TOWARDS A RATIONAL THEORY OF CRIMINAL LAIBILITY FOR CORPORATIONS IN NIGERIA

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Abstract

There is an increasing focus globally by prosecuting and regulatory agencies in bringing corporations to account directly for their actions. This paper will attempt to present the problems involved in the concept of corporate criminal liability, followed by an analysis of the approaches taken by different legal systems. It will consider the underlying principles of such liability so as to justify the imposition of criminal liability on corporations. The crimes corporations commit, if any, the mitigating factors thereof and the type and level of sanctions to be imposed will also be espoused. The paper is geared towards determining to what extent these sanctions can deter corporate criminality. The methodology adopted in this paper is doctrinal while the approach is narrative and comparative. The result indicated that there seems to be no specific liability theory for determining the corporate mensrea. Most relevant Nigerian legislation and case laws do not recognise that a corporation can have mensrea. In addition, there is lack of adequate corporate sanctions in Nigeria. This paper discovered that the extant laws on corporate criminal liability are deficient. Thus, it is recommended that the corporate fault theory of determining liability should be adopted in Nigeria.

Keywords: *Criminal liability, corporations, corporate homicide*

1. Introduction

It is worthy to note that the criminal liability of corporations has been controversial. While several jurisdictions have accepted and applied the concept of corporate criminal liability under various models, other law systems have not been able or willing to incorporate it. This is based on their particular historical, social, economic and political developments. Based on these developments, each country finds it

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appropriate to respond to the criminal behaviour of companies in different ways. In the common law world, following standing principles in tort law, English courts began sentencing corporations in the middle of the last century for statutory offences. On the other hand, a large number of European continental law countries have not been able to or not been willing to incorporate the concept of corporate criminal liability into their legal system[1]. The legal fiction of treating corporations different from those who run their daily operation has created certain limitations. As a result many courts and legislatures have resorted to make regulation of corporate behaviour more effective by creating criminal liability for both the corporation and the individual officers and executives of the corporation. However, it proved difficult to punish the corporation for lack of adequate sanctions. Over time, the English courts followed the doctrine of respondent superior or vicarious liability in which the acts of a subordinate are attributed to the corporation[2]. However, vicarious liability was only used for a small number of offences and later on replaced with the identification theory. Under the identification theory, subject to some limited exceptions, a corporation may be indicted and convicted for the criminal acts of the directors and managers who represent the directing mind and will and who control what it does[3]. This concept has developed over decades.

There are several difficulties to the traditional approach of imposing liability on a corporation based on identification and vicarious liability theory from a prosecutorial perspective. It provides for 'derivative liability' in the sense that corporations can only be culpable if the liability of an individual is established. From a practical perspective, it can be very difficult to identify the employee who committed the wrongful act or had the culpable state of mind. From a conceptual perspective, this approach does not reflect the complex interactions between human actors and the corporate matrix. Recently, some jurisdictions have contemplated a new basis for criminal liability 'organizational liability' that has the potential to address this

[1] C Kaeb , 'The Shifting Sands of Corporate Liability under International Criminal Law' (2017) *The GeorgeWashington International Law Review*, vol. 49 Available at <http://www.gwilr.org> Accessed on 10 July, 2017.

[2] This doctrine prescribes that the master is responsible for the acts carried out by the servant in the course of the servant's employment. It was justified because the master acquires the benefits and should therefore also carry the burden for wrong doings. See G Ferguson , 'Corruption and Corporate Criminal Liability'paper presented at Corruption and Bribery in Foreign Business Transactions: A Seminar on New Global and Canadian Standard. February 1999,Vancouver, Canada p 4 - 5.

[3] C M V Clarkson , H M Keating & S R Cunningham, *Clarkson and Keating Criminal Law: Text and Materials* (London: Sweet & Maxwell, 2007) p.48.

interaction more squarely[4]. Australia, in particular, has introduced provisions holding corporations directly liable for criminal offences in circumstances where features of a corporation, including its "corporate culture' directed, encouraged, tolerated or led to the commission of the offence[5].

2. Statement of Problem

In recent years, there has been an increasing focus on the ways in which corporate policies and conduct interact with the environment, government and communities, as well as the lives and rights of individuals. In particular, many countries have examined whether and how corporations can be held criminally liable directly for wrongful conduct. However consideration of the basis on which corporations may be criminally liable is also relevant to other laws and norms, including those protecting human rights. The key problem of corporate criminal liability is forging a coherent link between the corpus of criminal law, which has been developed in the context of natural persons, and to reflect the psychology of human beings and the realities of the corporate form, which is a complex fabric of human actors, on one hand and corporate hierarchies, structures, policies and attributes on the other hand.

In a legal sense, the question is whether, and to what degree, particular acts, necessarily committed by human beings, may constitute crimes committed by corporations in Nigeria. In most legal systems, criminal offences have a physical element and a mental or fault element otherwise known as *mensrea* and *actusreus*. Generally, the physical element of offences can be imputed fairly easily to a corporation. The real difficulty arises in relation to the mental/fault element which is the guilty mind (*mensrea*). When can the state of mind of particular human beings be imputed to the corporation, such that the corporation itself may be said to have the state of mind-knowledge or recklessness for example (together with the physical element) that constitutes an offence? It is not known whether the corporation can have a fault element in its own right in Nigeria.

While there is a substantive law on Criminal Act and Companies Act, there is no law on Corporate Manslaughter, Corporate Homicide and/ or holding Corporations directly liable criminally particularly murder cases in Nigeria as is obtainable in other climes. Thus, it is not known through research if the laws and regulation guiding

[4] A Robinson , 'Corporate Culture, As a Basis for the Criminal Liability of Corporations' Available at <http://www.business-humanria.org> Accessed on 20 July, 2017.
[5] *Ibid.*

corporate criminal liability in Nigeria are adequate. Additionally, it seems not to be clear which of the models of corporate criminal liability that the courts apply while determining the criminal liability of corporations in Nigeria. Notwithstanding the different models/theories of determining criminal liability of corporations, there appears to be no clear cut model used by Nigerian courts in determining the corporate criminal liability. Hence, this paper espouses the different theories adopted by different jurisdictions in determining corporate liability.

