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RESEARCH ARTICLE

ENVIRONMENTAL DEMOCRACY THROUGH ACCESS TO INFORMATION

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Abstract

The overall aim of environmental laws is to protect the environment from any adversary effects in order to lay down the foundations for sustainable development and secure a better life on earth for the present and future generations. Environmental protection is more urgent today than ever especially due to global environmental problems. Such a noble aim can only be achieved through environmental democracy rather than exclusive and top-down decision-making. Morocco, for example, witnesses intermittent social protests triggered by the lack of access to environmental information and the gap between laws and their implementation. The main aim of this study is thus to argue that access to information is at the heart of democracy and that the achievement of the intertwined objectives of environment protection, sustainable development, and environmental democracy is dependent on the effective implementation of the right of access to information and the adoption a participatory approach in environmental decision-making. For this, we first define the concept of environmental information, and the access to this human right in international and Morocco's legislations; then, we highlight the crucial role of the mass media in raising the public awareness of the threatening environmental issues and their rights and obligations towards the environment; and finally, we shed light on the link between the right to access environmental information and the establishment of environmental democracy.

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Introduction:-

We would like to start this article on the fundamental human right of access to environmental information with the following relevant incident:

There was a town where thousands of people drank water loaded with heavy metals, with the health authorities' blessing and total silence on the matter.

The question that arises here is: Why did this happen? That is, why did the competent authorities respond negatively to the incident?

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The answer:

That was because the people concerned were not informed of the danger posed by this contaminated drinking water.

Explanation:

The competent authorities were aware of the incident and its public health risk, but did not inform the people concerned so as not to intimidate them; besides, they had no obligation to do so.

This incident, which is not a rare occurrence, but an example of the many calamities that occur in many parts of the world, clearly illustrates the importance of citizens' access to environmental information in a society where environment protection is supposed to constitute a priority and urgent concern, in accordance with the existing international obligations and national legislations.

On the one hand, democratic debates must rely on the good foundations of access to information and participatory decision-making. The effective and efficient implementation of policy objectives is dependent on accurate and complete data and information, and environmental information is part of these foundations (Kettiger, 2010:7). On the other hand, the right of access to environmental information is constrained by the right of protecting the confidentiality of personal data, copyrights, inventions, patents, and other exceptions.

This paradoxical situation begs the following questions: How can we reconcile the right to have one's personal data protected, on the one hand, and the right to access the information required to defend and preserve the public interest, through environmental protection, on the other hand? Can the law continue to consider information that affects the collective heritage of humanity or the nation as confidential and of a special nature? How can the legal regulations establishing the right of access to environmental information contribute to the observance of the new requirements imposed by sustainable development and the right to live in a healthy environment?

These questions, among others, are the starting point of our research. We will attempt to answer and approach them by building on the conceptual framework relevant to sustainable development and deliberative democracy. The study is divided into four sections. Firstly, we define the conceptual framework of environmental information; secondly, we review and critically discuss the international and Morocco's national legislations on the right of access to environmental information; thirdly, we highlight the vital and even decisive role that the mass media must play in communicating and disseminating environmental information nationally and worldwide; and finally, we shed light on the link between the right to access environmental information and the establishment of environmental democracy, and argue that information sharing is the essence of democracy.

Definition of environmental information:

At present, energetic efforts are being undertaken to develop human rights, which have developed from civil and political rights (or the so-called first-generation rights), through economic, social and cultural rights (or second-generation rights), to solidarity rights (or third-generation rights), under which falls the right to live in a healthy environment. The establishment of this right is dependent on facilitating access to information, in general, and to environmental information, in particular.

In recent years, the human rights arena has witnessed fundamental developments that have recognized the citizens' access to information held by public authorities as a fundamental human right and, indeed, as a prerequisite for the realization of any other human rights (Mendel, 2008).

Environmental information, which can be aural, electronic, visual or written, encompasses many aspects of the environment. According to the European Council Directive 2003/4/CE on public access to environmental information, it covers six forms of information (Art. 2):

1. the state of the elements of the environment and the interaction among these elements, e.g. air and atmosphere, water, soil, land, landscape and natural sites, including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms;
2. the factors affecting the elements of the environment referred to in (1), e.g. substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases;
3. measures (including the administrative ones), e.g. policies, legislation, plans, programmes, environmental agreements, and activities affecting the elements and factors referred to in (1) and (2) as well as measures or activities designed to protect those elements;

4. reports on the implementation of environmental legislation;
5. cost-benefit and other economic analyses and assumptions used within the framework of environmental measures and activities referred to in (3); and
6. the state of human health and safety, including the contamination of the food chain, conditions of human life, cultural sites and built structures in as much as they are affected by the state of the elements of the environment referred to in (1) or, through those elements, by the factors, measures or activities referred to in (2) and (3).

