UNIVERSITE DE YAOUNDE II - FACULTE DES SCIENCES JURIDIQUES ET POLITIQUES

# REVUE AFRICAINE DES SCIENCES JURIDIQUES

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- TRADE UNIONS, LABOUR CONTRACTS AND INDUSTRIAL PEACE
- PRESENTATION SYNTHETIQUE DES MESURES CONSERVATOIRES D'APRES LE NOUVEAU DROIT DES AFFAIRES OHADA
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# SUSTAINABLE DEVELOPMENT: SOME REFLECTIONS WITH REGARD TO THE NEW CONSTITUTIONAL DISPENSATION IN CAMEROON

*By*
**Christopher FUNWIE TAMASANG***

**Abstract**

This article attempts to catalogue a number of environmental and related rights express or implicit for sustainable development using the Cameroonian Constitution as a springboard. It then proceeds to qualify sustainable development from a Constitutional perspective as an emerging umbrella of environmental and related rights. The paper also acknowledges that environmental protection constitutes the principal pillar of the three pillars of sustainable development and argues that the recognition and enforcement of the above rights for sustainable development is fraught with some judicial and executive challenges. The article then concludes by proposing some recommendations on the way forward to the enhancement of sustainable development under Cameroonian environmental law.

Key Words: Constitution, environment, international, instrument, legal, rights, sustainable, development

## 1 INTRODUCTION AND BACKGROUND

Environmental concerns gathered worldwide attention beginning in 1972 in the historic city of Stockholm during the United Nations Conference on Human Environment.[1]

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[1] The conference produced a Declaration of twenty-six Principles (The Stockholm Declaration), It also produced a Resolution of Institutional and Financial Arrangements, and an Action Plan of one hundred and nine Recommendations for the preservation and enhancement of the human environment. The Declaration may be regarded as the foundation or genesis of international environmental law. Although treated as part of the corpus of soft law in international law because of its non-binding force, the Stockholm Declaration has formed the basis of numerous subsequent conventions now considered hard law in the sense of its binding obligations.

L'associé a le droit de faire partie de la société. Il ne peut en être exclu sauf dans les cas prévus par la loi[97]. Cette exclusion est d'abord retenue à titre de sanction, lorsque l'associé n'a pas exécuté ses obligations[98]. Elle est ensuite considérée comme un remède à la demande de dissolution d'une société économiquement saine car comme il a été écrit, *"mieux vaut l'amputation que l'euthanasie"*[99].
Le législateur OHADA n'envisage l'exclusion légale qu'à l'article 249 (1) AUSC même si elle a été consacrée en droit français des sociétés[100]. Pourtant, elle constitue un bon compromis entre la garantie de la pérennité de la société et la protection des associés minoritaires[101].

## CONCLUSION

Si la volonté individuelle présente à l'origine de la constitution de la société peut faire pencher la balance vers une conception contractuelle de la société, les règles de fonctionnement laissent peu de place à la volonté individuelle et invitent à considérer la société davantage comme une institution. Cette dernière définition imprime son caractère à la société perçue dès lors comme une entité économique.

Garant de son bon fonctionnement, le législateur OHADA met en place des mécanismes de prévention de la cessation d'exploitation (la procédure d'alerte) et de prévention des abus dans la gestion par l'information (l'expertise de gestion). Garant de sa pérennité, le législateur OHADA recherche les solutions au maintien de la société en vie : réticence à l'admission de la nullité en cas d'irrégularités dans la constitution de la société, mise en place des procédures de redressement en cas de faillite de la société. Cette nature d'agent économique de la société fonde également la sauvegarde de la société par le recours aux mécanismes visant à assurer sa survie ; il s'agit notamment de la désignation d'un administrateur provisoire et du retrait forcé de l'associé (lorsqu'elle est économiquement viable) que le législateur OHADA n'envisage malheureusement que de manière implicite. Nous souhaitons qu'il soit plus audacieux et pragmatique à l'avenir !

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[97] L'article 249 (1) AUSC prévoit que « *la société ou un associé peut soumettre au tribunal saisi (...) toute mesure susceptible de supprimer l'intérêt du demandeur, notamment par le rachat de ses droits sociaux* ».

[98] Mais l'assemblée ne peut pas contraindre un actionnaire à augmenter ses engagements, notamment en décidant qu'il sera exclu s'il ne participe pas à une augmentation de capital : CA Paris, 7 juin 1988, Rev. sociétés 1989, p. 246, note S. DANA-DEMARET.

[99] D. MARTIN, *L'exclusion d'un actionnaire*, RJ com. 1990, pp. 94 et ss.

[100] En droit français des sociétés, le retrait est conféré au minoritaire privé des conditions du marché lui permettant de négocier ses titres dans des conditions normales de délai et de cours, lorsque la société est détenue à plus de 95% par un majoritaire ou des associés agissant de concert : article 33 de la loi N° 96-597 du 2 juillet 1996, dite « *loi de modernisation des activités financières* ». Selon C. BAJ, « *Le retrait obligatoire des actionnaires minoritaires des sociétés cotées* », Rev. droit bancaire et bourse, 1994, p. 154, ce droit d'éviction procède d'une logique boursière ; l'examen de la nature particulière des relations que noue le marché entre les actionnaires minoritaires et les sociétés dans lesquelles l'*affectio societatis* ne compte pas, semble seul permettre de trouver à cette disposition extraordinaire, un fondement que les principes généraux du droit des sociétés sont loin de fournir. Le retrait obligatoire des actionnaires minoritaires des sociétés cotées consacre ainsi une victoire du droit boursier sur le droit commun.

[101] Th. TILQUIN, *Les conflits dans la société anonyme et l'exclusion d'un associé*, Rev. prat. soc. (belge), 1991, n° 6560, n° 6, p. 8, cité par M.-C. MONSALLIER, op. cit., n° 643, p. 268 ; Voir également, B. DELECOURT, « *L'intérêt social* », mémoire DEA, Lille II, 2001, p. 78.

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The gist of the Declaration,[2] which ensued from that encounter, was that the environment was to be protected for the sake of it[3] thereby overlooking the development aspect of it. Meeting in Nairobi a decade later, the UN began thinking of environment and development and created a commission – the Brundtland Commission, to probe into these issues. An important aspect of the commission's report[4] describes sustainable development in the following words: Sustainable development is development that meets the needs of the present without comprising the ability of future generations to meet their own needs.[5]

The concept, therefore, refers to the objective of continuing to develop the economies of the world while protecting the environment for the benefit of all present nations of the world, and all future generations.[6] Put laconically, future generations should not have to pay the bills for the activities of their ancestors for if otherwise, it would be inequitable.

Barely five years after the Brundtland's report, that is, in 1992, countries of the world again converged in the city of Rio de Janeiro under the auspices of the United Nations and agreed[7] that environment and development are two sides of the same coin. Furthermore, re-echoing the importance of the concept of sustainable development, world leaders meeting in New York during the United Nations Millennium Summit in the year 2000 adopted the concept as one of their watchwords.[8] Reiterating the importance of the concept, the U.N organised a summit in South Africa focusing entirely on sustainable development.[9] It is, therefore, increasingly evident that since 1992, the concept of sustainable development has passed from the realm of mere aspirations to the level of a principle of customary international law worthy of note to lawyers. It has legitimacy of its own right and calls for an urgent recognition by everyone to do with the law but the enhancement of sustainable development requires formidable changes in attitudes, institutions, and ideologies and in legal development. This may explain why many countries of the world, which adhere to the principles of international environmental law, have incorporated the ideals of sustainable development into their laws especially in their Constitutions. It is for the above reason that we venture to qualify sustainable development as an emerging umbrella of rights, which of course must be matched by corresponding obligations. However, what is problematic here is the extent to which the incorporation of rights has been effected and the guarantees for their effective translation into

[2] Full references are Stockholm Declaration of the United Nations Conference on the Human Environment, June 16, 1972,U.N. Doc.A/Conf.48/14/Rev. (1973), 11 I.L.M.1416 (1972)

[3] This is the preservative approach to environmental protection, which has today been replaced by the conservative approach.

