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CORPORATE CRIMINAL LIABILITY IN THE INFORMATION AGE; ISSUES AND CHALLENGES

Abstract

Crime commission has become part of human existence and over the years it has taken different forms and dimensions. In the industrial era crimes commission was not limited to natural beings but juristic beings as well. The law however, is there to mitigate on the commission of crimes as same is considered to be polluting public morals. Hence, criminal wrong is tagged crime against the society or state, which is prosecuted by the state to serve as deterrent on others. It is on this background that this paper examines this emerging aspect of criminal jurisprudence in the information age, looking at the issues and challenges associated with it. The paper aimed at identifying the issues and challenges that militate on effective fight against corporate criminals. This paper through doctrinal method of conducting research discovered that the major challenge associated with corporate criminal liability is who the law should hold responsible for corporate crimes since the company acts through its alter ego. It is therefore recommended that the Courts should imbibe on judicial activism by shifting away from the common law principle of proving actus reus and mens rea. The paper concludes that special legislations on corporate crimes be enacted by nations to take care of corporate liabilities.

Keywords: Crime, Corporate crime, corporate criminal liability, lifting the veil.

1. Introduction

Various forms of associations were known to medieval law and as regards some of them the concept of incorporation was early recognized. Initially, incorporation seems to be used only in connection with ecclesiastical and public bodies, such as monasteries and boroughs, which had corporate personality conferred on them by a charter from the crown.[1] In commercial sphere the associations recognized were the guilds of merchants, which had little resemblance with modern companies. Incorporation as a convenient method of distinguishing the rights and liabilities of the association from those of its members was hardly needed, since each member traded on his own account subject only to obedience to the regulations of the guild.[2]

The phrase "corporate crime" is traced to criminologists Marshall Clinard and Richard Quinney who, in their classic text, called for a distinction among types of white-collar crimes. The authors identified corporate crimes and occupational crimes as general

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P.I Davies, *Gover's Principles of Modern Company Law* (16th Ed; Sweet & Maxwell Ltd, 100 Avenue Road, Swiss Cottage, London NW3 3PF, 1997) pg 18-19.

[2] PL Davies, No.1. p.19.

varieties of white-collar crimes.[3]In the past, it was inconceivable that a corporation could be held liable. The argument generally advanced was that a corporation as an artificial person has no physical existence and could therefore not be subjected to the prescribed penalties attached to offences. Alongside this thinking, there were also those who felt that a corporation has all the attributes of a natural person and should therefore be capable of receiving all the punishments attached to all offences including physical offences.[4] In certain circumstances it is important to know what a person thinks, knows or intends. When that person is a company (an artificial being), how can one determine what the company thinks, knows or intends?[5] The interpretation of the leading English case of *Lennard's Carrying Co Ltd v. Asiatic Petroleum Co Ltd*[6] was that you must look for the 'directing mind and will of the company. This paper shall therefore discuss corporate criminal liability in the information age paying particular attention to the effect of incorporation and possessing corporate legal entity by a company. The paper shall also address the issues and challenges of corporate criminal liability in the information age and the position in Nigerian as it relates to corporate liability.

2. Clarification of Some Key Terms and Concept

There are some relevant terms to this research which when properly articulated, shall beam light to what corporate criminal liability is. They include the following;

a. Crime;
b. Corporate crime;
c. Corporate criminal liability and
d. Information age

2.1. Crime

The on-line Black's Law Dictionary 2nd edition, defines crime as 'an act committed or omitted, in violation of a public law, either forbidding or commanding it; a breach or violation of some public right or duty due to a whole community, considered as a community.' While the Business Dictionary views crime as harmful act or omission against the public which the state wishes to prevent and which, upon conviction, is punishable by fine, imprisonment, and/or death.[7] From the foregoing definitions, it can be deduced that crime is majorly an offence against the state or the general public,

[3] KB Payne & S Tapp, 'Corporate Crime' http://www.oxfordbibliographies.com/view/document/obo-97801956607/obo-9780195396607-0185.xml accessed on 8th of December, 2023

