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From Constitutional Silence to Environmental Constitutionalism: The Evolution of Environmental Protection in Algeria(2016–2020)

من الصمت الدستوري إلى الدسترة البيئية: تطور حماية البيئة في الجزائر(2016–2020)

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ملخص:

تتناول هذه الدراسة مسار دسترة الحماية البيئية في الجزائر، إذ تتتبع المسار الذي قطعه المشرع الدستوري الجزائري من الصمت الدستوري المطوّل إلى الاعتراف الصريح بحق المواطن في بيئة سليمة بموجب التعديل الدستوري لسنة 2016، ثم إعادة صياغة هذا الحق ضمن إطار التنمية المستدامة في مراجعة 2020. وتنطلق الدراسة من فرضية أن هذا التحول لم يكن استجابةً للضغوط الدولية وحدها، بل نتاج تفاعل معقد بين الإرث الاستعماري، ومخاوف السيادة الوطنية، والتطور التشريعي البيئي الداخلي، والحراك الاجتماعي السياسي، ولا سيما احتجاجات الغاز الصخري عام 2014. وتُقيّم الدراسة الآليات المؤسسية وحقوق المشاركة البيئية المقررة بموجب دستور 2020، وتكشف عن فجوة تنفيذية قائمة تتجذر في الغموض الدستوري، ومحدودية الممارسة القضائية، والقصور الهيكلي للحوكمة البيئية.

كلمات مفتاحية:

الدسترة البيئية، الجزائر، الحق في بيئة سليمة، التعديل الدستوري ، التنمية المستدامة، الحوكمة البيئية.

Abstract:

This article examines the constitutionalization of environmental protection in Algeria, tracing a trajectory from prolonged constitutional silence to the explicit recognition of the right to a healthy environment in the 2016 constitutional amendment, and its subsequent reframing within the sustainable development paradigm in the 2020 revision. Situating Algeria within the broader global trend of environmental constitutionalism, the article argues that this evolution was shaped not solely by international normative pressures but by a complex interplay of colonial legacies, postcolonial sovereignty concerns, progressive domestic environmental legislation, and internal socio-political mobilization — most notably the 2014 shale

gas protests in southern Algeria. Drawing on comparative constitutional law and environmental governance literature, the article critically assesses the institutional mechanisms and procedural environmental rights established under the 2020 Constitution, evaluates their capacity to translate formal recognition into effective environmental protection, and identifies a persistent effectiveness gap rooted in ambiguous constitutional drafting, limited judicial practice, and structural governance deficits.

Keywords:
environmental constitutionalism; Algeria; right to a healthy environment; Constitutional reform; sustainable development; environmental governance.

INTRODUCTION

For decades, the international environmental law and governance regime — built through successive multilateral treaties, declarations, and institutional arrangements — proved insufficient to halt the accelerating ecological crisis it was designed to address. It is against this background of international regulatory inadequacy that states began, progressively and in increasing numbers, to embed environmental protection at the highest level of their domestic legal orders: the constitutional level (Kotzé, 2012). What had once been the province of administrative regulation and technical standard-setting ascended to the status of a fundamental right, a state obligation, and in some legal orders a foundational constitutional value. The 1972 Stockholm Declaration — which first articulated environmental protection as a matter of human rights rather than technical governance — and the 1992 Rio Earth Summit — which established sustainable development as the organizing principle linking environment and development — mark the two foundational milestones of this normative trajectory (Viola, 2022). More than 100 states have since incorporated the right to a healthy environment into their constitutional texts, a figure that has grown continuously since the early 1980s and which received renewed international impetus when the United Nations General Assembly, in its Resolution 76/300 of 2022, formally recognized the right to a clean, healthy and sustainable environment as a universal human right (Boyd, 2018; Amirante, 2022; Satria, 2025).

Algeria was not part of the first wave of this constitutional movement. For decades following independence, Algerian constitutions remained conspicuously silent on environmental rights, and this silence was not accidental. It was historically grounded: in the traumatic legacy of French nuclear testing in the Algerian Sahara between 1960 and 1966; in a postcolonial sovereignty consciousness that led Algeria to boycott the 1972 Stockholm Conference itself; and in a developmental ideology that viewed the international environmental agenda as a constraint on the sovereign right to exploit national resources in the service of economic independence. The gap between Algeria's progressive domestic environmental legislation — including the

landmark Environmental Protection Act of 1983 and its 2003 successor — and its constitutional silence on environmental rights persisted for over three decades, establishing a structural tension that grew increasingly difficult to sustain as the global constitutional movement deepened.

