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DEDICATION

To my beloved wife, Likando,

whose steadfast love, patience, and unwavering support

made this work possible,

and to my daughters,

Liseli, Naleli, Serah, and Anna,

whose laughter, joy, and presence reminded me, each day me each day,
of what truly matters and inspired me to persevere.

and above all to God Almighty, without whom, am nothing.

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Any errors or omissions in this work remain entirely my own.

ABSTRACT

This thesis examines the adequacy of the identification doctrine as a mechanism for holding multinational mining corporations criminally liable for their actions in Zambia. The identification doctrine, as articulated in *Tesco Supermarkets Ltd v Nattrass*[1] and further refined in *Meridian Global Funds Management Asia Ltd v Securities Commission*[2], attributes corporate criminal liability by equating the acts and mental states of senior officers, those constituting the "directing mind and will" of the corporation. While this doctrine has served as the foundational basis for corporate criminal liability across common law jurisdictions, including Zambia, its application to the complex, diffuse governance structures of multinational corporations has proved structurally deficient, generating what this thesis characterises as "structural impunity." Drawing on Zambia's relevant legislation, the thesis argues that the deliberate dispersal of decision-making authority across subsidiaries, holding companies, and global headquarters enables multinational mining corporations to evade criminal accountability. The thesis proposes the enactment of a dedicated Corporate Criminal Liability Act for Zambia, incorporating an organisational fault model, a corporate culture test, and strengthened international cooperation mechanisms, with a view to closing the accountability gap that has historically permitted multinational mining corporations to operate with impunity.

[1][1972] AC 153
[2] [1995] 2 AC 500

TABLE OF STATUTES

Zambia

Anti-Corruption Act No 3 of 2012

Companies Act No 10 of 2017

Constitution of Zambia (Amendment) Act No 2 of 2016

Environmental Management Act No 12 of 2011

Environmental Management (Amendment) Act No 8 of 2023

Environmental Management (Licensing) Regulations, SI 112 of 2013

Financial Intelligence Centre Act No 46 of 2010

Financial Intelligence Centre (Amendment) Act No 16 of 2020

Interpretation and General Provisions Act, Cap 2

Minerals Regulation Commission Act No 14 of 2024

Mines and Minerals Development Act No 11 of 2015 (repealed)

National Prosecution Authority Act No 34 of 2010

Occupational Health and Safety Act No 16 of 2025

Penal Code, Cap 87

United Kingdom

Bribery Act 2010

Corporate Manslaughter and Corporate Homicide Act 2007

Crime and Courts Act 2013

Economic Crime and Corporate Transparency Act 2023

Merchant Shipping Act 1894

Trade Descriptions Act 1968

Australia

Criminal Code Act 1995 (Cth)

TABLE OF CASES

Zambian Courts

Kangwa and Others v Environmental Council of Zambia and Others HP 245/2008 [2010] ZMHC 85

Kasengele and Others v Zambia National Commercial Bank Ltd (SCZ Judgment No 11 of 2000) [2000] ZMSC 20

Konkola Copper Mines Plc v Nyasulu and Others (SCZ, 2015)

Madison Investment Property and Advisory Co Ltd v Kanyinji [2018] ZMSC 348

Mbunda v Konkola Copper Mines Plc Appeal No 155/2012 [2015] ZMSC 22

Nyasulu and Others v Konkola Copper Mines Plc and Others [2011] ZMHC 114

Siulanda and 36 Others v Foodcorp Products Ltd (SCZ Judgment No 9 of 2002) [2002] ZMSC 28

United Kingdom and Commonwealth Courts

Adams v Cape Industries plc [1990] Ch 433 (CA)

Board of Trade v Owen [1957] AC 602 (HL)

Canadian Dredge and Dock Co v R [1985] 1 SCR 662 (SCC)

Chandler v Cape plc [2012] EWCA Civ 525, [2012] 1 WLR 3111

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Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd [1915] AC 705 (HL)

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Okpabi v Royal Dutch Shell Plc [2021] UKSC 3, [2021] 1 WLR 1294

Prest v Petrodel Resources Ltd [2013] UKSC 34, [2013] 2 AC 415

R v Cotswold Geotechnical Holdings Ltd [2011] EWCA Crim 1337

R v ICR Haulage Ltd [1944] KB 551 (CA)

R v Kite and OLL Ltd (Crown Court, 1994)

R v P&O European Ferries (Dover) Ltd (1991) 93 Cr App R 72

Salomon v A Salomon & Co Ltd [1897] AC 22 (HL)

Tesco Supermarkets Ltd v Nattrass [1972] AC 153 (HL)

Vedanta Resources Plc v Lungowe [2019] UKSC 20, [2020] AC 1045

Table of Contents

COPYRIGHT DECLARATION i

INSERT TURNITIN REPORT HERE ii

DEDICATION v

ACKNOWLEDGMENTS vi

ABSTRACT vii

TABLE OF STATUTES viii

TABLE OF CASES ix

CHAPTER ONE 1

1.1 INTRODUCTION 1

1.2 BACKGROUND 1

1.3 STATEMENT OF THE PROBLEM 4

1.4 OBJECTIVES OF THE STUDY 5

1.5 RESEARCH QUESTIONS 5

1.6 SIGNIFICANCE OF THE STUDY 6

1.7 SCOPE OF THE STUDY 6

1.8 LIMITATIONS 7

1.9 RESEARCH METHODOLOGY 7

1.10 LITERATURE REVIEW 7

1.11 ETHICAL ISSUES 14

1.12 CHAPTER OUTLINE 15

1.13 CONCLUSION 15

CHAPTER TWO: CONCEPTUALISING THE IDENTIFICATION DOCTRINE 16

2.1 Introduction 16

2.2 Foundations of Corporate Criminal Liability 17

2.3.Why the Identification Doctrine Became Dominant 18

2.4 The Identification Doctrine: Origins and Doctrinal Development 19

2.5 The Identification Doctrine and Multinational Corporate Structures 23

2.6 Competing Interests Underlying the Identification Doctrine 25

2.7 Conclusion 27

CHAPTER THREE: ZAMBIA'S STATUTORY AND REGULATORY FRAMEWORK ON CORPORATE CRIMINAL LIABILITY UNDER THE IDENTIFICATION DOCTRINE 28

3.1 Introduction 28

3.2 The Zambian Legal Framework Governing Mining Corporations 29

3.3 Overall Assessment of Zambia's Legislative Framework 39

3.4 Conclusion 41

CHAPTER FOUR: CHALLENGES IN PROSECUTING MULTINATIONAL MINING CORPORATIONS IN ZAMBIA 43

4.1 Introduction 43

4.2 Challenges in Prosecuting Multinational Mining Corporations in Zambia 45

4.3 Conclusion 55

CHAPTER FIVE: FINDINGS AND RECOMMENDATIONS 56

5.1 Introduction 56

5.2 Findings 57

5.2.1 The Structural Inadequacy of the Identification Doctrine 57

5.2.2 Deficiencies in Zambia's Legislative Framework 58

5.2.3 Structural Impunity as the Systemic Outcome 58

5.3 Summary of Findings 59

5.4 Recommendations 60

5.4.1 Recommendation One: Enact a Corporate Criminal Liability Act 60

5.4.2 Recommendation Two: Amend the Minerals Regulation Commission Act to Introduce Graded Corporate Sanctions 62

5.4.3 Recommendation Three: Enact an Extraterritorial Criminal Jurisdiction Provision 63

5.4.4 Recommendation Four: Strengthen Bilateral Mutual Legal Assistance Treaty Infrastructure 64

5.4.5 Recommendation Five: Establish a Specialised Corporate Crime Unit within the National Prosecution Authority 64

5.4.6 Recommendation Six: Strengthen Beneficial Ownership Transparency and Disclosure Requirements 65

5.5 Final Conclusion 66

BIBLIOGRAPHY 68

CHAPTER ONE

1.1 INTRODUCTION

Economic crimes can often be compared to a cancer that could significantly harm a country's economic growth. The concept of corporate criminal liability has been explored all over the world, including in the Zambian jurisdiction, especially in circumstances where corporations have been implicated in offences such as fraud, environmental violations, tax evasion, and occupational health and safety breaches situations where the acts or omissions of directors, senior employees, or agents, carried out in the course of their duties and for the benefit of the company, are attributed to the corporation itself. Corporations by their nature play a critical role in generating financial benefits for society, however, they can commit crimes. This chapter explores the basis on which a corporation can be held criminally liable by applying the doctrine of identification. In so doing, criminal conduct for which corporations may be held liable, including economic and financial crimes such as fraud, money laundering, and tax evasion; environmental offences such as illegal dumping and pollution; occupational health and safety violations arising from negligent corporate practices; and corruption-related offences such as bribery of public officials. These categories of crime are particularly important in the corporate context because they often result from deliberate organisational failures rather than isolated conduct of a single rogue individual. The identification doctrine which attributes the criminal acts and mental state of a corporation's directing mind and will to the corporation itself, serves as the primary lens through which these issues are examined.

1.2 BACKGROUND

Criminal liability occurs where there is the coincidence of the mens rea (guilty mind) and the actus reus (forbidden act). Common law is an essential part of the Zambian legal system. In *Board of Trade v Owen*[3] a crime was defined as an unlawful act or default which is an offence against the public and renders the person guilty of the act liable to legal punishment.

This principle of criminal law presents challenges when applied to corporations, which are artificial legal persons.

[3] [1957] AC 60

Corporations, at law are considered as legal beings separate and distinct from their owners, directors, and agents.[4] The legal principle of separate legal personality was established in the celebrated case of *Salomon v A Salomon and Co Ltd*[5] were it was held that a company, once incorporated, has a legal identity as an artificial person with inherent legal rights, privileges, and liabilities separate from its owners. The Supreme Court of Zambia in *Siulanda and 36 Others v Foodcorp Products Limited*[6] reaffirmed the Salomon Principle.

The identification doctrine also called the "directing mind and will" principle is fundamental to holding corporations criminally liable. It assigns the mental state and conduct of human actors (typically directors or managers) to the corporate entity itself. The doctrine sits uneasily alongside the foundational tenet of company law that a corporation is a separate legal person distinct from its members, as established in *Salomon v A Salomon & Co Ltd*.[7] The doctrine permits limited liability and protects shareholders, but when applied to criminal law it rises complex questions about how, when, and which human conduct can be treated as the conduct of the company itself.[8] The law has long recognised that strict adherence to this principle can, in certain circumstances, produce unjust outcomes particularly where the corporate form is used as a shield against criminal accountability. In such circumstances, courts have been willing to lift the corporate veil, piercing the legal fiction of separate personality in order to examine the conduct and intentions of those who actually control and direct the corporation.[9]

In common law jurisdictions this tension has produced multiple doctrinal responses: the identification doctrine (limiting attribution to senior "directing minds"), vicarious liability approaches (broader attribution to employees), and statutory schemes that impose strict or regulatory liability on companies for particular harms.[10] In the context of multinational mining corporations (MNCs), complex corporate structures, dispersed decision-making, and weak enforcement rise serious challenges to the identification doctrine. Historically, the doctrine

[4] SC Mumba Malila and Chanda Chungu, *The Law of Business Associations in Zambia: An Introduction* (1st edn, Juta 2019).
[5] [1897] AC 22
[6] [2002] ZMSC 28
[7] [1897] AC 22 (HL)
[8] Joshua C Macey, 'What Corporate Veil?' (2019) 117(6) *Michigan Law Review* 1195.
[9] ibid
[10] Alan Dignam and John Lowry, *Company Law* (11th edn, OUP 2020)

emerged in a period when corporate structures were relatively simple and the connection between ownership, control, and management was close and visible.[11] In that context, it was not unreasonable to suppose that the directing mind and will of the corporation could be identified with a senior management class of natural persons. That is the founding directors, the managing director, the board whose fault could be established through ordinary evidential means. The doctrine's structural weaknesses only became apparent as corporations grew in size, complexity, and geographical reach.[12]

The identification doctrine finds its earliest explicit articulation in a series of English cases decided during the Second World War, in which courts first grappled seriously with whether corporations could be convicted of offences requiring proof of guilty knowledge or intent.[13] Prior to this period, the prevailing assumption was that corporate criminal liability was confined to offences of strict liability and regulatory matters that did not require proof of a mental element.

Zambia's recognition of corporations as legal persons capable of criminal liability derives from both statute and inherited common law principles. *The Companies Act* codifies the principle of separate corporate personality, conferring on incorporated entities a legal identity distinct from their members and officers.[14] This foundational principle is the precondition for corporate criminal liability. The corporation, as a legal person, can in principle be the subject of criminal proceedings. The question that immediately arises, however, is how the mental element of a criminal offence which by its nature requires a human mind capable of forming intention, knowledge, or recklessness can be attributed to an artificial entity.

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[11]Alex Sarch, 'Collective Knowledge and the Limits of the Expanded Identification Doctrine' (2024) 44(4) *Oxford Journal of Legal Studies* 920.
[12] Yuyun Ma and Nicholas Ryder, 'Progress or stagnation? The evolution and reform of corporate criminal liability in the UK' (2025) 10 *Journal of Economic Criminology* 100172.
[13] ibid
[14]Companies Act No 10 of 2017 (Zambia) s 16.

The answer provided by Zambia's common law tradition is the identification doctrine. As Campbell has argued, the identification doctrine proceeds on a fundamentally anthropomorphic conception of the corporation, treating the company as though it possessed a directing intelligence capable of harbouring the requisite mens rea. A construct which, while analytically plausible for small companies, is ill-suited to the large, hierarchically complex structures that characterise modern multinational corporations. The predominant model of corporate criminal liability in Zambia is derivative. That is, the identification model, with residual traces of vicarious liability in specific statutory contexts.[15] The identification doctrine, developed through *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd*[16] and consolidated in *Tesco Supermarkets Ltd v Nattrass* [17] resolves the attribution problem by treating the acts and mental states of the corporation's directing mind and will as the acts and mental states of the corporation itself. This position was affirmed in the case of *Kasengele & Others v Zambia National Commercial Bank Ltd*[18] where it was held that a corporation can only act and possess knowledge through the human beings managing its affairs. It is against this background that the adequacy of Zambia's legislative framework must be measured.

1.3 STATEMENT OF THE PROBLEM

The rapid expansion of multinational mining corporations creates economic benefits but also led to serious challenges, including environmental degradation, unsafe labour conditions, and the displacement of local communities. These harmful side effects of mining activities give rise to pressing questions of accountability. Although criminal liability for corporations is recognised in

[15]Liz Campbell, 'Corporate Liability and the Criminalisation of Failure' (2018) 12(2) *Law and Financial Markets Review* 57, 59
[16] [1915] AC 705
[17] [1972] AC 153 (HL)
[18] [2000] ZMSC 20

theory through the identification doctrine. Where the "directing mind and will" of senior managers is attributed to the company, its application to multinational mining corporations has proven to be difficulty. Their structures of holding subsidiary companies often make it nearly impossible to locate an individual with the requisite mens rea, effectively shielding corporations from prosecution. While statutes such as the *Minerals Regulation Commission*[19], which repealed and replaced *the Mines and Minerals Development Act of 2015*[20], represent a progressive step in regulating Zambia's mining sector, the adoption of an individual first model that attributes criminal liability solely through the knowledge, consent, or connivance of individual directors, managers, shareholders, or partners creates problems. Instead of holding the corporation itself criminally liable as a primary wrongdoer, the new Act is silent on how the identification doctrine should be applied where the directing minds of multinational mining corporations are domiciled in foreign jurisdictions beyond Zambia' reach, with no provision made for parent company criminal liability, piercing the corporate veil within multinational group structures, or extraterritorial criminal jurisdiction this has resulted in a gap that renders the Act incapable of holding multinational mining corporations criminally accountable for offences committed on Zambian soil. This problem is observed in the other applicable Zambian legislation.

