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# The Judiciary and Compliance and Enforcement of Corporate Environmental Governance in Cameroon: A Critical Appraisal

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**Abstract**

*If one were to judge from the perspective of the quantum of regulations and the variety of sanctions put at the disposal of the judiciary as an enforcement and compliance institution, it would be agreed that as a country, Cameroon has fared reasonably well in corporate environmental governance (CEG). The law will be of no effect if its compliance and enforcement are not guaranteed. This is especially so, as the propriety of every law is not only on how the law is made but how it is applied. The onus, therefore, rests on the judiciary to ensure that corporate institutions comply with governance responsibilities while those who fail to comply are held responsible for their actions. Surprisingly, in the exercise of its functions vis-a-vis compliance to environmental governance, the judiciary has played a very insignificant role such that its relevance is almost not visible in this area. This is corroborated by the near absence of judicial rulings in environmental-related cases, yet a proliferation of corporate conducts that ignore and violate the requirements of environmental governance. This paper, therefore, seeks to ascertain the rationale behind the insignificant role of the courts in ensuring compliance with CEG. While recognising the efforts made by the judiciary, we equally argue that it is definitely not enough to deter recalcitrant offenders. Sanctions do not fit damage, preference of compromise as an alternative to judicial settlement, uneasy access to environmental justice (locus standi) and more, seem to clip the wings of the courts as evidenced by the upsurge in the number of cases of violation of CEG. A reform in the procedure and sanction system will certainly increase its relevance.*

**Keywords:** judiciary, compliance, enforcement, corporate environmental governance, responsibility, critical, appraisal.

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## Introduction

Industrial and commercial activities that are unfriendly to the environment usually bundle along the risk of environmental contamination and ecosystem degradation, whose consequence is human health challenges. This risk translates into the legal liability risk of the owners and operators of such activities for the consequences of damaging the environment in regulatory systems that are properly structured. Corporate environmental governance (CEG) liability is one of the means of making corporate environmental defaulters pay and take action towards

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preventing, remediating, compensating or rehabilitating environmental damage they cause from violation of their responsibilities. Corporate environmental governance liability refers to the process by which financial liability for environmental harm brought on by a breach of environmental governance is returned to the wrong dowers. This may be limiting in the Cameroonian context considering that the applicable instruments incorporate, as part of the liability of defaulters, the penal sanction of imprisonment. The seriousness of this is guaranteed by the incorporation of the Penal Code[2] in the environmental liability regime. The assignment of responsibility for the damage is the key issue that follows after the definition of the object of liability[3] and the mechanisms for its implementation[4]. A strong liability framework for corporate environmental governance acts as a powerful deterrent to non-compliance with legal environmental requirements.

Although it is acceptable that the making of laws with liability regimes to punish perpetrators of environmentally unfriendly conduct is important, it is not an end in itself. Laws are to be enforced and complied with. If laws are not complied with, the rule of law is of no significance. There must be, therefore, a substantial level of enforcement otherwise the rule of law becomes devoid of meaningful content.[5] As environmental law matures, its enforcement is consequently becoming more important than environmental law-making. For corporate environmental governance enforcement to be effective, officials must have access to a broad array of effective enforcement actions and sanctions. One important way of enforcing the laws is through the criminal justice system.[6] They certainly must include the most potent enforcement action: criminal prosecution[7] without downplaying civil remedies. Sentencing is an important part of the criminal justice system and the upholding of the rule of law. Determining appropriate punishment for criminal conduct is a difficult but vital task. Administrative institutions and the courts have a fundamental role to play in ensuring compliance and enforcement.

[2]Law No. 65/LF/24 of 12 November, 1965 and Law No. 67/LF/1 of 12 July, 1967 on the Cameroon Penal Code as modified by Law No. 2016/007 of July 12, 2016, relating to the Penal Code.

[3] Environmental damage.

[4]Obligation to remediate or compensate the damage.

[5] Gicheru J. E, "Environmental law and access to Environmental Justice", an address to the Kenyan National Judicial Colloquium, (2006), Mombasa, Kenya, p. 3.

[6]The criminal justice system consists of the police, the courts and the correctional institutions.

[7] See Kevin A. Gaynor & Thomas R. Bartman, (Criminal enforcement of environmental laws, (1999), 10 colo. Journal of International Environmental Law and Policy 39, for an overview of the role that criminal prosecution play in enforcing environmental laws in the United States.

Cameroon's environmental legislation incorporates numerous corporate environmental governance offence provisions. By so doing, the legislator seems to have acknowledged the role of the judiciary in guaranteeing compliance and enforcement of the law through the provision of criminal sanctions for aforementioned offences. Surprisingly, reported cases dealing with environmental prosecutions are few. This is far from being justified by the fact that there are only a few cases of non-compliance or violation of corporate environmental governance. The explanation behind this under exploitation of the judiciary is that out-of-court settlement of offences in violation of CEG with the application of principally civil and administrative sanctions is prioritised over the judicial settlement. The administrations in charge, in a few instances, only revert to the courts as last resort, when the offender fails to comply with the civil or administrative sanctions imposed. Another motive that might have propelled the preference of out-of-court settlement to the judiciary and consequently the underutilisation of the judiciary is the fear that punitive judicial sanctions may get companies out of business or chase them away from the country. Thus, given the relatively small maximum penalties of most environmental offences, it is preferable treating them out of court. As a result of this background, it is challenging to track down environmental cases that have gone through the legal system[8] in Cameroon because many of them do not seem to be listed as crimes against the environment or other related categories. Environmental management is regarded as the executive's top priority, whether through government administrative agencies, private managers, or providers of public services. Government agencies often have a larger and more direct role in the management of natural resources, especially where, as is often the case, the resources are owned by the government.

Although the judiciary's role in Cameroon's environmental management is regarded as being less important than that of the executive and administrative agencies, it is nonetheless important because it ensures that laws and standards are complied with. Courts can be helpful in encouraging compliance because they are the final arbiters of actions to enforce environmental laws. Additionally, courts frequently have the responsibility of examining the legality of decisions of administrative agencies. As a result, the judiciary plays a crucial and distinctive role in upholding environmental responsibility.

The courts play a very important role in the enforcement of corporate environmental governance and environmental law in general. The disadvantage of the judiciary as an

[8] Also referred to as the judicial life cycle, it refers to the full length of the criminal justice system.

environmental law enforcement institution is that court actions are reactive by nature[9] and serve as a last resort. As a result, most of the decisions of the courts are meant to punish the wrongdoers but at the same time compensate the victim and deter future violators of the law. The ability of the courts to effectively perform their role of allocating liabilities for violation of corporate environmental governance responsibility depends on two fundamental legal technicalities, namely access to environmental justice (*locus standi*) and jurisdiction.

This paper probes into the relevance of the judiciary in the enforcement of corporate environmental governance responsibilities and in the process attempt a justification of the reason for the almost insignificant role played by the Cameroonian judiciary as an environmental law enforcement institution even though criminal sanctions have been provided by the environmental criminal law with the support of the penal code.

However, since the largest potential environmental violators are corporations and organisations, effective criminal enforcement in the environmental sector raises the perennial issue of whether artificial entities can be criminally liable. This worry shall equally be given befitting attention in the development of this paper.

