

Transnational Mining Companies and the Conundrum of Human Rights Protection in Central Africa: Towards Strengthening the Horizontal Effects of Fundamental Human Rights?



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Celui qui n'échapperait à l'arbitraire de l'Etat que pour tomber sous la domination des puissances privées ne ferait que changer de servitude

(Jean RIVERO, 1971).

Abstract Despite having an abundance of mineral resources, the populations of the Central African states have not benefitted much from these resources, with their exploitation having led to dire human rights violations. Driven by this unfortunate reality, the region has reformed its mining codes to better protect human rights in the mining and extractive sectors. However, there is a need to strengthen the safeguarding of these rights through the horizontal application of fundamental rights. This would ensure the criminalisation of human rights violations, the industrial liability of their perpetrators, the imprescriptibility of actions for compensation by victims, and the development of mining justice and human rights education. This chapter examines the human rights issues arising from the activities of transnational mining companies in Africa, with a focus on the central African regions. It is argued that the rise of human rights violations in the extractive industries and mining presents a conundrum, especially as States give in to the artifices of the mining industries to maximise profit. This conundrum is exacerbated by soft and subtle deregulation, a denial of the rights of local communities, and tax fraud. To achieve this aim the

'He who escapes the arbitrariness of the State only to fall under the domination of private powers would only change their servitude' Jean Rivero, « La protection des droits de l'homme dans les rapports entre personnes privées », in René Cassin, *Amirocum Discipulorumque Liber*, t. III, Paris, Pedone, 1971, p. 312.

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751

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chapter uses perspective, positivist, critical thinking, comparative, and socio-political research approaches.

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1 Introduction

It is common knowledge that the countries of the Central Africa region (including Cameroon, Gabon, the Democratic Republic of Congo (DRC), Congo Brazzaville, Central African Republic (CAR), Chad, and Equatorial Guinea) are endowed with significant reserves of mineral resources, both liquid minerals (hydrocarbons) and solid minerals (Touka 2015, pp.7–9). Unlike the manufacturing and building sectors, the extractive industry has been the main generator of states' revenues in the region since their independence (Touka 2015, p.13).

For example, the DRC's vast mineral potential is estimated at 1100 different minerals, and it occupies a prominent place in the world rankings of countries producing strategic minerals. The DRC is the leading producer of cobalt with more than 70% of world production, as compared to Indonesia (4.8%), Australia (3.5%), the Philippines and Cuba (2.7%), and Russia and Madagascar (1.8%) (Voy. La Nouvelle Tribune 2023). According to Jeune Afrique, the DRC is projected to be the second-highest world producer of copper after Chile (Jeune Afrique 2023; Statista 2024). In addition,). These riches led to the geological scandal involving the Belgian geologist Jules Cornet after he explored the great Katanga in 1892. The concept of geological scandal gained traction in contemporary political speeches and scientific research (Goossens 2009, pp.13–16; Le Ster 2011, pp.435–438; De Putter et Decree 2012, p.47).

On the other hand, Gabon is one of the largest producers of manganese (RFI 2024), while Cameroon has the largest deposit of bauxite in the world in terms of quantity and quality (Agence Ecofin 2020). The DRC has over 25 billion tonnes of iron reserves, 3.2 billion tonnes of potassium reserves, 2.2 million tonnes of copper reserves, and 531 million tonnes of phosphate reserves (Gouvernement/Ministère du Commerce 2020). The CAR annually produces 500,000 carats of all types of gemstones and is ranked 10th in the world by volume and 5th by the quality of stones (Central African Republic, Ministry of Mines, Unpublished, p.3). Equatorial Guinea also contains abundant unexploited reserves of gold, bauxite and diamonds (Matières News 2021). Beyond the central African region, other African countries are also endowed with natural resources. For example, in 2023 Angola was classified as one of the world's top six industrial diamond mining countries (Statista 2024). Burundi has 6% of the world's nickel reserves (Burundi Eco 2024).

Although the mining and extractive industry presents an opportunity to advance the economic development of these countries, its exploitation has led to serious human rights violations (Handelsman 2002, p.182). Developed by Karel Vasak, the generational theory of human rights entails classifying human rights into three generations, based on a dual chronological and material approach, and is one of the essential notions of international human rights law. However, some commentators (Vasak 1997, pp.1649–1679; Rousseau 1987, p.135; Helmons 2000, pp.550; Hennebel 2010, pp.423–435), have evoked a fourth generation of rights: the right to human dignity, which does not seem to enjoy sufficient protection in the mining context, despite being entrenched in various international and African human rights instruments, including the *Universal Declaration of Human Rights* (UDHR), 1948, the *International Covenant on Civil and Political Rights* (ICCPR), 1966, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), 1966, the *Convention on the Elimination of All Forms of Discrimination against Women* (CEFAW), 1979, the *International Convention on the Rights of the Child* 1989, the *African Charter on Human and Peoples' Rights* (ACHPR), 1981 and its various protocols, among others. The rights are also affirmed in the constitutions of African States. For example, they are affirmed in the provisions of Title II of the Constitution of the DRC of 2006 (Democratic Republic of Congo 2006), article 1 of the Constitution of the Republic of Gabon as revised in 2023 (Gabon Constitution 2023), articles 8 to 49 of the Constitution of the Republic of Congo of 2015, articles 13 to 61 of the Constitution of the Republic of Burundi of 2018 (Burundi Constitution 2018), article 13 of the Constitution of Equatorial Guinea of 2012 (Equatorial Guinea 2012), articles 22 to 87 of the Constitution of the Republic of Angola of 2010 (Angola Constitution 2010), articles 13 to 64 of the Constitution of the Republic of Chad of 2023 (Chad Constitution 2023), articles 11 to 58 of the Constitution of the CAR of 2023 (Central African Republic Constitution 2023), and articles 22 to 63 of the Constitution of São Tomé and Príncipe of 1975 (revised 2003).

This chapter examines the human rights obligations of transnational mining companies in Africa, with a focus on the Central African region. It is argued that the rise of human rights violations in the extractive industries and mining in this region presents a conundrum, especially as states give in to the artifices of the mining industries for the maximisation of profit. This conundrum is exacerbated by soft and subtle deregulation, denial of the rights of local communities, and tax fraud. In this regard, the protection of human rights in the context of extractive industries and mining should be an issue of great concern in central African countries. Furthermore, the chapter asserts the necessity to reflect on the applicable constitutional and legislative rights, with a view to horizontalising the protection of human rights in the context of the exploitation of mineral resources in this region. This could be achieved by promoting and ensuring the 'humanisation of mining operations', echoing what other authors have called the 'humanisation of international law' (Cançado Trindade 2012) or even the 'humanisation of climate change' (Cournil and Perruso 2018), expressing the need to put human beings at the centre of this industry and the possibility of addressing the responsibility of a State in the name of human rights. It could also be achieved by reflecting on the implementation and concretisation of

such a process in practice. This amounts to considering the effectiveness of the possible horizontalisation of human rights in the mining sector within the central African countries, and which legal mechanisms could achieve this aim.

The theoretical orientation of this chapter is to expose the merits and weaknesses of mining regulations in the Central African region. The analysis is focused on the practical protection of local communities' rights where they suffer from the 'curse or paradox' of an abundance of natural resources. The natural resource curse is understood as the harmful effects of a country's natural resources on its security, political stability and socio-economic development (see chapter "Land-Grabbing as the New Western Agri-business Venture, and the Issue of Natural Resource Curse in Africa" of this volume).

