

Second: English Researches

4. Specialized Environmental Courts in Egypt: Toward Sustainable Environmental Justice

Amir Aly Mahmoud AbdelWahab

5. Converting Agricultural Engines to Run on Hydrogen as a Sustainable Solution to Climate Challenges

Ahmed G. Mohamed, Ahmed M. Ibrahim, and Moataz A. Mahfouz

Specialized Environmental Courts in Egypt: Toward Sustainable Environmental Justice

المحاكم البيئية المتخصصة في مصر: نحو عدالة بيئية مستدامة

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Abstract

Before the rise of the Industrial Revolution, the world had lower emissions than it does nowadays. That era was characterized by industrial growth without considering the environmental consequences. Factories that adopted oil as a main energy source were widely spread, resulting in air and water pollution and contributing to the world's environmental challenges today.

In light of these environmental challenges, the international community has enacted several environmental protection agreements to reduce emissions and mitigate climate change. Various international environmental agreements have been ratified to enhance cooperation among states to save the environment. However, their effectiveness has been undermined by inefficient enforcement mechanisms, which have limited their ability to achieve their intended targets.

In addressing these challenges, there has been significant growth in establishing Environmental Courts and Tribunals (hereinafter mentioned as “ECTs”) worldwide, motivating the need to protect our environment from ongoing damage and degradation. While not all ECTs have succeeded in delivering justice in environmental disputes, many have effectively addressed complex environmental issues.

This research examines the possibility of establishing Environmental Courts (hereinafter mentioned as “ECs”) in Egypt. By drawing on successful international models, the study proposes a model for establishing ECs that aligns with Egypt’s judiciary system.

Keywords: Environmental courts, specialized judiciary, international environment agreements, environmental courts and tribunals

Research Problem:

The current Egyptian judiciary system lacks specialized ECs established to handle the complexity of environmental issues. Environmental cases are typically adjudicated within the general judiciary system; they may go to the administrative judiciary if a public authority is involved and to the civil courts if the parties are private legal persons. They may also go to criminal courts. This fragmentation raises concerns about the adequacy, consistency, and specialization of judicial handling in environmental matters, highlighting the need to explore the potential role of ECs within the Egyptian legal system.

Aims and Objectives:

This research aims at exploring the possibility of establishing ECs in Egypt by first evaluating the current gaps within Egypt's judicial system and then examining the role of ECTs in other jurisdictions. It also aims at finding how Egypt can integrate such courts into its legal system.

Research Questions:

The primary research question guiding this study is:

1. How can ECs be effectively integrated into the Egyptian judiciary system?

To delve deeper into the context of environmental courts, secondary research questions are:

2. What structural and jurisdictional features should an EC system in Egypt have to effectively address environmental cases?

3. How are environmental disputes currently addressed within Egypt's judiciary system?

Research Methodology:

This research adopts both descriptive and analytical approaches to examine Egypt's formal institutions and its ability to implement ECs. The descriptive approach will outline Egypt's current judiciary system, while the analytical approach will involve studying global models of Environmental Courts. The overview of EC models relies on existing legal scholarship and judicial reports, rather than on original research, to identify the most suitable model for adaptation in Egypt.

This research falls under “reform-oriented” legal research, as it aims at assessing and proposing an EC model within Egypt's current judiciary system.

This research is evaluative, focusing on assessing Egypt's current environmental laws and judicial practices. Additionally, it is comparative, as it examines international examples of ECs, and projective-predictive, as it proposes how these courts could be established and how they could function in Egypt.

Literature Review:

Establishing specialized courts with exclusive jurisdiction over environmental disputes has been increasingly recognized as a better means of addressing complex environmental disputes in countries adopting this model.

In this literature review, the research will tackle various perspectives concerning this concept by reviewing case studies, juris opinions, and finally, the formal institutional sources necessary for creating effective ECs in Egypt. For clarity, this section will be divided into two parts:

1) Foundations and International Practices of ECTs

This research will start the literature review by demonstrating the research written by Brian J. Preston, the Chief Judge of the Land & Environment Court of New South Wales, addressing the main characteristics of successful ECTs. (Preston, 2014)

This article identifies 12 characteristics based on Preston's practical experience as a New South Wales Environment Court Chief Judge. He suggests that these characteristics should mainly exist to successfully operate these courts and thus achieve their aim of delivering environmental justice.

The first characteristic Preston addresses is status and authority, which refers to the level of credibility, recognition, and legitimacy an ECT must have to effectively address environmental disputes. According to Preston, successful ECTs do not necessarily need to be superior or higher courts within a judicial hierarchy, but at least they should enjoy recognition and legitimacy. Preston sees that it does not matter whether it takes the shape of a tribunal or a court. Also, hierarchy does not matter in a court, as he mentioned some unsuccessful ECs that enjoy superiority and unsuccessful inferior ECs. From Preston's perspective, what really matters to have a successful EC is that it should enjoy comprehensive jurisdiction, as tackled in the third characteristic below.

The second characteristic is independence from the government and impartiality. For ECTs to function effectively, judges must be free from external influences such as political pressures, industry interests, or public opinion, stressing that court judgments should only be based on legal and factual considerations.

The third one is a comprehensive and centralized jurisdiction; such a jurisdiction allows a court to address a wide range of environmental issues, thus centralizing all environmental cases within a single

specialized court instead of distributing them among the general courts in a country. In short, Preston recommends that ECs should have exclusive jurisdiction over environmental disputes.

The fourth characteristic is that judges and court members who assist judges should be more educated about environmental issues. This opportunity will improve their ability to respond to environmental disputes, improving their decision-making quality, effectiveness, and efficiency. Due to the scientific and technical complexity of these types of disputes, the court members shall also have some environmental knowledge to assist judges. Further, Preston stressed the same idea in the sixth criterion by extending access to scientific and technical expertise outside the court.

The fifth characteristic is called "Multi-Door Courthouse," which is a judicial approach designed to provide multiple pathways to resolve disputes beyond traditional litigation. This model integrates various alternative dispute resolution (hereinafter mentioned as "ADR") methods, such as mediation, arbitration, conciliation, and negotiation, within a single courthouse system, allowing parties to choose the most suitable process for their case.

The seventh characteristic is facilitating access to justice by removing some barriers during the litigation process, imposing flexible standing requirements, and allowing the public to participate and appeal in environmental decisions issued by the government. As Preston stated in introducing this characteristic, it reflects the essence that *delaying justice is a denial of justice*. Also, the eighth characteristic complements this, as it stresses achieving a just, quick, and affordable resolution of disputes.

