

THE ROLE OF GENERAL ENVIRONMENTAL PRINCIPLES IN THE LEGAL PROTECTION OF NATURAL RESOURCES FROM DEGRADATION

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Abstract:

The Algerian legislator has recognised the importance of preserving environmental resources and their significant role, particularly from economic and health perspectives. Due to the specific nature of these resources, it was necessary to establish flexible mechanisms applicable to all cases, embodied in the general environmental principles enshrined in Law 03-10 on environmental protection, specifically in its third article. These principles differ from other general principles in terms of strength and legal value, and they themselves vary in this regard. Both the administration and the judiciary refer to these principles to derive appropriate rulings in cases concerning this field

Introduction:

Human existence on Earth is based on the exploitation and utilisation of its natural resources and wealth. For a long time, the Earth was able to renew its resources naturally. However, the frightening increase in population after the world wars has intensified the exploitation of all kinds of resources, peaking in the 20th century following the agricultural and industrial revolutions. These were accompanied by the excessive use of machinery in production. This has led to the disruption of the natural balance of environmental resources and their depletion, particularly of non-renewable resources.

For a long time, it was believed that these resources were eternal and sustainable, resulting in a lack of concern for their state. However, research and studies have demonstrated a significant decline in these resources, with many species facing extinction. It has become clear that the environment cannot renew its resources adequately without international efforts to address this issue, or at least mitigate it. This has indeed been reflected in regional and international environmental agreements and forums. As preserving the environment requires cooperation, various countries have enacted domestic legislation to contribute to this cause.

The Algerian legislator has kept pace with this interest in conserving natural resources in all laws related to environmental protection, employing two approaches. The first relies on the legal and administrative means granted to the regulatory authority for the protection of these resources. These include preventive measures such as licensing or permits and also technical environmental studies, which assess the impact or summarize it and study risks, all of which are required before commencing any activity. Additionally, there are prohibitory and mandatory systems. The legislator has also provided deterrent measures to address potential damages, ensuring a graduated response, starting with a warning to the operator of the harmful activity, outlining the violations observed and the legal penalties resulting from failure to take necessary precautions. If compliance is not achieved, the activity may be temporarily suspended to encourage compliance; if that fails, a permanent suspension of the activity and revocation of the license will occur.

The second approach is more modern and flexible. It has been recognised by the Algerian legislator due to the unique nature of environmental protection and its resources. It is based on numerous general principles characterised by a high degree of generality and flexibility, enabling them to

encompass various transformations, changes and emerging situations. This flexibility also allows for conflicts among the principles, enabling them to be applied to an unlimited number of environmental casesⁱ. Furthermore, this flexibility enables the judiciary and the administration to prioritise and select the most suitable principle for each case, with the aim of achieving the best possible protection, as set out in Article 3 of the Environmental Protection Law within the framework of sustainable development. These principles differ in strength, resulting in varying degrees of protection: some are purely advisory and lack legal force, while others can be enforced by the courts. From this perspective, we pose the following question:

What role can the general environmental principles enshrined in Algerian legislation play in protecting natural resources from degradation? To answer this question, we have divided our research into two sections. The first section discusses the general environmental principles established by the legislator to guide the protection of natural resources, while the second section examines the legal protection of resources based on these principles.

The importance of this topic lies in the fact that many resources are wasted in Algeria with no response from the relevant authorities. Our aim is therefore to clarify the legal means available for this protection and how to implement them in practice, particularly with regard to the general principles, which represent a new concept. Thus, elucidating the various functional aspects is essential to understanding how to apply them and facilitating their implementation.

Section One: General Environmental Principles of a Guiding Nature and Their Role in Protecting Natural Resources

The legislator has limited some of these principles to a declarative and guiding form, contributing to raising awareness and fostering a collective sense of responsibility for preserving the environment and its resources. These principles include: the principle of biodiversity conservation (first topic), the principle of non-degradation of natural resources (second topic), the principle of information and participation (third topic), and the principle of integration (fourth topic).

