

# The Right to the Environment as a Human Right

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## Abstract:

A clean, healthy, safe, and sustainable environment is a prerequisite for the full enjoyment of human rights, given the interconnectedness of human rights and a protected environment. This was emphasized by the United Nations through its resolutions, the first of their kind in its history, issued by the Human Rights Council in 2021, specifically Resolution (48/13/RES/HRC/A), which affirmed that every individual, everywhere, has the right to live in a healthy, clean, and sustainable environment. The same was affirmed by the General Assembly in 2022, Resolution (76/300/RES/A), explicitly and publicly adding this right as a fundamental human right to the list of internationally recognized human rights.

Furthermore, this international recognition reflects the growing global awareness that environmental protection is inseparable from the protection of human dignity and fundamental freedoms. It also places a responsibility on states to adopt effective policies and legal frameworks to ensure the preservation of the environment for present and future generations.

**Keywords:** Right to a Healthy Environment, Human Rights, Environmental Protection, International Environmental Law, United Nations Resolutions.

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## Introduction:

The subject of human rights and the environment is relatively recent. Even if it is not from a distant period, there is a clear momentum currently witnessed in both human rights and the environment, as recent decades have seen great attention paid to them, especially from the international community, which later extended to the national or domestic level alike. Furthermore, the environment and its preservation are at the core of human rights due to the close relationship between them, as they affect human health and livelihood.

Accordingly, the importance of this study stems from the existing relationship between the environment and human rights, especially in light of the devastating impact on human rights witnessed in our contemporary world as a result of environmental changes and threats.

Perhaps the question raised regarding this study is:

**Is the right to the environment truly considered a human right?**

**Objectives of the Study:** This study seeks to achieve the following objectives:

1. To clarify the concept and meaning of the right to the environment as a human right.
2. To examine the development of international recognition of the right to the environment within international conventions, conferences, and organizations.

3. To highlight the legal recognition of the right to the environment in national legislations, particularly within the Algerian legal system.

**Methodology of the Study:** To achieve the objectives of this research, the study relied on the following methodologies:

1. **The descriptive approach:** used to describe the concept of the environment and the right to the environment as a human right.
2. **The analytical approach:** used to analyze international and national legal texts related to environmental protection.
3. **The comparative approach:** used to compare the recognition of the right to the environment in different legal systems and international instruments.

**Structure of the Study:** Based on the nature of the topic, the study is divided into two main axes:

**First Axis: The Meaning of the Right to the Environment**

- Definition of the Environment
- Definition of the Right to the Environment

**Second Axis: Recognition of the Right to the Environment**

- Recognition of the Right to the Environment at the International Level
- Recognition of the Right to the Environment at the Domestic Level

**First Axis: The Meaning of the Right to the Environment**

The right to the environment is considered one of the modern rights that emerged with the development of the human rights system, due to the increasing environmental challenges and their direct impact on human life and health. Therefore, it has become necessary to clarify the meaning and dimensions of this right as a fundamental basis for ensuring a clean, healthy, and sustainable environment for individuals and societies.

**First: Definition of the Environment**

Since the law has strived to protect the environment, this means that it represents a significant value among other values, and this is through confronting any activity in a way that affects its elements; hence, it is indispensable to reveal the nature of the environment from all aspects. The definitions of the environment can be categorized according to its concept, whether broad or narrow, just as its evaluation can differ according to whether it is a doctrinal or legal definition. This is outlined as follows:

**1. The Doctrinal Definition of the Environment:**

From a doctrinal perspective, there have been many legal opinions that have strived to establish a comprehensive and accurate definition of the term "environment." Some jurists have stated that the environment includes everything encompassing the natural aspect and nothing else, and that the expression of the environment in its broad perspective is applied to express a set of psychological, civilizational, and cultural factors in addition to the environment in the concept of the material aspect <sup>1</sup>.

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<sup>1</sup> - Salah al-Din Amer, Introduction to the Study of Public International Law, Dar Al-Nahda Al-Arabiya, Cairo 2007, p. 908.

Thus, it is: "everything that surrounds a person." Accordingly, the environment encompasses all the factors that affect the surroundings in which a person lives, and according to this definition, the environment is limited to the material aspect only, or the surroundings in which a person lives <sup>2</sup>.

