



# **An Examination Of Criminal Liability Of Artificial Intelligence Entities: Nigerian Law In Focus**

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## **ABSTRACT**

This paper presents a discussion on the criminal liability of artificial intelligence entities under the Nigerian Law(s). It is of no doubt that one of the present challenging issues in the world today is the role and place of artificial intelligence with humanity relation to the law. This concern extends to the question, whether such artificial intelligence entities should be subjected to the law as to be criminally liable for their actions or inactions considering the fact that the rapid technological advancement has undoubtedly rendered them prone to crime commission. Machines in performing such duties in various sectors in the world including but not limited to health care, law, sports and marketing. And those machines engaged in such services are known as the artificial intelligence entities/beliefs. The aim of this paper was to examine the relevant law in Nigeria vis-à-vis the criminal liability of these artificial intelligence entities to determine whether their criminal liability is recognized by the law albeit directly or indirectly. The methodology adopted is doctrinal via analyzing the relevant law(s) and some judicial decisions. It is also found that the relevant law(s) in Nigeria did not specifically recognize the criminal liability of artificial intelligence entities though they could be criminally liable for their crimes under corporate criminal responsibility and if the law recognized their personhood. It is recommended that the law(s) in Nigeria should be made to directly recognize the criminal liability of artificial intelligence entities because of their nature and threat to humanity.

**Keywords:** Artificial intelligence, criminal liability, entities, law.

## **1. INTRODUCTION**

The basic question of criminal law is the question of criminal liability, i.e. if the particular person or entity bears criminal responsibility for a particular offence committed at a specific time and place. Thus, there are two elements to imposing criminal liability on a person and they are the physical and mental elements ordinarily referred to as the *actus reus* and *mens rea*. The two elements must be present (co-exist) before a criminal liability can be imposed. Before now the criminal liability of AI entities seemed strange and unthinkable but owing to the advancement in technology and rapid growth of such entities coupled with their orchestrated dangers, threats and harm to human beings and society at large, there was a change of mind set in that regard.

To this end, this paper x-rays Nigerian law (s) on Criminal Liability for offences committed by or with the use of Artificial Intelligence entities to determine whether our criminal laws cover this area of human and technological development/advancements. Artificial intelligence entities or beings generally do not qualify for criminal liability as natural persons. Interestingly, even natural persons capable of being criminally responsible for their action(s) and inaction(s) in some cases/circumstances may be exculpated. This may be as a result of some extenuating factors or defenses. Thus, defence of accident, mistake of fact, immaturity, insanity and intoxication<sup>1</sup> have the tendency of relieving one from criminal liability if raised and upheld.

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<sup>1</sup> See generally sections 24, 25, 30, 27, 28 and 29 of the Criminal Code Cap C38 L.F.N, 2004.

Unlike natural persons who are generally responsible for their actions or inactions, artificial intelligence entities/beings can be criminally liable under corporate criminal liability just as corporations. Also, if a law recognizes them as being criminally liable for their actions or omissions, they can be held liable for their actions or omissions and the liability may vary according to their class. For instance, weak or narrow artificial intelligence entities/beings which are merely developed and used as tools are regarded as innocent agents and cannot be held criminally liable. This is because they do not act on their own. But the stronger artificial intelligence entities such as the Artificial super-intelligence which are capable of their needs and goals as well as acting independently of their developer or user should be held criminally liable for their actions and inactions. This class of artificial intelligence entity develops on its own and grows beyond human expectations. We also have established models of criminal liability for these artificial intelligence entities/beings such as the Perpetration via another liability model, natural probable consequence liability model and direct liability model<sup>2</sup>.

It is imperative to note at this juncture that corporate criminal liability is akin to the liability of artificial intelligence entities, *mutatis mutandis*. Both of them are artificial/legal persons. Corporations act through their agents or representatives. They also think through them. That is why their agents or representatives usually play pivotal role(s) in their criminal trials. But artificial intelligence entities especially the artificial super-intelligence can act on their own independently, and can face trial alone. They grow beyond the expectations of their developers/programmers and enjoy absolute independent existence.

## **2. LEGAL FRAMEWORK FOR CRIMINAL LIABILITY OF ARTIFICIAL INTELLIGENCE ENTITIES IN NIGERIA**

This part of the research work tends to x-ray Nigerian law(s) on Criminal Liability for offences committed by or with the use of Artificial Intelligence entities to determine whether our criminal laws cover this area of human and technological development. To that effect, the relevant laws and penal statutes in Nigeria will be examined. In Nigeria, there are a lot of points to be underscored in respect of the laws guiding criminal liability. A careful look at chapter 5 of the Criminal Code<sup>3</sup> which borders on criminal responsibility gives credence to this. But for the purposes of the discussion in this paper, we shall narrow them to those that are of immediate relevance to the study.

