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Environmental Protection and Human Rights: a Comparative Study of Constitutional Law in Kuwait and Other GCC Countries

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Abstract

This article asserts that living in a healthy environment is a human right. As such, it is incumbent on nations to ensure adequate environmental protection to satisfy this right. This article reviews the legal frameworks currently in place in Kuwait and the GCC to preserve and protect the environment. The focus is on measures taken to reduce pollution. In addition to national constitutions that position the environment as a value, and a healthy environment as a human right, this article examines international declarations and other legal instruments that establish environmental protection as a duty of the state. Specific focus is additionally placed on the Islamic law provisions as represented by the GCC member-states. The article concludes with recommendations to strengthen environmental protection.

Keywords

environment – Shariah – human rights – protection – constitution

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1 Introduction

Since ancient times, protecting and preserving the environment has been an integral part of most human societies because people needed to predict nature and control water to create food for their survival.¹ This ancient character was manifested by the Greeks, Indians, and other religions around the world that worshiped all forms of nature, believing that it was from the spirit of the Divine. In the Jewish and Christian traditions, God gave the land to his people and their descendants as a permanent possession that must be cared for and passed on from one generation to another. In particular, the Bible says that individuals should refrain from polluting the land.² In Islam, both the environment and humankind are creatures of Allah, the Almighty, and both prostrate to Allah and praise Him, therefore human beings must foster a feeling of friendliness and love for the living or inanimate beings around them.³

There have been very few studies, particularly in the field of law, concerned with environmental topics in the State of Kuwait, although Kuwait has suffered greatly from environmental problems. According to the available data, the state experiences natural disasters, industrial emissions, oil refinery pollution, and vehicular pollution.⁴ It is therefore necessary to study and analyse Kuwaiti law and regulations in terms of environmental protection and control and to see if they are comparable or consistent with international standards and regulations.

The article attempts to investigate and compare the approaches to environmental protection found in Islamic law, constitutional provisions from different countries and international perspectives. Since the leading international bodies acknowledged a healthy environment as a fundamental human right, it is reasonable to find out whether individual states incorporate the same principles into their legislations. The study begins by presenting the definition of the term 'environment' and explaining how this right has become equated with the right to a decent living. In the next section, the environmental law is analysed from an international perspective to demonstrate how various organisations comment on and regulate this issue. In section three, national constitutions as a source of this right and guarantor of its protection are

1 Daniel R. Headrick, *Humans Versus Nature: A Global Environmental History* (Oxford University Press, 2020) p. 67.

2 *English Standard Version Bible* (ESV Online 2001) Numbers 35:33. <<https://esv.literalword.com/>> accessed 7 October 2023.

3 Mohammed bin Ghanem Al-Ali, *General Backgrounds of Environmental Strategy* (Symposium on Environmental Reality in Light of International Changes 2003).

4 'Climate Change Endangers Quality of Life in Kuwait' (The Arab Weekly 2021). <<https://thearabweekly.com/climate-change-endangers-quality-life-kuwait>> accessed 7 October 2023.

analysed. Specific attention is devoted to GCC countries, in general, and Kuwait, in particular. We conclude by recommending measures through which states can better protect the environment and secure the rights of their citizens.

2 Environmental Law from an International Perspective

The idea of human rights is evolving and does not stop at certain limits or at a certain time. Human beings are always looking to affirm and expand their rights in order to attain a better life and a society where human dignity and justice must prevail. The Universal Declaration of Human Rights (UDHR), issued in 1948, marked the start of a revolution in the field of rights and freedoms, particularly as it gave people the right to demand their basic rights. For instance, Article 1 stipulates that “all human beings are born free and equal in dignity and rights.”⁵ Thus, if a clean environment is considered a fundamental right, no person may be deprived of it. This document additionally highlights that the scope of those rights expanded and respect for them became the duty of all governments and societies.⁶

The recognition of the environment as a fundamental human right was enshrined by the UN General Assembly, which stated that everyone has the right to live in an environment that supports their health and well-being.⁷ Even though this decision was implemented in 2022, much effort took place in the past to reach this point of destination. In 1972, the United Nations organised the Conference on the Environment in Stockholm and adopted a corresponding Declaration. It stated that “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.”⁸ This principle was reinforced and affirmed in 1993 during the World Conference on Human Rights in Vienna when its Declaration acknowledged that all human rights were interrelated and mutually reinforcing.⁹

Since then, the United Nations and the international community have formally recognized the link between human rights and the environment.

5 United Nations, Universal Declaration of Human Rights, 1984, art. 1.

6 Jean Maurice Arbour, Sophie Lavallée and Hélène Trudeau, *Droit International de l'environnement* (Anthemis, 2nd ed., 2006); see also Mary Menton *et al.*, ‘Environmental Justice and the SDG s: From Synergies to Gaps and Contradictions’, *Sustainability Science* 15 (2020): at 1627.

7 United Nations General Assembly, Resolution A/76/L.75, 2022.

8 United Nations, Conference on the Environment in Stockholm Declaration, 1972.

9 United Nations, World Conference on Human Rights in Vienna Declaration, 1993.

Published in 1994, the Draft Principles on Human Rights and the Environment state that '[a]ll persons have the right to a secure, healthy and ecologically sound environment', thereby placing this right alongside other civil, cultural, economic political, and social rights which have become universal, interrelated and indivisible.¹⁰

A significant step toward resolving the issue occurred in 2021 when the Human Rights Council adopted Resolution 48/13. The document encouraged countries, international entities, and business organisations to recognise the importance of a clean environment.¹¹ That suggestion further turned into Resolution A/76/L.75 by the United Nations General Assembly, and this report revealed that 161 states supported the provided suggestion and declared access to a healthy and clean environment a universal human right.¹²

Furthermore, an effective approach to defining and protecting the environment is found in France. The Conseil d'Etat, the highest Administrative Court of France, issues specific regulations to oblige the state to take appropriate measures to protect nature. For instance, ruling no. 428409 of 2020 stipulated that the Government had failed to reduce air pollution and fined the state with an enormous penalty of ten million euros for every semester of delay.¹³

It goes without saying that respect for human rights and fundamental freedoms is not only a legal obligation but a pragmatic necessity that can lead to people's normal and comprehensive development. It is additionally a sacred duty that must always be fully observed. The rights of the individual must be prioritised and afforded unwavering attention. This statement primarily applies to international organisations since they establish the agenda for the entire world. If such bodies cope with the task, countries, businesses and individuals will receive a specific and official guide for their behaviour in terms of environmental protection.¹⁴ Given that the human right to live in a healthy environment stems from the human right to a decent life, there can be no doubt that environmental protection is one of the most important issues for researchers and citizens. Indeed, it is the only issue before which

10 United Nations, Draft Principles on Human Rights and the Environment, 1994; see also Barry E Hill, Steve Wolfson and Nicholas Targ, 'Human Rights and the Environment: A Synopsis and Some Predictions', *Georgetown International Environmental Law Review* 16(3) (2004): at 359.