3. Corporate Criminal Liability under the Common Law

Corporate criminal liability draws from the concept of separate legal entity of corporations. It is looked at from the point of view of the origin of the separate identity of a corporation and the need for such a distinction along with the capacity and liability of a corporation. Corporations were not initially held criminally responsible for corporate activities. A corporation was considered to be a legally fictitious entity, incapable of having the *mesrea* necessary to commit a criminal act. Thus, the liabilities of a company were to be treated as separate and distinct from the shareholders.

Corporate criminal liability as a concept was absent in Britain before the advent of industrialisation. The rationale behind the same was based on the traditional understanding of criminal law, where a person was convicted if he had a guilty mind (*mensrea*) [6]and the concept of victimisation. Thus, if corporations didn't have a soul, they couldn't be held criminally liable.[7] Similarly, they could not be sued for treason since treason was the offense of disloyalty, which sprang from the violation of the oath of fealty.[8] Since corporations cannot take oaths, they cannot commit treason.[9] It must be noted that this traditional concept of the lack of corporate criminal liability was infused by canon law.[10] The church had insisted that as a corporation (universitas), it was distinct from the individual persons constituting it, who might commit wrongs and sins. At the same time, it was itself a merely fictional entity, a personal ficta incapable of wrong and sin.[11] The roots of the so-called

[6]M D Dubber, 'The Comparative History and Theory of Corporate Criminal Liability', (2015) vol 16, no 2, *New Criminal Law Review*, 203-240.
[7]*R v Birmingham & Gloucester Railway Co.*, (1842) 3 Q B 223, 114 E R 492, *Evans & Co. Ltd v London County Council*, (1914) 3 K B 315.
[8]W Blackstone, *Commentaries on the Laws of England*.(1765) vol. 1 at 464.
[9] F Pollock & F W Maitland, *The History of English Law Before the Time of Edward*, (London: Sweet and Maxwell,1898) 2[nd]ednvol 1 at 502-504.
[10]*Ibid.*
[11]*Ibid.*

*mensrea*requirement in English criminal law have often been traced back to canonical origin that explains the lack of corporate criminal liability.[12]

However, this stress on the requirement of *mens rea* reduced considerably with the advent of the industrial revolution.[13] The development of strict liability offences did away with the concept of a guilty intent altogether (e.g bigamy) [14] and *mensrea*became a tool of statutory interpretation[15] rather than a mandatory requirement.[16] With an unprecedented rise in corporations, there was little respect for the required standard of care, making it only prudent to issue strict liability standards to protect human health and deter corporations from getting away with any crime committed. The 19th century saw a gradual shift in the rules applicable to corporate criminal liability, the courts finally held corporations liable for the actions of their agents, acknowledging that doing otherwise would lead to "incongruous" results[17]. Thus, the concept of vicarious liability was borrowed from tort law to justify the same. However, there were still limitations. English courts repeatedly rejected the idea that *respondeat superior* theory should apply as a blanket rule to criminal acts. Thus, corporations could still not be held liable for "moral" crimes such as rape and murder owing to the restricted personification of a company.[18]

In layman's terms, the doctrine of corporate criminal liability is essentially the doctrine of respondeat superiorwhich has been imported into criminal law from tort law. This doctrine states that a corporation can be made criminally liable and convicted, for the unlawful acts of any of its agents, provided those agents were acting within the scope of their actual or apparent authority.[19]

4. Corporate Criminal Liability in Nigeria

[12]R Sethia, 'The Development of Corporate Criminal Liability in the Common Law- An Overview', (2016) *International Journal of Law and Legal Jurisprudence Studies,* 212.
[13]F P Lee, 'Corporate Criminal Liability', (1928) 28 *Columbia Law Review* 1, 4.
[14]*Ibid.*
[15] M D Dubber, 'Policing Possession: The Waron Crime and the End of Criminal Law, (2002) *Journal of Criminal Law and Criminology* 829, 915-961.
[16] J F Stephen expressed the same view in *R v Tolson* (1889) 16 Cox C C 629 at 644.
[17] R Sethia,' The Development of Corporate Criminal Liability in the Common Law-An Overview', (2016) *International Journal of Law and Legal Jurisprudence Studies*< https:www.ijlljs.in.wp-content.com> Accessed on 22 November, 2017.
[18]A Weissmann, 'Rethinking Criminal Corporate Liability' (2009) *Indiana Law Journal,* 82 (2).
[19] A Mahesh, 'Corporate Criminal Liability', Available at <http://www.lawctopus.com accessed on 20 November, 2017.

The Nigerian Criminal jurisprudence recognises the offence of involuntary manslaughter which may result from an unlawful act (constructive) manslaughter, or gross manslaughter which results from a breach of a duty of care. Criminal liability for the former involves an unlawful act in itself which results in death, while liability for the later arises where the defendant's conduct though lawful, is carried out in such a way that it is regarded as grossly negligent and therefore a crime.[20] It is this second aspect of involuntary manslaughter that companies are often liable for, that raises concerns. In circumstances where a company's conduct could be regarded as grossly negligent and therefore a crime, the present law in Nigeria, requires the invocation of the provisions of the general criminal law so as to prove either the offence of manslaughter (under the Criminal Procedure Act) or homicide (under the Criminal Procedure Code).[21] However, corporate criminal liability intersects both company law and criminal law, and problems have traditionally arisen in imposing liability on an artificial legal construct such as a company. This has been reiterated in a plethora of cases. In the case of *Armah v Horsfall,*[22] the Supreme Court made it clear that a company has no soul or body through which to act, it can only do so through human agents, but which acts they cannot be personally held liable. Mainly, the challenge is that legal concepts such as *actusreus,mensrea* and causation, designed with natural actors in mind, do not easily lend themselves to inanimate entities such as companies which are distinct and separate from their owners.[23]

As a former British colony, the Nigerian legal system was modeled after the English legal system; hence the common law position represents the law in Nigeria. In Nigeria, corporate criminal liability is a recent development and as a result, the cases are quite few. In *Ogbuagu v Police,*[24]the appellant was the proprietor and publisher of a newspaper in Jos, Northern Nigeria. When leaving Jos, he instructed the man he left in charge not to publish the paper while he was away. The man, however, published the paper, which contained a seditious libel in one issue. Here the court refused to impute the state of mind of the employee to the proprietor of the newspaper. However, in *R v African Press*[25], a case with nearly the same facts as *Ogbuagu,* the article was written by and under the responsibility of the editor and the court held

