

Penal Protection of Environment from Oil Operators Pollutants

A Study in Light of Punitive Legislation in Kurdistan Region – Iraq

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ABSTRACT

Today, the protection of the environment has assumed an even more prominent position with the rapid industrialization resulting not only in the overuse of our limited natural resources but also causing the pollution of the environment. One of the most serious environmental dilemmas we face is oil pollution. The wastes of oil operators, if not treated properly, will inevitably lead to pollution of the environment and may cause life-threatening disasters for all creatures and for many years. Hence, the entire ecosystem could be irreversibly damaged that cost normal life of the mankind. With the beginning of oil industry in Kurdistan Region of Iraq mainly post 2003, the legislator in Kurdistan initiated to issue two laws with the aim of organizing its oil sector and protecting Kurdistan's environment with its three elements of soil, water and air. Being recent to and lacking experience of the authorities in Kurdistan Region about Oil operations and its negative impacts had reflected on the contents of those two laws. Thus, they were issued with a number of legal loopholes that hindered them to achieve the objectives of environmental security, particularly Environment Penal Protection. In this context, considering the importance of this topic in Kurdistan Region of Iraq, this research attempts to explain and evaluate these two laws, addressing the issues with identifying potential legal solutions to prevent oil pollution infringements in the region which will be a contribution to the development of Kurdistan Region of Iraq.

KEY WORDS: Environmental Infractions, Kurdistan Region's Law, Oil Operators, Penal Responsibility, Punitive Legislation

1. INTRODUCTION

The environmental pollution has multiple risks affecting human health and threatens the demise of the world in which he lives in. It has got a significant interest at the international and national levels by states, international and local organizations, governmental and non-governmental. The environment and its problems are no longer a private issue of a region or a particular

state, because pollutions do not know geographical and political boundaries of countries as it spreads through water and air. Nowadays, environment and its pollutions became a public issue, and a big problem facing humanity in general in every country, including Iraq and Kurdistan Region.

2. PROBLEM OF THE STUDY

Oil pollution is one of the main causes of environmental pollution where environmental elements are exposed to severe disruptions in their balance as a result of operations carried out by the companies working in the field of oil industries. After Kurdistan Region joined the global oil map as a result of the discovery of oil and the growing of production and concluding contracts with big international oil companies, risks of environment pollution in this region is increasing due to increasing of oil companies and oil

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refineries, and these companies neglect their obligations to protect the environment while conducting oil operations, particularly regarding the waste processing in a scientific way according to the instructions, laws and regulations. These risks require confrontation and control through taking special technical procedures and legally protecting that achieves environmental security, especially penal protection which is the most powerful kind of legal protection. On these bases, researchers chose to study penal confrontation related to oil pollution problem.

3. IMPORTANCE OF THE STUDY

This study intends to achieve the followings:

- Determine legal basis of oil companies' obligations working in the oil industry to protect the environment in Kurdistan region.
- Determine to what extent the oil companies meet their legal obligations of protecting the environment.
- Determine the role of the concerned governmental establishments in opposing the environmental problems.
- Study Kurdistan region environment protection legislations and their mechanisms to solve oil pollution issues.
- Determine the possibility of applying the environmental penal protection.
- Evaluation of the environmental legislations from the point of providing penal protection for the environment.

4. SCOPE

The scope is focused on punitive legal security of oil pollution, which means study of legal protection in general and penal protection specifically, and its defects and shortcomings. This study does not extend to the followed technical procedures to prevent environment pollution from oil industry spills, also does not extend to obstacles of these technical procedures.

5. SECTION I: OBLIGATION OF OIL COMPANIES TO PROTECT THE ENVIRONMENT

The researchers will discuss the obligations of oil companies to protect the environment in two chapters. The first chapter will explain the basis of oil companies' obligation to protect environment, while the second chapter will focus on to what extent the oil companies are committed to their environment protection obligations.

