

## COMPARATIVE ANALYSIS OF CORPORATE HOMICIDE LEGISLATIONS IN SELECTED JURISDICTIONS: LESSONS FOR NIGERIA\*

### Abstract

The issue of corporate homicide, a globally relevant concern involving unlawful killings resulting from corporate misconduct, is a significant focus within legal and regulatory frameworks. This paper provides a comparative analysis of corporate homicide legislation in selected jurisdictions—Australia, Canada, the United Kingdom, and the United States of America—to extract insights applicable to Nigeria. It compares these jurisdictions' statutory provisions, judicial interpretations, and enforcement strategies to identify best practices and areas for improvement in Nigeria's legal framework. Through a comparative approach utilising doctrinal methodology, the paper examined essential elements such as the scope of corporate liability, standards of proof, penalties, and the effectiveness of enforcement mechanisms, using primary and secondary sources of data collection. The findings revealed diverse approaches, from the strict penalties in the United Kingdom to comprehensive liability standards in the United States of America and the balanced approaches in Canada and Australia, reflecting nuanced legislative developments and judicial interpretations. Strengths and weaknesses in each system were identified, leading to specific recommendations for Nigeria, including adopting explicit statutory definitions, suitable penalties for corporations, and enhanced enforcement mechanisms aimed at addressing gaps in Nigeria's current legal framework and improving the effectiveness of corporate homicide legislation. This comparative analysis contributes to the broader discourse on corporate responsibility and provides actionable insights for enhancing Nigeria's approach to corporate homicide, ultimately promoting greater corporate accountability and public safety.

**Keywords:** Comparative Jurisprudence, Corporate Accountability, Corporate Criminal Liability, Corporate Homicide

### 1. Introduction

The notion of corporate homicide, which denotes the legal responsibility of corporations for fatalities resulting from gross negligence or systemic shortcomings, has garnered global recognition.<sup>1</sup> This recognition is due to the increasingly influential role of businesses in contemporary society and the urgent need for robust legal frameworks to hold corporations answerable for actions leading to loss of life.<sup>2</sup> Notable catastrophes like the 1992 Westray mine disaster in Nova Scotia, Canada;<sup>3</sup> the 1998 ESSO Longford gas plant explosion in Victoria, Australia;<sup>4</sup> the 2005 BP American refinery explosion in Texas, United States (US);<sup>5</sup> the 2010 BP oil spill in the Gulf of Mexico, US;<sup>6</sup> the 2012 Dana Air crash in Lagos, Nigeria;<sup>7</sup> the 2013 garment factory accident in Dhaka, Bangladesh;<sup>8</sup> and the 2017 Grenfell Tower fire in London, United Kingdom (UK)<sup>9</sup> exemplify this need. These incidents, along with numerous others, underscore the weight of corporate responsibility and the urgency of enacting legislation that not only discourages such behaviour but also ensures justice and reparation for victims, a crucial ethical aspect of the issue.

In countries such as Australia, Canada, the UK, and the US, the legal frameworks addressing corporate homicide have evolved to meet the associated challenges. Australia and Canada are distinguished by their explicit legislative provisions

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<sup>1</sup> KO Akanbi, 'The Nigerian Corporate Manslaughter Bill: A Thousand Steps to Nowhere' *Coventry Law Journal* (2022) (27) 115<<http://publications.coventry.ac.uk/index.php/clj/article/view/874/927>> accessed 31 July 2024.

<sup>2</sup> *Ibid*

<sup>3</sup> CW Johnson, 'Ten Contentions of Corporate Manslaughter Legislation: Public Policy and the Legal Response to Workplace Accident' *Safety Science* (2008) 46(3): 351 - 353 <DOI:10.1016/j.ssci.2007.05.011 > accessed 31 July 2024.

<sup>4</sup> Australian Emergency Management Institute, 'Event – Complex Emergencies – Longford Gas Plant Accident and Victorian Gas Supply Crisis' (September 1998) <<http://www.disasters.ema.gov.au/Browse%20Details/DisasterEventDetails.aspx?DisasterEventID=2152>> accessed 31 July 2024.

<sup>5</sup> This incident resulted in 15 fatalities and 180 injuries. See US Chemical Safety and Hazard Investigation Board, 'Investigation Report: Refinery Explosion and Fire, BP Texas City, Texas, March 23, 2005' (Report No. 2005-04-I-TX) <<https://www.csb.gov/bp-america-refinery-explosion/>> accessed 31 July 2024.

<sup>6</sup> National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, 'Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling (Report to the President)' US Government Printing Office (2011) <<https://www.govinfo.gov/content/pkg/GPO-OILCOMMISSION/pdf/GPO-OILCOMMISSION.pdf>> accessed 31 July 2024.

<sup>7</sup> KO Akanbi, 'The Legal Framework for Corporate Liability for Homicide: The Experience in Nigeria and the United Kingdom' *IJMLJ* (2014) 22(1) 117 <<http://doi.org/10.31436/ijumlj.v22i1.118>> accessed 31 July 2024.

<sup>8</sup> (n 1) 116

<sup>9</sup> T Gillespie, 'The Grenfell Tower Fire: Why Was It So Deadly?' *BBC News* (29 October 2019) <<https://www.bbc.com/news/uk-40301289>> accessed 31 July 2024

and effective enforcement strategies,<sup>10</sup> while the UK has set a strong precedent with its Corporate Manslaughter and Corporate Homicide Act 2007.<sup>11</sup> On the other hand, the US approach, which is based on general criminal and tort law principles rather than specific corporate homicide statutes, provides valuable insights into the complexities of holding corporations accountable without targeted legislation. This approach also showcases standard procedures and guidelines for sentencing corporate defendants in line with international best practices.<sup>12</sup> However, Nigeria's framework for addressing corporate liability in fatal incidents still needs to be developed. The country does not have specific legislation similar to the jurisdictions above and instead relies on general criminal and tort laws.<sup>13</sup> This lack presents significant challenges in enforcing accountability and achieving justice in corporate negligence cases leading to fatalities.<sup>14</sup> The current limitations within the Nigerian legal system regarding corporate homicide highlight the necessity for a comprehensive study to explore potential reforms.

