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Instituting the Motor Vehicle Insurance Fund in Cameroon: An appraisal of Law No. 2015/013 of 16 July 2015 Creating and Regulating the Motor Vehicle Insurance Fund in Cameroon

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Abstract
The CIMA Code empowers each member State of the CIMA zone to create and regulate its own Motor Insurance Guarantee Fund. This is the import of article 600 of the Code. It is thanks to this article that Law No. 2015/013 was promulgated by the Cameroonian legislature, creating and regulating the Motor Insurance Guarantee Fund in Cameroon. Although the Code lays down the guidelines for creating and regulating the fund, the member states of CIMA have the huge responsibility of ensuring the smooth functioning, effectiveness, and success of the fund. The purpose of this fund is to ensure that no qualified motor accident victim goes uncompensated, whether there was insurance or not. This paper therefore does an appraisal of this law through the eyes of its purpose according to the spirit of its enactment. This paper criticizes, analyzes and proposes measures to ameliorate some lapses in the law regulating the fund, the purpose of which is to guarantee a better compensation scheme for motor accident victims.

Keywords: *Motor insurance, Motor Insurance Guarantee Fund, Motor accidents, Motor accident victims, Law No. 2015/013, Cameroon, Compensation.*

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INTRODUCTION
The raison d'etre for the institution of a new law [1] on compensation was to overcome the challenges presented by the former laws on compensation that existed in Cameroon before 1992 [2]. Some of these challenges were: the very slow pace of the compensation procedure [3], the award of extremely high damages against insurance companies [4], the too many escape routes through which the insurer could avoid paying compensation to motor accident victims [5] and too much powers given to the judges on interpretation of insurance statutes and decision making on insurance issues. The new law on compensation, which is the CIMA Code [6] has succeeded to an extent to overcome these antipodal hurdles.

However, questions have arisen as concerning the situation of motor accident victims whose injuries were caused by an uninsured motorist, a hit and run vehicle, or even an insured motorist but whose insurer is denying liability for one reason or another. How would such victims be compensated? The no-fault system of compensation as instituted by the Code has as one of its basic tenets the fact that once there is an accident caused by a motor vehicle that causes corporal damage, there must be compensation. Therefore, in a bid to guarantee the validity of this tenet, the Code made express provision for creation of a Motor Insurance Guarantee Fund in every CIMA member state. It is thanks to this provision that Law No. 2015/013 was promulgated by the Cameroonian legislature on 16 July 2015, creating and regulating the Motor Vehicle Insurance Guarantee Fund. The appraisal of this law shall be the primary focus of this paper.

CREATION OF THE MOTOR VEHICLE GUARANTEE FUND IN CAMEROON

Article 600 of the *CIMA* Code recommends that member states create individual motor insurance funds. All registered insurance companies that cover liability insurance each member state are obligatorily part of the fund. It is in this regard that Law No. 2015/013 [7] of 16 July 2015, creating and regulating the Motor Vehicle Guarantee Fund [8] in Cameroon was enacted. The Fund was given the status of a special public entity that has legal personality and financial autonomy [9]. Through its legal personality, it can sue and be sued. Through its financial autonomy, it has the ability to generate income for its activities. Administratively, the Fund shall be placed under the supervisory authority of the ministry in charge of insurance [10]. This is because its duties are of a general interest.

Its sources of income are diverse such as contributions from insurers, insured persons, state subventions, amounts deposited by persons under the obligation to insure and uninsured persons. Both the 2015 law and the Code fail to state the specific form which the Fund must take as a legal entity.

The raison d'etre of the Motor Insurance Guarantee Fund

Although this has not been clearly spelt out under the 2015 law, a careful reading of article 600 of the *CIMA* Code briefs us about its *raison d'etre*. It was put in place for two major reasons according to this article.

The first reason is to take charge of medical expenses incurred by eligible [11] motor accident victims, paying for treatment of bodily injuries sustained from a road traffic accident. This provision is one of the innovations brought about by the Code. It is similar to the institution of periodic payments to motor accident victims even before final compensation is made by the insurer. Initially [12], motor accident victims were left to cater for themselves while they waited to be compensated by the insurer. Payments were made in one lump-sum by the insurer. This procedure was problematic because many victims are usually not viable economically. Paying effectively and in a sustained manner for their medical expenses was farfetched. Therefore, this is an innovation to be applauded. However, the victims will have to fulfill certain requirements to benefit from this innovation as has been examined in later parts of this work.

