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**The Arab Human Right Committee:
A Promising Mechanism in an Emerging Human Rights
System**

Author: Hadeel Hunaiti

Supervisor: Prof. Mohammed Amin Al-Midani

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Abstract

This research discusses the effectiveness of Arab human rights mechanisms within the League of Arab States (LAS) over the past 52 years. It argues that LAS Member States lacked interest and political will to advance human rights in the Arab world, evident by their efforts to block the development of a system that genuinely seeks to protect human rights. Instead, a primitive human rights system with varying instruments emerged within LAS, primarily to respond to international and national pressures for political reforms. This thesis also analyzes the historical and political contexts that have contributed to shaping the Arab human rights system, including the deficiencies that have undermined its development. The research focuses on the Arab Human Rights Committee (The Charter Committee), mandated by the Arab Charter on Human Rights in 2004, as a cornerstone for independent and effective human rights mechanisms. While the Charter Committee has demonstrated a level of independence and adherence to international standards over the past eight years which could strengthen the human rights system, effective engagement from civil society has remained absent. Such engagement must be required by the Charter Committee to ensure tangible protection and advancement of human rights in the Arab world.

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Acronyms

ANNHRI: Arab Network for National Human Rights Institutions

Arab ECOSOC: The Arab Economic and Social Council

BICI: Bahrain Independent Commission of Inquiry

CAT: The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984

CEDAW: the UN Convention on the Elimination of all Forms of Discrimination Against Women 1979

CERD: The International Convention on the Elimination of All Forms of Racial Discrimination 1965

CIHRS: The Cairo Institution for Human Rights Studies

CRC: The Convention on the Rights of the Child 1989

CSOs: Civil Society Organizations

FIDH: The International Federation for Human Rights

GANHRI: The Global Alliance for National Human Rights Institutions

HRC: The UN Human Rights Committee

ICCPR: The International Covenant on Civil and Political Rights. 1966

ICESCR: International Covenant on Economic Social and Cultural Rights 1966

ICJ: International Commission of Jurists

LAS: The League of Arab States

NHRI: National Institutions of Human Rights

OAS: The Organization of American States

OAU: The Organization of African Unity

OPCAT: Optional Protocol to the Convention against Torture 2002

PACHR: The Permanent Arab Commission for Human Rights

UAE: The United Arab Emirates

UN: The United Nations

Introduction

In its first-ever, concluding observations and recommendations report on the status of human rights in Jordan in 2012, the Arab Human Rights Committee (hereinafter the ‘Charter Committee’ or the ‘Arab Committee’) made a recommendation to amend Jordan’s discriminatory nationality law to allow Jordanian women to confer nationality status to their children. The Charter Committee has since made the same recommendation to *all* Member States that submitted reports to the Committee. The Arab Charter on Human Rights of 2004, which is the main Arab human rights treaty and is ratified by 16 out of 22 Member States of the League of Arab States (LAS), has not explicitly addressed the issue of women conferring nationality status to their children, and in fact left the regulation of nationality laws to the discretion of domestic legislations, as per Article 29 (2) of the Charter. This is one of many recommendations that the Charter Committee has made that goes beyond what is stipulated within the Arab Charter. The Charter Committee has also made specific recommendations to Member States to amend discriminatory and outdated laws in their respective countries. For instance, the Committee has made recommendation to Saudi Arabia on its initial report to amend their discriminatory male guardianship system and ensure equality for women in law.

Parallel to the evolution of the United Nations system for the promotion and protection of human rights, including the adoption of the Universal Declaration of Human Rights on December 10, 1948, the world has witnessed the emerging of two regional human rights systems in Europe and America. These two regional systems have even established their own human rights enforcement bodies including commissions and courts. In 1977, the United Nations General Assembly adopted a resolution calling for the creation of the regional human rights systems in regions where these systems do not already exist.¹ This call was followed by a gradual evolution of regional human rights systems of promotion and protection of human rights in Africa, Asia and the Arab World.

In Fact, over the years, the regional human rights systems played a fundamental role in the promotion and protection of human rights in their regions. In certain contexts, the regional bodies provided more effective protection measures to victims of human rights violations than those

¹ UN General Assembly Resolution A/RES/32/127 of 16 December 1977. Available at <https://www.refworld.org/docid/3b00f13940.html>

provided by United Nations human rights bodies. Strong and effective regional systems are also considered among the main pillars of the international human rights system and contribute to the interpretation of universal human rights standards as enshrined in human rights instruments.² Additionally, their enforcement bodies play an effective role in developing and setting regional human rights standards, thus fostering states responsibilities to respect, protect and fulfill their human rights obligations.

This research will attempt to provide an analysis of the Arab regional human rights system, and focusing in-depth on the role of the Arab Human Rights Committee created by the Arab Charter on Human Rights in enhancing this system. The Arab human rights system, which is developed under the LAS, consists of:

- (i) the Permanent Arab Commission of Human Rights, established in 1968 as the first mechanism to address human rights issues in the region;
- (ii) the Charter of the Arab Child adopted in 1983;
- (iii) the Arab Charter on Human Rights of 2004, which entered into force in 2008 after seven countries ratified it. The Charter further created the Arab Human Rights Committee (the Charter Committee) as a mechanism to monitor state compliance to rights and freedoms provided in the Charter; and,
- (iv) the Statute of the Arab Court of Human Rights adopted in 2014 but has not entered into force yet. The Statute needs to be ratified by seven State Members before it enters into force, and as of writing it was ratified by Saudi Arabia and signed by Bahrain.

Given that this research will focus on the Arab human rights system, it will need to adopt criteria for a robust assessment. A study published by the European Parliament,³ titled “*The Role of Regional Human Rights Mechanisms*”, classified the existing regional human rights protection mechanisms according to their nature and effectiveness into four categories.⁴ These categories are comprised of (1) “*an advanced regional system of human rights protection in Europe and America*”; (2) “*a regional system requiring further consolidation like the African system*”; (3) “*an*

² The Vienna Declaration and Program of action 1993, asserted on importance of the role of regional human rights systems article 37, available at (<https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>)

³ Information about the European Parliament are available at (<https://www.europarl.europa.eu/about-parliament/en>)

⁴ European Parliament, 2010, p. 11.

emerging regional system for the Arab countries"; and, (4) *"a region without a regional system of the human rights protection, such as Asia"*.⁵ The study provides the four conditions to assess the effectiveness of a regional system mechanism in the protection of human rights, which include *"regional inclusiveness, independence, access to justiciability, and follow-up mechanisms."*⁶ To that end, this research will build on the same four-tier criteria to assess the component of the Arab human rights system, with a specific focus on the Arab Human Rights Committee.

The research will begin by providing an analysis of the Arab regional human rights mechanisms and instruments and discuss their effectiveness in protecting and promoting human rights in the region. The research will then provide an in-depth discussion of the Arab Human rights Committee, its mandate and work since it began operating – an analysis that has been done only in few other studies all of which were published in Arabic. To this end, the first chapter of the thesis will briefly discuss the creation of LAS in 1945 (before the creation on UN) as the first regional organization and its growing interest in human rights promotion and protection in the region, or lack thereof. The research will then shed light on the main international and national factors that have contributed in shaping the Arab human rights system. The second chapter will then illustrate the main mechanisms and instruments of LAS, including the Arab Charter on Human Rights and the Statute of the Arab Court of Human Rights. The third chapter will examine the mandate of the Arab Human Rights Committee and evaluate its work over the years in accordance with the criteria provided above. The fourth and final chapter will discuss the level of engagement between Arab civil society and LAS organs and its human rights mechanisms.

⁵ We also can add the system adopted by the Organization of Islamic Cooperation, see Al-Midani, Mohammed Amin, 2019, p. 9. and p. 56-58.

⁶ European Parliament, 2010, p.14.

Chapter I: The Evolution of Human Rights Promotion and Protection System within the League of Arab States Organization

The League of Arab States (LAS) was created in 1945 to serve as the first regional organization of its type. Unlike other regional organizations, human rights, democracy, and rule of law have not been of LAS interests or priorities. However, over the past decades, a human rights system has made its way through hardly with uncomfortable for States within the LAS, imposed by several international and national events. Nonetheless, the lack of political will of the LAS Member States and their disfavor of human rights made it even more challenging for the system to be effective. This chapter will briefly provide a brief about the historical background on the formation of the LAS. It will then shed the light on the Pact of the LAS as a foundation document, and its relation with Human Rights norms, it will then illustrate the main organs and bodies of the LAS. It will also provide an analysis of the international and national contexts that contributed to the evolution of the Arab Human Rights System.

A. The Creation of the League of Arab States (LAS) as a Regional Organization

Attempts to achieve Arab unity extended back to the 19th century with the rise of the Arab Nationalism movement and its struggle for independence from the Ottoman Empire. However, the scope, nature, and aim of such unity remained ambiguous until the mid-1940s after the establishment of the League of Arab States (LAS).⁷ For instance, one of the significant initiatives to unify the Arab world was led by General Nuri Es-Said, the Iraqi Prime Minister at that time. In 1941, Nuri put forward a plan for the creation of the Arab League with an Arab Permanent Council which he underlined its objectives in six main areas related to; “*defense, foreign affairs, currency, communications, customs and protection of minority rights*”.⁸ However, Nuri’s plan did not obtain consensus of the Arab countries due to conflicting political interests among some countries.⁹

In 1943, the plan for the Arab unity was officially picked up, this time by Egypt, and it was motivated by a statement made by the British Foreign Security Mr. Eden on 24 February 1943 in

⁷ Al-Ajaji, Mohammed S. M, 1983, p. 14-15.

⁸ Aziz, M.A, Dec 1955, p.483-484.

⁹ Ibid, p.485-486.

which he extended¹⁰ his government's support to any plan that promotes for Arab unity.¹¹ Since then, Egypt took the initiative to uphold Arab unity and started organizing meetings with Arab countries to promote the plan and get their views on it. Efforts made by Egypt in this period led to the formation of a "Preparatory Committee" that consists of envoys of Arab states¹² entrusted to put the outline for the project. On 25 September 1944, the Preparatory Committee held a conference in Alexandria, Egypt, to discuss the project of Arab unity that would secure the approval of all states. After 12 days of discussions, the Committee provided the "Alexandria Protocol" signed on 7 October 1944 by all the Committee members except Saudi Arabia and Yemen, who both signed it in 1945 respectively after it was drafted. The protocol underlined the scope of cooperation between Arab states in matters of political issues and concerns, social issues, nationality and passports, economy, health, culture, and issues of communications.¹³

In fact, the deliberations of the Alexandria conference had been overwhelmed by the national political interests' agenda of each state over the interests of a meaningful unity. In addition, states were hesitant to relinquish certain parts of their sovereignty in favor of the central organization's objectives unlike other similar regional organizations.¹⁴ The outcome of the "Alexandria Protocol" was a general agreement in favor of an organization established based on a broad mandate with ambiguous vision and links to the future United Nations, over the desire of a full political unity.¹⁵ This form was supported by the international community. According to Robert MacDonald "...it appears that the founders of the Arab League were on sound ground when they rejected political union in favor of regional organization. "Arab unity," nevertheless, remains the sacred cow of the League: it gives little nourishment, but no one dares kill it".¹⁶

The "Alexandria Protocol" established a political Committee to draft the Pact of the League of Arab States as a first regional organization of this type. As of 22 March 1945, the Pact was drafted and ratified by six Member States¹⁷: Egypt, Iraq, Lebanon, Syria, Saudi Arabia and Trans-Jordan

¹⁰ For more information on the British support for Arab unity see: Aziz, M.A, Dec 1955, p.483-486.

¹¹ Ireland, Philip W, 1945, p.798.

¹² The Committee composed of representatives of, Syria, Lebanon, Iraq, Egypt, Transjordan, Saudi Arabia, Yemen and Palestine.

¹³ Ireland, Philip W, 1954, p.798-800.

¹⁴ Macdonald, Robert W, Dec 1965, p. 25-26.

¹⁵ Aziz, M.A, 1955, p.488.

¹⁶ Macdonald, Robert W, Dec 1965, p.41.

¹⁷ Aziz, M.A, 1955, p.490.

which became Jordan in 1946.¹⁸ The Pact entered into force on 10 May 1945 and more Arab States joined respectively.¹⁹ As of today, the LAS consists of 22 States extended between the Middle East and North Africa.²⁰ These countries include *inter alia* Algeria, Bahrain, Comoros, Djibouti, Kuwait, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Somalia, Sudan, Tunisia, the United Arab Emirates (UAE) and the what became united Yemen in 1990.²¹ Ten of them are also members of the African Union.²²

B. The Pact of the League of Arab States

The Pact of the League of Arab States consists of a preamble, 20 articles, and three annexes.²³ The Pact as a foundation document of the LAS set forth the memberships, aim, structure as well as the functions of LAS. According to Article (1), the LAS consists of every independent Arab State that has signed the Pact, while other Arab States that wish to join the League should submit an application to the General Secretariat which will then submit it to the Council where it will be examined in its first meeting following the submission of the application.²⁴ In this regard, the criteria for membership as defined in the Pact that a member is a State, Arab, independent, and has sovereignty. Unlike other regional organizations such as the Organization of African Unity (OAU) and the Organization of American States (OAS) geographic proximity is not required as part of the criteria. Moreover, unlike the Council of Europe membership of the League does not require State parties' adherence to principles of democracy, good governance, rule of law or human rights.²⁵ The LAS was criticized for going far in granting membership to some African States²⁶

¹⁸ A representative from Palestine attended but he did not sign it. See: Rishmawi, Mervat, 2015, p.9.

¹⁹ Ibid.

²⁰ Ireland, Philip W, 1945, p.799 -800.

²¹ Rishmawi, Mervat, 2015, p.10.

²² Algeria, Comoros, Djibouti, Egypt, Libya, Mauritania, Morocco, Sudan, Somalia and Tunisia.

²³ The First annex is about Palestine which include the Council of the League nominated a Palestinian representative to participate in its sessions until it achieves independence. The second, is about the cooperation between the LAS and the non-dependence Arab States which are not members of the League. The third related to appointing Mr. Abdel-Rahman Azzam, Minister of the Egyptian Ministry of Foreign Affairs as the first Secretary-General of the League for a period of two years. More information about the historical background on the League of Arab State visit the LAS website :<http://www.leagueofarabstates.net/ar/aboutlas/Pages/HistoricalOverView.aspx>. See also: Aziz, M.A, 1955, p.491.

²⁴ An English copy The Pact of the LAS is available at: https://avalon.law.yale.edu/20th_century/arableag.asp.

²⁵ For example, article (3) of the statute of the Council of Europe reads “*Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realization of the aim of the Council as specified in Chapter I*”. The Statute of the Council of Europe available at: <https://rm.coe.int/1680306052>

²⁶ King, Preston, 1978, p.104-105.

whose official language is not Arabic such as Somalia,²⁷ or where Arabic language is partially used such as in Djibouti and Mauritania. In other words, the classification of what is considered an Arab State is vague in light of the absence of the language requirement; and hence it appears that membership is left to the discretion of the Council.²⁸

Article (2) of the Pact outlines the aims of the LAS such as strengthening ties between Member States; political coordination; safeguarding independence and sovereignty to serve the affairs and interests of the Arab Countries; cooperation in economic, communications, cultural matters; as well as other issues related to nationality, passports, visas, execution of judgments and extradition; social welfare and public health. In addition, by virtue of article (5) of the Pact the League must play a role in mediating disputes that might arise between Member States themselves or a third party. However, its resolutions are not binding unless accepted by the respective states. Another task that was assigned to the League in article (3); is to coordinate and cooperate with international bodies that might be established in the future, which subtly refers to the creation of the United Nations.²⁹

From this perspective, the LAS was created to be an intergovernmental regional organization for coordination and cooperation; hence its objectives are intersected with the objectives of its counterparts of the international and regional organizations which were formed thereafter.³⁰ However, the organization over the years fell behind its counterparts in regard to human rights, democracy, rule of law, and good governance as all of these principles were not on the agenda of the LAS. In contrast, the promotion and protection of human rights and fundamental freedoms and other principles mentioned above were set forth among other international and regional organizations' principles, priorities, and purposes. In addition, the Pact allows only for States

²⁷ The official language of Somalia who joined the LAS in 1974 is Somali. King, Preston, 1978, p.104-105.

²⁸ King, Preston, 1978, p.104-105.

²⁹ See Article 2, 3 & 5 of the Pact. Available at: https://avalon.law.yale.edu/20th_century/arableag.asp

³⁰ For example, Chapter I, Art 1(3) of the Charter of the United Nations provides the purpose of the United Nations among other aims is to “achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character”. The United Nation Charter is available at: <https://www.un.org/en/sections/un-charter/un-charter-full-text/>

See also Chapter (I) aim of the Council of Europe, Art 1 (b). available at: <https://rm.coe.int/1680306052>

See Purposes Art II (2) of the Organization of African Union Charter. available at :

https://au.int/sites/default/files/treaties/7759-file-oau_charter_1963.pdf

See Chapter I Art (1), Nature and purposes of Charter of the Organization of American States available at: http://www.oas.org/en/sla/dil/inter_american_treaties_A-41_charter_OAS.asp

engagement with LAS bodies, and excluded individuals or nongovernmental organizations from such engagement.³¹ Moreover, that the Pact made no reference to the term ‘Arab Citizens’ or ‘Arab People’ throughout the whole text. It also did not mention the right to self-determination even though most of the Arab countries were under colonization and the Palestinian cause was one of its central issues of concerns for the LAS.³²

Given that the LAS was created before the United Nations and the other Regional organizations, it is argued that LAS was influenced by the Covenant of the League of Nations³³ given that the latter was the only international module organization at the time. Meanwhile, principles such as democracy, human rights, and rule of law were not on the international community’s agenda and therefore the LAS was not influenced by it. According to Robert MacDonald “...*the Pact resembles the League of Nations Covenant more than anything else, and some of its phraseology and provisions seem to have been lifted from either the League Covenant or the draft United Nations Charter*”.³⁴

Yet it is important to stress four main points in this regard. First, the draft UN Charter which was discussed at that time included provisions pertaining to human rights which were disregarded by LAS and were not included in the Pact, meaning that the issue of human rights was in fact on the international community’s agenda at the time. Second, the protection of minority rights was a subject of the League of Nations as a matter of concern of the international community in that era.³⁵ It was addressed in the Nuri Es- Said proposal for the Arab unity in 1941³⁶, however, the Pact still made no reference to minority rights as a principle. Third, over the years that followed the creation of the United Nations, the Member States of the LAS did not tend to amend the Pact as provided by article 19³⁷ to include human rights or other values in line with the development of human rights and the United Nations principles despite proposals submitted over the past years to

³¹ Only in 2005 the Council established the Arab Parliament to serve as a platform for Arab people participation in the work of the Arab League.

³² Hassan, Bahey Eddine, 2014, p.50.

³³ Macdonald, Robert W, 1965 p.42.

³⁴ Ibid

³⁵ Buergenthal, Thomas, 2006, p. 783.

³⁶ Aziz, M.A, Dec 1955, p.483-484.

³⁷ Article 19 of the Pact allows for its amendment for inter alia including to regulating the relations with international bodies that might established in the future. https://avalon.law.yale.edu/20th_century/arableag.asp

include it.³⁸Fourth, human rights remain one of the controversial issues at the LAS and it has hardly made progress over the past years. This demonstrates that the omission of human rights from the Pact by Arab States was a matter of discretion rather than non-awareness.

This also demonstrates why efforts to create a system to promote and protect human rights has been barely developing within the LAS during the past decades, thus its failure to enforce the universal human rights standards provided by the United Nations. The absence of human rights from the LAS agenda reflects the Member States' negative positions on human rights and was not the consequence that it's the first regional organization.

C. The Main Bodies of the League of Arab States

The LAS consists of three main bodies established by the Pact in addition to other bodies that were created by the Council of the LAS.³⁹ For the purpose of this research we will outline the main bodies and the institutional mechanisms of the LAS.

- 1. The Council of the LAS:** is a charter-established body, the chief political body of the League and its decision-making body. It consists of representatives of Arab States including the Palestinian Liberation Movement -now the State of Palestine. Each State has one vote. The Council is responsible for many issues including overseeing the implementation of agreements between Member States, solving disputes between Member States through arbitration and mediation, outlining the level of cooperation with international organizations towards preserving international peace and security; appointing the Secretary General of the LAS, and setting up the bylaws of the Council, the Permanent Committees and the General Secretariat. Furthermore, the Council is responsible for accepting memberships and approving states withdrawals from the LAS. Since 2000, the Council started to take its decisions at three levels; the Summits of Heads of States, Ministers of Foreign Affairs and the Permanent Representatives.⁴⁰
- 2. The Economic and Social Council:** established in 1953, its objectives were modified in 1997 and in 2004. It approves any new Committees to be established under the LAS and

³⁸ Rishmawi, Mervat, 2015, p.15.

³⁹ Ibid, p.19.

⁴⁰ Ibid, p.20-21.

consists of Ministers of Commerce and financial affairs. It grants Nongovernmental organizations (CSOs) an observer Status with very strict criteria.⁴¹

3. **The Ministerial Councils:** consists of 13 specialized Councils of Member States for cooperation on issues regarding, youth, housing, media, sports and others. Its decisions influence the daily life of Arab people and it often has negative impacts on human rights. For instance, the Council of Ministers have adopted some legislations as a guidance for Member states such as the Arab Convention on the Suppression of Terrorism (1998) and principles regulating media and satellite and television broadcasting (2008) both of which contradict international human rights standards.⁴²
4. **The General Secretariat:** it is based permanently in Cairo, Egypt and is responsible for technical and administrative tasks including pursuing the implementation of the Council's decisions and its Committees, determining the date of sessions of the LAS's Council, calling for the meetings of Council and the permanent Committees, organizing related secretarial work as well as preparing for the LAS budget. Additionally, the Secretariat is entrusted with political tasks which increased significantly with the expansion of the LAS activities and the multiplicity of the dimensions of those activities and their fields.⁴³

D. Arab Mechanisms

1. **The Permanent Arab Commission for Human Rights (PACHR):** the first human rights mechanism of the LAS established in 1968. It consists of one representative from each Member State and is usually criticized for the lack of independence. It is responsible for drafting human rights treaties before being adopted by the Council or the Summit.
2. **The Arab Parliament:** The Parliament was established in 2005 by the Arab Summit resolution (292) as a platform to engage the Arab people in the work of the LAS. Its Statute was adopted in 2012.⁴⁴
3. **The Arab Committee on Human Rights:** "The Charter Committee" the first independent human rights mechanism within the LAS created by article 45 of the Arab Charter on Human Rights 2004 mandated for state reporting examination.

