

ANALYSIS OF ENFORCEMENT PROCEDURES OF THE 1994 FORESTRY LAW AND ITS RELATED DECREES AS TOOLS FOR SUSTAINABILITY OF FAUNA AND FLORA IN CAMEROON

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ABSTRACT

Once a law is made, it does not automatically create an impact in the society unless the said law is enforced. A law without compliance and enforcement is as good as a non-existing law. It is therefore of paramount importance to analyse in this article the nature of compliance and enforcement of the various laws relating to the sustainability of fauna and flora. Categorically speaking, the laws relating to the protection of Wild fauna and flora have witnessed rampant non-compliance especially within the first decade of existence of the 1994 forestry law. However, the non-compliance sparked the initiative of the government and international organs to put up enforcement measures geared towards the insurance of compliance. All these efforts comprehensively from 1994 till present are built on one reason which is to achieve sustainability of fauna and flora. The paper argues that despite these mechanisms of enforcement, fauna and flora have not been effectively sustained but efforts are commendable as lots of species of plants and animals can still be seen conserved in national parks and game reserves. Thus, the paper attributes part of the reasons for the depletion to the recidivism of some citizens who have voluntarily maintained illegal exploitation without recourse to laws prohibiting the exploitation of same. The paper ends by recommending the improvement of implementation strategies to ensure the achievement of sustainability.

INTRODUCTION

Enforcement and compliance are related concepts that must always be used separately. Enforcement can be understood as the right to take measures to ensure compliance with the law or to obtain a ruling by an appropriate court or other organ when there is noncompliance. In his article on, The Use of Cameroon Harmonized Criminal Procedure Code to Enforce Sectoral Environment Laws, Chi (2011) writes:

Enforcement of criminal laws and sanctions for non-compliance involve prosecution and suppression with the use of physical force (arrest and imprisonment) and or financial (fines) penalties. Such repressive measures are common in forestry and wildlife related offences such as illegal logging, poaching, buy and sell or possess any specimen of species listed as endangered or threatened.ⁱ

Non-compliance is the failure to obey part or whole of the law. The 1994 laws on Forestry and wildlife were subjected to non-compliance period (1994-2004). Despite the many offences, there were no prosecutions. This situation attracted international attention that resulted in October 2003 to a ministerial Declaration on African Forest Law Enforcement and Governance (AFLEG) in Yaoundé, Cameroon, The Declaration addressed the many obstacles to enforcement. The declaration followed a workshop in Douala (Cameroon) in March 2003 within the framework of AILEF, where a series of illegal acts common to the forestry sector in many African countries was identified, with the most common being harvesting outside concession boundaries and activities contravening provisions of the Convention on International Trade in Endangered Species (CITES), concerning protected speciesⁱⁱ.

CITES was non-binding or just a soft law instrument but compliance with the AFLEG declaration resulted in the re-organization of MINFOF in 2005ⁱⁱⁱ. MINFOF has many internal and external enforcement (control) organs or structures such as ‘National and Provincial (now Regional) Control Brigades for forest and anti-poaching operations’.

Forestry and wildlife Control Stations’ (Fixed and mobile) and many ‘Forestry Check Points’. The government appointed competent personnel to manage these units which promptly made them operational. Working together with LAGA in 2006 they successfully prosecuted and sanctioned six defaulters to pay a total sum of 17 860 000francs CFA as damages for taking and circulating within the national territory life-protected animals. Its specimens an trophies without certificate of origin. Regrettably these prosecutions were only in the wildlife sector, and was not directly connected to

flora'. Almost every week a wildlife criminal was being prosecuted or put behind bars with other penalties for cases involving multi-billion francs CFA fines pending in different courts within the national territory. Why was the forestry sector not receiving the same attention, given that this sector is more prone to illegal exploitation and corruption than the wildlife sector? This question has not obtained satisfactory answers and that is why tree species are fast depleting. This has also explained the reason for Unsustainability Enforcement Processes.

PROCEDURE APPLICABLE FOR PROSECUTION

By the preamble of Cameroon constitution, a person cannot be convicted for an act unless the act is defined and the penalty, well prescribe in written law. This cardinal principle of legality is expressed in Latin as “*Nullum crimen nulla poena sine lege*” “ there is no crime nor punishment except found in a legal text^{iv}. The Penal Code also states in like terms that no penalty or measure may be imposed unless provided by law, and except in respect of an offence lawfully defined.^v There is a law governing the procedure to be followed when a person is alleged to have committed an offence. This is governed by law no. 2005/2007 of 27 July 2005 on the criminal Procedure Code referred to by some authors as the ‘Harmonised Criminal Procedure Code,^{vi} as amended by Law no. 2006/008 of July 2006 amending and supplementing the provisions of Section 747 of the Criminal Procedure Code, relating to the entry in to force of the Criminal Code, relating to the entry in to force of the code on January 1st 2007. As its name indicates, the latter is concerned with legal procedural rules that need to be followed and steps taken to investigate, apprehend, charge, prosecute, convict and sentence individuals who violate the law.^{vii} It interacts with the substantive criminal law. In other words, it is impossible to apply the substantive criminal law without an in-depth knowledge of the rules of criminal procedure. The Code guarantees human rights at all stages of criminal proceedings, curbs judicial delays, and speeds up the execution of judgments as well as facilitates the recovery of fines as soon as judgment is delivered.^{viii} It is on account of this that we can still boast of some vital fauna and flora resources.

