International Journal of Multidisciplinary and Current Educational Research (IJMCER)
ISSN: 2581-7027 ||Volume|| 4 ||Issue|| 1 ||Pages 129-140 ||2022||

Assessing the suitability of "Lifting the Corporate Veil" Legal Mechanism in the Enforcement of Law on Corporate Manslaughter and Corporate Social Responsibility in Nigeria.

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ABSTRACT: Drawing empirical evidence from legal practitioners, firms, lawmaker, judge and Nigerians, this study explores the issues with enforcement of corporate social responsibility and lifting of corporate veil in Nigeria. It was found that with regards to corporate liability and enforcement of corporate manslaughter and corporate social responsibility in, companies seem to hide from liability. The nature of law can be tricky. The company in a case against them in court may for example argue that they are forced to accept the liability of its subsidiary company in a corporate manslaughter case against them. In some countries, the nature of the law with regards to corporate social responsibility failures and enforcement of laws to punish for corporate manslaughter, the decision of the court will be that the parent company must or must not accept the liability of its parent company. This finding confirms that Nigerians, government, and its institutions do not know the effects that corporate manslaughter law can have in the Nigerian judicial system when the veil of corporations are lifted to punish companies for death at work thereby making companies to be socially responsible and lifting of corporate veil is still difficult in Nigeria. It is anticipated that this paper will add to the body of knowledge firstly on educating Nigerians of their role to the road of lifting of corporate veil to aid enforcement of corporate social responsibility among companies in Nigeria by the courts and secondly on the effect of lifting of corporate veil to aid enforcement of corporate social responsibility among companies in Nigeria; and provide some insights for multinational companies carrying on business in Nigeria.

Through the use of focused group case study research technique, this journal article identified the judicial obstacles with regards to lifting of corporate veil to aid enforcement. It clarifies the there is still in Nigeria the difficulty of lifting the corporate veil of companies operating in Nigeria and Nigeria has good laws, but the problem is in the implementation of the laws to better the lives of Nigerians. This article suggests that the town criers, the kings, Chiefs and Non-Governmental Organizations needs to help communicating the viability of laws like corporate manslaughter in bringing justice in Nigeria. This is because it involves a declarative moral judgment about a social actor. This article assesses the impact of town criers, kings, chiefs and non-governmental organization to bring the normative basis of regulation to the force, restating that the law matters to the citizens (lifting the corporate veil), that breaching it is wrong and why this is so in Nigeria.

OBJECTIVE OF THIS ARTICLE : To state the effects in the lifting of the corporate veil with regards to enforcement of corporate manslaughter and corporate social responsibility in Nigeria.

I. INTRODUCTION

The problem with the lifting of corporate veil, enforcement of corporate manslaughter and corporate social responsibility in Nigeria is that there is no strong law in Nigeria to lift the corporate veil and charge companies in the event of corporate manslaughter. Nigerian law like the Criminal Code or the Companies and Allied Matters Act 2004 only made provision for the award of damages (as in a civil case) in the event of tragedies such as petrol tanker explosion that happened in Anambra State of Nigeria in 2015 which claimed lives. Nigeria is one of the countries in the world that is experiencing problem in prosecuting multinational oil companies because the laws in existence are weak[1]. Some youths in the Niger Delta Area of Nigeria instituted criminal proceedings against Shell Nigeria in the Netherlands to give effect to enforcement of corporate manslaughter and corporate social responsibility in Nigeria since the law in Nigeria do not accommodate such proceedings enabling companies to hide under its corporate veil. This is why the Nigerian government needs to educate Nigerians on using town-criers to educate and announce the bill otherwise no one will know about the bill and its effect on CSR among MNCs operating in Nigeria (firstly educating Nigerians to react positively (letting

[1] 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

companies hear and understand that the hunger of a nation to generate revenue for the sustenance of its citizenry does not mean that the nation is weak and fools) on the import of a new law, why the current ones have not achieved much to make companies effectively and continuously practice CSR in their business..
However, in developing countries Like Nigeria, Nigerians utilizing their knowledge of the import of the law and its consequences on a company to change the attitude of companies towards CSR will only be just the beginning because of the issue of corruption.

