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RIGHT TO THE ENVIRONMENT OF THE INDIGENOUS PEOPLES IN THE DEMOCRATIC REPUBLIC OF CONGO

The implementation of the nature conservation project in the Democratic Republic of Congo has caused upheaval among indigenous communities in the wake of the decision to evict them from their land without compensation or indemnification.

However, in addition to the proposed law on the protection and promotion of the rights of indigenous peoples in the DRC, which is currently being drafted in parliament and which will have to be promulgated by the President of the Republic, the Democratic Republic of Congo has ratified several international legal instruments relating to human rights and, by extension, to the rights of indigenous peoples, in which the Principle of Free, Prior and Informed Consent is expressed in various ways. This principle calls for the participation of indigenous peoples at two levels: at the level of decision-making that may affect their right to the environment, but also at the level of policy-making aimed at protecting the environment, as local knowledge is indispensable. However, despite the existing legal order, the implementation of this environmental justice of indigenous peoples seems to be ineffective. The greatest challenge remains its implementation. Many agree that international human rights law is even better when it comes to environmental protection. Some point out that environmental protection can be a condition for the enjoyment of other human rights.

In addition to the right to the environment, indigenous peoples have the right to enjoy their territories, lands and natural resources; but they also have the right to participate in environmental protection.

The fact remains that legislative and judicial weaknesses remain major obstacles to the effectiveness and efficiency of environmental justice for indigenous peoples, for whom legal and judicial reform remains a panacea. To this end, it would be more appropriate to accelerate the process of promulgating the law on the protection and promotion of the rights of indigenous peoples, in which their status must be well defined. This will give them standing to sue in the future. The interdisciplinary nature of environmental law also requires the creation of chambers specialising in environmental law within the Congolese judicial system.

Key words: Environmental justice, free, prior and informed consent, indigenous peoples.

Introduction. The Democratic Republic of Congo (DRC) is of crucial importance for the conservation of Africa's dense forest heritage. The country is home to 60 percent of the Congo Basin forests and is rich in biodiversity and diversity of peoples and cultures. Local and indigenous communities and these rich ecosystems have lived in interdependence for centuries. But both these peoples and the biodiversity are now in a more precarious situation than ever. Species are disappearing and habitats are being eroded. The human population has also experienced enormous disruption: colonization has disrupted customary systems of recognition and enjoyment of rights to resources and land, leading to large-scale displacement.

Major challenges exist in terms of conservation and land rights. Across the country, there are competing demands for access to and control over land: the customary rights of local and indigenous communities are being challenged by infrastructure projects, commercial and industrial agriculture, nature conservation, and logging, mining and oil exploration. In almost all cases, commercial interests trump the rights of local and indigenous people when it comes to allocating land use. With regard to conservation, the Congolese state aims to formally protect at least 17 percent of the country's land area. About 11 percent of the national territory is currently covered by protected areas. Many of these prohibit access and use of resources by communities. In this situation of pressure for land, community land rights and biodiversity protection are often presented as contradictory, although this is not always the case.

In the wake of the advent of the idea of nature conservation in the DRC, the Congolese government will adopt an integral conservation approach for most of its forests. The aim of the Congolese state is to contribute to the fight against global warming and the safeguarding of its rich biodiversity. In order to implement this conservation project, the DRC is going to expel indigenous Pygmy populations from their land in the name of conservation without any compensation or indemnification. This is the case of the

indigenous BATWA pygmies of the Kahuzi-Biega National Park who were chased by the Congolese government from their ancestral lands in the 1970s in the name of nature conservation. All the vulnerability of the pygmy populations in the DRC is based on one problem, the lack of access to land and all the consequences that this has for their survival, because land provides everything for the indigenous people. From the land they get their food, health care, money, natural resources, education for their children, and can initiate and succeed in business. To survive, some have learned from other non-Batwa communities how to make charcoal and sell it. The Batwa of northern KBNP have settled on land that is officially unoccupied, but which is often allocated to other communities by local authorities. The Batwa have no legal protection when members of other ethnic groups decide to take their land or drive them out of their villages.

It should be noted, however, that indigenous peoples who are very attached to their natural environments and who benefit from the right to free, prior and informed consent as a vehicle for the judicialisation of their rights, are sometimes surprised by large-scale projects with a real impact on their environment which sometimes force them to leave the area without the benefit of equitable environmental justice. This is what many indigenous peoples in Congo Forest Basin are experiencing and what appears to jeopardize their right to self-determination.

