

# A Legal Appraisal of The Mechanism For The Enforcement of Measures To Fight Against Climate Change in Cameroon

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## ABSTRACT

*The world in general and Cameroon in particular is on a mad rush towards economic growth and development. The resource to achieve this programme is sometimes very scarce and often come with a cost; that of influencing climate change. Every society is striving to live a very exorbitant standard of life and by so doing exploiting the environmental resources in such a way that instigates greenhouse gas that provokes climate change. Many laws, policies and declarations have been put in place with the intention to control the way business with the use of natural resources and operation of activities that can increase the quantity of greenhouse gases can be checkmated. Despite these measures, the earth continuous to experience increase in temperatures. This then calls to question the effectiveness of mechanisms for the respect of climate safety measures. This paper is seeks to investigate the effectiveness of the mechanisms put in place to enforce measures to fight climate change in Cameroon. In an attempt to address this objective, resort is made to laws, literature in this area, and other primary documents. It is discovered that judicial and administrative personnel lack the capacity to handle cases on climate change. The population does not also have the knowledge to protect and defend their environmental rights. In the end, we suggested that: the court and administrative officials should boost their capacity to handle issues on climate change; the population should be trained to drag to court violators of climate safety measures that go against their rights; the courts should take very harsh penalties against those who violate climate safety measures to deter others.*

*Keywords: Legal Mechanisms, Enforcement, Fight Against, Climate Change, Cameroon*

## 1. Introduction

Climate change is the long-term alteration of the earth's climate and weather patterns.<sup>1</sup> Changes in the climate constitute shifts in meteorological conditions lasting a few years or longer. These changes may involve a single parameter, such as temperature or rainfall, but usually accompany more general shifts in weather patterns that might result in colder, wetter, cloudier and windier conditions.<sup>2</sup> Climate change is a very disturbing issue that almost every part of the world is experiencing nowadays. It has caused very disturbing situations in places while in some areas, some benefits have been derived from it. But in all, the drawbacks experienced by the world and any particular region on earth as a result of climate change has been very much than the gains.<sup>3</sup> Because of the continuous demerits brought by this phenomenon in the daily lives of humanity, there has been joint agreement by the international community at various levels to fight against climate change. The fight against climate change occupies a very important section of the world's agenda today. Many laws have been made to fight it, many meetings have been held, much fund have been allocated and engaged to fight it, much research has been carried out in this sector and significant mechanisms have been put in place to fight against climate change. Cameroon has not been left behind in the fight against this heinous phenomenon. She has put in place administrative and judicial mechanisms to enforce the measures instituted to engage in this fight. But despite all these, climate change continues to be experienced in every day's life. The objective of this research is to examine the effectiveness of the mechanism put in place to enforce measures to fight against climate change. At the administrative level, the State has agents that help her to better carry out this function. There also exist surveillance agents and specialized institutions in this sector. The administrative agents give out serious sanctions against those who do not want to respect the

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<sup>1</sup>Andy, C. and Ron, G., (2018) Climate Change History; A&E Television Networks Available at <https://www.history.com/topics/natural-disasters-and-environment/history-of-climate-change>(accessed on 28/10/2019).

<sup>2</sup> Burroughs. J. W., (2015) Climate Change in Prehistory The End of the Reign of Chaos. Cambridge University Press, Cambridge. P. 19.

<sup>3</sup>Snow, R. and Snow, M., (2010). "Global Warming Risks to Sustainable Forests: Evidence, Impacts, and Intervention." Linton Atlantic Books, P. 23.

regulations put in place to fight against climate change. There is also the judicial mechanism instituted to fight climate change in Cameroon. More so, there are various judicial agents who take the disposition to carry out this mission and when they identify any defaulter, he/she is punished accordingly.

## 2. Administrative Mechanism to Enforce Measures in the Fight against Climate Change

There is no harmonized administrative mechanism put in place in Cameroon to sanction those who fail to respect climate safety measures. In a bid to examine the administrative mechanism to enforce measures to fight against climate change in Cameroon, this section of the work looks at the general competence of the administrative authorities to sanction climate change offenses, the administrative agents in surveillance of compliance to climate change regulations. It also explores the sanctions pronounced on those companies who flout climate safety measures.

### 2.1. The General Competence of the Administrative Authorities to Handle Climate Change Offenses

The Administration is at the center of environmental protection in Cameroon. It ensures its management, determines rules to be followed by the private sector before they can use these resources and ensures control. Administrative authorities quickly became aware of the need to sanction infringements of climate safety measures with the way exploiters of environmental resources turn to violate protection measures. The Cameroonian framework law on environmental management provides that:

*"Without prejudice to the prerogatives recognized by the public prosecutor, judicial police officers with general jurisdiction, sworn officers of the administration responsible for the environment or other relevant administrations, in particular those of domains, cadastre, town planning, public works, forests, merchant marine, mining, industry, labour and tourism are responsible for search, identification and prosecution in repression of infringements of provisions of this law and its implementing texts".<sup>4</sup>*

From foregoing provision, it emerges that the Administration being the first guarantor of environmental protection, the central agents and decentralized offices in charge of the various aforementioned areas are responsible to take records of the related environmental offenses.<sup>5</sup> The officials mentioned above shall take an oath before the competent court, upon the request of the Administration concerned, following the terms and conditions laid down by an enabling decree of this law. In the exercise of their duties, the officials on oath shall carry their professional card.<sup>6</sup>

Other legal instruments on environment have emphasized the use of sworn officers to help enforce the law geared towards protecting the climate from accumulated greenhouse gases thus fight against climate change and make the earth a safe place for every living thing.<sup>7</sup> The various environmental laws also emphasize the issue of oath taking by environmental officers<sup>8</sup> before engaging their service of climate change protection. When they are faced with any incident of violating the laws aimed at protecting the climate, they write a report<sup>9</sup> to that effect and forward to the competent administrator. Apart from this

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<sup>4</sup> Art. 88 of Law No. 96/12 of 05 August 1996 Relating to Environmental Management.

<sup>5</sup> Oumba, P., (2013) La Contribution du Droit Administratif a la Reparation des Atteintes a L'environnement au Cameroun P. 2.

<sup>6</sup> Art. 88 of Law No. 96/12 of 05 August 1996 Relating To Environmental Management.

<sup>7</sup> See: Art. 57(1) of Law No. 2003/006 of 21 April 2003 to Lay Down Safety Regulations Governing Modern Biotechnology in Cameroon; Art.141 of Law No.94/01 of 20 January 1994 to Lay Down Forestry, Wildlife and Fisheries Regulations; Art. 37 of Law No. 98/015 of 14 July 1998 Relating to Establishments Classified as Dangerous, Unhealthy or Obnoxious.

Art. 31 of Law No. 2003/003 of 21 April 2003 Relating to Phytosanitary Protection

Art. 2 of Decree No. 2015/1373/PM of 8 June 2015 to Lay Down Rules for Exercising Some Powers Transferred by the State to Councils on Environment.

<sup>8</sup> See Art. 141(2) of Law No.94/01 of 20 January 1994 to Lay Down Forestry, Wildlife and Fisheries Regulations. See also Art. 37 (2) Law No. 98/015 of 14 July 1998 Relating to Establishments Classified as Dangerous, Unhealthy or Obnoxious.