1.4 OBJECTIVES OF THE STUDY

The objectives of the study are to:

i. Conceptualise the identification doctrine.
ii. Analyse Zambia's laws in holding multinational mining corporations criminally accountable.
iii. Examine the challenges posed by complex corporate structures, jurisdictional barriers, and enforcement capacity in prosecuting multinational mining corporations.
iv. Propose reforms and amendments the laws governing corporate crimes in the mining sector.

1.5 RESEARCH QUESTIONS

The following are the research questions:

i. What is the identification doctrine and how does it apply to corporate criminal liability?

[19] Act No. 14 of 2024
[20] Act No. 11 of 2015

ii. Is Zambia's current legal framework adequate in ensuring the criminal accountability of multinational mining corporations?
iii. What obstacles hinder the effective application of the identification doctrine to multinational mining corporations in Zambia?
iv. What reforms or alternative approaches could enhance Zambia's ability to hold multinational mining corporations criminally liable?

1.6 SIGNIFICANCE OF THE STUDY

This study is significant for both academic scholarship and practical legislation making in Zambia's extractive sector. From an academic perspective, it contributes to the ongoing discourse on corporate criminal liability by interrogating the adequacy of the identification doctrine in the Zambian legal system, a subject that has received limited focused analysis in the local context. the study is of great importance to Zambia's governance of its mining industry, which forms the backbone of the national economy but is also a major source of environmental harm, and financial crimes. By examining gaps in the current framework and proposing reforms, the study provides insights that could guide legislators, regulators, and prosecutors in strengthening accountability mechanisms. This study has potential to enhance corporate compliance, deter harmful practices, and ensure effective revenue generation for Zambia.

1.7 SCOPE OF THE STUDY

This study is confined to examining the effectiveness of the identification doctrine in holding multinational mining corporations criminally liable within the Zambian legal context. It focuses on the doctrinal foundations of corporate criminal liability, particularly the application and limitations of the identification principle in Zambia's statutory and judicial framework. The analysis centres on the mining sector, given its significance to Zambia's economy and its frequent association with environmental, social, and regulatory controversies. The study does not extend to issues of civil liability or taxation of mining corporations, except where such matters incidentally illuminate the problem of criminal accountability.

1.8 LIMITATIONS

This study is limited by its reliance on existing legislation, judicial decisions, and secondary literature, as there is relatively little Zambian case law directly addressing the criminal liability of multinational mining corporations. The study is doctrinal in nature and does not include empirical fieldwork such as interviews with regulators, prosecutors, or affected communities. Comparative analyses are selective and focus only on common law jurisdictions relevant to Zambia, which may not capture the full global spectrum of corporate liability models. These limitations, however, do not detract from the study's objective of critically assessing the adequacy of the identification doctrine and proposing reforms suited to Zambia's legal and mining context.

1.9 RESEARCH METHODOLOGY

The doctrinal research methodology, which is a qualitative approach was adopted as the methodology for conducting the study. The doctrinal approach was applied specifically to interrogate the legislative framework governing corporate criminal liability in Zambia's mining sector, principally the *Penal Code,*[21] *the Environmental Management Act*[22], the Anti-Corruption Act[23], the Minerals Regulation Commission Act[24], the Occupational Health and Safety Act,[25]and other relevant legislation. Secondary sources, like legal commentaries, textbooks, and journal articles, were used to support and contextualise the analysis.

1.10 LITERATURE REVIEW

The criminal liability of corporations for the acts and omissions of their directing minds constitutes one of the most contested and practically consequential problems in modern criminal law. The identification doctrine seeks to attribute to a corporation the acts and mental states of those individuals who constitute its "directing mind and will". In the context of multinational mining corporations operating in developing economies such as Zambia, this doctrine acquires heightened significance. Mining operations frequently pose grave risks to local communities, environments, and workers, and yet the structural complexity of multinational corporate groups renders the

[21] Chapter 87 of the Laws of Zambia
[22] Act No. 12 of 2011
[23]Act No. 3 of 2012
[24] Act No. 14 of 2024
[25] No. 16 of 2025

attribution of criminal fault elusive. The literature review examines the identification doctrine, its limitations, and the emerging alternative frameworks that seek to modernise the law of corporate criminal liability in ways that may have direct implications for Zambia.

The common law approach to corporate criminal liability is grounded in the identification doctrine, whose foundations are traced to the principle articulated in *Tesco Supermarkets Ltd v Nattrass*[26], in which the House of Lords held that a company is identified with individuals who constitute its directing mind and will. Campbell examines the criminalisation of corporate failure and identified the primary theoretical tension at the heart of the identification doctrine.[27] Campbell argued that the identification doctrine proceeds on a fundamentally anthropomorphic (humanlike) conception of the corporation, treating the company as though it possessed a directing intelligence capable of harbouring the requisite mens rea for a criminal offence.[28] This fictional construct, while analytically sound in the context of small companies, it is ill-suited to the large, horizontally and vertically differentiated corporate structures that characterise modern multinational corporations with complex structures.[29]

Clough, in his examination of the theoretical foundations of corporate criminal liability, analysed the identification doctrine within the broader controversy about whether an anthropomorphic model of corporate fault can adequately account for the diffuse decision-making structures of modern multinational enterprises.[30] Clough argued that the courts have remained wedded to derivative liability as the basis for corporate fault and have proved unable to develop a model of liability that reflects the unique nature of the corporate defendant, thereby producing a framework that is neither theoretically satisfying nor practically effective.[31] This conflation is especially problematic in the mining sector, where decisions that produce fatal or environmentally catastrophic outcomes are typically the product of complex organisational processes rather than the individual decision of any single senior officer.

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[26] [1972] AC 153
[27]Liz Campbell, 'Corporate Liability and the Criminalisation of Failure' (2018) 12(2) *Law and Financial Markets Review* 57, 58.
[28]ibid 3.
[29]ibid 4.
[30]Jonathan Clough, 'Bridging the Theoretical Gap: The Search for a Realist Model of Corporate Criminal Liability' (2007) 18(3–4) *Criminal Law Forum* 267, 270.
[31]ibid 275.

The concept of identifying the directing mind in corporate criminal liability has attracted sustained scholarly criticism on the grounds of its susceptibility to evasion by sophisticated corporate actors. Campbell identified the fundamental paradox inherent in the doctrine: structural features that enable corporations to amass economic power, the functional specialisation, hierarchical delegation of authority, and geographical dispersion.[32] These features render the identification of a single directing mind nearly impossible. Clough develops this criticism further, demonstrating that despite sustained criticism of Tesco, courts in common law jurisdictions have remained wedded to derivative liability as the basis for corporate fault, and have proved unable to develop an adequate realist model of corporate criminal liability that is responsive to the decentralised governance structures of large corporations.[33] The consequence of this incoherence for multinational mining corporations in Zambia is profound. The structural opacity of the multinational group effectively insulates senior management from criminal accountability even where organisational failures are egregious and the resulting harms are catastrophic.[34]

Sarch provide additional critical perspective by noting that the identification doctrine operates in an environment characterised by a "structural accountability deficit", in which the formal legal persons amenable to prosecution are frequently not those in whose interests the harmful decisions were made.[35] This accountability deficit is compounded in the Zambian context by the limitations of domestic regulatory capacity and the jurisdictional immunities effectively enjoyed by parent corporations incorporated abroad.

A related doctrinal problem concerns the extent to which principles of vicarious liability can supplement the identification doctrine in establishing corporate criminal liability. Wells's comprehensive review of corporate criminal liability in English law provides a valuable perspective on the doctrinal evolution of attribution rules in English criminal law over the decade following the Corporate Manslaughter and Corporate Homicide Act 2007.[36] Wells demonstrates that the introduction of the corporate manslaughter offence and the failure-to-prevent bribery

[32]Liz Campbell, 'Corporate Liability and the Criminalisation of Failure' (2018) 12(2) *Law and Financial Markets Review* 57, 63.
[33]Jonathan Clough, 'Bridging the Theoretical Gap: The Search for a Realist Model of Corporate Criminal Liability' (2007) 18(3–4) *Criminal Law Forum* 267, 280.
[34]ibid 285.
[35] Alexander Sarch, 'Collective Knowledge and the Limits of the Expanded Identification Doctrine' (2024) 44(4) *Oxford Journal of Legal Studies* 920, 921–922.
[36]Celia Wells, 'Corporate Criminal Liability: A Ten Year Review' [2014] *Criminal Law Review* 849, 856.

offence represent significant departures from the identification doctrine, both prompted by the widely acknowledged incapacity of the common law to hold large organisations accountable for systemic organisational failures.[37] However, Wells also observes that outside these two specific offences, the common law identification doctrine has remained largely unreformed, meaning that corporate groups continue to benefit from a narrow conception of criminal attribution that closely mirrors the original Tesco framework and is ill-suited to the complex governance structures of multinational corporations.[38]

The conservatism embraced in the identification doctrine has significant implications for Zambia. As Dyson notes, the criminal law's reluctance to embrace a more expansive vicarious liability framework means that corporate groups can structure their operations so as to place harmful activities in subsidiary entities that are legally distinct from the parent corporation, thereby insulating the real directing minds of the parent from criminal exposure.[39] This is precisely the corporate structure adopted by many multinational mining corporations operating in Zambia, where the operational subsidiary is incorporated domestically while the parent corporation and source of strategic direction remains domiciled in a foreign jurisdiction.

The limitations of domestic criminal law frameworks for holding multinational corporations accountable have prompted the examination of whether international law can provide alternative or supplementary mechanisms. Simons provides an analysis of international law's "invisible hand" and its implications for the future of corporate accountability violations.[40] Simons argues that while international law has progressively expanded its engagement with corporate conduct, it has failed to establish binding obligations of criminal liability that would operate upon multinational corporations.[41]

Adeyeye presents a complementary perspective, arguing for a "home country solution" to the regulatory gap created by the extraterritorial limitations of host state criminal law.[42] Adeyeye

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[37]ibid 860.
[38]ibid 863.
[39]Celia Wells, 'Corporate Criminal Liability: A Ten Year Review' [2014] *Criminal Law Review* 849, 866.
[40] Penelope Simons, 'The Value-Added of a Treaty to Regulate Transnational Corporations and Other Business Enterprises: Moving Forward Strategically' in Surya Deva and David Bilchitz (eds), *Building a Treaty on Business and Human Rights: Context and Contours* (Cambridge University Press 2017) 48, 55.
[41]Simons (n 15) 60.
[42] Adefolake O Adeyeye, *Corporate Social Responsibility of Multinational Corporations in Developing Countries: Perspectives on Anti-Corruption* (Cambridge University Press 2012) 143.

contends that home state jurisdiction offers the most defensible and practically achievable mechanism for closing this gap.[43] This argument has particular resonance in the Zambian context, where the dominant mining corporations are incorporated in other states that in principle possess the legislative competence to extend their criminal law extraterritorially.

Sliedregt examines the increasing recognition of corporate liability within international criminal law and argues that the traditional focus on individual responsibility is inadequate in addressing the role of multinational corporations in environmental harm. She highlights ongoing conceptual and doctrinal challenges, particularly in attributing intent and responsibility to corporate actors within existing legal frameworks.[44]

A recurrent theme in the scholarly literature is the relationship between corporate governance frameworks and the practical efficacy of criminal liability regimes. MacNeil and Esser argue that the shareholder primacy model, which continues to dominate the governance of English-listed corporations including those with significant mining operations in Zambia, systematically deprioritises the interests of workers, communities, and the environment in favour of financial returns to shareholders.[45] This governance orientation, they contend, creates powerful incentive structures that drive cost-cutting and risk-externalisation, behaviours most likely to give rise to criminal liability. MacNeil and Esser further argue that the adoption of a meaningful stakeholder model of governance that imposes legally enforceable duties on directors to have regard to the interests of employees, communities, and the environment would transform the internal incentive structures of corporations in ways that would reduce the incidence of the organisational failures that generate criminal liability.[46] However, they observe that governance reform alone cannot be a substitute for a robust criminal liability framework, since governance duties are characteristically enforced through civil mechanisms that do not carry the deterrent force of criminal prosecution.[47]

Adeyeye reinforces this analysis, arguing that the gap between formal legal accountability and social legitimacy expectations creates a "governance vacuum" that is exploited by corporate actors

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[43]Adeyeye (n 17) 149.
[44]Elies van Sliedregt, 'The Future of International Criminal Justice is Corporate' (2025) 23(1) *Journal of International Criminal Justice 17.*
[45]Iain MacNeil and Irene-Marié Esser, 'From a Financial to an Entity Model of ESG' (2022) 23(1) *European Business Organization Law Review* 9, 12–18.
[46]ibid 10.
[47]ibid 13.

to the detriment of host state communities.[48] The structural deficiencies of the identification doctrine have prompted sustained doctrinal innovation in English literature. Dsouza advances a reformulation he terms 'comprehensive identification', which proposes that all corporate officers and employees should be treated as embodying the corporation, when acting within their real or ostensible authority. He contends that their acts and mental states are directly attributable to the corporation without requiring identification of a directing mind at the apex of corporate governance. Dsouza further argues that the objections conventionally raised against the expansion of corporate criminal liability are unpersuasive when measured against the criminal law's general willingness to hold natural persons accountable for comparable acts, and that a corporation ought not to be permitted to disclaim responsibility for the criminal acts of its agents in a manner that would be unavailable to a natural person. This argument carries direct relevance to the Zambian context, where the structural opacity of multinational corporate groups enables precisely the kind of disclaimed responsibility that comprehensive identification would foreclose.

The legislative evolution of the identification doctrine in England and Wales has accelerated. Horder and Watts examine the scope of liability for failure to prevent economic crime in the period leading to the legislative reform subsequently enacted by the Economic Crime and Corporate Transparency Act 2023.[49] They argue that the failure-to-prevent model offers a theoretically coherent basis for imposing criminal accountability on large organisations whose governance structures prevent the identification of a single directing mind, while the defence of reasonable prevention procedures incentivises corporations to adopt compliance cultures that reduce the incidence of predicate offending. The relevance of this analysis for Zambia is significant. A failure to prevent framework modelled on the English approach could provide the statutory architecture necessary to hold multinational mining corporations accountable for offences committed through their Zambian subsidiaries.

Horder provides a persuasive assessment of the reformed identification doctrine in English law. Horder concludes that while the extension of corporate criminal liability to senior managers below directorial level is a welcome development, it was not sufficiently thought through at the legislative stage, and that the opportunity to make the failure to prevent serious crime a generally applicable

[48]Adeyeye (n 17) 149.
[49] Jeremy Horder and Gabriele Watts, 'The Scope of Liability for Failure to Prevent Economic Crime' (2021) *Criminal Law Review 851*.

principle of corporate criminal liability was missed.[50] Horder's critique demonstrates that even the most progressive legislative reform in a leading common law jurisdiction falls short of the comprehensive framework that the accountability of multinational corporations demands. For Zambia, this assessment reinforces the thesis proposition that the identification doctrine, even in its reformed English variant, cannot serve as an adequate model for a proposed Corporate Criminal Liability Act and that a more expansive statutory architecture is required.

