

Collective Actions for Access to Justice in Environmental Matters: A Comparative Study

الدعوى الجماعية للوصول للعدالة في المادة البيئية: دراسة مقارنة

MEKHLLOUF Omar

Faculty of Law

University of Ahmed ZABANA, Relizane (Algeria)

omar.mekhlouf@univ-relizane.dz

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Abstract:

Access to justice as a pivotal environmental procedural right for defending the collective interests of current and future generations, thereby achieving sustainable development. However, the diffuse, impersonal, and ricochet nature of environmental harm—notably pollution—has raised significant legal challenges regarding the requirements of standing and interest to sue.

This study examines the procedural obstacles hindering individual environmental litigation to activate the right of access to justice. It analyzes collective actions (group actions) as the most effective mechanism for collective redress, focusing on their requirements and procedures under Algerian legislation and comparative systems, including French, American, and Canadian models as pioneering frameworks in this field.

Keywords: Access to Justice; Environmental Damage; Locus standi; Class Action; Joint Representation Action; Collective Recourse.

ملخص:

يعد مبدأ الوصول للعدالة أحد أهم الحقوق الإجرائية البيئية في الدفاع عن مصالح الأجيال الحالية والقادمة، لتحقيق التنمية المستدامة، ونظرا لطبيعة الأضرار التي تلحق البيئة ولاسيما جزاء التلوث، والمعتبرة أضرار غير شخصية و غير مباشرة و أضرار مرتدة، قد أثار ذلك إشكالات تتعلق بالتقاضي، خاصة فيما يتعلق بضرورة توفر شرطي الصفة والمصلحة.

تهدف الدراسة الى التعرض للإشكالات الاجرائية التي حالت دون تمكن الأفراد من الادعاء في المجال البيئي، من أجل تفعيل حق الوصول للعدالة للدفاع عن البيئة. تناولت الدراسة الدعاوى الجماعية التي تعتبر الأنسب كوسيلة للادعاء من أجل تحقيق الانتصاف من الأضرار الجماعية، وذلك من حيث شروطها وإجراءات رفعها والأحكام المنظمة لها في كل من التشريع الجزائري و التشريعات المقارنة كالتشريع الفرنسي، الأمريكي و الكندي كنماذج كان لها السبق في تقرير هذا النوع من الدعاوى.

الكلمات المفتاحية: الوصول للعدالة؛ الضرر البيئي؛ الصفة القانونية؛ الدعوى الجماعية؛ دعوى التمثيل المشترك؛ الطعن الجماعي.

* Corresponding Author: MEKHLLOUF Omar

Introduction

The citizen's right of access to justice is one of the most significant procedural environmental rights enshrined in domestic laws and the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, commonly known as the Aarhus Convention (1998), which entered into force in 2001. This procedural right empowers citizens to play a pivotal role in defending environmental interests and protecting them from threats, aiming to achieve sustainable development by activating its core principles: the Preventive Principle, the Polluter Pays Principle, and the Principle of Compensation for Environmental Damage.

It is well established that environmental elements subject to pollution or degradation are classified into two categories: First, elements belonging to a specific natural or Juridical person (public or private) who holds a private right over them, whether a right in rem (such as ownership or usufruct) or a personal right (such as a leasehold). Second, common public elements enjoyed by all members of society—where no individual can prevent others from utilizing them—such as air, water, soil, and flora and fauna. These elements are considered part of the nation's collective property. A legal challenge arises regarding damage inflicted upon the environment itself or its unowned elements, which constitute the collective financial assets of society as a whole (*res communes*), such as river waters, lakes, seas, air, and public pastures.

The study aims to address the legal recourse for environmental protection. Given the absence of private ownership over environmental elements and their lack of Juridical personality, the environment cannot litigate on its own behalf, nor can third parties easily initiate legal actions due to the lack of standing (*qualité à agir*). To overcome this procedural dilemma, various legal systems have sought to grant citizens the right of access to justice. This includes Algerian legislation under Law No. 03-10 (Articles 36 and 37), the French Environmental Code (Barnier Law of 1995), as well as Canadian and U.S. laws."

Drawing upon this research's focus on elucidating the vital role of citizens in environmental protection and the pursuit of sustainable development by activating their procedural right of access to justice—and by examining collective action (*Action de Groupe*) and the primary legal and procedural challenges impeding its effectiveness under Algerian legislation and comparative legal systems—the core research problem is: **How can collective action be effectively invoked for environmental protection, given the procedural constraints in Algerian and comparative legislation?**

To address the aforementioned research problem, this study adopts the descriptive and analytical method in examining the specific nature of environmental damage, the character of the protected interest, and the legal challenges concerning standing (*qualité à agir*). Additionally, it employs the comparative method by analyzing the positions of comparative legal systems—notably French, U.S., and Canadian legislation—regarding various aspects of collective action.