This situation leads to the association of the notion of access to justice, initially perceived as a fundamental human right, with environmental protection. In this context, access to environmental justice is closely linked, like fingers on the same hand, to the right to information and the right to participate in decision-making that could damage the environment. These environmental rights, both procedural and substantive, have the potential to significantly influence environmental policies.

Access to environmental justice for indigenous people remains a topical issue, as evidenced by the United Nations' sustainable development objectives, which aim to "promote the rule of law in the domestic and international order and ensure equal access to justice for all" [11]. The effectiveness of rights, or even their profound nature, can only really be experienced in the judicial struggle; it is probable that without it the notion of right, even in the subjective sense, would not exist. Thus, access to the law enables every person to obtain recognition and enforcement of their rights. Without this access to justice, the rights enshrined in various legal instruments, whether at national, regional or global level, would be purely theoretical. Effective legal protection therefore depends on access to justice [16]. And the European Court of Human Rights expressly links its enforcement to the democratic functioning of a society [8].

However, access to justice in the name of environmental protection is not easy. First of all, nature cannot defend its own interests in court, any more than its components can [7]. It is obvious that trees or frogs do not speak, do not write, and, more generally, are unable to communicate with legal institutions¹. It should then be added that environmental protection is a collective interest. This collective nature does not sit well with the traditional means of recourse in which the personal nature of the interest is often required [2]. This particularity justifies in a general way the need for a study on access to justice in environmental matters for the indigenous peoples.

I. The Principle of Free, Prior and Informed Consent. It is difficult to determine the legal nature of FPIC in a circumscribed manner, as the lack of conceptual clarity surrounding the notion of indigenous peoples' consent is rightly seen as an obstacle to its institutionalization [18]. FPIC was first mentioned in ILO Convention No. 169, but it is not clear whether it is a general principle of international law, especially as it is difficult to identify it as a principle common to the domestic legal orders from which it would have been transposed into international law.

However, FPIC is a collective right of indigenous peoples and local communities to give or withhold their consent prior to the commencement of any activity that may affect their rights, lands, resources, territories, livelihoods and food security [17].

Without any positive legal value, FPIC would be the concerted or collective expression of political intentions on what seems necessary to ensure an order inspired by certain ideals corresponding to the current requirements of international society. Indeed, as Professor Basue notes, it is in the area of so-called third generation rights that the mainly Western doctrine insists on the absence of binding environmental principles [1].

At least, recognised as a norm of international law, its anchor begins in 2007 with UN General Assembly Resolution 61/295 on the UN Declaration on the Rights of Indigenous Peoples. In the preamble to the declaration, the UNGA expresses concern about the environmental injustices suffered by

¹ Some authors have developed theories attributing to nature or its elements the right to sue, such as Christopher Stone in his famous article "Should trees have standing?" (Should trees have standing?).

indigenous peoples, including the dispossession of their land, which violates their right to development, culture and even self-determination [22].

But long before the UN human rights system enshrined it in the 2007 declaration, the 1980s marked the incubation period of this principle already in the field of not only environmental law in relation to the control of the movement of chemicals and biologicals [20], but also in the field of fundamental rights with the International Labour Organisation's Indigenous and Tribal Peoples Convention No. 169².

Furthermore, in its bipolar evolution, which Professor Yang li describes as a mutation from an entry control tool for hazardous products to an exit control tool for both biological and cultural resources [20], the principle of free, prior and informed consent has also been a feature of cultural heritage law. With the 2003 UNESCO Convention prioritising the collection and inventorying of intangible cultural heritage, scepticism from indigenous communities has grown. They question the ownership of certain data, considered to be illegally disclosed at the time of colonization; or the way in which these collected data are presented to the public, as the image they reflect does not correspond to their cultural identity and what they want to demonstrate to the world.

Due to this particular case of violations of indigenous peoples' human rights [15], such as their right to a healthy environment, their right to self-determination and their cultural rights, FPIC is a result of the struggle to address the damage caused by multinational mining and extractive companies in so-called development projects that jeopardize many of the fundamental rights of indigenous peoples. Environmental pollution has been described as a continuation of the effects of colonialism and social inequalities in terms of access to and occupation of territory, use of fauna, flora, knowledge and terminologies relating to practices and experiences in the territory [9].

However, beyond circumscribed areas such as human rights law or the protection of cultural heritage, the knowledge of indigenous peoples has always aroused scientific curiosity with regard to environmental protection and sustainable development. It is used as a lever to save the planet from famine, pollution and climate change [14].