[4] DF Tom, 'Corporate Crimes and Liability Under Nigeria Laws' www.nigerianlawguru.com/.../ accessed on 31st January, 2024 by 1:36pm

[5] S. Goulding, *Principles of Company Law* (Great Britain by Cavendish Publishing Limited, Wharton street, London 1996) pg. 43

[6] (1915) AC 705

[7] 'Crime' <http//www.businessdictionary.com/definition/crime.html> Accessed on 12th January, 2024 by 12:02pm

which when committed the offender is expected to serve some punitive sanctions as could be ascribe to such offender by the law. The essence of the punitive sanction is to serve as deterrent to other members of the community or society who may wish or nurture such criminal tendency. In the criminal parlance, there are two principal elements of crime that a prosecutor is expected to prove for an offender to be punished. First is the *mens rea* which is a Latin word translated as 'to have in mind and *actus reus* also a Latin word meaning 'to do an act'.[8]These two major elements shall be discussed in the course of the paper especially as it relates to the difficulty involve in establishing the criminal intent of a corporate body.

2.2. Corporate crime

Folorunso defines corporate crimes as illegal acts, omissions or commissions by corporate organizations themselves as, social or legal entities or by officials or employees of the corporations acting in accordance with the operative goals or standard, operating procedures and cultural norms of the organization, intended to benefit the corporations themselves.[9] They are usually committed either to benefit the company at large or to benefit the perpetrators of the crime and in most cases such individuals generally do not think of themselves as criminals, nor do they consider their activities criminal, this notion stems from the fact that the company could not be seen or considered as to have the capacity of committing crime (though the law as it is today has moved away from this believe as a result of some decided judicial authorities which gave birth to the corporate criminal liability of a company involved in crimes commission. The apex court in Nigeria in *Abacha v. A.G Federation*[10]held that a company may be liable in a crime to the extent as a natural person. Thus, a company could be prosecuted for the common law offences of conspiracy to defraud even though the mens rea is an essential element of the offence.

From the foregoing, it is established that under our criminal justice system corporate bodies can be prosecuted for crimes just like natural persons. To consider the concept corporate criminal liability becomes pertinent.

2.3. Corporate criminal liability

Corporate criminal liability is the liability imposed upon a corporation for any criminal act done by any natural person.[11] Liability is imposed so as to regulate the acts of a corporation. The principle of corporate criminal liability is based on the doctrine of

[8] 'Elements of a Crime' <https//www.lawteacher.net/free-law-essays/business-law/outline-the-basic-elements-of-crime-law-essays.php> Accessed on 13th of February, 2024

[9]DT Folorunso, 'Corporate Crimes and Liability under Nigerian Law' <http//www.nigerianlawguru.com/articles/company> accessed on 13th April, 2024

[10](2014)18NWLR PT. 1438 P.31.

[11]'Corporate Criminal Liability Law and Legal Definition' https://definitions.uselegal.com/c/corporate-criminal-liability/ Accessed on 25th March, 2024.

respondent superior which is commonly known as the theory of vicarious liability, where a master is made liable for the acts of his servant.[12] Companies, even though they are fictitious legal persons, can be held to be criminally liable. This was decided as early as the 1840s in two cases concerning statutory railway companies.[13] One of the major requirements to be proven by a prosecutor in a criminal offence is the *mens rea* (motive/intention). In relation to a company, how can it be shown that a company had a criminal intent? This question was answered long ago in an English case of *DPP v. Kent and Sussex Contractors Ltd*,[14] in this case the company was charged with doing an act with intent to deceive and making a statement which it knew to be false. The Divisional court held that the company could be liable and therefore have the necessary intent to deceive.

