CHAPTER 10:
PRINCIPLES OF ENVIRONMENTAL MANAGEMENT IN CAMEROON

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1 Introduction

Environmental degradation in general and its threat to human wellbeing has become one of the most unavoidable topics in general international, and consequently domestic discourse. One of the major stakes in environmental discourse in particular is how to balance the offsets between development and protection of the environment. It is true that each state has the sovereign right to design and pursue her development objectives as she deems fit but in recent years, the *modus* of development opted for by each state is no longer a thing reserved within her exclusive purview, but one that attracts the general attention of states that make up the international community. Within the context of developing countries like Cameroon, this sort of new trend which comprises international scrutiny of domestic development becomes a bit delicate because development needs are hoisted in urgency meanwhile international concerns for environmental protection constitutes the rope with which the length of the said development is measured.

The considerations highlighted above only reveal that environmental protection and the pursuit of development are two hands of which one cannot wash itself clean without the help of the other so as to achieve human wellbeing. In the same spirit, international law rules and principles cannot be dissociated from domestic policy and decision making processes relating to the environment and development *nexus*. It may be expected from the latter consideration that domestic policy makers should simply refer to some sort of international environmental code that contains the general orientations and directions of the international community, but there is no such code. Rather, bits and patches of environmental exigencies are scattered into assorted multilateral environmental agreements (MEAs) and related instruments, each with its own specificity. So in the absence of an international environmental law compendium, the general orientations relating to the conservation and management of natural resources may only be obtained through a synergy and cluster of these MEAs which,

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it should be said, is not an easy task. Some of the prescriptions contained in these texts are said to be soft, and others hard,[1] and so it may be a pretty meticulous exercise for a state to tap out the general environmental considerations from these texts through the abovementioned clusters and synergy. What then may be a simpler formula?

Almost every legal discipline has some rules, values, principles and even maxims which, for the most part, constitute expressions that synthesise the subject matter of the whole discipline so that with just a few of these expressions, we may be able to discern the substratum of that particular area of studies.[2] Environmental law is not an exception; in effect, there are a number of principles which, it may be argued, make up the foundations of this discipline as well as a general guidance and orientation for policy makers and state action. So rather than referring to particular texts in a bid to determine the rules that guide or shape action relating to environmental management, it may be more practical to simply look at these principles to see how they have been received by international texts and case law and then translated into the national environmental management processes.

This chapter therefore sets out to make an appraisal of the extent to which Cameroonian law relating to environmental management incorporates principles of international environmental management. To this end, the work devolves in six sections of which the first is an introduction; the second, deals with conceptual clarifications; the third is an analysis of the fundamental principles of environmental management in Cameroon while the fourth section indicates the limited extent to which these principles are treated under Cameroonian law. The fifth and sixth sections consider some of the challenges which hinder smooth incorporation of principles of environmental management into legislative crafting, general conclusion and way forward respectively. It is hoped that that this paper may inform policy and decision-makers on how to better translate general environmental law principles into policy considerations that guarantee a more sustainable management of the environment and its resources.

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1 ‘Soft Law’ refers to the category of texts that do not contain rigorous legal provisions but rather general principles, breach of which may not really invite immediate and deterring sanctions. They are either inspirational sources of law or later on mature into hard law. An example includes the Rio Declaration of 1992 from the United Nations Conference on Environment and Development. An example of a ‘hard law’ on the other hand is the Convention on Biodiversity (1992).

2 A good example of a discipline whose subject matter is contained in its principles or maxims is equity. Some of the relevant maxims that constitute the bedrocks of equity include: equity acts *in personam* and not *in rem*; delay defeats equity; equality is equity; equity follows the law; he who seeks equity must do equity and he who comes to equity must come with clean hands; equity looks at that as done which ought to be done and equity looks at the intent to impute an obligation.

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2 Why principles of environmental law in general and principles of environmental management in particular?

2.1 Theoretical foundations of principles of (environmental) law

Whether we talk of principles of law or principles of environmental law, they all are abstract. In a generic manner, these principles are all founded on equity, ethics and good conscience. Most of them are therefore said to be imbedded in natural law. It should be said immediately that founded on these basis, principles of law remain abstract, general in nature and most of all non-binding. The reason is because abstract rules – such as the rules of morality and good conduct in society are not enforceable at law. It is the reason why it is common to hear people say general principles of law are non-binding. But are these the only foundations of principles?

At this juncture, it may be interesting to highlight the fact that some – most of these so-called general principles of (environmental) law are identified and consecrated in legal texts and instruments. This sort of legal consecration not only plays the same role that codification of customary norms[3] play in relation to these principles, but most of all, it gives the principles some judicial viability and enforceability. We may like to single out the example of the legal recognition and consecration of principles of law in Article 38 (1) (c) of the Statutes of the International Court of Justice. At the national level, principles of environmental management are contained in Article 9 (a) – (f) of the 1996 Law Establishing the Regime of Environmental Management in Camerooon[4] (herinafter referred to as the '1996 Law'). The only problem is that the law referred to here above is a framework law and its legal enforceability is not as enough as to command any specific legal enforceability of these principles. In any case, the baseline is that principles of law may also be founded on legal texts once they are identified and ascribed some particular legal regimes. This is not as if to mean that legal texts create principles of law, they rather constitute solid basis or foundations for these principles. This is the same case with the principles that are upheld and consecrated by powerful *locus classicus* decisions of precedents.[5] Once this

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3 The codification of customary norms serves a number of purposes. First, it is to secure the customary rule and make it long-lasting without any dangers of modification of the rule of its disappearance in time. Through codification, the customary rule can also become an *erga omnes* rule which becomes binding to all states, whether they are members of the treaty of codification or not. Codification equally and arguably provides easier judicial enforceability since the custom is henceforth covered by a text. It should be said in passing that the principal organ in charge of codification in international law is the International Law Commission that prepares draft instruments of codification.

4 Law No. 96/12 of 5 August 1996 Establishing the Regime of Environmental Management in Camerooon.

5 The *Trail Smelter Arbitration* was between USA and Canada, 3 RIAA 1907 (1941).

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happens, the court decision through which the principle is consecrated as a precedent consequently becomes the basis – jurisprudential basis – of the principle.

Writers sometimes identify and elaborate generously on the scope and significance of certain principles which may not be based on any text or court decision yet. Viewed from this angle, we may refer to the consecration by scholars as the doctrinal consecration. Almost every contemporary writer[6] in international environmental law devotes some time to consider principles of environmental law at length.

2.2 Sources and role of principles in law and environmental law in particular

If we go by the general formula for determining the sources of international law in general provided by the Article 38 (1) of the Statutes of the International Court of Justice, general principles of law constitute a non-negligible source of international environmental law. But the question is to know whether the principles of environmental law can be given the same status as the general principles of international law. Both categories of principles are abstract, come from equity, ethics and natural law. In this way, they usually inspire judges and policy makers in taking decisions on a given subject. With this similitude, one may say that the principles of environmental law can be accorded same status with those of international law in general. These principles are philosophical and ideological in nature and are of general application and recognition, for the most part, unlike environmental values that are usually more context-specific.

It may be interesting to make the clarification here at once that general principles of environmental law, just like general principles of international law are not direct sources of law like written law for instance. We consider principles only to be secondary or inspirational sources of law. Taking the famous separation of powers theory[7] into consideration, every legal system should have a legitimate authority competent to make laws. It is the law that comes from such authority that is considered to be of direct application. So general principles of environmental law are not of that category, but only inspire and guide judges and policymakers in the decisions that they take.