⁴¹ Ibid, p. 31-38.

⁴²Ibid, p. 24-26.

⁴³ Ibid, p.60-62.

⁴⁴Ibid, p.48.

- 4. The Arab Court on Human Rights:** The Statute of the Arab Court on Human Rights was adopted on September 7, 2014 and its permanent office is in Al-Manama, Bahrain. It has not entered into force yet.

Furthermore, considering that the LAS headquarters is based in Egypt along with the Arab Human Rights Committee, the Permanent Arab Commission for Human Rights, the General Secretariat, and the Secretary General is usually Egyptian, it appears that Egypt has a greater influence on the dynamics of the LAS.

E. The Evolution of the Arab Human Rights Promotion and Protection System within the LAS

As discussed above, the issue of human rights was not included in the Arab League Pact. It is true that the LAS was formed before the creation of the United Nations and the popularizing of human rights at the international and regional agendas, however, it took the LAS over 23 years to include human rights on their Agenda and to trace the global trend towards human rights promotion and protection.⁴⁵ This fact is not striking if we consider the political nature of most of Member States of the LAS, who were in some instances ruled by various undemocratic and authoritarian regimes where some Arab leaders ruled their countries with an iron fist.⁴⁶ Gross human rights violations have been recorded in a widespread and systematic manner across the region. Atrocities took place in some countries as a result of civil wars and political unrest. The governance transfer was often led by military coups rather than as a result of democratic reforms. Some countries were-and remain- under occupation to this day such as Palestine.⁴⁷ Meanwhile, economic, social, and cultural rights have not been recognized in many Arab countries.⁴⁸

Despite such an environment, the Arab world was not isolated from the global contexts and thus it was slowly influenced by the global variables which accompanied the creation of the United Nations and the development of the human rights promotion and protection system at the international arena. Other global political contexts contributed such as the end of the Cold War

⁴⁵ Hassan, Bahey Eddine, 2014, p.50. Abdullahi A. An-Na'im, 2001, p.712.

⁴⁶ Börzel, Tanja A, Vera Van, Hüllen. 2015, p. 141.

⁴⁷ Hassan, Bahey Eddine, 2014, p.48.

⁴⁸ Arab Studies Quarterly, 1990, p.103-104.

and the global trend toward democratization and the institutionalization of human rights. In addition, the 11 September attacks in 2001 and the so-called “war on terrorism”, and most importantly the outbreak of the “Arab Spring” in 2011 and the growing popular demand for political reforms have played a significant role in pushing the Arab LAS to address human rights as a response to international and national pressure. As such, these events contributed in shaping the Arab approach to human rights promotion and protection system that still struggles to make its way under the LAS framework. This part of the research will shed light on the main international and national events that contributed to establishing and developing the Arab human rights system during the past two decades.

1. The Impact of the UN System on the Creation of the Arab Human Rights System

In the late 1960s, Arab Human Rights mechanisms started to emerge under the LAS framework by the creation of the Permanent Arab Commission for Human Rights (PACHR) in 1968 as the first human rights mechanism in the region. The creation of the PACHR was driven by several factors, including a proposal made by the UN Human Rights Commission towards the creation of a region-based Human Rights Commission similar to those in Europe and America. To avoid the imposition of a regional commission by the UN due to concerns of imposed power over Arab States, Arab Countries took the initiative to create the PACHR as a way out to respond to UN demands with less serious impacts.⁴⁹

Furthermore, in this period the United Nations held many activities with regard to human rights, including the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) 1965,⁵⁰ and the International Human Rights Covenants in 1966. In addition to the preparation for the Tehran World Conference marking the 20th anniversary of the United Nations Declaration of Human Rights, the United Nations General Assembly called on its Member States and the regional organizations to consider 1968 “a year of human rights”.⁵¹ Arab countries, as others in the world were invited to take part in the events and for that purpose the LAS formed two Committees to coordinate its scope of coordination with the United Nations

⁴⁹ Al-Ajaji, Mohammed S.M,1983, p.112.

⁵⁰ The convention is Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>

⁵¹ In 20 Dec 1965, the United Nation General Assembly issued it resolution 2081 calling on its member States and Regional Organizations to commemorate the 1968 as a year for human rights. Abdullahi A. An-Na'im, 2001, p. 712.

bodies.⁵² In light of this, on 3 September 1968 the Council of the LAS issued Resolution 2443 which provided the creation of the Permanent Arab Commission for Human Rights (PACHR) to be the first Human Rights Mechanism within the Arab League.⁵³ This will be discussed in more details in the next Chapter.

The Secretariat of the LAS organized its first human rights conference in Beirut between 2-10 December 1968, where participants expressed their concerns over the Israeli occupation of Palestine. They further proclaimed for more cooperation in the field of human rights protection at the international and regional levels, as well as with the PACHR.⁵⁴

During the 1970s the Arab League engaged more with the United Nations human rights activities, including on women, children and family rights.⁵⁵ In 1983, the LAS adopted the Arab Charter on the Rights of the Child, which was the first human rights instrument adopted by the LAS. The Charter was adopted in the context of the discussions that took place in the early 1980s, prior to the adoption of the UN Convention on the Right of The Child 1989.⁵⁶ As of 1970 the LAS formed the Arab Women Committee as part of its efforts in taking part in the first international conference on women prior the adoption of the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) in 1979.⁵⁷

It is argued by some that the creation of the PACHR was merely a political tactic rather than a genuine interest in reinforcing human rights protection in the region. For example, Börzel, T. and van Hüllen argue that: *“The creation of the PACHR was a tactical concession to international expectations, trying to deflect the ‘threat’ of a human rights commission for the Arab world imposed through the UN system that might not be under the direct and sole control of the Arab*

⁵² Börzel, Tanja A, Vera Van, Hüllen, 2015, p. 143. Both Committees were created by the resolution 2259 12 Dec 1966, and resolution 2304 18 March 1967. For more information see: Abdullahi A. An-Na'im, 2001, p.712.

⁵³ Abdullahi A. An-Na'im, 2001, p.712.

⁵⁴ Ibid, p. 712.

⁵⁵ If we look at the Arab approach toward acceding international treaties we realize that most of the Arab countries have joined the UN treaties on children, Women rights and the CERD quickly in comparison to their attitude toward acceding the two UN Covenants 1966, and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984, which was ratified by most of Arab countries in the middle of 90s –2000.

⁵⁶ Börzel, Tanja A, Vera Van, Hüllen, 2015, p.144-145.

⁵⁷ Ibid, p.145.

League's member states".⁵⁸ Nonetheless, the creation of the PACHR formed the base for shaping the human rights system within the framework of the LAS.

2. The Influence of the African Systems on the Creation of the Arab Human Rights System

Ten Arab countries that are Members of the League of Arab States are also members of the African Union.⁵⁹ All of these countries, except Morocco, have ratified the African Charter on Human and Peoples' Rights.⁶⁰ Additionally, some of them have also ratified other human rights instruments in the African system such as the Maputo Protocol to the African Charter, focused on the protection of the rights of women and girls in Africa,⁶¹ and the African Charter on the Rights and Welfare of the Child.⁶² In the past few years, several Arab representatives have also occupied positions of commissioners at the African Commission of Human Rights.⁶³ In light of this context, it is probable that the engagement of several Arab countries in the African system might have also influenced the development of the Arab human rights system.

3. Global, Regional, and National Political Contexts and the Creation of the Arab Human Rights System

a) The End of the Cold War and the Global Shift Towards Democratization and the Institutionalization of Human Rights

By the End of the Cold War in the early 1990s, the world had witnessed remarkable trends toward democratization and institutionalization of human rights. In this period, states in East and Central Europe, Latin America and some parts of Asia witnessed political transformation toward democracy. Globally, steps were taken towards the institutionalization of human rights including

⁵⁸ Börzel, Tanja A, Vera Van, Hüllen, 2015, p. 143-144.

⁵⁹ These Arab countries are: Algeria, Comoros, Djibouti, Egypt, Libya, Mauritania, Morocco, Sudan, Somalia and Tunisia.

⁶⁰ List of countries that have ratified the African Charter is available at: <https://au.int/en/treaties/african-charter-human-and-peoples-rights>

⁶¹ Lists of countries ratified the protocol are available at https://www.equalitynow.org/ratify_the_maputo_protocol

⁶² List of countries which have ratified the African Charter of the Child are available at: <https://www.acerwc.africa/ratifications-table/>

⁶³ More information about former Commissioners available at the African Commission Website: <https://www.achpr.org/formercommissioners>

the World Conference on Human Rights in 1993; the establishment of the Office of the High Commissioner for Human Rights (OHCHR); the increasing number and influence of (CSOs) particularly those working in the field of human rights at national and regional levels; and the emergence of National Human Rights Institutions (NHRIs).⁶⁴ In spite of these development the Arab States remained elusive to such democratic transformation and they used human rights as a political tactic to counter the growing international pressure and domestic efforts to the international community to proclaim reforms as explained below.⁶⁵

The adoption of the Arab Charter on Human Rights 1994 came as part of the PACHR's preparations for the 1993 World Human Rights Conference in Vienna. The plan was to adopt it by Member States before the Conference. However, the Council postponed its adoption for one year waiting for further responses from Member States.⁶⁶ On 15 September 1994, the Arab Charter was adopted by the Council per Resolution 5437 which remained a dead letter as no Member State had ever ratified it. The 1994 Charter was a primitive human rights document, which was widely criticized by experts at both regional and international levels for not meeting universal human rights standards, and for contradicting them in some aspects. For instance, the Charter failed to provide human rights protection in many areas including fair trial guarantees and the right to political association and participation. Most importantly, the Charter leaves the door open for states to either comply with the Charter provision or not. In addition, the Charter lacked a human rights protection mechanism.⁶⁷

During the consultations over the Charter the Egyptian delegations in their attempts to convince Member States representatives to adopt it, summarized the Arab vision behind the Charter by stating that it is “...as a regional shield against international pressures on Arab states in the field of human rights”.⁶⁸ It is worth mentioning here that such pressure in this period has not affected all Arab countries in similar manner. For example, much pressure was imposed on Morocco,

⁶⁴ Donnelly, Jack, 2011, p.9.

⁶⁵ Börzel, Tanja A, Vera Van, Hüllen,2015, p.145.

⁶⁶ Abdullahi A. An-Na'im, 2001, p.714. Seven Arab Countries rejected the draft in 1992 which were: Kuwait, Saudi Arabia, Bahrain, Oman, Sudan, United Arab Emirates and Yemen.

⁶⁷ Riad, Sohair, Oct 2013, p.16-17. Abdullahi A. An-Na'im, 2001, p.714.

⁶⁸ Abdullahi A. An-Na'im, 2001, p. 715.

Tunisia and Algeria in comparison to countries like Egypt, Jordan and the Gulf States who were more impacted later by international pressure following the 11 September attacks in 2001.⁶⁹

b) The Aftermath of 11 September 2001 and “The War on Terror”

In 2004 a revised version of the Arab Charter on Human Rights was adopted during the 16th ordinary Arab Summit convened in Tunisia between 22-23 May.⁷⁰ The revision was done in the aftermath of the 11 September attacks, as Arab states faced huge international pressure for political reforms.⁷¹ Such pressure could be concluded from the American officials who expressed in several occasions that the stability of the authoritarian regimes does not guarantee the security of the United States and therefore, bad governance in the Middle East is the main cause for religious radicalization and terrorism which affect the world security.⁷² In this context, the Arab leaders used once again human rights as a political maneuver to reduce the pressure and gain some legitimacy to their regimes.⁷³ The international events coincided with a growth of social movements at national level which called for political and economic reforms such as the Egyptian Movement for Change “Kifay or enough” in 2004,⁷⁴ and the mining basin uprising outbreak in Tunisia in 2008⁷⁵ which added to the international pressure and contributed in pushing for more reforms at the LAS.

In response to such pressure the Council of the LAS adopted two resolutions, 6148 and 6243, in which they proposed to revise the Arab Charter 1994 in order to bring it in conformity with international standards. In addition, both the Arab Council and the Secretary General put forward several proposals towards the “modernization” of the LAS which include to revising the Arab Charter and creating the Arab Court of Justice⁷⁶, Arab Security Council as well as the Arab Parliament, among others.⁷⁷ Based on this proposal, the Charter was revised and the Arab Parliament was founded. An important discussion took place at that time about amending the Pact

⁶⁹ Cardenas, Sonia; Flibbert, Andrew, 2005.

⁷⁰ R, Almakky, 2015, p.134.

⁷¹ Ibid, p.133.

⁷² Oweidat, Nadia and others, 2008, in vii. Al-Ezzi, Ghassan, 2017, p.597-798.

⁷³ Riad, Sohair, Oct 2013, p.18-19. Börzel Tanja A, Vera Van, Hüllen, 2015, p.150.

⁷⁴ Oweidat, Nadia and others 2008, p.3.

⁷⁵ Chakroun, Hatem, 2018, p.91.

⁷⁶ A proposal was submitted by the Arab League Secretary General submitted a new draft Statut in 2005

⁷⁷ Riad, Sohair, Oct 2013, p.19.

of the LAS to include human rights. However, it was postponed and eventually not implemented.⁷⁸ Similar discussions took place regarding the establishment of a Court of Justice.⁷⁹ Accordingly, the major achievements that can be recorded in this period are the adoption of the revised Charter 2004 and the establishment of the Arab Parliament.⁸⁰

c) The Outbreak of the “Arab Spring” in 2010

Following the Arab uprisings that started in 2010, visions to reform the organs and the structure of the LAS have been proposed by Arab CSOs and the LAS Bodies. These visions were crystalized by attempts made by Nabeel Al-Arabi, the Secretary General of the LAS at that time, to engage the Civil Society Organizations in the work of the LAS which has not led to any change in practice.⁸¹ Additionally, in 2012, the United Kingdom of Bahrain driven by the findings of the Bahrain Independent Commission of Inquiry (BICI) on the events that took place since 2011 and their sequences,⁸² presented a proposal to establish an Arab Court of Human Rights.⁸³ The proposal was adopted in the Doha Summit convened in March 2013 and in 2014 where the Statute of the Court was adopted by the Council of Ministers of Foreign Affairs. Nonetheless, the Statute was widely rejected by national, regional and international human rights organizations for not meeting international human rights guarantees and standards, besides its lack of independence.⁸⁴

It is clear that the foundations of the Arab human rights mechanisms and instruments were impacted by several global factors as described above. Though all of these factors contributed to shaping the existing Arab human rights system and its mechanisms towards the promotion and protection of human rights, however, these mechanisms remain primitive and fall short of the international standards as discussed in the next chapter.

⁷⁸ Rishmawi, Mervat, 2015. p.15-16.

⁷⁹ Rishmawi, Mervat, Oct 2013, p.28.

⁸⁰ Ibid

⁸¹ FIHD, 2013, p.30.

⁸² For more information about the BICI visit: http://www.bici.org.bh/index79e3.html?page_id=235

⁸³ Speech of HM king Hamad bin Isa Al Khalifa on 23rd November, available at:

http://www.bici.org.bh/index79e3.html?page_id=235

⁸⁴ Rishmawi, Mervat, 2015, p.59. <https://reliefweb.int/report/world/challenges-abound-proposed-arab-court-human-rights>

Chapter II: The Role and Power of the Arab Human Rights System Mechanisms

Any regional human rights system consists of three main pillars. Firstly, human rights instruments, including treaties and protocols that establish the legal basis and codify rights and freedoms. Secondly, human rights commissions that deal with human rights issues. Thirdly, human rights mechanisms that monitor Member States' implementation of their human rights obligations.⁸⁵ To ensure that the system is effective it must rely on regional binding treaties and mechanisms. It must be independent, provide individuals with access to its mechanisms and to justice, and it have follow-up mechanisms to ensure implementation.⁸⁶ This chapter will first illustrate the main human rights commissions and mechanisms of the LAS, their mandate and role in ensuring Member States' adherence to their human rights obligation's vis-a-vis the Arab people. It will then discuss the strengths and weaknesses of the revised Arab Charter on Human Rights 2004. The Chapter will provide analysis on the effectiveness and weaknesses of the overall Arab human rights system established by LAS.

A. The Human Rights Organs

1. The Permanent Arab Commission for Human Rights

As discussed in the first chapter, the Permanent Arab Commission for Human Rights (PACHR) was established on 3 September 1968, by Council Resolution 2443. It was established as part of the LAS attempts to respond to the United Nations pressure to form regional human rights mechanisms. Hence, the Arab Commission was a self-established as a way to avoid UN interference in the establishment of such a mechanism.

The PACHR was established as one of the permanent specialized commissions created by the Pact of the LAS and its rules of procedures were part of these commissions.⁸⁷ However, the PACHR introduced its first Rules of Procedures in 2007 and modified it in 2015.⁸⁸ Over the past years the Commission, through its composition, mandate, and functions, proved that it was not established

⁸⁵ Al-Midani, Mohammed Amin, 2019, p.7.

⁸⁶ European Parliament, 2010, p.14

⁸⁷ Article (4) of the Arab Pact created special committees that deal with several issues such as economic, health, and social issues and the PACHR has been later created as part of these commissions.

⁸⁸ Al-Midani, Mohammed Amin, 2016, p.10.

to be an effective mechanism in protecting human rights in the region in comparison to other regional organizations. Therefore, it has been widely criticized by human rights advocates and legal experts who perceived it as ‘not visible’. For instance, Bahey Eddine Hassan described the Commission’s effectiveness as follows: “***However it is called a Permanent Commission, no one could recognize that it is existing***”. Other experts described it as a Syndicate of the Arab States, referring to the low level of its independence.⁸⁹

The PACHR consists of representatives from all Member States who officially represent their countries. The Head of the PACHR is nominated by the LAS Council for a two-year renewable term.⁹⁰ The PACHR meets twice a year and has always been criticized for the lack of its independence due to the fact that its members pursue their roles in their official capacity, rather than their personal independent capacity.⁹¹ It has proven to serve as a political organ rather than a mechanism to examine human rights situations in Arab countries, or to address human rights issues.⁹² Historically, the PACHR has mainly focused on the Israeli occupation of Palestine, which is an important issue yet less controversial as opposed to bringing real change about.⁹³ In addition, the PACHR has no power to take decisions related to human rights issues as it merely serves as an advisory body to the Council of the LAS on human rights issues based on a request by the Council, or the Secretary General or Member States. The Council has complete discretion to adopting recommendations provided by the PACHR.⁹⁴

Since the beginning, the PACHR was assigned with, inter alia, supporting Arab joint work with regard to human rights issues, seeking protection for Arab people while taking into account the Arab culture specificity of certain human rights issues, besides to raising awareness about human rights among the Arab people.⁹⁵ The mandate given to the PACHR was loose and it did not provide practical mechanisms to achieve its aims.⁹⁶ This mandate was modified in 2015 to include, in addition to its advisory role, the harmonization of Arab legislations with international standards,

⁸⁹ Hassan, Bahey Eddine, 2014, p.52.

⁹⁰ Article 5 of the Rules of Procedure of the Permanent Arab Commission for Human Rights

⁹¹ Rishmawi, Mervat, 2015, p. 27.

⁹² FIDH, 2013, p.13.

⁹³ Midani, Mohammed Amin, 2019, p.170.

⁹⁴ Ibid, p.156.& Rishmawi, Mervat, 2015, p.27.

⁹⁵ Al-Ajaji, Mohammed S. M, 1983, p.114.

⁹⁶ Rishmawi, Mervat,2015, p.29

and to draft proposals of Arab Conventions relevant to human rights, The mandate incurs other duties on the PACHR, to conduct studies and research in the field of human rights, provide recommendations on human rights issues upon requests from Member States or the Secretary General, coordinate and cooperate, and provide technical assistance to Member States on their obligation towards United Nations Conventions and Treaty Bodies.⁹⁷ However, no real achievements have been witnessed on the ground.

In contrast to other regional mechanisms, the PACHR does not have the power to receive individual complaints, review reports of Member States, or appoint special rapporteurs, working groups or missions, or any other mechanisms available in other regional systems.⁹⁸ Hence, through its work it did not contribute to developing human rights standards in the region, or contribute to improve the human rights protection in the Arab countries.⁹⁹ However its main achievements was that it was entrusted by the Council to draft an Arab Convention on Refugees Rights, besides contributing to the drafting of the Arab Charter on human rights 2004.¹⁰⁰ Furthermore, it held seminars and conferences on human rights related issues, and represented the LAS regionally and internationally.¹⁰¹

Finally, the PACHR has demonstrated very limited engagement with civil society organizations throughout the past years and has designated restricted criteria to allow them to participate in its activities, which will be discussed thoroughly in the fourth chapter. Moreover, the PACHR failed to push for the adoption of two remarkable human rights documents regarding Arab human rights defenders and a guideline to combat torture and ill-treatment proposed by the State of Palestine.

⁹⁷ Al-Midani, Mohammed Amin, 2019, p.164-168.

⁹⁸ Rishamwi, Mervat, 2015, p.29.

⁹⁹ For example, the quasi-judicial recommendations and decisions of the African Commission on human and people's Rights among other producers such as, general comments, resolutions, principles and guidelines, have played a significant role in developing human rights standard setting on the several provisions of the African Charter.

¹⁰⁰ Al-Midani, Mohammed Amin, 2016, p.23.

¹⁰¹ In September 2006, the Council of the LAS established a Sub-Commission within the framework of the PACHR that consists of seven independent experts in human rights to be nominated by their states and elected by member states by a secret ballot. The members of the Sub-Commission must be independents, competent and impartial. According to Mohamed Amin Al-Midani, the Sub- Commission was created to complement the lack of human rights independent experts in the PACHR. And thus, it was entrusted with preparing human rights treaties and studies on human rights issues and present recommendations, among other issues. Since its establishment it drafted the LAS strategy to enhance human rights protection 2008-2013, establishing channels between the LAS organs to cooperate on human rights issues. It further reviewed the Arab Charter on Children Rights. In 2012, the Sub-Commission was dissolved by a decision of the Council based on a recommendation by the PACHR.