First topic: The Principle of Biodiversity Conservation

Biodiversity is defined as “the natural diversity of living organisms, considering the diversity of ecosystems, species, communities, and genetic diversity over time and space, as well as the organisation and maintenance of ecosystems at biogeographical levels”ⁱⁱ. Recognising its importance, a special convention was dedicated to it at the 1992 Earth Summitⁱⁱⁱ. At the national level, the protection of biodiversity is enshrined in Law No. 03-10 on environmental protection. This law includes a principle that is used to assess the impact of activities on biological species. This is stipulated in the first paragraph of Article 3, which states: ‘This law is based on the following general principles: the principle of biodiversity conservation, according to which every activity must avoid causing significant harm to biodiversity.’^{iv}

Biological species fall into several categories based on various levels, including genetic and species levels, as well as the environments they inhabit and cultural levels. This diversity provides numerous raw materials that are essential for producing goods and services such as food products, clothing, construction materials, timber, industrial materials and ores, and medicines. This highlights the connection between various natural resources and the survival of these species, as many depend on their presence and balance. Therefore, preserving biodiversity ensures the renewal and continuity of many natural resources, preventing their depletion.

Second topic: The Principle of Non-Degradation of Natural Resources

This principle aims to preserve these resources in all their forms from rapid decline during exploitation. It encompasses both renewable and non-renewable resources, as well as all components of the Earth’s natural environment^v. The aim of this principle is to balance the demands of development with the sustainability and renewal of these resources for the benefit of future generations. As resources manifest in various forms distributed across elements of nature, preserving

them also entails protecting the air from pollution, safeguarding the climate from change, and preserving water and soil resources.

The principle was first articulated in Principle 14 of the Rio de Janeiro Declaration in 1992^{vi}, and was later enshrined in Article 3, Paragraph 2 of Algeria's Law 03-10 on environmental protection within the framework of sustainable development.

It serves as the legal framework for preventing the degradation of environmental resources and guides the assessment of public conduct in their protection. It forms the basis for evaluating permit applications for any activity; activities that are shown to harm these resources are not authorised. Furthermore, this principle can adapt to new situations: if harm becomes evident even after permits have been granted, the necessary legal measures can be taken to mitigate such harm under this principle.

Third topic: The Principle of Information and Participation

In order to achieve the optimal protection of environmental resources, it is essential that individuals contribute to this effort. This is because harming these resources has a direct impact on their livelihoods, health and the future of their children. Many resources are fundamental to the survival of numerous communities, which often serve as the first line of defence against potential threats.

In order to fulfil their roles effectively, individuals must be aware of the dangers posed by harming these resources. This awareness can be fostered through education and by disseminating information about the facts and projects that may impact the environment, and by informing the public. People should have the right to freely access information held by the authorities in this field, so they can participate in decision-making processes and help find the most effective protection solutions^{vii}. Participation should occur through various methods and mechanisms that enable citizens to express their opinions, such as consultation, public inquiries and general discussions^{viii}.

This right is enshrined in Principles 19 and 20 of the 1972^{ix} Stockholm Declaration, as well as in Principle 10 of the 1992 Rio Declaration. It has also been codified by the Algerian legislator in Paragraph 8 of Article 3 of Law 03-10 concerning environmental protection^x.

The principle of information and participation plays a crucial role in protecting environmental resources because it enables the monitoring of activities that harm these resources and alerts the relevant authorities, allowing them to make timely decisions. Thus, it accelerates intervention to protect these resources, where time is undoubtedly critical to the survival of a species or resource.

Furthermore, by encouraging citizens to participate in effective environmental protection decisions, this principle fosters a sense of importance regarding the preservation of the environment and its resources. In this way, individuals transition from being mere participants to becoming advocates who develop ideas for protection and innovate ways to assist in this effort through collective frameworks, whether through voluntary actions or fundraising initiatives that contribute to this cause.

Fourth topic: The Principle of Integration

In pursuit of development and economic progress, countries exploit environmental resources. However, as technology advances, the exploitation of these resources has reached levels that threaten their sustainability. To avoid this, it is essential to utilise these resources rationally through prior programming and planning, establishing strategies that balance environmental resource conservation with development. This is reflected in plans that set out future strategies for these resources, detailing how they should be exploited to ensure their survival and renewal.