Among Criminal laws, laws defining wrongs against the state or society are environmental laws for example, the Cameroon 1994 forestry and wildlife regulations and its related decrees.^{ix}

INVESTIGATING AND ESTABLISHING AN OFFENCE

Investigation and establishment of offence investigation marks the very first step in enforcement.

For an offence to be established, the due process of investigation must be carried out by those in charge and evidence must be obtained. Some authorities are relevant to do investigation in forestry matters.

THE RELEVANT AUTHORITIES IN ENFORCEMENT

The Criminal Procedure Code names prosecution agents or officials. In most countries, it is the ‘Police’ that is competent in judicial prosecution because they are trained to carry out investigations, arrest, detention, use of force and firearms. According to Chi (2011) states:

A police may be defined as someone who intervenes at different levels and in different situations administratively (administrative police) and judicially (judicial police). The former is a government official with power to regulate matters of safety, health and welfare, nuisance and morals for the good of the public. It is generally exercised by administrative authorities (e.g. Senior Divisional Officers, Regional Governors and Ministers etc.), and at the local level by municipal authorities, (e.g. Mayors of Councils). In recent practice, the authority of the mayors has been extended to include the conservation and management of natural resources such as Council forests, that is, forest belonging to or planted by the council. With the recent move towards decentralization in Cameroon, Municipal Councillors are authorized and are competent to create Forests Reserves and Protected Areas within their areas of jurisdiction. The police judiciaries or judicial police intervene when a criminal law is breached and a judicial process is activated. This is not the case with police administrative which is limited to extra-judicial matters.

As far as environmental forces are concerned, the relevant prosecution authorities consist of the judicial police officer (JPO) with general jurisdiction which comprises of police and gendarmerie officers, and the judicial police officer with special jurisdiction made up of sworn officials of the services of MINFOF and other administrative officials. These personnel can jointly or severally carryout investigation to establish offence.

THE JUDICIAL POLICE OFFICER (J.P.O) WITH GENERAL JURISDICTION

The CPC of the republic of Cameroon states in section 78(1) that the duties of the judicial police shall be performed under the supervision of the State Counsel by judicial police duties are assigned by Law.^x The Persons referred to above shall be the auxiliaries of the State Counsel. In each jurisdiction of the court of Appeal, the judicial police shall be under the control of the Procureur General (P.G). evaluates at the end of each year, the work of the judicial police personnel. The following shall have the status of the J.P.O.

- Officers and non-commissioned officers of the gendarmerie
- Gendarmes in charge even in an acting capacity of a gendarmerie brigade or gendarme post.
- Superintendent of police
- Deputy Superintendents of police
- Gendarmes and inspectors of police who have passed the J.P.O Examination and taken the oath.
- Public servants even if they are temporarily performing the functions of head of an external service of the National Security.^{xi}

Gendarmes who are not J.P.O Polices inspectors and constables shall have the status of judicial police agents. They shall assist the J.P.O in the performance of their duties and shall report to their superior officers of all offences which have come to their knowledge^{xii}. Such as exploitation of protected species without the relevant permits. Judicial police agents shall have no authority to take decisions to remand in police custody.^{xiii}

JUDICIAL POLICE OFFICER (J.P.O) WITH SPECIAL JURISDICTION

Without prejudice to the prerogatives of the legal Department and judicial police officers having general jurisdiction, sworn officers of the services in charge of forestry shall, on behalf of the state, local councils, communities, or private individuals investigate, establish, and prosecute offences relating to forestry^{xiv}. The officials referred to above shall at the request of the services concerned and under the conditions laid down by decree, take an oath before the competent court.