### **2.1 Constitution of Federal Republic of Nigeria 1999 (as amended)**

The relevant sections of the constitution that are relevant to the discussion here are Sections 36(8) and 36(12) of the 1999 Constitution.<sup>4</sup> Section 36(8) provides:

No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed. In the same vein, Section 36(12) of the same Constitution provides:

Subject as otherwise provided by this constitution a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law; and in this subsection, a written law refers to an Act of the National Assembly or Law of a State, and subsidiary legislation or instrument under the provisions of a law.<sup>5</sup>

Pertinently, the provision of Section 36(12) of the Constitution only recognizes the Act of the National Assembly and the Laws of States with the subsidiary legislations or instruments made under them as the written Laws in Nigeria. This therefore excludes Order in Council made by Her Majesty for Nigeria which is

<sup>2</sup> See G Hallevey 'The Criminal Liability of Artificial Intelligence Entities – from Science Fiction to Legal Social Control' (2010) 4 *Akron Intellectual Property Journal*, 71.

<sup>3</sup> Criminal Code contained in the schedule to the Criminal Code Act, Cap C38, Laws of the Federation of Nigeria, 2004.

<sup>4</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended).

<sup>5</sup> See the cases of *Awoko v Fagbemi* (1961) 1 ALL NLR 400; *Ifegwu v FRN & Ors* (2001) 47 WRN 86

in force in or forms part of the law of Nigeria. Premised on this, the phrase ‘order in council’ made by Her Majesty for Nigeria which is in force in or forms part of the law of Nigeria’ should be deleted from Section 4 above as no one can be punished for any offence under such order if any.

## **2.2 Companies and Allied Matters Act (CAMA)**

The Companies and Allied Matters Act<sup>6</sup> is the current law in Nigeria that regulates the operation of companies and their possible criminal liability for crimes/offences committed in the cause of their operations. The liability of companies in this regard is called corporate criminal liability. Obviously, the terms company, corporate entity, corporate body and corporation are often used interchangeably. By the authority of *New Resources International Ltd & Anor v Oranusi*<sup>7</sup> it was emphatically noted that companies or corporations are not natural persons but a legal person.

The definition of corporation by the Black’s Law Dictionary is imperative here. It defined corporation thus;

An entity having authority under the law to act as a single person distinct from the shareholders who own it and having rights to issue stock and exists indefinitely. A group or succession of persons established in accordance with legal rules into a legal or juristic person that has a legal personality distinct from the natural persons who make it up, exists indefinitely apart from them, and has the legal powers that its constitution gives to it.<sup>8</sup>

The foundation of a company law that gave rise to the legal personality of companies is said to have emanated from the old English Case of *Salomon v Salomon*<sup>9</sup>. This legal personality of a company is provided for in Section 42 of the Act which borders on effect of registration.

On liability, Section 89 of the Act provides that ‘any act of the members in general meeting, the board of directors, or a managing director while carrying on in the usual way the business of the company, shall be treated as the act of the company itself and the company is criminally and civilly liable to the same extent as if it were a natural person’.

This provision of the Act emphatically affirms the criminal liability of companies for their acts, though with some provisos. By Section 89 (b) of the Act, if a business is being carried on by a company, the company will still be liable for acts undertaken in connection with that business even if the business in question was not among the business authorized by the company’s memorandum.

It is imperative to note that under the new CAMA, only offences relating to matters such as fraud remain criminal offences and most offences such as failure to file resolutions etc, are now administrative offences. Corporate Affairs Commission is empowered to impose penalties for administrative offences through fines prescribed in its regulations.

## **2.3 Criminal Code Act**

The Criminal Code Act<sup>10</sup> which is an Act to establish a code of criminal law is relevant here.

Section 4 of the Criminal Code Act<sup>11</sup> provides thus:

No person shall be liable to be tried or punished in any court in Nigeria for an offence except under the express provisions of the Code, or some other Act, or some Law or of some Order-in-council made by Her Majesty for Nigeria which is in force or forms part of the Law of Nigeria; Provided that in the case of an offence committed before the commencement of this Act the offender may be tried and punished either under the Law in force when the offence was committed or under the Code, provided that the offender shall not be punished to any greater extent than was authorized by the former Law.

<sup>6</sup> Act No. 3, 2020

<sup>7</sup> (2011) 2 NWLR (pt. 1230) p. 102-107

<sup>8</sup> B Garner (ed), Black’s Law Dictionary (9th Edn, USA: West Publishing Co. 2009) p. 8

<sup>9</sup> (1897) A C 22

<sup>10</sup> Criminal Code Act Cap C38 LFN, 2004.

<sup>11</sup> Ibid.

At this juncture, some of the sections of the Criminal Code which borders on criminal liability shall be considered. These are Sections 7, 8, 24, 28, 29 and 30 of the Criminal Code. Section 7 of the Criminal Code deals with parties to offences. It provides thus:

When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it:

- (a) every person who actually does the act or makes the omission which constitutes the offence;
- (b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
- (c) Every person who aids another person in committing the offence;
- (d) Any person who counsels or procures any other person to commit the offence.

