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58

## محتويات العدد

الصفحة	الموضوع	مسلسل
4	هيئة التحرير	.1
6	الهيئة الاستشارية	.2
8	افتتاحية العدد	.3
	اسم الباحث	عنوان البحث
71-9	الأستاذ الدكتور/ عمار بوضياف	أوجه إلغاء القرار الإداري في ضوء تطبيقات مجلس الدولة الجزائري
102-72	الدكتور/ رائد محمد فليح النمر	الأثار المترتبة على رهن المحل التجاري وكيفية انقضائه
121-103	بحث مشترك د/ صباح شنايت و د/ أمينة قهواجي	نزاعات العمل الجماعية وإجراءات تسويتها وفقاً للمشرع الجزائري حالة المؤسسة الوطنية للسيارات الصناعية - SNVI -
212-122	الدكتور/ جسني موسى محمد رضوان	نظام تسوية المنازعات في ظل اتفاقية الأمم المتحدة لقانون البحار 1982
249-213	الدكتور/ مؤيد حسن محمد الطوالبة	عملية التحويل المصرفي دراسة في القانون الاماراتي والمقارن
297-250	بحث مشترك الدكتور/ مصعب معتصم سعيد أرباب و مفيدة محمد عوض الله محمد	اثر السياسات النقدية على سوق وأسعار الأسهم في السودان للفترة من 2000 - 2013م ( سوق الخرطوم للأوراق المالية نموذج )
340-298	الدكتور/ عامر محمود الكسواني	ماهية عقد الفرنشايز
398-341	بن بادة عبد الحليم	مبدأ حرية المنافسة في الصفقات العمومية بين ضروريات تجسيد المبدأ واستثناءات التطبيق الفعلي
417-399	جدي وفاء	الإجراءات الاستثنائية للإبرام في قانون الصفقات العمومية الجزائري
443-418	طاهري الصديق	أثر الجباية البيئية في الحد من التلوث البيئي في الجزائر



الصفحة	الموضوع	مسلسل
448-444	الدكتور/ الهادي علي بوحمره	.14
490-449	Professor oluyemisi bangbose	.15
508-491	Oluwasegun isaac aderibigbe	.16
529-509	Tarek fathi abo el wafa	.17
560-530	حمادي مليكة	.18



## هيئة التحرير



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**Collapsed Building Sagas:  
Liabilities under the Criminal Law**

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The incessant collapse of buildings resulting in the loss of lives and properties is a matter of major concern to individuals and nations worldwide. The rate of incidents and the frightening number of collapsed buildings all around the world has caused unquantifiable and unimaginable loss to families and nations. Apart from deaths and injury of persons, colossal and unquantifiable sums of money result from collapsed buildings in addition to lives that are adversely affected. Buttressing this point, the Hyatt regency Walkway Collapse in Kansas City in Missouri USA in July 1981 was stated to have resulted in one hundred and fourteen death, over two hundred injuries, millions of dollars in cost resulting from the collapse, a number of firms went bankrupt and there were expensive legal suits settled out of court.<sup>(1)</sup> In 2006, one of the tallest buildings in Nigeria as at that time collapsed.<sup>(2)</sup> Part of the ninth floor of the twenty one story building of the Nigerian Industrial Development Bank building in Lagos Nigeria collapsed. Using a crime statistics for the year 2012, it is said that in India, a staggering figure of two thousand, six hundred and fifty one deaths, eight hundred and fifty injuries were recorded from the collapse of two thousand, seven hundred and thirty two collapsed structures.<sup>(3)</sup> Ayedun et al in a study of collapsed

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<sup>1</sup>- Hyatt Regency Walkway Collapse 2006 In The Engineer. Retrieved in <http://www.engineering.com/Library/ArticlesPage/tabid/85/ArticleID/175/Hyatt-Regency-Walkway-Collapse.aspx>. Accessed on 28 June 2015

<sup>2</sup>- *One of the tallest buildings in Nigeria collapses*. In NaijaNetWednesday May 22 Retrieved in <http://naijanet.com/news/source/2006/mar/22/1001.html>. Accessed on 29 June 2015

<sup>3</sup>- How many people die in building collapse in India by Mona Chalabi September 3, 2013 in The Guardian. Retrieved in

<http://www.theguardian.com/news/datablog/interact/2013/Sept/03india-falling-7651-deaths-structural-collapse-architecture-housing>. Accessed on 29 June 2015



that there were about 145 deaths, 250 injuries and several properties worth millions of Naira destroyed.<sup>1</sup> An Abimbola Ajayi led tribunal of inquiry on collapsed buildings said that between 2007 till 2013, there were 134 incidents of collapsed buildings in Lagos.<sup>2</sup> It has also been stated in some studies on collapsed buildings in Nigeria, that while the incidence of collapsed building is so high, Lagos State is recorded to record higher cases than other States put together between 1955 till 2000.<sup>3</sup> The calamity caused by this collapsed building saga is not localized to particular regions of the world, but affects all continents.

A building is a structure that provides privacy, safety and protects belongings. However, the incessant collapse of buildings worldwide has not made buildings to be what they should be and serve the purpose they should serve.

Many reasons have been adduced for the incidence of collapsed buildings but none for the incessant happening. Though the incidence of a building collapsing is not localized as stated earlier, there is no doubt that different countries have noted that some part of the country have recorded higher cases than others.

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<sup>1</sup>- Ayedun, C. A., Durodola, O. D., and Akinjare, O. A. (2012). "An Empirical Ascertainment of the Causes of Building Failure and Collapse in Nigeria", *Mediterranean Journal of Social Sciences*, Vol.3 (1), 313-324.

<sup>2</sup>- Taiwo A A and Afolami J A (2011) Incessant building collapse: A case of a hotel in Akure, *Nigeria Journal of Building Appraisal* (2011) 6, 241-248. doi:10.1057/jba.2011.

<sup>3</sup>- Arayela, O. and Adam, J.J. (2001) Building disasters and failures in Nigerian: Causes and remedies. *AARCHES Journal*1 (6): 71-76. See also Ebehikhalu Nicholas & Dawam Patrick, Spatial Analysis of Building Collapse in Nigeria: A Study of the Causes and Problems *Journal of Economics and Sustainable Development* Vol.5, No.25, 2014



Literature review on the issue of collapsed buildings, reveals that different persons have been blamed for the frequent incidence of collapsed building and especially different professional bodies have shifted the responsibility and liability of factors causing collapsed buildings.

The resultant effects of collapsed buildings may be catastrophic and life threatening or it may be non-catastrophic in which case Feld and Carper say they will be described as incident or accident.<sup>(1)</sup> In addition the resultant effects on persons and properties can bring about liabilities under civil and criminal law. The major distinctions or distinct difference areas between the two areas of law are intention in the type of action against the defendant and the remedy sought.

While the Criminal Law is an infringement against the laws of a State, therefore attracting punishment, a civil action is to protect individuals against one another resulting in claim by a party whose right is infringed.

The crux of this paper is the criminal liabilities under the criminal law that may be brought against persons responsible for collapsed buildings. This paper considers the incidence of collapsed buildings in Nigeria while making references to other jurisdictions, and the causes. The law of crime is discussed with particular reference to the elements of a crime. Some offences for which persons found liable for collapsed buildings may be charged with are highlighted and a few selected ones discussed.

The extent to which incidence of collapsed buildings can be abated through the intervention of the criminal law will form the conclusive part of this paper.

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<sup>1</sup> - Feld Jacob and Carper Kenneth 1997 Construction Failure 2<sup>nd</sup> edition John Wiley and Sons Publishers



### **Scope of the Paper:**

The incidences that lead to loss of lives and properties are of diverse types ranging from car accidents, fire outbreaks, natural and human disasters amongst many others. The collapse of structures generally are also included in the above list. However, for the purpose of this paper, the focus is on collapsed buildings. This is because buildings serve as shelter which is a basic need of man. This paper will discuss collapsed building cases from a global perspective however, the liabilities will be discussed in relation to the penal laws in Nigeria but borrowing examples from other jurisdictions.

### **Methodology:**

The paper is based on secondary data obtained from journals, reports, case law, laws, newspapers, the internet and from empirical research work of scholars. This was done by the review of reported cases on collapse buildings and content analysis of same.

### **Justification:**

A review of the literature on collapsed buildings shows that studies have been carried out extensively by scholars within and outside Nigeria and many articles are available in the area of causes of collapsed structures. Many of these works are used in this paper. Summarizing the results from these studies, causes of collapsed buildings are human and natural; as a result of ignorance, recklessness, negligence, carelessness, incompetence, oversight, and greed to mention a few. Many persons have been identified as being responsible for this act, however not much has been done to make them accountable and liable. Further, research on this issue however reveals that works on the liabilities of those responsible for such disastrous occurrences and offences for which they can be charged are scarce. This paper therefore considered the criminal liabilities of those who are found responsible for collapsed buildings.



