
ENVIRONMENTAL CRIMES AND CRIMINAL ENFORCEMENT

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1 INTRODUCTION

Environmental Management in Western countries, and particularly in those of Europe from which developing countries inherited their legal culture, is generally governed by both public and private law. Public law regulations include both constitutional and administrative laws. Both public and private law generally includes elements of both criminal and civil law.

Because criminal law is much better elaborated, some specialists tend to claim that offenses related to environmental management are punished by criminal law only. On the contrary, criminal, civil and administrative laws are concurrently implemented in several countries, in terms of the civil liabilities of individuals and moral bodies having violated the norms of environmental management.

In fact, the concept of Environmental conservation dates back to the years 1920-1940, when the first treaties in this domain were concluded at both bilateral and multilateral levels. The concept has been enriched with the sustainable development aspect introduced after the summits of Stockholm and Rio in 1972 and 1992 respectively.

Before these meetings, Western countries, along with those of the developing world, had signed a number of treaties relating to the environment. These translated into national laws and regulations to determine environmental management rules and regulations, as well as sanctions provided in the case of violations, rules of implementation of these sanctions and identification of administrative and legal officials, and other security services involved.

2 CONVERGENT MODELS

Most countries of the Southern Hemisphere generally and sub-Saharan Africa in particular have had to adopt a range of national sanctions applicable to environmental management, depending on the cultures, traditions and history of each country. These laws reflect the weight of the inheritance from Europe for these countries, which depending on the case, would be French, British or Spanish dominated.

Each of these countries in this Southern region of the world, claims to strive to get closer to the growing body of laws and institutions that provide for constitutional guarantees, legal status, public freedom, and independence of the judge. We could in this respect talk of convergent models. Yet this similarity should not shade the large diversity of situations created by the gap between legal instruments and actual practice. Actual practice depends on political forces and the stakes of social groups, as well as on the local situations created by the ideological, political, economical and social perspectives.

The executive power which is predominant, has some influence in the process of elaboration of instruments that define the various offenses, their classification, as well as applicable sanctions. The restricted nature of the role played by parliamentary process that was given to these countries leads to poor initiatives and provides for adoption of weak instruments.

These developing countries, Colombia excepted, have adopted a dual jurisdiction system, a model that combines dualistic law and jurisdiction under the executive through administrative law and through parliament.

Most sub-Saharan African French-speaking countries (i.e., Morocco, Mauritania, Niger, Gabon, Togo, Cameroon, Mali, Senegal, The Central Africa Republic, Etc.) have progressively elaborated some administrative law, implemented by a common law judge.

3 **VARIED REALITIES**

The relative power of different organizations and the elaboration of instruments in most developing countries distort these adopted models and result in a heterogeneous situation that reflects the political situation in which these countries find themselves.

Many countries are under emergency regimes, characterized by suspensions of fundamental laws, which in turn are replaced by a state of emergency legislation, by ruling orders and government Decrees (e.g. Burundi, Guinea). Others find themselves under social constitutional regimes (Morocco).

Also, there is a diversity of party systems (Senegal, Togo, and Cameroon), where the observance of regulations varies according to the country. The major diversity lies in the process of elaboration of instrument, notably in the more or less rapid handling of the process, depending on the existence or lack of political will.

As concerns administrative litigation and jurisdictional organization, as well as the settlement of common law offenses, for various reasons it is difficult to carry out any judgement on the systems that are actually in force in the different countries.

Even if the instruments are easily perceived in the field, the reality and impact is not often known or felt by the local citizens themselves.

Some interesting indicators would help us appreciate the current system including:

- The number of courts within the territory.
- The number of jurisdictional decisions taken every year.¹

On the whole, the efficiency and effectiveness of the elaboration and implementation process of the rules and regulations relating to environmental management, and particularly to the sanctioning of their violations depends on the level of the socio-economic and cultural development of the country under consideration

The intent of this paper consists in striving to present the case of Cameroon in this context.

