

## Preventive and Remedial Mechanisms for the Protection of Public Water Resources in Algerian Legislation

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Received: 25-10-2025 Accepted: 05-05-2026 Published: 08-06-2026

### Abstract:

Given that water resources are a vital resource, they must be protected through the establishment of legal mechanisms; The Algerian legislature has recognised its importance by establishing a set of legal and regulatory measures aimed at preserving this resource and ensuring its rational use through administrative means such as licences and concessions, as well as oversight by administrative bodies.

It has also relied on deterrent penalties to combat pollution and illegal exploitation, whilst adopting the principle of sustainable management, in order to ensure the protection and sustainability of this precious resource.

**Keywords:** water, mechanisms, preventive, remedial, environment.

### Introduction

Water resources in Algeria are a strategic national asset and a key element in achieving sustainable development and ensuring water security, particularly in light of the growing challenges associated with water scarcity and climate change. The increase in demand for water resulting from industrial development and rapid demographic growth has posed a challenge to humanity at international, regional and national levels. Water has become the most important of the human rights enshrined in numerous international conventions, which have urged states and international organisations to respect it.

For this reason, the Algerian legislature has attached great importance to the protection of public water resources, considering them to be part of the public national domain in accordance with Law No. 08-14 on public national property. The Algerian legislature enacted the first law regulating water, Law No. 83-17, which was amended in 1996 and recast in 2005 as Law No. 05-12 on Water, as amended and supplemented.

This law establishes a comprehensive legal framework governing the use of water resources and ensuring their protection against various forms of encroachment, pollution and depletion.

The protection of public water resources in Algeria is manifested through the adoption of preventive mechanisms aimed at averting harm before it occurs and subjecting activities affecting water to administrative oversight. In addition, the legislature has established remedial mechanisms that intervene before harm occurs, such as the imposition of administrative or criminal penalties.

Consequently, a study of the legal protection of public water resources in Algeria is of paramount importance in highlighting the extent of the Algerian legislator's commitment to enacting laws relating to the protection of water resources and their awareness of the serious threats to which these precious resources may be exposed, both in terms of quantity and quality, in terms of water security and sustainable development, and in considering the national strategy for their protection is considered a benchmark for the success of water governance.

In light of the above, the following question arises: to what extent does the legal framework set out in the amended and supplemented Water Law 05-12 succeed in ensuring the effective and sustainable protection of water resources in Algeria?

To answer this question, we have adopted a descriptive analytical approach, based on the examination, analysis and description of the legal texts. We shall address the subject in two sections:

**Chapter One:** Preventive mechanisms for the protection of public water resources.

**Chapter Two:** Remedial and preventive mechanisms for the protection of public water resources.

### **Chapter One: Preventive Mechanisms for the Protection of Public Water Resources**

In this chapter, we examine the preventive mechanisms for the protection of public water resources. In the first section, we outline the institutional measures for the management and protection of public water resources, whilst the second section deals with administrative measures, specifically licences for the use of public water resources.

#### **Section I: Institutional Mechanisms for the Management and Protection of Public Water Resources**

The institutional mechanisms for the management and protection of public water resources comprise both central and decentralised administrations, as well as master plans for the development, protection and conservation of water resources. We shall endeavour to explain each of these in turn in the following sections.

##### **Segment I: Central Departments**

This refers to all the structures comprising the Ministry of Irrigation, its subordinate directorates, and public administrative bodies, including the National Advisory Council for Water, the Water Regulatory Authority, and the agencies responsible for management that operate under the supervision and oversight of the Ministry of Irrigation.

##### **First: Ministry of Irrigation**

This refers to the central government body responsible for formulating and implementing state policy in the field of water resources; it is also the primary and central body within the administrative structure of the water sector, It comprises the central administration of the Ministry of Irrigation, which is placed under the authority of the Minister of Irrigation in accordance with Article 1 et seq. of Executive Decree No. 23-209<sup>1</sup>, which sets out the organisation of the central administration of the Ministry of Irrigation, as well as Executive

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<sup>1</sup> Executive Decree No. 23-209 of 1 June 2023 regulates the central administration of the Ministry of Irrigation; Official Gazette No. 38 of 6 June 2023.

Decree No. 23-208<sup>2</sup>, which defines the powers of the Minister of Irrigation, and Executive Decree No. 23 -210, which defines the functions, organisation and operation of the General Inspectorate of the Ministry of Irrigation<sup>3</sup>. It comprises the Minister of Irrigation, the Secretary-General, the Chief of Staff, the General Inspectorate and its subordinate bodies, namely the General Directorate of Irrigation and Public Water Services, as well as the General Directorate of Support Services and Resources.

## **Second: Public Administrative Bodies**

These comprise the National Advisory Council for Water and the Water Regulatory Authority

### **A. The National Advisory Council**

Article 62 of Law No. 05-12<sup>4</sup>, as amended and supplemented, provides that ‘a national advisory body known as the National Advisory Council for Water Resources shall be established, tasked with examining strategic options and the instruments for implementing the National Water Plan, as well as all water-related matters on which it is requested to give an opinion’. This body is composed of representatives of the relevant departments, local councils, public institutions, professional associations and users<sup>5</sup>. Its functions have been defined in accordance with Executive Decree No. 08-96 of 15 March 2008, which sets out the functions, composition and rules of procedure of the National Advisory Council for Water Resources. <sup>6</sup>

### **B. Water Regulatory Authority**

As provided for in Article 65 of Law No. 05-12 on water, the Water Regulatory Authority is a public administrative body with legal personality, established by Executive Decree No. 08-303, which defines the powers and regulatory framework governing the Water Regulatory Authority’s operations and the provision of public water services<sup>7</sup>. Its objective is to regulate the water sector and improve the relationship between the administration and its staff, whilst ensuring that the executive authority, the Ministry of Water Resources, does not interfere in the performance of its duties. <sup>8</sup>

Pursuant to the powers conferred upon it under Article 65 of the aforementioned Law No. 05-12 on water, the Regulatory Authority ensures the proper functioning of public water services for the benefit of users, in accordance with the applicable legislation and regulations; in this capacity, it is responsible for ensuring that concessionaires and those entrusted with public water services comply with their obligations, for examining complaints from customers or

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<sup>2</sup> Executive Decree No. 23-208 of 1 June 2023 defines the powers of the Minister of Irrigation, as set out in Official Gazette No. 38 of 6 June 2023.

<sup>3</sup> Executive Decree No. 23-210 of 1 June 2023 defines the functions, organisation and management of the General Inspectorate of the Ministry of Irrigation, Official Gazette No. 38 of 6 June 2023.

<sup>4</sup> Law No. 05-12 of 4 August 2005 on water, Official Gazette, No. 60 dated 4 September 2005, amended and supplemented by Law No. 08-03 dated 23 January 2008, Official Gazette No. 04 dated 27 January 2008. Amended and supplemented by Order No. 09-02 dated 22 June 2009, Official Gazette No. 44 dated 26 June 2009.

<sup>5</sup> Articles 62 and 63 of the same law.

<sup>6</sup> Official Gazette No. 15 dated 16 March 2008.

<sup>7</sup> See Article 1 of Executive Decree No. 08-303 dated 27 Ramadan 1429, corresponding to 27 September 2008, defining the powers and regulatory framework of the Public Water Services Regulatory Authority, Official Gazette No. 56 dated 28 September 2008.

<sup>8</sup> Ghitaoui Abdelkader, Oumari Fatima Al-Zahra, ‘The Legal Framework of the Public Water Services Regulatory Authority’, Journal of the Research Professor of Legal and Political Studies, Vol. 05, No. 02, 2020, p. 1511.

users of public water services and formulating all appropriate recommendations, as well as for monitoring and evaluating the quality of services provided to users by the bodies operating public water services, etc.

