

Green Justice: The Case for Establishing a Special Environmental Court in The State Of Qatar, Challenges And Alternatives To Promote Environmental Justice

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Abstract

The State of Qatar is witnessing a state of development at various levels, and is proceeding differently towards achieving the Qatar National Vision 2030, which has four axes: human, social and environmental development. Within the framework of protecting the environment and combating environmental violations, the State of Qatar has issued many environmental legislations and ratified many international environmental agreements. In addition to assigning environmental affairs in the country to a specialized ministry, the Ministry of Environment and Climate Change, there is reason to say that the State of Qatar has achieved distinguished successes in the field of environmental protection and achieving sustainability. However, environmental lawsuits in the State of Qatar are still heard according to the traditional rules of jurisdiction, and the same procedures prescribed for lawsuits of various types, civil, criminal, and administrative. This is because there is no special environmental court or judicial body specialized in environmental lawsuits, as well as the absence of special procedural rules in environmental lawsuits and the implementation of judgments issued therein. This reality does not reflect the special characteristics of environmental lawsuits that requires the presence of a specialized judicial body or procedures and executive rules commensurate with the technical, legal, and economic characteristics of these lawsuits that make it necessary to assess the possibility and visibility of establishing a specialized environmental judiciary within the framework of the existing judicial system. This research will present the case for establishing special environmental judiciary in the State of Qatar. The justifications and requirements for its establishment, as well as the challenges attached to this option. The study will envisage what is required legislatively, administratively, and technically to initiate the establishment of a special system for litigation in environmental lawsuits. The conclude that the establishment of special environmental court will certainly enhance environmental justice in a way that reflects the development of the Qatari legal system, and the leadership of the State of Qatar in various fields, including legal and judicial, and contribute to achieving the country's National Vision 2030, which made environmental development one of its four pillars.

Keywords: *Development; Climate change; Environment.*

Environmental justice

The term environmental justice means all procedures and measures aimed at enforcing environmental legislation and confronting environmental violations and the harms resulting from them. This includes monitoring administrative decisions that have environmental impacts, prosecuting environmental violations and crimes, and adjudicating civil liability claims for environmental damage.

Environmental justice is closely linked to environmental rights, which are a group of human rights that guarantee a person the right to live in a safe and healthy environment. These rights can be classified according to their content into substantive rights, such as the right to a sound and healthy environment, the right to development, and the right to natural resources. The Procedural rights such as the right to obtain information, the right to participate in environmental decision-making process, and the right to access justice².

Peculiarities Of Environmental Lawsuits

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² For more on environmental rights, see in Arabic, Abdelnaser, Hayajneh, Muhammad, Al-Shawabkeh, “The Reality of Environmental Rights in the Constitutions of the Gulf Cooperation Council Countries” 2013, Journal of Judicial Studies, Institute of Training and Judicial Studies - Sharjah, United Arab Emirates, Volume 6, Issue 11, pp. 117-173, Available electronically at the following link: <https://qspace.qu.edu.qa/handle/10576/16120>

Liability claims for environmental damage and environmental violations in general have many characteristics that work together to make the consideration of these claims by ordinary judicial bodies a matter full of difficulties that affects the effectiveness and enforcement of environmental legislation.

It is possible to summarize some of these characteristics that give environmental liability special features that justify their revision by a special or specialized judiciary within the framework of the national judicial system.

Within the framework of civil liability for environmental damage, the following issues can be cited to clarify the challenges facing the general rules of civil liability and traditional litigation rules when they are intended to be applied in the environmental framework.

- The technical nature of activities resulting in environmental damage, and environmental damage itself. The difficulties in proving liability, fault of the defendant, or harms of the plaintiff especially when the damage is latent, as well as difficulties associated with proving the fault causing the damage as required by general rules regarding the causal link between the fault and the damage.
- Anonymity of the sources responsible for the damage in some cases, or multiplicity of these sources and the difficulty of determining the contribution of each source to the damage incurred.
- The multiplicity of those injured and the necessity of organizing class actions and its procedures to ensure collective access to justice³.
- Environmental harms affecting non-privately owned environment; this matter presents challenges regarding *locus standi* or the right to sue; as the traditional rules of adjudication requires the plaintiff to have personal interest in the subject matter to have jurisdiction.
- Difficulties in estimating compensation for environmental damage, or the impossibility to compensate for some irreversible environmental damage due to the impossibility of restoring the situation of the environment to what it was before the damage occurred⁴. This particular issue should be solved by setting up some criteria to estimate environmental damages according to progressive vision including but limited to punitive damages where the defendant shows server recklessness or gross negligence⁵.
- The statute of limitations that may block the way of claiming compensation for environmental damage, especially those hidden or latent environmental harms that may not appear until after a long period of time, during which they accumulate over years before the affected person becomes aware of their effects⁶.

