

FORMS OF LEGAL REMEDIES TO VICTIMS OF ENVIRONMENTAL POLLUTION IN CAMEROON

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Abstract: This paper examines the forms of legal remedies available to victims of environmental pollution in Cameroon. It provides a critical analysis of the existing legal framework, including the Environmental Management Law, and explores the effectiveness of various remedies, including: Injunctive Relief, Monetary Damages, and Restoration Orders. Civil Lawsuits such as seeking restitution, damages, or injunctive relief. Criminal Prosecutions In severe cases, violators may face criminal charges, leading to higher penalties and enforcement of stricter accountability measures. Findings, Key Legislation and Regulations are Environmental Management Framework Law (Law No. 96/12 of 1996, Forestry Law (Law No. 94/01 of 1994, Wildlife Law (Law No. 94/01 of 1994, Water Code (Law No. 98/005 of 1998. Enforcement Mechanisms include Ministry of Environment, Protection of Nature and Sustainable Development (MINEPDED. Some Challenges by victims are inadequate enforcement and compliance, Lack of awareness and education, insufficient institutional capacity. Possible Recommendations include Strengthen enforcement and compliance, Promote public awareness and education, Enhance institutional capacity, Implement Environmental Impact Assessments (EIAs), Increase sanctions for environmental offenses, Environmental education and sensitization. The findings of this research contribute to a deeper understanding of the legal mechanisms for addressing environmental pollution in Cameroon and inform policy recommendations for improving access to justice for victims of environmental harm.

Key words: Pollution, Remedies, Victims, Liability, Mechanism, Enforcement, Litigation

Introduction

Environmental pollution is a significant challenge in Cameroon, with far-reaching consequences for public health, ecosystems, and economic development. The country's rich natural resources and biodiversity are under threat from various forms of pollution, including industrial waste, agricultural runoff, and oil spills. Despite the existence of laws and regulations aimed at protecting the environment, victims of environmental pollution in Cameroon often face significant barriers in accessing justice and obtaining effective remedies. This paper explores the forms of legal remedies available to victims of environmental pollution in Cameroon, with a focus on the effectiveness of these remedies in addressing the harm caused by environmental degradation. Through a critical analysis of the existing legal framework and case law, this research aims to identify the strengths and weaknesses of the current system and inform policy recommendations for improving access to justice for victims of environmental harm. By examining the legal remedies available to victims of environmental pollution in Cameroon, this dissertation contributes to a deeper understanding of the complex relationships between environmental law, human rights, and sustainable development. The findings of this research have implications for policymakers, practitioners, and communities affected by environmental pollution, and highlight the need for a more effective and equitable approach to addressing environmental harm in Cameroon.

Administrative Remedies

In recent years, as access to administrative remedies has become more and more popular, people now expect administrative behaviors to follow fair, open, and democratic procedures and to ensure principles of a law-based administration to protect civil rights and interests.¹ In the event of illegal or improper administrative decisions or an administrative authority's failure to take such actions, administrative remedies may implement to protect relevant parties' rights. The purpose of remedies is for environmental restoration, to redress those affected, to implement legislation, to reinforce the rule of law and to promote sustainable development. Article 91 of the law of 1996 relating to environmental management in Cameroon gives powers to all administrative units in charge of environmental management the right to effect a compromise. The main purpose of the administration is for the general interest. To sanction violators of state laws. This therefore means that administrative sanctions will apply to persons or companies that pollute or cause harm to persons due to their negative activities.² Sanctions therefore are the application of power tools as a reaction to violations of administrative law norms with the characteristic of coercion (dwang).³ In various laws have emphasized that administrative officials can impose administrative sanctions in the form of coercion (bestuur dwang), as well as environmental law. Basically, administrative sanctions are sanctions in the form of coercion intended to force the person in charge of businesses and/or activities to restore polluted environmental conditions.⁴ The sanction is in accordance with the legal objective to restore the damaged environment to its original condition. Injunction, suspension, closure of polluted companies all constitutes the various forms of administrative remedies. Hence these forms of administrative remedies shall be discussed in the following Paragraphs⁵.

Injunction

The legal framework includes Law No. 96-6 of 18 January 1996 to amend the Constitution of 2 June, 1972 section 37 gives the judiciary powers to adjudicate over disputes and make judicial decisions. Section 8(1) of the judicial organization ordinance of 1972 provides that

¹ Administrative liability at <https://unimelb.libguides.com/c.php?g=948139&p=6870678> (lastly visited February 2, 2023).

² Dinah Shelton And Alexandre Kiss on 'judicial handbook on environmental law' Introduction' by Hon. Judge Christopher G. Weeramantry P.54

³ London her Majestys Stationery Office: 'The Law Commission' working paper no 40 remedies in administrative law, 11 October 1971 P. 42

⁴ Environmental pollution and its legal remedies <https://www.scribd.com/document/419459288/Environmental-Pollution-and-Common-Law-Remedies> (lastly visited February 20, 2023)

⁵ Law No. 96-6 of 18 January 1996 to amend the Constitution of 2 June, 1972 section 37

judicial decisions and orders are enforceable throughout the Republic of Cameroon. The law gives power to competent courts to issue injunctions of its kind if the case at hand demands it. This is discretionary remedy granted by the court temporarily or permanently restraining the act or omission perpetrating hazard⁶⁸. Injunction is a remedy sought by victim of tort to stop the continuing injury to the victim⁶⁹. The granting of this remedy either prohibits or restricts a defendant from carrying on an environmentally damaging activity. Normally, either the activity complained of has to be continuing at the date of claim or has to be a threat that the activities will continue. It is however, observed that seeking injunctive remedy imposes several difficult burdens on the litigants as they are extraordinary remedy which the court grant sparingly and at its discretion and will only be granted if it is just and convenient.⁶

