



**CORPORATE MANSLAUGHTER AND ITS RELATIONSHIP WITH CORPORATE
SOCIAL RESPONSIBILITY IN NIGERIA**

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CERTIFICATION

This is to certify that I am responsible for the work submitted in this thesis, that the original work is mine except as specified in the acknowledgements and references, and that to the best of the researcher's knowledge, neither the dissertation nor the original work submitted therein has been submitted in part or in full to this university or any other institution for the award of a degree, or diploma.

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DEDICATION

This dissertation is dedicated to the memories of my beloved mother Late Dr. (Mrs) Virginia Nkoli Nzegwu and my father Late Alfred Chukwukelue Nzegwu for their sweet souls.

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Table of Contents

ABSTRACT	17
CHAPTER ONE	20
1.1A GENERAL BACKGROUND THAT CLARIFIES THE BASIS FOR THE CHOICE RESEARCH AREA	20
1.2INTRODUCTION	39
1.3 A STATEMENT OF PROBLEM	40
1.4 RESEARCH QUESTIONS	41
1.5 RESEARCH OBJECTIVE	42
1.6 RESEARCH METHODOLOGY	45
1.7 CONTRIBUTION TO KNOWLEDGE	49
1.8 WHY YOU HAVE CHOSEN NIGERIA AND THE NIGER DELTA IN PARTICULAR	53
1.9 STRUCTURE OF THESIS	57
2.1 LITERATURE REVIEW	61
2.2 THE BASIS FOR THE CHOICE OF LITERATURE	63
2.3 DISCUSS AND JUSTIFY THE CONCEPTUAL FRAMEWORK AND RELATE IT TO THE QUESTIONS AND OBJECTIVE OF RESEARCH	64

Fig 1 Link between Corporate Manslaughter and Corporate Social Responsibility is woven into Enforceability.....	68
Fig 2 How corporate social responsibility and corporate manslaughter are enforced....	72
2.3.1 IS THE SECRET BEHIND THE SPIRIT OF LAW OR THE LETTERS OF THE LAW THAT MAKES COMPANIES OBEY THE LAW?	72
2.3.2 THE CAPACITY OF THE SYSTEM TO ACCOMMODATE AND INTERPRET THE LAW TO AID ENFORCEMENT	79
2.3.3 THE NATURE OF HUMAN INSTITUTIONS. IF IT IS THE HUMAN INSTITUTIONS WHAT THEN IS IT WITH THE HUMAN INSTITUTIONS?	89
Fig 4 the human institutions	90
2.4 PHILOSOPHIES AND THEORIES IN LAW AS REGARDS LEGAL ENFORCEABILITY	90
➤ The nature of the rule of law in the country (for example law by the courts)	91
2.4.1 IS THE SECRET BEHIND THE SPIRIT OF LAW OR THE LETTERS OF THE LAW THAT MAKES COMPANIES OBEY THE LAW.....	114
2.4.1.1 IF THE LAW IS CONSTRUCTED IN A MANNER THAT IS AGAINST THE INHERENT DESIRE OF THE INDIVIDUAL OR DESIGNED IN SUCH A MANNER THAT THE INDIVIDUALS ARE UNABLE TO OBEY IT, IS IT BAD LUCK?.....	124
2.5 IDENTIFY AND JUSTIFY YOUR MODEL FOR LITERATURE REVIEW	132
2.6 IMPLEMENT THE MODEL IN THE REVIEW OF PRE-EXISTING LITERATURE IN THE AREA	138
2.6.1 THE UNITED KINGDOM	142

2.6.2.1 JUSTIFICATION ON ENFORCEABILITY FOR CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE IN THE UK	145
2.6.3 AUSTRALIA (ENFORCEABILITY)	146
2.6.3.1 JUSTIFICATION / PROBLEM IT SOLVED IN THE AUSTRALIAN CAPITAL TERRITORY	148
RELATIONSHIP BETWEEN CORPORATE MANSLAUGHTER AND CORPORATE SOCIAL RESPONSIBILITY WITH REGARDS TO LEGAL ENFORCEABILITY .	154
Table 1 shows Corporate Manslaughter (Law) and its effect on corporate social responsibility among companies.....	154
CHAPTER THREE METHODOLOGY.....	159
3.1 BRANCHES OF METHODOLOGY.....	159
3.1.1 BRIEFLY DISCUSS YOUR ONTOLOGY	159
3.1.2 EPISTEMOLOGY	160
TABLE 4 BRANCHES OF METHODOLOGY	169
3.2 LEGAL RESEARCH APPROACH.....	170
3.2.1 CRITICAL THEORY.....	170
3.2.2 SOCIAL CONSTRUCTIVISM	172
3.4 CHOSEN LEGAL RESEARCH APPROACH.....	191
3.5 RESEARCH PARADIGM.....	193
3.5.1 EPISTEMOLOGY PHILOSOPHICAL STANCE	195

3.5.2 ONTOLOGY PHILOSOPHICAL STANCE	196
3.5.3 METHODOLOGY/AXIOLOGY PHILOSOPHICAL STANCE	197
TABLE 2 ASSUMPTIONS OF THE MAIN PARADIGMS	200
FIG 5 EXPLAINS THE STAGES OF THE METHODOLOGY	203
3.6 RESEARCH STRATEGY	205
3.6.1 ETHNOGRAPHY	207
3.6.2 CASE STUDY METHOD	210
3.7 RESEARCH METHOD	212
3.7.1 VALIDITY, RELIABILITY, AND GENERALISABILITY IN QUALITATIVE RESEARCH.....	212
3.7.2 The disguised observation (non-participant) is simply to validate the semi- structured interview by looking at surrounding environmental contexts to identify the role of people, their actions, and the circumstances under which they operate. As a useful tool in behavioural science, this method helps to bring out data that respondents are reluctant to give or omitted during the interviews.	213
3.8 RESEARCH METHODS AND THEIR USAGE. SAMPLE SIZE, SAMPLING TECHNIQUE, AND REASONS FOR CHOICE. ITS APPLICATION IN THE NIGER DELTA.....	216
TABLE 3 LIST OF POPULATION FOR QUANTITATIVE DATA (QUESTIONNAIRE	216
3.8.1 DECIDING ON SAMPLE SIZE.....	219

Table 4 Sample Size	220
3.8.2 JUSTIFYING SAMPLE SIZE, SAMPLING TECHNIQUE, AND TRIANGULATION	223
3.8.3 TRIANGULATION	225
CHAPTER FOUR.....	226
4.1 LACK OF LEGITIMACY OF INDIVIDUALS AND THE POLITICAL INFLUENCE OF THE MULTINATIONAL OIL COMPANIES IN NIGERIA WITHIN THE POLITICAL ENVIRONMENT OR WITHIN THE SOCIAL / GOVERNMENTAL STRUCTURE.....	227
4.2 LACK OF INSTITUTIONAL UNDERSTANDING OF THE IMPORTANCE OF ENFORCEMENT OF LAWS.....	230
4.3 ABSENCE OF A LEGITIMATE INSTITUTION LIKE THE COURTS AND ITS CAPACITY TO INTERPRET THE LAW AND THE AIDING OF ENFORCEMENT	246
4.4 ABSENCE OF DESIRE ON THE PARTIES TO OBEY THE LAW	250
4.5 ABSENCE OF LEGITIMATE INSTITUTIONS TO ENFORCE THE LAW.....	259
DATA ANALYSIS	263
Figure 6 WILL THE INTRODUCTION OF CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE BILL 2015 REDUCE DEATH CAUSED BY THE ACTIVITIES OF OIL COMPANIES IN NIGERIA LIKE OIL SPILLAGE, GAS FLARING, HUMAN RIGHT ABUSE OR DEATH OF EMPLOYEE AT WORKPLACE?	263

4.6 IDENTIFY AND DISCUSS HOW LACK OF ENFORCEMENT IN NIGERIA CREATES CONFUSION AND LIMITS ENFORCEABILITY IN NIGERIA	284
5.1 FACTS OF THE CASE.....	291
5.2 THE ISSUE IN OKPABI'S CASE	297
5.2.1 CASE LAW	305
5.2.1.1 POLITICAL TENDENCIES THE HURDLES FACING NIGERIAN COURTS REGARDING CORPORATE CRIMINAL LIABILITY	306
5.3 RAISING FUNDAMENTAL QUESTIONS AS IT RELATES TO OKPABI'S CASE AT THE COURT OF APPEAL.....	308
CHAPTER FIVE	310
5.3.1 ANSWERING THE FUNDAMENTAL QUESTIONS RAISED.....	312
5.3.1.1 WHETHER THE DUTY OF CARE (CONCERN AN INTERPRETATIVE PHILOSOPHY) SUFFICIENTLY PROVIDES A GROUND FOR ENFORCEABILITY AND WHETHER IT GUARANTEES SUFFICIENT ACCOUNTABILITY FROM THE OPERATIONS OF MULTINATIONAL COMPANIES IN THE NIGER DELTA AREA.	313
5.3.1.2 THE QUESTION OF CONTROL. WHETHER THE ESSENCE OF CONTROL OR PROXIMITY IN OKPABI'S CASE UNDERMINES THE RIGHT OF ACCESS TO EFFECTIVE REMEDY?.....	314
5.3.1.3 WHETHER A CRIMINAL LIABILITY IN THE FORM OF CORPORATE MANSLAUGHTER SHOULD SUFFICIENTLY GROUND THESE IDEA (NOT JUST IN TORT) IN ORDER TO PROVIDE SUFFICIENT ENFORCEMENT AND	

ACCOUNTABILITY FOR THE PEOPLE WHO HAVE BEEN INJURED AS A RESULT OF THE ACTS OF MULTINATIONAL COMPANIES	319
5.3.1.4 WHETHER THE COURT HAS JURISDICTION IN THIS (OKPABI'S) CASE?	323
5.3.1.5 THE DECISION ON THE ISSUE OF PROXIMITY COULD IT HAVE AMOUNTED TO JUDICIAL/ PROCEDURAL PITFALL WORTHY TO BE TAKEN ADVANTAGE OF BY ANYBODY?	330
5.4 BRINGING IN PRIMARY DATA TO DISCUSS THE LOOPHOLES (IN THE COURT OF APPEAL DECISION IN OKPABI'S CASE) ALREADY RAISED	331
5.4.1 RESPONSES FROM FOCUS GROUP STRUCTURED INTERVIEW	340
TABLE 5 BREAKDOWN OF FOCUS GROUP INTERVIEWS	340
5.4.2 Given the limitations placed on mechanisms for the enforcement of corporate manslaughter and corporate social responsibility in Nigeria, how can enforcement of law be socially constructed since critically in reality there is a failure in oil companies practising corporate social responsibility (leading to corporate manslaughter) in the Niger Delta Area?	351
TABLE 7 Constructivism versus reality resolves the issue of enforcement mechanism and regulation	351
Interviewees	351
Responses	351
Villagers from Bonny Island Rivers State	351
Legal Practitioners	352

Employees of oil company	352
Employees of oil company	353
5.4.3 To what extent does loophole in our laws promote or constrain enforceability	355
Interviewees	355
Responses	355
Legal Practitioners from Onyechi Ikpeazu’s (SAN) chambers	355
The staff of Ministry of Labour and Employment	356
They added that.....	356
5.4.4 To what extent in reality or the way law and its enforcement is constructed in Nigeria promote or hinder enforceability	360
Interviewees	360
Responses	360
Ministry of Labour and Employment Porthacourt Rivers State	360
5.5 OBSERVATION AND INTERVIEW DATA ANALYSIS	387
5.5.1 This section of the research is for data analysis. It seeks to interrogate the data obtained through interviews and personal observation.	387
5.5.2	388
5.5.3 Construction vs structure of reality as it relates to hindrance tendency in enforcement	389
6.1 ENFORCEABILITY AND SOCIAL CONSTRUCTIVISM UNDER WRAPS	395

6.1.1 ENFORCEMENT AND JUSTICE.....	400
6.1.2 LEGAL RELATIONS (COMPLIANCE AND CORPORATE SOCIAL RESPONSIBILITY) AND INTERFERENCE WITH ENFORCEABILITY	410
CHAPTER 7 CONCLUSION.....	420
7.1 INTRODUCTION.....	420
7.2 FINDINGS OF THIS RESEARCH.....	424
7.3 ORIGINAL CONTRIBUTION TO LITERATURE.....	426

LIST OF ABBREVIATIONS

ACT- Australian Capital Territory

ACTA- Alien Torts Claim Act

BP- British Petroleum

CAMA- Companies and Allied Matters Act

CMCHA- Corporate Manslaughter and Corporate Homicide Act

CMCHB- Corporate Manslaughter and Corporate Homicide Bill

CSR- Corporate Social Responsibility

ESQ- Esquire

FDI- Foreign Direct Investments

HSE- Health and Safety Executive

HSWA- Health and Safety at Work Act

JSC- Justice of The Supreme Court

JVA- Joint Venture Agreement

MNOCs- Multinational Oil Companies

MNCs- Multi National Companies

MOSOP- Movement for the Survival of Ogoni People

NGOs- Non-Governmental Organizations

NMCB- Nigerian Content and Monitoring Board

NNPC- Nigerian National Petroleum Corporation

OHS- Occupational Health and Safety

OON- Officer of the Order of the Niger

RDS- Royal Dutch Shell

SAN- Senior Advocate of Nigeria

SMA- Seaman's Manslaughter Act

SPDC- Shell Petroleum Development Company

UK- United Kingdom

WBCSD- World Business Council for Sustainable Development

ABSTRACT

This thesis examines the relationship between corporate manslaughter and corporate social responsibility in Nigeria through the lens of legal enforceability.

The law all over the world has been unclear as regards what corporate social responsibility means¹ and the level of obligation that a company owes its employees and other stakeholders.

The issue of legal enforceability has been staggered in/ with different jurisdictions. While in some countries the liability for death at the workplace is individual but some countries have moved to organizational liability.

This thesis, therefore, asks whether the absence of a coherent legal framework to legally enforce all aspects of corporate social responsibility affects the legal enforceability of incidences that leads to corporate manslaughter offenses. Whether there is a link between corporate manslaughter and corporate social responsibility through the lens of legal enforcement? What is the attitude of the courts on legal enforceability?

Nigeria is one of the countries in the world that is experiencing problems in prosecuting multinational oil companies because the laws in existence are weak.

With regards to enforceability, one consequence of the artificial nature of a company as a legal person (corporate personality) is that inevitably decisions for, and actions by, it must be taken by natural persons. Decisions on its behalf may be taken by shareholders of the company. These shareholders in the event of corporate manslaughter may refuse to ratify the decisions of their senior managers as the acts of the company itself. Secondly, a country with weak laws and a

¹ Gerlinde Berger-Wallister and Inara Scott “Redefining Corporate Social Responsibility in an Era of Globalization and Regulatory Hardening” (2018) 55(1) 167-218 at 172

system for the enforcement of the law will have problems prosecuting companies in the event of corporate manslaughter.

In such circumstances, this thesis will look at the culture behind legal enforcement, the attitude of the government and its institutions, the companies, and the people towards the enforcement of corporate manslaughter laws.

This researcher will use a questionnaire and organized interview to measure whether the absence of a coherent legal framework to legally enforce all aspects of corporate social responsibility affects the legal enforceability of incidences that leads to corporate manslaughter offenses.

This researcher intends to use a case study. Using a case study, the researcher will be able to discover that with regards to enforcement have read the duty of care provision in Nigerian law in *pari passu* with the provision of the law in the United Kingdom, the law in Nigeria is weak and porous.

The significance of the findings in this research is to explain that in Nigeria, the system of enforcement of the law against companies is almost non-existent. This means that for corporate manslaughter cases in Nigeria, there must be a certain system of enforcement involving the government and its institution to legally enforce the law. This is to ensure obedience to the law by the companies and the citizens.

CHAPTER ONE

1.1A GENERAL BACKGROUND THAT CLARIFIES THE BASIS FOR THE CHOICE

RESEARCH AREA

There are conflicts between the different facets of corporate social responsibility but with regards to the issue of corporate manslaughter and corporate homicide legal obligations differ.

The law all over the world has been unclear as regards what corporate social responsibility means and the level of obligation that a company owes its employees and other stakeholders.

This means that there is no thorough analysis of the issues surrounding the lack of a generally accepted definition of CSR and the use of conflicting academic theories of CSR among other issues afflicting CSR². Hence the clear misunderstanding of this concept has caused major conflicts within legislation across the world. The World Business Council for Sustainable Development (WBCSD) defines CSR as the continuing commitment by businesses to behave ethically and contribute to economic development while improving the quality of life of the workers and their families as well as the local community and society.³

² Onyeka K. Osuji “Corporate Social Responsibility, Stakeholder Needs and Sustainable Development-Overcoming Contextual and Regulatory Challenges through the Values Paradigm” (2020) 8(4/2) *Kilaw Journal* 313 -347

³ John Okpara, Samuel O. Idowu, Rene, Schmidpeter, *Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders* (Springer 2013) 5

In 1979, a management scholar, Archie B. Carroll, proffered a general definition of CSR. According to him; CSR encompasses the economic, legal, ethical, and discretionary (philanthropic) expectations that society has of organizations at a given point in time.⁴

This definition is generally about how companies should respond to externalities of their operations which are sometimes though not always illegal but which may not stand up to societal expectations.⁵ While this corporate social responsibility operates in a different sphere, there is a common thread that runs across which is the idea of legal enforceability.

Proponents of neo-liberalism have criticized the CSR definition by Carroll above. They believe companies do not have any responsibility towards other stakeholders; their only responsibility is to maximize profits for shareholders⁶. That was the idea of shareholder supremacy at that time. The brainchild of shareholder supremacy was Milton Friedman who believes that the sole aim of corporate social responsibility is profit-making for the company and shareholders excluding other stakeholders as long as the company remains within the rule of the game⁷. Stone criticized Friedman's viewpoint and stated that businesses have broader responsibilities that extend beyond owners and shareholders to include customers, employees, the host

⁴ Olufemi Amao, *Corporate Social Responsibility, Human Rights and the Law Multinational corporations in developing countries* (Routledge, 2011) 68

⁵ For example the activities of shell in Ogoniland South- South Nigeria as seen at <http://www.youtube.com/watch?v=2Wzu6FZTW0g>

⁶ Christine .A. Mallin *Corporate Governance* (6th Edition Oxford University Press, 2019)

⁷ Milton Friedman *Capitalism and Freedom* (University of Chicago, 1962) at 133 in Eghosa .O. Ekhaton and Ibukun Iyiola-Omisore *Corporate Social Responsibility in the Oil and Gas Industry in Nigeria: The Case for a Legalised Framework* (Springer, 2021) at 442

communities, and suppliers because these people play important roles in society, as taxpayers, service providers, investors, and distributors amongst others⁸.

This is the question of legal enforceability. Similarly, according to Lambooy, with regards to the legal enforceability of CSR, there are theories regarding enforcement of CSR which are principle-based regulation and rule-based regulation⁹. Principle-based regulations are the regulatory modes, as the name suggests that usually contain non-prescriptive guidelines and principles, such as the Organization for Economic Cooperation and Development's Guidelines for Multi-National Enterprises and the UN Global Compact (UNGC)¹⁰. Rule-based regulations are the prescriptive regulatory modes containing clearly defined enforcement mechanisms and predictable remedies for victims in cases where they are violated¹¹. This from the description of rule-based regulation then means national laws in various countries (like CAMA 2004 in Nigeria). Zerk accuses rule-based regulation to be over-regulative, too prescriptive, intrusive, and sometimes disrespectful of the regulatory initiatives of other countries¹². This could be

⁸ Christopher Stone *Where the Law Ends: The Social Control of Corporate Behaviour* (Harper and Row, 2012) at 83 in Eghosa .O. Ekhaton and Ibukun Iyiola-Omisore *Corporate Social Responsibility in the Oil and Gas Industry in Nigeria: The Case for a Legalised Framework* (Springer, 2021) at 442-443

⁹ T. Lambooy *Corporate Social Responsibility: Legal and Semi-Legal Frameworks Supporting CSR Development 2000-2010 and Case Studies* (Kluwer, 2010) at 261 in Nojeem Amodu "Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria" (2017) 61(1) *Journal of African Law* 105-130 at 110

¹⁰ Nojeem Amodu "Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria" (2017) 61(1) *Journal of African Law* 105-130 at 110

¹¹ Nojeem Amodu "Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria" (2017) 61(1) *Journal of African Law* 105-130 at 110

¹² J. Zerk *Extraterritorial Jurisdiction: Lessons for Business and Human Rights Sphere from Six Regulatory Areas*. Corporate Social Responsibility Initiative Working Paper no 59, John Kennedy School of Government, Harvard University, 2010 at 82 in Nojeem Amodu "Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria" (2017) 61(1) *Journal of African Law* 105-130 at 111

caused by the approach in the enforcement of rule-based regulation for example in Nigeria and the UK.

For example, the Corporate Social Responsibility Bill 2007¹³ Nigeria was introduced at the National Assembly for approval to collect a compulsory 3.5% of a company's revenue for the execution of community development projects¹⁴ whereas section 9 of the proposed English Corporate Responsibility Bill 2002 was never made to levy companies with regards to community development but rather made to make companies in the UK produce and publish reports on environmental, social, economic and financial matters, provide functions of corporate responsibility board¹⁵ to mention just a few.

This then means that the issue with rule-based regulation in Nigeria lies with the approach to enforcement of the law.

The issue of legal enforceability has been staggered in/ with different jurisdictions. This has led to contentious debates on the true meaning of CSR. This enforceability is an offshoot of the responsibility companies owe to stakeholders and society at large.

¹³ Adaeze Okoye “Exploring the Relationship between Corporate Social Responsibility, Law and Development in an African Context: Should Government be Responsible for Ensuring Corporate Responsibility?” (2012) 54(5) International Journal of law and management 364-378

¹⁴ The Corporate Social Responsibility Bill 2007 Nigeria C1239-44 Section 5 Available at <<http://www.nassnig.org/document/download/1>> [Accessed] 16th June 2016 in Nojeem Amodu “Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria” (2017) 61(1) Journal of African Law 105-130 at 113

¹⁵ Nojeem Amodu “Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria” (2017) 61(1) Journal of African Law 105-130 at 114

While some jurisdictions choose to enforce certain aspects of the law (liability for death at work or classes of persons liable for death at work or classes of stakeholders protected under the law), other jurisdictions choose not to for reasons of socio-economic or socio-cultural. However, when it speaks to the general question of the safety of lives and property, the law has also been unclear as to the effects, and causes of the activities of companies leading to the death of individuals. Unanimous legal provision exists for the protection of human life. Therefore, one cannot understand the basis where there is a separation between the actions of the company leading to the death of an individual as distinct from the criminal obligation of some companies. The relative strengths and weaknesses of CSR regulations trigger the need for interventive interventionism¹⁶. The solution then lies in incorporating substantive outcomes¹⁷ to prevent what happened from happening again or preventing deadly violence against the activities of oil companies by communities from happening). The basis for this study is the question of to what extent the companies in Nigeria are to be held accountable for the death of people within their host community or employees. While the law is clear in section 33 of Nigeria's 1999 constitution as to the right to life, the actions or inactions of some companies have led to the death of so many people and yet companies are not held accountable (regulatory collusions and

¹⁶ Onyeka K. Osuji "Corporate Social Responsibility, Juridification and Globalisation: 'Interventive Interventionism' for a 'Paradox'" (2015) 11(3) 265-298 at 266

¹⁷ Onyeka Osuji "Corporate social responsibility, juridification and globalisation: "interventive interventionism" for a "paradox"" (2015) 11(3) International Journal of Law in context 1-31

failures occur where this constitutional segregation is ruptured¹⁸. This is the focus of this research. This researcher will therefore investigate why this has been the case, what steps can be taken to address oil concerns (death caused by the activities of companies), and whether could there be challenges in the lackadaisical attitude of regulators¹⁹ with regards to enforcement.

In this research legal enforceability will be the central concept on which this researcher will tie corporate social responsibility and corporate manslaughter. This is because there seem to be contradictions as to universally how countries enforce corporate social responsibility.

There has to be a uniform framework that underpins how countries enforce these aspects of corporate social responsibility²⁰ because the United Kingdom for example has legal enforceability of legal corporate social responsibility²¹ in their breach of duty of care resulting from a senior management decision (resulting in death)) section of Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA 2007). Some authors like de Burca with regards to CSR say that regulation can exist in a continuum between the extremes of prescriptive regulation (a regulation that describes in some detail an operation to be performed) and pure

¹⁸ Whyte David “Regimes of Permission and State-Corporate Crime” (2014) 3(2) State Crime Journal 237-246 at 239

¹⁹ Nojeem Amodu “Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria” (2017) 61(1) Journal of African Law 105-130

²⁰ Eghosa O. Ekhaton and Ibukun Iyiola-Omisore *Corporate Social Responsibility in the Oil and Gas Industry in Nigeria: The Case for a Legalised Framework* (Springer Nature, 2021)

²¹ This researcher here is criticizing the various attempts to make CSR Mandatory or compulsory in Nigeria.

voluntarism²². For Buhman, the complex and multifarious relationship between law and CSR has been recognized in literature in contrast to the facile regulation versus voluntarism polemics²³. This means that with regards to CSR and its definition, it draws partly on the law's multidimensional nature and the voluntary nature of CSR.

CSR is the idea or theory that companies have a duty towards society beyond their primary obligations to their shareholders or owners and it is said to be voluntary²⁴. However, in some instances, the activities of MNCs have had negative consequences in a lot of countries²⁵ (especially developing countries, including Nigeria). Examples include the Bodo oil spill in Nigeria and the Union Carbide disaster in India that killed over 5,000 people and caused lifelong health damage to up to 100,000 others²⁶. This is caused by a lack of a generally accepted definition of CSR. CSR makes companies responsive to stakeholders who include

²² G. De Burca "New Governance and Experimentalism: An Introduction" (2010) 1 Wisconsin Law Review 227-238 in 179 in Onyeka .K. Osuji "Corporate Social Responsibility, Juridification and Globalisation: "Interventive Interventionism" for a "Paradox"" (2015) 11(3) International Journal of Law in context 1-31 at 2

²³ K. Buhman "Integrating Human Rights in Emerging Regulation of Corporate Social Responsibility: The EU Case" (2011) 7(2) International Journal of Law in Context 139-179 in Onyeka .K. Osuji "Corporate Social Responsibility, Juridification and Globalisation: "Interventive Interventionism" for a "Paradox"" (2015) 11(3) International Journal of Law in context 1-31 at 2

²⁴ Olufemi Amao "Emergent State Practice on the Creation and Practice of Standards on Corporate Social Responsibility" (2014) 1(1) State Practice and International Law Journal 117-137

²⁵ Eghosa .O. Ekhaton and Ibukun Iyiola-Omisore *Corporate Social Responsibility in the Oil and Gas Industry in Nigeria: The Case for a Legalised Framework* (Springer, 2021)

²⁶ Eghosa .O. Ekhaton "Regulating the Activities of Oil Multinationals in Nigeria: A Case for Self-Regulation?" (2016) 60(1) Journal of African Law 1-28

suppliers, shareholders, customers, communities, and the environment amongst others²⁷. Thus companies are expected to take responsibility for their actions toward these stakeholders²⁸.

Secondly, this researcher finds that there are few extant laws in Nigeria but only recently created a legal obligation to meet their requirement concerning gas flaring, oil spillage, and human rights abuse regards human rights laws that punish certain human rights abuses, oil spillage, gas flaring in terms of environmental laws that are enforced in Nigeria. Chapter 3 Section 240 (2) of the Petroleum Industry Act 2021 (by making CSR contribution a mandatory levy on corporations), has changed the voluntary and self-regulatory element of CSR to hard law legislation²⁹. The sanctions in section 238 of the Petroleum Industry Act 2021 according to Debski and Ezeani mandate corporations to comply or face the ultimate consequence of losing their license³⁰. While there is no decided court case yet on this provision, readers wonder as to the effectiveness of this provision (will it suffer the fate of enforceability?³¹).

²⁷ Eghosa .O. Ekhaton “Corporate Social Responsibility and Chinese Oil Multinationals in the Oil and Gas Industry in Nigeria an Appraisal” (2014) 28 *Cadernos De Estudos Africanos* 119-140

²⁸ Eghosa .O. Ekhaton and Ibukun Iyiola-Omisore *Corporate Social Responsibility in the Oil and Gas Industry in Nigeria: The Case for a Legalised Framework* (Springer, 2021)

²⁹ J.A. Debski and Ezeani E.C. Corporate Social Responsibility Under the Petroleum Industry Act 2021: Achieving Environmental Sustainability Through Multi-Stakeholder Partnership (2022) 3(1) *African Journal of Engineering and Environment Research* 1-24

³⁰ J.A. Debski and Ezeani E.C. Corporate Social Responsibility Under the Petroleum Industry Act 2021: Achieving Environmental Sustainability Through Multi-Stakeholder Partnership (2022) 3(1) *African Journal of Engineering and Environment Research* 1-24

³¹ J.A. Debski and Ezeani E.C. Corporate Social Responsibility Under the Petroleum Industry Act 2021: Achieving Environmental Sustainability Through Multi-Stakeholder Partnership (2022) 3(1) *African Journal of Engineering and Environment Research* 1-24 at 10

According to Debski and Ezeani, this means that with regards to enforceability in Nigeria, still there are no extant laws³² that make these offenses punishable when a company deliberately degrades the environment since there is yet to be a decided court case in Nigeria on companies failing to abide by the provisions of the Petroleum Industry Act 2021 Nigeria for example. For gas flaring lawmakers are still contemplating whether to have a law to punish a company for gas flaring in Nigeria or not. There are laws in the parliament to make certain companies accountable but they are more or less favorable to multinational oil companies operating in Nigeria.

The need to enforce the basic aspects of corporate social responsibility is essential to maintaining healthy corporate practices in the Niger Delta. Companies or corporate bodies are to be held accountable for actions or inactions during their operations. This is the basis for those aspects of corporate social responsibility. As mentioned earlier, there are different aspects of corporate social responsibility.

Firstly, the ethical aspect of corporate social responsibility is companies' working procedures, modes of supervision, and activity within the organization that companies failed to exhibit which caused a severe breach of duty of care³³ leading to action for corporate manslaughter and corporate homicide (breach of duty to take care). In essence, oil companies have been given

³² Veronica Ngozi Ekundayo, Olisakwe Okechinyere and Olalekan Moyosore Lalude "An Analysis of Corporate Criminal Liability in Nigeria" (2020) 11(2) *The Gravitas Review of Business and Property Law* 47-57 at 47

³³ Eli Lederman "Corporate Criminal Liability: The Second Generation" (2016) 46 *Stetson Law Review* 71-87

enough time to self-regulate their activity but oil spill causing fatal illnesses in Niger Delta Nigeria has not stopped either has oil companies voluntarily recognized the economic opportunities to clean up oil spillage or reduce gas flaring (accountability) without being charged to court for the death of an employee at the workplace or at home in his or her village. The second aspect of corporate social responsibility is philanthropy. Oil Company's idea on CSR is more of a public relations issue where the companies act mainly to appeal to customers' consciences and desires but with the true intention of benefitting from them³⁴. One of the real imports of CSR is corporate-community involvement³⁵.

These oil multinational corporations have done little or nothing in ameliorating the sufferings of the inhabitants of the Niger Delta region³⁶. The third aspect of corporate social responsibility is legal.

The legal aspect of the relationship between corporate social responsibility which this writer is to explore is enshrined in The Corporate Manslaughter and Corporate Homicide Bill Nigeria which provides under Section 1 that "an organization is guilty of an offense under this section only if how its activities are managed or organized by its senior management is a substantial element in the breach referred to in subsection 1" Section 1 (4b) provides that "a breach of a

³⁴ Opeyemi Mordi and Tonbara Ojo "Corporate Social Responsibility and the Legal Regulation in Nigeria" (2012) 64(1) Economic Insights- Trends and Challenges 1-8

³⁵ Uwafiokun Idemudia "Assessing Corporate-Community Involvement Strategies in the Nigerian Oil Industry: An Empirical Analysis" (2009) 34 Resources Policy 133-141

³⁶ Kelly Ejumudo, Zephaniah Edo, Lucky Avweromre and Jonathan Sagay "Environmental Issues and Corporate Social Responsibility (CSR) in Nigeria Niger Delta Region: the Need for a Pragmatic Approach" (2012) 4 Journal of Social Science and Public Policy 1-21

duty of care by an organization is “a gross” breach if the conduct alleged, falls far below what can reasonably be expected of the organization in the circumstances”. A company under S. 1(1) of the Bill owes a duty of care to its employees and a company is in breach of this accountability when the way the activities of such company in Nigeria are managed or organized causes death. Such duty of care in Nigeria also extends to a company as an occupier of premises³⁷ (villagers).

When, an employee or other stakeholders such as the villagers, dies due to a breach of the duty of care resulting from the activities of the company, there will be no provision of the law to charge the company with a crime³⁸. This is the problem under sections 65 and 66 of the Companies and Allied Matters Act which made provision for ratification of corporate criminal liability by members of the board and shareholders in a general meeting.

The extent readers can assume the relevance of Sections 65 and 66 of CAMA in this debate on questions of enforceability hinges springs from the problem of individual liability under CAMA 2004 (S. 63 and 65. It is called ‘Acts of the Board of Directors’). Criminal prosecution will then be instituted against the board of directors and junior directors. This may create a multiplicity of actions for the same case. The law employs standards based on individual and

³⁷ Simon Parsons “The Corporate Manslaughter and Corporate Homicide Act 2007 Ten Years On: Fit for Purpose?” (2018) 82(4) *The Journal of Criminal Law* 305-310 at 306

³⁸ Samson Erhaze and Daud Momodu “Corporate criminal liability: call for a new legal regime in Nigeria” (2015) 3(2) *Journal of Law and Criminal Justice* 63-72

human characteristics and views the corporate body in the same regard³⁹: as having a soul to damn and a body to kick⁴⁰

The Corporate Manslaughter and Corporate Homicide Bill (CMCHB) 2015 provides that acts of senior managers can only ground liability for corporate manslaughter. It is then immaterial that it was a junior staff who took the decision not to check if the machinery is working properly or to know that oil spillage could cause fire and explosions with casualties. Also, the CAMA makes it difficult to charge and prosecute MNCs.

Similarly, section 24 of the Criminal Code⁴¹ provided that a company will not be held liable for an event that occurred by accident. An employee can die by accident due to the fault of their company (lack of training or supervision). When an employee dies, there will be no provision of the law to charge the company⁴². However, the Interpretation Act also provides that a person includes persons corporate or unincorporated⁴³. According to Ekundayo et al, it

³⁹ Mohammed Saleem Tariq “A 2013 look at the corporate killer” (2014) 35(1) *Company Lawyer* 17-20

⁴⁰ CMV Clarkson “Kicking Corporate Bodies and Damning their Souls” (1996) 59 *The modern Law Review* 557-572 at 557

⁴¹ C.O. Okonkwo *Criminal Law in Nigeria* (2nd Edition Spectrum Law Series, 2012) in Mohammed Suleh-Yusuf “Criminal liability of corporate persons in Nigeria” (2017) 3(4) *International Journal of law* 32-38

⁴² Nneka Obiamaka Umejiaku and Chisom Ngozi Uzoka “Towards a Rational Theory of Criminal Liability for Corporations in Nigeria” (2019) 6(1) *Nnamdi Azikiwe Journal of Commercial and Property Law* 126-149

⁴³ Interpretation Act Cap 123 Laws of the Federal Republic of Nigeria 2010, Section 18(1)

can thus be deduced that companies in Nigeria can be held liable and prosecuted for criminal offenses occasioned by its agents⁴⁴.

According to Amodu, the issue afflicting enforcement of CSR is sustainability⁴⁵ with enforcement by the bodies supposed to regulate the law. Effective 17th October 2016, the Financial Reporting Council of Nigeria (FRC) has released the National Code of Corporate Governance, 2016, to be applicable in Nigeria. However Amodu states that there may be issues afflicting enforcement of CSR in Nigeria like by whom, where, and how will non-compliance with the sustainability requirements of the National Code of Corporate Governance, 2016 are enforced without contravention of the primary provisions of the primary law under CAMA 2004⁴⁶ for example.

To critique Amodu's view of deflecting questions of enforcement to purely an institutional issue, this writer is stating that the central issue with enforceability is in the misaligned framing of CSR leading to its poor understanding. Also, the lack of unanimity in the definition of CSR makes enforcement strategies difficult to implement.

Secondly, with regards to the legal responsibility of CSR, Debski, and Ezeani, the issue afflicting enforcement of CSR in Nigeria is that there is limited interest and intervention by the

⁴⁴ Veronica Ngozi Ekundayo, Olisakwe Okechinyere and Olalekan Moyosore Lalude “An Analysis of Corporate Criminal Liability in Nigeria” (2020) 11(2) The Gravitas Review of Business and Property Law 47-57 at 50

⁴⁵ Nojeem Amodu “Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria” (2017) 61(1) Journal of African Law 105-130

⁴⁶ Nojeem Amodu “Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria” (2017) 61(1) Journal of African Law 105-130

Nigerian government at the national and state level to pursue a policy of regional development in the communities, there is significant poverty and lack of education in the communities and these communities lack real agency with their government⁴⁷. This is an example of limited interest and intervention by the Nigerian government. There are also issues of conceptual clarity impacting on an institutional understanding of CSR. This will be discussed in chapter four.

The fourth aspect of corporate social responsibility is socio-economic. To explain the socio-economic aspect of corporate social responsibility, in Nigeria, it is notorious that oil companies choose to flare gas. It is cheaper to flare it instead of renewing it (refining the gas) as part of renewable energy or channelling it to the ground because it likes to save money. This could be a result of the corruption of oil and gas companies in Nigeria and the Nigerian government to the detriment of the health and safety of Nigerians.

With regards to this issue of corruption plaguing the socio-economic responsibility of CSR, a solution lies in 1992 when states gathered at Rio De Janeiro Brazil for the United Nations conference on environment and development⁴⁸. The report from the conference (Brundtland Report) laid down some principles in pursuit of a sustainable environment. This indicates the

⁴⁷ J.A. Debski and E.C. Ezeani “Corporate Social Responsibility under the Petroleum Industry Act 2021: Achieving Environmental Sustainability through Multi-Stakeholder Partnership” (2022) 3(1) African Journal of Engineering and Environment Research 1-24

⁴⁸ Rio de Janeiro Declaration on Environment and Development, June 16th 1992 UN DOC.A/CONF.15/15. It is called the Earth Summit.

global progressive awareness of the crucial need to observe and investigate environmental risk⁴⁹ and reduce it to the barest minimum.

Similarly, in the 1972 conference, the Human Environment brought the industrialized and developing nations together to delineate the “rights” of the human family to a healthy and productive environment⁵⁰. Nations were taught about the right of the human family to a healthy and productive environment. This began a new era of economic growth (growth that is forceful and at the same time socially and environmentally sustainable)⁵¹ for all.

The idea behind corporate manslaughter and corporate social responsibility under ethics in this research is that ethical principles must be an integral part of how the organization operates and be reflected in the organization’s code of ethical conduct, formal and informal controls, policies, processes, and procedures⁵². For the company, the board and management, therefore, have to ensure that there is a high degree of congruence between the ethical standards of the organization (sustainability framework) and their own behavior and activities. Pinchot and Pinchot suggested that executives should cultivate their ethical competence with the same enthusiasm they devote to cultivating their technical, marketing, and financial skills to avoid

⁴⁹ Abdulkadir Bolaji Abdulkadir “Corporate Social Responsibility and Environmental Protection in the Nigerian Energy Sector: Reflection on Issues and Legal Reform” (2021) 12(2) Law and Policy 332-367

⁵⁰ Supra at 345

⁵¹ Ibid at 345

⁵² Bonn Ingrid and Josie Fisher “Corporate Governance and Business Ethics: Insights from the Strategic Planning Experience” Corporate Governance an International Review (2005) 13(6) 730-738

incidences like the Bhopal chemical explosion in India⁵³. These ethical principles form the basis for an ethics of sustainability and include the Precautionary Principle, among others, that can assist in framing the issue and developing suitable solutions, and that can cope with risk and its ramifications⁵⁴.

An example of ethical principles is the sharing of accident information and learning the lesson and checking the nature of corporate systems of companies. In many developing countries like Nigeria, negligence by companies has been attributed to cutting costs. When companies are faced with profit-making at the detriment of safety of their workers or any other person it is commonly resolved by examining the long-term interest of the company⁵⁵. It is an important way of reducing errors in any industry⁵⁶. The reason is that all human beings make errors at some time and design and operational work must be capable of dealing with human fallibility⁵⁷.

This is the problem with companies practicing corporate social responsibility in Nigeria because lawyers, judges, employees of oil companies in Nigeria, Nigerians, and indeed the Nigerian government are not looking at records of safety procedures in oil companies or listen

⁵³ Gifford Pinchot and Elizabeth Pinchot “Can We Afford Ethics?” (1992) 9 Executive Excellence 3–4 in Ann Svendsen The Stakeholder Strategy: Profiting from Collaborative Business Relationships (Berrett-Koehler Publishers Inc, 2010) at 193

⁵⁴ Max Energy Limited, ‘Oil Rig Disaster Deep Water Horizon’ (Deepwater Horizon, 2014) available at <http://www.solarnavigator.net/oil_rigs_deepwater_horizon_british_petroleum.htm> [Accessed] 10th May 2015

⁵⁵ Robert Whittingham Preventing Corporate Accidents An Ethical Approach (1st ed. Butterworth-Heinemann Ltd 2008) 283

⁵⁶ John Bond “Professional Ethics and Corporate Social Responsibility” (2009) 87 Process Safety and Environmental Protection 184-190

⁵⁷ John Bond “Professional Ethics and Corporate Social Responsibility” (2009) 87 Process Safety and Environmental Protection 184-190

to the news on the radio or television on the adverse effects of oil spillage and gas flaring and news about Nigerian officials who accept bribe from multinational oil companies to ignore continued oil spills and gas flaring. This is also where corporate manslaughter and corporate homicide law ends and corporate social responsibility begins for oil companies in Nigeria and the Nigerian government.

In a case of corporate manslaughter, the jury may have recourse to the general organizational and system failures. The jury on CSR will have to consider the general organization's overall objectives, published statements on safety, monitoring and compliance policies, attitudes to the development of safety and training and awareness, approaches to remedying previous health and safety infringements⁵⁸.

In summary, the nature of corporate systems must encourage managers to work in an ethical manner bearing in mind the long-term interests of the company, executives should cultivate their ethical competence with the same enthusiasm they devote to cultivating their technical, marketing, and financial skills to avoid incidences of death at work, ethical principles must be an integral part of how the organization operates and be reflected in the organization's code of ethical conduct, formal and informal controls, policies, processes, and procedures, therefore, corporate executives must have to ensure that there is a high degree of congruence between the

⁵⁸ Brent Fisse and John Braithwaite *Corporations Crime and Accountability* (Cambridge University Press 1993) in Rick Sarre "legislative attempts to imprison those prosecuted for criminal manslaughter in the workplace" (2002) 9(3) available online at <http://www.murdoch.edu.au/elaw/indices/title/sarre93_abstract.html> [Accessed] 11th December, 2016; David Ormerod and Richard Taylor "The Corporate Manslaughter and Corporate Homicide Act 2007" (2008) 8 Criminal Law Review 589-611

ethical standards of the organization (sustainability framework) and their behavior and activities.

Finally, the new sentencing guidelines demand that in cases of corporate manslaughter the court should “adopt the same basic structure for sentencing organizations for health and safety, corporate manslaughter and food safety and hygiene offenses as was used in the definitive environmental guideline⁵⁹”.

The idea behind corporate manslaughter and corporate social responsibility under socio-economic responsibility in this research is that if Shell Nigeria has remedied its damage to the environment Ken Saro Wiwa will not have protested and the civil unrest between the two villages which Shell Nigeria aided⁶⁰ would not have happened.

This made writers in the field of CSR like Schramm-Klein et al, Asemah et al to mention just a few to suggest that the essence of CSR is that companies should not only concentrate on profit making but companies should strive to further some social good that goes beyond the interest of the firm as well as the requirements of the law⁶¹. The definition of corporate social

⁵⁹ Sentencing Guideline Commission 2010 Para 8 in Company Lawyer, “New Sentencing Guidelines For Corporate Manslaughter, Etc” (2016) 228 Criminal Law 8-9

⁶⁰ Ike Okonta and Oronto Douglas *Where Vulture Feast Shell, Human Rights, and Oil* (Verso 2003)

⁶¹ Hanna Schramm-Klein, Joachim Zentes, Sascha Steinmann, Bernhard Swobodo and Dirk Morschett “Retailer Corporate Social Responsibility is Relevant to Consumer Behaviour” (2016) 55(4) *Business and Society* 550-575; Ezekiel Asemah, Ruth Okpanachi and Leo ON Edogoh “Business Advantages of Corporate Social Responsibility Practice: A Critical Review, *New Media and Mass Communication*” (2013) 18 45-54 in Ukpabi, D.C, Ikaba, Y.V, Enyindah, C.W, Orji, O.G and Idatoru, A.R, “Impact of Corporate Social Responsibility on Organizational Effectiveness: An Empirical Analysis of Oil and Gas Industry in the Niger Delta, Nigeria” (2014) 16(12) *IOSR Journal of Business and Management* 32-36

responsibility supports remedial order. CSR can be defined as a company's voluntary act manifested by "*demonstrating the inclusion of social and environmental concerns in business operations and interactions with stakeholders*"⁶². Schramm-Klein et al and Van Marrewijk above advocate that the legal responsibility of CSR is far more important than the economic responsibility of CSR. Even Carroll is in support of the duo. Carroll said that with the legal responsibility of CSR, a company enters a social contract to be law-abiding by protecting the lives of all stakeholders⁶³. However, Visser thinks that the economic responsibility of CSR is at the top priority (money-making) over legal responsibility because, for companies in doing in Africa, the legal responsibility of CSR is lowered below economic CSR since African countries rely heavily on MNCs for infrastructure and revenue to run its economy⁶⁴. This according to Visser then means that the legal responsibility of CSR should then be that part attractive to MNCs for foreign investment to continue. This then leads to the type of definition of CSR which excludes companies for human rights abuses for example. Multinational oil companies in the host African countries by this capacity of its understanding

⁶² Marcel Van Marrewijk Concepts and Definitions of CSR and Corporate Sustainability: Between Agency and Communion" (2003) 44(2-3) Journal of Business Ethics 95-105 at 97

⁶³ Archie .B. Carroll "The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders" (1991) Business Horizons 34 at 37

⁶⁴ W. Visser "Revisiting Carroll's CSR Pyramid: An African Perspective" in E.R. Pedersen and M. Huniche (eds) *Corporate Citizenship in a Development Perspective* (Copenhagen Business School Press, 2005) 29 at 30

of economic responsibility of CSR according to Visser, so conveniently see themselves as owing responsibility to the government⁶⁵ and not owing legal responsibility to the villagers.

1.2INTRODUCTION

There are conflicts between the different facets of corporate social responsibility but with regards to the issue of corporate manslaughter and corporate homicide legal obligations differ.

This researcher finds that there is no extant law in Nigeria that creates a legal obligation to meet their requirement concerning gas flaring, oil spillage, and human rights abuse with regards to human rights laws that punish certain human rights abuses leading to the death of villagers in the Niger Delta Area, oil spillage causing explosions or pollution of drinkable water by citizens and claiming human lives of villagers in the Niger Delta Area, gas flaring (causing terminal illness of villagers in the Niger Delta Area like cancer⁶⁶) in terms of environmental laws that are enforced in Nigeria. There are no extant laws that make these offenses punishable when a company deliberately degrades the environment. For gas flaring lawmakers are still contemplating whether to have a law to punish a company for gas flaring in Nigeria or not.

⁶⁵ Paul Samuel Tamuno “Corporate Social Responsibility in the Niger Delta: Past, Present and Future Challenges” (2022) *Journal of African Law* 1-27

⁶⁶ O .E. Smaranda and Jacob Udosen “Corporate Manslaughter Law in Nigeria: A Comparative Study” (2020) 11 *Beijing Law Review* 358-381at 359

1.3 A STATEMENT OF PROBLEM

In the case of Nigeria, haven done the introduction (1.2), the general problem has to do with the absence of a legal framework to capture the various facets of corporate social responsibility within the ambit of legal enforceability. This means that it is not all aspects of corporate social responsibility that are legally enforceable. This loophole enables oil companies for example to spill oil or flare gas. Therefore, the problem is that the law on it is not clear, and is contradictory.

While the right to life is guaranteed by the law, on one hand, people are dying from oil and gas explosions, oil spillage, mechanical malfunction of facilities, and inhaling of flared gas to mention just a few, and no one is held liable. It is, however, worthy to mention that the Workmen's Compensation Act⁶⁷ makes provision for the civil remedy of compensation to workmen for injuries suffered in the course of their employment, or death caused by specified diseases under the Act⁶⁸ but it does not treat the death of an employee caused by the activities of oil companies in Nigeria by oil spillage or gas flaring at the workplace or while living at his village.

Therefore, the absence of a uniform legal framework and the presence of contradictory principles as they relate to the implementation of corporate social responsibility and the enforceability of corporate social responsibility is a core problem that this researcher is investigating. Whenever corporate Social Responsibility is linked to development in Africa, it

⁶⁷ Workmen's Compensation Act Cap. W.6 Laws of the Federal Republic of Nigeria 2004

⁶⁸ Workmen's Compensation Act Cap. W.6 Laws of the Federal Republic of Nigeria 2004 Section 32

is often asserted that companies are performing the role of governments and this presents its challenges⁶⁹. This research will serve as educating Nigerian about the menace of ignoring that corporate social responsibility in the oil sector in Nigeria is dying but corporate manslaughter and its punishment through law begin.

Despite the demerits of Law and corporate social responsibility, Okoye suggests that the crucial wider question of the role of law as a tool for CSR is how can CSR transcend from its voluntary nature to show itself to be more relevant, contextual, and accountable if it intends to play a key role in African development?⁷⁰

1.4 RESEARCH QUESTIONS

(1) Whether the absence of a coherent legal framework to legally enforce all aspects of corporate social responsibility affect the legal enforceability of incidences that leads to corporate manslaughter offenses?

(2) Whether there is a link between corporate manslaughter and corporate social responsibility through the lens of legal enforcement?

⁶⁹ Jędrzej George Frynas “The False Developmental Promise of Corporate Social Responsibility: Evidence from Multinational Oil Companies” (2005) 81(3) *International Affairs* 581-598

⁷⁰ Adaye Okoye “Exploring the Relationship between Corporate Social Responsibility, Law and Development in an African Context: Should Government be Responsible for Ensuring Corporate Responsibility?” (2012) 54(5) *International Journal of law and management* 364-378

(3) What are the attitudes of the courts on legal enforceability as it relates to the enforcement of corporate manslaughter and corporate social responsibility?

1.5 RESEARCH OBJECTIVE

By its nature, an investment implies the establishment of a relationship by a multinational company with its host government. This relation should exceed the normal day-by-day buying and selling relation. Oil exploration is a big business venture. It is and by nature characterized by the various phases of petroleum operations (exploration, development, production, transport, storage, and other downstream activities) and demands a long-term duration (normally, averaging 20–30 years, or even more under the still surviving concession agreements)⁷¹. The idea is liability and responsibility for example cleaning up oil spillage which can catch fire claim lives or poison fish and water that their employees and their families eat and drink.

The main aim of the study is to investigate how corporate manslaughter law can improve corporate social responsibility in Nigeria’s oil and gas sector. It is against this backdrop that the purpose of this study is two-fold.

Research objective 1: to examine the effects of Corporate Manslaughter Law on Corporate Social Responsibility through the lens of enforceability.

⁷¹ Piero Bernardini “Stabilization and adaptation in oil and gas investments” (2008) 1(1) Journal of World Energy Law & Business 98-112 at 98

The second is to examine the effects of the Corporate Manslaughter Law on Corporate Social Responsibility in the oil and gas sector in Nigeria through the lens of enforceability.

Thirdly, this researcher will show that the absence of a legal framework for the enforceability of all aspects of corporate social responsibility in Nigeria has made it impossible to enforce corporate manslaughter (punishment as an offense). This entails explaining the relationship between corporate manslaughter and corporate homicide offense and the national legal and regulatory system (the courts, criminal laws, and the police), legal attitudes (is there a link between corporate manslaughter and corporate social responsibility through the lens of legal enforcement?) and the policy context (how will it be enforced (for example, it will begin with the need to educate readers of the impact of law on corporate social responsibility)).

In sum the objectives for this research are:

- (1) To conduct a literature review on the relationship between corporate manslaughter and corporate homicide using the concept of enforceability
- (2) To examine the link between corporate manslaughter, corporate social responsibility, and enforceability, clarify it and justify it
- (3) To identify the methodological stance that elevates the relationship between corporate manslaughter and corporate social responsibility about legal enforceability. This researcher will use ethnography and case study research methods.

- (4) To critically analyze data with regards to issues raised in the literature review, research objectives, and the research question
- (5) To explore the socio-cultural and political tendencies which affect the enforcement of both corporate manslaughter and corporate social responsibility as it relates to issues raised in the literature review, research objectives, and the research question by using the concept of enforceability

1.6 RESEARCH METHODOLOGY

This researcher intends to use a theoretical model to measure this research. A theoretical model which will be used to derive an empirical approach starts from a general characterization of law by an extended constant explanation of the law and its enforceability which includes its effectiveness in social justice and its adaptability in correcting activities of companies in society.

Using few simplifications allows for a general empirical approach to estimate the incoherent state of the law as regards its effectiveness and use to punish companies whose activities cause death. Also, using a few simplifications allows for the development of a general empirical approach to estimate legal enforceability, which also depends on citizens' knowledge of the law, the political culture of a state, and the attitude of companies towards the practice of corporate social responsibility. In this research, the legal enforceability of law must depend on the commitment of the country in question to tackle issues of corporate manslaughter resulting from failure in various corporate social responsibility practices by companies in the Niger Delta Area of Nigeria and the misalignment in the conceptualization of corporate social responsibility in Nigeria.

Secondly, this researcher will be embarking on an epistemological study. The reason this researcher is embarking on an epistemological study is that there is no empirical work in this area and this area requires empirical observable work.

My very essence of choosing empirical research is because of the very nature of empirical research itself since it combines my knowledge of the law with the actual action that is going on there that tries to shape or understand how one affects the other.

This is because the centre of this researcher's research is on enforceability and this researcher cannot explore the enforceability concept without knowing what is happening on the ground.

The material in law is not sufficient now to help for a deeper understanding of the cultural, social, economic, and other non-legal things that impact the development of the law itself.

Empirical research will give insight into the areas of enforceability, corporate manslaughter, and corporate social responsibility and try to clarify the assumptions that exist in this area to give a broader understanding of the contending forces that play into making it difficult for enforceability to take root. By choosing empirical research, data from the field work becomes relevant. Data analysis will be done based on empirical work. But doctrinal research begins with the nature of the law. Empirical research also begins with the nature of the law but brings in the researcher's conception of what the law should be.

The data will also test whether a more stringent treatment to revive corporate social responsibility practices like procurement of safe working equipment to reduce oil spills and gas flaring, oil production platform explosion (near Ibeano in rivers State) killing villagers⁷², disclosure of information, staff training to mention just a few are needed.

⁷² Ike Okonta and Oronto Douglas *Where Vultures Feast Shell, Human Rights, and Oil* (Verso, 2003)

This researcher intends to use a focus group and grouping interviewing (when it will be hard for this researcher to get a focus group of a particular people) method of data collection in qualitative research. This researcher will combine it with individual interviewing of respondents in the legal field, politicians, and oil company employees in the Niger Delta Area of Nigeria. This researcher chose to combine focus group and group interviewing with individual interviewing especially for Nigeria, the number of people that comprises a focus group, and why most qualitative research operates from the perspective that knowledge is contextual.

A Focus group is a special group designed to capture people's perceptions of a defined area of interest in a non-threatening environment. According to Litosseliti, focus groups are small, structured groups with selected participants, normally led by a moderator⁷³. A Focus group is done with at least seven to ten people by a knowledgeable interviewer. They are set up to explore specific topics, and individuals' views and experiences, through group interaction⁷⁴. Participants share their ideas and perceptions⁷⁵. Interviews according to Mason are part of the qualitative research method and qualitative interviews usually involve one-to-one interaction⁷⁶.

This researcher chose focus group coupled with individual interviewing (not group interaction

⁷³ Lia Litosseliti *Using Focus Groups in Research* (A & C Black, 2003)

⁷⁴ Lia Litosseliti *Using Focus Groups in Research* (A & C Black, 2003)

⁷⁵ Richard Krueger *Focus Groups: A Practical Guide for applied Research* (Thousands Oak California: SAGE Publications Inc 2, 1994)

⁷⁶ Jennifer Mason *Qualitative Researching* (2nd Ed. Sage, 2002)

at a go but focus group then interviewed individually). Few people managing oil companies in Nigeria may be willing to discuss the activities of their company about issues like death because of the issue of exposure to the activities of oil companies in the Niger Delta area of Nigeria. Qualitative research is based on the idea that knowledge is situated and relative and so it is the duty of the researcher/ interviewer to ensure that the relevant context into focus so that situated knowledge can be produced⁷⁷.

⁷⁷ Jennifer Mason *Qualitative Researching* (2nd Ed. Sage, 2002)

1.7 CONTRIBUTION TO KNOWLEDGE

To explain the various legal dimensions of legal enforceability with regards to corporate manslaughter and corporate social responsibility and how it plays out in Nigeria.

The idea is to explain how the framework that this researcher developed will be able to maximize the effectiveness of legal enforceability in Nigeria (Niger Delta) with the belief that this framework will be of wide application or usage (real-world application) in other parts of the world.

This research will develop a framework that will ensure that corporate manslaughter as an - offense (punishment for companies for failing in their corporate social responsibility duties) will be recognized in certain areas and becomes enforceable (a framework that delineates from corporate social responsibility of provision of pipe-borne water and corporate social responsibility practices that leads to death. In essence, it is not all corporate social responsibility that will be regulated by law) so as not to lead to corporate manslaughter.

This means that for those incidences of oil spillage, gas flaring, or human rights abuse, there has to be a certain level of framework that will encourage or mandate governments and oil companies to implement certain standards based on that framework to ensure that oil spillage, gas flaring, and human right abuse does not lead to corporate manslaughter offense and charge.

It is also through effective enforcement of the law⁷⁸ that the law can assist CSR to deliver sustainable societal development and remedy the damage caused. For example, if one comes into an environment that prevents certain people from assessing what they should have assessed (maybe the oil company is polluting their water), it would become a legally binding obligation for companies to provide their employees and the villagers (based on the liability of companies as an occupier of premises) with services that would reduce the impact of the activities of oil companies within the community where it operates.

It becomes a binding obligation on the company and that binding obligation as to quantity, quality and price (sacrifice from MNCs (CSR)) so that the people can enjoy the whole benefit from oil exploration.

The communal requirement test (what the company will be producing, what the villagers will likely suffer as a result of what the company is doing in the community (oil exploration) states that companies must put things in place to ameliorate the harshness the villagers are suffering as a result of the activities of the company and also companies giving the villagers what they need to be comfortable to cushion the effect of the activities of companies in their environment.

It will no longer be a question of doing it because the company like to. No.

⁷⁸ Ini Etim Usoro. Can the Law Assist Corporate Social Responsibility Deliver Sustainable Development in the Niger Delta?: A Study of the Nigerian Energy Sector Nottingham Trent University and Southampton Solent University January, 2011

The law will come in and mandate companies to do it as part of the requirement because if companies do not do it, corporate manslaughter could result (terminal illnesses of villagers from inhaling flared gas). If companies and the government put things in place at the level of social responsibility that is legally binding, it would reduce death (provision of hospitals, trained personnel, regular cleaning up of oil spillage, provision of clean drinkable water, clean environment, provision of constant electricity).

This will help stop the villagers from engaging in oil pipeline vandalism, oil bunkering, and illegal electricity connection to mention just a few, and there by further endangering their lives.

All these falls within the test that will be considered enforceable against a company if it is to operate in an area.

This researcher will be creating a test or a framework that would help delineate corporate social responsibility for corporate social responsibility from corporate social responsibility that has to be legally enforceable to prevent corporate manslaughter. The framework will delineate and identify those activities that causes corporate manslaughter. It will be a test that will fulfil and to what extent companies comply with the law and corporate social responsibility best practices. It will be an impact assessment of corporate manslaughter and corporate homicide law for enforcement of corporate social responsibility. These contributions are original ideas as distilled from this researcher's literature review and empirical research.

1.8 WHY YOU HAVE CHOSEN NIGERIA AND THE NIGER DELTA IN PARTICULAR

It is because there are so few prosecutions for corporate manslaughter in Nigeria. Several explanations immediately present themselves, but none is entirely convincing. It could be that the political culture in the country hinders the prosecution of companies. One of the reasons could be the power these companies wield or that because of economic interest, the host government chose not to prosecute multinational oil companies. Alternatively it could be submitted that the reason for the absence of prosecutions for manslaughter is that there are no institutions mandated to investigate and prosecute multinational oil companies which is the issue of legal enforceability of corporate manslaughter laws and corporate social responsibility. Critical theorists argue that our current institutions are the result of a particular historical context and that communication within these institutions is systematically distorted⁷⁹. The solution could lie in the government staying positive, taking health and safety issues very seriously motivating the judiciary and the police, educating the entire nation about corporate manslaughter and corporate homicide and corporate social responsibility, empower the police and other government agencies to investigate and prosecute companies for corporate manslaughter and corporate homicide in the event of death caused by the activities of the company. There has to be a change of mindset of everyone toward/ for best corporate practices.

⁷⁹ Phil Johnson and Joanne Duberley *Understanding Management Research An Introduction to Epistemology* (Sage Publications Limited, 2000) 1-216

In political science staying positive on issues or what political scientists call ‘positive political science’ will then take on the role of accustoming the general mind to succumb to what is, and of theoretically as well as practically fixing the parameters of knowledge and action within the predominant configurations of the present-day reality⁸⁰. There needs to be a change of mindset or a revolution by the citizens to change the attitude of the present-day host government and multinational oil companies towards a continued practice of corporate social responsibility by companies and its enforcement by the judiciary and government officials. The desired result is the ability of the government all the time to punish companies whose decisions caused the death of someone and the company to know what went wrong. This is a ‘proactive corporate fault’. Knowledge to this writer could mean what if the board of directors or senior managers ordered management to cut costs which led to short staffing, lack of preparation by and communication between employees, and the resultant death. Proactive corporate fault imposes liability where a company fails to make reasonable efforts to implement internal controls to prevent the commission of a crime⁸¹. Evidence of reasonable efforts to prevent organizational crime is gleaned from

⁸⁰ G Lenzer Introduction: August Comte and Modern Positivism in Elizabeth Adams St. Pierre “Another Postmodern Report on Knowledge: Positivism and its Others” (2012) 15(4) *International Leadership in Education* 483-503

⁸¹ G.R. Skupski “The Senior Management Mens Rea: Another Stab at a Workable Integration of Organizational Culpability into Corporate Criminal Liability” (2012) 62(1/11) *Case Western Reserve Law Review* 267- 331

- (i) The development and implementation of safeguards to prevent crime commission and
- (ii) The delivery of clear and convincing prohibitions of criminal behavior in the form of business conduct codes, ethics codes, and compliance training programs⁸².

This writer believes that the conviction of companies for corporate manslaughter then will be a good result because the company will like to prove that it implemented corporate social responsibility practices (staff training and supervision, provision of health and safety materials for staff, maintenance of equipment, and some charity works to mention just a few). A company's corporate social responsibility for example should not only relate to making a profit, but companies also should strive to further some social good that goes beyond the interest of the company as well as the requirements of the law⁸³.

The defence also opens the door for companies to point to ostensibly air-tight compliance programs that, in substance, are mere shams to shield the company from a conviction⁸⁴.

With regards to punishment for noncompliance to corporate social responsibility by companies, fines would continue to be the principal sanction, but a remedial order could be sought. The

⁸² Supra at 301

⁸³ Hanna Scramm-Klein, Joachim Zentes, Sascha Steinmann, Bernhard Swoboda, and Dirk Morschett "Retailer Corporate Social Responsibility Is Relevant to Consumer Behaviour" (2016) 55(4) Business and Society 550-575 at 551

⁸⁴ G.R. Skupski "The Senior Management Mens Rea: Another Stab at a Workable Integration of Organizational Culpability into Corporate Criminal Liability" (2012) 62(1/11) Case Western Reserve Law Review 267- 331

remedial order would oblige the company (convicted) to remove the matter which occasioned the death, the subject of the trial for corporate manslaughter.

However, scholars believe that fines may induce the convicted company to discharge those responsible for placing it in legal jeopardy, thereby allowing the corporate sanction to filter down to its human source⁸⁵. The case of *R.v. Denbo Property & Nadenbousch, Timothy Ian*⁸⁶ demonstrates that fines against companies may be manifestly inadequate in achieving the criminal law's stated aim of deterrence particularly if the amount imposed is either small or cannot be paid (forcing the company into bankruptcy and the claimant getting nothing for all that trouble emphasis mine) when compared with the threat to a prison term for company directors⁸⁷.

⁸⁵ M Jefferson "Corporate Criminal Liability: The Problem of Sanctions" (2001) 65 *Journal of Criminal Law* 235-261

⁸⁶ *R.v. Denbo Property & Nadenbousch, Timothy Ian* [1994] vicSc 326 (14 June 1994)

⁸⁷ Simon Chesterman "Law and Change The Corporate Veil, Crime and Punishment (1994) 19 *Melbourne University Law Review* 1064-1074

1.9 STRUCTURE OF THESIS

Chapter one is the introduction

Chapter one will be divided into seven parts

Part one will be a general background that clarifies the basis for the chosen research area.

Part two will a statement of the problem

Part three will be the research question.

Part four will be the research objectives

Part five is the research methodology

While part six is about the contributions to knowledge

Finally part seven will be why this researcher has chosen Nigeria and the Niger Delta in particular

Chapter two is the literature review

Chapter two will be divided into seven parts

Part one is to introduce chapter 2 and show how this researcher intends to conduct the literature review.

Part two will be to clarify the basis for your choice of literature

Part three will be to define and clarify the main concepts and how they relate to this researcher's questions, objective, and areas of investigation

Part four will be to identify and justify the model for the literature review

Part five will be to implement the model in the review of pre-existing literature in the area

Part six will be from this researcher's findings in the literature, to develop your conceptual framework

Part seven will be to discuss and justify this researcher's conceptual framework relate it to the questions and objective of the research and show its usefulness in resolving the research problem if properly located and fine-tuned to a specific environment.

Chapter three is the Methodology.

Chapter three will be divided into six parts

Part one will be the researcher briefly discussing his ontology

Part two will be the researcher briefly discussing his epistemology

Part three is discussing the research paradigm

Part four is choosing a research approach and justifying it

Part five is stating the research strategy

Part six is on methods and how this researcher intends to use them. For example sample size, sampling technique, and reasons for the choice. The idea is to prove how it applies to the Niger Delta Area.

Chapter four is the Nigerian Chapter

It will be divided into parts

The first part will be why Nigeria

The second part will be the relevance of Corporate Manslaughter law to the Nigerian legal system. This part will take cognizance of the position of law before the Corporate Manslaughter and Corporate Homicide Bill 2015 and will the law CMCHB fits into the society in which it is to operate. Secondly, it will consider the loopholes under Nigerian law regarding legal enforceability, corporate social responsibility, and liability for corporate offenses. The chapter will conclude with a discussion on the corporate culture of legal enforceability of corporate manslaughter law for failure by companies in their corporate social responsibilities.

Chapter Five will be a data analysis

Chapter Six will recommend and finally

Chapter Seven will be the conclusion.

The next chapter will be chapter two which is a literature review.

CHAPTER TWO

2.1 LITERATURE REVIEW

Following the issues raised in chapter one, this chapter discloses that there are gaps or inconsistencies in the mode and method of implementation of corporate manslaughter laws. These gaps are a product of the deficiencies and the cultural differences in how different countries have developed their framework for the implementation of corporate manslaughter laws.

About the enforcement of corporate social responsibility when companies fail to abide by their corporate social responsibilities⁸⁸ (leading to an offense of corporate manslaughter and corporate homicide⁸⁹), the case even goes deeper in terms of the discrepancies and inconsistencies in the way that it has been handled.

The reason for these inconsistencies is not far from the difficulty in achieving a universal framework for the enforcement of corporate manslaughter laws especially as it relates to corporate social responsibility.

The difficulty in achieving a universal consensus could have its basis in different economic philosophies. Some countries, adopt a system of economic theory or philosophy. In these

⁸⁸ Jędrzej G Frynas “Corporate Social Responsibility or Government Regulation? Evidence on Oil Spill Prevention” (2012) 17(4):4 Ecology and Society 1-13

⁸⁹ Paul Almond *Corporate Manslaughter and Regulatory Reform* (Palmgrave Macmillan, 2013)

countries, the system encourages profit maximization and the consequence of such an enforcement framework is that corporate organizations cannot be held accountable for any harm.

This means that the idea of punishing corporate organizations that engage in business in those countries is then far removed from legal enforcement in the host country. The host government makes the business environment favourable for those corporate organizations and unfavourable for its citizens.

This framework of doing business is to the detriment of the environment and people within those environments. For other developed countries, the government considers the environment and the way of life of their people and the health and welfare of their people far above the monetary gains they can get or whatever monetary support they can get from these companies.

As such, the different practices that exist in various countries tend to point to the variations in the ways these laws are enforced especially in cases of corporate manslaughter.

2.2 THE BASIS FOR THE CHOICE OF LITERATURE

This researcher is exploring this literature based on how systems all across the world enforce corporate social responsibility in such a way as to implement regulation or legal requirements for corporate manslaughter to prevent companies from engaging in actions that endanger their employees and the villagers. The choice of literature will be restricted to aspects that deal specifically with the laws and how the laws have been used as an instrument for control in managing companies and preventing them from engaging in activities that endangers the employees and the villagers. This researcher also intends to explore literature that governs issues and the necessary accountability that will be put in place by these legal instruments. They are legal instruments that have shaped governance structures and operational instruments within companies that prevent these companies from engaging in acts that put the host community/ villagers in danger. This literature includes cases, laws, and statutes that go as far as changing the nature of how laws are implemented to safeguard public interest to alleviate the applicability of corporate social responsibility principles.

This literature will also include case laws from America, Europe, Australia, and Africa while specific priority will be given to literature related to the oil and gas industry and how these laws are managed as it pertains to corporate manslaughter. Issues of enforceability will include the nature of enforceability and how the context of enforceability plays into the ideas that are reflected in the application of the corporate social responsibility principle in the prevention and commission of corporate manslaughter.

2.3 DISCUSS AND JUSTIFY THE CONCEPTUAL FRAMEWORK AND RELATE IT TO THE QUESTIONS AND OBJECTIVE OF RESEARCH

This researcher intends to relate the research question and research objectives to the area of investigation through the main concept of enforceability. This is where the conceptual framework for this research (which is enforceability, the creation of legal obligation, and the links to discuss the relationship between corporate manslaughter and corporate social responsibility) lies.

The idea of enforceability is the capacity of law or the capacity of institutions within the law (by its human agents like the police, health and safety officers from the ministry of labor and environment of Nigeria, UK health and safety executives, the crown prosecution service⁹⁰ to mention just a few) to use the law as a yardstick of control and monitoring⁹¹ to prevent the occurrence of certain actions or inactions that leads to the death of an employee and the villagers (the case of death of villagers is rampant in Nigeria).

This researcher from his research question and the content of chapter one is discussing legal enforceability, corporate manslaughter, and corporate social responsibility.

The bottom line is legal enforceability. In discussing the concept of enforceability, corporate manslaughter, and corporate social responsibility, readers will understand that the underlining

⁹⁰ Sarah Field and Lucy Jones “Is the Net of Corporate Criminal Liability Under the Corporate Homicide and Corporate Manslaughter Act 2007 Expanding?” (2015) 36(6) Business Law Review 215- 220

⁹¹ Chris .O. Nwoko “Evaluation of Environmental Impact Assessment System in Nigeria” (2013) 2(1) Greener Journal of Environmental Management and Public Safety 22-31

thing which runs across the concept of enforceability (being legally obligated⁹²) is that enforceability is the sense upon which corporate manslaughter punishment⁹³ as an offense can be given effect in justice. This justice is about companies that fail in their corporate social responsibility practices.

Therefore, the idea of exploring enforceability as a concept is extremely critical to understanding how legal enforcement or enforceability of a driver of the process can be controlling or prevent the incidence of corporate manslaughter.

In terms of enforceability being the main concept, this writer will approach it with the following strategies:

First Strategy

The first strategy is the capacity of the system (law) through the government and its human institutions created by law to bring into action legal principles that will curb or prevent the actions or inactions of companies leading to the death of employees and host communities/villagers. This could be in the form of compulsory regulation. Compulsory regulation refers to legislative enactments or judicial judgment prescribing roles and sanctions⁹⁴. The desire for

⁹² Veronica Ngozi Ekundayo, Olisakwe Okechinyere and Olalekan Moyosore Lalude “An Analysis of Corporate Criminal Liability in Nigeria” (2020) 11(2) The Gravitas Review of Business and Property Law 47-57 at 47

⁹³ Veronica Ngozi Ekundayo, Olisakwe Okechinyere and Olalekan Moyosore Lalude “An Analysis of Corporate Criminal Liability in Nigeria” (2020) 11(2) The Gravitas Review of Business and Property Law 47-57 at 47

⁹⁴ Bethel .U. Ihugba “Compulsory Regulation of CSR:A Case Study of Nigeria” (2012) 5(2) Journal of Politics and Law 68-81 at 69

compulsory regulation is because it is seen as a sure way to promote transparency and accountability and also regain the trust of the public⁹⁵.

The governments in the African States like Nigeria have been traditionally identified and linked with advancing social development⁹⁶. The government has made laws for social development and legal enforceability for example but with limited results⁹⁷ like the Companies and Allied Matters Act 2004 which made provision for liability of directors by disqualification only without the option of director's imprisonment.

Second Strategy

The second strategy is the capacity of the system (government institutions) created by law to bring into action legal principles that will curb or prevent the actions or inactions of companies leading to the death of employees and host communities/ villagers. This is because evidence has shown that when companies are left unchecked, they do become irresponsible⁹⁸. This researcher believes that this gap should no longer exist since from the first strategy, the

⁹⁵ N Shaxton Nigeria Extractive Industries Transparency Initiative: Just a Glorious Audit? Chatham House Available at <http://www.chathamhouse.org.uk/files/15223_1109neiti.pdf> [Accessed] 16th of March 2010 in Bethel .U. Ihugba "Compulsory Regulation of CSR:A Case Study of Nigeria" (2012) 5(2) Journal of Politics and Law 68-81 at 69

⁹⁶ Maxwell O. Chibundu "NEPAD and the rebirth of development theory and praxis" (2008) in Adaeze Okoye "Exploring the relationship between corporate social responsibility, law and development in an African context: should government be responsible for ensuring corporate responsibility?" (2012) 54(5) International Journal of law and management 364-378

⁹⁷Paatii .W. Ofosu-Amaah "Remarks on the Role of the Bank in the Development of Africa" (1999) 30 Law and Policy in International Business 698-702 in Adaeze Okoye "Exploring the relationship between corporate social responsibility, law and development in an African context: should government be responsible for ensuring corporate responsibility?" (2012) 54(5) International Journal of law and management 364-378

⁹⁸ Bethel .U. Ihugba "Compulsory Regulation of CSR:A Case Study of Nigeria" (2012) 5(2) Journal of Politics and Law 68-81 at 69

government has made laws for social development. The question, therefore, is whether the government in Nigeria with regards to enforceability should take a stronger role in driving CSR, if it is to aid in enforcement. This also raises other ancillary questions like can and should CSR enforcement in the oil-rich Niger Delta Area of Nigeria become mandatory. Would this encourage (MNOCs in Nigeria, the Nigerian courts to mention just a few) better social responsibility linked with enforcement of corporate manslaughter law (punishment of MNCs for corporate manslaughter), or is the government simply renegeing on their primary responsibility of law-making? Even where governments have a key role as drivers of CSR, should they use command and control mechanisms to govern the CSR process?

These strategies will be discussed in subheading 2.4.

Below, this researcher will identify the link between corporate manslaughter and corporate social responsibility with the concept of enforceability and then justify and clarify the relationship between the identified link and this researcher's conception of enforceability. This researcher will begin with the nature of the law (obedience to law by force or coercion: is it justified?).

This researcher is weaving enforceability to corporate manslaughter and corporate social responsibility under the links to be discussed below by making the point that there will be no relationship between corporate manslaughter and corporate social responsibility without enforceability, legal obligation creates enforceability and in the absence of enforceability,

companies are getting away⁹⁹ with murder unlike in other countries of the world. This necessitates creating a legal framework that can create a legal obligation on corporate social responsibility among multinational companies in Nigeria to prevent cases of corporate manslaughter.

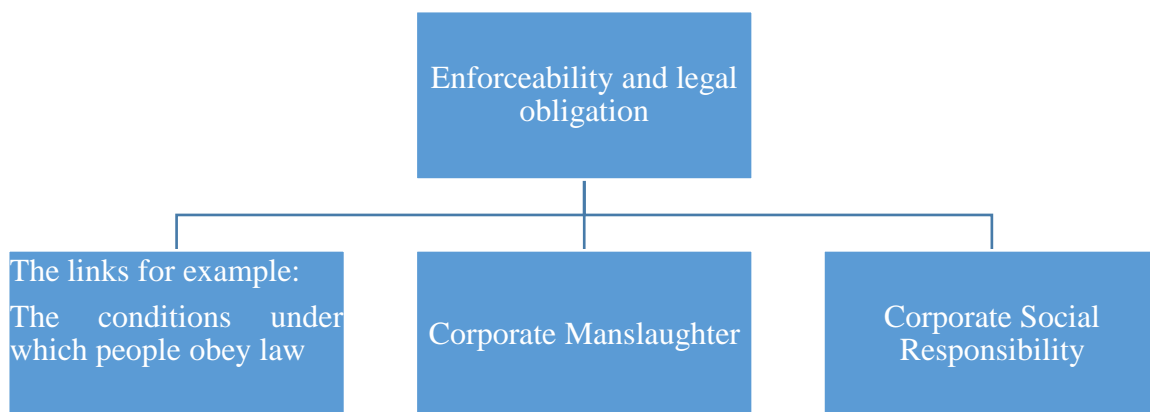


Fig 1 Link between Corporate Manslaughter and Corporate Social Responsibility is woven into Enforceability

⁹⁹ Nneka Obiamaka Umejiaku and Chisom Ngozi Uzoka “Towards a Rational Theory of Criminal Liability for Corporations in Nigeria” (2019) 6(1) Nnamdi Azikiwe Journal of Commercial and Property Law 126-149

Below this researcher will discuss the yardstick for his literature review concerning enforceability. This is the conceptual framework of this thesis.

This researcher will weave enforceability with a legal obligation as a concept to link corporate manslaughter with corporate social responsibilities in different countries. This will flow into the philosophies and theories in law as regard legal enforceability. The idea is to find out why the law on corporate manslaughter works in other countries but not in Nigeria (concerning the outcome of Nigerian court cases and court cases abroad as it relates to corporate manslaughter to discuss the conceptual framework). The reader will be able to understand the following links to the conceptual framework in this research. The following links will guide the Nigerian government in making a law on corporate manslaughter. Using these links readers will be able to understand why enforceability works in some other countries but not in Nigeria yet. They are:

- Is the secret behind the spirit of the law or the letters of the law that makes companies obey the law?
- The conditions under which people obey the law
- If the law is constructed in a manner that is against the inherent desire of the individual or designed in such a manner that the individuals are unable to obey it is it bad luck?
- The nature of human institutions. If it is the human institutions what then is it with the human institutions?

This researcher will weave these links with enforceability and corporate manslaughter and corporate social responsibility to show the importance of the creation of a legal obligation.

In the United Kingdom for example the enforcement system is working in terms of punishment than what it was 50 or 100 years ago¹⁰⁰ because corporate social responsibility is inculcated into legal principles to the extent that any case of breach of duty of care by a company leading to death, companies are fined huge sums of money and the senior managers of that company may be disqualified. This is the essence of legal obligation. Legal obligation makes a court assumes jurisdiction because a case must be answered in court on points of the law to determine if CSR can be turned legal in a case of corporate manslaughter like in Okpabi's case. The obstacles in the case will determine whether a particular country has a system in place for legal enforcement. It is important to also note that where a court passes a judgment on corporate manslaughter, it creates a legal obligation again on companies to adhere to the judgment of the court. Thirdly when the obligation is performed by the guilty party, it then means that the rule of law has been enforced. Readers will find out why corporate manslaughter is enforced in one country and not the other. The answer is linked to a legal obligation and avoidance/ denial of legal obligation. Fourthly, when a corporate manslaughter judgment is passed against a company it creates a legal obligation to continue to clean up oil spillage, supervise their work, and always publicize the particulars of the conviction. Fifthly when a case is initiated by due

¹⁰⁰ .J Van Erp, W. Huisman and .V. Walle *Criminalization and Regulation 23 Political Culture and Corporate Homicide Liability in the UK and Europe* (Routledge, 2015)

process of law, upon fulfilment of all conditions precedent and the court is composed as to the number of the members of the bench it creates a legal obligation on the court to hear the case like in Okpabi's case, to begin with. Sixthly, the human agent like the president/ government as the chief executive officer of the country has a legal obligation to put the life of his citizens first before economic gain and so should not interfere with the court judgment. Seventhly, whenever a company breaches its legal corporate social responsibility, it creates a legal obligation on members of the community as citizens to file an action in court against the company for the enforcement of corporate manslaughter.

