

# An Appraisal of External influences in the Development of Corporate Criminal Responsibility in Cameroon

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## Abstract

Legislations on corporate criminal responsibility often arise out of a pressing crisis, public outrage and the desire to be seen to have acted. However, the eventual enforcement of such legislation is often more weaker than originally promised. Despite the introduction of corporate criminal responsibility into the Cameroonian legal system, there are both institutional and human influences that have marked its development and implementation. It's likely that external factors are able to affect the final content of the legislation and its implementation. This article analyses the external influences that have affected and which continue to affect the development of corporate criminal responsibility in Cameroon. This article also hails the insertion of corporate criminal responsibility in the revised Penal Code of 12 July 2016 as well as in other specific sectoral legislations. However, this article opines that the law poses very glaring challenges with regards to the imputation of corporate criminal liability and some practical challenges linked with the execution of some categories of sanctions which are not unconnected with the influences of some external parties. This article concludes with the call for the enactment of a specific corporate criminal code as well as the revision of the criminal procedure code in order to insert procedural provisions specific to corporate responsibility in Cameroon.

**Keywords:** Appraisal, Influences, Criminal Responsibility, Corporations, Development.

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## INTRODUCTION

Due to the rise of corporate criminal wrong doing in Cameroon, the legislator decided in 2016 to introduce for the first time into the Cameroonian Penal Code the criminal responsibility of corporate bodies, Corporations nowadays commit offences ranging from environmental pollution, accounting and financial fraud, tax evasion, misappropriation, manslaughter, bribery and corruption.

The most recent and prominent case in Cameroon is the Eseka [<sup>1</sup>] train accident of October 2016 in which the negligence of the management organs of the company in charge of railway transport resulted to the loss of lives, property and jobs [<sup>2</sup>]. It's on record that the said company has never been charged criminally but has however been compelled to make some reparations in

monetary and material terms that were handed to the victims or their next of kins. Though the concept of corporate criminal responsibility was introduced into the penal code, there also exist specific texts which cover this area of the law. Despite the introduction of corporate criminal responsibility into the Cameroonian legal system, there are some external influences which are responsible for its enactment and development. In order to analyze and predict how the law will or should develop in this area, it's important to discuss the sociopolitical dynamics of corporate criminal responsibility in Cameroon.

Various groups with conflicting interests can influence the content and application of the law in this area, especially as legislative reforms have dominated recent developments [<sup>3</sup>]. Corporate legislation often arises out of pressing crisis, public outrage and the

<sup>1</sup> Elvis Teke, "Eseka Train Accident: Names of 744 victims published" available at [w.w.w.crtv.cm](http://w.w.w.crtv.cm) assessed on the 23 June 2022

<sup>2</sup> Ibid

<sup>3</sup> Kristen Wong "Breaking the Cycle: The Development of Corporate Criminal Liability". A Dissertation submitted in partial fulfillment of the requirements of the degree of Bachelor of Laws at the University of Otago (2012) p.33

political desire to be seen to be taking action [4]. However, the eventual legislation and enforcement of such legislation is often much weaker than originally promised [5]. It is likely that external influences are able to affect the final content of the legislation and its enforcement.

In this vein, a discussion of how these various groups are able to influence the law is critical to the analyses of the development of corporate criminal responsibility in Cameroon in order to avoid making mistakes in the future. In light of the above, these article analyses the concept of corporate criminal responsibility with special attention to those externalities that influence its development in Cameroon. How should these groups help in advocating for more practical reforms for the laws on corporate criminal responsibility in Cameroon?

### THE DEVELOPMENT OF CORPORATE CRIMINAL RESPONSIBILITY IN CAMEROON

The concept of corporate criminal responsibility wasn't incorporated into the 1965 and 1967 Penal codes of Cameroon [6]. Corporate personality and the imposition of liability has been a burden to the legislator. It had been a long standing question of whether corporations can be criminally liable or not. This has been so because as a general rule, only human beings could commit offences [7]. The basic rule on criminal responsibility is based on the maxim *actus non facit reum, nisi mens rea*. Which means that to make one liable, it must be shown that an act or omission has been done which is prohibited and reprehensible by the law and has been done with a guilty intention.

The reasoning behind this is that corporations are artificial persons distinct in identity from those who form them and as such; the imposition of criminal responsibility on them might defeat the intended purpose [8]. The exception is that moral persons can also be liable for white collar crimes, despite the absence of unlawful

conduct and guilty mind [9]. With the evolution brought about by the emergence of corporate criminal law in many legal systems across the globe there became a lot of curiosity on the subject for at least two main reasons. Firstly the corporation is considered to be the seat and an instrument for the commission of a great number of crimes [10]. This is true because of the corporation's structure or its organizational arrangements [11].