In the fourth case, he may be charged either with himself committing the offence or with counseling or procuring its commission.

This section of the code provides for the degree of participation in the commission of the offence like those that are principal offenders and accessories after the fact.

Section 8 of the code provides for offences committed in prosecution of common purpose. It provides thus;

When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.<sup>12</sup>

In the cases of *Mbang v State*<sup>13</sup> and *Ofor & Anor v The Queen*<sup>14</sup>, the courts had reaffirmed the fact that in inferring common intention, the facts of the case must be considered as a whole together with the role played by each of the accused person in the commission of the offence, consequence of such role and the circumstances of the case.

Sections 24, 28, 29 and 30 of the Criminal Code exempt from liability persons which the law deems to lack the mental capability of committing an offence whether by reason of accident, insanity, tender age or intoxication. Section 30 exempts from criminal responsibility for any act or omission of all persons under the age of 7 years and those under the age of 12 years unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission. Section 28 is of the effect that if at the time of doing the act or making the mission, the person is in such a state of mental disease or natural mental infirmity as to deprive him of capacity to understand what he is doing or of capacity to control his actions, or of capacity to know that he ought not to do the act or make the omission, he is not criminally responsible for such act or omission. Section 29 of the Code on the other hand borders on defence to criminal responsibility by reason of intoxication. But it should be noted that it is only involuntary intoxication as provided in Section 29 (2)(a) and (b) of the Code<sup>15</sup> that the law considers as a defence to criminal responsibility.

Having looked at some of the sections of the code on criminal liability, the universal elements or ingredients in fixing criminal liability on a person or entity shall be examined. This was developed in the common law and came to be part of Nigeria's criminal jurisprudence, even though it was not in any criminal statute in Nigeria. It is expressed in the Latin maxim, *actus non facit reum nisi men sit rea*, which means that an act does not render a person legally guilty unless his heart is also blameworthy. This maxim has evolved into two elements or ingredients for fixing criminal liability which are *Actus Reus* (the guilty act) and *Mens Rea* (the guilty mind).

<sup>12</sup> See *Garba v Hadejia N.A.* (1961) NRNLR 44.

<sup>13</sup> (2010) ALL FWLR (pt. 508) 179.

<sup>14</sup> [1955] 15 WACA 4.

<sup>15</sup> The relevant Sections of the Penal Code on this discussion so far are Sections 79, 50, 51 and 52.

In other words, the former is the external or factual element, that is to say, criminal conduct (*actus reus*) while the latter is the internal or mental element that is to say, knowledge or general intent vis-à-vis the conduct element (*mens rea*).<sup>16</sup> If one element is missing, no criminal liability can be imposed. The *actus reus* requirement is expressed mainly by acts or omissions.<sup>17</sup> Sometime, other external elements are required in addition to conduct, such as the specific results of that conduct and the specific circumstances underlying the conduct.<sup>18</sup> The mens rea requirement has various levels of mental elements.<sup>19</sup> The highest level is expressed by knowledge,<sup>20</sup> while sometimes, it is accompanied by a requirement of intent or specific intention.<sup>21</sup> Lower levels are expressed by negligence<sup>22</sup> (a reasonable person should have known) or by strict liability offences.<sup>23</sup> No other criteria or capabilities are required in order to impose criminal liability process not from humans, or any other kind of entity including corporations and artificial intelligence entities. An entity might possess further capabilities, however, in order to impose criminal liability; the existence of *actus reus* and *mens rea* in the specific offence is quite enough.

In determining the criminal liability of artificial intelligence entities in Nigeria, the word Person(s) in our laws defining offences and setting out punishments should be looked into. This has been done in the preceding subheading but for the sake of emphasis, some of the relevant provisions of the constitution and other requisite laws shall be reproduced and as well examined. Thus, Section 36(12) of the Constitution of the Federal Republic of Nigeria 1999 clearly uses the word ‘Person’ in enshrining one of the principles of legality that must be considered before any one is tried or punished for any alleged or purported criminal offence. This shows that it is imperative that before criminal liability is imputed, it must be certain on whom the imputation is being made. The question is, is the person a proper subject recognized by the law. Thus, a failure to get this right will lead to futility when it comes to sentencing and practically executing sentence/punishment.

Artificial intelligence entities are not anywhere in our laws recognized as having legal personality to be subjects or even objects of the law as seen in most international regulations. So, if artificial intelligence entities are to be held criminally liable for the acts and omissions, the relevant laws in Nigeria should recognize them as being subjects to the law and the sections of the laws defining ‘person(s)’ should be amended to include artificial intelligence entities as persons under the law.

<sup>16</sup> G Hallevey, *Ibid*

<sup>17</sup> W H Hitchler, ‘The Physical Element of Crime,’ 39 Dick L. Rev. 95 (1934); M Moore, ‘Act and Crime: The Philosophy of Action And Its Implications for Criminal Law’ 156-68 (1993).