Through prospective, positivist, critical thinking, comparative, and socio-political approaches part I of this chapter examines the theory of the horizontal effect of fundamental rights and the breakdown of violations and attacks on human rights, real or virtual, due to the mining industry. Then the chapter proposes a strengthening of the fight against this scourge through legislative modifications from a substantive point of view, by proposing the strengthening of the penalisation of human rights violations by mining operators, the consecration of objective civil liability, and the civil and criminal imprescriptibility of human rights violations in the context of mining (Part II). The chapter will further suggest procedural readjustment mechanisms for human rights violations, the institutionalisation of class action as well as the organisation of training and information on these rights (Part III), with the ultimate goal of making the mining industry in these countries less destructive of human rights.

2 Human Rights Violations and the Horizontal Effect of Fundamental Rights in the Mining Regions of Central Africa

This part commences with an analysis of the nature of human rights violations in mining areas in Central Africa and a review of the theory of the horizontal effect.

2.1 Recurrent Human Rights Violations by the Transnational Mining Industry in Central Africa

Generally, human rights violations in the context of both the artisanal and the industrial exploitation of mining resources in the states of Central Africa include violations in all three generations or categories of human rights.

Among the rights of the first generation, which is the category of civil and political rights or rights-attributes or rights-liberties of the human person which are

enforceable against the state, a pertinent illustration is the forced labour of children in mines, which results in a violation of the fundamental civil right not to be subjected to forced or compulsory labour enshrined in Articles 8 of the ICCPR, 15 of the African Charter on the Rights of the Child, 16 of the Congolese DR Constitution, 33 of the Congo Constitution, 16 of the Central African Constitution. One such glaring example is the 2019 jurisprudence in the US Federal Court, *International Rights Advocates v. Apple, Microsoft, Dell, Tesla* (1:19-cv-03737). In the case, the person was accused of benefiting from, and aiding and abetting the cruel and brutal use of young children in the mine in cobalt, DRC (at para 2). These multinationals profit from the forced labour of more than 40,000 children in the mines of Katanga in DR Congo through the Chinese companies Huayou Cobalt (through its wholly-owned subsidiary Congo Dongfang Mining) and Swiss Glencore, which supply cobalt, an important mineral in the manufacture of telephones and electric vehicles (Jeune Afrique 2019; Amnesty International 2016). The same scourge is also evident in Cameroon, particularly in the Kambélé mine in the east of the country (France 24 2021) and in the Central African Republic in the Sosso Nakombo region in the southwest of the country (DW 2024).

We can also mention the violation of the right to life enshrined in particular in articles 3 of the UDHR, 6 of the ICCPR, 4 of the ACHPR, 24 of the Burundian constitution, 18 of the Chadian constitution, 30 of the Angolan Constitution, 16 of the DRC Constitution, and article 22 of the Constitution of São Tomé and Príncipe. Violation of this right is particularly evident in Cameroon, where in 2017, at least 43 people died on mining sites exploited and then abandoned by mining companies (Africa News 2019). In Chad, it is reported that in 2019, a mine collapsed, causing the death of more than 50 people and injuring nearly 40 others, thus impacting the right to physical integrity affirmed in particular in articles 4 of the ACHPR.

As for second-generation rights, being economic, social and cultural rights enforceable against the state and the organised national and international community, consideration needs to be given to the pollution of water resources in the mining sector. Indeed, it is generally recognised that activities linked to mines and quarries have always conflicted with good water management (Georges Vigneron 2015, p.172; Kemp et al. 2010, pp.1553–1562). These may result in violations of the right to water (set out in Observation No. 15 of the International Covenant on Economic, Social and Cultural Rights adopted by the United Nations Economic and Social Council, 2002 and supported in Article 14 of the African Charter on the Rights and Welfare of the Child), and also the right to food (understood in particular in Articles 25 of the UDHR, 47 of the Central African constitution, 47 of the DRC Constitution, the Congolese Constitution). A pertinent example of water pollution from mining is to be found in the Congolese-Angolan context, the pollution in 2021 of the Kasai and Tshikapa rivers by the Angolan diamond mine CATOCA. Mining deprives the populations of this part of the country of their access to water they can use in preparing their food (Bokona 2024, pp.317–318). In the same sense, in Gabon, the exploitation of Mounana Uranium had been the basis of the pollution of the waters of the Ngamaboungou River, which has been transformed into a mining waste dump (Ndong 2023).

Several cases of forced evictions (which constitute a violation of the right to sufficient and decent housing recognised in articles 11 of the ICESCR, 25 of the UDHR, 85 of the Angolan Constitution, 48 of the DRC Constitution, 48 of the Central African Constitution) due to mining activities have also been reported in certain Central African states (Khan and Temocin 2022, pp.20–29). There are also examples of the violation of the right to health enshrined in articles 25 of the UDHR, 16 of the ACHPR, 12 of the ICESCR, 36 of the Constitution of Congo, 55 of the Constitution of Burundi, 50 of the Constitution of Sao Tome. In this regard, we can mention the testimony of a resident of Kipushi in the DRC who indicates that ‘the smoke and dust from mining activity threaten and attack us every day. If we had medical tests, we would all have lung diseases. And if we do nothing, ourselves, our husbands, our children, and you our priests, we will all die because of this mining’ (Muhigirwa 2009, p.22).

Similar situations are noted in Cameroon, where more than 72% of gold miners have been infected with mercury in mining sites, which can cause serious skin diseases or even pneumonia (Mongabay 2022). This is also the case in the Central African Republic (CCRAG 2021, p.13)

Concerning third-generation rights, which encompass the so-called rights of solidarity, collectivity, and participation, we can first mention the cases of violations of the right to a healthy, sufficient, satisfactory or conducive environment recognised in articles 24 of the ACHPR, 51 of the Chadian Constitution, 39 of the Angolan Constitution, 53 of the Central African Republic constitution, etc. In this regard there was a report in 2012 by the Carter Centre on the mining activities of the company CHEMAF in DRC. These activities have serious impacts on the environment of the Tshiamilemba and Kabetsha districts, where the average concentrations of manganese, cobalt, and lead are high in the runoff water from its factory (Carter Center 2012, p.7). The same situation prevails in all countries in the region, particularly in Burundi, particularly in the province of Cibitoke (IWACU 2024). Likewise, mining also contributes to deforestation and threatens the preservation of peatlands by releasing carbon in the form of greenhouse gases (GHG) (Komassi 2017, p.19; Dargie et al. 2018), this in violation of international climate commitments under the United Nations Framework Convention on Climate Change (UNFCCC 1992) and its Kyoto Protocol, 1997, as well as the Paris Climate Agreement, 2015 (Bokona 2023, pp.39–50).

About the violation of the right to peace provided for in particular in articles 23 of the ACHPR, 52 of the Central African Republic constitution, and 52 of the Congolese constitution, the Australian mining company ANVIL Mining was complicit in the acts constituting the crime of war perpetrated by the Congolese armed forces, by providing them with significant material support during the Kilwa massacres in 2004. This led to their conviction for war crimes by the African Commission on Human and Peoples’ Rights, which found as part of its decision that this company failed in its obligation to avoid participating in or supporting ‘the perpetration of violations of human and peoples’ rights’ (ACHPR 2023, para. 100 *et seq.*). More recently, in June 2024, the Central African Republic authorities revoked the licence of the Chinese mining company Daqing SARL, which was accused in particular of

sharing information with armed groups (ADF 2024). In these instances, accentuating the horizontal effect of human rights could, if applied, offer itself as an effective means of reversing the trend.

