The Imperatives of Passing the Corporate Manslaughter and Homicide Bill into Law in Nigeria

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ABSTRACT

Corporate personality and imposition of corporate criminal liability for manslaughter have caused a great unease in the field of criminal law. Today, the doctrine of corporate manslaughter is recognised in a number of jurisdictions and holds that a company is to be penalised for negligent acts which result in the death of an individual. This paper examines the legislative approach taken in Nigeria to deal with death arising from work activities and, in particularly, deaths that can be directly attributed to the negligent behaviour of corporate organisations. It also examines whether Corporate Manslaughter Law addresses the apparent or perceived shortcomings in the current approach to prosecution for corporate manslaughter. This approach is compared with some of those available in other selected countries. The paper adopts a doctrinal approach and analyses the basis of corporate criminal liability, what can be done to further the business of corporate criminal responsibility for manslaughter and a comparative analysis of the proposed corporate manslaughter law with similar laws in other countries. This work finds that the offence of corporate manslaughter is not provided for in Nigeria'sCriminal/Penal Codes which makes it imperative for a law to be enacted expeditiously to address this gap. It also finds that the corporate manslaughter is the product of a campaign to punish corporations following a number of high profile accidents at the end of the twentieth and start of the twenty-first centuries. The work therefore recommends that there is need to expeditiously review and pass into law the Corporate Manslaughter Bill to penalise public and private organisations and arms of government whose negligent activities cause the death of individuals, if the menace of corporate killings is to be frontally confronted in Nigeria.

Keywords:Corporate manslaughter; homicide; criminal liability; imperative; *actusreus* and *mensrea.*

1. **INTRODUCTION**

Homicide is a global phenomenon especially in the area of unsafe goods and services and work place related deaths. There have been global incidences of death occurring as a result of some activities of corporations. For example, in 1987, in the United Kingdom (UK), the Herald of Free Enterprise ferry capsized leading to the death of about 193 personson board. In the same year, there was the King's Cross Station fire also in the UK which killed 31 persons.

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Similarly, a gas explosion caused by leaking pipes killed 4 persons in their home in Scotland in 2001. In 2005, the British Petroleum American Refinery exploded in the United States killing 15 persons.

Back in Nigeria, on 22 January, 1973, the Royal Jordanian 707-300 Airline crashed in Kano. 6 of the 11 crew members and 170 of the 198 passengers were killed.[1]While on 10 December, 2005, Sosoliso Airlines DC9-32 crashed in Port-Harcourt, all 7 crew members and 101 of the 103 passengers including many school childrenwere killed.[2]On 29 June, 2014 30,000 barrels of oil spilled near Exxon Mobil's Ibeno oilfield, Eket in Akwa-Ibom State leading to loss of many lives and property.[3]

In June 2012, a Dana commercial plane crashed in the Lagos suburb, killing more than 150 persons.[4]This plane crash in Nigeria attracted so much condemnation and uproar across the length and breadth of the country, and even beyond. The crash was described as one crash too many as there had been series of plane crashes in Nigeria over time, as shown above.The Dana crash popped up the question whether or not the airline could be criminally liable for the death of the over 150 persons involved in the crash. However, the existing legal framework that is the Criminal and Penal Codes do not expressly provide for the criminal liability of a corporation or corporate body for manslaughter and murder, as the case may be. As an obvious follow up of this and previous developments, the Nigerian CentralLegislature, precisely the National Assembly made efforts to address this challenge by proposing a Corporate Manslaughter Bill which was co-sponsored by Senator Chris Anyanwu and Honourable Yakubu Dogara, of the then Senate and the House of Representatives respectively. Their efforts gave birth to the Corporate Manslaughter Bill 2018, which was tailored in line with the United Kingdom(UK)'s Corporate Manslaughter and Corporate Homicide Act 2007. Hitherto, the Senate on the 23rd of September. 2013 passed the 'Bill for an Act to make Provisions Creating The Offence Of Corporate Manslaughter and for The Matters Incidental Thereto' (the Bill). This earlier Bill wassponsored by Late Senator Pius AkporEwherido in February, 2013 as a result of the Dana airplane crash where it was evident that the decisions made by the management of Dana Airlines may have resulted in the crash, Although, the Distinguished Senators said that the passage of the Bill would be an expression of solidarity with their deceased colleague, it is obvious that beyond that statement, the recent spate of buildings collapse and public agitations may have provided an added impetus to the passing of the Bill which has been before the National Assembly.

It is, therefore, disappointing that over a decade since the Dana crash mentioned above, the Bill still straddles the National Assembly and the Presidency in Nigeria. The Bill was denied assent by former Nigerian President, MuhammaduBuhari on 9 July, 2018 on the grounds that it is inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria 1999. The thrust of this paper,

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1 See '10 Air Crashes That Shook Nigeria' <https:/9am/saharareporters.com/2019/06/14/10-air-crashes-shook-nigeria> accessed 3 November 2023.

2 ` *Ibid.*

3 *Business day* (Lagos 1 September 2012) 14.

4 KO Akanbi, 'The Legal Framework for Corporate Liability for Homicide: The Experience in Nigeria and the United Kingdom' (2014) 22(1) *International Islamic University Malaysia Law Journal,* 115.

therefore, is to appraise the situation in Nigeria and highlight the imperative of passing the Nigerian Corporate Manslaughter and Corporate Homicide Bill into law forthwith. The paper addresses the perceived lacunaein the Bill that are likely to clog its implementation when eventually passed particularly the challenges already being faced by the UK Corporate Manslaughter and Corporate Homicide Act.

2. THE CONCEPT OF CORPORATE HOMICIDE

The concept of corporate homicide as would be shown here under, is yet to gain the necessary judicial recognition in Nigeria despite the progress in UK and other Commonwealth nations. Corporationsin Nigeria still escape liability for deaths caused by them because the existing legal framework does not easily accommodate corporate liability for homicide. In addition, the fact that Nigeria is a developing country means many of its experiences of corporate homicide are unreported because of ignorance, poverty and religious influence.[5] The influence of religion is hinged on such beliefs, as the devil is responsible for or influences deviant behaviour in people, illnesses and deaths are seen as punishments from God for possible unrighteous acts, and that everything happens based on the will of God. These beliefs therefore discourage victims of crimes from doing anything to report the crimes or seek redress.

The menace of fake food, drugs and substandard services has also contributed greatly to the incidences of corporate homicide in Nigeria. According to Dora Akunyili, a one-time Director-General of the National Agency for Food, Drugs Administration and Control (NAFDAC), the menace of fake and sub-standard drugs had been killing Nigerians as far back as the 1970s.She cited an incident when Nigeria donated meningitis vaccines to Niger Republic and the vaccines were later detected to be counterfeits after approximately 600,000 persons had been vaccinated with them.[6] In another instance, fake drugs worth about sixteen million dollars were recovered by NAFDAC.[7] The infiltration of fake drugs into the Nigerian drug market has been made easy by the endemic corruption in the country as compromised enforcement officials connive with manufacturers of fake drugs to beat legal safe-guards provided by law thereby perpetuating illegality.[8]

In related development, more than eighty children were killed as a result of ingesting adulterated teething mixture, this caused a major outcry which resulted in the pharmaceutical company being prosecuted for violating a regulatory offence, as the legal framework could not sustain prosecution for manslaughter.[9] Generally, the Nigerian legal framework, atthe moment, does not expressly support corporate

5 Although the country has no state religion, it is a multi-religious society where three major religions to wit: Christianity, Islam and Traditional religion are recognised. See also section 10 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which affirms the secularity of Nigeria.

