

THE ARAB CHARTER ON HUMAN RIGHTS

The task still unfinished

Author:

Fida HAMMAMI

Under the supervision of

Dr Noelle Higgins

Academic year 2012/2013

Irish Centre for Human Rights

National University of Ireland Galway

Abstract:

The Arab Charter on Human Rights has been on the Arab League of State's Agenda for over half a century now. Five years after its entry into force, it still remains a topic of controversy. The purpose of this thesis is to study the genesis of the Arab Charter on Human Rights in an attempt to understand the historical and political context that resulted in the present Charter in a first place. Then to analyse the content and mechanisms of the Charter and its legal value in light of international human rights standards and in comparison with other regional human rights instruments.

This thesis also considers the possible opportunities offered by the Arab Spring and discusses the influence the Arab Spring has had on the League's attitude towards human rights so far and the prospects of improvement of the Arab system for the protection of human rights.

Acknowledgement

I feel grateful towards many people that have assisted me academically and supported me morally while I was working on this thesis.

I would like to thank

My parents to whom I am most grateful for making it all possible, for the advice and support, and for believing in me,

My supervisor, Dr Noelle Higgins, for her guidance, valuable advice and for always keeping her door open,

Prof Ray Murphy, Hadeel Abu al Hussain and all the team at the Irish Centre for Human Rights for the warm welcome and for doing their best to help me get to Ireland in time,

Mrs Mervat Rishmawi for her generosity, her insight and her time,

Hayet, Ahmed and Marwa for always being there ready to help whenever I needed rescue!

List of acronyms:

LAS: League of Arab States.

UDHR: Universal Declaration of Human Rights.

UN: United Nations.

ACHR: Arab Charter on Human Rights.

ICCPR: International Covenant on Civil and Political Rights.

CIHRS: the Cairo Institute for Human Rights Studies.

CDHRI: the Cairo Declaration of Human Rights in Islam.

ICESCR: International Covenant on Economic Social and Cultural Rights.

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INTRODUCTION

Arab States, which are spread on a large part of North Africa and Asia, have created on 22 March 1945 the League of Arab States (hereafter the LAS) that presented itself as an organization that will defend the interests of Arab States and peoples, most of which only gained their independence after Second World War. This regional organization has succeeded to assert its place in the region yet without having that much influence on the geopolitical or economic regional landscape.

Parallel to the growth of the LAS other regional organizations have seen light and contributed into shaping the current geopolitical international scene. One of the main differences between the LAS and other regional organizations is its involvement in the field of Human Rights. While the Council of Europe, the Organization of American States and the African Union participated in the international Human Rights law corpus by adopting conventions and treaties related to human rights and establishing regional protection mechanisms not long after their creation, it took the League over 60 years after it was established to witness the entry into force of the Arab Charter on Human Rights in 2008.

The process that lead the pan-Arab organization to adopt a legally binding human rights treaty was lengthy and complicated; it was marked with the apparent hesitation of Arab States to engage in the establishment of an effective regional human rights system on one hand and with the determination of the international and regional human rights organizations to bring the idea of an Arab human rights treaty into concretization on the other. Moreover, the socio-political context of the Arab region is complex and has been hostile towards human rights as most Arab states are infamous for their undemocratic regimes that are with some variations built on repression and violations of human rights, constituted a discouraging environment for the establishment of a regional human rights protection system. In fact, the Arab Charter was not the first regional text related to human rights to be adopted as the Organisation of the Islamic Conference had adopted in 1990 the highly criticized Cairo Declaration of Human Rights in Islam but it was the first legally binding text that recognized the universality of human rights and did not

only limit it to the Islamic ideology but still could not totally break from religious influence.

Hence, it's only half a century after the establishment of the LAS that a first version of the Arab Charter saw light. In 1994 the council of the LAS adopted the Arab Charter on Human Rights only to turn out to be a still-born that never entered into force because it had not received a single ratification from member states. Even if the LAS did not put this matter on top of priorities on its agenda, civil society advocacy for the updating of the Charter kept growing and it took the LAS another 9 years to decide to "modernize" the charter in order to make it meet international human rights standards, which resulted in 2004 in the adoption of the updated version of the Arab Charter on Human Rights.

This Charter is indeed a significant step forward compared to the earlier version and could be the cornerstone of an effective regional system for the protection of human rights. However, it was still subject of heavy criticism from human rights organizations, scholars and defenders for being far behind human rights standards set by international law and for being a weak text compared to other regional conventions like the European or the inter-American one. Besides concerns raised about the content of the Charter's provisions in regard to minority protection, gender equality, discrimination, torture, and the omnipresent religious references, the Charter provides for a primitive monitoring mechanism that would not ensure the implementation of the charter's provisions.

The purpose of this thesis is hence to study the genesis of the Arab Charter on Human Rights in an attempt to understand the historical and political context that resulted in the present Charter. Then to analyse the content and mechanisms of the Charter and its legal value in light of international human rights standards and in comparison with other regional human rights instruments. Finally to envisage a more efficient and rigorous protection of human rights in the Arab Region in light of the different opportunities that the Arab Spring offers

The first chapter of this thesis gives an overview of the drafting history that will shape the Charter by presenting in a first place the LAS attitude towards human rights and the role that civil society played in advocating for an Arab human right treaty

demonstrating the difficulties that were on the way of the creation of the Charter. Secondly, the chapter gives a brief critical presentation of the first version of the Charter adopted in 1994 and how it resulted in the final updated version.

The second chapter will first give an analysis of the content of the Charter in regard to which rights it recognizes and which rights it limits or omits in comparison to international UN treaties and regional Human rights treaties as well as the implementation mechanisms it provides for. Second, it will try to put the Charter into perspective against the new backdrop of the current changing context driven by the Arab Revolutions that started at the end of 2011 to try to study the possibilities of reform in order to establish an effective Arab system for the protection of human rights.

I. The genesis of the Arab Charter on Human Rights:

A. A belated insertion of Human Rights in the Pan-Arab legal edifice:

1. The LAS: a meager soil for Human Rights:

1.1. A human rights- free Pact for the LAS :

The League of Arab States (the Arab League) was founded in 1944 to be a pioneer regional inter-governmental organisation in the world predating even the creation of the United Nations by seven months. In a preparatory meeting held in Alexandria, Egypt, from 25 September to 7 October 1944, representatives of Syria, Transjordan (renamed Jordan after 1946), Iraq, Lebanon, and Egypt, adopted the Alexandria Protocol which declared the creation of the LAS with the objective to “control the execution of the agreements which the above states will conclude; to hold periodic meetings which will strengthen the relations between those states; to coordinate their political plans so as to insure their cooperation, and protect their independence and sovereignty against every aggression by suitable means; and to supervise in a general way the affairs and interests of the Arab countries.”¹ On March 22, 1945 the Pact of the LAS² (hereafter the Pact) was signed in Cairo by seven states namely Egypt, Iraq, Transjordan, Lebanon, Saudi Arabia, Syria, and North Yemen and hence the LAS officially came to existence.³ Fifteen more states joined the League which currently comprises 22 countries, including Libya (1953), *Sudan* (1956), Morocco (1958), Tunisia (1958), Kuwait (1961), Algeria (1962), Oman (1971), Qatar (1971), the *United Arab Emirates (UAE)* (1971), Bahrain (1971), Mauritania (1973), Somalia (1974), *Palestine* (1974) represented by the *Palestine Liberation*

¹ Alexandria Declaration of 7 October 1944 available in English at http://avalon.law.yale.edu/20th_century/alex.asp.

² Yale Law School, The Avalon Project Documents in Law, History and Diplomacy, *Pact of the League of Arab States*, 22 March 1945, available at http://avalon.law.yale.edu/20th_century/arableag.asp.

³ M.Rishmawi and M.Comandulli, League of Arab States. Maw Plank encyclopaedia of public international law.

Organization (PLO), Djibouti (1977), and Comoros (1993). In 1990 the unified Yemen joined the LAS in place of the original membership of North Yemen.⁴

The LAS's scope of work as described in the Pact covers mainly matters of security and co-operation between states in the Arab region. In its second article the Pact outlays the purpose of the LAS as follows: "the strengthening of the relations between the member-states, the coordination of their policies in order to achieve co-operation between them and to safeguard their independence and sovereignty; and a general concern with the affairs and interests of the Arab countries."⁵ Article 2 also states that the LAS has the objective of strengthening co-operation of the member states on matters concerning economic and financial affairs, Communications, Nationality, Cultural affairs, Social affairs and Health affairs. In this respect the LAS is not different from similar international and regional inter-governmental organisations that were created later on. The Charter of the United Nations (hereafter UN) for instance states that the purpose of the UN besides maintaining international peace is inter alia to "achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character"⁶. Regional organisations like the Organisation of American States (OAS) and the Council of Europe (COE) and the African Union (AU) resemble the Arab League and the UN in this regard and in the fact that they have principally political and economic aims. However, unlike all these organisations, the Pact of the LAS has no mention whatsoever of Human Rights and democratic values. The words "right", "justice", "democracy" or "freedom" have no trace throughout the Pact while we find these values strongly present in the founding legal documents of all organisations similar to the LAS. While the second half of the UN charter's art1 (3) reads " [to achieve international co-operation]... in promoting

⁴ Ibidem .

⁵ Pact of the League of Arab States, Mar. 22, 1945, art.2, available in English at: <http://www.yale.edu/lawweb/avalon/mideast/arableag.html>.

⁶ Charter of the United Nations, chapter I, art1 (3) available at: <http://treaties.un.org/doc/Publication/CTC/uncharter.pdf>.

and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”⁷, and the preamble of the AU charter states “Convinced that it is the inalienable right of all people to control their own destiny, Conscious of the fact that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples”⁸, and the article 1 (b) of the statute of the COE being “This aim shall be pursued through the organs of the Council by discussion of questions of common concern and by agreements and common action [...]in the maintenance and further realisation of human rights and fundamental freedoms”⁹, the LAS loses from its birth the opportunity to be also a pioneer organisation in the promotion of human rights and democratic values.

It has to be noted though that the Pact of the LAS came prior to the creation of international human rights treaties and before human rights became a focal point of interest on the international level. It is also to be noted that the Pact fails to refer to the Arab “peoples” or “populations” and only addresses states and governments. In this regard the Pact can be considered as a classic international law document that is meant to settle arguments between states and regulate their relations in terms of economic trade and security rather than define principles that states should base their policies on to guarantee a democratic rule and the protection of rights. The Pact does not even make reference to the right of self-determination of states in a time where a number of Arab states were still under colonisation (Tunisia, Algeria, and Palestine for example). To highlight again the awareness of the fact that the Pact came in a time of history when Human Rights were just starting to sculpt their place on the agendas of the international organizations contrary to the central position they have today attention has to be drawn to the fact that two more documents have been regarded as

⁷ Charter of the United Nations, chapter I, art1 (3) available at: <http://treaties.un.org/doc/Publication/CTC/uncharter.pdf>.

⁸ Charter of the African Union, preamble, available at: http://www.au.int/en/sites/default/files/OAU_Charter_1963_0.pdf.

⁹ Statute of the Council of Europe, article 1 (b), available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/001.htm>.

complementary to the Pact by the LAS; namely, the LAS Treaty for joint Defence and Economic co-operation, concluded on March 13, 1950, and the Charter for National Economic Action, issued on November 26, 1980¹⁰ while the Revised Arab Charter on Human Rights adopted in 2004 was not.

Furthermore, the LAS could have amended its Pact according to the development of international law and the ratification by its member states of core international treaties especially as article 19 of the Pact states that “This Charter may be amended with the consent of two thirds of the states belonging to the League, especially in order to make firmer and stronger ties between the member-states, to create an Arab Tribunal of Arbitration, and to regulate the relations of the League with any international bodies to be created in the future to guarantee security and peace.” The LAS has not used this clause yet to include Human Rights on its agenda nor to even state its adherence to human rights values. This Human Rights-free Pact thus sets the note of the LAS attitude towards Human Rights from the beginning and gives an idea of the lack of the political will of the Arab states to recognize the rights of their peoples and work on their protection.

This omission of human rights in terms of objectives of the organisation translated in the LAS initial structure since the league did not establish in the beginning any body ad hoc to the promotion and protection of Human Rights in the region. The Arab League did not show any interest in Human Rights until 1968, when it established the Arab permanent committee on human rights, and it took another 25 years to adopt the Arab Charter on Human Rights.

¹⁰ International Commission of Jurists, *Le processus de « modernisation » de la Charte arabe des droits de l'homme: des régressions inquiétantes*. (the Process of “modernization of the Arab Charter on Human Rights: alarming regressions) 20 December 2003, p. 6 (original in French, translation by author). Available at: <http://icj.wpenline.netdna-cdn.com/wp-content/uploads/2012/05/Arab-Charter-position-paper-2003-fra.pdf>. (Accessed on 1 May 2013).

1.2. Exterior influence to bring Human Rights to the League:

From its establishment in 1945 until the late 1960s, Human Rights were absent from the League's agenda as they were from its Member states'. Apart from the collective right of self-determination for the Palestinian people and the predicament of Palestinian refugees, the League did not seek to voice any concerns about the Human Rights situation in the region. Throughout this period in time most, if not all, of its members could be fairly considered to be undemocratic and repressive where the authoritarian governments maintained power by various forms of oppression, and civil and political rights were often violated.¹¹ It is thus not surprising that these states were not eager to embrace the Human Rights movement that was developing in the world and bring it into the League as "Generally speaking, and regardless of minor variations between them, it is clear that Arab States tend to be extremely reticent, often strongly suspicious about any activity that remotely pertains to the human rights field"¹². The League then had to be prompted by exterior factors to its member states to join the international human rights dynamic that emerged from the UN. According to Boutros Ghali, it is in the context of the co-operation between the League and the UN that the role played by the Arab League in promoting human rights should be considered.¹³

Although the League's Pact was drafted before the actual existence of the UN, the provisions of the Pact foresaw, even if in broad terms, the future relationship between the League and the yet-to-exist international organizations in two different articles¹⁴ as article 3 of the Pact states that: "It... shall be the Council's task to decide upon the means by which the League is to cooperate with the international bodies to be created in the future in order to guarantee security and peace and regulate economic and social relations"¹⁵ and article 19 implicitly envisaged the amendment of the Pact to "regulate

¹¹ Forsythe, 2009, p. 412.

¹² An-Na'im, 2001, p. 710.

¹³ Ibidem.

¹⁴ Ghali, 1982, p. 576.

¹⁵ Pact of the LAS, Art 3.

the relationship of the League with any international bodies to be created in the future to guarantee security and peace.”¹⁶ Within this framework, the League tried to build a partnership with the UN. The relationship between the LAS and the UN hence started to gradually evolve when the LAS sought recognition as a regional inter-governmental organization at the UN. On 1 November 1950, the UN General Assembly recognizing the League invited its Secretary-General to take part in the sessions of the General Assembly as an observer. Since that date the Secretary-General of the League has participated in all the Assembly’s sessions. In December 1945, the Arab League established permanent representation with the UN in New York and two years later in Geneva.¹⁷ Since then the league became increasingly involved in cooperation with UN organs, particularly with the economic and social Council and the pressure intensified upon the League to change its attitude toward human rights and to take some serious steps in this regard¹⁸ especially that by the late 1960s the UN Human rights dimension was amplified when the two core human rights covenants were adopted¹⁹ and when the UN human rights commission began to review the policies of particular governments.

In celebration of the 20th anniversary of the Universal Declaration of Human Rights, the UN general Assembly called in its resolution 2081 of 20 December 1965 upon member states and regional organizations to commemorate the year 1968 as “the year of Human Rights” and invited member states to “consider in connexion with the international year of Human Rights the possible advantage of undertaking on a regional basis common studies in order to establish more effective protection of Human Rights”²⁰. In response to this resolution the Arab league decided to actively participate in the celebration of the year of Human Rights and adopted resolution 2259 of 12 December 1966 by which it created a special commission to prepare an Arab

¹⁶ Pact of the LAS art 19.

¹⁷ Ghali. 1982 p. 576.

¹⁸ I. Pogany, 1987, p. 373.

¹⁹ The International Covenant on Civil and Political Rights and The International Covenant on Economic, Social and Cultural Rights were adopted by the UN General Assembly on 16 December 1966.

