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# THE CONCEPT OF 'MANSLAUGHTER' UNDER ENGLISH AND NIGERIAN LAWS: RESOLVING CORPORATE MANSLAUGHTER AND JURISDICTIONAL DOCTRINAL AMBIGUITIES

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## **Abstract**

The general principles of criminal law with regard to offences against the human body provided serious homicide offences against the human body such as 'murder and manslaughter.' The paper critically looked at the different definitions of manslaughter in the Nigerian Criminal Code, Penal Code on the one hand as well as the English Homicide Act, on the other hand. In order to achieve this, the paper considered subsisting judicial authorities pivoted and focused on the portions of the provisions of the Nigerian criminal and penal codes, altogether forming, the underpinning of the 'homicide legislations' in Nigeria. Consequent on the comparative investigation of the homicide legislations, the paper strived to ascertain the effect of the application of the doctrine of homicide in the Nigerian and British jurisdictions and *ipso facto* arrived at a better application of the doctrine of manslaughter in the Nigerian legal climate. The authors argued that manslaughter is specie of the genus 'homicide.' The investigative effort to resort to judicial authorities in this discourse leaves us with no option of agreeing that the Nigerian judiciary, in the exercise of their constitutional jurisdictions provided by section 6 of the constitution of the federal republic of Nigeria (CFRN) 1999, have drawn and elucidated on the definition of manslaughter, more particularly 'homicide' as contained in the statute books. But beyond this, there is need to extend the definition of manslaughter to corporations. The authors therefore concluded by maintaining the process of continuous elucidation on the doctrine of homicide, more particularly 'corporate manslaughter' which has rendered the 'inherent doctrinal difficulty less problematic,' both in nature and scope of comprehension.

**Key words:** Manslaughter, English law, Nigerian Legislations, homicide, culpable, jurisdiction, corporate manslaughter.

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## 1. Introduction

The Nigerian trial system is basically accusatorial because of its English origin, having derived its root from the English Law. The Nigerian trial legal system usually depicts a non-physical battle between the prosecutor and the accused. Against this backdrop, there is the existence of a reality that for the prosecution/prosecutor to succeed, he must generally prove all the concomitant elements of an offence as charged as well as defined in the provisions of the legislation and must fail, if he cannot and unable to so prove the concomitant elements of the offence. The rule that every element of an offence must be proved and that 'only those-elements must be proved' may seem obvious, but it is nonetheless fundamental in a trial system, for instance, where conduct is only criminal when so defined in a written law. It is this rule which makes every work in a definition count. Most offences are defined in terms of 'intention or knowledge.' That is the principle of 'no liability without fault.' Against this background, the paper focuses on the concept of manslaughter in Nigeria and English jurisdictions as well as investigating the associated problems involved in the definitional and scope perspectives, and thereafter strive to seek to proffer a solution on these problems. It should be noted that criminal law, just like any other public law, requires keeping abreast with changes taking place in the wake of economic globalisation. These changes are prompted by the developments, which took place in 1995. In the post liberalised economic world, big corporations and multinational companies are expanding their business across the shores. The business and investment activities are facilitated by various bilateral and multilateral agreements, which give concessions and subsidies to the corporation while they are establishing their entities.<sup>1</sup> Whereas, these corporations during their operations in

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<sup>1</sup> Significantly, most of the offences in criminal law have been designated to accommodate offenders' violation of the substantial rights of persons which invariably requires the state to exercise the duty to protect the basic fundamental rights of such individuals. To this end, once the basic right has been violated, it will take a convenient place in the domain of criminal law. Consequently, it may be pertinent to extend the concept of manslaughter to corporations in view of the dynamics of economic globalization, particularly the need to capture 'corporate manslaughter.' This postulation is feasible considering the daily interaction between

third world countries, work directly with the local communities as well as involved in the routine exploitation of the host community's natural resources. In some places, while these corporations engage in exploitation of the local communities, they experience resistance from the local populations.<sup>2</sup>