## **Collapsed buildings Saga, Causes and Effects:**

Incidents of collapsed structures of all types have in recent times been very frequent with very devastating effects on lives and properties. The rate of occurrence of this disaster is so high, very rampant and it is not localized to any particular jurisdiction, but is so widespread, that it is affecting nearly all nations of the world where human beings reside and carry out their activities. This aspect of linking collapsed structures with human activities therefore necessitates looking into the word structures. A structure is something built or constructed.<sup>(1)</sup> It includes buildings, bridges, which have been put together for many parts and for different purposes.<sup>(2)</sup> In describing a structure, it is said to be something that will support an object or a load. It is further said that it must be strong enough to support its own weight and whatever load is put on it.<sup>(3)</sup> As stated above, this discussion will be limited to buildings. Ayoola and Afolami states that buildings are shelter for human beings, their properties, and activities.<sup>(4)</sup> It is also said to be a man-made structure<sup>(5)</sup> it is either permanent or temporary<sup>6</sup> and it is for the use of man for habitation, and activities.

Buildings are constructed with different materials depending on its purpose and use. It suffices to say that such materials must be of good quality and quantity and must be appropriate for the purpose of the building.

<sup>1</sup>- Dictionary.reference.com/browse/structure

<sup>2</sup>- Ibid.

<sup>3</sup>- What is a structure?-isptechnology in <https://isptechnology.wikispaces.com/.../what+is+a+structureppt> Accessed on 29 June 2015

<sup>4</sup>- Ayedun, C.A., Durodola, O.D, & Akinjare, O.A. 2012. An Emperical Ascertainment of the causes of building Failure and Collapse in Nigeria. Mediterranean Journal of Social Science 3(1) pp. 313-322.

<sup>5</sup>- <https://en.wikipedia.org/wiki/building>. Accessed on 28 June 2015.

<sup>6</sup>- [www.businessdictionary.com/definition/building.html](http://www.businessdictionary.com/definition/building.html) Accessed on 28 June 2015.



The purpose for which a building is constructed is very important as it will determine a lot of things. Referring to bridges specifically, but also applicable to construction of buildings too, Blackely says that the purpose to which the structure is to be used for is one of the most critical decisions that any builder has to take into consideration.<sup>(1)</sup> Such structures must be able to stand firm whatever happens taking into consideration such natural forces as heavy rain, wind, flood and man-made impacts such as weight of vehicles, pedestrians and trains as the case may be.<sup>(2)</sup>

From the above discussion, it is clear that buildings are man-made and the purpose of such structures is to serve and be of benefit to human beings. Such structures are expected to be durable, stable, comfortable, and safe.<sup>(3)</sup>

To serve the purpose for which they are constructed, structures are therefore expected to be adequately stable to prevent its collapse or discomfort to the users, durable and resistant to weather, fire outbreak and other forms of accident.<sup>(4)</sup> It is also clear that durability of the structure

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- <sup>1</sup>- David Blackely 1982 Bridges in <http://www.bristol.ac.uk/civilengineering/bridges/pages/howtoreadabridge.html> Accessed on 28 June 2015.
  - <sup>2</sup>- David Blackely 1982 Bridges in <http://www.bristol.ac.uk/civilengineering/bridges/pages/howtoreadabridge.html> Accessed on 28 June 2015
  - <sup>3</sup>- Obiefuna, U.C. 2013. Vol 5 no 32 Journal of Environmental Sciences and Resource Management. Retrieved in <http://www.cenresinpub.org/pub/December2013/jersm/page2073-792291.pdf>. The Incidence of Building Collapse & Emergency management in Nigerian Journal of Fundamental science & Resource management. Vol 5 no 2 pp. 73-79.
  - <sup>4</sup>- Ayuba P., Olagunju R., Ebenezer A., Olufemi K. 2012. Failure and Collapse of buildings in Nigeria: The role of professionals and other participants in the building Industry. In Interdisciplinary Journal of Contemporary research in Business (1) CR Oct. 2012 Vol 4 (b).



depends on the materials used by man and other factors such as terrain and purpose. It is therefore necessary to discuss causes of collapsed structures.

### **Causes of collapsed buildings:**

The saga of incessant collapsed buildings has led to passing of buck by individuals, professional bodies and governmental agencies. This fact unfortunately however does not remove the fact that the structures continue to collapse at an alarming frequency and the causes remain the same. Generally, causes of collapsed structures can be broadly categorized under two groups. They can be as a result of natural or man-made phenomena. Natural phenomenon that may make buildings to collapse include earthquakes, tsunamis, flooding and thunder while man-made causes are those as a result of the act or negligence of human beings. This forms the crux of this paper. Collapsed buildings could be as a result of a singular cause or multi-interrelated causes in which case it will be difficult if not impossible to determine the proportion of the different causes.

**Some of the causes are highlighted below.**

**Design Fault:** Oyewande opined that 50% of collapsed structures are caused by design fault.<sup>(1)</sup> This fact was supported by Holland et al who opined that faulty design has the highest percentage of building collapse.<sup>(2)</sup>

**Error in site selection/Failure to carry out soil test:** Certain layers of soil are not strong enough to carry the weight of particular structures

<sup>1</sup>- Oyewande 1992. A research for quality in the construction industry. *Builders Magazine June/July ed. Lagos*

<sup>2</sup>- Holland R, Montgomery B.E., Smith and Moore S.F.A. 1992 *Appraisal & Repair of building structures: London. Thomas Telford*



and failure to do a soil test before construction has been said to lead to collapsed structure.<sup>(1)</sup>

*Modification in the original use/plan of building/Illegal Conversion/Changes to stability arrangement:* The above is a major concern and cause of collapsed structures. Owners of buildings and contractors handling such buildings are guilty of this heinous act. In the synagogue Church of All Nations building collapse case in Nigeria in September, 2014, modification in the original plan of the guest house of the church designed from foundation to hold a three story building, which ended up as a six storey edifice, almost twice the load of foundation, with no approved plan, no secured regulatory approval, was said to be the cause of the collapse.<sup>(2)</sup> A change to stability is where the structures that provide support for a building was removed. It is distinguished slightly from overloading an existing structure

*Use of Non-Professionals/non experts/inexperienced and quacks<sup>(3)</sup>:* the use of non-experts or inexperienced workers during construction has been attributed to causing collapsed buildings. In the report of a Nans survey, patronage of quacks by owners has been stated to be the cause of collapsed structures.<sup>(4)</sup>

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- <sup>1</sup>- Sunday, E.B. 2006. Builders code and challenges for builders. Cited in Ayuba Philip1, Olagunju, Remi Ebenezer1 and Akande, Olufemi kehinde (2012) Failure and collapse of buildings in Nigeria: The role of professionals and other participants in the building industry. *Interdisciplinary Journal Of Contemporary Research In Business* October 2012 VOL 4, NO 6
  - <sup>2</sup>- IlevbareTheophilus 2014 *Time to stop the tragedy of building collapse* . In The Nation. September 19 2014. Retrieved in <http://the nationonlineng.net/new/time-to-stop-the-tragedy-of-building-collapse> Accessed on 20 June 2015
  - <sup>3</sup>- Ogunseni, 2002. Cost control and quality standard of building projects in Ogunseni, D.R., Building Collapse: Causes, prevention and remedies: workshop proceeding. Ondo State Nigeria Institute of Building: Akure, Nigeria.
  - <sup>4</sup>- Muhammed Tola. 2014. Quacks responsible for building collapse – NAN SURVEY. NAN NEWS. Retrieved in <http://www.nannewsnigeria.com/substandard-material-quack-responsible-for-buildings-collapse-nansurvey-o>. Accessed on 20 June 2015



**Inadequate/deficient inspection/lack of maintenance:** this is a major cause of structural collapse. This was identified as the cause of a building collapse in the Ishaga building collapse case in Lagos Nigeria. According to the report, a stop work seal was placed on the building which was under construction. However, developer continued with the physical development of the defective building because of deficient inspection by the government officials.<sup>(1)</sup>

**Non-compliance with building code:** This was one of the causes attributed to the Hyatt Regency Hotel walkway collapse in Kansas, U.S.A. amongst other causes.<sup>(2)</sup> Investigation revealed that there was a change in the original design, there was non-compliance with the Kansas building code, there was a wrong assumption by the engineers who approved the final drawing as they failed to review their initial drawing which had been worked on by another expert. In Asia, in the Rana Plaza building collapse case in Bangladesh in 2013, a few hours before the collapse, a building expert who carried out an inspection on the building recommended immediate evacuation of all workers from the building because of a dangerous crack found in the building. This recommendation was ignored and the building collapsed a few hours after. After the collapse, it was reported there was evidence of serious structural problems, that the building was constructed with substandard material, there was an illegal construction of upper floors, blockage of fire escape routes and placement of large generating sets on the illegally constructed

<sup>1</sup>- Office of the Governor Lagos State News. *Lagos Government to Prosecute all found Culpable in the Ishaga Collapsed Building Incident*. Retrieved in <http://www.tundefashola.com/arcieeves/news/2013/07/23/20130723n21/html>

Accessed on 20 June 2015

<sup>2</sup>- Hyatt Regency Walkway Collapse 2006 In *The Engineer*. Retrieved in <http://www.engineering.com/Library/ArticlesPage/tabid/85/ArticleID/175/Hyatt-Regency-Walkway-Collapse.aspx>. Accessed on 28 June 2015



floors which shook the illegally constructed floors whenever they were switched on which was very frequently because of power failure.<sup>(1)</sup> The Hyatt Regency Hotel walk way collapse and the Rana Plaza building collapse are examples of multi-related causes of building collapse.