The second reason is to compensate victims of bodily injuries resulting from an accident caused by a mobile motor vehicle, its trailers or its semi-trailers excluding railways and trams within the limit of the ceiling set by the law of each member state relating to the Fund. The Code permits each member state of the *CIMA* to set ceilings which the Fund shall limit the amount compensable to eligible motor accident victims by the Fund. The purpose of this ceiling is to ensure balance between compensation and the continuous survival of the Fund. If there were no ceilings limiting the amounts payable as compensation, the Fund may not be able to meet up with excess demands. However, these ceilings too have their own consequences. Motor accident victims compensable under the Fund are unable to get effective medical care for their sustained injuries. This is because hospitals most often than not decline to give them proper treatment for fear of the fact that they may not be able to get a full refund from the Fund. Where injuries are severe and quite serious, the victim may end up dead in the absence of proper medical care. At this point, it would be important to examine the duties of the Fund.

Duties of the Fund [13]

The 2015 law discusses the duties of the Fund in its chapter II. According to Section 3 under Chapter II:

Where the person liable for damages caused by a circulating motor vehicle, as well as its

trailers or semi-trailers, excluding rail vehicles is not known, or known but uninsured, save for legal exemption from compulsory motor insurance, or is fully or partially insolvent, the Fund shall:
- *Cover all costs within the limits and ceilings set by this law;*
- *Compensate duties of damages due to bodily injuries.*

An analysis of the above section indicates that the main duty of the Fund is the payment of compensation. However, compensation is paid out only after the fulfillment of certain conditions.

Firstly, the 2015 law specifies that the accident must have been caused by a circulating [14] motor vehicle. This requirement automatically excludes stationed vehicles. However, this is quite reasonable because once a vehicle is stationed it is unlikely to be involved in any road traffic accidents. The use of the word "circulation" instead of the word "motion" has far reaching consequences. This is because while "circulation" limits the area in which the occurrence of a motor accident may engage the responsibility of the Fund for compensation while "motion" broadens it. The former is limited to accidents that occur on roads that are well regulated and actively used by numerous vehicles. These roads which can be referred to as major roads are found both within urban centers and linking up urban centers. The latter broadens the notion of a road. A vehicle could be in motion anywhere even in a private residence. The use of the word "circulation" is to denote driving on a road well regulated by traffic laws and generally used by other motor vehicle owners.

A further reading of the above section reveals that victims compensated by the Fund only receive compensation limited to bodily injuries [15]. Therefore, impliedly, damage to property cannot be compensated by the Fund. At this point, it should be noted that motor accident victims under the *CIMA* Code are equally entitled only to compensation for bodily injuries under the no-fault system. Under the Code, the no-fault system is applied for the victim non-driver. This means that whether the victim that suffered bodily injuries was at fault or not, he must still be compensated, but only for bodily injuries.

However, under the Code, property damage could still be compensated but this comes at a price. The applicable law becomes the fault system where civil responsibility plays an essential part for the case of the victim non-driver. Where it involves the driver-victim, the no-fault system is used to determine his liability both for property and corporal damages.

Circumstances under which the Fund Assumes Compensation Responsibility

For a victim to be eligible for compensation under the Fund, the following must be proven [16]:
- The accident must have been caused by a vehicle in circulation.
- The person accused must be liable.
- The person accused is not known or the person accused is known but not insured.
- Compensation cannot be covered by any other claim.
- The tortfeasor is known but is fully or partially insolvent.

Where all these conditions are fully met, the Fund shall pay compensation to the victims or their rightful claimants. A careful analysis of the above requirements brings some questions to mind like: must the liability of the tortfeasor be established before the victim gets compensation? What happens then if such liability is not established?

The first question can be answered in the affirmative. This is because by establishing that the accused is liable, one must equally adduce that the accident was caused by a motor vehicle in circulation as required by the 2015 law. In the absence of this, there will be no proof of liability. These two aspects are inextricably linked, interrelated, and interwoven. They play an essential part in determining whether the

Fund has to pay a claim for compensation or not. Even in a case where the accused is not known [17], it must equally be proven that though not known, he is guilty. This can only be done by showing that the accident was caused by a motor vehicle in circulation. Establishing the liability of the accused is equally important for the purpose of subrogation [18]. According to the 2015 law [19];

The Fund shall, after compensation, become subrogated to the rights of the creditor of the compensation against the person responsible for the accident or his insurer or any other compensation obligor. In the event of payment, the Fund shall be entitled to institute third party proceedings against the person responsible for the accident.

