

Specificity of Criminalisation in the Jordanian Environmental Protection Law

Ali Al-Hammouri¹ and Tareq Al-Billeh²

Abstract

This article aims to analyse the specificity of criminalisation in the Environmental Protection Law. Environmental justice is achieved by providing a legally fair framework that regulates and enforces penalties and legal measures against violators of environmental protection laws. The Jordanian Environmental Protection Law has sought to enhance the privacy of criminalisation. It accurately defines criminal acts by identifying and classifying environmental violations as crimes. The competent authorities responsible for the environment are entitled to monitor environmental activities and collect evidence to summon the violators. They use their legal authorities to establish investigations and collect the data and information necessary to make official charges. And when this is achieved, those accused of ecological actions such as polluting oceans or infringement of natural resources in return are entitled to exercise their legal rights and defend themselves. After that, a suit is filed supported by the collected evidence and a verdict is issued. Environmental penalties resulting from criminalisation can include fines, imprisonment and compensation for environmental damage.

Keywords: environmental crimes, environmental justice, environmental protection law, criminalisation privacy

Introduction

Commission crimes against the environment have increased dramatically in the modern era. Pollution, depletion of natural resources, and environmental degradation resulting from these crimes negatively affect public health, the environment, and sustainable development. For this reason, governments have realised the need to develop and enforce a legal framework that protects the environment and penalises whoever commits environmental crimes (Omar, 2023).

¹The Author is an Assistant Professor at the Faculty of Law at the Applied Science Private University, Al Arab St 21, Amman, Jordan, and the author is a practicing lawyer in Jordan as well. He can be accessed on a_alhammouri@asu.edu.jo

²The Author is an Assistant Professor at the Faculty of Law at the Applied Science Private University, Al Arab St 21, Amman, Jordan, and the author is a practicing lawyer in Jordan as well. He can be accessed on t_billeh@asu.edu.jo

Jordan, in reality, has a lot of environmental challenges to overcome. Along with the advancement Jordan has gone through, environmental pollution, the unsustainable use of natural resources, and irresponsible handling of environmental issues have all dramatically boosted. Therefore, Jordan developed a special law dealing with environmental issues called Environmental Protection Law. Regrettably, Unfortunately, the Jordanian Environmental Protection Law's legal framework has numerous drawbacks and challenges (Alfi, 2000).

This research sought to assess the legal framework of the Jordanian Environmental Protection Law and identify its challenges and the effects of these challenges on the protection of the environment and sustainable development in Jordan by addressing the following questions: How did it address environmental crimes? What challenges do the legal framework of environmental crimes in Jordan encounter? What are the effects of these challenges on protecting the environment and sustainable development in Jordan? What legal practices do other countries use in facing environmental legal challenges? What recommendations and reforms can be applied within the framework of Jordanian law to enhance environmental protection and combat environmental crimes?

This paper will suggest some solutions to enhance environmental protection in the Jordanian Environmental Protection Law. The importance of this research lies in highlighting the legal framework of environmental crimes in the Jordanian Environmental Protection Law and analysing the related challenges. Understanding and evaluating this legal framework and determining its shortcomings can contribute to reconsidering and amending environmental policies and related laws. In addition, research recommendations may enhance environmental protection and achieve sustainable development in Jordan.

Methodology

This research used the descriptive approach as it is the most fit to analyse the current legal framework of environmental crimes in the Jordanian Environmental Protection Law.

Data will be collected from official legal sources and relevant academic research. Legal practices and legislation will also be compared with other countries that experience similar challenges in environmental crimes. The study will recommend solutions for reforming the legal framework of environmental crimes in Jordan.

What is the environmental crime?

Protecting the environment is among the primary goals and duties of the Ministry of Environment. Article 4 of the Environment Law No. 6 of 2017

empowers the Ministry of Environment to establish broad policies for environmental protection, collaboration, and coordination with donor entities and bodies involved with environmental issues on a domestic, Arab, and international scale. Coordination of national efforts to anticipate climate change, identify sectors affected by it, and restrict and mitigate greenhouse gas emissions (Baz, 2005).

The Ministry is also in charge of monitoring the implementation of the terms of any environmental convention to which the Kingdom is a party, guarding water sources from contamination, issuing environmental licenses, preserving biodiversity, monitoring locations that need extra environmental protection, and establishing classification rules for substances that are environmentally hazardous. Furthermore, it develops environmental mapping as a reference for any activity in that regard, monitors environmental elements, collects environmental data, conducts research and environmental studies, prepares emergency management plans and environmental disasters, and - introduces draft laws and issues necessary environmental instructions for the implementation of the provisions of this act (Jundi, 1989; Al-Billeh, 2022a).

