

RESEARCH ARTICLE		The Preventive Mechanisms to Confront Ecological Crimes	
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Abstract			
There has been an increased interest in environmental problems and the resulting negative impacts on society and the universe in general. It became necessary to examine the legislative framework. Indeed, the Algerian legislator has kept pace with these new international developments through the issuance of Law No. 10-03, linking it to the increasing and escalating transformations within Algerian society, especially with technological advancement. The matter concerns the necessity to equip the state with legal mechanisms, including preventive ones, which allow for better protection of the environmental balance.			
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Introduction

Following the emergence and increasing severity of ecological problems, it became necessary to establish laws, the most important of which is the Environmental Protection Law within the framework of sustainable development under Law No. 10-03¹. The aim of this law is to provide protection in its broadest sense, as it is not merely the product of ordinary legislation but is embodied in international charters² and constitutional provisions. Although these may not specifically

¹ Law No. 10-03, dated July 19, 2003, concerning the protection of the environment within the framework of sustainable development, Official Journal of the Algerian Republic No. 43, issued on July 20, 2003.

² Algeria has ratified 17 conventions out of 50 signed, an increase of five conventions compared to the previous repealed Law No. 03-83 related to environmental protection. The legislator's approach to embodying the ratified international dimensions was through working to establish legal means to protect the environmental balance, quoted from Abdel Monem Ben Ahmed, Legal and Administrative Means for Environmental Protection in Algeria, PhD thesis, Faculty of Law Ben Aknoun, University of Algiers, 2009, p. 25.

mandate environmental protection, they at least guarantee the right to live in suitable environmental conditions, including the Algerian Constitution, as confirmed by Article 21.

From the latest constitutional amendment³, which states that in order to protect individuals and ensure their well-being, the state is committed to guaranteeing a healthy environment.

Therefore, this article is considered a reaffirmation of the constitutional founder's commitment to environmental issues, particularly regarding the reference to fossil fuels and ensuring their rational use, due to concerns about negative impacts on a healthy environment⁴.

Article 64 of this amendment also stipulates that the right to a healthy environment within the framework of sustainable development is a right of every citizen⁵.

Furthermore, Articles 1, 2, and 3 of the aforementioned Law No. 10-03 state that defining the goals it seeks to achieve and the principles on which it is based serve as preventive mechanisms underpinning the fight against all ecological hazards and environmental damages.

This leads us to pose the following problem statement:

On what do the preventive mechanisms rely to confront ecological damages? And what is Algeria's strategy to preserve the environmental balance?

To answer this problem, we decided to divide our research into two sections

Section One: The Legal Foundations on Which the Fight is based

Article 03 of Law No. 10-03 clarifies a set of general principles upon which the protection of this balance is based, which include defining the authorities of the various actors involved in protecting environmental balance (First Subsection). Additionally, the Algerian legislator adopted the Environmental Impact Assessment system (Second Subsection).

First Requirement: General Principles Stipulated in Law 10-03

Preventive measures in the field of environmental protection aim to take all means and procedures that lead to the development and improvement of the environment and consideration of its ecological laws, to prevent any threats that endanger it. Therefore, prevention means to avoid the occurrence of the problem⁶.

Among the innovations introduced by Law 10-03 concerning environmental protection within the framework of sustainable development are the international environmental principles, which the legislator considered as the foundations and pillars upon which the special law for protecting environmental balance is based⁷.

Accordingly, we will address these principles in the following subsections:

³ Presidential Decree No. 442-20 dated December 30, 2020, concerning the issuance of the constitutional amendment ratified in the referendum of November 1, 2020, Official Journal of the Algerian Republic No. 82, issued on December 30, 2020.

⁴ Maryam Loukal, The Right to a Healthy Environment in Light of International Human Rights Law and the Algerian Legal System, published article, Journal of Rights and Freedoms, Vol. 09, Issue 20, 2021.

⁵ This article constitutes an internal affirmation of human rights within the framework of what is known as third-generation rights, represented by the preservation of natural resources and environmental protection, which in turn represent the most important elements forming the subject of sustainable development. This contrasts with Article 68 of the 2016 constitutional amendment, which did not address the issue of sustainable development aimed at achieving equality between future generations and present generations in enjoying the same level of environmental resources, quoted from Abdelhamid Mellal, Legal Protection of Environmental Health in the Urban Field, PhD thesis, Faculty of Law and Political Science, University Center, Maghnia, Algeria, 2025, p. 64.