*Substandard and inadequate use of materials:* the use of substandard building materials and the sharp practice of using inadequate materials in construction has been said to be a cause of collapsed buildings.<sup>2</sup> In a site investigation and site inspection and testing of collapsed structure element, improper mix of materials and use of substandard materials have been found to contribute to collapse buildings.<sup>(3)</sup>

*Non Enforcement of Existing Law:* There are different laws that are applicable to construction of buildings and for any breach of existing regulations. In Nigeria, the National Building Code has not been passed into law by the National Assembly. However, there are other laws that are relevant and can be applied to persons found liable for a collapsed building. The problem of enforcement of such laws by the relevant authorities is one major cause of the continued cases of collapsed buildings globally.

<sup>1</sup> Greenhouse Steven 2014 *Bangladesh Inspectors find gaps in safety*. In New York Times March 11 2014. Retrieved in <http://www.nytimes.com/2014/03/12/business/safety-flaws-found-in-new-inspection-of-factories-in-bangladesh.html/>.

Accessed on 20 June 2015

<sup>2</sup> Fadamiro, J.A. 2002. An assessment of building Regulation and Standard and the implication for building collapse in Nigeria. In Ogunseni D.R. 2002. Building collapse: causes, preventions, remedies. Paper at workshop: The Nigerian Institute of Building, Ondo.

<sup>3</sup> Ezeanya C.A. Udeburu, J.N. and Obiorah S.M.O. (2015) destructive and non-destructive Assessment of Collapsed Structures in Onitsha, Anambra State, Nigeria. In American Scientific Research Journal for Engineers, Technology & Sciences. (ASRJETS) Retrieved in [https://asrjetsjournal.org/index.php/american\\_scientific\\_journal/article/view/564](https://asrjetsjournal.org/index.php/american_scientific_journal/article/view/564). Vol 12. No.1 2015.



**Greed and Negligence:** The greed by owners or professionals or contractors may be a cause of collapsed buildings. This may be through cutting corners through the purchase of substandard materials or non-use of adequate materials. In the Rana plaza building collapse on April 24 2013, the owner of the building is reported to be a very wealthy man but there is evidence of illegally accumulated wealth that is being investigated by the anticorruption Bureau.<sup>(1)</sup> Despite this fact, after the collapse of the plaza, there was evidence of construction with substandard materials and illegal construction of additional floors.<sup>2</sup> The high number of deaths in the collapse could have been avoided but for what can be said to be the greed of the owners. A report had earlier stated that on 23 April, a day before the collapse, workers heard a rumbling sound in the building which led to the invitation of the building expert who saw cracks in the supporting columns and recommended immediate evacuation of all workers. However, the owner of the building and the factory owners urged, threatened non-payment of salaries, physically assaulted and forced the three thousand six hundred and thirty nine factory workers to go back to their work in the eight story building despite evidence that the building was unsafe. This was to maximize profit in the garment factories at the cost of the risk to the lives of the workers. The building collapsed Forty five minutes later, after the workers resumed work and the

<sup>1</sup>- SakhawatAdil 2015 *Anti-corruption okayscase against Sohel Ranas Parents*. In Dhaka Tribune April 10 2015. Retrieved in <http://www.dhakatribune.com/bangladesh/2015/april10/acc-okays-cases-against-sohel-rana-parents.html>.

Accessed on 22 June 2015

<sup>2</sup>- Jalfikar Ali Manik 2013 *Report on deadly factory collapse in Bangladesh finds widespread blame*. In New York Times May 23 2013. Retrieved in <http://nytimes.com/2013/05/23/world/asia/report-on-bangladesh-building-collapse-finds-widespread-blame.html>. Accessed on 21 June 2015



generating sets were put on, the building shook and collapsed killing 1137 and injuring 2500 people<sup>(1)</sup>>

1. One or more of the above stated causes may be responsible for the collapse of a building.<sup>2</sup>Taiwo and Afolami in a study, stated that multiple causes accounted for the collapse of a hotel building in Akure, Nigeria. According to the report,

"It was observed that substandard materials were used in the construction of the hotel building. The quality and quantity of cement used in the construction was very poor. The concrete mix was not evenly distributed. From observation, one could easily assert that the concrete was mixed manually, which made the non-even distribution of the cement, sand and coarse aggregate possible. The reinforcement steel bars used in the construction of this building had low area of steel in the beams, columns and floor slabs, which eventually gave rise to cracks that led to the collapse of the structure under the massive weight of the dead loads"<sup>3</sup> It was also reported that the "Bangladeshi government investigation into the Rana Plaza collapse found that it has been built with "extremely poor quality" materials and rested on an unstable foundation"<sup>4</sup>. The report further stated that the head of the team

<sup>1</sup>- Institute for Global Labour and Human Rights. 2014 *Rana Plaza: A look back and forward*. April 24 2014. Retrieved in <http://www.globallabourrights.org/alert/rana-plaza-A-look-back-and-forward>

<sup>2</sup>- A A Taiwo<sup>1</sup> and J A Afolami(2011)*Incessant building collapse: A case of a hotel in Akure, Nigeria* Journal of Building Appraisal (2011) 6, 241–248. doi:10.1057/jba.2011.1

<sup>3</sup>- ibid

<sup>4</sup>- AhmedBeenish2015More Than 40 Charged With Murder For Bangladesh Garment Factory Collapse. In Think Progress. June 2 2015.Retrieved in <http://thinkprogress.org/world/2015/06/02/3664880/bangladesh-garment-industry/>. Accessed July 2 2015



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who carried out the investigation said "a portion of the building was constructed on land which had been a body of water before and was filled with rubbish,"<sup>(1)</sup>

Experts in the construction field, have attempted to categorize all the above causes of collapsed structures into groups. Feld et al give seven classifications which are fundamental error in concept; site selection and site development errors; programming deficiencies; design errors; construction error; material deficiencies and operational errors.<sup>(2)</sup>

### **Persons that may be liable for Collapsed Buildings**

The construction of buildings involves a number of persons who may also in one way or the other be held liable for one reason or the other in the collapse of such buildings. They are discussed briefly below.

*The Owner of the building.* The owner during the construction of the building is usually referred to as the client. The owner could be a natural or an artificial person. Owners of structures play a prominent role in the construction of structures and their conduct go a long way in determining the durability and sustainability of the structure. Conducts such as monetary delay, purchase of substandard materials, modification without approval, use of incompetent artisans and building without building plan may affect the durability and stability of the structure and contribute to its collapse or failure.<sup>(3)</sup> The collapse of the building Synagogue Church For all Nations in Nigeria on September 12, 2014 is a typical example of where an owner can be held liable. An owner who ordered the act of contravention, who for example put extra plots on the

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<sup>1</sup>- Ibid

<sup>2</sup>- Feld, P.14

<sup>3</sup>- Collapsed structures: Time for NASS to pass Building code in Law- kaloje by Kwaifa, H.A. in <http://www.peoplesdailyng.com/weekend/index.php/news/nass-analysis14390-collapse-s----> Accessed on 20 June 2015



building contrary to its original plan or design should be held responsible for any collapse resulting from such act. According to reports, the synagogue church originally designed from the foundation to hold a three story building ended up a six story edifice<sup>1</sup> The Rana Plaza factories collapse discussed above is another illustration of where an owner can be held liable for a collapse. Sohel Rana, the owner of the plaza and seven persons who owned garment factories in the plaza who were alleged to have “discussed and decided to keep the factory open when an expert advised that the plaza should be evacuated were held responsible to have “sent the workers to their death with cool heads.”<sup>2</sup> In the United States of America on the 26<sup>th</sup> of March, 2015, a New York City building collapsed killing some people, with about 22 people injured and some missing.<sup>3</sup> The owner of the building is a company. According to reports, the tenants were informed by the building management, who were the owners of the building, to only direct all information about any gas related problem to them and not the energy company or 911. This directive given by the building management was contrary to the law which allows such matters to be reported to the energy company or 911.<sup>4</sup> The report stated that the specific instruction to tenants by the building management could be a key

