



CRITICAL ANALYSIS OF THE CORPORATE CRIMINAL LIABILITY UNDER RWANDAN LAW

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Abstract

The main objective of this study was to identify whether corporations can be prosecuted for criminal offences in courts in Rwanda, to discover specific challenges hindering and come up with possible challenges that can improve on application of vicarious liability in corporate cases. Within this study secondary sources have been the main source of material used and this includes books, review of case laws, statutes, international treaties, articles, and journals. Collection of these materials included intensive library research and internet searches. The study findings. Rwandan law does recognize the concept of separate entity of a corporation in general and the criminal liability thereof in particular. It has further been established that the Rwandan criminal laws contain an inherent liberal bias that is designed to restrain both the breadth and type of criminal statutes that may be employed to suppress criminal conduct. In this light, corporations can and do get charged in Rwandan courts for allegedly committing certain criminal offences. However, it has further revealed

that whereas this is the position, the prosecutorial arm of the judicial system has been somewhat lax in adopting a staunch prosecutorial role for such strictly penal offences against corporations. Instead, most of the criminal cases instituted against corporations have often been regulatory offences. Thus, most of the convictions that have been sustained in Rwandan courts about corporate crime have been brought under the various statutory provisions other than the Penal Code which is the principal statutes. Due to the study results, the study suggests that there should establish due diligence approach in different corporations to advance a probable defense for corporate entities charged with criminal offences. In this regard, a corporation seeks to establish that it had put in place a compliance program through which all its agents and/or employees were encouraged to adhere to. This means that corporations should hire transactional lawyers/experts who will ensure their due diligence is properly done.

Key Words: *Critical Analysis; Corporate; Criminal Liability; Rwandan Laws.*

1. Introduction

This study was based on the secondary data assessment as critical analysis of the corporate criminal liability under Rwandan laws. This research study specifically examines the law relating to criminal liability of corporate under Rwandan Law [4]. In doing this, it first seeks to establish the historical origins and developments which underpin the imposition of criminal liability on corporate bodies. It then carries out an analysis of Rwandan laws

and relevant case laws in this regard and an examination of scholarly writings and journal articles in addition to books. The recommendations/suggestions are given to shed light on whether there are lessons that Rwanda needs to learn and borrow from those jurisdictions to improve on its fight against corporate crimes [30].

2. Statement of the Problem

Basing on the current law regulating the corporate liability in Rwanda, it can be clearly seen that it is not well structured and detailed clearly to crack down or curb down a rate at which these corporate crimes are being committed day and night by public institutions and private companies and most of the cases individual have been held liable for crimes committed by these large corporations [35]. To some scholars still not sure whether a corporation can be held liable for criminal acts and yet it is not a human being and so some still think that it lacks intention men's rea required element for the commission of a criminal act and this for a long time has helped corporation to go to free of any prosecution because many authors and academicians still think that a corporation cannot be prosecuted because it lacks men's rea which is vital and so it from this that it can be criminally held liable for corporate crimes [14].

Furthermore it is not yet very clear whether a corporation can be held liable for acts committed by its employees and so, this too many academicians and legal scholars have raised several discussions on how a corporation can be held liable for the wrong of its employees because some employees have used corporations to escape their sole responsibility while found committing crimes and they normally like to hide under the umbrella of the corporation that they were acting on behalf of the corporation and this needs to be dealt with, to understand under what conditions/circumstances can a corporation be held liable, then when is a corporation not liable for the acts committed by its employees [1]. Corporations may be held criminally liable for the isolated acts of low-level employees often come to the "shock, incomprehension, and outrage of senior management. That reaction is understandable given the extent to which many corporations have devoted substantial resources, both in terms of time and expense, to instructing their employees regarding compliance with applicable laws and regulations and company policies, and the extent to which perfect compliance is impossible [6]. Everyone understands that there will be bad apples in the corporation, but few would suggest that the penalty for a bad apple should be to cut down the tree. It is still unclear to some scholars because corporation could be still held responsible for isolated crimes committed by their employees and while the corporation was ensuring compliance against corporate crimes [24].

3. Empirical Review

In this section, only literature related to the main objective of the study was noted.

