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CAMEROONIAN DELEGATION PRESENTATION

ON *SCOPE AND CONTENT OF ENVIRONMENTAL LAW*

• Evolution, definition, concepts, principles and types of environmental law • International and national environmental law • Emerging issues in litigation

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The word "environment" positions Man in the center and the rest on the periphery. Thus, man is master and possessor. This concept can be thus considered as ‘’anthropocentrist’’. It involves humanity in its diversity as multi-face as it is.

As a result, "what right, more than environmental law, does it not pretend to universality? ‘’ .This universality is perceived at the level of its principles, which, for example, were set out at the Earth Summit held in Rio de Janeiro in 1992 in its objectives of sustainable development, Solidarity and common to all earthlings, in its techniques as evidenced by the great number of conventions that organize it.

What is undeniable is that today more than ever man is in the midst of a temporal conflict between the present and the future, the background of which is the past.

Since "the Earth, the home of humanity, is a whole marked by interdependence", environmental issues have become a source of major concern for all countries of the world, requiring multiple commitments and specific actions at the level of the global society.

So, Before addressing the subject, we thought it useful to make a summary presentation of Cameroon from the environmental point of view, which we believe is necessary to understand the challenges of protecting environment in our country.

Cameroon which has the form of a triangle whose base goes from the Gulf of Guinea to the South of the Central African Republic and the height up to Lake Chad, about 2000 km was qualified as Africa in miniature both because of Its human diversity than natural.

In the south of the country, Cameroon shares with Gabon and Congo one of the most important forests in the world (***the second lung of the planet***) considered as the common heritage of humanity, whereas in the North predominates a Sudano-Sahelian zone.

Its hydrography is one of the densest in sub-Saharan Africa. But because of so many threats on this natural wealth, Cameroon has made the (sustainable) management of its environment a national cause[1] ***and has taken, by abundant legislation safeguard measures against persons likely to disturb this environmental public order.***

This was first expressed in the preamble to the Constitution of 18 January 1996 (revision of the 1972 Constitution)

The latter states in this respect: “Everyone has the right to a healthy environment, the protection of the environment is a duty for all, and the State is responsible for the preservation and protection of the environment”.

The solemn affirmation thus enshrined in the Constitution was subsequently translated into an important legislative effort in this area by a framework law and specific laws relating to particular areas.

This is to signify that Cameroon, as far as it is concerned, has made the management of its environment a national cause. This is so true in the ‘’Cameroon Vision 2035’’ document , which

[1] In fact, our country is spared, neither by the effects of drought and desertification in the Sudano-Sahelian zone, nor by deforestation, bush fires and the degradation of the humid dense forest, nor by the destruction of coastal ecosystems and still less multifaceted pollution in urban centers and around industrial establishments.

stipulates that "the State of Cameroon intends to develop appropriate strategies not only to deal with environmental threats but also to integrate ecological data into its economic development policies."

At this stage, logic requires that our intervention during this session on the theme "Scope and Content of Environmental Law", may be articulated around the three axes proposed by the program of this Colloquium namely:
- ***the philosophical axis regrouping***: evolution, definition, concepts and principles of environmental law (I);
- ***the legal framework*** that will enable us to define the international and national legal framework for environmental law (II); and
- ***the practical axis*** in which will be concretely presented, the new environmental challenges in Cameroon, the environmental damage that we are facing there and the measures implemented to overcome them (III).

Part I. The philosophical axis:

Evolution, definition, concepts and principles of environmental law.

The philosophy of our intervention is based on elements that will enable us to better understand environmental law from the point of view of its evolution (A), its definition, its concepts and principles (B).

A. Evolution of environmental law.

If environmental law is recent, environmental issues are old. Environmental law has thus evolved in three major steps:

1- ***At the beginning, the sole purpose of environmental law was to preserve, safeguard and protect environment***. It was a right to preserve a state of nature considered by society to be part of a patrimony to which it is attached, in the same sense as the law of historical monuments which had as its objective to preserve a cultural heritage exposed to the onslaught of time and modernization.

