
THE CONSTITUTIONAL RIGHT TO A HEALTHY ENVIRONMENT

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Abstract:

A healthy environment is a prerequisite for the enjoyment of human rights. This is due to the fact that the life and dignity of individuals can only be safeguarded if people are able to live in an environment that is characterised by certain fundamental features. Environmental degradation, including air, water and soil pollution, can affect the enjoyment of specific human rights such as the right to life, the right to food and the right to health.

This study aims to shed light on the constitutional protection of environmental rights in Algeria by addressing the definition of the constitutional right to a healthy environment, its legal nature, and its implicit and explicit constitutional recognition.

Keywords: Right to the environment, healthy environment, environment in Algerian constitutions.

Introduction:

Recent decades have witnessed a rapid acceleration of two important issues: human rights and environmental protection. While the focus after the Second World War was primarily on civil, political, economic, social and cultural rights, the current emphasis is on the third generation of human rights, known as collective rights, one of the most important of which is the right to a healthy environment.

In the early 1970s, global attention began to focus on the environment as a result of the increasing number of environmental disasters caused by human activity. This was particularly evident following the sinking of the Liberian oil tanker off the coast of the United Kingdom in May 1967. The concern at the time was less about human rights and more about environmental protection and improvement. This incident alerted the international community to the need for international cooperation in dealing with pollution problems. As a result, the United Nations (UN) recognised this fact and called for a global conference on the environment to seek solutions to the many pollution and other threats facing the planet.

After extensive preparatory meetings, the United Nations Conference on the Human Environment was held in Stockholm in 1972. This conference adopted the theme "One Earth" and was considered the first international conference of its kind to scientifically define the concept of the human environment, along with a practical plan of action and methodology. In the years that followed, numerous conferences and seminars were held and discussions on environmental protection increased. It became clear to people that to talk about environmental protection is essentially to talk about human safety, because human well-being is inextricably linked to the safety of the environment in which we live.

Given that Algeria is part of the world and its geographical region is connected to the earth, it is natural that it is affected by global issues, including the problem of environmental protection and pollution. Algeria faces environmental challenges that require urgent action to mitigate them and ensure a healthy, safe and suitable environment. This led Algeria to explicitly include the right to a healthy environment in its constitutional amendments of 2016 and 2020, after only implicit references to it in the constitution.

The issue addressed in this study is the limits of constitutional protection of the right to the environment. To what extent have the Algerian constitutional amendments of 2016 and 2020 recognised the right to the environment? Does the constitutional text on this right provide effective guarantees for its protection? If the previous amendments did not explicitly mention this right, does this mean that it is not recognised, or can an implicit constitutional protection be inferred for it?

The importance of this research stems from the importance of its subject matter, as it deals with the constitutional protection of environmental rights. All human rights depend on the environment in which people live. Human rights cannot be fully understood simply by considering the individual as a person, but also by examining his or her relationship to the environment and the community in which he or she lives. On the one hand, the environment must have a constitutional provision protecting it. In the absence of such a provision, any damage to the environment will inevitably lead to the deprivation of individual rights, in particular the right to a healthy environment. Constitutional recognition of this right elevates it to the level of other fundamental rights guaranteed by the Constitution. The constitutional text on this right should not be underestimated, as it is in itself an effective guarantee of its protection.

This study aims to shed light on the constitutional protection of environmental rights in Algeria by addressing the definition of the constitutional right to a healthy

environment, its legal nature, and the implicit and explicit constitutional recognition of this right.

In order to address the research problem, we considered it necessary to carry out a comparative study using an analytical methodology. This study aims to analyse the provisions of national constitutional texts relating to the right to a healthy environment, starting with the first constitution of 1963 and including the amendments of 1976, 1989, 2002, 2008, 2016 and 2020. We use a historical approach to examine the extent to which these texts cover environmental issues, their alignment with recent developments in this area, and their accuracy. The study is structured as follows

Chapter One: The nature of the constitutional right to a healthy environment.