²⁰ UN resolution 2081, December 20, 1965 para 7 available at: <http://daccess-dds-un.org/doc/RESOLUTION/GEN/NR0/218/44/IMG/NR021844.pdf?OpenElement>.

contribution to Human Rights Year and then resolution 2304 of 18 March 1967 creating another Commission to study in conjunction with the first the application of the programmes established.²¹ These two resolutions were the first Council Resolutions that had a Human Rights focus. Within the framework of these resolutions, the secretariat of the League convened the first Human Rights conference in Beirut on 10 December 1968. The conclusions of this conference focused on condemning Israel and confirming solidarity with the Palestinian people but did as well call for regional cooperation in the protection of Human Rights and urged the implementation of the Universal Declaration of Human Rights (UDHR) and recommended the commission to draft an Arab Human Rights treaty.²²

It is thus fairly arguable that the steps related to Human Rights that the League took in the late 60s were mainly in response to UN initiatives. The evolution of the League's position with regard to Human Rights was highly influenced by the growing Human rights movement led by the UN on the international level in the late 1960s rather than by an internal trend within the League towards the protection of Human rights in the region and it was consequently based on political rather than on humanitarian considerations.

It is within this context that the LAS decided through resolution 2443 of 3 September 1968 to establish the Permanent Arab Human Rights Commission (the commission), which constitutes a landmark in the evolution of the Human Rights aspect of the League and a major step towards the creation of an Arab Human Rights instrument. The following section will present the commission and reflect upon its mandate and rules of procedure, and the role it played in the promotion and protection of human rights the region.

²¹ Al-Midani, 2002, p. 3.

²² An-Na'im, 2001, p. 712.

2. The Permanent Arab Commission on Human Rights

2.1. Mandate and organizational structure:

The increasing involvement of the League with the UN and the development of the international Human Rights movement have thus influenced the LAS into taking some measures related to Human Rights leading it in 1968 to the decision to establish an Arab Permanent Commission on Human Rights (the commission) within its framework.

The establishment of this commission marked the first concrete step in the developing of a regional human rights mechanism within the League.

The Council of Ministers Resolution 2443 initially defined the mandate of the commission by giving it the tasks of first, supporting the joint Arab action in the field of human rights, second endeavouring to protect Arab human rights, and the proper presentation of the humanitarian aspect of the Arab cause, and third promoting awareness among the Arab people about human rights and the need for their protection.²³ This initial mandate given to the commission was criticized as being too broad. Moreover, the phrasing of the second point was noteworthy for Bahiy Eddine Hassan²⁴ who considers that “the ambiguous wording of the principle of protection in the second task, which has been linked with the so-called "Arab cause", a term synonymous with the Palestinian cause, indicates that the intended function of the commission is only the protection of the Palestinian people in the face of attacks²⁵”. The Commission did indeed focus most of its activities on the Palestinian People’s situation for a long period after its establishment as will be demonstrated later. As for the membership of the commission, it conforms to that of all other special committees

²³ An-Na’im, 2001, p. 712.

²⁴ Current Director of the Cairo Institute for Human Rights Studies and human rights expert. Further information available at: <http://www.human-dignity-forum.org/2011/11/bahey-eldin-hassan-the-founder-of-the-human-rights-movement-in-egypt>.

²⁵ El-Feghery, 2006, p. 44 (Original Arabic, translation by author).

previously created as it is considered one of the permanent technical committees under art4 of the Pact of the LAS.²⁶ The commission is thus formed of representatives of LAS member states, who attend as political representatives of their states and not as independent experts. The President of the commission is appointed by the LAS Council for a two-year term from nominations made by Member States and the Commission's agenda is decided by the Council of the League based on suggestions by Member States.²⁷ In addition, at the beginning, the commission did not have its own rules of procedure and it operated according to the general rules of procedure of the other technical committees at the League. Consequently, the commission's margin to work independently within the league is highly limited. Due to this apparent lack of independence in the work of the commission, Bessel Youssef²⁸ ironically says that in this way the League is unique in having a the first state human rights body compared to other regional inter-governmental organizations and describe it as "almost a syndicate for the Arab States"²⁹. Another important criticism of the commission is that unlike other regional mechanisms, it does not employ any remedies or individual or collective complaint mechanism nor does it have a mechanism to receive or examine periodic reports from the States on human rights situations.³⁰ More importantly, the commission does not have the power to take its own decision as its work takes the form of drafts and agreements that the League's Council is to study and approve.³¹ In addition the meetings of the commission were held behind closed doors and its reports

²⁶ Article 4 of the Pact of the LAS states that "A special Committee shall be formed for each of the categories enumerated in article 2, on which the member States shall be represented. These Committees shall be entrusted with establishing the basis and scope of co-operation in the form of draft agreements which shall be submitted to the Council for its consideration preparatory to their being submitted to the States referred to."

²⁷ Mervat Rishmawi, Human rights Commission of the Arab states, online Max Planck Encyclopaedia of public international law, Oxford university press, June 2008. Available at: http://www.mpepil.com/subscriber_article?script=yes&id=/epil/entries/law-9780199231690-e812&recno=2&searchType=Quick&query=league+of+arab+states.

²⁸ Iraqi lawyer and human rights expert (1936-2012).

²⁹ Bassel Youssef: "*Joint Arab action and human rights between reality and ambition*" - Human Rights in the Arab world magazine - the Arab Organization for Human Rights - Issue 20 cited in (El-Fegieri, 2006, p. 45).

³⁰ Rishmawi, supra footnote p. 27.

³¹ Ghali, 1982, p. 577.

were not public. Furthermore in the beginning NGOs could not partake in the work of the commission as they were not given any consultative status. It is not until 2005, that NGOs were accorded a consultative status within the League in accordance with LAS Economic and Social Council Resolution No 1540 of 6 January 2005 which applies to all meetings of LAS organs.³²

However, in September 2007, the commission adopted its own Rules of Procedure which were endorsed by the League's Council resolution 6826 of 5 September 2007³³. These new rules state that states should take into consideration in the nomination of members' expertise in human rights³⁴ without bringing any real substantive change that would give more independence to the members or enlarge the scope of discretion of the commission. The resolution also restated that the commission works under the direction of the LAS Council of Ministers. These new rules of procedures did not expand the margin of independence of the commission but the League did revisit however the commission's mandate in this resolution and enlarged its scope. According to this resolution, the main functions of the Commission, are inter alia, to establish rules of cooperation among LAS Member States in the field of Human Rights, formulate an Arab Position on human rights issues that are under discussion on the regional and international levels, draft human rights treaties to be presented to the LAS council of ministers, and promote cooperation in the field of human rights education between LAS member states. The Commission is also to study matters referred to it by the LAS Council, Secretary-General or member states. From the literature, it becomes apparent hence that the commission was not very much trusted to play a significant role in Human Rights promotion and protection in the region as it was not set to be a watch dog for the states but rather an ornament that would make the

³² The consultative status is not easy to obtain though as according to this resolution, organizations applying for the consultative status should fulfil a number of conditions including that the organization must be registered according to the laws of the country where it is based. Applications are considered by the LAS Economic and Social Council, which gives any State, including that in which the NGO is based, the right to object to the organization.

³³ Available at:

<http://www.lasportal.org/wps/wcm/connect/1db3ee804510fd4dbd93fd6a5847d031/128.pdf?MOD=AJPERES> (original in Arabic translation by author).

³⁴ Supra footnote 33, Art 2.

LAS look “good” in the eyes of the international community.

In the light of what has been stated above, the next section will give consideration to the work of the commission and give an overview of its evolution since its creation until it was mandated to draft an Arab Charter of Human Rights.

2.2. Work of the Commission:

Upon its creation, the commission drew a program of action that envisaged its activities on the national, regional and international level. At the national and regional level, the commission’s activities mainly consisting of the convening of seminars, celebration of the Arab Human Rights day, cooperation with national human rights NGOs,³⁵ and giving recommendations to member states regarding their Human Rights agendas. The first regional conference the commission participated in organizing was the Arab Regional Conference on Human Rights held in Beirut (Lebanon) from 2 to 10 December 1968. Considering that it came a few months after the Israeli occupation of Palestine in 1967³⁶, the conference focused most of its discussion on the aftermath of the conflict and the rights of the Palestinian people. The two first meetings³⁷ of the Commission were also devoted to the Palestinian issue. On the international level, the underlying aim of the activities of the regional commission has been for a long time “to appeal to humanitarian principles and to international law in order to arouse greater interest in the Arab Cause”³⁸. Violations of Human Rights committed by member states against their peoples were not on the commission’s agenda while Israel’s violations of Palestinians’ rights were on top of the commissions priorities. This could be explained by the lack of independence in the work of the commission. At the beginning the commission did not have any apparent influence on the LAS in matters of Human rights. The LAS council did not take any action related to human rights

³⁵ Since the LAS refused to grant observer status to any NGO without the approval of the state where the organization is based, those organizations which enjoy that status tend to lack independence and credibility of genuine human rights NGOs.

³⁶ In 1967, Israel conquered more land. Following the Six Day War, in which Israeli forces launched a highly successful surprise attack on Egypt, Israel occupied the final 22% of Palestine that had eluded it in 1948 – the West Bank and Gaza Strip.

³⁷ The commission met in March and then April 1969.

³⁸ Ghali, 1982, p.578.

from 1971 to 1981. The League's resolutions during that period reveal that the only instances where human rights were mentioned it was either for the designation of the commission's new chairman or the renewal of his term.³⁹ The creation of the commission had however some positive influence on the Member States in regard to Human Rights. It is interesting to note though, as Bahey Eddine Hassan points it out, that Arab States only started signing and ratifying the two UN covenants of 1966 after 1969⁴⁰ and while the UN campaign to encourage states to sign the covenants might have had a role in that, it is believed that the commission had a major influence on states in this regard.⁴¹

Besides denouncing regularly the occupation of Arab land by Israel, the commission, has also condemned violations of human rights and international law by the previous Iraqi regime and has called for trial of its members before an Iraqi tribunal based on Iraqi laws. For example, the commission discussed in its February session in 2004 the subject of the human rights violations of the previous Iraqi government, and considered that the former regime perpetrated crimes against the Iraqi people and crimes against humanity, and its officials should be brought before Iraqi courts in accordance with Iraqi law.⁴² Unfortunately, no other instances where the commission has denounced a human rights situation in one of the member states can be found.

Moreover, its role in the drafting and deliberation of several agreements related to human rights has been only minor. For example, the commission did not have a direct involvement in the Charter on the Rights of the Arab Child of 1983⁴³

Accordingly, the Commission seems to have played only an insignificant role in the protection of human rights in the region. This could be explained by the limited mandate which does not allow it to consider thoroughly and independently the human rights situation in Arab countries and provide technical assistance to them or receive

³⁹ An'aim, 2001, p. 713.

⁴⁰ The first states to sign the covenants were Tunisia and Syria in 1969, Libya in 1980, and Iraq in 1981.

⁴¹ El-Feghery, 2006, p. 45.

⁴² Rishmawi, *supra* footnote p. 27.

⁴³ It was decided at the first Arab conference on Arab children held in Tunis (Tunisia) from 8 to 10 April 1980, to prepare the draft of a pact on the Rights of the Arab Child. Two years later, the Secretary-General of the LAS presented a draft to the Council of Arab Ministers of Social Affairs at their in their fourth meeting in Tunis from 4 to 6 December 1983, and it was adopted.

individual or collective complaints on one hand and on the other hand by the overall negative and reticent attitude of Arab States towards Human Rights . The existence of the commission has not had a real measurable effect on the human rights situation in the Arab World. In fact, its existence is barely noticeable outside the League which led human rights lawyer Mostafa Abdel Ghaffar⁴⁴ to say that “even though it is called permanent (the commission), no one notices its existence”⁴⁵.

Civil society in the Arab region, human rights academics and legal scholars, have constantly called for the commission to be invigorated and considered that its structure as a political body and its limited mandate are major hindrances towards an active commission.⁴⁶ However, it should be noted that, the Commission has become more active throughout the time, even if very slowly. This seems to have been initiated with the adoption of the revised Arab Charter on Human Rights even if it still remains a body for the promotion of human rights only and does not have the mechanisms to protect human rights in an effective way.⁴⁷

The commission was given the mandate to draft an Arab Charter on Human Rights upon its inception pursuant to the recommendation formulated at the Beirut Conference mentioned above. It is not until 1970 though that the commission took a step to concretise this upon a suggestion made to the LAS by the Iraqi association for Human Rights by setting up a committee to draft the “Declaration of the Rights of the Arab Citizen”.

It is necessary for the purpose of this work to draw attention to the fact that parallel to the attempts to create an Arab regional human rights treaty within the League, there were also suggestions, and drafts made by the civil society in the 1970s and the 1980s like the “Declaration of Human and People’s Rights in the Arab World” of 1986⁴⁸. These documents together with the 1994 charter, even though concretely utterly insignificant and highly criticised, constitute the ground on which the current revised

⁴⁴ Mostafa Abdel Ghaffar is a Bahraini human rights lawyer and Director of the Institute for Judicial and Legal Studies.

⁴⁵ Cited in M El-Fegiery, 2006, p. 45.

⁴⁶ Rishmawi supra note, p.27.

⁴⁷ Ibidem.

⁴⁸ Gloppen & Lise, 1993, p. 8.

Arab Charter on Human Rights is build.

The following section will then be devoted to presenting and assessing the non-governmental contributions in the process leading to the adoption of the 1994 draft of the Arab Charter on Human Rights that is at the origin of the current revised Arab Charter.

3. The Role of NGOs:

In order to understand and assess the role of NGOs in the development of a human rights system in the League and the creation of an Arab charter on human rights it is necessary to give a brief overview of the birth of the regional and national human rights NGOs.

The emergence of human rights NGOs in the Arab region, as independent organizations and as defined by international standards can be traced to the early 1970s⁴⁹. It was also during that time that Arab civil society started undertaking various initiatives advocating for an Arab Human Rights treaty.⁵⁰ These initiatives resulted in draft texts or critically examined the projects of the League. The suggestion of the Iraqi organization for Human rights to the League's council to adopt an Arab declaration of human rights marks an important step in the involvement of the Arab NGOs in the process of the creation of an Arab human rights treaty. In September 1970, the Council of the League approved the suggestion of the Iraqi organization for Human Rights to adopt an Arab declaration of human rights. Pursuant to the league's decision, the commission set up a committee of experts to prepare a draft declaration (resolution 2668/30)⁵¹. The committee adopted in July 1971 a draft of a declaration

⁴⁹ An'aim, 2001, p. 716.

⁵⁰ M El-Feghery, 2006, p. 45.

⁵¹ Ghali, 1982, p. 579.

called “the Declaration of the rights of the Arab Citizen”.⁵² It was submitted to the Member States for consideration and comments. Comments from eight States⁵³ were considered and incorporated and a new draft was sent to the LAS Council for ratifications. The Council however rejected the draft in January 1986⁵⁴. Even though the declaration was not legally binding and does not entail real obligations on them, the states rejected it and only eight states bothered to give their stand in its regard. After this aborted attempt, the council of the League and the permanent Arab commission on human rights did not take any measures to revive the idea of the declaration while the Arab civil society continued to advocate the idea through several means.

In 1979, the Arab Lawyers’ Union (ALU)⁵⁵ prepared a draft for an Arab Convention on Human Rights, and referred it to the council of the league for consideration, calling for the revitalization of its Permanent Committee on Human Rights. The council of the league then referred this draft to two experts that prepared, based on the ALU’s proposal a draft project for an Arab charter on human rights in 1983. This draft had only seen light unfortunately after 9 years and it was not even discussed within the League.⁵⁶

In parallel, in the 1980s a human rights movement blossomed within the Arab civil society. A group of Arab intellectuals protested the erosion of civil and political rights in the Arab States and formed an Arab human rights group that will later become the Arab Organization for Human Rights (AOHR). Hence the first pan-Arab human rights NGO, The Arab Organisation for Human Rights, was established in 1983. Its primary

⁵² The Declaration consists of 31 articles. Its preamble states the belief in the principles enshrined in the UDHR. It recognizes the main civil and political rights like the right to life, liberty, equality, physical integrity, political participation, freedom of belief and religion and prohibits slavery and forced labour. On the social-economic, level the declaration recognizes the rights to work and form unions and the right to enjoy a decent living standards and free education. The last article of the declaration does however nullify all these rights by giving states party the right to repudiate all their obligations under the declaration in emergency situations including the right to life, which the bane that clung to each subsequent draft for an Arab charter proposed by the League. In (M El-Fegiery, 2006, p. 45).

