

REPUBLIC OF CAMEROON  
PEACE – WORK – FATHERLAND

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MINISTRY OF ENVIRONMENT AND  
PROTECTION OF NATURE  
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ENVIRONMENTAL DISPUTE PROCEDURES  
GUIDE OF THE MINISTRY OF ENVIRONMENT AND  
PROTECTION OF NATURE

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## INTRODUCTION

Environmental dispute or litigation includes the structural organization, rules of procedures, distribution of competences and appeal mechanisms. It is aimed at preventing risks and awarding compensation for damages already caused both to natural persons and artificial persons or corporate bodies as well as to ecosystems.

Environmental law has special adapted or created procedures which differ from the usual grounds for appeal in civil and penal matters. The reason is that the environment can truly be preserved or protected only through preventive, dissuasive, repressive, repartition and curative measures .

The procedure of environmental dispute is stipulated not only in Section 90 and the following sections of Law n° 96/12 of 5 August 1996 relating to environmental management, but also in other sector laws that protect the environment and natural resources some of which are targeted in this guide. It is important to bring out some specific details so that actions undertaken by the Ministry of Environment and Protection of Nature (MINEP) should take place in legality, clarity, objectivity and transparency. These preconditions thus presented lead us to examine, on the one hand, the first stage, which comprises the establishment of infringements (A), and Reports (B); and, the procedures which include the administrative phase (A) and the judicial (B) on the other.

### I. FIRST STAGE

#### A/ ESTABLISHMENT OF INFRINGEMENTS

The establishment of infringements is not only recognized by the public prosecutor's office, the judicial police vested with general

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competence, but also by officials on oath of the Administration in charge of environment, or other Administrative units concerned, especially those of the cadastral survey, town planning, public works, forestry and wildlife, merchant navy, mines, industry, labour and tourism services (cf Section 88 (1)/1996 Law ). The offence recording officials of MINEP are environmental controllers and inspectors who have taken oath before the competent court of jurisdiction i.e. the Court of First Instance at the request of their administration. They shall be in charge of research, the establishment of infringements and repressive proceedings in keeping with the provisions of the framework law and its enabling instruments. These MINEP officials on oath shall carry their professional card, a mission order in the exercise of their duties, and they shall produce a report at the end of the mission.

It should be noted that as regards environmental impact assessment, environmental inspectors/controllers have the power to suspend the completion of the work envisaged or already initiated where the impact assessment is not known or the impact assessment procedure is totally or partially disrespected. (cf Section 20 (2) of Law n° 96/12 of 5 August 1996 relating to environmental management).

Thus, "the competent Administration or, if need be, the Administration in charge of the environment shall demand the implementation of appropriate emergency procedures to suspend the work envisaged or already initiated. These emergency procedures shall be initiated without prejudice to the penal sanctions provided for by this law ".

The emergency procedure consists in instantly establishing the infringement, giving a formal notice to the offender to immediately stop the aforementioned infringement, and seeing to the implementation of appropriate protective measures as soon as the infringement is established. This is evidenced by the drafting of a report.

### **B / THE REPORT**

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The report is identical irrespective of whether it is an emergency procedure or a normal procedure. This is a unique document containing the hearing or examination and specifying the nature of the infringement. This report comprises the following:

- Date and time of the beginning and the end of hearing;
- Names, first name, and capacity of the judicial police vested with special competence;
- Names, first names, and capacity of the official of the inspected structure or his/her representative;
- Each page of the original of the report must be co-signed by the two environmental inspectors;
- When the whole or part of a report is devoted to a hearing, the persons heard must after the reading, be invited to sign each page of the report;
- The last page of the report shall be co-signed by the two environmental inspectors, and the official in charge of the inspected structure or his/her representative;
- Any person asked to sign a report and who is unable to do so, shall affix the fingerprint of their right thumb.
- In the event of refusal, either to sign, or to affix a fingerprint, the environmental inspectors shall indicate it in the report.

Any person asked to sign a report can precede their signature with any reservations/remarks which they deem necessary.

The report established by officials who have taken oath before the court of competent jurisdiction, shall comprise all the detailed information on the nature of the infringement, the legal basis and the corresponding sanction. It shall serve as proof and be authentic until the validity is disputed or a plea of forgery is introduced.