The sworn officials of forestry shall be J.P.O having special jurisdiction as concerns forestry. Without prejudice to the recognized duties of the J.P.O having general jurisdiction, such officials

shall establish facts and seize products (*e.g. such as protected species*) collected without authorization and the objects used to commit the offences (*e.g. vehicles transporting these species*), and write a report thereon. Such report shall be exempt from stamp duty and registration formalities. The report drawn up and signed by the sworn official shall be held as a true record of the facts stated therein until proved false.^{xv} According to Section 142(3) of the 1994 Law, the sworn officials shall, forthwith, question and identify any offender who is caught in *flagrante delicto*. They may, in the exercise of their duties

- Requisition the police and gendarmerie for purposes of search and seizure of produce fraudulently exploited or circulated or of securing the identity of the offender.
 - Search trains, vessels, vehicles, aircraft or any other mean that may be used to transport the said products, upon presentation of a special search warrant.
 - Enter houses and enclosures after consultation with local traditional authorities by day in case of *flagrante delicto*.
 - Bring proceedings against offenders
- In the discharge of their duties, sworn officials, shall be expected to possess their professional cards.^{xvi}

The sworn officials of forestry and J.P.O having general jurisdiction shall, forthwith, as the case may be, forward their reports to their superiors. The official who drew up the report or, if need be, the person to whom the report is sent may require the offender to pay a deposit against a receipt. Such deposits shall be fixed by the services in charge of forestry. The deposit received shall be paid into the State treasury within 48 hours. The amount received as deposit shall as of right be used to cover any finds and court charges, but in case of acquittal, the court shall order its refund.^{xvii}

REPORT ESTABLISHING AN OFFENCE AND ITS CONTENT

The report establishing the violation of forestry laws and/or regulations, such as illegal exploitation of protected species of fauna and flora, shall comprise the following information.

Article 135(1) of the 1995 decree stipulates

- The date in words of the notice of the violation
- The complete identity of the sworn officer who booked the offender, together with his rank, his duty and his place of service.

- The date, time and place of service
- The complete identity of the offender and the detailed description of the means he used
- A detailed description and appraisal of the offense
- The offender's statement and signature
- The complete identities of possible witnesses, accomplices and collaborators, together with their statements and signatures;
- The references of the legal instruments which forbid and/or check the act committed.
- The amount of deposit received, if any
- The list of the produce and machines seized and where they are stored
- Any other information which might help appreciate the case^{xviii}

Once closed, the report shall be given a serial number in a register of contentious matters which shall be opened for that purpose in the local services concerned. It shall be forwarded within 72 hours to the provincial service^{xix} which in this case is the Regional Delegate for MINFOF.

LEGAL PROCEEDINGS OR ACTION

Competent Trial Courts

In Cameroon, the Court of First Instance has jurisdiction in criminal matters including the illegal exploitation of protected species of plants and animals, to try misdemeanours or simple offences and in civil matters to hear matters where the damages do not exceed 10.000.000 Francs. It is also competent to try simple offences punishable with imprisonment for up to ten days or with fine of up to 25.000 (twenty-five thousand) Francs, such as trespassing within a State forest. It can try misdemeanours with a fine exceeding 25.000 (Twenty-five thousand) francs, such as setting fire on a State Forest, felling without authorization of protected tress, hunting without a license or permit or exceeding killing limit. Since the new forestry and wildlife laws provide penalties of not less than 18 months and maximum of 5 years, they pre-suppose that all wildlife crimes fall within the competence of the High Courts.

As for the High Court in Cameroon, it is competent to hear matters where the amount of damages claimed exceeds 10.000.000 francs.^{xx}

It is worth noting that both the Court of First Instance and the High Court apply graduated penalties, regardless of whether the offence is committed by unauthorized or authorized exploiters. There is a need to vary sanctions between unauthorized (illegal) exploiters who are hard to sport,

and authorized operators who are much easier to keep track of, as they are already identified. Proactively, the law obliges the latter to supply information on where they are operating, a good indication of where they may be conducting any unauthorized activities, and therefore accessible to monitoring, controls and investigations. Because of these advantages there is need for them to be motivated and this should be reflected in the penalties in order not to discourage licensed exploitation. The cost of such exploitations should be lowered and the benefits higher than the costs and benefits of illegal exploitations.

Alternatively, where exploiters comply with essential legal requirements and an offence is committed, sanctions can be tampered within the context of ‘mitigating circumstances’ although in contrast with the law relating to environmental offences.^{xxi} This should act as an incentive to participatory management invaluable in the sustainable conservation of forest and wildlife resources.^{xxii}

THE INITIATIVE OF THE STATE PROSECUTOR

The magistrates of the Legal Department of the Supreme Court, a Court of Appeal, a High court and a Court of First Instance shall, under the control, direction and authority of the Heads of the said Legal Departments, exercise the powers conferred by the law on the P.G. of the Supreme Court, the P.G. at the Court of Appeal and the State Counsel respectively.^{xxiii} According to Article 29(1) of law No. 2006/015 of 29 December 2006 on judicial organization in Cameroon, the legal Department shall ensure the enforcement of laws, regulations and judgments, and may in the interest of the law, make any request it considers necessary before any court in criminal matters, including those concerning illegal exploitation of protected species, and without prejudice to the right of the civil party, it shall search for offences, institute and carry out prosecutions and issue any warrant necessary for the institution and prosecution of criminal action.^{xxiv}