On the other hand, the narrow and specific trend regarding what is meant by the environment considers that the word "environment" is a general term that lacks the characteristics of renewal and restriction, unlike the proponents of the broad trend who give meanings close to the word environment, mostly like the word "nature," "framework of life," and "inherited land." Thus, the meaning of the environment according to the proponents of this opposing trend is "everything that provokes the behavior of the individual or group and affects it" <sup>3</sup>.

## **2. The Terminological Definition of the Environment:**

Terminologically, the environment is defined as the physical surroundings in which a person lives and what it includes of air, water, soil, space, and living organisms, in addition to the facilities that are operated to satisfy their needs. It clearly appears <sup>4</sup>, according to this definition that the environment consists of two elements: a natural element and an artificial element, which we will explain as follows <sup>5</sup>:

- The Natural Element: This element is termed the natural environment because it includes living elements, which means various living organisms including humans, and non-living elements, which consist of the three primary elements: air, water, and soil.
- The Artificial Element: This element is called the newly emerged or man-made element, as its concept includes all activities carried out by humans in the environment in which they live, along with the means or tools invented by humans to control it, the facilities they have built, or the economic, political, social, and cultural systems they have developed with the aim of regulating their relationship with the environment.

## **3. The Legal Definition of the Environment:**

The environment has become of great importance at the present time, serving as a core value of the contemporary international community, so most countries have moved to affirm this value and protect it through various legal means. It should be noted that a group of legal jurists believes that the law has had a major contribution to the difficulty of finding a clear definition of the environment. This is due to several reasons, such as the use of the term to express different and multiple concepts, which actually creates difficulty in controlling the meaning of the environment, especially given the differences among various legislative systems. Another trend of legal jurists argues that most of the legal texts related to the environment contained in various legislations are literally translated

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<sup>2</sup> - Bouzidi Boualem, The Human Right to a Sound and Clean Healthy Environment in Algerian Law, Master's thesis in Public Law, specialization in Rights and Freedoms, Department of Legal and Administrative Sciences, University of Adrar, 2010-2011, p. 07.

<sup>3</sup> - Daoud Al-Baz, Protection of Public Tranquility: Treating the Problem of the Era in France and Egypt, Noise, a comparative study in administrative, environmental, and Islamic legislative law, Dar Al-Nahda Al-Arabiya, Cairo, 1998, p. 18.

<sup>4</sup> - Majed Ragheb Al-Helou, Environmental Protection Law in Light of Legislation, Munsha'at Al-Ma'arif, Alexandria, 2002, p. 31.

<sup>5</sup> - Abdelaziz Mkhaimer, The Role of International Organizations in Environmental Protection, Dar Al-Nahda Al-Arabiya, Cairo, p. 26-27.

texts from foreign legislative texts or international conventions, which largely led to creating ambiguity and confusion around the content of the legal texts, their significance, and the meanings they contain <sup>6</sup>.

However, despite this reality, the legal aspect cannot be ignored due to its important role in determining what is meant by the environment, whether within the framework of international codification or comparative legal systems.

- **Definition of the environment under international conventions:** Many international conferences have made a prominent contribution to defining the environment. Among the most important of these definitions is the one provided by the Stockholm Conference. The conference affirmed that the term emerged within the framework of the United Nations Conference on the Human Environment, which was held in the Swedish city of Stockholm in the period from June 5–16, 1972, serving as an alternative to the term human environment (*Le milieu humain*). It provided a broad concept for the environment, encompassing various meanings and elements. According to this conference, the environment is a mass of natural, social, and cultural systems and factors that constitute the surroundings in which both humans and other organisms live, from which they derive their sustenance and in which humans perform their activities; thus, it is clearly evident that the environment according to this trend is nothing but a dynamic reservoir<sup>7</sup>.
- **Definition of comparative legal systems for the environment:** Many domestic legislations have worked on defining the environment, similar to the Algerian legislator who defined it under Article 4 of Law 03-10 dated July 19, 2003, which stated that the environment is: "a dynamic intertwined set of species of flora and fauna, distinct organs and their non-living features, which according to their interactions form a functional environmental unit consisting of abiotic and biotic environmental resources such as air, water, land, underground, flora, and fauna, including the genetic heritage and the forms of interaction between these resources, as well as places, landscapes, and natural monuments"<sup>8</sup>.