The constitutional turning point came, belatedly, with the 2016 amendment, which introduced Article 68 — the first explicit recognition of the citizen's right to a healthy environment in Algerian constitutional history. Four years later, the 2020 revision maintained this recognition while embedding it within the framework of sustainable development, generating significant scholarly debate about whether this reformulation represented a consolidation of the constitutional environmental guarantee or a regression from the protection established in 2016. These two constitutional moments together define the contemporary landscape of environmental constitutionalism in Algeria.

Against this background, this paper asks: **how did environmental protection become constitutionalized in Algeria, and to what extent do the constitutional reforms of 2016 and 2020 establish an effective legal framework for environmental governance?** Addressing this central question also raises several related issues: what historical and political forces shaped Algeria's distinctive pathway to constitutional environmental recognition? What is the precise content and normative architecture of the framework established by the 2016 and 2020 amendments? And does that framework — in its institutional design and procedural mechanisms — possess the capacity to translate constitutional declaration into effective environmental protection?

This article pursues three objectives. First, to situate Algeria's constitutional evolution within the global trend of environmental constitutionalism, identifying the specific historical forces — colonial, postcolonial, and political — that shaped its distinctive trajectory. Second, to provide a systematic analytical account of the content and evolution of Algeria's constitutional environmental framework across the 2016 and 2020 amendments, engaging critically with the Algerian doctrinal debate on the regression question. Third, to evaluate the institutional and procedural architecture through which the constitutional environmental right is meant to be enforced, identifying the structural deficits that produce a persistent effectiveness gap between constitutional text and environmental reality.

The study adopts a comparative analytical methodology, combining doctrinal analysis of constitutional and legislative texts with critical engagement with the relevant comparative constitutional law literature. Primary sources — constitutional texts, environmental legislation, and judicial decisions — are analyzed in their historical and political context. The comparative dimension draws on constitutional models from North Africa and France, to situate Algeria's choices within a broader constitutional landscape.

The article is organized in two parts. Part I traces Algeria's environmental constitutional framework in its entirety — its genesis, content, and evolution — from the decades of constitutional silence through the 2016 breakthrough to the 2020 revision. Part II then subjects this fully described framework to critical evaluation, examining the institutional architecture and procedural mechanisms through which the constitutional right is — or fails to be — made effective in practice.

PART I- *Algeria's Environmental Constitutional Framework: Genesis, Content, and Evolution*

Tracing the emergence of environmental constitutionalism in Algeria requires two distinct analytical processes. first situating Algeria within the global constitutional trend: to understand why most of the world's constitutions came to include environmental rights provisions, and why Algeria was, for so long, absent from that movement. Second following the domestic trajectory through which Algeria moved from constitutional silence to explicit constitutional recognition: the legislative groundwork laid without constitutional foundation, the constitutional transformations of 2016 and 2020 that together define Algeria's current environmental constitutional framework.

Section 1 : Global Environmental Constitutionalism and Algeria's Historical Positioning

This section proceeds in three stages. Through it we will first examine environmental constitutionalism as a global phenomenon : its origins, expansion, and the scholarly frameworks developed to analyze it. Then we will turn to the specific historical forces that led Algeria to adopt a posture of deliberate distance from the global environmental discourse for decades after independence. We will conclude it by tracing the constitutional chronology of silence from 1963 to 1996 : the period during which each successive Algerian constitution declined to recognize explicitly the environmental right.

A. Environmental Constitutionalism as a Global Phenomenon

Over the last fifty years, one of the most important advances in comparative constitutional law has been environmental constitutionalism, or the inclusion of environmental rights, obligations, and principles in constitutional documents (Daly & May, 2015; Kotzé, 2012). From a relatively marginal phenomenon in the early 1970s, when only a handful of constitutions contained any environmental reference, it has grown into a near-universal feature of contemporary constitutional design. More than 100 states now explicitly protect a right to a healthy environment at the constitutional level, and between 153 and 157 of the 193 United Nations member states include some form of environmental provision in their constitutions (Boyd, 2018; Vasilieva, 2024; Kocevski, 2025). The Te three main turning points of this normative evolution are the 1972 Stockholm Declaration, the 1992 Rio Conference on Environment and

Development, and the United Nations General Assembly Resolution 76/300 of 2022 , which formally recognized the right to a clean, healthy and sustainable environment as a universal human right (Viola, 2022; Satria, 2025).

