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REVUE AFRICAINE DE DROIT PUBLIC

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Sommaire

JURISPRUDENCE ANNOTÉE

Jugement n°01/2012/CA/CS du 25 janvier 2012, Affaire TCHAPTCHET Joseph c/ Etat du Cameroun (MINDCAF) 7

Note par Jean-Luc ENGOUTOU

Arrêt n°163/A/CFJ/CAY du 08 juin 1971, Affaire : compagnie des chargeurs réunis contre Etat du Cameroun Oriental. 15

Note par Patrice Arthur KOUMOU

DOCTRINE JURIDIQUE

Constructing Synergies for the Conservation and Wise Use of Wetlands in the Central African Sub-region: Legal and Institutional Pathways, 25

Christopher F. TAMASANG

Le principe de légalité en droit administratif camerounais : quel chagrin !, 57

Araon LOGMO MBELEK

L'aménagement juridique de la coopération décentralisée au Cameroun, 83

Lionel-Pierre GUESSELE ISSEME

L'âge en droit public, 117

Henri Martin Martial NTAH A MATSAH

La participation directe des populations à la gestion des affaires locales au Cameroun, 141

Guy Herman MFOYOUOM

Le juge administratif face à la libéralisation politique : Recherches sur quelques jurisprudences récentes en droit administratif Camerounais, 167

Serge Mathieu OWONA

La loi de finances et le budget dans le nouveau régime financier de l'État du Cameroun, 197

Hortence NGUEDIA MEIKEU

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DOCTRINE JURIDIQUE

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Constructing Synergies for the Conservation and Wise Use of Wetlands in the Central African Sub-region: Legal and Institutional Pathways

Par

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Plan

1. Introduction
 - 1.1. Background and rationale to the study
 - 1.2. Conceptual Framework and Methodology for the study
2. The international and national importance, functions, value of and threats to wetlands
 - 2.1. Socio-cultural Importance, functions and value of wetlands
 - 2.2. Economic Importance, functions and value of Wetlands
 - 2.3. Environmental Importance, functions and value of Wetlands
 - 2.4. Threats to Wetlands in the study area: The Focal Problem
3. Existing legal mechanisms for wetlands protection and wise use
 - 3.1. Wetlands status (regime) from a global perspective
 - 3.1.1. Some Early Initiatives of a Soft Law nature
 - 3.1.1.1. The Declaration of Stockholm
 - 3.1.1.2. Rio Declaration and Agenda 21
 - 3.1.2. Some Early Hard Law Initiatives relating to Wetlands Management
 - 3.1.2.1. The Convention on Wetlands of International Importance especially as Waterfowl Habitat, Ramsar, 1971
 - 3.1.2.2. The Convention Concerning the Protection of World Cultural and Natural Heritage and its relationship with wetlands protection and wise use
 - 3.1.2.3. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and its nexus with wetlands protection and wise use
 - 3.1.2.4. The Convention on the Conservation of Migratory Species of Wild Animals and its link with wetlands
 - 3.1.2.5. The Convention on Biodiversity and wetlands concerns
 - 3.1.2.6. International Treaty on Plant Genetic Resources for Food and Agriculture and Wetlands management
 - 3.2. Wetlands conservation, management and wise use at the regional and sub-regional level
4. Conclusion and the Way Forward

1. Introduction

1.1. Background and rationale to the study

It is trite knowledge that environmental challenges are today a global concern in the sense that they affect directly or indirectly humankind in one way or the other. Indeed, for close to five decades now, the promotion of environmental protection has occupied a priority place in international discourse. Environmental challenges are many and various but probably do not affect different communities in the same way and with the same intensity. This fact, notwithstanding, the global community generally under the auspices of the United Nations, has deployed significant and commendable efforts aimed at reversing the state of environmental degradation. These are evident in

the ever increasing Multilateral Environmental Agreements (MEAs)¹. Such global initiatives are aimed at addressing challenges such as, deforestation and forest degradation, pollution in all its forms, climate change, funding for environmental protection, poverty-environment nexus, capacity building for environmental protection, biodiversity loss, in particular, threats to wetlands, etc which are trans-boundary in character and consequences.

The environmental protection debate at the international level today has indisputably been championed by the climate change conversation which is undoubtedly connected to biodiversity management in general and forest resources management in particular. Only a peripheral reference is made of wetlands in particular. Meanwhile, wetlands accommodate some of the richest biodiversity re-

¹ International Environmental Law today is grounded essentially on Multilateral Environmental Agreements. They may assume a generic or general sense (*lato sensu*) in which case we can talk of all the arsenal of legal instruments relating to environmental protection be they of Soft law or Hard law character. This way we can catalogue such Soft law instruments as Declarations, Resolutions, Recommendations, Directives, Statements, Guidelines, Stipulations, Targets, and Hard law instruments notably Treaties and Conventions, protocols, Covenants, Charters, Pacts, Constitutive Instruments, and Final Acts. Mul-

tilateral Environmental Agreements may also be understood in a limited or restricted sense (*stricto sensu*). In this regard, MEAs are limited to and should be understood to mean hard law instruments without more. In this study, unless specific reference is made to the one or the other sense, it should be noted that the two shall be employed. For more on these, see Tamasang, C.F. (2011), *Legislation for Sustainable Forest Management in the Central African Sub-region: What Prospects for Effective Implementation?*, Edward Elgar Publishing, Cheltenham, Massachusetts, p 504-505

sources and offer enormous environmental goods and services as shall be demonstrated in this write-up. In fact, Wetlands are a melting pot for fauna and flora whether genetic or otherwise, of migratory species of wild flora and fauna, and to a large extent, natural heritage.

The Central African Sub-region² which the present writer has termed *le Coeur Vert de l'Afrique*,³ possesses huge

² The Central African Sub-region has undergone a mutation in its membership in recent years. It may today be understood from different perspectives. From the socio-economic front, it refers to those countries that came together in 1981 to form what is called the Economic Community of Central African States (ECCAS) for the purpose of socio-economic integration. The basis of the union is the ECCAS Treaty, 1981. Under that treaty, the member states were the Republic of Angola, the Republic of Burundi, the Republic of Cameroon, the Republic of Central Africa, the Republic of Chad, the Republic of Congo, the Democratic Republic of Congo (DRC), the Republic of Gabon, the Republic of Rwanda, and Sao Tome & Principe. The quest for more socio-economic development has caused most of the countries to belong to many other Regional Economic Communities today (Angola, DRC belonging more to Southern Africa Development Council (SADC) and International Conference of the Great Lakes Region - CGLR; Burundi, Rwanda, belonging more to the East African Community) or leave the

environmental resources including a significant surface area covered by wetlands. The sub-region today has been documented as having forty three (43) sites from nine contracting parties to the Ramsar Convention, of a total number of two thousand one hundred and eighty two (2,182) sites already designated for the Ramsar List throughout the world.⁴ It is even more interesting to know that, put together,

ECCAS officially. This is the case of Rwanda since 2007. From the environmental front, however, many of the countries have remained tied to Central Africa and even Rwanda continues to pay her contributions under the COMIFAC treaty, a purely Central African legal instrument and of course the first ever sub-regional treaty for the sustainable management of forest Ecosystems.

³ See *Rapport Final de "l'Etude sur L'Identification des Domaines de L'Environnement et des Ressources Naturelles en vu d'Harmoniser les Efforts Déployés au niveau de la Sous-région CEEAC"*, l'étude commandité par Union Africaine, Union Européen et Programmes des Nations Unies pour l'Environnement, Mai 2010, p 3 and 102.

