

# Environmental Sustainability in Cameroon: Implications for Human Rights

Edumbong Smith Naseri<sup>1</sup>  
naserismith@gmail.com

**Abstract:** Cameroon has a plethora of laws that seek to protect the environment. These laws are seen as an attempt by the country to enhance its attempts towards achieving sustainable development. This paper critically examines the legal protection of the right to a healthy environment on Cameroon, through an elaboration of the various laws that seek to ensure both substantive and procedural rights in the country. This paper begins by establishing a connection between human rights and the environment, as well the rights and obligations entailed in environmental rights. Human rights standards are chosen based on the UNDP human rights principles. The paper further examines and provides an understanding of the definition and idea of the right a healthy environment. The paper also critically examines the various laws that protect the right and finally provides a critique of the protection of the right to a healthy environment in Cameroon through the various substantive and procedural rights entailed by the laws.

## A. Introduction

Traditionally, environmental rights have been viewed as the so-called third generation or solidarity rights after civil and political rights (first generation) and socio-economic rights (second generation).<sup>2</sup> The right to a healthy environment, specifically, is typically formulated as a collective right.<sup>3</sup> However, not all human rights practitioners accept such a classification of rights, as they feel it detracts from the realization of civil, political and socio-economic rights as a matter of priority, as well as waters down the notion of human rights.<sup>4</sup>

## B. Connecting human rights and the environment

The interrelationship between human rights and the environment has manifested in various forms, based on which approach to environmental sustainability a person chooses. Firstly, there is an approach which is primarily interested in utilizing or emphasizing relevant human rights guarantees in drafting international environmental instruments.<sup>5</sup> Secondly, the anthropocentric approach to environmental rights favours the 'greening' of existing human rights, which directs environmental protection and conservation efforts toward protecting human life, property, privacy and health.<sup>6</sup> For example, civil and political rights such as the rights of access to information and access to a remedy empower aggrieved individuals to seek redress for environmental damage that causes harm to their person or property and also affords them the opportunity to influence decision-making in environmental matters.<sup>7</sup>

The third approach aims to incorporate the environmental agenda fully into human rights by formulating a new human right to an environment that is not defined in purely anthropocentric terms, an environment that is not only safe for humans, but one that is ecologically-balanced and sustainable in the long term.<sup>8</sup>

<sup>1</sup> Edumbong Smith Naseri is a Ph.D fellow in law and a graduate teaching assistant at the Faculty of Laws and Political Sciences, University of Buea PO Box 63, Buea, Cameroon. Email: [naserismith@gmail.com](mailto:naserismith@gmail.com).

<sup>2</sup> Ben Boer and Alan Boyle, 'Human rights and the environment – Background Paper for the 13<sup>th</sup> Informal ASEM Seminar on Human Rights' (21–23 October 2013) Sydney Law School Research Paper No. 14/14; see also, Philip Alston 'Conjuring up new human rights: a proposal for quality control' (1984) 78 *American Journal of International Law* 607.

<sup>3</sup> United Nations, 'Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John Knox' (2012) A/HRC/22/43. para 12.

<sup>4</sup> Boer and Boyle. *op.cit.* pg. 14

<sup>5</sup> Tim Hayward (2005), *Constitutional Environmental Rights*, Oxford: Oxford University Press.

<sup>6</sup> Michael Andersen (1996), 'Human Rights Approaches to Environmental Protection' in Alan E. Boyle and Michael R. Andersen (eds), *Human Rights Approaches to Environmental Protection* 15 (Clarendon Press)

<sup>7</sup> Boer and Boyle. *op.cit.* pp. 11- 13.

<sup>8</sup> Hancock, Jan (2003), *Environmental Human Rights: Power, Ethics and Law*, London: Ashgate.

This paper does not attempt an argument of which stance is better in the integration argument. However, it is our view that, human rights owe a duty towards enhancing the protection of the environment as was the view of Ken Saro-Wiwa when he postulated that, “The Environment is Man’s First Right”<sup>9</sup>

## B. UNDP Human Rights Principles

The human rights-based approach to development has been the go-to strategy for the practical application of development from a human rights perspective. Julia Hausermann defines the human rights approach to development as one that ‘puts people first and promotes human-centred development, recognises and promotes equality between women and men, promotes equal opportunity and choices for all..., promotes national and international systems based on economic equity, equity in the access to public resources, and social justices and promotes mutual respect between people’<sup>10</sup>

The African Commission in the *Endorois* case, held that; “... the right to development requires fulfilling five main criteria: it must be equitable, non-discriminatory, participatory, accountable, and transparent, with equity and choice as important, over-arching themes in the right to development.”<sup>11</sup>

In this light, the UNDP has developed its three key areas of intervention, which helps in human rights mainstreaming within development programming at all levels.<sup>12</sup> These include;

- (i) Supporting the strengthening of national human rights systems;
- (ii) Promoting the application of a human rights-based approach to development programming;
- (iii) Greater engagement with the international human rights machinery

These areas of intervention make sure that the national development programmes of each nation are in compliance to international human rights standards.