For instance, in its 32nd Ordinary Session in 2012, the State of Palestine submitted a draft proposal on the “Arab Declaration on Human Rights Defenders”, a draft that was in line with international standards on the protection of human rights defenders.¹⁰² The draft was approved in the 36th ordinary session convened in 2014, and was referred to the Secretariat to be presented to the Council in its next meeting in 2016 for adoption.¹⁰³ In 2016 certain states opposed the draft proposal and changed it to “*The Arab Declaration on the Rights of Groups and Individuals and Civil Society Organizations in Enhancing and Protecting of Human Rights and Fundamental Freedoms*”. The new draft did not adhere to the standards provided in the initial draft put forth by Palestine, emptying the document of its essence.¹⁰⁴

2. The Statute of the Arab Court on Human Rights

Driven by the events that took place in Bahrain in February and March 2011, King Hamad bin Isa Al Khalifa established an “Independent Commission of Inquiry” on 1 July 2011. The Commission was mandated with investigating “*the human rights abuses committed by Bahrain authorities against Bahrain protesters and demonstrators who called for political reforms*”.¹⁰⁵ On 23 November 2011, the Commission of Inquiry issued its report.¹⁰⁶ This prompted King Hamad to call on Arab States to establish an Arab Court of Human Rights “...*to move concretely toward the creation of an Arab Court of Human Rights to take its proper place on the international stage.*”¹⁰⁷ In 2014, the Statute of the Arab Court of Human Rights was adopted by the LAS. The adoption of the Statute has illustrated the flaws of the existing human rights protection system of the LAS and stressed once again the passive position of Arab leaders towards human rights protection mechanisms over the years. Deliberations on the creation of the Court were made in secret rooms

¹⁰² A copy of the declaration and the proposal available at the report and the recommendations of the 32 ordinary session convened in 2012 of the PACHR in Arabic at :

<http://www.lasportal.org/ar/sectors/dep/HumanRightsDep/Pages/CommitteeMeetingsDetails.aspx?RID=10>

¹⁰³ See the 36 ordinary session of the PACHR convened in 2014 available in Arabic:

<http://www.lasportal.org/ar/sectors/dep/HumanRightsDep/Pages/CommitteeMeetingsDetails.aspx?RID=7>

¹⁰⁴ See PACHR 39 ordinary session held in 2016. A copy of the new proposal is also available:

<http://www.lasportal.org/ar/sectors/dep/HumanRightsDep/Pages/CommitteeMeetings.aspx>

¹⁰⁵ The Report of the Bahrain Independent Commission of Inquiry, 2011, p.1.

¹⁰⁶ The Report of the Bahrain Independent Commission of Inquiry Available at:

<http://www.bici.org.bh/BICIreportEN.pdf>

¹⁰⁷ The speech of King Hamad available at: http://www.bici.org.bh/index79e3.html?page_id=235

and were limited to Member States' contributions without engaging civil society organizations or including legal experts in the entire adoption process.¹⁰⁸

In 2012, the Bahraini Government officially proposed an initiative to create an Arab Court of Human Rights, an initiative that was welcomed by the Council of Ministers of Foreign Affairs during the Arab Summit in Doha on 26 March 2013.¹⁰⁹ Accordingly, the Ministerial Council contingent a "high level Committee of legal experts" from states parties to work under the supervision of the LAS Secretariat in order to come up with a draft proposal on the Statute of the Arab Human Rights Court.¹¹⁰ No information about this Committee was published.¹¹¹ The draft was finalized between 15-18 March 2014. It was initially accepted by the Arab Summit in Kuwait in March 2014 which required finalizing the Statute and then displaying it to the Ministerial Council for its approval. On 7 September 2014, the Statute of the Arab Court on Human Rights was adopted and was open for ratification on 4 November 2014.¹¹² According to article 33 of the Statute, the Statute shall enter into force following ratification by seven States.¹¹³ As of today it has only been ratified by Saudi Arabia, whereas interestingly Bahrain, who initiated the creation of the Court and whose permanent seat is supposed to lie in its capital has not ratified the Statute yet.¹¹⁴

The Arab Civil Society Organizations including human rights associations, Bar associations and/or judicial experts were only informed about the Court Statute after it was initially accepted and just a few months before it was adopted by the Ministerial Council.¹¹⁵ Consequently, around 16 leading Human Rights organizations in the region submitted a letter to the Ministerial Council calling for

¹⁰⁸ Konstantinos Magliveras & Gino Naldi, 2016 p.157

¹⁰⁹ Ibid

¹¹⁰ Ibid

¹¹¹ Rishmawi, Mervat, 2015. p.54.

¹¹² Konstantinos Magliveras & Gino Naldi, 2016 p.157

¹¹³ See Article (33) of the Court Statute. A copy of the is statute available in English at:

https://aci.hl.org/texts.htm?article_id=44&lang=ar-SA

¹¹⁴ According to Article (3) of the Statute the seat of the Court will be in Al- Manama city in Bahrain.

¹¹⁵ According to HRW, on 25-26 May 2014, a conference was organized by the LAS and the Bahrain National Institution of Human Rights convened in Doha with the participation of national and international Human Rights organizations to discuss the initiative of establishing the Court. Nonetheless, the participants were informed that the drafting of the Court Statute was finalized and was awaiting approval of the Ministerial Council. More information available at: <https://www.hrw.org/news/2014/06/06/proposed-arab-court-human-rights-empty-vessel-without-substantial-changes-draft#>

postponing their approval of the draft.¹¹⁶ In early September 2014, representatives of national and international human rights organizations visited Cairo to meet officials and the LAS in order to delay the adoption until consultations with CSOs take place, but their efforts were disregarded.¹¹⁷ Hence, the process was highly criticized for the lack of transparency throughout entire process including ambiguity around the composition and drafters, the lack of consultations with CSOs in the drafting process, as well as its adoption.¹¹⁸

The Statute of the Court falls short below international standards in many areas including its power in providing human rights protection for individuals. Furthermore, access to the Court is limited to states upon acceptance of both parties; or to certain human rights organizations accredited by the LAS based on the approval of States. Hence, it does not allow for direct access to individuals.¹¹⁹ As stated under Article (19):

1-*“The State Party whose citizen claims to be a victim of a human rights violation has the right to access the Court, provided that both the Claimant State and the Defendant State are party to this Statute, or they have accepted the jurisdiction of the Court as determined by Article 20 of the Statute”*¹²⁰;

2- *“State Parties can accept, when ratifying or acceding to the Statute or at any time later, that one or more NGOs that are accredited and working in the field of human rights in the State whose subject claims to be a victim of a human rights violation has access to the Court”*.¹²¹

Such criteria present limitations in comparison to other international mechanisms¹²² particularly given that in practice states tend to not file complaints against each other for diplomatic considerations.¹²³

Regarding the admissibility criteria, similar to the approach adopted by other international and regional human rights mechanisms; local remedies must be exhausted before resorting to the

¹¹⁶ ICJ,2015. p.10

¹¹⁷ Ibid.

¹¹⁸ Ibid, p.11.

¹¹⁹ HRW, June 2014. Available at: <https://www.hrw.org/news/2014/06/06/proposed-arab-court-human-rights-empty-vessel-without-substantial-changes-draft#>

¹²⁰ Article 19 of the Court Statute available at: https://acihl.org/texts.htm?article_id=44&lang=ar-SA

¹²¹ Ibid

¹²² For example, some human rights treaty bodies allowed for inter-state complaints. For more information see: <https://www.ohchr.org/EN/HRBodies/Petitions/Pages/InterStateComplaints.aspx>

¹²³ ICJ, 2015, p.5-6.

Court. According to experts, this article should not be interpreted in a restricted manner and it should be flexible to allow for access in cases where the national jurisdiction is prolonged and inefficient.¹²⁴

Another area of concern is the competence of the court which is bound by the Arab Charter on Human Rights; which does not fully comply with international human rights standards¹²⁵ According to article (16) the Court has a jurisdiction over “...*all suits and conflicts resulting from the implementation and interpretation of the Arab Charter of Human Rights, or any other Arab convention in the field of Human Rights involving a member State*”.¹²⁶ Additionally, it is unclear what “*other Arab Human Rights documents*” this article refers to.¹²⁷

Moreover, the composition of the judges and the question of the Court and judges’ independence, as addressed in Articles 2, 5, 6, 7, 8 and 15 of the draft, remains an area of concern. It needs to be more precise to foster its independence and to meet the international standards concerning gender representation, impartiality, the level of experience, the election process of Judges and state non-interference. According to article (5) of the Statute; the court shall consist of seven judges from States parties which could be increased to 11 for a four-year term renewable by a request from the Court and acceptance from the Assembly which is to be created according to the article (2) of the Statute. The judges must be elected by the Assembly in a secret ballot and must demonstrate high competence and impartiality and should prove qualifications in the highest judicial and legal units in their countries with preferable experience in human rights.¹²⁸

B. The Human Rights Instruments

1. Charter of the Rights of the Arab Child

The Charter was adopted in 1983 and it consists of 51 articles and a preamble. It focuses on the fundamental rights and freedoms of the Arab Children including the right of children to health care and protection from physical negligence and exploitation. The Charter also set in place several

¹²⁴ Konstantinos Magliveras & Gino Naldi, 2016 p.165.

¹²⁵ Rishmawi, Mervat, 2015, p.57

¹²⁶ Article 16 of the Court Statute.

¹²⁷ Rishmawi, Mervat, 2015. p.57.

¹²⁸ ICJ, 2015, p12-20.

objectives and means to achieve children welfare.¹²⁹ The Charter is considered to be a significant contribution for enhancing the rights of children. In 2009, the PACHR tasked its Sub-Commission to update the Charter and align it with international standards. The Sub-Commission decided that the Charter is not adding value as most of the Arab States have ratified the UN Convention on the Rights of the Child and its protocols and hence the Arab Charter might duplicate the work in this regard.¹³⁰

2. The Arab Charter on Human Rights 2004

On 24 March 2003, the Council of the LAS issued Resolution 6302/119 (Part II) in which it assigned the PACHR to revise the 1994 Arab Charter on Human Rights.¹³¹ During this period, the Secretary General of the LAS expressed that the new version of the Charter must be in conformity with international standards.¹³² Nonetheless, the draft - which was prepared by the PACHR introduced lower standards than the 1994 version, allowing for national legislation to obtain a superior position than the Charter Provisions. This put the LAS under pressure to recognize calls made by the national and international CSOs to reject the submitted drafts.¹³³

In response to that, the LAS signed an understanding with the United Nations Office of the High Commissioner for Human Rights to provide them with technical assistance to redraft the Charter. Consequently, a team of Arab experts who works for the United Nations Treaty Bodies and Special Experts were assigned to draft the Charter. Between 21-26 of December 2003, the team met in the LAS headquarters in Cairo and started the drafting process during which they consulted with national and international human rights organizations who work in the region. That was the first opportunity for the CSOs to engage in the work of the LAS¹³⁴ which contributed in making the

¹²⁹ Al-Midani, Mohammed Amin, 2017. p.288.

¹³⁰ PACHR 28 ordinary session 2010 available at:

<http://www.lasportal.org/ar/sectors/dep/HumanRightsDep/Pages/CommitteeMeetingsDetails.aspx?RID=13>

¹³¹ Zerrougui, Leila, 2011, p.8

¹³² Amnesty, 2004, p.1.

¹³³ Rishmawi, Mervat, 2005, p. 363. Zerrougui, Leila, 2011, p.8-9.

¹³⁴ Amnesty, 2004, p. 3.

process more transparent and assisted the team in bringing a compressive and solid draft that was accepted by more than 40 CSOs who called for adopting it without modifications.¹³⁵

The team accomplished their mission in January 2004, and the proposed draft was discussed in the PACHR third extraordinary session convened between 4-8 January 2004 in Cairo. The PACHR on January 14 presented its draft based on the one provided by the experts but deleted some provisions, making the draft once again fall short to international standards.¹³⁶ In general, the new draft was considered a significant improvement compared to the 1994 draft, but it did not meet the ambitions of CSOs who highly criticized it.¹³⁷ Nevertheless, the new version was adopted by the Council of the League of Arab States during its 16th summit held in May 2004 in Tunis. Despite the deficiencies, some experts considered the adoption of the draft a step forward as it was the first time that Arab states have agreed to adopt a binding instrument that recognizes that human rights are universal, indivisible, interdependent and interrelated.¹³⁸

In May 2004, the revised Arab Charter was adopted and entered into force on 16 March 2008 after it was ratified by seven Member States. As of today, the Charter has been ratified by 16 Member States of the LAS.¹³⁹ It is also worth mentioning that the revised Charter secures numerous rights and provides human rights mechanisms with a basic level of protection through the Charter Committee, which allowed for the emergence of an Arab Human Rights system on basis similar to those provided on the international and regional levels.

a) The Rights and Freedoms of the Arab Charter on Human Rights

The revised Charter 2004, consists of a preamble and 53 articles which provide a range of civil and political rights together with economic, social and cultural rights in addition to rights concerns certain groups such as people with disability, women and children, old people, youth and migrants.¹⁴⁰ Besides, it includes rights of development likewise the African Charter on Human and

¹³⁵ The new draft was supported by more than 40 CSOs in the region who issued statements calling for its adoption without amendment. See Zerrougui, Leila, 2011, p.9.

¹³⁶ Zerrougui, Leila, p.11.

¹³⁷ Amnesty, 2004, p.2.

¹³⁸ Zerrougui, Leila, 2011, p.11-12.

¹³⁹ States which ratified the Charter based on the year of ratification are: Jordan, Algeria, Bahrain, Libya, Palestine, Syria, Yemen, Arab United Emirates, Saudi Arabia, Qatar, Sudan, Lebanon, Kuwait, Iraq, Egypt and Mauritania.

¹⁴⁰ Rishmawi, Mervat, 2005, p.364

Peoples Rights.¹⁴¹ The Charter by virtue article (45) creates a human rights mechanism to oversee states implementation to the Charter, the Arab Human Rights Committee (The Charter Committee).¹⁴² The Charter allows for its amendment as well as to suggest optional protocols.¹⁴³

Rights and freedoms set forth in the Charter could be classified into four groups. The first and second groups identify individual rights including “*right to life (5,67), right to not to be subjected to torture, inhuman or degrading treatment (articles 8, 9, 18 and 20); the right to be free from slavery (article 10); and the right to security of the person (articles 14 and 18). The second group outlines rights to obtain justice: the right of all persons to be equal before the law (article 12); and the rights to due process and fair trial (articles 13, 15, 16, 17 and 19)*”.¹⁴⁴

The third group deals with civil and political rights, including “*the right to freedom of movement (articles 24, 26 and 27); the right of respect for private and family life (article 21); rights of minorities (article 25); the right of political asylum (article 28); the right to acquire a nationality (article 29); liberty of thought, belief and religion (article 30); the right of private property (article 31); the right of information and liberty of opinion, expression and research (article 32); and the right to full consent to marriage (article 33)*”.¹⁴⁵ Finally, the fourth group contains some economic, social and cultural rights such as “*the right to work (article 34); the right to form trade unions (article 35); the right to social protection (article 36); the right of development (article 37); the right of education (article 41); and the right to participate in cultural life (article 42)*”.¹⁴⁶

In general, the 2004 Charter witnessed considerable improvement in many areas in comparison to the 1994 version. For example, article 1 (4) of the Charter explicitly asserted that human rights are “*universal indivisible, interdependent and indissoluble*”¹⁴⁷ and therefore it ended for the first time the Arab argument on the relativity of human rights especially that the Charter did not refer to

¹⁴¹ See Article 22 of the African Charter Available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201520/volume-1520-I-26363-English.pdf>. And article 37 of the Arab Charter on Human Rights 2004 is available in English at: http://www.eods.eu/library/LAS_Arab%20Charter%20on%20Human%20Rights_2004_EN.pdf

¹⁴² The Arab Charter on Human Rights 2004 Article (45).

¹⁴³ Articles 50-52 of the Arab Charter on Human Rights 2004.

¹⁴⁴ Al-Midani, Mohammed Amin; M. Akram, Susan, 2004, p.148-149.

¹⁴⁵ Ibid

¹⁴⁶ Ibid, p.148-150.

¹⁴⁷ Article 1 (4)

relativism based on culture or religious specificity.¹⁴⁸ In spite of this provision's improvement, the preamble and some provision of the Charter need to be amended to be in line with the principle of universality. For instance, the preamble which refers to the United Nations Declaration of Human Rights and the two International Covenants on Human Rights, still references the Cairo Declaration of Human Rights in Islam¹⁴⁹ which confirms the attitude towards relativism¹⁵⁰. Moreover, the Charter still refers to Shari'a Law (Islamic Law) as a standard to regulate women's rights,¹⁵¹ both references being contradictory to international human rights standards.

Furthermore, the Charter in many areas provided more progressive provisions than those provided by the international instruments.¹⁵² For example, regarding the prohibition of all forms of slavery and slave trade, as well as the prohibition of sexual exploitation or the exploitation of children in armed conflict¹⁵³ It also explicitly stipulated the equality between women and men in addition to prohibiting violence against women and children in the family.¹⁵⁴ Nonetheless, the provisions relevant to women's rights remain conflicting with other provisions of the Charter which are based on Shari'a law and domestic regulations.¹⁵⁵ Additional progress is witnessed regarding the right of persons with disability¹⁵⁶ the Charter includes by virtue of article 3 (1) the prohibition of discrimination against physical or mental disability.¹⁵⁷ Finally, the Charter requires states to promote human rights principles in educational programs and activities at both official and non-official levels.¹⁵⁸

On the other hand, the Charter falls short in the international human rights norms in many other areas related to rights to life, the prohibition of torture, women's rights, non-citizens rights, as well as freedom to religion - many of these rights which have been left to national legislations. Notably,

¹⁴⁸ Zerrougui, Laila, 2011, p.4.

¹⁴⁹ See the Preamble of the Charter.

¹⁵⁰ The Cairo Declaration is controversial when it comes to the principle of Universality of human rights and it emphasis on human rights relativism or what so-called cultural specificity with regard to Women rights and freedom to religion. Riad, Sohair, Oct 2013, p.21-22. Rishmawi, Mervat, 2005, p. 367.

¹⁵¹ For example, Article 3 (3) stated "*Men and women are equal in human dignity, in rights and in duties, within the framework of the positive discrimination established in favor of women by Islamic Shari'a and other divine laws...*"

¹⁵² Zerrougui, Laila, 2011, p.13.

¹⁵³ Article (10)

¹⁵⁴ Zerrougui, Laila, 2011, p.13. Article 3(3) and Article 33 (2)

¹⁵⁵ Articles 3(3) and 29 (2).

¹⁵⁶ Article (40).

¹⁵⁷ Zerrougui, Laila, 2011, p.13.

¹⁵⁸ Rishmawi, Mervat, 2005, p.370. Article 41 (5) of the Charter.

most of the shortcomings in these rights reflect the Arab states' reservations and position from international human rights law and treaties.¹⁵⁹ With regards to the right to life, the main flaw to be highlighted is the death penalty. Generally, the Charter in article (6) limits the death penalty for the most serious crimes which appeared in line with international standards.¹⁶⁰ However, by virtue of Article (7 (1)), the Charter allows for the death penalty on children under the age of 18 in case it is provided under national legislation at the time of the commission of the crime.¹⁶¹ This provision contradicts international standards that ultimately prohibit the death penalty on children.¹⁶² Interestingly, all Arab states have ratified the United Nations Convention on Child Rights without reservation and most of them have ratified the ICCPR without reservation to article 6 (5). According to Mervat Rishmawi, the Charter appears to echo the practice in Saudi Arabia and Yemen who are among few countries in the world that allow for the imposition of the death penalty against children.¹⁶³

Another concern to shed light on here is that the Charter did not stipulate to exclude the imposition of death penalties in crimes related to political affiliation and freedom of expression. This is concerning in light of the fact that some Arab countries have imposed death penalty on some human rights defenders and political opponents under the pretext of combating terrorism or posing threats to the national security.¹⁶⁴ Hence, it was important in such specific contexts to stress on excluding the imposition of the death penalty on cases of political affiliation and freedom of expression.¹⁶⁵ Finally, the Charter did not answer some controversial questions related to the right

¹⁵⁹ For more information about Arab States positions on death penalty, women's rights, freedom to religion see Rishmawi, 2015, p.73-79. Also see Rishmawi, Mervat, Oct 2009. Available at: <https://carnegieendowment.org/sada/23951>

¹⁶⁰ Amnesty, 2004. p. 4-5.

¹⁶¹ Ibid, p.6.

¹⁶² By virtue of article 6 (5) of the ICCPR "sentence of death shall not be imposed for crimes committed by persons below eighteen years of age". The Convention on the Rights of the Child (CRC) reads in article 37 (a) "*neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age*".

¹⁶³ Rishmawi, Mervat, 2005, p.372.

¹⁶⁴ See the annual report of HRW on human rights violations, 2020, Death Penalty in Bahrain: <https://www.hrw.org/world-report/2020/country-chapters/bahrain>, <https://www.hrw.org/world-report/2019/country-chapters/saudi-arabia>

¹⁶⁵ Rishmawi, Mervat, 2015, p.77.

to life, such as when does life start, the status of the fetus and the question of abortion, which it left ambiguous and open for interpretation.¹⁶⁶

Another area where the Charter remains with deficiencies is concerning the prohibition of torture, and other cruel, inhuman or degrading treatment. In this regard, article (8) of the Charter prohibits physical or mental torture or cruel inhuman or degrading treatment. However, it does not prohibit degrading punishment as a form of torture.¹⁶⁷ This practice was regulated in Saudi Arabia until April 2020.¹⁶⁸ Furthermore, the Charter stated that victims of torture are entitled to a right to compensation and rehabilitation but not to other form of reparation.¹⁶⁹ Moreover, the Charter does not prohibit states from extraditing or returning people who are at risk of torture.¹⁷⁰ This will be highlighted in the next chapter as the Arab Human Rights Committee addressed the issue in its recommendations and concluding observations to State parties. Amnesty International also criticized the Charter for not defining torture as provided by the CAT¹⁷¹ though other regional instruments similarly did not define it as such. However, it is important to introduce a definition that complies with that stipulated under the Convention against Torture, and to ensure that violations are interpreted according to the definition presented therein.

The advancement of women's rights is another area where the Charter falls short to comply with international standards.¹⁷² In this regard, the Charter provisions either refers to Islamic Sharia as the basis for women rights or refers to national laws- both of which are problematic and do not guarantee rights. National laws in many Arab Countries stem from Sharia when it comes to family laws and other rights related to women.¹⁷³ For example, Article 3 (3) of the Charter stipulates that *“men and women are equal in respect of human dignity, rights and obligations within the framework of the positive discrimination established in favour of women by the Islamic Shariah, other divine laws and by applicable laws and legal instruments”*.¹⁷⁴

¹⁶⁶ Al-Midani, Mohamed Amin, 2019, p.61.

¹⁶⁷ ICJ,2003, p 17-18. Amnesty, 2004, p.8.-9

¹⁶⁸ Corporal punishment was abolished in Saudi Ariba in April 2020. for more information see:

<https://www.theguardian.com/world/2020/apr/25/saudi-arabia-to-end-flogging-as-a-form-of-punishment>

¹⁶⁹ Amnesty, 2004, p.9.

