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A COMPARATIVE ANALYSIS OF THE CRIMINAL LIABILITY OF NON GOVERNMENTAL ORGANISATIONS IN ZAMBIA AND THE UNITED KINGDOM

BY

JOSEPH SIYABONG'A BANDA

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2025

DECLARATION

I declare that this dissertation entitled, **A COMPARATIVE ANALYSIS OF THE CRIMINAL LIABILITY OF NON GOVERNMENTAL ORGANISATIONS IN ZAMBIA AND THE UNITED KINGDOM** which is hereby submitted in partial fulfilment of the requirement for the award of a Bachelor's Degree at the University of Lusaka is my own original work and it has not been previously submitted for the award of a degree at this university or any other tertiary institution. I understand what plagiarism entails and I'm aware of the University's policy in this regard. Thus, where other people's work is cited, I have duly acknowledged. The errors or omissions in this work are solely mine.

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RECOMMENDATION

I **JOE MWAULUKA** recommend that this dissertation prepared under my supervision by **JOSEPH SIYABONG'A BANDA**, entitled **A COMPARATIVE ANALYSIS OF THE CRIMINAL LIABILITY OF NON GOVERNMENTAL ORGANISATIONS IN ZAMBIA AND THE UNITED KINGDOM** be accepted for examination. I have checked it carefully and I'm satisfied that it fulfils the requirement pertaining to the format laid down in the regulations governing directed research.

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JOE MWAULUKA

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DEDICATION

I dedicate this dissertation to Almighty God, whose grace and wisdom have sustained me, and to my family, who instilled in me the value of education, perseverance, and integrity. Their unwavering belief in my potential made this achievement possible.

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ABSTRACT

Using comparative insights from the UK, this dissertation investigated the criminal liability of non-governmental organisations (NGOs) in Zambia. It contended that Zambia's present legal system, especially the Non-Governmental Organisations Act No. 16 of 2009, lacks explicit measures for criminal accountability and instead concentrates on administrative regulation. This piece of writing examined pertinent statutes and case law using a doctrinal research approach to ascertain whether NGOs can be held accountable for crimes like fraud or corruption.

The Bribery Act of 2010 and the Corporate Manslaughter and Corporate Homicide Act of 2007 provide an effective system based on organisational fault and preventive compliance, but Zambia's enforcement is fragmented and reactive, according to findings. According to the study's findings, Zambia should amend its NGO legislation to more clearly acknowledge criminal liability, improve interagency cooperation, and encourage accountability and openness in the non-profit sector.

CHAPTER ONE

GENERAL INTRODUCTIONS

1.0 INTRODUCTION

Non-Governmental Organizations (NGOs) are autonomous, non-profit organizations that are essential to the global advancement of human rights, education, healthcare, social welfare, environmental preservation, and humanitarian aid. Particularly in developing nations with inadequate public sector resources, NGOs frequently bridge vital service gaps by working alongside governmental and international organizations. Internal policies and national and international legal frameworks control them, and they usually operate with a mix of professional personnel, volunteer assistance, and donor financing. Transparency, accountability, and public trust are critical to their legitimacy and efficacy.

The Non-Governmental Organizations Act[1], which created the NGO Registration Board and outlined requirements for registration, governance, and reporting, is the main law governing NGOs in Zambia. Although the Act aims to encourage transparency and accountability, it makes no mention of making NGOs criminally accountable for crimes committed by their agents, employees, or members. The Act places less emphasis on harsh enforcement for criminal offenses and more on administrative compliance.

In addition to the broad restrictions on corporate liability, the Companies Act[2] establishes specific corporate governance norms that apply to establish NGOs, including corporations limited by guarantee. The unique criminal culpability of NGOs as separate organizations working in the public interest is not specifically addressed, nevertheless. Similar procedures to look into and prosecute corrupt or illegal actions, including those involving business entities, are provided by the Proceeds of Crime

[1] Act No. 16 of 2009.

[2] Act No. 10 of 2017.

Act[3] and the Anti-Corruption Act[4]; nevertheless, enforcement against NGOs has been patchy and uneven.

This research aims to provide a comprehensive understanding of the concept of criminal liability as it applies to Non-Governmental Organizations (NGOs) and to examine the existing legal framework governing such liability in Zambia. While many countries acknowledge that NGOs and similar entities can be subject to civil and administrative sanctions, there remains considerable debate over whether, and to what extent, NGOs should be held criminally accountable for offenses committed within their operations. The application of criminal law to NGOs raises complex legal and practical questions, making it a more contested and evolving area of law.

1.1 BACKGROUND OF THE STUDY

The question of criminal responsibility for non-governmental organizations (NGOs) in Zambia has changed as the sector has expanded and become more involved in development and governance. Over the years, legislative and policy responses have been motivated by concerns regarding accountability and the possible misuse of NGO platforms for illegal activity. In 2009, Zambia enacted the Non-Governmental Organisations Act, aiming to regulate NGO activities by mandating re-registration every five years and requiring detailed disclosures about operations and funding. Critics argued that the Act imposed excessive controls, potentially infringing on the independence of NGOs and restricting their ability to operate freely. Muna Ndulo, in his article contends that the Act unjustifiably curtails the freedom of association and threatens the effective operation of NGOs in Zambia.[5]

The NGO Bill of 2024, which called for tougher rules such required audits and the potential for jail time for non-compliance, sparked a heated discussion. Civil society

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[3] Act No. 19 of 2010.

[4] Act No. 3 of 2012.

[5] Muna Ndulo, 'Freedom of Association and NGO Law: The Constitutionality of the 2009 Zambian NGO Law' (2011) 1(2) Southern African Journal of Policy and Development https://scholarship.law.cornell.edu/sajpd/vol1/iss2/5/ accessed 16 April 2025.

groups voiced their worry that these actions would be taken to stifle dissent and restrict NGOs' ability to operate. Human Rights Watch pointed out that the law places NGOs under a government-dominated NGO Registration Board that has the capacity to impede their operations and subject them to disproportionate and unjustified controls.[6] The aforementioned developments highlight the continuous conflict between maintaining the autonomy and vital contributions of non-governmental organizations to Zambian society and guaranteeing accountability within the sector. Although procedures to deal with possible wrongdoing are obviously needed, the difficulty is in putting laws into place that don't restrict the important work that NGOs do or violate fundamental rights and liberties.

1.2 STATEMENT OF THE PROBLEM

Non-Governmental Organizations (NGOs) are key actors in Zambia's socio-economic landscape, contributing significantly to humanitarian assistance, development, and human rights advocacy. However, as the sector has grown in size and influence, there has been a corresponding increase in concerns related to abuse of NGO platforms for illicit activities, including financial mismanagement, corruption, and other forms of misconduct. Despite the increasing risk of such offenses, Zambia lacks a well-defined legal framework for holding NGOs, as corporate entities, criminally liable for such acts. This creates a regulatory vacuum that threatens not only the accountability of the sector but also public confidence in the work and integrity of NGOs.

The existing legal instruments, including the Non-Governmental Organisations Act No. 16 of 2009, primarily address administrative issues such as registration and compliance but fail to provide concrete provisions for criminal liability of NGOs. Moreover, Zambia's criminal justice system does not clearly outline how an NGO, as a legal person, can be held accountable for crimes committed by its employees or directors. This inadequacy significantly limits the effectiveness of existing legal

[6] Human Rights Watch, 'Zambia: Repeal Law That Restricts Civil Society' (29 March 2023) https://www.hrw.org/news/2023/03/29/zambia-repeal-law-restricts-civil-society accessed 16 April 2025.

measures in deterring wrongdoing, leading to impunity in cases where NGOs are used as vehicles for criminal acts. Additionally, the enforcement mechanisms under the current regulatory regime remain weak, lacking the investigative and prosecutorial capacity to deal with complex offenses involving corporate entities.

By contrast, countries such as the United Kingdom have implemented robust legal frameworks that recognize and enforce corporate criminal liability, including for NGOs. These frameworks are supported by various legislation, which specifically outline the conditions under which organizations can be held liable for criminal conduct. The disparity between Zambia's legal provisions and those of more developed systems exposes a gap that needs to be addressed through legislative reform and institutional strengthening. Therefore, this study seeks to examine the current legal and institutional landscape in Zambia with regard to NGO criminal liability, and to explore viable reform options based on comparative analysis.

1.3 RESEARCH OBJECTIVES

To analyse the criminal liability of Non-Governmental Organisations (NGOs) in Zambia in comparison with the United Kingdom, and to propose reforms for enhancing NGO accountability.

i. To examine the legal, ethical, and policy justifications for imposing criminal liability on NGOs.
ii. To analyse the extent to which NGOs are held liable for criminal offences in Zambia.
iii. To draw lessons from the United Kingdom's legal framework on NGO criminal liability.

1.4 RESEARCH QUESTIONS

i. What are the legal, ethical, and policy justifications for imposing criminal liability on NGOs?
ii. What legal provisions currently exist in Zambia for holding NGOs criminally liable?
iii. What lessons can be drawn from the United Kingdom legal framework on NGO criminal liability.

1.5 SCOPE OF THE STUDY

This study is limited to the examination of the criminal liability of Non-Governmental Organizations (NGOs) within the jurisdiction of Zambia, with a comparative reference to the legal framework in the United Kingdom. It specifically focuses on the extent to which NGOs, as legal entities, can be held criminally responsible for offenses committed by their agents, employees, or officers in the course of their operations. The research further considers the adequacy of existing Zambian laws in addressing NGO-related criminal offences, with particular reference to the Non-Governmental Organisations Act, and other relevant legislation.