## **2. Nature, Scope and Definition of Manslaughter**

It is important here to recollect the definition of crime provided by Blackstone. Blackstone defines crime as 'an act committed or omitted in violation of public law forbidding or commanding it.' Furthermore, Blackstone improved on this definition following criticisms. He maintained that a crime is a violation of the public rights and duties of the own community.' According to the improved version of the definition, 'crime is a violation of public right or duty.' This definition makes it clear that criminal law is designed to punish the offenders who violate the public rights of the people. It is also important to note that the state represents the victims in the criminal justice system, since state has an obligation to protect the rights of individuals in the society.<sup>3</sup> The crime of 'Manslaughter' being specie of murder attracts a wider and complex outlook. Arriving at a definition requires a critical consideration of the provisions of the Codes (Criminal and Penal) on manslaughter on the one hand and the English law jurisdiction on Homicide Act, on the other hand.

It is significant that portions of the Nigerian code be examined in order to properly articulate the true purport of the offence of manslaughter. For instance, Section 317 of the Criminal Code<sup>4</sup> provides 'A person who unlawfully kills another in such circumstances as not to constitute murder is guilty of manslaughter.'

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corporations and communities, which portends the possibility of an infraction or violation of public right or duty.'

<sup>2</sup> Benarji Chakka, Teaching Criminal Law with latest developments: A Case for Inclusion of Corporate Crimes and Corporate Manslaughter, International Journal of Law and Social Sciences (IJLS) Volume 4, Issue 1, 2018 | P-ISSN No: 2454-8553

<sup>3</sup> Ibid, at P. 2

<sup>4</sup> Cap 77 LFN 1990

Furthermore, Section 222 (1) of the Penal Code<sup>5</sup> provides that ‘Culpable homicide is not punishable with death if the offender whilst deprived of the power of self-control by grave and sudden provocation causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.’

On the other hand, the English law deals with homicide. It provides under section 3 of the Homicide Act 1957 that: ‘Where on a charge of murder there is evidence on which the jury can find that the person charged was provoked (whether by things done or by things said or by both together) to lose his control... the verdict would be manslaughter.’ In all these definitions, it is obvious that the target nomenclature is different. For instance, the Nigerian legislation of Criminal Code uses the word ‘manslaughter’ while the Nigerian Penal Code utilises the phrase ‘culpable homicide not punishable with death.’

For a clear understanding of the concept of manslaughter we must understand what murder and culpable homicide punishable with death is. Murder is defined in section 316 of the Criminal Code:<sup>6</sup>

Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say:

1. If the offender intends to cause the death of the person killed, or that of some other person;
2. if the offender intends to do to the person killed or to some other person some grievous harm;
3. If death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;
4. If the offender intends to do-grievous harm to some person for the purpose of facilitating the commission of an offence when is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such offence;

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<sup>5</sup> Cap 89 LFN 1990

<sup>6</sup> Cap 77 LFN 1990

5. If death is caused by administering any stupefying or overpowering things for either of the purposes last aforesaid;
6. If death is caused by wilfully stopping the breath of any person for either of such purposes is guilty of murder.

In the second case it is immaterial that the offender did not intend to hurt the particular person who is killed. In the third case it is immaterial that the offender did not intend to hurt any person. In the three last cases it is immaterial that the offender did not intend to cause death or did not know that death was likely to result.

In the Penal Code section 220<sup>7</sup> provides that,

Whoever causes death:

- a. By doing an act with the intention of causing death or such bodily injury as is likely to cause death; or
- b. By doing an act with the knowledge that he is likely by such act to cause death; or
- c. By doing a rash or negligent act, commits the offence of culpable homicide.

### **3. The Length and Breadth of the scope of Manslaughter**

It is obvious that most developing countries such as India, Nigeria and etcetera, lack any conscious effort to define the offence of corporate homicide or manslaughter, unlike developed and industrialised countries, that have adopted laws to address the problems of corporate homicide or manslaughter. For instance, the common law country like the United Kingdom has adopted in 2007 the corporate manslaughter and corporate homicide act.<sup>8</sup> The acts explain the offence: An organisation is guilty of an offence if the way in which its activities are managed or organised causes a person's death, and amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased. The organisation to which

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<sup>7</sup> Cap 89 LFN

<sup>8</sup> B. Chakka, *supra*, at P. 7

this section applied are: a corporation, a department or other body listed in its schedule or a police force partnership or a trade union or employers associations that is an employer. An organisation is guilty of an offence under this section only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach.