The Fund is entitled to sue the tortfeasor who is responsible for the accident upon compensation of the victim. Therefore, it is necessary that liability of the tortfeasor be proven. By proving such liability, it is simultaneously established that the victim has a right to action against the tortfeasor. Establishing the insured's right to action against the tortfeasor is laying the foundation of the Fund's right to subrogation. This is because the Fund can only have a right of action against the tortfeasor only when it is proven that the victim had a legitimate right of action against the same. It is equally worth mentioning here that, the Fund cannot have a better right of action against the tortfeasor than the victim has against the same. The Fund is only entitled to the same rights the victim has against the tortfeasor, nothing more and nothing less. Where the victim has no right of action against the tortfeasor, the Fund automatically looses every right of action against the same.

Equally, the compensation claim should be one that cannot be covered under any other claim [20]. Basically, the Fund is the lender of last resort to motor accident victims just the same way as central banks are lenders of last resort to commercial banks. This simply means that the Fund only comes to the rescue when other means have failed or are inapplicable. Therefore, a compensation claim that can possibly be compensated elsewhere other than the Fund is automatically rejected.

Another reason for this requirement could be the enforcement of the principle of indemnity. This principle states that the insured is entitled to receive full compensation, nothing more and nothing less. However, when a claim can be compensated elsewhere other than the Fund, the victim may be tempted to receive compensation from the Fund and go around to claim compensation from the other party. This will mean the victim is using an unfortunate situation to make gain. This practice is utterly prohibited in insurance as the insured cannot make gains out of his insurance policy.

Finally, the tortfeasor may be known but is fully or partially insolvent. In such situations, the Fund pays full compensation and then brings an action in subrogation against the tortfeasor.

Victims Excluded from Compensation under the Fund [21]

According to Section 4(2) of the 2015 law, the following persons shall be excluded from compensation under the Fund;

The Driver Responsible for the Accident

Under the *CIMA* Code, drivers are compensated following the civil liability or the fault system. This means that their faults that contributed to the occurrence of the accidents are taken into consideration in determining whether they will be compensated as victims of motor accidents or not. However, the 2015 law has taken a more radical approach towards driver-victims. This is so because it has completely excluded them from any form of compensation under the Fund. But the question that begs for answer here is: what could be the intention of the legislature in promoting such strictness against the driver-victim? Two reasons can be forwarded to answer this question.

Firstly, such an approach is meant to deter drivers from reckless and irresponsible driving that constantly put the lives of hundreds of thousands of Cameroonians at risk. Knowing they have no right to action against the Fund, drivers will be more diligent in their profession being aware that every cost incurred as a result of bodily injuries they sustain from motor accidents will be borne solely by them.

The last explanation for this radical approach may be that the 2015 law is based essentially on the no-fault system of compensation. Following the principles laid down by the *CIMA* Code, the driver-victim is compensated following the civil responsibility or the fault system. The 2015 law oriented towards the no-fault system has, therefore, opted to exclude any claims from driver-victims because they are compensated following the fault system. Another proof that the 2015 law has rather adopted the no-fault system of compensation is the elimination of compensation for material damages. The compensation for material damages under the Code is based essentially on the fault system or civil liability. The 2015 law almost entirely follows the Code. Since the Code has placed the compensation of damages for bodily injuries under the fault system, the Cameroonian legislature has deliberately excluded it from the 2015 law so as to give the law a complete no-fault flavour.

The Owner or the Person Having Custody of the Vehicle at the Time of the Accident

The owner or the person having custody of the vehicle at the time of the accident has equally been excluded from compensation for bodily injuries under the Fund. It should be noted that the Cameroonian legislature has gone an extra mile in including this category of persons as not being eligible for compensation under the fund. The *CIMA* Code in its article 602(1) talking about persons excluded from compensation under the Motor Insurance Fund does not mention this category of persons.

