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# Criminal liability of corporate persons in Nigeria

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**Abstract**
It is quite clear that the Nigerian approach to corporate criminal liability is in tandem with the direction taken in the UK and the doctrinal affinity has indicated that the jurisprudence in Nigeria as well as its Jurists have taken a stand that hinges on the attribution principles. Thus in many ways the criminal justice system in Nigeria has accepted the conclusion that corporate persons, although juristic, can be held liable for criminal infractions. This Paper looks through the different doctrinal approaches that affords the Nigerian system the comfort of attributing acts of natural persons to a company in determination of its criminal liability. More so there is that concern that beyond the doctrinal struggles there are implementation and enforcement challenges to the whole idea of criminal liability of non-natural persons, such as corporate entities.

**Keywords:** criminal liability, corporate persons, criminal justice, Nigeria

## Introduction

It is clear that the Nigerian laws have recognized that companies, though lack the natural attributes of natural persons, can be culpable in the same extent as the natural persons. In many ways this recognition had to surmount the difficulty in ascribing a guilty mind to a company without converting it to a natural person. The Nigerian jurisdictions have fallen back on the common law reliance on the alter ego doctrine to attribute acts of natural persons to the company based on whether they actually reflect the 'soul' of the company. Therefore the approach looks beyond the 'un-natural' characteristics of the corporate person and indirectly holds it liable through the secondary acts of its directors and managers. This is based on the alter ego doctrine under common law that recognizes the influence of natural persons on corporate actions and the attribution of their acts to the company itself.

In Nigeria the focus in determining corporate criminal liability is hinged on the doctrine of *alter ego* which is the adopted approach to determining actual intentions and corporate mens rea. This aligns with the position in the UK and tallies with the umbilical connection between the Nigerian legal system and UK jurisprudence. In *Orji Uzor Kalu v FRN* [1] the Court of Appeal made that conclusion when called upon to determine corporate criminal liability by stating that the Appellant, who is the first Accused in the case at the Federal High Court is the alter ego of the second Accused Slok Nigeria Limited and remained its directing mind even while he was the governor of a State. The same direction was taken by another panel of the Court of Appeal in *Romrig Nigeria Limited v FRN* [2] where it held that another Accused person who is a Director of Romrig Nigeria Limited was its alter ego and his absence at a key meeting with the Prosecutor meant that the Company was not part of the agreed outcomes at the plea bargain meeting.

According to Samson and Daud [3] there has been a growing trend in Nigeria to subject companies to severe punishments outside the punishments prescribed for individuals who may have acted on the company's stead. They cited the Failed Banks (Recovery of Debt) and Financial Malpractices Decree 1995 as a good illustration of a deliberate focus to hold companies criminally liable for acts of their employees, managers and directors. Their postulation tallies with the position of the Court in *Yakubu Lekjo and others v EFCC* [4]; where it held that all ventures set up for business purpose are within the contemplation of the Money Laundering Act; the Court was even specific on Section 24 of the 2004 version of the Act on liability of corporate persons.

O Okonkwo [5], a leading light of the study of criminal law in Nigeria explained the concept of legal personality as it applies to criminal law in Nigeria and in particular its applicability to corporate criminal liability. In his evaluation [6] the Criminal Code, a key statute that sets out crimes in Nigeria, makes no special provisions concerning the criminal liability of companies (as distinct from the individual liability of members comprising the company) and this to Okonkwo casted doubt on the applicability of the concept. He further stated [7] that there is no 'special reason why in principle a corporation should not be committed under the Criminal Code' because in his own conclusions every offence in the code starts with 'Any Person....' and it is trite law that a company is a 'person'. It is clear from judicial authorities that companies in Nigeria can be prosecuted for crimes either alone or alongside their agents, officers and directors. A well-documented judicial