11 Human Rights Council, Resolution 48/13, 2021.

12 United Nations General Assembly, *supra* note 21.

13 Conseil d'Etat, July 10, 2020, No. 428409.

14 Ahmed Abu Al-Wafa, *International Protection of Human Rights* (Arab Renaissance House 2000) 15.

all differences between individuals and nations fade away because human existence is ultimately at stake.¹⁵

The extent to which the environment serves as the foundation for other human rights is acknowledged by many countries that have positioned environmental protection as a core value in their laws and constitutions. It is also evident in the range of international declarations which name the right to live in a healthy environment as a human right and in those laws which establish, as a duty of the state, the preservation and protection of the environment from all potentially harmful acts.¹⁶ Since the leading international bodies acknowledge the importance of clean environment and stipulate that all people should have the right to it, the article comments on whether national constitutions follow the same approach.

3 Constitutional Sources of Environmental Human Rights

Whether they are procedural or substantive, rights must be enforceable, and if they are not, they are not considered among the recognized rights in practice. This idea is the core of the ongoing debate in international environmental law.¹⁷ It follows that measures prescribed to protect the right to a healthy environment must be accompanied by implementation mechanisms enshrined in international and domestic law. However, the scope of this article is limited to domestic law. Various national constitutions are analysed to determine whether their focus on environmental protection law is adequate in terms of international regulations provided by the United Nations General Assembly. The rationale behind this strategy refers to the fact that the selected approach contributes to increased specialisation of the study.

The constitution is the basic legislation without which no legal state can exist. It establishes order in the state and the legal foundation for governing bodies in the community. Such documents define the means of protecting those who have no power in the face of those who have power and sets out individual rights and freedoms, which are aimed at protecting the individual

15 Akram Chehayeb, *The Environmental Issue in Lebanon: Crisis and Features of Treatment* (Lebanese Center for Studies 1996) at 33; see also Alla Nerubasska, Kastiantyn Palshkov and Borys Maksymchuk, 'A Systematic Philosophical Analysis of the Contemporary Society and the Human: New Potential', *Postmodern Openings* 11(4) (2020) at 276.

16 Noor Alhendi and Muamar Salameh, 'Environmental Pollution Crime', *Journal of Environmental Management and Tourism* 14(1) (2023) at 176.

17 Hill, Wolfson and Targ, *supra* note 24 at 359.

and minorities from the arbitrariness and tyranny of the majority.¹⁸ Towards this end, various constitutions have sought to establish a range of rights for individuals, including the right to live in a healthy environment, which will be discussed through the lenses of Kuwaiti and other nations' constitutions below.

3.1 *Environmental Protection in Islamic Law*

Islamic law or Shariah represents a specific set of rules and regulations that govern all spheres of life in Islamic states. People in such countries rely on this source to make decisions and choose appropriate behaviours. Even though there are up to 1.8 billion Muslims in the world, the research field draws insufficient attention to the relationship between Islam and environmental studies.¹⁹ In general, Islam places much emphasis on environmental protection and care for nature. Thus, humans are considered "the superior creation who are blessed with the ability to influence the ecological balance."²⁰ Even though Islam analyses and considers the environment from the supply side, sufficient attention is devoted to the fair and balanced use of resources.²¹

In particular, specific verses in the Quran are devoted to the selected topic. First, the aspect of stewardship is promoted, which denotes that if a person is allowed to use nature for their preferences, they are additionally responsible for using it in a balanced and sustainable manner.²² Second, the principle of the Amanah (entrusted property) stipulates that the earth is given to people, and their task is to protect it.²³

In this case, the leading obligation is to ensure that all living creatures (people and animals) live in harmony with non-living objects (water, soil and air).²⁴ However, the current respectful approach does not mean that everything is good with environmental protection because even Islam-dominated countries suffer from various types of pollution. Thus, the following

18 Sami Jamal Al-Din, *Oversight of the Administration's Work in the State of Kuwait* (Dar Al-Kutub 1998) p. 27; see also White House, 'The Constitution'. <<https://www.whitehouse.gov/about-the-white-house/our-government/the-constitution/>> accessed 11 October 2023.

19 Yasser A. Al-Rawi and others, 'An Examination of Environmental Taxes from the Islamic and Shariah Perspectives' *Journal of Environmental Studies and Sciences* 13(1), (2023) at 142.

20 Norita Mohd Nasir, Mahendhiran Sanggaran Nair and Pervaiz Khalid Ahmed, 'Environmental Sustainability And Contemporary Islamic Society: A Shariah Perspective' *Asian Academy of Management Journal* 27(2) (2022) at 214.

21 Ibid, at 214.

22 Quran 10:14.

23 Quran 33:72.

24 Ibid, at 214.

sections will comment on how the Shariah principles manifest themselves in the constitutions of some Gulf Cooperation Council (GCC) countries, and the major focus will be placed on Kuwait.

3.1.1 Considering GCC Countries

GCC, also known as the Cooperation Council for the Arab States of the Gulf, is a regional organisation that unites six Arab countries. Kuwait, Saudi Arabia, Bahrain, Qatar, Oman, and the United Arab Emirates created the union in 1981 for political and economic reasons. First, these states are among the leading oil and gas exporters in the world. According to the available estimates, the region owns 30.5% and 19.6% of global oil and gas reserves, respectively.²⁵ Second, the GCC is responsible for the 2.49% contribution to the world's CO₂ emission.²⁶ This figure is high because the organisation covers a relatively small area. Third, a survey demonstrated that citizens understood the importance and challenges of this situation. In particular, 89% of the respondents admitted the role of people in climate change, while 51% mentioned that the governments did not act sufficiently to address the problem.²⁷ Thus, these statistical values denote that the GCC countries should draw more attention to the issue.