II. LITERATURE REVIEW

What this article intends to achieve are:
(1) The problem created by English court under the doctrine of separate legal personality when it ruled against the lifting of corporate veil
(2) The change in judicial attitude in judgment for lifting of corporate veil in England to aid enforcement
(3) The practice of lifting of corporate veil under the Nigerian law with how companies are hiding under the corporate veil and the need to educate Nigerians of the effect of lifting of corporate veil

THE PROBLEM CREATED BY ENGLISH COURT UNDER THE DOCTRINE OF SEPARATE LEGAL PERSONALITY WHEN IT RULED AGAINST THE LIFTING OF CORPORATE VEIL : The doctrine of separate legal personality comprises of two elements. Firstly, a company's property belongs to it and not to its directors and secondly, a company is responsible for its own debts and liabilities. This means that shareholders and directors are not responsible for paying a company's creditors back in the event of it being wound up as a result of insolvency. This principle was established in *Salomon v Salomon & Co Ltd*[2].

The facts of Salomon were such that Aron Salomon, from being a sole proprietor made his business into a limited company and in conformity with the law at that time made sure at least seven persons had subscribed as shareholders or members. The company later became insolvent and although the Court of Appeal holding that this move by Aron Salomon was tactical to benefit him with limited liability, the House of Lords held different. Despite the other shareholders of the company being Aron Salomon's family members, the members of a company would not automatically be entitled to the benefits or automatically liable for its troubles. This created the doctrine of separate legal personality. However, several exceptions to the principle have come about in case law and statute. In these cases, the veil separating the members of a company from the company itself is said to have been pierced. This means that the liabilities and assets of a company are treating in the same way as those of its members.

THE CHANGE IN JUDICIAL ATTITUDE IN JUDGMENT FOR LIFTING OF CORPORATE VEIL IN ENGLAND TO AID ENFORCEMENT : After Salomon's case, the courts in England have realised that lifting the veil can also be of advantage to the members, as in example, in the case *DHN Food Distributors Ltd v Tower Hamlets London Borough Council*[3], where the Court of Appeal treated a group of companies as a single economic entity (so to enable compensation for compulsory purchase of land to be paid). Nevertheless, this case has been challenged in *Adams v Cape Industries Plc*[4] . In this case, the Court could find no legal objection (in respect of a holding company-subsidiary relationship), "*where the corporate structure of a group of companies had been used to ensure that any future legal liability, so attached to the group enterprise, would fall on a subsidiary of the holding company, rather than on the holding company itself*". The courts therefore refused to lift the veil and on this strict application of the Salomon principle, Slade LJ held "*we 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 liability (if any) in respect of particular future activities of the group (and correspondingly the risk of enforcement of that liability) will fall on another member of the group rather than the defendant company. Whether or not this is desirable, the right to use a corporate structure in this way is inherent in our corporate law*"[5]. This solution has been followed in the case of *Connelly v RTZ Corp Plc*[6].
This *Adams v Cape Industries plc*[7] supra case modified the attitude of the courts on the question of lifting the

[2] Salomon v Salomon & Co Ltd [1897] AC 22
[3] [1976] 1 WLR 852

[5] As per the court in *Adams v Cape Industries Plc* [1990] Ch 443
[6] *Connelly v RTZ Corp Plc* [1998] AC 854
[7] *Adams v Cape Industries Plc* [1990] Ch 443

veil to establish a controlling interest or an economic entity. Prior to *Adams v Cape Industries*[8] supra, the method for establishing that a group of companies was in reality one economic entity was somewhat vague but a number of cases (such as *DHN Food Distributors Ltd v Tower Hamlets London Borough Council* [9]) suggested that an economic entity could be established **where the holding company exerted a substantial degree of control over the affairs of the subsidiary company, to the extent that the holding company controlled and dictated the corporate policy of its subsidiary**. Since the case *Adams v Cape Industries*[10], a company's ability to control the overall policy structure of another company is unlikely, of itself, to be sufficient to justify the lifting of the corporate veil. To dislodge the corporate veil of the subsidiary, the courts have demanded something more: "*namely, in addition to a holding company's control over the policy structure of its subsidiary, the finding of a façade is required in relation to the incorporation of the subsidiary company*"[11].

The courts varied their attitude and strengthened the Salomon principle with the case of *Adams v Cape Industries*[12] supra. Since this case, it seems that the only circumstances in which the courts are likely to lift the veil are: firstly when the court is construing a statute, contract or other document which requires the veil to be lifted; secondly when the court is satisfied that the company is a '*mere façade*', so that **there is an abuse of the corporate form**; and thirdly when it can be established that the company is an authorised agent of its controllers or its members, corporate or human.

