

Criminal Protection of the Environment in Egyptian Legislation

**Marwa Awad Mohamed Soliman¹, Mahmoud Ibrahim Mahmoud²,
Dareen Mohamed Refaat³, Ahmed Talha Hussein⁴**

1- Department of Administrative, Legal, and Environmental Sciences, Institute of Environmental Studies, Arish University, Egypt.

2- Department of Life Sciences, Institute of Environmental Studies, Arish University, Egypt.

3- Department of Environmental Protection, Faculty of Environmental Agricultural Sciences, Arish University, Egypt.

4- Department of Administrative, Legal, and Environmental Sciences, Institute of Environmental Studies, Arish University, Egypt

Abstract

This research aims to study the criminal protection of the environment under Egyptian legislation, providing a comprehensive analysis of legislative developments aimed at addressing environmental challenges in light of sustainable development requirements.

The study demonstrates that environmental crimes are no longer traditional offenses but represent a direct threat to human life and natural resources.

It reviews the concept and legal nature of environmental crimes, analyzing the specific characteristics of environmental harm, which is often indirect and not immediately detectable.

The research also examines the constitutional and legal protection of the environment in Egypt, highlighting key constitutional provisions that guarantee the right to a clean and safe environment.

Additionally, the role of criminal judiciary in enforcing environmental protection laws and issuing deterrent judgments against violators is discussed.

The study concludes with the necessity of enhancing current environmental legislation, strengthening regulatory and judicial institutions, and promoting environmental awareness among individuals and institutions to achieve sustainable development and secure the rights of future generations.

Keywords: Criminal Protection, Environment, Environmental Crimes, Egyptian Legislation, Sustainable Development

Introduction:

Environmental protection is one of the most complex issues of our time, capturing the attention of specialists in various fields and across human societies, regardless of their legal and social systems. The dangers and threats surrounding it have become a challenge that humanity must confront, thanks to the rapid advancement of science and technology and the ability to transform its environment in an immeasurable way and on an unprecedented scale. The environment has begun to lament and cry out for help with the damage it has suffered, represented by environmental pollution. Humans, in their pursuit of

life, are now corrupting and destroying, in order to cleanse corruption on land and sea, as is obvious. The future of life on Earth is now threatened by grave dangers as a result of their actions, behavior, and increasing attacks on the surrounding environment.

Given the social value of the environment, some have suggested including all crimes affecting the environment, alongside traditional crimes, in the core of the penal code, in addition to enhancing the effectiveness of its provisions. Inter-ethnic crime is a harmful behavior that disrupts the environmental balance and threatens the security, stability, and future of humankind on Earth. Criminal law is one of the tools used by the international and national communities to combat and control environmental damage, including corruption and pollution. Therefore, society has deemed it necessary to impose punitive liability on those responsible for environmental damage.

Research Problem:

Environmental attacks have become a major threat to human survival on Earth. These violations continue to occur in various forms and manifestations. Consequently, questions are being raised about the role played by the Penal Code in protecting the environment from pollution.

Are these punitive mechanisms sufficient to protect the environment, and to what extent are they compatible with the rules of public law on the one hand and the rules of private law on the other?

Significance of the Research:

The importance of the research can be derived from Article 25 of the Universal Declaration of Human Rights of 1948, which stipulates that everyone has the right to a standard of living adequate for their health and well-being.

Thus, the importance of this research stems from the fact that every person has the right to live in a suitable environment, ensuring their right to a fair share of environmental resources and services. Furthermore, given that we live today in a world witnessing a congested industrial activity, and regardless of the physical damage some of these activities cause, which may lead to human death if they impinge on the right to live in a pollution-free environment, environmental crimes have emerged as a fundamental challenge that hinders countries' development and their efforts to attract investment and achieve a better economic and social situation. Hence, it is crucial to pay greater attention to this topic, given the negative consequences of environmental crimes on countries. On the other hand, the importance of research appears in the global dimension of the research topic. The presence of pollution anywhere in the world does not limit its impact to that region, but rather transcends political and geographical borders, creating an environmental disaster whose impact extends beyond the surrounding area in which it occurred. Such as the Chernobyl nuclear reactor explosion in the Soviet city of Kiev on April 26, 1986, and the resulting

