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Compliance with Corporate Criminal Responsibility by OHADA Member States

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ABSTRACT

The primary objective of establishing the Organization for the Harmonization of Business Law in Africa is to facilitate economic development and integration through the standardisation of business laws and practices among the member states. A fundamental element of the OHADA framework is the enforcement of sanctions. The regulations concerning sanctions are intended to ensure that businesses adhere to legal standards, with the Organisation aiming to foster transparency, accountability and good governance. Consequently, the efficacy of the Organisation's framework is contingent upon the adherence of member states to these regulations. The legal framework governing compliance with OHADA provisions for sanctions is established through multiple sources. These sources encompass the foundational treaty which articulates the objectives, the legislative instruments that regulate specific aspects of business law and sanctions within the OHADA jurisdiction, national laws, and the interpretative regulations and directives issued by OHADA's Council of Ministers and Permanent Secretariat. Consequently, the application of corporate criminal responsibility by OHADA member states has emerged as a significant subject of discussion and analysis. Although the OHADA Treaty aspires to standardise business law across member states, it delegates the particulars of criminal responsibility to individual states. This delegation has resulted in variations in the application of corporate criminal responsibility, with some states enacting penal laws to restrict corporate criminal liability while others have integrated corporate criminal liability within their penal codes.

Keywords: *compliance, corporate criminal responsibility, OHADA, member states, uniform acts, penal codes, Cameroon*

I. INTRODUCTION

Corporate criminal responsibility might be seen as an old garment with a change in name. This assertion is supported by the fact that, from very early on in the seventeenth century, corporate responsibility had existed in many Western States.[1] Therefore, given that most of the legislation

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[1] WILLIAM S. LAUFER, *The Evolution of Corporate Criminal Law*, in CORPORATE BODIES AND GUILTY MINDS: THE FAILURE OF CORPORATE CRIMINAL LIABILITY (University of Chicago Press 2006),

applicable in Africa in general, and Cameroon in particular, is transposed from the colonial masters, corporate liability existed in Cameroon and was enshrined criminally in the Criminal Procedure Ordinance,[2] which was what applied in criminal litigation in Anglophone Cameroon from independence until sometime in 2007, when Law No. 2005/007 of 27 July 2005[3] came into force as a piece of local legislation governing criminal proceedings in Cameroon, thereby harmonising criminal procedure throughout the nation.[4] The contextualisation of corporate liability, and now corporate criminal responsibility, therefore demands an understanding of who or what a corporate person or corporation is, and also how and why it can be held criminally liable, given its inanimate nature and the high standard of proof in criminal matters.

A company is a person in law. It is for this reason that companies are referred to as having a juristic personality,[5] because they are subject to rights and obligations. The question which therefore begs for an answer in criminal litigation is: who can be responsible for a crime? The main ingredients of establishing an offence and criminal responsibility are the intent (*mens rea*) and the action or act (*actus reus*). These are also often referred to as the moral and material elements of an offence. Therefore, for a crime to be fully consummated, both elements must co-exist.[6]

It therefore goes without saying that a corporation, being a mere juristic person, cannot on its own fulfil the ingredients to establish the commission of a crime and, as such, cannot strictly speaking be said to be criminally responsible in the absence of the *mens rea* and the *actus reus*. It is for the above reason that criminal liability seemed to have been more suitable as a term used to impute responsibility on corporate bodies for criminal offences before now. The need to hold corporations criminally responsible may be a novelty in Africa, and especially within the penal codes of some OHADA Member States, but the reluctance to include corporate criminal responsibility in penal law is not new in the world. Most common law countries were akin to this reluctance, especially countries like England and America, because they viewed the

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[2] The Criminal Procedure Ordinance, Cap. 43 of the Laws of Nigeria (1958), which was applicable to the North West and South West provinces of Cameroon.

[3] The Criminal Procedure Code.

[4] This is because, prior to 2005, the French-speaking provinces of Cameroon had several laws which were used in criminal proceedings, such as the *code d'instruction criminelle* (14/02/1838), the *loi du 20/05/1863* on the *instruction des flagrants délits*, the *décret du 30 novembre 1928 instituant les juridictions spéciales pour les mineurs*, and the *décret du 2 septembre 1954 relatif au casier judiciaire*, amongst others. The English-speaking provinces used the Criminal Procedure Ordinance, Cap. 43, 1958 Laws of Nigeria, the Evidence Ordinance, Cap. 62, 1958 Laws of Nigeria, the Prison Ordinance, Cap. 159 of the Laws of Nigeria 1958, and the provisions of the 1955 Southern Cameroons High Court and Magistrates' Courts Laws regarding criminal trials, amongst others.

[5] BRYAN A. GARNER (ED.), BLACK'S LAW DICTIONARY (8th edn, 1999), p. 9873.

[6] However, this rule is not one of steel, as there are instances, especially for strict liability offences, wherein offences can be consummated without, or in the absence of, intent.

corporate person as a mere legal creation governed by terms and specifications enshrined in memoranda. This was also the primary perception of corporations because they considered the impossibility of physically bringing a corporation to court and imposing punishment on it.

The essence of corporate criminal responsibility, like vicarious liability and indemnity,[7] is to make sure that a company or agency which benefits from the commission of an offence should not go unpunished while the agents or directors, who are considered as the mind and flesh of the corporation, with direct, indirect or no direct benefit from the offence, get punished. It is in line with this reasoning that OHADA Member States resolved to have corporate criminal responsibility integrated as an article or section of their penal codes.[8] The principal elements of the legal framework are encapsulated in the mandatory stipulations of Article 5 of the OHADA Treaty, which obliges member states to establish criminal sanctions for the offences addressed in the Uniform Acts. This aspect of the Treaty reflects the legislator's intention to safeguard businesses and stakeholders against corporate criminality. The requirement for state parties to align their penal laws with the provisions of Article 5 illustrates OHADA's deliberate effort to sustain a harmonised system of business laws while avoiding the creation of apparent safe havens for corporate offenders.[9] According to Article 5 of the OHADA Treaty, member states are required to establish and enforce sanctions for offences outlined in the various Uniform Acts. The presence of these offences, as detailed in the different Uniform Acts, reflects the Organisation's commitment to combat corporate crime at all levels.[10] The Uniform Acts implemented by all Member States outline specific sanctions, thereby serving as a crucial element for ensuring compliance in the enforcement of sanction provisions and the application of corporate criminal responsibility.

This realisation notwithstanding, after the resolution was arrived at, not all OHADA Member States have complied with the treaty provisions.[11] That is why, as at now, only some member

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[7] Indemnity is an undertaking by one person to recompense another for loss, damage or injuries suffered. It can be in the form of restitution or reimbursement: legal dictionary definition, THE FREE DICTIONARY (retrieved 12 January 2020). Vicarious liability has been defined as liability that a supervisory party, such as an employer, bears for the actionable conduct of a subordinate or associate, such as an employee, based on the relationship between the two parties (*respondeat superior*): LEGAL INFORMATION INSTITUTE, CORNELL LAW SCHOOL (retrieved 12 January 2020).

[8] This was the rationale in the Eséka Camrail case. In that case the presiding magistrate of the Eséka Court of First Instance, Magistrate Marcel Ndigui Ndigui, held on 26 September 2018 that Camrail, as a legal person, was guilty along with eleven others, and they were all sentenced to imprisonment terms ranging from three months to six months. Camrail was equally ordered to pay the sum of CFAF 50 million to five civil parties in that suit.

[9] OHADA, *OHADA Criminal Law: New Developments in the Domestic Laws of Member States*, https://www.ohada.com/actualite/3523/ohada-criminal-law-new-developments-in-the-domestic-laws-of-member-states.html.