### **Third: Public Institutions Responsible for management**

#### **1/ The National Agency for Water Resources (N.A.W.R) = ANRH :**

This is a public institution of an administrative nature engaged in scientific and technical activities, established by Executive Decree No. 81-167, which provided for the creation of the National Institute for Water Resources<sup>9</sup> It was formerly known as the ‘National Institute for Water Resources’, but following an amendment to the aforementioned Executive Decree by Executive Decree No. 87-129<sup>10</sup>, it was renamed the National Agency for Water Resources.

#### **2/National Agency for Dams (N.A.D) = ANB :**

It is a public industrial and commercial institution known as the Public Agency for Dams and Diversions, possessing legal personality and financial autonomy. It was established by Executive Decree No. 85-163, which provides for the creation of the National Agency for Dams<sup>11</sup>, as amended by Executive Decree No. 05-101<sup>12</sup>. The Agency is placed under the supervision of the Minister responsible for water resources and has its registered office in Algiers. The Agency is responsible for the production and supply of water to the institutions and municipal agencies responsible for its distribution, and for ensuring the management, operation and maintenance of the facilities used for the mobilisation and conveyance of surface water resources. In this capacity, the Agency shall be responsible for allocating water to distribution companies and municipal agencies in accordance with agreements concluded with these water distribution companies within the framework of distribution programmes determined by a decision of the Minister responsible for water resources, and to carry out all interventions relating to inspection and technical monitoring, and to ensure the monitoring, maintenance, desilting and repair of facilities for the collection and conveyance of exploited water resources, in accordance with operating instructions and standards, etc.

#### **3/ National Agency for Integrated Water Resources Management (N.A.I.W.R.M) = AGIRE :**

This is a public industrial and commercial institution with legal personality and financial autonomy. It was established pursuant to Executive Decree No. 11-262, which provides for the creation of the National Agency for Integrated Water Resources Management.<sup>13</sup>

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<sup>9</sup> Executive Decree No. 81-167 dated 23 Ramadan 1401 (corresponding to 25 July 1981) provides for the establishment of the National Institute for Water Resources, Official Gazette No. 30 dated 28 July 1981.

<sup>10</sup> Executive Decree No. 87-129 dated 23 Ramadan 1401, corresponding to 19 May 1987, changes the name of the National Institute of Water Resources to the National Agency for Water Resources, Official Gazette No. 21 dated 20 May 1981.

<sup>11</sup> Executive Decree No. 85-126 dated 22 Ramadan 1405, corresponding to 11 June 1985, establishes the National Agency for Dams, Official Gazette No. 25 dated 12 June 1985.

<sup>12</sup> Executive Decree No. 05-101 dated 12 Safar 1426, corresponding to 23 March 2005, amending the Statutes of the National Agency for Dams, Official Gazette No. 21 dated 23 March 2005.

<sup>13</sup> Executive Decree No. 11-262 of 28 Sha’ban 1432 (corresponding to 30 July 2011) establishing the National Agency for Integrated Water Resources Management, Official Gazette No. 43 of 3 August 2011.

The National Agency is placed under the supervision of the Minister of Irrigation and has its headquarters in Algiers; however, its headquarters may be relocated to any other part of the national territory by decree, upon the proposal of the supervising Minister. Within the framework of the national development policy, the National Agency is responsible for carrying out all activities aimed at ensuring the integrated management of water resources.

**4/ Algerian Water Company (A.W.C) = A.D.E :**

It is a national public industrial and commercial enterprise with legal personality and financial autonomy. The company was established in 2001 pursuant to Executive Decree No. 01-101.<sup>14</sup> It operates under the supervision of the Minister responsible for Water Resources (currently the Ministry of Irrigation), Its registered office is in Algiers. Within the framework of the national development policy, the company is responsible for ensuring the implementation of the national policy on drinking water and industrial water, including its transport, treatment, storage, conveyance, distribution and supply, as well as the renewal and development of its associated infrastructure.

**5/ National Sanitation Office (N.S.O) = ONA :**

A national public institution of an industrial and commercial nature, possessing legal personality and financial autonomy, established in accordance with Executive Decree No. 01-102, which provides for the creation of the National Sanitation Office<sup>15</sup>. The Office operates under the supervision of the Minister of Irrigation, Within the framework of the national development policy, the Office is responsible for ensuring the preservation of the water environment throughout the national territory and for implementing the national sanitation policy in consultation with local authorities. In this capacity, it is also responsible, by delegation, for overseeing the construction and operation of basic sanitation facilities falling within its remit.

**6/ National Office for Irrigation and Drainage (N.O.I.D):**

A public administrative body with legal personality and financial autonomy, known as the 'National Agency for the Construction and Management of Basic Infrastructure for Irrigation and Drainage', The Agency was established pursuant to Executive Decree No. 87-181, which provides for the establishment of a National Agency for the Construction and Management of Basic Irrigation Infrastructure for Irrigation and Drainage, as amended and supplemented<sup>16</sup>. The Agency shall be placed under the supervision of the Minister of Irrigation, and its registered office shall be in Algiers. The Agency shall be responsible for the management, operation and maintenance of basic irrigation equipment and facilities in irrigated areas, including water transfer facilities intended for irrigation, which are entrusted to it by the State and/or local authorities.

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<sup>14</sup> Executive Decree No. 01-101 dated 27 Muharram 1422, corresponding to 21 April 2001, establishing the Algerian Water Company, Official Gazette No. 24 dated 22 April 2001.

<sup>15</sup> Executive Decree No. 01-102 dated 27 Muharram 1422, corresponding to 21 April 2001, establishing the National Sanitation Office, Official Gazette No. 24 dated 22 April 2001.

<sup>16</sup> Executive Decree No. 87-181 of 23 Dhu al-Hijjah 1407 (corresponding to 18 August 1987) provides for the establishment and management of a national agency for the construction and operation of basic irrigation infrastructure for irrigation and drainage, Journal No. 34 of 19 August 1987.

## **Segment II: Decentralised Administrations**

To bring the administration closer to the public, a Provincial Irrigation Directorate has been established in each province to represent the State's external interests. These directorates are organised in accordance with Executive Decree No. 02-187, which sets out the rules governing the organisation and operation of the Provincial Irrigation Directorates<sup>17</sup>. Following the promulgation of Executive Decree No. 23-09, which sets out the organisation of the central administration of the Ministry of Irrigation and under which the Ministry of Irrigation was established,<sup>18</sup> the aforementioned Executive Decree No. 02-187 was amended by Executive Decree No. 24-275.<sup>19</sup>

Pursuant to the provisions of Articles 4 and 5<sup>20</sup> of the aforementioned Executive Decree No. 24-275, and the joint ministerial decision issued on 17 April 2004 specifying the number of provincial irrigation directorates and regulating their internal organisation<sup>21</sup>, the organisation of irrigation directorates in several provinces.

Each provincial irrigation directorate may also comprise departments, which in turn are composed of offices according to the specific characteristics of each province and the importance of the tasks assigned to them. As for the functions of the provincial irrigation directorates, these are set out in Article 20 of Executive Decree No. 02-187, which lays down the rules governing the organisation and operation of provincial irrigation directorates, as amended and supplemented.

## **Segment III: Master Plans for the Development, Protection and Conservation of Water Resources**

In order to curb the irrational depletion of water resources, the Algerian legislature established a planning framework through Law No. 12 -05 as one of the fundamental pillars of the national water policy, as it defines national objectives and priorities in the field of water mobilisation, management, transfer and allocation, in terms of programmes and studies or in terms of achievements and development projects of public interest, whether regional, local or national. Referring to the aforementioned law, we find that the planning provided for includes the National Water Plan and the Water Resources Master Plans.<sup>22</sup>

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<sup>17</sup> Executive Decree No. 02-187 dated 13 Rabi' al-Awwal 1423 (corresponding to 26 May 2002) sets out the rules governing the organisation and operation of provincial irrigation directorates, Official Gazette No. 38 dated 29 May 2002.

