

# The Sustainability of Industrial Logging under Gabonese Environmental Laws

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## Abstract

The importance of forests in supporting millions of livelihoods in the world cannot be over emphasized. In Gabon like in all the other Countries of the Congo Basin Forests, forestry exploitation is carried out under the concession regime but with considerably diminished European interests as opposed to Asian conglomerates gaining grounds particularly the Chinese. Indeed, the emergence of Sino-Indian rivalry in the forest sector in Gabon is emerging. The State of Gabon, being one of the principal stakeholders in the protection of forests on its national territory has enacted forest protection legislation and equally erected a forest perseveration institutional framework. In spite of these laudable efforts, forest loss particularly emanating from mechanized logging is still going on. As such, the very existence of Gabonese forests which constitute an integral part of the greater Congo Basin Forests is seriously threatened. Through a content analysis of primary and secondary data, this article thus reviews how the plethora of legislative and institutional frameworks put in place to check logging at a large scale have been implemented and enforced to ensure the continuous existence of the forest. The findings of this study reveal that Gabon has a great forest potential per km<sup>2</sup> of its 267.667km<sup>2</sup> surface area that is very diversified and harbours a very rich and endemic biological diversity. Hence, the need for its protection for humanity's sake is imperative.

**Keywords:** Enforcement, Protection, Institution, Industrial Logging, Environmental Laws, Gabon, Legal Compliance, Challenges.

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## INTRODUCTION

Forests are considered the richest and the most productive ecosystem in the world. Yet, the forest ecosystems of some African Countries such as that of Gabon, are changing faster than ever before through the combined impact of global and local pressures. The loss of forest ecosystems is compromising food security, health and well-being and the effects are being borne disproportionately by the poor as a result of unsustainable and illegal logging by concessionaires. In this line, industrial logging in Gabon could have serious negative impacts on the environment and on the adjacent local communities. Some of these adverse effects include: soil erosion, and environmental pollution; threats and destruction of biodiversity; the acceleration and exacerbation of climate change and global warming; threats to cultural heritage leading to the loss of traditional and cultural values; increase in poaching as a result of road and other infrastructural development into previously enclaved forest areas;

forced displacement of forest communities from some forestlands; the generation of social conflicts whereby local communities make recourse to riots and rebellions say because of the non-respect of corporate social responsibilities by logging companies or dissatisfaction with participatory and benefit-sharing mechanisms in force; and the exacerbation of poverty among local communities for instance, if their rights to customary ownership of land and usufructs rights are not recognized or protected. The efforts of Gabon in protecting the environment including its forests have been applauded by the International Community in recent years for its remarkable stance at the preservation of its forests particularly to help combat climate change a global concern. Gabon's forest cover is 22million hectares making up 80% of its national territory.

## II. THE CONCEPT AND IMPORTANCE OF INDUSTRIAL LOGGING IN GABON

Industrial Logging is the granting of forest harvesting rights to commercial forest companies for

management with the main aim of exploiting timber for commercial purposes through an exploitation contract between the Gabonese State through the Ministry of the Forestry Economy, of Waters and Fisheries, in charge of the Environment and Nature Protection and a commercial logging company. Today, Gabon has some forty active forestry concessions covering some 16 million hectares of forestlands making Gabon a country where forest concessions proportionately occupy the highest woodland surface area and in which industrial wood production is highest in the world.

- A. **Ecological Utility:** Industrial logging practiced with respect to the legal framework in force including the prescribed forest certification standards will lead to the sustainability of the forest and subsequently the sustainability of industrial logging in Gabon. Sustainable industrial logging in Gabon would lead to: the preservation of biological diversity of Gabon; the intensification of the fight against climate change and global warming through mitigation and adaptation measures for, Gabonese forests would play a key role in the world climate diplomacy and discourse with subsequent benefits particularly financial; the protection of Gabon from desertification which is fast approaching from the Lake Chad Basin and would play a great role in ensuring food security by combating soil erosion and regulating soil and water quality, contributing natural fertilizers to soil fertility, intercepting rainfall and channeling run-off, and maintaining the balance of elements and nutrients in organisms, soil, water, and air.
- B. **Economic Vitality:** Industrial logging has played a vital part in the Gabonese economy. Its contribution to State revenue is outstanding following the 100% industrialization policy of the wood sector since 2010 buttressed by the Gabon Special Economic Zone (GSEZ) located some 27 kilometres from the capital city Libreville occupied more than 80% by commercial industrial concessions. Industrial logging has also contributed significantly to the Gross Domestic Product of Gabon. It has valorized the Gabonese wood by instituting value-added chains of transformation. It has helped in reducing unemployment. It has equally led to economic cooperation between Gabon and foreign logging companies particularly OLAM that came into Gabon as an industrial logging company but has gradually transformed its base of operation to encompass; the operator of the GSEZ at N'kok destined for the reception of wood transformation industries, and agro-business mainly based on palm oil and rubber production. Mechanical logging has also contributed to turnover from industrial forest products in Gabon.
- C. **Social Impact:** In accordance with exploitation contact documents, concession-based forestry is compelled to comply with its corporate social responsibilities the non-respect for which may be seen as backing the wrong horse. To this effect; the

provision of health facilities, energy and water supply, the provision of educational facilities as well as improvement in the transport network in Gabon.

### III. FUNDAMENTAL PRINCIPLES UNDERPINNING INDUSTRIAL LOGGING IN GABON

#### 1. The Principle of Prevention

The prevention principle demands that an undertaking whose disastrous effects on the Environment (the forest being an important component) or on Man as foreseen should be prevented. It should not be carried out at all because its outcome on the Environment or on Human health would be catastrophic. This is because if the foreseen disastrous activity is carried out and the environment is injured and human health is affected the cure would be unbearable. Summarily put this principle recommends for "prevention than cure". This principle is encompassed in Gabonese Environmental Laws.

#### 2. The Principle of Precaution

The precautionary principle is to the effect that, where the outcome of an activity is unknown, it should be carried out with a lot of precaution or care, by adopting necessary measures that would prevent serious or irreversible damage to the environment or to human health. This can take place in situations where there is the absence of scientific or technical certainty. This principle has been incorporated into many international and national laws on the environment.

The principle is designed to apply to apply to activities that are likely to cause harm to the environment or to human health where it is not scientifically certain. In other words, where complete scientific knowledge and innovation of the injury is lacking. This principle is based on the assumption that scientific knowledge and innovation on the environment is still emerging and that new activities may be harmful only after irreversible damage has been done. As such emphasizing on precaution is to avoid inflicting injury on the environment or putting human health at risk.

This principle is based on the idea that, scientific uncertainty should not be a defense to take action with respect to a certain environmental and health concern. Considering the technical and scientific knowledge of the moment the absence of certainty must not delay the adoption of effective measures to prevent a grievous environmental or health harm at an acceptable economic cost.

The principle calls for action of preventing environmental or health harm even when there is scientific uncertainty about the precise magnitude or degree of risk to the Environment or to health. According to this principle uncertainty about serious environmental or health harm is not a valid ground for refraining from preventive measures. Its main feature is

to operate an enabling action and authorizing preventive measure in cases of scientific uncertainty. The REDD<sup>+</sup> initiative is a precautionary measure to prevent future harm from occurring from activities that threaten forest sustainability in Gabon. This is a well-established principle.

