



## REVUE AFRICAINE DE DROIT DE L’ENVIRONNEMENT – AFRICAN JOURNAL OF ENVIRONMENTAL LAW

Issue No. 8/2023

### Climate Justice and Extractive Industries in African Law

#### Call for papers

Under the aegis of the International Union for Conservation of Nature’s World Commission on Environmental Law, and with support from the Institut de la Francophonie pour le développement durable, the Faculty of Legal, Political and Social Sciences of Tunis, the Konrad Adenauer Foundation, and Natural Justice (through its African Activists for Climate Justice project financed by the Dutch Ministry of Foreign Affairs), issue no. 8/2023 of the Revue africaine de droit de l’environnement – African Journal of Environmental Law (RADE) will focus on the following theme: *Climate Justice and Extractive Industries in African Law*

#### 1. RADE’s purpose

The conclusions of the experts and practitioners meeting at the international seminar on the effective enforcement of environmental law in French-speaking Africa, held in Ouagadougou in November 2011, highlighted the widespread lack of awareness of this new and important branch of law among a broad range of environmental and sustainable development stakeholders.

The Revue africaine de droit de l’environnement – African Journal of Environmental Law was founded one year later in response to the need to promote environmental law and ensure that it is widely understood and enforced on the continent. RADE, with its specific focus on African environmental law, aims to serve as a vehicle for ideas and information, experience sharing and exchanges of best practices, in order to foster progress and strengthen the impact of this vital legal discipline in Africa.

#### 2. Background to issue no. 8/2023

Climate change is no mere virtual menace; indeed, it has become a critical issue for survival, growth, and sustainable development in Africa. Although the IPCC estimates that Africa is responsible for only 3.8% of global greenhouse gas (GHG) emissions, the continent remains the most vulnerable to climate change and environmental disasters, compounding the economic and social inequalities it already suffers.

Owing to its rich subsoil, Africa has been the focus of considerable economic and political interest, and, for the past two decades, it has entered a “commodity super-cycle” attracting numerous foreign investments. The continent is the world’s leading producer of precious metals and strategic minerals, with 26 of the 63 countries with the most extractive industries. According to the Bureau of Geological and Mining Research, Africa holds 30% of the world’s supply of bauxite, 60% of manganese, 75% of phosphates, 85% of platinum, 80% of chromium, 60% of cobalt, 30% of titanium, 75% of diamonds, and 40% of gold.

The multitude of economic benefits derived from these important mineral resources are, however, outweighed by the major socio-environmental impacts associated with their exploitation. There are significant interactions between climate change and extractive industries, and the latter bear a large share of the responsibility for environmental degradation and the climate crisis. Mining causes 7% of global deforestation. Yet forests are second only to oceans as the largest global carbon sinks. Globally, 15 to 17% of CO<sub>2</sub> emissions are due to deforestation. And although GHG emissions from extractive industries already doubled between 1970 and 2010, they are expected to increase by a further 45-60% by 2050 in response to robust growth in global demand for minerals. This is compounded by other impacts of mining, such as soil and water pollution, substrate loss and desertification.

Extractive industries also cause serious disruptions in the way communities interact with their physical and social environment, even destroying their productive resources (water, soil, vegetation), leading to increased conflicts over resource use and even causing climate-induced migration.

This erosion of communities’ rights of access to environmental goods represents a growing injustice. The disruption of ecological balances due to over-exploitation of natural resources increasingly impacts human populations, threatening their very survival. This is a clear case of gross environmental injustice and—more specifically—climate injustice.

Groups suffering from the degradation of their environment struggle to make their voices heard and to defend the values and knowledge they have developed in their home environments. These challenges are compounded by their inability to challenge public policies that do not adequately address their vulnerability to the harmful effects of climate change, which again raises the issue of climate justice.

Climate justice, in this case, involves three types of interactions: between governments, with respect to compliance with international climate commitments; between governments and mining companies; and between mining companies and local communities affected by their activities and dependent on natural resources.

With each successive climate summit, climate justice has become an increasingly strong demand on the part of international civil society, eventually emerging as a central theme of the COP 21 summit, which produced the Paris Agreement in 2015. The Agreement addresses climate justice from a human rights perspective, defining it as a guarantor of human rights. It states that climate change is “a new way of violating” fundamental human rights and that “climate justice is about securing those rights”. It therefore emphasises the realisation of human rights as central to action on climate justice.