The paper's significance lies in comprehending how various jurisdictions address corporate homicide and derive insights to improve Nigeria's legal system. Through a comparative analysis of legislative provisions, judicial interpretations, and enforcement mechanisms in Australia, Canada, the UK, and the US, the paper seeks to identify best practices that can guide the development of more effective laws in Nigeria. This analysis is crucial for reinforcing corporate accountability, safeguarding public safety and ensuring justice in cases of corporate negligence resulting in loss of life. The chosen focus on these selected jurisdictions is justified by their comprehensive and diverse legal approaches to corporate liability, offering valuable perspectives on different methods of regulating corporate conduct. The findings of this paper will serve as a basis for recommending specific statutory reforms, enforcement strategies, and policy measures to enhance Nigeria's approach to corporate homicide. Such efforts are particularly relevant in Nigeria's expanding industrial and commercial sectors, where the risk of corporate negligence and its consequences is increasingly significant.

The paper begins by reviewing Nigeria's current statutory provisions and enforcement mechanisms, highlighting the challenges and limitations within its existing framework. It then examines the legislative frameworks in Australia, Canada, the UK, and the US, focusing on key statutory provisions and legislative elements. The subsequent section delves into significant case law and judicial interpretations in each jurisdiction, comparing judicial approaches and their impact on corporate liability. The paper also explores enforcement strategies, assessing the mechanisms for regulatory oversight and the effectiveness of these strategies in each jurisdiction. A comparative analysis follows, detailing the scope of corporate liability, standards of proof, penalties, and enforcement effectiveness across the selected jurisdictions. Based on this comparative insight, the paper identifies best practices and key lessons for Nigeria. It offers specific recommendations for statutory reforms, enhanced penalties, improved enforcement mechanisms, and comprehensive policy and legislative reforms. Drawing on the experiences of Australia, Canada, the UK, and the US, this paper aims to contribute to developing a more effective and accountable legal framework for corporate homicide in Nigeria, ultimately enhancing public safety and corporate responsibility.

## **2. The Nigerian Position on Corporate Homicide**

### **Overview of Nigeria's Statutory Provisions Related to Corporate Homicide**

The concept of corporate homicide in Nigeria involves unlawful homicide resulting from corporate recklessness or negligence.<sup>15</sup> This falls under involuntary manslaughter and is governed by existing criminal laws.<sup>16</sup> According to section 36(12) of the Constitution,<sup>17</sup> criminal offences must be defined and penalties prescribed in written laws, which means that the criminal liability of persons (whether natural or artificial) for any offence, including unlawful homicide, is strictly determined by statute. While corporate homicide is not explicitly defined as a distinct offence in Nigeria, the general provisions of the Criminal and Penal Codes indirectly address corporate liability for fatalities caused by corporate negligence or recklessness. Both codes consider corporations as 'persons,' making them subject to liability for offences outlined within them.<sup>18</sup> As a result, offences such as manslaughter, culpable homicide, gross negligence, and criminal negligence can be used to hold corporations accountable for causing death. For instance, the Criminal Code explicitly defines manslaughter as the act of unlawfully causing the death of another person in circumstances that do not amount to

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<sup>10</sup> (n 3)

<sup>11</sup> Subsequently, the Act or the CMCHA when properly defined.

<sup>12</sup> See chapter 8 of the United States Sentencing Commission, Guidelines Manual, §3E1.1 (Nov. 2021). Subsequently as USSG when properly defined

<sup>13</sup> (n 7) 116 – 132

<sup>14</sup> *Ibid*

<sup>15</sup> (n 7) 118 – 119

<sup>16</sup> The Criminal Code Act, 1916, Cap C.38 LFN 2004, and Penal Code Act, 1960, Cap 53 LFN 2004. Subsequently as Criminal and Penal Code.

<sup>17</sup> The Constitution of Federal Republic of Nigeria, 1999 (As amended). Subsequently, the constitution or the 1999 constitution when properly defined.

<sup>18</sup> See section 5 of the Penal Code and section 18(2) of the Interpretation Act Cap. I23, LFN 2004

murder.<sup>19</sup> This implies that any situation resulting in death other than those specified in section 316, such as death caused by negligence or recklessness, can be considered manslaughter, which is punishable by life imprisonment.<sup>20</sup> Although this provision does not explicitly mention corporate entities, it can be interpreted to include corporate actors, especially when an organisation's negligence leads to loss of life. However, enforcing the punishment of life imprisonment presents a challenge.<sup>21</sup> Additionally, while the term 'manslaughter' is not recognised under the Penal Code, the code does acknowledge 'culpable homicide' as an offence. Culpable homicide does not carry the death penalty but is punishable by life imprisonment, a fine, or both<sup>22</sup> when death results from a reckless or careless act.<sup>23</sup> Therefore, depending on the jurisdiction in Nigeria, corporate homicide can be categorised as either involuntary manslaughter or culpable homicide, and neither offence carries the death penalty.