<sup>9</sup> See: Art. 58(1) of Law No. 2003/006 of 21 April 2003 to Lay Down Safety Regulations Governing Modern Biotechnology in Cameroon; Art.142(2) of Law No.94/01 of 20 January 1994 to Lay Down Forestry, Wildlife and Fisheries Regulations; Art.38 (2) of Law No. 98/015 of 14 July 1998 Relating to Establishments Classified as Dangerous, Unhealthy or Obnoxious.

competence with regard to the observation of infringements, the administrative authorities can proceed with the transaction to settle an environmental dispute. This is what emerges in Article 91 of the Framework Law on Environmental Management, which offers a general idea of the procedural transaction.<sup>10</sup> The transaction, which is defined as an agreement by which the parties by means of reciprocal concessions terminate an arisen dispute or an unborn dispute,<sup>11</sup> is one of the non-jurisdictional modes of settling environmental disputes. Indeed, in the event of an environmental violation, the Administrations in charge of environmental management have full power to compromise. For this, they must be entered by the offender. The amount of the transaction is set in consultation with the administration in charge of finance and may be less than the minimum of the corresponding criminal fine.<sup>12</sup> In addition, it is imperative that the settlement procedure is prior to any legal proceedings, otherwise it becomes void. This demonstrates that administrative settlement of environmental dispute is not an optional way of resolving environmental dispute; it must be exploited before the judicial process comes in if the administrative means fail. This is the purport of article 91(3). Article 91(3) states that the proceeds of the transaction are paid in full to the fund provided for by the framework law. In this article 91 we have a general idea on the transaction procedure.

The administrative authorities may also, within the framework of the amicable dispute settlement procedure relating to environmental offenses, play the role of arbitrator at the request of the parties to the conflict. To this effect, environmental litigation recognizes the non-jurisdictional mode of dispute resolution. Article 92 of the Framework Law on Environmental Management states that: "*Parties to an environmental dispute may settle the dispute by a joint agreement reached through arbitration*", demonstrating the place of the administration in environmental litigation.

Traditional authorities being the arm of the administration also have the competence to settle disputes relating to the use of some natural resources that may affect the climate especially water and pastures. They shall do this settlement based on the strength of the local ways and customs, without infringing on the right of the parties to the conflict to refer the matter to the competent courts. A report on the settlement of the conflict shall be drawn up. A copy of this report duly signed by the traditional authority and the parties to the conflict or their representatives shall be deposited with the administrative authority under whose territorial jurisdiction the village community or the site of the conflict is situated.<sup>13</sup>

### **2.1.1. Ministries with Administrative Competence to Sanction Violators of Climate Safety Measures**

There are two principal Ministries with a lot of administrative powers that are very visible in the fight against climate change in Cameroon. They have very active personnel put in place to ensure compliance with the measures laid down to fight climate change. We have the Ministry of Forestry and Wildlife (MINFOF) and the Ministry of Environment, Nature Protection and Sustainable Development. (MINEPDED) This is adumbrated below.

#### **2.1.1.1. The Surveillance and Sanction Units in the Ministry of Forest and Wildlife**

This Ministry of Forest and Wildlife is strongly involved in the fight against climate change because it controls a resource (the forest) that seriously absorbs greenhouse gas if well managed. The ministry in charge of forests is entrusted with the carrying out of studies or works necessary for the implementation of forest policy drawn up by the government to help fight climate change. However, it can, if necessary, entrust some of its activities to any natural or legal person it deems competent and approved in accordance with the law.<sup>14</sup> As part of the development and implementation of forest policy, the administration in charge of forest consults and associates the neighboring populations concerned and professional associations of forestry sector. As such, they can take charge of certain development activities of the forestry sector. This ministry has to also ensure that the activities undertaken by the exploitation companies must be carried out in strict compliance with the forestry sector programs and policies, as decided by the Government.<sup>15</sup> To ensure there is always compliance with regulation in the forestry sector, there are bodies in this ministry assigned different responsibilities.

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<sup>10</sup> See Art. 91 of the Framework Law on Environmental Management.

<sup>11</sup> See Art. 2044 of the Cameroon civil Code.

<sup>12</sup> Art. 91 (2) of the Law on Environmental Management.

<sup>13</sup> Art. 93 of the Law on Environmental Management.

<sup>14</sup> Art. 4.(1,2) Décret N° 95/531/PM Du 23 Aout 1995 Fixant les Modalités D'application du Régime des Forets.

<sup>15</sup> Ibid Art. 5.(1).

#### **2.1.1.1.1. The Central Administrative Surveillance Services**

This comprises of services at the central department of the ministry of forestry that ensure other services comply with forest regulations. This is in a bid to ensure measures to fight against climate change in this sector which has a big role to play in absorbing greenhouse gases emitted into the atmosphere is well respected. Under this service are the general inspection unit, the national brigade for forest control operations, and the directorate in charge of regeneration, reforestation monitoring and silvicultural extension.

The general inspection unit deals with the internal control and evaluation of the functioning of central and decentralized services, establishments under supervision, as well as related organizations and projects dealing with forest regulation and enforcement. It monitors the implementation and regular evaluation of the application of organizational techniques and methods and simplification of administrative work in the forest sector in conjunction with the services responsible for administrative reform.<sup>16</sup>

The national brigade for forest control operations is concerned with carrying out all kinds of investigations in the forestry sector on instructions from the Minister with the possible presence of an independent observer.<sup>17</sup> It is based on this investigation that the minister takes any sanction.

Then comes the directorate in charge of regeneration, reforestation and monitoring extension. Its work is for monitoring compliance with processing, packaging and marketing standards of forest products so that those engaged in this sector do not go against the rules and regulations in place.<sup>18</sup>

#### **2.1.1.1.2. Decentralized Services of the Ministry of Forestry**

The decentralized services of this ministry are found in the regions, the divisions and the subdivisions. They are fully engaged in ensuring compliance with forestry regulations in their various jurisdictions. They investigate issues relating to climate change violations and call the violators to book under the ministry. The decisions they arrive at here are purely administrative measures. Under the jurisdiction of this Ministry are the Regional delegations, the divisional delegations and the sub divisional delegations. Under the Regional Delegation is found the regional brigade, the regional forest service and the technical operational units. Regional Delegations control activities carried out at this level under the responsibility of Divisional Delegations. Forest Control Posts and Technical Operational Units are under the coordination of the Regional Delegates. They ensure forest exploiters respect the regulations put in place to ensure sustainability and fight climate change.<sup>19</sup> Where they fail to respect these laws, they are awarded administrative sanctions.

The regional brigade monitors the application of forestry regulations, the forest and wildlife police controls the respect of specifications clauses of the loggers and controls the effectiveness of the payment of forest taxes and fees.<sup>20</sup> The regional Forest Service has a patrol team that ensures the surveillance of forest heritage. This body also reports any illegality observed in the forest sector and ensures the culprit is sanctioned.<sup>21</sup> Technical Operational Units are responsible for ensuring the application of forestry regulations within the geographic limits of their unit. The Technical Operational Units are created in accordance with development plans and located in identified areas presenting special interest.<sup>22</sup> The Divisional and sub Divisional Delegations perform the same functions like the regional delegation but taking orders from the regional delegate. With the use of monitoring centers such as forest control posts and check points, these decentralized bodies track down violators of climate change safety measures.<sup>23</sup> Each of them have their powers and limits.<sup>24</sup> This body also reports forest exploiters who violate regulations put in place to ensure sustainability and ensure measures to fight against climate change. It also applies sanctions at the level of their competence.

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<sup>16</sup> Art. 5 Decree n° 2005/099 of 06 April 2005 on the Organization of the Ministry of Forestand Wildlife.

<sup>17</sup> Ibid Art. 25.

<sup>18</sup> Ibid Art. 41.

