

## The Right to a Healthy Environment in the Democratic Republic of Congo: A Right of Ambiguous Effectiveness

Ajabu Mastaki Gabriel<sup>1\*</sup>, Nzohabonayo Analet<sup>2</sup>

<sup>1</sup>PhD. Student at the Doctoral School of the University of Burundi, J9CM+CGG, Boulevard Mwezi Gisabo, Bujumbura, Burundi

<sup>2</sup>Associate Professor, Faculty of Law, University of Burundi, J9CM+CGG, Boulevard Mwezi Gisabo, Bujumbura, Burundi

\*Corresponding author: Ajabu Mastaki Gabriel

| Received: 18.09.2023 | Accepted: 26.10.2023 | Published: 02.11.2023 |

**Abstract:** Today, living in a healthy environment remains an ongoing quest, despite the affirmation of the right to a healthy environment by various national and international legal instruments. The Stockholm and Rio conferences were the starting point for raising awareness of the dangers posed by human activities. To this end, the States undertook to confer on every individual the right to live in a healthy environment. It was only after a struggle by the Human Rights Committee that the right to a healthy environment was recognized as a human right. It is now a subjective right recognized for every human being. The Congolese legislature enshrined this right in article 53 of its constitution. The constitutionalisation of this right gives it the status of a justiciable right. For 17 years now, this right has remained more theoretical than practical in the Democratic Republic of Congo, even though it is a constitutional right. There are several reasons for this theorizing, such as the low number of cases referred to the courts, or the fact that it is impossible to do so, and the absence of environmental litigation. Yet there are many solutions that can make the right to a healthy environment effective in this country. In light of these issues, the study answers the following question: Can violations of the right to a healthy environment be justiciable before Congolese courts? The constitutionalisation of the right to a healthy environment as a human right implies a constitutional obligation on Congolese courts and tribunals to apply not only the Constitution, but also international treaties and agreements enshrining this right and forming an integral part of the Constitution.

**Keywords:** Justiciability; Right to a healthy environment; Constitutionalisation; Aarhus Convention; Environmental justice; Environmental information.

### INTRODUCTION

Today, living in a healthy environment remains an ongoing quest, despite the affirmation of the right to a healthy environment by various national and international legal instruments. The Stockholm and Rio conferences were the starting point for raising awareness of the dangers posed by human activities. To this end, governments have undertaken to grant every individual the right to live in a healthy environment. At international level, following a struggle by the Human Rights Committee, the right to a healthy environment has been recognized as a human right. It is now a subjective right recognized for every human being. All regional human rights instruments now recognize the right to a healthy environment as a human right. Congolese lawmakers have enshrined this right in article 53 of the Constitution, which states that *everyone has the right to a healthy environment conducive to their full development. They have a duty to defend it. The State shall ensure the protection of the environment and the health of the population.* The constitutionalisation of the right to a healthy environment makes it a justiciable

right. Unfortunately, Congolese practice proves the contrary. The analysis therefore focuses on the effectiveness of the right to a healthy environment, its effects, and its justiciability. It concludes with the idea that, for this right to be effective, the Congolese constituent must establish a sound environmental policy, strengthening environmental education and guaranteeing citizens access to the courts in the event of violation of this right.

### I. Shaping the right to a healthy environment from a legal-historical perspective

For several decades now, environmental protection has been a major concern for all societies. The symptoms of environmental deterioration have become undeniable: river water pollution, oil slicks on the coasts, poisoned mists, the rarefaction of wild fauna and flora species - all bear witness to the risks that humans have

Quick Response Code



Journal homepage:

<https://saspublishers.com/>

**Copyright © 2023 The Author(s):** This is an open-access article distributed under the terms of the Creative Commons Attribution **4.0 International License (CC BY-NC 4.0)** which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use provided the original author and source are credited.

**Citation:** Ajabu Mastaki Gabriel & Nzohabonayo Analet (2023). The Right to a Healthy Environment in the Democratic Republic of Congo: A Right of Ambiguous Effectiveness. *Cross Current Int Peer Reviewed J Human Soc Sci*, 9(10), 199-215.

created for their own existence [1]. It was around the 1970s that rules designed to protect the environment began to emerge from limbo. The right to a healthy environment does not directly protect the environment, but only human beings against harm from their environment [2]. It is now internationally recognized as a human right [3]. The United Nations Conferences on the Human Environment, held in Stockholm in 1972 and Rio de Janeiro in 1992, were the starting point for raising awareness of the dangers posed to the environment by human activity and natural disasters. In its first principle, the Stockholm Declaration clearly recognized that man has a fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being. He has a solemn duty to protect and improve the environment for present and future generations [4]. As Daly points out, the first fundamental aspect is the now clearly recognised link between human dignity and the protection of the environment [5]. In its 1997 judgment, the International Court of Justice (I.C.J.) also recognised that the environment is not an abstraction, but the space in which human beings live and on which the quality of their life and their health depend, including for future generations [6]. The link between ecology and human beings has thus gradually developed. There is now a consensus on the inescapable interdependence between humans and nature, with humans in vital need of ecosystems and ecosystems in need of humans in order to survive [7]. However, this does not mean that the anthropocentric approach is totally outdated, since human beings are the only ones who are aware of the need to protect the environment, and the interdependence between humans and the natural environment is inevitable, which means that anthropocentrism can be overcome [8]. The right to a healthy environment therefore has a strictly anthropocentric interpretation, with the exception of a few rare cases that suggest that

an interpretation that takes egocentric aspects into account may be in the making [9].

### **I.1 Anthropocentrism and the emergence of environmental law**

The quality of the environment is a rising value in social concerns and, as a result, the status of the living environment is rising in the hierarchy of interests protected by law [10]. At this point, the ceiling of these interests includes the subjective rights recognised to human beings. As the healthy environment has a direct impact on human life, the right to a healthy environment has gradually taken its place among the subjective rights recognised to the individual. The affirmation of environmental protection as a human right is a manifestation of the anthropocentric approach. Thus, the right to a healthy environment does not directly protect the environment in the same way as the right to the environment but protects human beings against any calamity resulting from the environment.

Environmental law, comprising all the rules designed to protect the environment, came into being in the 1970s. The right to a healthy, safe and enabling environment as a human right took shape at the United Nations Conference on the Human Environment in Stockholm in 1972. But before this right was given substance, a few trends had already emerged to reflect it. Going back in history, the UN's scientific conference on the conservation and use of resources (Lake success, New York from 16 August to 16 September 1949) is the first UN body to deal with the depletion of natural resources and their use, but the emphasis was only on improving management to promote economic and social development rather than conservation [11]. In 1968, UN bodies paid particular attention to environmental issues. The Economic and Social Council first put the issue on its agenda as a specific item and took the decision later

<sup>1</sup> Beurier Jean-Pierre, "Droit international de l'environnement", in *droit international de l'environnement*, Éditions A. PEDONE (PARIS, 2010).

<sup>2</sup> See. Francesca MAGISTRO, *Le droit à un environnement sain revisité : étude de droit suisse, international et comparé*, Romandes, Schulthess (Geneva, 2017), <http://archive-ouverte.unige.ch/unige:104665>.

<sup>3</sup> See the resolutions adopted by the Human Rights Council in 2021 (A/HRC/RES/48/13) and by the General Assembly in 2022 (A/RES/76/300) in 'Special Rapporteur on Human Rights and the Environment', *OHCHR* <<https://www.ohchr.org/fr/special-procedures/sr-environment>> [accessed 23 March 2023].

<sup>4</sup> United Nations Conference and Declaration on the Human Environment (UNCHE), 15 and 16 June 1972, Stockholm.

<sup>5</sup> E. Daly, J. R. May, 'Exploring environmental justice through the lens of human dignity', *Widener Law Review* (2019)25, 177.

<sup>6</sup> I.C.J., *Gabcikovo-Nagymaros Project*, judgment of 25.9.1997, Rec. 1997, para.53.

<sup>7</sup> Elisabeth Lambert, *Environment and Human Rights: Introductory Report to the High-Level Conference on Environmental Protection and Human Rights*, prepared at the request of the Steering Committee for Human Rights (CDDH), Strasbourg, 2020, p4.

<sup>8</sup> *Ibidem*

<sup>9</sup> MAGISTRO, Francesca, *Le droit à un environnement sain revisité : étude de droit suisse, international et comparé*. Romandes. Schulthess. Geneva, 2017, p11. <http://archive-ouverte.unige.ch/unige:104665>

<sup>10</sup> Michel PAQUES, *L'environnement, un certain droit de l'homme*, Limont, 2006, p.66 online: <https://orbi.uliege.be/bitstream/2268/8275/1/157.pdf>

<sup>11</sup> Peter Jackson, *From Stockholm to Kyoto: A Brief History of Climate Change*, Sd. online <https://www.un.org/fr/chronicle/article/de-stockholm-kyoto-un-bref-historique> of climate change #:~:text=The%20Conf%C3%A9rence%20of%20the%20OUN,of%20action%20containing%20recommendations

endorsed by the General Assembly to organise the UN Conference on the Human Environment [12]. The United Nations Conferences on the Human Environment held respectively in Stockholm in 1972, Rio de Janeiro in 1992, and the Johannesburg Summit on Sustainable Development in 2002 awakened humanity's awareness of the boundless dangers to the environment posed by human activity and natural disasters. These high-level meetings led to environmental concerns being considered by regulators and in political programs. This desire to recognize the right to a healthy environment has led to the introduction of national legislation that has incorporated it into its body of law. Today, therefore, whether in Europe, the United States [13], Africa [14] or other parts of the world [15], the right to a healthy environment is enshrined in a constitution that is less controversial [16]. Finally, in 2021, the Parliamentary Assembly of the Council of Europe adopted a resolution enshrining the right to a healthy environment in the European Convention on Human Rights [17]. In the Democratic Republic of Congo, the right to a healthy environment is enshrined in Article 53 of the Constitution of 20 January 2011, which states: "Everyone has the right to a healthy environment conducive to their full development. They have a duty to defend it. The State shall ensure the protection of the environment and the health of the population" [18]. This constitutionalisation makes the right to a healthy environment justiciable in the Democratic Republic of Congo. Several other texts supplement the constitution by enshrining the right to a healthy environment. This is the case, for example, of Law no. 11/009 of 09 July 2011 on the fundamental principles relating to environmental protection; Law no. 011/2002 of 29 August 2002 on the

forestry code in the Democratic Republic of Congo; Law no. 14/003 of 11 February 2014 on nature conservation, repealing Ordinance-Law no. 69-041 of 22 August 1969 governing nature conservation. All these laws are and remain under the aegis of Congolese judges with a constitutional mandate to guarantee fundamental rights and freedoms [19]. In the Democratic Republic of Congo, the right to a healthy environment is currently controversial in terms of its content, obligations, and beneficiaries. Even though the right to a healthy environment has been enshrined in law, there has also been a lack of enforcement in the Democratic Republic of Congo, which suggests that the right has been recognised in theory but not in practice.