The principle of integration is realised through several mechanisms, the most prominent of which is environmental planning. This is defined as 'a conscious concept and vision that serves as a regulator for all types of economic and social plans aimed at using environmental resources in a balanced and safe manner'^{xi}. This also encompasses technical environmental studies, including impact assessments and risk studies.

This principle has been enshrined by the legislator in Paragraph 4 of Article 3 of Law 03-10 on environmental protection, which states: 'The principle of integration requires that arrangements

related to environmental protection and sustainable development be integrated when preparing and implementing sectoral plans and programmes.^{xiii}

Despite its guiding nature, this principle plays a significant preventive role in protecting environmental resources by seeking to minimise harm before it occurs. Pre-planning, based on scientific principles, involves assessing the potential impact of projects, particularly environmental ones, before implementation. This approach adds new dimensions to the value of resources and their use, based on cost-benefit analysis and conservation methods. This has a positive impact on both the economy and the environment, ensuring the continuity and renewal of resources.

Section Two: Judicial Environmental Principles and Their Role in Protecting Natural Resources

Unlike previous principles, legislators have granted several environmental principles the necessary strength to be adopted as the basis for liability and judicial claims. The precautionary principle is applied in the absence of scientific certainty (First Topic), whereas the precaution principle is applied when certainty is available (Second Topic). If an activity causes damage to environmental resources, the owner is required to bear the costs of remediation under the ‘polluter pays’ principle (Third Topic). If it becomes difficult to find a solution to the harmful activity, it may be necessary to replace it (Fourth Topic).

First Topic: The Precautionary Principle

The rapid advancement of science produces phenomena and products whose effects are unknown due to their novelty, which may result in significant harm to the environment and public health. Such potential harms, for which a causal relationship has not yet been established, should not be ignored. Precautionary measures should be implemented to avoid severe and irreparable harm, even in the absence of scientific certainty. Continuous research should be conducted to identify the causes^{xiii}. Once definitive scientific certainty has been reached, the principle will no longer need to be applied^{xiv}.

This new dimension in protecting the environment and public health from unknown dangers necessitates several conditions for its implementation, including the absence of scientific certainty regarding the dangers and the possibility of harm occurring, with the requirement that the harm reaches a certain level of severity. The precautionary principle does not encompass minor nuisances or simple harms^{xv}.

This principle emerged within a legislative project aimed at ensuring air cleanliness in West Germany in 1970, and was adopted in 1974. Since then, it has been enshrined in numerous international agreements, either explicitly or implicitly^{xvi}, culminating in its inclusion in Principle 15 of the 1992 Rio Declaration. It has subsequently been incorporated into various domestic legislations. In France, for example, it was adopted in Article 5 of the Environmental Charter attached to the Constitution, as well as in Article L110-1 of the Environmental Code of 1995. At a national level, Law 03-10 on environmental protection considers the precautionary principle to be one of its foundational principles, as stated in Paragraph 6 of Article 3: ‘The precautionary principle requires that the unavailability of technologies due to current scientific and technical knowledge should not delay the taking of effective and proportionate measures to prevent the risk of severe harm to the environment, at an acceptable economic cost.’^{xvii}

Due to its high degree of flexibility, the precautionary principle plays a crucial and effective role in protecting natural resources, facilitating its implementation even in the absence of scientific certainty. Under this principle, the burden of proof is reversed; rather than the claimant having to prove the harm, the defendant must demonstrate that their activity is not causing the alleged damage. This maximises protection for the environment and all its resources, acting as a preventive shield against new threats and harms arising from ever-increasing scientific and technological discoveries. Notably, it obliges those responsible to prove that their activities do not cause harm, thereby

simplifying the process of proving damage — one of the main obstacles facing environmental advocates and the protection of natural resources.