Furthermore we admit that these corporations can invoke some legal prerogatives which were hitherto reserved only for physical persons; there is no reason therefore why they shouldn't be sued like the latter. Since corporations can sue for offences committed against it as a victim and claim damages, it's but normal that they can be sued too as accused persons [12]. With the facilitation of investments and the growing influence of multinational companies coupled with the profit driven motives of such corporations, there was a great concern about the accountability of corporations [13].

Generally, one way in which accountability can be achieved is through criminal responsibility. Corporations have been known through their activities to cause grave harm to the society such as environmental pollution, injury, death, accounting and financial fraud, tax evasion, misappropriation, manslaughter, bribery and corruption etc. Therefore there is need for corporations to be held criminally liable. In *Salomon V Salomon and Co Ltd* [14], the House of Lords held that Salomon the majority shareholder in the company was not personally liable for the debt of the company.

In the past, corporations were considered as artificial persons that had no physical existence and therefore could not be convicted and imprisoned, this is because crimes were fundamental in nature such as theft, robbery, witchcraft practices, rape etc and were clearly

<sup>4</sup> See Simon Mackenzie and Penny Green'' Performative Regulation: A Case Study in How Powerful People Avoid Criminal Labels'' (2008) 48 Brit.J. Criminol 138 at 139.

<sup>5</sup> See Laureen Snider ''This Time We Really Mean It: Cracking Down on Stock Market Fraud in HN Pontell and G,Geis (ed) *International Handbook of White collar and Corporate Crime*(Springer, New York,2007) 627 at 627.

<sup>6</sup> Law NO 65-LF-24 of 12 July 1965 and Law NO 67-LF-1 of 12 of 12 June 1967.

<sup>7</sup> Chioma E, E & al.'' A New Dawn of Corporate Criminal Liability Law in the United Kingdom, Lessons for Nigeria'', *African Journal of Law and Criminology*, vol.2, NO 1. (2012) pp 86-98, p86.

<sup>8</sup> Ibid

<sup>9</sup> CS.R Synman; *Criminal Law*, 4th ed.Butterworths, U.K, 2001, p249.

<sup>10</sup> Bosquet-Denis (J.B),''Le Droit Penal et L'Entreprise Commercial au Niger'', Pennant,Jan-Avril 1996 no 820,p90

<sup>11</sup> Jacques Henri Robert, *Droit Penal*, PUF,CouThemis,5eed.,2001,p159

<sup>12</sup> Pascal Nguihe KANTE, ''Ou en est La Responsabilite Penale des Entreprises en Droit Camerounais?''*Juris Periodique* NO 87, Juillet-Septembre 2011 p.53.

<sup>13</sup> The Organization for the Harmonization of Business Law in Africa (OHADA) made up of 17 member states has as aim to bring out legislation that will instill confidence in the legal environment and as such facilitate investments in the sub region. Such facilitation of investment should not go without the criminal law aspect being taken into consideration. See Comfort Fuah Kwanga, ''Corporate Criminal Liability in Cameroon: The Dawn of a New Era'' *Commonwealth Law Review Journal (CLRJ)* Volume 4, June 2018, p272.

<sup>14</sup> [1894] AC 22, 66 LJ ch 35,[1895-99] All ER 33.

the crimes of individuals [15]. According to Smith and Horgan:

*Since a corporation is a creature of law, it can only carry out such acts as it's legally empowered to, that any crime is necessarily ultra vires and the corporation having neither body nor mind cannot perform the act of form or intent which are the prerequisites of criminal liability [16].*

This is because the question of *mens rea* is a very difficult one in imputing liability on a corporate body because of its artificial and fictive nature. Corporations were mostly held liable in civil law under the doctrine of vicarious liability which determines the liability of the corporation by attributing liability of the natural person to the corporation. However this position has evolved and corporations are now believed to be identifiable entities and morally responsible agents [17].

CCR in Cameroon is still in its inception with revision of the penal code in 2016 [18]. After Cameroon's independence, the concept of CCR was not applicable. The 1965 and 1967 Penal Codes didn't make mention of corporate criminal liability, there were no penal sanctions that could be applied to convicted legal persons. Furthermore just from gaining independence, there was the need for industrial and economic development, therefore the introduction of CCR could mean discouraging investments, industrial and economic development.

## THE APPLICATION OF CORPORATE CRIMINAL RESPONSIBILITY IN CAMEROON BEFORE THE NEW ERA

Before 2016 the penal code never made mention of the criminal responsibility of corporate bodies, however when a broader interpretation was made of certain provisions, corporations could be held liable. In case of guilt, the only principal penalty was a fine, some accessory penalties and preventive measures were also pronounced such as ban on activity and confiscation of the 'corpus delicti'. The courts could easily sanction corporations for the crimes of adulteration of foodstuffs [19] and for strict liability offences which doesn't require the *mens rea* as element of an offence [20]. Other examples of such offences are found in section 277 grievous harm and section 280 simple harm but most especially amongst simple offences [21].

