

Constitutionally Expressed Concerns About Climate Change In Algeria

المخاوف المعبر عنها دستوريا بشأن تغيرات المناخ في الجزائر

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Abstract :

The issue of climate change stands out as one of the most significant environmental challenges facing societies in the present era. This has prompted many countries to review their environmental and even economic legislation and policies to address this increasingly complex challenge, especially with the escalation of severe natural phenomena such as earthquakes, floods, hurricanes, water scarcity, desertification, and drought.

The constitutional dedication to environmental protection within the framework of sustainable development in Algeria aims to enhance environmental protection and confront various environmental challenges, particularly those related to pollution and climate change. This legal commitment serves to ensure environmental sustainability and guarantee environmental rights for both the current and future generations.

Keywords: Climate change, environmental challenges, sustainable development, constitutional dedication, legal security

Introduction:

Algeria, like many other countries around the world, faces significant environmental challenges in the face of rapid climate change and its impact on the environment and environmental human rights. Climate change is considered one of the most pressing challenges confronting societies in the present era, as it affects ecosystems, economies, and public health. In this context, the law must play a pivotal role in promoting sustainable development and protecting environmental human rights in Algeria, regulating various aspects of social, political, economic, and even cultural life within the framework of enhancing sustainability and mitigating the causes of climate change.

The constitution represents the supreme law of the state, and all the issues it addresses, implicitly or explicitly, are of utmost importance, especially when it dedicates clear constitutional principles to them. The Algerian constitution explicitly and clearly addresses the issue of environmental rights in Articles 21 and 64 of the recent constitutional amendment of 2020. Therefore, the focus of the study will revolve around the following problematic aspects:

The consequences of inadequate environmental protection in Algeria on climate change and environmental human rights.

To address this problem, we adopted a dual research plan. In the first section, we focused on examining the legislative framework for environmental protection in Algeria. As for the

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second section, we attempted to analyze the issue of climate change challenges and environmental human rights.

1- The Legal Framework for Environmental Protection in Algeria:

1.2- The Algerian Constitution's Approach to Environmental Protection:

The explicit inclusion of environmental protection in the Algerian constitution, first through the constitutional amendment of 2016 and further strengthened by the recent amendment of the Algerian constitution in 2020, is a clear indication of the significant legal importance given to environmental protection by Algeria. It emphasizes that environmental considerations must be taken into account when formulating laws and regulations in Algeria. Therefore, incorporating environmental protection in the constitution helps to enhance the commitment to preserving the environment and improving the quality of life. It also reflects the official position of the Algerian state towards these issues and its concern for environmental protection. This position includes the state's commitment to providing a suitable legal and legislative framework to address environmental crimes and impose strict penalties on offenders. Thus, the integration of environmental issues in the constitution reflects a strong commitment by the Algerian legislature to combating environmental crimes and preserving a healthy environment for current and future generations.

According to the preamble of the constitution, published in the Official Gazette No. 82 dated December 30, 2020:

"The Algerian people express their adherence to the human rights stipulated in the Universal Declaration of Human Rights of 1948 and the international conventions ratified by Algeria. The Algerian people are committed to their choices in order to reduce social disparities and eliminate regional inequalities, and they are working to build a productive and competitive economy within the framework of sustainable development. The people remain concerned about environmental degradation and the negative consequences of climate change, and are keen to ensure the protection of the natural environment and the rational use of natural resources, as well as their preservation for the benefit of future generations."¹

The inclusion of environmental issues in the preamble of the constitution carries strong implications regarding the recognition of the significant importance given to environmental protection by the constitutional founding body. It serves as an introduction and preamble to constitutional chapters and articles that form the fundamental and highest law of the state. The preamble is an integral part of the constitution and is not separate from it.

The Algerian constitution specifically addresses the environment through a set of explicit articles, as well as implicit references in several other articles. Article 21 of the Algerian constitution states the following:

"The state ensures:

- The protection of agricultural lands,
- The guarantee of a healthy environment to protect individuals and achieve their well-being,
- Continuous awareness of environmental risks,
- Rational use of water, fossil fuels, and other natural resources,
- Protection of the environment in its terrestrial, maritime, and atmospheric dimensions, and the adoption of all appropriate measures to punish polluters."

Furthermore, Article 64 of the constitution addresses a highly important issue related to third-generation human rights, namely environmental human rights. It states:

"Every citizen has the right to a healthy environment within the framework of sustainable development. The law defines the duties of natural and legal persons to protect the environment."²

1.2- The approach of the Algerian legislature towards environmental protection:

The Algerian legislature has aligned domestic environmental legislation with the principles of international environmental law by adhering to relevant international treaties and agreements. This is because international environmental law is considered a primary source of domestic environmental legislation.

