

## **The Legislative Framework for Protecting Water Sources in Iraq**

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**Abstract:** Despite its great importance of water resources, they have not received much attention in legal thought. The interest in water resources is the subject of legal philosophical discussions - both international and domestic. Signs of interest in it appeared in the last third of the 20th century and the first half of 21st century. Although the interest in water resources is intensified at the beginning of this century, internationally and the constitutionally. Furthermore, the interest in water sources from a natural standpoint is of great importance in Iraq, which has become threatened by drought and desertification, despite having two great rivers, the Tigris and Euphrates, whose sources are located outside Iraq, which is a large part of the problem in this area. Therefore, state and its various authorities has the responsibility of the to secure this right for its citizens.

**Keywords:** Iraq, legislative framework, protecting, water sources.

### **Introduction**

Water is the nerve of life. Access to safe drinking water is crucial for the preservation of life and the enhancement of good health. It is fundamental for preserving the dignity of everyone. However, there are millions of individuals who haven't an access to potable water from improved sources. These numbers reveal a concerning situation, and the reality is even worse. The existing water crisis can be attributed to factors such as inequality, poverty, and unequal power dynamics. This crisis is further intensified by social and environmental issues including rapid urbanization, climate change, and pollution.

### **Research significance**

Several national constitutions provide protection for the right to have water or stipulate the state's public responsibility of warranting access to potable water for all is crucial. Courts from various legal systems have also tackled issues associated to the realization of the right to water. They have addressed concerns such as water pollution and unjustified or illegal water service disruptions.

### **Research problem**

The problem of the study lies in the effectiveness and robustness of the legal frameworks that encompass the legal protection of water sources. Therefore, the problem revolves around questioning the sufficiency and efficiency of the legal protection of water sources in Iraq.

### **Research objectives**

The research aims to identify the existing legal frameworks that determine the legal protection of water and assess their impact on providing sufficient protection for these water sources. This will be

achieved by examining the positions of national constitutions and current legislation and evaluating their effectiveness in safeguarding water sources.

### ***Research Methodology***

We adopted a descriptive-analytical methodology by first describing and identifying the water sources in Iraq, defining the dimensions of the research problem and its legal protection, and stating the constitutional and legislative texts. Secondly, we analyzed the position of national constitutions regarding the protection of water sources.

This research is subdivided into three sections. The first section is the concept of human rights in water which is subdivided into identifying the individual right to get water and the second is the types of water sources. Second section focuses on legal protection of water sources. This is subdivided into national protection and international protection. The third section identifies the authorities responsible for protecting water sources. This is discussed by the legislative and executive authorities and the High Commission for Human Rights (HCHR).

#### **1. The concept of human rights in water**

Water is a crucial natural resource for human survival, and throughout history, it has been the primary source of sustenance. Despite its importance, water sources have not received significant attention in legal thought, although they are subject to philosophical and legal debates, both domestically and internationally. Interest in water sources emerged in the last part of 20th century and intensified at the beginning of the 21st century, both at the international level and in constitutional legislative matters.

In Iraq, despite possessing two great rivers, the Tigris and the Euphrates, whose sources are located outside the country, drought and desertification threaten the nation. This poses a significant problem, and it is the state multiple authorities have responsibility to make sure that its inhabitants shall have this essential resource.

#### ***The individual right to get water***

Water rights have not been established as a separate right within international treaties on human rights. However, law on international human rights imposes specific obligations regarding access to potable water safely. These duties mandate that states guarantee every person has access to a sufficient quantity of potable water for private and household needs, encompassing drinking, hygiene, food preparation, laundry, and sanitation. Countries are also obliged to protect individuals' privacy and ensure the standard of drinking water resources and supplies. The human right to water is encompassed within the broader framework of human rights, which define the rights that every person is entitled to as a human being. Article 1 of the Universal Declaration of Human Rights supports this definition that stipulates that each person is innately free and equal in dignity and rights from birth. It is essential for people to treat one another with a sense of brotherhood (Radi & Abdul Hadi, 2010). Furthermore, this comprehensive human characteristic of rights is also supported by the text of Article 2 of the Declaration, which shows that "each single person is entitled to whole rights and freedoms set forth in this Declaration, without discrimination of any kind, like race, color, gender, language, religious beliefs, political or other viewpoints, national or sociality, property, birth or other status." Therefore, the term human rights refer to the set of rights closely linked to human dignity as stipulated in international treaties. Every individual is entitled to this right and it cannot be denied or taken away for any reason, irrespective of any forms of discrimination such as religion, language, color, origin, ethnicity, gender, and other factors.