## I.2 Characteristics of the anthropocentric interpretation

At present, the right to a healthy environment is interpreted in an anthropocentric way, simply because its protection is limited to human beings, considering their health, life and/or dignity. This interpretation, which places people at the center, implies at the very least the right not to be subjected to harmful pollution. This is how the right to a healthy and favorable environment came into being. As Professor Michel Paque points out, the anthropocentric approach seeks to protect the environment because it is useful to man [20]. The healthy environment thus establishes a link with health, individual rights, and a close environment [21]. In the Democratic Republic of Congo, the healthy environment is enshrined in the constitution, in article 53 of the 2011 constitution. Health, which has long been protected, has made it possible to include the healthy environment as a human right. As we shall see, the right to a healthy

<sup>12</sup> Ibidem

<sup>13</sup> Article 11 'San Salvador Protocol on Economic, Social and Cultural Rights of 1988' <<https://legal.un.org/avl/studymaterials/ilfp/2014/book2.pdf>> [accessed 22 March 2023].

<sup>14</sup> African Charter on Human and Peoples' Rights, in Article 24. '36390-Treaty-0011\_-african\_charter\_on\_human\_and\_peoples\_rights\_e.Pdf' <[https://au.int/sites/default/files/treaties/36390-treaty-0011\\_-african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_f.pdf](https://au.int/sites/default/files/treaties/36390-treaty-0011_-african_charter_on_human_and_peoples_rights_f.pdf)> [accessed 21 March 2023].

<sup>15</sup> 'ACIHL-The Arab Charter On Human Rights 2004' <[https://acihl.org/texts.htm?article\\_id=16](https://acihl.org/texts.htm?article_id=16)> [accessed 22 March 2023]. ; the Association of Southeast Asian Nations Declaration of Human Rights of 18 November 2012 recognises the right of everyone to a safe, clean and sustainable environment as a component of the right to an adequate standard of living.

<sup>16</sup> "European Parliament resolution of 7 July 2021 on citizens' dialogues and citizens' participation in EU decision-making (2020/2201(INI))", 2021.

<sup>17</sup> "European Parliament resolution of 7 July 2021 on citizens' dialogues and citizens' participation in EU decision-making (2020/2201(INI))".

<sup>18</sup> This provision echoes the provisions of article 24 of the African Charter on Human and Peoples' Rights: "Everyone has the right to a healthy environment conducive to his or her full development. It adds that everyone has a duty to defend this right. Finally, it emphasises that the State shall ensure the protection of the environment and the health of the population". The implementation of this provision seems problematic in the DRC, given that the State, in its mission to protect citizens from all natural disasters, should train environmental judges and set up specialized environmental courts to ensure that this right is effective.

<sup>19</sup> Article 150 of the DRC Constitution as amended by Law no. 11/002 of 20 January 2011 revising certain articles of the Constitution of the Democratic Republic of Congo of 18 February 2006 provides that: "The judiciary is the guarantor of individual freedoms and the fundamental rights of citizens. In the exercise of their functions, judges are subject only to the authority of the law. An organic law sets the status of magistrates" quoted by Kennedy KIHANGI BINDU, note 7.

<sup>20</sup> Michel PÂQUES, *L'environnement un certain droit de l'homme*, online

<https://orbi.uliege.be/bitstream/2268/8275/1/157.pdf>

<sup>21</sup> Idem, p.18

environment encompasses a whole range of basic elements which, if inadequately protected, can have a negative impact on human health. The healthy environment resulting from the anthropocentric conception thus becomes a precondition for the enjoyment of the right to health, and indeed *of all other human rights* [22]. As we shall see, these basic elements are safe water, clean air, a safe climate, water without health risks, adequate sanitation services, healthy food produced using sustainable methods, non-toxic environments in which everyone can live, work, study and play, and healthy biodiversity and ecosystems [23]. As we shall see, this right implies obligations on States.

### I.3 Formulation of the right to a healthy environment

The right to a healthy environment was enshrined in international law at the World Summit on the Environment in 1972, and quickly became a human right. It is now protected at both international and national level. Resolution A/76/L.75 of the United Nations General Assembly, supplemented by Human Rights Council resolution 48/13 of 8 October 2021 [24], supplemented by resolutions 44/7 of 16 July 2020 [25], 45/17 of 6 October 2020 [26], 45/30 of 7 October 2020 [27] and 46/7 of 23 March 2021 [28], this right is now universally recognized and is included in all regional human rights systems with the exception of the European system. In this section, we shall try to see how this right is reformulated at universal level, at regional level, more specifically in regional human rights instruments, and in the Constitution of the Democratic Republic of Congo.

#### A. The right to a healthy environment in United Nations texts

The fight for the universal enshrinement of the right to a healthy environment in a binding legal text is the result of a decade of awareness-raising. Beginning with the work carried out at the World Summits on the

Environment, which contributed to the development of the right to a healthy environment, through the work of human rights bodies, which led to the adoption of a recent resolution recognizing this right as a human right, this right is now included in the list of rights that are legally binding.

On 8 October 2021, the United Nations Human Rights Council (UNHRC) recognized the right to a clean, healthy and sustainable environment as a human right essential to the exercise of other rights. Resolution 48/13, adopted at the 48th session, is the first UN instrument to affirm the viability of the right to a healthy environment. It guarantees individuals and peoples an environment of a quality that enables human beings to enjoy a life of dignity and fulfillment [29]. In September 2020, at the 45th session of the UNHRC, the core group indicated that it had begun consultations with various stakeholders, as the possible recognition of a right to a safe, clean, healthy, and sustainable environment at global level would have positive consequences for present and future generations [30]. The recognition of the right to a clean, healthy, and sustainable environment in a text of the UN Human Rights Council is due to its undeniable value for the realization of human dignity and for the positive transformations it brings about in terms of protecting the environment and human beings [31]. To remove any ambiguity, the UN General Assembly endorsed this resolution by also enshrining the right to a healthy environment. It did so by adopting resolution A/76/L.75 [32]. Henceforth, the right to a healthy environment is a universally binding right, requiring States to adopt good practice to ensure its realization. According to Resolution A/HRC/43/53 adopted by the Human Rights Council at its 43<sup>rd</sup> session on 24 February-20 March 2020, good practice by States "is understood in a broad sense and refers to laws, policies, jurisprudential rules, strategies, programs, projects and other measures that

<sup>22</sup> 16<sup>e</sup> recital of the United Nations Resolution on the right to a healthy environment. A/76/L.75

<sup>23</sup> For an in-depth reading, see A/HRC/43/53: Right to a healthy environment: good practices - Report of the Special Rapporteur on the issue of human rights obligations relating to the means of enjoying a safe, clean, healthy and sustainable environment, of 30 December 2019.

<sup>24</sup> Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 53A (A/76/53/Add.1), chap. II

<sup>25</sup> Ibid, Seventy-fifth Session, Supplement No. 53 (A/75/53), chap. V, sect. A.

<sup>26</sup> Ibid, supplement No. 53A (A/75/53/Add.1), chap. III.

<sup>27</sup> Ibidem

<sup>28</sup> Ibid, Seventy-sixth Session, Supplement No. 53 (A/76/53), chap. V, sect. A.

<sup>29</sup> Camila Perruso, "L'affirmation d'un droit à un environnement propre, sain et durable universel", La Revue des droits de l'homme [Online], Actualités Droits-Libertés, online since 15 November 2021, connection on

06 December 2021. URL : <http://journals.openedition.org/revdh/13063> ; DOI : <https://doi.org/10.4000/revdh.13063>

<sup>30</sup> Joint statement, Core Group Human Rights and the Environment, HRC 45 - GD Item 3, Geneva, September 2020,

[https://www.genevaenvironmentnetwork.org/wp-content/uploads/2020/09/StatementCoreGroupHRE\\_towardsGlobalRecognition.pdf](https://www.genevaenvironmentnetwork.org/wp-content/uploads/2020/09/StatementCoreGroupHRE_towardsGlobalRecognition.pdf)

<sup>31</sup> Camila Perruso, "L'affirmation d'un droit à un environnement propre, sain et durable universel", in La Revue des droits de l'homme [Online], Actualités Droits-Libertés, online since 15 November 2021, connection on 06 December 2021. URL : <http://journals.openedition.org/revdh/13063> ; DOI : <https://doi.org/10.4000/revdh.13063>

<sup>32</sup> United Nations General Assembly, The right to a clean, healthy and sustainable environment, resolution adopted at the seventy-sixth session on 26 July 2022.

mitigate environmental degradation, improve environmental quality and ensure the enjoyment of human rights. Good practices concern both procedural and substantive elements of the right to a safe, clean, healthy, and sustainable environment. The procedural elements are access to information, public participation, and access to justice and effective remedies. The substantive elements include clean air, a safe climate, water free of health risks adequate sanitation services, healthy food produced using sustainable methods, and non-toxic environments in which everyone can live, work, study and play. work, study and play, and healthy biodiversity and ecosystems" [33]. As a result of this practice, this fundamental right is now recognized by law in more than 80% of United Nations member states (156 out of 193) [34].