A. Chapter I: Basis of Oil Companies' Obligation to Protect Environment

Living in a clean environment is a right of a citizen (Iraq's Permanent Constitution of 2005(IPC), Art.33 paragraph 1) and is a constitutional duty of the State

(IPC. Art 33 paragraph 2) in which there is no doubt that legislation is the State's way to accomplish this duty. Individuals and companies are not required to adhere to protect the environment by themselves, but by the legislation. By the legislation the State can compel individuals, companies, public and private institutions to protect the environment. Upon this, the basis of oil operators' obligation to protect environment lies in law, as well as some of the contract clauses between them and the host country. In Kurdistan region there is no specific law to protect the environment from oil pollution, but the issue of this protection is dealt by including it within other laws. In Kurdistan region laws requiring oil companies to protect the environment has been issued, like Kurdistan Oil and Gas Law No. (22) of 2007 (KOG) and Environmental Protection and Improvement Law No. (8) of 2008 (EPI).¹

The first law is related to the environment in Kurdistan is Kurdistan Oil and Gas Law No. (22) of 2007 (KOG Law of 2007), which is concerned about environment and emphasizes on its protection through provisions which can be summarized as follows:

First: Article (24), paragraph (3) Item (2) of KOG Law of 2007 imposed on the oil operators that want to get petroleum contracts in Kurdistan to be committed to the ten principles of the UN Global Compact issued on 26 July 2000, in which the principles (7th, 8th, and 9th) specialize in the necessary measures and mechanisms to protect the environment (<https://www.unglobalcompact.org/what-is-gc/mission/principles>).

Second: this law made protecting environment and preventing it from pollution or any environmental damages caused by oil operations and its treatment, conditions for granting permission to public and private oil companies for drilling and exploring oil (KOG Law of 2007, Art. 26 paragraph 3 item 2).

Third: This law requires that the Production Sharing Contracts must include specific clauses to obligate these companies to guarantee safety, health, welfare and protection of environment (KOG, Art. 37 paragraph 1 item 3), as well as taking preventive measures to protect the environment from oil pollution or to reduce its negative effects, and also to take the conventional methods and procedures used in oil industry which secures environmental protection and calls to adopt methods that reduces the oil operations impact on environment (KOG Law Art. 37 paragraph 4 Item 3).

In applying it, the Production Sharing Contracts include clauses related to environment protection which enforce the oil companies to protect the environment in all production sharing contracts, by requiring companies to carry out environmental impact assessment and take action to protect the environment and the use of modern means in accordance with international environmental

protection standards in order to protect health and safety in the Region (Sa'ad, 2015).

Fourth: This law stated that the production sharing contracts should include specific clauses which obligate the oil companies to make payments into an Environment Fund to be administered by Kurdistan Regional Government for the exclusive benefit of the natural environment (KOG, Art. 37 paragraph 1 Item 10).

In addition, oil companies obey the instructions issued by Ministry of Natural Resources, according to Article (53) paragraphs (6th) and (13th) of KOG Law of 2007. In this regard, Ministry of Natural Resources issued recently instructions No. (1) Of 2015 on the Environmental Impact Assessment of Petroleum Operations, in order to ensure that oil operations are designed, operated and terminated in a manner that minimizes damage to the environment. These instructions apply to all oil operations in Kurdistan Region, whether these operations have started after or before the effective date of these instructions. Under these instructions the operator must submit an EIA (Environment Impact Assessment) report to the Ministry for those operations. The EIA involves the identification, prediction and assessment of the significant positive and negative effects of any given petroleum operations on the environment. This report should also contain the physical characteristics, the type and amount of waste and emissions and any other effects, which causes leaks, fires and other accidents. It should also determine the appropriate measures to manage, mitigate and where possible avoid any significant negative environmental effects of the operations in order to protect the health and safety of workers and the people (Instruction No. (1) of 2015 on the Environmental Impact Assessment of Petroleum Operations in Kurdistan Region, Arts. 1, 3, 5, 13)².

The second Law on Environmental Protection, which petroleum operators must abide by in Kurdistan, is Environmental Protection and Improvement Law No. (8) of 2008 (EPI Law of 2008), which stipulates protecting environment of the Region with its three elements soil, water and air, as follows:

First: Water Protection: EPI Law of 2008 stipulates protecting water element, through Article (22), Which prohibits the put up or discharge any harmful liquid, gaseous, radioactive or thermal substances in water sources or streams unless they are treated in accordance with conventional standards.