³ For more on the class action, see, Nisrin Mahasneh, “Class action for Collective Harm in Comparative Law :Towards a Special Legal Regulation in Arab Laws: Qatari and Jordanian Laws as a Model, 2020, Journal of the Kuwait International College of Law, Volume 8, Issue 29, pp. 199-244, available. Electronically at the following link: <https://journal.kilaw.edu.kw/wp-content/uploads/2020/08/199-244-Prof.-Nisreen-S.-Mahasneh.pdf>

⁴For more on the specialty of environmental damage, see Gharraf Yassin, “The Role of the Judiciary in Protecting the Environment,” PhD thesis, Djilali Liabes, Sidi Bel Abbes University, Algeria, 2019, available electronically at the following link:http://rdoc.univbsa.dz/bitstream/123456789/2487/1/D_Droit_GHOURAF_Yassine.pdf , last visit date 31-12-2023. See in English: Peter Cane, “Are environmental harms special?” 2001, Journal of Environmental Law, Vol. 13, No. 1, pp. 3-20, Oxford University Press, available online at: <https://www.jstor.org/stable/44248298>

⁵ Abdelnaser, Hayajneh, “The Awarding of Punitive Damage under the Jordanian Civil Law: Is it Possible?”, 2010, European Journal of Social Sciences, V 14, Issue 4, available online at: http://www.eurojournals.com/ejss_14_4_11.pdf

⁶It is worth noting that some laws allow the criminal prosecution of environmental crimes and the hearing of civil liability claims for environmental damage without being bound by any statute of limitations, as the Jordanian legislator and the Yemeni

These dilemmas - although to a lesser extent - face the judiciary when it seeks to prosecute environmental crimes and violations or decide environmental damage cases. Therefore, many countries around the world have established special courts to decide environmental cases⁷. Other States have allocated judicial chambers specifically for environmental cases within the framework of ordinary judicial system⁸. There are even demands and initiatives to establish an international court specifically for the environmental damage⁹. Some countries have also made special provisions for civil liability for environmental damage, and in this context, reference must be made to the Yemeni Environmental Protection Law, which includes advanced provisions in the field of liability for environmental damage¹⁰.

legislator did. Article 17/A of the Jordanian Environmental Protection Law stipulates that “the statute of limitations shall not apply to felonies committed in contravention of the provisions of this law and to the criminal penalties imposed therein.” It is clear that this ruling is limited to environmental violations that qualify as a felony from a legal standpoint. As for Yemeni Law No. (26) Of 1995 regarding environmental protection, Article (80) of it stipulates that, “as an exception to the general rules, lawsuits arising from actions harmful to the environment shall not be dropped after the period specified in the law.” Jordani an Environmental Protection Law No. 6 of 2017, available electronically at the following link

http://www.moenv.gov.jo/ebv4.0/root_storage/ar/eb_list_page/%D9%82%D8%A7%D9%86%D9%88%D9%86%D8%AD%D9%85%D8%A7%D9%8A%D8%A9_%D8%A7%D9%84%D8%A8%D9%8A%D8%A6%D8%A9_%D8%B1%D9%82%D9%85_6_%D9%84%D8%B3%D9%86%D8%A9_2017-0.pdf, and Yemeni Law No. (26) of 1995 regarding environmental protection, available electronically at the following link : https://yemen-ic.info/db/laws_ye/detail.php?ID=11458

⁷ Australia, New Zealand, China, India, Japan, Korea, Malaysia, Philippines, Kenya, Ghana, Bangladesh, Trinidad and Tobago, El Salvador, Brazil, Chile, Belgium, Germany, Bulgaria, etc. “By 2010, more than 350 environmental courts or tribunals had been established in more”, J D Zhang, “A thesis on the establishment of specialized environmental and resources courts in China”, 2019, IOP Conference Series: Earth and Environmental Science, available online at: <https://iopscience.iop.org/article/10.1088/1755-1315/354/1/012059/pdf>

⁸ Such as some American states including Hawaii and Vermont, Pakistan, Indonesia, Greece, Finland and Spain. For more information and data on the presence and spread of environmental courts in the world, see: Environmental Courts and Tribunals – 2021: A Guide for Policy Makers, by United Nations Environment Program UNEP, available online at : <https://www.unep.org/resources/publication/environmental-courts-and-tribunals-2021-guide-policy-makers>. In the State of Kuwait, Article 171 of the Kuwaiti Environmental Protection Law provides that: “The Environment Public Prosecution is responsible for investigating, acting and prosecuting all crimes arising from the application of the provisions of this law and it’s implementing regulations and decisions. Within two years from the date of enforcement of this law, one or more circuits shall be established in the Court of First Instance to consider environmental crimes and disputes”. Kuwaiti Environmental Protection Law No. 42 of 2024 amended by Law No. 99 of 2015, available online at: <https://s3.amazonaws.com/rgi-documents/e8370c2be3051be5d7b161f579ba544edeb37ca1.pdf>. “Strictly speaking, whether these models should be considered environmental courts is debatable. Nonetheless, because this model saves on time, budget and even judicial training, it is the preferred option in numerous countries”, Environmental Courts and Tribunals – 2021: A Guide for Policy Makers, <https://wedocs.unep.org/handle/20.500.11822/40309>

⁹ For more on these efforts, see Dr. Maash Sarah, “The Role of the International Judiciary in Protecting the Environment”. Available electronically on the official website of the Jil “Generation” Center for Scientific Research: <https://jilrc.com>, last visit date 31-12-2023.

¹⁰ Article (79) of Yemeni Law No. 26 Of 1995 regarding environmental protection stipulates “anyone who, by his action or negligence, causes harm to the environment or to others as a result of violating the provisions contained in this law or the regulations or decisions issued in implementation thereof or the applicable laws shall be considered solely responsible.” or jointly with others for all costs resulting from treating or eliminating these damages, as well as compensation that may result from these damages. The elements of compensation for environmental damage include the following: A - The cost of removing environmental damage and purifying the environment. B - Compensation for damages to property and persons. C- Compensation for damage to the environment itself that prevents its legitimate use, whether temporarily or permanently, or harms its aesthetic value. Article (80) of the same law also added that “as an exception to the general rules, the lawsuit arising from acts harmful to the environment shall not be dropped after the period specified in the law.” Likewise, Article (81) stipulates, “the competent authority may oblige projects liable to cause environmental damage to deposit a financial guarantee sufficient to cover potential damages.” Article (82) also stipulates, “Yemeni environmental

The Judicial System in The State of Qatar

The State of Qatar follows a unified judicial system, and despite the existence of a legislation provided for constitutional judiciary; the Law of the Supreme Constitutional Court is still waiting to be put into effect¹¹.