The civil law dimension of corporate accountability for transnational harm has developed substantially through the litigation of cases involving UK-domiciled parent companies and their foreign subsidiaries operating in the extractive sector, most notably in the Vedanta Resources plc v Lungowe[51] case. Palombo situates these developments within the broader expansion of the duty of care in business and human rights litigation, tracing the gradual recognition by UK courts of parental responsibility for extraterritorial harm occasioned by subsidiaries in the global south, and examining the implications of climate change commitments as a potential basis for establishing duty of care in future litigation.[52] Although these developments are located in the civil rather than the criminal law, they illuminate the expanding juridical recognition of corporate accountability for transnational harm and provide a persuasive analogy for the criminal law reform arguments advanced in this thesis.

Palombo further argues that attempts by business and human rights litigators to hold UK-domiciled parent companies accountable for the extraterritorial human rights abuses of their subsidiaries and supply chains in the global south have attracted criticism from judges and scholars on anti-imperialist grounds.[53] She argues that this critique rests on three fallacies: the equal sovereign fallacy, which assumes that developing and developed states are equally able to hold multinationals accountable; the neutrality fallacy, which assumes that Western courts are no more or less appropriate forums for such claims than others; and the victim agency fallacy, which assumes that claimants from the global south lack genuine agency in bringing transnational

[50] Jeremy Horder, 'Corporate Criminal Liability under the Economic Crime and Corporate Transparency Act 2023' (2025) 45(1) *Legal Studies* 133.
[51] [2019] UKSC 20, [2020] AC 1045
[52] Dalia Palombo, 'Business, Human Rights and Climate Change: The Gradual Expansion of the Duty of Care' (2024) 44(4) *Oxford Journal of Legal Studies* 889.
[53] Dalia Palombo, 'Transnational Business and Human Rights Litigation: An Imperialist Project?' (2022) 22(2) *Human Rights Law Review*

claims.[54] This analysis directly addresses the conditions under which Zambian claimants have sought accountability from multinational mining corporations, and Palombo's dismantling of the anti-imperialist critique provides a principled foundation for the argument that domestic Zambian criminal law should be reformed to enable comparable accountability to be achieved through internal, rather than extraterritorial, mechanisms.

The literature reviewed in this work is broadly united in its critique of the identification doctrine as a mechanism for corporate criminal liability in the context of multinational enterprise. The key contributions of this literature to the present thesis are threefold. First, it provides the foundations for understanding why the identification doctrine fails to address the structural characteristics of multinational mining corporations operating in Zambia. Second, it surveys the legislative and judicial developments in English and related common law systems that have sought, with only limited success, to transcend the limitations of the identification doctrine. Third, it advances a range of reform proposals doctrinal, legislative, and systemic that inform the argument developed in the subsequent chapters of this thesis. The Zambian dimension of this problem, while not directly addressed by the reviewed literature, is illuminated by the broader analytical frameworks that the literature provides, and it is these frameworks that will be applied and contextualised in the chapters that follow.

1.11 ETHICAL ISSUES

No significant ethical concerns were encountered in this study, as the research was based primarily on secondary data obtained from publicly available sources. Nevertheless, the researcher ensured that all information was used responsibly and in accordance with accepted academic and ethical standards. Confidential or sensitive information that was encountered during the course of the study was treated with strict confidentiality to prevent any potential harm or prejudice to affected individuals or entities.

[54] ibid

1.12 CHAPTER OUTLINE

The study comprises of five chapters. Chapter one provides the introduction of the study and literature review. It also provides the statement of the problem, significance of the study, objectives of the study, and methodology of the study. Chapter two conceptualises the identification doctrine as it applies to corporate criminal liability. It also examines the nature and theoretical foundations of the doctrine, trace its historical development under common law. The chapter further explores the rationale behind the doctrine and assess its limitations in the context of modern corporate organisation. Chapter three analyses Zambia's legal framework in holding multinational mining corporations criminally accountable. The chapter further assess the adequacy of the frameworks and regulatory mechanisms available in Zambia. It also evaluates whether existing laws are sufficient to address the conduct of multinational corporations engaged in mining activities. Then, chapter four examines the challenges posed by complex corporate structures, jurisdictional barriers, and enforcement capacity in prosecuting multinational mining corporations. Thereafter, chapter five focuses on the findings and makes recommendations aimed at improving the laws governing corporate crime in the mining sector.

1.13 CONCLUSION

In conclusion, this study provides a comprehensive analysis of the identification doctrine as a means of holding multinational mining corporations criminally liable for their actions in Zambia. It recognises that while the doctrine, which attributes liability to the "directing mind and will" of senior management, has long been a cornerstone of corporate criminal law, its effectiveness is increasingly questioned in light of the complex structures and operational models that characterise multinational enterprises.

CHAPTER TWO: CONCEPTUALISING THE IDENTIFICATION DOCTRINE

2.1 Introduction

As established in Chapter One, a corporation is a distinct juristic legal person, separate from its members. The foundational question this chapter addresses is therefore how the law attributes a criminal act and the requisite mental element to such an artificial person. Within the common law tradition upon which Zambian criminal law is founded, the answer has been supplied primarily by the identification doctrine, also known as the alter ego doctrine or the directing mind and will theory. This doctrine, refined through common law decisions culminating in the House of Lords in *Tesco Supermarkets Ltd v Nattrass*[55] and subsequently moderated by the Privy Council in *Meridian Global Funds Management Asia Ltd v Securities Commission,*[56] has shaped corporate criminal liability across common law jurisdictions. The current versions of the identification doctrine have been criticised for suffering from several well documented shortcomings that render them inadequate for the realities of modern corporate enterprise.[57]

The chapter conceptualises the identification doctrine in its common law setting, providing the foundation upon which Chapter Three examines Zambia's specific statutory and regulatory framework. The chapter surveys the principal competing doctrines of corporate criminal liability before tracing the identification doctrine's historical development from its origins in the English wartime cases, through *Tesco v Nattrass,* to the Privy Council's contextual refinements in *Meridian* and the legislative responses prompted by the doctrine's failures. It then analyses the difficulties the doctrine encounters when applied to multinational corporate structures, and interrogates corporate accountability, individual fault, legal certainty, and freedom of enterprise. Understanding how "case law and legislative developments have responded to the challenges

[55][1972] AC 153 (HL).
[56][1995] 2 AC 500 (PC).
[57]Mark Dsouza, 'The Corporate Agent in Criminal Law – An Argument for Comprehensive Identification' (2020) 79(1) *Cambridge Law Journal* 91, 92.

posed by the identification doctrine" is essential to assessing whether existing legal frameworks provide genuine corporate accountability.[58]

2.2 Foundations of Corporate Criminal Liability

There are four principal models through which the criminal acts and mental states of natural persons may be attributed to a corporate body: the identification or alter ego theory; the vicarious liability theory; the aggregation theory; and the organisational or corporate culture model.[59] Each theory reflects a different understanding of what a corporation is and of the relationship between individual human agency and collective organisational action. A clear grasp of these competing models is essential, because the deficiencies of the identification doctrine are most sharply visible when set against what the alternatives offer and why they have or have not been adopted in common law jurisdictions.

The vicarious liability model, transplanted from the civil law of tort, attributes to the corporation the acts and mental states of any employee acting within the scope of their employment.[60] Vicarious liability captures the full range of conduct undertaken by corporate agents and is not confined to a narrow class of senior officers. However, it could be observed, the theory has been resisted in criminal law on the fundamental ground that it "violates the most deep-rooted traditions of criminal law" by severing the connection between criminal liability and personal blameworthiness.[61] To hold a corporation criminally liable for the act of any employee, regardless of whether the corporation's governance structures authorised, facilitated, or condoned that act, sits uneasily with the foundational principle that criminal punishment presupposes fault.[62]

The aggregation theory permits courts to combine the partial knowledge or negligence of several individuals within the corporation in order to satisfy the requisite mental element of an offence, even where no single individual possesses the complete mental state required.[63] This model has

[58]Yuyun Ma and Nicholas Ryder, 'Progress or Stagnation? The Evolution and Reform of Corporate Criminal Liability in the UK' (2025) 10 *Journal of Economic Criminology*
[59]Ma and Ryder (n 53) 3.
[60]ibid 4.
[61]Jeremy Horder, 'Corporate Criminal Liability under the Economic Crime and Corporate Transparency Act 2023' (2025) 45(1) Legal Studies 133, 134.
[62]ibid.
[63]Alexander Sarch, 'Collective Knowledge and the Limits of the Expanded Identification Doctrine' (2024) 44(4) *Oxford Journal of Legal Studies* 920, 922.

the merit of reflecting the reality that corporate decision making is frequently distributed across multiple actors, none of whom individually bears full responsibility. Its weakness lies in the risk of manufacturing criminal fault from a mosaic of individually innocent conduct.

The organisational or corporate culture model locates fault in the systemic attitudes, policies, and practices of the corporation as a whole.[64] Under this model, a corporation is criminally liable where its embedded culture: understood as the values, norms, and practices that govern conduct throughout the organisation tolerate the commission of the offence.[65] This approach is arguably the most intellectually coherent response to the realities of corporate wrongdoing, as it focuses attention where it belongs. That is, on the systemic conditions that enable misconduct, rather than on the fortuitous question of whether a particular senior individual can be shown to have had a guilty mind. It is against this theoretical backdrop that the identification doctrine the dominant model in Zambian and English law could be evaluated.

2.3.Why the Identification Doctrine Became Dominant

The identification doctrine achieved dominance in common law jurisdictions for reasons that are both conceptual and historical. Conceptually, it offers the most direct analogy between individual and corporate criminal liability. For example just as natural persons are liable for acts performed with their own hands and minds, the corporation is liable for the acts of those persons who, in the constitutional (articles of the company) sense, are the corporation itself.[66] This preserves the requirement of personal fault; the identification doctrine does not hold the corporation liable for the acts of mere agents or subordinates; it holds the corporation liable for its own acts, attributed through a legally coherent theory of identity.

Historically, the doctrine emerged in a period when corporate structures were relatively simple and the connection between ownership, control, and management was close and visible.[67] In that context, it was not unreasonable to suppose that the directing mind and will of the corporation could be identified with a senior management class of natural persons. That is the founding

[64]Dsouza (n 52) 93.
[65]ibid 94.
[66]Dsouza (n 52) 95.
[67]Alexander Sarch, 'Collective Knowledge and the Limits of the Expanded Identification Doctrine' (2024) 44(4) *Oxford Journal of Legal Studies* 920, 922.

directors, the managing director, the board whose fault could be established through ordinary evidential means. The doctrine's structural weaknesses only became apparent as corporations grew in size, complexity, and geographical reach.[68]

2.4 The Identification Doctrine: Origins and Doctrinal Development

In *DPP v Kent and Sussex Contractors Ltd,*[69] a company was convicted for making use of a document with intent to deceive under wartime regulations. The Divisional Court held that the intent of the company's transport manager could properly be attributed to the company, since in making the relevant return he was acting as the company and not merely as its agent.[70] In *R v ICR Haulage Ltd,*[71] the Court of Appeal confirmed that a company could be indicted for conspiracy to defraud, holding that the fraudulent mind of the managing director was, for all relevant purposes, the mind of the company.[72] These decisions marked a decisive step away from the earlier restrictive view and established the foundational premise of the identification doctrine: that the mental state of certain individuals within a corporation can, in law, be treated as the mental state of the corporation itself.

The conceptual architecture underlying this premise had been laid, in the civil context, by Viscount Haldane LC in *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd.*[73] Addressing whether a company could be said to have committed an act with its actual fault or privity under the Merchant Shipping Act 1894, his Lordship reasoned that a corporation must act through living persons and that, for the acts of those persons to constitute the acts of the company itself, there must be somebody who is not merely a servant or agent, but a person who is truly "the directing mind and will of the corporation, the very ego and centre of the personality of the corporation."[74] This metaphor of the directing mind and will became the conceptual cornerstone upon which the criminal law identification doctrine was subsequently constructed. The resonance of this logic in

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[68] Yuyun Ma and Nicholas Ryder, 'Progress or Stagnation? The Evolution and Reform of Corporate Criminal Liability in the UK' (2025) 10 *Journal of Economic Criminology*
[69][1944] KB 146 (KB) 155.
[70]ibid.
[71][1944] KB 551 (CA) 556.
[72]ibid.
[73][1915] AC 705 (HL) 713.
[74]ibid.

the criminal context was confirmed in *R v P&O European Ferries (Dover) Ltd,*[75] where Turner J accepted that the identification doctrine applied to prosecutions for manslaughter, though on the facts no conviction was secured because no individual directing mind could be identified as possessing the requisite fault.[76]

The identification doctrine received its most authoritative and enduring formulation in the decision of the House of Lords in *Tesco Supermarkets Ltd v Nattrass.*[77] The case arose from a prosecution of Tesco for applying a false trade description to goods by offering them at a price higher than that advertised. The House of Lords drew a sharp distinction between those individuals who constitute the directing mind and will of the corporation, that of the board of directors, the managing director, and superior officers to whom full authority has been delegated. And, those employees who are merely the hands through whom the company acts but who remain legally distinct from it. It was further emphasised that identification rests upon the company's internal constitutional structure: it is the memorandum and articles of association, board resolutions, and terms of delegation that determine who is invested with authority to act as the company itself. On the facts, the store manager was held not to constitute the directing mind of Tesco and the company successfully invoked the due diligence defence.

The decision in *Tesco v Nattrass*[78] established several propositions of enduring doctrinal significance. First, the identification doctrine is a matter of constitutional analysis, not a factual inquiry into who was responsible in a causal sense for the outcome: the question is not who caused the harm, but who, in the constitutional sense, is the company.[79] Second, the class of persons who may constitute the directing mind and will is narrow and defined by reference to constitutional authority rather than by proximity to the wrongful act. Third, and critically, rank-and-file employees, however senior their operational responsibilities will not ordinarily qualify as the directing mind and will of the company. This strict constitutional approach meant that only persons

[75][1991] 93 Cr App R 72
[76]ibid 83.
[77][1972] AC 153 (HL).
[78] Ibid.
[79]Law Commission, Corporate Criminal Liability: An Options Paper (June 2022) para 2.4.

with 'directing mind and will' status (company directors) were persons whose words and actions were identified with the company."[80]

The inflexibility of the *Tesco* formulation was substantially tempered by the Privy Council's decision in *Meridian Global Funds Management Asia Ltd v Securities Commission.*[81] Lord Hoffmann, delivering the opinion of the Board, rejected the assumption that the identification doctrine supplies a single, universally applicable rule for the attribution of natural persons' acts to a corporation. On his Lordship's analysis, the question of attribution is always a question of statutory construction: which acts, and whose state of mind, did the particular statutory provision in question intend should count as the act and state of mind of the company for its purposes?[82]

Lord Hoffmann identified a hierarchy of attribution rules. At the base are the company's own primary rules of attribution; those found in its constitution and in general company law which govern internal corporate matters. Above these are general rules of attribution derived from the law of agency. Where neither set provides a satisfactory answer, the courts must identify a special rule of attribution tailored to the particular substantive rule under consideration, having regard to its language, content, and purpose.[83] The result is that the appropriate person or persons whose knowledge and conduct is attributed to the company may vary depending upon the nature of the offence or liability in question.[84] The absurdity of the rigid *Tesco* formula when applied to offences whose regulatory purpose would be entirely defeated if attribution were confined to the most senior officers of the company.[85] Nevertheless, the doctrine retains the premise that a single natural person must be identified, that is the person who committed the offence with the requisite mental element, and that this individualist constraint continues to generate well documented shortcomings.[86]

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[80]Horder (n 56) 136.