Environmental crimes have an impact on society as a whole. Due to the rise in environmental crimes that qualify as international crimes, the international community has become aware that environmental damage has become a serious threat to the survival of humanity. Despite bilateral, regional, or worldwide agreements to protect the environment, numerous and diverse factors might harm the environment, some of which may be related to technical and industrial advancement. (Jundi, 2004; Al-Billeh, 2022b).

In Jordan, the environment is protected under numerous legislations, including but not limited to the Penal Code, the Agriculture Law, the Public Health Law, the Traffic Law, the Jordan Valley Authority Development Law, the Special Aqaba Authority Law and the Water Authority Law. Environmental crimes, however, are those acts that have a negative impact on the environment, produce pollution, or deplete natural resources, according to Jordan's Environmental Protection Law No. (52) of 2006 and its revisions. These behaviors could involve the following offenses:

Environmental pollution includes oil spills, illegal disposal of harmful chemical products, and throwing industrial waste into freshwater or oceans (Helou, 1998).

Environmental degradation: cutting down forest trees without a licence and destroying important natural landscapes such as beaches or lakes (Zubaidi, 2014).

Illegal trade in animal and plant materials: such as smuggling of endangered species and smuggling of protected animal products such as ivory or fur.

Animal abuse: the unjustified killing, animal cruelty or torture of pets or farm animals.

Mishandling of hazardous waste: dumping toxic waste in a place not designated for that or not properly disposing of harmful chemicals (Zidan, 2014; Al-Billeh, 2022c).

As previously stated, environmental crimes are defined as: “any act which adversely affects the elements of the environment, as well as any violation of the requirements and conditions set forth in the regulations, instructions, specifications, technical rules, and decisions to that effect” This definition is one of the qualitative additions to the law, which was not included in the previous Law of Environmental Protection No. 25 of 2006. The Environmental Protection Law No. 6 of 2017 defined environmental crimes in Articles (6-12) and specified its penalties in Articles (17-27).

The Jordanian legislator stipulated the first pillar, the legal pillar, in Article 3 of the Penal Code: “There shall be no penalty imposed unless allowed for by law at the moment the offence is committed. A crime is regarded complete when all of the acts that comprise it are performed, regardless of when the consequence occurs”.

The legal element of the crime is the illegal characteristic of the act, whereas the legal text is the reference to determine the legality or illegality of this act. Thus, a crime cannot be committed without the legal element. The principle of legality includes two things: In criminal law, the concept of legality states that no one may be convicted of a crime unless there is a previously published legal document “*nulla poena sine lege, lit*”. The legality of punishment concept states that no punishment is illegal (Abdel-Qawi, 2002; Al-Billeh, 2022d).

The second pillar of crime is the material pillar. This pillar involves three elements: criminal behaviour (the act), whether positive or negative. The criminal result is the legal effect of criminal behaviour and the causal relationship between criminal behaviour and the result. The third pillar is the moral pillar, represented by the availability of the will and the knowledge of the perpetrator of the criminal incident in terms of reality and the law, i.e. the will of the perpetrator is directed towards carrying out the act (Abd Rabbuh, 2003; Al-Billeh, 2022e; Al-Billeh & Al-Hammouri, 2023).

The Environmental Protection Law No. 6 of 2017 defined environmental crimes in Articles (6-12) as follows: “Bringing hazardous substances that are prohibited or restricted in terms of import, storage, or use within the Kingdom;

collecting any waste, debris, solid or liquid waste, or engaging in any activity involving transferring, disposing, categorizing, processing, burning, tampering, or handling in violation of the Ministry's approved conditions, procedures, and sites; Polluting aquifers or the marine environment; the use of equipment, motors, or vehicles that exceed the approved limits for noise and vibration; exceeding the limits for pollutants released into the environment; and engaging in any activity that negatively affects the environment in the country's network of nature reserves. The crime of not removing the causes of pollution and not complying with the closure decision in case of emergency pollution (urgent cases - urgency)".

The following issues with the Environmental Protection Law's legal framework for environmental offenses include:

Weak legislation and penalties: The environmental protection law may encounter a challenge regarding the lack of strong legislation to punish violators of environmental laws. There may be limited penalties or weak legal consequences for violating environmental measures.