The courts will, however, only convict if all the essential elements of the offence are present. Because of the nature of a company, it is not all offenses that it can be indicted for.[15] Similarly in Nigeria, the court's position was re-affirmed in *Abacha v. A.G Federation* where upon, on the legal personality of a company and whether agents of its subscriber or trustee can be liable, the court held that by virtue of section 37 of the companies and Allied Matters Act 1990, an incorporated company is a creation of the law, clothed with independent legal personality from the moment of its incorporation. It has distinct and separate legal personality from those that labored to give birth to it.

2.4. Information age

The modern age regarded as a time in which information has become a commodity that is quickly and widely disseminated and easily available especially through the use of computer technology.[16]The information age is the idea that access to and the control of information is the defining characteristic of this current era in human civilization. The information age is also called the computer age and the new media age, is coupled tightly with the advent of personal computers.[17] The crux of this paper is basically to appraise the concept of corporate criminal liability as it relates to this era wherein so many activities are carried on via the computer and the internet. Crimes are often committed through this medium and part of the answers this paper begs for is whether

[12] 'Corporate Criminal Liability Law and Legal Definition

[13]S Goulding, *Principles of Company Law*, pg. 43. See R v. Birmingham & Gloucester Railway Co (1842)3 QB 224 and R v. Great North of England Railway Co (1846)9 QB 315

[14] (1944) KB 146.

[15]JO Orojo, *Company Law and Practice in Nigeria*, 5th Ed,(LexisNexis, Durban 215 North Ridge, Mornigside, 4001, South Africa, 2008) pg. 106.

[16] Definition of Information Age' <https//www.merriam-webster.com/dictionary/information%20Age> Accessed on 13th of November, 2023.

[17] M Rouse, 'Information Age' <http//www.searchcio.techtarget.com/definition/information-Age> Accessed on 13th November, 2023.

or not the law has developed to cover corporate crimes committed via the instrumentality of the computer and the internet.

3. Incorporation of a Company and the Concept of Corporate Personality and Liability

The process and purpose of incorporation and the concept of corporate personality and liability is very paramount in understanding the concept of corporate criminal liability as they expose one to the rationale behind holding the company criminally and civilly liable for crimes and civil wrongs committed. Upon incorporation, a company becomes a separate legal entity distinct and separate from its shareholders and it is not the agent of those shareholders, not even if it is a two men company with two shareholder (just as in Nigeria one needs a minimum of two shareholders) controlling all its activities. This fundamental principle of corporate law was first established by the House of Lords in *Salomon v. Salomon & Co Ltd*.[18]

3.1 Lifting the Veil of Incorporation

Modern company law has its origins in the mid-19th century, when the limited liability Act 1855 and the Joint Stock Company Act 1856 introduced a simpler method of incorporating corporate bodies for commercial purpose.[19]Corporate veil is a legal concept that separates the personality of a corporation from the personalities of its shareholders, and protects them from being personally liable for the company's debts and other obligations.[20]

The distinction between a company and its members sometimes called 'the veil of incorporation'. Though an inappropriate term to use, since the identity of the members can be discovered by exercising the rights given to the public to inspect the register of members. However, as an exception to the veil of incorporation separating the company from its members the principle of lifting the corporate veil of incorporation was introduced.[21] The effect of lifting the veil is to either render other persons, usually members and directors, jointly liable with the company for its debts or to identify them with the company as a single person. This was what the court did in *Mezu v. C & C.B (Nig) Plc*[22] The courts are prepared to pierce the corporate veil to combat fraud. They will not allow the Salomon principle (i.e. the company having distinct personality with

[18] B Hannigan, *Company Law* 2nd Ed (Oxford University Press, Great Clarendon Street, Oxford OX2 6DP, 2009) p. 53.

[19]JM Gullick, *Ranking & Spicer's Company Law* 13thed (United Kingdom, Butterworth & Co (Publishers) Ltd, 88 Kingsway, wC2B 6AB and 61A North Castle Street, Edinburgh EH2 3LJ,) p. 1.

[20]S Chaitanya , (et al) 'Lifting the Corporate Veil' <https//www.lawctopus.com/academike/corporate-veil/> accessed on 12th January, 2024

[21]JM Gullick, *Ranking & Spicer's Company Law* p. 5.

