

# The Effectiveness of the Legal Frameworks in the establishment of Liability of Land Transport Operators in cases of Accidents in Cameroon: A Critical Appraisal

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**Abstract**—The liability of land transport operators in Cameroon is guaranteed by a good number of laws including; the constitution of Cameroon,<sup>1</sup> the penal code<sup>2</sup>, the 2001 law governing the Profession of Road Transport Operators<sup>3</sup>, the 2023 law governing the rail sector in Cameroon<sup>4</sup> and more.<sup>5</sup> Such liability can be under the Tort of negligence, vicarious liability, or strict liability as provided for under section 289(1) of the Cameroonian penal code on Unintentional killing. However, the laxity of the courts in handling accident-related disputes, the contradictory and vague nature of the laws on the liability regime and even the lenient nature of the sanctions provided for by these laws do not meet up with the rate of accidents today in Cameroon. This article therefore has as its objective to examine the effectiveness of the legal frameworks in the establishment of liability of land transport operators in cases of accidents in Cameroon. Arguably, the author holds that the legal frameworks establishing the liability of land

transport operators in cases of an accident in Cameroon are ineffective. A doctrinal research method has been adopted where both primary and secondary sources of information have been consulted. Our finding reveals that; the ineffectiveness of legal frameworks in the establishment of the liability of land transport operators in cases of accidents is a result of the laxity of the courts in implementing the laws and, the vague and contradictor nature of the law. We, therefore, recommend that; separate court hearings should be set for accident-related disputes and judges trained only on that, the laws should be revised, the sanctions in cases of accidents should be increased and all mitigating circumstances in cases of accidents should not be taken into consideration like a first-time offender, the plea of guilt etc.

**Keywords**—*Legal Frameworks; Land Transport Operators; Liability; Accidents*

## RESUME

La responsabilité des opérateurs de transport terrestre au Cameroun est garantie par un bon nombre de lois dont la constitution du Cameroun, le code pénal, la loi de 2001 régissant la profession des opérateurs de transport routier, la loi de 2023 régissant le secteur ferroviaire au Cameroun et bien d'autres. Cette responsabilité peut être engagée en vertu du délit de négligence, de la responsabilité du fait d'autrui ou de la responsabilité objective telle que prévue à l'article 289(1) du code pénal camerounais sur l'homicide

<sup>1</sup> Law no 96/06 of 18 January 1996 as amended by law no 2008/001 of 14 April 2008 on the Cameroonian constitution

<sup>2</sup> Law no 2016/007 of 12 July 2016 on the Cameroonian penal code.

<sup>3</sup> law No 2001/015 of 23 July 2001 Governing the Professions of Road Transport Operator and Auxiliary of Road Transport in Cameroon.

<sup>4</sup> law no 2003/010 of 25<sup>th</sup> July regulating rail transport in Cameroon as amended by law no 2023/01 of 25<sup>th</sup> July 2023 Governing the Railway Sector in Cameroon

<sup>5</sup> See the rest of the legal framework from page 5 of this article.

involontaire. Cependant, la laxité des tribunaux dans le traitement des litiges liés aux accidents, le caractère contradictoire et vague des lois sur le régime de responsabilité et même le caractère clément des sanctions prévues par ces lois ne sont pas à la hauteur du taux d'accidents aujourd'hui au Cameroun. Cet article a donc pour objectif d'examiner l'efficacité des cadres juridiques dans l'établissement de la responsabilité des opérateurs de transport terrestre en cas d'accident au Cameroun. L'auteur soutient sans doute que les cadres juridiques établissant la responsabilité des opérateurs de transport terrestre en cas d'accident au Cameroun sont inefficaces. Une méthode de recherche doctrinale a été adoptée, dans laquelle des sources d'information primaires et secondaires ont été consultées. Nos conclusions révèlent que l'inefficacité des cadres juridiques dans l'établissement de la responsabilité des opérateurs de transport terrestre en cas d'accident résulte du laxisme des tribunaux dans l'application des lois et du caractère vague et contradictoire de la loi. Nous recommandons donc que des audiences distinctes soient organisées pour les litiges liés aux accidents et que les juges soient formés uniquement à ce sujet, que les lois soient révisées, que les sanctions en cas d'accident soient augmentées et que toutes les circonstances atténuantes en cas d'accident ne soient pas prises en considération, comme la première infraction, le plaidoyer de culpabilité, etc.

**Mots clés : Cadres juridiques, Opérateurs de transport terrestre, Responsabilité, Accidents**

## 1.0. INTRODUCTION

Land transport in general deals with transport by roads and by rail.<sup>6</sup> Road transport deals with the movement of both goods and passengers by motor vehicles trailers, buses, and motorcycles by roads<sup>7</sup> and is governed in Cameroon principally by law No 2001/015 of 23 July 2001 Governing the Professions of Road Transport Operator and

Auxiliary of Road<sup>8</sup> Transport in Cameroon. The road provides 90 % of the world's transport and is the leading cause of death and the world and Cameroon in particular<sup>9</sup>. Rail transport is the means of transport that transfers goods and passengers on wheeled vehicles running on rails which are located on tracts. It is governed in Cameroon by LAW NO 2003/010 OF 25TH JULY REGULATING RAIL TRANSPORT IN CAMEROON AS AMENDED BY LAW NO 2023/01 OF 25TH JULY 2023 GOVERNING THE RAILWAY SECTOR IN CAMEROON. Transport operators are any natural or legal person who carries the transport of persons or goods for profit or non-commercial purposes.<sup>10</sup> The natural or physical person defined in article 2 of law No 2001/015 of 23 July 2001 Governing the Professions of Road Transport Operator and Auxiliary of Road Transport in Cameroon can be the owner of the Car involved in the accident or may be working for another person who exercises transport activity. The term *accident* in this research work implies that nobody should be blamed, but the event may have been caused by unrecognized or unaddressed risks. Most researchers who study unintentional injury avoid using the term *accident* and focus on factors that increase the risk of severe injury and that reduce injury incidence and severity.<sup>11</sup>

Generally, liability refers to the legal responsibility of a person or an organization to make good on a loss they have caused to another person.<sup>12</sup> Under the principles of Tort law, liability refers to the legal responsibility of a person or an organization for damages or injuries caused by their actions or inactions.<sup>13</sup> The legal liability of land transport operators in case of an accident refers to the

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<sup>8</sup> Roads have been defined by section 2 of law no 2022/007 of 27<sup>th</sup> April 2022 relating to the protection of national road assets in Cameroon as "*terrestrial right of way open to the public*"

<sup>9</sup> Ahmed, I. (2013). "Road infrastructure and road safety. Transport and Communications" *Bulletin for Asia and the Pacific, Volume 83, Pp. 19.*

<sup>10</sup> Article 2 of law No 2001/015 of 23 July 2001 Governing the Professions of Road Transport Operator and Auxiliary of Road Transport in Cameroon

<sup>11</sup> Robertson, Leon S. (2015). *Injury Epidemiology: Fourth Edition.* Lulu Books publication, P. 55.

<sup>12</sup> Eric Johnson(2015), *Torts: Cases and Context, 1<sup>st</sup> edition,* Elandel Press, P, 2.

<sup>13</sup> *ibid*, P, 3.

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<sup>6</sup> Jean-P. R., Claude C., & Brian Slack (2016), *The Geography of Transport Systems*, 3<sup>rd</sup> edition, Routledge Publishing New York, P, 18.

<sup>7</sup> WOUNBA Jean François et Al, (2022), "Using safe system approach to analyze road infrastructure causes of road accidents on Yaoundé-Bafoussam road" *International Journal of Applied Science and Research*, Pp, 179

responsibility of transport operators, such as bus and truck drivers, train conductors, and other transport professionals, for damages and injuries that occur as a result of accidents involving their vehicles or other modes of transportation.<sup>14</sup> Such liability in question can be in Negligence, vicarious liability, strict liability and Unintentional killing as provided by section 289(1) of the Cameroonian penal code.<sup>15</sup>

In Cameroon, over 16500 accidents are recorded every year with an average of 1200 deaths and 4000 to 5000 injuries, including dozens disabled for life each year.<sup>16</sup> The Review, conducted by the Ministry of Transport under the supervision of the United Nations Economic Commission for Europe (UNECE) and in collaboration with the United Nations Economic Commission for Africa (ECA), presents a holistic analysis of the country's road safety progress and challenges.<sup>17</sup> The material damage from these accidents is valued at over 100 billion CFA francs per year, equivalent to 1 % of the gross domestic product.<sup>18</sup> The most accident-prone axes as reported by the Ministry of Transport (MINT), with 70 % of all accidents, are the Douala-Yaoundé, Yaoundé-Bafoussam and Bafoussam-Douala axes, commonly called "Triangle de la mort".<sup>19</sup> Cameroon's national road No. 4 which connects Yaoundé, the political capital to Bafoussam, is a part of the "Triangle de la mort", not only because of its triangular shape but also because of the countless deaths that occur on this axis every year.<sup>20</sup>

Accidents in Cameroon today especially road accidents are becoming a normal aspect daily. It is almost becoming impossible today in Cameroon for a day to pass

<sup>14</sup> Jennifer Wriggins, (2010), "Automobile Injuries As Injuries With Remedies: Driving, Insurance, Torts, and Changing the "Choice Architecture" of Auto Insurance Pricing", *Loyola of Los Angeles law review vol, 44*, Pp. 71..

<sup>15</sup> Law no 2016/007 of 12 July 2016 on the Cameroonian penal code.

<sup>16</sup> UNECE, (2018), [Road safety: Cameroon must redouble its efforts and strengthen coordination. Retrieved from, https://unece.org/press/road-safety-cameroon-estimates.com](https://unece.org/press/road-safety-cameroon-estimates.com). Consulted on the 15/06/2023.

<sup>17</sup> Ibid.