It clearly appears to us through this text that the Algerian legislator focused in its definition of the environment on the broad concept, which signifies its total inclusion of the various elements of the natural environment—meaning the three natural elements of water, air, and soil, as well as tourist sites, antiquities, artistic and architectural heritage, and industrial facilities.

As for the Nature Protection Law issued by the French legislator on July 10, 1967, it adopted a broad concept of the term environment in its first article, stating that the environment is a term used to express the three elements of nature (*la nature*), in addition to various plants and animals and natural resources including mines, places,

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<sup>6</sup> - Ahmed Mohamed Hashishi, *The Legal Concept of the Environment in Light of the Principle of the Islamization of Contemporary Law*, First Edition, Dar Al-Fikr for Alexandria University, 2001, p. 08.

<sup>7</sup> - Ali Adnan Al-Fil, *The Legislative Methodology in Environmental Protection (A Comparative Study)*, First Edition, Dar Al-Thaqafa for Publishing and Distribution, Jordan 2012, p. 49.

<sup>8</sup> - See the text of Article 4 of Law No. 03-10 dated July 19, 2003, relating to the protection of the environment and sustainable development.

and tourist natural sites, along with the three elements constituting nature: soil, air, and water as a fundamental element for life <sup>9</sup>.

### **Second: Definition of the Right to the Environment**

The concept of the right to the environment has proven attractive all over the world. This concept includes the belief that everyone has the right to live in an environment suitable for their health and well-being, making the subject of the right to the environment one of the important topics in the field of human rights, particularly the right to a healthy environment. This is because every individual has the right to live and work in a non-harmful, non-toxic, and sustainable environment. Significant attention was given to this right at the United Nations Conference on the Human Environment in Stockholm in 1972, where this conference highlighted the close relationship between environmental quality and human well-being. Furthermore, significant progress has been made in recognizing this right at the international level in recent years, particularly in 2021, when the UN Human Rights Council adopted a resolution recognizing the human right to a clean, healthy, and adequate environment.

**To define the right to the environment, two trends have emerged, which are as follows:**

#### **1. Definition of the right to the environment in terms of its content:**

Also termed the objective trend, according to this trend, the right to the environment is defined as: "The right to live in an ecologically balanced environment suitable for developing life while preserving natural landscapes"<sup>10</sup>.

There is also a broad definition stating "that the environment is the surroundings with which the human and their health are connected in society, whether created by nature or made by humans" What is understood from this definition is that it affirms that the <sup>11</sup>. environment consists of two elements. The first is one where humans have no part in its existence, meaning the natural element (such as deserts, seas, and space). The other is a man-made, industrial, or constructed element, which includes the built environment and land uses for agriculture and construction.

Accordingly, the right to the environment according to this trend is: "The right to provide the human with an adequate environment that helps them live with dignity, and to develop their personal capabilities."

Thus, the right to the environment is the right to live in a clean and healthy environment, and this helps individuals to have a safe and adequate living.<sup>12</sup> As for the term environment as a human right and defining its concept in terms of the quality of the environment to be protected, some establish an objective concept for the right to environmental safety, stating that: "The right to the existence of a balanced environment is a value in itself, and this entails the necessity of maintaining and improving natural systems and resources, and repelling pollution or unfair degradation of its resources" <sup>13</sup>.

<sup>9</sup> -Bouzidi Boualem, previous reference, p. 09.

<sup>10</sup> - Faiza Bouchama, The Environment as a Human Right, Journal of Human Rights and Public Freedoms, Volume 08, Issue 01, Year 2023, p. 05.

<sup>11</sup> - Ben Atallah Ben Aila, International Protection of the Right to the Environment, Jeel Journal of Human Rights, Issue 02, June 2013, p. 09.

<sup>12</sup> - Faiza Bouchama, previous reference, p. 05.

<sup>13</sup> - Ben Atallah Ben Aila, previous reference, p. 60.

This once again emphasizes the issue of the right to a healthy, organized, and sound environment.

This complies with all international and national charters and texts alike, which have affirmed that the environment and everything included in its broad concept is considered a common heritage, and the responsibility for protecting this heritage and working to develop it at the national and international levels falls upon all states and their individuals<sup>14</sup>.