[10] *Op. cit.*

[11] While the OHADA Treaty enjoins its members to incorporate corporate criminal responsibility in their penal laws and define the appropriate sanctions, Cameroon is amongst the nine countries which have updated their laws

states have included it in their criminal laws, and until the 2016 amendment of the Cameroon Penal Code there was no express or implied provision in the Cameroonian Penal Code[12] touching on corporate criminal responsibility for offences committed for their benefit by their representatives.[13]

II. OHADA Member States and Compliance

The provision for state parties to determine and implement sanctions for offences considered as corporate criminal offences[14] by the OHADA Treaty, and captured in various Uniform Acts, is a form of institutionalisation of criminal law within the ambit of business law.[15] Although this obligation is not mandatory by its very preserve, it however urges the Member States of the OHADA zone to uphold sanction provisions in the application of the Treaty and the Uniform Acts.

It is therefore within the purview of these seemingly discretionary powers devolved to Member States[16] that national penal legislation should be amended and/or incorporated to include suitably determined offences and sanctions for corporate criminal offences.[17]

OHADA Member States can in this regard be said generally to be in compliance with sanction provisions within the contemplation of the applicability of the sanctions for offences provided for in the various Uniform Acts, given that a vast majority of these member states have complied with Article 5 and incorporated corporate criminal responsibility into their local legislation.[18]

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in compliance with the treaty provisions.

[12] The penal code which was in force before the 2016 amendment was Law No. 65/LF/24 of 12 November 1965 and Law No. 67/LF/1 of 12 June 1967.

[13] It is worth mentioning here that, before the coming into force of the amended Penal Code in 2016, there already existed some specific pieces of national legislation which indexed corporate criminal responsibility, amongst which are Law No. 89/27 of 29 December 1989 on dangerous and toxic products (section 4(3)), Law No. 94/01 of 20 January 1994 on the Forestry Regime in Cameroon (section 150(1)), Law No. 2010/012 of 21 December 2010 on Cyber Security and Cyber Criminality in Cameroon, and Law No. 2011/012 of 6 May 2011 relating to Consumer Protection in Cameroon (section 36).

[14] Article 5.

[15] Gildas Nyugha Pefela, *In-depth Analysis of Criminal Liabilities of Company's Directors under OHADA Law: Difficulties in Segregating Personal Liabilities from Company's Liabilities*, 2(1) INTERNATIONAL JOURNAL OF LAW, JUSTICE AND JURISPRUDENCE 71 (2022).

[16] The wording of Article 5 of the OHADA Treaty with regard to sanctions stipulates that Uniform Acts may contain criminal offences. By this stipulation, it is clear that some issues relating to corporate crimes may not feature in Uniform Acts. It is therefore left for Member States to follow the direction of Uniform Acts, which are compulsorily applicable upon ratification in all member states, and determine further sanctions for both the offences contemplated in the Uniform Acts and those determined under national penal legislation.

[17] The Cameroon 2016 Penal Code has largely incorporated the offences provided for in the various Uniform Acts.

[18] The seventeen OHADA Member States all apply OHADA laws in their nations and, because some of these laws, which are contained in the various Uniform Acts, contain offences and directives on sanctions, it can be gleaned that all the member states are implementing sanctions on corporations for offences infringing OHADA laws. However, it must be noted that this in itself is not sufficient, and it is from that backdrop that Article 5 of the Treaty enjoins member states to determine and implement criminal sanctions for the offences already provided for within their respective national legislation.

The offences prescribed in the different Uniform Acts having been largely incorporated into the penal laws of these states, it would therefore be apposite to discuss briefly the OHADA Member States which have complied, as well as those which have not yet complied, with the determination of sanctions for offences provided in Uniform Acts.

A. Cameroon

In discussing the nature of corporate criminal liability in Cameroon, national and supranational legislation will be looked at. As the concept of corporate criminal responsibility became more apparent in several pieces of legislation in Cameroon, so did the concept become recognised, and it can be perceived as a bid by the legislator to fight the rising nature of corporate crimes. There was therefore need for the recognition and introduction of a general law that would impose corporate criminal responsibility and punish corporate bodies for corporate crimes.

The Penal Code, like other pieces of national legislation,[19] now gives rise to corporate prosecution. Section 1(1) of the Penal Code provides that all persons are bound by the criminal law, whether they are natural persons or corporate bodies.[20] The Penal Code is the substantive criminal legislation in Cameroon,[21] and by it corporations and their agents can now be criminally sanctioned for acts which infringe the law.[22] Section 74-1(a), when considered in conjunction with section 1(1) of the Penal Code, clearly indicates that the establishment of corporate criminal responsibility is both relevant and necessary. It stipulates that "corporate bodies shall be criminally responsible for offences committed on their behalf by their organs or representatives". This suggests that corporate entities and their agents may be indicted jointly and severally. The provisions articulate the general principle that corporate entities can typically be held criminally accountable.

The acknowledgment of corporate criminal responsibility serves as a foundation to argue that the Penal Code's reference to the organs or representatives of a corporate body in section 74-1(a) aligns with the provisions of the OHADA Treaty and its Uniform Acts. This alignment is evident in the emphasis on the actions of decision-makers, whose actions may be attributable to

[19] Laws governing the environment, consumer protection, forestry laws and several others are instructive in this regard. With the introduction of section 74-1 of the Penal Code, along with the tenets of the various applicable Uniform Acts, this concept took on a vivid nature in Cameroon.
[20] Section 1(1) definitely provides that all persons shall be subject to the criminal law. This demonstrates that all are equal in the face of criminal law in Cameroon and, since a corporation is regarded as a person in law, it flows therefrom that all corporate bodies are subject to this law.
[21] It was initially adopted by Law No. 65/LF/24 of 12 November 1965 and became operational in 1967. While this initial code did not recognise corporate criminal responsibility, the amended Penal Code, Law No. 2016/007 of 12 July 2016, has brought about a novelty of including corporate criminal responsibility, thereby making it possible to apply the law to both natural and moral persons.
[22] Section 74-1(c) of the 2016 Penal Code.

the corporation.[23] An attraction of the OHADA Uniform Act on Commercial Companies and Economic Interest Groups is that it provides ample rules for the processes by which the various types of companies are managed, and to what purpose. The rules clearly state who has power and who makes decisions in a particular company, and when they will be liable for not acting in the best interest of the company. Partners, equity holders and shareholders are made a part of the decision-making, thereby ensuring management lines up with their interests in a manner that guarantees financial performance and profit.

This therefore means that Cameroon has integrated the identification theory into its penal laws, whereby the actions of an agent (organ) are attributed to the corporation, holding the corporation liable. Additionally, the country has adopted the attribution theory, which stipulates that the failures of decision-makers within a corporate entity are directly ascribed to the corporation, as the law recognises them as the organs or representatives of the corporate body. This framework establishes that responsibility is determined by the conduct of the agent or representative.[24]

An illustrative case is the Glencore corruption scandal (2022–2024).[25] In this instance, the multinational commodity trader Glencore acknowledged the payment of bribes amounting to billions of CFA francs to officials within the oil sector of Cameroon. In 2022, a UK court convicted Glencore, leading to investigations by Cameroon's Special Criminal Court into the officials and corporate practices involved. This case highlights issues of corporate liability concerning international bribery and corruption.[26]

According to section 96 of the Penal Code,[27] an individual may be held criminally liable as an accomplice or co-offender, which classifies such individuals under the law as those who, in collaboration with others, participate in the execution of a criminal act. This establishes the presumption that the criminal intent of an individual is viewed as congruent with that of the corporation involved.