⁵³ Egypt, Syria, Iraq, Kuwait, Saudi Arabia, Lebanon, Jordan, Libya.

⁵⁴ Ghali, 1982, p. 579.

⁵⁵ Established in 1944, the ALU is a pan-Arab confederation of bar associations and law societies based in Cairo.

⁵⁶ El-Fegiery, 2006, p. 48.

goal has been to document and publicize human rights abuses throughout the region, promote human rights and advocate the amnesty of prisoners of opinion.⁵⁷ In the Declaration of the Tunis Conference concerning Democratic Freedoms in the Arab World 1983, they stated that “the last thirty years have witnessed the complete disappearance of democratic freedoms in the Arab world...authority in the Arab countries is today based on intimidation, subjugation and co-optation”⁵⁸. This declaration was then submitted to the UN as the AOHR applied for consultative status with the UN Economic and Social Council only to be faced by a strong rejection from Arab States that led to the refusal of their application for lack of consensus.⁵⁹ The reaction of the Arab states that joined forces despite their enmity to block the AOHR’s application in the UN is much telling of the Arab states’ and hence the Arab League’s attitude towards any initiative the civil society takes to promote human rights and condemn governments’ practices and advocate more freedoms and rights. It is though partially due to the pressure of the growing human rights non-governmental actors in the region that the League did not completely discard the idea of establishing a regional human rights system.

The efforts of human rights groups to offer more formal resistance to state violence and to renegotiate the political space in which they could operate continued to grow notably in the Arab region.⁶⁰ The Arab civil society has hence witnessed a growth of

⁵⁷ The organization "call for respect of human rights and fundamental freedoms of all citizens and residents of the Arab world; defends any individual whose human rights are subjected to violations which are contrary to the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights; endeavour, regardless of political considerations, to obtain release of detained or imprisoned persons, and seek relief and assistance for persons whose freedom is restricted in any way or who are subject to coercion of any kind because of their beliefs and political convictions, or for reasons of race, sex, colour or language; protest in cases where a fair trial is not guaranteed; provide legal assistance where necessary and possible; call for improvements in conditions of prisoners of conscience; work for amnesty of persons sentenced for political reasons." The AOHR’s website:
<http://web.archive.org/web/20080112073439/http://aohr.org/> .

⁵⁸ Declaration of the Tunis Conference concerning Democratic Freedoms in the Arab World 1983 cited in (J, Crystal, 1994, p. 435).

⁵⁹ Marvine Howe, *UN Council Bars Arab Rights Group*, NY Times 5 March, 1987. Available at: <http://www.nytimes.com/1987/03/05/world/un-council-bars-arab-rights-group.html>.

⁶⁰ J, Crystal, 1994, p. 437.

human rights organizations during the 1980s. The Tunisian League for the Defence of Human Rights⁶¹ for instance was engaging in a variety of human rights activities: monitoring trials, investigating human rights abuses, advocating for political prisoners, and reporting on human rights issues.

The mid 1980s also witnessed the emergence of several other significant human rights NGOs and groups in various Arab Countries as well as among Arab activists living outside the region, mainly in Western Europe. National organizations within the region include the Egyptian Organization for Human Rights established in 1985 and the Sudanese Human Rights Organization also established in 1985.⁶²

In the meantime, the LAS Permanent commission on Human Rights was silent on human rights situation in the member states and no attempt to revive the draft declaration of the Declaration of the Rights of the Arab Citizen and there have been no initiatives from within the LAS to take any real measure towards more protection of Human Rights in the region.

It was again another non-governmental initiative that brought back the idea of an Arab human rights charter on the table. In 1986, at a seminar convened in Syracuse, Italy, a draft declaration entitled “the declaration of Human and Peoples rights in the Arab World” was presented by experts from 13 Arab countries on the initiative of the International Institute of Higher Studies in Criminal Science⁶³ that was headed at the time by Egyptian expert in international law Mahmoud Cherif Bassiouni.⁶⁴ This draft was fully consistent with, and even expanded on, established international human rights standards. For example, it made torture a criminal offense for which prosecutions cannot be barred by any statute of limitation, imposed limitations on the right of governments to declare a state of emergency, and included the right to a clean and healthy environment, in addition to rights to health care, social security, food, shelter, and education. The draft also provided in detail for strong mechanisms for the

⁶¹ The Tunisian League for the Defence of Human Rights was established in May 1977.

⁶² An'aim, 2001, p. 715.

⁶³ The International Institute of Higher Studies in Criminal Science is an Italian not-for-profit foundation, Established in Siracusa (Italy) on September 1972 dedicated to education, training and research in the fields of international and comparative criminal justice and human rights.

⁶⁴ El-Fegiery, 2006, p. 46.

protection of human rights through the establishment of an Arab Human Rights Commission and Court. Unfortunately, though not surprisingly⁶⁵, that draft was never seriously considered by the Arab League or any national government and did not occupy a significant space in the discussions of Arab civil society.

All these efforts to make the LAS reconsider the project of an Arab human rights system that starts with a regional charter or convention did succeed in putting some pressure on the LAS council eventually to adopt in 1994 the Arab Charter on Human Rights that the following section will present and assess.

B. The 1994 Charter: a still born:

The Genesis of the Arab Charter on Human Rights had been long and arduous as outlined in the previous section. The reluctance of the Member states of the LAS to take action in regard to the Human Rights situation in the region resulted in the obvious lack of the political will of the council of the League to adopt a regional Human Rights treaty that would put any real obligations on the states. It has hence taken the League almost 50 years to adopt such a document. The LAS permanent Human Rights commission finally presented its final project of the Arab charter on Human Rights in 1993 to the Las council and it was approved by the LAS council in 1994 through Resolution No 5437.

It is argued that in addition to the pressure that regional and international NGOs had been putting on the League in order for it to take measures to create an efficient mechanism for the protection of Human Rights in the region as mentioned in the first section of this chapter, the Vienna World Conference on Human Rights⁶⁶ was a trigger

⁶⁵ It was too developed for the readiness of Arab states at that time and entailed real legal obligations that they are not ready to abide by. On another level, the Arab nationalistic political discourse was predominant on the draft, which did not encourage other political movements from other ideologies in the Arab region to advocate for its adoption.

⁶⁶ The World Human Rights Conference was held by the UN between 14-25 June 1993 in Vienna, Austria. It was attended by representatives of 171 nations and 800 NGOs. The key result of the World Conference on Human Rights was the Vienna Declaration and Programme of Action, which was adopted by consensus of 171 states on 25 June 1993.

for the LAS council to adopt the Charter⁶⁷ as the Vienna declaration and programme of action stated that: “Regional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standards, as contained in international human rights instruments, and their protection. The World Conference on Human Rights endorses efforts under way to strengthen these arrangements and to increase their effectiveness, while at the same time stressing the importance of cooperation with the United Nations human rights activities. The World Conference on Human Rights reiterates the need to consider the possibility of establishing regional and sub-regional arrangements for the promotion and protection of human rights where they do not already exist.”⁶⁸ In this new international context, and after all the efforts in order to create an Arab Human Rights treaty, the Council of the League adopted the Arab Charter on Human Rights⁶⁹ on 14 September 1994.⁷⁰

The adoption of the Charter constitutes a positive step forward towards the creation of a regional mechanism for the protection of Human rights in the Arab World even though it never entered into force and that it was highly criticized for not complying with international standards and not laying down any implementation mechanisms that would ensure the respect and protection of the rights recognized by it as will be demonstrated in the next section. The following section will give an overview of the charter and demonstrate the inadequacies with international standards in comparison with UN treaties and regional Human Rights mechanisms.

1. The Charter does not meet international standards:

1.1. A controversial preamble:

The founding principles of the Charter were laid down in its preamble which starts with stating the belief in human dignity, freedom, peace and justice like the core

⁶⁷ Chekir, 2005, p. 75.

⁶⁸ Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in Vienna on 25 June 1993 p. 37 available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx> .

⁶⁹ Available in English at: <http://www1.umn.edu/humanrts/instree/arabhrcharter.html>.

⁷⁰ Chekir, 2005, p. 76.

UN Human Rights treaties⁷¹ as it says “Given the Arab nation's belief in human dignity since God honoured it by making the Arab World the cradle of religions and the birthplace of civilizations which confirmed its right to a life of dignity based on freedom, justice and peace”⁷². These values and principles are as well present in all regional Human Rights treaties as the African Charter on Human and Peoples’ Rights’ preamble stipulates that “freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African people”⁷³ and the European Convention on Human Rights and Fundamental Freedoms’ preamble states that “Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world...”⁷⁴ Thus the preamble of the Charter started typically by underlying the fundamental principles of freedom, justice and peace but still in a peculiar way. The peculiarity of the Charter in this regard is yet conspicuous as the UDHR and the two covenants considers the “inherent dignity” and “the equal and inalienable rights” of all Humans to be the foundation of freedom, justice and peace in the world with an absolute neutrality towards religions⁷⁵ while the preamble of the Charter emphasizes the contribution of religions and faith of the Arab Nation in the recognition of these values and principles. The entitlement to these rights and the recognition of these values are according to the preamble are rooted in providence since “God honoured the Arab region by making it “the cradle of religions and the birthplace of civilization”.

Moreover, the second paragraph of the Preamble reads as follows “Pursuant to the eternal principles of brotherhood and equality among all human beings which were

⁷¹ The bill of right treaties preambles (the UDHR, the ICCPR and the ICESCR) start by stating that : « Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”.

⁷² Preamble of the charter Para 1.

⁷³ Organization of African Unity, *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, available at: <http://www.refworld.org/docid/3ae6b3630.html> .

⁷⁴ Council of Europe, *European Convention on Human Rights and Fundamental Freedoms*, available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf.

⁷⁵ This neutrality is adopted without exception in all UN Conventions. As at the regional level, the African Charter, the American Convention and the European Convention do not contain any religious references.

firmly established by the Islamic Shari'a⁷⁶ and the other divinely-revealed religions". This very strong reference to religion again is contrary to the idea that religious neutrality is one of the pillars of universal human rights in order to guarantee non-believers or believers of other faiths their rights.⁷⁷ This already raises the concern about the content of the Charter and whether or not it will guarantee the protection of rights related to such principles as equality, freedom and justice independently from the stipulations of the Koran and the Shari'a.

In addition, the inalienable internationally recognized right to self-determination is stated in paragraph 4 of the preamble but in relation again to the Arab World's "faith" (presumably Islam) as it reads as follows "Conscious of the fact that the entire Arab World has always worked together to preserve its faith, believing in its unity, struggling to protect its freedom, defending the right of nations to self-determination and to safeguard their resources, believing in the rule of law and that every individual's enjoyment of freedom, justice and equality of opportunity is the yardstick by which the merits of any society are gauged".

Furthermore, the preamble ends with the reaffirmation of the principles "of the Charter of the United Nations and the Universal Declaration of Human Rights, as well as the provisions of the United Nations International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights and the Cairo Declaration on Human Rights in Islam". The combination of these three texts could be considered as odd, especially in consideration of the nature of the latter vis-à-vis the first two. The Cairo Declaration on Human Rights in Islam⁷⁸ is a text that is considered to be in sharp decline in comparison to international human rights standards⁷⁹ and also in comparison with regional mechanisms for Human Rights protection like the European Convention on Human Rights and Fundamental Freedoms, the African Charter on Human rights and the inter-American convention. In fact, the Cairo declaration does not recognize inter

⁷⁶ Shari'ah is a set of rules derived from the Qur'an and the Sunnah (practices of the Prophet Mohammed), and other secondary sources including Islamic jurisprudence.

⁷⁷ See generally J,Witte and M.C, Green, Religion and Human Rights: An Introduction, Oxford University Press, October 2011.

⁷⁸ Adopted by the Conference of Ministers of Foreign Affairs of the Organization of the Islamic Conference in 1990 available in English at:<http://www1.umn.edu/humanrts/instree/cairodeclaration.html> .

⁷⁹ Al-Midani, 2002, p. 113 (original in French, translation by author).

alia equal rights between men and women in law and not only in dignity, freedom of belief and religion are not guaranteed by the declaration. In addition, the declaration is ambiguous on the relationship between interpretation of Shari'ah and Human rights as it permits for instance physical punishment as has been prescribed by the Shari'a⁸⁰ and finally it fails to references international instruments relating to human rights⁸¹. This without doubt reflects the difficulty that the drafters of the Charter faced in finding a compromise between specific beliefs in the Arab and Muslim world and universal values and standards as the mention of the Bill of Rights requires the consent of Member States with the principles and rights stipulated in it which is not the case for all of them.⁸² It is important to note here that seven members of the League have not yet ratified the ICCPR and the ICESCR (Saudi Arabia, Bahrain, Comoros, United Arab Emirates, Mauritania, Oman, Qatar)⁸³. Hence the ambiguity of the preamble of the Charter, which attempted to reconcile, the Islamic values and international principles by putting on the same level the Islamic Declaration of 1990, and the international human rights instruments, to satisfy at the same time the conservative movement and the modernist or progressive movement within the League. However, while in this context the mention of Islam and other divine faiths are "inescapable; the bias against other ideologies, for example secularism, could also be easily inferred"⁸⁴ which gives the preamble a highly political dimension that is implicitly inclined to the isalmist political ideology.

Even though regional human rights instruments have an exclusive potential to contribute to the realization of human rights "as they are mechanisms that inhabit the legal space between the international and national levels and are hence well placed to impact and draw from both"⁸⁵ trying to find a common ground between cultural particularities and the universality of human rights, it seems that the preamble of this charter only casts doubt on whether or not it (the Charter) will succeed in this purpose.

⁸⁰ Art 2 (d) of the Cairo declaration states that "Safety from bodily harm is a guaranteed right. It is the duty of the state to safeguard it, and it is prohibited to breach it without a Shari'ah-prescribed reason."

⁸¹ Al-Midani, 2002, p. 113.

⁸² Mahiou, 2008, p. 8.

⁸³ Ibidem.

⁸⁴ Rehman, 2010, p. 379.

⁸⁵ Mattar, 2013, p. 91.

Hence, the omnipresence of religious references and the mention of the Cairo Declaration on Human Rights in Islam raise doubt at the outset about the nature of the rights that will be recognized in the Charter and already give a strong argument to the criticism that the Charter has received for being no more than a “text of compromise”⁸⁶

Besides the controversy around the religious references, the preamble contains another controversial point that has triggered much criticism as paragraph 5 considers racism, Zionism, occupation and foreign domination as a violation of human rights and an essential barrier in front of World peace.⁸⁷ The next section of this chapter develops this idea further as the mention of Zionism occurs again in article 2(3) of the Charter.

Accordingly, the charter of 1994 presents itself as a controversial and ambiguous human rights text from the outset and concerns about the scope of recognition of rights that it will cover are justifiable in the light of the omnipresence of religious references and the contradictions present already in the preamble between international human rights standards Islamic values and stipulations. The following section will attempt at giving a brief overview of the rights recognized by the charter and their adequacy with international standards and the reasons why it was discarded and needed to be revised.

1.2. A problematic content:

Regarding the general organization of the Charter; besides the preamble, it consists of 43 articles that are subdivided into 4 parts: a first part is devoted to the right of people to self-determination, the second part establishes certain civil and political rights but also various economic, social and cultural rights, the third part deals with mechanisms of implementation and the fourth part is devoted to procedures for ratification and entry into force.

The first part of the Charter is consecrated to collective rights as it restates the right to self-determination of peoples⁸⁸ as it was already inscribed in the Preamble and in the

⁸⁶ Chekir,2005, p. 76.

⁸⁷ Preamble of ACHR , Para 5 : “Rejecting racism and Zionism, which constitute a violation of human rights and pose a threat to world peace” .

⁸⁸ Art 2 of the ACHR.