[4] The report is entitled: "Sustainable Development: Our Common Future", published in 1987 by the World Commission on Environment and Development (WCED)

[5] *Ibid* at p 2

[6] See Malcolm (1994), A Guidebook to Environmental law, Sweet & Maxwell, London, p.12.

[7] See Rio Declaration on Environment and Development, June 13, 1992, U.N.Doc. A/CONF.151/26 (vol.1), 31 I.L.M. 874 (1992) and its Agenda 21, June 13, 1992, U.N. Doc.A/151/26 (vols. I, II, and III) (1992).Their Agreement was evident in Principles 4,5,7,8,10,20,21 and 28 of the Declaration.

[8] See U.N Millennium Declaration and the Report of the Summit's Outcomes in the Secretary General's Report, point 22.

[9] See the Report of the World Summit on Sustainable Development (WSSD) which held in Johannesburg from the 18-22 of August, 2002. See also the Report of the Global Judges Symposium on Sustainable Development and the Role of Law, which held back-to-back with the Summit, which now fully integrates the concepts of environment and development.

practical realities which remain debatable. This article attempts to explore the extent to which sustainable development concerns have been incorporated into the Cameroonian legal framework expressly and/or implicitly and measures for ensuring its concrete application or realisation. In doing this, the Constitutional dispensation of 1996 as amended in 2008 shall be used as a barometer for obvious reason – the Constitution is the supreme law of the land from which all other laws draw their inspiration.

## II SUSTAINABLE DEVELOPMENT: WHAT PLACE IN THE CAMEROONIAN CONSTITUTIONAL EVOLUTION PRIOR TO 1996

What is Cameroon today has undergone a triple foreign administration. The Germans annexed[10] Cameroon as a protectorate in 1884 but their control over Cameroon ended in 1916 after their defeat by the Anglo-French forces during the course of the First World War[11]. Cameroon was provisionally partitioned between the British and the French and the Mandate Agreement administered the country as 'Class B' mandated territories of the League of Nations between 1922 and 1945.[12] When the United Nations Organisation was created in 1945 replacing the League of Nations, the two spheres of Cameroon became U.N trust territories and managed under the Trusteeship System of the U.N.

The British part of Cameroon known as the Southern Cameroons was granted internal autonomy in 1954[13] while the French Cameroon referred to as *La Republique du Cameroun* had its own internal autonomy in 1957.[14] The latter gained its independence on January 1 1960 and the former achieved its own independence in 1961 by accepting to join *La Republique du Cameroun* during the U.N sponsored plebiscite on February 11, 1961. The union was legalised and consolidated by the Federal Constitution of 1961[15] in Foumban. A

[10] It is important at this point, to square what has been debatable in many circles namely the question whether or not Cameroon had come under direct colonisation. It should be noted that Cameroon has never been colonised although successive administering powers sought to regard the country as a colonial protectorate. The terms of the agreement had no relationship to colonialism. Therefore, Germany did not, legally speaking, colonise the Cameroons. This could be explained by the following: In the first place, at the time of German arrival in Cameroon, there were already indigenous governments in effective control. In the second place, the terms of the treaties signed and ratified did not allow colonisation. In the third place, the German government at the time and even the opposition parties detested colonies regarding same as economic encumbrances; and finally, the German constitution had made no provision for the government of a colonial empire. Even when the Reichstag was asked to approve a financial appropriation for Cameroon in 1885, it raised questions in connection to the legality of such an action. It is for these reasons that the idea generally held that Cameroon was a German colony is only imaginary. Consequently being a German protectorate when France and Britain obtained shares in the administration of Cameroon, their powers of free sovereign were also limited. For more, see generally Enongchong, H.N.A. (1967), Cameroon Constitutional law: Federalism in a Mixed Common Law and Civil Law Systems, Centre d'Edition et de Production de Manuels et d'Auxilliaires de l'Enseignement, UNESCO, Yaoundé, p.63.

[11] Ngoh, V.J. (2004), Cameroon from a Federal to a Unitary State, 1961-1972: A Critical Study (edt) Design House, Limbe, p.1.

[12] *Loc cit*

[13] See Enonchong H.N.A., *Op cit* at p 74-75

[14] *Ibid*

[15] It was referred to as *La Constitution du 1er Septembre 1961 portant révision de la Constitution du 24 Mars 1960 tendant a l'adoption des institutions de l'Etat aux exigences de la modernité*. This has generally been considered as *'la fraude a la Constitution'*

crucial question is whether the 1961 Federal Constitution ever envisaged anything with regard to sustainable development.

## A) THE FEDERAL CONSTITUTION OF 1961

The Federal Constitution did not make any express pronouncement nor could anything be implied from that Constitution on the idea of sustainable development. The question then is what accounts for such a state of affairs. Could this be explained by the fact that just emerging from independence, and young as it was, the legislator was more preoccupied with consolidating the hard-earned union, or that sustainable development issues were not contemporary at the time, or again by both explanations? If we consider the second explanation, it may not be convincing for the simple reason that even if the words 'sustainable development' were not *en vogue*, there were and still are ideals[16] rooted in African indigenous and traditional knowledge institutions which relate to or have implications on sustainable development which could have been integrated into the constitution at the time. This may explain why the learned judge Christopher G. Weeramantry argues that the concept of sustainable development is an ancient concept, which has just recently been revived.[17] Based on the foregoing, it can hardly be convincing that the Federal Constitutional draftsmen were unaware of the ideals of sustainable development. Consequently, we take the view that sustainable development as fashioned and referred to in modern law today, owes its origin in indigenous and traditional knowledge of the African people in general and Cameroonian people in particular, which subsist even today. Thus, any legal document and in particular the Constitution which failed to allude to rights leading to sustainable development could, in our humble opinion, be considered as incomplete. This may, therefore, be the case with the 1961 Federal Constitution.

On the contrary, it seems plausible to argue that the constitutional draftsmen of 1961 concentrated on laying a foundation for the nature and form and the functioning of the new-found federal system and by so doing relegated environmental sustainability and related issues to a footnote. This state of affairs, it must be added, was a general one for countries of the African continent, as environmental and related concerns had not yet received much attention both at the national and international arenas. However, the fragmented and piecemeal legislations on environment and related domains[18] of the former foreign

[16] We are referring here to the African three-fold traditional concept of humanity: those who came before us, those who are with us here and now, and those who are yet to come; group or community rights against individual rights; the traditional rights of animals; the tendency of traditions to concentrated on duties than rights as opposed to modern law today; relative freedom of contract; relative ownership of property as opposed to the modern law recognition of absolute freedom of contract; and absolute ownership of property.

[17] Sustainable Development: An Ancient Concept Recently Revived (2002), in; Report of the Global Judges Symposium on Sustainable Development and the Role of Law, Johannesburg, vol II, UNEP, Nairobi, p 142-150.

