

# Corporate Criminal Sanctions For Human Rights Abuses: A Legal Appraisal Of This Liability Under Cameroonian Business Law

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**Abstract**—Criminal responsibility for corporate related human rights violations is a challenging and complex question in today's world, this is partly because of the individual or personal character of criminal responsibility. It is held as a general rule that only human beings can commit offences. The primary objective of this research is to critically examine the human rights aspects of corporate criminal responsibility of companies in Cameroon. The conducts of business by various corporations in Cameroon are recognized as an impetus to economic, social, cultural and political advancement. With the rise in corporate crimes in the world today, the question has been whether a corporate body can be held liable for corporate crimes or not. The paper answers in the affirmative that a corporate body can be subject to criminal prosecution and liability for crimes occurring within the corporation especially in the domain of human rights. Considering that a corporate body cannot be imprisoned, or punished like an individual, there are ways to punish a corporation. A corporate body may be fined, ban, closed placed under judicial supervision for a specified period of time. With this in mind, the paper analyses the concept of corporate criminal liability with specific regards to corporate capacity, the basis upon which such liability attaches to a corporation and sanctions with the aim of illustrating the weaknesses of the different aspects trundled-out above.

**Keywords**—Cooperate, Criminal, Sanctions, Human rights

## Introduction

Corporate criminal responsibility for human rights abuses concerns liability for illegal behaviour of business or by individuals acting on behalf of a business that impacts human rights. In fact, corporate crimes have been defined as illegal acts, omissions or commissions by corporate organizations themselves as 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<sup>1</sup> The primary goal of this work is to critically identify and examine the corporate human rights abuses in Cameroon. In effect, as a

component of corporate criminal responsibility, cases of corporate human rights abuses are much felt. Under existing law, it is extremely difficult to prosecute companies for human rights abuses. This is for a variety of reasons. Some of the most serious human rights abuses by corporations constitute crimes of universal jurisdiction.

The Cameroon penal code has listed the sanctions that can be applied to corporations for human right violation. The most common sanction is the fine which is applicable for all types of offences<sup>2</sup>. The penal code had grouped these sanctions applicable to corporations into principal penalties (A), accessory penalties (B), and preventive measures (C).

## A. PRINCIPAL PENALTIES APPLICABLE TO CORPORATIONS FOR HUMAN RIGHT VIOLATION IN CAMEROON

The various principal penalties that apply to corporations in Cameroon include fines; dissolution and closure of establishment.

### 1. Imposition of Criminal Fines for Corporations Human Right Violation in Cameroon

Fines are one the main principal penalty impose on corporations for human rights abuses in Cameroon, the amount fine is determined based on the limits applicable to individuals; the maximum amount for corporations cannot exceed five times the maximum for individuals unless the corporation is a recidivist. The fine can also exceed the five times threshold when the corporate body is guilty of an offence punishable with imprisonment only<sup>3</sup>. There is the most common sanction. A pecuniary sanction has the advantages of directly affecting the corporation, it generate the capital necessary to compensation or restitution to the victims, it can be executed within minimum costs and when and appropriately individualized it has sufficiently strong impact to accomplish the scope of the punishment (especially the retributive and deterrent scopes)<sup>4</sup>. The amount of fine must be sufficiently high to have an impact on the corporation. Fine can be disadvantageous too; a very high fine will have effect on innocent third parties. Shareholders, other employees, and creditor will be affected by the secondary consequences of the penalty. It can lead to the increase of prices of the corporation's products and even dissolution of the

corporation. Despite all these draw fines are the most effective and less expensive frequently applied sanction under common law.

## 2. Dissolution of Corporations for Human Right Violation in Cameroon

Dissolution represents the capital punishment for corporation Due to the security of this sanction the sanction of dissolution is applied only when the corporation committed very serious crimes or when the corporation was created for illegal purposes<sup>5</sup>. However, the punishment has its place amongst corporate sanctions<sup>6</sup>. Dissolution is also a capital punishment which may be inflicted on a corporation<sup>7</sup> whenever a judgment on dissolution is passed against a corporate body is especially when the corporate body must have acted in violation of its object clause<sup>8</sup>. In heading down a judgment on dissolution of a corporation or corporate body, the court must ensure that the corporate body has been referred to the competent court winding up at the instance of the legal department<sup>9</sup>. The sanction of dissolution is however applied only in circumstances where the corporate body had committed very serious crimes or when the corporation was created for an illegal purpose.

