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### RESEARCH ARTICLE

#### RE-EXAMINING THE LAWFUL INSUFFICIENCIES FOR CORPORATE PUNISHMENT: A CASE FOR THE PUNISHMENT OF COMPANIES IN NIGERIA FOR CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE

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#### Abstract

The penalization of companies for corporate manslaughter and corporate homicide has been the subject of extensive debate. This is largely due to questions of the legal inadequacies of Nigeria's legal system to prosecute organisations for corporate manslaughter. This article argues that there are legal defects in Nigeria's legal system at the level of enforcement of corporate manslaughter and corporate homicide and law through government institutions, but in other countries like the United Kingdom at the level of administrative rules and enforcement, there are no legal defects with regards to punishment of companies for corporate manslaughter and corporate homicide. This paper assesses the legal defects in the current system's inability to punish companies for corporate manslaughter and corporate homicide in Nigeria when compared with other countries like New Zealand, Malaysia, The Netherlands, Australia and The UK. This finding confirms that with regards to punishing companies in Nigeria for corporate manslaughter and corporate homicide, there are legal defects from Nigeria's current system. The idea is to establish a fundamental nexus between lack of legal attitude for the prosecution of companies in Nigeria for corporate manslaughter and legal defects in Nigeria's legal system at the level of punishing companies whose activities cause death. The research achieves the outcome by evaluating the mechanism in place for punishment of companies in various countries when its activities causes death.

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#### Introduction:-

The ongoing issue in Nigeria is the lack of a system to hold multinational oil and gas companies accountable for corporate manslaughter. Companies, the Nigerian government, and its citizens have yet to fully recognize that while multinational oil companies may provide boreholes for the oil-producing communities, concurrent oil spills into rivers and streams can contaminate the fish that villagers consume.

Companies in high-risk sectors, such as oil exploration, are mandated to adhere to legal regulations. In this context, economic activities often lead to negative environmental consequences<sup>1</sup>, such as oil refinery explosions resulting in

<sup>1</sup> Nick Grant "Mandating corporate environmental responsibility by creating a new director's duty" (2015) 17(4) Environmental Law Review 252-265

fatalities and environmental degradation. These issues have triggered uprisings, which have, in turn, led to violence and loss of lives<sup>2</sup> in Nigeria's Niger Delta region.

Regrettably, many oil companies fail to prioritize health and safety, leading to a significant number of avoidable deaths<sup>3</sup>. The ambivalence that society feels towards the oil and gas industry is understandable, given that the exploration and refining of oil and gas have resulted in community fatalities, oil spills, air pollution, and injuries<sup>4</sup>.

Nigerians have long perceived their nation to be afflicted by corruption. Concurrently, the very foundation of Nigeria is being compromised by oil spills instigated by multinational corporations. Rather than continuing to focus on corruption alone, it would be prudent for Nigerians to concentrate on promoting stringent measures and enforcing punishments for corporate manslaughter and corporate homicide within the oil sector because according to Trubek it will reflect a coherent view about the basis relations between persons and about the nature of society<sup>5</sup>.

In Nigeria, the Niger Delta region is facing severe environmental degradation due to oil exploration activities. Munyaradzi asserts that the failure of multinational oil companies and the Nigerian government to issue remedial orders should not be underestimated<sup>6</sup>.

Therefore, in light of the above, this article undertakes an analysis of the understanding of the punishment of companies for Corporate Manslaughter and Corporate Homicide (with some evidence of some court judgement) in various countries with Nigeria. The problem is that companies in Nigeria and not yet continuously being punished for corporate manslaughter when the activities (like oil spillage catches fire) of companies operating in Nigeria causes death. This article will help make the Nigerian government to take corporate manslaughter punishment serious.

### What Is Corporate Manslaughter

Corporate manslaughter and corporate homicide refer to the decisions undertaken by a company that went wrong either in regards to their execution (owing to negligence) or due to existence of some inherent fault or loopholes in the decision and its subsequent execution, resulting in or causing death of a person or persons<sup>7</sup>. Forlin defined corporate manslaughter as a criminal offence<sup>8</sup>. He continued to say that it enables a corporation to be convicted of corporate manslaughter when someone is killed as a result of the way the organisation is managed or organised and the failings by senior managers add up to a gross breach of the 'relevant duty of care' owed to the deceased person<sup>9</sup>. The term corporate manslaughter was considered by the close family members of the deceased victim as what revolutionised and paved way for Corporate Manslaughter and Corporate Homicide (Act 2007 UK) law in the UK in the aftermath of corporate accidents<sup>10</sup>. Braithwaite defined corporate crime as the "conduct of a corporation, or of employees acting on behalf of a corporation which is proscribed and punishable by law"<sup>11</sup>. Mujih on his own part

<sup>2</sup> Daniel Omoweh *Shell Petroleum Development Company, The State and Development of Nigeria's Niger Delta A Study in Environmental Degradation* (Africa World Press, Inc 2005)

<sup>3</sup> Jane Barrett "When Business Conduct Turns Violent: Bringing BP, MASSEY, and Others Scoff Laws to Justice" (2011) 48 *American Criminal Law Review* 287-333

<sup>4</sup> David Spence "Corporate Social Responsibility in the Oil and Gas Industry: The Importance of Reputational Risk" (2011) 86(1/4) *Chicago-Kent Law Review* 59-85

<sup>5</sup> David Trubek "Where the Action Is: Critical Legal Studies and Empiricism" (1984) 36 *Stanford Law Review* 575-622 at 577

<sup>6</sup> Mawere Munyaradzi (ed.) *Underdevelopment, Development and the Future of Africa* (Langaa Research and Publishing CIG 2017)

<sup>7</sup> Shivam Goel *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India 2015).