<sup>18</sup> Executive Decree No. 23-209 sets out the organisation of the central administration of the Ministry of Irrigation, op. cit.

<sup>19</sup> Executive Decree No. 24-275 dated 8 Safar 1446, corresponding to 13 August 2024, amends and supplements Executive Decree No. 02 -187 dated 13 Rabi' al-Awwal 1423, corresponding to 26 May 2002, which sets out the rules governing the organisation and operation of provincial irrigation directorates, Official Gazette No. 57 dated 21 August 2024.

<sup>20</sup> See Articles 02 and 04 of Executive Decree No. 24-275 amending and supplementing Executive Decree No. 02-187, which sets out the rules governing the organisation and operation of provincial irrigation directorates, op. cit., p. 09.

<sup>21</sup> Joint Ministerial Decision dated 27 Safar 1425, corresponding to 17 April 2004, determining the number of provincial irrigation directorates and regulating their internal organisation, Official Gazette No. 56, September 2004.

<sup>22</sup> See Article 2 of Executive Decree No. 02-187, which sets out the rules governing the organisation and operation of provincial irrigation directorates; op. cit., p. 35.

Furthermore, the Algerian legislature has adopted several measures and established specific frameworks for water resources as part of efforts to strengthen their protection and conservation. In this section, we will first address water resource management plans and then, secondly, the protection and conservation of water resources.

### **First: Water Resource Management Plans**

Water resource management plans are divided into:

- 1. The Master Plan for Water Resource Development:** Regulated by Executive Decree No. 10-01 dated 4 January 2010<sup>23</sup>, it includes an assessment of identified water resources, including alternative resources derived in particular from wastewater treatment and seawater desalination, as well as resources recovered as a result of reducing physical losses and the purification of natural resources, an assessment of water requirements based on long-term sector development objectives, as defined for each natural hydrographic unit; the identification of projects and programmes designed to rehabilitate and develop facilities for the supply of drinking water, sanitation and irrigation; The phasing of all structural projects and programmes in line with the evolution of water demand over the planning period, as well as the estimation of investment costs<sup>24</sup>.

The department responsible for water resources shall prepare the master plan for the development of water resources on the basis of data and proposals from the relevant river basin authority, It shall be subject to consultation within the framework of the river basin committee, which shall examine it and give a detailed opinion thereon. The master plan for water resources development shall be approved for a period of twenty (20) years and shall be reviewed by the department responsible for water resources every five (5) years.

- 2. National Water Plan:**

Regulated by Executive Decree No. 10-01 of 4 January 2010, it comprises an assessment of the water sector, covering, in turn, the resources identified and utilised by type of use in terms of quantity and method, existing irrigation infrastructure, as well as institutional and regulatory aspects.

Defining long-term sectoral development objectives, taking into account the situation in the water sector as well as regional planning guidelines, environmental protection and other sectoral master plans; identifying infrastructure projects and programmes based on their alignment with master plans for the management of water resources, as well as projects for water transfer between natural hydrographic units; Identification of national-level structural projects and programmes aimed at ensuring the sustainable management of water resources and irrigation infrastructure; the phasing of all structural projects and programmes; and the water framework prepared on the basis of cost estimates for structural projects and programmes at the provincial level. <sup>25</sup>

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<sup>23</sup> Executive Decree No. 10-01 dated 18 Muharram 1413, corresponding to 4 January 2010, concerning the Master Plan for Water Resources Development and the National Water Plan, Official Gazette, Issue No. 1 dated 6 January 2010, p. 3.

<sup>24</sup> See Article 2 of Decree 10-01, op. cit., p. 4.

<sup>25</sup> See Article 7 of Decree 10-01, op. cit., p. 4.

The Department of Water Resources shall draw up a twenty-year (20-year) National Water Plan; the National Water Plan shall be approved by executive decree upon the recommendation of the Minister responsible for water resources; and the Department of Water Resources shall review the National Water Plan every five (5) years.

## **Second: Protection and Conservation of Water Resources**

The legislator has set out how to ensure the protection and conservation of water resources, by way of an exhaustive list rather than examples, in Article 30 of Law 05-12, as amended and supplemented, through quantitative protection zones, water management plans, qualitative protection zones, measures for the prevention and protection against pollution, and measures for the prevention of flood risks.<sup>26</sup>

### **1/ Qualitative and quantitative protection of water resources:**

The Algerian legislature addressed the scope of quantitative protection and the scope of qualitative protection of water resources in the aforementioned Law 05-12, which states that the scope of quantitative protection applies to aquifers that are overexploited or at risk of overexploitation, with a view to protecting water resources. Articles 31 to 33 of Law 05-12, as amended and supplemented, provide for the scope of qualitative protection.

As for the scope of specific protection, it covers an area of specific protection around facilities, namely all groundwater or surface water collection, treatment and storage facilities, as well as certain areas of vulnerable aquifers and valleys; depending on the need to prevent pollution risks, a direct protection zone, where the land must be state-owned and protected by a natural or legal person responsible for operating the relevant facilities and structures; a close protection zone within areas where discharges, activities or facilities that could cause permanent or sudden water pollution are prohibited or regulated; and a remote protection zone within areas where the discharges, activities and facilities mentioned above are regulated.

Within the scope of specific protection, all activities—including agricultural and industrial activities—may be regulated or prohibited; It may also be subject to specific monitoring, restriction or prohibition measures, particularly regarding the installation of sewage channels, the discharge of effluents and, in general, all products and materials that may affect water quality, including those intended for agriculture<sup>27</sup>. Subsequently, Executive Decree No. 07-399 of 23 December 2007 was issued, relating to the scope of quality protection for water resources, to clarify the scope of application and procedures for establishing quality protection, as well as the regulatory measures governing activities within the scope of quality protection.<sup>28</sup>

### **2/ Protection of water resources from water abstraction, pollution and flooding:**

The Algerian legislature stipulated in Law No. 05-12 on water that the scope of erosion control in catchment basins upstream of surface water barriers shall be defined, in order to prevent and limit the silting up of these barriers and ensure the maintenance of their adequate capacity, A joint anti-erosion plan shall be drawn up in consultation between the administration, the

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<sup>26</sup> See Article 30 of Law No. 05-12 on water, *op. cit.*, p. 7.

<sup>27</sup> See Articles 38 to 39 of Law No. 05-12, *op. cit.*, p. 8.

<sup>28</sup> Executive Decree No. 07-399 of 23 December 2007, concerning the scope of specific protection of water resources, Official Gazette No. 80, published on 26 December 2007, p. 3.

relevant bodies and representatives of the affected population, for each area, based on and determined by the severity of soil erosion in the land and catchment areas, in order to ensure the conservation of water and soil and to minimise the risks of degradation of threatened ecosystems<sup>29</sup>. The aforementioned Water Law delegated the determination of the conditions and procedures for defining the scope of water erosion, as well as the procedures for preparing, approving and monitoring the implementation of anti-erosion management plans, to the relevant regulatory body, leading to the issuance of Executive Decree No. 11-136 concerning the scope of water erosion control<sup>30</sup>.

The aforementioned Water Law 05-12 also addresses the prevention and protection of water resources from pollution, as set out in Articles 43 to 52, where the legislator sought to link the principle of sustainability to the various uses of water resources—a principle adopted from Law No. 03-10 on environmental protection within the framework of sustainable development.<sup>31</sup> The Algerian legislator also addressed the protection of water resources from the risks of flooding; Articles 53 to 55 of the aforementioned Law 05 -12, the legislator stipulated that mechanisms may be established for flood forecasting and measures for planning and intervention to ensure the protection of persons and property located downstream of surface water barriers and adjacent to valleys; it prohibits the planting of trees, the passage of animals or the carrying out of any activity that could damage the structure of facilities located on protective barriers; and it mandates the implementation of all and assist the affected population in order to preserve their living environment and property and prevent risks in areas threatened by rising groundwater levels.