⁶ Ali Saidan, Environmental Protection from Pollution by Radiological and Chemical Substances, 1st edition, Al-Khaldounia, Algeria, 2008, p. 192.

⁷ Dust emitted from stone quarry and gravel plant facilities has led to the decline and contraction of green bushy areas that used to be food sources for many wild animals. Additionally, the noise generated by these quarry and gravel plant facilities during the day has caused many wild animals that graze during daylight to flee. All these factors caused many forest animals to graze in the orchards of nearby village residents due to the absence of grazing areas in the forest. Because these animals, which previously grazed during the day, turned into nocturnal animals due to the aforementioned disturbances, they began relying on their sense of smell since they cannot see at night. Their sense of smell leads them directly to the orchards because of the scent of vegetables, which results in the destruction of these orchards.

Branch One: The Principle of Biodiversity Conservation:

Biodiversity refers to the biological diversity in the plant and animal environment. According to this principle, every activity must avoid causing significant harm to biodiversity⁸ and preserve it.

and the continuation of life and achievement of natural balance as defined in Article 04 of the aforementioned Law No. 10-03⁹.

Branch Two: The Principle of Non-Degradation of Natural Resources:

According to this principle, no harm should be caused to natural resources such as water, air, soil, and underground resources, which in all cases are part of the sustainable development process and play a vital role in sustaining life, especially underground resources¹⁰.

Branch Three: The Principle of Substitution (Le principe de substitution):

The substitution principle aims to replace an environmentally harmful activity with another that is less dangerous to the environment, even if the risk remains somewhat elevated, as long as the activity is compatible with the system governing the protected environment.

It was derived from the Earth Summit conference and can be practically applied provided that the activities achieve the same objective, but the degree of environmental risk is reduced by substituting one activity with another.

Branch Four: The Principle of Integration (Le principe d'intégration):

According to this principle, environmental protection provisions must be integrated when preparing sectoral plans and programs and efforts must be made to implement Article 04 accordingly. This is what Law No. 10-03 stipulates in its Article 03.

Branch Five: The Principle of Preventive Action and Priority Correction of Environmental Damage at the Source (Le principe de prévention et la lutte à la source):

According to this principle, the best available technologies should be used at an economically acceptable cost, and anyone whose activity could cause significant harm to the environment must consider the interests of others before starting their activity¹¹.

Branch Six: The Precautionary Principle¹² (Le principe de prévention)

With the emergence of new types of technology, this era has witnessed the rise of new risks known as ecological risks. The damage caused by these risks is often difficult to estimate and influenced by uncertainty. By adopting the precautionary principle, the law has completely changed its perspective, acknowledging that it is necessary to take into account not only expected risks but also uncertain risks. This obligation of precaution is expressed in several ways: on one hand, it requires

⁸ Article 3 of the aforementioned Law No. 10-03 includes eight general principles. These are listed in the first chapter entitled General Provisions. These principles form the foundation of the Environmental Protection Law, as they are part of Algeria's preventive policy to preserve the environment. This policy is among the most complex legal topics due to the abundance and diversity of environmental rules and their relation to many sectors, including sustainable development and urban planning.

⁹ Article 04, paragraph 05 of Law No. 10-03 states: The alteration in living organisms from any source, including terrestrial and marine ecosystems and other aquatic ecosystems, as well as the ecological complexes they comprise. This includes biodiversity within species, among species, and the diversity of ecosystems.

¹⁰ However, reality is quite the opposite of what the state's policy, especially through the environmental law, aims to achieve. In some areas, stone quarry and gravel plant facilities continuously cause the deterioration of natural resources. Some regions rely on spring water for drinking and irrigation, and these water sources are located near quarry and gravel plant facilities. The vibrations caused by excavation, blasting, and the movement of heavy machinery threaten the disappearance of this divine blessing, as the frequent and continuous vibrations cause spring water to recede and become increasingly difficult to access.

¹¹ Article 03, paragraph 05 of the aforementioned law.