[22](2013)3 NWLR PT.1340 P. 188.

its members) to be used as an engine of fraud. Fraud here covers criminal fraud and also equitable fraud.[23]

3.2 Types/Nature of Corporate Criminal Liabilities

Corporate crimes, also called organization crimes, are types of white-collar crimes committed by individuals within their legitimate occupations, for the benefit of their employing organization. Such individuals generally do not think of themselves as criminals, nor do they consider their activities criminal. Related to corporate crime is professional white-collar crime, which is crime, committed by those who identify with crime and make crime their sole livelihood.[24] Hundreds of companies routinely commit crimes that injure the public much more than street crimes in many ways: economically, socially, physically and environmentally. Yet corporate crimes are generally dealt with by civil and administrative law, for example, many industries control themselves. The law is applied differently for different people. Corporate crimes are offences committed by corporate officials for their corporations and the offences of the corporation themselves for corporate gain.[25]

In the United Kingdom, under the Financial Service Act of 1986 a company can be criminally liable for making statements or forecast which it knows is misleading. By the provision of section 47 of the Act, any person who makes a statement, promise or forecast which he knows to be misleading, false or deceptive or makes such a statement, promise or forecast recklessly or dishonestly conceals any material facts is guilty of an offense if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person to enter into a contract in the UK to buy or sell shares. Furthermore, it is also a criminal offence for a person to create a false or misleading impression in the UK as to market in or the price or value of any shares if he does so for the purpose of inducing another person to acquire, dispose of or subscribe for shares. It is also in same breath that under section 19 of the United Kingdom Theft Act of 1968, a director or other company officer can be guilty of an offence if, with intent to deceive members or creditors of a the company about its affairs, publishes or concurs in publishing a written statement or account which, to his knowledge, is or may be misleading, false or deceptive.

[23] JH Farrar & BM Hannigan, *Farrar's Company Law (*4th Ed; Butterworths, Halsbury House, 35 Chancery Lane, London WC2A 1EL and 4 Hill Street, Edinburgh, 1998) pg. 71

[24] FE Hagan, <Corporate Crime Law' https://www.britannica.com/topic/corporate-crime accessed on 7th January, 2024.

[25] J Hermida, 'Corporate Crimes' <https:www.julianhermida.com/c0ntcorporate.htm> accessed on 8th of February, 2024.

4. Corporate Criminal Liability in Nigeria

A company being an artificial person can only incur liability through its organs, agents and officers. The position was explained by Tobi, JCA in *Kurubo v. Zach-Motison (Nigeria) Ltd*,[26] thus;

> In view of the fact that an artificial person or company vested with legal or juristic personality lacks the natural or physical capacity to function as a human being, those who work in it do all things for and on behalf of it... It is therefore the law and the tradition for the human beings authorized to negotiate agreement for and on behalf of the company. Where an agreement is so executed by a person in authority, the company is liable or deemed to be liable for the act or acts of the person.

It is evident from the above decision of the court that the company is a distinct and separate being from its owner. Possessing legal rights and duties, with capacity to sue and be sued in its name. The company functions effectively through its alter ego that is; the directors, managers, secretary or other officers of the company, or any such person to whom powers of control and management have been delegated to, with full discretionary powers of some sections of the company's business.[27]

Based on this, the company can be generally liable in crime, tort and contract like an individual. This is also statutorily provided for by section 89 CAMA[28] that any act of the members in general meeting, the Board of Directors or of the managing director, while carrying on business of the company, shall be treated as the act of the company itself and the company shall be criminally and civilly liable where necessary for it to the same extent as if it were a natural person. While section 90 CAMA went further to provide for circumstances where officers and agents of the company will be liable either directly or vicariously. Similarly section 365 CAMA made further provision that pursuant to the powers conferred on the Corporate Affairs Commission under sections 357-363 CAMA to appoint an investigator saddled with the responsibility of investigating into the affairs and activities of a company, if from the report of such investigator it appears that any person has, in relation to the company or any corporate body whose affairs have been investigated is guilty for any offence for which he is criminally liable, such report shall be forwarded to the Attorney General of the Federation for onward prosecution accordingly.