⁴ These statistics have been extracted by the author from a search at: Contracting Parties to the Ramsar Convention on Wetlands: Number of sites designated for the Ramsar List and the precise search is: *Ramsar sites. Database*, last accessed on 20/06/2014. The number of designated sites per contracting party are as follow: Burundi-4, Cameroon-7, Central African

this number covers a total surface area of thirty-three million two hundred and seventy-six thousand five hundred and fifty eight (33.276.558) hectares out of a total of two hundred and eight millions five hundred and forty seven thousands and thirty five (208.547.035) hectares from around the world.⁵ These statistics are telling. Arithmetically, the sub-region has more than 5% of the designated sites for the Ramsar List across the globe with three of its countries out of twelve figuring among Contracting Countries having the largest surface area of wetlands designated for the Ramsar List⁶. It is equally interesting to know that three out of the nine largest wetlands of international importance are found within the sub-region⁷. For a sub-region, these figures

undoubtedly reveal that wetland ecosystems occupy an important portion and therefore can contribute enormously to the provision of environmental goods and services to countries that make up the sub-region including Cameroon and even beyond the sub-region. These are not all. There are many more potential wetlands sites in process of designation and many more to be identified.

Cameroon's wetlands situation within the continent generally and within the Central African sub-region specifically is particularly interesting. That the country is Africa in miniature is true in all respects including its biodiversity resources in general and wetlands resources in particular. Within the sub-region, its ranks second in biodiversity wealth⁸ in general

Republic-2, Chad-6, Congo-10, Democratic Republic of Congo-3, Gabon-9, Rwanda-1, and Sao Tome & Principe-1.. It may be necessary to mention that Angola is the only member state of the sub-region which has not yet ratified the Ramsar Convention.

⁵ *Ibid.* In terms of surface area covered, the figures in hectares are as follows: Burundi-78.515, Cameroon-827.060, Central African Republic-376.300, Chad-12.405,068, Congo-11.335.259, Democratic Republic of Congo,7.435.624, Gabon, 2.818.469, Rwanda (not documented), Sao Tome & Principe-23

⁶ Ramsar Convention Secretariat

(2013), The Ramsar Convention Manual : A Guide to the Convention on Wetlands, (6th edition), Gland, p 101. It may be important to add that Canada aside, two countries of the sub-region (Chad and Congo) occupy the 2nd and 3rd positions respectively and D.R. of Congo, the 9th positions in terms of surface area covered.

⁷ *Ibid.* These wetlands are Ngiri-Tumba-Maindombe, D.R. of Congo (6,569,624ha; Grands Affluents, Congo, 55908, 074ha ; Plaines d'inondation des Bahr Aouk et Salamat, Chad (4,922,000ha).

⁸ The Democratic Republic of Congo ranks first within the sub-region.

and third in the number of wetland sites⁹ designated for the Ramsar List and more interestingly, many more identified in the pipeline and not far from being designated. In spite of these wetlands wealth and what it offers to the state and the community as a whole, threats to conservation and their wise use are on the rise and the major worry is how to overcome these threats and ensure a sustainable benefit for the present and future generations.

It must be highlighted immediately that, from a doctrinal perspective, there has been a lot of difficulties unanimously agreeing on what constitute wetlands for the simple and convincing reason that wetlands are complex and found in a diversity of milieu, location, form, size, hydrological functioning and uses.¹⁰ In fact, it may be said that the categories of wetlands are yet to be closed. Consequently, there are multitudes of understanding of wetlands from around the world.¹¹ However, if there is a denominator for the identification of wetlands at this preliminary stage of the study, it is that water is a thread that runs across all wetlands.

The crafters of the Ramsar Convention envisaged the protection of co-

herent sites and so provided for wetlands to be included in the Ramsar List of internationally important wetlands as '...may incorporate riparian and coastal zones adjacent to the wetlands, and islands or bodies of marine water deeper than six metres at low tide lying within the wetlands...'¹² It is also clear from this definition that water appears to be the threshold of what may constitute a wetland. The focal question then is what has provoked such an attention given to wetlands at the international level at least in terms of principles. The answer to such a worry requires unraveling the importance, functions, value of and threats to wetlands to the international as well as national communities. In addition, the problem of wetland management in the Central African sub-region particularly has been compounded not only by inadequate attention given to such key matters but even more by the multiplicity of international legal instruments relating thereto so much so that the difficulty has turned on how appropriately to synergize and focus implementation but also to ensure proper coordination of implementation of such diverse legal initiatives.

⁹ Cameroon has seven designated Ramsar sites coming after Congo with 10 and Gabon with 9.

¹⁰ As a result of the complexity of wetlands, some of characteristics include the fact that they are located between the ground and water; composed of swamps, trees, herbs,

animals...; spatial and temporal variability of submersion or saturation...

¹¹ For instance, it is a region where water is the principal factor which controls the natural milieu and the associated animal and vegetation life (look for source).

1.2. Conceptual Framework and Methodology for the study

This study hinges on the proper understanding of wetlands and their 'wise use' and hence seeks to demonstrate that wetlands accommodate very important biodiversity resources and play a key role in the protection of biodiversity resources and therefore require a particular attention of the legislator of the Central African Sub-region. The study acknowledges, as already highlighted above, that wetlands have not yet been given a unanimous definition by writers on the subject. Given this difficulty therefore, the study adopts the definition of wetlands as provided by International legal instruments. Thus, wetlands are areas of marsh, fen, peat land or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres.¹² The study posits that to keep wetland ecosystems alive so that they may continue to accommodate biodiversity resources and provide environmental goods and services for present and future generations within the sub-region and even beyond, there is need for the

legislator of the sub-region to craft legal and institutional frameworks that ensure the observance of the principle of 'wise use' akin to the concept of sustainable use.

The study acknowledges that until 1987, the understanding and strength of the concept of wise use was still very much clouded especially so because although the concept represents the core of the Ramsar convention, the convention offers no more specific guidance for what the 'wise use of wetlands' means.¹⁴ This vacuum notwithstanding, doctrinal sources have afforded a meaning to the concept of 'wise use' of wetlands to mean their sustainable utilization for the benefit of mankind in a way compatible with the maintenance of the natural properties of the ecosystem.¹⁵ In fact, the 'wise use' of wetlands involves maintenance of their ecological character achieved through the implementation of ecosystem approaches, as a basis not only for nature conservation but for sustainable development as a whole.

The methodology utilised in this study involves the reading of records from libraries, documentation centres of National and International Organisations working in the domain of

¹² See article 2.1 of the Convention

¹³ See notably article 1 of the Ramsar Convention on Wetlands of International importance especially as Waterfowl Habitat, 1971, *infra*

¹⁴ See Hunter (D.), Salzman (J.), & Zaelke (D.) (1998), 'International En-

vironmental Law and Policy', Foundation Press, New York, p 1060 – 1061.

¹⁵ See notably Davis (T.D.) (ed) (1993), *Towards the wise use of wetlands, Wise Use project*, Ramsar Convention Bureau, Gland, p 7-8.

biodiversity including wetlands, and from internet searches. We also proceeded to the identification, interpretation and critical analysis of relevant international and national legal instruments relating to or having implications on wetlands and their resources management. The aim of this is to find out how, with the multiplicity of international legal instruments, the legislator of the sub-region can synergize and focus the implementation of such instruments in order to ensure the wise use of wetlands within and perhaps beyond the sub-region.

2. The international and national importance, functions, value of and threats to wetlands

Wetlands have a wide variety of importance, functions, value but also threats. For convenience purposes, the importance, functions and value may be catalogued into socio-cultural, economic, and environmental, of course without undermining the fact that the frontiers of such categorization are not very neat. Concerning threats, they are so interwoven that no need arises for their categorization in this paper.

¹⁶ See for instance, Ordinance No 74-2du 6 juillet 1974 fixant le regime domanial, art 3 (b) which regulates le domain public fluvial.