<sup>18</sup> WOUNBA Jean François et Al, (2022), *Op, Cit*, P. 180

<sup>19</sup> NGHEMKAP, A. (2010). « Accidents de la route au Cameroun: Halte à l'hécatombe ». Retrieved July 21, 2023, from <http://www.camerounlink.com/printnews.php?>

<sup>20</sup> WOUNBA Jean François et Al, (2022), *Op, Cit*, P. 180.

without hearing of an accident in the country. In 2023 alone, we gather the following number of accident cases by road alone, 1<sup>st</sup> January 2023, 9 persons died on the Douale-Edea road from collusion between a Camion and Bus, on the 15<sup>th</sup> of same month, 7 Christians from the Catholic church of Mfoua in the south Region died from road accident, on the 9<sup>th</sup> of May, 14 people died in a car accident in Guaroua Boulai on their way to Douala, same 9<sup>th</sup> of May, a Tanka transporting Fuel caught fire and killed five passengers in the village of Nkonkon on the Garoua highway, on the 14 of June, an assistant state counsel of Akonolinga died in a road accident, on the 15<sup>th</sup> of June, a renounced Cameroonian Comedian Cabrel Nanjip died from an accident on the Douala-Yaounde Road, , on 24<sup>th</sup> of June, 22 persons died from an accident involving Miss-Voyage at Ebebda on the Yaounde-Bafoussam road, on the 27<sup>th</sup> of same month, the commander of la legion de Gendermarie of Adamawa died from road accident, on the 29<sup>th</sup> of same month, 5 persons died at Misselel Tiko Douala Road, on the 2<sup>nd</sup> of July an accident on the road of Kribi-Bipindi claim the lives of 4 persons, on the 9<sup>th</sup> of same month, 4 persons died in Bangante in an accident on their way to Baham, same 9<sup>th</sup> of July, 15 people died on the road of Pitao-Garoua among which were Muslims returning from Pilgrimage in MECA, On the 11 of same month, between Bombe and Balagui, a camion transporting goods had an accident and claim the lives of 3persons, On the 14<sup>th</sup> of same month, at accident in Nkonsanmbe claim the lives of 5persons from the same family, on the 8<sup>th</sup> of August along the Kobilala locality in Doume Sub-division East Region, 6 people died and several other injured from an accident, on the 9<sup>th</sup> of same month, a Touristique Buss with registration number; Lt.426 QH was involved in an accident that claimed the lives of 7 passengers and 16 injured at Falaise de Mbe in Ngaoundere, on the 10<sup>th</sup> of the same month, 7 people died from collusion at Peage of Mbanga, on the 16<sup>th</sup>, a truck pusher by name Bangou was killed by a Brasseries truck at carrefour Loum in the Mounjo Division, on September 2<sup>nd</sup>, A kadji truck killed three persons(two girls and a boy) beside Foukou Bonaberi, on the 15<sup>th</sup> on December, 5 persons died on the Guaroua-Maroua road in another Touristique car, on the 17<sup>th</sup>, an accident in Likumba

Tiko claimed the lives 4 persons, on the 26<sup>th</sup> of the same month, at the locality of KoumbiIn Mbanga sub-division, 5 people died from an accident and about 20 others injured. The list of these examples of accident cases is non-exhaustive. A memorable accident which also remains in the minds of Cameroon is the Dschang cliff accident which occurred on the 27<sup>th</sup> of January 2021 where 53 people were killed, 29 others injured and some burnt beyond recognition. Accidents are unfortunate incidents, occurrences which cannot be completely wiped out but can only be minimized by adopting measures and most vigilant practices, safety precautions like respect for speed limits and other transport precautionary norms that prevent accidents. The rate of accidents in Cameroon today permits us to question the legislative frameworks put in place in the establishment of the liability of land transport operators in cases of accidents which is the aim of this article.

The first problem affecting the effectiveness of the liability of land transport operators in cases of accidents is the laxity of the courts in handling these cases. Delaying before the court poses significant challenges to the victims in receiving compensation as a result of the accident in question. A good demonstration can be seen in **Affaire Ministere Public ET Telefact Guy et Autres C/ Kanah Pierre Roger (the Falais accident of 27<sup>th</sup> January 2021 is still pending before the court of first instance of Dschang )**. This accident took place on the 27<sup>th</sup> of January 2021 at Falais de Dschang where 53 people were killed and 29 others suffered severe burns. This accident occurred about 3 am when an interurban travel Agency known as Menoua Voyage collided with a truck carrying fuel at the Cliff of Dschang. This court case has been on trial since 2021 and was adjoint on the 2<sup>nd</sup> of December 2023 to 24/01/2025. This case is entering the fourth year since the accident in question took place. Some of the victims of this accident will have given up on the court proceedings because of continuous delays before the court. On the other hand, one of the reasons why the court might delay might be because of a lack of judicial personnel since the courts are so crowded with cases and since the judges in Cameroon are not specialized in a particular domain, the delay is likely to take place. For liability to be established,

the cause of the accident must first be known. The cause of the accident acts as the basis of liability. The cause of the accident is usually established after an investigation carried out by the police or members of the National Gendarmerie. At times, this investigation is usually not accurate which gives rise to disputes before the courts concerning who is at fault in the accident in question. Without establishing the cause, it is difficult to impute liability. Other problems associated with the legal frameworks also include the vague nature of the laws and the linear sanctions which do not reflect the rate of accidents today. These problems permit us to examine the effectiveness of these laws in the establishment of liability of land transport operators in cases of accidents in Cameroon.

### **1.1. Legal frameworks in the establishment of liability of land transport operators in cases of accidents in Cameroon**

Legal frameworks here refer to the various texts put in place by the state of Cameroon to hold land transport operators liable as a result of the accidents. These laws are national law, international law as well as regional law.

#### **1.1.1. National laws**

These are domestic laws enacted by the Cameroonian parliament establishing the liability of land transport operators in cases of accidents. These laws are;

##### **1.1.1.1. Cameroonian Constitutional Guarantee<sup>21</sup>**

In terms of the hierarchy of laws, the constitution of Cameroon is the highest law of the land. The Cameroonian constitution does not exclusively talk about the liability of transport operators in cases of accidents. But the Cameroonian constitution guarantees the right of every Cameroonian to access justice and seek redress in cases of injury including victims of land transport accidents.<sup>22</sup> Access to justice is a fundamental right under the Constitution. It permits everyone whose right has been violated or who has suffered any injury as a result of the actions of another person or even the State to seek redress

<sup>21</sup> law no 96/06 of 18 January 1996 as amended by law no 2008/001 o 14 April of 2008 on the Cameroonian constitution

<sup>22</sup> Preamble of the Cameroonian constitution.

from the courts.<sup>23</sup> Victims of land transport accidents have the right to justice from the Cameroonian courts as a result of the injuries suffered. When the accident results in bodily injuries or death, the victim is assisted by the State and the offender is prosecuted free of charge on behalf of the victim. Access to justice is a mechanism put in place by the state to ensure that everyone should have the ability to bring his case to the competent court for redress including victims of land accidents.

This position was **seen in Affair Ministere Public et NGouana Koukam Glory C/ Ymelong Kaffo Mathias Ernest**<sup>24</sup>. In this case, the accused Ymelong Kaffo Mathias Ernest was arrested on the 17 of April 2018 and charged with Unintentional killing under section 289(1) of the Cameroonian penal code as a result of his imprudence, negligence and disregard of regulations which caused the death of the victim named NGOUANA KOUKAM Glory aged 05 years who was crossing the road from right to left while running at the place called Batchowa in the District of Penka-Michel West Region of Cameroon. He pleaded guilty to this offence and was sentenced to 60 days in prison with a fine of 50,000 FRS and 41,415 FRS as the cost of the proceedings. The vehicle in question was owned by **Fouodji Flaubert** and insured under AGC Assurance, in applying the provision of article, 264 of the CIMA Code, both the insurance company and the owner of the car were civilly liable to pay the sum of 1.305, 720 FRS. Justice **Medjow Angoa Casimir**, in delivering judgment before the court of the first instance of Dschang as a result of an accident believed that:

*Victims of accidents either alive or dead have the right to seek redress. This is a fundamental right guaranteed in the preamble of the Cameroonian constitution. Access to justice in cases of injuries is a fundamental right in Cameroon. The family of the young girl of 5 years who died in this car accident as a result of the negligent act of Mr Ymelong Kaffo Mathias must obtain redress from*

<sup>23</sup> TCHANA NZOUEDJA A (2021), "[Access to Justice and Human Rights Protection in the Common Law Jurisdiction in Cameroon: Problems and Prospects](#)", *Zien Journal of Social Sciences and Humanities*, p. 34.

<sup>24</sup> Judgement No 392/COR du 22 mai 2020

*the court as guaranteed by the Cameroonian constitution.*<sup>25</sup>

However, access to justice as guaranteed by the Cameroonian constitution remains a problem. This is because some of the victims of accidents cannot afford even the court fee required to be paid for their actions to be heard. Again, some cannot afford the services of a lawyer which is one of the mechanisms guaranteeing access to justice in Cameroon. After an accident, the victims in most cases are struggling to look for means to get the best medical assistance and might not have money and means for court proceedings which poses a significant problem. The rate of accidents in Cameroon today is a national emergency and the constitutions should be the first document which provides for liability in cases of accidents. We recommend that the Cameroonian constitution should be revised and provisions relating to the liability of land transport operators should be inserted within the Cameroonian constitution. This will add more force to the specific laws already in existence.

#### **1.1.1.2. Criminal Liability in the Cameroonian Penal Code**<sup>26</sup>

The punishment of crimes in Cameroon is regulated by law no Law no 2016/007 of 12 July 2016 on the Cameroonian penal code. Everyone shall be subjected to the Cameroonian criminal law. This is in line with section 1-1 of the penal code on the principle of Non-exemption.<sup>27</sup> For an act to amount to a crime in Cameroon, it must be provided first by the law. This is reflected in section 17 of the penal code.<sup>28</sup> Therefore, any act not defined as an offence, shall not be punishable by the law. In cases of liability for accidents by road or rail, Section 289 of the Cameroonian penal code talks of Unintentional Killing and Harm.<sup>29</sup> The penal code must first be appreciated for the

<sup>25</sup> Ibid, P. 4

<sup>26</sup> Law no 2016/007 of 12 July 2016 on the Cameroonian penal code.

<sup>27</sup> SECTION 1-1 : No exemption: All persons shall be subject to the criminal law.

<sup>28</sup> 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.

<sup>29</sup> According to this section;



punishment of traffic-related offences. The factors which determine the cause of liability are provided for in section 289(1). It can be caused by a **lack of due skill, carelessness, rashness or disregard of regulation**. These elements form the basis of liability of land transport operators in cases of accidents under the Cameroonian penal code. Liability under section 289 of the penal code can be when the victim is alive and when he is dead. When the victim is dead, the offender is charged for unintentional killing and when the victim is alive but has suffered injuries as a result of the accident, then the offender will be charged for unintentional harm.

