

English Articles

Democracy and Human Rights in The Constitution of Kuwait

by:

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Introduction

The rule of law embodies the simple principle that all state officials, whether elected or non-elected, should act within the law and the constitution, on the basis of powers that are legally defined and circumscribed. The principle can be traced back to the Aristotelian idea that the best government involves the 'rule of laws, not of men'. In its modern form the principle evolved from the struggle to limit the arbitrary discretion of the monarch and his or her officials, by requiring legal authorization for all executive action.

The rule of law can be readily seen to be a cornerstone of both individual freedom and democracy. Without it there can be no protection of individual rights from the executive. And, in so far as the source of law is a democratic constitution and an elected legislature, it must be a requirement of democracy that the executive observe it. Attempts to bypass procedural or legal regularity 'in the national interest' or under the pressure of instant popular demand must therefore be judged undemocratic.

People often talk about 'democracy', but the word tends to mean different things to different people, and there is a good deal of confusion about what democracy actually involves. Is it individual freedom, multi-partyism, majority rule, minority rights, or what? Are there any agreed criteria by which we can judge a particular country democratic, or by which we may assess its progress in democracy? Are there set institutions or practices that a country must have for it to count as democratic, or can democracy be realized through many different means and in many different forms?

It should be evident that a country which has no comparative elections or universal suffrage, or where elected politicians have no effective control over the non-elected state officials, or where there are no guaranteed rights of association, assembly or free expression, cannot count as democratic. It is now recognized by the international community that the protection of human rights and the rule of law, not only in developed but also in developing states, is best achieved through a commitment to democratic principles. It is also recognized that the exercise of human rights and freedoms is necessary for democracy to function properly at all. It used to be claimed that individual human rights can be defended and enjoyed in undemocratic

systems, especially where the priority had to be given to economic development. But the evidence is overwhelming that such systems sooner rather than later become benign, more repressive, corrupt and unstable.

In June 1993, representatives from 171 States met in Vienna, Austria, for a World Conference on Human Rights. The motto of the conference was :

Human Rights: know them, demand them, defend them

At the end of the conference, the States' representatives agreed the Vienna Declaration and a Programme of Action. The Vienna Declaration appears as the most recent reminder to States of the obligations they have voluntarily undertaken to protect the individual rights of their citizens. Even if a State has not signed or ratified any of the human rights conventions or covenants, it is at the very least morally bound by the Declaration signed in Vienna.

The subject of 'Human Rights' raises issues that are neither simple nor clear. Human Rights are political by nature and they require political will to implement and public scrutiny to maintain. States have a duty to govern according to the rule of law and to respect the rights and freedoms of individual citizens. Citizens must also be constantly vigilant and insist on transparent and accountable government.

Almost every State in the world today provides for the protection of particular human rights and fundamental freedoms in its constitution or basic law with the aim of giving effect to their precise meaning. An independent judiciary has the role of determining the meaning of human rights in light of the spirit and purpose of the constitution while allowing at the same time for the changing needs of society. The effect is to limit the power of those who must be restrained in the exercise of their authority. If this is not done the supremacy of the constitution will be violated and the mandatory character of its provisions will be transformed into mere recommendations without binding legal effect.

In Egypt, the constitutional proclamation provides that "The sovereignty of Law is not only a guarantee for the freedom of the individual alone, but is also the sole basis for the legality of authority".

Article 1 of the Egyptian Constitution states that "The Arab Republic of Egypt is a democratic, Socialist State".

In Kuwait, Article 6 of the Constitution provides that "The System of Government in Kuwait shall be democratic, under which sovereignty resides in the people, the source of all powers."

This topic reports on the democracy and Human Rights protection in the Constitution of Kuwait.

Chapter 1 provides several illustrations of the Kuwaiti Constitutional approach to the democratic principles.

In Chapter 2, an introduction to the international human rights standards is followed by a detailed section on the protection of human rights in the Constitution of Kuwait.