¹⁷⁰ Ibid

¹⁷¹ Ibid, p.8-9.

¹⁷² Rishmawi, Mervat, 2005, p.374-375.

¹⁷³ Ibid

¹⁷⁴ The Arab Charter Article 3 (3).

Notably, the Committee of CEDAW in its review of several Islamic countries including Arab states raised concerns regarding the conflict between the Sharia Laws and CEDAW in many areas including in marriage and divorce, marrying non-Muslims, inheritance, obedience,¹⁷⁵ and nationality issues.¹⁷⁶ In addition, the Charter limits the establishment of family to marriage in the traditional sense, which means that all forms of modern family are excluded. Finally, article 29 (2) left it for the national legislation to regulate women's rights to provide their children with their nationality which is problematic as most of the Arab states have discriminatory legislation in this regard.¹⁷⁷ However, the Charter's Committee in its recommendations to States asserted the equality of women and men in providing their nationalities to their children and spouses.

Other deficiencies are related to the discrimination against non-citizens, they are not granted the rights to peaceful assembly and association and State parties are not obliged to guarantee their access to primary education.¹⁷⁸ In addition to right to hold opinion, the freedom of thought, conscience and religion is restricted by the Charter.¹⁷⁹ Finally, the Charter did not include prohibition of propaganda for war, advocacy for national, racial or religious hater as provided by article (20) on the ICCPR.¹⁸⁰

b) The Arab Human Rights Committee (The Charter Committee)

Meanwhile, the Charter created The Arab Human Rights Committee (The Committee) also known as the "The Charter Committee".¹⁸¹ The Committee is considered to be the first independent human rights Committee established in the LAS. It is mandated to monitor the implementation of the Charter, where its main task is to review State reports and submit relevant comments and recommendations, all of which will be discussed in Chapter 3.

To conclude, it is clear that the Arab human rights system which developed over the years despite all the progress remains ineffective in providing human rights protection in the region. Therefore, Member States of the LAS should open a serious debate with good faith to amend the mechanisms.

¹⁷⁵ The wife's duty to her husband according to the Shari'a Law.

¹⁷⁶ Musawah, 2011, p.7-9.

¹⁷⁷ Ibid, 2011, p.9.

¹⁷⁸ Rishmawi, Mervat, 2005, p.373. Article 24 and 41 (2)

¹⁷⁹ Amnesty, 2004, p.18.

¹⁸⁰ El,Sheikh, Ibrahim Ali Badawi, 2018, p.18.

¹⁸¹ Article 45 of the Charter.

These weaknesses pertain to its instruments and mechanisms, they lack the power to protect human rights due to lack of independence, and the lack of political will of Member States to improve and develop the system. As such the Permanent Arab Commission for Human Rights must be independent and developed to include mechanisms such as Special Rapporteurs, working groups as well as a commission of inquiries, the Arab Charter must be amended to bring those provision which is not in compliance with international human rights standards in line with it to pave the way to the work of the Arab Court of Human Rights.

Chapter III: The Arab Human Rights Committee (the Charter Committee)

The Arab Charter on Human Rights 2004, created The Arab Human Rights Committee (The Committee) also known as the “The Charter Committee”.¹⁸² The Committee is considered to be the first independent human rights Committee established in the LAS. It is mandated to monitor the implementation of the Charter, where its main task is to review State reports and submit relevant comments and recommendations.¹⁸³ Articles 45-48 of the Charter defined both the institutional structure and the scope of its power as discussed below.¹⁸⁴ The Committee set forth its Rules of Procedures¹⁸⁵ and guidelines to states and CSOs regarding reporting and Shadow reports.¹⁸⁶ In 2012 the Committee started to review reports by examining the initial report submitted by Jordan. As of today, the Committee has reviewed 16 reports submitted by Member States. This Chapter will first discuss the institutional structure of the Committee, and then analyze its mandate. It will also assess the procedures and guidelines put in place by the Committee in relation to those set forth by the United Nations treaty bodies and other regional systems. It will then provide general analysis of state obligations and compliance to the reporting process.

The chapter further examines how the Committee addresses State parties’ implementation of their obligations in regard to the rights and freedoms set forth in the Arab Charter of Human Rights.

¹⁸² Article 45 of the revised Charter available in English at:

http://www.eods.eu/library/LAS_Arab%20Charter%20on%20Human%20Rights_2004_EN.pdf

¹⁸³ Article 48 of the revised Charter.

¹⁸⁴ Article 48 of the revised Charter.

¹⁸⁵ The Rules of producers of the Committee are available in Arabic at:

<http://www.lasportal.org/ar/humanrights/Committee/Pages/BasicSystem.aspx>

¹⁸⁶ The Guidelines for Member States on Drafting and Submitting Reports, and Guidelines on Drafting Shadow Reports for NHRIs and CSOs are available in Arabic at:

<http://www.lasportal.org/ar/humanrights/Committee/Pages/CommitteMechanism.aspx>

This will be done by looking at the Committee’s concluding observations on the periodic reports submitted by Member States. To this end, the chapter mainly focuses on Jordan (as the first Member State to ever have its periodic report reviewed by the Committee); Bahrain (as a Member State where an uprising took place and resulted in mass human rights violations); and the United Arab Emirates (as the latest Member State to be reviewed by the Committee). Additionally, this chapter will thoroughly analyze how the Committee has addressed rights and freedoms of ‘controversial nature’ in the Arab world or which the Charter fall short in providing protection such as: torture, women rights, civic space and freedom of expression.

A. The Institutional Structure of the Arab Human Rights Committee

Articles 45 and 46 of the revised Arab Charter on Human Rights, defines the institutional structure of the Committee. The Committee is composed of seven members who shall be nationals of state parties,¹⁸⁷ highly qualified and recognized competence in the human rights field. In addition, they should be fully independent and impartial.¹⁸⁸ They must be elected by the State parties to the Charter through a secret ballot. They shall serve for a period of four years term, renewable for one time.¹⁸⁹ The Committee must meet twice a year and could hold exceptional sessions when requested by the LAS Secretary-General, any Member State, the Council or upon a prior decision by the Committee. Article 47 emphasizes that the Member States shall enjoy the immunities necessary for their protection while carrying their functions as members of the Committee.¹⁹⁰

The Committee’s budget should be considered from the LAS budget by the Secretariat.¹⁹¹ However in the last two years the Committee has faced challenges in continuing its activities because of budget cuts.¹⁹² Meanwhile in many occasions it empathized on the necessity of its financial and administrative independence from the LAS.¹⁹³ In 2019, the General Secretariat of the LAS enacted several decisions aimed at controlling the Arab Human Rights Committee, legally, administratively and financially, which could greatly affect the Human Rights Committee’s

¹⁸⁷ Article 45 (1-3)

¹⁸⁸ Article 45 (2)

¹⁸⁹ Article 45 (3-4)

¹⁹⁰ Article 45.

¹⁹¹ Article 46 (5)

¹⁹² Arab Human Rights Committee, the 11th annual report, 2019, p.39.

¹⁹³ Arab Human Rights Committee, the 8th annual report,2016, p.38-39.

independence.¹⁹⁴ The Ministerial Council created a committee made up of Member States and the Secretariat, to examine the status of the Committee, while taking into consideration the views of the Arab Human Rights Committee members. The committee was supposed to convene in March 2020; however, it remains unclear if it has done so.¹⁹⁵

In 2015, the Committee set forth guidelines on the procedures for the election of the Arab Human Rights Committee members.¹⁹⁶ In the following years, the Committee developed a guideline for member States on the criteria of nominating candidates for membership of the Committee.¹⁹⁷ This includes competence experience in the field of law and human rights,¹⁹⁸ preference to ensure women nomination and participation,¹⁹⁹ including individuals with experiences in various fields of human rights²⁰⁰, and ensuring that candidates reflect cultural diversities in their states.²⁰¹ Finally, it recommended states to avoid nominating or electing candidates in positions that may create conflict of interests when functioning as Committee members.²⁰²

In fact, some of the current members of the Arab Committee lack adequate qualifications or experiences needed in the field of law or human rights or covering various fields of experiences as provided by the guidelines. Though reviewing the resumes of current members of the Arab Committee, it appears that the guidelines were not always taken into consideration.²⁰³ For example some members only have experience serving as government officials in the field of human rights.²⁰⁴ If compared with the United Nations Treaty Bodies, it appears that UN Treaty Bodies members must have relevant competences of a “*recognized character*”. According to Helen Keller this term indicates “that *the competence must be acknowledge in circles that have proper*

¹⁹⁴ See footnote (2), Arab Human Rights Committee, the 11th annual report, 2019. p.9.

¹⁹⁵ Arab Human Rights Committee, the 11th Annual report, 2019, p.9.

¹⁹⁶ Guidelines on the Procedures of the Elections of Members of the Arab Human Rights Committee. Available in Arabic at: <http://www.lasportal.org/ar/humanrights/Committee/Pages/AboutCommitteeMembers.aspx>

¹⁹⁷ Guidelines on the Qualifications of Persons Nominated for the Membership of the Arab Human Rights Committee. Available in Arabic at:

<http://www.lasportal.org/ar/humanrights/Committee/Pages/AboutCommitteeMembers.aspx>

¹⁹⁸ Ibid, Articles 1-2.

¹⁹⁹ Ibid, Article 3.

²⁰⁰ Ibid, Article 4.

²⁰¹ Ibid, Article 5.

²⁰² Ibid, Article 7.

²⁰³ The current Members of the Arab Human Rights Committee and their resumes. Available in Arabic at:

<http://www.lasportal.org/ar/humanrights/Committee/Pages/CommitteeMembers.aspx?RID=1>

²⁰⁴ Ibid.

qualifications for such evaluation”.²⁰⁵ In comparison to qualifications of the Arab Human Rights Committee members, the United Nation Human Rights Committee for instance includes in its composition: professors, judges, chief judges or individuals who served in the United Nations or other regional human rights systems - where such diversity and experience appears to be lacking in the Arab Committee membership.²⁰⁶

Additionally, most of the previous and current Arab Committee’s members serve governmental positions.²⁰⁷ In general, human rights conventions do not prohibit members of treaty bodies from holding governmental positions.²⁰⁸ The same situation was evident in the African Commission on Human and People’s Rights, which was criticized for the lack of independence given that some of its members held senior political positions at the national level. In 2005, the African Union notified its Member States to exclude senior civil servants and diplomatic representatives from the Commission membership,²⁰⁹ a note that the LAS might need to consider given the similarity between both political systems. As for women inclusion, the current members include three women,²¹⁰ which is a positive remark to consider and to build on, given that the previous period had no women representatives. Another note to be emphasized here is that the wording regarding the inclusion of gender balance in the guideline was not mandatory and was left as a recommendation for States to take into consideration.²¹¹

To conclude, the competency, independence and integrity of the Arab Human Rights Committee members, could lead to implications on the quality and the effectiveness of the reporting mechanisms, which would affect the implementations and interpretations of the rights and freedoms enshrined in the Arab Charter. To that end, emphasis should be made to ensure the

²⁰⁵ Keller, Helen, and Geir Ulfstein, 2012. p.79.

²⁰⁶ Ibid, p.79. Information about the current HRC members available at :
<https://www.ohchr.org/EN/HRBodies/CCPR/Pages/Membership.aspx>

²⁰⁷ The Former Members of the Arab Human Rights Committee and their resumes. Available at:
<http://www.lasportal.org/ar/humanrights/Committee/Pages/CommitteeMembers.aspx?RID=2>

²⁰⁸ Keller, Helen, and Geir Ulfstein, 2012, p.80. Human rights treaty bodies always stress that members of the committees should be of high moral and serving in their personal capacity and some conventions such as CERD requires impartiality.

²⁰⁹ The Centre for Human Rights, 2016, p. 11.

²¹⁰ A list of the Committee members is available in Arabic At:
<http://www.lasportal.org/ar/humanrights/Committee/Pages/CommitteeMembers.aspx?RID=1>

²¹¹ Guidelines on the Qualifications of Persons Nominated for the Membership of the Arab Human Rights Committee, Article 3.

impartiality and the high morality of the candidates to allow them to carry out their roles.²¹² As stated by the UN High Commissioner for Human Rights in his comment on the UN treaty bodies; *“ultimate success of any monitoring system.... depends on the caliber and independence of the experts monitoring the implementation of treaty standards”*.²¹³

B. The Mandate and the Power of the Arab Human Rights Committee

In relation to human rights protection, the Committee was given a very limited mandate for human rights protection in comparison to that given to its counterparts in the African and Inter-American Commissions of Human Rights. As stipulated in article 48 of the Charter, the Committee is only mandated to monitor the State parties' implementation of the Charter through a periodic state reporting mechanism and provide the Council of the LAS with comments and recommendations through the Secretary-General of the League. Through its bylaws, the Committee gave itself the power to interpret the Charter, conduct and participate in workshops, conferences and seminars that served the aims of the Charter.²¹⁴ Moreover, the guidelines on procedures of state reporting allows the Committee to conduct visits to Member States to oversee human rights situation as well as to promote for the Charter by upon Member State invitation or upon the Committee request. Such visits may be developed for the purpose of investigating human rights violations.²¹⁵ For example the Committee visited Yemen in September 2015, during which they monitored human right violations in Yemen and wrote a report about it. The report and the recommendations were adopted by the Committee and were referred to the Secretary General in order to refer it to Council.²¹⁶

²¹² The Committee always recommends in its annual reports Member States to adhere to guidelines provided on the nomination criteria: see for example the 11th annual report, p.40. available in Arabic:

<http://www.lasportal.org/ar/humanrights/Committee/Pages/CommitteePublications.aspx>

²¹³ Concept Note, March,2006, p.17. available at : <https://digitallibrary.un.org/record/571491?ln=en#record-files-collapse-header>

²¹⁴ According to its Rules of Procedures adopted in 2014, the Committee by article 2 (2) mandated itself to interpret the Charter. See:

<http://www.leagueofarabstates.net/ar/humanrights/Committee/Documents/النظام%20الداخلي%20للجنة%20لحقوق%20الإنسان>

ان%20العربية%20عملاً%20بأحكام%20الفقرة%20207%20من%20المادة%202045%20من%20الميثاق%20العربي%20لحقوق%20الإنسان

²¹⁵ Guidelines on reporting procedures Article (A.9) available in Arabic at:

<http://www.lasportal.org/ar/humanrights/Committee/Pages/CommitteMechanism.aspx>

²¹⁶ Arab Human Rights Committee, Seventh annual report, 2015, p.14. Available at :

<http://www.lasportal.org/ar/humanrights/Committee/Pages/CommitteePublications.aspx>

Similar to the African Commission on Human Rights and the Inter-American Commission, the Arab Committee is mandated with reporting and interpreting the Charter. However, the scope differs as the first two Commissions were given a broader mandate in the promotion and protection of human rights. Article 45 of the African Charter allows the Commission in addition to state reporting mechanism to, inter alia, receive inter-state complaints or individual complaints from individuals or CSOs or any other groups, in addition to appeals and other activities of the special rapporteur, working groups and missions.²¹⁷

The quasi-judicial recommendations and decisions of the African Commission among other procedures such as, general comments, resolutions, principles and guidelines, have played a significant role in developing human rights standard setting in the region. Since its establishment in 1987, the Commission dealt with more than 400 communications from individuals, CSOs and groups.²¹⁸ It issued around 235 decisions concerning human rights violations by Member States.²¹⁹ These decisions have encouraged Member States over the past years to develop effective domestic remedies.²²⁰ The Commission through its broader interpretation of the Charter by using the implied rights theory in areas like right to housing, rights of food, water, sanitation and social security, by using this approach, several internationally recognized human rights, not explicitly protected by the African Charter, were recognized. Most importantly, the Commission's decisions over several complaints have contributed to underline the scope of States obligations under the African charter as to respect, protect and fulfill.²²¹

Moreover, the American Convention on Human Rights²²² mandates the Inter- American Commission to investigate alleged human rights violations from CSOs and individuals, or to receive communications from states Parties. This power was given among other tasks, including to receive state reports on measures adopted in implementation of human rights and to conduct on-site observations in Member States²²³ The Commission has dealt with thousands of individual

²¹⁷ Article 45 of the African Charter of Human and Peoples Rights Available at:

<https://treaties.un.org/doc/Publication/UNTS/Volume%201520/volume-1520-I-26363-English.pdf>

²¹⁸ Ssenyonjo, Manisuli, 2018, p.10.

²¹⁹ Ibid.

²²⁰ Ibid, p.7-12.

²²¹ Ibid.

²²² The American Convention on Human Rights, Section 3, Articles 44-45. Available at:

<https://treaties.un.org/doc/Publication/UNTS/Volume%201144/volume-1144-I-17955-English.pdf>

²²³ Ibid

complaints since its establishment and has played a significant role in ensuring justice and remedies for victims of human rights violations. This has been done through three main pillars that both the Commission and Court adopted over the years: petitions, friendly settlements and precautionary measures. Most importantly, the Commission and Court contributed to providing a distinguished and solid legal framework that led to the development of international human rights law not only regionally but also globally.²²⁴

In light of this, the protection mandate provided to the Arab Committee is considered by many experts to be weak and primitive as it is very restricted and lacks the power to receive complaints from states (Inter-State complaints) or individuals.²²⁵ The establishment of such complaint mechanisms would not only contribute to providing more protection to victims of human rights violations, but it would also foster an Arab human rights standard-setting. Furthermore, it would establish a platform for human rights activists and defenders to advocate and lobby for their rights. This is crucial given that Arab human rights defenders are always accused by their governments of representing foreign agenda and thus threatening the national security of their national states when advocating for their rights.²²⁶

C. The Committee Power in Reviewing State Reports

The Arab Committee's review and examination of States reports stem from specific obligations defined in the Arab Charter on Human Rights 2004, particularly Article (48). It is considered to be the main and the only supervision role provided by the Charter to monitor Member States adherence to their human rights obligations as enshrined in the Charter at the national level. This section will shed light on the guidelines and working methods developed by the Committee over the past years to clarify the purpose, methodology, process and the criteria for states reporting and shadow reports submitted by CSOs, and compare it with the reporting guidelines set out by the international and regional mechanisms.

By virtue of Article 48 of the Charter, Member States shall submit initial reports to the Charter's Committee through the Secretary-General. The report shall include information on measures taken

²²⁴ European Parliament, 2010, p. 77.

²²⁵ For example, See Zerrougui, Leila, 2011, p.14-15. Rishmawi, Mervat, 2009.

²²⁶ Abdullahi A. An-Na'im, 2001, p.714.

to ensure the rights and freedoms stipulated in the Charter, as well as progress made towards the enjoyment of these rights. The initial report must be submitted within a year from the date that the Charter entered into force in the respective state. Following the submission of the initial report, State parties must submit periodic reports every three years.²²⁷ The Committee may request Member States to provide further information related to the implementation of the Charter.²²⁸

Article 48 also stipulates that the Committee must examine the report publicly with the presence of a delegation from the state under review. The Committee then issues its observations, recommendations, and remarks, which must be considered by the state party under review and adopted by the Committee with absolute majority.²²⁹ Additionally, the Committee through the Secretary-General shall submit an annual report to the Council of the LAS including its conclusions and recommendations²³⁰. The report, concluding observations, as well as the recommendations shall be available to the public and should be widely disseminated.²³¹

Likewise, examination of State parties' reports is an integral part of the UN Treaty Bodies work. States parties' reports shall include information on the implementation of the States obligations stipulated under the relevant treaty, and the challenges faces in that regard.²³² Unlike the Arab Committee, the African Commission undertook its power to receive state reports by its mandated broad reading power, the African Charter on Human and Peoples' Rights under Article 62, entrusted Member States to submit periodic reports on the implementation of the charter every two years without indicating to which organ these reports must be submitted the Commission took on the issue .²³³ likewise, the review of reports submitted to the United Nations Treaty Bodies and under the African Charter of Human and Peoples' Rights report review of the Arab Charter Committee is based on a constructive dialogue with the concerned State party. Such dialogue aims at, inter alia, providing states the chance to undertake a self-assessment on its performance and to harmonize their legislation and policies in accordance with their international obligations. Hence,

²²⁷ Most of the human rights treaty bodies set out regular reporting state parties known as “reporting periodicity”, which covers initial and periodic reports. OHCHR, 2017, p.32-33.

²²⁸ Arab Charter on Human Rights, article 48 (2).

²²⁹ Ibid, Article 48 (3-6)

²³⁰ Ibid, Article 48 (5)

²³¹ Ibid, Article 48 (6)

²³² Keller, Helen, and Geir Ulfstein, 2012, p.16.

²³³ Procedures of reviewing state reports of Member States of the Arab Charter. available at: <https://www.achpr.org/statereportingproceduresandguidelines>

State reporting has become one of the main universal monitoring mechanisms aimed at improving the human rights situation in Member States.²³⁴

D. The Arab Human Rights Committee Methodology of Considering State Reports and Follow-up

In its first two years of its establishment, the Committee developed guidelines and work methods in which it outlined the reporting methodology for states and CSOs. These guidelines were developed and revised in 2014. This section will shed light on the methodology provided by the Committee in considering the drafting criteria, the reporting process, and the follow-up procedure and will assess its compliance with the international standards in this regard.

1. The Format of the Report

With regard to drafting, according to the guidelines the report must follow certain criteria in respect to the format, structure and the content of reports. It should contain certain formatting style²³⁵; a description of the methodology followed in preparation. This includes a list of the national, government bodies and the administrative agencies that contributed to preparing the report, information about the consultation process undertaken with the national stakeholders, such as the National of Human Rights Institutions (NHRIs) and the CSOs as well as the extent of including information from non-governmental sources.²³⁶

2. The Content of the Report

With respect to the content, the first section of the report shall include information about land and people, the demographic, economic, social and cultural characteristics of the State, and the general political structure. It should also include the legal human rights framework within which human rights are protected such as, constitutions, legislative framework, and the administrative bodies, international and regional human rights framework, as well as the national mechanisms, the effective national remedies, compensation and redress mechanisms available. Finally, the report

²³⁴ Keller, Helen, and Geir Ulfstein, 2012, p.27.

²³⁵ As of formatting the report should be submitted in both soft and hard copies, and should not exceed 100 pages formatted for A4-size paper, single spaced the text set out in 16 simplified Arabic.

