



Constitutionalizing The Right To A Safe Environment In The Algerian Constitutions

Dr. Ikram Mahfoud, University of Saida, Algeria, ikrammahfoud17@gmail.com ORCID: 0000-0001-7258-0671

Dr. Sid Ahmed Soufiane, University of Annaba, Algeria, univsid.dz@gmail.com ORCID: 0000-0003-3499-1888

Abstract:

The increasing human right to live in a safe environment pushed many modern constitutions to devote an important position for it in their provisions. However, classifying this right inside the Algerian constitutions differs from one to another. The constitutional founder had pointed to this right implicitly since the 1st constitution in 1963 until that of 2016 where he clearly provided, for the 1st time, for the human right to live in a safe environment. Later, the constitution of 2020 had been issued and added a set of principles and regulations that contribute to protecting the environment and limiting the deterioration of the human environment in order to achieve an effective protection of this right.

Keywords: international law; human rights; the right to a safe environment; Algerian constitutions.

Introduction:

The environmental deterioration is a fatal result of the industrial and technological advance, the demographic explosion, and the urban expansion. Thus, the governments turned their attention towards the issues of the environment in order to face and overcome its problems mainly in the light of the increasing awareness of the people about the dangers that threaten the human health and the environmental systems.

The real start of the interest in the environment had been in the Conference of Stockholm about the human environment in 1972 after the decision of the General Assembly of the UN No° 2398/23 that took the slogan of "Just One Earth". The aims of the Conference were achieving a balance between the environment and the development, warning peoples and governments about the human activities that threaten the environment and create severe risks that threaten the human life, and discussing the ways of encouraging the international governments and organizations to take the necessary measures to protect and enhance the environment.

The Conference resulted in a declaration entitled “Stockholm Declaration on the Human Environment”. It included a preamble and 26 principles. It was the 1st international document about the principles of the relationships between the states regarding the environment, how to deal with it, and the responsibility of the dangers that affect it. From the texts of the Declaration, we find that it linked the human to the environment as it pointed in the preamble that the human is the main element that affects the environment and that protecting and enhancing it is an important topic that affects the survival of the humans and the economic development. The 1st principle recognized a new right in the international scene that is the human right to live in an environment that has a good quality which allows a decent and luxurious life; this is known as “the right to a safe environment”.

The increasing human right to live in a safe environment pushed many modern constitutions to devote an important position for it in their provisions. However, classifying this right inside the internal constitutions differs from one state to another and from one constitution to another. Some implied this right within the economic, social, and cultural rights. On the other hand, others included it in the statement of the preamble or the general provisions while others included it in the main human rights.

The varying stances of the states’ internal constitutions towards the human right to a safe environment pushes us to raise the following problematic: how did the Algerian constitutions incarnate the human right to a safe environment and what is the role of the constitution of 2020 in enshrining this right?

Aims of the study:

This study aims at showing the role of the constitutional founder in recognizing the role to a safe environment and the contribution of the Algerian constitutional amendment of 2020 in enshrining the legal protection of this right and addressing the shortcomings of the previous constitutions.

Methodology of the study:

We followed the analytical method through analyzing the Algerian constitutions and delving deep in them. In addition, we used the descriptive method as an auxiliary method to the analytical because some phases of the study required using the description as a tool that paves the way for, and helps, the analysis. Furthermore, we resorted to the historical method to show the main phases of the development of the Algerian constitutions and the amendments that had happened.

The study problematic had been processed within a dual plan divided into two chapters. The 1st discusses the development of the constitutionalization of the right to a safe environment in the Algerian constitutions while the 2nd is about the ways of achieving the right to a safe environment in the light of the Algerian constitution of 2020 through tackling the protection of the environment and the achievement of the sustainable

development in the 1st section, and the achievement of the water and food security and avoiding conflicts in the 2nd section.

The 1st chapter: the development of the constitutionalization of the right to a safe environment in the Algerian constitutions:

Because the constitution is the main legislation of the state that guarantees the individual and collective rights and duties, providing for the right to a safe environment contributes to achieving the highest legal protection for this right. From the previous Algerian constitutions before the constitutional amendment of 2020, we find that some pointed to this right implicitly while it was explicit in some others. We shall discuss in the following lines the implicit constitutionalization of the right to a safe environment in the 1st section and then speak about the explicit in the 2nd.