In the **Cameroonian case of THE PEOPLE Vs GITA GITAMOH MICHAEL**,<sup>30</sup> *CFIB/428F/2022*, **Mr Gita Gitamoh Michael** was accused of recklessly and carelessly driving his Toyota Hiace no. CH 025210 rashly on the public highway on 24/08/2022 at Buea in the Fako Judicial Division, and as a result knocked **Esengwo Sarah Apanaka** and caused her incapacity lasting 120 days and thereby committed an offence contrary to and punishable under Section 289(1) of the Penal Code. The state prosecutor, **Magistrate Ngantu Nicoline Epse Taminang**, presented evidence which shows the accused person was negligent and disregarded all rules and regulations governing the highway applicable to drivers. The accused pleaded guilty to the charge and was sentenced to 6 months imprisonment with a fine of 60,000 FRS. **Justice NJONJO JOHN NJIE**, the preceding judge before the

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*Whoever by lack of due skill, carelessness, rashness or disregard of regulation causes another's death or such harm, sickness or incapacity as is described in section 277 or 280 shall be punished with imprisonment for from 3 (three) months to 5 (five) years or with a fine of from CFAF 10 000 (ten thousand) to CFAF 500 000 (five hundred thousand), or with both such imprisonment and fine. (2) Where such harm, sickness or incapacity as is described in Sections 277 or 280 is caused by an offence against section 227 or 228 (2) (a) or (b) the imprisonment shall be from 6 (six) to (20) twenty years. (3) Where another's death is caused by an offence against Sections 227 or 228 (2) (a) or (b), the punishment shall be imprisonment for life. (4) Where any offence against this section is committed in the course of driving a vehicle requiring a driving license, the Court may disqualify the offender for up to 3 (three) years from holding such license and for any subsequent offence within the meaning of Section 88 of this Code may disqualify him for up to 10 (ten) years.*

<sup>30</sup> **Court of First instance Buea, Judgment no 428F, 02/12/2022**

Buea Court of First Instance noted that the negligent act of the accused person resulting in the injuries suffered by the victim was sufficient enough to convict the accused person to 6 months imprisonment. Also, in the case of **THE PEOPLE of Cameroon VS FONKI YANNICK NDELEY**,<sup>31</sup> *CFB/162F/2023*, **Mr FONKI YANNICK NDELEY**, the accused who was a Journalist was charged on two counts. Firstly, he was accused of negligently driving Toyota Rav 4 No LT 604 C2 which caused one Tantokwe Halidou inability to work lasting 90 days punishable under Section 289 (1) of the Penal Code and secondly of non-possession of a valid insurance certificate contrary to Section (1)(1) and punishable under Section 8(1) of law N° 65LF/9 of 22<sup>nd</sup> May 1965. **The prosecuting counsels; Magistrate, Foncham Nadesh, Mekombe Dianel, and Ngantu Nicoline Epse Taminang**, argued and presented evidence which showed it was the reckless and careless driving of the accused person which resulted in the injury suffered by the victim. If the accused had taken all precautionary measures in the course of driving, there would have been no accident for the victim to be incapacity for more than 90 days. **Justice NJONJO JOHN NJIE, the preceding judge**, gave a harder sentence where the accused was sentenced to three (3) years imprisonment and to pay a fine of 500.000 FCFA. The sentence in this case was more than the first above despite it being the same judge who presided over both cases and the victim in the first case suffered an injury which lasted for more than 120 days but was sentenced to 6 months in prison. In pronouncing judgment in the case of **THE PEOPLE of Cameroon VS FONKI YANNICK NDELEY**, **Justice NJONJO JOHN NJIE believed that;**

*From the evidence, the victims are suffering from untold hardships which would have been covered by an insurance policy, which the accused failed to do. The accused act amounts to dangerous activities to himself and 3<sup>rd</sup> parties. The consequences of driving without an insurance certificate certainly must be messaged through this judgment to deter citizens and the public at large*

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<sup>31</sup> Court of First instance Buea, Judgment No 162F of 31<sup>st</sup> March 2023.

*from engaging in driving vehicles when not covered by an insurance policy. The upshot of the above is that a deterrent sentence will certainly fit this situation in exercising my discretion judiciously and judicially. The convict is sentenced to three (3) years imprisonment and to pay a fine of 500.000 FCFA.*

The words of this judgment given by Justice **NJONJO JOHN NJIE** demonstrated the urgent need for strict sanctions in cases of accidents because 90% of daily accidents are a result of the negligence of drivers.

In the **People of Cameroon Vs Nzepewou Romaric, Judgement** No CFIB/727/2024<sup>32</sup>, the accused person was charged on four counts before the court of first instance of Buea on the 23<sup>rd</sup> of January 2024. On Count 1; on the first of January 2024 accused person drove his Mercedes No LT 351 JK rashly on the public highway and caused the death of **Teke Emmanuel Acha**, committing an offence contrary to and punishable under section 289(1) of the penal code. On count 2; the accused drove the same car and caused the death of **Yongabi Ariseleme Mbeng** contrary and punishable under section 289(1) of the penal code. On the third count, the accused was also charged with unintentional harm caused to one **Tata Edwwine Fonyuy** incapacity to work lasting more than 90 days punishable under section 298 of the penal code. The fourth count was rather under the Cameroon section 7 of the highway code for lack of control and caution while driving the same car and punishable under section 90 of the highway code. The accused person pleaded guilty to all the counts. Justice **Mengale Vivian Mbole Epse Achu**, sentenced the accused to an imprisonment term of 3 months and to pay a fine of 400,000 FRS. We find again this sentence to be linear from an accident which resulted in the loss of life of two persons as a result of rash driving, lack of caution and control. But again, we interviewed the prosecuting state counsel, **Justice Dikoume Ndole**, who explained that the family of the victim even pleaded on behalf of the accused person who had earlier met with the families of the victims and taken care of all the funeral expenses and more before the issue

<sup>32</sup> Court of First Instance Buea, Judgement No 727 of 24/04/2024

was called on the audience on the 06/02/2024. For her, it was useless to appeal the judgment of the court when the family was not willing to stand against the accused person and the same families demanded no damages in this case. The ability of families of victims to stand again with the offender and plead on their behavior makes the application of certain sanctions against accused persons difficult.

Similarly in the case of the **People of Cameroon Vs Taougoukou Nengou Paul, CIFB/456/2024**<sup>33</sup>, In this case, the accused person was charged on the 21<sup>st</sup> of August on four counts of; Unintentional killing of 2 persons, Simple harm Non-possession of insurance Certificate and destruction of the property belonging to the Cameroonian GCE Board. The accused on being the driver of a vehicle marked Mercedes matriculated LT 134 LA, drove same carelessly on the public highway and in the course, caused the death of one **Ewang Elvis Ekwede**, and one **Fobasso Bertrand**, and thereby committed an offence contrary to and punishable under section 289(1) of the Penal Code. On the second count, at the same time and place, drove carelessly on the public highway and in the course, caused unintentionally one **Taminang Jubilian inability** to work lasting more than 30 days, and thereby committed an offence contrary to and punishable under section 280 of the Penal Code as read with section 289 of same. On the third count, at the same time and place, the accused destroyed property belonging to the Cameroon GCE Board, to wit: 15 meters of the Fence, the Generator House, and electric cables all valued at 925,500frs, and thereby committed an offence contrary to and punishable under section 316(2) of the Penal Code. And lastly, on the fourth count, the accused did not have an insurance certificate contrary to law no 65/LP/9 of 22 May 1965. With the evidence presented by the state prosecution, Justice **Foncham Nadesh**, the accused pleaded guilty to all counts and was sentenced to 1 Month in Prison and to pay a fine of 100.000 FRS. Another noticeable issue about this judgment is the punishment which is 1 month imprisonment and the payment of a fine of 100,000 FRS. Such a sentence does not frighten other drivers from taking all necessary precautionary measures to

<sup>33</sup> Court of First instance Buea, Judgment no 456 of 08/10/2024.

avoid all accidents. But again, all the prosecution witnesses in this case were absent which might explain the linear sentence given by the presiding judge. But the presiding judge in the pronouncing judgment took into consideration that, the convict is a first-time offender, by pleading guilty, he has earned himself the benefits of section 359 of the criminal procedure code and has also saved the precious of the court. All the above militated in favour of the convict and the one-month sentence was justified.

At times proving unintentional killing under this section is very difficult and without sufficient evidence, the accused cannot be convicted for offences provided in section 289 of the Cameroonian penal code. This can be seen in **the people of Cameroon Vs Kamga Andre**,<sup>34</sup> the accused person who was a truck driver was charged before the court of first instance of Limbe on 27 counts for rash driving causing the death of 8 school children and causing bodily injuries to 18 other children on the 31 of march 2023 in Molowi Limbe, punishable under section 289(1) of the penal code. The prosecuting counsel Magistrate **Mofoh Joseph Mbeng could** not show that the accident was a result of the act of the accused person. The counsel for the defendant in the course of the trial argued that unintentional killing under section 289 of the penal code is a strict liability offense which does not require intention. There is no material element of this offence and therefore, evidence must be tendered to show that it is the act of the accused person which resulted in the situation of the victims. If such evidence is absent, the accused person must be discharged and acquitted. The presiding judge, Justice **Valerie Ankonnda Samandi**, found the accused not guilty for want of evidence and the accused was discharged and acquitted on all 27 counts. The verdict of this case was a surprise to so many families of the victims to see the person accused of causing the death of 8 children and injuring 18 other children to be discharged of all the counts. But again, the judge did not sentence the accused person based on emotions. The prosecution failed to show he was the cause of the accident and there was no evidence linked to the accused. The counsel for the defendant in the course of the

trial argued that unintentional killing under section 289 of the penal code is a strict liability offense which does not require intention. There is no material element of this offence and therefore, evidence must be tendered to show that it is the act of the accused person which resulted in the situation of the victims. If such evidence is absent, the accused person must be discharged and acquitted.

An accident might not result in the death of the victim and may cause him just bodily injuries and the destruction of his property. The Cameroon penal code still provides sanctions in these instances. A good example can be seen in the case of **The People of Cameroon vs NWANGEH MFIBAN ERNEST**<sup>35</sup>, **the accused was charged before the court of first instance of Limbe on two counts, on the first count**, NWANGEH MFIBAN Ernest on the 21 October 2022 at Bundes junction Limbe in the Fako Judicial Division being the driver of the vehicle brand Toyota SW-561- BF drove same rashly on the public highway and in a manner liable to cause harm to any person and as a result collided with motorcycle n° CH 003356 ridden by ABWE Kingsly EBONTANE and thereby committed an offence contrary to and punishable under section 228 (2)(d) of the Penal Code known as Dangerous activities.<sup>36</sup> On the second count: That NWANGEH

<sup>35</sup> Court of First instance of Limbe, Judgment no 04c/11/03/2024

<sup>36</sup> SECTION 228: Dangerous activities

(1) Whoever fails properly to provide against risk of bodily harm to any person from his dangerous activities shall be punished with imprisonment for from 6 (six) days to 6 (six) months.

(2) Whoever rashly and in manner liable to cause harm to any person:

a) makes use of fire, or of any inflammable or explosive matter, or of electricity, or of any machinery or,

b) demolishes in whole or in part any construction or any uninhabited building, notwithstanding that he may be the owner; or

c) furnishes medical or surgical treatment, or furnishes or administers any drug or other substance or,

d) Leads, drives, rides, stops or leaves any animal or vehicle on the public highway. Shall be punished with imprisonment for from 3 (three) months to 3 (three) years, or with fine of from CFAF 5 000 (five thousand) to

CFAF 500 000 (five hundred thousand), or with both such imprisonment and fine.

(3) Whoever drives any vehicle when drunk or under the influence of drugs shall be punished in like manner.

(4) Upon conviction under subsection (2) (d) in respect of a vehicle, or under subsection (3), the Court may add

<sup>34</sup> CFIL/78FD/2023



MFIBAN Ernest at the same time and place being the driver of the same car, drove rashly on the public highway and as a result caused bodily injuries to ABWE Kingsly EBONTANE and thereby committed an offence contrary to and punishable under section 289 (1) of the Penal Code known as unintentional harm. The evidence presented by the prosecuting Magistrates; Justice **Gabi Leonard and Sama Jaradine** led to the conviction of the accused person. Justice **Mafanyi Manyi Enanga**, Found the accused person guilty and fined him 100,000 FRS for the offence. The convict in this case was convicted just to pay the fine.