The UNDP being the main development agency of the United Nations, has adopted a set of principles which it considers as the ‘fundamental recurring principles’ in the various international human rights instruments, especially in the International Bill of Rights. These four sets of principles will be analysed separately to demonstrate their relevance within the development agenda. These also demonstrate the human rights-based approach to development theory which the UNDP applies and encourages in the adoption of development policies and implementation processes.

Universality and indivisibility; Article 5 of the Vienna Declaration 1993 states that, “All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”

Universality of rights basically provides that every person, woman, man or child these rights bestowed on them by virtue of their humanity. These rights are equal across the board all over the world and must not apply to particular groups, in exclusion of others. Indivisibility presupposes that each right basically depends on the other. The implementation of a particular right depends on the implementation of another rights. This avoids picking and chooses which rights to implement over the other.

Donnelly notes that, “Indivisibility” suggests that a life of dignity is not possible without something close to the full range of internationally recognized human rights.<sup>13</sup> As such, civil, political, economic, social and cultural rights must be implemented concurrently.

Equality and non-discrimination; Article 2 of the Universal Declaration of Human Rights (UDHR) states that every human being is entitled to all rights and freedoms “without distinction of any kind, such as

<sup>9</sup> Ken Saro-Wiwa, (1995) *Stand by Me and the Ogoni People*, 10 Earth Island Journal 35, No. 3.

<sup>10</sup> Julia Hausermann (1998) *A Human Rights Approach to Development*. London: Rights and Humanity. pg.32.

<sup>11</sup> African Commission on Human and Peoples’ Rights. Communication No. 276/2003. *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of the Endorois Welfare Council v. The Republic of Kenya* Available at <http://caselaw.ihrrda.org/doc/276.03/view/>. para. 277

<sup>12</sup> UNDP (2005) Human Rights in UNDP: Practice Note. Available at [https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/human\\_rights/hrinundpg.html](https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/human_rights/hrinundpg.html). Accessed on February 14, 2021

<sup>13</sup> Jack Donnelly (2013) *Universal Human Rights in Theory and Practice*. 3<sup>rd</sup> Edition. London: Cornell University Press. pg.31

race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>14</sup> also provides for the prohibition of discriminatory practices. Non-discrimination is also provided for in the ICCPR and ICESCR.

Equality is an important concept in the fulfilment of international human rights instruments. Equality suggests equal access to resources, participation and enjoyment of the benefits such a participation. The aspects of equality and non-discrimination are especially important in aspects of human development. Participation and Inclusion; Substantive equality includes strengthening agency, voice, and participation of women and other disadvantaged groups in the development process.<sup>15</sup> The preamble of the DRD provides the definition of development as "a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and the fair distribution of benefits resulting therefrom."

Article 2 of the Declaration further insists on the human person being the central subject of development and as such, 'should be the active participant and beneficiary of the right to development.' Stiefel and Wolfe describe participation as an 'organized efforts to increase control over resources and regulative institutions in given social situations on the part of groups and movements hitherto excluded from such control.'<sup>16</sup> The right to participation, which also reflects inclusivity, ensures that every individual is included in the design, planning and implementation process of development activities. This is important because, it enables the persons involved, to have a voice in actions and activities that affect them.

Accountability and the rule of law; In a report titled, *The rule of law and transitional justice in conflict and post-conflict societies*, the UN Secretary General refers to the rule of law as, "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."<sup>17</sup>

This definition of the rule of law is an expanded and more comprehensive view from that which was offered by Professor V.A Dicey in his *Law of the Constitution*. Dicey offered three principles which constitute the rule of law. That which directly relates to this work provides that, 'every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals.'<sup>18</sup>

From the above definitions, rule of law is an aspect of equality and therefore ensures access to justice, due process, and ensuring a path towards obtaining remedy for the violation of rights and freedoms through strengthening the voices of the marginalised, poor and underprivileged.

Accountability forms a part of the rule of law as seen in the definition provided by the UN SG. Holding people accountable and providing an avenue for citizens to seek justice for violation of their rights is an integral part of accountability. The state is recognised as the primary duty-bearer to respect, protect and fulfil human rights. As such, each state has to be accountable to the citizens to whom they owe the duty.

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<sup>14</sup> Articles 11(e) and 14.

<sup>15</sup> U.N Women (2015) *Progress of the World's Women 2015-2016: Transforming Economies, Realizing Rights*. *Ibid*

<sup>16</sup> Matthias Stiefel and Marshall Wolfe. (1994) *A Voice for the Excluded: Popular Participation in Development: Utopia or Necessity?* London and Geneva: Zed Books and United Nations Research Institute for International Development.

<sup>17</sup> UN Secretary-General, *The rule of law and transitional justice in conflict and post-conflict societies*, Report to the Security Council, 23 August 2004, UN Doc. S/2004/616, par. 6, pg. 4.

