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# REGIONALIZATION OF HUMAN RIGHTS: TOWARDS AN ARAB HUMAN RIGHTS SYSTEM?

The Charter, the Bodies, and the Court Saga

Author: Hassnaa Amghar

Supervisor: Prof. Mohsine El Ahmadi

## Abstract

The evolution of the International system for the protection and promotion of human rights, or the United Nation System, has led to the regionalization of human rights with the growing of regional human rights protection systems in importance steadily over the past few decades.

The MENA Region does not have a regional human rights system of its own, but most of its States are covered by at least one of the five above-mentioned regional systems, namely the African Human Rights System, the Arab Human Rights System and the European Human Rights System, notably the case of Turkey.

This paper is to examine the emerging Arab Human Rights System championed by the League of Arab States, which is the newest regional systems. Studying the Arab Human Rights System is important mainly because of the size of the population that it is meant to cover and the current turmoil in the Region it is meant to cover.

A well functioning human rights system can provide answers to many of the causes of the turmoil and hence improve the lives of the population of the region; however, as things stand presently, a lot of changes need to take place before establishing such a system and achieving these ends.

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# Introduction

Parallel to the evolution of the International system for the protection and promotion of human rights, or the United Nation System, regional human rights protection systems have also been growing in importance steadily over the past few decades.

Indeed, Since the signature of the European Convention on Human Rights 1950, and its entry into force in 1953, thus marking the very milestone on the path of the world's first regional human rights protection system, the world has witnessed the birth of four other regional human rights instruments, namely the Inter-American Human Rights System, the African Human Rights System, the Arab Human Rights, and the ASEAN Human Rights System, bringing the total number of regional human rights system to five functioning and emerging systems covering a large portion of the world's population.

The MENA Region does not have a regional human rights system of its own, but most of its States are covered by at least one of the five above-mentioned regional systems, namely the African Human Rights System, the Arab Human Rights System and the European Human Rights System, notably the case of Turkey if we are to adopt a larger definition of the MENA Region, and possibly even the Caucasus States, namely Armenia, Azerbaijan and Georgia is we are to adopt the largest definition.

Some States, on the other hand are not covered by any of them, notably the case of Iran, as the ASEAN system does not cover all of Asia, but only the ten States members of the Association of Southeast Asian Nations, namely Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.

With the exception of Morocco, which abandoned the Organization of African Unity in the mid 70s, all African States which are also members of the League of Arab States would be covered by both the African Human Rights System and the Arab Human Rights System upon ratification of the Arab Charter on Human Rights, which many States still have not ratified.

Of the five regional human rights systems, the purpose of this paper is to examine the emerging Arab Human Rights System championed by the League of Arab States. This system is rather among the newest ones as it is followed only by the hardly emerging ASEAN Human Rights System, despite the fact that one of its bodies had been created as early as 1968. A first version of its instrument, the Arab Charter on Human Rights, which was signed in 1994, and which was severely criticized by experts for constituting a serious compromise on human rights, failed to ever

enter into force as no Member State ever ratified it. An updated version, which was deemed to constitute a significant improvement from the first one, but still falling far short of international human rights standards,

The importance of Arab Human Rights System presently arises from a multitude of factors, the first of which is the size of the population of the Member States of the League of Arab States. If every Member State ratifies or accesses the Arab Charter on Human Rights, then little less than half a billion of the world population will be covered by this instrument and should be able to enjoy all the rights contained in it.

Another important aspect of the Arab System is that many Member States of the League of Arab States can only be covered by the Arab Human Rights System, as Morocco, Levant States, and Arab Gulf States do not belong to any other Regional System, the Maghreb Union and Gulf Cooperation Council not having any human rights instruments of their own.

This is particularly important as, the way things stand presently, the majority of Member States of the League of Arab States have not yet ratified or accessed all core international human rights instrument, and very few recognized the competence of the Treaty Body overseeing the ratified instrument to receive individual complaints. Add to that the fact that UN Treaty Bodies are flooded with work and can hardly keep up of all the requirements they are supposed to meet and the need for regional human rights systems becomes more pressing than ever. Indeed, when national systems fail to grant or protect rights, and the international system is too difficult to access, an integrated regional human rights system, where individuals can seek and obtain redress for the violations they've been subjected to can be the right answer.

One more important factor is the political state of play in the MENA Region, notably in the States concerned by the Arab Human Rights System, notably since the beginning of the 2011 uprisings, or what is dubbed as the "Arab Spring(s)". Many of these States are still going either through a phase of democratic transitions with varying degrees of difficulty, but also of success, or through bloody civil wars. In other countries, the uprisings have been silenced either by the use of excessive force, through a coup, or simply through bribing the people into happiness or at least satisfactions, when the State has enough resources to do so. However, stability in these countries remains rather fragile and chaos might resume at any moment, so an integrated, independent, efficient, human right system dedicated to this very region and takes into account its political, cultural, and social specificities can help mainstream a human rights approach in any change that will take place as part of these transitions, help disseminate a human rights culture throughout the

region, remedy victims of human rights violations where often non independent national justice systems fail to, contribute to broaden the interpretation of provisions in such a way to grant the maximum of rights to individuals, contribute to the human rights case law both regionally and internationally, force States to face their failures to meet their commitments, and perhaps, one day, contribute to transitional justice processes in these States.

The present paper shall attempt to examine the emerging Arab Human Rights System from all angles. It shall attempt to provide a detailed objective analysis and criticism of these aspects to shed light onto some of the issues that hinder the efficient and independent functioning of the system presently and the shortcomings that will prevent the future Arab Court for Human Rights from achieving the natural aims of any serious human rights court.

The first Chapter shall be dedicated to an examination and a detailed critical analysis of the Arab Charter on Human Rights, which is the cornerstone of the emerging human rights system. The Chapter shall, thus, attempt to go over a number of issues that constitute a serious compromise on human rights standards as universally known and fall far short of many of the international conventions that some of the Member States of the League of Arab States and State Parties to the Charter have ratified. It will thus go over issues such as the right to life, torture and other forms of cruel, inhuman, and degrading treatment or punishment, the right to asylum, statelessness, freedom of movement, discrimination, women's rights, and cultural rights.

The next Chapter will then go over the existing Arab human rights bodies or mechanisms, give a detailed account of their different mandates where possible, shed the light on their shortcomings and the limitations on their independence and/or efficiency and what can be done to address these shortcomings and/or limitations to improve their work and contribution, and bring the entire Arab Human Rights System in line with international human rights standards consequently.

The last Chapter shall deal with the Arab Court for Human Rights whose idea was approved in principle by the Member States of the Arab League in the March Summit in 2013 and whose Draft Statute was adopted by the Council of the League of Arab States in the September 2014 Summit. The Statute is yet to be ratified by any Member State including the State Parties to the Arab Charter on Human Rights, and seems to be engulfed with a total blackout as no version of it has ever appeared in public; however, the different reactions by well established reputable international human rights organizations allow for a general and somewhat precise idea of the shortcomings of the Statute and hence of the Court. It is based on these reactions that this Chapter

shall attempt to analyze the Statute and suggest alternative ways to address these shortcomings.

# 1. The Arab Charter on Human Rights

First of all, it is important to note that as of the date of writing of this paper, and save for Morocco, no other League of Arab States Member State has ratified or accessed all Core International Human Rights Instruments, and all of them have placed reservations or declarations against certain provisions of the Convention of the Elimination of all Forms of Discrimination against Women (CEDAW). This might actually explain the pressing need felt for a regional instrument that would save the countries of the Region from looking like avoiding commitment for human rights, all while committing to the requirements of an instrument that takes into consideration the “cultural specificities” of the Region.

The first version of the Arab Charter on Human Rights was created on 15 September 1994, but no state ratified it. The Charter was updated in 2004 and came into force in 2008, two months after seven of the members of the League of Arab States had ratified it, as required by Article 45 of the Charter itself. The first version of the Arab Charter was severely criticized for falling short of international standards. The updated 2004 version is considerably more advanced than the previous one but still not fully in line with international human rights standards.