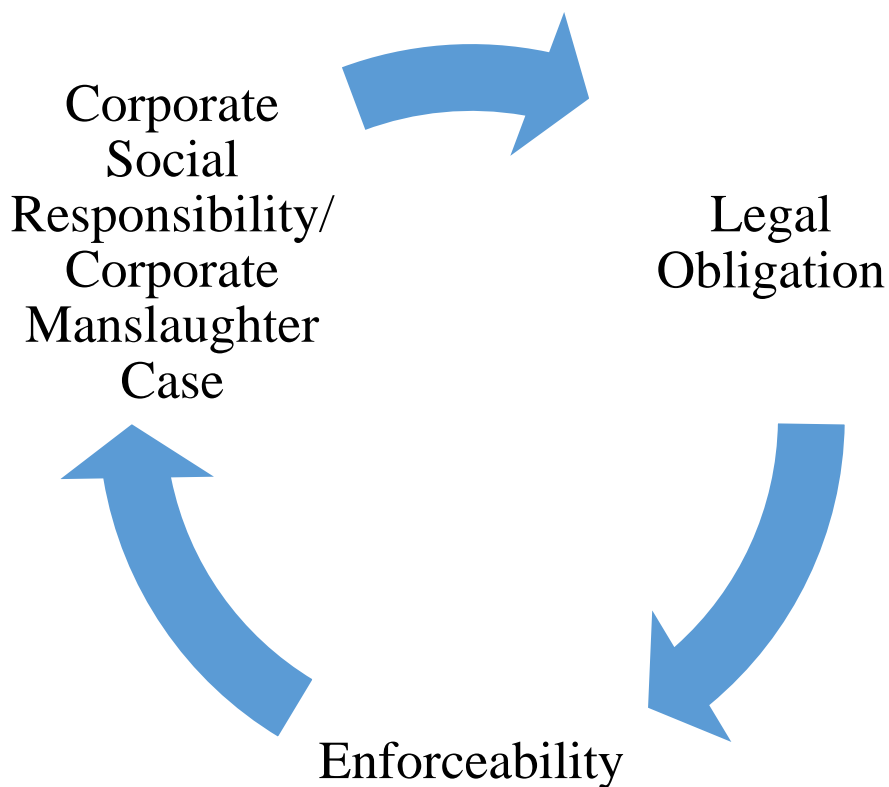


Fig 2 How corporate social responsibility and corporate manslaughter are enforced

Below are the various laws and their effects on corporate social responsibility. This researcher will begin with the nature of the law (obedience to law by force or coercion: is it justified?)

2.3.1 IS THE SECRET BEHIND THE SPIRIT OF LAW OR THE LETTERS OF THE LAW THAT MAKES COMPANIES OBEY THE LAW?

In countries like The United Kingdom, it flows from the letters of the law to the spirit of the law to empower the court in rendering justice. Looking at the letters of the law, the effect of the Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA 2007) on corporate social responsibility is on the duty of care¹⁰¹. Then in the spirit of the law, those in charge of workplaces must know that decisions that they take or choose not to take may have serious consequences for those who work for them and generate profits¹⁰² (duty of care / safe working place and conditions as corporate social responsibility). In the English case of *Regina .v. Lion Steel Equipment Ltd*¹⁰³, it was alleged that on 29th May 2008 that the defendant (the company) by the way it carries out its activities caused the death of an employee Steven Berry who fell

¹⁰¹ This writer believes that such duty of care is owed by the companies on their employees , villagers and other stakeholders like the consumers

¹⁰² Neil Foster Individual Liability of Corporate Officers (2016) (Westlaw UK)

¹⁰³ *Regina .v. Lion Steel Equipment Ltd* Manchester Crown Court T20117411 20th July, 2012

from a roof undergoing repairs. The prosecution invoked the provision of Section 1 of the CMCHA 2007 (breach of duty of care). They alleged that how the activities of the company (defendant) were managed or organized by its senior management caused the death of Steven Berry an employee of Lion Steel Equipment Ltd. This means that the letters of the law create a legal obligation on the courts to enforce corporate manslaughter. These letters of the law which create legal obligations ignite the spirit of the law for the enforcement of corporate manslaughter and corporate social responsibility. The lesson learned in this case that is: improved corporate social responsibility is, that subsequently, workers must be properly trained by their companies plus better welfare be put in place for their workers. Schmidpeter believes that businesses as “responsible corporate citizens” are therefore no longer seen as the problem, but rather provide solutions for the most pressing challenges of our time¹⁰⁴. Lesson learned from cases of corporate manslaughter and corporate homicide generally challenges companies to incorporate responsibility (continuous legal obligation on the company) systematically into all management processes which implies incorporating substantive outcomes to prevent what happened from happening again¹⁰⁵ (ethics and economic responsibility of CMCHA, 2007). According to Schmidpeter corporate social CSR allows for a stronger involvement of employees and better incorporation of scientific findings in assuming

¹⁰⁴ John Okpara, Samuel Idowu and Rene Schmidpeter *Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders* (Springer, 2013) at 171

¹⁰⁵ Onyeka Osuji “Corporate Social Responsibility, Juridification and Globalisation: “Interventive Interventionism” for a “Paradox”” (2015) 11(3) *International Journal of Law in context* 1-31

responsibility¹⁰⁶. The employer will hereby obey the court order (which is a legal obligation the court has created) and introduce a mechanism that will continuously reduce the incidence of corporate manslaughter (to enhance the practice of corporate social responsibility in its company (this is a legal obligation working again here). One can safely say that letters of the law are the starting point of enforcement of both corporate manslaughter and corporate social responsibility while legal obligation gives spirit to the letters of the law and enforcement.

Corporate social responsibility CSR also called corporate conscience, social performance or sustainable responsible business indeed is a form of corporate self-regulation integrated into a business model¹⁰⁷. In *R .v. Adomako*¹⁰⁸ a case in which an anaesthetist was prosecuted for manslaughter following the death of a patient in the operating theatre. Lord Mackay LC noted that in applying the ordinary principles of the law of negligence it had to be established that the defendant's breach of duty had caused the death, he continued:

“The jury will have to consider whether the extent to which the defendant's conduct departed from the proper standard of care incumbent upon him, involving as it must have done a risk of death involved and the conduct of the defendant was as bad in all the circumstances as to amount in their judgment to a criminal act or omission”¹⁰⁹. However, Swart, believes that

¹⁰⁶ John Okpara, Samuel Idowu and Rene Schmidpeter *Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders* (Springer, 2013)

¹⁰⁷ Supra at 73

¹⁰⁸ *R .v. Adomako* [1995] 1 AC 171 at 187

¹⁰⁹ Per Lord Mackay LC in *R .v. Adomako* [1995] 1 AC 171 at 187

“corporations have their institutional memories. They can remember things that happened in the past and learn from their experiences. They can correct their policies if they have made mistakes, or if circumstances make it desirable for them to change them. As far as their relationship with the law is concerned, they can make free choices about whether or not to comply with the law. Their freedom of choice in this respect makes it both possible and justifiable to hold them accountable for their choices”¹¹⁰. Okpara et al disagrees and states that CSR policy functions as a built-in, self-regulating mechanism whereby business monitors and ensures their active compliance with the spirit of the law, ethical standards, and international norm¹¹¹.

In the UK, for an offense of corporate manslaughter under the Corporate Manslaughter and Corporate Homicide Act 2007, it is now understood that “organizations should be under a duty to reduce the chances of those [individual] errors taking place and to minimize the consequences when they do”¹¹². Corporate Manslaughter prosecution yields responsibility for individual action¹¹³. According to Rahim, corporate social responsibility is understood as the

¹¹⁰ Bert Swart “International trends towards establishing some form of punishment for corporations” (2008) 6 *Journal of International Criminal Justice* 947-979 at 951

¹¹¹ John Okpara, Samuel Idowu and Rene Schmidpeter *Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders* (Springer, 2013)

¹¹² Christopher Seargent “Two steps forward, one step back- the cautionary tale of the Corporate Manslaughter and Corporate Homicide Act 2007” (2014) 1(1) *UK Law Students’ Review*

¹¹³ Christopher Seargent “Two steps forward, one step back- the cautionary tale of the Corporate Manslaughter and Corporate Homicide Act 2007” (2014) 1(1) *UK Law Students’ Review*

scope for which, and how an organization is consciously responsible for its actions and non-actions and their impact on its stakeholders¹¹⁴.

Furthermore, Section 172 of the Companies Act 2006 UK provides that directors while acting on behalf of the company shall exercise their duties with diligence and care for other stakeholders like employees, villagers, consumers, etc in their decision-making¹¹⁵. These letters of the law guide the court to add spirit to the law through enforcement to create/ set a legal obligation for all in a corporate manslaughter case.

However, in Nigeria, the secret still lies in the letters of the law and not in the spirit of the law about corporate social responsibility and enforcement of laws in corporate manslaughter-related cases.

Nigeria needs a corporate manslaughter law that will empower the court and create government offices like the police and Ministry of Environment (to create legal obligation and enforceability to bring back corporate social responsibility practices in a corporate manslaughter case) run by the members of the oil-producing community without the interference of the kings who can be easily be bribed by the multinational companies. This is the area of legal enforcement that Nigeria is lacking, and it is working in the United Kingdom. In terms of corporate social responsibility in Nigeria, it is more of a populace activity.

¹¹⁴ Mia Mahmurdur Rahim *Legal Regulation of Corporate Social Responsibility A Meta-Regulation Approach of Law for Raising CSR in a Weak Economy* (Springer 2013).

¹¹⁵ Companies Act 2006 United Kingdom Section 172

According to Tombs, failure to do this (to have a legal framework for corporate manslaughter and corporate social responsibility by a country) creates a condition where businesses are relatively free from local enforcement and where regulation and compliance are defined by businesses themselves¹¹⁶. Mandatory regulation can help to reduce uncertainties about the future, improve the economic incentives for companies to act responsibly (whenever companies breach their duty of care or as an encouragement to do charity work for the community (emphasis mine)), and ensure a level playing field for everyone¹¹⁷. The question scholars like Okoye asks is should governments in Africa take a stronger role in driving CSR if, for example, it is to aid in development? Can and should CSR contributions (whether of obeying the law or of business etiquette emphasis mine) become mandatory within developing countries in Africa?¹¹⁸ There is a substantial body of work needed regarding Nigerian law on corporate liability and regulating the activities of MNCs in Nigeria that reflects corporate accountability¹¹⁹. The governments in African states have been traditionally identified and linked with advancing social development¹²⁰. The government has made laws for social

¹¹⁶ Tombs, Steve. "Making Better Regulation, Making Regulation Better?" (2016) 37(4) Policy Studies 332-349 12

¹¹⁷ Wallace C D *The Multinational Enterprise and Legal Control: Host State Sovereignty in an Era of Economic Globalization* (The Hague Nijhoff Publishers 2002)

¹¹⁸ Adaeze Okoye "Exploring the relationship between corporate social responsibility, law and development in an African context: should government be responsible for ensuring corporate responsibility?" (2012) 54(5) International Journal of law and management 364-378

¹¹⁹ Samson Erhaze and Daud Momodu "Corporate criminal liability: call for a new legal regime in Nigeria" (2015) 3(2) Journal of Law and Criminal Justice 63-72

¹²⁰ Chibundu M.O. "NEPAD and the rebirth of development theory and praxis" (2008) in Adaeze Okoye "Exploring the relationship between corporate social responsibility, law and development in an African context: should government be responsible for ensuring corporate responsibility?" (2012) 54(5) International Journal of law and management 364-378

development but in most cases with limited results¹²¹. It is important now for Nigeria to implement the Corporate Manslaughter Bill 2015 (to create a concrete legal obligation on the courts, the parties to the court case, and human agents enforcing the law and give spirit to the letters of the law (which must go hand in hand with the letters of the law)) to empower Health and Safety Executives like in the UK¹²² to hopefully carry out yearly inspection of oil rigs and flow stations in Nigeria and making companies cautious of the CSR responsibility to the country¹²³. Another ethical responsibility of CSR achieved through the Corporate Manslaughter Bill (2015) in Nigeria is that companies must update and monitor their health and safety policies to check and prevent the chances (loopholes) of incidences at the workplace (death) from happening¹²⁴, rectify some deficiencies in its operation rectify some deficiencies in the training of the workers like in the UK¹²⁵. Other states like the US and France that have suffered from environmental damages for example --have used their domestic laws to call for instant

¹²¹ Ofosu-Amaah W.P “Remarks on the Role of the Bank in the Development of Africa” (1999) 30 Law and Policy in International Business 698-702 in Adaeze Okoye “Exploring the relationship between corporate social responsibility, law and development in an African context: should government be responsible for ensuring corporate responsibility?” (2012) 54(5) International Journal of law and management 364-378

¹²² Gunningham, N. & Johnstone, R. *Regulating Workplace Safety: System and Sanctions* (Oxford University Press 1999) in Steve Tombs and David Whyte “Transcending the deregulation debate? Regulation, risk, and the enforcement of health and safety law in the UK” (2013) 7(1) Regulation & Governance <<http://doi:1111/j1748-5991.2012.1164.x>> accessed 12 June 2017

¹²³ Steve Tombs and David Whyte “Transcending the deregulation debate? Regulation, risk, and the enforcement of health and safety law in the UK” (2013) 7(1) Regulation & Governance <<http://doi:1111/j1748-5991.2012.1164.x>> accessed 12 June 2017 at 14

¹²⁴ Sana Farooq Khan “Corporate Manslaughter-The Need for Reform” (2013) 1(35) Irish Business Law Review 38-45

¹²⁵ Gary Slapper “Justice is mocked if an important law is unenforced” (2013) 77(91) Journal of Criminal Law 91-94

clean ups¹²⁶ while states like Nigeria could not because of its weaker laws. The Corporate Manslaughter Bill (2015) Nigeria corrects the failure of CSR. This law punishes companies for unsafe corporate practices. The punishment will serve as a deterrent to other companies: encouraging them to observe ethics, review their practices, and where necessary alter their practices¹²⁷. This punishment could take the form of remedial order (S. 8) of the Corporate Manslaughter Bill (2015) in Nigeria and these instances can potentially be excellent rehabilitative tools; by examining where the corporation went wrong.

This situation above (no legal framework for corporate manslaughter and no legal framework for corporate social responsibility) leaves the researcher with the problem of linking corporate manslaughter and corporate social responsibility and attaching legal obligations to that link. This is to draw a relationship between enforcement and legal obligation.

2.3.2 THE CAPACITY OF THE SYSTEM TO ACCOMMODATE AND INTERPRET THE LAW TO AID ENFORCEMENT

In Canada for example since oil production and sale began in Alberta Canada, Alberta's Conservative government has favored employers' interests to achieve electoral and economic goals¹²⁸. To achieve electoral success, the Conservatives privileged rural interests through

¹²⁶ David Ong "Regulating environmental responsibility for the multinational oil industry: continuing challenges for international law" (2015) 11(2) *International Journal of the Law in Context* 153-173

¹²⁷ Wong Hui Yan, C. "Corporate Homicide Legislation Should Hong Kong Follow Suit?" (2011) 5 *Hong Kong Journal of Legal Studies* 31-48

¹²⁸ Barnetson, Bob. "Worker Safety in Alberta" in Meenal Shrivastava and Lorna Stefanick *Alberta Oil and the Decline of Democracy in Canada* (Athabasca University Press, 2015)

public expenditures and limiting workplace rights¹²⁹. To achieve economic goals, the Conservatives enacted repressive labour laws to attract and retain investment, primarily in the oil industry¹³⁰. Such laws, operating in a boom-and-bust economy, have so weakened Alberta's labour movement that there are few political consequences for violating workers' freedom to associate and, ultimately, their right to a safe workplace¹³¹. This hinders enforceability.

Alberta's occupational health and safety (OHS) regime exhibit classic symptoms of regulatory capture by employers. These include ineffectively regulating workplace safety, deeming employers to be "partners" in regulation, being reliant on employer funding of regulatory activity, allowing employers preferential access to policymaking, enacting policies that reward the appearance of safety rather than safety itself, and promulgating a narrative that blames another stakeholder (i.e., workers) for workplace injuries¹³².

In these ways, Alberta's regulatory climate undermines workers' freedom to associate and right to health, as well as the principle of the state acting in the public interest. These rights and principles are associated with democratic societies and constitute the main bulwark that

¹²⁹ Barnetson, Bob. "Worker Safety in Alberta" in Meenal Shrivastava and Lorna Stefanick *Alberta Oil and the Decline of Democracy in Canada* (Athabasca University Press, 2015)

¹³⁰ Barnetson, Bob. "Worker Safety in Alberta" in Meenal Shrivastava and Lorna Stefanick *Alberta Oil and the Decline of Democracy in Canada* (Athabasca University Press, 2015)

¹³¹ Barnetson, Bob. "Worker Safety in Alberta." in Meenal Shrivastava and Lorna Stefanick *Alberta Oil and the Decline of Democracy in Canada* (Athabasca University Press, 2015) at 225

¹³² Barnetson, Bob "Worker Safety in Alberta" in Meenal Shrivastava and Lorna Stefanick *Alberta Oil and the Decline of Democracy in Canada* (Athabasca University Press, 2015)

workers have constructed against capital organizing work in an injurious manner, effectively trading worker health for profit.

While employers have denied that they have been granted privileged rights throughout Canada (right to form health and safety policies, fund them and blame workers for their work hazards rights), in Alberta's oil-driven economy these privileged rights from the Canadian government are common practice¹³³.

According to Barnetson inadequate injury-prevention efforts, which result in unsafe working conditions, are symptomatic of successive Alberta governments' long-standing preferences for employer-friendly labour law, a preference that compromises workers' right to health¹³⁴. This writer believes that the idea behind the Canadian government favouring MNCs in their country is because of the revenue it generates from these companies. Multinational oil companies will invest in a country where the health and safety rules are weak so that they can save from health hazards to an employee whenever it occurs.

In Canada's case above, enforcement arises if there is a legal obligation by these companies as stipulated by the government and its agents. One can then rightly ask how then a court can assume jurisdiction to decide a particular case. This is because corporate social responsibility is generally unenforceable but corporate manslaughter cases at least in The United Kingdom

¹³³ Barnetson, Bob. "Worker Safety in Alberta." in Meenal Shrivastava and Lorna Stefanick. *Alberta Oil and the Decline of Democracy in Canada* (Athabasca University Press, 2015) at 226

¹³⁴ Barnetson, Bob. "Worker Safety in Alberta." in Meenal Shrivastava and Lorna Stefanick. *Alberta Oil and the Decline of Democracy in Canada* (Athabasca University Press, 2015)

are enforceable. This is the link between corporate manslaughter and corporate homicide and corporate social responsibility in this research.

In Australia, Ken Philips went further to state that “work safety is too important an issue for games to be played with it. Laws cannot make people behave safely. But laws can set the frameworks within which work cultures, systems, and behaviors are formed¹³⁵. A senior officer will be guilty of industrial manslaughter of an employee only¹³⁶ and punished by a fine of \$275,000 or imprisonment for 25 years or both in the Australian Capital Territory if the officer failed to do something that would have prevented the death¹³⁷. In the words of Øien et al, “The laws must imbue people with confidence that obligations and responsibilities are applied equitably, fairly and with common sense. If the law fails in these areas, people will conspire to avoid their obligations for fear of unjust laws. This sets the scene for endemically unsafe work cultures. People’s well-being and lives will be placed at risk”¹³⁸.

In analyzing the impact of the Crimes Industrial Manslaughter (Amendment) Act 2003, considering the September 25th, 1998 explosion that took place at the Esso natural gas plant in

¹³⁵ Ken Philips Workplace Health and Safety Presentation (Australian Financial Review Conference Industrial Relations Reform 2005, Sydney 31 March 2005)

¹³⁶ Andy Blunden Corporate Manslaughter Laws in Australia May 2012

¹³⁷ Richard Alcock and Casper Conde “Socially and Environmentally Responsible Business Practices: An Australian Perspective” (2005) 1(2) Corporate Governance Law Review 329-338

¹³⁸ Øien K, Utne Ingrid Bouwer, Tinmannsvik Ranveig Kviseth and Massaiu S, “Building safety indicators: Part 2- Application, practices and results” (2011) 49 Safety Science 162-171 at 10

Longford, Australia, two people were killed¹³⁹. Companies intend to imbibe safety management systems for the detection of early warnings, access to the casual links between indicators, the implementation of safety measures, and plant safety¹⁴⁰. This happens when the system can interpret the law without interference.

Those who support industrial manslaughter offenses believe that dangerous acts need to be criminalized with the offender facing the full force of the law, such as prison, in very serious cases. Some feel that such laws are necessary because they hold those persons ultimately responsible for safe systems of work liable¹⁴¹. Such laws also enable companies to ethically have a risk management framework to manage risk¹⁴². Therefore, in this within the capacity of the system to interpret the law, legal obligation begets enforceability in corporate manslaughter cases. Besides, the prosecution of the company will motivate the company to (CSR) internally monitor its processes and then bring about changes to internal culture and procedures likely to influence conduct in the longer term¹⁴³. The system, therefore, needs to shun any form of interference or influence for the court to retain its capacity to interpret the law. In every

¹³⁹ Hopkins Andrew “lessons from Longford: The Esso Gas Plant Explosion” (2000) CCH Australia Limited, Sydney Available at tctoday.com. In Øien K, Utne Ingrid Bouwer, Tinmannsvik Ranveig Kviseth and Massaiu S, “Building safety indicators: Part 2- Application, practices and results” (2011) 49 Safety Science 162-171

¹⁴⁰ Øien K, Utne Ingrid Bouwer, Tinmannsvik Ranveig Kviseth and Massaiu S, “Building safety indicators: Part 2- Application, practices and results” (2011) 49 Safety Science 162-171

¹⁴¹ Tim Dixon Corporate Social Responsibility and Socially Responsible investment (Oxford Institute for Sustainable Development, 2006) in John Okpara, Samuel Idowu, and Rene Schmidpeter, *Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders* (Springer, 2013)

¹⁴² Andrew Hopkins “Risk-Management and Rule-Compliance: Decision-Making in Hazardous Industries” (2011) 49 Safety Science 110-120

¹⁴³ Kyriakakis J, “Australian Prosecution of Corporations for International Crimes” (2007) 5 Journal of International Criminal Justice 809-826

corporate manslaughter case, the court should be free to create a binding legal obligation on parties to the case to continue from then on respecting the judgment of the court and carrying out its corporate social responsibility duty as a result of a corporate manslaughter judgment and human agents who carry out the judgment of the court.

The Crimes Industrial Manslaughter (Amendment) Act 2003 combined with Occupational Health and Safety (OHS) will improve corporate social responsibility in Australia. Dixon believes that including a serious crime such as OHS laws could encourage the community to view these laws as ‘serious’ provisions and raise a perception that workplace offenses are ‘real crimes’ thus ultimately improving workplace safety¹⁴⁴.

Sarre believes that even the threat of prosecution leads managers to discipline employees who engage in violations of the rule and keeps the manager's mind firmly on safety¹⁴⁵. The community can then know how to keep themselves safe while working or living in the community. However, the weight of the threat of deterrence needs to be significant to amount to the denunciation of the act¹⁴⁶. Secondly, with the success of the combined Crimes Industrial Manslaughter (Amendment) Act and Occupational Health and Safety in the Australian Capital Territory, several states and the Australian Commonwealth amended their Occupational Health

¹⁴⁴ Tim Dixon Corporate Social Responsibility and Socially Responsible investment (Oxford Institute for Sustainable Development, 2006) in John Okpara, Samuel Idowu, and Rene Schmidpeter, *Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders* (Springer, 2013)

¹⁴⁵ Rick Sarre Sentencing those Convicted of Industrial Manslaughter (National Judicial College of Australia/ the Australian National University Sentencing Conference 2010 Canberra 6 and 7 February 2010)

¹⁴⁶ Simon Chesterman “The Corporate Veil, Crime and Punishment: The Queen vs. Denbo Property Limited and Timothy Ian Nadenbousch” (1994) 19 Melbourne University Law Review 1064

and safety laws (legal responsibility for CSR) in respect of both corporate and individual liability by increasing the penalties for causing harm or death due to gross negligence¹⁴⁷. In the United Kingdom, the Corporate Manslaughter and Corporate Homicide Act 2007 provided the power to impose an unlimited fine, the fine should be far higher and should rise to the level necessary to ensure that the directors and shareholders of the company take effective measures properly to reform themselves and ensure that they fulfil their obligations¹⁴⁸ (CSR). There can be no doubt as to the objectives of applying this principle of unlimited fine when sentencing a company for offenses against health and safety. As Scot Baker J stated in his judgment in *R .v. F Howe & Son (Engineers) Ltd*:

“The objective of prosecutions for health and safety offenses in the workplace is to achieve a safe environment for those who work there and for other members of the public who may be affected. A fine needs to be large enough to bring that message home where the defendant is a company not only to those who manage it but also to its shareholders¹⁴⁹”. This (CMCHA improving CSR (being careful in the way they do business (economic and ethical responsibility) was reinforced in the Definitive Guideline of the Sentencing Guidelines Council Corporate Manslaughter & Health and Safety Offences Causing Death published in 2010¹⁵⁰ .

¹⁴⁷ Guthrie R and Waldeck E, “The liability of corporations, company directors and officers for OSH breaches: a review of the Australian landscape” (2008) Policy and Practice in Health and Safety 31-54

¹⁴⁸ Forlin Gerald “Many Rivers to cross sentencing large companies for environmental crimes” (2015) 8(4) Archibold Review 1-2

¹⁴⁹ Scot Baker J stated in his judgement in *R .v. F Howe & Son (Engineers) Ltd* [1999]2 All ER 249 at 255

¹⁵⁰ The Body sets out guidelines for sentencing companies for corporate manslaughter and health and safety offences. It was introduced in the United Kingdom in 2010

This has been reflected for example in the case of *R. V. Tufnells Park Express Ltd*¹⁵¹ (the fine after trial on a company with a turnover of one hundred million pounds and profitability of seven million, seven hundred thousand pounds was two hundred and twenty-five thousand pounds; this reflected, as the court noted, 2.9% of its operating profit¹⁵²). The situation is different in developing African countries. It could be a result of the influence the host government has on the enforcement of laws and the institutional weakness of government institutions (like the courts) in its enforcement attitude toward justice.

In British Petroleum's (BP) Deep Water Horizon case in 2010, the blowout and the oil spill were caused by a bad well design. Ethically what BP learned from the court also is that a good well design/program provides for the correct number of barriers that would stop an uncontrolled flow of petroleum from the geographic formation to the surface. There was no plan for risk. A risk structure takes into account the fact that the operators decide on a good design/program and are in charge of the execution of this program by running the operation at the well site¹⁵³. Hopkins castigates BP for devaluing engineering expertise in its decision-making about drilling methods and practices¹⁵⁴. It is necessary for the company to deliberate on the likely side effects in advance and to take active steps before the fact to prevent harm

¹⁵¹ *R. V. Tufnells Park Express Ltd* [2012] EWCA Crim 222 at para.43

¹⁵² Case Analysis *R. v. F Howe & Son (Engineers) Ltd* [1999]2 All ER 249).

¹⁵³ Peter Cameron "Liability for catastrophic risk in the oil and gas industry" (2012) 6 *International Energy Law Review* 207-219

¹⁵⁴ Hopkins Andrew "Disastrous decisions: the human and organisational causes of the Gulf of Mexico Blowout" (2012) 30(12) *The Safety and Health Practitioner* 50

from occurring¹⁵⁵. This is correct because oil companies need to establish the credibility of their CSR actions to reap legitimate benefits from CSR¹⁵⁶. If the court in BP's case did not recognize its legal obligation for the enforcement of the law in its interpretation duties, BP will never know where it went wrong and there will be no legal obligation on BP to clean up oil spillage and compensate the deceased employee family members. This means that it is always important for the courts to have the capacity to interpret the law.

In Nigeria, the decision of the (Supreme) court such as in Okpabi's case and its outcome (is now) could be a yardstick for measuring the balance between corporate rights and corporate liabilities¹⁵⁷ in future cases as it relates to corporate social responsibility and corporate manslaughter in developing countries. On the contrary, institutional processes, public welfare ambitions, and affluence appear to have shaped their rationales and trajectories to the effect of increasing the total amount of regulatory investment, including the size of public enforcement activity¹⁵⁸.

The governance weaknesses in the petroleum sector value chain in Nigeria are (challenges in sector regulation) (political and economic attributes) the following

¹⁵⁵ Andy Lockett Jeremy, Moon and Wayne Visser "Corporate Social Responsibility in Management Research: Focus, Nature, Salience and Sources of Influence" (2006) 43(1) Journal of Management Studies 115-136

¹⁵⁶ Jane Barrett "When Business Conduct Turns Violent: Bringing BP, MASSEY, and Others Scoff Laws to Justice" (2011) 48 American Criminal Law Review 287-333

¹⁵⁷ Vanessa R Bishop "An International Analysis of "Corporate Personhood": Rights vs. Responsibilities" (2015) Senior Honors Theses 449

¹⁵⁸ Jacob Kringen, "Investing in Implementation" Regulatory Governance and Public Enforcement of Risk Regulation in a Generous Welfare State: the Case of Norway (2019) Discussion Paper No 86

- (i) strong executive control on petroleum governance in a political environment of weak checks and balances;
- (ii) regulatory and operating roles bundled into one institution, thereby creating a conflict of interest; and
- (iii) manipulation of elections and political appointments¹⁵⁹. This is what the Nigerian judiciary and the Nigerian government need to work on if corporate social responsibility must be enforced in Nigeria.

¹⁵⁹ Alex Gboyega Tina Søreide Tuan Minh Le G. P. Shukla Political Economy of the Petroleum Sector in Nigeria. The World Bank Africa Region Public Sector Reform and Capacity Building Unit August 2011 Policy Research Working Paper 5779

2.3.3 THE NATURE OF HUMAN INSTITUTIONS. IF IT IS THE HUMAN INSTITUTIONS WHAT THEN IS IT WITH THE HUMAN INSTITUTIONS?

In the United Kingdom, the nature of human institution like the court in a case of corporate manslaughter is that an organization convicted of corporate manslaughter or corporate homicide can be issued with a remedial order by the court, requiring it to take specific steps to remedy the breach; any matter the court believes to have resulted from the breach and caused the death; and any deficiencies in the organization's health and safety policies, systems or practices of which the breach appear to be an indication¹⁶⁰. Similarly, employers in America are required by law to make public their incident statistics on the US Occupational Safety and Health Administration's Website from January 2017. Such practice will consider the effect on fear of reputational damage, safety standards in the UK, and online publication of criminal convictions under the Corporate Manslaughter and Corporate Homicide Act 2007 CMCHA s. 19¹⁶¹. As a result of this, such practice in America should be introduced in the UK to promote transparency on safety.

¹⁶⁰ Corporate Manslaughter and Corporate Homicide Act 2007 United Kingdom Section 9(1)

¹⁶¹ Anna Hart "A "nudge" to better performance" (2016) Health and Safety at Work (Westlaw UK)

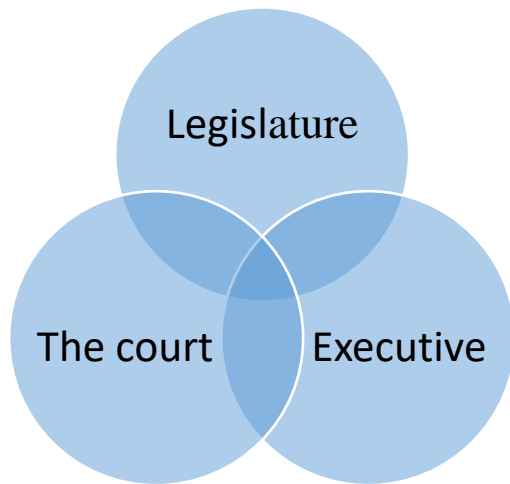


Fig 4 the human institutions

Below this researcher will discuss philosophies and theories in the law regarding enforceability.

2.4 PHILOSOPHIES AND THEORIES IN LAW AS REGARDS LEGAL ENFORCEABILITY

Under this subheading, this writer will weave the thought of different philosophers and theorists like Hart, Locke, Dworkin, Bentham, Posner, and Polinsky to mention just a few with the enforceability of law as it relates to corporate social responsibility and corporate manslaughter among companies. Under this subheading also, this writer will explain the theory of rules of recognition. For this theory of rules of recognition, this writer will also explain

- Is the secret behind the spirit of the law or the letters of the law that makes companies obey the law?

- The nature of the law (obedience to law by force or coercion. Is it justified?)
- If the law is constructed in a manner that is against the inherent desire of the individual or designed in such a manner that the individuals are unable to obey it is it bad luck?
- The nature of the rule of law in the country (for example law by the courts)
- The capacity of the system to accommodate and interpret the law to aid enforcement
- The nature of human institutions. If it is the human institutions what then is it with the human institutions?

The idea of legal enforceability is the capacity of law or the capacity of institutions within the law to use the law as a yardstick of control to prevent the occurrence of certain actions or inactions that leads to the death of an employee.

What is this law all about? Quoting Wack, “law is rarely out of the news. It rarely stimulates controversy. While lawyers and politicians celebrate the virtues of the rule of law, reformers lament its shortcomings, and cynics question its professed equivalence with justice. Yet all recognize the law as a vehicle for social change. And a few doubts the central role of law in our social, political, moral, and economic life¹⁶²”. A famous philosopher by the name Saint Thomas Aquinas explained how the instrumentation of law, shapes the behaviour of companies that causes death and defined law as an ordinance of reasoning promulgated for the common

¹⁶² Raymond Wacks *Philosophy of Law a Very Short Introduction* (Oxford University Press, 2006)

good of mankind. His definition of law identified the relationship between the law and the capacity of the law to bring about the effectiveness of certain social norms or social status or social occurrences which the law as an instrument of control of behaviours or actions within the host community and how the implementation of law shapes the behaviour and attitude of social actors within an environment. This takes this writer on a philosophical journey into the relationship between the law and the behaviors of social actors. For example, corporate manslaughter law is also helpful to companies' performance in achieving their corporate social responsibility objectives of profit-making and protection of the lives of workers and society based on legal policies.

This position of Locke according to this writer can be made stronger when not just natural law but the law of the host community guarantees the protection of lives of all in the pursuit of happiness and there is a framework to legally enforce these rights in the event of a breach of duty of care leading to death and caused by the activities of a company. Whereas for Hobbes natural rights come first, and natural law is derived from natural rights. This research revolves around the law as a means of social control (corporate social responsibility (CSR) leading to corporate manslaughter offense and the legal enforceability of corporate manslaughter law or whatever name it is called in a particular country or law equivalent (Occupational Health and Safety Act in America) to restore corporate social responsibility best practices (even though lives lost cannot be restored) through fines, publicity order, community order, and remedial order, this writer tend to agree with Hobbes that natural right (right to life through the protection

of a safe working place (for employees community for the villagers) and safe clean environment) come first and that natural law comes from natural rights. The reasoning is that there will not be a natural law if there is no breach of natural rights (corporate manslaughter and corporate homicide). Locke derives natural rights from natural law i.e. from reason. Hobbes discerns a natural right of every person to everything. Locke argues that our natural right to freedom is constrained by the law of nature and its directive that we should not harm each other in 'life, health, liberty, or possessions'¹⁶³. Locke advocates a limited form of government: the checks and balances among branches of government and the genuine representation in the legislature would, in his view, minimize government and maximize individual liberty¹⁶⁴.

Locke's idea of natural law and its impact as a means of social control is limited. And its idea of limiting the use of government agencies as agents of social control is confusing.

This writer is saying that Locke's idea of natural law is limited and confusing because while companies are pursuing happiness through making money from for example oil exploration, it should in turn consider the happiness of its employees and the villagers who suffer from oil and gas explosion (the recent is in Mexico on the 17th of January 2019 (oil pipeline explosion in Mexico City Mexico) that claimed the lives of 85 oil workers and villagers), oil spillage, gas

¹⁶³ Raymond Wacks *Philosophy of Law a Very Short Introduction* (Oxford University Press, 2006) at 8

¹⁶⁴ Raymond Wacks *Philosophy of Law a Very Short Introduction* (Oxford University Press, 2006) at 8

flaring, human right abuses to mention just a few. These government agencies like the police, health and safety executives and the crown prosecution service¹⁶⁵ are needed and are there as agents of social control to legally enforce the law. This legal enforcement of the law could be in the form of remedial order, to investigate, discover, and tackle the cause of pipeline explosions, oil spillage, gas flaring, and human rights abuses leading to death.

Since companies will be punished for a crime or their name stigmatized, (criminal prosecution is more punitive and stigmatizing than other control mechanisms), the managerial tactics by law are simply something that cannot be ignored by managers¹⁶⁶. However, the effectiveness of regulation is possible when its enforcement is possible and financially viable; otherwise, society would be reluctant to enforce it. For instance, the high cost of enforcement is a major argument against perspective regulation¹⁶⁷.

Another philosopher is Dworkin. 'Law as integrity' is Dworkin's favored constructive interpretation of the concept of law and is the best legal theory.

According to Dworkin, coercion of law is justified if the company for example portrays those characteristics which members of the public identify as ideally not integrity¹⁶⁸. One may for

¹⁶⁵ Sarah Field and Lucy Jones "Is the Net of Corporate Criminal Liability Under the Corporate Homicide and Corporate Manslaughter Act 2007 Expanding?" (2015) 36(6) Business Law Review 215- 220

¹⁶⁶ Sally Simpson *Corporate Crime, Law, and Social Control* 1st ed. (Cambridge University Press, 2002)

¹⁶⁷ Bethel Uzoma Ihugba "The Governance of Corporate Social Responsibility: Developing an Inclusive Regulation Framework" (2014) International Journal of Law and Management, 110

¹⁶⁸ Ronald Dworkin *Law's Empire (Legal Theory)* (Hart Publishing, 1998)

example claim however that this company may be adhering to the tenets of the law in doing business but not only till people see that a company adheres to an organized mapped procedure that involves providing a safe working environment and safe working equipment/machinery for employees, regular maintenance of facilities, abstinence from human right abuses (emphasis mine) which have become part of the company then we grant that a company has integrity¹⁶⁹. Most significantly, researchers will ask first what is it the company is not getting right and can the law be used as a way of restoring the lost values which the public ordinarily think is the way companies should be responsible. Law as integrity fits legal research. This is so because it addresses the activities of the company in the place of work and it reminds members of the public to stand up for what is integrity¹⁷⁰. The emphasis here is that when the law is incoherent because of political reasons (former colonial master has an interest in the oil wealth of their colony) or for an economic reason (because a country is not diversified relying on one source of revenue generation) it could affect the legal enforceability in that country.

Wacks thinks that when this is the situation (legal enforceability) in a country, the law is depicted as uncertain, ambiguous, and unstable. And instead of expressing rationality, the law reproduces political and economic power¹⁷¹. This means the government enforcing the law by force against anybody. This mostly occurs in developing countries in which the government

¹⁶⁹ J.W Harris *Legal Philosophies* (2nd Ed. Butterworths, 1997)

¹⁷⁰ J.W Harris *Legal Philosophies* (2nd Ed. Butterworths, 1997)

¹⁷¹ Raymond Wacks *Philosophy of Law A Very Short Introduction* 2nd Edition (Oxford University Press, 2014) at 107

official and their institutions are corrupt. This is not the case in developed countries like the United Kingdom. In the United Kingdom (UK), companies that report on their corporate accountability activities are more likely to manage their activities appropriately¹⁷². For companies that do not abide, the health and safety inspectors in the UK will intervene. The senior managers of a company must be aware that the decisions that they take, or choose not to take may have serious consequences. These serious consequences (damaging the duty of care / safe working place and conditions (corporate social responsibility) are about the employees of the company¹⁷³. The idea is that it will not be necessary for any corporate manslaughter charge if companies have a plan for example for staff training and regular inspection and servicing of machines. Everyone will know why the law needs to be obeyed when they have breached the law and the punishment for it.

In continuation, companies that report on their corporate accountability activities (corporate reporting) are more likely to manage their activities appropriately¹⁷⁴. For companies that do not, the health and safety inspectors in the UK for example will brief them on what they are doing well or not doing well. Those in charge of workplaces must know that decisions that they take or choose not to take may have serious consequences for those who work for them and

¹⁷² Dane Christensen “Corporate Accountability Reporting and High-Profile Misconduct” (2016) 91(2) The Accounting Review 377-399

¹⁷³ Neil Foster Individual Liability of Corporate Officers (2016)

¹⁷⁴ Dane Christensen “Corporate Accountability Reporting and High-Profile Misconduct” (2016) 91(2) The Accounting Review 377-399

generate profits¹⁷⁵ damaging the duty of care / safe working place and conditions as corporate social responsibility owed to everyone. The idea is that it will not be necessary for any corporate manslaughter charge if companies have a plan for example for staff training and regular inspection and servicing of machines. Therefore, the lesson learned from cases of corporate manslaughter and corporate homicide generally challenges companies to incorporate responsibility systematically into all management processes. Philosophers like Durkheim agree to the legal enforceability of law by way of punishment to instil the desire and attitude of corporate social responsibility practices in a company. According to him, punishment is an essential element of the conception of crime: the state reinforces the collective conscience by punishing those who offend against the state itself. He defines punishment as ‘a passionate reaction of graduated intensity that society exercises through the medium of a body acting upon those of its members who have violated certain rules of conduct¹⁷⁶. This implies incorporating substantive outcomes¹⁷⁷ to prevent what happened from happening again or preventing deadly violence against the activities of oil companies by communities from happening.

Philosophers like Hart think that when legal rules require men to act or abstain from action, one who breaks the law is usually liable, according to other legal rules, to punishment for his

¹⁷⁵ Neil Foster Individual Liability of Corporate Officers (2016)

¹⁷⁶ Raymond Wacks *Philosophy of Law A Very Short Introduction* (2nd Edition Oxford University Press, 2014) at 92

¹⁷⁷ Onyeka Osuji “Corporate Social Responsibility, Juridification And Globalisation: “Interventive Interventionism” For a “Paradox”” (2015) 11(3) International Journal of Law in context 1-31

misdeeds, or to make compensation to persons injured thereby, and very often he is liable to both punishment and enforced compensation. He is thus liable to be ‘made to pay for what he has done’¹⁷⁸. However, Swart believes that “corporations have their institutional memories. They can remember things that happened in the past and learn from their experiences. They can correct their policies if they have not made mistakes, or if circumstances make it desirable for them to change them. So as far as their relationship with the law is concerned, they can make free choices about whether to comply with the law. Hart went further to state that a man may be liable to pay compensation for harm suffered by others, though neither he nor his servants have caused it. This is so, for example, in Anglo-American law when the harm is caused by dangerous things which escape from a man’s possession, even if their escape is not due to any act or omission of his or her servants, or if harm is caused to a man’s employees by defective machinery whose defective condition he could not have discovered¹⁷⁹. Their freedom of choice in this respect makes it both possible and justifiable to hold them accountable for their choices’’¹⁸⁰.

¹⁷⁸ Joel Feinberg and Hyman Gross *Philosophy of Law* (2nd Edition Wadsworth Publishing Company Inc, 1980) at 397

¹⁷⁹ Joel Feinberg and Hyman Gross *Philosophy of Law* (2nd Edition Wadsworth Publishing Company Inc, 1980) at 397

¹⁸⁰ Bert Swart “International trends towards establishing some form of punishment for corporations” (2008) 6 *Journal of International Criminal Justice* 947-979

Okpara et al disagrees and states that corporate social responsibility (CSR) policy functions as a built-in, self-regulating mechanism whereby business monitors and ensures its active compliance with the spirit of the law, ethical standards, and international norm¹⁸¹.

Legally, the courts must “consider the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices within the organization that was likely to have encouraged any such failure as is mentioned in subsection (2)¹⁸² or have produced tolerance of it”.¹⁸³ Secondly, for an offense of corporate manslaughter under the law organizations should be under a duty to reduce the chances of those [individual] errors taking place and to minimize the consequences when they do¹⁸⁴.

However, the effectiveness of regulation is possible when its enforcement is possible and financially viable otherwise society would be reluctant to enforce it. For instance, the high cost of enforcement is a major argument against prospective regulation.¹⁸⁵

This writer believes that Corporate Manslaughter prosecution under the law makes companies; have to rethink what caused the death and what can be done to remedy the situation.

¹⁸¹John Okpara, Samuel Idowu and Rene Schmidpeter *Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders* (Springer, 2013) at 73

¹⁸² Corporate Manslaughter and Corporate Homicide Act 2007 UK Section 1 (2) (breach of duty of care as it applies to this law.

¹⁸³ Brenda Barrett “Liability for Safety Offences: Is the Law Fatally Flawed?” (2008) 37 *Industrial Law Journal* 100-118 at 11

¹⁸⁴ Christopher Seargant “Two steps forward, one step back- the cautionary tale of the Corporate Manslaughter and Corporate Homicide Act 2007” (2014) 1(1) *UK Law Students’ Review* 1-20

¹⁸⁵ Bethel Uzoma Ihugba “The governance of corporate social responsibility: developing an inclusive regulation framework” (2014) *International Journal of Law and Management*, 110.

In the United Kingdom, for example, in corporate manslaughter cases, after a large company has been convicted for corporate manslaughter and corporate homicide, the 2010 guideline laid down principles to be followed to restore ethics (Mistake in the procedure (health and safety under Section 42 of HSWA 1974) causing death¹⁸⁶.

These include “a good health and safety record and a responsible attitude to health and safety, which includes seeking advice on how to reduce risk from experts, and consultation with employees or others affected by the activities of the organization¹⁸⁷. The idea is to through legal enforcement have consequences for breach of duty of care and to make companies realize the negative impacts their decisions are having on their employees.

After a fatality, a company may also mitigate by promptly accepting responsibility, making genuine efforts to remedy the defect, co-operating fully with the investigation “beyond that which will always be expected” (Sentencing Guideline Commission 2010 Para 8) and working procedures, modes of supervision and activity within the organization.¹⁸⁸ This helps other companies to learn from the mistake made by the convicted company.¹⁸⁹ This writer believes

¹⁸⁶ Sarah Field and Lucy Jones “Death in the workplace: who pays the price?” (2011) 32(6) *Company Lawyer* 166-173

¹⁸⁷ Eli Lederman “Corporate Criminal Liability: The Second Generation” (2016) 46 *Stetson Law Review* 71-87

¹⁸⁸ Eli Lederman “Corporate Criminal Liability: The Second Generation” (2016) 46 *Stetson Law Review* 71-87

¹⁸⁹ Hui Yan Wong “Corporate Homicide Legislation Should Hong Kong Follow Suit?” (2011) 5 *Hong Kong Journal of Legal Studies* 31-48

that the lesson will then stay and serve as a yardstick for measuring the level of corporate social responsibility practice by any company in its host country.

On the other hand, Locke an economic philosopher thinks that the business of dealing with natural resources has nothing to do with law. In essence, his philosophy is stating that there should not be any punishment for the breach of duty of care since it can only be natural to do business without any repercussions. Locke's idea of political economics emerged in the 17th century. This idea of political economy favors writers like Drucker.

He maintained that “a profitability objective of a business measures both maximum profits a company can and must make to remain in business”.¹⁹⁰ Based on his work on CSR he said that CSR measures the effectiveness of business activities; second, it provides a “risk premium” necessary for the corporation to stay in business; and third, it ensures the future supply of capital¹⁹¹. This is because the corporate social responsibility (economic responsibility) of a business is to “produce goods and services that society desires and to sell them at a profit.

This writer thinks that if on the doctrine of political economy, oil companies are given the liberty to do business as they want without consequences when their activities endanger human lives, there could be chaos between the government for its lack of enforceability and its citizen

¹⁹⁰ Peter Drucker *The effective executive: the definitive guide to getting the right things done* (Harper Collins, 2006) in John O Okpara, Samuel O Idowu and Rene Schmidpeter (eds) *Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders* (Springer, 2013).

¹⁹¹ Peter Drucker *The effective executive: the definitive guide to getting the right things done* (Harper Collins, 2006) in John O Okpara, Samuel O Idowu and Rene Schmidpeter (eds) *Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders* (Springer, 2013).

who may decide to protest against the negative activities of companies. The government cannot always hide under the umbrella that these companies generate money it uses to run its economy.

The lives of employees and villagers also matter.

Griffin has argued, “Punishing members of [a] board of directors would, in the creation of an effective deterrent, accelerate the desire on the part of the company’s power base to ensure greater compliance with... health and safety legislation”¹⁹². However, Whyte argues that it is the job of the company to correct itself (not bothered about being CSR until something happens).

According to him, it is often implied in policy and academics to disclose that the harmful and destructive side effects of business are marginal and peripheral rather than the inherent consequences of corporate activity.

This is correct even if corporations appear to act illegally and irresponsibly, it is argued widely in political circles that it is corporations themselves that must lead the way or retain autonomy in reforming themselves along more socially responsible lines; only where ‘corporate social responsibility fails should the government step in to regulate to bring recalcitrant corporations into compliance. Some philosophers like Hart will say that this argument of companies self-regulating themselves is wrong. The correct position according to Hart is that the state¹⁹³ will

¹⁹² Stephen Griffin “Corporate Manslaughter: A Radical Reform?” (2007) 71 *The Journal of Criminal Law* 151-166 at 164

¹⁹³ Mark Tebbit *Philosophy of Law an Introduction* (2nd Edition Routledge Taylor and Francis Group, 2007) at 137

punish companies when it breaches their duty of care for example. This right to punish wrongdoing is derived solely from its wrongness and complaint of the community/ society¹⁹⁴.

This then leads to the question below.

If the law is constructed in a manner that is against the inherent desire of the individual or designed in such a manner that the individuals are unable to obey it is it bad luck?

For many people, it is bad luck because the law through the human agent (like the court) will not be enforced. The people who have knowledge of the law, and who instituted an action in court under human rights law for example will feel marginalized. This is coming from the angle of how the courts adjudicated a case. Those who did not institute an action in court under human rights law for example will be angry against the companies' continued presence in their community doing business and continuing its impunity.

According to Locke, the purpose of the Government and law is to uphold and protect the natural rights of men. So long as the Government fulfils this purpose, the laws given by it are valid and binding but, when it ceases to fulfil them, then the laws would have no validity¹⁹⁵. The latter can only lead to protests by angry youths against companies.

¹⁹⁴ Mark Tebbit *Philosophy of Law an Introduction* (2nd Edition Routledge Taylor and Francis Group, 2007) at 137

¹⁹⁵ Elahi Manzoor Laskar Summary of Social Contract Theory by Hobbes, Locke and Rousseau Symbiosis Law School Pune 2013 at 4

This is always the case in developing countries whose governments depend on these multinational companies and their revenues for their survival. The inherent desire of the people is to witness justice meted on companies.

Otherwise, companies would like to continue evading punishment or won't even know that it is committing a crime.

Parker stated that: to the extent that the law focuses on companies' internal responsibility processes (payment of employees' salary or approving holidays for their employees for example) rather than external accountability outcomes (the negative effect of a company's activities), the law runs the risk of becoming a substanceless sham, to the delight of corporate power-mongers who can bend it to their interests''¹⁹⁶. The idea is for individuals not to feel that the law is designed in such a manner that the individuals can obey it while companies that can be rational¹⁹⁷ are unable to obey it.

In the United Kingdom, for an offense of corporate manslaughter under the Corporate Manslaughter and Corporate Homicide Act 2007, it is now understood that "organizations

¹⁹⁶ C Parker 'Meta-regulation: Legal Accountability for Corporate Social Responsibility' (2007) in Doreen McBarnet, Aurora Voiculescu and Tom Campbell (eds), *The New Corporate Accountability Corporate Social Responsibility and the Law* (Cambridge University Press 2007)

¹⁹⁷ By being rational, oil companies will then do more legally than just deny liability or do voluntary corporate social responsibility as a cover up by providing boreholes but streams are polluted with oil spills (poisoning drinking water and fishes).

should be under a duty to reduce the chances of those [individual] errors taking place and to minimize the consequences when they do¹⁹⁸.

Corporate Manslaughter prosecution, therefore, yields responsibility for individual action¹⁹⁹.

In India, the courts have appreciated that environmental pollution tends to violate the right to life. The Supreme Court of India in *Charan Lal Sahu v. Union of India*²⁰⁰ explained the provision of the Indian constitution on safeguarding the right to life including the right to a wholesome environment. Also in *Subhash Kumar v. State Bahir*²⁰¹, the Supreme Court made the point of the right to a wholesome environment even clearer. In their words, they said “that the realization of the right to life encompassed the enjoyment of pollution-free water and air for full enjoyment of life. The right to life goes beyond the mere existence of the quality of life; it includes the right to live in a reasonably healthy and pollution-free environment”²⁰².

In Australia and an Australian case of *Esso Longford Property Limited* case, Shivam believes that on Friday the 25th of September 1998, a pump that normally supplies heated lean oil to the

¹⁹⁸ Christopher Seargant “Two steps forward, one step back- the cautionary tale of the Corporate Manslaughter and Corporate Homicide Act 2007” (2014) 1(1) UK Law Students’ Review 1-20

¹⁹⁹ Christopher Seargant “Two steps forward, one step back- the cautionary tale of the Corporate Manslaughter and Corporate Homicide Act 2007” (2014) 1(1) UK Law Students’ Review 1-20

²⁰⁰ Shivam Goel, *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India, 2015)

²⁰¹ Shivam Goel, *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India, 2015)

²⁰² Shivam Goel, *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India, 2015)

heat exchanger heated up causing Gas Plant No. 1 to go off. This caused the plant to explode²⁰³. The explosion killed two workers at the Longford gas plant. Judge Daryl Dawson found among other things that the company failed to provide and maintain a risk-free business environment for its workers²⁰⁴. The court found the company guilty of eleven breaches of the Occupational Health and Safety Act 1985. This case was also reviewed under the new law of Crimes Industrial Manslaughter (Amendment) Act 2003²⁰⁵. The defendant company was fined \$2 million²⁰⁶. The idea is that companies should have known and should have had in place a reasonable system to detect and prevent any variation to the design²⁰⁷. The idea is that the law will always perform its legal corporate social responsibility of punishing companies if there is evidence that they departed from ethical corporate social responsibility (Corporate culture of safety²⁰⁸ good practice thereby causing the death of an employee. This serves as deterrence for other companies.

²⁰³ Shivam Goel, *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India, 2015)

²⁰⁴ Shivam Goel, *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India, 2015)

²⁰⁵ Shivam Goel, *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India, 2015)

²⁰⁶ Shivam Goel, *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India, 2015)

²⁰⁷ Gobert J, Pascal, A. *European Developments in Corporate Criminal Liability* (Routledge, 2011)

²⁰⁸ Andrew Hopkins "Risk-Management and Rule-Compliance: Decision Making in Hazardous industries" (2011) 49 Safety Science 110-120

Malawi has a provision for corporate manslaughter offenses in its Occupational Safety Welfare Act²⁰⁹. The Act looks beyond the line manager and seeks liability of members of the board of directors as well²¹⁰. The essence of this provision could be to change the attitude of managers and boards of directors on the consequences and the failure of its corporate social responsibility.

Dixon believes that including a serious crime such as OHS laws could encourage the community to view these laws as ‘serious’ provisions and raise a perception that health and safety in the workplace and the communities²¹¹ are paramount thus ultimately improving workplace safety²¹². This could be part of the teaching curriculum in secondary schools in developing countries to enable youths to know about health and safety law and its provision.

One may argue that if the law is constructed in a manner that is against the inherent desire of the individual or designed in such a manner that the individuals are unable to obey it may not be bad luck. This could be because these multinational companies may not know the law.

²⁰⁹ Malawian Occupational Safety Welfare Act (OHSW Act) 1997 S. 85

²¹⁰ Zolomphi Nkowanani “Injury unto Death: Occupational Health and Safety Regulation: A Window on Malawi” (2008) 41 *Company and International Law Journal of South Africa* 49-79

²¹¹ Jason K Levy and Chennat Gopalakrishnan “Promoting Ecological Sustainability and Community Resilience in the US Gulf Coast after the 2010 Deep Water Horizon Oil Spill” *Journal of Natural Resources Policy Research* (2010) 2(3) 297-315

²¹² Tim Dixon *Corporate Social Responsibility and Socially Responsible Investment* (Oxford Institute for Sustainable Development, 2006) in John Okpara, Samuel Idowu, and Rene Schmidpeter, *Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders* (Springer, 2013)

When an oil company by a negligent act causes death or environmental degradation, it is like the government is also involved and that makes the government apathetic to ensuring that the damages or wrong is redressed by them (state initiated and facilitative relationship (failure to restrain deviant business activities or in the states' unwillingness to pursue aggressive regulations due to shared state-corporate goals)²¹³). This then stops companies from corporate self-regulating business (sorting out issues within itself when there is the law of the host country it may not be aware of).

This may be what the company only knows since multinational oil companies in the country do not know the implication (prosecution and conviction) of the negligent act causing death.

According to Rousseau and his philosophy of social contract, the citizens live in harmony and surrendered their right to life to the community as a whole²¹⁴. With civilization like the joint venture agreement (both the government and oil companies enjoying the oil wealth without stating that oil spillage causing death is not to be tolerated in the country for example or whose liability it is to be to clean up oil spillage) comes a social contract²¹⁵ constituted and administered by the State. According to Rousseau, the original freedom, happiness, equality, and liberty existed in primitive societies before the social contract was lost in modern

²¹³ R Kramer, R Michalowski and D Kauzlarich "The Origins and Development of the Concept and Theory of State-Corporate Crime" (2002) 48(2) Crime and Delinquency 263-282 in David Whyte "Regimes of Permission and State-Corporate Crime" (2014) 3(2) State Crime Journal 237-246 at 238

²¹⁴ Elahi Manzoor Laskar Summary of Social Contract Theory by Hobbes, Locke and Rousseau Symbiosis Law School Pune 2013 at 5

²¹⁵ Supra at 5

civilization. Through the social contract, a new form of social organization between the companies and the state was formed to assure and guarantee rights, liberties, freedom, and equality²¹⁶. This arrangement in essence means that the government knows when the company violates the law so should remind the companies at the initial stage but will then begin to punish those companies whenever it breaks the law.

Secondly, a philosopher argues that a limited government for example is not bad luck.

Locke argues that our natural right to freedom is constrained by the way the law is directed (by the government and its institutions) and that we should not harm each other in 'life, health, liberty, or possessions'²¹⁷.

Locke advocates a limited form of government (it could be to avoid the government and its institutions (turning a blind eye to the law and its provisions to do favors for companies in return for continued investments from these multinational companies) but checks and balances among branches of government (in terms of the executive/ legislature duty it could be approving bills for serious crimes for example (when the executives approve a bill made by the legislature for a corporate manslaughter offense) and the genuine representation in the legislature would, in his view, minimize government and maximize individual liberty²¹⁸.

Locke's idea of the natural right to freedom and the idea of limiting the use of government

²¹⁶ Ibid at 5

²¹⁷ Raymond Wacks *Philosophy of Law a Very Short Introduction* (Oxford University Press, 2006) at 8

²¹⁸ Raymond Wacks *Philosophy of Law a Very Short Introduction* (Oxford University Press, 2006) at 8

agencies as agents of social control is not confusing. It is meant to ensure checks and balances between the arms of government. The limitation comes in the form of the government and its institution like the executives using its office to condone the activities of the company's causing death. This can start from investigation to arrest and to prosecution which the executive does. The limitation in government will therefore be the executive not stopping these chains of the process because of corruption for example. This can only make the law already made by the legislature bad luck.

The legal enforceability of law is then based on the fact that the government's authority to punish for any wrongful harm is obtained from its social dangers that if it goes unpunished the community whose ethics it is in breach of will in this sense begin to fall apart²¹⁹. This writer believes that obedience to the law then begins when the government is serious about the enforcement of the law without forming a negative alliance with foreign companies simply because it generates money for the host government's economy.

Indeed, to save our lives and the long-term future of human life, a challenge to the company is now more necessary than ever²²⁰. Sometimes it is not the fault of companies that proper steps to ensure corporate social responsibility were not taken.

²¹⁹ Mark Tebbit *Philosophy of Law an Introduction* (2nd Edition Routledge Taylor and Francis Group, 2007) at 137

²²⁰ David Whyte "Challenging the impunity of our most prolific killers" (2015) 125 *Employment Law Bulletin* 6-7

It will be the fault of regulatory agencies and not the companies (for example when it comes to regulation and prosecution).

Companies that report on their corporate accountability activities (corporate reporting) are more likely to manage their activities appropriately.²²¹

For companies that do not, the health and safety inspectors in the UK for example will brief them on what they are doing well or not doing well. Those in charge of workplaces must know that decisions that they take or choose not to take may have serious consequences for those who work for them and generate profits²²² damaging the duty of care / safe working place and conditions as corporate social responsibility owed to everyone.

Schmidpeter believes that businesses as “responsible corporate citizens” are therefore no longer seen as the problem, but rather provide solutions for the most pressing challenges of our time.²²³ The idea behind this statement is that it will not be necessary for any corporate manslaughter charge if companies have a plan for example for staff training and regular inspection and servicing of machines. Therefore, the lesson learned from cases of corporate

²²¹ Dane Christensen “Corporate Accountability Reporting and High-Profile Misconduct” (2016) 91(2) The Accounting Review 377-399

²²² Neil Foster Individual Liability of Corporate Officers (2016)

²²³ Rene Schmidpeter Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders (1st ed. Springer 2013) in Okpara J, O, Idowu S, Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders (1st ed. Springer 2013) at 171

manslaughter and corporate homicide generally challenges companies to incorporate responsibility systematically into all management processes.

This implies incorporating substantive outcomes²²⁴ to prevent what happened from happening again or preventing deadly violence against the activities of oil companies by communities from happening.

Control that the law exerts is not the control that exists in the air. It is the control that can be exerted through the instrumentality of enforceability as a tool. Therefore, the capacity to enforce the law is a tool in the hands of the law and in the hands of the operators of the law to institute certain control measures in a system. The point here is that the capacity to enforce which is enforceability is a tool in the hands of institutions to control the activities of individuals within a particular space. Therefore, the idea of enforcement goes a long way in instilling the tendencies and prejudices that should exist in a particular space. Enforceability cannot exist on its own. It requires the instrumentality of agents that will propel the enforcement. It requires the creation of a system that works together to ensure its effectiveness. This clearly explains the position of this writer. In essence, even if employees may be under a moral obligation to ensure their safety at work²²⁵ (before the introduction of CMCHA and its high number of health and safety death cases on the rise in the United Kingdom for example

²²⁴ Onyeka Osuji “Corporate Social Responsibility, Juridification and globalisation: “Interventive interventionism” for a “paradox”” (2015) 11(3) International Journal of Law in context 1-31

²²⁵ Gray .C. Gray “A Socio-Legal Ethnography of the Right to Refuse Dangerous Work” (2002) 24 Studies in Law, Society and Politics 133-169 at 135

before 2007 which made the Crown Prosecution Service²²⁶ introduce before the parliament a proposal for a law on corporate manslaughter and corporate homicide), the very function of the law which is creating instruments that will make such obligations legal creates a new dimension in enforceability.

Apart from the social effect, any moral social obligation could have on a particular company and the ethical consequences that result, the legal aspect of it takes a different dimension because that legal aspect creates an enforceable obligation that makes that particular company shape its operational activities or processes around meeting the terms of that law. This in effect changes the behavior of companies so as not to offend the principles of the law. Therefore, enforceability is a useful tool in maintaining stability or uniformity in behaviors.

Below, this writer will then discuss the secret behind the spirit of the law or the letters of the law that makes companies obey the law.

²²⁶ Sarah Field and Lucy Jones “Is the Net of Corporate Criminal Liability Under the Corporate Homicide and Corporate Manslaughter Act 2007 Expanding?” (2015) 36(6) Business Law Review 215- 220

2.4.1 IS THE SECRET BEHIND THE SPIRIT OF LAW OR THE LETTERS OF THE LAW THAT MAKES COMPANIES OBEY THE LAW

Under the Corporate Manslaughter and Corporate Homicide Act 2007, for an offense of corporate manslaughter and corporate homicide, the prosecution must prove that the way the activities of a company are managed and organized is to have been a substantial element of the breach of the duty owed by the corporation to the deceased. Gross breach is further defined as conduct that falls below what can reasonably be expected of the organization in the circumstances²²⁷. The prosecution must first prove that a duty of care exists between the company and a dead employee or any other dead person²²⁸. For duties as an employer, the prosecution must satisfy the court that the prosecution breached the duties to provide safe places of work.

Also, companies as an occupier of premises, duties will render organizations liable if there are, for example, faulty electrical wiring, or dangerous staircases, to mention just a few²²⁹.

After the prosecution has established his case for breach of duty of care, the judge will decide (a question of law) whether a duty of care is owed under the law. The judge must make any findings of fact necessary to decide that question²³⁰. They may also have regard to any health

²²⁷ Corporate Manslaughter and Corporate Homicide Act 2007, S. 1(4) (b)

²²⁸David Ormerod and Richard Taylor "The Corporate Manslaughter and Corporate Homicide Act 2007" (2008) Criminal Law Review 589 at 568.

²²⁹David Ormerod and Richard Taylor "The Corporate Manslaughter and Corporate Homicide Act 2007" (2008) Criminal Law Review 589 at 568

²³⁰Corporate Manslaughter and Corporate Homicide Act 2007, S. 2(5)

and safety guidance that relates to the alleged breach²³¹. This is all proof of the letters of the law.

Okpara et al disagrees and states that corporate social responsibility (CSR) policy functions as a built-in, self-regulating mechanism whereby business monitors and ensures its active compliance with the spirit of the law, ethical standards, and international norm²³². This can be achieved by law through the indictment of companies, the conviction of companies, and court and government officials monitoring companies to ensure that the court judgment is respected and performed by the convicted company.

Therefore, social control mechanisms and credible risks of sanction (both referring to court judgment when companies are found guilty of corporate manslaughter) are hoped to persuade individuals (but in this research companies) that while it is desirable (to save costs on providing health and safety equipment or cleaning up oil spillage regularly for example), a criminal act is not worth the risk²³³. This writer agrees with Okpara above that the secret behind compliance and obedience to the law is embedded in the spirit of the law and not in the letters of the law.

The reason according to this writer is that spirit of the law lies closer to the enforcement of the

²³¹ Chioma Eze Emem, Amadi Prince Uche, (2009) “A New Dawn of Corporate Criminal Liability Law In The United Kingdom: Lessons For Nigeria” *African Journal of Law and Criminology*, Volume 2 Number , 86-98 91-92

²³² John Okpara, Samuel Idowu and Rene Schmidpeter *Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders* (Springer, 2013) at 73

²³³ Jonathan Jackson, Ben Bradford, Mike Hough, Andy Myhill, Paul Quinton and Tom .R. Tyler “Why Do People Comply with the Law Legitimacy and the Influence of Legal Institutions” (2012) 52(6) *British Journal of Criminology* 1051-1071 at 1053

law than the letters of the law which this writer believes is just a threat. The spirit of the law when enforced encompasses the criteria for good corporate practice (it could be obedience to health and safety laws (fiduciary duties²³⁴) for an ethical company while recognizing the duties a company owes as a company to its employees, the local community, families, and society.

Whyte believes that although both criminal justice institutions and regulatory agencies are driven by formal goals and ostensibly aim to guarantee public protection, this does not mean that they can ‘police’ in comparable ways²³⁵. Regulatory agencies, such as those dedicated to environmental protection and workplace safety, are typically minuscule in comparison with police forces, and rates of prosecution and law enforcement are concomitant with their relative size and resources²³⁶. An organization convicted of corporate manslaughter or corporate homicide may also be issued with a remedial order by the court, requiring it to take specific steps to remedy the breach; any matter the court believes to have resulted from the breach and caused the death; and any deficiencies in the organization’s health and safety policies, systems or practices of which the breach appear to be an indication²³⁷. This may also involve extending

²³⁴ Companies Act 2006 United Kingdom Section 172

²³⁵ David Whyte “Policing for whom?” (2015a) 54(1) *The Howard Journal of Criminal Justice* 73-90

²³⁶ David Whyte “Policing for whom?” (2015a) 54(1) *The Howard Journal of Criminal Justice* 73-90

²³⁷ Corporate Manslaughter and Corporate Homicide Act 2007 United Kingdom Section 9(1)

hands of charity to the society where the incidences occurred either voluntarily or by enforcement notices²³⁸.

However, a succession of cases held that the interests of a company are the interests of its shareholders and that company resources²³⁹ could not be diverted for any purpose that would not benefit them. Although the late twentieth century saw a relaxation of this legal position, and greater corporate involvement in the wider community, the social norm of shareholder primacy had become firmly embedded in the English corporate world²⁴⁰. Secondly, it may not be sufficient to align private action (court judgment) with the public good, merely to strengthen the background legal constraints with which a business operates (to boost their business) it must be a form of punishment for the company²⁴¹. Even the United States of America calls for ethics (welfare of employees (health and safety work equipment and environment (CSR)) in business. The courts in America order companies to publish particulars of their conviction in a newspaper. The new move in the USA is towards improving the ethical, economic and legal corporate social responsibility of companies. This is true because there is a new requirement that requires employers in America to make public their incident statistics on the US

²³⁸ Andrea Oates *Tolley's Corporate Manslaughter and Homicide: A guide to Compliance* (LexisNexis Tolley Library 2008)

²³⁹ Karsten Engsig Sorensen and Mette Neville "Social Enterprises: How Should Company Law Balance Flexibility and Credibility?" (2014) 15(2) *European Business Organisation Law Review* 267-308

²⁴⁰ Nick Grant "Mandating Corporate Environmental Responsibility by Creating a New Director's Duty" (2015) 17(4) *Environmental Law Review* 252-265 at 254; B. Sjøfjell and B. Richardson, *Company Law and Sustainability* (Cambridge University Press, 2015) 2

²⁴¹ John Parkinson *Corporate Power and Responsibility Issues in the Theory of Company Law* (Clarendon Press 1994)

Occupational Safety and Health Administration's Website from January 2017. Such practice in America should be introduced in the UK to promote transparency on safety. Such practice will consider the effect on fear of reputational damage, safety standards in the UK, and online publication of criminal convictions under the Corporate Manslaughter and Corporate Homicide Act 2007 CMCHA s. 19²⁴².

Criminal justice rationalizes penal punishments by reference to several desirable goals. These include the public denunciation of wrongful acts, retribution upon offenders for their wrongdoing, deterrence of future wrongdoing by offenders and others, and rehabilitation of offenders²⁴³. Significantly public condemnation (Publicity Order S. 10 CMCHA, 2007) and denunciation reaffirm the value of human life²⁴⁴. In analysis, in the UK much attention has been placed on the ethical responsibility among companies. Authors believe that behavior in business and the practice of corporate social responsibility are very important²⁴⁵. These authors further believe that there is another type of corporate social responsibility: legal responsibility which entails complying with the law²⁴⁶ (in this research when companies are charged with and convicted of corporate manslaughter). But while regulations may make companies comply with

²⁴² Anna Hart "A "nudge" to better performance" (2016) Health and Safety at Work (Westlaw UK)

²⁴³ Tasmania Institute, 2005 Law Reform; Corporate manslaughter and Corporate Homicide Act 2007 UK Section 19

²⁴⁴ Aidan Ricketts and Heidi Avolio "Corporate liability for manslaughter: the need for further reform" (2009) 13(10) Southern Cross University Law Review 56-86

²⁴⁵ Jamali Dima and Mirshak Ramez "Corporate Social Responsibility (CSR): Theory and Practice in a Developing Country Context" (2007) 72(2) Journal of Business Ethics 243-262

²⁴⁶ Jamali Dima and Mirshak Ramez "Corporate Social Responsibility (CSR): Theory and Practice in a Developing Country Context" (2007) 72(2) Journal of Business Ethics 243-262

an issue of corporate social responsibility, it is difficult for the law to ensure that companies adhere to that responsibility²⁴⁷. Today, in the UK companies must provide proof to the court as to compliance with corporate social responsibility as to their judgment²⁴⁸. This writer believes that as a developing country Nigeria needs to learn from CMCHA 2007 UK. The court in the UK sees that its decision on corporate manslaughter and corporate homicide improving corporate social responsibility (ethics, legal, economic) is implemented by the convicted company.

For example, in the Lion Steel case (ethics) the court ordered that the convicted company publishes the particulars of its conviction²⁴⁹.

The Corporate Manslaughter and Corporate Homicide Act 2007 UK was introduced because current manslaughter cases are difficult to prove against large companies. The government was therefore failing (failing to punish companies that are not complying with their ethically, legally, and economically corporate social responsibility) in their duty to provide justice, punishment, or deterrence²⁵⁰. This practice educates Americans and indeed companies doing business in America about the relationship between law and corporate social responsibility.

²⁴⁷ Pratima Bansal “The Corporate Challenges of Sustainable Development” (2002) 16(2) *Academy of Management Executive* 122–132

²⁴⁸ Paul Almond and Sarah Colover “Mediating Punitiveness: Understanding Public Attitudes towards Work-Related Fatality Cases” (2010) 7(5) *European Journal of Criminology* 323-338

²⁴⁹ Simon Daniels “Corporate Manslaughter: New Horizon or False Dawn? (2013) 14(1/2) *Mountbatten Journal of Legal Studies* 51-74

²⁵⁰ Andrew Hopwood, Francis Adams and Francis Edum-Fotwe *The Impact of Corporate Manslaughter and Corporate Homicide Act 2007 on the Construction Industry in the UK*

The areas of investigation in this research are why is there a contention between the oil companies in Nigeria and the Nigerian government over whose responsibility it is to regularly clean up oil spills catching fire. This is now the responsibility of Nigerian courts and lawmakers. This is a problem in Nigeria because the Nigerian government is in a joint venture agreement with multinational oil companies operating in Nigeria.

In developed oil-producing countries like America, court cases have proved that corporate social responsibility is directly reactive to changes in the legal framework. In US Attorney's Office, Northern Dist. of III case Binder recorded that a barge captain was sentenced on June 26, 2015, to six months in prison for negligent manslaughter of a seaman and negligently pouring crude oil into a navigable waterway. The crude oil caught fire and killed a seaman. It also caused 4,800 gallons of oil to float on the canal. The company Egan Marine Corp and the Captain were convicted of seaman manslaughter²⁵¹.

The reactive change, in this case, is that the company learned that the way it carries on business could cause death. The punishment of the company creates awareness that doing things properly by spending money (economics) rather than throwing oil into navigable waterways could save lives.

²⁵¹ US Attorney's Office, Northern Dist. of III; Dennis Binder "Criminal Law- The Increasing Application of Criminal Law in Disasters And Tragedies: A Global Phenomenon" (2016) 38(3) Western New England Law Review 313-353

In the *United States of America .V. BP Exploration & Production Inc, et al.* Transocean Deep Water owned the offshore drilling platform, BP was the majority owner of the well and managed the drilling. The drilling holes were temporarily plugged with “mud”, actually cement, by Halliburton Corporation until production commenced. The mud did not hold. The resulting pressure blew up, setting the platform on fire. BP pled guilty to felony manslaughter and paid \$ 4 billion in criminal fines and sanctions.

The reactive change, in this case, is that the company BP must appoint a process safety and risk management as well as an independent auditor to monitor safety, risk management, and drilling equipment maintenance in the Gulf of Mexico. In the words of Binder (2016), the defendant (BP) needs a separate ethics monitor to improve the code of ethics and ensure BP’s candour with the US government²⁵².

In another case of *United States of America .V. BP Exploration & Production Inc, et al.* British Petroleum (BP) pled guilty to Seaman’s Manslaughter for criminal charges of negligence causing death. The court fined BP \$ 4 billion set aside to compensate victim families (charity)²⁵³. The US government also directed BP to perform immediate cleaning up of the oil spills in the Gulf of Mexico. The court in their judgment gave British Petroleum five years’

²⁵² Dennis Binder “Criminal Law- the Increasing Application of Criminal Law in Disasters and Tragedies: A Global Phenomenon” (2016) 38(3) Western New England Law Review 313-353; *United States of America .V. BP Exploration & Production Inc, et al* Case 2:10-md-02179-CJB-ss 30th November 2015.

²⁵³ Dennis Binder “Criminal Law- the Increasing Application of Criminal Law in Disasters and Tragedies: A Global Phenomenon” (2016) 38(3) Western New England Law Review 313-353; *United States of America .V. BP Exploration & Production Inc, et al* Case 2:10-md-02179-CJB-ss 30th November 2015.

probation period of no business in the Gulf of Mexico²⁵⁴. The reactive change, in this case, is that the company learned how to extend its hands of charity to the community. Extending the hands of charity by oil companies to the community and further responding to the government on clean-ups (healthier ecosystem and community). This will reduce public anger against the company which rose quickly after the Deep-Water Horizon explosion and oil spill²⁵⁵. This writer believes that the five-year probation period will give companies enough time to think about safety and monitor failures that led to the oil rig explosion.

This writer is also suggesting in the case above that oil companies can even partner with the government, suppliers, customers, and others in their industry to innovate sustainable solutions to environmental and other problems together.

In another case of the *United States of America .V. BP Exploration & Production Inc, et al* case

Eleven out of the one hundred and twenty-six people aboard the Horizon died in the explosion and fire and at least seventeen others were seriously injured.

²⁵⁴ Miriam Cherry, and Judd Sneirson, “Beyond Profit: Rethinking Corporate Social Responsibility and Greenwashing After the BP Oil Disaster” (2011) 85 Tulane Law Review 983-1038; Vincent Foley “Post-Deepwater Horizon: The Changing Landscape of Liability for oil pollution in the United States” (2011) 74(1) Albany Law Review 517-518; Laura Hall “Calling on Experts: Industry’s Perspective on the Regulatory Response to the BP Blowout” (2012) 3 International Energy Law Review 95; Oliver Houck “The Reckoning: Oil and Gas Development in the Louisiana Coastal Zone” (2015) 28(2) Tulane Environmental Law Journal 185-296; Jacqueline Weaver “Offshore Safety in the Wake of the Macondo Disaster: Business as Usual or Sea Change?” (2014) 36(1) Houston Journal of International Law 147-216; Jason Levy and Chennat Gopalakrishnan, “Promoting Ecological Sustainability and Community Resilience in the US Gulf Coast after 2010 Deepwater Horizon Oil Spill” (2010) 2(3) Journal of Natural Resources Policy Research 297-315; United States of America .V. BP Exploration & Production Inc, et al. In addition to the fine, the court sentenced BP to a five year probation period.

²⁵⁵ Ruwantissa Abeyratne “The Deep Water Horizon Disaster- Some Liability Issues” (2010) 35 Tulane Maritime Law Journal 125-152

In addition, the government (plaintiff) argued that the oil spill was extremely serious- that it was a massive disaster that resulted in actual and potential harm to the environment and human health. On November 15, 2012, the United States of America and BPXP entered a plea agreement, which was accepted by Judge Vance, under which BPXP paid \$5.5 million for eleven counts of seaman's manslaughter. The reactive change for corporate social responsibility, in this case, is that the punishment of companies for manslaughter will call to mind the issue of safety and the accessibility of safety procedures in cases of disaster. Uhlmann believes that when the Deepwater horizon exploded, alarms and safety systems on the rig failed to operate as intended potentially affecting the time available to evacuate personnel²⁵⁶ (during the disaster).

Below, this writer will discuss the condition which makes people not obey the law.

²⁵⁶ David Uhlmann, "After the Spill is Gone: The Gulf of Mexico, Environmental Crime, and Criminal Law" (2011) 109(8) Michigan Law Review 1413-1461 ;United States of America, D. M. .V. BP Exploration & Production Inc, et al Case 2:10-md-02179-CJB-ss 30th November 2015.

2.4.1.1 IF THE LAW IS CONSTRUCTED IN A MANNER THAT IS AGAINST THE INHERENT DESIRE OF THE INDIVIDUAL OR DESIGNED IN SUCH A MANNER THAT THE INDIVIDUALS ARE UNABLE TO OBEY IT, IS IT BAD LUCK?

For many people, it is bad luck because the law through the human agent (like the court) will not be enforced. The people who have knowledge of the law, and who instituted an action in court under human rights law for example will feel marginalized. This is coming from the angle of how the courts adjudicated a case. Those who did not institute an action in court under human rights law for example will be angry against the companies' continued presence in their community doing business and continuing its impunity.

According to Locke, the purpose of the Government and law is to uphold and protect the natural rights of men. So long as the Government fulfils this purpose, the laws given by it are valid and binding but, when it ceases to fulfil them, then the laws would have no validity²⁵⁷. The latter can only lead to protests by angry youths against companies.

This is always the case in developing countries whose governments depend on these multinational companies and their revenues for their survival. The inherent desire of the people is to witness justice meted on companies.

²⁵⁷ Elahi Manzoor Laskar Summary of Social Contract Theory by Hobbes, Locke and Rousseau Symbiosis Law School Pune 2013 at 4

Otherwise, companies would like to continue evading punishment or won't even know that it is committing a crime.

Parker stated that: to the extent that the law focuses on companies' internal responsibility processes (payment of employees' salary or approving holidays for their employees for example) rather than external accountability outcomes (the negative effect of a company's activities), the law runs the risk of becoming a substance less sham, to the delight of corporate power-mongers who can bend it to their interests''²⁵⁸.

The idea is for individuals not to feel that the law is designed in such a manner that the individuals can obey it while companies that can be rational²⁵⁹ are unable to obey it.

In the United Kingdom, for an offense of corporate manslaughter under the Corporate Manslaughter and Corporate Homicide Act 2007, it is now understood that "organizations should be under a duty to reduce the chances of those [individual] errors taking place and to minimize the consequences when they do"²⁶⁰.