Within the framework of the Qatari judicial system, the following litigation paths can be monitored:

Civil or ordinary judiciary

Civil Judiciary is the ordinary judiciary that has jurisdiction over all civil and commercial disputes, as well as all criminal matters. There is a specialized room in the court of first instance to consider administrative disputes, as there is no special administrative judiciary in the State of Qatar to date¹².

Family Judiciary

Family judiciary is represented by the Family Court, which is the court of first instance in all family matters¹³. The court applies Qatar Family Law derived mainly from Islamic Law “Sharia”

Constitutional Judiciary

The State of Qatar has Law No. 12 of 2008 establishing the Supreme Constitutional Court, and to date this court has not yet been established to exercise the powers assigned to it under the law.

Special Judiciary

The State of Qatar has special court to decide certain disputes prescribed by the laws establishing these special courts, i.e. Qatar Financial Center Court, Qatar International Court, and Investment and Trade Court.

protection associations and any person may initiate a civil lawsuit against any natural or legal person.” By his action or negligence, he caused damage to the environment and its natural components or contributed to its deterioration and corruption. In the event of a compensation being awarded, the compensation shall be deposited in the Environmental Protection Fund and the value of the awarded compensation shall be allocated to spending on protecting, improving and developing the environment. Likewise, Article 86 allows individuals and environmental protection associations to report violations that occur in violation of the provisions of this law or any other laws related to environmental protection, as well as to assist the competent authorities in the event of environmental disasters or to remove attacks and damage that occur to the environment. Yemeni Law No. (26) of 1995 regarding environmental protection, available electronically at the following link: https://yemenic.info/db/laws_ye/detail.php?ID=11458

¹¹ Law No. (12) of 2008 establishing the Supreme Constitutional Court, available electronically at the following link: <https://www.almeezan.qa/LawPage.aspx?id=2486&language=ar>, and before that Law No. (6) of 2007 regarding adjudication of The canceled constitutional disputes are available electronically at the following link: <https://www.almeezan.qa/LawPage.aspx?id=2633&language=ar>

¹² According to Article 4 of the Judicial Authority Law: “The courts consist of: 1- The Court of Cassation 2- The Court of Appeal 3- The Court of First Instance.”. Judicial Authority Law No. 8 of 2023, available electronically at the following link: <https://www.almeezan.qa/LawView.aspx?opt&LawID=9223&language=ar>

¹³ Article 2 of the articles of the Qatari Family Law No. 22 of 2006 stipulates, “One or more chambers of the Court of First Instance and the Court of Appeal, called the Family Court, shall decide on claims and disputes related to family and inheritance matters.” The Family Court of the Court of First Instance, consisting of a single judge, may decide on lawsuits and disputes related to family and inheritance matters determined by the Supreme Judicial Council.” Law No. 22 of 2006 promulgating the Family Law, available electronically at the following link: <https://almeezan.qa/LawPage.aspx?ID=2558>

Judicial and quasi-judicial bodies and committees

To alleviate the work's load and burden on the courts, some Qatari Laws provide for judicial and semi judicial committees, such as Rental dispute resolution committees, and Labor dispute resolution committees

Sport Judiciary

Recently, the State of Qatar established the Qatar Sports Arbitration Foundation to be a quasi-judicial body to consider sports disputes and commercial disputes in the sports field¹⁴.

Current Position

In the State of Qatar, environmental cases of various types, civil and criminal, are heard by the district or “total” court of first instance according to the rules of jurisdiction established in the Code of Civil and Commercial Procedures and the Code of Criminal Procedures. There is no special court to review and decide environmental cases. The Qatari Environmental Protection Law does not provide for a specific judicial body competent to decide environmental violations and other environmental harms lawsuits¹⁵.

It is worth noting that the Supreme Judicial Council recently introduced a mechanism to decide some cases within one day, as this is done in simple cases such as environmental and traffic cases, and the competent judge issues the ruling during the same session without postponements¹⁶. Noting that environmental cases are adjudicated through a specialized chamber in the Court of First Instance, which helps speed up the adjudication of these cases, given that the chamber specializes in deciding crimes committed in violation of the Environmental Protection Law and other relevant laws.

It is noteworthy that the State of Qatar took the initiative, since 2014, to establish an environmental public prosecution as one of the specialized public prosecutions within the framework of the Public Prosecution¹⁷.

The Attorney General's decision included the establishment of a specialized prosecution in the Public Prosecution called the Environment and Municipal Prosecution, headed by a first prosecutor, and assisted by a sufficient number of members. The decision also stipulated that the Environment and Municipal Prosecution be added to the organizational structure of the Public Prosecution, and its jurisdiction shall include all lands and territorial waters of the State of Qatar.

