

Sanctioning Corporations for Environmental Crimes in Cameroon

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Abstract

This article examines the legal regime in Cameroon with respect to the sanctioning of corporations for environmental crimes in the conduct of their activities. The paper specifically outlines the legal framework for corporate criminal responsibility with emphasis on the revised Penal Code. The article further examines the types of corporations that can be held criminally liable, the types of environmental crimes they may commit as well as the sanctions meted out on them. In as much as this paper applauds the introduction of corporate criminal liability in the Penal Code, it brings out the challenges to the effective implementation of the law and calls for the amendment of the Criminal Procedure Code to readapt the changes brought in by the Penal Code in 2016.

Keywords: corporations, environmental crimes, sanctions, Cameroon

1. Introduction

In their quest for profits maximization, corporations tend to violate environmental norms and standards put in place by the government. The Cameroonian legislator in response to this conundrum, instituted a corporate criminal responsibility (CCR) regime to enable corporations to be prosecuted for crimes committed by persons acting for the corporations.

In general, corporations are known for crimes such as environmental pollution, corruption, tax evasion, mismanagement of funds, embezzlement, production of defective goods and goods that endanger the environment, money laundering, market manipulation, labour exploitation just to name a few.¹ In a globalized world where corporations are much larger, operate worldwide and make use of different laws to evade taxes, elude public regulation and commit corporate wrongdoings which are detrimental to the public, the need to impose liability on corporate behaviour becomes pressing.²

In 2016, the Cameroonian legislator decided to introduce into the Cameroonian legal system, the liability of corporate bodies. As a result of this amendment, corporations and other legal entities are directly liable for crimes committed on their behalf. Prior to the 2016 amendment, the Cameroonian penal code which was enacted in 1965 and came into force on 12 June 1967, did not take into consideration, corporate criminal responsibility but was limited only to the criminal liability of physical persons. This is evident from the provisions of Section 74 (2) of the Code which stipulates that, “criminal responsibility shall lie on him who intentionally commits each of the ingredient acts or omissions of an offence with the intention of causing the results which completes it”. This was in consonance with the old common law and civil law positions inherited by Cameroon under which, it

¹ F.A Comfort, (2018). Corporate Criminal Liability in Cameroon: The Dawn of a New Era. *Commonwealth Law Review Journal (CLRJ)*, 4, p. 270.

² D. Brodowski et al., (2014). *Regulating Corporate Criminal Liability*, Springer International Publishing, Switzerland, p. 2, in F.A Comfort, Corporate Criminal Liability in Cameroon: The Dawn of a New Era, *Commonwealth Law Review Journal (CLRJ)*, 4, June 2018, p. 270.

was inconceivable that a corporation could be held criminally liable. The argument advanced was that a corporation as an artificial person had no physical existence and could therefore not be subject to prescribed penalties attached to the offences.¹

Hence it was difficult if not impossible for courts to hold corporation liable. Consequently, only administrative sanctions were applicable to them. But these administrative sanctions could not deter corporation from committing crimes as they were limited to fines and considering the fact that administrative trials are not public.² This situation has changed with the integration of corporate criminal responsibility into the Cameroonian Penal Code.³

In Cameroon corporate criminal responsibility is still at an infant stage given its incorporation in the revised edition of the penal code in 2016.⁴ When Cameroon gained its independence in the 1960s⁵, the concept of CCR was not popular. The reasons for such lukewarmness are that: first, the notion of a distinct corporate personality⁶ posed a big problem largely because the 1967 Penal Code did not make mention of the criminal liability of corporations, and as such, it was difficult to determine the exact extent of such liability. Moreover, there was no provision in the penal code defining sanctions that could be applied when a legal person was convicted. It had to be deduced from the nature of the criminal sanction, whether such a sanction could be given in effect to a moral person.⁷ Secondly, given that at independence, there was the need for industrial and economic development, the fear was that the introduction of corporate criminal responsibility could mean discouraging investment, and industrial and economic development.⁸

It is worth noting that, the 1965 and 1967 Penal Code did not expressly mention the word “company” or “corporation”. As such, corporations could only be punished based on the broad interpretation of the said code. A glaring example was the interpretation given to Section 258 (1) and (2) to punish corporations.⁹ The word “whoever” as used in that section could not exclude corporations involved in the adulteration of foodstuff, beverage or medical substance whether for human or animal consumption. However, they could not be imprisoned.

Prior to the introduction of CCR in the 2016 revised Penal Code, a handful of national laws have recognized the criminal liability of the moral person such as Law No. 89/27 of 29 December 1989 on Toxic and Dangerous waste,¹⁰ Law No. 94/01 of 10th January 1994 on Forest, Fauna and Fishing,¹¹ Law No. 96/12 of 05 august 1996 relating to environmental management,¹² Law No. 05/015 of 29 December 2005 on the fight against child

¹ C.M.W. Clarkson, (1996). Kicking Corporate bodies and Damming their Souls. *M.L.R.* 59, p. 1.

² F.A Comfort, op. cit. p. 271.

³ See Section 18 (b), 18 (1) (b), 19 (b) and 20 (b) of Law No.2016/007 of 12 July 2016, amending the Penal Code.