[20] S Erhaze& D Momodu, 'Corporate Criminal Liability: Call for a New Legal Regime in Nigeria' (2015) *Journal of Law and Criminal Justice*vol 3 no 2, 63-72.
[21]*Ibid.*
[22] [2015] All F.W.L.R Pt 912, p. 709.
[23] C E Enem and P Uche, 'A New Dawn of Corporate Criminal Liability Law in the United Kingdom: Lessons for Nigeria' (2012) *African Journal of Law and Criminology*, 2(1) 86-98.
[24](1953) 30 NLR 139.
[25](1957) WRNLR 1.

both the defendant company and the editor jointly liable since the article was written by and under the responsibility of the editor. In *R v. Zik Press,*[26]a corporation was found quality of an offence of contravening Section 51 (1) (c) of the Nigeria's Criminal Code. Similarly in *Mandilas&Karaberis v COP,*[27] a corporation was convicted of the offence of stealing by conversion under Section 390 and 383 of the NigerianCriminal Code. While in *A.G. Eastern Region v Amalgamated Press of Nigeria Ltd,*[28] the preliminary objection raised by the defense counsel on the ground that an offence could not be committed by a corporation in the absence of *mensrea*was overruled by the court.

However, there are certain 'human crimes', to which a corporation has not been held criminally liable in Nigeria. For example, a corporation cannot be charged with the offence of personal violence or with offences for which the only punishment is imprisonment. But in Nigeria, the notion of holding corporations directly criminally liable being a recent development, cases are rare and there are yet no known cases of corporations being charged for the offences of manslaughter or murder. There is no doubt that as a former British colony, the principle of corporate criminal liability in Nigeria is still governed by the old common law doctrine.[29] Accordingly, under the Nigerian law, a corporation cannot be convicted of the common law offence of involuntary manslaughter except a separate conviction is also sustained against an individual who was part of the company's directing mind and will[30].

Under the current law in Nigeria, the task for the prosecution pursuing a possible charge of corporate manslaughter or homicide is twofold: they must prove the *actusreus* of gross negligence on the part of the corporation, second, and more challenging, they must prove *mensrea***,** and in this regard, they must show that the act of an individual or group of individuals is attributable to the corporation, for the later to be held criminally responsible[31]. These burdens are no doubt very difficult if not impossible to discharge. It becomes very pertinent to revisit our laws on corporate manslaughter and homicide.

[26](1947) ENLR 12.
[27](1958) WM LR 147.
[28](1956) FSCN.
[29] N Cavanagh, 'Corporate Criminal Liability: An Assessment of the Models of Fault' (2011) *Journal of Criminal Law*, 75(5), 422-435.
[30] G Slapper, 'Corporate Punishment', (2010) *Journal of Criminal Law*, 73 (4), 181-184.
[31] S Erhaze& D Momodu, *op cit*.

It is worthy to note that the Nigerian central legislature has been making effort to bring into law a bill that seeks to criminalise the actions or inactions of a corporation and penalise same accordingly where death of a person results or a breach of such duty of care designated as "relevant duly of care". The bill specifically disregarded any rule of the common law that has the effect of preventing a duty of care from being owned by one person to another by reason of the fact that they are jointly engaged in unlawful conduct. It is worthy to note that the proposed legislation is a welcomed step in the right direction. As corporations continue to enjoy all civil rights including the enforcement of their fundament human rights, yet they continue to elude some legislative control and accountability for criminality.

5. Theories of Corporate Criminal Liability

It's true that the principles of criminal law were developed in the traditional times to punish the guilty and to deter the wrongdoing of an individual. The widely accepted common law basis of corporate responsibility where the courts and legislations of these countries have used many theories like the theory of vicarious liability of a company and the likes of identification theory to establish the guilt of the corporation for the criminal offences that it undertakes as an extension of the nominalist view only.[32] For the regulatory offences, legislation makes the imposition of corporate liability easier. Complexity arises with providing culpability of corporations in *mensrea* offences. Several theories have been advanced to tackle this challenge.
The principles adopted by different countries to interpret the concepts and principles of corporate criminal liability have been established by certain theories.

a. Identification or Directing Mind Theory

This is also known as the 'organic theory' as the corporation is viewed as a body with various organs with the directors being the brain[33]. Under this theory, the principle basis on which a company is responsible for a criminal act is that a person whose is the directing mind and will of the company and who control what it does has committed an offence in the course of the company's business. Such a person is treated in law as being the company. Lord Reid stated the principle in *Tesco Supermarkets Ltd v Nattrass*,[34] thus; a living person has a mind which can have knowledge or intention or be negligent and has hand to carry out his intention. A

[32]E Colvin, 'Corporate Personality and Criminal Liability'. (1995) 6 *Criminal Law Forum* 1, p 1-2.
[33] E Lederman, 'Models for Imposing Corporate Criminal Liability: From Adoption and Imitation Toward Aggregation and the Search for Self-Identity', (2002) 4(1) *Buffalo Criminal Law Review* 641 at 655
[34](1972) AC 155 at 170.

corporation has none of these: it must act through living persons though not always one or the same persons. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his act is the mind of the company… he is an embodiment of the company, or one could say, he hears and speaks through the persona of that company within the appropriate sphere and his mind is the mind of the company. If it is a guilty mind, then that guilt is the guilt of the company. Also in the case of *M.M.A Inc. v National Marine Authority,*[35]the Supreme Court reiterated that a company is only a juristic person; it can act through an alter ego, either its agents or servants. It may in many ways be likened to a human body. It has a brain and a nerve center which controls what it does. It also has hands which hold the tools and act in accordance with directions from the center. Some of the people in are mere servants and agents who are nothing more than the hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, these managers are the state of the mind of the comp-any and are treated by the law as such.