[18] The Imperial Land Decree of June 15 1896, the Forest Ordinance of April 14 1900, (German legislations); The Forestry Ordinance of May 4, 1916, the Land and Native Rights Ordinance, amendments to the 1916 Ordinance of 1927, 1937, and

administrators would have at least influenced, in the Cameroonian context, the 1961 Constitutional draftsmen.

In any event, barely two months after the Federal Constitution was promulgated, an Ordinance[19] was signed whose main objective was to place all forests and forest based resources under state control. Four years after the promulgation of the above Ordinance, the 1916 Ordinance, which conferred the governor, powers to dispose of land and regulate the use of forest, was amended and consolidated. Finally, in 1968, a Federal legislation[20] was passed which reviewed the 1963 Land Tenure Code and introduced the concept of national lands and ownership of forest by the state.

It would be observed that efforts were made by the Federal government to regulate the management of the environment for the people's livelihood through the various legislations discussed above. However, the question that begs for answer is where did the legislator gather his legal source of inspiration since the 1961 Constitution being the supreme law made no allusion to sustainable development or at least to environmental protection as the latter constitutes one of and the main pillars[21] of sustainable development. Therefore, the federal legislations relating to environmental protection could be considered as having no legal source of inspiration. Consequently, the said legislation could be regarded as unconstitutional and therefore, null and void although they were implemented. This would obviously have been case as there is no evidence that anyone had raised the unconstitutionality of the above-mentioned laws.

## B) THE 1972 CONSTITUTION

The Constitutional history of the state of Cameroon evolved to a decisive point in 1972. Decisive because the form or nature of the state was changed from a federal to a unitary state. The Constitution of 1972[22] led the Federal Republic of Cameroon to acquire and was henceforth known as the United Republic of Cameroon.[23] In its preamble, there were provisions, which relate to or have implications on environmental protection and sustainable development. For instance, it is provided in the preamble that the state is resolved to exploit its natural wealth in order to ensure the well-being of every citizen by the raising of living standards, proclaims its right to development.[24] It is equally provided that the state shall endeavour to provide for all its citizens the conditions necessary for their development.

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1948; the Forestry Decree of March 8, 1920, Décret No. 46-126 of May 3, 1946 which categorised forest into domaine classé and domaine protégé

[19] Ordinance No 61-14 of 16 November 1961.

[20] Loi No 68-1-COR of 11th July 1968.

[21] The other pillars of sustainable development are social and economic

[22] The 1972 Constitution has always been referred to as the Unitary Constitution.

[23] It may be important to note that with regard to the form or nature of the state, there was a move in 1984 from the United Republic of Cameroon to the Republic of Cameroon by Law No 84/1 of February 4 1984.

[24] See preambular paragraph 3

It is clear from the above that although express reference was not made to environmental protection and sustainable development, there was an implied provision relating to sustainable development through sound environmental management. Unfortunately, the preambular provisions of the 1972 Constitution were only Directive Principles with no firm justiciable rights. The explanation for this is that the preamble of the Constitution was at the time not part of the Constitution and consequently had no legal value.[25] This argument notwithstanding, the state has since 1972, been involved in crafting legislation on environmental management, the 1973 Forestry Ordinance[26] and its Enabling Statute a year later is an example par excellence.

In 1981, forestland was classified into three categories as follows: private, state and national lands with the latter administered by the state.[27] Although the rights of usage of the local population were recognised, forestry administration placed some restrictions. Between 1984 and 1993 under the guise of the Forest Planning Tools, a number of policy reforms were undertaken with the aim of attaining sustainable development objectives.[28] Reforms in the forestry sector were climaxed in 1994 by the Forestry Law[29] and its Enabling Statutes[30].

It would be noticed that between 1972 and 2008 (the year of most recent revision of the 1972 Constitution) a lot was undertaken in terms of legislations touching on environmental management and sustainable development. However, the key question is what provoked this plethora of legal reforms. One explanation could be that there was increasing awareness of environmental and sustainability issues at the global level influenced on the main by international legal instruments, the Stockholm Declaration 1972, for instance. Although considered soft law with non-binding legal force its principles form part of the corpus of customary international law. Of enormous influence was also the Rio Declaration of 1992, the Biodiversity Convention and related legal instruments with much emphasis on sustainable development concerns. A second explanation could be founded on the Constitutional provisions. Even if they were non-binding because of their preambular nature, they however,

[25] It had always been generally held that the preamble of the Constitution was part of the Constitution and so of legal value, but that argument is rendered null by a group of scholars today evident in: Melone, S; A.S Minkoa; L. Sindjoun (1996), La Réforme Constitutionnelle du 18 Janvier 1996 au Cameroun: Aspects Juridiques, et Politiques, Foundation Friedrich Ebert/Graps, Yaoundé. See also the position of the judicial and administrative judges on the question of the legal validity of the preamble of the Constitution in Arrêt No 45/L of 22nd February 1973 in which the Supreme Court reaffirmed the legal value of the preamble as it disregarded the application of a custom which excluded girls from succession arguing that such a custom was contrary to the preambular provision of the Constitution on discrimination on basis of sex. In the same light, see Arret No 118/CFG/SCAY of 29 March 1972 in the case of Eitel Mouelle Koula c/ La République Fédérale du Cameroun just to cite these few.

[26] Ordinance No 73/18 of 22 May 1973. By the provisions of the Ordinance and its Enabling Statute, forestry management for English and French speaking Cameroon was harmonised and forest resources were nationalised, protected areas were created and controlled by the state and only customary use rights of secondary products were recognized.

[27] This was according to Law No 81/130 of 27 November 1981 and its Enabling Statute of 1983.

[28] These included the 6th Five Year Development Plan; the Tropical Forestry and Economic Recovery Action Plan (TFAP) and the Structural Adjustment Program

[29] Law No 94/01 of January 20, 1994 to lay down Forestry, Wildlife and Fisheries Regulations.

[30] The Enabling Statute of the Forestry and Wildlife Laws were set out in 1995 by Prime Ministerial Decree No 95-531-PM of 23 August 1995 to determine the conditions for implementation of Forestry Regulations; and Decree No 95-466- PM of 20 July 1995 to lay down the conditions for the implementation of Wildlife Regulations.

constituted a legal source or springboard for any subsequent legislation on the environmental sustainability. It is therefore, evident that before the Constitutional reforms of 1996, there had been various attempts (albeit implicitly) at building a sustainable society for Cameroonian although the climax was reached in 1996.

## III SUSTAINABLE DEVELOPMENT AS AN EMERGING UMBRELLA OF ENVIRONMENTAL AND RELATED RIGHTS: THE 1996 AND 2008 CONSTITUTIONAL DISPENSATION

More than two decades under the Unitary Constitution, it was time in 1996 to review and modernise the Constitution to meet changing times and international aspirations. The 1972 Constitution was, therefore, revised[31] in 1996 by Law No 96-01 of 18 January 1996 and more recently in 2008 by Law No 2008/001 of 14 April 2008.

The revised Constitution of 1996 and 2008 like that of 1961 does not expressly mention sustainable development. This notwithstanding, there are provisions in the 1996 revised Constitution which expressly and implicitly relate to environmental protection and consequently sustainable development. This observation appears sound as some authors[32] have posited that the concept of sustainable development may be found expressly or implicitly in many environmental legal instruments.

