exercise of power

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19 Eli Lederman, *Models for imposing Corporate Criminal Liability. From Adaptation and Imitation Toward Aggregation and the Search for Self-Identity,* (4 Buff. Crim. L.R. 2000) 694.

20 *Bank of Boston v Belloti*, 435 U.S. 765, 787-95 (1978).

21 The law cannot forsee the impossible – see Streteanu & Chirita, *op.cit.* at 112.

22 *R. v I.C.R. Haulage Ltd*, (1994) K.B. 551 (Crim. App).

23 *Ibid*.

24 *R.V.P. & O. European Ferries (Dover) Ltd*, 93 Cr. App. Rep. 72 (1990, UK); Eli Lederman, op.cit. at 645-46.

25 *Ferguson v Wilson* (1866) L.R. 2 Ch. App 77, C.A.

26 Sara Sun Beale & Adam G. Safwat, *What Developments in Western Europe Tell Us about American Critiques of Corporate Criminal Liability* (8 *Buff Crim. L.R.* 89, 97, 2004) 93.

conferred by laws.[27] Moreso, "those that are subjects of legal duties, not only can perform those duties, but also breach them".[28]

The *ultra vires* theory, according to critics, would render illicit any action of a corporation perpetrated outside its scope of incorporation.[29] Their argument is premised on the ground that corporations are bound by their memorandum, articles of incorporation and by law; no law gives them power to perpetrate criminal act, as a result, any crime is necessarily *ultra vires* an incorporation. However, the use of the *ultra vires* doctrine as a shield was overruled in tort and criminal laws, in the early part of the 20th century for the latter.[30] The *ultra vires* theory was designed to insure the legality of the activities of corporations, it would therefore, be paradoxical that same theory could be an instrument through which corporations escape criminal liability.[31]

The major criticism of corporate criminal liability was based on the incongruity of a corporation possessing a *mens rea*. To these critics, a corporation ordinarily "cannot be blameworthy or guilty of criminal offence".[32] The critics emphasized the fact that "corporate will and power of decision" are only exercisable through individuals directing the affairs of the corporation. Accordingly, "mens rea element of a criminal offence does not belong to the corporation, but to the members who made a decision to take a specific course of action".[33] It would, therefore, be against the principles of criminal law for a corporation to be punished without being blameworthy.[34] On the positive side, the critics recognize the "independent existence of a corporate will" which is completely different from that of the "collective will of members of the corporation".[35]

2.3 Argument in Support of Corporate Criminal Liability

A perfect response to the above criticism is that the corporation's capacity to "act and decide" has been recognized in many areas of law".[36]

> Therefore, if a corporation has the capacity to think and decide when it is a part of a contract (and thus being the subject of contractual rights and obligations), it cannot be sustained that corporate will power exists when it produces legal effects, but not when the effects created are illegal (criminal offenses).[37]

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27 Streteanu & Chirita, *op.cit*., 46.

28 Hirsch H.J., *La Criminalisation du Comportment Collectif – Allemange" in "La Criminalisation Du Comportament Collectif: Criminal Liability of Corporations* (H. de Doelder & Klaus Tiedemann (eds), Kluwer Int'l, 1996) 37.

29 See *Ashbury Ry Carriage and Iron Co. v Richie* (1875) L.R. 7 H.L. 653. *People v. Rochester Ry & Light Co.,* 88 N.E. 22 (N.Y. 1909).

30 Nicolette Paris, *Theories of Corporate Criminal Liability (or Corporations Don't Commit Crimes, People Commit Crimes),* in "Corporation As Criminals", Ellenhochstedler (ed.) (Sage Publications, 1984) 41, 45.

31 Streteanu & Chirita, *op.cit* at 52.

32 Hirsh, *op.cit*. at 37, Bale & Swafat, *op.cit*, at 93.

33 Streateanu & Chirita, *op.cit*, at 52.

34 Hirch, *op.cit* at 38.

35 Streteanu & Chirita, *op.cit*, at 53-59; Friedman, *op.cit* at 847-52.

36 For example, law of contract, administrative law and constitutional law.

37 See Streteanu & Chirita, *op.cit*, at 55, citing R. Plascencia Villanueva, Teoria Del Delito 73-74 (Universidad National Autonoma de Mexico, 2000).

Moreover:

> … corporations have civil liability, it would be difficult to explain why the corporation should not be held liable when the offense is more serious (criminal offense as opposed to civil offense). The culpability of corporations exist and it is sufficient for the culpability required by the criminal law.[38]

With the suppression of these anti-corporate criminal liability arguments, the niggling question is who are those persons who can cause corporate criminal liability? At the early days, only the "corporate organs" could activate the corporations' criminal liability:

> The organs represented the soul of the corporation, their actions were the corporation's actions, and therefore, the crimes committed by the organs were those of the corporation.[39]

In recent time, with the dynamic superstructure of corporations (multinationals, subsidiaries and holdings) the categories of persons who can engage the corporations' criminal liability have tremendously expanded.

