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# Legal Protection Of Air Pollution In IRAQ

## الحماية القانونية لتلوث الهواء في العراق

*Keywords: Legal protection; environment; air pollution; Legislations*

**الكلمة المفتاحية : الحماية القانونية، بيئة، تلوث الهواء، التشريعات**

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## Abstract

*One of the major challenges to protect the environment in Iraq is air pollution. As it has become a great problem in Iraq and is of great concern due to its negative effects on the quality of life. Air pollution reduces renewable and non-renewable natural sources and is a major threat to the life of the coming generations. Environmental experts agree that the current environmental problems in Iraq are the result of three great wars; all kinds of internationally prohibited weapons were used by, Saddam Hussein, the previous Iraqi regime. Needless to say, the effect of the Second Gulf War on the environment in Iraq and other neighboring countries in 1991 is equal to the great environmental pollution resulting from the explosion of the Nuclear Chernobyl Reactor in the Soviet Union in 1986. That war damaged the coastal areas in some countries, led to the increase of earth's temperature and the pollution of water and air due to a massive oil leak and widespread fires in the oil wells. The estimated leak from the shipping stations and sinking ships was about 8.4 million barrels. It is worth noting that the environment was not just affected by one kind of pollutant, but also involved radiological, chemical and other electromagnetic pollutants. This accident negatively affected the lives of people, especially those residing in the affected area. Furthermore, the United States' occupation to Iraq in 2003 had a crucial role in increasing the problem of environmental air pollution; they used internationally prohibited weapons, e.g., radioactive uranium and chemical weapons. The use of such weapons led to fatal health problems for the Iraqi people, evidenced mainly by the occurrence of cancerous diseases, distorted new born babies and infertility. Hence, this paper proposes the adoption of the Iraqi criminal law represented by the Iraqi Punishments Law No. 111 of 1969, is a law governing all crimes without exception, whether they are environmental or ordinary crimes. Additionally, the special law of the environment represented by the law of protecting and improving the environment No. 13 in 1997 was amended by Law No. 27 in 2009.*

*Many provisions under this law legislate the protection of the environment from air pollution crimes and the protection of individuals and cities by criminalizing every act that constitutes an assault to the environment. For this purpose, a qualitative method of research is adopted as primary and secondary sources were consulted.*

## *Introduction*

*There are serious environmental crimes being committed in Iraq. These crimes, such as burning of solid remnants and trafficking of toxic waste and hazardous chemicals, including the storage of these dangerous chemicals and trying to get rid of them illegally, have contributed to the pollution of the environment and have negatively and dangerously affected the lives of individuals and living creatures. Additionally, individuals or institutions have established industrial or oil installations near the cities that are devoid of the most basic means of environmental safety. It should be noted that these installations have contributed to the spread of toxic dust and discharge of toxins into the air. This has caused the occurrence of acid rain which is a health risk to the public. Further, acid rain can damage plants, relics, historical and natural landmarks*(1). *Additionally, the United States of America (U.S.) occupation to Iraq in 2003 had a role in increasing the problem of environmental air pollution; they used internationally prohibited weapons. In 2003, a study conducted on the Basra province, located in southern Iraq, which has seen fierce fighting between Iraqi forces and the forces of the international coalition, revealed that there was radioactive contamination due to a high level of depleted uranium in the vicinity of Iraq's weapons which had been destroyed by the international coalition led by the U.S., The same study also revealed that these radioactive pollutants had drifted to other cities as a result of environmental and climatic factors, such as wind. This paper will address the issue in the following sections*(2).

## *The Research Design And Procedure*

*This research uses the qualitative approach. The theoretical approach and the analytical examination of the legal protection of air pollution in Iraq were followed and comparisons with some laws related to the environment were also made. In addition, a review of related various sources and references were also conducted.*

## *The Environmental Challenges – Air Pollution*

*The Iraqi legislature defines pollution as "the presence of any contaminants affecting the environment or concentration or abnormal substance leading directly or indirectly to harm humans or living organisms or non-living components where they are located". Some researchers in the field of environment agree with the Iraqi legislature on the fact that this definition includes most of the aspects that could constitute an assault on the environment, whether these attacks were caused by external, internal or by man-made actions*[(3)].