radioactive clouds that spread into the atmosphere of many European and Asian countries, sparking panic among their peoples who realized the seriousness of radioactive pollution and its threat to their lives and existence. Thus, pollution may cause international problems that require concerted international efforts to address them. Criminal law has always been concerned with protecting the various social values and interests that the collective conscience recognizes the importance of protecting. Since environmental protection represents a new societal value, it has become necessary for criminal law to directly intervene to protect it through strict legal texts that criminalize various forms of aggression against it. Therefore, criminal protection of the environment has become an urgent necessity and a global and local demand, especially in light of the rapid progress and development witnessed by the world.

Research Objectives:

The research primarily aims to demonstrate the importance of issuing laws, criminalization, and punishment, and their effective role in environmental conservation.

The following sub-objectives emerge from this primary objective:

- 1- Developing criminal protection for environmental protection in Egypt.
- 2- Developing and defining the approach to criminal protection in terms of: the concept and legal nature of the crime of environmental pollution.
- 3- The legal basis for the crime of environmental pollution.
- 4- The scope of criminal protection for the environment.

Research Hypotheses:

In light of the research problem and objectives, the following hypotheses can be formulated:

The research is based on a set of hypotheses, the validity of which will be determined through further research in this area. These hypotheses are as follows:

- 1- Is criminal protection necessary for environmental protection?
- 2- Are criminalization and punishment central to environmental protection legislation?

Research Methodology:

Given the breadth and complexity of this study, which encompasses numerous issues, given that the environment itself contains numerous elements and components, the Egyptian legislator, like other legislation, has designated each of its elements, along with the influences and activities surrounding it that may impact any element of the environment and, consequently, destroy the environment, with legal protection and specific legal regulation. Most, if not all,

of these elements include penal provisions. In providing comprehensive legal protection, which made us face a study of a subject regulated by an arsenal of legal texts, so we had to study the subject of penal protection for the Sunnah, moving away from the descriptive analytical approach, relying on analyzing the provisions of the texts contained in Egyptian laws related to environmental protection, which requires us to analyze and scrutinize them, relying on the various jurisprudential positions and opinions issued on each legal point in a way that enables us to show the extent of its sufficiency or deficiency and the extent of the effectiveness of the protection achieved on the ground, with regard to the various environmental interests covered by this protection, while clarifying the results we extracted, and the jurisprudential positions and trends we tend toward, basing this on the viewpoints that preceded us and which were more convincing to us.

Theoretical Framework:

First: The Legal Nature of the Crime of Environmental Pollution

Crimes affecting the environment differ from traditional crimes that entail tangible physical consequences in the outside world, such as murder, assault, theft, forgery, etc. The behavior constituting the crime of environmental pollution is not followed by any associated physical consequence, but rather merely exposes an environmental element to danger. The result is not realized immediately, but rather after a period that may be long or short, depending on the circumstances. The result may not occur at the location where the act occurred, but rather elsewhere. The result may cross state borders, as is the case with the pollution of international rivers or seas, or radioactive pollution from nuclear power plants, nuclear-powered ships, and the like, in what is commonly called "transboundary pollution." In the first section, we addressed the legal basis of the crime of environmental pollution, while in the second section, we addressed the harm and danger posed by the crime of environmental pollution

1- The Legal Basis for the Crime of Environmental Pollution

Criminal protection of the environment does not merely mean preserving it from harm. Rather, criminal protection here refers to its improvement and development based on scientific principles. From this standpoint, it can be said that any assault or violation of the legal rules, regulations, and procedures regarding the environment must be criminalized in order to achieve criminal protection of the environment in the sense we have indicated.

There is no doubt that the involvement of criminal law in criminalization and punishment emphasizes the importance of this social value, which must be subject to criminal protection to live up to this. The legislator has taken care to issue laws regulating various activities that may result in environmental pollution.