Chapter Two: Constitutional recognition of the right to a healthy environment.

Chapter Three: The legal nature of the constitutional right to a healthy environment.

The term 'environment' has been widely used over the past five decades, but its precise definition remains unclear to many. There is no specific and universally agreed definition that clarifies the nature of the environment. Therefore, in the first section we will discuss the definition of the right to a healthy environment, and in the second section we will examine its legal nature.

Chapter One: Defining the right to a healthy environment

The term "environment" is etymologically derived from the Arabic verb "ba'a yabu'u", which means to return or come back. For example, "bawa'a al-manzil" means to return to one's home. In the Qur'an it is mentioned: "And those who believe and do righteous deeds - We shall certainly assign them chambers [in Paradise]¹ " (Surah Al-Ankabut, 29:58). "Tabawa'a al-makan" means to occupy or settle in a place. The Qur'an states: "And those who occupied the house and believed before them"² (Surah Al-Hashr, 59:9), referring to those who made the city their home and residence. "At-tubu'" means possession and stability, while al-bi'ah refers to the dwelling³.

In technical terms, the environment refers to "the living environment that includes living organisms, including humans, animals and plants, as well as the surrounding elements of soil, air and water, together with the solid, liquid and gaseous substances they contain, or the various forms of energy, and any fixed or mobile structures built or operated by humans". It can also be understood as "the sum of the external

¹- Surah Al-Ankabut, verse 58.

²- Surah Al-Hashr, verse 9.

³- Al-Mu'jam Al-Wasit, Arabic Language Academy in Cairo, Dar Al-Ma'arif Printing Press, part 1, second edition, 1972, p. 75.

conditions and factors in which living organisms exist and which influence their biological processes". It also includes "all situations, conditions and environmental influences that affect the development of organic life".

So the environment is everything that surrounds people. It includes the earth on which humans live, the air they breathe, the water they drink, and all the living and non-living things that surround them. All of these elements make up the environment in which humans live. Preserving the integrity of this environment and ensuring its suitability for human life is the objective of environmental protection, which is pursued through local environmental laws as well as international conventions and treaties.

In contrast, the Algerian Constitution does not explicitly mention the environment. However, referring to Article 4 of Law No. 03/10 on the protection of the environment in the context of sustainable development¹, it states: "The environment is composed of non-living and living natural resources, such as air, atmosphere, water, land, subsoil, plants, animals, including genetic heritage, and the interactions between these resources, as well as natural sites, landscapes and landmarks".

It is noteworthy that the Algerian legislator² has not defined the environment in technical terms. Instead, it refers to the components of the environment. According to the previous article, the environment includes a fundamental element, which is the non-living and living natural resources, such as air, atmosphere, water, soil, subsoil, plants, animals, including genetic heritage, and the interactions between these resources, as well as natural sites, landscapes and landmarks. The legislator has thus adopted a narrow definition of the environment, limited to the natural elements that make up the natural environment and in which man has no role. This is also the approach taken by the French law of 19 June 1976 on classified installations for the protection of the environment, the Brazilian environmental law, the Polish environmental law of 1980 and the Libyan law of 1982 on the protection of the environment³.

It would be preferable for the Algerian legislator to adopt the broader concept of the environment, which includes both natural and human elements, i.e. the natural and urban environment.

¹- Law No. 03/10 of 19 July 2003 on the protection of the environment in the context of sustainable development, Algerian Official Journal No. 43, published on 20 July 2003.

²- The Algerian legislator enacted the first environmental law in 1983, Law No. 83/03 of 05/02/1983 on the protection of the environment, Official Gazette, No. 6, published on 8 February 1983.

³- Adel Maher Al-Alfi, Criminal Protection of the Environment, Ph.D. Thesis, Dar Al-Jami'a Al-Jadida, Egypt, 2011, pp. 127-128.