Corporate Manslaughter prosecution, therefore, yields responsibility for individual action²⁶¹.

²⁵⁸ C Parker 'Meta-regulation: Legal Accountability for Corporate Social Responsibility' (2007) in Doreen McBarnet, Aurora Voiculescu and Tom Campbell (eds), *The New Corporate Accountability Corporate Social Responsibility and the Law* (Cambridge University Press 2007)

²⁵⁹ By being rational, oil companies will then do more legally than just deny liability or do voluntary corporate social responsibility as a cover up by providing boreholes but streams are polluted with oil spills (poisoning drinking water and fishes).

²⁶⁰ Christopher Seargant "Two steps forward, one step back- the cautionary tale of the Corporate Manslaughter and Corporate Homicide Act 2007" (2014) 1(1) UK Law Students' Review 1-20

²⁶¹ Christopher Seargant "Two steps forward, one step back- the cautionary tale of the Corporate Manslaughter and Corporate Homicide Act 2007" (2014) 1(1) UK Law Students' Review 1-20

In India, the courts have appreciated that environmental pollution tends to violate the right to life. The Supreme Court of India in *Charan Lal Sahu v. Union of India*²⁶² explained the provision of the Indian constitution on safeguarding the right to life including the right to a wholesome environment. Also in *Subhash Kumar v. State Bahir*²⁶³, the Supreme Court made the point of the right to a wholesome environment even clearer. In their words, they said “that the realization of the right to life encompassed the enjoyment of pollution-free water and air for full enjoyment of life. The right to life goes beyond the mere existence of the quality of life; it includes the right to live in a reasonably healthy and pollution-free environment”²⁶⁴.

In Australia and an Australian case of *Esso Longford Property Limited* case, Shivam believes that on Friday the 25th of September 1998, a pump that normally supplies heated lean oil to the heat exchanger heated up causing Gas Plant No. 1 to go off.

This caused the plant to explode²⁶⁵. The explosion killed two workers at the Longford gas plant.

Judge Daryl Dawson found among other things that the company failed to provide and maintain

²⁶² Shivam Goel, *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India, 2015)

²⁶³ Shivam Goel, *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India, 2015)

²⁶⁴ Shivam Goel, *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India, 2015)

²⁶⁵ Shivam Goel, *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India, 2015)

a risk-free business environment for its workers²⁶⁶. The court found the company guilty of eleven breaches of the Occupational Health and Safety Act 1985.

This case was also reviewed under the new law of Crimes Industrial Manslaughter (Amendment) Act 2003²⁶⁷. The defendant company was fined \$2 million²⁶⁸. The idea is that companies should have known and should have had in place a reasonable system to detect and prevent any variation to the design²⁶⁹.

The idea is that the law will always perform its legal corporate social responsibility of punishing companies if there is evidence that they departed from ethical corporate social responsibility (Corporate culture of safety²⁷⁰ good practice thereby causing the death of an employee. This serves as deterrence for other companies.

Malawi has a provision for corporate manslaughter offenses in its Occupational Safety Welfare Act²⁷¹. The Act looks beyond the line manager and seeks liability of members of the board of directors as well²⁷². The essence of this provision could be to change the attitude of managers

²⁶⁶ Shivam Goel, *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India, 2015)

²⁶⁷ Shivam Goel, *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India, 2015)

²⁶⁸ Shivam Goel, *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India, 2015)

²⁶⁹ Gobert J, Pascal, A. *European Developments in Corporate Criminal Liability* (Routledge, 2011)

²⁷⁰ Andrew Hopkins “Risk-Management and Rule-Compliance: Decision Making in Hazardous industries” (2011) 49 *Safety Science* 110-120

²⁷¹ Malawian Occupational Safety Welfare Act (OHSW Act) 1997 S. 85

²⁷² Zolomphi Nkowanji “Injury unto Death: Occupational Health and Safety Regulation: A Window on Malawi” (2008) 41 *Company and International Law Journal of South Africa* 49-79

and boards of directors on the consequences and the failure of its corporate social responsibility.

Dixon believes that including a serious crime such as OHS laws could encourage the community to view these laws as ‘serious’ provisions and raise a perception that health and safety in the workplace and the communities²⁷³ are paramount thus ultimately improving workplace safety²⁷⁴. This could be part of the teaching curriculum in secondary schools in developing countries to enable youths to know about health and safety law and its provision.

One may argue that if the law is constructed in a manner that is against the inherent desire of the individual or designed in such a manner that the individuals are unable to obey it may not be bad luck. This could be because these multinational companies may not know the law.

When an oil company by a negligent act causes death or environmental degradation, it is like the government is also involved and that makes the government apathetic to ensuring that the damages or wrong are redressed by them. This then stops companies from corporate self-regulating business (sorting out issues within it when there is the law of the host country it may not be aware of).

²⁷³ Jason K Levy and Chennat Gopalakrishnan ‘‘Promoting Ecological Sustainability and Community Resilience in the US Gulf Coast after the 2010 Deep Water Horizon Oil Spill’’ *Journal of Natural Resources Policy Research* (2010) 2(3) 297-315

²⁷⁴ Tim Dixon *Corporate Social Responsibility and Socially Responsible investment* (Oxford Institute for Sustainable Development, 2006) in John Okpara, Samuel Idowu, and Rene Schmidpeter, *Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders* (Springer, 2013)

This may be what the company only knows since multinational oil companies in the country do not know the implication (prosecution and conviction) of the negligent act causing death.

According to Rousseau and his philosophy of social contract, the citizens live in harmony and surrendered their right to life to the community as a whole²⁷⁵. With civilization like the joint venture agreement (both the government and oil companies enjoying the oil wealth without stating that oil spillage causing death is not to be tolerated in the country for example or whose liability it is to be to clean up oil spillage) comes a social contract²⁷⁶ constituted and administered by the State. According to Rousseau, the original freedom, happiness, equality, and liberty existed in primitive societies before the social contract was lost in modern civilization. Through the social contract, a new form of social organization between the companies and the state was formed to assure and guarantee rights, liberties, freedom, and equality²⁷⁷. This arrangement in essence means that the government knows when the company violates the law as so should remind the companies at the initial stage but will then begin to punish those companies whenever it breaks the law.

Secondly, a philosopher argues that a limited government for example is not bad luck.

²⁷⁵ Elahi Manzoor Laskar Summary of Social Contract Theory by Hobbes, Locke and Rousseau Symbiosis Law School Pune 2013 at 5

²⁷⁶ Elahi Manzoor Laskar Summary of Social Contract Theory by Hobbes, Locke and Rousseau Symbiosis Law School Pune 2013 at 5

²⁷⁷ Supra at 5

Locke argues that our natural right to freedom is constrained by the way the law is directed (by the government and its institutions) and that we should not harm each other in 'life, health, liberty, or possessions'²⁷⁸. Locke advocates a limited form of government (it could be to avoid the government and its institutions (turning a blind eye to the law and its provisions to do favours for companies in return for continued investments from these multinational companies) but checks and balances among branches of government (in terms of the executive/ legislature duty it could be approving bills for serious crimes for example (when the executives approve a bill made by the legislature for a corporate manslaughter offense) and the genuine representation in the legislature would, in his view, minimize government and maximize individual liberty²⁷⁹. Locke's idea of natural right to freedom and the idea of limiting the use of government agencies as agents of social control not is confusing. It is meant to ensure checks and balances between the arms of government. The limitation comes in the form of the government and its institution like the executives using its office to condone the activities of the companies causing death. This can only make the law already made by the legislature a bad luck.

A country that loses its environment and citizens is unacceptable when the objective is to ensure that everyone is safe and companies according to Ndekugri comply with documents (law

²⁷⁸ Raymond Wacks *Philosophy of Law a Very Short Introduction* (Oxford University Press, 2006) at 8

²⁷⁹ Raymond Wacks *Philosophy of Law a Very Short Introduction* (Oxford University Press, 2006) at 8

emphasis mine) standards in performance of an activity²⁸⁰ (CSR emphasis mine). The importance of corporate manslaughter law cannot be over emphasized. It makes companies practice the law in their businesses.

Those who support punishment for industrial/ corporate manslaughter offences believe that dangerous acts need to be criminalised with the offender facing the full force of the law, such as prison, in very serious cases.

Some feel that such laws are necessary because they hold those persons ultimately responsible for a no safe systems of work liable²⁸¹. Such laws also enable companies to ethically have a risk management framework to manage risk²⁸².

While oil companies are implementing some measures to address these impacts, efforts remain insufficient. Corporate social responsibility like controlling oil spillage and gas flaring remain piecemeal and short-term.

If deterrence is a key concern it has been argued that punishment of the company sound as justice gotten. Besides, the prosecution of the company will motivate the company to (CSR) internally monitor its processes and then bring about changes to internal culture and procedures

²⁸⁰ Issaka Ndekugri ‘The Consulting Engineer and Corporate manslaughter Risk’ (2013) 166 (MP3) Management, Procurement and Law 128-136 at 134

²⁸¹ Tim Dixon Corporate Social Responsibility and Socially Responsible Investment. Oxford Institute for Sustainable Development (OISD) 2006 in John Okpara, Samuel Idowu and Rene Schmidpeter Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders (Springer 2013)

²⁸² Andrew Hopkins ‘‘Risk-Management and Rule-Compliance: Decision-Making in Hazardous Industries’’ (2011) 49 Safety Science 110-120

likely to influence conduct in the longer term²⁸³. This situation then led this researcher to identify and justify the model for the literature review.

Below, this writer will identify and justify the model for the literature review.

2.5 IDENTIFY AND JUSTIFY YOUR MODEL FOR LITERATURE REVIEW

Under this heading, this writer is explaining the ingredients that constitute the sum total of the investigation in this research. This entails those areas that this writer intends to explore in order to make readers understand the broader picture this writer is researching. The concepts are the main tools or ingredients that are subject to investigation. Normally, when a researcher explores concepts like corporate manslaughter or CSR or legal enforceability, it will open up the understanding of the entire subject that a researcher is dealing with. The goal of this research is to explore or understand the reason companies kill people because of their actions through oil exploration and it is not held to account under the law. In order to understand this goal, this researcher needs to identify concepts that will help in understanding this research. This writer

²⁸³ Joana Kyriakakis “Australian Prosecution of Corporations for International Crimes” (2007) 5 Journal of International Criminal Justice 809-826

has chosen three concepts namely corporate manslaughter and corporate homicide, corporate social responsibility and legal enforceability. The concept of legal enforceability is the concept this researcher has decided to use to understand why these companies are not being held accountable which means that the fact that legal enforceability is least understood, not applied to legal provision or the capacity of enforcement to be meted out is absent could be the reason. There are some countries where certain aspects of corporate social responsibility are enforced (have legal backing) while in other countries it is not. Because of this lack of enforcement, certain companies go free while others are punished heavily in some other countries.

This writer argues that having legal enforceability does not mean that a country's legal system has a sense of law. It could mean the capacity to enforce the law. Therefore the law could be present but the capacity to enforce it could be absent. Sometimes, it might not even be the capacity to enforce the law but the inability to understand how to enforce it because of the lack of understanding of the concept of enforceability.

Enforceability refers to the foundation of authority, in the form of public validation, which underpins the actions of state institutions; a regulator must demonstrate to its publics that it is both procedurally fair and valid.

Thirdly, responding to issues of public concern through policing and sentencing practices and the structure of offences, can help reduce public 'fear of crime', which has become an

increasingly important measure of the criminal justice system's value²⁸⁴. There could be problem with economic form of a company and how companies are likely to adhere to health and safety rules especially because money corrupts. This could make legal enforceability of law difficult and the level of compliance to law varies from one country to another. Legal enforceability, corporate social responsibility practices as an effect of punishment for corporate manslaughter and corporate homicide offence is likely to produce a financial argument for less rather than more controls on business activity as readers will read below since the costs of meeting new regulatory requirements on the part of businesses are generally more calculable than are the economic or social benefits of such regulation²⁸⁵; in other words, they cement the business case at the heart of government.

It can be argued also that what can motivate companies to adhere to health and safety could be because of external pressures, whether from consumers, the public, or the idea of companies risking their reputation as a company that formally observes ethics in business upon conviction.

It could be as a result of economic self-interest as a driver of participation in new governance initiatives. (Could it be what MNCs are willing to do (in accordance to what health and safety laws stipulate) and can afford?) Ford and Condon called it 'optimal corporate governance'²⁸⁶.

²⁸⁴ Paul Almond "Corporate Manslaughter: Changing the Relationship between Criminal Law and the Corporation?" (2016) Prison Service Journal Paper

²⁸⁵ Tony Cutler and Philip James "Does Safety Pay? A critical account of the Health and Safety Executive Document: 'The Costs of Accidents'" (1996) 10(4) Work, Employment and Society 755-765 in Tombs, Steve, and David Whyte. *Regulatory surrender: death, injury and the non-enforcement of law* (Institute of Employment Rights, 2010) P. 12

²⁸⁶ Cristie Ford and Mary Condon "Introduction to New Governance and the Business Organization" (2011) 33(4) Law and Policy 449- 458 at 454

This point bears further examination. One of the key insights on deterrence is indeed that shareholders' self-interest is in line with respect to debates about optimal corporate governance (external pressures calling for a change) because of desire by shareholders to make more and more profit and spend less. This can change especially when through external pressures, shareholders understand that in as much that they want returns on their investments, they and senior managers working for them need to understand that oil spillage needs to be cleaned up to avoid catching fire or poisoning fish which humans eat or poisoning water which humans drink (decoupling (via derivatives) of an economic interest from the legal rights traditionally embedded in the shareholding relationship²⁸⁷).

In other words, the economic interests of shareholders are not static but are themselves reconstituted in the process of negotiating corporate governance norms²⁸⁸. Every business man and woman like making money but they can be thought on ethics in business, the legal consequences of failure in health and safety (which is payment of huge fines, loss of reputation) and the desire to extend hands to charity to the oil producing communities where they are situated and carry on business.

As such, regulators such as Health and Safety Executive (HSE) who initiate corporate manslaughter proceedings in court need to show that they are reflecting public concern by

²⁸⁷ Cristie Ford and Mary Condon "Introduction to New Governance and the Business Organization" (2011) 33(4) *Law and Policy* 449- 458 at 454

²⁸⁸ Condon, Mary *Making Disclosure: Ideas and Interests in Ontario Securities Regulation 1945–1978* (University of Toronto Press, 1998) in Cristie Ford and Mary Condon "Introduction to New Governance and the Business Organization" (2011) 33(4) *Law and Policy* 449- 458 at 454

controlling major risks by for example, censuring offenders via prosecution action in court²⁸⁹.

The Health and Safety Executive (HSE) investigates work-related deaths, along with the police, but takes primary responsibility for the enforcement of health and safety. The cases they investigate are under sections 2 and 3 of the Health and Safety at Work Act 1974 (HSWA). This includes failure to ensure, so far as is reasonably practicable, the health, safety, and welfare of employees or member of the public²⁹⁰. Such an active response by the Health and Safety at Work Act 1974 has been subjected to debate, especially in the 1990s.

The belief is that the Health and Safety at Work Act 1974 has tended to regard enforcement as a secondary component of its operation²⁹¹. For example, despite persistent pressure from friends and relatives of the victims (in Piper Alpha oil rig explosion, P& O Ferry capsized) and also a highly critical report the HSE had declined to investigate further, in response however, there is evidence that the picture may be slowly changing. The debate on corporate manslaughter seems to have stimulated the number of prosecutions in recent years. In 1999/2000, there was an increase of 9% in the number of prosecutions, 28% of which were initiated by the HSE²⁹². And in 2002, the Health and Safety Commission published new

²⁸⁹ Paul Almond “Corporate Manslaughter: Changing the Relationship between Criminal Law and the Corporation?” (2016) Prison Service Journal Paper

²⁹⁰ Paul Almond *Corporate Manslaughter and Regulatory Reform* (Palmgrave Macmillan, 2013)

²⁹¹ Paul Almond “An Inspector’s Eye-View The Prospective Enforcement of Work-Related fatality Cases” (2006) 46 *British Journal of Criminology* 893-916; Keith Hawkins *Law as Last Resort: Prosecution Decision-Making in a Regulatory Agency* (Oxford University Press on Demand 2002) in Paul Almond *Corporate Manslaughter and Regulatory Reform* (Palmgrave Macmillan 2013)

²⁹² Health and Safety Executive (2001), 2001/2002, Annual Report, HMSO

Enforcement Policy Statement containing clearer guidelines as to when investigations and prosecutions would be warranted.

Among the factors that would ‘normally’ lead to prosecution are the occurrence of death, the gravity of the offence, a reckless disregard of health and safety requirements, the absence of a license or serious disregard of its requirements, a failure that falls ‘far below what is required’, repeated breaches despite formal cautions, and the intentional obstruction or deception of a regulator’s investigation²⁹³.

Below, the literature review will tell readers about the conceptual framework (in other countries) that exist and existed in areas of corporate manslaughter, corporate social responsibility before this Research. This section of the literature review will educate readers the problem with legal enforceability. It will develop a conceptual framework then justify it. For example, for countries like the United Kingdom who has enforced Corporate Manslaughter and Corporate Homicide Law, how were they able to enforce this law.

Below, this researcher will discuss implement the model in the review of pre-existing literature in the area.

²⁹³ Health and Safety Executive (2002), 2002/2003, Annual Report, HMSO para 39

2.6 IMPLEMENT THE MODEL IN THE REVIEW OF PRE-EXISTING LITERATURE IN THE AREA

Under this heading, this writer will explain the position of law in various countries with regards to liability for the enforcement of law. It will treat the position of law in the beginning to now for some countries, the problem encountered with the practice of a particular choice of liability the attitude of the court with regards to liability and then the justification for the choice of liability.

It is important to note in this beginning that the enforceability of law lies on the judgement or conviction of the court on cases of corporate manslaughter. According to Almond, by holding corporate offenders guilty of a manslaughter offence, the argument goes, the legal system is able to reflect adequately the normative importance that the public attaches to these cases, and address the concerns and fears that work related fatality cases can provoke²⁹⁴. The proposed change that is required and indeed what other oil producing countries in Africa and The Middle East whom do not have a Corporate Manslaughter Law (CML) can learn from countries that have corporate manslaughter law will evolve over time through various experiences²⁹⁵ both of the community members whom are complaining about oil spillage and gas flaring and its deadly consequences and the company whom suffer economic loss through court fines and

²⁹⁴ Paul Almond “Understanding the Seriousness of Corporate Crime: Some Lessons for the New ‘Corporate Manslaughter’ Offence” (2009) 9(2) 145-164 at 146

²⁹⁵ Michael P. Vandenberg Beyond Elegance: A Testable Typology of Social Norms in Corporate Environmental Compliance (2003) 22 Stanford Environmental Law Journal 55-114 at 71

reputational damage through court proceedings for corporate manslaughter and corporate homicide.

Under the CMCHA 2007 UK for example, it is the company itself who is prosecuted and fined.

The activities of the company are managed by the senior managers, the company will be sued in its names and the company pays the fine (senior managers sent to jail (emphasis mine)).

Ormerod and Taylor suggest that some juries are likely to conclude from the fact of a breach of health and safety regulations causing death as conclusive evidence of a gross breach of duty²⁹⁶. Secondly, corporate social responsibility according to Okpara et al has developed from a purely from legal compliance measure to explicit responsibility management in the core business of companies²⁹⁷. This writer believes that it then behoves on the court to decide if the way the activities of the company by senior managers as an organisation constitutes corporate manslaughter. In determining when an act should be attributed to a corporation for purposes of corporate manslaughter, the courts focus on the procedures, policies, and culture of the corporation.

²⁹⁶ David Ormerod and Taylor R The Corporate Manslaughter and Corporate Homicide Act 2007. (2008) Criminal Law Review 589–611

²⁹⁷ John Okpara, Samuel Idowu and Rene Schmidpeter *Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders* (Springer, 2013)

The court analogizes the internal mental processes of an individual with the internal organizational policies of a company²⁹⁸. The prosecution must prove in court that the procedures and practices of the corporation created the wrongful conduct i.e., that there is a casual connection between corporate policies and the wrongful activity²⁹⁹. The second would require that the prosecution show how the company procedures or policies did not and could not prevent such activity³⁰⁰.

In Malawi, the mining industry is strongly influenced by externally generated pressures such as civil society organisation activism and community expectations; although other drivers such as public and private regulations and pressure from financial markets also played a role in pressurising Paladin to adopt a CSR agenda³⁰¹. Malawi is a small country with little population which over the years has not been abused by oil wealth and the power oil rich government and oil rich companies can wield when the government over the years tolerated or did not control.

In Nigeria where corruption is rife and its government still borrow money from G20 countries like China just to pay civil servants their salary, pressure from financial market (financial market could mean the international organization like the United Nations or UNHDR

²⁹⁸ Ronald Slye “Corporations, Veil, and International Criminal Liability” (2007) 33(3) Brook Journal of International Law 955-973

²⁹⁹ Corporate manslaughter and Corporate Homicide Act 2007 UK Section 1(3)

³⁰⁰ Ronald Slye “Corporations, Veil, and International Criminal Liability” (2007) 33(3) Brook Journal of International Law 955-973

³⁰¹ Andrew Ngawenja Mzembe and Julia Meaton “Driving Corporate Social Responsibility in the Malawian Mining Industry: A Stakeholder Perspective” (2014) 21(4) Corporate Social Responsibility and Environmental Management 189-201

regulating the amount of oil exploration and income MNCs make until they reconsider the adverse health effect³⁰² of occupational hazards (oil spillage, gas flaring or gas explosion) will play very little to make oil companies to be corporate social responsible (clean up oil spillage, reduce gas flaring). This writer is suggesting that the whole of Nigeria needs to be educated on health and safety, corporate social responsibility, and the effect of law³⁰³ (corporate punishment) on CSR.

In recent years, violent activism have impacted the management of oil because of the continuous environmental damages in the region. Some Angolans are suggesting that the solution to the problem of over-dependence on rent and revenue from oil companies and oil proceeds which gives MNCs privilege to ignore cleaning up oil spillage could lie in diversification of economy.

Below, this writer will discuss the problem encountered by the American courts through the use of individual liability.

Below, this writer will discuss the transition from individual liability to corporate liability in the United Kingdom.

³⁰² O.E. Smaranda and Jacob Udosen “Corporate Manslaughter Law in Nigeria: A Comparative Study” (2020) 11 Beijing Law Review 358-381

³⁰³ S. N. Nzegwu and I. Uhumavbi “Assessing the Suitability of “Lifting the Corporate Veil” Legal Mechanism in the Enforcement of Law on Corporate Manslaughter and Corporate Social Responsibility in Nigeria” (2022) 4(1) IJMCR 129-140

2.6.1 THE UNITED KINGDOM

The Corporate Manslaughter and Corporate Homicide Act 2007 came into force on the 6th of April 2008. Almond believes that the reasons for the introduction of the new offense include the severe practical difficulties in applying the existing law of manslaughter to corporate bodies, evidenced by the fact that there have only ever been six successful prosecutions of corporate bodies for manslaughter³⁰⁴. The new offense proposes formative changes designed to circumvent this issue by introducing a test for liability based on a ‘management failure’ to adequately control risks to health and safety, intended to make the prosecution of corporate defendants more workable. Almond also believes the new offense also represents an attempt to change existing patterns of enforcement activity to increase the number of successful prosecutions³⁰⁵. The intended effects of this change are threefold: to deter other companies from committing the offense of corporate manslaughter, to communicate a symbolic message about the importance of health and safety standards, and to secure the confidence of the general public in the legal measures that control corporate conduct³⁰⁶. The move from charge to conviction for corporate manslaughter now is caused by a delay from the Crown Prosecution Service to

³⁰⁴ Paul Almond “An Inspector’s Eye-View The Prospective Enforcement of Work-Related fatality Cases” (2006) 46 British Journal of Criminology 893-916 at 894

³⁰⁵ Paul Almond “An Inspector’s Eye-View The Prospective Enforcement of Work-Related fatality Cases” (2006) 46 British Journal of Criminology 893-916

³⁰⁶ Paul Almond “An Inspector’s Eye-View The Prospective Enforcement of Work-Related fatality Cases” (2006) 46 British Journal of Criminology 893-916 at 894

conclude its investigation on whether a company will be indicted under the CMCHA 2007³⁰⁷.

This may be the reason the local council who owns the Grenfell Tower building (Fire incident in 2017 which claims 72 human lives) is yet to be charged in court for corporate manslaughter and corporate homicide³⁰⁸. This is one area this researcher recommends that the UK government looks into.

The evidence that corporate social responsibility is directly reactive to the legal framework or legal enforceability of CMCHA 2007 or Health and Safety Act 1974 UK is on the duty of care³⁰⁹.

Those in charge of workplaces must know that decisions that they take, or choose not to take may have serious consequences for those who work for them and generate profits³¹⁰ (duty of care / safe working place and conditions as corporate social responsibility). In the English case of *Regina .v. Lion Steel Equipment Ltd*³¹¹, it was alleged that on 29th May 2008 that the defendant (the company) by the way it carries out its activities caused the death of an employee Steven Berry who fell from a roof undergoing repairs. The prosecution invoked the provision of Section 1 of the CMCHA 2007 (breach of duty of care). They alleged that how the activities

³⁰⁷ Sarah Field and Lucy Jones “Is the Net of Corporate Criminal Liability under the Corporate Homicide and Corporate Manslaughter Act 2007 Expanding?” (2015) 36(6) Business Law Review 216-220 at 219

³⁰⁸ Victoria Roper “Grenfell Charge Delays Understandable, but Where have all the Corporate Manslaughter Prosecutions Gone?” (2019) 40(8) The Company Lawyer 265-267

³⁰⁹ This writer believes that such duty of care is owed by the companies on their employees , villagers and other stakeholders like the consumers

³¹⁰ Neil Foster Individual Liability of Corporate Officers (2016) (Westlaw UK)

³¹¹ *Regina .v. Lion Steel Equipment Ltd* Manchester Crown Court T20117411 20th July, 2012

of the company (defendant) were managed or organized by its senior management caused the death of Steven Berry. The lesson learned in this case that is: improved corporate social responsibility is, that subsequently, workers must be properly trained by their companies plus better welfare be put in place for their workers. Schmidpeter believes that businesses as “responsible corporate citizens” are therefore no longer seen as the problem, but rather provide solutions for the most pressing challenges of our time³¹². Lesson learned from cases of corporate manslaughter and corporate homicide generally challenges companies to incorporate responsibility systematically into all management processes which implies incorporating substantive outcomes to prevent what happened from happening again³¹³ (ethics and economic responsibility of CMCHA, 2007). According to Schmidpeter, corporate social CSR allows for a stronger involvement of employees and better incorporation of scientific findings in assuming responsibility³¹⁴.

³¹² John Okpara, Samuel Idowu and Rene Schmidpeter *Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders* (Springer, 2013) at 171

³¹³ Onyeka Osuji “Corporate Social Responsibility, Juridification and Globalisation: “Interventive Interventionism” for a “Paradox”” (2015) 11(3) *International Journal of Law in context* 1-31

³¹⁴ John Okpara, Samuel Idowu and Rene Schmidpeter *Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders* (Springer, 2013)

2.6.2.1 JUSTIFICATION ON ENFORCEABILITY FOR CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE IN THE UK

The criminal law³¹⁵ has as its function the protection of citizens and gives effect to the state's duty to try those who have deprived citizens of their rights of life, liberty, or property; and that this death was attributable to a 'gross breach of a relevant duty ('gross breach' being defined as conduct falling 'far below what could reasonably have been expected of the organization in the circumstances')³¹⁶ Companies have a duty of care to ensure no one is harmed by the activities that they carry out. Meeting this requirement should involve a comprehensive approach to risk management that is led from the top of a company's business. If companies do not put health and safety at the core of their decision-making, they will violate the law. Health and safety are of paramount importance³¹⁷. Section 8 (2) CMCHA 2007 requires the jury, in making this decision, to consider evidence showing that 'the organization failed to comply with any health and safety legislation that relates to the alleged breach in terms of 'how serious that failure was' and 'how much of a risk of death it posed'³¹⁸.

Below this writer will discuss the position of law in Australia with regards to proving liability and enforceability.

³¹⁵ James Gobert "The Fortuity of Consequence" (1993) 4 Criminal Law Forum 1

³¹⁶ Corporate manslaughter and Corporate Homicide Act 2007 UK Section 1(4)

³¹⁷ Ndekugri Issaka 'The Consulting Engineer and Corporate Manslaughter Risk' (2013) 166 (MP3) Management, Procurement and Law 128-136 at 134

³¹⁸ Corporate manslaughter and Corporate Homicide Act 2007 UK Section 8(2)

2.6.3 AUSTRALIA (ENFORCEABILITY)

Before 2003, the main focus of Australian lawmakers has been on occupational health, safety, and welfare legislation that is designed to prevent workplace injury, not to punish individual offenders per se if there has been an injury or death³¹⁹. Australia is practicing individual liability of directors for health and safety offenses. The thinking is that severe penalties imposed upon individuals in tragic circumstances do have deterrent value, but they are only one, indeed a supplementary, method of keeping workplaces risk-free³²⁰. Punishment, or the threat of punishment, is not seen as the primary tool. For this reason, occupational health and safety legislation in each Australian jurisdiction is primarily regulatory in its framework, for example, invoking strict liability for any person who fails to put in place the required safe work practices³²¹. Employers in each jurisdiction have a duty under the relevant legislation to ensure that conditions in their workplace do not endanger the health or safety of their workers as well as other people who may be at risk. Breaches of these statutory duties are generally punished summarily³²².

³¹⁹ Rick, Sarre and Jenny Richards. “Responding to Culpable Corporate Behaviour-Current Developments in the Industrial Manslaughter Debate” (2005) (8) Flinders Journal of Law Reform 93- 111

³²⁰ *Supra* at 95

³²¹ Richard Fox “New Crimes or New Responses? Future Directions in Australian Criminal Law” (2002) 28(1) Monash University Law Review 114-118 at 103

³²² This means that the court is at liberty to award the maximum sentence or less but the fine needs to be substantial in order to deter the accused company. This is obtainable by the courts under the Occupational Health and Safety Act (1985) Section 21. Also the prosecution has a choice to either prosecute the company itself or its senior managers.

Several jurisdictions have recently reviewed and strengthened their OH&S legislative penalty regimes and broadened the likelihood of individual culpability for corporate turpitude³²³.

For example, in Queensland in 2003, legislators increased the terms of imprisonment for employers whose acts cause workplace death or serious injury³²⁴.

The Australian Capital Territory Australia is strengthening its Occupational Health and Safety however passed The Crimes Industrial Manslaughter (Amendment) Act 2003.

In the Australian Capital Territory (ACT), in 2004, became the first jurisdiction in Australia to introduce the offense of industrial manslaughter it did so, via the Crimes (Industrial Manslaughter) Act 2003 (ACT)³²⁵. “Industrial manslaughter” is defined as causing the death of a worker while either being reckless regarding causing serious harm to that worker or any other worker or being negligent about causing the death of that or any other worker³²⁶. What is most striking about the provision of the Act is the liability of a worker for his/ her fellow worker.

Below, this writer will discuss the effect of the law on the enforceability of liability in the Australian Capital Territory.

³²³ Sarre, Rick, and Jenny Richards. “Responding to Culpable Corporate Behaviour-Current Developments in the Industrial Manslaughter Debate” (2005) (8) Flinders Journal of Law Reform 93- 111 at 95

³²⁴ Workplace Health Safety and Other Acts Amendment Act 2003 (Queensland).

³²⁵ Sarre, Rick White-Collar Crime and Prosecution for Industrial Manslaughter as a Means To Reduce Workplace Deaths in *International Handbook of White Collar and Corporate Crime* (Springer, 2007) 648-662 at 652

³²⁶ Crimes Act 1900 (ACT) sections 49C, 49D.

2.6.3.1 JUSTIFICATION / PROBLEM IT SOLVED IN THE AUSTRALIAN CAPITAL TERRITORY

Liability in this research is an ingredient of enforceability of law.

This writer believes that this liability could be caused by a lack of supervision³²⁷ or training of a junior staff before the execution of a task. The Act provided that in such a situation, the company will be made to pay a huge fine (up to the US \$750,000 million for large corporations, US \$140,000 for individual senior officers) and or a term of imprisonment for the employee (20 years imprisonment, or both)³²⁸. It is often thought that corporations may be particularly susceptible to deterrence because they tend to make decisions on a cost/benefit analysis. However, when sentencing by fine for a serious crime court must be wary of the ‘deterrence trap’. The deterrence trap is ‘the situation where the only way to make it rational to comply with the law is to set penalties so high as to jeopardize the economic viability of corporations³²⁹. If a corporation is heavily fined and goes bankrupt, the fine may not be recovered, and perhaps few of the purposes of punishment will be met, particularly if the corporation is resurrected as a ‘phoenix company³³⁰.

³²⁷ Simon Parsons “‘The Corporate Manslaughter and Corporate Homicide Act 2007 Ten Years On: Fit for Purpose?’” (2018) 82(4) *The Journal of Criminal Law* 305-310

³²⁸ Sarre, Rick White-Collar Crime and Prosecution for Industrial Manslaughter as a Means To Reduce Workplace Deaths in *International Handbook of White Collar and Corporate Crime* (Springer, 2007) 648-662 at 652

³²⁹ B Fisse & J Braithwaite, *Corporations, Crime and Accountability* (1993), 136.

³³⁰ Jenny Rudolf and Benedict Bartl, "Sentencing Organisations for Causing Death or Serious Injury" (2005) 9(86) *Australian Law Reform Commission Reform Journal* 36-38 & 71

Rudolf and Bartl believe that if a company in the Australian Capital Territory and most especially in Australia causes the wrongful death or serious injury of a person it is important that it, like a person, be punished and publicly condemned for doing so.

This public condemnation reaffirms the value we place on human life and the respect we demand it. The important role that organizations play in our society makes it all the more important that they should not be above the reach of the law.

Punishing an organization's harmful behavior, just as we would any natural person who causes the death or serious injury of another, can therefore be particularly significant³³¹.

Section 49C of the Crimes Industrial Manslaughter (Amendment) Act 2003 provides that "an employer commits an offense if –

a worker of the employer –

dies in the course of employment by, or providing services to, or about, the employer; or

(ii) the employer is negligent about causing the death of the worker, or any other worker of the employer, by the conduct"³³². Sarre pointed out that the negligence of the company is a result of a poor corporate culture³³³. From a sentencing policy point of view, a key question emerges.

³³¹ Jenny Rudolf and Benedict Bartl, "Sentencing Organisations for Causing Death or Serious Injury" (2005) 9(86) Australian Law Reform Commission Reform Journal 36-38 & 71

³³² The Crimes Industrial Manslaughter (Amendment) Act 2003 Section 49(C)

³³³ Rick Sarre Sentencing those Convicted of Industrial Manslaughter National Judicial College of Australia/ the Australian National University Sentencing Conference 2010 Canberra 6 and 7 February 2010

Is there any evidence to suggest that prosecuting companies for crimes of industrial manslaughter will make managers more likely to inculcate a culture of safety in their workplaces? (Ethics of care (corporate social responsibility)).

One could safely assume that the inclusion of the “corporate culture “ such as those found in the Australian Capital Territory legislation, will make prosecutions more likely as it is probably easier to prove a poor culture than a manager’s (or string of managers’) direct culpability³³⁴.

Sarre believes that every company requires the cultivation of an organizational ‘culture of mindfulness, a vigilant and constant awareness of the possibility of wrongdoing, a personal ethic of care, and an assumption of individual responsibility for the consequence of one’s actions.

This means companies committing to guarantee that companies not only adhere to the laws but perform to a higher standard than what is needed by the law³³⁵. This awareness of corporate manslaughter creates the ability for corporations to be able to behave ethically and respect applicable legislation. Secondly, certainly, the possibility of imprisonment of managers sends a strong message to the community that culpable conduct will not be tolerated, even if it means targeting individuals who are the guilty parties³³⁶. Blunden argues that constant payment of

³³⁴ Rick Sarre Sentencing those Convicted of Industrial Manslaughter (National Judicial College of Australia/ the Australian National University Sentencing Conference 2010 Canberra 6 and 7 February 2010)

³³⁵ Rick Sarre “Responding To Corporate Collapses: Is There A Role For Corporate Social Responsibility?” (2002) 9 Deakin Law Review 1

³³⁶ Rick Sarre Sentencing those Convicted of Industrial Manslaughter National Judicial College of Australia/ the Australian National University Sentencing Conference 2010 Canberra 6 and 7 February 2010

finances could prove a public disgrace that the company always fails in the corporate culture of health and safety and if death cases go unpunished, companies in Australia will not improve on their corporate social responsibility³³⁷. Conversely, Sarre and Richards believe that the prosecution of companies for crimes of industrial manslaughter will make companies endorse health and safety in their business³³⁸.

According to Ken Philips “the bedrock of safe cultures, systems and behaviours must be that individuals are held liable and responsible for situations and actions over which they have responsible and practical control. Legislation that distorts this foundation contorts work behaviours and invites unsafe workplaces”³³⁹.

Ken Philips went further to state that “work safety is too important an issue for games to be played with it. Laws cannot make people behave safely. But laws can set the frameworks within which work cultures, systems, and behaviours are formed³⁴⁰. A senior officer will be guilty of industrial manslaughter of an employee only³⁴¹ and punished by a fine of \$275,000 or imprisonment for 25 years or both in the Australian Capital Territory if the officer failed to do

³³⁷ Andy Blunden Corporate Manslaughter Laws in Australia May 2012

³³⁸ Rick Sarre and Jenny Richards “Responding to Culpable Behaviour- Current Developments in the ‘Industrial Manslaughter’ For Failure in Occupational Health and Safety” (2005) 8 Flinders Journal of Law Reform 93-111 at 94

³³⁹ Ken Philips Workplace Health and Safety Presentation (Australian Financial Review Conference Industrial Relations Reform 2005, Sydney 31 March 2005) at 9

³⁴⁰ Ken Philips Workplace Health and Safety Presentation (Australian Financial Review Conference Industrial Relations Reform 2005, Sydney 31 March 2005)

³⁴¹ Andy Blunden Corporate Manslaughter Laws in Australia May 2012

something that would have prevented the death³⁴². In the words of Øien et al, “The laws must imbue people with confidence that obligations and responsibilities are applied equitably, fairly and with common sense. If the law fails in these areas, people will conspire to avoid their obligations for fear of unjust laws. This sets the scene for endemically unsafe work cultures. People’s well-being and lives will be placed at risk”³⁴³.

In analyzing the impact of the Crimes Industrial Manslaughter (Amendment) Act 2003, considering the September 25th, 1998 explosion that took place at the Esso natural gas plant in Longford, Australia, two people were killed³⁴⁴. Companies intend to imbibe safety management systems for the detection of early warnings, access to the casual links between indicators, the implementation of safety measures, and plant safety³⁴⁵.

Those who support industrial manslaughter offenses believe that dangerous acts need to be criminalized with the offender facing the full force of the law, such as prison, in very serious cases. Some feel that such laws are necessary because they hold those persons ultimately

³⁴² Richard Alcock and Casper Conde “Socially and Environmentally Responsible Business Practices: An Australian Perspective” (2005) 1(2) Corporate Governance Law Review 329-338

³⁴³ Øien K, Utne Ingrid Bouwer, Tinmannsvik Ranveig Kviseth and Massaiu S, “Building safety indicators: Part 2- Application, practices and results” (2011) 49 Safety Science 162-171 at 10

³⁴⁴ Hopkins Andrew “lessons from Longford: The Esso Gas Plant Explosion” (2000) CCH Australia Limited, Sydney Available at tctoday.com. In Øien K, Utne Ingrid Bouwer, Tinmannsvik Ranveig Kviseth and Massaiu S, “Building safety indicators: Part 2- Application, practices and results” (2011) 49 Safety Science 162-171

³⁴⁵ Øien K, Utne Ingrid Bouwer, Tinmannsvik Ranveig Kviseth and Massaiu S, “Building safety indicators: Part 2- Application, practices and results” (2011) 49 Safety Science 162-171

responsible for safe systems of work liable³⁴⁶. Such laws also enable companies to ethically have a risk management framework to manage risk³⁴⁷. On the other hand, if deterrence is a key concern it has been argued that punishment of the company,, as opposed to individual directors,, is more likely to sound justice gotten. Besides, the prosecution of the company will motivate the company to (CSR) internally monitor its processes and then bring about changes to internal culture and procedures likely to influence conduct in the longer term³⁴⁸. The Crimes Industrial Manslaughter (Amendment) Act 2003 combined with Occupational Health and Safety OHS will improve corporate social responsibility in Australia.

Dixon believes that including a serious crime such as OHS laws could encourage the community to view these laws as ‘serious’ provisions and raise a perception that workplace offenses are ‘real crimes’ thus ultimately improving workplace safety³⁴⁹.

Below this writer will discuss the conceptual problem in ways liability is enforced and how can it be resolved.

³⁴⁶ Tim Dixon Corporate Social Responsibility and Socially Responsible investment (Oxford Institute for Sustainable Development, 2006) in John Okpara, Samuel Idowu, and Rene Schmidpeter, *Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders* (Springer, 2013)

³⁴⁷ Andrew Hopkins “Risk-Management and Rule-Compliance: Decision-Making in Hazardous Industries” (2011) 49 *Safety Science* 110-120

³⁴⁸ Kyriakakis J, “Australian Prosecution of Corporations for International Crimes” (2007) 5 *Journal of International Criminal Justice* 809-826

³⁴⁹ Tim Dixon Corporate Social Responsibility and Socially Responsible investment (Oxford Institute for Sustainable Development, 2006) in John Okpara, Samuel Idowu, and Rene Schmidpeter, *Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders* (Springer, 2013)

Below is a table that explains the legal effect of corporate manslaughter law on corporate social responsibility.

RELATIONSHIP BETWEEN CORPORATE MANSLAUGHTER AND CORPORATE SOCIAL RESPONSIBILITY WITH REGARDS TO LEGAL ENFORCEABILITY

Table 1 shows Corporate Manslaughter (Law) and its effect on corporate social responsibility among companies

CSR	Enforceability	Legal Effect of Corporate Manslaughter law on CSR
Legal	More Disclosure (The court will order a publicity order asking companies to shame themselves by disclosing the real cause of an incident.	It will serve as an example of punishment for companies of what a defaulting company will eventually suffer in the event of death caused by a company. This will make companies endeavor to always check at the beginning of work if the machineries are in good working conditions.

<p>Legal</p>	<p>Accountability: A company owes a duty of care to its employees and a company is in breach of this accountability when the way the activities of such company is managed or organized causes death.</p>	<p>It will enable companies to make a proper management of its activities. For instance, the company henceforth could arrange staff training of machineries for its staffs abroad before certifying them as full staff. The idea is to ensure that they can carry out their task with no mistakes and can report any malfunctioning immediately. This writer believes that countries which is yet to pass the law on corporate manslaughter should consider in their law to empower the police and create the office of Ministry of Health and Safety whose job will be to carry out corporate manslaughter investigations. The government then needs to provide these bodies with</p>
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		<p>enough funding in addition to a sufficient salary to make them independent, unbiased and carry out the jobs in the event of death at workplace.</p>
Ethical	<p>Due process. This entails lack of awareness of risk. A company owes a duty of care in connection with supply of goods and services.</p> <p>The company by the way they carry on business owes a duty of safety to their employees.</p> <p>The duty of care also extends to negligent act of a company in management causing death.</p>	<p>It will enable not just the company but the government to assess the activities of oil companies. From this assessment the government will understand the danger in failure not to punish oil companies in the event of oil spillage that could cause death (oil spillage catching fire).</p>
Philanthropy	<p>Pipe-borne water, building schools.</p> <p>This law does not make provision for philanthropy. If there is a provision for philanthropy under the law, then it</p>	<p>A company will be encouraged to do charitable work.</p>

	<p>is no longer philanthropy but legal responsibility. A company can only be encouraged as part of remedial order under S. 8 to voluntarily extend hands of charity towards the society.</p>	
<p>Economic</p>	<p>Long term measure. Remedial order corrects and stabilizes long term measures of the company.</p>	<p>It will enable the court to decide the relevant breach of duty of care causing death which occurred.</p> <p>This may include any deficiency in health and safety matters in the companies' constitution, ways the company carries on business.</p>
<p>Legal</p>	<p>Disqualification of Senior Managers</p>	<p>It is regrettable that senior managers are not held culpable for the management decision, which led the company to be convicted for corporate manslaughter. It is suggested that senior managers who</p>

		<p>are the controlling mind should also be subjected to the payment of unlimited fine. Even if the court award payment of huge fines against a company in their judgement, it is never an adequate sanction for large companies.³⁵⁰</p>
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Below is Chapter Three which is Methodology. It will begin by briefly discussing ontology.

³⁵⁰Sarah Field “Criminal liability under the Corporate Manslaughter and Corporate Homicide Act 2007: a changing landscape” (2016) 27(7) International Company and Commercial Law Review 229-233

CHAPTER THREE METHODOLOGY

3.1 BRANCHES OF METHODOLOGY

3.1.1 BRIEFLY DISCUSS YOUR ONTOLOGY

Ontology as explained by Wilson is the way the researcher views the nature of reality³⁵¹. It can be seen as a system of belief that reflects on an individual's understanding of what establishes a fact. It is a set of concepts and categories in the subject area or domain that shows their properties and the relations between them. Ontology only describes what the law is without the researcher going to the field to collect data. Therefore, ontology is stating what the law is or doing doctrinal legal analysis by taking purely from statute or case law and doing pure legal analysis.

Ontology aims to reform the norms of the business organization about sustainability and what can be done to avoid societal risk. Ontology is intended to be broadly applicable to sustainability and societal concerns of human enterprises or society and to be directly applicable as a reference model for companies consistent with sustainability and organizational management³⁵². An institutional theory argues that companies are created by the government (which is the source of law (statutes and court judgments)) and organized by people who under

³⁵¹ Jonathan Wilson *Essentials of Business Research: A Guide to Doing Your Research Project* (Sage Publications Limited, 2014)

³⁵² Jonathan Wilson *Essentials of Business Research: A Guide to Doing Your Research Project* (Sage Publications Limited, 2014)

the law act on behalf of the company. Organizational ontology believes that companies as legal entities have a burden and responsibility that owes society safety³⁵³. Since companies are part of society, companies need to begin to ask themselves what desirable outcomes from business, support a sustainable society³⁵⁴. In this research, the ontological perspective is on the positive impact of the Corporate Manslaughter and Corporate Homicide Act 2007.

According to Almond, the successful conviction for the offense of corporate manslaughter in the UK for example will communicate a symbolic message about the importance of health and safety as a whole³⁵⁵ (CSR (Accountability) compliance to law) and have a deterrent effect and secure the confidence of the public in the legal measures that control corporate conduct³⁵⁶ (with a view of intrinsic values³⁵⁷).

Below, this writer will explain epistemology.

3.1.2 EPISTEMOLOGY

In addition to ontology, which focuses on the question ‘what is there in the world?’, it is helpful to understand what epistemology in research means and its applications. Ontological claims in

³⁵³ Eric.W. Orts “Theorizing the Firm’s Organizational Ontology in the Supreme Court” (2016) 65 De Paul Law Review 559-596

³⁵⁴ Antony Upland & Peter Jones “An Ontology for Strongly Sustainable Business Models: Defining an Enterprise Framework Compatible with Neutral and Social Science” (2016) 29(1) Organizational and Environment 97-123

³⁵⁵ Paul Almond “An Inspector’s Eye view the Prospective Enforcement of Work-Related Fatality Cases” (2006) 46, British Journal of Criminology 893-916

³⁵⁶ Paul Almond “An Inspector’s Eye view the Prospective Enforcement of Work-Related Fatality Cases” (2006) 46, British Journal of Criminology 893-916

³⁵⁷ Eric .W. Orts “Theorizing the Firm’s Organizational Ontology in the Supreme Court” (2016) 65 De Paul Law Review 559-596

research are closely related to epistemological claims and they are usually discussed together. Researchers who love appreciate a combination of statistical analysis as well as consider reality especially if the investigation of the research is to understand cultures (or in this research knowledge of the effects of law) from the standpoint of those being studied³⁵⁸ then mixed research method will be appropriate³⁵⁹. Epistemology is concerned with the questions ‘what is knowledge?’ (as part of this research it is the concept of punitiveness otherwise known as the effects of corporate manslaughter and corporate homicide law on corporate social responsibility). Epistemological questions should therefore direct a researcher to a consideration of philosophical issues involved in working out exactly what a researcher would count as evidence or knowledge of a phenomenon. For example, the acquittals in corporate manslaughter cases have generally resulted from an inability to convince the court that a gross breach occurred which caused the deceased to die³⁶⁰.

One of the questions could be are their ambiguity in the application and enforcement of the law³⁶¹ from government institutions like the legislature and the courts causing claimants to file actions in courts abroad for example.

³⁵⁸ Alan Bryman *Quantity and Quality in Social Research* (Routledge, 1988)

³⁵⁹ Omar Gelo, Diana Braakmann, and Gerhard Benetka “Quantitative and Qualitative Research: Beyond the Debate” (2008) 42(3) *Integrative Psychological and Behavioral Science* 266-290

³⁶⁰ Victoria Roper “The Corporate Manslaughter and Corporate Homicide Act 2007- A 10- Year Review” (2018) 82(1) *The Journal of Criminal Law* 48-75 at 65

³⁶¹ Paul Almond and Judith Van Erp “Regulation and Governance Versus Criminology: Disciplinary Divides, Intersections, and Opportunities” (2020) 14 *Regulation and Governance* 167-183 at 173

The acquittal signals the capacity and willingness to enforce the law through the court system.

However, failure to get justice may in some sense point to a new and more insidious aspect of enforceability which this research also seeks to unpack.

Similarly, Failure to get justice could be the fallout of ambiguity in the law, absence of necessary legal and enforcement infrastructure, or a dearth of legal interpretation tools or well-trained personnel.

Failure to get justice could be the fallout of ambiguity in the law, absence of necessary legal and enforcement infrastructure, or a dearth of legal interpretation tools or well-trained personnel. The purpose of this elucidation is to provide the needed information to Nigerian Law Makers and other stakeholders with the needed information to support their enforcement work in this area.

The reason for choice epistemology is to educate Nigerian Law Makers on the knowledge³⁶² that will be gained from learning the relationship between Corporate Manslaughter and Corporate Homicide law and corporate social responsibility through the lens of enforcement.

³⁶² Howard Becker The Epistemology of Qualitative research (1996) 27 53-71 in Richard Jessor, Anne Colby, A., and Richard Shweder Ethnography and Human Development: Context and Meaning in Social Inquiry (University of Chicago Press, 1996)

The empirical investigation has tended to suggest that public attitudes in this area, as with other areas of regulation, are characterized more by uncertainty, a lack of knowledge, and relatively ambivalent normative attitudes³⁶³.

According to Schmidpeter corporate social responsibility (CSR) allows for a stronger involvement of employees and better incorporation of scientific findings in assuming responsibility.³⁶⁴

This point is relevant, especially in the Alpha Piper 1988 North Sea (Scotland) oil rig explosion which will be discussed later. Corporate social responsibility CSR also called corporate conscience, social performance or sustainable responsible business indeed is a form of corporate self-regulation integrated into a business model.³⁶⁵

Legally, the courts must “consider the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices within the organization that was likely to have encouraged any such failure as is mentioned in subsection (2)³⁶⁶ or have produced tolerance of

³⁶³ Paul Almond “Public Perceptions of Work-Related Fatality cases: Reaching the outer Limits of Populist Punitiveness?” (2008) 48(4) *British Journal of Criminology* 448-467; Paul Almond and Sarah Colover “Communication and Social Regulation: The Criminalization of Work-Related Death” (2012) 52 *British Journal of Criminology* 997-1016.

³⁶⁴ John Okpara, Samuel Idowu and Rene Schmidpeter *Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders* (Springer, 2013)

³⁶⁵ John Okpara, Samuel Idowu and Rene Schmidpeter *Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders* (Springer, 2013) at 73

³⁶⁶ Corporate Manslaughter and Corporate Homicide Act 2007 UK Section 1 (2) (breach of duty of care as it applies to this law.

it”.³⁶⁷ Secondly, for an offense of corporate manslaughter under the law organizations should be under a duty to reduce the chances of those [individual] errors taking place and to minimize the consequences when they do³⁶⁸.

However, the effectiveness of regulation is possible when its enforcement is possible and financially viable otherwise society would be reluctant to enforce it. For instance, the high cost of enforcement is a major argument against prospective regulation.³⁶⁹

This writer believes that Corporate Manslaughter prosecution under the law makes companies; have to rethink what caused the death and what can be done to remedy the situation. According to Rahim, corporate social responsibility is understood as the scope for which, and how an organization is consciously responsible for its actions and non-actions and their impact on its stakeholders.³⁷⁰

³⁶⁷ Brenda Barrett “Liability for Safety Offences: Is the Law Fatally Flawed?” (2008) 37 *Industrial Law Journal* 100-118 at 11

³⁶⁸ Christopher Seargent “Two steps forward, one step back- the cautionary tale of the Corporate Manslaughter and Corporate Homicide Act 2007” (2014) 1(1) *UK Law Students’ Review* 1-20

³⁶⁹ Bethel Uzoma Ihugba “The governance of corporate social responsibility: developing an inclusive regulation framework” (2014) *International Journal of Law and Management*, 110.

³⁷⁰ Mia Mahmurdur Rahim *Legal Regulation of Corporate social Responsibility A Meta-Regulation Approach of Law for Raising CSR in a Weak Economy* (Springer ,2013).

In the United Kingdom, for example, corporate manslaughter cases after a large company has been convicted for corporate manslaughter and corporate homicide, the 2010 guideline laid down principles to be followed to restore ethics (Mistake in the procedure (health and safety under Section 42 of HSWA 1974) causing death.³⁷¹

These include “a good health and safety record and a responsible attitude to health and safety, which includes seeking advice on how to reduce risk from experts, and consultation with employees or others affected by the activities of the organization.

After a fatality, a company may also mitigate by promptly accepting responsibility, making genuine efforts to remedy the defect, cooperating fully with the investigation “beyond that which will always be expected” (Sentencing Guideline Commission 2010 Para 8), and working procedures, modes of supervision and activity within the organization.³⁷² This helps other companies to learn from the mistake made by the convicted company.³⁷³

³⁷¹ Sarah Field and Lucy Jones “Death in the workplace: who pays the price?” (2011) 32(6) *Company Lawyer* 166-173

³⁷² Eli Lederman “Corporate Criminal Liability: The Second Generation” (2016) 46 *Stetson Law Review* 71-87

³⁷³ Hui Yan Wong “Corporate Homicide Legislation Should Hong Kong Follow Suit?” (2011) 5 *Hong Kong Journal of Legal Studies* 31-48

Good news for Nigeria, under the 2015 Sentencing Guidelines, a conviction for health and safety for corporate manslaughter and corporate homicide in the UK amounts to a conviction for corporate manslaughter³⁷⁴ abroad³⁷⁵ (for example) in Nigeria.

This is so because whenever a subsidiary of a parent company in a host country³⁷⁶ caused the death of someone in Nigeria it is a breach of health and safety and a cause of action³⁷⁷ (for corporate manslaughter) (in that country and using UK law and courts) like in the UK. The idea is to bring a solution to convicting large oil companies (Shell Nigeria which is owned by Britain and The Netherland). Currently, there is no law in Nigeria convicting oil companies in Nigeria for corporate manslaughter. It is still a bill.

³⁷⁴ Company Lawyer, “New Sentencing guidelines for corporate manslaughter, etc” (2016) 228 Criminal Law 8-9

³⁷⁵ Company Lawyer, “New Sentencing guidelines for corporate manslaughter, etc” (2016) 228 Criminal Law 8-9

³⁷⁶ Jennifer Zerk ‘Corporate Abuse in 2007: A Discussion Paper on What Changes in the Law Need to Happen. The Corporate Responsibility (CORE) Coalition’ Published November 2007

³⁷⁷ Jennifer A. Zerk, *Multinationals and Corporate Social Responsibility Limitations and opportunities in International Law* Cambridge University Press (2006) 105

In summary, companies are convicted of corporate manslaughter because of the way companies do business, which causes death and injury. Employees cause the death of another employee because they are not properly supervised³⁷⁸.

Ontology will tell you what knowledge is but epistemology gives researchers techniques for applying knowledge to law³⁷⁹. This is one branch of methodology and the other is ontology already explained above. Epistemology supports this researcher's area of research (which is corporate manslaughter and its relationship with corporate social responsibility). This researcher is not doing doctrinal research which is law in black and white which suits ontology but empirical research because this researcher went to the field to collect data.

Epistemology is a theory of knowledge, especially about its methods, validity, scope, and distinction between justifiable beliefs and opinions. While ontology concretizes belief by explaining what is already there, with epistemology, researchers carry out checks by designing methods (validity, scope) to justify the belief or knowledge.

In this research, academicians have said that legal enforceability or lack of legal enforceability is the basis why Nigeria does not have systems in place to check the menace of environmental despoliation owing to the practices of MNCs in the Niger Delta Area of Nigeria leading to

³⁷⁸ Oliver Quick "Medicine, Mistakes and Manslaughter: A Criminal Combination?" (2010) 69(1) Cambridge Law Journal 186-203

³⁷⁹ Gary Thomas *Pocket Study Skills: Doing Research* (2nd Edition, Bloomsbury Publishing, 2017)

corporate manslaughter. Secondly, if the mode of application of CSR in Nigeria has been one of the most schemes applied by MNCs in escaping its legal liability for corporate manslaughter and the very power enforcement scheme around it worsens this problem. Therefore, the main purpose of the thesis is to investigate the possibility, effectiveness and the enforceability of CSR principles (philosophical lens here is how legalisation of CSR can promote enforceability) to reduce corporate manslaughter among oil and gas industry by analysing the effects of corporate manslaughter law and senior management decisions among oil companies properly. This is the hypothesis for this research. This researcher will then go into the field to test this hypothesis to ascertain whether it is in fact enforceability that materializes or lack of enforceability that materializes into the poor outcome which the community is against from the oil companies destroying the environment and escaping liability for corporate manslaughter. This testing is possible because this researcher is using epistemological approach and the result after field testing will indeed be yes meaning that it is true that lack of enforceability owing to the smooth approach employed by MNCs in the Niger Delta is the basis for the lack of accountability by MNCs in the Niger Delta.

This researcher to advance his epistemology, has designed a research method. This research method entails:

- (1) Technique (quantitative and qualitative (mixed method))
 - (i) Semi-structured interviews

(ii) Questionnaires

(iii) observation

(2) Justification of sample population

(3) Scope of this research (what is the size of population)

(4) Sample size based on this research's sample technique

(5) Sample criteria

In terms of validity, what guarantee's validity is for example is the sample criteria representative, is the sample size representative of the actual sample population

TABLE 4 BRANCHES OF METHODOLOGY

Ontology	Epistemology
It is a branch of metaphysics. Ontology tells researchers what knowledge is (which is what the law is or arguing what the law is if the research is related to law)	It is the theory of knowledge especially with regards to its methods, validity, scope and distinction between justifiable beliefs and opinion.
Ontology is found in doctrinal approach of legal analysis where the researcher is purely taking from the statute in analysing data.	Researchers design methods to check and sample opinion to help ascertain whether there is knowledge actually.

Below, this researcher will discuss legal research approach

3.2 LEGAL RESEARCH APPROACH

3.2.1 CRITICAL THEORY

Critical researchers see organizations in general as social-historical creations, born in conditions of struggle and domination³⁸⁰. Critical theorists, authors, and actors are often caught up in an ideological milieu that they are unaware of³⁸¹. This means that a truly critical hermeneutic understanding must seek to reach beneath the everyday presentation of things and the seeming obviousness of human situations³⁸². The critical theory offers extremely powerful and inspiring stimuli for rethinking contemporary society and its institution, including management³⁸³. However, researchers are warned to be careful in interpreting critical theory in general as there is no single critical theory³⁸⁴.

³⁸⁰ Mats Alvesson and Stanley Deetz “A Framework for Critical Research” (2000) *Doing Critical Management Research* 135-165

³⁸¹ David Partington *Essential Skills for Management Research* Ed. (Sage, 2002)

³⁸² David Partington *Essential Skills for Management Research* Ed. (Sage, 2002)

³⁸³ Mats Alvesson and Stanley Deetz “A Framework for Critical Research” (2000) *Doing Critical Management Research* 135-165

³⁸⁴ Joe .L. Kincheloe and Peter McLaren *Rethinking Critical Theory and Qualitative Research The Landscape of Qualitative Research* (2nd Edition Sage, 2000); Joe .L. Kincheloe, Peter McLaren, Shirley R. Steinberg, and L.

The issue with critical theory in action research is that if the process is replicated it will not be identical and it will not produce the same result³⁸⁵. This then means that in generalizing results, action research is poor³⁸⁶. It can fail to provide language to articulate what are arguably indispensable concerns with obligation, liability, accountability, and justice³⁸⁷. According to Johnson and Duberley, critical theory is individualistic in its emphasis on desire and pleasure and it is irrational in its rejection of theory and rational critique³⁸⁸.

As such it makes a researcher involved in unending research, especially with the normal way of doing critical empirical research on one end and guidelines on how to conceptualize and conduct empirical research on the other end.

Therefore, social constructivism is recommended to apply deductive reasoning to elicit the concept of enforceability by exploring the application of existing theories in a constructive manner towards confirming theories in the literature review tied with data presented in chapter four, data analysis in chapter five, and line with the research objective and research questions in this research.

Monzó “Critical Pedagogy and Qualitative Research” (2018) 5 The SAGE Handbook of Qualitative Research 235-260

³⁸⁵ Hans J. Jochen Scholl Action Research and System Dynamics: Can They Benefit From Each Other? 37th Annual Hawaii International Conference on System Sciences Proceedings of the IEEE 2004

³⁸⁶ Hans J. Jochen Scholl Action Research and System Dynamics: Can They Benefit From Each Other? 37th Annual Hawaii International Conference on System Sciences Proceedings of the IEEE 2004

³⁸⁷ Hans J. Jochen Scholl Action Research and System Dynamics: Can They Benefit From Each Other? 37th Annual Hawaii International Conference on System Sciences Proceedings of the IEEE 2004

³⁸⁸ Phil Johnson and Joanne Duberley *Understanding Management Research An Introduction to Epistemology* (Sage Publications Limited, 2000) 1-216

Below, this researcher will discuss social constructivism.

3.2.2 SOCIAL CONSTRUCTIVISM

This is the philosophy by which this researcher ties his epistemology to the research method.

This is because this researcher is exploring the social phenomenon and the social phenomenon

which is being explored in this research is the capacity of enforcement or enforceability to form

the sanctity of legal application or legal effectiveness. This research is using this phenomenon

within the branches of corporate manslaughter, corporate social responsibility, and

enforcement or enforceability to understand the effect of lack of enforceability on the problem

of non-accountability to the law. This is an approach that shows how researchers take on board

the expectations and norms of the community to which they belong and how these expectations

shape the established practices within a given community³⁸⁹. Social constructivism brings to

the fore the importance of ideas, identity, and interaction in the international system, revealing

how the ‘human world is not simply given and/or natural but that on the contrary, the human

world is one of artifice; that it is “constructed” through the actions of the actors themselves³⁹⁰.

Social constructivism suits this research because the actors according to this research are the

³⁸⁹ Madhavi Kesari *Developing Academic Skills A Nexus of Reading and Writing* (Lambert Academic Publishing, 2012) at 48

³⁹⁰ Christine Agius *Social Constructivism* (2013) 3 *Contemporary Security Studies* 87-103

Nigerian government and its institutions, multinational companies, and the villagers (including non-governmental organizations).

The argument of Watts³⁹¹ fits into the situation among oil companies in Niger Delta area of Nigeria. He believes that “oil actively constitutes a particular “regime of living” but also a regime of death, of bare life”³⁹². Although externalities pose significant costs for the population as a whole, the businesses that create them are relatively unaccountable for any environmental impacts³⁹³. In Nigeria, Omoweh reported that the youths of Umuechem protested against Shell in Nigeria over environmental degradation³⁹⁴. The youth also said that support of N8,000 scholarships given to youths and the untreated boreholes provided for the community is not enough compared to the amount of money Shell makes from oil exploration in their community³⁹⁵. The youth of Umuechem blocked the road leading to Shell’s office. Shell reported this to the Nigerian government³⁹⁶. By the early hours of November 1, 1990, the village was razed down leaving the town king and 50 others dead³⁹⁷. In July 1993, 132 Ogoni men,

³⁹¹ Watts Michael “A Tale of Two Gulfs: Life, Death, and Dispossession along two oil frontiers” (2012) American Quarterly 437-463

³⁹² Supra at 439

³⁹³ Nick Grant “Mandating Corporate Environmental Responsibility by Creating a New Director’s Duty” (2015) 17(4) Environmental Law Review 252-265

³⁹⁴ Daniel Omoweh *Shell Petroleum Development Company, The State and Development of Nigeria’s Niger Delta A Study in Environmental Degradation* (Africa World Press, Inc 2005)

³⁹⁵ Daniel Omoweh *Shell Petroleum Development Company, The State and Development of Nigeria’s Niger Delta A Study in Environmental Degradation* (Africa World Press, Inc 2005)

³⁹⁶ Daniel Omoweh *Shell Petroleum Development Company, The State and Development of Nigeria’s Niger Delta A Study in Environmental Degradation* (Africa World Press, Inc 2005)

³⁹⁷ Daniel Omoweh *Shell Petroleum Development Company, The State and Development of Nigeria’s Niger Delta A Study in Environmental Degradation* (Africa World Press, Inc 2005)

women, and children returning from a trip to the Cameroons were massacred on the Andoni River by uniformed men wielding automatic weapons³⁹⁸. The hypothesis here is lack of enforcement for enforceability and it has created unaccountability in multinational oil companies in the Niger Delta Area of Nigeria.

According to Locke, the purpose of the government and law is to uphold and protect the natural rights of men. So long as the government fulfils this purpose, the laws given by it are valid and binding but, when it ceases to fulfil it, then the laws would have no validity³⁹⁹. The latter can only lead to protest by angry youths from the Niger Delta Area against oil companies and destruction of oil company's facilities by Nigerian youths⁴⁰⁰.

The quest for truth is objective, external and logical. Therefore, social constructivism puts into context the actions, beliefs, and interest of actors and understands that the world they inhabit has been created by them and impacts on them⁴⁰¹. Hart suggests that law is made up of institutional facts like orders and rules, and those are made by people who are not socially constructed, and it is created by and for people who are not socially constructed either⁴⁰². This writer then suggests that it now behoves on the government and its institutions to set the record

³⁹⁸ Daniel Omoweh *Shell Petroleum Development Company, The State and Development of Nigeria's Niger Delta A Study in Environmental Degradation* (Africa World Press, Inc 2005)

³⁹⁹ Elahi Manzoor Laskar *Summary of Social Contract Theory by Hobbes, Locke and Rousseau* Symbiosis Law School Pune 2013 at 4

⁴⁰⁰ Daniel Omoweh *Shell Petroleum Development Company, The State and Development of Nigeria's Niger Delta A Study in Environmental Degradation* (Africa World Press, Inc 2005)

⁴⁰¹ Christine Agius "Social Constructivism" (2013) 3 *Contemporary Security Studies* 87-103

⁴⁰² H.L.A. Hart *The Concept of Law* (3rd Edition Oxford University Press, 2012)

straight with enforcement in order to give these rules true means (through orders and court judgment). Scholar like Dworkin argues that our law includes not only norms found in treaties, customs, constitutions, statutes and cases, but also moral principles that provide the best justification for the norms found there⁴⁰³. These moral principles are there to be used constructively sometimes by the court in appeal cases to set records straight. This point will be evident in Okpabi's case in chapter 5.

In Okpabi's case at the Court of Appeal, the claimants are citizens of Nigeria and inhabitants of the areas affected by the oil leaks. RDS is a company incorporated in the United Kingdom and is the parent company of the Shell group of companies ('the Shell Group'). SPDC is an exploration and Production Company incorporated in Nigeria, and is a subsidiary of RDS. It is the operator of a joint venture agreement between itself, the Nigeria National Petroleum Corporation, Total Exploration and Production Nigeria Ltd and Nigeria Agip Oil Company⁴⁰⁴.

The claimants in these two actions seek damages arising as a result of serious, and ongoing, pollution and environmental damage caused by leaks of oil from pipelines and associated infrastructure in and around the Niger Delta for which, they contend, the 1st defendant ('RDS') and the 2nd defendant ('SPDC') are responsible⁴⁰⁵.

⁴⁰³ Ronald Dworkin *Taking Rights Seriously* (Harvard University Press, 1978); Ronald Dworkin *Law's Empire* (Harvard University Press, 1986)

⁴⁰⁴ *Okpabi & Ors v Royal Dutch Shell plc & Anor (Rev 1)*[2018] EWCA Civ 191

⁴⁰⁵ *Okpabi & Ors v Royal Dutch Shell plc & Anor (Rev 1)*[2018] EWCA Civ 191

The court believes that the case provided by the claimants/ appellants (representatives of the Ogale community in Rivers State) in this case was not persuasive and as such the Royal Dutch Shell cannot be duty bound to suffer vicariously from actions done by the subsidiary Shell Petroleum Development Corporation (SPDC).

The court of appeal is saying that even if the community members (the appellants) maintains that given the documents which include the Shell's RDS overall framework for the control of all its companies within the Shell Group, The Royal Dutch Shell Corporate Social and Responsibility Committee documents, The Shell Sustainability Report and Shell's HSSC and SP control framework including Shell's policy and commitment should not form a framework that justifies that the Royal Dutch Shell exercises significant control over its subsidiaries to make it vicariously liable for any tort.

The Supreme Court in England reversed the judgment by the Court of Appeal and on the issue of control stated that

“the recognition that ‘control is just a starting point’ has considerable implications for the ability of such procedural cases, in the absence of excessive documentation, to fall in the claimants’ favour. It prevents the application of a strict reading to the decision, considering issues such as the extent to which management of an activity is shared. This will place a much lower evidentiary burden on claimants at the preliminary stage, allowing more cases to be

*considered on their merits than has been the case in the past*⁴⁰⁶. This Supreme Court judgment is Hart's Social constructivism. It is based on correction through following due procedure for justice. This is validity at the Supreme Court in Okpabi's case which validity was misinterpreted with due respect in Okpabi's case at the Court of Appeal.

Based on social constructivism, Hart rejects the view of Dworkin and posits that the law should not end at body of rules that needs moral justification only but law, moral justification, and human intervention⁴⁰⁷. This argument by Dworkin and Hart sits at the core of this researcher's research using the philosophy of social constructivism (to link my methodology with my research methods) in that with regards to environmental degradation going on in the Niger Delta Area of Nigeria caused by the negative activities of MNCs, the mechanism for the enforcement of both corporate manslaughter and corporate social responsibility in Nigeria is just changing.

Social constructivism further fastens how enforceability of law will work according to Hart. In continuation, Hart posits that anything in the law is there, either intentionally or accidentally. It has a history; it all can be changed; it is all either known or knowable. Some of our laws have good justifications, some do not, and justifications do not anyway suffice to make law⁴⁰⁸. To

⁴⁰⁶ *Okpabi and others .v. Royal Dutch Shell Plc and another* [2021] UKSC 3 paragraph 147

⁴⁰⁷ H.L.A. Hart *The Concept of Law* (3rd Edition Oxford University Press, 2012)

⁴⁰⁸ H.L.A. Hart *The Concept of Law* (3rd Edition Oxford University Press, 2012) at xviii

do that we need actual human intervention: orders need to be given, rules to be applied, decisions to be taken, customs to emerge, or justifications to be endorsed or asserted⁴⁰⁹.

For this reason Hart argues that

- (1) Law contains much greater variety than is presented by a theory that equates law (only) with commands.
- (2) That theories that equates law with the command of a sovereign cannot account for the legal status of custom, and may also have trouble accounting for judicial legislation and
- (3) That many communities do not have anything that would count as a “sovereign” in the sense used by Austin, a person or institution that has no limits or constraints⁴¹⁰.

People obey the law because of fear of punishment.

This means that people obey the law because of fear of punishment. Criminal justice policy (responding to policies and not just law and government institutions with regards to social constructivism) from law making to corrections seeks to deter individuals from committing crimes by threatening to punish them⁴¹¹. Whether the threat of punishment can deter criminal acts depends on three elements: certainty, severity, and celerity⁴¹². Deterrence works best when individuals are certain that they will be caught and punished and when their punishment is

⁴⁰⁹ H.L.A. Hart *The Concept of Law* (3rd Edition Oxford University Press, 2012) at xviii- xix

⁴¹⁰ Michael Freeman and Patricia Mindus *The Legacy of John Austin's Jurisprudence* (Springer, 2013)

⁴¹¹ G. Maxfield and Earl Babbie *Basics of Research Methods for Criminal Justice and Criminology* (Thomson/Wadsworth, 2006) at 38

⁴¹² G. Maxfield and Earl Babbie *Basics of Research Methods for Criminal Justice and Criminology* (Thomson/Wadsworth, 2006) at 38

severe enough and this punishment must also be handed down quickly⁴¹³. This is for policy response.

Below, this researcher will link Dworkin's and Locke's argument on enforceability in order to play out social constructivism and critical theory. The idea for this is that Locke's and Dworkin's philosophies has already played out in this literature review, but readers are being given another opportunity to read how Dworkin's and Locke's argument is linked with social constructivism and critical theory while explaining enforceability.

LINKING DWORKIN'S ARGUMENT WITH JOHN LOCKE'S IN UNDERSTANDING ENFORCEABILITY (PLAYING OUT SOCIAL CONSTRUCTIVISM AND CRITICAL THEORY

Philosophers like Dworkin state that if there is a loophole in the provisions of the law⁴¹⁴ (like in section 65 of CAMA or the provision no criminal liability on artificial persons under the Criminal code and the Penal Code) because of the norms of the society or a company, it behoves on the courts to change this⁴¹⁵. This is yet to happen in Nigeria. This situation according to this researcher requires first understanding what Dworkin means by a "rule" and how rules differ from other norms that he calls "principles."

⁴¹³ Michael G. Maxfield and Earl Babbie *Basics of Research Methods for Criminal Justice and Criminology* (Thomson/ Wadsworth, 2006) at 38

⁴¹⁴ Scott J Shapiro *The Hart-Dworkin Debate: A Short Guide for the Perplexed* (2007) Available at <<https://ssrn.com/abstract=968657>> or <<http://dx.doi.org/10.2139/ssrn.968657>> [Accessed] 15th August 2017

⁴¹⁵ Scott J Shapiro *The Hart-Dworkin Debate: A Short Guide for the Perplexed* (2007) Available at <<https://ssrn.com/abstract=968657>> or <<http://dx.doi.org/10.2139/ssrn.968657>> [Accessed] 15th August 2017

In Dworkin's terminology, rules are "all or nothing" standards⁴¹⁶. When a valid rule applies in a given case, it is conclusive or, as a lawyer would say, "dispositive." Because valid rules are conclusive reasons for action, they cannot conflict. If two rules conflict, then one of them cannot be a valid rule⁴¹⁷.

John Locke theory of Social Contract is different than that of Hobbes. According to him, man lived in the State of Nature⁴¹⁸. This can mean JVA enabling companies amassing profit and government generating revenue while things like human right abuse, death as a result of explosion or terminal illness of oil company employees and villagers by oil spillage and gas flaring being tolerated in Nigeria because both the Nigerian government and oil companies are both smiling to the bank. Locke justifies this by saying that in the State of Nature, the natural condition of mankind was a state of perfect and complete liberty to conduct one's life as one best sees fit. It was free from the interference of others⁴¹⁹. John Locke considered property in the State of Nature as insecure because of three conditions; they are:-

1. Absence of established law;
2. Absence of impartial Judge; and

⁴¹⁶ Scott J Shapiro The Hart-Dworkin Debate: A Short Guide for the Perplexed (2007) Available at <<https://ssrn.com/abstract=968657>> or <<http://dx.doi.org/10.2139/ssrn.968657>> [Accessed] 15th August 2017 at 9

⁴¹⁷ Supra at 9

⁴¹⁸ Elahi Manzoor Laskar Summary of Social Contract Theory by Hobbes, Locke and Rousseau Symbiosis Law School Pune 2013 at 3

⁴¹⁹ Supra at 3

3. Absence of natural power to execute natural laws⁴²⁰. This researcher thinks that corporate social responsibility among oil companies in Nigeria much more than this if oil companies in Nigeria are being punished for their acts causing death in the Niger Delta Area of Nigeria.

John Locke considered property in the State of Nature as insecure because of three conditions; they are:-

1. Absence of established law;
2. Absence of impartial Judge; and
3. Absence of natural power to execute natural laws⁴²¹.

This writer agrees with Locke that the situation for example in Nigeria where oil companies can be allowed to cause death through the activities or decisions of their directors because of loopholes in the Nigerian laws like ratification by shareholders under section 65 of CAMA, acts that occurs independently of the exercise of the will of directors or by accident (where proper welfare of employees have not been provided by MNCs because they wants to save money) non institution of action on the grounds of locus standi under section 17(1) of the 1999 constitution can only lead to lack of enforceability of laws and order against the activities of oil and gas companies in Nigeria. Corporate criminal liability is about the metaphysical, at

⁴²⁰ Elahi Manzoor Laskar Summary of Social Contract Theory by Hobbes, Locke and Rousseau Symbiosis Law School Pune 2013 at 4

⁴²¹ Elahi Manzoor Laskar Summary of Social Contract Theory by Hobbes, Locke and Rousseau Symbiosis Law School Pune 2013 at 4

another about the functions, purposes and complexity of legal responses and yet another about variations in procedure and enforcement (implementation)⁴²² mechanisms⁴²³.

Critical theory offers extremely powerful and inspiring stimuli for rethinking contemporary society and its institution, including management⁴²⁴. The solution could lie in the government staying positive, taking health and safety issues very seriously motivating the judiciary and the police, educating the entire nation of corporate manslaughter and corporate homicide and corporate social responsibility, empower the police and other government agencies to investigate and prosecute companies for corporate manslaughter and corporate homicide in the event of death caused by the activities of the company. There has to be a change of mindset of everyone toward/ for best corporate practices. In political science staying positive on issues or what political scientist call 'positive political science' will then take on the role of accustoming the general mind to succumb to what is, and of theoretically as well as practically fixing the parameters of knowledge and action within the predominant configurations of the present-day reality⁴²⁵. There need to be a change of mindset or a revolution by the citizens to change the attitude of the present-day host government and multinational oil companies towards a

⁴²² Jędrzej Frynas. "The false developmental promise of corporate social responsibility: Evidence from multinational oil companies." (2005) 81(3) *International affairs* 581-598 598

⁴²³ Celia Wells *Corporations and Criminal Responsibility* (2001 Second Edition); Lawrence Friedman "In Defense of Corporate Criminal Liability" (2000) 23 *Harvard Journal of law and Public Policy* 833.

⁴²⁴ Mats Alvesson and Stanley Deetz "A Framework for Critical Research" (2000) *Doing Critical Management Research* 135-165

⁴²⁵ G Lenzer Introduction: August Comte and Modern Positivism in Elizabeth Adams St. Pierre "Another Postmodern Report on Knowledge: Positivism and its Others" (2012) 15(4) *International Leadership in Education* 483-503

continued practice of corporate social responsibility by companies and its enforcement by the judiciary and government officials. The desired result is the ability of the government to all the time punishes companies whose decision caused the death of someone and the company to have knowledge of what went wrong. This is 'proactive corporate fault'. Knowledge to this writer could mean what if the board of director or senior managers ordered management to cut costs which led to short staffing, lack of preparation by and communication between employees and the resultant death. Proactive corporate fault imposes liability where a company fails to make reasonable efforts to implement internal controls to prevent the commission of a crime⁴²⁶. Evidence of reasonable efforts to prevent organizational crime is gleaned from

- (i) The development and implementation of safeguards to prevent crime commission and
- (ii) The delivery of clear and convincing prohibitions of criminal behaviour in the form of business conduct codes, ethics codes, and compliance training programs⁴²⁷.

This writer believes that conviction of companies for corporate manslaughter then will be a good result because the company would like to prove that it implemented corporate social

⁴²⁶ G.R. Skupski "The Senior Management Mens Rea: Another Stab at a Workable Integration of Organizational Culpability into Corporate Criminal Liability" (2012) 62(1/11) Case Western Reserve Law Review 267- 331

⁴²⁷ Supra at 301

responsibility practices (staff training and supervision, provision of health and safety materials for staffs, maintenance of equipment and some charity works to mention just a few).

The Dworkin debate on the other hand concerns such disparate issues as the existence of judicial discretion⁴²⁸, the role of policy in adjudication⁴²⁹, the ontological foundations of rules⁴³⁰, the possibility of descriptive jurisprudence⁴³¹, the function of law⁴³², the objectivity of value⁴³³, the vagueness of concepts⁴³⁴, and the nature of legal inference⁴³⁵.

As stated earlier, social constructivism brings to the fore the importance of ideas, identity, and interaction in the international system, revealing how the ‘human world is not simply given and/or natural but that on the contrary, the human world is one of artifice; that it is “constructed” through the actions of the actors themselves’⁴³⁶.