2.4 Identification Theory

At common law, corporate criminal liability is based on these two major theories: the identification theory and the respondent superior theory. The former[40] was directly imported from the civil law of torts under the English law.[41] Under this theory, the working mechanism of the controlling unit of a corporation have been vividly explained in anthropomorphic terms, wherein "a high ranking corporate member acts not as an agent of the corporation, but as the corporation itself".[42] In line with the decision in *Tesco Supermarkets Ltd v Natrass*,[43] "the *mens reas* and *actus reus* of the high ranking managers are automatically those of the corporations."[44] The essential element of this test is the independence of action of the individual officer.[45] The major pitfall of the identification theory is "where there is defective organisation[46] or deliberate act of corporations to evade liability by restructuring themselves in a way that few decisions could be taken by controlling officers".[47] Another identified pitfall is that it is "impossible to cumulate the acts of *mens rea* of multiple controlling officers".[48]

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38 Hirch, *op.cit* at 38.
39 Streteanu & Chirita, *op.cit*, at 134.
40 Also known as the *alter ego* theory.
41 Guy Stessens, "Corporate Criminal Liability: A Comparative Perspective", (1994) *43 int'l & Comp. L.Q.* 493, 514.
42 Harding C., *op.cit* at 370.
43 *Supra.*
44 Christina De Meglie, "Centennial Universal Congress of Lawyers Conference – Lawyers and Jurists in the 21st Century*:* Paper Models of Corporate Liability in Comparative Law" (2005) 4 *Walsh. U. Global Stud. L. Rev.* 547, 556.
45 Guy Stessens, *op.cit.* at 509.
46 Christina De Meglie, *op.cit.* at 557.
47 See *National Rivers Auth v. Alfred McAlpine Homes E. Ltd* (1994) 4 All E.R. 286 (Q.B.Div.'l Ct).
48 *R.v.H.M. Coroner for East Kent* (1989) Cr. App. R. 16.

2.5 Respondent Superior Theory

Under the *respondent superior theory*, on the other hand, corporations are liable for strict liability offences and for crimes which the law "expressly or impliedly provides indirect liability".[49] It is trite that if the law imposes an obligation, the corporations must organise themselves well enough so they can comply.[50] The *respondent superior* model has been lifted from the civil law and famously adopted by the United States of America:

> The principle of respondent superior represents the implementation of the principle governing vicarious liability: the actus reus and the mens rea of the individuals who act on behalf of a corporation are automatically attributed to the corporation.[51]

As in the tort of vicarious liability, the corporation is liable if the employee commits the crime while acting within the scope of his employment and on behalf of the corporation.[52]

3.0 SANCTIONS

Corporations enjoy certain rights, as well as tied to corresponding obligations under the law. In other words, if the law gives rights to the corporation it may also saddle it with obligations. The legal person is a creature of law. Thus, by law, the legal person, not its shareholders or employees, is assigned its own duties which can be enforced by imposing sanctions

3.1 Corporate Penalties

The bases of sanctions under criminal law are in line with the concepts of prevention, rehabilitation and moral pressure which by their nature, are impossible to apply to corporations. Moreso, corporations cannot be physically incarcerated or executed.[53] To avoid "reputational harm", corporations have embraced criminal fine penalty. The criminal fine penalty system has, therefore, been successful in most countries and "has had a deterrent effect when its quantum was properly individualized."[54] The penalties of re-organization or probation has served as a means of rehabilitation to corporations.[55] The criterion of "just" has been satisfied where the criminal punishment of corporations was proportional to the culpability of the corporation.[56] Criminal sanctions for corporate criminal liability have proved to be appropriate means of fulfilling the retributive, rehabilitative and deterrent goals of criminal law.[57]

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49 *Allen v. Whitehead* (1930) 1 K.B. 211; Streteanu & Chirita, *op.cit.* at 147.
50 *Alphacell v. Woodward* (1972) ZALL E.R. 475 (HL).
51 Christina De Meglie, *op.cit.* at 553.
52 Wise E.M., *Criminal Liability of Corporations – US*, in "La Criminalisation Du Comportament Collectif: Criminal Liability of Corporations", H. de Doelder & Klaus Tiedemann (eds.) (Kluwer Law Int'l, 1996) at 390-91.
53 Streteanu & Chirita, *op. cit.* at 65.
54 *Ibid*.
55 James Gobert, "Controlling Corporate Criminality: Penal Sanctions and Beyond", 2 Web JCL1 page 6 (1998) available at http://webjc/inc/ac.uk/1998/issue2/gobert2/html accessed 20 November, 2023.
56 *Ibid*.
57 *Ibid*.

Confiscation of the fruits of the crime has also proved to be another effective sanction.[58] Confiscation is more effective with impactive results if employed as a complementary sanction.[59] For serious violations of labour or environmental laws the sanctions of suspension could also be imposed on incorporations.[60] Where a corporation was created for illegal purposes or where a corporation has committed very serious crimes, dissolution represents a capital punishment.[61] Adverse publicity orders is another effective sanction for corporate criminal activity.[62] Sanction of community service is another effective and community-friendly solution.[63] Other form of sanctions are:

> …restraining the corporation from the performance of some activities, denial, suspension or retraction of licenses, loss of rights (such as benefitting from subventions or tax breaks), prohibition of advertising or selling on specific markets, etc.[64]

Corporations "can also be restructured, required to submit periodical reports, or put under the supervision or control of a consultant…"[65] Corporate probation has been rated to have "strong rehabilitative effects"[66] with minimal flaw.[67]