## 3. Closure of Corporations for Human Right Violation in Cameroon

Corporate sanction in Cameroon consist of restraining the corporation from performing all or part of its activities, or using the site for the performance of the whole or part of it activities. The penalty means a temporal or final closure of an establishment consider to be a corporate body. The penalty prohibits the convicted corporate body from carrying out the activities through the offence was committed. The temporal closure of an establishment may not exceed five years and such a decision may not be suspended<sup>10</sup>.

Other corporate criminal sanctions consist in restraining the corporation from the performance of some activities, denial suspension or retraction of license, loss of right (such as benefitting from subventions or taxed deduction). Prohibition of advertising or selling on specific market etc.<sup>11</sup>. Corporation can also be restructured required to submit periodical report, or put under the supervision or control of a consultant who can recommend or impose appropriate measures for preventions of future crimes. This "corporate probations" has very strong and rehabilitative effect. Its side effects on innocent their parties are also minimal<sup>12</sup>. Another attractive solution is the sanction of community service which is not likely to result in job losses and will be extremely beneficial to the community<sup>13</sup>.

In England, the standard sanction is the fine. However, because fines are often too low in relation to the corporation do financial means and damages caused by the offence, corporate probation, confiscation of the proceeds of the crime and

withdrawal of licenses have also been scarcely applied<sup>14</sup>. We are therefore of the opinion that English law should reassess both the nature of sanctions applicable to corporate offenders and the principles of attribution of criminal liability to corporation.

## B. ACCESSORY PENALTIES APPLICABLE TO CORPORATIONS FOR HUMAN RIGHT VIOLATION IN CAMEROON.

The main accessory penalties that can be inflicted on corporation in Cameroon are publication of judgment, closure of the establishment, placement under judicial supervision and confiscation of "corpus delicti"

### 1. Publication of Judgment on Corporations Human Right Violation in Cameroon

The publication of the decision or adverse publicity order consists in the publication at the company's expense of an advertisement, emphasizing the crime committed and its consequences. This sanction has an important deterrent effect because of the incidental loss of profits that negative publicity can cause to the corporation. By its nature, this sanction can only be an auxiliary sanction accompanying another corporate penalty<sup>15</sup>. This sanction has a possible spill-over effect, the losses can cause the corporation to close plants or even go out of business, which will in turn negatively affect innocent employees, distributions and suppliers<sup>16</sup>. Section 33 of the penal code provides; "*Where the competent court may order publication of its judgment, it shall be posted in manner to be prescribed by decree for up to 2(two) months in the cause of felony, or misdemeanour or (15) fifteen days for a simple offence*".

Therefore, the modalities of publication shall be dealt with subsequently by a regulating instrument as per the section cited supra. In the course of publishing the judgment, the court shall appoint the media which is charged with its implementation<sup>17</sup> and such publication shall be at the expense of the convicted corporate body<sup>18</sup>. The penal code indicates that the posting may be limited only to the operative part of the judgment, therefore posting of the entire decision may be allowed<sup>19</sup>. The law also authorizes information through print media, radio and television or by internet as well as fair comments<sup>20</sup>.

### 2. Closure of Corporations for Human Right abuses/Violation in Cameroon

As a principal penalty, closure of an establishment is either a final or temporary closure of an establishment considered to be a corporate body<sup>21</sup> whereas as an accessory penalty it operates as a ban on the exercise of an activity. The penal code in it Section 34 has provides for the competent court order the closure of a business or industrial establishment or any premises devoted to gainful activity, which was used for the commission of the offence such closure shall imply a ban on the exercise of the same business or industry or activity in the same premises,

whether by the offender or by any other to whom he may sell, transfer or let the establishment or premises.

This sanction has an important drawback because of the effect on the employees who would lose wages. This sanction however seems justified for serious violation of labour and environment law and besides the court may order that employees be paid their salaries for the time suspension.