Rights related to culture, environment, and development (also known as "third-generation rights". The constitution includes provisions that guarantee the right to make environment hygienic and preserved, as well as the right to economic cultural, and political development (United Nations, 2010).

#### ***Types of water sources***

Water represents an irreplaceable source of life and is a necessary commodity shared by all inhabitants of the Earth. It is considered part of humanity's heritage and cannot be equated with any other

resource. Water is not a tradable or marketable commodity. It is the responsibility of society, at all levels, to guarantee the right to access water for all individuals without discrimination. Water covers approximately 71% of the Earth's surface which is a vast quantity that is difficult to imagine. The total water resources on Earth amount to about 326 million cubic miles, with each cubic mile being roughly equivalent to a trillion gallons of water (Shahab, 2019). Groundwater accounts for about 30% of these resources, while surface water accounts for only 0.27% (Dinka et al., 2015). The most sources of water include:

### ***Surface water***

The term "stream" in this context refers to all surface water that flows, including rivers, lakes, reservoirs, and wetlands. Streams provide around 78% of the freshwater that we use, although this figure can vary due to factors such as drought. Over 1.2 billion people rely on surface water as their primary source of water in major cities worldwide. Additionally, 90 million children swim and play in surface waters annually, and surface water is the primary source of drinking water in the majority of the United States (Kadhim & Jadoa, 2016).

### ***Groundwater***

Groundwater, which accounts for approximately 22% of the water we utilize is found under the surface of the Earth, filling up sand and rock layers' gaps and fractures. It may be found in sands and soils that hold onto water. The line where water-filled rocks and soil separate unsaturated from saturated soil is represented as the water table. Over 13 million inhabited dwellings have their own well, and a 2008 survey found that private household wells utilize the majority of all well water. In the US, irrigation is the predominant usage of groundwater. (Farouk, 2009).

### ***Rainwater***

Rainwater refers to the water that flows when it rains or when snow melts on the ground or impermeable surfaces. Instead of infiltrating into the ground, this water runs over surfaces and eventually ends up as stormwater, flowing into rivers, lakes, ponds, and oceans. Managing and collecting stormwater runoff is crucial for meeting water demands in the United States. It is one of the four essential types of water that we rely on for our survival. Understanding this information helps us identify our need to conserve and access additional water resources. It's essential to state that we cannot create new water, so the key is to make the most of the water we already have (Fanack Water, 2022).

## **Legal protection of water sources**

The water right was not among the rights that drew the attention of international and constitutional legislators in recent years, as other rights took up sufficient space at both the international and domestic levels. However, environmental changes, lack of proper management of this essential natural resource, increasing human population and their needs, and other factors have pushed this right to the forefront of basic human rights at present. It has taken a leading position compared to other rights at both the international and constitutional levels.

### ***National protection***

Most constitutions did not initially have specific provisions to safeguard water. However, after several constitutional amendments, the majority of the world's constitutions now include such provisions. This is because the right to water and its provision to citizens face many challenges and threats worldwide. The right to water is now a "new" social and collective right that serves as the foundation for other rights, including the right to life, health, and education. As a social right, members of society can demand that their political authorities provide and protect their right to water. As a collective right, political authorities representing their citizens in a particular region can claim their right to water within the international legal system (Ben Zehaf, 2019). The water right is not just personal or universal but a natural right and a right for humanity. It was thus crucial for constitutions to adapt to the developments in this field and achieve political and legal balance while keeping up with changes in

implementing the constitutional document. The constitution serves as an organization of power to preserve freedom. Based on the information presented and our review of constitutional texts, countries have become interested in regulating the water right within their constitutions as a right for their citizens, a legal obligation for their institutions, and a goal that the state seeks to achieve. Many countries have included constitutional provisions to protect their water resources. Some of the most important constitutions that have regulated constitutional provisions to protect water sources are:

Firstly: The Constitution of Venezuela for the year 1999. The amended text of the Venezuelan Constitution for 1999 considers the guarantee of the right to get water as one of the basic duties of the state. Article 127 states that "It is one of the fundamental duties of the State to guarantee... access to water, and it shall be given special protection by law." (The Constitution of Venezuela, 1999).