<sup>18</sup> J W Salmond, *On Jurisprudence* (Glanville Williams edn, (1957) p. 505; G Williams, *Criminal Law: The General Part* (2nd edn, (1961) p. 511; O W Holmes, *The Common Law* (1923) p. 54; W W Cook, ‘Act, Intention and Motive in Criminal Law,’ (1917) 26 *YALE L.J.* 645.

<sup>19</sup> J Dressler, *Cases And Material on Criminal Law* (4<sup>th</sup> edn, (2007) 80-81.

<sup>20</sup> *United States v Youts*, 229 F. 3d 1312, 1316 (10<sup>th</sup> cir. 2000)

<sup>21</sup> J L Edwards, ‘The Criminal Degrees of Knowledge,’ 17 MOD. L REV 294 (1954); R M Perkins, ‘Knowledge as a Mens Rea Requirement,’ (1978) 29 *Hastings L.J.* 953; *State v Sergeant* 994 A.2d 401, (Vt. 1991); *State v Wyatt*, 482 S.E. 2d 147 (w.va 1996); *People v Steinberg*, 595 N.E. 2d 845 (N.Y. 1992).

<sup>22</sup> J Hall, ‘Negligent Behaviour Should Be Excluded from Penal Liability’, 63 Colum. L. REV 632 (1963); P Fine and G M Cohen, ‘Is Criminal Negligence a Defensible Basis for Criminal Liability?’ 16 BUFF. L.REV 749 (1966)

<sup>23</sup> J. Horder, ‘Strict Liability, Statutory Construction and the Spirit of Liberty’, 118 LAW Q. REV 458 (2002); F B Sayre, Public Welfare offences, 33 Colum L. REV 55 (1933), S P. Green, *Six Senses of Strict Liability: A Plea for Formalism, Appraising Strict Liability* (A.P. Simester edn, 2005) 1; A.P. Simester, Is Strict Liability Always Wrong?, *Appraising Strict Liability* (A.P. Simester edn, 2005) 21.

#### **2.4 Penal Code Law**

The Penal Code<sup>24</sup> just as the Criminal Code is a penal statute that is applicable in Nigeria, particularly the Northern parts of the country. The Penal Code provided for criminal responsibility in its chapter II which is made up of sections 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66 and 67. Artificial intelligence entities/beings were not captured in the Code as being subjects or objects of the law neither was their liability, civil or criminal considered or underscored by the Penal Code.

#### **2.5 Copyright Act.**

Section 2 of the Copyright Act<sup>25</sup> makes provision for works eligible for copyright. Section 2(1) of the Act provides thus:

Subject to this Act, the following works shall be eligible for copyright:-

- (a) Literary works;
- (b) Musical works;
- (c) Artistic works;
- (d) Audio-Visual Works;
- (e) Sound recordings; and
- (f) Broadcasts

Going further, Section 2 subsection 2(1) (a) – (b) of the Act, provides for the condition precedent a literary, musical or artistic work must satisfy to qualify them as being eligible for copyright.

Pertinently, the Copyright Act is made up of 53 Sections and in none of the sections was artificial intelligence entities/beings or their activities captured or underscored. As such, their liability, whether civil or criminal was neither in focus nor envisaged.

Section 3 of the Act made provision for works that are not eligible for copyright and they include:

- (a) Ideas, procedures, processes, formats, systems, methods of operation, concepts, principles, discoveries or mere data;
- (b) Official text of a legislative or administrative nature as well as any official translations, except their compilations; and
- (c) Official system symbols and insignia, including flags, coat-of-arms, anthems and banknote designs.

Furthermore, in Section 4 of the Act, eligibility for copyright under this Act shall not require any formality. And by Section 5 of the Act copyright can be conferred to the works made by authors in Nigeria or a body corporate incorporated in Nigeria. From the above provision, it is clear that the law did not make express provision for the conferment of copyright on artificial intelligence created works.

In the same vein, the Patents and Designs Act<sup>26</sup> provides in its Section 1 subsection 1(a) and (b) patentable inventions and it does not include the inventions designed or created through artificial intelligence operations. Subsection 4 of section 1 made it clear when it provided that patents cannot be validly obtained in respect of:

- (a) Plant or animal varieties, or essentially biological processes for the production of plants or animals (other than microbiological processes and their products); or
- (b) Inventions, the publication or exploitation of which would be contrary to public order or morality. Section 5 of Subsection 1 summarized the point when it provided that principles and discoveries of a scientific nature are not inventions for the purpose of this Act. Obviously, the development and operation of artificial intelligence entities or beings are premised on scientific principles and discoveries. The corollary of the foregoing is that they are not recognized under the patents and Designs Act.

<sup>24</sup>Contained in the schedule to the Penal Code Law, Laws of Northern Region of Nigeria No. 18 of 1959. The Penal Code is cited as cap 89 Laws of Northern Nigeria, 1963.