Accordingly, this research has structured in two sections, the first one about: The Enshrinement of collective Action in Environmental Matters under Algerian Legislation. While the second section deals with Environmental Group Actions in Comparative Jurisdictions.

Section I: The Collective Action in Environmental Matters under Algerian Legislation.

This section explores the legal framework of collective action within Algerian environmental law, particularly as a procedural mechanism for realizing the right of access to justice (**Subsection I**). It examines how the Algerian legislator, primarily through Law No. 03-10 on Environmental Protection and Sustainable Development, has attempted to overcome traditional procedural hurdles. By analyzing the role of environmental associations and the specific conditions for their legal standing (**Subsection II**).

A) The Citizen's Right of Access to Environmental Justice

In this section, we examine the role of access to justice—as a fundamental human right—in achieving sustainable development, alongside the obstacles hindering access to environmental justice.

1- Access to Justice and Sustainable Development

The right of access to environmental justice, enshrined for non-state actors—particularly citizens and non-governmental organizations (NGOs)—has evolved through numerous legal and historical milestones. It has come to be recognized as a procedural human right granted to individuals to seek redress through judicial and non-judicial bodies whenever their fundamental rights are violated. The Universal Declaration of Human Rights (1948) stipulates that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law¹. Furthermore, the International Covenant on Civil and Political Rights (ICCPR) subsequently stipulated the same right in greater detail. It mandates each State Party to the Covenant to ensure that individuals have access to remedies by establishing judicial, administrative, or legislative authorities responsible for determining whether a violation of a person's rights has occurred and providing redress accordingly. Moreover, States Parties to the Covenant are required to ensure that competent authorities enforce such remedies once they are granted².

The principle of access to justice, as a fundamental human right, has gained prominent status as one of the most critical procedural environmental rights. Following the rise of environmental awareness in the 1960s and the subsequent evolution of domestic, regional, and international environmental law—coupled with the advancement of the concept of "Good Governance" and the emergence of the citizen as a vital actor in decision-making processes on both national and international levels—the right of access to justice has undergone a renewal in its essence and scope. It is now recognized as a principle and a right through which any individual can defend collective or "solidarity rights" to protect a public interest: the interest of society.

Access to justice in the environmental field has become one of the fundamental pillars of sustainable development. It ensures redress for any damage or threat to the environment and its resources, while guaranteeing the continuity of natural assets and resources for the benefit of future generations, particularly following the establishment of mechanisms to enforce judicial outcomes. Furthermore, the "Aarhus Convention" on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters—adopted by the United Nations Economic Commission for Europe (UNECE)³—addressed this procedural right within the context of its relationship to the right to a healthy environment.

2- Procedural Issues Hindering Access to Justice for Citizens

A party suffering damage is required to seek redress and compensation through the court of competent subject-matter and territorial jurisdiction. However, when natural or Juridical persons pursue litigation for environmental damage, they may face obstacles in obtaining compensation or other forms of relief. This is often a result of the litigant's inability to meet the procedural requirements stipulated by law, most notably the "capacity to sue" (standing) and "legal interest." These hurdles arise due to the nature of environmental damage, which is typically non-personal, indirect, and ricochet (reflex) damage.

2-1. Environmental Damage as Non-Personal and Indirect:

Environmental damage affects both biotic and abiotic resources; it is "damage in rem" (objective damage), as opposed to personal damage that directly affects the right-holder (personal interest) and typically does not extend to other interests. If we accept that indirect damage is objective rather than personal, the right to compensation theoretically belongs to the victim—which is the environment itself. However, from a legal standpoint, the environment is not recognized as a "legal person." This necessitates adopting the view that distinguishes between "environmental damage" per se and "damage resulting from environmental harm"⁴.

2-2. Environmental Damage as Ricochet (Reflex) Damage:

Environmental damage often does not manifest immediately upon the occurrence of a polluting event; rather, its appearance is frequently delayed. This time-lapse raises significant challenges regarding the "causal link" between the pollution and its source, as other intervening factors may overlap with the original cause⁵.

3- Justifications for Adopting the Collective Action Mechanism

The justifications for the legal enshrinement of the group action mechanism vary between practical and legal considerations. The practical motives necessitating a collective procedural mechanism for environmental defense—particularly against pollution—lie in the immense advancement of industrial activities. This evolution inevitably creates an "asymmetry of power" between the parties in a lawsuit. In other words, the victim of an environmental activity may be a mere natural person, while the defendant is a large industrial corporation possessing legal resources and expertise that the victim cannot match in judicial defense. Furthermore, environmental disputes are significantly costly, often exceeding the financial capacity of ordinary individuals to cover expenses such as expert witness fees. Consequently, associations can intervene to defend the collective interest defined in their bylaws and, in turn, manage the proceedings of such lawsuits.

