

Corporate Criminal Liability: Call for a New Legal Regime in Nigeria

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Abstract

The increasingly relevant role that corporations assume in all aspects of modern life is correspondingly attended by their increased participation in criminal activities that result in loss of lives and properties. However, there is a conundrum created by the artificiality of corporations as they do not easily lend themselves to existing criminal laws designed with human actors in mind. The current Nigerian law on corporate criminal liability is disquietingly deficient. The extant law only provides room for civil recompense in the event of tragedies such as the recent petrol tankers explosions in different parts of Nigeria which claimed hundreds of lives. This paper emphasizes the need to make a radical departure from the present position of the law which is fashioned along the old English legal system to the effect that corporations could only be criminally held liable for very limited offences. The paper, while considering the extant position in the UK by virtue of the Corporate Manslaughter and Corporate Homicide Act, 2007, calls for a review of our laws, and more particularly, calls for the expedited passage of the Corporate Manslaughter Bill, 2010 into law if the menace of corporate killings is to be properly confronted in Nigeria.

Keywords: Corporate Crime, Corporate Liability, Vicarious Liability, Corporate Manslaughter.

1. Introduction

Corporate personality and imposition of corporate criminal liability have given a great unease in the field of Criminal Law. "Nobody bred it, nobody cultivated it, nobody planted it, it just grew" (Mueller, 1957). In the past, it was inconceivable that a corporation could be held liable (Emem and Uche, 2012). The argument generally advanced was that a corporation as an artificial person, has no physical existence and could therefore not be subjected to the prescribed penalties attached to offences (Amao, 2008). Alongside this thinking, there were also those who felt that a corporation has all the attributes of a natural person and should therefore be capable of receiving all the punishments attached to all offences including physical punishment.

Under the Common law, corporations are criminally liable subject to certain limitations such as assault, manslaughter, murder, and rape. This position makes it possible to hold a corporation criminally liable for acts of non-feasance under the Common Law and this was later extended to cover misfeasance. In this respect, no mental state was required and the penalty which was practicable then was a fine which a corporation could easily be made to pay (Slapper, 2010). Presently, in offences that require the proof of *mens rea*, corporations are easily made liable by imputing the state of the mind of e.g. the directors who are the alter ego and directing mind of the corporation.

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In other instances, corporations have been vicariously and criminally held liable for the acts of such junior employees as drivers, clerks or cashiers. This is done through either the law of agency or labour law which makes the principal liable for the act of its agent and the master liable for the act of its servant (Slapper, 2010). The Nigerian Legal system which is fashioned along the same system as the English legal system accommodates the position at Common law to the effect that corporations could be criminally held liable but not for all offences.

Moreover, new insights have been gained largely through the onslaught of legislative activity, something that has become necessary, as legislators try to regulate very closely, the socio-economic activities of corporations. While corporate veils were lifted or pierced in the past to determine liability in civil matters, it is now clear that such conduct as pollution, tax evasion, production of harmful drugs and offences against other regulatory laws attract corporate criminal liability. The emerging scenario is one in which the legislature seeks to mulct the offending corporation, and at the same time disposed to subjecting such corporation to more severe punishment than fine.

In recent legislative history in Nigeria, the Failed Bank (Recovery of Debts) and Financial Malpractices in Bank Act is an example of such law. The law imposes criminal liability on both the individual corporate officer and the corporate body. This paper therefore seeks to analyze the Nigerian laws in relation to the criminal liability of corporations by focusing its attention on what constitutes corporate crimes and the extent to which corporations could be made criminally liable for a more serious offence like corporate manslaughter under Nigerian laws.

2. Corporate Crimes

Corporate crimes are defined as, illegal acts, omissions or commissions by corporate organizations themselves as social or legal entities or by officials or employees of the corporations acting in accordance with the operative goals or standard, operating procedures and cultural norms of the organization, intended to benefit the corporations themselves (Lederman, 2001).