It should be noted that the right to a healthy environment is not clearly defined in law¹. However, it can be defined from two perspectives²:

The first aspect: It concerns the consideration of the right holder and his needs. The right to a healthy environment, as it stands, is a necessity to enable people to make the best use of natural resources. Human well-being and benefits are directly linked to the safety of the environment. This is in line with the very purpose of the right itself, as its ultimate goal is to provide a decent life for human beings. This can only be achieved if there is a suitable environment for individuals to exercise their rights and freedoms.

As for the second aspect: It concerns the consideration of the subject matter of the right. Accordingly, the right to a healthy environment entails the need to provide it in all its aspects, including for human beings themselves. It also requires the preservation of the ecological balance dictated by the laws of nature.

It is clear that the personal and objective dimensions of the definition of the right to a healthy and adequate environment are interdependent. The provision of an adequate environmental framework enables human beings to make optimal use of natural resources. However, this can only be achieved if individuals themselves maintain the ecological balance and respect the laws of the universe as ordained by Allah.

The right to the environment focuses on the protection of the environment from pollution and the provision of a suitable environmental setting for human life and the natural course of life.

The second aspect: The legal nature of the right to a healthy environment

The right to a healthy environment has a number of characteristics. First, it is a universally recognised right. Second, it is a composite right. Third, it is a right of solidarity.

First - The universality of the right to a healthy environment:

The recognition of the right to a healthy environment has been one of the most debated issues in international law over the last twenty years. Some have supported the recognition of this right at the international level, while others have taken the opposite approach and rejected it.

The explicit focus on the right to a healthy environment began with the Stockholm Conference in 1972¹. It stated that people have the right to an environment of a quality that allows for a decent and prosperous life. This concept was further

¹- Ahmed Abdel Karim Salama, Environmental Protection Law, Dar Al-Nahda Al-Arabiya, Egypt, 2008, p. 136.

²- jaber Gad Nasar, Human Rights in a Healthy Environment, Journal of the Arab Universities Union for Legal Studies and Research, Faculty of Law, Issue No. 11, Cairo University, 2000, p. 385.

¹- The first article of the proclamation declares that every human being has a fundamental right to freedom, equality and to live in conditions that enable him to lead a life of dignity in a quality environment.

developed in the World Charter for Nature, adopted by the United Nations General Assembly in 1983, which emphasised that human needs can only be met by ensuring the proper functioning of natural systems. The 1992 Rio de Janeiro Conference in Brazil emphasised that human beings are at the centre of sustainable development and have the right to live productively and in harmony with nature. This was reaffirmed at the 2005 World Summit, which emphasised the close link between human health and environmental security. In addition, UN General Assembly Resolution 45/94 states that all people have the right to live in an environment adequate for their health and safety. The resolution called for efforts to improve the environment and promote better health.

As a result, the right to a healthy environment has gained significant international recognition, highlighting the importance of ensuring environmental conditions that contribute to human well-being and sustainable development¹.

Second - The right to a healthy environment as a right to solidarity:

The 1980s saw the emergence of a third generation of human rights, referred to by some as the rights of peoples. The aim of this generation was to emphasise the need for solidarity among the individuals of humanity and for international and national cooperation in order to protect the right to a healthy environment and to ensure its exercise in a manner that guarantees the preservation of the environment and of human beings in the face of challenges that affect human life, and to establish guarantees for humanity².

This right gives every individual the right to demand that others respect certain universal values in a spirit of solidarity¹. In fact, they are called solidarity rights² or collective rights that must be protected for all individuals regardless of their legal status, political affiliation or ethnic origin³. These rights require cooperative behaviour by all actors to be effective⁴.

The environment is therefore not just an individual right, but a collective right of the community. This is because natural resources do not belong to one generation alone; each generation has a responsibility to preserve the environment for itself and for

¹- House of Representatives, Parliamentary Committee on Human Rights, Series of Background Studies: The National Plan for Human Rights, The Right to a Healthy Environment, pp. 10-12.