Chapter 1

Democracy and the Constitution

Throughout our lives we are members of different groups or associations, from families, neighbourhoods clubs and work units to nations and states. In all such associations, from the smallest to the largest, decisions have to be taken for the association as a whole : about the goals to be pursued, about the rules to be followed, about the distribution of responsibilities and benefits between members. These can be called collective decisions, in contrast to individual decisions taken by people on behalf of themselves alone. Democracy belongs to this sphere of collective decision-making. It embodies the ideal that such decisions, affecting an association as a whole, should be taken by all its members, and that they should each have equal rights to take part in such decisions. Democracy, in other words, entails the twin principles of popular control over collective decision-making and equality of rights in the exercise of that control. To the extent that these principles are realized in the decision-making of any association, we can call it democratic.

Conventionally we have come to call a state 'democratic' if its government is accountable to the people through competitive election to public office, where all adults have an equal right to vote and to stand for election, and where civil and political rights are legally guaranteed. However, no such state in practice realizes the two principles of popular control and political equality as fully as it might. To that extent the work of democratization is never ended; and democrats everywhere are involved in struggles to consolidate and extend the realisation of democratic principles, whatever regime or political system they happen to live under.

Competitive elections are the main device whereby public officials are rendered accountable and subject to popular control. They also constitute an important arena for ensuring political equality between citizens, both in access to public office and in the value of their votes. The criterion of 'free and fair elections' embraces in the first place the electoral system.

1- Control through election

It is clear today that a representative system is the best system yet devised for securing popular control over government in circumstances where the citizen body is numbered in millions and has not the time to devote itself continuously to political affairs. The theory is that the people control the government by choosing the members of a legislature or parliament that can exercise continuous supervision over the government on the people's behalf, through its power to approve or reject legislation and taxation. This popular control is only effective, however, to the extent that elections are 'free and fair', that government is open and that parliament has sufficient powers in practice to scrutinize and control its actions.

The purpose of election at national level is twofold. First is to choose the head of government or chief executive and the broad policy that the government will pursue.

Second is to choose the members of the representative assembly, legislature or parliament, who will decide on legislation and taxation and scrutinize the work of the government on the people's behalf. In a presidential system, where the president is head of the government, these two purposes are clearly distinguished by having separate elections for president and members of the legislature; such elections may or may not take place at the same time. In a prime-ministerial or parliamentary system, one set of elections will fulfil both purposes, since it is the elected members of parliament who will determine the head of the government on the basis of which party leader can win majority support in parliament.

Elections and popular control

The regular election of these public officials in an open and competitive process constitutes the chief instrument of popular control in a representative democracy. Elections demonstrate that political power derives from the people and is held in trust for them ; and that it is to the people that politicians must account for their actions. In the last resort only the possibility of being turned out of office ensures that those elected fulfil their trust and maintain the standards of public office, and guarantees those changes in the personnel and policies of government that changing circumstances require.

The Constitution of Kuwait provides in Article 80 that the National Assembly shall be composed of fifty members elected directly by universal suffrage and secret ballot in accordance with the provisions prescribed by the electoral law.

Ministers who are not elected members of the National Assembly shall be considered ex-officio members thereof.

Article 81 states that electoral constituencies shall be determined by Law.

Article 82 stipulates that a member of the National Assembly shall :

- a) Be a Kuwaiti by origin in accordance with Law.
- b) Be qualified as an elector in accordance with the electoral law.
- c) Be not less than thirty calendar years of age on the day of election.
- d) Be able to read and write Arabic well.

2- Constitutionalism and Democracy

As the term 'Constitutionalism' implies, these features, together with all the other component elements of democracy, are best protected in a written constitution, in which the rights and duties of citizen, and of the different organs of state, are explicitly defined and publicly known. The special position of the constitution is recognized when public officials are required to swear loyalty to it above party or sectional interest, and by the fact that it requires special measures, such as qualified majorities or referenda, to alter it. Yet in practice a written constitution is only secure to the extent that an independent judiciary has the authority and determination to enforce it and that the public at large is vigilant in its defence.

In Article 174 of the Kuwaiti Constitution, it is provided that either the Amir or one-third of the members of the National Assembly shall have the right to propose the revision of this constitution by mending or deleting one or more of its provisions or by adding new provisions.