> The goal, which is the rectification of the corporate policies and practices that gave rise to the criminal offence, is so crucial that a remedial/rehabilitative probation condition should be virtually automatic unless the company could show that it had already taken adequate steps to prevent a reoccurrence of the offence.[68]

3.2 U.S.-Style Sanctions

As opposed to the English mode of sanction which was stated to lack imagination and effectiveness,[69] the American system "provide just punishment, adequate deterrence, and incentives for organisations to maintain internal mechanism for preventing, detecting, and reporting criminal conduct."[70] The American law system lay emphasis on retribution and deterrence; the punishment and fines must be just and fit:

> In the first, the court will calculate a base fine that reflects the seriousness of the offence committed (USSG s 8C 2.4). Seriousness is measured by the greater of the pecuniary gain to the offender; the pecuniary loss to the victim (to the extent the loss was caused intentionally, knowingly or recklessly); and the intrinsic wrongfulness of the offence as established by a statutory table (USSG s 8C 2.4 (a)). Next, the court will multiply the base fine by a numerical

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58 *Ibid*.
59 Streteanu & Chirita, *op.cit.* at 172.
60 *Ibid*.
61 James Gobert, *op.cit.* at 11.
62 *Ibid*, at 9.
63 James Gobert, *op.cit.* at 6-8.
64 Streteanu & Chirita, *op.cit.* at 174.
65 James Gobert, *op.cit.* at 11-18.
66 Guy Stessens, *op.cit.* at 517.
67 James Gobert, *op.cit.* at 18.
68 *Ibid* at 12.
69 Harding C., *op.cit.* at 381.
70 U.S. Sentencing Guidelines Manual, 18 U.S.C.S. Appx. S 8A1.1 (2005), at S 8, introducing cmt.

> factor that reflects the culpability of the offender (USSG s 8C 2.7). This will yield a recommended fine range. Finally, the court will select an appropriate fine from within the recommended range, unless it can justify a departure from the range (USSG s 8C 2.8).[71]

In addition, for a corporation purposely set up for criminal activities, the fines "will be sufficient to divest the organisation of all its net assets".[72] Together with payment of huge fines, detective and preventive measures are also imposed on the corporation:

> This new approach to deterrence is called the carrot-stick model. The stick consists of the application of fines, which are much higher than in the past. The carrot consists of a reduction in fines if the corporation has adopted an effective compliance and ethics program.[73]

4.0 PLEA BARGAIN AND CORPORATIONS

Plea bargain is an expedient adjudicatory mechanism in the settlement of corporate criminal cases, it offers acceptable sanctions and it is time effective. Nevertheless, this procedure is also fraught with moral issues and may lead to travesty of justice.

4.1 Plea Bargain and the Administration of Criminal Justice System

Plea bargaining have been a useful tool for infusing efficiency into the administration of criminal justice process in the United States of America and it had been adopted in other common law and civil law jurisdictions.[74] According to the Black's Law Dictionary,[75] plea bargaining is:

> A negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for some concession by the prosecutor, usually a more lenient sentence or a dismissal of the other charges. Also termed plea agreement, negotiated sentence bargain.

In *Santobello v New York*,[76] the U.S. Supreme Court acknowledges the pivotal role of plea bargaining in the US administration of criminal justice process:

> The disposition of criminal charges by agreement between the prosecutor and the accused, sometimes loosely called 'plea bargaining', is an essential component of the administration of justice, properly administered, it is to be encouraged.

The California Supreme Court in *People v Orin*[77] described the plea bargaining process as follows:

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71 James Gobert, *op.cit.* at 14.
72 U.S. Sentencing Guidelines Manual, , *op.cit.* at S 8C1.1.
73 Christina De Meglie, *op.cit.* at 565.
74 For example, France and Argentina it is also widely applicable in England, Wales, India e.t.c.
75 Garner, B.A. (ed), *Black's Law Dictionary* (8th edn, United States of America: West Publishing Co., 2004).
76 (1971) 404 U.S. 257, 260 (92 S. Ct. 495, 498).
77 (1975) 13 Cal. 3d 937, 942, (120 Col. Rptr. 65, 533, p.2d, 193).

> The process of plea bargaining which has received statutory and judicial authorisation as an appropriate method of disposing of criminal prosecutions…contemplates an agreement negotiated by the people (the prosecutor) and the defendant and approved by the court.

The California Supreme Court unanimously agreed that "Judicial approval is an essential condition precedent to the effectiveness of the 'bargain' worked out by the defense and prosecution."[78]

4.2 The U.S. Experience

The Serious Fraud Office (SFO) of the United States has effectively saved time and costs through the instrumentality of plea bargaining. In July 2012, Oxford University Press reached a €1.9m civil settlement with SFO over bribery allegations after admitting that it made improper payments to win government contracts in East Africa. In the same vein, in July 2011, Macmillan Publishing reached an €11m civil settlement with SFO over bribery allegations after admitting that it made improper and unauthorized payments to local officials in Sudan in an attempt to win contracts.[79] In December 2010, the U.S. government received about $1.28 billion in form of criminal fines and disgorgement[80] of profits from various firms, to wit, Siemens paying $30 million, Halliburton $579 million, Snamprogetti and Technip paying $240 million each as fine and disgorgement to the U.S. government as criminal penalty for crimes of bribery and criminal conspiracy committed in Nigeria.[81] Another example is the British pharmaceutical company, Glaxosmithkline, which in July 2012 pleaded guilty to criminal charge in the U.S. and paid $3 billion in criminal and civil fines to settle allegations of healthcare fraud spanning more than 10 years.[82] In the US, it has been reported that about 90 percent of criminal cases end in plea bargain,[83] this has accounted for the high rate of convictions.