The Criminal Code Act is not left out in recognition of the legal entity of an incorporated company as it provides for liability of a company or a person acting on

[26] (1992)5 NWLR (Pt. 239) p. 102 at 115.

[27] JO Orojo, *Company Law and Practice in Nigeria*, p. 107.

[28] Companies and Allied Matters Act No. 3, 2020.

behalf of a company to be criminally responsible for acts done or omitted to be done.[29] The Supreme Court recently gave this provision (section 35 CPA) its judicial blessing in the case of *Oyebanji v. State* where it held on when veil of incorporation would be lifted;

> By virtue of section 35 of the Criminal Code a person who being a member of a co-partnership, corporation or joint-stock company, does or omits to do any act with respect to the property of the co-partnership, corporation or company which, if he were not a member of the co-partnership, corporation or company would constitute an offence is criminally responsible to the same extent as if he were not such member…….[30]

The court went further to hold that one of the occasions when the veil of incorporation would be lifted is when the company is liable for fraud. However, since a statute will not be allowed to be used as an excuse to justify illegality or fraud, it is the statute which may result in grave injustice that the court, as occasion demands, have to look behind or pierce the corporate veil.

Another law in Nigeria as relates to corporate criminal responsibility which has out rightly placed liability of a corporation on its representatives is the Dishonoured Cheque (Offences) Act.[31] In Section 2 the law made it clear that where any offence under the Act is proved to have committed by or with consent of corporate body or in connivance with such corporate body, any servant, director, manager, secretary, or similar officer (or any person acting in such capacity), both the person and the corporate body shall be deemed guilty of such offence and appropriate actions shall be proceeded against the person and the corporate body. More so, the Cybercrimes (Prohibition, Prevention, ETC) Act of 2015 is not left out in recognition of the corporate criminal responsibility of a corporate body. The Act in Sections 13 and 14 provided for computer related forgery and computer related fraud, these two sections incriminated such acts by any person and when convicted shall be liable to imprisonment as provided in the Act. The interpretation section of the Act which is Section 58 defines 'any person' to include body corporate and by implication therefore, corporate bodies can also be liable for such criminal acts.

From the foregoing therefore, the position on corporate criminal liability in Nigeria clearly indicate that the court will not be reluctant to lift the corporate veil of incorporation where it suspects the commission of crime by the company through its alter ego (that is; agents, directors or managers).

[29] Criminal Procedure Act Cap C38 LFN 2004, Section 35.
[30] (2015)14 NWLR Pt.1479 p. 270.
[31] Cap D11, Laws of the Federation of Nigeria, 2004.

5. Issues and Challenges of Corporate Criminal Liability in the Information Age

From the discussion thus far, the following can be deduced as the some of the issues and challenges of corporate criminal liability in the information age: Liability; Punishment; Limited legislations; Jurisdiction.

5.1. Liability

The first issue and challenge of corporate criminal liability is the issue of liability**,** who should be held liable for corporate crimes committed amongst the alter ego of the company. One consequence of the concept of a company's separate personality is that it can be liable for breaches of contract, torts and crimes. But for obvious reasons it can only act through human agents or employees, so that, as a general principle, a company can only be liable either where a principal would be liable for the acts of an agent or an employer liable for the acts of an employee.[32] However, for so many years now it is unclear whose act and intentions could be attributed to the company, is it that of the directors and managers who control what the company actually does or the acts of mere servants who simply carry out the course of action prescribed by those in control? The court over time have had divergent views on this while in some instances it held that directors and managers are to be held liable[33], in other instances it held the servants liable.[34]