### **3. Placement of Corporations under Judicial Supervision for Human Right Violation in Cameroon**

This is also known as “corporate probation”, wherein corporation can be restructured, required to submit periodical reports or put under the supervision or control of a consultant who can recommend or impose appropriate measures for prevention of crimes in future<sup>22</sup>.

In Cameroon, the placement under judicial supervision can be applicable to corporate bodies found criminally liable and the courts shall appoint a judicial representative who controls mission and duration thereof shall be prescribed by the court<sup>23</sup>. This judicial supervision is not decreed as on all the activities of the corporation but only on the activities in respect of which the offence was committed. The judicial representative appointed by the court shall render accounts of its mission regularly to the competent state prosecutor as part of his functions.

Placements on judicial supervision can never amount or lead to dissolution or a ban for life. Section 34-1(4) of the penal provides; At the end of the judicial representative's mission and based on his report, the competent state counsel shall seize the court that ruled on placement under court supervision for the corporate body to be relieved of the measure.

From the provision of the penal code above, we can affirm that the measure has a very strong rehabilitative effect. Its side effect is minimal on innocent third parties. The goal therefore is the rectification of the corporate policies and practices that led to the criminal offence. Hence for the purpose of rehabilitative probation, placement under judicial supervision should be virtually automatic unless the company could show that it had already taken adequate steps to prevent a reoccurrence of the offence<sup>24</sup>.

### **4. Confiscation of “Corpus Delicti” of the Corporation**

The Confiscation of the Proceeds of the crime has been one of main sanction that has often been used, in confiscation of the “corpus delicti”<sup>25</sup>. The deprivation of the proceeds of the crime is used under common law as a security measures on corporations<sup>26</sup>. However, in order to achieve the scope of criminal punishment, the best solution would be if confiscation were as complementary sanction. If confiscation were the only sanctions imposed, the corporation would be encouraged to take the chance, since the probability

of getting caught is not very high<sup>27</sup>. The penal code empowers the competent court for upon conviction for any felony or misdemeanour order the confiscation of any property movable or immovable, belonging to the offender and attached, which was used as an instrument of its commission or proceeds of the offence<sup>28</sup>. Corporations would be encouraged to take chance since the probability of not being caught is very high. Restitution of the corpus delicti in some instance can lead to absolvment of criminal responsibility<sup>29</sup>.

### **C. PREVENTIVE MEASURE – BANNED OCCUPATION**

The lone preventive measure that is applicable to corporate bodies in Cameroon by virtue of its penal laws is that of banned occupation. This consists in restraining the corporation from the performance of some activity's denial, suspension or retraction of license, loss of right. In Cameroon this section is pronounced upon conviction for a felony or misdemeanour under ordinary law. In a motivated judgment, the court may go ahead to forbid the convict from continuing to follow any occupation found to stand in a direct relation to the offence, and his continuation in which would give grave reason to apprehend a repetition<sup>30</sup>. Such a ban except otherwise provided by law may not be less than a year nor for more than 5(five) years after completion of the principal sentence.

In respect to corporation bodies specifically, this sanction corresponds to prohibition for a specified period from directly or indirectly undertaking one or several activities contained in its purpose. In case of subsequent conviction or recidivism<sup>31</sup> from felonies or misdemeanour they shall be for life. So, in order to prevent the reoccurrence of grievous acts and cases of previous convictions a life ban can be placed on a corporation in respect of those activities in which is commits crimes.

### **D. CIVIL LIABILITY FOR CORPORATE VIOLATION OF HUMAN RIGHT IN CAMEROON**

It's been a subject of criticisms, that other types of liability are more efficient than corporate criminal liability. It's believed by theories that criminal liability is too over deterring. It induces corporation to spend more resourced for prevention than its economically and socially useful<sup>32</sup>. Moreover, the cost of criminal proceedings is higher than the civil cases and therefore, not justified when both have the same result pecuniary penalties<sup>33</sup>. It has also been argued that the reputational harm accompanying corporate criminal liability is either unnecessary or excessive. The high risk of reputational harm would also mount pressure on corporations to speed up procedure and pleads guilty when the charge is groundless. In addition, the reputational damage resulting from a criminal conviction does not provide a reciprocal gain to any injured party.

