



(RESEARCH ARTICLE)



ADMINISTRATIVE LAW AS A RESPONSE TO CLIMATE CHANGE: REFLECTIONS ON LOCAL EXPERIENCES IN BENIN AND SENEGAL

Saka Dori GOUNOU *

Doctor of Public Law, Assistant at the Pan-African University Institute, Republic of Benin.

* Corresponding Author

ORCID Details

Saka Dori GOUNOU: <https://orcid.org/0009-0007-0774-9291>

World Journal of Advanced Research and Reviews, 2026, 32(01), 1614–1623

Publication history: Received on 12 September 2026; revised on 20 October 2026; accepted on 22 October 2026

Article DOI: <https://doi.org/10.30574/wjarr.2026.32.1.2683>

Copyright © 2026 Author(s) retain the copyright of this article. This article is published under the terms of the Creative Commons Attribution License 4.0

ABSTRACT

The fight against the effects of climate change at the central level does not exclude the need for local authorities to also adapt. The role of municipalities is often overlooked, but remains essential due to their proximity to social realities. While the state is committed to combating climate change at the international level, the effective transfer of some of its powers to sub-state entities would require them to resort to national law. Administrative law, because it aims to serve the public interest, must logically include the fight against climate change through its tools and enforcement powers.

Keywords: Climate change, Administrative law, Administrative judge, Local authorities, Decentralization

1 INTRODUCTION

Contemporary mutations in administrative law offer decentralized local authorities new governance instruments to streamline their public action against climate disruption. At the international level, the adoption of United Nations General Assembly Resolution 77/276, requesting an advisory opinion from the International Court of Justice (ICJ) on the obligations of States in this matter, marks a major turning point. Far from being driven by a logic of antagonism with the State, decentralization creates new political spaces where local authorities particularly in Benin and Senegal appropriate these global obligations.

In light of the referral to the Court, the relationship between the judge of international commitments and the administrative judge operates under a logic of complementarity. Although operating in distinct internal and international spheres of application, these two legal orders intersect. International norms constitute direct sources of administrative law, framing the action of the administration. By virtue of Articles 147 and 98 of the respective Constitutions of Benin and Senegal, these treaties possess an authority superior to statutory law, which the administrative judge must enforce by guaranteeing administrative legality.

Studying the responses of administrative law to the climate challenge requires prior conceptual clarification. Semantically, administrative law governs the activities of the administration. Historically, two doctrinal schools have

opposed each other regarding its defining criterion. The public service school, led by Léon DUGUIT, subordinates administrative law to the pursuit of an activity of general interest. Conversely, the public power school, defended by Maurice HAURIOU, emphasizes the exorbitant means and processes of common law implemented by the administration. This duality is reconciled by René CHAPUS, who understands administrative law as the set of legal rules governing the activity of the administration, public entities, and their relations with individuals, under the control of a specific jurisdictional order, which is the administrative order.

The concept of "climate change" benefits from an unequivocal definition. The United Nations Framework Convention on Climate Change (UNFCCC) defines it as climate variations attributed directly or indirectly to human activity that alters the composition of the global atmosphere, in addition to natural climate variability. This wording is adopted almost identically in Beninese positive law. For its part, the Intergovernmental Panel on Climate Change (IPCC) emphasizes the persistence of these modifications over a prolonged period, typically expressed in decades. Finally, the notion of "environment" here encompasses the global system including living and non-living entities, as well as meteorological alterations.

The study of the role of administrative law in the fight against climate change at the local scale is a theoretical contribution to the renewal of the classical conception of administrative law, now perceived as a dynamic instrument of general interest integrating the climate. Facing a global crisis, the local level becomes the preferred arena for deploying mitigation and adaptation policies.

On a practical level, it accompanies the decentralization of national climate competencies by equipping local actors. The choice of Benin and Senegal as a geographical framework is based on interconnected institutional dynamics and climate vulnerabilities. Derived from the Romano-Germanic tradition, both States apply a similar model of decentralization where the municipality (commune) is the basic echelon of public action. Furthermore, they face a triple climate vulnerability: coastal (sea-level rise), urban (flooding), and agricultural (inconsistency of rainy seasons).

Consequently, the central problem is stated as follows: How can administrative law serve as a lever in the fight against climate change?

Framed primarily through the prism of legal positivism, this scientific analysis is based on the examination of laws, jurisprudence, and existing legal discourse. This approach is enriched by a comparative perspective open to international law, which is indispensable when dealing with a global phenomenon.

The central hypothesis posits a renewal of public order, within which the fight against climate change occupies a cardinal position. In this sense, the local response to the climate crisis calls for instruments of administrative action (I), while the justiciability of environmental harm (II) remains within the purview of the administrative judge.