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

[82]ibid 506 (Lord Hoffmann).

[83]ibid 507.

[84]ibid 511.

[85]Alexander Sarch, 'Collective Knowledge and the Limits of the Expanded Identification Doctrine' (2024) 44(4) *Oxford Journal of Legal Studies* 920, 922.

[86]Dsouza (n 52) 97.

The structural limitations of the identification doctrine in the context of serious corporate harm were starkly exposed in *R v Cotswold Geotechnical Holdings Ltd,*[87] the first successful corporate manslaughter prosecution in England and Wales under the common law. The prosecution succeeded only because the defendant was a very small company in which the directing mind could be identified with an individual whose gross negligence had caused a fatal accident. The case illustrated, by contrast, the near impossibility of securing a conviction against a large corporation with diffuse management structures, where decision-making authority is spread across multiple levels and departments. As could be noted, this asymmetry, by which small companies are far more readily prosecuted than large ones, is a structural defect in the identification model that reforms have sought, but not wholly succeeded, in addressing.[88]

In *R v Kite and OLL Ltd*[89] both a company and its directing mind were convicted of gross negligence manslaughter for the first time in English legal history. Following the deaths of four teenagers on a sea kayaking trip in March 1993, the court found that Peter Kite, managing director of OLL Ltd, had personally received and disregarded written warnings about dangerous safety deficiencies in the company's operations. The prosecution succeeded because OLL Ltd was a small enterprise in which the directing mind was unambiguously identifiable with a single individual, satisfying the structural precondition of the identification doctrine. The same feature characterised the later conviction in *R v Cotswold Geotechnical Holdings Ltd*[90]. Taken together, these cases confirm that the identification doctrine is structurally biased towards simple corporate forms: where organisational complexity diffuses decision-making authority across multiple layers of management, attribution of the requisite mental element to a single directing mind becomes increasingly difficult, if not impossible. This structural asymmetry is of direct relevance to the accountability deficit examined in this thesis, as multinational mining corporations operating in Zambia are precisely the kind of large, diffuse organisations that the identification model is least equipped to reach.

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[87][2011] EWCA Crim 1337 [42].

[88]Yuyun Ma and Nicholas Ryder, 'Progress or Stagnation? The Evolution and Reform of Corporate Criminal Liability in the UK' (2025) 10 *Journal of Economic Criminology*

[89] Crown Court, 1994

[90] [2011] EWCA Crim 1337

2.5 The Identification Doctrine and Multinational Corporate Structures

The identification doctrine was fashioned in an era of relatively simple corporate structures. Its application to modern multinational enterprises characterised by layered group structures, geographical dispersion of management, and complex patterns of delegation and oversight exposes its most serious structural weaknesses. The defining feature of a multinational corporations is the separation of legal personality across a network of subsidiary companies all ultimately controlled to varying degrees and through various mechanisms by a parent company incorporated elsewhere.[91] The economic unity of such a group is typically real and substantial. The legal separateness of each subsidiary is real and rigorously maintained by the corporations themselves for reasons including tax efficiency, regulatory arbitrage, and limitation of liability.

When criminal conduct occurs within the operations of a subsidiary the identification doctrine requires the prosecution to identify a natural person who both constitutes the directing mind and will. In practice, this confronts the prosecution with a structural dilemma.[92] If the decisions that caused the harm were made at the group level by executives of the parent company situated in another jurisdiction those individuals may not be considered the directing mind of the Zambian subsidiary and may be beyond the reach of Zambian criminal jurisdiction. If the decisions were ordinarily made at the subsidiary level, the relevant officers may truthfully respond that they were implementing group-wide policies or standards that they had no authority to deviate from. The doctrine thus generates an accountability vacuum, a structural space within multinational corporate organisations where criminal responsibility evaporates because it can be disaggregated between levels of authority that are legally separate.[93]

This accountability vacuum is not merely an abstract doctrinal concern. It has concrete and severe consequences for the communities and environments affected by corporate misconduct in host states. The sophisticated corporate structures can enable management to orchestrate harmful or risky practices whilst ensuring that no individual within the organisation possesses the complete

[91]Law Commission (n 70) para 2.12.

[92]Yuyun Ma and Nicholas Ryder, 'Progress or Stagnation? The Evolution and Reform of Corporate Criminal Liability in the UK' (2025) 10 *Journal of Economic Criminology*

[93]Dsouza (n 52) 106.

mental element required for criminal conviction.[94] The identification doctrine, in its current form, is structurally incapable of resolving this problem it requires proof of individual fault in a way that multinational corporate structures, by their very nature, render systematically difficult or impossible to establish.[95]

The structural challenge described above is compounded by the interaction between the identification doctrine and the foundational principle of corporate law that each company in a group is a legally separate person.[96] The consequence of this principle is that the identification doctrine, even if applied to its maximum extent within the Zambian subsidiary, cannot extend upwards to attribute liability to the parent company. The parent is a separate legal person, and its directors who may in practice exercise the real directing power over the subsidiary are not the directing mind of the subsidiary for the purposes of the doctrine.

The courts have been consistently reluctant to pierce the corporate veil that is, to disregard the separate legal personality of the subsidiary and treat the parent as if it were the operating entity except in the narrowest of circumstances. The exception to this principle is where the corporate veil is lifted, or pierced. In *Madison Investment, Property and Advisory Company Limited v Kanyinji*[97], it was held that the court can lift the veil where fraud or improper conduct is established.

Similarly, In *Adams v Cape Industries plc,*[98] the Court of Appeal confirmed that the corporate veil will be lifted only where the parent has been guilty of specific wrongdoing, such as using the subsidiary as a device to evade a pre-existing legal obligation, or where a specific statute requires it.[99] The Supreme Court in *Prest v Petrodel Resources Ltd*[100] further restricted the doctrine to cases where a person subject to an existing legal obligation deliberately interposes a company under his control to evade that obligation.[101] Courts have unanimously resisted the broader proposition that

[94]Alexander Sarch, 'Collective Knowledge and the Limits of the Expanded Identification Doctrine' (2024) 44(4) *Oxford Journal of Legal Studies* 926.
[95]ibid 927.
[96][1897] AC 22 (HL).
[97] [2018] ZMSC 348
[98][1990] Ch 433 (CA) 536.
[99]ibid.
[100][2013] UKSC 34, [2013] 2 AC 415
[101]ibid [35].

the mere fact of a parent's ownership and control of a subsidiary justifies treating them as a single entity for the purposes of criminal liability.

It is important to acknowledge that civil law has demonstrated a greater willingness than the criminal law to develop doctrines that recognise the practical unity of multinational corporate groups. In *Chandler v Cape plc,*[102] the Court of Appeal recognised that a parent company may owe a direct duty of care in negligence to the employees of a subsidiary where the parent has superior knowledge about the relevant health and safety matters, where the subsidiary's system of work is unsafe, and where the parent knew or ought to have foreseen that the subsidiary or its employees would rely on the parent using that knowledge for their protection.[103] In *Vedanta Resources plc v Lungowe,*[104] the UK Supreme Court, when considering a case which happened in Zambia, confirmed that a parent company's imposition of group-wide environmental and operational policies on its subsidiaries may give rise to a duty of care to those affected by those subsidiaries' operations, and that jurisdiction over such claims against a UK parent may be established even where the harm occurs in a third country.[105] In *Okpabi v Royal Dutch Shell plc,*[106] the Supreme Court further confirmed that it is the substance of the relationship between parent and subsidiary, not its legal form, that determines whether a duty of care arises.

Criminal liability continues to require proof, beyond reasonable doubt, that the requisite mental element was possessed by a natural person who constitutes the directing mind and will of the corporate defendant. The civil law developments therefore ameliorate, but do not resolve, the structural inadequacy of the identification doctrine in the criminal context.[107]

2.6 Competing Interests Underlying the Identification Doctrine

The identification doctrine does not exist in a vacuum: it reflects, and is shaped by, a set of fundamental and competing interests that any system of corporate criminal liability must seek to balance. A clear understanding of these competing interests is essential both to evaluating the

[102][2012] EWCA Civ 525, [2012] 1 WLR 3111
[103]ibid [80].
[104][2019] UKSC 20, [2020] AC 1045 .
[105]ibid [83].
[106][2021] UKSC 3, [2021] 1 WLR 1294
[107]ibid 906.

adequacy of the doctrine as it stands and to assessing the reform considerations that Chapter Three addresses in the Zambian context.

The first set of interests favours broad and effective corporate criminal liability. These include the interest of the state in enforcing the criminal law and maintaining the rule of law as a constraint upon all actors, natural and corporate alike; the interest of affected communities and individuals in obtaining accountability for harm caused by corporate conduct; the public interest in deterring corporate misconduct through the threat of criminal sanction; and the interest of society in ensuring that the economic benefits generated by corporate activity are not purchased at the cost of unpunished harm to persons, communities, and environments. These interests are particularly acute in the business and human rights context, where communities in host states often in developing countries bear the heaviest burden of corporate misconduct whilst possessing the fewest legal resources with which to seek redress.[108] In the multinational mining context that this thesis addresses, these interests are correspondingly acute.

The second set of interests pulls in the opposite direction. These include the principle of individual criminal responsibility, which demands that criminal liability be grounded in personal fault and resists the attribution of liability without genuine culpability. The principle of legal certainty, which requires that the criteria for criminal liability be sufficiently clear and predictable to enable corporations to structure their affairs in compliance with the law; and the principle of freedom of enterprise, which militates against the excessive criminalisation of commercial activity. The conflict between the "individualist constraint" the insistence that a single natural person must possess the full mental element for corporate criminal liability to arise and the practical needs of a regulatory system that must be capable of reaching diffuse and systemic corporate wrongdoing.[109] The core challenge of the identification doctrine is the need to develop a theoretically and practical framework that achieves corporate accountability without abandoning coherent principles of criminal fault.[110]

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[108]Elies van Sliedregt, 'The Future of International Criminal Justice is Corporate' (2025) 23(1) *Journal of International Criminal Justice* 17, 18.
[109]Alexander Sarch, 'Collective Knowledge and the Limits of the Expanded Identification Doctrine' (2024) 44(4) *Oxford Journal of Legal Studies* (n 33) 921.
[110]Jeremy Horder, 'Corporate Criminal Liability under the Economic Crime and Corporate Transparency Act 2023' (2025) 45(1) Legal Studies 133.

The identification doctrine's particular resolution of these competing interests by requiring proof of fault in a narrow class of senior constitutional officers reflects a deliberate prioritisation of the individual fault principle and of legal certainty over breadth of coverage. In the relatively simple corporate world in which the doctrine was developed, this resolution was defensible. In the world of modern multinational enterprise, however, it has produced a systematic imbalance: the interests of corporate accountability are regularly subordinated, not because a principled and considered judgment has been made that this is the correct balance, but because the structural features of multinational corporations render the doctrine's fault requirements effectively impossible to satisfy.[111]

2.7 Conclusion

This chapter has provided the conceptual and doctrinal foundation necessary for the examination of Zambia's statutory and regulatory framework in Chapter Three. It has surveyed the principal competing theories of corporate criminal liability, explaining why the identification doctrine achieved dominance in common law jurisdictions and what structural assumptions underpin its operation. The chapter has further demonstrated that the identification doctrine has a responsibility gap which is compounded, in the multinational context, by the doctrines of separate legal personality and the corporate veil, which insulate parent companies from liability for the conduct of their subsidiaries even where the parent's policies and oversight mechanisms are the proximate cause of the harm. The identification doctrine, whilst performing an important historical function in bridging the gap between individual fault and corporate legal responsibility, is characterised by a structural rigidity that renders it ill-suited to the realities of large, hierarchically complex multinational enterprises. In Chapter Three, the extent to which Zambia's existing statutes and regulatory instruments have reproduced or ameliorated those inadequacies will be discussed.

[111] ibid 148.

CHAPTER THREE: ZAMBIA'S STATUTORY AND REGULATORY FRAMEWORK ON CORPORATE CRIMINAL LIABILITY UNDER THE IDENTIFICATION DOCTRINE

3.1 Introduction

This chapter analyses Zambia's legal framework for holding multinational mining corporations criminally accountable, assesses the adequacy of the regulatory mechanisms available, and evaluates whether existing laws are sufficient to address the criminal conduct of multinational corporations engaged in mining activities. The chapter examines the five principal legislative instruments applicable to the mining sector: *the Companies Act*[112], *the Minerals Regulation Commission Act*[113] (the 'MRC Act'), *the Environmental Management Act*[114] (the 'EMA'), the *Occupational Health and Safety Act*[115] (the 'OHSA'), and *the Penal Code*[116], together with supporting legislation including *the Anti-Corruption Act*[117]and the *Financial Intelligence Centre Act*[118] The analysis proceeds through the lens of the identification doctrine, which constitutes the operative legal mechanism through which Zambia's statute-based offences are attributed to corporate entities.

The identification doctrine requires that the criminal act and mental state of a natural person who is the directing mind and will of the corporation be attributed to the corporation itself. This proposition raises practical difficulties in the multinational mining context, where corporate decision-making is diffused across foreign parent entities, locally incorporated subsidiaries, and layers of intermediate holding companies. The key argument of this chapter is that Zambia's

[112] Act No. 10 of 2017
[113] Act No 14 of 2024
[114] Act No 12 of 2011
[115] Act No 16 of 2025
[116] Chapter 87 of the Laws of Zambia
[117] Act No 3 of 2012
[118] No 46 of 2010.

regulatory framework creates an architecture of corporate criminal liability that is incomplete and operationally underpowered, generating a structural accountability gap that multinational mining corporations are structurally positioned to exploit.

3.2 The Zambian Legal Framework Governing Mining Corporations

The Penal Code[119] is the foundational statute of Zambia's criminal law. The primary statutory expression of corporate criminal capacity within the Code provides that a person convicted of a felony, other than manslaughter, may be sentenced to pay a fine in addition to imprisonment, with the further proviso that where such person is a corporation, the corporation may be sentenced to a fine *instead of* imprisonment.[120] The combined effect of these provisions is that the Penal Code impliedly recognises the criminal capacity of corporations by substituting a financial sanction for an impossible custodial one, without ever expressly establishing how liability is to be attributed. The questions of how a corporation's *mens rea* and *actus reus* are to be established, and which natural person's conduct and intention are to be treated as its own, are left entirely to the common law identification doctrine. A further and more fundamental structural deficiency is the complete absence from the Penal Code of offences specifically tailored to corporate misconduct in extractive industries. Prosecutors pursuing a multinational mining corporation must therefore route liability through general offences. As Chapter Four of this thesis demonstrates, this two-stage exercise imposes an evidentiary burden that has proven practically insurmountable, particularly where decision-making authority is fragmented across a transnational corporate structure and where

[119] Chapter 87 of the Laws of Zambia
[120]The Penal Code Chapter 87 of the Laws of Zambia. Section 26(3)-(4).

Zambia's institutional prosecutorial capacity is constrained by limited resources and restricted access to extra-territorial evidence.