The scholarly literature has developed two principal theoretical frameworks for analyzing the phenomenon. The dominant human-rights approach treats the right to a healthy environment as a third-generation solidarity right imposing both negative and positive obligations on state actors, and generating procedural entitlements — access to information, public participation, and access to justice — instrumentally necessary for effective realization (Daly & May, 2015; May, 2020). A more ambitious global constitutionalism approach grounds environmental protection in the constitutional recognition of ecological limits, intergenerational responsibilities, and planetary boundaries (Kotzé, 2012; Bosselmann, 2014; Qerimi, 2023). Empirical research consistently confirms that states with constitutional environmental rights provisions tend to adopt stronger environmental legislation and exhibit higher levels of governmental environmental accountability, though the gap between constitutional text and environmental reality remains a defining challenge across many contexts (Boyd, 2018; Daly & May, 2015).

B. Algeria's Historical Positioning: Colonial Legacy and Sovereignty Consciousness

Algeria's pre-2016 constitutional posture on environmental matters was not unintentional oversight but an active ideological position rooted in specific historical circumstances (Ghewas, 2024, p346). Any analysis of Algeria's relationship with environmental governance must begin with a fact that occupies a unique place in its national consciousness: France conducted seventeen nuclear weapons tests in the Algerian Sahara between 1960 and 1966 — four atmospheric explosions and thirteen underground tests — whose environmental and human consequences were catastrophic (Hennaoui & Nurzhan, 2023). This legacy established a formative association in the Algerian political consciousness between environmental discourse and external imposition: for a state emerging from one of the most violent decolonization struggles of the twentieth century, a global environmental agenda emanating from the former colonial powers was inherently suspect.

Algeria's boycott of the 1972 Stockholm Conference was accordingly a deliberate political statement rather than an oversight. The following year, Algeria hosted the Fourth Summit Conference of the Non-Aligned Movement in Algiers, whose Declaration framed natural resource exploitation as a fundamental sovereign right and implicitly contested any framework that would subordinate development to environmental constraints (Ben Dahou, N. 2023, pp.140). Algeria held, throughout this period, that environmental protection as framed by the industrialized North amounted to a mechanism for constraining the development ambitions of newly independent Southern states — what the sources describe as 'an imperialist maneuver

designed to obstruct the development process (Ghewas, 2024, p346). This posture began to shift at the 1992 Rio Conference, which Algeria attended and whose instruments — including the Rio Declaration, Agenda 21, and the Framework Convention on Climate Change — it subsequently ratified. The Rio framework's concept of sustainable development, which reconciled development and environmental protection rather than treating them as antagonists, provided a more accessible point of entry for Algeria into international environmental governance.

C. The Constitutional Chronology of Silence (1963–1996)

Algeria's pre-2016 constitutional period is characterized, in the literature, as one of implicit and indirect recognition of environmental protection through associated social rights provisions rather than any explicit acknowledgment of the environmental right as such (Ben Dahou, N. 2023, pp. 137–141). The 1963 Constitution contained no explicit environmental reference. The 1976 Constitution's Article 151 granted the National People's Assembly legislative competence over environmental matters — including territorial planning, quality of life, and the protection of animals and plants — without constitutionalizing environmental protection as a fundamental right. The 1989 Constitution maintained the same approach despite accelerating international momentum toward constitutional environmental protection. The 1996 Constitution approached environmental protection only obliquely through Articles 54 and 55, addressing healthcare, pollution-related illness, and workplace safety — provisions amounting to implicit rather than explicit environmental protection (Ghewas, 2024). These scattered social rights references — from the right to a dignified life in 1963 to workplace safety provisions in 1989 — conveyed the impression of constitutional environmental engagement without its substance (Khellaf, 2024, p.629).

Section 2: Legislative Groundwork, the 2016 Breakthrough, and the 2020 Revision

This section traces the domestic trajectory through which Algeria moved from constitutional silence to explicit environmental constitutionalism. It proceeds in four stages: the legislative framework built between 1983 and 2003 in the absence of constitutional foundation; the 2014 shale gas protests that served as the immediate domestic catalyst for constitutional reform; the content and legal significance of Article 68 introduced by the 2016 constitutional amendment; and the modifications introduced by the 2020 revision; analyzed through the competing scholarly interpretations of regression and consolidation.

