

AN EVALUATION OF CORPORATE PERSONHOOD AS THE BASIS FOR CRIMINAL LIABILITY OF CORPORATIONS IN NIGERIA*

Abstract

A corporation in conducting its business may be dysfunctional to social stability by committing crimes which exposes it to various forms of liabilities. Corporate criminal liability regulation is characterised by uncertainties and conflicts across jurisdictions. As an artificial person, questions abound about whether a corporation can be held criminally liable and the quantum of punishment it can get. The crux of the argument is that corporate criminal liability for crimes of intent ran contrary to the rudiments of criminal law. This paper attempts to address the daunting challenges bedevilling this area of law and concludes that in Nigeria, the extant laws regulating corporate crimes need to be harmonized in order to attain a uniform corporate law regime that intersects corporate and criminal laws.

Keywords: *Actus Reus, Mens Rea*, Corporate Personhood, Corporate Criminal Liability, Corporate Crime

1. Introduction

'Corporate Personality' doctrine established in the epic case of *Salomon v Salomon*¹ and conventionally celebrated as forming the foundation for corporate criminal liability regulation, has generated issues across jurisdictions in both Criminal and Company law. Commenting on the emerging controversies, Mueller stated: 'No one grew it, no one cultivated it, no one rooted it, and it was just growing.'² Other notable scholars believed, it was rather ridiculous that a company can be held criminally liable in contrast to criminal acts by natural person or group of persons.³ Again, some others believed that "It was doubtful in the past that corporations might be held criminally liable".⁴ Generally, their main argument is that a corporation is a legal fiction lacking a body and soul and therefore by no stretch of the imagination can it be subjected to the penalties attached to offences.⁵ A corporation interacts with the larger structures of the society and in conducting its business, may be dysfunctional to social stability by committing crimes and other civil vices which exposes it to various forms of liabilities. Corporate crimes are illegal acts, omissions or commissions by corporations themselves or by their officials or employees, acting in accordance with the operating goals, to benefit the corporations themselves.⁶ While in the beginning it was impossible to hold corporations' criminally liable; this position however, is changing across jurisdictions, as corporations are now held accountable even in cases requiring the proof of *mens rea*. Again, the proper prescription amongst stakeholders on how to determine culpability for criminal acts committed and type of punishment to be meted out to rogue corporations is still chaotic. It is against this background, that this paper attempts to assess corporate criminal liability regulation in Nigeria as follows:

2. Corporate Personality

Corporate Personality denotes the distinctiveness of the personality of a corporation from that of its shareholders, members and directors. The doctrine came to limelight in the case of *Salomon v Salomon and Co Ltd*⁷ and provided the foundational platform and precedence for corporate criminal liability regulation. The court in *Salomon's* case, held that an incorporated company is at law a different person from its members. It follows therefore that the rights and duties of a corporation are not the rights and duties of its directors or members who are, most times, obscured by a corporate veil surrounding the company.⁸ Dignam and Lowry⁹ posits that the concept of corporate personality confers on the company, legal rights and obligations which affects its structure, existence, capacity, powers, rights and liabilities.

3. Corporate Personhood under Nigerian Company Law

The Laws regulating corporate personhood is dictated by the Nigerian legal system. The principal statute governing corporate law is CAMA¹⁰ which gave approval to corporate personality. Section 41 (6) of CAMA provides:

The certificate of incorporation shall be prima facie evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with and that the Association is a company authorized to be registered and duly registered under this Act.

Thus, in Nigeria, apart from CAMA,¹¹ corporate personhood is affirmed and applied in plethora of cases in relation to administration, control and governance of corporations. In *Emenite Ltd v Oleka*¹² it was held that legal personality of a corporation can only be established as a matter of law by production in evidence of the certificate of incorporation. Also decided in *Goodwill and Trust Investment Ltd & Anor v Witt & Bush Ltd*¹³ and *Adewumi v Adebest Telecommunications Ltd*.¹⁴ Again, in *Xingjiang Power Transmission & Transformation Engineering Company v Motract Global Networks Ltd*,¹⁵ the Court of Appeal held that 'the direct consequences of incorporation is that a registered company is hereby conferred with the privileges of corporate personality. Similarly, the Supreme Court