This document can also be accompanied by recommendations, suggestions or any other measures which MINEP may take against the offender aiming at removing or reducing threats to the environment.

Any refusal to countersign the report or statement of offence by the offender must be mentioned by the official recording the offence.

At the end of each inspection/control, a mission report must be written by the inspectors and controllers and immediately forwarded to the Minister of Environment for competence.

At the end of each inspection/control, the inspectors/controllers shall send recommendations and suggestions to the structure inspected or controlled for a better functioning of the said structure.

The report shall be presented in the form of a counterfoil book comprising three pages listed and initialled by the office of the clerk of the court of competent jurisdiction.

A copy of the report shall be given to the offender.

It shall be written in a legible manner.

The report shall be established only in the event of an infringement.

## II. PROCEDURES

They concern inspections and controls which have been the subject of establishment of infringements recorded in a report or statement of offence.

Environmental dispute comprises two phases namely:

The administrative or extra-judicial or transaction phase;

The judicial phase.

### **A/ The administrative or extra-judicial or transaction phase**

This phase must be prior to any submission of case before the court or the judge under pain of being declared null and void.

It comprises two stages:

#### **1. The first stage:**

At the end of an inspection/control mission, the files of the officials recording the offence including the mission report and the statement of offence, shall be forwarded to the Department of Standards and Control which, through the Follow-up and Dispute Unit, shall acquaint

itself with the whole file for purposes of checking possible irregularities of the form and content. The dispute follow-up unit initiates the notification draft for the attention of the hierarchy for continuation of the procedure.

### **2. The second stage:**

It consists of the notification by MINEP of the infringement and the amount of the corresponding penalty to the offender. It can be done by way of a bailiff. Notification of the infringement by the bailiff prevents unjustified contesting by the offender and ensures compliance with the 20 days time-limit granted to the offender to refer it to MINEP for purposes of contesting the aforementioned report.

Indeed, the Framework Law n°96/12 of 5 August 1996 stipulates in Section 90(1) that the offender shall have a time-limit of 20 (twenty) days from the date of notification to contest the report of establishment of the infringement

Where the offender acts within the time-limit and the contesting is founded, the report shall be closed with no follow-up.

As regards transaction, MINEP shall have the full right to affect a compromise and arbitrate in consultation with the Administration in charge of finance; the amount of the penalty shall not be lower than the minimum of the corresponding sanction. Transaction is defined as an act of amicable agreement by which the author of an infringement to the environmental law shows his/her willingness to compensate for damage by paying certain fees and restoring of the degraded site in its initial state. It shall be affected before any possible legal procedure, under pain of being declared null and void.

MINEP shall examine the complaint of the author of the infringement after the matter has been duly referred to it by the latter. Where the offender acts out of the time-limit, any contesting shall be inadmissible. Where the contesting is founded, the report shall be closed with no follow-up by MINEP. The bailiff shall be in charge of giving formal notice to the offender as soon as the time-limit of

payment of the fine is foreclosed. The law also stipulates arbitration which spells out that: "parties to an environmental dispute may settle the dispute by a joint agreement reached through arbitration» (cf Section 92 /1996 law).

We talk of arbitration when parties to a dispute instead of going to the courts, decide to come to an amicable agreement called compromise, to entrust the matter to one or more arbitrators, generally chosen for their competence on the matter, which arbitrators take care in finding the right solution to the litigation. Arbitration must be done in writing. When parties to a dispute agree to resort to arbitration, they are obliged to respect the decision of the arbitrator (s) also known as arbitration sentence.

In case this transaction does not succeed or that the offender refuses to pay the penalty and to subject himself or herself to the recommendations made by the offence recording officials, MINEP shall proceed to legal proceedings: hence the 2nd phase.

### **B / THE JUDICIAL PHASE**

It comprises two stages:

The first stage: it starts with a complaint of MINEP or its local representative (RDE, DDE) addressed to the territorially and materially competent state prosecutor namely:

The Court of First Instance (TPI); ruling in minor offence if the amount of the claim is lower or equal to 5 million CFAF;

The Higher Level Court (TGI); ruling in a criminal matter, if the amount of the claim is strictly higher than 5 million CFAF.