Lord Pearson also added that some officers are identified with the company as being or having its directing mind and will its centre and ego, and its brains.[36] This directing mind theory was a reaffirmation of the principle laid by Viscount Haldane in *Lennard's Company Co. Ltd. v Asiatic Petroleum Company,*[37]the theory equates the corporation with certain key personnel who may be considered the directing mind includes directors, the managing director or the person to whom the particular functions had been delegated so that they may be performed without supervision, independently and without instruction from the board of directors.[38]

The theory has been criticized on several grounds. It was criticized as unduly restricting corporate criminal liability to the conduct or fault of directors and high level managers, thereby creating a discriminatory rule in favour of large corporations where the range of persons who will possess the relevant characteristics to make the company liable will inevitably be a small percentage of its work force.[39] The theory

[35] (2013) All F.W.L.R Part 678, p.796. See also *Igwem& Co. Ltd v Igwebe* (2010) All F.W.L.R Part 540, p. 1293.
[36]*Tesco Supermarkets Ltd v Naltrass* (1972) AC 153 at 190.
[37](1915) AC 705 at 713.
[38] See Lord Hailsham of St. Marylebone (ed) *Halsbury's Laws of England* (4thedn, Butterworth & Co. (Publishers) Ltd, 1976) 451.
[39] J Gobert, 'Corporate Criminality: Four Models of Fault', (1994) 14 *Legal Studies* 393 at 400 and B Fisse, 'Attribution of Criminal Liabilities to Corporations: A Statutory Model' (1991) 13 *Sydney Law Review* 227.

also fails to recognize that offences committed on behalf of large organizations often occur at the level of middle or lower tier of management.[40] When in fact many decisions of large corporations are made at the level of branches or units, the identification theory insulates corporations form liability for decisions made at those levels.[41] The identification theory has also been criticized as too broad and perhaps too simplistic in that it automatically attributes the actions of certain individuals to the corporation. Prior efforts by the company to prevent illegal activity by senior employees may not count much.[42]

The identification theory has to grapple with the concepts of *acts reus* and *mensrea* as they are transposed (or not) from individual criminal onto the corporate body. The theory is widely applied in common law jurisdictions, but Canadian courts had extended it by locating the 'directing mind' at much lower levels in the corporations than the English courts were willing to.

b. Vicarious Liability Theory

The first obvious attempts at ascribing criminal liability to corporations were done on the back of the established civil law doctrine of vicarious liability; Criminal vicarious liability naturally has its origins in the civil law agency concept. It is often rationalised on the basis of the proximity of relationship between the corporation and its individual human actor. Vicarious liability concept has been borrowed from tort law wherein there is automatic liability for the offences committed by officers acting within the scope of their employment.[43] Criminal vicarious liability may arise because some statutory offences may expressly or impliedly impose vicarious liability on all employers and principals for the act of employees or agents, especially for offences of strict or absolute liability. It may also arise because some countries by statutes expressly subject companies to vicarious liability for the conduct of its officers and directors (such as in Australia though the defense of reasonable care is permitted), and lastly, it may arise because some Jurisdictions embrace vicarious liability as a general principle for corporate liability even for *mensrea* offences. Compared to the identification theory, it extends liability to cover criminal wrongs committed by even lower level officers.

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[40] *Ibid* .
[41] *Canadian Dredge and Dock Co v The Queen* (1988) I. S. C. R. 662.
[42] D Markus , 'The Comparative History and Theory of Corporate Criminal Liability, New Criminal Review'(2013) *International and Interdisciplinary Journal*. Vol 16, No 2 240.
[43] J D Greenberg and E C Brotman, 'Strict Vicarious Criminal Liability for Corporations and Corporate Executives: Stretching the Boundaries of Criminalization', (2014) *American Criminal Law Review*, Vol 51.

In respect of corporations, vicarious liability may be justified because it is directed to ensuring more internal policing.[44]The deterrence inherent in vicarious liability revolves round greater shareholder and corporate officer attention to the selection of officers and subordinates. As a model of liability, it certainly has utilitarian value in obviating problems of ascribing liability where the wrong is committed by the lower level official.[45] Because liability transmits through the wrongdoer to the corporation, individuals need not be prosecuted.[46] That may not be a good precept on which to operate in all circumstances; there will be many instances where the individual should rightly be prosecuted in addition to the corporation. Vicarious liability may also be justified on the basis of criminal law's chief aim of prevention and on the legitimate criminal goal of compensation. While an additional deterrent effect might be gained by applying respondent superior to all crimes of corporate agents, no characteristic peculiar to corporations demands exceptional measures.

Justification for the application of the vicarious liability is on basis of deterrence as corporations may undertake much more rigorous internal policing and greater shareholder and corporate officers' attention is paid to the selection of officers and subordinates. Besides, the employers engaged the employees for economic gain. Therefore it is fair for the law to demand that the employer bears the losses (in this case usually fire) occasioned because of the employment relationship, for it is the employer who is going to reap the benefits of the relationship. Courts generally hold that a corporation is subject to strict vicarious liability for a criminal act by one of its employees if the later acted within the scope of his employment and intended at least in part to benefit the corporation.[47]

The relationship between vicarious liability and identification doctrine has been described as one in which the identification doctrine is actually a modified and limited version of vicarious liability theory. Identification doctrine holds the corporation liable only for the faults of senior employees or officers (the directing mind) rather

[44] L H Leigh, The Criminal Liability of Corporations In English Law, (1969), at p 75; see also *James and Sons Ltd v Smith* [1954] 1 QBD 273 per Lord Parker at p 279.
[45] A J Duggan, 'The Criminal Liability of Corporations For Contraventions Of Part V Of The Trade Practices Act',1977 5 *Australian Business Law Review*,222.
[46] J S Parker, 'Criminal Sentencing Policy For Organization's', (1989) 26 *American Criminal Law Review* 523
[47]*United States v Ionia Mgmt. S. A.*, 555F.3d 303, 309 (2d Cir. 2009) see also U. S. Department of Justice, United States Attorney's Manual 9-28. 200 (b) (2008) <http://www.justicce.govaccessed on 18 September, 2017.

than for the fault of all employees as occurs under vicarious liability.[48] Again the identification theory is used to attribute *mensrea* to the corporation itself, whereas in the case of vicarious liability, no distinct or separate 'corporate' *mensrea* by those who control or run the corporations is required.[49]

Vicarious liability theory has been criticized as unfair as it subjects a corporation to criminal liability when a single rogue employee engages in misconduct, even if the misconduct directly violate corporation's policies and the violation occurred despite a rigorous compliance program.[50] Vicarious liability theory treats responsible corporations the same as corporations that fail to take reasonable efforts to prevent misconduct. The two are not similarly situated, however, insofar as a corporation can be blameworthy, a corporation that has implemented a robust compliance policy is less deserving of blame than a corporation which failed to adopt a compliance policy. Yet strict vicarious criminal liability treats the two equally.[51]