4.3 Plea Bargain under the Nigerian Law

The adoption of plea bargain in the administration of criminal justice in Nigeria is relatively new.[84] There have been arguments for and against plea bargain in Nigeria. The argument that generated more controversy was credited to the former Chief Justice of Nigeria, Justice Dahiru Mustapher (as he then was). He was reported to have berated the Economics and

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78 *People v Orin (Supra)* at pp. 942-943.

79 Elly Proudlock & Caitlin McCuskes, "Establishing the Criminal Liability of Corporations", Fraud and Corporate Crime. Legal Departments of Wilmerhale, November 2012, <www.legal500.com/c/nigeria/developments/22251>accessed 14 November 2023.

80 Under the U.S. Model, erring companies or individuals are to pay criminal penalty or fine in multiple of the amount of the transactions, disgorge all profits made from that deal and institute a three year scheme of corporate compliance.

81 The Guardian (Nig.), Tuesday, December 14, 2010, pp. 1&2.

82 Elly Proudlock & Caitlin McCuskes *op.cit*.

83 Sandefur T., "In Defence of Plea Bargain" *Regulation Fall* (2003) Reid, S.T. Criminal Justice & Benchmark: Chicago (1996).

84 The practice of plea bargaining was alien to Nigeria's jurispendece until the enactment of the EFCC Act, 2004.

Financial Crimes Commission (EFCC), for smuggling the plea bargain concept into the Nigerian jurisprudence and stated that the concept had "dubious" origin. The address of the former CJN is reflective in nature:

> When I described the concept as of 'dubious origin', I was not referring to the original raison-d'etre or the juridical motive behind its conception way back either in the United States or England in the 19th century, I was referring to the sneaky motive behind its introduction into our legal system, or its evident fraudulent application. You will learn that plea bargain is not only "condemnation without adjudication" as John Langblen described it, it is as some other critic say, "a triumph of administrative and organisational interests over justice". At its very best it penalises the innocent who may be tempted to plead guilty to avoid being activated by judicial default and its most obnoxious extent it grants 'undue leniency' as reward to criminals simply for pleading their guilt…[85]

However, with due respect to the learned former CJN, Justice Dahiru Mustapher, the practice and concept of plea bargain is not totally "alien to our nation's statutes" and 'dangerous to our justice system'. Section 14(2) of the Economic and Financial Crimes Commission (Establishment) Act, 2004[86] provides as follows:

> Subject to the provision of Section 174 of the Constitution of the Federal Republic of Nigeria, 1999,[87]the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, exceeding the amount to which that person would have been liable if he had been convicted of that offence.

Similarly, the Lagos State Administration of Criminal Justice Law (ACJL 2007)[88] provides that:

> Notwithstanding, anything in this law or any other law, the Attorney-General of the State shall have power to consider and accept a plea bargain from a person charged with any offence where the Attorney-General is of the view that the acceptance of such plea bargain is in the public interest, the interest of justice and the need to prevent abuse of legal process.[89]

Arguably, section 180(1) of the Criminal Procedure Act has been cited in support of plea bargaining, it provides that:

> When more charges are made against a person and a conviction has been had on one or more of them, the prosecutor may, with the consent of the court, withdraw the remaining charge or charges or the court, of its own motion, may stay trial of such charge or charges.[90]

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85 Vanguard Newspaper, March 6, 2012.

86 EFCC Act, 2004.

87 Section 187 of the 1999 Constitution relates to the power of the Attorney-General to institute, continue, takeover or discontinue any criminal proceedings against any person in any court of law.

88 ACJL 2007 had since been repealed by ACJL 2011.

89 Under the Nigerian legislative framework, it is not the exclusive preserve of the federal government to regulate the criminal justice system.

90 Criminal Procedure Act CAP C41 LFN 2004, section 180 (1).

Order 18, Rule 1 of the Federal High Court (Civil Procedure) Rules also hints at plea bargaining, it states that:

> When a matter comes before the court for the first time, the judge shall in circumstance where it is appropriate grant to the parties, time, not more than thirty days within which parties may explore possibilities for settlement of dispute.[91]

Article 37 of the United Nations Convention against Corruption also stated that state parties should allow for the mitigation of punishment for accused persons who agree to give evidence of their corrupt acts in co-operation with prosecuting authorities.[92]

In spite of the arguments against plea bargaining in Nigeria, it is unconstitutional, it is against the Nigerian adversarial or accusatorial judicial system, it is against the fundamental principle of presumption of innocence[93] and heavily susceptible to abuse and perversion, its advantages are numerous. In *Federal Republic of Nigeria v Lucky Igbinedion,*[94] the Court of Appeal per Ogunwumiju, J.C.A. stated thus:

1. Accused can avoid the time and cost of defending himself at trial, the risk of harsher punishment, and the publicity the trial will involve.
2. The persecution saves time and expense of a lengthy trial.
3. Both sides are spared the uncertainty of going to trial.
4. The courts system is saved the burden of conducting a trial on every crime charged.