Though it is generally believed that a corporation is not indictable but its members are, this general belief appears to have been premised on two major reasons. The first reason was specifically linked to the legal formalism attendant upon the corporation as person-metaphor. In other words, since corporations are seen as "artificial persons", juridical entities or legal constructs (Reasons, 1991) distinct in identity from the shareholders who created them (Weissman, 2007), an imposition of criminal fault on corporations would therefore defeat the essence of the legal anthropomorphism of the corporate form. According to Smith and Hogan (2002),

"Since a corporation is a creature of law, it can only do such acts as it is legally empowered to do, so that any crime is necessarily ultra vires and the corporation having neither body nor mind, cannot perform the acts or form the intent which are prerequisite of criminal liability."

The second reason was predicated on the jurisprudential principle that there could be no vicarious liability for the crimes committed by the agents of corporations because of the requirement of *actus reus* and *mens rea*, hence *actus non facit reum nisi mens sit rea* (i.e. an act does not render one guilty unless the mind is guilty).

In *Peaks Gunston and Tea Ltd. v. Ward*, (1902) Channel J. had this to say:

"By the general principles of criminality, if a matter is made a criminal offence it is essential that there should be something in the nature of mens rea, and therefore, in the ordinary cases a corporation cannot be guilty of criminal offence, nor can a master be liable criminally for an offence by his servant".

Corporations could not therefore possess the moral blameworthiness necessary to act in *propria persona*. Imputing an agent's intention to a corporation appeared radically inconsistent with the purpose of criminal law of punishing the blameworthy since the *respondeat superior* doctrine (Sanger, 2013) was yet undeveloped to allow for an imputation of any kind of mental state.³ However, the principle of entity liability of corporations for the acts of its organs later evolved under the common law (Khana, 1996).

³ In **personal injury** and similar **torts** cases, "respondeat superior" is a rule of law stating that the employer of a **negligent defendant** is also responsible for the defendant's actions. The phrase "respondeat superior" means "let the master answer," and the rule of respondeat superior is also known as the "master-servant" rule. Respondeat superior is a type of **vicarious liability**, which allows a third party to be held liable for a defendant's negligence in some cases, even if the third party wasn't there when the injury occurred and did not cause the injury or make it worse.

3. Corporate Criminal Liability under the Common Law

Under the common law a corporation is liable for criminal liability subject to certain limitations such as assault, manslaughter, murder and rape. This appears to be a departure from the past when criminal liability of corporations was for acts of nonfeasance which was later extended to misfeasance acts. Thus the common law regime began with strict liability welfare offences which do not require proof of *mens rea* so that in offences that require proof of *mens rea*, corporations are made liable by an imputation of the knowledge and intention on the alter ego and directing mind of the corporation. It also came to instances where corporations were vicariously held liable for the acts of their agents (DPP v. Kent & Sussex Contractors Ltd, 1944). As already stated however, there are certain "human crimes" to which a corporation could not be criminally held liable. The category of these offences are enumerated by Stable J. in Moore v. Brestlet Ltd (1944) as follows

"...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 basis of which the exception rests being that the court will not stultify itself by embarking on a trial in which if a verdict of guilty is returned, no effective order by way of sentence can be made."

According to Stephen Griffin in Griffith v. Strudebraker, (1924)

"a corporate entity may not be convicted of murder or manslaughter as the sentence for that offence, namely, a mandatory penalty of death or life imprisonment respectively, is incapable of being imposed against an artificial entity."

However, in spite of this clear position of the common law in respect of corporate criminal liability, there appears to be some judicial intervention for the basis for corporate criminal liability because from the decision of Birgham L.J. in the R. v. East Kent Coroner ex p Spooner and Others (1988) on an application for a judicial review in the Queen's Bench Divisional Court, a tacit acceptance that a corporate body could be liable for the offence of manslaughter could be inferred. He said

"... On appropriate facts the mens rea required for manslaughter can be established against the corporation. I see no reason in principle why such a charge should not be established... Whether the defendant is a corporation or a personal defendant, the ingredients of manslaughter must be established by proving the necessary mens rea and actus reus of manslaughter against it or him by evidence properly relied on against it or him".

According to Mueller (Mueller, 1986)

"Why should not a corporation be guilty of murder where, for Instance a corporation's resolution sends the corporation workmen to a dangerous work place, without protection, all the officers secreting from these workmen the fact that even a brief exposure to the particular work hazards will be fatal as was the case in the notorious Hawk's West venture in West Virginia, where wholesome death (as in Bhopal's case in India) was attributed to Solicosis?"