The Environmental Prosecution has a very wide jurisdiction. It is responsible for investigating and disposing of crimes stipulated in the following laws. Law No. 9 of 1974 regarding neglected animals and its amendments. Law No. 4 of 1983 regarding the exploitation and protection of living aquatic resources in Qatar and its amendments. Law No. 1 of 1985 regarding animal health and its amendments. Law No. 4 of

¹⁴Qatar Sports Arbitration Foundation, <https://www.qsaf.qa>

¹⁵The Court of First Instance launched specialized judicial chambers, including a special chamber for environmental cases. This step was taken within the framework of the Supreme Judicial Council's plan to develop judicial work and ensure the achievement of timely justice, which includes speed in litigation procedures, quality and proficiency in work, in a way that guarantees the rights of everyone. The court includes approximately 35 judicial chambers, according to official statements by the head of the Follow-up Office of the Court of First Instance in July 2022. See the following short electronic link: <https://2u.pw/mShs>

¹⁶ Al Sharq Qatari newspaper, issue 2/27/2023, available electronically at the following link: <https://www.al-watan.com/article/52358/%D8%A7%D9%84%D9%88%D8%B7%D9%86/%D8%A7%D9%84%D9%81%D8%B5%D9%84-%D8%A8%D8%A7%D9%84%D9%82%D8%B6%D8%A7%D9%8A%D8%A7-%D8%A7%D9%84%D8%A8%D9%8A%D8%A6%D9%8A%D8%A9-%D8%AE%D9%84%D8%A7%D9%84-%D9%8A%D9%88%D9%85-%D9%88%D8%A7%D8%AD%D8%AF>

¹⁷The Public Prosecution is an independent judicial body that handles public lawsuits in the name of society, supervises judicial control affairs, and ensures the implementation of laws. It has exclusive jurisdiction to initiate and follow up criminal proceedings, and it may not be initiated by others except in the circumstances specified in the law. The official website of the Public Prosecution in the State of Qatar: <https://www.pp.gov.qa/Arabic/Pages/default.aspx>

1985 regarding the organization of buildings and its amendments. Law No. 10 of 1987 regarding public and private state property and its amendments. Law No. 1 of 1988 regulating the drilling of groundwater wells and its amendments. Law No. 8 of 1990 regulating human food control and its amendments. Law No. 1 of 1993 regarding preventing the dredging of agricultural lands and beach sand, and its amendments. Law No. 32 of 1995 regarding preventing harm to the plant environment and its components, and its amendments. Law No. 4 of 2002 regulating the hunting of wild animals, birds and reptiles. Decree Law No. 30 of 2002 promulgating the Environmental Protection Law. Decree Law No. 31 of 2002 regarding radiation protection. Law No. 14 of 2003 regulating veterinary quarantine and its amendments. Law No. 8 of 2004 regarding the protection of offshore oil and gas facilities. Law No. 19 of 2004 regarding the protection of wildlife and its natural resources. Law No. 24 of 2005 regarding agricultural quarantine. Law No. 5 of 2006 regulating trade in endangered species of wildlife and their products. Law No. 3 of 2007 regarding the exploitation of natural wealth and its resources. Law No. 21 of 2007 regarding controlling substances that deplete the ozone layer. Law No. 1 of 2012 regulating and monitoring the placement of advertisements. Law No. 5 of 2015 regarding commercial, industrial and similar public shops and street vendors. Law No. 6 of 2016 regarding combating the smuggling of petroleum products and illegal dealing in them. Law No. 10 of 2016 regarding control of tobacco and its derivatives. Law No. 18 of 2017 regarding public hygiene. Law No. 19 of 2017 amending some provisions of Law No. 4 of 2008 regarding real estate leasing. In addition to its' competence in any other work assigned to it.

Although it is not explicitly stated, the circumstances indicated that the Environmental Public Prosecution also has jurisdiction over the crimes and violations stipulated in the executive regulations of these laws. However, it is clear that the Environmental Public Prosecution or the Environment Prosecution lack competence in crimes with environmental dimension included in the Qatari Penal Code.

Perhaps the establishment of an environmental public prosecution represents an official acknowledgment of the specialty of environmental violations and environmental harms lawsuits. In my opinion, having special environmental prosecution, and giving the fact that Qatar has special law for environmental protection. Moreover, a standing ministry for the environment climate change along with special department for the environment in the Internal Security Forces (*Lekhwiya*) which; can be considered as an environmental police¹⁸. This comprehensive framework allows the assumption that the remaining issue as such is only the initiative to establish a special environmental judiciary, or at least allocating a judicial body that has jurisdiction to hear and decide all criminal and civil environmental cases.

Determinants Of the Initiative to Establish a Special Environmental Judiciary

Certain determinants are to be highlighted because of their significance before taking the initiative to establish special environmental judiciary; here are the most important:

The reality of environmental rights

Substantive and procedural environmental rights still need more recognition and clear enshrinement in various legislative frameworks, including constitutional, legal and regulatory levels.

Despite the modernity of the Permanent Constitution of the State of Qatar, as well as the Qatari Environmental Protection Law, they have overlooked the determination of substantive and procedural environmental rights, explicitly or effectively¹⁹. The Qatari Constitution stipulates in Article 33 the following: "The State shall preserve the environment and its natural balance in order to achieve comprehensive and sustainable development for all generations." While the Environmental Protection Law only mentioned environmental rights in an implicit and incomplete manner. Qatar Civil Law also adopt

¹⁸ In the Arab world, Jordan and Kuwait have established their special Environmental Police within the framework of its internal security forces.

¹⁹ Abdelnaser, Hayajneh, Muhammad, Al-Shawabkeh, "The Reality of Environmental Rights in the Constitutions of the Gulf Cooperation Council Countries" 2013, Journal of Judicial Studies, Institute of Training and Judicial Studies - Sharjah, United Arab Emirates, Volume 6, Issue 11, pp. 117-173, Available electronically at the following link: <https://qspace.qu.edu.qa/handle/10576/16120>

traditional approach when dealing with human rights, no explicit reference was made to any human right, rather, some human right are to be traced implicitly throughout the Law²⁰.