2 THE MEANS OF ADMINISTRATIVE ACTION

The municipal administration possesses legal means to fight against climate change. Beyond the legal rules (A) enacted by local elected officials to implement these policies, public procurement (B) constitutes another essential lever of action.

2.1 A Local Legal Framework

In Benin and Senegal, municipal legal rules rely on the constitutional principle of free administration. They impose themselves as a local constraint through normative restrictions (1), the violation of which regarding atmospheric pollution is sanctioned by taxes (2).

2.1.1 Enacting Restrictive Measures under Law

Freedom is a fundamental element of human dignity. In this sense, individuals can make choices, express their opinions, and live according to their convictions. It is an important aspect that has withstood all modifications to the Beninese Constitution of December 11, 1990. In Senegal, despite numerous constitutional revisions, freedom remains paramount. However, for reasons of general interest, freedom may sometimes be restricted. The imperative nature of public order justifies these restrictions. Although they can be appealed before the administrative judge, restrictive measures are unilateral acts taken by the administration that limit the exercise of certain rights and freedoms. They protect categorical public interests beyond individual interest, provided that "the purpose of protection [...] constitutes a concern of public interest." This protection aims to limit polluting human activities within the local territory by imposing legal constraints.

The local dimension of these restrictions is essential because it is often on a given territory that the effects of pollution or degradation manifest concretely. Clearly, "to confer binding force upon climate action, recourse is made to law." The legal rule applied in the context of decentralization is thus perceived as a vector of citizen participation, as it imposes procedures such as public inquiries, allowing residents to be informed and express their views before the realization of projects that could affect natural environments. Moreover, the principle of non-regression embedded in law dictates that local restrictive rules cannot be weakened over time. On the contrary, they must constantly evolve toward a higher level of protection.

Thus, the legal rule at the decentralized level acts as an indispensable constraint that forces an arbitrage between territorial development and the requirement to compensate for or limit environmental externalities. By its normative force, it constitutes a concrete lever to sustainably manage resources, protect biodiversity, fight pollution, and adapt territories to the challenges of climate change, while ensuring a balance between individual freedoms and collective interests. It is therefore far from being a simple theoretical framework, but rather a true local constraint that structures action and responsibility at the territorial scale.

The adoption of restrictive measures by local authorities for the environment relies on law and core principles: prevention, polluter-pays, and precaution. These allow authorities to act by prohibiting or limiting polluting activities. They aim to both prevent damage and restore harm, relying on the responsibility of the actors involved. If the law comes to the rescue of the environment, this reflects the existence of a dynamic law, using the local level as a foundation while actively penalizing environmental pollution through the payment of taxes.

2.1.2 The Taxability of Polluting Emissions

Environmental challenges such as climate change, air pollution, waste, and water management are major concerns for decentralized local authorities. A reading of the necessary planning documents shows that these issues are addressed. Taxing environmental pollution sources and greenhouse gas emissions is an effective way to combat climate change and falls within a complex fiscal framework aimed at holding economic actors accountable and financing actions in favor of environmental protection.

Since the role of municipalities in taxation is limited by the legislator to setting rates within the ceilings determined by statute, the taxability of polluting emissions remains complementary to national environmental taxation. However, this dependence does not mean municipalities cannot collect taxes or fees as part of implementing their contingency plans against climate change.

Although the Beninese legislator does not address this in extenso in the General Tax Code, climate-targeted levies are indeed possible. This includes targeted taxes in specific sectors such as transportation, with the tax on motorized canoes and motorized boats, and the tax on two- to four-wheeled city taxis. For example, municipalities may be required to fix the amount due according to the harmful capacity of the vehicle, thus differentiating between electric or hydrogen engines, hybrid engines, and more polluting ones, which are subject to a higher rate. This approach helps incentivize local authorities to steer their local policies toward less polluting mobility, relying on differentiated taxation.

The surface fee on mining research and exploitation permits and the quarry exploitation tax are local financing means for adapting to climate change. Furthermore, municipalities have a specific role in implementing and financing polluting waste management through the household waste removal tax (TEOM).

Moreover, the taxation of polluting emissions also occurs through business license contributions (patentes) paid by private legal entities and public enterprises of an industrial or commercial nature operating within the municipalities. These mechanisms reveal that the taxability of polluting emissions by local authorities is an essential lever for encouraging responsible behavior within an evolving legislative context. This incentive-based fiscal framework thus contributes to a better local integration of climate stakes by embedding the polluting dimension into public service financing methods.