## **2. Definition of the right to the environment in terms of persons:**

The right to the environment according to the proponents of the personal trend is: the right to provide an adequate environment for human life in order to live with dignity in a medium that allows for the harmonious development of their personality. It means the necessity for a person to live in a peaceful and healthy environment in a way that enables them to think correctly and care about the necessity of effective and productive participation in society and the enjoyment of life<sup>15</sup>.

The reality is that the right to environmental safety is characterized by its broad content because it has several dimensions, whether in terms of the parties concerned with it or those benefiting from its protection. The right to the environment is characterized by being in the category of individual and collective rights. It is an individual right considering its content, which is primarily based on meeting the necessary needs of individuals, such as providing healthy natural resources, along with ensuring the prevention of the use of nuclear weapons and disarmament, since these factors would have a negative impact. It is considered one of the rights inherent to human life and guaranteed to all individuals equally, which cannot be waived, and for which the state must take all necessary measures and methods to ensure its protection. The state is primarily responsible for maintaining this right and abstaining from everything harmful to the health or well-being of all individuals.

Perhaps this is what the Algerian legislator affirmed through the 1996 Constitution, where it explicitly stipulated that all citizens equally have the right to health care, and the state bears the responsibility of providing all means to prevent epidemic and infectious diseases and working to combat them. This is through Article 54 of it. The<sup>16</sup> human right to a sound environment was explicitly affirmed through the 2016 Constitution in its preamble, along with Article 68, which affirmed the right of every citizen to enjoy a sound environment and that the state bears the responsibility of preserving the environment<sup>17</sup>.

## **Second Axis: Recognition of the Right to the Environment**

The right to the environment as a third-generation human right must be built on the idea of the necessity of solidarity between peoples to ensure its achievement and guarantee it to all individuals without discrimination, provided that this right is considered one of the

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<sup>14</sup> - Ibid., p. 61.

<sup>15</sup> -Youssef Bougmah, The Right to the Environment as a Human Right, Journal of Law and Political Science, Volume Ten, First Issue, p. 107.

<sup>16</sup> - Djamel Wanouqi, Enshrining the Right to the Environment as a Human Right and its Place in International Instruments and Constitutions, Journal of Legal and Political Sciences, Issue 17, January 2018, p. 88.

<sup>17</sup> - Ibid., p. 88.

most important rights in the field of public rights and freedoms. The issue of recognizing this right occurred at three levels, which we will work on clarifying through the following two points:

**First: Recognition of the right to the environment at the international level**

The right to the environment found its place among international charters after many efforts, after it had been viewed modestly or only through its sub-elements. International conferences were the first to urge and enshrine this right, and over time it took its place among the constitutions and internal legislations of countries.

**Accordingly, we will clarify these international efforts made toward the recognition of this right as follows:**

**1. The right to the environment through international environmental conferences:**

Among the most important of these conferences is the Stockholm Conference of 1972. Even if there was no international instrument in this conference stipulating the right to a clean environment, the conference produced the Stockholm Declaration, which contains many principles-about 26 principles-in addition to 109 recommendations that came within an action plan, where the connection between the environment and human rights was made through the first principle of this conference's declarations.<sup>18</sup> Added to this is the Rio de Janeiro Conference of 1992, known as the Earth Summit, which was held exactly about 20 years after the Stockholm Conference. Its goal was to crystallize the strategies and measures necessary to stop the effects of environmental degradation.<sup>19</sup>

The necessity of preserving a pure environment suitable for individuals' lives was further emphasized through the World Summit on Sustainable Development held in Johannesburg in 2002, alongside many international conferences such as the UN Climate Change Conference in Copenhagen in 2009, the UN Climate Change Conference in Cancun in 2010, the Durban Conference in South Africa in 2011, and the UN Climate Change Conference in Paris in 2015.<sup>20</sup>

**2. The right to the environment within the framework of international organizations:**

General and specialized international organizations have long been considered an appropriate international legal framework for intensifying and unifying international efforts to consolidate the right to the environment. In this context, we mention the efforts of the United Nations Environment Programme, which was established as a subsidiary body in 1972 at the initiative of the UN General Assembly. The mission of this body is based on encouraging activities and ensuring the implementation of the action program specified in the Stockholm conference. Its tasks also include submitting a detailed report on environmental conditions directly to the Economic and Social Council, which in turn refers it to the UN General Assembly to take whatever recommendations it deems necessary.<sup>21</sup>

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<sup>18</sup> - Ben Atallah Ben Aila, previous reference, p. 61.