ICCPR⁸⁹. Which is peculiar to the Charter in this part is the mention again of “Zionism” as a challenge to Human Rights-which was maintained in the Revised Charter of 2008. This has triggered much criticism as the Charter was considered to be particularly biased against Zionism and emphasized that the relationship of Arab States with the State of Israel is a matter of concern that is reflected even in Human Rights texts. Moreover, some organizations considered this as a “blatantly anti-Semitic statement”⁹⁰ and the UN OHCHR as Louise Arbour⁹¹ stated that the fact that the Charter equates Zionism with racism is not in conformity the UN General Assembly Resolution 46/86, which rejects that Zionism is a form of racism and racial discrimination.⁹² The ACHR is not the only human rights treaty to mention Zionism in this context. In fact the African Charter on Human and People’s Rights, which was adopted thirteen years before the Arab Charter⁹³, similarly states in its preamble that states are conscious of their duty to undertake the elimination of colonialism, neo-colonialism, apartheid and Zionism.⁹⁴ The Charter can be problematic on some levels in regard to the rights it recognized and the guarantees it offers as well. While it stipulates in common with the ICCPR, ICESCR and regional human rights instruments the fundamental rights in appearance, some of its provisions are limited in scope and some rights are ignored or omitted. First, there is, at no time, the reference to the indivisibility, interdependence and inalienability of human rights.⁹⁵

Second, while the Charter recognizes the right to life, freedom and security of person (art 5), it does not prohibit the death penalty or encourage its abolition but only

⁸⁹ Art 1 (1) of the ICCPR states that : « All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” .

⁹⁰ In a letter sent in January 2008 to then UN High Commissioner for Human Rights Louise Arbour, by UN Watch. Letter available at:

<http://www.unwatch.org/site/apps/nl/content2.asp?c=bdKKISNqEmG&b=1316871&ct=4981963>.

⁹¹ Former UN High Commissioner for Human Rights (2004-2008).

⁹² UN News Centre, Arab rights charter deviates from international standards, says UN official, statement available at: <http://www.un.org/apps/news/story.asp?NewsID=25447#.Ua5U7EAj3zs>.

⁹³ The African Charter on Human and People’s Rights was adopted by the African Union in 1981.

⁹⁴ Preamble of the African Charter on Human and People’s Rights, Para 9: “Conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, Zionism and to dismantle aggressive foreign military bases and all forms of discrimination, particularly those based on race, ethnic group, colour, sex, language, religion or political opinions”.

⁹⁵ Chekir, 2005, p. 80.

regularizes it. Articles 10, 11 and 12 tackle the question of the death penalty. Matching the ICCPR's article 6 and the Inter-American Convention on Human Rights' article 4⁹⁶ by stating that the death penalty "may be imposed only for the most serious crimes and anyone sentenced to death shall have the right to seek pardon or commutation of the sentence"⁹⁷ and that it shall not be imposed on minors under 18 of age and on pregnant women or nursing mothers.

The Charter proclaims essentially the same individual civil and political rights as those embodied in other international and regional human rights instruments as its provisions stipulate for instance the prohibition of torture, inhumane or degrading treatment⁹⁸ (but not punishment), the right to free movement⁹⁹, the right to political participation¹⁰⁰, freedom of belief, thought and opinion¹⁰¹ and the right to freedom of peaceful assembly and association¹⁰². The Charter however fails to provide for the right to political organization and participation, which is the core issue facing all efforts to promote democracy and protect human rights in the Arab world.¹⁰³ Minority rights are also articulated in article 37.

Another set of rights cover the rules of justice including equality before the law¹⁰⁴ and the right to fair trial. In addition, article 7 affirms the principle of innocence until proven guilty. Thus, the charter places obligations upon states parties to ensure an independent and impartial judicial system with a right to legal remedy for all. These provisions are however do not meet international standards set, inter alia in the two International Covenants. For instance, the Charter's provisions for fair trial standards fall short of

⁹⁶ "In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes..." .

"Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence..." .

⁹⁷ Art 10.

⁹⁸ Art 13.

⁹⁹ Art 20.

¹⁰⁰ Art 19.

¹⁰¹ Art 26.

¹⁰² Art 27.

¹⁰³ Al Na'im, 2001, p. 714.

¹⁰⁴ Art9.

those set by the Civil and Political Rights Covenant, such as the right to appeal to a higher tribunal, including cases where the death penalty is imposed.¹⁰⁵

On the economic and social level, the Charter does proclaim some rights like the right to work¹⁰⁶, the right to education¹⁰⁷ and the right to private property but fails to recognize other fundamental socio-economic rights prescribed in the ICESCR like the right to food and housing¹⁰⁸ and the right health¹⁰⁹. Moreover, the Charter recognized in article 29, the right to form trade unions and the right to strike “within the limits laid down by law” but since the majority of LAS Member States seldom respect these rights and their national legislations do not guarantee them, the enjoyment of such rights in countries like the Gulf countries is impossible¹¹⁰. In addition and contrary to the provisions of Article 8¹¹¹ of the International Covenant on Economic, Social and Cultural Rights, only the rights to form a union and to strike are recognized by the charter with no further guarantees. As for freedom of syndical activities, the right to free

¹⁰⁵ Al Na'im, 2001, p. 714.

¹⁰⁶ Art 30.

¹⁰⁷ Art 34.

¹⁰⁸ Art 11 of the ICESCR stipulates that “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” .

¹⁰⁹ Art 12 ICESCR “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.

¹¹⁰ AL-Midani, 2002, p. 110.

¹¹¹ Article 8 ICESCR: “The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.” .

exercise of trade union activities and the protection of trade union leaders, they are utterly absent.¹¹²

It should be emphasized though that out of the 22 Member States of the LAS, 13 states are party to the ICCPR and to the ICESCR¹¹³, 18 States are party to the International Convention on the Elimination of All Forms of Racial Discrimination,¹¹⁴ and only 13 States are party to the convention against Torture and Other Cruel Inhuman or Degrading treatment or Punishment¹¹⁵. Accordingly, the idea that an Arab regional human rights instrument should reinforce or at least meet universal standards at the regional level might be idealistic as it is coming from states that do not fully recognize, and if they do, they do not respect, these standards. Although the criteria of conformity with international human rights standards is essential for evaluating any regional instrument in the field of human rights, the nature of the undemocratic Arab regimes in place at the time of the drafting, the inconsistency of their domestic laws with international human rights law, and their obvious hostility to any national human rights related activity is to be kept in mind.¹¹⁶

In a critical assessment of the content of the 1994 Arab Charter on Human Rights, Hafidha Chekir¹¹⁷ sums it up in the end saying that “In reality, and finally, we can safely say that two principles that are missing from this Charter are, equality and freedom, which indicate the intention of the Arab States to adopt a cloze text stripped of any power to have an impact on the promotion of human rights.”¹¹⁸

On another level, Article 3 prohibits the denial of any of the fundamental human rights that are legally binding on member states by virtue of international treaties or custom, the Charter repudiates the value of this safeguard in Article 4, by providing that limitations or restrictions on all rights under the Charter can be imposed by law, if

¹¹² Chekir, 2005, p. 80.

¹¹³ Algeria, Egypt, Iraq, Jordan, Kuwait, Lebanon, Morocco, Somalia, Sudan, Syria, Tunisia and Yemen.

¹¹⁴ Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Mauritania, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, Yemen and the UAE.

¹¹⁵ Algeria, Bahrain, Egypt, Jordan, Kuwait, Lebanon, Libya, Morocco, Qatar, Saudi Arabia, Somalia, Tunisia and Yemen (the Comoro Islands and Sudan are also signatories to the Convention).

¹¹⁶ El-Fegiery, 2006, p. 53

¹¹⁷ Tunisian law professor and human rights activist.

¹¹⁸ Chekir, 2005, p. 80.

deemed necessary for the protection of national security and economy, public order, health, morals, and the rights of others. This broad and vague exception opens the door for legislation and other measures that can undermine the totality of the rights provided for by the Arab Charter. Finally, the Charter is also weak on mechanisms for the implementation of the rights it recognizes, since the powers and competence of the committee of human rights experts it provides for are confined to examining reports submitted to it by states parties to the Charter, and reporting on them to a Committee of Experts on Human Rights to be elected by states parties to the Charter (art40).

The limitations of the rights recognized by the Charter and the omission of some fundamental rights-which do not reflect the developments in international human rights law and standards- are not the only concerns that this text has raised as the core problem with the Charter is the lack of any enforcement mechanisms, as compared with the mechanisms within the European and American Conventions on human rights, or with the African Charter on Human and Peoples' Rights. In this regard “the Arab Charter is primitive, compared to the other regional systems as far as enforcement mechanisms are concerned. The Arab Charter is primitive because of the extremely limited system of monitoring state compliance with the Charter's provisions.”¹¹⁹ Accordingly, even if widely ratified, it is unlikely that this Charter could improve the protection of human rights in the region.¹²⁰

Notwithstanding the various fundamental and procedural limitations, the Charter is still a significant step forward for the LAS in the field of Human Rights protection¹²¹ and even if it never entered into force it constituted a crucial cornerstone. The Charter of 1994 could not come into force it never received the required number of ratification (seven).¹²²

¹¹⁹ Al-Midani, *the League of Arab States and the Arab Charter on Human Rights*, Arab Centre of International Humanitarian Law and Human Rights Education, October 2005. Available at: http://www.acihl.org/articles.htm?article_id=6.

¹²⁰ Na'im, 2002, p. 714.

¹²¹ Rehman, 2010, p. 384.

¹²² Art 42 (b) of the Charter: “The present Charter shall enter into effect two months after the date of deposit of the seventh instrument of ratification or accession with the Secretariat of the League of Arab States.”

It was only signed by Iraq in 1996¹²³. It was also heavily criticized by international organizations and local NGOs, as the following section will show, until the incessant calls by NGOs and human rights defenders in the Arab world for its updating or modernization lead to the re-drafting then adoption of the Revised Arab Charter on Human Rights in 2004.

2. Reactions to the 1994 Charter:

2.1. On the international level

Following the adoption of the Arab Charter in 1994 through resolution N°5437¹²⁴ there was increasing criticism of its deficiencies by experts, NGOs, academics and others within the Arab region and beyond as will be explained below.

On the international level, Amnesty International was the only organization to celebrate the draft Charter before it was adopted¹²⁵ because it was “the first regional human rights treaty to include all Arab States and the first treaty that represents a region where the majority of inhabitants are Muslims.”¹²⁶ Nonetheless, amnesty raised concerns in relation to various provisions including: general limitations and derogations; right to life; prohibition of torture and ill-treatment; right to liberty and security of person; freedom of movement; freedom of thought, conscience and religion; freedom of expression; freedom of association; and, the right to a fair trial; in addition to observations about the implementation of the Charter.¹²⁷

Furthermore, the Charter was heavily criticized by the International Commission of Jurists (ICJ) that stated that “[the Charter] is marred by fundamental deficiencies: it contains important omissions, guarantees rights only superficially, offers expanded

¹²³Rishmawi, Mervat, ‘The Arab Charter on Human Rights’, Online Max Planck Encyclopaedia of public international law, Oxford university press, June 2008, accessed on 20 May 2013 at: http://www.mpepil.com/subscriber_article?script=yes&id=/epil/entries/law-9780199231690-e1913&recno=2&searchType=Quick&query=the+arab+commission.

¹²⁴ *ibidem*.

¹²⁵ El-Fegiery, 2006, p. 53.

¹²⁶ Comments of Amnesty International on the Draft Arab Charter on Human Rights, December 1993, quoted in (El-Fegiery, 2006, p. 53.)

¹²⁷ *Ibidem*.

possibilities for restrictions and derogations to the rights guaranteed, and above all contains no real mechanism to monitor respect of these rights.”¹²⁸

2.2. On the regional level

Due to the lack of trust in the LAS and its Human Rights Commission and the non-involvement of Arab NGOs in the drafting process of the Charter, some Arab Human Rights defenders discredited the intention of the LAS in adopting the Charter considered it to be a mere political manoeuvre that the League did to relieve the international pressure it was under. Bahi Eddine Hassan reached the conclusion in *No One Is Protected* that what the League wanted was just to “issue a political card for external use or to be used as a protective shield against the pressures of the international community”¹²⁹. This is based on No‘man Jalal’s¹³⁰ statement that ““It was the Egyptian delegation in the Legal Committee of the LAS that pushed for the adoption of the Charter, on the grounds that the League of Arab States is one of the oldest regional organizations, however, was preceded by other regional organizations in issuing regional human rights treaties, and that the proposed charter is a ‘regional protective fence’ to relieve some of the pressure the international community is exercising on Arab countries in the field of human rights”¹³¹.

In the same context, the Cairo Institute for Human Rights’ Studies criticized the Charter stating that the “Charter perceived the human being and nations within the Arab World as inferior to others, and ineligible for enjoying the same rights as do other people in every region of the world. Consequently, one of the ills of the Charter was not restricted to its being a valueless document for the protection of the human being within the Arab World, but could be used as a frame of reference to justify and cover up assaults on and violations of these rights within the Arab World.”¹³²

¹²⁸ International Commission of Jurists, *supra* footnote 10.

¹²⁹ El-Fegiery, 2006, p. 55.

¹³⁰ Former Egyptian Ambassador and Representative of Egypt to the Arab League, Cairo. 1992-1995.

¹³¹ Quoted in M El-Fegiery, 2006, p. 54.

¹³² “CIHRS Calls the League of Arab States to Adopt the UN Draft Arab Chapter for Human Rights without any Amendments” 4 January 2004 available at <http://www.cihrs.org/?p=5742&lang=en>.

Although the League was not trusted with the improvement of the Human Rights situation in the region and its reasons behind adopting a regional human rights treaty were questioned by the Arab civil society as can be seen above, the Arab Human Rights movement called upon the LAS to revise the Charter in order to make it meet international standards. A First International Conference of the Arab Human Rights Movement was organized in Casablanca, Morocco 23-25 April, 1999 by the Cairo Institute for Human Rights Studies with the collaboration of the Moroccan Organisation for Human Rights. One hundred representatives from human rights groups and NGOs from across the Arab world attended this conference.¹³³ The conference resulted in a declaration that was called the Casablanca Declaration of the Arab Human Rights Movement¹³⁴ and that urged the LAS to review the Charter in collaboration with human rights NGOs to make it “compatible with international standards”¹³⁵ and decided to form a working group that would prepare a draft proposal.

Pressure on the LAS to update the Charter in order to establish an effective regional human rights system that meets international standards continued growing until the LAS council took the decision to “modernize” the Arab Charter on Human Rights and instructed the Permanent Human Rights Commission to revise it through Decision 6302/119 (part II) of 24 March 2003¹³⁶. The next Chapter will on one hand discuss in the scope and limitations of the new revised Charter that entered into force in 2008 and its implementation mechanism and on the other hand the place of this Charter in the current political context of change that the Arab region is going through and attempt to give suggestions for the improvement of the Arab Human Right system.

¹³³ Cairo Institute for Human Rights’ Studies, ‘Which Arab Charter on Human Rights, 23 December 2003. Available at: <http://www.cihrs.org/?p=4868&lang=en> (accessed on 1 July 2013)

¹³⁴ Text of the Declaration available in English at: <http://www.al-bab.com/arab/docs/international/hr1999.htm>.

¹³⁵The Casablanca Declaration of the Arab Human Rights Movement Para 2 goes as follows “Calling upon the League of Arab States to review all its conventions relating to human rights -- especially the Arab Agreement on Combatting Terrorism -- and also to review the Arab Charter of Human Rights of 1994, with a view to drafting a new Arab convention on human rights, in cooperation with Arab human rights NGOs, so as to make it compatible with international standards. The Conference decided to form a working group to prepare a draft proposal for such a convention.”

¹³⁶ Rishmawi, 2005, p. 363.

II. The revised Arab Charter on Human Rights:

A culmination of factors contributed to the updating of the Arab Charter on Human Rights in 2004. On one hand, the international political context changed since the events of September 2001 and the efforts made by some Arab and international NGOs have led some states to review their policy on human rights and led the council of the League of Arab States Arabs to adopt a Resolution in 2001¹³⁷ to recommend to the Arab States, to accelerate the process of signature and ratification of the 1994 Charter that never entered into force,¹³⁸ which reflects the awareness of the LAS of the scrutiny Arab countries were under. In this context Leila Zarrougui¹³⁹ says that “the attacks of 11 September 2001 had dramatically undermined decades of human rights achievements at the international level, in the Arab world these same events, which had led to the collapse of Saddam Hussein and the occupation of Iraq, had also destabilised the regimes in a number of countries that for decades had been confronted by growing dissatisfaction and demands for political openness. The traditional allies of the United States, which are generally the least willing to undertake political change, found themselves for the first time confronted by great US pressure for more political openness. This conjunction of internal demands and international pressure was an opportunity worth seizing.”¹⁴⁰ Therefore, the revision and updating of the Charter in the light of international standards of human rights protection had indeed become necessary because of the severe criticism that the 1994 Charter received from some Arab states and several Arab and International NGOs, and the lack of ratifications.