At common law, it is therefore arguable that a corporation could be convicted of involuntary manslaughter, but by gross negligence, even though manslaughter was not classified as a distinct offence. In convicting for manslaughter, the House of Lords (*R v. Adomako*, 1994), has held that it is sufficient that the jury adopted the gross negligence test without reference to the test of recklessness as defined in the case of *R v. Lawrence* (1981). So the ordinary principles of law of negligence must still apply in ascertaining whether or not a corporation has been in breach of duty of care to the victim who has died. Where such is established the next question would be whether that breach of duty caused the death of the victim who has died. Also, the jury must consider whether that breach amounted to a gross negligence. The jury will also have to consider whether the extent to which the corporation's conduct departed from the proper standard of care incumbent upon him and reasonably expected of him in the circumstances of the case which must have posed a risk of death to the victim, was such that it should be judged criminal (*R v. Adomako*).

Until recently, it has not been possible to convict the corporation itself for criminal negligence, unless it is found that the individuals, who can be identified as the 'directing mind and will' of the corporation, are themselves guilty of gross negligence. This is known under the common law as the "identification principle."

And because a corporation's artificial nature makes it incapable of committing a physical act that is a prerequisite for the offence of manslaughter, corporate liability for involuntary manslaughter was ascertained in accordance with the identification principle. Under the common law identification model, offences of individual senior officers and employees are imputed to the corporation on the basis that the states of mind of these officers and employees are that of the corporation. This is otherwise known as the "*Alter Ego*" doctrine or the "Organic theory". In every corporation there are certain individuals who control and direct the activities of the company. They are considered the embodiment of the company such that their acts and states of mind are that of the company. The company could thus be held liable, not for the acts of these principal officers or servants, but for what is deemed to be the company's own acts. The judicial development of this is traceable to the popular words of Viscount Haldene L.C in a well-known case of *Lennard Carrying Company v. Asiatic Petroleum Ltd* (1915), when he echoed thus:

"My lord, a corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody who for the same purposes may be called an agent; but who is really the directing mind and will of the corporation, the very ego and centre of personality of the corporation".

Accordingly, a corporation could be liable for the offence of involuntary manslaughter where a person's death was caused by gross negligence of the corporation's directing mind. It must be noted however, that a case against a personal defendant cannot be fortified by evidence against another defendant. In other words, a case against a corporation can only be made by evidence properly addressed to showing guilt on the part of the corporation as such so that the evidence against the corporation can only consist of evidence related to the directing mind and will (*Griffith v. Strudebraker*). In *R. v. I.C.R. Haulage Ltd*, (1944) a company was held liable for conspiring to defraud by the acts of its managing director.

This is called the rule against "aggregation". As has been argued, a corporation could therefore, "escape conviction for involuntary manslaughter in circumstances where an individual representing the company's directing mind was incapable of being convicted for involuntary manslaughter." (*Griffith v. Strudebraker*) But the identification principle is not without some difficulties.

The main complex task has remained the formula to be employed in knowing what category of workers is to be considered as the "directing mind" or "*alter ego*" of a corporation. If it is conceded that the obvious place to look at is the company's memorandum of understanding and articles of association, it may difficult to try to draw a line separating the *alter ego* of a corporation from its mere agents (Lederman, 1985). And the nature of modern multinational corporations is that such powers and duties are spread across departments and sections. In such situations there may be obvious problems in the allocation of responsibilities and liabilities within the higher echelons of a corporation. It would appear that, these lapses in the identification model prevented the prosecution from sustaining successful prosecutions against companies for the offence of involuntary manslaughter because up till date there has been a dearth of cases where a public company has been convicted for involuntary manslaughter in England. The first known recent case is *R. V. Kite & OLL Ltd* (1994). Here, a company who organizes canoe trips was convicted for manslaughter (through its managing director) for the death of four students who drowned as a result of the gross misconduct of the managing director.

Griffin has also attributed this failure to the hierarchical complex management structures of big corporations when he argued that:

The failure to prosecute public companies may be explained in the context of complex management structures 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 (Griffith v. Strudebraker).