## Section II: Administrative Measures Governing the Use of Water Resources

The Algerian legislature has regulated the use of national water resources through the rules and provisions set out in Article 71 of Law No. 05-12 on Water, which states that no use of water resources, including water intended for agricultural use and non-potable water, may be made by natural or legal persons subject to public or private law, through water extraction facilities or structures or for the purposes of aquaculture, except under a licence or concession granted by the competent authority.<sup>32</sup> The State may also grant a concession for the management of public water services to legal persons subject to public law on the basis of terms and conditions and a service regulation approved by decree; it may also delegate all or part of the management of these services to legal persons subject to public or private law by means of an agreement,<sup>33</sup> We shall therefore endeavour, in this section, to address the use of water through the granting of licences in the first subsection, the use of water through the granting of concessions in the second subsection, and finally the use of water through delegation in the third subsection.

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<sup>29</sup> See Article 34 of Law No. 05-12, *op. cit.*, p. 7.

<sup>30</sup> Executive Decree No. 11-136 of 23 Rabi' al-Thani 1432 (corresponding to 28 March 2011) concerning the scope of measures to combat water pollution, Official Gazette No. 20, published on 30 March 2011, p. 06.

<sup>31</sup> Law No. 03-10 of 19 Jumada al-Awwal 1424 (corresponding to 19 July 2003) on environmental protection within the framework of sustainable development, Official Gazette No. 43, published on 20 July 2003, p. 6.

<sup>32</sup> See Article 71 of Law No. 05-12, *op. cit.*, p. 11.

<sup>33</sup> See Article 101 of Law No. 05-12, *op. cit.*, p. 14.

### **Segment 01: Use through the Granting of Licences**

Various legal provisions confer powers on administrative authorities in the management and protection of public national property, particularly with regard to water resources, Among these powers are decisions to grant licences, which constitute a legal procedure issued by the competent authority by way of a decision, permitting the exercise of a specific activity which the law does not authorise without obtaining such a licence.

#### **First: Definition of a water resources licence**

The licensing system may be defined, in accordance with Article 74 of Law No. 05-12 on water<sup>34</sup>, as a contract governed by public law, and any natural or legal person subject to public or private law may submit an application for such a licence in accordance with the conditions set out in this Law, in accordance with the procedures laid down by regulation. In the context of the application of the aforementioned Article 74, Executive Decree No. 08-148<sup>35</sup>, as amended and supplemented by Executive Decree No. 21-260, was issued to specify the procedures for granting licences for the use of water resources. The legislator has made any use of water resources subject to the requirement of obtaining prior administrative authorisation where it concerns the establishment and conduct of activities in various fields relating to the construction of wells or boreholes for the extraction of groundwater; the construction of facilities for the exploration of water sources not intended for commercial exploitation; The construction of facilities and structures for the diversion, pumping or storage of water, with the exception of dams for the extraction of surface water. The construction of all other facilities or structures for the extraction of groundwater and surface water.<sup>36</sup>

#### **Second: The Way a Licence to Use Water Resources is Granted**

The licence may be issued upon application by the interested party to the department responsible for water resources, The application, in accordance with Article 2 of Executive Decree 08-148, as amended and supplemented by Decree 21-260, shall be addressed to the provincial department responsible for water resources and must be accompanied by the following explanations and documents: Justification, in the form of a formal contract, for the occupation of the land and plots allocated for the site of the water extraction facilities or structures to be constructed by the applicant. Applicants for a licence to use prospective groundwater resources on municipal land belonging to the State must provide proof of occupation of the land or plots for the site of the proposed water extraction facilities or structures by means of a document justifying the occupation and use, issued by the competent municipal or agricultural authorities.

\* Seek the opinion of the bodies responsible for the integrated assessment and management of water resources in accordance with Article 3 of the same decree.<sup>37</sup>

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<sup>34</sup> See Article 74 of Law No. 05-12, cited above, p. 11.

<sup>35</sup> Executive Decree No. 08-148 dated 15 Jumada al-Awwal 1429, corresponding to 21 May 2008, sets out the procedures for granting licences for the use of water resources, Official Gazette No. 26, published on 25 May 2008, p. 7, amended and supplemented by Executive Decree No. 21-260 dated 13 June 2021, Official Gazette No. 48.

<sup>36</sup> Article 75 of Law No. 05-12, as amended and supplemented.

<sup>37</sup> See Article 3 of Executive Decree No. 08-148, as amended and supplemented by Ministerial Decree No. 21-260.

Consequently, a licence to use water resources is granted by decision of the governor, based on the findings of the technical assessment, within a period not exceeding one month from the date of submission of the application; In the event that the licence is refused, the reasons shall be communicated to the applicant,<sup>38</sup> who may lodge an appeal within 10 days of the date of notification of the refusal with the regionally competent Water Resources Directorate, which shall decide on the appeal within 15 days. A licence for the use of water resources may be renewed upon submission of an application at least six months prior to the expiry of its validity<sup>39</sup>. Furthermore, a water abstraction licence may be amended, reduced or revoked in the cases provided for in Articles 86 and 87 of Law No. 05-12 on water. The licence shall be revoked if the works are not completed within the specified time limits, if works have not commenced within two years of the date of notification of the licence decision, if the completed installations and structures do not comply with the technical documentation, or if the water is used for a purpose other than that authorised.

### **Segment 02: Use through the Granting of Concessions**

In some cases, the administration may, for the purpose of managing state property, resort to an approach that differs entirely from the licensing system. This approach takes the form of a contractual system, manifested as a concession, whereby the concessionaire is a second party to the contract with the administration and enjoys a more secure position than a licence holder.

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#### **First: Definition of a Concession for the Use of Water Resources**

The Algerian legislature has defined a concession contract in Article 64 bis of Law No. 90-30, which forms part of the National Property Code, as follows: “A concession for the use of public national property is a contract whereby the public authority owning the property, referred to as the concession-granting authority, grants a legal or natural person, known as the concessionaire, the right to exploit an appurtenance to public property or to finance, construct or operate a public facility for the provision of a public service for a specified period, at the end of which the facility or equipment subject to the concession reverts to the authority holding the concession<sup>41</sup> This definition was established in accordance with Article 76 of the Water Law, which in turn defined the concession for the use of water resources as ‘a concession for the use of water resources belonging to the public natural water domain, which is considered a contract under public law, and any natural or legal person subject to public or private law may submit an application for such a concession in accordance with the conditions specified in this Act.’<sup>42</sup>

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<sup>38</sup> See Article 4 of the same decree.

<sup>39</sup> Article 65 of the same decree.

<sup>40</sup> Hanan Messaoui, Pedagogical publication containing lectures on national property law aimed at first-year Master’s students specialising in public law, Faculty of Law, Institute of Law and Political Science, Maghnia University Centre, Algiers, academic year 2019–2020, p. 73.

<sup>41</sup> Article 64 bis was introduced by Article 19 of Law No. 08-14 dated 17 Rajab 1429 (corresponding to 20 July 2008), amending and supplementing Law No. 90-30 containing the National Property Law, Official Gazette No. 44 dated 3 August 2008, p. 15.

<sup>42</sup> See Article 76 of Law No. 05-12, the Water Code, *op. cit.*, p. 12.