Forms of Injunction

Mandatory and prohibitory constitutes the types of injunctions.⁷ A prohibitory injunction requires the other party to refrain (stop) from doing something. The court at its discretion has the power to issue an order to stop a company that operates against the rules and regulations that it is to follow.⁸ For example, a manufacturing industry that does not respect its production standards, air standards, and noise and pollutes the environment and causing the neighborhood to suffer, the population can approach the court to seek for an injunction order to stop such an action. Mandatory injunction requires a party to do something.⁹ This is most common in areas where there is a likely result of serious harm or damage if something is not done. It may be the need to prevent serious flood; the court can order an enterprise to take necessary steps to avoid causing harm to individuals because of its operation. Other forms of Injunction are Quia timet injunction Injunctive relief is usually granted where there has been some infringement or alleged infringement of the plaintiff's rights. Preliminary or interim injunction Temporary injunction Permanent injunction

Conditions to Obtain Injunctive Remedies

A victim seeking the remedy of prohibitory injunction must first establish a right recognized and enforceable either at law or in equity.¹⁰ He must also demonstrate that he will suffer irreparable injury and that no other adequate remedy is available and it appears to the court to be just and convenient to do so and the applicant has 'clean hands' (eg, has not delayed unreasonably or acted improperly themselves) and on the other hand, mandatory injunction is granted on the conditions that the applicant will suffer serious harm if the injunction is not granted, the applicant will most likely succeed at trial, the respondent will not incur expenditure which would be disproportionate to the applicant's harm.¹¹

Applicable Cases of Injunction

See the case *Kennaway v. Thompson*, 72 where the Court decided to award the claimant an injunction, restricting the times defendant boats raced and the noise made, on the application of the plaintiff, notwithstanding the public interest in the sport.¹² In addition, Injunction is illustrated in the famous Cameroon case *In the matter of M. Nguenta Mesmine V Minef*. The defendant, Mr. Nguenta owned a garage in the Bastos neighborhood in Yaoundé. Pieces of metals and scraps of old vehicles were dumped in the surrounding causing land pollution. The air was also polluted because of the smoke and gas given off when welding was done. The offence was aggravated because Bastos is a high-class residential area. The defendant was

⁶ London her Majestys Stationery Office 'The Law Commission' working paper no 40 remedies in administrative law, 11 October 1971 P.41-42

⁷ The importance and types of injunction at <https://hrlrc.org/2018/04/12/the-importance-and-types-of-injunctions-equitable-remedy-in-the-law-of-equity/> (lastly visited February 12,2023)

⁸ Types of injunction in civil courts <https://www.lawteacher.net/free-law-essays/civil-law/types-of-injunctions-in-civil-courts-0039.php>. (lastly visited February 11,2023)

⁹ An introduction to injunction remedies at <https://www.scribd.com/document/380663317/Injunctions>. (lastly visited April 1,2023)

¹⁰ Case *In the matter of M. Nguenta Mesmine V Minef* [42] the defendant, Mr. Nguenta owned a garage in the Bastos neighborhood in Yaoundé

¹¹ Mandatory and prohibitory injunction at <https://www.claims.co.uk/knowledge-base/civil-court/mandatory-and-prohibitory-injunctions/>. (lastly visited January 17,2023)

¹² Environmental pollution under tort law at <https://blog.ipleaders.in/environmental-pollution-as-a-tort-overview-and-analysis/>. (lastly visited January 16,2023)

accused of violating Section 21 of the Code and therefore was levied a fine of 2,500,000 FRS. He was also instructed to move the garage from that neighborhood.

Restoration / Rehabilitation

The constitution of Cameroon greatly emphasizes on the need to maintain the environment. The law on environmental management of 1996 gives power to administrative authorities to punish polluters of the environment and one of which is to restore or rehabilitate the environment as it was Article 5 of the said law stipulates that: laws and regulations must guarantee the right of everyone to a healthy environment and ensure a harmonious balance within ecosystems and between urban and rural areas.¹³ The penal code of Cameroon also plays a key role on rehabilitation and restoration of environmental harm by defaulters. Remedy entails the resuscitation of the ecological status of the environment prior to the pollution. This remedy can avail victims of environmental pollution that the status of the environment in which the victim lives in be restored to where it was before it was polluted. It is observed that very little or no attention is being paid to the issue of rehabilitation of the land in which the victims live on and source for means of livelihood on it. Restitution does not mean monetary recompense but that the polluter found liable for pollution should be responsible for the cost of cleaning up the polluted area and reinstating it to the status quo as much as it is most practicable. This is remedy is in tandem with the concept of polluter pays principle.¹⁴ The polluter pays principle refers to the requirement that cost of pollution should be borne by the polluter or the person responsible for the pollution and consequential cost.¹⁵

Applicable Cases of Restoration, Rehabilitation

A Kenyan case where the defendant was found to have dumped wastes on a neighbor's property, the High Court of Kenya ordered the wrongdoer to clean up the waste. See Paul K. Nzangu v. Mbiti Ndili (High Court of Kenya at Machakos, Case 8/1991). Case of the Mayo-Darlé Mine Site, Adamawa Region. Because of mining activities, it resulted to massive destruction and environmental pollution of land as water downwash wastes unto the environment-causing nuisance. Policies were implemented to rehabilitate and restore the environment to its formal state. In environmental cases, courts often order environmental harm to be cleaned up or the damaged ecosystem returned to a healthy state.¹⁶