Manslaughter can be broadly sub-divided into two, namely; voluntary and involuntary manslaughter. It is a case where the defendant kills with the fault required for murder but because of the presence of a particular extenuating circumstance recognized by law, the offence is reduced to manslaughter. Voluntary Manslaughter occurs when a person intentionally kills another but the offence is reduced from murder to manslaughter because of provocation.

In our judicial system, section 18 of the Criminal Code<sup>9</sup> provides “When a person who unlawfully kills another in circumstances which but for the provisions of this section would constitute murder, does the act which causes death in the heat of passion caused by grave and sudden provocation and before there is time for his passion to cool, he is guilty of manslaughter only.’

It is important to note here that this section does not define provocation but rather it is defined in section 283 of Criminal Code<sup>10</sup> and this part deals with assaults. For this section to apply, it must be read together with section 283.<sup>11</sup>

A successful plea of the defence of provocation shall normally depend on certain elements which have to be satisfied and these are usually termed as ‘elements of provocation.’

Firstly, the provocation must be one that can make a reasonable man loose his self-control. The effect it will have on a reasonable man and not what it did actually have on the accused.

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<sup>9</sup> Cap 77 LFN 1990

<sup>10</sup> Ibid

<sup>11</sup> Ibid

In *Bedder v D. P.P.*<sup>12</sup> The accused who was sexually impotent tried unsuccessfully to have sexual intercourse with a prostitute. She jeered at him and kicked him causing him to lose control. He stabbed her twice and killed her. On a charge of murder he pleaded provocation and argued that the proper test was what would be the reaction of an impotent reasonable man in the circumstances. The House of Lords upheld a decision that the proper test was the effect, which the conduct of the prostitute would have on an ordinary person, not on a sexually impotent person.

Under the English jurisdiction, that is in S. 3 of the Homicide Act 1957, it is stated that ‘Where on a charge of murder there is evidence on which the jury can find that the person charged was (whether by things done or by things said or by both together) to lose his control.’ The question whether the provocation was enough to make a reasonable man do as he did shall be left to be determined by the jury and in determining that question, the jury shall take into account everything both done and said according to the effect which in their opinion, would have on a reasonable man. It therefore follows that anything that causes a sudden and temporary loss of self-control is capable of amounting to provocation.

In another case *D.P.P. v Camplin*,<sup>13</sup> it has held that the accused a boy of 15 killed the deceased by striking him on the head with a chapatti pan because the deceased had buggered him against his will and then laughed at him as a result of which he lost his self-control. He was charged with murder and pleaded provocation. His counsel suggested to the jury that when they considered section 3 of the Homicide Act 1957 whether the provocation was enough to make a reasonable man do what the accused did they should consider not the reaction of a reasonable adult but that of a reasonable boy of the accused age. The case went on appeal and to the House of Lords, which held that under section 3 of the Homicide Act 1957, the jury

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<sup>12</sup> [1954] 1.W.L.R. 1119

<sup>13</sup> [1978] 2.W.L.R. 679

should take into account everything including his age, colour, sex, physical and mental disabilities. From the above we can see that the definition of reasonable man was also looked at but in the context of the accused person.

The reason for this is not far-fetched. While it is common knowledge that the creator has endowed each person with some peculiarities, he has also made it possible for each person's human weaknesses. This is why, each individual reacts differently to different occasions. What, for instance, is likely to annoy Mr. A., may not annoy Mr. B. or Vice versa. It is therefore, in recognition of this fact that the criminal law and more especially those who have been called upon to adjudicate on such matters have after many years laid down those fundamental principles which have continued to serve as guidelines in those instances where murder as an offence is sought to be committed to manslaughter as a result of a successful plea of the defence of provocation.

For instance, in Udo Akpakan's Case,<sup>14</sup> the Court decided that confession of adultery by a wife to her husband should not be sufficient to provoke the husband and that where the man killed his wife because of the confession, he was guilty of murder and not manslaughter.