The changes of case *Adams v Cape Industries*[13] supra have been more recently affirmed in cases such as *Ord v Belhaven Pubs Ltd*[14] or *Williams v Natural Health Foods Ltd* [15]. As has been posited, the triumph of corporate form and limited liability over business enterprise is an actuality only in England. The law pursuant to *Ord v Belhaven Pubs Ltd*[16], following *Adams v Cape*[17] and treating *DHN*[18] as an aberration, is that corporate personality can only be ignored where the corporate form is being used for some "manifestly improper or fraudulent purpose" and the principles on which the veil would be pierced are very inflexible. Thus a bona fide group restructuring *lis pendens* was held to be perfectly legitimate, in spite of the subsidiary having no assets left to meet its contingent liabilities.[19]Furthermore, the overruling of *Creasy v Breachwood Motors*[20] in *Ord* by Hobhouse L.J., who described H.H. Judge Southwell QC's opinion that English law "definitely" recognised the principle of lifting the corporate veil as "heresy", has strengthened the perception regarding the reluctance of the British to pierce the veil, especially since both cases involved transfer of assets to another company pending litigation.[21] The concerns expressed by Moritt V.C. in *Trustor AB v Smallbone*[22] further validates the position that the corporate veil cannot be lifted merely because justice requires it and that the only remedy for a plaintiff

[8] Adams v Cape Industries Plc [1990] Ch 443
[9] [1976] 1 WLR 852
[10] [1990] Ch 443
[11] As per the court in Adams v Cape Industries Plc [1990] Ch 443
[12] Adams v Cape Industries Plc [1990] Ch 443
[13] Adams v Cape Industries Plc [1990] Ch 443
[14] [1998] B.C.C. 607 (CA).
[15] [1998] 1 WLR 830 (HL)
[16]Ord v Belhaven Pubs Ltd [1998] B.C.C. 607 (CA).

[17]Adams v Cape Industries Plc [1990] Ch. 433.

[18]DHN v Tower Hamlets [1976] 1 W.L.R. 852.

[19]In *Ord*, the plaintiffs commenced proceedings in 1991 claiming damages in tort and contract from Belhaven Pubs Ltd. However, the Court of Appeal flatly rejected the "group interest" approach and held that the veil could not be lifted while relying on *Woolfson v Strathclyde* 1978 S.L.T. 159 and *Adams v Cape Industries* [1990] 1 Ch. 433 to suggest that corporate personality should only be ignored where the corporate form is being used for some manifestly improper or fraudulent purpose and in this case there was a genuine restructuring.

[20]*Creasy .v. Breachwood Motors* [1993] B.C.L.C. 480. The veil was lifted to hold BML liable for the debts because the assets had been shifted to BML deliberately with full knowledge of the plaintiff's claim

[21]A. Walters, "Corporate Veil" (1998) 19 *Company Lawyer* 226, 226.

[22]*Trustor AB .v. Smallbone* [2001] 3 All E.R. 987 Ch D.

is to go under the narrow exception of fraud or evading an existing, fully crystallised contractual/ legal obligation as in *Jones v Lipman*[23]. Courts then employ equitable discretion to prevent malafide.[24]

THE PRACTICE OF LIFTING OF CORPORATE VEIL UNDER THE NIGERIAN LAW WITH HOW COMPANIES ARE HIDING UNDER THE CORPORATE VEIL AND THE NEED TO EDUCATE NIGERIANS OF THE EFFECT OF LIFTING OF CORPORATE VEIL

In Nigeria a company not registered in Nigeria is a legal person and may sue in a Nigerian court. This legal guess was approved judicially in the case of Kitchen Equip W.A. Ltd v Staines Catering Equip International Ltd[25].

As a result of the above, it has been decided in the Nigerian case of Philips v Abou Diwan[26] that the ''shareholders are not the individual owners of the company's property and have no powers as individuals to dispose of the company's property''. This in its real meaning entails that the ''liability of individual shareholders is limited to the number of shares subscribed to and does not cover the unsubscribed assets of the shareholders since they are distinct from the company's assets''.In addition, in the case of Government of Midwestern State v Mid Motors Nig. Co. Ltd[27] ''it was held that as a legal person a company can sue and be sued but the action must be in the name by which the Company is registered''[28]. Statutorily, under the Companies and Allied Matters Act 2004 the doctrine was well stated in its section 37 as follows:

"As from the date of incorporation mentioned in the Certificate of incorporation, the subscriber of the memorandum together with such other persons as may from time to time become members of the Company, shall be a body corporate by the name contained in the Memorandum capable forthwith of exercising all the powers and functions of an incorporated Company including the power to hold land and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the Company in the event of its being wound up as is mentioned in the Act''[29]. The Nigerian version of the corporate liability was also strengthened in the case of Adeyemi .v. Lan & Baker Nig. Ltd[30] where the court held that ''one of the consequences of a company's incorporation is that a limited liability company only exists in the eye of the law, it can only operate by means of human beings; usually a company acts through its human agents such as directors, managers and officers whose actions can be attributed to that of the Company[31]''.

