

Protecting the Human Right to Water and Clean Air: A Study in International Charters and National Legislation

حماية حق الإنسان في الحصول على الماء والهواء النقي:

دراسة في إطار المواثيق الدولية والتشريعات الوطنية



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Abstract:

In addition to procedural environmental rights, the human right to water and the right to clean air are basic rights that cannot be separated from the right to a recognized environment for the individual and the group, which guarantees the provision of sufficient quantities of either hygienically safe water or clean air in a sustainable manner that meets the individual's daily needs, in order to enhance his right to enjoy a decent standard of living, as well as because they are considered essential factors in human survival. Accordingly, this study aims to highlight the special attention given to the right to water and clean air through various international charters and efforts to protect the environment, which clearly addressed the right to water and the right to clean air as fundamental rights related to the actual exercise of the right to the environment and its affirmation at the level of practical reality. It is also through some of the legal systems of the countries of the world that have recognized them at the level of legislative and regulatory texts, in accordance with international standards and good practices for this right and promoting their utilization in order to preserve human dignity and raise the standards of life in a healthy environment.

key words: Human rights protection, right to water, right to clean air, legal enshrinement, international conventions, national legislation.

ملخص:

إضافةً إلى الحقوق الإجرائية البيئية، فإن حق الإنسان في الحصول على الماء والحق في الهواء النقي يعتبران من الحقوق الجوهرية التي لا يمكن فصلها عن الحق في البيئة المعترف بها للفرد

والجماعة، والتي تضمن توفير كميات كافية سواء من الماء المأمون صحيا أو الهواء النقي بصورة مستدامة تفي باحتياجات الفرد اليومية، تعزيزا لحقه في التمتع بمستوى معيشي لائق، وكذا لاعتبارهما عاملان أساسيان في بقاء الإنسان على قيد الحياة. وتبعاً لذلك، فإن هذه الدراسة تهدف إلى إبراز الاهتمام الخاص الذي حظيا به كلا من الحق في الحصول على الماء والهواء النقي من خلال مختلف المواثيق والجهود الدولية المبذولة لحماية البيئة، والتي تطرقت بشكل واضح إلى الحق في الحصول على الماء والحق في الهواء النقي كحقوق جوهرية مرتبطة بالممارسة الفعلية للحق في البيئة وتأكيداه على مستوى الواقع العملي، وكذا من خلال بعض المنظومات القانونية لدول العالم التي أقرتها على مستوى النصوص التشريعية والتنظيمية، وفقا للمعايير الدولية والممارسات الجيدة لهذا الحق وتعزيز الانتفاع بهما حفاظا على كرامة الإنسان والرفع من مستويات الحياة لديه قُدا في ظل بيئة سليمة.

الكلمات المفتاحية: حماية حق الإنسان، الحق في الحصول على الماء، الحق في الهواء النقي، الاتفاقيات الدولية، التشريعات الوطنية.

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1- Introduction

The interest in the right to an ecologically sound environment as a basic human right has witnessed a significant development and wide recognition within various international, regional and national legal efforts. This is clearly evidenced by the tendency of most countries of the world to hold conferences and conclude international agreements aimed at protecting the environment and its natural resources and establishing legislation and legal mechanisms for this. Hence, all of them emphasized that the effectiveness of the right to the environment requires the affirmation of other procedural or substantive rights and prerogatives recognized for each person, due to their close connection to the exercise and enforcement of the right to the environment.

Accordingly, the international legal interest in enshrining the right of every person to an ecologically sound environment in the various constitutions and domestic legislations of the countries of the world as a basic right of the third generation of human rights has led to the recognition of other fundamental rights that are closely related to the exercise of the right to the environment. Foremost among them is the right to access to safe water and the right to breathe

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clean air¹, as the fundamental right to the environment is one of the prerogatives that a person can enforce directly before judicial courts, by resorting to filing a lawsuit against a third party who violated his right to the environment or the use of its natural resources. In this regard, some jurists believe that recognizing a substantive right to the environment is too complicated and unreasonable, given that the environmental prerogatives recognized for humans may be very broad and slightly framed.² Subsequently, it has been proposed to recognize private and substantive rights that relate only to part of the environment and its natural resources, not the environment as a whole, such as the right to water and the right to clean air.