2.2 The Theory of the Horizontal Effect of Fundamental Rights

It should be noted that the theory of fundamental rights makes sense only to the extent that it serves to protect humans against both powerful public entities and private persons. Thus understood, the system of fundamental rights would not consist exclusively of the defensive rights of the human person against public power, but also of all the mechanisms implemented or to be implemented to sanction attacks on human rights resulting from particular acts perpetrated by private persons and entities. From the range of human rights violations indicated above, two types of violations easily emerge, from the point of view of the nature and even the status of their perpetrators. Although attacks by private individuals are the most numerous, those resulting from the actions of holders of state power are also significant. It is known that since the decline of the concept of the welfare state, individuals, natural and/or legal persons, have intervened in several sectors which put them in conflict with the rights of the human person. For several decades these violations or attacks on human rights, although widespread particularly in workplaces, have remained latent, rampant, and inapparent to the point that today, they infiltrate almost the entire socio-economic fabric. This is the case in several countries in the Central African region. There has been an affirmation, albeit not a unanimous one, of the doctrine of “the horizontal effect of fundamental rights”, both direct and indirect (Andriantsimbazovina et al. 2008, p.301). This doctrine establishes that individuals should not only be the beneficiaries of fundamental rights but should also be the bearers of the obligation to respect them (Hochmann and Reinhardt 2018, p.8).

This horizontal effect of fundamental rights constitutes an application of the ‘radiant effect’ of fundamental rights, which is an ‘objectivation of subjective right’ (Hochmann and Reinhardt 2018, p.8). The theory of the horizontal effect has the function of ‘unconcealing’ the ‘sneak attacks’ to which our societies have unfortunately become accustomed. Indeed, new legal and social phenomena have made it possible to put the theoretical fundamentals, even the philosophical underpinnings of the doctrine of human rights, back on the agenda. Some authors believe that the loss of influence of the state in favour of international organisations, but also of private actors, as well as the appearance of public spaces that belong to private persons (Hochmann and Reinhardt 2018, p.9), justifies the extension of the responsibility to respect human rights to the private realm. This fully applies to mining companies. The legal orders of the states under study include legal provisions of a constitutional or legislative nature that govern the relationship of the state and its branches with the individual as well as the relationships between individuals,

although in different forms and with varying intensities. On this basis, this study will identify the obligations that must weigh on mining operators, both public and private, to protect and respect the human rights of the populations of the regions in which they operate. To achieve this, it is necessary to overhaul the substantive provisions of the applicable legislation by widening the circle of behaviours affecting human rights to be sanctioned, or by strengthening the existing criminal, civil, or administrative sanctions.

3 Substantive Legislative Adjustments?

After independence, the states of Central Africa adopted legislation to assert their permanent sovereignty over their natural resources, including those in mines. The first legislative texts on the mining sector were less attentive to the question of human rights. Various reforms have been implemented, though in more recent times. The most recent reform of a mining code is that of the Central African Republic, whose new law was promulgated in 2024. This still inaccessible law has not been analysed in this study, nor has the recent mining legislation of São Tomé and Príncipe. Cameroon and Burundi reformed their mining codes in 2023. Equatorial Guinea and Gabon did so in 2019, DRC and Chad in 2018, Angola in 2011, and Congo Brazzaville in 2005. These reform processes have favoured or strengthened the system of sanctioning violations of human rights. This involves a two-pronged challenge. On the one hand, it is a question of strengthening this perspective in the states that have carried out the reforms, and on the other hand, of leading other states to revise their legislation because of the progress made by the first group. The readjustments should focus on strengthening the criminalisation of human rights violations, the institution of no-fault or strict liability for mining industries, and the rationalisation of the prescription or imprescriptibility of civil actions for compensation in various states in the region.

3.1 Strengthen the Criminalisation of Human Rights Violations

Nowadays, ‘it is clear that penal tools are increasingly used to protect human rights by punishing their violation’ (Lochak 2019, p.191). This assertion, however, goes against the words of Bentham, who indicates that we should not resort to criminal law, particularly in the context of human rights, since ‘the same goal could be achieved by gentler means’ (Bentham 2010, p.69).

The trend toward the penalisation of human rights violations follows the necessity for states to resort to criminal measures to protect certain interests or certain social values (Cartuyvels 2005, p.437), including human rights. This hitherto

doctrinal orientation has since acquired jurisprudential value through several decisions handed down by the European Court of Human Rights, particularly about the right to life (decision cited by Spielmann 2002, p. 34), and the right of children to protection against mistreatment (C.E.D.H., 1998-VI, p.2692) or all forms of sexual abuse (C.E.D.H., 1985, series A 91).

We also note the conventional dimension of the penalisation of human rights violations. Indeed, at the international level, several treaties or conventions oblige States to resort to the criminal arsenal to guarantee the effectiveness of the human rights they set out. This is the case with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 4 of which invites member states to ensure that acts of torture constitute offences punishable by appropriate penalties in the light of their criminal nature. Moreover, the repression of the most serious violations of human rights—crimes against humanity, war crimes, and genocide—by international criminal courts reinforces the internationalisation of this criminalising approach.

In response to human rights violations in the mining sector, the mining legislation of some central African states has adopted this criminalising approach. In this regard, the DRC legislation could not be more ambitious and surpasses all the legislation in the region under consideration. Indeed, the Congolese legislator provides that ‘the exploitation and trade of mining products originating from a site where there has been an infringement of the laws on the protection of human rights, the rights of the child, or the rights of women, are illegal and must be the subject of a report by a competent authority’ (Article 299 *bis* of the 2002 Mining Code as amended and supplemented in 2018).

It may be argued that we can rejoice in the fact that the Congolese legislator of 2018 penalises the violation of all human rights enshrined in both domestic law and international law without distinction. However, there is an issue with the legality of the offences created because of inaccuracies in the legislation. One of these inaccuracies lies in the expression ‘laws on the protection of human rights, children’s rights, or women’s rights’ used in this provision. Indeed, this reference should not be interpreted in the restrictive sense of the notion of law which would only concern legislative acts but rather in its sense of legality in the broad sense (Diez Picazo 2003, pp.450–471), even including constitutional provisions relating to the protection of human rights. Furthermore, this expression should also be understood as not excluding the international commitments concluded by the DR Congo which, moreover, take precedence over laws in the strict sense (article 215 of the Constitution). Furthermore, the principle of legality would require that we determine among the rights guaranteed by the Constitution, those whose violation would result in criminal sanctions against the perpetrators. In addition, for better drafting it would have been necessary to determine the responsible parties concerning the said rights. This unintelligibility in writing gives free rein to arbitrariness and would be likely to dilute the horizontal effect of fundamental rights. It seems that unintelligibility or writing deficit could have an inhibiting effect on the horizontal effect of fundamental rights.

Continuing its orientation towards penalising violations of human rights, the Congolese Mining Code provides that without prejudice to the provisions of Article 299 of the code, anyone who engages in mining in violation of this article, that is to say by violating human rights, is punished with a fine the amount of which is equivalent in Congolese francs of USD10,000 per day until the violation ceases. Likewise, anyone who trades in mining products in violation of this article (based on human rights violations) is punished with a fine equal to three times the commercial value of the products in question (Article 299 *bis* paragraph 3 of Congolese Mining Code as amended).

A major weakness is inherent in these two provisions. Indeed, despite the seriousness of the human rights violations likely to be committed in the mining sector, as has been noted above, the Congolese legislator seems to neglect this magnitude when it only punishes with a fine, whatever the monetary value of such acts. According to the order of precedence of the penal provisions in Congolese criminal law, a fine comes only in the fourth position (article 5 of the amended Congolese Penal Code punishes forced labour and penal servitude). Once it is proven that the mining industry infringes on the right to life, health, and a healthy environment of populations, subjecting all human rights violations to a fine alone may not be feasible. This therefore remains an editorial deficiency that should be corrected.