However, while indigenous knowledge is recognized as an element of environmental protection, environmental inequality and injustice are still a daily reality for indigenous peoples, particularly those in the Democratic Republic of Congo, who have FPIC as a basis for environmental justice. This is despite the fact that the African Charter on Human and Peoples' Rights has been in force for more than two decades and has been almost unanimously ratified by African states³ including the DRC⁴.

II. FPIC in the Congolese legal order. The political scientist and specialist in ethnic and linguistic minorities, Joseph Yacoub, also notes that human rights are highly dependent on cultures and that they are subject to manipulation and political instrumentalisation. Human rights, in fact, vary according to place and time. The values that underlie them - freedom, equality, tolerance, non-discrimination, etc. - are historically relative and evolving. Thus, France has had a succession of declarations since 1789. The United States Constitution, the oldest in force, has been amended twenty-seven times. The 1948 Universal Declaration has been supplemented by a series of subsequent texts. The various nations, conglomerations of nations and international organizations in Africa, Asia and the Americas have adapted human rights to their worldviews, demonstrating that the human person is perceived and protected differently in different civilizations and cultures.

The DRC is in a legal monism. From treaties to internal laws and international agreements, it is a unified normative system in which international law has primacy. However, there is a legislative block in which provisions referring to local communities and therefore by extension to indigenous peoples can be found both in international legal instruments ratified by the DRC and in local laws.

International environmental treaties have not totally ignored the socio-cultural dimension of sustainability. The recognition of the culture-nature relationship in environmental treaties has a long history. And, the special relationship that traditional indigenous communities have with the environment was recognized as early as 1957 in Article VII of the North Pacific Fur Seal Interim Convention. Similarly, the 1973 Agreement on the Conservation of Polar Bears allows in Article III (1) certain exceptions to the prohibition of hunting and capture of polar bears, including harvesting by local

² Article 4(1) requires that appropriate measures be taken to safeguard (...) the environment of indigenous peoples. And these measures shall not be contrary to the freely expressed wishes of the peoples concerned (Convention No. 169, Article 4 para. 2.).

³ Adopted in 1981 in Banjul, the African Charter has now been ratified by 54 of the 55 states on the African continent. Only Morocco has not ratified the Charter.

⁴ The DRC ratified the African Charter in 1987.

populations using traditional methods in the exercise of their traditional rights and in accordance with the laws of that Party. This exception is not only a recognition that this cultural practice is part of the way of life. It demonstrates that this practice also contributes to the sustainable management of the environment and its natural resources. It is a recognition of the principle of local people's participation in *decision-making*.

Some more recent environmental treaties have taken this approach further by explicitly recognizing the role that local and indigenous traditional knowledge and practices play in the sustainable management of a fragile environment and its threatened resources. For example, there is the 1992 UN Convention on Biological Diversity (CBD)⁵. Also, the 1994 Convention to Combat Desertification (CCD), which is also relevant to environmental protection and ensuring the participation of local people in environmental decision-making, calls for the protection of the economic, social and cultural rights of local people in the context of ensuring environmental sustainability and their livelihoods⁶.

Furthermore, the Convention on Biological Diversity was the first international treaty to address these issues by linking the economic aspect of biological diversity with the cultural aspects of its use and the related knowledge of local communities⁷. A more recent FAO international treaty on plant genetic resources also gives a central role to the traditional knowledge of local and indigenous communities for biodiversity conservation and sustainability⁸.

Beyond the fact that the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights (Article 1)⁹, the International Covenant on Economic, Social and Cultural Rights¹⁰ and other human rights instruments have been duly ratified by the DRC and therefore would apply by virtue of the principle of *pacta sunt servanda*¹¹ and Article 215 of the Constitution¹². Article 51 of the Congolese Constitution provides for the protection of minorities¹³. This protection requires both legal and judicial measures to protect the rights guaranteed to them, in particular the right to a healthy environment conducive to development as set out in Article 53¹⁴.

In this vein, Law No. 15/026 of 31 December 2015 on water makes the participation of local communities a basic principle in water conservation¹⁵. The multiple use of water by indigenous peoples justifies their right to participate in its conservation, as their exclusion would lead to the violation of several of their fundamental rights, notably their right to self-determination. In a legal holism of indigenous peoples' rights, the African Commission on Human and Peoples' Rights noted in the CEMERIDE v. Kenya case that the use of water is exclusively for physiological needs. It can also be a cultural or religious need of an indigenous people or a local community¹⁶.