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¹(1897) AC 22

²GOW Mueller, 'Mens Rea and Corporation,' (1957) *University of Pittsburg Law Review*, 19, 38-40

³J Smith and B Hogan, *Criminal Law: Cases and Materials* (8th edn, London: Butterworths, 2002) p 282

⁶CE Emem and P Uche, 'A New Dawn of Corporate Criminal Liability in the United Kingdom: Lessons for Nigeria. (2012) *African Journal of Law and Criminology*, 2, 86-98

⁷O Amao 'Corporate Social Responsibility, Multinational Corporations and the Law in Nigeria: Controlling the Multinational in Host States,' (2008) *Journal of African Law*, 52, 89-113

⁹C Reasons, 'Crime against the Environment: Some Theoretical and Practical Concerns.'(1991) *Crim.L.Q.* 34

⁷supra

⁸HAJ Ford, *etal Principles of Corporations Law* (16th edn, London: Lexis Nexis Butterworths, 2015) p 101

⁹A Dignam & J Lowry, *Company Law* (7th edn, Oxford: Oxford University Press, 2012) p 17

¹⁰Companies and Allied Matters Act, 2020, ss.41(6), 42

¹¹*Ibid* s.42

¹²[2005] 6 NWLR (Pt. 921) 350

¹³(2011) LCN/3814(CA)

¹⁴(2011) LPELR – 9087 (CA)

¹⁵(2019) LPELR – 47677 (CA)

in *Reptico S.A. Geneva v Afribank (Nig) Plc*,¹⁶ held that it is only by production in evidence of a certificate of incorporation can corporate personality status be proved. Corporate personhood is also given approval in several other cases such as *Pharmacia (Nig) Ltd v Pharmacia Corporation*,¹⁷ *Konkon Conglomerate Ltd & Ors v NIPCO*,¹⁸ *Ekweozor v Reg. Trustees of The Saviours Apostolic Church of Nigeria*,¹⁹ *NLNG Ltd v Onwukwe*²⁰ and also in the more recent case of *John & Ors v Akhuamhenkhun & Ors*.²¹

4. Theories of Corporate Criminal Liability

Theories explain the functionality and rationale of corporate personality as a foundation for corporate criminal liability regulation and to a large extent is influenced by development of judicial participation in this area of law in the 20th century.

Agency or Vicarious Liability Theory

This theory holds a corporation accountable for criminal acts of its employees and agents in the course of their employment. In *New York Central Railroad Company v United States*,²² the court held the action of a traffic manager and his assistant who made payments of rebates on shipment of sugar, as the act of the company since they acted within the scope of their employment. Also in *United States v Parfait Powder Puff Company, Inc.*,²³ the Appellate court held that the agents acted for the benefit of their employers and also in the course of their employment.

Organic or Alter Ego Theory

This also called Doctrine of Attribution theory. Stessens²⁴ traced it to *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd*,²⁵ wherein the theory limits itself to the directing minds of the company in an attempt to determine corporate criminal liability for offences requiring *mens rea*. The Identification theory and its application is prevalent in commonwealth jurisdictions including Nigeria.

Corporate Fault Theory

It establishes a touchstone of liability in the behavior of the corporation. Gobert,²⁶ observed that the touchstone is the blameworthy 'organizational conduct' (the fault) of the corporation such as neglect to observe duty of care or to observe due diligence to avert the commission of crime.

Imperative or Command Theory of Law

This theory laid by John Austin presupposes that, law is a command of the sovereign in the state. Austin asserts further that, any legislation involves an established procedure of law and is a final command that calls for obedience. He sees duty and command as correlative terms to the extent that whenever there is a command, a duty is implied and *vice versa*. The Austinian positivist theory admits that effectiveness of law depends on subjection to its jurisdiction.²⁷

Flowing from the above, it appears that in recent times, the process of imputing corporate criminal liability across jurisdiction is still rather complex, clumsy and imprecise. Wells²⁸ on her part identified the above theories as basis for which corporations could be held criminally liable; however, she observed that they are rarely applied to serious criminal offences such as corporate manslaughter. Umejiaku and Uzoka,²⁹ stated that limitations in the other theories and desire to have an equitable premise for corporate criminal liability extendable to all forms of corporate criminal activity prompted scholars to consider 'corporate fault' as a model. Gobert,³⁰ believes the Identification theory encourages discriminatory rule within a corporation and neglects criminal acts perpetrated by employees of middle and lower tiers of the organizational structure. These limitations have further sparked the debate on what the appropriate mechanism is for establishing corporate culpability in respect of manslaughter prosecution.