2- ***Subsequently, it was realized that it was not enough to protect it through the use of conservative measures, but that it also comprised of carrying out positive acts for restoration and management of the environment***;

3- ***Then emerged the concept of sustainable development as the overall objective of contemporary societies.*** It has, however, revealed the inadequacy of these tools of environmental law. The most significant political translation of this paradigm shift is to be seen in the shift from the Millennium Development Goals (MDGs) to the sustainable development goals (SDGs). Ségolène ROYAL affirms this adequately: "Sustainable development objectives mark the beginning of a new era in which humanity's respect for its planet becomes a major concern".

B. Definition, Concepts and Principles of Environmental Law.

1. Definition of environmental law.

Environmental law, as far as it is concerned, is clearly seen as legal rules, which distinguishes it from wordings on environmental policy as expressed in strategies, common positions, white papers, recommendations and other policy documents. However, the aspects of environmental policy must not be ignored by the law whose content they guide, some can even be

adopted at the highest level by means of a law of orientation or programming of this environmental policy in areas (Such as forests, water, energy, biodiversity management, waste management).
In a simple way, environmental law may be considered as legal rules that organize and regulate the functioning of environmental institutions on the one hand and regulate the various fields of the environment on the other. The former describes the institutional framework within which environmental competencies are exercised, while the latter set out the rules of protection and management proper.

2- Concepts of environmental law.

a- ***The most well-known of these concepts is that of sustainable development, enunciated in 1980 by IUCN;***
b- ***The second concept*** *makes it of necessity to question oneself, in conjunction with that of sustainable (or sustainable) development****: the concept of the right of future generations***. It began to be spelled out in Stockholm in 1972;

Here then arises the question of the definition of future generations: what is the temporal deadline for this reflection, and is there a limit to the future? At the same time, should we not ask ourselves who has the legitimacy to express themselves on behalf of these future generations and to defend their interests, even though we do not know what interests they would wish to protect?

c- ***The third concept can be considered justifying the emergence of environmental law, that of a common heritage common to the whole human species in a very broad sense;***
d- Fourth concept therefore: the right to environment. Which means, each one has the right to an environment of the highest possible quality, a quality that can be declined by elements such as air, water, soil (which explains the progressive adoption of thematic laws.

3- Principles of environmental law.

In terms of the broad principles underlying environmental law, ***they can be differentiated into three families.***

- ***In the first family****, is made of those that can be defined as principles of anticipation*, that is to say, principles to which priority is given prior to the environmental fact being the subject of a legal framework: ***these are the Principles of prevention and precaution.***
- ***The second family*** can be defined as the one to which one refers after the environmental event, downstream, when it is essentially a matter of repairing, correcting, remedying: ***it is the polluter-pays principle***;
- ***A third family*** can be determined by the transversality of its field of application in the field of environmental law, obviously linked to the principles of prevention, precaution and polluter-pays: it brings together everything relating ***to transparency, Information (What information can I ask for? What information should officials provide in response to such a request***? ***Can officials refuse to provide the requested information? What happens if a public authority does not have the information requested? Is the competent authority required to have this information?), participation (***This principle is the juridical translation of what Kofi Annan called "environmental democracy")***, cooperation***.
- **The principle of subsidiarity.**

Article 9 (f) provides: "the principle of subsidiarity ***according to which, in the absence of a general rule of law or special written law on environmental protection, the identified customary norm of a given terroir and proven more effective for the protection of the environment applies*** ".

II. The legal axis: International and internal environmental law

The influence of international conventions will be discussed, distinguishing their effects on the drafting of national law and then on its application.

A. International conventions on the environment and the drafting of national law.

By the phenomenon of the incorporation of international law, duly ratified and existing conventions must find a legal translation into domestic law. Either they impose themselves directly and then become national law automatically, or they require a particular legal translation in laws or regulations. Depending on the matter dealt with, this would be an innovation in national law or an amendment with the repeal of the earlier rule which had become incompatible with the new rule imported from international law.

Environmental law at the beginning of this century is confronted with two major developments: its internationalization and its constitutionalization. In both cases, the result is a certain legal complexity and, at the same time, an uncertainty, a doubt as to the real legal effects of this internationalization and constitutionalization, not to mention the question whether these transformations of law which are an indisputable enrichment, translate on the ground by a real improvement of the state of the environment and contribute thus to the safeguarding of the planet

Limiting our intention to the internationalization of environmental law, we can see that the multiplication of universal, regional or bilateral international conventions (more than 300) necessarily leads to a certain uniformity of the content of national laws. It is no longer a question of constructing specific national laws, but of constructing a right in which all countries, whether northern or southern, adopt at the same time rules that are almost identical, issued by international conventions.