As for activities subject to the water resource concession scheme, these include, in particular, the drilling of wells to extract water from aquifers or slow-replenishing groundwater systems for agricultural or industrial use, particularly in desert regions. The construction of structures for the extraction of groundwater or surface water through connection to water supply networks, to ensure an independent supply for regions or industrial units. Construction of seawater desalination facilities or facilities for the removal of salts and minerals from brackish water, for public benefit or to meet specific needs, as well as the construction of facilities at the foot of dams, water intake points and transfer structures to supply hydroelectric power stations..<sup>43</sup>

### **Second: The Way a water use concession is granted**

The granting of a water use concession is contingent upon the signing of a specific terms and conditions document by the granting authority and the concessionaire. Model terms and conditions are established for each category of use set out in Article 77 of the Water Law, by means of regulations<sup>44</sup>; Consequently, once the terms and conditions have been signed, the concession gives rise to legal consequences in the form of rights and obligations incumbent upon both the concession beneficiary and the administration holding the concession rights. It is worth noting that the granting authority or administration has the power to amend, reduce or revoke the concession in the event that the concessionaire suffers direct harm, whilst retaining their right to compensation; however, the concession may be revoked without compensation in the event of a breach of the terms and obligations imposed by the granting administration following a formal notice issued to the concessionaire. The administration also has the right to refuse to grant the concession if the obligations to be fulfilled are unjustified, or if their fulfilment affects the quantitative and qualitative protection of water resources, harms the public interest, or infringes upon the rights of third parties. Among the most important applications of water resource use concessions is the concession for the use of treated wastewater for irrigation purposes, which is regulated by Executive Decree No. 07-149.<sup>45</sup>

### **Segment 03: Provision through Delegation**

The delegation of public water services is a new approach introduced by the Water Act No. 05-12, adopted by the public authorities with a view to involving the national and foreign private sector in the management of the public water utility, and currently in force in some of the country's major cities. The first process of delegating the management of water resources came into effect in January 2006 between the French company **Environnement-Suez** and its Algerian counterpart, the Algerian Water Company, and the National Sanitation Office, The merger of these three companies resulted in the creation of the Water and Sanitation Company of Algiers (W.S.C.A.), a joint venture (N.S.O 50%, A.W.E.50%).<sup>46</sup>

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<sup>43</sup> See Article 77 of Law No. 05-12, the Water Code, *ibid.*, p. 12.

<sup>44</sup> See Article 78 of Law No. 05-12, the Water Code, *ibid.*, p. 12.

<sup>45</sup> Executive Decree No. 07-179 dated 3 Jumada al-Awwal 1428, corresponding to 20 May 2007, sets out the procedures for granting concessions for the use of treated wastewater for irrigation purposes, as well as the standard terms and conditions relating thereto, Official Gazette No. 35 dated 23 May 2007, p. 8.

<sup>46</sup> Boudaïaf Kadour, 'The Delegation of Public Water Services', \*Voice of the Law\* Journal, Issue 4, University of Algiers 1, October 2015, p. 113.

In its ruling of 22 March 2000, the French Council of State defined delegation in the field of water resource management as “a method of managing a water utility whereby the concessionaire undertakes to construct, equip and operate the utility at its own expense and under its own responsibility, in return for the revenue derived from charges paid by users”<sup>47</sup>, Referring to the provisions of Law No. 05-12 on water, we see that the legislator did not provide a precise definition of delegation; however, the first paragraph of Article 101 of the Water Law states that “... It may also delegate all or part of the management of these services to legal persons subject to public or private law by virtue of an agreement”, thus the legislator, through this article, used the term “agreement”.

As for the procedure for granting a public water service concession, the legislator has authorised the State, through the Ministry of Water Resources, as well as concessionaires, to grant the management of public services to specialised and experienced public or private legal entities recognised for their competence in a specific field within the water sector, However, this process must follow the stages set out in the Water Law and its implementing regulations, including Article 105 of Law No. 05-12 and Executive Decree No. 10-275, which specify the procedures for approving agreements to delegate public water and sanitation services.<sup>48</sup>

It should also be noted that the legislator has not clearly specified the duration of the authorisation to operate the water utility, whilst the duration of the concession to operate the water utility has been set at 30 years, as confirmed by Article 4 of Executive Decree No. 08-53<sup>49</sup> approving the model terms and conditions for the concession of public sanitation services and the related service regulations. Referring to the provisions of Article 105, we find that it emphasises the need to specify this duration when the concession is put out to tender, and it is understood from this that the determination of the concession period is subject to the discretion of the delegated authority.

## **Chapter Two: Remedial Mechanisms for the Protection of Public Water Resources**

The Algerian legislature has established deterrent remedial mechanisms against offences committed against public water resources; this can only be achieved through the provision of an effective supervisory body tasked with investigating and inspecting violations and offences affecting public water resources, and bringing the perpetrators to justice in order to impose appropriate penalties commensurate with the seriousness of the acts. The Algerian legislature has dedicated Chapter Nine of Law No. 05-12 on Water to setting out the criminal protection measures it has established for the protection of water, through the creation of the Water Police as a body tasked with investigating and detecting the offences and misdemeanours prescribed under the Water Law and the penalties prescribed for them. It has also provided for the criminal protection of water under other laws, such as the Penal Code, the Environment Code, the Forestry and Forest Resources Code, and the Code on the Protection and Conservation of State

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<sup>47</sup> Marceau Long, *Concessionary Systems and Community Law in the Water Sector*, R.A., No. 318, 2000, p. 577.

<sup>48</sup> See Article 3 of Executive Decree No. 10-275 dated 27 Dhu al-Qa'dah 1431 (corresponding to 4 November 2010), which sets out the procedures for approving agreements on the concession of public water and sanitation services, p. 15.

<sup>49</sup> Executive Decree No. 08-53 dated 2 Safar 1429, corresponding to 9 February 2008, approving the model terms and conditions for the concession of public sanitation services and the related service regulations.

Lands. In this section, we shall address the legal protection of public water resources in accordance with the Water Code 05-12 (first section), and the legal protection of public water resources in accordance with other laws (Second Section ).

### **Section I: Legal Protection of Public Water Resources in accordance with the Water Act 05-12**

In order to implement the national policy on water resources and to investigate various offences relating to this vital resource, the Algerian legislature established, under the Water Law, the Water Police as a body specialising in the investigation and detection of offences and various infringements against public water resources. The Water Law also grants judicial police officers and agents the authority to investigate and detect offences relating to water resources, given that they have general jurisdiction. In this section, we will address the Water Police (Segment 1), followed by judicial police officers and agents (Segment 2), and finally the offences and penalties applicable to them (Segment 3).

#### **Segment I: Water Police**

The Water Police is one of the bodies established under Algerian legislation, much like the Urban Planning Police; it is the competent authority attached to the department responsible for water resources and works to protect water resources of all kinds, It has the authority to investigate, inspect and probe violations committed by individuals within the national territory, with a view to recording them in reports and forwarding them to the Public Prosecutor for the strict enforcement of the law.<sup>50</sup>

It may also be defined as the body placed under the authority of the executive administrative body for water resources, whose mission is to protect public water resources, as well as to monitor public services through pricing, and to pursue those who violate the provisions of the Water Law, whether in terms of wastage, excessive use or pollution.<sup>51</sup>

Whilst the duties of the Water Police are summarised as investigating, inspecting and monitoring all infringements committed by individuals against the legal provisions and regulations contained in the Water Code and its implementing decrees, pursuant to the provisions of Law 05-12, these duties have been entrusted to a specialised body—the Water Police—in addition to officers and agents of the Judicial Police, Here we find that the Algerian legislator has recognised that this large contingent of officers entrusted with the tasks of investigation, surveillance and inspection is somewhat inappropriate, as these duties were effectively additional to their primary functions for which they were appointed under the Water Act 83-17<sup>52</sup>. Thus, under the current legislation, a separate Water Police corps has been established and classified into three ranks in accordance with Article 52 of the Basic Law.<sup>53</sup>

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<sup>50</sup> Mohamed Jalab, 'The Water Police and Their Powers under the Algerian System', *Journal of Technology*, Issue 23, December 2013, p. 85.