A. Legislative Groundwork Without Constitutional Foundation (1983–2003)

Environmental Protection Act No. 83-03 of 5 February 1983 marked Algeria's entry into modern environmental legislation, establishing the principle of environmental protection as a matter of public interest and assigning regulatory responsibility to public authorities at both national and local levels. It was followed

by a series of complementary statutes: Laws No. 84-12 on forests, No. 87-03 on urban planning, No. 90-25 on land, and No. 90-29 on urban development (Mimoun, 2017, p.p. 84-86). The classical approach embodied in this early legislation — premised on prohibition and sanction rather than incentive and participation — proved structurally inadequate for the complexity of environmental governance challenges, and the failure to develop a culture of environmental information transparency constrained its practical effectiveness (Si Hamdi, A. 2022).

The culmination of this legislative phase came with Law No. 03-10 of 19 July 2003 on Environmental Protection within the Framework of Sustainable Development, which superseded Law 83-03 and remains the core statute of Algerian environmental law. Law 03-10 articulated eight guiding principles for environmental governance — including the precautionary principle, the polluter-pays principle, and the principle of sustainable use of natural resources (Law No. 03-10, Ben Dahou, N. 2023). The procedural environmental rights it enshrined are particularly significant.: Article 3 provides that every person has the right to be informed about the state of the environment; Article 7 specifies that any natural or legal person may request environmental information from the competent authorities unconditionally, without demonstrating personal interest; and Articles 36 and 38 authorized environmental associations to bring claims before competent courts and permitted natural persons to delegate compensation claims to authorized associations (Mimoun, & Hennaoui. 2025, p.p216–217; Law 03-10, Articles 3, 7, 36, 38).

Despite its doctrinal sophistication, Law 03-10 exhibited both operational and structural limitations, as its implementation required the issuance of more than twenty-three executive decrees and implementing texts, resulting in a heavy regulatory dependency that rendered the law difficult to apply in practice for many actors and highlighted gaps in specialized institutional capacity (Issa Zahia, 2021, p. 949). At the same time, its procedural provisions remained ordinary legislative norms, susceptible to amendment or repeal and lacking the hierarchical force that constitutional recognition would have conferred. The absence of a constitutional anchor meant that legislative protection of the environment remained contingent on political will rather than constitutionally mandated (Ghewas, 2024, p.362). This dual mismatch — combining a sophisticated legislative framework with both an incomplete implementing architecture and a lack of constitutional foundation — is what the 2016 reform sought to resolve.

B. The 2014 Shale Gas Protests as the Domestic Political Catalyst

The immediate domestic context for the 2016 constitutional recognition of environmental rights was the Algerian government's decision to authorize the exploration and exploitation of shale gas in the Algerian Sahara — a decision driven by the sharp decline in global oil prices and the resulting pressure on Algeria's hydrocarbon-dependent economy. The announcement triggered an unprecedented

mobilization of environmental concern in southern Algeria: residents mounted sustained protests against hydraulic fracturing operations, citing risks of seismic activity, threats to the Saharan groundwater reserves that constitute the primary water source for southern Algeria, and potential climate and ecosystem impacts (Khellaf, 2024, pp. 136–138).

These protests, which continued through the period of constitutional revision consultations, directly influenced the constitutional drafters. The 2016 constitutional recognition occurred within the framework of the state's response to the demands of environmental associations denouncing the use of shale gas, and the protests of southern residents had resonance and influence on decision-makers (Ghewas, 2024, p355). The government's response included a four-year moratorium on drilling announced by the Prime Minister on national television and a presidential suspension of parliamentary shale gas legislation — political concessions that directly preceded and shaped the constitutional revision process (Khellaf, 2024, p. 136). This causal sequence illustrates a broader pattern documented in the global literature: constitutional environmental reform is often triggered not by top-down normative diffusion alone but by concrete domestic political pressure (Boyd, 2018; Gellers, 2015).

C. Article 68 of the 2016 Constitution: The Constitutional Breakthrough

Article 68 of the 2016 Constitutional Amendment provides in three paragraphs: (1) that the citizen has the right to a healthy environment; (2) that the state shall work to preserve the environment; and (3) that the law shall define the obligations of natural and legal persons for the protection of the environment. Its placement within Chapter Four of the 2016 Amendment, titled Rights and Freedoms, is constitutionally determinative: the provisions contained in this chapter form part of the directly applicable norms — elevating environmental protection from legislative policy to a justiciable fundamental right, generating both negative obligations not to degrade the environment and positive obligations to actively preserve it (Ghewas, 2024, p.356; Constitutional Amendment Law No. 01-16). The 2016 Amendment further introduced in Article 19 an explicit recognition of the rights of future generations within the framework of sustainable development, conferring an intergenerational dimension on the constitutional environmental right.