*To define "air pollution", some researchers contend that the definition is not simple. One could claim that air pollution started when humans began burning fuels. In other words, all man-made (anthropogenic) emissions into the air can be called air pollution, because they alter the chemical composition of the natural atmosphere. The increase in the global concentrations of greenhouse gases, like Carbon Dioxide (CO2), Methane (CH4) and Nitrous Oxide(N2O), can be called air pollution using this approach, even though the concentrations have not been found to be toxic for humans or for ecosystem*[(4)].

## *Types of Air Pollution In IRAQ*

*One study has indicated that air pollution is the introduction of chemical and biological materials that cause harm or discomfort to humans or other living organisms, and cause damage to the natural environment or built environment. It can be defined as the presence in the outdoor or indoor atmosphere of one or more gaseous or particulate contaminants in quantities, characteristics and of*

*duration, injurious to humans, plants, animal life or property, or which unreasonably interferes with the comfortable enjoyment of life and property. A substance in the air that can cause harm to humans and the environment is also known as an air pollutant. Pollutants can be in the form of solid particles, liquid droplets or gases. In addition, they may be natural or man-made*(5).

*In an analytical study of the problems of man in Iraq and his environment, air pollution has been defined as "a defect in ecological air system through the release of large quantities of gas and solid elements, leading to a significant change in the characteristics and size of the air elements, transforming many of them from useful and makers of life into harmful elements (pollutants); causing huge damages and risks up to the point of death and destruction of organisms, and destruction and vandalism of the components of non-living organisms. The scope of the air pollution concept has been widened to include noise which spoils the nature of quiet air and turns it into an annoying and painful air, causing many diseases"*(6).

## *Air pollutants are divided in terms of composition, into three types:*

1. *POPs organic pollutants containing as general rule, carbon and hydrogen. Examples include methane and pesticides.*
2. *Inorganic pollutants not containing hydrogen although they may contain carbon in its simplest form as the carbon oxide.*
3. *Components not containing carbon such as sulfur oxide and nitrogen dioxide, ammonia, chloride and fluoride.*

## *Air pollutants in terms of their occurrence are divided into:*

*1. natural pollutants: pollutants caused by meteorites, volcanoes and natural conditions and activity of organisms in the seas and oceans, the volume of these pollutants may exceed human-generated pollutants, but their distribution in the world makes nature able to*

*absorb them, in addition to air pollution with pollen and insects wings and germs and fungi.*

*2. human pollutants: caused by different human beings activities both in industry and production, agriculture or consumption stage, whether in the form of gas or fine particles, and polluting gases constitute ninety percent of air pollution rates, while fine particles form clouds that vary in shape, density and content, to impose of legal protection from air pollution the latter must be from human source, by acting in this manner pollutants resulting from the nature activities, for example, volcanoes subject of another Sciences are taken away. The reason of confining protection to human activities is to determine responsibilities for approval of necessary follow-ups against polluters, and the norm adopted to identify the extent of damage to the air*[7].

## *The Protection Of The Air Under IRAQI Legislation*

*Iraq has suffered from environmental pollution in all its territories in many previous historical periods. Previous government policies have led to neglect and omission. In addition to that, the greed of colonizing forces such as Great Britain (GB) and the USA have had a negative effect on the environmental security of Iraq and all of these have led to an increased in air pollution and damage to the life of all living creatures and the environment. Therefore, in order to know the penal protection of air pollution in Iraq, the historical periods can be classified as follows.*

### *Legal protection of the air since the founding of the state of Iraq in 1921 till – 1980*

*The environment in general and particularly the air environment have suffered since the establishment of the Iraqi state in 1925, i.e., after its independence from the Ottoman Empire. There was gross neglect and lack of attention given to the matter and all this happened in spite of the fact that the Industrial Revolution in Europe and the world began in the mid-nineteenth century. During that*