Seeking equity, African countries have consistently demanded their fair share of the USD 100 billion annual allocation for the funding of climate change adaptation. The President of Senegal spoke out for climate justice in Africa at the 2022 climate summit in Egypt. In particular, he argued that adequate financial resources needed to be allocated to the Adaptation Fund to enable Africa to develop renewable energy sources. On this occasion, the Chairperson of the African Union Commission also made a strong plea for the climate negotiations to bring about “the effectiveness of Climate Justice, repairing the damages suffered by Africa”.

Moreover, in many countries, judges are increasingly being called upon to promote climate justice. A thriving climate litigation practice is emerging. For example, a court in the Netherlands has ordered an Anglo-Dutch oil major to reduce its CO<sub>2</sub> emissions by 2030. Another ongoing lawsuit pits French oil company Total against a coalition of NGOs over the construction of the world's longest heated pipeline between Uganda and Tanzania, which would result in emissions of 34 million tonnes of CO<sub>2</sub> equivalent per year. The ruling on that case was deferred on 28 February 2023.

At a time when Africa is experiencing an unprecedented mining boom, it is important to question the operationalisation of climate justice with regards to extractive industries. What mechanisms exist or need to be put in place to achieve climate justice for the communities most heavily impacted by mining? How can African states strengthen the role of their courts in this area?

Among the many applicable instruments in Africa, we can cite the Constitutive Act of the African Union (AU), which enshrines the promotion of social justice among its guiding principles. In the mining sector, the African Mining Vision, adopted in 2009, is the gold standard for mining management on the continent. It calls for the introduction of a framework for cooperation and harmonisation of mining policy and legislation, to incorporate transparency, human rights, and action on climate change.

African treaty law generally embraces the principle of responsible management of extractive industries, without, however, going so far as to establish a direct link with climate change. One example is the Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (Abidjan, 1981) and, in particular, its Additional Protocol on Environmental Norms and Standards for Offshore Oil and Gas Exploration and Exploitation Activities.

In domestic legal systems, it can be noted that African laws on the climate and mining fail to take each other into account: climate legislation is generally silent on extractive activities, while mining legislation usually fails to address climate issues.

Although they were enacted in the recent past, the few laws dealing with climate change in Africa make no reference to the climate impacts of mining development. This is the case in Benin (*loi de 2018 sur les changements climatiques*), Kenya (Climate Change Act, 2016), Mauritius (Climate Change Act, 2020), Nigeria (Climate Change Act, 2021), and Uganda (National Climate Change Act, 2021). Only Gabon's climate change ordinance of 2021 makes a passing reference to the issue, stating that economic operators, including mining companies, whose CO<sub>2</sub> emissions exceed a certain volume must carry out annual assessments of their emissions, based on which an overall assessment of GHG emissions is conducted at national level.

For their part, African mining laws, including those adopted during the last decade, fail to consider the climate impacts of mining activities at all, with the sole exception of Mali's 2019 mining code, which includes an analysis of the climate impact of mining projects in its definition of environmental and social impact assessment.

On the other hand, African mining laws now pay more attention to the socio-environmental dimensions of extractive industries, as well as to the governance, transparency, and corporate social responsibility issues of mining companies. They also consider the interests of local communities and people living near mining areas, as well as safety, health, and hygiene issues in the mining sector, workers' rights, and gender equality. In short, they strive to reconcile mining development, environmental protection, and social justice.

### 3. Theme of issue no. 8/2023

Issue no. 8/2023 of RADE focuses on *Climate Justice and Extractive Industries in African Law*.

Proposals for contributions should explore the legal and institutional dimensions of this issue, as reflected in African domestic laws or in the framework of inter-African cooperation at regional, sub-regional or bilateral levels. Efforts to promote climate justice with regard to mining activities should highlight the roles played by various governmental (national, regional, international) and non-governmental (local community, civil society) stakeholders, including corporations (within the framework of their corporate social responsibility activities). Furthermore, in addition to the work of national, regional, and international judges, alternative dispute resolution methods (conciliation, mediation, arbitration) may also be addressed.

Practitioners, judges, lawyers, civil servants, and governmental, intergovernmental, and non-governmental experts who actively follow these issues are encouraged to formulate concrete proposals that can enrich the theoretical findings of academic research.

The normative frameworks to be examined are wide-ranging and may encompass not only instruments directly governing extractive industries, climate change and the justice system, but also the environment, land-use planning, and human rights, with a view to achieving ecosystem sustainability and inter- and trans-generational human solidarity.