¹⁷ It may be worthwhile underlining here that the respect of the legal provisions of land regulations generally and in the context of wetlands in particular, in the majority of the coun-

2.1. Socio-cultural Importance, functions and value of wetlands

Wetlands are sites for spiritual and ritual performances. This way, they may be referred to as sacred sites. They are sites for touristic activities. They serve recreational and aesthetic purposes as well as they are a milieu for education and research. Wetlands also provide artisanal products. Perhaps, the most paradoxical importance of wetlands is that they serve as habitats for humans. The paradox here lies in the fact that it is hard to conceive that one can be talking about wetlands as defined above, yet talking about human habitation with particular reference to the African continent in general and the Central African countries in particular. But this is the reality on the ground. From a legal stand point any way, it may be noteworthy that in almost all the legislation dealing with land or having implications on land matters in Central Africa,¹⁶ wetlands (in essence, marshes, swamps, peat lands) fall under the public property of the state and therefore forbidden from human exploitation by individuals by way of settlement¹⁷, for instance. However, such category of wetlands may no

tries of the Central African Sub-region in general and Cameroon in particular has posed enormous difficulties especially within the last two decades where urban sprawl has been on the rise partly resulting from uncontrolled population growth, rural urban migration of the working age group, and partly because of the re-

longer constitute public property of the state where it has been developed into plantations, pursuant to article 3(b) of Ordinance No &4-2 of 6 July 1974 on Public Property of the State. Unfortunately, it seems debatable when it comes to determining among others, plantation development (*plantations aménagées*), in the words of paragraph 'b' of article 3 of the Legislation just cited. The justification for such a debate will be based on the fact that the Legislator has failed to define and determine what is meant by '*plantations aménagées*'.

2.2. Economic Importance, functions and value of Wetlands

From an economic point of view, wetlands provide fishing, fish farming and hunting grounds for the population where they are found. Livestock activities are equally perpetrated on wetland. They serve as transport

cent importance attached to land as source of wealth and the desire to acquire same free of charge and/or fraudulently. This situation is particularly disturbing in Cameroon where, for the past ten years, the Government Delegate of the Yaoundé City Council has been bent on enforcing the provisions of land and related regulations by causing the destruction of human settlements in areas hitherto identified as marshy, swampy ... and therefore prohibited from any private human exploitation. One may be curious to know why the law prohibits human settlement in such areas. The answer is simple and it is one of secu-

medium for both persons and goods and equally accommodate vast mineral resources including hard, liquid and gaseous minerals. Maybe, the most important economic activity undertaken in wetlands is agriculture which is generally considered as inimical to the wise use of wetlands. However, a number of authors think that if a well conceived partnership is put in place in the area of agriculture in wetlands, countries of the ECCAS space, Cameroon for instance, may realize her dream of being an emerging economy by the year 2035.¹⁸ It is perhaps important to explore the carrying out of agricultural activities in wetlands within the ambit of the law and policy in some countries of the Central African Region, Cameroon, for example, before determining the kind of strategic partnership that may reconcile the compelling but also conflicting activities of agricultural development and wetlands protection.

rity for the health, lives and property of the citizens and thus to ensuring general social peace in society. For more on this, see Goudem, J. (2010), *Les Politiques foncières et domaniales du Cameroun: De l'ère précoloniale à nos jours, thèse du Doctorat/PhD, Faculté des Sciences Juridiques et Politiques, Université de Yaoundé II, Soa*, pp 245 and 422.

¹⁸ See generally Ajonina, G., *Zones Humides et Agriculture: Quel Enjeux pour l'Emergence du Cameroun?*, paper presented at the workshop organized in celebration of World Wetlands Day, 01-02 February 2014, *Institut de Science Halieutique, Yabassi*.

Agriculture has been largely responsible probably to a greater extent than human habitation for the drastic ecological change of wetlands in most parts of Africa in general and in countries of Central African Sub-region in particular. Behind this trend lies the increasing quest for water and land as a consequence of exponential population growth. Wetlands are therefore converted to agricultural land through massive deforestation of aqua-forests, diversion of water for rice, maize¹⁹ and vegetable farming, and overexploitation of other wetland resources. The agricultural policies in most of the countries of the sub-region are in favour of this situation in disregard of general environmental policy as no specific policy exist in these countries on wetlands protection, management and conservation. A specific policy on wetlands would have, may be, integrated agricultural concerns. This seems to be the first dimension of the problem.

The second dimension of the problem relates to the position of existing legal architecture on land and agricultural activities. As highlighted earlier, activities on wetlands including agricultural activities are regulated in the majority, by Legislation on Land Tenure and State Lands.²⁰ By this leg-

islation, no human activities may be carried out in wetlands (marshy and swampy areas) except by the state as this is the public property of the state.²¹ All what is allowed by the law in these areas is plantation development. Plantation development appears to be, in our view, linked to agriculture. But it may also be interpreted otherwise as the law on the subject is ambiguous and obscure; having not articulated clearly on what could constitute plantation development. In any event, agriculture is crucially important for sustainable livelihoods of communities and for the enhancement of economic growth of the countries of the sub-region. The question now is what kind of partnership then must be constructed between environmental and agricultural stakeholders on wetlands if countries of the sub-region are to be emerging economies by 2035 for example. Writers²² who support this thesis of agriculture in wetlands posit that there is need for an integrated approach that considers the veritable participation of all stakeholders and this will result to a win-win partnership. For this to happen there is a need for clear directions by way of policy or strategy for wetlands management and wise use of its resources.

¹⁹ *Ibid*

²⁰ See for instance, Ordinance n° 74-02 of July 6 1974 regulating Public Property of the State.

²¹ It is important to mention that the use of marshy and swampy areas of wetlands is usually done by the state

for public utility projects and of course all proper measures are usually taken to ensue security of persons and property.

²² See for example, Ajonina, G., *Op. Cit.*

2.3. Environmental Importance, functions and value of Wetlands

From a purely environmental perspective, wetlands maintain the water table by facilitating the movement of large volumes of water into underground aquifers, resulting in the recharge of the water table. Wetland ecosystems equally prevent floods and erosion by slowing surface runoffs and reducing overflows into the riverbank downstream, thus stopping erosive flood conditions and feed oceans with water. They serve the purpose of storm protection, purify water and are a valuable source of portable water. The most widely known function of wetlands is undoubtedly the fact that they are a habitat for plants and animal life especially waterfowl. They are equally important in the provision of environmental services. In this respect, they regulate local and by extension global climate and this is crucial and critical as the climate change challenge has taken a lead in contemporary environmental discourse²³ and this justifies the environmental slogan "think global and act locally". So wetlands are an international concern.

²³ There is an increasing unanimity at global, regional and national levels to integrate climate change concerns in policy and legal orientations no longer as environmental challenge but as a sustainable development challenge

²⁴ The Concept of sustainable development has been exhaustively explored in other works by the present author. See for instance, Tamasang, C.F. (2008) Sustainable development:

It seems unnecessary to state that the organization of the importance and functions of wetlands into various heads is not to cast any doubts on their inter-linkages as the social, economic and environmental domains are the representative pillars of sustainable development.²⁴

2.4. Threats to Wetlands in the study area: The Focal Problem

In spite of the importance, the functions and value of wetland resources in the Central African sub-regional countries, enormous threats to wetlands abound. Essentially, they relate to the degradation of wetlands through the excess use of chemical products especially non-homologated chemical products. Fortunately, the importation and use of some chemicals for agriculture purposes within the Economic and Monetary Community of Central African States (CEMAC) which is comprised of more than half of the countries of the larger region – the Economic Community of Central African States (ECCAS), has been regulated.²⁵ The wise use of wetlands in the Central

Some reflections with regard to the new constitutional dispensation in Cameroon, *The African Journal of Law*, vol 2, published by the Faculty of Laws and Political Science, University of Yaounde II, Soa.

²⁵ See *Règlement n° 09/06-UEAC-114-CM-05 en date du 11 mars 2006 portant adoption de la réglementation commune sur l'homologation des pesticides en zone CEMAC et son Règlement n° 09/12-*

African sub-region is also frustrated by excessive use of pesticides and over exploitation of biodiversity.