<sup>1</sup>- Theophilus Ilevbare (2014) Time to stop the tragedy of building collapse In Daily Post. September 19 2014 Retrieved in <http://dailypost.ng/2014/09/19/theophilus-ilevbare-time-stop-tragedy-building-collapse/> Assessed on 25 June 2015

<sup>2</sup>- Abigail Elise 2015. Rana Plaza Disaster Update: Owner Sohel Rana Charged With Murder In Building Collapse That Killed 1,129 International Business Times May 31 2015 Retrieved in <http://www.ibtimes.com/rana-plaza-disaster-update-owner-sohel-rana-charged-murder-building-collapse-killed-1945446> Assessed on June 29 2015

<sup>3</sup>- Margolen Josh and Crudee Mark 2015 *Possibility of Criminal Charges in New York City Building Collapse growing* . In ABC News. Retrieved in <http://abcnews.go.com/us/possibility-criminal-charges-york-city-building-collapse-growing/story?id=29982760>. Accessed on 23 June 2015

<sup>4</sup>- ibid



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indicator that someone knew the gas piping might not be in accordance to the city code and a violation of the city code and by so informing the tenants, their actions would be taken as jeopardizing the safety of people in and around the building.<sup>(1)</sup>

*Contractors:* Contractors also play another major role in construction of structures which go a long way to determine its durability and stability. They ensure procurement and supply of construction materials, supervise specifications to the minutest details, ensure use of proper and standard materials and ensure proper mix of materials. On November 23, 2013, the Maxima supermarket building in Rega District of Zolitude Latvia collapsed killing 54 people and causing injury to 41.<sup>(2)</sup> At the time of the collapse, some construction was going on. The Latvian prosecutor office brought charges against eight persons in relation to the collapse and these included the construction supervisor.<sup>(3)</sup> In a similar case, in Lagos, Nigeria, the government in the Ishaga building collapse in July 2013 commenced investigation and proceedings against the developers who continued with the physical development of a defective structure despite the fact that a stop work seal had been placed on the building.<sup>(4)</sup>

*Building Professionals:* There are many members of professional bodies involved in the construction of buildings and they may be held criminally liable for the collapse and the failure to meet professional responsibilities. These include the Nigerian Institute of Architects (NIA),

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<sup>1</sup> - ibid

<sup>2</sup> -The Baltic Times 2015 *Charges brought against 8 in maxima supermarket collapse criminal case*. In The Baltic Times 18/04/2015. In [http://www.baltictimes.com/charges\\_brought\\_against\\_eight\\_in\\_maxima\\_supermarket\\_collapse\\_criminal\\_case/](http://www.baltictimes.com/charges_brought_against_eight_in_maxima_supermarket_collapse_criminal_case/) Accessed on 23 June 2015

<sup>3</sup> - ibid

<sup>4</sup> - Lagos government to prosecute all found culpable in the Ishaga collapsed building incident: In office of the Governor. Lagos State news. July 23, 2013.



Nigerian Society of Engineers (NSE), Nigerian Institution of surveyors (NIS), Nigerian Institute of Town Planners (NITP), Nigerian Institute of Quantity Surveyors (NIQS), Nigerian Institution of Estate Surveyors and Valuers (NIESV) and the Nigerian Institute of Builders. (NIOB). A State legislative member in India has asserted that the agency or persons who undertake an audit of the building collapses should be held responsible for the mishap.<sup>1</sup> This reaction was to a series of building collapse. The legislator further said that any person who conducts a structural audit of a building or any construction should register with a competent authority and in the event of a collapse, such a person or agency should be blacklisted and criminal proceedings initiated against them.<sup>2</sup>

Victor Oyenuka, a onetime President of The Nigerian Institution of Structural Engineers said that the central objective of a designer of a building structure is safety and economy<sup>3</sup>. There are factors which determine whether or not a building structure will withstand the forces of nature, they are: the professionals behind the structure, the materials used for the structure and the techniques or construction methodology adopted for the structure.<sup>4</sup> Structural Engineers for example may make or mar a structure in terms of safety.. Though structural engineers have major roles

<sup>1</sup>- Ayuba Philip<sup>1</sup>, Olagunju, Remi Ebenezer<sup>1</sup> and Akande, OlufemiKehinde (2012) *Failure And Collapse Of Buildings In Nigeria: The Role Of Professionals And Other Participants In The Building Industry*. In *Interdisciplinary Journal of Contemporary Research In Business*. October 2012 Vol 4, No 6

<sup>2</sup>- Structural auditors to be held accountable if buildings collapse. By Sanjeev Shivadekar July 27, 2013. In <http://www.timesofindia.indiatimes.com/city/mumbai/structural-auditors-to-be-held-accountable-if-building-collapses/articleshop/21381078-cms>. Accessed on 23 June 2015

<sup>3</sup>- Why Buildings Collapse in Nigeria.. A must Read for the prospective and Existing Property owner. retrieved in <http://www.ngozigold.com/2012/06/why-buildings-collapse-in-nigeria-a-must.html>

<sup>4</sup>- *ibid*



to play in the construction of buildings, they are not the only professionals involved in the constructions of buildings and thus should not be the only take responsibility for the collapse of buildings, depending on the cause of the collapse of the building.

In the Maxima supermarket building collapse in the Riga District of Zolitude in Latvia cited earlier in this paper, amongst the persons found liable and charged for the collapse were the construction engineer and construction inspection expert.<sup>1</sup> In the Rana Plaza building collapse case, a widow of one of the workers filed a murder charge against the chief engineer of the municipality in Bangladesh.<sup>2</sup> In a related case, the engineers of the company that designed the Hyatt Regency walkway which collapsed in 1981 in Kansas City in Missouri USA were held responsible and convicted by the Kansas State professional body for gross negligence misconduct and unprofessional conduct in the practice of engineering.<sup>3</sup> It was alleged that the failure of the engineering company to review the initial drawing which was worked on by another company and later on approved by them was the cause of the collapse.<sup>4</sup>

*Government officials:* Government officials may in certain instances be held responsible for collapsed structures. In a building collapse case, in 2013, in Latvia, a Prime Minister resigned from his position and took full responsibility for the collapse and admitted that “poor government oversight of construction projects had been partly to blame for the cave in the maxima supermarket”. According to reports, the country cut the position of the national building inspector due to the austerity measures

<sup>1</sup> - Supra The Baltic New 2015

<sup>2</sup> - Bangladesh: Death toll reaches 610; widow files murder charges. May 2013 in <http://www.globallabourrights.org/alerts/bangladesh-death-toll-reaches-610-widow-files-murder-charges>. Accessed on 23 June 2015

<sup>3</sup> - Hyatt Regency Walkway Collapse 2006 supra note 25

<sup>4</sup> - ibid



and after the collapse, it was stated that the government would reinstate the position.<sup>1</sup> A Latvia state official was also found liable for the collapse for failure to act.<sup>2</sup> In the Rana Plaza building collapse in Bangladesh, where over one thousand, one hundred and twenty nine workers died, out of the forty one persons accused in the case and charged to court with murder, twelve were government officials.<sup>3</sup> They are alleged to have a collective responsibility with others for what was described as “mass killing” as there was an illegal extension which violated the construction regulation which was described as “the seed of the massive disaster”.<sup>4</sup> In the Ishaga building collapse in Lagos Nigeria in 2013, the Attorney General stated that all government officials who were in charge of monitoring the collapsed building after a stop work seal was pasted by the government, but removed by the developers, would be held liable for all who died.<sup>5</sup>

#### **Collapsed buildings and Criminal Liabilities in Nigeria:**

Holding persons liable under the criminal law is not a recent idea. As far back as between 1955-1931BC, criminal liabilities existed for persons responsible for collapsed buildings. King Hammurabi, the famous law-making Babylonian ruler, famous for the laws which became

<sup>1</sup>- Richard Milne (2013) Latvia P.M. Dombrovskis resigns over Rega Supermarket roof collapse. In <http://www.ft.com/cms/s/0/6feb1706-575e-11e-3-b615--00144-feabdc0.html> (financialtimes.6.feb. Accessed on 23 June 2015

<sup>2</sup>- Section 319 Criminal Code of the Republic of Latvia

<sup>3</sup>- Abigail Elise 2015. Rana Maza Disaster update: Owner Sohel Rana charged with murder in building collapse that killed 1129. May 31, 2015, <https://www.ibtimes.com-rana-plaza-disaster-update-owner-sohel-rana-charged-with-murder-in-building-collapse-that-killed-19455446>.

<sup>4</sup>- *ibid*

<sup>5</sup>- Lagos government to prosecute all found culpable in the Ishaga collapsed building accident. In office of the Governor Lagos State: News. In <http://www.tundefashola.com/archives/news/2013/07/23/20130723N21/html>. Accessed on 23 June 2015



the Code of Laws of Hammurabi had provisions relating to building construction and collapse.<sup>1</sup> The earliest building code was in the Code of Laws of Hamurabi. The relevant part of the code relating to buildings and collapsed buildings are stated below

Rule 228: If a builder builds a house for someone and complete it, he shall give him a fee of two shekels in money for each sar of surface.