⁵ The Convention recognizes in Article 8(j) the important contribution of local and indigenous knowledge, innovations and practices to the sustainable management and protection of the environment, and thereby obliges Parties to take measures to safeguard them.

⁶ Article 19 point 1a of the 1994 Convention to Combat Desertification.

⁷ Article 8-point J of the Convention on Biological Diversity.

⁸ Article 9(1), International Treaty on Plant Genetic Resources for Food and Agriculture. "Each Contracting Party shall, as far as possible and as appropriate:

Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices:"

⁹ Article 1 of the Covenant recognizes the right of peoples to self-determination, and states in paragraph 2 that: "In no case may a people be deprived of its own means of existence."

¹⁰ Ibid, (n24).

¹¹ Any treaty in force is binding on the parties and must be performed in good faith, Article 26 of the Vienna Convention on the Law of Treaties of 23 May 1969.

¹² According to Article 215 of the Congolese Constitution: "International treaties and agreements duly concluded have, upon their publication, an authority superior to that of laws".

¹³ "The Congolese State (...) also ensures the promotion and protection of vulnerable groups and all minorities..."

¹⁴ 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.

¹⁵ Article 13-point f. The government, the provincial government as well as the urban, communal, sector and chiefdom executive colleges shall, each within the limits of their competences and attributions, take measures for the inventory of all water resources, their conservation, including wetlands, coastal areas and basins and sub-basins, as well as for their protection, prevention and control of pollution They shall adopt and implement appropriate policies, master plans and programmes with a view to, inter alia Ensure the participation of all relevant stakeholders, including local communities, users, civil society and the private sector.

¹⁶ One of the beliefs of the Endorois is that their ancestors, Dorios, came from the sky to settle in the Mochongoi forest and that every season the waters of the lake turn red, and the hot streams emit a strong smell signalling the time when the community must perform traditional ceremonies to appease the ancestors who drowned at the birth of

This customary and traditional organisation as well as the attachment of local communities to a specific terroir is also reflected in the definition given by both Law No. 11/003 of 11 February 2014 on nature conservation¹⁷ and Law No. 11/2002 of 29 August 2002 on the DRC's forestry code¹⁸, the first of which (law) imposes on the State the responsibility of identifying threatened communities with a view to conserving them because of: (...) social, scientific or cultural importance¹⁹; and the second recognises the right of local communities to obtain part or all of forest concessions under customary law²⁰. In addition, the Forest Law grants local communities the right to use the environment for customary and traditional purposes as long as this use is not *contra legem*.

Furthermore, Law 15/012 of 1st August 2015 on the general regime for hydrocarbons guarantees the right of restitution to the pristine state of the environment of local communities. However, Title II and Title III of the law, which refer to upstream and downstream hydrocarbon activities respectively, make no reference to the principle of FPIC. It goes without saying that this law is iniquitous in that it only targets the interests of hydrocarbon activities, while indigenous people are neither consulted nor involved in the exploration and exploitation process, but are only consulted at the time of reclamation. This undermines the principle of FPIC.

However, it should be noted that the Congolese Mining Code, which is also part of the Congolese environmental legal order, does not contain any provisions devoted to the environmental rights of indigenous peoples in particular. It merely sets out the right to the environment in general terms. Yet the DRC, which is a geological scandal, has deposits, some of which are located in areas inhabited by indigenous peoples.

It should be noted that ILO Convention 169, which is the instrument par excellence for the protection and promotion of the rights of indigenous peoples and which establishes the procedural rules of environmental justice for indigenous peoples, has not been ratified by the Democratic Republic of Congo. Hence it is impossible to oppose the DRC to this convention in its article 4 of ILO Convention 169, which is the basis of the principle of free, informed and prior consent; a key principle that would underpin judicial action with regard to environmental justice for indigenous peoples.

However, in a textual parallelism between ILO Convention 169 and Law No. 11/009 of 9 July 2011 on the fundamental principles relating to the protection of the environment in the DRC, Articles 8 and 9 of the aforementioned law show a similarity to the FPIC principle enshrined in Article 4 of ILO Convention 169.