The criminal prosecution process in Nigeria is governed by a comprehensive framework that includes substantive laws such as the Criminal and Penal Codes and procedural legal aspects predominantly based on the Administration of Criminal Justice Act.<sup>24</sup> The ACJA supplements the provisions of the Criminal and Penal Codes by providing a more modern framework for the administration of criminal justice in Nigeria. It guides every aspect, from investigations to trials. Although there are no explicit laws addressing corporate homicide, the ACJA offers a procedural framework that can be applied to cases involving fatalities caused by corporate activities.<sup>25</sup> This Act provides mechanisms to summon corporate defendants.<sup>26</sup> It outlines specific trial procedures for corporations, considering their unique legal status and thus providing guidelines for investigating, apprehending, and prosecuting these entities for offences. In situations where corporate actions lead to deaths, the Ministry of Justice, the courts, and law enforcement agencies, particularly the Nigerian Police Force (NPF), must follow these procedures.<sup>27</sup> Part 47 of the ACJA contains specific provisions for the arraignment and trial of corporate defendants, emphasising efficient and effective criminal proceedings and ensuring that justice is not delayed. Similarly, part 32 of the Act provides essential protection for victims of corporate offences, including homicide, by ensuring their rights and enabling them to seek just compensation.<sup>28</sup> This mandates the prosecution of corporate entities alongside individuals, indirectly supporting the prosecution of corporate homicide cases. However, the lack of a specific definition or categorisation of corporate homicide within the existing criminal laws leads to ambiguity and challenges in prosecuting corporations for fatal incidents caused by their actions or negligence, highlighting the urgent need for reform.

#### **Enforcement Mechanisms and their Effectiveness**

Enforcing laws related to corporate homicide in Nigeria involves various relevant institutions, such as the NPF and appropriate law enforcement agencies, the Ministry of Justice, and the judiciary. The NPF is tasked with investigating incidents and collecting evidence,<sup>29</sup> while the Ministry of Justice, under the direction of the Attorney-General's office, is responsible for prosecuting cases.<sup>30</sup> However, the NPF faces challenges such as inadequate funding, insufficient training, and limited resources, which significantly impede its effectiveness in upholding law and order. Additionally, the Ministry of Justice, empowered to prosecute corporate entities under the ACJA, faces obstacles, including political interference, limited resources, and a lack of specialised legal frameworks addressing corporate homicide.<sup>31</sup> Consequently, enforcement actions often rely on interpreting general criminal laws, potentially missing nuances of corporate liability in fatal incidents, impacting the thoroughness and impartiality of prosecutions. Furthermore, the judiciary, crucial in interpreting and applying the law, encounters resource constraints and legislative gaps, leading to delays in the judicial process. These limitations impact the ability of these institutions to fulfil their responsibilities in corporate homicide cases, emphasising the need for reform.

#### **Challenges and Limitations within Nigeria's Current Framework**

The challenges in addressing corporate homicide in Nigeria are myriad. A significant issue is the lack of explicit legal provisions that specifically define and categorise corporate homicide. This creates significant ambiguity in determining corporate liability and establishing guilt, making it difficult for law enforcement, judicial bodies, and other relevant

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<sup>19</sup>Section 317

<sup>20</sup>Section 325

<sup>21</sup>While courts have held that they can, under certain circumstances, impose fines as an alternative penalty when the law mandates imprisonment, the criteria for imposing such fines remain challenging. See the cases of *R v Service Press Ltd* [1952] 20 NLR 9, *Apamadari & Anor v The State* [1997] 3 NWLR (pt. 493) 289, and *Ushie v State* [2012] LPELR-9705(CA)

<sup>22</sup>Section 224

<sup>23</sup>Section 222

<sup>24</sup>Administration of Criminal Justice Act, 2015 subsequently, the ACJA when properly defined

<sup>25</sup>Sections 477 – 485

<sup>26</sup>Sections 114, 117, 122, and 123

<sup>27</sup>Section 1(2)

<sup>28</sup>Sections 319 – 327

<sup>29</sup>Section 4 of the Nigeria Police Act 2020. Subsequently, the NPA when properly defined. See also *Onyekwere v State* [1973] 8 NSCC 250, and *Obi v IGP & Ors* [2022] LPELR-59141(CA)

<sup>30</sup>Sections 174 and 211 of the Constitution.

<sup>31</sup>This political influence primarily originates from the appointing authority, which is the president at the federal level or the governor at the state level.

bodies to hold corporations accountable for fatalities resulting from corporate actions or negligence.<sup>32</sup> Moreover, the existing provisions under the Criminal and Penal Codes lack the necessary detail to address the complexities of corporate liability, especially in cases involving intricate corporate structures and decision-making processes. These laws do not distinguish between individual and corporate liability, posing challenges in prosecuting and penalising corporations as separate legal entities. Additionally, the broad nature of the provisions on manslaughter, culpable homicide, and negligence within these codes requires prosecutors to rely on broad interpretations, leading to inconsistent application of the law and varying judicial outcomes.<sup>33</sup> The lack of clarity also impacts the predictability of legal consequences for corporations, potentially undermining the deterrent effect of the law and its ability to ensure corporate accountability. These issues, combined with highlighted institutional challenges, erode the predictability and reliability of the legal system in holding corporations accountable.

### **3. Legislative Frameworks in Selected Jurisdictions**

#### **Overview of Statutory Provisions**

##### **Australia**

Australia's legislative framework for corporate homicide is primarily governed by the Criminal Code Act<sup>34</sup>, which applies nationally. This Act allows for attributing criminal actions to corporations through concepts like aggregation and corporate culture, making it possible to convict corporations of offences such as manslaughter if committed by their employees or representatives within the scope of employment. The Act goes beyond simple identification, attributing fault elements like intention, knowledge, or recklessness to a corporation based on its overall corporate culture, which includes attitudes, policies, and practices influencing behaviour.<sup>35</sup> This ensures corporations are held accountable not only for the actions of high managerial agents but also for systemic failures in ensuring safety. Part 2.5 of the Act explicitly states that corporations are subject to criminal liability in the same manner as individuals, with necessary adjustments.<sup>36</sup> It outlines conditions under which the physical and fault elements of an offence committed by employees or agents within their employment scope are attributed to the corporation.<sup>37</sup> In negligence cases, liability can be determined by examining employees' collective conduct and inadequate management or systems.<sup>38</sup> The Act also includes provisions for strict liability offences, emphasising the need for due diligence.<sup>39</sup> The 1998 ESSO Longford gas plant explosion significantly influenced Australia's legal framework. It led to enacting the Crimes (Industrial Manslaughter) Amendment Act 2003 in the Australian Capital Territory (ACT), which critically reassessed corporate accountability and safety protocols. This Act was the first in Australia to establish specific offences for industrial manslaughter, imposing severe penalties on corporations and senior officers if their negligence or recklessness results in a worker's death. Penalties include fines up to \$1.25 million for companies and up to \$250,000 or 25-years' imprisonment for individuals.<sup>40</sup> Additionally, the Act empowers courts to order corporations to undertake community projects, emphasising accountability beyond financial penalties.<sup>41</sup> These legislative measures highlight the importance of robust legal frameworks in ensuring corporate responsibility and public safety.