However, it is necessary to mention the penalisation efforts made by the Equatorial Guinean legislator who, dividing criminal acts into three types: minor, serious, and more serious, places in the last two categories the criminal acts relating to the protection of human rights. For example, an offence is more serious in particular ‘when infringements represent a very serious danger or an imminent risk for the safety of persons, property or the environment’ (Article 120 paragraph e. of the Equatoguinean Mining Code of 29 November 2019 as translated from Spanish). Regarding what constitutes a serious offence, this includes the fact of ‘incompleting the conditions of the enabling titles or the obligations relating to the conditions and requirements of security, resulting in serious occupational risk for life, health, safety, and security, hygiene of workers, or the environment’ (article 119 of the Equatoguinean Mining Code as translated from Spanish).

In Equatorial Guinea the legislator seems not to limit itself to a fine for serious offences, but adds in addition to fines the suspension of 3 months and 1 day to 1 year or even the revocation of the mining title (See article 123 of the Equatorial Guinean Mining Code 2019). In the same vein, we can also salute the work of Cameroonian legislators (Article 181 of the Cameroonian Mining Code 2023). Human rights are protected in that this provision sanctions all acts detrimental to security, hygiene, and environmental protection. In addition, Burundian legislation (Article 249 of the Burundian Mining Code 2019 as revised in 2023) punishes, among other things, with penal servitude of 2–5 years anyone who engages in mining activities in violation of human rights, in particular ‘without complying with the rules relating to public health, safety at work and preservation of the environment’, all of which provide for the penalty of imprisonment in addition to a fine. Other countries should replicate these legislative achievements by providing for the penalty of penal servitude or imprisonment, or any other penalty capable of discouraging behaviour that

violates human rights. But beyond the penalties which would strike natural persons and employees of legal persons, they should also suffer penalties compatible with their nature of impalpability and immateriality, in particular the dissolution of juristic persons, the closure of the establishment, and exclusion from public procurement, (Bokona 2021, pp.1329–1331), particularly in states where the adage *societas non delinquere potest* still survives. It would not be an exaggeration to consider other more severe penal measures if the seriousness of the violation is considerable, provided that it achieves its main objective, which is to protect human rights, in particular by dissuading any behaviour that would infringe them. If the criminal liability of mining operators and their agents is thus established, it remains to consider what is their civil liability.

3.2 *Adopting a System of Civil Liability for Mining Operators*

Faced with the increased industrialisation of human societies and the resulting damage, particularly those affecting the exercise and enjoyment of human rights, it has become almost impossible to take charge of reparation within a framework of responsibility that requires proof of fault. This is why the civil liability regime has undergone a major evolution to establish a form of responsibility that ignores fault. This is the system of strict liability (Pierre 2010, pp.403). Several cases of no-fault civil liability emerge in the provisions of articles 260, 261, and 262 of the Congolese Civil Code Book III. Kalongo Mbikayi believes that ‘objective liability or liability without fault fits well with the authentic Congolese legal mentality’. Indeed, in traditional law the mere fact of causing damage to others constitutes the necessary and sufficient condition for incurring the civil liability of its author, unlike written Congolese law of Western inspiration; traditional law is therefore not concerned with conditions such as the psychological aspects of the author of the damage to determine his civil liability (Kalongo Mbikayi 2010, p.222).

The objectification of the civil liability of the mining industries has been established clearly by the Gabonese legislator (Republic of Gabon 2019), who understands it as the

obligation for the holder of an authorisation or a mining title to fully repair any damage for which it is responsible, including in the absence of fault or negligence, due to its mining activity, within a rigorous time limit compatible with respect for human rights, in particular the right to life, health and to an unpolluted environment (article 4 (64) of Law No. 037/2018 of June 11, 2019, regulating the mining sector in the Gabonese Republic).

It remains to be seen whether this provision will be effectively applied.

In DR Congo, where the law (Congolese Mining Code 2018) also provides for this form of liability, there are still some grey areas to be clarified. The Congolese legislator indicates that such responsibility

aims to protect human beings, property, and the environment due to the potentially dangerous nature of industrial mining activities’ (article 405 *bis* of the Mining Regulations as

amended in 2018). It continues to describe such responsibility to the effect that ‘any holder of a mining and/or quarry right is responsible for damage caused to people, property, and the environment as a result of his mining activities, even in the absence of any fault or negligence. He is required to repair them. It can only be exonerated if it provides proof that this damage comes from a cause unrelated to its mining activity (article 285 *bis* of the Congolese Mining Code as supplemented and modified in 2018).

Two facts emerge from this provision, one posing a principle and the other an exception. While these data are supposed to be convergent, they are nevertheless exposed to contradiction. Indeed, we consider that this form of liability is based, among other things, on the theory of risk-profit or activity risk. This theory imputes to the person who benefits from an activity all its costs, including compensation for the damage it causes, and therefore the legislator admits that ‘any mining and/or quarrying activity which functions for a company rights holder operates at the latter’s risk and that it is the latter who must pay the risks, including the consequences damaging to third parties, property, and the environment’.

Apart from this theoretical foundation, industrial responsibility would also fall under the category of polluter-pays or even the precautionary principle (Banza Ilunga 2023, p. 74). However, providing for the hypothesis of exemption from liability risks leading to the absence of liability, or implying fault-based liability. We can welcome the fact that the Gabonese legislator does not pose any hypothesis of exemption or an exception to the commitment of industrial liability (articles 165 to 172 of law n°037/2018 of June 11, 2019, regulating the mining sector in the Gabonese Republic). Failing this, it would be indicated that, in the event of a plurality of industrial mining operators, all should respond jointly or *in solidum* so that no damage relating to the violation of human rights remains unpunished.

Still within the framework of this responsibility, it is then provided that ‘the liability of the holder of a mining right and/or quarries is also engaged in the event of direct or indirect contamination due to mining activities having an impact on the health of man and/or leading to the degradation of the environment and resulting in particular in the pollution of water, soil, atmosphere and causing damage to man, fauna and flora (article 285 of the Congolese Mining Code as supplemented and modified in 2018).

The legislator adds that ‘the holder of the mining and/or quarry right is required to repair any damage caused by diseases attributable to mining activity following the rules of common law’ (article 285 of the Congolese Mining Code as supplemented and modified in 2018). Note that other states in the region, speaking of social responsibility, have limited themselves to the classic and civil form of liability with fault. This is the case of Chad (article 294 of the 2018 Mining Code) and Equatorial Guinea (article 116 of the 2019 Mining Code). Cameroon assigns ‘absolute and total’ liability, which is also based on fault (article 163 of the 2023 Mining Code).

It is important that all states in the region, and even on the whole continent, adopt strict liability as Gabon and DR Congo have done. Adopting such an option would help promote the greater protection of human rights in the mining industry. States should help achieve such an objective in particular by accentuating the horizontal

effect of fundamental rights. Criminal or civil liability does not exclude administrative sanctions against the mining industry. These could consist of the suspension of the operating permit or its withdrawal in consideration of the seriousness of the acts violating human rights.

However, the fact remains that the Central African states guarantee recourse for compensation without any time-related conditions.