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[23] Comfort Fuah Kwanga, *Corporate Criminal Liability in Cameroon: The Dawn of a New Era*, 4 COMMONWEALTH LAW REVIEW JOURNAL 279 (June 2018).

[24] Comfort Fuah Kwanga, *Corporate Criminal Liability in Cameroon: The Dawn of a New Era*, 4 COMMONWEALTH LAW REVIEW JOURNAL 279 (June 2018).

[25] *Rex v. Glencore*, [2024] EWCR 6; see also *Serious Fraud Office v. Glencore Energy UK Ltd*, sentencing remarks of Fraser J, Southwark Crown Court, 3 November 2022.

[26] The Glencore proceedings involved a series of criminal investigations and legal proceedings which, in Switzerland, culminated in a summary penalty order against Glencore International AG. The Office of the Attorney General of Switzerland (OAG) imposed a fine of CHF 2 million and a compensation claim of USD 150 million on account of Glencore's failure to prevent bribery of foreign public officials in connection with mine deals in the DRC. Glencore had previously pleaded guilty to bribery charges in the United Kingdom and the United States and had cooperated with the OAG's investigation. The case highlights the ongoing scrutiny of corporate conduct and the legal consequences of corporate misconduct.

[27] A person can either be held liable as a principal offender or as an accomplice.

Another novelty in the 2016 Penal Code with regard to corporate criminal responsibility is captured in chapter 1 of part II, which provides for punishments and preventive measures. It must be mentioned here that, while section 1(1) and section 74-1(a) of the Penal Code both lay down the general rule that corporate bodies can be prosecuted and held criminally responsible, they do not make a clear distinction between an individual and a corporation. With this in mind, the legislators have tried to make a distinction between principal penalties and accessory penalties for individuals and corporate bodies, as well as some preventive measures,[28] all in a bid to establish effectively the concept and nature of corporate criminal responsibility.

Section 18(b) of the Penal Code provides the principal sanctions which can be meted out on corporate bodies as dissolution, temporary or final closure, and fines, while section 19(b), on the other hand, provides for accessory penalties which include a ban for a specified period of time on the direct or indirect exercise of any or all of its activities; placement under judicial supervision for a specific period of time; closure for a specific period of time of the establishment or branches having served in the commission of offences; publication or media broadcast of the judgment; as well as any other accessory penalties provided for by special instruments.[29]

Apart from the principal and accessory penalties, the Penal Code also provides for preventive measures[30] against corporate offenders, and these include a ban on the exercise of activity for a period of time, confiscation, and placement under judicial supervision for a specific period of time.[31] Even though the Penal Code does not specifically define what constitutes a corporate crime for which the sanctions will apply, it demonstrates that the other relevant pieces of national, regional and international legislation which, by the Constitution of Cameroon,[32] are applicable in Cameroon will be relied on to decipher the offences for which corporations can be indicted.

Some authors[33] are of the opinion that the Penal Code is silent as to the aspect of *ratione personae* of those to be held liable by the Code, and they hold that the Code has mentioned

[28] Sections 18, 19 and 20 of the 2016 Penal Code.
[29] The inserting of the conditional term of penalties contained in special instruments is testament to the fact that the nature of corporate criminal responsibility in Cameroon is not limited to criminal law and criminal procedure.
[30] Section 20(b).
[31] The provisions on principal and accessory penalties, as well as preventive measures, in the Penal Code are evidence of the fact that criminal law in Cameroon has evolved and now recognises that corporations can commit crimes and should be held responsible. As Comfort Fuah Kwanga opines, corporate accountability can generally be achieved through criminal liability, and this researcher agrees with her stance that, since corporate bodies are bearers of rights, they should be answerable for their liabilities. It is for this reason that the penalties and preventive measures are a welcome innovation in the Cameroon Penal Code.
[32] Section 45 of the 1996 Constitution of Cameroon.
[33] *Ibid.*, Comfort Fuah Kwanga.

moral persons without any specific distinction as to their civil or commercial character, or as to their foreign or national character, amongst others, or whether the corporate personality is applicable only to those bodies which have acquired legal status or to all businesses. This observation, it should be mentioned, is very cogent, but is in our context dealt with by the fact that the challenges raised are captured by the other pieces of relevant applicable law.

To this, another author[34] is affirmative that, because the legislators have given an operative meaning to corporate bodies, it permits an efficient application of the law. Tsimi further opines that if the description of corporate bodies which can be held criminally responsible is to be limited only to those which have registered in the commerce register, then this will create a shield for certain corporate persons to hide behind, on the basis that they are not registered and can therefore not be criminally responsible, whereas not being registered in itself constitutes a crime. The author concludes that the fact that the Penal Code has not clearly defined who a moral person is means that this category of persons includes all forms of corporate bodies with the exception of those which have been expressly excluded.

Another very important aspect regarding the nature of corporate criminal responsibility in Cameroon lies in the very explicit exemption of the State and her agencies from criminal responsibility.[35] The exclusion of the State and her agencies from corporate criminal responsibility is very typical of the nation's civil law background, where the State is almost inviolable and unaccountable. This is, however, the case with the penal code provisions in this regard in most OHADA Member States,[36] wherein the State is exempt from criminal liability. However, this is in sharp contrast to the French Criminal Code of 1994,[37] which simply provides that corporations shall be held liable for criminal offences committed for and on their behalf by their representatives, without distinguishing between private corporations and State agencies.

B. Benin

Benin, like all other OHADA Member States, is expected to align her national laws with OHADA's Uniform Acts, inclusive of the provisions for criminal sanctions.[38] This nation's 2018

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[34] Ntono Tsimi, *Le devenir de la responsabilité pénale des personnes morales en droit camerounais: des dispositions spéciales vers un énoncé général*, JURIDIS PÉRIODIQUE No. 89, 87, as cited by Comfort Fuah Kwanga (2018), 280.

[35] Section 74-1(b) expressly excludes the State and her agencies from corporate criminal responsibility.

[36] Several Member States have presently acted in line with the provisions of the OHADA Treaty. Amongst the Member States which have aligned their penal codes with the Treaty are Benin, Cameroon, the Central African Republic, Chad, Congo, Gabon, Guinea, Niger and Senegal. Most recently, Articles 377.1 to 377.43 of Niger's penal code (Law No. 2017-10 of March 2017) and Articles 473 to 517 of Chad's amended penal code (Law No. 2017-01 of 8 May 2017) have laid down sanctions for corporate crimes.

[37] Article 121-2.

[38] OHADA, *OHADA Criminal Law: New Developments in the Domestic Laws of Member States*, https://www.ohada.com/actualite/3523/ohada-criminal-law-new-developments-in-the-domestic-laws-of-member-

Penal Code[39] was amended in 2022 by *Loi no. 2022-37 du 20 décembre 2022*,[40] which modified and supplemented certain provisions of the previous penal law.[41] This modification, amongst other things, consolidates some relevant OHADA legislative provisions on corporate criminal law with corresponding punitive provisions impacting corporate entities and business management in Benin.[42]

Worthy of note is the fact that, in compliance with sanction provisions as contemplated by the OHADA Treaty, Benin's new Penal Code, while consolidating existing laws on corporate criminal liability, has introduced new provisions relating to those excluded from corporate criminal responsibility,[43] even though answerable for offences like fraud, intellectual property rights violations, fraudulent accounts, and other corporate body liabilities.[44] The essence of this consolidation of corporate law into criminal law speaks loudly of the country's tacit compliance with sanction provisions in line with the OHADA Treaty.