5. Assessment of Criminal Liability of Corporations in Nigeria

In appraising corporate criminal liability in Nigeria, Oraegbunam³¹ stated that, with the provision of various incentives by the government of Nigeria for the promotion and participation of both foreign and local investors in the country's economy, there is upsurge of business participation in various sectors ranging from communication, food, industry, and so on, prompting the need for incorporation of companies, to effectively carry out businesses. However, criminal activities are associated with corporate entities in the course of their operations, thus giving rise to a number of questions as to liability. To address these issues, several statutes that regulate corporations, specify various penalties for infraction and impose strict liability on them were enacted. They include: Criminal Code Act, Penal Code Act, Companies and Allied Matters Act, 2020, Money Laundering (Prevention and Prohibition) Act, 2022, Failed Banks (Recovery of Debts) and Financial Malpractices Act, Economic and Financial Crimes Commission Act, *etcetera*. However, notwithstanding these appreciable legal frameworks in Nigeria, it appears that corporate crime is on the increase and remains unabated thereby showcasing an epileptic potency of these laws. It is worthy of note that the rudiments of corporate criminal liability was established in 1944 in three

¹⁶(2013) LPELR – 20662 (SC)

¹⁷(2020) LPELR - 49581(CA)

¹⁸(2021) LCN/ 14998(CA)

¹⁹[2020] 11 NWLR (Pt. 1743) 61

²⁰[2019] 10 NWLR (Pt. 1680) 253

²¹(2021) LCN/ 15126 (CA)

²²[1909] 212 US 481

²³[1947] 163 F.2d 1008 (7th Cir. CA)

²⁴G Stessens, 'Corporate Criminal Liability: A Comparative Perspective' (1994) 43. No.3 *The Int'l Comparative Law Quarterly*, 493, 494.

²⁵ [1915] AC 705.

²⁶*Op cit* p. 393-410.

²⁷ FN Obi, *Basic Understanding of Jurisprudence* (Asaba: Mercury Press, Jovene, 2004) 86.

²⁸ C Wells, *Corporations and Criminal Responsibility* (2nd ed Oxford University Press 2001) p 156.

²⁹NO Umejiaku and CN Uzoka, 'Towards a Rational Theory of Criminal Liability for Corporations in Nigeria' (2019) 6(1) *Nnamdi Azikiwe University Journal of Commercial and Property Law*, 139.

³⁰J Gobert, 'Corporate Criminality: Four Models of Fault' (1994) 14(3) *James Gobert Legal Studies*, 393-410.

³¹IK Oraegbunam, *et al* 'An Appraisal of Corporate Criminal Liability' (2019) *International Journal of Innovative Legal and Political Studies*, Vol. 7 pp 43-51

English war time cases as follows: Firstly, in *DPP v Kent & Sussex Contractors Ltd*,³² the company was charged and held culpable for offence of making use of a false document with clear intent to deceive. Also, In *R v ICR Haulage Ltd*,³³ the court held that a company can be indicted for a common law conspiracy to defraud. Similarly, in *Moore v Bresler Ltd*,³⁴ the court held that a company may be guilty of a criminal offence including an offence involving *mens rea*. In the instant case, the company was convicted of criminal intent to deceive contrary to law.³⁵

In Nigeria, the origin and development of corporate criminal liability regulation, is closely connected to the evolution process of England and some other jurisdictions as observed by Idhiarhi.³⁶ Also, Folorunsho,³⁷ stated that the Nigerian legal system accommodates the position at common law that corporations are now held criminally accountable for their unlawful actions, subject to certain limitations such as offence of assault, murder, manslaughter and the likes. It is worthy of mention that the case of *R v Attorneys for Anglo-Nigeria Tin Mines Ltd*,³⁸ espoused the application of corporate criminal liability to corporate law in the country. In this case, Berkley J stated as follows: 'There must be some person who must be brought before the court, and if necessary placed in the dock. But in modern times, there are certain statutory offences created which renders corporate bodies liable to penalty in certain events'.