However, the travesty of plea bargain in Nigeria was displayed in the following cases:

> In 2008, the former governor of Edo State from 1999-2007, Chief Lucky Nosakhare Igbinedion was arraigned by the Economics and Financial Crimes Commission (EFCC) before the Federal High Court, Enugu in charge No FHC/EN/6C/2008 on a 191-count charge of corruption, money laundering and embezzlement of ₦2.9b. In a plea bargain arrangement the EFCC through its counsel Mr. Rotimi Jacob reduced the 191-count charge to one-count charge… in line with the plea bargain on the 18th December 2008, the court presided over by Justice A. Abdul Kafarati convicted Lucky Igbinedion on the one-court charge and ordered him to refund ₦500m, forfeit 3 houses and sentenced him to 6 months imprisonment or pay ₦3.6m option of fine.[95]

Another incident of the abuse of plea bargain arrangement was the case of Yusuf John Yakubu, a former Assistant Director of the Police Pension Board. Yusuf was accused of embezzling ₦32.8billion from the Police Pension Board Funds. He entered a guilty plea and

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91 Federal High Court (Civil Procedure) Rules, 2009, Order 18, Rule 1.

92 United Nations Convention Against Corruption, 2003, Article 37.

93 See the Constitution of the Federal Republic of Nigeria, 1999, Section 36 (5); the Evidence Act 2011, Section 135 (1), (2) and (3).

94 (2014) LPELR – 22760 (CA) at 75-76.

95 Peter Odia,"The Abuse of Plea Bargain in Nigeria", Sahara Reporters, June 23, 2011<saharareporters.com/2011/06/23/abuse-plea-bargain-nigeria> accessed 15 October, 2023.

Justice Muhammed Taiba of the Federal High Court, Abuja ordered the forfeiture of 32 choice assets acquired by Yusuf and sentenced him to 6 years imprisonment, two years for each of the three counts or an option of ₦250,000 for each count.[96]

In a similar development, the former Inspector General of Police, late Tafa Balogun, converted billions of naira belonging to the Police Force for his personal use. He was handed a six-month jail term for each of the eight counts brought against him as well as a fine of ₦500,000 for each count. The terms were to run concurrently while the judge ordered that the 67 days he spent in detention during trial should be deducted.[97] Other high profile abuse of the process in Nigeria is the money laundering case of former Governor Dipreye Alamieyeseigha of Bayelsa State who forfeited some of the assets believed to be fraudulently acquired to escape stiff sentence. Ditto, the former Managing Director and Chief Executive Officer of Oceanic Bank Cecilia Ibru, who was accused of mismanaging depositors' funds.[98]

5.0 STATUTORY AND INSTITUTIONAL FRAMEWORK FOR CORPORATE CRIMINAL LIABILITY IN NIGERIA

Statutes and court decisions in Nigeria clearly confirm the operation of this principle.

5.1 Statutory Framework

It has been emphatically stated that the Criminal Law in Nigeria has no business with the English doctrine of *mens rea* as developed at common law, considering that the Codes have extensive provisions dealing with the mental element of a crime.[99] This position was explicitly expressed thus:

> First and most important… there is really no need to import mens rea into Nigerian Criminal Law at all in view of the provisions in the criminal code itself.[100]

It was further explained that, the combined effect of section 36(12) of the Constitution[101] and section 4 of the Criminal Code Act,[102] it seems, is to eliminate the common law of crimes in Nigeria as well as every other customary criminal law.[103] In other words, the body of the criminal law in Nigeria is statutory, the elements to determine the existence of offences are, therefore, products of statutes.[104] The effect of this is that the common law of crime in

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96 "Plea Bargain: A Mockery of Nigeria's Legal Process!" *The Street Journal*, February 6, 2013, <thestreetjournal.org/2013/02/6653/ >accessed 15 October 2023.

97 *Ibid.*

98 *Ibid.*

99 Criminal Code Act, Cap. 77, Laws of the Federation of Nigeria, 1990 (now Cap, C28 LFN, 2004), Chapter V; and Penal Code Law, Cap. 89 Laws of Northern Nigeria, 1968, Chapter II.

100 Okonkwo & Naish, "Criminal Law in Nigeria" (2nd ed., Ibadan: Spectrum, 1980) 67.

101 Constitution of the Federal Republic of Nigeria, 1999 (as amended).

102 *Op. cit.*

103 A.G. Karibi-Whyte, *Criminal Policy: Traditional & Modern Trends* (Lagos, 1988) 25-68. See *Aoko v. Fagbemi* (1961) All NLR 400 where conviction for adultery was quashed for not being an offence under the Criminal Code). See also the Penal Code Law, op cit sections 2 & 3.

104 For examples, Criminal Code Act, Section 24 and the Penal Code Law, Section 48. Sections 190 and 436(b) of the Criminal Code Act was applicable to the promoter of Malabu Oil and Gas (shell and Eni was used to bribe Nigerian politicians and intermediaries who helped to secure one of Nigeria's richest

Nigeria is either modified or excluded.