Rule 229: if a builder builds a house for a man, and does not make its construction firm and the house which he has built collapses and causes death of the owner of the house – the builder shall be put to death.

Rule 230: if it causes the death of the son of the owner of the house – they shall put to death a son of that builder.

Rule 231: if it causes the death of a slave of the owner of the house – he shall give to the owner of the house a slave of equal value.

Rule 232: If it destroys property, he shall restore whatever it destroyed and because he did not make the house which he built to be firm and it collapsed, he shall rebuild the house which collapsed at his own expense.

Rule 233: if the builder builds a house for a man and does not make its construction meet the requirement and a wall fall in, that builder shall strengthen the wall at his own expense.<sup>2</sup>

The provisions of the Hamurabi Code as stated above, in present day society may be said to be harsh and extremely punitive. However, in the present day penal laws, there are different offences for which different

<sup>1</sup>- Arthur E. Cote C. Grant National Fire Protection Association *Codes and Standards for the Built Environment* Retrieved in [www.nfpa.org/~media/files/forms-and-premiums/.../codesfph.pdf?la](http://www.nfpa.org/~media/files/forms-and-premiums/.../codesfph.pdf?la). Accessed on 29 June 2015

<sup>2</sup>- Harper Robert Francis (2007) *The Code of Hammurabi, King of Babylon about 2250 BC Ancient Text and Translation* Wipf and Stock Publishers. See also *The Code of Hammurabi, King of Babylon by Hammurabi, translated by Robert Francis Harper* Retrieved in [https://en.wikisource.org/wiki/Author:Robert\\_Francis\\_Harper](https://en.wikisource.org/wiki/Author:Robert_Francis_Harper). Accessed on 29 June 2015



categories of persons responsible for the collapse of a building can be held liable. It is trite law that a person can only be punished for doing or omitting to do an act only if the act or omission constitutes an offence under the law in force when it occurred.<sup>1</sup> It is based on the above provision that the paper considers provisions under the Criminal Code Act and the offences for which persons responsible for collapsed building can be held liable. The liabilities may be for injury or death of persons or damage or destruction of property.

### Elements of a Crime

The Nigerian Criminal Code Act<sup>2</sup> governs the criminal law in Southern Nigeria. Section 2 of the Code defines a crime thus: "an act or omission which renders the person doing the act or making the omission liable to punishment under this code, or under any Act, or Law, is called an offence." There are generally two elements of a crime namely *the actus reus and the mens rea*. These elements are derived from the Latin maxim "*actus non facit reum nisi mens sit rea*" which means that a person will be criminally liable only if the offence with which he is charged is the result of his voluntary outward conduct concurring with his morally – blame worthy mind.<sup>3</sup> The *actus reus* includes a voluntary act or the omission to perform an act. It comprises all the elements of the offence other than the state of mind of the accused.<sup>4</sup> A voluntary act consists of a bodily movement that otherwise is the effort or

<sup>1</sup>- Section 11 of the Criminal Code Act. See *Engineer Sule Aliyu v Federal Republic of Nigeria* Suit No: Sc. 185/2012

Delivered on the 13th Day Of December, 2013. Retrieved in <https://Easylawonline.Files.Wordpress.Com/2014/01/Engineer-Aliyu-V-Frn.Pdf>. Accessed on 2 July 2015

<sup>2</sup>- Cap C38, Laws of the Federation of Nigeria, 2004

<sup>3</sup>- Fakayode, E.O. (1977) *The Nigerian Criminal Code Companion*. Benin: Ethiope Publishing Co. p.8

<sup>4</sup>- Elliot, C, & Quinn, F. (2006). *Criminal Law*. 6th ed. Harlow: Pearson Longman



determination of the actor, either conscious or habitual. The term *mens rea* is used to denote the morally blameworthy state of mind sometimes known as intention or negligence or recklessness.<sup>1</sup> *Mens rea* in criminal law is concerned with the state of mind of the defendant. Where *mens rea* is not required the offence is one of strict liability. The terms intention, recklessness and negligence are main concepts of *mens rea* and they reflect different degrees of culpabilities

Of the three terms, intention requires the highest degree of fault. A person who intends to commit a crime, can generally be said to be more culpable than one who acts recklessly or negligently.<sup>2</sup>

Under the English law intention is divided into direct intent and oblique intent. Direct intent can be said to exist where the defendant embarks on a course of conduct to bring about a result which in fact occurs. A contractor of a building or a building professional engaged to construct a building may be held liable for act done with intent to defraud under section 441 of the Criminal Code Act where for example, he or she engaged to construct a building, intends to defraud or cut corners in the construction of a building. To achieve the result, the person goes ahead to purchase substandard materials after charging fees for quality materials, uses inadequate materials and constructs without obtaining the necessary approval or permit for which fee have been charged. The person would have achieved the desired result to defraud once the building is completed with all the aforementioned actions. Oblique intent on the other hand is more complex. It can be said to exist where the defendant embarks on a course of conduct, not with a particular aim or desire but knowing that the consequence of the conduct/actions may bring about another result. In the

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<sup>1</sup>- Fakayode, op cit. p. 12

<sup>2</sup>- E Law Resources. Retrieved in <http://e-lawresources.co.uk/Mens-rea-intention.php>. Accessed on July 1 2015



context of this paper, a defendant, has the intention to defraud while constructing a building by using substandard, inadequate materials, The defendant is aware that the building will be inhabited by persons or property stored in it or that that workers will be in the building at the time of construction. The defendant is also aware that the building may collapse by this action and it will result in the injury, or death of persons in the building or destruction of property. If there is a collapse of the building, he /she may be held liable for the injury or death of all the persons affected or the damage to property even though he only wanted to defraud the owner. This is notwithstanding the fact that the defendants aim or desire at the time of intending to defraud, was not to cause injury or death or destruction to property. It is interesting to note that under Section 441 of the Criminal Code Act discussed above, an owner of the building may be held liable. It is immaterial that the property in question belongs to him or her.<sup>1</sup> The fact to note, which will determine whether the defendant had the intention or not, was stated by Lord Bridges in the case of R v Moloney<sup>2</sup> when he said

First, was death or really serious injury in a murder case (or whatever relevant consequence must be proved to have been intended in any other case) a natural consequence of the defendant's voluntary act? Secondly, did the defendant foresee that consequence as being a natural consequence of his act? The jury should then be told that if they answer yes to both questions it is a proper inference for them to draw that he intended that consequence."<sup>3</sup> A person may indirectly intend to commit an offence and may be so found liable.<sup>4</sup> A person responsible for the

<sup>1</sup>- Section 441 (2) Criminal Code Act

<sup>2</sup>-1985 AC 905

<sup>3</sup>- Retrieved in <http://e-lawresources.co.uk/Criminal.php>. Accessed on July 1 2015

<sup>4</sup>- <http://e-lawresources.co.uk/Mens-rea-intention.php>



construction of a building may not desire to kill or cause grievous harm to the workers or future occupants or users or anyone in a building he or she is involved in. However, if the defendant takes an outrageous risk which he or she is aware of and knows it can cause death or grievous harm and it so causes death or grievous harm, the defendant may be guilty of murder or manslaughter.<sup>1</sup>

The Rana Plaza building collapse case is illustrative of this fact. The owner and other factory owners were aware of the outrageous risk of the cracks in the beam and the columns of the building. They were given expert advice to immediately evacuate all workers. However it was reported that they “discussed and decided to keep the factory open”<sup>2</sup> and “sent the workers to their death with cool heads.”<sup>3</sup> The intended result is a spinoff or effect of the defendants’ action.<sup>4</sup> The consequence of a crack in the beam and columns of an eight story building is that it is virtually likely to collapse.

**Recklessness:** It means the conscious taking of an unreasonable and unjustified risk. The risk may be seen by the defendants who go ahead with it. A defendant will be liable if he or she should have known better.<sup>5</sup> In the synagogue Church of All nations building collapsed and the Rana plaza collapse discussed earlier in this paper, the acts of the owners could be taken as reckless. The construction of additional floors in the

<sup>1</sup> - See the case of R v Woollin 1999 1 Appeal Cases 82; 1998 4 AER 103

<sup>2</sup> - Abigail Elise 2015. Rana Plaza Disaster (supra)

<sup>3</sup> - ibid

<sup>4</sup> - Janet Loveless 2012 Complete Criminal Law: Text Cases and Material Oxford: Oxford University Press  
Edition: 3rd revised edition. Retrieved in [https://bookshop.blackwell.co.uk/extracts/9780199228287\\_loveless.pdf](https://bookshop.blackwell.co.uk/extracts/9780199228287_loveless.pdf) (Supra)

<sup>5</sup> - Ibid



two cases, on a foundation not originally structured to take the additional load is opined to be reckless acts.