### a) Express Reference to Environmental Protection

The Constitutionalisation in an express manner of environmental concerns at the continental level in general and in Cameroon in particular is of recent pedigree. It must be stated here that this awareness was raised after the Rio Declaration of 1992 and subsequently the Convention on Biodiversity and a host of other legal instrument relating to environmental protection.[33] In response to the Rio call, many African countries have now inserted in their Constitutions[34] extensive express provisions on environmental protection. Some of these

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[31] Olinga A.D (2006), *La Constitution de la République du Cameroun*, UCAC, p.23-27 in this scholarly demonstration against views held by other authors of the existence of two Constitutions, takes the view that there is one constitution and that is the revised Constitution of 1972 ;

Ondoa M. (2000), *la Constitution Duale: Recherches sur les Dispositions Constitutionnelle Transitoire au Cameroun; Revue Africaine des Sciences Juridiques*, Yaoundé, vol. 1, pp 20-56. The author argues that there is a continuity of the old constitution in Cameroon because the 1996 law does not make provisions canceling the old Constitution .See in particular p. 25 and 33; Kamto, M, (1996), *Révision Constitutionnelle ou Ecriture d'une Nouvelle Constitution, lex lata*, Yaoundé, p.19. The author argues that the 1996 Constitution is fundamentally and substantially new.

[32] See notably, Sands, P. (2003), Principles of International Environmental Law, (2nd Edition), Cambridge University Press, Cambridge, p 10

[33] Amongst them, we may cite the Forest Principles, the UN Framework Convention on Climate Change, May 29, 1992, 31 I.L.M 849 (1992), the Desertification Convention, cited as United Nations Convention to Combat Desertification in Countries Experiencing Drought and/or Desertification, particularly in Africa, October 14, 1994, 33 I.L.M.1328 (1994); and the Convention on Biological Diversity, June 5, 1992, 31 I.L.M. 818 (1992).

[34] South Africa, Kenya, Uganda, Ghana, Tanzania, Sierra Leone, Nigeria, Namibia, Mali just to name a few. For more see UNEP (2005) Proceeding of Symposium for Lecturers in Environmental Law from African Universities, September 2004, Nakuru, Kenya.

countries have made express reference in their Constitution to the key concept of sustainable development. However, this is not to say that those African countries without express provisions do not adhere to or are not inclined to forge a pathway to sustainability. It could be argued that they consider the pertinence of sustainable development as this is evident in their Constitutionalisation of environmental concerns, the observance of which may variably or invariably lead to the achievement of sustainable development. Some authors[35] have referred to the incorporation into the Cameroonian Constitution of environmental concerns as a clear stand of the legislator to protect the environment in accordance with international prescriptions.

### i) The Right to a Healthy Environment

In the Constitutions of most African countries, express reference to environmental protection has taken the form of a right. This is the human right to a healthy environment.[36] In fact, it is interesting to note that the continent of Africa was the first to afford a formal legal recognition to the right to environment as a human right through the African Charter of Human and Peoples Rights adopted in Kenya in 1981.[37] Article 24 provides that: "all people have a right satisfactory and global environment suitable for their development". In the Cameroonian context, questions relating to the protection of the environment have also taken the form of human right to a healthy environment. This was incorporated into the revised Constitution of 1996 and maintained in that of 2008 in the following words:

every person shall have a right to healthy environment. The protection of the environment shall be the duty of every citizen. The state shall ensure the protection and improvement of the environment.[38]

An understanding of the provision above relating to environmental protection as encapsulating sustainable development objectives requires that we look not only at the letter of the law but the legislative spirit or at what may be termed the principle of law as well. That everybody has a human right to a healthy environment has rendered what was hitherto a slogan to environmental protection, a human right to a healthy environment. This has been referred to as third generation rights.[39] Some authors[40] have argued that third generation rights are destined to conciliate civil and political rights so-called formal liberties (first-generation rights), and economic and social rights so-called real liberties (second-generation

[35] Notably, Tcheuwa, J.C. (2006), Les Préoccupations Environnementales en Droit Positif Camerounais, RJE, 1, Limoges, p 26

[36] See for example, the Ugandan Constitution in article 39, the Kenyan Constitution, art 241, the Constitution of Burkina Faso, art 29, the Constitution of Congo in its preamble, the Constitutions of Sierra Leone, Benin, Nigeria, South Africa, etc

[37] See Kamto, M. (1996), Droit de L'environnement en Afrique, EDICEF, Cedex, p 51

[38] Paragraph 26 of the preamble of the Constitution

[39] See Tamasang, C.F. (2007), Community Forest Management Entities as Effective Tools for Local-level Participation under Cameroonian Law: A Case Study of *Kilum/Ijim* Mountain Forest, Ph.D thesis, University of Yaounde II, Soa, p.52.

[40] Notably, Kamto, M. *Op Cit*, p 50. The author mentions only economic and social rights as second general right because he considers cultural rights as third general rights. But we differ with this view which he holds alogside others because the two Protocols of 1966 adopted by the UN which he has referred to recognizes cultural rights as second generation rights. We humbly submit that cultural rights are second generation rights.

rights). In fact, there ought not to be an argument differentiating human rights if not only in terms of the periods of emergence of the same. By implication therefore, whether so-called first or second-generation rights, they ought to be universally recognised and enforced with the same standards and rigour. No difference, in our view, really exists between environmental rights and other rights because almost all human rights are intricately related. If any difference, there is, it is that the enjoyment of environmental rights depends fundamentally or substantially on preventive measures to environmental protection with reparation being only a last resort while the enjoyment of many other human rights depend substantially on reparation. We cannot, therefore, enjoy our rights to a healthy environment if we are not conscious that we have a corresponding duty to protect the environment by adopting preventive measures in accordance with the international law principle of prevention, which is one of the cornerstones of sustainable development. This seems to be the legislative spirit behind the Constitutional provision that... "the protection of the environment shall be the duty of every citizen ..." Then, of course, the state within its responsibility[41] will oversee and ensure the protection and improvement of the environment in order that the right be a reality. She does this by involving every citizen in various ways under the now famous concept of public participation both in legislative crafting and institutional building capacity for environmental protection. In short, the state has to provide an enabling environment for everyone to participate in building an equitable and just society where each person can enjoy his/her human right to a healthy environment.

Relating the above Constitutional provisions on environment protection to the concept of sustainable development requires an examination of the principle of intergenerational and intra-generational equity, which are the hallmarks of sustainable development.[42] These principles have been recognised in international legal instruments either as principles of customary international law or as principles of hard law.[43] Again, one can cite the Stockholm Declaration,[44] the Rio Declaration[45] and the UN General Assembly

[41] Given that environmental issues have attracted a lot of attention and are now spearheaded at the international level, state responsibility has become international so that international legal instruments enjoin states to assume their responsibility in environmental issues. See for example Principle 21 of the Stockholm Declaration and Principle 2 of the Rio Declaration.

[42] It is necessary to state that the achievement of sustainable development also depends on such issues as the precautionary principle, the *erga omnes* principle, environmental impact assessment, the principle of common concern for human kind, obligation not to cause environmental harm, the principle of prevention, the polluter and user pays principle, just to mention these few.

[43] The hard law/soft law divide has been extensively explored by Tamasang, C.F. (2006), Legislation for Forest Management in the Central African Sub-region: What Future for Sustainable Development, published in the Proceeding of the IUCN Colloquium on, "Environmental Law and Sustainable Development: The Role of Compliance and Enforcement," New York, June 2007.

[44] Principle 1 "Man ... bears a solemn responsibility to protect and improve the environment for present and future generations."

[45] Principle 3, "The right to development must be fulfilled so as to equitably meet the developmental and environmental needs of present and future generations."