<sup>18</sup> Dicey A. V. (1889) *Introduction to the study of the Law of the Constitution*, (3<sup>rd</sup> Edition). London: Macmillan and Co. pg.181

### C. Obligations entailed in environmental rights

According to Knox and Ramin Pejan,<sup>19</sup> there are three categories of obligations associated with the right to a healthy environment. Procedural obligations, substantive obligations, and obligations towards the particularly vulnerable of environmental harm.<sup>20</sup>

In 1972, Principle 1 of the Stockholm Declaration emphasised the right of man “to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being”.<sup>21</sup> Environmental rights have been defined as the rights of the individual to environmental protection as “proclamation of a human right to environmental conditions of a specified quality”.<sup>22</sup>

As described by Marcos Orellana, “...substantive obligations sustain an environmental quality conducive to a life of dignity. This substantive dimension of the right to a healthy environment links directly with the conditions that enable a healthy planet...”<sup>23</sup> The Brundtland Report further asserts that “The law alone cannot enforce the common interest. It principally needs community knowledge and support, which entails greater public participation in the decisions that affect the environment.”<sup>24</sup>

After Vienna more attention emerged for the discussion on the formulation of a human right to a healthy living environment. A right to a healthy living environment had been formulated in several human rights treaties. The most explicit among them was the 1981 African Charter on Human and Peoples’ Rights which referred to a “general satisfactory environment favourable to their development.”<sup>25</sup> As in the case of the right to development, questions arise as to who are the beneficiaries and who the protectors of the right to a healthy environment and what are the parameters of this right.<sup>26</sup>

Procedural rights deal with the process through which a decision (administrative or judicial) is taken and typically encompass public consultation, information provision and access to the courts.<sup>27</sup> The core issues involved are procedural fairness, allowing people to be part of the process, and community empowerment, enabling people to take an active role in decisions affecting their lives.

Environmental procedural rights refer to the right of access to information, the right to public participation, and access to justice (participatory rights).<sup>28</sup> It is important to note that these rights provide for practical ways to promote environmental protection and to achieve sustainable development.<sup>29</sup> In so doing, environmental procedural rights establish the linkage between practical rights, such as those relating to information and participation in decision making, and the harder to grasp complex substantive rights included in the right to a healthy environment.<sup>30</sup> Environmental procedural rights are generally viewed as a mechanism for ensuring the protection of fundamental rights to a clean environment.<sup>31</sup>

Razzaque asserts that “participatory rights create a sense of ‘ownership’ in the decision itself. Involving people at the early stage of decision-making processes creates greater trust in the process... Accountability of public bodies and participation of all stakeholders remain a crucial but underdeveloped

<sup>19</sup> Knox J. H. and Pejan R. (2018) *The Human Right to a Healthy Environment*. Cambridge: Cambridge University Press.

<sup>20</sup> *Ibid.* pg.18

<sup>21</sup> Declaration of the United Nations on the Human Environment, 16 June 1972, A/Conf 48/14/Rev 1, 3.

<sup>22</sup> Dinah Shelton, (2010) ‘Developing Substantive Environmental Rights’ 1 J of Human Rights and the Env 89.

<sup>23</sup> Cited in Knox and Pejan, *Ibid.* pg.290

<sup>24</sup> Brundtland Commission (1987) *Our Common Future*: Oxford University Press. pg.

<sup>25</sup> Article 24, African Charter on Human and Peoples’ Rights. See also Article 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights

<sup>26</sup> Sumudu A. Atapattu (2006) *Emerging Principles of International Environmental Law*. Ardsley, NY: Transnational Publishers, pp. 9-21.

<sup>27</sup> Jonas Ebbesson, (1997), ‘The Notion of Public Participation in International Environmental Law’, *YBIEL* 8, 51–97. pg.5

<sup>28</sup> Maria Lee and Carolyn Abbot, (2003) ‘The Usual Suspects? Public Participation Under the Aarhus Convention’ 66 *Modern Law Review* 80.

<sup>29</sup> Mwebaza R (2004), ‘Enhancing Environmental Procedural Rights in Uganda’, in Marianela Cedeño Bonilla, Françoise Burhenne-Guilmin (eds), *Environmental Law in Developing Countries: Selected Issues*, pg.4

<sup>30</sup> Stephen Stec and Susan Casey-Lefkowitz (2000), ‘The Aarhus Convention: An Implementation Guide’, Prepared for the United Nations Economic Commission for Europe, United Nations: New York and Geneva, at 29,

<sup>31</sup> Eckhard Reh binder (2003) “Democracy, Access to Justice and Environment at the international level.” *Michel Prieur, Vers un nouveau droit de l’environnement* Université de Limoges, pg. 134.



component of resource rights, for example the right to food and water.”<sup>32</sup> This decreases the chances for conflicts on processes and outcomes as individuals participate fully in the process.<sup>33</sup> This is akin to the right to development which we have discussed earlier and the concept of development which seeks to involve the individual or community into the development process.

Whereas procedural environmental rights thus concentrate on the limited canon of rights to information, to access to justice and to participation, substantive environmental rights may encompass the realisation of further individual rights and obligations, such as the right to health, clean and fresh drinking water, sanitation, and even to environmental conditions of a particular quality.