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6 See notably authors like Bell & McGillivray (2008:41-75); Sands & Peel (2012:187-236); Fisher et al. (2013:402-457); Louka (2006:49-57); Sand (2003:231-289); Ebbeson & Okowa (2009:411-429); Sunkin et al. (2002:1-91); Philippopoulos-Mihalopoulos (2011:83-105).

7 The separation of powers theory is the theory according to which every legal system should have three arms of government: the legislative, the executive and the (federative, that is in the original version of the theory by John Locke) judiciary, as systematised by Baron Charles Louis de Seconda alias Montesquieu. The law making organ is the legislative, the organ if implementation is the executive and the organ of enforcement is the judiciary.

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2.3 Some conceptual clarifications

2.3.1 What is environmental management?

Environmental management within the context of Cameroon includes all the operations geared towards the improvement and preservation of the state of the environment, both in its natural resources in general and ecosystem, as well as how to interfere with the environment rationally in order to achieve human wellbeing as highlighted in Article 2 (2) of the 1996 Law. Any project aimed at achieving development in whatever form that must pass through interference with natural resources is subject to a set of stringent rules aimed at ensuring that the said development is not achieved at the expense of environmental sanity.

2.3.2 What do we mean by the environment?

At the national level, the environment, in the light of the provisions of the 1996 Law refers to:[8]

> all the natural or artificial elements and biogeochemical balances they participate in, as well as the economic, social and cultural factors which are conducive to the existence, transformation and development of the environment, living organism and human activities.

From the above definition, what can one consider to be environmental law?

Generally, law is defined as a body of rules and regulations that govern human life in a given society and at a given time. If we go by this definition and with respect to the definition of the environment above, then one may say that environmental law is the body of rules and regulations that govern human life in and man's interaction with the environment at a given time and place.

3 Fundamental principles of environmental management under Cameroonian law

For purpose of smooth understanding of the role of each, the principles may be split into three categories: there are principles that seek to make a blend between environmental control and socio-economic development; principles that seek to reduce or prevent likely harm to the environment; and finally, principles that affix liability for damage caused on the environment. The first part of this section will be consecrated

8 See Article 4 (k) of the 1996 Law.

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to the theoretical formulation of the principles while the second part will be dedicated to an assessment of the practical utility and implementation of these principles in Cameroon. Relevant statutory provisions are contained in Articles 1 and 9 (a) – (f) of the the 1996 Law.

3.1 Theoretical presentation of the principles

3.1.1 Principles that reconcile environmental management and socio-economic development

There are at least four principles that guide and orientate state action: the principle of sustainable development, the principle of permanent sovereignty over natural resources, the principle of integration and the principle of participation. Each of these deserves some individual consideration in turns.

3.1.1.1 The principle of sustainable development

3.1.1.1.1 Meaning of sustainable development

Of all the principles of environmental law, the principle of sustainable development has the most contested definition because it means different things to different people. This is why the meaning of the principle is said to be context-specific and purpose-driven. One of the gist from the Stockholm Conference was that the environment was to be protected for the sake of it, thereby overlooking the development aspects of it.[9] The United Nations then created the Brundtland Commission in Nairobi to give it a thought. The result of the works of that Commission was, *inter alia*, one of the most solicited definitions of sustainable development. According to that Report, sustainable development is "…development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs".[10]

The principle of sustainable development does not really feature under Chapter III of the 1996 Law entitled 'Fundamental Principles'. This sends the signal that the Cameroonian legislator does not exactly consider the concept as a principle. The leg-

9 Tamasang (2008:146).
10 Brundtland Commission Report (1987).

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islator however defines sustainable development, even though not as a principle, but as a key word under Chapter I of the 1996 Law that deals with "Definitions".[11]

3.1.1.1.2 Some manifestations of the principle

Writers identify different sets of elements that spring from the principle, but others treat some of these components of the principle as independent principles on their own. The most common elements of the principle include intra-generational equity (or wise use[12] and equitable utilisation) and intergenerational equity. From these two, we can be able to explain how the principle manifests itself through certain obligations.

First, there is the obligation of equitable utilisation[13] which translates the requirement of intra-generational equity. This duty or obligation was articulated in early judicial decisions regarding the sharing of freshwater resources.[14] The duty is also contained in the 1997 United Nations Watercourses Convention. It should be remarked that equity is a principle that is hard to pin down[15] and many authors[16] have argued that equitable considerations introduce an especially subjective element in the interpretation of international environmental law. On the one hand, the principle may be interpreted to mean that the use of natural resources of the earth should be done on a 50/50 proportion. From another viewpoint, it may be interpreted to mean that those who have priority in the use of certain resources should benefit from maximum protection. Yet again, the principle may suggest that the use of natural resources is based

11 The definition of sustainable development under the 1996 Law is provided by Article 4 (d). According to that section, sustainable development "shall be a mode of development which aims at meeting the development needs of present generations without jeopardizing the capacities of future generations".

12 See Tamasang (2015).

13 Louka (2006:53). The author considers equitable utilization to be a distinct principle of international environmental law on its own but we prefer to treat it here as a subset of the principle of sustainable development.

14 *Lac Lanoux Case* (Spain v. France), 12 RIAA, 285. See also *Gabcikovo-Nagymaros Project* between Hungary and Slovakia (1998) 37 ILM 162 (Danube Dam).

15 The concept of equity is hard to pin down because several meanings can be given to it. Among the most common one, equity is understood to mean good conscience, moral rectitude and natural justice. It also refers to a shield that was developed in England to protect the law from its own inherent weaknesses and limitations (see Lord Cowper in the Case of *Dudley and Ward v. Lady Dudley*). Today, equity is no longer absolutely associated with discretion and conscience because the rules are now as formalistic and systematised as those of Common Law so that the meaning of equity today may not really be same as the meaning it got in the 16th Century.

16 Notably Louka (2006:53).

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on factors that are independent of where the property is situated within national confines.

Another manifestation of the principle is the responsibility that we owe future generations. Richard Driss[17] notes that at the start of the Century, cities were not crowded, rural areas were more active and pollution was not known to be an international problem. Today, "science has given birth to monsters" and the threat of a polluted planet looms. As time evolves, the question receives a bolder imprint: what kind of environment do we want to leave to future generations? In fact, if a child is born today, by 2035 he will be 18 years old. Are the efforts that we put in place sufficient to guarantee the achievement of the goals designed by the international community? Our responsibility to future generations is coded in our very existence; we come from the past and study our ancestors as well as their behaviour. So one unavoidable component of our development and wellbeing is how much we are able to guarantee the wellbeing of future generations.

3.1.1.2 The principle of permanent sovereignty over natural resources

3.1.1.2.1 Significance and foundation of the principle

Before saying anything about this principle, it may be good to point out that the 1996 Law does not make mention of it in the famous Article 9 (a)-(f) that contains all the principles envisaged by the legislator in matters of environmental management. This is not as if to mean that this principle is completely disregarded in matters of environmental management in Cameroon. On the contrary, even if the principle does not come out clearly in the 1996 Law, it is specifically alluded to in the Cameroonian Constitution[18] as the basis for development and the principle that governs the cooperation between Cameroon and any other state to achieve the said development.[19] The 1996 Law being subject to the Constitution must therefore take on board the provisions of the latter in the process of environmental management in Cameroon.

What are the foundations of the principle? First, the principle is announced in Principle 21 of the Stockholm Conference[20] according to which "states have, in ac-

17 Driss (1998:21).

18 The Constitution referred to above is Law No. 2008/1 of 14 April 2008 to amend and supplement some provisions of Law No. 96/6 of 18 January 1996 to amend the Constitution of 2 June 1972.