Wide ranges of exceptions to this principle were in law codified by Companies and Allied Matters Act 2004 hereinafter referred to as CAMA 2004. For instance in cases of investigation section 316 of CAMA ''upon an inspector being appointed by the commission to investigate into related companies which can be conducted by virtue of the affairs of a Company, the inspector, may if he thinks it necessary for the purpose of his investigation, investigate also the affairs of any other related company, and report on the affairs of such other related company so far as he thinks the result of his investigation thereof are relevant to his main investigation'' and this provision is in relation with the ratio of Denning L.J previously Considered in the case of Norwest Holst v Secretary of State For Trade[32] where section 165 of the U.K. Companies Act was applied. It is appropriate to say that the section was not meant to witch hunt but the court has the power to have such suits struck off. Hence, the court supported this statement to ensure that the veil is unveiled for accountability in the face of economic realities.

[23] *Jones v Lipman* [1962] 1 W.L.R. 832

[24] A. Capuano, "The Realist's Guide to Piercing the Corporate Veil" (2009) 23(1) Australian Journal of Corporate Law 56, 65.

[25] The Federal High Court Sitting at Calabar Nigeria did not report this 1982 case suit no 17 (UNREPORTED FCAL/17/82)

[26] [1976] 2 FRCR 24

[27] [1977] 10 S. C. 43

[28] Njemanze v Shell B.P. Port–Harcourt (1966) 1 All NLR 8.

[29] Companies and Allied Matters Act 2004, s. 37

[30] [2000] 7 NWLR (PT. 663) 33

[31] Decision of the court in the case of *Adeyemi .v. Lan & Baker Nig. Ltd* [2000] 7 NWLR (PT. 663) 33

[32] [1978] Ch 201

In addition, a fair look at section 338 of CAMA makes clear on the dichotomy between holding and subsidiary Companies in the face of lifting the veil so that subsidiaries will not hide under the backing of corporate personality of the holding Company to commit fraudulent practices or take away from the government income accumulating to her from the profits made. The section provides "(1) subject to subsection 4 of this section, a company shall for the purposes of this Act be deemed to be a subsidiary of another company if … the Company is a member of it and controls the composition of its Board of Director or holds more than half in nominal value of its equity share capital or the first mentioned Company is subsidiary of any company, which is that other subsidiary."

Having dealt with the differences in both jurisdictions, it is apposite to pierce the veil of incorporation to discover the actual financial return of either Company. Nevertheless, on the legislative sledgehammer, which cracks open the corporate shell, the Courts will not hesitate to unveil the mask of incorporation where it discovers that there exists reckless or fraudulent trading. In the Nigerian case of *Nathaniel Adeniji v State*[33] the court held that ''any business which appears to have been handled recklessly or with intent to defraud, the court may declare that any person who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally liable for all or any of the debts or other liabilities of the Company''[34]. It is submitted that the work of the Court have been made easier by Section 506(1) of the CAMA which provides that ''if in the course of winding up of a company, the act has been carried on in a reckless manner or with intent to defraud, the creditors of the Company or creditors of any person for any other purpose, the receiver or liquidator or contributory of the company may, if it thinks proper to do so, declare that any person who were knowingly parties to the aforesaid be made personally liable''[35].

The court further stated in *Yesufu v Kupper International N.V*[36] that ''*where a director is in the eyes of the law, an agent of the Company, for which he acts, the general principle of agency will apply*''. The Supreme Court held that ''where a director enters into a contract in the name of or purporting to bind the company, it is the Company, the principal, which is liable on it, not the director''. The director is not personally liable unless it appears that he undertook personal liability. For instance, a Company's director is not personally liable for the loan granted to the Company in good faith. Readers can now believe that both statutorily and judicially it is very possible for corporate veil to be lifted in Nigeria and corporate social responsibility through court judgment be enforced.There is now every reason for educating Nigerians of the effect of law with regards to lifting of corporate veil in order to enforce corporate social responsibility in Nigeria using town criers, kings and local chiefs

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.Educating Nigerians of the import of CMCHB also entail the duty of Nigerians to speak up for employees who are suffering from using unsafe working equipment and working in an unsafe working environment whom cannot speak up because they may risk losing their jobs. These workers may have complained of use of unsafe working equipment and have been told by their boss that something will be done. According to Almond and Gray, the actions of these employees will be framed rather than companies doing something to ensure that health and safety of their workers will not be compromised and jeopardized[37]. Sometimes in developing countries like Nigeria issues like use of unsafe equipment by employees because it is what is provided for them will not be resolved. The experiences of employees need to be listened to. The advantage of educating Nigerians on the impact of enforcement of the law on companies through town criers, the kings and local chiefs to mention just a few is the assurance that companies are recognized as persons under the CMCHB, and even with the complex structure of MNC's management, once the decision not to provide safe working environment or safe working equipment which results to a death of a person is made; the company will be liable for corporate manslaughter.