Over time, the clamor that corporations like natural human beings should be criminally liable gained ground in subsequent cases such as *R v Service Press Ltd*,³⁹ *Attorney-General, Eastern Region v Amalgamated Press of Nigeria Ltd*,⁴⁰ and also in *Mandillas and karaberis Ltd & Anor v Inspector General of Police*,⁴¹ where the court held the company and manager liable for stealing. Also, the Court of Appeal in *IBWA v Sasegbon*,⁴² held that a company can be liable for contempt through its officers. Thus, in Nigeria, while it appears that the issue and dire need of holding a corporation criminally accountable has come to stay, the proper prescription to determining culpability and kind of punishment for rogue corporations is still bedeviled by confusion. Again, in addition to proof of intent, a major distinguishing characteristic of criminal law is the threat of imprisonment. It has been argued that a corporation cannot be imprisoned, thereby creating an impression that criminal law is not an appropriate tool for controlling corporate behavior in all ramifications.

It is worthy of note that for an act to qualify as a crime in Nigeria, it must be under a written law. This position is entrenched in the Constitution,⁴³ thereby presupposing that corporate crime and liability in the country, must be looked at from enabling laws. However, both the Criminal and Penal Codes did not expressly define a 'person'; but the Interpretation Act⁴⁴ defines a person to include any body of persons, corporate or unincorporated. This definition notwithstanding, the Criminal and Penal codes did not also state how corporate criminal liability can be determined. It is trite that the predominant means by which a society controls crime is vide criminal law. It appears however, that the application of criminal procedure to a corporation as an artificial person, has not been easy due to the traditional criminal law requirements of application of *actus reus* and *mens rea* to determination of criminal liability. The Criminal Code Act for instance provides as follows: 'Subject to the express provision of this code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission, which occurs independently of the exercise of his will or for an event which occurs by accident'.⁴⁵

As earlier stated, every crime possesses two elements; one physical called *actus reus* and the other mental known as *mens rea*. The physical attributes are criminal conduct by a person which the law and society frowns against; while the mental attribute, is the blame worthy mental condition comprising of intention and knowledge. Consequently, some fundamental questions arise in the circumstance:

1. Whether a corporation can be held liable for criminal acts committed by its members or agents acting on its behalf?
2. Whether an employee of a corporation can be held liable for the criminal acts of the corporation and the exceptions thereto

It appears that CAMA and the courts in Nigeria have proffered some answers to the above questions which we shall look at hereunder:

5. Liability of Corporations for Criminal acts of Agents

In *Agbebaku v State*,⁴⁶ in determining whether a corporation can be liable for the criminal acts of its agents, the Court of Appeal citing CAMA and several Supreme Court authorities held that in all such cases, evidence is required to establish liability of the company or the personal liability of its directors, officers and employees. The Court stated further that, before a trial Court can establish that the acts in issue are those for which the company ought to face liability or those for which the Appellant (a principal member of the company) should personally be held accountable; there must be benefit of evidence. The trial Court must hear the witnesses and any relevant documents must be tendered and, if admissible, be admitted in evidence. If criminal offence is committed in the course of employment, with the knowledge and authority of the company, then it is the company that ought to face the charge; on the other hand if a particular officer is personally to be held accountable, the evidence would so reveal. Thus in a bid to separate criminal liability of corporations from those of its members and agents, the court held further that whether a company can be liable for the criminal acts of its agents, falls

³² (1944) K.B. 146 (King's Bench Divisional Court)

³³ [1944] 2 K.B. 551 (Court of Criminal Appeal)

³⁴ (1944) 2 ALL ER 515.

³⁵ Finance (No.2) Act, 1940 UK

³⁶ S Idhiarhi, 'An Examination of the Scope of Corporate Criminal Liability in Nigeria (Jan, 2016); <http://www.researchgate.net/publication/3152120727309612.pdf>> accessed 28th January, 2022.

³⁷ D Folorunsho, 'Corporate Crimes and Liability under Nigerian Laws; http://www.nigerianlawguru.com/articles/companylaw_Crimes_And_Liability_Under_Nigerian_Laws.pdf> accessed 28th Dec, 2022.

³⁸ (1926) 10 NLR 69.

³⁹ (1952) 20 NLR 96.

⁴⁰ (1956) 1 ERLR 12.

⁴¹ (1958) 1 NSCC 70.