19 See paragraph 3 of the Cameroonian Constitution.

20 The 1972 United Nations Conference on Human Environment is popularly known and referred to as the Stockholm Conference that held in Sweden. This meeting is the first remarkable gathering of the international society to try and shape environmental policy. It was attended by

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cordance with the UN Charter, and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies…". This enunciation by Principle 21 became a cornerstone of international environmental law and twenty years after – in the Rio Declaration[21], states were almost absolutely unable to change the language or modify the enunciation. It should be indicated that the principle of permanent sovereignty over natural resources is enunciated simultaneously with the obligation not to cause environmental harm and since 1972, both principles have been respected as such without decoupling. We have decided to untangle them in our present analysis by reason of the different categories into which we have classified them such that it may not be convenient to discuss both of them under the same category.

It should also be made clear that the principle of permanent sovereignty over natural resources was not born in the Stockholm Conference; since about 1952, the principle had been seen in many UN Resolutions[22] geared towards the need to balance the rights of sovereign states over their resources with the desire of foreign companies to ensure legislative certainty and stability of investment.

Besides the Stockholm and Rio Conferences, the principle is also contained in a number of texts[23] such as the Convention on Biological Diversity (1992) which provides that states have "sovereign rights…over their natural resources" and that the

113 countries (even though only India and Sweden were represented by their respective Heads of States).

21 Summit took place in Rio de Janeiro, Brazil 1992. This is history's single most reported event (over 9,000 journalists), 178 nations represented and 115 heads of states present. Unlike in Stockholm, the South had taken consciousness of environment and development concerns. The South therefore expressed the concern at Rio that environmental protection should not be done at the expense of their development and that the North should bear primary responsibility for suffering caused by environmental degradation so far. The North on its part, even more conscious of the need to protect the environment and interfere with it rationally seemed to lay much emphasis, logically, on sustainable development. From the summary of the two positions (between North and South), it appears that while the South paid more attention to intra generational equity, the North laid emphasis but on intergenerational equity.

22 For more details see van Wyk (2017). See for instance UNGA Resolution 1803 (XVII) (1962). In this Resolution, it was indicated that, "the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development of the wellbeing of the people of the state concerned".

23 The principle is contained in the preamble of the United Nations Framework Convention to Fight against Climate Change in which parties are urged to "respect state sovereignty in international cooperation to fight against climate change". The International Tropical Timber Agreement (ITTA) also acknowledges "the sovereignty of producing members over their natural resources" in its Article 1 (old) and preambular paragraph (d) of the 2006 amendment of the Agreement. The Ramsar Convention of 1971 makes it clear that the inclusion of national wetland sites in its list of wetlands does not "prejudice the exclusive sovereign rights of…the party in whose territory the wetlands is situated" (Article 2 (3) of the Convention).

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authority to determine access to genetic resources rests with the national governments and is subject to national legislation.[24]

Besides international texts and MEAs specifically, the principle of permanent sovereignty over natural resources is also enunciated in a number of court decisions. An example in perspective is the decision of the International Court of Justice in the case of *Kuwait v. American Independent Oil Company*[25] in which the ICJ had the opportunity to bring clarity on the significance of the principle. In effect, the ICJ equally indicated several years after this case that the principle is one that can be considered as part of customary international law.[26]

3.1.1.2.2 The principle of permanent sovereignty as an enhancement to democracy

An interesting issue on which to ponder, especially within the context of developing countries and Cameroon in particular, is what connection there is between sovereignty over natural resources and democracy. Some scholars[27] hold the view that the mutual democratisation of states and their societies appears to operate in a virtuous relationship with more reflective ecological modernisation at the domestic level as well as more effective environmental citizenship by such states. It is also true that this virtuous relationship cannot be deepened without a move from liberal democracy to ecological democracy.[28] Despite growing levels of environmental recognition and awareness, liberal democratic states have been unable to resolve or significantly minimise many ecological problems.

Liberal democracies continue to construct decisions and design policies geared towards acceleration of investment, production and consumption all to be championed by the private sector. When these states permit social actors to displace ecological costs on to others, it restricts the ability for environmental victims to enjoy the full range of freedoms that liberalism supposedly upholds. This includes the freedom to participate or otherwise be represented in the making of decisions that bear upon their own lives.

Ecological democracy (green democratic state) is most suited in this context and field of studies than liberal democracy as it enables a more concerted political questioning of traditional boundaries between what is public and private, domestic and international, intrinsically valuable and instrumentally valuable. The rationale behind

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24 See Article 15 (1) of the CBD. See also Article 6 of the 2010 Nagoya Protocol to the CDB that governs access to genetic resources.
25 *Kuwait v. American Independent Oil Company* 21 ILM 976 (1982).
26 ICJ Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (1996).
27 See for instance Eckersley (2004:241).
28 (ibid.).

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ecological democracy is that all those potentially affected by ecological risks ought to have some meaningful opportunity to participate, or be represented in the determination of policies or decisions that may generate risks.[29] A flipside however of perceiving sovereignty in green democratic states as a shield is the responsibility for neighbouring states not to cause environmental harm which will be discussed later.

3.1.1.3 The principle of integration

The principle of integration is not included in the list of principles outlined in Article 9 of the 1996 Law. This notwithstanding, the principle is observed in practice especially in the actions and plans of the administration as we shall see in the second part of this section in which we discuss the practical utility of principles of environmental management in Cameroon. The principle is equally identified in section five below as one of the principles that are developed and observed more in practice but without any much legislative consideration.

Environmental protection requirements must be integrated into the definition and implementation of all areas of policy in particular with a view to promoting sustainable development.[30] The European Community Treaty provides that environmental protection requirements must be integrated into other community policies such as policies that have to do with agriculture and industry-related policies.[31]

The principle of integration seeks to incorporate environmental consideration into all policy areas. The aim here is to avoid otherwise contradictory objectives that result from a failure to take into account environmental protection or resources conservation goals. For instance, the failure to consider environmental consequences of liberalising air travel or road construction programmes designed to meet priority transport objectives may possibly ensue when environmental concerns are not sufficiently integrated in the drafting of the budgetary law.

3.1.1.4 The principle of participation

The principle of participation is constructed on the premise that in order to ensure effective implementation of environmental laws and actions at all levels, individuals

29 (ibid.:243).

30 Article 6 of the European Community Treaty. This Article lends more impetus to the allegation that sustainable development is the paramount consideration of all which the other principles must strive to attain.

31 (ibid.:Article 175).

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should be able to participate in environmental decision making.[32] The principle may be understood as if to mean that it only seeks to ensure or guarantee procedural rights for citizens. This will be an erroneous interpretation because the principle of participation requires a little more than just procedural rights. For instance, the principle seeks to ensure the flow of information as well as guarantee the mainstreaming of local and indigenous people in every decision making process.

In this light, it may be fair to say that environmental issues are best handled with the participation of all citizens concerned at the respective levels of society. For instance, at the national level, every individual should have appropriate access to information relating to the environment that is held by public authority; including information on hazardous materials and activities in their communities and the opportunity to participate in decision making processes. In this way, at the national level, states must facilitate and encourage public awareness, effective access to judicial and administrative proceedings as well as guarantee the availability of redress and remedy through these processes.

The principle of participation is contained in Article 9 (e) of the 1996 Law. 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 enunciation of the principle under that section of the law is rather vague and limited in scope. Just one isolated example may strengthen this argument: the Article is silent on the issue of access to justice especially the extension of *locus standi* for public-interest litigations. Issues of access to justice are instead addressed in Article 8 (2) of the 1996 Law which does not fall under the title of ‘Fundamental Principles’, and even then, the issue of public interest litigation which is a contemporary development is apparently missing in the law.