It is very important to note that once ratified by all League of Arab States members, the Arab Charter on Human Rights will affect the lives of some 395 million people, hence its importance. So far, 14 out of 22 Member States of the League of Arab States (LAS) have ratified or accessed it. Three other states signed it in 2004 but still have not ratified it, namely Egypt, Morocco and Tunisia. The remaining four Arab League Member States, namely Djibouti, Mauritania, Somalia, and the Sultanate of Oman neither signed nor ratified it.

The updated version of the Charter has also been criticized by many for the lack of compliance of some of its provisions with international standards of human rights. Indeed, starting from the Preamble and throughout the Charter many shortcomings can be ascertained.

## 1.1. The Right to Life

The Charter guarantees the right to life, however, Article 6 of the Charter allows for the use of the death penalty “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.”<sup>1</sup>, which reproduces, almost word for word, Article 6 (2) of the International Covenant on Civil and

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<sup>1</sup> See Article 6, The Arab Charter on Human Rights, available at: <https://www1.umn.edu/humanrts/instree/loas2005.html>



Political Rights (ICCPR). The Charter thus fails to take into account the developments that occurred in the international human rights standards, notably the entry into force of the Second Optional Protocol to the ICCPR. It is noteworthy in this regard that only one Arab League Member State accessed the Second Optional Protocol to the ICCPR, that is Djibouti.

More concerning than the above is the fact that Article 7 of the Arab Charter stipulates that “Sentence of death shall not be imposed on persons under 18 years of age,”<sup>2</sup> however, it does allow it where it is “otherwise stipulated in the laws in force at the time of the commission of the crime.”<sup>3</sup>, which does not really amount to an effective ban as State parties that do not already have in place laws that allow for the execution of minors can change their laws to overcome this “ban”.

## **1.2. Torture and other forms of Cruel, Inhuman, and Degrading Treatment or Punishment**

First of all, it is worth noting that all Arab League Member States but one, the Sultanate of Oman, have ratified or accessed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Article 8 of the Arab Charter Stipulates that “No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment.”<sup>4</sup>, and further places upon State Parties the burden to “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.”<sup>5</sup>. Despite the importance of this provision, which partly transposes Article 2 of the CAT, the Arab Charter falls significantly short of the CAT’s standards.

In her Article “The Revised Arab Charter on Human Rights: A Step Forward?” Mirvat Rishmawi notes that “Article 8(a) prohibits ‘physical or psychological torture’ and ‘cruel, inhuman, degrading or humiliating treatment’, but not punishment. It also fails to include a definition of ‘torture’.”<sup>6</sup> Indeed no definition for torture is provided anywhere in the Charter. In addition to this, and while Article 2 of the CAT specifies that “No exceptional circumstances whatsoever, whether a

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<sup>2</sup> See Article 7, The Arab Charter on Human Rights.

<sup>3</sup> Ibid.

<sup>4</sup> See Article 8, The Arab Charter on Human Rights.

<sup>5</sup> Ibid.

<sup>6</sup> See Rishmawi, Mirvat “The Revised Arab Charter on Human Rights: A Step Forward?”, *Human Rights Law Review* (2005) 5 (2): 361-376.

state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”<sup>7</sup>, Article 8 of the Arab Charter does not provide of such an absolute ban on the use of torture.

Another area where the Arab Charter fell short is that it failed to transpose the principle of “non-refoulement” as such which is one of the absolute most important provisions of the CAT, which stipulates in Article 3 that “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”<sup>8</sup>, despite the fact that Article 26(2) of the Arab Charter stipulates that “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”<sup>9</sup> and that “Collective expulsion is prohibited under all circumstances.”<sup>10</sup>, and Article 28(2) stipulates that “Political refugees may not be extradited.”<sup>11</sup>

### 1.3. The Right to Asylum

Article 28 of the Arab Charter specifies that “Everyone has the right to seek political asylum in another country in order to escape persecution.”<sup>12</sup> And that “Political refugees may not be extradited.”<sup>13</sup>, however it also states that “This right may not be invoked by persons facing prosecution for an offence under *ordinary law*.”<sup>14</sup> This provision falls short of the provisions the Convention Relating to the Status of Refugees, notably its “Exclusion Clauses” included in Article 1(F) which Stipulate that the provisions of the Convention “shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he has committed *a crime against peace, a war crime, or a crime against humanity*, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he has committed a *serious non-political* crime outside the country of refuge prior to his admission to that country as a refugee; (c) he has been guilty of *acts contrary to the purposes and principles of the United Nations*.”<sup>15</sup>

It is worth noting that Many Member States of the Arab League, notably in the Middle East have not accessed the Convention and Protocol Relating to the Status of Refugees, while these

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<sup>7</sup> See Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

<sup>8</sup> Article 3, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>9</sup> See Article 26, The Arab Charter on Human Rights.

<sup>10</sup> Ibid.

<sup>11</sup> See Article 28, The Arab Charter on Human Rights.

<sup>12</sup> Ibid

<sup>13</sup> Ibid.

<sup>14</sup> Ibid

<sup>15</sup> See Article 1, Convention Relating to the Status of Refugees, available at: <http://www.unhcr.org/3b66c2aa10.html>

countries have been historically home to scores of refugees beginning with the Palestinians, then Iraqis and more recently Syrian refugees whose number is estimated at millions.

#### **1.4. Statelessness**

Article 29 of the Arab Charter stipulates that “Everyone has the right to nationality. No one shall be arbitrarily or unlawfully deprived of his nationality.”<sup>16</sup>. While it is commendable that the Charter provides for everyone’s right to a nationality, the way the article was written allows room for States to deprive people from their citizenship where it is done according to the law. Most importantly, it does not ban States from depriving someone from their citizenship when that would leave them stateless. It also does not require State Parties to take any measures to combat statelessness.

It is important to note in this regard, that most Arab League Member States have not ratified or accessed neither the Convention relating to the Status of Stateless Persons nor the Convention on the Reduction of Statelessness. It is also important to note that some Gulf States are home to large score of stateless persons, notably Syria, home to some 160.000 stateless persons, Iraq, where there are 120.000 stateless persons, Kuwait, which is home to 93.000 stateless persons, and Saudi Arabia, which hosts 70.000 stateless persons<sup>17</sup>.

#### **1.5. Freedom of Movement**

Article 26 (1) of the Arab Charter on Human Rights states that “Everyone lawfully resident 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*.”<sup>18</sup>. The manner the provision is phrased leaves a lot to be desired as States are granted enough leeway to restrict freedom of movement when they so choose.

Indeed, it is a fact that some Arab League Member States have imposed and continue to impose curfews on their citizens whenever citizens demonstrate against the regimes. This clause can also be interpreted in such a way to allow restrictions on women’s freedom of movement, as many States in the region require the approval of the “mahram”<sup>19</sup> for a woman to be able to travel or get a passport.

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<sup>16</sup> See Article 29, The Arab Charter on Human Rights.

<sup>17</sup> See UNHCR Global Trends 2014, available at: <http://www.unhcr.org/556725e69.html>

<sup>18</sup> See Article 26, The Arab Charter on Human Rights.

<sup>19</sup> A male guardian, usually the husband, or in the case of unmarried women the father or the brother in the absence of the father, but might also be another male relative

## 1.6. Discrimination

Article 3 of the Charter stipulates that “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.”<sup>20</sup>; However, several dispositions in the Arab Charter discriminate between citizens and non citizens of member States. Indeed, many rights included in the Charter seem to be exclusively granted for citizens.

Some of the most important rights which seem to be granted exclusively to citizens of State Parties, are the rights enumerated in Article 24 of the Charter. These rights are civil and political in nature and include the right to freely pursue a political activity, to take part in the conduct of public affairs, directly or through freely chosen representatives, to stand for election or choose his representatives in free and impartial elections, 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, to freely form and join associations with others, and the freedom of association and peaceful assembly<sup>21</sup>.