The right to access justice

The right to access to justice is considered one of the procedural environmental rights, and it is linked to the human right to resort to the judiciary to claim and defend his rights.

Article 135 of the Permanent Constitution of the State of Qatar stipulates, “Litigation is a right protected and guaranteed to all people, and the law specifies the procedures and conditions for exercising this right”²¹.

Although this text states that ensuring the right of access to justice for all; the traditional obstacles related to the requirement of direct and personal, interest and capacity hinder the achievement of environmental justice. The plaintiff in environmental damage cases may not have a direct personal right to file a lawsuit because the substantive right to a healthy environment is not recognized as an actionable right in the Qatari Constitution or any other legislative instrument.

In this context, it is necessary to adopt an advanced position on the issue of giving individuals and environmental associations - even under certain conditions - the right to initiate judicial and/or administrative procedures to ensure the application of environmental legislation and the enforcement of environmental rights.

It is worth noting that the Kuwaiti Environmental Protection Law stipulates in Article 172 that “every citizen or association concerned with environmental protection may resort to the competent administrative and judicial bodies for the purpose of implementing the provisions of the Environmental Law and what is stated in the executive regulations of this law”²².

Practical considerations and proper management of the judiciary

²⁰For more on human rights and civil law, see, Abdelnaser, Hayajneh, “Vanishing Borders: Can Human Rights be a subject of Private Law? Exploring Human Rights under Jordanian Civil Law”, 2011, European Journal of Social Sciences, V 23, Issue 2. Available online at: http://www.eurojournals.com/EJSS_23_2_11.pdf

²¹Permanent Constitution of the State of Qatar 2004, published in the Official Gazette, No. 6, dated 06/08/2005, available electronically at the following link: <https://www.almeezan.qa/LawArticles.aspx?LawTreeSectionID=6684&lawId=2284&language=ar>

²²Kuwaiti Law No. 42 of 2014 issuing the Environmental Protection Law, available electronically at the following link: <http://sub.eastlaws.com/GeneralSearch/Home/ArticlesTDetails?MasterID=1766797&related>. In the same direction and in a more developed form, Article 3 of the Palestinian Environmental Protection Law states that “any person has the right to: A- File and pursue any complaint or specific judicial procedures without regard to the conditions of private interest against any natural or legal person who causes harm to the environment.” Palestinian Environmental Protection Law No. 7 of 1999, available electronically on the official website of the Encyclopedia of Palestinian Laws and Court Rulings “Maqam” at the following link: <https://maqam.najah.edu/legislation/250>. The Algerian legislator also did the same in Articles 35-38 of Law No. 3-10 relating to environmental protection within the framework of sustainable development No. 2003, available electronically at the following link: <https://www.me.gov.dz/wp-content/uploads/2022/05/%D9%82%D8%A7%D9%86%D9%88%D9%86-03-10.pdf>

Perhaps the most prominent justification for establishing a special environmental judiciary is to achieve speedy adjudication of environmental cases by a specialized judicial body expert in the technical issues related to such cases.

This will certainly reduce the burden on civil courts within the national judicial system; by providing a clear path to access to justice by a specialized judiciary, which contributes to the proper conduct of justice and takes into account the special features of environmental lawsuits. Taking into account the large number of crimes, violations and environmental cases that are brought before regular courts²³.

Requirements And Challenges of Establishing a Special or Specialized Environmental Judiciary

By special environmental judiciary, we mean that there is a special judicial body to review and decide environmental cases alongside the existing judicial system.

An environmental court of first instance, an environmental court of appeal, or a supreme environmental court shall be established. A specialized environmental judiciary may take the form of a judicial department allocated within the framework of the existing judicial system to review and decide environmental issues, at least at the first level of litigation.

Choosing one of the two previous paths depends on the national legislator's assessment of his options, noting that some rightly see that it is not always desirable to expand the idea of special judiciary, and call for specialization within the framework of the existing judicial system.

In the opinion, this choice avoids the complexity of the judicial system in the country, and maintains fair trial guarantees for opponents, the most prominent of which is that litigation should be at two levels because the specialized judiciary within the framework of the existing judicial system achieves the goal that the legislator seeks in establishing the special judiciary²⁴.

Although we agree with those who believe that, the establishment of a special judiciary should not be expanded - in principle -. However, we believe that a set of justifications that we mentioned above justify the creation of a special environmental judiciary within the framework of the existing national judicial system. It should be taken into account that the establishment of this special environmental judiciary requires a set of factors and components so that this experiment has reasonable chances of success. These requirements are as follows:

First: Considering environmental protection as a human right.

A healthy environment must be considered as a human right²⁵. This right must be actionable. By virtue of this actionable right, every individual or organization concerned with the protection of the environment

²³According to figures from the Qatar Planning and Statistics Authority, crimes and violations of environmental laws increased from 3,068 in 2019 to 7,589 in 2021, and this is without counting civil lawsuits related to or unrelated to these violations. Report, Chapter Seven, Security and Judicial Services, available at the following link: https://www.psa.gov.qa/en/statistics/Statistical%20Releases/General/StatisticalAbstract/2022/7_Security_2022_AE.pdf

²⁴ Abdelnaser, Hayajneh, "Special judicature, again and again: Does Jordan need to establish special environmental court?", 2010, European Journal of Social Sciences, Volume 14, Issue 2, Pages 290 – 298. Available online at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2427171

²⁵ Many national constitutions of countries around the world have enshrined the right to a clean environment as a human right. Examples of this are many, including the Palestinian Basic Law in Article 33, which states: "A clean, balanced environment is a human right, and the Palestinian environment must be preserved and protected for the sake of present and future generations. Protection of the environment is a national responsibility". And Article 5/1 of the Palestinian Environmental Protection Law No. 7 of 1999, which stipulates that "this law guarantees: A - the right of every human being to live in a healthy

shall have the right to file a lawsuit to demand implementation of Environmental Protection Law and other relevant environmental laws.