⁴² [2007] 16 NWLR (Pt. 1059) 195 at 216

⁴³ Constitution of The Federal Republic of Nigeria, 1999 (As Amended) s.36 (12).

⁴⁴ Interpretation Act, Cap I 23 LFN 2004 S.18.

⁴⁵ Criminal Code Act, Cap C38, LFN, 2004. S. 24

⁴⁶ (2015) LPELR - 25763 (CA)

under the narrow view in relation to whether the express provisions of CAMA⁴⁷ on criminal liability is in favour of the Appellant. Again CAMA⁴⁸ provides for strict liability of a company to the effect that:

where in accordance with sections 89 to 93 of this Act, a company would be liable to a third party for the acts of any officer or agent, the company shall, except where there is a collusion between the officer or agent and third party, be liable notwithstanding that the officer or agent has acted fraudulently or forged a document purporting to be sealed by or signed on behalf of the company.

The above provisions highlight two distinct (though somewhat related) ways, in which a corporation may be criminally or civilly liable.

1. Liability could arise by the corporation having done the act in issue through its members, Board of Directors, Managing Director or other officers as agents of the company.
2. Liability could also arise from the act of any of its officers in the course of their employment, making the company vicariously liable.

Companies or corporations, in line with the concept of artificial personality, as established in Salomon's case, were not initially held criminally responsible for actions taken by them as they were considered incapable of forming the requisite *mens rea* to commit criminal acts. However, the case of *DPP v Kent and Sussex Contractors Ltd*,⁴⁹ which followed the earlier case of *Lennard's Carrying Co. v Asiatic Petroleum Co*,⁵⁰ brought to fore the principle that a corporation, which can only have knowledge and form an intention through its human agents, will be liable, if the circumstances are such that the knowledge and intention of the agent must be imputed to the corporation.

6. Liability of Employees for Criminal acts of Corporations

In *Manga v Federal Government of Nigeria*,⁵¹ the Appellant contended that as a director, he cannot be held (vicariously) criminally liable for act or omission of the company. The Court of Appeal in determining the issue and the exceptions thereto made reference to provisions of CAMA,⁵² and stated that there is no gainsaying generally that vicarious liability is not allowed in law, but there are exceptions even in doctrine of corporate liability. It is known that a corporation does not run on its own but on minds of organs of the corporation who in law is the mind of the corporation. Legally the procedure is, it is only after due evaluation of evidence on the acts of the corporation and that of the directors like the Appellant in the instant case, that the lower court can then separate the 'wheat from the chaff' to determine the liabilities of the parties. The Court observed further that the Appellant from available evidence, having received large sum of money and also one of the signatories to the corporation's accounts cannot be seeking for discharge based on a no case submission as it is part of Nigerian Laws that a director or officer of a corporation can be held vicariously liable for criminal acts of a corporation. Also, in *Olawepo v S.E.C*,⁵³ it was held that, where an offence is committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against. Thus, the principles of law enunciated in *Olawepo case*⁵⁴ no doubt had drawn the line where the employee in the course of his normal employment, on the one hand, and the corporation on the other hand or even both, can be held accountable for corporate criminal liability. Also in *Iyere v Bendel Feed and Flour Mill Ltd*,⁵⁵ the court held that directors, officers and employees of a company can be criminally liable for acts they personally committed, regardless of whether they were acting in furtherance of the corporation's interests. The Court will, when the occasion demands, lift the veil of incorporation to identify wrongdoers as held in *FDB Financial Services Ltd v Adesoza*.⁵⁶

7. Liability of Corporations for Offence for which Imprisonment is the only punishment prescribed by Law

As earlier stated, it was conceived as absurd for a corporation to be prosecuted for an offence for which imprisonment was the only form of punishment prescribed by law. This was well illustrated in the old case of *Attorney-General, Eastern Region v Amalgamated Press of Nigeria Ltd*,⁵⁷ where the court per Ainley CJ stated the position as follows: 'I concede that a corporation cannot be charged with offences of personal violence, or with offences for which the only punishment is imprisonment'. However, it is worthy of note that the above situation has changed in recent times as the courts in Nigeria have taken a position that a corporation can be charged with an offence for which imprisonment is the only form of sanction prescribed by law. This was established in *Jadny Trust Ltd v State of Lagos and Ors*,⁵⁸ wherein the court of Appeal as per Georgewill JCA answered this issue in the affirmative and stated the position further as follows:

...I find that there is no distinction or dichotomy, between offences punishable by fines only or by imprisonment only or by both, as to what categories of offences with which a Corporate entity can be charged with before a Court of law. I therefore, do not see any incompetence in Counts 2 - 111 as laid against the Appellant merely on the ground that the sentence for Counts 2 - 111 would, if conviction is secured, involve a custodial sentence of life imprisonment.