Many economic and social rights also seem to be granted exclusively to citizens by virtue of the Arab Charter on Human Rights, one of which being the right to work granted by Article 34 of the Charter, which stipulates that “the right to work is a natural right of *every citizen*”<sup>22</sup>, clearly excluding non citizens, regardless of their status, from the enjoyment of this right.

Article 36 of the Charter stipulates that “The States parties shall ensure the right of every citizen to social security, including social insurance”<sup>23</sup>, while Article 37 states that “every citizen has the right to participate in the realization of development and to enjoy the benefits and fruits thereof”<sup>24</sup>, both effectively leaving out non citizens residing in these States.

Yet, perhaps the most important and at the same time most basic social right of which the Arab Charter deprives non citizens is that of access to health care on equal footing and in equal conditions with citizens as Article 39 of the Charter clearly states that “the States parties recognize the right of *every member of society* to the enjoyment of the highest attainable standard of physical

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<sup>20</sup> See Article 3, The Arab Charter on Human Rights.

<sup>21</sup> See Article 24, The Arab Charter on Human Rights.

<sup>22</sup> See Article 34, The Arab Charter on Human Rights.

<sup>23</sup> See Article 36, The Arab Charter on Human Rights.

<sup>24</sup> See Article 37, The Arab Charter on Human Rights.

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”<sup>25</sup>.

Another important social right which seems to be granted only to citizens is that of education. Indeed, Article 41(2) states clearly that “the States parties shall guarantee *their citizens free education* at least throughout the primary and basic levels”<sup>26</sup>, while Article 41(6) maintains that “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.”<sup>27</sup>

### **1.7. Women’s rights**

Women’s rights are another area where the Arab Charter on Human Rights seems to have left a lot to be desired. For a start, Article 3 of the Arab Charter states that “men and women are equal in respect of human dignity, rights and obligations within the framework of the positive discrimination established in favour of women by the Islamic Shariah, other divine laws and by applicable laws and legal instruments”<sup>28</sup>. While it is true that Islamic Shariah might have given women a few advantages in certain situations, however, women’s situation under Shariah Law in general hardly amounts to positive discrimination, as many of its provisions clearly discriminate against women, notably in areas of access to marriage, access to divorce, marriage to non Muslims, and inheritance, in addition to women’s permanent need of the approval of their male guardian to conduct basically any activity.

Indeed, when it comes to the right to a family life for instance, Article 33(1) of the Charter stipulates that “Men and women of marrying age have the right to marry and to found a family according to the rules and conditions of marriage”<sup>29</sup>, and that “The laws in force regulate the rights and duties of the man and woman as to marriage, during marriage and at its dissolution”<sup>30</sup>. It is worth noting that with very few notable exceptions, most Arab League Member States’ Family Laws draw heavily from Shariah Law. Consequently, most laws still keep the concept of guardianship (*wilaya*) in dealing with the issue of marriage. Thus, most laws require the presence and approval of the woman’s guardian (the *Wali*) in order to conclude the marriage, while the man is exempt of any such requirement. Also most family laws in these countries allow a man to get up to four wives and to marry non Muslim women of certain confessions, while a Muslim woman is only allowed to marry a Muslim man.

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<sup>25</sup> See Article 39, The Arab Charter on Human Rights.

<sup>26</sup> See Article 41, The Arab Charter on Human Rights.

<sup>27</sup> See Article 41, The Arab Charter on Human Rights.

<sup>28</sup> See Article 3, The Arab Charter on Human Rights.

<sup>29</sup> See Article 33, The Arab Charter on Human Rights.

<sup>30</sup> *Ibid.*

In the area of dissolution of marriage, States where family laws are inspired by Sharia Law give the man the full right to divorce his wife at a whim, with immediate effect and without having to file for divorce and go through a legal procedure, while a woman who wishes to get divorced has to go to court where she might fail to get one. The only solution often available to women who insist on divorce is a form of divorce called “khula” where she is granted divorce immediately in return of give up all of her rights to any form of financial compensation, notably the alimony, waive the remaining of the dower, and at times pay back the dower she received upon marriage.

Another issue where the Charter seems to discriminate against women is that of the right to passing on their citizenship to their children born to a foreign father. Indeed Article 29 (2) stipulates that “States parties *may* 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”<sup>3132</sup>. The article is written in such a broad way that gives States ample discretion as to the measures they shall adopt, notably that they are requested to do it in accordance with their own domestic laws, and does not impose any obligation on States in this regard. It is important to note in this regard, that very few Arab League States possess Citizenship Laws that allow women to pass their citizenship on to their children, notably Morocco, Tunisia and Egypt. Where they do it is conferred upon request or following a procedure, with the exception of Morocco where it is passed on automatically and on equal footing with children born to Moroccan men.

## **1.8. Cultural Rights**

Despite Article 3 mentioned above, which advocates the principle of non-discrimination, notably in terms of race, the Charter refers in its Preamble to the “Arab nation”, despite the fact that many Arab League member states are home to large non-Arab populations, which raises major concerns as to the cultural rights of these populations.

This concerns becomes further serious since Article 25 of the Charter stipulates that “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.”<sup>33</sup>, but that “*the exercise of these rights shall be*

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<sup>31</sup> See Article 29, The Arab Charter on Human Rights, available at : <http://www1.umn.edu/humanrts/arab/a003-2.html>

<sup>32</sup> note that Article 29 in the English translation that is being referred to throughout this paper includes the verb “shall” which implies obligation, however the Arabic version of the Charter, which is the original version, clearly only gives States the choice or possibility and does not impose any obligation, hence the use of the verb “may” in this paper.

<sup>33</sup> See Article 5, The Arab Charter on Human Rights.

*governed by law.*<sup>34</sup>, which opens the door for restrictions of these rights. In addition, the way the Article is written exempts the State from any obligation to actively protect or promote these rights.

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<sup>34</sup> Ibid.

## 2. The Mechanisms of the Arab Human Rights System

Several bodies were created within the League of Arab States that deal with the issue of human rights from different perspectives, ranging from legal to political, and with different mandates, though these mandates lack clarity at times and overlap at others. This chapter will look into the different existing and planned mechanisms constituting the Arab Human Rights System with a detailed account of their mandates, mode of functioning and shortcoming.

### 2.1. The Arab Human Rights Committee

The Arab Human Rights Committee, also known as the “Charter Committee”, is the treaty body of the Arab human rights system, whose main task consists over overseeing the implementation of the provisions of the Charter by State parties. The Arab Human Rights Committee was created by virtue of Article 45 of the Arab Charter, which sets forth the conditions and modalities for electing the members of the Committee.

Accordingly, and pursuant to the Article, the Committee consists of seven members which are elected by secret ballot by the states parties to the Charter<sup>35</sup>. According to Article 45(b) of the same Charter, the Human Rights 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”<sup>36</sup> while Article 45 (c) underlines that it “shall include among its members *not more than one national* of a State party”<sup>37</sup>, that “such member may be re-elected *only once*”<sup>38</sup> and that “Due regard shall be given to the rotation principle.”<sup>39</sup>

To enable the members of the Committee to perform their functions and duties freely, Article 47 of the Charter requires State Parties to the Charter to “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.”<sup>40</sup>

Article 48 of the Arab Charter defines the scope of the mandate of the Committee. Under this Article, State Parties are required to submit periodic reports, first within one year of the date of entry into force of the Charter and subsequently every three years, to the Secretary-General of the

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<sup>35</sup> See Article 29, The Arab Charter on Human Rights.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> See article 47, The Arab Charter on Human Rights.