4 **THE CASE OF CAMEROON**

Offenses, sanctions and procedural regulations related to implementation of environmental management requirements in Cameroon result from the following processes.

4.1 **International Conventions**

Cameroon is a party to over thirty conventions on the Environment. It has, like other countries of the globe and of the developing world, translated these into national laws and regulations.

4.2 Framework law

Among these instruments is the fundamental law which deal with the necessity to protect the environment and which provides for the management of national resources within the framework of the 1996 law.

The framework law relating to environmental management, the 1996 law on forestry, wildlife and fishery resources, and related implementation instruments provide for important regulations as regards responsibilities, offenses and their observations. Engineers and forestry technicians who concurrently play the role of police officers with specific competence are responsible for acknowledging the offenses together with the ordinary police officers and for putting such cases before:

- The administrative officials and sworn officers of the administration in charge of forestry, wildlife and fisheries with the view to arrive at administrative sanctions.
- The competent legal authority (Administrative) or criminal judge as the case may be.

4.3 Law suits

It occurs in practice when the offenses are established and presented before the judge, three types of lawsuits may be envisaged, namely:

- a. Simple lawsuits whereby the acknowledged offense are sanctioned by the judge in compliance with the laws and regulations on environmental management and in full observance of all criminal civil or administrative procedures.
- b. Complex lawsuit procedures whereby the citizen accused by the forestry and wildlife administration proceeds to question the laws and regulations relating to the Environment and all other legal procedures; to sue the administration's official or clerk to the court on the grounds of the deeds for which he is being accused. This could result in consequences such that a judge with no mastery of the above mentioned laws and regulations and consequently non-vigilant to this effect could settle the litigation in favor of the offender. Hence the need for the judge to be enlightened by state officials on the legitimacy implement the laws in force so that the offender be appropriately sanctioned..
- c. As concerns International cooperation, the punishment of environmental protection-related offenses is subjected to the implementation of agreements signed in this respect.

All the situations portrayed in 1 and 2 above stem from the judges' insufficient acquaintance with environmental law which is still new in Cameroon as well as in the rest of the developing world, and henceforth calls for training in this domain. Indeed, there exist at least one lawsuit on environmental issues in the 40 Divisional jurisdictions, 10 Courts of Appealed the Supreme Court throughout the country.

It is in this light that within the framework of the CITES convention for example, the laws and regulations of the country of origin are enforced when the products seized at the moment of exportation are still within the territory of the said exporting country. On the

contrary, when the latter products are already within the territory of the importing country then the laws and regulation of the said country are enforced. In both cases the prescribed CITES quota must be respected.

As regards INTERPOL agreements, Member countries set to implement legal provisions agreed upon within the framework of conventions signed with the view to enhance cooperation on security matters and the existing and compatible laws and regulations in this domain. It is in compliance with this that our Forestry and security officials are usually on duty in all airports.

5 PROGRESS MADE - ELEMENTS OF ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT IN CAMEROON

Legal and constitutional aspects relating to the environment in Cameroon have been the subjects of a study carried out within the framework of the National Environmental Management Plan. The study culminated in a report entitled "Analysis of Conflicts and of the Legal and Institutional Framework Relating to the Environment in Cameroon" - Ministry of Environment and Forestry, October 1995. 190 existing rules and regulations were identified and the report emphasized problems relating to the drawing up of new legal instruments appropriate for better environmental management in Cameroon. It contained a recommendation to undertake a codification exercise to lead to the drawing up of a Global or Framework law on the Environment that contained:

- Umbrella provisions relating to each sector of environmental protection.
- Definitions of major concepts such as "sustainable development" or "sustainable use".
- Fundamental principles like "the right of every citizen benefit from the environment and his duty to protect it"
- Nature and biodiversity conservation.
- Laws on nuisances, i.e., a set of provisions spread out within sectoral regulations which all alone, constitute the substance of a distinct code dealing with noise, pollution, wastes, etc. and which correlate to regulations relating to Town Planning, Industrial production, mines and quarries, and water.