1.6 LITERATURE REVIEW

There are many scholars who have contributed to the discourse on the regulation and accountability of Non-Governmental Organizations (NGOs), particularly in relation to their legal status, oversight mechanisms, and the evolving framework for imposing criminal liability on such entities. Some of these scholars include:

Constantine Ntsanyu Nana examines the UK's approach to corporate criminal liability, especially for NGOs, in his thesis, Corporate Criminal Liability in the United Kingdom: Determining the Appropriate Mechanism of Imputation. He examines methods such as the "identification doctrine" and "failure to prevent" violations and talks about the difficulties in assigning criminal activities to organizations. According to Nana, a logical framework for assigning blame is necessary in order to hold companies responsible without suppressing lawful activity.[7] Nana does not extend his analysis to NGOs specifically or to comparative African contexts. However, this piece of writing builds on Nana by applying these doctrines directly to NGOs and contrasting with Zambia's weaker framework.

Anthony O. Nwafor's article, "Corporate Criminal Responsibility: A Comparative Analysis," looks at how several legal systems, including the UK, handle corporate

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[7] Constantine Ntsanyu Nana, Corporate Criminal Liability in the United Kingdom: Determining the Appropriate Mechanism of Imputation (PhD thesis, Robert Gordon University 2014) https://rgu-repository.worktribe.com/output/247934/ accessed 16 April 2025.

criminal liability. He offers insights that are relevant to NGOs functioning within different legal systems as he examines the procedures by which organizations can be held liable for illegal activity.[8] Nwafor's work is general to corporations, not NGO-specific, and does not address Zambia. However, this work narrows the analysis to NGOs as distinct entities in Zambia and the UK, showing how generic corporate models apply differently to them.

John Paul Ongeso, in his doctoral thesis, examines the idea of corporate criminal liability in international law, emphasizing the ways in which multinational firms—and consequently non-governmental organizations can be held responsible for aiding and abetting transnational crimes. The difficulties and opportunities of applying criminal culpability to non-state actors under international legal systems are highlighted by his research.[9] The focus is multinational corporations and international crimes, not national frameworks for NGOs. However, this work will examine NGOs as domestic and transnational actors within specific national legal systems (Zambia/UK) rather than international criminal law.

Dr Chaloka Beyani, an Associate Professor at the London School of Economics and a Zambian legal expert, has studied international human rights legislation and the legal standing of non-state actors in great detail. His research highlights the significance of legislative frameworks that guarantee organizations, including NGOs, are held accountable, especially when it comes to humanitarian aid and population displacement.[10] Beyani's work is broad on human rights; does not address the

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[8] Anthony O Nwafor, 'Corporate Criminal Responsibility: A Comparative Analysis' (2016) Journal of African Law 60(2) 195 https://doi.org/10.1017/S0021855316000066 accessed 16 April 2025.

[9] John Paul Ongeso, Corporate Criminal Liability for Aiding and Abetting International Crimes under International Law (PhD thesis, University of the Witwatersrand 2020) https://wiredspace.wits.ac.za/items/e27b86f5-7a37-4b44-8603-a2750460fc0e accessed 16 April 2025.

[10] Chaloka Beyani, Human Rights Standards and the Free Movement of People within States (Oxford University Press 2000).

mechanisms of criminal liability for NGOs. This piece of work moves beyond general accountability to concrete criminal liability doctrines and statutory gaps.

Jennipher Bwalya, in her 2019 thesis, examines the effectiveness of Zambia's legal system in addressing corporate crime. She argues that while corporations are recognized as capable of committing criminal offences, the legislation tends to focus more on individual liability, making it challenging to hold organizations, including NGOs, criminally accountable.[11] She addresses corporate entities broadly, not NGOs, and does not use a comparative UK angle. However, this work extends her analysis by focusing specifically on NGOs and introducing lessons from the UK model.

Dr Munyonzwe Hamalengwa, in his article, discusses the challenges of prosecuting corporate entities and the state's role in organized criminality. His work underscores the complexities of holding organizations, including NGOs, accountable within existing legal frameworks.[12] Hamalengwa does not examine NGOs specifically, nor comparative approaches. However, this work focuses directly on NGOs and contrasts Zambia's limited liability regime with the UK's stronger model.

C. M. V. Clarkson examines the moral and legal justifications for corporate criminal liability, emphasizing the need to attribute blame to corporate entities rather than just individuals. His analysis provides a foundation for understanding how NGOs, as corporate bodies, can be held accountable for criminal actions.[13] His work provides theoretical foundations but not NGO application. This work applies Clarkson's

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[11] Jennipher Bwalya, An Analysis of Legislation on Corporate Criminalisation and Criminal Sanctions in Zambia (LLB dissertation, University of Zambia 2019) https://dspace.unza.zm/handle/123456789/6415 accessed 17 April 2025.

[12] Munyonzwe Hamalengwa, 'Taxation and Organized State Criminality: The Case of Zambia' (Pambazuka News, 20 March 2013) https://www.pambazuka.org/governance/taxation-and-organized-state-criminality-case-zambia accessed 17 April 2025.

[13] C. M. V. Clarkson, 'Kicking Corporate Bodies and Damning their Souls' (1996) 59 Maryland Law Reviews 557.

arguments to NGOs, showing how they can be morally and legally accountable as corporate entities.

Albert W. Alschuler, in his article, discusses the complexities of punishing corporations, highlighting two primary approaches: imposing fines and holding individuals accountable. He argues that while fines are common, they may not effectively deter corporate misconduct. This perspective is valuable when considering the challenges of holding NGOs criminally liable.[14] Alschuler has a general discussion on corporations, no NGO or Zambian context. However, this work engages with his concerns about deterrence and applies them to NGOs in high-risk operational settings.

1.7 METHODOLOGY

This research shall primarily be a qualitative analysis; reference shall be made to statutes, reports, internet sources, text books, journals and articles and case law as well as other relevant materials that shall contribute towards this research.

1.7.1 RESEARCH APPROACH

This research shall primarily be a qualitative analysis. Reference shall be made to statutes, reports, internet sources, textbooks, journals, scholarly articles, and case law, as well as other relevant research materials that will contribute to the study of the criminal liability of Non-Governmental Organizations (NGOs). Additionally, the research will include visits to relevant institutions and interviewing appropriate officers, legal practitioners, and stakeholders involved in NGO regulation and compliance.

1.7.2 RESEARCH DESIGN

The research design adopted in this paper is the evaluative approach. This is because the research assesses various legal arguments, statutory provisions, and regulatory practices that shed light on how the absence or inadequacy of specific

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[14] Albert W. Alschuler, 'Two Ways to Think About the Punishment of Corporations' (2009) 46 Am. Crim. L. Rev. 1359.

legal frameworks for criminal liability affects the accountability of Non-Governmental Organizations (NGOs), particularly in Zambia. The study also evaluates how the legal framework in the United Kingdom addresses similar issues, with the aim of drawing lessons and identifying areas for legal reform.

1.7.3 RESEARCH TYPE

The research type employed in this study is the descriptive type. This is because the study seeks to describe and analyse how Non-Governmental Organizations (NGOs) may be held criminally liable under existing legal frameworks, particularly in Zambia, and how the regulatory landscape compares with that of the United Kingdom. The research will further explore the gaps, challenges, and implications of imposing criminal liability on NGOs, while outlining the current state of regulation and oversight.

1.7.4 DATA COLLECTION

Data collection for this study will be done through a review of books, scholarly articles, legal reports, previous academic theses, policy documents, and various credible internet sources relating to the regulation and criminal liability of Non-Governmental Organizations (NGOs) in Zambia and the United Kingdom.

1.7.5 DATA ANALYSIS

This study employs thematic analysis as the primary qualitative data analysis method. Given that the research aims to explore and compare how the legal frameworks in Zambia and the United Kingdom address the criminal liability of Non-Governmental Organizations (NGOs), thematic analysis provides an effective approach for identifying and analysing recurring patterns, themes, and concepts within legal texts, scholarly articles, statutory provisions, and interviews. This method allows the researcher to distil key issues such as regulatory gaps, enforcement challenges, accountability mechanisms, and institutional practices. Thematic analysis further enables a structured comparison between jurisdictions, highlighting both strengths and deficiencies in how each country holds NGOs criminally accountable, thereby offering a comprehensive understanding of the topic.

1.8 ETHICAL CONSIDERATIONS

This study will be carried out in compliance with all relevant ethical guidelines. The researcher will guarantee the full confidentiality of any information gathered in confidence throughout this study, especially from interviews with regulatory agencies and legal experts. Such information cannot be misused, misrepresented, or disseminated in a way that could hurt or prejudice the people or organisations that provided it. Additionally, any information and understanding acquired throughout this investigation will only be utilised for scholarly purposes.

1.9 RESEARCH OUTLINE

CHAPTER ONE provides the background, statement of the problem, objectives, research questions, scope, and significance of the study.

CHAPTER TWO examines theoretical and normative grounds for holding NGOs criminally accountable, drawing from corporate criminal liability theory and ethical principles.

CHAPTER THREE analyses the Zambian legal framework, including the Non-Governmental Organisations Act, Companies Act, Anti-Corruption Act, and case law.

CHAPTER FOUR reviews relevant UK legislation and what lessons can be drawn with regards to their legal framework that enables the criminal liability of NGOs.

CHAPTER FIVE summarises key findings, and proposes reforms tailored to Zambia’s legal and institutional context.

CHAPTER TWO

AN EXAMINATION OF THE LEGAL, ETHICAL, POLICY JUSTIFICATIONS FOR IMPOSING CRIMINAL LIABILITY ON NGOS

2.0 INTRODUCTION

Non-governmental organisations (NGOs) play a crucial role in the social and economic advancement of Zambia. They provide humanitarian help, promote human rights, and complement government services. However, worries about financial mismanagement, corruption, and platform misuse have grown along with their expanding importance. A clear and strong framework for enforcing criminal culpability on NGOs as legal persons is lacking in Zambia, as the statement of the problem emphasises. Even while the NGO Act No. 16 of 2009 emphasises compliance and registration, it lacks procedures for bringing charges against NGOs that are involved in fraud, the funding of terrorism, or violations of human rights. This results in a regulatory void that erodes public confidence and accountability.