Thus in *Tesco Supermarket Ltd v. Nattrass* (1972), Tesco evaded liability simply because the store manager could not be regarded as part of the company's directing mind, nor had the store manager been delegated an authority by the directing mind to act in a manner contrary to the company's policy. In other words, attempts at identifying and sanctioning key responsible officers in a corporation have always been a herculean task.

Owing to the fact, that in recent times there has been an upsurge of series of human disaster, accidents and deaths in which corporations have been found to be at fault⁴ (though no major company has been convicted), the debate and call around the world for the reform of the legal principles governing corporate criminal liability in general and corporate manslaughter in particular, has gathered momentum. The UK recently responded to this call by the birth of 'Corporate Manslaughter and Corporate Homicide Act 2007' which was brought into force on April 6, 2008.

4. Corporate Criminal Liability under the UK's Corporate Manslaughter and Corporate Homicide Act (CMCHA), 2007

This new law has *inter alia* modified the common law identification principle as noted above by the idea of *collective knowledge or aggregation model* so that, rather than being contingent on the guilt of one or more individuals, liability for the new offence depends on a finding of gross negligence in the way in which the activities of the organization are run. It must be remembered that under the common law identification principle, it was not possible to aggregate the culpable conducts of persons within a company's senior management to establish a company's liability for involuntary manslaughter. The gross negligent conduct had to be directly attributable to an individual representing the company's directing mind (*R v. P & O European Ferries (Dover) Ltd*, 1991). However, under section 1(3) of the new Act, identification principle is 'further extended to permit corporate liability to be established by an aggregation of the cumulative conduct of a collective of senior managers of a company (CMCHA, 2007).

By section 1 of the CMCHA, the crime is committed where in particular circumstances an organization owes a duty to take reasonable care of a person's safety and the way in which activities of the organization have been managed or organized amounts to a gross breach of that duty and causes the victim's death.

The manner in which the activities of the organization concerned were managed or organized by senior management must be, according to section 1(1)(b), a substantial element of the gross breach. Section 2 defines relevant duty in relation to an organization to mean any of the following duties owed by it under the law of negligence: a duty owed to its employees or to other persons working for the organization or performing services for it; a duty owed in connection with the carrying on by the organization of any other activity on a commercial basis, or the use or keeping by the organization of any plant, vehicle or other thing. An organization is guilty of an offence under section 1(3) only if the way in which its activities are managed or organized by its senior management is a substantial element in the breach referred to in subsection 1.

By section 1(4)(c), "senior management", in relation to an organization, means the persons who play significant roles in: the making of decisions about how the whole or a substantial part of its activities are to be managed or organized, or the actual managing or organizing of the whole or a substantial part of those activities. An organization to which this section applies is guilty of an offence if the way in which its activities are managed or organized: (a) causes a person's death, and (b) amounts to a gross breach of a relevant duty of care owed by the organization to the deceased. Causation will be assessed in the normal way but what is meant by 'gross breach' may be daunting, but must not be far from a reprehensible conduct. Arguably, the term reflects the threshold for the common law offence of involuntary manslaughter by gross negligence (*Griffith v. Studebaker*). But how does one identify it and 'in whom'? The Act, under section 1(4)(b), has however identified it as an act/conduct of the organization that falls far below what can reasonably be expected of the organization in the circumstances. In other words, the jury must establish that the conduct of the corporation in the circumstances showed a significant departure from the proper and normal standard of care reasonably expected of it.

Section 8 provides a clearer framework for assessing an organization's capability by setting out a number of matters for the jury to consider as follows: If there was a failure, how serious that failure was; how much of a risk of death it posed. The jury may also consider the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices within the organization that were likely to have encouraged any such failure as is mentioned in subsection 2, or to have produced tolerance of it. They may also have regard to any health and safety guidance that relates to the alleged breach.

⁴ See for e.g., the UK's 1997 Southall Rail crash, in which seven persons died; the 1999 Paddington (Ladbroke Grove) crash, in which 31 people died as well as the 2000 Hatfield Rail crash, in which four persons died.