5.2 Lifting the Veil of Incorporation under Nigerian Statutes

The Companies and Allied Matters Act (CAMA) 2020[105] extensively provide for corporate criminal liability for erring corporations. Sections 89 – 94 of CAMA 2020[106] effectively combined to demystify the principle of distinct corporate personality established in *Salomon v Salomon*.[107] Section 436 of the Criminal Code Act[108] provides for the "criminalization" of certain corporate activities. Section 8(1) (a-f) of CAMA[109] also conferred on the Corporate Affairs Commission the power of "regulation and supervision of the formation, incorporation, management and winding-up of the companies". This power includes lifting the veil of incorporation to impute criminal liability on individuals that are criminally liable.

In *Public Finance Securities Ltd v Jefia*,[110] the court copiously stated that:

> The court will lift the veil of incorporation of any company to find out who was behind the fraudulent and improper conduct of the company. This will be necessary where the canopy of legal entity is used to defeat public convenience, justify wrong, perpetuate and protect fraud and crime. Also, where a company was involved in reckless and fraudulent trading activity tainted with fraud, the court can pierce the veil of incorporation.

However, there are certain 'human crimes' that are virtually impossible to hold a corporation criminally liable. In the words of Stable J:

> … perjury and offence which cannot be vicariously committed or bigamy… offences of which murder is an example, where the only punishment the court can impose is corporal, the basic of which the exception rests being that the court will not stultify itself embarking on a trial in which if a verdict of guilty is returned, no effective order by way of sentence can be made.[111]

Stephen Griffin put it more clearly that:

> Corporate entity may not be convicted of murder as the sentence for that offence, namely, a mandatory penalty of life imprisonment is incapable of being imposed against an artificial entity.[112]

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oil field (OPL245) - that a false declaration was made to induce the Corporate Affairs Commission to issue an incorporation certificate.

105 CAMA, Cap. C20, Laws of the Federation of Nigeria, 2004(Ss.65,66 &67(1)) was repealed by CAMA 2020.

106 *Ibid.*

107 (1897) A.C. 22.

108 *Op. cit*.

109 CAMA, *op.cit*; see also section 850(formerly s. 563) - on the withdrawal and cancellation of the certificate of incorporation by CAC.

110 (1998) 3 NWLR pt. 59.

111 *R.V. I.C.R. Haulage Ltd* (1947) K.B. 551.

112 Griffin S., "Corporate Killing – the Corporate Manslaughter and Corporate Homicide Act 2007" in *L.M.C..L.Q.*, 2009, p.72 at 74.

This is also the position of law in Nigeria, a corporation could not be charged with the offences of personal violence or with offences for which the only punishment is imprisonment. Ainley C.J., in *A.G. Eastern Region v Amalgamated Press of Nigeria*,[113] said

> I will concede that a corporation cannot be charged with offences of personal violence or with offences for which the only punishment is imprisonment.

In addition to the provisions of the Companies and Allied Matters Act, Criminal Code and Penal Code, certain Nigerian statutes specifically contain provisions which tacitly attach strict responsibility to company officers for corporate criminal liability. These statutes are Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act[114], National Drug Law Enforcement Agency Act[115], National Environmental Standards and Regulation Enforcement Agency (NESREA) Act[116], Tobacco Smoking (Control) Act[117], Food and Drug Act[118], Standard Organization of Nigeria Act[119], Weights and Measures Act[120], Dangerous Drugs Act[121] and few other municipal laws which are now redundant and in urgent need of amendment or outright repeal.[122]

5.3 Nigerian Financial Sector and Corporate Crime

The statute that has caught the eyes of the public in the Nigerian financial sector is the Failed Bank (Recovery of Debts) and Financial Malpractices in Bank Act[123]. The relevant section that copiously capture corporate criminal liability in Nigeria clearly states that:

> Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the connivance of or to be attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, where practicable, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.[124]

The section extends the criminal liability to other body corporate other than banks in Nigeria; it further states that:

> Where a body corporate, other than a bank, is convicted of an offence under this Act, the Court may order that the body corporate be wound up and the

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113 (1956-57) 1 E.R.N.R. 18.
114 Cap. C45, LFRN 2004, Section 3.
115 Cap N30 LFRN 2004, Section 24.
116 2007, No.25, NESREA Act (NESREA Act by section 36 officially repealed the Federal Environmental Protection Agency Act Cap. F10 LFN, 2004), section 27(4).
117 Cap. T6, 1990 No.20, Section 5(2).
118 Cap. F32 Vol. 7 LFN 2004, Section 17(2).
119 Cap. S9 Vol.4 LFN 2004, Section 20.
120 Cap W3 LFN, Section 33.
121 Cap. D1, Vol.5 LFN 2004, Section 19(5).
122 For examples, Environmental and Sanitation Edict, 1994, Edo State (enacted by virtue of Constitution Suspension and Modification Decree, 1993), Kano State Environmental Sanitation and Planning Edict, 1990, Anambra State Environmental Sanitation Authority Edict, No.5, e.t.c.
123 Cap. F2, Vol.6, LFN 2004.
124 *Ibid*, Section 18(1).