[33] [1992] 4 NWLR (PT 248) 1
[34] Companies and Allied Matters Act 2004, s. 93
[35] Companies and Allied Matters Act 2004, s. 506(1)
[36] [1996] 5 NWLR (PT 248) 1
[37] Paul Almond and Gray G ''Frontline safety: understanding the workplace as a site of regulatory engagement'' (2017) 31(1) Law and Policy 5-29 at 5

The law (Act) may have a deterrent effect insofar as it acts as a reminder to organisation to provide better training in safety management, and thereby prevent future deaths in the workplace[38].Brønn and Vidaver-Cohen believe that businesses can only remain competitive if they meet society's demands[39]. This further reinforces the need to further educate Nigerians on the effect of lifting of corporate veil with regards to enforceability for enforcement of corporate manslaughter and corporate social responsibility and its effects on companies. This could be the reason and loophole that some laws in developing countries may not be enforced because the citizens do not know of its impact and the power, they have to influence a law to be enforced (punishing companies for corporate manslaughter). To buttress this point, Davis and Blomstrom believes that ''those who do not use power in a way society considers responsible will tend to lose it''[40] This has worked in many countries across the world especially when the citizens feel that there is need to give companies room to fulfil their CSR. According to Davis government regulation is the one keyway in which corporate power can be reduced and controlled[41] when the citizens of the host country thinks this corporate power is still exercised in an irresponsible manner.

Davis further proposed that business has the resources to solve social problems (cleaning up oil spillage before it catches fire claiming lives, reducing gas flaring which causes terminal illness when inhaled, providing safe working environment for employees to mention just a few (emphasis mine)) that may surpass the resources of other institutions[42].It is important to note that it is not all problems that can be handled in this way. According to Davies, the fact remains that companies can be and should be encouraged to become more active in social areas[43]. It will then be a step in the right direction.This writer believes that Nigerians needs to firstly understand that although other Nigerian laws on corporate criminal law did not achieve much but CMCHB allows for breakthroughs (remedial order, publicity order, payment of huge fine) a revolution from individual liability (identification issue problem and proof) especially company with so many directors. According White (1989) a revolution in which mainstream preconceptions are exposed (that MNCs cannot be charged and convicted for corporate manslaughter for example in Nigeria (emphasis mine)), found insufficiently (if larger companies have not been charged for corporate manslaughter maybe under CAMA because it makes no provision for it, it cannot be achieved under CMCHB (emphasis mine)) fertile and replaced by new preconceptions[44].

This then simply means that the Corporate Manslaughter and Corporate Homicide Bill make it easier to charge and convict companies in Nigeria for corporate manslaughter. Once it is proved that there was a breach of duty of care leading to death and that same breach of duty of care was as a result in failure in senior management decision taken by any senior manager on behalf of the company then the company will be guilty of corporate manslaughter[45]. The veil of companies will then be lifted immediately.However, the fact remains that much of the business world does not properly account for environmental and social impacts[46], as evidenced by constant environmental degradation especially in developing countries of Africa.

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[38] Sarah Field & Lucy Jones "Five years on: the impact of the Corporate Manslaughter and Corporate Homicide Act 2007: plus a change?" (2013) I.C.C.L.R 239

[39] Peggy Simcic Brønn and Deborah Vidaver-Cohen ''Corporate Motives for Social Initiative: Legitimacy, Sustainability, or the Bottom Line?'' (2009) 87 Journal of Business Ethics 91–109 at 93

[40] Davis, K. and R. L. Blomstrom. Business, *Society and Environment. Social Power and Social Response* (2nd Edition McGraw-Hill, 1971) at 95.

[41] Davis, K. and R. L. Blomstrom. Business, *Society and Environment. Social Power and Social Response* (2nd Edition McGraw-Hill, 1971) at 95.