Apart from the penal code and due to the discovery of new forms of crimes especially with the development of modern techniques of information and communication, the need for the protection of the environment, fight against terrorism, misappropriation and money laundering, it was imperative CCR was recognized. Cameroon with time gradually recognized the need for corporate criminal liability in specific areas of the law. A handful of national legislations had admitted the criminal responsibility of corporate bodies. Without being exhaustive, these laws are; Law NO 89/27 of 29 December 1989 on Toxic and Dangerous Wastes [22], Law NO 94/01 of 10 January 1994 on Forest, Fauna and Fisheries [23], Law NO 99/15 of 22 December 1999 on the Creation and Organization of a Stock Exchange Market [24], Law NO 05/ 015 of 29 December 2005 on the Fight against Child Trafficking [25].

<sup>15</sup> E.N Ngwafor, *Corporate Criminal Responsibility*, Star Printers and Publishers Ltd.U.k.1989, p1.

<sup>16</sup> J.Coplan, R.Weisberg, G.Binder, *Criminal Law Cases and Materials*, Butterworth, 7th ed.2012, p149 quoting Smith and Horgan in *Texts, Cases and Materials*.

<sup>17</sup> Incorporation gives the company a personality and in Cameroon incorporation is done by registering the company with the Trade and Personal Property Rights Register (TPRR) as prescribed for in Article 97 of the OHADA Uniform Act on Commercial Companies and Economic Interest Groups (UACCEIG).

<sup>18</sup> Law NO 2016/007 of 12 July 2016 relating to the Penal Code.

<sup>19</sup> Section 258(1) and (2) of the Penal Code provides that; *whosoever carries out the adulteration and falsification of food products whether for human or animal consumption maybe punished with a fine, through confiscation, destruction of property as well as publication of the judgment under section 33 of the Penal Code.*

<sup>20</sup> See section 281 of the Penal Code is to the effect that; *whoever by lack of due skill, carelessness, rashness or disregard of regulations who causes another's death or such harm, sickness or incapacity as described in section*

*277 or 280 shall be punished with an imprisonment for from three months to five years or with a fine from ten thousand to five hundred thousand francs or with such imprisonment and fine.*

<sup>21</sup> Decree NO 67/DF/322 of 20 July 1967 relating to the regulatory part of the Penal Code to define simple offences. Simple offences are in four classes and are found as from section 362 to 370 of Penal Code.

<sup>22</sup> Article 4(3); *when the act is committed by a moral person, natural persons who are authors of reprehensible, acts will be sentenced jointly and severally with the corporation to pay a fine.*

<sup>23</sup> Article 150(1) provides that; *any natural or moral person who violates the provisions of this law and its regulatory instruments shall be criminally liable.*

<sup>24</sup> Article 35(1) punishes any natural or moral person who.....with a fine from 500.000 to 5.000.000 francs CFA.

<sup>25</sup> Article 7 holds that; *notwithstanding the criminal responsibility of its managers, corporate bodies may be declared guilty and sentenced to pay a fine if the managers committed the offence in the exercise of their duties.*

It should be noted that law No. 2010/012 of 27 December 2010 relating to Cyber Security and Cyber Criminality [26], Law NO 2014/028 of 23 December 2014 on the Suppression of Acts of Terrorism [27]. In the economic sector we have Law NO 2006/18 of December 2006 Governing Advertising in Cameroon [28], Law NO 2011/012 of 06 May 2011 on the Frame Work Law on Consumer Protection in Cameroon [29], Law NO 2019/021 of 24 December 2019 to lay down some Rules Governing Credit Activities in the Banking and Microfinance Sectors in Cameroon [30]. And since April 2022, Law NO 2022/008 of 27 April 2022 Governing Banking Secrecy in Cameroon has come to increase and diversify the many special laws on the criminal liability of corporate bodies in Cameroon.

The Law courts too have had the opportunity to hold corporations criminally liable through the broad interpretation of various laws in force. However the best way corporations were brought to court was by constituting them civil defendants in criminal suits, the corporation is sued to court as a mere civil defendant, while the agents face the brunt of the of criminal justice [31]. Inadvertently, these suits have been commenced perhaps only because it's known that a corporation cannot be imprisoned and the only remedy to the criminal act it commits is a fine and or compensation for damages. This was even more so because many considered the insurance policies entered into by third party insurance such as corporal losses and deaths as well as manslaughter related road accidents have already been taken care of by insurance coverage [32].