In Senegal, the heavy urban traffic and the exploitation of hydrocarbons threaten the stability of polluting emissions. Despite this state of affairs, the taxability of polluting emissions by local authorities remains very limited and poorly formalized, relying mainly on transferred national taxes or specific fees, such as the tax on Installations Classified for the Protection of the Environment (ICPE) and the sewer discharge tax. These levies find their legal basis in Law No. 2023-15 of August 2, 2023, establishing the Environment Code. The ICPE tax applies to operators of facilities generating nuisances, although its collection primarily benefits the State before any potential redistribution mechanisms. The General Code of Local Authorities authorizes certain municipal-type taxes, such as the sewer discharge tax or waste taxes, to meet sanitation costs. However, this normative framework favoring the local taxability of polluting emissions is limited by the absence of a direct local eco-tax on air or carbon. There is not yet an autonomous local taxation system

specifically targeting the volume of greenhouse gas or atmospheric pollutant emissions discharged within a municipality's territory.

The taxability of polluting emissions by local authorities is not limited to simple tax collection; it constitutes a strategic tool for delivering the infrastructure required for the ecological transition through public procurement.

2.2 The Adaptability of Public Action to Climate Change

The taxation of polluting emissions as a tool favoring the ecological transition requires, in its implementation, the acquisition of supplies, the execution of works, and even intellectual services. Local leaders, as major buyers within their territorial jurisdictions, must adapt purchasing acts (1) to climate objectives by transforming the contract into an instrument at the service of the environment (2).

2.2.1 Integrating Environmental Criteria into Public Procurement

Adaptation to climate change is necessary. Although they are among the states with the lowest greenhouse gas emissions representing only 0.05% of global emissions Benin and Senegal are among the states most vulnerable to climate change. Projections indicate a climate warming scenario of 2.7°C, with 98% of the territory exposed to extreme temperatures by 2070 for Benin, and a widespread thermal increase of 2°C to 4°C depending on greenhouse gas pathways for Senegal. This situation, though based on scenarios, calls for anticipation, especially since the effects of climate change are already being felt: rising temperatures, more intense or irregular rainfall, prolonged droughts, coastal erosion, violent winds, etc.

Like the central government, local authorities are required to fight climate change through their competencies in territorial planning, housing, urban planning, energy, and transport. They owe the right to a healthy environment to the populations who mandated them to manage local public services, develop territories, and implement numerous public policies.

The harmful effects of climate change demand a participatory and multi-sectoral response to promote sustainable consumption and production patterns. Achieving this sustainability objective justifies the adaptability of sectoral policies, particularly those relating to public procurement. This strategic orientation of public procurement was recognized as early as the 1992 Rio Conference by Agenda 21 as a key function for achieving sustainable development goals and combating global warming. During the Johannesburg World Summit on Sustainable Development, a task force on sustainable public procurement was created, and the report established after the summit provides for encouraging the inclusion of sustainable development during procurement processes, notably.

Benin illustrates this commitment through ambitious legislative measures aimed at systematizing the inclusion of environmental criteria in public procurement. Law No. 2020-26 of September 29, 2020, on the Public Procurement Code, does not strictly oblige municipalities to integrate environmental considerations into all public contracts, but makes it an obligation of means. However, this law mandates taking sustainable development objectives into account when defining needs to ensure a balanced reconciliation of environmental, social, and economic issues. The role of public procurement in adapting to climate change is measured through concrete actions within the procurement sector contained in the National Climate Change Adaptation Plan (NAP). Indeed, several concrete actions touching all territorial sectors aim notably to adapt infrastructure, agriculture, and public energy, water, and transport services. Public procurement thus becomes an essential transversal tool that can be mobilized by all municipal actors to make society more resilient to the impacts of climate change.

In Senegal, Decree No. 2022-2295 of December 28, 2022, on the Public Procurement Code, elevates sustainable development and environmental protection to guiding principles. Article 1 of the text explicitly requires contracting authorities to take into account the requirements and objectives of sustainable development in their environmental, social, and economic dimensions, alongside good governance and efficiency. Article 4 of the same text formally introduces the legal definitions of Sustainable Public Procurement (SPP) and Responsible Public Procurement. The buyer must integrate ecological criteria throughout the entire life cycle of the product or work.

Candidates for public contracts must prove their environmental qualifications. This translates into signing an acknowledgment of the environmental charter and providing concrete evidence of ecological management, such as an Environmental and Social Management Plan (ESMP). The desire to make environmental protection a central stake is also reflected in the evaluation of bids, which no longer relies solely on the lowest price but favors the most economically advantageous tender, integrating the overall life-cycle cost and ecological performance.

The adaptability of public action to climate change illustrates the necessity of a balance between mitigation and adaptation. Reducing polluting emissions remains indispensable to limit the severity of future changes. However,

adaptation is absolutely necessary to deal with inevitable impacts already underway and to prevent social, economic, and environmental costs from becoming disproportionate.