### B. The right to a healthy environment in Africa

At African level, the African Charter on Human and Peoples' Rights, adopted on 27 June 1981 by the States of the Organization of African Unity (OAU), now the African Union (AU) 207, is the first regional human rights text to expressly enshrine the right to a healthy environment under the heading of "the right to a satisfactory and comprehensive environment". According to Article 24 of the African Charter on Human and Peoples' Rights, "All peoples have the right to a satisfactory and comprehensive environment conducive to their development". Two decades later, such a right did not yet exist in general or special international law. It had only been set out, at a universal level, in soft law texts, in this case the 1972 Stockholm Declaration on the Human Environment, the first principle of which recognized a fundamental human right to "satisfactory living conditions, in an environment of a quality that permits a life of dignity and well-being" [35]. A reading of article 24 of the Charter suggests that the writer chose imprecise words that could lead to misleading interpretation. Mohamed Ali Mekouar believes that more precise words such as "healthy, salubrious, clean, balanced, decent, suitable, of quality, dignity, well-being, interest of future generations, etc." could have been used to give more meaning [36]. The African Commission on Human Rights has ruled on this vagueness in one case. This was the case of Social and Economic Right Action Center, Center for Economic and

Social Rights v. Nigeria, known as the Ogoni case [37], in which the Commission considered that the right to a satisfactory and comprehensive environment was equivalent to the right to a healthy environment. Despite the weakness of this provision, it is nonetheless worth pointing out that the African Charter has thus served as a reference not only for other continents to be able to enact the right to a healthy environment in their texts, but also for African States to make this right constitutional. The right to a healthy environment is now enshrined in the constitutions of African states, but it is regrettable that it remains a less justiciable right.

### C. The right to a healthy environment in America

According to the ICJ, the environment is not an abstraction, but the space in which human beings live and on which the quality of their life and their health depend, including for generations to come [38]. From this declaration, a link between the environment and human life can be deduced, which points to the need to protect the environment in order to enshrine certain human rights.

In America, the American Convention on Human Rights (ACHR), adopted in 1969, does not directly and explicitly enshrine the right to a healthy environment. Instead, the Additional Protocol to the ACHR in the Economic, Social and Cultural Fields filled this gap when it was adopted in San Salvador in 1988 (although it did not come into force until 1999).

According to article 11 of this protocol, "Everyone has the right to live in a healthy environment and to benefit from essential community facilities". The Spanish version of this text defines the environment as "sano", whereas the English version speaks of "healthy". Magistro qualifies these two words as "healthy", while the doctrine qualifies them as "salubrious". It should be emphasized that this protocol complements the provisions of the ACHR and gives force to the existence of the right to a healthy environment. The binding nature of this text was the subject of controversy and was finally clarified by the Inter-American Court of Human Rights, which, in an advisory opinion initiated by the Republic of Colombia on the interpretation of article 64 [39] of the Convention, found that the ACHR was legally binding

<sup>33</sup> Introduction of the annexed resolution A/HRC/43/53

<sup>34</sup> Ibidem

<sup>35</sup> Mekouar A. M., Le droit de l'environnement dans la Charte africaine des droits de l'homme et des peuples, FAO legal study online # April 2001, title retrieved 9 October 2012, available at: <<http://www.fao.org/Legal/default.htm>>.

<sup>36</sup> Ibidem

<sup>37</sup> For a good understanding of the Commission's thinking, see ADHP Comm, Social and Economic Rights Action Center, Center for Economic and Social Rights v. Nigeria (Ogoni case), Communication No. 155/96, 27 October 2001.

<sup>38</sup> Legality of the Threat or Use of Nuclear Weapons, ICJ, Advisory Opinion of 8 July 1996, ICJ Reports 1996, p. 226, § 36.

<sup>39</sup> In accordance with the provisions of the first and second paragraphs of this Article, the member States of the Organization may consult the Court concerning the interpretation of this Convention or of any other treaty concerning the protection of human rights in the American States. At the request of any Member State of the Organization, the Court may issue an opinion on the compatibility of any of the laws of that State with the aforementioned international instruments.

[40]. It remains to be emphasized that, as in Africa, the right to a healthy environment remains a less justiciable right. The San Salvador Protocol, which enshrines this right, has unfortunately only been ratified by 16 States, compared with 23 States parties to the American Convention on Human Rights [41]. As a result, the justiciability of the right to a healthy environment has increased thanks to the efforts of the courts.

#### **D. The right to a healthy environment in Europe**

In Europe, the right to a healthy environment has not been expressly enshrined in the European Convention on Human Rights (ECHR), and even less so in its Additional Protocols. It is worth noting that despite this gap, the supervisory bodies have attempted to fill the void through case law.

In several complaints in which individuals allege a violation of the right to a healthy environment, the Court has recognized that the individual rights included in the Convention can be affected by environmental factors in three different ways:

*"Firstly, human rights as protected by the Convention may be directly affected by adverse environmental factors. For example, toxic odours from a factory or landfill could have a negative impact on human health. Secondly, people affected by adverse environmental factors may be entitled to certain procedural rights. The Court has held that public authorities must respect certain requirements concerning information and communication, as well as participation in decision-making processes and access to justice in cases involving environmental issues; thirdly, the protection of the environment may also constitute a legitimate aim justifying interference with the enjoyment of certain human rights. For example, the Court has held that the right to peaceful enjoyment of possessions may be subject to restrictions if necessary for the protection of the environment"* [42].

<sup>40</sup> Pascale Ricard. The clarification of the link between human rights and environmental protection and its consequences by the Inter-American Court of Human Rights in its advisory opinion of 15 November 2017. *Journal of the Centre for International Law (CDI)*, 2018, 17, pp. 15-18. fihal-02514693

<sup>41</sup> Until 1<sup>er</sup> February 2016, these states are : Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, state see ÚBEDA DE TORRES (2013), p. 132; there were 25 states party to the convention, but Trinidad and Tobago and Venezuela have denounced the treaty (MAGISTRO, 2017).

<sup>42</sup> Council of Europe, Handbook on Human Rights and the Environment: Principles drawn from the case law of the European Court of Human Rights and the

As far as the Committee was concerned, the constant was that the negligence of States with regard to environmental issues may amount to a failure to respect certain rights set out in the Charter. For example, it considered that the absence of measures to avoid or reduce the deterioration of the environment may infringe specific rights in the Charter, such as the right to protection of health, interpreted by the Committee as including the right to a healthy environment [43]. This is why the Committee expressed the need for a binding text enshrining the protection of a healthy environment.

#### **E. The right to a healthy environment in the DRC Constitution**

Environmental protection is a matter for the law. In the light of the 2006 Constitution, the right to a healthy environment is based on Article 53 of the Constitution of 20 January 2011, which states that "Everyone has the right to a healthy environment conducive to their full development. They have a duty to defend it. The State shall ensure the protection of the environment and the health of the population" [44]. The inclusion of the environmental aspect in the fundamental law bears witness to the importance of environmental issues. As the right to the environment is a component of the right to life, which is a human right recognized at both international and national level, its enshrinement in the Constitution is a way for victims of environmental damage to defend the protection of the environment before the courts and to seek compensation in the event of its deterioration. It is a constitutional right. Unfortunately, despite this constitutional recognition, the right to a healthy environment remains a theoretical right that has no jurisdictional guarantee in the Democratic Republic of Congo.

#### **II. The components of the right to a healthy environment**

As we have already emphasized [45], the right to a healthy environment as guaranteed by Article 53 of the Constitution, supplemented by Articles 46 [46] and

conclusions and decisions of the European Committee of Social Rights, 3<sup>e</sup> Edition, February 2022, p.7

<sup>43</sup> Idem, p.8

<sup>44</sup> This provision takes up the provisions of article 24 of the African Charter. It adds that everyone has a duty to defend this right. Finally, it emphasises that the State shall ensure the protection of the environment and the health of the population. Unfortunately, its application seems problematic in the DRC, where the State, in its mission to protect citizens from all natural disasters, should train environmental judges and set up specialised environmental courts to ensure the effectiveness of this right.

<sup>45</sup> See note 33

<sup>46</sup> According to article 46, "Everyone has the right to a healthy environment conducive to their full development. They have a duty to defend it, by all legal means, in individual or collective action".

following of the Environment Act 2011, covers not only the substantive elements, but also the formal elements. The procedural elements are access to information, public participation, and access to justice and to effective remedies. The substantive elements include clean air, a safe climate, safe water, adequate sanitation, safe and sustainably produced food, non-toxic environments in which people can live, work, study and play, and healthy biodiversity and ecosystems. In Africa, the procedural elements are set out in the African Convention on the Conservation of Nature and Natural Resources (or the Maputo Convention of 11 July 2003), which states: "1. *The Contracting Parties shall adopt the necessary legislative and regulatory measures to ensure timely and appropriate: a) dissemination of environmental information; b) public access to environmental information; c) public participation in decision-making that may have a significant impact on the environment; d) access to justice in matters relating to the protection of the environment and natural resources.* 2. *Any Contracting Party which causes transboundary environmental damage shall ensure that persons affected by such damage in another Contracting Party have a right of access to its administrative and judicial procedures equal to that granted to its nationals or residents in the event of environmental damage within its borders*" [47]. The procedural elements make it possible to achieve the substantive elements, which is why only the procedural elements will be discussed in this section.