²³⁶ Guidelines for Member States on drafting reports to the Arab Human Rights Committee.

shall include information about status of the Charter in the domestic legal order as well as information and publicity.²³⁷

The second section of the State's report shall include information about efforts made to implement substantive provisions of the Charter including theoretical legal, and administrative policies. The report shall include comparative statistics and information in order to indicate progress made in the implantation of these rights. Moreover, it shall include analysis of the challenges and constraints that stand in the face of implementation of the charter. In addition to the previously mentioned, the Committee requires states to include annexes and supporting documents such as copies of court decisions, legislations, national schemes and programs in order to facilitate the work of the Committee.²³⁸

The Committee may distinguish between the initial and periodic reports, as of which the initial reports are considered to be the first communication between the state and the Committee. Therefore, they should focus on the basic principles provided by the guidelines, whereas the periodic reports must focus on the period between the previous consideration of the state party and the current submission. It shall include in particular updates about the developments and progress made in realization of the recommendations and concluding observations provided in the previous report, as well as an analysis to the challenges that encountered the implementations.²³⁹

3. The Reporting Procedures

Between 21-26 June 2014, the Committee adopted its procedures to receive state reports²⁴⁰, which clarifies its methodology in examining these reports. In short, the Secretariat of the Committee shall notify the state party of when its initial and periodic reviews are due. State shall send the report to the Secretary General of the LAS within three months from the Secretary General's notice, and the latter shall refer it to the Committee. Generally, the Committee reviews the reports in chronological order upon its submission to the Committee Secretariat where the review is prioritized to the initial reports that are in due or they are late. Then the Committee notifies the

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ Al-Sheikh, Ibrahim Ali Badawi, 2018, p.48.

²⁴⁰ The Committee decision 152\26, in its 26 session held between 21-26 June 2014. See review producers at: <http://www.lasportal.org/ar/humanrights/Committee/Pages/CommitteMechanism.aspx>

respective State of the date of the review. Moreover, the Committee shall meet at least two days before the review in order to discuss the questions and comments prepared by its members and to conform it before the session.

4. Consideration of the Report

Following submission, The Committee's Secretariat will review the state's reports and examine the level of its compliance with the guidelines and the Charter's obligations. The Committee then compiles a report that encompasses information from NHRIs, CSOs, United Nations treaty bodies and the League of Arab States. This helps the Committee form a better understanding of the difficulties facing the implementation of the Charter in the respective state.²⁴¹ It will also invite non-governmental stakeholders including NHRI and CSOs to submit shadow reports and invite them to attend the sessions.²⁴²

In order to make the review and the follow-up more effective, the Committee appoints a Rapporteur for each report. The Rapporteur shall not hold the citizenship of the state under review, and he/she is entrusted to draw up a list of issues prior to the examination of the state under review. The Rapporteur can request complementary information, which shall be endorsed by all the Committee members, upon that, these questions shall be communicated to the state under review. The state may respond by a written submission in advance or orally during the examination session.²⁴³

5. The Constructive Dialogue

The actual review of the state report will be conducted in a constructive dialogue in a plenary session with the presence of the State's delegation. The delegation consists of high competence and senior State officials who have the power to clarify all aspects of the human rights situation in their countries, and to respond to the questions provided by the Committee.²⁴⁴ The review session

²⁴¹ Procedures of reviewing state reports of Member States of the Arab Charter. available in Arabic: at (<http://www.leagueofarabstates.net/ar/humanrights/Committee/Documents/آلية%20النظر%20في%20تقارير%20الدول%20التي%20أطراف%20في%20الميثاق%20العربي%20المقدمة%20إلى%20لجنة%20حقوق%20الإنسان%20العربية.pdf>)

²⁴² Ibid

²⁴³ Ibid

²⁴⁴ Ibid

is usually held for two days. CSOs and NHRIs are welcome to attend these sessions as observers. The members of the Committee who hold its citizenship are not allowed to take part in the dialogue.²⁴⁵ The constructive dialogue is concluded with the issuance of Concluding Observations.²⁴⁶ It is worth mentioning here that the United Nations Treaty Bodies require - in addition to the experience and competencies of the delegation - that States must have a gender balance in their composition which the Committee overlooked in its guidelines.²⁴⁷

6. Concluding Observations and Follow-up

Based on the dialogue with State Parties and on information received from State Parties and other bodies and entities; the Committee adopts concluding observations. The Concluding Observations must include the positive aspects and progress made toward the implementation, obstacles and constraints, main issues of concerns, suggestions and recommendations. In this regard, the Committee recommends one or more priority issues that the state under review must urgently address in the implementation for the next session. The Committee may request the state under review to submit a follow up report on the efforts made to implement these priority issues. Finally, the report is uploaded at the Committee's website and made public after an absolute majority adopts it, while the annual reports must be referred to the Council of the League of Arab States.²⁴⁸ In the next review, the State shall implement the outcome of the report as appropriate.

The appointed Rapporteur is responsible, in cooperation with the Committee members to draft the recommendations and concluding observations after the dialogue, and follow up with the state under review to implement the recommendations and concluding observations. The Rapporteur is also entrusted to prepare a mid-term report for the Committee in order to assess the progress made in the implementation of the concluding observation that the Committee prioritized.²⁴⁹

To that end, we notice that the reporting process established by the Charter and as clarified by the Committee's guidelines are to a large extent similar to those of the United Nations Treaty Bodies

²⁴⁵ Ibid

²⁴⁶ Ibid

²⁴⁷ OHCHR, 2017, p. 53.

²⁴⁸ Procurers of reviewing state reports of the Member States of the Arab Charter.

²⁴⁹ Keller, Helen, and Geir Ulfstein, 2012, p.28.

concerning the format, reporting and examination process and the reporting periods.²⁵⁰ It also cuts across with the reporting process adopted by the African Commission, with some differences with regard to the detailed reporting process, report content and the follow-up.²⁵¹ On the other hand, the reporting process of the Arab Committee is completely different from that entrusted to the Inter-American Commission of Human Rights. However, there are still similarities. For example, by virtue of Articles 41 and 43 of the American Convention of Human Rights 1969, the Commission may request State parties to provide it with information about measures taken on human rights issues. The Commission may also request State Parties to provide information on measures taken to implement the Convention similar to the role given to the Arab Committee by virtue of Article 48(2).²⁵²

E. The Committee's Experience in Reviewing State Reports Since 2012

1. Overview on States Compliance to Reporting

Since 2012, The Committee has been receiving reports. As of July 2020, The Committee has reviewed 16 reports of which 10 were first periodic reports.²⁵³ Six countries have not submitted any reports at all, however some of these states were among the seven Member States that first ratified the Charter,²⁵⁴ in addition to Egypt and Mauritania who ratified the Charter in 2019.²⁵⁵ Other states have submitted their periodic reports years ago, but the review is still pending. For example, Kuwait has submitted its first periodic report on 9 January 2017 and the review is still pending.²⁵⁶ Bahrain has submitted its first periodic report on 27 July 2016 and the review was only conducted in January 2019. In such cases the Committee has clarified in its annual reports that this delay has occurred due to the lack of financial resources or for prioritizing the review of other

²⁵⁰ Al-Sheikh, Ibrahim Ali Badawi, 2018, p. 4.

Al-Midani, Mohammed Amin, 2019, p. 37-38.

²⁵¹ The Center of Human Rights, University Pretoria, 2016, p. 27-30.

²⁵² Al-Midani, Mohammed Amin, 2019, p. 37.

²⁵³ Information on this regard available at: <https://www.achpr.org/statereportingproceduresandguidelines>.

²⁵⁴ Palestine, Libya, Yemen and Syria have not submitted any report yet.

²⁵⁵ See the Committee 11th annual report, 2019, p.11.

²⁵⁶ Information about reporting is available in Arabic at:
<http://www.lasportal.org/ar/humanrights/Committee/Pages/Reports.aspx>

initial reports or because the country of concern was not ready to attend the session by the date appointed by the Committee.²⁵⁷

For some countries, their second periodic reports are overdue for a year and have not been submitted yet.²⁵⁸ The lack of frequency in reporting indicates the extent to which state parties are making effort to meet the obligations they voluntarily undertake when they ratify the Charter and thus it challenges the effectiveness of the state reporting system in monitoring states' obligations. Generally, Member States showed relatively good compliance with their reporting duty in comparison to their counterparts in the African system.²⁵⁹ It is also worth mentioning that the countries that did not submit any reports to the Arab Committee are mostly those who are under occupation as Palestine or have civil wars and their governmental institutions have collapsed such as in Yemen, Libya and Syria.

Despite our recognition of the positive efforts made by those states who submitted their reports, in practice, their level of implementation of their obligations does not seem to indicate the same level of compliance. General observations can be pointed out in this regard from the reports, questions sent to states in advance as well as from the recommendations and concluding observations. For example, most of these countries did not draft their reports in conformity with the reporting guidelines set out by the Committee. For instance, most of the reports provided incomplete information in many areas of the report. They often described the theoretical legal framework and only highlighted positive actions made by the state while neglecting analysis or information about obstacles and constraints encountered in the implementation of these rights. They lack listing specific policies and concrete actions made to overcome the shortcomings and therefore their reports do not reflect the human rights situation in their states or the practices taking place.²⁶⁰ Most

²⁵⁷ See Arab Human Rights Committee, the 11th annual report, 2019, p.16-17.

²⁵⁸ For example, the second periodic reports of Jordan and Algeria were due in 2019 but still not submitted, Qatar submitted its second periodic report on June 2 2020 but not yet reviewed.

²⁵⁹ In comparison, as of today 6 African countries has not submitted any report yet and 18 countries are late by three or more reports. <https://www.achpr.org/statistics> and <https://www.achpr.org/statereportsandconcludingobservations>

²⁶⁰ German Institute for Human Rights, p. 5. Available at : https://www.institutfuermenschenrechte.de/fileadmin/user_upload/Publikationen/E-Info-Tool/e-info-tool_abc_of_hr_for_dev_coop_the_arab_hr-system.pdf

importantly, most of the reports lack information provided by CSOs as well as lack of consultation with the NHRIs and CSOs, a concern that the Committee raises in almost all submitted reports.²⁶¹

The Committee often reflects such flaws in its concluding observations. In its concluding observations on Jordan's first periodic report, the Committee realized that the state did not engage the National Institution of Human Rights in Jordan (known as the National Center for Human rights) or the CSOs in the preparation process. Neither the report nor the questions submitted in advance have included sources from CSOs.²⁶² The Committee also stated that the list of issues submitted in advance as well as the discussion lacked illustration of efforts made to publish and promote the Charter or provide copies of the rulings of their national courts that refer to the rights and freedoms stipulated in the Charter.²⁶³ In other reviews, the Committee was even more precise in its concluding observations. For example, in its concluding observations to the first periodic report of Bahrain, the Committee observed that the report does not include comparative statistics and factual data in regard of the implementation of the rights such as the right to life and physical safety (Articles 5-9), and the prohibition of slavery and trade in persons (Article 10). It stated that the report illustrates freedoms and rights enshrined in the Charter generally with a focus on the legislative framework without providing an explanation of the limitations that face the implementations with regard to the obligations to respect, protect and fulfil, and did not touch on obstacles and constraints encountered in the implementation process.²⁶⁴ Concerning the United Arab Emirates, the Committee emphasized that the report must include comparative statistics about the implementations of some rights such as the death penalty and complaints about torture

²⁶¹ Criticism about the delay and infrequently in submitting reports, incomplete information and all other issues are facing the African Commission, for more information see (Viljoen, Frans, 2000, p.111). and on Arab Member States reporting see Al-Sheikh, Ibrahim Ali Badawai, 2018, p. 55-57.

²⁶² See concluding observations and recommendations on the first periodic report of Jordan, session 9, 13-18 Feb 2016, Cairo. Available in Arabic at: <http://www.leagueofarabstates.net/ar/humanrights/Committee/Documents/الملاحظات%20والتوصيات%20الختامية%20الص%20202.pdf> (على%20تقرير%20المملكة%20الأردنية%20الهاشمية

²⁶³ Ibid, point 9 - 10.

²⁶⁴ See concluding observations and recommendations on the first periodic report of Bahrain, session 15, 27-30 Jan 2016, Cairo, points A and K. Available in Arabic at: www.leagueofarabstates.net/ar/humanrights/Committee/Documents/الملاحظات%20والتوصيات%20الختامية%20الصادر%200 (على%20تقرير%20مملكة%20البحرين%20الدوري%20الأول

in addition to up-to-date information about indicators on the implementations of some rights such as education, right to development and individual freedoms.²⁶⁵

The Committee emphasizes on the importance of participation of the CSOs and the role of National Institutions of Human rights in the state reporting process through questions submitted in advance and in its concluding observations. However, the Committee itself does not provide a model for best practices that highlights its genuine vision on the importance and the effectiveness of their engagement. For example, the Committee does not make shadow reports of CSOs available on its website in a clear and consistent manner, along with the National Reports, lists of questions submitted in advance and its concluding observations. It also does not include information compiled by the secretary from NHRIs and CSOs and other entities such as the United Nation treaty bodies.²⁶⁶

In general, the Committee has succeeded in illustrating the human rights situation in respective state parties by focusing on the deficiencies of the theoretical legal framework that regulates certain human rights issues which are of concern. In addition, it requested comprehensive and substantive complementary information in its list of issues to cover the gaps in the reports such as the lack of providing specific measures and instructions, schemes, forms and models, and statistics. Nonetheless, unlike the United Nations treaty bodies, the Committee is still reluctant to confer pressing issues or specific violations of a widespread or systematic manner in the state under review. For example, with regard to Bahrain's first periodic review the Committee touched upon the human rights situation in its comments and recommendation by focusing on the deficiencies in the legal frame work with regard to the use of lethal force, death penalty, torture and ill-treatment, fair trials guarantees and the trial of civilians before military courts, the revocation of citizenship as well as the freedom of association in particularly human rights organizations. Most of its recommendations were similar to the recommendations provided by both the Committee against Torture (CAT) and the Human Rights Committee to the State of Bahrain.²⁶⁷

²⁶⁵ See concluding observations and recommendations on the first periodic report of UAE, session 16,2019. Available in Arabic at: <http://www.lasportal.org/ar/humanrights/Committee/Pages/Reports.aspx>

²⁶⁶ The United Nations illustrate shadow reports and the stakeholder's summaries in the website together as part of the reporting process a practice that the Committee may need to consider.

²⁶⁷ Committee against Torture, concluding observations on the second and third periodic reports of Bahrain, 2017. Available

The Committee against Torture for example includes in its Concluding Observations emblematic cases. For instance, concerning death penalty, the Committee expressed its concern in paragraph 12 that “(a)*The interruption by the State party of the de facto moratorium that had been in place since 2010 on the application of the death penalty, which led to the execution by firing squad on 15 January 2017 of Abbas al-Samea, Sami Mushaima and Ali al-Singace;*” “(c)*The situation of Mohammed Ramadhan and Hussain Ali Moosa, who face the death penalty and are said to have been convicted on the basis of confessions extracted under torture...*”²⁶⁸

The Arab Committee referred to information provided by the Bahraini National Institution of Human Rights in respect to numbers of travel ban orders and the revocations of citizenships imposed arbitrarily by Bahrain authorities against Bahraini citizens. However, the Committee did not elaborate on the context of which the travel bans occurred.²⁶⁹ Additionally it did not tackle the issue of reprisals against journalists, human rights defenders and lawyers because of their work especially for their cooperation with the United Nations mechanisms, an issue of great concern in Bahrain.²⁷⁰ According to the Guidelines on drafting the shadow reports CSOs are not allowed to mention of individual cases. However, referring to such specific violations helps in alarming States of the Committee’s concerns regarding the overall human rights situation in these countries as well as provide protection for them.

Over the years, the Arab Committee has shown progress in making its recommendations clearer and more precise. For example, in its Concluding Observations to the report of United Arab Emirates (UAE), the Committee reminded the State party of the importance of harmonizing its

at:https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fBHR%2fCO%2f2-3&Lang=en

HRC, CCPR/C/BHR/CO/1, 2018. Available at :

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBHR%2fCO%2f1&Lang=en

²⁶⁸ Committee against Torture, concluding observations on the second and third periodic reports of Bahrain, 2017, available

at:https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fBHR%2fCO%2f2-3&Lang=en

²⁶⁹ Arab Human Rights Committee, concluding observations on Bahrain first periodic review, 15th session, 2019, Article 51-52, p.12. Available at: <http://www.lasportal.org/ar/humanrights/Committee/Pages/Reports.aspx>

²⁷⁰ Reprisals include travel bans, harassment or intimidation, death threats, violence, arrests and arbitrary detention for more information about the reprisals and the human rights situation in Bahrain see (CCPR/C/SR.3492 and 3493) available at:<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsiMkkhmRBkQVnCbdfYxdTy6GQja8djUQQUivDikVKQlmvIZ%2bgwjT2jYggAyZn1IEZ2xZ7Toz4WtpBozJ3jO9IHJFL35H4amdve496VIjbPAP>

legislations regarding the protection against torture, in line with Article 8 of the Charter and listed issues to be included in this regard.²⁷¹ In addition, it recommended the State to include in the next periodic review updated statistics of complaints against torture and ill-treatment, the number of criminal cases against public servants officials, the number of cases of redress, and the amount of redress and measures taken to rehabilitate victims of torture in the next report. However, in order to get a clearer picture on torture, the Committee might need to request State to provide information on how many of high rank officials were among those public servants, and how many were convicted accordingly. As a priority follow up, the Committee requested the state to expedite the creation of a National Institution of Human Rights and complete the inclusive national scheme to enhance human rights and protection. Priority recommendations for follow up were not provided in the review of the first periodic reports of Jordan and Algeria.

2. The Scope of Recommendations and Concluding Observations Provided by the Committee on State Reports

This section will thoroughly analyze how the Committee has addressed rights and freedoms of “controversial nature” in the Arab world or which the Charter fall short in providing protection, specifically; torture, women rights, civic space and freedom of expression.

a) Protection from Torture or to Cruel, Inhuman or Degrading Treatment Article (8)

With regard to torture, the Committee provided serious comments and recommendations on state reports similar to those provided by the Committee against Torture and the Human Rights Committee.²⁷² For example in its comment on the first periodic report submitted by Jordan in the 9th session in 2016, the Committee welcomed a step taken by Jordan to amend article 208 of the Penal Code in which it defines torture and brings it in line with CAT definition. However, the Committee raised concerns on several issues regarding the definition of torture in the Penal Code. Among the concerns is that torture is still addressed as a misdemeanor, perpetrators can still benefit from statute of limitation, the existence of specialized courts and prosecutions to investigate claims of torture, which result in prolonged legal procedures and prevent victims from accessing their

²⁷¹ Arab Human Rights Committee, concluding observations on the UAE first periodic report, 2019, 16th session, concluding observation no 27, p.9. available at:

²⁷² See CAT/C/JOR/CO/3, 2016. Available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fJOR%2fCO%2f3&Lang=en

ordinary independent judiciary, thus leading to impunity.²⁷³ Additional concerns include the lack of national mechanisms for redress and compensation for victims of torture as well as the lack of an independent and competent national mechanism to monitor places of detention and investigate allegations of torture. While, in its recommendations to Bahrain, the Committee stressed that the national mechanism that exist to monitor detention places must be independent.²⁷⁴

Similar observations were made by the UN Committee against Torture in its Concluding Observations to Jordan:

“The Committee is further concerned that torture is not treated as a serious crime but rather as a misdemeanour, and is not subject to penalties appropriate to its gravity (between six months’ and three years’ imprisonment). The Committee regrets the absence of a provision in the Penal Code that would exclude the crime of torture from statutes of limitations and it is concerned that statutes of limitations applicable to provisions of the Penal Code may prevent investigation, prosecution and punishment of these grave crimes (arts. 1 and 4)”.²⁷⁵

Interestingly, the Committee’s recommendations tend to be broader than the Charter and not exclusively constrained by it. For example the Committee went beyond the Charter’s language in article 8 (2)²⁷⁶ when it recommended the State party to enact legislations for redress, compensate and rehabilitate victims of torture by means of treatment and social rehabilitation services, including medical and psychosocial rehabilitation.²⁷⁷ This recommendation appeared again in the review of UAE’s first periodic report in 2019.²⁷⁸ Nonetheless, this broad reading to redress does not appear to be consistent in all recommendations, where the Committee was at times restricted by article 8(2) that is only limited to compensation and redress.²⁷⁹ Another progress was made when the Committee started to recommend that States to disregard confessions taken under torture

²⁷³ Arab Human Rights Committee, Concluding observations and recommendations on the first periodic report of Jordan, 2016.

²⁷⁴ Arab Human Rights Committee, Concluding observations and recommendations on the first periodic report of Bahrain, 2019.

²⁷⁵ Committee against Torture, Concluding observations on the third periodic report of Jordan, 2016. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fJOR%2fCO%2f3&Lang=en

²⁷⁶ According to this article state parties are obliged only for remedy, compensation and rehabilitation.

²⁷⁷ Arab Human Rights Committee, concluding observations on the first periodic report of Jordan, 2016.

²⁷⁸ Arab Human Rights Committee, concluding observations on the first periodic report of UAE, 2019, recommendation 27, p. 9.

²⁷⁹ Arab Human Rights Committee, concluding observations on the first periodic report of Algeria 2016, first periodic report of Qatar 2017. And the Initial report of Lebanon 2015.

and to amend national laws to prohibit extradition of individuals who might be at risk of torture.²⁸⁰ It also recommended that the State party establish an independent and competent national mechanism to monitor detention places and investigate allegations of torture. In the same context, the Committee may have to recommend that state parties ratify the Optional Protocol to the Convention against Torture (OPCAT) that provided for the establishment of International and National Preventive Mechanism.²⁸¹

b) Women's Rights

Another area where the Committee has gone beyond the Charter, surrounding discrimination against women and nationality issues. In its Concluding Observations to all Member States regarding nationality, the Committee went beyond article 29 (2) of the Charter which left the regulation of the matter to domestic laws on the question of women passing their nationality to their children. In its recommendations, the Committee urged states to amend their national laws to allow women married to foreigners to pass their nationalities to their children on equal basis with men. It further considered the current practices of inequality in passing nationality as a form of discrimination against women. CEDAW and the Human Rights Committee included the same recommendation in their review to almost all Arab Member States.²⁸²

The Arab Committee mentioned women's rights in several contexts in the comments and recommendations to State parties. The Committee recommended the prohibition of discrimination against women in national legislations; including discrimination against women in workforce, in wages, in public sector and decision-making positions. A remarkable progress was witnessed in the reviews of Bahrain and UAE reports, where the Committee conferred issues regarding violations against female migrants' workers. It shed light on sexual harassment, physical and psychological assaults including violations committed by a third party and recommended to organize awareness raising campaigns and the availability of effective remedies as well as shelters

²⁸⁰ Arab Human Rights Committee, concluding observations on the first periodic report of UAE, recommendation No. 27, p. 9. Amnesty recommended that Such provision shall be stipulated in the Charter.