2.1 EQUALITY BEFORE THE LAW

The idea that all legal persons should be held to the same legal standards, irrespective of their characteristics or objectives, is a fundamental normative argument. NGOs shouldn't be exempted from the penalties of criminal law as they have many of the same rights as businesses, including legal personality, asset ownership, and contracting authority.[15] The idea of equality before the law would be compromised if NGOs were exempt from culpability, establishing a special legal class that is impervious to punishment.

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[15] Philip I Blumberg, The Multinational Challenge to Corporation Law: The Search for a New Corporate Personality (Oxford University Press 1993).

According to the rule of law, no one or organisation should be above the law, no matter how good their intentions may be.[16] Because it shows impartiality and fairness, criminalising NGOs enhances the legitimacy of the legal system. Additionally, it avoids giving the impression that some laws are applied selectively, with businesses facing criminal penalties but non-governmental organisations are exempted from punishment despite having an equal potential to cause harm.

2.2 LEGAL JUSTIFICATIONS

2.2.1 RULE OF LAW AND EQUALITY BEFORE THE LAW

Non-Governmental Organisations (NGOs) are subject to criminal responsibility because of the fundamental tenets of constitutional governance, the rule of law and equality before the law. All individuals, whether natural or juristic, must be subject to the same legal obligations, safeguards, and penalties under these principles.

The idea that no one or thing is above the law, is established by the Zambian Constitution. As corporate entities with legal personality, NGOs ought to be held to the same accountability standards as businesses and other establishments. By shielding NGOs from criminal prosecution, the idea of equality before the law is compromised and a privileged group of legal players is protected from prosecution.

2.2.2 ADDRESSING LEGAL GAPS IN EXISTING LAWS

Although corporate accountability is generally recognised by the Companies Act and Anti-Corruption Act, NGO criminal liability is not specifically recognised in Zambia. The NGO Act only permits NGOs guilty of embezzlement or facilitating illegal activity to be deregistered or penalised, which is insufficient to address major offences. By enabling NGOs as well as individuals to face criminal charges, criminal liability closes this gap and promotes greater accountability and deterrence.

The Zambian courts proved that a corporate body may be prosecuted in People v. Post Newspapers Ltd,[17] proving that legal people might be held criminally liable.

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[16] Andrew Ashworth, Principles of Criminal Law (9th edn, Oxford University Press 2022).

[17] (1999) ZR 49 (HC).

Despite not being a case involving NGOs specifically, it establishes a standard for acknowledging organisational responsibility.

2.2.3 ACCOUNTABILITY AND PUBLIC TRUST

NGOs work in extremely delicate fields and are frequently entrusted with vulnerable populations, donor cash, and humanitarian help.[18] Since their legitimacy depends on the trust of the public and donors, accountability is essential. Criminal culpability guarantees that NGOs are held accountable in a way that acknowledges the gravity of misconduct in addition to administrative accountability.[19] The abuse of NGO platforms for fraud, corruption, or financing terrorism runs the risk of undermining credibility both domestically and internationally in the absence of criminal penalties. The majority of regulatory systems only subject NGOs to administrative penalties, including suspension or deregistration, for failing to comply with reporting requirements.[20]

Though crucial, these actions don't deal with serious wrongdoing like misappropriation of donor cash, corruption collusion, or aiding the funding of terrorism. Accountability to donors, recipients, and the general public is strengthened by criminal culpability, which guarantees that NGOs face severe, enforced repercussions commensurate with the harm inflicted.

2.2.4 INTERNATIONAL OBLIGATIONS

The United Nations Convention against Corruption (UNCAC), to which Zambia is a party, mandates in **article 26** that state parties hold corrupt organisations, including non-governmental organisations, accountable.[21] NGOs are also known to be

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[18] Ian Smillie, The Alms Bazaar: Altruism Under Fire – Non-Profit Organisations and International Development (IT Publications 1995).

[19] C M V Clarkson, 'Kicking Corporate Bodies and Damning their Souls' (1996) 59 Maryland Law Review 557, 560–562.

[20] Jennipher Bwalya, An Analysis of Legislation on Corporate Criminalisation and Criminal Sanctions in Zambia (LLB dissertation, University of Zambia 2019).

[21] United Nations Convention against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41.

susceptible to terrorist financing, according to the Financial Action Task Force (FATF).[22]

Comparative jurisprudence has affirmed that businesses can be found criminally accountable by identifying its directing mind, as demonstrated by the UK case of Tesco Supermarkets Ltd v Nattrass.[23] This reasoning is in favour of making NGOs in Zambia liable as they too operate through directors and trustees.

Accountability for groups that engage in or support violations of human rights has become a focal point of international discussions about non-state actors. Although aimed at businesses, the UN Guiding Principles on Business and Human Rights represent a normative framework that is equally applicable to non-governmental organisations that have a substantial impact on communities.[24] Criminal culpability guarantees adherence to these more general accountability rules in cases where NGOs neglect to stop abuses like staff sexual exploitation.

OECD Convention on Anti-Bribery. A growing worldwide consensus on corporate accountability is reflected in the OECD's advocacy for strong sanctions on legal entities engaged in bribery of foreign officials.

The 2003 African Union Convention on the Prevention and Combating of Corruption. Article 10 emphasises regional acceptance of collective criminal accountability by calling for actions to punish corporate entities responsible for corruption.

These frameworks show that states are increasingly expected under international law to criminalise misbehaviour by groups, especially non-governmental

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[22] Financial Action Task Force, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (2012, updated October 2023), Recommendation 8.

[23] [1972] AC 153 (HL).

[24] UN Human Rights Council, Guiding Principles on Business and Human Rights (2011) UN Doc A/HRC/17/31..

organisations. There is a large accountability gap as a result of Zambia's failure to operationalise these duties.

2.3 ETHICAL JUSTIFICATIONS

2.3.1 DUTY TO PROTECT BENEFICIARIES

In Zambia, non-governmental organisations frequently assist vulnerable groups, such as impoverished communities, refugees, and orphans. Ethical responsibilities of care and protection are brought about by this disparity in authority. Criminal liability guarantees that NGOs' betrayal of trust is seen as a grave wrong against recipients when they commit scandals like assistance diversion, exploitation, or corruption.[25] The English legal case of R v. ICR Haulage Ltd,[26] demonstrates how businesses can be found guilty of offences like conspiracy, demonstrating that businesses are capable of causing actual harm and should be held accountable for it. This logic supports Zambia's demand for accountability.

NGOs are not nations, but because of the way they operate, they frequently have a lot of influence over people and communities. NGOs have the power to regulate access to food, shelter, medical treatment, and legal aid in refugee camps, humanitarian emergencies, and development initiatives.[27] Because of this power imbalance, beneficiaries are susceptible to abuse or disregard, which makes accountability essential. NGOs are seen as duty-bearers with enforceable commitments to the people they serve when criminal liability is extended.

The safeguarding of those most impacted by NGO operations, beneficiaries in precarious or conflict-affected environments, is another normative defence. Criminal culpability offers a framework for redress and deterrence when NGOs participate in

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[25] Human Rights Watch, 'Zambia: Repeal Law That Restricts Civil Society' (29 March 2023) https://www.hrw.org/news/2023/03/29/zambia-repeal-law-restricts-civil-society accessed 25 August 2025.

[26] [1944] KB 551 (CCA).

[27] Chaloka Beyani, Human Rights Standards and the Free Movement of People within States (Oxford University Press 2000).

abuses (such as aid workers sexually exploiting people, aid workers working with armed groups, or humanitarian funds being embezzled).[28] The premise behind the argument is that people working with humanitarian missions have a greater obligation to protect rights holders.

2.3.2 RETRIBUTIVE JUSTICE

Retribution is an old-fashioned idea of punishment that maintains that wrongdoers should be punished for breaking the law and causing harm.[29] In contrast to deterrence or preventive, it does not defend punishment on the basis of its practicality; rather, it argues that punishment is morally justified because it appropriately addresses the offender's level of blameworthiness. According to retributive philosophy, wrongdoers should get punishment commensurate with their level of responsibility. Since NGOs have benefits like tax breaks, donor confidence, and operational autonomy, they also have obligations.

Retributive justice in Zambia necessitates more than administrative sanctions, as demonstrated by incidents involving the embezzlement of donor funds or cooperation with dishonest authorities. Criminal culpability guarantees that the punishment for misconduct is commensurate with the harm inflicted.[30]

In addition to punishing the offence, criminal punishment acts as a reminder that an organization's humanitarian status does not exclude it from the law in cases where it participates in activities like embezzling aid funds, permitting violations of human

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[28] John Paul Ongeso, Corporate Criminal Liability for Aiding and Abetting International Crimes under International Law (PhD thesis, University of the Witwatersrand 2020).

[29] Immanuel Kant, The Metaphysics of Morals (Mary Gregor tr, Cambridge University Press 1996).

[30] Muna Ndulo, 'Freedom of Association and NGO Law: The Constitutionality of the 2009 Zambian NGO Law' (2011) 1(2) Southern African Journal of Policy and Development.

rights, or aiding the funding of terrorism. By indicating that wrongdoing would be met with appropriate censure, retribution thereby enhances public trust.[31]

2.4 POLICY JUSTIFICATIONS

2.4.1 DETERRENCE AND PREVENTION OF MISCONDUCT

One of the first explanations stems from Jeremy Bentham's deterrence theory, which maintained that by making illegal behaviour more costly, penalties are necessary to stop future harm. According to this strategy, criminal responsibility acts as a deterrent by making sure NGOs implement strong internal controls and compliance procedures to avert wrongdoing.