<sup>51</sup> Daouar, Jamila; Lounie, Nassira; 'Water Law in Algerian Legislation', *Journal of Legal and Political Studies*, Vol. 06, No. 02, June 2020, p. 128.

<sup>52</sup> Daouar Jamila, Lounie Nassira, 'Water Police in Algerian Legislation', *op. cit.*, p. 129.

<sup>53</sup> Mohamed Jalab, 'Water Police and Their Powers in the Algerian System', *op. cit.*, p. 86.

The jurisdiction of the Water Police is a specialised one; it focuses exclusively on a single, specific field, namely the protection of water resources. Furthermore, this body specialises in a particular area, given that the water sector forms part of the nation's resources, which require protection and conservation by all, as they constitute a national asset.

As for the powers of the Water Police, the Algerian legislature has confirmed in Article 160 of Law 05-12 on water that Water Police officers shall exercise their powers in accordance with their basic law and the provisions of the Code of Criminal Procedure.

The duties of the Water Police, as set out in the Water Law under Part IX, Chapter I, entitled 'Powers of the Water Police' (Articles 166 to 165), are summarised as follows:

- The power to enter facilities and structures utilised for the purpose of using public water resources, to carry out the necessary investigations, and to inspect any documents they deem necessary for the performance of their duties.
- The Algerian legislature has authorised water police officers, in cases of *flagrante delicto*, to bring the offender before the Public Prosecutor or a judicial police officer on charges of infringing upon public water resources, in the event of resistance.
- The scope of investigation, inquiry and inspection of violations of the Water Law, and the recording of facts and statements made by offenders in reports, given that the report constitutes the legal framework reflecting all operations carried out by the Water Police and must comply with the formal requirements set out in the Water Law. The report on the inspection of the violation shall be sent to both the regionally competent public prosecutor and the provincial director responsible for irrigation. It should be noted that Decree No. 66-155, which contained the Code of Criminal Procedure, has been repealed by the new Law No. 25-14 on the Code of Criminal Procedure; consequently, Articles 14 (paragraph 3) and 27, respectively, are now replaced by Articles 22 (paragraph 3) and 32, respectively, of the new law.<sup>54</sup>

## **Segment II: The Judicial Police**

In addition to the duties entrusted to the Judicial Police in their capacity as a general-purpose force, with a view to ensuring public safety, public order and public health, the Algerian legislature has also entrusted it with the task of investigating and detecting offences affecting public water resources, pursuant to the Water Law 05-12, as stipulated in Article 161: "Offences under this Law shall be subject to investigation, inspection and inquiry by officers and agents of the Judicial Police."<sup>55</sup>

Article 20 of the Code of Criminal Procedure provides that: "The judicial police shall carry out their duties within the jurisdiction of each judicial council, under the supervision of the Public Prosecutor; the Public Prosecutor's Deputy shall be responsible for their administration at the level of each court, subject to the oversight of the Indictment Chamber; The judicial police shall be entrusted with the task of investigating and detecting the offences specified in criminal legislation, gathering evidence in relation thereto, and searching for the perpetrators and accomplices, provided that a judicial investigation has not yet commenced."<sup>56</sup>

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<sup>54</sup> Law No. 25-14 of 19 Safar 1447 (corresponding to 5 August 2025) incorporates the Code of Criminal Procedure, Official Gazette No. 54, published on 13 August 2025.

<sup>55</sup> Article 161 of Law No. 05-12 on Water, *op. cit.*, p. 19.

<sup>56</sup> Article 20 of Law No. 25-14 on Criminal Procedure, *ibid.*, p. 9.

The task of conserving water resources and protecting them from those who engage in activities that harm them by failing to comply with the legal provisions set out in the Water Act and its implementing regulations. This task has been entrusted to officers and agents of the judicial police, as well as water police officers. The legislature has organised the judicial police apparatus under the Code of Criminal Procedure and defined the categories of personnel with judicial police powers. Referring to Article 22 of the Code of Criminal Procedure, we find that judicial police powers are exercised by: judicial police officers, judicial enforcement officers, and officials and officers legally entrusted with certain judicial enforcement tasks.<sup>57</sup> In accordance with Article 23 of the Code of Criminal Procedure, it defines the status of judicial police officers for specific authorities as set out in the text of the article.

Pursuant to Article 29 of the Code of Criminal Procedure, judicial officers comprise police officers, officers of the National Gendarmerie and the Deki, personnel of the military security services, and inspectors of navigation and maritime affairs, as well as coastguard officers attached to the National Coastguard Service who do not have the status of judicial police. Judicial police officers assist judicial police officers in the performance of their duties and gather all information revealing the perpetrators of such crimes and those involved in them, in accordance with the orders of their superiors. In addition to judicial police officers and agents, there are certain agents to whom the law grants judicial police powers; these agents are provided for in Article 31 of the Code of Criminal Procedure. Unlike the approach of the old law, which dealt with this category in various articles, the legislator, under this law, has provided a general definition of this category without giving specific examples.<sup>58</sup>

Reference to Article 32 of the Code of Judicial Police reveals that it stipulates that officials and agents of public administrations and services shall exercise certain powers of judicial police conferred upon them by their respective laws; they may not enter homes, workshops, buildings, courtyards or adjacent enclosed premises except in the presence of a judicial police officer. They may bring any person caught in the act of committing a misdemeanour before the Public Prosecutor or judicial police officers, and they may, in the performance of their duties, call upon the assistance of the public security forces.<sup>59</sup>

Furthermore, the public prosecutor, the investigating judge and police officers may, in the course of criminal investigations, request assistance from officials and staff of public administrations and services entrusted with certain judicial police duties.<sup>60</sup>

### **The duties of the judicial police**

The remit of the judicial police is diverse in legal and judicial terms, but we shall limit ourselves to focusing on the area of investigating and detecting crime and its perpetrators, which is carried out by judicial police officers prior to the initiation of public proceedings with the aim of verifying that a crime has been committed, gathering information about it, and preparing the file on which the Public Prosecution relies in initiating public proceedings. We will then address the powers relating to water law as set out in Article 161.

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<sup>57</sup> Article 22 of Law No. 25-14 on Criminal Procedure, *ibid.*, p. 10.

<sup>58</sup> Jinan Amer Youssef, Code of Criminal Procedure No. 25-14, Dar Laima, Algiers, 2025, p. 46.

<sup>59</sup> Articles 32, 33 and 34 of Law No. 24-14 on Criminal Procedure, *op. cit.*, p. 12.

<sup>60</sup> Article 29 of Law No. 25-14 on Criminal Procedure.

Judicial police officers have territorial jurisdiction as provided for in Article 24 and Article 25(2) and (3) of Law No. 25 -14, which includes the Code of Criminal Procedure, as well as the powers of officers and agents of the ordinary judicial police, as provided for in Article 26, paragraph 1, Article 20, paragraph 3, Article 21, Article 18 and Article 25 of the same law.

They also have special powers provided for in Articles 72 to 95 and Articles 114 to 127 of the same Law No. 25-14.

The Algerian legislature has regulated special investigative methods in the Code of Criminal Procedure as exceptional procedures, which can be classified into three categories: surveillance of persons under Article 25 of the Code of Criminal Procedure, and the use of undercover agents under Articles 120 to 127 of the Code of Criminal Procedure.<sup>61</sup>

As for the powers relating to the Water Code, the judicial police are responsible, in accordance with Article 161 of the Water Code, for investigating those who contravene the provisions of the Water Code. This includes drawing up reports on their actions and taking the initiative to notify the Public Prosecutor of all offences and crimes that come to their attention. The reports shall be accompanied by all documents, records and items seized in connection with the offence committed and shall be sent to the Public Prosecutor at the court with territorial jurisdiction.