3. Existing legal mechanisms for wetlands protection and wise use

From the foregoing discussion on the importance, functions and value of wetlands, one can go away with a satisfactory impression that wetlands are critically important for ensuring survival of plants, animal and human life and for enhancing a sustainable society. This is probably what attracted the concern of the international community as early as the 1970s to craft specific and other related legal instruments on wetlands governance. While this is so, the question may be

CEMAC-CPAC-CM- du 2012 portant disposition spécifique a l'application de la réglementation commune sur les pesticides en Afrique Centrale.

²⁶ Save for Gabon who ratified in 1987; Chad in 1990; DRC in 1996; and Congo in 1998; the rest of the countries ratified beginning in 2002.

²⁷ It is perhaps necessary to explain that genetic resources may also be found in wetlands and since they are of utmost importance today given their use for health and other needs for human wellbeing across the board (they are rightly referred to in contemporary International Environmental Law and literature as common concerns for humankind), the protection regime focuses on the resources with little or no emphasis on the status of

asked in relation to knowing why, in spite of this early international concern, wetlands have emerged important only fairly recently in a majority of countries of the Central African Sub-region. In answer to this worry, one may attempt the following arguments.

In the first place, almost all the countries of the sub-region have ratified only fairly recently²⁶ the Convention on wetlands. In the second place, a proper stock-taking of the wetlands potentials within the sub-region had not been made. In the third place, biodiversity issues broadly and access to genetic resources²⁷ in particular but not wetland matters specifically, have preoccupied a majority of the countries of the sub-region.²⁸ Finally, there has been a lack of specific institutions

the particular environment in which the resources are located. By the way, a vast majority of genetic resources are not located in wetlands strictly speaking.

²⁸ It must be mentioned that a majority of the countries of the sub-region have focused attention on biodiversity conservation generally but only Cameroon has attempted to address the specific concerns of access to genetic resources through policy and legislative frameworks. See for instance, the National Strategy on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization (ABS), MINEPDED, August 2012; A Draft Decree to regulate access to genetic resources has been finalized

to drive wetland issues into the sub-regional priority agenda and oversee the coordination of policy and legislative crafting and effective implementation. Today, wetland matters are beginning to occupy a central place on basis of progress in relation to the foregoing arguments. Since such progress has been grounded mainly on the countries of the sub-region's fairly recent commitment to international legal instruments, it is therefore of essence to x-ray these instruments in order to determine their emphasis on wetlands protection, management and wise use.

3.1. Wetlands status (regime) from a global perspective

3.1.1. Some Early Initiatives of a Soft Law nature

It is perhaps important to state that the examination of some early soft law or non-legally binding instruments at this point is justified by the fact that such instruments have indis-

under the aegis of MINEPDED and is awaiting signature by the Prime Minister, Head of Government. The government, through the Ministry of Environment, Protection of Nature and Sustainable Development (MINEPDED), has proceeded to sign a Memorandum of Understanding (MOU) in lieu of "Mutual Agreed Terms" (MAT) after a Pre-PIC in lieu of Prior Informed Consent (PIC), had been signed between the Community where the genetic resources are located and a French company (V. MANE FILS) intending to access the

putably influenced the progressive development of international environmental law generally and wetland issues in particular. In fact, wetland concerns caught the attention of the international community beginning with preliminary discussions which culminated in a number of non-legally binding instruments.

3.1.1.1. The Declaration of Stockholm

As indicated earlier, matters of wetland were given due legislative recognition at the global arena beginning in the 1970s by way of soft and hard laws. At the dawn of International Environmental Law in 1972, the international community came back to the question of wetlands earlier regulated in an Intergovernmental Treaty in 1971 in Ramsar.²⁹ This was in the Declaration adopted in Stockholm – the so-called Stockholm Declaration. Although not clearly articulated as wetlands, the Declaration stipulates that:

genetic material in the roots of the *Echinops Giganteus* plant as prescribed by the Convention on Biodiversity and the Nagoya Protocol to the Convention. These are only interim measures as users shall be required, upon the coming into force of the Decree, to meet the conditions prescribed by that legislation.

²⁹ It is worthy of note that although the United Nations Educational, Scientific and Cultural Organisation (UNESCO) serves as Depository for the Convention, the Ramsar Convention is not part of the United Nations

The natural resources of the earth, including the air, water, land, flora and fauna especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning and management, as appropriate³⁰

In fact, a careful reading of the contents of Principle 2 above simply reveals that wetlands are envisaged in the Declaration because they, as underlined earlier, and as provided in the Ramsar Convention itself on wetlands, the selection of wetlands of international significance is effected on basis *inter alia* of their botanic (flora), zoological (fauna), and hydrological (water) characteristics.³¹ Of course, these components are clearly expressed in Principle 2 of the Declaration mentioned above. Although it may be argued that this Declaration might not have added anything new to the Convention provisions by dint of the fact that it is a soft law instrument and does not oblige states to observe its provisions than they could do for the Convention, one must, however, be quick to state that the implicit recognition of wetlands by the Declaration is important in at least two ways. Firstly, that the Stockholm Declaration comes under the canopy of United Nations and UNESCO sys-

and UNESCO system of Environment Convention and Agreements. Consequently, the Convention is responsible only to its Conference of the Contracting Parties (COP) and its day-to-day activities have been entrusted to a Secretariat under the au-

thority of a Standing Committee elected by the COP.

tems of international agreements while the Ramsar Convention is not, and over and above all, the Declaration marks the genesis of International Environmental law. Secondly, being within the UN system of agreements, the Declaration Principles have influenced the progressive development of International Environmental Law generally and biodiversity related laws in particular for which matters of wetlands are inclusive.

3.1.1.2. Rio Declaration and Agenda 21

Two decades after Stockholm, the issue of wetland, although highlighted implicitly in Stockholm, was brought to the table of the international community in the Rio Meeting of 1992. The Declaration, among others, which sanctioned the end of that encounter, did not ignore wetlands as critical habitats for biodiversity resources. The Declaration stipulates that:

States shall cooperate in a spirit of global partnership to conserve, protect, and restore the health and integrity of the earth's ecosystems...³²

In fact, global cooperation to conserve, protect and restore the health and integrity of the earth's ecosystems

thority of a Standing Committee elected by the COP.

³⁰ See Principle 2.

³¹ For details, see article 2, paragraph 2 of the Convention.

³² Principle 7.

definitely include wetlands as they form part of the earth's natural ecosystems. So therefore, the Declaration, though not having specifically addressed wetlands, has done so implicitly.

The Agenda 21³³, the blue print for the implementation of the Rio outcomes, addresses a wide variety of issues of environmental and sustainable development perspective including wetlands. Within the broader context of biodiversity management, the question of wetlands is dealt with in Chapter 15. That chapter provides that:

...take action where necessary to conserve biological diversity through the *in situ* conservation of ecosystems and natural habitats, as well as primitive cultivars and their wild relatives, and the maintenance and recovery of viable population of species in their natural surroundings and implement *ex situ* measures preferably in the source country. *In situ* measures should include the reinforcement of terrestrial, marine and aquatic protected area systems, and embrace *inter alia*, vulnerable fresh water and other wetlands and coastal ecosystems, such as estuaries, coral reefs and mangroves.³⁴

From the foregoing, it is clear that *in situ* measures are strongly recommended for natural habitats, terrestrial, marine and aquatic protected

areas systems including wetlands.

In any event, it is important to state that wetland issues which are undoubtedly intertwined with other biodiversity matters, although having been given a legislative undertone at the sub-regional level, are regulated at the global level under the general canopy of what is referred to as biodiversity related conventions. There exists five of such biodiversity related conventions. Coincidentally, in terms of their birth year, the Ramsar Convention on Wetlands is first, having been adopted and signed in 1971. This is followed by the Convention on World Cultural and Natural Heritage (WHC), 1972; the Convention of International Trade on Endangered Species of Wild Fauna and Flora (CITES), 1973³⁵; the Convention on the Conservation of Migratory Species (CMS), 1979; and the Convention on Biodiversity (CBD), 1992. To these may be added the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), 2004, which is by the way not, properly speaking, an environmental convention as such because of the objectives and context in which it was crafted but which has a bearing on genetic resources of plant varieties for food and agriculture. However, an important question remains namely: how are these different instruments related to wetlands and how do they relate to the problem of

³³ UN Doc. A/CONF.151/4 (1992).