Resolution[46] on the historical responsibility of states for the protection of nature for the benefit of future generations,[47] and the Convention on Biological Diversity.[48]

The principle of intergenerational equity is one of fairness.[49] It requires that present generation should use the environment in such a way that it does not leave future generations worse off by the choices they make today.[50] It focuses on the future generations as rightful beneficiaries of environmental protection.[51] This is also, what sustainable development is all about. And the argument that future generations do not have rights since only people existing at any one time should be regarded as having rights could now be considered as a limit to modern law. The reason is that before the advent of modern law, African environmental conservation was founded on the three-fold concept of humanity.[52] We should, therefore, not make the mistake of making our law know no cultural tradition. In fact, one basic ingredient of intergenerational equity is the "conservation of quality," which requires that each generation maintains the quality of the planet so that it should be passed on to future generation in the same state, (if not better) as they received it and should also be entitled to a planetary quality comparable to that enjoyed by previous generations.[53] This falls on all fours with the 1996 revised Constitution and maintained in the 2008 revised Constitutional provision of the right to a healthy environment.

On its own part, the principle of intra-generational equity requires that within the same generation, its members should enjoy an equal right of access to benefits and burden to the legacy of the past generation.[54] This implies that every member of a generation has an equal right to an environment of quality that ensures human health and well-being. It has also been argued that this is tantamount to "conservation of access."[55] If this were to be the case, it *amounts to distributive justice,*[56] which is a sustainable development ideal. Put in the Cameroonian context, the Constitutional dispensation for a right to a healthy environment is one which must be available to all living in the present generation which of course will eventually be handed down to the future generations.

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[46] See UNGA Res.35/8, October30, 1980

[47] General Assembly Resolution 35/8 of October 30, 1980.

[48] See art 2(16) of the Convention where it is expressly stated that components of biological diversity shall be used in a way and at a rate that does not lead to long term decline of biological diversity thereby maintaining its potentials to meet the need and aspiration of present and future generations. In fact, the frequent use of the concept of "sustainable use" throughout the Convention provisions alludes to intergenerational and intra-generational equity.

[49] See Weiss, E.B. (1996), In Fairness to Future Generation, International Law, Common Patrimony and Intergenerational Equity, Cambridge University Press, p. 37-39.

[50] Hunter, D; James Salzman and Durwood Zaelke (1998), International Environmental Law and Policy, Foundation Press, NY. p.354.

[51] *Loc. cit*

[52] *Op Cit*, see note 15

[53] *Ibid*, p.356

[54] Kiss, A and Shelton, D. (2004), International Environmental law, 3rd Edition, Transitional publishers, NY., p.11.

[55] Hunter, D, James Salzman and Durwood Zaelke, *Op Cit*, p.356

[56] *Ibid*

**ii) The Right of Access to Natural Resources and the Right to Development**

Natural resource base particularly land, forests, water, fisheries, wildlife, wetlands, minerals is the life-wire of the African people. Natural resources, therefore, constitute the foundation of African states.[57] This certainly explains why a majority of African countries have engrained in their supreme laws provisions on natural resources management and development for the betterment of their people. The Republics of Uganda, Kenya, Ghana, Tanzania and South Africa are among of the leading African countries that have inserted in their Constitutions extensive provisions on the obligation for the government to manage natural resources in order to allow a right of access to the same by the citizens for their well-being and development.[58] Indeed, article 237 of the Constitution of Uganda for instance, reiterates government's obligation to harness and hold in trust all natural resources for ecological and touristic reasons for the common good of all citizens.

In Cameroon, the right of access to natural resources for the well-being of every citizen, the raising of living standards and the right to development, the readiness to cooperate with all states desirous of participating in realising these objectives while respecting sovereignty of Cameroonian state are recognised.[59] Within this framework, a number of issues, which relate to environmental management and rights, contained therein and hence leading to sustainable development, need in-depth examination.

**a) Exploitation of Natural Resources for the well-being of all citizens without Discrimination.**

Under the Cameroonian grundnorm, the state resolves to harness all its natural resources in order to ensure the well-being of its citizens and to do so without discrimination of any kind. If these provisions were to be applied to the letter, then the state will not only cater for the well-being of everyone but also raise their living standards. This takes us back to the idea of intra-generational equity, which as we have demonstrated earlier, is one of the cornerstones of sustainable development.

**b) The Right to Development**

The genesis of the right to development is the United Nations General Assembly endorsements since 1986.[60] Whether or not there exist a right to development is a debatable issue. The United States government for instance, argues that there is no right to development and hold that development is a goal, which we all hold, which depends for its realisation in large part on the promotion and protection of human rights set in the Universal Declaration of Human Rights.[61] This undoubtedly explains why the United States alone did not sign the UN

[57] For the centrality of natural resources for African states, see Kameri-Mote, P. (2005), Proceedings of the Symposium of Environmental Law Lecturers from African Universities, Nakuru, September-October 2004, UNEP Nairobi, p. 95-96.
[58] For instance, the Constitution of Uganda, National Objectives, Principle viii
[59] See Preambular paragraph 3
[60] UNGA Resolution 41/128 of December 4, 1986.
[61] Hunter, D, James Salzman and Durwood Zaelke, *Op Cit* p. 334.

General Assembly Resolution just referred to above. However, the rest of the countries of the world hold that there is a right to development. In fact, the Rio Declaration[62] in its Principle 3 still firmly states that: the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.
It is interesting to note that the above provision is reinforced by Principle 4 of the same Declaration in the following words: in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

It may be useful to know that at Rio some delegates from the developed countries re-echoing the US stands argued that no right to development existed and that even if such a right existed, it was a limited right constrained by natural limits (i.e. the limit of natural resources and that of the ecosystem to restore it), and by the principle of equity which required sustainable development.[63] When the above argument fell on the ground, they resorted to another, namely that principles 3 and 4 be merged to one.[64] On their part, developing countries negotiators, (Cameroon inclusive)[65] insisted on the separation of the two concepts and their intention was to ensure that the right to development is not transformed into a right to sustainable development.[66] Such intention is more evident from the fact that to a majority of countries of the South, environmental protection is a luxury to be addressed later and therefore, viewed primarily as a drag on the engine of growth and development. They even maintain that natural resource issues ought not to be addressed at the international level but primarily as internal matters because harmonizing environmental standards through global agreements would slow their development and unreasonably limit their economic growth to respond to problems caused predominantly by the consumption patterns of the North. We are of the opinion that this could be taken care of by the principle of common but differentiated responsibilities,[67] which is an international environmental law principle, which enhances sustainable development. In any case, a global marriage for the above conflicting views has emerged under the cover of 'global partnership'[68] between the developed and developing countries to achieve sustainable development.