<sup>8</sup> Gerald Forlin and Smail (Eds) *Corporate Liability: Work Related Deaths and Criminal Prosecutions*. 2<sup>nd</sup> Ed. (Bloomsbury Professional Ltd, 2010)

<sup>9</sup> Gerald Forlin and Smail (Eds) *Corporate Liability: Work Related Deaths and Criminal Prosecutions*. 2<sup>nd</sup> Ed. (Bloomsbury Professional Ltd, 2010)

<sup>10</sup> Mohammed Saleem Tariq "A 2013 look at the corporate killer" (2014) 35(1) *Company Lawyer* 17-20

<sup>11</sup> J Braithwaite, B Fisse *Self-regulation and the Control of Corporate Crime* (1987) In 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

suggests that the public have clamoured not only that companies should be increasingly prosecuted for corporate manslaughter in the aftermath of corporate accidents, but that company directors should also be prosecuted and convicted<sup>12</sup>.

According to Gary Slapper, corporate manslaughter arises when companies whose lethal gross negligence killed people. He continued by saying that corporate manslaughter caused the death rate at work and in commercially related disasters to be high (over 50,000 people have been killed at work in the UK since 1967)<sup>13</sup>. According to Forster, manslaughter by companies is because of delay in putting things in proper state<sup>14</sup>. According to him, a company may be convicted of manslaughter or corporate manslaughter arises because of a grossly careless management system, as well as from the individual carelessness of a manager<sup>15</sup>.

### Element Of Corporate Manslaughter

An organisation would be held liable on conviction on indictment to a fine<sup>16</sup> if in the way its activities are managed or organised by its senior management<sup>17</sup> causes:

1. A person's death<sup>18</sup>; and
2. Amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.<sup>19</sup>

The way that activities are managed and organised are to have been a substantial element of the breach of the duty owed by the corporation to the deceased. Gross breach is further defined as conduct that falls below what can reasonably be expected of the organisation in the circumstances.<sup>20</sup> The prosecution must first prove that a duty of care exists between the company and a dead employee or any other dead person.<sup>21</sup> For duties as an employer, the prosecution must satisfy the court that the prosecution breached the duties to provide safe places of work. Also as an occupier duties as occupier of premises will render organizations liable if there are, example faulty electrical wiring, dangerous staircases, to mention just a few.<sup>22</sup>

After the prosecution has established his case for breach of duty of care, the judge will decide (a question of law) whether a duty of care is owed under the law. The judge must make any findings of fact necessary to decide that question.<sup>23</sup> They may also have regard to any health and safety guidance that relates to the alleged breach.<sup>24</sup>

Instances Of Enforcement Of Corporate Manslaughter And Corporate Homicide In Various Countries To Show The Inadequacies Of Enforcement Of Corporate Manslaughter In Nigeria's Legal System

### New Zealand

The New Zealand's corporate criminal legal system subscribes for involuntary manslaughter. Involuntary manslaughter describes killings where the defendant is guilty of culpable homicide, but not guilty of murder<sup>25</sup>. The

<sup>12</sup> Edwin Mujih "Reform of the law on Corporate Killing: A Toughening or Softening of the Law?" (2008) 29(3) 76-83

<sup>13</sup> Gary Slapper "Justice is mocked if an important law is unenforced" (2013) 77(91) Journal of Criminal Law 91-94

<sup>14</sup> Neil Forster "Manslaughter by Managers: the personal liability of company officers for death flowing from company workplace safety breach" (2006) 9 Flinders Journal of Law Reform 79

<sup>15</sup> Neil Forster "Manslaughter by Managers: the personal liability of company officers for death flowing from company workplace safety breach" (2006) 9 Flinders Journal of Law Reform 79

<sup>16</sup> Corporate Manslaughter and Corporate Homicide Act 2007, S. 1 (6)

<sup>17</sup> Corporate Manslaughter and Corporate Homicide Act 2007, S. 1 (3)

<sup>18</sup> Corporate Manslaughter and Corporate Homicide Act 2007, S. 1 (1) (a)

<sup>19</sup> Corporate Manslaughter and Corporate Homicide Act 2007, S. 1 (1) (b)

<sup>20</sup> Corporate Manslaughter and Corporate Homicide Act 2007, S. 1(4) (b)

<sup>21</sup> David Ormerod and Richard .D. Taylor "The Corporate Manslaughter and Corporate Homicide Act 2007" (2008) Criminal Law Review 589 at 568.

<sup>22</sup> David Ormerod and Richard .D. Taylor "The Corporate Manslaughter and Corporate Homicide Act 2007" (2008) Criminal Law Review 589 at 568.

<sup>23</sup> Corporate Manslaughter and Corporate Homicide Act 2007, S. 2(5)

<sup>24</sup> Chioma Eze Emem, Amadi Prince Uche, (2009) "A New Dawn of Corporate Criminal Liability Law In The United Kingdom: Lessons For Nigeria" *African Journal of Law and Criminology*, Volume 2 Number , 86-98 91-92

Court of Appeal in *R .V. Murray*<sup>26</sup> held that homicide, including both murder and manslaughter, cannot be committed by a company as a principal because of the definition of homicide in s. 158 of the Crimes Act 1961 as the 'killing of one human being by another'.

Law like Crimes Act 1961 of New Zealand was couched to address culpable homicide under the common law. According to the law, homicide is culpable when it consists in killing of any person-

1. By an unlawful act;
2. By an omission without lawful excuse to perform or observe any legal duty; or
3. By both combine<sup>27</sup>.

According to the provisions of the Crimes Act 1961 the omission is required to be a major departure from the standard of care expected of a reasonable person to whom that legal duty applies in those circumstances<sup>28</sup>. This boils down to the prosecution being able to identify under the common law a person in top management whose gross negligent act as the only basis of liability caused the death of the deceased<sup>29</sup>.

Under section 167 of the Crimes Act 1961 New Zealand, culpable homicide is murder in the following cases:

- (a) If the offender means to cause the death of the person killed
- (b) If the offender means to cause to the person killed any bodily injury that is known to the offender to be likely to cause death, and is reckless whether death ensues or not
- (c) If the offender means to cause death, or being so reckless as aforesaid, means to cause such bodily injury as aforesaid to one person, and by accident or mistake kills another person, though he does not mean to hurt the person killed
- (d) If the offender for any unlawful object does an act that he knows to be likely to cause death, and thereby kills any person, though he may have desired that his object should be effected without hurting anyone<sup>30</sup>.