## II.1 Access to environmental information

As long ago as 1982, the United Nations General Assembly adopted the World Charter for Nature, principle 16 of which enshrines access to environmental information. In 1987, the Brundtland Report (entitled "Our Common Future") was drawn up by the United Nations Commission on Environment and Development. In its prescriptions, it also mentions the quintessence for sustainable development of the right of access to information on the environment [48]. According to principle 10 of the 1992 Rio Declaration, "everyone should have appropriate access to information relating to the environment held by public authorities, including information relating to hazardous substances and

*activities in their communities*". The animus of this principle is to enable the public to participate in decision-making. There is no doubt that the right decision is based on clear, consistent, and accurate information. In 1998, the United Nations Economic Commission for Europe adopted the *Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters* (the Aarhus Convention), a consensus that is new in international environmental law. This treaty does not deal with environments, substances, or species, but recognizes and affirms rights that can be directly invoked by anyone before the courts [49]. According to this text, "the public authorities have an obligation to make information on the environment available to the public, within the framework of their national legislation..." [50]. They are also required to make available to the public the environmental information requested from them and copies of documents containing such information within one month of the date of the request. This must be done even if the public has not asserted a particular interest [51]. As a procedural right, it is one of the conditions for realizing the right to a healthy, high-quality environment [52]. In Africa, access to information is a fundamental right guaranteed by Article 9(1) of the African Charter, which states: "Everyone has the right to information" [53]. In line with the Charter, in the Democratic Republic of Congo, access to environmental information is recognized by Law n° 11/009 of 09 July 2011 on the fundamental principles relating to environmental protection [54]. According to this law, "Everyone has the right to access available, complete and accurate information relating to the environment, including that relating to hazardous substances and activities and the measures taken for their prevention, treatment and elimination, as the case may be. The State, the province and the decentralized territorial entity shall make available to the public any information relating to the state of the environment. The procedures for access to information and the means of appeal in the event of unjustified refusal to provide information are defined by decree deliberated by the Council of Ministers" [55]. The Congolese legislator has instead modelled itself on principle 10 of the Rio Declaration. Despite the existence

<sup>47</sup> See also The African Convention on the Conservation of Nature and Natural Resources (or Maputo Convention of 11 July 2003), in Article 16, which is entitled "procedural rights".

<sup>48</sup> Message on the approval of the Aarhus Convention and its application as well as its amendment amendment, FF 2012 4032

<sup>49</sup> Baril, J. (2009). Right of access to environmental information: the cornerstone of sustainable development. [VertigO] La revue électronique en sciences de l'environnement, (6).

<sup>50</sup> Article 4 of the Aarhus Declaration

<sup>51</sup> Article 4 § 1 let. a

<sup>52</sup> Kiss, A., J.-P. Beurrier, 2004, *Droit international de l'environnement*, 3rd edn, Paris, A. Pedone, 502 p.

<sup>53</sup> The wording of this right leads us to believe that it has direct effect on contracting parties. Individuals can thus raise its violation before the State judge as well as before the judge of the African Court on Human and Peoples' Rights.

<sup>54</sup> This law was also supplemented by Article 20 of Decree No. 14/019 of 02 August 2014 laying down the operating rules of the procedural mechanisms of environmental protection dealing with the procedure followed for an environmental impact assessment in that "... *The agency shall make available to the public, the Manual.*"

<sup>55</sup> Article 8 of Law no.° 11/009 of 09 July 2011 on the fundamental principles of environmental protection

of such a provision, this right seems theoretical to us in the DRC and is devoid of any jurisdictional guarantee, even though it falls within the scope of justiciable rights.

## II. 2. Public participation in environmental decision-making

Public participation in environmental decision-making is one of the key elements in ensuring the effectiveness of the right to a healthy environment. It is set out in Articles 6 to 8 of the Aarhus Convention. According to paragraph 2, supplemented by paragraph 4 of article 6, the public must be informed of the start of any decision-making process affecting the environment, individually or by means of a public notice as appropriate, in an effective manner and in good time. The information must relate to the proposed activity, the nature of the decision or draft decision that might be taken, the name of the authority responsible for taking the decision and the procedure envisaged, as well as the fact that the activity in question is subject to a national or transboundary impact assessment [56]. With regard to paragraph 7, public participation implies the possibility for the public to submit in writing or, as appropriate, at a hearing or public enquiry involving the applicant, any comments, information, analyses or opinions which it considers relevant to the proposed activity. The spirit of this paragraph refers to the possibility for the public to be able to make its own appraisal of each project submitted by the authority. Under article 8 of the Convention, the public may also participate, not only in relation to a specific project, but also in the preparation of plans and programs relating to the environment in general.

Article 23 of the Cartagena Protocol to the Convention on Biological Diversity also goes some way towards public awareness and participation, and by encouraging States to involve non-state actors in decision-making at national level. In the Democratic Republic of Congo, public participation in environmental decision-making is recognized by Law N° 11/009 of 09 July 2011 on the fundamental principles of environmental protection. According to this law, *"Everyone has the right to participate in the decision-making process relating to the environment and the management of natural resources. The public shall participate in the process by which public authorities develop policies, programs, plans, and regulations relating to the environment within a transparent and equitable framework defined and*

*established by those authorities. The public concerned also has the right to participate, from the outset and throughout, in the process of taking decisions which affect its existence or may have a significant effect on the environment, in particular planning decisions, authorizations for the construction of a project or activity, authorizations for the construction or operation of classified installations, emissions and environmental and social impact assessments. He has the right to be informed of the final decision"* [57]. The application of this provision should influence the decision-making process, but unfortunately in the DRC, the exercise of this right does not benefit from any necessary guarantees. It therefore appears to be a theoretical right. This is justified by the fact that the Congolese administration sees itself as an institution imposing its will on citizens in environmental matters. Congolese citizens are never involved in the preparatory work for these environmental decisions, which leaves them in a subordinate position that does not allow them to make any claims whatsoever. Logically, the failure to involve the public should be sanctioned by the court in the same way as the violation of a substantial formality, thus tainting the procedure at the end of which the contested decision was made with irregularity and, therefore, the annulment of the decision in question [58].

## II.3. Access to environmental justice

According to Cécile, *"In a state governed by the rule of law, access to justice is an essential condition for the rule of law to be effective. It enables all individuals to obtain recognition and enforcement of their rights. Without access to justice, the rights enshrined in law would be purely theoretical"* [59]. It was as long ago as 1992 that this right was set out in principle 10 of the Rio Declaration: *"Effective access to judicial and administrative proceedings, including redress and remedy, must be ensured"*. Article 1 of the Aarhus Convention also provides for the idea of access to environmental justice in this sense: *"In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights ... of access to justice in environmental matters"*. This provision is further clarified by Article 9 of the same Convention, which states that *"Each Party shall ensure, within the framework of its national law, that everyone [...] has the possibility of seeking a remedy before a court of law or another independent and impartial body established by*

<sup>56</sup> Article 6 § 2 let. a, b, c, d, e, cited by Magistro (2017), note 930

<sup>57</sup> Article 9 of Law no.° 11/009 of 09 July 2011 on the fundamental principles of environmental protection

<sup>58</sup>KONATÉ A., Pour une démocratie environnementale en Afrique : de nouveaux droits de citoyenneté indispensables à l'effectivité du droit de l'environnement, in *Revue africaine de Droit de l'Environnement : Le Droit de l'Environnement en Afrique*, Proceedings of the

First International Colloquium on Environmental Law in Africa, Abidjan, 2014, pp 37-52.

<sup>59</sup> Cécile Ott Duclaux-Montei, L'accès à la justice en matière d'environnement par les populations en Afrique de l'ouest et centrale, in institut de la francophonie pour le développement durable : *Pas à pas vers une justice environnementale* ; Liaison Énergie-francophonie, 2014, pp10-14



law. Where a Party provides for such a remedy before a judicial body, it shall ensure that the person concerned also has access to an expeditious procedure established by law, which is free of charge or inexpensive, for the review of the application by a public authority or for its consideration by an independent and impartial body other than a judicial body". Article 9(2)(b) thus specifies that the public should have access to a review procedure before a court of law and/or another independent and impartial body established by law to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6 and, where provided for under national law and without prejudice to paragraph 3 below, other relevant provisions of this Convention. The inclusion of such a provision reflects the importance of access to justice for the realization and effectiveness of other rights. The African Charter on Human and Peoples' Rights also recognizes the right to justice, proclaiming that "All persons shall enjoy full equality before the law and shall be entitled to equal protection of the law" [60]. This provision is spelled out in Article 7, which states that "Everyone is entitled to a fair hearing. This right includes: (a) the right to take proceedings in the competent national courts against any act violating the fundamental rights recognized and guaranteed by the conventions [...]". By ratifying the Charter [61], the Democratic Republic of Congo thus undertook to apply it. As we have already said, it has thus made the right to a healthy environment constitutional. As regards access to environmental justice, the DRC has agreed to apply the Charter in its entirety. More specifically, it mandates judges to be guarantors of fundamental rights and freedoms [62], thereby enshrining the right of access to justice. Article 19 of the Constitution also enshrines the right of access to justice: "No one may be removed or distracted against his will from the court assigned to him by law. Everyone has the right to have his case heard within a reasonable time by a competent court". The right of access to environmental

justice is also provided for in the Democratic Republic of Congo, in Article 134 of Law no. 011/2002 of 29 August 2002 on the Forestry Code [63]. It is also enshrined in Law no. 11/009 of 09 July 2011 on the fundamental principles relating to environmental protection, which establishes the duty of every person to defend the protection of the environment, by all legal means, either individually or collectively [64]. The unfortunate fact is that all these texts enshrining access to environmental justice are silent on the competent jurisdiction and the conditions for bringing cases before it, which makes this right almost theoretical in the DRC.