The ninth characteristic is the court's responsiveness to pressing environmental issues like climate change and biodiversity loss. Successful ECTs not only address legal disputes but also promote remedies and solutions to these complex issues. Specialization in environmental law allows these courts to use their doctrine and provide more extensive remedies than ordinary courts. They will not be able to make their doctrine except by their response to the environmental issues through their day-to-day handling of cases, which is the idea of the tenth characteristic.

The eleventh characteristic is adopting a clear mission or statement of purpose, which should focus on protecting the environment for the public rather than protecting private rights.

The last characteristic emphasizes the value that ECTs can add beyond individual cases. ECTs contribute to developing environmental jurisprudence by interpreting and expanding environmental laws, often drawing on international case law to strengthen domestic regulations. Additionally, ECTs enhance administrative decision-making by formulating non-binding principles through merit review appeals. These principles guide future administrative decisions, ensuring consistency and clarity in environmental governance. ECTs are also known for their innovative legal practices and procedures, often implementing changes more swiftly than larger courts. Examples include eCourt systems and flexible dispute resolution methods like mediation and conciliation.

Overall, ECTs resolve disputes, shape environmental law, improve administrative practices, and drive innovation in environmental litigation.

2) The Need for Specialized ECs in Egypt

Under this fold, Counselor Mohamed Fayez's research, particularly the last chapter, will be reviewed. The research focuses on the need for establishing ECs in Egypt (**Hussien, 2024**). It highlights the importance of climate and environmental disputes and the need for a special court to handle them.

Counselor Mohamed Fayez Hussien mentioned two different approaches in his research by which a judge could handle environmental disputes. The first one recommends that judges avoid getting into the scientific details, seeing them as outside their expertise. While the second approach states that judges carefully look at the government policies and decisions to ensure they protect the right to a clean environment and meet national and international commitments.

Counselor Mohamed Fayez Hussien supports creating specialized courts focused on environmental and climate issues. In his research, he agrees with Donald W. Kaniaru, the Managing Partner of Kaniaru & Kaniaru Advocates in Kenya, who is the Chair of the National Environmental Tribunal of Kenya and represents the International Council of Environmental Law (ICEL) at the United Nations Environment Programme (UNEP) in Nairobi. Donald W. Kaniaru believes these courts are crucial for handling such disputes. These courts would allow cases related to environmental disputes to be dealt with more efficiently.

He also notes that regular courts may face challenges in handling environmental cases due to the high level of expertise needed to do so properly. He suggests creating a specialized environmental committee with legal and scientific experts as a solution. This committee could work with Egypt's National Climate Change Council to ensure that government decisions are informed by legal and scientific knowledge. It would also ensure that Egypt's environmental policies align with international climate agreements.

Introduction to the Means of Environmental Protection Globally

1. Environmental Global Issues

In this decade, the world has witnessed a significant atmospheric change due to global warming, which has negatively affected the environment, affecting all countries worldwide. The problem is that environmental challenges are unlike any other international community problems. That is because they require intensive measures and the collaboration of all countries, particularly the industrial ones, due to their high contribution to greenhouse gas emissions. Moreover, any delay or barriers in enforcing these measures will, unfortunately, result in a massive environmental dilemma that no state can contain.

The international community's awareness about the effects of climate change has grown, especially after the first important world conference on the environment, which was held in Stockholm in 1972 (United Nations Conference on the Human Environment, 1972). At this conference, several principles were adopted, including, but not limited to, recognizing the right to live in a healthy environment as a fundamental human right that cannot be derogated. For this reason, the right to live in a healthy environment is enshrined in most constitutions, including Egypt. The conference also highlighted the importance of scientific research and development for the environment in all countries, particularly developing countries, by providing them with the necessary tools to conduct this kind of research.

In 1985, a conference was held in Austria, where meteorologists warned the international community about a serious environmental threat resulting from the rise in global temperatures, which could threaten the existence of living organisms and human beings (Askar, 2013, p. 8). The rise of ocean and sea volume, resulting from icebergs melting, will cause coastal flooding, leading to human rights violations due to people's displacement from coastal cities, and numerous forms of chaos.

2. Overview of International Environmental Governance: Treaties and the Evolution of Climate Litigation

Recognizing the negative consequences of climate change, the international community managed to enact environmental agreements that hope to mitigate its impact. These agreements promote environmental governance, by which states are obliged to reduce greenhouse gas emissions. Even countries like Egypt, the United Kingdom, France, and Germany are committed to reducing these emissions. Accordingly, they incorporated the ratified international environmental conventions into their national laws (Hashish, 2024, p. 62).

The United Nations Conference on Human Environment (hereinafter mentioned as “**Stockholm Conference**”) was held in 1972 in Stockholm, Sweden. This conference is considered the first major world conference to address global environmental issues (Askar, 2013, pp. 122- 126). The Stockholm Conference established 26 principles that confirm the fundamental right to a healthy environment, the protection of natural resources for present and future generations, and the prevention of environmental harm, particularly pollution. They highlight the importance of rational planning, national institutions, and environmental education to foster responsible conduct. Additionally, the principles stress the necessity of scientific research, international cooperation in environmental law, and liability for environmental damage. Lastly, they call for global efforts to eliminate nuclear weapons and other means of mass destruction to safeguard both humanity and the environment.

After the Stockholm Conference, the United Nations Conference on Environment and Development, which is known as the Rio Earth Summit, was held 20 years later, in 1992, in Rio de Janeiro, the previous capital of Brazil (United Nations Conference on Environment and Development, 1992). The Rio Earth Summit issued 27 principles that balance environmental protection with economic development. Principle 10 highlights the importance of public access to justice and judicial remedies among the most important principles.

From our perspective, this declaration promoted the idea of establishing ECTs under the auspices of national states, by which each state has its own ECTs, as Principle 10 reads that “...*Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.*” Consequently, the Rio Declaration ensures that individuals can effectively access judicial and administrative proceedings regarding environmental disputes. However, it does not clearly declare the establishment of a specified environmental court. Instead, it issued a broader principle of access to justice in environmental matters, leaving it to individual states to determine the most appropriate judicial mechanisms for addressing environmental disputes. This approach has led some countries to establish dedicated ECTs. In contrast, others have incorporated environmental adjudication within their existing judicial frameworks, without requiring specialized courts to address environmental disputes.