The connection between having clean air and safe water is not just about procedural rights for the environment. It also includes the right to have clean water and air, which are basic rights that come under the broader right to a healthy environment. Since the right to water and the right to clean air were, and still are, two of the most basic human rights for which international and positive laws have established controls to deal with. Given the lack of legal material in clarifying the features of these two rights, due to their novelty compared to other constitutionally guaranteed human rights, it was necessary to address each of them by trying to highlight the most important international efforts and domestic legislation of countries that addressed each of them, by posing the following question: "What is the status of the right to water and the right to clean air under international conventions and national legislations of countries as a real guarantee of the realization of the human right to an ecologically sound environment"?

2- The human right to water

The right to water is one of the fundamental rights recognized for every human being with a right to the environment, which cannot be separated from the realization and implementation of this right at the level of practical reality, which, despite its importance, does not enjoy explicit international recognition as other rights stipulated in the basic human rights code. However, this did not prevent some countries and international bodies from recognizing this right within the various international or national efforts associated with it and enacting legislation with respect to it.

¹ - Henri Smets, *Le droit de chacun à l'eau*, Revue Européenne de Droit de l'Environnement, N°2, Paris, 2002, p.129.

² - Vincent Rebeyrol, *L'affirmation d'un droit à l'environnement et la réparation des dommages environnementaux*, tome 42, Editions lextenso, France, 2010, p.76.

2-a- The definition of the right to water

The right to water is defined as "the right of everyone, regardless of their economic level, to enjoy the minimum quantity of safe water of good quality, sufficient for life and human health." ¹ General Statement No. 15 of the United Nations Committee on Economic, Social and Cultural Rights at its twenty-ninth session in 2002 states that "The human right to water entitles everyone to a quantity of water that is sufficient, safe, accessible and financially affordable for personal and domestic use".²

However, this statement has defined the general framework of the right to water, namely the minimum water supply, which places a clear obligation on states to provide a specific amount of water of acceptable quality at affordable prices, and to facilitate regular access to it. This general framework, though, raises the issue that most countries in the world differ in determining the minimum water supply, depending on the different water reserves that each country possesses, as well as the degree of development and the standard of living of its population.

Moreover, the right to water includes sufficient quantities of clean water, whether for consumption or for sanitation purposes³, and may require that potable water is always available in residential areas, as it is the source of life for every human being.⁴ It is one of the most important natural resources that humans need in order to enjoy the right to the environment and the right to development. This right must be sustainable and free from all factors of environmental degradation or pollution, which constitutes the greatest challenges facing humanity at the present time, especially in poor and developing countries.

On the other hand, the right to water is considered a fundamental right for both the individual and the community, a common heritage of humanity on which the health of individuals and global societies depends. Everyone has the right to clean, safe, hygienic water in appropriate quantities suitable for drinking and use for all human beings without discrimination, making water an essential

¹ - Vincent Rebeyrol, *L'affirmation d'un droit à l'environnement et la réparation des dommages environnementaux*, op.cit, p.76-77.

² - United Nations, *International Human Rights Instruments, Volume I, Compilation of General Comments Adopted by the Human Rights Treaty Bodies*, HRI/GEN/1/REV.9 (VOL.I), 27 May 2008, p.101.

³ - عارف صالح مخلف، الإدارة البيئية، الحماية الإدارية للبيئة، دار اليازوري العلمية للنشر والتوزيع، عمان، الأردن، الطبعة الأولى، 2007. ص29.

⁴ - Vincent Rebeyrol, op.cit, p.77.

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element for the realization of the human right to an ecologically sound environment and a fundamental human right that cannot be separated from the right to the environment, as they are closely related to each other.

In its first principle, the World Commission for Action on the "Water Decade" emphasized that: "Water is a source of life and is the common property of all the inhabitants of the Earth. As the essential and indispensable source of life in the Earth's ecosystem, water is the common property of the inhabitants of the planet and no individual or human community has the right to make it its own property. Water is a common heritage of mankind, not to be exchanged or valued for money. Because there is no substitute for water, every member of the human community is entitled to water, especially potable water in the quantity and quality necessary for decent living, economic activity and other needs"¹.

2-b- The legal enshrinement of the right to water

The idea of enshrining the right to water as a basic human right was triggered by the international community's concerns about the scarcity of this natural resource and the lack of safe access to it ². This has a negative impact on the realization of human rights such as the right to a clean and healthy environment as an essential aspect thereof, so many legal works have tended to affirm it, whether at the international or domestic level, given its importance.