Responsibility is required to deter harmful behaviour and encourage conformity within organisational systems. As a preventative precaution, criminal liability in the context of NGOs promotes the implementation of strong compliance initiatives, financial transparency policies, and internal oversight frameworks. NGOs, especially those working in unstable governments or conflict areas, might not have the institutional motivation to thoroughly screen partners, keep an eye on field activities, or fend off local corruption pressures if they are not exposed to the risk of litigation.[32]

Criminal culpability acts as a disincentive. The possibility of prosecution would motivate Zambian non-governmental organisations to strengthen their governance frameworks, financial audits, and compliance procedures. This is especially crucial in a jurisdiction where certain NGOs can abuse funds with no repercussions due to inadequate oversight.[33]

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[31] Andrew Ashworth, Principles of Criminal Law (9th edn, Oxford University Press 2022)

[32] Jeremy Bentham, An Introduction to the Principles of Morals and Legislation (W Harrison ed, Macmillan 1948)

[33] Munyonzwe Hamalengwa, 'Taxation and Organized State Criminality: The Case of Zambia' (Pambazuka News, 20 March 2013).

Zambian NGOs can learn from the South African case of S v. Van der Merwe,[34] which shows how organisational arrangements can lead to liability in situations where oversight is deficient. In that case, the court acknowledged that inadequate internal controls, lax oversight, and systemic governance flaws inside a corporate entity might foster an atmosphere conducive to misbehaviour. Hence, due to the organization's structural flaws, liability was not limited to a single wrongdoer but rather extended to the entire entity.

In Zambia, where dispersed operations and inadequate administration can expose the sector to corruption and abuse threats, this logic is extremely pertinent to NGOs. It shows that organisational culture and governance shortcomings can result in liability, which is a lesson Zambia might apply to non-governmental organisations. In the Attorney General v. Roy Clarke (2008) case, the courts also recognised that business organisations and their executives can be held accountable for the abuse of official platforms.

2.4.2 STRENGTHENING PUBLIC TRUST AND DONOR CONFIDENCE

In Zambia, NGOs mainly depend on donations. Corruption-related scandals undermine public confidence and donor trust. By demonstrating that wrongdoing will have dire repercussions, criminal responsibility offers a vehicle for policymakers to restore legitimacy. This supports Zambia's overarching policy objective of enhancing accountability and openness in governance. NGOs function primarily on credibility and reputation, in contrast to companies that make money through economic activity. Often referred to as their "currency," public trust enables them to draw in partnerships, cash, and volunteers.

The validity of the organisation and the larger NGO sector may be called into doubt when accusations of financial mismanagement or corruption surface.[35] In the end, NGOs' capacity to remain viable depends on their credibility. They run the risk of

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[34] 2006 (2) SACR 121 (T).

[35] Lester M Salamon and Helmut K Anheier, Defining the Nonprofit Sector: A Cross-national Analysis (Manchester UP 1997) 11.

losing their beneficiaries, donor base, and general social legitimacy if they don't have trust.[36]

Therefore, criminal liability has both preventive and corrective purposes, preventing wrongdoing and ensuring the long-term sustainability of the NGO sector. Increasing donor confidence and trust is consistent with global anti-corruption tools. Article 12 of the United Nations Convention against Corruption (UNCAC) obliges nations to encourage accountability and integrity in both the business and non-profit sectors.[37] By demonstrating adherence to these global norms, criminal liability measures for NGOs reassure donors of a strong regulatory framework.

2.4.3 PREVENTIVE REGULATORY APPROACH

Criminal culpability can serve as a preventive measure in addition to a form of punishment. Liability frameworks encourage non-governmental organisations to foresee risks before harm occurs by incorporating compliance duties, internal audits, and anti-corruption protections. This is especially important in Zambia, where NGOs frequently work in dangerous settings with little government supervision.

For non-governmental organisations, this hybrid model improves internal governance, promotes proactive compliance, and increases transparency in financial and operational management. For NGOs operating in politically sensitive, high-risk areas, liability is therefore not just about punishing after harm has happened but also about integrating best practices to prevent harm. The regulatory approach moves the justification for NGO liability from punishment alone to compliance culture, structural reform, and safeguarding public confidence.

It is proactive, seeking to stop misuse while maintaining NGOs' independence and legality. NGOs are particularly susceptible to governance breakdowns due to: They frequently work in unstable nations with little enforcement of the law; They oversee

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[36] Peter Willetts, Non-Governmental Organizations in World Politics: The Construction of Global Governance (Routledge 2010) 67.

[37] United Nations Convention against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41, art 12.

substantial financial flows without being motivated by shareholder profit; They mainly depend on donor trust and reputation; and they work closely with beneficiaries who are at risk.[38]

Because it requires NGOs to foresee hazards, create compliance frameworks, and proactively prevent wrongdoing rather than just responding after harm has occurred, the preventive-regulatory paradigm is appropriate in this situation.

2.5 CONCLUSION

This chapter has shown that there are ethical, legal, and policy justifications for holding NGOs criminally liable. NGOs are subject to the same legal obligations as other corporate entities and have independent personality. They have moral and fiduciary obligations to act in the public interest. Criminal responsibility protects donor and beneficiary interests, encourages good governance, and guarantees accountability.

These requirements are not met by Zambia's current regulatory system, which mostly concentrates on administrative compliance. The nation must incorporate these arguments into a comprehensive legislative framework that acknowledges NGO criminal responsibility as a fundamental component of sustainable development and good governance in order to attain true accountability.

[38] Ian Smillie, The Alms Bazaar: Altruism Under Fire – Non-Profit Organisations and International Development (IT Publications 1995)

CHAPTER THREE

THE EXTENT TO WHICH NGOS ARE HELD CRIMINALLY LIABLE FOR CRIMINAL OFFENCES IN ZAMBIA

3.0 INTRODUCTION

This chapter evaluates how much criminal liability NGOs in Zambia face for crimes they commit while conducting their business. Zambia has a number of regulations that deal with financial crimes, fraud, and corruption, but they are not often applied to NGOs. To assess the suitability of the current accountability measures, the chapter examines statutory provisions, case law, and enforcement procedures.

The chapter makes the case that although Zambia acknowledges the legal personality of non-governmental organisations (NGOs) and imposes administrative duties on them, it has not yet established procedures for the criminal prosecution of NGOs as collective organisations. The outcome is a framework that prioritises regulation and registration over accountability and deterrence.

3.1 LEGAL FRAMEWORK IN ZAMBIA

3.1.1 THE NON-GOVERNMENTAL ORGANISATIONS ACT

The NGO Act governs Zambian NGOs' governance, compliance, and registration. Its rules, however, are primarily administrative in nature and centre on re-registration and reporting. Section 5 establishes the NGO Registration Board, which has powers to suspend or cancel registration for non-compliance.[39] NGOs as business companies are not specifically listed as criminal offenders under the Act, however noncompliance may result in suspension or deregistration. This shows that even in circumstances of substantial misbehaviour, NGOs can avoid direct criminal penalties.

3.1.2 THE COMPANIES ACT

Under the Companies Act, a large number of NGOs in Zambia are registered as companies limited by guarantee. Section 10 provides for companies limited by

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[39] Act No. 16 of 2009.

guarantee.[40] Section 21 of the Act recognises companies as body corporates with legal personality.[41] The Act acknowledges that corporations may face criminal charges and allows for corporate liability in general. However, the legislation lacks provisions particular to NGOs, and prosecutions are infrequent. Liability is thus theoretically feasible but actually constrained by lax enforcement.

3.1.3 THE ANTI-CORRUPTION ACT

The Anti-Corruption Act makes corrupt activities illegal and holds "legal persons" accountable. Section 50 of the Anti-Corruption Act imposes liability on "a body corporate or unincorporated body" found guilty of corruption.[42] Although NGOs are nominally covered by this, charges against them are essentially non-existent in real life. Rather, enforcement usually targets specific people, such as employees or directors. Institutional accountability is weakened as a result.

The lack of charges is a reflection of attribution issues, which demonstrate that corrupt behaviour by trustees or staff can be attributed to the organisation. According to Wells, NGOs with decentralised governance structures find it challenging to identify a "directing mind," which is a requirement of classic corporate liability doctrines.[43]

3.1.4 THE PROCEEDS OF CRIME ACT

This Act makes handling illegal proceeds and money laundering illegal, and it has restrictions that apply to corporations. While NGOs have occasionally been suspected of money laundering, there is limited evidence of direct indictments against them as entities. The lack of well-known incidents points to either lax enforcement or trouble assigning responsibility.

The NGO Registration Board's lack of investigative authority and poor interagency collaboration are the causes of this restriction. Therefore, enforcement agencies

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[40] Act No. 10 of 2017.

[41] Ibid

[42] Act No. 3 of 2012.

[43] Celia Wells, Corporations and Criminal Responsibility (2nd edn, OUP 2001).

seldom pursue asset forfeiture cases, even when an NGO's financial operations raise suspicions.

3.2 REGULATORY AND INSTITUTIONAL CONTEXT

The fragmented mandates and powers of Zambia's several authorities that oversee NGOs make enforcement more difficult:

NGO Registration Board: Created in accordance with Section 7 of the NGO Act, the Board's authority is restricted to registering, overseeing, and deregistering NGOs.[44] Criminal offences cannot be looked into or prosecuted by it. Because of this, its enforcement function is limited to administrative penalties like certificate suspension or cancellation. Because of this, there is a gap in its jurisdiction where significant criminal accusations against NGOs fall.

Anti-Corruption Commission (ACC): The Anti-Corruption Act gives the ACC the authority to look into and stop corruption. The Commission has typically targeted individuals, rarely applying section 50 to non-governmental organisations, even though it extends accountability to legal persons. According to scholars, this illustrates a structural bias in favour of personal accountability over corporate responsibility.[45]

Drug Enforcement Commission (DEC): The DEC is authorised by the Proceeds of Crime Act to investigate financial crime and money laundering through its Anti-Money Laundering Investigations Unit. Although both natural and legal persons are covered by the statute, the DEC's records indicate a focus on private businesses and people; no convictions of NGOs were noted.