Companies and their top directors are not covered in this Act. Also, under the Health and Safety in Employment Act 1992 employers were mentioned and their duties explained without how employers will be held criminally liable in the event of death for example in the decisions. The Act under section 6 provides:

Every employer shall take all practicable steps to ensure the safety of employees while at work; and in particular shall take all practicable steps to

- (a) Provide and maintain for employees a safe working environment; and
- (b) Provide and maintain for employees while they are at facilities for their safety and health
- (c) Ensure safe working of machineries to mention just a few<sup>31</sup>.

In New Zealand, the government is realizing the negative effect of loopholes in the law for punishment of companies for corporate manslaughter. Legally, the New Zealand government introduced that "corporate manslaughter is culpable homicide when committed by a body corporate"<sup>32</sup>. It will be a charge that is appropriate to situations where the actions or omissions amount to a gross breach of a relevant duty of care owed by the organisation to the deceased<sup>33</sup>. The introduction of this charge remedies a gap that currently exists in New Zealand law, as demonstrated by the Pike River Mine tragedy (Crimes (Corporate Manslaughter) Amendment Bill (Draft for Consultation) (explanatory note))<sup>34</sup>. Under this bill, it is explained that there will be a "gross breach" of a duty of

<sup>25</sup> Jonathan, Wong. "Corporate Manslaughter: A Proposed Corporate Killing Offence for New Zealand." (2006) 12 Canterbury L. Rev. 157C

<sup>26</sup> *R .V. Murray* [1970] NZLR 476

<sup>27</sup> The Crimes Act 1961 Section 160(2)

<sup>28</sup> A.P. Simester, & W.J. Brookbanks, *Principles of Criminal Law* 2<sup>nd</sup> Ed. (Brookers, 2002)

<sup>29</sup> Attorney- General Reference (No.2 of 1999)

<sup>30</sup> The Crimes Act 1961 Section 167

<sup>31</sup> The Health and Safety in Employment Act New Zealand 1992 Section 6

<sup>32</sup> Aaron, Sweet. Making a Killing: A Separate Corporate Manslaughter Offence for New Zealand? (University of Otago, Dunedin, New Zealand. University of Otago, 2006).

<sup>33</sup> Aaron, Sweet. Making a Killing: A Separate Corporate Manslaughter Offence for New Zealand? (University of Otago, Dunedin, New Zealand. University of Otago, 2006).

<sup>34</sup> Aaron, Sweet. Making a Killing: A Separate Corporate Manslaughter Offence for New Zealand? (University of Otago, Dunedin, New Zealand. University of Otago, 2006).

care if the conduct alleged to amounts to a breach of a duty that falls far below what can reasonably be expected of the organisation in the circumstances (Section 177A subsection 3(C) of the Bill). Section 177A subsection (3) (b) further provides that a “relevant duty of care” means any duty of care which, but for the accident compensation system may be said to exist as a matter of law, whether the law of negligence or any other law<sup>35</sup>. Under the Crimes (Corporate Manslaughter) Amendment Bill, it is provided that companies when convicted of corporate manslaughter shall be penalised to the maximum fine of ten million New Zealand dollars and in the case of a senior manager whose act contributed to the offence when convicted for imprisonment for up to ten years<sup>36</sup>. The court can in addition to the above order companies to publicise particulars of the offence including the names and positions of any of the senior managers who were convicted; and publicising the amount of penalty imposed<sup>37</sup>. It is interesting to note that this private law was not passed into law in New Zealand. In contrast, while the Health and Safety at Work Act 1992 provides for creation of risk, the Corporate Manslaughter Bill shifts the focus from risk creation to the actual harms occurring<sup>38</sup>. Under the Crimes (Corporate Manslaughter) Amendment Bill, liability accrues because the conduct of a senior manager(s) fall “far below” what can reasonably be expected<sup>39</sup>.

Following the move by the New Zealand government to punish companies for corporate manslaughter, persistent argument by workers arose in New Zealand after Pike River Mine explosion which occurred on the 19<sup>th</sup> of November 2010, killing 29 workers<sup>40</sup>. This led to an enquiry. According to Panckhurst et al, The Royal Commission on the Pike River Coal Mine tragedy concluded that even though the company was operating in a known high-hazard industry, the board of directors did not ensure that health and safety was being properly managed and that the executive managers did not properly assess the health and safety risks that the workers were facing<sup>41</sup>. The commission stated that in the Pike River Coal Mine’s drive towards coal production, the directors and executive managers paid insufficient attention to health and safety and exposed the company’s workers to unacceptable risks. As a result, twenty-nine workers lost their lives<sup>42</sup>.

It seems the reason for the inadequacy in punishment of companies in Nigeria for corporate manslaughter and corporate homicide (even though as part of remedial order, companies should always clean up oil spillage or reduce gas flaring) is that decided cases on corporate criminal liability are rare in Nigeria and because of resource curse in Nigeria. Oil companies in Nigeria likes to keep maximizing profits at the detriment of the lives and safety of their employees and Nigerians and the Nigerian government wants to keep business with these companies (because of resource curse issue). The author believes that if oil companies in Nigeria are allowed to operate without facing consequences when their activities jeopardize human lives, it could lead to chaos. The government, lacking enforceability, may face protests from citizens against these harmful corporate actions. The government cannot

<sup>35</sup> Aaron, Sweet. Making a Killing: A Separate Corporate Manslaughter Offence for New Zealand? (University of Otago, Dunedin, New Zealand. University of Otago, 2006).

<sup>36</sup> The Crimes (Corporate Manslaughter) Amendment Bill Section 177. As cited in Aaron, Sweet. Making a Killing: A Separate Corporate Manslaughter Offence for New Zealand? (University of Otago, Dunedin, New Zealand. University of Otago, 2006).

<sup>37</sup> The Crimes (Corporate Manslaughter) Amendment Bill Section 177(a) .As cited in Aaron, Sweet. Making a Killing: A Separate Corporate Manslaughter Offence for New Zealand? (University of Otago, Dunedin, New Zealand. University of Otago, 2006).

<sup>38</sup> The Crimes (Corporate Manslaughter) Amendment Bill Section 177(a) .As cited in Aaron, Sweet. Making a Killing: A Separate Corporate Manslaughter Offence for New Zealand? (University of Otago, Dunedin, New Zealand. University of Otago, 2006).