The most significant textual limitation of Article 68 is its restriction of the environmental right to citizens (مواطنون) rather than all persons present on Algerian territory. This implies that the right is conditioned on Algerian nationality, excluding foreign nationals and stateless persons — including migrant workers and refugees — from its constitutional protection. The contrast with the French Environmental Charter, whose Article 1 provides that every person (chacun) has the right to live in a balanced environment respectful of health, is immediate: the French formulation extends the right to all persons on French territory regardless of nationality.

Constitutional systems that go further still — employing the term "all" or "everyone," as in the Brazilian and Spanish constitutions — achieve the widest personal scope, reflecting the principle that the environment as a public good transcends citizenship, nationality, origin, and any individual characteristic (Khellaf, 2024, pp. 131–132). Algeria's late constitutional recognition, combined with this narrow personal scope, placed it behind several other constitutions that had recognized the right more broadly before 2016.

D. The 2020 Revision: Consolidation or Regression?

Article 64 of the 2020 Constitution provides in two paragraphs: (1) that the citizen has the right to a healthy environment within the framework of sustainable development; and (2) that the law shall define the obligations of natural and legal persons for the protection of the environment. Two modifications distinguish it from Article 68: the addition of the qualifying phrase within the framework of sustainable development, and the deletion of the second paragraph which had explicitly provided that the state shall work to preserve the environment. These modifications have generated the most significant doctrinal controversy in Algerian environmental constitutional law.

The regression argument identifies two grounds for concern. First, the sustainable development qualification renders a conditional right, subjecting environmental protection to a conceptual framework whose inherent ambiguity allows state authorities to control this right, expanding or narrowing it, in accordance with their own interests (Khellaf, 2024, p.135). The difficulty of defining sustainable development as a legal standard — a difficulty extensively documented in the international literature — means that the constitutional guarantee becomes as elastic as the government's developmental priorities. Second, the deletion of the state preservation obligation eliminated from the constitutional text the only express state duty in environmental protection, constituting, on this reading, a clear regression on the part of the constitutional legislator (Khellaf, 2024, p.138).

The counter-reading points to Article 21 of the 2020 Constitution as the most operationally significant provision of the environmental constitutional framework — one that the regression argument does not fully account for. Article 21 provides that the state shall ensure the protection of agricultural land, guarantee a healthy environment for the well-being and security of persons, promote continuous environmental awareness, ensure the rational use of water and fossil fuels, protect the terrestrial, marine, and atmospheric environment, and take appropriate measures to hold polluters accountable (Ghewas, 2024, p 359). This article constitutionalizes the polluter-pays principle through the criminal accountability provision, and comprehensively specifies state environmental duties in a manner that potentially compensates for the deletion from Article 64 of the explicit preservation

obligation — provided courts enforce Article 21 as directly applicable constitutional law.

Comparative constitutional analysis contextualizes the sustainable development debate. Morocco's 2011 Constitution (Article 31) treats the right to a healthy environment and the right to sustainable development as distinct and parallel constitutional entitlements, affirming both without subordinating one to the other. The French Environmental Charter of 2004 addresses the environmental right in Article 1 and sustainable development separately in Article 6. Algeria's 2020 formulation, by integrating both within a single textual formula, adopts a more restrictive approach than both comparators (Khellaf, 2024, pp. 133–134). Egypt's 2014 Constitution, by contrast, provides in Article 46 that the state commits to environmental protection and preservation, including as a matter of rights of future generations — a framing that embeds intergenerational equity without conditioning the citizen's environmental right on a sustainable development framework, making Algeria's 2020 formulation more restrictive than this regional comparator as well (Hamdi, M., & Nouis, N. 2025, p 1156). The net assessment of the 2020 revision is a framework that is structurally ambitious in its textual scope through Article 21 but internally inconsistent in its normative architecture — a condition that gives rise to both vulnerability to economic-priority override and opportunity for judicial interpretation that gives full effect to the constitutional environmental mandate.

PART II: *The Effectiveness of Algeria's Environmental Constitutional Framework: Institutions, Procedures, and the Implementation Gap*

Having established in Part I the full content and evolution of Algeria's environmental constitutional framework, in Part II we subject this framework to critical evaluation. The central question is no longer what the constitutional text says but whether it is capable of delivering effective environmental protection in practice ; whether constitutional declarations generate institutional action, judicial enforcement, and procedural capacity that are proportionate to the rights they proclaim. Section 1 examines the institutional architecture through which the constitutional environmental right is intended to be implemented, analyzing the Constitutional Court, the National Economic, Social and Environmental Council (NESEC), and the civil society framework. Section 2 analyzes the procedural environmental rights that condition the effectiveness of the substantive right — in particular the right to environmental information — and identifies the persistent implementation gap that separates Algeria's constitutional text from environmental reality.