The need for compliance was demonstrated by Benin prior to the country's 2018 Penal Code[45] and the amendment in 2022.[46] Benin has enacted laws[47] which are all geared towards determining and implementing sanctions against corporate criminal responsibility of corporations and their executing bodies.[48] In this regard, section 18 of Benin's Law No. 2022-37[49] provides that corporate criminal responsibility does not exclude the responsibility of physical persons who are authors or accomplices of the same acts, and that both can be sentenced at the same time.

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states.html.

[39] *Loi no. 2018-16 du 4 juin 2018 portant code pénal*. This code revoked the initial law of 6 May 1877 and consolidated Benin's criminal law.

[40] Benin's Law No. 2022-37, enacted on 20 December 2022, modifies and supplements existing laws regarding the judicial organisation, criminal procedure and the criminal code. Specifically, it amends the laws concerning judicial organisation (Law No. 2001-37 of 27 August 2002), the Code of Criminal Procedure (Law No. 2012-15 of 18 March 2013) and the Penal Code (Law No. 2018-16 of 28 December 2018).

[41] Olivier Bustin, *Benin: The Adoption of a New Penal Code* (June 2023) (retrieved 14 April 2024).

[42] *Ibid.*

[43] Section 17 of *Loi no. 2022-37 du 20 décembre 2022* to amend and supplement certain provisions of the 2018 Penal Code deals with the principle of corporate criminal responsibility and provides that state corporations and, to an extent, decentralised state entities are excluded from criminal liability.

[44] Section 64 vividly addresses corporate criminal liability with regard to offences committed by their management structures.

[45] *Loi no. 2018-16 du 4 juin 2018*.

[46] *Op. cit.*

[47] There are several pieces of local legislation in Benin which draw up corporate criminal liability, and these include Benin's consumer protection law, environmental law, competition and anti-trust law, and *Loi no. 12-2013 du 28 juin 2013*, which outlines sanctions for offences provided by OHADA's Uniform Acts relating to General Commercial Law, accounting law, securities law and collective proceedings law.

[48] *Op. cit.*

[49] *Ibid.*

In a bid to comply fully with sanction provisions as spelled out in the OHADA Treaty, Benin had in 2013 specifically enacted *Loi no. 12-2013 du 28 juin 2013*,[50] which specifically provides sanctions for offences spelled out in various OHADA Uniform Acts. This law provides a framework for punishing offences relating to corporate criminal offences as envisaged by the Treaty.

The nation's 2018 Penal Code's incorporation of offences relating to acts indexed by the OHADA Uniform Acts makes it obvious that Benin, as an OHADA Member State, has complied with the provisions of Article 5 of the OHADA Treaty.

C. Central African Republic

The Central African Republic is another Member State which has integrated the treaty provision of implementing sanctions for corporate criminal responsibility into her local penal legislation. The country's Penal Code[51] outlines the nation's criminal laws and, even though it does not explicitly define corporate criminal liability, it provides penalties for various offences.

It is in view of the fact that sanctions have been provided for offences for which corporations can be held criminally responsible that, based on the penal provisions in the Central African Republic, corporations can also be held responsible for human trafficking,[52] theft,[53] money laundering,[54] forced labour as prohibited by the country's Labour Code,[55] and illicit trade.[56]

The Penal Code, in its title VI, chapters one to nine, deals with infringements and commercial offences in line with the OHADA Uniform Act.[57] Article 330 of the Penal Code provides *inter alia* that legal entities can be held criminally responsible for acts of terrorism and can be sanctioned with penalties including fines and dissolution. The law also highlights the fact that objects and instruments used in committing corporate offences shall be mandatorily confiscated.[58]

The application of the provisions of the nation's Penal Code in conjunction with the provisions of the OHADA Uniform Act on General Commercial Law falls in line with the required efforts of the Central African Republic to comply with the directives in Article 5 of the OHADA Treaty.

[50] *Loi no. 12-2013 du 28 juin 2013 portant sanction des infractions prévues par les Actes uniformes de l'OHADA*.
[51] *Loi no. 10.001 du 6 janvier 2010 portant Code pénal centrafricain*.
[52] Article 151.
[53] Article 165 *et seq.*
[54] Articles 198–203.
[55] Article 262.
[56] Articles 264 and 265.
[57] Articles 208–245.
[58] Article 204.

The Penal Code, the Criminal Procedure Code[59] and other CEMAC-oriented regulations[60] have as a matter of fact shaped the determination and sanctioning of corporate criminal offences in the Central African Republic.

D. Chad

Chad is one of the OHADA Member States situated within the Central African sub-region. It became a member of the Organisation by ratifying the OHADA Treaty[61] and depositing its instruments.[62] After following these procedures, the Treaty entered into force in Chad on 2 July 1996.[63]

Like the other OHADA Member States, Chad is expected to apply completely the various Uniform Acts, inclusive of those which provide for corporate criminal offences,[64] and to comply with treaty provisions[65] requiring member states to determine sanctions for offences related to business law. This application is what qualifies Chad as one of the compliant member states.

In 2017, Chad modified its Penal Code[66] in conformity with Article 5 of the OHADA Treaty and inserted book 7, with forty-four articles dealing with penalties applicable to OHADA offences, titled *des peines applicables aux infractions prévues par les Actes uniformes de l'OHADA*.[67] Chapter one of the said book punishes offences related to criminalisation provided by the Uniform Act on General Commercial Law.[68] Chapter 2 provides sanctions for offences enshrined in the Uniform Act on Commercial Companies and Economic Interest Groups.[69] Chapter 3 deals with sanctions provided for offences against crimes in the Uniform Act on Securities.[70] Chapter 4, on its part, provides sanctions for offences which infringe the provisions of the Uniform Act Organising Collective Proceedings for the Clearing of Debts,[71] while chapter 5 of book 7 of the 2017 Penal Code provides sanctions for offences provided for in the Uniform

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[59] *Loi no. 10.002 du 6 janvier 2010 portant Code de procédure pénale centrafricain*.
[60] The Central African Republic Commercial Code enshrined in Law No. 2016-06 of 30 December 2016 on the Commercial Code and Investment Charter, which provided incentives for investments inclusive of tax benefits, as well as Article 30 *et seq.* of CEMAC *Règlement no. 06-2019 relatif à la concurrence*.
[61] Chad ratified the Treaty on 13 April 1996.
[62] Instruments were deposited on 3 May 1996.
[63] This date marked the official date of Chad becoming a member state of the Organisation for the Harmonization of Business Law in Africa.
[64] All OHADA Member States are, by virtue of the ratification of the OHADA Treaty, expected to adhere to the harmonised legal rules and regulations relating to business within the OHADA zone. It is therefore within this purview that all the offences catalogued in the various Uniform Acts are applicable, giving member states the powers enshrined in Article 5 of the Treaty to have varied sanction provisions for the same offences.
[65] Article 5.
[66] *Loi no. 2017-01 du 8 mai 2017 portant Code pénal du Tchad*.
[67] Articles 473–517.
[68] Articles 473 and 474.
[69] Articles 475–497.
[70] Articles 498 and 499.
[71] Articles 500–509.

Act on Simplified Recovery Procedures and Enforcement Measures,[72] and chapter 6, which closes book 7, captures sanctions for infringements of the criminal provisions in the Uniform Act on the Harmonisation of the Accounts of Enterprises.[73]

The amended Chadian Penal Code quite aptly transposes the provisions of the various Uniform Acts verbatim, with the sole inclusion of sanctions into the transposed phraseology, and the sanctions are largely pecuniary in nature, ranging from CFAF 50,000 to CFAF 50,000,000.[74]

The Code also penalises company directors, managers, their spouses, children, ascendants, descendants and notaries with possible imprisonment terms and other related sanctions.[75]

The Chadian Penal Code has codified sanctions for infringements by corporate bodies and their agents in line with corporate criminal responsibility, but, like the other compliant member states, Chad's Criminal Procedure Code[76] fails to spell out any specific procedures tailored for the prosecution of corporate bodies. The Code however deals with and generally outlines procedures pertaining to the general investigation and prosecution of crimes.[77] The presumption is therefore that the same rules of prosecution applicable to physical persons, as contained in the Code, are also applicable to moral entities within the context of criminal prosecution.