*period, the concern for the environment and the management of its affairs was restricted to missions and services carried out by the municipal councils. The services carried out by the municipal councils include the cleaning of streets, the removal of rubbish and waste material from the streets, shops and houses and disposing the said rubbish and waste in a safe manner, and the proper management of water reservoirs, lakes and rivers. When rubbish and waste material are disposed of, properly, there will less pollution in the air. All the aforementioned services are done to ensure that the health and comfort of the citizens are not adversely affected*(8).

*During that period, the Iraqi legislature enacted several laws for the preservation of the environment, but no criminal sanctions were imposed on violators. Examples of the aforementioned laws include Law No. 42 of 1932 for the supervision of professional crafts causing air pollution, Law No. 27 of 1943 to regulate the work of factories and fuel products causing environmental damage, Law No. 19 of 1950 on the organization of work in marble stone factories and air pollution, Law No. 1 of 1959 on functions of the Atomic Energy Commission, and the law on foreign civilian aircrafts and military planes entering or leaving Iraq under Law No. 11 of 1959*(9).

*The interest of Iraq to protect the environment increased after its participation in the Stockholm Conference on the protection of air environment in 1972 and the ratification of the Convention in 1974. The Iraqi legislature granted to the boards of governorates the power to maintain public health and improve health affairs and take sufficient means to prevent the spread of contagious and infectious diseases by air the establishment and maintenance of forests and basins, the establishment and management of parks and preventing the construction of buildings that are harmful to the air environment. On the tenth of March 1974, the law of the office of dissolved presidency Diwan No. 2411, was enacted the office had a major role in the founding of the Supreme Body of the Human Environment, and this was the first legal organization in Iraq that was set up to take care of the environment and members of the Supreme Body are*

*representatives from the relevant institutions and it was chaired by the Ministry of Municipalities.*

*The Supreme Body of the Human Environment was dissolved in 1975 and it was substituted by the Supreme Council for Human Environment under the dissolved Revolutionary Command Council Resolution No. 1258, and was subsequently renamed as the Council for the Protection of the Environment from Pollution and the Council is chaired by the Minister of Health*(10).

## *Legal protection of the air* (1980-2003)

*According to the provisions of Article IV of the Law on the Prevention of Ionizing Radiation No. 99 of 1980, a body known as the "Radiation and Pollution Protection Body" and affiliated to the Council for the Protection of the Environment from Pollution. This body was formed due to the large increase in usage of radioactive materials in the non-military sectors (civil industries) and Iraq had proven experiences of human and environmental exposure to radiation from these sources. This body has broad powers and supervise and control the usage of this type of materials to protect the public from exposure to radioactive pollution. It also draws up policies on all matters related to the field of radiation protection including its prevention, the monitoring of radiation levels in the environment and the determination of allowable maximum limits of radiation in the air*(11).

*According to the Ministry of Health Law No. 10 of 1983, on pollution the Council for the Protection of the Environment from Pollution was seconded to the Preventive Services and Environment Department which is an executive body that specializes in environmental issues and the maintenance of the same according to the General Environment System of Health Services Law No. 2 of 1984, and entrusted with the responsibility of:*

1- *Preparing programmable air pollution control plans for Iraq.*
2- *Diagnosing the areas and sources of pollution and participating in the finding of appropriate solutions to reduce and control them.*

*3- Giving technical advice to public and private institutions on the problems caused by pollution.*

*4- Control and tackle air pollution issues and examine and analyze samples taken from the environmental investigation teams in order to diagnose the chemical and microbial contaminants in the same.*

*5- Drafting programs and plans for environmental awareness and training courses for personnel working in the field of fighting environmental pollution in Iraq.*