⁴ Law No. 2016/007 of 12 July 2016 on the Penal Code.

⁵ After the defeat of the Germans in the First World War, Cameroon became a mandated and subsequently a mandatory territory to the French and British and only gained independence in 1960 for French Cameroon and 1961 for British Cameroon.

⁶ By the principle of corporate personality, a company upon incorporation acquires a legal personality distinct from its members. This principle was developed by the House of Lords in *Salomon v. Salomon Co. Ltd* (1897) AC 22.

⁷ For instance, Section 258 (1) & (2) on adulteration and falsification of food products where companies could be punished through fines, forfeitures, confiscation or destruction of property.

⁸ F.A, Comfort op. cit. p. 275.

⁹ Section 258 (1) stipulated that “whoever either adulterate any foodstuff, whether for human or animal consumption or beverage or medicinal substance intended to be sold, or keeps any substance designated or fit only for the purpose of effecting such adulteration, shall be punished with imprisonment for from three months to three years and fine of from five thousand to five hundred thousand francs”.

¹⁰ Article 4(3) stipulates that, “where the offense is committed by a legal entity, the criminal responsibility shall lie with the natural person, whether or not the latter manages, supervises or controls the activity of that legal entity. The legal entity in question shall be jointly and severally liable with the person or persons sentenced to pay fines, civil compensation, as well as costs and expenses”.

¹¹ Article 150(1) provides that, “Any natural person or corporate body found guilty condition, the provisions of this law and its implementation instruments shall be liable and punishable in accordance with the penalties provided therein”.

¹² Article 78 provides that “when the constituent elements of the offence originate from an industrial, commercial, cottage industrial, or agricultural establishment, the owner, operator, director or manager as the case might be, may be liable to fines or legal fees owed by the authors of the offence, and to the rehabilitation of the sites”.

trafficking,¹ Law No. 2010/012 of 21 December 2010 relating to cyber security and cyber criminality,² Law No. 2011/012 of 06 May 2011 Framework on Consumer Protection³ and Law No. 2014/028 of 23 December 2014 on the Repression of Acts of terrorism⁴. The areas protected by specific laws are varied in nature. They range from the protection of the environment, protection of economic activities, protection of persons as well as the security and life of individuals.

The multiplication of specific texts in the area of corporate criminal responsibility however, was not enough to bring out a general principle on corporate criminal responsibility. There was the need to insert corporate criminal responsibility in a general text which is the penal code for it to achieve the needed impact. With this the legislator had to introduce corporate criminal responsibility into the penal code in 2016.⁵

2. The Historical Overview of Corporate Criminal Responsibility

Responsible social policy requires that people who victimize society via anti-social or dangerous conducts be deterred. This is because historically, criminal law has been a vehicle for such deterrence.⁶ In the same vein, corporations should be deterred for the dangerous acts they commit irrespective of the significant role they play in society. Thus, in the UK and USA, criminal prosecution of corporations and other fictional entities have occurred routinely since the 19th and 20th Centuries respectively. In the late 20th Century, France, Canada and Netherlands enacted standards for holding fictional entities criminally responsible.⁷ In other parts of the world, legislative and judicial bodies are being urged to recognize CCR by advocates who point to the major role played by corporations in modern day life and argue that active prosecution of corporations is vital to effective crime control efforts.⁸ Be that as it may, because of practical and theoretical problems in prosecuting fictional entities, CCR is controversial. An examination of the historical evolution of the concept will permit us to establish on the one hand the orthodox view that corporations cannot be prosecuted and on the other hand the current position which considers corporations as entities capable of being prosecuted.

2.1 The Orthodox View of Corporate Criminal Responsibility

Originally, the prevalent view was that corporations were a mere collection of individuals, having no independent metaphysical existence, and therefore incapable of incurring culpability in terms of criminal law. This is because crimes were fundamental in nature such as murder, battery, theft, robbery, treason and were clearly the crimes capable of commission by individuals.⁹ Given this strand of reasoning, Blackstone submitted that:¹⁰

A company can neither maintain nor be defendant to an action in battery or such like personal injuries, for a corporate can neither beat nor be beaten, in its body politic. A corporation cannot commit treason, or a felony. It is not liable to corporate penalties nor attainder, forfeiture or corruption of blood, neither can it be committed to prison for its existence being ideal, no man can apprehend or arrest it.

Similarly, Smith and Horgan argued that:

... Since a corporation is a creature of law, it can only carry out such acts as it is legally empowered to, so that any crime is necessarily *ultra vires* and the corporation having neither body nor mind cannot perform the acts of

¹ Article provides that “Notwithstanding the criminal liability of their managers, moral persons can be held liable and asked to pay fines provided for if offences were committed by the managers in the exercise of their duties.”

² Article 64 stipulates that “Moral persons are criminally liable for offences committed on their account by their managing organs.”

³ According to section 33 “corporate bodies may, without prejudice to the criminal liability of the executives or employees of sales, supply or service, technology or commodity companies, be sentenced to double the fines provided for in section 32 above, if their executives or employees committed offences during or in the exercise of their functions within the structure”.

⁴ Article 6(1) states that, “for the purpose of this law, a corporate body may be held criminally liable”.