Therefore, as alternative to corporate criminal liability, several scholars and authors have proposed, civil liability of corporation for criminal fines imposition of administrative sanctions and individual criminal liability<sup>34</sup>.

### 1. Civil Liability of Corporations

Although the civil liability of corporations has its advantages in compensating for the injuries caused by corporations, it is not sufficient to prevent corporate criminal misconduct. Some offences, called crimes "of danger", do not create victims who can sue the corporations for civil damages. Or in environmental crimes, victims might not even know about the commission of the crimes by the corporations. Moreover, in some crime connected with the process of production and distribution of goods, the victim is so far in the chain that he/she does not even realize that the corporation was the author of the offense<sup>35</sup>. On the other hand, although the benefit to the corporation is substantial due to a high number of victims, the prejudice caused is so small that the imitation of a civil law suit is unjustified<sup>36</sup>. Even when a corporation is civilly obligated to pay damages, civil sanctions may not be sufficient to determine the corporation to refrain from future misconduct when the benefits obtained from the misconducts outweigh the civil damages paid.

The reputational harm resulting from corporate criminal liability might encourage faster settlements, thus avoiding pricey trials<sup>37</sup>. Furthermore, criminal liability expresses the society's condemnation of the corporate misconduct<sup>38</sup>, thereby vindicating the proper valuation of person and goods whose true work was disparaged by the corporation's conduct, just as in the case of an individual offender. Corporations have an identifiable personal and can express moral judgment distinct from those of their members. Therefore, corporations can be the subject of the expressive retributive goal of criminal law.

### 2. Civil Liability of Corporations for Criminal Fines.

Civil liability of corporation for criminal fines impose on a corporate officer is another alternative to corporate criminal liability. This solution has been used in some countries such as Italy, Portugal, Netherlands, Belgium, Luxemburg and France. These alternatives have been criticized firstly because civil liability often serves only as a surety<sup>39</sup>. Secondly, it contravenes the principle of individual punishment; the corporate officer is set to be guilty but the corporations have to bear the sanctions. Thirdly, these alternatives create inequality of treatment of the individual convicted for the offence; if the law provides a sanction for the offence, both imprisonment and a fine, the individual is condemned to pay a fine will not execute it but the individual sanctioned by imprisonment must execute the punishment. Fourthly, the identification of the person who committed the offence is necessary. Corporations have a complex structure and sometimes it is very difficult or

impossible to determine who the author of the offence was. Hence, a civil liability of corporations for criminal fines imposed on its employees cannot fulfil the purpose of deterrence and to retribution.

### 3. The imposition of administrative sanction for corporate violation of human right in Cameroon

A very frequently used alternative to corporate criminal liability has been the imposition of administrative sanctions. These sanctions are usually imposed by administrative bodies which are parts of the executive branch, the court playing a limited role in some countries when so allowed. Reasons why administrative sanctions are meted are the belief that moral stigma is superfluous, the flexibility of the concept of guilt and responsibility in the administrative and the specialized nature of the administrative bodies that could handle the matter more efficiently. Many critics argue that the strong impact of these sanctions makes them resemble criminal sanctions<sup>40</sup>. Which lack the constitutional guarantees of criminal procedures<sup>41</sup>. Moreover, corporate administrative liability raised the same issues as corporate criminal liability does regarding the *mens rea* element and the individual character of criminal liability. Some authors argued that, it is unfair that individual may be held criminally liable while the corporations are merely administratively sanctioned for the same offence. Moreover, administrative sanctions do not symbolize the moral condemnation of the society thus the doctrine has advanced possible resolution. Corporations should be held administratively liable for minor offences but should be held criminally liable for more serious offences.

### 4. Individual Criminal Liability for Corporate Violation of Human Right in Cameroon

Individual Criminal Liability is less complicated and may be sufficient. This argument has strongly been criticized for several reasons. First, due to the high complexity of modern corporations, the individual responsible for the offence might be impossible to identify such is the case when the decision process is fragmented among multiple departments, when the activities of some employee is not systematically verified because of his/her position of trust or when a decision is taken by a multi-member board by vote<sup>42</sup>.

Secondly, prosecutors may conclude that an individual indicting an individual is not justified because the employee thought that his or her superiors were aware of and approved the action or because they acted from fear of losing their jobs.