##### **Canada**

In Canada, the legal framework for corporate homicide is primarily governed by the Criminal Code, notably amended by Bill C-45,<sup>42</sup> also known as the Westray Bill. This Bill was introduced following the 1992 Westray Mine disaster in Nova Scotia, which resulted in the deaths of 26 miners. The subsequent provincial inquiry revealed negligence by managers, politicians, and regulators, yet no applicable laws allowed for criminal charges against the managers.<sup>43</sup> The Westray Bill emerged from sustained pressure from trade unions, parliamentarians, and the victims' families, extending liability to corporations and supervisors aware of employee crimes.<sup>44</sup> The Westray Bill introduced the concept of 'organisational criminal liability,' making corporations responsible for preventing criminal activities that result in fatalities or severe harm.<sup>45</sup> It emphasised the crucial role of senior management in ensuring a safe working environment and differentiated

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<sup>32</sup>(n 7) 118 - 132

<sup>33</sup>*Ibid*

<sup>34</sup>The Criminal Code Act 1995 (Cth) Subsequently, the Act or 1995 Act when properly defined

<sup>35</sup>Section 12.3

<sup>36</sup>Section 12.1

<sup>37</sup>Section 12.2

<sup>38</sup>Section 12.4

<sup>39</sup>Section 12.5

<sup>40</sup>(n 3)

<sup>41</sup>*Ibid*

<sup>42</sup>An Act to amend the Criminal Code (criminal liability of organizations), SC 2003, c 21, Subsequently, Bill C-45 or the Westray Bill when properly defined.

<sup>43</sup>(n 3) 351 - 353

<sup>44</sup>Section 22.2

<sup>45</sup>Section 22.1 of Bill C-45.

between corporate and personal accountability in adverse events. Under the current Criminal Code, prosecutors must demonstrate a person's culpable state of mind when committing an offence.<sup>46</sup> Bill C-45 addressed both individual and corporate accountability. While the Criminal Code already encompassed public bodies, corporate entities, associations, and companies,<sup>47</sup> establishing the mental state for convicting a corporation was challenging. Bill C-45 extended these principles to include organisations beyond corporations, such as political associations and terrorist groups.<sup>48</sup> It updated the 'directing mind' provisions by introducing the term 'senior officer,' broadening the definition to include individuals with pivotal roles in setting policy or managing significant organisational activities.<sup>49</sup> This shift from titles to functions clarified that CEOs should be considered senior officers. The Bill also incorporated concepts from the Criminal Code regarding organisations 'party to an offence,' such as those who commit, aid, abet, or counsel others to commit an offence.<sup>50</sup> Organisations may be implicated if they advise someone to commit a criminal act.<sup>51</sup> The legislation aligns with the broader Canadian distinction between negligence and intent. Previously, proving that an employee had committed an illegal act was sufficient to establish organisational liability. However, under Bill C-45, the term 'employee' is expanded to 'representative,' covering directors, partners, members, agents, contractors, and employees.<sup>52</sup> In negligence cases, the Crown had to demonstrate that employees had committed the act and that a senior officer should have taken reasonable steps to prevent it.<sup>53</sup> Bill C-45 simplifies matters by holding organisations responsible for their representatives' negligent acts and omissions, covering complex scenarios where several failures compound over time.<sup>54</sup> To establish intent, courts assess whether senior officers deviated from the expected standard of care,<sup>55</sup> comparing the practices of the accused with those of similar organisations.

Bill C-45 includes extensive amendments that establish factors for sentencing organisations. These factors cover the benefits of the offence, planning, attempts to hide assets, impact on stability and employees, public costs, regulatory penalties, prior convictions, and actions for restitution and prevention.<sup>56</sup> By considering these factors, the bill aims to ensure that sentences align with the gravity of the offence and promote preventive measures. Furthermore, the bill outlines organisations' probationary conditions, including restitution requirements, policy establishment, and public disclosure of offences and corrective actions.<sup>57</sup> This promotes transparency and accountability. The bill also imposes significant fines on organisations and additional penalties for non-payment.<sup>58</sup> Bill C-45 effectively addresses corporate homicide provisions by replacing the 'directing mind' concept with 'senior officer,' covering intent and neglect and providing appropriate corporate sanctions. Its broader implications address corporate responsibility and significantly impact financial integrity.

### **United Kingdom**

The CMCHA is the UK's primary legal framework for corporate homicide, enacted on 6 April 2008. This legislation aims to hold companies and organisations accountable for severe breaches of duty of care resulting in fatalities, marking a shift from individual blame to systemic failures. It creates the offence of 'corporate manslaughter' in England, Wales, and Northern Ireland and 'corporate homicide' in Scotland. An organisation can be convicted if its management or practices cause death and breach a duty of care owed to the deceased.<sup>59</sup> The Act applies to corporations, government departments, police forces, partnerships, trade unions, and employers' associations.<sup>60</sup> A 'gross breach' indicates behaviour significantly below expected standards.<sup>61</sup> Conviction requires senior management's substantial role in decisions or management of organisational activities.<sup>62</sup> The Act defines a 'relevant duty of care' from negligence law, covering obligations to employees, premises occupiers, service provision, construction management, and custodial care.<sup>63</sup> Specific sectors, like military activities, hazardous training, specific policing, and emergency responses, have exemptions.<sup>64</sup> Juries determine if a severe breach occurred, considering health and safety law violations and the organisation's policies and

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<sup>46</sup>See sections 22.1 and 22.2, which outline the criteria for holding organisations criminally liable.