The Companies Act[121] (CA) is the principal legislation governing corporations in Zambia. Three provisions of the CA are of direct relevance to the identification doctrine's operation in Zambia. First, and most significantly, the Act's own corporate attribution mechanism, provides that where an offence under the Act is committed by a body corporate or unincorporated body, the director, manager or shareholder suspected of committing that offence is liable to the penalty specified for the offence, unless that individual proves that the act was done without their knowledge, consent or connivance, or that they took reasonable steps to prevent it.[122] This 'knowledge, consent or connivance' formula is the same language reproduced across Zambia's sector-specific statutes, including the MRC Act, the ACA, and the OHSA. The Financial Intelligence Centre[123] provides that where an offence under that Act is committed by a body corporate, every director or manager is liable as if they had personally committed the offence, unless they prove absence of knowledge, consent or connivance. The pervasiveness of this formula across Zambia's statutory landscape confirms that the individual-first attribution model is not a drafting anomaly confined to the mining sector but a systemic feature of Zambian corporate criminal law. Critically, the CA imposes liability on the individual officer, not on the corporation itself as a primary criminal offender.[124] The corporation is the vehicle through which the offence is committed; criminal liability flows derivatively to the human actor. This individual-first model confirms that the CA, as the foundational statute of corporate law in Zambia, reproduces rather than resolves the structural

[121] Act No 10 of 2017
[122] Companies Act No 10 of 2017. Section 371.
[123] Financial Intelligence Centre Act No 46 of 2010. Section 52.
[124] ibid

limitation of the identification doctrine. It provides no mechanism for aggregating knowledge across multiple officers, no provision addressing the position of a foreign parent company, and no basis for attributing systemic corporate fault directly to the body corporate.

Secondly, The Act creates a criminal offence for breach of director duties, but it does not rehabilitate the identification doctrine's structural limitation. The Act targets the natural person (*a director*) not the body corporate. No mechanism exists to attribute that director's criminal breach upward to the corporation as a primary offender.[125] Furthermore, the duties whose breach is criminalised run exclusively to the company and its members, not to third parties harmed by corporate conduct. This therefore becomes a personal enforcement mechanism that leaves the attribution question entirely untouched. It confirms rather than resolves the pattern identified throughout this chapter. The governance architecture governing directors' duties under the Companies Act is not designed to generate the form of corporate criminal accountability that the identification doctrine demands. That is, the attribution of a directing mind's culpable state to the corporation as a primary offender for substantive criminal wrongs

Thirdly, The Act's primary liability mechanism for director wrongdoing. Where a director wilfully commits a breach of any duty or responsibility specified in the Act, that director is liable to compensate the company for any loss suffered, may be removed from the board, and must account for any profit made as a result of the breach.[126] This is civil liability, not criminal liability, and it runs to the company, not to affected third parties. The Companies Act's primary enforcement mechanism for director misconduct is therefore civil and compensatory, not criminal and punitive.

[125]Companies Act No 10 of 2017. Sections 105–106.
[126]Companies Act No 10 of 2017. Section 120 (1).

The *Minerals Regulation Commission Act*[127] (the 'MRC Act') is the primary legislation governing the mining sector in Zambia. The MRC Act repealed and replaced *the Mines and Minerals Development Act*[128] consolidating regulatory oversight into a single autonomous body, the Minerals Regulation Commission (the 'Commission' or 'MRC').[129] The Commission is vested with broad regulatory authority, including powers to grant, suspend, and revoke mining rights; to audit environmental performance in collaboration with ZEMA; to conduct inspections and investigations on safety, health, and environmental matters; and to prevent illegal mining activities.[130]

The MRC Act's significance for corporate criminal liability lies in several interconnected provisions. First, the Act creates specific criminal offences applicable to bodies corporate. Where a mining company undertakes exploration, mining, or mineral processing activities without obtaining the required environmental impact assessment approval from ZEMA, it commits an offence and is liable, upon conviction, to a fine of five million penalty units in the case of a body corporate.[131] This express differentiation between the penalty applicable to natural persons and that applicable to bodies corporate represents a legislative recognition of corporate criminal capacity, and constitutes a departure from the Penal Code's generic approach of substituting fines for imprisonment in the case of convicted corporations.

In a departure from the approach of the repealed 2015 Act, which confined liability primarily to directors and management without expressly extending accountability to shareholders, the MRC Act expressly holds directors, managers, shareholders, and partners liable for corporate offences

[127] Act No 14 of 2024
[128] Act No 11 of 2015
[129]Act No 14 of 2024
[130]Minerals Regulation Commission Act No 14 of 2024. Section 6(g)–(j).
[131]Minerals Regulation Commission Act No 14 of 2024. Section 10(3).

committed with their knowledge or consent.[132] The requirement that the offence be committed 'with the knowledge or consent' of the individual officer is similar in certain respects to the *mens rea* requirement underlying the doctrine. However, the identification doctrine confuses the question of legal attribution with the deeper question of corporate culpability, producing a framework that is neither satisfying nor practically effective, particularly in the mining sector where decisions producing fatal or environmentally catastrophic outcomes are typically the product of complex organisational processes rather than the individual decision of any single senior officer.[133] The provision does not resolve the foundational evidentiary challenge of the identification doctrine in the multinational context. It does not define who qualifies as the corporation's directing mind, does not provide for the aggregation of knowledge across multiple officers, and does not address the situation where the culpable decision was made at the level of a foreign parent company rather than the local subsidiary. These omissions are structurally significant: they mean that the provision, while progressive on paper, is operationally constrained by the same limitations as the common law doctrine it purports to extend.[134] It is further observed that the Act's enforcement mechanism is predominantly administrative rather than criminal. The Commission's primary powers are to grant, suspend, and revoke mineral rights, to audit, and to issue compliance orders and refer matters for further action. The Act contains no express provision empowering or requiring the Commission to refer matters to the National Prosecution Authority.

The *Environmental Management Act*[135] (the 'EMA') constitutes the primary legislative instrument governing environmental protection and management in Zambia. It establishes the Zambia

[132] Minerals Regulation Commission Act No 14 of 2024. Section 88.
[133] Jonathan Clough, 'Corporations and the Criminal Law: An Enduring Controversy' (2017) 41(2) *Melbourne University Law Review* 771, 785.
[134]Liz Campbell, 'Corporate Liability and the Criminalisation of Failure' (2018) 12(2) *Law and Financial Markets Review 57, 62;*.
[135] Act No 12 of 2011

Environmental Management Agency (ZEMA) and provides a regulatory framework encompassing pollution control, environmental impact assessment, enforcement, and sustainable resource management. In the mining sector, the EMA operates as the principal statutory basis for environmental liability and enforcement action.

ZEMA is empowered to issue environmental restoration orders where the discharge of a contaminant or pollutant poses a risk to human health, property, or the environment.[136] Failure to comply with a restoration order constitutes a criminal offence attracting a fine or imprisonment for a term not exceeding three years, with continued non-compliance attracting further daily penalties.[137]

The Zambian courts have applied the EMA in the mining context, though the record discloses a persistent gap between formal liability and effective criminal accountability. In *Nyasulu and Others v Konkola Copper Mines Plc and Others*,[138] the Lusaka High Court found that Konkola Copper Mines Plc (KCM) had disregarded the EMA in discharging acidic effluent into water sources serving more than 2,000 Chingola residents. The Court observed that KCM had continued copper production while community water supplies were contaminated, and expressly noted that ZEMA's predecessor, the Environmental Council of Zambia (ECZ), was dealing with a 'truant investor' and that it was not too late to prosecute KCM to set an example to other mining companies.[139] That judicial observation is revelatory of the enforcement gap, notwithstanding compelling evidence of corporate environmental wrongdoing, criminal prosecution of the mining company did not follow. On appeal, the Supreme Court upheld the finding of liability but reduced the quantum of damages, compelling affected communities to seek substantive justice in the English courts. The environmental criminal law framework, while formally applicable, proved inadequate to deliver accountability.

The *Environmental Management (Amendment)*[140] introduced targeted reforms to the EMA's enforcement architecture, including higher penalty thresholds for specified offences, mandatory minimum penalties, and expanded provisions relating to environmental assessments and climate-

[136]Environmental Management Act No 12 of 2011. Section 105.
[137]EMA s 105(4)
[138][2011] ZMHC 114
[139]ibid.
[140] Act No 8 of 2023

related regulatory functions. Whether these amendments will prove sufficient to address the structural enforcement gap exposed by *Nyasulu* remains to be seen.

The Occupational Health and Safety Act[141] (the 'OHSA') provides a framework for workplace health and safety, including in the mining sector. The Act creates criminal offences carrying significant penalties. A person who contravenes the obligations applicable to manufacturers, suppliers, and importers of articles or substances for use at work is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years.[142] Contravention of the employer's general duty of care obligation attracts a fine.

Like the EMA, the OHSA does not contain a corporate attribution provision. The Act's offences are drafted in terms of 'a person', which, under the Interpretation and General Provisions Act[143], includes a body corporate. However, the mechanism through which the body corporate's criminal liability is established remains the common law identification doctrine, with all its attendant limitations in the multinational context. Workplace accidents and safety failures in large mining operations characteristically result from systemic, organisational failures, inadequate safety cultures, cost-cutting investment decisions, deferred maintenance programmes, rather than from the deliberate or negligent act of a single identifiable directing mind. The OHSA's reliance on the identification doctrine to attribute such systemic failures to the corporation is structurally inadequate. Notably, the 2025 Act introduces, for the first time, an express provision addressing the liability of principal officers of bodies corporate: where an offence under the Act is committed by a body corporate with the knowledge, consent or connivance of a director, manager, shareholder

[141] Act No 16 of 2025
[142]Occupational Health and Safety Act No 16 of 2025. Section 18(7).
[143] Chapter 2 of the Laws of Zambia

or partner, that individual is personally liable to the penalty specified for the offence.[144] The Act, partially addresses the gap left by the identification doctrine by piercing the corporate veil at the level of individual officers. However, it does not resolve the doctrine's core deficiency in attributing systemic or organisational fault to the corporation itself where no single officer possesses the requisite directing mind and will. Where the *mens rea* of a criminal offence is disaggregated across multiple persons within a corporation, none of whom individually possesses the complete mental element, the individualist premise of the identification doctrine cannot adequately respond to the corporate threat.[145] This structural inadequacy is a recurring deficiency across common law jurisdictions that rely on the identification principle as their primary corporate attribution mechanism.[146]

The Anti-Corruption Act[147] (the 'ACA') constitutes the primary legislation for combating corruption in Zambia and represents, alongside the Penal Code, a central pillar of the regulatory framework within which multinational mining corporations operate. The Act was enacted to give domestic effect to Zambia's obligations under the United Nations Convention Against Corruption, the African Union Convention on Preventing and Combating Corruption, and the Southern African Development Community Protocol Against Corruption.[148] The ACA replaced and substantially expanded the Anti-Corruption Act 2010, and its interpretive and structural provisions bear careful scrutiny in the context of corporate criminal liability.

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[144] Occupational Health and Safety Act No 16 of 2025. Section 49

[145] Alexander Sarch, 'Collective Knowledge and the Limits of the Expanded Identification Doctrine' (2024) 44(4) *Oxford Journal of Legal Studies* 920, 921

[146] Ambareen Beebeejaun and Raahil Mandarun, 'Corporate Criminal Liability and the Identification Principle: A Critical and Comparative Analysis across Mauritius, US, UK and Canada' (2024) 32(3) *Journal of Financial Crime* 572, 578

[147] Act No 3 of 2012

[148] Anti-Corruption Act No 3 of 2012 Preamble.

The ACA criminalises corrupt solicitation, acceptance, and receipt of gratification by a public officer in connection with any matter with which a public body is concerned, further, liability also extends to persons acting in connection with any private body.[149] The term 'private body' includes any company, partnership, club, or organisation which is not a public body, thereby encompassing the corporate subsidiaries of multinational mining groups incorporated in Zambia. The definition of 'agent' extends to any officer of a public or private body who acts for or on behalf of that body, which captures the senior management of such subsidiaries who act on behalf of the corporate entity.[150] Where an offence under the Act is committed by a body corporate or unincorporate body, every director or manager of that body shall be liable upon conviction as if the director or manager had personally committed the offence, unless it is proved to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent, or connivance of the director or manager, or that the director or manager took reasonable steps to prevent the commission of the offence.[151] It is important to note that this provision operates as a form of derivative or accessorial liability for corporate officers rather than as a direct mechanism for establishing the primary criminal liability of the corporation itself. The provision does not resolve the attribution question. It addresses the liability of natural persons within a corporate structure, but it leaves open the prior question of whether the corporation as a legal entity itself is guilty of the underlying offence.

[149]Anti-Corruption Act No 3 of 2012. Sections 19(1), 20(1).

[150]ibid s 3

[151]Anti-Corruption Act No 3 of 2012. Section 50.

The jurisdictional reach of the ACA is more expansive than that of the Penal Code. The ACA has effect both within and outside Zambia. Thus, any offence committed by any person outside Zambia may be dealt with as if it had been committed within the Republic. [152] In principle, this provision could ground the prosecution of a foreign parent company whose directors or senior officers authorise or condone corrupt conduct in Zambia's mining sector from abroad. However, the practical utility of these provisions for pursuing foreign corporate actors may be severely curtailed by the absence of bilateral extradition treaties between Zambia and many of the home jurisdictions of multinational mining companies, as well as by the institutional constraints on the capacity of the Anti-Corruption Commission and the Director of Public Prosecutions to conduct complex transnational investigations.

Notwithstanding these features, the ACA's corporate liability framework is subject to the same fundamental limitation that characterises the broader Zambian statutory landscape: it does not specify the mechanism of corporate attribution. The ACA addresses the derivative liability of directors and managers but is silent on how the criminal act and mental element of a natural person are to be attributed to the corporation as principal offender.[153] In the absence of a legislative attribution rule, Zambian courts and prosecutors must resort to the common law identification doctrine as received from the English authorities, most notably the foundational statement of Lord Reid in *Tesco Supermarkets Ltd v Nattrass*[154] to the effect that a company acts through persons who represent its directing mind and will and who control what it does.[155] The consequences of this reliance are examined in detail in Chapter Four, but it is sufficient to note here that the

[152]ibid Section 91(1).
[153] Anti-Corruption Act No 3 of 2012. Section 50.
[154] [1995] 2 AC 500 (PC).
[155][1972] AC 153 (HL) 170.

restrictive scope of the identification doctrine creates acute difficulties in the multinational mining context, where operational and governance structures are typically designed such that decision-making authority is diffused across multiple tiers of management and across multiple jurisdictions, rendering it practically impossible to identify a single directing mind whose conduct can be attributed to the corporation.

3.3 Overall Assessment of Zambia's Legislative Framework

The cumulative assessment of Zambia's legislative framework: *the Companies Act*[156], *the Minerals Regulation Commission Act*[157] (the 'MRC Act'), *the Environmental Management Act*[158] (the 'EMA'), the *Occupational Health and Safety Act*[159] (the 'OHSA'), and *the Penal Code*[160], together with supporting legislation including *the Anti-Corruption Act*[161] reveals a framework that is substantively inadequate to hold multinational mining corporations criminally accountable under the identification doctrine. Four systemic deficiencies define the framework's inadequacy.