<sup>39</sup> The Crimes (Corporate Manslaughter) Amendment Bill Section 177(a) .As cited in Aaron, Sweet. Making a Killing: A Separate Corporate Manslaughter Offence for New Zealand? (University of Otago, Dunedin, New Zealand. University of Otago, 2006).

<sup>40</sup> Anne-Marie. Mcinally “Corporate manslaughter-Does it have a place in NZ law?.” (2014) 39(2) New Zealand Journal of Employment Relations 106-116.

<sup>41</sup> Panckhurst, Graham and others Royal Commission on the Pike River Coal Mine Tragedy; Te Komihana a te Karauna mo- te Parekura Ana Waro o te Awa o Pike - Volume 1 and Overview (Royal Commission on the Pike River Coal Mine Tragedy, Wellington, New Zealand, 2012)

<sup>42</sup> The Royal Commission on the Pike River Coal Mine tragedy (2012) Volume 1 at page 12 in Panckhurst, Graham and others Royal Commission on the Pike River Coal Mine Tragedy; Te Komihana a te Karauna mo- te Parekura Ana Waro o te Awa o Pike - Volume 1 and Overview (Royal Commission on the Pike River Coal Mine Tragedy, Wellington, New Zealand, 2012)

perpetually excuse itself by claiming that these companies generate revenue essential for the economy. The lives of employees and villagers are equally important.

This author asserts that the prosecution and punishment of companies for corporate manslaughter under the law compels companies to re-evaluate the factors leading to a death and identify measures to address and prevent such incidents.

Frynas believe that oil companies in Nigeria have been given enough time to self-regulate their activity but oil spill causing fatal illnesses in Niger Delta Nigeria has not stopped<sup>43</sup> neither has oil companies voluntarily recognizes the economic opportunities<sup>44</sup> for voluntary action (accountability).

This writer can only suggest that in Nigeria that at least director's duties under the Companies and Allied Matters Act should be widened to accommodate duties to other stakeholders. At the present, under the Companies and Allied Matters Act 2004 (Nigeria), the directors of the company owe duties only to the company and its shareholders<sup>45</sup>. The proposed change would allow the directors to take appropriate account of the interests of non-shareholding stakeholders which include employees and people living within the area where the company is situated and carries on business who are directly affected by the activities of the company in Nigeria<sup>46</sup>.

Below, this writer will discuss Australia.

### **Australia: The Australian Capital Territory**

Before 2012, in Australian states like the Australian Capital Territory, Victoria, and Tasmania, health and safety inspectors had the power to deal with reported safety breaches<sup>47</sup>. Individuals or companies would promise these inspectors to do or not do certain things.

According to Johnstone and King when the health and safety at work promise is breached, the undertaking is enforceable in court with the company being penalised<sup>48</sup>. From 2012, in the Australian Capital Territory under the Work and Health Safety Statutes, where an officer is reckless and engages in conduct that exposes an individual whom a duty is owed to a risk of death or serious injury or illness, the officer can be imprisoned for up to five years<sup>49</sup>.

### **Evidence of conviction in Australia (State of Victoria)**

In *R.V. Denbo Property & Nadenbousch, Timothy Ian*<sup>50</sup>, the company pleaded guilty to one charge of manslaughter. Timothy and Nadenbousch pleaded guilty to two breaches of the provisions of the Occupational Health and Safety Act 1985 as an officer of the company to maintain a safe and working environment for employees of the company<sup>51</sup>. Anthony William Krog an employee of the company died while working for the company when the truck he was driving overturned<sup>52</sup>. He died from head injury<sup>53</sup>. The court in their judgment reasoned that the company approved

<sup>43</sup> Jędrzej Frynas "Corporate Social Responsibility or Government Regulation? Evidence on oil spill prevention" (2012) 17(4):4 Ecology and Society 1-13

<sup>44</sup> Trevor Goddard "Corporate citizenship and community relations: contributing to the challenges of aid discourse" (2005) 110(3) Business and Society Review 269-296

<sup>45</sup> The Companies and Allied Matters Act 2004 Section 279

<sup>46</sup> Olufemi Amao, *Corporate Social Responsibility, Human Rights and the Law Multinational corporations in developing countries* (Routledge, 2011)

<sup>47</sup> Richard Johnstone "Work health and safety and the criminal law in Australia. Policy and practice in health and safety" (2013) 11 (2) 25-44 Available at <<http://eprints.qut.edu.au/78220/>> [Accessed] 13th May 2021

<sup>48</sup> Richard Johnstone and Michelle King "A Responsive Sanction to Promote Systematic Compliance? Enforceable Undertakings in Occupational Health and Safety Regulation" (2008) 21 Australian Journal of Labour Law 280- 315

<sup>49</sup> Richard Johnstone "Work health and safety and the criminal law in Australia. Policy and practice in health and safety" (2013) 11 (2) 25-44 Available at <<http://eprints.qut.edu.au/78220/>> [Accessed] 13th May 2021

<sup>50</sup> *R.V. Denbo Property & Nadenbousch, Timothy Ian* [1994] vicSc 326 (14 June 1994)

<sup>51</sup> *R.V. Denbo Property & Nadenbousch, Timothy Ian* [1994] vicSc 326 (14 June 1994)

<sup>52</sup> Shivam Goel *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India 2015).

<sup>53</sup> *R.V. Denbo Property & Nadenbousch, Timothy Ian* [1994] vicSc 326 (14 June 1994)

that the truck was safe for work convicted the defendants for manslaughter<sup>54</sup>. They were fined jointly \$80,000. Also Goel recorded another manslaughter case by a company in Australia Capital Territory. It is the case of Esso Longford Property Limited. According to him, on the 25<sup>th</sup> of September 1998, an explosion took place at a plant in Victoria Australia Capital Territory (ACT), killing two workers<sup>55</sup>. Longford gas plant (presumably the second defendant) was owned by a joint partnership between Esso (presumably the first defendant) and BHP. Esso oversees the operation of plants<sup>56</sup>. On Friday the 25 of September 1998, a pump which normally supplies heated lean oil to the heat exchanger heated up causing the Gas Plant No. 1 to go off. This caused the plant to explode<sup>57</sup>. On enquiry, The Royal Commission headed by Judge Daryl Dawson found among other things that the failed to provide and maintain a risk free business environment its workers<sup>58</sup>. The Royal Commission found the company guilty of eleven breaches of the Occupational Health and Safety Act 1985<sup>59</sup>. The company was fined \$2 million. In addition business owners who suffered property damage caused by the explosion brought a class action in court in 2002<sup>60</sup>. The case was sustained and eventually, in December 2004, the Supreme Court ordered Esso Longford to pay \$32.5 million to those business owners<sup>61</sup>.