⁴²⁸ Kent Greenawalt, “Discretion and Judicial Discretion: The Elusive Quest for the Fetters that Bind Judges” (1975) 75 Columbia Law Review 359- 391

⁴²⁹ Kent Greenawalt, “Discretion and Judicial Discretion: The Elusive Quest for the Fetters that Bind Judges” (1975) 75 Columbia Law Review 359- 391

⁴³⁰ Scott J Shapiro *The Hart-Dworkin Debate: A Short Guide for the Perplexed* (2007) Available at <<https://ssrn.com/abstract=968657>> or <<http://dx.doi.org/10.2139/ssrn.968657>> [Accessed] 15th August 2017

⁴³¹ Stephen Perry *Interpretation and Methodology in Legal Theory in Law and Interpretation* (Clarendon Press, 1995); Jeremy Waldron *Ethical (or Normative) Positivism,* in *Hart’s Postscript with Hart’s Concept of Law, and Jules Coleman’s The Practice of Principle* (Oxford: Oxford University Press, 2001) vi, 248–50

⁴³² Scott J Shapiro *The Hart-Dworkin Debate: A Short Guide for the Perplexed* (2007) Available at <<https://ssrn.com/abstract=968657>> or <<http://dx.doi.org/10.2139/ssrn.968657>> [Accessed] 15th August 2017

⁴³³ Herbert Lionel Adolphus Hart *American Jurisprudence through English Eyes: The Nightmare and the Noble Dream in Essays in Jurisprudence and Philosophy* (Clarendon Press, 1983), 139–40

⁴³⁴ Joseph Raz *Legal Reasons, Sources and Gaps, in The Authority of Law* (Clarendon Press, 1979)

⁴³⁵ Scott J Shapiro *The Hart-Dworkin Debate: A Short Guide for the Perplexed* (2007) Available at <<https://ssrn.com/abstract=968657>> or <<http://dx.doi.org/10.2139/ssrn.968657>> [Accessed] 15th August 2017

⁴³⁶ Christine Agius *Social Constructivism* (2013) 3 Contemporary Security Studies 87-103

This researcher can only advise the Nigerian government to be mindful of keeping records in the books which can arise when there is no mechanism in place to enforce the law. This issue of keeping records in the books happened in the United Kingdom. Chesterman, quoting Criminal Law Commissioners (1843) on the idea of corporate criminal liability law, opined that the great object of penal law is to deter men from violating the law by holding out privation and suffering as the consequences of transgression⁴³⁷. Subsequently, the word corporate manslaughter conveys a strong implication of loss of life which suggests that there will be law to regulate the activities of companies causing death. Therefore, linking the two words (corporate and manslaughter) together with law implies efforts to punish corporations through law⁴³⁸. Gobert and Pascal, supporting this idea opine that, fuelled by a series of corporate debacles and disasters, many western capitalist states have recently contemplated or implemented laws aimed at punishing corporations for their harmful and illegal acts⁴³⁹. In some cases of corporate manslaughter according to this researcher which involves companies that do not count their profit in the billion, the defence may pray with the court to keep the record of charge for corporate manslaughter in the books (even though the defendant company pleaded

⁴³⁷ Simon Chesterman “The Corporate Veil, Crime and Punishment: The Queen vs. Denbo Property Limited and Timothy Ian Nadenbousch” (1994) 19 Melbourne University Law Review 1064

⁴³⁸ Steven Bittle and Lauren Snider “Law, Regulation, and Safety Crime: Exploring the Boundaries of Criminalizing Powerful Corporate Actors” (2015) 30(3) Canadian Journal of Law and Society 445 - 464

⁴³⁹ James Gobert and Ana-Maria Pascal *European Developments in Corporate Criminal Liability* (Routledge, 2011)

guilty to it) and to give judgement for health and safety breach. This can only affect enforceability of law.

Finally, one of the political tendencies affecting enforceability in Nigeria is whose liability it will be haven signed a joint venture agreement. In the very words of the court, it reasoned that the question now is whether the arguments referred to at ground are relevant, or more specifically, decisive, for the assessment in the main actions⁴⁴⁰. In the court's opinion, Oguru et al. have not as yet made this sufficiently plausible. Oguru et al. have up to now not substantiated that a parent company has acted unlawfully according to Nigerian law if it is aware of, and has influence and authority over, the inadequate environmental policy of a subsidiary, yet fails to intervene (arguments at a and b). Contrary to what Oguru et al. argue, an oil company's environmental policy cannot provide a definitive answer to the question of whether acts have been lawful or unlawful in relation to a specific oil leakage⁴⁴¹. It has also not as yet been substantiated that a legal person can be ordered to implement a different (environmental) policy under Nigerian law, as claimed by Oguru et al. in the main actions at VII (argument at c)⁴⁴². Neither has Oguru et al. substantiated that the management of an oil

⁴⁴⁰ Oguru et al .v. Royal Dutch Shell PLC [2011] 365498 / HA
ZA 10-1677

⁴⁴¹ Oguru et al .v. Royal Dutch Shell PLC [2011] 365498 / HA
ZA 10-1677

⁴⁴² Oguru et al .v. Royal Dutch Shell PLC [2011] 365498 / HA
ZA 10-1677 at 4.14

pipeline must provide security for it under Nigerian law, or that the management may be obliged to replace an inadequately maintained oil pipeline under Nigerian law, regardless of whether this inadequate maintenance situation has led to leakages (argument at d)⁴⁴³. Finally, Oguru et al. have not explained how the relationships of ownership and authority within the Joint Venture are relevant under Nigerian law to the liability of the participating enterprises (argument at e)⁴⁴⁴. The implication of this case is that the position of the law in Nigeria as it relates to corporate criminal liability remains undesirable. This is true as the issue of holding a company liable for offences with mental elements including murder and manslaughter remains neither here nor there⁴⁴⁵. The situation makes claimant to file for civil suit abroad. In abroad, the defence counsel will raise the issue of joint venture agreement between the Nigerian government and multinational oil companies in court abroad. This is unacceptable considering first that the United Kingdom from where Nigeria borrowed the corporate criminal liability approach has since moved on to a point where companies can be held liable for corporate manslaughter⁴⁴⁶. This is the case Under the UK Corporate Manslaughter and Corporate Homicide Act 2007 the effect of which in summary is that an organization is guilty of the

⁴⁴³ Oguru et al .v. Royal Dutch Shell PLC [2011] 365498 / HA

ZA 10-1677 at 4.14

⁴⁴⁴ Oguru et al .v. Royal Dutch Shell PLC [2011] 365498 / HA

ZA 10-1677

⁴⁴⁵ Callistus .N. Iyidobi “Rethinking The Basis of Corporate Criminal Liability in Nigeria” (2015) 13 The Nigerian Judicial Review 103-130 at 117

⁴⁴⁶ Supra at 117

offence of “corporate manslaughter” (corporate homicide' in Scotland) where the way in which its activities are managed or organized causes the death of a person; and amounts to a gross breach of a relevant duty of care owed to the deceased and where the way in which the organization’s activities are managed or organized by its “senior management” is a “substantial element” of the gross breach of the relevant duty of care⁴⁴⁷. The important thing here is that the emphasis is not necessarily on a manager or any individual but on the organizations activity⁴⁴⁸. By implication, what matters is that looking at what the organization has done, it can be inferred that there has been a breach of a relevant duty of care owed to the deceased person and that this breach emanated from the senior management of the organization and is the cause of the deceased’s death⁴⁴⁹. This is very commendable. Since it is the activity of the company that is in question, the senior management principle is uncalled for⁴⁵⁰. In the United Kingdom the offence of corporate manslaughter is clearly stipulated and prosecution plus conviction are much easier since there is no joint venture agreement (JVA). The colonial masters Britain knew the trick of joint venture agreement and insisted on it when they began oil exploration in Nigeria in the mid 1950s.

⁴⁴⁷ Callistus .N. Iyidobi “Rethinking The Basis of Corporate Criminal Liability in Nigeria” (2015) 13 The Nigerian Judicial Review 103-130

⁴⁴⁸ Supra at 118

⁴⁴⁹ Callistus .N. Iyidobi “Rethinking The Basis of Corporate Criminal Liability in Nigeria” (2015) 13 The Nigerian Judicial Review 103-130 at 118

⁴⁵⁰ Supra at 118

Nigerian judges now show more understanding for the plight of the oil producing communities. They have also “become more critical of the behaviour of oil companies”⁴⁵¹ and the Nigerian government.

Secondly, Non-Governmental Organizations also have a role to play in telling the story of what effect oil spillage or gas flaring can have in Nigeria especially before it happens. Oshionebo believes that although Non-Governmental Agencies (NGOs) have played a significant role in promoting corporate responsibility and accountability in Nigeria’s oil and gas industry, the story has not been all rosy⁴⁵².

The strategies, mass mobilization, protests and litigation adopted by NGOs in Nigeria against the reckless behaviour of oil and gas MNCs are for the most part post-crisis strategies (after the breach of health and safety have already occurred). The NGOs are more reactive than proactive. Thus far, NGOs have failed to articulate legal and policy alternatives to the failed regulatory regimes in Nigeria. This is perhaps due to a combination of factors, including lack of expertise and the denial of access to corporate information in Nigeria.

Second, there is a lack of coordination and cooperation among ethnic community associations.

⁴⁵¹ Jedrzej. G. Frynas, “Legal Change in Africa: Evidence from Oil-Related Litigation in Nigeria” (1999) 43(2) *Journal of African Law* 121 at 147

⁴⁵² Evaristus Oshionebo ‘Transnational Corporations, Civil Society Organisations and Social Accountability in Nigeria: Oil and Gas Industry’ (2007) 15(1) *African Journal of International and Comparative Law* 107-129

The Corporate Manslaughter and Corporate Homicide Bill 2015 should be passed into law immediately simply because a country that loses its environment and citizens is unacceptable when the objective is to ensure that everyone is safe and companies according to Ndekugri comply with documents (law emphasis mine) standards in performance of an activity⁴⁵³ (CSR emphasis mine). The importance of corporate manslaughter law cannot be over emphasized. It makes companies practice the law.

Having a plan formulated is not enough. It is only necessary that companies adhere to the law as well as keep records (for the jury just in case someone dies) that they adhere to health and safety rules, the duty of care, exercising of reasonable care and skill like in Nigeria and the UK.⁴⁵⁴ The essence is that if for reasons like an act of God above human intervention, companies can be able to provide for the jury audited report that they practiced CSR and adhered to the law.

Below, this researcher will discuss chosen legal research approach.

⁴⁵³ Issaka Ndekugri 'The Consulting Engineer and Corporate manslaughter Risk' (2013) 166 (MP3) Management, Procurement and Law 128-136 at 134

⁴⁵⁴ Corporate Manslaughter and Corporate Homicide Bill 2015 Section 2(1), Corporate Manslaughter and Corporate Homicide Bill 2015 Section 8(1C), Corporate Manslaughter and Corporate Homicide Act 2007 UK C.19 S. 8 (2-3)

3.4 CHOSEN LEGAL RESEARCH APPROACH

This research adopts objectivism and critical realism as the chosen research approach. In this research, a mixed style of data analysis (qualitative and quantitative method of data collection, ethnography and case study data analysis method) will be adopted. Objectivism in this research completes and complements critical realism in case study data analysis, especially during observation (and analyzing what was observed (during data analysis in sampling, data will then be triangulated)), and objectivism suits ethnography in this research because people's perception of a phenomenon. This is during data analysis in chapter four. The advantage of objectivism in this research is that everyone in the company is the target of corporate manslaughter rather than in the identification doctrine wherein personality is reduced to the attributes of a single officer in the company. The identification principle is therefore ignoring the truly complex nature of the company⁴⁵⁵. While on the other hand, the fundamental tenet of critical realism is that researchers can use causal language to describe the world. Critical realism mirrors the language and procedures researchers regularly use and the explanations that researchers create.

Critical realism is particularly well suited as a companion to case study research as it justifies the study of any situation, but only if the process involves thoughtful in-depth research to

⁴⁵⁵ Neil Cavanagh "Corporate Criminal Liability an Assessment of the Models of Fault" (2011) 75 (5) International Criminal Law 414- 440

understand why things are as they are⁴⁵⁶, why corporations kill and the managers commit murder?⁴⁵⁷, the failure of companies in its corporate social responsibility (legal, ethical and economic responsibility⁴⁵⁸ or what Stone called failed corporate culture⁴⁵⁹. According to Stone, the corporate culture of the company contributes to its illegal behavior⁴⁶⁰. Corporate illegality means “a desire for profits, expansion, power, desire for security (at corporate as well as individual levels); the fear of failure particularly in connection with shortcomings in corporate innovativeness; organizational diffusion of responsibility; corporate ethnocentrism (in connection with limits in concern for public’s wants and desires”⁴⁶¹.

Concerning subjectivism, Max Weber said that for subjectivism, all human beings participate in the construction of the social world by acting meaningfully and interpreting meaning⁴⁶². However, the limitation of subjectivism is an idealization. Critics claim that with subjectivism on epistemology (what you know based on the experience of corporate manslaughter for

⁴⁵⁶ Geoff Easton “Critical Realism in Case Study” (2010) 39 *Industrial Marketing Management* 118-128

⁴⁵⁷ C Stone *Where the Law Ends: The Social Control of Corporate Behaviour* (Harper and Row, 1975) in Steven .R. Hirschtick “Stone: Where the Law Ends: The Social Control of Corporate Behavior” (1976) 9(4) *Loyola of Los Angeles Law Review* 976

⁴⁵⁸ Punch Maurice “Suite violence: Why managers murder and corporations kill” (2000) 33(3) *Crime, Law and Social Change* 243-280

⁴⁵⁹ C Stone *Where the Law Ends: The Social Control of Corporate Behaviour* (Harper and Row, 1975) in Steven .R. Hirschtick “Stone: Where the Law Ends: The Social Control of Corporate Behavior” (1976) 9(4) *Loyola of Los Angeles Law Review* 976

⁴⁶⁰ C Stone *Where the Law Ends: The Social Control of Corporate Behaviour* (Harper and Row, 1975) in Steven .R. Hirschtick “Stone: Where the Law Ends: The Social Control of Corporate Behavior” (1976) 9(4) *Loyola of Los Angeles Law Review* 976

⁴⁶¹ C Stone *Where the Law Ends: The Social Control of Corporate Behaviour* (Harper and Row, 1975) at 236

⁴⁶² Boike Rehbein “Max Weber, Understanding and the Charge of Subjectivism” (2020) 13(3) *Forum for Inter-American Research* 35-45 at 35

example), it is hard to see how to vindicate idealization over another idealization⁴⁶³ without presupposing that there are already facts about what is the right answer for the idealization to hit⁴⁶⁴. Subjectivism cannot suit as a chosen research approach because this researcher is doing an objective analysis of the social reality of enforceability with regards to corporate manslaughter and corporate social responsibility in the Niger Delta Area of Nigeria and because this is legal research (applying empirical analysis) the methodological approach will be multi-theoretical in the analysis of data (observing reality using objective measures) to do a deep dive into social reality.

Below, this researcher will discuss the research paradigm.

3.5 RESEARCH PARADIGM

In this research, the research paradigms are epistemology and ontology

Patton defines a paradigm as a worldview: a way of thinking about and making sense of the complexities of the real world⁴⁶⁵. A paradigm refers to the progress of scientific practice based on people's philosophies and assumptions about the world and the nature of knowledge; in this

⁴⁶³ Idealization means what do one person think is now the cause of failure in enforcement of corporate law in Nigeria. A respondent will stick to one answer while another respondent like a government official will have a different opinion on the same question of failure in the enforcement of corporate law in Nigeria by attributing corporate manslaughter in Nigeria to oil pipeline vandalism.

⁴⁶⁴ Mukhles M. Al-Ababneh "Linking Ontology, Epistemology and Research Methodology" (2020) 8(1) Science and Philosophy 75-91

⁴⁶⁵ Michael Quinn Patton *Qualitative Evaluation and Research Methods* (3rd Ed. Sage Publications, Inc 2002)

context, about how research should be conducted⁴⁶⁶. A paradigm offers a framework comprising an accepted set of theories, methods, and ways of defining data. It tells us what is important, legitimate, and reasonable⁴⁶⁷.

Kuhn defines a paradigm as a set of practices that define a scientific discipline during a particular period⁴⁶⁸. In light of setting the context of an investigator's study, Kuhn highlights that paradigms affect research in four different ways as follows:

1. What is to be observed and scrutinised,
2. The questions to be asked in relation to the determined subject,
3. How these questions are to be asked,
4. How the results of scientific investigations should be interpreted⁴⁶⁹.

A thorough appreciation of these philosophical foundations is required to fully understand the positions of paradigmatic schemas, especially the ontological and epistemological questions which are central to the understanding of the research problem in a mixed research method.

⁴⁶⁶ Jill Collis and Roger Hussey *Business Research* (2nd Ed. Palmgrave Macmillan 2003)

⁴⁶⁷ Michael Quinn Patton *Qualitative Evaluation and Research Methods* (3rd Ed. Sage Publications, Inc 2002)

⁴⁶⁸ Thomas Kuhn *The Structure of Scientific Revolutions* (The University of Chicago Press, 1962)

⁴⁶⁹ Thomas Kuhn *The Structure of Scientific Revolutions* (The University of Chicago Press, 1962)

3.5.1 EPISTEMOLOGY PHILOSOPHICAL STANCE

Epistemology is the study of knowledge, and so of science: the study of its nature, its validity and value, its methods and its scope⁴⁷⁰. According to Hussey and Hussey, epistemology is concerned with the study of knowledge and what we accept as being valid⁴⁷¹. This involves an examination of the relationship between the researcher and that which is being researched⁴⁷². Epistemological assumptions underpin any approach to research⁴⁷³. As the study of knowledge, Thomas states that epistemology is concerned with the following questions: How can we know anything with certainty? How is knowledge to be distinguished from belief or opinion? What methods can yield reliable knowledge?⁴⁷⁴ As the study of justified belief, epistemology aims to answer questions such as: What is the nature of the knowledge we can generate through our research? How can we generate scientific knowledge? What is the value and status of this knowledge?⁴⁷⁵. Epistemology questioning is vital to serious research, as through its researchers can establish the validity and legitimacy of their work. A particularly central issue in this context is the question of whether the social world can and should be studied according to the same principles, procedures, and ethos as the natural sciences⁴⁷⁶. All research is based on

⁴⁷⁰ Raymond-Alain Thietart *Doing Management Research: a Comprehensive Guide* (Sage, 2001)

⁴⁷¹ Jill Hussey and Roger Hussey *Business Research* (MacMillan Press Limited 1997)

⁴⁷² Jill Hussey and Roger Hussey *Business Research* (MacMillan Press Limited 1997)

⁴⁷³ D. Remenyi, B. Williams, A. Money and E. Swartz *Doing Research in Business Management: An Introduction to Process and Method* (Sage Publications, 1998)

⁴⁷⁴ A.B. Thomas *Research Skills for Management Studies* (Routledge, 2004)

⁴⁷⁵ Raymond-Alain Thietart *Doing Management Research: a Comprehensive Guide* (Sage, 2001)

⁴⁷⁶ Alan Bryman *Social Research Methods* (2nd Edition Oxford University Press, 2004)

certain vision of the world, uses a certain method and proposes results aimed at predicting, prescribing, understanding, constructing or explaining. Recognizing that they have these presuppositions, allows researchers to control their research approach to increase the validity of the knowledge produced and to make this knowledge cumulative⁴⁷⁷. Epistemology provides a set of criteria for evaluating knowledge claims and establishing whether such claims are warranted. According to Punch and Maykut and Morehouse, epistemology explains the nature of knowledge, what is accepted as knowledge and the relationship between the knower and the known⁴⁷⁸. Therefore, epistemology is chosen as my research paradigm because it suits this research (knowledge to be gained from enforcement of both corporate manslaughter and CSR and the method for enforcement).

3.5.2 ONTOLOGY PHILOSOPHICAL STANCE

Ontology is the assumption we make about the nature of reality⁴⁷⁹. According to Punch, ontology is the concept explaining reality and why everything exists in the world, including the nature and form of reality⁴⁸⁰. In the study of nature being and existence, Maykut and Morehouse state that ontology is concerned with the following questions: What is the nature

⁴⁷⁷ Raymond-Alain Thietart *Doing Management Research: a Comprehensive Guide* (Sage, 2001)

⁴⁷⁸ K. Punch *Introduction to Social Research- Quantitative and Qualitative Approaches* (Sage, 1998); P. Maykut and R. Morehouse *Beginning Qualitative Research: A Philosophical and Practical Guide* (The Falmer Press, 1994)

⁴⁷⁹ M. Easterby-Smith, R. Thorpe and A. Lowe *Management Research: An Introduction* (2nd Edition Sage Publications, 2002)

⁴⁸⁰ K. Punch *Introduction to Social Research- Quantitative and Qualitative Approaches* (Sage, 1998)

of the world? What is real? What counts as evidence?⁴⁸¹ With the ontological assumption, it has to be decided whether it is considered the world is objective and external to the researcher, or socially constructed and only understood by examining the perceptions of the human actors⁴⁸².

3.5.3 METHODOLOGY/AXIOLOGY PHILOSOPHICAL STANCE

Collis and Hussey define methodology as an approach to the process of the research encompassing a body of methods⁴⁸³. It describes an approach to a problem that can be put into practice in a research programme or process⁴⁸⁴. Methodology, unlike method, defines the procedure by which an inquiry is conducted⁴⁸⁵. It encompasses the methods and strategies employed to guide the design of a study⁴⁸⁶. Methods refer to the various means by which data can be collected and/or analysed⁴⁸⁷. Regardless of which paradigm a researcher is employing,

⁴⁸¹ P. Maykut and R. Morehouse *Beginning Qualitative Research: A Philosophical and Practical Guide* (The Falmer Press, 1994)

⁴⁸² Jill Hussey and Roger Hussey *Business Research* (MacMillan Press Limited 1997)

⁴⁸³ Jill Collis and Roger Hussey *Business Research A Practical Guide for Postgraduate and Undergraduate Students* 4th Edition (Palmgrave Macmillan, 2014)

⁴⁸⁴ Jill Collis and Roger Hussey *Business Research A Practical Guide for Postgraduate and Undergraduate Students* 4th Edition (Palmgrave Macmillan, 2014)

⁴⁸⁵ Jill Collis and Roger Hussey *Business Research A Practical Guide for Postgraduate and Undergraduate Students* 4th Edition (Palmgrave Macmillan, 2014)

⁴⁸⁶ Jill Collis and Roger Hussey *Business Research A Practical Guide for Postgraduate and Undergraduate Students* 4th Edition (Palmgrave Macmillan, 2014)

⁴⁸⁷ J Collis, and R. Hussey, *Business Research* (2nd Ed. Palmgrave Macmillan 2003)

it is important that attention is paid to all the features and ensure that there are no contradictions or deficiencies in the methodology⁴⁸⁸.

According to Hussey and Hussey, methodology is concerned with the following main issues:

- Why data are collected?
- What data are collected?
- From where data are collected?
- When are data collected?
- How are data collected?
- How are data analysed?⁴⁸⁹

Axiology and Rhetoric Structure: Axiology refers to the role of researcher values in the scientific process⁴⁹⁰. These values help to determine what are recognised as facts and the interpretations which are drawn from them⁴⁹¹. Rhetoric refers to the language which is used to present the procedures and results of research to one's audience⁴⁹². Rhetoric structure depends

⁴⁸⁸ J Collis, and R. Hussey, *Business Research* (2nd Ed. Palmgrave Macmillan 2003)

⁴⁸⁹ Jill Hussey and Roger Hussey *Business Research* (MacMillan Press Limited 1997)

⁴⁹⁰ Joseph G. Ponterotto "Qualitative Research in Counselling Psychology: A Primer on Research Paradigms and Philosophy of Science" (2005) 52(2) *Journal of counselling psychology* 126-136

⁴⁹¹ J Collis, and R. Hussey, *Business Research* (2nd Ed. Palmgrave Macmillan 2003)

⁴⁹² Joseph G. Ponterotto "Qualitative Research in Counselling Psychology: A Primer on Research Paradigms and Philosophy of Science" (2005) 52(2) *Journal of counselling psychology* 126-136

on the researcher's epistemological and axiological stance. According to Collis and Hussey, Axiological assumption is concerned with the role of value as follows:

- Positivists believe that the process of research is value-free. Therefore, positivists consider that they are detached and independent from what they are researching and regard the phenomena under investigation as objects. Positivists are interested in the interrelationship of the objects they are studying and believe that these objects were present before they took an interest in them. In addition, they believe that the objects they are studying are unaffected by their research activities and will still be present after the study has been completed⁴⁹³.
- In contrast, interpretivists consider that researchers have values, even if they have not been made explicit. These values help to determine what are recognized as facts and the interpretations drawn from them. Most interpretivists believe that the researcher is involved with that which is being researched.

This means that axiology/ methodology does not suit this research. The reason is that axiology does not suit objectivism which is this researcher's chosen legal approach. For example, the

⁴⁹³ Jill Collis and Roger Hussey *Business Research A Practical Guide for Postgraduate and Undergraduate Students* 4th Edition (Palmgrave Macmillan, 2014)

axiology question is: How can the inquirer (would-be knower) go about finding out whatever the researcher considers can be known?⁴⁹⁴

Consequently, the researcher’s perception is highly objective and is not filtered through his own understanding which is modified and evolved as more understanding accumulated over time⁴⁹⁵. This is for readers to understand that axiology is not the choice of research paradigm for this research. Secondly, axiology is concerned with values in the scientific process⁴⁹⁶. This researcher is not doing scientific experiment but an empirical researcher. Therefore axiology is not this researcher’s choice for a research paradigm but epistemology is.

TABLE 2 ASSUMPTIONS OF THE MAIN PARADIGMS

Assumption	Question	Quantitative	Qualitative
Epistemology	What is the relationship of the	Researcher is independent from	Researcher interacts with that being researched

⁴⁹⁴ Aliyu Ahmad Aliyu, Ibrahim Musa Singhry, Adamu Haruna and Muhammad Abubakar Mu’Awuya Ontology, Epistemology, and Axiology in Quantitative and Qualitative Research: Elucidation of the Research Philosophical Misconception Academic Conference: Mediterranean Publications and Research International on New Direction and Uncommon. University of Agric, Abeokuta, Ogun State, Nigeria 22nd December 2015

⁴⁹⁵ M. Easterby-Smith, R. Thorpe, R. and A. Lowe *Management Research: An Introduction* (Sage Publications, 1991)

⁴⁹⁶ Joseph G. Ponterotto “Qualitative Research in Counselling Psychology: A Primer on Research Paradigms and Philosophy of Science” (2005) 52(2) Journal of counselling psychology 126-136

	researcher to that researched?	that being researched	
Ontology	What is the nature of reality?	Reality is objective and singular, apart from the researcher	Reality is subjective and multiple as seen by participants in a study
Methodology/Axiology	What is the process of research?	Deductive process Static design-categories isolated before study Generalisations leading to prediction, explanation and understanding	Inductive process Emerging design-categories identified during research process Patterns, theories developed for understanding

		Accurate and reliable through validity and reliability	Accurate and reliable through verification
Axiology	What is the role of values?	Value-free and unbiased	Value-laden and biased
Rhetorical	What is the language of research?	Formal Based on set definitions Impersonal voice	Informal Evolving decisions Personal voice

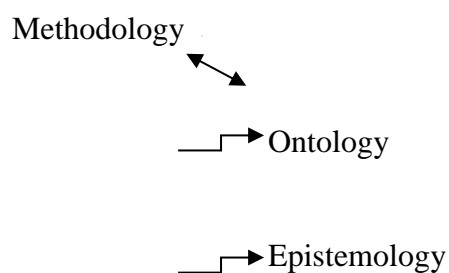
Source: Creswell, J. Research Design: Qualitative and Quantitative Approaches (Sage Publications, 1994)

The chosen paradigms for this research are ontology and epistemology.

With regards to ontology here, critics have argued that Nigeria’s corporate laws and governance codes are inadequate and cannot produce the desired result of punishment⁴⁹⁷ (which is legal enforceability). With regards to epistemology, author like Ijaiya believe that the problem of applying the Criminal code to oil pollution cases lies in the fact that the law was not enacted for the specific aim of addressing oil pollution in the Niger Delta and that the law is over a hundred years old⁴⁹⁸. This means that with regards to epistemology, it could be on knowledge on the potency of the Nigerian Criminal Code, The African charter, NEITI Act to mention just a few for the enforcement of CSR in Nigeria.

This is the knowledge (epistemology) on corporate manslaughter in this research.. This means that epistemology as a research paradigm best suits this research.

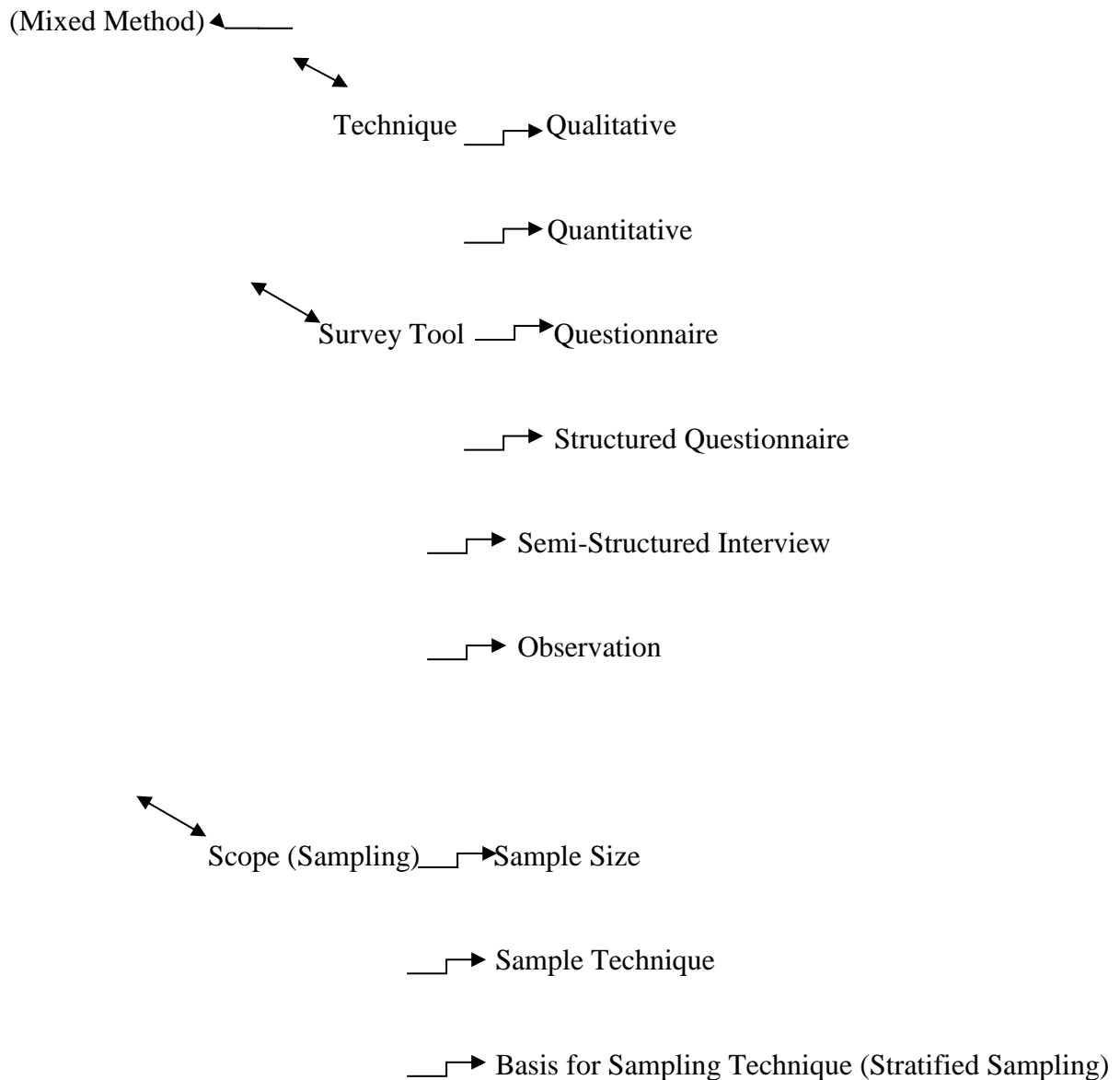
FIG 5 EXPLAINS THE STAGES OF THE METHODOLOGY



Research Method

⁴⁹⁷ Oludolapo Makinde “The Nigerian Corporate Governance Challenge: Inadequacy of Laws or Question of Enforcement?” (2020) 11(4) The Gravitas Review of Business and Property Law 59-71 at 59

⁴⁹⁸ Hakeem Ijaiya “Challenges of Corporate Social Responsibility in the Niger Delta Region of Nigeria” (2014) 3(1) Afe Babalola University Journal of Sustainable Development Law and Policy 60-71at 69



The reason this figure 5 above is important is that in advancing epistemology, this researcher used mixed method and using a mixed method, this researcher has designed a technique and technique is quantitative and qualitative, identified the surveyed tools which are questionnaires, semi-structured interviews, and personal observations and under the research method as well this researcher is looking to justify sample population. Also under epistemology (scope of this

research), this researcher is looking at the size of the population then size based on my sample technique then the sample criteria.

This will help in ascertaining internal validity based on representation (is the sample size representative of the actual size of the sample population? This will be determined by this researcher's sampling criteria and sampling technique (stratified sampling as used in this research. Hence this researcher considered the strata of respondents and their level of involvement (how knowledgeable they are for the phenomenon under investigation) in this research before choosing them to elicit information)). This researcher also used personal observation to test the validity of data gathered using interviews and questionnaires. This is to avoid misrepresentation of data (reliability of data) and sample in this research.

Below, this writer will discuss the research strategy.

3.6 RESEARCH STRATEGY

Under this heading, the researchers will discuss the chosen research strategies which are the ethnography and case study method plus their relevance to the research. This researcher intends to use ethnography to explain the social tensions or the social nuances and how law functions in a social environment. This relates to people's experiences of a social phenomenon and their assessment of what the solution will be. The case study on the other hand will border on the pure legal application principle to phenomena like corporate manslaughter and corporate homicide and corporate social responsibility among oil companies in Nigeria. Readers will

discover that chapter four of this thesis will adopt the research strategy of ethnography. The choice of ethnography is to elicit what could have been the problem that gave rise to this research using enforceability or enforcement as a concept. This researcher for example will be able to discover when some respondents withheld information from questions asked during data collection.

Chapter five of this thesis will adopt a case study research strategy. The case study in this research will involve identifying the company or companies which cause corporate manslaughter and corporate homicide in Nigeria and pure application of the provisions of the law using the concept of enforceability or enforcement. Here in chapter five, the researcher will be able to discover that with regards to enforcement haven read the duty of care provision in Nigerian law in pari passu with the provision of the law in The United Kingdom, this researcher encourages the Nigerian government and its institutions to implement the various laws on CSR mooted like the African Charter, The NEITI Act 2007, CAMA 2021, the Supreme Court decision in Okpabi case and Centre for oil Pollution Watch .v. NNPC to mention just a few. Chapter five will be explaining how enforceability could be hindered by how laws are applied.

In chapter six this researcher intends to bring ethnography and case study together. Chapter six will be explaining solutions to the lack of enforceability of laws in Nigeria to stop multinational oil companies in Nigeria from getting away with murder. There are the recommendations.

Below this writer will discuss ethnography.

3.6.1 ETHNOGRAPHY

Ethnography is a phenomenological methodology that emanates from anthropology⁴⁹⁹.

Anthropology is known as the study of people, especially of their societies and customs⁵⁰⁰.

Saunders et al. and LeCompte and Schensul believe that ethnography is a research setting

where the researcher investigates a phenomenon by being a participant observer within the

context in which it occurs⁵⁰¹. This is where a researcher becomes part of the society or

companies interact with members of the society or employees (subject), collects artifacts⁵⁰²,

and after the fieldwork, the researcher develops his experiences in the form of a thesis⁵⁰³. In

ethnography, observation of subjects is of paramount importance during data collection⁵⁰⁴ in

that the researcher must be able to explain what the subjects are complaining about, which

⁴⁹⁹ Dawson .R. Hancock and Robert Algozzine *Doing Case Study Research: A Practical Guide for Beginning Researchers* (Teachers College Columbia University, 2006)

⁵⁰⁰ Jill Collis and Roger Hussey *Business Research A Practical Guide for Postgraduate and Undergraduate Students* 4th Edition (Palmgrave Macmillan, 2014), Jill Hussey and Roger Hussey *Business Research A Practical Guide for Postgraduate and Undergraduate Students* (Macmillan Business, 1997)

⁵⁰¹ Mark Saunders, Philip Lewis and Adrian Thornhill *research Methods for Business Students* 5th Edition (Pearson Education Limited, 2009); Margaret Diane LeCompte and Jean J. Schensul *Designing and conducting ethnographic research*. Volume 1 (Rowman Altamira, 1999)

⁵⁰² Martyn Hammersley and Paul Atkinson *Ethnography Principles in Practice* 2nd Edition (Routledge, 1995)

⁵⁰³ Mark Saunders, Philip Lewis and Adrian Thornhill *Research Methods for Business Students* 4th Edition (Prentice Hall, 2007)

⁵⁰⁴ Evert Gummesson *Qualitative Methods in Management Research* (Sage, 2000); Alan Berkeley Thomas *Research Skill For management Studies* (Routledge, 2004)

affects the way they live or work and what they accept as normal. This is the reason for the research or the aim of the methodology.

Patton offers several suggestions for researchers conducting ethnographic studies which can be summarised in the following stages:

Build trust as early as possible,

Become as involved as you can with the phenomena, but maintain an analytical perspective,

Develop strong contacts with a few key informants,

Gather data from as many different sources as possible, using multiple methods,

Capture participants' views of their experiences in their own words, but remember the limitations of their perspectives,

Write up field notes as soon as possible after leaving the setting and do not talk to anyone until all notes are done,

Be descriptive when taking field notes and draw diagrams of physical layouts,

Include the researcher's own experiences, thoughts, and feelings as part of the field notes. In this research, what this researcher intends to get from the use of ethnography as a research strategy is the ability to capture social trends like how enforcement can yield corporate social responsibility, and the journey towards creating agencies to maintain law (monitoring and

inspection) to mention just a few. This understanding and practice of social trend is not available in other research strategies. This makes ethnography suitable for this research.

Ethnography will help this researcher understand the power balance between these different forces that have bigger power because of the nature of their social relationship. The question of relationship could be whether is it a relationship of master and servant, is a relationship of equals, and if it is a master-servant relationship then how does it impact enforceability or the enforcement of the law?

As fieldwork draws closer, concentrate on making a synthesis of notes⁵⁰⁵. Below, this researcher will explain how ethnography is applied to his research and why it is important.

Ethnography will be used in this research to explore stakeholder influence for example within the context of enforceability or enforcement. In Nigeria, enforcement can be impossible because the legislation that should facilitate or empower any enforcement organ to act, the Nigerian government, its institutions, and Nigerians are yet to fully embrace them.

In the UK, Field and Jones stated that the UK, Crown Prosecution Service in a case of corporate manslaughter must prosecute companies⁵⁰⁶. Secondly, In the UK, the enforcement of corporate manslaughter and corporate social responsibility represents a move toward greater

⁵⁰⁵ Michael Quinn Patton *Qualitative Research and Evaluation Methods* 3rd Edition (Sage, 2002)

⁵⁰⁶ Sarah Field and Lucy Jones “Is the Net of Corporate Criminal Liability Under the Corporate Homicide and Corporate Manslaughter Act 2007 Expanding?” (2015) 36(6) *Business Law Review* 215- 220 at 219

accountability as well as a significant widening of the corporate homicide net to include the conviction of public bodies and companies⁵⁰⁷.

This makes the ethnography strategy suitable for this research.

Below, this researcher will discuss the case study.

3.6.2 CASE STUDY METHOD

A case study method is a method of choice when the phenomenon under study is not readily distinguishable from its context⁵⁰⁸. Case study research is an investigation and analysis of a single or collective case, intended to capture the complexity of the object of study⁵⁰⁹. Qualitative case study research, as described by Stake, draws together “naturalistic, holistic, ethnographic, phenomenological, and biographic research methods” in a “palette of methods”⁵¹⁰. The case study methodology maintains deep connections to core values and intentions and is “particularistic, descriptive and heuristic”⁵¹¹. As a study design, a case study is defined by an interest in individual cases rather than the methods of inquiry used. The selection of methods is informed by the researcher and case intuition and makes use of naturally occurring sources of knowledge such as people or observation of interactions that occur in

⁵⁰⁷ Sarah Field and Lucy Jones “Is the Net of Corporate Criminal Liability Under the Corporate Homicide and Corporate Manslaughter Act 2007 Expanding?” (2015) 36(6) Business Law Review 215- 220 at 220

⁵⁰⁸ Robert Yin *Case Study Research: Design and Methods* 3rd Edition (Sage Publications, 2003)

⁵⁰⁹ Robert .E. Stake *The Art of Case Study Research* (Sage Publications, 1995)

⁵¹⁰ Robert .E. Stake *The Art of Case Study Research* (Sage Publications, 1995) at xi-xii

⁵¹¹ Sharan .B. Merriam *Qualitative Research A Guide to Design and Implementation* (Jossey-Bass, 2009) at 46

time⁵¹². Multiple data collection and analysis methods are adopted to further develop and understand the case, shaped to fit the context of the research and the data to be gathered for the research⁵¹³.

For example in the qualitative aspect of the research, a case study “explores a real-life, contemporary bounded system (a case) or multiple bounded systems (cases) over time, through detailed, in-depth data collection involving multiple sources of information and reports a case description and case themes”⁵¹⁴.

Below, this researcher will explain how the case study is applied to his research which is the impact of Nigerian laws; the political culture of law mixed with the activities of Shell Nigeria which is a major player in Nigeria’s oil and gas industry, and why they are important. For this research, the case study will be pure law. This researcher is researching the activities of oil companies like Shell Nigeria, and the challenges it has in enforcing corporate social responsibility duties which are the encounters oil companies had with regulators about corporate social responsibility. This will take the researcher to the legal aspect of it (The 1999 Constitution Nigeria, The Criminal Code Nigeria, The Companies and Allied Matters Act Nigeria, The Corporate Manslaughter and Corporate Homicide Act the UK) to mention just a

⁵¹² Robert .E. Stake *The Art of Case Study Research* (Sage Publications, 1995)

⁵¹³ Robert .E. Stake *The Art of Case Study Research* (Sage Publications, 1995)

⁵¹⁴ John .W. Creswell *Qualitative Inquiry Research Design: Choosing Among Five Approaches* 3rd Edition (Sage, 2013) at 97

few with regards to how it all has shaped the understanding of corporate manslaughter and corporate homicide and corporate social responsibility. This takes the researcher into the law. What this researcher intends to get from using a case study strategy in this research is to understand the in-depth nature of the legal relationship between government and oil companies, government, and the people. It is for the existence of laws and how well these laws capture the very problem that this researcher is investigating. These laws are human rights law (the 1999 Constitution), criminal law, company law, and environmental law to mention just a few.

The question of the case study in this research is how these laws help in the understanding of what is going on within the system. This means looking at the specific provisions of the law from the angle of conducting a case study on a particular company or company to have a deeper understanding of enforcement or enforceability. This makes the case study strategy suitable for this research.

Below, this researcher will discuss the means of data collection.

3.7 RESEARCH METHOD

3.7.1 VALIDITY, RELIABILITY, AND GENERALISABILITY IN QUALITATIVE RESEARCH

To further triangulate data, this researcher used observation to cross-check and verify the validity of information and data collected through semi-structured interviews. To avoid

including bias (not wanting this researcher's subjective element to play into the analysis, in order not to include/ increase bias) or check bias by using observation, this researcher checked his bias by using the repeated semi-structured interview to question the focus group. This is just to revoke the inherent bias.

3.7.2 The disguised observation⁵¹⁵ (non-participant) is simply to validate the semi-structured interview by looking at surrounding environmental contexts to identify the role of people, their actions, and the circumstances under which they operate. As a useful tool in behavioural science, this method helps to bring out data that respondents are reluctant to give or omitted during the interviews.

As a useful tool in empirical research, it is useful in this research to bring compare knowledge from participants on the capacity of enforcement or enforceability to enroll the sanctity of legal application or legal effectiveness. This research is using this phenomenon within the branches of corporate manslaughter, corporate social responsibility, and enforcement or enforceability to understand the effect of lack of enforceability on the problem of non-accountability to the law.

⁵¹⁵ John Creswell *Research Design Qualitative, Quantitative and Mixed Methods Approaches* (2nd Ed. Sage Publications 2003)

These methods cannot be functional at getting reliability⁵¹⁶ and validity if the views gotten are not representative of the perspectives shared by the majority of participants which are villagers, oil companies, and politicians to mention just a few. This then made the researcher choose the sample size chosen.

3.7.3 This researcher used a structured questionnaire. To ensure the validity and reliability of the content of both the questionnaire⁵¹⁷ and the structured questionnaires, the questionnaires were reviewed by statisticians from two different universities in Nigeria far from the Niger Delta Area to test validity and reliability. This is just to revoke the inherent bias. This means this researcher used to verify the validity of his quantitative data by using a structured questionnaire. This researcher used a structured questionnaire rather than a telephone questionnaire⁵¹⁸ to cross-check and verify the validity of information and data collected through the questionnaire. The problem with a telephone questionnaire is that if there are too many responses to choose from on the phone, there is the likelihood that a respondent will choose one⁵¹⁹ very fast without thinking properly. Structured questionnaire is a document that consists

⁵¹⁶ M. Joppe, *The Research Process* (2000) Available at <<http://www.ryerson.ca/~mjoppe/rp.htm>> [Accessed] 10th May 2017

⁵¹⁷ D. A. De Vaus *Survey in Social Research* (4th Edition, UCL Press, 1996)

⁵¹⁸ D. A. De Vaus *Survey in Social Research* (4th Edition, UCL Press, 1996) at 95

⁵¹⁹ Supra at 95

of a set of standardized questions with a fixed scheme, which specifies the exact wording and order of the questions, for gathering information from respondents⁵²⁰.

This researcher chose structured questionnaire because it serves as an assessment tool for a questionnaire⁵²¹ enabling this researcher to compare information gotten from respondents using questionnaire weeks before. The structured questionnaire was then filled (face to face)⁵²² in front of the respondents. Here this researcher will select a random sample which is approximately 5 to 10% of final sample size and administer the structured questionnaire to them. Then the researcher will have a clear discussion with respondents regarding each question, assessing their knowledge about each question⁵²³. This enhances validity and reliability.

Below this writer will discuss methods and its usage, sample size, sampling technique and reasons for choice, its application in the Niger Delta Area of Nigeria and sampling: preparing for interview (data collection and purposive sampling).

⁵²⁰ Adam Ka-Lok Cheung *Structured Questionnaires Encyclopaedia of Quality of Life and Well-Being Research* (Cham Springer International Publishing, 2021) 1-3.

⁵²¹ Adam Ka-Lok Cheung *Structured Questionnaires Encyclopaedia of Quality of Life and Well-Being Research* (Cham Springer International Publishing, 2021) 1-3.

⁵²² L., Bonet, B., Llácer, M., Hernandez-Viadel, D., Arce, I., Blanquer, C., Cañete, and J., Sanjuan, ‘‘Differences in the Use and Opinions about New eHealth Technologies among Patients with psychosis: Structured Questionnaire’’ (2018) 5(3) JMIR mental health e9950

⁵²³ S., Roopa, and M. S. Rani ‘‘Questionnaire Designing for a Survey’’ (2012) 46(4) Journal of Indian Orthodontic Society 273-277

3.8 RESEARCH METHODS AND THEIR USAGE. SAMPLE SIZE, SAMPLING TECHNIQUE, AND REASONS FOR CHOICE. ITS APPLICATION IN THE NIGER

DELTA

SAMPLING: PREPARING FOR INTERVIEW

Under this heading, the researcher will explain what sampling means, the types of sampling, the content of sampling, the idea behind the use of sampling in research, and justification for sample size, sampling technique, and triangulation.

Sampling is an important component of a research design⁵²⁴ , especially for research that employs interviewing as its mode of data collection⁵²⁵.

TABLE 3 LIST OF POPULATION FOR QUANTITATIVE DATA (QUESTIONNAIRE

S/NO	Community	MNCs	Government Institutions	Total Population of Place Studied
1	Awka	-	Nnamdi Azikiwe University Awka Anambra State	1%

⁵²⁴ Jennifer Mason “Qualitative Interviewing: Asking, Listening and Interpreting” (2002) 6(1) Qualitative Research in Action 225-241

⁵²⁵ Oliver C Robinson “Sampling in Interview-Based Qualitative Research: A Theoretical and Practical Guide” (2014) 11(1) Qualitative Research in Psychology 25-41

			University Professor of Company Law.	
2	Enugu Town	-	Lawyer: Senior Advocate of Nigeria (SAN), Barristers at the Senior Advocate of Nigeria (SAN) Chambers State Attorney (Ministry of Justice Enugu), Judge Federal High Court Enugu, Lawyers.	40%
3	PortHacourt	-	Rivers State House of	1%

			Assembly member	
4	Onitsha	-	Lawyer Senior Advocate of Nigeria (SAN) Barristers at the Senior Advocate of Nigeria (SAN) Chambers	20%
5	Agbani Enugu State	-	Nigerian Law School Enugu Campus. Barristers and Law Lecturers	2%
6	Bonny Rivers State	Nigerian Liquefied and Natural Gas	Oil and Gas Company	1%

7	PortHacourt Rivers State	Federal Ministry of Labour and Employment	Federal Ministry	2%
8	Bonny Rivers State (indigenes)	-	-	12%
	Bonny Rivers State	Alcon Nigeria Limited	Oil and Gas Company	5%
9	Imo State (Oguta) oil-producing community)	High Chief	-	1%
10	Ordinary Members of the Public			10%

Below, this writer will be discussing deciding on the sample size.

3.8.1 DECIDING ON SAMPLE SIZE

This research is social science research that needs identification, verification, and justification of sample size and sampling technique, unlike doctrinal research which just requires the

explanation of the law. This researcher is focusing here on how to redirect and reconstruct those methodologies to fit into the specifics of what the researcher is trying to achieve which is whether the absence of a coherent legal framework to legally enforce all aspects of corporate social responsibility affects the legal enforceability from incidences that leads to corporate manslaughter offenses which in this research are oil spillage, gas flaring and human right abuses by oil and gas companies in the Niger Delta? Whether there is a link between corporate manslaughter and corporate social responsibility through the lens of legal enforcement, the reasons countries adopt laws in enforcing corporate social responsibility as a punishment for corporate manslaughter and corporate homicide, and what are the attitude of the courts on legal enforceability? Sampling size and sampling technique help researchers to develop the ideas he or she is canvassing. This researcher is using the sampling technique as a tool since the research is functional and not descriptive. This researcher will give a brief explanation of sampling and then how sampling will be applied to this research. This is to create what this researcher wants or intends to achieve.

The table below shows the sample size of participants from oil-producing communities, parliament, oil companies, court, chambers, and Nigerian university/ law school.

Table 4 Sample Size

Respondents	Population	Sample	Sampling Technique	Survey	Observation

Villagers from oil producing communities in the Niger Delta	10	9	Stratified Random Probability (SRP)	Interview	Observed
Employees of oil companies in the Niger Delta	30	16	SRP	Interview	Observed
Judges including Legal Practitioners	30	24	SRP	Interview	Observed
Law Lecturers	5	4	SRP	Interview	Observed

Law Makers/ Politicians	3	2	SRP	Interview	Observed
Health and Safety Officials Federal Ministry of Labour and Environment	3	2	SRP	Interview	Non- Observed

With regards to sampling size, this researcher ensured that a certain number of people that he interviewed were represented. This researcher also ensured who the people were, what their position as regards the area under investigation is, how representative is this number to the totality of people, what was the justification for the size.

This researcher included the figures above to make probability an assurance after haven tested provisional number at the design stage, otherwise the researcher will not be able to calculate the number of respondents to be represented while at the same time separating the respondents observed from those not observed for intensive analysis of the case.

Secondly, this researcher included the figures above to assess the number of people whom were willing to supply information for the research during data collection and analysis

Thirdly, the numbers are there for flexibility purposes. The advantage of mixed research method is to have as many respondents as possible. The figures represent the number of people interviewed, randomly sampled and observed. This researcher feels that the total of people interviewed by him is enough after the figures were displayed in a table. This practice of having figures gives room for flexibility.

3.8.2 JUSTIFYING SAMPLE SIZE, SAMPLING TECHNIQUE, AND TRIANGULATION

The desire to ensure that all respondents as it relates to questions on corporate manslaughter and corporate homicide law and corporate social responsibility are represented prompted this researcher to choose a sample size (that he made) and random stratified probability technique because researchers may fear that the data collected may be prone to bias, especially during the selection of group universe⁵²⁶. Pole and Lampard, believe that this could be expected since sampling (sampling done on purpose) gatekeepers may mistakenly or not send the researcher to certain interviewees while avoiding others⁵²⁷. The problem encountered in listing the actual

⁵²⁶ George Alexander and Andrew Bennett *Case Studies and Theories Development in the Social Sciences* (MIT Press, 2005)

⁵²⁷ Christopher Pole and Richard Lampard. "Suitable samples: selecting, obtaining and profiting from them" *Practical Social Investigation: Qualitative and Quantitative Methods in Social Research* (2002) 32-69

groups of respondents informed the use of stratification based on experience with the law and on how companies in Nigeria operate.

The major hindrances were people's knowledge of the law on corporate manslaughter and corporate homicide law and how risky their lives some participants felt that the questions thrown at them are.

Therefore, this research lists the population based on stratification and thereafter takes out the sample size based on the percentage points scored against stratification criteria. These criteria include expertise, the level of exposure to it, the level of instruction, the superiority (each) respondents have in terms of information available, and how respondents are connected to the subject matter in question.

Based on the above criteria, each respondent was rated on a scale of 1 to 10 to indicate their level of compliance with 10 being the maximum rating and 1 being the least possible rating.

To derive the proportionate stratification, this researcher will test the validity of the sample population by grouping them in numbers and converting the results into percentages.

The outcome is as follows Judges including legal practitioners (48%) oil company workers (20%) lawmakers/ politicians (2%), Law lecturers (10%) villagers suffering from gas flaring and oil spillage (20%). This researcher afterward sorts out the sample using simple sampling (mixing (respondents) together for good representation). The idea is to avoid any form of bias after the final selection of the sample had been made through stratified random sampling. The

sample figures obtained through this method are shown in the table above to ensure that none of the groups were overrepresented.

3.8.3 TRIANGULATION

The idea for the use of triangulation in this research is to support my purposive sampling.

To ensure accuracy, reliability, validity of data, and consistency, this researcher will undertake independent confirmation of data on the subject matter by re-contacting respondents. This researcher will endeavour to re-contact his respondents as they are grouped to satisfy that no new information will be resurfacing. Though this is labour intensive and involves multiple stages of data collection, it has the advantage of confirmed quality data. This researcher will also observe some randomly selected respondents ensure that the data collected is re-validated. This has eliminated the researcher's assumptions on the topic and makes the research outcome-driven research⁵²⁸.

Below this writer will discuss Chapter four which is data presentation from Nigeria.

⁵²⁸ Ashley Crossman "An overview of qualitative research methods" ThoughtCo.<<https://www.thoughtco.com/qualitative-research-methods-3026555>> (2017)

CHAPTER FOUR

In this chapter, the idea is for this researcher's data to revolve around the concept of the objective which is showing that the absence of a legal framework for the enforceability of all aspects of corporate social responsibility in Nigeria has made it impossible to enforce corporate manslaughter (punishment as an offense).

The main thing readers should look out for in chapter four is how the data collected does reflect the concept of enforceability or the objectives of the research. This means that the data must answer the research questions or raise certain fundamental issues that are related to the objectives that are in question. Information was gathered about how Nigerians view corporate manslaughter and its relationship with corporate social responsibility in Nigeria.

This researcher will be using Bonny Island Rivers State as a specimen to see why enforceability has not worked in Nigeria. This is to understand the political, social, cultural, and economic tensions that will militate against enforceability and the measurement of this will be based on

- (a) Institutional capacity
- (b) Lack of institutional understanding
- (c) The political and social tensions between the oil company's objective and the objectives of Nigerians as Nigerians and the oil company's objectives and the Nigerian government. These are elements.

In chapter four this researcher will ask to what extent these elements militate against the effective implementation of the effective achievement of the sole goal of enforceability which is enforcement.

Below this writer will discuss the different parameters on which he hung the concept of enforceability using the data he collected from Nigeria. This researcher will also play out ethnography in its discussion which is the researcher's choice to use for/in this chapter.

4.1 LACK OF LEGITIMACY OF INDIVIDUALS AND THE POLITICAL INFLUENCE OF THE MULTINATIONAL OIL COMPANIES IN NIGERIA WITHIN THE POLITICAL ENVIRONMENT OR WITHIN THE SOCIAL / GOVERNMENTAL STRUCTURE

Under this subheading, in identifying the link between corporate manslaughter and corporate social responsibility (under the concept of enforceability) and the creation/ acceptance of legal obligation, readers will learn of the political imbalance creating a problem for enforceability.

This unenforceability of corporate manslaughter is being caused by multinational oil companies and the Nigerian government which can only play along because she runs a sole economy that depends on revenue from oil exploration for her survival. Sometimes the effect of the interference is reflected in the outcome of the court's judgment in a case for corporate manslaughter in Nigeria (like in Okpabi's case). An instance of unenforceability of corporate manslaughter can be in a case against a company in court, it may argue that they are forced to accept the liability of its subsidiary company for corporate manslaughter.

With regards to the nature of the law which means the obedience to law by force or coercion is it justified?, this researcher asked Chief Mrs. Justina Offiah (SAN) the question do you think the corporate manslaughter and corporate homicide bill when it becomes law will punish companies for death at the workplace, human right abuse (death of Nigerian youths protesting against the activities of oil companies in their community) and death caused by environmental pollution. She said yes to death at the workplace and death caused by environmental pollution.

With regards to death caused by human right abuse, she said that the Corporate Manslaughter and Corporate Homicide Bill 2015 do not have a penalty provision for death caused by human right abuse. She then went further to state the case of Ken Saro Wiwa and eight others against Shell when the leader of the MOSOP⁵²⁹ protested against the activities of Shell Nigeria causing environmental degradation and pollution in Ogoniland and for years sued Shell Nigeria in court both home and abroad. According to her, Shell Nigeria not being legitimate at that time decided to report the issue to Nigeria's Military head of State General Sani Abacha who decided that the leader of MOSOP Ken Saro Wiwa and the Ogoni eight be executed. Even a layman will understand that the effort of Ken Sao Wiwa an environmentalist (protesting against Shell Spilling crude oil in the Ogoni Rivers State of Nigeria which poisons drinking water and fish) in suing Shell Nigeria will mean that the nature of the rule of law in Nigeria will mean to Shell Nigeria obedience to the law (as the court will decide it) to be by force or coercion.

⁵²⁹Movement for the Survival of Ogoni People

Shell Nigeria did not consider the option of going to court for the protest while the Nigerian government indicted the group in court for breach of the peace (even though not on record money exchanged hands between Shell and Nigeria's Military head of State General Ibrahim who gave the court order to execute the group in its judgment amidst plea for leniency from the United Nations). This is a clear incidence of the lack of legitimacy of individuals (the Nigerian government) and the political influence of multinational oil companies in Nigeria. This step by the government, the court, and Shell Nigeria could cause the court to hoard its legal obligation to be just. This is a result of a state-initiated relationship facilitated⁵³⁰ by MNCs and the Nigerian government. This makes the Nigerian government apathetic to the negative activities of MNCs in its country.

It hinders enforceability in corporate manslaughter cases and prevents multinational companies in Nigeria to be corporate social responsibility. The legal obligation on the companies to practice corporate social responsibility continuously will then be lost.

Below, this researcher will discuss one of the parameters on which he hung the concept of enforceability which is a lack of institutional understanding of the importance of enforcement of laws.

⁵³⁰ Kramer R, Michalowski R and Kauzlarich D "The Origins and Development of the Concept and Theory of State-Corporate Crime" (2002) 48(2) *Crime and Delinquency* 263-282 in Whyte David "Regimes of Permission and State-Corporate Crime" (2014) 3(2) *State Crime Journal* 237-246 at 238

4.2 LACK OF INSTITUTIONAL UNDERSTANDING OF THE IMPORTANCE OF ENFORCEMENT OF LAWS

Under this heading, identifying the link between corporate manslaughter and corporate social responsibility (under the concept of enforceability) and the creation/ acceptance of legal obligation will be hinged on the nature of human institutions and readers will learn that if it is the human institution, what then is with the institution.

An instance of unenforceability of corporate manslaughter can be in a case against a company in court found in those institutions (like the host government (Nigeria) (and even the body created (when created) and lawmakers themselves like the senators or house of representative members) that are supposed to create specific institutions do not even have the institutional understanding of the elements required for enforcement of enforceability to take hold. This means that they lack institutional understanding of the importance of enforcement of laws. This has been a problem in enforceability taking hold.

This writer will also explain that to aid enforceability of laws in Nigeria any law to be published, every Nigerian and not just the institutions or the companies themselves must understand the importance and the effect/ impact of such laws and the legal obligation owed to the law and the judgment of the court.

This researcher interviewed the managing director of Sea float Marine Services Limited Port Harcourt Rivers State Nigeria a company that services and supplies life-saving equipment,

rescue equipment, and material, and man overboard offshore for oil company employees (like Mobil Nigeria, Shell Nigeria, Total Nigeria, Chevron Nigeria to mention just a few in Rivers State Nigeria (float stations and oil rigs) Engineer (Ezennia) Francis Obodoechina.

This researcher asked him the question “how well do you think oil companies in Nigeria reduce the damage it causes to the environment?” He replied that oil companies are not doing enough and that the issue is not that Nigeria does not have good laws⁵³¹ to make oil companies reduce the damage it causes to the environment or that there are loopholes in our laws but that corruption in the human institutions in Nigeria is not helping the matter.

This researcher asked him if there is no government agency to intervene (two bodies one representing the Nigerian government, and another representing oil companies in Nigeria to ensure enforceability and shun corruption) in this issue of corruption to ensure that laws in Nigeria are enforced against oil companies in Nigeria. Engineer Francis Obodoechina replied that there is a body called the Nigerian Content Development and Monitoring Board (NCDMB) which is the controlling body for oil and gas companies in Nigeria to protect the local content and their aim / the main motive for its establishment is for oil and gas nationals, oil and gas locals in Nigeria but this body is not watching how well oil companies reduce the damage it causes to the environment (Amodu said that the challenge lies in lackadaisical enforcement by

⁵³¹ Nojeem Amodu “Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria” (2017) 61(1) Journal of African Law 105-130 at 105

regulators⁵³²). This shows that government investigators lack the technical capacity⁵³³ to undertake inspections.

In the United Kingdom, the nature of a human institution like the court in a case of corporate manslaughter is that an organization convicted of corporate manslaughter or corporate homicide can be ordered by the court to publish particulars of its conviction in a newspaper, requiring it to take specific steps to remedy the breach; any matter the court believes to have resulted from the breach and caused the death; and any deficiencies in the organization's constitution with regards to health and safety policies, systems or practices which may have stemmed from the breach⁵³⁴. However corporate social responsibility is unenforceable in Nigeria and due to the rapport multinational companies with human institutions in Nigeria (built on corruption and denial of a legal obligation), the end product is the denial of legal obligation on the court to render a just judgment and on the multinational companies to review their health and safety policies (and comply with the law and the court to reduce the incidence of corporate manslaughter to the barest minimum).

He complained that when people like them complain to the Nigerian Content Development and Monitoring Board (NCDMB) about how well oil companies reduce the damage it causes to the

⁵³² Nojeem Amodu "Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria" (2017) 61(1) *Journal of African Law* 105-130 at 105

⁵³³ Smith .I. Azubuike and Ondotimi Songi "A Rights-based Approach to Oil Spill Investigations: A Case Study of the Bodo Community Oil Spill in Nigeria" (2020) 1(1) *Global Energy Law and Sustainability* 28-54 at 30

⁵³⁴ Corporate Manslaughter and Corporate Homicide Act 2007 United Kingdom Section 9(1)

environment they will chase them out, cancel their contracts with multinational oil companies (or make them do that) or even talk to your business partners abroad when supply one life-saving equipment to stop doing business with you.

This goes to show that these specific institutions do not even have the institutional understanding of the elements required for enforcement or enforceability to take hold.

The Constitution of the Federal Republic of Nigeria 1999 provides rights that are deemed non-justiciable⁵³⁵ meaning that they cannot be prayed to be granted by the court of law in Nigeria⁵³⁶.

Despite the general non-justiciability of economic and social rights under the Nigerian Constitution, in *Attorney General of Ondo State .v., Attorney General of the Federation and 35 Others*⁵³⁷ the Supreme Court of Nigeria held that the Directive Principles (which contain economic and social rights) can become justiciable if the constitutionally-recognized legislature (for instance the federal legislature⁵³⁸ (National Assembly) makes specific legislation which recognizes these rights as justiciable⁵³⁹. This awareness from the decision of the Supreme Court as a government institution in *Attorney General of Ondo State .v. Attorney*

⁵³⁵ The Constitution of the Federal Republic of Nigeria 1999 Sections 13-24

⁵³⁶ Philip .E. Oamen and Eunice .O. Erhagbe “The Impact of Climate Change on Economic and Social Rights Realisation in Nigeria: International Cooperation and Assistance to the Rescue?” (2021) 21 African Human Rights Law Journal 1080-1111

⁵³⁷ *Attorney General of Ondo State .v. Attorney General of the Federation and 35 Others* [2002] 7 Monthly Judgment of the Supreme Court 1

⁵³⁸ The Constitution of the Federal Republic of Nigeria 1999 Sections 13-24

⁵³⁹ Philip .E. Oamen and Eunice .O. Erhagbe “The Impact of Climate Change on Economic and Social Rights Realisation in Nigeria: International Cooperation and Assistance to the Rescue?” (2021) 21 African Human Rights Law Journal 1080-1111

General of the Federation and 35 Others is what this researcher is stressing that will educate judges in future cases on the lack of institutional understanding of the importance of enforcement of the law (instead of paying lip service in its judgment by giving excuses with lack of locus standi or lack of proximity by the plaintiff/ appellant) that under the directive principle, non-justiciable rights (locus standi, right to fair trial in a parent/ subsidiary relationship case) can be justiciable if the constitutionally recognized legislature makes specific legislation as a government institution which recognizes these rights as justiciable.

One major statute in this regard is Nigeria's African Charter on Human and People's Rights (Ratification and Enforcement) Act⁵⁴⁰ which domesticates the provisions of the African Charter on Human and People's Right (African Charter). The Charter provides justiciable economic and social rights⁵⁴¹, and Article 24 provides "for a climate change-related right by guaranteeing everyone's right to a general satisfactory environment favorable to their development"⁵⁴².

Thus the Supreme Court in *COPW .V. NNPC*⁵⁴³ approved the justiciability of economic and social rights in Nigeria by the provisions of the African Charter and now

⁵⁴⁰ African Charter on Human and People's Right (Ratification and Enforcement) Act Cap A9, Laws of the Federal Republic of Nigeria, 2004

⁵⁴¹ African Charter on Human and People's Right (Ratification and Enforcement) Act Cap A9, Laws of the Federal Republic of Nigeria, 2004 Article 14-17

⁵⁴² African Charter on Human and People's Right (Ratification and Enforcement) Act Cap A9, Laws of the Federal Republic of Nigeria, 2004 Article 24

⁵⁴³ *COPW .v. NNPC* [2019] 15 Nigeria Weekly Law Report 1666. This is the Supreme court appealed case of Centre for Oil Pollution .v. Nigerian National Petroleum Corporation FHC/L/CS/638/2004 (court of first instance being the Federal High Court in Lagos Nigeria in the same case) and Centre for Oil Pollution .v. Nigerian National Petroleum Corporation CA/L/413/2008 (the Court of Appeal citation in the same case)

- (1) Oil companies (both public and private) in Nigeria must prevent environmental degradation or oil spillage, human lives, public health, and the environment (the Court gave an indivisibly aligned interpretation of the right to life and the right to clean environment⁵⁴⁴)
- (2) Widened the scope of those who can challenge such degradation in court.

This is a huge success because according to Anozie and Wingate before this case “NGOs could not successfully access the Nigerian courts to protect the environment⁵⁴⁵.”

Secondly, (away from the courts and legislature’s example of government institutions and its understanding of the importance of enforcement of the law) how well oil companies reduce the damage it causes to the environment also borders on staff training. Engineer Francis Obodoechina said that he trains his staff abroad before letting anyone of them handle life-saving equipment but as regards bodies like the NCDMB⁵⁴⁶ which are supposed to be enforcers of the law, they lack training on CSR and health and safety and when they go offshore or onshore to carry out inspection, they will not know what to do or what they go there to do. One can according to Engineer Francis Obodoechina only monitor what he or she knows about. The

⁵⁴⁴ M.C. Anozie and E.O. Erhagbe “The Impact of Climate Change on Economic and Social Rights Realisation in Nigeria: International Cooperation and Assistance to the Rescue?” (2021) 21 African Human Rights Law Journal 1080-1111

⁵⁴⁵ M.C. Anozie and E.O. Erhagbe “The Impact of Climate Change on Economic and Social Rights Realisation in Nigeria: International Cooperation and Assistance to the Rescue?” (2021) 21 African Human Rights Law Journal 1080-1111

⁵⁴⁶ Nigerian Content Development and Monitoring Board

problem which arises is how oil companies in Nigeria get monitored since it will be what these oil companies tell the staff of the Nigerian Content Development and Monitoring Board (NCDMB) on inspection that they will take. He suggests that the new Corporate Manslaughter and Corporate Homicide Bill before it is passed into law⁵⁴⁷ should incorporate how well oil companies reduce the damage it causes to the environment and makes provision in the bill (a reform of the criminal law system of Nigeria by the National Assembly⁵⁴⁸) to describe what it will be (it entails (a good CSR practice), how it will be failed and penalty for its failure). This according to him can be achieved by companies keeping a record of how well it reduces damages it causes to the environment which causes the death of humans.

The reason according to him is that the situation in Nigeria is because of greed or corruption in pipelines which are supposed to be checked or life safety equipment which is supposed to be checked every year by a Nigerian government agency on inspection, but oil companies choose to pay and avoid inspection. Nigerians also lack knowledge of the effect of enforceability because they during inspection agree to accept bribes without doing their job.

Sometimes when employees of oil companies fall sick or family members of those who are supposed to carry out an inspection or family members of the king of an oil-producing community (who chooses to collect bribes from MNCs) fall sick, they are taken to the hospital

⁵⁴⁷ Ufuoma Veronica Awhefeada and Iroro Akpodovhan “Corporate Manslaughter: Identifying Criminal Liability under Nigerian Law” (2020) 98 Journal of Law, Policy and Globalization 81-92

⁵⁴⁸ Veronica Ngozi Ekundayo, Olisakwe Okechinyere and Olalekan Moyosore Lalude “An Analysis of Corporate Criminal Liability in Nigeria” (2020) 11(2) The Gravitas Review of Business and Property Law 47-57 at 57

for treatment but nobody is asking the real questions or fighting to see that certain laws are created or fighting to see that those other laws that have been created are properly enforced by the institutions that should enforce them. This means that an economy like Nigeria has been created out of conflict and conflict is now an instrument for economic empowerment.

There should be a record-keeping by multinational oil companies in Nigeria that this particular machinery was marked for inspection, when it will be due for inspection, what problem or not was recommended, or the status of particular equipment or machinery after inspection by Nigerian government agencies (for compliance with health and safety), was serviced and ready for another six monthly or yearly inspection.

He suggested that the new Corporate Manslaughter and Corporate Homicide Bill 2015 (for example yearly inspection of facilities, explaining what amounts to breach in failure to service facilities after inspection and the punishment for the breach) before it is passed into law should have a section for how well do oil companies in Nigeria reduce the damage it causes to the environment and include sensitization of both oil companies and Nigerian government officials (to stop power differentials between firms and marginalized stakeholders⁵⁴⁹ like the villagers) for the way they carry out their job onshore or offshore (bribe giving (Nigerian government officials)/ failure in practice of corporate social responsibility (oil companies in Nigeria).

⁵⁴⁹ Subhabrata Bobby Banerjee “Transnational Power and Translocal Governance: The Politics of Corporate Responsibility” (2018) 71(6) Human Relations 796-821 at 800

This researcher in a focus group made up of senior managers and health and safety staff of Seafloat Marine Services Limited Porthacourt Rivers State Nigeria asked the question “how well do oil companies in Nigeria practice corporate social responsibility?” One of the senior managers answered that there is a problem that oil companies learn from the Nigerian government and Nigerian government officials on inspection. He went further to say that having a law in Nigeria is not the problem but that the institutions authorized by law to enforce the law are not legitimate either because of greed or selfishness, they compromise the law. According to him even where there is a law, people compromise. He went further to say that for instance in Ogoni-land Rivers State known for oil spillage, what stops the Nigerian government (through the local government) from ensuring that its own citizens’ health, safety, and life are protected instead the Nigerian government decides to watch a citizen die meanwhile they know the cause and source of his or her death yet the Nigerian government will do nothing to start with.

He went further to say that if the oil companies will go to a large extent to reduce the damage of oil spillage and gas flaring; it is a function primarily of the government of the day, the oil-producing community members, and government agencies like NNPC (The Nigerian National Petroleum Corporation).

Even during the Ogoni crisis involving the case of The Federal Government of Nigeria against Ken Saro Wiwa and eight Others, the court said that it does not have jurisdiction to entertain the case according to Mrs. Ahariamuna a head of the department of corporate governance

Augustine Nnamani campus of the Nigerian Law School Enugu Nigeria when asked the question “do you think that the Corporate Manslaughter and Corporate Homicide Bill 2015 of Nigeria is long overdue?”. This is because the laws presently do not make provision for corporate manslaughter and corporate homicide and specifically mention the government institution (which court will it be?) to handle the case of Ken Saro Wiwa claiming the deaths of Ogoni people as a result of the negative activities of Shell Nigeria in Ogoniland. One of the heads of department in Seafloat Marine Services Limited participating in the focus group said that what Nigeria needs from the Nigerian government, Nigerian regulatory bodies, and multinational oil companies operating in Nigeria is for all to be an enforcer of the policies put in place by the Nigerian government.

This according to one of the heads of the department can begin through enlightenment campaigns for all to be able to understand the importance of enforcement policies and abiding by policies.

On the other hand, the Nigerian government owes it as a duty to be sincere without compromising or joking about the lives, health, and safety of its people no matter what happens. He also added that in Nigeria, this is not yet the case because the Nigerian government and its agencies under the law like NNPC continue to condone how well multinational companies practice corporate social responsibility in Nigeria. This may be because somebody in the Nigerian government could have a selfish interest in preventing policies from being enforced.

According to Professor Meshach Umenweke of Faculty of Law Nnamdi Azikiwe University Awka Anambra State (to the question of how well oil companies in Nigeria reduce the damage it causes to the environment?), the Nigerian government should have checked on how oil companies in Nigeria practice corporate social responsibility. The Nigerian police have a role to play in ensuring that companies in Nigeria comply very well with their corporate social responsibility.

He also suggested that the legislature in Nigeria have a role to play before the CMCHB 2015 is passed into law to fine-tune the law to make the law easy and well understood for enforcement. He also advised on the improvement of how well companies in Nigeria practice corporate social responsibility which is the sincerity of purpose. This according to him has been the major issue in Nigerian policies and laws being enforced.

Secondly, this writer asked a youth leader of two notorious clans in Bonny Island Rivers State Nigeria whether he has experienced or witnessed oil spillage or gas flaring. He said yes. He told me that the major problem in Bonny Island is gas flaring. Gas flaring according to him comes from The Nigerian Liquefied and Natural Gas (NLNG) Bonny, Mobil Nigeria, and Shell Nigeria. During the interview, he stated that before these oil companies came to Bonny Island for crude oil exploration, the villagers (this also includes employees of oil companies who comes to work from the village (because they told me and not want to go on record at all)) used to drink rainwater but now they cannot because when they fetch it, it is covered with black smoke which escaped as flared gas.

This act by oil companies according to him means that these oil companies want them to die.

He mentioned that NLNG gas flaring is not too much because the oil company has a tall tower/wall protecting too much-flared gas from escaping but that it is Mobil Nigeria that flares gas the most. He mentioned that gas flaring in Bonny Island has both positive and negative effects.

The positive effect for some people is that they seize the opportunity of gas flaring by oil companies to collect bribes from oil companies like Nigerian Liquefied and Natural Gas (NLNG) Bonny Island while the negative effect is that these multinational oil company senior managers live very far (in RA 1) from where the gas plants are and gas is flared every day.

Bonny Island⁵⁵⁰ is a very peaceful place according to what this researcher was told by his interviewees.

This respondent told me that oil companies do not listen to anybody whenever a complaint is made to it of the harmful effect of gas flaring coming from its gas plant when this researcher asked him the question ‘‘how concerned are you about oil companies promoting a safe working environment for example by servicing of their equipment, sending their staff abroad for treatment, buying safety equipment and regular cleaning up of oil spillage and senior managers listening to their junior staff for any mechanical malfunction?’’.

First of all, he told me that he is very concerned but complained that the problem with these big multinational oil companies is that they do not listen to complaints of health and safety

⁵⁵⁰ Bonny Island is an oil rich local government area in Rivers State of Nigeria.

coming from villagers and even when junior staffs working in the field complain to senior managers of the potential cause of gas flaring, senior managers at the office will disregard their complaint even though these junior staffs know and have seen on a daily basis what is going on in the field.

This goes to prove that there is no institution at the moment specifically tailored to enforce laws (or even complain to because the Nigerian police would not even know what to do if such case arises) related to corporate manslaughter and corporate homicide or related to the specifics of environmental standard, the specifics of health and safety. This is because according to this respondent this flared gas can be channeled into the ground to reduce gas flaring. In addition, this researcher asked a health and safety staff at Alcon Nigeria Limited Bonny Island Rivers State (a company that handles oil and gas pipeline installation for Nigerian Liquefied and Natural Gas Bonny Island Rivers State) the question “how well do you think oil companies in Nigeria reduce the damage it causes to the environment?” he answered that oil companies in Nigeria are not doing a good job.

He stated that Nigerian Liquefied and Natural Gas Bonny Island still flare gas and he has heard about the oil spillage issue going on in Ogoniland in Rivers State on television.

He mentioned that oil companies still flare gas to the detriment of the masses. The salient point that he made was that the Nigerian government is doing nothing to address this issue. He

recommended that the government put a check and control how gases are flared in Bonny Island Rivers State.

In the United Kingdom, this is a ground for prosecution (because they have institutions where this type of complaint (like the police) can immediately be lodged) and an important ingredient for an offense of corporate manslaughter and corporate homicide which is a breach of a duty of care⁵⁵¹ caused by senior management⁵⁵² in taking decision not to listen or consider taking an action on the complaint given by junior staffs of a company.

This issue of the absence of a legitimate institution to enforce law and order in Nigeria also affects the legal foundations upon which laws are to be enforced in Nigeria. This researcher asked Mrs. Patience Ahariamuna of the Nigerian Law School Enugu the question “do you think the introduction of the Corporate Manslaughter and Corporate Homicide Bill 2015 will reduce death in the workplace, death caused by environmental degradation, and death caused by human rights abuse (death of Nigerian youths protesting against the activities of oil companies in Nigeria?” She answered that when it becomes a law, it will reduce it drastically since an aggrieved party institutes civil action for tort in courts instead of a criminal one because there is no law presently with a criminal element for corporate manslaughter and corporate homicide since going by the rule under the case of *Ryland .v. Fletcher*⁵⁵³, the courts

⁵⁵¹ Corporate Manslaughter and Corporate Homicide Act 2007 Section 1(2)

⁵⁵² Corporate Manslaughter and Corporate Homicide Act 2007 Section 1(3)

⁵⁵³ *Ryland .v. Fletcher* [1868] 1 UKHL, [1868] LR 3 HL 330

are interested in strict liability offenses related to tort and in a civil action, a counsel cannot lay the foundation for a criminal element. The court will not entertain it.

This researcher went further to ask the question “how concerned are you about oil companies promoting a safe working environment for example by servicing of their equipment, sending their staff abroad for treatment, buying safety equipment and regular cleaning up of oil spillage and senior managers listening to their junior staff for any mechanical malfunction?” this question borders on what do employees of oil companies in Nigeria and villagers from oil producing communities need from government agencies inspecting oil company’s facilities. One of the health and safety staff at Alcon Nigeria Limited said that it is measured to be put in place to ensure the safety of all. In the case of employees, he mentioned that companies do sign an agreement with their client which stipulates that employees work in line with the procedure stipulated by both their company and their contractor.

It is interesting to note that this researcher did not see a sample of a copy of this agreement because it is confidential, this researcher is neither a client nor a contractor and Alcon Nigeria Limited Clients will not be happy to hear that a confidential agreement is being spoken of here in this research will be made public to a civilian or a member of the public.

This researcher can only advise institutions empowered by the Nigerian government to carry out an inspection to look out for these types of agreements during the inspection of sites and ensure that oil companies in Nigeria do not play with the health and safety of their employees

and oil companies are continuously reducing to the barest minimum the damage it causes to the environment by regularly checking for the oil spill, stopping it, clean up the oil spill and channel flared gas to the ground or renew it as part of renewable energy since flared gas causes terminal illness, oil spillage if catches fire can cause explosion claiming human lives or oil spill poisoning fishes which causes death when consumed.