2-b-1 At the international level

The right to water as a human right and as part of the right to the environment has been the subject of great interest at the international level, as it has been recognized in various international texts related to the protection of the environment and its natural resources. This includes the 1992 Rio de Janeiro Declaration, which contributed to strengthening it by clarifying the concept of this right and then expanding it to include ecological needs, as the declaration indicated that priority should be given to meeting the basic needs of ecosystems and protecting them in the context of water resources development and management to ensure their sustainability.³

Meanwhile, the International Conference on Water and the Environment, held in Dublin in 1992, made it clear that: "The right to water is a fundamental

¹ - Center for Arab and African Research, The Conflict over Water, the Common Heritage of Humanity, Madbouly Library, Cairo, Egypt, 2005, p.258.

² - Vincent Rebeyrol, op.cit, p.76.

³ - United Nations, United Nations Conference on Sustainable Development Rio+20, "The Future We Want", Agenda Item 10, Rio de Janeiro, Brazil, 20-22 June 2012, p.30.

right, and all human beings have the right to affordable access to clean water and sanitation"¹. The conference referred to the limitation of fresh water, emphasizing its necessity for the continuation of human life, development and the environment, which requires the participation of all individuals at all levels to develop, manage and value this natural resource.

At the 2002 Johannesburg Summit on Sustainable Development, it was stated that: "The right to water is a right for all". This was confirmed by the United Nations Committee on Economic, Social and Cultural Rights in its Statement No. 15 of 2002², which explicitly recognized the human right to water as a precondition for the realization of other human rights. Additionally, the 2006 Human Development Report stated that: "Water is the source of life for every living thing"³.

2-b-2 At the internal level of states

California was the first state in the United States of America to explicitly recognize the human right to water, under Assembly Bill 685, as this law became the applicable policy in the state of California, after it recognized that every person has the right to water, and that this water must be safe, clean, accessible and affordable. It also prioritized the use of water for personal and domestic purposes over other commercial and economic uses, and affirmed that water and associated rights are owned by the appropriate agencies and officials of the State of California. It is the responsibility of these officials to consider the right to water in all policies, programs, and budgetary activities, both present and future.⁴

Also, the recognition of the right to water as a fundamental and basic human right has been explicitly enshrined in the legislation and domestic laws of many countries, reaching the level of constitutional consecration in some countries of the world, such as Ecuador, Uganda, Bolivia, Uruguay, South Africa and the Republic of the Congo⁵. For example, the South African Constitution of 1996 stipulates in Article 27 that: "Everyone has the right to

¹ - The Dublin Statement on water and sustainable development, Dublin, Ireland, January 31, 1992, p.02-03.

² - UN Committee on Economic, Social and Cultural Rights Comment No. 15, November 2002.

³ - Human Development Report 2006 - Beyond Scarcity: Power, Poverty and the Global Water Crisis, UNDP, New York, USA, 1 Nov 2006, p.02.

⁴ - محمد ثامر، حق الإنسان في المياه، مكتبة دار السلام القانونية، الطبعة الأولى، بيروت، لبنان، 2018. ص 62 –

⁵ - United Nations High Commissioner for Human Rights, The Right to Water, Fact Sheet No. 35, Geneva, 2008, p.08.

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have access to sufficient water, which requires the state to take all legislative and other measures within its available resources to realize the right to water"¹.

Other countries recognize and regulate this right to water through special legislation, such as the Water Law No. PR/016 of Chad, which emphasizes that priority should be given to ensuring that the population has access to safe drinking water ², and the Algerian Water Law No. 05/12, which states in its third article: "The principles underlying the use, management and sustainable development of water resources are as follows:

- 1) - 1-The right to access to water and sanitation to meet the basic needs of the population while respecting the social balance and the rules established by law.
- 2) - 2-The right to use water resources for every natural or legal person subject to public or private law, within the limits of public benefit and respecting the duties specified by the law and the regulatory texts applicable to it".³

From the above analysis, it is clear that recognizing everyone's right to water is not only based on the existence of legal texts regulating it, but also on the existence of a clean and healthy environment that helps to achieve human needs and water goals, whether environmental or otherwise.

3- The right to clean air

The right to clean air is another fundamental right in addition to the right to water, recognized for every human being with a right to an ecologically sound environment, as an inherent right linked to the realization of the right to the environment and as a necessary condition for healthy societies free from severe or worsening air pollution due to industrial factories, vehicles or other factors polluting this natural resource.