*In order to develop the activities of the Council for the Protection of the Environment from Pollution and the development of plans and programs for the protection and improvement of environment and to follow up on the implementation of decisions issued by the council, the Law on Environmental Protection and Improvement, No. 76 of 1986 was passed and abrogated the 2 decisions of the Revolutionary Command Council No. 1258 in 1975 and No. 750 in 1978 relating to the formation of the Supreme Body of the Human Environment to protect and improve the environment and the same was replaced by the Council for the Protection of the Environment from Pollution. The most important characteristic of this Council is that all instructions, decisions and statements issued to facilitate the implementation of the provisions of law are binding. The Council can impose sanctions on violators of these instructions and its decisions are legal and enforceable by all the relevant ministries and institutions*[(12)].

*During the Second Gulf War in 1991, the Iraqi people suffered from the effects of radiological and chemical pollution because the American and British troops, for the first time, used warplanes and tanks to fire hundreds of depleted uranium shells on different parts of southern Iraq. Studies have shown that the shells fired by the US tanks can produce 900 to 3400 grams of uranium dioxide radioactive particles. Documents revealed and identified as issued by the US Department of Defense show that 14,000 artillery shells of depleted uranium were used during the war. The United Nations estimated that about 300-350 tons of these shells are left in the battlefields out of which only 10% were recovered while the rest were buried in the*

*desert sand. This has led to the soil, air, plant and animal pollution and caused Iraqis to suffer from strange diseases that were not present before the outbreak of the war, as many individuals suffered from diseases due to being exposed to radiation from the depleted uranium shells during the war, causing death. The best evidence to support this contention is that a significantly higher number of young children are suffering from cancer and other malicious diseases in the cities within the governorate of Basrah in southern Iraq as a result of their exposure to uranium radioactivity.*

*Driven by the desire to protection of the environment from pollution and to reduce its impact on public health, the environment and natural resources, and in order to achieve legal protection of environment, the Iraqi legislature issued a new law, the Law on the Protect and Improvement of the Environment, Law No. 3 of 1997, which established a board to protect and improve the environment affiliated to the Council of Ministers, and empowered it to:*

1- *Formulate public policy to protect and improve the environment and determine the controls on air pollutants؛*
2- *Give advice on the international relations of Iraq in the field of protecting and improving the air environment; and*
3- *Coordinate the activities authorities concerned with the protection of the environment and make decisions on the recommendations submitted to the Protection and Improvement of the Environment Department in all governorates of Iraq*[13].

*The Iraqi legislature stipulated that under this law the most important competencies exercised by the Council is to protect the environment from pollution, and it includes duties such as the preparation of basic designs of the city and determine the land use and divide and the create parks and gardens and identify various industrial areas, force factory owners to take measures to ensure the comfort of citizens and their health, locate and define business which are a sources of danger, anxiety or discomfort to citizens because of the emission of smoke, dust or gases and to control sites and activities that pollute the environment*[14].

*Finally, we can say that the attention to environmental protection and pollution in the period before the US occupation of Iraq in 2003 was marked by the issuance of many environmental legislations that were spread over a number of newly enacted laws, regulations, statements, decisions, orders covering various agricultural, industrial and construction sectors, which have led to a multiplicity of governmental institutions monitoring the application of these legislations. Consequently, the unity of actions and making decisions were lost and in addition to that there was a dispersion of criminal liability against the perpetrators of environmental crimes which led to the aggravation of environmental crimes in Iraq at that time.*