³⁴ See Chapter 15.5 paragraph (g).

³⁵ Full references of the convention are : 993 UNTS 243 entered into force on 1st July 1975.

wise use of wetlands? The next portion of this paper shall attempt answers to these questions by examining the objectives and aims, and other relevant matters provided for in each of the Conventions referred to above. In addition, the paper shall also find out how each of the conventions relates to the question of wetland resources and their wise use and then proceed to demonstrate how the sub-region can enhance the effective implementation of these legal instruments to address biodiversity issues more generally and the key issue of wetlands more specifically given their irrefutable importance not only within the sub-region but to the global community as a whole.

3.1.2. Some Early Hard Law Initiatives relating to Wetlands Management

The essence of discussing the hard law instruments in biodiversity related issues is to demonstrate their interconnectedness with biodiversity resources generally, their linkage to wetlands and their wise use in particular and consequently to bring to the limelight the need to think through all of them and may be other hard law instruments in order to enhance effective implementation by way of clustering and synergy building.

3.1.2.1. The Convention on Wetlands of International Importance especially as Waterfowl Habitat, Ramsar, 1971

The Convention on Wetlands of International Importance, the so-called Ramsar Convention is an interna-

tional legal instrument specifically focusing on questions of wetlands of international importance especially as waterfowl habitats. It was the first international hard law instrument relating to biodiversity issues in a sectoral context - wetlands of international importance. Hence, it is always, like the others just cited above, referred to as a biodiversity related convention although not under the UNESCO and UN systems of International Agreements but simply an intergovernmental agreement.³⁶

An important provision of the Convention is that Contracting Parties must designate at least one wetland to be included in the List when signing this Convention or when depositing its instrument of ratification or accession.³⁷ While such a provision invites countries to be Parties to the Convention, it however conditions such belonging to the designation of wetlands, at least one. This is just logical because the convention's main objective is to ensure wise use of wetlands and if wetlands are not identified and listed, then it will not be possible to ensure conservation and wise use of something not identified.

Another salient part of the Convention worth retaining is that dealing with the question of international responsibilities. It prescribes that Contracting Parties should consider its international responsibilities for the conservation, management and wise use of migratory stocks of waterfowl both at the time of designating entries

³⁶ For details, See *Supra*, note 29.

³⁷ See Article 2 (4).

for the List and when exercising its right to change entries in the List relating to wetlands within its territory.³⁸ The importance of this provision lies in the fact that it recognizes that the conservation, management and wise use of migratory stocks of waterfowls underlie international responsibilities and this clearly shows its link with the Convention on Migratory Species of Wild Fauna and thus justify why they should form the same cluster.

Even more salient is the prescription of the Convention on consultation to be effected with each Contracting Party on implementing obligations arising from the Convention especially in the case of trans-boundary wetlands or where a water system is shared by Contracting Parties and must endeavour to coordinate and support present and future regulations concerning the conservation of wetlands and their flora and fauna.³⁹ In fact, this provision brings to the limelight international cooperation although not said in those words, which is today, religious in the crafting of International Environmental Legal Instruments. Indeed, international cooperation has become a very pertinent part of international law-making in the field of the environment for the simple reason that environmental challenges have, more than ever be-

fore, become trans-boundary in outlook and consequences.

Finally, regarding compliance mechanisms, reporting is the most relevant of these mechanisms under the Ramsar Convention.⁴⁰ Although reporting is important in ensuring implementation of the Multilateral Environmental Agreement, other compliance prescriptions are equally critically important including technical and financial assistance. Unfortunately, these are markedly absent in the Ramsar but skeletally handled in many other early biodiversity conventions. However, this is understood in the sense that the Ramsar Convention and others were crafted before technical and financial assistance provisions for implementation became a widespread feature in facilitating compliance with Multilateral Environmental Agreements⁴¹. This notwithstanding, it must be said that such a vacuum has accounted for serious gaps in the effective implementation of the Ramsar and perhaps others. This again explains why there is an undeniable need to cluster and synergize the wetlands and other biodiversity related conventions. No problems ought to arise here as ten out of eleven countries of the sub-region have ratified⁴² the Ramsar Convention.

³⁸ See Article 2(6).

³⁹ See Article 5.

⁴⁰ For details, see Article 6(e).

⁴¹ UNEP (2007), *Compliance Mechanisms under selected Multilateral Environmental Agreements*, Nairobi, p 35-36.

⁴² As of 2011, save for Angola, Burundi ratified the Ramsar Convention on 05/10/2002 ; Cameroon, 20/07/2006 ; Central African Republic ; 05/04/2006; Chad, 13/10/1990; Congo, 18/10/1998; Gabon, 30/04/1987; Equatorial Guinea, 02/10/

3.1.2.2. *The Convention Concerning the Protection of World Cultural and Natural Heritage and its relationship with wetlands protection and wise use*

The Convention concerning the protection of World Cultural and Natural Heritage usually referred to as the World Heritage Convention (WHC) was adopted at the seventeenth session of the General Conference of UNESCO which held in Paris in 1972. It may be recalled that the importance of protecting world cultural and natural heritage had been emphasized in the sixteenth session of the General Conference of UNESCO and there was a unanimous agreement to make it a subject of an international convention. Indeed, the WHC was one of the early conventions within the UNESCO and UN systems of international agreements on biodiversity related matters albeit addressing the sectoral concerns of cultural and natural heritage the world over.

The rationale for thinking the protection of cultural and natural her-

itage across the globe was grounded on the fact that such heritages were increasingly threatened with destruction not only by traditional causes of decay but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction.⁴³ Even more disturbing was the fact that cultural and natural heritage is a unique and irreplaceable property, the protection of which at the national level, has remained incomplete because of the scale of resources it requires and of the insufficient economic, scientific and technological resources of the majority of the countries of the developing world where the property to be protected is found.⁴⁴

By the provisions of the Convention⁴⁵, "cultural heritage" include:

Monuments;⁴⁶ groups of buildings;⁴⁷ sites;⁴⁸ and "natural heritage" and composed of the following: natural features consisting of physical and biological for-

2003; Democratic Republic of Congo, 18/05/1996; Rwanda, 01/04/2006; Sao Tome et Principe, 21/12/2006.

⁴³ See Preambular paragraph 1 of the Convention.

⁴⁴ For more on this, see Preambular paragraphs 3 and 5 of the Convention

⁴⁵ Art. 1 and 2

⁴⁶ Categories of monuments include architectural works, works of monumental sculpture and painting, elements or structures of archaeological nature, inscriptions, cave dwellings

and combinations of features, which are of outstanding universal value from the point of view of history, art or science.

⁴⁷ Forming part of groups of buildings are groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history and science.

⁴⁸ Sites include works of man or the combined works of nature and man, and areas including archaeological sites

mations or groups of formation, which are of outstanding universal value from the aesthetic or scientific point of view; geological and physiological formations or groups of such formations, which are of outstanding universal value from the point of view of science or conservation; natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty.

From the Convention's definition or categorization above, one can decipher biodiversity concerns addressed by the convention expressly or by implications. Concretely, some categories of cultural heritage could harbour biodiversity resources of the kind of microbial. This could be the case for instance of monuments and sites. Express articulation of biodiversity concerns are more evident in what makes up natural heritage. Examples abound: precisely delineated areas which constitute the habitat of threatened species of animals and plants; and natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty. In this regard, the Dja Forest Reserve⁴⁹ in the South East of

Cameroon can be cited as an example *par excellence*. That forest reserve is also noted for its wetland component. In fact, most of the natural sites are usually found in wetlands. There is therefore an inextricable link between natural heritage sites generally and wetlands management as the thread is biodiversity conservation.