¹² Several international and regional agreements have been concluded that gradually developed the precautionary principle, including the 1985 Framework Convention for the Protection of the Ozone Layer and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer...

taking intensive protective measures more than what would be required by mere probability, and on the other hand, it entails taking protective measures against risks that are not at all probable¹³.

Branch Seven: The Polluter Pays Principle (Le principe du pollueur-payeur)

The goal that the legislator aimed to achieve by establishing this principle¹⁴ is to place the social cost burden of pollution on the polluter. In this way, it represents a form of financial pressure on the polluter to stop polluting the environment or at least reduce it.

The polluter pays principle includes compensation for the direct damages caused by the polluter to the environment. It thus covers ongoing or periodic polluting activities. However, there are other areas covered by the polluter pays principle as applied by European countries, which can be summarized as follows:

- First: The application of the polluter pays principle to residual damages: This means that the polluter's responsibility remains for residual damages if they violate the standards set by legislation, even if they have paid the prescribed fees through charges.
- Second: The application of the polluter pays principle to pollution caused by accidents: The Organization for Economic Co-operation and Development (OECD) has included pollution resulting from accidents by stipulating that the costs of preventive measures for pollution caused by accidents fall under the polluter pays principle. The purpose of this measure is to reduce the burden on the public budget for expenses related to pollution accidents by transferring them to the facility owner, thereby encouraging these owners to take necessary precautions to prevent such accidents¹⁵.

It can be said that the polluter pays principle is at the same time a preventive, punitive, and deterrent principle, as the independent polluter or producer is more motivated to reduce pollution at its source by establishing units within industrial facilities to combat crimes that disrupt environmental balance¹⁶.

Branch Eight : The Principles of Information and Participation (Le principe de l'information et de participation)

According to Article 02, paragraph 06 of Law No. 10-03, every person has the right to obtain information regarding the environment and its status, and also has the right to participate in advance when decisions that may harm the environment are taken.

Second Requirement: Environmental Impact Study System¹⁷:

The Algerian legislator adopted¹⁸ the Environmental Impact Study system under Law No. 03-83¹⁹ related to environmental protection, which defined it as a fundamental means to promote environmental protection aimed at assessing the direct and indirect impacts of projects on ecological balance and the living conditions and quality of life of the population.

¹³ Linda Sharaysha, The Specificity of the Precautionary Principle in International Environmental Law, published in Journal of Legal Thought, University of Mohamed Cherif Messaadia, Souk Ahras, Algeria, Issue 02, 2023, p. 154.

¹⁴ Article 03 of the aforementioned Law No. 10-03 established the Polluter Pays Principle as one of the general principles of environmental protection and defined it as follows: Every person whose activity causes or may cause environmental harm shall bear the costs of all measures to prevent pollution, reduce it, and restore the affected places and environment to their original condition.

¹⁵ Yahia Wanas, The Emergence of Sustainable Development through the Algerian Experience, published in Journal of Legal and Administrative Sciences, Faculty of Law and Political Science, University of Abu Bakr Belkaid, Tlemcen, Algeria, Issue 04, 2012, pp. 56-57.

¹⁶ - Jamila Hamida, The Legal System of Environmental Damage and Compensation Mechanisms, unpublished edition, Al-Khaldounia Publishing and Distribution House, Algeria, 2011, p. 212.

¹⁷ The emergence of the Environmental Impact Study in ecology dates back to 1936, when the United States enacted the Flood Control Act allowing the implementation of flood control projects through cost-benefit analysis. This established fundamental rules used for project evaluation. In 1972, this was called the industrial feasibility study. (Translated from Michel Prieur, Droit de l'environnement, 4th edition, Dalloz Delta, 2001; p. 96.)

¹⁸ It is worth noting that Algeria has internationally committed to implementing Environmental Impact Studies through its adoption at the Rio de Janeiro Conference, particularly via the United Nations Agenda 21, which in several of its chapters emphasizes the importance of Environmental Impact Studies to reduce environmental degradation. (Quoted from: Ahmed Lakhel, The Role of Local Communities in Environmental Protection, unpublished edition, Houma Publishing and Distribution House, Algeria, 2014, p. 138.)

Under this law, Executive Decree No. 78-90 related to the Environmental Impact Study²⁰ was issued, defining it as a prior procedure that applies to all major construction works or facilities that, due to their significance, may cause direct or indirect harm to the ecosystem, particularly public health, natural green spaces, animals, plants, preservation of sites and monuments, and good neighborhood relations.