**Conceptualisation of Corporate Environmental Governance**

Whether or not environmental law has influenced corporate governance reform, environmental concerns and values have undoubtedly permeated the corporate world.[10] There are definite indications that corporate environmental values are being internalised quickly. After the 1989 Exxon Valdez disaster, Zondorak observed in a piece that corporate environmental responsibility was merely focussed on compliance. As a result, businesses were only motivated to practice environmentally responsible to the extent required to avoid being held accountable under applicable environmental laws.[11] However, less than ten years later, Prakash can categorically state that the majority of significant US companies are voluntarily adopting "beyond compliance" environmental policies that are more stringent than the requirements of the applicable laws.[12] The question at hand is whether domestic corporate governance

[9] This means that court actions most often, are engaged when the harm is already done.

[10] Salter, for example notes that "a substantive majority of corporations consider concern for the environment to be a significant matter for business". See Salter, "corporate strategies and responses in environmental regulation", cited in Ong N. David, "The Impact of Environmental Law on Corporate Governance", (2001), Ejil, Vol 12, No 4, 685-726, at 686.

[11] Zondorak, (1991), "A New Face in Corporate Environmental Responsibility: the Valdez Principles", 18 Boston College Environmental Affairs Law Review, p. 457-500, at 457.

[12] Prakash A, *Greening the Firm: the Politics of Corporate Environmentalism*, (2000), xii, cited in Ong N, *opcit*, note 2.

frameworks ought to have a legislative mechanism requiring board members of corporations to ensure that their actions not only comply with environmental regulations but also promote overall environmental protection. This may be summarised in the developing concept of what is termed corporate environmental governance. This naturally presupposes that environmental protection in and of itself is a legitimate concern for company boards to take into account.

The concept of corporate environmental governance has been defined severally by different sources. According to Levy and Newell[13], *"Environmental governance refers to the wide range of political, economic, and social structures and processes that influence and limits actors' behaviour towards the environment*". Thus, environmental governance describes the various channels by which human influences on the environment are organised and controlled. It suggests developing rules, establishing institutions, and then overseeing and enforcing them. However, it also encompasses a "soft infrastructure of norms, expectations, and social undertakings of acceptable behaviour toward the environment through procedures that engage the participation of a wide variety of stakeholders."

On their part, White and Kiernan[14] provide a more succinct definition of corporate environmental governance as they state that: *"the term environmental governance is defined as encompassing the full range of best practice approaches to the management by companies of their environmental impacts, risks, performance and opportunities".* Corporate environmental governance thus describes how a corporation manages its corporate environment within a defined framework of environmental impacts, risks (threats), performance and opportunities. According to this definition, analyses of corporate environmental governance should consider all the factors listed, including opportunities, which refer to the environmental and social opportunities provided to local areas where businesses operate for their progress. Corporate environmental governance, then, is ethical corporate leadership that goes beyond the letter of the law and upholds the spirit of the law.

Illinitch et al[15] on the other hand, in attempting a more detailed explanation of the concept, break down corporate environmental governance requirements into procedures and outcomes

[13] Levy, D.L. and Newell, P., *The Business of Global Environmental Governance*, (Cambridge, Massachusetts, MIT Press 2005), p. 2.

[14] White A. & Kiernan M., *Corporate Environmental Governance: A study into the influence of Environmental Governance and Financial Performance*, (U.K. Environment Agency 2004), p. 129.

[15] Illinitch A.Y., Soderstrom N.S., Thomas T.E., "Measuring Corporate Environmental Performance", (1998), Journal of Accounting and Public Policy, 17, p. 383-408, at 388, cited in Nukpezah D., Corporate Environmental Governance in Ghana: Studies on Industrial Level Environmental Performance in Manufacturing and Mining,

that are both internal and external to the organisation. The broad categories include internal organisational procedures, internal legal and regulatory compliance, relationships with external stakeholders and external environmental impacts. Indicators for these categories include the adoption of an Environmental Management System (EMS), fines and penalties, publication of environmental reports (disclosure) and public access to emissions data.

White and Kiernan[16] outline the crucial business aspects of corporate environmental governance in a manner similar to those of Illinitch et al. The following are the main commercial factors that are crucial for analysing corporate environmental governance:

- Environmental values (represented by goals, objectives, and guiding principles);
- Environmental policy (expressed through strategy, objectives and targets);
- Environmental oversight (expressed through assigning responsibility, direction, training and communication);
- Environmental processes (management systems, initiatives, internal control, monitoring and review, stakeholder dialogue, reporting and verification);
- Environmental performance (use of Key Performance Indicators, benchmarking, eco-efficiency, reputation, compliance, liabilities, and business development).

The aforementioned explanations and definitions can be combined more effectively as institutional and procedural mechanisms by which businesses lower their risk exposure and strive to improve performance by interacting with their stakeholders.

Hence, corporate environmental governance effectively characterises the values, norms, processes and institutions that companies use to try to minimise their risk exposure and to show their stakeholders that they operating in a secure and ecologically responsible way. Corporate environmental governance is rooted in concerns about environmental issues within the firm. Welford points out that global environmental policy is gradually filling in the gaps that permit corporate environmental free-riding.[17] The majority of these worries are expressed by the board of directors at publicly owned companies. In private businesses, which are typically ones that are owner-managed, environmental concerns are typically shown through the owner's direct involvement.

(Ph.D Thesis, Brandenburg University of Technology, Cottbus 2010), p. 2.

[16] White A. & Kiernan M. (2004), *op cit*, note 13.

[17] Welford R. "Environmental Strategy and Sustainable Development: the Corporate Challenge for the 21st Century, (1995), 3 and 191 -204.

**Access to Environmental Justice (locus Standi)**

Court processes provide a means through which damaged issues are addressed. This medium can better serve this purpose only where the right to use the same is established. It is a fundamental principle in law that a party who commences an action in court must have the legal right (*locus standi*) to do so. The term *locus standi* means "a right to appear in court" and conversely to say that a person does not have *locus standi* means that he has no right to appear or be heard in a proceeding.[18] The *locus standi* is the right to file a lawsuit, be heard in court, or make a statement to the judge about a case that is now pending. This right emerges when a party to a lawsuit demonstrates that he has an interest strong enough to connect him with the case and that the court would not consider his claims absent such a demonstration.

Generally speaking, it is an established rule that the right to litigation in criminal violation is that of the state, exercised through the Legal Department. Where it is established that there is a *prima facie* case, the victim of the offence only acts as a witness for the prosecution. The discouraging fact with this system is that, where after the hearing, the court institutes both conviction and a fine or just a fine, and the money goes to the state treasury. The victim benefits nothing from such a fine. The law does not, however, exclude the possibility of the victim attaching a "*partie civile"* (civil claim) for damages. The risk with the attachment of a civil claim is that, where the criminal matter fails, the civil claim is automatically discarded.

Traditionally, a private person introducing a matter in court has typically been required to have sufficient substantial (legal) interest in the case. The ability to institute legal action is a check adopted by many jurisdictions to reduce or enhance the right of persons and organisations. The experiences of citizens and organisations who have endeavoured to bring legal proceedings in matters in which they cannot show "sufficient interest in the matter" are beneficial in this regard.

Litigation on the violation of corporate environmental governance responsibilities is a recent phenomenon in Cameroon and consequently too early to form an impression on the attitude of the courts on what concerns the *locus* to sue. Even with this difficulty in mind, with the trend of events, it would be safe to say that in the case of Cameroon, it is absolutely clear that access to environmental justice is the prerogative of the state represented by the Ministry of Environment, Protection of Nature and Sustainable Development.[19] Knowledge of corporate environmental violations is gotten either from reports or complaints by private individuals, the

[18]Meaning of *locus standi* according to Jovettes Dictionary of English Law, (1994), 2nd ed. Cambridge University Press, p. 225.