Furthermore, one of the interviewees and staff of Seafloat Marine Services Limited Porthacourt Rivers State Nigeria when asked the question “do you think that the corporate manslaughter and corporate homicide bill when it becomes law will reduce death at the workplace, death caused by environmental pollution and then death caused by human right abuse (death of Nigerian youths protesting against the activities of multinational oil companies?” mentioned that the institutional understanding of the importance of enforcement of laws should be introduced in Nigerian schools so that at early age every Nigerian will have respect for the rule of law, how the law works and what to get from law and obeying the law.

He mentioned that the reason for saying this is that in present-day Nigeria, corruption is still rife because oil companies still get away from being prosecuted for death at the workplace, death caused by environmental pollution, and then death caused by human rights abuse (death of Nigerian youths protesting against the activities of multinational oil companies whenever it happens but gradually enforceability will reign through making enforceability of laws and its important part of the curriculum in Nigerian schools (sensitization).

Below, this researcher will discuss the absence of a legitimate institution like the court due to interference by government institutions to interpret and enforce the law.

4.3 ABSENCE OF A LEGITIMATE INSTITUTION LIKE THE COURTS AND ITS CAPACITY TO INTERPRET THE LAW AND THE AIDING OF ENFORCEMENT

Under this heading, this researcher will be identifying the link between corporate manslaughter and corporate social responsibility (under the concept of enforceability) and the creation of a binding legal obligation by the courts for enforcement. It will be hinged on the capacity of the system to accommodate and interpret the law and government institutions through its human agents to enforce the law. The heading will discuss what respondents feel about when judgment is rendered can it aid enforcement and whether are there obstacles rendering corporate manslaughter in Nigeria unenforceable.

An instance of unenforceability of corporate manslaughter can be in a case against a company in court found in those institutions (like the host government (Nigeria) (and even the body created (when created) and lawmakers themselves like the senators or house of representative members) that are supposed to create specific institutions do not even have the institutional understanding of the elements required for enforcement of enforceability to take hold. This means that they lack institutional understanding of the importance of enforcement of laws. This has been a problem in enforceability taking hold.

As an advice, one of the lawyers from the chambers of Onyechi Ikpeazu (SAN) when asked the question “do you have any mechanism in place to implement corporate manslaughter in Nigeria?” responded that the issue and his prayer is that the CMCHB incorporate penalty for oil companies which do not provide safety gadgets for its workers and the law should make provision for the Nigerian aviation to monitor the state of activities of aircraft used by MNOCs in Nigeria or its agencies to provide man overboard, safety and rescue for its employees at work and if these multinational oil companies(MNOCs) are found wanting, they should be penalized, if the government agencies inspecting these aircraft do not do their job, they should be penalized under the CMCHB 2015⁵⁵⁴. This penalty according to him should also extend to all departments in the oil company. This will make everybody sit up according to this interviewee. Furthermore, the way enforceability is couched is important because a country could have a situation where there is no direct legislation for oil companies to conduct an impact study of their activities in the community which is one unit.

The second unit to be established by the Nigerian government to explain the impact of the law, the desirability for consequences for its failure, and the reason companies and individual needs to comply with the law (enforceability) is the health sector through the CDC which means communicable disease control unit.

⁵⁵⁴ Corporate Manslaughter and Corporate Homicide Bill 2015

When this is done by the Nigerian government then they (the government of Nigeria) need to establish a special session within the health sector (this could be the Ministry of Health which handles health cases in Nigeria and the Ministry of Labour and Employment which handle occupational deaths of employees caused by the activities of companies their employers) to go community by community, gather epidemiological data on the type of sicknesses the community members (employees of oil companies included) suffer and the reasons they suffer these sicknesses. Secondly, the government must live up to the expectation of supporting government agencies like the Nigerian police, the Oil Content Monitoring Board, and the Nigerian judiciary to investigate and punish oil companies for corporate manslaughter.

Nigeria is still at the stage it is now because the Nigerian government has substantial shares from the proceeds of oil exploration. This is so because the Nigerian government is in a joint venture agreement with multinational oil companies operating in Nigeria. Most respondents complained that these oil companies are not indigenous companies and they are in Nigeria to profit.

To that extent, most oil companies in Nigeria do not put sufficient emphasis on the welfare and safety of the people within the environment.

To make the situation worse the Nigerian government is supposed to be the regulatory body that will ensure that policies, which will check the negative effects of the activities of oil

companies operating in Nigeria, are doing little or nothing. Most times either because of greed or selfish interest, the Nigerian government does not put the necessary law in place.

It is therefore important to develop a framework to manage these tensions as part of a remedial order for the punishment of corporate manslaughter and corporate homicide. An example of a remedial order by the court could be effective organizational health and safety management. Effective organizational health and safety management⁵⁵⁵ can help to boost workers' and the villagers' morale and enable them to have confidence in the company's management since it is the villagers and company workers who are directly affected by the prone deadly activities of companies (organizations and their processes⁵⁵⁶).

When the company provides a safe working place (by remedying the cause), it would regain confidence in the villagers and improve workers' work behavior and trust in their employers. Having a plan formulated is not enough. It is only necessary that companies adhere to the law as well as keep a record (for the jury just in case someone dies) that they adhere to health and safety rules, the duty of care, exercising of reasonable care and skill like in the UK.⁵⁵⁷ The essence is that if for reasons like an act of God above human intervention, companies can be able to provide for the jury audited report that they practiced CSR and adhered to the law.

⁵⁵⁵ Emmanuel Akpan "Effective Safety and Health Management Policy for Improved Performance of Organizations in Africa" (2011) 6(3) *International Journal of Business and Management* 159-165 at 163

⁵⁵⁶ Stuart Henry and Danielle McGurrin "Preface" (2013) 14(2) *Western Criminology Review* 1-2 at 1

⁵⁵⁷ Corporate Manslaughter and Corporate Homicide Act 2007 UK C.19 S. 8 (2-3)

Below, this researcher will discuss the absence of desire of the parties to obey the law.

4.4 ABSENCE OF DESIRE ON THE PARTIES TO OBEY THE LAW

Under this subheading, this researcher will be explaining that if the law is constructed in a manner that is against the inherent desire of the individual or designed (through obedience to a court judgment against multinational companies (MNCs)) in such a manner that the individuals are unable to obey it is it bad luck? This subheading includes the action of non-governmental organizations in Nigeria suffering from environmental degradation with human terminal illnesses. This environmental degradation is a result of the negative activities One asks: if this non-governmental organization (citing the Geneva Convention) wins its case in court against these multinational oil companies (MNOCs) is it bad luck for these multinational oil companies to have the legal obligation to be punished for corporate manslaughter, check their corporate social responsibility practices and help other companies to learn what failure is not performing corporate social responsibility can cause. There is a presence of enforceability (even if it is only for the fact that the courts assumed jurisdiction to hear the case), legal obligation on both the parties to the case as created by the case and there is the presence of the relationship between corporate manslaughter and corporate social responsibility.

When asked the question have you been affected by oil spillage or gas flaring? Onyechi Ikpeazu (SAN) drew this researcher's attention to the fact of a case *Centre for Oil Pollution .v. Nigerian*

*National Petroleum Corporation*⁵⁵⁸. This case arose because of ecological devastation (caused by oil spillage and gas flaring) in Ineh Community (which is an oil-producing community sandwiched between Abia State and Rivers State of Nigeria). The community did not have the financial capacity to either fight or go to court. Members of the community belong to a non-governmental organization in Lagos State Nigeria. The non-governmental organization came together and did an extensive study of the effects / consequences of environmental degradation, its exposures and the terminal illness it could cause for both oil company employees and for the villagers. These negative effects show that MNCs feel that integrating the needs of external stakeholders like the villagers can harm the wealth maximization opportunities⁵⁵⁹ in Ineh community. After their study, the non-governmental organization decided to sue the Nigerian National Petroleum Corporation (NNPC) at the Federal High Court and the Court of Appeal both in Lagos without claiming anything but claiming a form of rectification of their environment and possibly re-locating them. At the Federal High Court, the defence raised an objection on locus standi arguing that the non-governmental organization has no locus standi or has shown any special interest. According to Onyechi Ikpeazu (SAN) (OON) (Officer of the Order of the Niger) what is intriguing about this case is that the Federal High Court struck the case out on the grounds of locus standi while the Court of Appeal entertained extensive argument as to the state of locus standi not just in Nigeria but in England, Australia and

⁵⁵⁸ *Centre for Oil Pollution Watch .v. Nigerian National Petroleum Corporation* FHC/L/CS/638/2004

⁵⁵⁹ Subhabrata Bobby Banerjee “Transnational Power and Translocal Governance: The Politics of Corporate Responsibility” (2018) 71(6) *Human Relations* 796-821 at 800

America and arrived at the conclusion that in those countries their legal system permits a relaxed form of requirements for locus standi to enable people who are not directly affected such as a non-governmental organization to institute such actions (which is public rights action.

Good news. The Supreme Court of Nigeria holds that since the interest of the Appellant is clear and not prompted by mischief, it is in the interest of justice to not shut the Appellant out⁵⁶⁰.

Aka Justice of the Supreme Court (JSC) in this case concurs with the above position and notes that there is increasing concern about climate change, and air and water pollution. He holds that the issue of environmental protection against degradation has become a contemporary issue⁵⁶¹.

He, therefore, admonishes that persons such as the Plaintiff/Appellant being in the vanguard of protecting the environment should be encouraged to ensure that actions or omissions by government agencies or multi-national oil companies that tend to pollute the environment are checked.⁵⁶² He specifically notes that

⁵⁶⁰ Ibrahim Obadina “Nigerian Supreme Court’s Stealth Relaxation of Locus Standi in Environmental Litigation: Redirecting Judicial Approach to Public Interest Litigation” (2021) 2(2) 200-218

⁵⁶¹ Ibrahim Obadina “Nigerian Supreme Court's stealth relaxation of Locus Standi in Environmental litigation: Redirecting judicial approach to Public Interest Litigation” (2021)2(2) Journal of Private and Business Law 200-218

⁵⁶² Ibrahim Obadina “Nigerian Supreme Court's stealth relaxation of Locus Standi in Environmental litigation: Redirecting judicial approach to Public Interest Litigation” (2021)2(2) Journal of Private and Business Law 200-218

*Since other commonwealth countries such as England, Australia and India have relaxed their rigidity in the application of the concept of locus standi in public interest litigation, Nigeria should follow suit.*⁵⁶³

Aka JSC expresses concerns about the constraints that are usually faced by communities affected by the spillage. He reveals that such communities may not muster the financial muscle to sue and if a good-spirited organization such as the plaintiff is denied access to sue, it is the affected communities that stand to lose⁵⁶⁴. Ejembi Eko (JSC) while concurring with the lead judgment restates the position that Courts, in recent times are inclined to apply more liberal tests on access to court and that the trend is moving away from the restrictive and technical approach to the question of locus standi⁵⁶⁵. While concurring that the appellant has locus standi, he specifically notes that; “The approach these days is one finding out whether the plaintiff has a genuine grievance to seek the adjudication of the Issue”.⁵⁶⁶ Onnoghen JSC (while also concurring with the lead judgment), puts the issue of locus standi in more direct terms by holding that where an NGO seeks the enforcement of an obligation under law vis-à-vis rights of the affected communities to maintain a healthy environment which extends to their forests,

⁵⁶³ Ibrahim Obadina “Nigerian Supreme Court's stealth relaxation of Locus Standi in Environmental litigation: Redirecting judicial approach to Public Interest Litigation” (2021)2(2) Journal of Private and Business Law 200-218

⁵⁶⁴ Ibrahim Obadina “Nigerian Supreme Court's stealth relaxation of Locus Standi in Environmental litigation: Redirecting judicial approach to Public Interest Litigation” (2021)2(2) Journal of Private and Business Law 200-218

⁵⁶⁵ *Centre for Oil Pollution Watch .v. Nigerian National Petroleum Corporation* [2019] 5 NWLR [Pt.1666] P.518

⁵⁶⁶ *Centre for Oil Pollution Watch .v. Nigerian National Petroleum Corporation* [2019] 5 NWLR [Pt.1666] P.518

rivers, air, and land, they should be heard noting that; the plaintiff cannot, in any way be described as a busy body or interloper⁵⁶⁷. This is public interest litigation in which the Chambers of the Honourable Attorney General of the Federation traditionally holds sway by the law on locus standi has grown beyond that and now encompasses public-spirited individuals and NGOs⁵⁶⁸. The Supreme Court in this case⁵⁶⁹ is therefore of the view that the lower courts are in error in holding that the appellant has no locus standi to institute the action which is aimed at saving the environment and lives of the people⁵⁷⁰.

Furthermore, in *Centre for Oil Pollution Watch .v. Nigerian National Petroleum*, the most significant step of the Supreme Court with regards to enforceability through the 1999 Constitution is its explicit recognition of Section 33 (which guarantees the ‘right to life) to recognize the fundamental right to a clean and healthy environment for all⁵⁷¹. This is because acts and omissions which degrade the environment and threaten the health of people also

⁵⁶⁷ Ibrahim Obadina “Nigerian Supreme Court's stealth relaxation of Locus Standi in Environmental litigation: Redirecting judicial approach to Public Interest Litigation” (2021)2(2) *Journal of Private and Business Law* 200-218

⁵⁶⁸ Ibrahim Obadina “Nigerian Supreme Court's stealth relaxation of Locus Standi in Environmental litigation: Redirecting judicial approach to Public Interest Litigation” (2021)2(2) *Journal of Private and Business Law* 200-218

⁵⁶⁹ *Centre for Oil Pollution Watch .v. Nigerian National Petroleum Corporation* [2019] 5 NWLR [Pt.1666] P.518

⁵⁷⁰ *Centre for Oil Pollution Watch .v. Nigerian National Petroleum Corporation* [2019] 5 NWLR [Pt.1666] P.518

⁵⁷¹ *Centre for Oil Pollution Watch .v. Nigerian National Petroleum Corporation* [2019] 5 NWLR [Pt.1666] at 569-570

threaten their lives which all others have a constitutional duty to refrain from violating, and which the government must protect⁵⁷².

Even where the cases were not successful, they have nevertheless raised awareness about areas in need of reform or provided an avenue for beneficial public participation in the climate change regulatory and governance process⁵⁷³. In *Centre for Oil Pollution Watch .v. Nigerian National Petroleum Corporation*⁵⁷⁴, the Supreme Court thinks that despite the absence of specific climate change legislation in Nigeria, there are several laws relevant to climate change⁵⁷⁵. The African Charter on Human and People’s Right (Ratification and Enforcement) Act⁵⁷⁶ provides in Article 24 that “all peoples shall have the right to a general satisfactory environment favorable to their development; thus establishing a statutory environmental right that could prove useful in a climate litigation strategy⁵⁷⁷.

⁵⁷² *Centre for Oil Pollution Watch .v. Nigerian National Petroleum Corporation* [2019] 5 NWLR [Pt.1666] at 569-570

⁵⁷³ Robert .F. Blomquist “Comparative Climate Change Torts” (2012) 46(4) Valparaiso University Law Review 1054-1076 in Uzuazo Etemire “The Future of Climate Change Litigation in Nigeria: COPW .V. NNPC in the Spotlight (2021) 2(2021) Carbon and Climate Law Review 158-170

⁵⁷⁴ *Centre for Oil Pollution Watch .v. Nigerian National Petroleum Corporation* [2019] 5 NWLR [Pt.1666] P.518

⁵⁷⁵ Uzuazo Etemire “The Future of Climate Change Litigation in Nigeria: *COPW .V. NNPC* in the Spotlight (2021) 2(2021) Carbon and Climate Law Review 158-170 at 161

⁵⁷⁶ The African Charter on Human and People’s Right (Ratification and Enforcement) Act Cap A9, Laws of the Federal Republic of Nigeria, 2004

⁵⁷⁷ The African Charter on Human and People’s Right (Ratification and Enforcement) Act Cap A9, Laws of the Federal Republic of Nigeria, 2004 Article 24

The African Union⁵⁷⁸ Charter is being enforced in Nigerian courts. This means that if all these charters can be enforced in Nigeria, one cannot understand how Nigeria's judicial standard on public rights action should not reflect the international standard and why it should not be. Therefore in a situation like that where the community cannot finance litigation because such litigation certainly will require extensive research on the health hazard and death occasioned by oil spillage and gas flaring and to determine the long time effect which could be terminal illness leading to death or instant death if these non-governmental organization (in which oil producing communities is a member) does not have the means to embark on such research or studies that would bring out such things, it means denial to justice by the government who out of smartness would want to cover the activities of multinational oil companies in their country simply because they would want to save their source of income generation which amounts to staying in business with these multinational oil companies operating in Nigeria. Great news⁵⁷⁹, on appeal, the Supreme court observed that in this case was public interest litigation, and as such, the appellant non-governmental organization had the locus standi to institute the case⁵⁸⁰.

THE IMPACT OF THE SUPREME COURT'S DECISION IN COPW .V. NNPC

⁵⁷⁸ Eghosa O. Ekhaton "Regulating the Activities of Multinational Corporations in Nigeria: A Case for the African Union?" (2018) 20(1) International Community Law Review 30-68

⁵⁷⁹ The future of environmental/ corporate manslaughter case in Nigeria from the Supreme Court's decision in Centre for Oil Pollution's case looks bright. Everybody including non-governmental organization can seek enforcement of public laws .

⁵⁸⁰ Philip E. Oamen and Eunice O. Erhagbe "The Impact of Climate Change on Economic and Social Rights Realisation in Nigeria: International Cooperation and Assistance to the Rescue?" (2021) 21 African Human Rights Law Journal 1080-1111 at 1090

The 1999 constitution of Nigeria in section 20 does not expressly make provision for the environmental right but makes provision for environmental protection⁵⁸¹. This means that the efficacy of the statutory environmental right will however depend on the presence of legitimate institutions like the courts and their capacity to recognize protected rights and the aiding of enforcement.

Contrary to the fact that a non-governmental organization can bring an action in court for adjudication on behalf of the community or a parent company sued and convicted for the negative activities (causing death) of its subsidiary company in Nigeria, in *COPW .V. NNPC*⁵⁸², the Supreme Court particularly ruled that Section 20, Chapter II of the Nigerian Constitution dealing with environmental protection is justiciable⁵⁸³ encouraging the possibility of enforcement of corporate social responsibility and corporate manslaughter in the minds of lawyers and scholars in Nigeria. These lawyers and scholars in Nigeria erroneously argue that since Section 20 of the Nigerian constitution⁵⁸⁴ on environmental protection is generally non-justiciable, Article 24 may not be considered to have ‘elevated environmental rights from non-

⁵⁸¹ Uzuazo Etemire “The Future of Climate Change Litigation in Nigeria: *COPW .V. NNPC* in the Spotlight (2021) 2(2021) Carbon and Climate Law Review 158-170 at 161

⁵⁸² *COPW .v. NNPC* [2019] 15 Nigeria Weekly Law Report 1666

⁵⁸³ The word justiciable was used in the Nigerian case of *Federal Republic of Nigeria .v. Anache and Others* [2004] 3 Monthly Judgment of the Supreme Court of Nigeria 1, 46-50 per Alfa Belgore wherein he ruled that with regards to Section 6(6c) of the Nigeria’s 1999 Constitution that Chapter 1 on environmental protection can no longer be considered a toothless dog which could only bark but cannot bite.

⁵⁸⁴ Section 20 of the 1999 Constitution provides that the State protect and improve the environment and safeguard the water, air and lands, forest and wildlife of Nigeria.

justiciable to justiciable⁵⁸⁵. The counsel to the defense also contended in court that the environmental right in Article 24 “may be an illusion”⁵⁸⁶ as it appears inconsistent with 1999 Nigeria’s Constitution (section 20) that is superior to the African⁵⁸⁷ Charter⁵⁸⁸.

According to Section 6(6c) of the 1999 Constitution, the provisions in Chapter II are non-justiciable, ‘except as otherwise provided by this constitution⁵⁸⁹. The Supreme Court relying on the decision of the same court (in the Federal Republic of Nigeria.v. Anache⁵⁹⁰ on justiciability) held that the aforementioned proviso in Section 6(6c) meant that the section did not render Chapter II absolutely and non-justiciable⁵⁹¹ and that it is possible for other provisions of the 1999 Constitution of Nigeria to make sections of Chapter II justiciable⁵⁹².

⁵⁸⁵ Lawrence Asekome Atsegbua, Vincent Akpotiare and Folarin Dimowowo *Environmental Law in Nigeria: Theory and Practice* (2nd Edition Ambik Press, 2010) at 204

⁵⁸⁶ Lawrence Asekome Atsegbua, Vincent Akpotiare and Folarin Dimowowo *Environmental Law in Nigeria: Theory and Practice* (2nd Edition Ambik Press, 2010) at 286

⁵⁸⁷ The African Charter on Human and People’s Right (Ratification and Enforcement) Act Cap A9, Laws of the Federal Republic of Nigeria, 2004

⁵⁸⁸ Lawrence Asekome Atsegbua, Vincent Akpotiare and Folarin Dimowowo *Environmental Law in Nigeria: Theory and Practice* (2nd Edition Ambik Press, 2010) at 204, The 1999 Constitution Laws of the Federal Republic of Nigeria Section 1(3)

⁵⁸⁹ Uzuazo Etemire “The Future of Climate Change Litigation in Nigeria: COPW .V. NNPC in the Spotlight (2021) 2(2021) Carbon and Climate Law Review 158-170 at 168

⁵⁹⁰ *Federal Republic of Nigeria .v. Anache* [2004] 3 Monthly Judgment of the Supreme Court of Nigeria 1, 46-50

⁵⁹¹ This also informed the decision of the Supreme Court in *Attorney General of Ondo State .v. Attorney General of the Federation and 35 Others* [2002] 7 Monthly Judgment of the Supreme Court 1 wherein the Supreme Court held that “it is not the intention to introduce these principles as mere pious declarations. It is the intention ... that in future both the legislature and the executive should not merely pay lip service to these principles but that they should be made basis of all legislative and executive action[s]”.

⁵⁹² COPW .v. NNPC [2019] 15 Nigeria Weekly Law Report 1666

All these studies by non-governmental organizations on environmental degradation caused by multinational oil companies in Nigeria and mobilization of finance and resources together to institute an action against multinational oil companies in Nigeria in court proves that non-governmental organization is the best option and yet the Nigerian government is shutting them down. Whenever they succeed, the decision of the court against the inherent desire of these multinational companies is not bad luck but rather proof that there is a legal obligation and both corporate manslaughter and corporate social responsibility can be enforced to create a long-lasting legal obligation on all.

Below, this researcher will discuss the absence of legitimate institutions to enforce the law.

4.5 ABSENCE OF LEGITIMATE INSTITUTIONS TO ENFORCE THE LAW

Under this subheading, this researcher will discuss the nature of human institutions; if it is the human institutions what then is it with the human institutions?

Under this subheading, in identifying the link between corporate manslaughter and corporate social responsibility (under the concept of enforceability) and the creation/ acceptance of legal obligation, readers will learn of the issues with the system of enforcement of court judgment and how the practice of corporate social responsibility is monitored in Nigeria. One can ask with the system and how the human institutions like the health and safety inspectors in Nigeria carry about their duties is it enough? And what is wrong with how the human institutions carry out the legal obligation expected of companies in Nigeria regarding their corporate social

responsibility practices (can the citizens help out?) and how the human institutions enforce corporate manslaughter-related laws in Nigeria?

Critically, these multinational oil companies are not entirely to be blamed. One could ask the question why would Nigerian chiefs or heads of youths in oil-producing communities decide to collect bribes from these oil companies when oil spillage and gas flaring continues, where is the Nigerian government? One of the interviewees said that even the Nigerian government is busy making money by negotiating with oil companies in places like Bayelsa State of Nigeria (an oil-producing state in Nigeria) from the incidence of oil spillage. This interviewee stated that this could not be so if both oil companies and the Nigerian government choose to remind themselves or understand the implication of compromising ethics in business or the health and safety or welfare of its employees and village members being affected by oil spillage or gas flaring. One of the respondents stated that in agreeing with the fact that oil companies in Nigeria are not doing well to reduce the damage it causes to the environment but there is also the sincere truth of insincerity itself by the host community. This according to him means oil spillage is a result of failure in some mechanism or machinery or from the oil pipeline but sometimes, there is also sabotage by members of the same host community. He added that this sabotage is a result of oil pipeline vandalism. According to him, to achieve a holistic far-reaching, and futuristic solution to the problem, there should be a proper collective responsibility, proper re-orientation, and sensitization in informing the members of the host communities in Nigeria where these oil companies are situated and carrying on business to

understand that if anybody vandalizes oil pipelines for very temporary relief that person will indeed be causing more permanent damage to the ecosystem (causing terminal illness for all from poisoned fish to poisoned drinking water). He concluded that in admonishing these oil companies, it is also useful and meaningful that there should be a proper sensitization by especially the National Orientation Agency (a body in Nigeria set up by the Nigerian government to discover the ills in the society and how to reduce them to the barest minimum) and even the opinion leaders and traditional rulers who control the opinion and mind-set of people in the Niger Delta Area to discourage Nigerians from indulging in oil sabotage. This is what countries like America have already done and it has helped them have more sophisticated operations according to Justice Liman of the Federal High Court Enugu Nigeria. He added that the system set up by the Nigerian government is still growing compared to countries like America or the United Kingdom but that does not explain why Nigeria would not pay more attention to details. According to Justice Liman paying more attention to details, enables a country to have a clearer picture of how the system works and to what extent the dynamics the impacts of the whole operation on the country's effort to improve the activities of oil companies in Nigeria and to pave way for better management and developing more effective measures to enhance greater growth and development in the oil and gas sector of Nigeria. He added that for broader enforceability, it will be the job of all and sundry and not just the government agencies but other sectors like the inspectors, the Nigerian police, and the villagers themselves to be sensitized on the effect and the necessity of legal obligation and the effect/ advantages of

enforcing corporate manslaughter and corporate social responsibility and corporate manslaughter on the breach of duty of care, Nigerians will know of their right to life under the 1999 constitution for a better implementation of the law. It can only be desirable to include the liability of Nigerian government officials for example for lack of accountability and transparency to live up to its expectation by reviewing any joint venture agreement to promote enforcement of CSR from companies in Nigeria⁵⁹³.

Below is a quantitative data analysis.

⁵⁹³ Samuel Nnamdi Nzegwu “Companies’ Corporate Social Responsibility and its Sustainability among Developing African Countries like Nigeria” (2022) 4(1) International Journal of Multidisciplinary and Current Educational Research 255-262 at 260

DATA ANALYSIS

Figure 6 WILL THE INTRODUCTION OF CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE BILL 2015 REDUCE DEATH CAUSED BY THE ACTIVITIES OF OIL COMPANIES IN NIGERIA LIKE OIL SPILLAGE, GAS FLARING, HUMAN RIGHT ABUSE OR DEATH OF EMPLOYEE AT WORKPLACE?

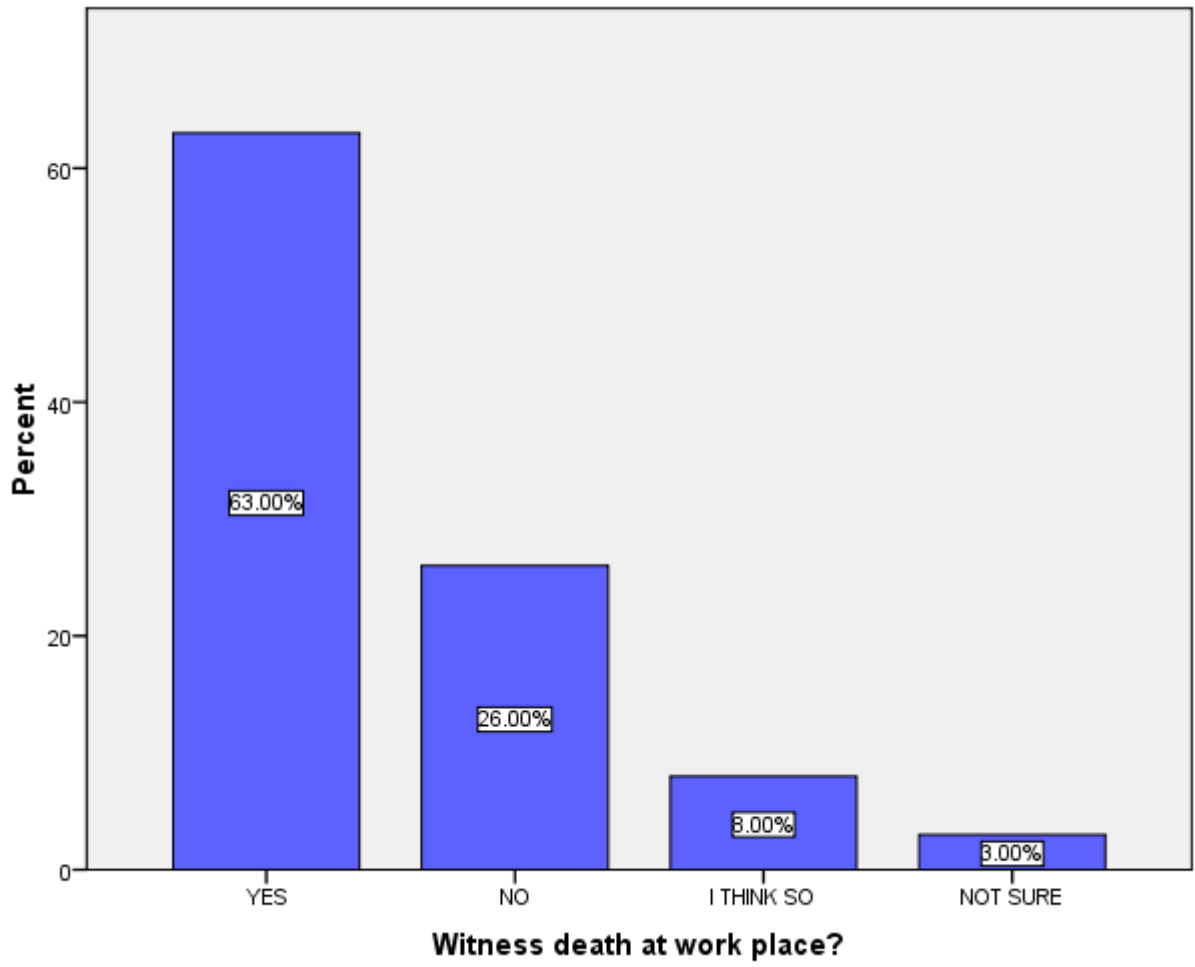
	Frequency	Percent	Valid Percent	Cumulative Percent
Valid MOST DEFINATELY	73	73.0	73.0	73.0
YES	19	19.0	19.0	92.0
MAYBE	5	5.0	5.0	97.0
NOT SURE	2	2.0	2.0	99.0
PREFER NOT TO SAY	1	1.0	1.0	100.0
Total	100	100.0	100.0	

The figure below shows the response of respondents on the regulation of activities of oil companies causing death

FREQUENCY TABLE AND BAR CHART

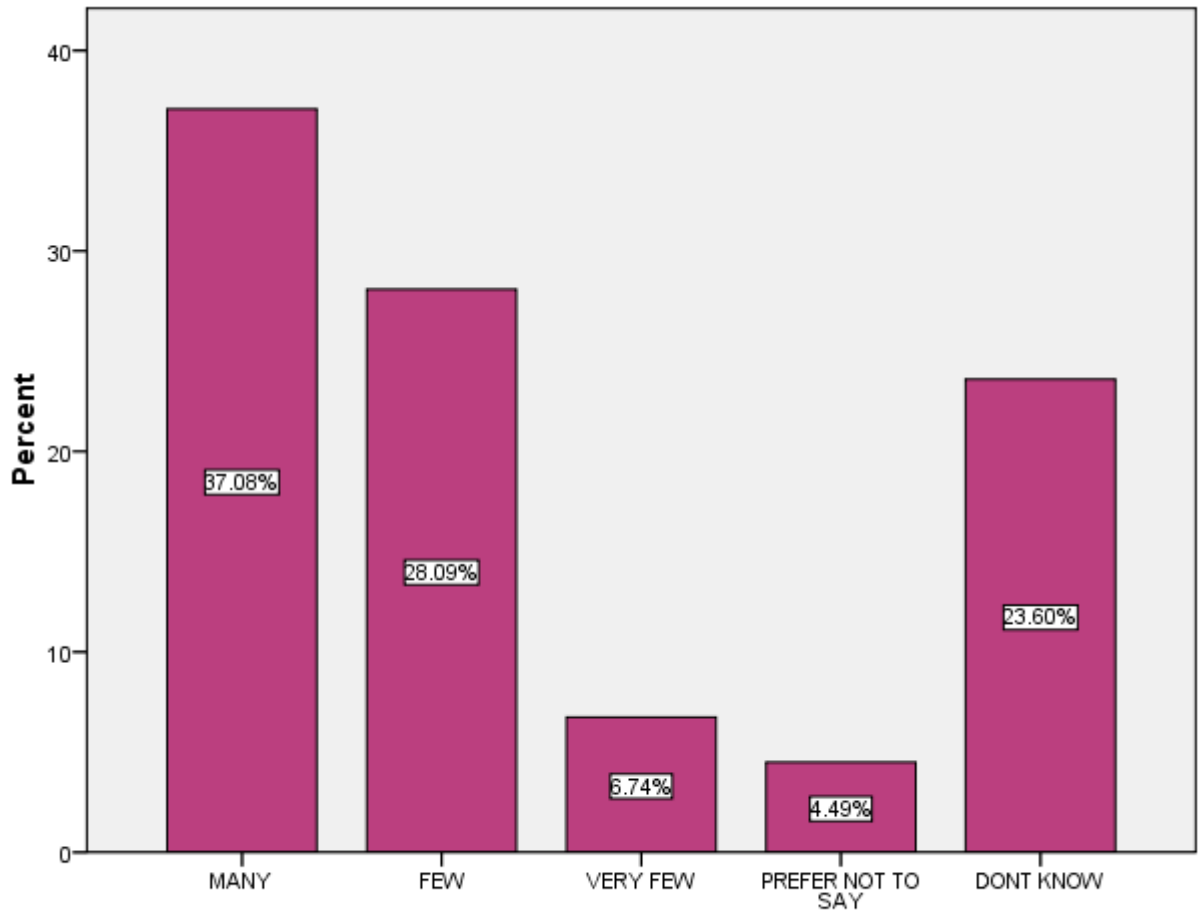
Witness death at work place?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid YES	63	63.0	63.0	63.0
NO	26	26.0	26.0	89.0
I THINK SO	8	8.0	8.0	97.0
NOT SURE	3	3.0	3.0	100.0
Total	100	100.0	100.0	



Have many people have died as a result of Oil spillage and gas flaring?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	MANY	33	33.0	37.1	37.1
	FEW	25	25.0	28.1	65.2
	VERY FEW	6	6.0	6.7	71.9
	PREFER NOT TO SAY	4	4.0	4.5	76.4
	DONT KNOW	21	21.0	23.6	100.0
	Total	89	89.0	100.0	
Missing	System	11	11.0		
Total		100	100.0		

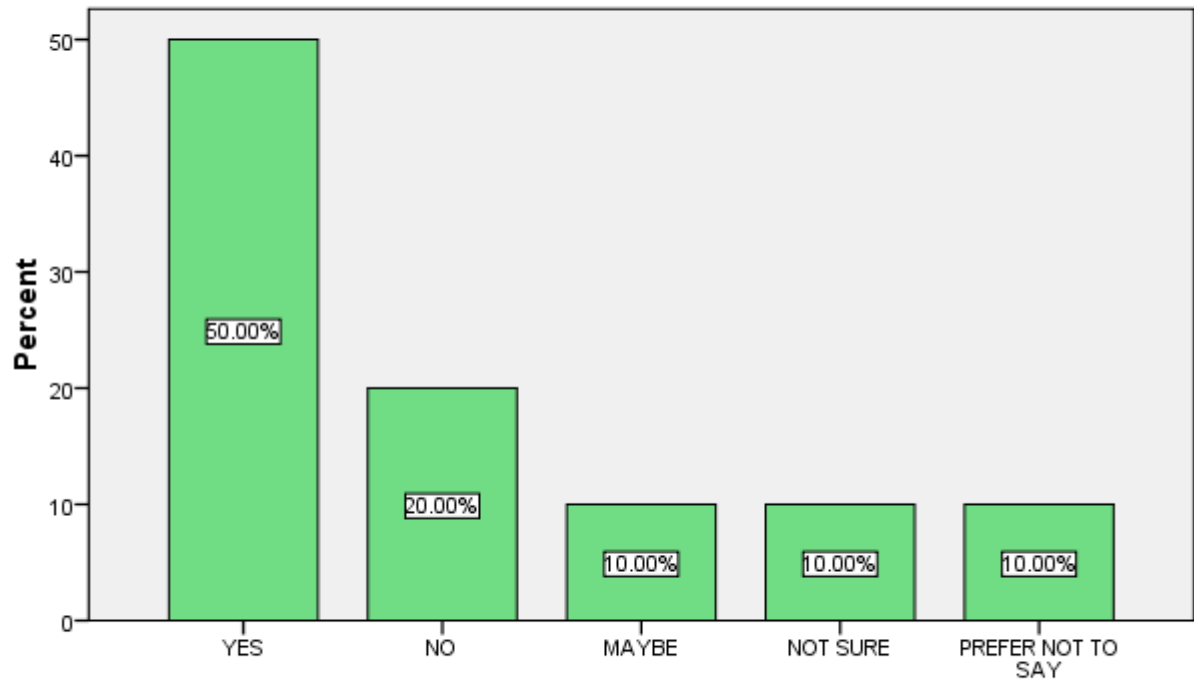


Have many people have died as a result of Oil spillage and gas flaring?

Will the introduction of Corporate Manslaughter Law have enforceability of CSR among oil companies in Nigeria by reducing death at workplace and in oil producing communities?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid YES	10	50.0	50.0	50.0
NO	4	20.0	20.0	70.0
MAYBE	2	10.0	10.0	80.0
NOT SURE	2	10.0	10.0	90.0
PREFER NOT TO SAY	2	10.0	10.0	100.0
Total	20	100.0	100.0	

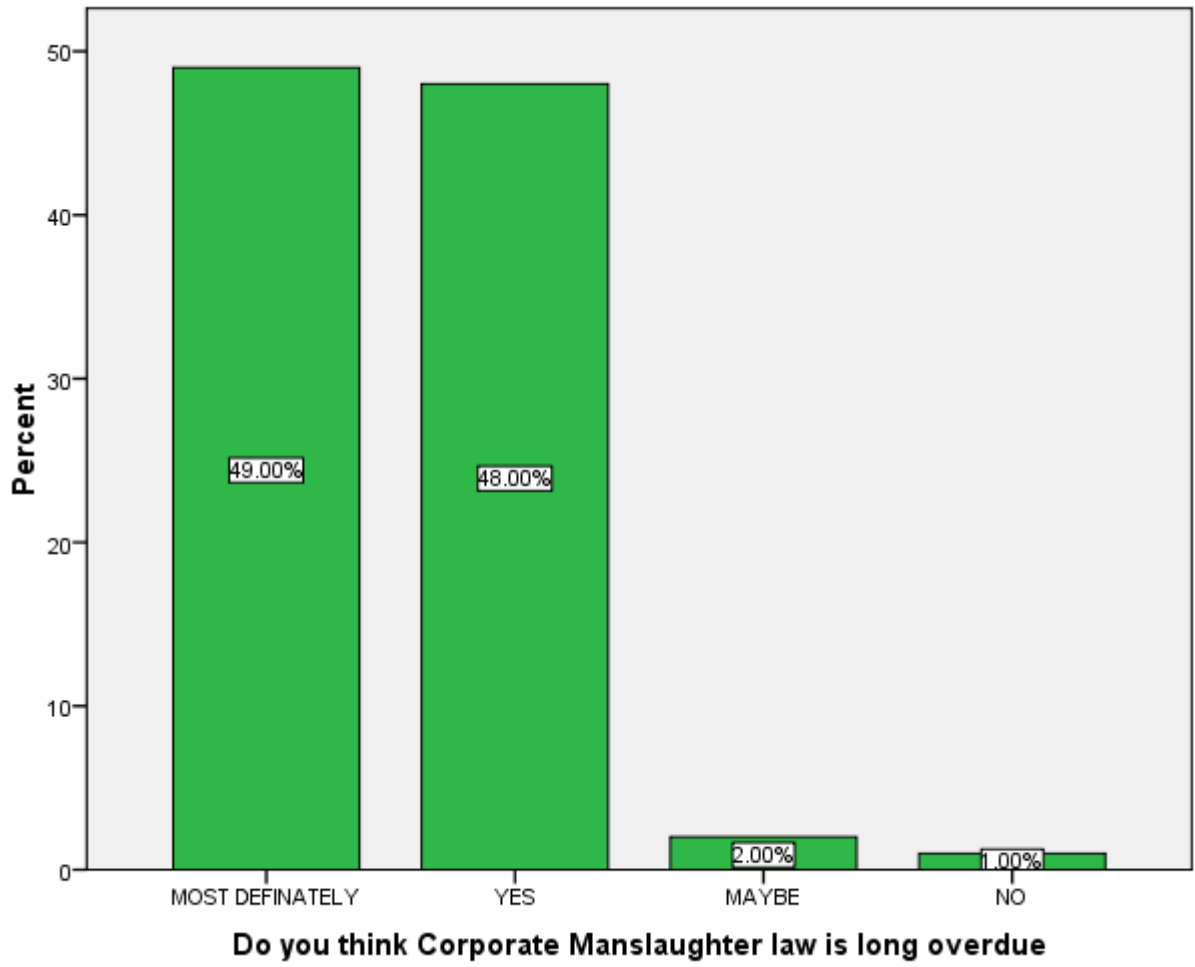
Will the introduction of Corporate Manslaughter Law have enforceability of CSR among oil companies in Nigeria by reducing death at workplace and in oil producing communities?



Will the introduction of Corporate Manslaughter Law have enforceability of CSR among oil companies in Nigeria by reducing death at workplace and in oil producing communities?

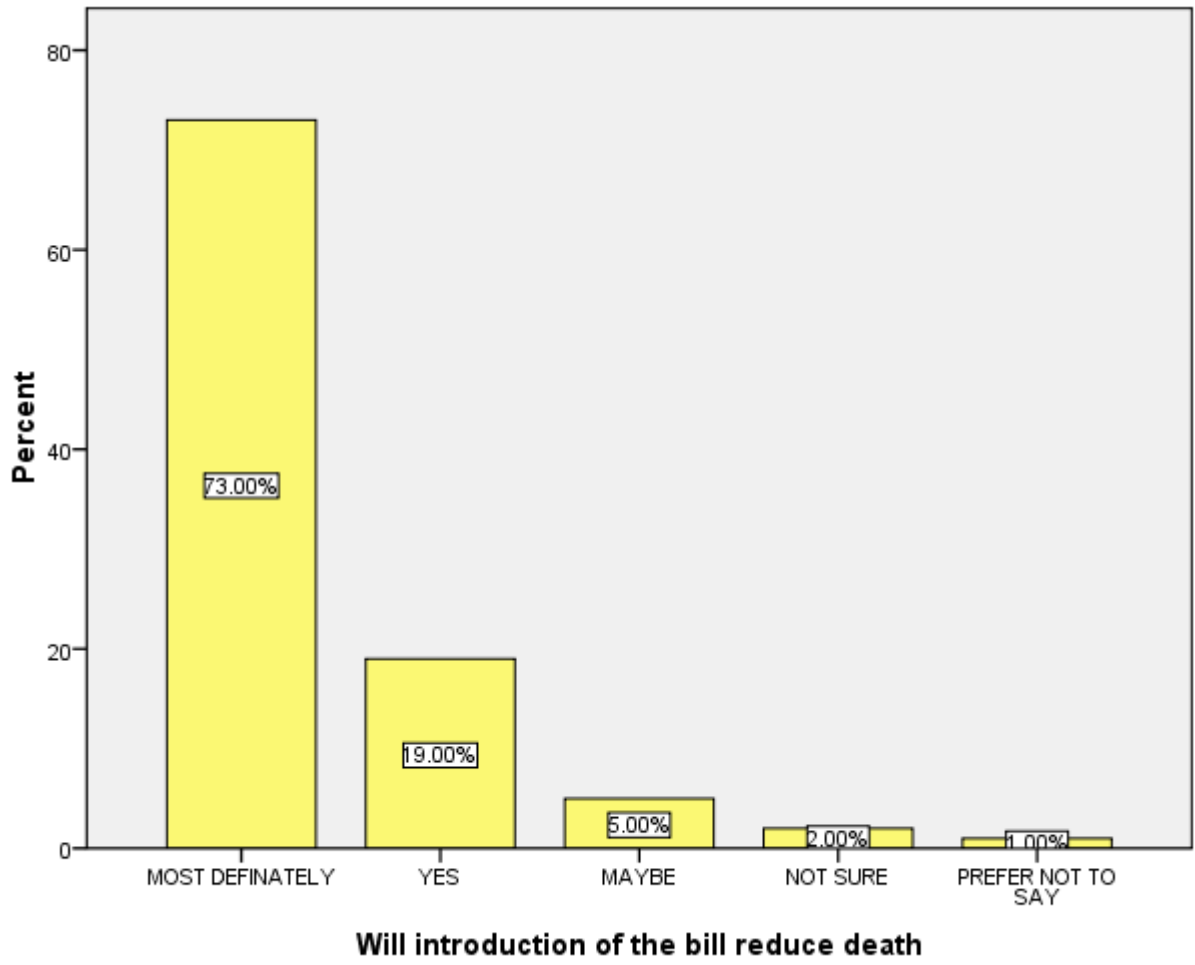
Do you think Corporate Manslaughter law is long overdue?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid MOST DEFINATELY YES	49	49.0	49.0	49.0
MAYBE	48	48.0	48.0	97.0
NO	2	2.0	2.0	99.0
Total	1	1.0	1.0	100.0
	100	100.0	100.0	



Will introduction of the bill reduce death?

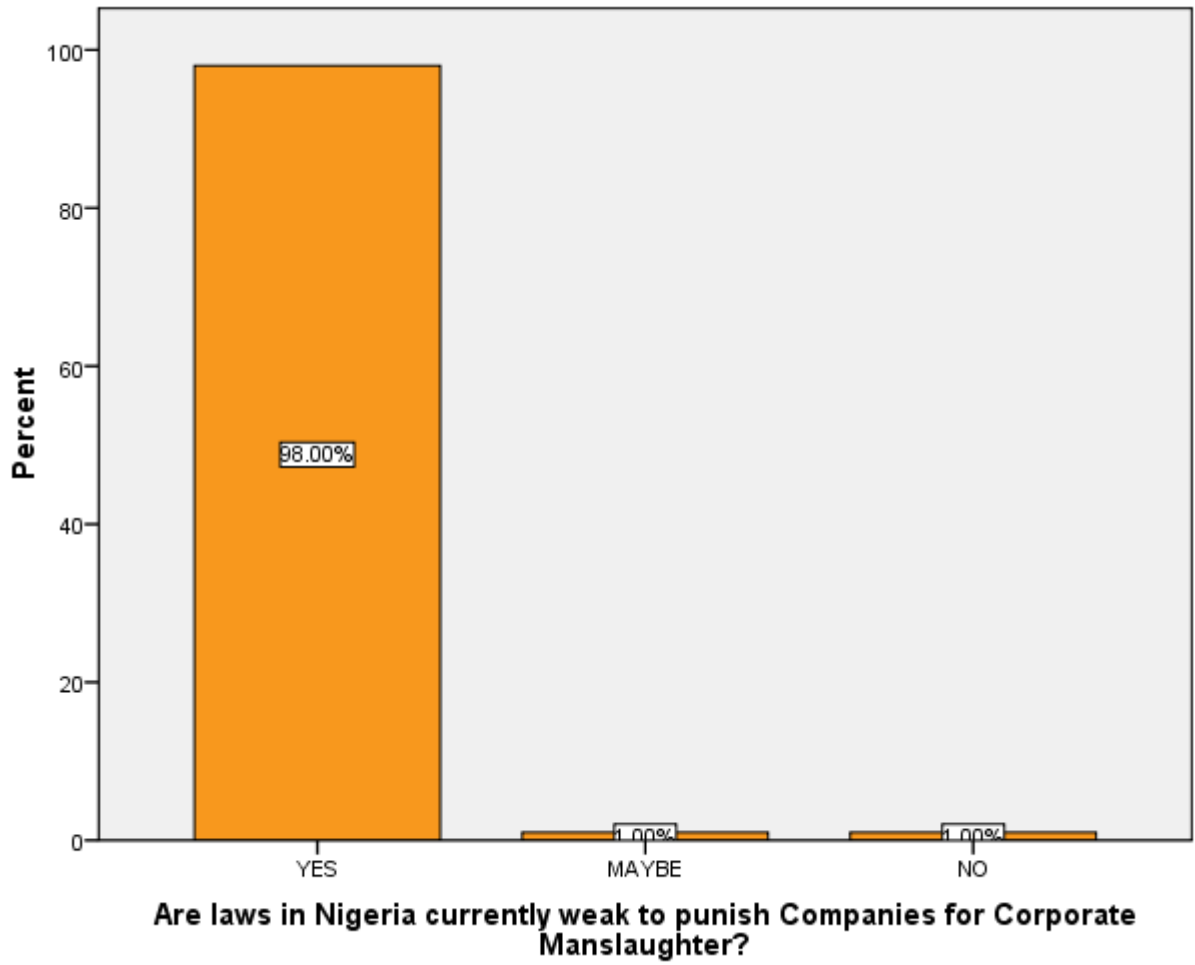
	Frequency	Percent	Valid Percent	Cumulative Percent
Valid MOST DEFINATELY YES	73	73.0	73.0	73.0
MAYBE	19	19.0	19.0	92.0
NOT SURE	5	5.0	5.0	97.0
PREFER NOT TO SAY	2	2.0	2.0	99.0
	1	1.0	1.0	100.0
Total	100	100.0	100.0	



Are laws in Nigeria currently weak to punish Companies for Corporate

Manslaughter?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	YES	98	98.0	98.0	98.0
	MAYBE	1	1.0	1.0	99.0
	NO	1	1.0	1.0	100.0
	Total	100	100.0	100.0	



Will introduction of the bill reduce death * Witness death at work place? Crosstabulation

		Witness death at work place?				Total	
		YES	NO	I THINK SO	NOT SURE		
Will introduction of the MOST bill reduce death	DEFINATELY	Count	45	19	7	2	73
	% of		45.0%	19.0%	7.0%	2.0%	73.0%
	Total						
	YES	Count	16	1	1	1	19
	% of		16.0%	1.0%	1.0%	1.0%	19.0%
MAYBE	Count	2	3	0	0	5	
% of		2.0%	3.0%	.0%	.0%	5.0%	
NOT SURE	Count	0	2	0	0	2	
% of		.0%	2.0%	.0%	.0%	2.0%	
	Count	0	1	0	0	1	

SAY	Total	PREFER NOT TO % of				
		.0%	1.0%	.0%	.0%	1.0%
Total	Count	63	26	8	3	100
	% of Total	63.0%	26.0%	8.0%	3.0%	100.0%

STATISTICAL ANALYSIS USING CHI-SQUARE TEST

Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Will introduction of the bill reduce death * Witness death at work place?	100	100.0%	0	.0%	100	100.0%

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	17.001 ^a	12	.150
Likelihood Ratio	17.916	12	.118
Linear-by-Linear Association	.129	1	.719
N of Valid Cases	100		

a. 16 cells (80.0%) have expected count less than 5. The minimum expected count is .03.

Hypothesis testing

Null hypothesis: Introduction of Corporate Manslaughter Law in Nigeria has made companies in Nigeria more corporate socially responsible.

Alternative hypothesis: Introduction of Corporate Manslaughter Law in Nigeria has not made companies in Nigeria more corporate socially responsible.

DECISION

If Pearson Chi-Square < significant value (5%) reject null hypothesis, otherwise accept null hypothesis

CONCLUSION

Since Pearson Chi-Square = 0.150 > significant value (0.05), we therefore accept the null hypothesis and conclude that the introduction of Corporate Manslaughter law in Nigeria has made companies in Nigeria more corporate socially responsible.

All the quantitative data presentation above is known as Figure 6 for the purpose of data analysis.

SUM TOTAL ANALYSIS (QUANTITATIVE DATA (QUESTIONNAIRE))

This data shows in figure 6 that in the case of Nigeria with regards to corporate manslaughter, corporate social responsibility, and enforceability, the state is already weak and is dependent on MNCOCs for prosperity and growth. This dependence is also combined with the political, economic, and socio-cultural tendencies in Nigeria prominent of which is the idea by the Nigerian government and MNOCs that the prospective borrower of the land (MNOCs) is not responsible for any improvements to be made to the land, leading to negative results like continued oil spillage or gas flaring claiming lives and protest by villagers. Prominent from the responses from the quantitative data in figure 6 above is the issue of corruption and what emerges as a country where development becomes increasingly underdeveloped. Multinational corporations are relatively free from obligation, and the threat of reputational damage is

toothless in a regime where MNCs' fiscal benefit from oil exploration overrides other potential benefits. When these companies are finally convicted, they are made by Nigerian courts to pay ridiculous fines. Secondly, countries that rely heavily on revenue from the exploration of natural resources in its countries may have problems punishing multinational oil companies (especially when the case is filled in court) for failing to practice health and safety even after promises of providing dividends of democracy (in a democratic country for instance) (for example good motorable road, constant electricity supply or water supply and good health care system to mention just a few). These countries are mostly developing countries and rely on the revenue from these multinational companies to sell their natural resources at a high price since the multinational companies and their countries are willing to buy (to continue to control and dominate the market in that region). When oil prices fluctuate and oil sales plunges, because this government expects oil prices to be high or depends on oil prices being high, to sustain their rules as the representative of the people (in North Africa)⁵⁹⁴ sharp fluctuation in such oil prices can lead to conflict because the flow of revenue will fall following price downturns⁵⁹⁵. This writer believes that firstly oil companies especially developing oil companies may try to cut costs by refusing to clean up oil spillage which causes terminal illness and eventual death when employees as part of members of the community and a citizen are fatally affected. This

⁵⁹⁴ David Sorenson “Transitions in the Arab World Spring or Fall?” (2011) *Strategic Studies Quarterly* 22-49 at 30

⁵⁹⁵ *Supra* at 30

is because it dominates the market and dictates to the host government what should be. The effect will be that in the event of oil spillage or gas flaring causing death, for example, some rich residents of the communities experiencing death caused by oil spillage and gas flaring collectively sue and obtain justice at the home countries of these multinational companies instead of at the courts in their host countries. Meanwhile, in the 2010 Deep Water Horizon⁵⁹⁶ oil spillage 2010 in the Gulf of Mexico, the states affected got justice in America (without filing the case in Britain which owned British Petroleum) against British Petroleum. This makes people ask if there is any more clarity in the legal provisions and the ability of law enforcers to understand the scope and the extent of the laws (Is it the way institutions are formed that makes laws difficult to be enforced)? Hart is suggesting that the court may sometimes have a mild attitude toward justice simply as a tactic for social control but it does not mean that when a person or an artificial person commits a crime, it will not face the law. Dworkin is suggesting that instead of the courts being mild, they should use their initiative to interpret the law and adjudicate a case to avoid chaos instead of giving an excuse for non-enforcement of the law at all.

Scholars like Dworkin disagree with Hart's rules of recognition on the interpretative and adjudicative power of the courts. Dworkin argues that first and foremost the judge in a case may decide to be fair and not just to avoid chaos even though judges while taking such

⁵⁹⁶ Ruwantissa Abeyratne "The Deep Water Horizon Disaster- Some Liability Issues" (2010) 35 Tulane Maritime Law Journal 125-152

decisions regard themselves as being bound by law⁵⁹⁷. This type of chaos could be when the courts feel that the outcome of its judgment might create an uprising. For example, in presidential/ constitutional cases, to avoid a riot, the court may decide that the voting process is inconclusive. Such a decision could hinder the enforcement of the law. This normally happens when the legal rules are new and it is up to the court to try it. Over the years if the court decides in favor of the plaintiff or appellant, it (such judgment) becomes part of the law. To clarify Dworkin's position Shapiro states that legal obligation can only be generated by legal rules but where legal rules are inapplicable or legal obligations do not exist, judges by necessity must look beyond the law to decide the case⁵⁹⁸. Dworkin is stating that there should be no excuse for enforcement of law simply because a big multinational oil company contributes to the revenue in its host country even though judges have some form of discretion, but such discretion should not be abused. Dworkin however denies that judges while interpreting the instrument (law) must exercise what he calls "strong" discretion, which is the idea that judges must look beyond the law and apply extra-legal standards to help settle the case. The first stage is recognizing the existence of legal principles.

⁵⁹⁷ Scot .J. Shapiro The Hart-Dworkin Debate: A Short Guide for the Perplexed Public Law and Legal Theory Working Paper Series University of Michigan Law School Working Paper No. 77 March 2007 at 10

⁵⁹⁸ Scot .J. Shapiro The Hart-Dworkin Debate: A Short Guide for the Perplexed Public Law and Legal Theory Working Paper Series University of Michigan Law School Working Paper No. 77 March 2007 at 10

When this is done Dworkin claims that it turns out to be obvious that judges are bound by legal standards even in hard cases⁵⁹⁹. This writer believes that in hard cases, Dworkin's "strong discretion"⁶⁰⁰ counters the letters of the law and gives room for help (giving flesh to the spirit of the law) from the judges after the uprising (and to prevent uprising) from citizens. This writer calls the attitude of the citizenry coercion by the citizens to the obedience of the law to help aid enforcement of the law. Dworkin is arguing that enforcement of the law through interpretation of instruments by judges is not a case of having a pedigree (which multinational oil companies in its host countries will fear emphasis mine) but a case of having institutional support to enable it to decide some cases⁶⁰¹. To help simplify Dworkin's statement above, this writer is saying that instead of the interpretative instrument alone, Dworkin suggested institutional support to aid the enforcement of the law. The reason Dworkin gave is that interpretative instrument goes hand in hand with institutional support since ingredients of enforcement of law like liability is changing over time from individual to organization which according to Hart⁶⁰² is normal (change) to avoid the rigidity of law.

According to this researcher's respondents, the CMCHB 2015 Nigeria is a welcome development but the fines should be commensurate to the loss of life of a human being and

⁵⁹⁹ Supra at 11 and 12

⁶⁰⁰ Philip Soper "Legal Theory and Obligation of a Judge : The Hart/Dworkin Dispute" (1977) 75 Michigan Law Review 473

⁶⁰¹ Ronald Dworkin The Model of Rules 1 Reprinted in *Taking Rights Seriously* (Harvard University Press, 1977)

⁶⁰² Herbert .L.A. Hart *The Concept of Law* (Oxford University Press, 1994)

Nigerians needs a strong prosecution team (like NGOs who has no interest in the Nigerian government and MNCs to promote enforceability) because it is now all about prosecution.[RbD1]

4.6 IDENTIFY AND DISCUSS HOW LACK OF ENFORCEMENT IN NIGERIA CREATES CONFUSION AND LIMITS ENFORCEABILITY IN NIGERIA

This section explores the extent and limitations of enforceability of corporate manslaughter and corporate social responsibility in Nigeria and how they contribute to its unenforceability and lack of understanding in Nigeria. This could be in the form of weakness of Nigerian laws and the nonchalant attitude of government institutions towards enforceability.

When asked the question of human rights abuse (under the question are laws in Nigeria weak to punish companies for death at the workplace, death caused by human rights abuse (Nigerian youths protesting against the activities of multinational oil companies in the Niger Delta Area) the Nigerian Liquefied and Natural Gas Bonny Rivers State Nigeria stated that Shell Nigeria PLC was not responsible for the death of Ogoni 8 who protested the negative activities of oil companies in their community. According to them, Shell merely complained about about this to the Nigerian government who decided to kill them.

This seemed to be that the Nigerian government is weak, and a weak nation will have weak laws. According to one of the interviewees, what stops the Nigerian government from ensuring

that its citizenry is protected? The Nigerian government is being nonchalant as regards the death of villagers caused by environmental damage.

This seemed to prove that the Nigerian government and indeed all stakeholders (the youths, Nigerian police, the courts, government, local chiefs, foreign companies, non-governmental organizations, and boards mandated by laws to check, monitor, and inspect the activities of MNCs in Nigeria) to ensure that the lives of Nigerians are not jeopardized have a work to do.

It is based on the questionnaire and interview data that a conclusion can be drawn that Nigeria needs a strong laws like Corporate Manslaughter and Corporate Homicide Law to punish companies in the event of death caused by the activities of companies in Nigeria.

For this to be achieved, the Nigerian government must look into the penalty section of the proposed bill before it passes it into law. This researcher observed when the judge of a Federal High Court Enugu Nigeria and State counsels from The Ministry of Justice Enugu Nigeria read the provision of Companies and Allied Matters Act 2004 on the enforceability of corporate social responsibility (there was a loophole since members in general meeting can or refuse to ratify the act of directors (decisions taken on behalf of the company either to save cost to the detriment of the health and safety of their employees and the villagers) that the laws in Nigeria are weak to punish companies for corporate manslaughter and the reasons companies are not adhering to health and safety, taking care of the welfare of workers and villagers, making profits without considering cleaning up oil spillage and reducing gas flaring in Nigeria. They

are revealed by questionnaires and interviews carried out for this study. This is noteworthy both for what the respondents did not tick nor say and for what they did tick and say.

None gave any information about a more consensual approach to ensure that the Nigerian government is eager to give support to the courts and the Nigerian police in pursuit of corporate manslaughter cases in Nigeria. It is submitted that such an approach would have a highly beneficial impact on, among other things, corporate social responsibility.

Thus there are two suggestions here to improve the enforceability of law in Nigeria and to test its enforcement through the lens of a corporate manslaughter law and its impact on corporate social responsibility among oil companies in the Niger Delta Area of Nigeria.

Many of the interviewees suggest that in addition to the remedial order and publicity order as punishment under the CMCHB 2015, the lawmakers must include fines of not less than ten to twenty million Naira fined on MNCs which will make it commensurate to the loss of human lives. They felt that the problem with laws like the Criminal Code, Factories Act, and Workmen's Compensation Act to mention just a few was that the fine is just ridiculous. Fines used in the twentieth century when these laws became enforceable in Nigeria as part of Received English Law are what the Nigerian courts still award as fines or penalties until today.

They all complained that it is still a challenge for Nigeria, especially oil spillage, gas flaring, and the hazardous effects it has on human lives (respiratory problems, poisoning of livestock)

and as companies are not fined huge fines or even directors sent to prison, multinational companies in Nigeria will continue to fail in their corporate social responsibility duties.

What emerges from the research is that now financial punishment in Nigerian law is still too low a motive for compliance, oil companies must be levied huge fines to have an impact. In addition to this, difficulty in attracting staff (publicity order as punishment), prison term for senior managers, and loss of reputation will also have an impact. It is even appropriate to sue their supervisors, who might make better targets based on their higher status within the company, may have had no better training and no more resources⁶⁰³ since they are the people junior staffs make complaints of mechanic malfunctions or in some cases complaint of the negative effects of oil spillage to the health of villagers (if they are allowed to make such complaints).

Yet higher up the corporate ladder, where responsibility for poor training and inadequate resources resides, management officials (who ensure that employees come to work and do their jobs (emphasis mine)) may not have enough knowledge to be charged with crimes⁶⁰⁴. In those cases, where crimes occurred and there is a need for accountability, condemnation, and societal

⁶⁰³ David M Uhlmann “The Pendulum Swings Reconsidering Corporate Criminal Prosecution” (2015) 49 University of California Davis Law Review 1235- 1283 at 1280

⁶⁰⁴ Supra at 1280

catharsis, it may not be fair or just to charge the employees or even their immediate supervisors⁶⁰⁵.

Instead, charges should be brought against the corporation that did not provide the training or the resources that its employees needed to meet the company's legal obligations⁶⁰⁶. Such resources could be materials to tighten oil pipelines to ensure that oil pipelines are capped.

In the UK, Governments at all levels have sought to roll out a better political way to control and check the activities of companies in their country by beginning a ceaseless initiative on a range of mutually reinforcing political, institutional, legal, and discursive fronts which effectively entails creating regulatory regimes in key areas of social protection from which enforcement is increasingly lacking⁶⁰⁷.

Research conducted by the Centre for Corporate Accountability showed that the majority of large companies convicted of health and safety offenses involving a death of a worker or member of the public were fined at a level that was less than one 700th of their annual turnover⁶⁰⁸. If individuals earning an average annual income of £24,769 were sentenced at this

⁶⁰⁵ Gerard E. Lynch, *The Role of Criminal Law in Policing Corporate Misconduct* (1997) 60(23) *Law and Contemp. Probs* at 52

⁶⁰⁶ David M Uhlmann "The Pendulum Swings Reconsidering Corporate Criminal Prosecution" (2015) 49 *University of California Davis Law Review* 1235- 1283 at 1280

⁶⁰⁷ Steve Tombs, 'Better Regulation' better for whom Centre for Crimes and Justice Studies (2016) Briefing 14 1-16

⁶⁰⁸ Gary, Slapper "Corporate Punishment" (2010) 74(3) *The Journal of Criminal Law* 181-184 at 184

level, they would have been fined £35 for manslaughter⁶⁰⁹. Scholars will be intrigued to learn how far the implementation of the new sentencing guideline creates a more punitive regime⁶¹⁰ when companies cause the death of their employees. The new sentencing guideline in 2015 set the fine for Corporate Manslaughter and Corporate Homicide in the United Kingdom⁶¹¹ between one hundred and eighty thousand pounds to twenty million pounds⁶¹². This is encouraging as a fine for corporate manslaughter and corporate homicide when compared to a loss of human lives.

This analysis emphasized that companies in Nigeria will comply with their corporate social responsibility duties when the government of Nigeria seriously looks at the activities of companies to ensure that they reduce environmental degradation, which could cause oil spillage catching fire, gas flaring causing terminal illness.

Furthermore, oil companies choose to bribe top officials at the Nigerian National Petroleum Corporation (NNPC) (a body by law that handles oil exploration businesses between the Nigerian government and multinational oil companies operating in Nigeria) to close cases and inquiries on oil spillage and gas flaring in Nigeria simply because oil companies want to save

⁶⁰⁹ Supra at 184

⁶¹⁰ Ibid at 184

⁶¹¹ Sentencing Guideline Commission 2010 Para 8 in Company Lawyer, “New Sentencing Guidelines For Corporate Manslaughter, Etc” (2016) 228 Criminal Law 8-9

⁶¹² Corporate manslaughter Available at <sentencingcouncil.org.uk/offences/crown-court/item/corporate-manslaughter/> [Accessed] 25th October 2019

money to spend less or nothing. It pains this researcher that the situation of oil spillage, gas flaring, and breach of human rights in Nigeria is so serious that other oil-producing countries like Iran label Nigeria as their farmland. Corporate Manslaughter law is helpful to companies' performance in achieving their corporate social responsibility objectives of profit-making and protection of lives of workers and society based on legal policies. The idea behind enforceability in this research is that ethical, legal, philanthropic, and socio-economic principles of CSR must be an integral part of how the organization operates and be reflected in the organization's code of ethical conduct, formal and informal controls, policies, processes, and procedures⁶¹³. For the company, the board and management, therefore, have to ensure that there is a high degree of congruence between the ethical standards of the organization (sustainability framework) and their behavior and activities.

Pinchot and Pinchot suggested that executives should cultivate their ethical competence with the same enthusiasm they devote to cultivating their technical, marketing, and financial skills to avoid incidences like the Bhopal chemical explosion in India⁶¹⁴. These ethical principles for example form the basis for an ethics of sustainability and include the Precautionary Principle, among others, that can assist in framing the issue and developing suitable solutions, and that

⁶¹³ Bonn Ingrid and Josie Fisher "Corporate Governance and Business Ethics: Insights from the Strategic Planning Experience" *Corporate Governance an International Review* (2005) 13(6) 730-738

⁶¹⁴ Gifford Pinchot and Elizabeth Pinchot "Can We Afford Ethics?" (1992) 9 *Executive Excellence* 3-4 in Ann Svendsen *The Stakeholder Strategy: Profiting from Collaborative Business Relationships* (Berrett-Koehler Publishers Inc, 2010) at 193

can cope with risk and its ramifications⁶¹⁵. An example of an ethical principle is the sharing of accident information, learning the lesson from accident-death-related corporate cases, and checking the nature of corporate systems of companies. In many developing countries like Nigeria, negligence by companies has been attributed to cutting costs.

5.1 FACTS OF THE CASE

The claimants are citizens of Nigeria and inhabitants of the areas affected by the oil leaks. RDS is a company incorporated in the United Kingdom and is the parent company of the Shell group of companies ('the Shell Group'). SPDC is an exploration and Production Company incorporated in Nigeria and is a subsidiary of RDS. It is the operator of a joint venture agreement between itself, the Nigeria National Petroleum Corporation, Total Exploration, and Production Nigeria Ltd, and Nigeria Agip Oil Company⁶¹⁶.

The claimants in these two actions seek damages arising as a result of serious, and ongoing, pollution and environmental damage caused by leaks of oil from pipelines and associated infrastructure in and around the Niger Delta for which, they contend, the 1st defendant ('RDS') and the 2nd defendant ('SPDC') are responsible⁶¹⁷. According to Frynas, oil pollution has become a big problem in Nigeria⁶¹⁸. According to him during his stay in Nigeria, this oil

⁶¹⁵ Max Energy Limited, 'Oil Rig Disaster Deep Water Horizon' (Deepwater Horizon, 2014) available at <http://www.solarnavigator.net/oil_rigs_deepwater_horizon_british_petroleum.htm> [Accessed] 10th May 2015

⁶¹⁶*Okpabi & Ors v Royal Dutch Shell plc & Anor (Rev 1)[2018] EWCA Civ 191*

⁶¹⁷*Okpabi & Ors v Royal Dutch Shell plc & Anor (Rev 1)[2018] EWCA Civ 191*

⁶¹⁸ Jędrzej G Frynas "Corporate Social Responsibility or Government Regulation? Evidence on Oil Spill Prevention" (2012) 17(4):4 Ecology and Society 1-13

spillage can cause a fire⁶¹⁹. Villagers have complained of fatal health illnesses as a result of the negative impact of this environmental degradation in Nigeria, especially in the Ogoniland Rivers State of Nigeria.

The issue in Nigeria is that these villagers in Niger Delta Area in Nigeria see it as an avenue to claim compensation from foreign oil companies operating in their community. The problem is half solved.

The judgment handed down by the court must be capable of making oil companies in addition to fines and compensation do clean-ups of oil spillage knowing the danger of failure not to clean can cause. The claimants in this case who are members of the Ogale community in the Niger Delta Area of Nigeria are praying to the court (in England where Shell Petroleum Development Corporation the parent company is headquartered) that as occupiers of premises the Royal Dutch Shell (a subsidiary of Shell Petroleum Development Corporation) is spilling crude oil which causes terminal illness and RDS needs to be stopped and SPDC pays them compensation for their damaged land (contaminated by oil spills). A “relevant duty of care”, about an organization, means any of the following duties owed by the company-

- (a) A duty owed to its employees or other persons working for the organization or performing services for it;

⁶¹⁹ Jędrzej G Frynas “Corporate Social Responsibility in the Oil and Gas Sector” (2009) 2(3) The Journal of World Energy Law and Business 178-195

(b) A duty owed as occupier of premises (Section 2 Corporate Manslaughter and Corporate Homicide Act 2007).

Similarly, the Health and Safety at Work Act 1974 provides that

2(1) it shall be the duty of every employee to ensure, so far as is reasonably practicable, the health, safety, and welfare at work of all his employees.

2(2) without prejudice to the generality of an employer's duty under the preceding subsection, the matters to which that duty extends include in particular section 2 (2c) the provision of such information, instruction, training, and supervision as is necessary to ensure, so far as is reasonably practical, the health and safety at work of his employees.

Page 29 of Okpabi's case by the Court of Appeal (the judgment) provides a holistic approach to why the court believes that the case provided by the claimants/ appellants (representatives of the Ogale community in Rivers State) in this case was not persuasive and as such the Royal Dutch Shell cannot be duty bound to suffer vicariously from actions done by the subsidiary Shell Petroleum Development Corporation (SPDC).

The court of appeal is saying that even if the community members (the appellants) maintain that given the documents which include Shell's RDS overall framework for the control of all its companies within the Shell Group, The Royal Dutch Shell Corporate Social and Responsibility Committee documents, The Shell Sustainability Report and Shell's HSSC and SP control framework including Shell's policy and commitment should form a framework that

justifies that the Royal Dutch Shell exercises significant control over its subsidiaries to make it vicariously liable for any tort.

Furthermore, on the question of the establishment of an RDS control test or framework, the Court of Appeal was of the view that irrespective of these documents (The Royal Dutch Shell Corporate Social and Responsibility Committee documents, The Shell Sustainability Report, and Shell's HSSC, and SP control framework including Shell's policy and commitment), that it does not evidence control and as such proximity cannot be established based on these documents and that something more should have been presented to show responsibility and liability of parent companies for its subsidiary (these documents were even tendered at the later part of the trial). This documentation according to the Court of Appeal was not sufficient to establish the needed control for proximity to be established and for a duty of care that a company owes to individuals and third parties to take effect. Page 29 of the Court of Appeal decision in Okpabi's case explains this in clear detail.

Royal Dutch Shell (RDS) is the ultimate holding company of SPDC. In that capacity, taken by itself, RDS does not have legal responsibility for any shortcomings by SPDC in its management of the pipeline and facilities⁶²⁰. However, the claimants say that in practice RDS took control itself of trying to ensure that the pipeline and facilities were maintained to a proper standard

⁶²⁰*Okpabi & Ors v Royal Dutch Shell plc & Anor (Rev 1)[2018] EWCA Civ 191* Ratio 138

and that effective security was put in place in respect of them⁶²¹. This was done because the Shell Group faced significant reputational harm and loss of oil revenues if the maintenance and security of the pipeline and facilities were not managed effectively⁶²². SPDC had experienced such significant problems in Nigeria that RDS had found it necessary to step in to manage those problems itself (including by directing SPDC regarding the steps it should take) or to take decisions jointly with SPDC regarding the management of those problems⁶²³.

In the present case, the central issue is relatively easy to state: whether the claimants can demonstrate (to the standard required) that RDS owed them a duty of care (in the relevant respects)⁶²⁴.

The rule on which the court relied is:

That the documentation presented by the claimants in itself according to the court is not sufficient to establish the needed control for proximity to be established for this duty of care which a company owes to each individual (employees) and third parties (which includes the villagers) to take effect. Page 29 of the court of appeal decision explains this in clear detail. However, in this researcher's view, the thought is that the reasons provided by the court of appeal in coming to this determination were not clear but the court in any case said that haven

⁶²¹*Okpabi & Ors v Royal Dutch Shell plc & Anor (Rev 1)*[2018] EWCA Civ 191 Ratio 138

⁶²²Supra at 138

⁶²³Ibid at 138

⁶²⁴*Okpabi & Ors v Royal Dutch Shell plc & Anor (Rev 1)*[2018] EWCA Civ 191 at Ratio 14

adopted a fair, just and reasonable test, it believes that the control test was not established by that documentation.

This position of the honourable justices of the court of appeal makes this researcher direct readers to page 33 to page 39 of the court of appeal judgment in Okpabi's case because there is a contrary position there (looking at the dissenting position held) to the effect that the court would take an alternative position given that those documentations exhibits some element of control which is sufficient to justify proximity between Royal Dutch Shell (RDS) and Shell Petroleum Development Corporation (SPDC) to implement this duty of care.

With due respect to the court of appeal, these two positions seem to run contrary and make the position unsettled although readers can understand that the court of appeal has already ruled that Royal Dutch Shell cannot be held liable for an action performed by its subsidiaries, but it is important to establish that within this judgment itself, a dissenting position exists. This means that while the court is making it clear that this is the law as it stands, it is important to examine or interrogate the dissenting positions.

The striking observation this researcher made from reading Okpabi's case is that the judgment dwelt on breach of tort of negligence and not corporate manslaughter however Nigerians from the Niger Delta Area are dying from the activities of multinational oil companies operating in Nigeria. This judgment ought to have extended from establishing the liability of parent companies for the actions of its subsidiary to corporate manslaughter.

Readers should not forget the right to life provision as enshrined under section 33 of the 1999 constitution of the Federal Republic of Nigeria. It provides that no one should be deprived of his right to life except in the execution of a court judgment, to suppress a riot, or in a case of mutiny. This researcher can only say that based on the provisions of Nigeria's 1999 constitution which is the father of all laws in Nigeria (and which other existing laws in Nigeria draws strength from as existing laws⁶²⁵).

(here put the position in 33-39 of CA and the ruling side by side for purpose of analysis (bring in your chapter 4 data and chapter two literature review data and reference in chapter two in here to come into life)). This is just the first area.

Below, this writer will discuss the issue in Okpabi's case

5.2 THE ISSUE IN OKPABI'S CASE

Under this subheading, this researcher will explain those contradictions that make enforceability impossible. For example, could it be that on corporate manslaughter and corporate social the courts do not understand how the Nigerian system works, or is it that there is no centrality of principles to guide the understanding of the courts towards certain directions or is there a misunderstanding in the language of the provisions of the law.

⁶²⁵Constitution of the Federal Republic of Nigeria 1999 section 315

In essence, this means that even if there are letters of the law which is the law as it is contained but the content of the law does not make provision for the people directly affected it will more or less be ineffective.

The issue in Okpabi's case is that it seems to dwell in the area of negligence, which is where the duty of care, in this case, plays out. It is important to note that assuming this case was brought on a criminal charge, would it receive the same threshold of analysis? This means assuming RDS was brought to court or charged with corporate manslaughter, would it enjoy the same legal analysis? Does the absence of a legal regime as it borders on corporate manslaughter prevent the very accountability that should exist in corporate malfeasance? This to an extent means that if this case had happened in the United Kingdom, would it just lie in the realm of the tort of negligence, would it attract criminal charges?

In Nigeria, there is social activism going on whereby people are complaining about the negative activities of multinational oil companies and trying to enforce or seek redress against these companies in Nigeria under environmental law when in fact, the effect of it outlives environmental issues.

For example, when the air is polluted⁶²⁶ people look at it as an environmental case but not as a human disaster. More so (health and safety inspectors) readers must also not forget that various

⁶²⁶ Rebecca S. Katz "Environmental Pollution: Corporate Crime and Cancer Mortality" (2012) 15(1) Contemporary Justice Review 97-125

Ministry of Labour and Employment do go for health and safety inspections to big multinational companies, but they do not have any power of arrest if these multinational companies are not complying with corporate social responsibility (example health and safety (spilling oil, flaring gas)). Moreover, these types of responses are indicative of a political context for regulatory enforcement where the idea of regulation is under⁶²⁷ attack because of the issue of corruption.

On the other hand, none has given any information about a more consensual approach to ensure that the Nigerian government is eager to give support to the courts and the Nigerian police in pursuit of corporate manslaughter cases in Nigeria. It is submitted that such an approach would have a highly beneficial impact on, among other things, corporate social responsibility.

Thus there are two suggestions here to improve the enforceability of law in Nigeria and to test its enforcement through the lens of a corporate manslaughter law and its impact on corporate social responsibility among oil companies in the Niger Delta Area of Nigeria.

Many of the interviewees suggest that in addition to the remedial order and publicity order as punishment under the CMCHB 2015, the lawmakers must include fines of not less than ten to

⁶²⁷ Steve Tombs ‘‘Better Regulation’ Better for Whom?’’ (2016) 14 Centre for Crimes and Justice Studies Briefing 1-16

twenty million Naira fined on MNCs which will make it commensurate⁶²⁸ to the loss of human lives.

Fines used in the twentieth century when these laws became enforceable in Nigeria as part of Received English Law are what the Nigerian courts still award as fines or penalties until today.

They all complained that it is still a challenge for Nigeria, especially oil spillage, gas flaring, and the hazardous effects it has on human lives (respiratory problems, poisoning of livestock) and as companies are not fined huge fines or even directors sent to prison, multinational companies in Nigeria will continue to fail in their corporate social responsibility duties. This simply means that the common forms of regulation allow companies to treat CSR simply as a means of value creation, ultimately undermining CSR impact and effectiveness⁶²⁹.

Secondly, there was no machinery in the first place to investigate corporate manslaughter in Nigeria (like in the UK) before the case of Okpabi was instituted in the UK courts. This lack of no system in place for enforcement enabled the court of appeal to rule that there was no breach of duty of care on the grounds of lack of proximity.

All this changed at the Supreme Court in the same Okpabi case.

The following issues were tackled at the Supreme Court.

⁶²⁸ Nneka Obiamaka Umejiaku and Chisom Ngozi Uzoka “Towards a Rational Theory of Criminal Liability for Corporations in Nigeria” (2019) 6(1) Nnamdi Azikiwe Journal of Commercial and Property Law 126-149

⁶²⁹ Gerlinde Berger-Wallister and Inara Scott “Redefining Corporate Social Responsibility in an Era of Globalization and Regulatory Hardening” (2018) 55(1) 167-218 at 171

(1) Issue of a material error of law

As regards the material errors of law⁶³⁰, the Supreme Court turned first to how the interlocutory proceedings had been conducted. The Court of Appeal had allowed itself to be ‘drawn into conducting a mini trial⁶³¹. This was at odds with the guidance set out by the House of Lords in *Three Rivers District Council v Governor and Company of the Bank of England*⁶³², which had been reiterated by the Supreme Court in *Vedanta*. The Court of Appeal subjected the evidence to a detailed analysis when, for interlocutory proceedings, it should have restricted itself to a much lighter touch approach and accepted assertions of fact at face value unless they were ‘demonstrably untrue or unsupportable’⁶³³.