[42] Davis, K. ''The Case for and Against Business Assumption of Social Responsibilities'' (1973) 16(2) Academy of Management Journal 312–322

[43] Supra at 317

[44] Edward White ''The Inevitability of Critical Legal Studies'' (1984) 36 Stanford Law Review 649-672 at P. 654.

[45]Corporate manslaughter and Corporate Homicide Bill 2015 Section 1(3-4).

[46] Alissa Mickels ''Beyond Corporate Social Responsibility: Reconciling the Ideals of a For-Benefit Corporation with Director Fiduciary Duties in the U.S. and Europe'' (2009) 32(1) Hastings and International Company Law Review 271-304 at 272

One of the reasons for educating Nigerians of the negative activities of MNCs and what can be achieved if MNCs are prosecuted for corporate manslaughter under the CMCHB is that it will remind MNCs of the role they should play. Dodd believes that the general public saw companies as economic institutions that have a social service role to play as well as making profits for shareholders and that companies have responsibilities to the company's shareholders, employees, customers, and to the general public[47]. It is not just Nigerians that need to be educated of the impact of The CMCHB on companies but the companies and senior managers (the companies (MNCs) themselves.

The reason for educating MNCs of this bill (most specially to respect it and cooperate) is because their activities help label Nigeria corrupt nation (politically) (if they do not give bribe, local kings will not collect. They need to do the right thing which is reducing environmental degradation which causes terminal illness (society)). News of environmental degradation makes a country less tourist attraction. Eweje (2007) opine that it will make sense if MNCs report publicly on their activities in a host country because of their impact on politics, economics and society in a host nation[48].Writers like Ukpabi et al even suggested operational shutdown (attack from host community) of companies if they are to take Nigerian laws seriously[49].Since companies will then work in a chaotic free atmosphere with better profitability and advancement, it is only proper that managers improvise and maintain means of engaging and empowering its host community in order to achieve warmth in community-company relationships.

Darsono believes that an organization is highly committed to CSR when it adopts and defends stakeholder-friendly values and norms and interlinks them with organizational processes to maximize their positive impacts (and minimize their negative impacts) on all stakeholders[50].Secondly, the law is still a bill but is a watchdog waiting to punish MNCs whenever their activities through senior management decision causes death. Thirdly, companies are big (by their name) and complicated (how powerful they seem to ordinary Nigerians). According to Rubin and Feeley, complicated people are unhelpful[51]. This writer can only suggest that the Nigerian government needs to enact a law that will fix minimum percentage out of profit of the company's profit[52]. Oil spill warrants criminal prosecution[53].Nigerians expect companies engaged in oil exploration to display high desire to keep the environment safe and clean. This is true especially when MNC's risky behaviour can cause oil explosion catching fire. Criminal prosecution will sound into oil companies (MNCs) the dangers of oil spills more than oil companies negotiating terms with the kings and the government (which is what is happening in Nigeria now).

[47]Merrick Dodd, ''For Whom are Corporate Managers Trustees?' (1932) 45 Harvard Law Review1145 in Andrew Keay ''Tackling the Issue of the Corporate Objective: An Analysis of the United Kingdom's 'Enlightened Shareholder Value Approach''(2007) 29 Sydney Law Review 577-612 at 581

[48] Gabriel Eweje, "Multinational Oil Companies' CSR Initiatives in Nigeria: The Scepticism of Stakeholders in Host Communities" (2007) 49(5/6) Managerial Law 218-235 at 218.

[49] Ukpabi D.C. Ikaba Y.V. Enyindah C.W. Orji O.G. and Idatoru A.R. ''Impact of Corporate Social Responsibility on Organisational Effectiveness: An Empirical Analysis of Oil and Gas Industry in the Niger Delta, Nigeria'' (2014) 16(12/1) Journal of Business and management 32-36 at 34

[50] Darsono, L.I. ''Corporate Social Responsibility and Marketing: What Works and What Does Not'' (2009) 11(2) International Journal of Business 275–293 in 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) 2(3) International Journal of Process Management and Benchmarking 101-135 at 107.

[51]Edward Rubin and Malcom Feeley ''Creating Legal Doctrine'' (1996) 69 1990-2037 at 1993.