First: ECTs' National Models

1. Global Rise of ECTs

Environmental justice is the essence of environmental protection, as it is an important safeguard for environmental protection (Hou, Yang, & Hou, 2024, p. 57081). Due to their technical complexity and urgency, traditional judicial systems prove insufficient to address environmental cases. Consequently, over 60 nations have established ECTs (United Nations Environment Programme, 2022, p. 11).

The UNEP report shows many examples for ECTs (United Nations Environment Programme, 2022, pp. 11-14), including but not limited to the case of New Zealand, a country with two ECs and one tribunal specializing in resource management and environmental disputes. These courts balance

sustainable development with environmental protection. Moreover, Australia has a network of ECs across various states, including specialized tribunals in New South Wales, Queensland, South Australia, Victoria, and Western Australia. These courts address various environmental issues, such as pollution control, land use, and conservation, ensuring effective enforcement of environmental laws.

2. National Specialized ECs

Under this section, the research will focus on three ECTs in different jurisdictions: Sweden, China, and Australia. The research will focus on the structure, jurisdictions, and standing of parties, which are the pillars of the legal systems that govern how appeals are handled, how individuals' rights are protected, and how decisions are challenged within each jurisdiction.

2.1. Sweden

A) The Structure and Evolution of Sweden's ECs

The courts in Sweden are divided into three main categories: general courts, administrative courts, and special courts (Wang, 2016, p. 609). The general courts are the District Courts, the Appellate Courts, and the Supreme Court.

The District Courts are often the court of first instance. The general court's role is to hear disputes in private law and criminal cases. On the other hand, public law disputes are heard by the administrative courts, which consist of the Administrative Courts of Appeal, which have jurisdiction to review administrative decisions. The latter courts are divided into the Country Administrative Courts, the Administrative Courts of Appeal, and the Supreme Administrative Court.

A new system was established for environmental permits and appeals. As a result, Land and Environmental Courts (hereinafter mentioned as 'LEC') were created upon enacting the Environmental Code (hereinafter mentioned as 'EC') within five district courts (Lexadin, n.d.) to handle cases relating to permits, appeals of administrative decisions or orders, and actions for injunctions and damages under the Environmental Code.

So, suppose a party seeks to file a lawsuit regarding environmental matters. In that case, they must file it with any of the five Land and Environmental Courts in different regions of the country. Then, if any of the litigants wants to appeal a decision from the former, the next step is to appeal to the Land and Environment Court of Appeal (hereinafter mentioned as "LECoA"). This court is a division of the Svea Court of Appeal (Sweden, 1998, Chapter 20, Section 1), which is located in Stockholm. If any of the parties wants to challenge the former decision, then the only way is to challenge it before the Swedish Supreme Court (Sweden, 1998, Chapter 20, Section 1).

B) The Jurisdiction of LEC

LECs are considered a part of the administrative decision-making regarding environmental matters, which is mainly exercised by the Municipal Environmental Boards (hereinafter mentioned as "MEB"). They are local government bodies responsible for enforcing environmental regulations within their jurisdiction, and they are responsible for handling issues like waste management, pollution control, and local land use planning. MEBs operate independently, but their decisions can be appealed to the Country Administrative Boards (hereinafter mentioned as "CAB"), which work at the regional level, on a larger scale than MEB. They are responsible for handling environmental issues that affect entire

regions, such as water quality, air pollution, and biodiversity, as well as reviewing MEB's decisions (Wang, 2016, p. 610). Moreover, the decisions made by CABs are subject to appeal before LEC (Voigt & Makuch, n.d., p. 396). Consequently, cases started in the MEB cannot be appealed beyond LECoA, except under certain circumstances. In addition, if cases are started in the LEC, they could reach the Supreme Court (Voigt & Makuch, n.d., p. 397).

Moreover, big projects made by the government cannot be appealed against by the ordinary procedures provided previously; instead, people concerned, including NGOs, may apply for judicial review to the Supreme Administrative Court (Wang, 2016, p. 610). Furthermore, LEC may have jurisdiction in cases concerning compensation for environmental damage, including but not limited to compensation arising from public interventions, permit application procedures, water operations, fishing prohibitions, and private claims related to bodily injury, material damage, or financial loss (Sweden, 1998, Chapter 20, Section 2).

Regarding criminal cases, supervisory authorities are obligated to report to the police or the prosecution service if there is suspicion of a criminal offense. Once a suspected offense is reported, it may lead to a police investigation, which could result in the issuance of a fine by the prosecutor or the initiation of a prosecution in the court (Wang, 2016, p. 611).

Moreover, while specialized courts like LECs benefit from deep legal and technical expertise in environmental law, their separation from general courts can lead to inconsistencies, especially in criminal environmental matters, especially when the criminal is accused of several crimes, including an environmental one. There have been debates about whether such criminal cases should also fall under LECs, as many district courts lack sufficient experience due to the low volume of such cases (Voigt & Makuch, n.d., p. 395). Also, *“imprisonment is rarely used – there were only 3-4 environmental cases where imprisonment was imposed. Prof. Darpö explained that in these rare cases, it does not concern crimes committed by businesses / professional operators, but by individuals or groups of individuals. He gave the example of a recent case related to a waste burning incident which resulted in a 6-month jail sentence.Also, the Land and Environmental Court of Appeal Judge confirmed that very few prison sentences have been imposed for environmental crimes committed by private individuals; if they were, it mostly concerns cases where these individuals were charged with other criminal activities too.”* (Philipsen & Faure, 2015, p. 19). The point is that environmental crimes shall be under the jurisdiction of LECs, as mentioned by Preston, that ECTs should enjoy comprehensive jurisdiction in administrative, civil, and criminal matters, as many successful ECTs around the world have been characterized by comprehensive jurisdiction (Preston, 2014, p. 372).

