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## Corporate Crime As A Victimless Crime And Its Impact On Sustainable Economic Development In Nigeria

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### Abstract

*The role of corporations is pivotal in sustaining the economic development of a nation. Greater dependence by nations on these corporations to generate wealth and ensure greater market integration is evident in the continued quest for Foreign Direct investments to support the domestic investments. At a time of persistent crises and pressing social and environmental challenges, harnessing economic growth for sustainable and inclusive development is more important than ever. These corporations are believed to be primary drivers of such growth. Regrettably, some of these corporations both foreign and local in a bid to maximize profit engage in criminal activities that have the consequence of destroying the economy of the nation without being held culpable usually, because corporate crimes are believed to be victimless. Against this background, new generation legal principles are emerging, pursuing a broader and more intricate development policy agenda, while building or maintaining a generally sustainable economy by sanctioning corporations for crimes committed in the course of business. This paper understudied victims of corporate crimes and the impact of such crime on the economic growth of Nigeria. It was discovered that there is a plethora of laws prohibiting corporate crimes in Nigeria, but implementation of these laws has been unrealizable partly due to the derisory penalties provided for violation of such laws. It is recommended that stiffer punishments be provided for commission of such crimes such as denial of licences to operate business within a stipulated period of time.*

**Key words:** Corporate crime, victimless, development, sustainability and sustainable economic development

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## Introduction

One of the consequences of incorporation is that a legal entity is birthed separate and different from its subscribers and directors. Recognizing the separate personality of a company is to draw a veil of incorporation over the company such that natural persons that make up the corporation become insignificant in dealing with the corporation save for few exceptional cases which, amongst others, include where a crime is committed by a staff of the corporation. Originally, where crimes are committed by officers of a body corporate, the veil of incorporation will be removed to identify the individuals responsible for the crimes. This appears to be in tandem with the primordial idea that criminal liability is attached to the person of the offender, when it was believed that corporate criminal liability is inconsistent with the basic premises of criminal law. According to this view, the traditional forms and functions of criminal law are not applicable to artificial persons because they cannot in any meaningful sense have *mens rea* or be “guilty” of a criminal offense. Additionally, corporations act only through their officers and employees, and holding an entity vicariously liable for the conduct of its agents and employees is inconsistent with the principle that an actor is responsible only for his own conduct and intent. Imprisonment— a defining characteristic of criminal law— cannot be imposed on a corporation. The doctrine of Legal personality of a company was, therefore, only restricted to civil cases and did not extend to criminal cases. This situation had the consequence of corporate entities exonerating themselves from liability and abdicating the corporate responsibility of regulating the conducts of their staff.

Corporate crime as a business crime has been in existence for a long time but the extent of damage and the hardship it brings has always been underestimated until now. Corporate crime was thought to be harmless and victimless, consequently making its criminalization needless. Recently, it has been discovered that the use of a significant position of power for illegal gain often results in damage or harm to victims as measured by financial loss, physical harm, and damage to the community's moral climate. Most experts agree that the economic impact of corporate crime is far more costly than

ordinary crime. The emerging problem of corporate crime poses a serious threat to nations around the world. Every country in the world has faced corporate crime of one type or the other. Legislations are continuously being enacted to make corporations liable for crime committed in the course of their businesses as victims of such crimes are gradually becoming visible. Criminal liability of corporations places a burden on them to monitor, supervise and regulate more efficiently the acts of its staff in order to avert economic hardship in the country. No doubt, corporations are the backbone of a successful and sustainable economy, thus making corporate governance mandatory in order to maintain a conducive business environment to enable the corporation attract capital, perform efficiently, generate profit and meet legal obligations as well as the expectations of society generally. Hence, it has become more pertinent to understand the nature of crime and criminality in the corporate sector and its impact on the Nigerian economy.

### **Concept And Nature Of Corporate Crimes**

"Corporate crime" was first used by Clinard and Quinney. Later, Clinard and Yeager clarified that corporate crime included crimes committed by corporate officials with the aim of benefitting the corporation. Corporate crime is regarded as a type of white collar crime whereby persons of high social status and respectability use their occupational position as a means to violate the law.

