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Suppressing Environmental Damage in Burundi

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Abstract

The Republic of Burundi provides constitutional protection for the environment and the right to the environment. As part of this protection, various laws have been enacted to protect the environment. The Environmental Criminal Law plays its part in this protection. It is a law with its own peculiarities that feeds the repressive apparatus in the fight to protect the environment. However, the statistical data available from the courts, while confirming the prosecution and conviction of environmental criminals, show that the level of repression is low compared to the statistics for cases involving other recorded offenses.

Keywords

Burundi, Environment, Repression

1. Introduction

The state of the environment has become a global concern. The enjoyment of human rights is closely linked to the state and quality of the environment. The International Covenant on Economic, Social and Cultural Rights has led States Parties to recognize the right of everyone to the highest attainable standard of physical and mental health.

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. A better state of health therefore presupposes a healthy environment conducive to good health: uncontaminated water, unpolluted air, a noise-free environment, etc.

A good environment is one in which the elements that make it up, and in particular human beings, can live healthy lives, and this presupposes that it is protected from damage, which is essentially of two kinds: natural or man-made. Damage caused by the disruption of nature cannot be remedied by sanctions. The opposite is true of damage caused by human action. The perpetrators can be

punished. For the most part, such damage is the result of human socio-economic activities aimed at survival, which unfortunately sometimes cause damage and harm to the surrounding environment and the people who live there.

The community of nations is now aware of the need to protect the environment, on which the quality of life depends, from what I would call "environmentally destructive" human activities. This has led to the consecration of a human right to a healthy environment, a right that is now constitutional in scope.

Statistics for 2019 show that 170 national constitutions provide constitutional protection for the environment, 85 of which explicitly recognize the human right to a healthy environment (Prieur, 2018; Prieur et al., 2016). The corollary of this right is that 100 constitutions around the world impose duties to protect the environment (Prieur et al., 2016). In the wake of this right and duty, Article 24 of the Greek Constitution of June 9, 1975, establishes a duty of the state: "The protection of the natural and cultural environment is an obligation of the State. The State is obliged to take special preventive or repressive measures for its preservation".

In France, the Charter of the Environment was adopted in 2004, proclaiming a new generation of human rights. It is a legal instrument designed to protect the environment and thus promote human well-being.

Article 1 of the Charter states that "everyone has the right to live in a balanced and healthy environment". Likewise, "everyone must contribute to the preservation and improvement of the environment" (Article 2). This Charter, which has constitutional status, reflects the will of the French people to ensure effective compliance with environmental protection rules. It enshrines environmental rights and duties.

Article 23 of the Belgian Constitution states that: "Everyone has the right to lead a life in keeping with human dignity. These rights include in particular (...) 4˚ the right to protection of a healthy environment".

With this provision, it is clear that the Belgian constituent sees a close link between human dignity and the protection of the environment, this dignity being the result of the enjoyment of a certain number of rights, in particular social rights. The two examples from the European area lead us to highlight the awareness of the rights and duties enshrined in constitutions, which are two sides of the same coin when it comes to the environment.

As part of its constitutional evolution, the Burundian electorate decided to give constitutional value to the right to a healthy environment, recognizing it as a right of the individual and the citizen. The Constitution of the Republic of Burundi of March 13, 1991, which marks the era of the arrival of democracy, contains a significant dose of commitment to the protection of the right to a healthy environment: "Proclaims its attachment to the respect of fundamental human rights as they result from the Universal Declaration of Human Rights of December 10, 1948, the International Covenants on Human Rights of December 16, 1948, the African Charter on Human and Peoples' Rights of June 18, 1981 and the Charter

of National Unity".

Admittedly, the wording doesn't bring out the environmental aspect at first glance, but the fact that it marks our attachment to the African Charter on Human and Peoples' Rights makes us jump to Article 24 of this Charter, which states that "All peoples have the right to a satisfactory and integral environment, conducive to their development" (Charte Africaine des droits de l'homme et des Peuples). According to this Charter, the right to a satisfactory environment is not only a human right, but also a collective right, a right of peoples. In this sense, the people of Burundi have the right to a healthy environment; consequently, every Burundian who is part of this people also has this right.

The 2005 Constitution not only expresses its commitment to the African Charter on Human and Peoples' Rights in its preamble, but also stipulates in article 19 that the rights it guarantees are an integral part of the Constitution. Thus, the right of peoples to a healthy environment, and thus the right of the Burundian people, is an integral part of the Constitution.