As for the aforementioned Law No. 10-03, Articles 15²¹ and 16²² in Chapter Four clarified the system for evaluating the environmental impacts of development projects.

Accordingly, and as a necessary approach, we have decided to divide this section into two parts: the first part dedicated to the nature of projects subject to impact studies, and the second part addressing the content of the Environmental Impact Study system.

Branch One: The Nature of Projects Subject to Environmental Impact Study

Due to the severity and often irreparability of pollution cases and environmental degradation, current environmental protection policies tend to focus on mechanisms that guarantee the prevention of The occurrence of damages affecting the ecological balance leads to development projects being subject, in advance, to the Environmental Impact Study system²³.

According to Article 15 of the aforementioned Law No. 10-03, the projects that require an impact study are: development projects, fixed structures and facilities, factories, other technical works, and construction and development programs. Considering the scale of the works and their impact on the ecosystem, we deduce two criteria:

- First criterion: Linking the study to the size and importance of the works, development activities, and major facilities.
- Second criterion: Considering the operations that impact the environment. These effects may affect either the natural environment, including agriculture, natural spaces, animals, and plants, or the human environment, particularly public health, as well as sites, monuments, and good neighborhood relations.

Referring back to Article 16 of Law No. 10-03, which states that: The regulations determine the list of works that, due to the importance of their impact on the environment, are subject to environmental impact study procedures²⁴...

¹⁹ Law No. 03-83 dated February 5, 1983, related to Environmental Protection, Official Journal of the Algerian Republic No. 6, 1983 (repealed).

²⁰ Executive Decree No. 78-90 dated February 27, 1990, related to Environmental Impact Study, Official Journal No. 10, 1990 (repealed).

²¹ Article 15 of Law No. 10-03: Subject to prior Environmental Impact Study or Environmental Impact Summary depending on the case are development projects, fixed structures, factories, other technical works, and all construction and development works that directly or indirectly affect immediately or later the environment, particularly species, resources, natural habitats, ecological balances, and the framework and quality of life.

²² – Article 16 of Law No. 10-03 stipulates that: The content of the Environmental Impact Study shall be determined by regulation and shall include at least the following:

- Presentation of the planned activity
- Description of the original state of the site and its environment that may be affected by the planned activity...

²³ Yahia Wanas, Legal Mechanisms for Environmental Protection in Algeria, PhD thesis, Faculty of Law and Political Science, University of Abu Bakr Belkaid, Tlemcen, Algeria, July 2007, p. 8.

²⁴ The required procedures regarding the Environmental Impact Study are:

- Determining whether the project requires an Environmental Impact Assessment or not.
- Approval of the Environmental Impact Study or the environmental risk, after submitting 10 copies by the project owner to the regionally competent Wali for examination by the environmental authorities. This stage culminates in the Wali's decision to open a public inquiry.
- Opening of the public inquiry, which means inviting the public and civil society to express their opinions about the project.
- After posting a notice of the public inquiry in the concerned municipalities and the wilaya (province), and publishing it in two national newspapers, with clarification of the subject, its duration not exceeding one month from the date of posting – the times and places for the public to submit their comments in a numbered and indexed register for this purpose. This process is overseen by an appointed investigator assigned by the Wali, whose tasks conclude with a report sent to the Wali according to Articles 10 and 15 of Executive Decree No. 145-07.
- In case the project complies with environmental standards, an operating permit for the classified establishment is granted.

Refer to legal provisions Articles 07 to 19 of Executive Decree No. 145-07 specifying the scope, content, and procedures for approval of Environmental Impact Studies and summaries, Official Journal No. 34, issued May 22, 2007.

Besides the Environmental Protection Law, there are other laws that specify certain projects that must undergo impact studies, including Law No. 02-01 related to spatial planning and sustainable development, as well as the Coastal Protection and Enhancement Law. The extraction permits for tiles and their related materials are also subject to the Environmental Impact Study²⁵.

Branch Two: Content of the Environmental Impact Study System

The content of the Environmental Impact Study under Law No. 10-03 related to environmental protection is articulated in Article 16 as follows: A presentation of the planned activity, a description of the original state of the site and its environment which may be affected by the planned activity, a description of the potential impact on the environment and human health caused by the planned activity and the proposed alternative solutions, and a report on the effects of the planned activity on cultural heritage.