Secondly: The Constitution of Bolivia for the year 2009. The amended Bolivian Constitution for 2009 states in its preamble that "a country based on respect and equality for all... and water right, education, work, and health for all" shall be established. Article 16 states that "each single person shall have the right to have water and food," while Article 20 states that "each person shall have the right to universal and equitable access to necessary services for potable water and sanitation." In Chapter Five of the Constitution, entitled "Water Resources," Article 373 states that "Water is declared to be a basic right for life within the framework of popular sovereignty. The country shall support the utilization and right to use water according to the principles of solidarity, complementarity, reciprocity, fairness, variety, and sustainability." (The Constitution of Bolivia, 2009).

Thirdly: The Constitution of Kenya for the year 2010. The amended Kenyan Constitution for 2010 addresses the right to water in multiple provisions, imposing on the state a range of obligations. Article 43(1), entitled "Economic and Social Rights," stipulates that "each single person shall have the right to have clean and safe water in sufficient quantities." The state is required to "make affirmative action programs designed to ensure that minorities and marginalized groups... shall be provided with have water, health services, and infrastructure." The government is prohibited from using the Equalization Fund "except to be responsible for necessary services such as water facilities... to raise the quality of those services in those areas to the level enjoyed by the rest of the nation, generally, and as far as possible, progressively." (The Constitution of Kenya, 2010).

Fourthly: The Constitution of Algeria for the year 2016. The amended Algerian Constitution for 2016 includes a provision to protect water sources. Article 63 states that "The State shall ensure that citizens have access to... drinking water and shall work to preserve it for future generations." (The Constitution of Algeria, 2016).

Regarding constitutional texts, we find that those regulating and guaranteeing water rights indicate this right in two ways: directly and indirectly. Upon reviewing the Iraqi Constitution, we do not find a direct provision that makes it the state's obligation to protect water sources, as previous constitutions have indicated. Perhaps this legislative oversight in the constitutional document requires consideration when amending the constitution (Parliament Organization, 2021).

The indirect text in the Iraqi Constitution of 2005 can be used to imply the right to get water. For instance, Article 33 ensures to reside in a safe and healthy environment while Article 31 ensures the right to healthcare and the state's responsibility for public health. Additionally, Article 15 recognizes the right to life, which includes access to essential resources like water. Furthermore, Article 110 grants exclusive authority to the federal government to plan policies related to external water resources and ensure fair distribution within Iraq. Article 114 establishes shared responsibilities between federal and regional authorities in developing policies for internal water resources and their equitable distribution, regulated by law. These constitutional provisions indicate that the federal government has a duty to work towards securing and safeguarding the right to get water for all Iraqis.

Regarding the lower-level legal texts, we find that the Ministry of Water Resources Law No. 43 of 2008, as amended, outlines the objectives of the ministry in securing aspects of water rights in relevant provisions. For instance, Article 2 states that the objectives of the ministry include: First: Planning the investment of water resources in Iraq and utilizing surface and groundwater to achieve optimal use of

water resources. Second: Developing and enhancing water resources, identifying and utilizing water sources. Third: The ministry's efforts include protecting Iraq's rights in bodies of water shared with other countries, maintaining communication and information exchange with neighboring countries and riparian states, and ensuring access to equitable agreements for the distribution of water quantity entering Iraq. Four: The ministry focuses on safeguarding groundwater and surface water from pollution, giving priority to environmental considerations, and undertaking efforts to revive and sustain marshes and other water bodies (Imran, 2022).