Victims in a Stolen Vehicle except Where the Victim Provides Evidence that He Was Unaware that It Was a Stolen Vehicle

Compensating victims of a stolen vehicle where such victims are fully aware of the fact that the vehicle is a stolen one amounts to abetting, aiding and promoting theft. It defeats the very purpose of including theft as a crime under the penal code. However, it is only normal that a person may not be aware of the status of the vehicle at the time he boarded it. Therefore, the Cameroonian legislature has taken it to heart to take a less severe stance in such circumstances by giving the victim the chance to prove his innocence [22]. However, the only problem is that the burden of proof lies on the victim. This could be problematic where the victim lacks the financial capacity to establish such a proof [23]. However, the good thing is, proof in civil matters is based on a balance of probabilities and not proof beyond all reasonable doubts.

However, Section 4(3) of the 2015 law gives the victims of a stolen car who were not aware of the status of the car another life line. It allows them to be able to seize the Fund for compensation where the accident was caused wholly or partially by another vehicle [24]. Certainly, the vehicle thief and his accomplices have been excluded from any form of compensation under the Fund. One question nonetheless arises here that begs for answers: if a person is punished for an offence, can he be punished a second time for the same offence? Under criminal law, this is certainly not possible and, therefore, the answer is no. Therefore, if a person has been punished for theft of a vehicle, he is still supposed to be entitled to compensation for bodily injuries sustained inside the stolen car caused by a road traffic accident. Refusal by the Fund and the Code to recognize this category of persons as eligible for compensation is definitely a travesty of justice. In our opinion, except for the time-bar limitation, a thief already convicted has the right to receive compensation under the Fund when he is entitled to. This can be explained by the fact that a person cannot be punished twice for the same crime. If this be the case, he may raise the plea of *auterfois convict*.

Compensation Procedure under the Fund

This procedure comprises different situations as follows:

Where the Tortfeasor is Unknown

This simply means that the person that caused the accident escaped after its occurrence. In such circumstances, Section 7 of the 2015 law states that where the person liable for damage is unknown, the claim of the victim or his rightful claimants should be submitted to the Fund within three years [25] of the occurrence of the accident. However, according to Article 613 of the *CIMA* Code, this time limit shall only run from the day the interested parties became aware of the damage, if they prove they were not aware of this damage till then. This means that at the expiration of the three-year time limit, an action for compensation brought before the Fund will not be entertained. The duration of three years according to this researcher is a reasonable time for the victim to constitute a claim and bring before the Fund.

The Tortfeasor Is Identified But Is Uninsured [26]

Where the person that caused the accident is identified but is uninsured, the compensation claim must be submitted to the Fund within one year [27] of the compromise or court judgement becoming *res judicata*.

The 2015 law goes further to state that within three years of the occurrence of the accident, the victim or his legal claimants must have reached an agreement with the Fund or filed a claim for damages where the person responsible for the accident is unknown or have reached a compromise with the person responsible for the accident or sued him, if he is known and not insured [28]. However, there is a little disparity between these provisions of Section 9 of the 2015 law and that of article 613 of the *CIMA* Code. While the 2015 law gives a time bar of three years, the *CIMA* Code gives a time bar of five years. Nonetheless, this disparity poses no problem as the *CIMA* Code simply lays down a guide for member states to follow.

Finally, where the compensation consists of the payment of annuity or payment by installment of capital, the claim must be lodged with the Fund within one year of the expiry of the period during which the obligor has failed to fulfill his obligation [29].

Components of the Claim

According to Section 7 of the 2015 law, motor accident victims or their rightful claimants must file their claim to the court by a registered letter with acknowledgement of receipt or by any other means leaving a paper trail and bearing a specific date. Claims are registered with acknowledgement of receipt issued in a bid to serve as documentary evidence in the case of an eventual litigation. Documentary evidences are the most credible types of evidences that can be adduced in court. This section goes further to state that to support the claim the rightful claimants or the victim shall be bound to prove the following:

That the accident giving them entitlement to compensation, in accordance with national legislation on civil liability, which may not give entitlement to other full compensation under any other claim, in which case, the Fund shall cover only the supplementary compensation. This requirement is of particular importance as it prevents the victim from getting compensated more than once for the same accident. If this was not the case, it could be possible for the victim to get double compensation, thereby making gains out of an unfortunate situation. This goes against the spirit of insurance and the principle of indemnity.