Therefore, it becomes evident that the existing environmental information, rather than that which requires further research to be collected, can be conveyed by all the possible means available on the state of the environment, its constituents, and the related enhancing or degrading factors, measures or activities. It encompasses all aspects of the environment without exception, i.e. natural components, man-made establishments, and all interacting forms of life on earth. Moreover, it englobes all the factors and activities endangering the environment whether directly or indirectly, as well as all the measures (legal, cultural, economic, administrative, etc.) intended for the protection of the environment.

Bearing in mind the various forms of environmental information, the right of access to it can be carried out in two ways. First, the citizens can request for the environmental information they need and accordingly the competent public authorities provide an answer, which is the accepted method. Second, the information holders can make environmental information available proactively without waiting for prior formal requests. In this case, the public authorities should ensure that the information is gathered, disseminated, known, evaluated and updated. An example of this is Morocco's annual report published at the beginning of each summer season on the quality of beach water for the benefit of beachgoers.

Therefore, this right consists essentially in the principle of making environmental information available to all natural or legal persons, without requiring the requester's justification of such a request or indication of the purpose or direct interest in the information requested. The request for environmental information does not require any justification, provided it respects the specific rules governing the requested information, and on condition that the latter is not of a confidential nature or affects public security or the rights and freedoms of individuals.

Access to environmental information in international and national laws:

At the international level:

The examination of the various sources of international environmental laws on the right of access to environmental information reveals that most of them have acknowledged the importance of access to environmental information. Today, it can be confirmed that information is the key element in the assessment and protection of the environment (Machado, 2007: 198).

The Stockholm Declaration, issued at the first world environment conference in 1972, sets forth a number of principles, including the establishment of a set of mechanisms to protect the environment for the common good of mankind. More particularly, for better environmental management planning, the Declaration emphasizes (i) the application of science and technology as means to identify, avoid and control environmental risks and solve environmental problems; (ii) provision of education in environmental matters for the young as well as adults, and enlightening individuals as well as industries and communities to make their behaviour responsible towards the environment; (iii) the essential contribution of the mass media in disseminating educational information on environment protection and improvement for human development at all levels; and (iv) the free flow of environment-related scientific information and the transfer of experience and technology both nationally and internationally with particular attention given to the developing countries. (Principles 18 to 20).

The Rio Declaration on Environment and Development, adopted in 1992, also recognizes the right of all concerned citizens to have effective access to the environmental information held by the competent administration and the relevant public authorities. In doing so, the Declaration enables and encourages citizens to participate in decision-making processes as a way to ensure their right to live in a healthy environment and their right to sustainable development whose most important dimension is the environment. Indeed, the tenth principle of the Declaration

emphasizes the interconnection between the principle of participation and access to information given that the latter affects public participation (Madani, 2016: 85)¹.

Indeed, the principle of public participation, which is based on the right of access to environmental information, is the pivotal principle of sustainable development principles as recognized by the international environmental law. For how can the principles of prevention, protection, precaution, contaminants control, intergenerational equity, etc. be enforced if the basic information is not yet available?

In 1998, the United Nations Economic Commission for Europe (UNECE) adopted an international convention, known as the Aarhus Convention, on access to information, public participation in decision-making processes and access to justice matters in the field of the environment. Its adoption thus constitutes a new generation within the international environmental law system.

As far as comparative law is concerned, it may be pointed out that the right to access information is one of the rights that has recently emerged but soon spread throughout the world. The first law in this regard was the Freedom of Information Act (FOIA), enacted by the American Congress in 1966 (Comeau, 2006:33). Currently, more than 70 countries have legislations on access to information, most of which were adopted during the last decade of the last century (Baril, 2009:2).