Second: Air protection: Article (25) of EPI Law of 2008 stipulates that any natural or legal person is obliged not to cause emission or leakage of pollutants into air, including disturbing or harmful odors. Article (26) states that all air-polluting activities shall be subject to the standards set by Kurdistan Region and emissions must

remain within the permissible limits. Joint committees inspect and monitor operators to assess their compliance to the law and instruction concerned, and fining them or closing them down if didn't comply.

Additionally, Environment Protection and Improvement Board (EPIB) issued Instructions No. (2) of 2011 (instruction of ambient air quality Protect from common and dangerous air pollutants) that precisely determined types of air pollutants and pollution standards, and mechanism of monitoring operators, and obliged them to submit EIA report and taking necessary measures to protect the ambient air quality.

Third: Soil protection: Paragraphs (1st, 2nd, 3rd, 4th and 5th) of Article (28) of EPI Law of 2008 prohibits scraping of agricultural land or exercising any activity which may directly or indirectly damage soil of agricultural land or pasture area, or leads to convert agricultural land to industrial land contrary to law, as well as prevent building or establishing any industrial activity on agricultural land contrary to law.

Article (30) of EPI Law of 2008 mandated the EPIB in coordination with other concerned stakeholders to develop appropriate environmental conditions clauses for activities of exploration and extraction of oil in a way that ensures protection of natural resources in the Region from pollution and attrition. Under Article (34), It is not allowed to dispose hazardous materials or waste, were liquid, solid or gas, except in accordance with instructions issued by EPIB in coordination with other concerned stakeholders.

What is noted on the EPI Law of 2008 is that although, it addresses environmental pollution with its three elements soil, water and air, and it does not deal specifically with oil pollution caused by diverse oil operations. In fact, it is a general law that governs environmental pollution in general, including oil pollution, in contrast to some countries that have issued laws specialized in pollution from oil operations, for example Kuwait, United States of America and others (Sa'ad, 2015)

B. Chapter II: Extent of Oil Companies' Commitment to Protect Environment

Oil production operations passes through many steps of: exploration, drilling, transportation and refining, and each step is a source of environment pollution in general, ambient area in particular, whether it was on land, naval or areal. This pollution damages it, directly or indirectly, such as pollution of an area nearby oil fields by waste, or causing illness to the area's population, or suffering these areas from drought as a result of global warming caused by oil operations. The interesting question is: does the oil operators operating in Kurdistan Region complied with their obligations to protect the environment in conformity to laws and

instruction and the terms of agreement between them and Kurdistan Regional Government, or not?

The answer is, in spite of oil operators having financial capacity and the required human resources to comply with their responsibilities towards environment, however, the reality shows that there is a clear contrast between their stated policies in this regard and consequences of their actions. According to the statistics published by authorities concerned about environmental protection, oil operators working in Kurdistan region do not take enough precautions to protect the environment. The reason for this is weakness in controlling these operators, which means that oil operators do not respect law and instruction clauses concerning environmental protection and their contract terms, but violated it and their oil operations negatively affected environment of Kurdistan region.

The main causes of environment oil pollution by oil operators in Kurdistan region are summarized as following (Ibrahim, Kawan Ismael, 2011; Hussein 2014):

First: Oil exploration and extraction leaves severe traces on the region's topography and causes temporary or permanent changes as it leads to distortion of earth's surface and results in significant damage to it. Exploration machinery of oil operators destroys farming lands; therefore, large areas became unsuitable for agriculture. Many operators occupied or destroyed villages and forced its residents to move out because of their oil operations without appropriate reimbursement as stated in Article (29 / 2) of KOG Law of 2007. In addition, oil operations devastated natural forests in Kurdistan Region, which has a negative impact on the environment, especially ratio of forestation in Kurdistan is lower than international standards.

Second: Drilling and extraction of oil pollutes the environment as a result of gas leakage from oil wells whether these emissions is due to using chemical materials in extraction, gases from the well or associated with crude oil at gas separation unit, which leads to serious damages in general and the agglomerations neighboring to oil fields in particular, as it poisons human, plant and animal life.