Suspension and Closure: Legal Consecration

The 1972 constitution of Cameroon in its preamble states that the state shall ensure the protection and improvement of the environment, this gives administration authorities the powers to put in regulation and rules to preserve our natural environment and to use measures one of which is the closure and suspension of environmental activities that negatively affects the environment and causes harm to individuals property and health.¹⁷ The Cameroon penal code of 2016 in its section 25-sub 2-3 talks about the dissolution and closure of establishments that falls under corporate bodies in Cameroon. Ban, for a specified period of time, on the direct and indirect exercise of any or all of its activities, Closure, for a specified period of time, of establishments or branches having served in the commission of offences (section 34); Banned occupation (section 36) applicable to natural persons who violate rules governing public order. Section 299 of the penal code on toxic waste empowers courts to close down companies in this nature. According to the Black's Law Dictionary, suspension shall mean to interrupt; to

¹³ Environmental law remedies under tort law at <https://lawjournal.mcgill.ca/article/remedies/>. (lastly visited January 26,2023)

¹⁴ Daniel E. Marcel E. On *Assessing Green Policies For Rehabilitation and sustainable restoration of Mine Site in Cameroon*: case of the Mayo-Darle mine site, Adamawa Region. Vol.12(2). 2020, P.134

¹⁵ Mussod, G. In Situ Technology of Vadose Zone Remediation Encyclopaedia of *Environmental Control Technology, Hazardous Waste Contamination and Treatment*. vol. 4 Gall Publication London)

¹⁶ The fight against plastics waste disposal and pollution in Cameroon at <https://landfillsolutions.eu/cameroon-struggles-against-plastic-pollution/> (lastly visited March 16,2023)

¹⁷ The banning of plastics papers at <https://www.businessincameroon.com/index.php/environment/0801-4558-cameroon-reaffirms-the-ban-against-plastic-packaging-starting-april-1-2014>. (lastly visited March 1,2023)

cause to cease for a time; to stay, delay, or hinder; to discontinue temporarily, but with an expectation or purpose of resumption. To forbid a public officer, attorney, or ecclesiastical person from performing his duties or exercising his functions for a more or less definite interval of time. A victim of environmental pollution can approach a competent court to seek for suspension remedies, to temporarily or permanently suspend the action of somebody or corporate body because of the effects caused usually manufacturing industries and other polluting bodies most common in the Littoral region of Cameroon. Dissolution of corporation refers to the closing of a corporate entity, which can be a complex process.¹⁸ Many companies have been permanently closed down giving the fact that they violate the rules and regulations governing their operations. Companies operating in violation of environmental rules and regulations can be suspended and due to persistent pollution and violations, a competent authority of the area of operation should close down such company.

Confiscation / Seizure: Legal Framework of Confiscation

Section 45 of the 2016 law of the Cameroon penal code states that the confiscation of anything whose manufacture, custody, sale or use is unlawful shall be ordered even if not belonging to the offender, and even if the prosecution does not result in conviction. According to the Black's law dictionary, Confiscation means to adjudge property to be forfeited to the public treasury; to seize and condemn private forfeited property to public use. Confiscation of assets or property is the permanent deprivation of property by order of a court or administrative procedures, which transfers the ownership of assets derived from criminal activity to the State.¹⁹

Common characteristics of Confiscation

- Confiscation is a criminal sanction
- It is pronounced by a competent court
- No compensation is accompanied with Confiscated private properties
- Confiscation applies on immovable properties of private persons
- For the purpose of the general interest.

There are two types of confiscation namely the partial and total Confiscation. Total Confiscation. The administration can confiscate a property that is considered causing more harm to society. It is an infringement on the right of property of individuals. In pollution cases, properties like buildings, cars, land can be seized by the administration for the purpose of general interest. Especially in a case of serious environmental health problems, it is causing like pollution.²⁰

Criminal and Civil Remedies

There are various criminal remedies provided by different statutes on environmental protection in Cameroon. Essentially, these criminal remedies are fine, imprisonment and forfeiture. The common feature of various statutes in Cameroon is that they have been laced with penal provisions and hence they numerously prohibit the doing of certain things that will cause environmental pollution.²¹

Justification for Criminal Remedies

There are five main underlying justifications of criminal punishment considered briefly here: retribution; incapacitation; deterrence; rehabilitation and reparation. Retribution is the fact that

¹⁸The Cameroon penal code of 2016 in its section 25 sub 2-3 talks about the dissolution and closure of establishments that falls under corporate bodies in Cameroon
¹⁹ Poor environmental governance in Cameroon at <https://www.researchkey.net/poor-environmental-governance-in-cameroon/?noamp=available>. (lastly visited March 10,2023)

²⁰ The banning of plastics papers at <https://www.businessincameroon.com/index.php/environment/0801-4558-cameroon-reaffirms-the-ban-against-plastic-packaging-starting-april-1-2014>. (lastly visited March 22,2023)

²¹ Prevention of crimes against the environment and justice to victims at [https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-7/key-issues/2--justifying-punishment-in-the-community.html#:~:text=There%20are%20five%20main%20underlying,%3B%20deterrence%3B%20rehabilitation%20and%20reparation](https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-7/key-issues/2--justifying-punishment-in-the-community.html#:~:text=There%20are%20five%20main%20underlying,%3B%20deterrence%3B%20rehabilitation%20and%20reparation.). (lastly visited March 19,2023)

the individual has committed a wrongful act that justifies punishment, and that the punishment should be proportional to the wrong. Deterrence is aimed at reducing crime by directing the threat of that sanction at all potential offenders. The theory of incapacitation assumes that the state has a duty to protect the public from future wrongs or harms, and that such protection can be afforded through some form of incarceration or incapacitation. Rehabilitation, the central premise of rehabilitation is that punishment can prevent future crime by reforming the individual offender's behavior. Reparation. The justification of reparation in criminal justice is based on the idea that crimes should be corrected by requiring that offenders make amends to victims to repair the wrong that they have done. Restitution and compensation to victims, their families or communities, This chapter examines the various statutory provisions of criminal remedies for victims of environmental pollution and the underlying traditional theories of punishment such as deterrence and retribution are the center of this discourse