As for the legal justifications, they are essentially procedural in nature. They arise from the complications associated with the lack of "standing" (capacity to sue) and "legal interest" required to seek judicial compensation for environmental damage. These challenges have prompted the legislator to seek a solution that enables citizens to defend their right to a healthy environment. In this context, the "group action"—exercised by associations or a group of individuals—emerges as a reasonable procedural solution for accessing the judiciary.

B) Association Lawsuits under Algerian Legislation

Civil or criminal action is a direct consequence of the occurrence of damage, as is the case with "public prosecution" initiated by the Public Prosecutor's Office, or "civil action" brought by the aggrieved party or those threatened by potential harm. The Algerian legislator, in alignment with other judicial systems, mandates a set of procedural and substantive requirements for access to the judiciary. The procedural requirements consist of "legal interest," "standing," and "capacity," as stipulated in Articles 13 and 65 of the Code of Civil and Administrative Procedure (CCAP).

The Algerian legislator did not explicitly address association lawsuits within the Code of Civil and Administrative Procedure; instead, they were regulated under specialized protective laws, most notably Law 03-10 on Environmental Protection in the Context of Sustainable Development. Articles 36 and 37 of the aforementioned law established specific procedural and substantive conditions related to the nature of these associations.

1- General Procedural Requirements for Association Lawsuits in Algerian Law

Article 49 of the Algerian Civil Code classifies associations—and any group of persons or assets granted Juridical personality by law—as "legal entities." Furthermore, Article 50 of the same code grants these associations the "right to sue" (standing). Law 12-06 on Associations further guarantees this right, allowing associations to exercise civil law remedies to defend collective interests. Additionally, this law authorizes associations to bring civil claims to defend the individual interests of their members⁶, across various fields related to their objectives, including the defense and protection of the environment.

In addition, specific legislative texts have reaffirmed the right of associations to establish themselves as a "civil party," including:

- Article 74 of Law 90-29 relating to Land-Use Planning and Urbanism: It stipulates that any legally constituted association whose bylaws aim to protect the living environment and the surroundings may claim the rights recognized for a "civil party" regarding violations of the legislation in force in the field of land-use planning and urbanism⁷.
- Article 71 of Law 98-04 relating to the Protection of Cultural Heritage: This article authorizes any legally established association, whose bylaws include a provision for the protection of cultural property, to set itself up as a "civil party" in proceedings concerning violations of the provisions of this law⁸.

In order for associations to pursue a lawsuit in the collective interest, they must possess a specific legal capacity, the quality to act, and a legitimate legal interest.

1-1. The Capacity to Sue (Legal Capacity)

Legal capacity to sue represents the "external legitimacy" of a lawsuit. In its absence, individuals are excluded from the proceedings, leading to the ultimate dismissal of the case. It is noted that a person's lack of capacity to sue renders them a mere assistant or a principal party in need of a legal representative to exercise this right on their behalf⁹. Since capacity pertains to the competency to perform the procedural acts that constitute litigation, its absence results in a "plea of nullity" (of the procedure) rather than a "plea of inadmissibility" (of the lawsuit). The justification for this distinction lies in the possibility of rectifying the procedure by appointing a legal

representative for the plaintiff—such as a guardian, tutor, or curator—to complete the legal proceedings.

Environmental protection associations are considered public-interest entities established for the purpose of preserving and protecting the environment. The latter is viewed as a public or collective interest against any infringement, in accordance with the objectives defined in the association's bylaws¹⁰. These associations are classified into two types: Declared Associations (A) and Undeclared Associations (B).

- Declared Associations

Declared associations refer to those endowed with "Juridical personality" (moral personality). To acquire this status, specific administrative procedures mandated by law must be followed, including the formal declaration of existence before the competent administrative authority. Such stringent requirements serve as a filter to exclude lawsuits that falsely claim the status of association lawsuits¹¹.

Laws regulating association lawsuits require—as a condition for recognizing their right to sue for pure environmental damage—that their objective, as stated in their bylaws, be the protection of the environment or nature. In this regard, Article 17 of Law 12-06 relating to Associations stipulates that the latter may initiate legal proceedings and take all necessary actions before the competent judicial authorities regarding facts related to the association's objectives. Furthermore, Article 36 of Law 03-10 relating to Environmental Protection in the Context of Sustainable Development requires that the subject of the lawsuit be linked to the association's goals and its field of intervention as defined in its bylaws.

- Undeclared Associations

These associations do not possess Juridical personality¹². Consequently, the general rule is that they lack the right to access the judiciary, whether as a plaintiff or a defendant. They cannot incur liability, nor do they have a right of recourse against a liable party. However, any individual member or legal entity within the group may seek redress from the party responsible for industrial pollution. This requires proving not only that the defendant infringed upon the collective interest of the group, but also that this infringement resulted in personal damage to the claimant¹³.