The 2018 Burundian constitution goes one step further, enshrining in the chapter on the fundamental rights of the individual and the citizen the State's obligation to exploit natural resources while preserving the environment: "The State shall ensure the sound management and rational exploitation of the country's natural resources, while preserving the environment and conserving these resources for future generations" (Constitution de la République du Burundi). This Constitution makes good environmental management a duty of the State on the one hand, and a right of individuals and citizens on the other.

The Burundian legislator defines the environment as "all the physical, chemical and biological elements, natural or artificial, as well as economic, social, political and cultural factors that have an impact on the life-supporting process, on the transformation and development of the environment, on natural and non-natural resources and on human activities" (Burundi Environmental Code).

The Burundian Environmental Code, which defines the environment, was promulgated to establish the basic rules for the management of the environment and its protection against all forms of degradation, in order to safeguard and promote the rational use of natural resources, to combat the various forms of pollution and nuisance, and thus to improve the living conditions of human beings, while respecting the balance of ecosystems.

The proclamation of rights and duties in this area of the environment cannot have any legal scope without the adoption of effective sanctions to combat degradation. Consequently, the application of and compliance with legal norms, in this case environmental, requires a strengthened legal framework, and therefore the adoption of dissuasive criminal sanctions.

Environmental damage must be punished, and punished effectively. To this end, in addition to administrative sanctions, which are one way to achieve this, the world has become aware of the need to resort to criminal sanctions. As the European Directive states, "Experience has shown that existing systems of

sanctions are not sufficient to ensure full compliance with environmental legislation. Such compliance can and must be reinforced by the existence of criminal sanctions, which reflect a social disapproval that is qualitatively different from that expressed by administrative sanctions or civil compensation". In this global context of growing awareness of the human right to a healthy environment, Burundi has responded by modernizing its general and sectoral legal framework for environmental protection.

Since the environment covers a wide range of aspects, the legislator has gone beyond the general law of the Environmental Code, which establishes a general framework, to include sectoral protection standards for the various aspects that make up the environment. There can be no doubt that the objective of the various laws, whether general or sectoral, is nothing other than to protect the environment and, moreover, to guarantee the right of man to a healthy environment.

The purpose of this article is therefore to assess the contribution of criminal law to environmental protection in Burundi. It will also examine the correspondence between the protection of the environment, as provided for in the instruments adopted for this purpose, and the reality on the ground.

In short, the ultimate goal is to answer the question of whether Burundian criminal law, for that is what it is, is fulfilling its mission to protect the environment. This question leads me to formulate the following hypothesis: "Criminal law is a driving force behind the implementation of the human right to a healthy environment in Burundi".

The interest of this article is twofold. On the one hand, it notes the lack of research on this subject in Burundi. Dedicating an article to the protection of the environment through criminal law will not only open the mind to the state of the question, but also fill the numerical gap in studies on the subject. The results could thus provide a framework for questioning not only the political decision-maker but also the soul of "Murundi" on the imperative of environmental protection (Ghestin & Goubeaux, 1983).

On the other hand, given that environmental crimes are a social phenomenon whose state of repression by the judiciary must be assessed on the basis of the instruments in force, the content of the statistics on the prosecutions initiated by the Public Prosecutor's Office, culminating in judicial decisions issued by the Burundian criminal justice system, will enable us to identify the extent of environmental crimes and to consider the relevance of strengthening incriminations and the procedural framework.

Cet article vise un double objectif. D'une part, il importe de dégager les textes légaux qui forment le droit pénal de l'environnement. D'autre part, circonscrire à l'aide des statistiques, comment le juge pénal contribue à la protection de l'environnement.

2. Methodology

As far as the method is concerned, we used the exegetical or legal method, which

consists of the jurist looking for the solution to his problem in legal texts. Since the law is entirely contained in the written law, the lawyer must extract it by seeking the will of the legislator.

Second, we need to collect statistical data from prosecutors' offices and courts in order to identify repressive trends in environmental crime.

In the absence of centralized statistics, I will have to consult the available archives of prosecutors' offices and courts to determine the quantitative status of the sentences handed down.

In terms of time, the study will cover the period from 2000 to 2020, between the promulgation of the Environmental Code on June 30, 2000 and its amendment in 2020.

Spatially, the study will be limited to the courts of Ruyigi and Cankuzo. The choice of these two provinces is justified, on the one hand, by the recurrence of forest fires in the province of Ruyigi, caused by man's search for grazing land, and, on the other hand, by the fact that the province of Cankuzo contains a large part of the Ruvubu Natural Reserve.