²⁸¹ Article 17 of the OPCAT, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

²⁸² Musawah, 2011, p.8-9.

for protection. Such issues were not initially tackled in the discussion of the initial reports of both Member States.²⁸³

Concerning family protection from violence, the Committee commented in some reports that the existing family law is not effective and does not provide sufficient protection for women and children; however, it did not elaborate on the deficiencies in this regard.²⁸⁴ Nonetheless, some progress was made in the last reviews of Bahrain and the UAE. With respect to UAE, the Committee recommended, *inter alia*, to encourage reporting on crimes regarding gender-based violence. This includes promoting reporting mechanisms, the availability of legal assistance in addition to the rehabilitation and shelters, in addition to conducting prompt, thorough and independent investigations with regard to allegations of domestic violence and hold the perpetrator\ s accountable. Also, by providing trainings for law enforcement officers to enhance their capacities to deal with cases of domestic violence.²⁸⁵

Another area the Committee has looked into was in its recommendation to Saudi Arabia to adopt educational programs that contribute to changing the stereotypes and customs about women in society, and enact a personal law that enhances women's rights (where they have also criticized the guardianship law).²⁸⁶ Generally, with regards to women's rights the Committee does not specify issues with regards to access to education and health or females with disabilities. Questions, comments, and recommendations in general lack requests for detailed disaggregated data and analysis on several issues related to women such as violence against women or gender-based violence cases, such as about the number of cases received, prosecuted and convicted or any disaggregated data by sex on access to education or health. It also did not mention certain issues regarding the so-called "honour crimes", discrimination in inheritance, obedience, polygamy, marital rape and other forms of discrimination under personal status laws.

²⁸³ Arab Human Rights Committee, concluding observations on the first periodic report of Bahrain, p.17. And concluding observations on UAE first periodic report, p,18-19.

²⁸⁴ Arab Human Rights Committee, concluding observations on the first Periodic report of Jordan, no page.

²⁸⁵ Arab Human Rights Committee, Concluding observations on the first periodic review of UAE, p. 15.

²⁸⁶ Arab Human Rights Committee, concluding observations on the initial report of Saudi Arabia,2016, right to work, freedom to association, no page.

c) Civic Space and Freedom of Expression

With regard to civic space and freedom of speech, the Committee raises concerns in its reviews to almost all states about the restrictions on freedom of associations, including the restrictions imposed on the formation of associations. It addresses the deficiencies of the legal framework that regulates freedom of association which gave the executive authority the right to permit, reject or dissolve associations, or to interfere with its work and change its board. In addition, it asserted in its recommendations and concluding observations on the priority to support the creation of human rights organizations and to provide an adequate environment for those existing and enhancing their role.

The Committee also looked into the legal framework that regulates the freedom of assembly and the restrictions imposed on public assembly in violation to the national constitution and the Charter. It recommended that States should adopt a public policy to secure protection for assemblies and peaceful demonstrations. In its comments on Jordan's first periodic report, the Committee raised concerns over the excessive use of force in dispersing peaceful protestors and recommended that the State conduct an independent and transparent investigation and hold perpetrators accountable.²⁸⁷

In other reports, the Committee expressed concerns regarding the vague and broad definition of terrorism included in the terrorism laws. Such definitions might in cases include activities that fall under freedom of speech and freedom of assembly. It recommended amending such laws in a way that secures the right of freedom of speech and assembly. Most importantly, the Committee recommended almost all State parties to halt detention over publishing. However, it did not explicitly address the use of the laws that regulate issues of defamation or insults against civil servants, king or State institutions, to ensure that it is not used to curtail the freedom of expression of journalists and human rights defenders. Finally, though the Charter makes no reference to hate speech, the Committee in its review to the periodic report of Bahrain recommended that the State

²⁸⁷ The Arab Committee, concluding observations on first periodic report of Jordan, 2016.

put effort into encountering hate speech, violence, and religion-based discrimination in media and to enhance principles of tolerance and the respect of religion diversity in school curriculums.²⁸⁸

Moreover, the Committee looked into the human rights aspects resulted by the outbreak of the COVID-19. In May 10, 2020, the Chair of the Committee issued a statement²⁸⁹ in which he made up recommendations to states while dealing with the COVID-19 crises, emphasizing among other issues, to take all measures necessary for the protection of the right to life and health, to adhere to the international and regional standards of human rights. The Chair also recommended that, all Member States that announced a state of emergency to adhere to Article 4 of the Charter and other international treaties, and to inform each other of measures taken to deal with the crises through the Secretary General to protect rights and freedoms set forth in the Charter. The Chair also called on States to respect the principle of non-discrimination especially regarding access to goods and health, guarantee the rights of workers and ensure that the private sector ensures their rights, respect human rights defenders and journalists, and most importantly to provide effective mechanisms for people seeking remedies for potential violations of their rights.

3. The Limits of the Recommendations and Concluding Observations provided by the Committee on state reports

Among the limitations observed in the work of the Committee is its failure to address issues related to violations and acts by States in other States territories. For example, the Committee did not tackle the role of some Member States in the war in Yemen or in the recruitment of child soldiers in armed conflicts. Issues related to the extraterritorial jurisdiction applicability were often examined by the Human Rights Committee.²⁹⁰ On the other hand, the Committee welcomed some steps made by some state parties towards their obligation to the UN, such as ratifying new conventions, meeting their obligations to submit their periodic reports, facilitating visits of UN Special Rapporteurs. Nonetheless, the Committee had not recommended Member States to ratify UN treaties or optional protocols or to withdraw their reservations on some provisions of the UN conventions.

²⁸⁸ The Arab Committee, Concluding observations to the first periodic report of Bahrain, 2019, p. 22.

²⁸⁹ Available in Arabic at the Committee Facebook page. Available at: <https://www.facebook.com/ahrcommittee/photos/a.687474354730443/2053728094771722/>

²⁹⁰ Keller, Helen, and Geir Ulfstein, 2012, p. 53-54.

4. The Implementation of Concluding Observations Provided by the Committee on State Reports

With regard to the follow-up, the Committee shall submit an annual report containing its comments and recommendations to the Council of the League. The Charter does not provide further information on what follow-up steps the Council may take to oversee and ensure the implementation of the Concluding Observations and recommendations, or what measures it may take in cases where States fail to submit their reports on time.²⁹¹ Guidelines developed by the Committee on the reporting process and drafting do not clarify what follow-up or related measures should be taken in such situations and thus risk leaving it to the political will of Member States. In practice, the Committee reports in its annual report to the Council information about the reporting status of Member States including names of States reports overdue, States which did not submit reports.

To that end, the Committee could be guided by the best practices of other international human rights mechanisms. For example, some UN treaty bodies such as the Human Rights Committee (HRC), International Covenant on Economic Social and Cultural Rights (ICESCR) and CAT, adopted procedures that allow for the examination of the human rights situation in States that failed to submit their reports, and with the absence of State delegations. Upon that it send its recommendations and concluding observations to the state and in case it did not receive an answer it will adopt the Concluding Observations and consider them as final.²⁹² In such cases, the Committee of Convention on the Rights of Persons with Disabilities (CRPD) might take further steps and report it to the General Assembly.²⁹³ While in cases of overdue reports, the Committee will allow states to consolidate their upcoming reports in one report to meet their obligations.²⁹⁴ Moreover, the African Commission of Human Rights may proceed with the examination and send its concluding observations to States in cases where States fail to send their delegations.²⁹⁵ In

²⁹¹ Al-Midani, Mohammed Amin, 2019, p. 36.

²⁹² See General Comment No.30 Adopted by the Committee in 2002. Available at: <https://www.refworld.org/docid/453883fe11.html>

²⁹³ Keller, Helen, and Geir Ulfstein, 2012, p.34

²⁹⁴ Ibid, p.44.

²⁹⁵ The Commission might do that after two notification. See: The Center for Human Rights, University of Pretoria, 2016, P.29

cases of non-submission of reports, the Arab Committee report the name of states who did not submit any reports in its annual report submitted to the council and in its other activities.

In conclusion, the Committee has showed over the years a serious commitment towards reviewing States reports. It addresses serious human rights issues in the region and provided strong recommendations and follow-up steps. In many areas, it provided a broader interpretation of some provisions on rights and freedoms contained in the Charter, while in other instances it was limited to the Charter's provisions and language. Additionally, unlike other Arab human rights mechanisms, the Committee demonstrated a certain level of independence in reviewing States' reports, which must be further enhanced by the LAS. Its mandate must also be to allow for the recipient of complaints from individuals or States (Inter-State complaints).

Chapter IV: Engagement of Civil Society Organizations and the National Institutions of Human Rights in the League of Arab State Organs

A. The LAS Engagement with Civil Society Organizations (CSOs)

Civil Society Organizations have proved to be the main outtrigger backing the international human rights system. Their cooperation with the United Nations in the promotion and protection of human rights, as well as their role in humanitarian action was highlighted in the 1990s, mainly after the World Conference of Human Rights in 1993.²⁹⁶ Human rights organizations, in particular, played a significant role in lobbying for good governance and impacting the decision making power²⁹⁷, in addition to their role in revealing human rights violations, raising the voice of victims, lobbying for accountability and pushing for better human rights conditions.²⁹⁸

As highlighted earlier, the Pact of the LAS only allowed for cooperation between states and had no room to engage Arab people in LAS activities. In such a situation, CSOs play an important role in bridging this gap and in delivering the voices of the Arab people to the LAS decision making organs. This section will review the cooperation between Civil Society Organizations and the LAS organs, and the level of the CSOs engagement in the LAS programs and activities over the past years. To understand their level of engagement; we will first look at the political contexts in which these organizations function then illustrate their level of engagement with the main organs of the LAS.

Arab human rights organizations with a mandate to work in the human rights field as outlined by the International Standards dates back to the early 1970s. During this period, four human rights organizations were established in Morocco, Tunisia, Egypt and Palestine. Additional human rights organizations started to emerge in other Arab countries during the 1980s.²⁹⁹ This period also witnessed the establishment of the first Arab regional human rights organization, the Arab

²⁹⁶ The World Conference on Human Rights in Vienna on 25 June 1993, Vienna Declaration and Program of action Article 38, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>

²⁹⁷ Center for Law and Democracy, 2018, p.1.

²⁹⁸ For more information about the importance of the CSOs in the human rights system see: R cker, Joachim *“Importance and impact of NGOs at the Human Rights Council”*, 2015. Available at: <http://www.ishr.ch/news/importance-and-impact-ngos-human-rights-council>

²⁹⁹ Awad, Ibrahim, 1997, p.30-33.

Organization for Human Rights.³⁰⁰ During the 1990s an outstanding wave of human rights organizations appeared with the establishment of more specialized human rights organizations in the field of children, women, economic and social rights, development, housing and workers' rights.³⁰¹

Since the beginning, most of the Arab regimes have shared a common practice in cracking down on human rights organizations and their members, and inciting against Civil Society Organizations especially those involved directly in advocating for human rights. Such hostility was apparent in the attempts to demonize such organizations, human rights defenders, and advocates by accusing them of representing foreign agendas and implementing the hostile interests in the region, therefore considering them a threat to national security.³⁰² For example, in 1996 CSOs were described by the Ministers of Interior of the LAS as “*destructive and dangerous to national security*”.³⁰³ Until this day; many organizations in Arab Countries including Egypt, Sudan and the Gulf are denied official registrations in their home-countries, their bank accounts are frozen, and their members are subjected to death threats³⁰⁴, arbitrary arrests, torture and long-term imprisonment in harsh conditions, travel bans and forcible disappearance for their work in human rights.³⁰⁵ For instance in 1993, a prominent Libyan human rights defender, Mansour el-Kikhya, a member of the Arab Human Rights Organization board of trustees; disappeared in Egypt after the government finally allowed the organization to convene its third meeting in Cairo.³⁰⁶ He was found dead in November 2012.³⁰⁷ Such ongoing practices forced some organizations to relocate and function from other

³⁰⁰ Ibid

³⁰¹ Alsaied, Mohamed Alsayyed, 1997, p.12. And Abdullahi A. An-Na'im,2001, p.716-781.

³⁰² CIHRS, 2020, p.26.27.

³⁰³ Rishmawi, Mervat,2013, p.11.

³⁰⁴ EUROMED RIGHTS, 2018, available at <https://euromedrights.org/publication/death-threats-against-cihrs-director-bahey-el-din-hassan/>

³⁰⁵ For more information about the human rights defenders in the Arab region see the Front Line Defenders in the Middle East and North Africa Available at: <https://www.frontlinedefenders.org/en/location/region-middle-east-and-north-africa>.

³⁰⁶ The General Secretariat of the Arab Origination of Human Rights was located in Egypt however it was operating from Tunis because it was not allowed to work in Egypt.

³⁰⁷ Rishmawi, Mervat, 2013, p.11. For more information about targeting human rights defenders see:

<https://www.hrw.org/news/2019/03/19/egypt-uncover-missing-politicians-whereabouts>

<https://www.amnesty.org/en/latest/news/2018/03/egypt-lawyer-and-human-rights-defender-ezzat-ghonim-at-risk-of-enforced-disappearance/>

<https://www.frontlinedefenders.org/en/location/region-middle-east-and-north-africa>

places in the world³⁰⁸, while others; especially, Syrian, Bahraini and Saudi Arabian organizations were founded in exile as it was almost impossible to function in their home-countries.³⁰⁹

In light of this highly tense context, it is not surprising that the LAS decision-making bodies, including the Council, Summits, Council of Ministers of Foreign Affairs or the Ministerial Council have not designated room for engaging CSOs in their meetings and work or gave them the chance to look into the agenda of their meetings.³¹⁰ However, in 2002 the LAS showed some interests in engaging with CSOs, and these interests were culminated by the creation of the Civil Society Organizations Department which is entrusted to be a key link between the LAS organs and the CSOs in the region. Such interest was further developed by the creation of the position of the Commissioner of the Secretary-General for Civil Society in 2002.³¹¹ Nonetheless, the creation of this department has not resulted in meaningful cooperation between CSOs and the LAS organs.

In 2005, the Arab Economic and Social Council (ECOSOC) adopted criteria to grant CSOs in the region an observer status³¹² that allows them to participate at the sessions of its Committees upon a prior invitation by the General Secretariat as well as other conditions imposed by the Council.³¹³ The criteria is restricted and controlled by Member States' policies and the domestic laws that regulate the formation and the functioning of CSOs in the respective countries.³¹⁴ Even those CSOs who are granted an observer's status are only allowed to attend meetings upon invitation without taking part of any type in the discussions.³¹⁵ As of May 2020, only 32 CSOs in the Arab Region were granted an observer status by the Arab ECOSOC.³¹⁶

The Arab ECOSOC holds economic and social development summits. These summits are held every two years, and are usually attended by the business and private sectors.³¹⁷ In several

³⁰⁸ For example, in 2014, CIHRS was forced to move its office from Egypt to Tunis due to the Egyptian government unprecedented crackdown on human rights organizations functioning in Egypt. For more information see <https://cihrs.org/after-20-years-cihrs-moves-its-regional-and-international-programs-outside-egypt/?lang=en>

³⁰⁹ Abdullahi A. An-Na'im, 2001, p 217.

³¹⁰ Rishamwai, Mervat, 2015, p.22.

³¹¹ Center for Law and Democracy, 2018, p.15.

³¹² The Criteria provided by The Arab ECOSOC is available in English at: Rishmawi, Mervat, 2015, p.32-33.

³¹³ The Center of Law and democracy, 2018, p.15-16.

³¹⁴ FIDH, 2013, p.35 & 15.

³¹⁵ Ibid, p.31-34.

³¹⁶ The list of organization that has accredited by Arab (ECOSOC) is available at the LAS website in Arabic: <http://www.lasportal.org/ar/devices/organizations/Pages/CivilSociety.aspx>

³¹⁷ Rishmawi, Mervat, 2015, p. 34-38.

occasions, the summits issued decisions to encourage the participation and engagement between governments and CSOs regarding development issues. However the summit has not put a strategy to engage CSOs in practice and the engagement element on the ground remains constrained.³¹⁸ CSOs in many occasions through the Arab Network for Development attempted to influence these summits by conducting meetings in parallel to those held by the summit, in which they invite officials of the LAS for discussions.³¹⁹

Another platform for engaging CSOs in the LAS activities is the PACHR. In 2006, the PACHR adopted different criteria from that of the Arab ECOSOC to grant the CSOs an observer status in its sessions.³²⁰ According to which, CSOs are only allowed to attend sessions without participating in discussion or submitting statements or proposals, which renders their participation limited and ineffective. In order to attend the PACHR meetings, they need to submit a request through the Ministry of Foreign Affairs in their home who in return will refer it to the Secretariat of the LAS.³²¹ In 2012, Palestine submitted a proposal in the 32nd session of the PACHR to allow human rights organizations with an observer status to comment on the agenda items of the PACHR sessions before adoption, as well as to allow them to submit proposals to be included in the session's agenda. Both recommendations were rejected.³²² Hence, CSOs' attendance and participation remained controlled by their states.

In fact, until May 2020, PACHR granted only 23 human rights organizations observer status.³²³ Many prominent human rights organizations were not granted observer status due to the restricted criteria that requires CSOs to be registered in their countries in accordance with the national laws. In many occasions the status given to some organizations was revoked based on recommendations of states that such organizations allegedly violate the national laws that regulate the work of CSOs. For example, in its 36th session convened in 2014, the PACHR decided to revoke the observer status of the Arab Human Rights Organization in Jordan based on a recommendation submitted by the Jordanian permanent envoy to the LAS which claimed that the organization violated the

³¹⁸ Ibid p.15.

³¹⁹ Center for Law and Democracy, 2018, p.18-19.

³²⁰ The Criteria provided by the PACHR is available in English at: Rishmawi, Mervat,2015, p.30.

³²¹ Rishmawi, Mervat,2015, p. 30.

³²² Center for law and Democracy,2018, p.17. See Also: <https://www.wattan.net/ar/news/10130.html>

³²³ The list of organizations accredited by PACHR is available in Arabic at:<http://www.lasportal.org/ar/sectors/dep/HumanRightsDep/Pages/CommitteeSuperVisor.aspx>

association law in Jordan. A similar decision was taken in the same session against two Iraqi CSOs for similar reasons.³²⁴ In practice, independent CSOs have no chance to participate in the PACHR sessions because they are less likely to meet the criteria given.³²⁵

Meanwhile, the Arab League General Secretariat is another platform where CSOs are allowed to engage without restrictions and thus any CSOs is able to engage freely with the Secretariat and its bodies.³²⁶

The lack of engagement between CSOs and the LAS organs is not limited to participating in its activities, but also extends to the lack of access to information on the activities of LAS bodies, including upcoming meetings, resolutions, plans, and thematic issues. Such information is either unavailable or outdated when disseminated and therefore it loses its effective. this prevents the interaction with CSOs and prohibit the latter from building a strategic plan for advocacy.³²⁷ In view of this situation, CSOs' engagement with the LAS remains restricted. The other reason for such limited engagement stems from a certain belief developed over the years by the organizations; investing efforts in such ineffective and bureaucratic mechanisms - that are in total alliance with the states - is rather ineffective, and therefore it is more useful to focus their advocacy efforts at international mechanisms.³²⁸

In the aftermath of the Arab Spring, the LAS showed some openness toward CSOs. During this period, the LAS appointed a special commission to put forward a proposal to reform their structure.³²⁹ In the meantime, human rights organizations saw that the Arab Spring had the best momentum to bring change at the LAS level. In 2012, the Secretary General of the League appointed a commission headed by an Arab expert Mr. Lakhdar Brahimi³³⁰ to draft a proposal to reform the LAS structure in a way that guarantees better engagement with CSOs, whereas CSOs provided their vision for reforms and possibilities for engagement.³³¹ After several meetings and

³²⁴ See Item 10 of the PACHR 36 session in 2014, p.168. Available in Arabic at :

<http://www.lasportal.org/ar/sectors/dep/HumanRightsDep/Pages/CommitteeMeetingsDetails.aspx?RID=7>

³²⁵ FIDH,2013, p.15.

³²⁶ Rishmawi, Mervat,2015, p.61.

³²⁷ Rishmawi, Mervat, 2013, p.49.

³²⁸ Hassan, Bahey Eddine,2014, p.63-64.

³²⁹ FIDH,2013, p.8.

³³⁰ A former Algerian Foreign Minister, UN diplomat, Mediator, post-conflict reconstruction and Peacekeeping expert.

³³¹ FIDH, 2013, p.8-9.

consultations with national and regional human rights organizations, by September of that year the expert prepared a draft after consultations with the six human rights organizations³³² that had previous experience with the LAS activities.³³³

Since then, several meetings and seminars were sponsored by regional human rights organizations to reinforce the relationship between the LAS and CSOs and to come up with a strategy to frame this relationship. Representatives of the League, including the Secretary General attended these events. Yet, such efforts have not resulted in practical changes. In fact, they may have instead increased the level of frustrations among CSOs who no longer have faith in working with the LAS as they see the prospective for reforms is a sterile path.

The Arab civil society organizations engagement with the LAS is constrained especially in comparison to other international systems. For example, the guidelines for civil society participation in the Organization of American States (OAS) activities allows for wide and unrestricted access including attending the General Assembly public meetings and, meetings of the Permanent Committees. They also allow CSOs to provide written communications before the meetings can deliver statements and provide expert advice even if under certain criteria.³³⁴

Additionally, dialogue with the Heads of Delegations of the OAS extended to include academics and other entities. It is worth mentioning that the institutionalization of such relations started only in 1999 but the engagement started in an earlier stage in a “*spontaneous fashion*”³³⁵. As of today, hundreds of CSOs take part in the OAS deliberations which are invaluable to the topics they bring into discussions and hence improve the human rights norms and standards in the Organization.³³⁶

To conclude, over the past years the LAS proved a lack of a political will to meaningfully engage with CSOs in the Arab region, which by time resulted in creating an environment that lacked trust and sometimes had hostilities emerge between both sides.³³⁷ Furthermore, genuine efforts must be

³³² The CIHRS, Crisis Action, the ICJ, the Arab Organization for Human Rights, Human Rights and Information Training Center and the FIDH.

³³³ FIDH, 2013, p.8.

³³⁴ Geneviève, Lessard, 2011, p.171.

³³⁵ Ibid

³³⁶ Ibid, p.171.