Algeria is dedicated to achieving environmental protection within the framework of sustainable development. Historically, these efforts have been reflected in legislation that aligns with the global trend of environmental protection and sustainability over the past century. In 1983, Algeria issued its first law dedicated to environmental protection, Law 83-03, which was enacted on February 5, 1983. This law represents a legal embodiment of Algeria's commitment to preserving the environment and ensuring its sustainability. It is an important step towards enhancing environmental protection.³

Before the concept of sustainability emerged on the international scene, we witnessed legislative developments at both the national and international levels concerning the environment. In this context, the Algerian Environmental Protection Law was issued in 2003, which marked the first usage of the term "sustainable development" in the law. This step was taken within the framework of the shift towards sustainable development and environmental protection. It reflected the impact of the World Commission on Environment and Development's report, known as "Our Common Future," which was issued in 1987. Subsequently, legislation increasingly focused on sustainable development, leading to its explicit recognition and dedication in the constitution. This highlights the importance of environmental sustainability and the commitment to it.⁴

The protection of the environment within the framework of sustainable development is considered a fundamental element in the Algerian constitution. Its importance and the protection of the environment are emphasized in several constitutional provisions, whether explicitly or implicitly. The Algerian constitution aligns with Algeria's international commitments in the field of environmental preservation and achieving a balance between economic and social development and environmental protection. The state aims to improve the quality of life for current and future generations by enhancing environmental protection, sustainable development, and the preservation of environmental heritage.

Environmental legislation encompasses a set of legal rules that empower the administration to intervene within the scope of its public authority to regulate individuals' behavior in the utilization of property and environmental resources. This intervention aims to enforce respect for public order, which consists of public security, public tranquility, and public health. While preventive mechanisms play a crucial role in reducing crimes against the environment and ensuring genuine protection, especially through environmental administrative control mechanisms, they cannot guarantee the absence of harm in all cases, whether due to the failure of precautionary measures or ongoing violations by humans. Therefore, the state has been compelled to enact legislation and laws to protect the environment and punish perpetrators of environmental crimes. These laws have been reinforced with various criminal penalties that correspond to the severity of the committed crime and are applicable to both natural and legal persons who violate environmental protection laws.

The protection of the environment within the framework of sustainable development holds a prominent legal position in the Algerian legal system, as it is intricately linked to a range of related laws, including special laws. This close connection reflects the advancement and development of the concept of sustainable development to a higher level, which explains its inclusion in the Algerian constitution, considered the country's supreme law. Additionally, the Algerian environmental law, Law No. 03-10, is officially titled "The Law on Environmental Protection within the Framework of Sustainable Development." Furthermore, Algeria adopts

international commitments in the field of sustainable development, notably the United Nations' Agenda 2030 for Sustainable Development.⁵

2- The Effects of Environmental Protection on Climate Change and Environmental Human Rights:

Contemporary societies strive to address the legal challenges that contribute to a relative stability of their legislation, thereby safeguarding the general public's security, health, and tranquility. Climate change, on the other hand, leads to hurricanes, droughts, sand encroachment, and numerous unpredictable natural disasters. These phenomena are inconsistent with the objectives of maintaining public order, as they can cause panic and fear, which contradict the notion of security. Additionally, they have repercussions on food security and public health.

2.1- The relationship between environmental protection and climate change

Environmental protection and climate change are closely interconnected issues. Climate change leads to disruptions in ecosystems, such as rising temperatures, sea-level rise, and changes in rainfall patterns. These changes have a profound impact on plant and animal life and overall ecological systems. Rising temperatures can contribute to the extinction of certain species and the degradation of coral reefs. Additionally, human activities, such as burning fossil fuels, industrial production, and agriculture, result in emissions that contribute to greenhouse gases, leading to global warming and climate change. These emissions pollute the air, water, and soil, disrupt the environmental balance, and cause sustainable climate changes.

In Algeria, the relationship between climate change and environmental protection is evident in the increasing concerns posed by climate change on ecological systems and environmental sustainability. The constitutional founder recognized the inadequacy of ordinary legislation in addressing environmental challenges, including those brought about by climate change. The need for legal security to ensure the stability of environmental legal principles in the face of environmental challenges, particularly climate change and its impacts on various aspects of life, including development, agriculture, industrial transformation, and personal and property security, became apparent.

The preamble of the Algerian constitution highlights the importance given by the constitutional founder to society's concerns regarding climate change and its challenges. It emphasizes the need to protect the environment, address the negative consequences of climate change, ensure the rational use of natural resources, and preserve them for the benefit of future generations.⁶

2.2- Environmental human rights in the context of the Algerian constitution:

The experiences of comparative systems have had a significant impact on the international level in the field of the environment. This impact has extended to the constitutional documents of several countries, leading them to adopt the issue of environmental protection by integrating it into their constitutions. It is worth mentioning the Iranian Constitution of 2001, the Yugoslav Constitution of 1991, the Hungarian Constitution of 1996, the Brazilian Constitution of 2011, and the Indian Constitution of 2012. These initiatives are in line with the commitments made by these countries through their ratification of international agreements or through individual will influenced by environmental conditions and the development of their legislative systems. It is noteworthy that most of these mentioned constitutions responded to the outcomes of the Stockholm Conference, which marked the first major turning point in the issue of environmental protection at the international level. These countries drew inspiration from the conference to incorporate environmental human rights into their constitutions. However, the level of addressing the environment in these constitutions is relatively limited compared to other traditional rights.