The 1st section: the implicit constitutionalization of the right to a safe environment:

After the Algerian independence from the French colonization and the end of the wars and slavery, the Algerian government started rebuilding itself through adopting a national legal system and gradually establishing its institutions. In this regard, the National Founding Assembly had been established directly after the independence to regularize the constitutional sides in the state and set a constitution for the state. Nevertheless, this Assembly could not do that due to the disaccords between its members. Consequently, the Political Office of the National Liberation Front took the responsibility of doing that. It made a project of a constitution which the Assembly voted for. Later, it had been subject of a referendum and had been issued on 10 September 1963. It was the 1st constitution of the independent republic of Algeria (Majdan, 2021, p. 19).

The constitution of 1963 was made up of a preamble and 78 articles. Article 11 showed the Algerian approval of the International Declaration of the Human Rights (Constitution, 1963) issued after the decision of the General Congress of the UN No° 217/3/a on 10 September 1948. The Declaration included 30 articles about the political, civil, economic, social, and cultural rights (Kanaan, 2008, pp. 936-94). Back to Article 25 of this Declaration, we find that it provided that each human has the right to a living level that is enough to guarantee his and his family's health and well-being mainly the food, clothe, housing, healthcare, and the necessary social services (The International Declaration of the Human Rights, 1948).

The Declaration did not point explicitly to the right to a safe environment (Kanaan, 2008, p.200). Nonetheless, Article 25 alludes implicitly to the necessity of having a clean living milieu far from any dangers of pollution so that the human can have health and safe food. This is because man cannot have a good health or a clean living milieu without a clean environment far from pollution (al Baz, 2006, p.88).

Articles 12 to 22 of the constitution of 1963 pointed to a set of fundamental rights such as the freedom of press, freedom of media, freedom of establishing associations, freedom

of speech...(Constitution, 1963). However, these Articles did not include the right to a safe environment mainly that this right emerged in the beginning of the 1970s with the Conference of Stockholm in 1972. But, we can extrapolate the indirect protection of the environment in the light of this constitution from Article 16 that recognized the right of each individual to have a decent life. The article says that the republic recognizes the right of each individual to a decent life and a fair wealth distribution. Since the decent life cannot be achieved without a safe environment, we can say that this Article alluded indirectly to the right to a clean environment (Ayachi, 2020, p. 148).

This constitution was abolished by the then President in accordance with Article 59 of the same constitution after internal upheavals. It had been blocked after the events of 1965 until the appearance of the constitution of 1976 which is the 2nd for the Algerian state (Majdan, 2021, pp. 19-20). It included a preamble and 03 sections. The 1st section was entitled the fundamental principles regulating the Algerian society and was divided into 07 chapters. The 04th chapter of the 1st section pointed to the fundamental freedoms and the human and citizen's rights (al Aidani, 2017, p.221) in Articles 39 to 73. However, it did not provide for the right to a safe environment clearly. In the same context, the consecutive constitutional amendments (1979-1980-1988) did not tackle this issue. We can say that this right had been alluded to indirectly through recognizing the right to healthcare that cannot be achieved only in a safe environment (Ayachi, 2020, p. 149). Article 67 provided that the citizen has the right for healthcare. This right is guaranteed through providing public free health services and extending the domain of the preventive medicine, the continual improvement of the living and working conditions, and promoting the physical and sportive education and leisure tools (Constitution, 1973). Hence, we can say that the healthcare cannot be achieved without a clean environment (al Baz, 2006, p. 88).

The constitution of 1976 gave the National Public Assembly the issue of the environmental protection. Article 151 provided it with the authority of setting the broad lines of the policy of regional development, faunal and floral wealth protection, and protecting the historical, cultural, and general system of the forests and the waters (al Aidani, 2017, p.222).

Despite that the constitution of 1976 had been issued after the Conference of Stockholm that enshrined the concept of the human right to a safe environment because it is a right of the 3rd generation, there was no clear echoes of this right in the constitution of 1976 because Algeria did not take part of the Conference and due to its orientation towards the achievement of development with all its aspects through taking advantage of all the natural resources and environmental wealth in order to keep up in pace with the developed countries and achieve the people's well-being. Hence, the environment had not been a focal point; rather, it was a tool to achieve the previously mentioned objectives with the end of the 1980s.

After an international economic crisis, Algeria started a set of reforms that resulted in the constitution of 1989 which brought a large openness in the various sectors of the public life. It opened the stage for the multiparty system and substituted communism with the liberal system (Majdan, 2021, p.21). This constitution included a preamble and 167 articles. Chapter 04 had been devoted for the duties and rights in Articles 28 to 66. Nonetheless, it did not include any change regarding the rights and duties and did not point to the right to a safe environment or the regulations related to the environment despite that Algeria had officially joined the states that participated to the Conference of Rio de Janeiro in 1992 and ratified many international agreements related to the environment.