A brother who killed his brother in *Maye Nungu v The Queen*,<sup>15</sup> because the deceased claimed to have provided money to enable the accused have a wife, was guilty of murder and not manslaughter, because he could not be said to have been provoked. On the other hand, the offence of murder was committed to manslaughter in a case in which a man killed his wife because the wife spat on his face while taunting him with his impotence. His plea of provocation was upheld as in the case of *Rex v Igira*.<sup>16</sup>

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<sup>14</sup> [1950] 1 FSC 1

<sup>15</sup> (1953) 14 WACA 379

<sup>16</sup> (1948) 12 WACA 377

Similarly, the offence of murder was committed to manslaughter in respect of an illiterate and primitive husband in the case of *Rex v Adekanmi*,<sup>17</sup> when his wife told him that he was impotent and that for that reason, she had been committing acts of adultery with other men. A confession of adultery without more is not sufficient to reduce a charge which could otherwise be murder to manslaughter as in the case of *Twunasi v The State*.<sup>18</sup>

In all these cases, and a plethora of others which cannot find space in this investigation, the Courts have always considered what effect provocation has on an ordinary man or ordinary person. The Court has gone further to interpret the words: 'ordinary person,' to mean a reasonable man of the accused person standing in life.' The test which the Court normally applies on the issue of power of self-control is that of the accused person's position in life.

In taking a rather calm view of the definition of the word 'manslaughter' in the English Homicide Act of 1957, section 3, it will be easy to arrive at the conclusion that the offence of manslaughter, speaking in general terms is one of murder which is reduced for purpose of the punishment to be administered, by virtue of a successful plea of the defence of provocation by the accused person. Secondly, the act which causes death must be done in the heat of passion caused by sudden provocation and before there is time for passion to cool. If between the provocative act and the killing, enough time has elapsed for passion to cool, the plea of provocation will fail.

In *R. v Green*<sup>19</sup> the prisoner's wife having left him, went to stay with her mother where she began to accept the advances of Y. The prisoner tried hard to win back his wife but failed. At about 9 p.m. one evening, he visited his mother-in-law and found his wife and Y having sexual intercourse. He returned to his own house to brood over his misfortune. At about 1 am

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<sup>17</sup> (1944) 17 MLR 99

<sup>18</sup> (1992) 3 N.W.L.R. Pt. 227, 54 at 65

<sup>19</sup> (1955) 15 WACA 73

he took a machet and returned to his mother-in-law's house to kill Y if he was still there. He found his mother-in-law snoring and heard his wife and Y talking in a dark room. He struck twice on the bed and killed his wife. The mother-in-law was also killed when she ran into the room. On a charge of murder the prisoner pleaded provocation, but this was rejected because between the provocation and the killing enough time had elapsed for his passion to cool. Clearly if he had killed the couple at 9 a.m. when he first saw them the plea would have been good. In determining whether there has been enough cooling time, it is proper to take into account the degree of provocation offered. For the more serious the provocation the longer will be the time required for passion to cool.

Thirdly, provocation by one person is no excuse for killing another person who does not in fact offer any provocation to the accused.

In *R. v Ebok*<sup>20</sup> the accused went to a farm and met four women, one of whom was his 'ex-wife' who had since married another man. He demanded the cloth she was wearing and as she was untying it at the insistence of other women he stabbed her several times and killed her. He overtook one of the other three women as they were running away and killed her. He was charged with murder of his 'ex-wife' but was convicted of manslaughter on the ground of provocation. On a further charge of murdering the second woman, it was held that even if the accused lost his self-control as a result of the provocation given by his 'ex-wife,' he was nevertheless guilty of murder because the second woman did not give him any provocation.

Although where there is a joint attack by a group of persons and a blow is struck by one of such group provocation can be successfully pleaded.

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<sup>20</sup> (1950) 19 N.L.R. 84

Fourthly, there is the issue of proportionality. The mode of resentment must bear a reasonable proportion to the provocation offered. And in doing this the court will take into account, the nature of the act resulting.