(2) Issue of non-disclosure in Okpabi’s case against RDS affecting the enforceability

The majority of the Court of Appeal attached much greater weight to the evidence offered by RDS than that which was submitted by the appellants. This was inappropriate given that there had been no opportunity for cross-examination of RDS witnesses and at this point in the proceedings disclosure had not been completed⁶³⁴. The Supreme Court noted that, in *Vedanta*,

⁶³⁰ Mark Wilde ‘Extraterritorial Liability of Parent Company for the Torts of its Subsidiary: *Okpabi and others v Royal Dutch Shell*’ (2021) 37(3) *Journal of Professional Negligence* 142-147

⁶³¹ *Okpabi and others .v. Royal Dutch Shell Plc and another* [2021] UKSC 3 at [101]-[109]

⁶³² *Three Rivers District Council v Governor and Company of the Bank of England* [2003]2 AC 1

⁶³³ *Okpabi and others .v. Royal Dutch Shell Plc and another* [2021] UKSC 3 at [107]

⁶³⁴ *Okpabi and others .v. Royal Dutch Shell Plc and another* [2021] UKSC 3 at [120]-[125]

Lord Briggs⁶³⁵ had emphasized the important role played by documentary evidence in unraveling the complex structures of multinational corporations and ascertaining chains of command, distribution of functions, and so forth⁶³⁶. Thus, the majority in the Court of Appeal had erred in law by reaching firm conclusions on evidence that the appellants had not had the opportunity to test.

(3) Issue of general principle assumed by the Court of Appeal in England in Okpabi's case which affected enforceability

The Supreme Court proceeded to consider how certain substantive points of law had been presented. It noted that the Court of Appeal seemed to accept a 'general principle' to the effect that the parent company can never assume a duty of care in respect of activities carried out by the subsidiary simply because it had adopted group-wide guidelines, policies, and procedures which the subsidiary was required to follow. This ran contrary to *Vedanta*, in which Lord Briggs held that there is no such 'reliable limiting principle' because such guidelines and policies could contain 'systematic errors'⁶³⁷.

This researcher asked Onyechi Ikpeazu (SAN) the question "are laws in Nigeria currently weak to punish oil companies in Nigeria for corporate manslaughter and corporate homicide?"

He said definitely and that is why Nigerians need the bill to be passed into law. He added that

⁶³⁵ *Vedanta Resources PLC and another .v. Lungowe and others* [2019]UKSC 20

⁶³⁶ *Okpabi and others .v. Royal Dutch Shell Plc and another* [2021] UKSC 3 at [126]-[132]

⁶³⁷ *Okpabi and others .v. Royal Dutch Shell Plc and another* [2021] UKSC 3 at [143]-[145]

it is important to note that oil companies in Nigeria fight very hard and they take advantage of the loopholes in Nigeria's judicial system which is many and they take advantage of the procedural pitfalls and in-laws in Nigeria. This according to him means that Nigeria needs a very progressive law and a progressive prosecution team because it is all about prosecution.

This procedural pitfall in Nigeria's judicial system could be the problem of limited liability hindering parent company/subsidiary company liability as witnessed in Okpabi's case at the Court of Appeal. Keane defined limited liability as "where the liability of the members for the debts and wrongs of the company can be limited to the amount unpaid on the shares which they own in the company"⁶³⁸. The doctrine arose because of the need to protect the individual shareholder and encourage them to support industrial revolution era companies as they raced toward modernization⁶³⁹. The application of this revolution of limited liability in the parent company and its liability is a huge example⁶⁴⁰.

The courts reject treating the parent company as a single economic entity since it will equate to liability being automatically imposed on the parent company⁶⁴¹. It focuses instead on treating each company, regardless of whether it is a parent company or a subsidiary, as a separate entity.

⁶³⁸ Brian Hutchinson *Keane on Company Law* (5th Edition, Bloomsbury Professional, 2016) at 5

⁶³⁹ E.A French, "The Origin of General Limited Liability in the United Kingdom" (1990) 21(18) *Accounting and Business Research* 15 in Eoin Jackson "The Case for Eco-Liability: Post Okpabi Justifications for the Imposition of Liability on Parent Companies for Damage caused to the Environment by their Subsidiaries" (2021) 7(1) *LSE Law Review* 61-85

⁶⁴⁰ Eoin Jackson "The Case for Eco-Liability: Post Okpabi Justifications for the Imposition of Liability on Parent Companies for Damage caused to the Environment by their Subsidiaries" (2021) 7(1) *LSE Law Review* 61-85 at 63

⁶⁴¹ *Adams .v. Cape Industries Plc* [1990] 2 WLR 2 WLR 657

Therefore, the parent company is treated as effectively identical to any other shareholder⁶⁴².

This is where the problem of parent company/subsidiary company liability at the Court of Appeal in Okpabi's case⁶⁴³ emanated. The conclusion according to this researcher is that this is just another excuse by the judge to rule that Shell is not responsible for the operational activities of its subsidiaries abroad (host country (Nigeria)) and so lacks jurisdiction to entertain this case (Okpabi's case). With due respect in a case like this⁶⁴⁴ (from the decision of Lord Collins), judges were aware that the result of their work would or might become law.

Nigeria needs to vest jurisdiction onto either a body that can adequately prosecute by restricting it to the office of the attorney general who may in his or her discretion create a special unit in that regard because corporate manslaughter and corporate social responsibility is a highly specialized area.

In the case of *Vedanta Resources PLC and another (Defendants/Appellants) v Lungowe and others (Claimants/Respondents)*,⁶⁴⁵ the defendants in question had caused a toxic discharge from a mine, leading to severe health issues for more than 1500 Zambian villagers⁶⁴⁶. Here the

⁶⁴² *Re Poly Peck International Plc* (in administration) (No 5) [1996] WC2A 2LL

⁶⁴³ *Okpabi & Ors v Royal Dutch Shell plc & Anor* (Rev 1)[2018] EWCA Civ 191

⁶⁴⁴ *Okpabi & Ors v Royal Dutch Shell plc & Anor* (Rev 1)[2018] EWCA Civ 191

⁶⁴⁵ *Vedanta Resources PLC and another (Defendants/Appellants) v Lungowe and others (Claimants/Respondents)* [2019] UKSC 20

⁶⁴⁶ Samantha Hopkins, 'Vedanta Resources plc and Another v Lungowe and Others' (2019) 70(3) Northern Ireland Legal Quarterly 371

existence of an internal sustainability report was used to justify the imposition of liability on a parent company for the pollution caused by its subsidiary⁶⁴⁷.

In the Vedanta case⁶⁴⁸, the court ruled that a parent company that has been using a subsidiary as a means of externalizing risk, while maintaining internal control can suffer some form of penalty⁶⁴⁹. The logic then is an emphasis on active governance control over an internal corporate structure to circumvent the issue of limited liability for shareholder's risk during degradation, damages, and costs of cleaning up oil spillage in Nigeria (but the appellants in Okpabi's case fought these all through to the Supreme Court in Nigeria).

The effort of non-governmental organizations in Nigeria finally paid off in the recent Supreme Court judgment in Okpabi's⁶⁵⁰ case.

5.2.1 CASE LAW

Under this subheading, which is the analysis section, this researcher will use decided court cases in Nigeria and UK and even beyond (Australia, India) to the data set, the corresponding

⁶⁴⁷ Eoin Jackson “The Case for Eco-Liability: Post Okpabi Justifications for the Imposition of Liability on Parent Companies for Damage caused to the Environment by their Subsidiaries” (2021) 7(1) LSE Law Review 61-85 at71

⁶⁴⁸ *Vedanta Resources PLC and another (Defendants/Appellants) v Lungowe and others (Claimants/Respondents)*[2019]UKSC 20

⁶⁴⁹ Eoin Jackson “The Case for Eco-Liability: Post Okpabi Justifications for the Imposition of Liability on Parent Companies for Damage caused to the Environment by their Subsidiaries” (2021) 7(1) LSE Law Review 61-85 at75

⁶⁵⁰ *Okpabi and others .v. Royal Dutch Shell Plc and another* [2021] UKSC 3

theme upon which the data support or negate, and then this researcher's analysis of the data using literature from chapter two and argument here this researcher will put forward his conceptual framework developed in his literature review in his data analysis here. This researcher will discuss political tendencies affecting enforceability under this. Below are the political tendencies.

5.2.1.1 POLITICAL TENDENCIES THE HURDLES FACING NIGERIAN COURTS REGARDING CORPORATE CRIMINAL LIABILITY

The political pothole with Nigerian courts is that laws are observed more in the breach than in compliance. This political pothole can be used as an excuse by the Nigerian government to aid companies in Nigeria with human rights abuses and the Nigerian courts will see no wrong in it because companies cannot commit manslaughter in Nigeria.

In the case of *SERAC and Another v. Nigeria*⁶⁵¹, emanating from the activities of Shell Petroleum Development Corporation (SPDC) and the Nigerian Military Government in the 90s participation, it was alleged that the SPDC by their activities degraded the environment while also causing health problems among the Ogoni people in Rivers State of Nigeria.

It was also alleged in this case that the Nigerian military government condoned the activities of these oil companies and that the Nigerian military government further participated in the

⁶⁵¹ *SERAC and Another .v. Nigeria* [2001] AHRLR 60; *SERAC and Another .v. Nigeria* in Fons Coomans "The Ogoni Case Before the African Commission on Human and People's Rights" (2003) 52(3) The International and Comparative Law Quarterly 749-760

violation of human rights by using security forces, killing innocent civilians, and destroying villages⁶⁵². The African Commission in SERAC's case held that Article 24 of the African Charter (which promotes the right to a satisfactory and healthy environment) enjoins African states 'to take reasonable and other measures to prevent pollution and ecological degradation, promote conservation, and secure ecologically sustainable development and use of natural resources⁶⁵³. The African Commission⁶⁵⁴ also held that the Nigerian Government and its agencies violated the African charter. The African Commission further held that the Nigerian state had violated a plethora of rights including rights to life (Article 4) and the right to a clean and generally satisfactory environment (Article 24) as provided in the African Charter⁶⁵⁵.

Thus, it is recommended that in line with best international practices the Nigerian courts adopt the corporate culture liability in holding companies to account for their criminal activities⁶⁵⁶.

Secondly, the political attitude of Nigerian courts is that federal statutes are being observed more in the breach than in compliance, and foreign oil companies operating in Nigeria capitalize on that to evade justice.

⁶⁵² Olufemi Amao *Corporate Social Responsibility, Human Rights and the Law: Multinational Corporations in Developing Countries* (Routledge Research in Corporate Law, 2013)

⁶⁵³ *SERAC and Another .v. Nigeria* [2001] AHRLR 60 paragraph 52 in Olufemi Amao Michele Olivier and Konstantin Magliveras *The Emergent African Union Law: Conceptualization, Delimitation, and Application* (Oxford University Press, 2022) at 14

⁶⁵⁴ In SERAC's case, the African Commission deepened the applicability of Article 24 on fulfilment of environmental rights and guidelines for the obedience of environmental rights.

⁶⁵⁵ Olufemi Amao Michele Olivier and Konstantin Magliveras *The Emergent African Union Law: Conceptualization, Delimitation, and Application* (Oxford University Press, 2022) at 14

⁶⁵⁶ Nneka Obiamaka Umejiaku and Chisom Ngozi Uzoka "Towards a Rational Theory of Criminal Liability for Corporations in Nigeria" (2019) 6(1) Nnamdi Azikiwe Journal of Commercial and Property Law 126-149

This means that if it is the human institutions, what then it is with the human institutions? As a company's responsibilities are commonly spread across the board, the laws and machinery of government are so weak to catch the strong multinational corporations who own major big businesses in Nigeria.

SERAC's case above using Article 21 of the African Charter on Human and Peoples' Right, held that the destructive and selfish role played by MNCs in Ogoniland, closely tied with the repressive tactics of the Nigerian government constitute a violation of Article 21⁶⁵⁷.

Below this writer will discuss raising fundamental questions as it relates to Okpabi's case.

5.3 RAISING FUNDAMENTAL QUESTIONS AS IT RELATES TO OKPABI'S CASE

AT THE COURT OF APPEAL

Under this subheading, this writer will be raising fundamental questions (your fundamental questions) as it relates to Okpabi's case and these fundamental questions will be linked to his research question because this researcher is trying to use the case study of Okpabi briefly discussed already (the facts) to explain all that he has been doing.

One of the fundamental questions haven briefed readers on the facts of Okpabi's case is

⁶⁵⁷ African Charter on Human and Peoples' Right Comm no 155/96 paragraph 55 (2001) in Paul Samuel Tamuno "Corporate Social Responsibility in the Niger Delta: Past, Present and Future Challenges" (2022) Journal of African Law 1-27 at 13

- (1) Whether the duty of care (concern an interpretative philosophy) sufficiently provides a ground for enforceability and whether it guarantees sufficient accountability for the operations of multinational companies in the Niger Delta Area?
- (2) The question of control. Whether the essence of control or proximity, in this case, provides sufficient guarantees for enforcement or enforceability in cases where the operations of companies have led to injuries to individuals?
- (3) Whether a criminal liability in the form of corporate manslaughter should sufficiently ground these ideas (criminal liability, enforceability) to provide sufficient enforcement and accountability for the people who have been injured as a result of the acts of multinational companies?
- (4) Whether the court has jurisdiction in this case?
- (5) The decision on the issue of proximity could have amounted to a judicial/ procedural pitfall worthy to be taken advantage of by anybody.

Below, this writer will answer the fundamental questions raised

CHAPTER FIVE

What this chapter seeks to achieve is to establish using case law whether the concept of unenforceability is tied to the absence of a legal framework (the absence of criminal jurisprudence for the punishment by the courts for corporate manslaughter in Nigeria) in holding multinational companies accountable.

The issue with regards to enforceability (interpretation and enforcement of laws in Nigeria) of corporate criminal liability is seen in companies in Nigeria hiding under the umbrella of no liability of a subsidiary company because it is dodging from being ascribed with the men's rea of the acts of its employees to be the acts of the company itself for corporate liability.

In Nigeria, under the common law, The Companies and Allied Matters Act 2004, the Workmen's Compensation Act, and the Factories Act, a company is liable for breach of duty of care for employees but one of the major problems is which director in a big company with different department takes liability for breach of duty of care of employees.

When an employee sues, shareholders may refuse to ratify the acts of the director that caused the death or hide under the umbrella of having an artificial personality. This will in turn form legal cultures in Nigeria. This makes claimants file criminal charges of corporate manslaughter for example against multinational oil companies in their home countries but the courts eventually hand in judgment on civil charges (torts).

Meanwhile what Nigerians need is a criminal conviction for oil companies for it to take oil spillage, and gas flaring (corporate manslaughter) to mention just a few very seriously.

Okpabi's case is a good example. As readers will read in the choice of the case (Okpabi's case⁶⁵⁸) which this researcher chose, the court uses the excuse of proximity to make the system impossible to enforce the law against oil companies for corporate manslaughter.

Under the common law then, the acts of an employer or an independent contractor may be regarded as the acts of the company once it is proved satisfactorily in court and thus an employer becomes vicariously liable for an act of an independent contractor, his acts or an act of another employee.

This means that under the common law in Nigeria, the employer owes a duty of care to his employees working for him at sites. According to Oladosu, an employer has a common law duty to take care of the safety of his employees⁶⁵⁹. The test is the duty of a reasonable man. The duty of a reasonable man is the standard of care expected of a reasonably competent engineer⁶⁶⁰.

The standard of care varies according to the state of knowledge and with the advance in knowledge. Corporate criminal liability is not without obstacles in Nigerian courts because Nigeria's legal system is not ready for the conviction of big multinational oil companies (for

⁶⁵⁸*Okpabi & Ors v Royal Dutch Shell plc & Anor (Rev 1)[2018] EWCA Civ 191*

⁶⁵⁹Ogunniyi Oladosu *Nigerian Labour and Employment Law in Perspective* (2nd Edition Folio Publishers Limited, 2004)

⁶⁶⁰*Griffiths .v. Arch Engineering Co. Ltd [1968] 3 ALL ER 217*

example) until the corporate manslaughter and corporate homicide bill (CMCHB) 2015 is passed into law and enforced. This is what the claimants like the courts to recognize and appreciate in this case chosen by this researcher.

The choice of this case is to have a lasting solution to corporate criminal liability in Nigeria and to set a precedent for it in Nigerian courts. The employer must therefore balance the dangers of the particular job and the seriousness of the consequences of any such accident for each employee⁶⁶¹. This writer believes that where the danger is already widely known, the employer will be held liable in case he fails to take precautions.

5.3.1 ANSWERING THE FUNDAMENTAL QUESTIONS RAISED

Under this subheading, the researcher will then provide answers (this is where the case analysis begins). These answers will now explain the duty of care, concern, and interpretation philosophy. Below, this writer will discuss whether the duty of care (concern an interpretative philosophy) sufficiently provides a ground for enforceability and whether it guarantees sufficient accountability for the operations of multinational companies in the Niger Delta Area.

⁶⁶¹ *Paris .v. Stepney Borough Council [1951] AC367*

5.3.1.1 WHETHER THE DUTY OF CARE (CONCERN AN INTERPRETATIVE PHILOSOPHY) SUFFICIENTLY PROVIDES A GROUND FOR ENFORCEABILITY AND WHETHER IT GUARANTEES SUFFICIENT ACCOUNTABILITY FROM THE OPERATIONS OF MULTINATIONAL COMPANIES IN THE NIGER DELTA AREA.

This question above is a huge problem under Nigerian law caused by the political system of adjudicating cases in Nigeria. This leads to an ineffective system of adjudication. This researcher's respondent all showed him the sections of the Nigerian Criminal Code that according to them is too weak to legally enforce all aspects of corporate social responsibility from incidences that leads to corporate manslaughter and corporate homicide offenses which are oil spillage, gas flaring, and human right abuse.

Under the Criminal Code, a company is recognized as an artificial person that cannot commit and be charged with manslaughter and homicide. Being labeled as an artificial person under the Criminal Code of Nigeria has for long created a misunderstanding in the language of the provisions of the law contextually. This has prevented companies from being charged with corporate manslaughter and corporate homicide ever under the Nigerian legal system. This leaves one to ask the problem with the enforceability of law in Nigeria for example is the problem from the spirit of the law or the letters of the law.

Below, this writer will discuss the question of control. Whether the essence of control or proximity in Okpabi's case undermines the right of access to effective remedy?

5.3.1.2 THE QUESTION OF CONTROL. WHETHER THE ESSENCE OF CONTROL OR PROXIMITY IN OKPABI'S CASE UNDERMINES THE RIGHT OF ACCESS TO EFFECTIVE REMEDY?

Under this heading, this writer will explain whether the essence of control or proximity in Okpabi's case undermines the right of access to effective remedy.

Readers should not forget that the UK court could not adjudicate in this Okpabi Nigerian case (this is why the parent company could say in Okpabi's case before the UK court that this is the way we have been operating in Nigeria and we have not broken any law) or compensate for the lack of legal framework in Nigeria and the UK court cannot also legislate for the national assembly in Nigeria. The National Assembly in Nigeria should demand that the executive should build up a national crime aversion methodology⁶⁶². The act by the National Assembly will then make the CMCHB 2015 sees the light of the day.

Another reason this researcher feels that court abroad in UK ruled on proximity could be that Nigerians are fed up with the ridiculous fines Nigerian courts award in case like this and these courts abroad knows this. When companies are found guilty by the courts, they pay fines which can be ridiculous as set out under the laws. This is as a result of loopholes under the Nigerian laws. It is also crucial that the new Corporate Manslaughter and Corporate Homicide Bill 2015 Nigeria penalty for breach of duty of care extend beyond strong monetary punishment and

⁶⁶² Jorge C Nkwoh and Uche Angustus Nnawulezi "Criminal Law, Justice and Crime Within the Context of Administration of Justice in Nigeria" (2017) 2 AFJCLJ 92-100 at 100

impose the death penalty for companies that are repeated offenders in order to prove that powerful companies financially buoyant cannot just by justice for the deceased⁶⁶³. The implicit CSR approach adopted by the UK made it an attractive prospect for this study. This is especially where its implicit CSR approach is given some legal teeth indirectly through its Corporate Manslaughter legislation.

Secondly, this writer believes that it does not just end at finding liability but also by enforcing a law. Enforcement aims to make the norms of law actual: it aims to make those norms obtain in the world.

In *R. v. Great Western Trains Co*⁶⁶⁴ the driver was allegedly packing his bags when he missed the red light⁶⁶⁵. His act of breach of duty of care led to the death of seven people he was carrying⁶⁶⁶. The issue in the case is that Great Western Trains disregarded safety standards but however no one could be convicted because no one of the company's directing mind could be found to impute liability⁶⁶⁷ (guilty).

⁶⁶³ Shambhavi Tej Nargundkar "The Death and Resurrection of Corporate Criminal Liability in the United Kingdom (2019) 2 De Lege Ferenda 54-91 at 91

⁶⁶⁴*R. v. Great Western Trains Co* unreported, Central Criminal Court, 30 June 1999, Official Court Transcript, p 34; The Law Commission report referred to Law Commission, *Involuntary Manslaughter* (1996, Law Commission Report No 237) pp 99-129 in Gary Slapper "Corporate Manslaughter: The Changing Legal Scenery" (2002) 10 Asia Pacific Law Review 161-170 at 168

⁶⁶⁵Anne Schneider "Corporate Liability for Manslaughter: A Comparison Between English and German law"(2009) 4(1) Zeitschrift für Internationale Strafrechtsdogmatik ZIS22-43

⁶⁶⁶Corporate Liability in Criminal Law available at <<https://www.lawteacher.net/free-law-essays/business-law/corporate-liability-in-criminal-law-business-law-essay.php#ftn66>>[Accessed] 16th October, 2019

⁶⁶⁷Anne Schneider "Corporate Liability for Manslaughter: A Comparison Between English and German law"(2009) 4(1) Zeitschrift für Internationale Strafrechtsdogmatik ZIS22-43

As mentioned earlier in *R .v. Great Western Trains Co*⁶⁶⁸, the prosecution stated that large multinational companies with numerous departments have numerous directors, supervisors and sometimes contractors⁶⁶⁹. This writer believes that this position of the law makes it difficult to identify who to impute corporate criminal liability causing death and owed to the activities of the company or while an employee is within the course of his employment

This outcome of the court judgement in the case above is what multinational companies and some host governments still wants today.

This researcher also asked lawyers at the chambers of Onyechi Ikpeazu (SAN) the question “have you heard of the Corporate Manslaughter and Corporate Homicide Bill 2015 Nigeria?”

They replied that they heard of the Corporate Manslaughter and Corporate Homicide Bill⁶⁷⁰ Nigeria from this researcher but that they are worried of the penalty section which provided for just a one million naira fine (among other penalties or in addition to like remedial order and publicity order) upon conviction of a company in Nigeria.

This amount of fine according to lawyers from Onyechi Ikpeazu (SAN) is not even commensurate to the life of a cow not to talk about the life of an individual employee or Nigerians. This means that oil companies can afford to pay fine not commensurate to the life

⁶⁶⁸*R. v. Great Western Trains Co* unreported, Central Criminal Court, 30 June 1999, Official Court Transcript, p 34; The Law Commission report referred to Law Commission, *Involuntary Manslaughter* (1996, Law Commission Report No 237) pp 99-129 in Gary Slapper “Corporate Manslaughter: The Changing Legal Scenery” (2002) 10 *Asia Pacific Law Review* 161-170 at 168

⁶⁶⁹Paul Almond *Corporate Manslaughter and Regulatory Reform* (Palmgrave Macmillan, 2013)

⁶⁷⁰Corporate Manslaughter and Corporate Homicide Bill 2015

of a human being (lack of adequate sanction in Nigeria⁶⁷¹). This situation means that the court and the law in Nigeria does not exert control on companies and when Nigerians file the case abroad the UK court will rule on proximity. The new sentencing guideline in 2015 set the fine for Corporate Manslaughter and Corporate Homicide in the United Kingdom⁶⁷² between one hundred and eighty thousand pounds to twenty million pounds⁶⁷³. This is encouraging as a fine for corporate manslaughter and corporate homicide when compared to loss of human lives.

In addition to the procedural pitfalls (this could be in the amount of fine as complained by the respondents above) caused by the courts like in Okpabi's case (lack of jurisdiction and ruling on proximity), there is also the problem of victims being unable to secure access to effective remedies also caused by the court whom might already been influenced by the government and multinational companies to assume jurisdiction in that particular case to award ridiculous fine under outdated laws in the first place since there is no Corporate Manslaughter and Corporate Homicide Law yet.

This is lack of access to corporate manslaughter relevant information in the form of publicity order or remedial oil in the form of immediate cleaning up of oil spillage or channelling flare gas to the ground.

⁶⁷¹ Nneka Obiamaka Umejiaku and Chisom Ngozi Uzoka "Towards a Rational Theory of Criminal Liability for Corporations in Nigeria" (2019) 6(1) Nnamdi Azikiwe Journal of Commercial and Property Law 126-149

⁶⁷² Sentencing Guideline Commission 2010 Para 8 in Company Lawyer, "New Sentencing Guidelines For Corporate Manslaughter, Etc" (2016) 228 Criminal Law 8-9

⁶⁷³ Corporate manslaughter Available at <sentencingcouncil.org.uk/offences/crown-court/item/corporate-manslaughter/> [Accessed] 25th October 2019

When the human institution like the court intentionally assumes jurisdiction and under the influence of maintaining more financially relationship but being influenced by the host government and multinational companies who has interest in a case, such judicial-corporate conduct undermines the right of access to effective remedy.

According to Jägers, there are huge power and information disparities presenting formidable obstacles for affected individuals and communities seeking remedy after negative corporate impact on human rights⁶⁷⁴ for example.

When the court jumps in and dismiss a case on grounds of lack of proximity or lack of locus standi for example it can cause lack of information on how to legally and judicially treat negative corporate activities in the form of breach of duty of care leading to death.

It also makes it more difficult for victims to file legal action against multinational companies because they are being silenced by the human institution and multinational companies who might not like to see a case on corporate manslaughter be a judicial precedent one day (being bad luck for them).

Below, this writer will discuss whether a criminal liability in the form of corporate manslaughter should sufficiently ground this idea (not just in tort) in order to provide sufficient

⁶⁷⁴ Nicola Jägers Access to Effective Remedy *The Role of Information. Research Handbook on Human Rights and Business* (Edward Elgar Publishing, 2020)

enforcement and accountability for the people who have been injured as a result of the acts of multinational companies.

5.3.1.3 WHETHER A CRIMINAL LIABILITY IN THE FORM OF CORPORATE MANSLAUGHTER SHOULD SUFFICIENTLY GROUND THESE IDEA (NOT JUST IN TORT) IN ORDER TO PROVIDE SUFFICIENT ENFORCEMENT AND ACCOUNTABILITY FOR THE PEOPLE WHO HAVE BEEN INJURED AS A RESULT OF THE ACTS OF MULTINATIONAL COMPANIES

Assuming Nigerian legislation has sufficient rule to prosecute multinational companies for corporate manslaughter, will this Okpabi's case turn out the way it turned out because if the legislation in Nigeria couldn't provide sufficient ground to connect the actions of a subsidiary to that of the parent company for the purpose of establishing tortious liability, would criminal law, provide an alternative? Therefore, will it be effective to suggest that the concept of unenforceability is tied to the legal framework (the absence of a criminal jurisprudence in this area) and subversion?

This is the question that links to this researcher's core argument wherein this researcher is saying that the absence of a robust legal framework to try corporate manslaughter has created unenforceability in their (the courts in Nigeria) operations in holding accountable these multinational companies and their operations in the Niger Delta Area. This is the core of this researcher's argument.

This simply means a direct connection between the absence of legislation and the legislative framework to capture the activities of these multinational companies, subversion and the lack of enforceability because if the courts cannot hold the Royal Dutch Shell (RDS) in the UK accountable for the actions of its subsidiary then of course holding the subsidiary accountable will be difficult.

The CAMA made provision for negligence and breach of duty of care under Section 282 of the Act. The norm when the Act was enacted in 1990 suits the Act. Obviously during the military era when CAMA was enacted in 1990 ordinary Nigerians cannot suggest on how the activities of MNCs in Nigeria then can be regulated. Then the grounds for punishment were only for negligence and breach of duty of care which the company will be liable for damages. However, section 279(4) and (9) of CAMA ‘shows very limited support for CSR in Nigeria, especially as regards employee rights’⁶⁷⁵ to life and to sue. Section 279 of CAMA provides that company directors owes duties to only the company (that is shareholders), and thus have no legal responsibility or capacity to embark on any other duty apart from their duty to the company and its shareholders⁶⁷⁶. According to Amodu, section 279 (4) of CAMA seems to enjoin directors to consider and have ‘regard for and balance employee-related issues and

⁶⁷⁵ Nojeem Amodu “Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria” (2017) 61(1) *Journal of African Law* 105-130 at 116

⁶⁷⁶ The Companies and Allied Matters Act Cap C20 Laws of the Federal Republic of Nigeria 2004 Section 279 (4) and (9)

interest in making corporate decisions'⁶⁷⁷. However, there is confusion in section 279(9) of CAMA since it leads employees to believe that whilst employees may believe that their interests are being taken into account in promoting the success of the company, they are not entitled to sue or make any claim whenever the company in making decisions does not consider their interest⁶⁷⁸. One begins to wonder why the provision of section 279(4) of CAMA was made in the first instance.

Today, the norms have changed. Nigerians have felt and experienced what pollution, environmental degradation, lack of supervision⁶⁷⁹ in use of machineries could cause). They now demand stakeholder participation because the solution could lie in stakeholder theory for compulsory regulation⁶⁸⁰ of CSR. In order to ensure that all stakeholders are informed transparency and accountability, the Nigerian government through the NEITI Act 2007 created the National Stakeholders Working Group (NSWG). The National Stakeholders⁶⁸¹ Working Group (NSWG) as NEITI's governing body is responsible for developing a framework for

⁶⁷⁷ Nojeem Amodu "Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria" (2017) 61(1) Journal of African Law 105-130 at 116

⁶⁷⁸ Nojeem Amodu "Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria" (2017) 61(1) Journal of African Law 105-130

⁶⁷⁹ Simon Parsons "The Corporate Manslaughter and Corporate Homicide Act 2007 Ten Years On: Fit for Purpose?" (2018) 82(4) The Journal of Criminal Law 305-310

⁶⁸⁰ Bethel Ihugba "Compulsory Regulation of CSR: A Case Study of Nigeria" (2012) 5 (2) Journal of Politics and Law 68

⁶⁸¹ In developing countries, there could be power imbalance as in the case between the oil industry (host government and MNCs) and the citizenry. Both the host government and MNCs have the power to influence what happens in the industry over the citizens and the host government and both have the power to influence what happens in the industry. This necessitated the need for stakeholder participation under NEITI Act 2007 to include the citizens in order to reduce the mismanagement of power by the host government institutions and MNCs.

achieving NEITI's mandate⁶⁸². The NEITI Act 2007 objectives include ensuring due process and transparency; monitor and ensure accountability; eliminate all forms corrupt practices⁶⁸³. The NSWG is created for stakeholder participation with citizens to reduce irresponsibility by MNCs and host governments or oversee the political elites who have shown that they cannot be trusted to remain responsible⁶⁸⁴. The citizens comprise people and professionals knowledgeable or have direct relationship with the extractive industry, extractive industry experts, extractive industry companies⁶⁸⁵ and the civil society from each six geopolitical zone in Nigeria⁶⁸⁶.

BEFORE NEITI

Before the NEITI Act 2007 was passed into law, the state of affair was imbalance in Nigeria because of corruption and lack of transparency and accountability in the extractive industries especially in the oil and gas sector of Nigeria where the oil and gas multinationals connive with the host government and some of the host governmental bodies to underpay the Nigerian

⁶⁸² NEITI Act 2007 Section 5

⁶⁸³ NEITI Act 2007 Section 2

⁶⁸⁴ Bethel Ihugba "Compulsory Regulation of CSR: A Case Study of Nigeria" (2012) 5 (2) Journal of Politics and Law 68

⁶⁸⁵ Which company wouldn't want to be charged for corporate manslaughter and likes to learn from what happened to other extractive company so that it doesn't happen to it.

⁶⁸⁶ NEITI Act 2007 Section 6(2a)

treasury. As a result, NEITI was created in 2007 under the administration of former president Olusegun Obasanjo⁶⁸⁷.

However, according to Ihugba NEITI is yet to meet its potentials. Ihugba meant that NEITI appears to barely meet the accepted level of stakeholder engagement because of the lack of independence of stakeholders and this undermines transparency and accountability⁶⁸⁸. Ihugba suggests that all hope is not lost and advises that compulsory regulation can only be a good CSR tool when it is created in an enforceable and transparency process⁶⁸⁹ (when government institutions and companies have institutional understanding of the importance of the enforcement of the law).

Below, this writer will answer the question whether the court has jurisdiction in Okpabi's case.

5.3.1.4 WHETHER THE COURT HAS JURISDICTION IN THIS (OKPABI'S) CASE?

Fundamental question raised in this case as it relates to the research question which is whether the absence of a coherent legal framework to legally enforce all aspects of corporate social responsibility affects the legal enforceability from incidences that leads to corporate

⁶⁸⁷ V.O.S. Okeke and E.T. Aniche "A Critique of the Enforcement of Nigeria Extractive Industries Transparency Initiative (NEITI) Act 2007 in Nigeria Oil and Gas Sector" (2013) 14(11) British Journal of Arts and Social Sciences 98-108 at 100

⁶⁸⁸ Bethel Ihugba "Compulsory Regulation of CSR: A Case Study of Nigeria" (2012) 5 (2) Journal of Politics and Law 68 at 77

⁶⁸⁹ Bethel Ihugba "Compulsory Regulation of CSR: A Case Study of Nigeria" (2012) 5 (2) Journal of Politics and Law 68 at 77

manslaughter offences which in this research are oil spillage, gas flaring and human right abuses by oil and gas companies in the Niger Delta? Whether there is a link between corporate manslaughter and corporate social responsibility through the lens of legal enforcement, the reasons countries adopt laws in enforcing corporate social responsibility as a punishment for corporate manslaughter and corporate homicide and what are the attitude of the courts on legal enforceability?

The fact brought before the court was that SPDC a subsidiary in Nigeria worked for RDS a parent company of Shell Group headquartered in England. The argument of the respondent on appeal was that at the time the case was brought to court, SPDC was no longer in business with RDS but SPDC has been acting under the instruction of RDS till the claimant decided to sue Shell and before RDS disengaged with SPDC. Technically RDS should have shared the liability of SPDC as occupiers of premises since it was its act before the case was instituted in court that caused the environmental degradation. This arms the English court with jurisdiction and should have ruled in favour of the claimant.

This leads to the role of judges in technical and philosophical reasoning because their decisions in cases form a law⁶⁹⁰. According to Hazard the participants in these legal deliberations have

⁶⁹⁰Geoffrey C. Hazard Jr “Law and Justice in the Twenty-First Century. Fordham” (2001) 70 L. Rev. 1739-1744 at 1741

sometimes been judges, as in the cases before the courts; sometimes legislators and lawyers, as about proposals being considered by legislative bodies; and sometimes legal academics⁶⁹¹.

This also explains the need to extend the applicability of a duty of care (in certain circumstances) to stakeholders other than employees or consumers⁶⁹². If not, MNCs can therefore hide behind their corporate structure to ensure the immunity of parent companies which generally hold most of the funds for the acts or omissions of their subsidiaries⁶⁹³. Even judges like Slade J in *Okpabi's* case reasoned that:

Our law, for better or worse, recognizes the creation of subsidiary companies, which, though in one sense the creation of their parent companies, will nevertheless under the general law fall to be treated as separate legal entities with all the rights and liabilities which would normally attach to separate legal entities...⁶⁹⁴We do not accept as a matter of law that the court is entitled to lift the corporate veil as against a defendant company which is the member of a corporate group merely because the corporate structure has been used so as to ensure that the legal

⁶⁹¹Geoffrey C. Hazard Jr “Law and Justice in the Twenty-First Century. Fordham” (2001) 70 L. Rev. 1739-1744 at 1741

⁶⁹²Samantha Hopkins “Vedanta Resources plc and Another .v. Lungowe and Others” (2019) 70(3) Northern Ireland Legal Quarterly 371-375 at 371

⁶⁹³Claire Bright *The Civil Liability of the Parent Company for the Acts or Omissions of its Subsidiary: The Example of the Shell Cases in the UK and in the Netherlands Business and Human Rights in Europe*. (Routledge, 2018) 212-222 at 212

⁶⁹⁴Janet Dine “Jurisdictional Arbitrage by Multinational Companies a National Law Solution” (2012) 3(1) Journal of Human Rights and the Environment 44-69

liability (if any) in respect of particular future activities of the group ... will fall on another member of the group rather than the defendant company⁶⁹⁵.

Whether or not this is desirable, the right to use a corporate structure in this way is inherent in our law⁶⁹⁶.

Authors like Dine here is trying to explain to readers that when there is an interest and benefits already established between group companies, the parent company should take responsibility even though it is far from where the subsidiary company is situated and carries on business and the case of the respondent SPDC that at the time of instituting the case RDS has severed ties with SPDC is absolute nonsense.

The statement inherent in our laws above is well explained by the apex court on appeal in 2021 when the plaintiff /appellants in Okpabi's case were not satisfied with the lower court in England who ruled on proximity. According to Lord Hamblen:

“first this case was able to proceed in the UK courts even though the alleged impact took place in Nigeria. This was because art. 4(1) of the Recast Regulation was held by the Court of Justice

⁶⁹⁵Janet Dine “Jurisdictional Arbitrage by Multinational Companies a National Law Solution” (2012) 3(1) Journal of Human Rights and the Environment 44-69

⁶⁹⁶Janet Dine “Jurisdictional Arbitrage by Multinational Companies a National Law Solution” (2012) 3(1) Journal of Human Rights and the Environment 44-69

in *Osuwu .v. Jackson* to allow any claimant to sue an English domiciled defendant in England free from jurisdictional challenge⁶⁹⁷ on *forum non conveniens* grounds’⁶⁹⁸

Lord Hamblen went on to say that the lower court erred on the grounds of proximity but that the real prospect for success was whether the procedure used in determining the existence of an ‘arguable claim’ against RDS was appropriate. The Court of Appeal was drawn into an evaluation of the weight of the evidence to establish lack of proximity and the exercise of a judgment based on that evidence (this hinders enforceability) instead of focusing on whether an arguable claim exists⁶⁹⁹. This made the Court of Appeal make inappropriate determinations⁷⁰⁰.

In *Akpan .v. Royal Dutch Shell PLC*⁷⁰¹, the claimant through a nongovernmental organization filed an action in court against a parent company Royal Dutch Shell and its subsidiary Shell Petroleum Development Company of Nigeria on the grounds that knew that its subsidiary is breaching its duty of care by spilling crude oil since the prevention of environmental destruction was a key policy objective.

⁶⁹⁷ *Okpabi and others .v. Royal Dutch Shell Plc and another* [2021] UKSC 3

⁶⁹⁸ Case C-281/02 [2005] QB 801 as cited in James Beeton, *Supreme Court Rules in Okpabi .v. Royal Dutch Shell PLC and SPDC* (International and Travel Law Blog, 12 February 2021 in S. Hopkins, .C. Hackett and .C. Patton “*Okpabi and others .v. Royal Dutch Shell Plc and another* [2021] UKSC 3 (2021) 72(1) 148-158

⁶⁹⁹ *Okpabi and others .v. Royal Dutch Shell Plc and another* [2021] UKSC 3 paragraph 107

⁷⁰⁰ *Okpabi and others .v. Royal Dutch Shell Plc and another* [2021] UKSC 3 paragraph 126

⁷⁰¹ *Akpan .v. Royal Dutch Shell PLC* District Court of Hague, 30th January 2013 [2013] LJN BY 9854/HAZA 09-1580

The court referred to the case of *Chandler .v. Cape* wherein the applicant had been exposed to asbestos during his employment by a subsidiary company. The English Court of Appeal held that the law may impose a duty of care on a parent company for the health and safety of its subsidiary's employees where: certain necessary conditions had been proved. The court subsequently went on to hold that '...the parent company Royal Dutch Shell Plc (RDS) can be blamed for failing to induce and/or failing to enable its subsidiary Shell Petroleum Development Company of Nigeria (SPDC) to prevent and limit any damage caused to people in the vicinity of sabotage⁷⁰²'.

With due respect the court in *Okpabi's* case was ready to take up the excuse of the respondent that at the time of instituting the case in England SPDC is no longer their subsidiary and so ruled on proximity.

The second involves the resolution of jurisdictional inquiry⁷⁰³. The *Vendata* case with regards to parent company/ subsidiary liability for example clears the doubt with regards to enforceability and liability⁷⁰⁴. This means that in parent/subsidiary company relationship, there

⁷⁰² *Akpan .v. Royal Dutch Shell PLC* District Court of Hague, 30th January 2013 [2013] LJN BY 9854/HAZA 09-1580

⁷⁰³ Ekaterina Aristova "Tort Litigation against Transnational Corporations in the English Courts: The Challenge of Jurisdiction" (2018) 14(6) *Utrecht Law Review* 14-21

⁷⁰⁴ Ekaterina Aristova "Tort Litigation against Transnational Corporations in the English Courts: The Challenge of Jurisdiction" (2018) 14(6) *Utrecht Law Review* 14-21

is little room for the argument that RDS the parent company did not have foreseen the litigation regarding overseas corporate abuses and overseeing things⁷⁰⁵ from its home states.

Below, this writer will explain the question on the decision on the issue of proximity could it have amounted to judicial/ procedural pitfall worthy to be taken advantage of by anybody.

Thirdly, Aristova noted that what the English court in Okpabi's case should have learnt from Vendata's case is that parent/subsidiary relationship creates understanding for all that where for example English-domiciled companies choose to undertake activities abroad, the political and economic link between itself, the subsidiary company and the home states of the parent company do not exist⁷⁰⁶. There should never be any room for the court to entertain any socio-cultural or political tendency (ruling on proximity like in Okpabi's case) affecting enforceability⁷⁰⁷, that the link should then be broken.

⁷⁰⁵ Ekaterina Aristova "Tort Litigation against Transnational Corporations in the English Courts: The Challenge of Jurisdiction" (2018) 14(6) Utrecht Law Review 14-21

⁷⁰⁶ Ekaterina Aristova "Tort Litigation against Transnational Corporations in the English Courts: The Challenge of Jurisdiction" (2018) 14(6) Utrecht Law Review 14-21

⁷⁰⁷ Supra at 14

5.3.1.5 THE DECISION ON THE ISSUE OF PROXIMITY COULD IT HAVE AMOUNTED TO JUDICIAL/ PROCEDURAL PITFALL WORTHY TO BE TAKEN ADVANTAGE OF BY ANYBODY?

The decision on the issue of proximity is that justice is not done or to set a precedence as part of case law. It will then be a case of losing all. It creates a systemic problem on how a particular principle could have been interpreted. This researcher asked Onyechi Ikpeazu (SAN) the question “are laws in Nigeria currently weak to punish oil companies in Nigeria for corporate manslaughter and corporate homicide?” He said and that is why Nigerians needs the bill to be passed into law.

He added that it is important to note that oil companies in Nigeria fight very hard and they take advantage of the loopholes in Nigeria’s judicial system which is many and they take advantage of the procedural pitfalls and in laws in Nigeria. This according to him means that Nigeria needs a very progressive law and a progressive prosecution team because it is all about prosecution. Nigeria needs to vest jurisdiction onto either a body that can adequately prosecute restrict it to the office of the attorney general who may in his or her own discretion create a special unit in that regard because corporate manslaughter and corporate social responsibility is a highly specialised area.

5.4 BRINGING IN PRIMARY DATA TO DISCUSS THE LOOPHOLES (IN THE COURT OF APPEAL DECISION IN OKPABI'S CASE) ALREADY RAISED

In this subheading, this writer will be bringing in primary data to discuss the loopholes already raised. After discussing these loopholes, this researcher will then throw up solutions haven discussed the loopholes. Those discussions will be reflected in this researcher's chapter six.

The first loophole is in paragraph 518 of the court of appeal decision in Okpabi & Ors v Royal Dutch Shell plc & Anor and page 73 and 74 of this researcher's thesis which is duty of a third party directed to a subsidiary where the parent company has taken direct responsibility for deriving a material health and safety policy.

The question that arises is: Whose ideals of CSR should the MNC apply? If the MNC applies the standards of its developing host country, it might be accused of operating in a socially irresponsible manner by its home country and CSR advocates if those standards fall short of what is expected by critics.

On the other hand, if the MNC applies the standards of its home country like the UK, Nigeria might interpret it as an infringement upon its sovereignty, and even the local community might be suspicious of the intentions of the MNC.

In Nigeria, so many researchers have accused oil companies (like Shell Nigeria of activities of Shell) of oil spillage, and pipeline leaks; its resultant effect like fire outbreaks⁷⁰⁸, death from activities of Shell and explosions causing death (Mobil Nigeria), failure in duty of care as occupiers of premises. As occupiers of premises⁷⁰⁹, they folded their arms without doing anything while they assist Nigerian Government which in league killed protesters⁷¹⁰.

On the same issue Which is the regulation of MNCs (conceptual difficulties) this researcher asked Mrs Patience Ahariamuna of the Nigerian Law School Enugu the question “do you think the introduction of the Corporate Manslaughter and Corporate Homicide Bill 2015 will aid the court in their judgments to reduce death at the workplace, death caused by environmental degradation and death caused by human right abuse (death of Nigerian youths protesting against the activities of oil companies in Nigeria?” She answered yes and that when it becomes a law, it will reduce it drastically since an aggrieved party institutes civil action for tort in courts instead of a criminal one.

This according to her is because there is no law presently with a criminal element for corporate manslaughter and corporate homicide since going by the rule under the case of *Ryland .v.*

⁷⁰⁸ Orhioghene Akpomuvie “Tragedy of Commons: Analysis of Oil Spillage, Gas Flaring and Sustainable Development of the Niger Delta of Nigeria” (2011) 4(2) Journal of Sustainable Development 200-210

⁷⁰⁹ Simon Parsons “The Corporate Manslaughter and Corporate Homicide Act 2007 Ten Years On: Fit for Purpose?” (2018) 82(4) The Journal of Criminal Law 305-310 at 306

⁷¹⁰ Daniel Omoweh *Shell Petroleum Development Company, The State and Development of Nigeria's Niger Delta A Study in Environmental Degradation* (Africa World Press, Inc 2005)

*Fletcher*⁷¹¹, the courts are interested in strict liability offences related to tort and in a civil action, a counsel cannot lay the foundation for a criminal element. The court will not entertain it. This is what is delaying enforceability in Nigeria.

The situation legislatively is different in the UK. The Corporate Manslaughter and Corporate Homicide Act 2007 UK in their meaning of relevant duty of care explained that a company owes a duty of care as an occupier of premises S. 2 (1b) and the carrying on by the company of any other activity on a commercial basis S. 2 (1ciii) Similarly, in the case of *Donoghue .v. Stevenson*⁷¹², the court held a company owes a duty of care in situations in which the damage is brought about through the actions of a third party or of the victim himself and where the defendant could have acted to avert the harm but failed to do so⁷¹³.

This researcher took the view that this law will have effect owing to the provision of the dominant role that corporations play in our lives that makes them appear to us as a fact of life. Corporations now take credit for, and profit from, providing most of the food that we eat, the clothes we wear, the communications systems we use and so.

⁷¹¹ *Ryland .v. Fletcher* [1868] 1 UKHL, [1868] LR 3 HL 330

⁷¹² *Donoghue .v. Stevenson* [1932] AC 562

⁷¹³ Richard Matthews *Blackstone's Guide to The Corporate Manslaughter and Corporate Homicide Act 2007* (Oxford University Press 2008)

What corporations do well or badly fundamentally affect our chances of a healthy life. Corporations produce the chemicals that end up in the air we breathe⁷¹⁴. Slye for example asks when a corporate entity itself should be held criminally liable for violations of law⁷¹⁵. By 2015, companies (including oil companies) had become the vehicle of choice for many commercial endeavours.

In Nigeria however, political factors and corporate culture (power mongers) combined may hinder oil companies like Shell to disclose company information whether they observe health and safety or are involved in human rights abuse causing death in Nigeria.

This political factor just made the UK court in the Okpabi case rule on proximity because Nigeria does not have the ground on which corporate manslaughter on the liability of parent company for its subsidiary will fall in the first place. This in a way according to Frynas is beneficial to Shell Nigeria PLC.⁷¹⁶ It is not just political factors that make oil companies in Nigeria indulge in corporate manslaughter for example.

⁷¹⁴ Steve Tombs and David Whyte “Counterblast; Challenging the Corporation/ Challenging the State” (2015) 54(1) *The Howard Journal of Criminal Justice* 91-95 at 91

⁷¹⁵ Ronald Slye “Corporations, Veil, and International Criminal Liability” (2007) 33(3) *Brook Journal of International Law* 955-973

⁷¹⁶ Jędrzej George Frynas “Authors Reply: Shell in Nigeria: A Further Contribution” (2000) 21(1) *Third World Quarterly* 157-164.

Economic activity, however, often creates negative environmental consequences (like oil refinery explosion causing death, environmental degradation that caused uprising leading to killings in Nigeria's Niger Delta) for third parties known as externalities⁷¹⁷.

According to Watts "oil actively constitutes a particular "regime of living" but also a regime of death, of bare life"⁷¹⁸. Although externalities pose significant costs for the population as a whole, the businesses that create them are relatively unaccountable for any environmental impacts⁷¹⁹.

The second loophole is the question of foreseeability (control of the operations which give rise to the claim).

In the Okpabi case, the court discussed whether it was foreseeable that, from the parent company's point of view, the parent company SPDC could be held liable for the acts of the subsidiary. This loophole centres on the degree of knowledge (that SPDC had over/ of RDS activity was not comprehensive or high enough)(by the court in this case (Okpabi)) for a duty of care to attach.

⁷¹⁷ Nick Grant "Mandating Corporate Environmental Responsibility by Creating a New Director's Duty" (2015) 17(4) Environmental Law Review 252-265

⁷¹⁸ Supra at 439

⁷¹⁹ Nick Grant "Mandating Corporate Environmental Responsibility by Creating a New Director's Duty" (2015) 17(4) Environmental Law Review 252-265

The courts in the UK are there to check that these laws are given the actual interpretation and the executives are mandated to rectify them.

This is because in law there is what is called the writ of mandamus in Nigeria where the courts can mandate an agency or the government to carry out certain acts.

The question therefore has the courts in Nigeria have been able to interpret the law or issue directives, what is preventing it from happening, can an individual bring an action challenging an oil company operating in Nigeria, and how many actions challenging the acts of oil companies in Nigeria have seen the light of the day, to what extent does oil and gas laws protect Nigerian citizens, what extent does oil and gas laws capture the very essence of corporate manslaughter, is the or does the solution lies in creating a corporate manslaughter law that makes corporate social responsibility enforceable which means parties can bring an action against a company in Nigeria for failure to meet their corporate social responsibility, would creating a corporate manslaughter law that makes corporate social responsibility enforceable offer a solution to the problem. Secondly, the argument of the counsel to MNCs and how he/she presented the case may influence the judge to be fair and not just.

The practical implications of MNC complexity can be devastating. Suppose, for example, that damage is done to the health of employees of a company.

The employees will find it difficult or impossible to claim against the local operator in some countries, especially if the legal system is structured to favour the MNC because of the need to attract foreign investment and/or if the legal system is corrupt or dysfunctional⁷²⁰.

Similarly, the fact that shareholders knew with certainty the maximum amount they could lose in any given economic venture enabled them to calculate what they could afford to invest⁷²¹.

This researcher believes that this issue of liability and losing profits/ investment can make MNOs (parent companies) avoid associating with their subsidiaries or argue in court laws that do not recognize the liability of the subsidiary company as the liability of the parent company. This can in effect makes the judicial system impossible to enforce the law on corporate manslaughter and corporate homicide.

Lord Goldsmith QC relied particularly on Beatson LJ's well-known *dictum* in paragraph 33 of his judgment in *Trust Risk GroupSpa .v. Am Trust Europe Limited*⁷²² where he said that: “[t]he evaluation of the factors relevant to ... disputed evidence is very much the province of the first instance judge ... an appellate court should only interfere where an error of principle has been made or that the result falls outside the range of potentially “right” answers”⁷²³. Lord Goldsmith

⁷²⁰Janet Dine “Jurisdictional Arbitrage by Multinational Companies a National Law Solution” (2012) 3(1) Journal of Human Rights and the Environment 44-69

⁷²¹ Janet Dine “Jurisdictional Arbitrage by Multinational Companies: A National Law Solution?” (2012) 3(1) Journal of Human Rights and the Environment 44-69 at 46

⁷²²*Trust Risk GroupSpa .v. Am Trust Europe Limited*[2015] EWCA Civ 437

⁷²³*Trust Risk GroupSpa .v. Am Trust Europe Limited*[2015] EWCA Civ 437

relied also on paragraph 136 of *Vedanta*⁷²⁴, where Simon LJ had said: “[t]he appellants have not persuaded me that the Judge misdirected himself on the law, nor that he failed to take into account what mattered or that he took into account what did not matter⁷²⁵. How the various matters weighed with him, either individually or together, was for him to decide provided that he did not arrive at a wrong conclusion”⁷²⁶.

These passages explain what is required before this court can interfere in a case of this kind⁷²⁷. Readers should not forget that denial of the jurisdiction in the home state of the parent company in practice means that access to justice is denied to victims of the subsidiary’s harmful activities. Structural problems including a weak rule of law, corruption, lack of independence of the courts and corporate capture’ mean that victims cannot access justice in the state hosting the subsidiary corporation and where the harmful activity takes place⁷²⁸.

The duty of care test applied in *Okpabi*’s at the Court of Appeal effectively gives rise to corporate immunity as a result⁷²⁹. *Okpabi and Others v Royal Dutch Shell plc and Another*⁷³⁰ were dismissed largely because of, the lack of ‘sufficient proximity between the parent

⁷²⁴*Lungowe .v. Vedanta Resources plc and Konkola Copper Mines plc* [2017] EWCA Civ 1528.

⁷²⁵ *Lungowe .v. Vedanta Resources plc and Konkola Copper Mines plc* [2017] EWCA Civ 1528.

⁷²⁶Jane Rooney “*Okpabi v Royal Dutch Shell*” (2019) 70(1) NILQ 157-162

⁷²⁷ *Okpabi & Ors v Royal Dutch Shell plc & Anor* (Rev 1)[2018] EWCA Civ 191 at Ratio 184

⁷²⁸ Amnesty International, ‘Rule 15 submission to Supreme Court of the United Kingdom by Amnesty International: *Okpabi and others vs Royal Dutch Shell plc and another* UKSC 2018/0068’ (26 April 2018) 2

⁷²⁹Jane Rooney “*Okpabi v Royal Dutch Shell*” (2019) 70(1) NILQ 157-162

⁷³⁰*Okpabi & Ors v Royal Dutch Shell plc & Anor* (Rev 1) [2018] EWCA Civ 191

company and subsidiary to prompt a duty of care⁷³¹. This also explains the need to extend the applicability of a duty of care (in certain circumstances) to stakeholders other than employees or consumers⁷³². If not, MNCs can therefore hide behind their corporate structure to ensure the immunity of parent companies which generally hold most of the funds for the acts or omissions of their subsidiaries⁷³³. With the recent CSR laws mooted in Nigeria and the recent Supreme Court judgment in Okpabi's case, Nigerians will be armed with knowledge on how to pursue legal enforcement.

CONCLUSION

Indeed, the corporate manslaughter law in the oil and gas sector of Nigeria will have a positive impact in Nigeria when it is enforced with the knowledge and understanding of the impact of the law on Nigerian lawmakers, judges, companies, Nigerians and the police. More so, as well as corporate manslaughter constituting problematic social events, there are other reasons work-related deaths must face intervention by law. Such deaths affect many people, and so may be

⁷³¹Claire Bright *The Civil Liability of the Parent Company for the Acts or Omissions of its Subsidiary: The Example of the Shell Cases in the UK and in the Netherlands Business and Human Rights in Europe*. (Routledge, 2018) 212-222 at 212

⁷³²Samantha Hopkins "Vedanta Resources plc and Another .v. Lungowe and Others" (2019) 70(3) Northern Ireland Legal Quarterly 371-375 at 371

⁷³³Claire Bright *The Civil Liability of the Parent Company for the Acts or Omissions of its Subsidiary: The Example of the Shell Cases in the UK and in the Netherlands Business and Human Rights in Europe*. (Routledge, 2018) 212-222 at 212

regarded as an issue of ‘social’ justice; while their tendency to affect the vulnerable means that they also have a strong social justice component⁷³⁴.

The idea is to have corporate manslaughter and corporate homicide law that will reform corporate social responsibility practices in Nigeria.

This researcher thinks that Nigerians lack awareness of the effects of the laws on enforceability.

5.4.1 RESPONSES FROM FOCUS GROUP STRUCTURED INTERVIEW

Under this heading, this researcher will group the responses from respondents during data analysis and use observation to supplement. This is to supplement the quantitative data presented in chapter four.

TABLE 5 BREAKDOWN OF FOCUS GROUP INTERVIEWS

S/NO	Community	MNCs	Government Institutions
1	Onitsha	-	Lawyers: Onyechi Ikpeazu Senior Advocate of Nigeria (SAN) Chambers

⁷³⁴ Paul Almond *Corporate Manslaughter and Regulatory Reform* (Palmgrave Macmillan 2013)

2	Porthacourt	MNCs	Seafloat Marine Services Limited
3	Porthacourt Rivers State	Federal Ministry of Labour and Employment	Federal Ministry
4	Bonny Rivers State (indigenes)	-	-

Fig.6 – Responses from Interviewees on will the introduction of corporate manslaughter in Nigeria support enforceability by reducing death

Interviewee	Number of Interviewees	2018	QUESTION 1	QUESTION 2	QUESTION 3	QUESTION 4
Oil company workers	5	YES	YES	YES	YES	YES
The staff of the	8	YES	YES	NO	YES	YES

Ministry of Justice						
Nigerian Youth	8	YES	YES	NO	YES	YES

Diagram of analysis

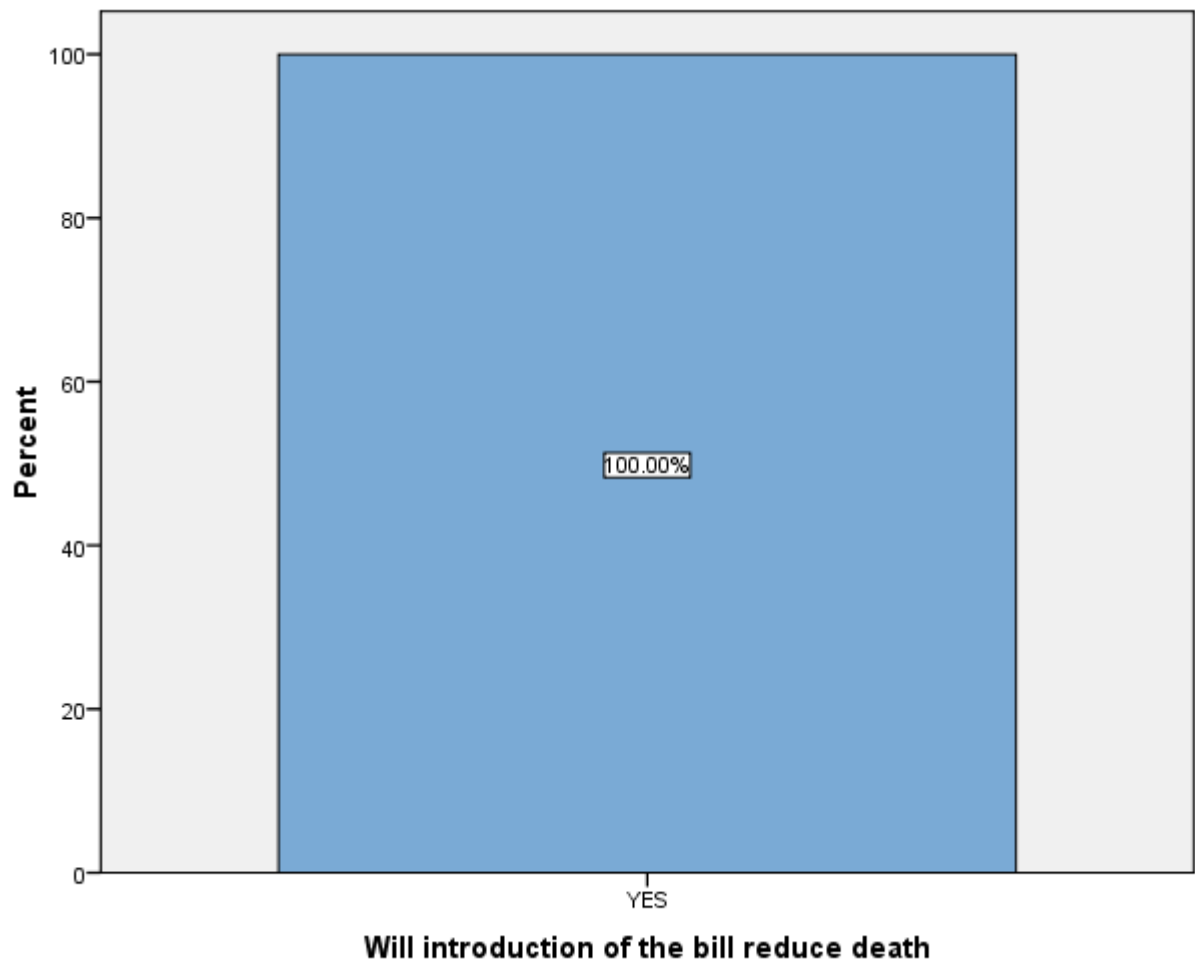
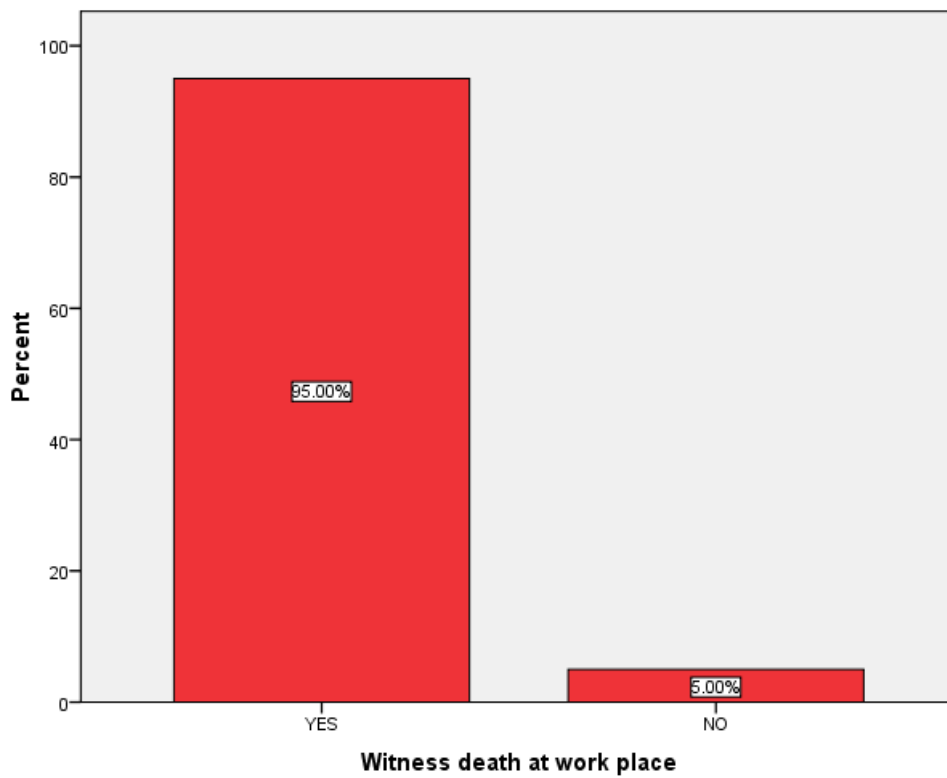


Diagram Analysis



FREQUENCY TABLE AND BAR CHART

Statistics

		Do you think oil company try to reduce the damage of oil spillage	Witness death at work place	Will introduction of the CMCHB 2015 reduce death at workplace and death caused by activities of oil companies in Nigeria	Have there been any changes in health and safety procedure as a result of the bill
N	Valid	20	20	20	20
	Missin g	0	0	0	0

Do you think oil company try to reduce the damage of oil spillage?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid YES	3	15.0	15.0	15.0
PARTIAL Y	6	30.0	30.0	45.0
NO	11	55.0	55.0	100.0
Total	20	100.0	100.0	

Witness death at work place?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	YES	19	95.0	95.0	95.0
	NO	1	5.0	5.0	100.0
	Total	20	100.0	100.0	

Will introduction of the bill reduce death?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	YES	20	100.0	100.0	100.0

Have there been any changes in health and safety procedure as a result of the bill?

	Freque ncy	Percent	Valid Percent	Cumulative Percent
Valid YES	13	65.0	65.0	65.0
MAYBE	1	5.0	5.0	70.0
CANT SAY	5	25.0	25.0	95.0
NO	1	5.0	5.0	100.0
Total	20	100.0	100.0	

Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Witness death at work place * Have there been any changes in health and safety procedure as a result of the bill	20	100.0%	0	.0%	20	100.0%

Witness death at work place * Have there been any changes in health and safety procedures as a result of the bill Crosstabulation

Count						
		Have there been any changes in health and safety procedures as a result of the bill				
		YES	MAYBE	CANT SAY	NO	Total
Witness death at work place	YES	12	1	5	1	19
	NO	1	0	0	0	1
Total		13	1	5	1	20

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	.567 ^a	3	.904
Likelihood Ratio	.890	3	.828
Linear-by-Linear Association	.485	1	.486
N of Valid Cases	20		

a. 7 cells (87.5%) have expected count less than 5. The minimum expected count is .05.

Table of Interview Questions Asked TABLE 6

Questions	Detailed of Question
Question 1	Will the introduction of the CMCHB 2015 reduce death at workplace and death of villagers caused by the activities of oil companies in Nigeria

Question 2	Do you think oil company try to reduce the damage of oil spillage
Question 3	Have there been any changes in health and safety procedures as a result of the CMCHB 2015
Question 4	Have you witnessed death at the workplace

5.4.2 Given the limitations placed on mechanisms for the enforcement of corporate manslaughter and corporate social responsibility in Nigeria, how can enforcement of law be socially constructed since critically in reality there is a failure in oil companies practising corporate social responsibility (leading to corporate manslaughter) in the Niger Delta Area?

TABLE 7 Constructivism versus reality resolves the issue of enforcement mechanism and regulation

Interviewees	Responses
Villagers from Bonny Island Rivers State	The continued oil spillage, gas flaring and their negative impacts on the health of

	<p>employees and villagers are a result of a lack of enforcement of laws for the offence of corporate manslaughter.</p>
<p>Legal Practitioners</p>	<p>Non-governmental organizations (NGOs) might have a better chance of formulating alternative or complementing legal and policy initiatives, lobbying for their adoption by lawmakers and building the capacity of regulatory agencies when they pool their expertise and deepen their cooperation.</p>
<p>Employees of oil company</p>	<p>The institutional understanding of the importance of enforcement of laws should be introduced in Nigerian schools so that at early age every Nigerian will have respect for the rule of law, how law works and what to get from law and obeying the law.</p> <p>The reason is that in present-day Nigeria, corruption is still rife because oil companies</p>

	<p>still get away from being prosecuted for death at the workplace, death caused by environmental pollution and then death caused by human right abuse (death of Nigerian youths protesting against the activities of multinational oil companies whenever it happens but gradually enforceability will reign through making enforceability of laws and its importance part of curriculum in Nigerian schools (sensitization).</p>
<p>Employees of oil company</p>	<p>What Nigeria needs from the Nigerian government, Nigerian regulatory bodies and from multinational oil companies operating in Nigeria is for all to be an enforcer of the policies put in place by the Nigerian government.</p>

	<p>This according to one of the heads of department can begin through enlightenment campaign of all to be able to understand the importance of enforcement policies and abiding by policies.</p> <p>On the other hand, the Nigerian government owes it as a duty to be sincere without compromising or joking with the lives, health and safety of its people no matter what happens. He also added that in Nigeria, this is not yet the case because the Nigerian government and its agencies under the law like NNPC continue to condone how well multinational companies practice corporate social responsibility in Nigeria. This may be because somebody in the Nigerian government could have a selfish interest in preventing policies from being enforced.</p>
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5.4.3 To what extent does loophole in our laws promote or constrain enforceability

Interviewees	Responses
<p>Legal Practitioners from Onyechi Ikpeazu’s (SAN) chambers</p>	<p>This researcher asked lawyers at Onyechi Ikpeazu’s (SAN) chambers the question “are laws in Nigeria currently weak to punish oil companies in Nigeria for corporate manslaughter and corporate homicide?”</p> <p>They said yes and that is why Nigerians needs the bill to be passed into law. He added that it is important to note that oil companies in Nigeria fight very hard and they take advantage of the loopholes in Nigeria’s judicial system which is many and they take advantage of the procedural pitfalls and laws in Nigeria. This according to them means that Nigeria needs a very progressive law and a progressive prosecution team because it is all</p>

	<p>about prosecution. Nigeria needs to vest jurisdiction onto either a body that can adequately prosecute by restricting it to the office of the attorney general who may in his or her discretion create a special unit in that regard because corporate manslaughter and corporate social responsibility is a highly specialized area.</p>
<p>The staff of Ministry of Labour and Employment</p>	<p>This researcher in a focus group interview asked staff of the Ministry of Labour and Employment Porthacourt Rivers State “are laws in Nigeria currently weak to punish oil companies in Nigeria for corporate manslaughter and corporate homicide?”</p> <p>They said definitely Yes and that the issue of loopholes in Nigerian law is compounded with lack of mechanism for enforceability.</p> <p>They added that Nigeria needs a serious form of unionization of the industries that they can</p>

	<p>really protect the interest of the people.</p> <p>Nigeria does not have it or to the level to which Nigerians should feel comfortable.</p> <p>This is a type of situation that a foreign oil company in Nigeria can capitalise on and refuse to clean up oil spillage causing explosion with fatalities hindering enforceability because of monopoly both sides (oil company claiming colonial masters and the Nigerian government assuring its dying citizens that they are doing their best to find a way to indict these oil companies in Nigeria) the citizens of Nigeria will be far from instituting an action for a corporate manslaughter and corporate homicide.</p>
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Davis argues that prevention is better than cure. “if business delays dealing with social problems now, it may find itself constantly occupied with putting out social fires so that it has no time to accomplish its primary goal of producing goods and services⁷³⁵. The enforcement

⁷³⁵Arthur Davis “Six Sigma for Small Companies: Implementing a Six Sigma Intervention Need Not Cost Millions” (2003) 42(11) Quality 20-22

strategy (which Nigeria can learn from (emphasis mine)) towards corporate social responsibility like in the UK is the disqualification of directors under section 37 of the Health and Safety at Work Act 1974. It may offer a satisfactory way to address the criminal liability of directors at work⁷³⁶. For example, Shell Nigeria has allegedly infiltrated local government authorities in Nigeria in the 1990s. They were accused of supporting local thugs who murdered and tortured people protesting⁷³⁷ about the company's exploitation of the country's natural resources⁷³⁸. Similarly, obsolete, leaking, rusty oil pipelines have become a major source of contaminating oil spills in Ogoni Rivers State. In 1992, a major oil blow-out in the village of Botem lasted a week before it was stopped; creating a biological dead zone in the reservoir that supplied drinking water local residents. Oil spills caused by obsolete pipelines are routinely blamed on sabotage, which allows companies to ignore repairs under Nigerian law⁷³⁹. In October, 1998, an explosion and leak flooded a large part of the village of Jesse, killing more than 700 people; two years later, two pipeline explosions in southern Nigeria killed 300 people⁷⁴⁰.

⁷³⁶ Frank Wright "Criminal Liability of Directors and Senior Managers for Death at Work" (2007) 949-968

⁷³⁷ Evaristus Oshionebo "Transnational Corporations, Civil Society Organisations and Social Accountability in Nigeria: Oil and Gas Industry" (2007) 15(1) African Journal of International and Comparative Law 107-129

⁷³⁸ Peter Fleming and Marc Jones *The End of Corporate Social Responsibility Crisis and Critique* (SAGE Publications Limited, 2013)

⁷³⁹ B. E. Johansen Nigeria: The Ogoni: Oil, Blood, and the Death of a Homeland Indigenous Peoples and Environmental Issues: An Encyclopaedia P. 2 Available at <<http://www.ratical.org/ratville/IPEIE/Ogoni.html>> [Accessed] 12th July 2017

⁷⁴⁰ Gedicks (2001), A1 'Resource Rebels: Native Challenges to Mining and Oil Corporations Boston: South End Press' In B. E. Johansen Nigeria: The Ogoni: Oil, Blood, and the Death of a Homeland Indigenous Peoples and Environmental Issues: An Encyclopaedia P. 2 Available at <<http://www.ratical.org/ratville/IPEIE/Ogoni.html>> [Accessed] 12th July 2017



Source: Oil for Nothing: Multinational Corporations, Environmental Destruction, Death and Impunity in the Niger Delta A U.S. Non-Governmental Delegation Trip Report, September 6-20, 1999.

The law provides an important signal that prescribes a particular behaviour to be sanctioned by legal liability when violated⁷⁴¹. In support, Swart believes that companies have their own institutional memories. They can remember things that happened in the past and learn from their experiences⁷⁴². They can correct their policies if they have made mistakes⁷⁴³, or if circumstances make it desirable for them to change them⁷⁴⁴. However, the successful enforcement of health and safety regulation is reliant upon the ability of regulatory agencies to

⁷⁴¹Patricia Funk “Is There an Expressive Function of Law? An Empirical Analysis of Voting Laws with Symbolic Fines” (2007) 9(1) American Law and Economics Review 135-159

⁷⁴² Bert Swart “International trends towards establishing some form of punishment for corporations” (2008) 6 Journal of International Criminal Justice 947-979

⁷⁴³ Jędrzej G Frynas “Corporate Social Responsibility or Government Regulation? Evidence on oil spill prevention” (2012) 17(4):4 Ecology and Society 1-13

⁷⁴⁴ Bert Swart “International trends towards establishing some form of punishment for corporations” (2008) 6 Journal of International Criminal Justice 947-979

demonstrate the legitimacy of the system of regulatory controls⁷⁴⁵. West Africa with its well-endowed natural resources remains highly attractive investment opportunity zone. It is the responsibility of the government to ensure that the people⁷⁴⁶ are not losing out of the benefits derived from the exploitation of these resources⁷⁴⁷ with their lives protected by the Nigerian government.

5.4.4 To what extent in reality or the way law and its enforcement is constructed in Nigeria promote or hinder enforceability

Interviewees	Responses
Ministry of Labour and Employment Porthacourt Rivers State	For corporate manslaughter and corporate homicide, there is no health system or framework in the health ministry or labour and employment ministries in Nigeria to track the cause of death. Therefore enforceability at that level is short-circuited.

⁷⁴⁵ Paul Almond “Understanding the Seriousness of Corporate Crime: Some Lessons for the New ‘Corporate Manslaughter’ Offence” (2009) 9(2) Criminology & Criminal Justice Volume 9(2) 145-164; Paul Almond “The Dangers of Hanging Baskets: ‘Regulatory Myths’ and Media Representations of Health and Safety Regulation” (2009) 36(3) Journal of Law and Society 352-375

⁷⁴⁶ Ahmed Musa, Yahaya Yusuf, Louise McArdle and Gbemisola Banjoko “Corporate Social Responsibility in Nigeria’s Oil and Gas Industry: The Perspective of the Industry” (2013) 3(2) International Journal of Process Management and Bench Marking 101-135

⁷⁴⁷ Leon Moller “The Governance of Oil and Gas Operations in Hostile But Attractive Regions: West Africa” (2010) 4 International Energy Law Review 110-122

Seafloat Marine Services Limited Port
Harcourt Rivers State Nigeria

the interviewees and a staffs of Seafloat Marine Services Limited Porthacourt Rivers State Nigeria when asked the question “do you think that the corporate manslaughter and corporate homicide bill when it becomes law will reduce death at workplace, death caused by environmental pollution and then death caused by human right abuse (death of Nigerian youths protesting against the activities of multinational oil companies?” mentioned that This situation poses a question of do Nigerians (employees of oil companies and the villagers where these oil companies carry on business) know of their right to life, are they educated on the effect of corporate manslaughter and corporate homicide law (for the punishment of oil companies) and who in Nigeria is punishing for the punishment of oil companies in the

	<p>Niger Delta Area of Nigeria? Enforceability</p> <p>will capture these questions through the legal instrument like Corporate Manslaughter and Corporate Homicide Law by the law creating government agencies to educate Nigerians on where to go to report oil spillage/ gas flaring (killing them and what these agencies are capable of doing to remedy the negative activities of oil companies operating in their community, how valuable their lives are to their families), carry out inspection (Inspection is used as an enforcement tool to keep multinational oil companies in check and to avoid things escalating and leading to prosecution when government agencies carrying out inspection suddenly discovers that multinational oil companies are not taking care of the health, safety and welfare of their workers), investigation, prosecution</p>
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	<p>and convictions of multinational oil companies in Nigeria for corporate manslaughter because there is loss of human lives</p>
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In supplementing quantitative data and responses from respondent on question like (do you have a mechanism in place for the enforcement of law, do you think that corporate manslaughter law when implemented in Nigeria will reduce death caused by oil spillage, death caused by gas flaring and death of Nigeria youths protesting against the activities of multinational oil companies in Nigeria and do you think corporate manslaughter law is long overdue in Nigeria?) with qualitative data one of the interviewees and a staff of Seafloat Marine Services Limited Porthacourt Rivers State Nigeria when asked the question “do you think that the corporate manslaughter and corporate homicide bill when it becomes law will reduce death at workplace, death caused by environmental pollution and then death caused by human right abuse (death of Nigerian youths protesting against the activities of multinational oil companies?” mentioned that the institutional understanding of the importance of enforcement of laws should be introduced in Nigerian schools so that at early age every Nigerian will have respect for the rule of law, how a law works and what to get from a law and obeying the law. He mentioned that the reason for saying this is that in present day Nigeria, corruption is still rife because oil companies still get away from being prosecuted for death at the workplace,

death caused by environmental pollution and then death caused by human right abuse (death of Nigerian youths protesting against the activities of multinational oil companies whenever it happens but gradually enforceability will reign through making enforceability of laws and its importance part of curriculum in Nigerian schools (sensitization). Supporting this idea above Onyechi Ikpeazu (SAN) when asked the question “do you think that the corporate manslaughter and corporate homicide bill when it becomes law will reduce death at workplace, death caused by environmental pollution and then death caused by human right abuse (death of Nigerian youths protesting against the activities of multinational oil companies?” responded that it is not just the law but the enforcement of the law will go a long way at appeasing the people. This is what the people do not know yet because there is yet no landmark case of conviction of oil company for involuntary manslaughter even in Nigeria (with senior managers sacked, oil companies paying huge fines to the family of the deceased and not just being ordered by the court to fix its machinery or replace it only). This according to Onyechi Ikpeazu (SAN) will go a long way towards eliminating death the at workplace or death caused by environmental pollution. The Nigerian government will then understand that a right-thinking person will feel appeased up to the level of not taking up arms against the sea of troubles. Similarly, a barrister/lecturer/a director of academics/ head of civil litigation department Augustine Nnamani Campus of Nigerian Law School Enugu Campus C.U. Muozoba Esq responded when asked the question “where did you hear about the Corporate Manslaughter and Corporate Homicide Bill 2015?” from the internet and that he is not happy the way laws

are published in Nigeria on the internet or in the newspaper. According to him there are Nigerians who are not internet literate or literate enough to reading newspapers. He suggested that Nigerian law makers like senators should go back to their villages and use the traditional ways of disseminating information which is town criers to educate and inform their people (including employees of oil companies (and oil companies itself (emphasis mine)) of the Corporate Manslaughter and Corporate Homicide Bill 2015 and how it can be enforced. The idea behind the use of town criers is that when this is done, the villagers will bring up ideas that they may wish to contribute but if this is not brought to their knowledge, they will not know of the enforceability of the law and yet the laws that will be made will affect them eventually. The reason is that it is them that is suffering from the activities of MNCs operating in their community and sometimes the Nigerian government (who is in a joint venture agreement with these MNCs) and MNCs does very little to stop the death of employees of MNCs and the villagers who die by explosions and by terminal illnesses caused by oil spillage and gas flaring. This writer is suggesting that for any law on corporate criminal liability (Nigeria) to be effective in Nigeria, Nigerian laws/ legal system needs a help from Nigerians to speak up whenever old / current law are ineffective to punish MNCs.

In Nigeria, to fill this loophole will not be easy to achieve but it will be achieved through community involvement.

The community needs to be educated about the bill and what it can achieve. In United Kingdom, according to Lowry and Reisberg, the legal position (in S. 172 of Companies Act

2006) that those companies are in business to amass profits were relaxed while recognizing the safety and health of the wider community⁷⁴⁸.

Hopwood and Adams believe that it is not just the community members that need to be aware of the impact of the bill but managers and operatives⁷⁴⁹.