Those who study corporate crime generally conclude that corporate offending creates far more harm than traditional offending. Typically, traditional criminological theories ignore organizational factors, while explanations for corporate offending must consider these same factors to fully understand corporate offending.[35]More so, criminal liability rests on the twin pillars of mens rea and actus reus. Any thought of establishing corporate criminal liability had to confront the issue of mens rea and actus reus since incorporation has no existence of its own.[36] Where the offences allege against a corporate body is such that the proof of mens rea (intention) is necessary, how then would a corporation's state of mind be determined so as to make the corporation liable? The proof of a corporation's state of mind becomes more difficult since a corporation does not have a physical existence like a natural person. Again, where it is possible to ascribe the state of mind of any of its employee to a corporation, another problem also faced is, who among the employees of a corporation is to be regarded as acting on

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[32] G Morse, *Charlesworth& Morse: Company Law* (Sweet & Maxwell Ltd, 100 Avenue Road, Swiss Cottage, London NW3 3PF, 1996) p. 32.

[33]*Tesco Supermarkets Ltd v. Nattrass* (1972)2 All ER. 127 (H.L); Purcell Meats (Scotland) Ltd v. McLeod (1987) SLT 528.

[34] *Stephens v. T. Pittas Ltd* (1989) S.T.C 376; *National Rivers Authority v. Alfred McAlpine Homes East Ltd* (1994)4 All E.R 286.

[35]KB Payne & S Tapp 'Corporate Crime.'

[36] 'Elements of a Crime' <https//www.lawteacher.net/free-law-essays/business-law/outline-the-basic-elements-of-crime-law-essays.php> Accessed on 13th January, 2024.

behalf of the corporation so as to make such employee's act , the act of the corporation. This is because some of the employees are so low in rank and the court is yet to make a clear cut pronouncement on this issue.[37]

5.2 . Limited legislation

This is a major challenge on corporate criminal liability. Some jurisdictions criminal law may not permit a corporation to be held criminally liable only individuals such as Germany and Russia. In situation where the criminal activity occur abroad, criminal law might only apply within a state's territory, so prosecutors do not have jurisdiction to investigate and prosecute.[38]

Bernaz a human right activist during her paper presentation at the Copenhagen Business School on 20th May, 2016 made three basic observations on corporate criminal liability as it relates to international human rights but two of the observations are germane to this discuss. That i) under International human rights law, there is currently no route to hold corporations liable for human rights violations, as this branch of law is state centered, ii) the international criminal court does not have jurisdiction over corporations, but only over individuals.[39] From the above observations, international human right abuses is another corporate criminal liability perspective that is neglected by states or states are doing little to address it as it regards to corporate criminal liability for human right abuses. This concerns the liability for illegal behavior by corporations or individuals acting on behalf of such corporation that impacts human rights. These illegal activities may be criminalized in International Humanitarian Law, Anti-trafficking legislation, environmental laws, and consumer safety laws, among others. A state has a duty to enact such laws to protect people from human right abuses.

However, compared to civil law, there are very few criminal law prosecutions for corporate human right abuses; this could be explained by the many challenges in holding corporations criminally liable for when human rights abuses occur. The economic power and influence of corporations can be so great as to deter government

[37] *Mousell Brothers v. London and West Railway Company* (1917)2 K.B 836, *D.P.P Western Nigeria v. Associated Press of Nigeria Ltd & Anor* (1959) WRNLR 247 where the court in Nigeria held the Newspaper liable for the acts of a mere reporter.

[38] 'Criminal Liability for Corporate Related Human Right Abuses' https://www.business-humanrights.org/en/corporate-legal-accountability/special-iisues/criminal-liability-for-corporate-relatedhuman-rights-abuses accessed on 14th February, 2024.