If the Amir and the majority of the members constituting the National Assembly approve the principle of revision and its subject matter, the Assembly shall debate the bill by article. Approval by two-thirds majority vote of the members constituting the Assembly shall be required for the bill to be passed. The revision shall come to force only after being sanctioned and promulgated by the Amir regardless of the provisions of Article 65 and 66 of this constitution.

If the principle of revision or its subject matter is rejected, it shall not be presented again before the lapse of one year from the rejection.

As provided by Article 175, the provisions relating to the Amiri system in Kuwait and the principles of liberty and equality, provided for in this Constitution may not be proposed for revision except in relation to the title of the Amirate or to increase the guarantees of liberty and equality.

Representative democracies are called liberal democracies. There is first a historical reason. Most Western states became liberal before they became democratic. That is to say they achieved a liberal constitutional order before they granted universal suffrage or developed mass political parties. The most important features of such an order were : the subordination of government or executive to the laws approved by an elected parliament ('rule of law') ; guaranteed rights of the individual to due legal process and to the freedoms of speech, assembly and movement; a judiciary with sufficient independence of both parliament and executive to act as guardians of the law and of these individual rights.

Historically, the democracies in which the suffrage was extended and mass political parties developed without the prior consolidation of these liberal constitutional features proved very insecure.

This brings us to a second, practical reason why liberal constitutionalism and democracy belong together. A government in a modern state has enormous powers at its disposal. Whatever its popularity, if it is not kept subject to the law like everyone else, or if it is not required to seek approval for legislation from parliament according to established procedures, or if it does not respect the liberties of its citizens, however unpopular on occasion their exercise may be, then people will rapidly lose the capacity to control it. Democracy is not a system that gives the people whatever they demand at a given moment, or in the shortest possible time, but one that secures the conditions for their influence and control over their government on an ongoing basis. And among these conditions have proved to be the basis elements of liberal constitutionalism already outlined : the rule of law, the separation of powers between executive, legislature and judiciary, and the guarantee of individual rights and liberties.

3- The Separation of Powers.

In democracies government is divided into three branches : the executive (sometimes also called 'the government' simpliciter), which is responsible for the formulation and execution of policy ; the legislature (also called parliament, representative or National Assembly), which is responsible for the approval of legislation and taxation and the scrutiny of the executive; the judiciary (or the courts) which is responsible for securing the observance of the law, by determining whether it has been infringed and sentencing those found guilty of its infringement. This separation of the three branches has proved essential to secure the different forms of accountability. Thus, if the courts are not independent of both legislature and executive, they cannot act without fear or favour to ensure that public officials operate within the law. Similarly, if parliament does not have independent powers to approve legislation and taxation and to scrutinize the executive, the political and financial accountability of the government to the electorate will be seriously impaired.

The Constitution of Kuwait provides in Article 50 that the system of government is based on the principle of separation of powers functioning in co-operation with each other in accordance with the provisions of the Constitution. None of these powers may relinquish all or part of its competence specified in the Constitution.

In a democracy the accountability of the government to the public is on the one side a legal accountability : to the courts for the observance of the law by all public officials (the 'rule of law');

on the other side a political accountability: to parliament and the public for the justifiability of government policy and actions. This accountability depends upon the independence from government of the courts, in their power to defend the constitution, to determine guilt and to punish offences, and of parliament, in its powers of legislation, taxation and scrutiny of government. Besides being accountable, democratic government should also be responsive, both through formal requirements of consultation and through its openness to the expression of public opinion in its various forms.

Independence of the Judiciary

The rule of law is only effective, however, to the extent that there is an independent judiciary to uphold it. Article 1 of the UN Basic Principles on the Judiciary states that 'the independence of the judiciary shall be guaranteed by the state and enshrined in the constitution or the laws of the country'. This independence is both a collective independence of the institution of the judiciary from interference by the executive, and also the personal independence of individual judges to perform their offices without fear or favour. Both kinds of independence require more than formal constitutional guarantees ; they depend also on the methods by which judges are appointed and on the security of their tenure of office. Appointments should not be in the hands of the government or executive, but should be the responsibility of a judicial committee of parliament or of an independent judicial services committee established

under the constitution. Similarly, judges should not be dismissable by the government of the day but have security of tenure that is terminable only by a special procedure of the appointing body, and for limited causes such as corruption or other gross misdemeanour or dereliction of duty. Similar considerations apply to other branches of the legal profession, whose independence from government is necessary to secure the principle of the rule of law.