In addition to that, it is reasonable to investigate the state of human rights protection in these Arabic states. For instance, the GCC states control the press, limit political freedoms and use the death penalty.²⁸ Global attention to these problems grows when the Arab nations participate in international events. Suitable examples include the FIFA World Cup Qatar 2022 and the 2034 World Cup, which will take place in Saudi Arabia. These events are significant because they make hosting nations attract a high number of migrant workers to build stadiums, hotels, and other infrastructural elements. In these states, migrants represent almost 70% of the employed population, and their rights are frequently violated at the site.²⁹ Thus, it is evident that the topic of human rights protection is of significance in the GCC.

Now, it is reasonable to discover how their constitutions address environmental protection issues. That is why the following list presents the findings regarding this issue.

25 Osama Sweidan, 'The Environmental and Energy Policies to Enable Sustainable Consumption and Production in the Gulf Cooperation Council Countries' 2021 23 *Clean Technologies and Environmental Policy* at 2640.

26 *Ibid* at 2641.

27 *Ibid* at 2646.

28 House of Lords Library, 'Human Rights in the Gulf States'. <<https://lordslibrary.parliament.uk/human-rights-in-the-gulf-states/>> accessed 6 November 2023.

29 *Ibid*.

- The Basic Law of Governance in the Kingdom of Saudi Arabia of 1992, revised in 2013: this country fails to incorporate the right to a healthy environment because it only states that ‘[t]he State shall conserve, protect and develop the environment and prevent pollution’;³⁰
- The Constitution of Bahrain, issued in 2002, revised in 2017: Article 9, clause h, stipulates that “the State shall take the necessary measures for the protection of the environment and the conservation of wildlife”.³¹
- The Constitution of the State of Qatar, issued in 2004: the basic law mentions that ‘[t]he State shall preserve the environment and its natural balance in order to achieve comprehensive and sustainable development for all generations’.³²
- The Constitution of Oman, issued in 1996, revised in 2011: Article 12 comments on the topic and stipulates that “[t]he state also works for the conservation of the environment, its protection, and the prevention of pollution”.³³
- The Constitution of the United Arab Emirates, issued in 1971, revised in 2004: Article 23 mentions the following: “[t]he natural resources and wealth in each Emirate shall be considered the public property of that Emirate. Society shall be responsible for the protection and proper exploitation of such natural resources and wealth for the benefit of the national economy”.³⁴

It is clear that the five member-states demonstrate that all of them have specific articles or clauses dedicated to environmental protection and conservation. These countries stipulate that governments and societies bear the primary responsibility for coping with these tasks. However, none of these constitutions aligned environmental protection with a basic human right. In other words, this finding may denote that the GCC members might violate the UDHR and the United Nations resolutions stipulating that a right to a clean environment should be given to all human beings. Thus, it is reasonable to perform a deeper analysis of the Kuwaiti Constitution to analyse whether the absence of specific articles in the basic law denotes that this right does not exist in Kuwait. It must be noted, however, that all these GCC countries have specific pieces of environmental protection legislation that allow citizens to enforce their rights in administrative courts. The following list presents the findings:

30 Basic Law of Governance in the Kingdom of Saudi Arabia of 1992, revised in 2013, art. 32.

31 Constitution of Bahrain, 2002, revised in 2017, article 9.

32 The Constitution of the State of Qatar of 2004, art 33.

33 Constitution of Oman, 1996, revised in 2011, article 12.

34 Constitution of the United Arab Emirates of 1971, revised in 2004, article 23.

- The Kingdom of Saudi Arabia issued a new Environment Law in 2020. In particular, Article 7 prohibits the pollution, harm, exploitation or sale of natural resources and their products.³⁵
- In Bahrain, Ministerial Order No. 21/1996 is the leading legislation that governs the issue of environmental protection in the country. This document established the Environmental Affairs Agency and mentioned specific rules to prevent air, land, and water contamination.³⁶
- In Qatar, the Environmental Protection Law is in effect. In particular, Article 2 explains that the law is created to prevent pollution of the environment.³⁷
- Oman relies on Law for the Protection of Environment and Prevention of Pollution, RD 114-2001, as the leading environmental protection legislation in the country. It stipulates that the pollution of the environment is a serious offence.³⁸ That is why Chapter Three is completely devoted to penalties that are imposed if these regulations are not followed.³⁹
- In the United Arab Emirates, Federal Law No. 24 of 1999 is the key piece of environmental legislation. It defines environmental offences and determines the type of penalty that can be assigned in each case.⁴⁰

The information above clearly demonstrates that the GCC countries have specific decrees regulating the area of environmental protection. Even though their constitutions fail to provide for clean environment as a basic human right, the stipulated laws indicate that individuals can protect themselves in administrative courts. If a person believes that other people or organisations have deprived them of this privilege, they can file a legal case based on the appropriate legislation piece.

3.1.2 Kuwaiti Constitutional Perspective

Kuwait receives specific attention in the given article because it is the most democratic nation in the GCC. The presented analysis is going to demonstrate that a failure of some constitutions to stipulate the human right to a healthy environment does not mean that they do not recognize this right. This statement perfectly applies to the Kuwaiti context because this nation's Constitution does not explicitly comment on people's right to a healthy environment. Nevertheless,

35 Kingdom of Saudi Arabia, Environment Law, Royal Decree No.M/165 of 2020, art. 7.

36 Bahrain, Ministerial Order No. 21/1996, amended in 2012.

37 Qatar, Law No. 30 of 2002 Promulgating the Law of the Environment Protection, art. 2.

38 Oman, Law for the Protection of Environment and Prevention of Pollution, RD 114-2001, art. 7.

39 *Ibid*, Chapter Three.