<sup>47</sup>Section 2

<sup>48</sup>Section 2 expands the definitions of "everyone," "person," and "owner" to include organizations, ensuring they are held to the same legal standards as individuals.

<sup>49</sup>Section 2

<sup>50</sup>Section 21

<sup>51</sup>Section 22

<sup>52</sup>Section 2

<sup>53</sup>(n 37)

<sup>54</sup>Section 22.1

<sup>55</sup>*Ibid*

<sup>56</sup>Section 718.21

<sup>57</sup>Sections 732.1 and 735

<sup>58</sup>*Ibid*

<sup>59</sup>Section 1(1)

<sup>60</sup>Section 1(2).

<sup>61</sup>Section 1(4)(b)

<sup>62</sup>Section 1(4)(c)

<sup>63</sup>Section 2(1)

<sup>64</sup>Sections 4, 5 and 6

practices.<sup>65</sup> Convicted organisations may face remedial and publicity orders, requiring them to rectify violations and publicly disclose their conviction details.<sup>66</sup>

The CMCHA's complexity has hindered full implementation, with its high threshold for proving a 'gross' breach complicating prosecutions.<sup>67</sup> Although the Act includes various organisations as potential defendants, smaller businesses have been primarily targeted, with limited prosecutions of larger entities like National Health Service (NHS) Trusts.<sup>68</sup> Fines, often seen as symbolic, are viewed by corporations as business expenses passed on to consumers.<sup>69</sup> Publicity orders, while potentially impactful on reputation, are optional and require prosecution requests, limiting their use.<sup>70</sup> Criticism of the CMCHA includes its failure to hold individuals accountable for secondary liability. Senior managers involved in organisational failings are not personally liable under the Act without accessorial liability. However, they can still face charges for gross negligence manslaughter or health and safety breaches.<sup>71</sup> Despite these critiques, the CMCHA is commendable for promoting organisational accountability and higher standards of care and safety, with notable application to police forces, holding them to similar standards as corporate bodies.

#### **United States of America**

In the United States, the legal framework for corporate homicide is less defined compared to the UK, Australia, and Canada. Corporate liability for deaths from organisational negligence is primarily addressed through general criminal and tort law rather than specific corporate homicide statutes. The doctrine of *respondeat superior* holds corporations criminally responsible for employees' actions within their employment scope and benefiting the corporation.<sup>72</sup> Relevant laws include the Occupational Safety and Health Act (OSHA)<sup>73</sup> and State manslaughter statutes.<sup>74</sup> OSHA mandates safe working conditions, and violations can lead to criminal penalties if willful and result in death.<sup>75</sup> State laws vary, with some imposing criminal liability<sup>76</sup> and others focusing on civil penalties.<sup>77</sup>

#### **Analysis of Key Legislative Elements and Approaches in Each Jurisdiction**

The analysis showed that different jurisdictions approach corporate homicide legislation in a way that balances holding organisations accountable and addressing systemic failures, with varying emphasis on individual and corporate liability. The UK's CMCHA focuses on corporate negligence, prioritising systemic issues over individual blame. Australia's Criminal Code Act includes concepts of corporate culture, and the Crimes (Industrial Manslaughter) Amendment Act 2003 imposes severe penalties for industrial manslaughter. Canada's Westray Bill extends organisational liability to supervisors and emphasises senior management's role in maintaining safety. In contrast, the US relies on general criminal and tort law principles, such as the doctrine of *respondeat superior* and OSHA regulations, to address corporate negligence. These varied approaches offer valuable insights for Nigeria as it develops robust legal frameworks to ensure corporate accountability and enhance public safety.

### **4. Judicial Interpretations**

#### **Significant Case Law and Judicial Interpretations**

##### **Australia**

In Australia, significant case law has influenced the judicial interpretation of corporate homicide, especially under the Crimes (Industrial Manslaughter) Amendment Act of 2003. This Act has raised various issues for the courts to interpret, including the specific conduct or omission necessary to establish recklessness or negligence, as well as the causal link

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<sup>65</sup>Section 8(2) and (3)

<sup>66</sup>Section 9 and 10

<sup>67</sup>Steve Tombs, 'The UK's corporate killing law: Un/fit for purpose?' *Criminology and Criminal Justice* (2018) 18(4) 9 -11 <<https://doi.org/10.1177/1748895817725559>> accessed 20 May 2024

<sup>68</sup>*Ibid*

<sup>69</sup>*Ibid*

<sup>70</sup>Taylor Richard and Ormerod David, 'The Corporate Manslaughter and Corporate Homicide Act 2007' *Criminal Law Review* (2008) (8) 589-611 <[https://www.researchgate.net/publication/292504904\\_The\\_Corporate\\_Manslaughter\\_and\\_Corporate\\_Homicide\\_Act\\_2007](https://www.researchgate.net/publication/292504904_The_Corporate_Manslaughter_and_Corporate_Homicide_Act_2007)> accessed 20 May 2024

<sup>71</sup>James Gobert, 'The Corporate Manslaughter and Corporate Homicide Act 2007 – Thirteen years in the making but was it worth the wait?' *Modern Law Review* (2008) 71(3):413 – 414 <<https://doi.org/10.1111/j.1468-2230.2008.00699.x>> accessed 20 May 2024

<sup>72</sup>See the cases of *United States v A&P Trucking Co* [1958] 358 US 121- 126, *United States v Cincotta* [1982] 689 F.2d 238, and *United States v Potter*, 463 F.3d 9, 25 (1st Cir. 2006).