Article 162 of the Kuwaiti Constitution states that the honour of the Judiciary and the integrity and impartiality of judges are the bases of rule and a guarantee of rights and liberties.

In Article 163, it is provided that in administering justice Judges shall not be subject to any authority. No interference whatsoever shall be allowed with the conduct of justice. Law shall guarantee and provisions relating to judges and the conditions of their irremovability.

As provided by Article 166 the right of recourse to the Courts is guaranteed to all people. Law shall prescribe the procedure and manner necessary for the exercise of this right.

Article 169 states that Law shall regulate the settlement of administrative suits by means of a special Chamber or Court, and shall prescribe its organisation and the manner of assuming administrative jurisdiction including the power of both nullification and compensation in respect of administrative acts contrary to law.

Similar protection may be found in Article 173. This article provides that Law shall specify the judicial body competent to decide upon disputes relating to the constitutionality of laws and regulations, and shall determine its jurisdiction and procedure. Law shall ensure the right of both the government and the interested parties to challenge the constitutionality of laws and regulations before the said body. If the said body decides that a law or a regulation is unconstitutional it shall be considered null and void.

4- Guaranteeing basic freedoms.

Democracy relies upon open debate, persuasion and compromise. The democratic emphasis on debate assumes not only that there are differences of opinion and interest on most questions of policy, but that such differences have a right to be expressed and listened to. Democracy thus presupposes diversity and plurality within society as well as equality between citizens. And when such diversity finds expression, the democratic method of resolving differences is through discussion, through persuasion and compromise, rather than by forcible imposition or the simple assertion of power. Democracies have often been caricatured as mere 'talking shops'. However, their capacity for public debate should be seen as a virtue rather than a vice, since it is the best means for securing consent to policy, and is not necessarily inconsistent with decisive action.

Democracy guarantees basic freedoms. Open discussion, as the method for expressing and resolving societal differences, cannot take place without those freedoms

that are enshrined in conventions of civil and political rights ; the rights of free speech and expression, of association with others, of movement, of security for the person. Democracies can be relied on to protect these rights, since they are essential to their own mode of existence. At best such rights allow for the personal development of individuals and produce collective decisions that are better for being tested against a variety of arguments and evidence.

In the Constitution of Kuwait, Article 7 stipulates that Justice, Liberty and Equality are pillars of society ; Co-operation and mutual help are the firmest bonds between citizens.

Article 30 provides that personal liberty is guaranteed.

As provided by Article 35 freedom of belief is absolute. The State protects the freedom of practicing religion in accordance with established customs, provided that it does not conflict with public policy or morals.

Also in Article 36 freedom of opinion and of scientific research shall be guaranteed. Every person shall have the right to express and propagate his opinion verbally, in writing or otherwise, in accordance with the conditions and procedures specified by Law.

Civil and Political rights

Civil and political rights encompass those freedoms - of expression, association, movement, and so on - which are a necessary condition for people to act politically, whether in terms of self-organization within civil society or to bring influence to bear upon government. Although these rights are properly guaranteed to individuals, as a part of human rights more generally, their value lies in the context of collective action, joining with others for common ends, campaigning, influencing public opinion, etc. It is thus mistaken to see individual rights as necessarily antithetical to collective purposes, or to the processes of collective decision-making and their popular control, for which they constitute rather the necessary foundation.

The idea of a 'civil' society indicates that democracy needs to have social associations of all kinds that are organized independently of the state. Only in this way, can the power of the state be limited, can public opinion be articulated from below rather than managed from above, and can society achieve the self-confidence to resist arbitrary rule.

The principle that such associations should be not only independent but also internally democratic embodies the idea that democracy at the level of the state will only be weakly rooted if the rest of society is run on autocratic lines. If people are conditioned to authoritarianism in the family, the school and the club, and if they have no experience of self-organization or co-determination in the workplace, the neighbourhood and voluntary associations, they are unlikely to be active citizens or feel any responsibility for the condition of their society at large.