In *R. v Akpakpan*<sup>21</sup> a woman brought her daughter's dead body home and when her husband remonstrated with her against such conduct, she used filthy and offensive language on him and he stabbed her five times with a heavy dagger. It was held that the degree and method of violence used by him precluded the court from bringing a verdict of manslaughter. This principle was not specifically provided for in the Code it was imported from English law. The courts place emphasis on the nature of act resulting from the provocation and not on the provocative act itself.

Fifthly, the killing must have involved assault, although provocation is not a complete defence to assault. Section 266 of the Penal Code<sup>22</sup> reduces the punishment for assault or criminal force within provocation to term which may extend to 3 (three) months or with a fine which may extend to twenty pounds or with both.

The same applies to section 277 of the Penal Code<sup>23</sup> and herein lies the distinction between the punishment for assault in the North and the South. In the Penal Code<sup>24</sup> it is wider in scope as provided for in section 222 (1). The death occurs to any other person by mistake or accident. This is in line with the saying of Aristotle 'The victim of the violence trigger of the violence.' But it is important that the foundation must be laid. This if compared to section 318 of the Criminal Code<sup>25</sup> is narrower in scope.

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<sup>21</sup> (1956) LF.S.C. I.

<sup>22</sup> Cap 77 LFN 1990

<sup>23</sup> Cap 89 LFN 1990

<sup>24</sup> Ibid

<sup>25</sup> Cap 77 LFN 190

In *Holmes v D.P.P.*<sup>26</sup> it was held that a mere confession of adultery without more is not sufficient for this purpose. In laying the foundation the words used would be examined and also if the intent to kill was present and finally the burden of proof remains throughout on the prosecution to negative it and prove beyond reasonable doubt that the accused did not kill the deceased in the heat of passion ceased by provocation as in *Maeze v The State*.<sup>27</sup>

### **3.2 Involuntary Manslaughter**

This occurs where a person cause death under such circumstances that he did not intend to kill and did not foresee death as a probable consequence of his conduct but there is some blameworthiness, such as gross negligence in his conduct.

### **3.3 Negligence**

The Criminal Code is silent as to the required degree of negligence. The negligence must be above the ordinary tortious negligence. There must be recklessness.

### **3.4 Medical negligence**

Section 303 of the Criminal Code<sup>28</sup> provides it is the duty of every person who except in a case of necessity, undertakes to administer surgical or medical treatment to any other person, or to do any other lawful act which is or may be dangerous to human life or health, to have reasonable skill and to use reasonable care in doing such act; and he is held to have caused any consequences which result to the life or health of any person by reason of any omission to observe or perform that duty.

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<sup>26</sup> [1946] A.C. 588

<sup>27</sup> [2004] All F.W.L.R. PT 202 pg 1920.

<sup>28</sup> Cap 77 LFN 1990

For instance, in *R. v Akerele*<sup>29</sup> a qualified medical practitioner, caused the death of a number of persons by administering to them too strong a dose of sobita. Therefore in every case of medical negligence reckless conduct must be provided or proved.

In a recent case as it affects manslaughter *Sowemino v The State*,<sup>30</sup> it was considered whether an accused can be convicted for manslaughter where medical evidence is discredited or inaccessible. The Court ruled that there is no law that an accused person cannot be convicted for manslaughter where medical evidence is discredited or where there is no medical evidence at all.

### **3.5 Manslaughter and Motor Vehicles**

This concerns driving of motor vehicles. The conduct required here is that of gross or rash negligence as in *R. v Kojo*<sup>31</sup> where the driver which had defective steering and useless brakes was held guilty of manslaughter when without any apparent reason his car mounted a pavement and killed a child because his conduct in driving the car in the condition in which it was, showed a reckless disregard for life and safety of others.