These laws and regulations contain specific provisions for their regulation and criminal penalties for any violation of the latter. However, before addressing criminal protection, we must understand the legal basis for the crime of environmental pollution through two sections: the first section defines environmental crimes and their seriousness, and the second section covers the legal nature of the crime of environmental pollution.

2- Definition of Environmental Crimes

Opinions vary regarding the definition of crime in general, but they almost agree that it is any unlawful act resulting from a criminal intent for which the law prescribes a penalty or precautionary measure, or an unlawful act, whether positive or negative, resulting from a criminal intent for which the law imposes a criminal penalty. Based on this, an environmental crime is defined as any unlawful, positive or negative, behavior, whether intentional or unintentional, committed by a natural or legal person that harms or attempts to harm an element of nature, whether directly or indirectly, for which environmental law prescribes a penalty or precautionary measure.

An environmental crime is considered harmful behavior that disrupts the balance of the environment and threatens human stability and future on Earth. Since the right violated in environmental crimes is a public right, protecting it is a public interest, it may also be a private right, as matters in the context of environmental crimes are intertwined and intertwined, as public and private interests are closely intertwined and inseparable. Crimes against the natural environment represent a form of international crime, especially if one state uses it to harm another. It is considered a form of war crime as stipulated in the Statute of the International Criminal Court, which requires it to be subject to the provisions of that court, given the enormity of the consequences resulting from the attack on the environment, which, after the attack on humanity itself, destroys the flow of the necessities of life. Environmental damages are unique from traditional damages, as they are often indirect and cannot be pinpointed. They are widespread and require collective efforts to address them. Furthermore, they generally result from economic growth. The criminal justice system plays a crucial role in deterring criminal behavior that harms the environment, in addition to civil deterrence. Similar to French and Egyptian law, the Egyptian legislator did not define what is meant by an environmental crime, leaving the task—as is customary—to criminal jurisprudence to determine a specific definition for this crime. Accordingly, an environmental crime may be an ordinary crime, or a national crime if committed by an individual who violates the provisions guaranteeing the preservation of environmental balance. This may include a person discharging or dumping pesticides or radioactive materials into the aquatic environment, or industrial or agricultural establishments failing to adhere to the permissible standards and levels for substances and gases that are harmful to the environment. An

environmental crime may also be an international crime for which the state is liable if the harmful activity is attributed to the state, for example, by conducting nuclear tests within its territory, resulting in the transfer of chemical or radioactive pollutants, such as smoke or acid rain, into the territory of another state, causing environmental damage. According to jurisprudence, an environmental crime is defined as those crimes established by the regime or included within public law and related to the environment.

Second: The Legal Nature of Environmental Crimes

Given the novelty of the environmental topic, the conflicting views of jurists on the subject, and the difficulty of studying the environment from its jurisprudential perspective to determine the legal nature of environmental crimes, it is especially important since everyone knows that the rules for environmental criminalization are found only in environmental law, but are scattered across several laws, the latter of which are complex and diversified in determining the legal nature of environmental crimes. Therefore, in the first section, we focus on the importance of criminalizing acts that harm the environment, while in the second section, we focus on the scope of criminal protection for the environment. The topic of criminal policy contributes to guiding the legislator towards developing environmental criminal law.

1- The importance of criminalizing acts that harm the environment.

The topic of criminal policy contributes to directing legislators toward developing environmental criminal law, particularly as it addresses a type of crime that is constantly and rapidly evolving, which requires the establishment of the necessary rules to address this development. The issue of environmental protection has not received a rapid response at the legal level, due to the difficulties facing legal professionals in this field, especially from the criminal aspect. The nature of environmental crimes is a new type that is distinct from other crimes, especially in some liability provisions that differ from traditional criminal liability. This is in regard to the extent of clarity of the material and moral element of crimes, as well as in terms of the criminal outcome. In terms of the material attribution of crimes, not the moral attribution of crimes, and also in terms of the criminal outcome. In terms of the material attribution of crimes, it cannot be overlooked that identifying the perpetrator in environmental crimes may be a matter of extreme precision and difficulty, as environmental pollution, whatever it may be, is not usually carried out by a single perpetrator, but rather often involves several sources that may not be linked together. The real difficulty in combating environmental crimes comes with dealing with a legal person, not a natural person. The dimensions and effects of environmental crimes committed by institutions and organizations cannot be measured by the same measure as their commission by individuals, as the criminal outcome