The Constitution of Kuwait provides in Article 43 that freedom to form associations and unions on a national basis and by peaceful means shall be guaranteed

in accordance with the conditions and manner specified by Law. No one may be compelled to join any association or union.

On the other hand, Article 44 stipulates that individuals shall have the right of private assembly without permission or prior notification, and the police may not attend such private meetings. Public meetings, processions and gatherings shall be permitted in accordance with the conditions and manner specified by Law, provided that their purpose and means are peaceful and not contrary to morals.

5- Public opinion control

Although elections are the principal means by which people have a say in government policy in a representative system, they are not the only means. People can join associations to campaign for and against changes in legislation; they can become members of political parties; they can lobby their representatives in person. Governments in turn can be required to consult those affected by their policies or a selected cross-section of the electorate. In practice, few representative governments are immune to expressions of public opinion such as are regularly provided by opinion polls or through the press, radio and television. Yet all these channels of popular influence are ultimately dependent upon the effectiveness of the electoral process. Governments will only listen seriously to the people when there is a realistic possibility that they will be turned out of office if they do not.

So popular control in a representative system is secured by the direct influence people exercise over the direction of government policy and personnel at elections, through the continuous supervision exercised over government by a representative assembly or parliament and by the organized expression of public opinion through a variety of channels, which governments have to take into account.

All governments, in every type of political system, seek to win for their policies the support or acquiescence of the population. And since a large population can only be reached through the means of mass communication - press, radio and television - these media play a central political role in contemporary societies. In a democracy, however, the media have important functions other than simply to provide a channel for government propaganda. These are to investigate government, to inform the public, to provide a forum for political debate and to act as a channel for public opinion to, and for popular pressure upon, the government.

Journalist as 'watchdog'

The investigative and informative functions of the media are necessary to combat every government's preference for secrecy, and to offset the sheer weight of its public relations machine.

A government can only be held publicly accountable if people know what it is doing, and if they have an independent means of testing official claims about its policies. Whilst the media must not overstep the bounds of privacy, it is their task to impart information and a conception of the public interest, and it is the right of the

public to receive them. Were it otherwise, the media would be unable to play their vital role of 'public watchdog'.

Besides the task of imparting independent information, the media also provide a forum for public debate, through which ministers and other public figures can be interrogated in ways that are accessible to a mass audience and that allow for contributions from ordinary citizens. In doing so they also provide a vehicle for the expression of public opinion to the government. In all these respects the media serve to complement and reinforce the scrutinizing and deliberative functions of parliament by engaging the population as a whole.

Independence of the media

However, the media can only perform these key democratic tasks if they are properly independent, and not dominated either by the government self or by powerful private interests. The dominance of a government can be limited by making the publicly financed media accountable to an independent commission or to representatives of citizens' groups, and by allowing competition from privately financed media. The dominance of powerful private interests can be restrained by limiting concentrations of media ownership, and by other forms of regulation. None of these on their own, however, can guarantee that the media fulfil their democratic role impartially and effectively.

Ultimately that depends upon the independence and professionalism of journalists, editors and producers and upon a widespread public acknowledgement of the vital contribution that the media make to the democratic process.

Article 37 of the Constitution of Kuwait stipulates that freedom of the press, printing and publishing shall be guaranteed in accordance with the conditions and manner specified by Law.

6- Political equality

What about the second democratic principle that of political equality ? A representative system involves inequality at least in this respect, that it gives a smaller number of the population the right to take political equality can be achieved to the extent that there is an effective equal right for all citizens to stand for public office, to campaign on public issues and to obtain redress in the event of maladministration ; and that the electoral system gives equal value to each person's vote. In practice most representative democracies do not fully satisfy these criteria, since political equality is substantially qualified by systematic differences in the wealth, time, access and other resources possessed by different groups of the population. It is one of the tasks of democrats in a representative system to find ways to reduce the political impact of these differences, as well as to make more effective the various mechanisms of popular control over government.