Analysing the different positions held by developed as well as developing countries negotiators,[69] one can conveniently state that the developed countries attempted to refuse the

[62] *Op cit*
[63] Porras, I. (1994), The Rio Declaration: A New Basis for International Cooperation, in; Phillippe Sands, Greening International Law, Cambridge, p 36-48
[64] *Ibid*
[65] Emphasis is mine
[66] Porras, I. *Op Cit*
[67] The principle of common but differentiated responsibilities is to the effect that although all the countries of the world are guilty of environmental damage, each would be responsible to the extent to which it has contributed to environmental harm. For instance, wealthier countries will pay more for causing pollution while poorer countries will do for natural resource degradation. In fact, the principle reflects core elements of equity.
[68] For more, see the Rio Declaration of 1992
[69] It should be noted that in international environmental negotiations, the developed countries sense of urgency to solve global environmental problems is counterbalanced by the developing countries sense of urgency to redirect the global economy to

right to development apparently because of their huge reliance on the natural resources[70] of the developing countries for their further development and even their survival.[71] Moreover, when the argument that there was no right to development gathered little or no support, they resorted to another namely, the mergence of the two principles in favour of the right to sustainable development. This way developing countries would be continuously reminded of the obligation to achieve sustainable development and hence rational exploitation of their resources. Although the latter point makes sense as rational exploitation implies a work towards sustainable development and may also be to the advantage of developing countries, Cameroon inclusive, the whole idea of separating the two rights insisted upon by negotiators of the developing countries is couched on one thing. Through their right to development, they may exploit their resources in any manner even through overexploitation, if and only if this can lead them to achieve economic growth and enjoy their right to development. We venture to think that by so doing, they may not necessarily attain sustainable development because although the resources are within their national territory in which they enjoy sovereignty, such an approach undermines the cardinal principle of common concern of humankind, which is a sustainable development pursuit. In any case, there was need to consider the relationship between environment and development. The Rio Declaration thus appeared to have given pre-eminence to development; hence, environment and development are the two phases of sustainable development. However, the right to development is imperative to the achievement of sustainable development. It is certainly on this note that the constitution of Cameroon insist on the right to development. However, a question that begs for answer is can the right to development be achieved in isolation?

**c) Cooperation with other States**

Globalisation, which has reduced the world into a global village, has many challenges. One way of facing such challenges is legal integration. But for integration to be

overcome the cycle of poverty. For more on these kinds of negotiations, See generally, UNEP et al (2007), Multilateral Environmental Agreement: Negotiators Handbook, (2nd edition), University of Joensuu, Joensuu .

[70] The developed countries are the primary consumers of natural resources. For more on this, see Hunter, D., James Salzman and Durwood Zaelke, *Op Cit* at p 277

[71] Natural resources, the forest for instance, contributes enormously to moderate local as well as global climates. It would be recalled that at Rio, the U.S. representative while refusing to sign the Biodiversity Convention instead deposited 150 million dollars for conservation of forest in the developing countries. This act which delegates from the developing countries termed "Greenwash" was, according to them, a strategy to deflect attention away from its failure to sign the Biodiversity Convention. The U.S. representative conditioned the signing of the Convention on a clear endorsement of Global Environment Facility (GEF) as the primary financial mechanism specific to the Convention.
The South viewed the U.S. support for forest conservation as a cynical effort to shift the obligation from the North's need to reduce greenhouse gas emission to the South's responsibility to conserve forest as carbon sinks. Instead of signing the Biodiversity Convention and the Framework Convention on Climate Change, it pushed for a global forest treaty which was ultimately rejected by delegates from developing countries who rather preferred to negotiate a set of non-binding forest principles at the conference, hence one of the outcomes of the conference was the Forest principles. In fact, climate change issues are especially important at this time when the so-called Annex I countries (industrialised countries) are refusing to sign the Kyoto Protocol fixing legally binding emission targets. See AGS Pathways Report (2007): Public and Stakeholders Attitudes towards Energy, Environmental and CCS, Alliance for Global Sustainability, Chalmers, Goteborg, p.1

effective, states must cooperate. The duty to cooperate, if fulfilled would certainly result in good neighbourliness in addressing environmental concerns, which have become trans-boundary, in order to conserve the global environment[72]. It is only in such a state of affairs that each state can adequately harness its natural resources for the well-being of its citizens as well as ensuring or achieving its right to development.

In fact, international recognition for the duty to cooperate in handling environmental problems and ensuring sustainable development began with the Stockholm Declaration in the following words:

International matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries... to effectively control, prevent, reduce and eliminate environmental effects resulting from activities...[73]

The importance of the obligation to cooperate was further stressed in the Rio Declaration as follows:

States and people shall cooperate in good faith... in the fulfilment of the principles embodied in the Declaration and in the further development of international law in the field of sustainable development.[74]

As signatories to the two Declarations and as a country which recognizes, complies and enforces within its domestic setting, principles of customary international law, Cameroon answered to the international calls for the duty to cooperate and build good neighbourliness for the purpose of addressing environmental concerns, realising its right to development and working towards sustainable development. This is evident in paragraph 3 of the preamble of the Revised Constitution of 2008.[75] However, the question is what exactly could be the extent of such cooperation.

**d) Respect for State Sovereignty**.

In the legal sense, state sovereignty signifies independence and should be exercised within the territorial limits of a country. So, therefore, although states are required to cooperate in handling environmental problems, the extent of such cooperation must be delimited for if otherwise, cooperation may be turned to interference in the internal affairs of a sovereign state. This may explain why the Cameroonian Constitution provides in the concluding words of preambular paragraph 3 that:

... to cooperate with all states... with due respect for our sovereignty and the independence of the Cameroonian state.

It is to be observed that although Cameroon adheres to the cooperation obligations enshrined in international legal instruments, it would only admit cooperation of other states that does not impinge on the management of her resources for the welfare of her people, that

[72] Kiss, A and Shelton, D, *Op Cit* p.17.
[73] See Principle 24
[74] See Principle 27.
[75] See also Article 37(9) of the Ghanaian Constitution

guarantees her right to development but does not undermine her sovereignty over natural resources. In fact, the principle of sovereignty and exclusive jurisdiction over their territory implies in principle that, countries alone have the competence to develop policies and laws in respect of their natural resources and the environment of their territory.[76] Support for this position is lent by the concluding words of Principle 24 of the Stockholm Declaration, ... that due account is taken of the sovereign interest of all states," and Article 15 of the Biodiversity Convention[77] which Cameroon has ratified.[78]

**B) Implied References to Environmental Protection and Sustainable Development**

Beside express Constitutional provisions on environmental protection and hence sustainable development, there are also a number of implied provisions on the protection of the environment leading to sustainable development.

**i) The Right to Life**

The right to life is a fundamental human right. The revised Constitution of 2008 provides that every person has a right to life... and this include the right to physical and moral integrity.[79] The right to life, therefore, seems to be the nerve centre of environmental protection and sustainable development although the Constitution does not expressly state so. This is because until the right to life is sufficiently guaranteed and protected, it would be nonsensical to talk of protecting the environment and forging a pathway to sustainable development. It is indeed imperative to read the above provision together with that on the right to a healthy environment. The right to life would only be meaningful in a healthy environment and a healthy environment guarantees the right to life, to physical and moral dignity. The right to life and the right to a healthy environment are thus complementary and the protection and enhancement of these rights would lay a solid foundation for the attainment of sustainable development.

**ii) The Right to Education including Environmental Education**

The right to education, which has been rightly used by some authors[80] interchangeably with the right to information, is crucial for sustainable development. In the environmental sphere, the right to education is understood to include the right to environmental education. This implies for the state the obligation to make available data and information relating to facts, activities, practices and projects affecting or likely to affect the environment and compromise the enjoyment of this right for sustainable development. The

[76] See Sand, P. *Op cit* at p 13

[77] "States have sovereign rights over their biological resources and the authority to regulate genetic resources through national legislation".

[78] The Convention on Biodiversity was ratified by Law No 93/010 of 22 December 1993

[79] See Paragraph 17 of the Preamble.