Section 1: Institutional Architecture and Its Structural Limitations

The analysis of Algeria's environmental institutional architecture reveals a consistent and troubling pattern: institutional design that produces the appearance of environmental rights enforcement while structurally limiting its operational capacity.

This section examines three institutional actors in turn — the Constitutional Court, whose design prevents citizens from directly enforcing their constitutional environmental right; NESEC, whose environmental mandate is undercut by its exclusion from the constitutional notification mechanism; and the civil society framework, whose structural weaknesses prevent meaningful participation in environmental governance.

A. The Constitutional Court: Citizens Locked Out of Constitutional Enforcement

The 2020 Constitution replaced the former Constitutional Council with a Constitutional Court, presented as strengthening constitutional review and enhancing the justiciability of constitutional rights. The Court has jurisdiction to review the constitutionality of legislation and to adjudicate the unconstitutionality plea mechanism (al-daf' bi-'adam al-dusturiyya) established under Article 225 of the 2020 Constitution — a mechanism allowing parties in ongoing litigation to challenge the constitutional validity of the legislative provision applicable to their case (Hamdi & Nouis 2025, p1153.).

Three structural limitations in the Court's design collectively prevent it from serving as an effective environmental rights enforcement mechanism. First, the Constitutional Court has no power of self-referral: it remains unable to act as long as none of the authorized bodies — the President, the Presidents of the two chambers of parliament, or twenty parliamentarians — notifies it. No environmental body or citizen can directly trigger constitutional review. Second, the constitutional legislator excluded the individual's right to challenge the constitutionality of laws through an original action before the Constitutional Court. Citizens cannot directly petition the Court to challenge legislation that violates their constitutional right to a healthy environment. Third, the unconstitutionality plea is available only incidentally within existing judicial proceedings, requires the challenged provision to be directly applicable to the pending case, and involves a filtering step at the trial court level before referral(Ghewas, 2024, p.p 377-379). These conditions mean that constitutional environmental challenges can only arise incidentally rather than as primary claims for environmental justice.

B. NESEC: An Environmental Mandate Without Enforcement Capacity

The National Economic, Social and Environmental Council (NESEC), established by the 2020 Constitution as the successor to the National Economic and Social Council, represents the institutional acknowledgment of environmental governance as a constitutional priority. This constitutional redesignation was significant: the 2020 text explicitly incorporated the environment into its official title, and through Articles 209 and 210 assigned it a consultative role in economic, social and environmental policy, including structuring civil society participation. Its composition and functioning were subsequently defined by Presidential Decree 21-37 of 22 January 2021. (Issa Zahia, 2021, p. 940).

In practice, however, NESEC was excluded from the bodies authorized to notify the Constitutional Court of unconstitutional environmental legislation (Ghewas, 2024, p 372). This exclusion means that even if NESEC were to identify legislation violating the constitutional environmental right — precisely the kind of specialized environmental assessment for which an economic, social, and environmental council is institutionally equipped — it has no legal capacity to trigger constitutional review. The densification of the legal arsenal is thus not matched by effectiveness in implementation, due to weak institutional coordination and the absence of genuine field effectiveness (Si Hamdi, 2022). Algeria's broader environmental governance architecture compounds this problem: the Environmental General Inspectorate (Decree No. 07-352), the High Council for Environment and Sustainable Development (Decree No. 02-115), and the National Observatory for Environment and Sustainable Development (ONEDD) operate within a framework characterized by fragmented mandates and insufficient coordination between institutions, operating without a centralized enforcement mechanism capable of triggering constitutional review.

C. Civil Society: A Framework with Structural Weaknesses

The 2020 Constitution established a Civil Society Observatory with an advisory mandate, adding formal institutional acknowledgment of civil society's role in governance. For environmental protection, the relevant civil society framework is governed primarily by Law 12-06 of 12 January 2012 on associations, whose Articles 2, 3, and 13 define the legal basis for environmental associations to engage in monitoring, advocacy, and litigation activities.

