

CORPORATE MANSLAUGHTER BILL, 2015

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A BILL

FOR

AN ACT TO PROVIDE FOR CORPORATE MANSLAUGHTER TO MAKE CORPORATE ORGANIZATIONS CRIMINALLY LIABLE FOR DEATH OF EMPLOYEES ARISING FROM ITS ACTS OR OMISSIONS AND FOR RELATED MATTERS

Sponsored by Hon. Yakubu Dogara

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria as follows-

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PART I — OFFENCES

1.—(1) Any organisation whose activities are managed or organized in such a way that it results in the death of a person and such death is occasioned by a gross breach of a relevant duty of care owed by the organization to the deceased is guilty of Corporate manslaughter. The Offence

(2) The organisations to which this section applies are-

(a) a corporate organization whether private or public;

(b) a government department, whether at the Federal, State or Local Government Council level;

(c) a police force, paramilitary and the armed forces;

(d) a partnership, or a trade union or employers' association that is an employer.

(3) 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 referred to in subsection (1).

(4) For the purposes of this-

(a) "relevant duty of care" has the meaning given by section 2, read with sections 3 to 7;

1 (b) a breach of a duty of care by an organisation is “a gross” breach if
2 the conduct alleged, falls far below what can reasonably be expected of the
3 organization in the circumstances;

4 (c) “senior management”, in relation to an organisation, means the
5 persons who play significant roles in-

6 (i) the making of decisions about how the whole or a substantial part
7 of its activities are to be managed or organised, or

8 (ii) the actual managing or organising of the whole or a substantial
9 part of those activities.

10 (5) An organisation that is guilty of corporate manslaughter is liable
11 on conviction or indictment to a fine.

12 (6) The High Court at the Federal and State levels shall have
13 jurisdiction to try cases of corporate manslaughter.

Meaning of
relevant of care

14 2.—(1) A “relevant duty of care”, in relation to an organisation, means
15 any of the following duties owed by it under the law of negligence-

16 (a) a duty owed to its employees or to other persons working for the
17 organisation or performing services for it;

18 (b) a duty owed as occupier of premises;

19 (c) a duty owed in connection with-

20 (i) the supply by the organisation of goods or services (whether for
21 consideration or not),

22 (ii) the carrying on by the organisation of any construction or
23 maintenance operations,

24 (iii) the carrying on by the organisation of any other activity on a
25 commercial basis, or

26 (iv) the use or keeping by the organisation of any plant, vehicle or
27 other thing;

28 (d) a duty owed to a person who, by reason of being a person within
29 subsection (2), is someone for whose safety the organisation is responsible.

30 (2) A person is within this subsection if-

1 (a) he is detained at a custodial institution or in a custody area at a
2 court or police station or short term holding facility;

3 (b) he is being transported in a vehicle, or being held in any
4 premises, in pursuance of prison escort arrangements or immigration escort
5 arrangements;

6 (c) he is living in secure accommodation in which he has been
7 placed;

8 (d) he is a detained patient.

9 (3) Subsection (1) is subject to sections 3 to 7.

10 (4) A reference in subsection (1) to a duty owed under the law of
11 Negligence includes a reference to a duty that would be owed under the law
12 of negligence but for any statutory provision under which liability is
13 imposed in place of liability under that law.

14 (5) For the purposes of this Bill, whether a particular organization
15 owes a duty of care to a particular individual is a question of law and the
16 judge must make any findings of fact necessary to decide that question.

17 (6) For the purposes of this Bill there is to be disregarded-

18 (a) any rule of the common law that has the effect of preventing a
19 duty of care from being owed by one person to another by reason of the fact
20 that they are jointly engaged in unlawful conduct;

21 (b) any such rule that has the effect of preventing a duty of care
22 from being owed to a person by reason of his acceptance of a risk of harm.