Legal Framework for Criminal Remedies

At the international level, several laws and conventions have given rise to criminal liability. The Fundamental Concept of Crime in International Criminal Law by Iryna Marchuk:²² The Concept of Crime in International Criminal Law page 69, Modalities of Criminal Liability in the Jurisprudence of International Criminal Courts and Tribunals page 159. International law handbook makes has given room for international wrongful acts to make reparation and institute criminal sanctions.²³ At the national level, Cameroon, The 1996 law on environmental management in Cameroon regulates waste disposals, pollution and polluters of the environment are to be sanction by these laws. Acts such as Criminal Code and penal code provides for various sanctions for environmental pollution in Cameroon. Air Quality legislation/ programmes: Section 1, Chapter III of Law No. 96/12 of August 5, 1996, on the Framework Law on the Environmental Management deals entirely on atmospheric pollution and Decree No. 2011/2582 / PM of August 23, 2011 Laying down conditions for protection of the atmosphere in Cameroon equally spells out clearly the necessary measures that must be taken to ensure good air quality in Cameroon²⁴. Law No.98/005 of 14 April 1998 that lays down regulations governing ground water resources. The man aim of this law is to determine, in line with the principles of environmental management, the general legal framework governing water resources in Cameroon. this law prevents groundwater pollution by forbidden anyone to discharge, submerge, spray, infiltrate, strew or dump directly or indirectly into water any solid, liquid or gaseous matter.²⁵

Cameroon Penal Code

The provision of most of these Acts carries criminal sanctions with it in nature of monetary fines and/or a term of imprisonment. In other words, if an individual or corporate body violets any of the provision of such statute he is liable to criminal charge. In this case, the idea is to inflict some pain on polluters or cause them some monetary loss. Some of these statutory provisions are hereunder examine. Criminal sanctions fall under criminal law, which has the "purpose of preventing harm to society, (a) declares what conduct is criminal, and (b) prescribes the punishment to be imposed for such conduct. It includes the definition of specific offenses and general principles of liability." The Cameroon criminal law classifies offenses in three broad categories in the Penal Code (Section 21):²⁶

Imprisonment

Virtually, every environmental related statute in Cameroon provides for term of imprisonment arising from the doing of certain prohibited act as prescribed by the statutes. For example,

²² Iryna Marchuk 'The Fundamental Concept of Crime in International Criminal Law': *The Concept of Crime in International Criminal Law* P. 69

²³ The 1996 law on environmental management in Cameroon, The Criminal Code and penal code of Cameroon

²⁵ The Framework Law on the Environmental Management. Air Quality legislation / programmes: Section 1, Chapter III of Law No. 96/12 of August 5, 1996.

²⁶ The Penal Code (Section 21):

Section 24 of the 2016 penal code states: imprisonment shall mean 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 judgment²⁷. Section 229 of the penal code handles toxic wastes and states that Whoever with immediate affects discard of dangerous or toxic waste generated by its company shall be punished with imprisonment of from 5 (five) 10 10 (ten) years and a fine of from CFAF 5 000 000 (five million) to CFAF 500 000 000 (five hundred million. ²⁸SECTION 261 : Pollution of air and water Whoever by his operations: a) pollutes any drinkable water liable to be used by another; or b) so pollutes the atmosphere as to render it harmful to human health, shall be punished with imprisonment for from 15 (fifteen) days to 6 (six) months.²⁹ Section 79 of the 1996 law of environmental management in Cameroon sites out the various terms of imprisonment corresponding to their offenses to be imposed on polluters of the environment. Both on natural persons and corporate bodies violating environmental rules and regulations in their operations. In addition, the Cameroon criminal procedure code serves as a legal framework for imprisonment sentence. From the above discussion, it is clear that the term of imprisonment for polluters of the environment varies corresponding to the gravity of the environmental harm caused to the victim. It is important therefore to sites some of the Cameroon cases where court have imposed criminal sanctions of imprisonment sentence on corporate bodies especially in major industrialized towns in Cameroon where the rate of noise, water, air and land pollution keeps increasing at rapid rate. United States v. Hansen, 262 F.3d 1217 (11th Cir. 2001), the court sentenced two officers and managers of LCP Chemicals of Brunswick, Georgia, to lengthy prison sentences for their environmental crimes. One was sentenced to serve nine years in prison .the other was sentenced to six and one-half years in prison.³⁰

Fines

According to the black's law dictionary A "fine" is a pecuniary penalty, and is commonly (perhaps always) to be collected by suit in some form. Fines are the most common type of sentence given by the courts. That is because they are given for lower-level crimes such as minor driving offences or minor theft. The court sets the amount of a fine after considering how serious the offence is and how much money the offender can pay based on their income. Fines can be given to organizations or companies as well as people. This is a common provision in all environmental statutes in Cameroon. It is the most common punishment in every part of the world. Where a fine is imposed, this exculpates the offender from further liability. The court should be able to extract some forms of compensation for the victims of environmental pollution.³¹