The Council had thus tasked the Arab Permanent Committee on Human Rights, with the redrafting of the Charter. The Secretary General of the League of Arab States¹⁴¹ explained that the term ‘modernisation’ meant that the Committee should bring the ACHR ‘in line with international human rights standards and remove any

¹³⁷ Resolution 6089 of 12 mars 2001.

¹³⁸ Chekir, 2005, p. 81.

¹³⁹ An Algerian legal expert on human rights and administration of justice. Special Representative of the Secretary-General for Children and Armed Conflict at the Under Secretary-General level at the UN since September 2012. Was the Chairperson of the Arab Group of Experts that re-drafted the Charter.

¹⁴⁰ Zarrougui, 2011, p. 8

¹⁴¹ Amr Moussa at that time.

inconsistency therewith'.¹⁴² The use of the term “modernization” or the original Arabic synonym “تحديث” by the LAS secretary general can only denote the belated acknowledgement of the League that the 1994 Charter was much behind compared to the modern human rights international standard. In fact, the updating of the Charter was part of “an overall modernization package”¹⁴³ proposed by the Secretary General of the Arab League to reform existing institutions and to establish new ones, such as an Arab parliament, which would have the competence to further human rights, as well as to review legislation in Arab countries; and a Regional Security Council that would promote conflict prevention and resolution in Arab countries, as well as develop a strategy to maintain peace. The package also included the establishment of an Arab Court of Justice. The proposed statute of the Court of Justice would give it competence on human rights issues, as well as disputes related to principles of international law.¹⁴⁴ However, the only project among these that has come into light until this time is the new revised Arab Charter on Human Rights.

Accordingly, the Arab Permanent Human Rights Committee revised the Charter and presented in October 2003 a draft of the new updated Charter to the Council of the League.¹⁴⁵ The new draft was nonetheless very much criticized because instead of bringing the ACHR to the level of international human rights standards, the changes made to the Charter are in fact regressions compared to the 1994 text.¹⁴⁶

Again, it was due to the pressure from the regional and international human rights organizations working in the region and following the process of redrafting the Charter closely along with the OHCHR¹⁴⁷ that this draft was discarded and that the Council of the League agreed to allow independent experts to prepare a new draft.¹⁴⁸ “Some

¹⁴² Report of the Arab Standing Committee on Human Rights at its special session, Cairo, Oct. 2003, cited in the Report of Arab Group of Experts, Dec. 2003, Para 3. Available only in Arabic at: <http://www.bibalex.org/arf/ar/Files/AHRrenew.pdf>.

¹⁴³ Rishmawi, 2005, p. 363.

¹⁴⁴ Rishmawi, 2005, p. 363.

¹⁴⁵ A copy of this draft is available in Arabic in M El-Fegier, 2006 pp. 238-247.

¹⁴⁶ International Commission of Jurists, *supra* footnote 10.

¹⁴⁷ A Memorandum of Intent was signed between OHCHR and the League of Arab States in April 2002, according to which the two secretariats started their cooperation approach and the LAS agreed to undertake specific activities in the field of human rights. In accordance with the Memorandum of Intent, the League of Arab States has granted OHCHR in January 2003 an “Observer status” in the Permanent Arab Commission on Human Rights.

¹⁴⁸ Rishmawi, 2005, p. 363.

international, regional and even national NGOs were aware of the process and were extremely interested in following it up and finding ways of influencing it. They organised meetings and conferences aiming at arriving at a common position.”¹⁴⁹ One of the prominent meetings held in this regard was a symposium organized by the Cairo Institute for Human Rights Studies entitled “Will the Arab System respond to the Reform claims? Which Arab Charter on human rights?”¹⁵⁰

Consequently, the OHCHR reached an agreement with the LAS to assemble a group of “independent Arab Experts” as a Committee of Experts to carry out the task of updating the ACHR. The committee’s members¹⁵¹ were drawn from the UN human rights treaty bodies.¹⁵² This committee presented in January 2004 a draft of the revised ACHR to the council of the League that adopted it later, and after having amended it, through resolution 6405 of 4 March 2004.

The lengthy and problematic process that has been presented in the previous Chapter has resulted in the entry into force in 2008 of the Revised Arab Charter on Human Rights,¹⁵³ which was the first concrete step towards building a regional Arab Human rights protection system as it is the first LAS Human Rights treaty to enter into force. The input from Arab and international organizations along with the work of the Arab Group of Experts shaped a draft that was mostly consistent with international human rights standards. In fact, in their report, the drafting committee that revised the charter state that they based their work on international Human Rights instruments and regional human rights treaties like the African Charter on Human Rights and Peoples, the European Convention on Human Rights, the Inter-American convention and the Cairo Declaration on Human Rights in Islam.¹⁵⁴ They also took consideration of the

¹⁴⁹ *Idem*.

¹⁵⁰ The symposium included participants from 36 local NGOs and 11 international NGOs and inter-governmental organisations, as well as 15 legal, academic and media experts. In addition, seven governmental and parliamentarian members, representatives from the Arab League and the OHCHR also attended. See ‘Towards an Effective Regional Protection of Human Rights, Which Arab Charter on Human Rights?’, June 2003, available at: <http://www.cihrs.com/focus/alkethaq/final-report.htm>.

¹⁵¹ Five Members: two women and three men from Algeria, Egypt, Qatar, Saudi Arabia and Tunisia.

¹⁵² Report of Arab Group of Experts, Dec. 2003, Para 5.

¹⁵³ There are several English translations of the Charter available. This paper uses the version that is available at <http://www1.umn.edu/humanrts/instree/loas2005.html>.

¹⁵⁴ Report of Arab Group of Experts, Dec. 2003, Para 9.

suggestions and opinions that the Arab and international NGOs have submitted.¹⁵⁵ Yet this second draft was amended by the Arab Commission on Human Rights, who made substantial changes,¹⁵⁶ mainly intended to accommodate positions of some Arab states in relation to certain controversial issues as will be demonstrated later.¹⁵⁷

The revised version of the Charter adopted in 2004 is thus considered to be a significant step forward from the 1994 Charter. It comprises a Preamble and 53 articles that recognize several fundamental civil and political, economic, social and cultural rights. It borrows considerably from language used in various international human rights treaties and includes provisions that are consistent with the standards found in them.¹⁵⁸ Amnesty international welcomed the adoption of the new Charter and stated that “the new Charter reflects developments in international human rights law and standards, including the development of jurisprudence.”¹⁵⁹

However, this did not ensure the Charter’s full conformity with international standards as alongside the positive provisions the new Charter inscribed certain concerns still persist with regard to issues like the mention of Zionism as a racist movement, discrimination towards women, children and resident citizens, death penalty, freedom of expression and religion, and minority rights as will be discussed later. The following section will look directly at the core of the text since the Charter kept the same preamble as the 1994 version, except for slight phrasing modifications, and that the preamble has been discussed in the previous chapter.

¹⁵⁵ Report of the Arab Group of Experts Para 9.

¹⁵⁶ The original draft submitted by the Arab group of expert to the Commission is available on in Arabic in M El-Feghery, 2006 pp. 294-313.

¹⁵⁷ Mervat Rishmawi, ‘the Arab Charter on Human Rights’, Sada, 6 October 2009, available at: <http://carnegieendowment.org/2009/10/06/arab-charter-on-human-rights/fbk1>.

¹⁵⁸ Rishmawi, 2005, p.376.

¹⁵⁹ Amnesty International, Middle East and North Africa Region: Re-drafting the Arab Charter on Human Rights: Building for a Better Future, 11 March 2004 available at: <http://www.amnesty.org/en/library/info/MDE01/002/2004>.

A. The scope of the new Charter:

1. Positive provisions:

Article 1 of the revised Charter is one of the articles that have brought significant progress to the text compared to the 1994 Charter. Not only does it state that the Charter aims at placing “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”, but it affirms the very important principles of the indivisibility and universality of all human rights¹⁶⁰ therefore “putting an end finally to the continued questioning of universality of human rights by some Arab states”.¹⁶¹ This is an important step forward that in appearance ends the controversy between cultural relativism in a complex region like the Arab world and the universality of Human rights.¹⁶² Even though the presence of this provision is highly important, it will be demonstrated later how limitations on the enjoyment of the universal rights are put by the charter itself.

In addition, article 3 of the Charter brings in important development as it inscribes the principle of equality insisting that no form of discrimination on the bases of “race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability” can be accepted hence including the prohibition of discrimination on the basis of physical or mental disability which was omitted from the 1994 Charter. Furthermore, the Charter focuses on the rights of persons with disabilities, it prohibits discrimination on the basis of disability and requires States parties to ensure a decent life for the disabled, strengthen their independence and effective participation in society, providing free social services,

¹⁶⁰ Art 1 (4): “To entrench the principle that all human rights are universal, indivisible, interdependent and interrelated”.

¹⁶¹ Rishmawi, the Arab Charter on Human Rights, Sada, 6 October 2009, available at: <http://carnegieendowment.org/2009/10/06/arab-charter-on-human-rights/fbk1>.

¹⁶² See generally: Abu-Sahlieh, Sami A. Aldeeb, *Les Musulmans Face aux Droits de l'Homme (Muslims Facing Human Rights)*, Bochum: Centre of Arab and Islamic Law, 1994. (In French).

material support, educational services and appropriate health.¹⁶³ This provision was welcomed by several commentators and organizations like Amnesty International.¹⁶⁴

One other important innovation to be mentioned in this context is the assertion by the Charter parity of opportunity and equality between men and women,¹⁶⁵ which was one of the point that triggered criticisms of the 1994. Although the affirmation of equality between men and women is considered to be a positive element the phrasing of article 3 (3) still constitutes a controversy in this regard, which will be discussed in the following chapter.¹⁶⁶ Moreover, Article 33 (b) of the Charter particularly prohibits violence against women and children within the family which is crucially important for societies where domestic violence is wide spread.¹⁶⁷

Also for the first time, the Charter affirms the rights to development.¹⁶⁸ In addition, fundamental economic and social rights that were omitted from the 1994 version were recognized as the Charter stipulates the right to an adequate standard of living, the right to food, housing and clothing, and the right to a healthy environment.¹⁶⁹ Moreover, the right to “the enjoyment of the highest attainable standards of physical and mental health” and the right to free basic health-care services are recognised in article 39.

¹⁶³ Art 40.

¹⁶⁴ Amnesty International, Middle East and North Africa Region: Re-drafting the Arab Charter on Human Rights: Building for a Better Future, 11 March 2004 available at: <http://www.amnesty.org/en/library/info/MDE01/002/2004>.

¹⁶⁵ Art 3 (1) (2) (3).

¹⁶⁶ Art 3 (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”.

¹⁶⁷ “Testimonies heard un discussion groups and in mock trials indicate that the family in many parts of the Arab World has been transformed from a place of safety and security into a place where any type of violence against women may be practiced. Family violence may range from the beating and sexual assault of wives to the sexual abuse and rape of immature girls and male relatives.” The Arab Human Development Reports 2005, towards the Rise of Women in the Arab World. UNPD, Regional Bureau for Arab States. p. 116.

¹⁶⁸ Art 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...”.

¹⁶⁹ Art 38.

Another addition to the text of 1994 is Article 10 that prohibits of all forms of slavery and servitude, including a specific prohibition on human trafficking for the purpose of sexual exploitation, the exploitation of children in armed Conflict or any other kind of exploitation.¹⁷⁰

As has been mentioned in the previous chapter, the 1994 charter only prohibits forced labour and does not recognize the right to be free from slavery.

The provisions related to the judicial system have also been strengthened as art 12 stipulates the independence of the judiciary and recognized the right to seek “legal remedy at all levels”¹⁷¹. Furthermore, art 13 recognizes the right to a fair trial by a competent, independent and impartial tribunal established by law. In this regard the charter recognizes a new set of: the right to be informed promptly and in detail of the nature of the charges, the right to dispose an adequate time and facilities to prepare a defence, the right to contact relatives, the right of an accused to have the free assistance of an interpreter, the right of any person convicted of appeal to a body superior court¹⁷², the principle of non bis in idem¹⁷³ and the prohibition of imprisonment for civil debt¹⁷⁴.

Accordingly, several provisions were added and others were amended in order to widen the scope of the rights recognized by the 1994 Charter and significant improvement was achieved. Despite these advances, the text of the Charter remains below expectations considering the lengthy process it went through to come into light and in comparison with other international and regional human rights treaties. Also, the revised Charter has failed to remedy one of the most important deficiencies of the 1994 charter which is the lack of effective implementation mechanisms as will be demonstrated later. The following section will hence tackle the limitations of the Charter in its new version in light of international human rights law taking a few fundamental rights as an example.

¹⁷⁰ Art 10 (2).

¹⁷¹ At 12.

¹⁷² At 16.

¹⁷³ Art 19.

¹⁷⁴ Art 18.

2. Truncated rights:

2.1. A restricted right to life:

Article 5 of the Charter recognizes the right to life and is followed by two articles consecrated to the death penalty. Following Art 6 of the ICCPR word by word, Art 6 of the Charter allows the imposition of the death penalty “for the most serious crimes in accordance with the law in force at the time of the commission of the crime”. However contrary to the 1994 version these articles do not excluded the death sentence for political offences (art 11), for persons under 18 years of age. While article 7 appears to prohibit death penalty for minors, it contains an important limitation in that it leaves domestic laws of the States the opportunity to do otherwise. This is a “disguised restriction on a guaranteed right”¹⁷⁵ as the scope of the rights guaranteed "can become very limited, if not disappear, if the terms of its exercise is left to the domestic law of States which have recognized this right!"¹⁷⁶ In fact, article 7 states that "the death penalty should not be imposed on those below the age of 18 *unless national legislation at the time of the commission of the crime state otherwise.*" whereas international law places an absolute prohibition on the imposition of the death sentence on children in any circumstances. Article 6 (5) of the ICCPR states "[s]entence of death shall not be imposed for crimes committed by persons below eighteen years of age" and Article 37 (a) of the Convention on the Rights of the Child (CRC) states "[n]either capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age". It should be noted that all member states of the Arab League are states parties to the CRC, and most are parties to the ICCPR and no Arab State has entered any reservations to Article 37 (a), CRC or article 6 (5), ICCPR.¹⁷⁷

Furthermore article 4 of the ICCPR prohibits derogation from all the provisions in Article 6 of the Covenant, which protect the right to life and contain the provisions on the death penalty, including the restricting of the death penalty to "most serious crimes"

¹⁷⁵ International Commission of Jurists, supra footnote 10, p. 10.

¹⁷⁶ Frederic Sudre, European and International Human Rights, 6th edition of University of France Press, Paris, 2003, p203 quoted in International Commission of Jurists, supra footnote 10, p. 10.

¹⁷⁷ Rishmawi, 2005, p. 372.

in countries that still retain the penalty, as well as the absolute prohibition of the imposition of the death sentence on children under the age of 18 and pregnant women, which is not the case of art 4 of the Arab Charter as pursuant to this article the provisions regarding the use of the death penalty against children and pregnant women¹⁷⁸ can be derogated from despite the fact that the right to life as guaranteed in art 5 cannot be a subject to derogation. It is crucial to note in this context that none of the LAS member states have abolished the death penalty yet.¹⁷⁹

It is worth mentioning in this context that article 7 of the original draft that the Arab group of experts submitted to the Arab permanent commission on human rights did not allow the infliction of the death penalty on minors if the domestic legislations stipulate so. The Commission amended the article by adding that. In fact the Arab group of experts protested this amendment stating in a memorandum that they have submitted to the LAS and the OHCHR that it is in breach of international law and asked the Commission to revoke it.¹⁸⁰ The original draft also stipulates that death sentence cannot be inflicted for a political offence (art6) or on a mentally disabled person (art 7), two elements that the commission erased when amending the draft that was submitted to them. According to Mervat Rishmawi, “in including or omitting these provisions, the charter not only fails to make progress in the law and practice on the death penalty in the region, but actually represents a serious setback in the struggle to afford greater protection for the right to life. In turn, it actively undermines the position of international human rights law in the Arab world.”¹⁸¹

2.2. Discrimination against non-citizens:

Non-nationals are excluded in some provisions of the Charter in a blunt discriminatory way. First, article 24 of the Charter potentially allows states to restrict the rights of non-citizens or nationals when it comes to participation in the public sphere. It grants the rights to participate in political life (art 24 (1)), run for elections (art 3 (3)), and peaceful

¹⁷⁸ Art 7(b) provides: “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”.