⁵ Comfort, F.A, op. Cit. p. 276.

⁶ B.H Pamela, (1991). Corporate Ethos: A Standard for Imposing Corporate Criminal Liability. *Minnesota Law Review* 2048, pp. 1095-1184, at p. 1096. <https://scholarship.law.umn.edu/mlr/2048>

⁷ E.N Ngwafor, (1985). Corporate Criminal Liability: A Comparative Study. *Institute of Third World Art and Literature*, p. 18. See also B.H. Pamela, (2002). Corporate Criminal Responsibility. *Encyclopedia of Crime and Justice*.

⁸ B.H Pamela, (2018). op. Cit, in M.A. Egute, *Principles of Product Liability Law in Cameroon*. Lead Publishers.

⁹ E.N. Ngwafor, (1989). *Corporate Criminal Responsibility*, Star Printers and Publishers Ltd. U.K., p. 1.

¹⁰ W. Blackstone, (1965). *Blackstone's Commentaries on the Laws of England*. University of Chicago Press, Vol. 1, p. 464.

form or intent which are the prerequisites of criminal liability.¹

The justification for the above arguments rests on the fact that the question of *Mens rea* is a very controversial one in imputing criminal responsibility on a corporate body because of their artificial and fictitious nature. Consequently, it was believed that corporations did not have the moral blameworthiness to commit crimes of intent. Most critics argued that criminal liability should not extend to corporations based on the maxim *societas delinquere non potest*, which means ‘a legal entity cannot be blameworthy’.²

In most cases, corporations were held responsible in civil law under the vicarious liability doctrine which determines the liability of the corporation by attributing liability of the natural person to the corporation. For any criminal responsibility to lie, there must be two separate elements namely the *actus reus* and *mens rea*³ which gives it a perfectly good sense when applied to individuals but do not easily translate to fictional or inanimate entities such as a corporation.⁴

Another obvious reason why it was difficult to bring corporations to answer for their crimes is that, there was procedural difficulties. According to criminal procedure, once a crime is committed, the courts usually require the accused to make an appearance in court. This could only be possible by natural persons and not corporate entities as the latter could not be either arrested or compelled to remain present during criminal proceedings.⁵

2.2 Corporations as Real Entities

The evolution of CCR is a remarkable instance of judicial and legislative activism in law as it puts to rest the traditional view that corporations could not be criminally responsible. This position has evolved and corporations are now believed to be identifiable entities and morally responsible agents. This is because upon incorporation, a company acquires a legal personality distinct from those of its members.⁶

Similar to most other developments within the law, the church also played a major role in the development of CCR. In the 12th century England, as the power of the landowner was reduced, the question of who actually owned the church was raised. As it was not deemed fit for the church to be owned either by the clergy or its patron saint, church property was to be owned by “the church” — that is the whole congregation treated as one single person for legal purposes. The church used this system to inherit land to such a degree that in 1279, King Edward I issued a Statute that limited the amount of land that could be passed on to what was then termed a corporate person.⁷ Today, the notion of juristic or legal persons is well established in most legal systems. Without this abstract conception, the idea of CCR would be inconceivable.

Hence corporations can now be made liable for non-feasance, that is, for omitting to act. It is worth noting that in the quest for profits, corporations should not go against the state prohibitions particularly when it concerns public safety and welfare. This explains why many developed countries worldwide and Cameroon have introduced CCR in their laws. England for instance introduced CCR in 1842 following the decision in *R v. Birmingham and Gloucester Railway Company*⁸, the Netherlands 1952⁹, the Nordic countries 1990, France

¹ J.Coplan, R. Weisberg, G. Binder, (2012). *Criminal Law Cases and Materials*, 7th ed. (Butterworth, 2012), p. 149, quoting Smith and Hogan in *Texts, Cases and materials*; See also Chioma EZE Emem and Amadi Prince Uche, (2012). A New Dawn of Corporate Criminal Liability Law in the United Kingdom: Lessons for Nigeria. *African Journal of Law and Criminology*, 2(1), pp. 86-98, 87.

² E B Diskant, (2008). Comparative Corporate Criminal Liability: Exploring the Uniquely American Doctrine through Comparative Criminal Procedure. *Yale Law Journal*, 118, 126, 129.

³ It is trite principle in criminal responsibility that, there must be a wrongful act, *actus reus* combined with a wrongful intention, *mens rea*. This principle is incorporated in the Latin Maxim, *actus non facit reum, nisi mens sit rea*, meaning, an act does not make one guilty unless the mind is also blameworthy. A mere criminal intention not followed by a prohibited act does not constitute an offence. In the same vein, mere *actus reus* ceases to be a crime as it lacks *mens rea*.

⁴ F.A Comfort, (2003). op. cit. p. 273, Citing J. Gobert, M. Punch, *Rethinking Corporate Crime* (Butterworths, U.K.), p. 10.

⁵ Faiz Kazi, (n.d.). Project on the Constituent Elements of Crime in the Indian Penal Code. Available at https://www.academia.edu/437424/Constituent_Elements_of_Crime. Accessed on October 2, 2021

⁶ This was the position of the House of Lords in *Salomon v. Salomon Co. Ltd* (1897) AC 22. In Cameroon, a corporation is incorporated as soon as it is registered in the Trade and Personal Property Credit Register (TPPCR) known in French as *Registre du Commerce et du Credit Mobilier* (RCCM). This is in line with Article 97 and 98 of the OHADA UACCEIG.