Three structural weaknesses undermine the practical effectiveness of this framework: a shortage of human and financial resources in environmental associations; weak enforcement and judicial follow-up authority; and bureaucratic coordination failures between civil society actors, administrative authorities, and the judicial system (Laroussi, R., & Ahnani,F. 2019, pp. 332–333). A fourth structural constraint compounds these: the limited tools available for meaningful civil society participation in environmental decision-making reduce civil society engagement to a formal compliance exercise rather than substantive participation (Ghewas, 2024, p 379). These institutional deficits collectively reproduce, at the enforcement level, the pattern identified throughout Part I: formal constitutional and legislative recognition coexisting with structural impediments to operational realization.

Section 2: Procedural Environmental Rights and the Effectiveness Gap

The effectiveness of a substantive constitutional environmental right largely depends on the existence of procedural guarantees, most notably the right of access to environmental information (Mimoun & Hennaoui, 2025, p. 215). Procedural environmental rights are not secondary to the substantive right but are essential to its effective implementation : citizens can only exercise, enforce, or litigate a substantive

environmental right if they can first access information about the state of the environment, participate meaningfully in decisions affecting it, and obtain judicial redress when it is violated. This section proceeds in three stages : first, it analyzes the framework of the procedural rights under Algerian law , using the Aarhus Convention as an international benchmark. Second, it examines three categories of domestic barriers that limit the effective exercise of those rights. Third, it assesses the lack of judicial practice and the gaps in legislative updating that together define the article's central diagnosis- the persistent implementation gap-.

A. The Right to Environmental Information: Formal Recognition and Procedural Gaps

At the domestic level, Law 03-10 formally recognizes the right to environmental information in Articles 3 and 7 and establishes litigation pathways for associations and individuals in Articles 36 and 38. These provisions are complemented by Law 12-06 on associations, which regulates the legal framework for civil society participation (Law 03-10, arts. 3, 7, 36, 38; Law 12-06, arts. 2, 3, 13). While Algerian law aligns with the principles of the Aarhus Convention at the level of formal recognition, it lacks the coherent procedural architecture necessary for effective enforcement.

The critical gap lies in the absence of implementing regulations. Law 03-10 does not specify the procedural steps for processing environmental information requests: it sets no statutory response timeframe, provides no defined formats for disclosure, and establishes no codified grounds for refusal. The implementing regulations that were meant to supply these procedural details were never issued (Mimoun & Hennaoui, 2025, p. 220).

Furthermore, procedural environmental rights in Algeria have not been constitutionalized. Unlike the French Environmental Charter, whose Article 7 explicitly guarantees access to environmental information and public participation as constitutional rights, Algeria’s procedural environmental rights exist only at the legislative level. They therefore remain doubly vulnerable — both to legislative amendment and to administrative non-implementation (Ghewas, 2024, p.369).

B. Three Categories of Barriers to Effective Implementation

Three categories of domestic barriers systematically prevent effective exercise of environmental information rights in practice. The first concerns secrecy-based legal limits. Algeria's administrative law recognizes a broad principle of administrative secrecy whose scope is not defined by detailed statutory criteria, allowing public authorities significant discretion in withholding environmental information. Industrial and commercial confidentiality constitutes an additional operational constraint: the legal definition of industrial secret in regulations governing classified installations remains vague, granting operators wide discretion

to exclude information from public access (Mimoun & Hennaoui , 2025 , pp. 224–226.).

The second category concerns deficits in the production and availability of environmental data. Environmental information is often unavailable, incomplete, non-digitized, or published in formats that impede analysis. Even when environmental information is formally disclosed, it may remain practically inaccessible or unusable, limiting its contribution to informed public participation.

The third category relates to institutional capacity constraints. Environmental data is fragmented across multiple ministries, agencies, and local bodies, with many local authorities lacking adequate resources, technical tools, or trained personnel to fulfill disclosure obligations (Mimoun & Hennaoui, 2025, p 226).

The combined effect of these three barriers is to maintain a wide gap between formal recognition and practical accessibility — a gap that undermines the procedural foundation on which effective exercise of the constitutional environmental right depends.

C. The Judicial Practice Deficit and the Legislative Updating Gap

The institutional and procedural deficits analyzed above ultimately converge in two further manifestations of the effectiveness gap. First, Algeria's administrative courts have, as of the date of this writing, never annulled an administrative decision on the basis of the right to a healthy environment as a constitutional principle. The Council of State has recognized environmental protection as a matter of public interest in isolated cases — including the Ouled Fayet landfill case and a water pollution case against a classified installation — but overall administrative jurisprudence in environmental matters remains sparse, inconsistent, and insufficiently grounded in the constitutional environmental right to constitute a systematic judicial remedy. In theory, the Constitution imposes a binding obligation on the legislator — sometimes described in Algerian doctrine as the constitutional environmental constraint (*qaid al-dusturiyya al-biʾiyya*) — requiring subsequent legislation to conform to the constitutional environmental standard (Ghewas, 2024, p 363). In practice, however, this constitutional constraint has not yet been activated through judicial review.