³³⁷ Center for Law and Democracy, 2018, p.15.

made to amend the LAS in a way that allows for an effective partnership and engagement with the Arab CSOs.

B. The Arab Human Rights Committee's engagement with Civil Society

Since its establishment, the Arab Human Rights Committee has expressed interests in engaging with Civil Society Organizations (CSOs). In 2009, the newly elected members of the Committee met representatives of Arab and international human rights organizations including the Cairo Institution for Human Rights Studies, the Arab Organization for human rights, Amnesty International, and the International Federation for Human Rights (FIDH) as a step forward to engage CSOs in its work.³³⁸ In addition, they conducted several meetings with CSOs in the following years to introduce the Committee and to discuss means of cooperation.³³⁹

In practice, the Committee proved good practice in engaging CSOs in its work and agenda, which can be seen in different layers. First, cooperation and coordination with CSOs was on the agenda of the Committee's annual plan. It was added to create a database for human rights organizations that work in the Arab countries each according to its specialty in order to facilitate inviting them to state report reviews and to assist in promoting for the outputs of report examination³⁴⁰. Second, the Committee through its recommendations and concluding observations to State parties has emphasized the necessity of engaging civil society organization in report drafting processes and for state parties to provide a suitable environment for the human rights organizations and accordingly amend legislations that restrict freedom of association.³⁴¹

Third, since its establishment the Committee tends to conduct two types of country visits to Arab states. The first type is to countries which have not yet ratified the Charter and where they were keen to meet with CSOs to promote for the Charter and to gain their support to persuade their countries to ratify it. Such meetings were held in Morocco and Mauritania.³⁴² The other type of

³³⁸ Riad, Suhair, 2013, p.20.

³³⁹ Arab Human Rights Committee, second annual report, 2010, no page. & Rishmawi, Mervat, 2013, p.23.

³⁴⁰ The annual plan is Available in Arabic at the Committee website:

<http://www.lasportal.org/ar/humanrights/Committee/Pages/StratigicCommittee.aspx>

³⁴¹ See for example Arab Human Rights Committee, concluding observations and recommendations on the first periodic report of Bahrain, session 15, 2019, p.12.

³⁴² A delegation from the Committee visited Mauritania between 30 Jan- 1-Feb 2018. More information about the visit is available at: <http://www.lasportal.org/ar/humanrights/Committee/Pages/ActivityDetails.aspx?RID=64>

visits is those to States party during which they held meetings with CSOs representatives to introduce the Charter and engage them in the reporting process.³⁴³

Finally, the Committee has put in place guidelines to engage civil society in the reporting process. Starting with consultations, contributions to the drafting process, submitting shadow reports and allowing for their attendance at the examination sessions as observers even those who did not submit shadow reports.³⁴⁴ Shadow reports submitted by CSOs are published on the Committee's website. However, at the beginning, this participation was limited to CSOs which were granted an observer status at the Arab ECOSOCS. In 2016, influenced by the wide participation of the Lebanese CSOs in the examination session of Lebanon's initial report (session 15),³⁴⁵ the Committee revised the guidelines from 2014 regarding shadow reports. In its revision, it showed more openness to CSOs and allowed for a broader and better engagement with the CSOs and NHRIs.³⁴⁶

Shadow reports provided by CSOs may include comments and observations on the state report or draw the Committee's attention on issues regarding the report or the human rights issues in the state under review. They may provide specific recommendations of best practices that the state should undertake to implement its obligations. These reports could also suggest specific questions for the Committee to ask the state. The Committee may take on their recommendations, suggestions and comments.³⁴⁷

During the review process, the Committee held special public hearing sessions and face-to-face dialog with National Institutions of Human Rights and the Civil Society Organizations aside from state review sessions, unless it decided to make it closed. Most importantly, the Committee does not limit its engagement to CSOs who have observer status with the Arab league. It rather allows CSOs which are accredited by the state in question, or by the LAS or the Organization of Islamic

³⁴³ A visit was conducted to the UAE on 19-21 Nov 2018. For more information about the visit see:

<http://www.lasportal.org/ar/humanrights/Committee/Pages/ActivityDetails.aspx?RID=86>

³⁴⁴ Arab Human Rights Committee, Guidelines on drafting shadow reports. Available in Arabic at:

<http://www.lasportal.org/ar/humanrights/Committee/Pages/CommitteMechanism.aspx>

³⁴⁵ The Chair of Arab Human Rights Committee, Mohamed Al-Dahi intervention about the relation between the Arab Human Rights Committee and the CSOs, 24-25 Feb 2016, p.20. Available at:

<http://www.lasportal.org/ar/humanrights/Committee/Pages/CommitteePublications.aspx>

³⁴⁷ Arab Human Rights Committee, Guidelines on drafting shadow reports.

Cooperation, or by the United Nations to attend the sessions as an observer. Further, the Committee may accept the attendance of CSOs other than those mentioned above as observers too.³⁴⁸ In this regard, we notice a remarkable increase in the number of shadow reports received from the first three sessions and after.

For example, during the initial report review to Jordan in the first session held in 28 March 2012 there was one shadow report submitted by Amman Center for Human Rights, whereas in the next review of the periodic report in February 2016, 11 shadow reports were submitted by Jordanian human rights organizations including some coalitions. Two shadow reports were submitted by Iraqi organizations parallel to the initial reports in its 6th session convened between 20-25 December 2014, whereas this increased to five in the first periodic review in the 14th session held on 1 to 5 July 2018. As for the UAE, no shadow reports submitted to the initial state report in the fifth session convened 21-26 December 2013, comparing to 5 shadow reports submitted parallel to the first periodic review in its session on 13 to 16 October 2019. However, CSOs in some countries such as Saudi Arabia, Algeria and Bahrain have not submitted any parallel reports yet. Most of the state parties to the Charter are from the Gulf where human rights organizations are still not functioning or independent.³⁴⁹

Despite all efforts made by the Committee to engage the CSOs in the state reporting process, the process is still slow, and the engagement of the Arab CSOs with international mechanisms remains more active. We still see the absence of prominent human rights organizations in the whole reporting process with the Committee, while the concluding observations of the Committee are not picked and disseminated by the CSOs. However, the Committee asserts the importance of engaging the CSOs whether in the process of adopting its concluding observations, the publication of shadow reports, or meetings conducted during country visits. Yet these best practices that highlight the importance of such engagement are not well amplified, including on the website of the Committee and social media, and no constructive strategy is being developed to build on the

³⁴⁸ Procurers of reviewing state reports of the Member States of the Arab Charter, item 7. and Rishmawi, 2015, p. 45.

³⁴⁹ Shadow reports are available at the LAS Webpage under the Committee sessions: <http://www.lasportal.org/ar/humanrights/Committee/Pages/CommitteeSessions.aspx>

achievements. Most importantly, the Committee will need to instate guidelines to protect CSOs and their members from reprisals based on their cooperation with the Committee.

C. The LAS of Engagement with National Institutions on Human Rights (NHRIs)

In 1993, the United Nations General assembly adopted the Paris Principles in which they stated status of the National Institutions of Human Rights (NHRIs), regulating the competences, responsibilities, and standards that govern the work of NHRIs. This determined the criteria in which states shall give NHRIs "*as broad a mandate as possible*"³⁵⁰ in promoting and protecting human rights at the national level. According to the Paris Principles, NHRIs are entrusted among other responsibilities to promote and secure the harmonization of the national enactments and laws with the international human rights treaties of which the state has ratified. NHRIs are also to ensure effective implementation, persuade states to ratify the international treaties, take part in reporting required by United Nations Treaty Bodies and regional institutions, and finally, engage with the United Nations and regional institutions in promoting and protection of human rights.³⁵¹

In fact, while NHRIs might differ from one country to another in regards to their form and mandate, their common role remains the promotion and protection of human rights. The effectiveness of NHRIs depend on the level of their independence. For that purpose, the Global Alliance for National Human Rights Institutions (GANHRI) reviews the status of NHRIs and accredits them a status based on their level of compliance with the Paris Principles.³⁵²

Arab National Institutions of Human Rights flourished in the early 1990s, when five National Institutions of Human Rights were established in Morocco, Tunisia, Algeria, Palestine and Yemen.³⁵³ Another wave was witnessed in early 2000 with the establishment of four other National Institutions in Jordan, Qatar, Egypt and Saudi Arabia. The first wave was driven by the national crisis, and the second by intentional pressure.³⁵⁴ As of 2020, there are 14 National Institutions of

³⁵⁰ Paris principles "*Competence and responsibilities*" article (2), available at: <https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx>

³⁵¹ Ibid, article 3 (competence and responsibilities) b-e.

³⁵² GANHRI Sub-Commission on Accreditation (SCA): <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Pages/default.aspx>

³⁵³ Cardenas, Sonia; Flibbert, Andrew, 2005, no page.

³⁵⁴ Awad, Mohsin, Abdallah, Khalil, 2005, p, 21-25.

Human Rights in the Arab countries³⁵⁵ of which six have been accredited with “A” and other six with “B” status by the Global Alliance of National Human Rights Institutions (GANHRI).³⁵⁶ However, the level of autonomy and the power of these Institutions range from one country to another.

The level of engagement between the LAS and the National Institutions of Human Rights is not yet institutionalized. It is still limited to meetings, seminars and workshops. They can grant observer status at the Arab ECOSOC and PACHR to access their sessions and deliberations under the same criteria that govern the CSOs. However, their access to the PACHR is direct as they only need to submit a request to the Secretariat of the LAS without the need to submit it first to the Ministry of Foreign affairs in their country as CSOs need to do. However, they are not allowed to submit proposals or make comments on the agenda or during the sessions.

The Arab Network for National Human Rights Institutions (ANNHRI), which was established on 27 April 2011, has not obtained that status yet. Initiatives led by the National Institutions of Human Rights to reform the LAS bodies were also limited and no significant progress is recorded in this regard.

D. The Arab Committee of Human Rights Engagement with NHRIs

Over the past few years of its work, the Arab Human Rights Committee showed openness in engaging with National Institutions of Human Rights, where NHRIs are encouraged to submit shadow reports in parallel to state reports. The Committee held special public hearing sessions and face-to-face dialogue with National Institutions of Human Rights aside from state examination sessions. The Committee has always recommended states where NHRIs do not yet exist to accelerate the formation of such institutions according to the Paris Principles³⁵⁷ In addition, the Committee has always asserted the necessity engage NHRIs in the drafting process. The Committee often refers to information provided in shadow reports submitted by NHRIs and recommends states to take on their recommendations.³⁵⁸ Furthermore, it often engages and makes

³⁵⁵ Arab Network for National Human Rights Institutions (ANNHRI) available at: <https://annhri.org/en/home/>

³⁵⁶ Information about accredited NHRIs are available at GANHRI webpage: <https://ganhri.org/membership/>

³⁵⁷ For example, see recommendations and concluding observation on UAE first periodic review article 15-16, P.7. and the recommendations and concluding observations on the Saudi Arabia initial report, article (ت).

³⁵⁸ See the concluding observations on Bahrain first periodic report, article 24-25, p.8.

joint activities with NHRIs in the Arab countries and is keen to meet with them during the introductory country visits they conduct.

On the other hand, NHRIs demonstrated very limited engagement with the work of the Committee since it started its work in 2012. For example, since its first session to review the initial report submitted by Jordan in 2012 until its seventh session convened to review the state report of Lebanon on 25 April 2015; only one shadow report was submitted by Qatar Committee of Human Rights parallel to the state report submitted by the State of Qatar. However, since 2015 more shadow reports were submitted by NHRIs.³⁵⁹ The Arab Charter on Human Rights and the Committee are not well promoted by the NHRIs on their web pages and social media which makes the work of the Committee and the Charter less visible to the Arab people. NHRIs also do not disseminate the concluding observations and the recommendations of the Committee following the state reviews. In this regard we often find that the Charter is even absent when NHRIs illustrates the core international human rights treaties and mechanisms on their websites or when they refer to the human rights provisions in their activities.³⁶⁰

A step forward has been taken by the Jordan National Center of Human Rights as they referred in their last annual report to the rights and freedoms stipulated in the Charter in addition to the United Nations treaties.³⁶¹ However the Center has not yet included or referred to the recommendations and the concluding observations of the Committee in the annual report as it does when it comes to the United Nations treaty bodies recommendations.³⁶² No similar practice was observed by other NHRIs. Similarly, the Center has not reminded nor urged Jordan to implement the recommendations provided by the Committee or of their overdue reports. The annual report of Qatar's NHRIs in 2018 mentioned the international treaties that Qatar has acceded to without

³⁵⁹ The National Commission of Human Rights in Sudan in the eight session, the National Center of Human Rights in Jordan in the ninth session, Qatar in the 13 session, Iraq in the 14th session and the National Institution of Human Rights in Bahrain in the 15 sessions.

³⁶⁰ See for example the Palestinian Independent Commission for Human Rights (ICHR): <https://www.ichr.ps/>. And The Jordan National Center for Human Rights: http://www.nchr.org.jo/User_Site/Site/Home_Page.aspx

³⁶¹ See for example the 15th annual report on the Human Rights Status in Jordan, 2018, Footnotes 10, p.70. and footnotes 49, p.79. It referred to article (57) of the Arab Charter on Human Rights the right to freedom of assembly and article (24) of the Charter on freedom of association. Available in Arabic at: http://www.nchr.org.jo/Admin_Site/Files/PDF/076cb5d7-aecf-4289-9bf4-651de27c9db7.pdf

³⁶² See for example p.207-208. of the 15th Annual report of Jordan which provide information about recommendations provided by CEDAW and by the Universal Periodic Review on Jordan. However, it did not mention the Arab Committee recommendations and concluding observations in its 13th annual report of 2016 when the Committee reviewed the first periodic report of Jordan.

mentioning the Arab Charter³⁶³. For example, they referred to CEDAW's concluding observation on their review to Qatar report with regards to nationalities conferred by women and did not refer to the recommendations provided by the Committee on the same issue.³⁶⁴

In 2016, the Arab Committee on Human Rights signed a memorandum of understanding with the Arab Network for National Human Rights Institutions (ANNHRI) to institutionalize their cooperation as part of the Arab Committee strategic plan set forth in 2014 to implement the Charter.³⁶⁵ Yet this engagement has not been implemented well on the ground. In its strategic plan 2016, 2017 and 2018 the Network put cooperation with the Arab Human Rights Committee in its agenda according to which the ANNHRI will encourage NHRIs to submit shadow reports to the Committee, conduct workshops to introduce the Arab Charter to human rights as well as to submit shadow reports by the ANNHRI. The strategy lacks clear tools for implementation and does not include an advocacy strategy to disseminate the Charter and the Concluding Observations of the Committee on State reports. It does not urge States to implement the recommendations and remind them of the overdue reports, and does not refer to encouraging the participation of the CSOs as well as many other issues that support and enhance the work of the Committee. In practice, the ANNHRI has not shown a best practice in promoting the Committee and its work on its website and social media.³⁶⁶

To conclude, despite the slow process of engagement and cooperation between the Arab Committee of Human Rights and the CSOs and NHRIs in the region, it is still evident that the Committee is the best platform in the Arab league where CSOs and NHRIs could freely engage and create change. The institutionalization of the cooperation between the Committee, CSOs and

³⁶³ National Human Rights Committee of Qatar, the 14th annual report, 2018, p.20. Available at: <https://nhrc-qa.org/en/annual-reports/>

³⁶⁴ National Human Rights Committee of Qatar, Annual report, Jan- Dec 2016, p.78. In Arabic: <https://nhrc-qa.org/en/annual-reports/>

³⁶⁵ The memorandum of understanding is available in Arabic at: <https://nhrc-qa.org/%D9%85%D8%B0%D9%83%D8%B1%D8%A9-%D8%AA%D9%81%D8%A7%D9%87%D9%85-%D8%A8%D9%8A%D9%86-%D8%A7%D9%84%D8%B4%D8%A8%D9%83%D8%A9-%D8%A7%D9%84%D8%B9%D8%B1%D8%A8%D9%8A%D8%A9-%D9%84%D9%84%D9%85%D8%A4%D8%B3%D8%B3/>

³⁶⁶ The Strategic Plan of ANNHRI is available in Arabic at: <https://annhri.org/%d9%82%d9%88%d8%a7%d9%86%d9%8a%d9%86-%d8%a7%d9%84%d8%b4%d8%a8%d9%83%d8%a9/%d8%a7%d9%84%d8%ae%d8%b7%d8%a9-%d8%a7%d9%84%d8%a7%d8%b3%d8%aa%d8%b1%d8%a7%d8%aa%d9%8a%d8%ac%d9%8a%d8%a9-%d9%88%d8%a7%d9%84%d8%a8%d8%b1%d9%86%d8%a7%d9%85%d8%ac/>

the NHRIs will help in strengthening the Arab human rights system within the LAS and push forward better and stronger human rights protection mechanisms.

Conclusion

The development of human rights instruments in the Arab region has been largely the result of international and national pressures, rather than a genuine will to advance and protect the rights of people and victims within the region. This has resulted in the creation of a primitive human rights system.

The Arab human rights system has emerged under the auspices of the regional organization of the League of Arab States (LAS), and several international and national factors have contributed to shaping the existing system. The 22 Arab States which make up the LAS, many of which have authoritarian governments with draconian and outdated systems of laws, continue to lack any genuine political will to develop effective human rights mechanisms for the region. In fact, under the façade of “advancing” regional mechanisms for human rights protection, many of these Member States have brushed off international pressure or questioning of the mass human rights violations taking place in their respective countries. As such, it is necessary to understand this context before any discussion of the development of human rights system in the Arab region, and the implications it continues to have in hindering its development.

The research began by providing an analysis of the main Arab human rights mechanisms, instruments and their mandates, and focused mainly on their role in ensuring Member States’ adherence to their human rights obligations vis-à-vis the Arab people (or lack thereof). Throughout the research, it was clear that the Arab human rights system, which is still developing, remains ineffective in protecting human rights and is below internationally recognized standards. Its weakness pertains to the lack of commitments to human rights protection by Member States, and their unwillingness to develop an effective human rights system. This has been largely to avoid incorporating further legal obligations for the respect of human rights that could in any way have any legal effects in their own national jurisdictions. In effect, this has allowed for political interests to prevail over the protection of human rights in the region. It has also rendered the main regional human rights treaty, the Arab Charter on Human Rights, well-below international standards in many areas in the protection of human rights. This in turn has affected the development of the Arab Court of Human Rights, which lack independence and does not offer effective remedies for individuals. As such, Arab States need to amend the provisions of the Charter in good faith,

especially those that contradict international standards, in order to pave a robust way for the work of the Arab Court of Human Rights, once it enters into force.

The research then focused on the Arab Human Rights Committee, as the first independent human rights mechanism established by the LAS to oversee the implementation of the Arab Charter on Human Rights, and particularly discussed how its work has spearheaded the development of a some-what effective Arab human rights system. The Committee is the first Arab mechanisms to ensure that its procedures and guidelines for the protection of human rights are in line with international standards. This research is one of few studies, that have provided an in-depth analysis of the Committee's mandate and work in addressing the implementation of Member States' obligations for the protection of human rights, as per the Arab Charter. The Committee has shown since 2012, a real commitment to addressing States' obligations and serious human rights violations under the Arab Charter, while providing strong recommendations. The research has discussed how the reporting and reviewing processes established by the Committee are to a large extent similar to those developed by the United Nations treaty bodies. Yet, many experts³⁶⁷ still consider the Arab Committee to be a weak and primitive human rights mechanism, particularly because of its restricted mandate to only reviewing States' reports and providing recommendations, without the possibility to receive complaints from individuals or States (Inter-State complaints). It is essential for the Committee to establish an individual complaint mechanism, in order to foster the protection of human rights in the regional system.

Closely related to the work of Arab regional human rights mechanisms, and specially the Committee, is the advocacy work conducted by CSOs to expose human rights violations by Member States in the region. Some of which have had a far better experience in documenting and reporting on abuses, as well as advocating for change, that in some instances, pre-dates the establishment of the Arab Committee. Yet despite this experience, many of these organizations do not engage with the work of LAS organs, including its human rights mechanisms. This is largely the result of LAS' deliberate exclusion of regional civil society from being effectively engaged in its activities and hence the development of such human rights mechanisms. As such, genuine

³⁶⁷ See for example, Rishmawi, Mervat, 2009. And, Al-Midani Mohammed Amin, 2019, p.38-39.

efforts must be made to amend the LAS in a way that allows for an effective partnership with Arab CSOs.

This research has shown that the Arab Human Rights Committee is the “best” mechanism in the Arab system that has provided a space for Arab CSOs to engage with it. As such, the institutionalization of the cooperation between the Committee and CSOs is crucial for strengthening the Arab human rights system within the LAS and largely towards stronger regional human rights protection mechanisms. In light of this, Arab regional human rights mechanisms need to be seriously amended to ensure that they recognize fundamental human rights protections that are in line with international standards. This in turn will contribute to improving human rights standards in the region. This will not be possible unless LAS and its Member States guarantee a meaningful engagement of Arab CSOs in the human rights system and its development.

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Annexes

League of Arab States, Arab Charter on Human Rights, May 22, 2004, *entered into force March 16, 2008.*³⁶⁸

The Preamble

Based on the faith of the Arab nation in the dignity of the human person whom God has exalted ever since the beginning of creation and in the fact that the Arab homeland is the cradle of religions and civilizations whose lofty human values affirm the human right to a decent life based on freedom, justice and equality,

In furtherance of the eternal principles of fraternity, equality and tolerance among human beings consecrated by the noble Islamic religion and the other divinely-revealed religions,

Being proud of the humanitarian values and principles that the Arab nation has established throughout its long history, which have played a major role in spreading knowledge between East and West, so making the region a point of reference for the whole world and a destination for seekers of knowledge and wisdom,

Believing in the unity of the Arab nation, which struggles for its freedom and defends the right of nations to self-determination, to the preservation of their wealth and to development; believing in the sovereignty of the law and its contribution to the protection of universal and interrelated human rights and convinced that the human person's enjoyment of freedom, justice and equality of opportunity is a fundamental measure of the value of any society,

Rejecting all forms of racism and Zionism, which constitute a violation of human rights and a threat to international peace and security, recognizing the close link that exists between human rights and international peace and security, reaffirming the principles of the Charter of the United Nations, the Universal Declaration of Human Rights and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and having regard to the Cairo Declaration on Human Rights in Islam,

The States parties to the Charter have agreed as follows:

Article 1

The present Charter seeks, within the context of the national identity of the Arab States and their sense of belonging to a common civilization, to achieve the following aims:

³⁶⁸ <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83546/92341/F2093473234/ORG83546.pdf>

1. To place human rights at the centre of the key national concerns of Arab States, making them lofty and fundamental ideals that shape the will of the individual in Arab States and enable him to improve his life in accordance with noble human values.