[19]Known in its French acronym as MINEPDED.

community and environmental Non-governmental organisations or from planned or surprised control and investigation missions conducted by the competent administrative body.[20]

On the question of whether private individuals have access to environmental justice, Cameroon is not different from other jurisdictions. This is in the sense that, reluctance from the judiciary to grant *locus* to individuals in environmental matters, has been an issue in the pursuit of citizens. Since that machinery did not envisage a role for private citizens, a combination of weapons has been designed to overcome this frailty. Taking the example of India[21], the right of a citizen to file a lawsuit over the pollution of the River Ganga was upheld by the Supreme Court in the case of *Mehta v. Union of India.*[22] A similar decision was reached in the famous *Green Peace Case*.[23]

From the decision of the court in the Green Peace case, we align with the conclusion of Fonja that, it is only where it is established by a person that the environmental harm is unreasonable - that it has specifically interfered with his use and enjoyment of his land, that he would be entitled to compensation for the harm caused to him.[24] The person also has to prove, that he is significantly affected by the decision as compared to other citizens. This is because in such situations where the harm sustained is to all members of the public, the plaintiff would be denied *locus* to object to the company's behaviour unless he can prove that he sustained specific or special damage that was distinct from the damage that all members of the public suffered.[25] This requirement of *locus standi* also applies to environmental matters. It is not always evident to see the private appropriation of water, groundwater, wild flora and fauna. Since ownership is the foundation for the protection of judicial interest, this makes it difficult to enforce the

[20] The competent administrative body in this case is the Environmental Investigation Brigade under MINEPDED.

[21] Fonja, Julius, Legal and Policy Mechanism for Urban Pollution Control with Particular Reference to Selected Cities in Cameroon, (2013, PhD thesis, University of Yaoundé II), p. 386.

[22]*Mehta v. Union of India AIR* (1968) SL 155.

[23]*Green Peace v. E. C. Commission* 1998 EVR.In this case, the trial judge held that although Green Peace did not have a statutory interest, the fact that 2,500 of its members lived in the vicinity of the location of a nuclear plant, and Green Peace was a responsible and expert body which could assist the court in mounting a careful selected and focused relevant and well-argued challenge, it would grant *locus* to Green Peace.

[24]Fonja (2013), *loc cit,* note 21, p. 386.

[25] The theory in use is that of nuisance and this is in most time distinguished as either private or public and in some jurisdictions statutory. It is public when some acts causes inconveniences or damage to the public in the exercise of rights common to everyone. On the other hand, it is private when the unreasonable use of one's property causes substantial interference with the enjoyment or use of another's land.

protection of nature based on customary liability law. This means that the person who wishes to defend the environment in court must fall under the category of people covered by the responsibility laws. This explains why in the context of environmental litigation, the courts have been very reluctant to recognise the rights of citizens to bring environmental suits.

It would, however, be unjust to deny that efforts have been made in various jurisdictions to diminish the effect of this principle. Courts in Nigeria have for example over the years, expressed their dissatisfaction over the doctrine of *locus standi*. Oluyede P. A., in his article[26], illustrates this in his commentary arising from the *Adesanya case* when he noted that:

> *The danger posed by this common law monster called locus standi doctrine in Nigeria of 1988 is potent and must be nipped in the bud before it does any further harm the injustice can be arrested by the Supreme Court overriding itself in this matter. But if the opportunity is long in coming, it is further suggested that the lawmakers should adopt what is done in Sudan where section 62 of the constitution provides that: Advocates shall defend the constitutional right of the citizens and shall adhere to the ethics of the law profession in accordance with the law*.[27]

This statement demonstrates clearly the fact that the doctrine of *locus standi* acts as a technical limit to the right to access justice. Though it may be laudable in its own way, especially as it prevents those who may be referred to as "busy body" from involving in issues they have no interest in, it on the other hand, limits access to justice.

This debate of *locus standi* has equally been given serious consideration by the Cameroonian judiciary. Is it the right of any individual to bring an action in court on behalf of the public at large if the public interest is affected by a wrongful environmental Act? This position is confirmed by the decision in *FEDEV v. China Road and Bridge Corporation*.[28] Rendering

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[26]Oluyede P. A., "Discretionary Power: Bane of Administrative Justice in Nigeria", Paper presented at the Second Anambra Law Conference, (1988). See also Akinola Aguda, "Prospects of Stability of the 3rd Republic", published in the National Concord of Monday November 7th 1988 at p. 7, cited in Fonja J. *loc cit*, note 23, p. 387.

[27]This commentary arose from the *Adesanya case* on the question whether Senator Adesanya had any *locus standi* to litigate in a matter in the absence of any sufficient personal interest. The decision of the Court of Appeal was that "the plaintiff having participated in the proceedings of the House leading to the confirmation of the second defendant's appointment, lacked the *locus standi* to challenge the appointment more so as his view was earlier rejected by a majority of the House". It is our humble submission that sitting in the House or participating in the proceedings for confirmation of appointment does not necessarily mean supporting the decision. The Senator might have had a divergent view, the reason why his participation should not act as a bar to *locus* in an attempt to protect his views in court.

[28] Judgment No. CFB/004m/09, (unreported).In this case, the respondent (China Road and Bridge Corporation) polluted land along the road it was building.

judgement in an action brought by the appellant (FEDEV)[29] against the respondent in the Court of First Instance, the judge held that the applicant had no *locus standy* to access justice in the case. Her argument was based on Section 8(1) (2) of the Environmental Code.[30]

Guided by the provision of Section 8(2)[31], the judge built his argument on three grounds; the need for the applicant to have liaised up with a grass root organisation proximate to the community directly affected by the environmental nuance; that the applicant must prove before the court it had been authorised to act for the interest of the public and lastly, that the relief sought in the matter does not in any way affect the appellant. The court was, however, reminded that in addressing its mind to Section 8(2), it should focus on the word "common good".[32] The trial judge proceeded to examine issues of locus *standi vis a vis* public interest. If the owner of the damaged nature has experienced economic losses, he is entitled to compensation.

It is not necessary that the person filing the case should have a direct interest in the litigation.[33] To be able to push through action in public interest litigation, the issue of *locus standi* must first be resolved. The question that becomes eminent is whether the appellant (FEDEV) in the matter had the required *locus standi* to commence the present action touching on public interest. To the mind of the court, there is no ambiguity in the interpretation of the phrase "common good" enshrined in section 8(2) of the Environmental Code. From the above, it was held that the appellant has *locus standi* to institute this action as per section 8(2). From all that has been said, it seems abundantly clear that any individual or association may be presumed to have

[29] FEDEV is a non-governmental environmental NGO.

[30]Section 8(1) states that "*Associations regularly declared or recognised as publicly useful and exercising their statutory activities in the field of environmental protection may only contribute to the actions public and semi- public environmental institutions following; An authorisation issued in keeping with the terms and conditions laid down by special instruments*". 8(2) on the other hand provides that, *"authorised grass-root communities and associations contributing to all actions of public and semi-public institutions working for environmental protection may exercise their rights of the plaintiff with regard to the facts constituting a breach to the provisions of this law and causing direct and indirect harm to the common good they are intended to defend*".

[31] Section 8(2), *ibid.*

[32] Counsel of the appellant argued that the provision of section 8(2) empowers the appellant of the matter to commence actions on issues that constitute breach of the law under consideration and causes harm directly or indirectly of common good

[33] See *Dr. Mohinddin Farooque v. Bangladesh and others*, CA. No. 24, 1995. In this case, the court stated *inter alia* that:

> If someone pursues a public cause involving a public wrong or injury, he need not be personally affected or have a personal interest. He must however be exposing a bonafide public cause and not be "a mere busybody" or interloper or pursuing some other dubious goal such as publicly or serving a foreign interest.