Second, Law 03-10 has not been revised following either the 2016 or the 2020 constitutional amendments (Ghewas, 2024). The persistence of pre-constitutional environmental legislation — enacted in 2003 before the right to a healthy environment existed as a constitutional norm — results in a structural misalignment between constitutional aspiration and legislative instrument. The procedural rights established in Law 03-10 were designed without the constitutional anchor that now exists; their reformulation to align with and operationalize the constitutional environmental right is both legally necessary and practically essential for reducing the effectiveness gap.

Together, the judicial practice deficit and the legislative updating gap illustrate the distance that still separates Algeria's constitutional environmental commitments from their realization in practice.

CONCLUSION

This article has traced Algeria's evolution from constitutional silence to environmental constitutionalism, situating this trajectory within the broader global movement toward the constitutional recognition of environmental rights. It has examined the historical, political, and legal factors that shaped Algeria's distinctive pathway, analyzed the constitutional framework established by the 2016 and 2020 amendments, and assessed the institutional and procedural mechanisms available for its implementation.

Principal Findings : Three principal conclusions emerge from the analysis.

1. Algeria's constitutional silence on environmental rights was ideologically grounded — in postcolonial sovereignty consciousness, shaped by the traumatic legacy of French nuclear testing in the Algerian Sahara and by skepticism toward a global environmental discourse often perceived as a constraint on developmental sovereignty. The constitutional breakthrough of 2016 was driven not only by international normative developments but also by domestic political dynamics — most notably the 2014 shale gas protests — illustrating how environmental constitutional reform is frequently catalyzed by internal mobilization rather than external normative diffusion alone.

2. The relationship between the 2016 and 2020 constitutional formulations of the environmental right is analytically complex. Article 64 introduces sustainable development as a structuring principle while omitting the earlier explicit state obligation to preserve the environment. This formulation opens potential constitutional space for the prioritization of economic considerations over environmental protection. At the same time, Article 21 strengthens the constitutional framework by specifying state environmental responsibilities and by constitutionalizing the polluter-pays principle. The resulting framework is therefore ambitious in scope but internally uneven in its normative architecture.

3. The principal challenge facing Algeria's environmental constitutional framework is not doctrinal but institutional and procedural. The constitutional obligation imposed on the legislator exists in theory but has not yet been activated in judicial practice. Citizens lack direct access to the Constitutional Court to enforce environmental rights, and the National Economic, Social and Environmental Council cannot initiate constitutional review of environmentally harmful legislation. Meanwhile, the right to environmental information remains largely formal, constrained in practice by administrative secrecy, incomplete implementing regulations, and institutional fragmentation. To date, no

administrative decision has been annulled on the basis of the constitutional environmental right.

Recommendations : Several reforms are necessary to bridge the gap between constitutional recognition and effective environmental protection.

1. Law No. 03-10 of 2003 should be revised to align with the constitutional framework introduced in 2016 and 2020. Such reform should include comprehensive implementing regulations governing access to environmental information, including clear response timeframes, defined disclosure formats, and narrowly specified grounds for refusal subject to a public-interest balancing test, broadly consistent with the standards of the Aarhus Convention. The revised legislation should also explicitly recognize the constitutional environmental right as an interpretive principle guiding administrative environmental decision-making.

2. The access to constitutional review should be strengthened. Citizens should be able to challenge environmentally harmful legislation through a direct constitutional action, without the requirement of pending litigation. At the same time, the National Economic, Social and Environmental Council should be granted the legal capacity to refer environmentally harmful legislation to the Constitutional Court, transforming its advisory environmental mandate into a meaningful constitutional oversight role.

3. A systematic program of environmental judicial training should be developed to enable administrative courts to enforce the constitutional environmental right as a directly applicable constitutional norm, with the polluter-pays principle constitutionalized in Article 21 providing the doctrinal basis for environmental liability claims. The development of a coherent body of environmental administrative jurisprudence is the necessary complement to the legislative and institutional reforms proposed above, and the indispensable mechanism for transforming constitutional aspiration into constitutional reality.

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