## *Legal protection of the air after the US occupation of IRAQ in* 2003

*The wars that Iraq fought when it was under the former regime of Saddam Hussein, i.e. the war between Iraq and Iran (1981-1988), the Second Gulf War (1991) the economic embargo on Iraq imposed by the United Nations (1991-1998), and the Third Gulf War (1998) led to air and chemical pollution to the Iraqi environment. The destruction of infrastructures, industrial plants and factories, gas and crude oil refineries, phosphate and sulfur mines due to the wars together with the burning of millions of tons of raw material and chemical compounds caused the dispersion of polluted air to large areas of Iraq, especially near to residential cities, for example in the province of Basrah. These wars caused the burning of 1.44 million barrels of crude oil and 1.13 million cubic meters of natural gas and 72,000 tons of sulfur dedicated to the production of sulfur dioxide in Anbar, 30 cubic meters of hydrogen sulfide gas in Kirkuk and 36 million liters of heavy oil in Al-Qaim and Karbala. All the aforementioned incidences resulted in an enormously high level of air pollution and the environment had high concentrations of poisonous sulfur-based compounds, hydrocarbons, nitrogen oxides and other complex chemical compounds, all of which are detrimental to the*

*environment and they directly influenced the overall health and wellbeing of humans, plants, animals, soil and water*(15).

*The said era of wars led to the massive deterioration of the air quality in Iraqi cities and it was due to oil refineries and storage facilities, and chemical warehouses and stores burning down and in addition to that there were random fires and explosions, the use of poor fuels to run factories and transport vehicles, the indiscriminate destruction of forests and orchards and the destruction and reduction of green lungs in and around Iraqi cities. All the above-mentioned destruction of the environment happened even though Iraq had effective mechanisms in place to combat and control air pollution. These problems became more widespread because of the weak deterrents in environmental legislation against violators and at that point in time, due to the situation Iraq was in most of the state budget was spent on the purchasing of weapons and not on other services. As a result, the enforcement of environmental legislations was weak and inefficient and the uncontrolled emission of pollutants had a great impact on humans and the environment.*

*In 2004, transitional government was formed and its primary objective was to stabilize the components of the new state and understandably the protection of the environment was not among its priorities during the transitional period. But, the serious environmental pollution in Iraq during that period and its impact on the lives of Iraqis, living organisms, plants and animals made the new government realize that the protection of the environment must be given priority. The Iraqi Constitution of 2005 specifically gave assurance for the protection of the environment under Article 33 whereby it stipulates that "everyone has the right to live in a safe environment and the state guarantees that it will protect the environment and bio-diversity and preserves it"*(16).

*The aggravated pollution problems and its threat to humans and other living organisms in Iraq have led the Iraqi legislature to enact the Law to Protect and Improve the Environment in Iraq No. 27 of 2009 to protect the Iraqi environment and improve it and at the same time reduce pollution together with its harmful effects on the health of*

*living beings, the environment and natural resources, through the removal and treatment of existing damages or damages that may occur in future. This law aims to preserve public health, natural resources, bio-diversity and cultural and natural heritage through cooperation with the competent authorities in order to ensure sustainable development and the achievement of international and regional cooperation in this area, and as such it constitutes a fundamental reference to the protection of the environment from pollution in Iraq*[(17)].

*At this juncture, we can say that this era was marked by the presence of Article 33 in the Iraqi Constitution of 2005 and other laws, weaknesses in environmental laws, overlapping with other laws, and impractical and formal texts in legislations on environmental protection due to poor technical and material possibilities, which have impacted negatively on the environmental situation in Iraq and caused a lot of environmental damage to humans and other living organisms.*

## *Conclusion And Recommendation*

*The national interest in the subject of protection the environment or defending it stems mainly from the risk of pollution to which everyone is exposed at all times and everywhere. Pollution knows no bounds nor kinds, and thus become a public danger threatening lives of living organisms and environment in all countries of the world .*

*At the local level, despite the multiplicity of laws related to environmental protection in Iraq, those were characterized by non-comprehensives, lack of consistency, dispersion and weak prescribed criminal sanctions which vary according to the gravity of the environmental crime administratively, civilly and criminally. The protection of the environment, including its threats does not mean to isolate individuals and live a primitive life, but really mean rational interaction with environmental components without extravagance or waste of these component.*

*Our suggestion for the Iraqi legislator is adopting a strategy to protect the environment in Iraq, because it becomes one of the main issues in national environmental laws and stopping aggression on various environment elements and protecting them from pollution for the survival of life and protection of human rights. Prevent serious effects resulting from targeting air and other elements of the environment, especially after the scientific, industrial and economic progress that the world has witnessed, the survival of the environment for a long time without the required care and legislative protection and the spread of disease and epidemics.*