The concept is one that is so inherently complex and multifaceted that it seems unlikely that one single definition could ever prevail. In criminology, corporate crime refers to crimes committed either by a corporation (i.e. a business entity having a separate legal personality from the natural persons that manage its activities), or by individuals that may be identified with a corporation or other business entity. It consists of illegal acts, omissions or commissions by corporate organizations themselves as, social or legal entities or by officials or employees of the corporations acting in accordance with the operative goals or standard, operating procedures and cultural norms of the organization, intended to benefit the corporations themselves.

According to Braithwaite, corporate crime is the conduct of a corporation, or of the employees acting on behalf of a corporation which is proscribed and punishable by law. The conduct could be punishable by imprisonment, probation, fine, revocation of license, community service order or other court imposed penalties. Both corporation (as legal person) and their representatives are recognized as illegal actors which or whether each is selected as a sanction target will depend on the kind of act committed, rules and quality of evidence, prosecutory preference and offending history, among other factors.

Corporate crime has been categorized as commercial crime which can be committed otherwise by legitimate business people, investors and corporations. This type of crime involves the production of goods and services which are legal, but whose methods of production or distribution are illegal.;creates exchanges with a normal business setting that are multilateral; involves fraud against workers, suppliers, costumers, investors or in such things as environmental offences against the public as a whole; generates income earned but unmerited by virtue of the illegal methods, etc. According to Clinard & Yeager, the most important and relevant types of Corporate Wrongdoing include the following behaviors: (i) Administrative: noncompliance with the requirements of an agency or a court; (ii) Environmental: mainly incidents of air and water pollution; (iii) Financial: involves illegal payments or failure to disclose such violations; (iv) Labor: imply discrimination in employment, occupational safety and health hazards, unfair labor practices, and wage and hour violations; (v) Manufacturing: relate to electric shock hazards, chemical and environmental hazards and fire and thermal burn hazards. Unfair trade practices: are various abuses of competition.

### **Origin Of Corporate Criminal Responsibility**

The first attempts to impose corporate criminal liability were taken by common law countries, such as England, the United States and Canada, this being partly because of the earlier beginning of the industrial revolution in

these countries than in most others. The recognition of corporate criminal liability by the English courts started in 1842, when a corporation was fined for failing to fulfill a statutory duty. By the fourteenth century, fictional entities were well recognized in English law. By the sixteenth and seventeenth centuries the importance of corporations grew as industrialization spread. Soon thereafter, massive business frauds and failures to perform duties (i.e., repair public bridges and roads) led to criminal prosecution of corporations for *nonfeasance*. By the mid-nineteenth century, English courts were willing to hold corporations criminally liable for wrongful acts as well as wrongful omissions. Over time, the English courts followed the doctrine of *respondeat superior* or vicarious liability, in which the acts of a subordinate are attributed to the corporation. However, vicarious liability was only used for a small number of offences, and later on replaced with the identification theory. By the twentieth century, however, English courts had developed an "identification" doctrine by which corporations were prosecuted for crimes of intent. This doctrine merges the personalities of the corporation and its controlling individuals, and holds a corporation criminally liable for crimes committed by persons who "represent the directing mind and will of the corporate entity". The recent statutes on corporate criminal liability are moving away from the identification principle. Nigeria like England has also made laws providing for criminal liability of corporations.

### **The Misconception Of Corporate Crimes As A Victimless Crime**

In simple terms, the word "victimless" means "lacking a victim". It is particularly used in relation to crimes. A victimless crime refers to behavior that is proscribed by law but does not violate the rights of any particular person. The term entered the academic and public discourse in the 1950s with the birth of victimology, a branch of criminology focusing on the victims and the interaction between victims and perpetrators.

It was the writing of Edwin Sutherland that gave credence to the fact that corporate crime creates victims. Before this time, it was seen as a victimless crime with those who suffer it being seen as victims of disasters or accidents,

not really as victims of criminal activity. It has been stated that two reasons contribute to the lack of attention to victims of corporate crime. They are: problem of measuring victims of corporate crimes and the way in which the corporate victim is rendered invisible. The victimization is so relatively obscured that it is not recognized or if identifiable, not acted upon. Victims of corporate crime are unlikely to be aware of any crime, let alone their victimization to it. Examples will include shareholders who receive a falsified balance sheet, consumers who have paid for an inflated price for a product as a result of antitrust collusion or consumers who have accepted with confidence the misleading advertising claims made for a product without the knowledge of its financial or health effects on them.