The Algerian Constitution of 2016 has taken these shortcomings into account and sought to expand the scope of rights and freedoms. It included the right to a clean environment in the

fourth chapter of the constitution, influenced by the outcomes of international conferences and the environmental awakening at the domestic legislative level in several countries. It may have been significantly influenced by the French Constitution of 2005, which introduced the Environmental Charter into the constitution.⁷

The right to a clean and healthy environment is recognized as of utmost importance by the international community. This has led to its adoption within international laws. However, this right has not received sufficient legal protection due to the lack of enforceability of some legal provisions, resulting in the failure to effectively implement adequate legal protection. In an attempt to address this gap, many countries have taken steps to codify this right, aiming to establish its stability within the laws through the mechanism of legal security, including the international legal fortification of the right to a clean environment.

Environmental protection is a matter of global and national concern, especially with the increasing instances of its violation through poor resource management and exploitation,⁸ as well as concerns over natural pollution resulting from climate change and global warming. Therefore, it has become necessary to establish national legislation in line with Algeria's commitments to international agreements and treaties in order to achieve a clean environment. It is essential to activate these accompanying agreements through the state's⁹ engagement in international political and legal activities. In this context, many countries around the world respond to this challenge by seeking to develop their environmental policies through the integration of environmental legislation into their constitutions.¹⁰

With the increasing global interest in environmental rights due to their close relationship with sustainable development, Algeria has joined the countries that have included environmental human rights in their constitutions. Despite the implicit presence of the right to a clean environment in previous Algerian constitutions,¹¹ the constitutional amendment of 2016 solidified this right more clearly. Subsequently, the recent amendment to the Algerian constitution in 2020 explicitly enshrined the citizen's right to a clean environment within the framework of sustainable development. As a result of these constitutional developments, environmental human rights have gained strong constitutional legitimacy in Algeria.

On the other hand, discussing the commitment to duties established by the law cannot be complete without addressing the penalties imposed in case of legal violations. Considering that the constitution includes general principles, it serves as the overall framework for rights and duties.

Since the constitution is the fundamental law established by the constituent authority through special measures and procedures, its articles and provisions cover the system of governance in the state, the organization of authority, the general principles of the state and society, the rights and duties of citizens, the powers of authorities, the relationship between them, and the means of ensuring the supremacy of its principles. As the constitution safeguards laws below it, lower-ranked legislation must not contradict its provisions, as such contradiction would render the legislation unconstitutional.¹²

Referring to the right to a clean environment as established by the Algerian constitution in the latest amendment of 2020, it raises the issue of obligations and duties of individuals, communities, and society as a whole towards environmental protection. This is stipulated by domestic legislation, whether through collaborative action to achieve sustainable environmental goals between the community (natural and legal persons) as one party, and the state with its institutions and tools as the other party, or through the commitment of individuals and communities to comply with laws and impose penalties on violators, whether they are natural or legal persons.

The constitutional legislator has addressed the issue of citizens' duties towards the environment through clear provisions, as stated in the aforementioned Article 64, which states:

"Citizens have the right to a clean environment within the framework of sustainable development. The law defines the duties of natural and legal persons to protect the environment."¹³

Upon analyzing Article 64 above, especially its second paragraph, we clearly observe the explicit constitutional dedication to the obligations of natural and legal persons towards environmental protection,¹⁴ as it states that the law defines the duties of natural and legal persons to protect the environment. This refers to other domestic legislations that specify the various and diverse duties related to the protection of different environmental elements from all forms and types of harm, including environmental pollution, climate change, and others.

Considering the legal value granted by the constitution to all matters it encompasses as the supreme fundamental law of the state, the legislations derived from it will be more stable through the clarity and legal security provided by the constitution regarding environmental protection and specifically the duties of individuals towards this protection. Therefore, all other laws should be in line with the constitutional text, and any amendments to the laws must take into consideration the issue of environmental protection and the obligations of natural and legal persons towards environmental protection as stated in the constitutional text.

Conclusion:

In conclusion, it can be inferred that environmental protection in Algeria represents an important legal framework to address environmental challenges, climate change, and protect environmental human rights. However, it is necessary to strengthen environmental legislation and policies in Algeria and ensure their strict and effective implementation. Environmental awareness and climate change mitigation should be enhanced, and this requires expanding international and regional cooperation in environmental protection and climate change mitigation, including knowledge and technology exchange.

Based on the study, the proposed recommendations may include the following:

- Strengthening environmental legislation and policies in Algeria to enhance environmental protection and combat climate change.
- Utilizing artificial intelligence technology for monitoring, prediction, and forecasting of environmental phenomena related to climate change.
- Public education on the importance of environmental protection and addressing challenges related to climate change.
- Enhancing international and regional cooperation in the field of environmental protection and climate change mitigation, including knowledge and technology exchange.
- Strengthening the role of environmental institutions and increasing their capacity to address challenges related to climate change.
- Ensuring the recognition of environmental human rights and increasing awareness of the importance of environmental rights in Algeria's legal and constitutional system.

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