1-2. Standing (Quality to Act)

It is an established principle in procedural doctrine that a lawsuit may only be brought by an aggrieved party possessing the requisite "standing" (Quality to Act). This implies that a claim for compensation must be initiated by the injured party whose rights have been infringed. If standing is absent, the lawsuit is destined for dismissal, and judicial bodies—whether courts or tribunals—cannot proceed with the merits of the case. The right of the aggrieved party to initiate a claim for compensation is rooted in a constitutional principle. Consequently, pursuant to Article 13 of the Code of Civil and Administrative Procedure (CCAP), a lawsuit brought by a party lacking standing is inadmissible, and the judge must raise the lack of standing *sua sponte* (on the court's own motion).

1-3. Legal Interest

The requirement of "interest" refers to the sought-after objective of the lawsuit, representing the practical benefit accruing to the plaintiff. If such interest is absent, the claim is inadmissible, for there is "no lawsuit without interest." The interest must be a "legal interest," meaning it must be based on a right or a legal position, aimed at protecting that right or position. Accordingly, claims based on purely economic or moral interests, or those that are unlawful, are inadmissible¹⁴.

Furthermore, the interest in a lawsuit must be legitimate, certain, existing, direct, and personal. However, this classical conception of interest—and the strict adherence to the literal interpretation of legal texts—often prevents aggrieved parties in the environmental field from accessing the judiciary to claim compensation. Consequently, for the defense of non-individual interests, it is more appropriate for associations to undertake the litigation process.

Associations are mandated to defend various categories of interests as stipulated in **Article 17 of Law 12-06**¹⁵ and **Article 37 of Law 03-10**¹⁶, classified as follows:

- The Public Interest

This refers to the interest entrusted to public authorities. The public interest is not merely the sum of the individual interests of the members of society; rather, it must be interpreted as the interest of the society itself, existing independently of its constituent individuals¹⁷.

- The Interest of Association Members

Every association comprises members, each possessing their own "subjective rights" and individual interests. If an association initiates a lawsuit to defend the personal right of one of its members, its **standing** (*qualité d'agir*) is generally precluded, unless explicitly authorized by a specific legislative provision. In such instances, the association's right is derived from its "capacity to represent" the member rather than its own standing in the case¹⁸. **Article 38** of Law 03-10 establishes specific cumulative requirements for the admissibility of such claims:

- The individual damages must arise from a **single cause of action** (a single polluting event).
- The association must obtain a **written proxy** from at least two natural persons.
- The association may exercise the rights of a "**civil party**" (*partie civile*) before criminal jurisdictions.

- The Private Interest of the Association

As a legal entity (Juridical person), an association possesses its own individual interests—whether material or moral—which it is entitled to defend. This applies when the association sues in its capacity as an entity with **independent financial liability** (*patrimoine indépendant*) to protect an established right belonging to the organization itself¹⁹.

- The Collective Interest

The collective interest occupies a middle ground between public and individual interests. It is distinguished by the fact that it pertains to a specific segment of the population or specialized groups (associations) dedicated to its defense. The "collective damage" resulting from environmental infringement is not the aggregate of diverse individual harms; it is a **genuine**

collective prejudice borne by the local or regional community. This collective interest is entirely autonomous from both the association's private interest and the individual interests of its members.

2- Specific Requirements for the Admissibility of Association Lawsuits in Environmental Matters

Article 38 of Law 03-10 on Environmental Protection stipulates the following cumulative requirements for the admissibility of a lawsuit brought by an environmental protection association:

- The association must be **legally accredited** pursuant to Article 35 of Law 03-10.
- The individual damages must arise from a **single act** (a single cause of action).
- The association must obtain a **written proxy** from at least two natural persons.
- The proxy must be **personally signed** by the concerned parties.

Pursuant to the third paragraph of Article 38, the association may initiate legal proceedings and exercise the rights recognized for a "**civil party**" (*partie civile*) before any criminal judicial authority.

3- Territorial Jurisdiction in Association Lawsuits

Regarding **territorial jurisdiction** (*Compétence territoriale*), and according to the general provisions of **Articles 37 and 38 of the Algerian Code of Civil and Administrative Procedure (CCAP)**, jurisdiction lies with the court of the **defendant's domicile**. In cases of claims for compensation arising from a felony, misdemeanor, or summary offense, jurisdiction may lie with the court of the **place where the harmful act occurred** (*Locus delicti*). For damages caused by administrative actions, jurisdiction belongs to the judicial authority within whose circuit the damages occurred. Furthermore, lawsuits brought against a company in the form of a polluting facility fall under the jurisdiction of the court where one of its establishments is located²⁰.

However, while the Algerian legislator has organized the rules of territorial jurisdiction for ordinary civil disputes, several questions arise regarding jurisdiction in disputes resulting from **pollution risks**. Applying the rule of "the court where the harmful act occurred" proves difficult in environmental matters, as identifying the precise location of the harmful act—especially in cases of **transboundary or diffuse pollution**—can be complex, leading to potential **negative conflicts of jurisdiction** between judicial bodies.