Section 18 expressly excludes secondary liability for the new offence. Secondary liability is the principle under which a person may be prosecuted for an offence if they have assisted or encouraged its commission. In general, this means that a person can be convicted for an offence if they have aided, abetted, counseled or procured it. However, section 18 specifically excludes an individual being liable for the new offence on this basis by providing that “an individual cannot be guilty of aiding, abetting, counseling or procuring the commissioning of the offence of corporate manslaughter”. This does not though affect an individual’s direct liability for offences such as gross negligence, manslaughter, culpable homicide or health and safety offences, where the relevant elements of those offences are made out.

According to section 1(6), a company’s punishment, if convicted of corporate manslaughter, takes the form of an unlimited financial fine payable to the state. Section 9(1) empowers the court to direct that a remedial order be made against a corporation convicted of corporate manslaughter. When the remedial order is made, a company is required to take further specific measure to remedy the cause of the breach and by section 10, the court is also clothed with the discretionary power to order a convicted corporation to publicize the fact that it has been convicted of corporate manslaughter, failure of which will amount to a crime punishable by fine. As at early 2015, there had been sixteen prosecutions brought since the Act’s commencement (www.out-law.com, 2015) resulting in twelve convictions.⁵

5. Corporate Criminal Liability in Nigeria

The Nigerian criminal jurisprudence recognizes the offence of involuntary manslaughter which may result from an unlawful act (constructive) manslaughter, or gross negligence, manslaughter which results from a breach of a duty of care. Criminal liability for the former involves an unlawful act in itself which results in death, while liability for the latter arises where the defendant’s conduct though lawful, is carried out in such a way that it is regarded as grossly negligent and therefore a crime. It is this second aspect of involuntary manslaughter that companies are often liable for, that raises concerns.

In circumstances where a company’s conduct could be regarded as grossly negligent and therefore a crime, the present law in Nigeria requires the invocation of the provisions of the general criminal law so as to prove either the offence of manslaughter (under the Criminal Procedure Act) or homicide (under the Criminal Procedure Code). However, corporate criminal liability intersects both company law and criminal law, and problems have traditionally arisen in imposing liability on an artificial legal construct such as a company. Mainly, the challenge is that legal concepts such as *actus reus*, *mens rea* and causation, designed with natural actors in mind, do not easily lend themselves to inanimate entities such as companies which are distinct and separate from their owners.

As a former British Colony, the Nigerian legal system is modeled after the English legal system; hence the foregoing common law position represents the law in Nigeria. Apart from the criminal code and penal code, there are other enacted statutes that have made provisions for corporate criminal liability in Nigeria. Some include Food and Drug Act Cap 150 LFN 1990; Standard Organization of Nigerian Act Cap S9 LFN 2004; Federal Environmental Protection Agency Act Cap 131 LFN 1990; Oil in Navigable Waters Act Cap O6 LFN 2004, etc. Accordingly, corporations could be held criminally liable in Nigeria (Folorunsho, n.d.). Thus in *R v Zik Press* (1947) a corporation was found guilty of an offence of contravening Section 51(1) (c) of the Nigeria’s Criminal Code. Similarly, in *Mandilas & Karaberis v. COP* (1958) a corporation was convicted of the offence of stealing by conversion under sections 390 and 383 of the Nigerian Criminal Code. While in *A.G Eastern Region v. Amalgamated Press of Nigeria Ltd* (1956-57) the preliminary objection raised by the defense counsel on the ground that an offence could not be committed by a corporation in the absence of *mens rea* was overruled by the court. However, there are certain ‘human crimes’ to which a corporation has not been held criminally liable in Nigeria.

⁵ *R. v. Cotswold Geotechnical Holdings Limited* [2011] 1 Cr. App. [15 February, 2011]; *R v. JMW Farm Ltd* [2012] NICC 17 [8 May, 2012]; *R. v. Lion Steel Equipment Ltd* T 2011 7411[3 July 2012]; *R v. Murray* [2013] NICC 15 [7 October, 2013]; *R v. Princes Sporting Club* [2013] Westminster Crown Court, 375 [22 November, 2013]; *R. v. Mobile Sweepers (Reading) Limited* [Unreported, February 26th, 2014]; *R v. Cavendish Masonry Ltd* [22 May 2014]; *R v. Sterecycle (Rotherham) Ltd* and others [7 November, 2014]; *R v. A. Diamond and Son* [17 December, 2014]; *R v Peter Mawson Limited & Peter Mawson* [19 December, 2014]; *R v. Pyranha Mouldings Ltd* 2014 EWCA Crim 533 [12 January, 2015]; *R. v Nicole Enterprise* [12 March, 2015].