### **Criminal Negligence:**

Negligence in normal parlance connotes carelessness, disregard or not giving enough attention to things or people one is responsible for. It is "conduct that falls below the standards of behavior established by law for the protection of others against unreasonable risk of harm"<sup>1</sup> "A person has acted negligently if he or she has departed from the conduct expected of a reasonably prudent person acting under similar circumstances"<sup>2</sup>.

Negligence occupies a major position in the field of tortious liability as it is the most important and dynamic of all torts. However, negligence is also relevant in criminal law since the state of mind of an offender is considered alongside the guilty act in order to convict and punish the offender<sup>3</sup>. A negligent act can be deduced from the act of the defendant.<sup>4</sup>

The guilty mind, may consist of an unlawful intent or culpable negligence. Thus, the law may punish an offender for an act done negligently so as to provide an effective inducement to be more careful on future occasions.

In criminal negligence, the mens rea consists in mere blame-worthy inadvertence based on foreseeability and a reasonable man's test.<sup>5</sup>

<sup>1</sup>- The Free Dictionary- Legal Dictionary. Retrieved in <http://legal-dictionary.thefreedictionary.com/negligence>. Accessed on July 2 2015

<sup>2</sup>- Ibid

<sup>3</sup>- Ola C.S., Ola A.O. (1990) Mens Rea in the Statutory Offences in Nigeria. Malthouse Law Series, Lagos, P.2

<sup>4</sup>- Charles Ebirika V State Retrieved in <https://easylawonline.wordpress.com/category/criminal-law/>. Accessed on 1 July 2015

<sup>5</sup>- Ibid.



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According to Glanville Williams, “responsibility for some crimes may be incurred by the mere neglect to exercise due caution where the mind is not actively but negatively or passively at fault...”<sup>1</sup>.

In a civil action, mere carelessness, inattention and inadvertence resulting in a breach of duty to take care is enough to ground the plaintiff’s claim against the defendant for damages. But in criminal law, the degree of negligence required is very much higher than that required for a civil action.<sup>2</sup> In the case of *R v. Bateman*<sup>3</sup> the standard or degree of negligence necessary to sustain a charge of manslaughter was explained thus:

“In explaining to juries the test which they should apply to determine whether the negligence in the particular case, amounted or did not amount to a crime, judges have many epithets such as “culpable”, “criminal”, “gross”, “wicked”, “clear”, “complete”. But whatever epithet be used and whether an epithet be used or not, in order to establish criminal liability the facts must be such that, in the opinion of the jury, the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the state and conduct deserving punishment”.

Thus for the prosecution to succeed in a charge of manslaughter by negligence, there must be proof:

- a. That the accused owed the deceased a duty to take care

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<sup>1</sup>GlanvilleWilliams.1953 *Criminal Law. The General Part*. London: Stephens & Sons, Ltd. Cited in the case of *O’Grady v. Sparling 1960 SCR 804* (Judgements of the Supreme Court of Canada) Retrieved in <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6499/index.do>. Accessed on July 2 2015

<sup>2</sup>Fakayode E.O. (1977) *The Nigerian Criminal Code companion*. Ethiope Publishing co. Benin, P.60

<sup>3</sup> (1925) 19 Cr. App. R. 8 at p.11



- b. A breach of such duty by the accused occurred
- c. That death resulted from the breach
- d. That the default went beyond a matter of compensation but amounted to a disregard for the life, limb or safety of others and such disregard deserves a conviction.<sup>1</sup>

Formerly, two forms of involuntary manslaughter were generally accepted: constructive manslaughter and reckless manslaughter. However, in the light of the decision of the House of Lords in the case of **R v. Adomako**,<sup>2</sup> gross negligence manslaughter was introduced. Lord Mackay LC giving the lead judgement in the case stated that reckless manslaughter does not exist but that gross negligence manslaughter did. Negligence is the blameworthy inadvertence to the consequences of one's acts or omissions<sup>3</sup> based on foreseeability and a reasonable man's test. Thus, it could apply where the accused had not seen any risk of causing harm but their conduct fell far below what could reasonably be expected in the circumstances. In criminal law, the degree of negligence required is very much higher than that required for a civil action, thus it is referred to a culpable, or criminal or gross negligence. In the case of **R v. Bateman**<sup>4</sup> the standard or degree of negligence necessary to sustain a charge of manslaughter was explained thus

“in explaining to juries the test which they should apply to determine whether the negligence in the particular case, amounted or did not amount to a crime, judges have many epithets such as ‘culpable’, ‘criminal’, ‘gross’, ‘wicked’, ‘clear’, ‘complete’. But whether an epithet be used or not, in order to establish criminal liability, the facts must be

<sup>1</sup>- ibid

<sup>2</sup>- [1994] 3 All ER 79

<sup>3</sup>- Fakayode, op cit p. 12

<sup>4</sup>- (1925) 19 Cr. App. 12. 8 at p.11



such that, in the opinion of the jury, the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving punishment”

Criminal Negligence could be in the form of negligent driving or criminal negligence by professionals or by quacks. Sections 343 and 344 of the Criminal Code provide for reckless and negligent acts causing harm and prescribes the punishment for such offences.

Though the Nigerian Criminal Code does not expressly provide for criminal negligence by engineers, it imposes criminal liability for acts done negligently or recklessly. This is contained in Sections 343 and 344 of the code. Thus, professionals involved in the construction of a building which eventually collapsed can be convicted under Section 344 of the criminal code for their negligence which has caused harm to people.

#### **Criminal negligence by professionals:**

The following principles are deducible from the authorities in respect of criminal negligence by professionals like doctors or surgeons or engineers, etc.

- i. A person who undertakes to perform a service (e.g. a structural engineer who undertakes to construct a building) is presumed in law as holding himself or herself out as a person who possesses the necessary skill and knowledge;
- ii. The law expects such a person to use the necessary skill, knowledge of and care in the discharge of his or her undertaking;
- iii. The law does not expect the highest nor the lowest skill and knowledge but the skill and knowledge of an average professional in the position of the accused;
- iv. The professional will not be convicted of manslaughter by negligence unless it is proved that he or she performed his or her duties in a manner that no reasonably skilled person in his or her profession would have done.



### **Criminal negligence by quacks or non-professionals:**

Where a quack undertakes to render any service and death results, his liability for manslaughter will be judged as having the necessary skill and knowledge to perform the action and his ignorance or lack of skill and knowledge for the business in hand will be some evidence from which to infer criminal negligence.

In *R v. Yaro Paki and another*<sup>1</sup>, the first accused was charged with manslaughter for operating on the tonsils of a patient who subsequently died. He gave evidence that he, as a native barber, inherited the trade of performing operations on the tonsils from his ancestor and that he had been doing such operations for about 27 years and on about 2,000 people without any known case of death resulting. The trial court held him liable because his instruments were crude and unsterilized and that he lacked sufficient skill and care for such operation.

Below are some specific offences for which persons responsible for the collapse of buildings can be charged.

#### **Abuse of Office by Public Officer.**

A public officer may be liable under section 104 of the Criminal Code Act, if he or she does any arbitrary act prejudicial to the rights of another person in the discharge of the duties. Public officers who fail to carry out their duty of diligent supervision of a building under construction or connives with building professional in contravening any building regulation may be found liable for abuse of office.<sup>2</sup> Section 104 of the Act provides that the prosecution can only be instituted with the

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<sup>1</sup>- (1955) 21 N.L.R. 63

<sup>2</sup>- *Engineer Sule Aliyu v Federal Republic of Nigeria* Suit No: Sc. 185/2012

Delivered on the 13th Day Of December, 2013. Retrieved in <https://EasyLawOnline.files.wordpress.com/2014/01/Engineer-Aliyu-V-Frn.Pdf>.

Accessed on 2 July 2015



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consent of the law officer which is usually the Attorney General. In the Ishaga building collapse in Lagos Nigeria<sup>1</sup>, the Attorney General stated that the officer/officers who should have been monitoring the building which a stop work seal was placed, but construction work continued, would be sanctioned. Failure to monitor the building was said to have resulted in the collapse of the building and the death and injury to persons.

Offence under section 305 and 305 A of the Criminal Code.

Section 305 of the Criminal Code Act states thus

“When a person undertakes to do any act the omission to do which is or may be dangerous to human life or health, it is his duty to do that act; and he is held to have caused any consequences which result to the life or health of any person by reason of any omission to perform that duty.

Any professional or contractor involved in the construction of a building may be criminally responsible under Section 305 of the Criminal Code Act. This is applicable, where a person involved in the construction of a building as discussed earlier in this paper, undertakes to design, inspect, supervise or do any other thing in respect to the construction of a building, but omits to do such work professionally, thereby endangering the life or health of persons. If the building collapses as a result of act or omission of such persons, and there is loss of life or injury, such persons concerned may be liable under Section 305.