> body corporate shall thereupon and without any further assurance but for that order, be wound up and all its assets, after satisfying all the claims of the Receiver or Liquidator, shall be forfeited to the Federal Government.[125]

The Failed Bank (Recovery of Debts) and Financial Malpractices Act[126], has been a potent weapon in the hands of the EFCC to instill normalcy into the financial and corporate institutions in Nigeria.[127]

6.0 'Home' Legislation and Corporate Criminal Liability

It is "generally perceived that home jurisdictions in vulnerable areas in Nigeria are powerless when it comes to the control of multinational corporations".[128] This "vulnerable areas" is partly due to the "hierarchical complex management structures of big corporations[129] and partly because of weak 'home' legislation relating to corporate criminal liability. Griffin Stephen[130] argued that:

> (T)he failure to prosecute public companies may be explained in the context of complex management structure of large corporations, which frequently result in a dilution of any causal link between a culpable employee and company's directing mind. In a large corporation, corporate policy and implementation of corporate powers flowing from directing mind may become misinterpreted, confused or abused by lower tiers of management. Although, the wrongful act or omission of an employee may have been linked to the 'instructions of a more senior employee, the act or omission would often be considered devoid of any direct and binding authority from the directing mind.

Obviously, it may be problematic to apportion blame based on hierarchical order due to the composition of the new-look multinational companies, as powers and duties are saturated across board. Apparently, this loophole in relation to the identification theory is a constraint and the main reason why there is a record low conviction rate against corporations for the offence of involuntary manslaughter in England. As a former British colony, the principle of corporate criminal liability in Nigeria is still governed by the old common law doctrine. Accordingly, prosecution of corporate bodies under the common law doctrine is more complex due to the 'identification doctrine', which operates on the belief that a director should take responsibility for any act or omission perpetrated by a company as the 'directing will' of such company. However, the reality of modern corporations is that their responsibilities are usually hyperextended to almost everyone within the organization.

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125 *Ibid*, Section 18(2).

126 *Op. cit*.

127 See *Federal Republic of Nigeria v. Dr. Nwochie Odogwu and Capital Merchant Bank* No.1 (1997). 1 F.B.T.L.R. 179. See also F.R.N. v. Dr. Odogwu No.2, (1997) F.B.T.L.R. 236- an application for the variance of the sentence.

128 Amao, O.O., "Corporate Social Responsibility, Multinational Corporations and Law in Nigeria: Controlling the Multinational in Hosts States" (2008) 52 *Journal of African Law* 2, 2.

129 See Griffin Stephen, *op. cit* at 74.

130 *Ibid.*

To this end, it is hard to identify an individual to carry the weight of the corporation's burden. Inevitably, it is almost impossible to implicate a corporate body by adopting 'the aggregation of the fragmented faults of the directors'. Therefore, in order to be held liable under the common law corporate manslaughter, a company's culpability must reflect the human element of criminal liability identified as the corporation's directing mind and will. Invariably, the directing mind of a corporation may partly or wholly depute its function to individual members of the senior management of the company, the delegation of power is now an essential element in the ascertainment of the criminal liability of a company. In the light of the above, under the Nigerian law, a corporate body cannot be held culpable for the common law offence of involuntary manslaughter except a 'separate conviction is also sustained against an individual who was part of the company's directing mind and will'.

6.1 United Kingdom Corporate Manslaughter and Corporate Homicide Act 2007 (CMCH Act)

The whole essence of the UK's CMCHA 2007 without doubt, is to make it easier to convict companies that cause fatal accidents and to help decrease the number of fatalities.[131] The CMCH Act defines "senior management" as persons who play a significant role in managing, or determining how to manage, the whole or a substantial part of the organization's activities (section 1(4)(c)). If the organisation is convicted under the CMCH Act then the organisation is liable for a fine that will seldom be less than £500,000 and may be measured in millions of pounds. The CMCH Act is limited to incidents that result in death (section 1(1)(a)). The CMCH Act applies to an organisation if the way in which its activities are managed or organised causes a person's death and it amounts to a gross breach of a relevant duty of care owed by the organisations to the deceased (section 1(1). The CMCH Act applies to a broad range of organisations including corporations, partnerships, police forces, trade unions, employers' associations, as well as a number of specific government departments and bodies (section 1(2)).

The CMCH Act also applies to non-profit organizations that have very limited resources and may not be as morally blameworthy as profit-making organizations that cut costs and prioritize gains over the welfare of their employees. Another element of the offence is that there must be a gross breach of a relevant duty of care. A relevant duty of care is a duty owed under the law of negligence by employers to employees, as occupier of premises, in connection with supplying goods or services or where the organization is responsible for another person's safety(section 2(1)).Key provisions of the Act include the extension of the identification principle,[132]unlimited financial fine for a convicted corporation,[133] power granted to court to make remedial order[134] and discretionary order[135]against any corporation convicted of corporate manslaughter, and the definition of relevant duty in relation to an

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131 Andrew D.H. *et al*; *The Impact of Corporate Manslaughter and Corporate Homicide Act 2007 on Construction Industry in the UK* (2010) <http://ascpro.ascweb.org/archives/cd/2010/paper/CPRT240002010.pdf >accessed 10 November, 2023.

132 UK's CMCHA, 2007, Section 1.

133 *Ibid*, Section 1(6).

134 *Ibid*, Section 9.