It has also been argued that vicarious criminal liability reduces corporations' incentives to implement rigorous and effective compliance policies as the absence of such polices has no effect on whether a corporation is subject to vicarious criminal liability for its employees' criminal acts. Indeed, vicarious criminal liability may actually deter corporations from having robust compliance policies. When a compliance policy yields information about criminal acts, that information can end up being used by the government to indict the corporation.[52]Corporations may decide that they are better off without compliance policies that could produce evidence that would support holding the corporation vicariously criminally liable. Finally, when the employee who committed the misconduct is convicted of a crime, convicting the corporations as well results in duplicative liability. This is inconsistent with the doctrine of respondeat superior that underlies vicarious corporate criminal liability.[53]

c. Aggregation or Organisation Theory

The aggregation model of corporate criminal liability extended the identification and vicarious liability doctrines by aggregating into one criminal whole the conduct of

[48]S Idhiarhi, 'An Examination of the Scope of Corporate Criminal Liability in Nigeria; <http://www.researchgate.net/publication/31521270 70 accessed on 18th September, 2017.
[49]*Ibid.*
[50] J Arlen, 'The Potentially Perverse Effects of Corporate Criminal Liability, (1994) 23 *Journal of Legal Studies*, 833.
[51]*Ibid.*
[52] D R Fischel&A O Sykes, 'Corporate Crime', (1996) 25 *Journal of Legal Studies*, 319,335.
[53]*Ibid.*

two or more individuals acting as the company (or for whom the corporation is vicariously liable) in order to impose corporate criminal liability on the corporation where the acts combined establish that liability but each act is in itself insufficient to do so.[54] Aggregation of employees' knowledge means that corporate liability does not have to be contingent on the individual employees satisfying the relevant culpability criterion.[55]

American courts developed the aggregation model, sometimes referred to as the doctrine of collective knowledge. In *United States v Bank of New England,*[56]in a charge of willfully failing to file report relating to currency transactions exceeding a certain statutory amount, the direction to the Jury was: " the bank knowledge is the totality of what all of the employees know within the scope of their authority, so if employee A knows one facet of the currency reporting requirement and B knows another facet of it, and C a third facet of it, the bank knows them all… the Court of Appeal affirmed the decision. Thus:

> A collective knowledge is entirely appropriate in the context of corporate criminal liability… corporations compartmentalize, knowledge, subdividing the elements of specific duties and operation into smaller components. The aggregate of those components constitute the corporation's knowledge of a particular operation. It is irrelevant wither employees administering one component of the operation knew the specific activities of employees administering another aspects of operation.[57]

The aggregation model is rejected in common law,[58] and there is on-going debate whether the principle apply to and is an adequate test of liability in those forms of corporate crime that require proof of will or intent.[59] The idea of aggregation has found the greatest favour where negligence is at stake and a decision has to be made about whether a collective failure to exercise reasonable care was culpable or about how great the measure of culpability was.

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[54] E Colvin, 'Corporate Personality and Criminal Liability' (1995) 6 *Criminal Law Review*, 1
[55]*Ibid.*
[56](1987) 821 F. 2d 844.
[57]*Ibid* at 856.
[58]Gobert, *op cit*.
[59]*R v P & O European Ferries (Dover) Ltd* (1991) 93 Cr. App. Rep 72: Here a seaman, Captain and five other crews failed to close the main Loading doors on a cross channel ferry. The ship sank and several hundred persons drowned. The court refused to follow the aggregation doctrine, holding that in the circumstance of the case there was insufficient evidence that the 'controlling mind' of the company had been reckless and the judge directed the Jury to acquit them.

It must however be noted that whereas knowledge may be capable of aggregation, emotions (tied to intents) may not be equally capable of aggregation. Also the aggregation model fails to lift the corporate veil. It ignores the reality that corporations has a duty to put in place measures to ensure that not only must individuals be prevented from committing offences but it must put in place polices in order to prevent commission of crime by a group of persons. Under the aggregate theory more junior officials and other servants of the company can form part of the collective knowledge or mind of the company, secondly, the aggregation theory has appeal where no single individual within the company is in possession of all the facts or individual.[60] Only by aggregating knowledge class the fuller picture energy.

One of the consequences of this approach may be that the sum of the knowledge may be greater than the parts.[61] Another worrisome question is 'whose knowledge should be aggregated? Would the court adopt the directing mind theory and simply view senior executive as the individuals whose mind could be aggregated to form the necessary *mensrea*? In many respects such an approach mistakes the perceived benefit of aggregation as a model of criminal liability.[62] Another critical argument against this theory is that it might lead to the conviction of legal bodies under far reaching and absurd circumstances claiming that 'the trend allows the conviction of a corporation by piecing together the conduct of different agents so as to form the elements of one offence is the result of over personification of corporate bodies.[63] The real merit of aggregation theory lies in the somewhat more collectivist approach than either vicarious liability or the identification theory. Nevertheless, in common with those approaches, it suffers from the fact that it is but another search for the essence of corporate liability rooted in and routed through, the individual within that organization.[64]

d. Corporate Fault Theory

All of the foregoing three theories suffer from limitations; they are atomistic rather than holistic. They rest on the premise of designation of individuals whose acts and mental states can be attributed to the company. Corporate criminal liability is in all

[60]Gobert, Corporate Criminality: Four Models of Fault, (1994), 14 *Legal Studies* 395.
[61]*Ibid,* p 405.
[62]*Ibid.*
[63]Ledermna, 'Criminal Law, Perpetrator and Correlation: Rethinking a Complex Triangle', (1985), 76 *Journal of Criminal Law and Criminology* 288.
[64] R May, 'Towards Corporate Fault as the Basis of Criminal Liability of Corporations'; *Mountbatten Journal of Legal Studies*<http://www.ssudl.solent.ac.uk.accessed on 20th September, 2017.

three a derivative form of liability.[65] All three theories suffer from the linkage of individual liability to corporate liability through the concept of juristic person. It is because of these limitations and from the desire to have an equitable premise for corporate criminal liability extendable to all forms of corporate criminal activity that scholars have considered 'corporate fault' as a model. The perception is that the attribution of fault or blame in corporate crime more properly requires focusing on collective corporate blame, rather than via the blameworthiness of individuals. If fault underlines individual liability, why should it not precede corporate liability? The nexus between the corporations and the individuals within them needs to be broken or, in any event, redefined. These models have limited success in providing a juristic basis of liability for corporations' criminal acts. It is dissatisfaction with all three that has led commentators to offer a fourth basis on which criminal liability can be attributed to the corporate form.