[39] N Bernaz, 'The Developing Notion of Corporate Criminal Liability Under International Law: A Presentation at Copenhagen Business School' <https//www.rightsasusual.com/?p=1051> Accessed on 14th February, 2024.

from enacting strong corporate crimes legislations for fear of losing investment.[40]Even where the legislations exist, State authorities may not be willing to enforce such laws because of this economic influence, and also due to lack of expertise or resources.[41] By the time attention is being given by states on this aspect of corporate criminal liability, one can argue conceptually that it will be easier individual criminal liability should be extended to companies than to argue that liability under international human rights law, which currently arises only when states have violated their human rights obligations, should be extended to companies.[42]

5.3. Punishment

As already stated earlier on in this paper that corporate criminal liability intersects both company law and criminal law, and the problems have traditionally arisen in imposing liability on artificial legal construct such as a company. Mainly, the challenge is that legal concepts such as actus reus ,mens rea and causation, were designed with natural actors in mind, they do not easily lend themselves to inanimate entities such as companies. If this is case, then the issue of punishment also arises, corporate bodies cannot be punished with sanctions such as imprisonment for corporate manslaughter.[43] What then is corporate manslaughter? Section 1 of the UK Corporate Manslaughter Act[44] sets out that an organization is guilty of manslaughter, "if the way in which its activities are managed or organized causes a person's death". Before the coming into effect of the Act, the prosecution has to prove two things: first, that a single person in the company was guilty of gross negligence; second, that this individual was the controlling mind of the company. If there was not enough evidence to convict an individual, there could be no prosecution of the company. This made it easier for larger companies to escape liability, as the larger the company the greater the number and the less likely the chance of proving that a single individual represents the company's controlling mind.[45]The position in the United Kingdom today is different with the coming into effect of the Corporate Manslaughter and Corporate Homicide Act of 2007.The prosecution need not prove that single senior individual was the controlling

[40] 'Criminal Liability for Corporate Related Human Right Abuses' https://www.business-humanrights.org/en/corporate-legal-accountability/special-iisues/criminal-liability-for-corporate-relatedhuman-rights-abuses accessed on 14th February, 2024.

[41] 'Corporate Crime: New principles will help Governments and Law Enforcement Tackle Corporate Abuse' by Amnesty International <https//www.business-humanrights.org/en/new-corporate-crime-principles-aim-to-advance-companies-legalaccountability-for-human-rights-develop-by-amnesty-intl-otherexperts#> accessed on 11th March, 2024.

[42]N Bernaz, 'The Developing Notion of Corporate Criminal Liability Under International Law: A Presentation at Copenhagen Business School' <https//www.rightsasusual.com/?p=1051> Accessed on 14th February, 2024

[43] Smith & Hogan., *Criminal Law (*London, Butterworths, 6th Ed. 1988) p. 170.

[44] UK Corporate Manslaughter Act 2007.

[45] 'Corporate Manslaughter' https://www.out-law.com/page-11163 accessed on 15th August, 2017.

mind of the company and personally guilty of manslaughter. Instead, the offence will be linked to existing health and safety standards, and applied where the senior management had shown a gross breach of their duty of care towards employees and others.[46]Interestingly, section 18 of the Act made it clear that an individual can no longer be held liable for corporate manslaughter but the corporate body as a whole. In Nigeria, although a corporation can be criminally liable to the same extent as if it were a natural person,[47]there is no law on corporate manslaughter but there is the corporate manslaughter Bill of 2015 before the National Assembly seeking to make corporate bodies liable for injuries suffered by their employees as a result of injuries suffered at work.[48] The Bill has scaled through second reading at the floor of the senate of the National Assembly, yet it seemed to have been abandoned.[49]

From the analysis on liability and punishment on corporate manslaughter above, it is evident that punishing corporate bodies on crimes committed by them whose punitive sanctions relates to imprisonment is practically impossible (on this background it is assumed that corporate bodies cannot commit murder, rape, treason; but in reality it is not the case).