The court ruled in the case of *Amusa v The State*,<sup>32</sup> that the following ingredient must be proved:

- a. that the accused person's manner of driving was reckless or dangerous.
- b. that the dangerous driving was the substantial cause of the death of the deceased and
- c. that the accident occurred on a Federal Highway

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<sup>29</sup> (1941) 710 W.A.C.A. 55

<sup>30</sup> [2004] AH F.W.L.R. Pt. 268 pg. 951

<sup>31</sup> [1958] L.L.R. 69

<sup>32</sup> [2003] F.W.L.R. Pt 148 Pg 1296

Also unlawful acts resulting in accident death is manslaughter, as in the case of *Umoru v State*.<sup>33</sup>

In the case of *R. v Akpunonu & anor*<sup>34</sup> a father buried while alive, one of a set of twins newly born. It should also be noted that killing an unborn child as well as killing of twins, all ground to manslaughter since they carry a maximum sentence of life imprisonment.

Another area in which section 24 Criminal Code<sup>35</sup> is being relied upon so as to reduce murder to manslaughter is under the defence of intoxication which is provided in section 29 of the Criminal Code.<sup>36</sup> Generally, intoxication shall not constitute a defence to any criminal charge. No accused is allowed to take shelter under the defence of intoxication if that intoxication is self-induced as in *Okeko v State*<sup>37</sup> in which case, the accused voluntarily without any urge either in due way of medical prescription or necessity, took the substance and committed the offence.

### **3.6 Diminished Responsibility**

Another defence is diminished responsibility. Section 2(1) of the homicide Act 1957 provides:

Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or related development of mind or any inherent causes or induced by disease or injury) has subsequently impaired his mental responsibility for his acts and omission in doing or being a party to the killing.

Where the jury has to deal with both diminished responsibility and intoxication, they should first consider whether the defendant would have killed as he did even if he had not been

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<sup>33</sup> (1990) 3 N.W.L.R. Pt. 138, 363 at 369

<sup>34</sup> (1942) 8 WACA 107

<sup>35</sup> Cap 77 LFN 1990

<sup>36</sup> Ibid

<sup>37</sup> [2003] F.W.L.R. PE 159 1381

intoxicated. If the answer is in the affirmative then, they should not go to consider whether he would have been suffering from diminished responsibility when he did. But however, where it is alleged that the defendant was suffering from diminished responsibility caused by disease of alcoholism (as opposed to mere intoxication) the jury must try to establish whether the first drink was taken voluntarily if so the defence will fail. This goes for the English jurisdiction. Also there is the defence of suicide pact, section 4 of the Homicide Act 1957 provided that any killing carried out in pursuance of a suicide pact will be treated as manslaughter rather than as murder. And the fourth defence is infanticide.

Section 1(1) of the Infanticide Act 1938 provides that where a woman kills her child before it reaches the age of 12 months and there is evidence to show that at the time of the killing the balance of her mind was disturbed by the effect of giving birth, then the jury is entitled to find her guilty of infanticide rather than murder.<sup>38</sup>

It is also important to say here that under involuntary manslaughter we have the defence of constructive manslaughter where the proof that the defendant intentionally committed a dangerous Criminal Act which resulted in the death of the victim and the defence of killing by gross negligence-duty of care, the breach of that duty and gross negligence.

Thirdly, the defence of motor manslaughter and the defence of causing death by dangerous driving section 1 and 2A of the Road Traffic Act 1988.<sup>39</sup>

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#### **4. Economic Globalisation and Quest for the introduction of crime of 'Corporate Manslaughter' in Nigeria**

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<sup>38</sup> Cavendish Law Cards — Criminal Law

<sup>39</sup> Ibid

It has been demonstrated that economic globalisation leading to the operation of corporations investing and carrying out business beyond their shores as well as in local and host communities with natural resources, has operated as a catalyst in extending the scope of corporate responsibility, which often-times result in resistance by the host or local community agitating for a fair investment deal, has significantly affected the traditional scope of public law with special reference to the existence of a basic right which ordinarily has been violated. Consequently, the violated basic right(s), will definitely take a convenient place in the domain of any offence within 'criminal law' (that is public law regime) such as stealing, murder manslaughter, and etcetera. Usually when the violation of basic right has been committed by a corporation, the violation could ground the offence of 'corporate manslaughter.'<sup>40</sup>

It has been demonstrated that criminal law, being a segment of public law, has been keeping abreast with the dynamics of human society, following the changes associated with the wake of economic globalisation. These changes were introduced by the developments, which took place in 1995. This era in the history of mankind ushered liberalised economic world upon which big corporations and multinational companies enjoyed ultimate expansion of their business across the globe. Their business and investment activities were facilitated by various bilateral and multilateral agreements, conferring concessions and granting subsidies to the corporations. Significantly, these corporations during their operations in developing countries automatically accommodated host community workforce in their routine transactions of exploitation of the host community's natural resources. In most places, the corporations relied on sanctity of contract in contradistinction with the host community's agitation for control of natural resources.