[1] supra
[2] supra

[3] Samson Erhaze and Daud Momodu, Corporate Criminal Liability: Call for a New Legal Regime in Nigeria (2015) *Journal of Law and Criminal Justice Vol. 3, No. 2, 63-72*
[4] FHC/KD/CS/117/2009
[5] Professor Okonkwo is foremost authority on criminal law and his book 'Criminal Law in Nigeria' has been a major reference point for about three decades
[6] C. O Okonkwo, Criminal Law in Nigeria (2nd Edition, Spectrum Law Series, 2012)
[7] ibid

confirmation of corporate criminal liability in Nigeria can be deduced from the position of the Supreme Court in the case of *Abacha v Attorney General of the Federation* [8] when the court was called upon to determine whether a company can be prosecuted for a crime, the court emphatically held that a company can be prosecuted as if it is a natural person. The court stated that by virtue of *Section 65* of *Companies and Allied Matters Act 1990* a company may be liable in crime to the same extent as a natural person and it can be prosecuted for the common law offence of conspiracy to defraud; even though *mens rea* is an important ingredient of that offence.

It is also clear that in Nigeria a company can be charged with conspiracy either with other companies or natural persons. In *FRN v Awe Odessa, All States Bank Plc. and Others* [9] the Court convicted all the accused persons, including the Company under section 3 of the Money Laundering Decree of 1995 for conspiracy and opening a bank account in All States for Ebenezer Retnan Ventures (one of the corporate accused in this case) without verifying the identity and address of Ebenezer Retnan Ventures. The unverified account was used to launder several sums of money to various banks in the United Kingdom. AllStates Trust Bank Plc. was convicted and sentenced to a fine of N2, 000,000 (Two Million Naira). The court also ordered that the company be wound up and its assets forfeited to the Federal Government of Nigeria. This is a clear demonstration of how companies can be charged for conspiring with natural persons to commit an offence under the Money Laundering legislations.

**Corporate Criminal Liability in Nigeria**

Corporate criminal liability has generally grown beyond an idea into a pragmatic segment of criminal law in both the United Kingdom and the United States with landmark decisions designing and demarcating its applicability. This growth has also elicited debates amongst scholars and jurists on the scope of the liability of companies for crimes and the approach in determining both the corporate *mens rea* and *actus reus*. Clearly a company cannot be ascribed human-like attributes but the law has relied on two different doctrines in the two important jurisdictions; the doctrine of *Respondeat Superior* in the United States and *alter ego* in the United Kingdom. In *New York Central and Hudson River Railroad and Company v United States;* [10] the US Supreme court clearly understood the impracticability of ascribing human attributes such as 'state of mind' to a juristic person and came up with an ingenious reliance on the doctrine of *Respondeat Superior* to isolate those that represent the company and ascribe their actions to the company itself; this invariably relied on human acts to determine culpability of companies. In the United Kingdom in the case of *Leanard's Carrying Company v Asiatic Petroleum Company Limited* [11] the court set a similar parameter to look beyond the abstract qualities of the company and review the activities of its 'directing minds' who are influential enough to be referred to as its '*alter ego* [12]'.

The principles of corporate criminal liability was fully established in common law in 1944 in the case *Director of Public Prosecutions v Kent and Sussex Contractors Limited* [13] where the court agreed that a 'corporation can only have knowledge and form an intention through its human agents' [14] due to its nature and this reliance means the review of corporate behaviour must be situated within the acts of natural persons acting on its behalf. In fact the court stated that 'circumstances may be such that the knowledge and intention of the agent must be imputed to the body corporate' [15] as if the company acts itself. Another English court in *R v ICR Haulage Limited* [16] agreed with the position but only made an added observation that the company may not be liable for some offences that actually require physical actions such as rape and battery. It should be noted that corporate criminal liability started with non-feasance offences and was later extended to malfeasance offences but essentially this was restricted to strict liability offences.