The incorporation of sanctions by Chad into its 2017 Penal Code, for offences provided for in the various OHADA Uniform Acts, is adequate testament of Chad's status as a compliant member state, and it demonstrates its commitment to upholding treaty provisions in furtherance of economic buoyancy within the OHADA zone.

E. Côte d'Ivoire

Côte d'Ivoire became a member of OHADA upon signing and ratifying the Treaty, ratification having taken place on 29 September 1995 and the instruments of ratification having been deposited on 13 December 1995. Like other compliant member states, Côte d'Ivoire has adopted

[72] Articles 510–515.
[73] Articles 516 and 517.
[74] The various articles provide for imprisonment terms ranging from one month, being the least, to 10 years, which is the maximum term.
[75] The Code provides for sanctions like suspension, foreclosure and banning from exercising a particular business.
[76] *Loi no. 012/PR/2017 portant Code de procédure pénale tchadien*.
[77] Available at lawcat.berkeley.edu.

national legislation[78] and judicial bodies[79] to determine and implement criminal sanctions for offences provided in the Uniform Acts.

Prior to the present Penal Code,[80] Côte d'Ivoire had the 1981 Penal Code,[81] which was severally amended[82] before finally being repealed by the 2019 Penal Code.[83] The Ivorian Penal Code specifically provides for criminal liability in title four. Chapter one under the said title deals with the criminal liability of both natural[84] and legal persons.[85] By virtue of Article 96 of the Penal Code it is clear that, when the criminal liability of a legal person is established, only a fine can be pronounced as the principal penalty. That provision, in consonance with OHADA principles, specifies that the criminal liability of legal persons does not exclude that of natural persons who are offenders or accomplices in the same acts.[86]

The recognition of corporate criminal responsibility in the 2019 Ivorian Penal Code is not in itself sufficient in the determination of sanctions, and it is in this regard that the said Code and its subsequent amendments to modify the Penal Code[87] have aligned with the 2017 law enacted specifically to provide sanctions for offences contained in OHADA Uniform Acts.[88]

It is therefore in this regard that Côte d'Ivoire is considered as compliant, even though the country's Penal Code does not explicitly incarnate the offences as provided in the Uniform Acts and their sanctions.

In Côte d'Ivoire, one of the most notable innovations of the 2019 overhaul of the Penal Code[89] resides in the recognition of the principle of criminal liability of legal persons. The 2019

[78] Decree No. 2016-48 of 10 February 2016 on the creation, roles, organisation and functioning of the National Control Commission of Judicial Representatives in the framework of implementing the Uniform Act on Insolvency Law, as well as Law No. 2017-727 of November 2017 on the repression of offences provided for by the Uniform Acts of the OHADA Treaty.
[79] In 2022 Côte d'Ivoire created an Economic and Financial Criminal Division, as a specialised court to deal with economic and business law offences, in a bid to help in the enforcement of criminalised offences under the various Uniform Acts and the accompanying penal sanctions.
[80] *Loi no. 2019-574 du 26 juin 2019 portant Code pénal ivoirien*.
[81] Law No. 81-640 of 31 July 1981 instituting the Penal Code.
[82] It was amended by Law No. 95-522 of 7 June 1995 to modify the Penal Code; also by Law No. 96-764 of 3 October 1996, Law No. 97-398 of 11 July 1997, Law No. 98-756 enacted on 23 December 1998 to modify and complete the Penal Code, and Law No. 2008-222 of 4 August 2008, which modified and completed certain provisions of the Penal Code.
[83] *Op. cit.*
[84] Article 94.
[85] Article 96.
[86] *Ibid.*
[87] *Loi no. 2021-893*.
[88] *Loi no. 2017-727 du 9 novembre 2017 portant répression des infractions prévues par les Actes uniformes du Traité relatif à l'Harmonisation du Droit des Affaires en Afrique* (Law No. 2017-727 of 9 November 2017 on the repression of offences provided for by the Uniform Acts of the Treaty on the Harmonization of Business Law in Africa).
[89] Law No. 2019-574 of 26 June 2019 on the Criminal Code. We work with the version published by the CNDJ, 2022 edition.

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legislation has doubly delimited the scope of the criminal liability of legal persons. On the one hand, the subjective scope limits that liability to certain classes of corporations.[90] On the other hand, its objective scope is clearly open to all infringements, which can only be limited by the nature of certain infringements.[91]

> Legal persons, with the exception of the State and its branches, are criminally liable for offences committed on their behalf by their organs or representatives. When the criminal liability of the legal person is established, only a fine is pronounced, as a principal penalty. This may be increased to a maximum amount five times higher than the amount incurred for the same offence by a natural person. The criminal liability of legal persons does not exclude that of natural persons who are perpetrators or accomplices of the same acts.

The fact that Law No. 2017-727 is a distinct law which was enacted in compliance with the provisions of Article 5 of the OHADA Treaty, and that it specifically deals with penal sanctions for OHADA-related offences, shows the country's commitment to align its national legislation with the regional legal framework of OHADA, and also to comply with treaty provisions while at the same time inducing businesses and assuring investors of business and legal stability through the sanctions enshrined in the 2017 law.[92]

In Côte d'Ivoire, like in some other OHADA Member States, the determination of sanctions for corporate criminal responsibility is tailored to specific fines and other accessory punishments. This can be understood within the context of the impossibility of imprisoning the corporate body within the purview of traditional criminal law tenets, wherein criminal responsibility is personal.

F. The Democratic Republic of Congo

The Democratic Republic of Congo is another OHADA Member State[93] which has complied with the determination and implementation of sanctions as provided by the Treaty, and has, even though not expressly,[94] identified that the principle of corporate criminal responsibility is

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[90] Article 96. The law by this provision specifically excludes the State and its branches from criminal liability.
[91] Cherif Norbert Carnegie, *La responsabilité pénale des personnes morales en droit ivoirien* (2024).
[92] OXFORD BUSINESS GROUP, *A Detailed Look at Côte d'Ivoire's Legal System: Africa 2019* (retrieved 29 September 2022).
[93] The Democratic Republic of Congo (DRC) was the 17th country to join OHADA. It ratified the OHADA Treaty on 27 June 2012 and became an OHADA Member State on 12 September 2012, when the Treaty entered into force in the DRC.
[94] The Penal Code of the Democratic Republic of Congo, as captured in the consolidated code of 30 November 2004, which incorporates the various laws and ordinances enacted to modify and complete the Decree of 30 January 1940 instituting the penal code of the Democratic Republic of Congo, does not expressly provide for corporate criminal responsibility, but it makes allusion to some offences and how corporations can be held liable.

relevant by enacting laws that touch on the participation or collaboration of business corporations and the remedies available to victims.[95] Like other OHADA Member States, the Democratic Republic of Congo has made strides in the incorporation of corporate offences and sanctions, albeit in separate pieces of local legislation which modify and complete the country's Penal Code.[96]

The application and implementation of sanctions[97] for corporate offences as captured in some OHADA Uniform Acts,[98] whose articles already provide for corporate offences by virtue of Article 5 of the OHADA Treaty, is respected in the DRC. It is therefore from this premise that the DRC is considered as one of the compliant OHADA Member States.