2.2.2 The Contractualization of Environmental Risk

Contractualizing environmental risk consists of integrating ecological clauses into the administrative contracts of local authorities. The choice of public procurement is justified by the major place it occupies in the contractual activity of municipalities. Beyond satisfying needs, which is their traditional role, contracts can be used secondarily to anticipate, manage, and distribute responsibilities related to pollution or harm to biodiversity. This includes preventive measures, compliance obligations, and environmental liability guarantees.

The principle of the binding force of contracts (*pacta sunt servanda*) compels parties who have freely consented to execute the obligations placed on them. The willingness of local leaders to anticipate the effects of climate change or adapt their purchasing policies to climate change justifies their explicit integration of responsibilities, obligations, and measures relating to the prevention, management, and mitigation of risks that could affect the environment into contracts. This responsible act aims primarily to anticipate and limit negative environmental impacts by making the contracting parties directly accountable. It requires the contracting authority to accurately assess environmental risks right from the needs-expression phase and appreciate their alignment with the municipality's vision defined in its strategic planning documents.

As for the co-contractor, the risk of environmental reputation appears as a threat hanging over the image and value of their company following negative ecological impacts during contract execution. Consequently, it leads to a loss of trust from local authorities, a decrease in revenue, and potentially sanctions that can extend to debarment from the list of partners eligible for sustainable public contracts. Assessing the capacity of companies to respect environmental contract clauses must mobilize the entire multidisciplinary team of the municipality.

The favorable context for the dialectic between contract and environment remains justified by law. Indeed, law appears less and less as an instrument of pure constraint and more as a response to the social expectations of citizens and users. The law, understood here as the contract, is both a legal act and a political act. The development of incentive norms for taking the climate dimension into account in contracts highlights a concern for pragmatism and flexibility among local elected officials, favored by the legislator. Parties are henceforth invited to deploy their contractual freedom in favor of the climate. The contract "aligns the creation and application of the norm, in contrast to the imposed norm which, by definition, is not developed by those to whom it applies." Non-compliance with these clauses can then trigger contractual sanctions and allow better control over responsible practices.

Commercialization of environmental risk is not limited to the simple drafting of clauses. It implies rigorous monitoring, in the form of operational condition surveillance and regular reporting. This continuous management is indispensable to anticipate risks, adapt mitigation measures, and allow better responsiveness to events likely to cause serious environmental damage. The contractualization of environmental risk is a strategic governance approach, the non-compliance with which exposes parties to sanctions. These varied sanctions include contractual penalties, administrative sanctions, or criminal penalties. They can also include the obligation to repair damage. Administratively, local elected officials can take administrative sanctions ranging from bidding bans to environmental compliance orders. Criminally, the applicable sanctions are those provided by the environmental law and the Criminal Code. The legislator's will to repress environmental breaches must manifest through the contractualization of the environment and by asking the judge to penalize environmental violations.

3 THE JUSTICIABILITY OF ENVIRONMENTAL HARM

The constitutionalization of the right to a healthy environment has favored the judicialization of ecological issues. This mutation requires protective rules and effective access to courts for litigants. Consequently, the justiciability of climate litigation rests on a double dynamic: on the one hand, the capacity of municipalities to refer matters to the judge (A) to defend their territory, and on the other hand, the recognition of ecological damage (B) under the control of the administrative judge.

3.1 The Capacity of Municipalities to Bring Legal Action

Municipalities can refer matters to the administrative judge for two reasons: to denounce non-compliance with environmental contractual clauses or to report environmental damage caused by the State on their territory. This action systematically requires an interest to act (1) and proof of certain environmental harm (2).

3.1.1 An Indubitable Interest to Act

The interest to act (*intérêt à agir*) in administrative matters is a fundamental condition of admissibility requiring that the petitioner have a personal, direct, certain, legitimate, and current interest in bringing their claim before the judge, with the ultimate consequence of annulling or reforming an administrative act. This implies an effective injury to their rights or interests, assessed at the time of the petition. Although the criteria are strict, the administrative judge interprets them flexibly to facilitate the review of legality.

The monopoly on development is increasingly slipping away from the State due to the creation of new public legal entities. The progressive transfer of competencies to municipalities has seen the birth and growth of new municipal interests in various fields. The transversality of environmental issues a domain of competence for municipalities under Articles 39 and 106 of the Code of Territorial Administration in both Benin and Senegal does not obscure the conferred fields of competence. The legislator, by allowing municipalities to give their opinion whenever the creation of projects likely to harm the environment is planned on their territory, justifies the interest in seizing the judge.