Thirdly, some of the persons who made the illegal decision might be located in another country and could not be prosecuted.

Fourthly, individual criminal liability is most of the time ineffective because the amount of a fine is tailored to reflect the individual financial possibilities and some systems allow the reimbursement of fines

paid by the corporate employee, or corporations can ensure themselves against intentional and unintentional wrong doing (for environmental offences)<sup>43</sup>

Lastly, some system requires the designation of a person responsible for corporations activities or high managers are automatically presume responsible when strong requirements of showing of guilt or proximate cause, the agent is compensated for this high risk and is reimbursed for the criminal fines. This solution encourages corporate wrongdoing because it would be probably less expensive for a corporation to hire a new manger "responsible with going to prison" than given up the illicit activity<sup>44</sup>.

All the above arguments underline the extreme importance of criminal corporate responsibility in modern society. The new technology and development of industries give rise to unpredictable risk that poses serious threats to our society. Corporation tries to obtain the highest profit in the shortest time and some of them are ready to achieve this result by any means. Some corporations are especially incorporated with the secret purpose of committing offences. Most counties that adopt criminal liability of corporation conclude that corporate misconduct should not be left unsanctioned in the most efficient way. Corporate criminal responsibility can successfully improve and co-exist together with the criminal liability of individuals. Corporate criminal responsibility better promotes general fairness and is consistent with the principle of criminal law

### Conclusion

There are a number of reasons why criminal responsibility should extend to the corporate entity and not be confined to the corporate personnel of the business enterprise. imposing criminal sanctions on corporate entities is necessary to indicate society 's condemnation of the corporate wrongdoing. Corporations have been known to engage in business activities that inflict harm upon society; hence, as societal actors, it is expected that by imposing criminal liability, corporations will be brought before the most authoritative regulatory mechanism available in society.<sup>45</sup> Imposing corporate criminal responsibility is necessary to deter corporations from engaging in criminal activities. Although explanations vary, criminal penalties that tend to be imposed sporadically, or even leniently, are seen as the leading reason for the failure to deter corporations from engaging in criminal activities.<sup>46</sup> The deterrence theory distinguishes between its general and specific forms.<sup>47</sup> Specific deterrence is concerned with punishing criminals so as to deter them from committing criminal offences again.<sup>48</sup> Corporate punishment could take a number of forms for example, a corporate death penalty, or subjecting the entity to a probationary period during which the courts monitor its business activities.<sup>49</sup> General deterrence is concerned with what effect punishing a specific offender will have on society at large, given that it

might dissuade society from trying to engage in similar criminal conduct. Some see general deterrence as the more appropriate rationale for corporate criminal liability, and rightly so. This is premised on the notion that corporate entities through their senior management tend to pay close attention to similar cases that have gone before the courts. They do this when weighing up the risks and rewards of whatever business activities they are about to engage in.

Again, imposing corporate criminal liability would allow for sanctions against corporate assets which, in turn, could generate funds for victims or their beneficiaries. On this view, corporate entities are likely to have substantially more assets than the corporate personnel. This also increases the likelihood of securing funds when enforcing a court order. Finally, extending liability to the corporate entity would be beneficial because culpable individuals are not always easily identifiable.<sup>50</sup> At times, undesirable conduct is carried out through the business form, which inevitably makes it difficult to identify culpable individuals.

<sup>1</sup> Garner B. A., *Black's Law Dictionary*, 7<sup>th</sup> ed. West Group, St. Paul Minn, 1999, p. 377.

<sup>2</sup> *ibid* section 25 (2)

<sup>3</sup> section 25 (2) of the P C

<sup>4</sup> Stretianu & Chirita, *ibid* 252 at 170

<sup>5</sup> James Gobert, controlling, Penal Sanctions and Beyond, 2 web jcli P,6 1998 ALSO AVAILABLE AT [http://webjcli.nd.uk/1998/issue 2/gobert 2htm](http://webjcli.nd.uk/1998/issue%202/gobert2.htm)

<sup>6</sup> B. schutz, le principe de la personnalite des Peines 114-116 (1967)

<sup>7</sup> Section 25 (2) of the penal code

<sup>8</sup> *ibid*

<sup>9</sup> Section 25 (3) of the penal code

<sup>10</sup> Section 25 (1-3) of the penal code

<sup>11</sup> Stretianu & chirita *loc cit* 252 at 174.