### 3. The Polluter-Pay Principle

This is a principle that results from measures aimed at preventing, mitigating and combating pollution and the rehabilitation of the polluted areas shall be borne by the polluter. This principle was originally enunciated by the Organization for Economic Cooperation and Development (OECD) to restrain national public authorities from subsidizing the pollution control cost of private firms. Member Countries of the OECD agreed in respect of this principle that no subventions shall be accorded to cover the cost of the measures to fight against pollution. The cost was borne by producers who imputed them on consumers simply by adding the prices of commodities. This principle is thus motivated by economic theory by which the external social costs of industrial production costs. Nonetheless this principle is not efficient when applied solely. As such recourse is made to other methods enhancing this principle. These include; the taxation of pollution, the enforcement of legal norms against pollution, and the establishment of various mechanisms of prevention. This is another well-established environmental principle and hence forestry protection principle that has been incorporated into Law No. 007/2014 Relative to Environment Protection in Gabon.

### 4. The Principle of Public Participation and Information

The participation of the public is emphasized in both National and International Environmental Law. This is because, the public that has a right to a healthy environment may be affected. The public thus, has a say in the determination of the future of the environment. This public includes; women, youth, indigenous and local populations, non-governmental organizations, local authorities, workers, business and industry, scientists and farmers, as well as foreigners and residents in certain jurisdictions. With regard to Environmental Impact Assessment, the public typically incorporates all environmental stakeholders including communities, women, children, indigenous people, non-governmental organizations, State institutions and non-State institutions. The EIA report is made available to the public for a specific period of time and the public is usually allowed to submit written comments.

### 5. The Principle of Integration

The integration principle upholds that due consideration be given by institutions and organizations with regard to the treatment of environmental concerns in their decisions. To this effect, certain jurisdictions such as the United States, the European Union and

business organizations such as the United States Chamber of Commerce have integrated environmental considerations in their decision making process through EIA mandates and other provisions. Law No 007/2014 on the Environment Code of Gabon has incorporated the principle of integration.

### 6. The Principle of Sustainability

This is one of the firmly established principles in the domain of environmental protection. The principle of sustainability is at the foundation of all International Conventions, Treaties, Protocols, and Declarations on the environment. It has been incorporated in many sectorial environmental laws of many States not leaving out Gabon. Sustainability is at the heart of the management of the world's natural resources the forest included. In the light of sustainability, Gabonese forests have to be harvested today in a manner that ensures their continuous existence. This can only be possible if the environmental norms and principles put in place are implemented and respected. This principle is incorporated by Law N° 007/2014.

### 7. The Principle of Rational and Effective Ecological Management

This principle is to the effect that the world's natural resources (including forests) should be used respecting all the components that make up each ecosystem. As such the dynamic complex of plants, animals and micro-organisms communities and their non-living environment, interacting as a functional unit should be protected. This interaction of both the biotic and abiotic components of a given milieu leading to the transfer of energy and food resources is necessary for the continuous existence of natural resources like forests.

## IV. THE LEGAL FRAMEWORK GOVERNING INDUSTRIAL LOGGING IN GABON

Gabon by its domestic and international ratified treaties has put in place laws governing concession-based lumbering the non-compliance to which the violator will be penalized.

### A. INTERNATIONAL LEGAL INSTRUMENTS GOVERNING INDUSTRIAL LOGGING GABON

By virtue of the Gabonese Constitution of 1991 as amended in 1997, international ratified treaties are part and parcel of the Gabonese Constitution. Gabon has ratified several Multilateral Environmental Agreements and equally signed many others. A profound assessment of these international legal instruments is necessary in ensuring legal logging by industrial loggers in Gabon.

#### 1. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES 1973)

Laws emanating from the international legal system have had a great influence on the protection of the forests in all over the world not leaving out Gabon. These international laws are guaranteed by the Gabonese Constitution. Whether signed and ratified or simply signed, these international instruments have ensured the protection of the forests in Gabon as Gabon is obliged to respect its international engagements as demanded by International Law. Some of these international legal engagements on the forest include: the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES 1973); the Convention on Biological Diversity (CBD 1992); the United Nations Framework Convention on Climate Change (UNFCCC 1992); the Convention of Vienna on the Protection of the Ozone Layer (1985); the United Nations Convention to Combat Desertification (UNCCD 1994); the Stockholm Declaration on the Human Environment and Development (1972); the Ramsar Convention on Wetlands of International Importance (1971); and the Rio Declaration on the Environment and Development (1992).

### **1.1 The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES 1973)**

CITES is a Multilateral Agreement on the Environment (MEA), regulating International Commerce of plants and animals whose conservation is a major preoccupation so as to make sure that such a trade should not threaten their survival. This treaty was initially signed in 1973 and it came into force in 1975. Gabon signed this treaty in Washington on the 3<sup>rd</sup> of March 1973, ratified it on the 29<sup>th</sup> of July 1987 and became party to CITES in 1989. 175 Member Countries signed this treaty that protects more than 33,000 species of animals and plants.

CITES does not regulate International Trade of wild species but is concerned only with International Commerce in these species. These include; importations, exploitations, re-exportations and introduction from the sea. CITES regulates the International Trade of species only if this is prescribed in the CITES Annexes. The trade of CITES species is diverse and comprises for instance the trade of living animals or plants, food products, traditional medicines, leather articles, logs, instruments or furniture made out of wood, roots, raw or transformed products coming from wild species.

### **2. The United Nations Framework Convention on Climate Change UNFCCC (1992)**

This Convention was adopted on the 9<sup>th</sup> of May 1992, opened for signature at Rio de Janeiro during the Earth Summit in June 1992. It then came into force on the 21<sup>st</sup> of March 1994, following its ratification by most States. Gabon signed the UNFCCC on the 9<sup>th</sup> of May 1992 in New York and then ratified it in June 1996. The UNFCCC's objective is to "stabilize

greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system".

The Kyoto Protocol is the Protocol to the UNFCCC, aimed at fighting Global Warming. The Protocol was initially adopted in 1997 in Kyoto (Japan) and it entered into force in on the 16<sup>th</sup> of February 2005. The climatic importance of the tropical rainforest was reiterated in the Kyoto Protocol to the UNFCCC.

Parties to the Convention have met annually from 1995 in Conferences of the Parties (COP) to assess progress in dealing with Climate Change. In 1997, the Kyoto protocol was concluded and established legally binding obligations for Developed Countries to reduce their greenhouse gas emissions in the period 2008-2012. The 2010 Cancun Agreements state that, future Global Warming should be limited to below 20<sup>o</sup>c (3.6<sup>o</sup>F) relative to the pre-industrial level. The Protocol was amended in 2012 to encompass the period 2013-2020 in the Doha Amendment which as of 2015 had not entered into force. In 2015, the Paris Agreement was adopted, governing emission reductions from 2020 through commitments of Countries in ambitious Nationally Determined Contributions. The Paris Agreement entered into force on November 4<sup>th</sup> 2016.

This Commitment would require substantial reductions in greenhouse gas emissions. Article 3(1) of the Convention states that, parties should act to protect the climate system on the basis of "common but differentiated, responsibilities" and that Developed Country Parties should "take the lead" in addressing climate change. Under Article 4, all parties make general commitments to address climate change through for example climate change mitigation and adaptation to the eventual impacts of Climate Change.