Referring to CAMA⁵⁹ and the case of *Nwude v FRN*,⁶⁰ the court held further that it is established under the Advance Fee Fraud and Other Related Offences Act,⁶¹ that where an offence under the Act, committed by a Body Corporate is proved to have been committed on the instigation or with the connivance of or attributable to any neglect on the part of a Director, Manager, Secretary or other similar

⁴⁷Companies and Allied Matters Act, 2020 s. 89

⁴⁸*Ibid* s. 94

⁴⁹*supra*

⁵⁰*supra*

⁵¹(2018) LPELR-45341 (CA)

⁵²Companies and Allied Matters Act, 2020 ss. 89, 90, 94 and 316

⁵³[2011] 16 NWLR (Pt.1272) 122

⁵⁴*supra*

⁵⁵(2008) 7-12 SC 151

⁵⁶[2002] 8 NWLR (Pt. 668) 170 at 173

⁵⁷*Supra*

⁵⁸(2018) LPELR – 47646 (CA)

⁵⁹*Op cit* s.89

⁶⁰[2015] 5 NWLR (Pt. 1505) 471

⁶¹*Op cit* s.10

officer, or any person purporting to act in any such capacity, he as well as the Body Corporate, where practicable shall be deemed to have committed that offence and shall be liable to be proceeded against and punished accordingly.’

In view of the foregoing, as a legal person, there is no reason why a rogue corporation cannot be sanctioned in its artificial state same way as a natural person for offences that prescribes penalties of imprisonment or to be condemned to death if the law so prescribes. Asogwah⁶² posits that if a corporation commits a criminal offence that warrants a death penalty, the winding up and subsequent dissolution of the corporation should be seen as the death of the company. In line with this apt view, it is suggested that where the penalty for an offence committed by a corporation is imprisonment, the rogue corporation can be sentenced to imprisonment by placing on hold its corporate registration and sealing its operations to the full glare of the public, same way a natural person will serve the custodial sentence by incarceration. Thus, if a corporation can be charged with an offence for which imprisonment is the only form of punishment prescribed by the law as established in *Jadny Trust Ltd v State of Lagos and Ors*⁶³ then it implies that same corporation can also face the prescribed punishment notwithstanding the fact that it is an artificial person.

8. Liability of Corporation and Members under the Miscellaneous Offences Act (MOA)

The MOA⁶⁴ provides that, where an offence by a body corporate is proved to have been committed with connivance of, or attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate, he as well as the body corporate where practicable, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. The MOA⁶⁵ also provides that where a body corporate is convicted of an offence punishable by a term of imprisonment without the option of a fine or to death under this Act, the Federal High Court may order that the body corporate be wound up and all its assets forfeited to the Federal Government. The above provisions have judicial approval in several cases such as *GFL Marine Services Ltd v FRN*,⁶⁶ *Ajayi v FRN*,⁶⁷ and *Ibanibo v FRN*.⁶⁸ The MOA reinforces the earlier argument that, where a corporation is convicted of an offence punishable by a term of imprisonment without the option of fine or condemned to death under the Act, the court can order the winding up of the corporation including the forfeiture of its assets. Thus where a corporation commits criminal offence against public order, of grievous nature such as drug trafficking, manslaughter and others, the courts should be able to make an order of whatever penalty or sanction prescribed by the enabling statute or law even if it is imprisonment or death sentence, as the winding up order on a corporation is similar to the imposition of death penalty on the corporation.