#### **D. Idea and definition of the right to a healthy environment**

The idea of a human right to a healthy environment has been heavily theorized before its acceptance both at international law, and at the national level.

In the field of human rights, Stammers<sup>34</sup> identifies environmental human rights, along with women’s rights, as one of the areas in which there is debate about how the International Bill of Rights should be extended, while Langlois<sup>35</sup> speculates on the possibility of there being a ‘human right to an adequate environment’. While in green theory Robyn Eckersley<sup>36</sup> notes the attractiveness of the rights framework whereby rights supersede lesser considerations, and thus the possibility that environmental rights could guarantee ecological outcomes.

The definition of a healthy environment is a problem in international environmental law and indeed international human rights law. There already exists a problem of definition of concerning the meaning of environment. The role of defining a healthy environment has been largely left to the interpretative role of human rights institutions. This flexibility of human rights is especially pertinent in the environmental context, with Shelton noting that, “the variability of implementation demands imposed by the right to environment in response to different threats over time and place does not undermine the concept of the right, but merely takes into consideration its dynamic character”. All human rights require flexibility in how they can be deployed, and a human right to a healthy environment is no different in this regard. As such, “indeterminacy is thus a problem, but not necessarily an insurmountable one.”<sup>37</sup>

#### **E. Legal and policy framework for the protection of the right to a healthy environment in Cameroon**

The Constitution of the Republic of Cameroon asserts in its Preamble that, “every person shall have a right to a healthy environment. The protection of the environment shall be the duty of every citizen. The State shall ensure the protection and improvement of the environment.” The Preamble further provides for other incidental rights such as, the right to work, the right to life, physical and moral integrity, the right to development, and the right to property, which are rights that have an environmental dimension and therefore qualify as part of substantive environmental rights in Cameroon.

The Ministry of Justice in elaborating on the right to a healthy environment in Cameroon notes that; “A healthy environment is an environment that is protected against all forms of damages (loss of biodiversity, various forms of pollution, etc) and that respects health standards. The right to a healthy environment involves

<sup>32</sup> Jona Razzaque (2013) “Information, public participation and access to justice in environmental matters.” In Shawkat Alam *et al.* *Routledge Handbook of International Environmental Law*. Routledge. pg.138.

<sup>33</sup> Patricia Birnie, Alan Boyle, and Catherine Redgwell (2009), *International Law and the Environment*, 3rd edition, Oxford: Oxford University Press, pg. 288.

<sup>34</sup> Neil Stammers (1999), ‘Social movements and the social construction of human rights’, *Human Rights Quarterly*, 21 (4), 980–1008.

<sup>35</sup> Anthony Langlois J. (2001), *The Politics of Justice and Human Rights: Southeast Asia and Universalist Theory*, Cambridge: Cambridge University Press.

<sup>36</sup> Robyn Eckersley (1996), ‘Greening liberal democracy: the rights discourse revisited’, in B. Doherty and M. de Geus (eds), *Democracy and Green Political Thought: Sustainability, Rights and Citizenship*, London: Routledge, pp. 212–36.

<sup>37</sup> Alan Boyle, ‘The Role of International Human Rights Law in the Protection of the Environment’ *op.cit.* pg.51

the protection of fauna, flora, architectural heritage as well as health against the adverse effects of climate change, land degradation and all forms of pollution.”<sup>38</sup>

### **i. Substantive rights**

The 1990s witnessed a new dimension to environmental protection, with the international community calling on all nations to adopt policies geared toward environmental protection, in order to fight environmental challenges like climate change which is fast becoming a threat to the global environment. In response to this, and with the desire of Cameroon to contribute its fair share to the protection of the environment for the global good, Cameroon in August 1996 adopted the first main legislation in Cameroon based mainly on environmental protection. That is, Law No 96/12<sup>39</sup> of 05 August 1996. This important piece of legislation on environmental management, is Cameroon’s main environmental document establishing Cameroon’s environmental policy and provides for an elaboration of the right to a healthy environment, provided for in the Constitution.<sup>40</sup> It seeks to guarantee the rights of everyone to a sound and safe environment and to ensure a harmonious balance within ecosystems and between urban and rural zones.<sup>41</sup> It guarantees the right of everyone to a sound environment and recognises the need for environmental laws and regulations to ‘ensure a harmonious balance within ecosystems’. To ensure sustainability, the law envisages inter alia the preservation and management of endangered plant and animal species.<sup>42</sup>

In furtherance of the protection of the environmental right, the law prohibits pollution of any kind, to the extent that it does not adversely affect the environment. The law obliges the state to establish quality norms for air, water and soil, as well as any other norms that could be necessary to safeguard human health and the environment.<sup>43</sup>

Further, the 1994 Forest and Wildlife Law<sup>44</sup> and its implementation Decrees<sup>45</sup> amongst other things seeks to lay a framework for an integrated and sustainable use of forest, wildlife and fisheries resources. This law is the main forestry law in Cameroon; it was drafted to ensure the sustainable management of forest resources. The 1994 law seeks to advance sustainable forest practices in the Cameroonian forestry sector, to achieve sustainable development. One of the greatest steps toward achieving such a goal is to ensure that indigenous communities who depend on the forest for their livelihood, have access to forest resources and participate fully in the management and decision making as far as the forest is concerned. This will help eliminate poverty at the grass roots and as such foster sustainable practices in the forestry sector. It will therefore be important to assess how the 1994 law seeks to protect indigenous peoples’ right to management and access to forest resources.