In a nutshell therefore, the principle of participation, from the above presentation, has three major canons: first we have participation in decision making; availability and access to information; and finally, access to judicial procedures.

3.1.2 Principles that relate to the reduction or prevention of likely harm

3.1.2.1 The precautionary principle

The 1996 Law simply retakes the view that lack of certainty, given the current scientific and technological knowledge should not retard the adoption of effective and commensurate measures aimed at preventing a risk entailing serious and irreversible

32 Sunkin et al. (2002:53).

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damage to the environment at an economically acceptable cost.[33] We have adopted a binary approach to the presentation of this principle: on the one hand, we will look at the significance and foundation of the principle while on the other, we will consider the manifestation of the principle through its link with future generations which in turn links up the principle to sustainable development.

The precautionary principle is to the effect that in case of serious and imminent harm which is irreversible, lack of scientific certainty shall not be a reason for postponing cost-effective measures to prevent environmental degradation. The principle is founded upon the assumption that science cannot absolutely predict how or why adverse impacts will occur or what their effects may be on man and the ecosystem. So the principle applies where there is absence of proof but availability of information sufficient enough to prevent risk. Where reasonable evidence exists, actions aimed at avoiding adverse impacts of harm become necessary. In this sense, the precautionary principle is all about "being safe rather than being sorry".[34]

Very often, our experience in environmental matters reveals that when we are certain, we rather become impotent because it is too little too late to repair the damage. The precautionary principle carries with it a structure of ideas which enable us to take decisions which seek ecological balance for the benefit of our human society. It offers guidance, within the embrace of the law, as to how we might interfere least, or least damagingly in the ecosystems that support life on earth. In addition, the principle provides a philosophical authority to take decisions in the face of uncertainty. Thus the principle becomes symbolic of the need for change in human behaviour towards the environment that sustains our existence; it challenges science but respects the basic principles of ecology.[35]

It should be clarified that the precautionary principle is not the same as the preventive principle. In effect, much of the confusion surrounding the principle's interpretation relates to its distinction from the more traditional standards of environmental prevention. According to Agius and Busuttil,[36] the precautionary principle in both its conceptual core and its practical implications, is preventive, but not all preventive standards are precautionary. In fact, any particular preventive standard may be either non-precautionary or precautionary and in various degrees, but it cannot be 'unpreventive'.

Prevention and elements of sustainable development can be traced back even to the 1930s but precautionary language made its grand apparition in the mid-1980s. This is why the UN Secretary General in 1990 said that the principle "has been en-

33 See Article 9 (a) of the 1996 Law.
34 Bell & McGillivray (2008:55).
35 Agius & Busuttil (1998:93).
36 (ibid.:99).

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dorsed by virtually all recent international forums".[37] From inception, the principle has constantly provided disagreement as to its meaning and effects among states and international judicial practice. Opponents of the principle have decried its potential to over-regulate and thus limit human activity.[38] This notwithstanding, the principle is considered as one of general application and is linked to sustainable development.[39] There is some evidence that states now begin to support this interpretation even though there is no unanimity on this viewpoint. The ICJ in 1995 described the principle in the *Nuclear Test Case* (between New Zealand and France) as a widely accepted and operative principle in international law even though France claimed that the status of the principle in international law was « *tout à fait incertain* ». We understand why when it was proposed that the principle should be included in the French Constitution as part of the Environmental Charter, the French Scientific Establishment went radical about the idea.[40] The longstanding conceptual debate about the principle has accordingly been supplemented by discussion of its implementation which has in turn given rise to a number of related questions about its nature and practicability:

- Is the principle scientific (rather than being ideological)?
- If so, can it be made operational in policy and regulation settings?
- If yes, can its implementation be subjected to meaningful judicial review?
- If not, does that call the practical usefulness of the principle to question?[41]

Besides this jurisprudential consecration and recognition,[42] the principle has equally attracted a wide range of textual consecration through diverse international texts.[43]

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37 An example is the Ministerial Declaration of the Second International Conference on the Protection of the North Sea on in November 1986, London. The states affirmed that: "…in order to protect the North Sea from possibly damaging effects of the most dangerous substances, a precautionary approach is necessary…" Again, signatories to the Baltic Sea Declaration adopted at the Baltic Environmental Conference held at Ronneby, Sweden, on 2 September 1990, agreed to "apply the precautionary principle, that is to take effective action to avoid potentially damaging impacts of substances that are persistent, toxic and liable to bio-accumulate" see 1 Year Book of International Environmental Law (1990), 423-429. Finally, the principle reappears in COP 9 of the Convention on the prohibition of International Trade in Endangered Species held in Fort Lauderdale – USA, 7-8 November 1994.

38 Sands & Peel (2012:218).

39 See the Bergen Ministerial Declaration on Sustainable Development in the United Nations Economic Commission for Europe (UNECE) Region, 16 May 1990. In effect, paragraph 7 of that Declaration is to the effect that in order to achieve sustainable development, policies must be based on the precautionary principle.

40 Paterson (2011).

41 For a detailed discussion on these questions and the precautionary principle, see Paterson (2011:85).

42 See further The *Southern Bluefish Tuna* Cases – New Zealand v. Japan and Australia v. Japan (2001) IRL 148; see also the *Mox Plant* Case – Ireland v. The United Kingdom (2002) 41 ILM 405.

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It should be indicated that the implementation of intergenerational and intra-generational equity has been more explicit in practice than most of the other principles of environmental law. One significant by-product of intergenerational rights is the position that everyone has the right to live in a balanced, ecologically safe and healthy environment. This places an obligation on the present generation to take all precautionary means necessary to conserve the diversity of culture and natural resource base just in same way as we obtained the right to access the legacy of the past generation.[44] The precautionary principle interpreted in this way lends more credence to the assertion that most, if not all, the other principles of environmental law seek to achieve the objective of sustainable development.

3.1.2.2 The principle of preventive action

Under the 1996 Law still, the legislator makes mention of preventive action and correction of threats to the environment by using the best available techniques at an economically acceptable cost.[45] It may be expedient for us to consider the significance and foundations of the principle in international and national law.

The principle of preventive action is to the effect that states bear the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or areas beyond the limits of national jurisdiction. It has been clarified above already that the principle of preventive action may be muddled with the precautionary principle but the two mean different things even though both of them promote the prevention of environmental harm as an alternative to bringing remedy to harm that is already caused. In a nutshell, the precautionary principle works well in moments of scientific uncertainty meanwhile the preventive principle may even be pursued by relying on scientific certainty.

The principle is contained in a number of international instruments of which one of the most common is the 1992 United Nations Conference on Environment and Development (Principles 2, 11 and 14). But before then, the principle was already enunciated in Principles 6, 7, 15, 18 and 24 of the Stockholm Declaration of 1972.

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43 The principle is contained in the preamble of the 1985 Vienna Convention on the Protection of the Ozone Layer as well as in the preamble of the 1987 Montreal Protocol to that Convention and the June 1990 amendment to the Protocol. Many scholars consider that the core of the principle lies in Principle 15 of the Rio Declaration. The principle features in the UNFCCC in Article 3 (3); The 1979 Convention on Long-Range Transboundary Air Pollution as well as in the preamble of its Additional Protocol II relating to Further Reduction of Sulphur Emissions – 1994, UN DOC.GE. 94. 31969.