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”<sup>41</sup> to the Secretary General of the League of Arab States, who in turn transmits the State reports to the Committee for their consideration.<sup>42</sup>

By virtue of the same Article, the Committee considers the reports submitted by the States Parties in the presence of the representative of the State Party whose report is being considered<sup>43</sup>. The Committee then “discusses the report, comment thereon and makes the necessary recommendations in accordance with the aims of the Charter”<sup>44</sup>.

In addition to considering, discussing, commenting and issuing recommendations concerning country reports, the Committee is mandated, under Article 48, to “submit an annual report containing its comments and recommendations to the Council of the League, through the intermediary of the Secretary-General”. The Article requires that the Committee’s reports, in addition to its concluding observations and recommendations be public documents that should be disseminated widely<sup>45</sup>.

It is worth noting that mandate and functioning of the Arab Human Rights Committee as a treaty body, is largely influenced by the United Nations Treaty Bodies example. Indeed, despite the fact of their “oversight” by the Arab Charter, the Arab Human Rights Committee does receive and consider shadow reports by civil society organizations, and conducts hearing sessions for these organizations<sup>46</sup>. These reports are available alongside country reports and the Committee concluding observations and recommendations on the website of the League of Arab States under the section dedicated to the Arab Human Rights Committee.<sup>47</sup>

A few basic, though important, observations arise from the assessment of the work of the Committee, most obvious of which is the striking unavailability of the Human Rights’ Committee’s annual reports at the Arab League portal or anywhere else. It is not clear whether this lack of availability of the documents is due to the fact that the Organization does not wish to publish them, which is contrary to the spirit of the Charter, the fact that they were never elaborated in the first place, or due to mere bureaucracy or indifference, although this last option is rather implausible

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<sup>41</sup> Article 48, The Arab Charter on Human Rights

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> See Guide for the Participation of Civil Society Organizations, available (in Arabic) at:

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

<sup>47</sup> See the Arab Human Rights Committee reports, available (in Arabic only) at:

<http://www.Lasportal.org/ar/humanrights/Committee/Pages/Reports.aspx>

since, as mentioned before, country reports, shadow reports and the Committee's observation and recommendations are available online.

Another observation that can be concluded from studying the work of the Arab Human Rights Committee since its establishment until today is that, out of 14 States that have ratified the Arab Charter on Human Rights, only nine States have submitted their first periodic reports despite the fact that the last States to access the Charter did so in 2013 and should have submitted their first periodic report in 2014 as required by Article 48 of the Charter. Out of the nine submitted reports, eight reports have been reviewed, while Sudan's report is still pending review since June 2014.

This fact is rather surprising as at least seven States were State Parties to the Charter as of the moment of its entry into force on 15 March, 2008. If these States complied with the requirements of Article 48 of the Charter, then these *seven* States would have submitted their *third* periodic report this year and *four* others would have submitted their *second* periodic report, while in reality no State has yet submitted its second periodic report.

It seems, hence, from these two observations that both the Human Rights Committee and the State Party are not keeping up with the requirements of Article 48 of the Charter and are thus slowly building up backlogs, and are consequently going to face the same problems now faced by the United Nations Treaty Bodies precisely because of failure to meet deadlines.

The third observation, and perhaps the most important one, is that while it is praiseworthy for the Arab Human Rights Committee to receive and assess shadow reports submitted by civil organization as part of a State's periodic review, however, it is lamentable that this advantage is granted exclusively to civil society organizations that are registered/ recognized in their own respective States<sup>48</sup>. Indeed, this excludes a valuable and perhaps more objective source of information, as many civil organizations whose political demands or leanings do not sit well with their respective States are simply denied recognition or registration in a region where freedom of association is de facto restricted, though to varying degrees among the States of the Region, even when they are de jure granted and protected.

## **2.2. The Permanent Arab Human Rights Commission**

The Permanent Arab Human Rights Commission is the Political human rights body of the League of Arab States. The Permanent Commission was created in 1968 by virtue of The League of Arab States' Council Resolution N° 2443 of 03 September 1968, upon a recommendation issued by

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<sup>48</sup> The Arab League and Human Rights: Challenges Ahead, FIDH, P. 15, available at: [https://www.fidh.org/IMG/pdf/rapport\\_lea\\_uk-lddouble.pdf](https://www.fidh.org/IMG/pdf/rapport_lea_uk-lddouble.pdf)

the Political Affairs Committee and had operated according to the Rules of Procedures for Permanent Technical Committees until 2007 when a special statute dedicated to the Permanent Arab Human Rights Commission was adopted<sup>49</sup>.

The Permanent Commission has a different composition and functions than those of the Arab Human Rights Committee. Indeed, Article 2 of the Statute of the Permanent Commission states that the Permanent Commission is composed of representatives of all the Member States of the League of Arab States, who are supposed to be specialists in the field of human rights.<sup>50</sup> According to Article 3 of the same Statute, the Permanent Arab Human Rights Commission functions under the supervision of Arab League's Ministerial Council<sup>51</sup>. The Permanent Commission holds ordinary sessions twice a year and may hold extraordinary sessions.<sup>52</sup>

The mandate of the Permanent Commission is broad and somewhat vague. It includes thirteen different points, namely setting the rules and scope for cooperation among Arab States in the field of human rights, elaborating a perception of the Arab position towards the human rights issues discussed at the regional and international levels, elaborating draft conventions on matters related to human rights and presenting them to the Arab League's Ministerial Council, examining the Arab conventions that may have some influences in the field of human rights and submitting an opinion relating to their conformity to the human rights standards and principles, cooperating with international and regional organizations and bodies working in the field of human rights, encouraging action towards advancing, promoting, respecting and protecting human rights in the Arab World, following up on the implementation the recommendations and Arab treaties and conventions, including the Arab Charter on Human Rights, encouraging the dissemination of human rights culture, participating in Arab, regional and international seminars and conferences relating to human rights, using an expert or experts in order to elaborate certain studies or scientific papers, in conformity with the regulations and standards in place within the League, coordinating the Arab positions towards human rights issues in regional and international conferences and events, notably in terms of draft international treaties, elaborating a perception relating to training competencies in this area, and finally examining any topic relating to human rights referred to the

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<sup>49</sup> See The Permanent Arab Human Rights Commission of the League of Arab States Portal, available (in Arabic) at: <http://www.Lasportal.org/ar/sectors/dep/HumanRightsDep/Pages/Committee.aspx>

<sup>50</sup> See Article 2 of the Statute of Permanent Arab Human Rights Commission, available (in Arabic) at: <http://www.Lasportal.org/ar/sectors/dep/HumanRightsDep/Documents/%D9%84%D8%A7%D8%A6%D8%AD%D8%A9%20%D8%AF%D8%A7%D8%AE%D9%84%D9%8A%D8%A9%20%D9%84%D9%84%D8%AC%D9%86%D8%A9.pdf>

<sup>51</sup> See Article 3 of the Statute of Permanent Arab Human Rights Commission.

<sup>52</sup> See Article 4 of the Statute of Permanent Arab Human Rights Commission.

Permanent Commission by the League's Council, the General Secretariat, or a Member State and issuing recommendations thereto.<sup>53</sup>

According to an FIDH report entitled "The Arab League and Human Rights: Challenges Ahead", published on the sideline of a regional seminar held in Cairo, Egypt, on 16 and 17 February, 2013, the Permanent Arab Human Rights Commission "has proved to be quite ineffective"<sup>54</sup>. The report argues that while "tied to an agenda the first point of which is settlement of the Arab-Israeli conflict, the Permanent Commission barely expresses itself on other issues, despite an increase in the number of councils of Ministers since popular uprisings in the region began."<sup>55</sup>

The report also notes that "Responsibility for the protection and promotion of human rights within inter-governmental organizations is often shared by several organs within the same organization: for example, in the UN system the General Assembly, the Human Rights Council and the High Commissioner for Human Rights all have a mandate to promote and enhance respect for human rights by Member States, whereas within the Arab League's system, this power has been devoted to only one political organ, the Arab Permanent Human Rights Commission, which does not have a history of effectively examining the human rights records of States, nor of engaging in human rights issues."<sup>56</sup>

The report also points out the very nature of the Permanent Commission, that is being composed of State representatives instead of independent experts, means that the Commission "lacks sufficient neutrality to question human rights issues within States."<sup>57</sup> The report consequently retains that there is an obvious need to clarify the mandate of the Permanent Commission and further asks pertinent questions relating to its mandate such as: "should the permanent commission have a greater protection mandate? Should its monitoring capacity be enhanced? Should it adopt recommendations and resolutions on the human rights situation in Member States? Should it be vested with the power to establish special procedures and the capacity to receive direct complaints from human rights victims and NGOs and investigate these violations? Should a complaint mechanism be established?"<sup>58</sup>.