The Legal Consecration of Fines

Fines are criminal sanctions imposed on persons and corporate bodies for their illegal environmental activities in this case pollution. The Cameroon constitution in its preamble insist on the need to protect and preserve the environment. Fines are consecrated in the Cameroon penal code of 2016, section 25 1) Fine shall mean a financial penalty by virtue of which a convict, natural person or corporate body, pays an amount of money, specified by Law, into the Public Treasury.(2) The maximum amount of fine applicable to corporate bodies shall be five times that provided for natural persons. (3) Where a corporate body is guilty of an offence punishable with imprisonment only, the fine to be paid shall be from CFAF 1 000 000 (one

²⁷ Forjindam D. M.on *Criminal Liability for Oil Pollution under Cameroon Law*. Page 12

²⁸ Section 229 of the penal code

²⁹ Section 24 of the 2016 penal code

³⁰ United States v. Hansen, 262 F.3d 1217 (11th Cir. 2001), the court sentenced two officers and managers of LCP Chemicals of Brunswick, Georgia

³¹ The Cameroon constitution in its preamble. The Cameroon Penal code of 2016, section 25 1)

million) to CFAF 500 000 000 (five hundred million).³² Section 78 on the law of environmental management in Cameroon emphasized on fines on industrial, commercial or agricultural activities likely to deviate from the rules and regulations governing their operations. Section 79 makes provisions for various fines to be applicable to polluters of the environment. Fines are imposed on natural persons as well as on corporate bodies who are liable for pollution harm on victims. It is suggested that the heavier the fines it will have greater deterrent effect. More so, where the polluters are multinational corporations with vast resources at their disposal it is suggested that the basic principle that should underlay the imposition of such heavy fines are the need to rehabilitate the environment, which has been polluted. Perhaps it is because of the quantum of fines of some of these provisions that are grossly inadequate the some of these laws are honored more in breach than compliance.

Cameroon Cases

In the decision of the case of *Ucb V Minef* in which the ministry levied a penalty of five million (5,000,000 FRS) Francs as stated by Section 82 of the Code on a brewery company, Union des Brasseries du Cameroun located in Douala for polluting the air. The amount was later tripled to fifteen million (15,000,000 FRS) Francs.³³

Fines sanctions under the penal code : Section 229-1: Toxic waste (1) Whoever unlawfully discards or discards dangerous or toxic waste generated by its company shall be punished with imprisonment of from 5 (five) to 10 (ten) years and a fine of from CFAF 5 000 000 (five million) to CFAF 500 000 000 (five hundred million). SECTION 261 : Pollution of air and water Whoever by his operations: a) pollutes any drinkable water liable to be used by another; or b) so pollutes the atmosphere as to render it harmful to human health, shall be punished with imprisonment for from 15 (fifteen) days to 6 (six) months, or with fine of from CFAF 5 000 (five thousand) to CFAF 1 000 000 (one million), or with both such imprisonment and fine. The above are some laws on fines and cases on polluters of the environment in Cameroon.³⁴

Forfeiture: Forfeiture has long been defined as the loss of a right, privilege, or property because of a crime, breach of obligation, or neglect of duty.³⁵

Legal Consecration of Forfeiture

The Cameroon penal code, in its section 30 states)removal and exclusion from any public service, employment or office (2) incapacity to be a juror, assessor, expert referee or sworn expert ; (3) incapacity to be guardian, curator, deputy guardian or committee, save of the offender's own children, or member of a family council ;(4) prohibition on wearing any decoration ; (5) prohibition on serving in the armed forces ;(6) prohibition on keeping a school, on teaching in any educational establishment, and in general on holding any post connected with the education or care of children.³⁶ The Cameroon civil code in its section 34 and Section 35 Forfeiture is incurred only if the events contemplated by the foregoing Section took place within ten years of acquisition of Cameroon nationality, and may be pronounced only within ten years from the commission of such an act. A person shall forfeit of his rights if he has been convicted of an act defined as a criminal act or an offence against the internal or external

³² The law on environmental management in Cameroon Section 78.

³³ Fonja Julius Achu, Moshefuch Valery Fomchang Phd, 'Law On The Polluter Pays Principle And The Law In Cameroon': University of Yaounde, Department of English Law, Too Much Or Too Little 30-10-2019. P 8

³⁴ Fonja Julius Achu, Moshefuch Valery Fomchang Phd, University Of Yaounde, Department Of English Law On The Polluter Pays Principle And The Law In Cameroon: 30-10-2019P 8 Section 229-1.

³⁵ The types of sentencing and fines at <https://www.sentencingcouncil.org.uk/sentencing-and-the-council/types-of-sentence/fines/>. (lastly visited December 23,2022)

³⁶ Commitment for environmental protection at <https://cameroon-report.com/environnement/government-reinforces-commitment-for-environmental-protection/>. (lastly visited December 16,2022)

security of the State; b) if he has committed acts harmful to the interests of the State.³⁷ Forfeiture is imposed more on corporate polluter usually in lieu of any other term of penalty such as fine or term of imprisonment. It can be imposed on Any carrier, including aircraft, vehicle, container and any other thing whatsoever used in the transportation or importation of the harmful waste; and Any land on which the harmful waste was deposited or dumped, shall be forfeited. Forfeiture by corporate polluters is mainly for deterrence of the polluters and other members of the society that are likely to follow suit.³⁸ Is our submission that these corporate bodies make huge profit from various activities that result in pollution, as such the sanction should be increased, and possibly to be made to restore the environment. A company may be forfeited from government contracts simply because it failed to follow the rules and regulations of its operations and cause serious harm to society and individuals. It will loss that right to obtained government contracts. Example to construct road, and public sites.