The rule of recognition states that the law is not a separation of rules but a unified set of rules to be cemented and recognized by the system. Therefore, the problem is not just that law is meant to end at the letters of the law which is one step to enforcement (having a law) but that the system which the police and the court (investigation and adjudication of the letters of the law) needs to give the letters of the law its spirit. This spirit is the second step towards the enforcement of the law. Hart argues that what is needed in the enforcement of a law is not just interpretative instruments in the form of law laid down by the government but creating a system (this writer believes is further through court judgement) for obedience to and understanding of the law and that enforcement of the law first begins by creating a system⁷⁵⁰. This writer believes that the position of Hart on creating a system could pose a problem which is how does the system which is central to the rule of recognition first know about the rule and secondly how to adopt and abide by the rules to enforce the law for the obedience of the law if the judges and the courts are already the rules themselves. This would not have been a problem if according to Luka we conceive the rule of recognition as constructive of only the primary (letters and spirit of the law) but not law which evolved from or became part of law based on

⁷⁴⁸ J. Lowry and A. Reisberg *Pettet's Company Law: Company Law and Corporate Finance* (Pearson: Harlow, 2012) at 69

⁷⁴⁹ Andrew Hopwood, Francis Adams and Francis Edum-Fotwe *The Impact of Corporate Manslaughter and Corporate Homicide Act 2007 on the Construction Industry in the UK* at P. 2

⁷⁵⁰ Burazin Luka "The Rule of Recognition and the Emergence of a Legal System (2015) 27 *Revus* 115- 130 at 119

the court's adjudication in a case but of court's interpretation of the first order of the law⁷⁵¹. This writer then believes that this single act of practice of the law is beyond the interpretation of the law by judges.

The idea behind this decision is that obedience to law from the community begins with acceptance provided there is an organised system for the enforcement of rules. Hart called it a case of once-established system⁷⁵². It follows therefore that there could be body of rules, but it amounts to nothing if the community do not accept it or recognize it as the road to justice. According to Hart, it follows therefore that since the community has to accept the rules as binding, there may be help from law makers and judges⁷⁵³. This writer believes that the judges and law makers need to do the extra duty of educating the community of the import of the law. They may in the process of instilling the tenets of the law into the community members, make by themselves the law for instance by coercing the implementation of order to socially control the actions of the community. Offering his own solution to putting spirit to the letters of the law through interpretation, Hart went further to state that the conditions under which people obey the law is that it begins with the attitude of government officials (like police, judges) who enforce the law. According to Hart also, government officials also need to have a distinctive critical attitude of acceptance towards a pattern of behaviour (when one breaks the law, the law must be enforced to punish the offender for example (emphasis mine)), which attitude of acceptance raises the said pattern to the level of public standard to which they conform⁷⁵⁴ (the community members).

⁷⁵¹ Burazin Luka "The Rule of Recognition and the Emergence of a Legal System (2015) 27 *Revus* 115- 130 at 120

⁷⁵² *Supra* at 122

⁷⁵³ Herbert .L. A. Hart *The Concept of Law* (Oxford University Press, 1994)

⁷⁵⁴ Herbert .L. A. Hart *The Concept of Law* (Oxford University Press, 1994)

This position Hart could pose a problem. For example, how effective then is this system? Are they corrupt? Will there be quick action to forstice? And will there be measures put in place so that corporate social responsibility practices (health and safety, ethics to mention just a few) will not be compromised? When according to this writer, the government through the courts fails in any of these problems through its interpretative duty; the result could be the community taking the law into its own hands.

In a philanthropic sense, even though CSR has a role to play in the lives of Nigerians as part of the f philanthropic responsibility of CSR; money meant for charity may be diverted by corrupt officials.⁷⁵⁵ As part of transparency, the writer recommends that the Nigerian law makers should introduce a supervisory system whereby the community members supervise oil companies operating in Nigeria upon completion of the charity work with a signed document to that effect. The signed document will be filed by oil companies to the state government for state recognition of their voluntary economic development in the state.

In corporate manslaughter and corporate homicide cases in the United Kingdom, it is the Police and the Health and Safety Executive who carry out an investigation. Also in every criminal cases in every country it is the police under the law that should carry out investigation. This makes the job of the police as a human agent in crime investigations very necessary.

⁷⁵⁵ Ciara Hackett ‘‘The challenge of MNCs and development: oil extraction, CSR, Nigeria and corruption’’ (2016) 2(2) Journal of Human Rights in the Commonwealth 1-14.

As a start and after being educated on the import of the Corporate Manslaughter and Corporate Homicide Bill 2015 Nigeria, the Nigerian police needs to be empowered by the law to play the role of agent to its principal which is the government. According to Nwano and Bamidele, in the dispensation of functions of office, agents are vital tools to authorities who are saddled with the responsibilities of service delivery to the public. These agents carry with them the aura of authority such as the law has vested on the principal. Agents possess powers to the limits of authority accruing unto them from the principal⁷⁵⁶. In the United Kingdom, that is the practice. The police carry out corporate manslaughter and corporate homicide investigations.

There are two major types of relation and sub-types. The major types are “claim and “power” and the sub-types are “immunity” and “privilege”. A claim relation is where one may effectively repel an act; a privilege relation is where one may effectively decline an act; and a power relation is where one may act effectively towards another. An essential element of legal relation (juris nexus) and of legal rules is constraint based on legal sanctions, whether of nullity, punishment or other physical coercion, liabilities, or the imposition of new duties.

As such, regulators such as Health and Safety Executive (HSE) who initiate corporate manslaughter proceedings in court need to show that they are reflecting public concern by controlling major risks by for example, censuring offenders via prosecution action in court⁷⁵⁷.

⁷⁵⁶ T. C., Nwano, and Joseph Bamidele Bello “Defining the Agency of the Police Conflicting Legal Approaches” (2018) 9(2) Nnamdi Azikiwe University Journal of International Law and Jurisprudence 22-30 at 22

⁷⁵⁷ Paul Almond “Corporate Manslaughter: Changing the Relationship between Criminal Law and the Corporation?” (2016) Prison Service Journal Paper

The Health and Safety Executive (HSE) investigates work-related deaths, along with the police, but takes primary responsibility for the enforcement of health and safety. The cases they investigate are under sections 2 and 3 of the Health and Safety at Work Act 1974 (HSWA). This includes failure to ensure, so far as is reasonably practicable, the health, safety, and welfare of employees or member of the public⁷⁵⁸. So this researcher is of the view that mandatory regulation can help to reduce uncertainties about the future, improve the economic incentives for companies to act responsibly, and ensure a level playing field for everyone. It is important for a country to implement a law on corporate manslaughter and corporate homicide to empower Health and Safety Executives like in UK⁷⁵⁹ to carry out yearly inspection of oil rigs and flow stations even if this one singular act will only mean a threat to oil operators to be cautions of CSR. According to Tombs & Whyte, “the “threat” of credible enforcement the sometimes explicit, but increasingly unspoken basis on which “responsive” regulatory arguments are proposed is notable only for its absence”⁷⁶⁰. These show that the rule of law can bestow liability on multinational companies, responsibility on police and health and safety executives and enforcement/justice on the courts. This is yet to be the case in oil rich developing countries.

⁷⁵⁸ Paul Almond *Corporate Manslaughter and Regulatory Reform* (Palmgrave Macmillan, 2013)

⁷⁵⁹ Neil Gunningham and Richard Johnstone. *Regulating Workplace Safety: System and Sanctions* (Oxford University Press 1999) in Steve Tombs and David Whyte “transcending the deregulation debate? Regulation, risk, and the enforcement of health and safety law in the UK” (2013) 7(1) *Regulation & Governance* <<http://doi:1111/j1748-5991.2012.1164.x>> accessed 12 June 2017

⁷⁶⁰ Steve Tombs and David Whyte “transcending the deregulation debate? Regulation, risk, and the enforcement of health and safety law in the UK” (2013) 7(1) *Regulation & Governance* <<http://doi:1111/j1748-5991.2012.1164.x>> at 14 accessed 12 June 2017

Apart from corruption, community participation in legal enforceability and the education of citizens on enforceability of law, the effectiveness of regulation is possible when its enforcement is possible and financially viable otherwise society would be reluctant to enforce it. For instance, high cost of enforcement is a major argument against perspective regulation⁷⁶¹.

This writer believes that Corporate Manslaughter prosecution under the law makes companies; to have a rethink of what actually caused the death and what can be done to remedy the situation. According to Rahim, corporate social responsibility is understood as the scope for which, and the ways in which an organization is consciously responsible for its actions and non-actions and their impact on its stakeholders⁷⁶².

In United Kingdom, for example corporate manslaughter cases after a large company has been convicted for corporate manslaughter and corporate homicide, the 2010 guideline laid down principles to be followed to restore ethics back (Mistake in procedure (health and safety under Section 42 of HSWA 1974) causing death.⁷⁶³

These include “a good health and safety record and a responsible attitude to health and safety, which includes seeking advice on how to reduce risk from experts, and consultation with employees or others affected by the activities of the organization.

After a fatality, a company may also mitigate by promptly accepting responsibility, by making genuine efforts to remedy the defect, by co-operating fully with the investigation “beyond that which will always be expected” (Sentencing Guideline Commission 2010 Para 8) and working

⁷⁶¹ Bethel Uzoma Ihugba “The governance of corporate social responsibility: developing an inclusive regulation framework” (2014) *International Journal of Law and Management*, 110.

⁷⁶² Mia Mahmurdur Rahim *Legal Regulation of Corporate social Responsibility A Meta-Regulation Approach of Law for Raising CSR in a Weak Economy* (Springer ,2013).

⁷⁶³ Sarah Field and Lucy Jones “Death in the workplace: who pays the price?” (2011) 32(6) *Company Lawyer* 166-173

procedures, modes of supervision and activity within the organization⁷⁶⁴. This helps other companies to learn from the mistake made by the convicted company⁷⁶⁵. The effects of Corporate Manslaughter Law on corporate social responsibility is on duty of care owed by the companies on their employees, villagers and other stakeholders like the consumers.

Most importantly, people's compliance to the law may stem at least as much, if not more, from personal commitment to law-abiding behaviour⁷⁶⁶. Those in charge of workplaces must know that decisions that they take or choose not to take may have serious consequences for those who work for them and generate profits⁷⁶⁷ damaging the duty of care / safe working place and conditions as corporate social responsibility owed to everyone.

Based upon the idea that people comply with the law because they believe it is the right thing to do, a normative model of crime control posits that institutions can secure compliance and cooperation by developing policies that generate legitimacy⁷⁶⁸. This writer believes that

⁷⁶⁴ Eli Lederman "Corporate Criminal Liability: The Second Generation" (2016) 46 *Stetson Law Review* 71-87

⁷⁶⁵ Hui Yan Wong "Corporate Homicide Legislation Should Hong Kong Follow Suit?" (2011) 5 *Hong Kong Journal of Legal Studies* 31-48

⁷⁶⁶ Tom Tyler *Why People Obey the Law* (Princeton University Press, 2006); Paul Robinson and John Darley "Does Criminal Law Deter? A Behavioural Science Investigation" (2004) 24(2) *Oxford Journal of Legal Studies* (2004) 24(2) 173-205

⁷⁶⁷ Neil Foster, "Individual Liability of Company Officers: Neil Foster" *European Developments in Corporate Criminal Liability* (Routledge, 2011) 127-151

⁷⁶⁸ Tom Tyler *Why People Obey the Law* (Princeton University Press, 2006); Tom Tyler and Yuen Huo *Trust in the Law: Encouraging Public Cooperation with the Police and Courts* (Russell-Sage Foundation, 2002) in Jonathan Jackson, Ben Bradford, Mike Hough, Andy Myhill, Paul Quinton and Tom .R. Tyler "Why Do People

legitimacy here means obedience to rule of law by companies and the effectiveness of law as a means of social control because if there is no belief that justice will prevail by enforcement and remedy produced, there will not be any need for a law in the first place.

Schmidpeter believes that businesses as “responsible corporate citizens” are therefore no longer seen as the problem, but rather provide solutions for the most pressing challenges of our time.⁷⁶⁹ The idea behind this statement is that it will not be necessary for any corporate manslaughter charge if companies have a plan for example on staff training and regular inspection and servicing of machines.

Therefore, the lesson learnt from cases on corporate manslaughter and corporate homicide generally challenges companies to incorporate responsibility systematically into all management processes, which implies incorporating substantive outcomes⁷⁷⁰ to prevent what happened from happening again or preventing deadly violence against the activities of oil companies by communities from starting.

According to Schmidpeter corporate social responsibility (CSR) allows for a stronger involvement of employees and a better incorporation of scientific findings in assuming responsibility⁷⁷¹. What is common in Rahim’s and Schmidpeter’s statement above is companies incorporating responsibility systematically into all management processes and companies

Comply with the Law Legitimacy and the Influence of Legal Institutions” (2012) 52(6) British Journal of Criminology 1051-1071 at 1053

⁷⁶⁹ Rene Schmidpeter *Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders* 1st ed. (Springer, 2013) in Okpara J, O, Idowu S, *Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders* (1st ed. Springer 2013) at 171

⁷⁷⁰ Onyeka Osuji “Corporate Social Responsibility, Juridification and Globalisation: “Interventive Interventionism” for a “Paradox”” (2015) 11(3) *International Journal of Law in context* 1-31

⁷⁷¹ John Okpara, Samuel Idowu and Rene Schmidpeter *Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders* (Springer, 2013)

allowing for a stronger involvement of employees and a better incorporation of scientific findings on the face of it makes CSR practices the job of the company. This means that with regards to CSR practices, companies in the eye of the law are seen as juristic persons. Juristic personality means that liability for corporate manslaughter is the liability of the company itself and no one else. There are advantages to the imputing liability to companies. One example is in the area of corporate social responsibility especially in a country that relies on revenue from oil (for example Scotland in The United Kingdom). This country cannot afford to mess with practising corporate social responsibility otherwise the lives of workers in their country will be endangered. In Scotland, the North Sea holds Western Europe's largest oil and natural gas reserves and is one of the world's key non-OPEC (Organization of Petroleum Exporting Countries) producing regions. Oil and gas will remain essential to the UK, its people and economy, for the foreseeable future. They currently provide about three-quarters of primary energy supplies. This proposition is forecast by government to increase to 80 percent or more by 2020⁷⁷². Quality Health Safety and Environmental Procedures, and all other systems, procedures and documentation which impact upon safety must be comprehensively implemented and kept under constant review to ensure a safe environment for all those working in or affected by the industry⁷⁷³.

In 1988, the Alpha Piper oil rig collapsed at the North Sea off Scotland claiming the lives of 165 oil workers. The workers died because of poor, structure of the oil rig. As the supporting infrastructure ages, often beyond the intended original design life, the industry forces increased

⁷⁷² Gerald Forlin and Louise Smail (Eds) *Corporate Liability: Work Related Deaths and Criminal Prosecutions* (2nd Ed. Bloomsbury Professional Ltd 2010)

⁷⁷³ Gerald Forlin and Louise Smail (Eds) *Corporate Liability: Work Related Deaths and Criminal Prosecutions* (2nd Ed. Bloomsbury Professional Ltd 2010)

costs of maintenance⁷⁷⁴. Implementation of corporate social responsibility support rational decision-making⁷⁷⁵. Improvement should be considered to support attainment of greater safety management. It is now necessary under the Act for convicted company to remedy the breaches not just payment of fines. Otherwise, there will be nowhere to do business (sites destroyed by disasters) although the level of fines imposed on large companies will make them to always consider health and safety⁷⁷⁶.

There are so many incidences of death at work place involving multinational oil companies in the UK like 1999 gas explosion in Larkhall which killed a family of four, HMA .V. Shell 2005⁷⁷⁷ where two men inspecting a Pipe-work offshore died, R .v. Gulf 1999⁷⁷⁸ a refinery explosion which caused environmental degradation and pollution for days HMA .V. British Petroleum 1987⁷⁷⁹ where a fire and explosion at Grangemouth caused by a high pressure flammable gas from a high pressure to a low pressure separator vessel which killed two oil workers, R .v. Gulf Oil and Texaco⁷⁸⁰ where in 1999 about 20 tonnes of flammable vapour were released which ignited and caused an explosion in Milford Haven refinery (Swansea). The refinery was shut down. A number of preventive systems had failed, PF (Aberdeen) .v.

⁷⁷⁴ Gerald Forlin and Louise Smail (Eds) *Corporate Liability: Work Related Deaths and Criminal Prosecutions*. (2nd Ed. Bloomsbury Professional Ltd 2010)

⁷⁷⁵ Manuela Weber “The Business Case for Corporate Social Responsibility: A Company-Level Measurement Approach for Corporate Social Responsibility” (2008) 26 *European Management Journal* 247-261

⁷⁷⁶ Chris Morrison “Sentencing Guidelines- New Dawn or Damp Squib” (2016) 172 *Employment Law Journal* 22-24

⁷⁷⁷HMA .V. Shell 2005 sentenced on 27 of April 2005 in Gerald Forlin and Louise Smail (Eds) *Corporate Liability: Work Related Deaths and Criminal Prosecutions*. (2nd Ed. Bloomsbury Professional Ltd 2010) 256-258 at 255

⁷⁷⁸ R .v. Gulf 1999 in Gerald Forlin and Louise Smail (Eds) *Corporate Liability: Work Related Deaths and Criminal Prosecutions* (2nd Ed. Bloomsbury Professional Ltd 2010) 256-258

⁷⁷⁹ HMA .V. British Petroleum 1987 HSB 149, P 5 in Gerald Forlin and Louise Smail (Eds) *Corporate Liability: Work Related Deaths and Criminal Prosecutions* (2nd Ed. Bloomsbury Professional Ltd 2010) 256-258 at 256

⁷⁸⁰ R .v. Gulf Oil and Texaco (22 November 1997), Swansea Crown Court, HSB 253, P. 3

Diamond Offshore drilling UK Ltd 2001 where a casting which was being moved by crane from pipe deck to catwalk fell and crushed an employee and PF (Aberdeen) .v. Diamond Offshore drilling UK Ltd⁷⁸¹, HMA .v. Santa Fe Drilling Co (North sea) Ltd 2003⁷⁸² where an employee was winched into a 12- inch hole and crushed to death. The winch operator had failed to hear shouts to stop.

There other case of death at workplace involving oil companies in the UK. All these companies were found guilty of breaching the provisions of Health and Safety Act 1974 UK convicted and were fined huge fines⁷⁸³. They were all cases before the advent of the Corporate Manslaughter and Corporate Homicide Act 2007. These companies would have been conveniently prosecuted under the new law if they had occurred on or after 2007. It is so because the Corporate Manslaughter and Corporate Homicide Act 2007 tackle what caused the death, how companies carry on business and ensure that such incidence does not happen in the future⁷⁸⁴. Forlin noted that by 2020 the North Sea and investment levels in the UK will start to fall⁷⁸⁵. This according to him will hasten Britain’s total dependence on countries such as Russia and the OPEC members for its oil. This is a product of failure in corporate social responsibility. The World Business Council for Sustainable Development (WBCSD) defines CSR as the continuing commitment by business to behave ethically and contribute to economic

⁷⁸¹ PF (Aberdeen) .v. Diamond Offshore drilling UK Ltd Aberdeen Sheriff Court, 5 March 2001, HSE case number 049 – www.hse.gov.uk

⁷⁸² HMA .v. Santa Fe Drilling Co (North Sea) Ltd Aberdeen Sheriff Court, 19 November 2001; (2001) Herald, 20 November.

⁷⁸³ Gerald Forlin and Louise Smail (Eds) *Corporate Liability: Work Related Deaths and Criminal Prosecutions* (2nd Ed. Bloomsbury Professional Ltd 2010) 256-258

⁷⁸⁴ Chris Warburton “Legal Labyrinth” (2016) Health and Safety at Work 21-24

⁷⁸⁵ Gerald Forlin and Louise Smail (Eds) *Corporate Liability: Work Related Deaths and Criminal Prosecutions*. (2nd Ed. Bloomsbury Professional Ltd 2010)

development while improving the quality of life of the workers and their families as well as the local community and society at large⁷⁸⁶. The advantage here lies in companies in the United Kingdom sharing its liability report for the purpose punishment (liability for corporate manslaughter and corporate homicide) to avoid total dependence on countries such as Russia and the OPEC members for its oil which seeking to take of the welfare of its citizenry. The problem the government can encounter with obedience to law by companies and enforcement of law could lie on apportioning of liability (the company or individual directors).

Before the introduction of CMCHA 2007, companies hide under the corporate veil to liability especially that company has no hands or limbs to give instructions or failed to give instructions which led to the death of an employee or employees.

Shareholders who see and enjoy the money as owners of the company will be refusing to ratify such decision (which caused the death of an employee) as the decision by the company. However, shareholders of the company will feel the impact of corporate manslaughter if the company is convicted⁷⁸⁷. This is because as Professor Griffin has argued “punishing members of [a] board of directors would, in the creation of an effective deterrent, accelerate the desire on the part of the company’s power base to ensure greater compliance with... health and safety legislation”⁷⁸⁸. The Corporate Manslaughter and Corporate Homicide Act 2007 provided the power to impose unlimited fine, the fine should be far higher and should rise to the level

⁷⁸⁶ The World Business Council for Sustainable Development (WBCSD) (2012)

⁷⁸⁷ Mick Woodley “Bargaining Over Corporate Manslaughter- What Price a Life?” (2013) 77 The Journal of Criminal Law 33-40

⁷⁸⁸ Stephen Griffin “Corporate Manslaughter: A Radical Reform?” (2007) 71 The Journal of Criminal Law 151-166 at 164

necessary to ensure that the directors and shareholders of the company take effective measures properly to reform themselves and ensure that they fulfil their obligations⁷⁸⁹ (CSR).

This is the basis for this research. This writer is explaining that corporate social responsibility by companies is the basis for this research. This writer is explaining that corporate social responsibility by companies is dead. The idea is for a corporate manslaughter law to revive corporate social responsibility. Therefore, result of corporate manslaughter and corporate homicide law through conviction for the offence of corporate manslaughter and corporate homicide is corporate social responsibility. Therefore, it is where corporate manslaughter and corporate homicide law ends that corporate social responsibility begins.

This may also involve extending hands of charity on the society where the incidences occurred either voluntarily or by enforcement notices⁷⁹⁰. In the UK, for an offence of corporate manslaughter under the Corporate Manslaughter and Corporate Homicide Act 2007, it is now understood that “organisations should be under a duty to reduce the chances of those [individual] errors taking place and to minimize the consequences when they do⁷⁹¹. Corporate Manslaughter prosecution can yield responsibility for an individual action⁷⁹². According to Rahim, corporate social responsibility is understood as the scope for which, and the ways in

⁷⁸⁹ Forlin Gerald “Many Rivers to cross sentencing large companies for environmental crimes” (2015) 8(4) Archibold Review 1-2

⁷⁹⁰ Andrea Oates *Tolley’s Corporate Manslaughter and Homicide: A guide to Compliance* (LexisNexis Tolley Library 2008)

⁷⁹¹ Christopher Seargant “Two steps forward, one step back- the cautionary tale of the Corporate Manslaughter and Corporate Homicide Act 2007” (2014) 1(1) UK Law Students’ Review

⁷⁹² Christopher Seargant “Two steps forward, one step back- the cautionary tale of the Corporate Manslaughter and Corporate Homicide Act 2007” (2014) 1(1) UK Law Students’ Review

which an organization is consciously responsible for its actions and non-actions and their impact on its stakeholders⁷⁹³.

Furthermore, Section 172 of the Companies Act 2006 UK provides that directors while acting on behalf of the company shall exercise his duties with diligence and care for other stakeholders like employees, villagers, consumers to mention just a few in their decision making⁷⁹⁴.

One of the problems experienced in some companies in the UK is bringing the directors to account. Under the company law the company has the power to sue to enforce duties. This decision lies in the hands of the shareholders who will either vote to ratify the breach, if capable thereof, or taken action against the director. Directors can use their own shares to vote in their capacity as shareholders. Although ratification will release the directors from liability and make binding any contract that is voidable by reason of the breach, not every breach is ratifiable. The solution to this problem is in prosecution of the companies for corporate manslaughter especially for remedial orders. In analysing the effects of corporate manslaughter punishment on corporate social responsibility Oates noted that the greatest effects of CMCHA 2007 will not perhaps, be increased prosecutions and fines:

“... But the increased awareness that the potential stigma of manslaughter will create in corporate boardrooms⁷⁹⁵.

The potential reputational impact will have a significant effect on many aspects of a company's operations ranging from its ability to hire staff and tender for work. It is hoped that this risk will encourage directors to re-examine their policies to make sure they are operating a safe

⁷⁹³ Mia Mahmurdur Rahim *Legal Regulation of Corporate Social Responsibility A Meta-Regulation Approach of Law for Raising CSR in a Weak Economy* (Springer 2013).

⁷⁹⁴ Companies Act 2006 United Kingdom Section 172

⁷⁹⁵ Andrea Oates *Tolley's Corporate Manslaughter and Homicide: A guide to Compliance* (LexisNexis Tolley Library 2008)

system of work and that the risks resulting from their operations are adequately assessed and controlled so that the spectre of fatal accidents need never arise'⁷⁹⁶.

The crown prosecution service, police and health and safety executives prosecutes companies in the UK for corporate manslaughter. However, a succession of cases held that the interests of a company are the interests of its shareholders and that company resources⁷⁹⁷ could not be diverted for any purpose that would not benefit them. Although the late twentieth century saw a relaxation of this legal position, and greater corporate involvement in the wider community, the social norm of shareholder primacy had become firmly embedded in the English corporate world⁷⁹⁸. Secondly, it may not be sufficiently in order to align private action (court judgement) with the public good, merely to strengthen the background legal constraints with which business operates (to boost their business) it must be a form of punishment for the company⁷⁹⁹. There is a new move in the USA towards improving ethical, economic, and legal corporate social responsibility of companies. Alternatively, there is a new requirement requires employers in America to make public their incident statistics on the US Occupational Safety and Health Administration's Website from January 2017.

Such practice in America should be introduced in the UK to promote transparency on safety. Such practice will consider the effect on fear of reputational damage, safety standards in the

⁷⁹⁶ Andrea Oates *Tolley's Corporate Manslaughter and Homicide: A guide to Compliance* (LexisNexis Tolley Library 2008) at 83

⁷⁹⁷ Karsten Engsig Sorensen and Mette Neville "Social enterprises: how should company law balance flexibility and credibility?" (2014) 15(2) *European Business Organisation Law Review* 267-308

⁷⁹⁸ Nick Grant "Mandating corporate environmental responsibility by creating a new director's duty" (2015) 17(4) *Environmental Law Review* 252-265 at 254; B. Sjøfjell and B. Richardson, *Company Law and Sustainability* (Cambridge University Press, 2015) 2

⁷⁹⁹ John Parkinson *Corporate Power and Responsibility Issues in the Theory of Company Law* (Clarendon Press 1994)

UK and online publication of criminal convictions under the Corporate Manslaughter and Corporate Homicide Act 2007 CMCHA s. 19⁸⁰⁰.

The criminal justice rationalises penal punishments by reference to a number of desirable goals. These include the public denunciation of wrongful acts, retribution upon offenders for their wrongdoing, deterrence of future wrongdoing by offenders and others, and rehabilitation of offenders⁸⁰¹. Significantly public condemnation (Publicity Order S. 10 CMCHA, 2007) and denunciation reaffirms the value on human life⁸⁰². In analysis, in UK much attention has been placed on the ethical responsibility among companies. Authors believe that behaviour in business and practice of corporate social responsibility is very important⁸⁰³. These authors further believe that there is another type of corporate social responsibility: legal responsibility which entails complying with the law⁸⁰⁴ (in this research when companies are charged with and convicted of corporate manslaughter). But while regulations may make companies to comply with an issue of corporate social responsibility, it is difficult for the law to ensure that companies adhere to that responsibility⁸⁰⁵.

⁸⁰⁰ Anna Hart “A “nudge” to better performance” (2016) Health and Safety at Work (Westlaw UK)

⁸⁰¹ Tasmania Institute, 2005 Law Reform; Corporate manslaughter and Corporate Homicide Act 2007 UK Section 19

⁸⁰² Aidan Ricketts and Heidi Avolio “Corporate Liability For Manslaughter: the Need for Further Reform” (2009) 13(10) Southern Cross University Law Review 56-86

⁸⁰³ Jamali Dima and Mirshak Ramez “Corporate Social Responsibility (CSR): Theory and Practice in a Developing Country Context” (2007) 72(2) Journal of Business Ethics 243-262

⁸⁰⁴ Jamali Dima and Mirshak Ramez “Corporate Social Responsibility (CSR): Theory and Practice in a Developing Country Context” (2007) 72(2) Journal of Business Ethics 243-262

⁸⁰⁵ Pratima Bansal “The Corporate Challenges of Sustainable Development” (2002) 16(2) Academy of Management Executive 122–132

Today, in the UK companies must provide proof to the court as to compliance of corporate social responsibility as to their judgment⁸⁰⁶. This writer believes that developing countries needs to learn from CMCHA 2007 UK. The court in UK sees that its decision on corporate manslaughter and corporate homicide improving corporate social responsibility (ethics, legal, economic) is implemented by the convicted company. For example in Lion Steel case (ethics) the court ordered that the convicted company publishes the particulars of their conviction⁸⁰⁷.

The Corporate Manslaughter and Corporate Homicide Act 2007 UK was introduced because current manslaughter cases are difficult to prove against large companies. The government was therefore failing (failing to punish companies that are not complying by their ethically, legally and economically corporate social responsibility) in their duty to provide justice, punishment or deterrence⁸⁰⁸. Before the introduction of CMCHA, companies can be charged for manslaughter but the law will need to consider the directing mind of these large companies. Prosecution for death at work under the Companies Act 2006⁸⁰⁹ was therefore difficult; as a sole person would need to be singled out for a gross breach of their duty and it is difficult to pinpoint responsibilities up the chain of command.

⁸⁰⁶ Paul Almond and Sarah Colover “Mediating Punitiveness: Understanding Public Attitudes towards Work-Related Fatality Cases” (2010) 7(5) *European Journal of Criminology* 323-338

⁸⁰⁷ Simon Daniels “Corporate Manslaughter: New Horizon or False Dawn? (2013) 14(1/2) *Moutbatten Journal of Legal Studies* 51-74

⁸⁰⁸ Andrew Hopwood, Francis Adams and Francis Edum-Fotwe *The Impact of Corporate Manslaughter and Corporate Homicide Act 2007 on the Construction Industry in the UK*

⁸⁰⁹ Breach of duty of care under Section 172 of the Companies Act 2006 UK for example

Hopwood et al believes that the introduction of management failure under the Corporate Manslaughter and Corporate homicide Act 2007 UK made it easier to prosecute large companies because of their many hierarchical levels⁸¹⁰.

It must be noted that by 2015, after the Corporate Manslaughter and Corporate Homicide Act 2007 had been operative for seven years, there still been no appreciable decline in the number of annual commercially related deaths. During the first seven years of the Act's operation there were more than one thousand deaths of workers and members of the public at work or in commercial incidents but only four companies were convicted of the crime⁸¹¹. However, while most national governments were able to respond to corporate malpractices with overwhelming logic through the imposition of corporate laws, at international level, corporations have been allowed to operate with limited legal constraints (especially human right abuse by oil companies⁸¹² in oil producing developing countries). Add in the costs of clean-up (worry for oil companies that they can lose a lot of money for oil spills clean ups), which could cost BP approximately \$20 billion as in BP Deepwater Horizon April 20th, 2010, case⁸¹³, and pure financial self-interest (as one of the richest oil producing companies with no fear of bankruptcy) should have been a strong motivator for safer drilling and operations. But this is not the case

⁸¹⁰ Andrew Hopwood, Francis Adams and Francis Edum-Fotwe The Impact of Corporate Manslaughter and Corporate Homicide Act 2007 on the Construction Industry in the UK

⁸¹¹ Sentencing Council. Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Guidelines, Consultation Paper, November 2014, Sentencing Council, London; Health and Safety Executive Statistics on Fatal Injuries in the Workplace in Great Britain (Health and Safety Executive, 2014)

⁸¹² Chrispas Nyombi, Andreas Yiannaros and Rhidian Lewis 'Corporate personality, human rights and multinational corporations' (2016) 27(7) International Company and Commercial Law Review 234-251

⁸¹³ Laurel Brubaker Calkins and Allen .M. Johnson, Jr., Mississippi AG Asks Judge to Oversee Feinberg, PRESS REGISTER (Mobile, AL), January 26, 2011, at C8 in Joshua Fershee "Choosing a Better Path: The Misguided Appeal of Increased Criminal Liability After Deepwater Horizon" (2011) 36(1/2) William and Mary Environmental Law and Policy Review 1-29 at 1

for developing oil producing countries⁸¹⁴. This writer is suggesting that developing country's government should organize health and safety forums where all will be taught health and safety and the legal consequences of compromising health and safety.

Posner agreed with this idea above but stated that the basis of an economic approach to law is the assumption that the people involved with the legal system act as rational maximisers of their satisfactions⁸¹⁵.

This suggests that the government should bear in mind when punishing companies operating in their country to remember that they (these companies) generate income which the host country feeds their citizenry. However, Dobson disagreed. He argued that section 172 enshrines the duty to promote the success of the company for the benefit of its members⁸¹⁶. He further stated that in order to comply with this duty, directors are expected to take into account a number of factors.

According to Dobson amongst these is a consideration of the likely consequence of any decision in the long term and the desirability of maintaining a reputation for high standards in business as well as the impact of decisions on the community and the environment⁸¹⁷.

Carroll summarised Dobson idea by stating that people look to oil and gas companies to self-regulate: to do more to guard against risks to society than merely comply with the law. Perhaps more so than in any other industry, people demand corporate social responsibility (CSR) from

⁸¹⁴ Joshua Fershee "Choosing a Better Path: The Misguided Appeal of Increased Criminal Liability After Deepwater Horizon" (2011) 36(1/2) William and Mary Environmental Law and Policy Review 1-29 at 1

⁸¹⁵ Richard Posner "The Economic Approach to Law" (1975) 53 Texas Law Review 757

⁸¹⁶ Alexandra Dobson 'Directors' liability for death or workplace injury' (2013) 51(5) International Journal of Law and Management 385-395

⁸¹⁷ Alexandra Dobson 'Directors' liability for death or workplace injury' (2013) 51(5) International Journal of Law and Management 385-395

oil and gas companies⁸¹⁸. This writer believes that one of the major problems hindering the control of multinational companies in developing countries is that MNCs do not or refuse to disclose information relating to occupational hazards in their companies.

Authors as Shover and Routhé believe that the strength of the environmental movement and the attention paid to environmental crime are belied by the paucity of systematic data on its extent and distribution, its perpetrators, and responses to it⁸¹⁹. This writer agrees with Shover and Routhé that when companies itself is punished (this can be in the form of damage to its corporate name or companies order by court to pay a huge fine for the offence of corporate manslaughter and corporate homicide) it calls the company's attention to environmental crimes (oil spillage or gas flaring (companies being punished for the way it carries on business (ethics), breach of duty of care (legal) and choosing money over welfare and health and safety of workers, failing to service and maintain equipment or failing to train or supervise junior workers (socio-economic)) caused by its activities.

Furthermore, Punch is of opinion that companies are not the problem since they are source of income generation to a country⁸²⁰. The idea by Punch above with all due respect is damning bearing in mind that when companies are not punished it can cause corporate scandal. This corporate scandal may lead to protest by interest groups protesting against the activities of companies in their country. Over the years, there have been corporate scandals such as British Petroleum (BP) with the Deepwater Horizon oil spill in 2010 where workers lost their lives and

⁸¹⁸ Archie Carroll 'A Three-Dimensional Conceptual Model of Corporate Social Performance' (1979) 4 *Academy of Management Reviews* 497-505

⁸¹⁹ Neal Shover and Aaron S. Routhé "Environmental crime. *Crime and Justice*" (2005) 32 321-371 at 321

⁸²⁰ Maurice Punch 'Suite Violence: Why Managers Murder and Corporations Kill' (2000) 33(3) *Crime, Law and Social Change* 243-280

as a result there is increased public pressure for corporations to be ethically responsible⁸²¹. This writer is of the opinion that companies need to act as ‘reactive minimalists’ by accepting the demands of the environment to move towards more sustainable practices.

The idea behind this is that complying with corporate ethics and law is primarily a risk minimization strategy designed to help oil companies avoid fines for non-compliance with governmental legislation and regulation, as well as avoiding their reputation from being damaged by community activists trying to expose their non-compliance to community regulations and community expectations.⁸²² This could be in the name of restorative justice. Authors like Spalding call for restorative justice. In the words of Menkel-Meadow, restorative justice usually involves direct communication, often with a facilitator, of victims and offenders, often with some or full representation of the relevant affected community, to provide a setting for acknowledgement of fault by the offender, restitution of some sort to the victim, including both affective apologies and material exchanges or payments, and often new mutual understandings, forgiveness, and agreed-to new undertakings for improved behaviours⁸²³.

It will be a restorative justice that does not merely punish the wrongdoer, but remedies the harm caused by the crime, prevents future harm, and reintegrates the defendant into the very community it violated⁸²⁴ (for example in America during the 2010 Deepwater Horizon case).

⁸²¹ Suzanne Benn, Dexter Dunphy, Andrew Griffiths, *Organizational change for corporate sustainability* (Routledge Studies in Organisational change and development) (3rd Ed. Routledge (Taylor & Francis Group) 2014) 7

⁸²² Suzanne Benn, Dexter Dunphy, Andrew Griffiths, *Organizational change for corporate sustainability* (Routledge Studies in Organisational change and development) (3rd Ed. Routledge (Taylor & Francis Group) 2014) at17

⁸²³ Carrie Menkel-Meadow ‘‘Restorative Justice What is it and Does it Work’’(2007) 3 Annu. Rev. Law Soc. Sci. 161-187

⁸²⁴ Andrew Brady Spalding ‘‘Restorative Justice for Multinational Corporations’’ (2015) 76(2) Ohio State Law Journal 358-408

5.5 OBSERVATION AND INTERVIEW DATA ANALYSIS

5.5.1 This section of the research is for data analysis. It seeks to interrogate the data obtained through interviews and personal observation. The researcher explores the questions in juxtaposition with the research objectives which are:

- (1) To conduct a literature review on the relationship between corporate manslaughter and corporate homicide using the concept of enforceability
- (2) To examine the link between corporate manslaughter, corporate social responsibility and enforceability, clarify it and justify it
- (3) To identify the methodological stance that elevates the relationship between corporate manslaughter and corporate social responsibility about legal enforceability. This researcher will use ethnography and case study research methods.
- (4) To critically analyse data with regards to issues raised in the literature review, research objectives and the research question
- (5) To explore the socio-cultural and political tendencies which affect the enforcement of both corporate manslaughter and corporate social responsibility as it relates to issues raised in the literature review, research objectives and the research question by using the concept of enforceability

5.5.2 On the question of a critical theoretical approach to liability of companies for corporate manslaughter and lack of a mechanism in place for enforcement impedes enforceability in Nigeria and can social constructivism solve this problem

Responses indicate that the critical theoretical approach (by the Nigerian courts for example in Nigeria and the provisions of Nigerian-made laws) to corporate criminal liability with regards to corporate manslaughter and corporate social responsibility impedes enforceability. For example, as stated in the social constructivism heading above the Nigerian government in Oguru et al's case has not explained how the relationships of ownership and authority within the Joint Venture are relevant *pari passu* with the Nigerian law to the liability of the participating enterprises (argument at e)⁸²⁵. This case implies that the position of the law in Nigeria as it relates to corporate criminal liability remains undesirable. This is true as the issue of holding a company liable for offences with mental elements including murder and manslaughter remains neither here nor there⁸²⁶. The situation makes the claimant file for a civil suit abroad. Abroad, the defence counsel will raise the issue of the joint venture agreement between the Nigerian government and multinational oil companies in court.

⁸²⁵ Oguru et al .v. Royal Dutch Shell PLC [2011] 365498 / HA

ZA 10-1677

⁸²⁶ Callistus .N. Iyidobi "Rethinking The Basis of Corporate Criminal Liability in Nigeria" (2015) 13 The Nigerian Judicial Review 103-130 at 117

5.5.3 Construction vs structure of reality as it relates to hindrance tendency in enforcement

Enforceability works in the United Kingdom and in America to mention just a few because developmental projects and other social infrastructures are not lacking in most of these countries like Nigeria and most of the time the Nigerian government can be nonchalant to provide them⁸²⁷. The major pitfall in Nigerian laws is that Nigerian lawmakers borrow ideas from laws operational in The United Kingdom for example to formulate her laws (like the shareholder value principle under Section 172 of the Companies Act⁸²⁸ and sections 65 and 66 of CAMA⁸²⁹ which provided for shareholder supremacy or shareholder ratification. This may work in the UK but in Nigeria because of corruption, the director may not be truthful and just and shareholders of the particular company are in breach refusing to ratify a glaring breach of duty of care because they would want to save money for the company (emphasis mine). This hinders enforceability (emphasis mine)) without considering the political structure of Nigeria.

According to critical theorists, the actual course of transformation and the fundamental measures to be taken to a rational organization of society are prescribed by analysis of economic and political conditions in the given situation⁸³⁰. Nigeria runs a mono-economy since

⁸²⁷ Gabriel Eweje, "Multinational Oil Companies' CSR Initiatives in Nigeria: The Scepticism of Stakeholders in Host Communities" (2007) 49(5/6) *Managerial Law* 218-235

⁸²⁸ Companies Act 2006 UK Section 172

⁸²⁹ The Companies and Allied Matters act Cap C20 Laws of the Federation of Nigeria 2004 Sections 65 and 66

⁸³⁰ Stephen Eric Bronner and Douglas Mackay Kellner *Critical Theory and Society A Reader* (Routledge, 1989)

most of her revenue generation comes from oil exploration. This explains the economic and political condition of Nigeria (with regards to the punishment of oil companies by the Nigerian government and its institutions for death caused by oil spillage and gas flaring in Nigeria) in the current situation. All these have the trappings of a resource curse, a lack of knowledge of the law by the citizenry and a lack of a mechanism in place for the enforcement of law in Nigeria. However, a socially constructivist character to enforceability in Nigeria will mean the appearance of the state in enforcement of the law, political relations would then become the organisation of the administration of social wealth⁸³¹ in the interest of the freed populace.

The social constructivist approach will make it possible for the rule to be interpreted (and according to Skupski) as providing a proactive corporate fault, imposing liability where a company fails to make reasonable efforts to implement internal controls to prevent the commission of a crime⁸³².

While the home countries of MNCs, MNCs themselves and the Nigerian government favour critical theory, lawyers reconceptualising the theory of a firm favour social constructivism; the reasons for this may not be farfetched.

There are challenges with analysing the law under what is before. Because they are challenges, that have affected the nature of the law and so the law shifted from the understanding of

⁸³¹ Stephen Eric Bronner and Douglas Mackay Kellner *Critical Theory and Society A Reader* (Routledge, 1989)

⁸³² G.R. Skupski 'The Senior Management Men's Rea: Another Stab at a Workable Integration of Organizational Culpability into Corporate Criminal; Liability'' (2012) 62(1/11) Case Western Reserve Law Review 267-331

enforcement to just reliance on the letters of the law because the letters of the law are lacking in the proper equipment to convey full compliance. Because the letters of the law can only carry sense and sense is reflected in the way and manner and the level of understanding of those that receive it. Therefore, because of the inadequacies in the letters of the law that conveyed the sense in which the law is carried, the law is unable to convey the sense that reflects the diversity of people's wishes and expectations. This means that it moved away from full reliance on the letters of the law into relying on the human agent to be able to visualise what the law intends to achieve. This means that in terms of the understanding of enforceability, the law moved away not just from the reliance on the law but the reliance on human agents as well that will receive the law. Therefore, reliance on human agents meant that citizens/ subjects of the king needed to understand the culture of that human and the social network where that human has found himself because human beings are a function of their environment. For example, oil was discovered in Ecuador in 1918, but it was not in a large commercial quantity⁸³³. Thus, most negotiations and disagreements that occurred in the early 1900s were between governments, oil companies, and/or land-owning elites⁸³⁴, but not necessarily the larger Ecuadorian population or those living in the affected oil-producing areas.

⁸³³ Patricia Vasquez, *Oil Sparks in the Amazon: Local Conflicts, Indigenous Populations, and Natural Resources* (University of Georgia Press, 2014)

⁸³⁴ Patricia Vasquez, *Oil Sparks in the Amazon: Local Conflicts, Indigenous Populations, and Natural Resources* (University of Georgia Press, 2014)

These conflicts started in the 1970s when crude oil was discovered in larger quantities in Amazon and the government decided to grant so many oil drilling contracts to multinational oil companies in the region⁸³⁵. These developments led to the recognition of indigenous groups as stakeholders⁸³⁶.

Little was known about the indigenous groups (especially the Waorani people, who are also known as Huaorani or Waodani in English) until the early 1900s⁸³⁷. Yet, indigenous communities experience many of the negative impacts of the hydrocarbon industry. Almost 7 per cent of Ecuador's 14 million resident population are indigenous and mostly live in the Amazon⁸³⁸. Traditionally, the Yasuní people have suffered the effect of the discovery of oil in the land (their landed properties compulsorily acquired by the government for oil exploration) and colonization by Spain (looting of their treasures even before oil was discovered).

Development and industrialization have also made the Waorani people (also an oil-producing area) violently challenge the employees of extractive industries⁸³⁹; The Waorani people are

⁸³⁵ Patricia Vasquez, *Oil Sparks in the Amazon: Local Conflicts, Indigenous Populations, and Natural Resources* (University of Georgia Press, 2014)

⁸³⁶ Patricia Vasquez, *Oil Sparks in the Amazon: Local Conflicts, Indigenous Populations, and Natural Resources* (University of Georgia Press, 2014)

⁸³⁷ Finer Matt, Varsha Vijay, Fernando Ponce, Clinton N Jenkins and Ted R Kahn "Ecuador's Yasuni Biosphere Reserve: A Brief Modern History and Conservation Challenges" (2009) 4(3) *Environmental Research Letters* Available at <https://doi.org/034005> [Accessed] 11 June 2014 in Ann Marie Hager, James Larson, Nene Kumashe Ugba and Vijay Ramesh "Oil Extraction in the Ecuadorian Amazon: Incorporating Conflict Resolution Theory and Practice" (2017) *Conflict Resolution Quarterly* 1-25

⁸³⁸ Patricia Vasquez, *Oil Sparks in the Amazon: Local Conflicts, Indigenous Populations, and Natural Resources* (University of Georgia Press, 2014)

⁸³⁹ Kimerling, Judith "Oil, Contact, and Conservation in the Amazon: Indigenous Huaorani, Chevron, and Yasuni." (2013) 24(1) *Colorado Journal of International Environmental Law and Policy* Available at <https://ssrn.com/abstract=2332782> [Accessed] 13 May 2015 in Hager Ann Marie, Larson James, Ugba Nene

known to be living in isolation. They felt that their life of living in solitude in the forest was infringed upon when multinational oil companies moved the operation deep into the forest in search of crude oil residues⁸⁴⁰. While the Ecuadorian constitution grants its citizens the right to live and own properties anywhere, the Waorani people felt that because the government was interested in revenue from these multinational companies (MNCs) they were being marginalized by many development laws and policies made by the same government.

Ecuadorian law incorporates the doctrine of *Terra Nullius*, an international law used to describe a territory that no one owns and ascribes sovereignty to the “discovering nation”⁸⁴¹. Similarly, the Doctrine of Discovery assigned Christian monarchs “the right to claim dominion over” non-Christian “heathen” lands upon discovery⁸⁴².

Based on these building blocks, the research proposes social constructivism for this research.

Kumashe and Ramesh Vijay “Oil Extraction in the Ecuadorian Amazon: Incorporating Conflict Resolution Theory and Practice” (2017) *Conflict Resolution Quarterly* 1-25

⁸⁴⁰ Kimerling, Judith “Oil, Contact, and Conservation in the Amazon: Indigenous Huaorani, Chevron, and Yasuni.” (2013) 24(1) *Colorado Journal of International Environmental Law and Policy* Available at <https://ssrn.com/abstract=2332782> [Accessed] 13 May 2015 in Hager Ann Marie, Larson James, Ugba Nene Kumashe and Ramesh Vijay “Oil Extraction in the Ecuadorian Amazon: Incorporating Conflict Resolution Theory and Practice” (2017) *Conflict Resolution Quarterly* 1-25

⁸⁴¹ Kimerling, Judith “Oil, Contact, and Conservation in the Amazon: Indigenous Huaorani, Chevron, and Yasuni.” (2013) 24(1) *Colorado Journal of International Environmental Law and Policy* Available at <https://ssrn.com/abstract=2332782> [Accessed] 13 May 2015 at 48 in Hager Ann Marie, Larson James, Ugba Nene Kumashe and Ramesh Vijay “Oil Extraction in the Ecuadorian Amazon: Incorporating Conflict Resolution Theory and Practice” (2017) *Conflict Resolution Quarterly* 1-25

⁸⁴² Kimerling, Judith “Oil, Contact, and Conservation in the Amazon: Indigenous Huaorani, Chevron, and Yasuni.” (2013) 24(1) *Colorado Journal of International Environmental Law and Policy* Available at <https://ssrn.com/abstract=2332782> [Accessed] 13 May 2015 at 48 in Hager Ann Marie, Larson James, Ugba Nene Kumashe and Ramesh Vijay “Oil Extraction in the Ecuadorian Amazon: Incorporating Conflict Resolution Theory and Practice” (2017) *Conflict Resolution Quarterly* 1-25 at 49

Doctrines like these have been known in Ecuador to deny property and political rights to indigenous groups such as the Waorani even though their rights are formally recognized by the Ecuadorian government⁸⁴³.

Readers will discover that in understanding the concept of enforceability it is imperative to understand the social network and environment itself where the law exists is critical to the understanding of the law in itself and the enforcement of that law. The idea here is that enforceability in itself did not work because of the human element of different people meeting/ mixing up and there is this competition of people creating a law which they would like to use in suppressing another and there is this mutual suspicion that will make it difficult for legal enforcement. This is also the issue of kings as the case may be creating institutions that are different/ distinct from the law and individuals who have been given the power to enforce the law (by the king as the case may be) and those institutions are supposed to be independent to enforce the law but clearly, the human agent has also infiltrated the institutions which now meant that the individuals within those institutions use the institution as a basis to discriminate against the individuals. This means that for some persons, laws are enforced against them while for others it is not. Therefore, these discrepancies have now delegitimized the law-making enforcement almost futile.

⁸⁴³ Patricia Vasquez, *Oil Sparks in the Amazon: Local Conflicts, Indigenous Populations, and Natural Resources* (University of Georgia Press, 2014) at 3.

The next chapter is chapter 6.

6.1 ENFORCEABILITY AND SOCIAL CONSTRUCTIVISM UNDER WRAPS

This research adopts social constructivism because it addresses social and legal phenomena within the sphere of enforceability which has created gaps in the system as regards corporate manslaughter, the function of law and corporate social responsibility. Social constructivism seeks to uncover and discuss the lapses in why laws are not enforced, whether it is a societal ill, or whether a body or someone is the cause of it in terms of enforcement of the law. Using social constructivism allows for the development of a general empirical approach to estimate legal enforceability, which also depends on citizens' knowledge of the law, the political culture of a state, and the attitude of companies towards the practice of corporate social responsibility. In this research, the legal enforceability of law must depend on the commitment of the country in question to tackle issues of corporate manslaughter resulting from failure in various corporate social responsibility practices by companies in the Niger Delta Area of Nigeria.

Social constructivism, therefore, is the appropriate tool for this research. Social constructivism seeks to understand the role of law in the daily lives of people and companies, the role of lawmakers and the relationship between corporate manslaughter and corporate social responsibility through the lens of enforceability.

Some critical theorists argue that enforcement of the law as a form of social control does not lie in making or having a law but the solution lies in the court of law⁸⁴⁴.

According to them, “the very public and political character of the legal arena (courts emphasis mine) gives lawyers, acting together with clients and fellow legal workers, an important opportunity to reshape the way that people understand the existing social order and their place within”⁸⁴⁵.

The capacity to deliver enforcement is then a function captured by fulfilling legal obligations and that is why enforcement can be known to serve as conditions for obedience. This could stem from a lesson learnt by a company from the conviction of another company for corporate manslaughter and how for example such conviction affected the convicted companies’ financial capital base after payment of huge fines.

Secondly, it is important to say that with regards to the construction of responsibility (using social constructivism) in terms of who owed duty care and why it is owed to enhance enforcement as a component of enforceability discussion on three variable combinations can be analyzed. They are: sharing liability reports for punishment, apportioning liability and payment of an unlimited fine. The World Business Council for Sustainable Development

⁸⁴⁴ Peter Gabel and Harris Paul “Building, Power and Breaking Images: Critical Legal Theory and the Practice of Law” (1982-83) 11 New York University Review of Law and Social Change 369-411 at 370 in Sharyn .L. Roach Anleu Law and Social Change (Sage Publications Ltd, 2000)

⁸⁴⁵ Peter Gabel and Harris Paul “Building, Power and Breaking Images: Critical Legal Theory and the Practice of Law” (1982-83) 11 New York University Review of Law and Social Change 369-411 at 370 in Sharyn .L. Roach Anleu Law and Social Change (Sage Publications Ltd, 2000) at 139

(WBCSD) 2012 defines CSR as the continuing commitment by businesses to behave ethically and contribute to economic development while improving the quality of life of the workers and their families as well as the local community and society at large⁸⁴⁶. The advantage here lies in companies in the United Kingdom sharing their liability report for punishment (liability for corporate manslaughter and corporate homicide). The problem the government can encounter with obedience to law by companies and enforcement of the law could lie in the apportioning of liability (the company or individual directors).

Before the introduction of CMCHA 2007, companies hide under the corporate veil of liability especially if the company has no hands or limbs to give instructions or failed to give instructions which led to the death of an employee or employees.

Shareholders who see and enjoy the money as owners of the company will be refusing to ratify such decision (which caused the death of an employee) as the decision by the company. However, shareholders of the company will feel the impact of corporate manslaughter if the company is convicted⁸⁴⁷. This is because as Professor Griffin has argued “punishing members of [a] board of directors would, in the creation of an effective deterrent, accelerate the desire on the part of the company’s power base to ensure greater compliance with... health and safety

⁸⁴⁶ The World Business Council for Sustainable Development (WBCSD) (2012)

⁸⁴⁷ Mick Woodley “Bargaining Over Corporate Manslaughter- What Price a Life?” (2013) 77 The Journal of Criminal Law 33-40

legislation”⁸⁴⁸. The Corporate Manslaughter and Corporate Homicide Act 2007 UK provides the power to impose an unlimited fine, the fine should be far higher and should rise to the level necessary to ensure that the directors and shareholders of the company take effective measures properly to reform themselves and ensure that they fulfil their obligations⁸⁴⁹ (CSR).

There can be no doubt as to the objectives in applying this principle of **unlimited fine** when sentencing a company for offences against health and safety. As Scot Baker J stated in his judgement in R .v. F Howe & Son (Engineers) Ltd:

“The objective of prosecutions for health and safety offences in the workplace is to achieve a safe environment for those who work there and for other members of the public who may be affected. A fine needs to be large enough to bring that message home where the defendant is a company not only to those who manage it but also to its shareholders⁸⁵⁰”. This (CMCHA improving CSR (being careful in the way they do business (economic and ethical responsibility) was reinforced in the Definitive Guideline of the Sentencing Guidelines Council Corporate Manslaughter & Health and Safety Offences Causing Death published in 2010⁸⁵¹ .

This has been reflected for example in the case of R. V. Tufnells Park Express Ltd⁸⁵² (the fine

⁸⁴⁸ Stephen Griffin “Corporate Manslaughter: A Radical Reform?” (2007) 71 The Journal of Criminal Law 151-166 at 164

⁸⁴⁹ Forlin Gerald “Many Rivers to cross sentencing large companies for environmental crimes” (2015) 8(4) Archibold Review 1-2

⁸⁵⁰ Scot Baker J stated in his judgement in R .v. F Howe & Son (Engineers) Ltd [1999]2 All ER 249 at 255

⁸⁵¹ The Body sets out guidelines for sentencing companies for corporate manslaughter and health and safety offences. It was introduced in the United Kingdom in 2010

⁸⁵² R. V. Tufnells Park Express Ltd [2012] EWCA Crim 222 at para.43

after trial on a company with a turnover of one hundred million pounds and profitability of seven million, seven hundred thousand pounds was two hundred and twenty-five thousand pounds; this reflected, as the court noted, 2.9% of its operating profit⁸⁵³). Whichever way it goes, it is clear that a particular and correlative relationship exists between enforcement and responsibility.

Therefore the question needs to be asked:

- (1) Whether enforcement can guarantee the justice that it professes?
- (2) Whether it can be said that there is no interference with the government (who may decide to accept bribes from multinational companies) or multinational companies (in case of ratification: refusing through its shareholders to ratify the decision taken by senior management on behalf of the company which caused death (breach of duty of care)).
- (3) Whether the correlative relationship that exists between enforcement and responsibility will stay the test of time?

These questions can be answered by examining how enforcement can be practised. Below, this researcher will discuss enforcement and justice.

⁸⁵³ Case Analysis R .v. F Howe & Son (Engineers) Ltd [1999]2 All ER 249).

6.1.1 ENFORCEMENT AND JUSTICE

The importance of justice cannot be over-emphasized because it guarantees compliance with the law. Compliance with the law adds value by providing improved relationships with regulators, the basis for a positive reputation as a good corporate citizen.⁸⁵⁴ Their duties could be inspecting facilities to ascertain whether it is in good working condition, compliance with health and safety (cleaning up of oil spillage) staff training and inspection, and checking companies' health reports to mention just a few.

Authors like Takala feel that globalization has worsened many of the traditional occupational safety and health problems due to the large number of new generation workers that have been exposed to well-known hazards, in particular, in developing countries and economies in transition⁸⁵⁵. He reasoned that often these new workers come from rural areas and have practically no experience with industrial processes, using electricity, machinery, and chemicals and building high-rise buildings without knowledge of the hazards involved⁸⁵⁶.

This is true because authorities or agencies tasked with for example environmental duties in developing countries should be empowered by law to inspect regulated facilities and gain

⁸⁵⁴ Suzanne Benn, Dexter Dunphy, Andrew Griffiths, *Organizational change for corporate sustainability* (Routledge Studies in Organisational change and development) (3rd Ed. Routledge (Taylor & Francis Group) 2014) at 17

⁸⁵⁵ Jukka Takala "Global Estimates of Traditional Occupational Risks" (2005) 1Scand J Work Environ Health Suppl 62-67 at 62

⁸⁵⁶ Jukka Takala "Global Estimates of Traditional Occupational Risks" (2005) 1Scand J Work Environ Health Suppl 62-67 at 62

access to their records and equipment to determine if they comply. They will remind companies that under the law the villagers can monitor if companies are adhering to health and safety, keeping records of their compliance activities and status and reporting this information regularly to the enforcement programme and making the information available.

This sounds understandable and it needs to be said that there is a need for an institutional framework⁸⁵⁷, one that will specify in clearer terms whom and who is responsible for which functions. The absence of such an institutional framework will make it difficult to establish who is responsible for ensuring compliance. Although, economic theorists will argue that based on the proportion and contribution of the company to the general wealth but the general wealth of the society cannot be quoted with the destructive effect of certain actions perpetrated by the company that reduces the capacity of individuals to achieve their potentials because of the actions and inactions of the company operating in those community.

Writers like Tombs and Whyte who disagree with economic theorists argue understanding companies as the source of revenue generation while condoning its breach of health and safety can be because there has been a general tendency in law to downplay the seriousness of safety crimes by responding to them as noncriminal “accidents”⁸⁵⁸. Industry officials in countries abroad are now mandated by the state to partially regulate the actions of their employers, with

⁸⁵⁷ Zephaniah Edo ‘The Challenges of Effective Environmental Enforcement and Compliance in the Niger Delta Region of Nigeria’ (2012) 14(6) *Journal of Sustainable Development in Africa* 260-276

⁸⁵⁸ Tombs, Steve and Whyte, David *Safety crimes*. Devon, UK: (Willan Publishing, 2007)

the state's role being to educate employers on safe work practices and enforce the law in cases where employers fail to follow the rules⁸⁵⁹.

This relationship between enforcement and justice, therefore, throws up this question

Does justice in rule of law by enforcement create a system?

This question will be answered by first addressing the concept of enforceability and justice as it reflects the goal of the society (sometimes referred to as social policy) which is corporate social responsibility.

Critics have argued that CSR is a distraction for business from meeting their primary goal of profit making, an inefficient means of allocating scarce resources and that business lacks the legitimacy and competency to take on any such responsibility outside their primary area of expertise⁸⁶⁰. In contrast, proponents of CSR have responded that the monumental increase in business power, the widespread incidence of corporate misdemeanours, issues of ethics and the increasing inability of governments to meet their basic responsibility to society as well as regulate business activities have meant that the acceptance of social responsibility by business was both inevitable and a necessity⁸⁶¹. It is now the duty of the company for law and order

⁸⁵⁹ Terry T. Pitoulis *Bloody Oil A Critical Discourse Analysis of Safety Crimes in the Alberta Oil and Gas Industry* Department of Criminology Faculty of Social Sciences University of Ottawa (2014) at 19

⁸⁶⁰ Friedman, Milton (1962) *Capitalism and Freedom*. Chicago, University of Chicago Press; Milton Friedman, *The Social Responsibility of Business is to increase its Profits*, *New York Times Magazine* September 13 1970 P33; Henderson, D. *Misguided Virtue: False Notion of Corporate Social Responsibility*, (2001) *New Zealand Business Roundtable*, the terrace, Wellington, New Zealand; Theodore, Levitt "The Danger of Social Responsibility," (1958) 36(5) *Harvard Business Review* 41-50

⁸⁶¹ Howard Bowen *Social Responsibilities of the Businessman* (University of Iowa Press, 2013)

(enforcement and justice) and that of the government. This then means that in developing countries and least developed countries there is no system to ensure justice through enforcement when it is needed. Bittle and Stinson argue that the inability of the state to hold powerful corporations and corporate actors⁸⁶² to account for their serious offending presents strategic opportunities for demanding improved accountability measures and changes to a system responsible for so much bloodshed and killing⁸⁶³.

Wälde believes that these non-legal ways have a high price; normally much higher than in a situation where legal methods of investment protection in a rule of law context can be effective.

They are also often not available to large Western companies subject to anti-bribery regulation

Keith Davis "Can business afford to ignore Social Responsibility?," (1960) 2(3) California Management Review 70-76; Keith Davis "Understanding the Social Responsibility Puzzle," (1967) 10 Business Horizon 45-50; Keith Davis "The Case For and Against Business Assumption of Social Responsibilities", (1973) 16(2) Academy of Management Journal 312-322; Keith Davis and Robert Blomstrom Business and Society: Environment and Responsibility (McGraw-Hill, 1975 (3ed)); Archie Carroll "A Three-Dimensional Conceptual Model of Corporate Social Performance," (1979) 4(4) Academy of Management Review 497-506; Archie Carroll "The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organisational Stakeholders," (1991) Business Horizon, July-August 39-48; Howard Bowen *Social Responsibilities of the Businessman* (Harper & Row, 1953); Norman Bowie "New Directions in Corporate Social Responsibility," (1991) 34(4) Business Horizons, July-August 56-65; Jeremy Moon "Business Social Responsibility: A Source of Social Capital?," Reason in Practice" (2001) 1(3) Journal of Philosophy of Management 385-408; Joseph Monsen, "Social Responsibility and the Corporation: Alternatives for the future of Capitalism," (1972) 6(1) Journal of Economic Issue 125-141

⁸⁶² Steven Bittle, Lori Stinson, "Corporate killing law reform: A spatio-temporal fix to a crisis of capitalism?" (2018) Capital and Class

⁸⁶³ Ruggie, John. (2008). Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. www.business-humanrights.org/SpecialRepPortal/Home in Steven Bittle and Laureen Snider. "Examining the Ruggie Report: can voluntary guidelines tame global capitalism?" (2013) 21(2) Critical Criminology 177-192 at 186

and NGO scrutiny⁸⁶⁴ stepping in on an ad-hoc basis to do the job of the government to ensure justice through enforcement when it is needed.

Internationally, there is a system for enforcement and justice at least for breach of human rights but locally in the host countries, especially in developing and least developed countries, there is none as it seems.

In the last decade, mechanisms of international human rights institutions have devoted an increasing level of attention to the issue of social responsibilities of businesses, especially about the collective rights of inhabitants living within a host community.⁸⁶⁵ A more precise due diligence expectation was described by the UN Special Rapporteur on Indigenous Rights thus:

“In the context of indigenous peoples, the corporate responsibility to respect human rights means that companies must exercise due diligence by identifying, before commencing their activities, various matters relating to the basic rights of indigenous peoples, and by paying adequate attention to those matters as the activities are being carried out. Such matters include recognition of the existence of indigenous peoples and their own social and political structures; indigenous possession and use of land, territory and natural resources; exercise by the State of its duty to consult indigenous people about activities that might affect them, and the related

⁸⁶⁴ Thomas W. Wälde “Renegotiating acquired rights in the oil and gas industries: Industry and political cycles meet the rule of law” (2008) 1(1) *Journal of World Energy Law & Business* 55-97 at 68

⁸⁶⁵ In 2001 the UN Commission on Human Rights (now Human Rights Council) appointed a Special Rapporteur on the situation of Human Rights and Fundamental Freedoms of Indigenous Peoples as part of its Special procedures.

responsibility of business; impact studies and mitigation measures, and benefit sharing with indigenous peoples’’⁸⁶⁶. This may be because the courts are thinking justice locally while researchers like this researcher could be forcing courts in developing and least developed countries to be thinking justice both domestically/ locally and internationally.

According to Carroll, society has not only sanctioned business to operate according to profit motive: at the same time business is expected to comply with the laws and regulations promulgated by federal, state and local governments as the ground rules under which business must operate⁸⁶⁷. To buttress this point, when the law is used to correct companies for their ills, it forces companies to treat prosecution as a managerial tactic- something to be taken into account as a possible outcome if criminal options are considered in the decision process⁸⁶⁸. Still, effective CSR may well require the good government to draft and some policy-makers to see CSR practices as a stepping-stone towards legal codification⁸⁶⁹. The idea for the legal codification of law is that although the right to life is naturally guaranteed because humans fear God’s punishment as a supreme being or part of a social contract agrees to protect lives and property in their pursuit of happiness, this right to life still needs to be guaranteed under the

⁸⁶⁶Jide James-Eluyode, “The notion of Collective Human Rights and Corporate Social Responsibility: Issues and Trends in international law” (2013) 24(5) *International Company and Commercial Law Review* 212-213 at 214.

⁸⁶⁷ Jędrzej George Frynas *Beyond Corporate Social Responsibility: Oil Multinationals and Social Challenges* (Cambridge University Press, 2009).

⁸⁶⁸ Jędrzej George Frynas *Beyond Corporate Social Responsibility: Oil Multinationals and Social Challenges* (Cambridge University Press, 2009).

⁸⁶⁹ Michael Blowfield M., and Jędrzej Frynas “Setting New Agendas: Critical Perspectives on Corporate Social Responsibility in the Developing World” (2005) 81(3) *International affairs* 503 Available at <<http://onlinelibrary.wiley.com/doi/10.1111/j.1468-2346.2005.00465.x/pdf>>

law in print to enable government officials as an agent of social control through the law to legally enforce the law. Locke a law philosopher believe that in every social contract⁸⁷⁰, parties to the contract (whether of oil exploration or the building of train stations) must make provisions in the contract to preserve the natural rights to life, liberty, and property, and the enjoyment of private rights: the pursuit of happiness engendered, in civil society, as well as the common good of all.

Similarly, the rule of recognition states that the law is not a separation of rules but a unified set of rules to be cemented and recognized by the system. Therefore, the problem is not just that the law is meant to end at the letters of the law which is one step to enforcement (having a law) but that the system which the police and the court (investigation and adjudication of the letters of the law) needs to give the letters of the law its spirit. This spirit is the second step toward the enforcement of the law. This raises the question as to the survival in the practice of law that gives no room for protection of lives, environment and social control. Market incentives and corporate environmental management are now the chief determinants of variations in firm-level environmental performance and beyond-compliance behaviour in particular⁸⁷¹. This then means the more production and profits these companies then make will then determine if they will clean up oil spillage which can catch fire claiming lives or poison drinkable water from

⁸⁷⁰ Raymond Wacks *Philosophy of Law a Very Short Introduction* (Oxford University Press, 2006)

⁸⁷¹ Robert A. Kagan Neil Gunningham Dorothy Thornton Explaining Corporate Environmental Performance: How Does Regulation Matter? (2003) 37(1) Law and Society 51- 90 at 53

streams or reduce gas flaring which can cause terminal illness leading to death. Hart argues that what is needed in the enforcement of a law is not just interpretative instruments in the form of law laid down by the government but creating a system (this writer believes is further through court judgement) for obedience to and understanding of the law and that enforcement of the law first begins by creating a system⁸⁷². This writer believes that the position of Hart on creating a system could pose a problem which is how the system which is central to the rule of recognition first knows about the rule and secondly how to adopt and abide by the rules to enforce the law for the obedience of the law if the judges and the courts are already the rules itself and themselves. This would not have been a problem if according to Luka we conceive the rule of recognition as constructive of only the primary (letters and spirit of the law) but not law which evolved from or became part of law based on the court's adjudication in a case but of court's interpretation of the first order of the law⁸⁷³. This writer then believes that this single act of practice of the law is beyond the interpretation of the law by judges.

The idea behind this decision is that obedience to the law from the community begins with acceptance provided there is an organized system for the enforcement of rules. Hart called it a case of a once-established system⁸⁷⁴. It follows therefore that there could be a body of rules

⁸⁷² Burazin Luka “The Rule of Recognition and the Emergence of a Legal System (2015) 27 Revus 115- 130 at 119

⁸⁷³ Burazin Luka “The Rule of Recognition and the Emergence of a Legal System (2015) 27 Revus 115- 130 at 120

⁸⁷⁴ Burazin Luka “The Rule of Recognition and the Emergence of a Legal System (2015) 27 Revus 115- at 122

but it amounts to nothing if the community do not accept it or recognize it as the road to justice. According to Hart, it follows therefore that since the community has to accept the rules as binding, there may be help from lawmakers and judges⁸⁷⁵. This writer believes that the judges and lawmakers need to have the extra duty of educating the community about the import of the law. They may in the process of instilling the tenets of the law into the community members, make themselves the law for instance by coercing the implementation of the law to socially control the actions of the community. Offering his solution to putting spirit to the letters of the law through interpretation, Hart went further to state that the conditions under which people obey the law are that it begins with the attitude of government officials (like police, and judges) who enforce the law. According to Hart also, government officials need to have a distinctive critical attitude of acceptance towards a pattern of behavior (when one breaks the law, the law must be enforced to punish the offender for example (emphasis mine)), which attitude of acceptance raises the said pattern to the level of public standard to which they conform⁸⁷⁶ (the community members).

This position of Hart could pose a problem. For example, how effective then is this system? Are they corrupt? Will there be quick action to justice? And will there be measures put in place so that corporate social responsibility practices (health and safety, ethics to mention just a few) will not be compromised? When according to this writer, the government through the courts

⁸⁷⁵ Herbert .L. A. Hart *The Concept of Law* (Oxford University Press, 1994)

⁸⁷⁶ Herbert .L. A. Hart *The Concept of Law* (Oxford University Press, 1994)

fails in any of these problems through its interpretative duty; the result could be the community taking the law into its own hands. Bittle believes that employees can demand discipline of companies through the law, particularly when organized as labour/unions, since companies misrecognize the problems of workplace safety, including that workers are routinely injured and killed in the pursuit of surplus profits⁸⁷⁷. This writer believes that the government of any country should not stop their citizens' peaceful protesting incidence of environmental degradation as long as it does not lead to the kidnapping of foreign oil workers or vandalization of oil pipelines. Secondly, according to Tombs, states will be complicit in corporate crime production through their failures either to put into place more effective legal regimes, to enforce existing laws, or to respond effectively to violations of such laws, concerning corporate activity. Touching on the second problem of whether will there be quick action to justice? There could be a problem which is that over-dependency on one natural resource breeds corruption and can hinder the criminal justice system of a country. This happens in developing (former colonies) African countries. In Africa, most foreign multinational oil companies are owned or partly owned by colonial masters.

For example, Total in Ivory Coast and several other African countries is French owned while Shell Petroleum Limited is co-owned by both Britain and The Netherlands.

⁸⁷⁷ Steven Bittle "Rational corporation meets disciplined worker: The (re)production of class subjects in corporate crime law reform" (2016) 40(2) Capital and Class 282- 303

These colonial masters still run affairs in their former colonies sometimes hindering the government of their host countries from prosecuting it in the event of death at the workplace or death caused by oil spillage and/or gas flaring. One of the problems arising from over-dependency on natural resources, especially in developing countries is that it makes countries of multinational oil companies have a vested interest in their host countries. Sometimes it can get to the extent of other leading countries refusing to hearken to the request of host countries in periods of political crisis like war. And will there be measures put in place so that corporate social responsibility practices (health and safety, ethics to mention just a few) will not be compromised?

6.1.2 LEGAL RELATIONS (COMPLIANCE AND CORPORATE SOCIAL RESPONSIBILITY) AND INTERFERENCE WITH ENFORCEABILITY

Companies can also play a dominant role in coercing the obedience to law against or for the benefit of the way things are done under the law in the host country. Of particular importance in shaping the prospects for development (thereby propelling obedience to the law) in such contexts is the organization of power within the ruling coalition⁸⁷⁸.

⁸⁷⁸ Mushtaq, Khan, "Political settlements and the governance of growth-enhancing institutions" (2010) School of Oriental and African Studies 1-139 at in Sam Hickey, Abdul-Gafaru Abdulai, Angelo Izama, and Giles Mohan The politics of governing oil effectively: a comparative study of two new oil-rich states in Africa. *ESID* (2015) WorkingPaper No. 54. Manchester, UK: University of Manchester. Available at www.effectivestates.org>[Accessed] 15th May 2015; Marcus Kurtz "The social foundations of institutional order: Reconsidering war and the "resource curse" in Third World state building" (2009) 37(4) *Politics & Society* 479-520 in Sam Hickey, Abdul-Gafaru Abdulai, Angelo Izama, and Giles Mohan The politics of governing oil effectively: a comparative study of two new oil-rich states in Africa. *ESID* (2015) WorkingPaper No. 54. Manchester, UK: University of Manchester. Available at www.effectivestates.org>[Accessed] 15th May 2015; Dan Slater *Ordering Power: Contentious Politics and Authoritarian Leviathans in Southeast Asia*. (Cambridge University Press, 2010) in Sam Hickey, Abdul-Gafaru Abdulai, Angelo Izama, and Giles Mohan The politics of

Where ruling coalitions can either repress or co-opt rival sources of power, then they can secure a *dominant party* political settlement, within which there is relatively little prospect of power changing hands through a formal electoral process⁸⁷⁹. Authors such as Levy are suggesting that the main alternative type of political settlement is termed *competitive clientelist*, which specifically entails a change in the coalition sharing of power (which is the ‘norm of public sharing’) and displacement which happens during the election⁸⁸⁰. This writer believes that in an everyday situation it could be for example the host government through its subsidiary which is the government agency responsible for the management of oil resources on behalf of the government and The MNCs operating in their host country. It could be that because oil companies generate income for the host country, they have strong coalition power over the host country’s government.

This leads to the question: will legal relations by the government through the courts and inspection agencies for punishment for corporate manslaughter on multinational companies lead to politics from multinational companies within the host country?

governing oil effectively: a comparative study of two new oil-rich states in Africa. *ESID* (2015) Working Paper No. 54. Manchester, UK: University of Manchester. Available at www.effectivestates.org [Accessed] 15th May 2015

⁸⁷⁹ Sam Hickey, Abdul-Gafaru Abdulai, Angelo Izama, and Giles Mohan The politics of governing oil effectively: a comparative study of two new oil-rich states in Africa (2015) *ESID*(Working Paper No. 54. Manchester, UK: University of Manchester. Available at www.effectivestates.org [Accessed] 15th May 2015 at 4

⁸⁸⁰ Brian Levy *Working with the Grain: Integrating Governance and Growth in Development Strategies* (Oxford University Press, 2014)

Corporations present a problem if their sole aim is to make a profit jeopardizing health, safety, and welfare and/ or recruiting unqualified or unsupervised staff. This has proved problematic in developing oil-producing countries like Mexico (Mexico recently 2019 had an oil explosion claiming 86 human lives) and the oil company as the courts have perceived the failure to provide an ‘appropriate’ safe system for work as a corporate criminal offence. In developing countries, the socio-economic responsibility of CSR entails considering the welfare of all stakeholders: consumers, villagers, business owners and the government to mention just a few. This writer believes communities think that natural resources explored in the community belong to them.

Any oil revenue management law (like other laws) must be adapted to the needs, institutions, and legal framework of the country it is meant for. Drafting (of any law) must take place within the parameters of the local legal system and must take account of existing laws and practices⁸⁸¹.

It is only through careful consideration of the politics and praxis of law enforcement can we adequately grasp the context of the regulation of workplace safety⁸⁸².

Politics in the view of Lasswell is the process of who gets what, when and how⁸⁸³.

⁸⁸¹ Emmanuel Graham, Ishmael Ackah and Ransford Edward Van Gyampo “Politics of Oil and Gas in Ghana” (2016) 8(2) 131-142 at 135

⁸⁸² Steve Tombs and David Whyte “The Myths and Realities of Deterrence in Workplace Safety Regulation” (2013) British Journal of Criminal Law 1-18

⁸⁸³ Harold .D. Lasswell *Politics: Who gets what, when, how*(McGraw-Hill, 1936) in Emmanuel Graham, Ishmael Ackah and Ransford Edward Van Gyampo “Politics of Oil and Gas in Ghana” (2016) 8(2) 131-142 at 132

More so, Easton defines politics as the authoritative allocation of values or resources⁸⁸⁴. In essence, politics denotes the complex activity of disagreement and reconciliation concerning such issues as the authoritative allocation of values in society.

The realm of politics is dynamic, and it deals with such subjects as the state, power and public policy⁸⁸⁵.

Congo is a rich mineral country at the heart of Africa. After being colonized by Belgium, it gained its independence in June 1960. It did not take long before Russia and The United States of America had their eyes on the mineral deposits in Congo. Both countries wanted their ‘man’ to be in power to facilitate the transfer of mineral resources back to their countries.

This writer also believes that the desire to take control of the oil business by a giant country or countries may create conflict that the host country suffers. It will then not be a case of corporate social responsibility for the countries that own the oil company. This writer believes that the desire for two giant countries as The United States of America and Russia to control the crude oil business in oil-producing foreign countries could create disharmony between the two countries.

⁸⁸⁴ David Easton, “The Political System Besieged by the State” (1981) 9 *Political Theory*, 203–225 in Emmanuel Graham, Ishmael Ackah and Ransford Edward Van Gyampo “Politics of Oil and Gas in Ghana” (2016) 8(2) 131-142 at 132; David Easton, *An analysis of political structure* (Routledge, 1990) in Emmanuel Graham, Ishmael Ackah and Ransford Edward Van Gyampo “Politics of Oil and Gas in Ghana” (2016) 8(2) 131-142 at 132

⁸⁸⁵ Emmanuel Graham, Ishmael Ackah and Ransford Edward Van Gyampo “Politics of Oil and Gas in Ghana” (2016) 8(2) 131-142 at 132

The solution to the arrangement can be through election electing a new government that will bring a change in terms of the agreement on how to clean up oil spillage and provide a safe working environment while also extending hands of charity to the oil-producing communities. It will then be the job of the government to uphold the rule of law while developing the country. This writer believes that this could be hard, especially in a country whose major source of revenue derivation/ generation is from crude oil exploration and production like Angola.

However, although the political ground on which this agreement/ arrangement will fall, sets certain structural conditions within which governance takes place either for the better in promoting corporate social responsibility or worse, the power relations between coalition elites, and the role to be played by both leaders (the host government and home companies country(emphasis mine)) and coalitions specific actors (MNCs and the government agency responsible for the management of oil resources on behalf of the government on behalf of Nigeria (emphasis mine)), can be critical in determining which paths are taken⁸⁸⁶.

For example, how deal-making occurs is likely to differ according to each type of settlement, both in line with the structural balance of power⁸⁸⁷ and more possible each coalition elite (the government agency responsible for the management of oil resources on behalf of the

⁸⁸⁶ Adrian Leftwich ‘ Beyond institutions: Rethinking the role of leaders, elites and coalitions in the industrial formation of developmental states and strategies’ (2010) 37(1) *Forum for Development Studies* 93-111

⁸⁸⁷ Mushtaq Khan ‘Political settlements and the governance of growth-enhancing institutions’ (2010) School of Oriental and African Studies 1-139 in Sam Hickey, Abdul-Gafaru Abdulai, Angelo Izama, and Giles Mohan The politics of governing oil effectively: a comparative study of two new oil-rich states in Africa. *ESID* (2015) Working Paper No. 54. Manchester, UK: University of Manchester. Available at <www.effectivestates.org> [Accessed] 15th May 2015 at 4

government and acting as a liaison between its government and oil companies and representatives of multinational oil companies in the host country (emphasis mine)) can maneuver and reach terms of the agreement⁸⁸⁸.

While these ensure the straining of the relationship between enforcement and justice such a strained relationship inadvertently creates privilege- a no-right justice which reduces the efficacy of rule of law on the activities of multinational companies causing death in its host country. For instance, liability relations guaranteed by the rule of law and understanding companies as the source of revenue generation while condoning its breach of health and safety creates privilege and no-right relations which provide a basis for the promotion of corruption and destruction of health and safety principles since there is no enforcement and justice.