<sup>19</sup> - Report of the United Nations Conference on Environment and Development, Volume One, United Nations, New York 1993.

<sup>20</sup> -Faiza Bouchama, previous reference, p. 16.

<sup>21</sup> -Faiza Bouchama, previous reference, p. 19.

**3. The right to the environment within the framework of human rights conventions:**

- **The Universal Declaration of Human Rights:** The right to the environment was considered a clear objective among the objectives of the Universal Declaration of Human Rights, even if it was not explicitly stipulated. Perhaps this is inferred through the emphasis on the necessity for every person to enjoy a standard of living aimed at maintaining health and well-being for themselves and their family, which was emphasized within the framework of Article 25 of this declaration.<sup>22</sup>
- **The Two International Covenants:** Among what was affirmed through the International Covenant on Economic, Social and Cultural Rights, within the framework of Article 11, is the individual's right to an adequate standard of living for themselves and their family, such that the right to food falls within it. The same international covenant adds, through the text of Article 12, the individual's right to enjoy the highest attainable standard of physical and mental health. Therefore, it is necessary to take all essential steps to achieve this right, along with preserving various environmental and industrial aspects.<sup>23</sup>

**4. The right to the environment within the framework of regional organizations:**

Regional organizations have also become linked in one way or another to the environmental field and the activities it includes, similar to international organizations. Among the prominent examples of these regional organizations that played a key role in recognizing the right to the environment, we find, for example but not limited to:

- **Regional Organization for the Protection of the Marine Environment:** It is considered the first serious regional initiative to enshrine the right to the environment in the Arabian Gulf, where its content focused on fighting pollution, and its contracting took place in 1979. Many programs to protect the marine environment from pollution have been accomplished since 1982 at the initiative of the organization's secretariat, in addition to organizing collective training courses, workshops, and seminars aimed at increasing the awareness of the peoples of the region about the necessity of protecting the environment from pollution and thereby fulfilling the human right to an organized and healthy environment.<sup>24</sup>
- **The acts of the Organization of American States:** This organization has concerned itself with many environmental activities, particularly those related to environmental protection and nature, although its charter did not explicitly stipulate the subject. After the eighth conference of the organization was held in 1938, a committee of experts was formed to study problems related to nature in the American states, and it prepared a convention for environmental protection and wildlife preservation. It should be noted that the organization approved it in 1940 and it entered into force in 1942, aiming to protect the environment and take all necessary steps to manage wildlife and protect endangered species.<sup>25</sup>

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<sup>22</sup>- Djamel Wanouqi, previous reference, p. 85.

<sup>23</sup>- Djamel Wanouqi, previous reference, p. 85.

<sup>24</sup> - Charef Ikram Amina, Messaoudi Ahlam, The Evolution of the Right to the Environment in International Law and Algerian Law, Master's thesis, specialization in Environmental Law, University of Saida, Faculty of Law and Political Science, year 2020-2021, p. 36.

<sup>25</sup> - Charef Ikram Amina, Messaoudi Ahlam, previous reference, p. 34.

**Second: Recognition of the right to the environment at the domestic level**

Looking at the domestic laws of many countries, there is a noticeable expansion in the issue of recognizing the right to the environment as one of the rights representing the third generation of human rights. This is evident through the explicit provision for the protection of the right to the environment, and therefore we will clarify the center of this right within the framework of various comparative national legislations as well as the Algerian legislation.