3.3 Enshrine the Civil and Criminal Imprescriptibility of Human Rights Violations

In law, a prescription is understood as a ‘method of extinguishing the legal action resulting from the non-exercise thereof before the expiration of the period fixed by law’ (Cornu (dir.), 2018, p.1680). Otherwise, it is a ‘cause for the extinction of the right to take legal action which renders the request made after the expiry of the time limit for action inadmissible and constitutes an end of admissibility’ (Cornu (dir.), 2018, p.1680). Even though it is recognised as involving a certain amount of injustice and immorality and even being inequitable, a prescription would have as its foundations, among other things, public order and the stability of the law, the presumption and preservation of proof as well as the sanction against the negligent creditor and the protection of the debtor (Levesque et al. 2016, pp.579–587). Nowadays, whether in criminal or civil matters, faced with the seriousness of certain acts, the notion of the imprescriptibility of legal actions has developed. This is an attempt to free the law, or rather justice, from the influence of time. Its consecration instills ‘the belief in a possible neutrality of time, which ceases to count and no longer has to be counted’ (Girard 2018, p.1).

This is how, within the framework of the liability of the mining industry, contrary to the Gabonese mining code, which limits the prescription of actions for compensation to 30 years (article 168 of the Gabonese Mining Code), the Congolese Mining Code manifests the evolution of the concept of imprescriptibility. It states that ‘actions for compensation for damage caused by mining activities on humans and the environment are imprescriptible’ (article 285 of the Congolese Mining Code as amended and supplemented in 2018).

Indeed, faced with the humanitarian and human disasters that the mining industry can cause, the legislators of the states under study have an interest in choosing to ‘stop the clock’ which is running to obtain reparation for the victims of human rights violations. The ratio legis of this development consists of the fight against the impunity of mining operators, just as it plays a role of dissuasion or discouragement from engaging in ‘human rights’ mining. This term would mean, in the context of this study, mining which would be carried out with total disregard for human rights or, better, by ignoring them through their systematic violation. It is therefore desirable that all states in the region establish the imprescriptibility of offences committed in mining zones when they harm human rights.

In other words, one may hope that the imprescriptibility of actions would extend to criminal cases, as has also been established by the Equatorial Guinean legislator. *Article 123 of the Mining Code provides that actions for the restitution of goods subject to the offence or replacement in their previous state or their compensation do not prescribe* (translated from Spanish). The legislators of the countries of the region would not be misguided, as highlighted above, in making certain criminal acts imprescriptible. This is particularly valid when the exploitation of or trade in mining resources takes place against a backdrop of serious violations of human rights which amount to ‘crimes against humanity’. From this point of view, we should consider exchanging the ‘penocentric’ concept of prescription for a ‘facto-centric’ vision. Indeed, the ‘penocentric’ concept would consist, for our part, of calculating the limitation periods for an offence based on the sentence, in this case, the maximum penalty of penal servitude with which the transgression is associated. Generally, and this is the case in Congolese law, offences are punishable by 1-year imprisonment. The ‘facto-centric’ vision of prescription would justify the limitation period not by taking into account the duration of the sentence but the nature of the facts, the perpetrators, the probabilities of their again harming the environment, and the collective organisation of the State. But we should not lose sight of the fact that adjustments to certain structural or procedural rules should supplement substantive revisions.

4 Structural and Procedural Adjustments

It is one thing to have a legal framework concerned with protecting human rights, but another to make it effective in practice. Indeed, despite the application of all the normative advances highlighted above, we note that several human rights violations are still reported. Hence, the practice has developed of borrowing ideas from the framework of ‘environmental or climate justice’ (Laigle 2019, par. 1; Torre-Schaub et al. (dir.), 2022, p.321–323; Torre-Schaub 2016, pp.161–183; Cournil and Varison 2018; Nzumbu Mwanga 2022), Owona 2020) in the context of Central African countries. To do this, strengthening the legal protection of human rights is essential, as it also encourages less vulnerable actors in favour of victims, as well as training and informing members of local communities.

4.1 Making Judicial Protection of Human Rights Effective

The criminal or civil liability of holders of mining rights for violating human rights can, in principle, only be recognised by a competent court. Therefore, the justice system represents the first guarantee of respect for human rights (Decaux 2002, p.79), otherwise, all the merits of the legal systems of the states of the region that have been advanced risk remaining a dead letter. In this sense, we note that mining

companies will often oppose human rights if they are enforced judicially (Sontag 2009). This assertion is more true for mining industries owned by multinationals.

However, the judges of several countries studied seem to be in ‘resistance, constantly reiterated, to give effect’ (Vesina and Gay, p.277) to human rights, notwithstanding their justiciability, applicable to all generations of rights, even though the legal framework in force is fully favorable to human rights enforcement. This sometimes indicates the judges’ lack of information or training on the tools at their disposal. For example, in the DRC the only case presented as unprecedented and historic pitted a worker at the Kisanfu mine against the company that employed him in 2021. To date, this case has not been brought to court. It only resulted in an arrangement concluded before the Kolwezi High Court (See RAID 2022). In Cameroon, we can mention the lawsuit, considered ‘unprecedented’, brought before the Batouri Court by the non-governmental organisation (NGO) Center for Environment and Development (CED) on behalf of four families who had lost their homes following the Kambele incident attributed to the Chinese company Mecheng Wang Woping (Afrik21 2022). Unfortunately, the outcome of this trial has not been reported. In other countries, these appeals have not been reported so far. Faced with such a situation, we can endorse the observation of Stéphane Doumbé-Billé that the judicial protection of human rights is constantly hesitant within the formal legal system. This is the case in Africa and Central Africa in particular, with human rights guaranteed but ineffective in practice (Doumbe-Bille 2013, p.693).

This observation is still plausible given that the majority of emblematic cases of human rights violations concerning mining companies operating in the region are brought before foreign national courts, particularly in the countries where they are domiciled and where there is a real legal constraint (Sontag 2009). This would aim to avoid the various legal or practical obstacles that would promote the ineffectiveness of internal legal action in the region. These obstacles include the denial of justice in local courts, the costs of filing a complaint, and the difficulty in obtaining legal representation or legal assistance from a lawyer due to a lack of resources. Furthermore, prosecutors do not have the resources, skills, and support necessary to carry out their mission of investigating the participation of mining operators in acts of human rights violations, (Office of the High Commissioner for Human Rights 2011, pp.33–34).

The countries under study should learn from one of the United Nations Guiding Principles on Business and Human Rights. Principle 26 recommends that

States should take appropriate measures to ensure the effectiveness of domestic judicial mechanisms when faced with human rights abuses committed by businesses, including by examining means of reducing legal, practical, and other obstacles that could lead to denial of access to remedies.

In this sense, these States would gain in efficiency by adopting more practical measures. It would then be necessary to establish the principle of free legal assistance for the benefit of victims of human rights violations committed by mining companies by placing legal costs either at the expense of the public treasury or at the expense of the defendant company. The legal costs in question should cover

procedures ranging from referral to the court to lawyers' fees, regardless of the outcome of the trial. In addition, any act of corruption committed to suppress evidence related to human rights violations should constitute an aggravating circumstance.

It would also be appropriate for special cells to be established in public prosecutor's offices to investigate human rights violations in the mining industry. Even by putting in place these different mechanisms that could make the judicial system more efficient and more accessible to all victims, other measures remain necessary to encourage the effectiveness of reparation within reasonable time frames.