Corporations in Cameroon were held liable for offences committed on their behalf by their organs or

representatives depending on the type of companies. In the case of *AES SONEL & EBAL TANYI Victor Vs The People of Cameroon & Or* [33], the corporation was found guilty and sentenced to pay a fine. In another case; *Affaire Compagnie Professionnelle d'Assurance, TPI/Acc, CA, du 10 Fevrier 2009* (unreported) relating to a highway accident.

The judge after sentencing the corporation jointly and severally with the general manager to pay cost of the proceedings, the court went further to issue an imprisonment warrant against the general manager in default of payment of a fine. According to Germain NTONO TSIMI, this judgment has to be given particular attention for two main reasons. Firstly it violates section 569 of the Criminal Procedure Code of Cameroon and secondly it undermines the role of the insurer in criminal matters [34]. The multiplication of specific texts in the area of Corporate Criminal Responsibility (CCR) and the willingness of the courts to hold corporate bodies were not enough to bring out a general principle on CCR.

There was therefore the need to insert CCR into a general code like the penal code for it to achieve the needed impact. Like France, Cameroon for the first time established a set of corporate criminal liability principles and sanctions [35], providing for in section 74-1(a) (b) of the revised penal code of 2016 that with the exception of the state and it's agencies, "Corporate bodies shall be criminally responsible for the offences committed on their behalf by their organs or representatives" [36]. The wish to see the notion of CCR being inserted into the penal code has now become a reality.

<sup>26</sup> See Article 64(1), corporate bodies shall be criminally liable for offences committed on their account by their management structures.

<sup>27</sup> See Article 6(1)

<sup>28</sup> Article 64 provides that; without prejudice to section 96 and 97 of the penal code, the following persons are liable to the penalties set forth in this law, the advertiser and the consulting firm. Section 96 and 97 of the penal code defines Co-offenders and Accessories.

<sup>29</sup> Section 33 holds that; *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 structures.*

<sup>30</sup> Going by the tenors of section 27(1) (2) (3); legal persons shall be criminally liable for offences committed by their managers or employees. The criminal liability of legal persons shall not preclude that of natural persons who are perpetrators or accomplices of the same offence. The penalty incurred by a legal person shall be a fine.

<sup>31</sup> Suit NO CASWP/25C/06-07 (unreported) Nzembong Fonjock Peter Vs The People and Xionshi Feed Company.

<sup>32</sup> Lonje Martin Bende'',Corporate Criminal Responsibility in the Transport of persons by road Transport Agencies in the Road Transport sector in Cameroon'' Masters Dissertation, University of Dschang, June 2011,p34.

<sup>33</sup> (2010) ICCLR 14 p1. See also Pefela Gildas Nyugha "An appraisal of criminal liabilities for Business offences under OHADA law and Penal laws in Cameroon''. National Journal of Criminal law (NJCL) 17-21 P.18

<sup>34</sup> Germain NTONO TSIMI, (2012)''Le devenir de la responsabilite penale des personnes morales en droit Camerounais. Des disposition special ver un enonce general?'' Section 569 of the CPC provides that; *imprisonment in default shall not be pronounced against (a) persons declared vicariously liable (b) insurers.*

<sup>35</sup> Ngaunde Leno Doris & Nana Charles Nguindip, (2020),''Imputation of criminal liability on corporate bodies in Cameroon. ''International Journal of Research and Innovation in Social Sciences (IJRISS) Vol.IV p.58.

<sup>36</sup> See n 18 above.

This however didn't just come from space different factors have contributed at various levels and degrees to its enactment or otherwise thereby influencing its present state and subsequently its implementation and development? That said, the eventual legislation and enforcement of the law on CCR in Cameroon may appear weaker than originally intended [37]. There is the likelihood that external factors are able to affect the content of the law and its enforcement, a discussion of how these groups are able to influence the law is critical to the analysis of the development of CCR. This is to avoid mistakes in future as well as making informed proposals for eventual law reforms.

### EXTERNAL INFLUENCES ON CORPORATE CRIMINAL RESPONSIBILITY IN CAMEROON

Five main groups have been identified to have greatly influenced and will continue to influence the development and enforcement of corporate criminal law in Cameroon. They comprise corporations, prosecutors, the government, the media and the public.

#### Corporations

Cameroon is a signatory to the OHADA Treaty, the Uniform Act on Commercial Companies and Economic Interest Groups (UACCEIG) defines a corporation as:

*An association of two or more persons that come together to carry out a certain activity and such persons must be bound by contract with the objective of sharing the profits that accrue from such activities* [38].

Corporations strive to create a favorable political, economic and legal environment for themselves. They are often treated as an individual unit and like individuals gain equal sovereignty in accordance with liberal values. Every time corporations successfully exercise political rights, they reinforce their political standing [39]. In particular they use their right to free speech to influence regulation to create and maintain a pro-corporate environment. Glasbeek argues that there are now in fact two governments.