40 United Arab Emirates, Federal Law No. 24 of 1999.

the obligation to protect the environment is implied in various constitutional texts, primarily Articles 11 and 15. In particular, Article 11 states the following: 'The State ensures aid for citizens in old age, sickness or inability to work; it also provides them with services of social security, social aid and medical care'.⁴¹ Simultaneously, Article 15 mentions that 'the State cares for public health and for means of prevention and treatment of diseases and epidemics'.⁴²

The right to health is without doubt one of the most prominent human rights, so it is not surprising that it is stipulated in many international charters and various constitutions. For example, Article 22 of the UDHR states that everyone 'has the right to social security'.⁴³ This is underscored by Article 25/1, which asserts that

Everyone has the right to a standard of living adequate for the health and well-being ... including food, clothing, housing, and medical care and necessary social services, and the right to social security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond their control.⁴⁴

Likewise, the Constitution of the World Health Organisation, signed on 22 July 1946, focuses in its preamble on affirming the principles that are essential for the happiness of all people. The most important of these is the principle of the right to health: 'the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition'.⁴⁵ This information raises an important question: Can the right to a healthy environment be independent of the right to health?

At its most basic, the right to health depends on there being a clean environment, which includes clean air, clean water, and uncontaminated food. Without a healthy, balanced environment free of pollution, it is not possible to guarantee the right to health.⁴⁶ Moreover, if the right to a healthy environment is not considered integral to the right to health stipulated in the Kuwaiti Constitution, then pollution cannot be considered harmful to health. This proposition is obviously false, as numerous studies have proven the seriousness

41 Constitution of Kuwait, 1962, art. 11.

42 Constitution of Kuwait, 1962, art. 15.

43 United Nations, Universal Declaration of Human Rights, 1948, art. 22.

44 United Nations, Universal Declaration of Human Rights, 1948, art. 25/1.

45 Constitution of the World Health Organisation, 1946, Preamble.

46 Ahmed Abdel Karim Salama, 'Environment and Human Rights in National Laws and International Conventions', *Mansoura University Journal of Legal and Economic Research* (1994) at 3; see also Ioannis Manisalidis *et al.*, 'Environmental and Health Impacts of Air Pollution: A Review', *Frontiers in Public Health* 8 (2020) at 14.

of environmental pollution and its repercussions for humans and for their mental and physical development. On the one hand, two American scholars found a four-fold increase in homicides in American municipalities that suffered from severe lead pollution.⁴⁷ On the other hand, European scientists focused on a related topic and identified that living near waste incineration led to slower sexual maturity among teenage boys and girls compared to their peers.⁴⁸

Ultimately, the articles related to the basic components of Kuwaiti society highlight the role of the state in guaranteeing a range of rights that provide individuals with access to health services, the means to prevent diseases and epidemics. All these measures help to keep the environment safe and protect it from degradation.⁴⁹ The available evidence and Kuwait's legislative activity demonstrate that the country understood the importance of a clean environment. That is why it issued and adopted multiple laws to regulate this sphere and protect individuals. The following list mentions the leading efforts that Kuwait undertook to control this issue:

- Law No. 12 of 1965 on Preventing Pollution by Oil in Navigation Water;⁵⁰
- Law No. 6 of 1965 Enacting the Law of Industry;⁵¹
- Law No. 19 of 1973 on the Conservation of Petroleum Resources;⁵²
- Law No. 131 of 1977 on the Control and Use of Ionizing Radiation on Prevention from Hazards.⁵³

In addition to that, one should comment on Law No. 62 of 1980 because it was the first step toward creating a centralised environmental body in Kuwait. In particular, the legislation piece established the Council for Environmental Protection that protected the environment in the country, coordinated the work of the government and other related authorities and adhered to international standards.⁵⁴ However, this effort was not sufficient because environmental issues were still emerging. That is why the state issued Law No. 21 of 1995, as amended under Law No. 16 of 1996, which established the Kuwaiti Environment Public Authority. This body was provided with jurisdiction and

47 Paul Stretesky and Michael Lynch, 'The Relationship between Lead Exposure and Homicide', *Archives of Paediatrics and Adolescent Medicine* 155(5) (2001) at 579.

48 Elly Den Hond *et al.*, 'Sexual Maturation in Relation to Polychlorinated Aromatic Hydrocarbons: Sharpe and Skakkebaek's Hypothesis Revisited', *Environmental Health Perspectives* 110(8) (2002) at 771.

49 Dawood Al-Baz, *The Constitutional Basis for Protecting the Environment from Pollution in the State of Kuwait* (Kuwait University Publications 2003) p. 138.

50 Kuwait, Law No. 12 of 1965 on Preventing Pollution by Oil in Navigation Water.

51 Kuwait, Law No. 6 of 1965 Enacting the Law of Industry.

52 Kuwait, Law No. 19 of 1973 on the Conservation of Petroleum Resources.

53 Kuwait, Law No. 131 of 1977 on the Control and Use of Ionizing Radiation on Prevention from Hazards.

54 Kuwait, Law No. 62 of 1980 on the Environmental Protection, art. 3.

the powers to monitor, control, and regulate all polluting practices.⁵⁵ The amendment that took place in 1996 enriched the law with additional concepts regarding conservation, protection and liability.

Since the selected legislation appeared in the late 20th century, it was impossible to expect that it would keep addressing all the arising challenges. Thus, the state decided to issue a new piece of legislation to ensure that its efforts are aligned with modern practices and procedures. Thus, Law No. 42 of 2014, The Environment Protection Law was passed to address this objective. Its Article 7 stipulates that the Environment Public Authority is responsible for managing all environmental affairs, regulating pollution and setting quality standards within this field.⁵⁶ Since these activities require many financial resources, the law establishes a specific fund that will finance environmental projects and all initiatives designed to overcome damages and facilitate sustainable development.⁵⁷ Moreover, this document obliges organisations to abide by emission standards and engage in continuous monitoring, while all businesses are encouraged to analyse environmental impact of any project to prevent harming nature.⁵⁸ These findings demonstrate that Kuwait has drawn much attention to environmental protection through specific laws.