5.4. Jurisdiction

This is the major challenge of corporate criminal liability. Reason being that a lot of corporate transactions is transacted on line, it now makes easier to commit crimes like fraud, impersonation of a company, misrepresentation and hacking on the internet. But the attendant effect of this is however, the applicable law to use in prosecuting such offender especially where such offence is committed in jurisdictions where corporate bodies are not held liable for corporate crimes. Jurisdiction is very fundamental to adjudication and a court without jurisdiction is like a toothless bulldog that can only bark but not bite ,and all its effort will be in futility. However, determining of the country to hear a matter in the information age has been a major challenge globally militating against the prosecution of cybercrimes.[50]

Generally as a result of practice over time for court to exercise jurisdiction on activities done on the internet it must ensure that certain considerations are put in place and they include; i) Examining the applicable long term statute or common law equivalent to

[46] C Evans, 'What is Corporate Manslaughter and How Does it Work?' https://www.rightsinfo.org/corporate-manslaughter-work/ Accessed on 15th April, 2024.

[47]Companies and Allied Matters Act Cap C20 LFN 2004, Section 65.

[48] 'Corporate Manslaughter in Nigeria' http://www.naijalegaltalking.com/article/other-important-legal-info/277-corporate-manslaughter-in-nigeria accessed on 15th February, 2024

[49]OE Ebenuwah, 'The Corporate Manslaughter Bill' https://www.pressreader.com/nigeria/thisday/20160607/28194313214835 accessed on 15th February, 2024

[50]Dzever, S.S., 'An Appraisal of the Legal Framework for Combating Cybercrime in International law' (LLM Dissertation, Ahmadu Bello University, Zaria, 2016) p. 142.

determine whether the statute grants the court the jurisdiction over out of state defendant. And in checking the long term statute the court considers whether the person is domicile within the state, or maintaining his place of business within the state, more so, based on the long term statute the court also considers the conduct of the defendant. And in doing that it takes into the consideration where the transaction took place, whether the injury or tortuous act was committed within the state, and whether or not the defendant had been soliciting business within the state or engaging in other persistent course of conduct or derives revenue from goods used or consumed or services rendered in the state. ii) The second step is to evaluate whether the exercise of jurisdiction in the particular case violates due process rights granted under the Constitution.[51]

With the above considerations the courts most often try to be very careful when it comes to crimes committed on line and also whether or not to assume jurisdiction. Most often States tend to be more protective of their jurisdiction when it comes to territorial jurisdiction.

6. Conclusion and Recommendations

This research piece has been able to look at corporate criminal liability from the point of corporate legal entity of a company. Looking at how a company comes into being via the process of incorporation, the paper further considered the concept of corporate criminal liability paying particular attention as to whether or not a corporate body could be criminally liable for offences committed. The doctrine of lifting the corporate veil was not left out as it exposes to us those circumstances where the court will lift the veil of incorporation and punish them accordingly. Some of the issue and challenges associated with corporate criminal liability in the information age were discussed wherein we discovered that jurisdiction, liability, limited availability of laws and punishment amongst others are some of the challenges affecting prosecution of crimes committed by corporate bodies. This paper therefore recommends that Nations should learn from the United Kingdom by making special legislation that will take care of corporate criminal liability. As this is one aspect of law that has been neglected by nations and a lot is being perpetrated by corporate bodies without facing the law. But as an immediate remedial for combating corporate crimes committed in this information age, this paper calls for an international convention that will bring ICT experts and internationally recognized corporate bodies all over the world to develop a universally accepted laws that will govern corporate affairs especially as it relates to checking crimes committed by corporate bodies in this era. More so, our courts should embark on judicial activism by moving away from the common law position where by prosecutors prosecuting corporate crimes are expected to prove the two major elements

[51] 'Jurisdiction in Cyberspace' https://www.corporate.findlaw.com/law-library/jurisdiction-in-cyberspace.html accessed on 15th April, 2024

of criminal responsibility which is proving the Actus reus (actual act) and Mens rea (criminal intent) as this most often become practically not possible to establish the criminal intent of a company being an inanimate but juristic being (i.e. associating the criminal intent of a corporate body to its alter ego which is often difficult to determine as the courts are over the globe are having divergent views as to who constitutes the alter ego of a company).