The second dimension of the interest to act stems naturally from municipal contractual acts, which can be described as carrying a local interest. While the question of the localism of interest divides legal doctrine, the existence of a local public interest specific to local authorities and distinct from the general interest is controversial. Indeed, proponents of the local public interest thesis justify their position by the existence of local affairs settled by deliberations of elected councils. Opponents of local public interest demonstrate the difficulty of distinguishing municipal affairs from national ones. In support of their position, these authors evoke the unilateral attribution of local authority functions by the executive branch, which holds unlimited modification power at any time. In conclusion, there would be no affairs or interests that are local by nature. However, insofar as local authorities possess discretionary power in the exercise of their competencies, one could argue that their action is guided by a local public interest specific to them.

The interest of local authorities in initiating environmental civil action would result from the general competence they possess over affairs on their territory. They rely notably on their status as local actors directly affected by projects likely to impact their living environment, whether initiated by the Municipal Council or by the State. Whenever actions likely to harm convenience of life, health, nature protection, or the environment are carried out, municipalities or their groupings can claim local environmental harm. The interest to act of Beninese and Senegalese local authorities in environmental matters, and specifically climate change, points toward the existence of a legal injury or prejudice.

3.1.2 A Certain Environmental Harm

Ecological damage is a recent legal principle. Its emergence dates back to 2012 with the Erika case, which consecrated it. This jurisprudential evolution leads to the recognition of an ecological harm distinct from personal harm, in that it does not directly affect a natural person. The French judge defined it as harm resulting from an injury to non-market environmental assets, repairable by equivalent.

In Benin, while positive law does not seem to explicitly include the term "ecological damage" in its lexicon, it provides a response that demonstrates its proximity to this French jurisprudential evolution. First, the Beninese Constitution of December 11, 1990, as amended by Laws No. 2019-040 of November 7, 2019, and No. 2025-20 of December 17, 2025, guarantees everyone the right to a healthy environment. Second, Law No. 2026-15 of July 13, 2026, establishing the Environment Law, formally provides in its Article 73 regarding corporate and environmental responsibility: "whoever is guilty of environmental pollution is bound to repair its consequences." Finally, it falls to the Constitutional Court of Benin to hold that, given the subjective nature of the right to a healthy environment, "the harm suffered by any person as a result of the violation of their fundamental rights entitles them to reparation." One can then conclude that in Benin, ecological damage appears as harm resulting from a violation of the right to a healthy environment. Environmental harm in local authorities designates a non-negligible injury to the elements or functions of ecosystems (air, water, soil, biodiversity) on their territory, or to the benefits they derive from them. Legal action aims to obtain reparation, primarily in kind or through damages.

In Senegal, environmental harm is recognized under the term ecological damage, explicitly inscribed in Article 2 of the Environment Code and defined as "damage suffered by the natural environment, persons, and property, and affecting the ecological balance. It can be: pollution damage caused by man and suffered by identifiable and specific heritages; damage suffered by unappropriated elements of the natural environment; damage caused to crops and property by wildlife." This textual definition is complemented by jurisprudence, notably the case of the vessel *Almadraba Uno* at the Madeleine Islands. In this instance, on August 2, 2013, the *Almadraba Uno*, a Spanish fishing vessel, left the port of Dakar after bunkering. The captain engaged the automatic pilot in the wrong direction. The vessel ran heavily aground on the rocks of the Madeleine Islands National Park, causing a leak of diesel fuel and toxic substances.

The Senegalese judge, invited to determine the criminal liability of the crew in the grounding within a protected zone and to assess the scope of pecuniary reparation due to the State for the injuries caused to the integrity of the marine

environment and the ecological functions of species, found the defendants guilty, sentencing them to prison terms and pecuniary reparations. This decision constitutes a landmark ruling in Senegalese and African environmental law jurisprudence, as the judge formally consecrated the reparation of injuries to the ecological functions of species and the natural environment within a marine protected area.

The right to be protected from climate change falls under the right to a healthy environment, a subjective right by nature. It is therefore legitimate to question whether it belongs to municipalities to observe the existence of harm and demand its reparation, or if the exercise of this prerogative belongs to municipal citizens. The answer leads to questioning the meaning of territory and the constitutive elements of a local authority. Indeed, territory designates "the spatial foundation over which an authority enjoys particular competencies" and is an integral part of the three characteristics inherent to the identity of a local authority, namely, the name and the population.

Remaining within a comparative approach, we see that the municipal territory is a component of the national territory over which the State exclusively exercises its sovereignty. This right to territorial integrity "empowers its holder to repel any injury brought against its spatial foundation, a condition of its being," thereby enabling the Beninese constitutional judge to empower the President of the Republic to ensure the integrity of the territory. In this case, the logic of action between the State and local authorities relies on the principle of subsidiarity, which stipulates that competencies must be exercised by the local authority closest to the citizens.