The Cameroonian penal code further provides aggravating circumstances of unintentional killing applicable specifically to drivers of motor vehicles. This is found in section 290 of the Cameroonian penal code.<sup>37</sup> The imprisonment terms of 3month to five years and a fine of 100,000 to 500,000frs provided under section 289(1) of the penal code shall be double under section 290 of the penal code applicable to drivers who are drunk or drugged when driving, who have not the license required for driving the vehicle in question, Who with intent to avoid his liability departs before being identified. The provision of this

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disqualification from holding a Driving license for up to 2 (two) years.

<sup>37</sup> SECTION 290: Drivers of Vehicles

(1) The punishment provided by section 289 (1) shall be double for an offence committed by the driver of any vehicle -

a) who is drunk or drugged when driving ; or  
b) who has not the license required for driving the vehicle in question ;

or

c) Who with intent to avoid his liability departs before being identified?

(2) Where such harm as is described in section 281 is caused Unintentionally in the circumstances of the last foregoing subsection, the driver shall be punished with imprisonment for from 6 (six) months to 4 (four) years and with fine of from CFAF 10 000 (ten thousand) to CFAF 100 000 (one hundred thousand). (3) For any offence against this section, the Court may disqualify the offender for up to five years from holding a driving license; and on subsequent conviction within the meaning of Section 88 of this Code may disqualify him for life or for any lesser term.

(4) In any case not covered by subsection (1) (c) of this section, the driver of any vehicle involved in an accident who with intent to avoid his liability departs before being identified shall be punished with imprisonment for from 1 (one) month to 1 (one) year and with fine of from CFAF 20 000 (twenty thousand) to CFAF 200 000 (two hundred thousand); and the Court may disqualify him for up to 2 (two) years from holding a driving license.

section was applied in the case of the **People of Cameroon and Djoumessi Margeritte Vs Adjoutsa Kemjioking Christophe Roberto, Judgment No 514/COR of 29 September 2017<sup>38</sup>**, where the accused person was charged with Unintentional killing for recklessly causing the death of Djoumessi Margeritte on the 02/11/2014 in Bafou with his motorcycle punishable under section 289(1) of the penal. Evidence presented by the state prosecutor Magistrate **Chuchoua Samo Bernadette** presented additional evidence which further demonstrated that the accused person did not have a driver's license aggravating the offence under section 290 of the penal code. The presiding magistrate **Justice Melinga Melinga Fabien** found the accused person guilty on all counts. But in a turn of events to our surprise, the accused was sentenced to pay a fine of 500,000 FRS. We would have expected the trial judge to give an aggravating sanction as provided in section 290 of the penal code.

However, the contradictory nature of the law poses a problem as far as liability in cases of accident is concerned. Take, for example, the provision of section 290 which the aggravated unintentional killing applies to drivers when the driver is drunk and at the same time accident under section 77 Accident and Physical Compulsion,<sup>39</sup> 78 Insanity<sup>40</sup> and 79 Intoxication<sup>41</sup> is a defence against criminal responsibility. Involuntary intoxication is grounds for criminal irresponsibility because the person is considered to be insane in compliance with the provision of section 78 when driving and cannot be criminally responsible. This poses a problem since intoxication is considered the same as insanity and at the same time, section 290(a) aggravates sanctions for the unintentional killing of drivers of a motor vehicle. The law has not

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<sup>38</sup> **Judgement No 514/COR of 29 September 2017**

<sup>39</sup> SECTION 77: Accident and Physical Compulsion: No criminal responsibility shall arise from an accident or from an irresistible physical compulsion.

<sup>40</sup> SECTION 78: Insanity (1) No criminal responsibility shall arise from the act or omission of a person suffering from mental illness which deprives him of all will-power or of the knowledge that what he does is blameworthy. (2) Mental illness whose consequences are only partial shall diminish responsibility.

<sup>41</sup> SECTION Involuntary intoxication shall have the same effect as mental illness.

defined involuntary intoxication and therefore no instruments are provided for the law to measure someone's drunkenness as a ground for liability under section 290 of the penal code. A careful reading of section 290 section 79 and section 78 is contradictory when it comes to liability in case of an accident. These issues identified above permit us to question concern the effectiveness of liability in case of an accident by land transport operators under Cameroonian law.

Also, the laxity of the courts in prosecuting accident-related offences in Cameroon poses a significant problem to the effectiveness of the penal code in prosecuting traffic-related offences. Some of the cases spend more than four years on trial. This makes some of the victims of land transport give as a result of the lengthy proceedings before the court. But again, some of the delays might be because of the numerous cases pending before the courts since our judges do not specialize in specific cases. But this laxity is a real problem. In some countries like the USA, they have traffic violation courts. These types of courts in existence speed up the proceedings process. Another challenge in the effectiveness of the penal code is the lenient sanctions provided for by the penal code. The 3 months to 5 years is small when we see the rate of accidents by land in Cameroon today. At times, the judges even give fines as sanctions for someone who has caused the death of 3 persons as a result of his negligence. Such sanctions do not send a strong signal to defaulters. Some of the provisions of this penal code are difficult to prove before the court in cases of accidents by land in Cameroon. This is because of the vague nature of some of the provisions of the penal code. A good example of the penal is that of Alcohol. There are no details provided by this law on how to carry out the alcohol test. The sanction generally provided under the penal code does not represent the reality we face today in Cameroon. We recommend that the penal code should be revised specifically on the sections on the liability of land transport operators in cases of accidents under Cameroonian law to represent the urgent problems of accidents by land today in Cameroon.

### 1.1.1.3. The law Governing the Professions of Road Transport Operator and Auxiliary of Road Transport in Cameroon

The profession of Road transport operators is governed in Cameroon principally by law No 2001/015 of 23 July 2001 Governing the Professions of Road Transport Operator and Auxiliary of Road Transport in Cameroon. This law is applicable alongside Decree No. 2004/0607/PM of March 17, 2004, setting the conditions of access to the professions of road transporter and auxiliary road transport in Cameroon. This law fixes the modalities and conditions for the exercise of road transport operators and auxiliary road transports in Cameroon.<sup>42</sup> This law further explains the roles and responsibilities of both road carriers (those transporting goods or people for profit) and transport agents (those providing auxiliary services such as loading, unloading, and managing terminals). The law defines road carriers as individuals or entities transporting goods or people for profit using their own or leased vehicles.<sup>43</sup> Auxiliary of road transport has been defined as; any natural or legal person who carries out an ancillary and/or related activity contributing to the performance of road transport operations; this includes in particular the management of road transport terminals, the management of loading and unloading operations in road transport terminals, removals and courier services for small parcels and operations involving the grouping and ungrouping of goods;<sup>44</sup>

To access the professional road transport operator and Auxiliary of road transport operators, the person must obtain authorization from the minister in charge of transport. This is in line with the provision of Article 5(1)<sup>45</sup> and Article 10(1)<sup>46</sup> of this law. The loading of a public transport vehicle gives rise to the establishment of a lettre

<sup>42</sup> Article 1 of law No 2001/015 of 23 July 2001 Governing the Professions of Road Transport Operator and Auxiliary of Road Transport in Cameroon.

<sup>43</sup> Article 2(1) (a) of the 2001 law.

<sup>44</sup> Ibid., article 2(1), (b)

<sup>45</sup> ARTICLE 5: (1) L'accès à la profession de transporteur routier est subordonné à l'obtention d'une licence délivrée par le Ministre chargé des transports.

<sup>46</sup> ARTICLE 10: (1) L'accès à une profession d'auxiliaire des transports routiers telle que définie à l'article 2 ci-dessus est assujetti à l'obtention d'une autorisation du Ministre chargé des transports

de voiture obligatoire (compulsory consignment note)<sup>47</sup> for the transport of goods and a bordereau de route (waybill)<sup>48</sup> for the transport of passengers. Anyone who carries out the profession of road transport without authorization from the minister in charge of transport will be punished according to the provisions of Articles 13,<sup>49</sup> 14,<sup>50</sup> 15 and 16<sup>51</sup> of this law.

<sup>47</sup>According to article 2(1) (c), compulsory consignment note is the road transport contract entered into between the shipper and the public road freight carrier;

<sup>48</sup>According to article 2(1) (d), Waybill is a materialist list which shows the amount of passengers in the course of a voyage by road in a public transport vehicle transporting persons by road

<sup>49</sup>DES INFRACTIONS ET DES SANCTIONS ARTICLE 13: Est considéré comme infraction à la présente loi et aux textes pris pour son application : - l'exercice de la profession de transporteur routier ou d'auxiliaire des transports routiers sans licence ou autorisation préalables ; - l'exploitation d'une licence ou d'une autorisation louée, prêtée, cédée ou transférée ; - l'utilisation d'un véhicule à usage personnel pour le transport public de personnes et/ou de marchandises à usage commercial ; - le transport interurbain ou international de marchandises ou de personnel sans la lettre de voiture ou le bordereau de route requis.

<sup>50</sup>ARTICLE 14: Sans préjudice des prérogatives reconnues au Ministère Public et aux officiers de police judiciaire à compétence générale, les infractions aux dispositions de la présente loi et des textes pris pour son application sont constatées par procès-verbal établi par les agents assermentés de l'Administration chargée des transports et dûment habilités par le Ministre chargé des transports. Un exemplaire de ce procès-verbal est transmis au Procureur de la République territorialement compétent et au Ministre chargé des transports.

<sup>51</sup>ARTICLE 15: (1) Sans préjudice de la suspension ou du retrait de la licence ou de l'autorisation selon le cas, est puni d'un emprisonnement de trois (3) à six (6) mois et d'une amende de cinq cent mille (500 000) à cinq millions (5 000 000) de francs CFA ou de l'une de ces deux (2) peines seulement, celui qui est reconnu coupable d'exercice illégal de la profession de transporteur routier ou d'auxiliaire des transports routiers. (2) En cas de récidive, les peines visées à l'alinéa (1) ci-dessus peuvent être doublées. ARTICLE 16: (1).L'exploitation de la licence ou de l'autorisation prévue par la présente loi peut être suspendue pour une période n'excédant pas un an pour les motifs suivants : - condamnation du bénéficiaire pour toute infraction aux dispositions de la présente loi et des textes réglementaires pris pour son application; - exercice de la profession d'auxiliaire des transporteurs routiers sans police d'assurance; - exploitation du transport interurbain ou international de marchandises ou de personnes sans carte de transport routier, lettre de voiture obligatoire ou bordereau de route selon le cas; - mise en exploitation d'un véhicule pour les activités d'auxiliaire sans autorisation préalable - chargement ou déchargement dans les centres urbains en dehors des terminaux de transport; - exploitation d'un terminal privé non conforme aux dispositions des textes réglementaires pris en application de la présente loi. (2) La décision de suspension de la licence ou de l'autorisation en fixe la durée. (3) La licence ou l'autorisation peut être retirée définitivement pour les motifs suivants : -

The provisions of this law were applied in **Affaire Ministère Public et Ayants droit DJIANENG Laurence et 22 autre, Zangue Teffo Renaule et 42 Autre, C/ Lekane Foueze Florence et Lekane Assonfack Marcous**, Judgement no 209/COR Du 19 Fevrier 2021<sup>52</sup>, who was charged for four counts, Unintentional killing and Harm, overloading, Dangerous activities and clandestine transport which resulted to the death of 23 persons and 44 other injured at Falais de Dschang. Investigation from the Dschang Gendarmerie showed that the driver overloaded the passengers for a care which was supposed to transport 70 people, had more than 80 which is prohibited by section 12 of the 2001 law. Again, the driver did not possess all the necessary documents to exercise road transport as required in articles 5 and 9 of this law default which is punishable under section 13 of this same law. The driver failed to take all necessary measures to avoid injuries from coming to a third party as a result of this overloading. He was found guilty of violating the provisions of articles 74, 289 and 228 of the penal code and also for violating the provisions of articles 5, 9 12, 13, and 15 of law no 2001/015 of 23 July 2001 regulating the profession of road transport operators in Cameroon. The accused was sentenced to 12 months imprisonment and to pay a fine of 2,000.000 FRs.