4.2 Instituting Class Actions Against Human Rights Violations

Faced with human rights violations committed in the mining sector, many victims are unaware of their rights and the recourse available to them to obtain compensation for damages, even though they have the right to useful access to justice (Redress 2006, p.44). Therefore, ignorance of the law or their rights by local communities potentially victims of the "human rights" mining industry is 'one of the major obstacles to access to the courtroom in Africa' (Degni-Segui 1994, p.464) in general and, in Central Africa in particular and presents itself as 'a factor in the violation of human rights' (Maldonado 2014, pp.85–98). This would be associated with the prevalence of illiteracy, particularly in the villages surrounding the mining industries. For example, Equatorial Guinea only has 5% illiterate people while Gabon has nearly 15%. In DRC and Congo Brazzaville this figure is almost 20%, while Cameroon and Burundi have around 25% and Angola tends towards 30%. The Central African Republic and Chad are poor performers in this area with more than 60% of people illiterate (World Sociological Atlas, Ranking of African States by literacy rate, updated January 5, 2023).

Faced with the illiteracy of victims of human rights violations, it is difficult to impose on them the principle according to which 'no one is supposed to ignore the law' (Degni-Segui 1994, pp.464–465), at the risk of promoting impunity for cunning mining operators. To remedy this unfortunate situation, some authors have proposed legal assistance mechanisms for these rural victims (Dieng 1990). In the same logic, we believe that we should encourage the emergence of 'mining justice' by counting on the activism of civil society as is the case with climate justice (Torre-Schaub 2018, p.121).

Indeed NGOs, opinion leaders, elected officials, and justice officials should be given the right to take legal action against mining companies in the name and on behalf of the victims of their actions who cannot do so themselves. These personalities who are more familiar with the legal workings and have the means to bring into play the criminal and/or civil responsibilities of mining operators that violate the law should put up a strong front against the practices of intimidation and influence peddling which victims of human rights violations have often suffered, in the face of the dominant position of transnational mining companies.

These efforts may be confronted with challenges to the mechanisms of interest and/or standing to take legal action, and this necessitates the reform of procedural laws. Such a reform should be inspired by the North American *class action* mechanism, which consists of allowing ‘an individual to assert the interests of a category of people (the class) without being obliged to justify mandates from the part of these [in that] the judge must then confer on the representative the capacity to act for the class while the latter does not strictly speaking have an interest in acting’ (Frison-Roche 2012, p.525; Ung 2023, p.291).

A legislative framework providing for a class action procedure will make it possible to avoid various forms of abuse of diverse origins. For example, it would safeguard against personalities bringing actions to enrich themselves at the expense of victim populations, or judges espousing legalism and depriving victims of their right to be compensated. Failing to initiate such a reform, we should focus on informing and training potential victims to enable them not only to protect themselves against attacks on their rights, but also to denounce them, and, possibly, to refer the matter to the competent judicial authorities with full knowledge of the facts.

4.3 Organising Information and Training in Human Rights for Staff and Populations Living Near Mining Sites

Recognising that ignorance of rights is a great danger to the upholding of human rights, the states of Central Africa need to provide basic education for the benefit of mining communities.

As defined by the Office of the High Commissioner for Human Rights, human rights education includes ‘training and information activities aimed at creating a universal culture of human rights by instilling knowledge, qualities, and attitudes likely to strengthen respect for human rights and fundamental freedoms’ (Office of the High Commissioner for Human Rights 1996. A/51/506/Add.1). In a similar vein, the General Assembly of the United Nations (UN) affirms that ‘education and training in human rights are essential to the promotion of universal and effective respect for all human rights and fundamental freedoms for all’ (Article 1, paragraph 2 of the United Nations Declaration on Human Rights Education and Training of December 19, 2011). Indeed, the essential issue of such an approach is, in this case, the effectiveness of the phenomenon of humanisation of the mining sector in the region, through the mobilisation of all the stakeholders, the miners, potential culprits of the violations of human rights, and the populations who are potential victims of them. Therefore, for this to be possible awareness must be raised by the parties concerned (Decaux et al., p.78). States could also adopt legislative measures to require mining companies to provide human rights education in mining areas, for the benefit of both the staff and the local populations.

Central African countries should encourage the translation, into local languages of the relevant provisions of mining codes and other instruments relating to

measures to protect human rights. This should be followed by radio or television broadcasts in the same languages on the social issues of mining, particularly human rights, without forgetting awareness campaigns in the most remote areas where populations do not have access to communication technologies. States should ensure that the translation work and the awareness campaign are financed by the budgets of mining companies.

5 Conclusion

Human rights are a cogent modern issue (Andriantsimbazovina et al. 2008, p.vii) and their protection is a universal ideal that must be ensured in all sectors of social life, especially where they are very fragile and likely to be violated. One of these sectors, which was the subject of this study, is the mining industry in Central Africa, whose harmful effects on the social life of the relevant populations are alarming.

Generally, liberal mining legislation focused on attracting more investment does not allow the protection of community or human rights (Komassi 2017, p.i). In Central Africa mining legislation as reformed has nevertheless shown itself in theory to be socialistically oriented by introducing courageous measures aimed at ensuring respect for and the free exercise of human rights in the face of possible violations caused by mining companies.

Indeed, as articulated by the United Nations Guiding Principles, these companies 'should avoid violating the human rights of others and remedy the negative impacts on human rights in which they are involved' (principle 11 of the United Nations Guiding Principles on Business and Human Rights). Legislators in the region should continue to strengthen deterrence and sanction mechanisms to achieve this ideal. To achieve this end, central African states should not establish themselves as closed, 'autonomist' or 'separatist' systems (De Frouville 2019, p.78) for designing and organising the protection of human rights. They should also avoid inconsistencies with norms of international law or domestic law. This is because the normative interactions between the internal norms of States on the one hand and between these and international norms would lead to a 'cross-fertilization' (Turgis 2012, p.19) or a 'cross-fertilization of orders in relation' (Turgis 2012, p.19).

This chapter has therefore noted and criticised some of these mechanisms which demonstrate some progress and has categorised them. These categories include, among other things, the criminalisation of human rights violations committed by mining operators, the establishment of a new form of civil liability, namely no-fault industrial liability, and the introduction of the imprescriptibility of actions for compensation for violations of the said rights. However, the implementation of these provisions is as yet ineffective, as in practice human rights violations in the sector continue not to be reported, and the judicial system seems powerless and not sufficiently organised to address them. Added to this is the illiteracy and lack of information and training of the victims of these acts, who cannot effectively deploy the legal mechanisms available to them. Furthermore, the corruption of managers and public

officials involved in the operating chain of these mechanisms is a major obstacle to their implementation. To address these problems this chapter has endeavored to provide some avenues of correction to make ‘mining justice’ truly effective in the countries of Central Africa. This requires free and specialised judicial services, the representation of the interests of local communities by civil society actors, and focusing the fight against corruption on solutions beneficial to victims of human rights violations. The States of Central Africa, like all of Africa, although still pursuing economic development, should not give carte blanche to the mining industries to commit acts violating human rights, which could compromise their development and reinforce the thesis of the curse or the spell of natural resources.