In cases of industrial pollution damage involving a **foreign element**, solutions must be sought within the rules of **Algerian Private International Law** regarding "**Transboundary Disputes**." These are resolved according to international conflict-of-laws rules, such as those established by the **Brussels Convention of September 27, 1968**, on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters. This convention defines the foreign element based on the location of the harmful activity, nationality, the domicile of the litigants, or the location of the damaged property²¹. The convention sought to provide the most suitable means for victims to litigate before the court of their own **residence or domicile**²².

Section II: Collective Actions in Environmental Matters under Comparative Legislation

Several comparative jurisdictions preceded the Algerian legislator in recognizing the right of associations to litigate and bring claims to defend both the collective interests and the private interests of their members—whether in response to actual damage or the threat of potential harm. Foremost among these collective interests is the protection of the environment from diverse forms of degradation.

Among the legislations that have regulated group actions with precision and detail are the French legislature, under the designation of "Action for Joint Representation" (*L'action en représentation conjointe*) (Subsection I), the U.S. legislature, which established the "Class Action" mechanism, and the Canadian legislature, referred to as "Collective Recourse" (*Le recours collectif*) (Subsection II).

A) The Action for Joint Representation in French Legislation

Certain provisions of French law have granted associations the right to litigate in defense of both public and collective interests. This was initially established through the **Barnier Law** for Environmental Protection (No. 95-101) and subsequently reinforced by the **Law of November 18, 2016**. To this end, stringent requirements were imposed, pertaining either to the duration since the association's establishment or the necessity of the aggrieved party's consent, among other conditions.

1- Group Actions under the Barnier Law of 1995

Among the entities granted the right to sue are environmental protection associations. The French Environmental Law No. 95-101²³ (the **Barnier Law**) sought to harmonize the procedural requirements for lawsuits initiated by such associations.

Subsequently, **Decree No. 96-170**, issued in implementation of the French Environmental Code, defined the conditions for obtaining the necessary authorization and accreditation (*Agrément*) for associations in the field of environmental protection²⁴. The following requirements were established:

- **Statutory Duration and Regularity:** The association must have been in existence for at least **three years**, with its establishment regularly declared to the competent authorities.
- **Functional Conformity:** There must be strict alignment between the activities performed by the association and its **bylaws** (*Statuts*). The association's activities must be exercised within its defined scope, which is generally interpreted as "principal activities in the field of environmental protection"²⁵.

Accordingly, this law has harmonized the different categories of accredited associations in this field, thereby opening the way for any association accredited in the general field of environmental protection. Furthermore, this law has authorized environmental protection associations the right to establish themselves as a "civil party" (*partie civile*) regarding "acts that result in direct or indirect harm to the collective interests they aim to defend, and which constitute violations of the legislative provisions relating to the protection of nature and the environment, the improvement of the living environment, the protection of water, air, soil, sites, and landscapes, urban planning, and all measures intended to prevent the risks and damages of pollution, as well as the texts and decrees implementing such legislation"²⁶.

2- Group Actions under the French Law of 2016

Since its inception via the **Law of March 17, 2014**²⁷ (Consumer Affairs), the **Group Action** (*Action de groupe*) has remained a central focus of French legislative activity. In less than three years, its jurisdictional ambit has been significantly broadened, evolving from a consumer-centric remedy to a trans-sectoral mechanism covering **healthcare sector** by the Law of January 26, 2016²⁸, and subsequently to the **fight against discrimination, environmental protection, and personal data protection** through the Law of November 18, 2016.

Law No. 2016-1547 of November 18, 2016, regarding the **Modernization of Justice for the 21st Century**²⁹, represents the third expansion of collective action in France. Building upon the foundations of the 'Hamon Law' and the 'Health System Modernization Law,' the French Parliament extended the scope of **Group Actions** (*Action de groupe*) to four new areas: discrimination, employment discrimination, **environmental damage**, and personal data protection.

Under this unified framework, the law stipulates that a group action is predicated on 'individual cases presented by the applicant.' In civil litigation, such actions may be initiated when multiple persons, placed in similar circumstances, suffer harm caused by the same entity. Regardless of the legal domain, these actions are governed by the common procedural rules established by the 2016 Law, applicable in both civil and administrative jurisdictions.

Regarding environmental matters, the law introduces **Article L. 142-3-1** of the Environmental Code, granting accredited environmental associations the standing to litigate. The primary objectives of these actions are to cease the infringement (*cessation du manquement*) and/or seek reparations for environmental harm. Notably, the legislator's omission of a specific definition for 'environmental damage' potentially broadens the judicial scope of these collective actions significantly.

