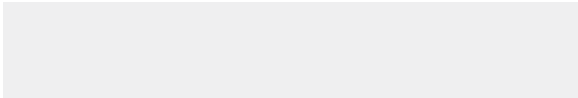
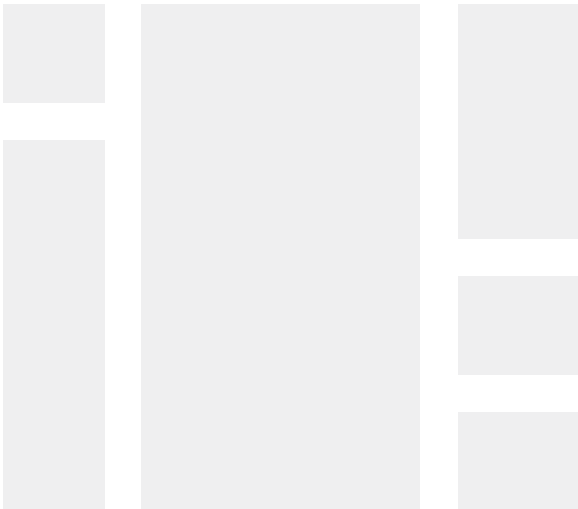




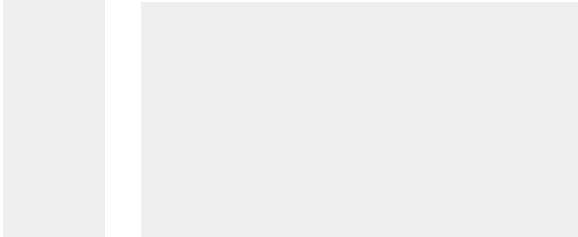
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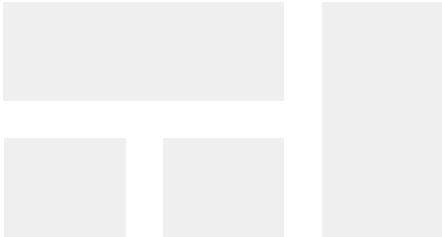
**The League of Arab States:
The Role of Regional Institutions in the
Protection of Human Rights**



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THE LEAGUE OF ARAB STATES: THE ROLE OF REGIONAL INSTITUTIONS IN THE PROTECTION OF HUMAN RIGHTS

*Hajer Almanea*¹*

Abstract:

This paper critically examines the role played by the Arab League in the protection of human rights. The League is the oldest existing organisation in the Arab region, having been established seven decades ago. It involves twenty-two states and is located on two different continents. This study will highlight the League's efforts to promote and protect human rights in the area. The League attempted to take a significant step in this regard by adopting the Arab Charter on Human Rights in 1994 (1994 Charter). However, this charter never entered into force, and the League was unable to surmount the regional difficulties that remained and hindered it from effectively defending human rights. The League updated the Charter in 2004, and it entered into force recently, but it has faced many criticisms in its provisions. The main criticisms, which this study indicates, involve the wide margin given to the member states in implementing the Charter. It has been argued that the Arab Charter on Human Rights lacks efficiency, which calls into question the effectiveness of the Arab League to uphold international human rights standards. However, this paper argues that the Arab League is effective via the Arab Committee for Human Rights (Charter Committee). This effectiveness is evident from the Committee's observations and recommendations, which are examined by considering its prohibition of torture.

Keywords: *Arab League, the Arab Charter of Human Rights , prohibition of torture.*

A. INTRODUCTION

The League of Arab States (Arab League) was declared in 1945 and is considered the oldest existing organisation in the Arab region.² It was comprised in the beginning of just seven states.³ In the present day, the League involves twenty-two states,⁴ most of which have adopted Arabic as their official language.⁵ The

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² International Centre for Non-for-Profit Law, 'Civic Freedom Monitor: League of Arab States' (2018) www.icnl.org/research/monitor/las.html (last accessed 30 July 2018).

³ The dates of deposit of the instruments of ratification (and of entry into force of the pact) for each contracting party are: Transjordan, 10 April 1945 (10 May 1945); Egypt, 12 April 1945 (10 May 1945); Saudi Arabia, 16 April 1945 (2 May 1945); Iraq, 25 April 1945 (10 May 1945); Lebanon, 16 May 1945 (1 June 1945); Syria, 19 May 1945 (4 June 1945); and Yemen, 9 February 1946 (24 February 1946). See: Pact of the League of Arab States (entered into force 22 March 1945).

⁴ The Arab League members are: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria (has been suspended since 2011), Tunisia, United Arab Emirates, and Yemen.

⁵ Cris Toffolo, *The Arab League* (Infobase Publishing 2008) 12-14.