In Nigeria, oil companies do not always rectify or replace oil pipelines. This caused explosions. In July 2000, a pipeline explosion outside the city of Warri caused the death of 250 people; an explosion in Lagos in December 2000 killed at least 60 people<sup>62</sup>.

The discovery of oil in the Niger-Delta region of Nigeria in 1956 led to the arrival of multinational oil companies to Nigeria. This gave birth to period of economic growth in the country because of high foreign direct investments (FDI)<sup>63</sup>. By the 1970s, the production and export of oil products had become the main source of wealth for the nation<sup>64</sup>. Therefore, the government of Nigeria made it a top priority that these oil companies are supported economically to boost oil exploration. The 1970s to 1990s was marked by series of military coup d'états that saw oil corporations functioning under military governance for several years<sup>65</sup>. During this time, the host-communities of these oil companies witnessed an irregular (good, better, worse) deterioration of their social, economic and environmental wellbeing<sup>66</sup>. The most poignant was the oil pollution of streams and rivers with crude oil where fish

<sup>54</sup> Shivam Goel *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India 2015).

<sup>55</sup> Shivam Goel *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India 2015).

<sup>56</sup> Goel Shivam *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India 2015).

<sup>57</sup> Shivam Goel *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India 2015).

<sup>58</sup> Shivam Goel *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India 2015).

<sup>59</sup> The Occupational Health and Safety Act 1985 Australia Section 21

<sup>60</sup> Shivam Goel *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India 2015).

<sup>61</sup> Shivam Goel *Corporate manslaughter and Corporate Homicide Scope for a New Legislation in India* (Partridge India 2015).

<sup>62</sup> Peter Nwilo and Olusegun Badejo Impacts of oil spill on the Nigerian coastal areas 1<sup>st</sup> International Congress on Petroleum Contaminated Soil, Sediments and Water 14-17 August 2001 London

<sup>63</sup> Chidi Ibe, Min Wang, Ling Kwek Shoon and Kai Yü "Exploring the impact of strategic proactivity on perceived corporate social responsibility in Nigeria's petroleum industry? A structural equation modelling approach" (2015) 11(4) Asian Social Science 275 -297

<sup>64</sup> Scott Davis "Would Changes in the Rules for Director Selection and Liability Help Public Companies Gain Some of Private Equity's Advantages" (2009) 76 University of Chicago Law Review 83

<sup>65</sup> Chidi Ibe, Min Wang, Ling Kwek Shoon and Kai Yü "Exploring the impact of strategic proactivity on perceived corporate social responsibility in Nigeria's petroleum industry? A structural equation modelling approach" (2015) 11(4) Asian Social Science 275 -297

<sup>66</sup> Bayode Babatunde and Adebola Adebisi "Strategic Environmental Scanning and Organization Performance in a Competitive Business Environment" Economic Insights-Trends and Challenges (2012) 64(1) 24-34

farmers fish for fish and other aquatic creatures for their daily bread<sup>67</sup>. As a result, the members of the host-communities of oil companies saw them as being exploitative<sup>68</sup>. This led to protests that were initially peaceful, but became violent as these oil companies more and more showed selfishness under the protection of military governments<sup>69</sup>. This was when social activism began in the Niger-Delta region of Nigeria<sup>70</sup>. It was described by academicians as having developed from the shared experience and aspirations that stemmed from the deprivation of social good by the activities of oil companies<sup>71</sup>.

This demands that in Nigeria, the nature of corporate systems must encourage managers to work in an ethical manner bearing in mind the long term interests of the company. In Nigeria's Niger Delta known for its oil and gas place of exploration, instead of Nigeria having a permanent mechanism in place for the punishment of companies for corporate manslaughter, Evuleocha stresses that Niger Delta will rely on the government in negotiating acceptable terms of production with the oil producing communities such as environmental compensation for damages, decision-making involvement in oil production, rule of law, transparency and accountable administration of the money from oil revenue<sup>72</sup>. When companies are faced with profit making at the detriment of safety of its workers or any other person it is commonly be resolved by examining the long-term interest of the company<sup>73</sup>. In practical management terms it means taking into account both the profit motive and the prevention of corporate accidents and achieving a balance that satisfies the company's best interests<sup>74</sup> as well as keeping the citizens of Nigeria alive and safe by the Nigerian government. According to Locke, the purpose of the Government and law is to uphold and protect the natural rights of men. So long as the Government fulfils this purpose, the laws given by it are valid and binding but, when it ceases to fulfil them, then the laws would have no validity<sup>75</sup>.

Additionally, ethical principles must be a core aspect of the organization's operations and should be reflected in its code of ethical conduct, as well as its formal and informal controls, policies, processes, and procedures<sup>76</sup>. Thus, the board and management need to ensure there is a strong alignment between the organization's ethical standards (sustainability framework) and their own behaviour and actions<sup>77</sup>.

It is also advisable that the Nigerian government should borrow a leaf from Australian Capital Territory and pass the Corporate Manslaughter and Corporate Homicide Bill 2015 Nigeria into law for punishment of companies in Nigeria for corporate manslaughter and corporate homicide.

<sup>67</sup> Chidi Ibe, Min Wang, Ling Kwek Shoon and Kai Yü "Exploring the impact of strategic proactivity on perceived corporate social responsibility in Nigeria's petroleum industry? A structural equation modelling approach" (2015) 11(4) Asian Social Science 275 -297

<sup>68</sup> Shola Omotola "The next gulf? Oil politics, environmental and rising tension in the Niger Delta" 2006 1(3) Accord occasional paper series 1-31

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<sup>70</sup> Chidi Ibe, Min Wang, Ling Kwek Shoon and Kai Yü "Exploring the impact of strategic proactivity on perceived corporate social responsibility in Nigeria's petroleum industry? A structural equation modelling approach" (2015) 11(4) Asian Social Science 275 -297

<sup>71</sup> Teddy .V. Jike. "Environmental degradation, social disequilibrium, and the dilemma of sustainable development in the Niger-Delta of Nigeria" (2004) 34(5) Journal of Black Studies 686-701.