The constitution of 1989 only insisted on the right to the healthcare in article 51 (Constitution, 1989). Like its precedent, it charged the national Public Assembly with determining the rules of the protection of the environment, setting rules in the domains related to protecting the faunal and floral wealth, protecting and maintaining the historical and cultural heritage, and determining the general system of the waters, forests, pastoral lands, mines, and fuels (Ayachi, 2020, p.149). This was the same for the constitution of 1996. The consecutive amendments (2002-2008) did not bring any news concerning the right to a safe environment. However, things changed with the constitutional amendment of 2016. This shall be discussed in the 2nd section.

The 2nd section: the explicit constitutionalization of the right to a safe environment:

The Algerian jurisprudence confirms that the previous constitutions which we previously mentioned included the right to a safe environment implicitly. This manifests in the correlation between the safe environment, the decent life, and healthcare. With the increasing interest in the issue of the right to a safe environment, the interest of the constitutional founder manifested through the constitution of 2016 that contained a preamble and 04 sections (al Aidani, 2017, p. 221).

From the preamble of this constitution, we find that it pointed to the fact that the Algerian people is attached to its choices to limit the social differences, end the aspects of the regional gaps, and to build a productive and competitive economy in the light of the sustainable development and environment preservation (Constitution, 2016). This indicates that the constitutional founder shed light on the question of environment protection and gave it its merits. In this line, Article 68 confirmed what came in the preamble and pointed clearly for the 1st time to the human right to live in a safe environment (Fikra & Badis, 21019, p. 138). The articles add that the government works to preserve the environment and that the law defines the duties of the ordinary and moral individuals to protect the environment (Constitution, 2016).

The constitutional founder insisted through Article 68 on the strong relation between the constitutional right to a safe environment and the sustainable development course. Thus, it added an economic nature to this right, increased the value of the right to a safe

environment, and included it to the main executable rights. The constitutional founder did not only explicitly declare the constitutionalization of the right to a safe environment; rather, it made it an axis of the rights and duties which the government must take the necessary measures to protect and activate, and that the ordinary and moral individuals must protect (Ayachi, 2020, p. 152).

It is noteworthy mentioning that, in addition to the previous competencies mentioned in the previous constitutions, the constitution of 2016 gave the National Public Assembly the mission of setting the general regulations related to the environment, the living frame, and urban development (Constitution, 2016). Despite the late constitutionalization of the right to a safe environment, we can say that Algeria made an important step in establishing an effective protection to this right thanks to the highness of the constitutional rights and duties in facing the rest of the legal regulations and rights. In addition, the constitutional founder set ways of achieving the right to a safe environment through the constitutional amendment in 2020. This shall be discussed in the following chapter.

Chapter Two: the ways of achieving the right to a safe environment in the light of the Algerian constitution of 2020:

As its precedent, the constitution of 2020 included the topic of the environment protection and the right of the human to a safe environment. This is in the light of the 1st chapter of the 2nd section entitled “the fundamental rights and public freedoms”. However, what distinguishes it is the set of principles and the new articles that are linked to the right to a safe environment that the previous constitutions did not allude to. This is a result of the recognition of the constitutional founder that widening the rights of the citizen to cover the right to a safe environment goes with what the international agreements and treaties recognize and with the requirements of the development and natural milieu development. In addition, it goes with the weather changes, contributes to increasing the living standards, and provides the suitable circumstances to exercise the businesses and protect the properties (Jolla, 2020). In this chapter, we shall tackle the main elements and principles that the constitution of 2020 made sure to enshrine to achieve the right to a safe environment and to give it comprehensive and complementary dimensions. This is to be done through two sections. The 1st shall discuss the environmental protection and sustainable environment achievement while the 2nd shall be devoted to achieving water and food security and avoiding conflicts.

Section One: environment protection and sustainable development achievement:

From the preamble of the constitution of 2020, we find that it pointed to the fact that the Algerian people expresses his attachment to the human rights indicated in the International Declaration of the Human Rights of 1948 and the international agreements that Algeria ratified (constitution, 2020). This Declaration alludes in Article 25 to the

necessity of having a clean living milieu far from pollution so that the human can enjoy health and safe food (Abbas, 2018, p. 307)

Among the most famous international agreements and treaties related to the human rights that Algeria ratified, we find the African Charter of the Human Rights of 1988 (Fikra & Badis, 2019, p. 136) whose Article 24 provides that the peoples have the right for a satisfactory and comprehensive environment that suits their development (the African Charter of the Human Rights, 1988). In addition, we find the Arab Charter of the Human Rights whose Article 38 tells that each person has the right to a living standard that is enough for him and his family and provides a decent life and the well-being including food, housing, and services. It adds that he has the right to a safe environment and that the signatory states must take the necessary measures according to their potentials to save these rights. Furthermore, Article 39 urges fighting the environmental pollution factors and providing sanitation (the Arab Charter of the Human Rights, 2004).