For example, a corporation could not be charged with the offences of personal violence or with offences for which the only punishment is imprisonment (F.R.N. V. Thompson & Ors, 1984). Nevertheless, the cases of *R v. Corry Bros Ltd* (1927) and *Granite Construction Company v. Superior Court* (1927) have both established the fact that corporations could be held liable of manslaughter. But in Nigeria, the notion of corporate criminal liability being a recent development, cases are rare and there are yet no known cases of corporations being charged for the offences of manslaughter or murder.

There is no doubt that as a former British colony, the principle of corporate criminal liability in Nigeria is still governed by the old common law doctrine. The common law, it must be remembered, makes it more intractable to prosecute corporations because of the 'identification doctrine', which requires that all the blame be linked at least to a director of a company usually identified as the "directing will". As company's responsibilities are commonly spread across the board, it is an obvious difficulty to pin all the blame of the corporation on only one person. And invariably, it is also not possible to incriminate a company by the aggregation of the fragmented faults of the Directors. To be liable for the common law corporate manslaughter, criminal liability of a company must be attributed with the culpability of the human element known as the corporation's directing mind and will. Because the directing mind of a corporation may partly or wholly delegate its function to individual members of the senior management of the corporation, the attribution of authority becomes a very integral factor in the establishment of the criminal liability of a corporation for the common law offence of corporate (involuntary) manslaughter. Accordingly, under the Nigerian law, a corporation cannot be convicted of 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.' (Slapper, 2010). This is the current unfortunate state of the Nigerian law on corporate criminal liability.

6. Reform in Corporate Criminal Liability Law in Nigeria

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. In Nigeria, often it is either plane crash⁶, petroleum products' tanker explosion (Amnesty International, 2009)⁷ or an oil spillage/pollution (Businessday, 2012).⁸ These disasters continue without a requisite statutory climate to impute corporate culpability (Cavanagh, 2009).

⁶ On November 12th, 2005, a plane belonging to Sosoliso Airline crashed killing all the 109 passengers and crew. December 18th of the same year 2005 recorded another air mishap involving Boeing 737 in which the passengers were stranded, but fortunately escaped unhurt. In October 31 of the following year 2006, ADC Airplane carrying 96 passengers crashed killing all the passengers on board. An Aircraft carrying ballot papers for the 2007 general election crashed in April 21, 2007 killing the 2 naval officers on board. Again, in April 10 2008, a plane carrying the under-20 female team athletes from Port Harcourt to Douala, Cameroun crashed, but luckily all the 111 passengers escaped death. Also in 2008, May 14 to be precise, Beechcraft 1900D crashed killing the 3 passengers and crew on board. In March 2012, a police helicopter carrying a high-ranking police official crashed killing four people in the central city of Jos. On June 3, 2012, DANA Airplane crashed killing all the 153 passengers and some residents of the crash site. In December of the same 2012 the governor of Kaduna State, Patrick Ibrahim Yakowa and former national security adviser, General Owoye Azazi were killed in a helicopter crash in Bayelsa State.

⁷ On June 2, 2015, a petrol tanker belonging to one of the petroleum independent marketing firms and heavily loaded with fuel ran into a motor park and exploded in Onitsha, Anambra State of Nigeria claiming over 70 lives and destroying properties worth billions of naira.

On June 6, 2015, another fully loaded fuel tanker belonging to an undisclosed petroleum independent marketing firm, exploded at the Iyanapaja end of Lagos as a result of the reckless over speeding of the driver and killed about 8 person while several houses and business shops were destroyed.

Earlier, sources from the Federal Road Safety Corps (FRSC), had it that on January, 11, 2013, a fully loaded petrol tanker fell, spilled its content and burst into flames along Mbiama junction, by Ahoada bypass in Rivers State, killing two persons – a male and a female while eight people were also hurt in the fire that emanated from the crash.