### III. Obligations deriving from the right to a healthy environment

According to the fourth point of United Nations General Assembly Resolution A/76/L.75, which enshrines the right to a healthy environment as a human right, States, international organizations, business and other relevant actors have an obligation to adopt policies, improve international cooperation, build capacity and continue to share good practices in order to strengthen efforts to ensure a clean, healthy and sustainable environment for all [65]. As noted above, good practice by States refers to *laws, policies, jurisprudential rules, strategies, programs, projects and other measures that mitigate environmental degradation, improve environmental quality and ensure the enjoyment of human rights* [66]. By applying good practice, the Democratic Republic of Congo has thus made the right to a healthy environment constitutional, which obliges it not only to respect and ensure respect for this right, but also to protect it and/or progressively realize it according to its means.

#### III.1 Obligation to respect

The obligation to respect requires the State to respect and ensure respect for the right enshrined in Article 53 of the Constitution. This respect is non-

subject only to the authority of the law. An organic law sets the status of magistrates".

63 According to this provision, "Associations representing local communities and approved national non-governmental organisations contributing to the implementation of government policy in environmental matters may exercise the rights granted to civil parties in respect of acts constituting an infringement of the provisions of this law and its implementing measures, or an infringement, according to the international agreements and conventions ratified by the Democratic Republic of Congo and causing direct or indirect damage to the collective interests that they aim to defend".

64 Article 46

65 Point 4 of resolution A/76/L.75

66 See note 33

<sup>60</sup> Article 3 African Charter on Human and Peoples' Rights, adopted by the 10th Conference of Heads of State and Government, June 1981, Nairobi, Kenya (<http://www.achpr.org/files/instruments/achpr/>)

<sup>61</sup> Ordonnance Loi N° 87-027 du 20 Juillet 1987 portant ratification par la RDC de la Charte africaine des Droits de l'Homme et des Peuples. See Journal Officiel de la République Démocratique du Congo, Instruments juridiques internationaux et régionaux relatifs aux droits de l'homme ratifiés par la République Démocratique du Congo, Cabinet du Président de la République, 43e numéro, décembre 2002, p. 244.

<sup>62</sup> Article 150 of the DRC Constitution as amended by Law no. 11/002 of 20 January 2011 revising certain articles of the Constitution of the Democratic Republic of Congo of 18 February 2006 provides that: "The judiciary is the guarantor of individual freedoms and the fundamental rights of citizens. In the exercise of their functions, judges are

negotiable under article 60 of the 2011 Constitution, which states that "Respect for human rights and fundamental freedoms enshrined in the Constitution is binding on the public authorities and on every person". According to Céline, the obligation to respect the right to the environment implies a prohibition on hindering, interfering with or undermining, directly or indirectly, the right to a healthy environment. It also implies a prohibition on direct or indirect discrimination, in particular against specific groups, in relation to the right to a healthy environment; a prohibition on obstructing the action of associations, individuals or groups working towards the realization of this right; a prohibition on implementing policies that affect, in any way, the prerogatives deriving from the right to a healthy environment or that do not take this objective into account [67]. By implementing this obligation, the State is moving towards protecting the right to a healthy environment.

### III.2 The Duty to Protect in relation to conduct

The obligation to protect the right to a healthy environment presupposes that the State undertakes to adopt the necessary measures leading to the application of this right. Article 53, paragraph 3 of the Constitution of the Democratic Republic of Congo imposes an obligation on the State to ensure the protection of the environment and the health of the population. Failure to comply with this obligation would be a violation of a constitutional norm that could lead not only to sanctions, but also to compensation. By protecting, the State bears the burden of preventing any person, company, or other State from hindering and/or undermining the human right to a healthy environment. It must therefore include in its regulations compensation for any damage caused. Article 54 of the 2011 Constitution [68], supplemented by the law we have referred to, law no. 11/009 of 09 July 2011 [69] laying down the fundamental principles relating to environmental protection, thus finds its raison

<sup>67</sup> Romainville, Céline . L'essor du droit à l'environnement sain en droit belge et ses défis. In: Bräen, André (ed.), *Droits fondamentaux et environnement. Proceedings of the conference "Regards croisés sur les rapports entre les droits fondamentaux et l'environnement : Perspectives de la Belgique, du Canada et de la France"* held at the Civil Law Section of the University of Ottawa, January 25, 2013, Wilson & Lafleur: Montréal, 2013, pp. 79-106

<sup>68</sup> According to this provision [...] Any pollution or destruction resulting from an economic activity gives rise to compensation and/or reparation. The law shall determine the nature of the compensatory and reparation measures and the procedures for their implementation.

<sup>69</sup> Article 3 of this law calls on the State, the province and the decentralised territorial entity, as well as any public or private natural or legal person, to protect the environment and participate in improving its quality.

d'être. The obligation to protect also leads the State to act in favor of the right to a healthy environment. The State thus refrains from infringing human rights by giving rise to the commission of environmental damage; prevents, through its regulations, harm resulting from environmental damage caused by businesses or other private actors, or by natural phenomena; takes effective measures to ensure the preservation and viable use of ecosystems and biological diversity on which the full enjoyment of human rights depends. In the absence of such protection, should exercise due diligence to prevent damage and minimize it as far as possible, and should provide for measures to compensate for damage that cannot be avoided [70].

### III.3 Obligation to carry out

As Céline points out, the right to a healthy environment implies, finally, the implementation of the obligation to fulfil fundamental rights in its two dimensions: procedural and material [71]. The obligation to fulfil thus requires access to environmental information [72]. It is true that the texts promulgated are published in the official gazette, which is not accessible or known by everyone, given that most Congolese are illiterate. The promotion of environmental education should start at an early age, by including environmental law in primary school alongside civics. Secondly, the state has an obligation to ensure public participation in environmental decision-making [73]. Finally, the State has an obligation to put in place the necessary conditions to facilitate access to environmental justice [74]. The State should fulfil this obligation by setting up specialized environmental courts and promoting the training of judges in environmental matters. This would also make the rest of the State's obligations justiciable. It is less important to enact legislation that is ineffective.

<sup>70</sup> For a better understanding, see the comments on framework principles 1 and 2 by Philippe Karpe, *Droit à un environnement sain et une tragédie onusienne ? 2022*. On line <https://hal.science/hal-03855015>

<sup>71</sup> Romainville, Céline, op, cit, p12.

<sup>72</sup> Provided for in Article 8 of Law no.° 11/009 of 09 July 2011 on the fundamental principles relating to environmental protection. Unfortunately, as we have pointed out, this is a theoretical text devoid of jurisdictional guarantees.

<sup>73</sup> Provided for in Article 9 of Law no.° 11/009 of 09 July 2011 on the fundamental principles of environmental protection

<sup>74</sup> Article 46 of the same 2011 law. The State must therefore guarantee access to effective remedies in the event of a breach of all the obligations we have mentioned. Unfortunately, access to environmental justice is still in its infancy. This is because environmental litigation is virtually non-existent.

#### IV. A somber but perfectible effectiveness of the right to a healthy environment

Unlike first-generation rights, which are immediately justiciable, second- and third-generation rights are enshrined without specifying their justiciability. The provisions enshrining them are formulated in general or vague terms. This makes it difficult for them to be enforced by the courts [75]. With regard to the place of the right to a healthy environment, Professor Nicolas de Sadeleer believes that it straddles the line between second- and third-generation human rights and could in this respect lead to the State becoming the principal figure in the management of ecological risks [76]. For some time now, the right to a healthy environment has been a legally protected constitutional human right. The fact that it is enshrined in the constitution provides a basis for bringing it before the courts. As we have pointed out, it has two features: a procedural nature (access to environmental information, participation in the environmental decision-making process, access to justice). So far, the interpretation of Article 46 [77] of Law no. 11/009 of 9 July 2011 on the fundamental principles relating to environmental protection refers to the idea that this is both an individual and a collective right. Violation of the procedural aspect gives the possibility of going to court individually or collectively to claim justiciability; the second character is the substantive one (safe drinking water, the right to better living conditions and the right to housing), which is not of immediate application. It should be emphasized that the effectiveness of the right to a healthy environment implies that every person should have the possibility of going to court to seek redress in the event of a violation of this right. An analysis of article 46 shows that this would be possible for the formal aspect, which can be considered even individually, rather than for the substantive aspect, which is not immediately applicable. Practice is clearly the opposite in the Democratic Republic of Congo, where this right is constitutional but lacks effectiveness in both formal and substantive terms. It is impossible to bring a case before a court, as all the texts enshrining this right are silent on the competent court. There is therefore a lack of clarity in this enshrinement. This could lead to a need to strengthen

environmental education, by clearly identifying who the beneficiaries of this right really are.

##### IV.1. Holders of the right to a healthy environment

Determining the true owner of the right to a healthy environment raises the question of whether it is an individual or a collective right. The wording of article 24 of the African Charter on Human Rights, which refers to the right of the people, implies collective rather than individual recognition. But the wording of article 53 of the Constitution of the Democratic Republic of Congo refers to a right recognized as belonging to each individual. Anyone who feels oppressed can raise his or her justiciability before a judge. The letter of the law might suggest a contradiction, whereas the spirit of the two methods might suggest complementarity. A human right recognized for everyone without discrimination based on race, skin, language, religion, ethnicity, political or any other opinion, national or social origin, etc [78]. In addition to individual recognition, this right can also be exercised by the community through associations and/or NGOs. Most often, civil society acts from time to time to defend the rights of civilians. If we consider the anthropocentric interpretation of the right to a healthy environment, we will come to the conclusion that the beneficiaries are indeed the individual men and women who can invoke the defense of the environment to protect their living conditions. But to safeguard this right, the beneficiaries would have to confront a key contentious element, namely the interest to act. To defend an individual environmental interest, that interest must be identifiable, and there must be a genuine interest in taking action [79]. This condition seems rather open to criticism, as it would run the risk of considerably closing *environmental litigation, since it will be agreed that the interest in protecting the environment is most often of a collective nature and that individualizing it is not an easy task. And in the absence of legal battles, it is ultimately the environment that suffers* [80]. States are thus called upon to settle the question in their legislation, and in the DRC the Congolese constitution settles the question by imposing as a condition the existence of environmental damage. Here too, however, the problem that arises in the DRC is that of the effectiveness of this constitutionalisation.