⁷ R.H, Weijman Jansson, (2018). Corporate Criminal Liability: Time for Sweden to look beyond individual Criminal Responsibility? Unpublished Master's Thesis in International Law, p. 29.

⁸ [1842] 3 QB 223.

⁹ Article 51 of the Netherlands Penal Code of 1976 has adopted corporate crime.

1994¹, Belgium 1999, Switzerland 2003, Austria 2006, Portugal 2007, Spain 2010 and Cameroon 2016². However, other countries do not consider corporations as legal entities criminally responsible. Examples of such countries include: Sweden, Russia and Germany.

The gravity of the consequences of negligence, management, systemic failures, and recklessness of corporations has brought to the fore, the important issue of CCR. Henceforth, if a statutory duty is cast upon a corporation, failure to observe or comply with such duty can lead to the corporation being convicted of the statutory offence.³ It is in this regard that the Bombay High Court in the Indian Case of *State of Maharashtra v. Syndicate Transport Co. Ltd*⁴ did not see any justification to exclude a corporation from liability for crimes committed by its directors, agents or servants while acting for or on behalf of the corporation.⁵ The U.S Supreme Court adopted a similar approach in the case of *New York Central & Hudson River Railroad v. United States*⁶ and held that criminal responsibility could be imputed to the corporation based on the benefit it received as a result of the criminal acts of its agents. Nevertheless, a corporation cannot be guilty of offences such as bigamy or perjury which by their very nature can only be committed by natural persons nor can a corporation be found guilty of a crime where the only punishment is death or imprisonment. Apart from these exceptions, corporations may be criminally responsible both for statutory and common law offences even though the latter involve *mens rea*: and in construction of any laws dealing with an offence punishable on indictment or on summary conviction, the expression “person” includes a body corporate unless the contrary intention appears.

A corporation can only commit an offence via its agents. It is a question of fact in the given circumstance whether the criminal act of the agent is the act of the corporation and whether the state of mind, intention, knowledge or belief of the agent can be attributed to the corporation. This will depend on the position of the agent vis-à-vis the corporation, the nature of the offence and other relevant facts and circumstances of the case.⁷

English courts by mid-nineteenth Century were willing to hold corporations criminally responsible for wrongful acts and omissions. By so doing, English courts introduced the “identification” theory by which corporations were prosecuted for crimes of intent. This theory merges the personality of the corporation and its controlling individuals, and holds it criminally responsible for crimes committed by persons who represent the directing mind and will of the corporation.⁸

3. Types of Corporate Bodies that Could Be Held Liable in Cameroon

For the purpose of CCR, the Cameroon Penal Code has mentioned moral persons without any distinction as to the civil or commercial character, as to public or private character or as to foreign or national character.⁹ The only exception is the state, decentralized territorial collectivities and its agencies. Another question begging for an answer is to know if the term “moral person” is limited only to those corporations that have acquired legal personality. In response to this question, Ntono Tsimi affirms that the legislator has given an operative meaning that permits an efficient application.¹⁰ The writer opines that, it would not be normal that only those who have actually acquired the legal personality by matriculation in the Trade and Personal Property Credit Register (TPPCR) be liable; this is because certain moral persons should not hide behind the idea of non-registration to escape from criminal liability. Failure to register the company is already an offence on its own. The fact that the legislator has not defined moral persons can be interpreted to mean that moral persons include all categories apart from those that have been expressly mentioned in the law.¹¹ Excluding moral persons that do not have the

¹ Article 121-2 of the French penal code provides that “les personnes morales a l’exclusion de l’état, sont responsables pénalement...”

² The Cameroonian penal code in its article 18 (b) and 19 (b) have brought out both principal penalties and accessory penalties for moral persons.

³ M.A. Egute, op. cit, p. 149.

⁴ 12 AIR 1964 Bom 195. Available at <https://indiankanoon.org/doc/677388>. Accessed on 02/10/2021.

⁵ This case deals with the question as to whether a corporate body is liable for punishment of offence involving *mens rea*. It also highlights the criminal liability for breach of trust and cheating under Section 406, 403 and 420 of the Indian Penal Code.

⁶ 212 U.S. 481 (1909).

⁷ Halsbury’s Laws of England. (1964). Halsbury’s Laws of England. 3rd ed., Volumes 1-43. UK, Lexis Nexis Butterworths. p. 181-182.

⁸ M.A. Egute, (1996). op.cit, Citing Doelder and Tiedemann, “Criminal liability of Corporations. The Hague, The Netherlands”, Kluwer Law International.

⁹ Comfort, F.A, op. cit. p. 280.

¹⁰ Comfort, F.A, op. cit. p. 280, citing Ntono Tsimi, “Le Devenir de la Responsabilité Pénale des Personnes Morales en Droit Camerounais, des dispositions spéciales vers un énoncé Général” *Juridique périodique* no. 89, p. 87.