### **3. The Convention on Biological Diversity (CBD) 1992**

The Convention on Biological Diversity CBD otherwise known as the Biodiversity Convention is an international legally binding treaty which was opened for signature in Rio de Janeiro, Brazil on the 5<sup>th</sup> of June 1992 at the Second Earth summit of the United Nations Conference on the Environment. Gabon ratified the CBD on the 28<sup>th</sup> of June 1996. It is a legally binding international treaty that has three main goals; the conservation of biological diversity, the sustainable use of elements of biodiversity and the fair and equitable sharing of gains emanating from genetic resources. As such, it imposes duties on Parties to develop national strategies for the conservation and sustainable utilization of biological diversity species of wild fauna and flora. It is the first time in International Law that a treaty has recognized that the conservation of biological diversity is a common concern for mankind and it is an integral part of the development process. This treaty englobes all ecosystems, including terrestrial, marine

and aquatic harbouring particularly endangered species of plants and animals and genetic resources whose accelerated loss is a cause for concern.

As such States are obliged under their specific capabilities to develop national strategies, plans and programmes geared at ensuring the conservation and the sustainable use of biodiversity. This convention obliges all State Parties and the private sectors to cooperate in enhancing the conservation and sustainable use of biological diversity by avoiding and mitigating negative effect on biodiversity. This Convention obliges all Contracting Parties to make use of appropriate economic and social measures that would boost the conservation and the sustainable use of the components of biodiversity of which forest are a vital component particularly in Gabon. Parties are called upon to embrace the concept of sustainable management of biodiversity resources so that future generations' need will not be comprised.

This notwithstanding the Convention has often been castigated for being largely inspirational and achieving little in practice. This for several reasons. Firstly, the protection mechanisms inherent in the Convention are secondary to economic and social development and poverty eradication, elements which are recognized as the first and overriding priorities of Developing Countries. Critics argue that by ensuring that Parties maintain full sovereignty to exploit their own resources according to their own environmental standards, biological diversity will continue to be overridden by other development priorities within individual nations. Secondly, unlike CITES, this Convention does not protect any particular species and while the Convention advocates the protection of natural habitats, it contains no specific and enforceable measures to achieve this goal.

#### **4. The United Nations Convention to Combat Desertification (UNCCD) 1994**

This is a Convention that seeks to fight desertification in Countries that are facing acute drought and/or desertification through national action plans that encompass long term strategies supported by international cooperation and partnership arrangements. In Africa, this Convention seeks to combat desertification and mitigate the effects of droughts.

This is the only Convention stemming from a direct recommendation of the Rio Conference's Agenda 21. It was adopted in Paris (France) on the 17<sup>th</sup> of June 1994 and it entered into force in December 1996. Gabon ratified this Convention on the 26<sup>th</sup> of February 1998. It is the only internationally legally binding framework set up to address the issues of desertification. The Convention is based on the principles of; participation, partnership and decentralization (the backbone of Good Governance

and Sustainable Development). It has 197 parties, making it near universal in reach.

To help publicize the Convention, 2006 was declared "International Year of Deserts and Desertification" but debates have ensued regarding how effective the International Year was in practice.

This Convention makes it very clear that forests have significant ecological functions that mitigate the effects of drought and prevent desertification. As such, its destruction would negatively affect ecological balance due to the fundamental role forests play in an ecosystem. As such strategies to deal with desertification are to mitigate forest loss since deforestation has serious consequences in terms of run off, soil erosion and the loss of soil fertility.

#### **B. REGIONAL LEGAL MECHANISMS INFLUENCING INDUSTRIAL LOGGING IN GABON**

These include: the African Convention on the Conservation of Nature and Natural Resources of Algeria (1968); the Bamako Convention on Waste Importations in Africa and Trans-border Movement and management of Toxic Wastes (1991); the Convention on Cooperation Relating to the Protection and Development of the Marine Environment and the Coastal Areas of West and Central Africa (1981); the African Forest Law Enforcement and Governance (AFLEG) of 2003; the Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora (1994) and the SADC Forest Law Enforcement Governance and Trade Plan 2013;

##### **1. The African Convention on the Conservation of Nature and Natural Resources of Algeria (1968)**

The African Convention was adopted on the 15<sup>th</sup> of September 1968 in Algiers, Algeria. It then entered into force on May the 7<sup>th</sup> 1969. Gabon signed the African Convention on the 29<sup>th</sup> of September 1968 and ratified it on the 29<sup>th</sup> of July 1987. The African Convention is primarily concerned with wildlife but also makes provisions for the preservation of other natural resources such as, forests, soil and water. The African Convention also covers other issues such as conservation education, research and the integration of conservation into development plans. According to Lyster Simon, the African Convention is the most comprehensive Multilateral Treaty for the conservation of nature, providing useful framework for which national legislation may be made. The provisions of the African Convention cover most of the threats to African wildlife and most of the actions that needed to be taken by governments to deal with these threats. The African Convention emphasizes the need for protected areas and special conservation measures for species listed in an Annex to the African Convention. The African

Convention has stimulated useful conservation measures in several African Countries such as Tanzania, Nigeria, Kenya and Gabon.

The Convention obliges Member States to protect plants, conserve and manage the forest sustainably and avoid bad agricultural practices like slash and burn, and overgrazing. The Convention upholds that the protection of the African environment is incumbent on Man.

The African Convention is established in Article 1. The fundamental principle of the African Convention is to the effect that Contracting Parties undertake to adopt the measures necessary to ensure the conservation, the utilization and development of the soil, water, flora and faunal resources in accordance with scientific principles and with due regard to the best interests of the people.

Concerning the establishment of conservation areas, the African Convention stipulates that, State Parties should establish conservation areas. Furthermore, State Parties to the African Convention have to establish necessary buffer zones around the boundaries of the conservation areas. The African Convention also deals with the wise use of habitats outside the specially designated protected areas.

The African Convention provides that Contracting States should take special measures on species listed in the Annex to the African Convention. The Annex is divided into class A and B. The African Convention does not however establish a clear criterion for the inclusion of species in a particular class. The only inference that can be drawn from Article 8 is that, the annex contains species which are threatened with extinction. Stricter protection is required for class A species contrary to class B species. Moreover, protective measures are also covered under Article 8. Class A species are required to be protected throughout the national territory of the State. Hunting, killing, capture or collection shall only be permissible if required in the national interest or for scientific purposes. Class B species shall also be totally protected but hunting, killing, capture and collection is permissible with authorization even where it is not in the national interest or for scientific purposes.

The African Convention permits State parties to exploit populations of species not listed in the Annex and situated outside of the conservation areas. Such exploitation is possible provided that, the said populations are managed for an optimum sustainable yield, compatible with and complementary to other land uses. In a bid to enhance sustainability, the African Convention requires that, sufficient laws should be adopted so as to regulate hunting, capture as well as fishing activities in Member States.

The African Convention also focuses on research, education and development. State parties are obliged to encourage as well as promote research with regard to the conservation, the use and the management of natural resources with particular attention paid to ecological and sociological factors. Concerning Education, the African Convention provides that States shall ensure that people appreciate dependence on natural resources and that they understand the rules and necessity for the rational utilization of natural resources. The African Convention equally obliges State Parties to ensure that the conservation and the management of natural resources are treated as an integral part of national and / or Regional development plans.