<sup>19</sup> Ibid Art. 71.

<sup>20</sup> Ibid Art. 75.

<sup>21</sup> Ibid Art. 73.

<sup>22</sup> Ibid Art. 79.

<sup>23</sup> Ibid Art. 70.

<sup>24</sup> Ibid Art. 77.

### **2.1.1.2. The Surveillance and Sanction Units of the Ministry of Environment, Nature Protection, and Sustainable Development**

The Ministry of Environment, Nature Protection and Sustainable Development<sup>25</sup> is one of the bodies responsible for enforcing measures in the fight against climate change in Cameroon. This Ministry has as some of its function to coordinate the various environmental protection activities undertaken by environmental promotion bodies, and promote the integration of environmental issues into development policies, projects, plans and programs in order to ensure the appropriate management and environmental resources on sustainable production bases for the improvement of well-being in Cameroon.<sup>26</sup> It also coordinates the implementation of Government policies and ensures the integration of environmental issues into national planning, the services and institutions concerned within the Government.

It advises the Government on legislation and other measures relating to environmental management or the implementation of relevant international conventions, treaties and agreements in the field of the environment whenever necessary and makes proposals in terms of environmental policies and strategies to the Government.<sup>27</sup>

The Regulation Unit ensures compliance with the legality and regularity of the acts committing the Ministry; formulate legal opinions on any matter concerning environment, nature protection and sustainable development, monitor the execution of court decisions involving the Ministry; and defend state interests in court whenever the Ministry is involved in a matter.<sup>28</sup>

At the local level, it is responsible for the management of the environment and social issues, there are regional and sub divisional delegations. They are responsible for organizing specific actions, providing information in these areas, and monitoring compliance with regulations related to environmental impact study applied to each phase of a project. References are submitted to the Ministry in charge of the environment. They also charge anyone infringing climate safety regulations with sanctions.

#### **2.1.1.2.1. The National Observatory on Climate Change**

The National Observatory on Climate Change is the overall technical body responsible for managing the changing climatic conditions in Cameroon. Its functions are supervised by the ministry in charge of environment.<sup>29</sup>

The duties of the National Observatory on Climate Change amongst others consist in monitoring and evaluating the socio- economic and environmental impact of climate change and proposing measures to prevent, alleviate and/or adapt to the adverse effects and hazards related to such changes.<sup>30</sup> In this respect, it is responsible for drawing up relevant climate indicators to monitor environmental policy. For conducting prospective analyses aimed at proposing a vision on the short, medium and long term climate trends.

It shall also initiate and promote studies aimed at highlighting the indicators, impacts, and hazards related to climate change. This body shall also be charged with initiating any sensitization activity and preventive information on climate change.

This body shall also serve as an operational instrument within the framework of other activities to reduce greenhouse gases. This body shall have the duty of proposing to the government the preventive measures to reduce the release of greenhouse gases, as well as measures to prevent and/or adapt to the adverse effects and hazards related to climate change.<sup>31</sup>

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<sup>25</sup> Established by Decree No. 2012/431 Of 1 October 2012 to Organize the Ministry of Environment, Nature Protection and Sustainable Development.

<sup>26</sup> Ibid Art.1.

<sup>27</sup> Ibid Art.14(1).

<sup>28</sup> Ibid Art. 15(1).

<sup>29</sup> Art. 1(3) Decree No. 2012/431 Of 1 October 2012 to Organize the Ministry of Environment, Protection of Nature and Sustainable Development.

<sup>30</sup> Art. 4(1) Decree No.2009-410 of 10 December 2009 on the establishment, organization and functioning of the National Observatory on Climate Change.

<sup>31</sup> Ibid Art. 4(2).



### 3. Administrative Sanctions

Sanctions await all those who violate forestry regulations and are caught or identified by the forest regulation compliance agents. Decree No. 95/53/PM<sup>32</sup> has stipulated a number of sanctions that the non-respect of forestry and exploitation regulations may attract. The sanction may be suspension of activities by the exploitation company in the field or the withdrawal of exploitation license and cessation of activities of the exploiter.

#### 3.1. Suspension of Exploitation Activities in the Forest

The 1995 Prime Ministerial Decree on modalities for the application of the forestry law says that suspension can be a mode of sanction for non-respect of forestry regulations. It opines that without prejudice to the penalties provided for by the law and the legislation in force, any authorization, or any logging permit provided for, by this decree may be suspended or withdrawn under the conditions provided for by said decree. It also says the suspension of an authorization or of a logging license is pronounced by the Minister in charge of forests and the suspension decision must be justified and notified to the respondent.<sup>33</sup>

The 1995 Prime Ministerial Decree on modalities for the application of the forestry law has enumerated a series of situations where exploitation rights and other activities in the forest can be suspended if the exploiters do not meet up with the forest regulations. It has requested that the operations provided for in the simple management plan, carried out by the community concerned, are controlled by the local services of the Forestry Administration. The Forestry Administration can suspend any activity carried out in the concerned forest, if it is not respected by the community of prescriptions in the simple management plan.<sup>34</sup> This document has also stated that the Administration in charge of forests monitors and controls the execution of management plans in permanent forests. It may also suspend the execution of work that does not comply with the indications of the said plans, after formal notice duly notified and not followed up within the time limit it fixes.<sup>35</sup> The municipality sends an annual plan to the local representative of the Forest Administration operations describing all the planned development work, as well as the activity report previously performed. The Administration in charge of forests may at any time suspend any activity contrary to the prescriptions of the development plan of the municipal forest concerned, after due notice.<sup>36</sup>

The exploitation of a forest belonging to an individual may be carried out by its owner or by any person of their choice. However, the individual concerned is required to notify in advance the local service of the forestry administration. The Administration in charge of forests may suspend this exploitation when it is likely to affect the environment, without prejudice to the implementation of the operating procedure such as provided for by the legislation in force.<sup>37</sup> Suspension may also be pronounced in the event of recidivism in the commission of an offense punishable by a fine of at least 3,000,000 CFA francs. The act pronouncing the suspension specifies the duration which do not exceed six (6) months.<sup>38</sup>

#### 3.2. Withdrawal of Exploitation License for Non Respect of Exploitation Regulations

The 1995 Prime Ministerial Decree on modalities for the application of the forestry law says withdrawal can be a mode of administrative sanction for non-respect of forestry regulations. This legal instrument holds forth that without prejudice to the penalties provided for by the law and the legislation in force, any authorization, or any logging permit provided for by this decree may be suspended or withdrawn under the conditions provided for by the said decree. Such withdrawal of an authorization or a logging license is pronounced by the competent authority and it must be motivated and notified to the respondent.<sup>39</sup> Withdrawal of a logging license or permit, as well as regulatory documents may also be pronounced if the company's activities are suspended in the said forest. Withdrawal can only be lifted after the end of the cause which gave rise to it and/or the payment of all taxes and charges due and payable.<sup>40</sup>

<sup>32</sup> Decree N° 95/531/PM of 23 August 1995 putting in place modalities for the application of the forestry laws.

<sup>33</sup> Ibid Art 130(1,2)..

<sup>34</sup> Ibid Art. 31.

<sup>35</sup> Ibid Art. 49.

<sup>36</sup> Ibid Art. 80.

<sup>37</sup> Ibid Art. 97.

<sup>38</sup> Ibid Art. 131.

<sup>39</sup> Ibid Art. 130 (1,3,4).

<sup>40</sup> Ibid Art. 132.