¹¹ Section 74-1 (b) of Law No.2016/007 of July 2016 relating to the Penal Code.

legal personality due to non- registration will be to distinguish where the law has not done so and by so doing weakening the efficacy of the law.

Section 74-1 (a) of the Penal Code assures us of the predictability of the Penal Code by individualizing the entities that cannot be assimilated to juristic persons or corporate bodies. The legislators have held that with the exception of the state and its agencies, corporate bodies shall be criminally responsible for offences committed on their behalf.¹ Corporate bodies within the meaning of the OHADA Uniform Act on Commercial Companies and Economic Interest Groups include all commercial companies which are incorporated or unincorporated in the region.

Due to the difficulty of circumscribing the boundaries between a company and a partnership, the French term “*société commerciale*”, translated to mean commercial companies, is used. In terms of Article 4 of the Uniform Act on Commercial Companies, a commercial company involves a “contract between two or more persons who agree to assign assets in kind or in cash to an activity for the purpose of sharing profits or benefiting from savings that may accrue therefrom”. This definition is misleading because the OHADA legislator has not sufficiently maintained the distinction between a company and a partnership.² However, the Uniform Act offers a wide range of business structures through which commercial activities can be conducted. We shall in turn discuss these corporate bodies alongside companies of the public sector so as to determine those that can be criminally responsible and those that cannot.

3.1 Companies of the Private Sector Governed Entirely by Private Law

The OHADA Uniform Act on Commercial Companies and Economic Interest Groups provides various types of commercial companies with either limited or unlimited liability³ namely: private companies (*Société en Nom Collectif: SNC*)⁴, sleeping partnership (*Société en commandite simple: SCS*)⁵, private limited liability company (*Société A Responsabilité Limitée: SARL*)⁶, public limited liability company (*Société Anonyme: SA*)⁷, joint venture (*Société en Participation*)⁸, *de facto* partnership companies (*Société de fait*)⁹, simplified public limited company (*Société par Actions Simplifiée: SAS*)¹⁰ and economic interest groups¹¹. With the exception of joint ventures and *de facto* companies, every company is required to apply for registration at the competent court within whose jurisdiction in which it carries out its principal activities.¹² The concept of incorporation does not extinguish the corporate criminal responsibility, meaning corporate bodies which include partnerships, incorporated joint ventures and *de facto* companies shall be criminally responsible for offences committed on their behalf except the state and its agencies.

3.2 Companies of the Public Sector Endowed with Special Legal Status

As concerns public sector companies, law No. 2017/010 of 12 July 2017 to lay down the general rules and regulations governing public establishments and law No. 2017/011 of 12 July 2017 to lay down the general rules and regulations governing public corporations regulate three types of corporate personalities namely: public establishments, corporations whose share capital is wholly held by the state (state owned enterprise) and corporations whose share capital is only partially held by the state (semi-public corporation). The organization and management of these companies is governed both by private law provisions and by specific rules and

¹ *Ibid*, section 74-1 (a).

² Ngaunde Leno and Nguindip Nana, “Imputation of Criminal Liability on Corporate Bodies in Cameroon”, p. 585

³ In limited liability companies, the liability of each shareholder for the debts of the company is limited to the amount of his shareholdings while in unlimited liability companies, the shareholders or some of them have unlimited liability as their liability for the company’s debts extends to the private assets. Unlimited liability companies are called *société de personnes* and are based on the *intuitu personae* since the relationship is personal and what matters most is the person himself or herself rather than the amount of financial contribution.

⁴ Article 270 Uniform Act on Commercial Companies and Economic Interest Groups.

⁵ *Ibid*, Article 293.

⁶ *Ibid*, Article 309.

⁷ *Ibid*, Article 385.

⁸ *Ibid*, Article 854.

⁹ *Ibid*, Article 864.

¹⁰ *Ibid*, Article 853-1.

¹¹ *Ibid*, Article 869.

¹² Articles 20-68 of the Uniform Act on General Commercial Law. In Cameroon, the President of the CFI is empowered to register companies and security rights in the country. This is by virtue of Decree 2002/302 of 3 December 2002.

regulations pertaining to the public sector and certain sectors of activity like banking/finance and insurance.

A public establishment is a corporate body governed by public law endowed with legal personality and financial autonomy, responsible for managing a public utility or carrying out a special general interest mission on behalf of the state or a regional or local authority.¹ A public establishment as such is an institution that is made of at least nine hybrids including: administrative public establishment, cultural public establishment, hospital public establishment, social public establishment, scientific public establishment, technical public establishment, professional public establishment, economic and financial public establishment and special public establishment.²

A state owned enterprise is any legal person under private law, having financial autonomy whose share capital is held exclusively by the state, one or more public enterprises or one or more regional or local authorities, set up to undertake, in the general interest, industrial, commercial or financial activities.³ It is clear from this definition that a state owned corporation is a legal form that does not admit of private capital and falls under public authority. Under the legal regime of “public corporation”, the latter exercises its activities following laws, regulations, customs and practices of public limited liability companies governed by Article 385 of the OHADA UACCEIG subject to the provisions of law No. 2017/011 of 12 July 2017 to lay down the general rules and regulations governing public corporations.⁴

As concerns corporation whose share capital is partially held by the state, it is a legal person under private law, having financial autonomy and with share capital that is majority owned by the state, one or many state corporations or several local authorities.⁵ A semipublic corporation is generally a public limited company governed in terms of activities and organization by the UACCEIG subject to special waivers in favour of the state over the appointment of state representatives in the general meeting of shareholders. The legal framework regulating semi-public corporations is from different from that of public limited companies under the UACCEIG. In this light, section 76 law No. 2017/011 of 12 July 2017 to lay down the general rules and regulations governing public corporations is to the effect that, the incorporation, administration, management, supervision, dissolution and liquidation and a semi-public enterprise shall be in accordance with the provisions of the OHADA UACCEIG. By contrast, the state control is less evident in corporations where it holds less than 25% of the share capital and voting rights.