Like most other biodiversity related conventions, the WHC has envisaged international cooperation for the protection of cultural and heritage sites. Hence the Intergovernmental Committee for the protection of the world cultural and natural heritage commonly known as the World Heritage Committee was established⁵⁰. This Committee is similar to the Ramsar Bureau created under Article 8 of the Ramsar Convention. The main task of the Committee is to ensure institutional coordination and synergy similar to the work of the Ramsar Bureau. But these are global institutional structures entrusted with task of coordination and while we laud these Convention initiatives, we take the view that there is need for sub-regional institutional coordination, something which is clearly inexistent in the Central African Sub-region in spite of its wetlands and cultural and natural heritage wealth. This probably

which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.

⁴⁹ The Dja Forest Reserve is cited in the UNESCO list of World Heritage Sites.

⁵⁰ Article 8 of the Convention.

explains why all the countries of the Central African region have ratified the convention.⁵¹

Also interesting to know is the financial assistance provision under the WHC. The World Heritage Fund for the protection of World Cultural and Natural Heritage was established under the Convention.⁵² It is a Trust Fund maintained through compulsory and voluntary contributions by Parties as well as donations to provide assistance to Parties.⁵³ Unfortunately, the major hurdle encountered in the effective implementation of the convention is that Parties do not make their contributions and where they do, they usually come late. The Committee is therefore, sometimes, forced to invite voluntary contributions and/or rely on assistance from other bodies. Where there is success in implementation of this sectoral biodiversity convention, wetlands can maintain their richness and therefore continue to provide or serve needs as indicated above.

3.1.2.3. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and its nexus with wetlands protection and wise use

Wild flora and fauna in their many beautiful and varied forms are impor-

tant part of the natural systems of the earth which are irreplaceable. Their value ranges from scientific, cultural, aesthetic, recreational and economic points of view. Consequently, international trade in such wild fauna and flora has been on the rise long before the birth of International Environmental Law. It is this ever increasing international trade that provokes over-exploitation of such resources and explains the endangered nature of these species thereby bringing to the fore the problematic of their protection. Considering therefore that most of these wild fauna and flora are biodiversity resources and have their homes in wetlands, and given that they are an irreplaceable part of the natural system, the need arose, first in 1973 when the Convention on International Trade in Endangered Species of Wild Fauna and Flora (the so-called CITES) was adopted to regulate international trade in this sector. Later on in 1979 the Convention was amended.⁵⁴ In a nutshell, an exploitation paradigm for international trade purposes was spelled out in the Convention in order to ensure protection of such species for the interest of the present and future generations. So therefore, the Convention urges peoples and states who are and should be

⁵¹ Angola ratified the World Heritage Convention on 07/11/1991; Burundi, 19/05/1982; Cameroon, 07/12/1982; Central African Republic, 22/12/1980; Chad, 23/06/1999; Congo, 30/12/1987; Gabon, 30/12/1986; Equatorial Guinea, 10/03/2010; Democratic Republic of Congo,

23/09/1974; Rwanda, 28/12/2000 (accession), Sao Tome et Principe, 25/07/2006; Chad, 23/06/1999.

⁵² See Article 15.

⁵³ For details on this, see UNEP (2007), *Op Cit*, p 38.

⁵⁴ The Convention on International Trade in Endangered Species of Wild

the best protectors of their own wild fauna and flora⁵⁵ to recognize their respective roles and stresses the urgency to take appropriate measures to this end.⁵⁶ In our humble view, the Central African Sub-region, with its nearly unmatched wealth of wild fauna and flora across the globe, is particularly targeted here.

The Convention establishes a permit system to control import and export of wild fauna and flora and the Lists controlled flora and fauna are in three Appendices.⁵⁷ Appendix I cover all species threatened with extinction that are or may be affected by trade. Commercial trade in these species is essentially banned and can only be authorized in exceptional circumstances. Appendix II covers species which are not currently threatened with extinction but which may so become unless trade in such specimens is controlled under the Convention. Lastly, Appendix III covers species that any Party has identified as being subject to national regulation for the purpose of preventing or restricting exploitation and as requiring the co-operation of other Parties to control

trade. Parties to the Convention are required to establish national Scientific Authorities to advise on the endangered status of native species of flora and fauna, and a management Authority to regulate their trade.⁵⁸ The question then is how many countries in the Central African Sub-region for instance, have clearly designated such Authorities and how effective are they working to regulate trade within the meaning of the Convention for purposes of preservation and conservation of these biodiversity species in their habitats especially in wetland habitats. We find that only a few countries are effectively respecting the provisions of the Convention and this is evidenced by the continuous rise in trade of wild fauna and flora within the sub-region. Reporting, which is one of the performance review information tools pursuant to Article VI.6 supports such an opinion.⁵⁹

A remarkable issue concerning CITES is that it has no provision for financial mechanism to facilitate compliance⁶⁰ and this is a serious setback to the effective implementation of the Convention. The Trust Fund which

Fauna and Flora was amended in Bonn on 22 June 1979. The amendment was necessitated by the need to review the different categories of species that were threatened with extinction and to institute a Trust Fund for the Convention.

⁵⁵ See Paragraph 3 of the Preamble of the Convention.

⁵⁶ See Paragraph 5 of the Preamble of the Convention.

⁵⁷ See Article II of CITES.

⁵⁸ See Article IX of CITES.

⁵⁹ See UNEP (2007), *Op Cit*, note 41, p 41.

⁶⁰ Initially the Secretariat was funded by UNEP but the Bonn Amendment of 1979 which entered into force in 1987 conferred financial powers to the Conference of the Parties and assistance from UNEP gradually phased out.

was created by the Conference of the Parties envisaged an agreed scale of contributions to be made by each contracting Party which could then take care of technical assistance but the Procedures and Guidelines on how this happens were only drafted in 2002. One can then imagine the difficulties that the Secretariat has encountered in trying to implement the convention. Fortunately other international organizations involved in fighting wildlife crime have assisted the Secretariat. Interpol for instance, through its Working Group on Wildlife Crimes is helping to make significant progress in the effective implementation of the Convention by way of technical and financial assistance. Last Grade Ape (LAGA) Organization is also very instrumental in fighting wildlife crimes especially in the Central African Sub-region. Given this hurdle, is there any other more viable alternative than synergizing the implementation of this convention with other biodiversity related conventions, Ramsar on wetlands for instance? Such a task will be eased up by the fact that all countries of the sub-region have ratified⁶¹ CITES but for Angola.

3.1.2.4. *The Convention on the Conservation of Migratory Species of Wild Animals and its link with wetlands*

The Convention on the conservation of Migratory Species of wild Animals (CMS), 1979 aims to conserve and manage migratory species of wild animals through an action of Range States.⁶² This again is a biodiversity related convention dealing with the sector of migratory wild animals. Wild animals in their innumerable forms are an irreplaceable part of the earth's natural system and their ever-growing value from a cultural, aesthetic, recreational, educational, socio-economic, ecological and environmental perspective justifies without more the obligation of the international community to protect them for the benefit of present and future generations. These values which are the same values discussed of wetlands accommodating a vast majority of migratory wild animals paints a direct nexus of migratory species and wetlands. An even closer link can be seen in the title of the Ramsar Convention itself: "Convention on Wetlands of International Importance on especially as Waterfowl Habitats".

⁶¹ As of 2011, Burundi ratified on 08/08/1997; Cameroon, 05/06/1981; Central African Republic, 27/08/1980; Chad, 02/02/1989; Congo, 30/01/1983 ; Gabon, 30/02/1989; Equatorial Guinea, 10/03/1992 ; Democratic Republic

of Congo, 20/07/1976; Rwanda, 20/10/1980; Sao Tome et Principe, 09/08/2001.

⁶² Range States are those states exercising jurisdiction within the range of any such species. See Article 1(h).