There are indications that the courts in the UK have relied on the doctrine of *alter ego* to make companies culpable for crimes committed by its agents, employers and directors to smash the glass of separate legal personality that clothes the companies. Through this doctrine *mens rea* of principal officers of the company is attributed and imputed to the company; though before this is done the position and status of that officer must be determined. Yet the actual decision whether to impose criminal liability in a given case on acts of alter egos that can be attributed or imputed to a company 'must in large measure depend on the wisdom and sense of practical realities of the court'. [17] Stable J in *R v I.C.R Haulage* stated that 'the criminal act of an agent, including his state of mind' must be reviewed to determine if they can be considered as acts of the company itself as well as 'the relevant position of the officer' within the company. C Wells [18] rejects the identification theory that imputes acts of alter egos to the company because it is too narrow and advocates an extension of the availability of direct corporate liability instead. She argued that having regard to the organizational structures of companies and its policies and practices the law should recognize that 'responsibility can both flow from the individual to the corporation and be found in the corporate structures themselves'. [19] She advocated a form of a corporate *mens rea* approach rather than attributing acts of 'directing minds' to it. Though her position has merit but she failed to provide a credible alternative.

Kathleen Brickey [20] believes that the concept of corporate criminal liability has been in existence since the 1800s but remained an abstract idea until the 1900s when courts started pushing through penalties and prosecution of companies. Historically, since the mid-1800 the Common Law has developed doctrines of vicarious liability and strict liability in determining liability of companies in the civil action of tort [21]. Under the Vicarious Liability rule the acts and intents of

[8] (2014) 18 NWLR Pt 1438, 21
[9] FHC/KD/143/04
[10] (1909) 21 U.S 481
[11] (1915) A C 705
[12] supra
[13] (1944) KB 146
[14] DPP v Kent supra
[15] DPP v Kent case supra
[16] (1944) KB 551
[17] R v ICR Haulage supra
[18] C. Wells, *Corporation and Criminal Responsibility* (2nd Edition, Routledge, 2001)
[19] ibid
[20] Kathleen Brickey, Rethinking Corporate Liability under the Model Penal Code (1992) *Rutgers L.J* 593
[21] Kathleen Brickey, *Corporate Criminal Liability* (2nd Edition, Callaghan, 1991)

employees are imputed to the company for the purpose of tortious liability. Therefore in doing that the Courts recognized that a company can only act through its agents and when such agents act within the scope of their employment they place the liability squarely on the company itself. While the doctrine of Strict Liability allows the placement of liability in certain situations without determining or requiring proof of any state of mind; while only looking at the acts of such agents and the possible liability of the company. In the United States companies have historically faced liability in civil actions for acts of their employees and agents particularly under the doctrine of *respondeat superior* but it was only in 1909 that the United States Supreme Court extended the corporate liability into the arena of criminal law. A good illustration of the reliance on *respondeat superior* for civil actions before 1909 is the court's decision in *Michigan Southern Ry v Prentice;* [22] where the Court stated that 'a corporation is doubtless liable, like an individual, to make compensation for any tort committed by an agent in the course of his employment' [23]. But it was in *New York Central and Hudson River v United States* [24] that the Supreme Court 'imported' this mindset to issues of crime and intent of companies in the United States. In the *New York* [25] case the Court ruled for the first time that a company should be held criminally liable for the acts, omissions and failures of an agent who acted within the confines and restrictions of his engagement.

Corporate criminal liability has been ingrained into English law as well due to judicial acceptance and it has been guided through the years by litigations rather than legislations. A good starting point to the journey of the concept through English courts is the case of The *Queen v. Great North of England's Railway Company* [26] where Lord Denman held that companies can be guilty of malfeasance and other courts also toed this line by relying on the doctrine of '*alter ego'.* This doctrine attributes actions of directors and officers of a company to its corporate personality. Courts in the United States also aligned with the English courts and accepted the possibility of prosecuting companies for all crimes except those that require an actual human being to perpetrate such as rape. In *New York Central and Hudson River Railroad and Company v United States* [27] where the US Supreme Court held that a corporation can be liable for an offence of intent and set the ball rolling in upholding the criminal liability of companies. In the US corporate criminal liability is based on imputation of actions of agents to the company through the application of the doctrine of '*respondeat superior'.* Though there is a consensus in both the US and English Courts that companies can be criminally liable they rely on different doctrines as outlined above which are tied to principles, procedures and nature of liabilities that will warrant the prosecution of companies. Thus the statutory and judicial acceptance of the capacity of companies to commit crimes is based on the long held legal norm that it has a legal personality similar to that enjoyed by natural persons; hence Lord Macnaghten referred to it as 'a different person altogether from the subscribers' [28].