C) The Standing for Parties in Swedish ECs

Standing means who can bring a case or appeal a decision, and in this regard, environmental matters. In other words, it determines who has the right to participate in legal proceedings concerning environmental decisions or permits, under the EC, that *“any person who is the subject of a judgment or a decision against him”* has the right to appeal it (Sweden, 1998, Chapter 16, Section 12). Also, it extends to non-profit organizations whose purpose is to promote nature conservation or environmental protection interests. Still, the organization shall at least have been working for 3 years in Sweden, and have no less than 2000 members (Sweden, 1998, Chapter 16, Section 13). However, this was overturned by the Court of Justice of the European Union (hereinafter mentioned as 'CJEU') and just reduced the number of members to 100, which can show that it has support from the public (*Djurgården-Lilla Värtans Miljöskyddsförening v. Stockholms kommun*, 2009). In this context, the ‘public’ is defined as *“one or more natural or legal persons, in accordance with national legislation*

or practice, including their associations, organizations, or groups.” (*Djurgården-Lilla Värtans Miljöskyddsförening v. Stockholms kommun*, 2009, paragraph 4). The public concerned, for the purposes of environmental protection, is considered to exist as long as individuals or groups are affected or likely to be affected by the matter in question, provided that they are recognized under national laws as promoting environmental protection. Consequently, if a foreign organization, like an NGO registered in Germany, wants to challenge an environmental decision in Sweden, the national criterion will not be fulfilled, and thus, it will not be able to challenge the decision because it lacks standing (Wang, 2016, p. 613).

2.2. China

A) The Development of Chinese ECTs

China's legal system is based on German and Japanese models, which historically started during the late 19th century (Lees & Viñuales, 2019, p. 139). However, modern law development was interrupted by a conflict that included civil wars and the Japanese invasion. Only after the Cultural Revolution (1966-1976) did China return to its legal modernization process, having adopted many laws and rules, including the environmental law. China's judiciary and legal services have continuously grown and developed (Lees & Viñuales, 2019, p. 139).

In the People's Republic of China, the courts system includes general and special courts. General courts are organized in the four levels; District People's Courts, Intermediate People's courts, High-people's Courts at the level of the province, and Supreme People's Court (hereinafter mentioned as 'SPC'). At every level there are divisions, which deal with civil, administrative, criminal, and commercial matters. Special courts perform more specific functions (Wang, 2016, p. 615).

The SPC is at the top of the pyramid and coordinates the lower courts. It is responsible to the National People's Congress, and the lower courts are answerable to their respective local people's congresses. Judicial independence is provided in the Constitution, with courts operating independently from administrative bodies, public organizations, and even persons. China's journey toward specialized environmental adjudication can be divided into three major phases (Wang, 2016, p. 615).

In the first phase in 1989, grassroots tribunals emerged under local environmental agencies without a clear legal basis, leading to their dissolution by the SPC. The second phase was in 2007, where formal reforms integrating environmental courts into the judicial system as divisions, panels, circuit courts, and tribunals, with 88 District Courts, 19 Intermediate Courts, and 2 High People's Courts establishing environmental tribunals by 2012. In this phase, environmental courts enjoyed legitimacy unlike the grassroots tribunals during the first phase. In the present phase, the SPC launched a national initiative to strengthen environmental justice, creating its own environmental division, requiring High People's Courts to establish environmental units, and encouraging District and Intermediate Courts with significant caseloads to do the same. Consequently, by the end of 2014, 291 District Courts, 92 Intermediate Courts, and 17 High People's Courts had established environmental divisions or panels. These environmental units handle four categories of cases: criminal, administrative, civil, and enforcement of administrative orders (Preston, 2014, p. 376).

B) The Jurisdiction of Chinese Courts in Environmental Disputes

ECs mainly function as judicial bodies. Environmental divisions within the court system shall handle administrative, civil, and criminal environmental cases filed with them. When environmental public

authorities commit illegal acts, act improperly, or fail to act (administrative omission), affected or interested parties in China have two main ways: administrative appeals and judicial review. These are alternative and complementary remedies; individuals may first pursue an administrative appeal and, if unsatisfied with the result, still retain the right to initiate judicial proceedings by filing a judicial review (Wang, 2016, p. 616).

In addition to administrative cases, Chinese ECs also have the power to hear civil claims involving ecological damage, bodily injury, property damage, and financial loss. Courts may also issue injunctions before or during litigation to prevent ongoing or potential environmental harm. In criminal environmental cases, the power to prosecute lies with the People's Procuratorate. Any individual or organization suspecting an environmental crime has a duty to report it to the police or procuratorate (Wang, 2016, p. 616).

The Judicial Guidance of July 2014 provided the structural framework for ECs in China. It requires the establishment of environmental divisions in the Supreme People's Court and High People's Courts. However, Intermediate People's Courts are only required to create such divisions if they face many environmental disputes. So far, a fully centralized and uniform environmental jurisdiction across regions has not been realized (Wang, 2016, p. 616).

C) The Standing of Parties before Chinese ECs

China has improved access to environmental justice by expanding its legal standing in administrative litigation to include third parties affected by environmental decisions. Before this amendment, only parties affected by such a decision could stand before the courts exclusively. However, administrative appeals remain limited to the original parties, and civil litigation continues to face barriers due to judicial reluctance and technical complexity. Historically, NGOs lacked standing to bring public interest cases, but the 2012 Civil Procedure Law amendments and the 2015 judicial interpretation marked significant progress by granting standing to qualified social organizations. Article 58 of the revised Environmental Protection Law (hereinafter mentioned as "EPL") mandates courts to accept these cases, strengthening public enforcement of environmental laws. This shift enhances legal accountability and aligns China more closely with international environmental standards (Wang, 2016, p. 617).

A study examining thirty-five cases accepted and heard in 2015 under Article 58 EPL found a notable diversification compared to the period between 2005 and 2014 (Lees & Viñuales, 2019, p. 139). Previously, environmental litigation primarily targeted water pollution and involved weaker individual defendants. In contrast, the 2015 cases covered a broader range of environmental harms, featured a wider array of plaintiffs, and often involved large corporate defendants. Proceedings were generally efficient and occasionally resulted in significant monetary awards or settlements.

Moreover, less than a third of these cases were filed before environmental tribunals, with most brought before general courts. Although ECs in China were not originally designed to accommodate administrative public interest litigation, the increased use of ordinary courts is a noteworthy trend.

2.3. Australia, New South Wales, Land & Environmental Court

A) Structure of Australia's Judicial System

The New South Wales court system has a three-level hierarchy. At the base of the system are the Local Courts (Magistrates' Courts), which handle most criminal matters, small civil claims, and committal hearings for more serious offenses. Decisions made by these courts can generally be appealed to the District Court (Stein, 2002, p. 7).