44 Weiss (1990).

45 Article 9 (b) of the 1996 Law.

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The preventive principle had equally featured, before 1992, in the United Nations Convention on the Law of the Sea, 1982 (Article 194) as well as the 1985 Vienna Convention on the protection of the ozone layer, Article 2 (2) (b) and in the preamble of the 1987 Montreal Protocol to the said Convention. The Convention on Biological Diversity as well as the Climate Change Convention all give some legality to the principle.[46]

3.1.2.3 The responsibility not to cause environmental harm

This principle is one of the many principles that are left out of the list of principles presented in the 1996 Law. In any case, the requirements of the principle can be deduced from the reading of the principles of prevention and precautionary action discussed under the said law.

The obligation not to cause environmental harm is a principle that is associated with the principle of permanent sovereignty over natural resources. In this way, the principle acts as a measure to limit or prevent absolute sovereignty of states by imposing on them the duty to make sure that the exercise of sovereign rights does not damage their immediate environment or that which is beyond national confines. All states have pledged their loyalty to this principle and the ICJ in the *Nuclear Test Cases* indicated that the principle has become an *erga omnes* in international law. The principle thus presented raises a few pertinent questions: What is environmental damage? What type of environmental damage is prohibited (is it just any type of damage or the most serious and significant ones)? What standard of care is applicable to the obligation; is it absolute, strict or fault-based? What is the measure of damage? These questions have been considered at length by Sands and Peel.[47]

It is posited that this principle gets its source from customary international law.[48] If we buy this idea, then it may be worthy to point out that custom stands as one of the major sources of international law in general and IEL in particular. The obligation not to cause environmental harm also enjoys some international recognition.[49]

This principle signifies that no state has the right to cause damage to the environment in breach of international standards. In effect, this principle is closely associat-

46 See Article 8 (h) and 14 (1) (d) of the CDB; Article 2 of the Biosafety Protocol to the CBD and Article 2 (2) (d) (i) and Article 5 of the Nagoya Protocol. The United Nations Framework Convention on Climate Change makes provision for the principle of preventive action in its Article 2.

47 Sands & Peel (2012:Chapter 17).

48 See Hunter et al. (1998:345).

49 In effect, we notice that this principle is consecrated in a number of international instruments such as in Section 21 of the Stockholm Declaration and Article 2 of the Rio Declaration.

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ed with other principles such as good neighbourliness.[50] It is not because a state has permanent sovereignty over her natural resources that the exercise of this right should breach the rights of her neighbours (to a healthy environment for instance), and the interests of the world at large. Any sustainable development process which passes through green trade must be done with respect to this obligation not to cause environmental harm.

The scope and contours of the principle however remain an issue of construction in international doctrine because the issue has not yet been subject to any international judicial clarification. So for instance, what is the degree of harm that can trigger the obligation and what standard should be made binding on the state are all questions of construction.

It has been indicated above already that the principle is founded on Principle 21 of the Stockholm Declaration that makes provision for permanent sovereignty over natural resources as well as the obligation not to cause environmental harm. It must however be pointed out that the principle predates the Stockholm Conference; its origin can be traced as far back as the *Trail Smelter Arbitration*[51] in which it was held that:

> under the principles of international law…no state has the right to use or permit the use of her territory in such a manner as to cause injury by fumes in or to the territory of another of the parties or persons therein…

Several years later, Judge De Castro in the *Nuclear Test Cases* stated in his dissent that the rule laid down in the *Trail Smelter Arbitration* was one of customary international law. In this light, one may say that the obligation not to cause environmental harm derives from the customary rule of good neighbourliness.

Again, the UN Charter in its Article 71 reminds the members that: “their policies in the metropolitan areas must be based on the general principle of good neighbourliness”. The principle is again contained in Article 3 of the United Nations Environmental Programme Draft Principles as well as Article 193 of the Law of the Sea Convention, 1982. Besides the *Trail Smelter*, other cases have recognised by principle, such as the *Corfu Channel Case* between UK and Albania (1949);[52] the *Lac Lanoux Case*[53] brings out the clarification that states must not enjoy their rights to the extent that it encroaches on the rights of others.

50 See Hunter et al. (1998:374) for details on this principle.
51 The *Trail Smelter Arbitration* was between USA and Canada, 3 RIAA 1907 (1941).
52 ICJ Reports 4, at 22.
53 *Spain v. France*, 12 RIAA, at 285.

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3.1.2.4 The principle of substitution

The principle of substitution enunciated under the 1996 Law is to the effect that in the absence of a written general or specific rule of law on environmental protection, the identified customary norm of a given land, accepted as more efficient for environmental protection, shall apply.[54] The latter principle is quite important and contextual as it gives some room for customary rules and practices to apply in matters of environmental management and protection. This principle is not commonly found in the doctrine of international environmental law and so some credit must be given to the Cameroonian legislator for consecrating this principle which is an expression of the intention to uphold and include customary laws and practices in the general environmental management process.

At this point, it may be good to indicate, in passing, that other principles of environmental law that fall under this category include the principle of substitution and the principle of common heritage of humankind.[55]

3.1.3 Principles that seek to affix responsibility for environmental harm

3.1.3.1 The principle of common but differentiated responsibility

The principle of common but differentiated responsibility is contained in Principle 7 of the Rio Declaration. In Article 3 (i) of the UNFCCC, it is provided that "parties should act to protect the climate system on the basis of equity and in accordance with their common but differentiated responsibilities and respective capacities." The principle further gives rise to two sets of obligations: the obligation to protect the environment (expressed in form of common responsibilities) and the obligation to consider differing circumstances in relation to each state's contribution (this is otherwise referred to as differentiated responsibilities).

It must be pointed out that this is a principle that mostly concern the relationship and cooperation between states at the international level to handle or address environmental concerns. So even though we may not see it in the principles identified in the 1996 Law, Cameroon demonstrates her commitment to respect her own share of international responsibility to minimise environmental worries translated through the management plans and actions contained in other legal instruments.

54 See Article 9 (f) of the 1996 Law.
55 Hunter et al. (1998:335-343).

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3.1.3.2 The polluter pays principle

According to Principle 10 of the Rio Declaration, the polluter should bear the expenses for carrying out pollution control and prevention measures so as to ensure that the environment is in an acceptable state. In other words, the cost of these measures should be reflected in the cost of goods and services which cause pollution in their production and/or consumption. The polluter pays principle is based on the fact that those who are responsible for pollution should meet the cost of its consequences.

This principle is however highly contested and may bring to light retrospective liability for historic pollution. As such, the principle may turn around to impose a duty to pay for pollution control measures as well as a wider responsibility on the producers of waste.

The principle of liability and the polluter pays principle are contained in Article 9 (d) and (c) respectively. The former is not very common in international environmental discourse unlike the later which is one of the most notorious of the principles of environmental management in international environmental law doctrine and legal instruments. There appears to be a problem with the way the polluter pays principle is couched in the English version of the 1996 Law which we will point out here below and then advice the use of the French version which is the original version of the text while the English version is only an inexact translation.