Commenting on the League of Arab States' March 2011 resolution that invited the General Secretariat to provide proposals for an effective review of the role of the Permanent Committee, in

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<sup>53</sup> See Article 3 of the Statute of Permanent Arab Human Rights Commission.

<sup>54</sup> The Arab League and Human Rights: Challenges Ahead, FIDH, P. 13, available at: [https://www.fidh.org/IMG/pdf/rapport\\_lea\\_uk-lddouble.pdf](https://www.fidh.org/IMG/pdf/rapport_lea_uk-lddouble.pdf)

<sup>55</sup> Ibid.

<sup>56</sup> Ibid

<sup>57</sup> Ibid.

<sup>58</sup> The Arab League and Human Rights: Challenges Ahead, FIDH, P. 13, available at: [https://www.fidh.org/IMG/pdf/rapport\\_lea\\_uk-lddouble.pdf](https://www.fidh.org/IMG/pdf/rapport_lea_uk-lddouble.pdf)

addition to its sub-committee of experts, the report suggests that such a review would “irrelevant and counter-productive to strengthen the Permanent Commission’s mandate on human rights promotion and protection without properly amending the Arab Charter on Human Rights.”<sup>59</sup>

The report further advances that “reform should be operated on two parallel but simultaneous trains: Charter reform and strengthening the organs”<sup>60</sup> and suggests that strengthening the organs could “be achieved by promoting the use of investigative missions and effective reporting, as well as providing a possibility for the Arab League to publicly qualify situations by reference to international standards and decide on interim measures on a given situation, whilst also providing redress for victims.”<sup>61</sup>. The report remains skeptical however as to the likelihood of victims of human rights violations bringing cases before “special procedures belonging to a system in which the perpetrating States are political representatives”<sup>62</sup> and finally concludes that “the only means of securing a stronger and more effective system of human rights protection is therefore to rely on the strengthening of the Arab Human Rights Committee as an independent treaty body attached to the Arab Charter on Human Rights.”<sup>63</sup>

### **2.3. The Human Rights Department**

The Human Rights Department is the “technical” body of the League of Arab States’ Human Rights System. It is placed under the authority of the Secretary General, and is under the supervision of the Assistant Secretary General for Legal Affairs. Very little information about the Human Rights Department can be found on the Arab League Portal. The only pieces of information available on the Portal explain that the Human Rights Department functions mainly as a Secretariat for the Permanent Arab Human Rights Commission. Its tasks as such consist of organizing the Arab Human Rights Commission’s meetings, preparing their draft agendas and elaborating its reports and recommendations<sup>64</sup>. In this same capacity, it also submits these reports and recommendations for consideration by the League of Arab States’ Council and follows up on their implementation<sup>65</sup>.

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<sup>59</sup> Ibid

<sup>60</sup> Ibid.

<sup>61</sup> The Arab League and Human Rights: Challenges Ahead, FIDH, P. 14, available at: [https://www.fidh.org/IMG/pdf/rapport\\_lea\\_uk-iddouble.pdf](https://www.fidh.org/IMG/pdf/rapport_lea_uk-iddouble.pdf)

<sup>62</sup> Ibid.

<sup>63</sup> Ibid

<sup>64</sup> See the Human Rights Department Section of the League of Arab States Portal, available (in Arabic) at: <http://www.Lasportal.org/ar/sectors/dep/HumanRightsDep/Pages/default.aspx>

<sup>65</sup> Ibid.

According to the FIDH report on the Arab League and human rights, “the Human Rights Department has few financial and human resources and lacks a clear mandate. This must definitely be addressed in forthcoming reform efforts.”<sup>66</sup>

The report suggests that the efficiency and fulfillment of the Human Rights Department’s mission in protecting and promoting human rights, can only be achieved through the Department’s involvement in defining the League of Arab States human rights policy and strategy<sup>67</sup>. This involvement in turn can only be achieved through “an increase in its resources with the recruitment of highly qualified and experienced staff, and possibly consultation with the civil society.”<sup>68</sup>

The report also maintains that the Department “should also provide expertise on human rights issues to the Secretary General and the Permanent Arab Human Rights Committee and could serve as a resource of expertise for other departments in the legal sector, in particular with regard to drafting new regional instruments, including amendments to the Arab Charter”<sup>69</sup>, which the Department does not seem to be providing currently as can be understood from the brief description of its mandate as can be found on the Portal.<sup>70</sup>

The report point out however to a certain positive change in the functioning of the Human Rights Departments and note that “in addition to developing its relationship with national human rights institutions in Arab League Member States, the Department is starting to interact more with civil society organizations.”<sup>71</sup> It seizes hence the occasion to recommend to the Department organizing informal briefings on human rights issues and pass on the concerns and recommendations to a higher political level as a way to further benefit from its interaction with civil society organizations.<sup>72</sup>

The report also notes that the Department is gaining more attention and importance, as it has been consulted on several occasions, notably as part of the endeavors regarding the Syrian crisis and the issue of imposing sanctions<sup>73</sup>. The report gives an example of this importance noting that the Department, with the help of the diplomats working on the Syrian crisis within the Arab League cabinet played an instrumental role in facilitating an exchange over the crisis between NGOs and the Secretary General of the Arab League, notably enabling civil society organizations to submit

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<sup>66</sup> The Arab League and Human Rights: Challenges Ahead, FIDH, P. 16, available at: [https://www.fidh.org/IMG/pdf/rapport\\_lea\\_uk-lddouble.pdf](https://www.fidh.org/IMG/pdf/rapport_lea_uk-lddouble.pdf)

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> See the Human Rights Department Section of the League of Arab States Portal, available (in Arabic) at: <http://www.Lasportal.org/ar/sectors/dep/HumanRightsDep/Pages/default.aspx>

<sup>71</sup> See The Arab League and Human Rights: Challenges Ahead, FIDH, P. 16, available at: [https://www.fidh.org/IMG/pdf/rapport\\_lea\\_uk-lddouble.pdf](https://www.fidh.org/IMG/pdf/rapport_lea_uk-lddouble.pdf)

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

recommendations to the Office of the Secretary General and securing consultation for some of them on the observer mission to be sent to Syria.<sup>74</sup>

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<sup>74</sup> Ibid.

### 3. The Arab Human Rights Court Project

During the League of Arab States' Summit, held in Doha, Qatar, between 21 and 27 of March, 2013, the Kingdom of Bahrain came forward with a proposal to establish the Arab Court of Human Rights. The proposal was met with enthusiasm from the Member States and was adopted by the League's Council in September 2014.<sup>75</sup>

Again, very little to no information can be found in Arab League sources and the formal establishment of the court is yet to be announced. Relying on different sources, however, some pieces of information can be glued together to understand the nature of the court, the motives behind creating it, and its shortcoming.

According to the FIDH report on the Arab League and human rights, the Kingdom of Bahrain proposed the establishment of an Arab Court for Human Rights after "receiving the final report of the Bahrain Independent Commission of Inquiry (BICI) and in an attempt to evidence its willingness to show a greater commitment to respecting human rights"<sup>76</sup>. Following this proposal "The Arab League Secretary General responded by appointing a committee of experts to look into the legal establishment of such a Court. Their report was discussed in a meeting convened in Manama at the end of February 2013"<sup>77</sup>, maintains the same report.