Third: The accidents that occur during oil transfer operations whether through pipelines or oil tankers. Sometimes oil leaks as a result of sabotaging and blasting those pipelines, and these kinds of incidents are common in Iraq and Kurdistan region as well. During transferring oil by tankers, many kinds of incidents may happen like collisions of oil tankers, flipping of oil tankers on the road or between production areas and refineries, as well as flames and fire of oil tankers.

Fourth: Refining and processing crude oil causes pollution due to emission of various toxic gases from refining operations, as well as wastewater and other harmful wastes emanates from refining operations

(<http://www.ifc.org/ehsguidelines>). Additionally, in Kurdistan region there are more than a hundred illegal oil refineries working without respecting any environmental regulations. According to a report of the monitoring and inspection committee of EPIB, the illegal oil refineries are increasing haphazardly on agricultural lands and near residential areas without getting appropriate licenses from authorities concerned, therefore the concerned authorities do not conduct environmental tests and inspections for them. Also, most of oil refineries do not submit to control, therefore they don't use filters and appropriate ways to get rid of their wastes. Generally, these refineries do not comply with rules and regulations of EPIB, and leaves serious damages to Kurdistan region environment.

Fifth: Environmental pollution due to not treating oil wastes scientifically and leaving it at workplace. Oil operators working in Kurdistan leave wastes at their workplace without treating, they do not bury and throw wastes without damaging the surroundings as demanded by laws and regulations enforced in Kurdistan, while the EPI Law of 2008 prohibits burring hazardous materials and wastes except in accordance with the instructions issued by the Ministry of natural resources in coordination with the concerned bodies (EPI Law of 2008, Art. 34).

We conclude that despite of not having accurate statistics about general pollution ratio in Kurdistan Region, however the reality obvious to everyone is that oil operators in Kurdistan Region did not comply with the terms of conventional environmental Protection respected in oil sectors in the rest of the world, particularly regarding the burial of waste and residues, which caused contamination of nearby areas and left significant damages to soil, water and air of the Region. Also, the issued laws in Kurdistan Region regarding environmental protection and improvement has not been seriously applied because of weakness of concerned authorities, lack of funds to carry out their functions, lack of sufficient authority of EPIB to monitor, inspect and closing down the facilities and lack of cooperation of ministries with EPIB, especially the Ministry of Natural Resources, which concentrates on attracting oil operators to Kurdistan Region in order to extract the largest amount of oil without worrying about maintaining the safety of the environment (<http://www.niqash.org/ku/articles/economy/3324>, <http://www.iraqhurr.org/a/25064496.html>). Therefore, it seems the risks posed by oil environmental pollution in Kurdistan Region became major and is increasing continuously, and the effects of oil pollution will be significant on populations' health.

6. SECTION II: PENAL RESPONSIBILITY OF OIL OPERATORS FOR ENVIRONMENTAL POLLUTION

Not fulfilling the obligations of environmental protection and violation of KOG Law of 2007 and EPI Law of 2008 exigencies and their instructions by oil operators, result in legal responsibility. This responsibility is in two types: the first -which is out of this study's scope- is the civil responsibility that obligates the polluting oil company to restore and compensate the damages done to the environment (Al-Husseini, 2010; Hussein, 2014), and the second -which is subject of our study - is the penal responsibility which is more severe than the first type and arises when an environmental infraction is committed (Younis, 1981). In meeting elements of environmental infraction, a penal penalty is imposed on the committee. We divided this section into two chapters, in first we study the elements of the environmental infraction and the second is dedicated to sanctions incurred.

6.1 Chapter I: Elements of Environmental Infraction

Environmental infraction is established when both material and moral elements is available - like other crimes - which we shall address in the following:

1. The Material Element:

The material element of environmental infraction is manifested through the criminal incident, which requires there be criminal act (*Actus reus*) committed and a criminal consequence as well as a causal link between the act and the consequence. The criminal act in environmental crimes may be an affirmative act or an unlawful omission of an act. Affirmative acts mean that a person conducts voluntary physical movements that lead to a consequence that the legislator sought to criminalize (Al-Saadi, 1970; Ibrahim, Akram Nashat, no date; Al-Hadithi, no date). Environment polluting is the affirmative act of environmental crimes, which is realized by adding polluting substances to an environmental medium. for example, causing leaking of gases or pollutants into the air or the act of drilling or scraping the land or the act of burying wastes in flawed ways, or act of emitting gases, smoke, solid, liquid, corrosive or toxic substances into the air, land or water environment that could disturb the population and endanger public health or safety, or damage plants, agricultural products or the topography. Omission to act refers to abstaining to take a certain act that the law requires (Al-Saadi, 1970; Ibrahim, Akram Nashat, no date), an example of omission in environmental crimes is abstention of oil operators to take certain measures to prevent leakage or emission of harmful gases into air. Oil operators, by virtue of the law, are obliged to take the necessary precautions to prevent leakage of harmful