<sup>75</sup>Chardin Carel Makita Kongo. La constitutionnalisation du droit a un environnement. Cahiers africains des droits de l'homme, forthcoming. hal-02431068. <https://hal.archives-ouvertes.fr/hal-02431068> Submitted on 7 Jan 2020

<sup>76</sup> NICOLAS DE SADELEER, Droits fondamentaux et protection de l'environnement dans l'ordre juridique de l'UE et dans la CEDH, European Journal of Consumer Law

de l'UE et dans la CEDH, revue européenne de droit de la Consommation: *Environmental law and Consumer protection*, Christophe verdure (ed.), Lacier, 2011/1

<sup>77</sup> "Everyone has the right to breathe air that is not harmful to their health. Any emission into the air likely

to inconvenience the population or to harm the environment and health is prohibited. Polluting activities are subject either to a ban or to prior authorisation. [...]. "

<sup>78</sup> Read articles 2 of the African Charter and 13 of the Constitution of the Democratic Republic of Congo

<sup>79</sup> Lecucq Olivier. Second workshop Constitution and environment: conditions of justiciability. In: International Yearbook of Constitutional Justice, 35-2019, 2020. Constitution et environnement - La justice prédictive. Pp. 567-574; doi : <https://doi.org/10.3406/ajc.2020.2783>

<sup>80</sup> Ibidem

## IV.2 Law enforcement of the right to a healthy environment

Under Article 53 of the 2011 Constitution, the right to a healthy environment is a constitutional right. This constitutional status provides an irremovable legal basis for environmental court decisions. In addition to the international recognition of this right as a human right, its constitutionalisation raises it to the level of human rights. It thus confers the right to take legal action in the event of environmental damage.

In the Democratic Republic of Congo, we are constantly witnessing a surge in legislation designed to regulate human activities with the sole aim of reducing the harmful effects on the environment and promoting the well-being of the population. This extra legislation would be justified by the fact that, in today's world, environmental and trans-generational responsibility is essential. What about the right to a healthy, satisfactory, and sustainable environment in the Democratic Republic of Congo? Despite this consecration, there is laxity in the application of this right. In practice, the right is enshrined in theory, but there are no concrete sanctions for breaches of the rules. The judicial dimension of the application of the right to a healthy environment is therefore certainly the crucial point in the operationalization of environmental law in this region [81]. If the right to a healthy environment is to be effective in the Democratic Republic of Congo, it is important to address the issue of justiciability.

### A. Justiciability of the right to a healthy environment enshrined in Article 23 of the Constitution

Justiciability can be defined as all the mechanisms that give the judge the possibility of giving reasons for his decision based on a standard and that give the individual the possibility of mobilizing a standard in a dispute [82]. Justiciability is the basis on which victims can bring their claims before the courts.

According to Article 150 of the Constitution, Congolese judges have a constitutional mandate to guarantee fundamental rights and freedoms in the DRC

<sup>81</sup> Stéphane Doumbe-Bille, "La Charte africaine des droits de l'homme et des peuples", in *Annuaire international des Droits de l'Homme*, Vol.I/2006, Bruylant, p.157.

<sup>82</sup> CÉLINE ROMAINVILLE, op cit, p.15

<sup>83</sup> Article 150 of the DRC Constitution as amended by Law no. 11/002 of 20 January 2011 revising certain articles of the Constitution of the Democratic Republic of Congo of 18 February 2006 provides that: "The judiciary is the guarantor of individual freedoms and the fundamental rights of citizens. In the exercise of their functions, judges are subject only to the authority of the law. An organic law sets the status of magistrates" quoted by Kennedy KIHANGI BINDU, note7.

<sup>84</sup> Lecucq Olivier . Second workshop Constitution and environment: conditions of justiciability. In:

[83]. It is important to stress that the law in general, and constitutional law in particular, is only of interest and ultimately fulfils its function when it produces normative effects, when it allows, constrains, demands, sanctions, or protects; when it is given the means to do so effectively [84]. The unfortunate fact is that all these texts enshrining the justiciability of the right to a healthy environment in the Democratic Republic of Congo are silent on the competent jurisdiction and the conditions for bringing cases before it, which makes this right almost theoretical in the DRC. It should be remembered that the justiciability of a right requires that the textual and even jurisprudential translation of this right be capable of producing the expected effects.

### B. What a mess to identify the jurisdiction for justiciability

A right is justiciable when its holder can invoke it before a judicial or quasi-judicial body. In practical terms, this means that an individual or group whose right has been violated can take their case to court to ask the court to annul the act that has caused or would cause them harm, or to order the person (public or private, but generally public) to pay compensation for the damage suffered because of the violation of their right [85]. This possibility gives effect to the human right to a healthy environment. It is true that the laws that enshrine the healthy environment are silent on the competent jurisdiction for the application of the rules they enshrine, but an important deduction must be made depending on the case with reference to Organic Law n° 13/011-B of 11 April 2013 on the organization, functioning and jurisdiction of the courts of the judicial order, which sets out the jurisdiction of the civil courts and tribunals in criminal matters. These are, of course, the material or territorial jurisdictions of the Courts of Peace (Tribunaux de Paix) and the High Courts (Tribunaux de Grande Instance - TGI) [86].

According to article 85 of this law, "*the Courts of the Peace shall hear offences punishable by a maximum of five years' imprisonment and a fine, at any rate, or only one of these penalties*" [87]. Environmental

International Yearbook of Constitutional Justice, 35-2019, 2020. Constitution and environment - Predictive justice. Pp. 567 574; doi :<https://doi.org/10.3406/aijc.2020.2783>[https://www.pers ee.fr/doc/aijc\\_09953817\\_2020\\_num\\_35\\_2019\\_2783](https://www.pers ee.fr/doc/aijc_09953817_2020_num_35_2019_2783)

<sup>85</sup> Bernard NTAHIRAJA and Nestor NKURUNZIZA, "L'État et les droits sociaux de ses citoyens : cas du droit à la santé au Burundi", in p. 12.

<sup>86</sup> Kennedy Kihangi Bindu, *Traité de droit de l'environnement perspectif Congolaises* Geneva: Globethics.net, 2022

<sup>87</sup> Article 85 of Organic Law no.° 13/011-B of 11 April 2013 on the organisation, operation and jurisdiction of the courts of the judicial system

protection legislation includes several offences that fall within the jurisdiction of this court. For example, Article 74 of Law no. 11/009 of 9 July 2011 on the fundamental principles of environmental protection [88]. It is also Article 76; Article 77; Article 78; Article 79; Article 80 [89]. The second example is the exploitation and export for commercial and scientific purposes of traditional knowledge provided for in Article 81 of Law No 14/003 of 11 February 2014 on nature conservation [90]. The Peace Court also has jurisdiction in the case of an authorization for an activity prohibited in a protected area in accordance with Article 75 of Law No 14/003 of 11 February 2014 on nature conservation [91]. It should also be noted that in accordance with article 88 of Organic Law no 13/011-B of 11 April 2013 on the organization, functioning and jurisdiction of the courts of the judicial system, decisions of the Courts of Peace may be appealed to the High Courts (TGD). The High Courts, in turn, has jurisdiction over environmental offences punishable by death and those punishable by a sentence of more than five years' rigorous imprisonment, in accordance with the provisions of article 89 of the Act on the organization, operation and jurisdiction of the courts of the judicial system. For example, the provisions of Articles 75 and 82 of Law no. 11/009 of 9 July 2011 on the fundamental principles relating to environmental protection [92].

### C. The need to set up a specialized jurisdiction to ensure effective accountability

According to the United Nations Environment Program (UNEP), improving the rule of environmental law, access to justice and the resolution of environmental disputes are essential to achieving the UN's Sustainable Development Agenda and Sustainable Development Goals (SDGs) [93].

<sup>88</sup> This provision applies to operators who do not have an emergency plan in accordance with national legislation.

<sup>89</sup> They respectively criminalise people who transport, deposit, throw away or dispose of industrial, craft, medical, biomedical or pharmaceutical waste; pollute water or degrade coastal ecosystems; or alter air quality.

<sup>90</sup> Article 75 of this law states: Anyone who engages in the commercial, scientific or other exploitation of traditional knowledge or innovations associated with the genetic resources of local communities without the prior written consent of those communities shall be liable to imprisonment for a term of six months to one year and a fine of one million to five million Congolese francs, or one of these penalties only. The penalty is one to five years' imprisonment and a fine of five million to twenty million francs for anyone who engages in the commercial, scientific or other exploitation of genetic resources without having obtained the written authorisation of the competent national authority under the conditions defined by this law and its implementing measures...

<sup>91</sup> Under this provision: ...any public official who, in a protected area, issues an authorisation for a prohibited

The establishment of specialized courts and judges would be a means of achieving the 16 ODD<sup>e</sup> [94]. Principle 10 of the Rio Declaration also recognizes that effective access to efficient, transparent, accountable, and democratic institutions is a means of strengthening sustainable development. Unfortunately, the Congolese judicial system has no specialized jurisdiction to deal with environmental violations. Instead, environmental violations are ambiguously brought before the ordinary courts [95]. The crux of the problem is that judges in the ordinary courts are often novices in the field and do not understand or have not been trained in international and national environmental law, are not experienced in making decisions based on analyses of uncertain, complex and changing scientific and technical information, prefer to avoid responsibility for balancing the social, economic and environmental impacts of a development project, or are incapable of making truly fair and equitable decisions in this area [96]. The Congolese legislature has introduced a range of legislative texts which provide for penalties for environmental offences and thus pave the way for the possibility of punishing environmental crimes and offences and repairing environmental damage, but do not refer to any competent jurisdiction for enforcement. The creation of specialized courts in the Democratic Republic of Congo is becoming a necessity if these texts are to be effective.