<sup>73</sup>29 U.S.C. §§ 651–678. The Act is also known as the Williams-Steiger Occupational Safety and Health Act 1970.

<sup>74</sup>In *US v. Armour & Co*, 168 F.2d 342, 343 (3rd Cir. 1948), the court ruled that corporations could be held criminally liable even if the statute didn't explicitly mention it as "person" broadly to include individuals, corporations, companies, associations, firms, partnerships, societies, and joint stock companies.

<sup>75</sup>Section 17 of the Act, codified as 29 U.S.C. § 666 subparagraphs (a), (b), (c), and (e).

<sup>76</sup>Section § 7.22 of the Texas Penal Code, 1973.

<sup>77</sup>Section §125.15 of the New York Penal Law 1965.

between conduct and a worker's death. It remains challenging to ascertain whether the role of an employer or senior officer in establishing a corporate safety culture directly contributed to a fatality. However, judicial interpretations have reinforced the rigorous standards set by the 1995 Act and the 2003 Amendment Act. Courts have emphasised the importance of corporate accountability and the need for comprehensive safety protocols.<sup>78</sup> For instance, in the case of *Kawasaki Heavy Industries Ltd v Laing O'Rourke Australia Construction Pty Ltd*,<sup>79</sup> the court determined that the actions of a managerial agent could be attributed to the company, demonstrating the application of the law in assigning blame based on employees' actions. These cases underscore the significance of establishing a direct link between corporate practices and fatal incidents, illustrating that attributing criminal liability requires more than proving individual negligence. It entails demonstrating how corporate policies and management decisions contributed to the breach of duty, highlighting the judiciary's commitment to upholding stringent standards of corporate conduct.

### **Canada**

In Canadian law, judicial precedents have clarified the circumstances under which a corporation can be held accountable for a crime.<sup>80</sup> A corporation can be found guilty if its highest-ranking official carried out the prohibited act with the necessary intent and intended to benefit the corporation through the criminal act.<sup>81</sup> This individual, often referred to as the 'directing mind,' is someone with the authority to set policy rather than manage existing directions,<sup>82</sup> essentially serving as the 'alter ego' or 'soul' of the corporation. The legal system has stressed the intricate nature of senior management and organisational policies. Canadian courts have underscored the importance of companies developing effective compliance programs and exercising due diligence to prevent criminal activities; notably, in *R v Metron Construction Corporation*,<sup>83</sup> the Ontario Court of Appeal upheld the company's conviction for criminal negligence causing death, underscoring the importance of ensuring safety standards and proper worker supervision.

### **United Kingdom**

The CMCHA has led to significant cases in the UK. In *R v Cotswold Geotechnical Holdings Ltd*,<sup>84</sup> the company was the first convicted under the Act after an employee's death from a trench collapse, resulting in a £385,000 fine due to neglected safety measures. In *R v Lion Steel Equipment Ltd*,<sup>85</sup> the company was fined £480,000 following an employee's fatal fall through a roof, with the court citing systemic management failures as a severe breach of duty of care. Another case, *R v Cornish and Maidstone & Tunbridge Wells NHS Trust*,<sup>86</sup> emphasised that senior management's organisational failings must substantially contribute to a gross breach of duty. Furthermore, in *R v Hennigan* and *R v Hughes*,<sup>87</sup> the court ruled that the prosecution must prove that the breach of duty caused the death, not necessarily as the sole cause but as an operating cause. These cases underscore the judiciary's role in defining a gross breach and the substantial involvement of senior management.

### **United States of America**

In the United States, the doctrine of *respondeat superior* and OSHA regulations determine corporate liability for fatalities. Precedent-setting legal cases have greatly influenced the interpretation of these regulations, particularly regarding corporate intent and negligence. For instance, in *United States v. Park*,<sup>88</sup> the court established that companies and their corporate officers can be held criminally responsible for failing to prevent violations that endanger public welfare. This 'responsible corporate officer' doctrine underscores the importance of holding top executives accountable for organisational shortcomings that result in fatalities.<sup>89</sup> Nevertheless, prosecutions in such cases are infrequent, and securing convictions often necessitates demonstrating gross negligence or deliberate misconduct. While the legal framework underscores corporate responsibility, its practical enforcement faces significant challenges.

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<sup>78</sup>See the cases of *Victorian Workcover Authority v Esso Australia Ltd* [2001] HCA 53; 207 CLR 520, and *R v Patel; ex parte A-G (Qld)* [2011] QCA 81.

<sup>79</sup>[2017] QSC 210. See also *R v ACR Roofing Pty Ltd* [2004] VSC 351, where the court applied sections 49C and 49D of Crimes (Industrial Manslaughter) Amendment Act 2003, demonstrating how companies can be prosecuted for industrial manslaughter when senior officers fail to ensure a safe working environment.

<sup>80</sup>See *Canadian Dredge & Dock Co v The Queen* [1985] 1 SCR 662

<sup>81</sup>*R v Fane Robinson Ltd* [1941] 3 DLR 409.

<sup>82</sup>In *R v Safety-Kleen Canada Inc* [1997] 98 OAC 14 (CA), the Ontario Court of Appeal emphasised that the directing mind must be an individual with significant control over corporate policies.

<sup>83</sup>[2012] ONCJ 506.

<sup>84</sup>[2011] EWCA Crim 1337

<sup>85</sup>Unreported July 20, 2012 (Crown Ct (Manchester))

<sup>86</sup>[2015] EWHC 2967

<sup>87</sup>[1971] 3 All ER 133 and [2014] 1 Cr App R 6

<sup>88</sup>[1975] 421 US 658.

<sup>89</sup>See also *United States v LE Myers Co* [7th Cir. 1981] 650 F.2d 738, where the company was convicted of criminal negligence after an employee's death due to inadequate safety measures.