The DRC's legal framework, like that of other OHADA Member States, recognises corporate criminal liability in various national statutes, inclusive of the Penal Code,[99] which outlines offences and penalties,[100] some of which are applicable to corporate bodies.[101] By virtue of the application of the various OHADA Uniform Acts, and the sanctioning of the offences contained therein, along with the other pieces of criminal legislative instruments which have modified and completed the 1940 Penal Code, the DRC has formally recognised that within the second half of the past century, all across the world, economic crimes have largely increased, and for that reason the country has also continued to modify its laws.[102]

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[95] Most of the laws are compiled as modifications and completions of the 1940 Decree instituting the country's Penal Code and are available at http://legnet.cd/legislation.htm (retrieved 1 February 2022).

[96] The initial penal code of the Democratic Republic of Congo was enacted by *Décret du 30 janvier 1940 portant Code pénal congolais*. This Decree has however been complemented and modified by several other pieces of national legislation, which include but are not limited to Law No. 05/006 of 29 March 2005 relating to the fight against corruption, modifying and completing the Decree of 30 January 1940; Law No. 06/018 of 20 June 2006 on sexual violence, to modify and complete the penal code; Law No. 11/008 of 20 July 2011 on the criminalisation of torture in the DRC; Law No. 15/022 of 31 December 2015 modifying and completing the penal code; Law No. 22/067 of 26 December 2022 modifying and completing the penal code on the prevention and repression of threats to persons; and Ordinance No. 23 of 11 September 2023 relating to sexual violence, to modify and complete the Decree of 30 January 1940.

[97] The OHADA Treaty in itself outlines corporate offences and liabilities but leaves the provision and implementation of sanctions thereto to individual Member States.

[98] The OHADA Uniform Acts which expressly provide for corporate offences are the Uniform Act on Commercial Companies and Economic Interest Groups, the Uniform Act on General Commercial Law, the Uniform Act on Securities, the Uniform Act on Simplified Debt Recovery Procedures and Enforcement Measures, and the Uniform Act on Arbitration.

[99] *Décret du 30 janvier 1940 portant Code pénal congolais* is the initial penal code of the DRC, which has been modified by *Loi no. 05/006 du 29 mars 2005 modifiant et complétant le décret du 30 janvier 1940* and *Loi no. 06/018 du 20 juillet 2006 modifiant et complétant le décret du 30 janvier 1940*; see also *Loi no. 06/014 du 12 juin 2006* on the United Nations Convention against Corruption and *Loi no. 06/013 du 12 juin 2006* on the United Nations Convention against Transnational Organized Crime aimed at preventing, repressing and punishing trafficking in persons, in particular women and children.

[100] Articles 86–102 of the Congolese Penal Code.

[101] Wangui Eunice Njoki, *Corporate Criminal Liability in Africa: The Discomfiture Surrounding the Protocol on the Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights* (April 2020), 27–28, highlighting the effects of the introduction of Article 46C of the Malabo Protocol as an operative provision for the enforcement of corporate criminal liability.

[102] *Ibid.*

As already stated, the criminal liability of legal persons under Congolese law is not dealt with in the ordinary way. It is governed in particular by certain legal texts such as Law No. 23-010 of 13 March 2023 on the Congolese digital code. In reviewing this code, an important element was discovered, projecting the repression of legal entities themselves for certain offences related to digital law.[103]

It is also worth noting here that, within the purview of sanctioning digital offences, the nation's digital legislation, with regard to criminal liability, excludes public legal entities and only recognises the liability of private legal entities, while leaving the liability of their agents intact. In other words, the conviction of private legal entities does not absolve their agents of responsibility. By private legal entities, one must see commercial companies and economic interest groups. As regards commercial companies, the relevant legislation must be considered in conjunction with the Uniform Act on Commercial Companies and Economic Interest Groups. It is important to note that the criminal regime established by the legislation is indifferent to the actual legal personality of the legal entities involved. In other words, it can refer to the same de facto commercial companies. Furthermore, it should be noted that this could be a state-owned company. This refers to a case where the State is acting as a private individual. Therefore, no immunity from criminal liability can be invoked if a private individual sues SNEL SA for committing one of the offences stipulated in the digital code. This is the case for REGIDESO, MIBA, and so on.

Three conditions must be met to establish criminal liability on the part of a private legal entity. Firstly, the offence must have been committed by the deliberate will of the organs of the legal entity concerned. These must be the bodies statutorily designated to act in the name and on behalf of the legal entity; these are the bodies that obviously bind the legal entity. The offence must also be attributable to the bodies or representatives of the legal entity. Secondly, the bodies must have acted in the name and on behalf of the legal entity. This concerns the profit or interest of the legal entity. Finally, the bodies must have acted with a view to achieving the purpose of the legal entity or for the defence of its interests, or the acts must be those which the concrete facts demonstrate were committed on its behalf. This means that the body or representative of the legal entity must commit an act related to the activity of the legal entity, and that the act must be beneficial to the legal entity, therefore an act from which it derives benefit.

In the Democratic Republic of Congo, there is a legal text governing the procedure for prosecuting a suspected offender. The Decree of 6 August 1959 establishes the Code of Criminal

[103] *Op. cit.*

Procedure. The Code applies to all offences stipulated in any criminal law. Congolese digital legislation refers matters of criminal prosecution to judicial legislation, namely the Code of Criminal Procedure. Indeed, this referral, we must say, would pose serious problems with regard to the prosecution of legal entities. This is because the Congolese Code of Criminal Procedure, like that of many other OHADA Member States, has its phraseology tailored to apply only to natural persons. This Code considers only natural persons as being capable of violating criminal law in the Democratic Republic of Congo.[104]

The penalties provided against legal entities for the offences referred to in the aforementioned decree-law are as follows. First, a fine whose maximum amount is equal to five times that provided for natural persons by the law which punishes the offence. It should be noted that, in order to compensate for the impossibility of imprisoning legal entities for offences related to digital law, the legislature has taken steps to increase the fines imposed on them. Legal entities are severely punished with regard to the quantum of the fines meted out as a sentence upon their conviction. This system, in our opinion, fulfils the functions of rehabilitation as well as individual and general prevention by punishment as defined by criminal law. Given that the capital or assets of legal entities constitute the very foundation of their existence, their convictions and very heavy fines are an important factor in reforming them, as the payment of these huge sums in fines could lead to the demise of a corporation, something which they would obviously want to avoid.

In view of general prevention, the seemingly repressive measures put in place by the Congolese legislator are permissible as a means to dissuade other legal entities from carrying out activities tantamount to committing criminal acts covered by the law, so that they do not get convicted and drain their assets in paying fines.

Dissolution is another sanction meted out on legal entities. This is especially so when it concerns offences that undermine the security and safety of the State. It is understood that this applies when the offence committed by the legal entity undermines national security as prescribed in Article 371, which further provides for:

- a permanent ban, or a ban for a period of two to five years, from directly or indirectly engaging in one or more professional or social activities;
- the permanent closure, or closure for a period of two to five years, of one or more of the company's establishments used to commit the incriminated acts;

[104] Obed Kongolo Kanowa, *Criminal Liability of Legal Entities in Light of Ordinance-Law No. 23/010 of 13 March 2023 Containing the Congolese Digital Code* (2024).

- permanent exclusion from public markets, or exclusion for a period of two to five years;
- a permanent ban, or a ban for a period of two to five years, from applying for public funds, especially with regard to commercial companies;
- a ban for a period of two to five years from issuing cheques other than those which allow the drawer to withdraw funds from the drawee or those which are certified, or from using payment cards. This penalty mostly applies to financial institutions;
- the confiscation of the tool used to commit the offence, along with the proceeds of the offence. It can be a computer, USB drives, external hard drives and any other equipment or structure used in the commission of the offence.