According to Article 9 (d) of the 1996 Law, the author of any act that endangers human health and the environment shall or cause the said conditions to be eliminated in such a way as to avoid the said effect. The so-called 'pollute and pay' principle provides that charges resulting from measures aimed at preventing, reducing and fighting against pollution and the rehabilitation of polluted areas shall be borne by the polluter.[56] In effect, the contention we are raising here begins from the expression used in the law, to wit, 'the pollute *and* pay principle.' If this is intended to be an incorporation of the famous polluter pays principle of international environmental law, then we humbly submit that the two expressions do not seem to convey the same technical message. The first expression appears to be an incentive while the second appears to be more deterrent. The pollute and pay suggests that one who has the ability to pay may go ahead and pollute and this may work out to the advantage of bigger entities that interfere with natural resources and the environment in general, to the detriment of smaller but 'clean' corporations. Again, even if this were to be the case, the general objective of sustainable development which is the virtue that all principle must strive to attain would be defeated. On the other side, this interpretation may not have been the intention of the legislator, in which the expression still betrays his in-

56 See Article 9 (c) of the 1996 Law.

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tention and thus becomes misleading. If we take away the conjunction 'and', we may arrive at 'polluter pays' which means that the conjunction rather opens a leeway in the law making it possible for polluters to escape through the cracks.

The French version of the 1996 Law appears to be better in its caption than the English version. The former version talks of the principle of '*pollueur-payeur'* which is not the same as the 'pollute and pay' principle captioned in the English version. While awaiting the revision and proper translation of the said 1996 Law, we submit that the English caption should be avoided as it is misleading.

3.2 Practical utility and implementation of the principles of environmental management

The utility and implementation of these principles in Cameroon will be assessed from two perspectives; from an administrative and from a judicial perspective. Each one of them needs to be considered independently.

3.2.1 Utility and implementation through administrative regulations and actions

3.2.1.1 Administrative regulations that consecrate principles of environmental management

It must be pointed out that there is a plethora of administrative regulations that enhance the implementation of specific principles either in specific texts or more than one principle enshrined in such texts. We will use a selected few of these texts to illustrate the fact that the principles enunciated in the 1996 Law do not remain only in the said law but are followed up in administrative regulations.

The first law we will like to identify is Order No. 0070/ MINEP/05 of 22 April 2005 to determine the different types of operations the realisation of which is subject to the rule of Environmental Impact Assessment (EIA; since 2013, we refer to it as Environmental and Social Impact Assessment).[57] It is true that EIA is not exactly a principle of environmental law, but a subset of the polluter pays principle (Article 9 (c) of the 1996 Law) as well as the principle of precaution (Article 9 (a) of the 1996 Law). The 2005 Order above makes a list of all the types of activities that will be subject to assessment[58] and this is not only precautious but also an indication to any

57 See Decree No. 2013/0171/PM of 14 February 2013 on Environmental and Social Impact Assessment.

58 See to this effect Articles 3 and 4 of the 2005 Order.

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potential polluter that in case his activity will be more damaging to the environment than economically gainful, he may be estopped from carrying out such activity. Even when the EIA is positive, the person carrying out the activity shall be responsible for cleaning up any pollution and treating resultant wastes.

There is, in same vein, a regulation jointly enacted by Ministry of Environment, Nature Protection and Sustainable Development (MINEPDED) and the Ministry of Commerce (MINCOMMERCE). The instrument in question is Order No. 004/12 of 24 October 2012 on the Regulation of the Manufacture, Importation and Commercialisation of Non-Biodegradable Packages. Pursuant to the polluter pays principle, the responsibility not to cause environmental damage and the principle of liability, the 2012 Order above provides that all dealers in non-biodegradable packages shall be responsible for the management of the resultant waste.[59] In addition, for anyone to deal in such packages, such an operator must obtain a prior permit[60] from the competent instance. The adoption of this law by the two ministries in question is an isolated example of the readiness of the government to be bound by the cannons of the principles of environmental management.

Finally, we have Order No. 002/MINEPDED/2012 of 15 October 2012 that establishes Special Conditions for the Management of Industrial and Dangerous Waste. The provisions of this law relating to the subject matter identified seek to enhance the implementation and respect of the same principles indicated in the previous paragraph. Yet again, this is another manifestation of the fact that the principles legislated upon in the 1996 Law inspire and guide the executive arm of government in adopting regulations on environmental management. But how then are these principles translated into practice? The following subsection answers the question.

3.2.1.2 Principles of environmental management in the practical actions of the cameroonian administration

With a single example, we will be able to illustrate how government action is planned and executed with respect to the principles of environmental management. We will like to use the example of recent initiatives of the Ministry of Forestry (MINFOF) to taste genetically modified species and organisms in Cameroon pursuant to the Law on Biosafety.[61] Section II of the 2007 enabling instrument[62] to the

59 This provision is contained in Article 3 (1) and (2) of the 2012 Order.

60 See Article 4 (1) of the 2012 Law.

61 Law No. 2003/006 of 21 April 2003 to Lay down Safety Regulations governing Modern Biotechnology in Cameroon.

62 The enabling instrument to this Law is Decree No. 2007/0737/PM of 31 May 2007 Establishing the Modalities for the Application of Law No. 2003/006 of 21 April 2003.

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above mentioned law is entitled Public Consultation and Participation. Under that section, Articles 46 and 47 of the 2007 Decree provide that in order for any action of modern biotechnology to be carried out in Cameroon, the project team must be able to do public consultations in view of sampling the opinions of the populations in the project site. Once the opinions are obtained they are handed over to the Technical Committee on Biosafety[63] of MINFOF. This Committee carefully studies the opinions of the populations and then give a reasoned (motivated) opinion which may be positive or negative in relation to the execution of the project. The technical opinions of these experts will then be transmitted to the Minister in charge of Forestry and Wildlife for him to either authorise or cancel the particular project that has been initiated. This is the *modus operandi* for the execution of any project that has to do with the testing of species to see whether they are genetically modified or not.[64]

Through this example, we see that the principle of participation is taken to be a principle that guides the actions of the administration as well as it plays a vital role in determining whether a plan or project initiated by the government can be achieved or not.

3.2.2 The judiciary and the implementation of principles of environmental management in Cameroon

The practical implementation of the principles of environmental management as contained in the 1996 Law is not left in the hands of the administration alone; it is as well an objective of the law-enforcement organ which is the judiciary. Through a selected few cases, we will show how the irrational exploitation of resources as well as pollution of the environment is sanctioned by the courts. It must however be indicated that the judicial implementation of the principles of environmental management is not exactly absolutely admirable; in the course of our discussion under this section, we will indicate where the judiciary did not meet up with the role expected of her and consequently what would be ideal in the respective circumstances.

63 The Technical Committee on Biosafety at MINFOF was created by Decree No. 039/CAB/PM of 30 January 2012 on the Creation, Organisation and Functioning of the National Committee on Biosafety.

64 The procedure for execution of projects relating to Biosafety was confirmed to us by Angèle Ziekine, Sub-director at MINFOF.

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3.2.2.1 Implementation of the responsibility not to cause environmental damage and the principle of liability

We can see the role of the judiciary in the practical implementation of these principles through the famous case of *The People of Cameroon v. Bisong Daniel Nkwo alias Bucande*.[65] The case was entertained in the Court of First Instance of Nguti, Southwest Region of Cameroon, in which the defendant stood trial on four counts for poaching with respect to the 1994 Wildlife Law.[66] Among his charges, the defendant was accused of killing 19 elephants (a class A protected specie under the 1994 Law) and for illegally hunting in the Bayang-Mbo wildlife sanctuary which is equally a highly protected area. Mr. Batuo Paul led the prosecution as the Senior State Counsel for Bangem. In her reasoned judgement delivered on 11 March 2004 the court found the accused guilty and sentenced him to two years imprisonment with a fine of one million francs CFA. Alternatively, the defendant could serve another two years imprisonment in lieu of the said fine. In addition, the court ordered that the elephant teeth should be handed to the World Conservation Society (WCS) as exhibit 'A' for preservation.