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# الحماية القانونية لتلوث الهواء في العراق

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**كلية الحقوق والدراسات الدولية والحكومية - جامعة اوتارا الماليزية**

## ملخص البحث

إن أحد التحديات الرئيسة لحماية البيئة في العراق هو تلوث الهواء، حيث أصبح مشكلة كبيرة في العراق ويشكل مصدر قلق كبير بسبب آثارها السلبية على نوعية الحياة. تلوث الهواء في العرق يقلل من المصادر الطبيعية المتجددة وغير المتجددة، ويشكل خطراً كبيراً على حياة الأجيال القادمة. ويتفق خبراء البيئة أن المشاكل البيئية الحالية في العراق هي نتيجة لثلاثة حروب كبرى. استخدمت جميع أنواع الأسلحة المحرمة دولياً من قبل (صدام حسين) النظام العراقي السابق. وغني عن القول أيضا تأثير حرب الخليج الثانية على البيئة في العراق وغيرها من الدول المجاورة في عام ١٩٩١، حيث سببت في تلويث البيئة العراقية وقد أكد مجموعة من خبراء البيئة أن الأضرار البيئية التي سببتها هذه الحرب تساوي تلوث بيئي كبير الناجمة عن انفجار تشيرنوبيل مفاعل النووية في الاتحاد السوفيتي في عام ١٩٨٦. تلك الحرب أضرت في المناطق الساحلية في بعض البلدان المجاورة، أدى إلى زيادة درجة حرارة الأرض وتلوث الماء والهواء بسبب تسرب نفطي ضخم وحرائق واسعة النطاق في آبار النفط. وقد قدر كمية تسرب النفطي من محطات الشحن والسفن الغارقة نحو ٨.٤ مليون برميل. ومن الجدير بالذكر أن البيئة في العراق لم تتأثر فقط من خلال نوع واحد من الملوثات، ولكن أيضا تعرضت إلى مجموعة من الملوثات منها الإشعاعية والكيميائية والملوثات الكهرومغناطيسية. هذه الأحداث أثرت سلباً على حياة الناس في المجتمع العراقي، وخاصة

أولئك الذين يقيمون في المناطق المتضررة. وعلاوة على ذلك، كان احتلال العراق في عام ٢٠٠٣، من قبل الولايات المتحدة الأمريكية له دوراً في زيادة مشكلة تلوث البيئة الهوائية في العراق؛ حيث استخدموا الأسلحة المحرمة دوليا ،مثل اليورانيوم المشع والأسلحة الكيميائية. واستخدام هذا النوع من الأسلحة أدى إلى مشاكل صحية قاتلة للشعب العراقي، وأدى إلى حدوث أمراض سرطانية، وتشوهات الأطفال حديثي الولادة والعقم. وبالتالي، تقترح هذه الورقة البحثية اعتماد القانون الجنائي العراقي الذي يمثله قانون العقوبات العراقي رقم ١١١ لسنة ١٩٦٩، وهو القانون الذي يحكم جميع الجرائم دون استثناء على اعتبار أن تلويث البيئة الهوائية جريمة تستحق العقاب، بغض النظر عن كونها جرائم بيئية أو عادية. بالإضافة إلى ذلك، تم تعديل قانون خاص للبيئة ممثلاً بقانون حماية وتحسين البيئة رقم ٣ لسنة ١٩٩٧ بموجب القانون رقم ٢٧ لسنة ٢٠٠٩. إن العديد من الأحكام الواردة في هذا القانون تشرع حماية البيئة من جرائم التلوث وكذلك حماية الأفراد والمدن وتجرم كل فعل يشكل اعتداء على البيئة. لهذا الغرض، تم اعتماد الأسلوب البحث النوعي القائم على تحليل النصوص القانونية .