**1. The right to the environment in Algerian legislation:**

The right to a sound environment for every citizen is among the rights explicitly affirmed by the Algerian legislator, which also determined a set of duties that fall upon both natural and legal persons alike with the aim of protecting the environment. This was through the constitutional amendment of 2020 within the framework of the text of Article 64.<sup>26</sup>

Also, among the most important laws issued by the Algerian legislator within the framework of environmental protection, we find Law No. 83/03 issued on February 05, 1983, whose first article clarified that the general and specific goal of this law is to implement a national program to protect the environment and natural resources, combat all forms of pollution, and improve living standards. Several regulatory texts were also issued in implementation of this law, including Executive Decree No. 87/143 dated June 16, 1987, related to classifying national parks and nature reserves, as well as Executive Decree No. 98/339 dated November 03, 1998, which sets the regulation applicable to classified installations.<sup>27</sup>

Among the legal texts stipulating the right to the environment within the framework of comparative laws, we find the Spanish legislation of 1978 through Article 45, which stipulated that: "everyone has the right to enjoy an environment suitable for the development of the person," while Article 123 of the Swiss Constitution of 1973 states: "The right to live in a sound and adequate environment and the development of life and the preservation of the countryside and nature".<sup>28</sup>

As for the Constitution of Mexico, it has affirmed the right of every person to live in an environment that matches their degree of development and level of well-being, according to what was stated in the text of Article 14 thereof. The same was affirmed by the Constitution of Ecuador through Article 14, where it explicitly recognized the right of the population to live in a balanced and healthy environment, with the aim of ensuring sustainability and a dignified living, considering this right among the inherent and recognized rights.<sup>29</sup>

Furthermore, the Constitution of South Africa has affirmed the right of everyone to an environment that is not harmful to their health or well-being, with the obligation to

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<sup>26</sup> - Bousseraj Zafira, Environmental Law and Sustainable Development, lecture presented by..., Third Year Law, Faculty of Law, University of Annaba, academic year 2021-2022, p. 22.

<sup>27</sup> - Taoussi Fatima, The Right to a Sound Environment in International and National Legislation, Master's thesis in Law, specialization in Human Rights and Public Freedoms, Faculty of Law and Political Science, Kasdi Merbah University, Ouargla, 2014-2015, p. 107.

<sup>28</sup> - Sidi Omar, The Human Right to Live in a Sound and Healthy Environment, Third Generation of Human Rights, African Journal of Legal and Political Studies, University of Adrar, Algeria, Volume 4, Issue 1, June 2020, p. 17.

<sup>29</sup> -Faiza Bouchama, previous reference, p. 25.

protect it for the benefit of present and future generations through reasonable legislative measures that contribute to the prevention of pollution and ecological degradation.<sup>30</sup>

**Conclusion:**

What we conclude through this study is that the issue of considering the right to the environment as a human right is somewhat a recent topic, as it is one of the newly developed subjects in international human rights law, given that it was not stipulated in the Universal Declaration of Human Rights nor the Two International Covenants except in passing.

The interest in this right came as a result of the efforts exerted by the United Nations by holding many international conferences, which in turn resulted in many declarations, strategies, and international and regional action plans that affirmed in their entirety the necessity for every human being to enjoy a clean, healthy, and sustainable environment. Furthermore, considering this right as a human right must be emphasized in many international forums, especially given the massive development taking place at the industrial and technological levels, and the resulting pollution that would affect all of humanity.

**First: Results**

1. The right to a clean, healthy, and sustainable environment is essential for the full enjoyment of all human rights due to their strong interconnection.
2. This right is relatively recent but has gained international recognition, especially through UN resolutions in 2021 and 2022.
3. The environment includes both natural elements (air, water, soil) and human-made elements, making its protection a shared responsibility.
4. Many constitutions and legal systems, including Algerian law, explicitly recognize and guarantee the right to a healthy environment.

**Second: Recommendations**

1. Strengthen environmental laws and ensure their strict enforcement to reduce pollution.
2. Raise public awareness about environmental protection and sustainability.
3. Promote international cooperation to address global environmental challenges.
4. Encourage sustainable development that balances economic growth with environmental protection.

**References:****First: Laws and Legal Texts**

1. See the text of Article 4 of Law No. 03-10 dated July 19, 2003, relating to the protection of the environment and sustainable development.

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<sup>30</sup> -Sidi Omar, previous reference, p. 17.

3. Daoud Al-Baz, *Protection of Public Tranquility: Treating the Problem of the Era in France and Egypt (Noise), A Comparative Study in Administrative, Environmental and Islamic Legislative Law*, Dar Al-Nahda Al-Arabiya, Cairo, 1998, p. 18.
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