Additionally, the legislator defined in Article 4 of Executive Decree No. 145-07 concerning the scope of the impact study the entity responsible for preparing the study, limiting it to study offices under the Ministry of Environment, which perform the study at the expense of the project owner. This is also supported by Article 22 of the aforementioned Law No. 10-03²⁶.

The aim of the Environmental Impact Study remains to avoid and reduce the negative impact of the project, improve and enhance its positive effects on the environment, and assure the population regarding the project's negative impact²⁷.

Second Section: Licensing, Prohibition, and Obligations System in the Environmental Field

The Algerian legislator dedicated Chapter Five of Law No. 10-03 to special legal systems. Article 18 addresses classified establishments, while Article 19 discusses the necessity of These establishments are subject to a licensing request for their exploitation (First Requirement), alongside the application of prohibition and obligation systems in the field of environmental protection.

First Requirement: The Licensing System²⁸

Combating all forms of environmental resource wastage requires the administration to impose certain obligations and restrictions through administrative permits, in order to prevent any damage that may harm the environment.

It is worth noting that there are many examples concerning the licensing system in the field of environmental protection. We will address the most important applications in construction (Section One) and classified establishments (Section Two).

Branch One : Building Permit

A building permit can be defined as an individual administrative act whose primary purpose is for the administration to ensure that the legislator's conditions or the construction works subject to the building permit application do not violate the legal provisions and substantive regulations of construction and urban planning²⁹.

Based on this, the building permit is considered a regulatory license, through which the administrative authority targets, by granting or refusing it, prior control over the establishment and implementation of construction works according to prescribed rules; thus, the building permit has a declarative nature.

²⁵ Nour Eddine Hamsha, *Criminal Protection of the Environment: A Comparative Study between Islamic Jurisprudence and Positive Law*, Master's thesis in Law and Sharia, Faculty of Law and Political Science, University of Hadj Lakhdar, Batna, Algeria, 2005, p. 48.

²⁶ The Environmental Impact Study or summary thereof is conducted at the expense of the project owner by a study office, expert office, or consultancy offices accredited by the Ministry of Environment.

²⁷ Janila Goudoudo, *The Effectiveness of Administrative Licensing Mechanisms in Land Development, Urban Planning, and Environmental Impact Studies in Achieving a Balance between Sustainable Development and Environmental Preservation*, article published in *Journal of Law and Political Sciences*, Issue 04, June 2016, p. 91.

²⁸ Licensing means the permission issued by the competent administration to carry out a specific activity. Licensing is merely a means of administrative control.

²⁹ Mohamed Sebti, *Building Permits in Algerian Law*, Master's thesis, Department of Administration and Finance, Faculty of Law, University of Algiers, 2001-2002, p. 8.

Reviewing the legal texts³⁰ concerning the procedures for preparing and issuing urban development contracts reveals a strong relationship between environmental protection and the building permit. The latter is considered one of the most important permits expressing prior control over the environmental and natural surroundings. To support this statement, we cite some examples, such as obtaining a building permit to protect forest areas. Accordingly, a permit must be obtained to erect a cabin or a woodworking workshop or to allocate space for storage of wood. This is related to the protection of forests from fires, pollution, grazing, and thus construction and works in national forest properties are not allowed except after obtaining a permit from the responsible ministry³¹.

Branch Two: Permit for Operating Classified Establishments

The Algerian legislator defined classified establishments in Law No. 10-03³² as those factories, workshops, nurseries, stone quarries, and mines – generally, establishments operated or owned by a natural or legal person, whether public or private, which may cause risks to public health, hygiene, safety, agriculture, ecological systems, natural resources, sites, landmarks, and tourist areas, or may cause disturbance to neighborhood comfort.

From this, we conclude that classified establishments are divided into:

First: Establishments subject to licensing

Article 19 of the aforementioned Law No. 10-03 defines the authority responsible for issuing the operating permits for classified establishments according to their importance and the degree of risk arising from their exploitation. It divides them into three categories:

- Establishments of the first category require a permit from the Minister in charge of the environment.
- Those of the second category require a permit from the regionally competent Wali (governor).
- Those of the third category require a permit from the President of the Municipal People's Assembly.