Financial Intelligence Centre FIC: In accordance with the Financial Intelligence Centre Act, the FIC keeps an eye on questionable financial transactions. Concerns have been expressed about NGOs' susceptibility to misuse for the purposes of money laundering and financing terrorism. But because it lacks prosecutorial

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[44] Act No. 16 of 2009.

[45] Anthony O Nwafor, 'Corporate Criminal Responsibility: A Comparative Analysis' (2016) 60(2) Journal of African Law 195, 210.

authority and merely forwards cases to investigative organisations, the FIC's influence is limited.

Registrar of companies: The Registrar is responsible for overseeing NGOs that are registered as corporations limited by guarantee. Corporate liability is provided for by the Companies Act, however enforcement of this law has been weak, mostly because the Registrar and prosecution agencies have not cooperated.

3.3 ENFORCEMENT AND CASE LAW

Corporate liability has been acknowledged by Zambian jurisprudence in a few specific situations. The High Court affirmed that a corporate entity might be prosecuted in People v. Post Newspapers Ltd.[46] However, no instances of NGOs as organisations being found guilty of crimes have been documented. Instead of criminal prosecution under the Companies Act, Anti-Corruption Act, or Proceeds of Crime Act, enforcement typically takes the form of administrative suspension or deregistration under the NGO Act.

3.4 PRACTICAL LIMITATIONS

3.4.1 WEAK INVESTIGATIVE CAPACITY

Investigating intricate financial crimes involving NGOs is frequently beyond the technical capabilities of law enforcement agencies, particularly when it comes to areas like money laundering or terrorist financing. Investigative and prosecution agencies' weak capabilities are a significant barrier to Zambian NGOs being held criminally accountable. Knowledge of cross-border transactions, access to international financial records, and forensic accounting abilities are necessary for complex cases involving donor fund theft, money laundering, or financial crimes.[47]

The Drug Enforcement Commission (DEC) and the Anti-Corruption Commission (ACC), for example, have come under fire for their lack of funding, insufficient knowledge, and political meddling. As Bwalya notes, agencies lack the necessary

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[46] (1999) ZR 49 (HC).

[47] Jennipher Bwalya, An Analysis of Legislation on Corporate Criminalisation and Criminal Sanctions in Zambia (LLB dissertation, University of Zambia 2019).

resources to effectively prosecute corporate criminals, which contributes to Zambia's corporate crime law's continued under-enforcement.[48] As a result, even in cases where NGOs are accused of grave misbehaviour, investigations frequently stop or concentrate solely on specific personnel, thereby failing to assess institutional culpability.

3.4.2 FOCUS ON INDIVIDUAL LIABILITY

Most indictments only target certain officers or employees, not the NGO itself. Deterrence is weakened, and groups are able to carry on in spite of widespread wrongdoing. In reality, rather than the NGO as a formal entity, prosecutions in Zambia are aimed against specific people, such as directors, managers, or staff. As evidenced in Attorney General v. Roy Clarke,[49] where accountability was attributed to an individual rather than the corporate publisher, this demonstrates a tendency on the part of the judiciary and prosecution to target natural persons.

Prosecutors have hardly ever used section 50 of the Anti-Corruption Act against NGOs, despite the fact that it expressly allows for corporate culpability.[50] According to Nwafor, corporate entities are shielded by African governments that frequently "fall back on individual liability because it is perceived as easier to establish."[51] This weakens deterrence and permits NGOs involved in misconduct to carry on by changing personnel or changing their names.

3.4.3 POLITICAL SENSITIVITIES

Certain NGOs work in politically delicate fields (governance, human rights). Even in cases when it is warranted, authorities may be deterred from pursuing corporate culpability if prosecution is viewed as harassment. In Zambia, NGOs frequently work

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[48] Munyonzwe Hamalengwa, 'Taxation and Organised State Criminality: The Case of Zambia' (2013) Pambazuka News https://www.pambazuka.org/governance/taxation-and-organized-state-criminality-case-zambia

[49] (2008) SCZ Judgment No. 14.

[50] Act No. 3 of 2012.

[51] Anthony O Nwafor, 'Corporate Criminal Responsibility: A Comparative Analysis' (2016) 60(2) Journal of African Law 195, 210.

in delicate fields including human rights, democracy promotion, and governance. NGOs that criticise the government run the risk of being viewed as political targets when they are criminally prosecuted.[52]

Ndulo points out that rather than being a neutral regulatory framework, the NGO Act has already been condemned as a weapon for state control over civil society. Because of this political aspect, regulators are reluctant to bring NGOs to criminal accountability for fear of both internal and foreign criticism.[53] On the other hand, selective enforcement by NGOs that support political elites might give rise to charges of unfair treatment. The criminal justice system’s credibility is weakened by this contradiction.

3.4.4 EVIDENTIARY CHALLENGES IN ESTABLISHING ORGANISATIONAL LIABILITY

There are evidentiary challenges in demonstrating that an NGO, as a legal body, is accountable for an offence. As demonstrated in Tesco Supermarkets Ltd v. Nattrass,[54] courts typically demand the identification of a “directing mind.” However, because NGOs frequently function through decentralised structures and field offices, it can be challenging to assign accountability to a single person or governing body. Although Zambian laws have not changed to address these systemic shortcomings, Wells contends that “organisational fault lies in structures and cultures, not only in individuals.”[55] Prosecutors thus find it difficult to blame wrongdoing on the NGO as a whole.

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[52] Human Rights Watch, ‘Zambia: Repeal Law That Restricts Civil Society’ (29 March 2023) https://www.hrw.org/news/2023/03/29/zambia-repeal-law-restricts-civil-society.

[53] Muna Ndulo, ‘Freedom of Association and NGO Law: The Constitutionality of the 2009 Zambian NGO Law’ (2011) 1(2) Southern African Journal of Policy and Development.

[54] [1972] AC 153 (HL).

[55] Celia Wells, Corporations and Criminal Responsibility (2nd edn, OUP 2001).

3.4.5 DONOR DEPENDENCY AND REPUTATIONAL CONCERNS

Another drawback is Zambian NGOs' strong reliance on donors. Instead of advocating for criminal charges that would interfere with service delivery, international donors frequently favour administrative measures like funding suspension or blacklisting.[56] Since maintaining donor relations takes precedence over seeking justice, this donor approach subtly deters local authorities from bringing charges against NGOs. However, as seen by global scandals like the Oxfam Haiti case, which had repercussions for African NGO accountability, this leaves significant malfeasance unaddressed.[57] Similar donor pressures run the risk of sustaining an impunity culture in Zambia.

3.4.6 JUDICIAL RELUCTANCE AND LIMITED PRECEDENCE

Finally, when it comes to expanding corporate liability beyond commercial firms, Zambia's judiciary has exercised caution. Courts have not established a coherent theory of organisational liability because there are few instances involving NGOs. Clarkson notes that courts frequently prefer to penalise people rather than "damn the soul of the corporation."[58] The disconnect between actual enforcement and statutory provisions that permit legal persons to be held liable is furthered by this judicial conservatism.

Although corporate criminal culpability is recognised in principle by Zambia's legal framework, NGOs are rarely held accountable as separate entities in reality. The NGO Act's dependence on administrative sanctions and other regulations' emphasis on personal responsibility expose a serious enforcement gap. Public trust, accountability, and deterrence are all weakened as a result.

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[56] OECD, Liability of Legal Persons for Foreign Bribery: A Stocktaking Report (OECD Publishing 2016).

[57] 'Oxfam Scandal: Aid Agency Loses 7,000 Donors over Sex Abuse Claims' (16 February 2018).

[58] CMV Clarkson, 'Kicking Corporate Bodies and Damning their Souls' (1996) 59 Maryland Law Review 557, 564.

3.5 COMMUNITY IMPACT OF WEAK LIABILITY

NGOs' relationships with donors and the populations they serve are significantly impacted when they are not held criminally accountable:

Misallocation of Resources: Beneficiaries are denied access to basic services like food assistance, healthcare, and education when non-governmental organisation executives embezzle donor funding. According to Bwalya, a cycle of wrongdoing being accepted and communities suffering from a decrease in program delivery is sustained by lax enforcement.[59]

Loss of Beneficiary Trust: When communities are subjected to corruption or exploitation by non-governmental organisations, they frequently lose faith in both the offending organisation and the NGO industry overall. Cooperation is undermined, which makes it harder for other respectable NGOs to function efficiently. Following scandals, case studies in Zambia have shown that the local population opposes NGOs because they believe they are exploitative rather than helpful.[60]

Victim Vulnerability: NGOs have considerable influence over aid access in humanitarian contexts. When NGOs are not held criminally responsible, victims are left without effective remedies. This is demonstrated by abuses like sexual exploitation by charity workers that have been documented in international cases like the Oxfam affair.[61] Similar dangers exist in Zambia, where non-governmental organisations frequently operate in unmonitored rural areas and refugee communities.

Donor Withdrawal and Project Collapse: Reputational issues are a concern for donors. As demonstrated in similar African contexts where NGOs lost foreign assistance following scandals, accusations of poor management or corruption can

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[59] Jennipher Bwalya, An Analysis of Legislation on Corporate Criminalisation and Criminal Sanctions in Zambia (LLB dissertation, University of Zambia 2019).

[60] Human Rights Watch, 'Zambia: Repeal Law That Restricts Civil Society'

[61] The Guardian, 'Oxfam Scandal: Aid Agency Loses 7,000 Donors over Sex Abuse Claims'

lead to funding reductions or withdrawal.[62] In addition to having an impact on the offending NGO, this also disrupts local service delivery, depriving recipients of vital assistance.