The theory of corporate fault is one essentially based on collective fault. The company as a whole has liability not by the actions or intentions of individuals within but rather through expressions of the collective will of the company. The most obvious place for such expressions of intent to be found is in company policies and procedures. This model attempts to discover a touchstone of liability in the behavior of the corporation itself rather than in the attribution to the corporation of the conduct or mental states of individuals within the corporation. That Touchstone is the blameworthy 'organizational conduct (the 'fault') of the corporation such as failure to take precautions or to exercise due diligence to avoid the commission of a criminal offence. In other words, the determination of liability focuses on the role that a company's structure, policies, practices, procedure and culture (corporate culture) play in the commission of an offence.[66] Corporate fault is then a conceptually different approach to corporate criminality:

> The company is treated as a distinct organic entity whose 'mind' is embodied in the policies it has adopted. Corporate policy is often different from the sum of the inputs of those who helped to formulate the policy, and typically is the product of either synthesis of views or a compromise among competing positions. Policy may reflect the company's corporate ethos. This ethos which is often unwritten may have been forged by founders of the company who are no longer actively involved in its day-to-

[65]Gobert, *op cit*, 407.
[66]*Ibid.*

> day affairs. When company policy or corporate ethos leads to the commission of crime, the company should be liable in its own right and not derivatively.[67]

This model recognizes that corporations have distinct public personae and possess collective knowledge. The model advocates a fundamental shift in the conception of corporate criminal liability as a 'transition from derivative to organizational liability', because of the increasing acceptance of the notion that corporations are moral and responsible agents.[68] A major assumption of this model is that a corporation, especially a large one, is not only a collection of people who shape and activate it, but also a set of attitudes, positions and expectations, which determine or influence the modes of thinking and behavior of the people who operate the corporation.[69]

This model was justified on the ground that is better equipped to regulate the modern corporation, especially a large one, which is typically decentralized. It was observed that harm from corporate crimes may have, in many situations, little or less to do with misconduct or incompetence of individuals, but more to do with systems that fail to address problems of risk.[70] The attraction of this approach is that it takes away from the *actusreus/mensrea* problem. It also has appeal in the fact that it moves away from the application of conventional criminal liability to the corporate form. It will also take away the problems associated with the courts attempts to squeeze corporate square pegs into the round holes of criminal law doctrines which were devised with individuals in mind.

Under the corporate fault model the focus would be on the creation of risks likely to lead to the occurrence of serious harm. If the harm in fact materialized, the company's liability would be for the failure to prevent harm rather than for the substantive crime itself. The company has the obligation to prevent crime under this model. In practice this means their development of policies and their implementation and the establishment of corporate ethos. As Gobert argues '*Mensrea* is one way, but not the only way, of getting at the issue of blameworthiness'.[71] The defence for a company facing criminal liability under the corporate fault model would be that of due

[67]Gobert, 'Corporate Criminality: New Crimes for the Times', (1994), *Criminal Law Review*, 734.
[68]Lederman, *op cit*. p 686.
[69]J Gobert, and E Mugnai, 'Coping with Corporate Criminally some Lessons from Italy (2002) *Criminal Law Review* 621.
[70] N Cavanagh, 'Corporate Criminal Liability: An Assessment of the Models of Fault, (2011), *The Journal of Criminal Law* Available at <http://www.journals.sagepub.com accessed on 20th September, 2017.
[71]*Ibid*, p 729.

diligence. The burden of proving due diligence should fall on the corporation. In satisfying the test of due diligence, the courts should adopt a test which clearly has its origins in health and safety law, with a balance being struck between the risk created against social utility of the activity weighed against the cost and practicability of eliminating the risk. Due diligence should be evidenced not just by senior management but rather by the organizational structure.[72]

Interestingly, the new proposal for an offence of corporate killing seeks to develop the concept of organisational blame worthiness.[73]While this is a welcome development, it still requires definition and elucidation. One danger may be the desire to equate this, simply with managerial failings. Corporate fault must look at collective failing rather than the failings on one section of the organisation.

6. Sanctions for Criminal Corporations

Historically, the only practical sanction available for corporations convicted of a criminal offence has been a fine.[74] Essentially, there are two reasons for this limitation in sentencing. First, corporations are legal fictions, and as such have not been subject to sanctions designed for individuals. Second, courts are reluctant to use dissolution of a criminal corporation as a sanction.[75]

a. Fine:

A fine is a criminal sanction while a civil sanction is called a penalty.[76]Non-payment of a criminal fine can result in incarceration, whereas non-payment of a civil penalty cannot.[77] The amount of a fine varies with the severity of the offence. Fines are the most common type of sentence given. Fines can be given to organizations or companies as well as people. However, fines have been the primary method used to control corporate criminal liability. A corporation operated for criminal purposes or by criminal means should be fined at a level sufficient to strip it of all its assets.[78]

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[72] French, 'The Corporation as a Moral Person', (1979),16*American Philosophical Quarterly* 207-215.
[73] Ridley &Dunford, 'Corporate Killing-Legislating for Unlawful Death', (1997) 26 (2) *Industrial Law Journal*, 99-113.
[74]'Structural Crime and Institutional Rehabilitation: A New Approach to Corporate Sentencing', (1979) 89 *Yale Law Journal* 354.
[75]*Ibid.*
[76] Fines-Sentencing Council <http://www.sentencingcouncil.org.uk> Accessed on 10 Nov. 2017.
[77]United States Sentencing Commision Guidelines Manual (1992). Hereinafter referred to as (U.S.S.G.) Section 8 (1) I. The Guideline calculation that falls short of a statutory minimum or exceeds a statutory minimum must be adjusted accordingly.
[78] 18 U.S.C 3572 (b), U.S.S.G Section 8(C) 2.2

On the other hand, a fine need not be imposed at all if it would render full victim restitution impossible.[79] On the other side, a fine below the recommended range should be imposed when necessary to permit restitution or may be below that range, when the corporation will be unable to pay a higher fine even on an installment basis.[80] A below-range corporate fine may also be fitting in light of individual fine imposed upon the owners of a closely held corporation. The criminal fines are the most common sanction. The rationale behind the use of fines in sentencing is deterrence. Corporations are presumed to act rationally in their profit-making ventures. The establishment of a system of fines is also designed to make corporate crime unprofitable, thus deterring rational corporations from criminal conduct. Unfortunately, the use of fine as a deterrence is rendered ineffective through a phenomenon known as the "deterrence trap". The "deterrence trap" occurs when the size of the fine that is necessary to deter criminal conduct by a corporation is larger than that which the corporation is able to pay.