By analogy to the state competence to watch over the national territory, local authorities, as guardians of their territory, must also be able to defend it against environmental injuries. Consequently, the assessment of local environmental harm highlights two approaches to municipal territory.

On the one hand, the naturalistic approach refers to the physical and natural elements affected during environmental pollution. Components such as flora, fauna, habitats, and ecosystems fall into this category. In this scenario, an injury to the territory can give rise to the recognition of pure ecological damage, insofar as the injury primarily affects nature itself.

On the other hand, the sociological approach of the municipal territory refers to "the well-being of the community of its inhabitants." In this case, ecological damage caused to the territory has negative consequences on the quality of life of the populations residing there, which is akin to an indirect prejudice.

In view of these two approaches to municipal territory, which one allows for a better understanding of environmental harm? The response of the High Court of Saint-Nazaire is enlightening, as it establishes that the existence of harm caused to nature must be demonstrated independently of any potential harm suffered due to the alteration of the living environment of the local authority's inhabitants.

In conclusion, the prejudice resulting from an injury to the authority's territory sits at the crossroads of pure ecological damage and indirect prejudice. The authority thus defends harm linked to the environment, a synthesis of the ecological and cultural interests of its territory. It acts simultaneously as a representative of nature and as a representative of its population regarding the degradation of their living environment. Both aspects of the harm caused to the territory matter. If the judge happens to reject the idea of cumulative prejudice, the harm caused to nature must imperatively be brought forward when requesting reparation for ecological damage.

3.2 The Necessary Control of the Administrative Judge

The competence of the administrative judge in environmental matters relies historically on the Blanco jurisprudence, which attributes liability for damages linked to the exercise of public service to the administrative judge. Furthermore, the competence of the administrative judge in environmental matters is also civilist, as the judge can mobilize the concepts and rules laid down by Article 1382 of the Civil Code, such as damage and reparation. The evocation of these concepts illustrates the recognition and reparation of ecological damage in French administrative jurisprudence in landmark cases such as "the Case of the Century," "Justice for the Living Case", or litigation relating to green algae pollution in the Bay of Saint-Brieuc.

In practice, this competence of the judge depends on their material capacity (1) to adjudicate cases while reconciling the interests of the parties (2) around environmental protection.

3.2.1 The Material Capacity to Judge

The competence of the administrative judge to hear disputes linked to climate change is justified by the involvement of public legal entities in the litigation. To this end, local authorities, as petitioners, can seize the administrative judge when the holders of the contracts they award fail in their contractual obligations notably environmental protection clauses or when they demand the integration of environmental concerns by the State in government projects implemented on

their territory. They can also find themselves as defendants in a lawsuit when citizens ask the judge to enjoin their municipality to take preventive measures against environmental degradation or to repair potential damages due to the inaction of local authorities.

Litigation linked to environmental protection is experiencing a remarkable surge due to human activities. This problem falls within an international context where climate actions against public entities are on an upward trend worldwide, increasing from 884 disputes in 2017 to 1,550 in 2020, and reaching 2,180 in 2022, according to the third report of the United Nations Environment Program.

In Benin, it is true that the constitutional judge does not speak in extenso of ecological damage in its June 5, 2002 decision. The right to a healthy environment is guaranteed by the Constitution, and any violation of this prerogative entitles one to reparation. One could also say that the administrative nature of environmental litigation is justified by a failure of the State or local authorities to meet their obligation to protect. In this respect, the Supreme Court of the Netherlands affirmed for the first time that it belongs to the State to protect its citizens against the causes and consequences of climate change. It thus consecrated the existence of an obligation for the State to reduce its greenhouse gas emissions consistently with scientific consensus and its international commitments. More recently, the competence of the administrative judge in environmental litigation was confirmed in the Municipality of Grande-Synthe, The Case of the Century, and Justice for the Living (or Justice for Biodiversity) cases. While it is obvious that the African continent is the most vulnerable to climate change despite its low contribution to global emissions (around 4%), environmental litigation is paradoxically less developed there.

In Senegal, Judgment No. 5424/2013 of October 9, 2013, by the Special Regional Court of Dakar stems from a criminal and repressive decision, but presents notable incidences and interfaces with civil, financial, and public interest matters, without constituting an administrative judgment in the organic sense. However, the competence of the Senegalese administrative judge in environmental matters rests on the duality of jurisdictions, the review of the legality of administrative acts, and the application of public regulation rules. The administrative judge is competent as soon as a unilateral administrative act linked to the protection or management of nature is contested. On this occasion, the judge verifies whether the administration understood in the broad sense, including decentralized local authorities respects its own obligations, such as the requirement of a prior environmental assessment for public projects.