First, the legislation cited above do not have purpose-built corporate criminal attribution mechanism. Each piece of legislation recognises corporations as capable of criminal liability but leaves the mechanism of attribution to the common law identification doctrine and the general provisions of the Penal Code. The identification doctrine's requirement that a single natural person constitute the directing mind and will of the corporation and possess the relevant criminal mental state is structurally ill-suited to the diffuse, multilayered governance structures of multinational mining corporations. The identification doctrine operates in an environment characterised by a

[156] Act No. 10 of 2017
[157] Act No 14 of 2024
[158] Act No 12 of 2011
[159] Act No 16 of 2025
[160] Chapter 87 of the Laws of Zambia
[161] Act No 3 of 2012

'structural accountability deficit', in which the formal legal persons amenable to prosecution are frequently not those in whose interests the culpable decisions were made, and this deficit is compounded in the Zambian context by the limitations of domestic regulatory capacity and the jurisdictional immunities effectively enjoyed by parent corporations incorporated abroad.[162]

Secondly, the legislative framework does not address the distinction between a locally incorporated subsidiary and its foreign parent. The cited legislation impose liability on the entity that directly committed the offending act within Zambia. None addresses how criminal liability may be attributed to a foreign parent whose policy, governance, or resource allocation decisions were causally responsible for the offence committed by the subsidiary. The criminal law's conservatism in relation to attribution rules means that corporate groups can structure their operations so as to place culpable activities in subsidiary entities that are legally distinct from the parent corporation, thereby insulating the real directing minds from criminal exposure. This structural omission creates a categorical accountability gap for multinational corporate groups.[163]

Thirdly, the criminal sentencing options available under the legislative framework are inadequate to deter large multinational corporations. Financial penalties are manageable business costs for mining multinationals operating multi-billion-dollar enterprises. The framework does not provide for alternative corporate sanctions such as deferred prosecution agreements, mandatory compliance programmes, enhanced remediation orders, or structural injunctions that have proved effective in other jurisdictions. The gap between formal legal accountability and social legitimacy expectations creates a 'governance vacuum' that is exploited by corporate actors to the detriment

[162] Mark Dsouza, 'The Corporate Agent in Criminal Law – An Argument for Comprehensive Identification' (2020) 79(1) *Cambridge Law Journal* 91, 95.
[163]Matthew Dyson, *Explaining Tort and Crime* (Cambridge University Press 2022) 189–91.

of host state communities, and this vacuum is clearly visible in the absence of calibrated corporate penalties capable of deterring multinationals operating in the mining sector.[164]

Fourthly, the fundamental question of whether the identification doctrine has correctly identified the responsible party in complex corporate structures remains unresolved across the continent. While there has been a notable trend towards expanding host state jurisdiction in matters of environmental crime, the doctrinal tools available to host states including the identification doctrine remain fundamentally ill-adapted to the task of prosecuting the conduct of multinational corporate groups. Zambia's framework does not engage with this critique: it proceeds on the assumption that the identification doctrine adequately resolves the attribution question and that its application to multinational corporations is merely an evidentiary rather than a structural challenge. This assumption is supported by the near-total absence of successful criminal prosecutions of multinational mining corporations in Zambia's post-independence history. The existing legislation is inadequate to curb corporate crime and deter would-be corporate offenders.[165]

3.4 Conclusion

This chapter examined Zambia's statutory framework for corporate criminal liability in the mining sector. The MRC Act 2024, EMA 2011, OHSA 2025, Penal Code Chapter 87, and ACA 2012 impose criminal obligations on corporations but provide no express attribution mechanism. In the absence of legislative guidance, courts default to the identification doctrine derived from *Tesco Supermarkets Ltd v Nattrass*[166], which is structurally inadequate for multinational corporate

[164]Adefolake O Adeyeye, *Corporate Social Responsibility of Multinational Corporations in Developing Countries: Perspectives on Anti-Corruption* (Cambridge University Press 2012) 143–49.
[165]Bwalya J, 'An Analysis of Legislation on Corporate Criminalisation and Criminal Sanctions in Zambia' (LLM dissertation, University of Zambia 2019) iv.
[166][1972] AC 153

structures where operational control is exercised by a foreign parent outside Zambian jurisdiction. The litigation in *Vedanta Resources Plc v Lungowe*[167] and *Okpabi v Royal Dutch Shell plc*[168] demonstrated that affected communities were compelled to seek civil remedies abroad precisely because domestic criminal enforcement mechanisms are inadequate. Available corporate sanctions, primarily fines, and licence revocation, are neither calibrated to the scale of multinational operations nor capable of reaching the parent company.

[167] [2019] UKSC 20
[168] [2021] UKSC 3

CHAPTER FOUR: CHALLENGES IN PROSECUTING MULTINATIONAL MINING CORPORATIONS IN ZAMBIA

4.1 Introduction

This chapter examines the challenges that arise when prosecuting authorities in Zambia attempt to translate the formal legal framework into actual criminal accountability for multinational mining corporations. The challenges include complex corporate structures, the barriers created by jurisdictional limitations, and the constraints on enforcement capacity. These three categories of challenge operate at distinct legal levels and are mutually reinforcing. The complexity of multinational corporate architecture constitutes a substantive challenge as it defeats the identification doctrine's attribution requirement. Jurisdictional barriers constitute a procedural challenge, even where a directing mind capable of satisfying the attribution requirement can be identified. Zambia's courts lack the jurisdictional competence to bring that person before them, and the procedural mechanisms available to extend reach across borders are inadequate. Enforcement capacity limitations constitute an evidential challenge. Even where substantive attribution is theoretically possible and procedural jurisdiction could in principle be exercised, the prosecuting and regulatory authorities lack the investigative resources and international cooperation mechanisms necessary to gather and adduce the evidence required to establish liability to the criminal standard.

The chapter argues that the combined effect of these three categories of challenges is structural impunity. A systemic condition in which multinational mining corporations operating in Zambia can engage in criminal conduct without a realistic prospect of criminal prosecution, not primarily because the law is insufficiently clear, but because the institutional and structural conditions necessary for effective prosecution are absent. This conclusion is supported by the practical record of corporate accountability in Zambia's mining sector, in which the formal availability of criminal

sanctions has not translated into any major prosecution of multinational mining corporation in Zambia.

Three specific legal gaps compound these structural challenges. First, the Zambian legislative framework contains no mechanism for aggregating corporate knowledge: neither *the Penal Code*[169] nor the sector-specific legislation examined in Chapter Three provide for the attribution of liability where criminal *mens rea* is distributed across multiple officers rather than concentrated in a single directing mind. This gap directly enables the diffusion of fault strategy deployed by large multinational corporate groups. Second, there is no parent company criminal liability regime in Zambian law: *the Minerals Regulation Commission Act*[170] extends liability to the director, manager, shareholder or partner of a body corporate or unincorporate body only where the offence was committed with their knowledge, consent, or connivance, a standard confined to proof of positive knowledge of or participation in the specific criminal act rather than structural or systemic control. The Anti Corruption Act[171]adopts a structurally identical approach for corruption offences. Third, Zambia lacks a failure-to-prevent offence equivalent to that introduced by the Economic Crime and Corporate Transparency Act 2023 (UK) in relation to fraud and other economic crimes, which would shift the evidential burden by requiring corporations to demonstrate adequate procedures rather than requiring prosecutors to identify a culpable individual.[172] These three legal gaps are identified and analysed in this chapter as the doctrinal dimensions of structural impunity,

[169] Chapter 87 of the Laws of Zambia
[170] Act No 14 of 2024. Section 88.
[171] Act No 3 of 2012. Section 50
[172]Jeremy Horder, 'Corporate Criminal Liability under the Economic Crime and Corporate Transparency Act 2023' (2025) 45(1) *Legal Studies* 133–136.

alongside the institutional and structural challenges that prevent prosecutors from using the existing framework to its full, if limited, potential.

4.2 Challenges in Prosecuting Multinational Mining Corporations in Zambia

Multinational mining corporations operating in Zambia typically do not operate as single legal entities. They are structured as corporate groups comprising a parent company incorporated in a foreign jurisdiction frequently in a jurisdiction with favourable tax or regulatory regimes. One or more locally incorporated subsidiaries or joint venture entities that hold the Zambian mining licences, employ the Zambian workforce, and directly conduct the physical operations of mining. Intermediate holding companies, special purpose vehicles, and offshore financing entities may further complicate the ownership and control structure.

This corporate architecture has a profound effect on the operation of the identification doctrine. The bedrock principle of corporate law is that corporations within a group are separate legal entities with distinct legal personalities and, as a consequence, have separate and distinct liabilities as held in *Salomon v A Salomon and Co Ltd.*[173] In the corporate group context, the parent company is ordinarily not liable for the legal infractions of its subsidiaries, and the locally incorporated subsidiary is not liable for the decisions of its foreign parent. The corporate veil, which divides the separate legal personalities of parent and subsidiary, is a structural feature that multinational corporations can exploit to insulate decision-making authority from legal accountability in the jurisdiction where harm occurs.[174]

[173] [1897] AC 22 (HL)
[174] Vivian Grosswald Curran, 'Harmonizing Multinational Parent Company Liability for Foreign Subsidiary Human Rights Violations' (2017) 17(2) *Chicago Journal of International Law* 407

In view of the identification doctrine, this organisational architecture creates a fundamental attribution problem. For the natural person to qualify as the directing mind and will of the group, such a person should be a member of the parent company's board of directors or a senior group-level executive responsible for the operational, environmental, or safety policies that led to the criminal conduct.[175] More often than not is an officer of the foreign parent company and is thus not a directing mind of the locally incorporated subsidiary that is the formal subject of Zambian criminal jurisdiction. The locally incorporated subsidiary's own directors and senior managers may have had no authority to alter the group-level policies or resource allocation decisions that proximately caused the offence.

A further structural feature of large multinational mining corporations that defeats the identification doctrine is the diffusion of fault across the corporate hierarchy.[176] 'Diffusion of fault' is a concept used in corporate criminal liability to describe the phenomenon in which the elements of a criminal offence that is the prohibited act and the requisite mental state are distributed across multiple individuals within a corporate hierarchy such that no single individual satisfies all elements, rendering individual prosecution impossible and corporate prosecution under the identification doctrine equally untenable. [177] Major operational decisions in multinational mining groups are not made by a single identifiable directing mind but emerge from iterative institutional processes involving multiple committees, departments, and levels of management across several jurisdictions.[178]

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[175] Alexander Sarch, 'Collective Knowledge and the Limits of the Expanded Identification Doctrine' (2024) 44(4) Oxford Journal of Legal Studies 920.
[176] Mark Dsouza, 'The Corporate Agent in Criminal Law: An Argument for Comprehensive Identification' (2020) 79(1) Cambridge Law Journal 91.
[177]ibid.
[178] Ruth V Aguilera, Valentina Marano and Ilir Haxhi, 'International Corporate Governance: A Review and Opportunities for Future Research' (2019) 50 Journal of International Business Studies 457.

The diffusion of fault as the central structural inadequacy of the identification doctrine in the modern corporate context does not adequately respond to the threat of corporate structures in which the criminal mental state is disaggregated across multiple officers, preventing any individual from forming the full *mens rea* of any offence.[179] The identification doctrine's failure to engage with collective corporate knowledge is a recurring deficiency across common law jurisdictions.[180] In Zambia, none of the legislative instruments examined in Chapter Three provides a mechanism for aggregating the knowledge or negligence of multiple officers to establish corporate liability, nor for establishing liability based on the corporation's systemic failures or organisational culture rather than the culpable mental state of an identified individual.

The practical consequence is that multinational mining corporations can structure their internal governance and information flows in ways that prevent any individual from having the complete knowledge or forming the complete intent required by the identification doctrine.[181] This may not necessarily be a deliberate evasion strategy. Large corporate bureaucracies naturally compartmentalise information and distribute authority. The structural effect is the same: the identification doctrine's individualist premise cannot be satisfied by reference to any identifiable natural person, and thus, the corporation escapes criminal liability.

A related structural challenge is the opacity of beneficial ownership in multinational mining groups. 'Opacity' in this context refers to the deliberate or structural concealment of the identity of the natural persons who ultimately own or exercise effective control over a corporate group,

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[179]Alexander Sarch, 'Collective Knowledge and the Limits of the Expanded Identification Doctrine' (2024) 44(4) *Oxford Journal of Legal Studies* 920, 920.
[180]Sarch Sarch (n 33) 926–930; Dsouza (n 52) 94–98. The collective knowledge problem has been recognised as a systemic deficiency in English, Canadian and other common law jurisdictions: see also the Law Commission of England and Wales, Corporate Criminal Liability: An Options Paper (2022) paras 5.1–5.18.
[181] Hasani Mohd Ali *et al.*, 'Corporate Culture as Means of Proving Mens Rea in Corporate Criminal Liability' (2023) 33 *JUUM* 119.

achieved through the use of anonymous shell companies, nominee shareholding arrangements, multi-layered holding structures, and offshore registration in jurisdictions that do not require disclosure of beneficial ownership information.[182] The legal significance of beneficial ownership opacity for corporate criminal liability is that it prevents prosecutors and regulators from identifying the individuals who are most likely to satisfy the identification doctrine's directing mind requirement. The low disclosure of beneficial ownership and shell companies in the mining sector is a matter of systemic concern.[183] Anonymous shell companies 'remain one of the most widely used methods for laundering the proceeds of crime and corruption enabling corporate groups to conceal the true beneficial owners of assets and operations. [184]

In the Zambian mining context, beneficial ownership opacity has distinct adverse effects on corporate criminal accountability as it prevents regulators and prosecutors from identifying the natural persons who control the corporate group and make the operational decisions that give rise to criminal conduct, making it impossible to satisfy the identification doctrine's requirement of a directing mind. it also enables the concealment of the proceeds of corporate criminal conduct including revenue streams generated by environmental violations and safety breaches that avoid the costs of compliance. Through opaque intra-group financial arrangements, tax havens, and transfer pricing structures that are difficult to trace or quantify.

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[182] Fabio Bento, Marco Tagliabue and Flora Lorenzo, 'Organizational Silos: A Scoping Review' (2020) 10(3) *Societies* 56.

[183]Transparency International Zambia, 'Beneficial Ownership Transparency in Africa – A Reality for All' (6 April 2023) <tizambia.org.zm/2023/04/beneficial-ownership-transparency-in-africa-a-reality-for-all/> accessed 1 June 2026; see also National Policy on Anti-Corruption (Zambia, January 2023) 14 (noting 'low disclosure of beneficial ownership and shell companies, especially giant corporations in the mining sector').

[184]Financial Action Task Force (FATF), 'Transparency and Beneficial Ownership' (FATF Guidance, October 2014) 7 <fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf> accessed 1 June 2026. The FATF identified anonymous shell companies as among the most widely exploited vehicles for money laundering and concealment of corrupt proceeds in its mutual evaluation reports and typologies work across this period.

Zambia's criminal jurisdiction is, in principle, territorial. *The Penal Code*[185] general jurisdictional provisions operate on the premise that Zambia's criminal law applies to acts committed within Zambia's territorial jurisdiction. By contrast, the Anti-Corruption Act[186] expressly confers extraterritorial reach, providing that the Act shall have effect within as well as outside Zambia and that any person who commits an offence under the Act may be dealt with as if the offence had been committed within Zambia. However, it is important to note that the formal existence of this extraterritorial provision does not resolve the practical enforcement challenge of compelling evidence and securing jurisdiction over foreign parent companies. The territorial basis of criminal jurisdiction is a foundational principle across common law jurisdictions, rooted in state sovereignty and the practical limits of criminal enforcement. In the context of transnational corporate accountability, the territorial model 'leaves significant gaps' in the regulation of multinational corporations because 'the harmful consequences of corporate conduct may occur in one state while the decision-making that caused them takes place in another.[187] The physical acts constituting the offence such as the discharge of pollutants, the failure to maintain safety equipment, the falsification of environmental impact assessments occur within Zambia, but they are often the operational consequences of strategic decisions made elsewhere.