6 Bulletin of the World Health Organization (Vol. 84, No. 9, September 2006), pp. 656 – 764. <https://www.who.htbulletin>volumes> accessed 2 January, 2024.

7 *Ibid.*

8 Nigeria's Corruption Rating according to Transparency International Corruption Index has been poor.

9 *AdeyemoAbiodun v FRN* (unreported) Suit No. CA/L/550/M/2013. Decided by the Federal High Court Lagos, on 17 May 2013.

criminal liability beyond strict liability for regulatory offences.[10] In addition,the existing homicides legislation are unsuitable and/or inadequate for prosecuting corporations.[11]

In the aviation sector alone, Nigeria has experienced over forty major avoidable plane crashes from 1960 to date and almost all of them resulted in loss of lives.[12] Yet the airlines escaped criminal liability as none of them was prosecuted for the deaths. Consequently, the crash on the 3rd of June, 2012, involving a commercial plane; operated by Dana Airlines in Lagos Suburb, Nigeria was considered as a climax.[13] There was a huge uproar and public condemnation of the crash. In particular, there were complaints by passengers who travelled inthe plane on another flight shortly before the crash that the plane had a near-crash experience and was considered not air-worthy.[14] The above made the need to define a framework for holding corporations liable for homicide become inevitable. More so, a little over a year after, in October 2013, another plane owned by Associated Airlines crashed minutes after take-off in Lagos, killing16 persons on board.[15]

Homicide generally is the killing of one person by another.[16] Corporate Homicide will therefore mean a situation where the acts or omission causing death occurred as a result of the systemic misconduct of a corporation, and the corporation is the truly blameworthy party and not the individual members of the corporation. Homicide also means when a person kills another person. It includes murder, manslaughter and infanticide.[17] It is regarded as the most grievous crime as a result of the general belief in the sanctity of life.[18] Corporate homicide, therefore, simply means when a corporation as a "legal person" kills another person.[19] However, as a result of the peculiar personality ofa corporation, a number of questions need to be answered in determining what qualifies as corporate homicide. Firstly, what class of homicide qualifies as corporate homicide? Will it be murder, manslaughter or infanticide? Secondly, how can a corporation, as an artificial person, kill another person?

In an answer to the first question, the latin maxim *actusreus non facitreum nisi mens sit rea*is seen as the basis for criminal liability: The *actusreus* for manslaughter and murder is the same, which means that a life must have been lost as a result of the act or omission of another. With respect to infanticide, there is a little variation as the life that must have been lost must be that of an infant under the age of twelve

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10 See KO Akanbi, "Corporate Criminal Liability as a Catalyst for Effective Anti-Corruption Law in Nigeria" (2018) 3(1) *KIU Journal of Humanities*.

11 Akanbi, supra (n4) 1.

12 <https://www.channelstv.com/2013/10/04timeline-of-plane-crashes-in-Nigeria> accessed 2 January 2024.

13 Vanguard (Lagos: 21 July 2012) 13

14 KO Akanbi, 'Corporate Criminal Liability: Towards Regulating Corporate Behaviour through Criminal Sanctions in Nigeria' (2015) (unpublished) Ph.D Thesis, Ahmad Ibrahim Kalliyah of Faculty of Law, International Islamic University, Malaysia.

15 <https//www.channelstv.com/home/2013/10/03/updateprivate-aircraft-crashes-near-Lagos-depot/> accessed 2 January 2024; Akanbi, supra (n4), 115 – 117.

16 CMV Clarkson, H.M Keating and SR Cunningham, *Criminal Law* (7thedn. Sweet and Maxwell, 2010) 660.

17 *Ibid*.

18 *Ibid*.

19 The case of *Salomon v Salomon and Co. Ltd* (1897) AC 22 has already settled the personhood of a corporation in the eyes of the law.

months. The difference between murder and manslaughter is the *mensrea*, known as malice aforethought or guilty mind.[20] Thus, a murder is said to have occurred when a person kills another with malice aforethought. On the other hand, manslaughter occurs when a person kills another without malice aforethought.[21]

Manslaughter has been described as the most complex form of homicides because it is quite wide-ranging, from voluntary manslaughter when a person seemed not to have the mental element for murder but kills in circumstances recognised by law, it is involuntary manslaughter when a person lacks the necessary intention but still committed the *actusreus* of killing. Manslaughter also includes gross negligent manslaughter, which is when a person is negligent in the discharge of a lawful activity leading to death. In *R v Adomako,*[22] the House of Lords provided an exposition of what constitutes involuntary manslaughter when it stated that in cases constituting involuntary manslaughter, there must be a duty of care that must have been breached as a result of negligence leading to loss of life. With respect to corporate homicide, death occurs as a result of corporate activity and the corporation is responsible for the death and not individual members of the corporation. This means that the death must have been because of a systemic breakdown within the corporation.A corporation by virtue of registration or incorporation is ordinarily formed for lawful purposes.[23] Therefore, when death occurs as a result of corporate activity, it is usually as a result of negligence and not because the corporation had pre-meditated itor had malice aforethought. So, corporate homicide occurs when in the course of doing its legitimate business, a corporation becomes negligent leading to loss of lives. Hence, corporate homicide qualifies as a form of gross negligence manslaughter.[24]

3. **CHALLENGES IN CORPORATE HOMICIDE**

The latin maxim *actusreus non facitreum nisi mens sit rea*accurately captures the basis of criminal liability. The challenge of corporate homicide is, therefore, in applying the twin ingredients of *actusreus* and *mensrea*to a corporation being an artificial entity. As stated earlier, one of the earliest challenges to corporate criminal liability was in attributing a corporate body with *actusreus*and*mensrea.*[25]

The issues to be addressed, therefore are how to determine
a. The *actusreus*of a corporation; and
b. The corporate *mensrea*

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20 *Ibid*, 665. That the term "malice aforethought" has undergone reform under the English law, from intention to kill to intention to cause grievous bodily harm. See *Hyam v DPP* (1975) A.C 55.
21 See the Supreme Court of Nigeria's decision in *Festus Amayo v State* (2002) SCM 109.
22 (1955) 1 AC 171.
23 CMV Clarkson, 'Context and Culpability in Involuntary Manslaughter: Principle or Instinct? In Ashworth and Michell' (eds.) *Rethinking English Homicide Law* (London: Sweet and Maxwell 2000) 152.
24 Akanbi, supra (n4), 117 – 118.
25 V S Khana, 'Corporate Criminal Liability: What Purpose Does It Serve?' (1996) *Harvard law Review,* 1479.

3.1Determining the *Actus Reus* of a Corporation

The *actusreus*is the physical manifestation of the crime. Therefore, the first requirement for criminal culpability is the *actusreus*which can be in form of acts or omission. However, determining the acts or omission of a corporation is peculiar because the corporation is a legal creation and cannot act physically by itself but only through its agents and officers. Therefore, the *actusreus*of a corporation can be found in the acts or omission of its agents and officers which are clearly regarded as the acts of a corporation.