References

- Africa Defence Forum (2024) RCA accuses Chinese mining company of collusion with rebel groups. <https://adf-magazine.com>. Accessed 16 Apr 2025
- Africa News (2019) Cameroon: 43 deaths on abandoned mining sites in 2017. www.google.com/amp/s/fr.africanews.com. Accessed 16 Apr 2025
- African Charter on Human and Peoples’ Rights (1981)
- African Commission on Human and Peoples’ Rights (2023) Institute for Human Rights and Development in Africa and Others v. Democratic Republic of Congo. Communication 393/10
- Afrik21 (2022) Cameroon: a Chinese mining company brought to justice for murder and pollution. <https://www.afrik21.africa>. Accessed 17 Jan 2025
- Amnesty International (2016) Child labour behind the production of smartphones and electric cars. <https://www.amnesty.org/fr/latest/news/2016/01/child-labour-behind-smart-phone-and-electric-car-batteries/>. Accessed 10 Feb 2025
- Amnesty International (2023) Powering change or business as usual? Forced evictions in industrial cobalt and copper mines in the Democratic Republic of Congo. <https://www.amnesty.org/en/documents/afr62/7009/2023/en/>. Accessed 10 Feb 2025
- Andriantsimbazovina J et al (eds) (2008) Dictionary of human rights. Presses Universitaires de France, Paris, p 864
- Angola Constitution (2010)
- Auty R.M. (1990) Resource-based industrialization: sowing the oil in eight developing countries. Clarendon Press, Oxford, p 303
- Bentham J (2010) Traité de droit civil et pénal. Dalloz, Paris, p 478
- Bokona F (2021) Réflexions sur la régénération du système pénal congolais. Casuistique du droit pénal des ressources naturelles. In Bigira JP, Mingashang I (eds), Le droit pénal entre douleur et enchantement dans le contexte contemporain. Liber amicorum. Bruylant, Bruxelles, 1319-1417
- Bokona F (2023) Industries minières et justice climatique en Afrique centrale : étude de droit international et comparé. Revue africaine de droit de l’environnement, n°8, 39-50.
- Bokona F (2024) Reflections on the re-orientation of the methods of shared waters governance in African river basin organizations. In: Ashukem J-CN, Sama SM (eds) Human rights and the environment in Africa: a research companion. Routledge, New York, 312-327
- Burundi Constitution (2018)
- Burundi Eco (2024) The mining sector, disappointing despite being a bearer of hope. <https://burundi-eco.com>. Accessed 16 Apr 2025
- Burundian Mining Code (2019) Revised 2023
- Cameroon Constitution (1972) Revised 2008
- Cameroonian Mining Code (2023)
- Cancado Trindade AA (2012) Le droit international pour la personne humaine. Pedone, Paris, p 370

- Carter Center (2012) Les investissements miniers en République démocratique du Congo : Développement ou appauvrissement des communautés locales ? Report, p 60
- Cartuyvels Y (2005) Les droits de l'homme : frein ou amplificateur de criminalisation ? In H. DUMONT, F. OST, S. VAN DROOGHENBROECK (eds.), *La responsabilité, face cachée des droits de l'homme*. Bruylant, Brussels, p 391-439
- Central African Republic Constitution (2023)
- Central African Republic, Ministry of Mines. Aperçu sur le potentiel minier de la République centrafricaine. Unpublished
- Chad Constitution (2023)
- Congolese Mining Code (2018)
- Constitution of São Tomé and Príncipe (1975) Revised 2003
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Cornu G (ed) (2018) *Vocabulaire juridique*, 12th edn. PUF, Paris, p 1 152
- Cournil C, Perruso C (2018) Reflexion sur 'l'humanisation' des changements climatiques et la "climatisation" des droits de l'homme. *Emergence et pertinence. Revue des droits de l'homme* 14. <https://journals.openedition.org/rvdh/3930>. Accessed 11 Apr 2025
- Cournil C, Varison L (2018) Les procès climatiques. Entre le national et l'international, Pedone, Paris, p 298
- Dargie GC et al (2018) Les tourbières du bassin du Congo : les menaces et les mesures de conservation. *Revue Mitigation Adaptation Strategies for Global Change*. <https://doi.org/10.1007/s11027-017-9774-8>. Accessed 11 Feb 2025
- De Frouville O (2019) L'Etat des critiques dans le champ juridique : un demi ? In Dubout E et Touze S (dir.), *Refonder les droits de l'homme. Des critiques aux pratiques*. Pedone, Paris, 77-97
- De Putter T, Decree S (2012) Le potentiel minier de la République démocratique du Congo (RDC). *Mythes et composantes d'une "dynamique minière"*. *Conjonctures congolaises*, 48-62
- Decaux E, Rispoli E, Rocha TC. L'éducation et la formation aux Droits de l'Homme. *La construction du droit international : un processus de maturation collective. Annuariobrasileiro de dereitointernacional* 1, 68-88
- Decaux E (2002) Justice et droits de l'homme. *Droits fondamentaux*, 22, 77-87
- Degni-Segui R (1994) L'accès à la justice et ses obstacles. in *L'effectivité des droits fondamentaux dans les pays de la communauté francophone: proceedings of the international conference, Port-Louis*, 449-467
- Democratic Republic of Congo Constitution (2006) Revised 2011
- Dieng A (1990) Assistance juridique aux populations rurales. *La Justice en Afrique*, 106-110.
- Doumbe-Bille S (2013) La juridictionnalisation des droits de l'homme en Afrique : 'much ado about nothing'. In: Akanji-Kombe J-F (ed) *L'homme dans la société internationale. Mélanges en l'honneur au Professeur Paul Tavernier*. Bruylant, Brussels, 693-706.
- DW (2024) Forced child labor in mines in the Central African Republic. <https://www.google.com/amp/s/amp/dw.com>. Accessed 16 Apr 2025
- Ecofin Agency (2020) Underexploited mining potential (3rd part): the case of Cameroon. www.agenceecofin.com. Accessed 16 Apr 2025
- Equatorial Guinea Constitution (2012)
- Equatorial Guinean Mining Code (2019)
- European Commission on Human Rights (1985) *X and Y. v. Netherlands*. A 91.
- European Convention on Human Rights (1988) *A. v. United Kingdom*. 1998-VI: pp. 2692 et seq
- France 24 (2021) Cameroon: videos prove that child labor continues in mines despite its ban. <https://observers.france24.com/en/africa/20211013-child-labour-cameroon-gold-mines>. Accessed 16 Apr 2025
- Frison-Roche M-A (2012) Le droit d'accès à la justice et au droit. In: Cabrillac R, Frison-Roche M-A, Revet T (eds) *Libertés et droits fondamentaux*. Dalloz, Paris, 535-555
- Gabon Constitution (2023)
- Girard AL (2018) La temporalité de l'imprescriptibilité en droit administratif. *Revue du droit public et de la science politique en France et à l'étranger* 3, 739-761