Administrative sanctions demanding the withdrawal of exploitation license is declared as of right, in the event that the suspension is not lifted during the six months period<sup>41</sup> or in the case of continuation of activities after notification of suspension, finding of a new offense against the respondent, during the twelve (12) months following the commission of a second offense leading to his suspension and non-execution of the works as provided for by the holder of a provisional agreement.<sup>42</sup>

In order to meet their own domestic needs, in particular for firewood and construction, people of Cameroonian nationality may fell a limited number of trees in the forests in the national domain, if they hold a personal logging authorization. The personal cutting authorization is issued by the provincial representative of the Ministry in charge of forests, after payment by the interested party of the selling price of forest products and this authorization cannot exceed three (3) months. He cannot go against the authorization rights else the authorization is withdrawn, without prejudice to criminal proceedings.<sup>43</sup>

### **3.3. Administrative Sanctions of Classified Establishments**

The regulation of classified establishments gives the competent administrative police authority and provides him with an arsenal of sanctions in his function against operators of classified establishments who do not respect norms and regulations put in place. The behavior sanctioned under this regulation concerns the non-compliance by the operator of a classified establishment with the conditions imposed on it and the operation of a classified establishment without the title required under the regulations. The law on classified establishments provides that in the event of non-compliance with the conditions imposed on the operator, the competent minister may take administrative sanctions.<sup>44</sup> But first, the non-compliance with the regulations must be noted by a sworn inspector as part of a control carried out and after a formal notice inviting the operator to comply with the regulations in force within a period not exceeding three months or two months when it is assumed that a classified establishment will operate in the absence of a title. Once these conditions have been met, and if the operator has not obeyed the formal notice, the Minister in charge of classified establishments<sup>45</sup> may proceed ex officio, at the operator's expense, to the execution of the prescribed measures, oblige the operator to deposit in the coffers of a public accountant a sum corresponding to the amount of the work to be carried out, which will be returned to the operator as and when the said work is carried out and, if necessary, proceed with the recovery by forced of this sum, suspend by decree, the operation of the establishment until fulfillment of the imposed conditions.

Both the protection of the environment through its care appears all the more essential thinkable that the risk of serious harm to environmental security is no longer an eventuality, as the threat is growing and inevitable,<sup>46</sup> especially when evokes the subject matter of classified establishments.

## **4. Judicial Intervention for the Enforcement of Measures to Fight against Climate Change**

When the administration has exhausted the mechanism put in place to ensure respect of climate safety measures and solution is still not arrived at, the next measure to exploit is the judiciary. There are instances where judicial solution may be sort without passing through the administration, but there are instances that must begin with administrative agents in whose competent the matter falls else any judicial matter is considered null and void. Judicial measures are always very stringent and must be respected to the latter. If a climate change issue is not considered justiciable, it will not be taken to court. Thus the concept of justiciability of climate change issues is very imperative in handling climate change in court and is x-rayed. The various courts competent to entertain climate change issues are looked into. The agents in charge of dragging to court violators of climate change regulations are also examined, the various penalties that may be given to climate change defaulters are analyzed.

### **4.1. Justiciability of Action on Climate Change**

Justiciability will generally denote the capacity of a person to demand a judicial solution before the

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<sup>41</sup> Ibid Art. 131 (3).

<sup>42</sup> Ibid Art.67.

<sup>43</sup> IbidArt. 94.

<sup>44</sup> Art 28 de la loi relative aux établissements classes dangereux, insalubresou incommodes. .

<sup>45</sup> Ibid.

<sup>46</sup> Expression de Dupuy reprise par Maljean-Dubois etcité par Foumena (2017).

court of law when his right has been infringed upon or there is likelihood to be done so.<sup>47</sup> This terminology refers to the path to a competent system to safeguard a well-known right. A suit can only be qualified as actionable in a particular legal system when that legal system has the capacity to arrive at a conclusive decision over the matter and sees it right to do so. The justiciability scrutiny evokes both judicial and practical inquiry. The initial inquiry is to know if the court judicial authority to try the case. This will in a usual way be governed by the powers the constitution has given the courts. Another inquiry to be made is if it will be incautious for the judiciary to decide over the suit. The judiciary usually possess the freedom to decide over this aspect based on the details it has at its disposal.

#### 4.2. Standing as a Requirement of Justiciability in Climate litigation

The judicial meaning ascribed to standing or locus standi differ amongst nations and may be somehow wide or limited with respect to nations and judicial systems (civil or common) in which one is carrying out his activities.<sup>48</sup> Fundamentally, the word means the measures one has to fulfill to be a litigant in a judicial action.

These measures are more often than not focused on seeing that the litigants have ample interest in the aftermath of the case and that the allegation put forth by the litigants can be handled by the court. For instance some legal systems expect the claimant to demonstrate they have been handicapped or will have a bad time that is assertedly orchestrated by the suspect's illegal attitude, and that the court is efficient to give solution that will eradicate if not lessen the damage.<sup>49</sup>

Standing measures may present a problem to climate change actions. For instance, difficulties may arise for a single complainant to ascertain an acceptable causative link between the perpetrator's purportedly illegal activity or inactivity and a damage that has connection with the effect of climate change. This is a special handicap in legal systems that demand the claimant to show a special damage for the purpose of standing. This notwithstanding, legal systems permit personalities and collection of persons to bring legal action on the basis of damage that touches the entire public thereby facilitating the claimant to take an action related to climate change.<sup>50</sup>

In the case of *Peter Ataba V. Sogea Satom and the State of Cameroon* Mr. Peter Ataba prayed the Court of First Instance Muyuka by way of a motion on notice to grant an order to compel the respondents to limit the environmental and health hazards created by the construction works by effectively watering the public high way through Muyuka Sub Division until such time tarring must have been done. Barrister Ataba also prayed that the first respondent pay into the coffers of the Muyuka district hospital the sum of 500,000 frs for each days she refused to respect the court orders supra for the free consultation and treatment of all reported cases of illness resulting from the respondents default. The counsel for the respondent raised the point that the applicant did not have the capacity (no locus standi) to sue in this proceeding. The applicant he said did not constitute an indigenious of Muyuka and as per communication 5 of the Banjun Court on Human and Peoples Right.

In the U.S., the question of standing has been central to climate change litigation. In *Massachusetts v. Environmental Protection Agency* (EPA), several states, cities and environmental non-governmental organizations (NGOs) sued the federal government, challenging the decision not to regulate GHG emissions from new motor vehicles under the Clean Air Act. The U.S. Supreme Court relied on the plaintiff states' special status as quasi-sovereigns within the federal system, and on their sovereign rights and responsibilities vis-à-vis prospective loss of coastal land, to find that they had standing to sue.<sup>51</sup> In *Urgenda Foundation v. Kingdom of the Netherlands*, the Hague District Court held that Urgenda had standing on its own behalf, due

<sup>47</sup> International Commission of Jurists, (2008) Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative experiences of justiciability Available at <https://perma.cc/YU9F-YCNR> (accessed on 18/09/2020).

<sup>48</sup> See generally, Pring, G. and Pring, C., (2016) Environmental Courts and Tribunals, in *Decision Making InEnvtl. L.* In: Paddock, L. et al., (eds.) ("Standing rules around the world range from very restrictive to very open"); Matt, H., (2002) Why Crocodiles, Elephants, and American Citizens Should Prefer Foreign Courts: A Comparative Analysis of Standing to Sue, 21 REV. LITIG.P. 97.

<sup>49</sup> Fournier, L., (2017) The Cost of Inaction: The Role of Courts in Climate Change Litigation, Edinburg Law School. P. 11.