*locus standi* to initiate litigation against environmental law violators, in so far as it is for the common good (public interest). One may be forced to reason therefore, that whatever doctrinal propositions that gave birth to the Common Law concept of *locus standi*, are no longer attractive to modern realities, especially as regards public rights.

**Jurisdiction (Competence) to Entertain Litigations on Corporate Environmental Governance**

It is expected that a court will only hear cases that have been referred to it. To handle such cases, the court first assumes jurisdiction. These courts must meet a number of conditions in order to assume jurisdiction. This is so that the court proceedings are void where they are not initiated through the proper channels of law.[34] This write-up borrows from Nigerian jurisprudence to properly diagnose the issue of jurisdiction in hearing cases on corporate environmental governance responsibilities. In *Yahaya v. The State*[35], the Nigerian Supreme Court declared that if a mandatory legal requirement is not followed, the trial is *ab initio* pronounced null and void. According to Uwais, CJN[36], prior to the start of the trial, the mandatory provisions must be followed. The court's authority to hear the case at hand is derived from the fulfilment of the law.[37]

Whether the plaintiff has a legal claim that may be enforced by the court is one of the prerequisites for the exercise of jurisdiction in any case. In other words, the plaintiff needs to have a legitimate stake in the outcome of the case.[38] Furthermore, when a lawsuit is brought in

[34] See *Jika v. Akuson* (2006) ALL FWLR (pt.293) p. 276.
[35] (2002) 3 M.J.S.C 103.
[36] CJN refers to Chief Justice of Nigeria.
[37] Where there is non-compliance by the plaintiff, the defendant may waive his right. In such instance, the court can assume procedural jurisdiction. See Rufus Akpofurere Mmadu, "Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from Kiobel", (2013), Afe Babalola University: Journal of Sustainable Development Law and Policy Vol. 2 Iss. 1, p. 149-170, at p. 153.
[38] In oil spillage cases, the right to fishery in tidal water is recognized in law. In *ELF Nigeria limited v. Sillo & Anor* (1994) 6 N.W.L.R (pt. 350) 258, the Supreme Court relying on *Adeshina v. Lemour* (1965) 1 All N.L.R. 233 held that the plaintiff has proved the existence of their common right of fishery in tidal waters and its violation and was therefore entitled to damages. See generally Theodore Okonkwo, The Law of Environmental Liability (Lagos: Afrique Environmental Development & Education, 2003), p.115. *locus standi* is the right of the party to appear and be heard on the question before the court-Per Bello, CJN in *Senator Adesanya v. President of Nigeria* (1981) 2 N.C.L.R 388; See also *Edjerode v. Ikine* [2002]2 M.J.S.C 163; *A-G Federation v. A-G of the 36 States* [2001] 6M J.S.C 69; *Arabambi v. A.B.I. Ltd* [2006]3 M.J.S.C 61; *Yesufu v. Governor Edo State* [2001] 5m.J.S.C 128.

a representative capacity, it must be authorised[39], and the parties who will be represented and those who will act on their behalf should have a stake in the outcome.[40] More so, where there is a need for a pre-action notice, the plaintiff must serve such a pre-action notice. The court held in *Asogwa v. Chukwu*[41] that where there is no issuance of pre-action notice as provided by the law, there is lacking a condition precedent, which could deny the court's assumption of jurisdiction. In *Teno Engineering Ltd v. Adisa*, the court held that service of the court process is a condition precedent to vesting jurisdiction in the court.[42] Also, in *Okolo v. U.B.N*[43] the court ruled that payment of filing fees is a condition precedent to the court's assumption of jurisdiction.

As yet another pre-condition for jurisdiction, where there is a time limit for the commencement of the action the victim must comply with the time limit of the action. The decision of the court in *Akibu v. Azeez*[44] that, in limitation of action, time begins to run from the date cause of action arose is instructive. Time for the commencement of an action is of essence to the successful institution of an action in court. The difficulty with this, however, is that in certain instances, the effect of the environmental hazard does not immediately become obvious.[45] Such instances may raise the issue of when the cause of action arose. In dealing with this, the Supreme Court in *Aremo11 v. Adekanye*[46] ruled that a fresh cause of action arises from time to time as often as the damage is caused. The court emphatically stated that the rules of court procedure must be followed. Upon compliance with the rules of procedure, the court may begin its assignment of ascertaining whether it has the authority to determine the case. A court is said to have jurisdiction to decide a case if it is qualified to handle it. It is trite to state that in all matters

[39]*Ndule v. Ibezim* [2002] 12 M.J.S.C 150.

[40]*Shell Petroleum Development Company Nigeria Limited v. Chief Otoko & Ors.* (1990) 6 N.W.L.R (pt 159) 693; *Amos v. Shell B.P. Nigeria Limited* (1974) 4 E.C.S.L.R 486; *Ejem v. Offiah* (2000) 7 N.W.L.R (pt. 666) 662.

[41] (2003) 4 N.W.L.R (pt. 811) 540 at 552; *Mobil Producing (Nigeria)Unlimited v. LASEPA* (2002) M.J.S.C 69; *Eze v. Okechukwu* (200302 M.J.S.C. 188; *Abakaliki Local Government Council v. Abakaliki Rice Mills Owners Enterprises Nigeria* (1990) 6 N.W.L.R. (pt. 155) 182; *University of Ife v.Fawehinmi* Construction Co. Ltd (1991) 7 N.W.L.R (pt. 201) 26; *Nigeria Cement Co. Ltd v. Nigeria Railway Corporation & Anor* (1992) 1 N.W.L.R (Pt. 22) 747; *Amadi v. N.N.P.C* (2000) 10 N.W.L.R (Pt. 674) 6; *Nigerian Ports Plc v. Oseni* (2000) 8 N.W.L.R (Pt. 669) 410.

[42] [2005] 7 M.J.S.C 89; A-G *Adamawa State v. A-G Federation* [2006] I M.J.S.C 1 *Sken Consult v. Ukey* (1981) 1 S.C. 6; *A.I.E.V. Adebayo* [2003] 12 M.J.S.C 44.

[43] [2004] 2 M.J.S.C 69.

[44] (2003) 5 N.W.L.R. (Pt. 814) 643; *Aremo 11 v. Adekanye* [2004] 11 M.J.S.C 11.

[45] This happens in cases of oil spillage, where damage to the soil though apparent may not be fully understood.

[46]*Aremo 11 v. Adekanye* [2004] 11 M.J.S.C 11.

before the court, the fundamental issue of jurisdiction must first be determined otherwise all proceedings relating thereto will be a nullity and an exercise in futility.[47]

It is important to analyse the facts while determining jurisdiction over a case. This is significant because a plaintiff must file a lawsuit in the appropriate court as well on time. The claim of the plaintiff establishes the jurisdiction of the court to consider a matter, as concluded by the Supreme Court of Nigeria in *Abu v. Odugbo*[48]. Along the same line, a key issue that cannot be waived is the court's or the proceedings' competence.[49] It is essential to think about jurisdiction first because when a court exercises jurisdiction it does not have, its decision is effectively null and void. This problem of jurisdiction can even be escalated at any phase of the proceedings.[50] The need to warn victims and stop the misery they are going to experience early on in the proceedings of the case is the driving force behind the acknowledgement of the necessity of jurisdiction. Only if the victim has sufficient time to refile the lawsuit in the appropriate court may a dismissal for lack of jurisdiction be problematic. However, if the deadline for filing the lawsuit expires before it is filed, the defendant may be able to have the lawsuit permanently dismissed due to the mistake of choosing the incorrect court.