It should be noted that, without prejudice to the provisions of the Congolese Penal Code, in the event of a conviction of a legal entity for any of the offences prescribed by law, the competent court may justifiably order the confiscation of equipment, instruments, computer systems or computer data, as well as cash benefits or proceeds resulting from the offence, while imposing other criminal sanctions.[105]

The strides made in holding corporate entities accountable for criminal offences as captured in the various Uniform Acts, coupled with the sanctions determined and provided for in the DRC's Penal Code inclusive of subsequent pieces of national legislation, bear testimony to the compliance of this OHADA Member State with the provision of Article 5 of the OHADA Treaty, which expressly provides for the sovereign nature of member states in the domain of determining and enforcing the actual criminal penalties to be imposed within their territory. By implementing sanctions that touch not just on company directors but also on confiscation of corporate property or property obtained from the commission of an offence by the corporation,[106] the DRC can be said to be a fully compliant OHADA Member State.

G. Senegal

Senegal is another OHADA Member State which has complied with Article 5 of the OHADA Treaty. Before the revision of her Criminal Code in 2021, only a few special texts had provided for the criminal liability of legal persons. One such piece of national legislation is Law No. 2018-03 of 23 February 2018[107] on the fight against money laundering and the financing of

[105] *Op. cit.*
[106] Article 22.
[107] Law No. 2018-03 of 23 February 2018 on combating money laundering and the financing of terrorism. Because Senegal is also a member of the Financial Action Task Force (FATF) and the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA), this law was amended by Law No. 2024-08, which effectively transposes Directive 01/2023/CM/UEMOA into national legislation.

terrorism,[108] alongside Law No. 94-63 on prices, competition and economic litigation,[109] the 2016 Mining Code,[110] the 2008 law on cybercrime,[111] the Press Code,[112] Law No. 2018-02 of 23 February 2018 on the repression of counterfeiting and other infringements of monetary signs,[113] and the Customs Code.[114]

According to these texts, in Senegal the criminal liability of legal persons is provided against legal entities under private law, whether or not their aim is to seek profits. This legal ambit includes civil companies, commercial companies, economic interest groups, associations, trade unions, foundations and even political parties.

Indeed, before the entry into force of Law No. 2021-33 of 23 July 2021 amending the Penal Code in Senegal,[115] legal persons were only criminally liable in the cases provided for by the aforecited special texts. There therefore existed a principle of speciality[116] in the criminal liability of legal persons. However, with the new Penal Code, there is the generalisation of criminal liability inclusive of corporate criminal liability.

The criminal liability of legal persons is recognised as the obligation of legal persons (other than the State) to answer, in the cases specified by law, for offences committed on their behalf by their organs or representatives, without excluding the personal criminal liability of the perpetrators or accomplices of such offences.[117] In fact, in Senegal it is not enough to be a legal entity to be held criminally liable for the offences committed within it; it must be ascertained that the entity has a legal personality. This condition necessarily leads to the exclusion from criminal liability of groups without legal personality, such as joint ventures, de facto companies or groups of companies. In the latter case, it is necessary to seek the liability of each company as a co-author or an accomplice.[118]

By virtue of the laws in force in Senegal, the penalties imposed on legal persons are:

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[108] Article 124.
[109] Article 70.
[110] Article 138.
[111] Article 431-62.
[112] Article 222.
[113] Article 19.
[114] Article 373.
[115] This law, which modifies the Senegalese penal code, actually seeks specifically to address offences liaised with terrorism by natural and legal persons in a bid to portray the country's efforts at strengthening its counter-terrorism framework, as accompanied by Law No. 2021-34 modifying the criminal procedure code.
[116] The *principe de spécialité* was purposely used for offenders who were extradited for specific offences and could not be tried for other offences without the consent of the extraditing state. Likewise, it was considered that criminal law is personal and, as such, the prosecution of the organs vitiated liability by the corporate person.
[117] GÉRARD CORNU, VOCABULAIRE JURIDIQUE (Association Henri Capitant, 12th edn).
[118] Oumar Ly, *La responsabilité pénale des personnes morales en droit sénégalais* (February 2023), https://www.village-justice.com/articles/responsabilite-penale-des-personnes-morales-droit-senegalais,45113.html (accessed 25 June 2025).

- a fine whose maximum rate is equal to five times that provided against natural persons by the law that punishes the said offence;
- dissolution: this is meted out when the legal person has diverted from the purpose for which it was created, or in a case where it has committed a crime or an offence punishable, in the case of natural persons, with imprisonment for more than five years;
- prohibition: the prohibition may be definitive or for a maximum period of five years. By this, the legal entity is prohibited from directly or indirectly exercising one or more professional or social activities;
- closure: this may be permanent closure, or closure for a period of up to five years, of one or more of the establishments of the company used to commit the offending acts;
- exclusion from public contracts: this could be permanent or for a maximum period of five years;
- the prohibition, definitively or for a period of no more than five years, from making a public tender;
- the prohibition, for a period of up to five years, from issuing cheques other than those that allow the drawer to withdraw funds from the drawee or those that are certified, or from using payment cards;
- the confiscation of the property used or intended to be used to commit the offence, or the property that is the product of the offence;
- the posting of the decision pronounced or its dissemination, either by the written press or by any means of communication to the public by electronic means.

By virtue of the new Article 45-2 of the Senegalese Penal Code, there is a sanction against the director of the legal person who is criminally liable for failing to comply with the sanction. That provision succinctly states that "any director of a legal person declared criminally liable who, knowingly, refuses to execute a court decision that has become *res judicata* shall be punished with imprisonment from six months to two years or a fine of 1,000,000 to 5,000,000 francs".

The laws in Senegal tend to demonstrate the essence of the respect of states' sovereignty as captured by Article 5 of the OHADA Treaty in advocating for member states to determine criminal sanctions against corporate offenders. The laws in Senegal have, like in several other member states, consciously evolved in the right direction by holding directors, managers and the companies themselves criminally liable, either as principal offenders or as accomplices.

H. Gabon

Gabon adopted a new Penal Code in 2019. This new code recognises the criminal liability of legal persons. Prior to this code, the criminal liability of legal persons could only be incurred under CEMAC criminal law, on the basis of the CEMAC regulation of 11 April 2016,[119] in the event of money laundering, terrorism financing and the proliferation of weapons.

The new Penal Code provides that, with the exception of the State, all groups of persons with legal personality, whether governed by public or private law, whether for profit or not, are to incur criminal liability.[120] The broadening of the scope of legal persons concerned is accompanied by a generalisation of offences.[121] Indeed, legal persons have now been qualified as being capable of committing the same offences as natural persons.[122] This applies to ordinary law offences and special offences like money laundering and the financing of terrorism, now punishable under the Penal Code, even though these acts were already criminalised under CEMAC community criminal law.

In Gabon, legal persons like companies are said to be criminally liable when the offence or offences are committed by their organs or representatives.[123] The criminal liability of the corporate person therefore presupposes that the criminal liability of the natural person is established beforehand, and it engages the corporation once done at its behest or for its benefit.

The criminal or correctional penalties provided for infringing legal entities are the fine and the sanction-reparation.[124] The fine applicable to legal persons is equal to five times the fine provided for natural persons by the law that punishes the offence. When it comes to a crime for which no fine is provided against natural persons, the fine incurred by legal persons is a maximum of 500,000,000 francs.