The fact that the proposal of the establishment of the court was advanced by the Kingdom of Bahrain, a country with a less than praiseworthy human rights record, who also insisted on hosting the Court in its capital Manama<sup>78</sup>, and the fact that it was followed through immediately in a region where very few countries have ratified all core international human rights instruments and even fewer have recognized the competence of the Treaty Bodies of these instruments to receive individuals complains, already in itself suggests that the Human Rights Court is means to show commitment for human rights while setting up a more manageable and controllable alternative more independent and objective mechanisms. It is important to note that no version of the Statue, whether in its draft stage or final stage is available online, which adds more substance to the skepticism surrounding the creation of the court.

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<sup>75</sup> See the League of Arab States Portal, available at: <http://www.Lasportal.org/ar/Pages/default.aspx> (in Arabic)

<sup>76</sup> See The Arab League and Human Rights: Challenges Ahead, FIDH, P. 17, available at: [https://www.fidh.org/IMG/pdf/rapport\\_lea\\_uk-iddouble.pdf](https://www.fidh.org/IMG/pdf/rapport_lea_uk-iddouble.pdf)

<sup>77</sup> Ibid.

<sup>78</sup> Aljazeera (English) 2013. Bahrain to host pan-Arab human rights court. Aljazeera [online], September 02. Available at: <http://www.aljazeera.com/news/middleeast/2013/09/20139219939454621.html>



### **3.1. Before the Adoption of the Draft Statute by the League of Arab States Council in September 2014**

Indeed, many international well established human rights organizations, who seem to have obtained various version of the Statute, have spoken out against the Statue and the whole project. For instance, in a letter addressed to the Ministers of Foreign Affairs of member States to the League of Arab States on 02 September 2014, signed by eighteen representatives of Arab and international NGOs working in the field of human rights, and published on the website of FIDH, the signatories expressed their “concern at the prospect of the impending adoption of a draft Statute for an Arab Court of Human Rights (the Arab Court)”<sup>79</sup>.

The signatories urged the Ministers to “move to defer action on the proposed draft Statute with a view to revising the draft Statute to ensure its accordance with international human rights law and standards”<sup>80</sup>, noting that “Deferring any action on the draft Statute would allow for further work to be undertaken on the draft text in a deliberative and transparent process.”<sup>81</sup>

The letter lamented that the proposed Statute was “drafted by an expert committee appointed by the Arab League Secretariat”<sup>82</sup>, underlining that “neither the identities of the expert members nor the working methods of the committee were publicized”<sup>83</sup> and that “the entirety of the drafting process, including the committee’s meetings, was opaque and conducted behind closed doors, thus contravening basic principles of inclusive participation and transparency.”<sup>84</sup>

The signatories of the letter regretted the fact that despite their repeated requests, “civil society organizations and other stakeholders were not given the opportunity to provide their general input or to comment on the existing or any earlier drafts of the proposed Statute”<sup>85</sup>. They further relate that “civil society organizations were finally invited by the Bahrain Human Rights Institution to a conference on the Court from 25 to 26 May 2014 in Bahrain, but the Arab League Secretary General announced at the time that the expert committee had finalized its work and draft.”<sup>86</sup> The signatories of the letter then proceeded to propose some amendments made based on the analysis of a draft obtained at the said conference and touching a variety of areas, namely:

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<sup>79</sup> See Arab League should postpone action to establish a court of human rights, available at: <https://www.fidh.org/International-Federation-for-Human-Rights/north-africa-middle-east/league-of-arab-states/15957-arab-league-should-postpone-action-to-establish-a-court-of-human-rights>

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

- **Independence and impartiality of the Court and its judges**

The independence and impartiality of the Court and its judges, which was apparently addressed in articles 6, 7, 8 and 15 of the draft State, seem to be a major concern among civil society organizations. Indeed the signatories of the above-mentioned letter suggested that “the draft Statute should be amended and strengthened so as to ensure that the judges on the Arab Court have a high level of expertise, integrity, and independence.”<sup>87</sup> In this regard, the letter asserts that the “nomination of candidates and election of judges should be based on transparent and non-discriminatory procedures that protect against undue, inappropriate or unwarranted interference from any source”<sup>88</sup> it further suggests that the “nomination and appointment decisions should take full account of appropriate personal and legal qualifications, gender balance, and a fair representation of different legal systems”<sup>89</sup> and that “judges should sit in their individual capacity, not as representatives of their home State, and serve for a single, lengthy term with a guaranteed tenure.”<sup>90</sup> The letter also noted the lack of clear criteria and procedures for the removal of judges in the draft Statute.<sup>91</sup>

The signatories of the letter seized the opportunity to recall that “existing international standards affirm that judges should only be subject to suspension or removal from office for reasons of incapacity or behaviour that renders them unfit to discharge their duties, following an appropriate procedure, established in advance, and that guarantees the rights of the concerned judge to a fair hearing incorporating all due process guarantees”<sup>92</sup> and called for the incorporation of these standards, particularly the UN Basic Principles on the Independence of the Judiciary in all rules and procedures relating to the independence of the Arab Court and the judges.<sup>93</sup>

- **Subject matter jurisdiction of the Court**

The subject matter jurisdiction of the Court was addressed in article 16 of the draft Statute as can be understood from the drafters of the letter. Naturally, the Court’s chief mandate will consist of addressing and remedying breaches of the Arab Charter of Human Rights by its State Parties, which is the Court’s subject matter jurisdiction.

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<sup>87</sup> See Arab League should postpone action to establish a court of human rights, available at: <https://www.fidh.org/International-Federation-for-Human-Rights/north-africa-middle-east/league-of-arab-states/15957-arab-league-should-postpone-action-to-establish-a-court-of-human-rights>

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid

<sup>93</sup> Ibid.

In this regard, the signatories of the letter consider that the Arab Charter itself should be amended to be brought in line with universal human rights standards<sup>94</sup>. Indeed, the Charter in its current form, as discussed in full in a previous chapter of the present paper falls considerably short of international standards and principles in a great number of issues, including the right to life, allowing death penalty to be carried on minor, the prohibition of cruel, inhuman or degrading treatment but not punishment, and equality of men and women.

Therefore, the signatories of the letter sustain that “provisions relating to the subject matter jurisdiction and applicable law of the Arab Court should therefore be amended so as to ensure that the Court, when applying the provisions of the Arab Charter does not provide interpretations that have the potential to be inconsistent or conflict with States’ other obligations under international law.”<sup>95</sup> The signatories urged the Court to apply “the most protective standard of human rights law that applies in the State concerned.”<sup>96</sup>

- **Restrictive admissibility provisions**

Article 18 of the draft Statute dealt with admissibility provisions. In this regard, the letter urged the Ministers to ensure that the provisions on the requirement to exhaust local remedies are not be overly restrictive, with a view to allowing for, and appropriately facilitating the access of rights holders to the Arab Court<sup>97</sup>. The signatories maintain that the Arab Court should be granted flexible discretion in the way of deciding on the admissibility of cases, in order to ensure maximum protection of human rights<sup>98</sup>, underlining that it “should be competent to assess the effectiveness of local remedies, including instances where procedures are unduly prolonged or unlikely to bring effective relief, as well as the ability and willingness of local courts to effectively and meaningfully address rights violations.”<sup>99</sup>

- **Restricted access to the Arab Court**

Perhaps the most “provocative” provision of the Draft Statute, at least to many observers of the Arab Court Saga, is the one contained in article 19 and which formally restricts access to the

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<sup>94</sup> See Arab League should postpone action to establish a court of human rights, available at: <https://www.fidh.org/International-Federation-for-Human-Rights/north-africa-middle-east/league-of-arab-states/15957-arab-league-should-postpone-action-to-establish-a-court-of-human-rights>

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

Arab Court for Human Rights to “any State party when one of its subjects claims that one of his human rights has been violated”<sup>100</sup> providing States parties with the option of allowing NGOs to submit cases on behalf of individuals, at their sole discretion.<sup>101</sup> The provision effectively excludes individuals from seeking remedy before the Arab Court, which is a serious blow to the principle of access to justice and to the emerging human rights system.

