

Burundi's Mining Code and Environmental Law

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Abstract

The pursuit of economic interests must not undermine sustainable development, one of the pillars of which is respect for the environment. The mining sector contributes to economic growth through spin-offs from mining activities. The Constitution of Burundi advocates the rational management of natural resources. This management must not negate the right to a healthy environment. Laws have been enacted to respect, protect and implement this right, in particular the Mining Code. Derived from the Constitution and the Environmental Code, its purpose is to promote mining activities without compromising the right to a healthy environment. An analysis of this code leads to the conclusion that the environment is a sensitive issue and that a series of legal mechanisms are in place to protect it.

Keywords

Burundi, Mining Code, Environmental Law, Healthy Environment, Mineral Exploitation

1. Introduction

The planet is facing disasters that are sometimes the result of human actions. The protection of the environment is therefore an urgent priority for the international community. This protection is guaranteed by legal instruments established at the international and national levels. Can the right to life, the right to physical integrity, the right to a life worthy of human dignity, the right to privacy, and the right to property be effective without guaranteeing that everyone can live in an environment that is physically and biologically compatible with the narrow ecological tolerances of the human species? (Born & Haumont, 2011; Verdussen & Bonbled, 2011)

People who protect the environment are both actors and beneficiaries, hence the right to a healthy environment that is now recognized. This right has emerged

and developed over time. At the international level, Principle 1 of the Declaration of the United Nations Conference on the Human Environment, adopted in Stockholm in 1972, established for the first time a link between human rights and environmental protection: “Human beings have the fundamental right to freedom, equality and adequate living conditions in an environment of a quality that permits a life of dignity and well-being. It is his solemn duty to protect and improve the environment for present and future generations” (Born & Haumont, 2011). Principle 1 of the 1992 Rio Declaration states that human beings are at the centre of sustainable development concerns. They have the right to a healthy and productive life in harmony with nature.

These declarations were certainly not binding, but they had the merit of bringing to the surface the close link between human rights and the environment. Article 24 of the African Charter on Human and Peoples’ Rights, adopted in 1981, proclaims that “all peoples have the right to a satisfactory and complete environment conducive to their development”. The San Salvador Protocol (1988) to the American Convention on Human Rights makes the right to the environment an individual right. Article 11-1 states that “everyone has the right to live in a healthy environment”. If we consider only these international declarations and conventions, we can conclude that the right to the environment enjoys international recognition.

Partly on this basis, the right to a healthy environment now has constitutional status in many countries. For the world as a whole, in 2019, 170 national constitutions provided constitutional protection for the environment (Prieur, 2011.) Burundi has also historically evolved in the recognition of the right to the environment. The African Charter on Human and Peoples’ Rights is cited in the preamble of the 1991 Constitution. The 2005 Constitution, which marks the end of the civil war, gives constitutional value to the African Charter on Human and Peoples’ Rights. With this integration, the constitutional right to a healthy environment provided for in Article 24 of the Charter is incorporated.

What’s more, the 2018 Constitution more explicitly enshrines this right to a healthy environment. Article 35 states that “the State shall ensure the sound management and rational use of the country’s natural resources, while respecting the environment and preserving these resources for future generations”. This article is part of the chapter on the fundamental rights of the individual and the citizen. The provisions of this article show that the duties of good management and exploitation of natural resources, as well as preservation of the environment, fall on the shoulders of the state.

On the basis of this fundamental law, Article 1 of the Burundian Environmental Code lays down 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. This Code places the improvement of human

life at the forefront and aims to protect the environment by promoting the rational use of natural resources. Moreover, article 4 makes a significant contribution in terms of obligations, since “the Burundian environment constitutes a common heritage, the protection of which is the responsibility of the State, local authorities, public institutions and citizens, individually or grouped in associations”. The burden of protecting the environment ultimately falls on the State and on everyone (Gowing et al., 2020; Matime, 2016; Sindayigaya, 2023).

The Burundian Environmental Code requires the rational use of natural resources. This obligation therefore extends to the exploitation of mining resources, which is regulated by Law No. 1/19 of August 4, 2023, amending Law No. 1/21 of October 15, 2013, on the Burundian Mining Code. The law specifically refers to the Constitution and the Environmental Code, which in turn refers to the duty of rational exploitation of natural resources. The rational use of these resources contributes to the development of the right to a healthy environment and protects it from degradation caused by human activities, in this case, mining (Jobbé-Duval, 1884; Schneider, 2001; Sindayigaya & Toyi, 2023).