Matters shall be brought to the State Counsel either by way of:

- A written or oral information or
- A written or oral complaint: or
- A written report by a competent authority.
- He may also be seized of his own motion^{xxv}

Any person who has knowledge of an offence classified as a felony or a misdemeanor shall directly and immediately inform either the State Council or any J.P.O or in their absences, any administrative authority of the locality.^{xxvi}

The original of case files concerning offenses committed within his jurisdiction and triable by ordinary law courts, shall be sent to the State Council.^{xxvii} The state Council before whom a criminal matter has been brought under conditions laid down in sections 135, 139, and 140 of the C.P.C, may decide to institute criminal proceedings against the suspect.^{xxviii}

THE INITIATIVE OF THE JUDICIAL POLICE OFFICER (J.P.O)

The Judicial police officer shall be responsible for

- Investigating offences, collecting evidence, identifying offenders and accomplices and bringing them before the legal department
- Executing rogatory commissions of judicial authorities
- Serving court processes
- Executing warrants and court decisions^{xxix}

Apart from the above duties, the J.P.O shall receive complaints and reports against persons including illegal exploiters of protected animal and tree species, and shall make preliminary investigations. They shall have a right to request directly the assistance of the forces of law and order in the discharge of their duties. They shall receive instructions from the state Council to carry out all investigations or any additional investigation which he considers necessary. The State Council may stop any J.P.O from continuing with the investigation. In such a case, he shall inform that officers immediate superior of his reason for doing so.

Subject to the powers conferred upon the state Council to stop the public, search or cause to be searched, any person suspected of being in the possession of arms or any other object likely to be used in the commission of an offence. Bodily search shall be carried out only by the person of the same sex as the suspect. It may be carried out in in public or in private. In all cases, the person to be searched shall first be informed of the reason for the search.^{xxx}

The J.P.O shall without delay inform the State counsel of the offenses of which he has knowledge. At the close of the investigation, he shall forward directly to the State Council the original and a copy of his report, as well as all other relevant documents. An inventory shall be made of all

the objects seized. They shall then be placed under seal and deposited with the Legal Department. A copy of the report on the seizure shall be given to the person who had possession of the objects.

The police report shall state

- The date and time when each phase of investigation started and ended.
- He full name and the status of the investigator
- Where necessary, the authorization referred to in section 88(2) of the C.P.C.

Each sheet of the original of the report or the statement register shall bear the signature of the investigator. When all or part of a written report is devoted to the recording of statements from or to the confrontation of persons, the said persons shall, after the reading and, where necessary, interpretation of the statements, initial each sheet of the report and all erasures, alterations, and interlineations not initiated therein. Any erasures alterations and interlineations not initiated shall be inadmissible. The last page of the report or statement register shall be signed by the maker, the investigator and by the interpreter. If any, any person asked to sign a report or statement register but who does not know or cannot sign shall be asked to affix his thumb-print to the document. Where this is not possible, the investigator shall choose any other finger and authenticate its print. The investigator shall in case of refusal to sign or thumb-print, mention this fact in his report.^{xxxix}

Searches and seizures shall be carried out by J.P.O who possesses search warrants. Any search or seizure shall be carried out in the presence of the occupant of the place and the person in possession of the object to be seized of in case of their absence, their representatives as well as two witnesses chosen from among the persons or neighbours present.^{xxxix} In the absence of a search warrant, searches and seizures of exhibits may be carried out only with the consent of the occupant or of the person in possession of the object to be seized.^{xxxix}

J.P.Os shall perform their duties within the territorial limits defined by the regulation in force However a J.P.O of the central or provincial service, in carrying out an investigation of the case, shall first inform the State Counsel in charge of the area where he is to carry out the investigation and shall thereafter perform his duties subject to the directives of the said state Counsel.

THE INITIATIVE OF THE SERVICE IN CHARGE OF FORESTRY

The Cameroonian law recognizes the right of MINFOF to associate in court action with public prosecutor as concerns matters relating to the violation of forestry regulations.^{xxxix} Including

illegal exploitation of protected species in fact, considering that MINFOF has a legal status, and given that it represents the Cameroonian state as a victim in acts of violation of law, it has the right to sue for compensation from any person guilty of committing a forestry-related offence.^{xxxv}

Without prejudice to legal department's right of persecution, offences against forestry regulations may be compounded. The compounding as requested by the offender shall put an end to public prosecutor, subject to its effective execution within its prescribed time limit. The offender shall bear the cost of registering such compounding.^{xxxvi} Where the offence is compounded.