⁸ In August 28, 2008, SPDC'S Trans-Niger pipeline resulted in a significant oil spill into the Bodo creek in Ogoniland of Rivers State. The oil spilled into the swamp and creek in the community for weeks killing the fish the people depend on for food and livelihood. There was also an oil spill near Exxon Mobil's Ibeno oilfield in Akwa Ibom State of Niger Delta. Again in September 2012 over 150 persons from the Mgbuoshimini community in Obio/Akpo Local Government Area of Rivers State were reported to have been admitted in different hospitals due to strange sicknesses they suffered when water was polluted by the operations of Agip Oil Company of Nigeria.

Under the current law in Nigeria, the task for the prosecution pursuing a possible charge of corporate manslaughter or homicide is twofold: they must prove the *actus reus* of gross negligence on the part of the corporation, second, and more challenging, they must prove *mens rea*, and in this regard, they must show that the act of an individual or group of individuals is attributable to the corporation, for the latter to be held criminally responsible. These burdens are no doubt very difficult if not impossible to discharge. These unfortunate disasters have indeed raised the public eyebrow as to the impotency and the unenforceability of corporate criminal law in Nigeria. With the frequency and worrisome occurrences of these human disasters, it becomes very pertinent to revisit our laws on corporate manslaughter and homicide. But currently, this remains the operative position of the law in Nigeria on corporate crime.

7. Corporate Manslaughter Bill (CMB), 2010

It is heartwarming to note that the Nigerian central legislature has been making efforts to bring into law a bill that seeks to criminalize the actions or inactions of a corporation and penalize same accordingly where death of a person results or a breach of such duty of care designated as "relevant duty of care" (CMB, 2010, S. 2). Under section 1(2) of the bill, organizations which are affected include a company, ministries, agencies and parastatals of government, the Police Force, a partnership, etc. An organization that is guilty of corporate manslaughter is liable on conviction for the incident to an unlimited fine (CMB, 2010, S.1(4)). For such guilt to be established, the activity of the organization must have led to death of a person or been in breach of its "relevant duty of care". The bill specifically 'disregarded any rule of the common law that has the effect of preventing a duty of care from being owed by one person to another by reason of the fact that they are jointly engaged in unlawful conduct' (CMB, 2010, S.2(1)(vi)). Section 6 excludes some class of organizations from being considered to have committed breach of relevant duty of care due *inter alia* to the fact that their activities are in the nature of emergencies. They include Fire Service, relevant Ministry of Health body or parastatal, an organization providing ambulance services, an organization providing rescue services, the armed forces, etc.

A court that convicts an organization may, on application by the prosecutor, make an order requiring the organization to take specific steps to remedy the breach committed and whatever may have been the causative factor. Failure to comply with such order will be penalized with a fine (CMB, 2010, S. 8). The court may also order that the fact of its conviction be publicized on terms prescribed (CMB, 2010, S.9). As such, the public is made aware that the company is an ex-convict. This is a status that was only possible in the case of a biological person who is convicted and certainly a commendable development that will, hopefully, discourage corporate killings. It is expected that since the reputation of the company will be greatly injured where the court makes such an order, corporate crimes will be guarded against more carefully.

This beautiful piece of proposed legislation is a welcomed step in the right direction. Corporations continue to enjoy all civil rights including the enforcement of their fundamental human rights, yet they continue to elude some legislative control and accountability for criminal liability. It is necessary to match the benefits of corporate personality which they enjoy with the criminal liability for their actions and inactions resulting in unlawful death of persons. It is humbly submitted that this is a bold legislative step in that direction.

However a few observations about the provisions in the bill have been made. According to findings contained in the report of the Senator Umaru Dahiru led Committee on Judiciary, Human Rights and Legal Matters (Tabiowo, 2014), allowing the family of the deceased victim to benefit under the law will amount to duplication since such has been taken care of under other legislation like the Employees' Compensation Act, Labour Act, Occupational Safety and Health Act etc (Tabiowo, 2014). This is moreso as the law does not preclude any person from instituting a civil case against the organization as regards compensation. Put conversely, the company may suffer double jeopardy due to the possibility of claiming against the company under more than one legislation.