The District Court exercises first instance jurisdiction over serious crimes and civil disputes up to a monetary limit. Parties dissatisfied with a Local Court outcome may seek review here, and the District Court's own decisions can in turn be appealed to the Supreme Court's appellate division. Alongside the District Court, in this intermediate tier sits the Workers' Compensation Court, a specialist forum for disputes over workplace injuries and insurance entitlements. Appeals from tribunal or commission determinations proceed through this Court before moving on to the Supreme Court's Court of Appeal (Preston, 2012, p. 6).

The highest state trial court is the Supreme Court of New South Wales, which hears the most serious criminal charges, including murder, and civil claims without a financial cap. Within the Supreme Court sits the Court of Appeal, a separate division charged with reviewing decisions from the Supreme Court's trial divisions, the District Court, the Workers' Compensation Court, and designated specialist courts. Two of those specialist courts, the New South Wales Land & Environment Court (hereinafter mentioned as 'NSWLEC'), which was established to handle environmental matters, and the Industrial Court, occupy the same superior status and appeals of their decisions are heard by the Court of Appeal (Preston, 2012, p. 6). Finally, the appeal lies with the High Court of Australia.

B) Jurisdiction of NSWLEC

NSWLEC is a court with a comprehensive jurisdiction covering all environmental disputes whether civil, criminal, or administrative, including planning and land matters and the use of natural resources, which makes this court the ideal model of national ECs (Hussien, 2024, p. 256).

In detail, the NSWLEC jurisdiction "*falls into the following categories: administrative or merits review of governmental decisions; civil jurisdiction; civil enforcement; judicial review of governmental action; criminal enforcement (prosecutions); appeals against criminal convictions and sentences of the Local Court; and appeals against decisions of Commissioners of the Court.*" (Preston, 2012, p. 403).

Also, it can conduct merits review of government decisions, admitting new evidence and exercising the same functions and discretions as the original decision maker. Merits review is organized into three classes: (Preston, 2014, p. 374) Class 1 covers environmental, planning, and protection appeals; Class 2 covers local government and miscellaneous appeals; and Class 3 covers land tenure, valuation, compensation matters, and Aboriginal land claims.

Beyond merits review, the Court has original civil jurisdiction over tree and neighbor disputes under the Trees Act and over mining and petroleum disputes under the Mining Act and Petroleum Act (Preston, 2012, p. 404). In its civil enforcement role, it can order individuals, companies, or government bodies to remedy or restrain planning and environmental statutes breaches. In its criminal enforcement role, it prosecutes summary offenses under laws such as the Environmental Planning and Assessment Act 1979 and the Protection of the Environment Operations Act 1997 (Preston, 2012, p. 403).

C) Standing of Parties

NSWELC has facilitated access to justice by removing barriers to environmental litigation and promoting public interest litigation in environmental matters, interpreting the law with a liberal approach (Preston, 2014, p. 383). This means that a person or group does not have to show a direct personal interest in the matter (like financial loss or property damage) (Preston, 2008, p. 27). Instead, it is often enough to show that the case raises important environmental or planning issues that affect the community. This is different from many traditional systems, where only people directly harmed can sue.

3. Critical Analysis of the Swedish, Chinese, and Australian ECs

The Swedish ECs are characterized by their integrated and specialized approach, which leads to their efficiency in handling environmental disputes, due to the following: first, the comprehensive jurisdiction they have. Second, the courts enjoy widespread credibility and legitimacy, consequently gaining the trust of industry stakeholders and environmental NGOs, who view them as impartial and effective forums for dispute resolution. However, the procedural framework by which Swedish ECs operate is facing some challenges, particularly the parallel proceedings due to different proceedings under each statute, such as the Environmental Code, the Minerals Act (1991:45), the Act on Building of Railroads (1995:1649), and the Roads Act (1971:948), which create complexity and redundancy (Voigt & Makuch, n.d., p. 398). These parallel processes may delay decision-making and confuse stakeholders due to overlapping jurisdictions and inconsistent procedural timelines. Consequently, Swedish ECs indeed have administrative jurisdiction. However, it is still insufficient due to the conflict of jurisdiction that could arise due to administrative courts' jurisdiction on the other side.

China's environmental judicial system is characterized by multiple divisions across China, unlike Sweden and Australia, which have integrated ECs with broad, consolidated authority that streamlines processes and improves access to justice. It has its own justification, as each country is trying to integrate its EC structure to suit its geographical and population. That is why China's ECs structure, due to its large size and population, has multiple divisions of environment across its courts, which would likely be inefficient elsewhere. Other countries would prefer adopting a unified court model like Sweden's or Australia's, as these structures would serve their objectives.

While NSWELC enjoys an extensive jurisdiction covering environmental, planning, development, building, local government, land, and resource matters, the court exercises both merit review and judicial functions, a dual role enabling it to operate simultaneously as an administrative tribunal and a judicial authority. In addition to its appellate jurisdiction, it hears appeals from local courts and decisions rendered by its commissioners. Its original jurisdiction extends to tree disputes, mining issues, and other land use conflicts. These powers within a single institution promote efficiency, consistency, and legal coherence, effectively making it a centralized court for environmental litigation. Moreover, NSWLEC's success is further supported by its accessibility through technological innovations like eCourts, videoconferencing, and onsite inspections. These tools enhance public participation and reduce geographic and procedural barriers to environmental justice.

Second: The Implementation of ECs within the Current Egyptian Judiciary System

1. Addressing Environmental Disputes in Egypt

1.1. The Current Egyptian Judicial System

Egypt has a dual judiciary system, which means that there are ordinary courts and administrative courts (Arab Republic of Egypt, 2019, Section Three), along with a separate Supreme Constitutional Court. The ordinary courts are three-tiered and primarily deal with civil and criminal matters.

The Court of First Instance is composed of Primary Courts (*Al-Mahākim al-Kullīya/ Al-Mahākim al-abted`ya*) and Summary Courts (*Al-Mahākim al-Juz`īya*). Their jurisdiction covers civil matters and is regulated under the Egyptian procedural law based on several criteria to determine their jurisdiction on cases (Arab Republic of Egypt, 1968, Arts. 28–68). Then, the next stage is the Court of Appeal (*Maḥakem- al-isti`nafīah*), and the final one is the Court of Cassation (*Maḥkamat al-naqd*) (Arab Republic of Egypt, 1972a, Art. 1).

The criminal judiciary system in Egypt includes Misdemeanor Courts (*Maḥākim Jināḥ*) and Felony Courts (*Maḥākim Jināyāt*). Felony Courts are divided into two levels: courts of First Instance and Courts of Appeal (Arab Republic of Egypt, 1951, Art. 216). Likewise, Misdemeanor Courts are divided into First-Instance Misdemeanor Courts and Appellate Misdemeanor Courts. Appeals arising from both are challenged before the Court of Cassation.