Therefore the concept of corporate criminal liability imposes the burden on companies through acts of its agents, officers and managers due to the nature of personality of such creations and the various differences with natural persons. The postulation of Haldane was quoted with approval by Aniagolu JSC in *Trenco (Nigeria) Limited v African Real Estate Limited* [29] and this is indicative of the direction of courts across several jurisdictions. Noteworthy is that while Haldane made that position in a civil case his prescription on 'directing mind and will' has set standards for even criminal cases where legal personality is put to test. David Uhlmann while analyzing the identification model was of the opinion that ''under the common law identification model, acts of criminal nature of individual senior officers and employees are imputed to the company'' [30] because that will determine the ''basis that the states of mind of these officers and employees are that of the corporation'' [31]. In every company there are certain natural persons who control and direct the activities of the company based on their positions or powers that flow to them from the company's constitutional documents. They also embody the wishes and policies of the company and make most decisions on behalf of the company; Uhlmann therefore concluded that the company ''could be held liable, not for the acts of these principal officers or servants as their own, but for what is deemed to be the company's own acts'' [32]. Thus the natural person must be identified in advance of attributing his acts to the company and this requires an assessment of his position and status within the company as to make him capable of being considered a 'directing mind' within that company.

It is clear that in Nigeria the statutes and courts have taken a heed and are heavily influenced by the English legal system in taking a stand and determining corporate criminal liability. This influence can be discerned from judicial decisions that have accepted the English doctrine of *alter ego* as the founding basis of measuring culpability of companies as well as determining attribution of acts of 'directing minds' of the company. Okonkwo [33] took this path while explaining the concept of legal personality as it applies to criminal law in Nigeria and in particular its applicability to corporate criminal liability. He stated that the Criminal Code makes no special provisions concerning the criminal liability of companies (as distinct from the individual liability of members comprising the company) and he concluded that the exact extent of corporate criminal liability 'is a matter of some doubt'. He further stated that there is no 'special reason why in principle a corporation should not be committed under the Criminal Code' because in his own conclusions every offence in the code starts with 'Any Person....' and it is trite law that a company is a 'person'. But in another case the court did not agree with Okonkwo completely and stated that this definition cannot be blanket; in *R v Opara* [34] the court held that the subject matter of *Section 100* of the Criminal Code (which deals with public officers receiving property to show favour) was such that it will be repugnant to define 'person' to include companies as that will

[22] (1892) 147 U S 101
[23] Michigan Southern supra
[24] (1909) 21 U.S 481
[25] ibid
[26] *US Eng. Rep*. 1294 (Q.B 1846)
[27] (1909) 21 U.S 481
[28] Solomon v Solomon (1897) A.C 22
[29] (1978) 1 LRN 146 at 153
[30] David Uhlmann, The Pendulum Swings: Reconsidering Corporate Criminal Prosecution (2016) UC Davis L.Rev 49, 4
[31] ibid
[32] ibid
[33] C. O Okonkwo, Criminal Law in Nigeria (2nd Edition, Spectrum Law Series, 2012)
[34] supra

not meet the expectations of that section. The court went further to list some offences that have a different understanding of who a 'person' can be; such as murder and rape that can which can only be committed by natural persons.