Political representation has two basic meanings. The first is an agency concept, whereby the representative is seen as 'authorized by', 'standing for', 'acting on behalf

of his or her constituents. In some respects the representative acts on behalf of all his or her constituents or electorate ; for example in the promotion of local interests, in the articulation of local opinion, or in pursuing remedy for individual grievances. In other respects the representative represents only those who voted for him or her: by carrying through the programme and policies that constituted the electoral platform, and that were rejected by some constituents as much as they were approved by others. The idea that parliamentary representatives speak and act for their constituents in all respects is a fiction, which is simply incompatible with their responsibility to act consistently with the programmes on which they were elected and to be accountable for their effective fulfilment.

The second concept of political representation is a microcosmic one, and concerns the representative assembly as a whole, rather than individual representatives. A legislative assembly can be said to be representative to the extent that it reflects the character of the electorate at large in some relevant respect : its social composition, its geographical distribution, its votes for the different parties . Which of these respects is most important? All matter, but in a system in which the electoral choice is between national parties offering competing programmes of legislation, the requirement that the assembly's composition should reflect the national vote for the respective parties can be argued to be the most important. It is most fully met in proportional electoral systems.

Two democratic principles

These two concepts of representation, the agential and the microcosmic, can be seen to embody the two basic principles of democracy. The principle of popular sovereignty - that all political authority stems from the people and that parliament and government should be subject to popular control - is encapsulated in the idea of the representative as agent of the electorate: authorized by, acting for, accountable to and removable by them.

The second, microcosmic, conception of representation embraces the principle of political equality: each vote should have the same weight or value, regardless of where people happen to live or which party they vote for. To the extent that this principle is met, the assembly will be microcosmically representative of the electorate, and reflect its geographical distribution and the distribution of the popular vote between the different parties.

It is a common misconception to equate democracy with majority rule. If we take the term democracy literally as rule by the people, then this means rule by the whole people, not by one part of the people over another. In other words, the crucial democratic feature is the rights of decision-making that all share equally, whereas decision by the majority is simply a procedural device for resolving disagreement when other methods (discussion, amendment, compromise) have been exhausted. Of course majority decision must be more democratic than allowing minorities to decide or to obstruct the will of the majority; but in so far as it leaves the minority impotent,

without any influence on the outcome, it should be regarded more as a rough and ready device for reaching decisions than as the acme of democratic perfection.

Principle of reciprocity

Defenders of majority rule point out that those in the minority on one occasion may be in the majority on the next, and that their lack of influence in one decision, or in one election, will be compensated by 'winning' later. Minority consent to the majority view, in other words, rests upon a norm of reciprocity : their turn to be in the majority will come, and others will have to respect it in the same manner as they have done. However, this principle of reciprocity breaks down if the decision of the majority impairs a minority's capacity to canvass its views in the future ; or if the minority is a 'permanent' one ; or if the issue being decided is so vital to the minority that it cannot be compensated by winning on different issues in the future.

Majority and individual rights

When the decision of majority (or of a government acting with majority support) infringes the basic democratic rights of an individual or group, it must by definition be undemocratic. These basic rights are those necessary to enable people to contribute to political life : the freedoms of speech, movement and association; the right to vote and to stand for public office. The guarantee of these rights equally to all citizens constitutes the bedrock of a democratic system ; ideally they should be given special protection in a constitution or bill of rights, where they remain immune from majority infringement.

Chapter 2

Human Rights in the Constitution

Human rights and fundamental freedoms are individual entitlements derived from human needs and capacities. The recognition of human rights and the creation of means for their defence in international law constitute perhaps the most important moral advance of this century. The international community has adopted many international agreements or conventions on human rights. These instruments seek to establish agreed definitions about the scope of human rights and freedoms and at the same time commit governments to take the necessary steps to ensure that such rights are protected in law and practice in their respective countries.