This article analyzes Burundi’s Mining Code from the perspective of respect for the environment and the right to a healthy environment. We hypothesize that, based on the Constitution, which requires the State to exploit natural resources rationally, the Environmental Code provides legal levers to protect the environment and the right to a healthy environment in the exploitation of mining resources. The importance of this article is obvious. It allows us to define the scope of protection of the environment and the right to a healthy environment on the table of the sinews of war coming from mining. This scientific aspect has not yet been studied.

2. Methodology

Our methodology is based on comparative analysis. We put into perspective the Environmental Code, which is of a general nature in terms of environmental protection, and the Mining Code, which must be harmonized with the latter, in order to identify the way in which the latter, while contributing to the economic development of Burundi through the financial spin-offs from mining, lays down restrictive rules for environmental protection and, consequently, participates in the respect of the right to the environment. The study therefore focuses on the analysis of the Mining Code in relation to the basic principles set out in the Environmental Code.

3. Results

3.1. The Environmental Code and the Enshrinement of Environmental Protection Principles

The Environmental Code was introduced to implement, among other things, Article 35 of the Constitution. It lays down the principle of codification of sectoral aspects of the environment, subject to compliance with the Code’s provisions

(article 3). It is therefore understandable that a mining code is needed to provide a legal framework for mining operations, which must nevertheless protect the environment. Article 2 of the Environmental Code lays down the principle of rational exploitation of resources and the fight against pollution and nuisance. The code also lays down the principles of natural resource management: sustainable development, information, prevention, precaution, the polluter-pays principle, the principle of responsibility and the principle of participation (article 15). The central question then becomes how, and thanks to what legal provisions, the exploitation of mining resources combines economic development with the imperative of environmental protection, and thus contributes to the right to the environment. In other words, to what extent the Mining Code complies with the requirements of the Environmental Code.

3.2. Legal Mechanisms to Protect the Right to the Environment

As we have just said, Burundi's mining code has just been revised, so the code in force is new. It is important to review the various mechanisms it advocates to ensure respect for the right to a healthy environment.

As far as the legal framework for mining operations is concerned, Article 35 of the Constitution, which is the mother text of other domestic legal instruments, assigns the State the responsibility for the sound management and rational exploitation of the country's natural resources and requires it to conserve the environment. It thus creates a duty for the State and a right for the individual, to whom it is accountable for this sound management and rational exploitation. Hence, and because of this right, the State has committed itself to three main obligations: respect, protect, and implement. The obligation to respect calls on the State, as the vertical debtor of this right, to respect it and ensure that it is respected by every individual, who is also the horizontal debtor (Majambere, 2023; Sindayigaya, 2022). The obligation to protect presupposes that the State adopts legislative or other measures to implement them.

This is the background to the introduction of the Environmental Code. Article 10 stipulates that "the implementation of a policy to protect and improve the environment constitutes, for present and future generations, a permanent obligation for the State and local authorities, as well as for any natural or legal person carrying out activities on the territory of the Republic of Burundi". Furthermore, "the protection of the environment, the maintenance or restoration of natural resources, the prevention and limitation of activities and phenomena likely to degrade the environment and cause harm to human health and ecological balances, and the repair or compensation of damage to the environment are of general interest".

Mining is one of the activities that cause damage to the environment and the right to the environment. Indeed, it's important to emphasize that the exploitation of mining resources, over and above the economic and financial spin-offs, also has its share of consequences for our environment and our lives. As a result, this exploitation undermines our right to a healthy environment.

The Mining Code of the Republic of Burundi, which provides a framework for mining activities, is the result of Article 3 of the Environmental Code, which stipulates that “the provisions of the (...) Code is applicable without prejudice to the rules established by legislative and regulatory texts concerning sectoral aspects linked to the protection or enhancement of environmental elements, insofar as the said rules are not contrary to the spirit and provisions of this Code”. It was from this angle that the legislator established the Mining Code, which defines its purpose in Article 1. According to this provision, “this code applies to all prospecting, research, industrial and artisanal exploitation, processing, holding, transport and trading operations, as well as the closure of mines, mineral or fossil substances, thermal waters and quarry products on the territory and in the territorial waters of the Republic of Burundi...”.