There are so many people who get affected by the acts of the company both directly and indirectly. Victims can fall prey to corporate crime in their home, local neighborhood, at work, as consumers, when travelling, using health and welfare services or even at leisure. The first people that get affected are the consumers or stakeholders who are its main beneficiaries and are at maximum risk. Following these are the employees of the Corporate; who are in twin roles; one role is of the victim and on the other hand it is the main protagonist of crime. Then comes the State; who receives the economic returns from it and also faces a dual loss when corporate is guilty of a crime in the shape of employment and revenue loss and the loss faced by the society. There are many other categories also who are involved in the corporate environment and get effected by the corporate crime like the International community, the NGO working in those areas, the independent contractors, the shareholders, the creditors, the close society where the company operates and the environment surrounding the company etc. Hence, it is untrue to state that corporate crimes are victimless.

This particular kind of crime is devastating to the environment, the respect and dignity of the consumers, the ethics and morals in society, and it also produces inequity and corruption all over the world, and as result turning impunity into an ordinary factor nowadays. Briefly saying, -these offences are extremely serious and may cause large financial losses or injuries to consumers, to

workers, or to the general public.

### **Corporate Crime And Its Implications for Sustainable Economic Development In Nigeria**

A corporation is an abstract and separate legal entity, regarded as a person for legal purposes, with legal capacity and responsibilities, which may conduct business and its main goal is to produce economic profit. Economic development generally refers to the sustained, concerted actions of policymakers, communities, individual and corporate bodies that promote the standard of living and economic health of a specific area. Such actions can involve multiple areas including development of human capital, critical infrastructure, regional competitiveness, environmental sustainability, social inclusion, health, safety, literacy, and other initiatives. Sustainable economic growth is economic development that attempts to satisfy the needs of humans but in a manner that sustains natural resources and the environment for future generations.

In Nigeria, while corporations both local and foreign invest in the country for profit making, government attracts the investment with a view to attracting development into the country. If investment activities are not properly regulated, Nigeria will be impoverished, while its investors have profitable businesses. The role of corporations in nation building and economic development are indispensable. They aid in increasing the productive capacity of an economy, generate income and improve the standard of living of the people through the production of goods and rendering of services. At the macroeconomic level, they bring new capital for investment, contribute to the balance of payments, raising exports and integrating countries into global economic networks, increasing employment, enhancing management and transfer of technology etc. thereby potentially adding to future economic growth of nation. Unfortunately, the activities of most corporations in Nigeria reveal that profit maximization is their only goal and this goal is pursued by every known means which sometimes may be detrimental to the society. This sometimes is attributable partly to lack of investment climate in the country

which includes inadequate implementation of laws regulating of the activities of these corporations.

In their day-to-day activities, not only do these corporations affect the lives of the people positively but also many a time in a disastrous manner which comes in the category of crimes. Examples of corporate crimes include but certainly not limited to: Money laundering, fraud (e.g. mail fraud, bank fraud, credit card fraud, insurance fraud, securities fraud, property fraud, telephone marketing fraud, and computer fraud), counterfeiting, embezzlement, forgery, insider-trading, investment schemes, kickbacks, racketeering, income, tax evasion, and pyramid investment schemes. This is by no means a comprehensive list of the types of corporate crimes committed.

Socio-economic implications of corporate crimes are destructive. What may be seen as primarily economic harms also have emotional effects? In the modern day world, the impact of activities of corporations is tremendous on the society. Indeed, pollution, destruction of the environment and pulverization of nature are forms of harm, which because of their great scale of damaging, their long lasting effects and consequences, are without a question way more destructive and graver for Earth and human life than common crime. The worst threat in what comes to specific consequences of environmental abuse is that-all manufacturing corporations have the opportunity to violate environmental pollution standards and occupational safety and health regulations.