Due to the importance of the environmental awareness to achieving an effective protection for the environment and protecting it, the preamble of the constitution of 2020 added two paragraphs (Jolla, 2020). The 1st says that the people keeps preoccupied with the deterioration of the environment and the negative repercussions of the climate change and makes sure to protect the natural milieu and rationally use the natural resources and protect them for the future generations. As for the 2nd, it tells that in recognition to the huge energy the Algerian youth represents, and with their expectations and determination to face the political, economic, social, and cultural challenges of the state, it is necessary to include the youths in the process of building and protecting the interests of the future generations through a qualitative training by the state and society institutions. Besides, Article 21 adds that the state works to guarantee a continuous awareness raising about the environmental dangers (Constitution, 2020). Hence, the constitution of 2020 enshrined the right to a safe environment and considered it an important right as the others.

Owing to the strong relation between the environment and the development, statement 01 of Article 64 (68 previously) added the term “sustainable development”. It provides that the citizen has the right to a safe environment in the light of the sustainable development (Constitution, 2020). Consequently, the issue of the environment turned into a developmental issue that is part of the state’s political economy, the public agenda, the development projects, and the private and public investment meant for the future (Jolla, 2020).

The constitutional amendment of 2020 witnessed the inclusion of the environment clearly with the constitutional counseling organizations in the official naming. The name “the national socioeconomic assembly” changed into “the national socioeconomic and environmental assembly” (Constitution, 2020). The promotion of the environment in the constitutional amendment of 2020 manifests in the mission attributed to the assembly guaranteed by Articles 209 and 210 according to which the Assembly is in charge of:

- Providing a frame for the participation of the civil society in the national consultation about the policies of the socioeconomic and environmental development in the light of the sustainable development.
- Guaranteeing the continuity of the dialogue and consultation between the national and socioeconomic partners.
- Evaluating and studying the issues related to the national interests in the socioeconomic, environmental, educational, vocational, and higher education fields.
- Presenting suggestions and recommendations for the government (Constitution, 2020).

Section Two: achieving the water and food security and avoiding conflicts:

Owing to deficits in the fresh water resources the nature witnesses and the shrinking of the arable lands and the forests, economists and development experts confirm that foods and fresh water became strategic resources and expensive goods that are subject of competition due to the decrease of the rain levels and the increase of demography, the consumption demand, and groundwater pollution. Data of the UN bodies show that the world has lost around 420 million acres of the forests since 1990 and that more than 690 million people suffer hunger most of which are women and children. In addition, more than 844 million people lack drinking water as the share of the individual of the fresh water decreased sharply to less than 1000 m³ and less than 500 m³ per year; the required rate is between 3000/4000 m³ per year (Jolla, 2020).

As a consequence, the constitution of 2020 worked to include legal texts that save the citizen from the problem of lack of water, preserve the resources and rationalize their consumption, and protect the agricultural lands (Jolla, 2020). These missions have been attributed to the state as it works to protect the agricultural lands, rationalize the use of waters, fossil energies, and the other natural resources, and protect the environment with its land, maritime, and air dimensions according to Article 21 that provided that the state works to guarantee a safe environment to protect the people and achieve their well-being (Constitution, 2020).

Moreover, the constitutional founder worked through the constitution of 2020 to empower the citizen to get drinkable water and protect it for the future generations according to Article 63 (Constitution, 2020). Many experts of the strategic studies agree that the wars and the future conflicts will be about water and the fertile agricultural lands, the forests, and the regions of the faunal and fish wealth. This can be described as unarmed conflicts that some African countries started living. Consequently, Water will be the blue gold and an expensive consumption product. In addition, the fertile lands and the agricultural crops shall be strategic goods that have geopolitical and living repercussions (Jolla, 2020).

As a result, enshrining the right to a safe environment represents a protection for the natural milieu, a security for the resources, and an achievement of the food security, well-being, stability, and peace mainly if we know that many African exodus movements are due to the lack of these resources, deterioration of the living standards, and loss of the income due to the drought, high temperature, and deforestation. The phenomenon of the climate refugees causes many armed conflicts about the green regions, oases, and the lands that are near the water. Hence, the state guaranteed the strategies of protecting the individuals and the environment through the constitution of 2020 (Jolla, 2020).