It is additionally reasonable to focus on judicial practice to determine how and whether the right to a clean environment is interpreted in courts. The focus is placed on Kuwait and Egypt since the two are among highly democratic Arabic states. The available reports demonstrate that Kuwait witnessed a significant growth in court cases that focused on environmental law violations. In particular, the number of misdemeanours grew from 571 in 2020 to 1,760 in 2021, while the number of felonies increased from 17 to 35 between the selected years.⁵⁹ The Environmental Policy Department reported that it took specific efforts to locate and punish individuals and organisations for violating environmental laws.⁶⁰ Prosecution that includes respective penalties and punishments is started for releasing waste, fishing in Kuwait Bay and other

55 Kuwait, Law No. 21 of 1995, Kuwait Environment Public Authority, as amended under Law No. 16 of 1996.

56 Kuwait, Law No. 42 of 2014 – The Environment Protection Law, art. 7.

57 *Ibid*, art. 13.

58 *Ibid*, art. 52, 16.

59 Arab Times, 'Environmental Law Violation Cases Saw Major Increase in 2021'. <<https://www.arabtimesonline.com/news/environmental-law-violation-cases-saw-major-increase-in-2021/>> accessed 6 November 2023.

60 *Ibid*.

actions that can harm wildlife.⁶¹ A single look at these figures reveals that the state began to draw more attention to environmental protection.

The finding above can be considered collateral proof demonstrating that Kuwait aligns its citizens' right to a clean environment with a basic human right. If one considers this statement as true, the growing number of legal proceedings is associated with the fact that the state relies on all measures to ensure that citizens are not deprived of this right. Since Kuwait acknowledges the importance of providing this right, law enforcement officers are instructed to prevent these right violations and punish individuals and organisations that have already broken it.

As for Egypt, the country has a scarce number of court cases that could demonstrate that the right to a clean environment is protected. One of them happened in 2018 when the Dekheila Appellate Misdemeanour Court accused a factory, Alexandria Portland Cement Titan, of causing environmental pollution and violating the citizens' right to health.⁶² It was a long prosecution process because the initial complaint was filed in 2015 and was referred to the Dekheila Misdemeanour Court.⁶³ It was a challenging process that resulted in complex litigation and appeals. In any case, the court upheld the initial decision and charged the organisation's CEO with significant fines.⁶⁴ While such decisions are not frequent in Egypt, this very case demonstrates that the judiciary acknowledges people's right to a clean environment.

3.1.3 Application of Environmental Law

We will now look at real-life examples and judicial practices from the GCC countries. This step is needed to see how the identified legal frameworks are applied in these contexts. The analysis of these sources allows for dividing the countries into two groups. The first one includes the states that fail to use their environmental protection laws properly. First, Oman is a suitable example because this country subjected its environmental rights activists to prosecution and harassment. In particular, Dr Issa Qatan, Amer Mulsim Biat Saeed and Salem Ali Al-Maashani fought for the preservation of the Dhofar plain and opposed a decree of the Minister of State and Governor of Dhofar.⁶⁵

61 Kuwait Times, 'Kuwait Environmental Police Monitors, Punishes – Felonies, Criminal Cases to Public Prosecution'. <<https://kuwaittimes.com/kuwait-environmental-police-monitors-punishes-felonies-criminal-cases-to-public-prosecution/>> accessed 6 November 2023.

62 Dekheila Appellate Misdemeanour Court, Appeal no. 2322/2018, 2018.

63 Dekheila Appellate Misdemeanour Court, Case no. 6645/2016, 2016.

64 Dekheila Appellate Misdemeanour Court, Appeal no. 2322/2018, 2018.

65 International Federation for Human Rights, 'Oman: Ongoing Judicial Harassment Against Environmental Rights Defenders'. 2021. <<https://www.fidh.org/en/issues/human-rights-defenders/oman-ongoing-judicial-harassment-against-environmental-rights>> accessed 4 July 2024.

This legal action demonstrates that citizens in Oman are not provided with the protection of the right to a clean environment. Irrespective of the fact that Oman has appropriate constitutional provisions and specific laws that are aimed to protect the environment, the selected case demonstrates that the legislation pieces are not effectively enforced.

Second, the available evidence demonstrates that Saudi Arabia does not draw much attention to the implementation of its legislation. This finding is obtained from the case of Saudi Aramco, a local oil and banking firm, that received a rebuke from the United Nations for contributing to a climate crisis.⁶⁶ While the state's constitution highlights the importance of protecting the environment, the real-life example proves that this provision is not always implemented. These two examples show the failures in the enforcement of the environmental protection laws. However, a close analysis of the Saudi Arabian context revealed many cases when individuals were prosecuted for encroachment in protected environments. The country even launched its own satellite system to monitor encroachment and protect the environment.⁶⁷

The other GCC countries show the opposite and positive findings. Below are examples from GCC states, and a deep analysis of these findings will be presented below. Bahrain can impress with a recent legal case when a person was imprisoned and fined for polluting the marine environment.⁶⁸ As for the United Arab Emirates, it is reasonable to look at a suitable case study. This resource demonstrates that the existing laws positively affect students and increase their awareness of sustainability development goals that are prioritised in the country.⁶⁹ Finally, another case study is used to assess the selected phenomenon in Kuwait. This recent document reveals that the country relies on its legislation base to engage in appropriate practices and procedures to overcome the negative consequences of the Gulf War on the

66 Client Earth Communications, 'US Takes Action Against Saudi Oil Firm and Its Banks over Climate and Human Rights'. 2023. <<https://www.clientearth.org/latest/news/un-takes-action-against-saudi-oil-firm-and-its-banks-over-climate-and-human-rights/>> accessed 4 July 2024.

67 Samir Salama, 'Saudi Arabia Satellite System to Monitor Land Encroachment' Gulf News 2020. <<https://gulfnews.com/world/gulf/saudi/saudi-arabia-satellite-system-to-monitor-land-encroachment-1.73423453>> accessed 7 July 2024.

68 Bahrain News Agency, 'Suspect sentenced to one year in prison, fined BD 21,000 for polluting marine environment'. 2023. <<https://www.bna.bh/en/SuspectsentencedtooneyearinprisonfinedBD21000forpollutingmarineenvironment.aspx?cms=q8FmFJgiscL2fwIzON1%2BDhcK4OQuKS%2Ba6J9QMCFWH9I%3D>> accessed 4 July 2024.

69 Aishah Almusalami and others, 'Sustainability Awareness in the UAE: A Case Study', *Sustainability* (2024) 16(4) at 1621.

environment.⁷⁰ There is no suitable evidence to evaluate the situation in Qatar, but the existing data is sufficient to make some conclusions.