As for how to achieve these objectives, Article 3 of the Iraqi law stipulates that "the Ministry shall seek to achieve its objectives as follows: First: Regulating water distribution, preventing flood hazards, controlling floods and river basins. Second: Conducting studies related to irrigation, reclamation, dams, groundwater, and developing designs and documents related to them through its formations or specialized consulting bodies. Third: Managing, operating, and maintaining dam, reclamation, irrigation, drainage, and groundwater projects. Fourth: The ministry can execute irrigation, dam, reclamation, and other projects either through its own executive bodies or by hiring local companies or international contractors. Five: The ministry engages in coordination with Arab, international, and regional, organizations, as well as specialized non-governmental organizations focused on water and environmental resources. Six: The ministry ensures coordination between its plans and the planning bodies and water-consuming sectors, aligning them with sustainable development goals in Iraq across all sectors. Seven: The ministry aims to incorporate modern technologies and geographic information systems (GIS) to enhance work methods within the organization. Additionally, it focuses on training technical and administrative individual to implement advanced and scientific water management and utilization techniques. Eight: The ministry's objective is to increase public awareness about the significance of preserving and optimizing water resources, protecting them from pollution, and expanding public participation and involvement of civil society organizations in the ministry's activities (United Nations, 2010).

### ***International protection***

The right to water was defined in various international contexts, with one definition stating that every individual is entitled of accessing a reliable source of water is secure, sufficient, and affordable, allowing them to live a healthy, dignified, and productive life while also preserving ecological systems that contribute to water replenishment. The Committee on Economic, Social and Cultural Rights of the United Nations affirms the right of every individual to have water that is good enough, safe, acceptable, physically accessible, and can be afforded personally and domestically (Ben Zehaf, 2019). The United Nations General Assembly in 2010 acknowledged accessing potable water and sanitation services as an essential human right. The United Nations Development Programme's (UNDP) endeavors have played a significant role in recognizing the right to water as a new right, equivalent to other established human rights in international human rights documents (Imran, 2022). Furthermore, in 2017, the World Health Organization (WHO) issued "Guidelines" on potable water quality, viewing safe water to be characterized as water that does not present any potential harm to the health of individuals throughout their entire lifespan., taking into account sensitive changes in different stages of life.

### **The responsible authorities for protecting water sources**

The federal authorities in Iraq, including the legislative, executive, and the High Commission for Human Rights, are constitutionally responsible for ensuring the protection of sufficient water sources for a sustainable livelihood. These authorities have the duty to secure and safeguard water sources in Iraq.

#### **Legislative and executive authority**

##### ***Legislative authority***

The legislative authority is represented by the House of Representatives, which has many constitutional and legal powers, through which it can and is able to provide and activate the right to water for Iraqis, and this is evident through the following:

### ***The legislative authority***

The legislative authority in Iraq lies with the House of Representatives, which is responsible for enacting laws across all areas. The Council's legislative power is not limited to specific domains, as it follows the principle of absolute jurisdiction of the law. In terms of water security, the House of Representatives plays two distinct roles (Khaled, 2019). Firstly, it legislates laws that facilitate the enforcement and realization of the right to water security, both at the federal human rights level and within the exclusive powers outlined in Article 110, as well as the joint competencies mentioned in Article 114. Secondly, the House of Representatives has the authority to approve treaties and international agreements related to water rights, reflecting their responsibility as representatives of the Iraqi people.

### ***Oversight authority***

The oversight of the executive branch is one of the most important tasks and competencies of parliamentary councils in various political systems, despite the legal differences resulting from the structural differences in the political systems themselves. However, the existence of parliamentary oversight within every democratic political system is an undeniable fact (Khaled, 2019). The Iraqi House of Representatives has multiple oversight tools provided by the Constitution and its internal regulations. The Council has the right to question and discuss public issues, interrogate officials, and even withdraw confidence from a minister or the Prime Minister, which would result in the Council's dissolution (Khaled, 2019). However, when monitoring the activities of the Iraqi parliament, we notice a weak parliamentary performance regarding water security, both from a legislative perspective - as we have previously mentioned - and from an oversight perspective. We have not seen any inquiries directed towards the federal government or the Minister of Water Resources related to this issue or any vote of no confidence due to government negligence in this important aspect of Iraqi life. Ensuring the constitutional and legal protection of Iraqis' right to water requires activating the constitutional and legal provisions governing the authorities in this field, intensifying political work and international diplomatic efforts to meet Iraqis' needs for this right, and optimizing the use of water resources from its two major rivers while avoiding waste and utilizing it scientifically. To enforce any constitutional rights, it is not enough to simply state them in the constitutional document. The political authorities must take a series of decisions and actions that constitute implementation and fulfillment of their constitutional obligations.