The African Convention allows State Parties to make exceptions to its provisions under certain situations. Article 17 states that, the African Convention's provision shall not affect the responsibilities of the State in cases of superior interests of the State, force majeure and the defense of human life.

The main criticism on the usefulness of the African Convention is its failure to set up an administrative structure and mechanisms to ensure its implementation. There is no requirement for regular meetings of State Parties, nor any requirement obliging them to submit any regular reports on how they have enforced the convention. Indeed, a central organ with the duty to oversee and promote the African Convention enforcement would have ensured the practical value of the African Convention.

This notwithstanding, we say that, this Convention has inspired Gabon in the adoption of its Forestry Code in 2001 and its New Environment Code in 2014.

## **2. The African Forest Law Enforcement and Governance (AFLEG) of 2003**

This initiative was launched in October 2003 following the first Ministerial Conference on the application of forestry laws and governance in Africa, jointly organized by the World Bank and Cameroon. The Conference had the following objectives: the exchange of ideas and opinions on forest governance; the examination of pressing issues such as the illegal exploitation of forests particularly for commercial purposes; and equally to determine the role of forest sector stakeholders. The Ministerial Conference of 2003 paved the way for the first international conference on the sustainable management of the forest ecosystems of the Central African Sub-Region, bringing together some 400 members of parliament and forest experts of States and NGOs in October 2006 in Yaoundé, Cameroon.

AFLEG is an initiative at the continental level aimed at specially looking for means and mechanisms for implanting the provisions of many international,

Regional and Sub-Regional mechanisms for the preservation of the environment with forests as a vital element.

The main aim of this instrument is enforcement and governance of African natural resources including forests. It is as a result of this law that many laws and institutions have been erected to ensure the protection of the forests in Gabon.

The AFLEG Declaration had a wide range of objectives that include: encouraging parties to work together to strengthen the institutional reforms already started in the forest sector by African Countries notably good governance programmes and the strengthening of the technical capacity of the forest sector; the reviewing of bilateral and multilateral engagements with a view to finding ways to facilitating the mobilization and the provision of financial resources for and related to the forest law enforcement and governance; reviewing with the appropriate partners the effects of structural adjustments and other economic reform programmes on forest law enforcement and governance with a view to strengthening forest institutions including collaborating with regional organizations and the identification, promotion and financing of better alternative economic opportunities for communities dependent on forest resources so as to reduce illegal activities and lessen the pressure on forest ecosystems.

### **C. SUB-REGIONAL INSTRUMENTS ENHANCING INDUSTRIAL LOGGING IN GABON**

These include: the Yaoundé Declaration (1999); the Treaty Relative to the Conservation and Sustainable Management of the Forest Ecosystems of Central Africa (2005) and the Sub-Regional Agreement on the Control of the Forests in Central Africa (2008).

#### **1. The Yaoundé Declaration (1999)**

As the year 2000 approached, the states of the Central African Sub-Region intensified their efforts to ensuring that, the conservation and sustainable management of the Forests of the Congo Basin is attained. The Yaoundé Declaration is one of such initiatives from a legal prospective. In this initiative, Central African Heads of State commit themselves to the sustainable use of the natural resources of the Sub Region with the Sub-Region's forests being a vital component. They undertake to cooperate in the preservation of the forestry ecosystem of the Sub-Region. The Declaration was made on March the 17<sup>th</sup> 1999 in Yaoundé, (Cameroon) following a summit by the Heads of State of the Sub-Region. It entered into force on the 1<sup>st</sup> of February 2000. The Heads of State in their Declaration insisted on the harmonization of initiatives, and cooperation and setting up of measures aimed at protecting the Forests of Central Africa.

It is aimed at the protection of the Congo Basin Forests. The implication of Heads of State of the Sub-

Region shows their political will to ensure the protection of the Forests of Central Africa including Gabonese forests.

#### **2. The Treaty Relative to the Conservation and Sustainable Management of the Forest Ecosystems of Central Africa (2005)**

To concretize the commitments enshrined in the Yaoundé Declaration of 1999, the Central African Heads of State also entered into another commitment aimed at the sustainable management of the forest ecosystems in Central Africa. This commitment was institutionalized in the Treaty on the Conservation and Sustainable Management of Forest Ecosystems and to the Establishment of the Central African Forest Commission (COMIFAC) in 2005. Initially the abbreviation COMIFAC stood for the council of Ministers in charge of Forests and now, it is known as the Central African Forest Commission. It was intended to serve as a sub-regional reference body or forum for the harmonization of forests and environmental policies in Central Africa and to follow up the implementation of the Yaoundé Declaration through the Convergence Plan that defines the prioritized actions for the conservation and sustainable management of forest ecosystems and savannas for the development of Africa.

The Central African Forest Commission was established in 2005. It is the political and technical organ of orientation, coordination, and decision making pertaining to the conservation and sustainable management of Central Africa's forests ecosystems. It harmonizes as well as coordinates the forest and environmental related policies of its Member States. One of its main successes is the Sub-Regional Agreement on Forest Control in Central Africa. That accord applies to activities related to lumbering, processing, monitoring, evaluation and the transportation of products both nationally and Sub-Regionally from the Central African Sub-Region. The Agreement encourages mutual law enforcement efforts amongst law enforcement officers of neighbouring countries. The commission supports and promotes other Sub-Regional and Regional initiatives on forest protection and is regarded as a reliable partner organization in forestry governance though its effectiveness has been limited by financial constraints.

Another achievement of COMIFAC is the management of trans-boundary protected areas and landscapes. Experts agree that, COMIFAC has been integral to the facilitation, management and coordination of these trans-boundary landscapes. Furthermore, COMIFAC has been able to enhance its authority and legitimacy by developing a reputation among network partners as a reliable organization that represents regional interests and takes its forestry governance work seriously. Its positive interactions with State and Non-State stakeholders in relevant forums, is applauded. COMIFAC stakeholders have

pledged to adopt an autonomous funding mechanism to ensure sustainable operations without external funding.

The rights of indigenous communities to rely on and to participate in the sustainable management of the forest, has been stressed in this Treaty.

#### **D. NATIONAL LEGAL INSTRUMENTS REGULATING INDUSTRIAL LOGGING IN GABON**

A series of legislation ensures legal industrial logging in Gabon. This domestic legislation coupled with international instruments has been paramount in the conservation, the promotion, and the sustainable management of the Gabonese forest ecosystem which accounts for 12% of the Congo Basin Forests. This municipal legislation includes: Law N° 007/ 2014 Relative to Environmental Protection and Law N° 016 / 2001 on the Forestry Code.

##### **1. Forestry Legislation**

Law N°. 016/2001 of the 31<sup>st</sup> of December 2001 on the Forest Code of the Gabonese Republic is the main forestry law in Gabon. This law called the Forestry Code is the ensemble of provisions relative to the waters and forests sector of the Gabonese Republic.