[52]Odetayo, T.A, Adeyemi, A. Z,Sajuyigbe, A.S ''Impact of Corporate Social Responsibility on Profitability of Nigeria Banks'' (2014) 4(8) International Journal of Academic Research in Business and Social Sciences 252-263 at 252

[53] David M. Uhlmann ''After the Spill is Gone: The Gulf of Mexico, Environmental Crime, and Criminal Law'' (2011) 109(8) Michigan Law Review 1413-1461 at 1419

Criminal prosecution will also ensure restitution (that oil companies have concerns for their health and safety and not just for their pocket) to victims of the oil spill[54]. The idea is that the money must be spent on corporate social responsibility. This must be an enormous amount of money sufficient to remedy the cause or potential cause of death. For example, clean-up of oil spillage which can poison humans when they consume contaminated fish or drink polluted water.In conclusion, companies operating in Nigeria needs to understand that Nigeria value the lives of its citizens. This goes to support the position of this writer in support with the position of Slapper that punishment is the essence of the criminal justice system[55]. Companies in the UK are always reminded that failure to comply with health and safety will amount to punishment. The CAMA and the Criminal Code for example do have loopholes on which companies can capitalize on to evade liability. It is therefore advised here that town criers, the local chiefs and the kings to mention just a few should step in and educate Nigerians on the importance of lifting of corporate veil in order to give effect to enforcement of both corporate manslaughter and corporate social responsibility in Nigeria.

INSTANCES WHEN THE VEIL OF INCORPORATION MUST BE LIFTED UNDER NIGERIAN LAW

LIFTING THE VEIL UNDER THE FEPA ACT 2004 :"Section 37 of the Federal Environmental Protection Act 2004[56] provides that where any offence against the FEPA Act or any regulations made thereunder has been committed by a body corporate or by a member or a partnership or other firm or business, every director or officer of that body corporate or any member of the partnership or any person concerned with the management of that business or firm shall, on conviction, be liable to a fine not exceeding N500,000.00 for such offence, and, in addition the body corporate, firm or partnership shall be directed to pay compensation for any damage resulting from such breach thereof or to repair and restore the polluted environmental area to an acceptable level as may be approved by the Federal Environmental Protection Agency''. In effect, this is another instance where the corporate veil will be lifted where a company wants to hide under the corporate veil to pollute the environment.

LIFTING THE VEIL UNDER THE ICPC ACT 2003 AND EFCC ACT 2004 : The Corrupt Practices and other Related Offences Act No 6 of 2003 made provision for changing offences which cut across section 12 – 29 of the Act. Section 2 of the Act under consideration defines a person under the Act to include juristic persons and natural persons. For instance, the law provides that without prejudice to any sentence of imprisonment under the Act, "a public officer or other person found guilty of soliciting, offering or receiving gratification shall forfeit the gratification and pay a fine of not less than five times the sum or value of the gratification which is the subject matter of the offence where such gratification is capable of being valued or is of a pecuniary nature or Ten thousand Naira, whichever is the higher''[57]. By implication, officers of a company will be penalized if they go against the law as the corporate shield will not benefit them due to the doctrine of corporate criminal liability in the statute. These instances of lifting of corporate veil among Nigerian laws above to give effect to enforcement of law are all good but with regards to laws like the Companies and Allied Matters Act 2004 which deals with management of companies, companies can refuse the liability of its managers. Section 65(1) of CAMA provides that:''any act of members in general meeting, the board of directors, or of a managing director while carrying on in the usual way the business of the company shall be treated as the act of the company itself and the company shall be criminally and civilly liable therefore to the same extent as if it were a natural person''58. The section literally provides that the acts of directors should be the acts of members in general meeting but in actual sense, it can only be so if members which are the shareholders of the company in general meeting ratifies that act of the director working for them which caused death.

Furthermore, section 66 of CAMA provides that: ''Subject to the provisions of section 65, the acts of any officer or agent of a company will be deemed to be the act of the company and the company will be liable in such circumstances provided the company is acting through its members in general meeting, board of directors or managing director, expressly or impliedly authorised the act''59.

[54] David M. Uhlmann ''After the Spill is Gone: The Gulf of Mexico, Environmental Crime, and Criminal Law'' (2011) 109(8) Michigan Law Review 1413-1461 at 1419

[55] Gary Slapper ''Corporate Manslaughter'' (2010) 74 The Journal of Criminal Law 181-184

[56] Federal Environmental Protection Act 2004, s.37

[57] the ICPC Act 2003, s.23

[58] The Companies and Allied Matters Act Laws of the Federal Republic of Nigeria 2004 Section 65(1)

[59] Supra at Section 66

In such instance town criers for example will then educate both Nigerians and companies of the provision of the same law on disqualification of directors and the effect of incorporation[60] which means that the liability of the directors is the liability of the company, and the corporate veil must be lifted in such cases to give effect to enforcement of corporate manslaughter and corporate social responsibility.