3.1. Evolution of Corporate Criminal Liability.

Corporations were not initially held criminally responsible for corporate activities. A corporation was a legally fictitious entity, incapable of forming the mens rea necessary to commit a criminal act. The Supreme Court ultimately rejected this notion in 1909 in *New York Central & Hudson River Railroad v. U.S.* A railroad company employee paid rebates to shippers in violation of federal law [11]. The court upheld the corporation's criminal conviction, finding no reason that corporations could not be held responsible for and charged with the knowledge and purposes of their agents, acting within the authority conferred upon them. The Supreme Court concluded that criminal liability could be imputed to the corporation based on the benefit it received because of the criminal acts of its agents. The case and its progeny have essentially imported the doctrine of respondent superior from tort law into the corporate criminal realm [34].

A corporation may be convicted for its agent's unlawful acts when the agent acted within the scope of his or her actual or apparent authority [18]. Another theory of corporate criminal liability is the collective knowledge doctrine. As knowledge of criminal activity is often the center element of a particular crime, the requisite knowledge can be imputed to the corporation based on the collective knowledge of the directors and officers [2].

It is now well settled that corporate directors, officers, and employees can be held criminally liable for any criminal acts that they personally commit regardless of whether they were acting in furtherance of the corporation's interests. A corporate director, officer, or agent must answer for any personal wrongdoing and cannot be shielded by the corporate entity [7]. An officer and a director can also be held criminally responsible for criminal acts committed by their agents under the respondent superior tort theory mentioned above [19]. Directors, officers, and employees may also be criminally responsible for any crime that they aid and abet because, at a public policy level, the growth and prosperity of society depends on the business community, governments recognize limits on the extent to which each permitted form of business entity can be held liable (including general and limited partnerships which may also have separate legal personalities) [17]. However, limitations on corporate liability can lead to profound injustices for individuals resulting from a limited ability to be properly compensated for wrongdoing [12].

Realistic approach: Realistic theories over corporation's criminal liability exist independently from their members. Corporations can therefore act and be at fault in their own peculiar ways, different from their individual members. The realist approach therefore asserts that the responsibility of the corporation by looking at what the corporation itself did not do as an organization, what it knew or ought to have known about its conduct and what it did or ought to have done to prevent the harm from occurring [16]. The realist models seek to reflect the corporation as an entity with its own distinctive goals, its own distinctive culture, and its own distinctive

personality rather than focusing on individual fault. This personality or culture is unique, and arises from several identifiable characteristics which include [21]:

(1) The Structure of the Corporation: In cases where there is great decentralization, this may increase the risk that the senior management will focus almost exclusively on financial information and become more and more detached from the pressures facing the lower management. (2) Corporate Goals: Whether a corporation sets realistic goals, or they are so unrealistic as to encourage unlawful behavior. A corporate culture that only purposes profits and sets unrealistic timetables may not only encourage illegal activity but also allow individuals to rationalize their actions. (3) Educating Employees: Whether the corporation makes reasonable efforts to educate its employees about legal requirements [36].

3.2. Corporate criminal liability situation in Rwanda

Article 25: Penalties applicable to institutions and organizations of the State or non-governmental organizations with legal personality

Penalties applicable to the institutions and organizations of the State, companies, cooperatives, non-governmental organizations with legal personality are the following: 1° a fine; 2° the ban on the conduct of one or several professional or social activities for a fixed period of time; 3° confiscation of the object used or intended for use in the commission of the offence or the proceeds thereof; 4° publication of the penalty pronounced. Companies, cooperatives, nongovernmental organizations with legal personality may also be punishable by the following penalties: 1° dissolution; 2° permanent closure of establishments in which incriminated acts have been committed or which have been used to commit such acts; 3° permanent exclusion from public procurement contracts, either indefinitely or for a fixed period of time provided for by relevant laws; 4° the ban on issuing a cheque, a credit card or negotiable instrument; 5° placement under judicial supervision

Article 88: Criminal liability of public institutions or organizations with legal personality public institutions, companies, cooperatives, public or private entities or organizations with legal personality are held liable for offences committed on their behalf by their organs or representatives. The criminal liability is established when the offenders have acted by virtue of the following: 1° power of representation; 2° decision-making power; 3° power of supervision. The criminal liability of public institutions, companies, cooperatives, public or private entities or organizations with legal personality does not exclude the criminal liability of their representatives, those who hold leadership posts within them or their co-offenders and accomplices.