Similarly, in **affaire Ministère Public et Kenfac Fride C/ Soffo Piere**,<sup>53</sup>. In this case, the accused person was charged with Unintentional Harm before the court of first instance Dschang. On the 29 of January 2022 in the village of Fongo-Tongo, a vehicle of Toyota Mark with Registration nOU-767-AJ, belonging to Dockeng Victorine driven by Soffo Pierre, climbed on the food of the victim which lasted for about 180 days. The accused person did not possess the required documents to drive on the road as required by articles 4 and 9 of the 2001 law and the offences committed are punishable by section 289 of the Cameroon penal code. The accused person was convicted

mise en liquidation judiciaire du bénéficiaire ; - usage des titres de transports dans le cadre d'une location, d'un prêt, d'une cession, d'un transfert ou d'une falsification ;

<sup>52</sup> The Court of First instance of Dschang, Judgment no 209 of 19 February, 2021.

<sup>53</sup> Jugement No 785/COR Du 17 Novembre 2023

and sentenced to pay a fine of 100,000 FRS and will take care of all the medical expenses of the victim.

These two cases show the importance of this law in the protection of Cameroonians from accidents. But this law of 2001 does not meet with the aspirations of Cameroonians today. A lot of drivers today ply Cameroonian roads without any authorization from the competent authorities. These drivers pay bribes to some of the road control officers to get away with these acts. Overloading is a common phenomenon on Cameroonian roads daily. One of the leading causes of accidents in Cameroon is overloading. These drivers carry passengers and cargo more than the rate required by the law. Some police officers members of the Gendarmerie and road safety officers collect bribes and permit these drivers to continue with all these wrongful acts. This law as a recommendation should be revised and effective mechanisms put in place to ensure its implementation.

#### 1.1.1.4. The law Regulating Rail Transport in Cameroon

Rail activities are regulated by law no 2023/010 of 25 July Governing the Railway Sector in Cameroon which repeals all previous provisions repugnant hereto, in particular Law No. 74/10 of 16 July 1974 relating to railway policing and safety.<sup>54</sup> Law No. 2023/010 governing the railway sector of July 25, 2023, lays down the new legal framework for the railway sector. Recognizing the sector's underdevelopment, this law outlines its objectives in Section 2, which include defining rules governing the roles and interactions of various institutional stakeholders in the railway sector, conditions for constituting and managing railway assets, standards for constructing, operating, maintaining, replacing, developing, and managing railway networks, railway safety and security, regulations governing railway professions and technical personnel, civil and environmental protection, dispute resolution among key players, and penalties for violations of the law.<sup>55</sup> By

<sup>54</sup> SECTION 166:

<sup>55</sup> Jacob Akuo, (2023), "The Legal Framework of Cameroon's Railway Sector: An Overview through Q&As", <https://dayspringlaw.com/the-legal-framework-of-camerouns-railway-sector/>. Accessed on 15/12/2024.

definition, rail activities have been defined in article 7 of this law as; *all processes consisting in mobilizing sundry resources and contributing to the technical or commercial operation of rail freight and passenger transport services, operation, maintenance, renewal and development of railway infrastructure, regulation and management of railway safety, as well as management of the railway public property*;<sup>56</sup> To protect Cameroonians against accidents from the rail sector, article 4 guarantees the principle of public safety<sup>57</sup> to all Cameroonians.<sup>58</sup> This means all rail transport companies must carry out their activities with due diligence and care in order not to cause any harm to another person or the destruction of property in the cause of carrying out their activities or emanating from the rail operator.<sup>59</sup> Accidents by rail in Cameroon are not as rampant as road accidents. However, the Eseka train accident pushed the Cameroonian authorities to revise the 2003 law in 2023.

**In Affaire Ministere Public C/ Camrail, Didier Vandebon et 13 autres also known as the Eseka Accident,**<sup>60</sup> Cameroonian rail operator Camrail and eleven other defendants were found guilty of Unintentional killing and harm punishable under section 289(1) of the penal code in connection with a train derailment that killed 79 people and injured over 745 in October 2016. The packed train operated by Camrail, a unit of French industrial group Bolloré, came off the tracks in the town of Eseka en route from the capital Yaounde to the port city of Douala. Eseka district **judge Marcel Ndigui Ndigui** ruled that Camrail and 11 of the 14 individual defendants were guilty of "dangerous activities and Unintentional Killing. Camrail's former chief executive **Didier Vandebon** was among those convicted. He was sentenced to six months in prison,

<sup>56</sup> Ibid, article 7.

<sup>57</sup> Railway safety refers all means (technical, human legal, etc.) used to control and curb risks of railway accidents or incidents, as well as mitigate their impact;

<sup>58</sup> Section 4: Rail transport activities shall be carried out with due regard for environment, the best interests of national defence and public safety.

<sup>59</sup> Railway operator has been defined in article 7 of this law as; legal or natural person holding a concession or license to construct, develop or operate technical and commercial rail freight and/or passenger transport services;

<sup>60</sup> Court of first instance of Eseka, Judgement no 287, 27/09/2018.



while others received prison terms of between three and five months. Three defendants were found not guilty. Camaral was also ordered to pay the sum of 50 million frs as compensation to the victims of the accident. A lawyer for one of the victims, **Me Massi Ngakele**, welcomed the ruling saying “*It’s a historic day after a time of tears. Now is the time to hope.*” The trial comes after a government inquiry in 2017 found that Camrail was mainly to blame for the derailment as the train was going at more than twice the speed limit was overloaded and its brakes were defective. The imprisonment term for those found guilty of this accident is considered by many other persons we interviewed as small. The director of Camrail was sentenced to just 6 months in prison and the 11 others had an imprisonment term of 1 to 5 months. One thing which might have justified this accident was the fact that some of the victims pleaded to behave for the company. This company took initiatives after the accident, to identify some of the victims and paid for some of their medical bills and other expenses. This contributed to linear sanction from the investigation we obtained concerning.

#### 1.2.1.5. The Cameroon Highway Code of 2001

The Cameroonian Highway Code also known as the CEMAC Highway Code is the set of laws and regulations relating to the use of public roads (sidewalks, roads, highways, etc.) by pedestrians, cyclists, users of two-wheeled motor vehicles, motorists, truck drivers, etc. in Cameroon.<sup>61</sup> This code is applicable in Cameroon and all the member states of CEMAC per the provision of Article 2 of this law.<sup>62</sup> To protect Cameroonians from accidents, the first condition to drive a car or motorcycle is that all drivers have driving licenses before they can ply the Cameroonian

roads. This is in line with the provision of Article 1 on the obligation to possess a driver's license.<sup>63</sup> The possession of driver's licenses delivered by the competent authority shows the person in question is qualified and is worthy to ply the Cameroonian roads. Some of the causes of accidents in Cameroon are a result of a lack of skills and such lack of skills can be explained by the lack of driver's licenses delivered by the Ministry of Transport in Cameroon because the person is not qualified to be possession of a driver's license. However, possession of driver's licenses does not necessarily mean the person is qualified to drive because some drivers get their licenses through corruption. However, the possession of a driver's license delivered by the competent authority implies that the authorities have seen the individual as competent to play the Cameroonian roads. Non-possession of driver's licenses is an offence and therefore punishable by the highway code and the penal code when it results in an accident under sections 289 and 228 of the penal code.

In the **People of Cameroon Vs Kiyoh Elvis Fonchang**, CFIT/237<sup>c</sup>/2022<sup>64</sup>, the accused person was charged before the Court of First Instance of Tiko, Fako Judicial Division in the southwest region of Cameroon on 4 Counts. On count one; That Mr Kiyoh Elvis Fonchang, on 10 May 2022 at Tiko town, within the jurisdiction of the court of first instance Tiko, carelessly drove a motorcycle with no registration, in a manner liable to cause harm to other road users, collided with oncoming vehicle no SW982 BH, and as a result injured one Ngeh Anita Lefe, an offence contrary to and punishable under section 228(2) d as read with 280 of the penal code. On count 2: at the same time and place, drove a motorcycle without a driving license, an offence contrary to, and punishable under sections 1, 90, 91

<sup>61</sup> <https://cameroun.cc/code-de-la-route-camerounais-cemac/>. Accessed on the 15/05/2023.

<sup>62</sup> According to article 2 ; Les dispositions du présent Code de la Route Communautaire et ses annexes sont applicables à tous les véhicules et engins immatriculés sur le territoire de la Communauté Economique et Monétaire de l'Afrique Centrale, aux conducteurs et passagers qui y circulent ainsi qu'à tous les usagers de la route, quelle que soit leur nationalité. Elles régissent l'usage des voies routières ouvertes à la circulation. Ces dispositions s'appliquent également aux conducteurs, passagers et véhicules étrangers circulant sous la juridiction d'un Etat membre de la CEMAC conformément aux Accords de réciprocité passés entre un Etat membre de la CEMAC et un Etat tiers en application des Conventions internationales.

<sup>63</sup> Article 1er : Obligation de posséder un permis de conduire. Sous réserve des dispositions relatives à l'apprentissage de la conduite, nul ne peut conduire un véhicule à moteur ou un ensemble de véhicules s'il n'est détenteur d'un permis en état de validité, établi à son nom, délivré dans les conditions fixées par décision de l'autorité compétente chargée des transports. Le permis de conduire ne vaut que pour la ou les catégories de véhicules qu'il vise expressément.

<sup>64</sup> Court of First Instance of Tiko, Judgment no 237<sup>c</sup>/12/10/2022



and 41 of the Highway Code. With regards to count three; Count 3; that at the same time and place, drove a motorcycle without a registration certificate an offence contrary to and punishable under sections 90, 91 and 51 of the Highway Code. Lastly on Count 4: that at the same time and place, drove a motorcycle without an insurance certificate an offence contrary to and punishable under sections 9 of law n° 65/LT/9 of 22 May 1965. The presiding magistrate, Justice Antienka Moses, found the accused person guilty and sentenced him to 6month imprisonment. The non-possession of a driver's license was considered one of the causes of the accident. The lack of a driver's license showed the accused person is not worthy of circulating on the highway and as a result, he injured the victim.