Culture of Impunity: The idea that strong organisations can function illegally is strengthened when NGOs are not prosecuted. According to Clarkson, “law ceases to act as a moral compass” when businesses are exempt from liability.[63] This view undermines the credibility of civil society and the legitimacy of the state in Zambia.

3.6 CONCLUSION

This chapter’s analysis demonstrates how inadequate and laxly implemented Zambia’s legal framework for NGO criminal liability is. Although it lacks substantive measures for criminal prosecution, the NGO Act 2009 offers administrative control. Due to institutional fragmentation and limited capability, additional statutes that theoretically extend accountability to legal persons have not been properly implemented to NGOs. As a result, the regulatory framework mostly serves as a registration and reporting system, providing little protection against grave misbehaviour. The complete model in the UK, where NGOs are subject to both administrative and criminal accountability, stands in stark contrast to Zambia’s current structure.

[62] OECD, Liability of Legal Persons for Foreign Bribery: A Stocktaking Report (OECD Publishing 2016).

[63] CMV Clarkson, ‘Kicking Corporate Bodies and Damning their Souls’ (1996) 59 Maryland Law Review 557, 564.

CHAPTER FOUR

LESSONS FROM THE UNITED KINGDOMS LEGAL FRAMEWORK ON NGO CRIMINAL LIABILITY: COMPARITIVE INSIGHTS FOR ZAMBIA.

4.0 INTRODUCTION

Building on Chapter Three's findings that Zambia's enforcement tools remain mostly administrative and fragmented, this chapter investigates the United Kingdom's approach to criminal liability of Non-Governmental Organisations (NGOs) and comparable non-profit enterprises. Recognising that organisations, whether profit-making or charitable, can commit crimes through the actions and inactions of their officers or through systemic management failures, the UK has created one of the most extensive corporate criminal liability regimes in the common law world.[64] In order to help Zambia improve accountability, transparency, and deterrence in the NGO sector, the chapter looks at pertinent UK statutes, case law, and institutional practices.

Although Zambia and the UK share a common law heritage, the UK model is instructive since it has undergone substantial modifications that have shifted the focus from the restrictive "directing mind" test to models of organisational and preventive liability.[65] Four main areas are examined in this chapter:

(a) the legal framework

(b) institutional enforcement mechanisms

(c) how the law is applied to charities and NGOs

(d) lessons learnt from other countries that apply to Zambia.

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[64] Wells, Corporations and Criminal Responsibility (2nd edn, OUP 2001) 13.

[65] Constantine Ntsanyu Nana, Corporate Criminal Liability in the United Kingdom: Determining the Appropriate Mechanism of Imputation (PhD thesis, Robert Gordon University 2014) https://rgu-repository.worktribe.com/output/247934/ accessed 24 October 2025.

4.1 LEGAL FRAMEWORK GOVERNING ORGANISATIONAL LIABILITY IN THE UNITED KINGDOM

4.1.1 THE COMPANIES ACT 2006

Companies, including charity organisations registered as companies limited by guarantee, are recognised as legal persons with the ability to incur civil and criminal liability under the Companies Act of 2006.[66] The responsibilities of directors are codified in Sections 170–177. These responsibilities include acting in good faith, using reasonable care and skill, and avoiding conflicts of interest.[67] Criminal offences may result from violations of these obligations in cases involving fraud, fraudulent accounting, or misrepresentation.

These obligations place a legal burden of caution and honesty on directors and trustees in the context of NGOs. Individuals and the organisation itself may be held liable for noncompliance, especially if carelessness or dishonesty leads to monetary loss or the misappropriation of donor funds.[68] By guaranteeing that organisational wrongdoing is not shielded by charitable status, this corporate governance model has strengthened a compliance culture in the UK charity sector.

4.1.2 THE BRIBERY ACT 2010

One significant change to corporate and non-profit liability is the Bribery Act of 2010. The "failure of a commercial organisation to prevent bribery" is a crime defined by Section 7 that carries severe liability unless the organisation can demonstrate that it had "adequate procedures" in place to stop such behaviour.[69] Companies and bodies incorporated under any legislation, whether for profit or not, are considered

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[66] Companies Act 2006 S 15.

[67] Ibid S 170–177.

[68] Bwalya, An Analysis of Legislation on Corporate Criminalisation in Zambia (LLB dissertation, UNZA 2019).

[69] Act No. 23 of 2010.

"commercial organisations" as long as they operate a company or are a part of a business in the United Kingdom.[70]

The Act's equal application to charities and NGOs was recognised by the Charity Commission.[71] As a result, NGOs with headquarters in the UK are required to uphold internal anti-bribery rules, employee training, and open procurement procedures. Zambia might take inspiration from this preventative model, which encourages proactive compliance as opposed to reactive enforcement. The "failure to prevent" strategy, as Nana notes, fills the evidence vacuum that frequently prevents charges based only on identifying a guiding mind.[72]

4.1.3 THE CORPORATE MANSLAUGHTER AND THE CORPORATE HOMICIDE ACT 2007

Gross management failures resulting in death were made a separate crime under the Corporate Manslaughter and Corporate Homicide Act of 2007. An organisation is responsible, according to Section 1(1), if the manner its operations are run or planned results in a fatality and constitutes a flagrant violation of a relevant duty of care.[73] The law specifically covers incorporated businesses, government agencies, and other entities, including non-governmental organisations.[74]

This Act is significant because it acknowledges collective organisational fault. Liability results from systemic management flaws rather than the actions of a single director.[75] Wells points out that this model is consistent with the "organisational fault"

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70 Ibid s 7(5).

71 Charity Commission, 'Charities and the Bribery Act' (2011).

72 Constantine Ntsanyu Nana, Corporate Criminal Liability in the United Kingdom: Determining the Appropriate Mechanism of Imputation (PhD thesis, Robert Gordon University 2014) https://rgu-repository.worktribe.com/output/247934/ accessed 26 October 2025.

73 Corporate Manslaughter and Corporate Homicide Act 2007 s 1(1).

74 Ibid s 1(2).

75 C. M. V. Clarkson, 'Kicking Corporate Bodies and Damning their Souls' (1996) 59 Maryland Law Reviews 557.

idea, which maintains that blameworthiness may result from flawed organisational structures and culture rather than personal animosity. This idea could be used by Zambia's framework to hold NGOs responsible for institutional shortcomings like dangerous operating procedures or systematic mishandling of aid distribution.[76]

4.1.4 COMMON LAW DOCTRINES AND JUDICIAL INTERPRETATION

The identification concept, which assigns corporate culpability when the offender represents the "directing mind and will" of the firm, was historically developed by UK courts.[77] In Tesco Supermarkets Ltd v. Nattrass, the House of Lords established that a business may only be held criminally accountable if the misconduct was carried out by an individual in charge of its operations.[78] Despite being ground-breaking, the theory was challenged for not being appropriate for big or dispersed institutions like NGOs.[79]

As a result, contemporary legislation has moved towards establishing culpability through systemic or collective blame. The Economic Crime and Corporate Transparency Act expanded corporate attribution even more, allowing senior managers' actions to be attributed to their companies.[80] This development shows that the UK has realised that corporate and non-profit responsibility needs to address structural governance difficulties instead of depending only on person identity.

According to the Privy Council in the case of Meridian Global Funds Management Asia Ltd v Securities Commission[81], attribution standards are contingent upon the context and intent of the act, which permits courts to use statutory interpretation to attribute knowledge or intent to a firm. Bolsters the claim that attribution may be extended by courts beyond the "directing mind" theory.

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[76] Celia Wells, Corporations and Criminal Responsibility (2nd edn, OUP 2001).

[77] [1915] AC 705 (HL).

[78] [1972] AC 153 (HL).

[79] C. M. V. Clarkson, 'Kicking Corporate Bodies and Damning their Souls' (1996) 59 Maryland Law Reviews 557.

[80] Act No. 56 of 2023.

[81] [1995] 2 AC 500 (PC).

4.2 REGULATORY AND INSTITUTIONAL ENFORCEMENT MECHANISMS

Through an integrated regulatory network that combines criminal prosecution and administrative oversight, the UK enforces organisational liability. Among the main institutes are:

The Charity Commission for England and Wales created by the Charities Act, which is responsible for monitoring registration, looking into wrongdoing, and issuing regulatory warnings or suspensions.[82]

The Serious Fraud Office (SFO) has been given authority by the Criminal Justice Act to look into and prosecute cases of substantial or complicated bribery and fraud involving businesses and non-governmental organisations.[83]

The Crown Prosecution Service (CPS) and National Crime Agency (NCA) coordinate investigations into terrorist financing and money laundering offences that impact non-governmental organisations.[84]

Through Memoranda of Understanding, these organisations work together to guarantee effective information sharing and prevent jurisdictional overlaps.[85] The end effect is a system that combines criminal penalties with preventive control. This multi-agency arrangement improves deterrence and trust in the integrity of the charity sector, as the OECD notes.

This emphasises how crucial it is for Zambia to align the missions of the Financial Intelligence Centre, the Anti-Corruption Commission, and the NGO Registration

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[82] Act No. 25 of 2011.

[83] Act No. 38 of 1987.

[84] National Crime Agency, Annual Report and Accounts 2023–24 (HC 66, 9 August 2024) https://www.gov.uk/government/publications/national-crime-agency-annual-report-and-accounts-2023-to-2024 accessed 27 October 2025.

[85] OECD, Liability of Legal Persons for Foreign Bribery: A Stocktaking Report (OECD Publishing 2016) 15 https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/fighting-foreign-bribery/Liability-Legal-Persons-Foreign-Bribery-Stocktaking accessed 27 October 2025.

Board. As mentioned in Chapter Three, fragmented enforcement reduces deterrence and makes it possible for NGOs involved in wrongdoing to avoid punishment.