<sup>25</sup>Act No. 8 of 2022.

<sup>26</sup> Cap P2 Laws of the Federation of Nigeria, 2004

## 2.6 Factories Act

The Factories Act<sup>27</sup> appears to be in contemplation of artificial intelligence entities/beings when it provides for self-acting machines in its section 22. It is obvious that most artificial intelligence entities are machines which have the capability of independent operation and possible output. Section 22(1) and (2) of the Act provides thus:

- (1) No traversing part of any self-acting machine and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass, whether in the course of his employment or otherwise, be allowed on its outward or inward traverse to run within a distance of 46 centimeters from any fixed structure not being part of the machine.
- (2) All practicable steps shall be taken by instructions to the person in-charge of the machine to ensure that no person employed shall be in the space between any traversing part of a self-acting spinning mule and any fixed part of the machine towards which the traversing part moves on the inward run except when the machine is stopped with the traversing part on the outward run.

There is no gainsaying that this Act going by the provision under discussion underscored the operation of artificial intelligence entity. But the liability of such intelligence entity or self-acting machines as provided by the Act is not secured as they are meant to operate under the supervision and control of human agents. Thus, going by Section 69 of the Act which provides for offences, it is either the occupier or owner of the factory, any person upon whom duty is imposed on by the Act, and the director, manager, secretary and so on in case of body corporate that shall always be guilty of offence committed in that operations and liable to be proceeded against.<sup>28</sup>

## 2.7 National Agency For Science and Engineering Infrastructure Act.

The National Agency for Science and Engineering Infrastructure Act<sup>29</sup> is an agency in Nigeria that authorizes and empowers the development and operation of Artificial Intelligence in Nigeria. In Section 6 of the Act which provides for the functions of the Agency, this fact was given credence to. Thus, Section 6(1) of the Act provides thus;

- (1) The Agency shall gear its organization and programmes towards the practical implementation of the National Science and Technology Policy to;
  - (a) ensure that the national research and development system is managed outside the civil service system;
  - (b) enhance the development and entrenchment of a new research and development tradition in Nigeria so as to:-
    - (i) establish Nigeria the practice of an open consistent equitable, accountable and corporate research management system;
    - (ii) engender a high morale and discipline in staff of all categories
    - (iii) ensure an efficient and cost-effective employment of available resources;
    - (iv) achieve a high research and development output and revenue and
    - (v) make the desired impact on national, economic and social development.

Subsection 6(2) provides *inter alia* as follows;

2. Accordingly, the Agency shall -
  - (a) commission technical feasibility studies and produce plans for the establishment of science and engineering infrastructure development complexes;
  - (b) establish, maintain and supervise science and engineering infrastructure development complexes and centres;

<sup>27</sup> Cap F1 Laws of the Federation of Nigeria, 2004.

<sup>28</sup> See generally Subsection 69 Sections (1) – (5) of the Factories Act.

<sup>29</sup> Cap N3 Laws of the Federation of Nigeria 2004

- (c) implement with the active involvement of relevant Federal and State Ministries, strategies for the generation of private sector science and engineering capital goods industries which form satellites of science and engineering infrastructure development complexes.

It is also noteworthy that through this Act under consideration, the natural focal point for international scientific affiliation with Nigeria is made possible and practicable.<sup>30</sup>

### **2.8 Federal Roads Maintenance Agency (Establishment etc) Act.**

The use of some artificial intelligence entities in roads such as traffic lights is made pursuant to the Federal Roads Maintenance Agency (Establishment, etc) Act<sup>31</sup>. Under section 8 of the Act which provides for the powers the Agency, particularly paragraphs (c) and (d), the Agency shall have<sup>32</sup> the power to plan and manage the development and implementation of the road safety standards and plan and develop strategies towards ensuring efficient and effective movement of traffic on the Federal trunk roads and ensure their implementation. Through this is the position going by the provisions of the Act, it is not certain whether the use of such artificial intelligence entities on state roads is allowed or prohibited by the Act.

### **2.9 National Health Act**

The National Health Act provides for the regulation, development and management of Nigeria's National health system and sets standards for rendering health services in the federation and other matters connected therewith<sup>33</sup>. This national health system include the Federal Ministry of Health, the Ministry of Health in every state and the Federal Capital Territory department responsible for health, parastatals under the federal and state ministries of health, all local government health authorities, the ward health committees, the village health committees, the private health care providers, traditional healthcare providers and alternative health care providers.<sup>34</sup>

By Section 2(1) of the Act, the functions of Federal Ministry of Health include *inter alia*; collaboration with states and local governments to ensure that appropriate mechanisms are set up for the implementation of national health policy, collaboration with national health departments in other countries and international agencies, conducting and facilitation of health systems research in the planning, evaluation and management of health services.

Going by the provisions of the Act, Nigeria as a country can adopt health policies from any country which seems suitable to her and as may be provided by some health care providers but subject to some control and regulations.