Second topic: The Preventive Activity Principle and Priority for Correcting Environmental Damage at the Source

This principle involves taking the necessary measures to avoid known harms that may be difficult to address after they occur, as well as taking measures to contain the harmful effects of incidents after they happen and attempting to minimise these effects as much as possible. Consequently, the principle has two objectives: the first is to prevent damage that may be difficult to remedy after it occurs; the second is to reduce the costs that would be incurred in removing and repairing environmental damage^{xviii}.

This principle has been recognised in several international agreements and texts, such as Principle 21 of the Stockholm Declaration and Principle 2 of the Rio Declaration. The Algerian legislator has enshrined the principle in Article 3, Paragraph 6 of Law 03-10 on environmental protection in the context of sustainable development.

The preventive activity principle and the priority for correcting damage at the source play multiple roles in preserving environmental resources from degradation. The first role is traditional, whereby any activity that threatens these resources is prohibited. If it is determined that a certain activity has caused damage to environmental resources, the owner of that activity is required to take the necessary measures to mitigate or reduce the damage as much as possible. Consequently, having incurred the costs of remediation, the party responsible for the damage will likely change their behaviour in future, thereby reinforcing the preventive aspect of the principle.

The regulatory authority implements this principle through methods of prohibition and obligation. Any activity that endangers these resources is prohibited, and those responsible are required to take action to prevent harm^{xix}. Additionally, prior authorisation or a permit must be obtained for any activity, preceded by technical studies confirming its non-hazardous nature to the environment and its various resources^{xx}. Activities with potentially serious environmental implications are not permitted.

Third topic: The Polluter Pays Principle

This principle involves transferring the costs of pollution control from states to those responsible for pollution, whether public or private entities, in order to address the issue at its source^{xxi}. In an environmental context, this principle has two meanings. The first is that anyone whose activity causes harm must pay appropriate compensation. The second is that the person responsible for the harmful activity must cover all the costs necessary to eliminate and prevent such damage^{xxii}.

This principle first appeared in Recommendation No. 72-128, issued by the Organisation for Economic Co-operation and Development (OECD) on 26 May 1972. It was later enshrined in Principle 16 of the 1992 Rio Declaration. It has also been recognised by national legislators as one of the foundational principles of environmental protection law, as stated in Paragraph 7 of Article 3: 'The polluter pays principle stipulates that any person whose activity causes or may cause damage to the environment or any of its components bears the expenses of all measures for pollution prevention and mitigation, as well as the restoration of places and their environments to their original state.'

The polluter pays principle serves several functions: it distributes the costs of pollution among those responsible; it provides financial resources for preventing and remedying environmental damage; and it obligates the polluter to cover the costs of preventing, removing or reducing the pollution they have caused^{xxiii}.

The polluter pays principle's high degree of flexibility allows it to be applied to protect environmental resources through various administrative, civil, financial and even penal means. Administratively, this is manifested in the costs of technical studies required for obtaining prior authorisation for any activity, which the legislator imposes on the applicant. It also involves imposing environmental fees and levies of various kinds to provide financial resources for covering

the cost of removing damage. Financial means share this characteristic as well. In civil law, it is applied by establishing effective rules of civil liability for harming environmental resources that align with the technical and legal specifics of such damage. Penal application involves imposing criminal and financial penalties on polluters who cause harm to these resources.

Fourth topic: The Substitution Principle

This principle involves replacing an activity that has been confirmed to harm the environment and public health with one that poses less risk. The cost of the new activity is irrelevant as long as it provides adequate protection for the environment and public health. It is not necessary for the new activity to be entirely harmless; it is sufficient for it to be less harmful than the previous activity. This aligns with environmental protection requirements, which necessitate minimising or reducing harm as much as possible.

The Algerian legislator has enshrined this principle in Article 3, Paragraph 3 of Law 03-10 on environmental protection in the context of sustainable development. This article states: 'The substitution principle involves replacing an environmentally harmful activity with one that poses less risk, even if the latter is costly, provided it is suitable for the environmental values being protected.' On 18 December 2006, the European Parliamentary Committee on the Environment, Public Health and Food Safety (REACH) approved an executive regulation in Brussels concerning the registration, evaluation, authorisation and restriction of chemical substances. The aim is to halt the production of many hazardous materials that are detrimental to the environment and public health, replacing them with environmentally friendly chemical products^{xxiv}.