9. Liability of Corporation for Corporate Manslaughter in Nigeria

Corporate manslaughter is the unintended fatalities traceable to negligence which befalls employees in the course of executing their duties, or members of the general public through the use of goods and services provided by corporations.⁶⁹ In Nigeria there are no laws for the prosecution of rogue corporations for corporate manslaughter by negligence notwithstanding that there are reports of plane crashes, collapsed buildings, oil pipes and gas explosions, sea disasters, breaches of environment or health and safety laws by corporations with far reaching devastating effects. The National Assembly in a bold attempt passed the Corporate Manslaughter Bill.⁷⁰ However, former President Muhammad Buhari on July 9th 2018, declined assent to the Bill, that ‘the provision is inconsistent with section 36(5) of the 1999 Constitution’.⁷¹

10. Judicial Approach to Criminal Liability of Corporations in Nigeria

The judicial revolution of the courts aggravated a ‘sweeping expansion of corporate law principles as it affects corporate criminal liability.’⁷² Thus prior to 20th century, it was rather inconceivable to ascribe criminal liability to companies since the twin requirements of *actus reus* and *mens rea* in criminal law shielded corporations from criminal liability.⁷³ In Nigeria, the judicial powers of the Federation and States are vested in the courts pursuant to the Constitution⁷⁴ which also provides for criminal prosecution of either an individual or corporate body as follows: ‘Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal’. There is plethora of authorities in Nigeria where the Supreme Court and indeed other courts imposed and enforced criminal sanctions on corporations. A good instance is *Barewa Pharmaceutical Ltd and ors v Federal Republic of Nigeria*,⁷⁵ where the Federal High Court sitting in Lagos before Hon Justice Okeke, as court of first instance, in a well-considered judgment delivered on 18th May 2013, found the corporation guilty for manufacturing deadly ‘Teething Mixture’ which allegedly killed over 80 babies in 2008 and ordered that it be wound up and its assets forfeited to the Federal Government. The court also sentenced two of the corporation’s employees to 7 years imprisonment each for conspiracy and selling of dangerous drugs. Upon appeal, it was allowed in part; the conviction for conspiracy was set aside, while conviction for sale of dangerous drugs was affirmed. The order for winding up and forfeiture of assets of the Appellant was also set aside and in its place the Appellant was sentenced to a fine of N1,000,000.00 (One Million Naira) only. Dissatisfied, the Appellant appealed further to the Apex court. The Supreme Court unanimously dismissed the appeal and upheld the judgment of the Court of Appeal. Again, a company can be prosecuted for crimes

⁶²FI Asogwah, ‘Rules of Attribution – Corporate Acts and Liabilities’ in *Law of Business Associations in Nigeria* edited by Prof C Ohuruogu (Lagos: Princeton & Associate Publishing Co. Ltd, 2020) p 171

⁶³*supra*

⁶⁴Miscellaneous Offences Act, 2007 s.3(1)

⁶⁵*Ibid* s.3(2)

⁶⁶(2018) LPELR-43476 (CA)

⁶⁷(2018) LPELR-43477 (CA)

⁶⁸(2018) LPELR-43478 (CA)

⁶⁹P Almond, ‘The Prospective Enforcement of Work Related Fatality Cases.’ (2006) *British Journal of Criminology*, Vol.46 p.893

⁷⁰Bill for an Act to Create the Offences of Corporate Manslaughter and Matters Incidental Thereto, 2018 (CMB,2018).

⁷¹H Umoru, ‘Buhari declines Assent to Corporate Manslaughter Bill, 3 Others’, Vanguard, July 18, 2018 available at www.vanguardngr.com accessed on 12th December, 2022.

⁷²HL Pitt and KA Groskaufmanis, ‘Minimizing Corporate Civil and Criminal Liability: A Second Look at Corporate Codes of Conduct’ [1990] 78 *The Georgetown Law Journal*, 1560.

⁷³EK Ainslie, ‘Indicting Corporations Revisited: Lessons of the Arthur Andersen Prosecution’ (2007) *Am. Crim.Law Rev.*, 107 at 121.

⁷⁴Constitution of the Federal Republic of Nigeria, 1999 (As Amended) s.6 (6)(c) ; 36(4)

⁷⁵(2019) LPELR-47385 (SC)

either separately or alongside their directors, officers and agents. In *Abacha v Attorney General of the Federation*,⁷⁶ the court held that a company can be prosecuted as though it is a natural person. In Nigeria, while the courts are leaning towards the approach of English courts by adopting the alter ego principle, in other situations, corporations have been criminally and vicariously held liable for acts also of junior ranking members of a corporation. However, it appears that in all these cases, the maximum sanction meted out by Courts on convicted corporations is imposition of fines which is outrageously low and not commensurate with the alleged criminal conduct of rogue corporations.