Statutes usually provide for acts that should be regarded as the acts of a corporation. For example, section 65 of the Companies and Allied Matters Act of Nigeria[26]provides that actions of the members in general meeting, the managing director and the board of directors done while carrying out the usual business of the company will be construed as acts of the corporation itself.

It provides further[27] that acts of officers and agents of the company will be deemed to be that of the company if the company through its member in general meeting, the managing director or through the board of directors had expressly or implicitly authorised the officer or the agent to act.[28]

In the same vein, the Australian Criminal Code[29] provides that the physical element of a crime will be attributed to the corporation[30] if the crime was committed by an employee, agent or officer of the corporation within the actual or apparent authority or scope of employment.[31]The *actusreus*of a corporation therefore will include acts done by officers and agents of the corporation while carrying on the usual business of the corporation.

3.2Determining the Corporate *MensRea*

Mensrea which is the mental element of an offence poses the greatest challenge to holding a corporation liable for homicide. This stems from the fact that a corporation is an artificial person and as such, it appears difficult to attribute a mental element to an artificial person which normally is incapable of any emotive thoughts or feelings. But, the courts have over the years sought to impute corporate *mensrea* by adopting several distinct methods. The English courts had used the civil law doctrine of vicarious liability by holding a corporation vicariously liable for the *mensrea* of its officers. Thus in the case of *Mousell Brothers Ltd v London and North-Western Rly Co.,*[32]the English Court held that the corporation could be vicariously liable for the acts of its employees. This method was also adopted in South Africa by the statutory provisions of the Criminal Procedure Act[33] which states[34] that a corporate body is vicariously liable for acts done by or on instruction or through implied or express

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26 Section 65 CAMA Cap. C20 Laws of the Federation of Nigeria 2004.
27 Section 66 CAMA, *Ibid*.
28 Adeniji v State [1992] 4 NWLR (pt. 547) 53 at 60.
29 Section 12(2) Criminal Code Act 1995
30 The word “corporate body” is used in the Act.
31 Section 12(2) Criminal Code Act.
32 (1972) 2 K.B 836.
33 Act 51, 1977.
34 Section 332, *Ibid*.

permission of its directors or servants.[35] However, the vicarious liability method does not accurately capture the corporate *mensrea.* This is because it is against the individualistic notion of the criminal law to hold a "person" liable for the wrong of another person. Secondly, it seems to render the issue of *mensrea* which is the pivot of criminal responsibility irrelevant. This is because applying vicarious liability to corporate criminal liability renders a corporation guilty irrespective of the fact that it had not the *mensrea* to commit the act constituting the offence or notwithstanding the fact that the act itself might have been committed contrary to corporate policy.[36]

The principle of *respondent superior* has also been used to justify holding a corporation liable for the *mensrea* of its officers or agents. It was adapted to the criminal law for the first time by the American Court in the case of *New York Central and Hudson River v United States.*[37]In arriving at the decision, the court held that since the corporation can only act through its officers and agents, then it should in the same vein be liable for the acts of its agents who have the authority to act in a particular manner. Under this theory, three factors must exist. The first is that there must be the commission of a crime by an agent of the corporation.

Secondly, the crime must be committed in the course of employment and lastly, such crime must be done with the intent to benefit the corporation. In applying this theory, the court considers both the apparent and express authority of the employer. In *United States v Hilton Hotels Corporation*[38], Hilton Hotel was held liable despite evidence that the responsible employee acted contrary to the corporation's instructions.[39] The corporation is held liable even if it had in fact received no actual benefit from the crime committed so long as the employee intended to benefit the corporation.[40]

Same as the vicarious liability method, this approach is against the individualistic notion of criminal law and may in fact disregard the *mensrea.* It is the most prominent method of determining the corporate *mensrea* having been adopted in various commonwealth countries like Malaysia, Nigeria, and Australia. It was introduced into the criminal law by the English Courts in a series of cases that were decided in 1944.[41] This method locates the corporate *mensrea* in a person who is the directing mind of the corporation.[42] In *D.P.P v Kent and Sussex Contractors Ltd,*[43]it was stated thus:

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35 The Statutory Provision of the Criminal Procedure Act even extends the liability of the corporation beyond acts done within the scope of employment. C.N. Nana, "Corporate Criminal Liability in South Africa: The Need to Look Beyond Vicarious Liability" (2011) 55(1) *J.A.C.* 94.

36 Nana, *Ibid*., 101.

37 212, U.S. 481 (1909).

38 467 F.2d 1000 (9th Cir. 1972).

39 The rationale given for ascribing liability to the company was that the corporation did not take stringent measures to ensure that its instructions were complied with.

40 *United States v American Radiator and Standard Sanitary Corp*. 433 F 2d 174, 204 (3d Cir. 1970), Cert. denied, 401 US. 94(1971).

41 *D.P.P. v Kent and Sussex Contractors Ltd* (1944) 1 K.B 146; *R v ICR Haulage Ltd* (1944) 2 K.B 515.

42 The courts were probably influenced by the decision in the civil case of *Lennards Carrying Co. v Asiatic Petroleum Co. Ltd* (1915) A.C 705, H.L.

43 Supra.

> It is true that a corporation can only have knowledge and form an intention through its human agents, but circumstances may be such that the knowledge and intention of the agent must be imputed to the body corporate … If the responsible agent of a company, acting within the scope of its authority, puts forward on its behalf a document which he knows to be false and by which he intends to deceive. I apprehend that his knowledge and intention must be imputed to the company.

In a follow up case of *Bolton (Engineering) Co. Ltd v Graham and Sons*[44], Lord Denning, L.J. held that;

> A company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with the directions from the centre. Some ofthe people in the company are servants and agents who are nothing more than hands to the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, and control what it does.

This method[45] has been applied to prosecute corporations for deaths caused by corporate activities. It was used in the prosecution following the collapse of the Herald of Free Enterprise,*H.M. Coroner for Kent, Exparte. Spooner*[46]and the case of *Attorney-General's Reference* (No. 2 of 1999)[47]which followed the South Hall Rail crash where seven people were killed. In the same order,*Transco's* case was prosecuted using this method for the gas explosion tragedy in Scotland.[48] However, this method has proved inadequate in determining the *mensrea* of large corporations. This is because in large corporations, the directing mind might not be easily linked with the actions constituting the crime. Therefore, the prosecution of the three cases cited above was unsuccessful because the directing mind could not be linked with the acts constituting the crime. In *Transco's* case, the prosecution failed because there was no evidence of negligence on the part of the directing mind of the corporation. Another shortcoming of this method is that it does not capture the reality of corporate crimes where crimes are committed more as a result of systemic process than as a result of a deliberate act by a specific person. However, the identification method was used to successfully prosecute the case of*Kite and Oil Limited* following a canoeing accident which killed four children.[49] The corporation in this case was a small one man company; therefore, it was easy to attribute the crime to the directing mind.

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44 (1957) 1 Q.B 159.

45 The identification theory also known as the alter ego theory was originally developed as a civil law principle in the case of *Lennards Carrying Co. Ltd v. Asiatic Petroleum Co. Ltd* (1915) AC 705 HL and it identifies certain categories of people within the company as the alter ego of the company. The alter ego is not treated as the agent of the company but as the company itself as it is the embodiment of the company. This principle is influenced by the fiction theory of the corporation. The management failure theory is the theory developed by the UK's Corporate Manslaughter and Corporate Homicide Act 2007 and hinges the company's *mensrea*on the senior management of the company.