¹⁷⁹ World Coalition against the death penalty database <http://www.worldcoalition.org/worldwide-database.html> accessed on 19 June 2013.

¹⁸⁰ Memorandum of suggestions in order to eliminate the contradiction between the Arab Charter and International standard, Arab group of experts, Geneva, 30 January 2004 (Arabic).

¹⁸¹ Rishmawi, 2005, p. 372.

assembly and association (art 24 (6)), to only to citizens excluding thus non-nationals¹⁸². While Article 25 of the ICCPR guarantees the right to participation in public affairs to citizens only, Article 21 and 22 of the ICCPR on right to peaceful assembly and freedom of association respectively are granted to everyone and not only citizens. This is another article that the Arab group of experts have criticized and suggested that it should comply with the non-discrimination principle found in art 22 of the ICCPR¹⁸³ as it was in the original draft that was submitted to the Commission.

Moreover, art 41 (2) of the Charter guarantees free basic primary education only to “citizens” which is inconsistent with the universal protection afforded by art 13 of the ICESCR and article 28 of the CRC which recognize the right to free compulsory education for everyone within the state’s jurisdiction. Article 34 and 36 as well privilege only citizens with the economic and social rights as art 34¹⁸⁴ recognizes the right to work and art 36 provides right to social security and social issuance.¹⁸⁵

2.3. Treatment but not punishment:

Another omission in the Charter is the omission of the prohibition of cruel, inhumane and degrading punishment. In fact art 8 of the Charter provides that “No one shall be subject to physical or psychological torture or to cruel, degrading, humiliating or inhumane treatment”, which is not consistent with the prohibition of torture in international law. Art 7 of the ICCPR and art 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture)¹⁸⁶ both prohibit torture and inhumane and degrading treatment for the purpose of punishment. Furthermore, all other regional human rights arrangements do so as art 3 of the European Convention on Human rights, art 5 of the African Charter on human rights, art 5 of the Inter-American Convention and art 14 of the ASEAN declaration on

¹⁸² Art 4 provides: “Every citizen has the right...” while the other articles use terms like “everyone” and “all persons”.

¹⁸³ Memorandum of suggestions in order to eliminate the contradiction between the Arab Charter and International standard, Arab group of experts, Geneva, 30 January 2004 (Arabic).

¹⁸⁴ Art 34 (1) “The right to work is a natural rights of every citizen”.

¹⁸⁵ Art 36: “the states parties shall ensure the right of every citizen to social security, including social insurance.”.

¹⁸⁶ All LAS member states are parties to the convention against torture except Oman.

Human Rights all comply with international law in this regard by including physical punishment in the provision on the prohibition of torture.

An explanation of this omission in the Arab charter could be that countries like Saudi Arabia still use corporal punishment as it was stipulated in the Shari'a. In fact corporal punishment (amputation and flogging) is lawful as a sentence for crime, including for child offenders in Saudi Arabia. Under the Saudi Law of Criminal Procedure (2001), amputation is carried out pursuant to a Royal Order issued by the King or his representative, and must be witnessed by representatives of the Administrative Governor, the Court, the Bureau of the Promotion of Virtue and Prevention of Vice, and the police (article 220). Flogging should also be witnessed by these officials but there is no requirement for a Royal Order (article 220).¹⁸⁷ This is the case for other LAS member states as well; in Oman for instance corporal punishment is lawful as a sentence for crime. The Constitution states in article 13 that "Any form of mental or physical violence is prohibited" but the Criminal Code provides for punishments of amputation and flogging (e.g. article 7)¹⁸⁸. It is hence possible that the reason behind the omission of the prohibition of cruel, inhumane and degrading punishment is due to the awareness of the drafters of the legality of these practices in some influential member states that could work against the adoption of the charter because it conflicts with their domestic laws in this regard.

2.4. Gender equality:

Women's rights is one of the areas where the clash between established interpretations of Islamic stipulations and international human-rights principles is most acute.¹⁸⁹ This is reflected in the provisions of the Charter as they provide insufficient protections for women against the discriminatory domestic laws of some Arab states.

¹⁸⁷ Global Initiative to End All Corporal Punishment of Children Country Report: Saudi Arabia. August 2012, available at :

<http://www.endcorporalpunishment.org/pages/pdfs/states-reports/Saudi%20Arabia.pdf>.

¹⁸⁸ Global Initiative to End All Corporal Punishment of Children Country Report: Oman. April 2013, available at: <http://www.endcorporalpunishment.org/pages/progress/reports/mauritania.html>.

¹⁸⁹ Oxford Islamic Studies Online <http://www.oxfordislamicstudies.com/article/opr/t236/e0325>.

Even though the Charter recognizes that “Men and women are equal in dignity, rights and obligations”¹⁹⁰ it limits it by adding the framework within which these rights must be recognized, namely the “positive discrimination established in favour of women by the Islamic Shari’a, other divine laws and by applicable laws and legal instruments.”¹⁹¹ This article does not protect women from discrimination imbedded in the national laws of some Arab states but it does reaffirm it by giving domestic laws supremacy over the charter’s provisions. The concern is that countries like in the Gulf countries for instance, personal status law or family law matters, including those relating to marriage, the annulment and dissolution of marriage, divorce, maintenance and custody of children, are governed by Shari’ah based rules.¹⁹² Amnesty International¹⁹³ expressed concern as well in regard to the above mentioned article as well stating that that national legislation of some of the LAS Member states might not guarantee equality between men and women as required by article 23 (4) of the ICCPR¹⁹⁴. In this context Mervat Rishmawi states that “whilst welcoming the reference to positive discrimination in favour of women, which is badly needed within Arab societies, subjecting in to such qualifications as Shari’ah national legislation could seriously undermine attempts at equality”¹⁹⁵

It is not surprising though that the phrasing of these rights in the charter is followed by a mention of the Shari’a. In fact, it is for this reason that most of the Arab States that have ratified the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)¹⁹⁶ have made reservations on several of its provisions particularly article 2¹⁹⁷ “in order to ensure the implementation of the CEDAW within

¹⁹⁰ Art 3 (3).

¹⁹¹ Ibidem.

¹⁹² Amnesty International, « Gulf Cooperation Council countries : Women Deserve Dignity and Respect » 11 May 2005 p 18, available at: <http://www.amnesty.org/en/library/info/MDE04/004/2005> .

¹⁹³ Amnesty International, Middle East and North Africa Region: Re-drafting the Arab Charter on Human Rights: Building for a Better Future, 11 March 2004, p.7. Available at: <http://www.amnesty.org/en/library/info/MDE01/002/2004>.

¹⁹⁴ Art 23 (4) ICCPR : « States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.”.

¹⁹⁵ Rishmawi, 2005, p.375.

¹⁹⁶ All but Somalia, Sudan and Oman.

¹⁹⁷ Algeria, Iraq, Lybia, Morocco, UAE, Qatar

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#EndDec.

the bounds of the provisions of the Islamic Shari'a" as the Bahrain State put it.¹⁹⁸ "Therefore, and like the references contained in the preamble, it is the conciliation or compromise between international instruments and religious principles which served as the basis for the recognition of women's rights."¹⁹⁹

Furthermore, the prohibition of violence against women inscribed in art 33 (2) is considered to be insufficient as it is restricted to domestic violence and in this context Amnesty International "calls on the Arab League to extend the prohibition of violence against women contained in Article 33 (b) to include all forms of violence in the community and by state officials. This Article should also be complemented by provisions that require that legislation and policies to end impunity for abuses against women by state and non-state actors, including the exercise by the state of due diligence to prevent them, and protect women from such abuses."²⁰⁰

This reluctant recognition of gender equality and the weak protection provided to women's rights is reflected in the language of the Charter as it is written in the masculine form in both the Arabic and English versions. For a Human Rights text that was drafted in 1994 and amended in 2004, this could have been avoided if the idea of equality was present.

2.5. Minority protection:

The charter devotes only one provision to minority rights per se. Article 25 of the Charter goes as follows: "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". The International Commission of Jurists criticized this article considering it to be "a hasty affirmation" of minorities' rights that does not guarantee protection of minorities from discrimination and persecution as it gives states discretion to limit the exercise of minorities' cultural and

¹⁹⁸ http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#EndDec.

¹⁹⁹ Chekir, 2005, p. 83.

²⁰⁰ Amnesty International, supra footnote 190, p. 6.

religious activities by giving national laws the power to govern it.²⁰¹ The issue of minorities' rights is crucial in the Arab region considering the complex social structure of some of the Arab Countries and the on-going sectarian strife that can be witnessed in some of them. Egypt, for example, has a noteworthy Christian minority representing 9 percent of the population.²⁰² In Syria, 10 percent of the population is Christian, while Shiites, Alawites, Ismailis, and the Druze together constitute a minority of 16 percent²⁰³. In the United Arab Emirates, Shia are also a minority, accounting for an estimated 16 percent of the population.²⁰⁴ However, Sunnis are a minority in Iraq, constituting 32 to 37 percent of a population that has a 60 to 65 percent Shiite majority.²⁰⁵ Lebanon is the example of several minorities converging within one country as 17 religious sects are recognized with 39 percent of Lebanese citizens belonging to various Christian denominations, and Muslim making up 59.7% between Shia, Sunni, Druze, Isma'ilite, Alawite or Nusayri.²⁰⁶ "This demographic diversity makes an expansive reading of Article 25 of the Charter an important legal necessity."²⁰⁷

The other mention of minorities in the Charter comes in article 43 that states that that provisions of the Charter should not be interpreted in a way that undermines the rights and freedoms protected by national legislation of the state parties or those provided for in international and regional human rights instruments ratified or acceded to including those relating persons belonging to minorities.²⁰⁸ A positive provision that

²⁰¹ International Commission of Jurists, *supra* footnote 10, p.13.

²⁰² CIA, The World Factbook: Egypt <https://www.cia.gov/library/publications/the-world-factbook/geos/eg.html>.

²⁰³ CIA, The World Factbook: Syria <https://www.cia.gov/library/publications/the-world-factbook/geos/sy.html>.

²⁰⁴ CIA, The World Factbook: UAE: <https://www.cia.gov/library/publications/the-world-factbook/geos/ae.html>.

²⁰⁵ CIA, The World FactBook: Iraq <https://www.cia.gov/library/publications/the-world-factbook/geos/iz.html>.

²⁰⁶ CIA, The World FactBook: Lebanon, <https://www.cia.gov/library/publications/the-world-factbook/geos/le.html>.

²⁰⁷ Mattar, 2013 p.128.

²⁰⁸ Art 43 of the Charter stipulates that: "Nothing in the present Charter shall be interpreted as impairing the rights and freedoms protected by the State Parties' own laws, or as set out in international or regional instruments of human rights that the State Parties have signed or ratified, including women's rights, children's rights and minorities' rights."

can contribute to the protection of minorities' rights and that Amnesty International welcomes but yet not enough to guarantee the efficient protection for minorities.²⁰⁹

Mohamed Y. Mattar²¹⁰ underlines that in order to guarantee protection for minorities, minority rights under the Charter “should be interpreted in light of the developments in international law, where there has been a shift in focus from individual rights to the recognition of the rights of minorities as a group”, translated in the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities²¹¹

The concern regarding this issue goes beyond the text of the provisions of the Charter itself as the question relies in several Member states in the implementation of these provisions when domestic laws can be very restrictive on the exercise of religious freedoms of minorities particularly with regard to the exercise of non-Muslim worship. In fact, it is subject in most of the Arab states to restrictions not to offend the Muslim majority. Saudi Arabia for instance denies the exercise of any other religion than Islam on the grounds that, according to the prophetic tradition, there cannot be two religions in the Arabian Peninsula.²¹² The provisions that address minority rights in the Charter are thus not sufficient to provide for the necessary protection of minorities in a region tainted with complex sectarian and ethnic strife.

3. Weak implementation mechanisms:

The main criticism of the 1994 version of the Charter remains relevant as there was no significant improvement in the monitoring and implementation mechanisms that it provides for. In fact, the monitoring body that the Charter provides for is an “Arab Human Rights Committee” (hereafter the Committee) composed of 7 members (who must be nationals of States parties)²¹³ to be elected by secret ballot by the States parties

²⁰⁹ Amnesty International, supra footnote 190 , p. 2.

²¹⁰ Mohamed Y. is a Senior Research Professor of International Law and the Executive Director of The Protection Project at The Johns Hopkins University School of Advanced International Studies (SAIS).

²¹¹ Mattar, 2013 p.128.

²¹² Abu-Sahlieh, 1994. p. 115.

²¹³ Art 45 (2).

to the charter with a four years mandate and the possibility of re-election only once.²¹⁴ These members are presented as candidates by the states parties but they “serve in their personal capacity and shall be fully independent and impartial”²¹⁵

This committee is thus to be the monitoring body of the Charter. It is though given a very limited mandate: The committee is to receive states periodic reports every three years and submit its recommendations to the LAS Council via the Secretary-General in an annual report²¹⁶.

These provisions do contain a few innovations compared to the 1994 version. One is that the rotation principle in the committee is affirmed in art 45 (3) in the revised charter as opposed to “the rotation principles shall be observed as far as possible” in art 40 (e) of the 1994 charter. More importantly, the revised version brought other positive additions to the provisions related to the monitoring mechanism. First, art 47 stipulates that states parties are to ensure the immunity of members of the Committee and provide them protection from any form of pressure.²¹⁷ Second, art 48 (6) provides that “the Committee’s reports, concluding observations and recommendations shall be public documents which the Committee shall disseminate widely”, which represents a significant step towards more transparency in the work of the League.

The criteria necessary to be a candidate to the Committee are laid down by art 45 (2) as it states that members “must be highly experienced and competent in the Committee’s field of work...and shall be fully independent and impartial”. This is crucial to the work of the committee and could determine the success or not of such a Committee to supervise the compliance of States with the provisions of the Charter. The independence of the members is one of the guarantees to the accuracy of their work. This has been underlined by the UN High Commissioner for Human Rights speaking of the UN treaty monitoring bodies: “The ultimate success of any monitoring system.... depends on the

²¹⁴ Art 45 (1) (3) (4).

²¹⁵ Art 45 (2).

²¹⁶ Art 48.

²¹⁷ Article 47 goes as follows: “The States parties undertake to ensure that members of the Committee enjoy the immunity 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”.

calibre and independence of the experts monitoring implementation of treaty standards.”²¹⁸ However, Amnesty International has noted that these criteria are not as exhaustive as those imposed by several UN human rights treaties. It has recommended the LAS to add other criteria; including guaranteeing that the experts have knowledge of specific issues and subjects relevant to the Charter, a certain legal experience, and acquaintance with the legal systems in the region. It has also suggested that more than one candidate should be nominated by each State in order to make certain that elections are from a list of highly qualified specialists and not a restricted group.²¹⁹

The mandate of the Committee is defined in Article 48 of the Charter. Art 48 (1) provides that States are to report 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’. According to this article, the states submit their reports to the Secretary-General of the LAS who transmits them to the committee. The Committee is thus to consider the reports in the presence of State representatives²²⁰, and will ‘discuss the report, comment thereon and make the necessary recommendations in accordance with the aims of the Charter’.²²¹ Article 48(2) requires States to present an initial report one year after the Charter has entered into force for the State concerned and thereafter to submit periodic reports every three years. Articles 48(5) and 48(6) provide that the Committee must issue an annual public report of its ‘comments and recommendations’. The Charter, consequently, does not require the Committee to issue its comments and recommendations after each session.

The Charter does hence provide for a monitoring body to review states reports and comment on their compliance with the provisions of the Charter and give recommendations, which is far from being an enforcement mechanism like the ones other regional human rights systems have set up. Not only there is no judicial or quasi-judicial body to ensure the implementation of the Charter like the ones established by

²¹⁸ Concept paper on the High Commissioner for Human Rights’ proposal for a unified standing treaty body, March 2006. Available at: <http://www1.umn.edu/humanrts/unifiedstandingtreatybody.html>.