Challenges to Impositions of Criminal Remedies in Cameroon

There are several challenges, which make the environmental criminal remedies in above statutes ineffective in their application as remedies for victim, of environmental harm in Cameroon. Some of these difficulties include: Environmental offences are matters of public interest and as such are presented on behalf of the state. Most of these cases are handled by the administration under environmental management bodies and at times, no prosecution is done. This has made the judiciary ineffective in most environmental cases and the criminal sanctions imposed are at times minimal.³⁹ In addition, enforcement mechanisms provided by the laws are weakened by fraud, a number of abuses and irregularities. This has made enforcement very difficult for example criminal sanctions like fines are often small to stop big industries from their activities, the will pay and continue to produce above their emissions and air standards.⁴⁰ Prosecution of environmental crime in Nigeria is not easy because culprit in the whole affairs are government and corporate organizations, who are the manipulators and promulgators of the sanctions. Based on the above Akujobi²⁶ opined that the dormancy of criminal sanctions is largely because they are primarily not intended to be effective.⁴¹ Civil law is that body of laws that every particular nation has established peculiarly for itself. These are laws concerned with civil or private rights and remedies, as contrasted with criminal laws. All civil cases or disputes are settled in accordance with the Civil Code.⁴² Civil cases include personal injury lawsuits, fraud, negligence, breach of contract, harassment, and other similar wrongdoings. In contrast to criminal penalties, civil penalties generally involve monetary payment, or a court order to do something or not do something. Civil penalties are handed down by a judge, or settled out of court by opposing insurance adjusters. Here are some sanctions or penalties regarding civil law This section examines the statutory provision for compensation arising from exploration and mining activities that has occasioned personal and proprietary damage to the victim of pollution. It will also examine damages arising from wrongful act of polluters and grounds upon which damages can be awarded, to put the victim as nearly as possible to the position he was before the pollution occurred. Further to be examined are the various civil remedies highlighted above.⁴³

Damages

In civil cases, damages are the remedy that a party requests the court award in order to try to make the injured party whole. Typically, damage awards are in the form of monetary compensation to the harmed party. Damages are imposed if the court finds that a party

³⁷ The Cameroon penal code, in its section 30.

³⁸ The Cameroon civil code in its section 34 and Section 35.

³⁹ Remedies For Environmental Damages Under The National Environmental Standards And Regulation Enforcement Agency (NESREA)2007 Act Page 134

⁴⁰ Dinah S. and Alexandre K on 'judicial handbook on environmental law' by Hon. Judge Christopher G. Weeramantry P. 55

⁴¹ An introduction to legal remedies at <https://lawjournal.mcgill.ca/article/remedies/>. (lastly visited March 19,2023)

⁴² Environmental pollution and remedies at <https://www.scribd.com/document/419459288/Environmental-Pollution-and-Common-Law-Remedies>. (lastly visited March 16,2023)

⁴³ Damages<https://www.law.cornell.edu/wex/damages#:~:text=In%20civil%20cases%2C%20damages%20are,contract%20or%20violated%20some%20right>(lastly visited March 16, 2023).

breached a duty under contract or violated some right. Damages are compensatory remedies provided by the statutes and under the common law. They are awarded, in form of monetary compensation to a person who complains of the violation of his legally protected right by the defendant.⁴⁴ Damages are awarded on the principle of restitution in integrum meaning that the Plaintiff be restored to status quo. The remedy of damages is therefore awarded for the purpose of restoration and rehabilitation and to reduce the consequence of the harm that has been inflicted on the victims or any other loss or injury, which they have suffered because of environmental degradation.

The Consecration of Damages Under Cameroon Law

Law No. 98/005 of 14 April 1998 To Lay down Regulations Governing Water Resources Article 16: (1) whoever pollutes and alters the quality of water shall be punished with imprisonment of from 5(five) to 15(fifteen) years and with a fine of from 10,000,000 (ten million) to 20,000,000 (twenty million) CFA francs. (2) In case of repeated offence, the maximum penalty provided for in Subsection (1) above shall be doubled.⁴⁵ Law No. 86/008 of 5 July 1986 on gas and water vapor pressure equipment, Law No. 89/027 of 27 December 1989 on toxic waste, Decree No. 76/372 of 2 September 1976 regulate establishments classified as dangerous, unhygienic and obnoxious.⁴⁶ Thus, Law No. 96/12 of August 1996 now provides the legal framework for environmental management in Cameroon. The constitution of Cameroon, the ministry of environmental and protection. The above laws and policies aim to preserve the environment and provide sanctions for polluters of the environment in the form of payment of damages for victims of pollution in Cameroon. At the international level, the Rio Declaration This international instrument by virtue of Principle 13 of the 1992 Declaration, which provides as follows:⁴⁷ State shall develop national law regarding liabilities and compensation for victims of pollution and other environmental damage. State shall also cooperate in an expeditions and more determined manner to develop further international laws regarding liability and compensation for adverse effect of environmental damage cause by activities within their jurisdiction or control to area beyond their jurisdiction.

Various Forms of Damages

There are various types of damages, these includes exemplary or punitive damages nominal damages, aggravated damages and contemptuous damage. Nominal damages are awarded if the action is proved but the claimant has suffered no loss. The claimant in such a case would receive a very small sum of money. Contemptuous damages are usually awarded in libel actions in which the claimant has technically proved the case but the court wishes to express its disapproval that the action was ever brought in the first place. Punitive damages may be distinguished from aggravated damages in that here the intention of the court is to punish the wrongdoer by an additional award on top of the award of compensatory damages, and perhaps to deter others who might be tempted to act in the same way as the defendant. However, our concern here is with respect to special and general damages because they provide grounds for claims of environmental harm to the victims to seek for remedy of damages.⁴⁸ General damages are awarded to compensate for the direct physical and psychological effect of an action. Example of general damages shall include physical pain and suffering, physical injury impairment, mental pain, reduced quality of life etc.⁴⁹ It should be noted that, compensation for general damages is largely based on the severity of the injuries, how the victim has been affected and how the victim might still suffer in future due to the fault. On the other hand,

⁴⁵ Law No. 98/005 of 14 April 1998 To Lay down Regulations Governing Water Resources Article 16: (1).