135 *Ibid*, Section 10.

organization.[136] The court also has the power to require the organization to publicize its conviction in addition to the particulars of the offence, the amount of any fine imposed and the terms of any remedial order made (section 10). Again, the UK Parliament decided to create a specific stand-alone corporate offence of negligently failing to prevent bribery by the enactment of the Bribery Act 2010. Under section 7(1) of the UK Bribery Act 2010, a commercial organization is guilty of an offence if a person associated with the organization bribes another person intending to obtain or retain business, or an advantage in the conduct of business, for the organization. However, the Bribery Act contains a defence of due diligence, this defence is tenable where the company has adequate procedures in place which are designed to prevent employees or agents from being involved in bribery (section 7(2)).

6.2 U.S. Corporate Manslaughter and Corporate Homicide Act, 2007

The United States of America's Corporate Manslaughter and Corporate Homicide Act[137](US'CMHA 2007) also came into force in 2008. Its major pre-occupation is corporate conduct that results in death. Under the US' CMHA 2007:

> … a company can be held criminally liable for the actions of its employees regardless of their seniority in the organisation. This lower threshold for liability together with the greater resources and a more aggressive prosecution policy, means that the US authorities have a greater appetite for significant corporate prosecutions than their counterparts in the UK…[138]

Conspicuously, the US CMHA, 2007 considerably set the threshold lower than the director cadre and the onus is not on the prosecution to prove specific failings on the part of individual senior managers.[139] The Act criminalises conduct that amounts to negligence and offences involving dishonesty. Thus, a corporation can be liable for the actions of its agents (including its employees) whenever the agents act within the scope of their employment and partly to benefit the corporation. The US courts have adopted a broad interpretation of 'scope of employment' in a wider range so as to leave a company with narrow route of escaping liability. Thus, where another party acted on the belief that a company's agent has authority, the company would be held liable even where it has not in fact empowered such agent. Most importantly, irrespective of the high ranking or managerial status of employees, the company could still be held criminally liable for their acts or omissions. The US system is more forceful and aggressive than the UK system due to its flexibility, financial capability and ruthless corporate prosecution policy.

6.3 CONCLUSION AND RECOMMENDATIONS

The common law position adopted by Nigeria for corporate criminal liability has created palpable problems in the prosecution of incorporations for corporate manslaughter. Although the identification of the company's directing mind may be effective in decent-sized corporate bodies, it is basically ineffective in a large conglomerate or multinational corporations In the United Kingdom and the US, there are paradigm shifts in the investigations and prosecutions

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136 *Ibid*, Section 2.

137 U.S. CMHA, 2007.

138 Elly Proudlock & Caitlin McCusker, "Establishing the Criminal Liability of Corporations" (2012) <www.legal500.com/c/nigeria/developments/22251> accessed 15 October 2023.

139 Ibid.

for corporate manslaughter due to the dynamism of the enabling laws – these has considerably reduced the frequency of corporate manslaughter in the U.K. and U.S.

Nigeria and other jurisdictions perhaps should take a clue from the afore-mentioned countries and effect the desired changes in their laws. The aviation, administrative, construction, corporate and, the oil and gas sectors of the Nigerian economy are replete with incidents that amount to corporate manslaughter with no significant conviction recorded. Constructively, both the Criminal and Penal Codes rule out the possibilities of holding a company liable for offences of manslaughter or gross negligence. Due to the absence of specific law for prosecution of companies for manslaughter or gross negligence resulting from a breach of a duty of care to their employees, many citizens have lost their lives without retributions or compensations in Nigeria.

It is hereby recommended that the Nigerian Corporate Manslaughter Bill of 2018 should be further amended in line with the U.K. and U.S. models in order to make it easy to prosecute and convict companies in Nigeria for corporate manslaughter and gross breach of a duty of care to their employees or any other aggrieved party. The aim and objective of the Bill is to fill some lacunae in the Criminal and Penal Codes which mitigate the criminal liability of corporate bodies for gross negligence and other criminal acts of commission or omission. The U.K. and U.S. version of the aggregation model (senior management test) should be adopted in Nigeria, as corporate liability has ultimately 'moved away from the wholly individualistic approach of the identification doctrine to a test that better reflects corporate criminal liability'. In line with the practice in developed countries like the U.S., U.K. and Australia, it is further recommended that punishment for corporate criminal offences should include substantial fines, remedial orders, publication, corporate probation, criminal restitution of gains received and other monetary penalties.

Also, effective compliance programmes should be put in place before any plea bargaining or negotiated pardon for a corporate body who has committed any crime. Whistleblower's policy should also be encouraged to allow employees anonymously report suspected managerial crimes to regulatory authorities or outsiders. Henceforth, a company must merit its plea for mitigation - it must manifestly show that it has substantially activated requisite compliance mechanisms so as to afford early prevention and detection of wrongdoings by its employees before being granted pardon or leniency. Corporate leniency or mitigation should, therefore, be merited.

Finally, a company may be convicted of murder where it is foreseeable that its action could result in the death of its employee or a third party, as long as such act or omission was in the course of the duty of the company. The effective sanctions for the offence of corporate manslaughter should be dissolution, temporary closure of the company or withdrawal of its certificate of incorporation, striking the erring company's name off the register of companies or winding up of the company. These sanctions are equivalent to the punishment of death for a natural person as prescribed by section 17(a) of the Criminal Code and section 68(1)(a) of the Penal Code.