As the signatories of the letter firmly noted, “decades of experience of existing regional human rights courts and UN human rights treaty bodies demonstrates that States, for diplomatic and political reasons, virtually never make use of interstate complaints procedures on questions of human rights.”<sup>102</sup> This trend is highly unlikely to improve within the framework of the League of Arab States, if anything it might actually develop into a situation of complete stagnation of the Court, since, as the signatories stated, “the possibility of NGOs bringing cases to the Arab Court being at member States’ discretion is similarly problematic, as State officials are unlikely to and cannot be expected to allow access to the Court by the very NGOs that are seeking to call those States to account.”<sup>103</sup>

Article 19 allows one final leeway as it grants the Arab Human Rights Committee the right to refer cases to the Arab Court when it fails to reach an “amicable settlement in the case of an individual complaint”<sup>104</sup>, yet this provision is as problematic as the others since the mandate of the Committee does not include receiving and examining individual complaints until this day. The draft Statute does not reveal how the Committee’s mandate will be extended.<sup>105</sup>

The letter insisted that the right of individual access is a “critical and, indeed, indispensable component of any human rights court that purports to remedy human rights violations”<sup>106</sup>, and reiterated their organizations concerns that a provision contained in an earlier draft of the Statute, which provided for the right of access to individuals, was eventually removed from the draft presented to NGOs at the 25-26 May conference in Bahrain<sup>107</sup>, despite the fact that without this

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<sup>100</sup> See Arab League should postpone action to establish a court of human rights, available at: <https://www.fidh.org/International-Federation-for-Human-Rights/north-africa-middle-east/league-of-arab-states/15957-arab-league-should-postpone-action-to-establish-a-court-of-human-rights>

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

element, the Arab Court is likely to be “an empty chamber, seized of few cases, if any, and certainly not an effective instrument of justice for the Arab League region.”<sup>108</sup>

Therefore, the signatories called for draft article 19 to be amended with a view to “ensuring access to all individuals within the territory of a State party, or subject to its jurisdiction, when they claim to be a victim of a violation of a right that comes under the jurisdiction of the Court”<sup>109</sup>, equally calling for the removal of any obstacles that may limit NGO access to the Court including the condition that this access should be allowed by Member States themselves, or restricting access only to NGOS accredited in a respondent State.<sup>110</sup> The letter urged that other avenues to access the Court should “be provided, including for individuals or NGOs to join proceedings as interested parties or to submit amicus curiae briefs, third party interventions or expert opinions”<sup>111</sup>.

- **Other provisions required to ensure and enhance the Court’s effectiveness**

The signatories of the letter, reacting on behalf of several regional and international civil society organizations dealing with human rights were equally concerned that the Court is not expressly mandated, under the current draft Statute, “to issue provisional or interim measures, which may be taken prior to a final judgment where the applicant faces an imminent risk of serious, irreversible or irreparable harm.”<sup>112</sup>

In addition, and according to the same letter, the draft Statute fails to establish specific provisions to ensure protection measures to be taken in relation to witnesses.<sup>113</sup> The letter maintained that “mechanisms should also be put in place to ensure that the judgments of the Court are appropriately and effectively executed, including by providing for an independent and effective monitoring mechanism and enabling the Court to prescribe specific measures to be adopted by States in order to execute the Court’s judgments.”<sup>114</sup>

Le signatories were also concerned that the seat of the Court will be in Bahrain’s capital, Manama, although the Court may convene in any other location as it deems appropriate, with the

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<sup>108</sup> See Arab League should postpone action to establish a court of human rights, available at: <https://www.fidh.org/International-Federation-for-Human-Rights/north-africa-middle-east/league-of-arab-states/15957-arab-league-should-postpone-action-to-establish-a-court-of-human-rights>

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

approval of that second country, as provided for by article 3 of draft Statute<sup>115</sup>. The signatories considered that an amendment should be brought upon this provision “to ensure that the decision to designate the host country is based on the commitment and compliance of the concerned State party with universal human rights law and standards, including by for example being a party to the core human rights instruments, and that the host country provides the necessary guarantees for the Court, including judges and staff, to operate in defence of human rights free from any undue interference, constraints or pressures.”<sup>116</sup> They called for these guarantees to include the protection of the victims, the victims’ representatives, witnesses, and civil society associations from any measures of reprisal and restrictions<sup>117</sup>.

### **3.2. After the Adoption of the Draft Statute by the League of Arab States Council in September 2014**

Several reactions by many an International Organization followed the adoption of the draft Statute by the League of Arab States Council in September 2014. Indeed, it seems all the criticisms and the efforts deployed by the regional and international community to bring about some change and introduce amendments to the Statute in order to bring it in line with international human rights standards were clearly ignored and largely unmet.

As such, the International Commission of Jurists (ICJ) issued a press release on 09 September 2014 dismissing the adoption the adoption by the League of Arab States (LAS) of the Statute of the Arab Court of Human Rights as “an empty gesture that will do nothing for the victims of human rights violations in the Middle East and North African (MENA) region.”<sup>118</sup>

In the press release, the ICJ, through its Director of the ICJ MENA programme, Said Benarbia, clearly stated that it “does not consider this Statute to have established a genuine human rights court. It is a gross departure from the human rights courts established in other regions of the world: Africa, the Americas, and Europe. Indeed, the Statute defeats the very purpose of establishing a human rights court: to provide those whose rights have been violated in the Arab League member States with direct access to an effective judicial remedy.”<sup>119</sup>

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<sup>115</sup> See Arab League should postpone action to establish a court of human rights, available at: <https://www.fidh.org/International-Federation-for-Human-Rights/north-africa-middle-east/league-of-arab-states/15957-arab-league-should-postpone-action-to-establish-a-court-of-human-rights>

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

<sup>118</sup> See Arab League’s Human Rights Court will not bring justice to victims of violations, ICJ, available at:

<http://www.icj.org/arab-leagues-human-rights-court-will-not-bring-justice-to-victims-of-violations/>

<sup>119</sup> Ibid.

The Organization went further on to underline that “several other provisions of the Statute, including those relating to the independence of the Court and its judges, the jurisdiction of the Court, and the admissibility of cases, fell far short of international standards and practice.”<sup>120</sup>

The ICJ also regretted the fact that “no draft was ever “officially publicized or subject to any meaningful consultation with civil society organizations and other key stakeholders”<sup>121</sup> and that “requests for meetings with the Arab League Secretary General and other Arab League senior officials went unanswered.”<sup>122</sup>

Similarly, Human Rights Watch issued a piece by deputy Middle East and North Africa director at Human Rights Watch Joe Strok, on 26 November 2014 titled “New Arab Human Rights Court is Doomed from the Start”. In this article, the writer argued that despite the fact that the Arab Court for Human Rights will not see the day before years have passes, it is not too early to evaluate “whether the court is likely to be part of the human rights solution in the Arab world - or part of the problem.”<sup>123</sup>

The article is not opposed to the idea of creating an Arab Human Rights Court in itself and considers it attractive, noting that “in a region where officials enjoy impunity galore despite serious abuses, such a court could provide a chance to press for some degree of accountability”<sup>124</sup>, as the Arab Charter remains only a “paper document “ in the absence of a court to enforce its provisions and remedy any breaches thereto.