Zambian criminal law does not contain a comprehensive parent company liability regime that would allow the criminal acts of a locally incorporated subsidiary to be attributed to its foreign parent where the parent exercised operational control over the subsidiary. The MRC Act[188] extends

[185] Chapter 87 of the Laws of Zambia. Sections 5 -6.
[186] Act No 3 of 2012. Section 91
[187]Hassan M Ahmad, 'Jurisdictional Vacuum: Transnational Corporate Human Rights Claims in Common Law Home States' (2022) 70(2) *American Journal of Comparative Law* 227, 229–235,.
[188] Act No 14 of 2024. Section 88.

liability to the director, manager, shareholder or partner of a body corporate or unincorporate body, but only where the offence was committed with their knowledge, consent, or connivance, a standard that requires proof of positive knowledge of or active participation in the specific criminal act, not merely structural or systemic control of the subsidiary. This is a significantly higher threshold than a due diligence or control-based standard of parent company liability. The Anti-Corruption Act[189] adopts a structurally similar model, providing that where an offence under that Act is committed by a body corporate, every director or manager of that body is liable as if they personally committed the offence, unless they prove that the act was done without their knowledge, consent, or connivance and that they took reasonable steps to prevent it. Both provisions thus replicate the individualist attribution requirement of the identification doctrine, requiring prosecutors to establish the culpable mental state of an identified natural person rather than permitting liability to be founded on corporate organisational failures or systemic negligence.

The jurisdictional limitation was starkly illustrated by the *Vedanta Resources Plc v Lungowe*[190] litigation. The UK Supreme Court, in allowing the claims by 1,826 Zambian villagers against Vedanta Resources Plc and its Zambian subsidiary KCM to proceed in the English courts, found that there was an arguable case that Vedanta, the UK-incorporated parent, owed a duty of care to the Zambian claimants by reason of its group-wide environmental policies and its assumption of responsibility for their implementation. The UK Supreme Court's willingness to entertain parent company liability on these grounds, and the parallel finding in *Okpabi and Others v Royal Dutch Shell Plc and Another*,[191] that the maintenance of group-wide health, safety, and environmental policies by a parent company could be sufficient to give rise to a triable duty of care demonstrates

[189] Act No 3 of 2012. Section 50
[190][2019] UKSC 20, [2020] AC 1045.
[191][2021] UKSC 3, [2021] 1 WLR 1294 [27].

that the parent-subsidiary divide can, in principle, be overcome. But it can only be overcome in the courts of the parent company's home jurisdiction. Zambia's own criminal law provides no equivalent mechanism.

The legal principle of forum non conveniens compounds the jurisdictional challenge. Forum non conveniens is a procedural doctrine by which a court that has jurisdiction over a matter may decline to exercise it on the ground that another court, in a different jurisdiction, is a more suitable forum for the resolution of the dispute.[192] The doctrine was authoritatively stated in England in *Spiliada Maritime Corporation v Cansulex Ltd*[193] where the House of Lords held that a stay should be granted if the defendant could demonstrate that there was another available forum that was clearly or distinctly more appropriate. In the multinational corporate liability context, the doctrine operates as a jurisdictional barrier by enabling corporations to resist claims in their home jurisdictions on the ground that the harm occurred, and witnesses and evidence are located, in the host state. Multinational corporations facing criminal proceedings in Zambia or in their home states may invoke the doctrine to argue that another jurisdiction is the more appropriate forum for litigation, thereby exploiting disparities in judicial capacity, procedural resources, and enforcement infrastructure between jurisdictions.

A gap in the identification doctrine could be observed in the interaction between forum non conveniens and multinational corporate accountability. This has historically enabled corporations to exploit the 'practicable impossibility' of litigation in host states with weak judicial systems.[194]

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[192] William S Dodge, Maggie Gardner and Christopher A Whytock, 'The Many State Doctrines of Forum Non Conveniens' (2023) 72 *Duke Law Journal* 1163.
[193] [1987] AC 460 (HL).
[194]Ekaterina Aristova, 'The Future of Tort Litigation against Transnational Corporations in the English Courts: Is Forum [Non] Conveniens Back?' (2021) 6(3) *Business and Human Rights Journal* 399, 403.

The UK Supreme Court in *Vedanta v Lungowe*[195] made this point explicitly as it acknowledged that Zambia had an independent judiciary and sound civil procedure, but found that the practical impossibility of funding group claims in Zambia as a result of the absence of legal aid and the unlawfulness of conditional fee agreements meant that the English courts were the appropriate forum for the exercise of justice. This judicial finding is a damning indictment of the practical inadequacy of Zambia's legal system as a forum for holding multinational mining corporations accountable.

The National Prosecution Authority Act[196] established the National Prosecution Authority (NPA) as the principal institution responsible for criminal prosecutions in Zambia. The NPA is headed by the Director of Public Prosecutions (DPP), who has authority over all prosecutorial functions.[197] The DPP's constitutional authority vests the office with the power to institute and undertake criminal proceedings against any person before any court in respect of any offence alleged to have been committed by that person. *The National Prosecution Authority Act*[198]further confers on the NPA the functions of prosecuting or discontinuing criminal proceedings and the authority to take over and continue criminal proceedings instituted by any other person or authority. The NPA's power to prosecute corporate criminal offences in the mining sector is thus constitutionally and statutorily anchored, and is not constrained by any sector-specific exclusion. The question is therefore not whether the NPA has power to prosecute, but whether it has the institutional capacity to exercise that power effectively against well-resourced multinational defendants. The NPA's mandate encompasses the prosecution of corporate crime in the mining sector, including

[195][2019] UKSC 20, [2020] AC 1045
[196] Act No 34 of 2010
[197] The Constitution of Zambia (Amendment) Act No 2 of 2016. Article 180.
[198] Ibid.

environmental, safety, and anti-corruption offences. However, the NPA's institutional capacity to prosecute complex corporate criminal cases involving multinational defendants is significantly constrained by structural and resource limitations.

Complex corporate and financial crime prosecutions in Zambia, particularly in the mining sector require specialised forensic, financial, and legal expertise, yet the country's enforcement framework has historically been constrained by fragmented institutions, weak enforcement capacity, and a need for external technical support in handling such cases.[199]

Such prosecutions involve the analysis of complex corporate structures to establish the identity of the directing mind, the tracing of financial flows across multiple jurisdictions, the gathering and management of large volumes of digital, financial, and technical evidence, and the conduct of proceedings against defendants with access to international legal and forensic resources. The Organised Crime Index identifies Zambia's law enforcement capacity as constrained by 'corruption, inadequate funding and low salaries', noting that budgetary constraints affect police operations and that the absence of a witness protection programme complicates efforts to secure convictions.[200]

The NPA has, in recent years, sought to address these capacity limitations through international partnerships. The 2023 Memorandum of Understanding between the NPA and the Basel Institute on Governance's International Centre for Asset Recovery, funded by the British High

[199] Basel Institute on Governance, 'Building Zambia's Capacity to Investigate Financial Crime and Recover Illicit Assets' (2024–2025) <https://baselgovernance.org/resources/stories/zambia/> accessed 30 June 2026.
[200]Organized Crime Index, 'Zambia – Resilience' (ENACT 2023) <ocindex.net/country/zambia> accessed 1 June 2026.

Commission, represents an effort to build capacity in asset recovery and financial investigations.[201] This partnership is a positive development, but it remains focused on anti-corruption and asset recovery rather than on the specific challenge of corporate criminal prosecution in the mining sector. The gap between the NPA's current capacity and the capacity that would be required to prosecute a major multinational mining corporation for environmental or safety offences remains wide.

A particularly acute enforcement capacity challenge is the difficulty of gathering the evidence necessary to satisfy the identification doctrine's requirements in proceedings against multinational mining corporations.[202] To establish that a natural person was the directing mind and will of a multinational corporation, prosecutors must obtain access to internal corporate documents including board minutes, executive communications, governance frameworks, and compliance records. Zambia does not have bilateral mutual legal assistance treaties with many of the jurisdictions in which major mining corporations are incorporated, and the absence of such treaties means that requests for evidence from foreign authorities may be refused or significantly delayed. By contrast, the Financial Intelligence Centre Act[203] expressly applies the Mutual Legal Assistance (MLA) provision to offences in the Act. Notably absent from other mining sector's legislative framework. This asymmetry demonstrates that the absence of a comparable MLA framework within the mining criminal law context constitutes a legislative gap that is capable of being remedied through targeted legal reform.

[201]Basel Institute on Governance, 'New Partnership with Zambia's National Prosecution Authority' (28 June 2023) <baselgovernance.org/news/new-partnership-zambias-national-prosecution-authority-gretta-fenner-speaks-long-term-benefits> accessed 1 June 2026.
[202] Elies van Sliedregt, 'The Future of International Criminal Justice is Corporate' (2025) 23(1) Journal of International Criminal Justice 17.
[203]Act No 46 of 2010. Section 50.

4.3 Conclusion

The three categories of challenge examined in this chapter; complex corporate structures, jurisdictional barriers, and enforcement capacity limitations are not merely additive obstacles. They interact with and reinforce each other to produce a condition of structural impunity. Complex corporate structures make it impossible to identify the directing mind within the jurisdiction, jurisdictional barriers prevent prosecutors from reaching the directing mind outside the jurisdiction, and enforcement capacity limitations prevent the effective investigation and prosecution that would be necessary to overcome both categories of obstacle. The combined effect is that the formal availability of criminal sanctions under Zambia's legislative framework does not translate into a realistic prospect of criminal prosecution for multinational mining corporations.

The *Vedanta v Lungowe*[204] proceedings demonstrated that justice for communities affected by corporate misconduct was only achievable in the courts of the parent company's home jurisdiction, not in Zambia itself.

The conclusions of Chapters Three and Four together establish the foundational case for legislative and institutional reform. Chapter Three identified the doctrinal inadequacies of Zambia's substantive legal framework. This chapter has identified the structural challenges that compound those inadequacies in practice. Chapter Five will provide recommendations for improving Zambia's legal framework.

[204] [2019] UKSC 20, [2020] AC 1045.

CHAPTER FIVE: FINDINGS AND RECOMMENDATIONS

5.1 Introduction

This chapter presents the findings of the study and advances recommendations for reform aimed at strengthening Zambia's capacity to hold multinational mining corporations criminally accountable. The preceding four chapters established, through doctrinal analysis, statutory examination, and a review of the structural and institutional barriers to prosecution, that the identification doctrine as it currently operates in Zambia is fundamentally inadequate to discharge the accountability function that the criminal law demands of it. Chapter Two established the foundations of the identification doctrine and identified its structural limitations in the multinational corporate context. Chapter Three demonstrated that Zambia's principal legislative instruments, the Minerals Regulation Commission Act[205], the Environmental Management, Act[206] the Occupational Health and Safety Act,[207] the Penal Code, and the Anti-Corruption Act[208] and other legislation reproduce rather than correct the doctrine's structural deficiencies. Chapter Four examined the three mutually reinforcing categories of challenge, complex corporate structures, jurisdictional barriers, and enforcement capacity limitations, that compound those deficiencies to produce a condition of structural impunity. This chapter draws together those findings and, building upon the insights developed throughout the study, proposes targeted legislative, institutional, and bilateral reforms designed to close the accountability gap that the preceding analysis has identified.

The reform recommendations advanced in this chapter are grounded in the conclusion that piecemeal, incremental adjustment of the existing framework will not suffice. The accountability gap that has resulted in the near-total absence of successful criminal prosecutions of multinational mining corporations in Zambia is structural rather than incidental. It derives from the fundamental mismatch between the identification doctrine's individualist attribution requirement and the collective, diffuse, and transnational character of decision-making in large multinational corporate groups.[209] Addressing that mismatch requires a reform to the attribution rules, legislative reform

[205] Act No 14 of 2024
[206] Act No 12 of 2011
[207] Act No 16 of 2025
[208] Act No 3 of 2012
[209] Sarch (n 33) 921.

to the substantive offences and penalties, and institutional reform to the prosecutorial and regulatory bodies responsible for enforcement. The recommendations that follow are organised across six thematic areas, with each recommendation anchored in the analytical findings of the preceding chapters.

5.2 Findings

5.2.1 The Structural Inadequacy of the Identification Doctrine

The first and foundational finding of this study is that the identification doctrine, as formulated in *Tesco Supermarkets Ltd v Nattrass*[210] and as received into Zambian law through the common law tradition, is structurally inadequate to hold multinational mining corporations criminally liable for the offences that their operations generate. The doctrine's requirement that the prosecution identify a single natural person who constitutes the 'directing mind and will' of the corporation and who possessed the complete mental element of the relevant offence at the relevant time cannot realistically be satisfied in the context of large, hierarchically complex, and geographically dispersed multinational corporate groups. The diffusion of decision-making authority across multiple tiers of management, the separation of operational and strategic functions between local subsidiaries and foreign parent companies ensure that no single individual will possess the requisite *mens rea* in a form susceptible to identification by a prosecutor operating within Zambia's territorial jurisdiction.[211]

This structural inadequacy is compounded by the principle of separate legal personality, which prevents the criminal acts of a locally incorporated subsidiary from being attributed upwards to a foreign parent company even where the parent exercised substantive operational and governance control over the subsidiary.[212] The consequence is a responsibility gap where criminal responsibility evaporates because it can be disaggregated between levels of authority that are legally separate. No Zambian statute addresses this gap. The legislative framework assumes that the identification doctrine is adequate to resolve the attribution question, an assumption that is

[210][1972] AC 153
[211]Sarch (n 33) 923.
[212]Campbell (n 23) 4.

empirically contradicted by the absence of successful criminal prosecutions of multinational mining corporations in Zambia.

5.2.2 Deficiencies in Zambia's Legislative Framework

The second principal finding is that Zambia's legislative framework for corporate criminal liability in the mining sector is substantively inadequate.[213] There are four systemic deficiencies that define the framework's inadequacy. First, no Zambian statute provides a comprehensive corporate criminal attribution mechanism. The Minerals Regulation Commission Act, the Environmental Management Act, the Occupational Health and Safety Act, the Penal Code, and the Anti-Corruption Act collectively recognise corporations as capable of criminal liability but leave the mechanism of attribution to the common law identification doctrine. Secondly, no legislative instrument addresses the parent-subsidiary divide. All four principal instruments examined in Chapter Three impose liability on the entity that directly committed the offending act within Zambia, without addressing how criminal liability may be attributed to a foreign parent whose policy or governance decisions were causally responsible. Thirdly, the criminal sentencing options available under the framework are inadequate to deter large multinational corporations. Financial penalties represent manageable business costs for mining multinationals operating multi-billion-dollar enterprises, and the framework provides no alternative corporate sanctions such as deferred prosecution agreements, mandatory compliance programmes, or enhanced remediation orders. Fourthly, the derivative individual liability provisions found in the Minerals Regulation Commission Act[214] and the Anti-Corruption Act[215] whilst a constructive step in addressing the liability of natural persons within a corporate structure are rather weak on the primary criminal liability of the corporation as a legal entity.