The Universal Declaration

The main source of human rights ideas in the modern world stems from the Universal Declaration of Human Rights, adopted by the United Nations General Assembly on 10 December 1948. In 1966 the United Nations adopted two international instruments based on the rights proclaimed in the Universal Declaration. These are the International Covenant on Economic, Social and Cultural rights and the International

Covenant on Civil and Political Rights. Two-thirds of the world's states have now ratified these instruments. The UN also adopted an Optional Protocol to the International Civil and Political Covenant, which provides individuals with a right of petition to the monitoring body for this Covenant, the Human Rights Committee, if their rights were violated by their governments. But this right is available only if the state in question, having ratified that Covenant, has also accepted this Protocol. Not so many states have done so.

The Universal Declaration of Human Rights also speaks of the individual's duties to his or her community. It asserts that it is only in community with others that an individual's free and full development of personality is possible. The notion of human rights nevertheless begins with the belief in the unique worth of every individual human person.

On the other hand, the international standards permit restriction on the exercise of certain rights on specified grounds, such as public order, public morals, national security and the rights of others. However, certain rights may not be so restricted. Certain fundamental guarantees for the individual, such as freedom from torture, freedom of thought and freedom from discrimination, may never be withdrawn in a democratic society.

The principles concerning the justification of an interference with or restriction of a right are well established in international jurisprudence. These are that the restriction is provided for by law ; that it pursues a legitimate aim, in other words that the purpose of the limitation is clearly one permitted by international standards, and that the necessity for the interference or restriction is made out according to the concept of a democratic society. In practice this means that the government must show that its actions in limiting a right or freedom are proportionate and not excessive.

Vienna Conference

These important understandings about human rights and about the duties of the international community were more recently confirmed at the World Conference on Human Rights held in Vienna in June 1993.

All human rights are universal, indivisible and interdependent and inter-related. The international community must treat human rights globally in a fair and equal manner on the same footing and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be born in mind, it is the duty of states regardless of their political, economic and cultural systems to promote and to protect all human rights and fundamental freedoms.

Regional conventions

These instruments, the Universal Declarations of Human Rights, the two Covenants and the Optional Protocol are together known as the International Bill of Human Rights. There are many other universal national treaties on human rights as well as regional conventions, such as the American Convention on Human Rights, the

African Charter on Human and People's Rights and the European Convention on Human Rights.

The rule of law

All internationally recognized human rights are interrelated and reinforce each other. In some societies, depending on their stage of development certain rights may be taken for granted by most citizens, for example, in richer countries, the right to a reasonable standard of living and the rights to food, clothing, shelter and education. In poorer countries these rights be uppermost in the concerns of the people.

But in all democratic societies such economic and social rights are fundamental and should be guaranteed, just as basic civil and political rights, the right to be governed under the rule of law, to have protection from arbitrary arrest and detention and to enjoy freedom of expression and association are fundamental and should be guaranteed. In international law it is the duty of the state to promote respect for all human rights of all citizens without distinction.

The principle of non-interference in the internal affairs of states by other states is one of the cardinal principles of the modern international order as laid down in the Charter of the United Nations. However, the growth of international human rights movement and the steady extension of international human rights standards have brought about this currently accepted principle : that the way any state treats its citizens is in the public domain, and that external criticism from other governments or NGO's does not constitute interference in the internal affairs of that country. The World Conference on Human Rights confirmed that 'the promotion and protection of all human rights is a legitimate concern of the internatioanl community'.

Human Rights Classification

Rights can be classified in many ways, but the most accepted is into civil, political, social, economic and cultural rights. This is the classification adopted in the International Bill of Human Rights. Examples of civil and political rights are : the right to life, freedom from torture, freedom from forced labour, freedom from arbitrary arrest, the right to fair trial, freedom of thought, conscience, religion or belief, the right to private life, the freedoms of speech and association and the right to take part in public affairs. Civil and political rights are typically rights that require a state to refrain from action or interference with individuals or groups. However, they can also impose obligations of action on a state, for example, to fund a legal aid system to ensure that the poor or those of limited means can defend their rights in court, for example, when they face serious criminal charges. Another example might be public expenditure to ensure that a national minority has access to the media.

Economic Social and cultural rights

Examples of economic, social and cultural rights are the rights to food and to health, to an adequate standard of living, to equal pay for equal work, to social

security, to work, to strike, to housing, to education and to participate in cultural life. Economic and social rights are typically rights that require a state to act or to provide, where individuals cannot provide for themselves, for example because they are unempolyed or because they are disabled.