Through this judgement, we see that the court was guided by and strictly applied the principle of liability and obligation not to cause environmental harm. The principles of environmental management therefore consolidated the sanctions previewed by the 1994 Wildlife Law above.

The same principles inspired the court and were upheld in the case of *The People v. Sadou Mana and Three Others*.[67] The case was filed before the Court of First Instance of Garoua in the Northern Region of Cameroon in which the defendants were tried for poaching, receiving and trafficking black rhinoceros which again is a class A protected specie under the 1994 Wildlife Law in the Benue National Park. The first defendant was sentenced to two years imprisonment and a fine of 300,000 francs CFA for poaching. The other defendants were found guilty for receiving and each one of them were sentenced to six months imprisonment with a fine of 200,000 francs CFA each.

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65 2004 (unreported) CFING/107c/03/04.

66 The Wildlife Law in question is Law No. 94/01 of 20 January 1994 on Forestry, Wildlife and Fisheries Regulation. In effect, the defendant was held, *inter alia*, to have violated Articles 18 (2) and 158 of the said Law.

67 The case was filed in its original French version as *Affaire Ministère Public et Ministère de l'Environnement et de Forets v. Sadou MAna, Bowana Raoul, Nana Augustin and Haoua Bolade* (unreported), Judgement No. 568/COR of 6 January 1998.

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3.2.2.2 The judiciary and the principle of participation

On many occasions, the courts have had to permit and recognise the participation of Non-Governmental Organisations (NGOs) in the identification, investigation, prosecution of offenders and execution of judgements. These NGOs give tremendous and most often much needed technical support to the entire legal process. Evidence of this was seen in the case of *The People of Cameroon v. Bisong Daniel* mentioned above, in which the judicial machinery was triggered by WCS. The complaint in that case was actually presented to the State Counsel by David Hoyle the then director of WCS. The director in question testified in court as the first prosecution witness while the other staff of the NGO gave evidence to the prosecution. It should be recalled to this effect that the court, after landing her sentence ordered that the teeth of the animal be handed to WCS for preservation. This tells of the willingness of the court to acknowledge and consolidate the participation of other stakeholders in the process of environmental management.

In the same vein, in the case of *The People (MINEF) v. Bertrand Van Den Brink and Groupement Coop Buns*,[68] investigations were conducted with the assistance of the Foundation for Environment and Development (FEDEV). It is this NGO that actually visited the *locus* and recorded the polluting activities of the defendants.[69] FEDEV actually played the role of the plaintiff in the case of *Foundation on Environment and Development (FEDEV) v. Bamenda Urban Council*[70] in which the NGO filed the action on behalf of the population. The possibility for an NGO such as this one is a clear manifestation of the principle of participation that takes into account the aspect of extension of *locus standi* for public interest litigations. Unfortunately, this case is one of those which still await judgement in the High Court of Bamenda which will be discussed below.

3.2.2.3 The judiciary fails to apply the polluter pays principle

In the case of *The People (MINEF) v. Bertrand Van Den Brink*, the Bamenda Court of First Instance missed the opportunity to enforce the observance of the polluter pays principle. The case was investigated by the Northwest Provincial Chief of Brigade Control for MINEF, as then it was. After investigation, the case was forwarded to the legal department. The director of the defendant company faced an eight charge

68 CFIB/87c/03-04.
69 The Report can be obtained from Ref. No. MINEF / PDEF / NWP / PSCB / 43, Report of Pollution of Natural Waterways Chum, Bafut-Wum Road.
70 Suit No. HCB/117M/04-05.

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count for pollution of natural waters, air pollution, harvesting communal forest without prior assessment and failure to rehabilitate degraded sites caused by exploitation of laterite in violation of the 1994 Wildlife Law and the 1996 Law. The defendant was a European and after being served with the court process, he left Cameroon and failed to show up. The court was therefore frustrated by the absence of the defendant.

The facts of this case reveal that the defendant potentially committed gross violation against the polluter pays principle and challenged the readiness of the authorities that be to enforce the principle. A few procedural issues were ignored in this case. In the first place, absence of a defendant may be a cause for discontinuity of criminal action but not the same for a civil action. If the criminal action was discontinued, there was still possibility to pursue a civil action. On the other hand, service of a process and subsequent departure of the latter does not exactly frustrate the action considering that there is what we refer to as substituted service which may happen with the collaboration of the ministries in charge of external relations of the two countries. Again, an international arrest warrant may be sought or the defendant tried by any other court if we consider that the nature of the damage caused was not only a problem for Cameroon but raised common concern for humankind. Taken from this viewpoint, the offence committed by the defendant can be said to be *hosti humanum generis* (hostile to humanity as a whole) and thus give rise to universal jurisdiction. We therefore think that had the competent authorities pressed harder and further, justice would have been achieved but the apparent disinterestedness and may be ignorance of the authorities is one of the reasons that pushes us to advocate for the creation of specialised environmental courts below.

4 Addressing the insufficient consideration of principles of environmental management in the 1996 law

4.1 Absence in Cameroonian law of some basic principles of contemporary environmental management

The principles of environmental management discussed in this write-up are those contained in the 1996 Law on Environmental Management in Cameroon. The principles envisaged by this law are six in number and contained in Article 9 (a)-(f). It may be logical to argue that at the time the law was enacted, the principles of environmental law were not as developed as we find them today. In effect, the majority of contemporary writers in the discipline identify a dozen of these principles or something around that neighbourhood. The consequence is that some of the most outstanding principles of environmental management that obtain today are not contained in the law and while we may strive to observe them in practice, they have no legal backing and regime at the national level. In the following subsection, we will pick out a few

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glaring examples of the principles of environmental management that are either absent or poorly addressed under the 1996 law.

4.1.1 Absence of the *Erga Omnes* principle in the 1996 law

The expression '*erga omnes*' is a Latin phrase which means towards everyone or again towards all. Legally speaking therefore, an *erga omnes* obligation is one that binds everybody, so we say it is generally binding. In international law, the fulfilment of the obligations or requirements contained in this principle is of interest to all states considering that the subject matter of such obligations is of importance to the international community as a whole. So breach of such an obligation raises concerns not only to the victimised state but also to all the other members of the international community. Therefore once these obligations are breached, every state must be considered justified in invoking the responsibility of the guilty state committing the internationally wrongful act. An example of an *erga omnes* rule is the right to self-determination.

At the national level, the principle urges judges to give a wider interpretation to cases on breach of environmental principles in order that this covers the harm that has been caused on the environment since the environment is a universal common heritage of which that of Cameroon is only an integral part.[71] What this means is that the judge who is seised of an environmental matter, has according to this principle, to give the widest interpretation that considers such a harm as having been perpetrated to the universal environment. This is therefore different from the traditional interpretation which is always limited to serving the interest of the parties to a case brought before the judge. The absence of this principle in the 1996 law really betrays the extent of reconciliation of the provisions of the law with contemporary developments in the discipline.

4.1.2 Absence of the principle of common concern for humankind

The principle of common concern for humankind has been discussed in earlier parts of this work and so we need not duplicate the explanations at this point. What is important to point out here is the fact that the major environmental concerns today are addressed at the international level not as the particular problems of the places that give rise to these concerns, but as the common and shared responsibility of all states.

71 Section 2 (1) of the 1996 Law.

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Issues such as climate change, global warming, loss of biodiversity and forest loss all constitute issues of concern for the community of states in general. In the same light, any developmental project or initiatives must be guided by the principle of common concern for humankind. Cameroon being one of those countries that distinguish themselves in natural wealth and capital, she depends a lot on this natural capital for her development. But if the development itself is not sustainable, its adverse effects may create common concerns for humankind.