Weak enforcement of penalties: Despite fair environmental laws, the enforcement framework may lack sufficient capacity to ensure the effective enforcement of those laws. This may require strengthening coordination between the concerned authorities and the capacities and resources available to the various environmental authorities.

Weak oversight and review: Both could ensure compliance with environmental laws which is an important part of the legal framework. However, there is weak and ineffective oversight and control over pollutants and e violators.

Prosecution cases and legal hurdles: Prosecution procedures and legal hurdles are potential challenges in combating environmental crime. Due to complex judicial procedures and legal objections, there may be some difficulties in proving environmental crimes and achieving environmental justice.

Lack of awareness among the public, businesses and institutions may contribute to increased environmental violations and crimes (Fil, 2013; Al-Billeh& Abu Issa, 2023).

The policy of criminalisation in the Environmental Protection Law No. (6/2017)

The Jordanian legislator has established several legal rules in the Environment Protection Law, where Article (17) stipulates the following: "Penalties for violations of this legislation shall include: A- Crimes that violate this act and its consequences are not covered by the provisions relating to the status of limitation. B. Anyone who participates in any of the crimes listed in this act, whether as an accomplice, helper, or organizer, will receive the same

punishment as the perpetrator. C- If this act is violated repeatedly, the penalties will be doubled. D- The punishment specified for the facility under the provisions of this law shall apply to anyone who violates the requirements of this law, the rules and instructions issued thereunder, where the facility has the intention or where it is complicit in dodging the responsibility”.

As stipulated in Article (27) of the Environmental Protection Law: “b. Penalties specified for efforts under the Penal Code must apply to anyone who attempts to commit an offense in violation of this law's provisions, including misdemeanors committed in violation of those requirements. b) The imposition of the penalties outlined in this article does not preclude the imposition of more severe penalties outlined in other laws”.

Status of limitation in environmental crimes

No statute of limitation for environmental crimes, which are considered a felony. Paragraph (a) of Article 17 of the Environmental Protection Law stipulates: “Crimes against this act and its penalties do not fall under the provisions related to the status of limitation.” Article 338 states that: 1. The criminal and civil cases shall be dismissed after ten years from the date the felony was committed, unless the criminal proceedings were initiated during this period, in contrast to the Code of Criminal Procedure and its amendments, which set ten years as a statute of limitations for felonies. 2. If the case was brought before the court and no judgment was rendered, the two cases will be dismissed 10 years after the date of the last procedure. 3. If the incitement to commit a felony or misdemeanour did not lead to a result, the penalty indicated in the two previous paragraphs of this article should be reduced to one-third”.

Doubling penalties in case of repetition

The Penal Code in Articles (101/102/103) set several controls and conditions for doubling the penalty in cases of crime repetition. In contrast, the Environmental Protection Law generalised doubling the penalty in case of repetition of violation to all crimes. Paragraph (c) of Article 17 of the Environmental Protection Law states, “For repeated violations, the penalty will be doubled”.

Applying a more severe penalty

According to the Environmental Protection Law, any severer penalty stipulated in any other legislation shall be applied to the committers of environmental crimes, accomplices, assistants or instigators. Paragraph (c) of Article 27 of the Environmental Protection Law stipulates that: “The application

of penalties provided for in this Act does not preclude the application of more severe penalties provided for in other regulations”.

In this statute, the legislator tends to protect the environment, as, despite strict penalties in the law, this does not preclude the application of any other text that intensifies the penalty as in the State Security Court law, paragraph 3 of Article 3, “terrorism crimes stipulated in Articles (147) to (149) of the terrorist crimes committed in contravention of the provisions of the Prevention of Terrorism Law No. (55) of 2006 and the Anti-Money Laundering and Terrorist Financing Law No. (46) of 2007 and its amendments.

Criminalising those who help a facility evade responsibility

According to Article 17(d) of the Environmental Protection Law, the lawmaker made it illegal for anybody to help or be complicit in a facility avoiding responsibility in the event that the law's requirements are broken: “Anyone who violates the terms of this legislation, its rules, or any instructions issued thereunder "shall be subject to the penalty prescribed for the facility under the provisions of this law" if the facility is complicit in the violation or has the purpose to evade accountability”. Bearing in mind that the legislator intensified in the Environmental Protection Law the penalties for legal persons, as fines reach two million dinars, as stipulated in Paragraph (2) of Article 21 of the law: “Whoever discharges, leaks, pours, or drains any noxious substance into the marine environment—by any means and in any manner—shall be subject to a fine of not less than 2,000,000 Dinars and not more than 10,000,000 Dinars, and shall be required to repair any damage at their own expense. The tools and equipment that caused the damage shall be impounded until the fine is paid”.