The first is the provisional, elected and subject to the rule of law. The second government is permanent and comprises of large corporations, their lobbyists, the media, advertisers and their financial as well as legal experts. To him the provisional government relies on the permanent government which consists of only a small proportion of the population [40]. Large corporations have the resources to lobby politicians, fund political campaigns, and to undertake litigation designed to influence the content and implementation of government policies [41]. They can threaten to withhold investments, close down or move to less restrictive jurisdictions. This can place jobs and tax incomes at risk which can cost government some votes and donations. Corporations are capable of lobbying below the political radar to limit the enforcement of corporate crime. We are therefore of the opinion that most policy change which are always paraded as democratic reforms emanates from corporate pressure. Given the current questionable effectiveness of CCR, it appears that corporations have successfully been able to circumvent and stifle the development of CCR in Cameroon for the most part by using their vast resources and their ability to participate in the legislative process.

#### Prosecutors

In Cameroon they belong to a branch of the magistracy corps known as the legal department or *ministere public/parquet* in French. They are found in every court of law to prosecute all public actions and at times civil actions as well as ensuring the application and enforcement of laws [42]. The presence of the legal department in court is obligatory in criminal matters 'The legal department is found at the Court of first Instance and High Courts and is composed of the state counsel and deputy state counsels.

At the level of the Supreme Court and Appeal Courts, the legal department is manned by the Procureurs General, Advocates General and deputy Procureurs General [43]. Magistrates of the legal department administratively emanate from the sole authority of the Minister of Justice who is a member of the executive and are hierarchically subordinated to him [44]. By virtue of

<sup>37</sup> See n 5 above.

<sup>38</sup> See Article 4 of the OHADA UACCEIG

<sup>39</sup> Harry Glasbeek, 'The corporation as a legally created site of Irresponsibility' in HN Pontell and G.Geis (ed) *International Handbook of White Collar and Corporate Crime* (Springer, New York, 2007) 248 at 249.

<sup>40</sup> Ibid

<sup>41</sup> Ibid at 266. For example, particularly in the US, professional lobbyists were able to convince the government to release banks from the fetters imposed on them after the hyper speculation that preceded the Great Depression.

<sup>42</sup> See Article 29 (1) (2) (3) of Law NO 2006/015 of 29 December 2016 to lay down judicial organization in Cameroon as amended.

<sup>43</sup> Section 127 of Law NO 2005/007 of 27 July 2005 to institute a Criminal Procedure Code (CPC).

<sup>44</sup> Section 3 of Law NO 2004/080 of 13 April 2004 to amend and supplement certain provisions of Law NO 95/048 of 8 March 1995 to lay down the statute of the Magistracy. See also section 64 (1) of Law NO 2005/007 of 27 July 2005 on the CPC which provides as follows; *The Procureur General of a court of Appeal may by express authority of the Minister of Justice, enter a nolle prosequi at any stage before judgment on the merit is delivered, if such proceedings could seriously imperil social interest or public order.*

this principle, the Procureurs general at the court of appeal receives instructions from the Minister of Justice while the state counsels on their part receive instructions from the Procureurs general. Within the legal department itself, deputy state counsels receive instructions from the state counsel.

The legal department is characterized by the following principles; hierarchical subordination [45], the indivisibility of the legal department [46], the independence of the legal department [47] and the impeachability of the legal department [48]. The legal department has very wide functions which cover both civil and criminal jurisdictions. In fact, in criminal matters the legal department is a principal party for the sole purpose of public prosecution. Therefore prosecutors are central to the enforcement of corporate criminal responsibility. They have a fairly broad discretion in determining when, how and whether to prosecute a corporation [49]. The exercise of prosecutorial discretion is inevitable because prosecutors lack the resources to investigate and prosecute every case [50].

Therefore, the legal department will be inclined to prosecute the cases that are most likely to secure a conviction.<sup>51</sup> However prosecutors are still able to exercise relatively unfettered discretion in making the final decision. This discretion can invite arbitrariness into the decision making process [52]. Moreover prosecutors can use the threat of a high profile prosecution to gain leverage in settlement negotiations which takes place without the restraints of judicial oversight or the protection of judicial procedure [53]. Corporations may have no choice but to comply with the prosecutors demands.

<sup>45</sup> Ibid

<sup>46</sup> Section 127(1) of the CPC provides *that; the Legal Department shall be indivisible. Any judicial act done by any magistrate of the legal department shall be presumed to be done in the name of the entire legal department.*

<sup>47</sup> Vis-à-vis the judge and the parties before the courts, the legal department doesn't receive instructions even in communicable matters. Moreover no criminal case can be heard without the submissions of the legal department.