3. Results

Burundi's environmental criminal law covers a number of offences in different sectors of environmental law. Thus, the Environmental Code provides for 29 offences, the Water Code for 14 offences, the Forestry Code for 28 offences, the Mining Code for 8 offences, the Town Planning, Housing and Construction Code for 4 offences, the Law on the Organization of Fisheries and Aquaculture for 5 offences, the Law on the Organization of the Seed Sector for 6 offences, the law on the permanent stabilization and prohibition of the divagation of domestic animals and basse court provides for 2 incriminations, the 2017 law on plant protection provides for 1 incrimination, the law on the production and marketing of plant seeds provides for 6 incriminations, the law on the hygiene and sanitation code provides for 14 incriminations and the law on the management of pesticides provides for 4 incriminations.

What are the statistics of repression for all these offenses that are provided for and punished by the various laws that regulate the environmental sector?

4. Discussion

The repression of environmental offenses is part of Burundi's criminal environmental policy. Aware of the urgency of environmental issues, the Burundian legislator uses criminal law to protect the environment.

The "organization of the fight against a predefined crime, a fight carried out in various forms, using a variety of means and directed towards precise objectives" (Bouloc, 2021) is a symptomatic feature of any criminal policy. The Burundian legislator has laid the foundations for the repression of environmental crime.

Bearing in mind the principle of "nullum crimen, nulla poena sine lege", the Burundian legislator has defined the scope of environmental offences and the

corresponding criminal penalties. In so doing, it has followed the general framework of criminal law, the determination of material and legal elements.

With these introductory elements in mind, our research shows that Burundi, as in other parts of the world, has turned to criminal law to protect the environment. An analysis of legal instruments for the criminal protection of the environment in Burundi reveals several characteristic features: 1) a quantitative criminal law, 2) a sparse codification, 3) a characteristic codification of areas of protection, 4) a multitude of incriminated facts, 5) varied offences in terms of their nomenclature, 6) custodial sentences and/or fines with no environmental reparation effect, 7) diversified protection in terms of procedure and actors of repression, 8) repression combining deprivation of liberty and/or fines and 9) protection suffering from a lack of qualification in the environmental field.

4.1. Quantitative Criminal Law

Burundian environmental criminal law is quantitative in terms of the number of texts that make up its corpus. The multiplicity of texts is a symptomatic feature of Burundian environmental criminal law. This multiplicity of texts testifies to the awareness of the legislator and, by extension, of the community of the environmental issue. There is a tendency towards exhaustive incrimination of protected areas.

The consequence of this multiplicity of texts is a quantitative understanding of incriminations, characterized by their abundance. From a quantitative point of view, the leading text in this field is the Constitution of the Republic of Burundi. In its chapter on the fundamental rights of the individual and the citizen, the Constitution establishes as a duty of the State the sound management and rational exploitation of the country's natural resources. It must preserve the environment and contribute to the conservation of these resources for future generations.

This duty assigned to the State is therefore the measure/genesis of all environmental policies and legislation in favor of environmental protection. Since criminal law must be used for this purpose, it must be enacted by law, since crimes are a matter of law. As it happens, the Constitution is the source of most of the texts that regulate the repression of environmental offenses. Nevertheless, we must take into account the adoption of texts of legislative scope, whose genesis is the domestication of treaties ratified by Burundi.

Specifically, the right guaranteed by this Constitution is the right to a satisfactory environment (which must be healthy) provided for in Article 24 of the African Charter on Human and Peoples' Rights, with a reminder that this right has constitutional value based on Article 19 of the Constitution of Burundi. This Charter has the merit of legally enshrining the human right to the environment as a people's right (Kamto, 1996).

Among the texts based on the Constitution, the Law on the Environment stands out. This law establishes the general framework for environmental protection in Burundi. In addition to this general text, there are sectoral texts on environmental protection, as provided for by the legislator in article 3 of the Environmental Code.

These sectoral texts, which cover different areas, complete the Environmental Code. They all have one thing in common: they criminalize all forms of environmental damage. With regard to the protection of the environment through criminal law, it can be said that there is no legal vacuum in this area in Burundi.

4.2. Scattered Codification

As mentioned above, Burundian environmental criminal law exists in quantitative terms. Another characteristic of this law is that it is scattered. This is the logical consequence of the multiplicity of texts. Whereas in other countries the offences are contained in a single text, such as the French Penal Code, environmental offenses are provided for in a number of legal texts of different dates, each with its own scope of protection. The Burundian legislator has created a peculiarity by not including all environmental crimes in the Penal Code. The Code contains very few environmental offenses.