The 1998 law governing water resources<sup>46</sup> enjoins all sound physical or moral, owner of facilities likely to cause pollution water flow, to take all necessary measures to limit or eliminate sea effects.<sup>47</sup> The prohibition and repression of any discharge into the waters of waste toxic substances are reaffirmed by the law regulating forests, fauna and fishing<sup>48</sup> In line with the fight against water pollution, the Penal Code Cameroonian punishes with imprisonment from fifteen days to six months and a fine from XAF 5,000 to 1,000,000 whoever, by their activity pollutes drinking water likely to be used by others.<sup>49</sup> The penalties are

<sup>38</sup> Republic of Cameroon (2015) National Plan of Action for the Promotion and Protection of Human Rights in Cameroon (2015-2019). Yaoundé: Ministry of Justice (MINJUSTICE). pg.87

<sup>39</sup> Law No 96/12 of 05 August 1996 on environmental management in Cameroon

<sup>40</sup> Edumbong S.N Connecting human rights and environmental sustainability in Africa: A Cameroonian Perspective. Unpublished PhD thesis, University of Buea 2021.

<sup>41</sup> Section 5 of Law No 96/12.

<sup>42</sup> Sections 62 to 64 of Law No 96/12.

<sup>43</sup> Article 10(1) (i) of Law No 96/12.

<sup>44</sup> Law No 94/01 of 1994, laying down Forests, Wildlife and Fisheries Regulations.

<sup>45</sup> Decree No 95/531/PM of 1995, setting the Modalities for the Implementation of Forest Regulations; Decree No 95/466/PM of 1995 setting the Modalities for the Implementation of Wildlife Regulations.

<sup>46</sup> Law No. 98/005 of 14 April 1998 to Lay Down Regulations Governing Water Resources

<sup>47</sup> Article 5 and 6 of Law No. 98/005

<sup>48</sup> Article 161(2) of Law No. 94/01

<sup>49</sup> Article 261 (a) of Law No. 2016/007

aggravated by the law on water regime against anyone who pollutes and alters the quality of water. In this case, the penalty of imprisonment is five to fifteen years and a fine of 10,000,000 to 20,000,000 CFA francs.<sup>50</sup> The Penal Code provides for punishment against the pollution of the atmosphere, “as to render to harmful to human health.”<sup>51</sup> In line with the prohibition of pollution of water and atmosphere, there is also punishment for violations relating to the soil and subsoil. This is governed by the law on environmental management,<sup>52</sup> the Mining Code,<sup>53</sup> and the law on the use of fertilizers in Cameroon.<sup>54</sup>

At the close of the 1992 Rio Summit, Cameroon initiated its main environmental policy framework, the National Environmental Management Plan.<sup>55</sup> This policy incorporates goals, strategies, priorities, and objectives on biodiversity conservation, the sustainable use of its components, public participation, benefits sharing and sustainable development. National Environmental Management Plan (NEMP)<sup>56</sup> serves as Cameroon’s environmental policy. This policy is given full effect by Law No 96/12 of 5 August 1996 on Environmental Management.<sup>57</sup> Law No 96/12 established the Inter-ministerial Committee on the Environment and a National Consultative Commission on the Environment and Sustainable Development to assist the state in the formulation, coordination and implementation and monitoring of environmental policies.<sup>58</sup> The NEMP is a participative approach in the natural resource management that considers the ecological realities of different regions of Cameroon. It defines policies, objectives, and strategies for a more sustainable development in general and an ecologically sustainable industrial development in particular.

## ii. Procedural rights

Beyond these substantive environmental rights which are protected by laws, as detailed above, there are other procedural environmental rights which are relevant, to ensure that communities and in fact, all citizens can actively participate in the protection of the environment. These such procedural rights include; right to access to information, access to public participation and access to justice. These rights are essential for the achievement of sustainable development, which this present paper concludes to be the integration between environmental protection and human rights standards, norms and practices.

Legal instruments such as the Constitution<sup>59</sup>, law on modern biotechnology<sup>60</sup> and the law on environmental management,<sup>61</sup> have provisions allowing for the right to access to environmental information. However, as Ashukem notes, the Preamble of the Constitution provides for freedom of expression, which he opines, “the right to freedom of expression is supportive of the right to access to information, because information is necessary for the expression of an opinion.”<sup>62</sup> As we have noted above, Cameroon is signatory to several international treaties that ensure the right to access to information and by virtue of Section 45 of the

<sup>50</sup> Article 16 of Law No. 98/005

<sup>51</sup> Article 261 (b) Penal Code provides that, “Whoever by his operations: (b) so pollutes the atmosphere as to render it harmful to human health, shall be punished with imprisonment for from 15 (fifteen) days to 6 (six) months, or with fine of from XAF 5000 (five thousand) to XAF 1,000000 (one million), or with both such imprisonment and fine.”