[80] See notably, Spiry, E. (1996), *Protection de l'Environement et Droit International des Droit de l'Homme: De la Dialectique à la Symbiose*, International Law Review, No 3, Geneva, p. 190.

right to education or information is a procedural environmental right.[81] The following excepts from UNESCO's education for sustainable development information briefs may illuminate the relationship and importance between the right to environmental education and sustainable development:

Education at all levels can shape the world of tomorrow equipping individuals and societies with skills, perspectives, knowledge values to live and work in a sustainable manner. Education for sustainable development (ESD) is a vision of education that seeks to balance human and economic well-being with cultural traditions and respect for the earth's natural resources... the overall aim of education for sustainable development is to empower citizens to act for positive environmental and social change implying a participatory and action-oriented approach. Pursuing sustainable development through education (at all levels), the judiciary inclusive, requires educators and learners to reflect critically on their own communities, identifying non-viable elements in their lives, become empowered to develop and evaluate alternative visions of a sustainable future and to work to collectively fulfil these visions.[82]

Of course, in line with these visions, the Cameroonian Constitutions including the most recent amendment of 2008 recognize a right to education,[83] which must be considered to include environmental education for sustainable development. In fact, there is ongoing national initiative to make environmental education compulsory in primary and secondary schools. Just how far this would go is still not certain though.

### iii) Equal Right of Access to Justice

Equal right of access to justice is a human right recognised at the international level. Under Cameroonian, the legislator drawing from international norms provides for equal right of access to justice.[84] The enjoyment of this right means that every one without discrimination and in all cases including environmental harm should be able to get access to justice. In environmental matters, this right is claimed at the national as well as at international level. Therefore, the right exist for transboundary injury[85] as where a person in Gabon, for instance, suffers pollution damage resulting from acts perpetrated in Cameroon. Such a person (the Gabonese) should at least receive equivalent treatment to that afforded in country of origin of the harm, that is, Cameroon. From a procedural standpoint, equal right of access to justice in a transboundary context could include such treatment as the right to take part in, or have resort to all administrative and judicial procedures existing within the country

[81] *Ibid*
[82] UNEP et al (2006), Education for Sustainable Development Innovations: Programmes for Universities in Africa, module 2, UNEP, Nairobi. p. 6-7
[83] Preambular paragraph 23
[84] See the Preamble of the Constitution, paragraph 16
[85] See Implementation of a Regime of Equal Right of Access and Non-Discrimination in Relations to Transfrontier Pollution Recommendation adopted on May 17, 1977. For more, see Hunter, D., James Salzman, & Durwood Zaelke, *Op cit*, p 379.

of origin in order to prevent domestic harm, to have it abated and/or to obtain compensation for damage caused.

At the domestic level, procedural as well as substantive problems particularly the *locus standi* doctrine may arise to frustrate an environmental litigant's claim for harm suffered. However, in many African countries, these kinds of difficulties are gradually being mitigated in legislative instruments but also by the judiciary. Cameroon is no exception although some infelicities abound. Consequently, the incorporation into the Cameroonian Constitution of equal right of access to justice for harm suffered including environmental harm falls within the gamut or what we have referred to earlier as an emerging umbrella of environmental and related rights for sustainable development.

From the foregoing, it is fairly clear that although Cameroon unlike other African countries has not expressly mentioned sustainable development in her Constitution, a careful perusal of the Constitutional provisions reveal that there are sufficient environmental protection ingredients and related issues for ensuring sustainable development. This is evident from various legislative texts drawing inspiration from the Constitution and expressly referring to sustainable development.[86] However, there exist some limits to the enjoyment of Constitutional environmental and related rights for sustainable development

## IV The Challenges in the Protection and Enforcement of Constitutional Environmental and Related Rights for Sustainable Development: Some Milestones

It is just one thing to recognise the existence of rights but it is quite another thing to ensure that these rights are protected and enforced. This of course, is the idea that law is not just what is written down as black letter law but that which eventually finds compliance and enforcement. Thus, compliance with and enforcement of environmental and related rights is the touchstone of sustainable development. This calls for the role of the executive and judiciary in the guarantee and enforcement of Constitutional environmental rights in particular and environmental protection in general.

### A) The Challenge of the Judiciary in the Protection and Enforcement of Environmental and Related Rights for Sustainable Development

Judicial institutions serve, *inter-alia*, the function of interpreting and applying the law, peaceful settlement of disputes and upholding the rule of law. From environmental and other perspectives, these are the benchmarks of sustainable development. In fact, the judiciary is at the cutting edge of the development of the concept of sustainable development.[87]

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[86] For instance, see the 1994 Forestry Law and its Enabling Statutes, the 1996 Environmental Management Code and a host of other Regulatory Instruments on environment protection and related issues.

[87] Justice Weeramantry, C.G. (2002), Sustainable Development and the Role of Law, in, Report of the Global Judges Symposium and the Role of Law, vol II, UNEP, Nairobi, p.46.

The role, which the judiciary has to play in upholding and enforcing environmental rights and enhancing sustainable development is even more crucial and is grounded on the argument that majority of the cases coming before the court may not fall within a settled legislative provision or judicial decision but in a gray area not specifically covered by black letter law.[88] Consequently, the judiciary has to handle such situations, when they come for the first time. These factors leaves a significant scope for the appropriate exercise of judicial discretion in the enforcement of environmental rights, upholding the rule of law and providing a good surveillance in the justice system, all of which are pointers to sustainable development.[89]

In the Cameroonian context, the question is what guarantees and enforcement mechanisms are there for environmental and other related rights enshrined in the Constitution for ensuring sustainable development. It is important to be reminded that Constitutional entrenchments on environmental protection for sustainable development are to be found in the preamble. There has been a lot of heated debate on the legal value of the preamble of the Constitution.[90] One school of thought holds that the preamble of the Constitution has no legal value because its provisions are mere declarations and directive principles of state policy. This appears to be the prevalent view as many of the Constitutions of African countries regards it so. This may probably explain why in many African countries issues of environmental protection and sustainable development have been engrained not in the preamble but in the Constitution itself.[91] This is intended to render environmental rights justiciable in courts of law within their various national jurisdictions.

A second school of thought take the view that the preamble of the Constitution is of legal value and therefore that its provisions are justiciable. This implies that environmental rights and sustainable development implications are justiciable in courts of law across the country. Cameroon is one of those countries, which favours this view. This is justified by the provisions of article 65[92] to the effect that the preamble is part and parcel of the Constitution. However, we must be quick to add that this recognition dates as far back as 1996 the year of revision of 1972 Constitution. The question then is what obtained in Cameroon before this date? In the phase of ambiguity, the matter was left entirely in the hands of the judges who were required to make decisions on rights enshrined in the preamble of the Constitution. This probably explains why judicial decisions varied depending on whether it was a judicial or administrative judge who was seised of the matter. Fortunately, before 1996, no express pronouncement was made in the constitution on environmental protection and so the judiciary had not had the opportunity to interpret provisions relating to environmental

[88] *Ibid* (2005), Judges and Environmental law, in; Judicial Handbook on Environmental Law, UNEP, Nairobi. p.20.
[89] Zaelke, D., Stilwell, and D. Young (2005), What Reasons Demands in Making Law Work: Environmental Compliance and Sustainable Development (edited), Cameron May, London, p. 29-52.
[90] See Tamasang, C.F. (2007), *Op Cit* at p. 71-73.
[91] See *supra* the Constitution of Uganda, Kenya, Ghana, South Africa.
[92] See Law No 2008/001 of 14 April 2008 modifying and completing some provisions of Law No 96/06 of Jan 18 1996 to revise the Constitution of 2nd June 1972.

protection and sustainable development perhaps because of lack of education on environmental matters. In fact, to date these matters are a relatively unexploited and unfamiliar territory to most judges. In any event, article 65 of the Cameroonian Constitution is one of the important milestones in the sense that it has now settled the ambiguity on the justiciability of environmental and related rights for sustainable development protected by the preamble as it provides the judge with the basis to act within the letter of the law and addition could employ his discretion.