Just like the preceding CITES, CMS categorizes migratory species of wild animals into endangered migratory species⁶³ in Appendix I and migratory species subject to agreement in Appendix II.⁶⁴ This convention is managed by a Secretariat through the Conference of the Parties which, in its first meeting created a Scientific Council⁶⁵ to provide advice on scientific matters and this constitutes technical assistance. Similar to the other biodiversity related conventions, CMS has, for financial assistance to Parties, a Trust Fund and a new association called 'Friends of CMS', may also contribute to raise funds for the effective implementation of the convention. The effectiveness in the implementation of the convention thus largely depends on the frequency of contributions into the Fund by the Parties and the generosity of the 'Friends of CMS'. Where this does not happen or happen late, the effective implementation of the Convention can then be frustrated. Countries of the Central African Sub-region have equally ratified this convention which should be an important starting

point in efforts to harmonize and synergize implementation.⁶⁶

3.1.2.5. The Convention on Biodiversity and wetlands concerns

The Convention on Biological Diversity, the so-called CBD was adopted and signed by almost all the countries of the world in Rio de Janeiro in the landmark Summit on Environment and Development in 1992. The objectives of the convention can be stated in three arms: the conservation of biodiversity; the sustainable use of its components; and fair and equitable sharing of benefits arising from the utilization of genetic resources. As one of the most important outcomes of the Rio meeting, the CBD therefore addresses biodiversity concerns from a holistic perspective. So it could be assimilated to a framework convention although this is not evident from its label. It actually fills the gaps in the early biodiversity conventions which treat biodiversity matters in a segregated manner. Of course, as any framework convention, there is need for enabling instruments.⁶⁷ Countries of the Central

⁶³ See Article III.

⁶⁴ Article IV.

⁶⁵ Article XIII.

⁶⁶ But for Burundi and the Central African Republic, Angola ratified on 01/12/2006; Cameroon, 01/11/1983; Chad, 01/09/1997; Congo, 01/01/2000; Gabon, 01/08/2008; Equatorial Guinea, 01/08/2010; D.R. Congo, 01/09/1990; Rwanda, 01/01/2005; Sao Tome et Principe,

01/12/2001.

⁶⁷ For the effective implementation of the CBD, the Cartagena Protocol on Biosafety and the Nagoya Protocol on access to genetic resources and fair and equitable sharing of the benefits arising from the utilisation of genetic resources were crafted as enabling instruments and have been ratified by a majority of the countries of the Central African sub-region.

African sub-region have made significant strides implementing this convention although with little emphasis on wetlands.

The CBD prescribes *in situ*⁶⁸ and *ex situ*⁶⁹ conservation of biological diversity and in relation to wetlands, these measures can enhance conservation and wise use in the Central African sub-region. The CBD and the International Treaty on Plant Genetic Resources for Food and Agriculture which also prescribes these measures of conservation, and perhaps the other biodiversity related conventions can provide a good drive in the wise use of wetlands in the sub-region.

The CBD equally stipulates cooperation among Contracting Parties⁷⁰ in conservation and sustainable use of biodiversity. Consequently, biodiversity conservation in wetlands comes under the canopy of this cooperation required for countries within the sub-region but also beyond. It is probably to enhance this cooperation considered cardinal that the Convention envisages compliance measures by way of technology transfer⁷¹, technical cooperation⁷², financial mechanism⁷³, as well as reporting.⁷⁴ It is therefore clear from the foregoing that the biodiversity conventions have serious linkages.

Nonetheless, in the specific case of wetlands, one begin to see the usefulness of linking the CBD and the Ramsar especially in the light of the fact that conservation and wise use of wetlands will be more effective if reliance is made on the CBD with its measures to encourage compliance and by extension effective implementation. This will be more so as central African Sub-regional countries have all ratified this convention.⁷⁵

3.1.2.6. *International Treaty on Plant Genetic Resources for Food and Agriculture and Wetlands management*

The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), also known as the Seed Treaty was negotiated beginning in the 1950s but gained renewed impetus in 1983 in what was known as 'International Undertaking'. This Undertaking which was legally non-binding crystallized to a legally binding instrument after the adoption of the Convention on Biological Diversity (CBD) as the necessity arose to review the provisions in line with those of the CBD. The ITPGRFA entered into force in 2004 and has as main objectives the conservation and sustainable use of plant genetic re-

⁶⁸ For details, see article 8 of the CBD.

⁶⁹ For details, see article 9 of the CBD.

⁷⁰ See article 5.

⁷¹ See article 16.

⁷² See article 18.

⁷³ See article 21.

⁷⁴ See Article 26.

⁷⁵ Angola, 01/04/1998 ; Burundi,

15/04/1994 ; Cameroon, 19/10/1994 ; Congo, 01/08/1996 ; Gabon, 14/03/1997 ; Equatorial Guinea, 06/12/1994 ; Central African Republic, 15/03/1995 ; D.R. Congo, 03/12/1994 ; Rwanda, 29/05/1996 ; Sao Tome et Principe, 29/09/1999 ; Chad, 07/06/1994.

sources for food and agriculture and the fair and equitable sharing of the benefit arising out of their use, in harmony with the convention on biodiversity, for sustainable agriculture and food security. Plant genetic resources for food and agriculture are crucial in feeding the world's population⁷⁶ although it is little known and seldom cited as falling within the gamut of biodiversity related conventions.

Although at its original negotiation process and its eventual adoption, the environment was not specifically envisaged⁷⁷ but farmers' rights and those of their community, the scientific community and International Agricultural Research Centres, and others; the treaty, before its entry into force in 2004, collided with emerging environmental concerns. Biodiversity issues generally and wetlands in particular have received and continue to receive unprecedented challenges over the past forty years so much so that the treaty has now been bashed to the gamut of biodiversity related conventions specifically dealing with the question of plant genetic resources for food and agriculture.

Plant genetic resources are in the majority harboured by wetlands so that their continuous survival for research,

cross breeding and development and the legal consequences which come along with these depend largely on the wise use of wetlands. Since the Central African sub-region accommodates, as demonstrated above, vast areas of wetlands within the meaning of the Ramsar convention, there is therefore a close link of the ITPGRFA with the Ramsar in terms of maintaining the habitat for a diversity of plant genetic resources. Consequently, there is now a clear nexus of the treaty to the environment and present and future generations in the sense that the treaty will help to conserve genetic diversity of plants necessary to face unpredictable environmental changes and future human needs.

Although a biodiversity related Convention, ITPGRFA differs from the CBD, one of whose objectives is fair and equitable sharing of benefits arising out of the utilization of genetic resources in that the CBD does not address some issues relating to the access to plant genetic resources. Such issues include Plant Breeders' or Farmers' Rights which could take place in the domain of wetlands. The second key issue is the question of *ex-situ* collection (germplasm) such as

⁷⁶ See for more details, Moore, G. and Tymowski, W. (2005), Explanatory Guide to the International Treaty on Plant Genetic Resources for Food and Agriculture, IUCN Environmental and Law Paper No. 57, published by IUCN, Gland and Cambridge and IUCN Environmental Law Centre,

Bonn, p 6-7.

⁷⁷ The reason for not directing thinking to the environment at the negotiation phase of the ITPGRFA was obvious. This was not the era when environmental concerns were so crucial as to attract huge international attention.

that undertaken by International Agricultural Research Centres, the collection of which happens more often in wetlands accommodating these genetic resources. These two main issues and perhaps others probably hastened up ratification process of the Treaty for its entry into force in 2004 to fill these gaps. In fact, in spite of its relatively newness in terms of entry into force, all ECCAS countries except Equatorial Guinea, have ratified⁷⁸ the ITPGRFA because of its importance for the sub-region and beyond.