<sup>52</sup> See, Articles 36, 53, 82 and 79 of Law No. 96/12

<sup>53</sup> Articles 87 and 107 of Law No. 2016/017 of 14 December 2016 on the Mining Code

<sup>54</sup> Articles 6, 7 and 9 of Law No. 2003/007 of 21 April 2003 to regulate activities of the fertilizer subsector in Cameroon.

<sup>55</sup> This Plan (NEMP) was completed in 1996. The government recognises the NEMP as its official sustainable development strategy.

<sup>56</sup> Tenets of a NEMP:

- The rational management of space, ecosystems, and resources;
- The valorisation of primary products through industrial development and the improvement of infrastructure;
- The creation of favourable conditions for human capacity development;
- The improvement of living standards in urban areas.

<sup>57</sup> See Articles 10 and 13 of the Law No 96/12.

<sup>58</sup> Article 10(2) of Law No 96/12.

<sup>59</sup> Law No. 96/06 of 18 January 1996 to amend the Constitution of 2 June 1972

<sup>60</sup> Law No 2003/006 of 21st April 2003 to lay down safety regulations governing modern biotechnology in Cameroon.

<sup>61</sup> Law No. 96/12 of August 5, 1996, Relating to Environmental Management.

<sup>62</sup> Jean-Claude Ashukem (2017) Access to Environmental Information in the Context of Development Activities in the Legal Framework of Cameroon. *Verfassung und Recht in Übersee* VRÜ 50: 435-450, pg.442

Constitution, these treaties can be used to enforce this right at the domestic level. Further, the Constitution calls for the protection of the tenets imbibed in the UDHR which call for access to information.<sup>63</sup>

Article 9 of the law on environmental management provides that; “each citizen shall have access to information on the environment, including information on dangerous substances and activities.”<sup>64</sup> The law notes that the provision of environmental information constitutes an important fact in ensuring public participation.<sup>65</sup>

In addition, Article 7 states that:

(1) All persons shall have the right to be informed on the negative effects of harmful activities on man, health and the environment, as well as the measures taken to prevent or compensate for these effects.

(2) A decree shall define the conditions for exercising this right.<sup>66</sup>

The term informed in section 7(1) above invokes the right to access to information. The law further gives the responsibility for all public and private institutions to integrate such information about the environment into the programming and make same available to the public.<sup>67</sup> These provisions provide for a basis upon which citizens may request for information on environmental issues that affect them.

Another important instrument as it relates to access to information on matter relating to the environment, is the Law No. 2003/006,<sup>68</sup> which makes express provision on the right to access to information. The law provides that one of its objectives is to; “provide a mechanism for assessing, managing, communicating, and controlling the risks inherent in the use, release and cross-border movement of genetically modified organisms or those having new traits as a result of modern biotechnological activity that may negatively affect the environment, and by extension the conservation and sustainable use of biological resources. This shall be achieved by taking into consideration the risks to human, animal and plant health and their socio-economic effects and by fully developing the benefits of biotechnology, as opposed to traditional technology.”<sup>69</sup>

Although this law provides for the communication of information relating to “genetically modified organisms”<sup>70</sup>... that may negatively affect the environment”, it further provides in Article 12, the various situations in which this information may be divulged to the public. The law states that,

“No one shall be authorised to divulge information obtained in the performance of his duties as an inspector/controller<sup>71</sup> or in the implementation of this law and subsequent regulatory instruments, except:

- where such information is necessary for the effective implementation of the provisions of this law or related regulatory instruments;
- for the purpose of legal proceedings within the framework of this law and subsequent regulatory instruments, where a competent court of law so rules;
- where he is authorized by the competent authority to do so.<sup>72</sup>

<sup>63</sup> See, Carlyn Hambuda and Rachel Kagoiya (eds.) (2009) Freedom of Information and Women’s Rights in Africa. A Collection of Case Studies from Cameroon, Ghana, Kenya, South Africa and Zambia, UNESCO, pp. 18-19.

<sup>64</sup> Article 9 (e) para. 1 of Law No. 96/12

<sup>65</sup> Article 9 (e) of Law No. 96/12

<sup>66</sup> Article 7(1) and (2) of Law No 96/12.

<sup>67</sup> Article 6 of Law no. 96/12 provides that; (1) Public and private institutions shall, within the context of their competence, sensitize all the populations on environmental problems. (2) The institutions shall consequently include programmes in their activities to provide better knowledge of the environment.

<sup>68</sup> Law No. 2003/006 of 21st April 2003 to lay down safety regulations governing modern biotechnology in Cameroon.