Evidently the *Criminal Code* [35] and *Penal Code* [36] have no specific provisions on corporate criminal liability and although the Criminal Code made reference to 'person' but it does not contain the definition; Section 1(1) only defined person in relation to ownership of property. While the Penal Code in Section 5 (1) states that the term 'person' includes any company or association of persons, whether incorporated or not. Hence the statutes have divergent attitude to the issue of corporate criminal liability in Nigeria. The Court of Appeal in *Bebeji Oil Allied Products Ltd v Pancosta Ltd*. [37] held that the concept of legal personality is clear as captured by *Section 65 of CAMA* and it makes it different from its managers or officers. Jega JCA also held that same view in *Aso Motel Kaduna Ltd v Deyemo* [38] and went further to add that the company is neither the agent nor the trustee of its subscribers but has a life of its own distinct from those subscribers. Thus there is a steady acceptance of corporate criminal liability in Nigeria in the same direction as that taken by English jurists and courts over the years. Since 1944 the courts have taken the position that companies can be culpable for crimes and they have relied on the *alter ego* principle to determine both the requisite *mens rea* and *actus reus* of these companies. Yet this area of the law is still open to development as the courts continue to review corporate behaviour and take them into account in interpreting the laws. Hence there are opportunities to deepen the jurisprudence and approach to corporate criminal liability in Nigeria.

**Determination of Criminal Intent for Corporate Persons in Nigeria**

In the UK the courts have gradually evolved basis for measuring and determining the corporate mens rea by using different methods. The English courts had used the civil law doctrine of vicarious liability by holding a company liable for the mens rea of its officers. This gradual evolution can be deducted from the case of *Mousell Brothers Ltd v London and North –Western Railway Company,* [39] where it was held that a company could be vicariously liable for the acts of its employees and face the consequences associated with these acts. The Court was clear that a corporate body is vicariously liable for acts done by or on instruction or through implied or express permission of its directors or servants. However, the vicarious liability method the Court relied on in this case does not accurately capture the corporate mens rea or properly determine the extent of the company's liability. This is because it is against the individualistic notion of the criminal law to hold a "person" liable for the wrong of another person and this reduces the efficacy of this civil law action in meeting the retributive character of criminal law. Secondly, the attribution of the actions of an individual to a company through vicarious liability seems to render the issue of mens rea irrelevant and clearly that washes away one of the central cornerstones of criminal obligation and responsibility. This is because applying vicarious liability to corporate criminal liability renders a company guilty irrespective of the fact that it had not the mens rea to commit the act constituting the offence or even of the fact that the act itself might have been committed contrary to its corporate policy. This 'weakness' of this tortious liability has left open the need to develop corporate criminal liability as a tool of determining both the intents and acts of individuals that can be attributed to the company to meet the most basic requirements of criminal law principles.

Extension of criminal liability to cases requiring intent took a while longer in the UK. According to Wells [40], the doctrine of precedents contributed to this as it hampered courts from applying corporate criminal liability even after the initial procedural difficulties had been removed. However, in 1944, three cases decided within months of each other paved the way for corporate criminal liability in cases requiring intent. While the reasons why these decisions so close to each other were made at this particular time is uncertain, the effect has been said to be revolutionary [41]. In all three cases [42], the courts indicted a company for an offence requiring intent to deceive, conspiracy to defraud and using a document with intent to defraud respectively. The courts were able to do so by attributing the intent of its officers to the company itself, so that the officers were acting as the company and not/or the company. It was therefore the company itself which was liable and not merely being liable for the acts of its officers as under the vicarious liability doctrine. In Nigeria the courts have taken the same direction as the English courts in determining criminal intent of companies in their prosecution for crimes. Likewise the concept has gone through the same evolutionary stages including the transition through vicarious responsibility before the current reliance on criminal law principles to prosecute companies.

In *DPP v Kent and Sussex Contractors,* [43] Viscount Caldecott, after reviewing a long line of cases, concluded, that "(T]he officers are the company for this purpose... There was ample evidence on the facts... that the company, by the only people who could act or speak or think for it had done both these things." [44] While this was not expressly stated in any of the three cases, the attribution of the intent of the officers of the company to the company itself emerged in the law of torts and the courts may have been influenced by the reasoning of the court in the earlier case of *Lennard's Carrying Co. v Asiatic Petroleum* [45].