Countries have different rules of jurisdiction that determine the distribution of competence among the courts in the territory. The choice of Nigerian cases in the explanation of jurisdiction has been guided by the fact that the determination of jurisdiction of the courts in Nigeria is in conformity to that in Cameroon. In Cameroon just like in neighbouring Nigeria, jurisdiction is determined by the law and the limit of the court's authority. This authority may be restricted or extended by law. A limitation may be either to the kind and nature of actions and matters of which the particular court has cognizance.

Jurisdiction over corporate environmental governance litigations in Cameroon is determined by two very important elements, *viz* territorial jurisdiction (competence) and subject matter jurisdiction (competence). Before expatiating, it is worth stating that Cameroon does not have special courts designated for trying environmental cases. As a result, all environmental cases are tried by the classical criminal courts. This means that before a litigant takes a matter to

[47] See the decision of the Supreme Court of Nigeria in*7up v. Abiola*, [2001] 5 M.J.S.C 93 at 97. See Jurisdiction of the Court-General Information. Available at http://euopa:eu.int/comm./justice-home/ejn/jusrisdiction-courts-gen-en.htm accessed 21 August 2013, (visited on the 21/03/2018).

[48] [2001] 7 M.J.S.C 87 at 91.

[49] See the decision of the Supreme Court of Nigeria in the case of *Menakaya v. Menakaya* [2001] 8 M.J.S.C 50.

[50]*Eze v. A-G Rivers State* [2002] 1 M.J.S.C 87.

court, he must first determine the place where the offence was committed (territorial competence) and the type of case, in other words, the amount of claim involved in the case of damages or the type of offence committed.

**Territorial Jurisdiction (Competence)**

Except for the sole exception of the Supreme Court whose territorial jurisdiction covers the entire nation the court structure in Cameroon is highly decentralised. Courts in Cameroon have been classified into different categories and their categories determine their territorial and subject matter limitations. The jurisdiction of every court is fixed by the decree of creation and generally corresponds with the territorial limits of administrative circumscription. The driving force behind this has been the desire to bring justice nearer to the people. This desire itself was evidently motivated by the realisation that the courts, located as they were, in urban areas, were physically inaccessible to the vast majority of people in the sub-urban areas.

In terms of territorial jurisdiction, logically, the court where the offence was committed and in rare circumstances, the court where the offender resides is the competent jurisdiction to hear a case. This, by implication, means that unless in exceptional cases, the competent jurisdiction to entertain cases on violation of corporate environmental governance responsibility is the court of the place where the environmental wrong was committed. Judicial authorities that corroborate this abound. In *FEDEV v. China Road and Bridge Corporation*,[51] the respondent polluted land that flanked the Batibo – Mamfe road it was building. Because the act was perpetrated within the Batibo Sub Division which is the territorial jurisdiction of the Batibo Court of First Instance, the appellant initiated the action in the Court of First Instance in Batibo. Though the case had its difficulty, the challenge was not based on whether the court had territorial competence to entertain the matter but rather, whether the applicant had *locus standy* to access justice in the case. The same interpretation is applicable to the case of *FEDEV v. Bamenda Urban Council*[52]. In this case, the High Court of Mezam granted an order for the applicant to institute public interest litigation against the Bamenda Urban Council. The Mezam High Court was the territorially competent jurisdiction to hear the case.

**Material Jurisdiction (Competence)**

Apart from territorial competence, an environmental case will only be entertained by a court if it has the material jurisdiction to do so. In instituting a matter against a company for violation

[51] Judgment No. CFB/004m/09, (unreported).
[52] Judgement No. HCB/1170/OL-05, (unreported).

of corporate environmental governance responsibility, the applicant must consider the material competence of the court.[53] It is required that parties to a particular litigation must have accepted to submit their dispute to this court. Thus, if one of the parties challenges the jurisdiction of these courts, the judicial process becomes complicated. In the absence of such challenge, the courts have jurisdiction according to Art 2 of the law[54] to entertain criminal, civil and commercial cases which the law in force has not reserved to the jurisdiction of special courts. Judging from the sanctions provided in the Environmental Code[55] for violators of environmental law, it is abundantly clear that two courts stand out with express allocation of original jurisdiction over environmental matters in Cameroon.[56] These are the Courts of First Instance and the High Courts.[57]

According to Article 14(4) of the new law on the judicial organisation of courts in Cameroon[58], the Court of First Instance shall be organised into benches.[59] The Court of First Instance shall be established in the chief town of each Sub-Division.[60] However, for service purposes, its area of jurisdiction may be extended to cover several sub-divisions, by Presidential Decree. It can equally hold sessions out of its principal seat. Such hearings are referred to as circuit courts.[61] This court has jurisdiction to try simple offences, misdemeanours and felonies committed by minors without adult co-offenders or accessories. Except otherwise provided to the contrary, it shall also entertain cases whose actions for damages do not exceed 5 million francs and imprisonment of not more than 10 years. This by implication means that the competent jurisdiction to receive environmental cases whose punishment is imprisonment of not more than 10 years and a fine of not more than 5 million is the Court of First Instance.

[53]Material competence here refers to the kind of matters these courts can entertain.
[54]Law No. 2006/015 of 29 December 2006 on Judicial Organisation of Court as amended by Law No. 2011/027, of 14 December 2011.
[55] See specifically Chapter II, Sections 79 to 87.
[56] It is worth stating that the sanctions provided by the Environmental Code, are fines ranging from 500,000frs to 500,000,000frs and imprisonment term that range from 6 months to life imprisonment.
[57] The First Instance and High Courts referred to here are those in the area where the offence was committed.
[58] Law No. 2011/027, of 14 December 2011 amending certain provisions of Law No. 2006/015 of 29 December 2006 on Judicial Organisation of Court.
[59]These branches shall comprise of one or more benches for civil matters; one or more benches for commercial matters; one or more benches for labour matters; one or more benches for misdemeanour or simple offences and one or more benches for minors. Each bench shall be made up of a president, one or more magistrates, a registrar-in-chief, and one or more registrars.
[60]Sub divisional headquarter.
[61]Article 13 (1) and (2), *loc cit*, note 57.

On the other hand, offences whose punishment is imprisonment for more than 5 years and a fine of more than 10 million francs are referred to the High Courts. Just like the Court of First Instance, the High Court shall be organised into benches.[62] According to Article 16 of the 2006 law[63], the High Court is created in every divisional chief town. However, for service purposes, the jurisdiction of the high court can be extended to cover several divisions by presidential decree.[64] The High Court has jurisdiction to try felonies and related misdemeanours and to hear and determine applications for immediate release (habeas Corpus) made on behalf of persons taken in charge or detained illegally or without a warrant. It entertains cases with claims of above 10 million francs.[65]

From the above, it is safe to say that the competence of either the Court of First Instance or the High Court in hearing cases of violation of corporate environmental governance responsibility is determined by the gravity of the offence committed and the remedy sort. Where the offence committed is punishable with a fine of less than 10 million FCFA and imprisonment of less than 10 years, the competent jurisdiction is the Court of First Instance of the place where the offence was committed (territorial jurisdiction). On the other hand, if the offence is punishable with a fine of more than 10 million FCFA, then the court that has jurisdiction is the High Court of the Division where the offence was committed (territorial competence). It is worth stating that the jurisdiction of the Court of Appeal can be brought into question when either of the parties is discontent with the decision of the lower courts.