<sup>72</sup> Stevina .U. Evuleocha, "Managing indigenous relations: Corporate social responsibility and corporate communication in a new age of activism" (2005) 10(4) Corporate Communications: An International Journal 328-340.

<sup>73</sup> Robert Whittingham *Preventing Corporate Accidents An Ethical Approach* 1<sup>st</sup> Edition. (Butterworth-Heinemann Ltd 2008)

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<sup>75</sup> Elahi Manzoor Laskar Summary of Social Contract Theory by Hobbes, Locke and Rousseau Symbiosis Law School Pune 2013 at 4

<sup>76</sup> Bonn Ingrid and Josie Fisher "Corporate Governance and Business Ethics: Insights from the Strategic Planning Experience" Corporate Governance an International Review (2005) 13(6) 730-738

<sup>77</sup> Bonn Ingrid and Josie Fisher "Corporate Governance and Business Ethics: Insights from the Strategic Planning Experience" Corporate Governance an International Review (2005) 13(6) 730-738



According to Simpson, when law is used to correct companies for their ills, it forces companies to treat prosecution as a managerial tactic- something to be taken into account as a possible outcome if criminal options are considered in the decision process<sup>78</sup>. Since companies will be punished for crime or its name stigmatized, the managerial tactic by law is simply something that cannot be ignored by managers<sup>79</sup> (Criminal prosecution is more punitive and stigmatizing than other control mechanisms).

Under the Corporate Manslaughter and Corporate Homicide Bill 2015 Nigeria, remedial order demands that companies should constantly clean up oil spillage or reduce gas flaring.

Next, this writer will discuss The United Kingdom.

### The United Kingdom

In the United Kingdom under Corporate Manslaughter and Corporate Homicide Act 2007, the police and health and safety regulators investigate corporate manslaughter cases. If the investigation finds that senior management failure amounts to a gross breach of the duty of care owed by the organisation to the victim, then individual senior managers could face prosecution<sup>80</sup>. The Act provides that:

- A “relevant duty of care”, in relation to an organisation, means any of the following duties owed by the company-
- (a) A duty owed to its employees or to other persons working for the organisation or performing services for it;
  - (b) A duty owed as occupier of premises<sup>81</sup>.

The Corporate Manslaughter and Corporate Homicide Act 2007 provides for a fine, publicity order to mention just a few through which a court will be able to require an organisation convicted of corporate manslaughter to advertise the fact of its conviction, specified particulars of the offence, the amount of any fine imposed, and the terms of any remedial order that has been made<sup>82</sup>.

In the United Kingdom, directors are authorised by law to act in ways that “promote the success of the company, have regard to the impact of the company’s operations on the community and the environment”<sup>83</sup>. An organisation convicted of corporate manslaughter or corporate homicide may also be issued with a remedial order by the court, requiring it to take specific steps to remedy the breach; any matter the court believes to have resulted from the breach and caused the death; and any deficiencies in the organization’s health and safety policies, systems or practices of which the breach appears to be an indication<sup>84</sup>. The Companies Act 2006 UK specifically provides that a company should at least have a £50,000 capital base before incorporation. This may be to ensure that it has enough money to handle immediate and regular cleaning up of oil spillage. Some scholars like Whyte argue that it is the job of the company to correct itself<sup>85</sup> after UK court sentence on companies for corporate manslaughter and corporate homicide.

Field stated that that convictions for the offence of corporate manslaughter in England and Wales is now gaining momentum in terms of the evolving profile of the corporate defendant and incidence after the disheartening slow start- one conviction secured during the first four years<sup>86</sup>. Subsequently there were 12 convictions, 4 of which went to trial (the other 8 corporate defendants pleading guilty) and 2 acquittals- the rate of prosecution does appear to be

<sup>78</sup> Sally S. Simpson *Corporate Crime, Law, and Social Control* (Cambridge University Press, 2002)

<sup>79</sup> Rick Sarre “Responding To Corporate Collapses: Is There A Role For Corporate Social Responsibility?” (2002) 9 Deakin Law Review 1

<sup>80</sup> Micheal G Welham, *Corporate Manslaughter and Corporate Homicide: A Manager's Guide to Legal Compliance* Second Edition (Bloomsbury Professional, 2008)

<sup>81</sup> The Corporate Manslaughter and Corporate Homicide Act 2007 UK Section 2

<sup>82</sup> Gerald Forlin and Louise Smail (Eds) *Corporate Liability: Work Related Deaths and Criminal Prosecutions* (2<sup>nd</sup> Ed. Bloomsbury Professional Ltd 2010)

<sup>83</sup> Companies Act 2006 UK Section 172 (1C).

<sup>84</sup> Corporate Manslaughter and Corporate Homicide Act 2007 United Kingdom Section 9(1)

<sup>85</sup> David Whyte “Challenging the impunity of our most prolific killers” (2015) 125 Employment Law Bulletin 6-7

<sup>86</sup> Sarah Field “Criminal liability under the Corporate Manslaughter and Corporate Homicide Act 2007: a changing landscape” (2016) 27(7) International Company and Commercial Law Review 229-233

picking up<sup>87</sup>. For example, In Cavendish Masonry Limited corporate manslaughter case, an employee of Well Barn Estate in Moulsoford, Oxfordshire by name David Evans and aged 23, died while he was erecting a wall for his employer in 2010. He died when the block fell off a concrete lintel and crushed him<sup>88</sup>. The court found Cavendish Masonry Ltd guilty of corporate manslaughter. The Health and Safety Executive announced that the death was “completely avoidable”<sup>89</sup>. Health and Safety Executive (HSE) inspector Peter Snelgrove said Cavendish Masonry, based in Maesteg, south Wales, also said that Cavendish Masonry Limited had not properly planned the moving of the heavy limestone with a crane<sup>90</sup>.