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4.3 APPLICATION OF THE LAW TO NGOS AND CHARITIES IN THE UNITED KINGDOM

Even while NGOs are still rarely prosecuted, a number of noteworthy cases and regulatory investigations show how the UK system works in reality. The 2013 Cup Trust Case revealed the abuse of charitable status to evade taxes.[87] The trustees had permitted the charity to be utilised for projects that did not actually serve the public, according to the Charity Commission's findings. Stricter due diligence and trustee duty standards were brought about by the case, even though criminal prosecution did not follow.

Allegations of sexual exploitation by employees in Haiti sparked a formal Charity Commission investigation and public censure for governance shortcomings in the Oxfam Scandal (2018). The episode reinforced the idea that organisational negligence may result in criminal and regulatory liability and brought attention to the

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[86] Ibid 83

[87] Charity Commission, Inquiry Report: The Cup Trust (2013).

legal requirement that NGOs implement strong supervision and protection processes.[88]

The precedent that a company can be found guilty of conspiracy was previously set by R v. ICR Haulage Ltd, which confirmed that corporations, even non-governmental organisations, can be held directly criminally liable.[89] The statutory framework for contemporary approaches was established by this case.

These instances make it clear that UK NGOs must adhere to the same integrity and openness requirements as for-profit businesses. Both acts (like fraud or bribery) and inactions (like failing to stop abuse) can result in liability. The main takeaway is that legal individuality bestows rights and accountability, which Zambia's system has not yet managed to accomplish.

Even though the dishonest executives' acts were partially motivated by self-interest in the case of Moore v Bresler Ltd[90], the corporation was found guilty of tax evasion. This demonstrates that NGOs cannot avoid responsibility just because rogue staff act outside of their authority.

4.4 LESSONS FOR ZAMBIA FROM THE UNITED KINGDOM MODEL

Zambia's NGO accountability system can be improved by using the institutional and legal framework of the United Kingdom. A number of important lessons are revealed.

4.4.1 ADOPTION OF A "FAILURE TO PREVENT" MODEL

A statutory offence based on section 7 of the Bribery Act 2010, which holds corporations criminally accountable for failing to stop bribery by those connected to them, could be advantageous for Zambia.[91] This idea might be broadened to cover

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[88] Oxfam Scandal: Aid Agency Loses 7,000 Donors over Sex Abuse Claims' (16 February 2018).

[89] [1944] KB 551 (CCA).

[90] [1944] 2 All ER 515 (KB).

[91] Act No. 23 of 2010.

non-governmental organisations' inability to stop fraud, corruption, or abuse.[92] By concentrating on organisational controls rather than demonstrating individual intent, such a model would fill up the evidential gaps that impede convictions under the existing system.[93] In order to foster a culture of prevention, it would also motivate NGOs to put compliance measures like risk assessments, anti-corruption policies, and whistle blower routes into place.

4.4 2 STRENGTHENING INSTITUTIONAL COORDINATION

The NGO Registration Board, the Financial Intelligence Centre (FIC), the Drug Enforcement Commission (DEC), and the Anti-Corruption Commission (ACC) make up Zambia's regulatory landscape. The success of integrated enforcement is demonstrated by the UK approach. Through memoranda of understanding, the Charity Commission can collaborate with the SFO and the NCA thanks to the Charities Act of 2011.[94]

By creating legal procedures for interagency cooperation, Zambia might imitate this and guarantee that any alleged NGO wrongdoing is looked into and penalised together. Cooperation of this kind would remove redundancy and improve the flow of information about financial irregularities or donor fund misuse.

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[92] OECD, Liability of Legal Persons for Foreign Bribery: A Stocktaking Report (OECD Publishing 2016) 14–17 https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/fighting-foreign-bribery/Liability-Legal-Persons-Foreign-Bribery-Stocktaking accessed 28 October 2025.

[93] Constantine Ntsanyu Nana, Corporate Criminal Liability in the United Kingdom: Determining the Appropriate Mechanism of Imputation (PhD thesis, Robert Gordon University 2014) https://rgu-repository.worktribe.com/output/247934/ accessed 28 October 2025.

[94] Act No. 25 of 2011.

4.4.3 CODIFYING FIDUCIARY DUTIES AND TRUSTEE ACCOUNTABILITY

Directors' responsibilities are clearly outlined in the Companies Act of 2006, which guarantees that fiduciary violations will result in both civil and criminal penalties.[95] There is no equivalent codification in Zambia's NGO Act. It would be easier to bring local standards into line with global best practices if statutory requirements of honesty, integrity, and reasonable care were introduced for NGOs' trustees.[96] Additionally, by harmonising NGO governance with the norms that apply to firms limited by guarantee, these reforms would strengthen accountability.[97]

4.4.4 EMPHASISING PREVENTIVE COMPLIANCE

One example of how governments might encourage self-regulation is the UK's dependence on compliance guidelines, such as the Ministry of Justice's Guidance on Adequate Procedures under the Bribery Act 2010. A mandate for NGOs to keep compliance manuals, conduct yearly audits, and engage in risk-based monitoring might be incorporated into Zambia's legal framework. Sector-specific rules of conduct, like to those released by the Charity Commission, could be issued by enforcement bodies. Zambia would transition from punitive regulation to proactive accountability by formalising preventative compliance.[98]

4.4 5 RECOGNISING ORGANISATIONAL FAULT

Current UK law acknowledges that systemic management failures may result in criminal liability. "Corporate culpability arising from defective culture" is how Wells defines this.[99] However, Zambian laws continue to be rooted in individualised ideas of fault. Therefore, in accordance with the Corporate Manslaughter and Corporate

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[95] Companies Act 2006.

[96] Jennipher Bwalya, An Analysis of Legislation on Corporate Criminalisation and Criminal Sanctions in Zambia (LLB dissertation, University of Zambia 2019) https://dspace.unza.zm/handle/123456789/6415 accessed 28 October 2025.

[97] C. M. V. Clarkson, 'Kicking Corporate Bodies and Damning their Souls' (1996) 59 Maryland Law Reviews 557.

[98] Celia Wells, Corporations and Criminal Responsibility (2nd edn, OUP 2001).

[99] Celia Wells, Corporations and Criminal Responsibility (2nd edn, OUP 2001).

Homicide Act of 2007, reforms should establish "organisational negligence" or "management failure" as the foundation for NGO liability. By doing this, courts would be able to determine institutional guilt instead of looking for a single driving force.[100]

4.4.6 REINFORCING PUBLIC AND DONOR CONFIDENCE

Lastly, the UK example demonstrates that NGOs' legitimacy is strengthened rather than weakened when criminal standards are applied to them. Public participation and donor trust were enhanced by reporting and protection improvements after the Oxfam scandal. Transparent accountability would give Zambian stakeholders, both local and foreign, peace of mind that NGOs are run morally and legally.[101]

4.5 CHALLENGES IN THE UNITED KINGDOM FRAMEWORK

Although the UK model has been rather successful, it is not without flaws. Zambia can learn a few lessons from these difficulties.

4.5.1 ENFORCEMENT DISPARITIES

Despite having robust legislation, the UK's enforcement is nonetheless uneven and resource-intensive.[102] The Small NGOs frequently lack the resources to adhere to strict laws, whilst larger organisations can use sophisticated structures to shield themselves from liability. The Charity Commission has admitted that its ability to adequately oversee all registered organisations is hampered by capacity issues. Given Zambia's much more severe institutional constraints, it would be wise to

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[100] C. M. V. Clarkson, 'Kicking Corporate Bodies and Damning their Souls' (1996) 59 Maryland Law Reviews 557.

[101] 'Oxfam Scandal: Aid Agency Loses 7,000 Donors over Sex Abuse Claims' (16 February 2018).

[102] OECD, Liability of Legal Persons for Foreign Bribery: A Stocktaking Report (OECD Publishing 2016) 14–17 https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/fighting-foreign-bribery/Liability-Legal-Persons-Foreign-Bribery-Stocktaking accessed 29 October 2025.

employ a phased implementation approach to prevent overburdening both NGOs and regulators.[103]

4.5.2 RISK OF OVERREGULATION

Finding a balance between operational flexibility and accountability presents another difficulty. Overcriminalization has the risk of suppressing civil society activism and discourages volunteerism.[104] Ndulo cautions that too restrictive legislation may not be a valid form of regulation but instead be used as an instrument for political control.[105] Therefore, Zambia must make sure that any new liability framework include procedural protections against misuse, like open prosecutorial guidelines and court oversight.

4.5.3 COMPLEXITY OF CORPORATE ATTRIBUTION

It is still difficult to attribute intent or knowledge to corporate entities, even after statutory improvements.[106] Determining fault in decentralised NGOs that operate across jurisdictions is still difficult given the identification concept.[107] Even with the expansion of attribution through senior management by the Economic Crime and Corporate Transparency Act 2023, it is still difficult to prosecute big, globally

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[103] Jennipher Bwalya, An Analysis of Legislation on Corporate Criminalisation and Criminal Sanctions in Zambia (LLB dissertation, University of Zambia 2019) https://dspace.unza.zm/handle/123456789/6415 accessed 29 October 2025.

[104] Celia Wells, Corporations and Criminal Responsibility (2nd edn, OUP 2001).

[105] Muna Ndulo, 'Freedom of Association and NGO Law: The Constitutionality of the 2009 Zambian NGO Law' (2011) 1(2) Southern African Journal of Policy and Development https://scholarship.law.cornell.edu/sajpd/vol1/iss2/5/ accessed 29 October 2025.

[106] C. M. V. Clarkson, 'Kicking Corporate Bodies and Damning their Souls' (1996) 59 Maryland Law Reviews 557.