Due to their disguise, the corporate criminals are not recognized in the society as criminals; rather, they are considered respectable persons of the society. However, the losses and harm which result from corporate crimes are greater than those of street crimes. Not only do consumers, employees and members of the general public bear the cost of corporate crime, but honest business men and women suffer economic disadvantage at the hands of those competitors who break the law. It also leads to injuries, death, health hazards and loss of confidence in business and the capitalist system as a whole. Since corporations are more influential than individuals, it has been shown that corporations are capable of doing harm than persons acting in their individual capacities.



A practical example of corporate criminal activities of these corporations is seen in the fraudulent deductions of money from customers' accounts by some communication companies without the commensurate services rendered. The sound judgment of a high court of Imo State of Nigeria delivered by the erudite Hon. Justice Innocent Njaka on 19/6/2019 in *Barr. Godwin Achunulo JNr. v. MTN* is laudable. This was a case where the lawyer accepted an offer from MTN to subscribe to specific caller tune to entertain his callers at a monthly charge of N50.00. After sometime, the communication company changed the caller tune without the consent or approval of the Plaintiff which tune was created for the purpose of advertising the defendant's products and services. Despite writing to the defendant to stop the caller tune, the defendant refused and continued charging the Plaintiff the monthly sum of N50.00. The defendant denied being aware of the caller tune subscription by the Plaintiff but continued to benefit from it without taking any steps to stop same despite receiving warning from the plaintiff. The court granted the Plaintiff's claims for damages and remuneration for using his line for advertisement. Though this case was instituted as civil action, it is a proper case of corporate crime (fraud). The Plaintiff in this case deserves some commendations too for taking this bold step to develop our laws and to create public awareness over illegal activities of corporations in Nigeria.

### **Corporate Criminal Legislations in Nigeria**

Many countries of the world including Nigeria have recognized corporate crime.

In the United Kingdom, there is Corporate Manslaughter and Corporate Homicide Act (the CMCH) Act which applies to an organization if the way in which its activities are managed or organized causes a person's death and it amounts to a gross breach of a relevant duty of care owed by the organization to the deceased. The CMCH Act also applies to non-profit organizations that have very limited resources and may not be as morally blame-worthy as profit-making organizations that cut costs and prioritize profits over the health and safety of their employees. There is also the Fraud Act. By *Section 12* of the

Fraud, Act, a body corporate may be guilty of the offence of fraud if the offence is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity; or if the affairs of a body corporate are managed by its members, the member in connection with his functions of management as if he were a director of the body corporate. In the same vein, *Section 7* of the Bribery Act made it a criminal offence for a commercial organization to fail to prevent bribery by a person associated with the organization. A person associated with the commercial organization is one who performs services for or on behalf of the organization irrespective of the capacity in which he performs the services.

In Nigeria, apart from the Nigerian Criminal Code and Penal code, statutes have been enacted which contain specific provisions on corporate criminal liability. Such statutes include the Food and Drug Act, Standard Organization of Nigeria Act (SON), Weight and Measures Act, the Companies and Allied Matters Act, Federal Competition and Consumer Protection Act, National Environmental Standards and Regulations Enforcement Agency (Establishment) (NESREA) Act, Economic and Financial Crime Act and the Advance Fee Fraud and other Related Offences Act and a host of other statutes. These statutes were enacted to promote the social, economic and well-being of the citizens.

Food and Drug Act makes provision for the regulation of the manufacture, sale and advertisement of food, drugs, cosmetics and devices. The Act expressly prohibits the sale, manufacture and storage of food or drugs with any poisonous or harmful substance; that is unfit for human consumption; that consists of any filthy, disgusting, rotten or diseased substance; or which is adulterated etc. Non-compliance with provisions of the Act attracts criminal sanctions against defaulter whether natural persons or body corporate. Liability under this Act is a fine of not less than fifty thousand naira or imprisonment for a term not exceeding two years or to both such fine and imprisonment. *Section 17(2)* specifically provides that:

where an offence under this section

committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

A similar provision is contained in *section 33* of the Standards Organisation of Nigeria Act which Act establishes the Standards Organisation for the purpose among others, of undertaking investigation into the quality of facilities, systems, services, materials and product, whether imported or manufactured in Nigeria. A violation of the provisions of the Act by body corporates is as criminal as violation by individual persons.