In *Regina .v. Lion Steel Equipment Ltd*<sup>91</sup>, it was alleged that on 29<sup>th</sup> May 2008 that the defendant (the company) by the way it carries out its activities caused the death of an employee Steven Berry who fell from a roof undergoing repairs. The prosecution invoked the provision of Section 1 of the CMCHA 2007 (breach of duty of care). They alleged that how the activities of the company (defendant) were managed or organized by its senior management caused the death of Steven Berry an employee of Lion Steel Equipment Ltd<sup>92</sup>.

Enforceability in term of punishment of companies in Nigeria for corporate manslaughter and corporate homicide is in itself inhibited in Nigeria (this is because of the stance of The Federal High Court in Nigeria’s case below). Governance in Nigeria is in itself also inhibited so that the existence of a law does not mean that the law will be effective. In *Centre for Oil Pollution .v. Nigerian National Petroleum Corporation*<sup>93</sup>. This case arose because of ecological devastation (caused by oil spillage and gas flaring) in Ineh Community (which is an oil producing community sandwiched between Abia State and Rivers State of Nigeria). The community lacked the financial capacity to either fight or pursue legal action. Members of the community are part of a non-governmental organization (NGO) in Lagos State, Nigeria. This organization conducted an extensive study on the effects and consequences of environmental degradation, including its exposures and the terminal illnesses it could cause for both oil company employees and villagers. Following the study, the NGO decided to sue the Nigerian National Petroleum Corporation (NNPC) at the Federal High Court and the Court of Appeal in Lagos, seeking only the rectification of their environment and possible relocation. At the Federal High Court, the defense raised an objection on the grounds of locus standi, arguing that the NGO neither has locus standi nor has shown any special interest.

According to this writer, what makes this case particularly fascinating is that the Federal High Court dismissed it due to a lack of locus standi. However, the Court of Appeal<sup>94</sup> engaged in a comprehensive discussion on the concept of locus standi not only in Nigeria but also in England, Australia, and America. They concluded that these countries have legal systems that allow more lenient requirements for locus standi, enabling individuals or organizations, such as non-governmental organizations, to file lawsuits even if they are not directly affected by the issue at hand.

This writer, finds it distressing that the issues of oil spillage, gas flaring, and human rights violations in Nigeria are so severe that other oil-producing nations, due to environmental pollution<sup>95</sup>, derogatorily refer to Nigeria as their farmland. Corporate Manslaughter law plays a crucial role in enhancing companies' performance in fulfilling their corporate social responsibility objectives, which include both profit-making and the protection of workers' lives and societal well-being based on legal policies. While society sanctions businesses to operate with a profit motive, it

<sup>87</sup> Sarah Field “Criminal liability under the Corporate Manslaughter and Corporate Homicide Act 2007: a changing landscape” (2016) 27(7) *International Company and Commercial Law Review* 229-233

<sup>88</sup> BBC News Cavendish Masonry Fined for Corporate Manslaughter Available at Cavendish Masonry fined for corporate manslaughter - BBC News [Accessed] 11th of December 2022

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<sup>91</sup> *Regina .v. Lion Steel Equipment Ltd* Manchester Crown Court T20117411 20<sup>th</sup> July, 2012

<sup>92</sup> *Regina .v. Lion Steel Equipment Ltd* Manchester Crown Court T20117411 20<sup>th</sup> July, 2012

<sup>93</sup> *Centre for Oil Pollution Watch .v. Nigerian National Petroleum Corporation* FHC/L/CS/638/2004

<sup>94</sup> *Centre for Oil Pollution .v. Nigerian National Petroleum Corporation* CA/L/413/2008

<sup>95</sup> Tombari Bodo “Community Understanding of the Environmental and Socio-Economic Consequences of Petroleum Exploitation in Ogoni, Rivers State, Nigeria” (2018) 2(11) *International Journal of Advanced Research and Publications* 51-55

simultaneously expects them to comply with laws and regulations established by federal, state, and local governments as the fundamental rules under which businesses must operate<sup>96</sup>.

Next, this writer will discuss The Netherlands.

### **The Netherland**

In The Netherland, the imposition of liability on company in the event of death is even open. According to Keulen and Gritter the Dutch criminal law do not specifically say that only operators or directors of a company can cause death or to be held liable<sup>97</sup>. Even an employee can cause a company to be liable in the event of death as long as it can be understood under the law that the company 'has committed the offence'<sup>98</sup>. Authors like Keulen and Gritter, believes that the open approach in Netherland makes provision for 'tailor-made' jurisprudence enabling the court to decide relevant circumstances and factors<sup>99</sup>. This writer believes then that the idea of companies being charged for corporate manslaughter for failure in staff training which caused the death for example and made to pay huge fine in Nigeria and Malaysia instead of suspension and taking away an individual's licence (operator or director (in this research, senior managers)) could make the punishment sink in. It serves as a huge relieve to the victim's family and the general public that the breach which caused the death has been handled.

Next, this writer will discuss Malaysia.

### **Malaysia**

Malaysia is one of the countries in Asia that is considering having a law on corporate manslaughter. Ali noted that there have been many occurrences of death at work caused by negligence of companies in Malaysia to observe Occupational Safety and Health Legislation<sup>100</sup>. He also believes that in Malaysia, the construction sector of industries have the most record for fatality. Stakeholders like the citizens, the government in Malaysia, are suggesting a law holding companies in Malaysia for corporate manslaughter<sup>101</sup>. There is no mention that a company can be accused in the event of corporate manslaughter in Malaysia. The preference in Malaysia under company law is to prosecute directors of a company personally<sup>102</sup> but not directors/ senior managers on behalf of the company like in the UK. In Malaysia, cases of corporate killing (in this journal article: corporate manslaughter) are administrative in nature such as by suspending the operator's licence; giving preference to individual liability<sup>103</sup>. This writer believes that it is the same situation under company law in Nigeria. The only difference between Malaysia and Nigeria is that Nigeria has a Corporate Manslaughter Bill 2015. In Nigeria, what instigated the introduction of a corporate manslaughter law in UK<sup>104</sup> and specifically Nigeria was the harshness of the Common law in The UK and the weakness of the Companies and Allied Matters Act 2004 Nigeria, The Criminal Procedure Act (for Southern Nigeria) and The Criminal Procedure Code (for the northern Nigeria) to provide as laws for the prosecution of companies in Nigeria in the event of death at workplace. In Asia which Malaysia is part of (emphasis mine), companies have plans of saving money from record keeping and site inspection to spend it on staff training to improve staff welfare and to ensure that their workers do not quit. However, record shows that after all efforts like pushing down prices; company managers still complain they cannot find money to sponsor these services<sup>105</sup>. This writer believes that this difficulty is as a result of poor development strategy. A company which plan to stay long term should have a strategy to contribute to worker's safety and welfare.