When the law so provides against a legal entity, a crime or offence may be punished by one or more of the following penalties:

- dissolution, when the legal entity, once created, diverts from its purpose to commit the incriminating acts, and when it is a crime or an offence punishable in the case of natural persons by a prison sentence of three years or more;

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[119] This CEMAC Regulation focuses on preventing and repressing money laundering, terrorist financing and the proliferation of weapons. By this regulation, member states are at liberty to impose administrative, disciplinary or criminal penalties for non-compliance, with emphasis on the fact that offences under the regulation are imprescriptible.
[120] Article 121-1.
[121] Article 249-8 *et seq.* and Article 280.
[122] *Op. cit.*
[123] Article 121-1.
[124] Article 96 of the Gabonese Penal Code.

- the prohibition, either permanent or for a period of up to five years, of directly or indirectly engaging in one or more professional or social activities;
- placement under judicial supervision for a period of up to five years;
- permanent closure, or closure for a period of up to five years, of one or more of the company's establishments used to commit the alleged offences;
- exclusion from public procurement contracts on a permanent basis or for a temporary period of up to five years;
- prohibition, either permanent or for a temporary period of up to five years, from making a public offer of financial securities or from having its financial securities admitted to trading on a regulated market;
- a ban, for a period of up to five years, on issuing cheques other than those that allow the withdrawal of funds by the drawer from the drawee or those that are certified, or on using payment cards;
- the penalty of confiscation, under the conditions and according to the procedures provided for by the Penal Code;
- the posting of the decision pronounced, or the dissemination thereof either by the written press or by any means of electronic communication to the public;
- the confiscation of the animal that was used to commit the offence or against which the offence was committed;
- the prohibition, for a period of up to five years, of receiving any public aid allocated by the State, local authorities, their establishments or their groups, as well as any financial aid paid by a private person charged with a public service mission.

The additional penalty of confiscation is also automatically incurred for crimes and for offences punishable by a prison sentence of more than one year, with the exception of press offences.

In tort matters, the court may pronounce, in place of or at the same time as the fine incurred by the legal entity, the penalty of reparation sanction according to the terms set out. The court can impose the maximum amount of the fine, which cannot exceed the amount of the fine incurred by the legal entity for the offence in question. The execution of this sanction, whether in whole or in part, may be ordered by the judge in charge of the enforcement of sentences, under the conditions provided for by the Criminal Procedure Code, if the convicted person does not fulfil the obligation to make amends.[125]

[125] Article 100 of the Gabonese Penal Code.

III. Case Law and Jurisprudence on Corporate Criminal Responsibility in Cameroon

As examined above, several OHADA Member States have complied with Article 5 of the OHADA Treaty. Cameroon is one of the member states which has ultimately complied with treaty provisions and incorporated corporate criminal responsibility into her Penal Code. Cameroon has been able to sanction corporations in various forms, though the procedural law is still lagging behind after the 2016 amendment of the Penal Code and the emergence of corporate crimes. Corporations in Cameroon are now liable for offences or crimes committed on their behalf by their organs or representatives. In the case of *AES-SONEL & Ebai Tanyi Voctor v. The People of Cameroon & 1 Ors*,[126] the corporation was found guilty and sentenced to pay a fine.

To dissolve a defendant corporation is the most far-reaching decision that a court can arrive at. It is a sanction which measures up with the death penalty applied to human beings, provided by the Cameroon Penal Code. For instance, the punishment for murder is fixed at law as death. Unfortunately, a corporation cannot be hanged, but it can be dissolved if convicted of murder.[127]

This position is aptly captured in section 25-2 of the Penal Code, which provides that:

> (1) Dissolution shall mean capital punishment which may be passed against corporate bodies. (2) A judgment on dissolution may be passed against a corporate body that has acted in violation of its object clause. (3) The judgment on the dissolution of a corporate body shall refer such corporate body to the competent court for winding up at the instance of the Legal Department.

The most recent and prominent corporate criminal liability case in Cameroon is the Eséka train accident of October 2016, in which the negligence of the management organs of the company in charge of railway transport resulted in the loss of lives, property and jobs.[128] The October 2016 train accident on Cameroon's main railway line remains shrouded in mystery. The announcement of the derailment before it happened, followed by a denial by the Minister of Transport a few hours later, at the very moment of the accident, gave rise to much speculation. According to testimonies collected in Eséka through fieldwork and the media, this tragic event

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[126] (2010) 1 CCLR 14, p. 1.

[127] Gildas Nyugha Pefela, *An Appraisal of Criminal Liabilities for Business Offences under OHADA Law and the Penal Laws in Cameroon*, 3(2) National Journal of Criminal Law 17 (2020).

[128] Elvis Teke, *Eseka Train Accident: Names of 744 Victims Published*, Cameroon Radio Television (accessed 23 November 2025).

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was interpreted as the result of a witchcraft conspiracy.[129] It was reported that the inhabitants of this Bassa region of Cameroon, who consider the railway crossing their territory as a cultural heritage, had expressed their discontent with attempts to rationalise the line for some time. These accounts hold that the disaster was triggered by collective action which unfolded through three distinct phases: labelling, whereby words acquire particular power; harbingers of misfortune; and finally the bewitchment of the train to "zombify" it, leading to its derailment.[130]

Other evidence, however, suggests that the disaster was caused by a landslide that destroyed a bridge, leading to the closure of the international rail link between West African countries. On 23 March 2017, the government issued a statement on the results of the investigation conducted by the national committee of enquiry set up for that purpose. The investigation report concluded that the main cause of the overturning of the train was excessive speed of 96 km per hour, in a section of track where the speed is severely limited to 40 km/h. Experts observed overloading, inappropriate extension of the train, use of passenger coaches several of which had failed braking devices, use of a power unit whose braking was out of service, lack of serious verification of the continuity of the train's brakes before leaving Yaoundé, and refusal by the Camrail hierarchy to take into consideration the suggestions expressed by the train driver in respect of the above-mentioned anomalies. In the end, the train derailment resulted in the deaths of 79 people and 600 others injured. On 26 September 2018, the Court of First Instance of Eséka ordered the Cameroonian railway company Camrail to pay CFAF 50 million as compensation to the beneficiaries of five victims of the Eséka train accident. In total, six claimants brought an action before the court to obtain compensation, following an unsuccessful amicable settlement with Camrail's insurers.

It is worth mentioning that this case was properly litigated in the criminal court and adequate criminal sanctions meted out. However, this is just one of the few cases which have gone to trial, given that several corporate offences, especially by transport companies and others involved with environmental offences amongst others, have often been sanctioned without recourse being had to any criminal charges before the courts.

IV. Conclusion

The determination of sanctions and their implementation by Member States, as mandated by the OHADA Treaty, underscores the Organisation's dual objectives of fostering business in

[129] Brice Molo, *The Eséka Train Disaster as a Witchcraft Collective Action: A Socio-Historical Perspective on Anger* (Cambridge University Press 2024).
[130] Brice Molo, *The Eséka Train Disaster as a Witchcraft Collective Action: A Socio-Historical Perspective on Anger* (Cambridge University Press 2024).

Africa and safeguarding the interests of all business participants. Compliance with these sanctions is critical to mitigating unfair business practices and protecting stakeholders. Although the authority to determine and enforce sanctions lies primarily with the Member States according to Article 5 of the Treaty, adherence to the stipulations regarding sanctions remains essential. This is particularly pertinent given that the various OHADA Uniform Acts do not uniformly harmonise the administrative and judicial frameworks of Member States. Therefore, compliance by these states is crucial in preventing unfair business practices within the OHADA territory and in facilitating economic integration and cooperative relations among member states. Such compliance serves as a vital component for maintaining a harmonised, stable and conducive business environment that fosters fair competition, safeguards stakeholders, and encourages both foreign and domestic investment within the OHADA territory.

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