46 (1989) 88 Cr App. 207.

47 (2000) 2 Cr. App R. 207.

48 *Transco Plc. v H.M. Associate* (2003) GWD 38 – 1034, (2004) S.L.T, 995.

49 *R. v Kite and Oil Limited* (1994) 99 Cr App. R 362.

Another distinct approach of ascertaining the corporate *mensrea* is through locating the corporate culture. It was developed in Australia as a statutory response to violations of federal crimes.[50] It has, however, not been subject to much judicial interpretation even in Australia, this method was introduced in the Australian Criminal Code Act 1995[51] and it locates the corporate *mensrea* in the corporate ethos or standard, corporate politics, culture, practices and management. The corporate culture is defined in section 6 as the attitude, policy rules and course of conduct or practice existing in a corporation. It further provides[52] that the *mensrea* of an offence is attributed to a corporation that has expressly, impliedly or tacitly permitted or authorised the offence, and the existence of a corporate culture that tolerates or permits the offence can be used to determine whether a corporation gave implied or tacit permission.[53]

It has been said that the rationale for corporate culture as a method of determining the corporate *mensrea* s that the policies, practices and culture of the corporation are evidence of corporate aims and intentions which developed from the decision making process of the company.[54] This method is a good way of determining the corporate *mensrea* because liability is personal and not derivative and only a truly blameworthy corporation will be liable. However, as stated earlier, this method of determining the corporate *mensrea* has not been subjected to much judicial interpretation and it deals with corporate criminal liability generally and not corporate liability for homicide specifically.[55]

4. THE NIGERIAN EXPERIENCE WITH SPECIFIC REFERENCE TO THE TWO MAJOR SOURCES OF CRIMINAL LAW IN NIGERIA: THE CRIMINAL CODE AND THE PENAL CODE

This section appraises the Nigerian experience with specific reference to the two major sources of criminal law in Nigeria: that is, Criminal Code and Penal Code.

4.1**Criminal Code**

Under the Criminal Code, chapter 27 deals with homicide, section 306of the Code provides that it is unlawful for a person to kill another except in circumstances justified, authorised or excused by law. It provides further in section 308that whenever a person directly or indirectly caused the death of another, subject to other provisions in the chapter, such a person is deemed to have caused the death of such other person. Section 315also provides that it is the circumstances in which death occurs that determine whether the offence is murder or manslaughter. It goes further in section 317to give a comprehensive list of instances when the offence of murder will be said to have been committed. The instances are:

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[50] Australia is a Federal State, the powers of the commonwealth to legislate on criminal matters is limited to some specific federal offences.

[51] Part 2.5.

[52] Section 12 (1).

[53] Section 12 (2).

[54] Field and Jony, 'Corporate manslaughter and Liability: Should we be Going Dutch' (1991) *Crim. L.R,* 156 at 159.

[55] Akanbi, supra (n1) 120 – 125.

a. When a person intended to kill the deceased or any other person;
b. When a person intended to cause grievous harm to the deceased or any other person. This is irrespective of the fact that he did not intend to kill the deceased.
c. If the death of the deceased occurred as a result of the action of the person done in furtherance of an unlawful purpose irrespective of the fact that he did not intend to hurt any person;
d. If the person intended to do grievous harm in order to facilitate the commission of an offence of such a nature that an arrest could be made without warrant. It is immaterial that the person did not intend to cause death or know that death is likely to occur;
e. If a person caused the death of another through the application of any stupefying or overpowering substance either in furtherance of an unlawful purpose or to facilitate the commission of an offence of such a nature that an arrest without warrant could be made. This is irrespective of the fact that the person had no intention to cause death or knew that death was likely to occur; or
f. If a person willfully stopped the breath of another for either of such purposes. It does not matter that the person/accused did not intend to cause death or knew that death was likely to occur.

The Criminal Code also defines manslaughter in section 317as when a person unlawfully kills another in such a circumstance that does not constitute murder. Therefore, all other circumstances in which deaths occur apart from that expressly provided in section 316 shall suffice as manslaughter.

From the provisions of sections 316 and 317above, although corporate manslaughter is not expressly stated in the Criminal Code, corporate homicide qualifies as a form of manslaughter. The phrases *actusreus* and *mensrea* are not expressly mentioned in the Code. Nevertheless, the Act recognises that there must be both physical and mental elements to a crime. The courts also often make reference to the common law terms of *mensrea*and *actusreus.*[56]For example, in *Abeke v State,*[57]it was held that *mensrea* means a guilty mind.[58]

Chapter five of the Criminal Code deals with criminal responsibility and it provides in section 24thus:

> Subject to the express provisions of this code relating to negligent acts and omissions, a person is not criminally liable for an act or omission, which occurs independently at the exercise of his will, or for an event which occurs by accident.
>
> Unless, the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or

[56] This is mainly due to the influence of the common law in Nigeria being a former British colony. These common law terms have imparted into the Nigerian criminal law through the doctrine of judicial precedent.
[57] [2007] 9 NWLR (pt 1040) 411, at 429 – 430.
[58] Similarly in *Mandillas and Karaberis v IGP* [1958] 3 FSC 20. The court relied on the common law principle of *mensrea.*

part, by an act or omission, the result intended to be caused by an act or omission is immaterial. Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility.

The above explains criminal responsibility under the Code. First, the physical element is recognised to be in the form of an act or omission. Secondly, the requirement for the mental element is explained in two ways as follows. The first paragraph means that there can be no liability without fault. The word "will" in the paragraph means the accused's intention and awareness of the circumstances connected to the act. The second paragraph provides for result offences and simply denotes the common law rule on presumption of *mensrea* that unless intention is expressly stated as part of the definition of an offence, it is immaterial that the accused intended to cause a different result. Also, the wording of section 24 shows a presumption against vicarious liability for a mental element; it states that a person is said not to be liable for act which occurs without the exercise of his will. This is in tandem with the principle of personal liability as the hallmark of criminal responsibility.[59] Therefore, from these provisions, the *mensrea* or mental element is recognised; it is a matter of semantics that the common law phrase is not used expressly.

4.2**Penal Code**

Under the Penal Code,[60] the words "murder" and "manslaughter" are unknown. What is recognised under this Code is the offence of culpable homicide punishable with death and culpable homicide not punishable with death depending on the circumstances.

Section 220defines culpable homicide as when death is caused in any of three instances:

a. If an act is done with the intention of causing death or inflicting bodily harm that can cause death;
b. If an act is done knowing that it is likely to cause death; or
c. By doing a rash or negligent act.

The Code goes further in section 221to state the instances under which culpable homicide shall be punishable with death. The first is when the act is done with the deliberate intention to cause death.Secondly, if the accused knew or ought to know that death will be the probable and likely consequence of his act.

From the above, corporate homicide cannot be a type of culpable homicide punishable with death. This is because corporate activities resulting in death are usually caused as a result of negligent acts. Corporate homicide therefore can be accommodated under paragraph 220(c) of the Penal Codewhich is when death occurs as a result of a rash or negligent act.

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[59] Section 25 however provides that mistake of fact will be a reference to criminal responsibility unless the law creating a particular offence states otherwise.

[60] This is the main legislation on criminal law operative in the Northern part of Nigeria.