Also, that the person responsible for the accident could not be identified or that is identified but uninsured or has been found to be insolvent following final determination of the compensation through compromise or an enforceable court decision. In my opinion, laying the burden of proof on the victim is not always the best demand financially speaking. This is because it causes the already financially strained victims to spend further in putting together evidences to prove their claims before the Fund.

According to Section 13 of the same law, compensation claims must include a copy of the court decision or a certified true copy of the deed of compromise settlement for the final determination of compensation. If the victim or his rightful claimants and the Fund fail to reach an agreement, the former may then sue the latter in a court. From this provision, it is clear that where the victim is eligible for compensation under the Fund, it is a legal obligation on the part of the Fund to affect such payments. Failure to respect this obligation by the latter can, therefore, attract legal sanctions against it. This is one reason why the Cameroonian legislature endowed the Fund with a legal entity. However, the lengthy legal battles for compensation are not to the advantage of the victim and are against the spirit of the no-fault system of compensation adopted by the CIMA legislature.

Furthermore, according to the 2015 law [30] and the Code [31], where the tortfeasor is unknown, the accident record or report drawn up or prepared by the competent public authority must expressly mention it. Otherwise, the names and the addresses of the insurance company as well as the policy number must be mentioned. However, the 2015 law [32] follows the Code [33] in fixing the time limit for a copy of the report for bodily injuries caused by an unknown or an uninsured author to be sent to the motor insurance fund within sixty days following the date of the occurrence of the accident by the competent public authority or any interested party. The inclusion of other interested parties to this process by the Cameroonian legislature is in a bid to facilitate and accelerate the procedure for transmitting the report. This means that the victim or his legal claimants have to benefit from compensation from the competent public authority for onwards transmission to the Fund. However, the problem will lie at the level of the public office in-charge because of mediocrity and bureaucracy, for the report to be written and released way ahead of the deadline.

In case where there is a willful omission of a statement or misrepresentation in the report, it shall attract a fine of from *CFAF* 50.000 to 250.000 [34]. This penalty has been introduced by the Cameroonian legislature in a bid to ensure that due diligence is employed in the process of drafting the report for onwards transmission. This sanction is welcome. Mediocrity and procrastination in public services always turn to have an impact on the drafting of such reports. However, it is difficult to figure out how the Fund will be able to determine whether there was an omission in the report or not. This is because they have no representative on the field or on accident scenes that are likely to relate to them the appropriate facts. This means that they are compelled to believe whatever report is transmitted to them from the appropriate public authority. Therefore, the provision containing the sanctions is likely to remain a dead letter.

Where the Insurer Denies Liability

Section 16 of the 2015 law lays down the conditions under which the Fund may become liable to pay compensation even if there was an existing insurance contract concluded to guarantee the financial consequences of civil liability of the person liable for damage suffered by persons due to an accident. According to this Section, the Fund may be required to pay the compensation granted to the victim or his rightful claimants only in the event of:

Invalidity of the Contract [35]

The following factors can vitiate a motor insurance contract:

Misrepresentations and Concealments

A misrepresentation is a statement, whether written or oral, that is false. Generally speaking, in order for an insurance company to void a contract because of misrepresented information, the information in question must be material to the decision to extend coverage.

Concealment, on the other hand, is the failure to disclose information that one clearly knows about. To void a contract on the grounds of concealment, the insurer typically must prove that the applicant willfully and intentionally concealed information that was of a material nature.

Fraud

Fraud is the intentional attempt to persuade, deceive, or trick someone in an effort to gain something of value. Although misrepresentations or concealments may be used to perpetrate fraud, by no means are all misrepresentations and concealments acts of fraud. For instance, if an insurance applicant intentionally lies in order to obtain coverage or make a false claim, it could very well be grounds for the charge of fraud. However, if an applicant misrepresents some piece of information with no intent for gain [36], then no fraud has occurred.

Impersonation (False Pretenses)
When a person assumes the identity of another for the purpose of committing a fraud, that person is guilty of the offense of *impersonation* [37]. For instance, an individual that would likely be turned down for insurance coverage due to questionable health might request a friend to stand in for him (or her) in order to complete a physical examination.