### 4. Timetable for issue no. 8/2023

RADE's scientific committee will review all proposals submitted and select the papers to be published. This issue will be coordinated by Mr. Émile Derlin Kemfouet Kengny. The scientific committee and Mr. Kemfouet Kengny will be supported by RADE's secretariat in the editing process.

The authors of the selected contributions must comply with the editorial instructions provided in annex. They may be requested to make changes to their manuscripts.

The provisional timetable for the production of issue 8/2023 is as follows:

- Submission of one- to two-page proposals no later than **21 April 2023**, by email to emilederlin@yahoo.fr, with copies to savadogoy7@gmail.com, alimentasilue@gmail.com and marinabambara@gmail.com,
- Selection of proposals and notification of acceptance: **mid-May 2023**,
- Submission of manuscripts: **June 2023**,
- Dialogue with authors and submission of revised versions: **July 2023**,
- Finalisation of manuscripts in **August-September 2023**, and
- Publication of issue 8/2023 in **autumn 2023**.

**Call for papers – Revue africaine de droit de l'environnement – African Journal of Environmental Law – 8/2023**

As in the case of the previous two editions of RADE, a colloquium on the theme of issue 8/2023 will be held in person and/or by videoconference. The authors of all manuscripts accepted for publication will be invited to take part in the event, the proceedings of which will be published in this issue of RADE.

## INSTRUCTIONS FOR AUTHORS

Articles submitted for publication in RADE must closely comply with the following guidelines in order to ensure consistent presentation.

### Format and software

- Articles should be between 2,500 and 5,000 words in length. They are to be written in MS Word, using Times New Roman 12 font, with 1.5 line spacing.
- Notes, which should be kept to a minimum, should be typed in Times New Roman 10, single-spaced, placed in footnotes, and numbered consecutively.
- Articles should be preceded by an abstract of approximately 10 lines and a list of 3 to 7 keywords, in both French and English.
- The titles of the articles shall be written in all capitals and centred, and followed by the authors' names, titles, and positions. For example:

THE RELEVANCE OF ACCESSION TO THE MAPUTO CONVENTION FOR AFRICAN STATES

Leïla Chikhaoui-Mahdaoui  
Associate Professor of Public Law  
Faculty of Legal, Political, and Social Sciences, Tunis

- Authors should structure their manuscripts using headings and subheadings numbered with Arabic numerals (1., 1.1., 1.2., 1.3., 2., 2.1., 2.2., 2.3., etc.). Headings and subheading must not be underlined or end with a full stop. For example:

1. Enhanced protection of shared resources in accordance with the principles of international environmental law

1.1. Comprehensive identification of resources to be protected

1.1.1. Land and soil resources

- The manuscript shall be written in continuous text, with no particular formatting, and without page numbers, underlining, bolding, or tabbing of paragraphs, with only a blank line inserted between paragraphs.
- Quotations shall not be written in italics. They are to be enclosed in double quotation marks: "...". Quotations within quotations are placed inside single quotation marks (inverted commas): '...'. Words omitted from a quotation should be replaced by three suspension points enclosed in brackets: [...], e.g. "The state reporting system is described as having distinctly political 'ground rules' [...]."

- Foreign-language terms must be written in italics and not enclosed in quotation marks.
- Capital letters should be used sparingly, the idea being that lower case is the rule and upper case the exception. In names of institutions, titles of books and journals, etc., usually the first word of the title and all words within the title except articles (a/an/the), prepositions (to/on/for etc.) and conjunctions (but/and/or etc.) are capitalised, e.g. African Union, International Tribunal for the Law of the Sea, Supreme Court, Faculty of Law, Official Gazette, African Human Rights Law Journal, The Nigerian Law Journal. Titles of ministers are capitalised, e.g. Minister of the Environment, Minister of Justice.
- Months should be written in letters (not numbers). Dates between the first and ninth of the month should not be preceded by a zero, e.g. 3 March 2019.
- To illustrate their articles, authors may provide images, graphs, etc., in digital format (jpeg 600 dpi).