Section 222 of the Codelists instances of when culpable homicide will not be punishable with death as follows:

1. When deaths occurs as a result of grave provocation where the accused had lost his self-control or when death occurs by accident or mistake.

2. When the accused, acting in good faith in exercising his right to defend himself or his property, exceeds the power given to him and causes the death of another;
3. Where a public servant (or persons who aid a public servant) acts in good faith in the line of duty, but has exceeded the powers given to him to promote public justice;

4. When death occurs in the cause of a sudden fight and in the heat of passion; or

5. When a person causes the death of another by doing a rash or negligent act.[61]

The cumulative effect of the provisions of the Penal Code above is that corporate homicide qualifies as a type of culpable homicide not punishable with death. Thus, the definitions of corporate homicide and manslaughter in both the penal and criminal code respectively encompass the common law offences of gross negligence, manslaughter and unlawful act of manslaughter. The offence can be manslaughter or culpable homicide not punishable with death, depending on the jurisdiction in Nigeria.

Under the Penal Code, the phrases *mensrea* and *actusreus*are also not expressly used. The Penal Code is also couched in a different way from the Criminal Code. However, it provides in Chapter Two for criminal responsibility and its provisions also show that the principle of no liability without fault is recognised. Words like intention, knowledge, fraudulently and dishonestly are used to depict the mental element in the Penal Code.

Section 48provides:

> Nothing is an offence which is done by accident or misfortune and without any criminal intent or knowledge in the course of doing a lawful act in a lawful manner by lawful means and with proper care and caution.[62]

It is the opinion of the researchers that the reference to “proper care and caution” means without negligent intention, knowledge and negligence, and these words are used in the above provision to denote the mental element. Similarly, section 51also provides that:

> Nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind is incapable of

[61] Section 222(5) and (6) relates to suicide and infanticide.
[62] The emphasis is mine.

knowing[63] the nature of the act, or that he is either wrong or contrary to law.

Also, the principle of no liability without fault is recognised in the penal code. Therefore, although the terms *actusreus* and *mensrea* are not expressly used in both the Criminal and Penal Codes, however, both legislation recognise that there must be a physical and mental elements to criminal liability.[64]Note, with respect to corporate liability for homicide under the Criminal and Penal Code, the Nigeria criminal law legislation recognise the principle of no liability without fault; the challenge of corporate liability for homicide is therefore in attributing the corporate body with the mental element.

In addition, the offence of corporate homicide is hitherto unknown to the Nigerian criminal laws. However, the challenge, therefore, is whether the existing legal framework is sufficient to accommodate corporate homicide. The answer is in the negative because of the following reasons:

i. Based on the provisions on criminal responsibility under the two Codes, mental element is fundamental to criminal liability except when otherwise stated in the Codes.

ii. Based on the definition of the offences of manslaughter and culpable homicide not punishable with death in the Criminal and Penal Codes, a mental element is required as an element of the offence.

Therefore, the mental element of a corporation must be determined for the purpose of holding it liable for homicide. The Criminal and Penal Codes are silent on the issue of the mental element of an offence by a corporation. Also, the wording of the two Codes on the definition of the offence implies that a natural person was intended by the drafters. This is not surprising because the Codes are more than fifty years old respectively. It seems therefore that the drafters did not envisage that a corporate body will be liable for an offence that requires *mensrea.*[65]

There is also a dearth of cases involving prosecution of corporate bodies beyond that of strict liability regulatory offences such as the case in *AdeyemoAbiodun and Others v. Federal Republic of Nigeria,*[66]where a pharmaceutical company manufactured a teething mixture with a toxic substance which killed more than eighty children sometime in February 2009 in Nigeria. The company together with three of its officials were prosecuted and convicted for breach of a statutory offence under the Miscellaneous Offences Act.[67] The company was specifically charged under section 1(18)(a)(ii)which was a strict liability offence.[68]

Another approach used in criminal prosecution of corporations is by lifting the corporate veil and prosecuting individual members or officers of a corporation. For

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63 The emphasis is mine.

64 Except in the circumstances stated otherwise in the two codes.

65 Corporate criminal liability for strict liability has been recognised much earlier in Nigeria.See*R v Zik Press* (1947) 12 WACA 202. See also, *Mandilas&Karaberis Ltd v COP* (1958) 3 FSC 20.

66 Suit No. 2013 CA/L/550A/13.

67 M17, Laws of the Federation of Nigeria 2004.

68 The company was convicted and wound up.

example, in *Federal Republic of Nigeria v Odogwu and Another No. 1,*[69]involving a prosecution before the then Failed Banks Tribunal, the corporate veil was lifted and the managing director of the bank was convicted.[70]However, it is the identification theory that is used in place of the corporate *mensrea* in civil cases. For example, in *Bank for Commerce and Industry v Integrated Gas (Nigeria) Limited,*[71]the Court of Appeal held that:"the state of mind and will of the *alter ego* of a company, that is, the directing mind and will, is the state of mind and will of the company itself."[72]

5. IMPERATIVE OF PASSING THE CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE BILL INTO LAW IN NIGERIA

Corporate homicide qualifies as a form of gross negligent manslaughter. It might be asked why should there be a separate legal framework for corporate liability for homicide since, in actual fact, a corporation is only an abstraction who can do nothing for itself except through its natural persons; thus, why not hold the culpable officer or member of a corporation liable? The justification for corporate liability as opposed to individual liability lies in the very nature of the act or omission leading to death. In essence, the justification lies in the nature of the "killing" itself. Therefore, corporate homicide occurs when the act or omission leading to death is caused by the systemic breakdown or misconduct of a corporation and the corporation is indeed the blameworthy person and not an individual member or officer of a corporation.[73]

Another argument could be that considering the peculiar nature of corporations as artificial persons and the "definition" of corporate homicide as a form of gross negligence manslaughter, it is not necessary to "punish" the corporation through the instrumentality of the criminal law, since the corporation is primarily formed for a lawful purpose. However, the paramount justification for criminalising corporate homicide is the fact that societal quest for justice is better served through the criminal law than the civil law. Besides, homicide is a crime; it is indeed a grievous crime, because the sanctity of life should ordinarily be preserved. In addition, the fact of legal personality itself is a justification for criminalising corporate homicide. The recognition of a corporation as a person in law means it is recognised as a right-and duty-bearing entity whose acts and omissions can constitute a crime.[74] Finally, the increasing rate of corporate deaths makes it imperative that it should be brought into the realm of the criminal law even if only for deterrence purposes. One of the goals of sanction that is the consequence of crime and criminality is deterrence, which may be specific or general deterrence.[75]

The Bill initiated simultaneously in the upper and lower legislative arms of the Nigerian Government by Senator Chris Anyanwuand Honourable Yakubu Dogara

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69 (1977) 1 FBTLR 179.

70 K.O Akanbi, "Perspectives on the Legacy of *Salomon v Salomon* on the Nigeria and Malaysian Company Laws" (2012), I LNS (A) I VII PAGE.

71 *Ibid*, a similar decision was reached in *Delta Steel (Nig.) v American Computer Technology Incorporated* [1999] 4 NWLR (Pt. 597) 53 C.A.

72 Akanbi, (n4) 125 - 133.

73 *Ibid*.

74 KO Akanbi and DA Ariyoosu, 'Corporate Criminal Liability: Imperatives of Criminalising Corporate Wrongs' (2014) 9 *University of Ife Law Journal* 190.