- An adjustment shall be made immediately between the amount of the deposit and that of the compounding fee where the offender has paid a deposit.
- Non-perishable produced seized shall be sold by auction.^{xxxvii}

Where there is no compounding or in case such compounding is not executed and following prior notification of the offender, court action shall at the request of the service in charge of forestry be initiated within 7 hours. To this end they shall be empowered to

- Bring any offender before the competent court at government's expense
- Submit any written statement and submission and make any observations which they deem necessary to protect their interest. In such case, their representatives in uniform and without caps shall act in association with the State Counsel. They shall not be refused the right to speak and
- Lodge appeals as provided for by law in accordance with ordinary law procedures such as provided for by law in accordance with ordinary law procedure, such appeals have the same effects as those lodged by the Legal Department.

ESTABLISHMENT OF PROOF OR EVIDENCE

Proof of guilt for the offender may first of all either be noted or appended to the report establishing the facts of the offence. Listing the elements that should be found in the report. Article 135(1) of the 1995 Forestry decree makes mentions of the following.

- The complete identities of possible witnesses, accomplices or collaborators, together with their statements and signature.
- Any other information which might help appreciate the case.

Evidence may equally be presented before the court by the representatives of the services in charge of forestry, which shall associate with the State Counsel. According to Section 147 of the 1994

Forestry law, these representatives shall be empowered to submit any written statements and submissions and make any observations, which they deem necessary to protect the interests of the services in charge of forestry.

Offences related to resource exploitation are often committed flagrante delicto, either in the course of illegal exploitation or transportation, and therefore promptly ready for court trial. Because of this fact if there is strict measures to enforce the law, there will be a great probability of ensuring a fair sustainability of fauna and flora.

APPLICABLE SANCTIONS AS A MEANS OF ENFORCEMENT

The law has provided administrative and legal sanctions that can be applicable to defaulters of forestry legislations.

Administrative Sanctions

These are made of seizure of forestry produce, suspension of exploitation permits and withdrawal of permit.

Seizure

As a victim of an offence the service in charge of forestry may institute legal proceedings against the offender without prejudice to the right of seizure of the resource illegally exploited.

Perishable products seized with the exception of those that are dangerous or damaged, shall in the absence of the purchaser be sold forthwith by public auction or mutual agreement, by the competent service under the conditions laid down by decree. Chi. A. M. (2011) supra, writes on this issue:

Seizure of tools and vehicles can be an effective ploy to 'prevent' further offences. Because, even if seized items are eventually returned, being deprived of them for a time may represent a substantial loss. There are no constraints given that a variety of strategies have been developed regarding custody and disposal of perishable and non-perishable seized items. In Cameroon the seizure of non-perishable produce and equipment is entrusted to the competent technical service or failing this, the nearest pound. The seized item may not be restored to the offender but sold by public auction,

with the exception of arms and ammunitions, which shall be handed over to the competent service, following an infringement of the law, the law in Cameroon provides for the sale of seized perishable products but it does not explicitly deal with the destruction of items in a condition that prevents their sale.

Proceeds of the sale shall be paid into the State Treasury within 48hours.^{xxxviii}

Suspension of Permit

In addition to the power to seize is the power to suspend licenses and permits of exploiters by the forestry and wildlife administration. This is extremely useful, partly in preventing

Harmful operations and partly in giving operators exploiters opportunity to correct faults. But powers to suspend or stop operations ought to be exercised with caution to avoid undermining the balance of incentives to comply with the laws. The circumstances and the status of officials with such powers need to be specified and regulated. In Cameroon it is the prerogative e of the Minister in charge of forest and wildlife to withdraw or approve statutory documents and stop activities of the offender.^{xxxix}

Without prejudice to the penalties provided for by the law and legislation in force, any approval document provided for in the 1995 decree may be suspended or withdrawn under the conditions set out by same. Suspension of an approval document shall be pronounced by the Minister in charge of forestry. The suspension decision shall state the reasons thereof and shall be notified to the offender^{xl}

Without prejudice to the penalties under section 162 of the 1994 forestry law, suspension shall be pronounced in case of a further offence punishable with a fine of no less than 3.000.000FCFA. There is a repetition of an offence if in the 12months preceding a violation of the forestry law and /or regulations, the same offence is found to have been committed by the offender. The suspension instrument shall specify its duration which shall not exceed six (6) months.^{xli}

The suspension shall comprise

The cessation of forestry activities of the accused

And the seizure of forest produce not yet removed

It may only be lifted after cessation of what caused it and /or after the payment of all the taxes and charges due and payable.^{xlii}

Withdrawal of Permit

Withdrawal of an approval document shall be pronounced by the competent authority. The withdrawal decision shall state the reasons thereof, and shall be notified to the offender.^{xliii} The withdrawal shall be pronounced as of right if the suspension is not lifted within the period in Article 131 (3) of the 1995 Decree or in any of the following cases.