Some recent cases such as *Attorney General s Reference (No.2 of 1999)* [46] and *Rowley v DPP,* [47] have also given restrictive interpretations to determination parametres of the type of persons whose *mens rea* and *actus reus* reflects not just that of the company but mirror its internal corporate behaviour. This clearly is the one most important factor that reduces the efficacy of the identification doctrine in attributing corporate criminal liability. First, there are no clear criteria for

[35] LFN 2004
[36] LFN 2004
[37] (2007) Vol. 31 WRN 163
[38] (2006) 7 NWLR Pt 978 at 87
[39] (1917) 2 K.B 836

[40] Professor Celia Wells is a foremost scholar on corporate criminal liability
[41] R.S welsh, The Criminal Liability of Corporations (1946) 62 Law Q. Rev 346
[42] DPP v Kent and Sussex Contractors; R v ICR Haulage and Moore v Bresler
[43] supra
[44] This has variously been called the identification or alter ego doctrine or theory.
[45] supra
[46] (2000) 2 cr app R 207
[47] (2003) EWHC 693

determination of persons whose *mens rea* could be attributed to the company for purposes of criminal liability. Although the House of Lord's decision in *Tesco v Nattrass* [48] gives a restrictive interpretation by limiting these individuals who sit atop the management pyramid but it changed this direction in the case of *H.L. Bolton (Engineering) Co. Ltd,* [49] where the Court recognized managers of the company who were in charge of the daily running of the company as being persons whose mental state can be attributed to the company without determining their position on the corporate pyramid. Secondly, even without such divergence and lack of clarity, this restrictive interpretation of the doctrine greatly reduces the chances of successfully attributing liability to the company as it poses the rather difficult problem of finding a responsible officer high enough in the corporate hierarchy whose *actus reus* coincides with the requisite *mens rea* to be attributed to the company. This is more glaring because modern companies are more complex and have layers of corporate structures that are not in line with the traditional corporate pyramid envisaged by the Court in the *Tesco*'s case. In such complex modern companies, the *mens rea* of a lowly manager, who in reality is in charge of the day to day decisions for the running of the company, may not be considered a controlling mind of the company in light of the *Tesco* [50] decision and will leave the determination open to uncertainties and contextual restrictions.

In Nigeria the courts have often made reference to the common law terms of mens rea and actus reus in assessing corporate criminal liability in Nigeria. A good example is the case of *Abeke v State,* [51] where it was held that mens rea means a guilty mind and is a necessary precondition for attributing criminal acts to either a natural person or a fictional personality. This has also been captured under statutory law in the country and a good illustration is in Chapter five of the Criminal Code which deals with criminal responsibility and it provides in *Section 24* thus:

> Subject to the express provisions of this code relating to negligent acts and omissions, a person is not criminally liable for an act or omission, which occurs independently of the exercise of his will, or for an event which occurs by accident. Unless, the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial. Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal Sresponsibility [52].

The above Section explains criminal responsibility under the Code. First, the physical element is recognized to be in the form of an act or omission. Secondly, the requirement for the mental element is explained in three ways as follows. The first paragraph means that there can be no liability without fault. The word "will" in the paragraph means the accused's intention and awareness of the circumstances connected to the act. The second paragraph provides for result offences and simply denotes the common law rule on presumption of mens rea that unless intention is expressly stated as part of the definition of an offence, it is immaterial that the accused intended to cause a different result. Also, the wordings of *Section 24* show a presumption against vicarious liability for a mental element; it states that a person is said not to be liable for an act which occurs without the exercise of his will. This is clearly meeting the expectations of personal liability, which remains a major cornerstone of criminal responsibility. Therefore, from these provisions, the mens rea or mental element is acknowledged; it is a matter of semantics that the common law phrase is not used expressly in the Code.