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<sup>1</sup> - Supra f/N 44



### Offence under the Law of Homicide:

Section 306 of the Criminal Code<sup>1</sup> provides that it is unlawful to kill any person unless such killing is authorized or justified by law. This is also provided under the provision of right to life under Section 33) of the 1999 Constitution of the Federal Republic of Nigeria.} Thus, the killing of a person not as a result of a court sentence or other lawfully justifiable reasons is prohibited by the Nigerian Law. The Criminal Code<sup>2</sup> defines unlawful homicide thus "any person who unlawfully kills another is guilty of an offence which is called murder or manslaughter, according to the circumstances of the case.

Murder is the unlawful killing of a person under any of the following circumstances, that is to say-

- i. If the offender intends to cause the death of the person killed, or that of some other person;
- ii. If the offender intends to do the person killed or to some other person some grievous bodily harm;
- iii. If death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;

Likewise the Criminal Code states that a person who unlawfully kills another in such circumstances as not to constitute murder is guilty of manslaughter. The punishment for manslaughter is life imprisonment while that of murder is death sentence. Persons involved in the construction of buildings may be liable for murder or manslaughter under this provision. The intention of a person may be inferred from the act as discussed earlier in this paper. In the Rana plaza collapse case, the owner, Sohel Rana and more than 12 government officials have been charged for

<sup>1</sup> - Cap C38 LFN, 2008

<sup>2</sup> - Section 315



the Murder of over one thousand people who died in the accident<sup>1</sup>. In a related report, the wife of one of the dead workers also filed a murder charge against the Sohel Rana of the plaza.<sup>2</sup>The offence of manslaughter can arise against persons involved in the collapse of building, as a result of killing as a result of criminal negligence as discussed earlier in this paper.

### **Voluntary or Involuntary Manslaughter:**

Voluntary manslaughter is an unlawful killing in which death is unintentionally caused. The unlawful killing means without any intention to kill or do grievous bodily harm. This is where there is criminal negligence.

The unlawful act upon which manslaughter is based must be dangerous. This means it is one that is likely to injure or harm another person.<sup>3</sup>

The unlawful act should reasonably be such that the person injured will suffer some harm from such unlawful act of the accused. R v. Church 1966. The harm referred to is physical as opposed to emotional harm. R v. Dawson 1985 where an owner without ...goes ahead to put three more storeys on a foundation originally meant for a three storey building without permission from the authority or a professional involved in the construction of a building or the government official responsible for the supervision of a building project fails to carry out the duties, such acts should be regarded as dangerous.

<sup>1</sup>- Bangladesh murder trial over Rana Plaza factory collapse. BBC Asia 1 June Retrieved in <http://www.bbc.com/news/world-asia-32956705> Assessed July 2 2015

<sup>2</sup>- *TVC News (DHAKA) Widow sues Bangladesh building owner over collapse. Retrieved in <http://www.tvcnews.tv/?q=article/widow-sues-bangladesh-building-owner-over-collapse>. Assessed on 3 July 2015*

<sup>3</sup>- R v. Larken [1942] 29 Cr App R 18



As explained in Att Generals Reference No 3 1944, the unlawful or dangerous acts of the owners or professionals or contractor or government officials which lead to the collapse of the building and death or injury to persons forms part of the same sequence of event.

In the offence of manslaughter, the accused must have intended to do the act he or she did and it is not necessary to prove that the act was unlawful or dangerous. Therefore the owner or the professionals involved in constructions or government officials if proved that they intended to proceed to build more storey buildings to the original design without permission or did not supervise a project as they should, this satisfies the requirement. In the Nigerian case of the Synagogue building collapse the adding of additional floors to original three storeys without building permit and consent is proof that the owner intended to do it. The same applies to the Rana Plaza building collapse case:

According to Lord Salmond, in Att Gen. Ref no 3 of 1944, manslaughter is one of those crimes in which a basic intention needs to be proved.<sup>1</sup>

#### **Offence of Reckless Manslaughter:**

A person is defined as acting reckless in relation to a result, if he is aware of a risk that it will occur and it is unreasonable having regard to all the circumstances known to him to take that risk<sup>2</sup>

A person is guilty of reckless manslaughter if his or her act or conduct creates obvious and serious risk of physical harm to another and thereby giving no thought to it or is not aware of it and determines to take it. A situation where the owner goes ahead to create an obvious and

<sup>1</sup> - DPP v. Newbury 1977 Appeal Cases (AC) 500

<sup>2</sup> - Law Commissions Report on Offences against the Person: "Legislating the Criminal Code: Offences against the person and General Principles. (Law Commissions NO 218, 1993. Clause 1)



serious risk by putting additional three storey structure on an original existing structure without the consent or approval of the regulating body which results in the collapse of the building and death of persons falls under this offence of reckless manslaughter.

### **Offence of Killing by Gross Negligence:**

Gross negligence is an extremely careless and unreasonable standard of conduct.<sup>1</sup>In *R v. Bateman*<sup>2</sup>, the court provided the requirement for a liability for gross negligence. These include the requirement that the accused must owe the deceased a duty of care, which must be found to have been breached. There must be an obvious risk of death and the breach must have caused death. The breach must have caused the killing.<sup>3</sup>

The case of *R v Adomako* is very illustrative.<sup>4</sup> Professionals who have been contracted to undertake building projects may be liable for gross negligence. The Ishaga building collapse in Lagos and the Rana Plaza building collapse, where the owner and employers forced the workers into a building where warning had been given about the danger posed by a crack in the building are examples.

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<sup>1</sup>- Mens Rea: Intention Recklessness, Negligence and Gross Negligence. Chapter 3. Retrieved in [https://bookshop.blackwell.co.uk/extracts/9780199228287\\_loveless.pdf](https://bookshop.blackwell.co.uk/extracts/9780199228287_loveless.pdf). Accessed on July 1 2015

<sup>2</sup>- 1925 19 CAR 8

<sup>3</sup>- Janet Loveless 2012 Complete Criminal Law: Text Cases and Material Oxford: Oxford University Press 3rd Revised edition. Chapter 3 Retrieved in [https://bookshop.blackwell.co.uk/extracts/9780199228287\\_loveless.pdf](https://bookshop.blackwell.co.uk/extracts/9780199228287_loveless.pdf). Accessed on 1 July 2015

<sup>4</sup>- 1995 1 AC 171; See also *R v Sulman*, Prentice, Adomako and Holloway 1994 QB 304



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## **Offence of Causing Grievous Bodily Harm**

These are offences of causing grievous bodily harm or offences caused by negligent or reckless acts of another. It is not in all cases of collapse building that life is lost. In certain cases, persons suffer injury of various degrees. Grievous Harm is a serious type of harm to the body. Section 335 provides that any person who unlawfully does grievous harm to another is guilty of a felony and liable to imprisonment for seven years. The term grievous harm is defined in Section 1 of the Criminal Code: "any harm which amounts to a maim or dangerous harm which seriously or permanently injures health or likely to injure health or causes permanent disfigurement or serious injury to external or internal organ, member or sense. Harm is a bodily hurt, disease or disorder whether permanent or temporary injury. A person may suffer grievous harm as discussed above due to the act of persons who may be held responsible for collapsed buildings....in such a case must be proved to be aware that the act may have the consequences of causing some physical harm however small the harm may be to another person. The proof required is that of an ordinary man. Section 344 states that any person who unlawfully does any act which it is his duty to do, not being an act or omission specified in the preceding section, by which act or omission harm is caused to any person is guilty of a misdemeanor and liable to six months imprisonment.

Government officials responsible for granting permits or supervision projects, professionals who are responsible for designs, inspections and supervision may be held liable where there are injuries caused as a result of their acts in a collapsed building case.



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## Recommendations:

1. Adherence to Regulations and monitoring of action of stakeholders  
The agencies/organizations, associations and bodies involved in the building construction industry should adhere to regulations and continue to closely monitor the activities of stakeholders to ensure compliance with standards. The steps taken by the Standard Organisation of Nigeria (SON) in 2014 when the new cement standard was introduced is commendable. The standard according to the organization was reviewed "because they had attained the five-year mandatory period for review". Under this approved standard there are cements meant for bridge construction and special construction a different specification for column beams, slabs and block moulding and a different specification for plastering. Producers are enjoined by SON to specify the labeling information on the bags.<sup>1</sup>

2. Effective Regulatory and Industrial Checks against malpractices should be carried out regularly by appropriate organizations, bodies and agencies.

3. Formalized Bodies for building Operators

It is recommended that all operators in the building industry should be more organized and formalized like the existing bodies such as the NIA, NSE, NAS, NITP, NIQS, NIESU, NIOB and others.

The move by the block moulders forming a National Association of Block Moulders of Nigeria is commendable. The move will prevent the invasion of quacks and minimize serious quality issues of end products.<sup>2</sup>

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<sup>1</sup>- Understanding Quality Issues in Building, construction, The New Cement Standards. Sunday Punch, Sunday June 21, 2015 Vol 19, No 19, 849. P.17.