This step has led to the passing and promulgation of a Law to lay down a Framework Law on Environmental Management (Law #96/12 of August 5, 1996).

5.1 Sectoral level

At the sectoral level, the task consists of carrying out an exhaustive inventory of all the legal and regulatory instruments (Decrees, Orders and even circular letters) and organizing them in a way that will constitute an obvious indicator to all users of the complementary nature between the provisions there in and the norms hierarchy.

This exercise will be a long-term duty owing to the fact that it must cover all the sectors and will require both time and resources. Yet it remains an indispensable and beneficial task. Through this, the administration will achieve complete legal corpuses that will be easy to handle. Most of all, it will constitute a roundup of all applicable instruments, the knowledge of which shall thus be considerable improved and their enforcement made much easier.

5.2 Environmental Code

The Government of Cameroon has launched a project entitled "Drawing up of the Environmental Code of Cameroon". It falls within the context of the International and National legal record peculiar to participatory conservation of natural resources and within the framework of a government program for the Revision and Codification of the Legal and Regulatory Instruments.

For forty years, the Cameroon Administration has edited a number of legal instruments of legislative and regulatory nature relating to various domains. Other instruments have been added to existing old provisions dating back to the colonial period but still in force. Due to the multiple changes having occurred within the socio-political environment of the country, many of these instruments are inappropriate and non-applicable. This is due to, among other things:

- lack of texts of application;
- modifications and partial or total repeals of the initial norms;
- lack of appropriate codification.

As a result, environment-related international conventions ratified by Cameroon remain unintegrated.

The domestic object consists of carrying out an inventory and an analysis of all the instruments gathered so far, so as to distinguish those instruments to be codified immediately after modification, and new instruments to be elaborated before codification (100 without draft rules and regulations).

Following its submission to Donors of Cameroon, which include UNEP, UNDP and The Netherlands, this project led to the drawing up of an Inter-Ministerial Report on the enforcement of priority conventions and concrete activities relating to their implementation. (This was in compliance with the questions and answers on Page 3 of INECE's Country Progress Report and Self-Assessment for Environmental Compliance and Enforcement Programs -"Status of creating enforceable requirements.")

5.3 The courts

Disputes resulting from the implementation of the set of instruments described above are settled by courts that face a number of difficulties. In 1991, the Government, in this context, committed itself to thoroughly assessing its legal system and methods of management of legal information. This was done within the framework of a large governmental program known as "The Legal and Regulatory Instruments Revision and Codification Program."

Difficulties include areas governed by either promulgated framework laws that are still to be enforced because texts of application have not yet been elaborated and published, or laws implemented by virtue of Decrees orders, decisions, circular letter and other such attendant measures.

It is within these different contexts that law suits exist - complex or not - in the course of which the various stakeholder (Magistrates, lawyers, state attorneys and legal officer of the Ministry of the Environment and Forestry) deal with controversies based on the level of enforcement of instruments. Additionally they deal with controversies that relate to the setting up of institutions where international conventions are involved.

5.4 Institutional developments

On the institutional level, Decree 96/224 October 1, 1996 (which organized the Ministry of Environment and Forestry) upgraded the Department of Environment within the Ministry of Environment and Forest to the level of a Permanent Secretariat of Environment. The Secretariat is to serve the Inter-Ministerial Commission on Environment and Sustainable Development. Although an organizational plan has been developed for the Permanent Secretariat, no staff have actually been assigned to the new posts.

Other anticipated institutional changes include: the creation of certain committees for the ICCED; designation of environmental focal points in each line ministry; and strengthening of provincial environmental authorities. Draft legislative texts have been prepared for implementation of Decree 9/244/PM which establishes the ICCESC, but those texts have not yet been formally enacted.

In August 1998, the Ministry of Public Investments and UNDP signed the convention of phase II of the PNGE. This contains a legal element directed at implementation of the framework law inter alia through the formulation of sector legislation, development of an environmental code, and strengthening of Cameroon's capacity in environmental law.