Even though the GCC countries have similar approaches to environmental protection in their constitutions and laws, their enforcement can be significantly different. Even though the included examples represent a superficial view of the issue under analysis, the collected data are valuable in proving the following. While the GCC includes countries with similar norms, traditions, and approaches, it is still impossible to offer a unanimous conclusion. These states have some characteristic features that define the state of environmental legislation in their territories and how these laws are imposed. The frivolous analysis has resulted in the following finding: it is not sufficient to have appropriate legal provisions since they do not guarantee optimal practice.

The statement above denotes that the application of relevant laws and constitutional provisions is not the only aspect that can guarantee environmental protection. Many different aspects and processes can justify these identified variations within the GCC. On the one hand, it is reasonable to remember that all GCC countries are large oil and gas exporters. These energy resources are the leading sources of their revenue. However, gas and oil extraction implies negative consequences for the environment, and many organisations and governments advocate for certain measures to limit this harmful impact.⁷¹ However, many exporters tend to neglect these regulations because their introduction can be expensive or resource-intensive. This information demonstrates that economic priorities can impact the state of environmental protection in a particular country.

The second essential factor relates to the peculiarities and preferences of a current political regime. Some governments can be protectionist and focused on internal affairs, while other rulers can be interested in international cooperation. In the second case, there arises a necessity to comply with international treaties and standards. This aspect will be discussed in detail in the following section, but it is necessary to keep in mind that various organisations impose certain environmental protection requirements on their member states. Qatar is a suitable example in this case because hosting the 2022 FIFA World Cup drew international attention to this country, and it was

70 Zilter, 'A Case Study on Kuwait Environmental Remediation Program'. 2024. <https://landandgroundwater.com/media/KERP_Case_Study.pdf> accessed 4 July 2024.

71 Oluwasegun Adekoya, Johnson A Oliyide and Ismail O Fasanya, 'Renewable and Non-Renewable Energy Consumption–Ecological Footprint Nexus in Net-Oil Exporting and Net-Oil Importing Countries: Policy Implications for a Sustainable Environment' *Renewable Energy* 189 (2022) at 524.

forced to show compliance with different values.⁷² Since Saudi Arabia intends to host the 2034 FIFA.

Furthermore, it is additionally reasonable to focus on the power of religion and traditions in the countries. The Quran emphasises the importance of environmental protection and obliges all Muslims to avoid the pollution of nature. It is worth mentioning that the Shariah governs all spheres of human life, not only environmental affairs. Thus, one should note that Islam promotes obedience and respect for the elders and leaders. These are the central values in traditional Islamic societies, and not many people, if any, are ready and willing to challenge this status quo. In such communities, citizens do not criticise or question the decisions and actions of their governments. This situation is characterised by a low quality of environmental protection. In turn, more progressive societies typically have a better state of environmental legislation and its effective enforcement.

Finally, the performance of different environmental organisations positively impacts the enforcement of this legislation. According to the Secretary-General of the Gulf Cooperation Council, the GCC states cooperate with many agencies.⁷³ For example, they are the Regional Office of the UN Environment Program for Western Asia, the Regional Organisation for Protection of Maritime Environment and the Executive Council of the Arab Ministers in charge of environment affairs.⁷⁴ These bodies perform a significant function since they increase public awareness and oversee specific sectors of environmental protection. All this information demonstrates that multiple factors influence the effectiveness of environmental protection laws and their implementation.

3.2 *Environmental Protection in Other States*

3.2.1 Constitutional Perspective

Following the Stockholm Declaration of 1972, many countries recognised in their constitutions the citizen's right to a decent environment and the obligation of states to protect this environment and even extended this right to other living organisms. The available facts demonstrate that not all states understand the importance of this right. According to the United Nations General Assembly report, 156 out of 193 State Members recognise their citizen's

⁷² House of Lords Library, 'Human Rights in the Gulf States'. <<https://lordslibrary.parliament.uk/human-rights-in-the-gulf-states/>> accessed 6 November 2023.

⁷³ Secretariat General of the Gulf Cooperation Council, 'Cooperation in the Field of Human and Environment Affairs' 2024. <<https://www.gcc-sg.org/en-us/CooperationAndAchievements/Achievements/CooperationintheFieldofHumanandEnvironmentAffairs/Pages/EnvironmentalCooperation.aspx>> accessed 7 July 2024.

⁷⁴ *Ibid.*

right to a healthy and sustainable environment.⁷⁵ Among them, this right only faces constitutional protection in 110 countries, which denotes that multiple nations fail to incorporate this right into their constitutions.⁷⁶

- Constitution of the Argentine Nation (1994): “[a]ll inhabitants are entitled to the right to a healthy and balanced environment fit for human development in order that productive activities shall meet present needs without endangering those of future generations; and shall have the duty to preserve it”;⁷⁷
- The Spanish Constitution, issued in 1978: “[e]veryone has the right to enjoy an environment suitable for personal development, as well as the duty to preserve it”;⁷⁸
- The Constitution of Peru of 1993, revised in 2021: every person has the right “to peace, tranquillity, enjoyment of leisure time, and rest, as well as to a balanced and appropriate environment for the development of his life”;⁷⁹
- The Constitution of the Portuguese Republic of 1976, as revised in 2005: “[e]veryone has the right to a healthy and ecologically balanced human living environment and the duty to defend it”;⁸⁰
- The 1945 Constitution of the Republic of Indonesia, as amended in 2002: “[e]very person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care”;⁸¹
- The Constitution of the Republic of Korea, issued in 1978: “[a]ll citizens shall have the right to a healthy and pleasant environment. The State and all citizens shall endeavour to protect the environment”;⁸²
- The Constitution of Slovenia of 1991: “[e]veryone has the right in accordance with the law to a healthy living environment. The state shall promote a healthy living environment”;⁸³
- The Constitution of Iran of 1979, as revised in 1989: “[t]he preservation of the environment, in which the present as well as the future generations have a right to flourishing social existence, is regarded as a public duty in the Islamic Republic”;⁸⁴

75 United Nations General Assembly, A/HRC/43/53, 2019.

76 European Parliament, ‘A Universal Right to a Healthy Environment’. <[https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698846/EPRS_ATA\(2021\)698846_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698846/EPRS_ATA(2021)698846_EN.pdf)> accessed 11 October 2023.