Under the Penal Code that is applicable in Northern part of Nigeria, the words mens rea and actus reus are also not clearly expressed or pointed out. The Penal Code provides in Chapter Two for criminal responsibility and its provisions also show that the common law principle of no liability without fault was used as a guiding principle. Therefore established common law mental state benchmarks such as 'intention', 'knowledge', 'fraudulently' and 'dishonestly' are used to define the mental element in the determination of offences under the Penal Code. *Section 48* of the Code provides: "Nothing is an offence which is done by accident or misfortune and without any criminal intent or knowledge in the course of doing a lawful act in a lawful manner by lawful means and with proper care and caution" [53]. The most natural understanding of the phrase "proper care and caution" will infer acts done without negligence. Intention, knowledge and negligence are used in the above provision of the Penal Code to infer the necessity of the mental element as a premise of determining guilt and distribution of liability. In that vein Section 51 also provides that: "Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsound mind, is incapable of knowing the nature of the act, or that he is either wrong or contrary to law." This tallies with our earlier conclusion on the reliance of the common law principle that places liability only to where a fault is placed. Therefore, although the terms actus reas and mens rea are not expressly used in both the Criminal and Penal Codes, however, both legislations recognize that there must be a physical and mental element to criminal liability.

Beyond the Criminal Code and Penal Code, there are other enacted statutes that have made provisions for corporate criminal liability in Nigeria and have also made provisions for determination of the attribution principles. But a good view of the applicability of the Criminal Code can be located in the case of *R v Zik Press* [54]. where a company was found guilty of an offence of contravening *Section 51(1) (c)* of the Nigeria's Criminal Code. A second example can be seen from the outcome of the case of *Mandilas & Karaberis v. COP* [55] where another company was convicted of the offence of stealing by conversion under sections 390 and 383 of the Nigerian Criminal Code. While in *A.G Eastern Region v Amalgamated Press of Nigeria Ltd* [56] the preliminary objection raised by the defendant on the ground that an offence could not be committed by a company in the absence of men rea was overruled by the court; which relied on the attribution

[48] ibid
[49] ibid
[50] ibid
[51] (2007) 3 S.C Pt11, 105
[52] LFN 2004 Chap 77
[53] LFN Chap 89 2004
[54] (1947) 12 W.A,.C.A 202
[55] (1958) 3 F.S.C 20
[56] (1961) 1 All N.L.R 199

principles to determine the liability of the company based on the intents and acts of its officers and directors. However, the court was clear that certain offences cannot be attributed to the company and cited offences of personal violence or with offences for which the only punishment is imprisonment. Nevertheless, the cases of *R v Corry Bros;* [57] *Granite Construction Company v Superior Court* [58] and *Northern Mining Construction Company Ltd v Glamorgan Assizes* [59] have all established the fact that companies could be held liable for manslaughter. The position in Nigeria is better understood from the perspective of Erhaze and Momodu who stated that ''the notion of corporate criminal liability being a recent development, cases are rare and there are yet no known cases of corporations being charged for the offences of manslaughter or murder'' [60]. They went further to state that Nigeria being a former colony of the United Kingdom has relied on the principles of corporate criminal liability under the old common law doctrine ''that relies on the attribution principles that is restrictive when offences are of such nature that only natural persons can commit them'' [61]. They also were of the opinion that the common law has set the basis for determining corporate criminal liability based on the 'identification doctrine', ''which requires that intents and acts of officers and directors of a company are attributed to the company'' [62].

There is no doubt that under both statutory and case law in Nigeria criminal intent of companies has been established and hinged on the direction set by the English Common law through the attribution principles. Hence this will also guide the location of the point of intent of companies where the basis of the prosecution is an act of the company itself. The simple deduction is to lay the point of determination to the root base of the attribution model that guides on identification of the alter ego and in this instance to also review the acts of such alter egos in relation to the principles set out in criminal law.