The 2001 Forest Law classifies natural forest land into the Permanent Forest Land of the State (PFLS) and the Rural Forest Land (RFL). The PFLS is made up of classified forest lands. Classified forestlands are those that serve for preservation (protection forests, recreational botanical forests and zoological gardens arboretums, protected areas, forest for didactic and scientific usages, afforestation perimeters, productive forests particularly sensitive or close to Rural Forest Lands). The RFL is made up of forestlands reserved to village communities. The RFL is divided into two zones of which the first is reserved for nationals and is defined by regulations. This shows the will of the legislator to engage the local and indigenous people in the sustainable management of the forest so as to benefit from the income generated by the forests though this is not in full compliance with the full prescriptions of the CBD.

The penal responsibility of defaulters of the Forestry Law and its decrees of implementation is well established by these same instruments. The offences prescribed by the Law target the illegal hunter, those involved in illegal keeping, traders and other buyers. Indeed, it is not only the hunting and capture of animal species that are integrally protected that is forbidden but their detention, transportation and commercialization too. In this regard, the conditions of detention, transportation and commercialization of species of wildlife, game, and hunting products, in its Article 3 makes it clear that, the detention, transportation of living animals species, their carcasses and game are prohibited for the integrally protected species. The

special license for the commercialization of hunting products does not include the sale of integrally protected animal species.

The offences provided by the Gabonese Forestry Code and the corresponding sanctions are unequivocal on the protection of its forests and the fauna therein. Infact, the inter-dependence of the forests which are part of flora and wildlife part of fauna is indispensable. This explains why the Gabonese Forest Code has treated in an integrated manner the offences and the corresponding sanctions on the environment in general paying special attention to the forest (flora) and fauna (wildlife). According to the 2001 Forest Code, the authors of the following offences are punishable with imprisonment from forty five days to three months and with a fine of 25.000fcfa to 1.000.000fcfa or with only one of these two punishments: the violation of prescriptions pertaining to classified forests; unauthorized penetration and with ammunition into protected areas of fauna: non-observation of the regulations on the commercialization, the circulation or the detention of living animals and carcasses of game; the killing of fauna by means of trenches and nets; the disrespect for animal capture and killing norms; the violation of provisions relative to found sharp ivory; non-registration by owners of arms of insurance contract of a hunting nature; the importation, sale, ceding, gift, lending of all the lamps and lightings called "for hunting"; the importation of metallic traps except those destined for the capture of rodents or except written individual authorization issued by the General Director of water and Forests; the non-observation of modalities for the exercise of professional activities such as cinematography and the photography of wild animals; the violation of provisions pertaining to the visit of national parks and circulation within; the non-observation of the regulations on the collection of abandoned logs along rivers, sea sides, roads and parks; the voluntary obstruction of the agents of the Administration of Waters and Forests to the accomplishment of their duty; the cutting and carrying of trees or the exploitation of accessory forestry products without prior authorization from the Administration of Waters and Forests apart from the case of the exercise of the usages of customary rights; and the introduction of new hunting techniques . The law goes further to say that, in the event of the repetition of the offence or escape, the sanction is doubled.

Article 275 of Law No. 016/2001 of 31<sup>st</sup> December 2001 on Forest Code of the Gabonese Republic stipulates that the authors of certain offences shall be punishable with imprisonment from three to six months and with a fine of 1.000.000 fcfa to 10. 000. 000 fcfa or with only one of these two penalties. These offences include: hunting in integral natural reserves, sanctuaries national parks and reserves; the poisoning of sharp objects and streams; the creation of villages,



settlements and private roads; flying over below 200 metres; the hunting or capture of integrally protected species; the commercialization of species integrally protected or products of these species; the non-respect of the periods for the opening or for the suspension of hunting; hunting in forbidden zones; night hunting with illuminating devices; hunting using drugs, poisoned baits, explosives and fixed guns; hunting without permits; the sale, lending, or ceding of permits or licenses; hunting with unauthorized arms and immunities; the violation of provisions relative to carcasses, game and to the meat of animals killed in legitimate defense; the exportation or importation of sharp ivory whose weight is below 5kg and the skin of crocodiles; the importation of hunting products without appropriate documents of the country of origin; the non-respect by air companies of transit and of freight conditions for the transportation of living wild animals according to the provisions of IATA and CITES; the falsification or counterfeiting of exportation or importation permits of hunting products; disrespect for hunting guide of clauses relating to their obligations ; non- observance by the holders of title of hunting guide as well as by their employees, holders of a hunting guide license; the clandestine introduction of clients by the hunting guide; exploitation without title; cutting of wood beyond the limits of the permit, the harvesting of products other than those provided in the exploitation title; unauthorized ceding, transmission or transfer of permits or unauthorized regrouping of exploitation titles; exploitation beyond delays provided by the management plan; disrespect of norms and classification of forestry products; the poor handling of worksite booklets; fraudulent manoeuvres; the non-payment of land taxes and contributions; the non-presentation of account and technical documents to the Administration of Waters and Forests; the practice of cash-crop farming in a classified forest; and the destruction, displacement, disappearance of all or parts of the boundary marks or posts, marking hammers or fences serving to demarcate classified forests. Furthermore this law stipulates that in the event of repetition of an offence, the sanction is doubled.

## 2. Environmental Legislation

### **Law N° 007/2014 Relating to the Protection of the Environment in the Gabonese Republic**

Prior to Law No 007/2014, the environmental sector in Gabon was governed by law No 016/93 of 26<sup>th</sup> August 1993 Relating to the Protection and the Amelioration of the Environment in the Gabonese Republic.

This comprehensive law on environmental policy in Gabon focuses on: the preservation and the sustainable use of natural resources; the fight against pollution and other nuisances and wastes, the amelioration and the protection of living standards; the promotion of new values and activities that generate income as a result of the protection of the environment;

as well as the harmonization of development and the safeguard of the natural milieu.

As such, the State through the Ministry of the Environment: shall be responsible for the elaboration and the putting into place of public policies that would ensure the sustainable management of natural resources so as to ensure both their protection as well as their reconstitution so as to safeguard their continuity; shall enhance the rational exploitation of natural resources ensuring the maintenance of ecological balances and their interactions with environmental conditions; shall strive for non-polluting anthropogenic activities; shall guarantee the planning and the management of urban and rural milieu ensuring prevention against all nuisances as well as the harmonious, spatial and housing organization; and shall equally be responsible for the training, the information, research and the dissemination of knowledge so as to encourage the participation of all citizens so that its environmental policy can be attained particularly by the creation of institutions and other appropriate structures.

Law N° 007/2014 pays a lot of attention on the General Principles of International Environmental Law. Indeed article 7 focuses on several principles and rules that included: the principle of sustainability; the principle of the conciliation of the rights of present generations with those of future generations; the principle of protection and amelioration of the environment; the principle of prevention; the precautionary principle; the principle of correction; the polluter-pay principle; the principle of responsibility and the principle of integration. The incorporation of these principles into this law transforms them into hard law which is therefore legally binding over the Gabonese national territory with regard to the protection of its environment in which the forest is an important factor.

This law has equally led to the densification of the national institutional framework for the protection of the environment which includes; the National Commission for the Environment; the Technical Inter-Ministerial Commission on the Environment; the Fund for the Safeguard of the Environment and Environmental Protection Associations. EIA has also been treated by this law as in other international legal instruments, as well as environmental education and sensitization, and the right to environmental information.