- Goossens PJ (2009) Mineral potential of the Democratic Republic of Congo: a geological sandal? *Society of Economic Geologist Newsletter* 77(1): 1-16
- Government of the Republic of Congo, Ministry of Commerce (2020) Supplies and Consumption. Mine extractions. www.commerce.gouv.cg. Accessed 16 Apr 2025
- Handelsman SD (2002) Human Rights in the Minerals Industry, IIED and WBCSD, 182 p
- Helmens SM (2000) The fourth generation of human rights. In: Human rights on the threshold of the third millennium, Miscellany in homage to Pierre Lambert. Bruylant, Brussels, p 550. *et seq*
- Hennebel L (2010) Classification and hierarchy of human rights. In: International Yearbook of Constitutional Justice, Constitutions and Criminal Law – Hierarchy(ies) and Fundamental Rights. Presses universitaires d’Aix-Marseille, Marseille, pp 423–435
- Hochmann T, Reinhardt J (2018) L’effet horizontal, la théorie de l’Etat et la dogmatique des droits fondamentaux. In: l’effet horizontal des droits fondamentaux. Pedone, Paris, 7-11
- Ilunga AB (2023) Activités minières en RD Congo et responsabilité industrielle du titulaire d’un droit minier et/ou de carrières pour préjudices individuels et écologiques. *Revue des sciences-juridiques et économique* 3(2): 60-91
- International Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- IWACU (2024) Cibitoke: the environment and health of gold miners in danger. www.iwacu-burundi.org. Accessed 16 Apr 2025
- Jeune Afrique (2019) Apple, Microsoft and Google accused of having benefited from child labor in cobalt mines. <https://www.jeuneafrique.com/868593/societe/rdc-apple-microsoft-et-google-accuses>. Accessed 10 Feb 2025
- Jeune Afrique (2023) Why the DRC is assured of being the world's number 2 in copper. <https://www.jeuneafrique.com/1449842/economie-entreprises/>. Accessed 19 Apr 2025
- Kemp D et al (2010) Mining, water and human rights: making the connection. *Journal of Cleaner Production* 18: 1553–1562
- Khan GD, Temocin P (2022) Human rights-based understanding of mining-induced displacement and resettlement: a review of the literature and synthesis. *Journal for Social Sciences* 6(2): 20–29
- Komassi AA (2017) Double défi de l’industrie minière en Afrique subsaharienne : droits humains et changements climatiques. Master’s thesis, University of Sherbrooke, p 102
- La Libre Afrique (2019) Three dead in the repression of a demonstration against mining operators. <http://afrique.lalibre.be/42361/rdc-trois-morts-dans-la-repression-dune-manifestation-contre-des-exploiteurs-miniers/>. Accessed 19 Apr 2025
- La Nouvelle Tribune (2023) Here are the biggest producers of cobalt, an African country crushes all its rivals. <https://lanouvelletribune.info/2023/08/voici-les-plus-gros-producteurs-de-cobalt>. Accessed 10 Apr 2025
- Laigle L (2019) Justice climatique et mobilisations environnementales. *Vertigo* 19:1, <https://doi.org/10.4000/vertigo.24107> Accessed 10 Apr 2025
- Le Ster M (2011) L’Est de la République démocratique du Congo : du ‘scandale géologique’ au scandale politique, économique, humanitaire... *Les Cahiers d’Outre-Mer* 255, 435-438
- Levesque F, Tremblay F, Lepage C (2016) Lorsque le temps est l’ennemi de la justice : les fondements et les origines de la prescription extinctive des droits personnels. *RDUS* 46 (3): 575–608
- Lochak D (2019) Pénaliser les violations des droits de l’Homme ? Human rights in the 21st century, *Communications* 1: 191-203
- Maldonado AR (2014) De la connaissance à l’action : la pédagogie des droits humains comme instrument de lutte contre la pauvreté des femmes en Amérique Latine. In: Champiel-Desplats V (ed) *Pédagogie et droits de l’homme* Nanterre Academic Press, Paris, 85-98
- Matières News (2021) Equatorial Guinea embraces the mining sector as a key driver of the African economy. <https://matieresnews.com>. Accessed 16 Apr 2025
- Mbikayi K (2010) Droit civil. Les obligations, Volume 1. Ed. Centre for Research and Legal Dissemination, Kinshasa, p 510

- Mongabay (2022) online. <https://fr.mongabay.com/2022>. Accessed 16 Apr 2025
- Muhigirwa F (2009) The social responsibility of mining companies. p 22. <http://www.sjweb.info/documents/sjs/pjnewarticles/3-2MuhigirwaENG.pdf>. Accessed 16 Apr 2025
- Mwanga JN (2022) For mining justice in the DRC. <https://www.erudit.org/en/journals/rel/2022-n8>. Accessed 12 Jan 2025
- Ndong RE (2023) Mounana uranium in Gabon: from uncontested polluting mining to a post-mining collective protest of socio-environmental harm (1961-2010). <http://journals.openedition.org/ephaistos>. Accessed 16 Apr 2025
- Office of the High Commissioner for Human Rights (2011) Guiding Principles on Business and Human Rights: Implementation of the United Nations “protect, respect and remedy” framework
- Office of the High Commissioner for Human Rights (1996) Report on the implementation of the Plan of Action for the United Nations Decade for Human Rights Education (1995-2004)
- Owona D (2020) Earth life Africa Johannesburg c. Ministry of Environmental Affairs and Others. In: Cournil C (ed) *The Great Climate Affairs, Aix-en-Provence, Confluence of Rights* [online] DICE
- Paris Agreement (2015)
- RAID (2022) A DR Congo Court issues a historic decision in favor of a worker injured in a cobalt mine. <https://raid-uk.org/un-tribunal-de-la-rd-congo>. Accessed 13 May 2025
- REDRESS (2006) Implement the rights of victims. Fundamental Principles and Guidelines on Victims’ Right to Remedy and Reparation. https://redress.org/search-listing/?keywords=implement+the+rights+of+victims&filter_content_tag=&op=Search. Accessed 20 May 2025
- Republic of Gabon (2019) Law No. 037/2018 regulating the mining sector in the Gabonese Republic
- RFI, Gabon (2024) Comilog, the World’s Leading Manganese Producer, is Growing Stronger. www.rfi.fr. Accessed 16 May 2025
- Rivero J (1971) La protection des droits de l’homme dans les rapports entre personnes privées. In: Cassin R (ed) *Amirocum Discipulorumque Liber*, t. III. Pedone, Paris, p 312
- Rousseau D (1987) Les droits de l’homme de la troisième génération. *Droit constitutionnel et droits de l’homme*. Economica, Paris:125-138
- Sontag K (2009) The Justiciability of Human Rights with Respect to Transnational Corporations. <https://shs.hal.science/halshs-00857975>. Accessed 12 Mar 2025
- Spielmann D (2002) Du délicat exercice de mettre en balance certains droits fondamentaux. A propos du projet de loi n° 5076 "garantissant l’usage paisible du droit de propriété et la liberté de mouvement et portant introduction d’un nouvel article 442-1 au code pénal. *Annales du droit luxembourgeois* 12: 25-70
- Statista (2024) Main industrial diamond mining countries in the world in 2023. <https://fr.statista.com>. Accessed 16 May 2025
- Torre-Schaub M et al (eds) (2022) *Dictionnaire juridique de changement climatique*. Mare et Martin, Paris, p 284
- Torre-Schaub M (2016) L’affirmation d’une justice climatique au prétoire (quelques propos sur le jugement de la Cour du district de La Haye du 24 juin 2015). *Revue québécoise du droit international* 29 (1): 161–183
- Torre-Schaub M (2018) Les dynamiques du contentieux climatique : anatomie d’un phénomène émergent. In: Torre-Schaub M et al (eds) *Quel(s) droit(s) pour les changements climatiques ?* Mare et Martin, Paris: 111-137
- Touka R (2015) Improving the structuring effects of the mineral resources sector in the countries of the Central African Economic Community. UNCTAD workshop and project launch, p 22
- Turgis S (2012) Les interactions entre les normes internationales relatives aux droits de la personne. Pedone, Paris, 640
- Ung SC (2023) Essai sur la transmission de l’action en justice. Doctoral thesis, Université Parisacla, p 349.
- United Nations Framework Convention on Climate Change (1992)
- Universal Declaration of Human Rights (1948)

- Vasak K (1997) Revisiter la troisième génération des droits de l'homme avant leur codification. In: Espiell HG (ed) *Liber Amicorum Hector Gros Espiell*. Bruylant, Brussels: 1649–1679
- Vesina C, Gay M. Présentation : culture juridique de la personne et justiciabilité des droits sociaux : nouvelles perspectives. *Les Cahiers de droit* 61(2): <https://isidore.science/document/10.7202/1070645ar> Accessed 20 May 2025
- Vigneron G (2015) L'eau et les exploitations minières : d'une contrainte à une richesse. In: Euzen A, Jeandel C, Mosseri R (eds) *L'eau à découvert*. CNRS Editions, Paris, 172-173

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