- Continuation of activities after notification of suspension
- If the accused is found guilty of another offense within 12 months following the commission of a second offense entailing his suspension.
- Non execution of such works as provided for by Article 67^{xliv} of the 1995 Decree.^{xlv}
- According to Article 133(2) of the 1995 Decree, withdrawal shall comprise:
 - The loss of forest exploitation approval or rights
 - The final cessation of any activities related to the forest exploitation approval or rights
 - And the settlement of all outstanding dues, taxes and royalties. The said dues, taxes and royalties, may where necessary, be recovered by force.

Court Sanctions

These are contained in Sections 154-158, 162-164 of the 1994 Forestry law. A fine of from 5000FCFA to 50.000FCFA or imprisonment for up to 10 days or both such fine and imprisonment shall be imposed on whoever commits any of the following offences.

- Carrying out of activities not in conformity with the restrictions provided for in Section 6 on the right of ownership over forest;
- Contravention of the laws and regulations on exploitation rights provided for in sections 8, 26 and 36.
- Unauthorized importation or exportation of genetic material for personal use;
- Setting fire on a state forest, as provided for in section 14
- Trespassing within a state forest, as provided for in section 20.^{xlvi}

- A fine of from 50000FCFA-2000 00 FCFA or imprisonment for from twenty days to two months or both such fine and imprisonment shall be imposed on whoever commits any of the following offences.
- Committing a breach of the official work norms regarding the exploitation of special forest products provided for in section 992)
- Unauthorized importation or exportation of genetic material for gainful purposes as provided for in section 13
- Exploitation under license in a communal forest, of unauthorized forest products beyond the quantity and/or period granted, in contravention of section 56.
- Transfer or sale of an exploitation license, in contravention of sections 42(2) and 60.
- Contravention of Section 42 by a holder of an exploitation title who prevents the exploitation of products not mentioned in his exploitation title.^{xlvi}

A fine of from 200.000FCFA to 1.000.000FCFA or imprisonment for from one to six months or both such fine and imprisonment shall be imposed on whoever commits any of the following offences:

- Clearing or setting fire on a state forest, an afforested or a fragile ecological zone, in contravention of Sections 14, 16 (1), (3), 17 (2);
- Use of a forest belonging to an individual for anything other than forestry purposes, in contravention of Section 39(2).
- Implementation of a development or exploitation inventory not in conformity with the norms established by forestry services, in contravention of section 40(1).
- Unauthorized forest exploitation in a communal or community forest, in contravention of sections 52,53 and 54.
- Acquisition of shares in a company with an exploitation title, without the prior products as provided for in section 72;
- Non-demarcation of the boundaries of forest exploitation license.
- Fraudulent use, forgery or destruction of marks, marking hammers, boundary marks or posts utilized by the services in charge of forestry.^{xlvi}
- A fine of 1.000.000FCFA or imprisonment for from six months to one year or both such fine and imprisonment shall be imposed on whoever commits the following offence.
- Fraudulent forest exploitation by a sub-contractor operating in a State forest under a sub-contracting agreement, in contravention of section 51 (2).^{xlvi}

- A fine of from 3.000.000FCFA to 10.000.000FCFA or imprisonment for from one to three years or both such fine and imprisonment shall be imposed on whoever commits any of the following offences.
- Unauthorized forest exploitation in a State or council forest, in contravention of sections 45(1) and 46(2).
- Production of false supporting documents relating particularly to the technical know-how and financial status, place of residence, nationality and payment of a security deposit, in contravention of sections 41(2), 50 and 59.
- Acquisition of shares or setting up of a forest exploitation company with the intention of increasing the total area of exploitation to more than 200.000hectares, in contravention of section 49(2).
- Sub-contracting of personal forest exploitation titles, acquisition of shares in a company holding an exploitation title, without the prior approval of forestry services, in contravention of section 42.
- Falsification or forgery of any document issued by the services of forestry.¹
- The penalties provided for in sections 154 to 16 shall be applicable without prejudice to any confiscations, restrictions and damages awarded, and restoration of property.^{li}
- They shall be doubled:
- Where there has been a previous offence or where the offence was committed by sworn officials of the competent services or by judicial police officers with general jurisdiction or with their complicity, without prejudice to administrative and disciplinary sanctions;
- For any violation of forest control gates
- In case of escape or refusal to obey order from officials in charge of control^{lii}

For the offenses provided for in sections 157 and 158 above, the judge may, without prejudice to the sanctions stipulated in this law, give a ruling on the period during which the offender shall be banned from elections to chamber of Commerce and the Chamber of Agriculture and to courts dealing with labour matters, until such ban is lifted.^{liii}

Any delay in the payment of the forestry taxes or fees shall, without prejudice to the sanctions stipulated by this law, entail the following penalties.