²- Anwar Jumaa Al-Tawil, Civil Liability Lawsuit for Environmental Damages, Comparative Study, Dar Al-Fikr Wal-Qanoon, Egypt, 2014, p. 280.

¹- Rousseau, The Rights of Man in the Third Generation, Constitutional Law and Human Rights, ed. economica, collection of positive public law, Paris, 1987, p. 127.

²- Jacques Robert, General Report, IXth Conference of European Constitutional Courts, Paris, 10-13 May 1993.

³- Eid Ahmed Al-Hasban, The Constitutional System of the Right to the Environment in Constitutional Systems, Constitutional and Analytical Comparative Study, Studies, Sharia and Law Sciences, Volume 38, Issue 1, 2011, p. 287.

⁴- Shelton, Dinah, "Human Rights, Environmental Rights and the Right to the Environment", p. 122.

future generations to ensure a dignified life on this planet. The transfer of natural resources from the present generation to future generations is assumed¹.

Third - The right to a healthy environment is a composite right:

The right of individuals to a healthy environment has a distinct and different nature from individual rights. It is characterised as a multidimensional and composite right². This uniqueness makes it difficult to apply this right in an absolute and definitive manner within the known generations of individual rights. As environmental problems and their protection have come to the fore today, this right has become one of the fundamental rights of human beings. The right to life, which is one of the civil and political rights, cannot be realised without a clean, healthy and balanced environment. Similarly, it is inconceivable for individuals to enjoy their economic and social rights (such as work, wages, food, health and housing) without an adequate environment³. Therefore, every individual right, regardless of the generation to which they belong, is closely linked to the right to a healthy and balanced environment. In this regard, jurisprudence classifies this right as a composite right with multiple dimensions that cannot be discussed separately from other rights¹.

Moreover, it is characterised as both a right and a duty. The creditors (beneficiaries) and debtors (those responsible for its fulfilment) of this right are the individuals themselves. The majority of constitutions and national laws state that human beings have the right to live in a healthy environment and, in return, have the duty to preserve it².

The second section: Constitutional recognition of the right to a healthy environment

The right of individuals to a healthy environment in Algeria has gone through two main stages. The first stage implicitly referred to the right of individuals to a healthy environment (first demand). The second stage was characterised by the explicit recognition of the right to a healthy environment (Second Demand).

First demand: Implicit recognition of the right to a healthy environment

Prior to its amendment in 2016, the Algerian Constitution did not explicitly mention the right of citizens to a healthy and balanced environment. The 1963 Constitution referred to the fundamental rights of Algerians in Articles 12 to 22, but did not

¹- Anwar Jumaa Al-Tawil, the previous reference, pp. 280-297.

²- Mohammed Alwan and Mohammed Al-Mousa, International Human Rights Law, Sources, Means and Control, Part 1, Dar Al-Thaqafa for Publishing and Distribution, p. 424.

³- Said Jouili, The Right of Human Beings to the Environment, Dar Al-Nahda Al-Arabiya, Egypt, 2001, pp. 12-16.

¹- Eid Ahmed Al-Hasban, the previous reference, p. 287.

²- Riyad Saleh Abu Al-Ata, Protection of the Environment from the Perspective of Public International Law, published Master's thesis, Dar Al-Jami'a Al-Jadida, Egypt, 2006, pp. 65-66.

mention the concept of the environment in general or its safety in particular. However, referring to Article 16, it states: "The Republic recognises the right of every individual to live in dignity". This provision is the constitutional basis for the protection of the right to life.

The right to life is considered the most important civil and political right, and indeed the most fundamental of all rights, for without it other rights have no meaning. Constitutions have affirmed the guarantee of the human right to life and its protection by committing not to deprive any person of life¹. The right to life is either explicitly mentioned or implicitly recognised through adherence² to the Universal Declaration of Human Rights, adopted by the United Nations on 10 December 1948, which states that "everyone has the right to life, liberty and security of person"¹.