Title V of this law deals with climate change, renewable energies and the energy economy. To this effect, Article 39 stipulates that, the State shall ensure the sustainable management of forests and natural heritage so as to ensure that emission quotas are respected as well as encouraging operations of clean development. Article 40 urges exploiters to ensure the reduction and the compensation of greenhouse gases

within the framework of large exploitation operations or during the transformation of natural resources. Article 41 is to the effect that, in accordance with the recommendation of the UNFCCC a system of greenhouse gases emission is put in place that permits a natural inventory. Article 42 is to the effect that any operation must be based on carbon spreadsheet to check the volume of greenhouse gases to be emitted or to reduce emissions. By conforming to the provisions of the UNFCCC on climate change, Gabon shows its determination in reducing the emission of greenhouse gases particularly by making sure that its forests which serve as a carbon sink par excellence are preserved and managed sustainably.

On sustainable management of the national territory, Article 82 stipulates that any urbanization policy has to incorporate the fight against climate change, adaptation to climate change, and the imperatives of environmental protection as well as human health. In this regard the State: shall determine the national demarcation of the national territory into urban and rural areas and shall provide all urban and rural agglomerations with degraded water cleaning stations, ensure their maintenance and their adaptation.

Law No. 007/2014 also pays attention to biotechnology. Article 108 stipulates that, except provided by texts in force, the use, production importation, exportation, manipulation, transportation, marketing and their voluntary dissemination into the natural milieu of genetically modified organisms (GMOs) as well as any scientific research relative to it can only be carried out with prior authorization issued by the competent authorities after an approval by the Minister in charge of the Environment. Furthermore Article 109 declares that any person whether natural or juristic, public or private, who uses GMOs, has to inform the minister in charge of the environment of any new elements their modality of execution, as well as GMOs on which they are carried out. This demonstrates the willingness of Gabon to comply with the CBD.

Law No 007/2014 provides sanctions for environmental damage which are at the disposal of the Administration in charge of the Environment. These sanctions are of two types: administrative and penal. Article 142 stipulates that the Administration in charge of the Environment alone or in collaboration with other concerned administrations can suspend or withdraw from activity or operation authorizations as prescribed by this law (Article 142). In this vein, after an unsuccessful warning, the Ministry in charge of the Environment can notably order for: the reduction, interruption of all pollution or nuisance generated by the equipment or the installation; the end or the suspension of production operations, the manipulation or transportation of materials, products, substances or wastes, as well as their seizure, their stockage, their neutralization, their impounding, or their destruction;

the temporal closure of the enterprise or establishment as well as the seizure of particulars or exploitation material; and the suspension or cancellation of authorizations; radiation and withdrawal of sustainable development credits from the name of the wrongdoer from the sustainable development national register. Penal sanctions are also provided for with fines and imprisonment terms or one of the sanctions with fines ranging from 1.000.000fcfa to 500.000.000fcfa and imprisonment terms ranging from one month to five years. Moreso, any obstruction to the exercise of their duties of the agents of the Administration in charge of the Environment is an offence and is reprimanded with an imprisonment term of at most three months with a fine between 5.000.000fcfa and 50.000.000fcfa or one of these sanctions only. However, the pecuniary sanctions provided by this law can be replaced by a settlement in accordance with Article 156 of this law which goes further to say that the choice of the transaction is incumbent on the defaulter and must be approved in writing by the competent authority.

## V. INSTITUTIONAL FRAMEWORKS GOVERNING INDUSTRIAL LOGGING IN GABON

Institutions are bodies which follow up and ensure that laws underpinning industrial logging are not disregarded and where these laws are violated the jurisdictional institutions could penalize such perpetrators.

### A. The Ministry of the Forestry Economy, of Waters and Fisheries, in charge of the Environment and National Protection (Ministère de l'Economie Forestière, des Eaux et de la Pêche, de l'Environnement et de la Protection de la Nature-MEFEPEPN)

The main stakeholder in ensuring the protection of the Gabonese forest is the Gabonese State. This is because; it has created numerous national institutions and is equally responsible for ensuring an enabling environment for all the other forest protection stakeholders to carry out their activities. These national institutions include: The Ministry of the Forestry Economy, of Waters and Fisheries, in charge of the Environment and Nature Protection (MEFEPEPN), the Anti-pollution National Centre (Centre National Anti-Pollution-CNAP), the National Centre for Scientific Research and Technology (Centre National de la Recherche Scientifique et Technologique - CENAREST) and the National School for Waters and Forests (Ecole Nationale des Eaux et Forêts-ENEF).

The main public institution charged with the protection of Gabon's forests is the MEFEPEPN. This Ministry has the power to elaborate and to implement national policies in the environmental, forestry and fisheries sectors particularly through its General Directorate for the Environment and Nature Protection (Direction Générale de l'Environnement et de la Protection de la Nature-DGEPN). This department of

the MEFEPEN has as duty the coordination and the implementation of the Environmental and Social Management Plan (Plan de Gestion Environnementale et Sociale-PGES) and can be given support or be consulted by other ministerial units of the MEFEPEN or by other ministries.

### **A.1 A Description of the Structure of the MEFEPEN targeting the Protection of Forests in Gabon**

The MEFEPEN is the institutional framework for the Environmental and Forest Sectoral Programme (Projet Sectoriel Forêt et Environnement-PSFE). It was created by Decree No. 1746/PR/MEF of 29<sup>th</sup> December 1983, laying down the Attributions and the Organization of the Ministry of Waters and Forests and Decree No. 00913/PR/MEPN of 29<sup>th</sup> May 1985, laying down the Attributions and the Organization of the Ministry of the Environment and the Protection of Nature. The MEFEPEN is constituted into three General Directorates: The General Directorate for the Environment and Nature Protection (Direction Générale de l'Environnement et de la Protection de la Nature-DGEPN); The General Directorate for Waters and Forests (Direction Générale des Eaux et Forêts-DGEF), and the General Directorate for Fisheries and Aquaculture (Direction Générale de la Pêche et de l'Aquaculture-DGPA).

The MEFEPEN also encompasses certain institutions as well as organs. These include: The Anti-Pollution National Centre (Centre National Anti-Pollution-CNAP) created by Ordinance No. 5/6 of 22<sup>nd</sup> January 1976. It is a public institution endowed with a scientific and administrative prerogative. Its administration is ensured by a Board of Directors. It possesses financial autonomy and is equally apt to collect revenue in the course of its field operations on the protection of the environment. It comprises in theory of; an analysis and research office with four laboratories (aquatic ecosystems, atmospheric ecosystems, land ecosystems and procedures to combat anti-pollution), an inspection office, a study and expertise office, and a planning office whose principal missions are the permanent inventory of polluted areas, the assessment of the their degree of pollution, the elaboration of a data base, the establishment of classified establishments and counseling on the choice and means of fighting against pollutions and nuisances; The National Committee on Man and the Biosphere (MAB), created by Decree No. 815/PR/MRSEPN of 10<sup>th</sup> July 1978; the National Council for the Environment (Conseil National de l'Environnement-CNE) as envisaged by Degree No 237/PR/MRSEPN of 4<sup>th</sup> March 1976; the National School of Waters and Forests (Ecole Nationale des Eaux et Forêts-ENEF), created by Law No. 10/75 of 18<sup>th</sup> December 1975 as modified by Law No. 7/84 of 12<sup>th</sup> July 1984 and Decree No. 301/PR/MEFPTE.

