

Kuwait: The case for protection

Abdullah Alharoun of ICB shares his thoughts on Kuwait's new environment legislation and on how it serves as a building block to environmental protection.

In a region where the only carbon trading taking place is actual trading of hydrocarbons, it appears that introducing environmental legislation – which might be at odds with the nations' main source of income – is not a pressing priority.

Yet, despite the former presumption, some oil and gas producing countries rank within the top ten on the Environmental Performance Index¹, which measures how well countries perform on high-priority environmental issues. In 2014, Kuwait followed suit. The Parliament enacted the environmental framework legislation, Law No. 42 of 2014 on Environmental Protection (the EPL), which is miles ahead of its predecessor² in terms of the structure of the law and its wide reaching effects.

Our focus here is only the national environmental legislation in the State of Kuwait, in isolation of international and regional regulations

A FRAMEWORK LEGISLATION

Environmental management requires enforcement and regulation by several bodies due to the expansive nature of the regulation. Environmental framework legislations aim to provide within a single law “the legal and institutional frameworks without seeking to legislate comprehensively”³.

The EPL approach is indeed predicated upon a high-level view of various ecosystems within the terrestrial, air, marine and costal environments. The EPL has a relatively long chapter on environmental management which mandates creating a constantly updated five

year plan for Kuwait's environmental strategies.

As framework legislation, the EPL does not aim to address every aspect relating to environmental protection. Rather, it serves as building blocks, deferring quite heavily to executive bylaws and subsequent standards establishing resolutions to be implemented by the Environmental Public Authority (EPA).

ADHERENCE TO ESTABLISHED PRINCIPLES AND SCOPE

Integrated principles for effective environmental laws trace as far back as 1987 to the famous Brundtland Report (AKA our common future)⁴, and were further streamlined in the Rio Declaration of 1992. The main principles to adhere to are:

1. The precautionary principle;
2. Prevention;
3. Integration;
4. Public participation principle;
5. Polluter pays.

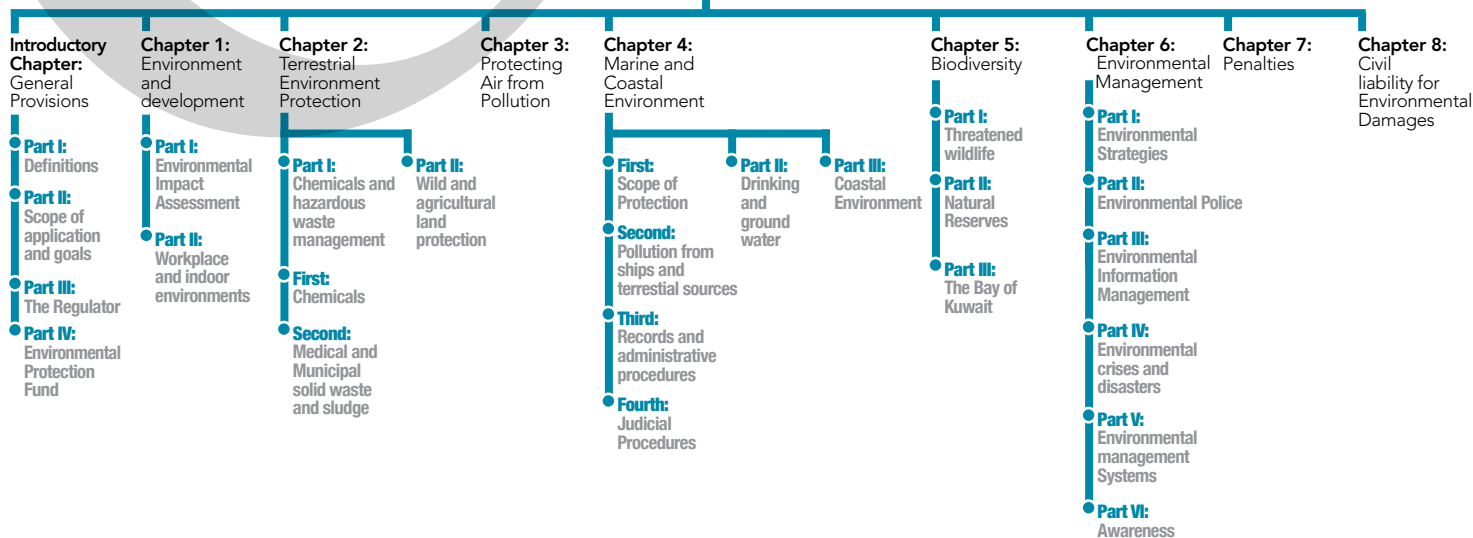
Here, we briefly examine whether the EPL remains true to the above cornerstone principles.