At present, for example, national laws on protected areas or the right of environmental impact assessments are found in all countries in very similar terms. Even rights traditionally marked by strong national origins and specificities are now being standardized under the influence of international environmental law (e.g. water law, forestry law, air law, etc.)

B- As far as enforcement of the law is concerned,

The fear is that this large number of environmental conventions sometimes leads to contradictions or conflicts of rules, especially since environment is a cross-cutting issue and the overlapping of these conventions is in fact inevitable. These possible difficulties further complicate the role of the national court in interpreting potentially competitive conventions and harmonizing their national effects.

This normative inflation that leads to hundreds of conventions, laws and decrees in the same field is also a matter of concern at the internal level. Cameroon for example is legally bound by more than 26 international commitments on environment, 18 internal laws, 18 decrees and at least 7 ministerial orders have been issued I the same field.

But once the conditions of applicability have been established, the judge must address the question of the reliability and the question of admissibility as to the merits of law.
Of course, in order for the national judge to be able to effectively apply environmental conventions, it must also be possible for him to know and interpret himself international conventions.

III. The practical axis: **new challenges to be met**.

A. ***Environmental issues and new challenges at the national level***.

Threats to the environment at the national level have been diagnosed. ***These are: - irrational degradation and exploitation of resources (illegal logging, illegal or unregulated mining, poor waste management, low environmental awareness on socio economic changes and impact of development activities; - pollution of air, water and soil; - waste of ecological potential …***

As the country Is committed to achieve its goal to become an emerging country around 2035, this goes with environmental threats linked to industrialization;

Another challenge is illegal poaching, no more for traditional use purpose, but for the feeding of rebel groups settled at our common borders, especially with Central Africa Republic, Nigeria and Chad.

All causes likely to compromise the balance of ecosystems and to mortgage the fate of future generations.

These environmental issues and challenges are addressed by actors, mainly in the administrative sector and other in courts.

It should be noted here that double legal evolution on environmental competence, internal to the state and towards the private sphere has put an end to this privilege of the State, as the main actor in protecting environment.

On one hand, the consecration of a policy of decentralization has introduced a dualism of the legal personality of the State, both organically and functionally with the creation and / or recognition of decentralized territorial communities and the creation of a " National and local public institutions.

On the other hand, initially entrusted to the Ministry of Environment, Water and Forests (MINEF), we witness the break-up of this Ministry. So today we have the Ministry of the Environment, Nature Conservation and Sustainable Development (MINEPDED) and the Ministry of Forests and Wildlife (MINFOF). Both Administrations have competence to settle environmental disputes through arbitration or transaction. But for this presentation, we'll rather focus our paper on the judicial treatment of disputes.

A. The National Treatment of Environmental Disputes.

Cameroon's judicial organization in its present state has not yet provided for specialized courts in the environmental field. In this judicial configuration, appeals against environmental damages are brought before the administrative judge and the judge sitting both in civil and criminal matters.

1- Before the administrative judge.

It would then be interesting to know when an environmental dispute can be brought before the administrative court and especially who can do so.

As a matter of fact, any appeal in administrative matters can be brought before the administrative court, but the most visible on the environmental issues are: ***the appeal for damages and the appeal for annulment.***

The first is to implement the obligation of the State to repair any damage caused by its fault.

The second is to annul an administrative act by removing it from the legal order. It is also known as ‘***’appeal for abuse of power***’’.[2]

2-Before the civil and criminal judge.