At the national level:

With regard to the right of access to environmental information in domestic legislations, the 2011 Moroccan Constitution generally recognizes the right of access to information as a constitutional right for all citizens. Article 27 states that "male and female citizens have the right of access to information held by the public administration, the elected institutions and the bodies invested with public service missions." In this regard, there is also Law No. 31.13 on the right to access information, which was enacted in March 2018. This law provides a definition of information types, identifies the directorates concerned with information disclosure, and sets the related rules and the list of exceptions and penalties.

Concerning environmental information, the constitutional document refers to it directly and indirectly in the following articles. According to Articles 31, the State, the public institutions and the territorial communities are required to mobilize all the means available to facilitate the equal access of male and female citizens to the rights of having water, living in a healthy environment and enjoying sustainable development. These rights, together with the realization of sustainable development, that the State is required to work for, will permit the consolidation of social justice and the preservation of national natural resources and the ensuring of the rights of future generations (Art. 35). Of course, this can only be achieved by facilitating access to environmental information, which is the core of the public's participation in decision-making processes.

In this connection, there is also the economic, social and environmental council introduced in Article 151 of Morocco's Constitution. This council contributes to facilitating access to environmental information, in particular through the reports it elaborates on the state of the environment, the green economy and other related topics, either on its own initiative or at the request of the Government or of one or both of the two Moroccan Houses of Parliament, i.e. the House of Representatives and the House of Councilors. The council's opinion on the general orientations of Morocco's national economy and sustainable development is very essential in the country's national sustainable development strategy.

In addition, many environmental laws provide for access to environmental information as a mechanism, rather than their main goal, for implementing their provisions. For example, one of the basic principles underlying Law 11.03 on the protection and enhancement of the environment, passed by the Moroccan Parliament in May 2003, is that "the protection and enhancement of the environment is a public interest and a collective responsibility requiring

¹Principle 10 of Rio Declaration: "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

participation, information and determination of responsibilities" (Art. 2). Law 11.03 also specifies that any person who has suffered damage to his health or property is entitled, within 90 days after the discovery of the damage, to ask the competent public authorities to undertake an investigation. The results of this investigation are communicated to the complainant. In the event of an urgent request by the complainant, the public authorities must inform him within a maximum of 60 days. Any refusal or closure of the request must be justified by the administration (Art. 76)

Moreover, the 2003 Law 12.03 on environmental impact assessment (EIA) (Articles 5, 9 and 10) and the 2006 Law 28.00 on waste management and disposal (Articles 1, 9, 10, 11, 12 and 13) provide for a procedural mechanism that enshrines the citizens' effective practice of their right of access to direct environmental information. This concerns the public survey carried out by the public authorities on the EIA reports of a particular project, or of the territorial waste management plans. These reports are presented to the concerned citizens to express their opinions, observations or objections, in accordance with specific procedures and time limits.

More specifically, Law 12.03, which sets forth the EIA rules and procedures, specifies that one of the main objectives of the EIA is to inform the population concerned about the project's negative impacts on their environment (Art. 5) and that it must contain, as one of its required component documents, a simplified summary of the main data and information contained in the assessment, which should be addressed to the public (Art. 6). Article 9 of the same law states that each project submitted for EIA gives rise to a public survey, whose purpose is to enable the population concerned to become aware of the potential impacts of the project on the environment and to collect their observations and related proposals. These observations and proposals are taken into consideration when examining the EIA (Art. 9). In the same vein, Article 10 states that the administration is required to take all the necessary measures to ensure that the information and conclusions relating to the EIA, i.e. to the negative impacts of the project on the environment, are publicly available during the period of the public inquiry, with the exception of information and data that are considered confidential, i.e. the disclosure of which could prejudice the interests of the project owner.

Likewise, Law 28.00 on waste management and disposal, which was enacted in December 2006, also accords great importance to the public access to environmental information. From the outset, it states in Art. 1 that its aim is the protection of the environment in general, and that for the achievement of such an aim, it guarantees informing the public about the harmful effects of waste and about the measures to prevent or compensate for their harmful effects. Articles 9, 10, 11 and 13 specify that the elaboration of waste management master plans, whether at the national, regional, prefectoral or provincial levels, must determine, among other things, the measures to be taken in the areas of the public information, awareness and advice.

In a nutshell, both the international and Morocco's legal systems accord great importance to the public's access to environmental information held by the public authorities. They also recognize the importance of the citizens' participation in environmental decision-making. Yet, in both systems, this human right of access to information is not applied across the board, for there are many confidentiality-related constraints imposed on its disclosure. Besides, Morocco needs to make more serious efforts to narrow the gap between these laws and their effective implementation.