**Conclusion**

In spite of the advantages and clarity of the alter ego doctrine approach adopted in the UK and Nigeria it has its downside. Some Scholars are worried that the requirement that for companies to be criminally liable the crimes must have been committed by a high ranking officer or manager constitutes an impediment in combating corporate crime because most companies will avoid liability by empowering lower level employees to make decisions or act on its behalf. The Tesco case readily comes to mind where the House of Lords concluded that a store manager is far below the ladder to be considered an alter ego. The UK system presents another disadvantage when requiring the identification of the individual who committed the act as a prelude to determine corporate criminal liability. The identification of the individual who committed the crime is often times impossible. Although the alter ego doctrine has the advantages of being clear, predictable, and consistent with the general principles of criminal law, it still leaves a gaping hole in matters of general fairness and efficiency. The US approach via the respondeat superior establishes a wide system of corporate criminal liability that promotes general fairness and deterrence but lacks the focus on clarity and precision associated with the alter ego doctrine. The US doctrine's adoption of the aggregation theory and the fact that any employee can engage the criminal liability of corporations has the advantage of making it easier for the prosecution of companies as against the single lane approach of the alter ego doctrine.

It is encouraging to note that the *alter ego* principle has been established in Nigeria with no vague outlines and the courts have started taking that direction in determination of corporate criminal liability as well as the extent of the veil that can be lifted through the judicial process. Though there are still rough edges it is clear that this principle provides adequate ammunition to guide law makers and jurists in Nigeria. Thus there are still areas of uncertainty particularly in relation to whether the Nigerian courts should rely on 'strict attribution principles' as set in the *Tesco*'s case or rather deep dive into corporate constitutional documents to determine the allocation of responsibilities, liabilities and status of the natural persons as recommended in the *Meridian* case. In determining whether acts of an alter ego can be attributed to a company in relation to criminal liability it will be restrictive to either apply the 'narrow' direction of the decision in *Tesco* or the 'expanded' parameter of the *Meridian* decision because of the subjective nature of this angle of corporate criminal liability. The ideal approach is to seek a different approach that marries the documented distribution of corporate powers as well as the practicality of corporate practice in Nigeria. The attribution principles have developed in such a way that it leaves open the determination of who qualifies as an 'alter ego' to pragmatic evaluation on case-by-case basis; ironically it also has the added benefit of insulating the company from certain acts of those that may have qualified as alter egos but will be wrapped alone in their personal liabilities. In *Federal Republic of Nigeria v Nwoche Odogwu and Capital Merchant Bank* [63] the promoter of the Bank who also doubled as its Managing Director was accused of granting unsecured loans that were later diverted for his personal use. The Court sentenced the Managing Director to 18 years in prison but discharged the Bank because it could not attribute the intents and acts of the Managing Director to the Company itself. The attribution principles are not just tailored to allocate criminal liability to companies or share them amongst the company and its alter egos; but it is also an instrument to protect the company from unscrupulous alter egos that can expose it to liabilities.

It is also important to refer to the noble changes made to criminal procedures through the *Administration of Criminal Justice Act* [64] that came into effect in 2015. The Act laid grounds for arraignment of companies in Nigerian Courts either alone or jointly with natural persons. In *Section 477(1)* was clear that for the purpose of criminal trial the term 'person' refers to both natural persons and companies. But the major impact of this Act is in *Section 477 (2)* where it provides that a company can appoint a representative to stand for it during its trial for a crime; this representative will take plea on its behalf and stand on its behest throughout the trial. The Act recognizing the 'alter ego' principles stated in *Section 477 (3)*

[57] (1927) 1 K.B 810
[58] (1983) 149 Cal App 465
[59] Unreported February 1 1965
[60] Erhaze, S., & Momodu, D. (2015). Corporate Criminal Liability: Call for a New Legal Regime in Nigeria. *Journal of Law and Criminal Justice*, *3*(2), 63-72.
[61] ibid
[62] ibid
[63] (1997) 1 F.B.T.L.R 179
[64] Administration of Criminal Justice Act 2015

that such representatives should be appointed in writing by 'a Managing Director or by any person (by whatever name called) having or being one of the persons having the management' of the company standing trial. The Act also states that such a written appointment of the representatives from the company's management suffices without further proof as a definite evidence of representation [65]. Though the Act is limited in application to only trials of offences contained in Federal statutes; it has provided a direction for the prosecution of companies in Nigeria.

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[65] Section 477 (3) of the same Act