gases and vapors, short falling to do duties required by law entails criminal responsibility.

The criminal consequence is any change occurring as an effect of a conduct committed which is an aggression against a right or interest protected by law (Mahmoud, 2002; Naji, 1974). The consequence of environmental crimes is materialized by any change in environmental elements (soil, air, water) due to prohibited conduct committed by a criminal, like dumping toxic wastes, which harms humans, animals or plants and causes a direct damage to the victim, which is called (the material meaning of the consequence) (Al-Khalaf and Al-Shawi, no date). The prohibited conduct represents also an aggression on an interest legally protected, like human, animal or plant's health, which is called (the legal meaning of the consequence) (Al-Khalaf and Al-Shawi, no date). It should be noted that the crimes of polluting environment, like other crimes, require a physical consequence, but sometimes it does not, in those cases the criminalization would be on the criminal activity itself regardless of its' consequences. That means criminal responsibility of environment pollution is raised if the activity itself endangers the protected right or interest, even if no criminal consequence happened, especially as the damage caused by the act of pollution usually does not appear immediately or at the same place, but may be delayed for a long period of time, which may reach tens of years. which means that the criminal consequence is the damages or risks that are likely to occur in the future, for example, the emission of gases into air that exceeds the permissible limit, certainly leads to real damage, which is not visible or immediately perceived, therefore it is difficult to identify, estimate or demonstrate its existence at least in short term (Hawass, 2012; Al-Atroushi, 2013).

The third of the material elements is the causality between the criminal act and the criminal consequence, without which the material element cannot be fulfilled. Therefore, the consequence must be caused by the conduct, if the consequence is associated to a factor other than act, the causality link is broken and the criminal responsibility accordingly ceases to exist (Al-Saadi, 1970; Al-Bazakan, no date). Environmental crimes do not deviate from the established causal regulations of crimes in needing the causal link unlike environmental endangerment offenses. On the other hand, displaying the causality between the conduct and the criminal consequence in environmental pollution infractions is hard, since it is difficult to prove the damage in time or to determine its source accurately, therefore the law does not require a tangible material result, but merely criminalizes the polluting act itself.

2. The Moral Element (*Mens Rea*):

As a general rule, it is not enough to impose criminal punishment on every person who harms environment,

but it must be committed knowingly and voluntarily. In other words, the offender should have a certain amount of mistake or with a guilty mind, which is called the moral element. So there is no crime without the moral element, whatever the outcome (Naji, 1974; Mustafa, 1983). The crimes of environmental pollution, like other crimes, must have a moral element. This moral element can be intentionally, in that case the crime is deliberate, or can be mistakenly, in that case the crime is unintentional. So, environmental crimes could be committed either deliberately or mistakenly.

The criminal intent involves a conscious decision voluntarily committed with knowledge (Al-Hadithi, no date; Al-Hassani, 1970). Knowledge in environment pollution crimes is awareness of the offender of his conduct and of the rights violated, which is the right to have a clean and healthy environment, in a sense the offender must be aware that his commission or omission act would cause the intended damage or endangers the environment. Voluntarily in environmental crimes means that the offender is willing to commit the criminal conduct for crimes requiring only criminal conduct, or willing the conduct and the consequence for crimes requiring a criminal consequence also (Al-Bazrakan, no date; Al-Hadithi, no date). If the conduct done without knowledge or intention, as if the offender committed the criminal act believing that his act is not an aggression on a legally protected interest, or done it without intention, his harmful act would not be considered an intentional crime, since criminal intention is absent.