23 (7) In this section -

24 "construction or maintenance operations" means operations of any of the
25 following descriptions-

26 (a) construction, installation, alteration, extension, improvement,
27 repair, maintenance, decoration, cleaning, demolition or dismantling of-

28 (i) any building or structure,

29 (ii) anything else that forms, or is to form, part of the land, or

30 (iii) any plant, vehicle or other thing;

1 (b) operations that form an integral part of, or are preparatory to, or are
2 for rendering complete, any operations within paragraph (a);

3 “custodial institution” means a prison, a secure training centre, a young
4 offenders or juvenile justice centre or a remand centre;

5 “detained patient” means-

6 a person who is detained in any premises, or is otherwise in custody, under any
7 health or mental health care treatment programme.

8 “immigration escort arrangements” means arrangements made under the
9 provisions of the Immigration Act;

10 “secure accommodation” means accommodation, not consisting of or forming
11 part of a custodial institution, provided for the purpose of restricting the liberty
12 of persons under the age of 18.

Public policy
decision

13 3.—(1) Any duty of care owed by a public authority in respect of a
14 decision as to matters of public policy (in particular the allocation of public
15 resources or the weighing of competing public interests) is not a “relevant duty
16 of care”.

17 (2) Any duty of care owed in respect of things done in the exercise of
18 an exclusively public function is not a “relevant duty of care” unless it falls
19 within section 2 (1) (a), (b) or (d).

20 (3) Any duty of care owed by a public authority in respect of
21 inspections carried out in the exercise of a statutory function is not a “relevant
22 duty of care” unless it falls within section 2 (1) (a) or (b).

23 (4) In this section -

24 “exclusively public function” means a function that falls within the prerogative
25 of the President or is, by its nature, exercisable only with authority conferred-

26 (a) by the exercise of that prerogative, or

27 (b) by or under a statutory provision;

28 “statutory function” means a function conferred by or under a statute.

Military activities

29 4.—(1) Any duty of care owed by the Ministry of Defence in respect
30 of-

- 1 (a) operations within subsection (2),
2 (b) activities carried on in preparation for, or directly in support of,
3 such operations, or
4 (c) training of a hazardous nature, or training carried out in a
5 hazardous way, which it is considered needs to be carried out, or carried out
6 in that way, in order to improve or maintain the effectiveness of the armed
7 forces with respect to such operations, is not a “relevant duty of care”.

8 (2) The operations within this subsection are operations, including
9 peacekeeping operations and operations for dealing with terrorism, civil
10 unrest or serious public disorder, in the course of which members of the
11 armed forces come under attack or face the threat of attack or violent
12 resistance.

13 (3) Any duty of care owed by the Ministry of Defence in respect of
14 activities carried on by members of the special forces is not a “relevant duty
15 of care”.

16 5.—(1) Any duty of care owed by a public authority in respect of-

Policing and law
enforcement

- 17 (a) operations within subsection (2),
18 (b) activities carried on in preparation for, or directly in support of
19 such operations, or
20 (c) training of a hazardous nature, or training carried out in a
21 hazardous way, which needs to be carried out in that way in order to
22 improve or maintain the effectiveness of officers or employees of the public
23 authority with respect to such operations, is not a “relevant duty of care”.

24 (2) Operations are within this subsection if-

- 25 (a) they are operations for dealing with terrorism, civil unrest or
26 serious disorder,
27 (b) they involve the carrying on of policing or law-enforcement
28 activities, and
29 (c) officers or employees of the public authority in question come
30 under attack, or face the threat of attack or violent resistance, in the course of

1 the operations.

2 (3) Any duty of care owed by a public authority in respect of other
3 policing or law enforcement activities is not a “relevant duty of care” unless it
4 falls within section 2 (1) (a), (b) or (d).

5 (4) In this section “policing or law-enforcement activities” includes
6 activities carried on in the exercise of functions that are-

7 (a) functions of police force, or other law enforcement agencies;

8 (b) functions of the same or a similar nature exercisable by any public
9 authority other than the security agencies.