The 2015 law gives the insurer at most three months of the receipt of the claim to declare to the Fund its intention not to pay the compensation based on any of the above reasons. Such declaration must be in writing and by a registered letter or by any means leaving a paper trail, with supporting documents, its exemptions. The insurer also has to notify the victim or his rightful claimants through the same channel [38]. On the other hand, where the Fund wishes to challenge the insurer's refusal for non-payment of a claim, it equally has to follow the same procedure to inform the insurer and the victim or his rightful claimant within three months of the reception of the declaration from the insurer [39].

It should be noted that in this seemingly unending process, it is the victim or his legal claimants that suffer. This is because court proceedings to determine liability will take considerable time at the expense of the victim. Legal procedures in Cameroon are usually very slow and marred by series of adjournments. However, if the insurer refuses to pay compensation to the victim under a valid contract, then the victim has the right to sue him for insurance bad faith or for breach of contract.

Medical Expenses Incurred by the Victim [40]
According to Section 21(1) the 2015 law, sundry medical expenses may be refunded to the victim upon production of supporting documentation. However, the presentation of supporting documentation does not automatically avail the victim or his legal claimants' reimbursement of all incurred medical expenses. This is because this section further states that the medical officer of the Fund will have to give his opinion on the medical bills. This is in a bid to avert fraud. Many a time, victims connive with medical personnel to inflate medical bills and dupe insurers of huge sums of money. Therefore, by putting this practice in check through trusted medical personnel from the Fund, hospital bills from victims are likely to be debated and moderated were the sums concerned are alarming and suspicious. Such medical bills are equally subjected to ceilings set by legislation.

Resources of the Fund
Section 27 of the 2015 law succinctly discusses the sources of income for the Fund. In accordance to this section, the income shall come from:

i. Contributions of insured persons and insurance companies
ii. Increased fines imposed on uninsured drivers
iii. Proceeds from actions taken by the Fund against any person required to pay compensation.
iv. Proceeds from fines imposed on perpetrators of compulsory insurance related road offences
v. Administrative fines as provided for by the insurance code
vi. Proceeds from investments as well as gifts and bequests

The 2015 law has determined the various sources of income for the Fund and this is commendable. However, the problem that arises here is the law does not state how this income will be collected and managed. It does not lay down any mechanism to ensure that monies collected will go right through to the coffers of the Fund. In a country where corruption and embezzlement are deeply rooted in all areas of social, economic and political life, such measures would be timely. Most police officers would rather prefer to collect bribes from uninsured motorists and allow them in circulation rather than take the appropriate measures to ensure that they end up paying fines to the coffers of the Fund.

The contribution of insured persons shall be based on premiums or contributions written as motor vehicle civil liability guarantee for the preceding month, net of cancellation, taxes and duties [41]. On the other hand, the contribution of insurance companies shall be based on premium or contributions written as motor vehicle civil liability guarantee. Such premiums shall be considered as excluding acceptance and net of cancellation, taxes and duties [42].

Finally, fines imposed for insurance-related offences against road traffic rules shall be increased by fifty percent and collected on behalf of the Fund [43].

Compensable Damages

According to Article 603 of the Code, damages liable to compensation by the Motor Vehicle Insurance Fund shall be those referred to in Articles 258 to 266 of the Code excluding articles 261, 263 and 266. These are exclusions for third-party assistance, career prejudice, and moral prejudice respectively. The table below shows the ceilings of compensation as instituted by the 2015 law [44].

However, it should be noted that despite the restriction of the Code on the compensation of some heads of damages as mentioned above, the 2015 law has gone ahead in defiance of these restrictions to institute compensation for third party assistance which is article 261 of the Code. Nonetheless, victims eligible for compensation under the Fund won't be able to get compensation for career damage and moral prejudice.

Understanding the concep of Temporal Disability [45]

This is the period when the motor accident victim of a road traffic accident cannot go about his normal activities. It usually runs from the period when he is hospitalized, that is from the day the accident occurred to the day his health becomes stable. Temporal incapacity is only compensated if the duration fixed by medical experts exceeds eight days and also entails loss of revenue [46].

The assessment of loss suffered is based on the net income earned six months prior to the accident with respect to wage earners. For non-wage earners, the assessment is based on the tax returns of two financial years prior to the accident. For adults who cannot justify income, the assessment is based on the monthly guaranteed minimum wage of the country where the accident occurred [47]. In Cameroon, this has been fixed at 37,910 *FCFA*. According to Section 22 (3) of the 2015 law talking about temporal disability, the ceiling of compensation to be paid in all cases shall be twice the amount of the annual guaranteed minimum wage. We are of the opinion that the compensations granted in this context are ridiculously low.