It is humbly submitted that notwithstanding this seeming duplication of benefits, this harsh position will be appropriate if the tide in disasters occasioned by corporations is to be stemmed. Besides, this is the position too under the UK Manslaughter Act from which the Nigerian proposed version is replicated. It is further submitted that due to the impossibility of imprisoning an artificial entity such as a corporation for its crimes, the closest thing to loss of freedom suffered by a human convict upon conviction for similar crime, is the corporation's pecuniary loss.

Culpability must be capable of being hung on a corporation. It is in this light the Committee conceded, while making its position known as to whether a corporation can be sent to prison if found guilty, that “the concept of legal personality of a corporation is a fundamental legal fiction in that the corporation has a name, certain rights, privileges and responsibilities under the law similar to those of a legal person and as such, can be deemed to be a personality apart from individual persons comprising it and can be subject to criminal law, exercising rights and committing crimes.” The committee further stated that, “the human persons who act for the corporation, who are its alter ego, its directing mind and will, can be sent to prison for crimes committed in the course of the corporation’s affairs. Furthermore, in appropriate and serious cases, the court may order the winding-up of the corporation” (Tabiowo, 2014). However section 16 of the bill excluded individual liabilities.

8. Conclusion

The Law in some jurisdictions has since moved towards finding a solution to these challenges. Parliament in the UK has hastened to enact a stand-alone offence under the Corporate Manslaughter and Corporate Homicide Act (CMCHA) 2007 which is aimed at holding companies and businesses liable for gross negligence manslaughter. So has Hong Kong. The UK CMCHA 2007 seeks to provide for the prosecution of companies and other organizations where there has been a gross failure, throughout the organization especially in the management of health and safety with fatal consequences. An organization whose gross negligence leads to death will face criminal prosecution for manslaughter.

In particular, this law enacts an offence where an organization by the way in which its activities are managed or organized either (a) causes a person’s death, and (b) amounts to a gross breach of a relevant duty of care owed by the organization to the deceased. A brilliant novelty of the CMCHA is the introduction of the ‘Senior Management Test’ as a rule of attribution under the Act. Under this model, an organization is guilty of an offence if the way in which its activities are managed or organized by its senior management is reckless or negligent as defined under the Act.

This approach ameliorates the burden of ascertaining the guilty mind of a corporate body and, it is humbly submitted, will go a long way in promoting a culture of self regulation, and corporate social responsibility in respect of systems and operational safety. The Corporate Manslaughter Bill of Nigeria, which was passed by Nigerian upper legislative chamber in 2014, is a commendable legislative gesture by the National Assembly. A close look at its content reveals that it has drawn heavily from its British forerunner. Such legislative activism must be brought to fruition with rapid executive assent to the bill. This bill is yet to be signed into law. However beautifully couched a piece of proposed legislation is, it remains useless to the masses and the injustices it seeks to remedy will continue to thrive in its face. Sadly, the consequence is that the extant position of the law on corporate culpability is still as obtainable under the common law with all its attendant inadequacies in the face of modern challenges such as increased corporate killings.

While hoping that this bill will not suffer the fate of the Freedom of Information Bill which had to wait presidential accent for another five years after having wriggled through the huddle of legislative passage for eight years, it is recommended that section 15 of the Corporate Manslaughter Bill that requires consent before proceedings can be instituted in court be dispensed with as this may clog the wheel of progress in instituting cases in court. Though the position is similar to the British 2007 Act, the peculiar factors in Nigeria form a bases for this suggestion. The possibility of influencing the DPP’s exercise of this discretion by the affected corporation exists. As a result, such consent may be unduly withheld.

It is further suggested that there should be sentencing guidelines to be released by the Attorney General of the Federation to guide the courts on appropriate fines to be paid by different categories of corporations. It is further suggested that in the event of the bill becoming an Act, the courts should take into consideration the conduct of the corporation soon after the occurrence of the fatal event and allow such conduct to weigh in its mind as mitigating factors. Such mitigating factors may include prompt acceptance of responsibility, high level of cooperation, efforts to remedy the defects, a good safety record, and responsible attitude to safety.

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