2. To teach the human person in the Arab States pride in his identity, loyalty to his country, attachment to his land, history and common interests and to instill in him a culture of human brotherhood, tolerance and openness towards others, in accordance with universal principles and values and with those proclaimed in international human rights instruments.

3. To prepare the new generations in Arab States for a free and responsible life in a civil society that is characterized by solidarity, founded on a balance between awareness of rights and respect for obligations, and governed by the values of equality, tolerance and moderation.

4. To entrench the principle that all human rights are universal, indivisible, interdependent and interrelated.

Article 2

1. All peoples have the right of self-determination and to control over their natural wealth and resources, and the right to freely choose their political system and to freely pursue their economic, social and cultural development.

2. All peoples have the right to national sovereignty and territorial integrity.

3. All forms of racism, Zionism and foreign occupation and domination constitute an impediment to human dignity and a major barrier to the exercise of the fundamental rights of peoples; all such practices must be condemned and efforts must be deployed for their elimination.

4. All peoples have the right to resist foreign occupation.

Article 3

1. Each State party to the present Charter undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein, without distinction on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability.

2. The States parties to the present Charter shall take the requisite measures to guarantee effective equality in the enjoyment of all the rights and freedoms enshrined in the present Charter in order to ensure protection against all forms of discrimination based on any of the grounds mentioned in the preceding paragraph.

3. Men and women are equal in respect of human dignity, rights and obligations within the framework of the positive discrimination established in favour of women by the Islamic Shariah, other divine laws and by applicable laws and legal instruments. Accordingly, each State party

pledges to take all the requisite measures to guarantee equal opportunities and effective equality between men and women in the enjoyment of all the rights set out in this Charter.

Article 4

1. In exceptional situations of emergency which threaten the life of the nation and the existence of which is officially proclaimed, the States parties to the present Charter may take measures derogating from their obligations under the present Charter, to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin.

2. In exceptional situations of emergency, no derogation shall be made from the following articles: article 5, article 8, article 9, article 10, article 13, article 14, paragraph 6, article 15, article 18, article 19, article 20, article 22, article 27, article 28, article 29 and article 30. In addition, the judicial guarantees required for the protection of the aforementioned rights may not be suspended.

3. Any State party to the present Charter availing itself of the right of derogation shall immediately inform the other States parties, through the intermediary of the Secretary-General of the League of Arab States, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Every human being has the inherent right to life.
2. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 6

Sentence of death may be imposed only for the most serious crimes in accordance with the laws in force at the time of commission of the crime and pursuant to a final judgment rendered by a competent court. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.

Article 7

1. Sentence of death shall not be imposed on persons under 18 years of age, unless otherwise stipulated in the laws in force at the time of the commission of the crime.
2. The death penalty shall not be inflicted on a pregnant woman prior to her delivery or on a nursing mother within two years from the date of her delivery; in all cases, the best interests of the infant shall be the primary consideration.

Article 8

1. No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment.

2. Each State party shall protect every individual subject to its jurisdiction from such practices and shall take effective measures to prevent them. The commission of, or participation in, such acts shall be regarded as crimes that are punishable by law and not subject to any statute of limitations. Each State party shall guarantee in its legal system redress for any victim of torture and the right to rehabilitation and compensation.

Article 9

No one shall be subjected to medical or scientific experimentation or to the use of his organs without his free consent and full awareness of the consequences and provided that ethical, humanitarian and professional rules are followed and medical procedures are observed to ensure his personal safety pursuant to the relevant domestic laws in force in each State party. Trafficking in human organs is prohibited in all circumstances.

Article 10

1. All forms of slavery and trafficking in human beings are prohibited and are punishable by law. No one shall be held in slavery and servitude under any circumstances.

2. Forced labor, trafficking in human beings for the purposes of prostitution or sexual exploitation, the exploitation of the prostitution of others or any other form of exploitation or the exploitation of children in armed conflict are prohibited.

Article 11

All persons are equal before the law and have the right to enjoy its protection without discrimination.

Article 12

All persons are equal before the courts and tribunals. The States parties shall guarantee the independence of the judiciary and protect magistrates against any interference, pressure or threats. They shall also guarantee every person subject to their jurisdiction the right to seek a legal remedy before courts of all levels.

Article 13

1. Everyone has the right to a fair trial that affords adequate guarantees before a competent, independent and impartial court that has been constituted by law to hear any criminal charge against him or to decide on his rights or his obligations. Each State party shall guarantee to those without the requisite financial resources legal aid to enable them to defend their rights.

2. Trials shall be public, except in exceptional cases that may be warranted by the interests of justice in a society that respects human freedoms and rights.

Article 14

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest, search or detention without a legal warrant.

2. No one shall be deprived of his liberty except on such grounds and in such circumstances as are determined by law and in accordance with such procedure as is established thereby.

3. Anyone who is arrested shall be informed, at the time of arrest, in a language that he understands, of the reasons for his arrest and shall be promptly informed of any charges against him. He shall be entitled to contact his family members.

4. Anyone who is deprived of his liberty by arrest or detention shall have the right to request a medical examination and must be informed of that right.

5. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. His release may be subject to guarantees to appear for trial. Pre-trial detention shall in no case be the general rule.

6. Anyone who is deprived of his liberty by arrest or detention shall be entitled to petition a competent court in order that it may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful.

7. Anyone who has been the victim of arbitrary or unlawful arrest or detention shall be entitled to compensation.

Article 15

No crime and no penalty can be established without a prior provision of the law. In all circumstances, the law most favorable to the defendant shall be applied.

Article 16

Everyone charged with a criminal offence shall be presumed innocent until proved guilty by a final judgment rendered according to law and, in the course of the investigation and trial, he shall enjoy the following minimum guarantees:

1. The right to be informed promptly, in detail and in a language which he understands, of the charges against him.

2. The right to have adequate time and facilities for the preparation of his defense and to be allowed to communicate with his family.

3. The right to be tried in his presence before an ordinary court and to defend himself in person or through a lawyer of his own choosing with whom he can communicate freely and confidentially.

4. The right to the free assistance of a lawyer who will defend him if he cannot defend himself or if the interests of justice so require, and the right to the free assistance of an interpreter if he cannot understand or does not speak the language used in court.

5. The right to examine or have his lawyer examine the prosecution witnesses and to on defense according to the conditions applied to the prosecution witnesses.

6. The right not to be compelled to testify against himself or to confess guilt.

7. The right, if convicted of the crime, to file an appeal in accordance with the law before a higher tribunal.

8. The right to respect for his security of person and his privacy in all circumstances.

Article 17

Each State party shall ensure in particular to any child at risk or any delinquent charged with an offence the right to a special legal system for minors in all stages of investigation, trial and enforcement of sentence, as well as to special treatment that takes account of his age, protects his dignity, facilitates his rehabilitation and reintegration and enables him to play a constructive role in society.

Article 18

No one who is shown by a court to be unable to pay a debt arising from a contractual obligation shall be imprisoned.

Article 19

1. No one may be tried twice for the same offence. Anyone against whom such proceedings are brought shall have the right to challenge their legality and to demand his release.

2. Anyone whose innocence is established by a final judgment shall be entitled to compensation for the damage suffered.

Article 20

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. Persons in pre-trial detention shall be separated from convicted persons and shall be treated in a manner consistent with their status as unconvicted persons.

3. The aim of the penitentiary system shall be to reform prisoners and effect their social rehabilitation.

Article 21

I. No one shall be subjected to arbitrary or unlawful interference with regard to his privacy, family, home or correspondence, nor to unlawful attacks on his honour or his reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 22

Everyone shall have the right to recognition as a person before the law.

Article 23

Each State party to the present Charter undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 24

Every citizen has the right:

1. To freely pursue a political activity.

2. To take part in the conduct of public affairs, directly or through freely chosen representatives.

3. To stand for election or choose his representatives in free and impartial elections, in conditions of equality among all citizens that guarantee the free expression of his will.

4. To the opportunity to gain access, on an equal footing with others, to public office in his country in accordance with the principle of equality of opportunity.

5. To freely form and join associations with others.

6. To freedom of association and peaceful assembly.

7. No restrictions may be placed on the exercise of these rights other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public health or morals or the protection of the rights and freedoms of others.

Article 25

Persons belonging to minorities shall not be denied the right to enjoy their own culture, to use their own language and to practice their own religion. The exercise of these rights shall be governed by law.

Article 26

1. Everyone lawfully within the territory of a State party shall, within that territory, have the right to freedom of movement and to freely choose his residence in any part of that territory in conformity with the laws in force.

2. No State party may expel a person who does not hold its nationality but is lawfully in its territory, other than in pursuance of a decision reached in accordance with law and after that person has been allowed to submit a petition to the competent authority, unless compelling reasons of national security preclude it. Collective expulsion is prohibited under all circumstances.

Article 27

1. No one may be arbitrarily or unlawfully prevented from leaving any country, including his own, nor prohibited from residing, or compelled to reside, in any part of that country.

2. No one may be exiled from his country or prohibited from returning thereto.

Article 28

Everyone has the right to seek political asylum in another country in order to escape persecution. This right may not be invoked by persons facing prosecution for an offence under ordinary law. Political refugees may not be extradited.

Article 29

1. Everyone has the right to nationality. No one shall be arbitrarily or unlawfully deprived of his nationality.

2. States parties shall take such measures as they deem appropriate, in accordance with their domestic laws on nationality, to allow a child to acquire the mother's nationality, having due regard, in all cases, to the best interests of the child.

3. No one shall be denied the right to acquire another nationality, having due regard for the domestic legal procedures in his country.

Article 30

1. Everyone has the right to freedom of thought, conscience and religion and no restrictions may be imposed on the exercise of such freedoms except as provided for by law.

2. The freedom to manifest one's religion or beliefs or to perform religious observances, either alone or in community with others, shall be subject only to such limitations as are prescribed by law and are necessary in a tolerant society that respects human rights and freedoms for the protection of public safety, public order, public health or morals or the fundamental rights and freedoms of others.

3. Parents or guardians have the freedom to provide for the religious and moral education of their children.

Article 31

Everyone has a guaranteed right to own private property, and shall not under any circumstances be arbitrarily or unlawfully divested of all or any part of his property.

Article 32

1. The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries.

2. Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order and public health or morals.

Article 33

1. The family is the natural and fundamental group unit of society; it is based on marriage between a man and a woman. Men and women of marrying age have the right to marry and to found a family according to the rules and conditions of marriage. No marriage can take place without the full and free consent of both parties. The laws in force regulate the rights and duties of the man and woman as to marriage, during marriage and at its dissolution.

2. The State and society shall ensure the protection of the family, the strengthening of family ties, the protection of its members and the prohibition of all forms of violence or abuse in the relations among its members, and particularly against women and children. They shall also ensure the necessary protection and care for mothers, children, older persons and persons with special needs and shall provide adolescents and young persons with the best opportunities for physical and mental development.

3. The States parties shall take all necessary legislative, administrative and judicial measures to guarantee the protection, survival, development and well-being of the child in an atmosphere of freedom and dignity and shall ensure, in all cases, that the child's best interests are the basic criterion for all measures taken in his regard, whether the child is at risk of delinquency or is a juvenile offender.

4. The States parties shall take all the necessary measures to guarantee, particularly to young persons, the right to pursue a sporting activity.

Article 34

1. The right to work is a natural right of every citizen. The State shall endeavor to provide, to the extent possible, a job for the largest number of those willing to work, while ensuring production, the freedom to choose one's work and equality of opportunity without discrimination of any kind on grounds of race, colour, sex, religion, language, political opinion, membership in a union, national origin, social origin, disability or any other situation.

2. Every worker has the right to the enjoyment of just and favourable conditions of work which ensure appropriate remuneration to meet his essential needs and those of his family and regulate working hours, rest and holidays with pay, as well as the rules for the preservation of occupational health and safety and the protection of women, children and disabled persons in the place of work.

3. The States parties recognize the right of the child to be protected from economic exploitation and from being forced to perform any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development. To this end, and having regard to the relevant provisions of other international instruments, States parties shall in particular:

(a) Define a minimum age for admission to employment;

(b) Establish appropriate regulation of working hours and conditions;

(c) Establish appropriate penalties or other sanctions to ensure the effective endorsement of these provisions.

4. There shall be no discrimination between men and women in their enjoyment of the right to effectively benefit from training, employment and job protection and the right to receive equal remuneration for equal work.

5. Each State party shall ensure to workers who migrate to its territory the requisite protection in accordance with the laws in force.

Article 35

1. Every individual has the right to freely form trade unions or to join trade unions and to freely pursue trade union activity for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights and freedoms except such as are prescribed by the laws in force and that are necessary for the maintenance of national security, public safety or order or for the protection of public health or morals or the rights and freedoms of others.

3. Every State party to the present Charter guarantees the right to strike within the limits laid down by the laws in force.

Article 36

The States parties shall ensure the right of every citizen to social security, including social insurance.

Article 37

The right to development is a fundamental human right and all States are required to establish the development policies and to take the measures needed to guarantee this right. They have a duty to give effect to the values of solidarity and cooperation among them and at the international level with a view to eradicating poverty and achieving economic, social, cultural and political development. By virtue of this right, every citizen has the right to participate in the realization of development and to enjoy the benefits and fruits thereof.

Article 38

Every person has the right to an adequate standard of living for himself and his family, which ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment. The States parties shall take the necessary measures commensurate with their resources to guarantee these rights.

Article 39

1. The States parties recognize the right of every member of society to the enjoyment of the highest attainable standard of physical and mental health and the right of the citizen to free basic health-care services and to have access to medical facilities without discrimination of any kind.

2. The measures taken by States parties shall include the following:

(a) Development of basic health-care services and the guaranteeing of free and easy access to the centres that provide these services, regardless of geographical location or economic status.

(b) efforts to control disease by means of prevention and cure in order to reduce the mortality rate.

(c) promotion of health awareness and health education.

(d) suppression of traditional practices which are harmful to the health of the individual.

(e) provision of the basic nutrition and safe drinking water for all.

(f) Combating environmental pollution and providing proper sanitation systems;

(g) Combating drugs, psychotropic substances, smoking and substances that are damaging to health.

Article 40

1. The States parties undertake to ensure to persons with mental or physical disabilities a decent life that guarantees their dignity, and to enhance their self-reliance and facilitate their active participation in society.

2. The States parties shall provide social services free of charge for all persons with disabilities, shall provide the material support needed by those persons, their families or the families caring for them, and shall also do whatever is needed to avoid placing those persons in institutions. They shall in all cases take account of the best interests of the disabled person.

3. The States parties shall take all necessary measures to curtail the incidence of disabilities by all possible means, including preventive health programmes, awareness raising and education.

4. The States parties shall provide full educational services suited to persons with disabilities, taking into account the importance of integrating these persons in the educational system and the importance of vocational training and apprenticeship and the creation of suitable job opportunities in the public or private sectors.

5. The States parties shall provide all health services appropriate for persons with disabilities, including the rehabilitation of these persons with a view to integrating them into society.

6. The States parties shall enable persons with disabilities to make use of all public and private services.

Article 41

1. The eradication of illiteracy is a binding obligation upon the State and everyone has the right to education.

2. The States parties shall guarantee their citizens free education at least throughout the primary and basic levels. All forms and levels of primary education shall be compulsory and accessible to all without discrimination of any kind.

3. The States parties shall take appropriate measures in all domains to ensure partnership between men and women with a view to achieving national development goals.

4. The States parties shall guarantee to provide education directed to the full development of the human person and to strengthening respect for human rights and fundamental freedoms.

5. The States parties shall endeavour to incorporate the principles of human rights and fundamental freedoms into formal and informal education curricula and educational and training programmes.

6. The States parties shall guarantee the establishment of the mechanisms necessary to provide ongoing education for every citizen and shall develop national plans for adult education.

Article 42

1. Every person has the right to take part in cultural life and to enjoy the benefits of scientific progress and its application.

2. The States parties undertake to respect the freedom of scientific research and creative activity and to ensure the protection of moral and material interests resulting from scientific, literary and artistic production.

3. The state parties shall work together and enhance cooperation among them at all levels, with the full participation of intellectuals and inventors and their organizations, in order to develop and implement recreational, cultural, artistic and scientific programmes.

Article 43

Nothing in this Charter may be construed or interpreted as impairing the rights and freedoms protected by the domestic laws of the States parties or those set force in the international and regional human rights instruments which the states parties have adopted or ratified, including the rights of women, the rights of the child and the rights of persons belonging to minorities.

Article 44

The states parties undertake to adopt, in conformity with their constitutional procedures and with the provisions of the present Charter, whatever legislative or non-legislative measures that may be necessary to give effect to the rights set forth herein.

Article 45

1. Pursuant to this Charter, an "Arab Human Rights Committee", hereinafter referred to as "the Committee" shall be established. This Committee shall consist of seven members who shall be elected by secret ballot by the states parties to this Charter.

2. The Committee shall consist of nationals of the states parties to the present Charter, who must be highly experienced and competent in the Committee's field of work. The members of the Committee shall serve in their personal capacity and shall be fully independent and impartial.

3. The Committee shall include among its members not more than one national of a State party; such member may be re-elected only once. Due regard shall be given to the rotation principle.

4. The members of the Committee shall be elected for a four-year term, although the mandate of three of the members elected during the first election shall be for two years and shall be renewed by lot.

5. Six months prior to the date of the election, the Secretary-General of the League of Arab States shall invite the States parties to submit their nominations within the following three months. He shall transmit the list of candidates to the States parties two months prior to the date the election. The candidates who obtain the largest number of votes cast shall be elected to membership of the Committee. If, because two or more candidates have an equal number of votes, the number of candidates with the largest number of votes exceeds the number required, a second ballot will be held between the persons with equal numbers of votes. If the votes are again equal, the member or members shall be selected by lottery. The first election for membership of the Committee shall be held at least six months after the Charter enters into force.

6. The Secretary-General shall invite the States parties to a meeting at the headquarters the League of Arab States in order to elect the member of the Committee. The presence of the majority of the States parties shall constitute a quorum. If there is no quorum, the secretary-General shall call another meeting at which at least two thirds of the States parties must be present. If there is still no quorum, the Secretary-General shall call a third meeting, which will be held regardless of the number of States parties present.

7. The Secretary-General shall convene the first meeting of the Committee, during the course of which the Committee shall elect its Chairman from among its members, for a two-year n which may be renewed only once and for an identical period. The Committee shall establish its own rules of procedure and methods of work and shall determine how often it shall et. The Committee shall hold its meetings at the headquarters of the League of Arab States. ~ay also meet in any other State party to the present Charter at that party's invitation.

Article 46

1. The Secretary-General shall declare a seat vacant after being notified by the Chairman of a member's:

(a) Death;

(b) Resignation; or

(c) If, in the unanimous, opinion of the other members, a member of the Committee has ceased to perform his functions without offering an acceptable justification or for any reason other than a temporary absence.

2. If a member's seat is declared vacant pursuant to the provisions of paragraph 1 and the term of office of the member to be replaced does not expire within six months from the date on which the vacancy was declared, the Secretary-General of the League of Arab States shall refer the matter to the States parties to the present Charter, which may, within two months, submit nominations, pursuant to article 45, in order to fill the vacant seat.

3. The Secretary-General of the League of Arab States shall draw up an alphabetical list of all the duly nominated candidates, which he shall transmit to the States parties to the present Charter. The elections to fill the vacant seat shall be held in accordance with the relevant provisions.

4. Any member of the Committee elected to fill a seat declared vacant in accordance with the provisions of paragraph 1 shall remain a member of the Committee until the expiry of the remainder of the term of the member whose seat was declared vacant pursuant to the provisions of that paragraph.

5. The Secretary-General of the League of Arab States shall make provision within the budget of the League of Arab States for all the necessary financial and human resources and facilities that the Committee needs to discharge its functions effectively. The Committee's experts shall be afforded the same treatment with respect to remuneration and reimbursement of expenses as experts of the secretariat of the League of Arab States.

Article 47

The States parties undertake to ensure that members of the Committee shall enjoy the immunities necessary for their protection against any form of harassment or moral or material pressure or prosecution on account of the positions they take or statements they make while carrying out their functions as members of the Committee.

Article 48

1. The States parties undertake to submit reports to the Secretary-General of the League of Arab States on the measures they have taken to give effect to the rights and freedoms recognized in this Charter and on the progress made towards the enjoyment thereof. The Secretary-General shall transmit these reports to the Committee for its consideration.

2. Each State party shall submit an initial report to the Committee within one year from the date on which the Charter enters into force and a periodic report every three years thereafter. The Committee may request the States parties to supply it with additional information relating to the implementation of the Charter.

3. The Committee shall consider the reports submitted by the States parties under paragraph 2 of this article in the presence of the representative of the State party whose report is being considered.

4. The Committee shall discuss the report, comment thereon and make the necessary recommendations in accordance with the aims of the Charter.

5. The Committee shall submit an annual report containing its comments and recommendations to the Council of the League, through the intermediary of the Secretary-General.

6. The Committee's reports, concluding observations and recommendations shall be public documents which the Committee shall disseminate widely.

Article 49

1. The Secretary-General of the League of Arab States shall submit the present Charter, once it has been approved by the Council of the League, to the States members for signature, ratification or accession.

2. The present Charter shall enter into effect two months from the date on which the seventh instrument of ratification is deposited with the secretariat of the League of Arab States.

3. After its entry into force, the present Charter shall become effective for each State two months after the State in question has deposited its instrument of ratification or accession with the secretariat.

4. The Secretary-General shall notify the States members of the deposit of each instrument of ratification or accession.

Article 50

Any State party may submit written proposals, through the Secretary-General, for the amendment of the present Charter. After these amendments have been circulated among the States members, the Secretary-General shall invite the States parties to consider the proposed amendments before submitting them to the Council of the League for adoption.

Article 51

The amendments shall take effect, with regard to the States parties that have approved them, once they have been approved by two thirds of the States parties.

Article 52

Any State party may propose additional optional protocols to the present Charter and they shall be adopted in accordance with the procedures used for the adoption of amendments to the Charter.

Article 53

1. Any State party, when signing this Charter, depositing the instruments of ratification or acceding hereto, may make a reservation to any article of the Charter, provided that such reservation does not conflict with the aims and fundamental purposes of the Charter.

2. Any State party that has made a reservation pursuant to paragraph 1 of this article may withdraw it at any time by addressing a notification to the Secretary-General of the League of Arab States.

End