Article 8 of the Congolese law reflects one of the elements of FPIC, namely information. According to this article, indigenous communities cannot be evicted from their environment without being informed. Information is a procedural obligation incumbent on public authorities who intend to relocate a people so that the people not only do not claim ignorance of the relocation but also ensure that their right to self-determination, i.e. their culture, way of life or even their means of subsistence as indigenous people are not altered. In other words, information allows indigenous peoples to give informed consent or withhold consent to projects affecting their environment if it violates their right to self-determination. This is why other authors speak of *informed* consent [6]. This reflects the spirit of ILO Convention No. 169, which states that such measures should not be contrary to the freely expressed wishes of the peoples concerned²¹.

Furthermore, Article 9 of the Congolese environmental law is in line with Article 2 para. 1 of ILO Convention 169. These two provisions speak of the participation of the people concerned in the environmental policy process. This participation not only reinforces the information criterion but, above all, elucidates what *prior consent* is. According to Article 9 of the Congolese law, indigenous peoples have the right to participate both upstream and downstream in the decision-making process that affects their existence or may have a significant effect on the environment, including the issue of development. It goes without saying that a development project for indigenous peoples in the DRC cannot be carried out without their prior involvement in the decision-making process. This implies that consent can in no way

the lake. Centre for Minority Rights Development and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya. Communication 276/2003, 27th progress report (2009).

¹⁷ Article 2 point 7 defines a local community as a population traditionally organised on the basis of custom and united by clan or parental solidarity which underpins its internal cohesion. It is also characterised by its attachment to a specific area. law n°11/003 of 11 February 2014 on nature conservation

¹⁸ Article 1 point 17 of law n°11/2002 of 29 August 2002 on the DRC forestry code

¹⁹ Article 9 point 2. Ibid (n32)

²⁰ Article 22 of Law n°11/2002 of 29 August 2002 on the DRC Forestry Code, Ibid, (n33)

²¹ Article 4(2) of ILO Convention No. 169

be subsequent to the decision or the decision-making process. It is in this respect that the Congolese water law mentioned above gives local communities the power to take legal action against any violation of the provisions of the said law or its implementation measures, or any infringement of the provisions of international agreements and conventions ratified by the DRC, which cause direct or indirect harm to the collective interests or aim to defend²².

III. The non-application of FPIC in Congolese law. Although the procedural rules of environmental justice for indigenous peoples seem to be located in the Congolese legal arsenal, the thorny issue remains that of its judicialization. The emptiness of Congolese jurisprudence in this area speaks volumes. International law now distinguishes between the rights of minorities, which are based on human rights, and the rights of indigenous peoples, which are based on collective rights [3]. However, as the Congolese land and property system does not recognise collective property rights and the legal status of indigenous peoples is still ambiguous, the judicialisation of indigenous environmental justice will often be confronted with the question of quality on the one hand and the interest in taking legal action on the other. Although Congolese land law recognizes customary land, it must be stressed that litigation relating to this land before the Congolese courts is essentially a matter of individual property rights, for which the competent judge is the tribunal de paix.

As Sandrine Clavel notes: *"most legislation is limited to recognizing the right of indigenous peoples to claim land rights over their ancestral territories, and in this case things become particularly complicated, as it is then up to the indigenous communities to establish the validity of their claim"* [19]. Similarly, in its opinion on CEMERID v. Kenya, the African Commission on Human and Peoples' Rights highlighted the failure of local legal systems to recognize communal property rights as one of the major problems faced by indigenous peoples²³.

This legal shortcoming also renders obsolete the mechanism for implementing any act that infringes the environmental rights of indigenous peoples by way of an exception of unconstitutionality. Insofar as the right to the environment is constitutionally guaranteed in the DRC, the Constitutional Court, which is the judge of unconstitutionality in matters of ordinary law, can only be seized to enforce FPIC if the indigenous peoples have a legal personality conferring on them the capacity to sue as a people and have a judge *ratione personae* for such a question, which is a question of collective property rights, a right not recognized by Congolese land law.

For a State to be held accountable for the violation of human rights, it is not enough that it itself violates these rights. It is sufficient for it to fail to take the necessary measures to protect the beneficiaries of these rights from third parties in order to respond²⁴. Thus, the failure of the Congolese State to provide effective remedies to ensure the implementation of indigenous environmental rights would in itself constitute a violation of Article 26 of the ACHPR.

Another difficulty in the ineffective implementation of environmental justice for indigenous peoples in the DRC is the lack of knowledge of international law in this area by Congolese judges and also the failure of litigants to refer to the international legal instruments to which the DRC is a party. Several legal instruments guaranteeing the right to a healthy environment, which can in a broader interpretation be applied in favour of indigenous peoples, have been ratified by the DRC and are therefore enforceable against it. Being a monist regime, international law has primacy over domestic laws. Therefore, the application of international law in this area should constitute a basis for internal jurisprudence.