On the other hand, Egypt's administrative judiciary comprises four tiers: (Arab Republic of Egypt, 1972b, Art. 3) the Administrative Courts (*Maḥākim al Idāriyya*), which act as courts of first instance; the Disciplinary Courts (*Maḥākim al Ta`dībīyya*); the Courts of Administrative Justice (*Maḥkamat al Qaḍā' al Idāri*), which review appeals and certain first instance matters; and finally, the Supreme Administrative Court (*Maḥkamat al Idāriyya al `Ulyā*), whose rulings are final. These courts have exclusive jurisdiction over administrative disputes (Arab Republic of Egypt, 1972b, Art. 10), including but not limited to election challenges, public employment matters, annulment of final administrative decisions, tax and nationality cases, disputes over quasi-judicial decisions, compensation claims, administrative contracts, and other matters defined by law.

The administrative judicial body also composed of two other divisions the fatwa division and the legislative division, whose jurisdiction covers: (i) issuing advisory opinions on legal questions referred by bodies designated by law, (ii) reviewing and drafting bills or regulations of a legislative nature, and (iii) reviewing contracts in which the State or any public entity is a party (Arab Republic of Egypt, 1972b, Art. 2).

Moreover, there are courts with special jurisdictions, including the Economic Courts, Family Courts, and Military Courts. However, for the present research objectives, the focus will be exclusively on the Economic Courts, as they serve as the foundational model for the proposed ECs.

Article 1(2) of Economic Courts Law No. 120 of 2008, which states that each Economic Court is composed of "first-instance circuits and appellate circuits," (Arab Republic of Egypt, 2008) while Article 1 makes clear that "appeals from first-instance circuits lie exclusively to the appellate circuits within the same Economic Court." Under the Law No.120 of 2008, as amended by Law 146 / 2019, review before the Court of Cassation is an exceptional remedy; neither cassation nor retrial (*Al-tamaas*

i 'aadat al-nazar) is available save for the limited grounds exhaustively listed under the law. Jurisdiction is likewise confined. Where a dispute falls within the closed list of “*economic matters*” mentioned under the law, it must be filed in the Economic Court. Causes of action governed by other legislation remain with the ordinary judiciary and follow the normal appeal path: first instance, then appeal, then cassation.

Accordingly, economic disputes are divided into two groups. The first comprises claims that begin before the Economic Court's first instance circuits; judgments here, and the appellate rulings that review them in noncriminal matters, are final, with no cassation lies. The explanatory memorandum stresses that this bar on further appeal serves the very purpose of the Economic Courts' swift resolution, legal certainty in commercial dealings, and an investment-friendly climate. The second group consists of claims that fall, in the first place, within the appellate circuits' original jurisdiction; the resulting judgments are subject to immediate cassation but not to an intermediate appeal, thus preserving the principle of “single-tier” litigation for these high-value or complex cases.

Cassation may be invoked on the grounds set out in article 248 of the Civil Procedure Code, misapplication or misinterpretation of law, or a procedural nullity affecting the judgment, or under article 249, where the appealed decision conflicts with an earlier final judgment between the same parties. Articles 11 and 12 of the Economic Courts Law repeated this restrictive regime, save for the Public Prosecutor's power under Article 250 of the Civil Procedure Code to file a “*cassation in the interests of law*” against any final decision, regardless of the issuing court, when it appears to violate the law.

Article 6 of the Economic Courts Law 120/2008 assigns exclusive jurisdiction to the Economic Court's primary circuits over all civil or commercial disputes worth more than or equal to EGP 10 million that “*arise from the application*” of 20 statutes (e.g., the Capital-Market Law, Leasing & Factoring Law, Competition Law, Intellectual-Property Law, Telecommunications Law, Investment Law). This list is exhaustive. If the resolution of a claim requires applying to one of those statutes, the Economic Court must hear it, except for what is reserved to the State Council (administrative judiciary) in relation to administrative disputes. Article 4 provides further exclusive criminal jurisdiction, both at first instance and on appeal, over offenses related to the aforementioned statutes, and extends to Anti Money Laundering and Cyber Crime laws. Thus, whether the dispute is civil or criminal, the Economic Court has the competence to hear the case.

1.2. Environmental Claims before Egyptian Courts

Under Egypt's current judicial system, environmental claims may be brought before the courts through civil, administrative, or criminal proceedings, as will be discussed below (Friends of the Environment Association, 1996, p. 197).

Any individual may report environmental crimes to the Public Prosecution or to one of the police officers, in accordance with article 25 of the Criminal Procedure Code and article 103 of the Egyptian Environmental Law. Additionally, a harmed party has the right to join the criminal proceedings as a civil claimant to seek compensation for damages resulting from the environmental offense. It is also possible to file a precautionary action known as a petition for fact-finding before the Summary Proceedings Court (Court of Urgent Matters), which may appoint an expert to examine the circumstances that are suspected to constitute an environmental violation. Another remedy is the action for restoration to the original state, which is filed before the competent civil court. Moreover, a claim may be brought for the removal of unlawful works with a threatening fine in the event of non-compliance with the removal order. Finally, it is possible to take action to compensate for damage

arising from environmental harm. This remedy enables claimants to pursue liability against environmental polluters.

Moreover, an action may be filed before the Administrative Judiciary by means of an annulment claim, where an administrative decision that violates the law affects any element of the environment. For such a claim to be admissible, the claimant must demonstrate a legal interest in having the decision annulled. This interest may be pecuniary or moral, actual or potential. The Supreme Administrative Court broadly interprets the concept of legal interest to the extent that it almost recognizes it in favor of any citizen concerned with public affairs (Supreme Administrative Court, Egypt, 1994). In 2001, an NGO concerned with protecting the environment filed a case against the Prime Minister, the Head of the Environmental Affairs Agency, the Chair of East Alexandria Neighbourhood, and the Head of the Egyptian General Authority for Shores Protection to challenge licenses granted for building clubs for the armed forces, police, and teachers on Rushdi and Kamal Mustafa Beaches, which are public property. The NGO argued that the construction would block the sea view, violate citizens' rights to enjoy public spaces, and breach Environmental Law No. 4 of 1994. The Administrative Court accepted the case on the grounds that the NGO had the legal right to defend the public interest in environmental matters. It ruled that the administrative decisions violated Article 74 of the Environmental Law, as no approval from the Environmental Affairs Agency or environmental assessment had been obtained, and accordingly annulled the decisions and halted all related procedures (Ahmad & Minan, 2021, p. 570). Consequently, the Egyptian administrative courts promote the principle of public interest litigation.