B) Class Actions in American Legislation

In this section, we examine the collective litigation models, starting with the United States in Paragraph I, followed by the Canadian model of "Collective Recourse" in Paragraph II.

1- Class Actions in the USA (The Class Action)

Rule 23 of the Federal Rules of Civil Procedure (FRCP) of 1938 authorized the use of "Class Actions" to seek compensation for individual damages. This rule was subsequently amended in 1966 to address several key procedural aspects³⁰, including:

- The binding effect of judgments (*Res Judicata*) on all members of the class.
- The elimination of the requirement for a prior legal relationship between class members.
- The codification of judicial powers to ensure the fair conduct of class action proceedings.

1-1. Prerequisites for Class Certification (Admissibility)

The right to initiate such actions is restricted to legally accredited associations in cases where individual damages have been sustained by multiple persons as a result of a single act. Under **Rule 23** of the Federal Rules of Civil Procedure (FRCP), the following prerequisites must be met for a class action to be maintained:

1. **Numerosity:** Individual damages must have affected a class so numerous that joinder of all members is impracticable.
2. **Commonality:** The damages must arise from a single act, involving questions of law or fact common to the class.
3. **Typicality:** The claims or defenses of the representative parties must be typical of the claims or defenses of the class.
4. **Adequacy of Representation:** The representative parties must fairly and adequately protect the interests of the class, requiring the representative to exert diligent effort in safeguarding collective interests in a fair manner³¹.

1-2. The Procedural Stages of Filing a Class Action

Rule 23(c)(2) of the Federal Rules of Civil Procedure stipulates that the court must direct to class members the best notice practicable under the circumstances, particularly individual notice to all members who can be identified through reasonable effort.

While notice may be sent via first-class mail, this method often entails a substantial financial burden. Consequently, notification may be conducted through broadcast or print media, or via postings in commercial establishments.

Notification is considered a fundamental procedural step in the lawsuit. It primarily serves to inform absent members that a class action has been initiated in their name. Furthermore, it triggers the "**Opt-Out**" mechanism, which empowers each member to expressly request exclusion from the lawsuit. However, under this system, silence is construed as tacit consent under the 'opt-out' regime, whereby class members are bound by the judicial outcome unless they affirmatively exercise their right to be excluded ("**Opt-In**" by implication).

1-3. Legislative Evolution of Class Actions

The U.S. legislature has enacted specific statutes to refine and develop the class action framework, notably:

- The Private Securities Litigation Reform Act of 1995 (PSLRA)

The 1995 Reform Act introduced new procedural and substantive rules applicable to class actions, specifically concerning:

- **Legal Characterization of Facts:** Standards for pleading and the specificity of allegations.
- **Liability:** Criteria for establishing legal responsibility.
- **Damages:** Methods for calculating and awarding compensation.
- **Litigation Costs and Expenses:** Regulations governing attorney fees and court costs.

- The Class Action Fairness Act of 2005 (CAFA)

The Class Action Fairness Act of 2005 provides defendants with the mechanism to remove class actions filed in state courts to federal courts (under federal diversity jurisdiction). This Act imposed new stringent restrictions on class action procedures, which resulted in a decrease in the overall volume of such litigation³². Furthermore, Section 4 of this Act expanded the original jurisdiction of federal courts by amending Title 28 of the United States Code (U.S.C.).

2- Collective Recourse in Canada (*Le recours collectif*)

Collective Recourse in Canada is a procedural mechanism that allows a plaintiff to initiate a lawsuit before the judiciary on behalf of a group of persons to seek compensation for damages arising from a single act. It was first codified under the Collective Recourse Act of June 8, 1978, enacted by the National Assembly of the Province of Quebec.

2-1. Prerequisites for Admissibility

Articles 1002 and 1003 of the Quebec Code of Civil Procedure stipulate several requirements for the admissibility of a collective recourse:

1. **Prior Authorization:** A member may only exercise collective recourse with the **prior authorization** of the court, obtained upon a formal motion (*Requête*)³³.
2. **Unity of Cause:** The damages must arise from a single act or common facts.
3. **Appearance of Right:** Proving the existence of the claimed right (noting that this was simplified in 2003).
4. **Group Composition (Numerosity):** The size of the group must make the application of ordinary procedural rules difficult or impractical. Article 1003 specifies that the group's composition should render traditional joinder procedures onerous, though not necessarily impossible.
5. **Adequacy of Representation:** The court must be satisfied that the designated representative is in a position to ensure adequate representation of the members³⁴.

In 2003, the Quebec legislature simplified the authorization process by removing the stringent requirement to prove the merits of the right claimed at the preliminary stage³⁵.

2-2. Conduct of the Collective Recourse

If the court grants the Authorization Order (*Jugement en autorisation*), the judgment must specify:

- The definition/description of the group.
- The common questions of law or fact for all members.
- The appointment of the group representative.