### **2.10 Cybercrimes (Prohibition, Prevention, Etc) Act**

The objectives and purpose of this Act is to provide an effective, unified and comprehensive legal framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria and as well ensure the protection of critical national information; infrastructure and promote cyber-security and protection of computer systems and network, electronic communications, data and computer programmes, intellectual property and privacy rights<sup>35</sup>. This Act criminalizes cybercrimes such as unlawful access to computer, unauthorized modification of computer system, network data, computer related forgery, computer related fraud, theft of electronic devices, cyber squatting, cyber stalking, system interference, misuse of devices, denial of service, identity theft and impersonation, child pornography, records retention and preservation, unlawful interception, cyber terrorism, failure of service providers to perform certain duties, racist and xenophobic offences, attempt, conspiracy, aiding and abetting, importation and fabrication of e-tools, fraudulent issuance of e-instructions, corporate liability and so on<sup>36</sup>.

<sup>30</sup> Section 6 (2)(h) *ibid*

<sup>31</sup> Cap F 38 Laws of the Federation of Nigeria, 2004

<sup>32</sup> Laws of the Federation of Nigeria, 2014

<sup>33</sup> Section 1(1) of the Act

<sup>34</sup> See Section 1(2) (a) – (i) of the Act.

<sup>35</sup> See Section 1 of the Cybercrimes (Prohibition, Prevention, etc) Act, 2015.

<sup>36</sup> See Part III, Sections 5 – 36 of the Cybercrimes (Prohibition, Prevention, etc) Act, 2015.



Obviously, this Act captures only the modalities for holding internet human fraudsters liable for the internet frauds and crimes above stated. It did not in any way capture or underscore the criminal liability of Artificial Intelligence Entities/beings in relation to internet fraud/crimes.

### **2.11 Administration of Criminal Justice Act**

The Administration of Criminal Justice Act is a law enacted by the Federal Government of Nigeria for the enhancement of criminal justice administration and delivery in Nigeria. The Act however did not recognize artificial intelligence entities/beings as subjects of the law and did not in any way provide for their criminal trial/liability. But it made copious provision for the trial of corporations through its representatives. By virtue of this Act, a corporation may be charged jointly and tried with an individual for any offence allegedly committed.<sup>37</sup>

The position of the Administration of Criminal Justice Act, 2015 as above stated is the same with that of the Administration of Criminal Justice Laws of the state. For instance, the Administration of Criminal Justice Law of Anambra State, 2010<sup>38</sup> neither provided for Artificial Intelligence Entities nor their liability for crimes for offences but it provided the trial and liability of corporations.<sup>39</sup>

### **2.12 National Information Technology Development Agency Act**

The National Information Technology Development Agency Act<sup>40</sup> is an Act of the National Assembly of the Federal Republic of Nigeria. Section 1 of the Act made provision for its establishment while Section 2 provided that the Agency shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name. Some Agencies such as National Centre for Artificial Intelligence and Robotics (NCAIR) and National Information Technology Development Agency (NITDA) are established pursuant to the Act with some functions/duties which include creating a framework for the planning, research, development, application, coordination, monitoring, standardization, evaluation and regulation of Information Technology practices, activities and systems in Nigeria and all matters related thereto and for that purpose, and which without detracting from the generality of the foregoing shall include providing universal access for Information Technology and systems penetration including general, urban and under-served areas and so on.

### **2.13 Police Act**

Nigeria Police Act<sup>41</sup> is the law that regulates the operation of Nigeria Police Force in Nigeria. This Act in Section 3(1) made provisions for the establishment of Nigeria police force. And in Section 4 of the same Act, the primary functions of the police force were provided for. The functions include prevention and detection crimes, and protection of the rights and freedom of every person in Nigeria as provided in the constitution, the Africa Charter on Human and People's Rights and any other law and so on.

Going by the above provisions of the Act it becomes crystal clear that the law empowers the Nigeria police to detect and investigate all forms of crimes and as well work in collaboration with any government agency in the course of discharging their duties. Thus, they are empowered to investigate and handle fully all forms of crimes including internet frauds or offence which could be committed by artificial intelligence entities by themselves or through them.

## **3. SECTION 7 OF THE CRIMINAL CODE VIS-À-VIS CRIMINAL LIABILITY OF AI ENTITIES**

It is imperative at this juncture to underscore the relevance of section 7 of the Criminal Code to the three models of criminal liability of artificial intelligence entities earlier referred to. In section 7 of the Criminal Code, certain parties to an offence are stated as principal offenders and accessories and are liable to the same degree as the actual doer or committer of the act, regardless of their level of involvement. All the subsections can be construed to cover cases of crimes committed by artificial intelligence entities or through their

<sup>35</sup> See Section 1 of the Cybercrimes (Prohibition, Prevention, etc) Act, 2015.

<sup>36</sup> See Part III, Sections 5 – 36 of the Cybercrimes (Prohibition, Prevention, etc) Act, 2015.