The recognition of ecological damage by the administrative judge in Africa is still a developing field, characterized by an emerging jurisprudence and significant evidentiary challenges. Although no decisions have yet been rendered in environmental matters by the Beninese administrative judge, sources of motivation for their decisions are not lacking. General principles of environmental law, international jurisprudence, regional jurisprudence, and the influence of neighboring legal frameworks can allow them to recognize and sanction significant environmental injuries, whether national or local in scope. The audacity of Beninese and Senegalese administrative judges in the context of a young and quantitatively small West African jurisprudence must allow them to sanction environmental violations resulting from a significant number of failures in the obligations of local authorities and the State.

The intervention of the administrative judge must allow for the reconciliation of the general interest with the subjective right of the petitioners.

3.2.2 Reconciling the Interests of Actors

The environment, considered a common heritage, has become the theater for confronting the interests of public and private actors. Ensuring the sustainability of this interest is at the heart of its protection. On the one hand, a balance must be found between environmental protection and the recognition of the rights of municipal actors. On the other hand, this balance deserves to be found between economic interests and the fairness of legal procedures. Indeed, while the reparation of ecological damage appears in every demand, other requests may be joined to it. The administrative judge is consequently assigned a decisive role in the fight against climate change, which can be viewed from three angles.

First, the judge must recognize the general obligation for public authorities to fight climate change. At the local level, a breach of this obligation implies the liability of the local authority.

Second, during the implementation of "polluting" government projects, the judge can hold the State liable for breaching its general obligation to fight climate change based on a proliferation of legal texts. On this same occasion, the judge can recognize the faulty deficiency of the local authority regarding the fight against climate disruption.

Third, after recognizing a general obligation to fight climate change incumbent upon local authorities and a faulty deficiency resulting from non-compliance with this obligation, the judge must rule on the existence of ecological damage resulting from the two factors mentioned above. To this end, the Beninese administrative judge will be able to use the jurisprudence of the Constitutional Court of Benin, notably decision DCC 02-065 of June 5, 2002, through which the

Beninese constitutional judge recognized that the violation of the right to a healthy environment entitled one to reparation. The administrative judge's argument can also draw its source from Law No. 2026-15 of July 13, 2026, on the Environment Law, notably its Article 73 under the terms of which: "Any natural or moral person author of environmental damage or direct or indirect deteriorations affecting natural resources or ecological services sees their corporate and environmental responsibility engaged for the reparation of damages." In Senegal, the decision of Judgment No. 5424/2013 of October 9, 2013, rendered by the Special Regional Court of Dakar, can well inspire the administrative judge to recognize ecological damage.

Despite this entire legal arsenal, the judge remains flexible in the administration of environmental justice. The judge reconciles the interests of the parties in an environmental dispute by ordering and hierarchizing environmental norms, assessing the weight of the interests at stake, and acting as a judicial conciliator. From this perspective, the judge may accept certain environmental injuries if they are necessary for a high-priority project of elected officials with a strong social impact. Recourse to the jurisprudential cost-benefit theory may appear attractive, as it will allow the judge to balance the advantages of the project against its disadvantages, whether regarding its cost, its environmental repercussions, its consequences on private property, or the injury caused to other public interests.

4 CONCLUSION

The role of local authorities in the fight against climate change goes beyond the theoretical framework of planning. To take concrete action, local elected officials rely on administrative law, which provides them with contractual means of action as well as an enforcement power adapted to new environmental stakes.

On the material level, administrative contracts assert themselves as true instruments of response. By integrating the contractualization of environmental risk and making use of their exorbitant prerogatives, local authorities possess the necessary legal competence to prevent climate crises and adapt their public services to ecological imperatives.

On the litigation level, administrative law allows for the liability of public entities to be engaged. Local authorities possess the power to seize the judge to demand the condemnation of the State in reparation of ecological damage. This avenue of recourse also applies to local governments, whose abstention or inaction in the face of environmental degradation constitutes a faulty deficiency entitling one to reparation.

The notion of ecological damage, which grounds these legal actions, is fully anchored in the positive law of Benin and Senegal. The judge can well invoke it on the basis of jurisprudence, the Environment Law of Benin, and the Environment Code of Senegal, all of which refer to civilist concepts of prejudice, liability, and reparation.

However, the repressive power of the administrative judge can be mitigated by the jurisprudential cost-benefit theory, which leads them to search for a balance between the general interest, economic interests, and the right to a healthy environment. Beyond this balance, the question of measuring atmospheric pollution in its harmful proportion remains a challenge for local authorities and petitioners, upon whom rests the burden of proof in the administrative litigation of climate change.