11. Corporate Criminal Liability in some other Jurisdictions

In appraising corporate criminal liability in Nigeria it has been observed that 'although corporate criminal liability has been accepted in many jurisdictions, the legal basis for its application varies from jurisdiction to jurisdiction.'⁷⁷For the purpose of this paper, a brief analysis of corporate criminal liability in other jurisdictions is considered hereunder:

United Kingdom (UK)

For several decades, corporations have been held criminally accountable for their unlawful acts in the United Kingdom (UK). Over the years, the English courts adopted the doctrine of vicarious liability in which the acts of a subordinate were attributed to the corporation. This applied to some offences that required no proof of *mens rea* such as public nuisance, contempt of court, *etcetera* and later on they were replaced with the identification theory which had its origin in the civil case of *Lennards Carrying Co Ltd v Asiatic Petroleum Co Ltd*.⁷⁸ Subsequently, in a bid to obliterate the difficulty of imputing criminal liability on corporations, two significant and effective corporate offences legislations were enacted.⁷⁹ The Bribery Act 2010, which tackles vicarious liability; while the Corporate Manslaughter and Corporate Homicide Act (CMCHA) addresses gross negligent manslaughter. Under the CMCHA,⁸⁰ identification principle is extended to allow corporate liability to be established by an aggregation of the cumulative conduct of senior managers of a company. The Act,⁸¹ further provides for a corporation's punishment if convicted of manslaughter, to take the form of unlimited fine payable to the state, while a conviction for gross negligence manslaughter carries a maximum sentence of life imprisonment. Again, The Act,⁸² empowers the court to direct that a remedial order be made against a corporation convicted of corporate manslaughter.

United States of America (USA)

In tracing the history of development of corporate criminal liability in the United States of America (USA), the courts had earlier refused to hold corporations culpable for criminal acts. This situation however changed when it was rejected by USA Supreme Court in *New York Central and Hudson River Railroad v United States*,⁸³ where the court introduced the theory of vicarious liability into criminal law. The US criminal law operates at both the Federal and State levels. Majority of criminal prosecutions are conducted under State criminal laws. The liability of corporations under Federal criminal law is based on the doctrine of *respondeat superior* or vicarious liability and aggregation doctrine. Thus the employer or corporation is liable if the employee commits the crime while acting within the scope of his employment and on behalf of the corporation. Furthermore, in terms of sanction, US law prescribes that a corporation can be sanctioned by imposition of fine, seizure of its properties, *etcetera* which is usually levied by an execution order granted by the court as decided in *US v Sun-Diamond Growers of California*.⁸⁴

Canada

In Canada, corporations are subject to its Criminal Code.⁸⁵ The Canadian courts have developed a set of rules to determine same. A corporation is held guilty, if its directing mind committed the crime and had the requisite *mens rea*. A 'directing mind' is a person who wields wide authority in the corporation and can be referred to as the corporation soul. The person can determine the policies of the corporation with a clear intention to benefit the corporation.

12. Conclusion

As shown in this paper, Nigeria has appreciable legal frameworks regulating corporate criminal liability; that notwithstanding, corporate crime is on the increase. This paper concludes that lapses in the principal criminal legislations, lack of unity of purpose of existing robust body of laws and such related issues, contributed to the subject problem. It therefore recommends a revisit to the proposed Corporate Manslaughter law and also a new legal regime, which intersect company and criminal laws, to regulate corporate criminal liability.

⁷⁶[2014] 18 NWLR (Pt.1438) 21

⁷⁷IK Oraegbunam, *et al* 'An Appraisal of Corporate Criminal Liability' (2019) *International Journal of Innovative Legal and Political Studies*, Vol. 7 pp 43-51

⁷⁸*supra*

⁷⁹Corporate Manslaughter and Corporate Homicide Act, 2007 and Failure to Prevent Bribery Act, 2010

⁸⁰S.1(3)

⁸¹*Ibid* s.1(6)

⁸²*Ibid* s.1(4) (c)

⁸³*supra*

⁸⁴(1999) 526 US 398

⁸⁵Criminal Code, R.S.C., 1985 c.C-46 s.2