The Advance Fee Fraud and other Related Offences Act is an Act to prohibit and punish certain offences pertaining to advance fee fraud and other fraud related offences. The Act provides that any person or corporation who by false pretense and with intent to defraud obtains from any other person for himself or any other persons, induces any other person to deliver to any other person or obtain property, whether or not the property is obtained or its delivery is induced through the medium of a contract induced by false pretense, commits an offence under this Act. The Act further punishes financial institutions and bodies corporate where as a result of negligence, or regulation in the internal control procedures, they fail to exercise due diligence as specified in the Banks and Other Financial Institutions Act, 1991 as amended or the Money Laundering (Prohibition) Act, 2004 in relation to the conduct of financial transactions which in fact involve the proceeds of unlawful activity.

The Federal Competition and Consumer Protection Act *establish inter alia the Federal Competition and Consumer Protection Commission*. The Commission will facilitate access by all citizens to safe products and secure

the protection of rights for all consumers in Nigeria. The Act is geared towards promoting economic efficiency; maintaining competitiveness in the Nigerian market and protecting the welfare of consumers. In doing this, the Commission may require a corporation of business outfit to produce its records for inspection. *Section 111* of the Act makes it an offence for a corporate body to refuse to produce any document required by the Commission; intentionally destroys or alters such records or withholds the production of documents in his possession.

National Environmental Standards and Regulations Enforcement Agency (Establishment) (NESREA) Act, established the National Environmental Standards and Regulations Enforcement Agency for the enforcement of environmental standards, regulations, rules, laws, policies and guidelines and to be responsible for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology etc. A corporate crime is committed under *section 31* of the Act where body corporate obstructs an officer of the agency in the performance of his duties under the Act.

### **Conclusion**

Corporate crime is no longer a novel concept in the world today. With the impacts of corporate crime in the society today, it is also difficult to refer to corporate crimes as victimless crimes. There is no gain saying the fact that there are laws put in place prohibiting corporate crimes in in Nigeria. Corporate criminal liability rests first on recognition of the dangers posed by the enormous power now wielded by corporations and the potential for harm to a nation's economy and the health and safety of its citizens. Corporations conducting business have been implicated in wide range of serious misconduct. By the application of the principle of lifting the veil of incorporation, identification and liability of corporate staff or workers to corporate crimes are easier to establish. However, the subject of controversy has been enforcement of the criminal laws against corporations as artificial entities in law.

There is a dearth of judicial precedents on prosecution of corporate crimes in

Nigeria mainly attributable to lack of political will, corruption (many times persons who are responsible for prosecuting these crimes take bribes from these corporation and compromise their duties), and bad governance, failure of institutions and public unawareness of the liability of corporations to crimes.

The weight of penalty imposed for these crimes contributes to the increase in corporate crime rate. Where, like in the Food and Drug Act, the minimum penalty is N50, 000, a multi-billion naira corporation would prefer to pay the fine and continue the criminality particularly where proceeds of the criminal activities far outweigh the penalty.

It is therefore recommended that an effective institutional framework be established to monitor the activities of these corporations. The fight against corruption should be intensified and specifically directed to this area in order to bring to book officers who, for personal gains, compromise their supervisory and oversight functions on these corporate bodies. Above all, implementation of these criminal legislations is highly recommended.

Stiffer sanctions, such as withdrawal of operational licence or sealing up the business premises for a stipulated period of time particularly, where death or permanent injury results from such crimes, are recommended as effective deterrents to potential corporate criminals. In Nigeria, often it is either plane crash, petroleum products' tanker explosion or an oil spillage/pollution. These disasters continue without a requisite statutory climate to impute corporate culpability. This may be because government-owned corporations do not take responsibility for such crimes when arising from them or their staff. A young man who returned from Germany for his wedding was shot dead by a police officer stationed at NNPC filling station five days before the date of his wedding. The Police officer till date is at large, while the corporation has been doing business freely without any liability or compensation to the family of the deceased. The government should, therefore, lead by example by holding its corporations culpable.

Nigeria should enact a law similar to the UK's CMCHA, to make it easier to

convict companies that cause fatal accidents and to help decrease the number of fatalities. The Corporate Manslaughter Bill which was refused assent by the President should be revisited by the legislature and passed into law.

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