Conclusion and recommendations. This shows that although FPIC is a legal instrument in the Congolese legal system, the greatest challenge remains its implementation. To speak of the implementation of FPIC in Congolese environmental justice is to raise the issue of what Professor Kennedy calls the 'justiciability' of the right to the environment [4], especially as the thorny question of the link between human rights and environmental protection has not yet been fully elucidated. However, many agree that international human rights law is even better when it comes to environmental protection [13]. Some [21] point out that environmental protection can be a condition for the enjoyment of other human rights. It is stated in the preamble of the 1972 Stockholm Declaration of the United Nations

²² Article 108 of law n°15/026 of 31 December 2015 on water

²³ Centre for Minority Rights Development and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, Communication 276/2003, 27^{ème} progress report (2009).

²⁴ Communication 74/92, NCHL v. Chad, §97. See also Communication 155/96 §48 in SERAC and others v. Nigeria. In this communication, the Commission decided that when a State freely adheres to the terms of the various human rights instruments, it is responsible for bearing the burden of all the obligations mentioned in these instruments. This has not been observed by the RUM.

Conference on the Human Environment that the environment is essential to the enjoyment of basic human rights, even the right to life itself²⁵.

From the right to the environment to the right to the environment, indigenous peoples have the right to enjoy their territories, lands and natural resources; but they also have the right to participate in environmental protection.

The fact remains that legislative and judicial weaknesses remain major obstacles to the effectiveness and efficiency of environmental justice for indigenous peoples, for which legal and judicial reform remains a panacea. To this end, it would be more appropriate to:

- Accelerate the process of promulgating the law on the protection and promotion of the rights of indigenous peoples, in which their status must be well defined. This will give them standing to sue in the future.

- Revise the so-called land law to recognize the collective ownership of indigenous peoples. This will give them the *right* to go to court

- The interdisciplinary nature of environmental law also requires the creation of chambers specialising in environmental law within the Congolese judicial system.

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ПРАВО НА ДОВКІЛЛЯ КОРИННИХ НАРОДІВ ДЕМОКРАТИЧНОЇ РЕСПУБЛІКИ КОНГО

Актуальність дослідження пов'язана з реалізацією природоохоронного проекту в Демократичній Республіці Конго, який викликав потрясіння серед корінних громад після рішення про виселення їх з їхньої землі без компенсації чи відшкодування.

Проте, окрім запропонованого закон про захист і заохочення прав корінних народів у Демократична Республіка Конго, який зараз узгоджується в парламенті і має бути оприлюднений Президентом Республіки, Демократична Республіка Конго ратифікувала декілька міжнародно-правових документів, які стосуються прав людини і, відповідно, прав корінних народів, у яких принцип вільної, попередньої та усвідомленої згоди виражений різними способами. Цей принцип передбачає участь корінних народів у реалізації права на навколишнє середовище на двох рівнях: на рівні прийняття рішень, які можуть вплинути на їхнє право на навколишнє середовище, а також на рівні розробки політики, спрямованої на захист навколишнього середовища, оскільки місцеві знання є незамінними. Проте, незважаючи на існуючий правопорядок, реалізація цієї екологічної справедливості корінних народів виглядає неефективною. Найбільшою проблемою залишається її впровадження. Багато хто погоджується, що міжнародне право краще, коли йдеться про захист навколишнього середовища. Деякі дослідники зазначають, що охорона навколишнього середовища може бути умовою для здійснення інших прав людини.

Окрім права на навколишнє середовище, корінні народи мають право користуватися своїми територіями, землями та природними ресурсами; але вони також мають право брати участь в охороні навколишнього середовища.

Фактом залишається те, що законодавчі та судові недоліки є основними перешкодами для ефективності екологічного правосуддя для корінних народів, для яких правова та судова реформа залишається панацеєю. З цією метою доцільніше було б прискорити процес оприлюднення закону про захист і заохочення прав корінних народів, у якому має бути чітко визначений їхній статус. Це дасть їм право подавати до суду в майбутньому. Міждисциплінарний характер екологічного права також вимагає створення палат, що спеціалізуються на екологічному праві в рамках судової системи Конго.

Ключові слова: право на довкілля, екологічна справедливість, вільна, попередня та усвідомлена згода, корінні народи.