### **Bibliographic references**

- All bibliographic references should be included in the footnotes, without a separate bibliography at the end of the article.
- In footnotes, *op. cit.* should be used to refer to a source that has already been cited and *ibid.* to indicate that the source is the same one cited in the previous reference.
- Bibliographic references should be cited as follows:

#### *Books*

Author(s) (First name initial and Surname), *Title of Book* (in italics), edition number (if applicable), Place of publication, Publisher, Series (if applicable), Year of publication. E.g. P.-M. Dupuy & J. E. Viñuales, *International Environmental Law*, 2nd ed., Cambridge, Cambridge University Press, 2018; J.-M. Breton, *Développement viable et valorisation environnementale*, Paris, Karthala, “Iles et pays d’outre-mer” series, 2006; M. Kamto, *Droit de l’environnement en Afrique*, Paris, EDICEF/AUPELF, 1996.

#### *Edited collections*

Author(s) (First name initial and Surname), followed by (ed.) or (eds), *Title of Book* (in italics), Place of publication, Publisher, Series (if applicable), Year of publication. E.g. R. Ben Achour & S. Laghmani (eds), *Le droit international à la croisée des chemins. Force du droit et droit de la force*, Paris, Pedone, 2004.

#### *Chapters from edited collections*

Author(s) (First name initial and Surname), “Chapter Title”, Author(s) of the book, followed by (ed.) or (eds), *Title of Book* (in italics), Place of publication, Publisher, Series (if applicable), Year of publication, Page(s). E.g. S. Doumbé-Billé, “Force du droit et droit de la force en droit international de l’environnement”, in R. Ben Achour & S. Laghmani (eds), *Le droit international à la croisée des chemins. Force du droit et droit de la force*, Paris, Pedone, 2004, pp. 367-2004.

*Journal articles*

Author(s) (First name initial and Surname), “Article Title” (in double quotation marks), *Journal Title* (in italics), Volume and/or Issue, Year, Page(s). E.g. S. Doumbé-Billé, “La nouvelle convention africaine de Maputo sur la conservation de la nature et des ressources naturelles”, *Revue juridique de l’environnement*, 1/2005, pp. 5-15.

*Online journal articles*

Author(s) (First name initial and Surname), “Article Title” (in double quotation marks), *Journal Title* (in italics), Volume and/or Issue, Year, Pages (if applicable), URL. E.g. O. de Frouville, “La Convention des Nations Unies pour la protection de toutes les personnes contre les disparitions forcées : les enjeux juridiques d’une négociation exemplaire”, *Droits fondamentaux*, No. 6, 2006, pp. 5 et seq., [www.droits-fondamentaux.org](http://www.droits-fondamentaux.org).

*Theses and dissertations*

Author(s) (First name initial and Surname), *Title of Thesis or Dissertation* (in italics), Degree, University, Place, Year. E.g. W. Sifaoui, *L’étude d’impact sur l’environnement dans le cadre du développement urbain durable*, PhD thesis in law, Faculty of Legal, Political and Social Sciences of Tunis, 2017.

*Reports*

Author(s) (First name initial and Surname) or Institution, *Report Title* (in italics), Place, Year of publication. E.g. Le Club des juristes, *Livre blanc. Vers un pacte mondial pour l’environnement*, Paris, 2017.

*Online reports*

Author(s) (First name initial and Surname) or Institution, *Report Title* (in italics), Place, Year of publication, URL. E.g. UNHCR, *Climate Change and the Human Right to Water and Sanitation*, Position Paper, Geneva, 2009, [www.ohchr.org/Documents/Issues/Water/Climate\\_Change\\_Right\\_Water\\_Sanitation.pdf](http://www.ohchr.org/Documents/Issues/Water/Climate_Change_Right_Water_Sanitation.pdf).

*Legislative and regulatory instruments*

Number, Date, Title of the Instrument, Place, Date of publication, Page number (if applicable). E.g. *loi n° 99-43 du 10 mai 1999 relative aux groupements de développement dans le secteur de l’agriculture et de la pêche* (JORT No. 39 of 14 May 1999, p. 710); Ordinance 62-123 on the classification of areas for forestry, agricultural or pastoral use in Madagascar, 1962.

*Court decisions*

Name of the court, Date of the decision, *Names of the parties* (in italics), Note or comment, Title of the publication (if applicable). E.g. ECJ, 24 June 2004, Case C-119/02, *Commission v. Greece*; ECHR, 30 March 2010, *Băcilă v. Romania*; Conseil d’Etat, 8 December 2017, *Fédération Allier Nature*, Case No. 404391, note R. Brett, *Revue juridique de l’environnement*, 3/2018, pp. 631-643.



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