By adopting the Mining Code, Burundi has already fulfilled two of its obligations, namely to respect and protect, by defining, through legislation, the mechanisms it intends to deploy to respect and protect the environment, and consequently the right to a healthy environment.

It is clear from the above that the mining sector in Burundi is not a lawless zone. Moreover, there can be no law without text. The existence of texts governing the mining sector is therefore the first characteristic element of respect for environmental rights in the mining sector in Burundi. The question then arises as to what should be retained from this text in terms of the imperative of respect for the environment. Burundi’s mining code comprises 260 articles. Our study will focus on 19 articles: 21, 26, 41, 43, 65, 68, 94, 96, 123, 133, 135, 187, 150, 157, 196, 198, 249 and 253.

3.3. Legal Mechanisms Provided by the Mining Code for the Protection of the Environment and the Right to the Environment

The definition of terms in Article 2 of the Mining Code avoids any confusion in the process and defines the language used by stakeholders. The legislator has thus defined three key concepts that set the tone for mining operations: the Environmental Impact Study, the Simplified Environmental Impact Study and the Environmental and Social Impact Study. From now on, everyone in the mining world (government officials or operators) is familiar with the concept and knows what it means in a mining file.

3.3.1. Prospecting Authorization

Article 21 of the Mining Code stipulates that prospecting permits are issued by the Minister in charge of mines and quarries. Article 13 requires all legal entities to have a permanent address in Burundi in order to obtain a prospecting license. This permit is an indicator of the orderliness of the sector. In fact, it is easy to obtain an exhaustive list of operators in the sector. As a result, it acts as a brake on illegal operators. Likewise, authorization is an indicator of commitment to the administration and the community. From now on, it will be possible to know who

is prospecting where and to identify their commitment to respect the environment. The permit clearly defines the perimeter within which prospecting takes place. Prior authorization for prospecting is therefore an essential element in the implementation of environmental rights in the mining sector.

3.3.2. The Possibility of Revoking a Mining Title

According to Article 26, mining titles include exploration permits and operating permits for large and small mines. According to the Mining Code, the Minister of Mines and Quarries must be notified of the beginning and end of exploration and mining activities. The Minister appoints agents to monitor exploration and mining activities on a daily basis. Article 36 gives the Minister the right to revoke a mining title in case of violation of sanitary, health, environmental and safety regulations. This is an important lever for the protection of the environment and the right to a healthy environment, since the law makes it possible to stop mining activities that do not respect the environment. It is also praiseworthy that this decision is to be taken after a formal notice has remained without effect. This legal provision for environmental impact assessments is part of the implementation of the principle of prevention.

3.3.3. A research Permit Granted by Decree, with the Start of Research Subject to the Submission of an Environmental Impact Study

Article 41 of the Mining Code stipulates that research permits are granted by decree and after consultation with the Council of Ministers. We interpret this as an indicator of the importance of this research in the life of Burundi and of the seriousness with which the authorities intend to treat this mining title.

The legislator has made the simplified environmental impact assessment part of the dossier to be submitted to the Minister in charge of mines and quarries. Article 43, in turn, makes the commencement of work conditional on the submission of the environmental impact study. The purpose of this study is to ensure that the environment will not suffer as a result of the activity and, if this is the case, the authorities will ensure that remedial measures are taken. It is a crucial lever for the protection of the environment and the right to a healthy environment. These requirements lead to the conclusion that the absence of a simplified environmental impact study leads to the rejection of the application and that the absence of this environmental impact study at the beginning of the work means that the mining title remains on paper. This is a strong preventive element to counteract the possible irreversible degradation of the environment.

3.3.4. A Large-Scale Mining Permit Is Subject to Respect for the Environment

Like the research permit, the large-scale mining permit is issued by decree (art. 65) and, according to art. 68, “the underlying mining contract must include provisions for the protection of the environment in general and the rehabilitation of mined sites in particular, both during and after the period of the permit, whatever the cause, in the framework of the “environmental impact study”. This provision

provides a lever for anticipation in terms of the operator's commitment to respect the environment, and the environmental impact study will serve as a grid for reconciling the pre-operational and post-operational environmental situations.