[107] Constantine Ntsanyu Nana, Corporate Criminal Liability in the United Kingdom: Determining the Appropriate Mechanism of Imputation (PhD thesis, Robert Gordon University 2014) https://rgu-repository.worktribe.com/output/247934/ accessed 29 October 2025.

operating NGOs.[108] Therefore, Zambia ought to give top priority to establishing the extent of liability for NGOs that are registered both domestically and abroad.[109]

4.5.4 FINANCIAL AND ADMINISTRATIVE BURDENS

Smaller charities may incur significant expenses as a result of the Bribery Act 2010 compliance requirements and Charity Commission guidelines. Mandatory compliance measures for Zambia, where NGOs frequently rely on foreign financing, ought to be scaled in accordance with risk exposure and size. To avoid excluding grassroots organisations from legal compliance frameworks, the government should implement proportionate duties, such as streamlined reporting for small local NGOs.[110]

The UK's approach to criminal responsibility for NGOs shows that it is possible to make non-profit organisations accountable under the law while maintaining their independence. In the United Kingdom, the concept of culpability has evolved from an individualistic one to one that acknowledges systemic fault and preventive compliance. A balanced framework that encourages openness, deterrence, and trust is produced by important elements including the "failure to prevent" crime, legislated fiduciary duties, and coordinated regulatory enforcement.

The goal of criminal responsibility for NGOs is to protect civil society integrity rather than to impose punishment. In order to improve its legal system and make sure that NGOs, like all corporate entities, operate within the parameters of legality and ethical responsibility, Zambia can benefit from a comparative analysis of the UK framework.

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[108] Act No. 56 of 2023.

[109] OECD, Liability of Legal Persons for Foreign Bribery: A Stocktaking Report (OECD Publishing 2016) 14–17 https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/fighting-foreign-bribery/Liability-Legal-Persons-Foreign-Bribery-Stocktaking accessed 30 October 2025.

[110] Celia Wells, Corporations and Criminal Responsibility (2nd edn, OUP 2001).

4.6 CONCLUSION

The UK model provides Zambia with unambiguous guidance: reform should promote institutional accountability through preventive measures rather than just criminalising wrongdoing. The current accountability gap would be closed by codifying trustee duties, integrating enforcement agencies, and adopting statutory measures acknowledging organisational culpability. In order to prevent the danger of overregulation, Zambia must also make sure that enforcement is equitable, open, and reasonable.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.0 INTRODUCTION

This chapter provides an overview of the main conclusions, findings, and suggestions drawn from the comparison of Zambian and British NGOs' criminal liability. The chapter goes over the study goals and questions from Chapter One again and assesses how well they were answered through comparative analysis, doctrinal research, and theoretical analysis. The purpose of the study was to ascertain the degree of criminal culpability imposed on NGOs in Zambia, evaluate the moral, legal, and policy grounds for such liability, and utilise the legal system in the United Kingdom to guide prospective improvements in Zambia.

5.1 GENERAL CONCLUSION

The analysis comes to the conclusion that NGOs' criminal responsibility is not sufficiently covered under Zambia's current legal system. Although it leaves out specific criminal penalties for organisational malfeasance, the Non-Governmental Organisations Act mainly provides administrative controls and reporting obligations. Serious crimes including fraud, corruption, and financial mismanagement within NGOs go mostly unpunished because of this legislative loophole.

Although general legislation like the Proceeds of Crime Act, the Companies Act , and the Anti-Corruption Act theoretically extend corporate liability to all legal persons, they are rarely used against NGOs. The Financial Intelligence Centre (FIC), the Anti-Corruption Commission (ACC), and the NGO Registration Board are examples of enforcement organisations that function independently and lack the resources and coordination necessary to handle complicated cases.[111] As a result, public trust in NGO governance is damaged and accountability within the NGO sector is still lacking.

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[111] Jennipher Bwalya, An Analysis of Legislation on Corporate Criminalisation and Criminal Sanctions in Zambia (LLB dissertation, University of Zambia 2019) https://dspace.unza.zm/handle/123456789/6415 accessed 4 November 2025.

5.2 SUMMARY OF CHAPTERS

5.2.1 CHAPTER ONE

The study's first chapter gave a thorough overview of the issue of non-governmental organisations' (NGOs') criminal liability in Zambia. It described the problem statement, the importance of the study, the goals of the research, and the methodology used. The chapter emphasised that although NGOs are essential to development and humanitarian efforts, there is no clear legal framework that holds them criminally responsible for wrongdoing like financial mismanagement, fraud, or corruption. It also pointed out a weakness in Zambia's NGO regulatory framework, which mainly concentrates on administrative supervision and registration under the Non-Governmental Organisations Act No. 16 of 2009 without enforcing serious criminal penalties.

The chapter ended with a summary of the study's goals, which included analysing the scope of NGO criminal liability in Zambia, examining the legal and policy foundations for such liability, and drawing conclusions from the legal system in the United Kingdom.

5.2.2 CHAPTER TWO

The legal, moral, and policy arguments in favour of holding NGOs criminally liable were covered in this chapter. It made the case that NGOs, as legal entities, should be held accountable for crimes carried out through their agents or systems by drawing on ideas of corporate personality and organisational fault.[112] It also emphasised how enforcing criminal culpability ensures justice, discourages wrongdoing, and fosters integrity in the administration of donor and public monies.[113]

In terms of ethics, the chapter stressed that criminal liability is a way to maintain public faith in NGOs' integrity and that they are obligated by the concepts of trust,

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112 Celia Wells, Corporations and Criminal Responsibility (2nd edn, OUP 2001).

113 Constantine Ntsanyu Nana, Corporate Criminal Liability in the United Kingdom: Determining the Appropriate Mechanism of Imputation (PhD thesis, Robert Gordon University 2014) https://rgu-repository.worktribe.com/output/247934/ accessed 4 November 2025.

stewardship, and moral responsibility. In terms of policy, the chapter defended liability as a means of encouraging accountability, good governance, and the protection of donors and beneficiaries, bringing Zambia's national framework into compliance with international commitments under agreements like the African Union Convention on Preventing and Combating Corruption, the OECD Anti-Bribery Convention, and the United Nations Convention against Corruption (UNCAC). It came to the conclusion that criminal culpability for NGOs is a policy requirement for efficient governance, an ethical requirement, and a legal necessity.

5.2.3 CHAPTER THREE

This scope of NGO criminal responsibility under Zambian law was covered in chapter 3. Various pieces of legislation were examined in thus chapter. The NGO Act does not cover serious criminal violations, but it does allow for administrative punishments like suspension or deregistration. According to the chapter, regulatory organisations function independently, which results in duplication and lax enforcement.[114]

The chapter concluded that while Zambia's current framework imposes administrative duties including registration, reporting, and auditing, it does not contain substantive rules that entail criminal culpability for non-governmental organisations. The NGO Registration Board, the Anti-Corruption Commission (ACC), the Drug Enforcement Commission (DEC), and the Financial Intelligence Centre (FIC) are examples of important organisations that lack coordination, institutional fragmentation, and limited investigative capacity, all of which contribute to the weak enforcement of general statutes that theoretically extend corporate liability to all legal persons.

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[114] Muna Ndulo, 'Freedom of Association and NGO Law: The Constitutionality of the 2009 Zambian NGO Law' (2011) 1(2) Southern African Journal of Policy and Development https://scholarship.law.cornell.edu/sajpd/vol1/iss2/5/ accessed 4 November 2025.

5.2.4 CHAPTER FOUR

The legal system in the United Kingdom was compared in this chapter. It looked at how the UK changed from the limited "directing mind" approach in Tesco Supermarkets Ltd. V. Nattrass[115] to more contemporary theories of organisational fault in laws like the Corporate Manslaughter and Corporate Homicide Act and the Bribery Act. It emphasised efficient regulatory collaboration amongst organisations such as the NCA, SFO, and Charity Commission. The UK's experience shows that thorough legislation reform can guarantee accountability without compromising the non-profit sector's independence when combined with preventive compliance measures.

5.3 RECOMMENDATIONS

1. **Legislative Reform**
   i. Explicit provisions on NGO criminal culpability, including offences like "failure to prevent corruption," "false reporting," and "misuse of donor funds," should be added to the NGO Act.
   ii. To ensure accountability for mismanagement and negligence, codify fiduciary duties for NGOs' trustees and directors, taking inspiration from sections 170–177 of the Companies Act 2006.
   iii. Allow courts to evaluate systemic governance shortcomings by acknowledging organisational culpability as a foundation for liability, akin to the Corporate Manslaughter and Corporate Homicide Act.
2. **Institutional coordination**
   i. To coordinate investigations and exchange information on NGO misbehaviour, the NGO Registration Board, ACC, DEC, and FIC should form a Joint NGO Accountability Taskforce.
   ii. Create interagency memoranda of understanding based on the Charity Commission, SFO, and NCA's collaboration in the UK.
   iii. Boost investigative ability with specialist training in financial forensics, non-profit risk assessment, and compliance audits.

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[115] [1972] AC 153 (HL).

3. **Compliance and Governance Mechanisms**
    i. Mandate that NGOs put in place internal compliance programs, including as whistle-blower procedures, anti-corruption policies, and yearly independent audits.
    ii. To ensure that smaller NGOs are not overloaded while still being subject to transparency responsibilities, implement tiered regulatory requirements.
4. **Judicial and Policy Measures**
    i. The judiciary should embrace a broader understanding of corporate attribution, informed by Meridian Global Funds Management Asia Ltd v Securities Commission, authorising accountability for collective decision-making mistakes.[116]
    ii. Create sentencing guidelines for violations involving NGOs to guarantee reformative and proportionate punishments instead of punitive dissolution.
    iii. To ensure legitimacy and compliance when draughting modifications to the NGO Act, encourage ongoing stakeholder interaction between the government, NGOs, and donors.

[116] [1995] 2 AC 500 (PC).

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