They must also have the right to and demand damages for environmental harms²⁶, provided that, these damages be directed to the proposed Environmental Protection Fund in the process of reviewing and modernizing environmental legislation in the State of Qatar²⁷.

Due consideration must be given to repair and restore affected environment that is not privately owned. It is also necessary to consider organizing a class action lawsuit to enable interested individuals and environmental organizations to enforce their environmental rights within the framework of a specialized, fair and transparent judicial system.

In this context, a necessary amendment must be made to the general rules in the Qatari Code of Civil and Commercial Procedures to allow individuals and environmental associations to be given the right to file environmental lawsuits within the framework of civil, administrative, or even criminal law by considering the environment as a public and common interest²⁸.

Second. Adopting Environmental Law principles

It is necessary to adopt the principles of environmental law that have become established and frequently appear in national legislation and international documents related to the environment, most notably the principle of sustainable development, the polluter pays principle, the precautionary principle, and others.

and clean environment and to enjoy the greatest possible degree of public health and well-being.” Available electronically at the following link: <http://muqtafi.birzeit.edu/pg/getleg.asp?id=13430>. Also, see the Palestinian Basic Law of 2003, available electronically on the official website of the Palestinian News and Information Agency “Wafa” at the following link: https://info.wafa.ps/ar_page.aspx?id=2645. The Constitution of the Republic of Kenya 2010, available in English at the following link: <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>. See also Yemeni Law No. 26 of 1995 regarding environmental protection, Article 4 of which states: “In order to achieve the objectives referred to in the previous article, the competent authorities shall carry out their tasks, each within their field of competence, by implementing the tasks assigned to them in light of the following foundations: 1- Man is an important and influential part of the natural environment in which he lives and benefits from its resources. 2- Every citizen has a basic right to live in a healthy and balanced environment consistent with human dignity that allows him healthy physical, mental and intellectual development. Every natural and legal person is committed to preserving the environment and its natural resources and preventing environmental damage. And pollution control. 3- The responsibility for preserving the environment and its natural resources, combating pollution, and protecting wildlife and marine life falls on the official state authorities, public and private institutions, as well as individuals. Yemeni Law No. (26) of 1995 regarding environmental protection, available electronically at the following link: https://yemeni-nic.info/db/laws_ye/detail.php?ID=11458

²⁶ Article 3 of Palestinian Law No. 7 of 1999 regarding the environment states that: “Any person has the right to: A- File and pursue any complaint or specific judicial procedures without regard to the conditions of private interest against any natural or legal person who causes harm to the environment. B- Obtain the official information necessary to identify the environmental impacts of any industrial, agricultural, urban activity or other development programs in accordance with the law.” Palestinian Law No. 7 of 1999 regarding the environment, available electronically at the following link: <http://muqtafi.birzeit.edu/pg/getleg.asp?id=13430>

²⁷ The experience of establishing environmental protection funds is known in more than one country, such as Jordan, Kuwait, USA and other countries.

²⁸ For more on the role of associations in protecting the environment, see: Al-Omrani Muhammad Lamin, “The contribution of associations in embodying environmental protection before the administrative judiciary,” research published in Al-Ijtihad Journal of Legal and Economic Studies, Volume 9, Issue 1, 2020, pp. 219-243, available electronically at the link Next: <https://alijtihed.uni-v-tam.dz/wp-content/uploads/2020/01/alijtihed-mag-024-art-011.pdf>

The legislator may consider the inclusion of these principles in the proposed legislation for the Environmental Court²⁹, or including them in the Environmental Protection Law itself³⁰.

Third: The specialized legal staff.

To establish a special or specialized environmental judiciary, it is necessary to prepare, qualify and train an integrated judicial and legal cadre of judges, lawyers and experts to deal with the management of the environmental court efficiently. This requires the introducing of teaching environmental legislation and related topics into the university education stage and conducting training courses for these cadres to inform and train them on the developments in the context of environmental legislation. Providing them with

²⁹Kenya, Environment and Land Court Act 2011, section 18 reads as follows: “In exercise of its jurisdiction under this Act, the Court shall be guided by the following principles; a- the principles of sustainable development, including:

- i- The principle of public participation in the development of policies, plans and processes for the management of the environment and land;
- ii- The cultural and social principles traditionally applied by any community in Kenya for the management of the environment or natural resources in so far as the same are relevant and not inconsistent with any written law;
- iii- The principle of international co-operation in the management of environmental resources shared by two or more states;
- iv- The principles of intergenerational and intragenerational equity;
- v- The polluter-pays principle; and
- vi- The precautionary principle”.