5.2.3 Structural Impunity as the Systemic Outcome

The third key findproduce the most serious consequence of the preceding deficiencies, is that the combined effect of the structural inadequacies of the identification doctrine, the deficiencies of Zambia's legislative framework, and the institutional challenges facing Zambia's prosecutorial and

[213]Bwalya J, 'An Analysis of Legislation on Corporate Criminalisation and Criminal Sanctions in Zambia' (LLM dissertation, University of Zambia 2019) 89.
[214] Act No 14 of 2024. Section 88
[215]Act No 3 of 2012 . Section 50.

regulatory bodies produces structural impunity. A systemic condition in which multinational mining corporations operating in Zambia can engage in criminal conduct without a realistic prospect of criminal prosecution. This condition is demonstrated by the Zambian legal experience in *Nyasulu v Konkola Copper Mines*[216] where proceedings established civil liability for environmental harm but generated no criminal prosecution of the mining company despite the High Count inviting the criminal prosecution of Konkola Copper Mines. The subsequent *Vedanta Resources Plc v Lungowe*[217] litigation demonstrated that justice for communities affected by corporate misconduct was only achievable in the courts of the parent company's home jurisdiction, a finding that constitutes a damning indictment of the practical inadequacy of Zambia's own legal system as a forum for holding multinational mining corporations accountable.

The structural gaps identified in this study is reinforced by three categories of operational challenge: the complex corporate architectures through which multinational mining groups insulate their directing minds from attribution, jurisdictional barriers that prevent Zambian prosecutors from reaching foreign-domiciled decision-makers, and severe institutional capacity constraints affecting the National Prosecution Authority, ZEMA, the Minerals Regulation Commission, and the Occupational Health and Safety Institute.[218] These categories of challenge are mutually reinforcing and compound each other's effects. Addressing structural impunity therefore requires a comprehensive response that targets each category simultaneously rather than addressing them in isolation.

5.3 Summary of Findings

Taken together, the findings of this chapter confirm that the identification doctrine, inherited by Zambia through its common law tradition and left undisturbed by successive statutory interventions, is not equal to the task of holding multinational mining corporations criminally accountable. The doctrine’s insistence on locating a single directing mind within the corporate hierarchy is a poor fit for entities whose decision-making is deliberately diffused across parent companies, subsidiaries, and layers of management operating across multiple jurisdictions.

[216][2019] UKSC 20, [2020] AC 1045.
[217][2011] ZMHC 114.
[218]National Prosecution Authority of Zambia, 'Cracking the Code: Zambia Shines Light on Illicit Mining and Financial Flows' (17 May 2024) <www.npa.gov.zm> accessed 1 June 2026.

Zambia's principal mining, environmental, safety, and anti-corruption statutes recognise, in principle, that corporations may be prosecuted, yet none displaces the common law attribution rule that in practice makes such prosecutions almost impossible to sustain.

This doctrinal gap does not operate in isolation. It is compounded by the practical and institutional conditions examined in Chapter Four, complex multi-tiered corporate structures that obscure the directing mind, the absence of extraterritorial reach and adequate mutual legal assistance arrangements that leave foreign parent companies beyond the practical reach of Zambian prosecutors, and an enforcement architecture that lacks the specialised capacity to investigate and prosecute complex corporate crime. The near total absence of successful criminal prosecutions of multinational mining corporations in Zambia, notwithstanding well documented instances of environmental harm, is the clearest evidence that these deficiencies are structural rather than incidental.

The comparative material examined in this study, particularly the reforms introduced in the United Kingdom through the Economic Crime and Corporate Transparency Act 2023 and in Australia through the corporate culture model of the Criminal Code Act 1995, demonstrates that jurisdictions sharing Zambia's common law heritage have found it both possible and necessary to move beyond the identification doctrine. Zambia is not unique in facing this challenge, and it need not develop a solution in isolation. It is on this basis that the following section sets out recommendations for legislative and institutional reform.

5.4 Recommendations

5.4.1 Recommendation One: Enact a Corporate Criminal Liability Act

The most significant recommendation arising from this study is that Zambia should enact a dedicated Corporate Criminal Liability Act ('CCLA') providing a comprehensive statutory framework for corporate criminal attribution. The current approach, which leaves the mechanism of attribution to the common law identification doctrine received through the cases of *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* and *Tesco Supermarkets Ltd v Nattrass,* is no longer

defensible in light of the structural realities of modern multinational enterprise. A purpose-built statute would perform essential functions highlighted below.[219]

First, the CCLA should adopt an expanded attribution rule modelled on the approach taken by the English Economic Crime and Corporate Transparency Act 2023,[220] providing that a body corporate is guilty of a relevant offence where a senior manager, defined as a person who plays a significant role in the making of decisions about how the whole or a substantial part of the corporation's activities are to be managed or organised, commits the offence acting within the actual or apparent scope of their authority. This expansion of the directing mind category beyond the narrow constitutional officers identified in *Tesco v Nattrass*[221] would substantially increase the range of individuals whose conduct can ground corporate criminal liability, capturing senior operational and divisional managers who exercise real decision-making power without necessarily appearing on the board of the local subsidiary.

Secondly, the CCLA should introduce a parent company liability provision establishing that, where a locally incorporated subsidiary commits a criminal offence, the foreign parent company shall be jointly liable for that offence where the prosecution establishes that; (i) the parent exercised substantive control over the subsidiary's operations in the relevant domain (environmental, safety, financial, or governance); and (ii) that the criminal conduct of the subsidiary was causally connected to the parent's exercise of that control, whether through the imposition of group-wide policies, the allocation of resources, or the setting of operational standards. This provision would translate into the criminal law modelled on lessons drawn from the civil duty of care principles.

Thirdly, the CCLA should incorporate a corporate culture provision modelled on the approach adopted by the *Australian Criminal Code Act*[222] under which a body corporate may be found guilty of an offence involving fault where the corporation's corporate culture, defined as the attitudes, policies, rules, course of conduct, or practices existing within the body corporate generally directed, encouraged, tolerated, or led to non-compliance with the relevant law. This provision

[219]Law Commission (n 70) 47.
[220] Ma and Ryder (n 53) 5.
[221] [1972] AC 153 (HL)
[222] Act 1995

would directly address the diffusion-of-fault problem identified in Chapter Four by enabling the prosecution to establish corporate liability through evidence of systemic organisational failures rather than through proof of a single directing mind's *mens rea.*

Fourthly, the CCLA should introduce a failure to prevent offence, applicable to serious corporate misconduct in the mining sector. Under this model, a body corporate would be guilty of an offence where an associated person, defined to include employees, agents, subsidiaries, and joint venture partners, commits a designated offence, such as bribery, environmental destruction, or reckless endangerment of workers, for the benefit of the body corporate. Unless, the body corporate can prove that it had in place at the material time adequate procedures designed to prevent associated persons from committing such offences.

5.4.2 Recommendation Two: Amend the Minerals Regulation Commission Act to Introduce Graded Corporate Sanctions

The Minerals Regulation Commission Act 's criminal penalty framework is inadequate to deter multinational mining corporations, whose financial resources render the existing fixed penalty units commercially negligible.[223] The Act should be amended to introduce a graded corporate sanction regime incorporating a turnover-based financial penalty, calculated as a percentage, not less than ten per cent, of the body corporate's annual turnover. This approach is consistent with the model adopted in European Union competition law and would ensure that penalties are proportionate to the financial capacity of the offending entity rather than to a fixed statutory threshold that may represent a fraction of a major mining corporation's profits.

The Act should introduce provision for deferred prosecution agreements ('DPAs') as an alternative enforcement mechanism for corporate defendants of sufficient means and complexity. DPAs enable the prosecution authority to suspend criminal proceedings in exchange for the corporation's agreement to pay financial penalties, submit to enhanced compliance monitoring, remediate harm caused, and cooperate with ongoing investigations. For regulators and prosecutors with limited institutional capacity, DPAs offer a practical mechanism for securing substantial accountability

[223]MRC Act No 14 of 2024, ss 10, 56, 74, 88, 92.

outcomes and financial remediation without the expense and evidentiary demands of full criminal trial.

Thirdly, the Act should provide for non-financial corporate sanctions including mandatory remediation orders, structural injunctions requiring governance reforms, and monitored compliance programmes as components of the sentencing toolkit available to Zambian courts following a corporate conviction. These measures would address the inadequacy of financial penalties alone as deterrents for well-resourced corporate defendants and would ensure that criminal proceedings generate substantive improvements in corporate governance and environmental performance rather than merely imposing costs that can be absorbed and passed on to shareholders.

5.4.3 Recommendation Three: Enact an Extraterritorial Criminal Jurisdiction Provision

A critical lacuna in Zambia's current criminal law framework is the absence of comprehensive extraterritorial criminal jurisdiction over the foreign parent companies of multinational mining groups. The Penal Code's general jurisdictional provisions operate on a strictly territorial basis,[224] whilst the Anti-Corruption Act's section 91 extraterritorial provision, which is the most expansive jurisdictional provision in Zambia's statutory armoury, is confined to corruption offences.[225] Notably, section 53 of the Financial Intelligence Centre Act[226] confers a comparable extraterritorial reach in the financial crime context, providing that the Act has effect within as well as outside Zambia and that any person committing an offence under it may be dealt with as if the offence had been committed within Zambia.[227] The existence of such a provision in the financial crime context, and its deliberate absence from the mining sector's criminal framework, reinforces the thesis argument that the jurisdictional gap is a legislative choice susceptible to reform rather than a constitutional impossibility. This territorial limitation systematically prevents Zambian prosecutors from reaching the foreign-domiciled directing minds most likely to have made the decisions that give rise to criminal conduct by Zambian subsidiaries.

[224]Chapter 87 of the Laws of Zambia, Sections 6, 7.
[225] Act No 3 of 2012 , Section 91.
[226] Act No 46 of 2010, Section 53
[227] Act No 46 of 2010, Section 53(1).

The CCLA recommended above, or alternatively a standalone amendment to the Penal Code, should introduce a general extraterritorial jurisdiction provision applicable to designated serious corporate offences in the mining sector. The amendment should extend Zambia's criminal jurisdiction to any body corporate incorporated in Zambia or carrying on business in Zambia in respect of offences committed by that body corporate or its associated persons anywhere in the world where the offence has a substantial connection to Zambia's territory or where the conduct was intended to benefit operations in Zambia. It should also extend Zambia's criminal jurisdiction, on a secondary basis, to foreign parent corporations that exercise substantive control over Zambian subsidiaries.

5.4.4 Recommendation Four: Strengthen Bilateral Mutual Legal Assistance Treaty Infrastructure

The evidentiary challenge identified in Chapter Four, namely that Zambian prosecutors lack access to the internal corporate documents necessary to satisfy the identification doctrine's requirements, is directly linked to the underdevelopment of Zambia's bilateral mutual legal assistance treaty ('MLAT') infrastructure. Zambia does not have comprehensive MLATs with many of the jurisdictions in which major mining corporations are incorporated, including Switzerland, the British Virgin Islands, Jersey, and Luxembourg, which serve as important nodes in the corporate structures of multinational mining groups operating in Zambia. This absence means that requests for documentary and testimonial evidence from foreign authorities may be refused, delayed, or subject to procedural conditions that exceed the investigative resources of Zambia's enforcement agencies.[228]The Government of Zambia should accord priority to the negotiation and ratification of MLATs with the principal home jurisdictions of major mining corporations operating in Zambia, including the United Kingdom, Switzerland, Canada, Australia. and the major offshore financial centres.

5.4.5 Recommendation Five: Establish a Specialised Corporate Crime Unit within the National Prosecution Authority

[228]Basel Institute on Governance, 'New Partnership with Zambia's National Prosecution Authority' (28 June 2023) <baselgovernance.org> accessed 1 June 2026.

The institutional capacity constraints identified in Chapter Four are among the most significant practical barriers to the effective prosecution of multinational mining corporations in Zambia. The NPA, whilst empowered by statute to conduct all criminal prosecutions,[229] lacks the specialised forensic, financial, and legal expertise required to investigate and prosecute complex corporate criminal cases involving multinational defendants with access to international legal and forensic resources.[230] The Organised Crime Index's finding that Zambia's law enforcement capacity is constrained by inadequate funding and low salaries reflects the systemic resource constraints that undermine enforcement across the criminal justice system. The NPA should establish a dedicated Corporate Crime Unit ('CCU') with specialist responsibility for the investigation and prosecution of corporate offences in the mining and extractive sectors.

5.4.6 Recommendation Six: Strengthen Beneficial Ownership Transparency and Disclosure Requirements

The beneficial ownership opacity identified in Chapter Four as a significant barrier to the identification of the directing minds of multinational mining groups represents a systemic vulnerability in Zambia's corporate governance and criminal enforcement infrastructure.[231][232] The FATF Guidance on Beneficial Ownership of Legal Persons confirms that the absence of accurate and current beneficial ownership information is one of the most significant impediments to the investigation and prosecution of corporate crime. In the Zambian mining context, this opacity enables corporate groups to conceal the true controllers of mining operations, preventing prosecutors and regulators from identifying the natural persons whose conduct constitutes the directing mind and will of the corporate structure.

Zambia should amend the Companies Act [233] and the Minerals Regulation Commission Act[234] to require the registration and public disclosure of the ultimate beneficial owners of all entities holding mining licences, joint venture interests, or interests in mining concessions. Disclosure

[229]National Prosecution Authority Act No 34 of 2010 (Zambia), s 4.
[230]Organised Crime Index, 'Zambia – Resilience' (ENACT 2023) <ocindex.net/country/zambia> accessed 1 June 2026.
[231]Transparency International Zambia, 'Beneficial Ownership Transparency in Africa – A Reality for All' (6 April 2023) <tizambia.org.zm> accessed 1 June 2026.
[232]Financial Action Task Force, 'Guidance on Beneficial Ownership and Transparency of Legal Persons' (FATF 2023) 10.
[233] Act No 10 of 2017
[234] Act No 14 of 2024

requirements should be extended to cover indirect ownership chains, including through intermediate holding companies, trusts, and nominee arrangements, and should require updating within thirty days of any material change in beneficial ownership. Failure to comply with beneficial ownership disclosure requirements should constitute a criminal offence, attracting personal liability for the responsible officers of the non-disclosing entity as well as licence suspension or revocation for the mining entity itself. These beneficial ownership transparency requirements would directly support the attribution function of the reformed identification doctrine and the parent company liability provision recommended above.[235]

5.5 Final Conclusion

This study has set out to examine the adequacy of the identification doctrine as a mechanism for holding multinational mining corporations criminally liable for their actions in Zambia. The analysis undertaken across its five chapters establishes that the identification doctrine in its current form fails to discharge this function. The doctrine's structural rigidity, its individualist attribution requirement, its confinement to the separate legal personality of the locally incorporated subsidiary, and its dependence on a domestic enforcement infrastructure collectively produce a systemic condition in which multinational mining corporations can engage in corporate crime without facing a realistic prospect of criminal accountability.

The reforms proposed in this chapter are centred on a dedicated Corporate Criminal Liability Act incorporating expanded attribution rules, a parent company liability provision, a failure-to-prevent offence, and a corporate culture model. Further, a turnover-based penalty regime, deferred prosecution agreements, extraterritorial criminal jurisdiction, strengthened MLAT infrastructure, a specialist Corporate Crime Unit within the NPA, and mandatory beneficial ownership transparency, represents a comprehensive and coherent response to the structural impunity that this study has identified and documented.

The criminal law's ultimate purpose is to secure accountability for wrongdoing and to deter its repetition. In the context of multinational mining operations in Zambia, that purpose is frustrated

[235] Elies van Sliedregt, 'The Future of International Criminal Justice is Corporate' (2025) 23(1) *Journal of International Criminal Justice* 17, 18.

by the structural features of the identification doctrine and a legislative framework that were not designed with the realities of multinational enterprise in mind.

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National Prosecution Authority Act No 34 of 2010

Occupational Health and Safety Act No 16 of 2025

Penal Code, Cap 87

United Kingdom

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