### IV.3. The need to strengthen the education system to implement the right to a healthy environment

*Environmental education deals with the relationship between man and his environment. It looks at the causes of human activity and its effects on nature and society. This includes the consequences of over-exploitation of resources, climate change, loss of*

activity other than those listed in article 66 of this law, shall be punished by imprisonment for three to six months and a fine of five million to twenty-five million Congolese francs.

<sup>92</sup> These provisions make it a criminal offence to import hazardous or radioactive waste; to dump, incite or dispose of hazardous or radioactive waste in continental waters and maritime areas under Congolese jurisdiction.

<sup>93</sup> George Pring and Catherine Pring, *Environmental Courts and Tribunals: A Guide for Decision-Makers*, UNEP, Nairobi, 2017

<sup>94</sup> Ensuring access to justice for all and developing effective, accountable and inclusive institutions at all levels

<sup>95</sup> Zizanie dans l'identification de la juridiction compétente et du juge pour une justiciabilité du droit à un environnement sain en République Démocratique du Congo

<sup>96</sup> George Pring and Catherine Pring, *Environmental Courts and Tribunals: A Guide for Decision-Makers*, UNEP, Nairobi, 2017

*biodiversity and damage to ecosystems* [<sup>97</sup>]. In the Democratic Republic of Congo, despite the growth in environmental protection legislation, human activities are still having a negative impact on the environment. This is proof of the ineffectiveness of these texts. The right to a healthy environment is a new right that Congolese citizens are unaware of and less familiar with. This is linked to the problem of understanding and acceptance. The high illiteracy rate in the DRC can also lead to ignorance of the guiding principles of the right to the environment. Environmental education is therefore essential to remedy this situation. Being a human right, to be known and accepted, it is concerned by the qualifier "Human Rights Education", synonymous with human rights education. Human rights education refers to "training and information activities designed to foster a universal culture of human rights by imparting knowledge, skills and attitudes that will: a) strengthen respect for human rights and fundamental freedoms; b) ensure the full development of the human personality and the sense of its dignity; [...]" [<sup>98</sup>]. According to a statement by the United Nations, "Not all situations of human rights violations can be reduced to shortcomings in the law, administrative injustices or flagrant failures by the State to fulfil its obligations. Violations of economic, social and cultural rights can also be perpetrated by private bodies or individuals and occur in the workplace, in the local community or in the family, often hidden from view" [<sup>99</sup>].

It is therefore important to draw the attention of all members of society to their personal rights and duties under international and domestic law, and to point out to them that they harbor both risks of violation and means of protecting and promoting human rights, and that they have a certain number of duties towards others [<sup>100</sup>]. A first concrete action that can contribute to the effectiveness of the right to a healthy environment in the DRC concerns the education and/or training of citizens. Local institutions should bear the burden of informing citizens of the environmental hazards of their activities. It will therefore be important to use this education to encourage each citizen to take responsibility for the

management of this common good, the environment. Citizens will then be able to take legal action if their right to a healthy environment is violated. This is justified by the fact that they are more sensitive to the environment as a global public good when they have been educated and made aware of environmental issues [<sup>101</sup>].

To this end, Vincent points out that "For citizens to accept and naturally apply the rules of environmental law, it is not enough for them to be enacted and published. They must also be understood and accepted by the public. To achieve this, it is essential not only to inform, train and raise the awareness of citizens, but also to promote environmental citizenship among them, so that citizens, especially the youngest, are familiar with the content of environmental law" [<sup>102</sup>].

A second category to educate is judges. It is almost impossible for a judge with no expertise in environmental law to apply or interpret environmental standards clearly. This is why judges also need to be educated and trained to ensure that the right to a healthy environment is effective.

It is also necessary to reinforce the jurisdictional and institutional mechanism for the effectiveness of the right to a healthy environment. Finally, if the right to a healthy environment is to be effective across the generations, it is important that it is included among the concepts that should be taught from primary school onwards, along with civics. In this way, children can grow up with an understanding of this right, which is just as important to the fulfilment of other rights.

## V. CONCLUSION

The success of international environmental standards lies not only in their consecration, but also in attesting to the collective will of those who govern and those who are governed to combine their efforts to preserve nature against any natural calamity that may lead to its degradation. It is quite important for these treaties to be applied and for them to serve as a beacon

<sup>97</sup> Education for sustainable development at <https://www.education21.ch/fr/edd/approches/education-a-l-environnement>

<sup>98</sup> Report of the United Nations High Commissioner for Human Rights on the implementation of the Plan of Action for the United Nations Decade for Human Rights Education (19952004) - A/51/506/Add.1 - 12 December 1996; reproduced in the Teachers' Guide to Human Rights Education in the French-speaking World, Paris, 2009.

<sup>99</sup> Office of the United Nations High Commissioner for Human Rights, *Economic, Social and Cultural Rights. Handbook for National Human Rights Institutions*, UNITED NATIONS, New York and Geneva, 2004, p. 93.

<sup>100</sup> United Nations, *Manual on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*, para. 141.

<sup>101</sup> Gérard Roland, "Éducation à l'environnement vers un Développement durable. Réseau et mouvement", *Le Sociographe*, 2009/2 (no. 29), pp. 27-37. DOI: 10.3917/graph.029.0027. URL: <https://www.cairn.info/revue-lesociographe-2009-2-page-27.htm>

<sup>102</sup> Vincent Zakane, "Problématique de l'effectivité du droit de l'environnement en Afrique: l'exemple du Burkina Faso", in Laurent Garnier (ed) *Aspects contemporains du droit de l'environnement en Afrique de l'Ouest et centrale*, IUCN, Glant, Switzerland, 2008, p.23.

for the national legal system. In the Democratic Republic of Congo, some believe that the superiority of treaties over domestic laws, as set out in articles 215 and 216 of the 2011 Constitution, would provide a loophole for Congolese judges to apply the provisions of international treaties and agreements relating to environmental protection that the Democratic Republic of Congo has ratified. This same constitution gives the judge the power to be the guarantor of texts that have been enacted internally and ratified internationally. It would therefore be impeccable for the Congolese judge to have in mind the sense of being able to contribute to the effectiveness of the right to a healthy environment.

About the enshrinement of the right to a healthy environment in the Democratic Republic of Congo, there has been a significant and above all commendable development in the texts enshrining a healthy environment and environmental protection in general. The role of the politician in the transfer of legal instruments is thus easily noticeable in the growth of environmental legal standards. The constitutionalisation of this right makes it a human right, which should benefit from all the jurisdictional guarantees in the same way as other rights (first- and second-generation rights). Unfortunately, in the DRC, this right is hampered by a problem of effectiveness. This can be seen in the absence of any judicial precedent in environmental matters, the impossibility of bringing a case before an environmental judge, and the lack of effective guarantees of the formal and substantive elements of this right. The result is chaos expressed in the massive violation of the law by citizens. This violation is probably justified by a lack of awareness of this right. As a result, it remains a theoretical right, ignored and almost unknown by the citizen despite its consecration.

As the Pope reminds us, the environment is a common thing and a common home for us all, so it is necessary for leaders to think about the tactics to be adopted to make the right to a healthy environment effective. These tactics include environmental education and/or raising public awareness. Given the growing illiteracy rate in the Democratic Republic of Congo, raising awareness will awaken the minds of citizens, who will then be able to take legal action to claim legal protection of their right to a healthy environment. This demand also implies the need to set up specialized environmental courts and to train judges. Only such a scheme will contribute to the effective configuration of the right to a healthy environment in the Democratic Republic of Congo.

## BIBLIOGRAPHY

- United Nations General Assembly, The right to a clean, healthy and sustainable environment, A/76/L.75 adopted at the seventy-sixth session on 26 July 2022.
- United Nations General Assembly, The right to a healthy, clean and sustainable environment, A/

RES/76/300, adopted at the seventy-sixth session, 28 July 2022.

- Human Rights Council in 2021 (A/HRC/RES/48/13) and by the General Assembly in 2022 (A/RES/76/300) in 'Special Rapporteur on Human Rights and the Environment', *OHCHR* <<https://www.ohchr.org/fr/special-procedures/sr-environment>> [accessed 23 March 2023].
- Human Rights Council, Human Rights and the Environment, RES. 44/7, RES. 45/17, RES. 45/30 , and A/HRC/43/53 , 2020.
- Human Rights Council, Right to a clean, healthy and sustainable environment, RES.48/13 of 8 October 2021.
- Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the means of enjoying a safe, clean, healthy and sustainable environment, A/HRC/46/28, forty-sixth session 22 February-19 March 2021.
- Human Rights Council, the need to ensure a healthy environment for the well-being of everyone, RES. 45/94 of 14 December 1990.
- European Parliament, on citizens' dialogues and citizens' participation in EU decision-making, 2020/2201 (INI), 7 July 2021.
- United Nations, Aarhus Convention: Application Guide, 2<sup>e</sup> Ed., 2014
- Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 25 June 1998, which entered into force on 30 October 2001.
- Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, 1992.
- Final Declaration of the United Nations Conference on the Human Environment, Stockholm, 1972.
- European Convention on Human Rights of 1950, which entered into force on 3 September 1953, as amended by Protocols Nos. 11, 14 and 15, and supplemented by Protocol Nos. 4, 6, 7, 12, 13 and 16.
- African Convention on the Conservation of Nature and Natural Resources (or Maputo Convention of 11 July 2003), in Article 16, which is entitled "procedural rights".
- African Charter on Human and Peoples' Rights adopted in Nairobi on 27 June 1981.
- San Salvador Protocol on Economic, Social and Cultural Rights, 1988
- Arab Charter on Human Rights, adopted in 1994, as revised and approved on 23 May 2004, in force on 15 March 2008; <https://legal.un.org/avl/studymaterials/ilfp/2014/book2.pdf>.
- Association of Southeast Asian Nations Human Rights Declaration of 18 November 2012
- Constitution of the Democratic Republic of Congo amended by Law no. 11/002 of 20 January 2011

revising certain articles of the Constitution of the Democratic Republic of Congo of 18 February 2006.