Failure of the 1996 law to properly address this principle despite its role and status in international environmental law exposes a huge vacuum in the said law and its inability to take on board contemporary trends contained in these principles.

4.1.3 Misplacement of the principle of sustainable development

The 1996 Law in effect does not mention the principle of sustainable development anywhere in the section consecrated for 'fundamental principles' split into the various subsections of Article 9. One may be tempted to argue that the principle of sustainable development is, according to the dominant opinion, the most paramount principle of all and has become a virtue which all the other principles of environmental management must seek to enhance. If this argument sells through, one may understand why the Cameroonian legislator failed to include sustainable development under the section consecrated for principles of environmental management.

The above argument notwithstanding, we still think that sustainable development as a cardinal principle of international environmental law deserved to be identified and elaborated in Article 9 of the 1996 Law. It becomes even more worrying when we read earlier sections of the said law which make explicit reference to sustainable development, but in those parts it becomes unclear whether the concept is intended to be understood as a principle or an environmental value. In Chapter 1 of the 1996 Law that defines key terminologies of the law, Article 4 (d) clearly defines the concept of sustainable development, which definition is not very distant from most of the definitions resorted to in international environmental law. This gives the impression that sustainable development will only be treated as a key term in the dispositions of the law and not exactly one of the fundamental and why not most paramount principle of environmental management.

If the 1996 Law above has to be subject to any revision, at least for purposes of clarity, we suggest that the principle of sustainable development be considered under the section of the law dedicated to fundamental principles and under that category, it must be made to feature as the most dominant or basic of the principles.

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4.2 Challenges to the development of principles on environmental management in Cameroon

4.2.1 Impasse between what obtains in theory and in practice

One major challenge that is faced in Cameroon in matters of development of principles of environmental management is that there is absence of legal basis or backing for some of the principles that are developed in practice. On the one hand, the reason may be due to the fact that the law only mentions such principles superficially without any comprehensive details or an enabling instrument. On the other hand, it may happen that some of the principles that are taken into consideration by the diversity of actors in environmental management such as the ministries of environment and of forestry in the execution of plans and projects are not actually found in the law. This is the case with principles such as common but differentiated responsibility and common concern for humankind, just to name these two. This situation makes it rather difficult to legislate on such principles that exist in practice while the law is still silent or unsatisfactory about them. As such, the legal regime governing such principles usually comes from international prescriptions rather than domestic legislation that best translates the readiness and willingness of a state to comply and enforce the observance of the same international requirements.

4.2.2 Timidity of doctrine in the discipline

Environmental law being a relatively new discipline in general and in Cameroon in particular, we expect to witness the type of doctrinal timidity in the discipline especially on sensitive issues such as the role of principles in matters of environmental management. It may be good to recall here that legislators may not necessarily be experts in the discipline of law but with the duty to make law, they sometimes hugely depend on the contributions of experts and scholars to achieve their mission. We may therefore begin to understand why the 1996 law on environmental management in Cameroon does not really treat the subject of 'fundamental principles' of environmental management comprehensively. Yet again, since the passage of the law in 1996 as a framework legislation, we expect some modification of the said law over twenty years afterwards today but the literature as well on the subject within the time frame indicated cannot be very reliable and inspiring for the legislator.

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4.2.3 The 1996 law challenged by contemporary trends

The 1996 Law on Environmental Management in Cameroon was enacted just a few years after the Rio Summit of 1992 and the passage and entry into force of some of its outcome documents like the CBD and UNFCCC. While it may be good to laud the effort and promptitude with which the Cameroonian legislator adopted the 1996 Law, we may not also continue relying on that twenty years afterwards. The intensity and emphasis of environmental exigencies in the modern society is not exactly the same as they were at the time of enactment of the law. The following illustration may be worthwhile.

The parties to the Rio Declaration of 1992 thought it wise to convene another summit in the same venue twenty years later; that was in 2012, to take stock of the level and extent of achievement of the objectives set out in 1992 as well as change the emphasis and attention so that which marries contemporary trends. In 1972 in the Stockholm Declaration, the emphasis was on human environment (man and his relationship with the environment); in 1992 in Rio, the emphasis was on environment and development while in 2002 in Johannesburg and 2012 in Rio, sustainable development and poverty eradication were the guiding considerations. If the 1996 law was adopted at the wake of the Rio Summit of 1996 as if inspired by it, then the time is rather ripe for the revision of the said law since the agenda of the initial Rio summit has taken a wider dimension. We may begin to see why sustainable development is not included in the 1996 law as a fundamental and all englobing principle meanwhile it was a major concern in Johannesburg in 2002 and in Rio+20 in 2012. In same way, no mention is made of the principle of common concern of humankind and the *erga omnes* principle. Therefore, if there is no room for the modification of this law, it may be hard to envisage the development of principles of environmental management to suit the purpose and status that befits them today. It may be added that the 1996 law in question is only a framework legislation and not an environmental code for instance which is still highly desired and awaited.

5 Conclusion and way forward

5.1 Conclusion

A global appreciation of the above write up only leads to the conclusion that there is some synchronisation between international environmental requirements contained in its general principles and Cameroonian Law on environmental management. This harmony is not however a perfect one because some of the founding principles of international environmental law are not given proper consideration under the 1996 Law while others are simply poorly conceived. It may be quite biased to say that princi-

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ples of environmental management in Cameroon are properly put in practice without any hitches. In the light of the challenges relating to the crafting and implementation of principles of environmental management discussed in the previous section of this work, some recommendations have been designed in view of enhancing the role of principles in general environmental management.

5.2 Way forward

5.2.1 Revision of the 1996 Cameroonian law on environmental management

It may be good to recall here that the 1996 Law in question was adopted just four years after the Rio Summit on Environment and Development and not very distant from the date of entry into force of most of the Rio-outcome instruments. This makes the 1996 Law not entirely obsolete today but void of provisions that espouse contemporary environmental trends and issues. Principles such as *erga omnes* and common concern for humankind are completely neglected in the law meanwhile such principles are modern fabrics of international environmental management. The law therefore needs to be revised in order to broaden the scope and substances of the principles of environmental management.

5.2.2 The need for enabling instruments to enhance the implementation of some principles

There is need for the adoption of enabling instruments that will give more effect to some of the fundamental and guiding principles of environmental management in Cameroon. An enabling instrument for instance is necessary for the rehabilitation of polluted areas as a subset of the polluter pays principle. This has already been done for some of the principles such as the principle of participation whose implementation is enabled by the law on Environmental Impact Assessment as modified by the 2013 Law on Environmental and Social Impact Assessment.

5.2.3 The creation of specialised environmental courts or tribunals

A while ago we made mention of the *erga omnes* principle whose pointers are specifically poised at the judge. We do not expect judges to have the same level of training and knowledge in environmental matters as much as he/she does in other legal branches. In the case of Cameroon, there is yet no branch consecrated for the training of environmental judges in the National School of Administration and Magistracy. It

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is not therefore unexpected for magistrates (whether standing or sitting) who leave from this institution to have the kind of disinterestedness in enforcing environmental considerations and principles as they do. It is only fairly recently that environmental studies were introduced in the National School of Administration and Magistracy (ENAM). The introduction of environmental education in institutions in charge of training of magistrates in French-speaking and English-speaking African countries is still under preparation and negotiation. The last meeting on the subject was organised in Yaoundé under the auspices of UNEP, Francophonie and ECOWAS in February 2018. On the basis of such developments, we see that the issue of insufficient capacity of judges and traditional court systems in building environment-related issues is not an allusion but a reality.

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