<sup>37</sup> See generally Sections 477 – 484 of the Administration of Criminal Justice Act, 2015.

<sup>38</sup> Amended by the Administration of Criminal Justice Act, 2022 of Anambra State

<sup>39</sup> See Sections 440 – 449 of the Administration of Criminal Justice Law of Anambra State, 2010.

<sup>40</sup> 2007

<sup>41</sup> Act No. 2 of 2020

agency. They can also be linked to the three liability models for imputing criminal liability on artificial intelligence entities above referred. By way of illustration, subsection (a) can be used to hold either the artificial intelligence itself liable, that is Direct Liability Model or even to hold the programmer or end user liable, for getting the artificial intelligence physical acts and taking them as that of the programmer or end user. Subsection (b) and (c) can be used to hold the end user or programmer criminally liable. Although they did not actually know when the offence was committed nor did they plan it, they should have reasonably foreseen it and prevent it. Thus, their act or omission in not reasonably foreseeing and hence aiding the artificial intelligence entity itself to do an act or omit to do an act resulting to an offence will be imputed on them. This is similar to the Natural-probable-Consequence Liability Model and it is a model to accomplice liability cases. Subsection (d) can be used to hold criminally liable a person such as the programmer or the end user who uses the artificial intelligence entities as an agent or instrument to perpetrate a crime. In the wordings of the Criminal Code, it can be said that such end users or programmers procured another for the commission of the offence or counseled another for the commission of the offence. The Code makes them liable for not just counseling or procuring but for also doing the actual act or making the alleged omission. This is the best construction that one can give to this law in relation to the Nigerian perspective in other to meet the Perpetration-via-another (agent) liability model<sup>42</sup>.

#### **4. INSTITUTIONAL FRAMEWORK FOR CRIMINAL LIABILITY OF ARTIFICIAL INTELLIGENCE ENTITIES IN NIGERIA**

There are some institutions that help in the development and regulation of Artificial Intelligence both in Nigeria and some other foreign countries. Some of these institutions in Nigeria are:

1. National Centre for Artificial Intelligence & Robotics (NCAIR)
2. The National Information Technology Development Agency (NITDA)
3. National Digital Economy Policy and Strategy (NDEPS)
4. Courts
5. Police
6. Corporate Affairs Commission
7. Nigerian Copyright Commission

##### **4.1 National Centre for Artificial Intelligence & Robotics (NCAIR)**

The NCAIR is one of NITDA's special purpose vehicles created to prompt research and development on emerging technologies and their practical application in areas of Nigerian national interest. It is located in the same building with the Office for Nigerian Digital Innovation (ONDI) at No. 790 Cadastral Zone, Wuse District Abuja.

NCAIR as a digital innovation and research facility focused on Artificial Intelligence, Robotics and Drones, Interest of Things (IOT), and other emerging technologies aimed at transforming the Nigerian digital economy in line with the National Digital Economy Policy and Strategy (NDEPS). It is also focused on creating a thriving economy for innovation-driven entrepreneurship (IDE), job creation and national development.

##### **4.2 The National Information Technology Development Agency (NITDA)**

The National Information Technology Development Agency (NITDA) is a public service institution established by NITDA Act 2007 as the ICT policy implementing arm of the Federal Ministry of Communication and Digital Economy of the Federal Republic of Nigeria. It has the sole responsibility of developing programs that carters for the running of ICT related activities in the country. NITDA is also mandated with the implementation of policies guideline for driving ICT in Nigeria. It plays advisory role in copyright law by verification and revision of applicable laws in tandem with the application of software and technology acquisition. Majority of these activities are achieved through organization of workshops which carter for training needs of her staff, government functionaries and education sectors.

<sup>42</sup> See I K E Oraegbunam and E U Uguru, 'Artificial Intelligence Entities and Criminal Liability: A Nigerian Jurisprudential Diagnosis' (2018), *African Journal of Criminal Law and Jurisprudence*, p. 3.

### **4.3 National Digital Economy Policy and Strategy (NDEPS)**

The National Digital Economy Policy and Strategy (NDEPS) is said to have been developed in line with the presidential directives given to the Honourable Minister of Communications and Digital Economy, Dr. Isa Ali Ibrahim Pantami on assumption of office. It is mainly targeted at creating employment opportunities for Nigeria's teeming population. Thus, as digital technologies are transforming every aspect of modern life, NDEPS will enable Nigeria to take advantage of such technologies in order to become a leading player in the global digital economy and as well provide a catalyst towards facilitating the diversification of the economy and the attainment of the key national objectives such as improving security, reducing corruption and expanding the economy.