- For a delay of more than 3 months, an increase of 10%
- For a delay of more than 6 months, an increase of 20%
- For a delay of more than 9 months an increase of 50%

➤ For a delay of more than 12 months, an increase of 100%^{liv}

If during a prosecution for an offence, the accused pleads a right of ownership or any other right, the court shall decide the matter in accordance with the following rules.

An interlocutory plea shall be allowed if it is founded either on an apparent right on equivalent facts of possession, and if the legal grounds are such as to negate the character of the offence attached to the facts which gave rise to the legal proceedings.

If the case is brought before a civil court, the judgment shall specify a period which shall not exceed 3 months within which the party must bring the case before the competent judges and justify his action, failing which the plea shall be overruled.^{lv}

COMPOUNDING OR SETTLEMENT AS A MAJOR LACURIAE IN ENFORCEMENT

‘Compounding’, or ‘settlement’ with its French equivalent of ‘la transaction’ is defined as ‘*un contrat par lequel les parties terminent une contestation nee on prevenient une contestation a naitre*’.^{lvi} Compounding is a reciprocal agreement with some notable advantages such as simplicity, rapidity, economical, appraised in a French adage as ‘*qu’une mauvaise transaction vaut mieux qu’un bon process*’.^{lvii} In ‘compounding’ the executive or administrator is empowered to replace criminal proceedings with a fine, on condition that the offender accepts this procedure and waves his right to be tried.^{lviii} More often than not it is solicited by the offender, and jointly signed by the offender and the competent administrative authority representing the service in charge, and it is registered at the offender’s expense.^{lix} In Cameroon, the law fixes the conditions and deadline for payment of fines which should not exceed three months.^{lx}

Compounding is clearly useful, as an alternative to criminal proceedings which may take place far from the home or workplace of the defendant, causing expenses to both sides. It is used to replace long interrogatory criminal court proceedings by unilateral decision-making by the administration.

The risk in compounding is that offences are not penalized according to their gravity.^{lxi} Because it is negotiated, offences are sometimes based on how advantageous the compounding or transactions is to the enforcement official. This has hindered the sustainability of fauna and flora. The system is not transparent with details of the time processing, difficult to find, lacks

accountability and is fraught with corruption. It creates room for overzealous and corrupt enforcement officials to harass and threatens citizens especially in the rural areas where most persons are illiterate and are ignorant of the law.

Another controversial issue is the status of the officials entrusted with compounding activities. The question is whether they have the reputation, competence, legitimacy and to whom they are accountable. In Cameroon only the Minister in charge of Forestry and Wildlife is authorized. His regional representatives are limited to compounding or settlement involving amounts that do not exceed 500.000 Francs.^{lxiii}

CONCLUSION

The Cameroonian government has laid down standard regulations to ensure sustainability of forestry resources as there are clear and unequivocal provisions of the 1994 law and its related decrees stating certain activities as illegal and restricting them. There is also an enriching procedure for enforcement which a prudent legal researcher will not need to take a second thought before affirming that the laws are intelligibly made. The questions that arise now are: Do we still have situations of non-compliance? Is sustainability of fauna and flora effectively attained? The answers according to this researcher are in the affirmative and in the negative to the former and the latter respectively. The fact that there exist the concept of compounding or settlement, giving the offender the latitude to waive his right to be tried by replacing criminal sanction with a fine is a shortcoming of the law on implementation as most offenders will prefer fines to imprisonment and hence deterring offenders will be limited. However, compounding comes with its advantages. It is relatively speedy, simple and economical. The paper ends by maintaining that enforcement proceedings since 1994 though faced with lots of non-implementation have gone a long way to preserve and conserve forestry resources. The major challenge is that lots of important tree and animal species are depleting. Hence the recommendation is to improve on implementation strategies and ensure strict respect of the law.

ENDNOTES

ⁱ Chi A.M (2011). Use of Cameroon Harmonised Criminal Procedure Code to Enforce sectoral Environmental Laws. Law in Africa. Rudiger Koppe Verlage. Koln Germany P.5

ⁱⁱ Article 9 of Africa Forest Law Enforcement and Governance (AFLEG) Ministerial Declaration, Yaounde, Cameroon, October 16, 2003