75 *Ibid*, 195.

respectively, is to provide for corporate manslaughter, corporate homicide and incidental matters. It is a short piece of legislation with twenty-six chapters. The Bill is fashioned after the UK's Corporate Manslaughter and Corporate Homicide Act 2007 and thus shares many similarities with the UK Act.

The provisions of the Bill will now be examined:

5.1 **The Offence**

The Bill creates an offence when death occurs because of the way the activity of an organisation is managed or organised and as a result of which there had been a breach of a duty of care by the organisation to the deceased. It further provides that an organisation can only be guilty of the offence if the way in which its activities are managed by its senior management is an important factor in the breach of the duty of care.[76]

From the definition of the offence, the organisation must owe the deceased a duty of care, which must have been breached, thus suggesting that there must have been some form of relationship between the organisation and the deceased. Most importantly, there must be a nexus between the senior officers or managers and the corporate activity resulting in death. It seems that creating a nexus between the senior management and the activity constituting the crime is a subtle endorsement of the identification theory or perhaps the management failure theory of determining the corporate *mensrea.*[77]Thus, there are bound to be challenges in applying the theories. First, in large corporations, the senior management, who are often the directors, is usually disconnected from the corporate activity constituting the crime. Thus, hinging corporate fault on the nexus may mean that the successful prosecution of large organisations will be a mirage.

Beside the above, another challenge is where to locate the managerial powers in large corporations with branches. A limiting factor is that the senior management might, as is often the case, delegate managerial duties and makes it difficult to establish the nexus. Thus, delegation of managerial duties and the extent of delegation are likely challenges.[78] Another limitation is the likely injustice to a corporation when corporate activity is managed negligently, but contrary to corporate policy.

The meaning of relevant duty of care is given in section 2 of the Draft Bill as duties owed under the law of negligence, which covers duties to employees, agents, occupier of premises, and duties owed in connection with the supply of goods and services. Briefly, these are duties owed by virtue of the old common law principle established in *Donoghue v. Stevenson*[79]on the basis of the neighborhood principle. The broad definition of relevant duty of care is commendable, as it places a

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76 Section 1(3).
77 See (n.47).
78 C. Wells, *Corporations and Criminal Responsibility*(2ndedn., Clarendon Press, 2011) 98 see the conflicting judgments in *Meridian Global Funds Management Asia Limited v Securities Commission* (1995) 2 AC 500 JCPC and *Attorney-General's Reference No. 2* (1999) (2000) 2 Cr. App. R. 207.
79 [1932] AC 562 1.

responsibility on corporations with respect to all those that can be affected by corporate activities: employees, agents, consumers and members of the general public. It is also provided that, what qualifies as a relevant duty of care is a question of fact that is determinable by the court.

However, some categories of duty are exempted from qualification as relevant duty of care within the meaning given in the Bill. For example, section 3 exempts any duty of care owed by a public authority in respect of a decision as to matters of public policy. Similarly, a duty of care owed in respect of actions done while exercising an exclusively public function are qualified, as such will not be regarded as a relevant duty of care unless it is in respect of employees, a duty owed as occupier of premises, or owed to one for whom the organisation is responsible for his safety.[80] Military and policing activities are also qualified with respect to the meaning of relevant duty of care, as certain actions done in specific instances will be exempted from the relevant duty of care rule.[81]

5.2 The *Mens Rea*

The greatest challenge to the development of corporate criminality as repeatedly noted earlier has been the *mensrea.* This is because of the peculiar nature of a corporation as an artificial person that is not capable of emotion, and the fact that the criminal law is founded on the principle of *actusreus non facitreum nisi mens sit rea.* (meaning an act is not necessarily culpable or a guilty act unless the accused has the guilty mind required for that offence). Therefore, any attempt at defining corporate homicide must necessarily include the yardstick of determining corporate *mensrea.* The Corporate Manslaughter Bill has adopted the management failure model developed in the UK's Corporate Homicide and Corporate Manslaughter Act 2007 as the attribution model for determining the corporate *mensrea.* It provides in its section 1(3) that an organisation will only be guilty of the offence if the way its activities are managed by its senior management is an important element of the breach of the duty of care. Thus, the *mensrea* necessary for manslaughter will be found in the senior management's conduct. In simpler terms, the organisation's mental element is evident in how the members of management behave, and the corporate *mensrea* lies in the actions of the senior management.

While the attempt to adopt a corporate *mensrea*is commendable, it must be stated that the management failure model adopted is not the most suitable and thus will affect the efficiency and efficacy of the Bill when and if it is fully passed into law. First, the management failure model is derivative and at variance with the core of the criminal law, which is based on individual liability. The ideal model for corporate criminality is individualistic and based on personal fault. Secondly, the management failure model developed in the UK to cure the challenges of the identification model is still tied to the apron strings of the identification model.[82] Thus, it is inevitable that with time it will become saddled with some if not all the challenges that the identification model has faced. Indeed, it can be argued that the difference between

[80] Section 3.
[81] Sections 4 and 5.
[82] J. Gobert, 'The Corporate Manslaughter and Corporate Homicide Act 2001: Thirteen Years in Making but was it Worth the Wait?' (2008) 71, *MLR,* 413, 428.

it and the identification model is simply a matter of semantics, as the senior management is no other than the director(s).

5.3 Thematic Application and Jurisdiction

With respect to geographical jurisdiction, the Bill, being an Act of the National Assembly, has a national application and applies to all parts of the country. In fact, section 18 gives further clarification to the extent or definition of the geographical application, which includes the seaward limits of territorial sea adjacent to Nigeria or on a Nigerian controlled aircraft, hovercraft or ship, even when the person is no longer on board as a result of a mishap. It also applies to any place to which the Petroleum Act[83] applies.

Also, its thematic application is also wide as it applies to organisations who are ordinarily not incorporated companies such as the police, the army, partnerships, trade unions, employers' associations, government agencies and departments in the same way as if they are incorporated companies. Hence, the word 'organisation' is used and not corporation, since the focus is wider than incorporated corporations. Another positive highlight with respect to the application of the Bill is section 13(1), which provides that any statutory provision on a criminal proceeding against a corporation shall be applicable to the police, government departments, partnerships, trade unions and employers associations with necessary modifications. It seems to pro-actively extend the definition of corporation for the purpose of corporate manslaughter. This is commendable, as it will prevent likely prosecutorial confusion with respect to past or future legislation on the extent of its application.

While the wide geographical and thematic application is commendable, the fact that individual accessorial liability is excluded is a deficiency of the Bill. Section 16 excludes individual liability for aiding, abetting or being a party to corporate manslaughter. This deliberate exclusion can in practice be detrimental to the effectiveness of the Bill. This is because directors are excluded from liability as accessories. Yet, the reality of corporate practice is that directors as managers and administrators of companies are often complicit in corporate crimes and criminality as in the *Barewa Pharmaceutical Company case*.[84] Not surprisingly, however, this exclusion is akin to section 20 of the model Act, the UK's Corporate Manslaughter and Corporate Homicide Act 2007, which has also been criticised as granting immunity to corporate officials from liabilitythat hitherto existed under the common law.[85] The discretion enjoyed by directors in the management of corporate affairs suggests that they are in a position to influence a culture of compliance and good behaviour in the company. Besides, the post-crime reaction to situations can also suggest culpability as accessories after the fact. Thus, individual, specifically directors' liability as accessories can further enhance the effectiveness of the Bill.