The mass media and access to environmental information:

In today's globalized and digital world, the mass media are, par excellence, the perfect tool for the wide dissemination of environmental information to the general public. This is due to a number of reasons: (i) they come out in various forms, including print media (e.g. books, magazines, newspapers, newsletters, tabloids, leaflets, information posters, etc.), audio-visual media (e.g. radio, television), and the Internet or multimedia platforms (e.g. websites, social media like Facebook, Twitter, YouTube, etc.); (ii) they use various formats to communicate information depending on the targeted public and other circumstantial considerations, including news, talks, plays, movies, songs, shows, advertising, campaigns, documentaries, etc.; (iii) they have undergone a huge technological evolution, which made them easily and instantly accessed by the Internet users with just a click of a mouse; (iv) they can be multilingual, which enables them to globalize information, and (v) unlike other systems that select their audiences, they provide information for all humans on equal and therefore democratic basis, irrespective of the color of their skin, their geographical location, social, economic educational, or political disparities.

In fact, there are many considerations that make the environmental media a gateway to access environmental information (Ragou, 2001). First, the media bear a great responsibility in raising the public awareness about environmental problems. Second, the journalist meets the urgent need to sensitize the reader and the public whom he is in daily contact with about the environment, and can contribute significantly to environmental education and sustainable development. Third, adult audiences rely mainly on the media for their learning and information. Therefore, the journalist is a man of education, who uses his pen or keyboard to inform and train the reader on environmental topics and issues. Finally, the media must provide the adult audiences with the basic knowledge that will enable them to make their choices, and must contribute to individual and collective awareness and responsibility for proper environmental management, and have to stimulate their commitment and involvement in decision-making processes.

Today, the digital media, for example through news outlets, can have a great influence on the general public nationally and internationally. According to the 2018 World Bank Study about the individuals using the Internet, 46% of the world population used the Internet in 2016, and in Morocco, users increased from less than 1% in 2000 (exactly 0.694%) to 62% in 2017. Another study on Africa internet statistics conducted on December 31, 2017, shows that out of Morocco's population estimated at 36,191,805, there were 22,567,154 internet users (i.e. 62.4% of the population with an internet growth of 22.467% between 2000-2017, including 15,000,000 Facebook subscribers (Internet World Stats, 2018). Internationally, Facebook succeeded in attracting 2.27 billion active users monthly as of the third quarter of 2018 (Statista, 2018).

Undoubtedly, thanks to their global reach and total active users worldwide, the Internet and social networking platforms can make a great difference in the citizens' awareness of their right of access to information, in general, and right to environmental information, in particular, and by extension in empowering them to contribute to environmental decision-making and influence the environmental policies in their respective countries as well as in contributing to solving the environmental issues that affect the globe.

Currently, the mass media are increasingly involved in the environment sector. Written journalism, especially in its electronic form, does its best to facilitate access to environmental information and to raise the public's awareness of the risks to the environment. In doing so, it contributes to the formation of collective environmental awareness as a strong educational tool in the environmental field. However, these efforts remain insufficient and more commitment on the part of the media is required.

For example, it is noticed that the manner in which environmental topics are presented suffers from some technical difficulties associated with the media language style in this area. The lack of scientific knowledge and competition among the different press platforms, among other considerations, make the environmental topics less attractive or uninteresting to the reader, especially when these topics are not presented on a systematic basis.

In a field study conducted by a researcher in the area of environmental information (Ragou, 2001), it was concluded from the analyzed data that the most important themes related to environmental issues, such as the responsibility related to the urgent and impending environmental problems, their causes and origins, or their impacts on human health and ecosystems, or even the possible alternatives to deal with them, have not been dealt with in the media, or have been addressed only superficially and not methodically.

In order to remedy the inadequacy of this subject, participation in open scientific forums constitutes a space for discussion, interaction, and exchange of ideas, experience and knowledge. It is also possible to benefit from the educational and training courses available in the field so as to build basic environmental knowledge and acquire pedagogical skills and methodologies.