### **Comparative Analysis of Judicial Approaches and their Impact**

The comparison of judicial approaches to corporate homicide across Australia, Canada, the UK, and the US illustrates a delicate balance between corporate and individual accountability, with a specific focus on the role of senior management in ensuring safety and compliance. Australia and the UK prioritise addressing systemic failures and improving corporate policies, as exemplified by cases such as *R v Cotswold Geotechnical Holdings Ltd* and *Kawasaki Heavy Industries Ltd v Laing O'Rourke Australia Construction Pty Ltd*. In Canada, there is an emphasis on holding senior management accountable for preventing criminal activities, as *R v Metron Construction Corporation* demonstrated. The 'respondeat superior' and 'responsible corporate officer' doctrines in the US ensure top executives are held accountable, as evidenced in *United States v Park*, although practical enforcement poses challenges. These diverse judicial interpretations offer valuable insights for Nigeria in establishing robust legal frameworks to promote corporate accountability and enhance public safety.

## **5. Enforcement Strategies**

### **Mechanisms for Enforcement and Regulatory Oversight**

#### **Australia**

Australia's approach to enforcing corporate homicide involves regulatory oversight and criminal prosecution. Safe Work Australia and its state-level counterparts oversee compliance, investigations, and legal actions to prevent corporations from avoiding accountability through complex structures or blaming lower-level employees. Penalties include significant fines and imprisonment for corporate officers responsible for neglecting their duties, aiming to punish and deter such behaviour. Each Australian state and territory has unique workplace safety and corporate liability approaches, resulting in different legal standards and outcomes. For instance, Victoria's Occupational Health and Safety Act 2004 addresses reckless endangerment,<sup>90</sup> while Western Australia's Occupational Health and Safety Act 1984 covers industrial manslaughter<sup>91</sup>—these jurisdictional variations and evolving legal standards present challenges,<sup>92</sup> prompting the Commonwealth Government to refine relevant legislation.<sup>93</sup>

#### **Canada**

Enforcing corporate homicide laws in Canada involves collaboration and cooperation between regulatory bodies, including the Royal Canadian Mounted Police (RCMP) and provincial workplace safety agencies.<sup>94</sup> These entities don't just investigate incidents but meticulously gather evidence and prosecute cases involving corporate negligence or misconduct. Despite ongoing enforcement challenges, such as proving senior management's direct involvement and attributing criminal intent to a corporate entity, the legislative framework offers a robust mechanism. This mechanism is strong and intricately robust for holding corporations accountable for fatalities and serious injuries.

#### **United Kingdom**

The UK operates under the CMCHA, which grants enforcement and regulatory authority to the police, Crown Prosecution Service (CPS), and Health and Safety Executive (HSE). This legislation carries stringent penalties, specifically unlimited fines and remedial orders. It has resulted in prominent legal actions such as *R v. Cotswold Geotechnical Holdings Ltd* and *R v Lion Steel Equipment Ltd*. These cases underscore the Act's emphasis on identifying systemic management deficiencies and the accountability of senior management in upholding safety protocols. Despite its strengths, the Act grapples with implementation hurdles, including delays stemming from the requirement for consent from the Director of Public Prosecutions (DPP)<sup>95</sup> and challenges related to inter-agency coordination. Furthermore, complex and resource-intensive investigations, exemplified by the handling of the Grenfell Disaster,<sup>96</sup> suggest that funding inadequacies may impede effective enforcement. Moreover, the Act's stringent criteria for establishing a 'gross breach' and senior management complicity may limit its efficacy, mainly when dealing with large corporate entities. Consequently, though conceptually progressive, the Act's practical application raises concerns regarding oversight of fundamental principles.

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<sup>90</sup>Section 32

<sup>91</sup>Section 30B.

<sup>92</sup>(n 3)

<sup>93</sup>See section 3A of the amended Occupational Health and Safety (Commonwealth Employment) Act 199.

<sup>94</sup>The Royal Canadian Mounted Police investigates corporate misconduct, while provincial workplace safety agencies focus on ensuring compliance with safety regulations and investigating workplace incidents.

<sup>95</sup>Section 1

<sup>96</sup>Lucy Pasha-Robinson, 'Grenfell Tower fire: Police considering manslaughter, corporate manslaughter and misconduct charges, hearing told' *The Independent* (2017) <<https://www.independent.co.uk/news/uk/crime/grenfell-tower-fire-latest-updates-police-manslaughtermisconduct-charges-criminal-hearing-deaths-a8103346.html>> accessed 31 July 2024.



### **United States of America**

US enforcement strategies involve various agencies, including the Department of Justice (DOJ), OSHA, and state regulatory bodies.<sup>97</sup> While the DOJ prosecutes corporations and individuals under federal laws, OSHA ensures regulatory compliance and can refer cases for criminal prosecution. Critics highlight the limited deterrent effect of penalties, particularly for large corporations that can absorb fines, as seen in high-profile cases like the BP oil spill.<sup>98</sup> Consequently, the Federal Sentencing Guidelines Manual was developed to establish a sophisticated sentencing procedure for corporate offenders aligned with international best practices. USSG Chapter 8 holds organisations accountable for offences committed by their agents, focusing on just innovative corporate sanctions, deterrence, and incentives for preventing and reporting criminal behaviour. Fines, restitution, probation, special assessments, forfeitures, and costs are some of the sanctions outlined. Corporate culture significantly influences the determination of fines and probation requirements, accounting for aggravating and mitigating factors. The guidelines also mandate full restitution for victims' losses, corrective measures, community service, and protocols to prevent and uncover criminal behaviour. Special assessments contribute to the Crime Victims Fund. Overall, the guidelines aim to ensure organisational accountability and prevent future offences while mitigating the impacts of criminal activities.