The similarities of the ITPGRFA with the CBD as biodiversity related conventions are twofold. Firstly, both legal instruments have as objective access to genetic resources and fair and equitable sharing of benefits arising out of their use. Secondly, both have, contrary to other biodiversity related conventions, compliance mechanisms which could be helpful in the implementation of the treaties provisions. These mechanisms include financial and technical assistance and transfer of technology. There is need to lay emphasis on the fact that such mechanisms could actually be very helpful in terms of synergizing the implementation within the biodiversity cluster especially as the Ramsar, CITES, CMS, and WHC lack prescriptions or have same on such compliance mech-

anisms but in a peripheral manner.

3.2. Wetlands conservation, management and wise use at the regional and sub-regional level

Wetlands have not received any particular attention at the regional level. Biodiversity issues including wetlands are generally covered in the Maputo Convention on Conservation of Nature and Natural Resources, 2003 revising the Algiers Convention of 1968 on the same subject. Unfortunately, that Convention has not yet entered into force in spite of the efforts made by the African Union Commission through the Multilateral Environmental Agreements' Project that has undertaken wide negotiations, lobbying and the development of a Ratification Toolkit to fast tract ratification by African countries and enable its entry into force.

At the Central African Sub-region, the Yaoundé Declaration, 1999 addressed biodiversity concerns including wetlands through the creation of Trans-boundary Protected Areas⁷⁹ and sustainable management of dense and humid forest ecosystems. In fact, in the spirit of the Head of States of Central African sub-region, Trans-boundary Protected Areas are necessary to avoid conflicts over ownership and jurisdiction to manage natural re-

⁷⁸ Angola ratified the ITPGRFA on the 14 March 2006; Burundi, 28 April 2006; Cameroon, 19 December 2005; Central African Republic, 4 August 2003; Chad, 14 March 2006; Congo, 14 September 2004; Democratic Re-

public of Congo, 5 June 2003; Gabon, 13 November 2006; and Sao Tome et Principe, 7 April 2006.

⁷⁹ TRIDOM, TRI National Sangha etc all within the Congo basin.

sources and so ensure the participation of concerned states in the preservation of endangered species.⁸⁰ The Principles contained in such a Soft law initiative were followed almost religiously in crafting the Treaty on the Conservation and Sustainable Management of Forest Ecosystems in Central Africa and instituting the Commission of Central African Forests (COMIFAC), the so-called COMIFAC Treaty of 2005. This is the first ever regional Hard Law instrument for the sustainable management of forest ecosystems including all biodiversity matters. In fact, COMIFAC adopted the first enabling Policy instrument to the Treaty soon after the treaty entered into force. That instrument is called the Convergence Plan. Although, it has been revised, it actually addresses biodiversity issues and wetlands in particular.

In line with the 2005 treaty implementation; in 2007, the Economic Community of Central African States (ECCAS) adopted a Policy instrument

for Environment and Natural Resources Management within the ECCAS space.⁸¹ In that Policy instrument, wetlands⁸², among other biodiversity issues are addressed. Such Strategic Axis simply calls on countries of the sub-region to develop National Action Plans to ensure conservation and wise use of wetlands.

In 2008, the first enabling legal instrument to the COMIFAC Treaty was signed. It is the *Accord Sous-régional sur le Contrôle Forestier en Afrique Centrale*.⁸³ Still within the implementation of the COMIFAC treaty, a sub-regional Directive was adopted in 2010. It is, *Directives sous-régionales relatives à la gestion durable des produits forestiers non ligneux d'origine végétale en Afrique Centrale*. Most of these non-timber forest products are found in wetlands in the Congo basin, but no particular attention is paid to wetlands as the habitats of such species. The accent has been on the protection of the resources itself than on the sources or habitats of

⁸⁰ For more details, see Tamasang, C.F. (2011), *Op. Cit.* 503-504.

⁸¹ It is perhaps important to highlight here that not all ECCAS member states are Parties to the COMIFAC Treaty, Angola for instance. So the ECCAS Policy Instrument for Environment and Natural Resources Management has, in principle, a wider territorial jurisdiction than the Convergence Plan as it applies to all the countries of the ECCAS space meanwhile the latter applies only to the

Contracting Parties to the COMIFAC Treaty.

⁸² See *Axe d'Orientation Stratégique 2 sur la Conservation et gestion des zones humides et des ressources en eaux douces d'Afrique Centrale de la Politique General en Matière d'Environnement et de Gestion des Ressources Naturelles dans l'espace CEEAC, Mars 2007.*

⁸³ See *Commission des Forêts d'Afrique Centrale, Série Politique n° 1, Yaoundé, Juin 2010.*

the biodiversity resources which are wetlands. While we agree that the conservation of biodiversity resources in the Central African sub-region is critically important as the livelihood of communities undoubtedly depends on them, we venture to think that it is even more critically important to ensure the protection of wetlands as they are pools to a vast majority of biodiversity resources.

4. Conclusion and the Way Forward

The discussions from the preceding pages clearly point to the fact that biodiversity resources are important, very important for the wellbeing of humanity in general. What this means is that appropriate measures must be taken to conserve not only the resources but the habitats of the resources as well. This is the justification for choosing to treat wetlands as they are the melting pot of almost all biodiversity resources. Unfortunately, in spite of the wealth of wetlands in the Central African sub-region and its importance, functions, value and threats as demonstrated above, legislators of countries of the sub-region have not given the attention which wetlands deserve. There is supposed to be, in our humble opinion, a separate legislation on wetlands in each country of the sub-region, something which, from our research findings, is clearly lacking.

Now, the frontiers of wetlands go beyond national. In the Central

African Sub-region, there are real and potential transboundary wetlands and of course biodiversity resources, the conservation and management of which cannot be limited to the territorial jurisdiction of a single state. Fortunately, the international community has made formidable strides in the direction of biodiversity conservation and management by way of crafting a wide array of biodiversity related conventions whether at the global level or at the regional and sub-regional level although regional and sub-regional legal instruments have no specific reference to wetlands. So there is need, absolute need for cooperation among states in the implementation of biodiversity related conventions using wetlands as a spring board. But how is this to happen?

Our arguments above have been grounded on the fact that there is an inextricable relationship among the sectoral biodiversity conventions and the CBD framework convention of 1992. Such an intertwined relationship is a good building ground for legislative and institutional cooperation. What this means is that the legislator of the Central African Sub-region must think biodiversity conservation and management from a holistic perspective. Therefore, in crafting laws on biodiversity, they need to go beyond sectoral issues. It is in this light that we recommend clustering and synergy of the biodiversity cluster of MEAs. The Biodiversity cluster of MEAs is composed of the conven-

tions and treaties discussed above and their relationship with wetlands. Therefore, in addressing the problems of wetlands under the Ramsar Convention, the sub-regional legislator must think across the board to embrace and harmonize CITES, WHC, GMS, CBD, ITPGRFA, COMIFAC Treaty etc, which are closely related to each other. This task will be facilitated by the fact that almost all the countries of the sub-region have ratified all the biodiversity related conventions. Consequently, if a separate wetlands legislation were to be crafted for the sub-region, as it is our strong recommendation, such a sub-regional legislation, the basis of which countries could be inspired to craft national legislations on wetlands; should take into consideration other biodiversity related concerns addressed in differing international legal instruments. This is tantamount to clustering and it is crucially important for purposes of synergizing effective implementation. Clustering and synergy to ensure effective implementation is even the

more important and advantageous for the simple reason, as demonstrated above, that most of the biodiversity sectoral conventions, including the Ramsar itself lack compliance mechanisms such as financial assistance. Therefore, where there is synergy, financial assistance for one related convention could be helpful in effective implementation of the others.

Furthermore, it may not be absurd to suggest the creation of a wetlands' Commission in the sub-region. Such a Commission will be tasked to coordinate, under the auspices of the Secretariat of ECCAS, wetlands matters. We could call it the Central African Wetlands Commission (CAWEC). Such an institutional framework will help drive wetlands and related issues to the frontline especially given its trans-boundary nature and impacts and assist countries in crafting national legislative and policy frameworks for conservation and wise use of wetlands and related issues.

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