They are therefore regarded as a category complementary to that of the water police, since the latter cannot carry out certain tasks without the presence of an officer of the judicial police, as stipulated in Article 33 of the Code of Criminal Procedure “However, they may not enter homes, workshops, buildings or adjoining enclosed premises except in the presence of a judicial police officer, and such inspections may not take place before 5 a.m. or after 8 p.m.”

### **Segment III: Offences and Penalties Under the Water Act**

The Water Law sets out a range of offences relating to water, as well as the penalties prescribed for them, in Articles 166 to 179, with the aim of ensuring effective criminal protection. We shall now examine the criminal acts relating to this vital resource as set out in the Water Law, and the penalties prescribed for them.

#### **First: Offences relating to water resources and the penalties prescribed for them**

These include offences affecting water resources, which are as follows:

##### **1. The offence of failing to report the discovery of groundwater**

The Water Code contains specific provisions relating to water, and this offence is set out in Article 5 of the Water Code, which states: "Any natural or legal person who has intentionally discovered groundwater or was present at the time of such discovery must notify the competent regional water resources authority " <sup>62</sup> The perpetrator of this offence shall be punished by a fine ranging from five thousand dinars (5,000 DZD) to ten thousand dinars (10,000 DZD), and the penalty shall be doubled in the event of a repeat offence.

##### **2. Offence of damaging water resources**

This is provided for in Article 12 of the Water Law, which states: “Within free-edge zones or areas subject to free-edge easements, all new construction, all ploughing, all erection of

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<sup>61</sup> Lubna Abdelkrim, a university publication on an in-depth analysis of the Code of Criminal Procedure, intended for first-year Master’s students specialising in criminal law and criminal sciences, Mohamed Seddik Ben Yahia University, Jijel, academic year 2025–2026, p. 35.

<sup>62</sup> Article 5 of Law No. 05-12 on Water, op. cit., p. 5.

permanent fences, and any action detrimental to the maintenance of valleys, lakes, ponds, marshes and watercourses is prohibited; The authority responsible for water resources may cut down trees and demolish any existing structures, whilst ensuring that the resulting damage is repaired. The penalty is a fine of between fifty dinars (50.00 DZD) and one hundred thousand dinars (100,000 DZD), and the penalty is doubled in the event of a repeat offence, in accordance with Article 167 of the same law.

### **3. The offence of extracting alluvial materials**

This offence is set out in Article 14 of the Water Code, which states: “The extraction of alluvial materials by any means is prohibited, in particular through the establishment of quarries in riverbeds, especially where this poses the risks of damage referred to in Article 15. The perpetrator of this offence shall be punished by imprisonment for a term of one (1) to five (5) years and a fine of two hundred thousand dinars (200,000 DZD) to two million dinars (2,000,000 DZD), The equipment, machinery and vehicles used in committing this offence may be confiscated, and the penalty shall be doubled in the event of a repeat offence, in accordance with Article 168 of the Water Code.

It should be noted that the Algerian legislature has exempted certain cases provided for under the amendment to the Water Code by Law No. 08/03 of 27 January 2008, which amended Article 14 of the Water Code on grounds of public interest, thereby temporarily permitting the extraction of silt following the granting of a temporary licence.

### **4. The offence of obstructing the free flow of surface water**

This offence is set out in Article 15 of the Water Code: “Any act that obstructs the free flow of surface water in riverbeds, undermines the stability of riverbanks and public infrastructure, or harms the preservation of alluvial deposits is prohibited.” The perpetrator of this offence shall be punished by imprisonment for a term of two (2) to six (6) months and a fine of fifty thousand dinars (50,000 DZD) to one hundred thousand dinars (100,000 DZD), or by one of these two penalties alone; the penalty shall be doubled in the event of a repeat offence. In accordance with Article 169 of Law No. 05-12.

### **5. The offence of raising the extraction level**

The offence set out in Article 32 of the Water Law, which states: “Within quantitative protection zones, it is prohibited to construct any new wells or boreholes or to make any alterations to existing installations that would raise the extraction level; subject to authorisation by the authority responsible for water resources to determine the exploitation level at certain extraction points or to suspend them”, and the perpetrator of this offence shall be punished by imprisonment for a term of six (06) months to three (03) years and a fine of fifty thousand dinars (50,000 DZD) to one million dinars (1,000,000 DZD). Furthermore, the equipment and machinery used in committing this offence may be confiscated, and the penalty shall be doubled in the event of a repeat offence.<sup>63</sup>

## **Third: Offences relating to water quality and the associated penalties**

In order to protect water from the risks of pollution, on the one hand, and to ensure that it is of good quality to safeguard public health, on the other, the Algerian legislature has criminalised

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<sup>63</sup> Section 170 of Law No. 05-12 on Water, op. cit., p. 20

the following acts:

### **1. The offence of throwing sharp or poisonous objects**

The offence set out in Article 44 of the Water Code, which states: “The throwing, dumping or depositing of any materials that do not pose a risk or cause damage to public water infrastructure is subject to a licence”, The prescribed penalty is a fine ranging from ten thousand dinars (10,000 DZD) to one hundred thousand dinars (100,000 DZD), and the penalty is doubled in the event of a repeat offence.

### **2. The offence of introducing harmful substances into water**

As set out in Article 46 of the Water Law, this covers a range of offences, including:<sup>64</sup>

- Prohibition on discharging, pouring, introducing or burying sewage in a manner that causes pollution to seep into surface or groundwater, thereby affecting human, animal and plant health. For this reason, the legislator has criminalised the dumping of sewage into wells, pits, water collection channels, springs, public drinking areas, valleys and canals . It has also criminalised the act of burial, which can be defined as burying or concealing unsanitary materials at a distance from the soil, or through re-supply, leading to the contamination of groundwater. These may include expired pharmaceutical materials that affect human health, and this act inevitably affects groundwater, as these materials naturally seep into the ground over time and mix with groundwater, which is then extracted for consumption and thus becomes harmful to humans and animals. The legislator has also criminalised the act of introducing unhygienic substances into water infrastructure facilities by mixing these substances directly with water or within a facility designated for water; In such cases, the physical, chemical and biological composition of the water is altered, rendering it unfit for consumption; consequently, the legislator has rightly and appropriately criminalised this type of act.

The legislature has prescribed a prison sentence of between one (1) and five (5) years and a fine of between fifty thousand dinars (50,000 DZD) and one million dinars (1,000,000 DZD) for anyone committing the offences mentioned above, with the penalty being doubled in the event of a repeat offence. <sup>65</sup>

### **3. The offence of discharging contaminated effluent into facilities**

As stipulated in Article 47 of the Water Law, the perpetrator of this offence shall be punished by a fine ranging from one hundred thousand dinars (100,000 DZD) to one million dinars (1,000,000 DZD), with the penalty doubled in the event of a repeat offence.

### **4. The offence of using contaminated water**

This is provided for in Article 130 of the Water Law, and the penalty is imprisonment for a term of one (1) to five (5) years and a fine of between five hundred thousand dinars (500,000 DZD) and one million dinars (1,000,000 DZD), with the penalty doubled in the event of a repeat offence.

## **SECTION I: Legal Protection of Public Water Resources under Other Legislation**

The legislator has worked to criminalise acts that are harmful and detrimental to water resources, in line with the Water Law, through other laws such as the Penal Code, the Law on

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<sup>64</sup> Article 44 of Law No. 05-12 on Water, *ibid.*, p. 8.

<sup>65</sup> Section 172 of Law No. 05-12 on Water, *op. cit.*, p. 20.

the Protection and Preservation of State Property, the Environment Law and other legislation, and has prescribed penalties for such acts, endeavouring to ensure that they all adhere to the principle of proportionality and reflect the seriousness of the harmful criminal activity. In this section, we shall address the remedial protection of public water resources under the Penal Code (Section 1), the remedial protection of public water resources under the Law on the Protection and Preservation of State Property (Section 2), and finally the remedial protection of public water resources under the Environment Act (Section 3).