Not escaping punishment

The Environmental Protection Law includes a criminal provision that is unique to the law, as Paragraph A of Article 27 of the Environmental Protection Law stipulates that: “Anyone who violates any provision of this law, the regulations it implements, or the instructions it issues shall be punished by imprisonment for a term of not less than three months and not more than one year, a fine of not less than 500 dinars and not more than 1000 dinars, or by both penalties, as appropriate”.

This clause applies to anybody who breaches the terms of this legislation or the rules or instructions issued in accordance with it and does not specify a penalty. This language was created to ensure that no one who performs an act that harms the environment would go unpunished (Abdel-Qawi, 2002; Al-Billeh& Abu Issa, 2022).

The efficacy of the criminalisation policy in the Environmental Protection Law No. (6/2017) in comparison with the previous law

By analysing the provisions of the Environmental Protection Law No. of 2017, We observe that the lawmaker increased the severity of the penalties and added clarity to the criminality. To implement national plans for environmental protection and accomplish the duties at the centre of the work of the Ministry of Environment this was positively reflected in the high level of environmental protection (AL-Hammouri et al., 2023; Alhendi & Bani, 2022).

It is evident that, despite the existence of a statute that prioritises specificity over other laws when they are criminalised, it has taken the Ministry of Environment's judicial police jurisdiction away. Which was present in the prior Law No. 52 of 2006, which provided the following in its Paragraph A, Article 7: "A- For the purposes of this law, the competent employee designated by the Minister in writing upon the Secretary-General's proposal is given the status of a judicial police officer and has the power to enter any site that is used for business, industry, craft, agriculture, or any other enterprise or institution, or any other entity whose activities may influence in any way whatsoever on the elements and components of the environment to ensure their conformity and their conformity with the established environmental conditions".

And since the legislator did not grant the status of the judicial police to the employees in the Ministry, as was the case in the previous law, they inspect by entering any industrial, commercial or craft store whose activity is likely to damage the environment in coordination with the Royal Department for Environmental Protection (it has the status of the judicial authority). With the issuance of the Environmental Protection Administration System No. (37) of 2018, based on Environmental Protection Law No. (6) of 2017, which intends to structure the operation of the Royal Department for Environmental Protection to be the executive instrument of the Ministry of Environment and participatory work. Article (5) of this system included defining the tasks and duties of the Royal Department for Environmental Protection, as it explicitly stated that the power to control environmental crimes is within the competence of the Royal Department for Environmental Protection (Kashakish, 1998; AL-KHAWAJAH et al., 2022).

Environmental crimes under the Environment Protection Law No. 6 of 2017 are subject to the jurisdiction of the competent court whose authority the violation of this law's provisions and the regulations made in accordance with it comes under. There is an urgent need to create an environmental court given the numerous environmental breaches and the variety of pollution sources in order to accomplish public deterrence and ensure that environmental infractions are halted. Which negatively affects the health of humans, animals and plants. Provided that

this court is distinguished by the speed and simplicity of procedures and the non-delay in issuing deterrent rulings. Perhaps putting forward such an idea is justified for two reasons:

The increased number of pollutants and environmental destruction resulted from the lack of environmental awareness or laws (Majali, 2022; Alkhseilat et al., 2022).

The expansion of industries and a large number of factories not adhering to environmental standards and measurements must be considered when conducting a study of the environmental impact of these industries (Hayagna, 2012; ALMANASRA et al., 2022).

It should be noted that the Jordanian Regular Courts Law No. 17 of 2001, amended by Law No. 30 of 2017, established an economic chamber at the Amman Court to confirm the speedy settlement of issues involving economic cases in which the claim exceeds one hundred thousand dinars. The legislator also established a special room for publication cases. It is clear that the protection of the environment is no less important than other cases because the legislator, according to Law No. 6 of 2017, set penalties of up to one million dinars, and the penalty can be doubled when repeated, or the perpetrator is a facility. These penalties would deter the perpetrators of environmental crimes. From this standpoint, we confirm that it is necessary to enact a law for establishing an environmental court or develop specialised judicial chambers to investigate environmental crimes.

International legal practices used to handle environmental legal challenges

Environmental justice is defined as the fair treatment and meaningful involvement of all people concerning developing, implementing, and enforcing environmental laws, regulations, and policies. Environmental discrimination is one of the issues that environmental justice seeks to address, so the specificity in criminalising penalties in the Environmental Protection Law aims to achieve environmental justice (Mazyad, 2008; Isa et al., 2022).