From the foregoing we can see that the category of moral person which can be held criminal responsible is not limited to companies. It generally includes all moral entities with a distinct legal personality which confers on them certain rights and obligations. Thus, trade unions as well as associations can also be held criminally responsible. Section 74-1 (b) however specifically excludes the state and its agencies from any possible criminal responsibility. Thus, the central government, the ministries, deconcentrated entities, decentralised collectivities, public establishments and all moral persons of public law cannot be held criminally responsible.

3.3 Types of Crimes for Which a Corporation Can Be Held Liable

Corporations are liable for all kinds of harm caused to the social values protected by the Penal Code. Like England, Netherlands, Belgium and Canada, Cameroon adopted the general liability system under which a corporation is liable for any type of crime except those that cannot be committed by corporations such as treason, bigamy, witchcraft, incest, murder and rape, that is, those that it cannot be imprisoned or punished like an individual.⁶ Essentially, a corporate body can be prosecuted for environmental pollution, depletion of natural resources, non-compliance with environmental legislations and standards, invasion of privacy, accounting and financial fraud, tax evasion, embezzlement, bribery and corruption and manslaughter with the most recent and prominent case in Cameroon being the Eseka train crash of October 2016, in which the negligence of the managing organs of the company in charge of railway transport resulted in great loses of money, jobs, and even lives (manslaughter).⁷ The above are generally referred to as corporate crime. The Black's Law Dictionary defines corporate crimes as “illegal acts, omissions or commissions by corporate organizations themselves as

¹ Section 4 para 4 of Law No. 2010/10 of 12 July 2010 to lay down the general rules and regulations governing public establishment.

² *Ibid*, Section 2(1).

³ Section 3 para 10 of Law No. 2017/011 of 12 July 2017 to lay down the general rules and regulations governing public corporations.

⁴ *Ibid*, Section 10.

⁵ *Ibid*, Section 3 para 11.

⁶ Ngaunde Leno and Nguindip Nana, op. cit, p. 585, citing Anca IP, *Corporate liability of Corporations — A Comparative Jurisprudence*, submitted in partial fulfillment of the requirements of the King Scholar Program, Michigan State University College of Law, Spring 2006, p. 21.

⁷ Elvis Teke, Eseka train accident: Names of 744 victims published, available at: www.crtv.cm, 6 august 2019.

social or legal entities or by officials or employees of the corporations, acting in accordance with operative goals or standard operating procedures and cultural norms of the organization, intended to benefit the corporations themselves”.¹ However, our focus will be on crimes relating to the environment, otherwise known as environmental crimes.

An environmental crime is an unauthorized act or omission that violates the law and is therefore subject to criminal prosecution and sanctions. It is worth noting that, not all flagrant disregard of the environment is punishable; however, it must be specified as a crime by law at the time the act or omission occurred. This is in line with the principle of legality² expressed in the Latin Maxim *nullum crimen nulla poena sine lege* meaning, there can be no crime and no punishment except as prescribed by law. Environmental Criminal law defines environmental crimes and prescribes punishment.

Although all environmental crimes share a common target, they exhibit important differences. They differ mainly in the perpetrators who commit them, the criminal action they entail, the victims they harm, and the law enforcement agencies that govern them. The most glaring basis for comparison is who commits environmental crimes? On this basis, four types of environmental crimes can be distinguished namely: corporate, organized, state and personal. Each entails different levels of risk to public health and the environment.³ Our focus in this paper is on corporate environmental crimes.

We and our environment are at risk. Water, air and soil pollution; hazardous waste disposal; global warming; acid rain and reduction of the ozone layer threaten the natural environment and endanger people's health. Corporations are known for non-compliance and disregard of environmental legislations. Their desires for huge profit maximization make them potential violators of national and international environmental, health and safety standards. The most recurrent corporate environmental crimes in Cameroon include pollution, depletion of natural resources and the disregard of legislations geared towards environmental protection.