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<sup>40</sup> B. Chakka, *supra*, note 2. Regard should be had to the thesis as propagated in f/note 1 above, that offences in criminal law have been designated to accommodate offenders' violation of the substantial rights of persons which invariably requires the state to exercise the duty to protect the basic fundamental rights of such individuals.

Drawing attention from the regime of public (criminal) law and particularly homicide, we are aware that ‘murder is an intentional killing that is unlawful (in other words, the killing is not legally justified), and committed with ‘malice aforethought’ (intent to harm or kill or reckless disregard towards life). The offence of murder and manslaughter possess a common physical act (*actus reas*) which is the unlawful killing of another human being.<sup>41</sup> Flowing from above elucidation of the requisite intention required for murder, it follows that if a natural person commits an act which is intentional or reckless disregard towards life it would be prosecuted. In such circumstances, if a legal or juridical person commits the same offence how should they be treated under the purview of criminal law. Should the said offence of the natural person be treated as an offence equal to that of murder or manslaughter? Significantly and as demonstrated, if there is presence of blame-able mental conditions and there is an unjustified killing of another human or reckless disregard to human life, it is submitted that the associated intention should be treated as manslaughter.

Unfortunately, there is no such provision in any Nigerian legislation as well as other developing common law jurisdictions, to deal with such offence of ‘corporate manslaughter,’ hence there is an urgent need as put forward by B. Chakka to accommodate the extension of crime of manslaughter to corporations. Consequently, there is need to amending the provisions of criminal law in order to capture the gap proposed hereafter.<sup>42</sup>

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<sup>41</sup> B. Chakka, *supra*, at P. 5

<sup>42</sup> Globalization has accelerated economic growth by permitting unbridled access to multinational companies or corporations to boost the economy. These multinational companies act across borders with ease due to development in technology as well as favourable trade and investment laws, they exercise significant power and influence in the countries where they operate. Sometimes they do get contacted directly with people and commit wrongful acts which, normally, go unnoticed and sometimes the legal system may not have sufficient rules to bring them to justice. This situation arises due to various reasons based on legal and non-legal issues. These issues may include, legal personality, limited shareholder liability and accountability, origin and registration of corporations in offshores and operating through a local subsidiary or joint venture in the host states. This conspicuous governance gap has created rather facilitated an environment in which the corporate actors commit serious human rights abuses with little or no accountability and with impunity, cited by Chakka, *supra*, at P. 5

The need to amend and/or introduce corporate manslaughter cannot be overemphasized. The atrocities being committed by corporations are glaring. These atrocities are push drive for competitions, maximization of profits and leverages on international corporate expansion. The transnational companies have committed brutal atrocities and knowingly assisting governments, and rebel armed groups and other non-state armed groups to commit gross human rights abuses.<sup>43</sup> It has been observed by Chakka that Oil and mining companies from the advanced countries that seek concessions and security from the third world countries have been allegedly involved in supplying arms, ammunition, money, vehicles to the government as well as armed rebel forces.<sup>44</sup>

## **5. Conclusion**

The problem of the definition of manslaughter can be seen from the very beginning of section 317 of the Criminal Code as well as the definitions in the Penal Code and the English Homicide Act. The concept of manslaughter is a very complex one, although the definition seems rather vague. But from this supposed vagueness a lot of issues emanated and the defences are very numerous.

There is need to accommodate corporate manslaughter in the Nigerian statute, in order to check the atrocities being committed by the transnational companies.

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<sup>43</sup> B. Chakka, *supra*, at P. 7

<sup>44</sup> *Ibid*, at P. 8