Article 89: Imposition of penalties on public institutions or organizations with legal personality in the event of criminal liability of public institutions, companies, cooperatives, public or private entities or organizations with legal personality, the court may impose one or more of the penalties provided under Article 25 of this Law depending on the offence committed

Article 104: Crime of genocide and crime against humanity committed by private entities with legal personality Companies, cooperatives, private entities with legal personality which, by any means, support the crime of genocide and the crime against humanity referred to under Articles 91, 93 and 94 of Law number 68/2018 of 30/08/2018 are liable to the penalty of dissolution or that of being subject to revocation of their authorization to carry out their activities in Rwanda.

Furthermore, to assess the scope of corporate criminal liability under vicarious liability some conditions need to exist which include master servant relationship at the commission of the crime. It should be noted that for one to be held liable for the acts of the party in Rwanda it is not easy because the law provides that criminal liability is personal therefore under some circumstances employees are held liable for their own wrong acts where they have been found guilty by court this is also in line with a South African case of Minister of Police v Rabie on holding the Minister of Police liable, Jansen JA, for the majority of the Court, formulated a test at 134 [25]:

“It seems clear that an act done by a servant solely for his own interests and purposes, although occasioned by his employment, may fall outside the course or scope of his employment, and that in deciding whether an act by the servant, does so fall, some reference is to make to the servant’s intention [29]. The test is in this regard subjective. On the other hand, if there is nevertheless a sufficiently close link between the servants’ acts for his own interests and purposes and the business of his master, the master may yet be liable. This is an objective test [32].

3.3. Mechanisms for the Improvement of Corporate Criminal Liability in Rwanda

The due diligence approach would create either an obligation for prosecutors to demonstrate that a given corporation has not taken all reasonable measures to prevent employee crime or, alternatively, would make such a showing an affirmative defense to criminal liability [28]. Under this approach, the prosecution would have to prove the corporation’s failure to prevent a crime to have the benefit of imputing the employee’s conduct to the corporation. Notably, this due diligence approach strongly encourages effective self-policing while at the same time ensuring that corporations and shareholders are not liable for the acts of rogue employees who commit crimes despite a corporation’s best efforts [37].

In United States of America, Supreme Court recognized in *Kolstad* that respondent superior principles are misplaced in situations where a company has done its best to prevent the offending employee’s actions. Additionally, a central goal of the United States Sentencing Guidelines is the promotion of successful compliance programs [26]. Those programs are considered indispensable to corporations seeking to prevent scandals of the type that brought down several major companies early this decade, as well as to ensure adherence to the legislative requirements enacted in the wake of those scandals. The due diligence approach further rewards corporations’ efforts to engage in robust compliance [3].

4. Methodology

While conducting this research, secondary sources have been the main source of material used and this includes books, review of case laws, statutes, international treaties, articles, and journals. Collection of these materials included intensive library research and internet searches.

5. Research Questions.

- a) To what extent, the corporate can be legally held liable in Rwandan criminal law?
- b) What should be done to improve the criminal liability of corporate in Rwanda?

6. Research Hypotheses

1. Article 83: Criminal liability and its occurrence is incurred by the offender, his/her co-offender, or accomplice. Only a person who intentionally commits an offence is punishable. However, if the law so provides, a person commits an offence because of his/her recklessness, clumsiness, negligence or any other form of carelessness.
2. In some jurisdictions corporate veil has been waived to avoid inconsistencies that a corporation is separate and distinct from its shareholders and so it cannot be held liable, prosecuted if it gets involved in criminal acts and if this is done here in Rwanda then corporation would not escape the liability.

7. The General Objective.

The general objective of this research study is to identify and examine the extent corporations could held liable for the offences committed by their employees in Rwanda.