Emergencies

10 **6.—**(1) Any duty of care owed by an organisation within subsection
11 (2) in respect of the way in which it responds to emergency circumstances is not
12 a “relevant duty of care” unless it falls within section 2 (1) (a) or (b).

13 (2) The organisations within this subsection are-

14 (a) a fire and rescue authority in Nigeria;

15 (b) any other organisation providing a service of responding to
16 emergency circumstances;

17 (c) an organisation providing ambulance services;

18 (d) an organisation providing services for the transport of organs,
19 blood, equipment or personnel in pursuance of emergency;

20 (e) an organisation providing a rescue service;

21 (f) the armed forces.

22 (3) For the purposes of subsection (1), the way in which an
23 organisation responds to emergency circumstances does not include the way in
24 which-

25 (a) medical treatment is carried out, or

26 (b) decisions within subsection (4) are made.

27 (4) The decisions within this subsection are decisions as to the
28 carrying out of medical treatment, other than decisions as to the order in which
29 persons are to be given such treatment.

30 (5) Any duty of care owed in respect of the carrying out, or attempted

1 carrying out of a rescue operation at sea in emergency circumstances is not a
2 “relevant duty of care” unless it falls within section 2 (1) (a) or (b).

3 (6) In this section-

4 “emergency circumstances” means circumstances that are present or
5 imminent and-

6 (a) are causing, or are likely to cause, serious harm or a worsening
7 of such harm, or

8 (b) are likely to cause the death of a person;

9 “medical treatment” includes any treatment or procedure of a medical or
10 similar nature;

11 “serious harm” means-

12 (a) serious injury to or serious illness (including mental illness) of a
13 person;

14 (b) serious harm to the environment (including the life and health
15 of plants and animals);

16 (c) serious harm to any building or other property.

17 7.— (1) A duty of care to which this section applies is not a
18 “relevant duty of care” unless it falls within section 2 (1) (a), (b) or (d).

Child-protection
functions

19 (2) This section applies to any duty of care that an organization or
20 local authority or other public authority owes in respect of the exercise of its
21 functions conferred by or under any law.

22 8.—(1) A court which convicts an organisation of corporate
23 manslaughter may make a “remedial order” requiring the organisation to
24 take specified steps to remedy-

Power of court

25 (a) the breach mentioned in section 1 (1) (“the relevant breach”);

26 (b) any matter that appears to the court to have resulted from the
27 relevant breach and to have been a cause of the death;

28 (c) any deficiency, as regards health and safety matters, in the
29 organisation's policies, systems or practices of which the relevant breach
30 appears to the court to be an indication.

1 behalf of the organisation.

2 (3) A publicity order-

3 (a) shall specify a period within which the requirements referred to
4 in subsection (1) are to be complied with;

5 (b) may require the organisation to supply to any enforcement
6 authority whose views have been ascertained under subsection (2), within a
7 specified period, evidence that those requirements have been complied
8 with.

9 (4) An organisation that fails to comply with a publicity order is
10 guilty of an offence and liable on conviction or indictment to a fine.

11 **10.**—(1) In this Bill “the armed forces” means the army, navy or
12 airforce of the Federal Republic of Nigeria.

Application of
the Bill to armed
forces

13 (2) For the purposes of section 2 a person who is a member of the
14 armed forces is to be treated as employed by the Ministry of Defence.

15 **11.**—(1) In this Bill “police force” means a police force within the
16 meaning of the Police Act.

Application to
police forces

17 (2) For the purposes of this Bill, a police force is to be treated as
18 owing whatever duties of care it would owe if it were a body corporate.

19 **12.**—(1) For the purposes of this Bill, a partnership is to be treated
20 as owing whatever duties of care it would owe if it were a body corporate.

Application to
partnerships

21 (2) Proceedings for an offence under this Bill alleged to have been
22 committed by a partnership are to be brought in the name of the partnership
23 (and not in the name of any of its members).