### ***The executive authority***

The Iraqi federal executive power is represented by the Council of Ministers, which exercises a range of constitutional powers that can be utilized to secure the right to water for Iraqis. One of the basic powers is the issue of treaties and international agreements. According to Article 80 of the Constitution, one of the Council's authorities is to negotiate and sign international treaties and agreements, or delegate this authority to others.

Another important power is international diplomacy, which falls under the exclusive jurisdiction of the federal executive authority according to Article 110 of the Constitution. It states that the federal authorities have exclusive jurisdiction over foreign policy, diplomatic representation, negotiation of international treaties and agreements, sovereign borrowing policies, signing and ratifying them, and formulating sovereign economic and foreign trade policies.

However, the current practical reality of the water crisis in Iraq demonstrates that the Council of Ministers has not fully exercised its expected constitutional role in providing water security. This includes both in terms of treaties and agreements, as well as utilizing foreign trade as a leverage tool against neighboring countries that infringe on Iraq's water rights. There are also noticeable shortcomings in the government's implementation of the Ministry of Water Resources Law in achieving its objectives in this regard.

## ***The High Commission for Human Rights***

According to Article 102 of Law No. 53 of 2008, the High Commission for Human Rights (henceforth, HCHR) was established to "firstly, ensure the protection and promotion of human rights in Iraq, and secondly, protect the rights and freedoms stipulated in the Constitution, laws, and global treaties and agreements ratified by Iraq." The tasks of the Commission were defined in Article 4 of its law, which states that it is responsible for "firstly, coordinating with relevant bodies in developing joint strategies and mechanisms to achieve its objectives stated in Article 3 of this law. Secondly, preparing studies and research, providing recommendations, and expressing opinions on matters related to enhancing and developing human rights." (The High Commission for Human Rights, 2008).

### ***Evaluating the legislation in force of its conformity with the Constitution***

HCHR in Iraq has several tasks and responsibilities, including evaluating existing legislation for its compatibility with the Constitution and providing recommendations for necessary amendments. The Commission is also involved in proposing Iraq's accession to international treaties and agreements of human rights. Additionally, the Commission collaborates with civil society organizations and independent human rights groups to effectively achieve its objectives. It promotes human rights education through various means, such as incorporating it into curricula, organizing events, and producing media programs. The Commission also presents recommendations and proposals to relevant committees responsible for preparing reports that the state must submit to the United Nations. It is required to submit an annual report to the House of Representatives, which includes a comprehensive assessment of the human rights situation in Iraq. However, it is important to note that the HCHR has not adequately addressed the crucial right to secure water within its established tasks and objectives.

## **Conclusions and Recommendations**

### **Conclusion**

1. After conducting our research, it is evident that accessing water is a crucial social right. Individuals have the right to demand protection of water sources from their political authorities. However, there is a lack of effective legal protection for water sources nationally and internationally.
2. Furthermore, accessing water is inherently connected to life, as indicated in Article 3 of the Universal Declaration of Human Rights. Access to clean water is vital for basic human needs such as food and hygiene.
3. In conclusion, it is imperative to address the issue of inadequate legal protection for the right to water. The government should take necessary measures to make sure that individuals have access to clean water sources and that their right to water is safeguarded.

### ***Recommendations***

1. We urge the Iraqi constitutional legislator to explicitly protect water sources and establish a federal-level legal framework that ensures the protection of these sources.
2. Issuing or amending existing legislation to ensure a high level of protection for water sources.
3. Encouraging civil society organizations, relevant institutions, and the media to raise awareness about the importance of protecting water sources, as water is a natural right for all living beings.
4. The executive authority, represented by the Ministry of Foreign Affairs, should intensify negotiations with neighboring countries to ensure the protection of water sources that are shared with Iraq.

### **Ethical considerations**

Not applicable.

### **Conflict of Interest**

The author declares no conflict of interests.

## Funding

This research did not receive any financial support

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