### **Segment One: Remedial Protection of Public Water Assets under the Penal Code**

The Penal Code, as the general law governing certain offences affecting water resources, has addressed this issue. It has classified one of these acts as a felony, considering it a terrorist and subversive act, and the other as a misdemeanour relating to the theft of water.

#### **First: Terrorist or Sabotage-Related Offence**

The Penal Code in Article 87 bis, paragraph 06, criminalises terrorist or destructive acts against the natural environment. These are among the most serious crimes affecting the environment and water resources due to the significant danger they pose to human health and safety and nature in general, which we can categorise under the title of environmental terrorism<sup>66</sup>. This criminal provision is included in the first chapter of the first section of the fourth bis under the title of crimes described as terrorist or destructive acts in the amended and supplemented Penal Code, which states "...<sup>67</sup>Attacking the environment or introducing a substance or leaking it into the vicinity or underground or throwing it onto it or into the territorial waters in a way that endangers the health of humans, animals, or the natural environment... The Algerian legislator has imposed the death penalty on the perpetrator of this crime according to the Penal Code under Article 87 bis 1<sup>68</sup>, as this crime is very dangerous and affects the security and health of society.

#### **Second: The crime of water theft**

The Algerian legislator classified the crime of water theft as a misdemeanour under the Penal Code, where the punishment ranges from two (2) to ten (10) years and a fine from 200,000 DZD to 1,000,000 DZD if the stolen item is equipment, property, or movable assets owned by the state, local communities, or public institutions and bodies.<sup>69</sup>

### **Segment Two: Remedial Protection of Public Water Properties According to the Law on the Protection and Preservation of State Properties**

The Algerian legislator has attempted, through Law 23-18 dated November 18, 2023, to enhance the means of protection for national properties belonging to the state, whether public or private, regardless of the rules governing their acquisition, management, or classification

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<sup>66</sup> Atef Ali Hamid, *Water Harvesting in the Arid Region of the Arab World*, Dar Safa for Publishing and Distribution, Amman, 2003, pp. 61 and 62.

<sup>67</sup> Article 87 bis of Order No. 66-156 dated 18 Safar 1386 AH corresponding to June 8, 1966, including the amended and supplemented Penal Code.

<sup>68</sup> See Article 87 bis 1 of Ordinance No. 66-156 containing the amended and supplemented Penal Code, same reference.

<sup>69</sup> Article 350 of Ordinance 66-156, which includes the Penal Code amended and supplemented by Law No. 24-06 dated April 28, 2024, Official Gazette No. 30 dated April 30, 2024.

into the appropriate category (public or private), in order to protect them and ensure their rational use and management without causing harm as a result of this use.

**First: The crime of unlawfully seizing state lands (public water properties) and exploiting them for personal use or for the benefit of others.**

This crime is considered a misdemeanour according to Article 17, Paragraph 1, and its punishment is imprisonment for a period of five (05) to ten (10) years and a fine ranging from 500,000 DZD to 1,000,000 DZD.

**Second: The offence of constructing buildings or structures on state land (public water property) that has been unlawfully acquired**

Article 17(2) stipulates that the penalty for this offence is imprisonment for a term of seven (07) to twelve (12) years and a fine of DZD 700,000 to DZD 1,200,000, and this offence is classified as a misdemeanour.

**Third: The offence of disposing of State land (public water property)**

This constitutes a misdemeanour under Article 17(3) of the Law on the Protection of State Land, and is punishable by a term of imprisonment of between ten (10) and fifteen (15) years and a fine of between DZD 1,000,000 and DZD 1,500,000.

**Fourth: The offence of intentionally regularising the status of buildings or structures illegally erected on State land (public water property)**

This offence is stipulated in Article 20 and is punishable by imprisonment for a term of six (06) months to three (03) years and a fine of DZD 500.00 to DZD 300,000.

**Fifth: The offence of deliberately altering the nature or purpose of State land (public water property)**

This offence is stipulated in Article 19 and is punishable by imprisonment for a term of between three (3) and seven (7) years and a fine of between DZD 300,000 and DZD 700,000.

**Sixth: The offence of obstructing inspection activities or impeding officers, members of the monitoring unit, or the competent authorities in the performance of their duties**

This offence is stipulated in Article 23 and is punishable by imprisonment for a term of six (06) months to three (03) years and a fine of DZD 50,000 to DZD 300,000.

**Seventh: The offence of connecting, or authorising the connection of, buildings or structures illegally erected on State land (public water property) to public utility roads and networks**

This offence is stipulated in Article 18 and is punishable by imprisonment for a term of two (2) to five (5) years and a fine of DZD 200,000 to DZD 500,000.

**Segment Three: Remedial Protection of Public Water Assets under the Environment Law**

Human activities are among the most significant causes of environmental damage, particularly in the field of water resources, as a result of industrial development and development activities, and the resulting threats to human, animal and plant life.

This is why the Algerian legislature, under Law 03-10 on environmental protection in the context of sustainable development, in Chapter Three, entitled 'Environmental Protection

Requirements', in Article 09, Paragraph 03, addressed water and aquatic environments, and established penalties for all offences that result in the pollution of fresh water and seawater.

#### **First: The offence of water pollution**

In Article 04, Paragraph 09 of the Environmental Code, the Algerian legislature defined the offence of water pollution as the introduction into the aquatic environment of a substance that alters the physical, chemical or biological properties of the water, poses a risk to human health, harms wild and aquatic fauna and flora, impairs the aesthetic value of the site, or hinders any other natural use of the water. Here, the legislature emphasised the value of water as an important component of the environment<sup>70</sup>. This offence is classified as a misdemeanour under Article 100 of Law 03-10.

#### **Second: The offence of polluting seawater with hydrocarbons**

Under Law 03-10, the Algerian legislature has established specific penalties for the offence of polluting seawater with hydrocarbons, depending on the circumstances of each case, as set out in Articles 57, 93, 94 and 99. These penalties apply depending on whether the master of the vessel is subject to the provisions of the International Convention for the Prevention of Pollution of the Sea by Oil.

#### **Conclusion**

Water resources are considered a key development resource, which has led Algeria to make strenuous efforts to preserve and protect this asset from threats. This is evident from the stages that the irrigation sector in Algeria has gone through. Given its importance, the sector has been included among the national public assets in order to provide it with special protection. Algerian legislators have adopted a set of rules governing water use and subject it to preventive control mechanisms through administrative means, such as licences and concessions, in order to curb uncontrolled exploitation. They have also strengthened control mechanisms through the intervention of central and decentralised bodies to ensure rational and balanced management, and have introduced dissuasive penalties to combat pollution and excessive depletion. Despite the existence of these mechanisms, their effectiveness remains dependent on their proper application on the ground and on the promotion of environmental awareness.

Accordingly, we can put forward a number of recommendations, which are as follows:

- Developing an integrated strategy to link the various sectors involved in water conservation and rational water use.
- Digitising the irrigation sector to ascertain Algeria's capabilities in this field and to address various shortcomings, whether in terms of constructing wastewater treatment plants or seawater desalination plants, and finding solutions to these issues.
- Training and enhancing the skills of irrigation sector personnel and managers to improve their knowledge and expertise.
- Engaging civil society in awareness-raising campaigns to promote the rational use and conservation of water resources.
- Activating the Water Police Corps nationwide, by issuing decrees that clearly define its responsibilities and expand its powers in search and investigation operations.

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<sup>70</sup> Nasri Abbas, Zarkoun Omar, Legal Protection of Water Resources in Algerian Legislation, op. cit., p. 72.

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