STATEMENTS ON COMPLIANCE WITH ETHICAL STANDARDS

Acknowledgments

I would like to express my sincere gratitude to my research director, Professor Arsène-Joël ADELOUI, for his invaluable guidance, continuous support, and insightful advice throughout the course of this research.

Disclosure of conflict of interest

The author declare no conflicts of interest regarding this manuscript.

REFERENCES

- [1] United Nations General Assembly Resolution 77/276, Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, adopted on March 29, 2023.
- [2] Constitution of the Republic of Benin of December 11, 1990, Article 147: "Treaties or agreements regularly ratified have, upon their publication, an authority superior to that of laws..."
- [3] Constitution of the Republic of Senegal of January 22, 2001, Article 98: "Treaties or agreements regularly ratified or approved have, upon their publication, an authority superior to that of laws..."

- [4] Léon DUGUIT, (*Treaty of Constitutional Law*), ancient proponent of the Public Service school.
- [5] Maurice HAURIOU, (*Principles of Administrative Law*) founder of the Public Power school.
- [6] René CHAPUS, (*General Administrative Law*), Volume 1, Paris, Montchrestien
- [7] United Nations Framework Convention on Climate Change (UNFCCC), signed in Rio de Janeiro in 1992, Article 1.
- [8] Beninese Law No. 2026-15 of July 13, 2026 on the Environment, incorporating international climate definitions.
- [9] Intergovernmental Panel on Climate Change (IPCC), Glossary and Assessment Reports tracking long-term climate decadal shifts.
- [10] CE, Sect., December 18, 1959, Société Les Films Lutetia, regarding the expansion of public order and general interest protections.
- [11] Principle of Non-Regression, a core principle of environmental law dictating that environmental protection rules cannot be dialed back or weakened.
- [12] Beninese General Tax Code (CGI), provisions relating to local taxation and municipal revenue structures.
- [13] Tax on motorized canoes and boats, implemented as a targeted local environmental transport levy in Beninese lakeside and coastal municipalities.
- [14] Household Waste Removal Tax (TEOM), a standard local tax applied to finance urban sanitation and waste management public services.
- [15] Senegalese Law No. 2023-15 of August 2, 2023 establishing the Environment Code, regulating Installations Classified for the Protection of the Environment (ICPE).
- [16] Senegalese Code of Local Authorities (Code général des Collectivités Locales), detailing municipal taxing authority and environmental charges.
- [17] Beninese Law No. 2020-26 of September 29, 2020 on the Public Procurement Code, establishing the integration of sustainable development in public purchasing.
- [18] National Climate Change Adaptation Plan (NAP) of Benin, establishing cross-sectoral territorial resiliency guidelines.
- [19] Senegalese Decree No. 2022-2295 of December 28, 2022 on the Public Procurement Code, formalizing Sustainable Public Procurement (SPP).
- [20] Environmental and Social Management Plan (ESMP), mandatory documentation for candidates to evaluate ecological risks in large public infrastructure bids.
- [21] French Court of Cassation (Crim.), September 25, 2012, Erika case, formally consecrating autonomous ecological damage into jurisprudence.
- [22] Beninese Constitution of December 11, 1990, as amended by Law No. 2019-040 and Law No. 2025-20 of December 17, 2025, guaranteeing the fundamental right to a healthy environment.
- [23] Beninese Constitutional Court, Decision DCC 02-065 of June 5, 2002, recognizing the subjective nature and right to reparation for environmental violations.
- [24] Senegalese Environment Code, Article 2, defining the structural parameters of "ecological damage".
- [25] Special Regional Court of Dakar (Tribunal régional hors classe de Dakar), Judgment No. 5424/2013 of October 9, 2013, State of Senegal v. Crew of the Almadraba Uno, landmark ruling on ecological function reparations in protected marine zones.
- [26] High Court of Saint-Nazaire (Tribunal de Grande Instance de Saint-Nazaire), jurisprudence separating pure ecological harm to nature from indirect harm to local inhabitants' lifestyle.
- [27] French Council of State (CE), February 8, 1873, Blanco Judgment, the foundational text establishing administrative liability linked to public services.
- [28] French Administrative Court, landmark climate inaction rulings including Municipality of Grande-Synthe (2020) and Case of the Century (2021).
- [29] United Nations Environment Programme (UNEP), Global Climate Litigation Report: 2023 Status Review, tracking worldwide legal trends.
- [30] Supreme Court of the Netherlands, December 20, 2019, State of the Netherlands v. Urgenda Foundation, establishing state human rights obligations to reduce emissions.
- [31] French Council of State (CE), May 28, 1971, Ministre de l'Équipement v. Fédération de défense des personnes concernées par le projet Ville Nouvelle Est (Consecration of the Cost-Benefit / Bilan theory).