Hence, for the writer, “A robust regional court could finally bring the Arab Charter to life and start enforcing rights, rather than just defining them.”<sup>125</sup> It is precisely in this spirit that the article considers that “it’s a terrible shame that the court will be hobbled from the get-go by its statute, which is deeply flawed.”<sup>126</sup>

The articles severely criticized the Statute for lacking the fundamental attributes of independence and professionalism, maintaining that it will likely prove impossible to deliver justice<sup>127</sup>, underscoring that “rather than building an institution that would help hold abusive

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<sup>120</sup> See Arab League’s Human Rights Court will not bring justice to victims of violations, ICJ. Available at: <http://www.icj.org/arab-leagues-human-rights-court-will-not-bring-justice-to-victims-of-violations/>

<sup>121</sup> Ibid.

<sup>122</sup> Ibid.

<sup>123</sup> See New Arab Human Rights Court is Doomed from the Start, Human Rights Watch. Available at: <http://www.hrw.org/news/2014/11/26/new-arab-human-rights-court-doomed-start>

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

<sup>127</sup> Ibid.

governments in check, it looks instead like Arab states have created just one more screen with which to shield one another from any accountability.”<sup>128</sup>

The article laments <sup>129</sup>that “a draft statute that Human Rights Watch reviewed early in 2014 allowed individuals to file complaints with the court – a pretty basic requirement for a system that is supposed to deal with violations of individual rights. But at a meeting about the court in late May, Arab League officials presented a “final” draft that had been changed so that only member states themselves – not individuals or non-governmental organizations - can file complaints.”<sup>130</sup>

The writer, who disapproves of choosing Manama, Bahrain, to be the host of the seat of the Arab Human Rights Court, noted that this choice was agreed without “securing any assurances that Bahrain will respect the rights guaranteed in the Arab Charter”<sup>131</sup> and that “ When Bahrain's King Hamad proposed setting up the court back in 2011, it was part of a wider public relations campaign to persuade the international community that Bahrain, in the wake of its high-profile crackdown on pro-democracy protesters, was serious about political reform.”<sup>132</sup> The brief history of the Court, confirms, according to the writer, the suspicions “suspicions that the agenda of many Arab states is to drape themselves in a cloak of human rights respectability without impinging on their capacity for abuse in any way.”<sup>133</sup>

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<sup>128</sup> See New Arab Human Rights Court is Doomed from the Start, Human Rights Watch. Available at: <http://www.hrw.org/news/2014/11/26/new-arab-human-rights-court-doomed-start>

<sup>129</sup> Ibid.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid.



## Conclusion

Regional human rights systems, when in full compliance with universal human rights standards and principles can be true champions of human rights where citizens of State Parties can seek and obtain redress for breaches of rights contained in the respective regional instrument where national courts fail to do so, for one reason or another.

Indeed, for a region that has been undergoing turmoil for years and many States of which are going through democratic transitions with varying degrees of difficulties, an independent and efficient regional human rights system could actually provide practical answers to a great number of issues especially in this peculiar situation, where peoples of the Region are longing to more rights and freedoms.

It is clear, however, that in its current state and conditions, the Arab Human Rights System is a far cry from what an independent and efficient regional human rights system ought to be. The Arab Human Rights System requires urgent amendments to a lot of its components before it could finally deliver results similar to other functioning human rights systems.

The very first component that requires amendments is absolutely the Arab Charter on Human Rights. This instrument is the foundation of virtually the whole system, so naturally this latter cannot properly function if the Charter is not in line with international human rights standards and principles, something that is yet to be accomplished with the current version. Without appropriate changes and amendments to the Arab Charter, any change or amendment to any organ of the system will be void. More importantly, any amendment to the Statute of the Arab Court for Human Rights will be pointless as the instrument whose respect it is supposed to oversee is flawed.

The Arab Charter on Human Rights should be amended in such a way to address its shortcomings. For instance the principle regarding to the right to life should apply in such a way that death penalty would be strictly restricted if not abolished altogether. This holds particularly true in the case of minors who should not be subject to death penalty under any circumstances whatsoever.

As for torture and other forms of cruel, inhuman, and degrading treatment or punishment, the Charter ought to provide a broad and extended definition of torture that would cover as many acts as possible while leaving room for the addition of new acts in the future. The Charter must also ban all forms of cruel, inhuman, and degrading punishment and not only treatment.

When it comes to the right to asylum, the Charter should be in line with the Convention and Protocol relating to the Status of Refugees. In this regard, the Charter can only extend the cases where people can be granted a refugee status and should firmly stick to the Clauses of Exclusions contained in the Convention without any addition. At any rate, the Charter should abide by the principle of “non refoulement” even when a person does not qualify for a refugee status.

The Charter should pay more attention to statelessness, precisely because the region is home to a very large chunk of the world’s ten millions stateless persons. The Charter should clearly restrict the cases of deprivation of citizenship. The Charter should clearly state that no one should be deprived of their citizenship if they would become stateless.

The Charter should not discriminate between citizen and non citizens when it comes to the enjoyment of the rights guaranteed by the Charter. The Charter should clearly State that all individuals falling under the jurisdictions of State Parties should enjoy the rights provided for by the Chapter on an equal basis regardless of citizenship.

The Charter has also a lot to catch up in terms of women’s rights. The Charter should clearly prohibit any discrimination on the ground of gender. The Charter should remove any provision that allows for any different treatment for religious purposes. It should notably grant equality in access to marriage and divorce and in inheritance among others.

Finally, the Charter should provide for provisions that require States to protect the rights of the minorities and indigenous peoples living on their territories without any restrictions thereto. States should also be urged to actively promote these rights.

The mandates of the organs need to be amended too. In particular, the mandate of the Arab Human Rights Committee should be extended to include the receipt and examination of individual complaints. In addition, the bans on receiving shadow reports from NGOs which are not registered or recognized in their country of origin should be lifted and the Committee should be able to receive shadow reports from any self-identified NGO regardless of its administrative status.

Other than the state of idleness that seems to be already taking place and conditioning the work of the Committee, as witnessed from the unavailability of documents, the absence of the annual reports it is supposed to be issuing and the fact that State Parties do not seem to take their obligations towards the Committee seriously, as witnessed by the non submission or the first reports by many States and the subsequent reports by others, the Committee seems to have a good.

As for the Permanent Commission, it needs to be more effective and start expressing itself on different human rights issue and not tie itself to the Arab- Israeli conflict. The composition of the Permanent Commission should be revised to allow for limited State Representativeness. Indeed, while it is not problematic in itself that the number of the members of the Permanent Commission corresponds to the number of the Member States of the Arab League, with each member being a national of a different Member State than the others, these members should however be experts in the field who work independently from than the State they come from.

The Arab Human Rights Department, as a technical body, seems to be on a rather good path; however, both the human and material resources allocated to it should be increased if it is to play a decisive role in the field of human rights at the Arab League level. The Department should be allowed more involvement in setting up the policies and strategies of the Arab League. It should also interact and consult more with civil society on different human rights issue, the same way it did when addressing the Syrian crisis.

Last but not least is the Arab Court for Human Rights and the Statute setting its mandate. The idea of setting up a human Rights Court in the Region in itself is brilliant and commendable in so many way; however, with such a flawed Charter and all the restrictions placed over access to the court in the adopted Statute, it might turn into another idle organ, or worse, a so called human rights court that actually contributes to human rights violations as the Arab Charter gives enough leeway for States to justify many violations under one pretext or another.

Moreover, the Statute should be amended to ensure the independence and impartiality of judges and grant protection to victims and witnesses.

All in all, the Region is still a far cry from having its own integrated and independent human rights system; however, many steps and measures that have already been put in place have the potential to form a solid basis for a real regional human rights system with some political will. A proper revision and amendment of the Arab Charter, the extension of the mandate of the Arab Committee, ensuring the independence of the members of the Permanent Commission and the revision and amendment of the Statute of the Arab Court, are all measures that are sure to contribute into the improvement of this emerging system to fit the Region with a system that is in line with international human rights standards and that would improve the lives of its population.

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