On the field, the MEFEPEN functions through specialized provincial services, depending on the specific General Directorate. With regard to environmental and nature protection, provincial units have territorial competences over three provinces. They carry out activities relating to the environment, coordinating actions and making periodic reports to the Central Administration of the MEFEPEN. Concerning Waters and Forests, it is incumbent on the Provincial Inspectorates for Waters and Forests. They are subdivided into cantonments and are responsible for the execution of the directives of the Central Services. For Fisheries and Aquaculture, the Inspectorates of Fisheries and Aquaculture have the totality of competences in matters of fisheries and aquaculture in their respective jurisdictions. Furthermore, in the framework of the preparation of the Environment and Forest Sectoral Programme (Programme Sectoriel Forêt et Environnement-PSFE), an analysis of the institutional structure of the Provincial Services of the MEFEPEN was led by the FAO and the main conclusions are found in Annex 7.

### **B. Other non-State institutions engaged in the protection of the forests in Gabon**

Apart from the MEFEPEN, other stakeholders are also involved in the protection of forests in Gabon among which we have: logging companies such as OLAM, SUNRY Gabon, RFM, FOREEX S.A, HUA JIA, CARL RONNOW, KHLL, TBNI, TTIB, Leroy Gabon, Rougier Gabon and SBL; specialized institutions such as the National School for Waters and Forests (Ecole Nationale des Eaux et Forêts-ENEF); and NGOs such as the International Union for the Conservation of Natural Resources (IUCN), the World Wide Fund for Nature (WWF), the Wildlife Conservation Society (WCS), Brainforest and Environment Justice.

Created in 1998, Brainforest is an NGO governed by Gabonese law and focuses on the Forest-Environment issue with a double perspective of support on the field and policy follow up. Its philosophy articulates on the taking into account of the interdependence in the analysis of social and environmental problems, the participation of local populations (Bantu and Autochthonous communities "pygmies") to the different processes pertaining to the recognition of their rights, the development and the taking into account of the specificities of autochthonous people.

Its domains of intervention include: the sustainable management of forest; resources and industries (crude oil and mines); governance; the protection and promotion of the rights of forest communities particularly the autochthonous populations and environmental education. Its mission is to "inform and accompany other stakeholders engaged in the

sustainable and equitable management of Gabonese natural resources.”

The ambition of Brainforest is to spread its activities throughout the Gabonese national territory and even beyond. Presently its activities are deployed in the Haut-Ogooué, Ogooué Ivindo, the Nyanga, the Ngounié, the Woleu Ntem and the Estuaire Provinces in Gabon. Its head office is based in Libreville.

Brainforest functions with two organs; a General Assembly which is a sovereign and consultative organ; and an Executive Secretariat which is the organ charged with the putting in place of the orientations of the General Assembly as well as the execution of projects and programmes. Their different departments include: the Department of Corporate Social Responsibility; the Department of Forest Governance; the Department of Extractive Industries; the Department of Legal Affairs; and the Communication Department.

Brainforest focuses on the sustainable management of natural resources which encompasses network participatory management based on partnerships with civil society organizations, local communities, the technical services of public administrations concerned and with experts in the Forest -Environment sector.

## **VI. CHALLENGES ENSURING SUSTAINABLE INDUSTRIAL LOGGING IN GABON**

The legal and institutional mechanisms put in place by Gabon to deter deforestation and forest degradation and enhance the sustainability of forests are confronted with numerous obstacles and inconsistencies that have militated adversely to the effective implementation of forest laws in force.

Indeed most of this legislation to a certain extent militates against the protection of the forest patrimony in the sense that it is crafted to favour economic development exclusively to the detriment of the forest (environment), despite the numerous negative impacts on the environment. These roadblocks greatly compromise the compliance and implementation initiatives undertaken by Gabon, to ensure the protection of the forest. They render difficult the comprehension and application of the forest (environmental) legislation. These impediments include: the lack of law enforcement and independent judiciary; the limited capacity for the implementation of forest protection laws; lack of commitment to protect the forest patrimony; insufficient recognition of the rights of local and indigenous populations; flawed management plans of forest concessions as well as their limited duration and size; inadequate forest inventory; contradictory provisions in forest laws; fragmented and legislative cross-referencing; ambiguous phrases in forest laws; corrupt practices by political and forest

administration officials and agents; illegal forest exploitation; gaps in field monitoring and control mechanisms; inter-ministerial conflicts and lack of collaboration; centralized management of the forest and the lack of human resources.

### **A. Dispersed legislation and legislative cross-referencing in Gabon**

The effective application of the 2001 Forest Code in Gabon and its decrees of application have been made difficult because they are fragmented and characterized by cross-referencing. Indeed, the laws governing forests in Gabon are spread across numerous pieces of legislations and regulations which render their understanding and implementation difficult because they are not contained in a unique document. The situation has moreover been compounded by the fact that too much cross-referencing has been employed by the draftsmen of these laws which render their implementation tedious and cumbersome. For instance, the 2001 Forest Code of Gabon provides that, the rural forest land is made up of lands and forests reserved for the benefit of village communities according to the modalities determined by regulations. The 2001 Forest Code still states that visits and circulations within national parks are subject to the payment of an entry tax whose rate and base are fixed by the Finance Law. Apart from time consuming, the texts to be referred to are not easily and readily available unlike in well-organized legal systems such as Canada and Great Britain.

### **B. The corrupt practices of the forest administration and the invasive influences of the political and economic elite on forestry policy and decision making in Gabon**

Corruption is one of the ills that is plaguing the forest sector in Gabon, thereby hampering legal protection initiatives put in place to deter deforestation and enhance sustainable forestry.

Indeed State officials in Gabon collect huge sums of money as bribes particularly from logging companies per year from illegal practices. Corruption also facilitates broader illegal forest activities, for instance by allowing illegally harvested timber to be transported and exported. Also, individual bribes to police or forestry officials are often distributed up the bureaucratic chain. For a forest officer, these payments work to keep favour with their bosses and those with more money are able to buy more favour. This means that officials who do not accept payments and distribute them accordingly, are quickly removed from their positions. This leads to enormous obstacles to the implementation of the forest laws in Gabon.

In Gabon, the enforcement of laws and regulations within and outside the forestry sector is very flexible and heavily influenced by interests from the political and economic elite. An anecdotal case

concerns the Kerazingo Scandal that occurred in 2016. Kevazingo (also called Bubinga) is a tree species with a very high timber value and is very much appreciated by Chinese markets. But, its regeneration is problematic. Its harvesting is therefore very restricted in most countries of Central Africa. In Gabon the exploitation of the kevazingo has been prohibited but the export of kevazingo timber products continued nonetheless. The network of people involved was discovered, and a few executive officers in this ministry in charge of forests were jailed for a few weeks. Eventually however, they came back to their offices and some were even promoted.

Indeed in Gabon, Asian enterprises are often pointed accusing fingers for illicit activities in the forest sector. Between 2018-2019, the illegal exploitation and exportation of the kevazingo made headlines across Gabonese tabloids. The sanctions taken by the administration concerned against these illegal practices were not dissuasive: it is rare for a forest concession contract to be cancelled or that huge fines are pronounced. The exportation of transformed or untransformed timber in containers poorly inspected facilitates trafficking.