<sup>48</sup> Though magistrates of the bench or judges may be recused under circumstances provided for by section 591 and 592 of the CPC, section 593 of same operates as an exception in the following terms; *a magistrate of the legal department may not be challenged.*

<sup>49</sup> George Skupski, "The Senior Management Mens Rea: Another stab at a workable Integration of Organizational Culpability into Corporate Criminal Liability" (2012) 62 Case W Res L.Rev. 1 at 34.

<sup>50</sup> See Pamela Bucy, "Corporate Ethos: A standard for imposing corporate criminal liability" (1991) 75 Minn L. Rev. 1095 at 1109.

As a result corporate criminal legislation may inadvertently grant prosecutors the powers to act as a prosecutor and judge [54]. This reduces the transparency, accountability and uniformity of the criminal justice process [55]. It's also potential for prosecutorial discretion to act in a biased manner in favor of large corporations. In Cameroon, these large corporations are sophisticated organizations which are able to navigate the legal and political system. Prosecutors know that corporations can strategically prolong investigations and trials; they are wealthy and have the ability to outspend the government [56]. These large corporations also understand that in certain circumstances resistance may be counterproductive and instead cooperate with prosecutors to gain beneficial settlements [57]. Therefore, prosecutors have greater incentives to negotiate amicable settlements with large corporations which are very difficult to convict as compared to smaller corporations [58].

Overall, prosecutors have enormous discretion in determining whether or not to prosecute a corporation and under what charges. However, there are serious glaring difficulties in obtaining convictions under our corporate criminal legislation particularly for large corporations. Corporations can always extract favorable terms through negotiations and amicable settlements. If the legal department rarely prosecutes big corporations, for whatever reason, then the law cannot develop in the courts thereby further cementing the ability of large corporations to evade criminal liability.

### ***The Government***

Government policies can indicate whether a political environment will be conducive in developing corporate criminal responsibility. Such policies can also deter corporations from carrying out potentially criminal

<sup>51</sup> See James Gobert and Maurice Punch; *Rethinking Corporate Crime* (Butterworths, Lexis Nexis, London, 2003) at 143

<sup>52</sup> Skupski above n 49, at 18. See also Albert Alschuler, "Two ways to think about the punishment of corporations" (2009) 46 Am Crim. L.Rev. 1358 at 1381.

<sup>53</sup> Ibid at 19.

<sup>54</sup> Geraldine Moohr, "The Balance Among Corporate Criminal Liability, Private Civil Suits and Regulatory Enforcement" (2009) Am Crim.L.Rev. 1459 at 1460.

<sup>55</sup> Miriam Baer, "Organizational Liability and the Tension between Corporate and Criminal Law" (2002) 19 JL Pol'y 1 at 8.

<sup>56</sup> Cindy Schipani, "Falling off the corporate Ladder: Prosecution for financial fraud in the United States". (2011) 32 Comp. Law 336 at 339.

<sup>57</sup> Gobert and Punch above n 51 at 17.

<sup>58</sup> William Laufer and Alan Strudler, "Corporate Crime and Making Amends" (2007) 44 Am Crim. L.Rev. 1307 at 1310

behavior by altering the political and economic environment within which corporations operate. In Cameroon the government is in charge of the implementation of the policies of the nation as defined by the President of the Republic [59].

The Prime Minister is the head of government and directs its action. As such he is responsible for the enforcement of laws, the exercise of statutory authority and appoints to civil posts subject to the prerogatives of the President in such areas in the accomplishment of his functions, he directs all government services and may delegate some of his powers to members of government and to senior state officials [60]. The government is able to significantly influence the content and application of corporate criminal legislation. CCR requires a strong political will to nurture and drive development through better policies. The relationship between corporations and government has changed over time. Liberal values operate within the law and the market to increase the marginalization of governments [61].

The government relies heavily on large corporations who are key sources of goods, services, taxation and employment [62]. This makes it difficult for government to legislate against the corporate sector. The relationship between the corporate sector and the government also operates on a deeper level. A significant number of politicians either originate from the corporate sector or join the corporate sector during or after their political career [63].

Therefore, they are likely to share similar ideologies which manifest themselves in a political environment that is favorable to the corporate sector [64]. Under the public choice theory, Mackenzie and Green argue that politicians face pressure to find a short term resolution to conflict due to the length of political office and their desire for reelection [65]. This leads political

regulation to focus more on suppressing social discord rather than resolving the substance of the conflict itself [66]. This theory has identified self-interest as an important factor in political decision making [67].