Writers like Dhir believe that this negligent management culture among companies breed due to absence of an accountability structure and discipline[61]. Even though that business is about profit making and as discussed above, reduction on things that could cause death, it will be the practice of attainment of optimal production[62]. The idea is to create awareness that the activities of MNCs have negative impact on the community and for companies to consider this while making their decision.

The government considers the health and safety and well-being of its citizens before making a law. It then makes a credible commitment to its vision by enforcement remediation practices. According to Griffith, companies will adhere to these laws in order not to fall behind industrial standards[63]. Whenever companies fail to comply with these 'industrial standards' or where there is none (industrial standards to be maintained by companies), then it could be a problem between the community and the company. In the UK, political pressure[64], involving the government has cautioned companies on the health and safety decisions they take and how they carry on business. The United Kingdom has had years and years of development in their laws. The government in the UK focused on ''Managerialism'' which according to Almond and Esbester (2018) entails greater constitutional legitimacy (Accountability and efficiency[65]). The government mapped out what each council in The UK must ensure that companies which wishes to base and do business in their constituency must live up to. Obviously, they are already educated on the standards and laws before they do their job. Countries like Nigeria need to start up locally by involving and educating everyone one of the effects of our laws and what can be achieved by it. Many Nigerians including oil company staffs do not have knowledge of corporate manslaughter offence, corporate manslaughter law or even how laws can make companies in Nigeria to be corporate socially responsible (through punishment for corporate manslaughter by law). Those who have this knowledge are few researchers like this writer who has knowledge of death at workplace and the importance of reducing the number of deaths at workplace. Glazebrook believes that very few people know about corporate manslaughter except those who sponsors the law and who believes that lives will be saved at the workplace, while supplying goods and services[66]. The non-government organizations NGOS, town-criers will educate Nigerians and MNCs of the new dawn and impact of CMCHB that company which fails[67] to remedy the situation for example will be punished. Authors like Braithwaite and Fisse agrees with this writer. According to the duo, Companies that fails to demonstrate such systems would be "told that they will be targeted for more

[60] The Companies and Allied Matters Act Laws of the Federal Republic of Nigeria 2004 Section 37

[61]Aaron A. Dhir, Challenging Boardroom Homogeneity: Corporate Law, Governance, and Diversity(2015) in Eli Lederman ''Corporate Criminal Liability: The Second Generation'' (2016) 46 Stetson Law Review 71-87 at 76

[62]Lee, E.M., Park, S. and Lee, H.J. ''Employee perception of CSR activities: Its antecedents and consequences'' (2013) 66 Journal of Business Research 1716-1724; Cochran, P. L., and Wood, R. A. ''Corporate social responsibility and financial performance'' (1984) 27(1) Academy of Management Journal 42–56

[63] Sean J. Griffith ''Corporate Governance in an Era of Compliance'' (2016) 57(6/4) William and Mary Law Review 2075- 2140 at 2109

[64] Paul Almond and Mike Esbester ''Regulatory inspection and the changing legitimacy of health and safety'' (2018) 12 Regulation and Governance 46-63 at P. 52

[65] Paul Almond and Mike Esbester ''Regulatory inspection and the changing legitimacy of health and safety'' (2018) 12 Regulation and Governance 46-63

[66] P.R. Glazebrook, "A Better Way of Convicting Businesses of Avoidable Deaths and Injuries?'' (2002) 61(2) Cambridge Law Journal 405- 422

[67] Steve Tombs and David Whyte ''Transcending The Deregulation Debate? Regulation, Risk, and the Enforcement of Health and Safety Law in the UK'' (2012) Regulation and Governance 1-19 at 3

interventionist direct enforcement"[68].Whenever, companies are found guilty and convicted for corporate manslaughter, and punished especially, in developing countries like Nigeria it does not end there. Companies need to incorporate what caused them to be indicted in the first place into their constitution and practice it. According to Garriga and Mele, the convicted company then needs to ''develop the processes and implement strategies to meet the corporate challenge of corporate sustainable development''[69]. This practice may take long time to culture and practice by these companies.This culture is very important especially in developing countries like Nigeria. When companies continuously clean up oil spillage, maintain their facilities, it will contribute to the common good like protection of fundamental human right to life[70] by providing cleaner environment (water and air). As a solution, the Nigerian Government should create a Ministry of Environment in every state of the federation mandating it to ensure that MNCs in Nigeria monthly file report of corporate good practice (it regularly clean up oil spillage, employees do not over work, facilities are maintained regularly, gas flaring is reduced, employees are trained and regularly supervised to mention just a few).

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