Permanent Disability

This consists of physiological damage, economic loss and third-party assistance, where applicable. Under the Code, sentimental loss is taken into account under this head, but the 2015 law has excluded it from compensation under the Fund. Physiological damage refers to pains as a result of wounds left after treatment in the normal functioning of the victim's body. This is manifested by the inability to use certain organs and parts of the body in the same way as the victim did before the accident. Economic injury sustained as a result of physiological damage is only compensated if the victim has sustained a permanent invalidity rate of at least 50% [48]. This rate is fixed by medical experts. Conversion tables are used to determine the sums and allowances to be paid. Under this head equally, substantial actual loss for employees shall also be compensated as well as recorded and substantiated loss of income for self-employed persons. However, it goes this section goes further to state that the ceiling of compensation shall be the amount of the annual guaranteed minimum wage.

Third-Party Assistance

However, the 2015 law has also established compensation for non-material damage [49]. Under this head, a victim may be entitled to compensation for pain and suffering as well as disfigurement. This has to be determined by a medical expert report and compensated separately according to the scale below, expressed as a percentage of annual guaranteed minimum wage:

Very light	5
Light	10
Moderate	20
Average	30
Fairly serious	50
Serious	75
Very serious	125
Exceptional	200

This provision of the *FOGAC* law is similar to what is obtained in the Code under sentimental loss.

Finally, Section 26(1) of the *FOGAC* law makes provision for the compensation of economic injury suffered by the rightful claimants through the death of a victim. It states that such compensation shall be based on the Annual Guaranteed Minimum Wage following the conversion tables laid down in the *CIMA* Code.

CONCLUSION

The effective creation of the Cameroon Motor Vehicle Insurance Fund is a major step towards catering for the plight of motor accident victims in Cameroon. Before its coming into existence, victims compensated under the Fund were completely stranded as concerning their compensation. Its absence made matters in such a way that while some victims had the possibility of being compensated, others were left out. It should, however, be noted that, the Fund was fully created in Cameroon only after sixteen years since it was first recommended by the Code. Its creation is something to be highly applauded. Motor accident victims can now rejoice as an almost excellent job has been done to ensure that every eligible victim gets compensated. Further, appropriate timeframe and procedures have been clearly laid down to govern the compensation procedure. Therefore, every eligible victim knows the clear cut procedure to follow and the approximate amount to expect as compensation. They know their duties and responsibilities and equally the consequences of failure to follow such procedure as laid down by the 2015 law. The same goes to for insurers. They understand what they must do if they intend to deny liability.

PD Point Values as % Annual GMW and Age of the Injured

Taux d'IP	moins de 15 ans	de 15 à 19 ans	de 20 à 24 ans	de 25 à 29 ans	de 30 à 39 ans	de 40 à 59 ans	de 60 à 69 ans	70 ans et plus
De 1 à 5	3	3	3	3	3	3	2	2
6 à 10	5	5	5	5	5	5	3	3
11 à 15	6	6	6	6	6	6	4	3
16 à 20	7	7	7	7	7	7	5	4
21 à 30	8	8	8	8	8	8	7	6
31 à 40	10	10	10	10	10	10	9	7
41 à 50	10	10	10	10	10	10	9	7
51 à 70	11	11	11	11	11	11	10	8
71 à 90	12	12	12	12	12	11	10	8
91 à 100	13	13	13	11	11	11	10	8

However, the 2015 law creating the Fund comes with its own weaknesses. Firstly, the Fund needs enough finances to meet up with compensation of motor accident victims eligible under the Fund. Though the sources of funding have clearly been outlined under the 2015 law, there is no guarantee that this funds will come through right to the coffers of the Fund. In a country marred by massive corruption and embezzlement, of which almost every government effort to curb this cankerworm has proven to be futile, it is clearly difficult to see how funds will make their way straight into the coffers of the Fund uninterrupted. This is of a very high significance because lack of finances will handicap the effective functioning of the Fund. This will invariably affect motor accident victims eligible for compensation under the Fund and the very purpose for its creation will be defeated. It is of my our opinion that a special task force be created with and effective training to take charge of collecting funds from the various contributors and depositing it into the coffers of the fund. Equally, proper guidelines regulating the activities of this task force should be laid down in a bid to guarantee accountability and transparency in the funds collection process.