²¹⁹ Amnesty International, ‘Middle East and North Africa: The Arab Human Rights Committee: Elections of Members and Criteria of Membership’, 10 June 2008, p. 8, available at: <http://www.amnesty.org/en/library/info/IO65/001/2008/en>.

²²⁰ Art 48(3).

²²¹ Art 48(4).

the European, African and Inter-American systems, but the charter does not even foresee any individual or State communications or complaint mechanisms like the ones established by UN treaty bodies.

In comparison to other human rights regional arrangements, the Arab charter gave its monitoring body a very limited mandate. The European Convention on Human Rights provides for the establishment of a human Rights Court in its art 19²²². The European Court of Human Rights was hence established in 1959. The Court receives individual complaints and has been dealing with a very big number of cases since its establishment building up a significant case-law body, which contributes in the enforcement of the European Convention on Human Rights. Other regional human rights instruments did not necessarily foresee the establishment of a judicial body in their initial treaty but still established stronger monitoring mechanisms than the Arab Human Rights committee and eventually added protocols that set ground for regional Human rights Courts, which is the case of the African and Inter-American system. The African Charter, for instance, entrusts the African Commission on Human and Peoples' Rights with the promotion and protection of the rights recognized by the Charter.²²³ The African Charter also gives the Commission the competence to receive communications from States and other sources and authorizes it to "interpret all the provisions of the ... Charter at the request of a State Party, an institution of the OAU or an African Organization recognized by the OAU" (art. 45(3)). To guarantee effective protection of Human Rights in Africa and the implementation of the African Charter, the African Court on Human and Peoples' Rights was established in 2006 to complement and strengthen the functions of the African Commission on Human and Peoples' Rights.²²⁴

²²² European Convention on Human Rights, art 19: "To ensure the observance of the engagements undertaken by the High Contracting Parties in the present Convention, there shall be set up:

1. A European Commission of Human Rights hereinafter referred to as 'the Commission';
2. A European Court of Human Rights, hereinafter referred to as 'the Court'."

²²³ African Charter, Art 30: "An African Commission on Human and Peoples' Rights, hereinafter called "the Commission", shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa."

²²⁴ The African Court Website <http://www.african-court.org/en/index.php/about-the-court/brief-history>.

The Arab Charter fails hence to set the ground for an enforcement mechanism and only provides for a monitoring body. Saïd Benarbia²²⁵ expressed his concern in this regard ironically asking "When a Syrian, an Egyptian or Tunisian is on trial at home, how can it be protected by the Charter?"²²⁶

Considering the weak and “primitive” implementation mechanism that the Charter provides for and the fact that this Charter came after other regional arrangements have realized the necessity of a judicial enforcement body for their Human Rights treaties, it is safely arguable that the LAS Member states are still resisting an efficient legally binding Human Rights system that would put too much pressure on their regimes to observe the respect of the Human Rights recognized by the ACHR.

Following the entry into force of the Charter in March 2008, the process for electing members for the Arab Human Rights Committee started in May 2008. Yet, the Committee was only set up in March 2009. The near-year long delay in the formation of the Committee was due to a delay in States parties nominating candidates for membership.²²⁷ The Committee adopted State Reporting Guidelines for initial reports²²⁸ during its second session held in July 2009²²⁹. Since then, the Committee has received four States’ reports²³⁰ and performed its first examination of State reports in 2012, starting with Jordan in March, Algeria in October and Bahrain in February 2013. The states’ reports, and the Comments and the recommendations of the Committee were made public as the Charter requires and are available only in Arabic at the LAS website.²³¹ Mervat Rishmawi has expressed her concern over the work of this

²²⁵ Saïd Benarbia is a Moroccan Jurist. Joined the ICJ in 2006, is a Senior Legal Adviser for the Middle East and North Africa Programme of the International Commission of Jurists (ICJ).

²²⁶ Rue 89 « *Une Charte arabe des droits de l'homme qui fait polémique* » (An Arab Charter on Human Rights that triggers a controversy) 02 February 2008, available at: <http://www.rue89.com/2008/02/02/une-charte-arabe-des-droits-de-lhomme-qui-fait-polemique> (Original French, translation by author).

²²⁷ Rishmawi, 2010, p. 172.

²²⁸ Available in Arabic at the LAS website:

<http://www.lasportal.org/wps/wcm/connect/870186804a6cddb49e249e526698d42c/%D8%AC%D8%AF%D9%8A%D8%AF+%D8%A7%D9%84%D9%85%D8%A8%D8%A7%D8%AF%D8%A6+%D8%A7%D9%84%D8%AA%D9%88%D8%AC%D9%8A%D9%87%D9%8A%D8%A9+%D9%88%D8%A7%D9%84%D8%A7%D8%B3%D8%AA%D8%B1%D8%B4%D8%A7%D8%AF%D9%8A%D8%A9.pdf?MOD=AJPERES>.

²²⁹ Rishmawi, 2010, p.174.

²³⁰ In chronological order: Jordan, Algeria, Bahrain and Qatar.

²³¹ Reports available in Arabic at the LAS website at:

committee when it was first set up in 2009 stating that the most important challenge for the Committee members is “how much they are willing to break from the perception that this is a region that has its own religious and cultural specificities” and that it would be reflected in their comments and recommendations at the expense of the universality of Human Rights.²³² The work of the Committee so far does demonstrate otherwise. The committee seems to be dedicated to the promotion of the respect of universal Human Rights and the implementation of the provisions of the Charter independently from the political stakes and the national peculiarities of the States they have until now reviewed.

In fact, in its first sessions held in March 2012 to discuss the Jordanian report, the opening statement of the committee’s president emphasized more than once the belief in the universality of Human Rights and explicitly reminded the States parties of their obligations under international human rights law, stressing the fact that the establishment of an Arab monitoring mechanism does not contradict with the accountability of Member states to the UN mechanisms and treaty bodies.²³³ These very positive references and statements were again stressed almost in the same phrasing in the second session of the Committee held in October 2013 to discuss the Algerian

http://www.lasportal.org/wps/portal/las_ar_humanrights/inpage!/ut/p/c5/vY_LcoJAFES_xQ-wZkBeLsFBB0ZAEFDZUEJSystBRAb4-pDsNZiU-i67q89tEIHpbucuu5zbjN7OJTicSIoh5_kB2XBwIyANGrJLeCk0LGjy4ABO2hQ6vQ75wi8VJoguJU0m2AGnWYOoyPCovATiAFY0xTTV0KpilkmWQUH5uJbw069ExzFpGFpIM72xofGa4zvoWgc5VY0y8zq3f9SSyRzY39WK6EKcPQ2V2wbLwtmNo8IGXmnHYuMs5rnOk5TiD9yGu8SYCxc2m2ZF777-3vTjv5AKgY1p9QIOIJfttgy8MERCvE-H2pjLEyvlz2rLa7Ez3VmIX1h55Hd5hqxUcD2kPV-wZE2WTFVLVwYuXXLh2tVVXN6dhzJ7z1oL_8iS_pRVV91W7Pa7ayM2IIVnXzy-c00!/dl3/d3/L2dBISEvZ0FBIS9nQSEh/?pcid=9c8bcd0047335c82a506ad3ebe8887b5.

²³² M Rishmawi, 2010, p. 178.

²³³ Session 1 of the Arab Committee for Human Rights, Opening Statement by chairman, 1 March 2012 available in Arabic at: http://www.lasportal.org/wps/portal/las_ar_humanrights/inpage!/ut/p/c5/vY_LcoIwGIWfhQdwlkAuZQkNysWgYETChkGmpRIuKgiFpy91r910-p_IN2e-4AYzKnT_pSn3amp0xJEIFYSiAK6d1cIriRsQFv1XVEJbQIdcebsMafSL-0DYAZwQJyXzXGWHays_cItybGJg1akw6rub-iKjuXI1lnDQ471PDPDcaF8xn2njllmlpW3t0xPZ0ySP-oIBY3pUZW_odJHDROJehmwzLk4StG1INtB72O5bwjVitu2Gvir3Km5pSQa9uKLS7ESxTFe6JbDqGsNRfYFYX4vfjbjZ-SdPzgdAgZi9WHfUwEFEZSSXTGe7YIPQTEF7o7La1JkAzFL4hUMttjYUGwiCpsvj9pTqwY2oUsXtRoKl76pG-zqX4jw3LWU_tGl_KnLs5rqHZyrfV9p9iK9Rxe-AeJ8VPE!/dl3/d3/L2dBISEvZ0FBIS9nQSEh/?pcid=2bcfb7004ac31083ad57bd526698d42c&year=%2fLAS%2flas%2flas_ar_humanrights%2fcommittee_cycles%2f_HIDE_cycle1.

report.²³⁴ Similarly, the third session of the Committee was rich with references to international human rights mechanisms as the president of the committee underlined the fact that the Arab mechanism cannot be considered an alternative to the UN mechanisms but should be perceived as complimentary to those besides restating what has been mentioned above in the previous two sessions. More importantly, in his statement, the president of the Committee this time, referred to the role of NGOs stating that the Committee made sure the state reports are published on the website so that NGOs could have access to them in order to study their content and send their comments and parallel reports to the Committee.²³⁵ Moreover, in these three statements the chairman of the Committee shed light on the changes taking place in the Arab region following the start of the Arab Uprising expressing the wish that these changes will lead to total respect of human rights “and not only the fundamental rights like the right to life, freedom of expression and equality but also the right to development, the right to a healthy environment and other civil, political, social, economic and cultural life.”²³⁶ This statement draws attention to the human rights aspirations of the Arab peoples protesting for more freedoms but also for better living standards and also to the

²³⁴ Session 2 Arab Human Rights Committee, opening statement by chairman, 13 October 2012 available in Arabic at: http://www.lasportal.org/wps/portal/las_ar_humanrights/inpage!/ut/p/c5/vY_LcoIwGIWfhQdwlkAuZQkNysWgYETChkGmpRluKgiFpy91r910-p_IN2e-4AYzKnT_pSn3amp0xJEIFYSiAK6d1cIriRsQFv1XVEJbQIdcebsMafSL-0DYB_g4IM7L5jjLDIbWfuGW5NjEQSvSYVX3N3RFx3Jk66zhIcd6npnhuFA-475Txywzy8rbW6anMybJH3WEgSB0qMrfUOmjholEvQxY51wcephakO2g97HcN4RqxW1bDfxV7tTcUhiNe_HF2ViJ4hgvdMth1LWGIvuCMD8ZP5vxM_LOH5wOAAQOxrDvqYCCCErJrhjP9sSnoJgCd8fINSmygZgl8QoGW2xsKDYRhc2XR-2pVQOb0KWLWg2FS9_UDXb1LOR47lpK-hS_tTIWU31Ds7Vvq80e5Heowvfk5erIQ!!/dl3/d3/L2dBISEvZ0FBIS9nQSEh/?pcid=2bcfb7004ac31083ad57bd526698d42c&year=%2fLAS%2flas%2flas_ar_humanrights%2fcommittee_cycles%2f_HIDE_cycle2.

²³⁵ Session 3 Arab Human Rights Committee, opening statement, 18 February 2013. Available at: http://www.lasportal.org/wps/portal/las_ar_humanrights/inpage!/ut/p/c5/vY_LcoIwGIWfhQdwlkAuZQkNysWgYETChkGmpRluKgiFpy91r910-p_IN2e-4AYzKnT_pSn3amp0xJEIFYSiAK6d1cIriRsQFv1XVEJbQIdcebsMafSL-0DYAZwQJyXzXGWHays_cItybGJg1akw6rub-iKjuXI1nDQ471PDPDcaF8xn2njllmIpW3t0xPZ0ySP-oIBY3pUZW_odJHDROJehmwzLk4StG1INtB72O5bwjVitu2Gvir3Km5pSQa9uKLS7ESxTFe6JbDqGsNRfYFYX4yfbjZ-SdPzgdAgZi9WHfUwEFEZSSXTGe7YIPQTEF7o7La1JkAzFL4hUMttjYUGwiCpsvj9pTqwY2oUsXtRoKl76pG-zqX4jw3LWU_tGl_KnLs5rqHZyrfV9p9iK9Rxe-AeJ8VPE!/dl3/d3/L2dBISEvZ0FBIS9nQSEh/?pcid=2bcfb7004ac31083ad57bd526698d42c&year=%2fLAS%2flas%2flas_ar_humanrights%2fcommittee_cycles%2f_HIDE_cycle3 (In Arabic, translation by author).

²³⁶ Ibidem.

League's role embodied in this Committee in the promotion and protection of those rights.

Hence, the Arab Charter on Human rights that came into light after a lengthy and complex process, and despite the positive developments that it has brought, still does not meet human rights international standards and does not provide protection for the limited scope of rights that it recognizes due to the weak enforcement mechanisms that it sets up. However, the tremendous changes that are currently taking place all over the Arab region, the changing political landscape, the dedication of some Arab NGOs to the engagement in the work of the League in matters of Human rights and a new tendency within the League for reform can constitute an unprecedented momentum for the Arab League to take up these contemporary challenges and undertake a role as a significant and efficient regional institution with a higher level of devotion to the promotion and protection of universally recognized human rights. The last section will hence reflect on possibilities of reform in the light of the changes brought by the Arab uprising.

B. Towards an effective Arab system for the protection of Human Rights: possibilities of reform

The decision to revise the Arab Charter on Human rights was mainly driven by the significant criticism the 1994 version received for not complying with international standards and even though the revised version brought several positive developments it still “remains a missed opportunity to be totally up to date and to achieve the Secretary General and the council’s unconditional aim of bringing the charter into compliance with international standards of human rights”²³⁷. The Arab Charter contains indeed several inconsistencies with international human rights standards as was demonstrated in the previous chapter. Gender equality is not guaranteed, the death penalty is maintained for minors, discrimination against non-citizens evident, minority rights are not addressed properly and torture is still an issue. These are inter alia some of the main defects in the content of the Charter. The Charter is still to be considered a major step

²³⁷ M.Rishmawi, 2005, p. 376.

forward that the LAS has taken in the field of Human Rights. Even though only 12 states have so far ratified the Charter so far, its revised version indicates of the emerging tendency within the League towards a more human rights-based policy.²³⁸

1. On the Legal level:

Legally, the Charter leaves room for possibilities of amendments and of addition of protocols to it. Articles 50 and 51 of the Charter give the possibility to Member states to present proposals for amendments through a rather simple procedure. Art 50 states that “Any State Party may propose an amendment to the present Charter and file it in writing with the Secretary General. Upon notification of the amendments to the other State Parties, the Secretary General shall convene the State Parties to examine the amendments for approval prior to the submission to the Council of the League for adoption. .” and article 51 provides for the requirements necessary for the revisions to enter into force by stating that “Amendments shall come into force and be binding on those State Parties which have accepted them when they have been approved by two thirds of the State Parties to the Charter.” Furthermore, art 52 stipulates the possibility of addition of protocols to the charter as it goes as follows: “Any State Party may propose supplementary protocols to the present Charter, which shall be adopted according to the same process as followed for the adoption of amendments to the Charter.” Accordingly, on the legal level, there are no obstacles for the possibility of revision of the provisions of the Charter.

It is noteworthy in this context to mention that other regional human rights systems have resorted to the revision of their instruments in order to ensure more effectiveness and enrich the texts of their treaties and strengthen their mechanisms of enforcement. The African Charter on Human and People’s rights witnessed the addition of several protocols as the additional protocol on the establishment of the African Court was adopted in 1998 (that is 12 years after the Charter entered into force) and after receiving the necessary fifteen ratifications it entered into force in 2004²³⁹ and the Protocol on the

²³⁸ States that ratified the Charter: Jordan, Algeria, Bahrain, Libya, Syria, Palestine, UAE, Yemen, Qatar, Saudi Arabia, Lebanon and Iraq.

²³⁹ Heyns, 2004, p. 682.

Rights of Women in Africa was adopted in July 2003²⁴⁰. The European system for the protection of human rights has as well revisited the text of the European convention on Human Rights and fundamental freedoms adding several rights to its provisions and strengthening its implementation mechanisms through different additional protocols.²⁴¹ Hence, the revision of the Charter is possible legally but depends on the political will of the Member states to follow the lead of other regional organizations and commit to building an effective Human Rights protection system by remedying to the flaws of the text of the Arab Charter in order to widen the scope of its provisions and guarantee the protection of fundamental individual rights as well as the collective rights.