Kenya, Environment and Land Court Act 2011, available online at: http://www.parliament.go.ke/sites/default/files/2017-05/EnvironmentandLandCourtAct_No19of2011.pdf

³⁰ Perhaps one of the most prominent Arab and comparative legislations that enshrined all the principles of environmental law is the Lebanese Environmental Protection Law No. 444 of 2002. Article three of which stipulates, “Every human being has the right to a safe and stable environment, and it is the duty of every citizen to ensure the protection of the environment and secure the needs of current generations.” Without prejudice to the rights of future generations”. Article Four also stipulates the following: “Within the framework of protecting the environment and managing natural resources, every natural or legal person, public or private, must adhere to the following principles. A - The precautionary principle, which requires the adoption of effective and appropriate measures based on scientific information and the best clean technologies available, aiming to prevent any threat of potential and irreversible damage to the environment. B - The principle of preventive action for all damage to the environment, using the best available technologies. C- The “polluter pays” principle, which stipulates that the polluter bear the costs of preventive measures, pollution control and reduction. D- The principle of preserving biological diversity, which stipulates that all activities should avoid causing harm to the various components of biological diversity. E- The principle of avoiding the deterioration of natural resources, which stipulates that all activities should avoid causing any irreparable damage to natural resources such as water, air, soil, forests, sea, rivers, and others. F- The principle of participation stipulates that: 1- Every citizen has the right to obtain information related to the environment, in accordance with applicable laws and regulations. 2- Every natural or legal person, public or private, ensures the safety of the environment, contributes to its protection, and reports any danger that might threaten it. G- The principle of cooperation, which requires that public and local authorities and citizens cooperate to protect the environment at all levels. H- The principle of the importance of the customary standard in the rural environment, which stipulates that this custom must be adopted in the event of the absence of the text. I - The principle of pollution control, which aims to prevent and control pollution in all environmental environments, including water, air, soil, plants, and waste, so that treating pollution in the environmental environment does not lead to the transfer of pollution to another environment or affect it. J- The principle of relying on economic incentives as a monitoring and regulatory tool in order to eliminate and/or mitigate all sources of pollution and promote sustainable development policy. K - The principle of environmental impact assessment as a means of planning and management in order to combat sources of pollution and deterioration of natural resources or reduce their size to a minimum. Lebanese Environmental Protection Law No. 444 of 2002, available electronically at the following link: <http://77.42.251.205/LawView.aspx?opt=view&LawID=244662>

knowledge and skills related to understanding and applying environmental legislation and environmental cases in general.

Fourth: Providing appropriate financial and technical support to the Environmental Court

This logistic requirement is crucial to the success of the proposed environmental court. This support can be done by allocating a special budget for the court within the framework of the financial and technical support allocated to operate and support the judicial facility, taking into account the court's need for qualified judicial, legal and administrative staff with a high level of training. Moreover, providing court requirements in accordance with modern litigation standards, ensuring easy access to court services and speedy adjudication of environmental lawsuits.

Fifth: Easy of access to justice.

It is known that establishing an environmental court or specialized environmental courts has its advantages - but it has some challenges that may hinder access to justice by limiting jurisdiction over environmental lawsuits to the environmental court. Which; may be few in number or have a limited geographical distribution.

By applying this to the State of Qatar, there is no reason for concern in this regard; given the geography of the State of Qatar, which has a relatively small area and the fact that all Qatari courts are currently located in the capital city of Doha . In this regard, it is sufficient to grant the Environmental Court general and comprehensive jurisdiction in various crimes, lawsuits and appeals related to application of environmental laws.

Sixth: Establishing special rules for procedures before the environmental court.

A set of special rules to bring, review, and decide environmental cases is required. These rules must take into account the specificity of environmental issues, especially with regard to moving the court and conducting technical inspections of sites related to the subject of environmental cases. The power to issue urgent orders or decisions to abate activity against financial guarantees ensuring that the defendant will not be harmed, special rules for preparing technical expertise reports, how to file and follow up on class actions before the Environmental Court, and other procedural matters.

In general, deciding environmental cases holds challenges for various judicial authorities. The same applies to the proposed special environmental court. Therefore, if the legislator consider that the time is still not appropriate to initiate the establishment of a special environmental judiciary, it is inevitable to consider providing alternatives that guarantee effectiveness in achieving the objectives of environmental legislation in protecting the environment and achieving sustainable development.

- Strengthening the role of the administrative judiciary in the field of oversight of administrative decisions in terms of examining their legality and their non-violation of the legal texts aimed at protecting the environment in all legislative instruments in the state.
- Promoting specialization within civil and criminal judiciary to review and decide environmental cases
- Enhancing the right to litigation for individuals and environmental associations to offer them standing to defend the environment and claim compensation where damage affects the environment per se.
- Consider amending provisions regarding the burden of proof in environmental lawsuits

These alternatives should be adopted anyway, in the current situation or if the proposed environmental court is being established. Therefore, certain amendments should be made even if the legislator decide to keep environmental disputes within the jurisdiction of ordinary courts.

Conclusions and Recommendations

The State of Qatar presents itself as a model for modern state in the Middle East region and universally. This presentation is working very well; with the huge transformation Qatar witness in the last few decades in all aspects of life. One feature of this transformation will be a leading example in environmental protection at legislative, administrative and practical level. A special environmental court will add extra points to Qatar's record.

At the end of this study, the author wish to present some recommendations, some are general; others are special as follows;