Conclusion:

The increasing human right to live in a safe environment pushed many modern constitutions to devote an important position for it in their provisions. However, classifying this right inside the Algerian constitutions differs from one to another. We tried through this study to show the role of the constitutional founder in constitutionalizing the right of the human to a safe environment and to explain his effective contribution in enshrining this right. After completing our study, we reached many conclusions and recommendations, which we

First, the results:

- The 1st Algerian constitution in 1963 did not include a text about the right to a safe environment. However, we can deduce this because it alludes indirectly to this right through recognizing the right to a decent life which cannot be attained without a safe environment.
- The 2nd constitution in 1976 was like the 1st regarding the right to a safe environment. It recognized it implicitly through the right to healthcare which cannot be attained without a safe environment according to the jurisprudents.
- The constitutions of 1989 and 1996 did not include any change regarding the rights and duties. In addition, it did not point to the right to a safe environment or the regulations related to the environment in an explicit manner. Rather, they insisted on the right to healthcare provided for in the constitution of 1976.
- Things changed with the constitutional amendment of 2016. The right to a safe environment was no longer implicit because the constitution pointed to it explicitly contrary to the previous constitutions.
- The constitutional founder recognized the importance of the right to a safe environment. As a consequence, the constitution of 2020 kept the clear text about the right to a safe environment and added a set of principles that contribute to achieving an effective protection to this right mainly achieving an environmental awareness and linking the protection of the environment to the achievement of the development. Furthermore, it added legal texts that save the citizen from the lack of water, preserve the resources, rationalize their use, and protect the agricultural lands.

Despite that the constitutional recognition of this right gives it the highest legal protection since the constitution is the fundamental legislation of the state that guarantees the rights and duties, it is necessary to provide the following recommendations

Second: Recommendations

- It is necessary to support the right to safe environment with legislative texts that enshrine the culture of respecting the environmental laws, produce agricultural practices that respect the climatic change, enhance irrigation and the styles of using pesticides and herbicides, fight pollution, and prohibit the urban sprawl to the agricultural lands.
- We must give attention to the institutions of the civil society, encourage them to activate the environmental domain, and motivate them to establish associations. In addition, we must encourage environmental studies and researches centers, university laboratories, and provide them with the needed tools.
- It is necessary to set effective international rules that cover all the sides related to the human right to a safe environment.
- It is necessary to establish environmental courts specialized in the violations of the human right to living in a safe environment.

Sources:

First, the books:

1- Al Baz, D. (2006), the constitutional basis for the protection of the environment from pollution (1st ed), Egypt: the university thought house.

2- Kanaan, N. (2008), the right of the human in Islam and the international charts and Arabic constitutions (1st ed), Jordan: Ithra for publication and distribution.

Second, Articles:

1- Abbes, M. (2018). the efforts of the UN to incarnate the right to a safe environment. the journal of scientific researches in the environment legislations, 5(2), pp. 298-323.

2- Al Aidani, S (2017). the right of the citizen to a safe environment in the light of the constitutional amendment of 2016. the journal of the legal and social sciences, 2(1), pp. 215-226.

3- Ayachi, H. (2020). constitutionalizing the right to a safe environment in the light of the constitutional amendment of 2016. the journal of legal and political researches, 14(2), pp. 128-159.

4- Fikra, A. and Badis, S. (2019). the legal protection of the human right to a safe environment. the journal of laws and political sciences, 6(2), pp. 131-142.

5- Majdan, M. (2021). the Algerian constitutional experience and building democracy. the Algerian journal of political sciences and international relationships, 1(1), pp. 15-34.

Third, Online article:

1-Jolla, S. (2020). the strategic dimensions of constitutionalizing the right to a safe environment in the light of the sustainable development. Ashaab newspaper (October 30). [Online]: Retrieved December 16, 2021, at URL: <http://www.ech-chaab.com/ar>.

Fourth, Legal documents:

- 1-The Algerian constitution. (1963)
- 2-The International Declaration of the Human Rights. (1948)
- 3-The African, Charter of the Human Rights. (1988)
- 4-The Algerian constitution. (1989)
- 5-The Algerian constitution. (1996)
- 6-The Arab Charter of the Human Rights. (2004)
- 7-The Algerian constitution. (2016)
- 8-The Algerian constitution. (2020)