The political process operates under a number of influences which include self-interest, ideology and special interest groups. Corporations can appeal to the government on each of these levels in order to garner support for pro-corporate environment. Furthermore, the political will and surrounding context is important in creating an environment conducive to developing corporate criminal responsibility. In the light of recent corporate scandals, politicians and the general public are calling for greater corporate monitoring and control.

A real paradigm shift in the approach to corporate criminal liability may be viable in the current political and economic environment. That notwithstanding, less controversial approaches such as harsher individual criminal offences for directors or senior managers may dominate reforms and leave CCR in its current latent form.

### **The Public**

Legislation on corporate criminality often arises out of a large public outcry over a corporate disaster or scandal [68]. When these crisis occur government faces political pressure from the electorates to hold someone accountable. The public often desire criminal sanctions, for its retributivist function against the corporation or key individuals involved [69].

There is concern that a strong public outcry will cause parliament to succumb to penal populism [70]. Public attitude in the aftermath of a corporate scandal may be hastily conceived and rushed through the legislative process without sufficient critical debate. Attempting to quickly satisfy the public may leave the

<sup>59</sup> Article 11 of Law NO 96/06 of 18 January 1996 on the constitution of the Republic of Cameroon as amended.

<sup>60</sup> Ibid Article 12.

<sup>61</sup> See Harry Glasbeek, *Wealth by Stealth: Corporate Crime, Corporate Law and the perversion of Democracy* (Between the lines, Toronto, 2002).

<sup>62</sup> Steve Tombs, "State Complicity in the Production of Corporate Crime" in James Gobert and Ana-Maria Pascal (eds) *European Developments in Corporate Criminal Liability* (Routledge, Oxon 2011) 70 at 74.

<sup>63</sup> Glasbeek above n 61 at 234.

<sup>64</sup> Clarkson, "Kicking Corporate bodies and damning their souls" (1996) 59 MLR 557 at 566. See also Rick Sarre, "White Collar Crime and Prosecution for 'Industrial Manslaughter' as a means to Reduce Workplace Deaths" in HN Pontell and G, Geis (ed) *International Handbook of White Collar and Corporate Crime* (Springer, New York, 2007) 648 at 649.

<sup>65</sup> See Simon Mackenzie & Penny Green, "Performative Regulation: A Case Study in How Powerful People

Avoid Criminal Labels." (2008) 48 Brit J Criminol, 138 at 139.

<sup>66</sup> James Gobert, "The Corporate Manslaughter and Corporate Homicide Act 2007: Thirteen Years in the making but was it worth the wait?" (2008) 71 MLR 413 at 422.

<sup>67</sup> Amy Sepinwall, "Guilty by Proxy: Expanding the Boundaries of Responsibility in the face of Corporate Crime." (2012) 63 Hastings LJ 411 at 414. Johnson and Johnson recalled 136 million bottles of children medicines-its fourth recall in less than a year as a result of "systemic" failures and a culture of mediocrity."

<sup>68</sup> Vikramaditya Khanna, "Corporate Crime Legislation: A Political Economy Analysis" (2004) 82 Wash U LQ 95 at 101.

<sup>69</sup> Eric Colvin, "Corporate Personality and Criminal Liability." (1995) 6 Crim LF 1 at 18.

<sup>70</sup> Where policies are developed primarily for their anticipated popularity.

legislative process open to criticisms of being unprincipled and opportunistic.

In recent times, parliament has resisted public pressure to steamroll CCR through the legislative process as a response to corporate disaster [71]. Furthermore; the legislature may prefer corporate criminal legislation because it satisfies the public's condemnation while potentially imposing relatively low costs on the corporate sector [72]. Additionally, the public suffers from a collective action problem and are not as well-resourced or well organized as corporate lobby groups. This makes it significantly more difficult for the public to effectively influence the law.

However with the increasing prevalence of social media, these collective action problems has declined overtime as it becomes easier for the public to organize protests to lobby parliament on various issues [73].

### **The Media**

The media has significant control over society's perception of corporate crime particularly if the media seeks to maintain current perceptions and dominant ideologies on corporate crime [74]. Freedom of expression allows an independent media industry to hold public officials to account and protects the social, political and economic interest of the public.

The media plays a significant role in setting the agenda and the boundaries of discussion and debate of controversial issues [75]. The public places substantial weight on the emphasis and prevalence of an issue in the media in determining the importance of that issue. The media is supposed to be independent, provide an objective coverage of events and make sure that all parties are accountable for their actions. As the potential for corporate harm escalates, society is becoming less

forgiving of reckless corporate behavior and the media is a powerful instrument to initiate change.

The media depends on numerous factors in determining the substance of their news narrative. These include geopolitical interest, market needs, and budget as well as cultural priorities [76]. The media in Cameroon faces pressure from investors, lobby groups and political entities to portray the news in a certain light. Many media outlets in Cameroon are owned and operated as private corporations and have a significant interest in maintaining a profitable company.