**Judicial Sanctions for Violation of Environmental Governance Responsibilities**

The function of the court as environmental law compliance and enforcement institution is most often brought to play after the environmentally wrongful act has been committed. The judicial process commenced before the court may terminate with either a conviction or an acquittal. When at the end of the judicial process the court finds the accused guilty, he is convicted and sentenced to either imprisonment or payment of a fine or both imprisonment and fine. The courts are usually exposed to several categories of sanctions for an accused found guilty. The

[62]This branches comprise of one or more benches for civil matters; one or more benches for commercial matters; one or more benches for labour matters and one or more benches for criminal matters. Each bench shall be made up of a bench president, one or more judges, a registrar-in-chief, and one or more registrars. See generally Article 17, *op cit*, note 58.
[63]Law No. 2006/015 of 29 December 2006 on Judicial Organisation of Court in Cameroon.
[64] *Ibid*, Article 16.
[65]Article 18, *ibid.*

Environmental Code, however, expressly outlines two principal penalties of fine and imprisonment.

**Imprisonment**

Generally speaking, while the death penalty is seldom passed, that of imprisonment is a daily routine. Imprisonment as defined by Section 24 of the Penal Code is: *"loss of liberty during which the offender shall be obliged to work, subject to any contrary order of the court for reasons to be recorded in the judgement".*[66] The Environmental Code[67] incorporates the penalty of imprisonment as a principal sanction with its duration depending on the gravity of the offence. These offences and penalties may be classified into two main categories notably, violation of preventive governance responsibilities[68] and violation of curative governance responsibility.[69]

The penalty of imprisonment for offences classified under the first and second categories above ranges from a minimum sentence of 6 months to a maximum punishment of loss of liberty for life (life imprisonment). For example, the Environmental Code stipulates that anyone who hinders the checks and analyses provided for by this legislation and/or its enabling instruments faces a prison sentence of between 6 months to two years[70] For offences related to dumping of waste, importation and ownership of dangerous substances, pollution, dumping of hydrocarbons in marine waters, the maximum punishment of loss of liberty for life.[71]

It is interesting to point out that the legislator has scaled the penalty of imprisonment such that the judge has the latitude to use his discretion in administering the sentence. This means that from the facts of the case, the judge may either award the highest or the lowest penalty of

[66] Section 24 of Law No. 65/LF/24 of 12/11/1965 and Law No. 67/LF/1 of 12/06/1967 on the Cameroon Penal Code as modified by Law No. 2016/007 of July 12 2016, relating to the Penal Code.It is imperative to note that if the prisoner is to be dispensed with the obligation to work, reasons for such dispensation must be recorded in the judgement. The proceeds from the work of the prisoner constitute the prison fund which as per Section 27 of the Penal Code, 2/3 of it goes to the public treasury and 1/3 is reserved for the prisoners. See section 27, *ibid*.

[67] Law No. 96/12 of 5th August 1996 relating to Environmental Management in Cameroon (Environmental Code).

[68]Preventive responsibilities here includes failure or improper execution of environmental impact assessment, non-disclosure or improper disclosure of harmful activities and pollution.

[69]Curative governance responsibility on the other hand refers to violation of responsibility to mitigate environmental harm

[70] See generally Section 79 of the Environmental Code.

[71]*Ibid*, Section 80(1). See also section 81 on the imprisonment of from 2 to 5 years for any person having imported, produced and/or used harmful or dangerous substance in violation of the regulations.

imprisonment. Whatever the case, the judge is not allowed to impose an imprisonment term that is above the maximum penalty provided by the legislator in the Environmental Code and enabling instruments for that particular offence.

The courts have been indisposed to apply the penalty of imprisonment in cases where environmental harm originates from a corporate entity. Illustrative is the case of *SCAN EQUIP v. MINEP*[72]. In this case, the defendant, a chemical company in Douala was noted for dumping its waste into nature. It was warned on several instances to stop the act but it resisted the warnings. The company was sued by MINEP in the court of First Instance in Douala for polluting the soil and subsoil, but it deliberately refused the allegation. After investigation, the court found that it had violated section 29 of the Environmental Code but only levied a fine of 2,800,000FCFA as provided in section 82 of the Code.[73] Surprisingly, no penalty of imprisonment was attached even as there had been repeated warnings. The court took a similar stance though with a variation in the amount of fine, in the case of *MINEF v. Cameroon Railway Corporation (CAMRAIL).*[74] Here again, the court found CAMRAIL guilty of violating section 43(1) of the Environmental Code but only ruled that the company should pay a fine of 2,500,000FCFA in addition to an order to clean and rehabilitate the affected land.[75]

**Criminal Fines**

Fines are a traditional approach to reprimanding environmental offenders. A principal penalty whose application is favoured by the courts in Cameroon as far as corporate environmental violations are concerned. It is referred to as a criminal fine because the money the offender pays enters the state coffers and precisely the special environmental fund. Fines are usually paid in place of imprisonment. However, there are instances where the convicted person is expected to serve both a term of imprisonment and equally pay a fine.

There have recently been worries regarding the adequate maximum fines set down in statutes and enforced by the judiciary. However, there are attempts to amplify its effect by raising the maximum fines, setting minimum fines, sentencing repeat offenders to larger fines, and making companies accountable for considerably much higher fines than individuals. Fine remains at

[72] Case No. 90/TPI/DLA/March 2002, (unreported).

[73] It can be observed that the fine is too small to deter the defendant from repeating the same offence. This renders the polluter pay principle a almost an empty slogan because it may be considered to mean "we pollute because we can pay".

[74]Case No. 20/TPI/DLA 12 April 2003, (unreported).

[75]See also the case of *The People & MINEF v. Bernard Brink Co,* Case No. 83/BA/78C/03-04 (Unreported). See also *SOTRAMILK v. MINEF,* Case No. o8/CF/BA/1245/02.03 (unreported).

the centre of sentencing regimes in areas where environmental legislation has undergone modification. The justification for such amendments is to deter potential offenders by threatening them with a severe economic penalty and to challenge the view that fines are less costly than installing and maintaining environment-friendly technology.

When an offender is fined and is unable to pay the said fine, he would have to serve a term of imprisonment. The provisions of section 53(2) of the Penal Code are instructive as far as the fine is concerned.[76] It provides that: where the offender, after haven been in custody awaiting trial, is sentenced to a fine only, the court may relieve him wholly or in part of the said debt. The court would absorb an offender of the entire fine or part of it if it considers that the time spent in custody is already sufficient punishment.

In the case of *SCAN EQUIP v. MINEP* (supra), the company was fined 2,800,000FCFA according to section 82 of the Environmental Code, for violating section 29 of the same Code. A similar decision was applied in the case of *MINEF v. Cameroon Railway Corporation (CAMRAIL)* (supra).[77] This was a case of land pollution by hydrocarbons from derailed coaches of CAMRAIL. MINEF entered into an agreement with the latter to clean the affected area. This was however dishonoured by CAIMRAIL. When the matter was channelled to court, CAMRAIL was found guilty of violating section 43(1) of the Environmental Code[78] and consequently levied a fine of 2,500,000FCFA. For a big company like CAMRAIL, a fine of 2,500,000FCFA may be considered to be relatively small. This puts to question the willingness

[76]See generally Section 53(2) of the Penal Code.