The unintentional mistake is the second form of the moral element and realizes unintentional infraction. Unintentional mistake is recklessness or negligence that leads to unexpected criminal consequence which could have been or should have been predicted or foresaw that it would be avoided (Mahmoud, 2002; Al-Hassani, 1970). For example, negligence of oil operators to take necessary measures when drilling or exploring which damages the environment.

6.2 Chapter II: Punishments of Environmental Crime

If the crime elements as stated above are attained, the environmental crime is established, and then we begin the search to determine the criminal responsibility and the sanctions incurred, whether the offender is a natural person or a legal person. Where a legal person becomes responsible for the crime committed because of his inadequacy to supervise his personnel or failed to take necessary precautions and prevention measures to avoid endangering environment and its damages (EPI, Art. 21; Iraqi Penal Code No. 111 of 1969, Art. 80). Therefore, if the oil companies operating in Kurdistan Region committed an environmental crime either by themselves or by their personnel during the exploration, extraction or refining of oil they will be criminally responsibility

and be sanctioned as well the natural person that committed the crime. Environmental infraction has two types of sanctions:

1. Administrative Sanctions:

Sanctions applied by the administrative authorities without intervention of judicial authority, whether the offender is a natural or legal person. These sanctions have been referred to as precautionary measures, since these sanctions are originally administrative decisions having a punitive nature, imposed by the specialized administrative authorities on the violator. These sanctions take various forms: warning, Suspension of work, closing down the facility and withdrawal of environmental approval (EPI, Art. 41), as following:

a. Warning:

The Minister or his appointed agent can warn any oil operator polluting the environment to remove the harmful or damaging factor of the environment, within a period not exceeding ten (10) days from the date of the notification. The warning is one of the lightest and quickest punishments to have a positive effect, therefore the legislator adopted it. Through warning, the administrative authority shall notify the violator that his activity is not conforming with the legal standards concerning environmental protection and alert him to the necessity of taking the required measures, and clarify that failure to comply with this warning would expose him to stricter sanctions.

b. Suspension of Work or Closing Down of The Facility and Withdrawal of Environmental Approval:

In case of not complying to the warning, the Minister can decide either to temporarily suspend work on the project or unit polluting until treatment of the pollution, or temporarily closing down the facility or the operator and withdrawal of the environmental approval until the pollution is removed and the situation is restored to where it was. Suspension is stopping the activities of the project that is harmful only, while closing down of an establishment means temporary stopping facility's activity, noting that the duration of suspension or stopping activity must be determined according to the degree of the pollution and stated in the order of suspension or closing down issued by the concerned administrative authority. It is preferable that the duration be equal to the time needed to remove or limit the pollutants.

c. Fine:

The Minister or his appointed agent, which his job is not lower than general director, could (not obliged to) fine a sum of 100,000 to 10,000,000 ID on violating operators or entities that violate the provisions of EPI Law of 2008, regulations and instructions concerned (EPI, Art 42 paragraph 3). We think it was better if the fine imposed was daily and the amount increased

gradually for each day the violator is late to remove the pollution after the expiration of the period specified by the minister.

2. Judicial Sanctions:

Are Sanctions applied by courts when the environmental offense constitutes a crime according to law and the court is seized. These sanctions are fine, imprisonment and prison, and is determined according to the type of the infraction whether it is a delinquency or a felony.

a. Environmental Delinquency:

Is punishable by two kinds of sanctions, first is imprisonment for a period of minimum one month without determining the maximum limit, which means that the term of imprisonment can be up to five years. The second kind of sanction is fine between (150,000) and (200,000,000) Dinars. The text of law gives the court the power to sentence one or both sanctions together (EPI Law of 2008, Art 42 paragraph 1). The fine is more effective and easier to apply and constrains to respect the legal provisions, especially if proportioned to the damage caused, because it affects the financial asset of operators as penalty for the offences, which are mainly committed for enriching this asset. However, Kurdistan Legislator misses this advantage in the field of oil industries, because the incurred fine not being proportional with the volume of environmental damages caused by oil operators. These fines are insignificant compared to the gains that the operators get from these polluting activities, which makes them chose to pay the fine as a part of production cost, and not considering it as a penalty, therefore these fines could not have deterrent effects, unless be increased to a proportional sum.