appears imperceptibly and in a gradual manner, and it is also achieved in a place. In the face of the development and increase of environmental problems, the efforts of states have increased. In order to curb these harmful practices and environmentally destructive activities, international environmental conferences were held, such as the Stockholm Conference in 1972 and the Rio de Janeiro Conference in Brazil in 1992. All countries subsequently enacted legislation to preserve and protect the environment. As a result, these legislations included provisions to address violations of environmental protection obligations and duties, requiring violators to be held accountable for environmental damage, including criminal liability. Environmental damage can take several forms, with pollution being the most common, especially since pollution, from a scientific perspective, has multiple types. However, in addition to the term pollution, there are other terms such as environmental damage, environmental assault, and environmental corruption. All of these terms can lead to environmental damage and negative impacts. Protecting the environment from pollution requires changing the terminology. It is necessary to say environmental corruption, not pollution. As long as the causes of environmental corruption are attributed to humans, it can be said that humans are actually the problem of the environment. Disrupting the balance of the environment after aggression against it requires protection from it. Protection within the framework of the law takes a broader concept than the normal concept. In the field of law, which regulates people's behavior, protection is represented in preventing pollution by preventing its causes and limiting what exists to the narrowest scope in preparation for getting rid of it whenever possible. It is understood from the above that legal protection of the environment requires one of two things: either preventing the causes of pollution, or combating the existing causes in order to restore the environmental balance and eliminate their effects.

1-The Scope of Criminal Protection of the Environment

Defining the interest protected by law as an intrinsic value, it is the subject of protection. Although the environment is linked to a significant group of other interests, such that it can be argued that there is a degree of shared protection between them, the environment, as the interest protected by the legislature, is independent and separate from other interests protected by other texts. This is evident in acts that harm bodily integrity, public health, or animal welfare. These acts are protected by other texts, unlike the environment. Therefore, harm to the environment may occur even if none of these interests are harmed, or if the harm resulting from the act harming the environment is likely, and none of them are likely to be harmed by an assault.

Indirect Protection of the Environment:

Indirect protection of the environment constituted an important step in understanding environmental harm and protecting it from certain acts that undermine it. However, this protection did not target the environment itself, nor was it sufficient or effective.

On the one hand, criminalizing certain acts by which the legislature protects other rights and interests may entail secondary environmental protection. An example of this is the texts by which the legislature protects the right to life, physical safety, and agricultural land. However, this protection is not fundamental environmental protection, as the reason for criminalizing these acts is not the environment itself. Therefore, it was conceivable that environmental harm could occur without this harm triggering the application of these general texts. Polluting water and air with toxic waste may not constitute a crime among the crimes stipulated by the legislator to protect the right to life or bodily integrity, since this pollution may not produce an effect of assault on these rights without extending to causing an impact on the environment, as was previously envisaged, but rather its effect may be delayed for long periods of time, and it may not cause harm to a specific person. On the other hand, this indirect protection is neither sufficient nor effective, as it does not encompass all forms of environmental harm. Moreover, the difficulty of proving a causal relationship between acts of assault on the environment and the criminal result required by the legislator in these general texts often seems impossible

Third: Environmental Protection in the Egyptian Constitution

Many constitutions of countries stipulate environmental protection. Recognizing the importance of the environment and the necessity of protecting it, the Egyptian Constitution stipulates the right to a clean environment in more than one article, as follows:

Environmental protection is a national duty.

Article (46) states, "Everyone has the right to a healthy environment, and its protection is a national duty." Environmental protection is a national duty, and this duty is not limited to the state's public authorities alone, but extends to all citizens in society.