<sup>50</sup> UNEP (2017) The Status of Climate Change Litigation – A Global Review, P. 28.

<sup>51</sup> *Mass. v. EPA*, 549 U.S. at 526.



to a Dutch law which allows non-governmental organizations to bring a court action to protect the general interests or collective interests for other persons, but – partly for practical reasons – the 886 individual claimants involved in the suit were not granted standing separate from that of Urgenda.<sup>52</sup>

### 4.3. Agents Involved in Climate Change Trial Process

Prosecutors are persons who initiate and take the principal position in the trial of an offender. Prosecutors are judicial personnel who stand as agent of the state in criminal suits.<sup>53</sup> There exist different categories of environmental prosecutors by dint of the type of the offense and the prescription of the law. For example, the state counsel,<sup>54</sup> the administrative technical staff in command of the environment, mines, cadastral survey, town planning, public works, forestry, wildlife, labour and tourism are all environmental prosecutors.<sup>55</sup> In the scope of Cameroons environmental law, two kinds of prosecutors exist: prosecutors with wide authority and prosecutors with special powers.

#### 4.3.1. General Prosecutors

General prosecutors (Legal Department) have the conventional intervening powers in all cases of criminal nature notwithstanding their character to undertake judicial inquiries, investigations, start and try every crime.<sup>56</sup> The practicability of the whole thing is that the police and Gendarmes officers who are agents of the legal department do investigations and dispatch the file to the State Counsel for judicial action if possible. To be clarified on this issue, some examples will be analyzed.

In *The People V. Ngam Sampson and 21 others*<sup>57</sup> in the Court of First Instance Fundong, the offender were arraigned for unlawfully making use of the Laikom Community Forest thereby going against the 1994 Forestry Law.<sup>58</sup> The Gendarmerie Brigade Santa did the investigation while the charge against the offender was done by the State Counsel Fundong who still stood at the fore front of the prosecution. The illegal exploitation of this forest was tantamount to reducing the capacity of that community forest to reduce greenhouse gas in the atmosphere and thus continue to instigate climate change.

#### 4.3.2. Special Prosecutors

Special prosecutors are personnel who have not received any formal training in legal issues. These are specialized staff of various services whom because of their exposure to environmental issues at their job side have become so versed with handling offenders of the environment and thus are called up and made to take the oath of office. They are then made special prosecutors once they take oath. Examples of these officers are civil servants of the forestry, wildlife, fishery and merchant shipping services who have been sworn thus they take the rank of judicial police agent with specific authority over forestry, wildlife and fisheries.<sup>59</sup> They are given the authority to detect, probe, take actions and try those offences. Note should be taken of the fact that their special authority does not infringe on the function general prosecutors that is, the Legal Department and Judicial Police Officer. In this direction, their duties are to complete the task of the other and not to exclude the other.

In the case of the *People V. Bertrand Brink and Groupement Coop Buns BS/78C/03-04* in the Bamenda Court of First Instance,<sup>60</sup> investigations into the atrocities of this company were done by the North West Provincial Chief of Brigade Control on behalf of the then Ministry of Environment and Forestry (MINEF). With effective investigation gone through, the Provincial delegate for MINFI pushed the file to the Legal Department of Bamenda. The State Counsel then took the forefront to bring out an eight count charge against *Mr. Bertrand Van Den Brink*, the Director of the company. Amongst the claims levied against him was

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<sup>52</sup> Urgenda, paras. 1-408, 1-409.

<sup>53</sup> Calow.P., (1999) Blackwells' Concise Encyclopedia of Environmental Management, Blackwell Science Ltd. Oxford UK

<sup>54</sup> Garner, B.A., (1999) Black Law Dictionary West Group USA.

<sup>55</sup> National Printing Press. Penal Code of the Republic of Cameroon (2001) Yaounde.

<sup>56</sup> This is provided by S: 23 and 24 of Law No 89/019 of 29th December 1989 on Judicial Organisation in Cameroon.

<sup>57</sup> The People of Cameroon V. Ngam Sampson and 21others FM/474c/00-01 (unreported).

<sup>58</sup> The offence is punishable under S: 156 of Law No 94/01 of 20th January 1994 (supra).

<sup>59</sup> This is provided by Art: 142 (1) of the 1994 Law on Forestry, Fisheries and Wildlife (supra).

<sup>60</sup> The People of Cameroon and Ministry of Environment and Forestry (MINEF) V. Bertrand V. D. Brink and Groupement Coop Buns. CFIB/87C/03-04. I appeared as counsel for the MINEF and we filed a claim of 30.000.000FCFA against the Defendant.

pollution of natural waters, air pollution, felling Communal Forest in default of prior evaluation and without restoring the degraded are orchestrated by exploitation of laterite contrary to the 1994 Forestry Laws and 1996 Environmental Code. All these charges were serious breaches of measures to fight against climate change. all the Prosecution witnesses in this charge were the staff of MINEF who investigated the case. Unfortunately, the suit was never attended to for the reason that the defendant fled to Europe and never showed up after being served the served.

One other example is *The People (MINEF) V. Tame Soumedjong and Sotramilk (LTD)*<sup>61</sup> before the court of First Instance Bamenda. The North West Region Provincial Chief of Brigade Control for MINEF meticulously investigated the case. After this investigation, it was forwarded to the Legal Department Bamenda where a three count charge was preferred against the defendant (the milk processing Company Director) for natural water source contamination, air pollution and waste treatment in an ecologically unfriendly manner all in contradiction of the 1996 environmental Code. The defendant is under bail while the case is still pending.

### 4.3.3. Inspectors

Inspectors refer to the establishment or personality given the task of monitoring, inspection and/or control of environmental activities. Monitoring and respect of environmental norms are in the hands of some particular agents. The Biosafety legal instruments of Cameroon says that “The duty of inspectors and controller shall be to check the functioning of establishments responsible for modern biotechnology and to ensure compliance with this law”<sup>62</sup>

The function of the inspectors in climate change observance and prosecution through the courts is very imperative. These agents frequently carry out control to make certain respect of environmental norms and identify illegal activities related to the environment, do inquiry before they commence action. For example the inquiry note in *The People V. Tame Soumedjong Henry (CFIBA/857C/02-03)* supra uncovered that the surveillance team of MINEF made a stop at the at the SOTRAMILK Company to do control on the 18-02-03 and 17-07-2002. This team sent alert notes to the company before carrying out their inquiry on the 05-03-2003. In *The People .V. Bertrand Brinks* (supra), similar procedure was done.

The national Biosafety law callas for frequent requires regular monitoring and verification to make sure that laws are respected to safe guard plant species.<sup>63</sup> The biosafety regulations in pointing out the functions of the inspector briefly says that “He shall, in addition, be responsible for identifying offenders, formulating and/or proposing appropriate sanctions”<sup>64</sup> This shows that this agent is very instrumental in tracking down violators of climate change protection measures and signaling the judiciary to take action against them.

Inasmuch as the police and the gendarmes exercise broad competence to detect and contain offences, the environmental inspectors do not have restricted functions. They rather have duty that go to balancing that of the other parties. For example the law states that “Without prejudice to the prerogatives granted to the prosecution and judicial police officers of general competence, sworn inspectors and controllers of the authority in charge of biotechnology or other services concerned shall be responsible for the investigation, establishment and repression of offences against the provisions of this law”.<sup>65</sup> Other legal instruments with similar provisions are the 2016 Mining Code,<sup>66</sup> the Forestry and Wildlife Laws<sup>67</sup> of 1994 and the 1996 Environmental Code.<sup>68</sup>

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<sup>61</sup> The People of Cameroon and MINEF V. Tame Soumedjong and SOTRAMILK LTD CFIBA/857c/02-03 is still pending before the Court of First Instance Bamenda. NB I appear as counsel for MINEF and have equally filed a Claim of 20.000.000FCFA against the Defendant.