Pursuant to **Article 1006** of the Quebec Code of Civil Procedure, group members must be notified of the action. Each member has the right to request exclusion (**Opt-Out**). The notice must include:

- A description of the group.
- The subject matter of the dispute.
- The right of any member to intervene personally in the collective recourse.
- The prescribed form and procedure for exercising these rights.

The court may permit notification solely through media publications. Furthermore, under Articles 1022 and 1024, the court retains the authority at any time to amend its authorization, redefine the group, or replace the representative. In this context, the judiciary assumes a parental or fiduciary role as the 'Guardian of the Class', ensuring the procedural integrity of the recourse and the protection of absent members' interests .

The Final Judgment carries the authority of *Res Judicata* and applies to all group members who did not opt out. The judgment must identify the group benefited or bound by it; it is not required to list each member by name but must provide the criteria for their identification³⁶.

Conclusion

The defense of collective interests necessitated the creation of a procedural mechanism capable of ensuring their judicial protection. Foremost among the collective interests of any society is the preservation and defense of the environment through all legal—and particularly judicial—means. This enables individuals to enjoy their right to a healthy environment while safeguarding the rights of future generations, in alignment with environmental protection and natural elements under the sustainable development model.

The study has reached the following findings:

- **-Legal Standing Paradox:** Environmental protection faces a "procedural dilemma" where the environment lacks Juridical personality, making it difficult to establish standing (*qualité à agir*) based on traditional rules of private interest.
- **Restricted Procedural Scope in Algeria:** the **Algerian legislator**, under **Law No. 03-10**, has adopted a restrictive approach by limiting collective litigation to "Association-led lawsuits" (*Action des associations*). This excludes a "Group of individuals" (*Groupement de personnes*) from initiating legal action collectively, unlike the more permissive Canadian and U.S. systems which recognize the right of citizens to act as a collective body without formal mediation.
- **Effectiveness of Article 38 (Law 03-10):** The analysis reveals that the effectiveness of Articles 36, 37, and 38 is hindered by the requirement for associations to prove a specific statutory interest.
- The complete absence of a unified framework within the **Code of Civil and Administrative Procedure** (the 'Mother Law') undermines the practical effectiveness and judicial consistency of these actions.
- **Evolution of the French Model:** The study highlights a shift from the restrictive 1995 Barnier Law (requiring 3 years of seniority for associations) to the 2016 Law, which expanded "Joint Representation Actions" (*Action de groupe*), enhancing judicial responsiveness to pollution risks.
- **Superiority of the U.S. "Opt-Out" System:** The research concludes that **U.S. Rule 23** provides superior victim protection through the "**Opt-Out**" mechanism, which automatically includes and represents all affected parties. In contrast, Latin-based systems (including Algeria) suffer from low participation due to the "**Opt-In**" requirement, which demands individual effort from each claimant.
- **The Judge as "Judicial Guardian" in Canada:** The comparative analysis reveals that the Quebec (Canada) system grants judges a "constructive" role

Finally, it is observed that the volume of group actions in the field of environmental protection in Algeria remains minimal. This reflects a **limited awareness** among citizens regarding their procedural right to access to justice.

Recommendation: The study recommends:

- **Transition to Open Collective Actions:** The study recommends shifting from "Association-led lawsuits" to "Open Collective Actions" by removing restrictive requirements regarding the number of claimants, thereby facilitating broader access to justice.
- **Codification for Legal Certainty:** It is imperative to explicitly integrate these procedures into the Code of Civil and Administrative Procedure to uphold the principle of **Legal Certainty** (*Sécurité juridique*) for all litigants.

Citations:

¹ Article 8 of the Universal Declaration of Human Rights, adopted by General Assembly Resolution 217 A (III) of 10 December 1948.

² Article 2 of the International Covenant on Civil and Political Rights (ICCPR), adopted by General Assembly Resolution 2200A (XXI) of 16 December 1966.

³ UNECE, the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, signed on 25 June 1998 in the Danish city of Aarhus, entered into force on 30 October 2001.

⁴ Ahmed Mohamed Hashish, *The Legal Concept of the Environment in the Principle of Islamizing Contemporary Law*, Dar al-Fikr al-Jamia'i, Cairo, n.d., 1995, p. 165.

⁵ Ahmed Abdel Karim Salama, *Environmental Protection Law: An Original Study in National and Convention Systems*, King Saud University Press, 1997, p. 347.

⁶ Law 12-06 of January 12, 2012, relating to Associations, Official Gazette No. 02 of January 15, 2012.

⁷ Law No. 90-29 of December 1, 1990, relating to Land-Use Planning and Urbanism, as amended and supplemented – Official Gazette No. 52.

⁸ Law No. 98-04 of June 15, 1998, relating to the Protection of Cultural Heritage – Official Gazette No. 44.