As for the timing of the permit application³³, it must be submitted at the same time as the building permit application.

Second: Establishments subject to declaration

These are establishments that do not cause any danger and have no direct impact on the environment. They do not cause risks or harms to natural resources or tourist areas; therefore, they do not require an Environmental Impact Study.

Second Requirement: Prohibition and Obligation System

Alongside the licensing system, which is considered the most important tool used by the administration in environmental protection, there is also the prohibition system (Section One), the obligation system (Section Two), as well as the reporting system³⁴.

Branch One : Prohibition System

³⁰ Executive Decree No. 19-15 dated January 25, 2015, concerning the procedures for preparing and delivering urban development contracts, Official Journal No. 7, 2015; amended and supplemented by Executive Decree No. 342-20 dated November 22, 2020, Official Journal No. 71, 2020.

³¹ Manal Bouamara and Ahmed Ben Massoud, Building Permit as a Mechanism for Environmental Protection in Algeria, published in Journal of Legal Studies, Issue 03, April 2023, p. 98.

³² Article 18 of the aforementioned Law No. 10-03.

³³ Regarding the procedures for obtaining the permit, they involve submitting the permit application to the granting authority. The application must include all information about the establishment owner, whether a natural or legal person, and specific information about the establishment, primarily the location of the facility, the nature of the intended activities, and manufacturing methods.

³⁴ The reporting system is a new method introduced by the legislator through recent legal texts related to environmental protection, specifically Article 61. This system aims to impose subsequent and continuous monitoring of activities and establishments, also known as post-monitoring. Therefore, it is considered a complementary method to licensing and is close to obligation since it requires the owner to submit periodic reports on their activities, enabling the administrative authority to enforce oversight. This method facilitates the administration's ability to track developments occurring in activities and establishments that pose environmental risks. Instead of sending agents to verify normal licensed operations, the activity owner provides the administration with information on new developments. The law stipulates various penalties for failure to comply with this obligation. For example, criminal penalties apply to any mine operator who fails to submit reports, including imprisonment from two to six months and fines ranging from 5,000 to 20,000 Algerian dinars.

Prohibition is a legal tool applied by the administration through administrative decisions, aiming to prevent certain actions due to the danger resulting from their practice. One of the characteristics of environmental protection laws is that most of their rules are mandatory, which individuals cannot violate because they relate to public order.

Referring to environmental protection laws, we find many such rules. Law No. 10-03 includes examples of prohibitions; for instance, Article 33 prohibits any action that harms biodiversity or disfigures the character of protected areas, as the legislator subjected them to special protection systems³⁵.

Under the new Water Law No. 12-05³⁶, the legislator prohibited any new construction, planting, erecting permanent fences, or any action that harms the preservation of valleys, lakes, ponds, and shores, or any act that obstructs the free flow of surface water in the courses of valleys. Many other legal texts have also adopted the prohibition approach in the legal protection of the environment³⁷.

From the above, it is clear that the legislator resorts to prohibition whenever there is a real danger threatening ecological balance and sees the necessity of intervention to preserve and protect it from any violation or aggression.

Branch Two : Obligation System

Obligation is the opposite of prohibition. While prohibition is a legal and administrative measure that prevents an activity (a negative measure), obligation requires performing a certain action (a positive measure).

Therefore, the administration resorts to obligating individuals to carry out certain actions to reinforce protection and preservation of the environment.

There are many examples of obligation in environmental legislation. For example, within the framework of air and atmosphere protection, Article 46, paragraph 2 of Law No. 10-03 states: Industrial units must take all necessary measures to reduce or cease the use of materials that cause ozone depletion.

CONCLUSION

In conclusion, this study highlights that achieving protection of the ecological system and ecological balance is realized through raising awareness among individuals about the necessity of preserving ecological balance. The existence of environmental legislation with deterrent and preventive mechanisms, organized administration, and strict judiciary alone is not sufficient to confront ecological environmental hazards unless civil society is sensitized, educated, and the role of active associations in environmental protection is strengthened.

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³⁶ Law No. 12-05 dated September 4, 2005, related to Water Law, Official Journal No. 60, 2005.

³⁷ Regarding the protection of forest resources, the legislator prohibits dumping waste and filling in forest properties, as well as placing or neglecting anything that may cause fires.

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