- ***As far as the civil judge is concerned***, while the framework law and the other Cameroonian environmental laws recognize its competence without the need to prove a fault in the event of an environmental attack, civil litigation of the environment in Cameroonian practice shows that *judges are generally based on liability either for the very fact of the person or because of carelessness or negligence*.[3]

the polluter is liable because the fact of polluting is a fault (Section 1382 of the Civil Code). Pollution due to breach of regulations or negligent or unwise conduct of the polluter, it should be noted that this is the most common basis for civil remedies;

- *the polluter is also liable, even without a fault, for the things he has in his custody* (Section 1384 of the Civil Code):

- ***As far as criminal courts are concerned***, ***they have jurisdiction to hear disputes based on domestic and international environmental offenses. In Cameroon, the common criminal way for the settlement of disputes applies***. In addition to the Criminal Code, which contains provisions on environmental violations, almost all specific environmental protection instruments place a significant proportion on penal provisions for the punishment of offenses but due to the dispersion of environmental texts, it is not uncommon to encounter contradictions in the penal provisions, requiring a consolidation of all these texts in ***an environmental code for better visibility and simplified application*.**

[2] Indeed, the management of environment by administrative institutions leads to the taking of administrative decisions which may be referred to the administrative court for annulment.

Two judgments of the Administrative Court of the Littoral region are sufficiently illustrative. They concern Judgment N°88 / QD / 16 of 26 May 2016, in the case of Association CLUB HSE against MINEPDED and Gaz du Cameroun and N° 90 / QD / 16 of 26 May 2016, in the case of Association CLUB HSE (Environmental Health Hygiene) v. MINEPDED and DANGOTE CEMENT CAMEROON SA.

In these two cases, the applicant (the association) brought an action before the administrative court, seeking annulment of the *certificate of environmental compliance* issued by the Minister of the environment to the defendant companies. In support of its action, it pleads essentially *procedural flaws in the award of the contested act*, in particular:

- starting of work before the issuing of the contested certificates,
- failure to comply with the time-limits for the convocation of the public consultation,
- lack of prior publicity and also,
- violation of decree N° 2013/0171 / PM of 14 February 2013 laying down the procedures for carrying out the environmental and social impact assessment.

In these two cases the substance of the dispute will not be debated because the judge will declare the first action inadmissible for lack of quality on the basis of Section 8 of Law No 96/12 of 5 August 1996 on the management of the environment.

The second action was also dismissed, not only for lack of quality but also for foreclosure of prior appeal to the administration.

[3] in the case of P. Z v. ATANGANA, in which Mr. ATANGANA complained about the emission of foul smells from the skin treatment company in his neighborhood, which rendered his house uninhabitable. In spite of the anteriority of this company and especially of the existence for its benefit of an authorization, the judge ordered the company to pay 8,500,000 CFA francs in damages, since the odors emitted exceeded the threshold of the normal disadvantages of neighborhood. In another case, [Maurice NKOUENDJIN YOTDA v. MAETUR and EXARCOS], the causal link was highlighted. The judge decided that the manufacturer of the road (MAETUR and EXARCOS) had not, by imprudence or negligence, foreseen the stagnation of rainwater at the entrance to the concession of Mr. NKOUENDJIN and that he suffered a certain damage

It must also be observed in addition that criminal proceedings are not used very often, due to the transactional option offered to offenders on the one hand, and the weakness or even non-existence of prosecution on the other.

- *Transaction*

One of the originalities of the framework law is the transactional route offered to the offender. Under Article 91 of that law, "***environmental management authorities shall have full power to transact, and to do so must be duly seized by the perpetrator of the infringement***".
However, the text makes two important reservations:

- That the transaction procedure is prior to any legal proceedings;
- That the amount of the transaction is not less than the corresponding penal fine.

Subject to these reservations, the transaction shall terminate any criminal proceedings which may be brought against the offender.

- *The almost non-existence of penalties*

If sometimes, courts are seized of offenses relating to wildlife legislation, the other areas do not seem to be subject to prosecution, perhaps because of the primacy of the transactional procedure, of the defect in research in the recognition of environmental offenses and unfortunately, because of corruption.

Conclusive remarks

Rio Principle 4 states that to achieve sustainable development "the protection of environment must be an integral part of the development process and cannot be considered in isolation" is the founding principle of a globalized law. ***It is called the principle of integration***. This necessarily implies a new role for Courts, which thus contribute to safeguarding the planet, and which was highlighted by the World Symposium of Judges held here in Johannesburg from 18 to 20 August 2002. Here we are again.

As Judges are likely to deal with environmental matters more and more, at several ***levels of litigation, there should be a harmonious concert of judges or a dialogue between judges on environment issues on the basis of the world-wide principles in this field as representing a kind of ‘’opinio juris Communis’’. This is our need and main expectation at this colloquium, as Officials in charge of the training of the judiciary.***