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83 CAP. P10 LFN 2004.

84 KO Akanbi, "Director's Accessorial Liability: A Tool for Effective Regulation" (2018) 16, *MLJ,* 99, 109.

85 Neil J. Foster, "Individual Liability of Company Officers'' from the Selected Works of Neil J. Foster, September 2009 <http://works.bepress.com/neil_foster/34> accessed 27 July 2023.

Section 14(1) and (2) is commendable as it recognises transfer of liability. While the concept of transfer of liability might be alien to the criminal law, it is appropriate in this context based on the peculiarity of the corporation as an artificial person. It provides that where death occurs as a result of the activity of a public organisation and such organisation has its functions transferred to another organisation, the new organisation shall inherit the liability of the original organisation even if such change in organisational functions took place in the course of proceedings under the Bill. This provision succinctly captures the reality of the workings of government ministries, extra-ministerial department and agencies especially in Nigeria, which is fraught with the vagaries of policy change which comes with every change of government.

An aspect of the Bill that deserves jettisoning is the mandatory requirement that the consent of the Attorney-General must be sought and obtained before a criminal proceeding can be instituted as provided in section 15 of the Draft Bill. This, no doubt, can be a veritable clog in the wheel of prosecutorial progress. This requirement can cause delay because of the usual administrative bottlenecks. Besides, this will add to the already bloated powers of the office of the Attorney-General, who is presently being described as a 'law unto himself'.[86] Thus, making the provision of section 15 is unnecessary.

But commendable, is the fact that a prosecution under the Bill does not preclude a prosecution under health and safety legislation if the circumstances so determine. Section 17(1) provides:

> Where in the same proceedings there is-
>
> a) a charge of corporate manslaughter arising out of a particular set of circumstances,
> b) a charge against the same defendant of a health and safety offence arising out of some or all of those circumstances, the court may, if the interests of justice so require, return a verdict on each charge.

The Bill further provides in section 17(2) that an organisation that has been convicted of corporate manslaughter may in the interest of justice be charged with a health and safety offence arising out of all or some of the circumstances.

5.4**Sanctions**

Like most other Nigerian legislation with respect to corporate wrongs, fines are the main sanction recognised in the Bill.[87] This is, however, not peculiar to Nigeria as fine is the most common corporate sanction in most jurisdictions globally. This is probably because of the artificial nature of a corporation with no physical body to incarcerate, thus the reasoning that corporate sanction will always be financial especially as corporations are usually formed for profit purposes. However, as common and suitable as fine is as a corporate sanction, it is not without its flaws. One of which is that it can be built into the normal cost of doing business and the consuming public ultimately made to pay the price for it.[88] Hence, the proposition for

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[86] *State v. Ilori*(1983) 1 SCNLR 94.
[87] Section 1(5).
[88] L Ali, *Corporate Criminal Liability in Nigeria* (Malthouse Law Books, 2008) 292.

the introduction of equity fine whereby a corporation is made to issue shares to a victim's compensation fund and cash is not removed from the corporation is justified.[89]

In addition, it confers power on the court to make orders as to remedying the wrong and a further order of publicity. Section 8 empowers the court to make a remedial order upon application by the prosecutor stating the terms of the proposed order. Such remedial order may be to remedy a breach or a state of affairs resulting from a breach. It may also be to remedy a health and safety deficiency or a particular policy or practice of the organisation. It is also required that before making an application for a remedial order, the prosecutor must have consulted with relevant enforcement authorities under whose supervision the remedy may be effected if eventually ordered by the court.[90] It should be noted however that the decision whether to order a remedy or not is entirely at the discretion of the court upon consideration of the proposal by the prosecutor and considering the available evidence. The remedial order is a good innovation as it has the effect of preventing future wrongs if the prevailing circumstances are remedied. However, with respect to the instant wrong, it cannot be remedied, as death cannot be remedied.

The researchers, therefore, suggest here, as opined by a learned writer[91]that a corporation even though being an artificial person, could also be subjected to an artificial death and imprisonment. The learned writer stressed that this could be achieved by winding up the corporation or striking off its name from the Register of Companies under the provisions of the CAMA 2020[92]to bring its life to an end. Also that a temporary closure of a corporation could be viewed as a form of imprisonment since during this period, the corporation would be incapacitated and restrained from functioning effectively.

Section 9 provides for an order of publicity, entailing the court giving an order to a convicted organisation that it should make a publication stating: the terms of the offence committed; the fact of conviction and the amount of fine; and the terms of the remedial order made if any. It also provides that the court in determining whether to order publication must seek the views of an enforcement authority. The publicity order has been described as an effective sanction that can achieve the deterrence goals of sanction because it can affect the public perception of an organisation, thereby leading to possible loss of reputation and patronage.[93]

Generally, the attempt to extend corporate liability to homicide is commendable, as it will ensure that corporations take more appropriate measures with respect to their safety standards and generally enhance a culture of compliance. It is also suggestive of the government's responsiveness to social reality since the Bill was introduced as a response to the yearnings of the public. The only snag, therein, is the procedure provided for in the Bill, the procedure may just culminate in a futile exercise. This is

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89 See generally Robert Baldwin, Martin Cave and Martin Lodge, *Understanding Regulations, Theory, Strategy and Practice.* (2ndedn., Oxford University Press, 2011) 250.

90 Section 8(3) and (4).

91 D.F Tom, *Nigerian Corporation Law: The Criminal Liability of Bodies Corporate in Nigeria,* (Chenglo Ltd, 2005) 5

92 Section 564 of The Companies Allied Matters Act 2020

93 Ali, (n87).

so because the Bill is an adoption of the UK's Corporate Manslaughter and Corporate Homicide Act 2007, which itself has not proved to be a successful model for corporate liability for homicide. The management failure model developed in the Act as a means of determining the corporate *mensrea*is suitable only for small corporations. The pattern of conviction following the Act in the UK has shown that most of the convictions were of small corporations,[94] and not large multinationals and or even government agencies.[95] It does not reflect the essence of the reality of modern corporate operations that is hinged more on systemic structure than on acts of individual officers of the corporation. Thus, in most instances, the corporate officials are disconnected from the acts constituting the offence.

In addition, the management failure model contained in the Bill as its principal, the UK Act, is likely to throw up some of the evidential challenges of the identification model. For example, section 1 (4)(c) of the Bill defines senior management as persons who play significant roles in:

> (i) the making of decisions about how the whole or substantial part of its activities are to be managed or organised, or (ii) the actual managing or organising of the whole or substantial part of those activities…

Thus, evidential issues of what qualifies as a substantial part of an organisation's activities, and what qualifies as a significant role, would be some of the challenges that may arise if the Bill is passed and it faces trial in court. Added to the above, is the need to expand the sanctions and introduce more suitable and contemporary sanctions. Further, the financial sanction of fine as it stands needs to be modified to the nature of equity fine in order to be effective as a corporate sanction.