<sup>96</sup> Archie .B. Carroll 'The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders' (Business Horizons, July-August 1991)

<sup>97</sup> B.F. Keulen and E. Gritter. *Corporate Criminal Liability in The Netherlands* (Intersentia, International Law Series, 2010)

<sup>98</sup> B.F. Keulen and E. Gritter. *Corporate Criminal Liability in The Netherlands* (Intersentia, International Law Series, 2010)

<sup>99</sup> B.F. Keulen and E. Gritter. *Corporate Criminal Liability in The Netherlands* (Intersentia, International Law Series, 2010)

<sup>100</sup> Linus Ali *Corporate criminal liability in Nigeria* (Malthouse Press Ltd, 2009)

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<sup>104</sup> Linus Ali *Corporate criminal liability in Nigeria* (Malthouse Press Ltd, 2009)

<sup>105</sup> Richard Welford and Stephen Frost "Corporate social responsibility in Asian supply chains" (2006) 13(3) Corporate Social Responsibility and Environmental Management 166-176

### Conclusion:-

Almost every day, we read from newspapers, the internet or we hear on the radio and the television of disasters happening at workplaces and our surroundings. On many occasions these disasters happen as a result of gas flaring, oil and/ or gas explosions, violent storms and so on. There may be death casualties while on some occasion death count will be nil. Sometimes when these catastrophes do happen no one will take blame for the death. It will be called an “act of God”, normal daily life incidence that man bear and life goes on. In different cases employees die while working for their employers from these work disasters caused by the grossly negligent and inadequate conduct of managers running the activities of the company<sup>106</sup>. It is proper that this topic is discussed as a way of punishing companies will making them corporate socially responsible.

The primary objective of penalizing corporations for corporate manslaughter is to ensure corporate accountability. As Parker articulated, if the law prioritizes internal responsibility processes over external accountability outcomes, it risks devolving into a superficial pretense. Such a scenario would be to the advantage of corporate power-mongers who could manipulate the law for their own interests<sup>107</sup>.

This implies that the punishment for corporate manslaughter and corporate homicide is enforced by the government (through its institutions like the courts and the police and The Nigerian Content and Monitoring Development Board<sup>108</sup>) and companies, fostering a culture of health and safety. It is of utmost importance and paramount consideration for the government of Nigeria and companies operating within Nigeria. The government places significant emphasis on the health, safety, and well-being of its citizens and will make a credible commitment to its vision through the punishment of companies in Nigeria for corporate manslaughter and corporate homicide enforcement of remediation practices<sup>109</sup> (regular cleaning up of oil spillage to prevent oil explosions causing death or poisoning of drinking water from streams and river and fishes in them which employees and the villagers will drink or eat resulting to death).

These factors have caused large corporations to become more sophisticated, complex, aggressive, and competitive<sup>110</sup>, which has in turn led to a culture of negligent management. Sarre argues that addressing corporate crime necessitates the cultivation of an organizational ‘culture of mindfulness,’ characterized by a vigilant and continuous awareness of potential wrongdoing, a personal ethic of care, and an acceptance of individual responsibility for the consequences of one's actions<sup>111</sup>.

Consequently, it is crucial for Nigeria to avoid any loopholes in the process of charging and convicting multinational corporations (MNCs) for corporate manslaughter and corporate homicide.

The situation in Nigeria is alarming. The country's obsession with generating revenue from oil exploration has made its economy heavily reliant on oil. As a result, oil companies in Nigeria often neglect to clean up oil spillages, which can lead to fires and death of employees and villagers.

Moreover, Nigeria lacks a robust system to hold multinational companies accountable for corporate manslaughter and corporate homicide. The current enforcement and punishment mechanisms are inadequate. Nigeria has not yet reached a point where corporate manslaughter and homicide are effectively addressed, and government institutions are ready to investigate and prosecute these offenses.

<sup>106</sup> Des Taylor and Geraldine Mackenzie “Staying Focused on the Big Picture: Should Australia Legislate for Corporate Manslaughter Based on United Kingdom Model?” (2013) 37(2) Criminal Law Journal 99-113

<sup>107</sup> C Parker ‘Meta-regulation: Legal Accountability for Corporate Social Responsibility’ (2007) in Doreen McBarnet, Aurora Voiculescu and Tom Campbell (eds), *The New Corporate Accountability Corporate Social Responsibility and the Law* (Cambridge University Press 2007)

<sup>108</sup> Samuel Nnamdi Nzegwu and Ikpenmosa Uhumuavbi “Enforcing Corporate Social Responsibility (CSR): An Assessment Of Institutional Actions Against Multinational Oil And Gas Companies In Nigeria” (2023) 11(1) International Journal of Advanced Research 1210-1218

<sup>109</sup> Eli Lederman “Corporate Criminal Liability: The Second Generation” (2016) 46 Stetson Law Review 71-87

<sup>110</sup> Eli Lederman “Corporate Criminal Liability: The Second Generation” (2016) 46 Stetson Law Review 71-87

<sup>111</sup> Rick Sarre “Responding To Corporate Collapses: Is There A Role For Corporate Social Responsibility?” (2002) 9 Deakin Law Review 1

In the future, Nigeria will establish a mechanism to penalize companies for corporate manslaughter and corporate homicide. Additionally, the courts will be encouraged to issue remedial orders for the prompt clean-up of oil spillages or the reduction of gas flaring, alongside imposing fines on the companies.

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Accessed 16<sup>th</sup> March 2014.