### **Effectiveness of Enforcement Mechanisms and Strategies in each Jurisdiction**

The effectiveness of enforcement mechanisms varies significantly across these jurisdictions. Australia sets a high standard for corporate accountability with stringent penalties and proactive regulatory oversight. Canada ensures senior management's responsibility in preventing workplace fatalities through a collaborative enforcement approach and robust legislative framework. The UK's CMCHA, while conceptually progressive, faces practical enforcement challenges but remains influential in addressing systemic failures. The US struggles with practical enforcement within its comprehensive regulatory structure, particularly in securing convictions for corporate officers and deterring large corporations. Still, it has the best sentencing guidelines for corporate defendants worldwide, aligning with international best practices. These diverse enforcement strategies provide valuable insights for Nigeria. Emphasising regulatory oversight, ensuring senior management accountability, and addressing systemic corporate failures are crucial for developing a robust legal framework.

### **6. Lessons for Nigeria**

The comparative analysis of corporate homicide legislation and enforcement strategies in the above-selected jurisdictions offers valuable insights Nigeria can utilise to strengthen its legal framework. This study underscores the significance of proactive regulatory oversight, inter-agency cooperation, senior management accountability, explicit legal provisions, and robust sentencing guidelines in addressing corporate misconduct. Australia's emphasis on rigorous enforcement, stringent penalties, and proactive regulatory oversight through entities like Safe Work Australia sets a strong precedent for Nigeria to bolster its deterrence efforts. Collaborative approaches, such as Canada's inter-agency cooperation involving the RCMP and provincial workplace safety agencies, highlight the importance of synergy among law enforcement agencies for effective evidence gathering and prosecution. Moreover, Canada's focus on holding senior management accountable for preventing workplace fatalities presents a noteworthy model Nigeria can adopt to enhance corporate accountability. The UK's CMCHA provides a progressive legislative framework that addresses systemic management failures and senior management accountability. However, to ensure effective implementation in Nigeria, attention should be given to practical challenges, such as inter-agency coordination and resource constraints. Additionally, adopting sophisticated sentencing guidelines akin to those in the US can further strengthen Nigeria's legal framework by emphasising just sanctions, deterrence, and compliance incentives for corporate offenders. Nigeria's current legal framework faces challenges due to the lack of explicit provisions for corporate homicide, leading to ambiguity and inadequate accountability. These challenges underscore the importance of developing explicit legal provisions defining and categorising corporate homicide, implementing stringent penalties, encouraging inter-agency cooperation, and addressing practical implementation challenges to ensure effective enforcement. By incorporating these key lessons from international best practices, Nigeria can enhance its legal framework for handling corporate misconduct, providing clarity, accountability, and just penalties for corporate offenders.

### **7. Recommendations for Nigeria**

To remedy the deficiencies in Nigeria's legal framework regarding corporate homicide and strengthen corporate accountability, various recommendations should be considered based on a comparative analysis with jurisdictions such as Australia, Canada, the United Kingdom, and the United States.

**Adoption of Specific Statutory Reforms:** Nigeria should establish precise legal frameworks to delineate corporate homicide separately from general criminal statutes. This approach would reduce vagueness and establish a definitive foundation for holding corporations and their senior officers accountable for fatalities stemming from corporate

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<sup>97</sup>Examples of state regulatory bodies include the California Division of Occupational Safety and Health (Cal/OSHA) and the Texas Department of State Health Services (DSHS).

<sup>98</sup>(n 6)

negligence. Drawing on the Australian and UK frameworks, Nigeria can adopt legislation detailing corporate accountability, corporate entities' obligations, and their leadership in safeguarding workplace welfare and averting fatalities.

**Implementation of Enhanced Penalties and Legal Standards:** Nigeria should adopt innovative corporate penalties, such as publicity and remedial orders, as well as stringent penalties, such as fines and imprisonment, for corporate officers guilty of corporate homicide, drawing inspiration from Australia and the UK. Implementing sentencing guidelines akin to those in the US will ensure proportionate penalties aligned with international best practices.

**Improvement of Enforcement Mechanisms and Regulatory Oversight:** Nigeria's law enforcement agencies, notably the Nigerian Police Force and Ministry of Justice, require increased funding, comprehensive training, and resources to advance their efficacy. Emulating Canada's collaborative enforcement model could facilitate inter-agency cooperation for thorough investigations and prosecutions. Furthermore, establishing dedicated regulatory bodies for corporate compliance will bolster enforcement efforts.

**Policy and Legislative Reforms to Address Identified Gaps:** Nigeria's criminal laws must be revised to address corporate homicide and align with modern corporate practices. Encouraging compliance through incentive programs and enforcing stricter penalties for non-compliance can promote effective safety protocols within corporate entities.

## **8. Conclusion**

The comparative analysis of corporate homicide legislation in Australia, Canada, the UK, and the US offers valuable lessons for Nigeria. Each jurisdiction employs unique approaches to corporate liability for fatalities, highlighting the importance of clear legal definitions, stringent penalties, robust enforcement, and comprehensive oversight. Australia emphasises systemic corporate failures and rigorous penalties, demonstrating the necessity for explicit statutory provisions and strict consequences for negligence. Canada's collaborative enforcement and robust legislative framework stress the importance of inter-agency cooperation and senior management accountability. The UK's CMCHA, despite enforcement challenges, effectively targets systemic management deficiencies, highlighting senior management's role in maintaining safety protocols. While facing practical enforcement issues, the US provides a sophisticated sentencing framework that aligns with international best practices, emphasising tailored penalties to deter corporate misconduct. To adopt these best practices, Nigeria should implement specific statutory reforms, enhance penalties and legal standards, improve enforcement mechanisms, and address legislative gaps. By enacting explicit legal provisions, ensuring stringent penalties for corporate negligence, enhancing enforcement agencies' capacity, and developing comprehensive policies, Nigeria can establish a robust framework to address corporate homicide effectively. These measures will hold corporations accountable, ensure justice for victims, and promote a culture of corporate responsibility and public safety, guiding Nigeria towards a more just and safe society.