<sup>69</sup> Article 4 (2) of Law No. 2003/006

<sup>70</sup> Article 5 (36) defines a genetically modified organism (GMO) as “An organism whose genetic material has been altered following a process which cannot be replicated naturally through mating and/or natural recombination, and which has the capacity to replicate and to transmit the same genetic material.

<sup>71</sup> Article 5 (28) defines an inspector/controller as “An accredited and sworn official of the competent service, who is well specialised in disciplines relating to biotechnology/biosafety, and whose duties consist in verifying, assessing, managing and ensuring the follow-up of risks, and control with a view to granting a prior approval and/or authorisation with full knowledge of the facts on notifications and release in the environment of genetically modified organisms and products thereof. He shall, in addition, be responsible for identifying offenders, formulating and/or proposing appropriate sanctions.”

<sup>72</sup> Article 12 of Law No. 2003/006



As it relates to the right to access to public participation, this is contained in Article 9 (e) of the 1996 Law.<sup>73</sup> Under this law, the principles manifests through three points: access to information, the duty to protect the environment and consultation or public debate before certain decisions are taken. The 1996 law also obliges the owner of any project which has the capacity of injuring human health and the environment must carry out an environmental impact assessment (EIA) at the beginning of such project to assess the impact of the project on the surrounding environment and derive ways to mitigate such effect.<sup>74</sup> There are other legislations that embody aspects and tenets of public participation in matters relating to environmental protection and management in Cameroon. these prominently include; the 1976 Ordinance on the Management of State Lands,<sup>75</sup> the 1994 Forestry, Fisheries and Wildlife Law (Forestry Law)<sup>76</sup> and the 2003 Modern Biotechnology Law.<sup>77</sup> These laws play a vital role toward the pursuit and expansion of the right to a healthy environment provided for in the constitution.

Access to justice in environmental matters are not coordinated in a particular legal text. However, pieces of information relating to access to justice can be found in various texts. As it relates to access to justice in projects that require environmental impact assessment, Section 17 of the 1996 Law Relating to Environmental Management, inter alia, permits citizens to be represented in environmental advisory bodies and consultation mechanisms within an EIA process.<sup>78</sup> Citizens are also able to access the courts by virtue of Article 11 of Decree No. 2005/0577/PM of February 23, 2005, in situations where they reasonably believe a development project may destroy the environment. Further, Article 147 of the 1994 Forestry, Wildlife and Fishery Law is to the effect that appeals shall be lodged as provided for in accordance with ordinary law procedure. The 1994 Forestry, Wildlife and Fishery Law, the Constitution of Cameroon, the 1996 Law on Environmental Management, the law on judicial organization and relevant procedure laws all empower the court to entertain various types of claims. In fact, the 1994 Forestry, Wildlife and Fishery Law provides that “disputes arising from the carrying out of any of the activities governed by this law shall be settled by the competent courts of Cameroon.”<sup>79</sup> Further, the 1996 Constitution of Cameroon<sup>80</sup> provides that judicial power shall be exercised by the Supreme Court, Courts of Appeal and Tribunals

#### **F. A critique of the protection of the right to a healthy environment in Cameroon**

Sustainable development in Cameroon, which as we have observed is the integration between human rights and environmental protection, has manifested itself in the plethora of legislations, policies, and institutions which we have analysed in this research.

Although the right to a healthy environment is protected in the Constitution, same does not provide for a context, in terms of responsibilities and how such rights can be enforced. Neither does the law provide for a concrete definition of a healthy environment.

The incompleteness of laws also adds to the violation and failure to effectively implement its obligation to protect and fulfil the right to a healthy environment of the citizens. This can be seen in the failure of the state to put into place, a law to implement the provision of Article 7 of Law N. 1996/12.<sup>81</sup> As such, several years since the law came into force, there is still no law which sets out the procedure for the access to environmental information. without the requisite conditions and procedures of access, the right to access to

<sup>73</sup> Law No 96/12 of 5th August 1996 relating to Environmental management.

<sup>74</sup> Art 17 of the 1996 law on environmental management in Cameroon.

<sup>75</sup> Ordinance No. 76/166 of 27 April 1976 lays down the Management of State Lands in Cameroon.

<sup>76</sup> Law No. 94/01 of 20 January 1994 lays down Forestry, Fisheries and Wildlife Regulations.

<sup>77</sup> Law No. 2003/006 of 21st April 2003 to lay down safety regulations governing modern biotechnology in Cameroon.