Finally, we can conclude that the intensive mass media treatment of environmental issues can contribute significantly to the increase of public awareness of the dangers threatening the environment and human health, their rights and obligations towards the environment, the importance of their participation in environmental decision-making, and of their essential role in achieving sustainable development in which the environmental dimension integrates with the economic and social dimensions. In doing so, the press can ensure its legitimacy in making wider audiences accountable with regard to the environment (Comby, 2009:187).

Access to information as an input to the establishment of environmental democracy:

Environmental democracy is synonymous with the mutual commitment and sharing of power by citizens and the public authorities to protect the environment. This can only be achieved by the effective enforcement of the human right of access to environmental information and the citizens' unconstrained freedom to participate in environmental decision-making processes so as to improve the quality of life for the people and the planet. Indeed, as Machado (2007:198) rightly puts it, "democracy is born and lives within truthful, complete and timely information. It is not democratic that only one social segment can have access to information, because this would give rise to an aristocracy of communication or institute tyranny if the government alone controls the information".

In fact, many recent legal studies point to the emergence of a new form of environmental governance, which is based on the provision of environmental information to the widest possible audience in the world (Baril, 2009:1). This approach emphasizes the importance of access to information in enshrining the principle of participation in the decision-making processes related to environmental public affairs. Many researchers consider this new approach, which has displaced the traditional regulatory approach as well as that of the economic instruments of the market, to be the third wave of environmental governance called "regulation by revelation" (Gupta, 2008:1; Mol, 2008; Baril, 2009:1).

In this context, the Aarhus Convention goes beyond the environmental framework to address questions of democracy and the sharing of power among the state, economic decision-makers and citizens, which is a prerequisite for sustainable development and the new governance it requires. Indeed, the Convention stresses that the implementation of its provisions regarding access to information, public participation in decision-making and access to justice in environmental matters contributes to strengthening democracy. However, the Convention puts constraints on the right of access to environmental information when the information disclosure affects or puts at risk the confidentiality of the proceedings of public authorities, international relations, national defence or public security, the course of justice, commercial and industrial information, intellectual property rights, and personal data (Art. 4).

It should be underlined here that what we may call the individuals' "right to understand" through the use of transparent language should be taken into account when disclosing environmental information. As Machado (2007:198) points out, transparency is language-based and operates through the clarity of the language used. Environmental information should be understood by everyone and should avoid technical terminology and ambiguous or evasive language techniques that impede real administrative transparency.

From another perspective, the right to access environmental information also falls within the context of recent research studies in the philosophy of law, in particular the theory of deliberative democracy or the so-called "communicative action" of Jürgen Habermas. In addition, the complete disclosure of information that can shed light on the various possible choices is thus considered a prerequisite for the development and legitimacy of environmental public standards (Melkevik, 2005).

All in all, democracy can only be achieved through an administration that is fully-transparent and close to the citizen because these two conditions are synonymous with good public governance. Therefore, facilitating access to environmental information will establish an environmental democracy based on the citizen's involvement in the decision-making processes that concern the good governance of environmental public affairs. After all, the right of access to environmental information is above all a mechanism in the service of democracy and the environment.

Conclusion:-

To sum up, if information is synonymous with power, then the sharing of information is a sharing of power. It is therefore natural that there are sociopolitical tensions over the subject. The development of the defense of the "right to know" cannot be separated from the ongoing struggle for the expansion of the scope of democracy. Environment and democracy are inextricably intertwined and go hand in hand, and in order to preserve the former, the latter must be enhanced (Baril, 2009:5).

On the other hand, laws and regulatory texts have established important mechanisms for the provision of and accessibility to environmental information, but they often remain mere formalities adopted only to supplement the procedures, rather than to ensure the achievement of the objectives for which they were established in the first place. This significant gap between laws and their implementation is especially due to the lack of the population

awareness, or not presenting the environmental information in a way that enables the concerned people's effective access to it, not to mention the ignorance of this right and the regulatory frameworks related to its practice. This critical and urgent situation, which hampers the environment protection, sustainable development and by extension solid democracy, calls for concerted efforts to intensify the public awareness-raising and sensitization. To face the situation, we first recommend integrating environmental rights and sustainable development into the national educational curricula with a view to enshrine these rights in the future generations' culture. Second, the government must do its best to engage and empower the concerned public to actively participate in environmental decision-making by way of adopting a bottom-up participatory approach. Last but not least, the government must develop programs to train professional environmental journalists and equip them with all the necessary means to carry out their duties properly, effectively, and with full integrity.

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