<sup>2</sup>- Role of Stakeholders in the block industry in the Sunday Punch. June 21. Vol 19, No. 19849. Pg 17.



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#### 4. Awareness programmes and sensitization of consumers

Consumers/users of building products should be aware and insist on quality products. Some agencies like the SON has certification for quality building products. There are marks, stamps to identify the good quality of such products. It is therefore suggested that consumers should be sensitized and made aware of such actions.<sup>1</sup>

#### 5. Proactive steps by Professional Bodies

The different associations of professionals need to be more proactive and ensure compliance with professional rules and protecting the image of the profession against quacks.

The step by COREN signing a memorandum of understanding with the ICPC to treat violations of COREN law as a criminal breach of trust. Therefore a breach is a commendable move to put members in check.

#### 6. Rigid Inspection of projects

The one thing which these failures conclusively point to is that all good concrete construction should be subjected to rigid inspection. It should be insisted upon that the inspector should force the contractor to follow out the specification to the minutest details. He must see that materials used are proper and are properly mixed and deposited... It is believed that only by this kind of inspection is it possible to guard against the failure of concrete structures.<sup>2</sup> This recommendation by Feld and Carper is important and supported to minimize collapsed buildings.

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<sup>1</sup> Block molding: Know the standards in Sunday Punch June 21 vol 19 no 19849. Pg 17

<sup>2</sup> Feld Jacob & Carper Kenneth L (1997) Construction Failure. Concrete quoting an editorial article by the American Railway Engineering Association Study of Failure or Concrete Structure with the Subtitle- A compilation of failed concrete structures and lessons to be drawn therefrom.



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## 7. Implementation of Policies and Enforcement of Laws

There is no doubt that there are existing laws which if properly enforced would serve as deterrence to erring persons responsible for the disastrous acts.

## 8. Enhanced Safety Programmes and New Techniques

New techniques should be adopted in buildings and enhanced safety programmes to meet with modern day challenges. In the United States of America, the collapse of structures between the 1970s and 1980s led to enhanced safety programmes and greater emphasis on inspection and maintenance.<sup>1</sup>

## 9. Structural Audit of Building

While all buildings must be constructed according to laid down regulations and specifications with adequate supervision and standard materials, it is recommended that a structural audit should be conducted for any building any more than 15 metres. This recommendation was also made by the Indian Legislative Assembly in reaction to a series of building collapse in the country.<sup>2</sup>

## 10. Proper Verification of design and structure in subsequent renovation.

This recommendation was given by the British Government after the collapse of a 26-year-old office building in Ashford, Middlesex, on 1st August, 1995 where four men working within the building at the time were killed.<sup>3</sup> According to a report, the government advised thus

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<sup>1</sup>- Feld & Carper supra.

<sup>2</sup>-Sanjeev Shivadekar (2013) Structural auditors to be held accountable if building collapses. The Times of India. July 27, 2013. Retrieved in <http://timesofindia.indiatimes.com/city/mumbai/structural-auditors-to-be-held-accountable-if-building-collapses-articleshow/21381078.cms> Assessed on July 4 2015

<sup>3</sup>Hollis Malcolm (2006) *Analysis of a building collapse: An examination of investigation methodology* Journal of Building Appraisal (2006) 2, 246–259



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“original construction drawings not being a reliable source of information about the method of construction or the materials that have been used should not be relied upon without corroboration in the analysis of an existing construction<sup>1</sup>

### 11. Passing of the National Building Code

The government should show more commitment to this recurrent disaster by passing the National Building Code which has been before the National Assembly since 2009. The National Building Code is a sort of guideline for those who operate in the building sector. The delay is making the construction industry vulnerable to quackery because there is no proper regulatory mechanism.<sup>2</sup> The idea of this code started in 1987 and a draft code was produced in 1991.<sup>3</sup> The need arose then, due to the incessant collapse of buildings which persists till date. The hope is that the code will reduce to the barest minimum the incident and promote safety and quality housing for all Nigerians. The draft bill has been approved by the Federal Executive Council and sent to the National Assembly and has passed through the second reading the absence of the code has been largely responsible for the incessant incidence of collapsed buildings being witnessed in Nigeria.<sup>4</sup>

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<sup>1</sup> - *ibid*

<sup>2</sup> - Dada Jackson 2013 National building code and the long delay. Daily Independent January 2013 in <http://Dailyindependentnig.Com/2013/01/National-Building-Code-And-The-Long-Delay> Assessed on July 4 2015

<sup>3</sup> - Dr Olusegun Mimiko 2006 (then Honourable Minister of Housing and Urban Development Abuja. Federal Republic of Nigeria National Building Code- Soft Design,). Preface to first Edition. Lexis Nexis Butterworth 2nd August 2006 Retrieved in [sdngnet.com/.../National%20Building%20Code%20of%20Nigeria%20](http://sdngnet.com/.../National%20Building%20Code%20of%20Nigeria%20). Assessed on 20 June 2015

<sup>4</sup> - Dada Jackson 2013 National Building Code and the long delay. Daily Independence January 7 2013



The need for input of professionals in the code cannot be overemphasized.<sup>1</sup> Therefore, the review of the National Building Code by the Federal government is a step in the right direction.<sup>2</sup>

## 12. Stiffer Sanctions for Culprits

The present sanction for culprits of collapsed buildings is not commensurate with the colossal loss. There should be stringent sanctions<sup>3</sup>, which should include prosecution for criminal offences in addition to other non-custodial sanctions as confiscation or forfeiture.

## 13. Liabilities for loss, damage, injury or destruction of Properties

Persons who can be held responsible for collapse of building may be liable for loss, damage/injuries or destruction of property. A property is a piece of land or real estate that is owned by someone.

With particular reference to professionals who undertake the construction of property for other, where it can be proved that they caused injury to such property without the consent of such persons, and where it is not authorized, excluded or justified as in the case of a demolition or in the overriding interest of the public would be held liable under Section 440 of the Criminal Code. The offence is an act done to defraud which causes damage to property. Section 441 may be applicable to contractors involved in sharp practices of cutting cost due to greed. Where a building

<sup>1</sup>-Ihua-Maduenyi Maureen 2014 National Building code Revision needs professional input-stakeholders. In Punch October 27, 2014. Retrieved in <http://www.punchng.com/revision-need-professional-input-stakeholder>. Assessed June 06 2015

<sup>2</sup>-Ayansina Caleb 2013. FG reviews national building code to check incessant building collapse. Vanguard, August 27, 2013. Retrieved in <http://www.vanguardngr.com/2013/08/fg-reviews-national-building-code-to-check-incessant-building-collapse/>. Assessed June 06 2015

<sup>3</sup>Johnson Dada 2014. Building collapse: Expert advocates stiff sanction for culprits. Daily Independence, 22 September 2014. In <http://dailyindependentnig.com/2014/09/building-collapse-expert-advocate-stii-sanction-for-culprits> Assessed June 21 2015



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collapses due to the act of the contractor or professional to defraud any person, such persons would be liable. An owner may fall under this section as the section provides that it is immaterial that the property in question belongs to the defendant who buys intentionally substandard products to cut cost in the construction of his or her building and the building collapses such owner can be held liable.

Of note is the 2011 Criminal Law of Lagos State<sup>1</sup> which provides as a special class of offence willful damage to public property. In section 349(1)(a) which carries a punishment of life. Public officers who willfully fail to carry out their duties which leads to the collapse of a public building may be held liable under this section of the law.

### **Conclusion**

During the period that this paper was being written, precisely on June 16 20, there was breaking news on BBC which read “Berkeley balcony collapse”<sup>2</sup> The news further stated that “Irish among six dead in California balcony collapse”<sup>3</sup>

Six Irish students on vacation in California died. The news of the Berkeley balcony collapse in Berkeley, California, United States of America on June 16, 2015 again reinforced the need for urgent steps to minimize collapsed buildings.

The incessant collapse of building has not allowed many buildings to serve the purpose as shelter for human beings, their properties and

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<sup>1</sup>- A Law to provide Rules on Criminal Conduct, Regulate Public Order and for Connected Purposes 2011

<sup>2</sup>-Irish victims were having a 21st birthday party when the apartment balcony collapsed in Berkeley, Calif.; they were in the US on work visa for summer. Breaking News. Retrieved in

<http://www.breakingnews.com/item/2015/06/16/irish-victims-were-having-a-21st-birthday-party-wh/> Assessed on June 16 2015

<sup>3</sup>- Irish among six dead in California, Balcony Collapse on Tues, 16 June, 2015. <http://www.bbc.com/news/world-europe-331503081>. June 16 2015



activities, continuous occupancy and for comfort. Instead, buildings have been death traps and the feeling of insecurity and fear pervade the minds of many users of buildings.

The way out of this predicament is for all stakeholders from the manufacturers of building materials, to professionals and their bodies, contractors, artisans, owners of buildings and the government to be more proactive and take steps in addressing the causes of collapsed buildings

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