Implementing the substitution principle to protect environmental resources from degradation encourages the research and development of solutions that provide maximum protection for these resources. It requires that every harmful activity create an alternative that either eliminates the harm or reduces it as much as possible, regardless of the cost, with the ultimate goal of achieving an activity that is entirely environmentally friendly.

Furthermore, it provides an alternative solution when other principles fail to strike a balance between development demands and environmental protection.

Conclusion:

In conclusion, our research shows that, when balancing the demands of economic development with the requirements of environmental protection and its various resources, the Algerian legislator has not limited itself to rigid administrative regulatory means. Instead, they have established a set of general principles that vary in intensity and strength. Some of these principles are declarative and advisory, playing a preventive role by raising awareness and fostering a collective sense of responsibility for preserving environmental resources. Others have a judicial character, whereby those who cause harm to these resources are held accountable for the costs of remediation or mitigation.

These principles are characterised by a high degree of flexibility and generality, enabling them to address most situations in the environmental field, including emerging issues. This approach aligns with the unique nature of environmental resource protection, where it is challenging to define and limit all violations due to the diverse and overlapping legislation distributed across various sectoral laws. This approach provides unity and clarity in legal texts, ensuring their effectiveness, particularly since it allows for conflicts among them. It gives the judiciary and the administration discretion to prioritise and apply the most effective and protective principles.

For the general principles to fulfil their intended role in environmental protection, particularly with regard to resources, collaborative efforts from legal scholars are essential to clarify how they can be realised by the administration and judiciary. Both should expand their discretionary powers to translate these principles into clear regulatory content.

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Footnotes:

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- ⁱ- Yves Jégouzo, The General Principles of Environmental Law, RFDA, 12 (2) March-April 1996, p. 234.
 - ⁱⁱ- Hadad Said, Legal Administrative Mechanisms for Biodiversity Protection in Algeria, Master's thesis in Legal Sciences, Faculty of Law and Political Science, University of Sétif 02, 2015, p. 18.
 - ⁱⁱⁱ- The Convention on Biological Diversity 1992, ratified by Algeria under Presidential Decree No. 95-163, dated June 6, 1995, Official Gazette No. 32, 1995.
 - ^{iv}- Article 03 Paragraph 01 of Law 03-10, dated 19/07/2003, concerning environmental protection within the framework of sustainable development, Official Gazette No. 43, published on 20/07/2003, which dedicates Chapter Three of this law to the protection of biodiversity in particular and all environmental resources in general, with the first section titled Provisions for Biodiversity Protection, and subsequent sections covering air, water, aquatic environments, land, subsoil, desert areas, and living environments.
 - ^v- Jean-Marc Lavieulle, Law in Question: International Environmental Law, 2nd edition, Ellipses, Paris, 2004, pp. 08.
 - ^{vi}- Rio Declaration on Environment and Sustainable Development, adopted in 1992, www.ecologie.gouv.fr/IMG/agenda21/textes/rio.