[77]Case No. 20/TPI/DLA 12 April 2003, (unreported). In that case, CAMRAIL'S coaches derailed and fell at Badjob, 15km from Esseka on the 1st of February 2003. The hydrocarbons that came out from the coaches polluted the land on which they stood. After a visit of MINEF's workers to the venue, a complaint letter No. B252/SG of 10th July 2003 was sent to the Prime Minister by MINEF. He responded quickly by saying that the environmental Code should be applied. MINEF then entered into an agreement with the latter that to clean the affected area. But it was discovered later that the agreement had not been respected.

[78] Section 43 (1) of the Environmental Code provides that:

> Any person, who produces or owns waste, shall eliminate or recycle or have it eliminated or recycled in plants authorized by the administration in charge of classified establishments, after the obligatory opinion of the administration in charge of the environment.
>
> Besides, the person shall inform the public of the effects of waste production, owning, elimination or recycling on the environment and public health, pending the rules of confidentiality and the measures intended to prevent or compensate its negative effects.

Subsection (2) on its part states that: *"the conditions under which waste is collected, sorted out, stored, transported, recuperated, recycled or processed in any other way, and finally eliminated to avoid over producing or wasting retrievable waste and environmental pollution in general shall be laid down by enabling decree of this law".*

of the courts to effectively deter others from exhibiting similar environmental conduct. Criminal fines in environmental cases in Cameroon do not sufficiently serve as a deterrent to others.[79]

**Accessory Penalties at the Disposal of the Courts**

Apart from the principal penalties of imprisonment and fine, the trial court may make use of other secondary or accessory penalties. Support to this is provided by the incorporation of the Penal Code into the framework law on environmental management which stipulates a supplementation of sanctions provided by those contained in the Penal Code as well as in other sectoral laws applicable to environmental protection.[80] Accessory penalties may include damages, confiscation, restrictions or rehabilitation of the damaged object. In the case where these other penalties are attached to the principal penalties, they usually take effect after the service of the principal penalty.

Available literature fails to present circumstances where the courts, after hearing a case, delivered a judgement that provides solely secondary penalties. Secondary penalties are most often presumed to act as reinforcement to the principal penalties of imprisonment and fine. In *MINEF v. Cameroon Railway Corporation (CAMRAIL)* (supra), the court attached an order to clean and rehabilitate the affected land in addition to a fine of 2,500,000FCFA the company was levied, after establishing the liability of CAMRAIL. Further judicial support for the use of secondary/accessory sanctions was demonstrated in the case of *The People & MINEF v. Bernard Brink Co*. (supra), wherein the sanction of the fine was accompanied by an order stopping the defendant from continuing the disposition of effluent into the stream.[81]

It may be misleading, however, to categorically conclude that accessory penalties must only be attached to principal penalties. A contrary view was held by the court in *SOTRAMILK v. MINEF*.[82] Here, the Bamenda Court of First Instance passed Judgement in favour of the

[79]See also the case of *The People & MINEF v. Bernard Brink Co*Case No. 83/BA/78C/03-04, (unreported). See also *SOTRAMILK v. MINEF*, Case No. 08/CF/BA/1245/02.03, (unreported),

[80] Section 85 of the Environmental Code.

[81] In this case, the Court of First Instance in Bamenda found the defendants guilty of water pollution and asked them to pay a fine of 5,000,000FCFA, as stated in section 82 of the Environmental Code.

[82]Case No. 08/CF/BA/1245/02.03, (unreported).In this case, the defendant a yoghurt producing company located at mile 3 Nkwen- Bamenda, had been systematically discharging industrial waste into a stream close to it. This caused pollution of the water, making it unfit for drinking. The defendant also burnt empty plastic bottles of yoghurt, leading to air pollution and destruction of the land on which they were burnt contrary to section 29 of the Environmental Code.

plaintiff. The court applied just the accessory penalty of prohibitory[83] and mandatory[84] injunctions. The judgement though laudable on the one hand, may be criticised on the other in that, the judge only restrained the respondent from further pollution without levying a penalty of fine or imprisonment as in other judgements examined earlier.

**Limitations to the Effectiveness of the Judiciary as an Instrument for Compliance and Enforcement of Corporate Environmental Governance**

To ensure the effective management of the environment, collective action is required at every level. While the legislator designs and drafts the regulations that define conduct that is not acceptable vis a vis the environment, the courts are expected to guarantee their compliance and enforcement. Support for this is provided by the understanding that the propriety of every law does not only depend on how the law is made but also on how the law is applied. This explains why the state has adopted laws that criminalise violations of corporate environmental governance with civil, administrative and criminal sanctions prescribed to that effect, but also commissioned the judiciary with the task of ensuring compliance and enforcement. The judiciary as a result has been mandated with the task to guarantee compliance and enforcement of these laws. There is no gain in saying that the impact of the courts in the execution of this task is still to be felt as not only are they seldom patronised, they are hesitant in applying the sanction of imprisonment. Probably, this explains why corporate breach of environmental governance responsibilities is still on the rise. The question that warrants attention, therefore, is, what could possibly account for this almost insignificant role of the courts as an environmental governance responsibility enforcement institution? This section considers the impediments militating against the effective utilisation of the judiciary as corporate environmental governance enforcement mechanism.

**Use of Compromise as an Alternative to Public Prosecution**

The option of compromise made available to the offender is a clear indication that criminal prosecution under the 1996 Environmental Code is a weapon of last resort. Although compromise under section 91 of the Environmental Code is discretional, where it is accepted

[83]Restraining the respondent from further discharging milky waste or industrial sewage into the stream.

[84]A mandatory injunction required the respondent to rehabilitate the polluted areas near the factory under the strict supervision of the appellant in conformity with the environmental governance curative responsibility of rehabilitation or restoration of the degraded environment.

by the legal department, it puts an end to the prosecution, provided that it is executed within the agreed time limit. The Code does not, however, spell out the time limit for its execution. The Code only requires the commencement of compromise before the possible legal procedure.[85] This law permits the compromise amount to be determined in collaboration with the administration in charge of finance. To create an impression that compromise is not an incentive to violators of corporate governance responsibility when compared to the sanctions at the disposal of the court, it is stated that the amount of the compromise shall not be lower than the minimum of the corresponding sanction.[86] This justification is short-sighted and misleading since judicial sanctions extend beyond fines to incorporate imprisonment and other accessory penalties. It should be made clear that engaging in compromise does not *ipso facto* put an end to the possibility of a legal procedure. To this effect, the Environmental Code provides that where the compromise is chosen as the means of settlement, it shall be effected before any possible legal procedure, under the risk of nullity.[87]

An unusual aspect of the compounding process is that it authorises the restoration of any equipment ceased at the end of the compounding process, where it was used for the first time to commit the offence and when the person concerned is a first offender. Restoration will not be made where the person concerned is a previous offender. There is no obvious justification for linking the restoration of the instrument used in committing a crime owing to the fact that the owner is a previous offender without taking into account the seriousness of his crime and the likelihood of his reputation. The deterrent effect, if any of such penalties, may be limited because this might have been included in the economic calculations of the offender. In other words, it is cost-effective for the company to degrade the environment or violate the law and seek compromise than abiding by the law. In fact, it will not be wrong to submit that the restricted right to compound any offence committed under this law substantially compromises the credibility of the criminal process here. This is so especially as the option seemed to have found favour before the administration than engaging the courts.

[85]Section 90(1) of the Environmental Code provides that: "*The administrative units in charge of environmental management shall have the full right to effect a compromise. To do this, they shall be duly notified by the defaulter*.
[86]*Ibid*, Section 91(2).
[87]*Ibid*, Section 91(2).