It is well known that the right to life extends to the quality and dignity of that life, and this quality cannot be achieved in the presence of a corrupt and polluted environment. Therefore, the human right to a healthy environment is considered part of the right to life in its broadest sense, as environmental threats fall within its scope².

Many courts have interpreted constitutional provisions that enshrine the right to life broadly to include the right to a healthy environment. For example, India, which has the largest number of judicial decisions related to the environmental aspects of the right to life, has interpreted Article 21 of its constitution³, which relates to the right to life, to include the protection of environmental resources. This is despite the fact that the Indian Constitution contains several provisions protecting both human health (Article 47) and the natural environment (Articles 48 and 51)⁴.

Despite the amendment of the Algerian constitution in 1976, four years after the 1972 Stockholm Conference, the situation did not change. This amendment referred to fundamental freedoms, human rights and civil rights in articles 39 to 73, but did not explicitly mention the right to a healthy environment. This is in contrast to some countries that have incorporated the provisions of this conference into their constitutions, such as the former Yugoslavia through a constitutional amendment in 1974, Portugal through its 1976 constitution and Brazil through its 1988 constitution.

¹- Riyad Saleh Abu Al-Ata, the previous reference, p. 82.

²- Some countries, such as Côte d'Ivoire and Djibouti, do not directly guarantee the right to life.

¹- Walid Mohammed El-Shanawi, *Constitutional Protection of Environmental Rights (A Comparative Study)*, Dar Al-Fikr Wal-Qanoon, Mansoura, 2013, p. 119.

²- Riyad Saleh Abu Al-Ata, the previous reference, p. 82.

³- Article 21 of the Indian Constitution states: "No one may be deprived of his life or personal liberty except in accordance with the procedure established by law."

⁴- Walid Mohammed El-Shanawi, *supra*, p. 123.

However, Article 67 of the Algerian constitutional amendment of 1976 states: "Every citizen has the right to health care". This provision is aimed at constitutional protection of the right to public health.

This right is considered one of the social rights that impose both positive and negative obligations on the State. With regard to negative obligations, the State is obliged to refrain from any action or activity that may affect or undermine the guarantees of public health for individuals. As for the positive obligations, they include all actions and activities that the state must undertake to ensure the health and public safety of individuals, including taking all necessary measures to prevent the spread of epidemics and diseases and taking the necessary steps to combat them when they occur. This right has two dimensions: the individual dimension, where the right to public health is concerned with the protection of the individual entity, be it the protection of life or physical and mental well-being. The other dimension is the collective dimension, which includes the obligations that this right imposes on the State to ensure public health for the entire population¹.

There is indeed a link between the right to public health mentioned in the previous text and the right to a healthy environment. It is undeniable that the protection of individuals from the effects of environmental pollution is necessary to preserve public health. Therefore, a healthy environment is achieved by ensuring that citizens enjoy the protection and safety of their human environment, free from epidemics, pollutants and diseases, and by taking preventive measures and providing treatment in the event of infection². This is confirmed by a facet of international jurisprudence that recognises the close relationship between the protection of the right to health and the protection of the environment, especially when environmental damage constitutes an attack or violation of the right to health. According to the deliberations of various committees, environmental pollution may threaten the right to health not only of individuals present at the time of pollution, but also of future generations. This legal interpretation establishes the legal relationship between the environment and the right to health on the basis of its future effects rather than its present or immediate effects. Despite ideological differences, the 1989 amendment to the Algerian constitution did not explicitly mention the right to a healthy environment.

Even after Algeria officially joined the ranks of countries participating in the Earth Summit in Rio de Janeiro, Brazil, in 1996, and ratified numerous international

¹- Eid Ahmed Al-Hasban, the previous reference, p. 294.