In my opinion, the multiplicity of texts is a shortcoming, a reproach that could be levelled at Burundian environmental criminal law, which is built on a multiplicity of texts, leading to referential gymnastics in repression. Those who deal with environmental criminal law have to refer to many different texts.

4.3. Typical Codification of Areas of Protection

As mentioned above, Burundi has a large number of texts dedicated to environmental protection. An analysis of these texts shows that this diversity is due to the environmental areas of protection. In general, the Burundian environmental code protects water, soil and subsoil, air, forests, protected natural areas, biological diversity and cultural heritage. More specifically and by sector, Burundi's various laws protect water, wildlife, forests, subsoil, protected areas and aquatic fauna.

4.4. A Multitude of Incriminating Facts

The previous section highlighted the multiplicity of environmental laws. This results in a multiplicity of criminal offenses, as each law targets its own area of protection and therefore contains its own set of specific offenses. It is clear that each law has its own provisions for environmental offenses. The Environment Code has 29 offenses, the Water Code has 14, the Forest Code has 28, the Mining Code has 8, the Town Planning, Housing and Construction Code has 4, the Fisheries and Aquaculture Act has 5, the Hygiene and Sanitation Act has 14, the Permanent Stabilization of Domestic Animals Act has 2, the Plant Protection Act has 1, the Seed Sector Act has 6, and the Pesticides Act has 4.

Clearly, all of these laws designed to protect the environment have a criminal component, resulting in a variety of punishable acts.

4.5. A Variety of Offences in Terms of Nomenclature

When we speak of the nomenclature of offenses, we are referring to their classification. A review of the various texts that deal with the repression of environmental

crimes, as mentioned above, shows that none of them classifies the crimes that they provide for and punish. We must therefore refer to the Penal Code, and more specifically to article 12, which provides for a triple classification of offenses: contraventions, "délits" and crimes (Code penal du Burundi).

An analysis of the various laws on the protection of the environment shows that the Burundian legislator classifies most environmental offences as misdemeanors. Crimes are therefore less numerous.

4.6. Penalties Involving Deprivation of Liberty and/or Fines with No Environmental Repercussions

The criminal sanctions provided for in the various environmental protection laws punish environmental offenders with imprisonment and/or fines. For most offenses, the legislator has provided for the cumulative application of a prison sentence and a fine, with the judge also having the discretion to apply either a prison sentence or a fine. In terms of environmental reparation, imprisonment is intended to punish environmental offenders. Seen in this way, the aim of these sanctions is not to repair the environment, but to reform the offender and deter potential offenders. Like fines, imprisonment does not involve the offender in restoring the damaged environment. What's more, since the fine is paid into the public treasury, it does not go directly to restoring the environment damaged by the criminal act.

4.7. Diversified Protection in Terms of the Procedure and Actors Involved in Repression

One cannot speak of repression without referring to the actors involved in the chain of repression. As in the case of the Code of Criminal Procedure, any citizen/individual who observes the commission of an environmental offense is empowered to seize the offender and bring him before the police. This is even more precise in the case of flagrante delicto, which refers to public outcry. In addition to the public's role in the repression of environmental offenses, the police also have a role to play: on the one hand, officers of the judicial police with general jurisdiction, and on the other, sworn agents who have the status of officers of the judicial police with limited jurisdiction, with the same missions as the former, but within the limits of their jurisdiction limited to their missions.

As provided for in the Code of Criminal Procedure and other environmental legislation, once the perpetrators have been identified and the evidence has been gathered, the cases are referred to the Public Prosecutor's Office for investigation. At this stage, the prosecutors' magistrates intervene and, at the end of the chain, the judges, if the case is referred to the court. It is clear, therefore, that the criminal chain of repression for environmental offenses involves several actors, with the peculiarity of sworn agents acting as judicial police officers with limited jurisdiction. This is a specificity of the environmental field compared to the normal framework established by the Burundian Code of Criminal Procedure. There is no doubt that

the legislator has chosen to involve civil servants whose daily work involves monitoring the environment.

4.8. Repression Combining Deprivation of Liberty and/or Fines

The various environmental protection laws give the judge the latitude to apply both the principal penalty of imprisonment and the fine, to make an optional combination by applying either the penalty of imprisonment or the fine, or to apply the fine alone.

4.9. Protection Lacking in Environmental Qualifications

With regard to the protection of the environment in Burundi, the various laws in force provide for the appointment of sworn agents with the status of judicial police officers with special jurisdiction to intervene at the beginning of the chain of repression of environmental offenses. Their main role is to investigate and record offenses, carry out seizures, prepare seizure reports and forward files and seizures to the Public Prosecutor's Office. They exercise these powers in conjunction with the judicial police officers of general jurisdiction.