4. Sanctions

A sanction is akin to punishment which is the infliction of consequences normally considered unpleasant on a person or a corporation convicted for a crime. The fact remains that when a corporation is held liable, it is punished and punishment includes a variety of sanctions. The issue of sanctions is today the subject of heated doctrinal debates, and often times, the argument for rejecting corporate criminal responsibility. The most consistent argument is that corporate criminal responsibility is inconsistent with basic tenets of criminal law. A corollary argument is that using criminal justice system inappropriately, by imposing criminal sanctions on corporate bodies, distorts, cheapens and ultimately weakens the criminal justice system. Proponents of this view argue that CCR is inconsistent with the criminal law in two respects. First, the current models of attributing CCR, which are based upon the identification, the vicarious liability or aggregation models as the case may be, are incompatible with the cardinal principle in criminal law that an actor can only be held responsible for its own action and intent. Since a corporation is a fictional entity in law, it has no intent and consequently not suitable for criminal prosecution, and the subterfuge of imputing another actor's act and intent to the corporation cannot substitute for this deficiency in proof. This argument also points to imprisonment as a defining characteristic of the criminal law and argues that since fictional entities cannot be imprisoned, CCR is inappropriate.⁴

For some critics, CCR should be rejected because criminal responsibility is individual in character and not corporate. This is in fact saying that in sanctioning a corporation, all its members are sanctioned regardless of whether they participated in the criminal offence.⁵ It has equally been argued that CCR would result in double sentencing of both the corporation and its members for the same offence.

The last argument advanced against CCR is that imposing it is detrimental to innocent actors namely: shareholders, who especially in the context of a large publicly held corporations are powerless to effect the

¹ B.A. Garner, (1999). *Black's Law Dictionary*, 7th ed. West Group, St. Paul Minn, p. 377.

² Section 17 of the Cameroon Penal Code provides that “No penalty or measure may be imposed unless provided by law, and except in respect of an offence lawfully defined”.

³ Yingyi Situ & David Emmons, (n.d.). Environmental Crimes: The Criminal Justice System's Role in Protecting the Environment. Available at <https://sk.sagepub.com/books/environmental-crime/n3.xml#:~:text=corporate%20environmental%20crimes%are%20>. Accessed on 14/19/2021.

⁴ Corporate Criminal Responsibility: Critique of Corporate Criminal Liability. Available at <https://www.law.jrank.org/pages/745/corporate-criminal-responsibility-critique-corporate-criminal-liability.html#>. Accessed on 9 June 2023.

⁵ Anca IP, (2006). *Corporate liability of Corporations — A Comparative Jurisprudence*, submitted in partial fulfillment of the requirements of the King Scholar Program, Michigan State University College of Law, Spring, p. 21.

conduct of corporate executives; bondholders holders and other creditors; employees; the community in which the corporation is situated and that may be adversely affected by serious consequences imposed on the corporation; and consumers, who likely will pay higher prices because of the criminal sanction imposed.

On the other hand, are those who uphold the doctrine of CCR. To them, CCR does not conflict with the individual character of criminal responsibility because the only person suffering the direct effects of a criminal sanction is the company whose property is separated from its members who assumed to risk their contributions to the corporation when they are reckless or act in their personal capacity.¹ Put differently, members cannot avoid legal penalties that would result from their actions as members. Another major argument offered for CCR is utilitarian: corporations are major actors in today's world and crimes cannot be fought effectively without appropriate mechanisms to pursue all actors. A corollary argument is that allowing corporations to engage in criminal activities gives illegal corporations a competitive edge over law-abiding corporations. This, in turn, distorts and undermines market forces in a capitalist economy. This argument is premised on the belief that CCR can change corporate behavior in two ways. First, general deterrence of similar behavior by many corporations is achieved through publicity about corporate prosecutions. Second, options for sentencing convicted corporations, such as community service and probation, which require implementation of an effective corporate compliance plan, force changes within a corporation.²

In spite of the divergent views discussed above, Cameroon has adopted a comprehensive sentencing system for individuals and corporate entities. It may include for natural persons the infliction of death, imprisonment or fine and for corporate bodies, dissolution, temporary or final closure or fine by reason of section 18(a) and (b) of the Penal Code. Added to the above are alternative penalties which include community service and reparatory sentence. But there are also accessory penalties which for natural persons include forfeitures, publication of judgment, closure of establishment and confiscation, while for corporate bodies they include ban for a specified period time, on the direct or indirect exercise of any activity or all its activities, placement under judicial supervision for a specified period of time, closure for a specified period of time, of establishments or branches having served in the commission of the offence, and publication or media broadcast of the judgment by reason of section 19(a) and (b) of the Penal Code. The penalties may also include preventive measures which according to Section 20(a) and (b) of the Penal Code include for natural persons ban on exercise of activity, preventive confinement, post penal supervision and assistance, confinement in a special health institution and confiscation. As concerns corporate bodies they include ban on the exercise of activity for a specified period of time, confiscation and placement under judicial supervision for a specified period of time. Besides the afore mentioned penal sanctions, we equally have administrative sanctions which can be imposed on the corporation notably administrative fines, warning/reprimand, forfeiture and withdrawal of license or authorization. The above sanctions could be subdivided into principal penalties, accessory penalties, preventive measures, alternative penalties and administrative sanctions.

Although the imposition of these sanctions on corporations by the legislator is plausible, it is important to remark that a major problem encountered with this imposition is the application of sanctions against the corporation. This problem is exacerbated by the theoretical difficulty in establishing the guilty mind (*mens rea*) of the corporation as well as the practical difficulty in applying appropriate sanctions on the corporation.