24 (3) A fine imposed on a partnership on its conviction for an offence
25 under this Act is to be paid out of the funds of the partnership.

26 (4) This section does not apply to a partnership that is a legal person
27 under the law by which it is governed.

28 **13.**—(1) Any statutory provision (whenever made) in relation to
29 criminal proceedings against a corporation shall subject to necessary
30 modifications apply to proceedings under this Bill against —

Criminal
proceedings

- 1 (a) a department or other government body,
2 (b) a police force,
3 (c) a partnership,
4 (d) a trade union, or
5 (e) an employers' association that is not a corporation,

Transfer of
liability

6 **14.—(1)** Where a person's death has occurred, or is alleged to have
7 occurred, in connection with the carrying out of the functions of a public
8 organisation and subsequently there is a transfer of those functions to another
9 organisation, any proceedings against the former organization under this Bill
10 shall be instituted against the organization that inherits its functions.

11 (2) Where the transfer of functions occurs while proceedings for an
12 offence under this Bill is pending, the proceedings are to be continued against
13 the organisation by which such functions are subsequently carried out as a
14 result of the transfer;

15 (3) Where as a result of the transfer no such organisation carries out
16 the functions, the proceedings shall be instituted against the same or any other
17 organisation by which the functions were last carried out.

Consent of the
Attorney-General

18 **15.** Proceedings for an offence of corporate manslaughter may not be
19 instituted except with the consent of the Attorney-General of the Federation.

Exemption of
individual
Liability

20 **16.—(1)** An individual cannot be convicted of aiding, abetting,
21 counseling or procuring or being party to the commission of an offence of
22 corporate manslaughter.

Charges under
this Bill not a bar
to and charges
under any health
and safety
legislation

23 **17.—(1)** Where in the same proceedings there is-

24 (a) a charge of corporate manslaughter arising out of a particular set of
25 circumstances,

26 (b) a charge against the same defendant of a health and safety offence
27 arising out of some or all of those circumstances, the court may, if the interests
28 of justice so require, return a verdict on each charge.

29 (2) An organisation that has been convicted of corporate
30 manslaughter arising out of a particular set of circumstances may, if the

1 interests of justice so require, be charged with a health and safety offence
2 arising out of some or all of those circumstances.

3 (3) In this section “health and safety offence” means an offence
4 under any health and safety legislation.

5 **18.—**(1) Section 1 applies if the harm resulting in death is
6 sustained in the Federal Republic of Nigeria or-

Extent of
territorial
application

7 (a) within the seaward limits of the territorial sea adjacent to the
8 Federal Republic of Nigeria; or

9 (b) on a Nigerian controlled ship, aircraft, hovercraft; or

10 (c) in any place to which the Petroleum Act applies.

11 (2) For the purposes of subsection (1) (b) and (c) harm sustained on
12 a ship, aircraft or hovercraft includes harm sustained by a person who-

13 (a) is then no longer on board the ship, aircraft or hovercraft in
14 consequence of the wrecking of it or of some other mishap affecting it or
15 occurring on it, and

16 (b) sustains the harm in consequence of that event.

17 **19.** In this Bill-

Interpretation

18 “corporation” means any body corporate that is incorporated but does not
19 include a corporation sole;

20 “employee” means an individual who works under a contract of
21 employment or apprenticeship (whether express or implied and, if express,
22 whether oral or in writing), and related expressions are to be construed
23 accordingly;

24 “enforcement authority” means an authority responsible for the
25 enforcement of any health and safety legislation;

26 **20.** This Bill may be cited as the Corporate Manslaughter Bill,
27 2015.

Short Title

EXPLANATORY MEMORANDUM

This Bill seeks to provide for the offence of corporate manslaughter and corporate homicide to make corporate organizations criminally liable for the death of employees arising from the failure of the organization to observe appropriate duty of care in the operations and management of its activities.