Also, in the case of the **People of Cameroon Vs Ngnintedem Chamberline, CFIL/424<sup>c</sup>/2024<sup>65</sup>**, in this case, **Mr Ngnintedem Chambeline** on 24/09/2023 at Mile 4-Limbe in the Fako Judicial Division, being driver of vehicle n° SW-909B1 drove car on the public high way without the certificate of roadworthiness and thereby committed an offence contrary to section 66 of the highway code and punishable under section 90 (1) of same law, causing harms to one Mrs Ernest punishable under section 289(1) of the penal code. The presiding judge, Justice **Kemgo Federick** found the accused person guilty and sentenced him to pay a fine of 50,000 FRS. The trial judge emphasis the importance the importance of the certificate of road worthiness which is the ability of the state to judge that an individual is capable of plying the Cameroonian highway. *The absence of such a certificate issued by the competent authority which is a requirement for every driver to ply the Cameroonian roads is an offence. The accused person has without authorization caused harm to the victim and I therefore find him guilty.*

In the case of **The People of Cameroon Vs Sahaga Nyantcho Henery Dumond(supra), CFIB/396F/2024<sup>66</sup>**, two of the 8 charges against the

accused person were under the Cameroonian highway code. The accused person failed to exercise caution while driving on the highway contrary to section 7 of the Highway Code. The accused person exceeded the speed limit provided for by the Highway Code which is contrary to section 8 and punishable under section 90 of this same law. The accused person was found guilty and sentenced to 5 months imprisonment and to pay a fine of 400,00frs. The obligation to exercise caution in the course of driving is to make sure drivers take all necessary precautionary measures not to cause harm to another road user be it a pedestrian or another vehicle, motorcycle or train.

The above cases demonstrate the ability of the Cameroonian courts to punish all those who act contrary to the provisions of the Cameroonian highway code. The courts are ready to punish anyone who violates the rules and regulations governing the Cameroonian highway. However, the Cameroonian highway code still suffers from the implementation of the law. The right of high speed on Cameroonian roads, and overloading continues to claim the lives of Cameroonians. The authorities who are supposed to control the actions of drivers on the highway like Road safety officers, routiers, police, gendarmes etc, are not doing their jobs effectively. Some of them receive bribes in exchange for a violation of the highway code which in return claims the lives of Cameroonians.

#### **1.2.1.6. The 1965 law on compulsory Automobile insurance in Cameroon**

The obligation for all motor vehicles to take out compulsory motor insurance policy is provided in Cameroon by law no law 65/LF/9 of 22 May 1965 on compulsory automobile insurance. This law is applicable alongside decree no Decree N° 65/DF/565 of December 29, 1965, implementing law No. 65/LF/9 OF MAY 22, 1965 Concerning Compulsory Automobile Insurance in Cameroon. According to Article 1 of this law;

*Any legal or natural person must, to operate a motor vehicle and its trailers or semi-trailers, be covered by insurance guaranteeing its civil*

<sup>65</sup> Court of First instance of Limbe, judgment no 424<sup>c</sup>/21/03/2024.

<sup>66</sup> Court of First instance Buea, Judgment No 396F, 11/10/2024

*liability under the conditions set out in this law and the texts adopted for its application.*<sup>67</sup>

However, this law does not apply to rail transport as per Article 2 of this law.<sup>68</sup> However, this does not mean that railway companies must not take out insurance policies to cover the risk of accidents. The obligations of all rail companies to take out insurance policies are provided for in articles 88 to 93 of Part VI of law no 2023/01 of 25th July 2023 on Governing the Railway Sector in Cameroon.

The provisions of this law were applied in **Affair Ministere Public et Takouang Marie, Demanou Simplicie C/ Piata serge Merlin**<sup>69</sup>. The accused in this case did not have an insurance certificate which was contrary to section 1 and punishable under section 8. **The accused was fined 25000 FRS and sentenced to 6 months imprisonment by Justice Melinga Melinga Fabien** before the court of First Instance of Dschang. Similarly, in the case of the **People of Cameroon Vs Takougou Nenegou Paul**<sup>70</sup>, the accused person alongside other charges was charged for non-possession of an insurance certificate contrary to section 1 and punishable under section 8 of the 1965 law on compulsory Automobile insurance. The accused was sentenced to 1month of Imprisonment and was to pay a fine of 100,000 FRS. Also in **The People of Cameroon Vs Sahaga Nyantcho Henery Dumond(supra), CFIB/396F/2024**<sup>71</sup>, the accused person did not have an insurance certificate which is contrary to section 1 and punishable under section 8 of the 1965 law. **Justice Mengalle Vivian Mbole Epse Achu**, alongside other charges, found the accused person guilty and sentenced him to 5 months imprisonment and to pay a fine of 400,000 FRS.

Insurance policies play a crucial role in establishing the liability of land transport operators in cases of accidents. This is because insurance policies provide a mechanism for compensating victims of accidents and covering the costs

associated with the accidents.<sup>72</sup> Insurance policies can cover the costs associated with damage to property caused by the accident, such as damage to vehicles, buildings, or infrastructure. It can also provide compensation for damages caused to the victims through bodily insurance and loss of life.

However, many drivers and even transport companies still ply Cameroonian roads without an insurance certificate. Again, these drivers bribe some of the officers at the control post to get away with these illegalities. We recommend that the state should ensure strict control of the implementation of this law.

### 1.2.1.7. The 2022 Law on the Protection of National Road Assets in Cameroon

The protection of national road assets in Cameroon is governed by law no 2022/007 of 27<sup>th</sup> April 2022 relating to the protection of national road assets in Cameroon. This law aims to protect the national road assets of the Republic of Cameroon.<sup>73</sup> Article 2 of this law has given various definitions relating to transport by land in Cameroon. The term road has been defined in Article 2 of this law as a “*terrestrial right of way open to the public*”<sup>74</sup>. For a vehicle to be put on the road, it must be approved by the competent authority concerning Article 9 of this law. A certificate of conformity or an attestation of conformity must be issued. This obligation has as its objective to protect Cameroonians from rampant accidents as a result of defective cars or vehicles which are considered dangerous to Cameroonians plying the highway.<sup>75</sup> Since accidents can be caused by the defective nature or non-maintenance of the cars by the driver or owner of the car, this law requires frequent inspection of the vehicle to make sure the car is roadworthy. This is provided for in section 11 of this law. All vehicles must undergo technical inspection, following which the technical inspection certificate will be issued to

<sup>67</sup> Article 1(1) of law no 65/LF/9 of 22 May 1965 on compulsory automobile insurance in Cameroon.

<sup>68</sup> Article 2: The provisions of Article 1 are not applicable to vehicles running on rails.

<sup>69</sup> Jugement No 18/COR/ du 5 Septembre 2017

<sup>70</sup> Court of First Instance of Buea, Judgement No 456F 2024

<sup>71</sup> Court of First instance Buea, Judgment No 396F, 11/10/2024

<sup>72</sup> Abue Ako Scott Eke,(2015), “Compensation of the Driver as a Motor Accident Victim in Cameroon: A Critical Appraisal of the Cima Code” *Open Journal of Social Sciences*, P, 145.

<sup>73</sup> Section 1 of this 2022 law on the protection of National Road Assets.

<sup>74</sup> Ibid, section 2.

<sup>75</sup> Ibid, section 9(1).

show that the car is roadworthy.<sup>76</sup> In the **People of Cameroon Vs Sahaga Nyantcho Henery Dumond(supra), CFIB/396F/2024**<sup>77</sup>, the 6<sup>th</sup> count against the accused person was on the lack of a certificate of road worthiness which is contrary to the provisions of section 11 of this law.

An accident might destroy road assets in Cameroon. In such a case, the person will be held responsible for such damage in question. In **Affaire Ministere Public et Fuetsa Borice, Donjio Kelly, Tenjotsop Hilaire, Ngintedem Georgette et Autres C/ Hanfouo Sonhanfoua Adrien**, Judgment No 650/COR/Du 12 September 2023<sup>78</sup>, the accused person was charged for unintentional harm punishable under section 289(1) of the penal code and destruction of national road facilities defined in section 4(3), section 7 and punishable under section 34 and 51 of law no 2022/007 of 27<sup>th</sup> April 2022 relating to the protection of national road assets in Cameroon. On the 1<sup>st</sup> of January 2019 from Douala to Dschang, the accused person as a result of his rash driving, negligence, imprudence and non-observance of road regulations lost control of his vehicle of Mark Toyota Hieace with a registration SW-927-AS, knocked down a motorcyclist (**Fuetsa Borice**) at Gare Routiere d'effoc-Foreke and three other person who stood there waiting for a bike. At the same place, he knocked down an electricity pool that qualified as a national road facility. The accused person also ran away from the accident scene which aggravates the punishment provided under section 290 of the penal code. The accused person has not pleaded guilty to these offences. He argued that he was on his right and the motorcyclist ran into him and it was in the course of trying to avoid the accident that he knocked down the other four victims. The prosecuting state counsel, Magistrate **Chutchoua Bernadette** presented evidence which showed it was the carelessness, rash driving, and non-observance of regulations which caused the accident in question. She further demonstrated that the accused person ran away from

the accident scene not to the police state but to escape liability which aggravated the sanction provided in section 290 of the penal code. This same accident knocked down an electricity pool which supplied electricity in the area in question. The presiding judge, **Justice Mbara Abestem Guy David**, found the accused guilty and sentenced him to pay a fine of 300.000frs and 124,655frs as the cost of proceedings. The accused person was to pay damages for the destruction of the electricity pool, the sum of 1500frs. However, the victims in this case did not ask for any damage from the accused person.

However, the provisions of this law still suffer from issues of application even though this law was a revision of the 1996 law which initially protected road property in Cameroon. We still see a motor vehicle driving on the Cameroonian highway without authorization or a certificate of roadworthiness. However, the provisions of this law still suffer from issues of application even though this law was a revision of the 1996 law which initially protected road property in Cameroon. We still see a motor vehicle driving on the Cameroonian highway without authorization or a certificate of roadworthiness.

#### 1.2.1.8. The 2005 Cameroon Criminal Procedure Code(CCPC)<sup>79</sup>

Criminal procedure therefore is the method laid down by law for bringing a person who is alleged to have committed a crime before a court of law for trial. It also deals with the method to be adopted by the court of trial, the powers of the court of trial, the right of appeal of a person convicted of a crime and the right of appeal of the initiator of the proceeding who is called the prosecutor.<sup>80</sup> The prosecution of traffic violation offenders in Cameroon must be done per the provisions of the criminal procedure code of Cameroon like any other offence punishable by the Cameroonian penal code. This is in line with the section of the CPC.<sup>81</sup> The sanction against the infringement of any

<sup>76</sup> Section 11(1).

<sup>77</sup> Court of First instance Buea, Judgment No 396F, 11/10/2024

<sup>78</sup> Court of First instance of Dschang, Judgment No 650/COR/of 12 September 2023

<sup>79</sup> Law N° 2005/007 of 27<sup>th</sup> July 2005 on the Criminal Procedure Code.

<sup>80</sup> Keubou P,( 2010), Précis de Procédure Pénal Camerounaise, 1ere Edition, Presses Universitaires d'Afrique, Yaounde, P, 22.