1- The Constitution obligates the state to take the necessary measures to preserve the environment and prevent harm to it:

Article (46) states, "The state is obligated to take the necessary measures to preserve it and prevent harm to it".

2- The legislator links environmental protection to achieving sustainable development, ensuring the protection of the rights of future generations to a clean environment

3- Article (46) stipulates that the state is obligated to take the necessary measures to preserve it and to prevent damage to it and to use natural resources

rationally in a way that ensures the achievement of sustainable development and guarantees the rights of future generations therein.

–Enumerating Environmental Rights:

The current Egyptian Constitution, in affirming its protection of the environment and highlighting the importance of preserving it, enumerated environmental rights as follows:

A- The Constitution stipulates the state's commitment to protecting and increasing agricultural land, criminalizing any encroachment upon it, and developing the countryside, raising the standard of living of its inhabitants, and protecting them from environmental hazards. Article (29) of the Constitution.

B- Article (30) of the Constitution stipulates, "The state is committed to protecting fish resources, protecting and supporting fishermen, and enabling them to practice their work without harming ecosystems, in the manner regulated by law".

C- Article (32), paragraph 1, stipulates, "The state's natural resources belong to the people, and the state is committed to preserving them, utilizing them properly, preventing their depletion, and respecting the rights of future generations therein".

C- Article (44) affirms the state's commitment to protecting the Nile River and preventing the waste or pollution of its waters. Its text reads, "The State is committed to protecting the Nile River, preserving Egypt's historical rights related to it, rationalizing and maximizing its use, and not wasting or polluting its waters"...

The right of every citizen to enjoy the Nile River is guaranteed, and encroachment on its waters or harming the river environment is prohibited.

The State shall guarantee the removal of any encroachments upon it, in the manner regulated by law".

D- Article (45), which affirms the State's commitment to protecting its seas and shores, reads, "The State is committed to protecting its seas, shores, lakes, waterways, and nature reserves." It is prohibited to encroach upon, pollute, or use it in a manner inconsistent with its nature and the right of every citizen to enjoy it. The State also guarantees the protection and development of urban green spaces, the preservation of plant, animal, and fish wealth, the protection of those endangered or threatened, and the welfare of animals, in the manner regulated by law.

D- Article (78), which emphasized consideration of environmental privacy when developing the national housing plan, stated: "The State guarantees citizens the right to adequate, safe, and healthy housing, in a manner that preserves human dignity and achieves social justice. The State is committed to

developing a national housing plan that takes environmental privacy into account".

R- Article (79), which emphasized every citizen's right to healthy and sufficient food and clean water. The State guarantees the preservation of agricultural biodiversity and local plant species to preserve the rights of future generations

The significance of the enumeration of environmental rights in the Constitution:

The enumeration of environmental rights in the Constitution clearly demonstrates the great importance it places on the environment. Protecting the environment is not a luxury, but rather an obligation and a duty that falls upon everyone. Environmental degradation affects our health, the quality of the food we eat, the air we breathe, and the quality of life itself. Therefore, protecting the environment is considered a matter of national security. Since the state is required to abide by the Constitution, it is an imperative obligation that it must fulfill, and it cannot do so according to its ability

Fourth: The role of the judiciary in protecting the environment:

The judiciary plays a major role in protecting the environment by applying criminal and administrative penalties for criminal violations. It also issues judgments for compensation to redress damages resulting from environmental crimes. Among the rulings issued by the Egyptian judiciary regarding environmental protection is the ruling of the Supreme Administrative Court in Appeal No. 8450 of 44 Q. This lawsuit concerns a request to cancel the decision of the Environmental Affairs Agency to refuse to permit the entry of a shipment into the country because it contained harmful materials and waste, claiming that some business sector companies had been allowed to import similar materials. The Supreme Administrative Court had a clear position in this lawsuit in affirming the human right to a clean environment as a fundamental right, so it ruled to reject the appeal and stated in its reasons for ruling, "Since the human right to a clean environment has become a fundamental right that transcends in its importance, value, and status with basic natural rights, including the right to freedom and the right to equality, the constitutional documents were keen to include provisions in their texts that confirm this fundamental view. In addition, the Stockholm Declaration document issued in 1972 confirmed that this right is a basic guarantee for providing a decent life for the human being in his homeland, and this right is met by determining a duty upon him to commit to preserving this environment." It added that "Law No. 4 of 1994, by virtue of which an agency for the protection and development of the environment was established, and its provisions included the means to preserve the environment and protect it from Pollutants and hazardous waste, prohibiting the import and entry of hazardous waste..." and that "the Environmental Affairs Agency rejected this shipment

because it contained lead dust, which is considered hazardous waste according to the Environmental Law," and that "in compliance with the Basel Convention, which Egypt ratified by Presidential Decree No. 385 of 1992, the Convention is incorporated into the fabric of national law and has the force of its provisions after its conclusion, ratification, and publication pursuant to Article 151 of the Constitution. Therefore, the decision issued in this regard is in accordance with the provisions of the law and is beyond dispute." This ruling clearly demonstrates the significant role played by the judiciary in protecting the environment and its safety. It is concluded from this ruling that the judiciary considered that:

- 1- The human right to a clean environment has become a fundamental right, transcending in its importance, value, and status with basic natural rights, including the right to freedom and the right to equality. 2- Commitment to international agreements that Egypt has agreed to, which have become part of the fabric of national law and have the force of its provisions after their conclusion, ratification and publication, in accordance with Article 151 of the Constitution

Recommendations

Based on the research findings and their analysis, the research recommends the following:

1-Strengthening Environmental Legislation:

It is necessary to issue and develop strong criminal legislation to protect the environment, criminalizing harmful acts and imposing severe penalties on violators.

2- Raising Environmental Awareness:

Launching national awareness campaigns to inform individuals of the dangers of environmental attacks and the importance of preserving natural resources.

3- Supporting Sustainable Development:

Linking environmental protection to achieving sustainable development to ensure the rights of future generations to a clean and healthy environment.

4- Empowering Environmental Justice:

Supporting the role of the judiciary in protecting the environment by enforcing environmental laws and issuing strict judicial rulings against environmental offenders.

5- International Cooperation to Combat Environmental Crimes:

Participating actively in international environmental protection agreements and cooperating with other countries to combat transboundary environmental crimes.

6- Using Technology in Environmental Protection:

Using modern technologies to monitor environmental violations, such as satellites and sensors, and analyzing data to enhance environmental monitoring.

References

- 1- Hassan, M. I. (2010). Explanation of the Penal Code: General Part (6th ed.). Cairo, Egypt: Dar Al-Nahda Al-Arabia.
- 2- Salbi, F. A. R. (2004). Modern Explanation of the Penal Code: General Section. Baghdad, Iraq: Law Library.
- 3- Hilal, A. (2005). Environmental Crimes between Theory and Application (1st ed.). Cairo, Egypt: Dar Al-Nahda Al-Arabia.
- 4- Abdel Hafiz, M. R. (2014). International Environmental Law and the Phenomenon of Pollution: A Step Forward for Protecting the Global Environment from Pollution. Egypt: Dar Al-Kutub Al-Qanuniya.
- 5- Hassouna, A. G. (2013–2014). The Legal Protection of the Environment within the Framework of Sustainable Development (Doctoral dissertation, Mohamed Khider University of Biskra, Algeria.)
- 6- Bouanas, B. (2016). The Legal Mechanisms for Environmental Protection in Algeria (Doctoral dissertation, University of Abu Bakr Belkaid, Tlemcen, Algeria.)
- 7- Saidan, H. (2004). Protection of the Environment from Radioactive and Chemical Pollution. Algeria: Dar Al-Khaldounia.
- 8- House of Commons. (2004). Environmental Crime and the Courts: Sixth Report of Session 2003-04. London, United Kingdom.