2. On the political level:

The recent events that shook the Arab dictatorships and shed light on the alarming human rights situation in the region has a major role in the acceleration in the change observed in the attitude of the LAS in matters related to human rights. The popular uprising uncovered the reality of the human rights situation in the Arab region and put the Arab regimes in front of a significant challenge, as Professor Souhaila Gammoudi²⁴² noted, “if the Arab regimes do not change they will be compelled to change”.²⁴³ It seems that this effervescent political scene has put pressure on the League to adopt a new human rights-based policy that shows through its recent decisions and actions. In fact, since 2011, the LAS has engaged positively with several human rights situations in the region. In March 2011, the LAS Council took the decision to suspend Libya’s representation until the Libyan regime stopped using violence against protestors.²⁴⁴

²⁴⁰ African Union, The Protocol to the African Charter on Human and People’s Rights (ACHPR) on the Rights of Women in Africa. Available at: <http://www.africa-union.org/root/au/Documents/Treaties/Text/Protocol%20on%20the%20Rights%20of%20Women.pdf>.

²⁴¹ There are 15 additional protocols to the European Convention, some amending the framework of the convention system, and some expanding the scope of its provisions and the rights that it protects. Available at: <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?MA=3&CM=7&CL=ENG>.

²⁴² Law professor at Algiers I University, faculty of Law.

²⁴³ S. Gamoudi, 2011, p. 12.

²⁴⁴ Security Council Report, Update report on Libya, 14 March 2011, available at: <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Update%20Report%2014%20March%202011%20Libya.pdf>.

Afterwards, on 11 March 2011, the Arab League asked the UN Security Council to impose a no-fly zone over Libya in hopes of halting Gaddafi's attacks on his own people and protecting the civilian population. This extremely very invitation for Western military forces to intervene on Arab territory was at the time described as an "extraordinary move" by the Arab League.²⁴⁵

The Syrian crisis has as well put the LAS in front of another challenge. After suspending Syria's membership in the League responding to a popular demand from the Syrian people²⁴⁶ and adopting a resolution imposing economic sanctions on the Syrian government following the violent oppression of the popular uprising²⁴⁷, the LAS adopted the Arab Plan of action by council resolution 7436 of 2 November 2011 according to which it conducted an observer mission to Syria to monitor Syria's progress in removing troops from protest areas, freeing political prisoners and negotiating with dissidents.²⁴⁸ Not only did this mission base its work on internationally recognized human rights but the League's secretary general Nabeel Al Araby consulted with a number of human rights Arab NGOs including the AOHR and CIHRS in the process.²⁴⁹ The focus of the LAS observer mission in Syria on human rights issues like the freedom of expression and assembly, the political prisoners and the respect of the right to life of civilians together with their engagement with civil society actors is a positive sign telling of the shift in the attitude of the LAS towards human rights crisis in the region.

On another level, the LAS has been engaging more with civil society actors and showing more commitment to the establishment of an effective human rights protection

²⁴⁵ New York Times, Arab League Endorses No-Flight Zone Over Libya, 12 March 2011, available at: <http://www.nytimes.com/2011/03/13/world/middleeast/13libya.html?pagewanted=all>.

²⁴⁶ New York Times, Protesters Urge Arab League to Suspend Syria as Death Mount, 11 November 2011 <http://www.nytimes.com/2011/11/12/world/middleeast/syrian-protesters-killed-during-street-protests-demanding-arab-league-suspend-syria.html?ref=middleeast>.

²⁴⁷ The Guardian, 'Syria suspended from Arab League: Member States agree to exclude Syria and impose sanctions over its failure to end government crackdown on protests', 12 November 2011.

²⁴⁸ League of Arab States, Observer Mission to Syria: Report of the Head of the League of Arab States Observer Mission to Syria for the period from 24 December 2011 to 18 January 2012 available at: http://www.columbia.edu/~hauben/Report_of_Arab_League_Observer_Mission.pdf.

²⁴⁹ The International Federation for Human Rights, *The Arab League and Human Rights: Challenges Ahead*, regional seminar. Cairo, May 2013 p.4, available at: http://www.fidh.org/IMG/pdf/rapport_lea_uk-ldouble.pdf.

system since the break of the Arab uprising in 2011. For example, 2011, 17 civil society organizations had observer status with the Permanent Human Rights Committee within the Arab League system while in 2013; a new list of 23 entities with an observer status was made public. These organisations are a combination of NGOs and national human rights institutions, namely the National Human Rights Council of Morocco and the National Human Rights Commission of Qatar.²⁵⁰ It is though important to mention that the increase in the number in this case can be an indicator of the openness of the League to more cooperation with civil society actors but does not remove the severe restrictions on the effective of the participation of these NGOs in the LAS' political organs and that the accreditation of the NGOs to attend the LAS's deliberations is still dependent upon the approval of their country of registration.²⁵¹

Moreover, in early 2012 the Secretary General of the Arab League requested Mr Lakhdar Brahimi²⁵² to consider reform of the organic structure of the League and to make recommendations on the enhancement of its interaction with the civil society organizations.²⁵³ Following this initiative a committee chaired by Mr Brahimi was set up to study prepare a reform proposal and consulted with a group of regional and international NGOs in a meeting held in Cairo in October 2012 gathering 6 organizations (the CIHRS, the AOH, Crisis Action, the International commission of Jurists , Human Rights and Information Training Canter and the International Federation of Human Rights) to discuss the challenges facing the Arab League regarding human rights and the interaction with civil society.²⁵⁴ While the report of this committee is yet to be public, this step is telling of the new tendency within the league towards reform and more engagement with the human rights NGOs in the region.

In addition, the references to human rights in the LAS council resolutions has become more recurrent and shows that Human Rights have occupied a significant place on the League's agenda compared to the past as the first chapter demonstrates. For example, in the Council's regular session 138 on the level of ministers in September 2012, the

²⁵⁰ Supra footnote 247, p. 8.

²⁵¹ Ibidem, p. 35.

²⁵² Former Algerian Foreign Minister, conflict mediator and UN diplomat; an expert in peacekeeping and post-conflict reconstruction.

²⁵³ The Arab League and Human Rights: Challenges Ahead, regional seminar. Cairo, May 2013 p. 8.

²⁵⁴ Idem .

council passed resolution 7555 approving the Arab Permanent committee on human rights call for more cooperation with the OHCHR in order “to strengthen and the develop the LAS human rights system and activate its permanent committee on human rights and its other mechanisms”²⁵⁵. The same decision’s 2nd point states the Council’s approval to organise a regional conference with human rights experts in order to discuss and study the reform of the Arab Human rights system in order to strengthen its mechanisms in cooperation with the OHCH.²⁵⁶

Furthermore, in the last regular session of the Arab summit of Arab Heads of states that took place on 26 and 27 March 2013, the heads of Arab states expressed their commitment to the fundamental principles and the humanitarian values of human rights and to the principles and stipulations of the Arab Charter on Human Rights together with the international human rights treaties that they have ratified. In addition, they stated their commitment to the respect of freedom of thought and expression, the guarantee of the independence of the judicial system and the promotion of popular participation and the activation of the role of civil society calling for a conference to be held in Qatar to discuss the development of the human rights system within the League.²⁵⁷

In addition to the examples of the change in the LAS policy towards Human rights mentioned above, another new development has found its way to the LAS council table as the proposal for the establishment of an Arab Court on Human Rights is being seriously considered by the League. In fact, the government of Bahrain has submitted to the LAS a proposal to establish an Arab Court on Human Rights²⁵⁸, which the council of League welcomed and decided through resolution 7489 to task the secretariat of the LAS with preparing a thorough study on the establishment of an Arab Court of Human Rights in collaboration with Arab legal experts taking into consideration previous

²⁵⁵ The Arab League of States council decisions of the regular session 138 of September 2012, p. 183.

²⁵⁶ Ibidem.

²⁵⁷ The declaration of Doha, the LAS council 24th regular session on the level of Heads of states. 26 March 2013 p.14 available at:

<http://lasportal.org/wps/wcm/connect/ab77c9804f4b7a599fcd9fa79d151c73/%D8%A7%D8%B9%D9%84%D8%A7%D9%86+%D8%A7%D9%84%D8%AF%D9%88%D8%AD%D8%A9.pdf?MOD=AJPERES> (in Arabic, translation by author).

²⁵⁸ Memorandum of the Representative of the Kingdom of Bahrain No. 38 regarding the establishment of an Arab Court of Human Rights. 15 January 2012.

regional experiences in setting up regional courts of human rights, and organizing a conference in Manama, Bahrain to discuss the Court proposal.²⁵⁹ King of Bahrain, Hamad Bi Eisa Al Khalifa, has as well referenced other regional instruments in his call for an Arab Human Rights court. King al Khalifa stated in an address to the Bahraini people that it was time for Arabs to set up the pan-Arab court “to take its proper place on the international stage”. King Al khalifa also mentioned the European court of Human Rights and the Inter-American Court of Human Rights saying that “The whole world benefits from the jurisprudence of these Courts. Surely, this shows us that there is something missing. Surely, the Arab nations, with our ancient traditions of fairness and justice, also have something to contribute. Surely, we too need to show that our officials are subject to a higher law, and that we can be proud of our traditions of respect for human rights.”²⁶⁰ In September 2011, the LAS council issued a resolution requesting the secretariat to speed up the procedure necessary to prepare the study about the proposal to establish an Arab court in order to organize the Manama conference that was mentioned above by the end of the year 2012.²⁶¹ Following the conference that took place in al Manama on 25 and 26 February 2013, the LAS council approves the proposal to establish an Arab League of Human Rights in the last Arab Summit of March 2013 and decides to set up a committee of legal experts from Member states to prepare a statute for the court to be discussed in the next council regular session.²⁶²

Accordingly, the project for an Arab court of Human Rights is on the way to concretization as the statute of the court is underway. According to Professor Mohamed Y. Mattar, “in light of the current political, social and legal landscape of the Arab states,

²⁵⁹ LAS meeting on the level of ministers, Regular session 137, 10 March 2012, resolution number 7489 p.125, available I Arabic at:

<http://lasportal.org/wps/wcm/connect/ffd637804a7967c7bd38bd526698d42c/%D9%85%D8%AC%D9%84%D8%AF+%D8%A7%D9%84%D9%82%D8%B1%D8%A7%D8%B1%D8%A7%D8%AA+%D8%A7%D9%84%D9%86%D9%87%D8%A7%D8%A6%D9%8A%D8%A9.pdf?MOD=AJPERES>

²⁶⁰ www.Gulfnews.com, “Arab League welcomes Bahrain’s rights court proposal” 6 September 2012 <http://gulfnews.com/news/gulf/bahrain/arab-league-welcomes-bahrain-s-rights-court-proposal-1.1070731>.

²⁶¹ LAS council Resolution 1554 of 5 September 2012 available at:

<http://lasportal.org/wps/wcm/connect/4efdf5004c9ce20f8529c5081bb96571/%D9%85%D8%AC%D9%84%D8%AF+%D8%A7%D9%84%D9%82%D8%B1%D8%A7%D8%B1%D8%A7%D8%AA+%D8%A7%D9%84%D9%86%D9%87%D8%A7%D8%A6%D9%8A%D8%A9+13+8.pdf?MOD=AJPERES>.

²⁶² LAS Council summit on the level of heads of states, resolution 573/24 of 26 March 2013. Available in Arabic at:

<http://lasportal.org/wps/wcm/connect/d289c9804f0a09648a349ea79d151c73/%D8%A7%D9%84%D9%82%D8%B1%D8%A7%D8%B1%D8%A7%D8%AA.pdf?MOD=AJPERES> .

and given the gaps in the Arab Charter's enforcement mechanism, the time is ripe to establish the first Arab Court of Human Rights".²⁶³ The real value of this Court is yet to be determined by the statute that would be drafted for it and whether it will come in an additional protocol to the Charter or as a mechanism of the Arab Permanent Human Rights commission. It is also dependent on the states ratifications and votes, until now only 12 states have ratified the Arab Charter on Human Rights which as has been demonstrated in the previous chapter does not put strict legal obligations on them so their willingness to join a Court cannot be guaranteed. What is certain though is that the LAS is facing a new challenge against this new backdrop and that this could be an opportunity for reactivating the Arab system for the protection of Human rights through reforming the charter and strengthening its implementation mechanisms.

²⁶³ M Y. Mattar, 2013, p.145.

CONCLUSION:

The present thesis has studied in the first chapter the genesis of the Arab Charter on Human Rights showing that the LAS did not start off to be a human rights “force” in the Arab region and that it took it over twenty years to express interest in joining the international human rights movement. What can be concluded from the process of the drafting and updating of the Charter is that the League very seldom took the initiative in taking measures in the field of human rights. It had to be constantly prompted to do so by either the international human rights organizations like the United Nations Office of the High Commissioner of Human Rights or by the pressure regional Arab NGOs tried to put on it. It seems like the attitude of the League towards human rights follows a pattern. The steps it took in this regard were often a result of an exterior factor, be it the Vienna Conference or the heavy criticism it receives in matter of human rights, as the first chapter shows.

Chapter two explains the main deficiencies of the Charter in comparison with other regional human rights instruments and in light of international human rights standards. It has shown that even though the Charter is the best text that the LAS has adopted so far (in comparison to other proposals and to the 1994 of the Charter) it still needs to be revised and amended in order to meet human rights international standards. Provisions about women’s rights, minority rights, death penalty, and discrimination, for example, are in sharp decline with the stipulations of UN treaties and other regional human rights instruments as can be seen in chapter two. More importantly, the monitoring mechanisms that the Charter provides for are weak and very much unlikely to guarantee the respect, protection and fulfilment of the Charter’s provision. Hence, the reform that the LAS human rights protection system needs should include the revision of the Charter itself to widen the scope of rights recognized by it and the strengthening of its implementation mechanisms to ensure the enforcement of its provisions.

Consequently, the Arab Charter on Human Rights seems to be in a constant struggle to assert its position in the region as a legal instrument for the protection of human rights, an instrument that would impose compliance on states and offer a legal remedy to the citizens. Several factors have contributed in perpetuating this situation. First, the Arab

regimes are very reluctant to tie their hands by a regional instrument that would closely monitor their policies and pressure them to respect human rights. Second, the undemocratic nature of most of the Arab regimes have resulted in major limitations on civil and political rights, mainly freedom of expression, which limited the work of NGOs and weakened their position as counter-power to the regime. Moreover, the spread lack of trust in the Arab League among the Arab societies. Finally, the scope of the Charter itself is limited and the fact that it does not offer strong enforcement mechanisms like an individual complaint mechanism for example. That is why the onset of the Arab uprising and the newly acquired freedoms that the Arab societies are enjoying may lead to a change in policies in order to move towards a more human rights-friendly region.

Thus, if the League often needed a prompter to engage in establishing and afterwards improving its system for the protection of human rights, the Arab Spring could be a significant catalyst. The significance of the Arab Spring as a trigger for the LAS to adopt a stronger human rights policy also comes from the fact that it is an internal factor emerging from within the Arab region and not the result of international pressure as was often the case. The second chapter discusses in its second half the influence the Arab Spring has had on the League's attitude towards human rights so far and how it might be a catalyst to the previously mentioned pattern. The LAS is now facing the challenge of responding to the demands of the rising Arab peoples that have an important human rights aspect to them.

Indeed, various positive changes have been seen in the LAS activities in the field of human rights since the break of the Arab Spring in 2011 as the last section demonstrates. Human rights have apparently forced their place on the Leagues agenda. Thus the decision of the council of the League in its last summit of March 2013 to engage in dialogue with civil society actors added to the decision to establish an Arab Court on Human Rights seem to be the first results of the Arab Spring regarding the LAS-human rights relationship. It is then justifiable to be optimistic at this stage and to argue that the Arab Charter on Human Rights is indeed a task that remains unfinished but also one that still leaves room for improvement.

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Annex:

The Arab Charter on Human Rights:

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:

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 rihts set forth herein.

Article 45

1. Pursuant to this Charter, an "Arab Human Rights Committee", hereinafter refered 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 of 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 term 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 meet. The Committee shall hold its meetings at the headquarters of the League of Arab States. It may 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.