The second paragraph of Article 42 stipulates doubling penalty of environmental delinquency in each repetition of the offence. This means that the minimum and maximum plafond of penalty incurred be doubled when the offence repeated for the second time (imprisonment for no less than 2 months and not exceeding 10 years and/or fine of 300,000 to 400,000,000 ID) and be tripled when repeated for the third time and so on. This mechanism of fine augmentation is novelty in Kurdistan and Iraq legislations, albeit in our view it is effective for environmental infractions, because this mechanism of multiplying is more deterrent.

b. Environmental Felony:

Environmental crime is defined as a crime committed in violation of the provisions of paragraphs (1, 2 and 3) of Article (35) of EPI Law of 2008, which includes:

- Importing dangerous wastes, harmful to people and environment of Kurdistan
- Importing dangerous materials without prior permit from EPIB.

- Traversing dangerous wastes and materials through Kurdistan Region without permit from EPIB.

These three conducts constitute environmental infraction of felony type, and are sanctioned by (5 to 15) years prison (EPI, Art 43). The offending oil operators also are obliged to return the imported dangerous substances or wastes to its origin, or treat it in a safe way with compensation.

The Kurdistan legislator initiative to regulate bases to protect environment and to impose penal sanctions is well perceived because environment cannot be protected without serious deterring sanctions. Most of the legislations employs a mixture of penal, civil and administrative punishments in one system to provide best protection for environment, which Kurdistan legislator also did. However, it seems that the condition for applying penal sanctions is the depletion of all administrative sanctions, but was not mentioned clearly in the law, which is lacking.

7. CONCLUSIONS

We have reached to a number of results and recommendations, the important are the following:

7.1 Results:

1. Living in a clean environment is one of citizen rights, the state has to provide it according to the constitution, and the oil companies should not pollute the environment by virtue of laws, regulations and the contractual clauses signed between them and Kurdistan regional government.
2. Kurdistan Region cared about the environment through issuing EPI Law of 2008. It is clear that although it has dealt with the three environmental pollution elements: soil, water and air, but it does not address the pollution resulted from various oil operations specifically, rather it is a law that treats environmental pollution in general including oil pollution.
3. The oil companies working in Kurdistan region do not comply with the conventional terms of environment protection, particularly regarding disposing the wastes, which polluted nearby areas and left significant negative effects to Kurdistan region soil, water and air as a result of toxic gases generated by oil refineries. Therefore, the risks produced by environmental pollution in Kurdistan Region is considerable and will increase continuously, particularly on health of the population of Kurdistan region.
4. Kurdistan Region legislations regarding environment protection and improvement have not been applied seriously because of the weakness in authority of the concerned administrative

departments and lack of resources to carry out their tasks, and the lack of sufficient authority of the EPIB to supervise, inspect and close down oil establishments as the result of not being cooperated by other concerned authorities, especially Ministry of Natural Resources.

- Disrespecting environment by oil companies and violating the KOG Law of 2007 and the EPI Law of 2008 results in a penal responsibility, which is applied only after depletion of all administrative penalties such as (warning, suspension, closing down and withdrawing environmental permit). In establishing of penal responsibility, a penal sanction is imposed such as (fine, imprisonment and prison).

7.2 Recommendations

- In view of plentitude of oil activities and its danger on environment, we recommend issuing a specific law for oil pollution, or activating EPI Law of 2008 No. (8) Of 2008.
- Establishing a strong cooperation and coordination between the establishments and ministries concerned about protecting the environment by activating the role of the EPIB in Kurdistan region and developing a common strategy to protect environment. As well as activating committees responsible for monitoring and inspecting establishments that have environmental harmful activities.
- Punishing establishments that have environmental harmful activities in case they violate environmental legislations and closing down or withdrawing their administrative permit if needed, and also closing down establishments that are working without administrative permit.
- Imposing high fines on violators.

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¹ Text of these two laws were published in Kurdistan Gazette "al-Waqai' al-Kurdستانيya", No. 90, dated 08/11/2008.

² Instruction No. (1) of 2015 on the Environmental Impact Assessment of Petroleum Operations in Kurdistan Region, published in Kurdistan Gazette "al-Waqai' al-Kurdستانيya", No. 184, dated 02/04/2015.