### **4.4 Courts**

Before now it was a view wildly held that the legal profession requires special skills and informed judgments that could only be provided by humans. As such, it is not associated with the changes that could be brought into limelight by digital transformation. But today, the application of artificial intelligence and machine learning technologies in the legal sector are on the increase. And it is believed that the main rationale behind this development is to provide a time-saving tool for lawyers and as well usher in a richer analysis of big data sets towards aiding legal decision making.<sup>43</sup> This subheading considered the case of *State v Loomis*<sup>44</sup>. The facts of this case are that Eric Loomis was found driving a car that had been used in a shooting. He was arrested and subsequently charged. During intake, Loomis answered a series of questions that were then entered into a compass, a risk-assessment tool developed by a privately held company and used by the Wisconsin Department of Corrections. In determining his sentence, the trial judge looked at his criminal record as well as the 'high risk' score the defendant received from the black box risk-assessment tool called compass and gave him a long sentence. Loomis being dissatisfied with the judgment appealed to the United States Supreme Court<sup>45</sup> wherein he challenged the state of Wisconsin's use of closed-source risk assessment software in sentencing him to six years in prison<sup>46</sup>. Unfortunately, the earlier decision of the lower court was upheld.

### **4.5 Police**

In Nigeria, Section 214 of the Constitution of Federal Republic of Nigeria 1999 (as amended) made provision for the establishment of Nigeria police force. Section 214(1) of the Act provides thus, 'there shall be a police force for Nigeria, which shall be known as the Nigeria Police Force, and subject to the provisions of this section, no other police force shall be established for the federation or any part thereof. It is this police that help in the enforcement of the provisions of the police Act and other Acts of the National Assembly and Laws of various states of the federation. They have both constitutional and statutory backup in the discharge of their duties.

The Corporate Affairs Commission is an agency of the Federal Government of Nigeria saddled with the task of regulating and managing companies in Nigeria. It was established in 1990 with the passing of the Companies and Allied Matters Act. It is headed by a chairman who is assisted by the Registrar General/Chief Executive Officer. In line with the mandate of the commission, it has many functions which include regulation and supervision of the formation, incorporation and winding up of companies and so on.

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<sup>43</sup> R Giarda and C Ambrosino, 'Artificial Intelligence in the Administration of Justice' (February 15, 2022) Baker McKenzie Technology Media and Telecoms Industry Group [http:// www.nationnews.bakermckenzie.com](http://www.nationnews.bakermckenzie.com) accessed 26 May, 2023

<sup>44</sup> 881N.W.2d749(Wis.2016)

<sup>45</sup> *Loomis v. State* 137 S. Ct. 2290 (2017).

<sup>46</sup> Smith Mitch {2016-06-22} In Wisconsin, a Black-lash Against Using Data to foretell Defendant's Futures -New-York Times ISSN 03624331 accessed on 2<sup>nd</sup> January, 2023.

#### **4.6 Corporate Affairs Commission**

#### **4.7 Nigerian Copyright Commission**

Nigerian Copyright Commission is the government agency responsible for all copyright matters in Nigeria including the administration, regulation, enforcement and prosecution of offenders under the Act. The functions of Nigerian Copyright commission include taking charge of legal issues on all matters affecting copyright in Nigeria with particular reference to the commission's statutory mandate and so on.

### **5. CONCLUSION**

Criminal liability for artificial intelligence entities before now seemed radical and skeptical to some scholars and eminent jurists but the rapid development of artificial intelligence technology requires current legal solutions in order to protect the society from possible dangers in technologies not subject to the law, especially criminal law<sup>47</sup>. This is because criminal law has a very important social function to preserve social order for the benefit and welfare of society. Thus, the advancement in artificial intelligence technology which was harnessed by the current wave of the fourth industrial revolution has brought into limelight some new types of crimes that have not been seen before which therefore need adequate legal control which will necessitate changes in the role and function of the criminal law paving the way for change and modification of the pre-existing criminal theories. Pertinently, the idea of criminal liability in the specific context of artificial intelligence entities is one such challenge that yearns for thorough exploration. For some AI entities their criminal liability will make more sense if human beings retain control over them. For the advanced ones, they may be directly liable for their actions or inactions or through their developers/programmers, instructors/users or controllers under corporate criminal liability principle of 'lifting the veil' of incorporation. This is so because the laws and penal statutes in Nigeria did not expressly or directly provide for the criminal liability of AI entities.

It is recommended in this paper that the laws and penal statutes in Nigeria should be amended or new ones enacted to directly recognize AI entities as persons capable of crime commission and as well being responsible for such crime(s) when adjudged guilty. Such legislation should be adequate and explicit on the mode and indices of the liability of such AI entities and as well regulate their development/programming, use and operation all geared towards guarding against their malfunction and risks. If this is done the threats and challenges posed by these AI entities to human beings and society at large and other envisaged ones will be adequately taken care of.

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<sup>47</sup> Yueh-Hsaun Weng, C Chien-Hsun & S Chuen-Tsai, 'Forward the Human-Robot-Co-existence Society: On Safety Intelligence for Next Generation Robots', (2009) 1 Int. 3 soc. Robot 267, 273 at 273