3-a- The definition of the right to clean air

The right to the environment includes basic points that represent a concern for the majority of the world's population, such as the right to clean air⁴, the latter of which focuses on ensuring the preservation and protection of the atmosphere from pollution, as pollution of the atmospheric environment is

¹ - Human Development Report 2003, Millennium Development Goals: A Compact Among Nations to End Human Poverty, New York, January 01, 2003, p.106.

² - United Nations High Commissioner for Human Rights, The Right to Water, op.cit, p.42.

³ - المادة 03 من القانون رقم 12/05 المؤرخ في 2005/08/04 المتعلق بالماء، الجريدة الرسمية الجزائرية، العدد 60.

⁴ - Cullet .Philippe, Definition of an Environmental Right in a Human Rights Context, In: Netherlands Quarterly of Human Rights, Volume 13, Issue 1, March 1995, op.cit, p.26.

considered one of the most important issues affecting humans, especially since it is the main source of water and land pollution¹.

According to some jurisprudence, the right to clean air is a necessary human right, and air is a common heritage for all individuals and human societies, as no one is allowed to appropriate or harm it. In order to rationally exploit and protect this natural resource, its management and administration is entrusted to the state, which is responsible for the environment and its natural resources in the interest of the members of society².

The right to clean air is a right without substance, and is at most limited to the right of every person to obtain information about air quality and its effects on health³, while another part of the jurisprudence believes that the right to clean air is a human right that concerns the international community as a whole. The right to air is a human right that concerns the international community as a whole, which should be considered the same as the right to water, considering that air is the first environmental element in the life of living beings⁴, and its existence guarantees their continued life and living on this earth, so caring for this natural resource is the responsibility of all as a global and humanitarian commonality.

3-b- Legal enshrinement of the right to clean air

The legal systems of countries have tended to explicitly stipulate the right to clean air as an inherent and fundamental right recognized as a human right within the framework of the environmental human rights system, as these systems sought to recognize and acknowledge it, whether at the level of international or national legal frameworks and texts.

3-b-1 At the international level

The right to clean air is closely related to the right to the environment, as interest in it increased at the international level with the 1972 Stockholm Conference on the Human Environment, which stated in its second principle that: "The natural resources of the Earth, including air, water, land, flora and

¹ - عصام حمدي الصفدي، نعيم الظاهر، صحة البيئة و سلامتها، دار اليازوري العلمية للنشر والتوزيع، عمان، الأردن، 2007، ص 27.

² - Jean- Pierre Machelon, Du droit de l'environnement au droit à l'environnement, a la recherche d'un juste milieu, Editions L'Harmattan, Paris, 2010, p.30.

³ - Vincent Rebeyrol, op.cit, p.78.

⁴ - عبد القادر الشخيلي، حماية البيئة في ضوء الشريعة والقانون والإدارة والتربية والإعلام، الطبعة الأولى، منشورات الحلبي الحقوقية، بيروت، لبنان، 2009، ص 72.

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fauna and especially similar samples of natural ecosystems, shall be safeguarded for present and future generations, through careful planning or regulation, as appropriate"¹.

In view of the serious effects of atmospheric pollution on the environment and the violation of the human right to clean air, which has become one of the main issues facing the entire international community, many countries have resorted to concluding some international agreements to protect the air from pollution. The 1975 Helsinki Convention on Long-Range Transboundary Air Pollution, which emphasized the protection and improvement of the environment and the protection of natural resources for the benefit of present and future generations², as well as the 1967 Outer Space Convention states that: "Outer space is considered the common heritage of mankind, and therefore all states have the right to explore and use it without any discrimination and everyone has the right to benefit from it"³.

The 1979 Geneva Convention on Transboundary Air Pollution, one of the most important steps taken in the field of improving the environment and air quality in Europe, stipulates in its Article 02: "The general obligation of States Parties is to protect human beings and the environment from pollution. The general obligation of States Parties is to protect human beings and the environment from pollution, and to endeavor to identify pollution whenever possible and to progressively reduce or prevent it, including transboundary air pollution".⁴

3-b-2 At the internal level of states

The right to clean air has received considerable attention at the level of legislation and internal laws of states, which have been keen to enshrine this right and clarify the procedures for its protection and ways to enjoy and exercise it. Among the constitutional rules that enshrine this right is Article 44 of the Constitution of the American state of Massachusetts, which stipulates: " The people benefit from the right to air, clean water, freedom from excessive and unnecessary sound damage, and an environment of natural and aesthetic

¹ - Jean –Marc Laville, droit international de l'environnement, Ellipses edition marketing, S.A, 03 édition, Paris, 2010, p.228.