Freedom from discrimination

An important principle attached to all rights is that in exercising rights people should not be discriminated against on grounds such as sex, race, religion or belief.

Article 29 of the Kuwaiti Constitution declares that all people are equal in human dignity and in public rights and duties before the law without distinction as to race, origin, language or religion.

The Protection of Human Rights in the Constitution

Several of the protection offered by the Kuwaiti Constitution to the most of civil, political, social, Cultural and economic rights.

1. Civil and Political Rights

According to Articles 30, 31, 32, 33 and 34, personal liberty is guaranteed. No person shall be arrested, detained, searched or compelled to reside in a specified place, nor shall the residence of any person or his liberty to choose his place of residence or his liberty of movement be restricted except in accordance with the provisions of law. No person shall be subjected to torture or to degrading treatment. No crime and no penalty may be established except by virtue of law, and no penalty may be imposed except for offences committed after the relevent law has come into force. Penalty is personal. An accused person is presumed innocent until proved guilty in a legal trial at which the necessary guarantee for the exercise of the right of defense are secured. The infliction of physical or moral injury or an accused person is prohibited.

In addition to these, Article 28 specifies that no Kuwaiti be deported from Kuwait or prevented from turning thereto.

Article 38 stipulates that places of residence shall be inviolable. They may not be entered without the permission of their occupants except in the circumstances and manner specified by law.

In article 39 it is provided that freedom of communication by post, telegraph and telephone and the secrecy thereof shall be guaranteed;

accordingly censorship of communications and disclosure of their contents shall not be permitted except in the circumstances and manner specified by law.

In accordance with Article 41 and 42 every Kuwaiti citizen has the right to work and to choose the type of his work. There shall be no forced labour except in the cases specified by law for national emergency and with just remuneration. However work is a duty of every citizen necessitated by personal dignity and public good. The State shall endeavour to make it available to citizens and to make its terms equitable.

For general protection, Article 45 states that every individual shall have the right to address the public authorities in writing over his signature. Only duly constituted organizations and bodies corporate shall have the right to address the authorities collectively.

2. Social Rights

By virtue of Articles 8, 9, 10, 11 and 15 of the Kuwaiti Constitution, the State safeguards the pillars of society and ensures security, tranquility and equal opportunities for citizens. The family is the cornerstone of society. It is founded on religion, morality and patriotism. Law shall preserve the integrity of the family, strengthen its ties and protect under its auspices motherhood and childhood. The State cares for the young and protects them from exploitation and from moral, physical and spiritual neglect. 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. The State cares for public health and for means of prevention and treatment of diseases and epidemics.

3. Cultural Rights

In accordance with Article 12, 13, 14 and 40, the State safeguard the heritage of Islam and of the Arabs and contributes to the furtherance of human civilisation. The State shall promote science, letters and the arts, and encourage scientific research therein. Education is a fundamental requisite for the progress of society, assured and promoted by the State, So, education is a right for Kuwaitis, guaranteed by the State in accordance with law and within the limits of public policy and morales. Education in its preliminary stages shall be compulsory and free in accordance with law. Law shall lay down the necessary plan to eliminate illiteracy. The State shall devote particular care to the physical moral and mental development of youth.

4. Economic Rights

As provided by Article 20, the national economy shall be based on social justice. It is founded on fair co-operation between public and private activities. Its aim shall be economic development, increase of productivity, improvement of the standard of living and achievement of prosperity for citizens, all within the limits of law.

Special protection may be found in Article 16, 18 and 19 of the Kuwaiti Constitution. These articles declare that property, capital and work are fundamental constituents of the social structure of the State and of the national wealth. They are all individual rights with a social function as regulated by law. Private property is inviolable. No one shall be prevented from disposing of his property except within the limits of law. No property shall be expropriated except for the public benefit in the circumstances and manner specified by law, and on condition that just compensation is paid. General confiscation of the property of any person shall be prohibited. Confiscation of particular property as a penalty may not be inflicted except by a court judgement in the circumstances specified by law.