**B) The Challenge of the Executive in the Guarantee and Enforcement of Constitutional Environmental and Related Rights for Sustainable Development**

The President of the Republic is the Chief Executive in the Cameroonian Political and Constitutional system. His obligations include *inter alia*, the guarantee and protection of the Constitution in particular, rights contained therein. An interesting question is how does the President fulfil such an obligation and how effective does he do this.

The President of the Republic by way of direct action ensures the observance, application and guarantee of Constitutional rights. This is one of two ways[93] of controlling the Constitutionality of laws in Cameroon.[94] Hence, the Chief Executive by way of direct action ensures the observance and enforcement of emerging umbrella of Constitutional environmental and related rights under the cover of sustainable development. By this means, the President can request the constitutionalisation of rights and order the observance and enforcement of rights enshrined in the Constitution. In Common Law jurisdictions, the Constitutionality of laws is actually controlled by the judiciary[95] under the famous doctrine of judicial review.[96] In any case, under Cameroonian Constitutional law, a crucial question is whether with the political and Constitutional system in place in the county, one can state without fear of contradiction that the President is effectively playing his obligatory role of protecting and applying the Constitution.

It may be difficult to provide an affirmative answer to this question because the prevalent situation in Cameroon is one where there are more projects of law than propositions of laws. The implication of this is that the President as the Chief Executive can hardly initiate a project of law, which is eventually deliberated upon by the National Assembly dominated by members of the party, which he heads and promulgated by him and then turn round to challenge the Constitutionality of such law. Therefore, we may submit that in matters of

[93] Under Cameroonian Constitutional law, another way of controlling the Constitutionality of laws is by way of exception. What this means is that a litigant may raise an objection before a judge that the law, which has been applied against him, is unconstitutional. When this happens, the judge consults the constitutional judge for an opinion. If it is found that the law is truly unconstitutional, the judge will decline from applying the law only in respect to the person who has raised the unconstitutionality of the law. Its unconstitutionality would not be applied to any person who does not raise such.

[94] For a detailed understanding of the concept of Control of Constitutionality of Laws in Cameroon, see Mbome, F. (1981), *Le Contrôle de la Constitutionalité des Lois au Cameroun, R. Jur. Coop, t.* 35, no 2, Paris, p 629 - 702

[95] For details, see the judgment of Chief Justice Marshall of the American Supreme Court in the well known case of *Marbury v Madison* (1803), 1 Cranch 137

[96] See Hood, O.P.& Jackson (2001), Constitutional and Administrative Law (8th edition), Sweet and Maxwell, London, p 10-11

Constitutional environmental and related rights for sustainable development, the President is unlikely to afford the expected protection and application of such rights.

## V - Conclusion

This article has addressed important questions of environmental protection for sustainable development using the Constitution as a springboard. The article has qualified and explored the meaning and scope of sustainable development but has been emphatic on the environmental dimension of the concept. The article also argues that a recognition of environmental rights whether expressly or implicitly in the Constitutions of African countries in general and Cameroon in particular although without express allusion to sustainable development is a milestone in the attainment of same. However, since the law is more meaningful when it finds itself into implementation, the question is raised as to the effective protection of environmental and related rights for sustainable development entrenched in the Constitution.

One way of facilitating the protection of environmental rights and related rights for enhancement of sustainable development is legislative specificities which encapsulates the broad protection afforded by the '*grundnorm*'. *In this direction, we catalogued a number of* environmental and related legislation,[97] drawing inspiration from the Constitution.

A second way of upholding and enforcing environmental rights and related rights for sustainable development is through litigation mechanisms. This is where the role of the judiciary is called into play. However, some major challenges facing the judiciary in this task are that the judges are, in the first place, not sufficiently informed on this relatively new terrain of the law, and secondly, the prevailing constitutional and political system does not guarantee the independence of the judiciary. Another challenge turns on the softening of the *locus standi* rigidity, which requires those bringing an action for infringement of environmental right to proof special interest unlike an action for the protection of other rights. This appears to be a limit to people willing to bring an action for environmental offences and could be surmounted by allowing public interest litigation.[98] All that is required here is for the court to seek that the litigant be a member of an affected group, society or any part of the public, which of course is usually the case. To attain sustainable development, we require rethinking, changing economic practices, attitudes, and ways of life, assuming, and sharing new responsibilities and costs as well. The judge would be the ultimate arbiter of the resulting tensions and conflicting interests. However, for an effective discharge of his duties in this regard, the judge needs to be seised of the matter. Indeed, a well-informed and effective judiciary amounts to relatively little if cases are not brought before them.

[97] The Land Tenure Ordinance, 1974 and subsequent Enabling Instruments including the 2005 Presidential Decree modifying and completing certain provisions of the ordinance; the Forestry Law of 1994 and its Enabling Statutes; the Water Code, and its Enabling Statutes, the Petroleum Code, 1998 and its Enabling Instruments etc.

[98] In the Indian case of ***Peoples Union for Democratic Rights v Minister of Home Affairs***, AIR 1985, Delhi 268, the court stated that public interest litigation is not the kind of litigation meant to satisfy people's curiosity, but is a litigation instituted *with the desire that the court can give relief to the* whole or section of the society. See p 14 -16 of the judgment.

Unfortunately, this seems to be the trend in Cameroon. With regard to environmental and related rights, there is still need to build a culture of litigation in most Cameroonians who, for some reasons, have hitherto been reluctant to adopt *judicial enforcement mechanisms for the* protection of environmental rights.

Although litigation would trigger interest on the part of the judges on environmental and sustainable development law, as they would be forced to reflect in the discharge of their functions, we still highly recommend judicial education in these areas otherwise the Constitutional provisions without effective enforcement by the courts would hardly result to sustainable development. Public participation and public access to justice through public interest litigation[99] of which the courts, are in essence, guarantors, in the same way like the Chief Executive in ensuring the respect of constitutional rights needs to be strengthened and reinforced through the Constitution as these are critical to enforcement and implementation of environmental law and ensuring sustainable development. Otherwise, we may recommend that the President of the Republic who is the guarantor of the elaboration and recognition of rights should catalogue in what we may call a sustainable development charter or code, explicit and implicit rights in the Constitution that could be further elaborated upon. Such a recommendation seems quite sound, because environmental and related rights have been treated by many authors[100] as a separate category of socio-cultural rights and so inappropriate to be ordained as justiciable rights in national Constitutions. This, they argue, most often require the courts to order the state to undertake extensive positive conduct and resource commitments, a thing most states are reluctant to do for political and other reasons.

Finally, progressive indigenous and traditional knowledge institutions which have formed the basis of environmental protection and enjoyment of environmental rights for sustainable development before the development of modern law in this field needs to be weaved together in the sustainable development Charter or Code for a more holistic and effective way of achieving sustainable development.

[99] Although public interest litigation has been very contentious in legal circles, it was stated *inter alia* in the Tanzanian case of ***Rev. Christopher Mtikila v AG*** *[1995]. TLR 31 that the incorporation into the Constitution* of the doctrine of public interest litigation would entail taking away personal ingredients and allowing the protection of the interest of the public.

[100] For a detailed discussion on this issue, see notably Davis, D.M. (1992). The Case against Inclusion of Socio-Economic Rights in a Bill of except as Directive Principles, South African Journal of Human Rights, vol.8, Part 4, pp 475-490