A pecuniary sanction has the advantages of directly affecting the corporation, it generates the capital necessary for compensation or restitution to the victims, it can be executed with minimum costs, and when appropriately individualized, it has a sufficiently strong impact to accomplish the scope of the punishment (especially the retributive and deterrent scopes).[81] Whereas the greatest threat to an individual may be loss of liberty, the greatest threat to a company is the loss of profitability. Because such a loss strikes at the essential purpose of the company, a fine holds the potential to be an effective deterrent.[82]A corporation will balance the momentary gain from the offence with the loss from the potential criminal fine. Therefore, the fines must be sufficiently high to have an impact on the corporations: the amount of the fines should also take into account the financial resources of the corporation.[83]

At the same time, fines have some disadvantages. A very high fine would have a negative effect on innocent third parts. Although a corporate manger usually commits the crime, he will be the last one to suffer the impacts of his actions. Even if adequate

[79]U.S.S.G. Section 8(C) (3) 3.
[80]U.S.S.G. Section 8 (C) (3) 4.
[81]I P Anca, 'Criminal Liability of Corporations-Comparative Jurisprudence, <http://www.law.msu.edu> Accessed on 25 November, 2017.
[82] J Gobert, 'Controlling Corporate Criminality: Penal Sanctions and Beyond, 2 Web JCU p. 7 (1998) <http://www.webjcli.nd.ac.uk/1998/issue/gbert2.html> Accessed on 20 November, 2017.
[83]*Ibid* p. 8.

fines are imposed, however, other problems arise when monetary penalties are the sole sanction used to control corporate behavior. The use of fines may also work injustice on innocent parties. The real cost of a fine may be borne not by the corporation, but by the shareholders through lower dividends and by the consumers through the increase of the prices for the corporation's products. Neither of these parties has significant control over corporate-decision making. Furthermore, depending on the characteristics of the relevant market, heavily fining a corporation may lead to non-management employee layoffs as well as other forms of detriment to innocent third parties.[84] Thus, raising the level of fines will not prevent a corporation from passing along the penalty.

The multi-divisional and often radically decentralized structure of the modern corporation also acts to weaken the deterrence value of fines. While it is the top management which sets the directives of the corporation, it is often up to the middle-level managers to meet those directives. This tends to insulate the top management (which may well desire that the sordid details of 'meeting the competition' not filter up to its attention) and intensify the pressures on those below.[85] As a result, the top management, which is generally the most concerned with profit maximization, is often unaware of the criminal conduct by the middle-level managers. Fines alone do not address the complexities of corporate criminal behavior. Despite all its drawbacks the fine is the least expensive and most frequently applied sanction.

b. Community Service

This is one of the innovative criminal sanctions. Community service is paying the community back for harm done, through doing work that benefits the public, is the essence of community service. Sentencing courts can require corporate offenders to engage in commodity service that is 'reasonably designed to repair the harm caused by the offense'.[86] Community service should not be used as an indirect means to impose financial burdens on a convicted firm since a community order is a less efficient means to achieve this end than a direct fine.[87] Rather, courts should impose community service orders only when "the convicted organization possesses knowledge, facilities or skills that uniquely qualify it to repair damage caused by the

[84] *United States v Danilow Pastry Co.* (1983) S.D.N.Y 563F.Supp 1159, 1166-1167.
[85] C Stone, 'Where the Law Ends- The Social Control of Corporate Behaviour'. (1975) *Criminal Law Reviev*, 36.
[86] U.S.S.G. Chapter 8, Section 8 B 1.3.
[87] However, community servics may be a sensible sanction when a firm is unable to pay its full fine.

offense.[88] The U.S. Guidelines endorse community service when a corporate offender can efficiently repair offense damage through its own efforts. However, the U.S. Guidelines do not identify the features that distinguish corporate community service order from remedial orders. The former are described as requiring a convicted corporation to "repair the harm caused by the offense," while the latter entail efforts to "remedy the harm caused by the offense".[89] While the common remedial focus is certainly present, there is little difference in the description of these types of orders other than the labels used.

The Sentencing Guidelines do not recommend community service for punitive or deterrent purposes alone. The Guidelines provide that compelled community service should remedy offense harm, suggesting that community service imposed for purely punitive or deterrent reasons is inappropriate.[90]Even with this restriction, courts can tailor community service obligations provide for some impact on corporate reputations along with remedial benefits and thereby serve punitive or deterrent goals as well as remedial ends. Corporate community service has previously entailed service obligations imposed on specific executives who were not themselves convicted of an offense. The involvement of high-level mangers in corporate community service activities may be necessary for community service to have the types of reputational impacts that will have significant punitive and deterrent value. The reputation of a firm and the attitudes of its managers will be less likely to change if a firm can designate a low-level employee to perform its community service than if that service must be performed by a high-ranking corporate officer.[91]

c. Remedial Order

A remedial order is also one of the innovative criminal sanctions that serve important sentencing goals that are often unsatisfied through other criminal sentences. The Sentencing Reform Act of 1984,[92] places remedial goals at the heart of federal sentencing in the U.S. The Guidelines reflect the U.S. Sentencing Commission's view that in sentencing an organizational offender, a court must, whenever practicable order the organization to remedy any harm caused by the offense.[93]If for example the

[88] R Gruner, 'To Let the Punishment Fit the Organization: Sanctioning Corporate Offenders through Corporate Probation (1988) 16 *American Journal of Criminal Law*, 39.
[89] U.S.S.G., Section 8 B1.3 and Section B. 1. 2 (a).
[90] B Fisse,'Community Service as a Sanction against Corporations', (1981)*Wisconsin Law Review*, 970.
[91]*Ibid.*
[92] The Sentencing Reform Act of 1984 was enacted as part of the comprehensive Crime Control Act of 1984.
[93]U.S. Sentencing Commission, Sentencing Guidelines Manual (2001) 413.

company involved in the corporate crime deals on delivering health and safety services, they would be required to provide health and safety services to the community or to families or to workers, that have been affected by a workplace death (s). Remedial orders were intended by the Sentencing Commission to be fallback sanction for corporate offenders, imposed only when restitution orders are insufficient to address victim injuries.[94] Reasons why restitution might be inadequate and remedial orders correspondingly justified include difficulty in identifying crime victims and the scope of their economic damage, the presence of small damage to numerous victims making individual recoveries procedurally inefficient, or the involvement of aesthetic or other non-pecuniary harm in an offense.[95] Two areas where these orders may be particularly important are food and drug violations and environmental offenses.[96]

d. Adverse Publicity

The publication of the decision or the adverse publicity order (which consist in the publication at the company's expense of an advertisement emphasizing the crime committed and its consequences) are also sanctions for corporate criminal activity.[97] This has an important deterrent effect because of the incidental loss of profits that negative publicity can cause.[98] By its nature, this sanction can be only an auxiliary sanction accompanying another corporate penalty.[99] This sanction also has a possible spill-over effect, the losses can cause the corporations to close plants or even go out of business, which in turn will negatively affect innocent employees, distributors and suppliers[100].