Once a case has been referred to the Public Prosecutor's Office, it is examined by a magistrate, who either dismisses the case (if no offense has been committed, if the facts are minor, if a fine has been paid, or if prosecution is inappropriate) or refers it to a judge.

From this point of view, environmental protection in Burundi suffers from a lack of qualified human resources, and it is for this reason that officials are appointed who are sworn to assist the natural actors in the repression of offences (officers of the general police with general jurisdiction, magistrates of the public prosecutor's office and judges).

As for the officers of the judicial police with general jurisdiction, although they are relatively numerous, the fact remains that environmental aspects are not integrated into their police training. This leads to a clear lack of sensitivity in this area.

With regard to magistrates, environmental law has only recently been integrated into the Burundian academic curriculum, which means that most magistrates, both prosecutors and judges, have never taken this course. This contributes to the lack of environmental sensitivity in the law enforcement apparatus.

The Current State of Environmental Law Enforcement in Burundi: The Case of the High Courts of Ruyigi and Cankuzo In order to determine the current state of repression of environmental offenses, we consulted the criminal files in the archives of the two High Courts.

The first signs of repression of environmental offenses, as provided for by environmental legislation, are emerging. During the reporting period, the Public Prosecutor's Office closed 18 and 22 cases, respectively, in the Ruyigi and Cankuzo High Courts. In terms of convictions, 16 environmental offenders were sentenced, while 2 defendants were acquitted in the Ruyigi High Court. In the same matter,

all those prosecuted were convicted, i.e. 22 environmental offenders at Cankuzo High Court. Taking into account the type of offense, according to the classification of offenses in the Burundian Criminal Code, most of those convicted were for "délits", i.e. 28 environmental offenders, slightly fewer for crimes, i.e. 7 environmental offenders, and 2 offenders were convicted for contraventions.

Of all these convictions, the most severe sentence imposed was 20 years of penal servitude, a sentence prescribed for a crime. Analysis of the data on these sentences shows that in some cases the judge imposed a sentence of imprisonment with a fine, and in other cases only a fine. Taking into account the status of the defendants during the judicial phase, the files show that most of those prosecuted were detained, i.e. under arrest warrant, while others were free defendants. The files consulted reveal only one case of an offender prosecuted under the flagrante delicto procedure.

The files examined show that non-traditional actors in the search for and suppression of crimes contributed to the arrest of the perpetrators. For the most part, these were public officials with the status of judicial police officers with limited jurisdiction, as provided for in environmental protection legislation. In some cases, the arrests were made by the defense forces, especially in the Ruvubu Reserve. These were soldiers stationed in the park.

With regard to the nature of the offences committed, the files examined show that the main offences committed were arson, illegal exploitation of minerals, destruction of animals in protected areas and illegal fishing.

Statistics available from the Ruyigi High Court show that from 2008 to 2020, out of a total of 4715 cases filed with the court, only 18 cases related to environmental crimes. This shows that environmental repression accounts for 0.38% of the total number of repressions. We can conclude that a considerable number of environmental offenses are not known to the law enforcement apparatus. This suggests that the grassroots (the population, sworn officers and judicial police) are not sufficiently active in detecting these offenses. As a result, there is a large number of economic criminals in the environmental field.

5. Conclusion

As we have seen from existing environmental documentation, the concert of nations has become aware of the need to protect the environment. This priority has led to the recognition of the right to the environment, which has been recognized and enshrined in constitutions around the world. Burundi is one of the republics that have included the right to the environment as a human right in its own right. This constitutionally recognized right requires protection by both the state and its citizens. One of the protection mechanisms put in place is the environmental penal code. Burundi has put in place instruments to manage the environment in its various components. We would have concluded that there are various laws designed to protect the environment. Numerous offenses are provided for and defined in their material, moral and legal elements.

The existing files at the Ruyigi and Cankuzo High Courts have led us to conclude that environmental crimes, as provided for by environmental protection laws, are investigated and punished. However, the number of files on environmental crimes is small compared to the number of files on ordinary crimes. Records from the archives of the Ruyigi High Court show that it has recorded repressive cases of environmental crimes in the order of 0.38%, which leads us to conclude that many environmental crimes are not investigated and punished. We recommend that the government, through the Office Burundais de Protection de l'Environnement (OBPE), intensify the training and sensitization of public officials sworn to perform the role of judicial police officers and redouble their efforts to detect, arrest and bring to justice environmental criminals.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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