- Constitution of the Democratic Republic of Congo of 18 February 2006
- Law No. 14/003 of 11 February 2014 on nature conservation repealing Ordinance-Law No. 69-041 of 22 August 1969 governing nature conservation.
- Law no. 11/009 of 09 July 2011 on the fundamental principles of environmental protection.
- Law n°011/2002 of 29 August 2002 on the forestry code in the Democratic Republic of Congo.
- Ordonnance Loi N° 87-027 du 20 juillet 1987 portant ratification par la RDC de la Charte africaine des Droits de l'Homme et des Peuples in Journal officiel de la République Démocratique du Congo, Instruments juridiques internationaux et régionaux relatifs aux droits de l'homme ratifiés par la République Démocratique du Congo, Cabinet du Président de la République, 43e numéro, décembre 2002, p. 244.
- Decree No. 14/019 of 02 August 2014 laying down the operating rules for the procedural mechanisms of environmental protection dealing with the procedure followed for an environmental impact assessment.
- Council of Europe, Handbook on Human Rights and the Environment: Principles drawn from the case law of the European Court of Human Rights and the conclusions and decisions of the European Committee of Social Rights, 3<sup>e</sup> Edition, February 2022, p.7.
- OHCHR. "Special Rapporteur on Human Rights and the Environment. Accessed 14 March 2023. <https://www.ohchr.org/fr/special-procedures/sr-environment>.
- Report of the United Nations High Commissioner for Human Rights on the implementation of the Plan of Action for the United Nations Decade for Human Rights Education (19952004) - A/51/506/Add.1 - 12 December 1996; reproduced in the Teachers' Guide to Human Rights Education in the French-speaking World, Paris, 2009.
- Office of the United Nations High Commissioner for Human Rights, *Economic, Social and Cultural Rights. Handbook for National Human Rights Institutions*, UNITED NATIONS, New York and Geneva, 2004, p. 93.
- United Nations, *Manual on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*, para. 141.
- Baril, J., Droit d'accès à l'information environnementale : pierre d'assise du développement durable [VertigO] La revue électronique en sciences de l'environnement, 2009.
- Bernard NTAHIRAJA and Nestor NKURUNZIZA, "L'État et les droits sociaux de ses citoyens : cas du droit à la santé au Burundi", in p. 12.
- Camila Perruso, "L'affirmation d'un droit à un environnement propre, sain et durable universel", La Revue des droits de l'homme [Online], Actualités Droits-Libertés, online since 15 November 2021, connection on 06 December 2021. URL : <http://journals.openedition.org/revdh/13063> Item 3, Geneva, September 2020, <https://www.genevaenvironmentnetwork.org/wp->
- Cécile Ott Duclaux-Montei, L'accès à la justice en matière d'environnement par les populations en Afrique de l'Ouest et centrale, in institut de la francophonie pour le développement durable : *Pas à pas vers une justice environnementale* ; liaison Énergie-francophonie, 2014, pp10-14
- Chardin Carel Makita Kongo, La constitutionnalisation du droit a un environnement, Cahiers africains des droits de l'homme, forthcoming. hal-02431068. <https://hal.archives-ouvertes.fr/hal-02431068> Submitted on 7 Jan 2020
- Daly, J. R. May, 'Exploring environmental justice through the lens of human dignity', *Widener Law Review* (2019)25, 177.
- DOUMBE-BILLE Stéphane, " La Charte africaine des droits de l'homme et des peuples ", in *Annuaire international des Droits de l'Homme*, Vol.I/2006, Bruylant, p.157
- EBAH P., *Les juridictions ivoiriennes et burkinabè à l'épreuve de la répression des infractions environnementales: avancées, reculs ou stagnation?* In *Revue africaine de Droit de l'Environnement*, no5, 2020, pp.97-106
- Education for sustainable development at <https://www.education21.ch/fr/edd/approches/education-a-l-environnement>
- Elisabeth Lambert, Environment and Human Rights: Introductory Report to the High-Level Conference on Environmental Protection and Human Rights, prepared at the request of the Steering Committee for Human Rights (CDDH), Strasbourg, 2020, p4.
- Gérard Roland, "Éducation à l'environnement vers un Développement durable. Réseau et mouvement", *Le Sociographe*, 2009/2 (no. 29), pp. 27-37. DOI : 10.3917/graph.029.0027. URL: <https://www.cairn.info/revue-lesociographe-2009-2-page-27.htm>
- George Pring and Catherine Pring, *Environmental Courts and Tribunals: A Guide for Decision-Makers*, UNEP, Nairobi, 2017
- Jean-Pierre, Beurier, "Droit international de l'environnement". In *Droit international de l'environnement*, Editions A. PEDONE. PARIS, 2010.
- KAMTO Maurice, *La mise en œuvre du droit de l'environnement : forces et faiblesses des cadres institutionnels*, in RADE, 2014, p.29
- KIHANGI BINDU K., *Traité de droit de l'environnement perspectif Congolaises* Geneva: Globethics.net, 2022



- KIHANGI BINDU K., *La justiciabilité du droit à l'environnement consacré par la the African Charter on Human and Peoples' Rights of 1981 in the République démocratique du Congo*, in revista catalana de dret ambiental, 2013, p. 34
- Kiss Alexandre Charles, *Les traités-cadres : une technique juridique caractéristique du droit international de l'environnement*. In: Annuaire français de droit international, vol. 39, 1993. pp. 792-797
- Kiss, A., J.-P. Beurier, *Droit international de l'environnement*, 3rd edn, Paris, A. Pedone, 2004, p.502
- Lecucq Olivier, *Second workshop Constitution and environment: conditions of justiciability*. In: *International Yearbook of Constitutional Justice*, 35-2019, 2020. *Constitution et environnement - La justice prédictive*. pp. 567-574; doi: <https://doi.org/10.3406/aijc.2020.2783>
- MAGISTRO, Francesca. *Le droit à un environnement sain revisité: étude de droit suisse, international et comparé*. Romandes. Schulthess. Geneva, 2017. <http://archive-ouverte.unige.ch/unige:104665>.
- Message on the approval of the Aarhus Convention and its application as well as its amendment amendment, FF 2012 4032
- Mekouar A. M., *Le droit de l'environnement dans la Charte africaine des droits de l'homme et des peuples*, FAO legal study online # April 2001, title retrieved 9 October 2012, available at: <http://www.fao.org/Legal/default.htm>.
- Michel PAQUES, *L'environnement, un certain droit de l'homme*, Limont, 2006, p.66 online: <https://orbi.uliege.be/bitstream/2268/8275/1/157.pdf>
- Nicolas de Sadeleer, *Particularité de la subsidiarité dans le domaine de l'environnement*, in *Édition juridique associée*, 2012, pp73-90
- Nicolas de Sadeleer, *Le rôle ambivalent des principes dans la formation du droit de l'environnement : l'exemple du principe de précaution*, in *Société française pour le droit international (SFDI), le droit international face aux enjeux environnementaux, colloque d'Aix-en-Provence*, Paris, Pédone, 2010.
- Nicolas de Sadeleer, *Droits fondamentaux et protection de l'environnement dans l'ordre juridique de l'UE de l'UE et dans la CEDH*, revue européenne de droit de la Consommation: *Environmental law and Consumer protection*, Christophe verdure (ed.), Lacier, 2011/1
- Pascale Ricard. KONATÉ A., *pour une démocratie environnementale en Afrique : de nouveaux droits de citoyenneté indispensables à l'effectivité du droit de l'environnement*, in *Revue africaine de Droit de l'Environnement: Le Droit de l'Environnement en Afrique*, Proceedings of the First International Colloquium on Environmental Law in Africa, Abidjan, 2014, pp 37-52.
- Peter Jackson, *From Stockholm to Kyoto: A Brief History of Climate Change*, Online <https://www.un.org/fr/chronicle/article/de-stockholm-kyoto-un-bref-historique-of-climate-change#:~:text=The%20Conf%C3%A9rence%20of%20the%20UN,of%20action%20containing%20recommmendations>
- Philippe Karpe, *The right to a healthy environment A UN tragedy?* 2022. Online at <https://hal.science/hal-03855015>
- Romainville, Céline. *L'essor du droit à l'environnement sain en droit belge et ses défis*. In: Bräen, André (ed.), *Droits fondamentaux et environnement*. Proceedings of the conference "Regards croisés sur les rapports entre les droits fondamentaux et l'environnement : Perspectives de la Belgique, du Canada et de la France" held at the Civil Law Section of the University of Ottawa, January 25, 2013, Wilson & Lafleur: Montréal, 2013, pp. 79-106
- Vincent Zakane, *"Problématique de l'effectivité du droit de l'environnement en Afrique : l'exemple du Burkina Faso"*, in Laurent Garnier (ed) *Aspects contemporains du droit de l'environnement en Afrique de l'Ouest et centrale*, IUCN, Glant, Switzerland, 2008, p.23.
- I.C.J., *Gabcikovo-Nagymaros Project*, judgment of 25.9.1997, Rec. 1997, para.53.
- *Legality of the Threat or Use of Nuclear Weapons*, ICJ, Advisory Opinion of 8 July 1996, ICJ Reports 1996, p. 226, § 36.
- *The clarification of the link between human rights and environmental protection and its consequences by the Inter-American Court of Human Rights in its advisory opinion of 15 November 2017*. *Journal of the Centre for International Law (CDI)*, 2018, 17, pp. 15-18. fhal-02514693
- ADHP Comm, *Social and Economic Rights Action Center, Center for Economic and Social Rights v. Nigeria (Ogoni case)*, Communication No. 155/96, 27 October 2001