6. CONSTITUTIONALITY OF THE NIGERIAN CORPORATE MANSLAUGHTER BILL

As stated above, the reason given for the refusal of Presidential assent is that the Bill as it is, is unconstitutional and violates the constitutional provisions on the presumption of innocence. Section 36 of the 1999 Nigerian Constitution is part of the fair hearing provisions of the Constitution and provides in subsection (5) that everyone charged with a crime shall be presumed innocent unless the contrary is proved, except in situations whereby any law imposes the burden of proving particular facts on the person.[96] Similarly, the presumption of innocence provisions is embedded in the Evidence Act,[97] to the extent that the burden of proving the guilt of the accused is on the prosecution and such must be proved beyond reasonable

94 The first conviction under the Act was that of a small one-man company: *R v. Cotsworld Geotechnical Holdings Ltd* (2011) ALL ER (D) 100. See also *R v Lion Steel Equipment* (Unreported) July (2012) Crown Court (NI); *R v Prince Sporting Club* (Unreported) (2013) Crown Court Southwark; *R v Mobile Sweepers (Reading) Ltd* (Unreported) (February) 2014 Crown Court Winchester; and *Health and Safety Executive v Huntley Mount Engineering Ltd* (Unreported) July, (2015) Crown Court Manchester.

95 *R v CAV Aerospace Limited* (Unreported) July, (2015) Central Criminal Court involved a large company with more than 400 employees. A parent company was convicted when an employee of its subsidiary was crushed by stacks of aircraft grade metal billets.

96 The requirement of presumption of innocence is in fact a global one as there are international instruments endorsing the same. An example is Article II of the Universal Declaration of human Rights 1948.

97 Section 135 Evidence Act 2011, Cap E14 Laws of the Federation of Nigeria (LFN) 2004.

doubt. Thus, the yardstick for criminal culpability will be that the prosecution must establish that the accused actually committed the offence; otherwise, the accused will be acquitted. It has been held that the purpose of the Constitution is to safeguard the interest and ensure that accused persons are given a fair trial.[98] Therefore, the presumption of innocence requirement is not to forestall criminal culpability, but merely to enhance justice and make sure an innocent party is not wrongly convicted.[99]

There is nothing in the Corporate Manslaughter Bill that forecloses the presumption of innocence or shifts the evidential burden of proof to the accused. First, from the definition of the offence, the offence is committed when the way in which an organisation is managed amounts to a breach of a duty of care and causes a person's death. It goes further that an organisation is guilty only if the way that the activities are managed is a major element in the breach of duty of care. There is nothing in the Bill that says that the gross breach occasioned by the management of the organisation must not be proved beyond reasonable doubt, or shifting the burden of proof to the accused organisation. Furthermore, the Bill provides that the question of whether an organisation owes the deceased a duty of care is a question of law, which the court must make findings on, based on the evidence before it. This, further strengthens the presumption of innocence requirements. Presumption of innocence merely applies to give the accused a reasonable benefit of doubt considering the context of the case.[100] Therefore, the refusal of presidential assent on the grounds that it is a violation of requirements of presumption of innocence is like merely giving a dog a bad name in order to hang it and should not be allowed to stand.

The second reason proffered for the refusal of presidential assent is that the Bill's provisions could lead to ambiguous legal interpretations or over-reach other laws potentially penalising corporations excessively or unfairly.[101] In answer to this reason, the researchers argue that existing legal provisions on corporate criminal liability are not sufficiently intentional and specific enough to engender a robust corporate criminal liability regime. Besides, the Nigerian criminal justice system is not proactive enough to articulate the several pieces of legislation in order to achieve a successful prosecution of erring corporations. Therefore, a separate dedicated legislation is imperative.

7. FINDINGS/OBSERVATIONS

In this section, the researchers put forward a summary of the observations or findings during the study as shown in the preceding sections

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98 *Adeniji v State* [2001] NWLR (pt. 73) 50, see also *Laoye v State* [1995] NWLR (pt. 10), 832.

99 See generally on presumption of innocence, Jacob Abiodun Dada and Eugene A. Opera, 'Application of Presumption of Innocence in Nigeria: Bedrock of Justice or Refuge for Felons' (2014) 28, *Journal of Law, Policy and Globalization,* 68 - 77, ISSN 2224-3259.

100 KO Akanbi, 'The Nigerian Corporate Manslaughter Bill: a thousand steps to nowhere'(2014) 22(1)*IIUM Law Journal*125.

100 See *Okoro v State* [1988] 5 NWLR (pt. 94), 255; *Onafowokan v State* [1987] 3 NWLR (pt. 61) 538; and *Garba v State* [2011] 14 NWLR (Pt. 1266) 98.

101 See Federal Government Official Notice on Refusal of Assent to Corporate Manslaughter Bill, URL: <https://gazzette.ng/Unofficial online access> accessed 29 May 2025.

It is limpid from the foregoing that the Bill, though very necessary at this point in the Nation's development, should not be rail-roaded into operation without providing safe-guards against the drawbacks or hick-ups presently being faced by the UK Act after which it was modelled. It is unarguable that the reality of contemporary times is that there is a paramount need to hold corporations criminally liable for deaths that occur from corporate activities as a result of the inevitable growing interaction between corporations and humans. This notwithstanding, the need to get it right can never be over emphasised as stated by a learned writer.[109]

This, researchers, therefore observe as follows

1. That there is the need for a rejigging of the Bill with the right parameters and needed local contents that will ensure its effectiveness and efficiency.

2. That the adoption of fines assanction or penalty to act as deterrent has not achieved the desired results in dealing with corporations as the financial burden of the fines is often watered down by the corporations through a transfer of same to members of the public who consume their goods and/or services as the case may be.

8. RECOMMENDATIONS

The problem of the management failure theory of corporate *mensrea,*which is incorporated in section 1(3) of the Bill perpetuates the complexity of proving the corporate *mensrea*. For the Bill to surmount this and other drawbacks identified above, the researchers strongly recommend the following:

(i) The corporate *mensrea* theory be replaced with the corporate culture theory which was developed in the Australian Criminal Code Act 1995 as the means of determining corporate *mensrea*[102]as it is based on personal liability and not derivative like the management failure.

(ii) The director's accessorial liability should be introduced into the Bill. This is because of the vantage position that directors hold in corporations. Having directors as accessories to corporate liability will ensure a culture of compliance, as there is a higher motivation to do the right thing.

(iii) Section 15 of the Draft Bill which requires the mandatory consent of the Attorney-General to commence prosecution be expunged.

(iv) The sanctions to be imposed upon being convicted be expanded where deserving to include winding up the corporation or striking of its name from the Register of Companies under the provisions of the CAMA 2020.

(v) The Corporate Manslaughter and Corporate Homicide Bill be rejigged in totality with the right parameters and specific reference to local content by the National Assembly and represented to the President for prompt assent.

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102 Jonathan Clough and Carmel Mulhem, "The Prosecution of Corporations" in *Corporate Culture as a Basis for the Criminal Liability of Corporations* (An Allen Arthur Robinsons Report for the United Nations Special Representative of the Secretary General on Human Rights and Business 2008).

9. **CONCLUSION**

The paper has highlighted the imperatives of passing the Corporate Manslaughter and Corporate Homicide Bill into Law in Nigeria. It has identified the challenges in determining the corporate *actusreus* and the corporate *mensrea*and also torch-lighted the Nigerian experience with specific reference to the two major sources of Nigerian criminal law; the Criminal Code and Penal code. The paper has also highlighted the short-comings in the Draft Bill and the UK Act after which the Draft Bill was modelled, and proffered suggestions or recommendations, which if consciously implemented could engender an effective corporate criminal law and corporate homicide law regimes in Nigeria.