77 Constitution of the Argentine Nation, 1994, section 41.

78 Spanish Constitution, 1978, art. 45/1.

79 Constitution of Peru of 1993, revised in 2021, art. 2/22.

80 Constitution of the Portuguese Republic of 1976, as revised in 2005, art 66.

81 Constitution of the Republic of Indonesia of 1945, as amended in 2002, art. 28H/1.

82 Constitution of the Republic of Korea, 1987, art 35/1.

83 Constitution of Slovenia of 1991, art 72.

84 Constitution of Iran of 1979, as revised in 1989, art 50.

It should be noted that the aforementioned constitutions were issued relatively recently, in an era when there is widespread awareness of environmental problems. That is why the first suggestion was that the right to a healthy environment was protected in the more recent constitutions because modern people draw more attention to the importance of this issue. However, the two latter constitutions refuted this suggestion because they were created and revised in the 21st century, but the corresponding right was absent in them. Egypt offers a different approach because the article about the right to a healthy environment was added to it during the recent amendment. In particular, this statement refers to Article 46, implying that '[e]very individual has the right to live in a healthy, sound and balanced environment; its protection is a national duty'.⁸⁵ This information demonstrates that it is impossible to find a correlation between the presence of a right to a healthy environment and the time when the constitution was adopted or revised.

Since the right to a healthy environment is a relatively new concept compared to the right to freedom or life, legislators are expected to draw adequate attention to this issue. They should additionally refrain from ignoring the environment when developing various legislation related to industry, agriculture and investment. It also restricts the ability of individuals, businesses and governments to sacrifice the environment to achieve other interests such as economic development. Additionally, affirming the constitutional right to a healthy environment counteracts the lack of or ambiguity in environmental protection legislation. Furthermore, it grants individuals and civil society organisations a legal license to defend the environment and obliges various authorities to preserve nature and take environmental considerations into account. In addition to that, it is reasonable to analyse how environmental protection and the provision of basic human rights are addressed in court cases.

3.2.2 Judicial Practice

This subsection is devoted to the discussion of significant court decisions from the US, France and Germany. These are developed nations that are expected to draw adequate attention to environmental protection. That is why it is essential to consider how they interpret their citizens' right to a clean environment. As for the American context, it is reasonable to look at two remarkable cases that occurred not long ago. The first example refers to *Sacket v. Environmental Protection Agency*, which has been described above. In this example, the defendant was found guilty of polluting wetlands because

⁸⁵ Constitution of Egypt of 1971, as amended in 2014, art. 46.

they were considered waters of the United States.⁸⁶ This decision was made based on the Clean Water Act. *West Virginia v. Environmental Protection Agency* is the second example that is worth consideration. This case touched upon the Clean Air Act and demonstrated that the Environmental Protection Agency attempted to regulate the amount of CO₂ emissions that the existing power plants released.⁸⁷ Even though the two cases implied certain challenges for the plaintiff, they evidently show that people's right to a clean environment is protected in the United States.

The discussion of the judicial practice in France demonstrates that environmental protection legislation does not only punish individuals and organisations. A few court cases reveal that the state can be considered guilty of violating the citizens' right to a clean environment. To begin with, one should explain that France is a member of the European Union, which denotes that European laws are effective in the country. One of them refers to European Directive No. 2008/50, stipulating that a limited amount of pollutants may be found in the air.⁸⁸ Since the allowed threshold for nitrogen dioxide and fine particulate matter was exceeded in 2017, the Conseil d'Etat ordered the government to comply with these standards.⁸⁹

However, this regulation did not lead to any improvement because the pollution levels remained high until 2021. That is why the French Administrative Supreme Court issued another ruling in 2020. It consists of two phases: in the first one, the court imposed a 10-million-euro fine, while the second phase obliged France to pay two additional fines of the same size each.⁹⁰ Thus, it is evident that the right to a clean environment is protected in France because even the government can be punished for its violation.

A similar situation occurred in Germany, where citizens decided to sue the state for its failure to provide people with clean air. An appropriate lawsuit was filed at the Federal Constitutional Court of Germany to prove that polluted air is a violation of human rights.⁹¹ In addition to that, a group of German youth filed a lawsuit to prove that Germany's Federal Climate Protection Act resulted in the violation of their basic human right.⁹² The plaintiffs

86 Sacket v. Environmental Protection Agency, 598 US __ (2023).

87 West Virginia v. Environmental Protection Agency, 597 US __ (2022).

88 European Directive No. 2008/50, 2008, art. 13.

89 Conseil d'Etat, July 12, 2017, No. 394254.

90 Conseil d'Etat, July 12, 2017, No. 394254.

91 Merish A H, 'German Citizens Sue Government for Right to Breathe Clean Air'. 2022. <<https://www.euractiv.com/section/health-consumers/news/german-citizens-sue-government-for-right-to-breathe-clean-air/>> accessed 6 November 2023.

92 Neubauer et al. v. Germany, Federal Constitutional Court, 2020.

argued that the legislation's target of reducing greenhouse gases by 55% was insufficient, and the court increased it to 65%.⁹³ However, the German Federal Constitutional Court later issued a press release stating that the existing 2019 Climate Change Act is unconstitutional.⁹⁴ The rationale behind this statement is that the legislation piece places the entire burden of reducing greenhouse emissions on future generations by establishing unreasonable expectations.⁹⁵ Thus, Germany is the third country in the section that explicitly and effectively aligns a clean environment with a basic human right, which allows people to bring environmental issues to court.

4 Environmental Protections Laws Context

It is additionally necessary to consider other important details and processes that accompany the administration and enforcement of environmental protection laws. To begin with, one should comment on the challenges that the selected countries can face in enforcing environmental protection laws effectively. The available research evidence proves that multiple challenges exist, but the key factor relates to misunderstanding.⁹⁶ Policymakers and other stakeholders do not understand key concepts, which leads to non-compliance with international treaties and domestic laws.⁹⁷ Furthermore, a scarcity of economic resources and placing a higher priority on economic development over environmental protection are other barriers.⁹⁸ These are only few examples, but they clearly demonstrate that the effectiveness of environmental protection legislation depends on many factors that are outside the legal sphere.