² - IUCN, Convention on Long-Range Transboundary Air Pollution, Geneva, Nov 13, 1979, p.01-07.

³ - P.W. Birnie and A.E Boyle, International law and the environment, second edition, Oxford University Press, New York, USA, 2002, p.516.

⁴ - رياض صالح أبو العطاء، دور القانون الدولي العام في مجال حماية البيئة، دار النهضة العربية، القاهرة، مصر، الطبعة الثانية، 2008. ص 137.

quality"¹. Article 32 of the 1990 Constitution of the Republic of Afghanistan mandates the state to take the necessary measures to preserve the environment, make reasonable use of natural resources, protect the right to air and water, and prevent their pollution.

At the level of laws and regulatory texts, most countries have dedicated special provisions related to the protection of this right and ensure the protection of the air environment from the dangers of pollution. Examples include the Chinese Law on the Prevention and Control of Air Pollution, which was approved on September 5, 1987 and entered into force in June 1988, and the Algerian Environmental Protection Law No. 03/10, which singles out the air or atmosphere with a set of legal rules and measures that protect it from various forms of pollution, and sets punitive sanctions within this law for anyone who causes harm to the air or atmosphere that may cause pollution².

The right to clean air is enshrined in France under Article 1.220.L of the law of December 30, 1996, which states in its first article that: "The State, its public institutions, regional groups and their institutions, as well as individuals, shall each contribute, within their respective fields of competence, to a policy designed to realize the recognized right of everyone to breathe clean and pure air..."³.

4- Conclusion

The human right to water and clean air constitute a third generation of human rights and an essential measure for the fulfillment of the right to the environment in practice. They play a pivotal role in promoting and protecting the human right to an ecologically sound environment and providing ecological awareness, as they are a prerequisite for any activity related to the protection of the environmental field and a vital element for participation in sound environmental decision-making, in line with the goals of achieving sustainable development.

This study shows that enshrining the right to water and the right to clean air at the level of national constitutions or internal laws of states is the legal mechanism that leads to the involvement of the individual in the formulation of decisions related to environmental affairs. It allows citizens to exercise their right to enjoy a healthy environment, whether individually or collectively. On

¹ - Jean -Pierre Machelon, op.cit, p.24.

² - المواد 44-45-46-47 من القانون رقم 03-10 المؤرخ في 19 جويلية 2003 المتعلق بحماية البيئة في إطار التنمية المستدامة، الجريدة الرسمية الجزائرية، العدد 43.

³ - Vincent Rebeyrol, op.cit, p.78.

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the other hand, the human right to water and the right to clean air are relatively new human rights compared to other human rights. Like other rights, they include freedoms and entitlements that are mainly represented in the right to safe and healthy water and the right to breathe clean air, especially given their dynamic characteristics stemming from the intricate nature of both rights. Their distinct nature necessitates a multi-dimensional approach and a varied system of protection, varying from one country to another.

Although international charters are not legally binding, they represent a consensus to conclude binding international instruments that suggest a real and serious commitment to giving the human right to water and clean air high priority and importance in implementing countries' environmental policies. This explains the growing number of countries that have enacted and approved legislation to expand and improve the quality of water and air for individuals, and have developed innovative policies to ensure the provision of safe and healthy water as well as clean air by making their management more effective and sustainable.

By studying the topic of the human right to water and clean air and dealing with its various aspects and scientific and legal dimensions, some suggestions can be made in this regard, the most important of which are the following:

- 1) - The need for a comprehensive and accurate review of environmental legislation and laws, while allocating sufficient space to manage and sustainably administer the right to access to water and clean air for all, so that individuals, groups and relevant stakeholders can exercise effective control over any violations or abuses that may affect these two natural resources and prevent them from occurring.
- 2) - The international and national legal systems related to the right to water and the right to clean air should be reviewed in conjunction with other rights embodied in the international human rights law, most importantly the right to life and human dignity.
- 3) - Urge states, administrations, public authorities and environmentalists to prohibit all forms of illegal pollution of water and air, and non-discrimination in access to clean, safe and secure drinking water at the global level.

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