Media companies rely heavily on corporations for survival because they generally make most of their profits through adverts. This has the potential to influence the way in which the media operates. The media landscape in Cameroon is comprised of the print media, the audiovisual as well as online media. The media is further divided into state own media<sup>77</sup> and private media [78]. Either of these media outfits is in English, French or is simply bilingual. Most of these press organs have reserved slots and spots for legal publications and sensitization. Newspapers charged exclusively with the treatment and dissemination of information on human rights violations and proceedings in civil and criminal matters are also part of the media landscape in Cameroon [79].

Unfortunately in reality, the media tends to operate to protect large corporations from accountability by under representing harm caused by powerful interests and being more critical of traditional crimes e.g. theft and assault than corporate crime. Just moments after the Eseka train derailment of 2016, corporate officials were able to deflect blame by referring to the tragedy as a natural accident rather than a homicide despite the severe breaches of safety standards by the representatives and managing organs of the railway corporation [80].

<sup>71</sup> The Eseka train derailment from Yaoundé to Douala in 2016, the Kenyan Airlines plane crash of 2007, the numerous road accidents that puts the national rate at 16583 road accidents each year averagely in Cameroon, (Statistics from [w.w.w.scirp.org](http://www.w.w.w.scirp.org), assessed on 24 May 2022) has revealed why the legislator inserted Corporate Criminal Responsibility into the Penal Code in 2016 without sufficient critical debates.

<sup>72</sup> Khanna *supra* n 68 at 98.

<sup>73</sup> For example social media played a very crucial part in the "On a Trop Supporter" OTS Movement of secondary education teacher's nationwide strike in Cameroon.

<sup>74</sup> Charles Lindblom, *Politics and Markets* (Basic Books Inc., New York, 1977) p 14.

<sup>75</sup> See Stephen Rossoff, "The Role of the Mass Media in the Enron Fraud: Cause or Cure?" in HN Pontell and G.Geis (eds) *International Handbook of White Collar and Corporate Crime* (Springer, New York, 2007) 513 at 518; Michael Barker, "Manufacturing Policies: the

media's role in policy making process." (Paper presented to the Journalism Education Conference, Griffith University, November 2005) at 6.

<sup>76</sup> John McMullan, 'News, Truth and The Recognition of corporate Crime.' (2006) 48 CJCCJ 905 at 908.

<sup>77</sup> Cameroon Radio Television (CRTV) for the audiovisual, Cameroon Tribune (CT) for the print media and CRTV Web for its online media.

<sup>78</sup> A good number of them exist; e.g Equinox Television (ETV) Spectrum Television (STV) etc for the audiovisual, The Guardian Post (an English language daily), The Post Newspaper, Le Jour, Le Messenger etc for the print media. as well as Mediatude an online news outlet

<sup>79</sup> See kalara *L'hebdomadaire du monde juridico judiciaire* DP Christophe Bobiokono.

<sup>80</sup> Ellen Podgor "White Collar Crime and the Recession: Was the Chicken or Egg First?" (2010) 21 Chi Legal F 205 at 217.

Furthermore, in recent times there has been a decline in the prevalence of print media as a result of the ever increasing use of digital media. This has a negative impact on the quality and frequency of investigative journalism which is expensive and labor intensive particularly in regard to complex corporate crimes [81]. The lack of funding and the inadequate assistance to some private media houses by the government in Cameroon, has forced media actors to adopt a coalition style of journalism as opposed to adversarial journalism.

Coalition journalism is an active collaboration between journalists and policy makers in determining policy making agendas [82]. This serves primarily policy makers and media interest rather than the public interest because it allows the policy makers to control the flow of information.

## **CONCLUSION AND THE WAY FORWARD**

Based on the above analysis, these different parties have been able to significantly influence the development and enforcement of corporate criminal responsibility in Cameroon. Corporations use their wealth and power to lobby for a pro-corporate political and economic environment. The government faces pressure to appease both the corporate sector and the citizenry. The public on its part tends to ignore important details which have led to legislators passing ineffective corporate criminal legislation. Finally, the media is able to hold corporations and public officials to account and is a heavily influential vehicle for change. However, the media is also vulnerable to the vast wealth and power of the corporate sector and have at times operated to retard developments in the area of corporate criminal responsibility. It is strongly recommended that the 2005 on the Criminal Procedure Code be amended and a Corporate Criminal Code enacted with relevant provisions inserted to check the extent to which these parties can influence the development and enforcement of CCR in Cameroon.

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<sup>81</sup> Ibid at p.23.

<sup>82</sup> Michael Barker "Manufacturing policies: the media's role in the policy making process".(Paper presented to

the Journalism Education Conference, Griffith University, November 2005) p 6