General Recommendations

- Due revision to the text of Article 33 of the Qatari Constitution to add more strength and clarity to the position of the Qatari legislator regarding its recognition of the right to a healthy environment as one of the general rights of individuals. In this context, the Qatari legislator can benefit from modern constitutional texts in the constitutions of some countries of the world and emulate their content in a way that reflects the desire of the Qatari legislator to protect and develop the environment and achieve environmental well-being for citizens.
- As a contribution of this study to this endeavor, the study proposes the following text: “1- Every individual has the right to live in a healthy, clean environment free of pollution. 2- The state protects the environment and works to develop it in a way that preserves the natural balance of its elements. 3- The state establishes special legislation to protect the environment includes in particular the general principles of protecting the environment and the necessary measures for that, provided that this legislation includes the establishment of a special environmental court to consider all crimes, violations and related lawsuits.”³¹.
- Granting individuals and environmental associations, the right to access the administration and the judiciary to demand the enforcement of environmental legislation and defend the environment per se “unowned environment”.
- In this context, we propose adding a text to the Qatari Environmental Protection Law and/or including a text with this content in the proposed Environmental Court Law. The study suggest that the text comes as follows: “All environmental protection associations shall have the right to initiate a civil lawsuit if the association is registered in accordance with the provisions of the law. It must have actual activity in the field of environmental protection; at least five years must have passed since its registration”. In this regard, it should be emphasized that the compensation awarded will go to the environmental protection fund proposed to be established, in exchange for the plaintiff association receiving 25% of the value of the compensation awarded.
- Establishing Environmental Protection Fund. This fund must have certain allocations from different resources; allocations within the state general budget, fines imposed for environmental crimes and violations, fees collected for providing environmental services in accordance with the relevant laws and regulations, as well as 75% of the compensation awarded in lawsuits filed by associations. An executive regulation shall determine the formation and working system of the fund, its projects and activities and any related matters.

³¹ Abdelnaser, Hayajneh, “Filling the Gaps: Proposed Review to Improve Qatar Environmental Law”, 2019, Journal of Law, Policy and Globalization, Vol.91, available online at: <https://iiste.org/Journals/index.php/JLPG/article/view/50507/52164>

Special recommendations

- The Qatari legislator is encouraged to consider establishing a special environmental court, and entrusts the court the authority and competence to review and decide all environmental crimes, violations, and lawsuits. In this context, the Qatari legislator is called upon to examine the experiences of the countries that preceded him in this field and to assess the best conditions regarding the formation of this court, its jurisdictions, procedures, the decisions issued by it, and the various technical and administrative aspects accompanying the establishment of this court. In view of the geographical and demographic reality and administrative divisions in the State of Qatar, it may be appropriate at this stage to create a special environmental court to be added to the Qatari judicial system. The court shall be composed of a single judge in the first instance, and in the appeal stage, the proposed court consists of a panel Triple. A sufficient number of experts in environmental matters shall report to the court. This court is given general and comprehensive jurisdiction in various environmental cases, whether they are criminal lawsuits filed by the Environmental Public Prosecution, or by victims of environmental crimes and violations. It will also consider civil liability lawsuits to demand compensation for environmental damages, whether they are related to environmental crimes and violations or not.
- Given the court's specialization, the proposed environmental court should have comprehensive jurisdiction. Therefore, it deems appropriate to offer the Environmental Court jurisdiction to review and decide appeals filed by concerned parties against administrative decisions with environmental impacts³², the court review these decisions with the aim of monitoring their legality and appropriateness, revoke them, and/or compensate for their damages. It goes without saying to emphasize the necessity of attaching a highly qualified and trained administrative and legal staff to the court to accomplish its tasks, follow up on cases pending adjudication quickly and effectively, and provide administrative services to judges, parties to cases, their representatives, experts, and the public.
- Alternately, the administrative circuits in the courts the authority shall have the competence to consider appeals submitted by those affected against the relevant administrative decisions, which include granting environmental licenses to initiate or expand activities or other decisions with environmental implications provided that the court panel includes a judge or judges specializing in environmental cases.
- Set up special rules for court procedures that include provisions take into account the specialty of environmental cases, i.e. burden of proof. In this regard, the plaintiff may be exempted from proving fault as long as the activity that caused the damage for which compensation is sought is dangerous, hazardous or would lead to the damages complained of, whereas the defendant be given the right to prove that he/she was not at fault, or prove the external cause.
- Alternately, the legislator may consider the establishment of civil liability for environmental damage based on damage without requiring fault "strict civil liability regime".
- The legislator must consider the imposition of compulsory insurance against civil liability for conducting hazardous or ultra-hazardous activities, as it deems appropriate.

³² This is with emphasis on the administrative nature of this jurisdiction, but it deems justified given the lack of an independent administrative judiciary in the State of Qatar and the assignment of jurisdiction to consider administrative disputes to the administrative circuit of the court of first instance, and to achieve comprehensiveness in the jurisdiction of the proposed environmental court.

- Court should be given the authority to order the suspension of activity or project. Moreover, it shall have the power to prevent the use of any machine or material, partially or completely, if the continuation of work on the project or the use of the machine or material poses a serious danger to the environment, provided that guarantees are imposed before the issuance of such orders. This authority shall be used only in urgent cases.
- Applying special provisions for the statute of limitations in criminal and civil liability lawsuits for environmental damage. This can be done by extending the traditional statute of limitations periods or by permitting the hearing of criminal and civil lawsuits without adhering to any statute of limitations period.
- Establish special rules for class actions in the Environmental Court Law or within the framework of the Civil and Commercial Procedures Law. In this context, environmental protection associations and even individuals must be given the right to initiate lawsuits to demand the cessation of activities harmful to the environment and compensation for environmental damage to elements of the environment that are not privately owned, provided that the compensation amounts awarded be directed to the proposed Environmental Protection Fund.
- Establishing an environmental police that supports Environmental Court and all ministries and departments concerned with environmental protection. In this context, it is necessary to develop the idea and practice of the Environmental Division within *Lekhwiya Security Force* to become an environmental police specialized in following up on the enforcement of environmental legislation, chasing and investigating environmental violations, and refer them to the Environmental Public Prosecution and/or the proposed Environmental Court.
- Giving the administrative circuits in the courts the authority to consider appeals submitted by those affected against the relevant administrative decisions, which include granting environmental licenses to initiate or expand activities or other decisions with environmental implications provided that the court panel includes a judge or judges specializing in environmental cases.

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