<sup>81</sup> Section 1: This law instituting the Criminal Procedure Code stipulates the rules which deal particularity with: (a) the

rule of criminal procedure shall be an absolute nullity when it is: (a) Prejudicial to the rights of the defence as defined by legal provisions in force; (b) Contrary to public policy.<sup>82</sup>

The prosecution of traffic violation offences like unintentional killing and harm begins first with the presumption of innocence of the accused according to article 8 of the CPC.<sup>83</sup> This first right was established in the case of the **People of Cameroon Daba Edwin Ekwene CFIL/45C/ 2024**<sup>84</sup>. In this case, DABA Edwin EKWENE on the 20th of August 2023 at Limbe, in the Fako Judicial Division, being the driver of vehicle matriculated LT-428-1Y belonging to Union Camerounaise des Brasseries (UCB), drove the same rashly on the public highway in a manner liable to cause harm to other road users and as a result collided with vehicle matriculated SW-041-BA belonging to **Njosa Ivo Fotoh** driven by **YOUASHI Richard** and thereby committed an offence contrary to punishable under section 228 (2)(d)<sup>85</sup> of the Penal Code.

The presiding judge, Justice Kengo Fedrick, reminded the accused person of his fundamental right of presumption of innocence until proven guilty. The accused person in the course of trial pleaded guilty to the offence

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investigation of offences; (b) the search and identification of offenders; (c) the method of adducing evidence; (d) the powers of those charged with prosecution; (e) the organization, composition and jurisdiction of courts in criminal matters; (f) verdict; (g) sentencing; (h) the setting aside of judgements in default and appeals; (i) the rights of the parties; (j) the methods of executing sentences;

<sup>82</sup> Section 3: (1) The sanction against the infringement of any rule of criminal procedure shall be an absolute nullity when it is: (a) Prejudicial to the rights of the defence as defined by legal provisions in force; (b) Contrary to public policy. (2) Nullity as referred to subsection (1) of this section shall not be overlook be raised at any stage of the criminal proceedings by any of the parties and shall be raised by the trial court of its own motion.

<sup>83</sup> Section 8: (1) Any person suspected of having committed an offence shall be presumed innocent until his guilt has been legally established in the course of a trial where he shall be given all necessary guarantees for his defence. (2) The presumption of innocence shall apply to every suspect, defendant and accused.

<sup>84</sup> Court of First instance of Limbe, Judgment no 45C/2024

<sup>85</sup> SECTION 228: Dangerous activities (1) Whoever fails properly to provide against risk of bodily harm to any person from his dangerous activities shall be punished with imprisonment for from 6 (six) days to 6 (six) months. d) Leads, drives, rides, stops or leaves any animal or vehicle on the public highway. Shall be punished with imprisonment for from 3 (three) months to 3 (three) years, or with fine of from CFAF 5 000 (five thousand) to CFAF 500 000 (five hundred thousand), or with both such imprisonment and fine.

and was sentenced to pay a fine of 50,000 FRS and an additional 50,000 FRS as cost of the proceedings the default of which he will serve 6-month imprisonment. In the investigation of land transport operators in cases of accidents, the suspect must be informed of his fundamental rights to remain silent, and his right to counsel as provided for in article 116(3) of the CPC.<sup>86</sup> This was demonstrated in the case of the **People of Cameroon vs. Kamga Andre, CFIL/78FD/2024 (supra)**. The police report submitted by the police after the accused was arrested, presented before the court by the state counsel showed the accused person was informed of his rights to remain silent and his right to have a defence counsel. All confessional statements obtained from the accused person must respect the provision of section 315 of the CPC. This means the confessional statement must be voluntary, there should be no duress threat or exchange of any advantage or promise.<sup>87</sup>

#### 1.2.1.9. The law on judicial organization in Cameroon

The organization and jurisdiction of courts in Cameroon is laid down by LAW N° 2006/015 OF 29 December 2006 On Judicial Organization amended and Supplemented by Law N° 2011/027 OF 14<sup>th</sup> December 2011. This law lays down the judicial organization in Cameroon. <sup>88</sup> Judicial organization shall comprise: The Supreme Court; Courts of Appeal; The Special Criminal Court; - Lower courts for administrative litigation;- Lower audit courts; Military Tribunals;- High Courts; - Courts for First Instance; -

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<sup>86</sup> Section 116: (1) Judicial police officers and agents shall carry out investigations either on their own initiative or on the instructions of the State Counsel. (2) The originals of the Police case files shall be forwarded to the State Counsel without delay. (3) As soon as investigations are opened, the judicial police officer shall, under the penalty of nullity, inform the suspect of: - his right to counsel; - his right to remain silent (4) Mention of this information shall be made in the report.

<sup>87</sup>Section 315: (1) A confession is a statement made at any time by an accused in which he admits that he committed the offence with which he is charged. (2) A confession shall not be admissible in evidence if it is obtained through duress, violence, or intimidation or in exchange of a promise for any benefit whatsoever or by any other means contrary to the free will of the maker of the confession. (3) A voluntary confession shall constitute evidence against the person who made it (4) The probative value of a confession shall be left to the appreciation of the court which may however admit or reject it only by a reasoned decision.

<sup>88</sup> Section 1 of the 2006 law on judicial organization



Customary law courts.<sup>89</sup> This law is necessary to determine the competent court to entertain disputes in cases of accidents by land in Cameroon. The type of offence in question will determine the competent court to entertain the disputes. Offences are generally classified by section 21 of the penal code; as felonies, misdemeanors and simple offences.<sup>90</sup> Accident-related offences are misdemeanor offences. For example, 289(1) of the penal code punishes unintentional killing and Harm with imprisonment for from 3 (three) months to 5 (five) years or with a fine of from CFAF 10 000 (ten thousand) to CFAF 500 000 (five hundred thousand), or with both such imprisonment and fine. Again, section 289(1) of the CPC gives the court of first instance the competence to trial all misdemeanors and simple offences.<sup>91</sup> All the above cases discussed in this work were heard before the court of first instance. For example, **People of Cameroon vs. Kamga Andre, CFIL/78FD/2024 (supra)**, was determined by the court of first instance of Buea, **People of Cameroon Vs Sahaga Nyatcho Henry Dumond(supra)**,<sup>92</sup> was also determined before the court of first instance of Buea, **In Affaire ministere Public C/ Camrail, Didier Vandebon et 13 autres also known as the Eseka Accident was also determined by the district court of Eseka.**

#### 1.2.1.10. The CEMA Code

Insurance companies are governed by the provisions of the CIMA (Conference Inter Africaine des Marchés d'Assurance) code, translated into English as the Inter African Conference on Insurance Market.<sup>93</sup> Article 1 of law no 65/9 of 22 May 1965 imposes compulsory motor insurance on all automobiles. The CIMA Code plays a significant role in enhancing the legal protection of

individuals involved in motor vehicle accidents by ensuring that insurance companies provide coverage and compensation to victims as required by law.<sup>94</sup> The CIMA Code mandates that all motor vehicles in member countries, including Cameroon, must have compulsory motor third-party liability insurance. This is reflected in section 200 of the CEMA Code.<sup>95</sup>

This insurance coverage ensures that victims of motor vehicle accidents are compensated for any bodily injury or property damage caused by the insured vehicle. Insurance companies can therefore be jointly liable alongside the insured as a result of an accident caused by the insured. The liability of the insurance company in cases of accident by land is only civil. A good example can be seen in the Cameroonian case of **The People of Cameroon Vs, Ngonbbouwo Bohmama, and CFIL/351FB/2024**<sup>96</sup>. In this case, the accused person was charged for recklessly driving a Camion owned by **Dangote Cement Company and insured under Prudential Beneficiary Insurance Company Ltd.** The heavy-duty truck collided with a Motor Cycle rider at Mille 2 Limbe resulting in body injuries which lasted for about 55 days and punishable under section 280 and 289(1) of the Cameroonian penal code. **The presiding Judge, Justice Nzene Ete Florence** found the accused guilty and fined the accused person with a fined of 300,000, and a cost of 117000 FRS. Dangote Cement Company which was the employer of the accused person was vicariously liable towards the victim alongside the **insurance company (.Prudential Beneficiary Insurance Company Ltd) which the vehicle in question was insured.** The victim receives the sum of 512000 FRS as compensation from the company as a result of the accident where the driver was at fault. Also, in the **affaire Ministere Public et Feukeng Francoise C/ Kouongni Dikko Samuel Serge, Judgement No 596/COR du 24 September 2017**<sup>97</sup>, the accused was charged for unintentional killing of Feukeng Francoise punishable under section 289(1) of the

<sup>89</sup> Section 3; of the 2006 law on judicial organization in Cameroon.

<sup>90</sup> Section 21(1) of the penal code.

<sup>91</sup> Section 289: (1) The Court of First Instance shall have jurisdiction to try simple offences and misdemeanors as defined in section 21 (1) (b) and (c) of the Penal Code. (2) Where the Court of First Instance tries a simple offences, it shall apply the same procedural rules as in the case of misdemeanors, with the exception, of those rules applicable to misdemeanors committed flagrante delicto.

<sup>92</sup> CFIB/396F/2024

<sup>93</sup> Kwati Evelyn Asek,(2024), lecture notes on Corporation law, Masters 1 English law, University of Dschang, P,11.

<sup>94</sup> Ntumnde M.S, (2012), « *Insurance Law in Cameroon*, Presses Universitaires d'Afrique, Yaoundé Cameroon, p. 15.

<sup>95</sup> Section 200 of the CEMA Code.

<sup>96</sup> Court of First Instance of Limbe, Judgment No 351FB, 13/03/2024

<sup>97</sup> Court of First instance of Dschang,



Cameroonian penal code. According to the facts of this case, on September 25, 2012, at around 7 a.m. in the town of Dschang at the place called “Carrefour EMAC” crossroads, a fatal road traffic accident occurred; A Mercedes truck registered Lt 067AT belonging to the company << Fokou, driven by its driver named KOUONGNI DIFFO Samuel Serge travelling at high speed, recklessly hit a motorcycle registered OU MT 875 B carrying the victim and which was crossing the above-mentioned crossroads; That the victim FEUKENG Françoise died shortly afterwards from her multiple injuries as attested by the death certificate drawn up on October 8, 2012 by the medical expert. The circumstances of this accident are such that full responsibility rests with the defendant. That the truck could only hit the rear of the motorcycle because it had almost completed the crossing of the intersection; The witnesses heard during the preliminary investigation, in this case **NGANKEU David**, stated that they experienced the scene and that it was at the moment when the motorcycle had almost crossed the intersection that the truck came out at high speed to hit it. Again this accident was caused by the defendant who was driving at high speed and who, through clumsiness, imprudence and failure to comply with the regulations, caused the death of FEUKENG Françoise. The prosecution notes that the aforementioned truck belonged to the company “Fokou” and was **insured by AXA Assurances**. The accused person was found guilty in 2017 and sentenced to pay a fine of 300,000 FRS. The accused person was also civilly liable alongside Foukou and AXA Assurance to pay damages to the family of the victim to the sum of 6,625,056,45frs. The damages in this case are to be paid by the insurance company to which the insured was registered. This reflects the provision of section 200 of the CEMA Code on the right of third parties to bring an action against insurance companies as a result of injuries suffered.