Precaution and prevention

In Article 2, the EPL clearly stipulates that the protection approach envisages the prevention and precaution against immediate or long-term degradation. The EPL has also maintained and refined the old rules on environmental impact assessment⁵ and other preventative mechanisms, such as strict rules on environmental health and safety⁶. In addition, the

ORGANISATIONAL STRUCTURE OF THE EPL

Environmental Protection Law
Law No.42 of 2014



EPL has introduced licensing requirements for engaging in activities that could potentially impact the environment, which adheres to the prevention principle. An example of this can be found in Chapter 2, namely in the provisions regarding handling chemicals and hazardous medical and municipal waste.

Integration

The EPL takes into consideration and integrates many other laws with respect to development - urban and otherwise – as well as creating restrictions in favour of protecting the environment. The EPL's objectives contain language referring to sustainable development. It further expressly integrates environmental protection into Kuwait's development plans, entrusting the EPA with providing recommendations⁷.

Public participation

In terms of public participation, and despite the general approach of regulators in the State of Kuwait of not adhering to freedom of information and transparency principles, the EPL creates support mechanisms for public participation.

Article 15 (8) focuses on promoting the participation of civil society organisations and other organisations working in non-environmental fields, outlining this as one support area for the Environmental Protection Fund⁸. Additionally, the EPL provides for the publication of environmental information in a manner that is "authenticated and transparent"⁹, and also requires the publication of air quality indices on their website (and other websites) to inform the public.

Here, it must be mentioned that beyond parliament, public participation in the formation of the law in its drafting stages did not occur. In addition, no exposure draft of the legislation was circulated officially – as there is no convention to do so.

Polluter pays

In express adherence to the concept of "polluter pays", the law creates an extensive penalty regime, adding 30 new offences to the old regime as well as providing language dealing with principles of civil liability. In addition to monetary penalties, these offences could theoretically reach the death penalty – for example in the event article 25 is violated by "importing, bringing, dumping or storing nuclear waste or disposing it in any form within the territory of Kuwait...". Notwithstanding the death penalty, the EPL offences do not prejudice the imposition of stricter offences stipulated in other laws. Furthermore, repeat offenders within a five year period receive a doubled penalty¹⁰. However, the law also creates exceptions to criminal liability in article 153.

The civil liability regime contains provisions for strict liability¹¹ "[sic] a supervising person shall be responsible for damage even if he did not commit anything wrong". Furthermore, in the event that multiple persons are

liable for damages, the regime presumes a joint and several liability. The EPL, in a unique precedent in Kuwaiti law, establishes a specialised unit in the Ministry of Interior: "the Environmental Police", which is tasked with monitoring the implementation of environmental laws and regulations, as well as supporting the EPA judicial officers.

THOUGHTS AND CHALLENGES

The EPL innervates other laws and regulators, which may prove administratively problematic for the enforcement of the EPL's provisions, once the bylaws are published. Despite the provision of similar mandates in the pre-EPL legislative framework, enforcement thereof was minimal and environmentally degrading practices were customarily carried on without actual deterrents.

Furthermore, having had limited practice in the past and due to lack of general awareness of environmental issues, the judiciary does not currently have the requisite expertise to decide on such cases swiftly.

Since the EPL is framework legislation, creating foundation principles and penalty regimes, it delegates substantial legislative power to the EPA and the Supreme Environment Council. This body is often burdened and unable to create streamlined, easy to implement, enforceable regulations.

Public awareness of environmental matters in the country is not commensurate with the importance of such issues; therefore, the EPA needs to do more in engaging the public, and supporting civil society organisations in outlining the importance of such matters. This will promote a culture of adherence due to comprehension of the purposes of the legislation, as opposed to fear of punishment. 🏠

1. Norway ranks 10th on the EPI 2014.
2. Law No. 21 of 1995 (as amended)
3. Kurukulasuriya & Robinson. *Training Manual on International Environmental Law. Chapter 3: the role of national laws.* UNEP.
4. *World Commission on Environment and Development. Our Common Future.* Oxford University Press
5. Chapter 1 in the EPL.
6. Article 18-20.
7. Article 7 (1)
8. *A fund established by the EPA into which the penalties and compensations are paid in addition to certain support budget from the State.*
9. Article 117
10. Article 154
11. Article 158



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