<sup>62</sup> Art. 34(2) of Law No 2003/006 of 21st April 2003 on Regulations governing modern Biotechnology in Cameroon.(The Biosafety.)

<sup>63</sup> Art.34 (2) of Law No 2003/006 of 21-4-2003 Governing Modern Biotechnology in Cameroon.

<sup>64</sup> Art. 28 of the 2003 Biosafety Law (Supra).

<sup>65</sup> Art. 57 (1) of the 2003 Biosafety law (supra).

<sup>66</sup> Arts.101 and S: 105 of Law No 1 of 16-04-2001 (the mining code).

<sup>67</sup> Arts.141 and 142 of the 1994 law on Forestry, Wildlife and Fisheries (supra).

<sup>68</sup> Arts.88 and 89 of Law No 96/12 of 5-08-1996 on Environmental Management (supra).

#### 4.3.4. Non-Governmental Organisations

Non-Governmental Organizations (NGOs) are civil society bodies authorized by the government to operate in its country but not managed by any government agency. These are non-government bodies that are set up to perform particular tasks. Noteworthy is the fact that these private organizations though independent from the government, are not really independent per se. It must be subjected to government rules and regulations before they operate and the government decides when to shut it down or allow it to continue to operate.<sup>69</sup>

NGOs contribution in enforcing measures to fight against climate change is essentially balancing and essentially instrumental. NGOs perform a strong duty of detecting violators, carry inquiry on suits, try and enforce judgments. The generally lend a lot of support to the general judicial proceedings. For example the judicial team in the case concerning *The People (MINEF) V. Bertrand V.D Brink* (supra) went on with very strong support from the personnel of Foundation for Environment and Development (FEDEV).<sup>70</sup> FEDEV was member of the environmental control team that stopped at the locus on the 10-07-2003 and took note of the pollution perpetrated by the defendant.<sup>71</sup> Related function was played by FEDEV in the case of *The People V. Tame Soudmejong* (supra). A plethora of environmental offences have been handled in which FEDEV has been very instrumental in the proceedings in order to implement the fight against climate change.<sup>72</sup> *FEDEV V. Bamenda Urban Council*<sup>73</sup> is a case in which FEDEV submitted requesting the court to grant mandamus to the Bamenda urban Council to carry out its duty of keeping the environment clean as the law permits.

### 5. Sanctions and Penalties from the Judiciary

In addition to enjoining harmful environmental conditions and granting compensation for the damages caused by such conditions, the other critical function performed by judges in fashioning remedies in environmental cases is penalizing environmental wrongdoing. As is the case with all law enforcement, the objective in punishing violators is not so much punishment for punishment's sake. Rather, it is to express community rejection of the conduct and send a message of deterrence that discourages similar misconduct in the future.

Several existing international agreements call for adequate penalties to deter violations. The Paris Convention for the Prevention of Land-Based Pollution,<sup>74</sup> and the Basel Convention on Transboundary Movement of Hazardous Wastes<sup>75</sup> require contracting parties to ensure compliance by taking appropriate measures not to only prevent but to punish conduct in contravention of the provisions of the agreement. The Bamako Convention on Waste Trade in Africa<sup>76</sup> goes further in requiring that the penalties be sufficiently high to both punish and deter illegal traffic. The 1994 Lusaka Agreement on Cooperative Enforcement Operations directed at Illegal Trade in Wild Fauna and Flora<sup>77</sup> supplements earlier provisions regarding the illegality of such trade by requiring states parties to investigate and prosecute such cases.

#### 5.1. Sanctions for Infringement on the Forest

Due to the predation of timber and non-timber forest products, the demand for agricultural land and the surge in urbanization, the forest is plagued by numerous attacks which are repressed by Cameroonian

<sup>69</sup> See Law No 90/053 of 19th December 1990 on the freedom of Associations in Cameroon.

<sup>70</sup> Foundation for Environment and Development (FEDEV) is a national NGO, which focuses inter alia on the promotion of Sustainable development, Environmental protection, and Respect for Human Rights via the instrumentality of laws and policies.

<sup>71</sup> The control team was made up of three MINEF staff and a staff FEDEV. See report of the Provincial Chief of Brigade Control for MINEF dated 22-07-2003 in Ref No MINEF/PDEF/NWP/PSCB/C1/C3/06/43 titled "Report of pollution of Natural Waterways Chum, Bafut-Wum Road"

<sup>72</sup> Some include: *The People V. Ngam Sampson and 21 Others* (FM) 474C/00-01 supra. *The People V. Michael Njiah and 118 Others* (2001) unreported. CFIK/358C/99

<sup>73</sup> *Fedev V. Bamenda Urban Council* (Hcb/117m/04-05)

<sup>74</sup> Art. 12 of the Paris Convention for the Prevention of Land-Based Pollution (1989)

<sup>75</sup> Art. 4 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

<sup>76</sup> Art 9(2) Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa (1991)

<sup>77</sup> Art. 4(1) Lusaka Agreement on Co-Operative Enforcement Operations Directed at Illegal Trade In wild Fauna and Flora

law. For example, it is forbidden to start, without prior authorization, fire likely to cause damage to vegetation in the national forest domain. Likewise, any late fire is prohibited.<sup>78</sup> Regarding the clearing of all or part of a state forest, this can only be done in the event of total or partial declassification of this forest.

Land clearing refers to removing trees or natural vegetation cover from forest land, in order to give it a non-forest use, regardless of the means used for this purpose. Whatever the case, the implementation of any development project likely to cause disturbances in the forest environment is subject to a prior environmental impact study.<sup>79</sup> It should be recalled that the implementation of a project without a prior impact study which falls within the scope of the projects, the operator is punished with a fine of 2,000,000 to 5,000,000 CFA francs and a prison sentence of six months to two years.<sup>80</sup> These sanctions are in a bid to deter others from committing the same offence thereby giving the trees the opportunity to absorb greenhouse gas emitted into the atmosphere.

In addition, the defending or classification of land as state forests entails the prohibition of clearing or exploiting the plots to which they apply. Likewise, the use of areas with fragile ecology makes it possible to regulate the use of the natural resources of the said land. Land may be declared an ecologically fragile area, or classified, depending on the case, national protection forest, integral ecological reserve, sanctuary or wildlife reserve, when the creation or maintenance of forest cover is recognized as necessary soil conservation, the protection of the banks of a watercourse, the regulation of the water regime or the conservation of biological diversity.<sup>81</sup> The perpetrators of the above mentioned forest protection measures are criminally responsible and liable to the penalties provided for this purpose. The 1994 law on forests exposes individual criminal responsibility. It also enshrines the criminal liability of legal persons for all offenses against forest. The ministry responsible for forests, fisheries and wildlife are civilly responsible for the acts of their employees committed in the exercise of their functions.<sup>82</sup>