This provision has the advantage of making the operator more accountable and providing the government with a basis for assessing and enforcing rehabilitation. In this respect, it is a lever for environmental protection and the right to the environment. It should be noted that the Mining Convention stipulates that environmental protection work carried out after the expiry of a large-scale mining permit is at the operator's expense.

3.3.5. Environmental Conditions for Granting a Small-Scale Mining Permit

Like the large scale mining permit, the small scale mining permit is subject to the submission of an environmental and socio-economic impact study approved by the Minister of Environment (Article 94). The mining contract contains provisions on the applicant's environmental protection obligations (Article 96). In addition, the operator who signs the mining contract undertakes commitments "relating to the protection of the environment in general and the rehabilitation of mined areas in particular, within the perimeter, both during the term of the concession and at its end, for whatever reason, following the environmental impact study". In this respect, there are similar obligations for large and small mines. In this respect, there are similarities between the obligations of large and small mines. It is therefore a common point of environmental protection and, consequently, of the implementation of the right to a healthy environment.

3.3.6. Environmental Obligations for the Beneficiary of Semi-Mechanized Mining

The semi-mechanized operator's permit is also subject to environmental requirements, in particular the obligation to ensure respect for the environment and to rehabilitate mining sites (Article 123). This rehabilitation obligation is transferred to the operator when the semi-mechanized mining permit expires, for whatever reason (Article 128). This reflects the company's commitment to the environment.

3.3.7. Artisanal Miners' Obligation to Respect the Environment

Artisanal miners must have an operating permit. They must carry out their mining activities in a rational manner and in compliance with public health, occupational safety and environmental protection standards (Article 133). He is obliged to rehabilitate at the end of the permit, whatever the cause (Article 135).

3.3.8. Requirement for the Consent of Natural or Legal Persons

The exploitation of mineral resources endangers the environment and human life in local communities. Mining damages the atmosphere, infrastructure, private property and health. Aware of these harmful consequences, the legislator has taken care to specify certain relationships between the holders of mining or quarrying rights and landowners. Article 181 stipulates that the consent of natural and legal persons must first be obtained for activities or works involving the exploration

or exploitation of mineral substances in the vicinity of enclosed properties, villages, groups of dwellings, settlements, wells or boreholes, religious buildings and burial sites.

The legislator has taken care to limit the authority's right of authorization by requiring the consent of the surrounding population. The protection of communities is of paramount importance when it comes to basic infrastructure that is of vital interest to the population. The involvement of the public is therefore welcome and their rights are taken into account.

3.3.9. Special Regulations for Certain Zones

The Mining Code provides for the possibility of establishing prohibited, protected and reserved zones. This power is vested in the Minister of Mines and Quarries. Within these zones, mineral exploration and exploitation may be regulated in order to protect public works, certain fragile habitats and ecosystems, and any area of general interest (Article 187). This provision puts a brake on the unbridled pursuit of economic interests at the expense of the environment and the people living in the area.

3.3.10. Requiring Quarry Permit Holders to Provide a Rehabilitation Guarantee, and Creating a Guarantee Fund for Site Rehabilitation

The Mining Code contains provisions regarding quarries. Quarry operators must register with the Mines and Quarries Authority. An industrial quarrying permit is issued by decree, while a mechanized or artisanal quarrying permit is issued by order of the Minister of Mines and Quarries (Article 150). Holders of industrial, mechanized or artisanal quarrying permits are required to carry out rehabilitation work in accordance with environmental regulations.

To this end, holders of industrial, mechanized and artisanal quarrying permits are required to provide a guarantee. These are sums intended to guarantee the execution of rehabilitation works and various irregularities. The Mining Code stipulates that the terms and amounts of this guarantee are determined by a joint decree of the Ministers of Finance, Environment and Mining (Article 157). Holders of large and small mining concessions are required to progressively rehabilitate the sites they operate. To this end, the State has set up a "Guarantee Fund for the Rehabilitation of Sites", the operating and financing procedures of which are established by decree (Article 196).

We believe that these guarantee mechanisms are encouraged by the lack of certainty regarding the actual rehabilitation of the sites. In this sense, it is a positive point, because otherwise the environment would be degraded without any prospect of rehabilitation. This mechanism fills a possible gap and thus ensures the certainty of environmental protection (Sindayigaya, 2022; Strauss, 1974).