2. Adapting National ECs Models to the Egyptian Context

The current Egyptian Constitution acknowledged environmental protection as a national duty, as article 46 of it reads, *"Every individual has the right to live in a healthy, sound and balanced environment. Its protection is a national duty. The state is committed to taking the necessary measures to preserve it, avoid harming it, rationally use its natural resources to ensure that sustainable development is achieved, and guarantee the rights of future generations thereto."* Moreover, Egyptian environmental law (Arab Republic of Egypt, 1994) provides the most comprehensive legislation covering various aspects of environmental protection. Side by side and other laws include Law No. 48 of 1982, which focuses on the protection of the Nile River and waterways from pollution, and Law No. 102 of 1983, which is concerned with the protection of nature reserves.

Although these laws protect the environment, their enforcement is distributed across several courts, as today environmental cases may proceed under civil, criminal, or administrative law. For example, criminal courts hear pollution offenses, ordinary courts hear tort and contract disputes, and the Supreme Administrative Court reviews administrative decisions. Unfortunately, this attitude does not serve the ideal protection of the environment, although within the recognition of law to sentence environmental disputes urgently, as the environmental law No. 4 of 1994 stipulated in article 83 bis that *"Cases involving violations of the provisions of this law shall be heard on an expedited basis."* So, the legislator admitted that any delay in environmental disputes does not serve environmental justice. That is why the former Minister of Justice, Mohamed Abdel-Aziz El Gendy, issued Decision No. 3009 for 2011, which stipulated making studies and recommendations to establish an independent EC in Egypt (Arab Republic of Egypt, 2011).

Therefore, access to justice is a cornerstone in achieving environmental justice (Preston, 2014, p. 382). Ideally, everyone in any country must be able to reach the courts without delays. In practice, however, the court systems in most countries struggle to meet this idea, suffering from slow litigation as caseloads

keep rising, judges and support staff are too few to handle all these cases, and some court buildings may lack the space and technology to handle a large number of litigants.

Despite Egypt's continuous efforts to address this issue, which is also a global challenge. This is perhaps why the principle of judicial specialization and ADR mechanisms were introduced to reduce the caseloads on courts. Former Minister of Justice, Counselor Omar Marwan, has acknowledged that Egypt once suffered from "*slow justice*," while recent figures show improvement, the caseload still far exceeds judicial capacity; the nation ideally needs one judge for every 14,000 people, yet the bench remains understaffed, as a result, the courts handle roughly 11 million civil and criminal cases each year, far more than the current number of judges can comfortably process (Logroño Narbona & Hasona, 2022, p. 20).

Therefore, these challenges point to a clear need for specialized ECs against this backdrop to serve environmental justice. The Environmental Court's models that have been introduced in the previous section will be recalled, and then its applicability if adopted in the Egyptian jurisdiction will be analyzed.

Sweden's 1999 Environmental Code created five regional Land and Environmental Courts to hear permit applications, appeals against administrative orders, injunctions, and damage claims. Appeals go to the Land and Environment Court of Appeal, a specialist chamber of the Svea Court of Appeal in Stockholm. Further challenges are possible only before the Swedish Supreme Court.

China followed a decentralized path, as by 2014 it had established environmental divisions in 291 District Courts, 92 Intermediate Courts, and 17 High People's Courts. These units sometimes full divisions, elsewhere three-judge collegial panels with expert judges hear criminal, administrative, civil and enforcement actions arising from environmental disputes.

New South Wales operates a three-tier hierarchy. Local (Magistrates') Courts hear minor criminal and small civil matters; appeals reach the District Court. The District Court also acts as a first instance forum for serious crimes and civil claims, with further appeal to the Supreme Court's Court of Appeal. At the same superior level as the Supreme Court sit two specialist benches the Land & Environment Court and the Industrial Court, whose decisions could be challenged before the Court of Appeal.

Accordingly, based on this background, Egypt would benefit from a dedicated environmental court structure modeled on Sweden's LECs but with some changes to adapt to the local nature. Specifically, the research proposes amending the Economic Courts Law to include Egypt's environmental statutes among the Economic Courts' subject matters. The Economic Courts are already a nationwide specialized judiciary covering all Court of Appeal circuits. By law, they handle cases related to economic and commercial matters.

A legislative amendment to add the Environmental Protection Law and other environmentally relevant laws to this list would allow the seven geographically distributed Economic Courts (one in each appellate circuit) to hear environmental cases. These courts have two tiers (first instance and appeal) and specialized judges and operate under modern procedures. In fact, after recent reforms, litigants can now file claims electronically in the Economic Courts through a unified e-filing system as per the Minister of Justice decree No.8548 of 2020. This digital infrastructure would immediately extend to environmental cases filed in the Economic Courts, helping to overcome Egypt's slow litigation and improve access to justice, particularly in remote areas. In short, using the existing Economic Court network provides a quick, centralized way to introduce expert environmental adjudication across the

country, while respecting the constitutional rule that administrative review remains with the State Council.

The proposed Egyptian environmental court would therefore mirror Sweden's system in being part of the ordinary judiciary and focusing on substantive environmental issues, but with two key adjustments: excluding administrative appeals (which stay in the State Council) and including criminal enforcement. Combining criminal and civil jurisdiction in one specialized court would create the needed “*two-in-one*” approach, and retaining the administrative jurisdiction with the State Council due to the constitutional barriers. This process means the new courts could handle, for example, criminal prosecutions for industrial pollution or illegal waste dumping alongside injunctions, fines, and damage claims under environmental law. At the same time, civil suits for environmental damages and disputes over compliance could proceed in the same courts. By concentrating on such cases, judges can develop deep expertise in environmental facts and law, similar to the Swedish model, while the procedural flexibility could be borrowed from Sweden's reformatory administrative procedure.