**Access to Court, a Drawback to Introducing Environmental Litigations**

As established earlier, the commencement of judicial proceedings against violators of environmental governance responsibility is only possible where the right to use the same is exist. It is a fundamental principle in law that one who commences an action in court must have the legal right (*locus standi*) to do so. This right emerges when a party to a lawsuit demonstrates that he has an interest substantial enough to connect him with litigation, and in the absence of such interest, the court would not consider his claims. It is safe to say that in Cameroon, it is absolutely clear that access to environmental justice is the prerogative of the state represented by the Ministry of Environment, Protection of Nature and Sustainable Development.

On the question of whether private individuals have access to environmental justice, the judiciary in Cameroon has been reluctant to grant *locus* to individuals in environmental matters. The doctrine of *locus standi* acts as a technical limit to the right to access justice. Though it may be laudable in its own way, especially as it prevents those who may be referred to as "busy body" from involving in issues they have no interest in, it on the other hand, limits access to justice. Instructive is the argument of the court in the case of *FEDEV v. China Road and Bridge Corporation* (supra). Even where it is established that any interested party can initiate a public interest litigation, another worry that surfaces are whether such can be instituted against a private company as was with the respondent[88] in the case above. It is again limiting to know that public interest litigations can only be filed against the state or state agency. Public interest litigation can never be actionable against a private party. Since the respondent in the case was neither the state nor a state agency, it could only be possible to institute public interest litigation when it is included as a co-respondent in any suit of a public interest nature.

This only encourages the public to be reticent towards prosecuting environmental offences, especially where it involves corporate institutions. The public finds no interest in initiating corporate environmental suits which will only engage a battle to establish *locus*, before the court can proceed to hear the case based on its merits. The consequence of this is that there is little or no incentive to patronise the courts, for it is not worth the stress.

**The Reluctance of the Courts to Apply the Sanction of Imprisonment to Corporate Entities**

It seems abundantly clear that the courts in Cameroon are content with the application of the sanction of fines and other accessory penalties to the detriment of imprisonment when the offender involved is a corporate institution, irrespective of the fact that the Code provides for

[88] China Road and Bridge Corporation.

imprisonment. The disadvantage of reliance on fines is that they are not punitive enough to serve as deterrence to violators, especially owing to the fact that these companies command huge capital. This explains why it is increasingly difficult to find Cameroonian cases on the violation of corporate environmental governance responsibility where the courts have actually implemented the sanction of imprisonment.

This attitude of the Cameroonian courts has left room for several unanswered questions: (1) is it that the judges find it comfortable and less stressful to impose only fines? (2) Does the doctrine of corporate personality stand as a major challenge to the application of imprisonment? (3) Are the courts in their reluctance to implement the sanction of imprisonment trying to protect the companies? Whatever the case, one thing that stands out clearly is that the courts in Cameroon have been reluctant to sanction companies who violate environmental law with imprisonment. Since this is the case, it becomes uneconomical engaging courts actions which are likely to end with the imposition of a fine, a result which could still be obtained through an out-of-court settlement. This only acts as a disincentive to punishment serving as deterrence to the violation, probably the reason why environmental violations are on the rise.

**Sanctions are not a Sufficient Disincentive to Violations**

The Cameroonian legislator through the 1996 environmental code, has classified offences into different categories and allocated penalties accordingly. Regrettably, punishments are not as effective as the money that can be made from unlawful activity. This makes violation of environmental governance responsibility profitable and if this continues, law enforcement will not be dissuasive and sanctions will not be a sufficient disincentive to illegality. The persistent rate of violation in the sector signals that sanctions do not sufficiently deter violators.

It should be noted that the temptation is that companies will evaluate the cost of respecting environmental governance to determine whether or not to respect the same. Logically speaking, if after the evaluation the company discovers that it is cost-effective to uphold these responsibilities than violate them and be punished, it would strive to uphold the same. But if the company discovers that the reverse is true, considering the paltry nature of sanctions, the temptation is for the companies to violate and pay the penalty. With this paltry sum of 2 to 5 million as a penalty, the deterrent objective of the law is defeated. This explains why many companies continue to degrade the environment. 2 million to 5 million FCFA for example, is too negligible for a company like BOCOM Petroleum, Brasseries du Cameroun, or ALUCAM to name these. It is considered therefore almost a waste of time seeking the courts for the punishment of violators especially as the severity of the sanction remains the same.

Sometimes, even when the court attaches an accessory penalty to the principal penalty the lack of follow-up is another drawback because it is possible that rehabilitation for example may never be executed. It is logical that if the judge visits the *locus in quo* after the supposed exercise, this will compel respondents to always do what the judgement obliged them. But, knowing that most judges do not do that, respondents hardly effectively comply with the court's instructions and have the deterrent effect of an otherwise severe judgement simply diluted.

**Lack of will by the Administration**

Initially, where environmental problems have occurred, they are considered to be of the public interest and external to private parties. The government has assumed the principal responsibility for the prosecution of environmental offences. Even where private individuals possess the right to initiate litigations on the bases of public interest, this can only be done against the state or state agency. Unfortunately, the government has always demonstrated an unwillingness to engage in court actions against companies that violate environmental law. Rather, where such violations have occurred its preference has been an out-of-court settlement. One of the principal motives behind the preference for an out-of-court settlement to the judiciary is the fear that punitive judicial sanctions may get companies out of business or chase them away. Another reason is that most environmental offences, given their relatively small maximum penalties, would be treated out of court.

**Conclusion**

It is no exaggeration to state that law is void of meaningful content if its compliance and enforcement are not guaranteed. This is particularly so, as the propriety of every law does not only depend on how the law is made but also on how it is applied. If one were to judge from the perspective of the quantum of regulations and the variety of sanctions put at the disposal of the judiciary as an enforcement and compliance institution, it would be agreed that as a country, Cameroon has fared reasonably well in environmental governance, particularly with regard to corporate environmental governance. Unfortunately, the impact of the courts as an enforcement and compliance institution *vis a vis* corporate environmental governance has not been significantly felt. The courts have in most instances been engaged as a last resort.

A careful observer can see that courts have not sufficiently played their role to enhance compliance with corporate environmental governance (CEG) and the reasons are not far-fetched. Firstly, concerning offences created by the Environmental Code, the penalties do not fit the damage at all. The fine and imprisonment provided for offenders reveal the unserious

treatment given to issues of environmental degradation. This negligible sum can definitely not deter recalcitrant offenders, bearing in mind that most of the companies involved in this crime usually have enormous resources. Furthermore, the introduction of compromise as an alternative for judicial settlement is another nightmare for the courts. The unwillingness of the courts themselves to grant *locus* to individuals for the prosecution of environmental offences is again, a limitation by the court to receive environmental cases. In addition, the courts seem to be content with the application of the sanction of fines and other accessory penalties to the detriment of imprisonment when the offender involved is a corporate institution, irrespective of the fact that the Code provides for imprisonment. There is also the lack of will by the administration and the public to patronise the courts. This explains why it is increasingly difficult to find Cameroonian cases on the violation of CEG responsibilities where the courts have actually implemented the sanction of imprisonment.

If the courts in Cameroon must effectively play their role as a mechanism for the enforcement and compliance to CEG, collective action is required from the government, the court themselves and the public. The state must shy away from the attitude of preference for compromise over court action under the excuse of preventing companies from departing because of draconian measures. The courts on their part must be willing to waive the limitation of *locus standi* to allow free access to the court. Finally, the public must be willing to patronise the services of the courts in cases of environmental violations.

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