- vii- Ben Mahra Nassima, *The Role of Environmental Media in Protecting the Environment*, Legal Journal Al-Mi'yar, University Center of Tissemsilt, Algeria, Issue 08, 2013, p. 95.
- viii- Algerian legislation only recognizes consultation and public inquiry mechanisms and has adopted a narrow consultation approach.
- ix- United Nations Conference on the Human Environment, held in Stockholm from June 5 to 16, 1972.
- x- This principle is enshrined in this law, which states: "The principle of information and participation, whereby everyone has the right to be informed about the state of the environment and to participate in pre-decision-making procedures that may harm the environment." This law also allocates Chapter Two, concerning environmental management tools, with Section One dedicated to the right to environmental information and Section Six to the right of citizen participation.
- xi- Hassouna Abdel Ghani, *Legal Protection of the Environment within the Framework of Sustainable Development*, Doctoral thesis, Department of Law, Mohamed Khider University of Biskra, 2013, p. 141.
- xii- This principle has also been established in several international agreements, including Article 130R of the Maastricht Treaty 1992.
- xiii- Mediene Amel, *Classified Installations for Environmental Protection (Comparative Study)*, Master's thesis in Law, Faculty of Law and Political Science, University of Abou Bakr Belkaid, Tlemcen, 2013, p. 167.
- xiv- Here, preventive measures are taken, as discussed in: Farida Takharli, *The Precautionary Principle in International Environmental Law*, Master's thesis in International Law and International Relations, Faculty of Law, University of Algiers, 2005, p. 32.
- xv- Yahia Wanas, *Legal Mechanisms for Environmental Protection in Algeria*, Doctoral thesis in Public Law, University of Abou Bakr Belkaid Tlemcen, 2007, p. 303.
- xvi- This includes the United Nations Convention on the Law of the Sea dated December 10, 1982, concerning the protection and preservation of the marine environment, the Vienna Convention for the Protection of the Ozone Layer 1985, the Maastricht Treaty 1992 (Article 174), the Paris Agreement dated September 22, 1992, concerning the protection of the Atlantic marine environment, and the Cooperation Agreement for the Protection and Sustainable Use of the Danube River signed on May 29, 1994, along with several international agreements that refer to this principle, see: Laamri Mohamed, *The Precautionary Principle to Prevent Serious Environmental Harm*, Master's thesis, Faculty of Law, University of Abou Bakr Belkaid Tlemcen, 2016, pp. 86, 98.
- xvii- The principle is explicitly stated in Article Eight of Law 04-20, enacted on December 25, 2004, concerning the prevention of major hazards and disaster management within the framework of sustainable development, Official Gazette No. 84, 2004, and also in Chapter One of Chapter Four of Law No. 09-03 dated February 25, 2009, concerning consumer protection and fraud repression, Official Gazette No. 15, dated March 8, 2009, titled Precautionary Measures and the Precautionary Principle.
- xviii- Youssef Al-Azouzi, Article titled: *What Role Does the Precautionary Principle Play in Enhancing Environmental Sustainability Opportunities?* Retrieved from: <http://platform.almanhal.com/Files/2/97596>, p. 104, accessed on 12/17/2017, at 19:00.
- xix- These two methods have several applications included in sectoral environmental laws, which the legislator frequently relied upon in the field of environmental resource conservation, in Law 04-07, dated August 14, 2004, concerning hunting, Official Gazette No. 51/2004, and Law 05-12, dated August 4, 2005, concerning water, Official Gazette No. 60, and Law No. 84-12, dated June 23, 1984, concerning the general system of forests, Official Gazette No. 26, 1984, etc.
- xx- It is required to obtain a license before commencing the activity, with penalties including imprisonment for one year and a fine of five hundred thousand dinars, in addition to the possibility of temporarily suspending the activity until the license is obtained for anyone who engages in an activity that has serious environmental impacts without a license, and even after obtaining one, a temporary ban may continue until the areas are restored to their original condition, according to Article 102 of Law 03-10 concerning environmental protection.
- xxi- Mamer Rattib Mohamed Abdel Hafiz, *International Responsibility for the Transport and Storage of Hazardous Wastes*, Dar Al-Nahda Al-Arabiya, Egypt, 2007, p. 124. This links the application of the principle at the international level.
- xxii- Mohamed Bouat, Article titled: *The Effectiveness of the International Responsibility System for Protecting the Environment from Pollution*, Academic Journal of Social and Human Studies, Department of Economic and Legal Sciences, Hassiba Ben Bouali University, Chlef, Algeria, Issue 15, 2016, p. 173.
- xxiii- Polluter Pays Principle, Futura Sciences, <http://www.futura-sciences.com>.
- xxiv- REGULATION (EC) No 1907/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of December 18, 2006, concerning the registration, evaluation, and authorization of chemical substances, as well as the restrictions applicable to these substances (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC, and repealing Regulation (EEC) No 793/93 of the Council.