However, the liability regime of insurance companies remains a problem for victims of land transport accidents. There are no immediate funds available to the victim to treat himself immediately after an accident. If the victim is injured, he has to look for funds from somewhere else to treat himself before waiting on the insurance

company. Some victims of accidents do not even know the procedure to commence or have the necessary funds to pursue litigation for them to be compensated. Under normal circumstances, insurance companies are required to settle claims within three months of receiving all necessary documentation from the claimant. The written statement of the accident must be transmitted to the insurance company.<sup>98</sup> But insurance companies are always looking for means or a mechanism for not to pay the victims.

#### **1.2.1.11. The labour code<sup>99</sup>**

The labour code regulates issues of employment<sup>100</sup> in Cameroon. It is governed by law no Law No. 92/007 of 14 August 1992. This law shall govern labour relations between wage-earners and employers as well as between employers and apprentices under their supervision.<sup>101</sup> In this law, "worker" shall mean any person, irrespective of sex or nationality, who has undertaken to place his services in return for remuneration, under the direction and control of another person, whether an individual or a public or private corporation, considered as the "employer". To determine whether a person is a worker, non-account shall be taken of the legal position of employer or employee.<sup>102</sup> The presence of the Cameroonian labour code in the determination of liability of land transport operators in cases of accidents is under the doctrine of vicarious liability where an employer shall be liable for the acts of his employee in the exercise of his functions. A driver can be an employee working for a company or for another physical person. In cases of an accident, the owner or employer shall be civilly liable alongside the driver as a result of the accident in question. Section 36(1) of law no 2022/007 of 27<sup>th</sup> April 2022 Relating to the protection of National Road Assets, provides that; *motor vehicle owners shall be liable for fines, and damages caused by their employees in the performance of their duties for which they are employed to*

<sup>98</sup> Article 312.

<sup>99</sup> Law no Law No. 92/007 of 14 August 1992.

<sup>100</sup> Section 23: (1) of the labour code defines A contract of employment as “an agreement by which a worker undertakes to put his services under the authority and management of an employer against remuneration”.

<sup>101</sup> Section 1(1) of the labour code.

<sup>102</sup> Ibid, section 1(2).

do.<sup>103</sup> Once a driver is working for somebody as an employee, if the driver causes an accident, the employer shall be civilly liable towards the victim. This position was seen in the **affair Ministere Public et Feukeng Francoise C/ Kouongni Diffo Samuel Serge, Judgement No 596/COR du 24 September 2017<sup>104</sup>(supra)**. In this case, the driver was an employee of Foukou Enterprise. Foukou was vicariously liable before the court of the first instance of Dschang for the accident accused by Kouongni Diffo Samuel Serge. **Also in The People of Cameroon Vs, Ngonbbouwo Bohmama, and CFIL/351FB/2024<sup>105</sup> (Supra), Ngonbbouwo Bohmama(the accused )** was an employee of Dangote Cement company in Douala. The company was also civilly liable for the acts of the accused person before the Limbe Court of First Instance. Generally, there is no express provision of the labour code clearly defining the liability of employers of land transporters in cases of accidents. This makes it difficult for some victims of land accidents to understand the nature of liability to be instituted against the employer. Some victims lack the means to bring an action against employers of drivers as a result of accidents. We therefore recommend that the labour code should be revised and specific provisions dealing with the liability of employers in cases of accidents caused by their employees in the exercise of their functions.

These domestic laws are applicable alongside other international legal instruments.

### **1.2.2. International laws in the establishment of liability of land transport operators in cases of accidents in Cameroon: The United Nations Convention on road traffic of 1977**

The United Nations Convention on Road Traffic also known as the Vienna Convention of 1977 was adopted on 8 November 1968 in Vienna, Austria. It entered into force on 23 March 1977, after the required number of signatories

<sup>103</sup> Section 36(1) of law no 2022/007 of 27<sup>th</sup> April 2022

Relating to the protection of National Road Assets,

<sup>104</sup> Court of First instance of Dschang,

<sup>105</sup> Court of First Instance of Limbe, Judgment No 351FB, 13/03/2024

had ratified the treaty. The convention has since been revised several times, most recently in 2011. The provision of Article 43 of the Cameroonian constitution permits the president of the republic to negotiate and ratify international agreements.<sup>106</sup> These agreements occupy a place in our domestic law and override national laws per the provision of Article 45 of the Cameroonian Constitution.<sup>107</sup> Cameroon has signed an international convention establishing the liability of land transport operators in cases of road only. This is the United Nations Convention on Road Traffic also known as the Vienna Convention of 1977. Cameroon signed this convention on December 10 1980 but this convention has not been ratified till today. Even though Cameroon signed this convention but has not ratified it till today, some of the provisions of this law can be reflected in our domestic laws. The United Nations Convention on Road Traffic contains several provisions that address driver's licenses, vehicle registration, and traffic regulations.<sup>108</sup> The liability of road transport operators is reflected in articles 68, 70 and 71 of this law. Article 68 - Addresses the general principle of liability for damage caused by land transporters in international road traffic.<sup>109</sup> **Article 70** - Sets out the procedure for bringing claims for damages arising from accidents involving land transporters.<sup>110</sup> **Article 71** -

<sup>106</sup> Section 43: The President of the Republic shall negotiate and ratify treaties and international agreements. Treaties and international agreements falling within the area of competence of the Legislative Power as defined in Article 26 above shall be submitted to Parliament for authorization to ratify.

<sup>107</sup> Section 45: Duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement.

<sup>108</sup> Article 41 of the Vienna Convention

<sup>109</sup> The article applies to damage caused to third parties as a result of accidents involving land transporters engaged in international road traffic. The land transporter is liable for damage caused to third parties in the country where the accident occurred, regardless of the nationality or place of residence of the land transporter.

<sup>110</sup> Article 70 of the United Nations Convention on Road Traffic states that claims for damages arising from accidents involving land transporters may be brought in:

1. The courts of the country in which the accident occurred.
2. The country where the land transporter has its headquarters.

Establishes the rules for determining liability in cases of accidents involving multiple vehicles or multiple liable persons. Article 71 of the United Nations Convention on Road Traffic deals with situations where multiple vehicles or multiple liable persons are involved in an accident. It provides that: If two or more vehicles or liable persons are involved in an accident, they are jointly and severally liable for damages. If the liable parties are unable to reach an agreement on the apportionment of liability, the court or other competent authority of the country where the accident occurred may determine the apportionment of liability.<sup>111</sup> We recommend that since the state of Cameroon has signed this convention since 1980; this convention should be ratified. Cameroon has not ratified any convention on the liability of rail transport operators in cases of accidents.

### 1.2.3. Regional instrument

The African Road Safety Charter (ARSC), which was adopted in 2006 by the African Union and African Ministers of Transport entered into force on May 22 2011.<sup>112</sup> The ARSC is an international agreement that seeks to improve road safety in Africa by addressing issues such as road infrastructure, vehicle safety, driver behavior, and law enforcement. The ARSC sets out specific goals and targets for road safety, including reducing the number of road traffic fatalities by 50% by 2020. It also promotes the use of best practices for road safety and encourages the development of national strategies for improving road safety.<sup>113</sup> This charter does not provide exclusively for the liability of land transport operators in cases of accidents. It provides rather preventive actions to be taken by all members of the African Union to guarantee safety by road in all African countries. This is reflected in Article 2 of the objective of this charter.<sup>114</sup> The law demands member states

3. The claim must be made within the period prescribed by the law of the country in which the claim is made.

<sup>111</sup> Article 71 of the Vienna Convention

<sup>112</sup> Nyaka Frankline, (2024), "Enhancing legal protection of individuals involved in motor vehicle accidents in Cameroon: A critical Appraisal, Master's thesis University of Dschang, P.,27.

<sup>113</sup> Ibid, P. 28.

<sup>114</sup> Article 2 – Objectives; 1. The main objectives of the Charter are: a) To serve as a policy framework for Road Safety improvement in Africa; b) To serve as an advocacy tool and

to create road safety agencies which will ensure the safety of people who travel by road daily.<sup>115</sup> It is an obligation under this charter for the state to ensure the vehicles that ply the roads are safe for users.<sup>116</sup> This means the vehicles in question must be road-worthy in other prevent accidents. The provision of this charter is reflected under the Cameroonian Highway Code which demands all vehicle owners to obtain authorization from the minister in charge of transport and also carry out technical control of the vehicles to ensure the vehicle in question is roadworthy.

### 1.2. Conclusion and Recommendations

The rate of accidents in Cameroon daily is a call for concern. It claims lives without distinction. Travelling by road or rail daily is a nightmare because you are not sure of coming back home. The legal frameworks put in place by the state of Cameroon permit the state to hold drivers and even corporate entities which are responsible for accidents to be held responsible. This can be reflected in the numerous laws discussed above beginning with the constitution of Cameroon, the penal code, the law regulating the profession of road transport operators, the law governing the rail sector in Cameroon, the Cameroonian highway code, the law protecting National road assets, the 1965 law on Compulsory Motor Insurance,

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instrument for Road Safety improvement on the Continent aimed at facilitating the creation of an enabling environment to drastically reduce the road traffic crashes. 2. The specific objectives are to: a) Facilitate the formulation of comprehensive Road Safety policies at country level; b) Speed-up implementation of national, regional and continental Road Safety programs; c) Contribute to the coordination of Road Safety in the Continent; d) Promote better coordination of interventions by Development Partners in the Road Safety area; e) Enhance Private sector, Civil Society Organizations, Non-Governmental Organizations participation in Road Safety issues; and f) Promote the harmonization of the collection, treatment and dissemination of Road Safety data.

<sup>115</sup> Article 4 of this charter.

<sup>116</sup> Article 15 – Safer vehicle. This article provides that; 1-States Parties shall adopt and enforce minimum standards of vehicles to ensure their roadworthiness. 2. States Parties shall formulate and enforce regulation on age limit of imported vehicles. 3. State Parties shall strengthen and enforce the mandatory periodic inspection of vehicles. 4. States Parties shall provide incentives for acquiring new vehicles that are environmentally and operationally safe. These incentives should apply also to mass transit vehicles and goods. 5. States Parties shall put in place legislation regulating the transportation of dangerous and hazardous goods.

the CIMA Code, the criminal procedure code of 2005, the 2006 law on judicial organization in Cameroon and the labour code. These national laws are applicable in Cameroon alongside, the Vienna Convention of 1968 and the African Road Safety Charter. Despite these laws put in place, the liability regime of land transport operators in cases of accidents is not properly enforced. Some of the reasons are delays by the courts, linear sanctions, and contradictory nature of some of the provisions of the laws like the penal code. We, therefore, recommend that the state should ensure accident-related disputes should be treated quickly once the cause of the accident has been established. This will permit the victim to obtain justice on time. Some of the laws should be revised like the 2001 law governing the profession of road transport operators. Stricter and heavy sanctions should be put in place because the punishment under section 289 of the penal code is not enough. Also, ambiguities like the definition of involuntary intoxication or drunk driving should be clarified by the law. Again, the state of Cameroon should train judges for accident-related disputes only. For example, the Bonanjo Court of First Instance in the Douala-Littoral Region of Cameroon, have a specific Audience only on accidents related disputes. This can be extended all over the national Territory to curb judicial delay.

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