One should delve deeper into the discussion of the economic side of environmental protection. It is evident that the management of such problems requires many financial resources. In particular, the European Environment Agency has calculated that the expenditure on environmental protection grew by 7% between 2018 and 2022.⁹⁹ The experts expect that this figure is going

⁹³ *Ibid.*

⁹⁴ Federal Constitutional Court, Press Release No. 31/2021 of 2021.

⁹⁵ *Ibid.*

⁹⁶ Denicia Kassie, 'Unravelling the Legal Labyrinth: Investigating Barriers to Effective Adoption and Enforcement of International Environmental Law in Domestic Jurisdictions', *Journal of Environmental Management* 352 (2024) at 119944.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ European Environment Agency, 'Environmental Protection Expenditure'. 2023. <<https://www.eea.europa.eu/en/analysis/indicators/environmental-protection-expenditure-8th-eap?activeAccordion=>> accessed 4 July 2024.

to keep rising in the near future because the world is dealing with a growing number of new threats.¹⁰⁰ In addition to that, other authors support this idea and stipulate that there is a close connection between expenditures and environmental quality.¹⁰¹ These scholars rely on evidence from the USA, China, and multiple European countries to identify that the level of environmental protection is closely associated with the nation's expenditure on this issue.¹⁰² This information explicitly demonstrates that governments need more extensive financial resources to implement stricter environmental protection measures effectively.

The evolving nature of environmental threats emphasises the role of local communities and grassroots movements. These stakeholders have valuable information since they can immediately notice emerging problems at the local level.¹⁰³ These individuals should perform as activists, lobbyists and advocates to ensure that the public and policymakers are aware of the existing environmental challenges. In addition to that, these movements and organisations can initiate and implement various conservation projects to bring immediate and direct solutions to the problems.¹⁰⁴ Thus, it is necessary to consider the contributions of these stakeholders while assessing environmental protection efforts in different countries.

5 Conclusion

One of the most basic human rights is the right to live in a healthy environment free from pollution. So natural is this right that it is stipulated by various legislations and international conventions due to its link to the most precious liberties that a person owns, namely, the right to health. Even though it is hard to deny or argue the previous information, not all national governments throughout the world accept it and guarantee this right in their constitutions. Detailed and qualitative analysis of the available data has demonstrated that most nations devote their constitutional articles toward ensuring that a healthy environment is a guaranteed right of their citizens. This statement

¹⁰⁰ *Ibid.*

¹⁰¹ Saffet Akdag, Hakan Yildirim and Andrew Adewala Alola, 'Comparative Benefits of Environmental Protection Expenditures and Environmental Taxes in Driving Environmental Quality of the European Countries', *Natural Resources Forum* (2024) p. 5.

¹⁰² *Ibid.*, p. 5.

¹⁰³ Suzanne Staggenborg, *Grassroots Environmentalism* (Cambridge University Press, 2020), p. 87.

¹⁰⁴ *Ibid.*, p. 61.

refers to various countries, including Argentina, Peru, Indonesia, Spain, Iran, and other states.

On the contrary, the identified evidence has proved that the GCC member-states fail to incorporate clauses that explicitly comment on the people's right to a healthy environment. This insufficient coverage is present even though Islamic law draws much attention to the necessity of environmental protection. These countries have specific clauses on environmental protection in their constitutions, but these issues are not aligned with basic human liberties. This information manifests itself in legal cases and real-life examples of how individuals were prosecuted for their environmental activism.

However, whether a nation's constitution aligns environmental protection with a basic human right is not the only criterion that defines this issue. Additional requirements include the presence of other legislation pieces regulating the sphere and the ability of the judicial branch to enforce these laws. Thus, when this triad is present, a country only has an efficient mechanism to ensure that its citizens have a right to a clean environment. Egypt is a suitable proof of the given statement because its constitution states that every citizen is entitled to a clean environment, while additional laws regulate this sphere. France, Germany, and the US exemplify the good aspect because the triad is found in these countries. Thus, multiple legal cases demonstrate that these governments understand the importance of a clean environment and allow citizens to protect their rights in court.¹⁰⁵

Although Kuwait does not have explicit provisions in its constitution on the environment, it has enacted numerous laws on the subject that fill the constitutional void. They include Law No. 62 of 1980 on the Environmental Protection, Law No. 21 of 1995, as amended under Law No. 16 of 1996, which established the Kuwaiti Environment Public Authority and other regulations. A growing number of felonies and misdemeanours on environmental protection issues is another indication that the country protects environmental rights.

In light of the above, the article generates the following recommendations:

1. A country needs an effective triad (constitutional provision, laws, and judicial practice) to ensure that the state considers a clean environment a basic human right, which results in its effective protection. It is necessary to ensure that the state's constitution includes the explicit articulation that would align a clean environment with a basic human right. This

¹⁰⁵ See *Sierra Club v. Morton*, 405 U.S. 727 (1972). *Lujan v. Defenders of Wildlife* 504 U.S. 555 (1992). *Massachusetts v. EPA*, 549 U.S. 497 (2007). *Mehta v. Kamalnath* 1997 (1) SC 388. *Manchester Ship Canal v. United Utilities Water* (2024) UKSC 22. Contrast with *Marcic v. Thames Water Utilities* [2003] UKHL 66.

amendment will positively affect the legislative and judicial branches because the two will understand the importance of this phenomenon for the nation. In particular, courts will be forced to ground their decisions on this constitutional provision, which will protect environmental activists from prosecution.

2. Kuwait should improve its judicial system to guarantee that people can easily file a case to protect their right to a clean environment.
3. GCC member-states have significant problems with environmental and human rights protection. Some of them ignore legal regulations, which results in environmental problems, such as in Oman and Saudia Arabia. That is why these countries should adopt successful approaches found in the international law and European countries' law.

Since the Constitution represents the basic principles and rules that are found in a country, all other processes should be aligned with this source. If it grants the status of a fundamental human right to a clean environment, no other law, decree or court decision may challenge this idea. This step is likely to provide local individuals with better environmental conditions and legal protection. This what will guarantee clean and healthy environment for Kuwait and the other GCC states.