In addition, the clearing or the ignition of fire in a protected forest area or with fragile ecology or assignment to a vocation other than forestry of a forest belonging to an individual in violation of the law; unauthorized logging in a forest in the national or community domain in violation of the law; exploitation in a forest in the national domain beyond the limits of the defined felling area and/or the period granted in violation of the law; the lack of delimitation of current logging licenses and felling areas; fraudulent use, counterfeiting or destruction of brands, forest hammers, poles used by the administrations responsible for forestry. Perpetrators of these offenses face an imprisonment term of one month to six months and a fine of 200,000 to 1,000,000 CFA francs.<sup>83</sup> The fine is 1,000,000 to 3,000,000 CFA francs and the term of imprisonment is from six months to one year in the event of exploitation in a state forest beyond the limits of the defined cutting area and/or the volume and the period granted in violation of the law; and in the event of fraudulent exploitation by a sub-contractor operating in a state forest in violation of the law. These different penalties are aggravated for almost similar offenses but contravening different legal provisions. The fine can then range from 3,000,000 to 10,000,000 CFA francs and from one to three years' imprisonment.<sup>84</sup> The above penalties are doubled in the event of a repeated offense, in the event of the involvement of a judicial police officer or with its complicity and in case of violation of a forest control barrier.<sup>85</sup>

## 5.2. Sanctions for Infringement on Water Resource

Water is a very important resource in the fight against climate change. Plants need water to survive and thus it need to be protected to give plants like trees life that will grow and continue to absorb greenhouse gas emitted into the atmosphere. According to the 1998 law governing water, "water is a common heritage

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<sup>78</sup> Art. 6. of Decree No. 94/436 / PM of 23 August 1995 Establishing the Modalities for the Application of Forest Regimes,

<sup>79</sup> Arts. 14-16. of Law No.94/01 of 20 January 1994 Forestry, Wildlife and Fisheries Regulations

<sup>80</sup> Art. 79 of Law No.96/12 of 05 August 1996 Relating to Environmental Management.

<sup>81</sup> Art. 17 of Law No.94/01 of 20 January 1994 Forestry, Wildlife and Fisheries Regulations,

Also see Art 3 of Decree No. 94/436 / PM of 23 August 1995 Establishing the Modalities for the Application of Forest Regimes

<sup>82</sup> Ibid Arts. 150 and 153

<sup>83</sup> Ibid Art.

<sup>84</sup> Ibid Art. 156.

<sup>85</sup> Ibid Art. 157 and 158.



property of the Nation, the protection and management of which is provided by the State and facilitated by everyone". The protection in question here covers surface water, groundwater, spring water and mineral water.<sup>86</sup> The law enjoins any natural or legal person, owner of installations likely to cause water pollution, to take all necessary measures to limit or eliminate the effects. As such, cleaning and maintenance of motor vehicles, internal combustion machines and other similar devices near water are prohibited. Likewise, the rejection, dumping, deposit, immersion or direct or indirect introduction into water of certain noxious or dangerous substances are prohibited or subject to prior authorization, depending on the case.<sup>87</sup>

In line with the fight against water pollution, the Cameroonian Penal Code punishes with imprisonment of fifteen days to six months and a fine of 5,000 to 1,000,000 CFA francs anyone who, by his activity pollutes drinking water likely to be used by others.<sup>88</sup> The sanctions are aggravated by the law on the water regime against any person who pollutes and alters the quality of water. In this case, the penalty of imprisonment is five to fifteen years and a fine of 10,000,000 to 20,000,000 CFA francs.<sup>89</sup> Consequently, an absolute ban is foreseen against any spill, flow, throw, infiltration, burial, spreading, deposit, direct or indirect, in water of any solid, liquid or gaseous matter and, in particular, industrial, agricultural and atomic waste. This ban specifically targets these materials when they are likely to alter the quality of surface or ground water or sea water within territorial limits; or harm public health as well as aquatic or underwater flora and fauna.<sup>90</sup>

The prohibition and repression of any dumping of toxic waste into water is reaffirmed by the law governing forests, wildlife and fisheries<sup>91</sup> and by the framework law on the environment. The latter law prohibits the dumping, immersion and incineration in maritime waters under Cameroonian jurisdiction, of substances of any kind. Specifically targeted are substances likely to harm marine biological resources; interfere with maritime activities; alter the quality of maritime waters; and to degrade values and the tourist potential of the sea and the coast.<sup>92</sup> The dumping, incineration or disposal by any means whatsoever of waste in continental waters and/or maritime under Cameroonian jurisdiction is seriously prohibited.<sup>93</sup>

All these offenses of pollution and alteration of water quality are punishable by a fine of 1,000,000 to 5,000,000 francs and imprisonment for six months to one year. The maximum amount of these penalties is doubled in the event of a repeated offense.<sup>94</sup> The imprisonment penalty is however the same as that mentioned above but the amount of fines re-evaluated from 10,000,000 to 50,000,000 francs against any ship captain who is guilty of a discharge into maritime waters under Cameroonian jurisdiction of hydrocarbons or other liquid substances harmful to the marine environment and which constitutes pollution in accordance with the provisions of the framework law on the environment and international conventions to which Cameroon is a party.<sup>95</sup> Keeping water safe is a measure to ensure plants have medium to provide their food and the necessary nutrients to live and grow thereby continue to absorb greenhouse gas emitted into the atmosphere thus fight against climate change. These sanctions provided by the law is in a bid to ensure mankind respect the measures put in place to fight climate change and thereby render the atmosphere conducive for human habitation.

### 5.3. Sanctions for Infringement to the Atmosphere

The atmosphere contributes a lot to the quality of health to both plants and animals because the air comes from the atmosphere. An unhealthy atmosphere means the health of every living thing is affected. If general weather condition is protected, the climate will be in good state and so the climate that carries the air we breathe. The penalties set out above in the event of pollution of drinking water by the Penal Code also apply to anyone who, by their activity pollutes the atmosphere to the point of making it harmful to public

<sup>86</sup> Art. 2 and 3 of Law No. 98-005 of April 14, 1998 on the water regime.

<sup>87</sup> Ibid Art. 5 and 6.

<sup>88</sup> Art. 261 (a) Loi n° 2016/007 du 12 juillet 2016 portant Code pénal.

<sup>89</sup> Art. 16 Loi n° 98-005 du 14 avril 1998 portant régime de l'eau.

<sup>90</sup> Art. 4. Law No. 98-005 of April 14, 1998 on the water regime.

See also Arts 29 and 53. Law No. 96/12 of August 5, 1996 on the framework law on environmental management.

See also Art. 36. Law n° 2003/003 of April 21, 2003 on phytosanitary protection.

<sup>91</sup> Art. 161 (2) Law n° 94/01 of January 20, 1994 establishing the forestry, fauna and fishing regime.

<sup>92</sup> Art. 31 Law No. 96/12 of August 5, 1996 establishing a framework law on environmental management.

<sup>93</sup> Ibid Art. 49 and 50.

<sup>94</sup> Ibid Art. 82.

<sup>95</sup> Ibid Art. 83.



health.<sup>96</sup> These penalties also apply to those who, through clumsiness, negligence or non-observance of regulations, cause pollution before, during or after a phytosanitary treatment.<sup>97</sup> These provisions are also applicable in cases where the discharge into the air, water or soil of a pollutant is subject to prior authorization and that said authorization has not been issued to the person responsible for the release into the atmosphere of a pollutant.<sup>98</sup> The penalties incurred in this case are a fine of 1,000,000 to 5,000,000 francs and imprisonment for six months to one year.<sup>99</sup>

Specifically, these penalties punish anyone who adversely affects the quality of the air or causes any form of modification of its characteristics that may have a harmful effect on public health or on property. They also penalize anyone who emits any polluting substance into the air, in particular corrosive or radioactive fumes, dust or toxic gases, beyond the limits set by the regulations in force. Finally, the penalties indicated above sanction anyone who emits odors which, by their concentration or their nature, are particularly uncomfortable for living things<sup>100</sup>; including plants that need to survive and help absorb greenhouse gas in the atmosphere.