<sup>12</sup> Golbert *loc cit* note 319 at 18.

<sup>13</sup> *ibid* 628

<sup>14</sup> Harding *supra* note 292 at 381

<sup>15</sup> Stretianu & chirita *ibid*

<sup>16</sup> James Gobert *ibid* 319 AT 10.

<sup>17</sup> Section 33 of the penal code

<sup>18</sup> Section 25 (3) of the penal code

<sup>19</sup> Section 33 (4) of the penal code

<sup>20</sup> Section 33 (6) of the penal code

<sup>21</sup> Section 25 (3) of the penal code

<sup>22</sup> Gobert *op cit* 319 at 11-18

<sup>23</sup> Section 34 (1-2) of the penal code

<sup>24</sup> Gobert *op cit* 319 at 12.

<sup>25</sup> Stessens *loc cit*

<sup>26</sup> *ibid*

<sup>27</sup> *ibid*

<sup>28</sup> Section 34 (1-2) of the penal code

<sup>29</sup> Section 35 (1) of Decree No 2013/288 of September 2014 fixing the modalities for the restitution of Corpus delicti.

<sup>30</sup> Section 36 of the penal code

<sup>31</sup> Section 88 of the penal code

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<sup>32</sup> Beale and Sawfatsupr note 277 at 93.

<sup>33</sup> V.S Khanna corporate criminal liability. What purpose does it serve 109 Harv.L.Rev. 1477,1509 (1996)

<sup>34</sup> Beale and Sawfat note 277 at 95.

<sup>35</sup> Stretenau and Chirita Supra note at 73.

<sup>36</sup> Gobert *ibid* 319 at 3 (“Millions of customers illegally overcharged by a matter of pence”)

<sup>37</sup> Khauna 261 at 1507.

<sup>38</sup> Beale and Sawfat 277 at 95

<sup>39</sup> Stretenau and Chirita at *ibid* 73. Citing G FIANDACA & E MUSCO, DIRITO PENAL. PARTE GENARAL 146 ( ZANACHLLI ED., 2001.

<sup>40</sup> Stessens *ibid* at 171 (critics referring to the extremely high administrative sanctions imposed by the European commission).

<sup>41</sup> *ibid* at 504.

<sup>42</sup> Gunter Heine, New Developments in corporate criminal liability in Europe learn from the American Experience or vice versa 1998 St. Louis-Warsaw Transatlantic LJ 174 (1998)

<sup>43</sup> *ibid* at 177.

<sup>44</sup> Stretenau and Chirita *ibid* 252 at 71, citing C.M.V, Clarkson, corporate culpability (SIC) web J. of current legal issues 3 (1998).

<sup>45</sup> Pamela Bucy, Corporate Criminal Liability: When does it Make Sense? (2009) 46 *American Criminal Law Review* 1437,

<sup>46</sup> Sally S Simpson, *Corporate Crime, Law, and Social Control* (Cambridge University Press, 2002) 45.

<sup>47</sup> There are several theories about punishment, these include, *inter alia*: \_deterrence, retribution, rehabilitation, restitution, incapacitation, and denunciation. David Ormerod, *Smith and Hogan Criminal Law* (Oxford University Press, 11<sup>th</sup>ed, 2005) 5.

<sup>48</sup> Andrew Weismann with David Newman, \_Rethinking Criminal Corporate Liability (2007) 82 *Indiana Law Journal* 411, 428.

<sup>49</sup> Ordinarily, this is carried out by imposing a term of imprisonment upon a natural person. Andrew Weismann with David Newman, \_Rethinking Criminal Corporate Liability (2007) 82 *Indiana Law Journal* 411, 428.

<sup>50</sup> Jonathan Clough and Carmel Mulhern, *The Prosecution of Corporations* (Oxford University Press, 2002) 6. For further discussion on some of the challenges that lie in identifying the culpable individual see, Joanna Kyriakakis, Corporations and the International Criminal Court: The Complementarity Objections Stripped Bare (2008) 19 *Criminal Law Forum* 115, 149.