This is partly due to corruption of the officials charged with monitoring at the different levels (starting from the production to the exportation points). Moreso, the selective and sometimes arbitrary application of laws is partly at the origin of the profit margin between the Asian companies and most of the European companies due to the fact that most forest officials receive bribes from the Asian enterprises. This explains why the European operators are wondering whether they are playing on the same field of play as their Asian rivals. In fact the lending and ceding of forest exploitation licences and permits by Gabonese nationals to foreigners is another corrupt practice that menaces the sustainability of the forest in Gabon. Despite the often declared political will to fight illegality and promote sustainability in the forest sector, forest resources attract a great deal of political interest and are the object of political pressure, in Gabon especially during the granting of timber harvesting titles. Political pressure is therefore a main cause of the lack of transparency in decision making in Gabon's forestry sector.

### **C. Ineffective enforcement of forestry laws and regulations and the lack of an independent judiciary in Gabon**

Another challenge to the legal protection of the forest in Gabon is the poor enforcement of forestry laws and regulations as a result of lack of knowledge and specialization by judicial personnel in the forest sector. Some administrative and judicial judges do not master the fundamentals of the forestry (environmental) law to investigate forest related offences. In Gabon the National School of Administration (Ecole Nationale

d'Administration-ENA) possesses no section consecrated for the formation of forestry (environmental) judges. This explains why magistrates trained in this institution show inaptitude in the application of forestry laws and regulations.

The lack of an independent judiciary in Gabon is equally a major hurdle to the legal protection of the forests in Gabon. The 1991 Constitution of the Gabonese Republic as amended in 1997 affirms that, "justice is an authority independent of the legislative and executive powers" and that, "judges are only submitted in the exercise of their functions to the authority of the Law". In reality this is untrue due to the fact that both the executive and legislative branches of government in Gabon constantly meddle in judicial issues particularly pertaining to the forestry sector. This constant interference influences or in most cases leads to judgments or decisions that at times do not adequately reflect the law. The obsolete legal and regulatory framework that govern the forestry sector and irrespective of their quality, law and regulations are implemented unpredictably. There is a general sense that enforcement is weak due to corrupt practices and influence peddling by political and economic elites.

The poor enforcement of forestry laws and regulations coupled with the absence of an independent judiciary are serious disincentives to the sustainability of the forest in Gabon. This constitutes a serious impediment to the enforcement of forestry legislations and regulations.

### **H. Inter-Ministerial Conflicts and Lack of Coordination of Government Ministries**

The legal protection of the forests in Gabon today is also hampered by conflicts and the lack of collaboration between ministries. In Gabon even though the forestry law is defined, articulated implemented and evaluated by a single ministry (MEFEPEPN), conflicts and lack of collaboration between MEFEPEPN and related ministries exist. Indeed, environmental (forestry) policy in the Gabonese Republic is the duty of MEFEPEPN. Today in Gabon, the Forestry/Agriculture interface is creating conflicts between the MEFEPEPN and the Ministry of Agriculture. To spur economic development, Gabon has promoted large-scale industrial agricultural plantations (agro-industries) of palm oil and rubber. The current government is committed to convert 4 million ha of forest into industrial agriculture. The Singapore-based multinational group OLAM has been granted 100.000 ha for oil palm and rubber plantations, while 200.000 ha have been set aside for small scale oil plantations in the form of joint ventures with OLAM or other foreign investors. The granting of agricultural concessions is the responsibility of the Ministry of Agriculture, which does not coordinate with the Ministry in charge of forests (MEFEPEPN). This has resulted to millions of ha being granted to multinationals at the expense of the

forest cover and without sound land-use planning. There are neither technical nor legal norms to guide the operations of agro-industries. This lack of coordination between the two ministries is a serious challenge that is militating in disfavour of forest protection in Gabon.

Furthermore, conflict situations and lack of coordination in Gabon is again clearly manifested in the allocation of logging titles. Gabon officially allocated 11 million ha to sustainable timber production. However, current estimates are that, 15 million ha are under timber concessions. This raises concerns about the overexploitation of forest resources. The excess is due to lack of coordination between the forestry and tax administrations. The forestry administration is supposed to grant and regulate logging concessions but the fiscal authorities have been accorded de facto allocating rights by offering a tax moratorium to companies that declare a logging interest and can identify a parcel on which they are operating whether logging is their principal activity or not.

## VII. CONCLUSION AND THE WAY FORWARD

Conclusively, the state of the world's forests is critical. This is mainly as a result of deforestation. Gabon's forest is not an exception. Deforestation here is caused mainly by anthropogenic factors that include; illegal logging particularly by industrial loggers, industrial agriculture, mining activities and infrastructural development.

Most States in the world today including Gabon have created laws and regulations to check deforestation. In spite of the creation of these legal and institutional frameworks, forest loss continues despite the importance of the forests to present and future generations.

Many challenges account for the continuous deforestation in Gabon amongst which we have; flawed legislation and institutional framework, corruption, over centralization of forest governance and illegal logging.

It is because of these impediments that militate against forest protection mechanisms that we have made suggestions to reverse the rate of deforestation in Gabon.

## RECOMMENDATIONS

### • Reformation of Policy and Legislation

The 2001 Forestry Code in Gabon has to be reformed, to meet present day forest realities. Indeed legislative loopholes pertaining to the protection of the forest have to be checked. The impediment of fragmented laws common in Gabon has to be resolved by harmonizing the dispersed environmental (forestry) protection arsenals. The settlement of environmental offence by means of transaction and channeling the funds collected into the public treasury rather than for the protection of the forest is a great prejudice to forest

preservation efforts. Indeed, any forest related offence has to be addressed in a due legal process and not by transaction. Then, the laws in Gabon should be clear, precise, stable and easy to be easily understood particularly by the common man. Indeed, legal reform is indispensable for the effective protection of the forests in Gabon.

### • Institutional Reform

Collaboration is essential among all the institutions charged with the protection of the forest in Gabon. Collaboration is needed particularly between the MEFEPEN and the Ministry of Agriculture so as to clearly map out agricultural land and forests for industrial logging.

### • An independent judiciary is necessary to ensure the protection of the forest

Generally speaking, the independence of the judiciary, means that, the judge is expected to be independent, neutral and impartial. It means that, judges are free to bring their own sense of value to bear in interpreting a law and do not simply reflect the values of Government. It also means that judges should not be influenced in their decisions by other motives other than the motive of justice. There can be no protection against the abuse of power even when safeguards are enshrined in a written Constitution, if judges who have to interpret these laws whenever the Government is challenged are mere puppets of Government. A judge must decide issues in accordance with the Law. His personal bias and prejudices as well as his political and religious views, must not be allowed to influence his decisions for, litigants expect a fair and full trial from him.

Other suggestions include: the development and promotion of alternative sources of the forest; education, sensitization and continuous training on the importance of the protection of the forest; the consideration of local and indigenous people as stakeholders in the protection of the forest; fighting corruption in the forestry sector; providing enough human, material and financial resources to forest protection initiatives; compensation of Gabon by the international community for the forest protection efforts made so far and strengthening forest protection NGOs.

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