⁴⁶ Law No. 86/008 of 5 July 1986 on gas and water vapour pressure equipment, Law No. 89/027 of 27 December 1989.

⁴⁷ Rio Declaration Principle 13 of the 1992 Declaration

⁴⁸ Christopher J. H. On 'Pollution control and the Rule of Law' PhD thesis, University of Sheffield, Department of law. January, 1995, P. 119

⁴⁹ Pollution remedy <https://www.legalserviceindia.com/legal/article-768-environmental-remedies-under-law-of-torts.html#:~:text=The%20primary%20remedies%20for%20these,be%20nominal%2C%20substantial%20or%20exemplary.> (lastly visited January 21, 2023)

special damages are awarded to compensate for out of pocket actually loss, expenses or financial cost that a victim of environmental pollution has suffered because of the action of the polluter. Special damages cover short term medical expenses, long-term medical expenses, transportation cost, etc. Law in some cases may not provide special damages. They do not flow in the ordinary course they are exceptional in their characters and therefore must be specially and strictly proved. They are given in respect of any consequences reasonably and probably arising from the breach complained of.⁵⁰ Hence, they must be proved and like the operative word, “Special” ought to be specially proved to the satisfaction of the court. General damages on the other hand are presumed by the law to be the direct and natural or probable consequence of action complained of. They are such as the court may give when there is no measure by which they are to be assessed except in opinion and judgment of reasonable man.⁵¹

Reasons for Award of Damages For Victims: Damages are awarded for various reasons some are premised on statutory provisions, however, claim of remedy of damages whether special or general are based on the following:

Destruction of Private Properties: Victim of environmental pollution may be awarded damages on proof of loss of farmlands. Reduced soil fertility, reduced nitrogen fixation increased erodibility larger loss of soil and nutrients, deposition of slit in tanks and reservoirs. Pollution has led to massive destruction of farmlands. Like in major cities in Cameroon like limbe, Douala, and Yaounde due to concentration of industrial activities that dumped wastes on land, oil wastes that is carried out by water on private farmland. Where there is a claim for total destruction of property the measure of damages will be the value of the property as at the time of destruction.

St. Helen Smelting Co. vs Tipping: In this case, the fumes from the defendant’s manufacturing work damaged plaintiff’s trees and shrubs. The Court held that such damages being an injury to property gave rise to a cause of action. In the case of damage to property, any sensible injury will be sufficient to support an action.⁵² In the UK, trespass is the action brought for the unpermitted volitional entry onto some one’s land either by a person or something sent by a person (see the case of Ryland , V. Fletcher 1868 LR 3 HL 330) in this case, the English courts held that the owner of property from which a substance or thing escaped was strictly liable to his Neighbour who suffered damage as a result. The principle in the case is now extended to environmental pollutants produced on one property and causing harm on another.⁵³

Health Effects of Pollution: The noise pollution creates temporary as well as permanent problems to the human beings; the noise pollution can have physical, physiological and psychological effects. Physical effects: Temporary hearing problems, Permanent deafness. Physiological effects: Headache, Pains in the heart, Reduction in the vision, Rise in blood pressure, Loss of memory and Psychological effects: Depression, Fatigue, Emotional disturbance effects of water pollution like excess amount of fluorides causes dental and intestinal problems. In general, consumption of polluted water causes diseases like typhoid, dysentery, cholera. In this line, pollution in Cameroon has contributed greatly to negatively affect the health of persons. In addition, victims of this can approach the court to seek for legal remedies for what they have suffered as a result from the actions of persons and corporate bodies by means of pollution. Given that the victim can proof that, he was affected. It should

⁵⁰ General and specific damages at <https://www.accidentclaimsadvice.org.uk/difference-between-general-and-special-damages/> (lastly visited January 2,2023)

⁵² St. Helen Smelting Co. vs Tipping, *The Court held that such damages being an injury to property gave rise to a cause of action, giving room for the award of legal remedies*

⁵³ Prof. Jonie Fonyam in his handbook (course) *environmental law*. P.13 the case of Ryland, V. Fletcher 1868 LR 3 HL 330) in this case, the English courts

be note here that, a victim of environmental pollution can sue a polluter on grounds of negligence that resulted to the effects. Failure to take reasonable care (duty of care) trespass etc. The above elements constitute a good ground for the award of remedies of damages.⁵⁴ A Cameroon case, the weakness that in Cameroon, the quantum of damages levied on the polluter when implementing the polluter pays principle is derisory can be illustrated in the decision of the case of Ketch V Minep. On the facts of this case, KETCH was accused of exploiting a quarry without carrying out the requisite environmental impact assessment. The result was the production of an enormous quantity of dust, which polluted the air. KETCH was then slammed a penalty of five million (5,000,000 FRS) Francs as punishment in accordance with Section 79 of the Environmental Code. Again, the main criticism advanced against the decision is the quantum of damages levied against the defender. As the sum of five million is seen as too small an amount to deter a big company like the defendant from committing or repeating the same offence.⁵⁵

Compensation : Environmental Compensation is a mirror image of absolute liability. It is a tool to protect the environment, which works on the polluter pay principle.⁵⁶ It would be more appropriate to say that the mother of Environmental Compensation is the Polluter pay principle. "Who pollutes the environment shall pay for it." Environmental Compensation is penalizing monetarily those who pollute the nature and environment & affecting human health thus recovering the damages from them. It ensured that injured victim is not worse off after the injury complained of or his property is destroyed, a fair market value is paid for the loss or deprivation of his property. Here, compensation in environmental matters is not restricted to personal or proprietary damages, it could be informed of restitution that is, restore the victim to status quo ante in so far as it is possible to so do through payment of monetary compensation.