8. Key findings and conclusion

This research paper has adhered to a narrow and limited scope, namely, to provide the reader with a Substantiated assessment of the scope of corporate criminal liability in Rwanda. Research dealt with status of criminal liability of corporate in Rwanda by using enacted legislation, case law and other documents published by academicians [9]. The key findings dealt with the challenges hindering the crackdown of corporate criminal liability challenges like limited skills to track down authors of the crimes, sophisticated/advanced in nature of corporate crimes, the existence weak fines and punishments given to corporate companies. It has shown also the mechanisms advanced to crackdown these crimes through institutional and legal mechanisms these include enhancing the law, banning corporations involved in criminal activities and encouraging the people to always report corporations involved in committing crimes [13].

Rwandan law does recognize the concept of separate entity of a corporation in general and the criminal liability thereof in particular. It has further been established that the Rwandan criminal laws contain an inherent liberal bias that is designed to restrain both the breadth and type of criminal statutes that may be employed to suppress criminal conduct. In this light, corporations can and do get charged in Rwandan courts for allegedly committing certain criminal offences.

However, it has further revealed that whereas this is the position, the prosecutorial arm of the justice system has been somewhat lax in adopting a staunch prosecutorial role for such strictly penal offences against corporations [27]. Instead, most of the criminal cases instituted against corporations have often been regulatory offences. Thus, most of the convictions that have been sustained in Rwandan courts about corporate crime have been brought under the various statutory provisions other than the Penal Code which is the principal statutes [38].

With these numerous provisions of law notwithstanding, the Rwandan approach to corporate criminal liability yet remains to be unclear. It cannot be attributed to be either falling under the Respondent Superior approach or the Identification theory or whatever theory. It simply exists on its own. It is thus a formless that assumes whatever shape under which the prosecutorial arm of the justice system brings forth their case [23].

An observation worth noting is that most criminal cases in the Rwandan justice system have been investigated by the Rwandan investigation Bureau and charged with the responsibility of upholding the rule of law and exercising State powers of investigations respectively [21]. The prosecution of criminal offences in Rwanda remains the domain of the National Public Prosecution Authority [38]. An average career investigators and prosecutors worthy of conducting investigation and a prosecution is they are limited to the skills to investigate or prosecute the advanced corporate emerging crimes and limited experience to corporate criminal liability. The corporation on the other hand possesses the means to hire the best legal minds to defend their cause. This is perhaps one of the major reasons as to why this doctrine has yet to assume any proper definitive outlook that can be clearly identified for purposes of corporate criminal liability and its development thereof. This research paper thus concludes by noting that the concept of corporate criminal liability in Rwanda is yet at its infancy stages and more remains to be done for it to assume and realize its full itinerary.

9. Suggestions

These recommendations were suggested by the researcher to make Rwanda free from corporate crimes in a long run retards economy of the country. These include:

1. There should establish due diligence approach in different corporations to advance a probable defense for corporate entities charged with criminal offences. In this regard, a corporation seeks to establish that it had put in place a compliance program through which all its agents and/or employees were encouraged to adhere to. This means that corporations should hire transactional lawyers/experts who will ensure their due diligence is properly done [39].

2. Furthermore the prosecution which is charged with the burden of proving the corporation's failure to prevent crime to have the benefit of imputing the employee's conduct to the corporation. In line with this observation, this research paper hereby recommends thus that far from giving corporations a shield to commit fraud or other impetus from responsibility; a standard and effective compliance program ought to be adopted [33].

3. Imposing heavy fines on corporations found guilty such that it can act to deter other companies/corporations to ensure regular checks on its day-to-day business and this will work as a precaution to those corporations and their individuals/employees [22]. The trends in criminal liability of corporations exemplify a predominantly utilitarian outlook in criminal law. They are not quite based on the theory of justice but largely upon the need for deterrence. They are scarcely concerned with justice to the victims of corporate offences or other parties who may get affected by the punishments slapped upon the company. In many instances when a fine is slapped upon a company, the expectation is that the pain of paying the fine may cause the company to pull up its corporate socks.

4. Lawmakers should specify the precise requirements for some of these penalties, especially about the dissolution of the corporation, also commonly referred to as the "corporate death penalty," as it is the most severe criminal punishment imposed on a legal entity. France and Belgium allow for a winding-up of the legal person if it was established to commit the crimes or if the corporation was deliberately diverted from its original purpose to pursue the criminal conduct [5].

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