Another problem encountered with the introduction of CCR is the procedural challenges in prosecuting corporations. Given that substantive rules will be useless if there are no appropriate procedures in place to implement them, the Cameroonian legislator seems to have hastily introduced CCR in the Laws without taking into consideration the fictitious nature of a corporate body. By not also amending the Criminal Procedure Code (CPC) to suit the substantive rules, the legislator seems to have disregarded the procedural difficulties involved in charging corporate entities to court. As such, holding a corporation criminally responsible raises certain procedural questions such as who must be summoned? who must stand in the dock? who must act on behalf of the corporation during trial? how arraignment should be done, *etc.*? The Criminal Procedure Code has not addressed these issues.

As per the CPC, the personal appearance of the accused is required during trial. This is in line with section 348 of the Code which provides that an accused on whom personal service has been affected shall be bound to appear before the court. Such an accused shall also appear before the court if it is proved that he had knowledge of the summons. But it is evident that corporate bodies will not be able to comply with this requirement, or else their legal representatives will be required to appear. The personal appearance of the accused during trial is

¹ Ibid, p. 37.

² Corporate Criminal Responsibility: Critique of Corporate Criminal Liability. Available at <https://www.law.jrank.org/pages/745/corporate-criminal-responsibility-critique-corporate-criminal-liability.html#>. Accessed on 9 June 2023.

important because the presiding magistrate is called upon to consider the demeanour of the accused. Considering that a corporation has no physical body nor soul to be compelled to physically appear, enter the dock or witness box to testify, it will be practically impossible for the provisions of section 348 of the CPC to apply with respect to corporate bodies. As far as trial¹ is concerned, the CPC in section 359 (1) requires the presiding magistrate after having complied with the provisions of section 338² to cause the charge³ to be read out to the accused and shall ask him if he pleads guilty or not. This is technically referred to as arraignment. This procedure is practicable as far as natural persons are concerned but does not easily translate to a corporate body which has no physical existence and is not capable of thinking for itself or of forming any intention of its own.⁴

Furthermore, in case the corporation is sentenced, what will happen when a fine is imposed on the latter who does not pay on the spot as required by section 557 CPC⁵? How will imprisonment in default of payment be executed against the corporate body? Other questions remain unanswered by the Law, such as the mode of summoning a corporate body to appear in court and how criminal records of corporate bodies shall be kept.

5. Conclusion

Considering the dangerous nature of the activities of some corporate bodies and the harm they present to the environment; the Cameroonian legislator has introduced the concept of Corporate Criminal Responsibility under the identification model practiced in the United Kingdom wherein corporations are criminally responsible for offences committed on their behalf by their organs or representatives. Corporations in their day-to-day operations commit environmental crimes ranging from pollution, depletion of natural resources to disregard of environmental legislation and standards. In response to these crimes, the Cameroonian legislator has enacted laws and established institutions to address CCR in relation to environmental protection. Despite the non-recognition of corporate criminal responsibility in some legal systems, Cameroon has adopted a comprehensive sentencing system for both natural persons and corporate bodies. But our point of focus was placed on corporate bodies which could be fined, dissolved, banned, closed or placed under judicial supervision, subjected to alternative penalties of community service or reparatory sentence as well as the imposition of administrative penalties such as administrative fines, suspension or revocation of licenses or authorization and forfeitures. In spite of the imposition of these sanctions, corporations still violate environmental legislations. This raises the question as to whether these sanctions are severe enough to produce the desired deterrent effects or whether the laws are not effectively implemented. In order to make the criminal law effective there is the need for the legislator to bring up solutions to the numerous procedural difficulties that have been posed as a result of introducing CCR notably the amendment of the CPC. In case an offence is committed by a corporation, the amended version of the criminal procedure code should clearly state the person to be summoned, the person to stand on the dock or act on behalf of the corporation during trial and how arraignment should be done.

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¹ Trial was defined by Wali JSC in *Kajubo v. The State* [1988] 3 SCNJ P.231 who made use of the definition contained in Blacks Law Dictionary where trial is defined as: "a judicial examination and determination of issues between the parties. A judicial examination in accordance with the Law of the land or of a cause, either civil or criminal, of issues between the parties, whether of Law or fact before a court that has proper jurisdiction".

² Pursuant to section 338 of the Criminal Procedure Code, the presiding magistrate shall declare the session open and ask the registrar in attendance to call the cases listed for hearing. He shall, for each case called, ascertain whether all the parties and other persons summoned are present or absent. He shall also verify the identity of every accused and shall mention all these formalities in his record book and judgment.

³ Section 2 of the repealed Criminal Procedure Ordinance, Cap. 43 of the 1958 Laws of the Federation of Nigeria defined a charge as the statement of offence or statement of offences with which an accused is charged in a summary trial before a court.

⁴ Its thinking and acting are done for it by directors or servants, and it is argued that it is these persons of flesh and blood who ought to be punished.

⁵ Pursuant to section 557 CPC imprisonment in default of payment shall be a procedure which aims at compelling a convict to execute a pecuniary sentence pronounced against him or make restitution ordered by a court in a criminal case. It shall be applicable without prior notice at the instance of the Legal Department in the event of non-execution of a pecuniary sentence or non-restitution of property. It shall equally consist of a term of imprisonment during which the debtor shall be obliged to work.

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