3.3.11. Lump-Sum Contributions for Orphan Site Rehabilitation

Under Burundi's Mining Code, holders of mining or quarrying rights and mineral transport permits are required to make a lump-sum contribution to the rehabilitation of orphan sites. The purpose of this contribution is to increase the base for

environmental rehabilitation.

3.3.12. Reports

The government requires holders of mining and quarrying permits to submit an annual activity report detailing the environmental impact of their operations. Similarly, holders of other types of prospecting permits or authorizations are required to submit an annual environmental impact report (Article 198). This is a good control mechanism for the authority to be able to assess the state of the environment as a result of operations and thus initiate remediation (Bakken, 2011).

3.3.13. Monitoring

The Mining Code establishes that mining operations are subject to administrative and technical supervision by civil servants. Holders of prospecting, exploration and mining permits are obliged to comply with measures issued by the Minister of Mines and Quarries and the Minister of the Environment. Holders of permits for prospecting, research and exploitation of mineral substances are obliged to comply with measures ordered by the Minister of Mines and Quarries and the Minister of the Environment. Refusal to comply with the measures will lead the Ministry to carry them out at their expense (Bastida, 2013). The Minister of Mines and Quarries has the power to enforce such orders (Majambere, 2023; Woody et al., 2010). The law thus empowers the authorities to take immediate remedial action to end the hazard. Monitoring contributes to the democratic management and protection of the environment (Majambere, 2023; Mispoulet, 1907).

3.3.14. Recourse to Criminal Law

Burundi's Mining Code includes a penal component to protect the environment resulting from mining and quarrying activities. A total of 24 offences are provided for and punished by the Mining Code. By way of example, we can refer to the fact of carrying out activities that do not respect public health, work safety and the preservation of the environment (Article 249). Article 253 of the Mining Code makes it a criminal offense to violate obligations to rehabilitate the site in accordance with environmental protection regulations. The use of mining criminal law to protect environmental rights plays an important role (Dupuy, 2014). It guarantees compliance with the standard, as the various regulations would be doomed to failure without this criminal power to enforce them (Nkurunziza et al., 2021).

4. Discussion

As we said at the beginning, the Environmental Code was enacted to establish the principles of environmental protection. It follows that all sectoral texts must be adapted to this Code. The same applies to the Mining Code, which regulates the mining sector in Burundi. An analysis of the Mining Code shows that the legislator has taken into account the legal mechanisms for environmental protection in the mining sector. A number of provisions in the Mining Code require that environmental protection be taken into account at every stage of the mining process.

Environmental protection is therefore at the heart of the process, both in the administrative phase of the interaction between economic mining operators and the public authorities in charge of the mining sector.

5. Conclusion

As we said at the beginning, the Environmental Code was enacted to establish the principles of environmental protection. It follows that all sectoral texts must be adapted to this Code. The same applies to the Mining Code, which regulates the mining sector in Burundi. An analysis of the Mining Code shows that the legislator has taken into account the legal mechanisms for environmental protection in the mining sector. A number of provisions in the Mining Code require that environmental protection be taken into account at every stage of the mining process. Thus, environmental protection is at the heart of the process, both in the administrative phase of the interaction between economic mining operators and the public authorities in charge of the mining sector.

The pursuit of economic interests must aim at sustainable development, one of the pillars of which is environmental protection. The mining sector contributes to this development through the spin-offs of mining operations. Burundi, through its Constitution, has committed itself to the good management of natural resources. It recognizes the need not to compromise the future of future generations. Accordingly, Article 35 of the Constitution recognizes the right to a healthy environment. The respect, protection and implementation of this right requires the adoption of laws and other texts to protect it.

In this sense, a Mining Code has recently been promulgated to regulate mining activities. However, the exploitation of mining resources must respect the environment so as not to harm it or the right to a healthy environment. We have analyzed the various provisions of this Code in order to identify the legal mechanisms put in place by the legislator to protect the right to a healthy environment. We conclude that the Code is sensitive to this right in terms of the elements that protect it.

Of course, these are legal mechanisms whose non-observance allows the authorities to take remedial action, which also gives the judiciary grounds to take up cases.

For other researchers, it is interesting to analyze the effectiveness of these mechanisms in order to determine the real impact of this Code on environmental protection and the right to a healthy environment.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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