One of the human rights included by the right of the third generation is the right to a healthy environment. This right is based on joint cooperation nationally, regionally and internationally. Contemporary environmental problems have become a priority for the international community and the United Nations due to their negative impact on international peace and security. After the failure of conventional safeguards, the urgent need to safeguard the environment became apparent constitutionally, particularly in light of the Stockholm Conference on the Human Environment's findings and the United Nations General Assembly's

historic resolution stating that everyone has the right to a clean, healthy, and sustainable environment (Momani, 2004; Alshibleet al., 2023).

We come to the conclusion that major environmental crimes are seen as crimes of a specific kind and are thus dealt with legally by enacting criminal texts within the environmental laws, in addition to the general rules found in the general penal code. We observed this through Jordanian regulations in Environmental Protection Law No. 6 of 2017, created to attain environmental justice. Given that environmental crime laws have changed dramatically in Europe over the past thirty years, it is crucial to learn from their experience. Provisions are now included in many nations' criminal codes or specific environmental laws. Additionally, the environment has gained more specialised protection in many legal systems than in the criminal justice system (Fahmy, 2011; Faure, 2017).

We believe that to protect the environment in the existing criminalisation rules in the Environmental Protection Law, future work should include separate case studies on environmental violations to develop new and innovative legal ways to prevent violations and reduce environmental crimes. A more environmentally focused approach to streamlining the regulatory and enforcement chain in the policy cycle is urgently needed. Enforcement depends largely on the national design for regulating and enforcing environmental law (offences, powers, competencies). The only way forward is to consider environmental protection as an independent legal benefit of the common collective interest, which also deserves criminal law protection. This means that although there is a specificity in criminalisation in the Environmental Protection Law, there is a problem in enforcement due to the failure to grant judicial control powers to workers in the Ministry and the lack of cadres working to detect crimes. In addition to the lack of sufficient allocations to implement the tasks entrusted to the Ministry of Environment or the royal administration that works to enforce all environmental legislation in the Kingdom, therefore, the principle of the Rule of environmental law must be taken into account, which is an important starting point for considering how to manage environmental development to create sustainable development (Cowell et al., 2021; Pali et al., 2022).

Sustainable development is dependent on the rule of law to safeguard the environment. It combines the requirements of the environment with fundamental components of the Rule of law and establishes the framework for better environmental governance by connecting it to fundamental rights and duties. It also serves as a foundation for environmental rights and duties and reflects universal moral principles and ethical standards of behavior. On the other side, environmental governance may be arbitrary, that is, discretionary, subjective, and unpredictable, in the absence of the environmental Rule of Law and the

enforcement of legal rights and responsibilities (Wyatt, 2022; White & Heckenberg, 2011).

It is evident that many SDGs, including those that do not specifically mention the environment, will not be met until considerable advancements in the environmental Rule of law are made, and there is significant alignment between the SDGs, indicators, and components of the environmental Rule of law. Governments and partners must integrate the concept of "environmental rule of law" into their legislative frameworks in order to carry out the goals of the 2030 Agenda for Sustainable Development.

Conclusions

The Environmental Protection Law, which goes against the general principles of the Penal Code, imposes severe punishments and fines, criminalises the attempt to commit all environmental crimes, excludes felonies from the statute of limitations, and doubles the penalties in the event of repetition of the crime. We argue that there is a legal shortcoming in that there isn't an environmental judiciary that is focused on issues related to the environment, in addition to implementing the most severe text wherever it appears in any other legislation.

The Environmental Protection Law is designed to safeguard the environment and preserve its natural resources. As a result, this law typically covers several environmental crimes committed against the environment, which are significant and harmful to both the environment and the general public's health.

Therefore, the penalties for environmental crimes must be tightened. Legal penalties for environmental infractions should be stringent to discourage individuals and companies from committing such crimes, in addition to working to educate the public about the importance of protecting the environment and the ecosystem through educational campaigns and awareness programs to educate the community about the seriousness of environmental crimes and their negative impact on the environment and human health and encouraging corporate social responsibility by applying social responsibility to companies and encouraging them to adopt sustainable practices and preserve the environment in general. In addition, it is necessary to strengthen international cooperation so that environmental protection requires effective international cooperation, as cooperation and exchange of information and expertise must be strengthened between countries to stand up to environmental crimes that may transcend national borders.

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