#### 5.4. Sanctions for Infringement to the soil and the Subsoil

The soil can be a very important resource for the fight against climate change. The soil can act as a very good carbon sink if well managed. It is for this reason that laws have been put in place to protect the soil and thus continue to fight climate change. If manipulations are left to be done on it without control, desertification and erosion will be a serious problem to handle in the long run. It is because of these that the respect of measures to fight against climate change must be strictly respected. According to the framework law on the environment, the soil, the subsoil and the wealth they contain, as limited resources, renewable or not, are protected against all forms of degradation. Thus, the Cameroonian legislator has provided for specific protection measures intended to fight against the pollution of the soil and its resources by chemicals, pesticides and fertilizers.<sup>101</sup> It is in this sense that the law on phytosanitary protection encourages the use of phytosanitary products without endangering human and animal health and the environment.<sup>102</sup> To make this measure effective, the import or export of plants or plant products and soils contaminated by harmful organisms is prohibited. The same applies to the possession of obsolete phytosanitary products.<sup>103</sup>

As soil pollution does not result only from the use of phytosanitary products but can have various and varied origins, the Mining Code also prohibits and punishes mining techniques and methods that do not comply with the requirements of environmental protection.<sup>104</sup> In addition, the framework law on the environment punishes with a fine of 1,000,000 to 5,000,000 CFA francs and imprisonment of six months to one year for anyone who pollutes and degrades soils and subsoils. This sanction is added to that which is foreseen against any person who carries out a project requiring an impact study without having carried out a study aimed at determining the impact of this project on the environment, in particular by terms of pollution and degradation of soils and sub soils. The offenders targeted in this case risk imprisonment of six months to two years and a fine of 2,000,000 to 5,000,000 francs.<sup>105</sup> An environmental impact study is particularly required in the event of intensive use of fertilizers on a farm. Indeed, the intensive use of fertilizers on a farm is subject to a prior assessment of the physical and chemical state of the soil. This assessment of the impact of fertilizers on the farm and on the environment must be carried out regularly. Beyond this obligation to study the environmental impact, a quality control of the fertilizers used is instituted.<sup>106</sup> Consequently, the refusal to take part in the formalities of control of the quality of the fertilizers or to submit to the procedures of it is an offense to control the use of fertilizers. The same applies to the production, distribution and/or use of fertilizers containing noxious substances or harmful properties, even when used in low doses and which may harm human and animal health and the environment. Those found guilty of these offenses face a prison

<sup>96</sup> Art. 261 (b).Law No. 2016/007 of 12 July 2016 on the Penal Code.

<sup>97</sup> Art. 36 Law n ° 2003/003 of April 21, 2003 on phytosanitary protection.

<sup>98</sup> Art. 53 Law No. 96/12 of August 5, 1996 on the framework law on environmental management.

<sup>99</sup> Ibid Art. 82.

<sup>100</sup> Ibid. Art. 21 and 60.

<sup>101</sup> Arts. 36 and 53 of Law n ° 96/12 of August 5, 1996 on the framework law on environmental management

<sup>102</sup> Arts. 2 Law n ° 2003/003 of 21 April 2003 on phytosanitary protection,

<sup>103</sup> Ibid Arts. 9 and 24

<sup>104</sup> Arts. Law 87 and 107 No. 001/2001 of April 16, 2001.

<sup>105</sup> Ibid Arts. 82 and 79 Art. 79 should be read in conjunction with Art. 17

<sup>106</sup> Arts.6, 7 and 9.Law n ° 2003/007 of July 10, 2003 regulating the activities of the fertilizer sub-sector in Cameroun.

term of one to five years and a fine of 50,000 to 100,000,000 CFA francs.<sup>107</sup>

### **5.5. Sanctions for Infringement on the Management of Waste and Radioactive Substances**

The Cameroonian legislator has fairly rigorous provisions on the protection of man and his environment against the risks likely to arise from the use, either of a radioactive substance, or from the exercise of an activity involving a radio exposure. Thus, the protection regime offered by the law on radiation aims, among other things, to preserve air, water, soil, flora and fauna; and the preservation or limitation of activities likely to degrade the environment.<sup>108</sup> The penalties provided for by this law are quite severe and can range from imprisonment of five to twenty years and a fine of 200,000 to 20,000,000 CFA francs for any contravention of the provisions of the law on radiation protection. The offenses concerned are causing, through negligence or recklessness, exposure to radiation or a nuclear accident; and the carrying out, without prior authorization, of activities relating to the nuclear fuel cycle and the installation of nuclear devices and equipment. It also means destroying, for the purpose of sabotage, all or part of a radioactive installation or a nuclear installation. The latter offense carries the death penalty.<sup>109</sup>

The treatment, discharge and disposal of radioactive waste are governed by the legislation on toxic, radioactive and hazardous waste.<sup>110</sup> This legislation also provides for the death penalty for any unauthorized person who introduces, to the production, storage, detention, transport, transit or dumping on Cameroonian territory of toxic and/or dangerous waste in all its forms. Likewise, it punishes with imprisonment of five to ten years and a fine of 5,000,000 CFA francs any unauthorized person who does not proceed to the immediate elimination of toxic and/or hazardous waste generated by his company.<sup>111</sup>

We can therefore conclude that it is forbidden to discharge in the national forest domain, as well as in the public, river, lake and maritime domains, a toxic product or industrial waste likely to destroy or modify the flora and fauna.<sup>112</sup> The Mining Code also obliges all holders of mining and quarry titles to ensure rational exploitation of mining resources in harmony with environmental protection. In particular, they must ensure, among other things, the prevention or minimization of any spillage into nature; reducing waste wherever possible; and the disposal of non-recycled waste in a manner that is appropriate for the environment and after information and approval from the Administrations responsible for mines and the environment. Failure to observe these rules can be punished with a fine of 5,000,000 to 25,000,000 CFA francs and imprisonment for one month to two years.<sup>113</sup>

## **6. Conclusion**

The fight against climate change cannot be done without enforcement mechanisms. This is because sanctions are always used to punish and deter violators and prospective climate safety violators from their actions. The administrative and judicial mechanisms are used to enforce these climate safety measures. Some of the findings that this research has arrived at is the fact that the courts are not versed with handling cases of climate change, the citizens do not also know they can use the courts to protect and defend their rights vulnerable to climate change, there is much relaxation on the part of the administrative personnel in sanctioning violators of climate change safety measures. The administrative and judicial personnel lack the necessary capacity to handle cases on climate change. It should be recommended that the personnel of the courts and the judiciary be trained to handle cases on climate change in order to better fight climate change. The administrative officials should stop to side line with the violators of climate safety measures and punish them rather than collecting bribes and set them free. The population should be trained to take violators of their environmental rights to court.

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<sup>107</sup> Ibid Arts. 17 and 18

<sup>108</sup> Law n° 95/08 of January 30, 1995 relating to Padiation Protection.

<sup>109</sup> Ibid Arts. 7 to 9.

<sup>110</sup> Ibid. Art. 13.

<sup>111</sup> Art. 4. Law n ° 89-27 of December 29, 1989 on toxic and dangerous waste.

<sup>112</sup> Art.18. Law n ° 94/01 of January 20, 1994 establishing the forestry, fauna and fishing regime.

<sup>113</sup> Arts.87 and 107Law No. 001-2001 of April 16, 2001 relating to the Mining Code.



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