<sup>78</sup> Terence Onang Egute (2012) *Modern Law and Local Tradition in Forest Heritage Conservation in Cameroon: The Case of Korup* 1, 58 (Nov. 26, 2012) (unpublished Ph.D. dissertation, Brandenburg University of Technology Cottbus–Senftenberg, Germany),

<sup>79</sup> Article 165 of Law No. 94/01

<sup>80</sup> article 37(2) of Law No. 96/06

<sup>81</sup> Article 7 provides that, “(1) All persons shall have the right to be informed on the negative effects of harmful activities on man, health, and the environment, as well as on the measures taken to prevent or compensate for these effects. (2) A decree shall define the context and conditions for exercising this right.”

information, including environmental information, is only illusory and elusive, to the extent that it hinders the possibility of properly enhancing environmental protection in Cameroon.<sup>82</sup>

It has been suggested that the practical realization of the right to public participation has been shown to be more a myth than a reality.<sup>83</sup> It has also been indicated that rules, processes, and procedures for public participation in Cameroon are not aligned with governance practices that allow for the views of local communities to be taken into account, and that instead, they are harassed and intimidated.<sup>84</sup>

Augustine Njamnshi *et al.* in their 2007 study for The Access Initiative, found that, “government systems for providing access to public participation are intermediate.”<sup>85</sup> This was due to the level of involvement of local people in various developmental projects that negatively affected the environment and the surrounding population. Their study further showed that, the level of involvement was based on government decision, rather than on the desire for the population to be involved in these processes.

This paper however found out that, these laws are relatively and sometimes grossly inadequate in protecting both the substantive and procedural environmental rights of the citizens. The Constitution fails to provide for what the right to a healthy environment entails and fails to provide apposite obligations for the State in relation to same. The Constitution also fails to mention and ensure other procedural rights such as the right to access to information and the right to access to justice.

The research further discovered that, despite being able to represent communities, constituted NGOs and associations have not been able to hold the State and its agencies, accountable for certain environmental rights violations. This comes from the fact that; the plethora of laws fail to provide substantial obligations for the state regarding management and protection of the environment. Both the Constitution and the law on environmental management, push this burden to the general population.

### G. Conclusion

In general, Cameroon has several laws and policies that seek to integrate human rights tenets into its environmental sustainability laws, policies and practices. However, there is an endemic problem of implementation and enforcement of these rights. As shown above, the current legal framework suffers from both substantive and procedural deficiencies, and arguably falls short of redressing environmental protection by means of human rights claims. These shortcomings illuminate some of the significant challenging tensions in domestic legal relationships between human rights and environmental protection. While the Preamble in the Constitution provides for the right to a healthy environment, it was clearly established that the constitutional guarantee was limited and therefore problematic, since it exonerates the state from any social justice and moral responsibility relating to environmental protection. It was argued that the right therefore remains as highly abstract. Moreover, a certain standard of environmental quality cannot be ensured by the state, as it currently has no obligation to take measures to control pollution and other environmental degradation that might negatively affect human health and private life. Presumably, such an obligation on the state, as there is on citizens, could significantly augment environmental protection and help to promote the rule of law in that context, given the state would be directly accountable for failing to regulate environmental degradation. Without such an obligation, it is impossible to hold the state accountable for its actions or failures to act.

### H. Recommendations

The starting point should be the 1996 Cameroon Constitution. The right to a healthy environment should be given added value directly from the 1996 Cameroon Constitution. Clear and precise rights, and especially procedural rights, will mean constitutional environmental rights will gain unencumbered access and protection. Substantive inclusion of these rights in the constitution will avert any probable weakening of laws,

<sup>82</sup> Edumbong S.N. *op.cit.* p.376

<sup>83</sup> Jean-Claude N Ashukem “Public Participation in Environmental Decision-Making in Cameroon: Myth or Reality? in Kameri-Mbote and others (eds) *Law/Environment/Africa* (NOMOS 2018) 357–373.

<sup>84</sup> Jean-Claude Ashukem (2016) ‘Included or excluded? An Analysis of the Application of the Free, Prior and Informed Consent Principle in Land Grabbing Cases in Cameroon’ 29 *Potchefstroom Electronic Law Journal*. PER Vol. 19, No. 1 Potchefstroom.

<sup>85</sup> Augustine B. Njamnshi *et al.* (2007) *Environmental Democracy in Cameroon: An Assessment of Access to Information, Participation in Decision Making, and Access to Justice in Environmental Matters*. *Op.cit.* pg.57

increase enforcement, and increase implementation. The Cameroonian legislators should be aware of what it means to enact ecologically proactive legislation. If the contents of the Preamble to the 1996 Cameroon Constitution contain those deep-seated prerequisites of all ensuing norms, they should at least be incorporated as substantive provisions in the constitution for clarity and reliability.

Actions and interactions committed to protecting human rights and the environment are often hampered by situating their points of departure from the actions of the President of the Republic. This top-down structure not only assumes an excessive overlook of duties by legislators but it equally creates a situation of nonfeasance (on the part of the legislative) and misfeasance (on the part of the executive). Legislators should appropriate to themselves the right to legislate in critical cases concerning fundamental rights, guarantees, and obligations of citizens within the scope of their legislative capabilities.

Consequently, there is a need to fundamentally reconceptualise the rights-based approach to environmental governance in Cameroon to adequately protect the environment and guarantee people's right to a healthy environment. Achieving this would require the government of Cameroon to commit to proactively protecting the environment and people's environmental right through the adoption of a rights-based approach, in the various laws and policies that promote environmental sustainability.

There is also a need for the state to enable and facilitate public access to relevant environmental information through clear conditions and procedures of access, as this serves to enhance the environmental paradigm and the protection of the environment and peoples' rights.

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