This is true because authorities or agencies tasked with for example environmental duties in developing countries should be empowered by law to inspect regulated facilities and gain access to their records and equipment to determine if they comply. They will remind companies that under the law the villagers can monitor if companies are adhering to health and safety, keeping records of their compliance activities and status and reporting this information regularly to the enforcement programme and making the information available.

⁸⁸⁸ Adrian Leftwich ‘Beyond institutions: Rethinking the role of leaders, elites and coalitions in the industrial formation of developmental states and strategies’ (2010) 37(1) *Forum for Development Studies* 93-111 in Sam Hickey, Abdul-Gafaru Abdulai, Angelo Izama, and Giles Mohan The politics of governing oil effectively: a comparative study of two new oil-rich states in Africa. *ESID* (2015) WorkingPaper No. 54. Manchester, UK: University of Manchester. Available at www.effectivestates.org [Accessed] 15th May 2015 at 6

Writers like Tombs and Whyte who disagree with economic theorists argue understanding companies as the source of revenue generation while condoning its breach of health and safety can be because there has been a general tendency in law to downplay the seriousness of safety crimes by responding to them as noncriminal “accidents”⁸⁸⁹.

Another philosopher is Dworkin. ‘Law as integrity is Dworkin’s favoured constructive interpretation of the concept of law and is the best legal theory.

According to Dworkin, coercion of law is justified if the company for example portrays those characteristics which members of the public identify as ideally not integrity⁸⁹⁰. One may for example claim however that this company may be adhering to the tenets of the law in doing business but not only till people see that a company adheres to an organized mapped procedure which involves providing a safe working environment and safe working equipment/machinery for employees, regular maintenance of facilities, abstinence from human right abuses (emphasis mine) which have become part of the company then we grant that a company has integrity⁸⁹¹. Most significantly, researchers will ask first what is it the company is not getting right and can the law be used as a way of restoring the lost values which the public ordinarily think is the way companies should be responsible. Law as integrity fits legal research. This is so because it addresses the activities of the company in the place of work and it reminds

⁸⁸⁹ Tombs, Steve and Whyte, David *Safety crimes*. Devon, UK: (Willan Publishing, 2007)

⁸⁹⁰ Ronald Dworkin *Law’s Empire (Legal Theory)* (Hart Publishing, 1998)

⁸⁹¹ J.W Harris *Legal Philosophies* (2nd Ed. Butterworths, 1997)

members of the public to stand up for what is integrity⁸⁹². The emphasis here is that when the law is incoherent because of political reasons (former colonial master has an interest in the oil wealth of their colony) or for an economic reason (because a country is not diversified relying on one source of revenue generation) it could affect the legal enforceability in that country.

Another possible interference with enforceability is the fact that liabilities emanating from the shareholder's economic interest are disrupting justice.

It could be a result of economic self-interest as a driver of participation in new governance initiatives. (Could it be what MNCs are willing to do (by what health and safety laws stipulate and can afford?) Ford and Condon called it 'optimal corporate governance'⁸⁹³. This point bears further examination. One of the key insights on deterrence is true that shareholders' self-interest is in line with debates about optimal corporate governance (external pressures calling for a change) because of the desire by shareholders to make more and more profit and spend less. This can change especially when through external pressures, shareholders understand that in as much that they want returns on their investments, they and senior managers working for them need to understand that oil spillage needs to be cleaned up to avoid catching fire or poisoning fish which humans eat or poison water which humans drink (decoupling (via

⁸⁹² J.W Harris *Legal Philosophies* (2nd Ed. Butterworths, 1997)

⁸⁹³ Cristie Ford and Mary Condon "Introduction to New Governance and the Business Organization" (2011) 33(4) *Law and Policy* 449- 458 at 454

derivatives) of economic interest from the legal rights traditionally embedded in the shareholding relationship⁸⁹⁴).

In other words, the economic interests of shareholders are not static but are themselves reconstituted in the process of negotiating corporate governance norms⁸⁹⁵. Every businessperson and woman like making money but they can be thought ethics in business, the legal consequences of failure in health and safety (which is the payment of huge fines, loss of reputation) and the desire to extend hands to charity to the oil producing communities where they are situated and carries on business.

There are also instances where corruption can make the level of compliance difficult or become interference with enforceability.

Enforceability refers to the foundation of authority, in the form of public validation, which underpins the actions of state institutions; a regulator must demonstrate to its public that it is both procedurally fair and valid. Thirdly, responding to issues of public concern through policing and sentencing practices and the structure of offences, can help reduce the public ‘fear of crime’, which has become an increasingly important measure of the criminal justice system’s value⁸⁹⁶. There could be a problem with the economic form of a company and how companies

⁸⁹⁴ Supra at 454

⁸⁹⁵ Condon, Mary *Making Disclosure: Ideas and Interests in Ontario Securities Regulation 1945–1978* (University of Toronto Press, 1998) in Cristie Ford and Mary Condon “Introduction to New Governance and the Business Organization” (2011) 33(4) *Law and Policy* 449- 458 at 454

⁸⁹⁶Paul Almond “Corporate Manslaughter: Changing the Relationship between Criminal Law and the Corporation?” (2016) *Prison Service Journal Paper*

are likely to adhere to health and safety rules especially because money corrupts. This could make legal enforceability of law difficult and the level of compliance with the law varies from one country to another. Legal enforceability, corporate social responsibility practices as an effect of punishment for corporate manslaughter and corporate homicide offence is likely to produce a financial argument for less rather than more controls on the business activity as readers will read below since the costs of meeting new regulatory requirements on the part of businesses are generally more calculable than are the economic or social benefits of such regulation⁸⁹⁷; in other words, they cement the business case at the heart of government. It can be argued also that what can motivate companies to adhere to health and safety could be a result of external pressures, whether from consumers, the public, or the idea of companies risking their reputation as a company that formally observes ethics in business upon conviction.

The next chapter is chapter seven.

⁸⁹⁷ Tony Cutler and Philip James “Does Safety Pay? A critical account of the Health and Safety Executive Document: ‘The Costs of Accidents’” (1996) 10(4) *Work, Employment and Society* 755-765 in Tombs, Steve, and David Whyte. *Regulatory surrender: death, injury and the non-enforcement of law* (Institute of Employment Rights, 2010) P. 12

CHAPTER 7 CONCLUSION

7.1 INTRODUCTION

This thesis explains the problems hindering legal enforceability in Nigeria. From discussions above, it demonstrates that the Nigerian government and indeed all stakeholders (the youths, Nigerian police, the courts, government, local chiefs, foreign companies, non-governmental organizations, and boards mandated by laws to check, monitor and inspect the activities of MNCs in Nigeria) must ensure that the lives of Nigerians are not jeopardized. It is based on the questionnaire and interview data that a conclusion can be drawn that Nigeria needs a strong harmonized law (that will teach Nigerians (lawyers in court for example) and equip the Nigerian police to carry out corporate manslaughter investigations for accountability and enforcement framework like in the UK⁸⁹⁸) like Corporate Manslaughter and Corporate Homicide Law and other current laws like the African Charter on Human and Peoples' Right Comm no 155/96 paragraph 55 (2001), NEITI ACT 2007 etc mooted to aid enforceability in Nigeria.

What emerges from the research is that there is the question of awareness of Corporate Manslaughter and Corporate Homicide Law in Nigeria and these new laws and the Supreme court decision on parent company/ subsidiary company liability and locus standi). It is clear that lawyers interviewed were in no doubt that the Corporate Manslaughter and Corporate

⁸⁹⁸ Nojeem Amodu ‘‘Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria’’ (2017) 61(1) Journal of African Law 105-130 at 126

Homicide Bill 2015, when passed into law,⁸⁹⁹ will have an impact on companies carrying on business in Nigeria but there may be a problem with awareness of this bill, its advantages on corporate social responsibility (an improvement on corporate practice by companies in Nigeria).

Secondly, in line with the problem of awareness⁹⁰⁰ as explained above is the issue of can an ordinary Nigerian sue an oil company for corporate manslaughter resulting from environmental pollution and what can be the attitude of the courts in such cases.

Now, non-governmental organizations have the locus standi to sue multinational companies and it gets convicted for environmental degradation as readers read from the Supreme Court decision in *COPW .V. NNPC*⁹⁰¹.

This Supreme Court decision has supported what an interviewee (Onyechi Ikpeazu SAN) said that a non-governmental organization appears to be the best option. In a Nigerian case⁹⁰² involving a non-governmental organization⁹⁰³, a group of Nigerians whose aims are to carry

⁸⁹⁹ Ufuoma Veronica Awhefeada and Irero Akpodovhan “Corporate Manslaughter: Identifying Criminal Liability under Nigerian Law” (2020) 98 Journal of Law, Policy and Globalization 81-92

⁹⁰⁰ Tombari Bodo “Community Understanding of the Environmental and Socio-Economic Consequences of Petroleum Exploitation in Ogoni, Rivers State, Nigeria” (2018) 2(11) International Journal of Advanced Research and Publications 51-55

⁹⁰¹ *Centre for Oil Pollution Watch .v. Nigerian National Petroleum Corporation* [2019] 5 NWLR [Pt.1666] P.518

⁹⁰² This case (*Centre for Oil Pollution .v. Nigerian National Petroleum Corporation* FHC/L/CS/638/2004 and *Centre for Oil Pollution .v. Nigerian National Petroleum Corporation* CA/L/413/2008) has already been explained in a previous chapter above but is been used by this researcher again for clarity.

⁹⁰³ Margaret Downie and Denise Gosling “Offshore Helicopter Travel: Is the U.K. Oil and Gas Industry Failing Workers?” (2020) 29(4) 504-518 at 515

out remedial duties of cleaning oil spillage after oil spills caused by the activities of oil companies.

Thirdly, it is on sensitizing the whole of Nigeria on this Corporate Manslaughter Law, African Charter on Human and Peoples' Right Comm no 155/96 paragraph 55 (2001), NEITI ACT 2007 etc and what can be achieved from the enforcement of these laws in Nigeria.

Fourthly, is the loopholes in the various laws Nigeria have on the punishment of companies operating in Nigeria in the event of death at the workplace; death caused by oil pollution and gas flaring, higher fines, tougher enforcement of laws in Nigeria and senior management liability under the Corporate Manslaughter and Corporate Homicide Bill 2015. With the various CSR laws mooted in Nigeria like the NEITI Act 2007, African Charter on Human and Peoples' Right Comm no 155/96 paragraph 55 (2001) to mention just a few read side by side with the provision of Section 33 of the 1999 Constitution of Nigeria, companies in Nigeria can no longer take advantage of any loopholes to evade punishment for death at workplace or death caused by environmental degradation and human right abuse.

To conclude, this researcher, in addition, asserts the proposition that is advanced in this thesis, namely that the solution to punishing companies in Nigeria for corporate manslaughter (for failure in their corporate social responsibility practices) lies in the attitude of Nigerians. They collect bribes from multinational oil companies while the entire land; water and atmosphere in the Niger Delta continue to degrade leading to death.

The findings of this research highlight that companies in Nigeria and indeed Nigeria will likely understand corporate manslaughter as a crime, the import of the bill, take corporate manslaughter seriously and find a solution to the implementation of laws to punish companies in Nigeria as a start.

This can only happen when Nigeria has a law and a procedure to investigate charge, prosecute and convict companies in Nigeria for corporate manslaughter (bearing in mind the complexities of modern business structures and corporate decision making which is often a consequence of corporate policies and procedures rather than individual actions⁹⁰⁴) especially when the Nigerian government through senators and other lawmakers educate their constituents of the need to protect, preserve and promote human lives without violence causing human right abuse.

To resolve this situation to make companies comply with their legal responsibility, Nigeria needs a stricter law as Corporate Manslaughter Law to treat the following:

Need for an institutional framework: one that will specify in clearer terms who and who is responsible for which functions and empower task agencies to perform environmental duties which include inspecting regulated facilities and gaining access to their records and equipment to determine if they comply.

Below is a summary of the findings.

⁹⁰⁴ Lucy Henry “Criminalising Corporate Manslaughter in Ireland: Still Nobody to Blame? (2021) 24 Trinity College Law Review 10-34

7.2 FINDINGS OF THIS RESEARCH

This researcher found out that there are there so few prosecutions for corporate manslaughter even in the United Kingdom and in Nigeria. Several explanations immediately present themselves, but none is entirely convincing. It could be that the political culture in the country hinders the prosecution of companies. One of the reasons could be the power these companies wield or that because of economic interest, the host government chose not to prosecute multinational oil companies. It could also be a result of a delay in government institutions like the Nigerian police or the Crown Prosecution Service in the UK in carrying out and concluding an investigation⁹⁰⁵ of death caused by the activities of companies.

There has to be a change of mindset of everyone toward/ for best corporate practices most especially with the intervention of the Supreme Court in Nigeria with regards to the right to fair hearing for non-governmental organizations and recognition of parent company/subsidiary company liability in Nigeria and the African Charter which recognizes the right to life of every Nigerian citizen, and it is to be enforced in Nigeria. In political science staying positive on issues or what political scientists call 'positive political science' will then take on the role of accustoming the general mind to succumb to what is, and of theoretically as well as practically fixing the parameters of knowledge and action within the predominant configurations of the

⁹⁰⁵ Sarah Field and Lucy Jones "Is the Net of Corporate Criminal Liability Under the Corporate Homicide and Corporate Manslaughter Act 2007 Expanding?" (2015) 36(6) Business Law Review 215- 220

present day reality⁹⁰⁶. There needs to be a change of mind-set or a revolution by the citizens to change the attitude of the present-day host government and multinational oil companies towards a continued practice of corporate social responsibility by companies and its enforcement by the judiciary and government officials.

The desired result is the ability of the government to all the time punishes companies whose decision caused the death of someone and the company to know what went wrong. This is a 'proactive corporate fault'. Knowledge to this writer could mean what if the board of directors or senior managers ordered management to cut costs which led to short staffing, lack of preparation by and communication between employees and the resultant death.

Proactive corporate fault imposes liability where a company fails to make reasonable efforts to implement internal controls to prevent the commission of a crime⁹⁰⁷. Evidence of reasonable efforts to prevent organizational crime is gleaned from

- (i) The development and implementation of safeguards to prevent crime commission
and

⁹⁰⁶ G Lenzer Introduction: August Comte and Modern Positivism in Elizabeth Adams St. Pierre "Another Postmodern Report on Knowledge: Positivism and its Others" (2012) 15(4) International Leadership in Education 483-503

⁹⁰⁷ G.R. Skupski "The Senior Management Mens Rea: Another Stab at a Workable Integration of Organizational Culpability into Corporate Criminal Liability" (2012) 62(1/11) Case Western Reserve Law Review 267- 331

- (ii) The delivery of clear and convincing prohibitions of criminal behaviour in the form of business conduct codes, ethics codes, and compliance training programs⁹⁰⁸.

This writer believes that conviction of companies for corporate manslaughter then will be a good result because the company would like to prove that it implemented corporate social responsibility practices (staff training and supervision, provision of health and safety materials for staff, maintenance of equipment and some charity works to mention just a few). A company's corporate social responsibility for example should not only relate to making a profit, but companies also should strive to further some social good that goes beyond the interest of the company as well as the requirements of the law⁹⁰⁹.

Next is the original contribution to literature.

7.3 ORIGINAL CONTRIBUTION TO LITERATURE

This writer's original contribution to literature is to explain the various legal dimensions of legal enforceability regarding corporate manslaughter and corporate social responsibility and how it plays out in Nigeria. The idea is to explain how the framework that this researcher developed will be able to maximize the effectiveness of legal enforceability in Nigeria (Niger Delta) with the belief that this framework will be of wide application or usage (real-world

⁹⁰⁸ Supra at 301

⁹⁰⁹ Hanna Scramm-Klein, Joachim Zentes, Sascha Steinmann, Bernhard Swoboda, and Dirk Morschett "Retailer Corporate Social Responsibility Is Relevant to Consumer Behaviour" (2016) 55(4) Business and Society 550-575 at 551

application) in other parts of the world. This research will develop a framework that will ensure that corporate manslaughter as an offence (punishment for companies for failing in their corporate social responsibility duties) will be recognised in certain areas and becomes enforceable (a framework that delineates from corporate social responsibility of provision of pipe-borne water and corporate social responsibility practices that leads to death. In essence, it is not all corporate social responsibility that will be regulated by law) so as not to lead to corporate manslaughter. This means that for those incidences of oil spillage, gas flaring or human rights abuse, there has to be a certain level of framework that will encourage or mandate governments and oil companies to implement certain standards based on that framework to ensure that oil spillage, gas flaring and human right abuse does not lead to corporate manslaughter offence and charge.

Secondly, as part of epistemology, my research is empirical. My very essence of choosing empirical research is because of the very nature of empirical research itself since it combines my knowledge of the law with the actual action that is going on (corporate manslaughter and CSR plus legal enforcement plus hindrances to enforcement of laws on CMCH among MNCs) there that tries to shape or understand how one affects the other.

This is because the centre of this researcher's research is on enforceability and this researcher cannot explore the enforceability concept without actually knowing what is happening on the ground. The materials in law are not sufficient at the moment to help for a deeper understanding of the cultural, social, economic and other non-legal things that impact the development of the

law itself. Empirical research will give insight into the areas of enforceability, corporate manslaughter and corporate social responsibility and try to clarify the assumptions that exist in this area to give a broader understanding of the contending forces that play in making it difficult for enforceability to take root. By choosing empirical research, data from the fieldwork becomes relevant. This researcher is focusing here on how to redirect and reconstruct those methodologies to fit into the specifics of what the researcher is trying to achieve which is whether the absence of a coherent legal framework to legally enforce all aspects of corporate social responsibility affects the legal enforceability from incidences that leads to corporate manslaughter offences which in this research are oil spillage, gas flaring and human right abuses by oil and gas companies in the Niger Delta? Whether there is a link between corporate manslaughter and corporate social responsibility through the lens of legal enforcement, the reasons countries adopt laws in enforcing corporate social responsibility as a punishment for corporate manslaughter and corporate homicide and what are the attitude of the courts on legal enforceability?

This makes my research original.

Thirdly, this research will stimulate corporate accountability through the enforcement of the law. This means a lesson other companies can learn from the enforcement of CSR and corporate manslaughter under corporate liability (because liability is easier with regards to enforcement than an individual liability (BP deepwater horizon case: liability of supervisors than BP itself)) for corporate manslaughter. This is so that from this research MNCs in Nigeria will learn how

enforcement works for accountability and companies would not want to pay huge unlimited fines and or risk reputational damage under the publicity order. This research will therefore encourage Nigerian lawmakers to pass the CMCHB 2015 Nigeria to revive the enforcement of CSR and corporate manslaughter and make the Nigerian judiciary to be independent with their judgment. This also means that the Nigerian judiciary will then have the corporate manslaughter law and claimants can argue their cases for human rights abuses or death caused by the activities of companies in Nigerian courts.

Fourthly, this researcher is recommending with regards to piercing of corporate veil, that procedural pitfall in Nigeria's judicial system could be the problem of limited liability hindering parent company/subsidiary company liability as witnessed in Okpabi's case at the Court of Appeal. Keane defined limited liability as "where the liability of the members for the debts and wrongs of the company can be limited to the amount unpaid on the shares which they own in the company"⁹¹⁰. The doctrine arose as a result of the need to protect the individual shareholder and encourage them to support industrial revolution era companies as it races to modernisation⁹¹¹. The application of this revolution of limited liability in parent company and its liability is a huge example⁹¹².

⁹¹⁰ Brian Hutchinson *Keane on Company Law* (5th Edition, Bloomsbury Professional, 2016) at 5

⁹¹¹ E.A French, "The Origin of General Limited Liability in the United Kingdom" (1990) 21(18) *Accounting and Business Research* 15 in Eoin Jackson "The Case for Eco-Liability: Post Okpabi Justifications for the Imposition of Liability on Parent Companies for Damage caused to the Environment by their Subsidiaries" (2021) 7(1) *LSE Law Review* 61-85

⁹¹² Eoin Jackson "The Case for Eco-Liability: Post Okpabi Justifications for the Imposition of Liability on Parent Companies for Damage caused to the Environment by their Subsidiaries" (2021) 7(1) *LSE Law Review* 61-85 at 63

The courts rejects treating the parent company as a single economic entity since it will equate to liability being automatically imposed on the parent company⁹¹³. It focuses instead is on treating each company, regardless of whether it is a parent company or a subsidiary, as a separate entity. Therefore, the parent company is treated as effectively identical to any other shareholder⁹¹⁴. This is where the problem of parent company/subsidiary company liability at the Court of Appeal in Okpabi's case⁹¹⁵ emanated. The conclusion according to this researcher is that this is just another excuse by the judge to rule that Shell is not responsible for the operational activities of its subsidiaries abroad (host country (Nigeria)) and so lacks jurisdiction to entertain this case (Okpabi's case). With due respect in case like this⁹¹⁶ (from the decision of Lord Collins), judges were aware that the result of their work would or might become law. In a similar case (piercing of corporate veil) of *Prest .v. Petrodel Resources Limited and Others*⁹¹⁷ which happened in England (just after Okpabi's case to prove that liability is liability everywhere and the court in England in Okpabi's case only chose to pay lip service to liability) three respondent companies at the Court of Appeal in England challenged the orders made against them on the ground that there was no jurisdiction for the corporate veil to be lifted to order the company's property (allegedly belonging to one of the owners of the company now dead and who is the late husband of the appellant) to be transferred to the wife in satisfaction of the husband's debt to the wife⁹¹⁸. Lord Sumption stood his ground and held on disregarding the separate legal personality of the parent company in order to impose upon the company's

⁹¹³ *Adams .v. Cape Industries Plc* [1990] 2 WLR 2 WLR 657

⁹¹⁴ *Re Poly Peck International Plc* (in administration) (No 5) [1996] WC2A 2LL

⁹¹⁵ *Okpabi & Ors v Royal Dutch Shell plc & Anor* (Rev 1)[2018] EWCA Civ 191

⁹¹⁶*Okpabi & Ors v Royal Dutch Shell plc & Anor* (Rev 1)[2018] EWCA Civ 191

⁹¹⁷ *Prest .v. Petrodel Resources Limited and Others* [2013] UKSC 34 On appeal from [2012] EWCA Civ 1395

⁹¹⁸ Facts coming from the court judgment in *Prest .v. Petrodel Resources Limited and Others* [2013] UKSC 34 On appeal from [2012] EWCA Civ 1395

liability which can only be that of the parent company personally⁹¹⁹. According to His Lordship in this case, the parent company is a mere nominee holding the property on trust for the company. Lord Mance at ratio 97 agreed that the appeal to lift the veil of the respondent Petrodel Resources Limited and Others be allowed for the reason given by Lord Sumption⁹²⁰.

Nigeria needs to vest jurisdiction onto either a body that can adequately prosecute by restricting it to the office of the attorney general who may in his or her own discretion create a special unit in that regard because corporate manslaughter and corporate social responsibility is a highly specialized area to pierce the corporate veil of incorporate in order for enforceability to take root.

The Supreme Court decision in Okpabi's case is a welcome development with regards to enforceability of CSR and corporate manslaughter but Nigeria needs more court judgment to finally settle the issue of procedural pitfalls with regards to enforcement of CSR and corporate manslaughter against MNCs in the Niger Delta area of Nigeria.

Finally, readers may ask what about the liability of directors? If directors and senior level managers are not held liable (by imprisonment and disqualification from holding the office of company director), the problem remains that they themselves escape appropriate sanctioning.

On the other hand, there is evidence that the threat of prosecution and imprisonment keeps a

⁹¹⁹ Facts coming from the court judgment in *Prest .v. Petrodel Resources Limited and Others* [2013] UKSC 34 On appeal from [2012] EWCA Civ 1395 Ratio 93

⁹²⁰ Facts coming from the court judgment in *Prest .v. Petrodel Resources Limited and Others* [2013] UKSC 34 On appeal from [2012] EWCA Civ 1395 Ratio 97

manager's mind firmly on safety, has deterrent effect⁹²¹, and sends a strong message to the community that culpable conduct will not be tolerated⁹²². Under the provision of Corporate Manslaughter and Corporate Homicide Act 2007 senior management or executive director has no secondary liability in relation to the offence of corporate manslaughter. In this respect, it is perhaps regrettable that members of the company's senior management and especially the company's board of directors are not to be held culpable for the inept corporate organisation and management practices which led to the company's conviction for corporate manslaughter⁹²³. Ultimately, the responsibility for the policies and management structures of a company reside in the company's command centre, the collective directing mind of a company is the company's board of directors. To this end, it is suggested that following a company's conviction for corporate manslaughter, every executive member of the board of directors should also be subjected to punishment by way of unlimited fine, with individual directors of oil companies operating in Nigeria being exempt from liability in circumstances, where, for example, a director establishes that he or she took reasonable steps to prevent the commission

⁹²¹ Dorothy Thornton, Neil Cunningham and Robert Kagan "General Deterrence and Corporate Environment Behaviour" (2005) 27(2) Law and Policy 262- 288

⁹²² Des Taylor and Geraldine Mackenzie "Staying Focused on the Big Picture: Should Australia Legislate for Corporate Manslaughter Based on United Kingdom Model?" (2013) 37(2) Criminal Law Journal 99-113

⁹²³ Stephen Griffin "Corporate Manslaughter: A Radical Reform?" (2007) 71 The Journal of Criminal Law 151-166 164

of the offence. As a result of this secondary liability, company directors would also be made subject to the disqualification process⁹²⁴. This makes my research original.

According to Griffin, a director's secondary liability and potential disqualification from any future involvement in the management of the convicted company would penalise the power base of the company, the human constituents of the company who were ultimately responsible for the improper management practices or organisation of the convicted corporate entity⁹²⁵. It is submitted that punishing members of the board of directors would accelerate the desire on the part of the company's power base to ensure greater compliance with health and safety (legal, ethical, economic and philanthropic responsibility of CSR)⁹²⁶. If corporate social responsibility is left to be purely voluntary, oil companies will not make meaningful contribution towards environmental and human right abuses in Africa⁹²⁷. However, even with what law can do, compliance to corporate social responsibility can be limited. For example, CSR proponents use economic incentives as the basis of generating compliance with CSR norms. For the most part, these economic incentives and disincentives are linked to corporate reputation⁹²⁸. Darsono suggests that a company on the face of it is corporate socially responsible when it adheres and practices norms and stakeholder- friendly values in the daily business activities to maximize their positive impacts thereby reducing to the barest minimum their

⁹²⁴ Stephen Griffin "Corporate Manslaughter: A Radical Reform?" (2007) 71 *The Journal of Criminal Law* 151-166 164

⁹²⁵ Stephen Griffin "Corporate Manslaughter: A Radical Reform?" (2007) 71 *The Journal of Criminal Law* 151-166 164

⁹²⁶ Stephen Griffin "Corporate Manslaughter: A Radical Reform?" (2007) 71 *The Journal of Criminal Law* 151-166 164

⁹²⁷ Emeseh Engobo and Songi Ondotimi "CSR, Human Rights Abuse and Sustainability Report Accountability" (2014) 56(2) *International Journal of Law & Management* 136-151

⁹²⁸ Jędrzej .G. Frynas "Corporate Social Responsibility in the Oil and Gas Sector" (2009) 2(3) *The Journal of World Energy Law and Business* 178-195

negative impacts on all stakeholders⁹²⁹. Stakeholders include employee, the communities, company business partners even the environment⁹³⁰ to mention just a few.

⁹²⁹Licen Indahwati Darsono “Corporate Social Responsibility and Marketing What Works and What Does Not” (2009) 11(2) *International Journal of Business* 275-293 in Musa Ahmed, Yahaya Yusuf, Louise McArdle and Gbemisola Banjoko “Corporate Social Responsibility in Nigeria’s Oil and Gas Industry: The Perspective of the Industry” (2013) 3(2) *International Journal of Process Management and Bench Marking* 101-135

⁹³⁰ Imo Ekpoh and Ajah Obia “The Role of Gas Flaring in Rapid Corrosion of Zinc Roofs in the Niger Delta Region of Nigeria” (2010) 30(4) *Environmentalist* 347-352 in Musa Ahmed, Yahaya Yusuf, Louise McArdle and Gbemisola Banjoko “Corporate Social Responsibility in Nigeria’s Oil and Gas Industry: The Perspective of the Industry” (2013) 3(2) *International Journal of Process Management and Bench Marking* 101-135; M. P Coelho, José António Filipe, and Manuel Alberto M Ferreira “Environmental Sustainability as a Dimension of Corporate Social Responsibility: The Case of CGD-Caixa Geral de Depósitos/Portugal” (2011) 1 *International Journal of Academic Research* 1 (2011): 610-617 in Musa Ahmed, Yahaya Yusuf, Louise McArdle and Gbemisola Banjoko “Corporate Social Responsibility in Nigeria’s Oil and Gas Industry: The Perspective of the Industry” (2013) 3(2) *International Journal of Process Management and Bench Marking* 101-135

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Court Transcript, p 34

R. v. Great Western Trains Co., Unreported, Central Criminal Court, 30 June 1999, Official

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Prosecuting manufacturers who injure the lives of Nigerians

<http://www.youtube.com/watch?v=2Wzu6FZTW0g&list=PL8XY->

[fzdgBaew2yvzIB_MpVoQ8EmLGrl0](http://www.youtube.com/watch?v=2Wzu6FZTW0g&list=PL8XY-fzdgBaew2yvzIB_MpVoQ8EmLGrl0)

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APPENDIX

APPENDIX 1: QUESTIONNAIRE

QUESTIONNAIRE

INTRODUCTION

My name is Samuel Nzegwu a PhD Research student University of Bolton United Kingdom.

Please may you kindly fill out this questionnaire for me? Multinational oil companies and oil for oil producing economies is a major sector in developing countries. I am looking at the activities of multination oil companies in the Niger Delta. Who takes decisions and whether these decisions causes the death of an employee or someone else?

Please Tick x in the right box

What is your Gender?

Male Female X

What is your Age?

15- 25yrs 26-45yrs X 46-56yrs 57-65 66-76 Others

How long have you worked for this company?

0-5yrs 6- 10yrs 11-20yrs 15 -20yrs 20-25yrs 26-

45

46-56 Others

What community in Rivers State are you from?

Abua/Oduai Ahoada East Ahoada West Akuku Toru Andoni

OpobouNkoro

Asari Toru Bonny Degema Eleme Emuoha

Etche

Gokana Ikwere Khana Obio/Akpor Ogba

EgbeomaNdoni Ogu Bolo

Port-Harcourt Omumma Okrika Oyigbo Tai Bonny

Others

What community in Bayelsa State are you from?

Brass EkaremorKolokum Opokuma Nembe Ogbia

Segboma

Southern Ijaw

Other States

Abia State Anambra State X Edo State Imo State Ondo State Others

What is your highest qualification?

Primary School Secondary School University First Degree

Master's Degree X Doctor of Philosophy

What is your position?

Full Time Staff X Part Time Staff Temporary Staff

Contract Staff Independent Contractor

What do you do?

Civil servant local chief Villager Lecturer Politician/lawmaker

Businessman/ Business Woman Judge/Magistrate Lawyer

Nigerian Youth others

Where do you work?

On Shore off Shore Company Parliament University

Business Judiciary Others

Have you witnessed death caused by Gas Flaring or oil Pollution?

Yes No I Think so Not Sure Prefer Not to Say

How many people have died as a result of oil pollution and/or Gas Flaring by your company

from its oil exploration in this community?

Many Few Very Few Prefer Not to say Don't Know

Are you aware of the 2015 Corporate Manslaughter and Corporate Homicide Bill?

Yes No Not Really Prefer Not to say

How did you get to know of the Nigerian Corporate Manslaughter and Corporate Homicide Bill?

On the Television in News Paper From a regulatory agency From a Friend

Others

Do you think this Corporate Manslaughter and Corporate Homicide Bill is long overdue?

Most Definitely No Not Sure May be

Yes Prefer Not to Say

Do you think the introduction of Corporate Manslaughter Law by the Nigerian Government would reduce death at work place, death caused by environmental pollution or death caused by human right abuse (death of Nigerian youths protesting activities of oil Companies)?

Most Definitely No Not Sure May be
 Prefer Not to Say

Do you think the introduction of Corporate Manslaughter Law by the Nigerian Government serve as an example of a law to reduce death at work place, punish companies for corporate manslaughter and is worthy of emulation by other oil producing countries in Africa and Asian since Nigeria (apart from UK) is about to pass a Corporate Manslaughter and Corporate Homicide Bill?

Most Definitely No Not Sure May be
 Prefer Not to Say

How concerned are you about promoting a safe working environment by servicing equipment, training staff, buying safe equipment, regular clean-up of oil spillage, listening to junior staff of any malfunction?

Extremely Concerned X Very Concerned Moderately Concerned

Are laws in Nigeria currently weak to punish companies for corporate manslaughter?

Yes X No Maybe Prefer Not to Say

Do you have any procedure or mechanism in place to implement the Corporate Manslaughter and Corporate Homicide Bill?

Yes X No Maybe Prefer Not to Say

Have there been any changes in your health and safety principles/ procedures as a result of the bill?

Yes X No Maybe Prefer Not to Say

APPENDIX 2: INFORMED CONSENT FORM

Example 1 : Informed Consent Form

Corporate Manslaughter and its Relationship with Corporate social Responsibility

In Nigeria.

*This form is to be completed independently by the participant.

Name: _____

	Yes	No
<p>1. I have read and understood the attached information sheet and have had the opportunity to ask questions.</p> <p>OR: I have had the attached information sheet explained to me and have had the opportunity to ask questions.</p>		
<p>2. I understand that I can withdraw from the study at any time without having to give any reasons.</p>		

<p>3. I understand that withdrawing from the study will not affect my parole or length of prison sentence.</p>		
<p>4. I am aware of, and consent to the tape recording of my discussion with the researcher, OR</p> <p>I am aware of, and consent to the researcher taking notes during the course of the discussion.</p>		
<p>5. I agree with the publication of the results of this study in a research journal. I understand that I will not be identified in these publications.</p>		
<p>6. I give consent that I would like to be involved in this research project.</p>		

APPROVED BY THE UNIVERSITY OF BOLTON RESEARCH ETHICS COMMITTEE

L:\AQAS\Common\Research\Research Ethics\Example 1 Consent Form.doc

APPENDIX 3: PARTICIPANT'S INFORMATION SHEET OR FORM

Example 1 : Participant Information Sheet

Corporate Manslaughter and its Relationship with Corporate Social Responsibility in Nigeria

My name is __Samuel Nnamdi Nzegwu_____. I am a researcher studying at the University of Bolton. We are working on a project looking at Corporate Manslaughter and its effect on Corporate Social responsibility among Oil Companies. I am talking to a number of people about their knowledge of corporate manslaughter law , corporate Social Responsibility among companies and their experiences of death at workplaces and in their communities. We have not chosen you because we think you are reporting a/ your company – it is simply that you have knowledge of companies.

What will I have to do if I take part?

If you agree to take part, we will ask you to answer some questions. There aren't any right or wrong answers – we just want to hear about your opinions. The discussion should take about an hour at the longest. Please note that some of the questions will relate to your personal history and experiences in prison.

Do I have to take part?

No, taking part is voluntary. If you don't want to take part, you do not have to give a reason and no pressure will be put on you to try and change your mind. You can pull out of the discussion at any time. Please note, if you choose not to participate, or pull out during the discussion this will not affect your current prison sentence or your chances of parole.

If I agree to take part what happens to what I say?

All the information you give us will be confidential and used for the purposes of this study only. The data will be collected and stored in accordance with the Data Protection Act 1998 and will be disposed of in a secure manner. The information will be used in a way that will not allow you to be identified individually. Prison authorities will not be able to link any information provided to you. However, we must inform management if:

1. you disclose details of any potential offence within this institution, which could lead to an adjudication. So, you should not mention anybody's name during this discussion;
2. you disclose details of any offence for which you have not yet been arrested, charged or convicted;

3. something you have said leads us to believe, that either your health and safety, or the health and safety of others around you, is at immediate risk;

4. something you have said leads us to believe that there is a threat to security.

In these situations, we will inform a member of prison staff, who may take the matter further.

What do I do now?

Think about the information on this sheet, and ask me if you are not sure about anything. If you agree to take part, sign the consent form. The consent form will not be used to identify you. It will be filed separately from all other information. If, after the discussion, you want any more information about the study, tell your personal officer, who will contact me.

If you feel upset after the discussion and need help dealing with your feelings, it is very important that you talk to someone right away.

The contact details for the person to talk to are:

Name: _____

THANK YOU VERY MUCH FOR YOUR HELP!

APPROVED BY THE UNIVERSITY OF BOLTON RESEARCH ETHICS
COMMITTEE

L:\AQAS\Common\Research\Research Ethics\Example 1 Participant.doc

APPENDIX 4: PROPOSAL FOR DATA COLLECTION SAMUEL NNAMDI NZEGWU

My name is Samuel Nnamdi Nzegwu a PhD research student at the University of Bolton Greater Manchester United Kingdom. I am research on Corporate manslaughter and its relationship with Corporate Social Responsibility if Nigeria.

I will be glad if I am given opportunity to collect data from you and your company.

Below is the reason for my data collection.

THE RESEARCHER'S REASON FOR COLLECTING DATA

Ostensibly, so many researchers in Nigeria have accused oil companies of oil spillage, pipeline leaks; its resultant effect like fire outbreak, death from the activities of oil companies and explosions causing death. This is because there is no strong law to bring companies to justice in Nigeria and mainly because companies as occupiers of premises in Nigeria owes a duty of care to the employees and the villagers in situations in which the damage is brought about by

the action of a third party. For example, a company which failed to carry out clean up of oil spillage which is toxic.

WHAT THIS RESEARCHER INTENDS TO ACHIEVE BY THIS DATA COLLECTION

PROCESS

This exercise will focus on corporate manslaughter law improving corporate social responsibility improving working environment of employees, health and safety rules through reduction of oil spillage and address the accountability among companies. For example, it is believed that companies are expected to make a positive contribution with regard to improvements in environmental performance, development and employee welfare. As a citizen, this will lead to more confidence in business; it will help reduce diseases since oil spillage flows into drinking water that the communities drink. From the participants, this researcher will elicit from them whether regulation is necessary for the fulfilment of corporate social responsibility and corporate crime (or in this research corporate manslaughter) is a criminal activity by persons of high social status and respectability who use their occupational position as a means to violate the law.

Secondly, if law is used to correct companies for their ills, will it force companies to treat prosecution as a managerial tactic (Publicity Order (announcement of conviction for corporate manslaughter in national newspapers and will punishment make the name of a company to have stigma). The goal is that to the extent that criminal prosecutions are feared than other

sanction sources like arbitration, will companies in Nigeria buttress their internal compliance systems and cooperate more with regulatory agencies to avoid criminal sanctions.

Many Thanks.

...SNNZEGWU.....

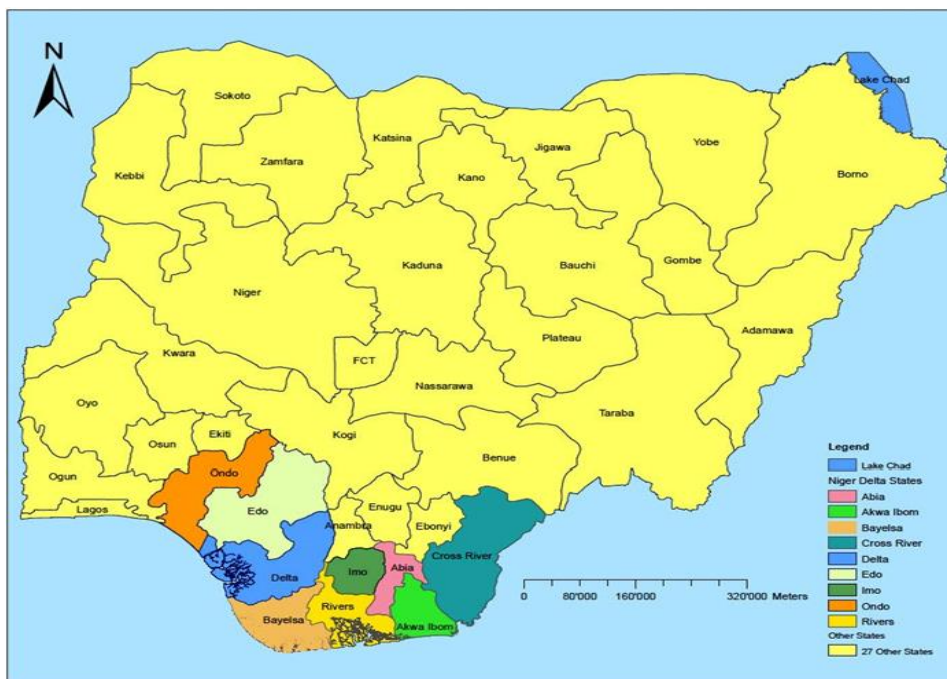
Samuel Nnamdi Nzegwu

PhD Student Bolton Law School

APPENDIX 5: MAP OF NIGER DELTA AREA OF NIGERIA



APPENDIX 6: MAP OF NIGERIA



APPENDIX 7: RESEARCH ETHICS CHECKLIST

Form RE1

This checklist should be completed for every research project which involves human participants. It is used to identify whether a full application for ethics approval needs to be submitted.

Before completing this form, please refer to the University Code of Practice on Ethical Standards for Research Involving Human Participants. The principal investigator and, where the principal investigator is a student, the supervisor, is responsible for exercising appropriate professional judgment in this review.

This checklist must be completed before potential participants are approached to take part in any research.

Section I: Applicant Details

1. Name of Researcher (applicant):	NZEGWU SAMUEL NNAMDI
2. Status (please click to select):	POSTGRADUATE PHD STUDENT
3. Email Address:	SNNIMPO@BOLTON.AC.UK
4a. Contact Address:	BROOMFIELD STUDENT HOUSE 33-35 WIGAN ROAD BOLTON. BL3 5PX
4b. Telephone Number:	

Section II: Project Details

5. Project Title:	CORPORATE MANSLAUGHTER AND ITS RELATIONSHIP WITH CORPORATE SOCIAL RESPONSIBILITY IN NIGERIA.
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Section III: For Students Only:

<p>6. Course title and module name and number where appropriate</p> <p>School/Centre: University of Bolton. Bolton Business School.</p>	<p>CORPORATE MANSLAUGHTER AND ITS RELATIONSHIP WITH CORPORATE SOCIAL RESPONSIBILITY IN NIGERIA.</p> <p>THE UNIVERSITY OF BOLTON. BOLTON LAW SCHOOL.</p>
<p>7. Supervisor's or module leader's name:</p>	<p>DR Rachael Ntongho and Dr Baomin Qi</p>
<p>8. Email address:</p>	<p>R.Ntongho@bolton.ac.uk, B.Qi@bolton.ac.uk</p>
<p>9. Telephone extension::</p>	<p>01204903493</p>

Declaration by Researcher (Please tick the appropriate boxes)

<p>x <input type="checkbox"/></p>	<p>I have read the University's Code of Practice</p>
<p>x <input type="checkbox"/></p>	<p>The topic merits further research</p>
<p>x <input type="checkbox"/></p>	<p>I have the skills to carry out the research</p>
<p>x <input type="checkbox"/></p>	<p>The participant information sheet, if needed, is appropriate</p>

x <input type="checkbox"/>	The procedures for recruitment and obtaining informed consent, if needed, are appropriate
x <input type="checkbox"/>	The research is exempt from further ethics review according to current University guidelines

Comments from Researcher, and/or from Supervisor if Researcher is Undergraduate or

Taught Postgraduate student:

MY PHD RESEARCH PROGRAMME FROM THE ONSET HAS BEEN A GREAT LEARNING EXPERIENCE IT BROADENED MY LEARNING ABILITIES. I DO NOT WRITE THE WAY I USE TO WRITE. NOW I WRITE MORE LOGICALLY AND CRITICALLY. I ALWAYS TAKE COMMENTS FROM MY TWO SUPERVISORS ONBOARD.

Section IV: Research Checklist

Please answer each question by ticking the appropriate box:

	YES	NO
1. Will the study involve participants who are particularly vulnerable or who may be unable to give informed consent (e.g. children, people with learning disabilities, emotional difficulties, problems with understanding and/or communication, your own students)?	<input type="checkbox"/>	<input checked="" type="checkbox"/> x
2. Will the study require the co-operation of a gatekeeper for initial access to the groups or individuals to be recruited (e.g. students at school, members of self-help group, residents of nursing home)?	<input type="checkbox"/>	<input checked="" type="checkbox"/> x
3. Will deception be necessary, i.e. will participants take part without knowing the true purpose of the study or without their knowledge/consent at the time (e.g. covert observation of people in non-public places)?	<input type="checkbox"/>	<input checked="" type="checkbox"/> x
4. Will the study involve discussion of topics which the participants may find sensitive (e.g. sexual activity, own drug use)?	<input type="checkbox"/>	<input checked="" type="checkbox"/> x

5. Will drugs, placebos or other substances (e.g. food substances, alcohol, nicotine, vitamins) be administered to or ingested by participants or will the study involve invasive, intrusive or potentially harmful procedures of any kind?	<input type="checkbox"/>	<input checked="" type="checkbox"/> x
6. Will blood or tissues samples be obtained from participants?	<input type="checkbox"/>	<input checked="" type="checkbox"/> x
7. Will pain or more than mild discomfort be likely to result from the study?	<input type="checkbox"/>	<input checked="" type="checkbox"/> x
8. Could the study induce psychological stress or anxiety or cause harm or negative consequences beyond the risks encountered in normal life?	<input type="checkbox"/>	<input checked="" type="checkbox"/> x
9. Will the study involve prolonged or repetitive testing?	<input type="checkbox"/>	<input checked="" type="checkbox"/> x
10. Will financial inducements (other than reasonable expenses and compensation for time) be offered to participants?	<input type="checkbox"/>	<input checked="" type="checkbox"/> x
11. Will participants' right to withdraw from the study at any time be withheld or not made explicit?	<input type="checkbox"/>	<input checked="" type="checkbox"/> x
12. Will participants' anonymity be compromised or their right to anonymity be withheld or information they give be identifiable as theirs?	<input type="checkbox"/>	<input checked="" type="checkbox"/> x
13. Might permission for the study need to be sought from the researcher's or from participants' employer?	<input type="checkbox"/>	<input checked="" type="checkbox"/> x

14. Will the study involve recruitment of patients or staff through the NHS?	<input type="checkbox"/>	<input checked="" type="checkbox"/> x
--	--------------------------	---------------------------------------

If ALL items in the Declaration are ticked AND if you have answered NO to ALL questions in Section IV, send the completed and signed Form RE1 to your School/Centre Research Ethics Officer for information. You may proceed with the research but should follow any subsequent guidance or requests from the School/Centre Research Ethics Officer or your supervisor/module leader where appropriate. Undergraduate and taught postgraduate students should retain a copy of this form and submit it with their research report or dissertation (bound in at the beginning). MPhil/PhD students should submit a copy to the Board of Studies for Research Degrees with their application for Registration (R1). Work which is submitted without the appropriate ethics form will be returned unassessed.

If ANY of the items in the Declaration are not ticked AND / OR if you have answered YES to ANY of the questions in Section IV, you will need to describe more fully in Section V of the form below how you plan to deal with the ethical issues raised by your research. This does not mean that you cannot do the research, only that your proposal will need to be approved by the School/Centre Research Ethics Officer or School/Centre Research Ethics Committee or Subcommittee. When submitting the form as described in the above paragraph you should

substitute the original Section V with the version authorized by the School/Centre Research Ethics officer.

If you answered YES to *question 14*, you will also have to submit an application to the appropriate external health authority ethics committee, after you have received approval from the School/Centre Research Ethics Officer/Committee and, where appropriate, the University Research Ethics Committee.

Section V: Addressing Ethical Problems

If you have answered YES to any of questions 1-12 please complete below and submit the form to your School/Centre Research Ethics Officer.

Project Title
CORPORATE MANSLAUGHTER AND ITS RELATIONSHIP WITH CORPORATE SOCIAL RESPONSIBILITY IN NIGERIA.

Principal Investigator/Researcher/Student
SAMUEL NNAMDI NZEGWU

Supervisor
DR RACHAEL NTONGHO

Summary of issues and action to be taken to address the ethics problem(s)

Please note that it is your responsibility to follow the University's Code of Practice on Ethical Standards and any relevant academic or professional guidelines in the conduct of your study. This includes providing appropriate information sheets and consent forms, and ensuring confidentiality in the storage and use of data. Any significant change to the design or conduct of the research should be notified to the School/Centre Research Ethics Officer and may require a new application for ethics approval.

Signed: SAMUEL.N. NZEGWU Principal

Investigator/Researcher

Approved: R.N. Supervisor or module leader (where appropriate)

Date: 11/01/2018

For use by School/Centre Research Ethics Officer:

No ethical problems are raised by this proposed study - Retain this form on record

Appropriate action taken to maintain ethical standards

The research protocol should be revised to eliminate the ethical concerns or reduce them to an acceptable level, using the attached suggestions

Please submit School/Centre Application for Ethics Approval
(Form RE2(D))

Please submit University Application for Ethics Approval
(Form RE2(U))

Signed: _____

Date: _____

APPENDIX 8 UNIVERSITY RESEARCH ETHICS COMMITTEE

Form RE2(U)

UNIVERSITY APPLICATION FOR APPROVAL OF A PROJECT INVOLVING HUMAN PARTICIPANTS, DATA OR MATERIAL

Registration No. (*office use only*)

Period of Approval (*office use only*) /...../..... to /...../.....

Approval is for two years from the date the full approval letter was issued or six months after the study is due to be completed, whichever is longest.

This application form is to be used by researchers seeking approval from the University Research Ethics Committee. *Applications must be completed on the form; ANSWERS IN THE FORM OF ATTACHMENTS WILL NOT BE ACCEPTED, EXCEPT WHERE INDICATED. No*

handwritten applications will be accepted. Applicants should contact the appropriate School/Centre Research Ethics Officer to establish procedures for research ethics review in the School/Centre. Applicants must go through School/Centre procedures and the School/Centre Research Ethics Officer must sign off the application before it is copied and submitted to the Secretary for the University Research Ethics Committee.

When the School/Centre Research Ethics Officer has signed the application, please submit the completed application to the Secretary to the University Research Ethics Committee, Quality Assurance and Enhancement, Services & Administration Centre, Eagle. Only those applications received two weeks prior to the next meeting will be considered. Alternatively, multiple copies of the application may be submitted to the Secretary up to 11 days prior to the meeting.

Potential participants must not be contacted until written approval has been received from the Committee.

PROJECT TITLE: CORPORATE MANSLAUGHTER AND ITS RELATIONSHIP WITH
CORPORATE SOCIAL RESPONSIBILITY IN NIGERIA

START DATE: 20/01/2018 END DATE: 30/03/2018

THIS PROJECT IS: Staff Research Project

(tick as many as Research Student Project x

apply)

Project by External Researcher

(please give details)

Project by member of staff from another institution

*(please give details of Post and Institution, including
address)*

MPhil/PhD student from another institution

*(please give details of Department and Institution,
including address)*

Masters student from another institution

*(please give details of Department and Institution,
including address)*

Class Research

(please give details of the programme, module and year)

PRINCIPAL INVESTIGATOR(S): *Research students can be listed as Principal Investigator
after their supervisors. The Director of Studies should also be identified.*

<i>TITLE & NAME</i>	<i>POST</i>	<i>DEPARTMENT</i>	<i>PHONE</i>	<i>EMAIL</i>
PHD RESEARCH STUDENT. SAMUEL NNAMDI NZEGWU	STUDE NT	LAW		SNN1MPO@BO LTON.AC.UK

LECTURER. DR RACHAEL NTONGHO	DIREC TOR OF STUDIES	LAW		R.NTONGHO@B OLTON.AC.UK

OTHER INVESTIGATORS:

<i>TITLE & NAME</i>	<i>POST</i>	<i>DEPARTMENT</i>	<i>PHONE</i>	<i>EMAIL</i>

ADDRESS FOR BROOMFIELD HOUSE 33/35 WIGAN ROAD BOLTON

CORRESPONDENCE LANCASHIRE UNITED KINGDOM

(PRINCIPAL INVESTIGATOR):

DECLARATION BY INVESTIGATORS

The information contained herein is, to the best of my knowledge and belief, accurate. I have read the University's Code of Practice for Ethical Standards for Research Involving Human Participants, and accept responsibility for the conduct of the procedures set out in the attached application in accordance with the guidelines, the University's Code of Practice and any other condition laid down by the University's Research Ethics Committee. I have attempted to identify all risks related to the research that may arise in conducting this research and acknowledge my obligations and the rights of the participants.

I and my co-investigators or supporting staff have the appropriate qualifications, experience and facilities to conduct the research set out in the attached application and to deal with any emergencies and contingencies related to the research that may arise.

Signature(s) SNNZEGWU

30/11/2017

):

Date

Principal Investigator(s)

Print name(s) of Principal Investigator(s) in

block letters

SAMUEL NNAMDI NZEGWU

DECLARATION BY SCHOOL/CENTRE RESEARCH ETHICS OFFICER

DATE APPLICATION RECEIVED: / /

DATE ETHICS REVIEW COMPLETED / /

The School/Centre Research Ethics Committee has reviewed this project and considers the methodological/technical and ethical aspects of the proposal to be appropriate to the tasks proposed and recommends approval of the project. The School/Centre Research Ethics Committee considers that the investigator(s) has/have the necessary qualifications, experience and facilities to conduct the research set out in the attached application, and to deal with any emergencies and contingencies that may arise.

Comments/Provisos:

The project meets the criteria of minimal risk and chair's action is recommended (delete if inapplicable)

Signature:

/ /

Date

Print name in block letters

UNIVERSITY RESEARCH ETHICS COMMITTEE USE ONLY

Date application / /

received:

*COLLECTION COMPONENT OF
PROJECT*

1.2 LAY DESCRIPTION: PROVIDE A BRIEF OUTLINE OF THE PROJECT, INCLUDING WHAT PARTICIPANTS WILL BE REQUIRED TO DO. THIS DESCRIPTION MUST BE IN EVERYDAY LANGUAGE WHICH IS FREE FROM JARGON. PLEASE EXPLAIN ANY TECHNICAL TERMS OR DISCIPLINE-SPECIFIC PHRASES. (NO MORE THAN 350 WORDS)

Those in charge of workplaces must know that decisions that they take, or choose not to take may have serious consequences for those who work for them and generate profits damaging the duty of care / safe working place and conditions as corporate social responsibility owed to everyone. This implies incorporating substantive outcomes to prevent what happened from happening again or preventing deadly violence against the activities of oil companies by

communities from happening. An example is the situation in Nigeria where the youths protest that oil spillage caused by the activities of oil companies could catch fire leading to death.

What participants needs to do is to answer voluntarily question on whether law on Corporate Manslaughter in Nigeria will have effect owing to the provision of the dominant role that companies play in our lives

1.3 STATE THE AIMS AND SIGNIFICANCE OF THE PROJECT AIMS OF AND JUSTIFICATION FOR

THE RESEARCH: The aim of the study is to investigate how corporate manslaughter law can improve corporate social responsibility in Nigeria's oil and gas sector. while the rationale/ justification behind or for this research is for social justice in Nigeria especially when it relates to the activities of oil companies in Nigeria. Social justice in this sense means legal intervention. This is true since when work place safety is regulated, it becomes a matter of protecting the vulnerable. It is in record in Nigeria that Nigerian youths and civil right groups like Ken Saro Wiwa (MOSOP) are protesting the negative effects of the activities of oil companies in the Niger Delta. Oil companies instead are aiding the Nigerian military to fight protesters. Corporate Manslaughter law is long overdue in Nigeria. This writer therefore chooses to recommend to the Nigeria government

through this research the effect of corporate manslaughter law on corporate social responsibility among oil companies in Nigeria.

The justification for individual interviewing in this research is that it serves as a stimulus for eliciting culture-specific cognitions channel (various opinion of people knowledgeable on law, corporate practices (and can separate the negatives and positives) and the activities of companies in Nigeria) and secondly, it narrows potentially broad exploration (issue under study like Corporate manslaughter and the need for a Corporate Manslaughter in Nigeria) Also please provide a brief description of the proposed research, a justification as to why this research should proceed and an explanation of any expected benefits to the community.

PLEASE PROVIDE FULL REFERENCES FOR ANY WORK REFERRED TO.

Okonta Ike and Douglas Oronto Where Vulture Feast Shell, Human Rights, and Oil (Verso 2003)

Okpara John, Idowu Samuel O, and Schmidpeter Rene, Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders (Springer 2013)

Omoweh Daniel. A., Shell Petroleum Development Company, The State and Development of Nigeria's Niger Delta A Study in Environmental Degradation (Africa World Press, Inc 2005)

Adekunbi Imosemi, and Nzeribe Abangwu "Compensation of Oil Spill Victims in Nigeria: The More The Oil, The More The Blood?" (2013) 2(3) Singaporean Journal of Business Economics, and Management Studies 30-43

Adeyanju Olarenwaju David "An Assessment of Impact of Corporate Social Responsibility on Nigerian Society: The Examples of Banking and Communication Industries" (2012) 1(1) Universal Journal of Marketing and Business Research 17-43

Aghalino, S. O., & Eyinla, B. Oil Exploration and Marine Pollution: Evidence from the Niger Delta, Nigeria. (2009) 28(3) Journal of Human Ecology 177-182.

Akpomuvie Orhioghene "Tragedy of Commons: Analysis of Oil Spillage, Gas Flaring and Sustainable Development of the Niger Delta of Nigeria" (2011) 4(2) Journal of Sustainable Development 200-210

Alabi O.F and Ntukekpo S.S “Oil companies and corporate social responsibility in Nigeria: An empirical assessment of Chevron’s community development projects in the Niger Delta” (2012)

4(2) British Journal of Arts and Social Sciences 361-374

Alcock Richard and Conde Casper “Socially and Environmentally Responsible Business Practices: An Australian Perspective” (2005) 1(2) Corporate Governance Law Review 329-338

Almond Paul “Public Perceptions of Work-Related Fatality cases: Reaching the outer Limits of Populist Punitiveness?” (2008) 48(4) British Journal of Criminology 448-467

Almond Paul “Understanding the seriousness of Corporate Crime: some lessons for the new ‘corporate manslaughter’ offence” (2009) 9(2) Criminology & Criminal Justice Volume 9(2) 145-164 146

Erhaze Samson and Momodu Daud “Corporate criminal liability: call for a new legal regime in Nigeria” (2015) 3(2) Journal of Law and Criminal Justice 63-72

Eze Chioma Emem, Amadi Prince Uche, (2009) “A New Dawn of Corporate Criminal Liability Law In The United Kingdom: Lessons For Nigeria” *African Journal of Law and Criminology*, Volume 2 Number, 86-98 91-92

(NO MORE THAN 700 WORDS)

1.4 PROPOSED METHOD: *Provide an outline of the proposed method, including details of data collection techniques, tasks participants will be asked to do, the estimated time commitment involved, and how data will be analysed. If the project includes any procedure which is beyond already established and accepted techniques please include a description of it. (No more than 500 words.)*

Rather than hypothesizing about a phenomena (study of variables and mathematics (involving statistics), investigative research was chosen so that unknown groupings could emerge. Several oil companies, oil producing communities and people either working for oil companies or living in oil producing communities will be chosen for qualitative research (semi-structured

interview using individual interviewing). Focusing on the law of corporate manslaughter and corporate homicide and its effect on corporate social responsibility among oil companies in Nigeria, each participant will be asked to air their knowledgeable thoughts whether someone have died while working for an oil company in Nigeria, whether senior managers facilitate the implementation of health and safety rules for their oil company, whether these two instances above will induce Nigerian law makers to pass the law on corporate manslaughter in Nigeria to make oil companies be corporate socially responsible. This researcher is researching on the effects of Corporate Manslaughter Bill 2015 Nigeria to deduce the effect it will have on corporate social responsibility among oil companies. The researcher in the instance is not introducing the law in Nigeria. This makes investigative method suitable for the research since the research is on educating (inductive) Nigerians on the effects of Corporate Manslaughter Bill 2015 Nigeria on CSR among oil companies in Nigeria and Corporate Manslaughter Bill 2015 is still a bill.

1.5 INVESTIGATORS' QUALIFICATIONS, EXPERIENCE AND SKILLS

List the academic qualifications and outline the experience and skills relevant to this project that the researchers and any supporting staff have in carrying out the research and in dealing with any emergencies, unexpected outcomes, or contingencies that may arise.

Master of Laws in International Business Law and Regulation, University of Salford, Greater Manchester United Kingdom 2014.

Barrister at Law Supreme Court Federal Republic of Nigeria 2011.

Bachelor of Law (with Hons) Nnamdi Azikiwe University Awka Anambra State Nigeria.

Training and experience with dates:

Barrister in training (Chamber Attachment) Nwakoby & Co (Barrister and Solicitor) 2010.

Legal Administrative Officer Nigerian Law School Augustine Nnamani campus Enugu State as part of primary assignment National Youth Service Corps 2011-2012.

Workshop and Presentation

Attended 2nd Postgraduate Research Students' Conference, University of Bolton, 28th October
2016

Guest lecture from former chancellor of the Exchequer, Norman Lamont on Britain and the EU-
the future of a troubled relationship by Rt Hon Lord Lamont of Lerwick 27th January 2015.

Attended a Research and Innovation Conference, University of Bolton, 20th June, 2014.

Presentation of Work in Progress at BBS Symposium, University of Bolton, 14th May 2014.

1.6 PLEASE EXPLAIN WHEN, HOW, WHERE, AND TO WHOM RESULTS WILL BE DISSEMINATED, INCLUDING WHETHER PARTICIPANTS WILL BE PROVIDED WITH ANY INFORMATION ON THE FINDINGS OR OUTCOMES OF THE PROJECT

The Result is only for my Research and will be made available to The University of Bolton, Bolton Lancashire United Kingdom.

1.7 WILL THE RESEARCH BE UNDERTAKEN *ONLY* ON-SITE AT THE UNIVERSITY OF BOLTON (including all campuses)?

No. The research will be undertaken in Nigeria.

YES, NO, not *(If NO, give details of off-campus location, including other only on-site only sites where research is being undertaken and other countries on-site providing data.)*

1.8 OTHER APPROVALS REQUIRED *Has permission to conduct the research in, at or through another institution or organisation (eg a School) been obtained? Individuals proposing to conduct research involving contact with children or vulnerable adults must first get agreement from the individual with appropriate authority in the institution or organization through which the research is being conducted. (Copies of letters of approval to be provided)*

YES NO NOT APPLICABLE

(If YES, please specify from whom and attach a copy. If NO, please explain when this will be obtained.)

1.9 IS THIS PROTOCOL BEING SUBMITTED TO ANOTHER ETHICS COMMITTEE, OR HAS IT BEEN PREVIOUSLY SUBMITTED TO AN ETHICS COMMITTEE? *This includes an NHS Local Research Ethics Committee or any other institutional committee of collaborating partners or research sites.*

YES NO *(If YES, please provide details including correspondence setting out conditions of approval.)*

2. *PARTICIPANT DETAILS*

2.1 *DO YOU INTEND TO RECRUIT: (TICK AS MANY AS APPLICABLE)*

	YES	NO
a) students or staff of this University (i.e. recruitment on-site at Bolton)	<input type="checkbox"/>	x <input type="checkbox"/>
b) adults (over the age of 16 years and competent to give consent)	<input type="checkbox"/>	x <input type="checkbox"/>
c) children/legal minors (anyone under the age of 16 years)	<input type="checkbox"/>	x <input type="checkbox"/>
d) patients or clients of professionals	<input type="checkbox"/>	x <input type="checkbox"/>
e) anyone who is in custody, custodial care, or for whom a court have assumed responsibility	<input type="checkbox"/>	x <input type="checkbox"/>
f) any other person whose capacity to consent may be compromised	<input type="checkbox"/>	x <input type="checkbox"/>
g) a member of an organisation where another individual may also need to give consent	<input type="checkbox"/>	x <input type="checkbox"/>

2.2 NUMBER, AGE RANGE AND SOURCE OF PARTICIPANTS

Provide number, age range and source of participants. Please provide an explanation for your proposed sample size (including details of statistical power of the sample, where appropriate) and state any exclusion or inclusion criteria.

The age range of my participants is from 18 years old. The source of my participants is from my PhD colleague in Bolton, my colleagues (Barristers) and friends in Nigeria.

2.3 MEANS BY WHICH PARTICIPANTS ARE TO BE RECRUITED

Please provide specific details of how you will be recruiting participants. How will people be told you are doing this research? How will they be approached and asked if they are willing to participate? If you are mailing to or phoning people, please explain how you have obtained or will obtain their names and contact details. This information will need to be included in the participant information sheet. If a recruitment advertisement is to be used, please ensure you attach a copy to this application.

By Phone and Email. Some I already know their names and contact addresses and the remaining participants They will text or email me their names and contact addresses.

2.4 WILL PARTS OF THIS PROJECT BE CARRIED OUT BY INDEPENDENT CONTRACTORS?

YES NO If YES, please explain who the independent contractors are, what their role will be and how their work will be monitored. Responsibility for proper conduct of the project remains with the Principal Investigator.]

No

2.5 ARE ANY OF THE PARTICIPANTS IN A DEPENDENT RELATIONSHIP WITH ANY OF THE INVESTIGATORS, PARTICULARLY THOSE INVOLVED IN RECRUITING FOR OR CONDUCTING THE PROJECT?

Research involving persons in dependent or unequal relationships (for instance, teacher/student) may compromise a participant's ability to give consent which is free from any form of pressure (real or implied) arising from this unequal power relationship. It is therefore recommended that, where possible, researchers choose participant cohorts where no dependent relationship exists. If, after due consideration, the investigator believes that research involving people in dependent relationships is purposeful and defensible, then the University Research Ethics Committee will

require additional information setting out the case and detailing how risks inherent in the dependent relationship will be managed. The Committee will also need to be reassured that refusal to participate will not result in any discrimination or penalty.

NB. Reasons of convenience alone will not normally be considered adequate justification for conducting research in situations where dependent relationships exist.

YES NO *(If YES, please explain the relationship (eg. teacher/student, student/lecturer, doctor/patient, employer/employee) and the steps to be taken by the investigators to ensure that the participant's participation is purely voluntary and not influenced by the relationship in any way.)*

Yes. Some of my participants are law school lecturers from the law school where I worked for a year.

2.6 *PAYMENT OR INCENTIVES: DO YOU PROPOSE TO PAY OR REWARD PARTICIPANTS?*

YES NO *(If YES, how, how much and for what purpose?)*

No

3. *RISK AND RISK MANAGEMENT*

3.1 DOES THE RESEARCH INVOLVE:

	YES	N
		O
use of a questionnaire or similar research instrument or measure? (attach copy)	<input type="checkbox"/>	x <input type="checkbox"/>
use of written or computerised tests	<input type="checkbox"/>	x <input type="checkbox"/>
interviews? (attach interview questions)	x <input type="checkbox"/>	<input type="checkbox"/>
diaries? (attach diary record form)	<input type="checkbox"/>	x <input type="checkbox"/>
participant observation?	<input type="checkbox"/>	x <input type="checkbox"/>

observation of participants (in a non-public place) without their knowledge?	<input type="checkbox"/>	x
		<input type="checkbox"/>
audio-taping interviewees or events?	<input type="checkbox"/>	x
		<input type="checkbox"/>
video-taping interviewees or events?	<input type="checkbox"/>	x
		<input type="checkbox"/>
access to personal and/or confidential data? (including student, patient or client data) without the participant's specific consent	<input type="checkbox"/>	x
		<input type="checkbox"/>
administration of any questions, tasks, investigations, procedures or stimuli which may be experienced by participants as physically or mentally painful, stressful or unpleasant during or after the research process?	<input type="checkbox"/>	x
		<input type="checkbox"/>
performance of any acts which might diminish the self-esteem of participants or cause them to experience embarrassment, regret or depression?	<input type="checkbox"/>	x
		<input type="checkbox"/>

investigation of participants involved in illegal activities?	<input type="checkbox"/>	x
		<input type="checkbox"/>
procedures that involve deception of participants?	<input type="checkbox"/>	x
		<input type="checkbox"/>
administration of any substance or agent?	<input type="checkbox"/>	x
		<input type="checkbox"/>
use of non-treatment of placebo control conditions?	<input type="checkbox"/>	x
		<input type="checkbox"/>
collection of body tissues or fluid samples?	<input type="checkbox"/>	x
		<input type="checkbox"/>
collection and/or testing of DNA samples?	<input type="checkbox"/>	x
		<input type="checkbox"/>
collection and/or testing of gametes or embryo tissue?	<input type="checkbox"/>	x
		<input type="checkbox"/>

participation in a clinical trial?	<input type="checkbox"/>	x
		<input type="checkbox"/>
administration of ionising radiation to participants?	<input type="checkbox"/>	x
		<input type="checkbox"/>
research overseas?	<input type="checkbox"/>	x
		<input type="checkbox"/>

3.2 POTENTIAL RISK TO PARTICIPANTS AND RISK MANAGEMENT PROCEDURES

Identify, as far as possible, all potential risks to participants (e.g. physical, psychological, social, legal or economic), associated with the proposed research. Please explain what risk management procedures will be put in place. There is no risk since everything is voluntary and this researcher have explained to them earlier the purpose of his research.

3.3 ARE THERE ANY SPECIFIC RISKS TO RESEARCHERS THAT ARE GREATER THAN THOSE ENCOUNTERED IN NORMAL DAY TO DAY LIFE? (Where research is

undertaken at an off-campus location, whether in the UK or abroad, researchers should consult the relevant University guidelines regarding risk assessment and seek the advice of the University's Health and Safety Advisor. The Head of School/Centre has overall responsibility for risk assessment regarding the health and safety of researchers. Useful advice for the safety of researchers is available on the Social Research Association website at: <http://www.the-sra.org.uk/Stay%20Safe.htm>

YES NO *(If YES, please describe.)*

3.4 PLEASE EXPLAIN HOW THE POTENTIAL BENEFITS OF THE RESEARCH OUTWEIGH ANY RISKS TO PARTICIPANTS. *Briefly describe the main benefits and contribution of the study. Include any immediate benefits to participants as well as the overall contribution to knowledge or practice.*

Not Applicable.

3.5 ADVERSE / UNEXPECTED OUTCOMES

Please describe what measures you have in place in the event of any unexpected outcomes or adverse effects to participants arising from involvement in the project. Not Applicable.

3.6 DEBRIEFING, SUPPORT AND/OR FEEDBACK TO PARTICIPANTS (as appropriate)

What, if any, debriefing, support or feedback will participants receive following the study and when? Participants may need to talk about the experience of being involved in the study or about issues it has raised for them. Depending on risks to participants you may need to consider having additional support for participants during/after the study (e.g., external counseling). Further information on the aims of the research, their own performance and/or the results of the study may also be appropriate.

Only Thank You.

3.8 MONITORING

Please explain how the researchers propose to monitor the conduct of the project (especially where several people are involved in recruiting or interviewing, administering procedures) to ensure that it conforms with the procedures set out in this application, the University's Code of Practice and any guidelines published by their professional association.

This researcher intends to phone colleagues, friends and friends of colleagues who will inform the participants before the researcher arrives.

4. *INFORMED CONSENT*

HAVE YOU ATTACHED TO YOUR APPLICATION A COPY OF THE PARTICIPANT INFORMATION SHEET? (*Guidelines for drafting this are provided on the research ethics web page(s)*)

Whenever possible, University letterhead should be used for information sheets.)

x YES NO (*If NO, please explain.*)

THE FOLLOWING IS A LIST OF ITEMS NORMALLY EXPECTED TO BE INCLUDED IN AN INFORMATION SHEET. PLEASE USE IT IN CHECKING THAT YOUR DOCUMENTS INCLUDE:

	YES	NOT APPLICABLE
clear identification of the University, the School/Centre (s) involved, the project title, the Principal and other investigators (including contact details)	<input type="checkbox"/>	<input type="checkbox"/>
details of what involvement in the project will require (e.g., involvement in interviews, completion of questionnaire, audio/video-taping of events), estimated time commitment, any risks involved	<input type="checkbox"/>	<input type="checkbox"/>
advice that the project has received clearance by the University Research Ethics Committee	<input type="checkbox"/>	<input type="checkbox"/>

if the sample size is small, advice to participants that this may have
implications for privacy/anonymity

a clear statement that if participants are in a dependent relationship
with any of the researchers that involvement in the project will not
affect ongoing assessment/grades/management or treatment of
health (*as relevant*)

assurance that involvement in the project is voluntary and that
participants are free to withdraw consent at any time, and to
withdraw any unprocessed data previously supplied

advice as to arrangements to be made to protect confidentiality of
data, including that confidentiality of information provided is
subject to legal limitations

a statement that the data generated in the course of the research be
retained in accordance with the University's policy on Data

Protection and must be kept securely in paper or electronic form for a period of five years after the completion of a research project.

advice that if participants have any concerns about the conduct of

this research project that they can contact the Chair of the University Research Ethics Committee at the University

any other relevant information

4.2 HAVE YOU ATTACHED TO YOUR APPLICATION A COPY OF THE CONSENT FORM? - *if you are not obtaining consent in writing please explain how the informed consent process is to be documented. (Guidelines for drafting a consent form are provided on the research ethics web page. Whenever possible, University of Bolton letterhead should be used for consent forms.)*

YES NO (*If NO, please explain how you consent will be documented.*)

YES

DOES THE CONSENT FORM INCLUDE THE FOLLOWING:

	YES	NO	NOT APPLICABLE
appropriate letterhead	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
title of the project and names of investigators	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
confirmation that the project is research	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
confirmation that involvement in the project is voluntary and that participants are free to withdraw at any time, or to withdraw any unprocessed data previously supplied	<input checked="" type="checkbox"/>		<input type="checkbox"/>

confirmation of particular requirements of participants, including

for example whether interviews are to be audio-/video-taped,
whether anonymised quotes will be used in publications

advice of legal limitations to data confidentiality (in studies where

the participants are named or de-identified)

if the sample size is small, confirmation that this may have
implications for anonymity

any other relevant information

5. *CONFIDENTIALITY/ANONYMITY*

5.1 WILL THE RESEARCH INVOLVE:

	YES	NO
complete anonymity of participants (i.e., researchers will not know the identity of participants as participants are part of a random sample and are required to return responses with no form of personal identification)?	x <input type="checkbox"/>	<input type="checkbox"/>
anonymised samples or data (i.e., an irreversible process whereby identifiers are removed from data and replaced by a code, with no record retained of how the code relates to the identifiers. It is then impossible to identify the individual to whom the sample of information relates)?	<input type="checkbox"/>	x <input type="checkbox"/> nN/ A

de-identified samples or data (i.e., a reversible process in which the identifiers are x
removed and replaced by a code. Those handling the data subsequently do so using
the code. If necessary, it is possible to link the code to the original identifiers and
identify the individual to whom the sample or information relates)?

participants having the option of being identified in any publication arising from the x
research?

participants being referred to by pseudonym in any publication arising from the x
research?

the use of personal data? (*If YES, you may need to register with the University*) x

*Please bear in mind that where the sample size is very small, it may be impossible to guarantee
anonymity/confidentiality of participant identity. Participants involved in such projects need to
be advised of this limitation.*

5.2 WHICH OF THE FOLLOWING METHODS OF ASSURING CONFIDENTIALITY OF DATA WILL BE IMPLEMENTED? PLEASE SELECT ALL RELEVANT OPTIONS.

data and codes and all identifying information to be kept in separate locked filing cabinets

access to computer files to be available by password only

other (*please describe*) BY THE CONSENT OF THIS RESEARCHER

5.3 LEGAL LIMITATIONS TO DATA CONFIDENTIALITY: *Participants need to be aware that the confidentiality of the information they provide can only be protected within the limitations of the law - i.e. it is possible for data to be subject to subpoena, freedom of information claim or mandated reporting by some professions. This only applies to named or de-identified data. If your participants are named or de-identified, you may need to specifically state these limitations.*

YES x NO (*please explain*) Not applicable

YES

6 DATA ACCESS, STORAGE AND SECURITY

6.1 WILL THE PRINCIPAL INVESTIGATOR BE RESPONSIBLE FOR SECURITY OF
DATA COLLECTED?

YES x NO (*If NO, please provide further details including any differences
between arrangements in the field, and on return to campus.*)

ACCESS TO DATA

Access by named researchers only

Access by people other than named researcher(s) *(Please explain:) This can be done on request from this researcher and for educational purposes only.*

STORAGE OF DATA

Stored at the University of Bolton

Stored at another site *(Please explain where and for what purpose:)*

6.4 DOES DATA STORAGE COMPLY WITH THE UNIVERSITY'S GUIDELINES FOR THE MANAGEMENT OF RESEARCH DATA AND RECORDS?

YES NO *(If NO, please explain.)*

7. *FUNDING*

7.1 IS THIS PROJECT BEING FUNDED?

YES NO *(If NO, please skip the remaining questions.)*

7.2 SOURCE OF FUNDING?

7.3 PROJECT GRANT TITLE AND PROPOSED DURATION OF GRANT *(Where applicable)*

7.4 DOES THE PROJECT REQUIRE APPROVAL BEFORE CONSIDERATION BY A FUNDING AGENCY?

YES NO

IF YES: DEADLINE FOR THE FUNDING AGENCY?

HOW WILL PARTICIPANTS BE INFORMED OF THE SOURCE OF THE FUNDING? *The source of funding should normally be explained in the participant information sheet.*

8. *CHECKLIST*

Please check that the following documents are attached to your application. Please note that where questionnaire or interview questions are submitted in draft form, a copy of the final documentation must be submitted for final approval when available.

	ATTACHED	NOT APPLICABLE
Recruitment advertisement (question 2.3)	<input type="checkbox"/>	x <input type="checkbox"/>
Participant information sheet (question 4.1)	x <input type="checkbox"/>	<input type="checkbox"/>
Consent form (question 4.2)	x <input type="checkbox"/>	<input type="checkbox"/>

Evidence of external approvals related to the research x

(question 1.9)

Questionnaire (question 3.1) NOT APPLICABLE

draft final

Interview Schedule (question 3.1) x

draft final

Other (please specify:)

For further details about completion of this form, please contact your School/Centre Research Ethics Officer in the first instance.

L:\AQAS\Common\Research\Research Ethics\University Application for Ethics Approval Form

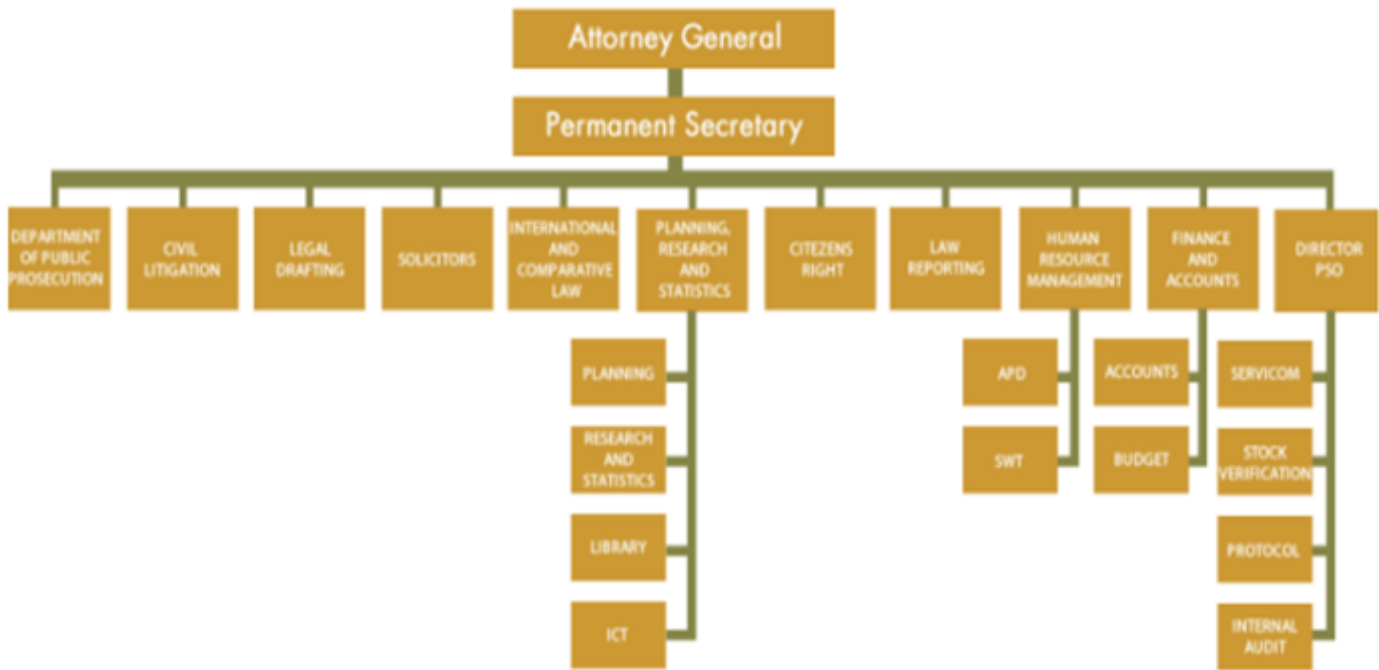
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APPENDIX 9: MAP OF AFRICA

Sub-Saharan Africa is all countries in Africa except for Morocco, Algeria and Egypt.



APPENDIX 10: ORGANOGRAM OF MINISTRY OF JUSTICE FEDERAL REPUBLIC OF NIGERIA



Federal Ministry of Justice Abuja, Nigeria available from

<<http://www.justice.gov.ng/index.php/about-us/struc/organ>>