From our perspective, these Swedish ECs are especially fitting for Egypt's unitary system. Unlike Australia, a federal country where the New South Wales Land and Environment Court serves only one state. Hence, Egypt requires a nationwide solution. The NSW court's jurisdiction is strictly limited to New South Wales, reflecting Australia's federated structure. In contrast, Sweden's LECs were designed for a unitary state and have a uniform national role. By following the Swedish idea, Egypt can establish environmental courts within the physical location of the economic courts. This step avoids the complexity of creating separate environmental tribunals in each governorate. Indeed, Sweden's experience shows that integrating environmental, planning, and land-use issues in one court branch promotes coherent case law and consistent enforcement nationwide. In contrast, an NSWELC-style court would not easily apply to Egypt because there is no parallel to Australian federalism.

3. Detailed Assessment and Identified Gaps in the Proposed EC model & Current Judicial System

In this section, the main characteristics observed by Judge Preston mentioned above in the literature review will be used in assessing the proposed EC model, namely status and authority, independence and impartiality, comprehensive and centralized jurisdiction, judicial expertise and access to technical knowledge, multi-door courthouse mechanisms, and access to justice.

The proposal benefits from the Economic Courts' established reputation as specialized and modern judicial bodies, giving it an immediate status advantage. This is supported by the fact that Egypt has constitutional provisions of the independence of the judicial branch, whereby only a few situations can be interfered with by the Court of Cassation, as mentioned before. Nevertheless, Preston points to the fact that actual power relies on the exhaustive jurisdiction. It is where the model is deficient, although the model unifies both civil and criminal cases of environmental disputes, administrative cases of environmental concerns remain within the jurisdiction of the State Council, as it is reinforced by the Constitution.

This partial consolidation of jurisdiction addresses some existing fragmentation but highlights another challenge, which is judicial expertise. Judges in the Economic Courts are highly experienced in commercial disputes, but they may lack deep knowledge of the nature of environmental disputes and environmental science. However, such an issue may be solved as long as time passes, as those reputable judges will gain the needed knowledge, especially when they create their own doctrine. Moreover, collaboration with experts from the Ministry of Justice would accelerate this process, and their

contribution is likely to become part of the court's evolving doctrine. While Preston prefers that those technical experts be integrated within the court structure, the proposal favors external collaboration. This preference, from our perspective, has its own justification, which is judicial independence, as integrating those experts within the court structure may affect the court's role and change it from adjudication to having an advisory role. By relying instead on external collaboration, the court can retain its independence while still ensuring access to specialized knowledge experts when needed.

In terms of accessibility, the nationwide reach of the Economic Courts and their e-filing system already reduces physical and procedural barriers, particularly for litigants in remote areas. However, strict standing requirements continue to limit the participation of citizens and NGOs with legitimate environmental interests, restricting the scope of public interest litigation. Article 103 of the Egyptian environmental law reads, *“Every citizen and organization concerned with the protection of the environment shall have the right to report any violation of the provisions of this Law.”* In solving this issue, the research suggests amending this article to enable them to initiate lawsuits, not just report violations. This amendment would make citizens and organizations shift from being passive reporters to active litigants in protecting the environment.

A further limitation is the courts' heavy reliance on formal litigation procedures, with limited integration of ADR. Preston's "multi-door" approach, incorporating mediation, conciliation, and expert facilitation, could make environmental dispute resolution more flexible. The procedural structure of the Economic Courts already contains a mechanism that could be adapted for such purposes. Each court forms a Preparation Panel chaired by a judge from its appellate circuits and composed of a sufficient number of judges at the rank of Court President or Primary Court Judge, supported by administrative staff. This panel is responsible for verifying the completeness of case documents, reviewing the materials, holding hearings with the parties, and preparing a memorandum summarizing claims, legal grounds, and points of agreement or disagreement. Crucially, the panel is tasked with attempting reconciliation between the parties. If successful, the settlement is recorded, signed, and referred to the competent circuit for incorporation into the official record and adjudication in line with the Civil and Commercial Procedures Law. The panel may also consult experts and specialists when needed. This process supports what Preston had said regarding “multi-door” courts, instead of having specialized committees away from the judiciary review.

With targeted reform, this structure could evolve into a genuine multi-door entry point for environmental disputes, embedding ADR within the court's workflow while preserving judicial oversight. So, the ADR mechanism in the Economic Courts is not merely a procedural formality before commencing trial proceedings, and it is not required in criminal cases or in appeal cases as defined by law.

Conclusion

In this paper, the main research questions concerning the establishment of ECs in Egypt were answered. The research started with a comparative case study of the international ECs, their structures, jurisdictions, and standings, aimed at determining which of these has the best potential to fit into the Egyptian judiciary system. Based on this analysis, the research proposed a solution to fit with the current judiciary system in Egypt, which is extending the jurisdiction of the Economic Courts to include environmental laws.

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المستخلص

قبل بداية الثورة الصناعية، كانت انبعاثات العالم أقل مما هي عليه اليوم؛ إذ تميزت تلك الحقبة بالنمو الصناعي دون مراعاة العواقب البيئية الناجمة عن المصانع المنتشرة على نطاق واسع، واعتماد النفط كمصدر رئيس للطاقة؛ مما أدى إلى تلوث الهواء والمياه وأسهم في تفاقم التحديات البيئية التي يواجهها العالم اليوم.

في ضوء هذه التحديات البيئية، قام المجتمع الدولي بعقد العديد من الاتفاقيات البيئية الدولية للحد من الانبعاثات والتخفيف من آثار تغير المناخ. وقد صدرت هذه الاتفاقيات لتعزيز التعاون بين الدول لحماية البيئة، إلا أن فعاليتها تأثرت سلباً بسبب ضعف آليات التنفيذ؛ مما أثر على تحقيق أهدافها المرجوة.

وفي مواجهة هذه التحديات، شهد العالم نمواً ملحوظاً في إنشاء المحاكم والهيئات القضائية البيئية، الأمر الذي يعكس الحاجة إلى حماية بيئتنا من الأضرار والتدهور المستمر. وعلى الرغم من أن بعض هذه المحاكم لم ينجح في تقديم العدالة في النزاعات البيئية، فإن العديد منها تمكن من معالجة القضايا البيئية المعقدة بشكل فعال.

بحثت هذه الدراسة إمكانية إنشاء محاكم بيئية في مصر من خلال الاستفادة من النماذج الدولية الناجحة، وتقدم نموذجاً لإنشاء هذه المحاكم يتوافق مع النظام القضائي في مصر.

الكلمات المفتاحية: المحاكم البيئية، القضاء المتخصص، الاتفاقيات البيئية الدولية، المحاكم والهيئات القضائية البيئية.