Adverse publicity diminishes corporate prestige by stigmatizing the corporation and by pulling it in an undesirable spotlight thereby facilitating unwanted investigation and regulation. In certain circumstance, adverse publicity may also cause financial loss to the company. The unique value of a publicity sanction, however, lies in its

[94] M Jefferson, 'Corporate Criminal Liability: Sanctions and Remedial Action', (1996) *Journal of Financial Crime*Vol 4 Issue 2, 176 available at https://www.doi.org accessed on 28 November, 2017.
[95] *Ibid.*
[96] R S Gruner, 'Beyond Fines: Innovative Corporate Sentences under Federal Sentencing', (2013) *Washington University Law Quarterly*Vol 71, 261 < https//openscholarship.wustl.edu accessed on 22 Nov, 2007.
[97] J Gobert, *op cit.*
[98]*Ibid.*
[99] I P Anca , 'Criminal Liability of Corporations – Comparative Jurisprudence, <http://www.law.msu.edu> Accessed on 22 November, 2017.
[100]*Ibid.*

ability to target aspects of corporate welfare that cash fines cannot directly affect[101]. Adverse publicity can also exploit the sensitivities of corporate management who value prestige and autonomy as end in themselves, not merely as means to profits. Corporate executive are thought to be highly deterrable by adverse publicity because those in high status occupations have more to lose in social standing and respectability by having their reputations tarnished[102]. Large scale market-surveys of consumer attitudes also support the existence of a direct relationship between corporate reputation and firm performance.[103] They report that most consumers claim that brand quality, company image and reputation have a significant impact on their purchasing decisions. Companies fear the string of adverse publicity attacks on their reputation more than they fear the law itself[104].

e. Corporate Probation

As part of Federal Organisational Sentencing Guidelines enacted on November 1, 1991, the United States Sentencing Commission included organizational probation. This sanction allows courts to place convicted corporations on probation, with conditions designed to reduce the likelihood of future law violations and remedy the effects of the original offense.[105] Organiations cannot be incarcerated. Probation is one of the criminal sanctions available to them.[106] Probation for organisations was formally codified into Federal law in November 1991, when the U.S Sentencing Commission added Chapter 8 to the U.S Sentencing Guidelines. Unfortunately, the legal soil in which Parsons tried to root his precedent, the Federal Probation Act of 1925 was tenuous because it was intended originally for the rehabilitation of individuals, not organisations. As a result of this weakness, probation sentences for organisations often were successfully appealed on the grounds that they were not aimed solely at monitoring fine collection.

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[101] K Yeung, 'Is the Use of Informal Adverse Publicity a Legitimate Regulatory Compliance Technique?' Australian Institute of Criminology <https://www.aic.gov.au> Accessed on 20 Nov. 2017.

[102] A Cowan , 'Scarlet Letters for Corporations? Punishment by Publicity under the New Sentencing` Guidelines (1992) 65 *Southern California Law Review*, 2387.

[103] I Devine and P Halpern, 'Implicit Claims: The Role of Corporate Reputation in Value Creation' (2001) 4 *Corporate Reputation Review*, 42.

[104] B Fisse and J Brithwaite, *The Impact of Publicity on Corporate Offenders* (New York State University of New York Press, 1984) p. 10.

[105] W S Lofquist, 'Organisational Probation and the U.S Sentencing Commission, *Sage Journals*, <htpps://www.journals.sagepub.com accessed on 29 November, 2017.

[106] G Green, Organisational Probation under the Federal Sentencing Guidelines, Available at<http://www.uscourts.gov accessed on November30, 2017.

f. Dissolution or Winding Up

Dissolution or winding up represents the capital punishment for corporations. Winding up of a company involves the liquidation of the company so that the assets are distributed to those entitled to receive them. In the case of Oredola Okoya Trading Co v B.C.C.I.107, the court held that liquidation is distinguishable from dissolution which is the end of the legal existence of a corporation. Liquidation may precede or follow dissolution. However, the court went ahead to state that mere revocation of banking license of a bank without more cannot bring to an end the juristic life of a bank or corporation. Firstly, too small or closely held corporations, dissolution alone does not prevent the controlling parties from simply regrouping in a new form. Secondly, as to large corporations, the socially disruptive effects of the dissolution of a whole corporation would generally be so great as to outweigh its benefits. Winding up or liquidation is putting an end to the life at a company. A winding up may be effected in any of the following ways; by the federal High court, voluntarily; or subject to the supervision of the court.[108]

7. Conclusion

While Nigerian has achieved significant success in our efforts at controlling corporate activities and combating corporate crime thus far, we recognize that we cannot rest on our laurels. We will need to constantly fine tune our system by learning from the experiences of some other jurisdictions and ensuring that we keep abreast of the latest developments. We must remain nimble and agile in our ability to deal with emerging trends in corporate criminal liability and corporate crime as we continue to safeguard and preserve our reputation and integrity as a trusted international financial and business hub with tenacity and resolve.

Thus, it is recommended that in line with best international practices that the Nigerian courts adopt the corporate culture liability theory in holding corporations to account for their criminal activities. This will obviate the need for *mens rea*. It has also become imperative that Nigeria enact a statute comparable to the Corporate Manslaughter and Corporate Homicide Act 2007 of the United Kingdom to properly spell out potential liability of corporate bodies whose operations may result in the deaths of either their workers or third parties. This way, corporate criminal liability will be deterred.

[107] [2015] F.W.L.R Pt 806, p. 248.
[108] Section 401 CAMA 2004.