The Legal Framework for Compensation under Cameroon Laws: Indemnification; payment of damages; making amends; making whole; giving an equivalent or substitute of equal value. That which is necessary to restore an injured party to his former position. Remuneration for services rendered, whether in salary, fees, or commissions.

Legal framework for compensation in Cameroon: Compensation is provided for in the Cameroon constitution preamble it states that ownership shall mean the right guaranteed every person by law to use, enjoy and dispose of property. No person shall be deprived thereof, save for public purposes and subject to the payment of compensation under conditions determined by law. This applies to land expropriation and acquisition of property rights of persons.⁵⁷ Cameroon penal code in Part I Punishment and Prevention Chapter I Preliminary Provisions Section 17: Penalties and Offences to be prescribed No penalty or measure may be imposed unless provided by law, and except in respect of an offence lawfully defined. Section 77 to 87 on the law of environmental mating Cameroon provides for liabilities and compensation for victims of pollution in Cameroon caused by a polluter.⁵⁸

Forms of Compensation

Compensation can be in the form of pecuniary and compensation in kind Pecuniary compensation is compensation that can be estimated in and compensated by money; not merely the loss of money or salable property or rights, but all such loss, deprivation, or injury as can be made the subject of calculation and of recompense in money. A loss that can be evaluated in money terms. On the other hand, compensation in kind Non-pecuniary

⁵⁴ The Case of Ketch V Minep. Ketch was then slammed a penalty of five million (5,000,000 FRS) Francs as punishment in accordance with Section 79 of the Environmental Code.

⁵⁵ Fonja Julius Achu, Moshéfuch Valéry Fomchang Phd, University Of Yaounde, Department Of English *Law On The Polluter Pays Principle And The Law In Cameroon: Too Much Or Too Little*. P 8

⁵⁶ Environmental pollution and law remedies at <https://www.scribd.com/document/419459288/Environmental-Pollution-and-Common-Law-Remedies>. (lastly visited January 13,2023)

⁵⁷ The Cameroon constitution in its preamble. Cameroon penal code in Part I Punishment and Prevention Chapter I Preliminary Provisions Section 17: Penalties and Offences

⁵⁸ The nature of legal remedies at <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1025>. (lastly visited January 10,2023)

damages are damages that cannot be easily measured in monetary terms. On-pecuniary compensation intangible losses, which are proportional to the intentional misconduct of one party. Non-pecuniary losses can take the form of psychological and physical injuries, pain and suffering, humiliation, loss of reputation, etc. That is why non-pecuniary damages are often used in legal cases as a remedy for such harm.⁵⁹

Resettlement

This remedy can also avail victim of environmental pollution. Where there is recurrence of pollution victims can be resettled in an area where they are not likely to be affected by subsequent pollution. Victims of pollution can be compensated by means of resettlement that is victims should be moved to sites free from pollution that affects them. It is a civil remedy and at times the best option before environmental law courts.⁶⁰ Victims of pollution shall be awarded legal remedies for the harm they suffer due to the wrongful acts of environmental polluters. Legal remedies for victims of environmental pollution in Cameroon are categorized in to three forms. We have administrative, criminal and civil remedies. Administrative remedies shall include suspension, rehabilitation, injunction etc. Criminal remedies shall include imprisonment, fines, forfeiture etc. and civil remedies are compensation and damages award. Remedies should be fair and proportionate to the injuries suffered by the victim. The constitution, environment management law, penal code, criminal procedure code sanctions violators of environmental activities because of the need to preserve and protect the natural environment from continuing pollution.

Conclusion

This dissertation has examined the forms of legal remedies available to victims of environmental pollution in Cameroon, highlighting the complexities and challenges of seeking justice in a context where environmental degradation is a significant concern. The research has shown that while Cameroon has a robust legal framework for environmental protection, the effectiveness of legal remedies is often hindered by institutional weaknesses, lack of awareness, and limited access to justice. The findings of this study underscore the need for a more comprehensive and coordinated approach to addressing environmental pollution in Cameroon. This includes strengthening the legal framework, enhancing institutional capacity, and promoting public awareness and participation in environmental decision-making. Furthermore, the study highlights the importance of providing effective remedies for victims of environmental harm, including injunctive relief, monetary damages, and restoration orders. Ultimately, this dissertation contributes to a deeper understanding of the complex relationships between environmental law, human rights, and sustainable development in Cameroon. The recommendations emerging from this research can inform policy and practice, promoting a more just and sustainable approach to environmental management in Cameroon.

Recommendations

- Strengthen the legal framework for environmental protection in Cameroon.
- Enhance institutional capacity for environmental enforcement and compliance.
- Promote public awareness and participation in environmental decision-making.
- Provide effective remedies for victims of environmental harm, including injunctive relief, monetary damages, and restoration orders.

By implementing these recommendations, Cameroon can take significant steps towards addressing environmental pollution and promoting sustainable development, ultimately protecting the health and well-being of its citizens and preserving its rich natural resources for future generations.

⁵⁹ Vivienne H. *On The Principles Of Tort Law* fourth edition Page 410

⁶⁰ Pecuniary damages ,its definition and understanding at <https://thelawdictionary.org/pecuniary-damages/#:~:text=Definition%20%26%20Citations%3A,and%20of%20recompense%20in%20money.> (lastly visited April 7,2023)

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