⁹ Yasser Mohamed Farouk Al-Miniawi, *Civil Liability Arising from Environmental Pollution*, Dar al-Jame'a al-Jadida, Egypt, n.d., 2008, p. 450.

¹⁰ Michel Despax, *Droit de l'environnement*, Librairies techniques (LITEC), Paris, France, 1980, p. 817.

¹¹ Said El-Sayed Qandil, *Mechanisms for Compensating Environmental Damage*, Dar al-Jame'a al-Jadida, Alexandria (Egypt), n.d., 2004, p. 69.

¹² The failure of these associations to acquire legal personality is attributed to either the lack of necessary conditions or the failure to follow the administrative procedures prescribed by law.

¹³ Souir Najib, *Sanctions of Civil Liability for Environmental Pollution Damage*, Magister's Thesis, Faculty of Law and Political Science, University of Sidi Bel Abbes, 2012-2013, p. 50.

¹⁴ Boubechir Mohand Amokrane, *Code of Civil Procedure*, Office des Publications Universitaires (OPU), Algeria, n.d., 2001, p. 38.

¹⁵ Article 17 of Law 12-06: "An accredited association acquires legal personality and civil capacity... it may litigate... regarding facts related to its objectives that have caused harm to the association's interests or the individual or collective interests of its members..."

¹⁶ Article 37 of Law 03-10 of July 19, 2003, relating to the Protection of the Environment in the Framework of Sustainable Development (Official Gazette No. 43).

"Legally accredited associations... regarding facts that cause direct or indirect harm to the collective interests they aim to defend..."

¹⁷ Said Qandil, *op. cit.*, p. 66.

¹⁸ Serge Guinchard, *L'action de groupe en procédure civile française*, R.I.D. Comp., 1990, Vol. 42, N°2 p. 606.

¹⁹ *Ibid*, p. 631

²⁰ Article 37 (CCAP): Territorial jurisdiction shall be vested in the court of the defendant's domicile... Article 38 (CCAP): In the event of multiple defendants, jurisdiction lies with the court of the domicile of any one of them.

²¹ Article 5 of the Brussels Convention (1968): A person domiciled in a Contracting State may, in another Contracting State, be sued: (3) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred...

²² Martine Remond-Gouilloud, *Convention de Bruxelles du 27 septembre 1968*, *Revue Juridique de l'Environnement*, France, Vol. 4, No. 1, 1979, pp. 20-23.

²³ Law No. 95-101 of February 2, 1995, relating to the reinforcement of environmental protection, known as the "Barnier Law," which is a French law that strengthens environmental safeguards. Official Journal (JORF), February 3, 1995.

²⁴ Decree No. 96-170 of February 28, 1996, relating to accredited environmental protection associations, Official Journal (JORF) No. 57, March 7, 1996, page 3538.

²⁵ Article 5 of Decree 96-170 defined this scope as follows: "Nature protection, improvement of the living environment, protection of water, air, sites, and landscapes, waste prevention, and urban planning; it is primarily open to the general scope of environmental protection."

²⁶ Article L. 252-3 of the French Rural Code.

²⁷ Loi n° 2014-344 du 17 mars 2014 relative à la consommation, JORF n°0065 du 18 mars 2014

²⁸ LOI n° 2016-41 du 26 janvier 2016 de modernisation de notre système de santé, JORF n°0022 du 27 janvier 2016 .

²⁹ Loi n° 2016-1547 du 18 novembre 2016 de modernisation de la justice du XXI^e siècle

³⁰ Dr. Boukaaban Al-Arabi & Khaira Saous, "The Right of Associations to Litigate," *Journal of Politics and Law*, Faculty of Law and Political Science, University of Ouargla, Algeria, Issue 08, January 2013, p. 117.

³¹ Rule 23. Class Actions, American Federal Rules of Civil Procedure: "(a) PREREQUISITES. One or more members of a class may sue or be sued as representative parties on behalf of all members only if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class...."

³² Dr. Boukaaban Al-Arabi & Khaira Saous, *op. cit.*, p. 118.

³³ Article 1002 of the Law of June 8, 1978: "A member may only exercise collective recourse with the prior authorization of the court, obtained upon motion."

³⁴ Article 1003 of the Law of June 8, 1978: "The court authorizes the exercise of the collective recourse and attributes the status of representative... if it is of the opinion that: a) the recourses raise identical, similar or related questions of law or fact; b) the facts alleged appear to justify the conclusions sought; c) the composition of the group makes the application of articles 59 or 67 difficult or impractical; d) the member... is in a position to ensure adequate representation..."

³⁵ Martin Cauchon & Mazia Tscadore, *National Experience: Canada, Collective Recourses*, Comparative Study, Society of Comparative Legislation, 2006, p. 38

³⁶ *Ibid*, *op. cit.*, p. 42.

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4. **Law No. 12-06** of January 12, 2012, relating to Associations (Official Gazette No. 02, January 15, 2012).