- iii World Resources Institute. MINEF (2003) Monitoring and Reporting Needs in Support of the African Forest Law Enforcement and Governance (AFLEG) process. Workshop summary and Recommendations
- iv R. Bird (1998). *Osborn's Concise Law Dictionary*, Sweet and Maxwell, Seventh Edition, P. 237
- v Ewang A. (2005) Reading through the Harmonised Criminal Procedure Code of Cameroon. Some Salient issues.
- vi *Ibid.*
- vii Chi (2011), Supra note 122 p.5
- viii Explanatory statement.: Draft Bill on the Criminal Procedure Code Bill no. 775/PJL/AN of the 2nd Ordinary session June 2005
- ix Chi (2011) Supra 122P..5
- x Section 78(1) of the H.C.P.C
- xi Section 79 *Ibid*
- xii Section 81 (1) *Ibid*
- xiii Section 81(2) *ibid*
- xiv Section 141(1) of the 1994 Forestry Law
- xv Section 142(4) *ibid*, In accordance with sections 141 and 142 of the 1994 Forestry Law. Article 134(1)(2) of the 1995 Decree of Implementation states that sworn officers of forestry services shall have the range of judicial police officers with special powers they shall be sworn in accordance to the laws and regulations in force.
- xvi Section 142(4) *ibid* in accordance with secti
- xvii Section 143(1) (2)(3) *ibid*
- xviii Article 135(1) of the 1995 Decree of Implementation
- xix Article 135(2) *ibid*
- xx Based on the legal sanctions provided for by the 1994 Forestry law, the High Court in Cameroon can only entertain the offences on Section 158 of the above law. That Section provides, A fine of from 3.000.000FCFA to 10.000.000FCFA or imprisonment for from one to three years or both such fine and imprisonment shall be imposed on whoever commits any of the following offences.
- Unauthorized forest exploitation in a State or council forest in contravention of Sections 45(1) and 46(2) and 46(2).
 - Production of false supporting documents relating particularly to the technical know-how and financial status, place of residence. Nationality and payment of a security deposit. In contravention of Sections 41(2) 50 and 59.
 - Acquisition of shares or setting up of a forest exploitation company with the intention of increasing the total area of exploitation to more than 200.000 hectares in contravention of Section 49(2).
 - Sub-contracting of personal forest exploitation titles, acquisition of shares in a company holding an exploitation title. Without the prior approval of forestry services in contravention of section 42
 - Falsification or forgery of any document issued by the services of forestry.
- xxi Article 87 du loi No. 37/2005 du 28 November 2008 sur la faune et les aires protégés.
- xxii Chi (2011) Supra note 122
- xxiii Section 127(2) of H.C.P.C
- xxiv Section 29(2) of the 2006 law on judicial organization in Cameroon
- xxv Section 135(1) of H.C.P.C
- xxvi Section 135(2) *ibid*
- xxviii Section 141(e) *ibid*
- xxix Section 82 *ibid*
- xxx Section 83 *ibid*
- xxxi Section 89(1) (2) (3) *ibid*
- xxxii Section 90 (1) to (7) *ibid*
- xxxiii Section 93(1)(2)
- xxxiv R. Djeukam (2006). *The Wildlife Law as a Tool for Protecting Threatened Species in Cameroon* P.12
- xxxv *Ibid*
- xxxvi Section 146(1)(2)(3) of the 1994 Forestry Law
- xxxvii Section 146(4) *ibid*
- xxxviii Section 144 of 1994 Forestry Law
- xxxix Article 71(2) and 73(1) of Decree No. 95/466/PM of 20 July 1995 to lay down the conditions for the implementation of wildlife regulations
- xl Article 130(1)(2) of Decree No. 95/531/PM of 23 August 1995 to lay down the conditions of implementation of forestry regulations.
- xli Article 131 (1)(2) (3) *ibid*

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- xlii Article 132(1)(2) *ibid*
xliiii Article 130(3) *Ibid*
xliiv According to Article 67(1) of the 1995 Decree of implementation, *during the period of validity of the provisional exploitation contract, the owner of the contract shall carry out or provide the technical and financial resources for the execution of development work according to the terms of the provisional contract and under the control of the services in charge of forest. Such works shall be carried out by the owner of the contract where he is qualified to do so, or by an approval contractor in accordance with the conditions laid down in this decree*
xli v Article 133(1) *ibid*
xli vi Section 154 of the 1994 Forestry Law
xli vii Section 155 *ibid*
xli viii Section 156 *ibid*
xli ix Section 157 *ibid*
l Section 158 *ibid*
li Section 162 (1) *ibid*
lii Section 162 (2) *ibid*
liii Section 162(3) *ibid*
li v Section 163 *ibid*
li v Section 164 *ibid*
li vi Article 2044 du *code Civil francaise*
li vii Chi A. M. (2011) *Supra* note 122
li viii *Ibid*
li ix *ibid*
li x Article 78(1)(2) (3) of the 1994 Forestry Law
li xi Chi(2011) *Supra* Note 122
li xii *Ibid*
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