Finally, a lot of responsibilities have been put on the victims to prove some facts before they can be compensated. For example, victims must prove that they were not aware the vehicle was stolen in case they are involved in a motor accident where the vehicle was stolen. Placing the burden of proof constantly on the victim who is many a time economically disadvantaged may not be the best option. This is because adducing evidences may be costly and will bring a certain financial burden on the already poor victim. I am of the opinion that much more responsibility on investigation for proving facts should be placed on the Fund which has the financial advantage.

The Fund no doubt has come at an appropriate time – a time when motor accidents are increasing at a geometric progression and where the number of motor accident litigations are sharply on the rise in Cameroon. The added solution the Fund brings to ameliorate the plight of the motor accident victims in Cameroon is no doubt highly appreciated.

REFERENCES

1. A law based on the no-fault system.
2. These laws include the French Code Civil, the Fatal Accidents Acts of 1864-1846 and the 1989 Ordinance on the compensation of motor accident victims.
3. It took on average about 40 months for a victim of motor accident to be compensated. The system was essentially based on the fault or the civil liability system.
4. This complaint was usually put forth by insurance companies. However, it was quite logical because excess payment of compensation could force some insurance companies out of business.
5. The insurers could raise defenses such as act of God or contributory negligence to avoid paying compensation to motor accident victims.
6. Hereinafter referred to as “the Code”.
7. Hereinafter referred to as “the 2015 law”.
8. Hereinafter referred to as “the Fund”.
9. See Section 2 (1) of Law No. 2015/013 of 16 July 2015 creating and regulating the Motor Vehicle Guarantee Fund.
10. See Section 2 (1) of Law No. 2015/013 of 16 July 2015 creating and regulating the Motor Vehicle Guarantee Fund. In Cameroon, this is the Ministry of Finance.
11. The Fund does not compensate every category of motor accident victim; that is why this term has been used.
12. Before the coming into force of the Code.
13. These duties have been formulated in line with the provision of article 600 (1) of the CIMA Code.
14. Under article 600 of the Code, the word “mobile” was preferably used.
15. Article 601 (2) of the Code lays down a similar restriction.
16. This is according to Chapter II, Section 3 of Law no. 2015/013 of 16 July 2015.
17. This could be the case of a hit and run vehicle.
18. This is provided for by article 617 of the CIMA Code.

19. Section 12.
20. See article 600 (2) of the CIMA Code.
21. See equally article 602 of the CIMA Code.
22. See article 602(2) of the CIMA Code.
23. Like bringing a witness to court.
24. See article 602(3) of the Code.
25. See article 613 of the CIMA Code.
26. Section 8 of Law no. 2015/013 of 16 July 2015.
27. See Article 613 0f the CIMA Code.
28. Section 8 of Law no. 2015/013 of 16 July 2015.
29. Section 10, Ibid.
30. Section 15 (1).
31. Article 605.
32. Section 15 (3).
33. Article 606(5).
34. Section 15(2) of Law no. 2015/013 of 16 July 2015
35. The following factors can cause the invalidity of an insurance contract; such as, for example, failing to disclose a medical treatment that the applicant is personally embarrassed to discuss.
36. Also known as false pretenses.
37. Section 17(1) ibid.
38. Section 18 of Law no. 2015/013 of 16 July 2015.
39. Section 21 (1) of Law no. 2015/013 of 16 July 2015.
40. Section 28 of Law no. 2015/013 of 16 July 2015.
41. Section 29, Ibid.
42. Section 30, ibid.
43. Section 23 (1)
44. Section 22 of the 2015 law. See Assi EHA, Issa SJ, Jacqueline LO. CIMA, Droit des Assurance. *Bruylant Bruxelles.* 2002; 400-405pp.
45. See generally Tumnde SM. Motor Vehicle Insurance Law in Cameroon. *Limbe Design House*. 2003; 207p. See equally Section 22 (1) of the 2015 law.
46. See generally Tumnde MS. Insurance Law in Cameroon. *Presses Universitaires d'Afrique*. 2012; 217p.
47. Article 259 of the CIMA Code and Section 22 (2) of the 2015 law.
48. Section 23 (1) (a) of the 2015 law.
49. Section 24.

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