²- Dawood Abdul Razzaq Al-Baz, The Constitutional Basis for the Protection of the Environment from Pollution in the State of Kuwait: An Analytical Study within the Legal Concept of the Environment and Pollution, Scientific Publishing Council, Kuwait University, 2003, p. 107.

agreements related to the environment, it did not explicitly include the right to a healthy environment in the 1996, 2002 and 2008 constitutional amendments.

Therefore, it can be said that the Algerian constitutional system, from 1963 until the 2008 amendment, by linking the right to life enshrined in the 1963 Constitution, the right to public health established in the 1976 amendment and the right to a healthy environment, has indirectly provided constitutional protection for the right to a healthy and balanced environment, based on the implicit will of the constitutional legislator.

The second demand: Explicit recognition of the right to a healthy environment

Algeria is one of the countries that has recently enshrined the right to a healthy environment, starting with the 2016 constitutional amendment, which states in its preamble that: "The Algerian people remain committed to their choices to reduce social inequalities, eliminate regional disparities and build a productive and competitive economy within the framework of sustainable development and environmental protection."

The 2016 amendment to the Algerian Constitution explicitly recognised this right in Article 68, which is included among the rights and freedoms in Chapter Four, which states: "Citizens have the right to a healthy environment. The State shall work to preserve the environment and the law shall determine the duties of natural and moral persons to protect the environment". This was reaffirmed by the 2020 constitutional amendment in Article 64.

The constitutional amendment of 2016 was the first step towards guaranteeing the right to the environment, which represents a relationship of both rights and duties, as stated in the Preamble and in the second and third paragraphs of Article 68. This was further emphasised by the Constitutional Amendment of 2020 in Article 64. A healthy environment is a right of the citizens and at the same time they have a duty to preserve it, together with the duty of the State, with reference to the ordinary law regulating environmental protection duties.

With regard to the classification of this right, the Constitutional Council pointed out that the right to a healthy environment, as set out in Article 68, is linked to the third-generation human rights relating to the preservation of natural resources and the protection of the environment, both of which are considered essential conditions for sustainable development¹.

¹ Opinion of the Algerian Constitutional Council No. 01/16 of 28 January 2016 on the draft law containing constitutional amendments, published in the Official Gazette No. 06 of 3 February 2016. Available at the following website: <https://www.joradp.dz/HAR/Index.htm>. Accessed on 20 March 2023 at 00:39.

There is no doubt that the realisation of the right to a healthy environment requires, as a basic condition, the concerted efforts of the citizens concerned, the State, public and private organisations, as well as the cooperation of the international community.

Conclusion:

In this study, we have examined the constitutional protection of environmental rights in the Algerian constitutional system and we have come to the following conclusions:

1- The right to a healthy environment in Algeria has gone through two main stages. The first phase was prior to the 2016 constitutional amendment, where this right was implicitly referred to through provisions on the right to a decent life and the right to health. The second stage began with the 2016 constitutional amendment and continues to the present day, where the right to a healthy environment is explicitly stated.

2- Algeria is one of the countries that has recently explicitly recognised the right to a healthy environment through its constitutional amendments of 2016 and 2020, which include it among the rights and freedoms.

3- A healthy environment is a right of citizens and at the same time they have a duty to preserve it, along with the duty of the state. The inclusion of the right to a healthy environment in the Constitution strengthens its legal status, given the high position of the Constitution in the hierarchy of legal texts. It gives it a binding character and grants its holders privileges in relation to state structures and others.

4- Moreover, the constitutional value of the right imposes on the State a series of obligations aimed at ensuring its provision to individuals and working to enforce its respect.

5- Any authority that violates this duty is subject to legal consequences and the supervision of the competent constitutional judge.

6- The constitutional amendments of 2016 and 2020 referred the regulation of the duties of natural and moral persons to protect the environment to ordinary law. Therefore, the ordinary legislator must comply with the express will of the constitutional legislator when enacting laws regulating this right and laying down detailed provisions.

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