Arab League-governed Member States lie in the Middle East and North Africa, with a few states lying beyond this region, and covers an area of about 9.8 million square miles.⁶

This article provides a critical analysis of the Arab League as a regional human rights' monitoring and enforcement organisation in the Arab region. This regional block could widely promote and protect international human rights standards⁷ as it 'open[s] the possibility for faster response and improved implementation when states are closely bound by economic and political ties'.⁸ However, the Arab League is in a weak position which prevents it from playing an effective role in the field of human rights. Thus, the Arab League in its current state ought to 'reform or disappear'.⁹

The first section of this article will briefly outline how the first version of the Arab Charter of Human Rights faced several obstacles which prevented it from coming into existence. In contrast, the modern version of the Charter entered into force with indications that it could offer real and effective protection of human rights as a regional instrument under the Arab League. However, linking some rights in the Charter with Islamic law, along with domestic legislation of Member States, is criticised as preventing compliance with international standards in human rights protection. Subsequently, this article will proceed to examine the effectiveness of the Arab League as a regional human rights organisation in light of the right to prohibition of torture. Thus, the second section will examine Article 8 of Arab Charter with regard to the prohibition of torture and the fulfilment of international standards of human rights. The reports of Arab Committee for Human Rights (Charter Committee) will also be examined with regards to this right. The proposed Arab Court on Human Rights will then be discussed briefly. The article concludes that the Arab League is becoming more effective in this field through the Charter Committee, despite the serious flaws of this body such as the non-binding nature of its recommendation and the lack of an individual complaint mechanism. In spite of the flawed history of the League, there is still hope that the Member States could adhere to international standards.

B. INTERNATIONALISATION OF THE CONCEPT OF HUMAN RIGHTS

1. The Arab League and International Human Rights Standards

It is important to review the role played by the Arab League in the Arab world against the background of the international human rights movement. Human rights discourse emerged during World War II and was followed the drafting of the United Nations (UN) Charter in 1945.¹⁰ The UN Charter was described as 'the constitutional instrument which governs the organisational structure of a world community'.¹¹ This Charter was enforced as an international treaty in 1948 following ratifications from the majority of states.¹² The UN

⁶ *ibid.*

⁷ Curtis Doebbler, *International Human Rights Law: Cases and Materials* (CD Publishing 2004) 177.

⁸ Frans Viljoen, *International Human Rights Law in Africa* (2nd edn, Oxford University Press 2007) 9-10.

⁹ Interview with Amre Moussa, previous Secretary General of the Arab League (as cited in Rodrigo Tavares, *Regional Security: The Capacity of International Organizations* (Routledge 2012) 111).

¹⁰ Craig Durham, 'International Human Rights Law: A Legitimate Influence or Constraint on Sovereign Jurisdiction' (1997) *Australian International Law Journal* 56, 58.

¹¹ Bardo Fassbender, *The United Nations Charter as the Constitution of the International Community* (Martinus Nijhoff Publishers 2009) 3.

¹² United Nations, 'History of The United Nations' (*United Nations*) www.un.org/en/sections/history/history-united-nations/index.html (last accessed 30 July 2018).

Charter established the six organs of the UN¹³ that operate to protect individuals' various rights and freedoms.¹⁴

The concept of human rights became the subject of a global movement,¹⁵ when the idea of an International Bill of Human Rights came into being. Human rights were protected under a non-binding instrument in the form of the Universal Declaration of Human Rights (UDHR). However, the general principles proclaimed in it have since been transformed into binding treaty obligations¹⁶ under the International Covenant on the Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).¹⁷ These conventions (and other international instruments and declarations) promulgated by the General Assembly of the UN are the basis of the human rights movement as they contain many principles and rules relating to these rights and the resulting freedoms.¹⁸

The ratification of human rights conventions has always revealed the states who are willing to respect those rights and fundamental freedoms. In recent years, many states have been rushing to ratify various human rights treaties, even though they are not binding unless states choose to ratify and abide by them.¹⁹ Despite the divergence of legal opinions that explain the states' motivations in acceding to those treaties,²⁰ it seems that the ratification of these agreements by the developing states (including the Arab League Member States) is likely to be motivated by undeclared goals and not closely aligned with the principal aim of involvement in the international human rights system.²¹ Among these potential objectives are the economic benefits that may result from joining these treaties and having a clean record in signing international treaties in terms of the protection of human rights.

It is of note that Hathaway argued that the ratification of international human rights treaties by a state and the state meeting its obligations positively affects that state's position in the international community, thus 'shaping the way a country is viewed by the international community, which in turn has very real consequences for that country's material interests, including foreign investment, aid donations, and international trade'.²² The economic benefits the states may reap from acceding to international human

¹³ The organs (as originally enacted) are: General Assembly; Security Council; Economic and Social Council; Trusteeship Council; International Court of Justice; and Secretariat.

¹⁴ Javaid Rehman, *International Human Rights Law* (2nd edn, Longman Pub Group 2010) 28.

¹⁵ Louis Sohn, 'The New International Law: Protection of the Rights of Individuals Rather Than States' (1982-83) 32 *American University Law Review* 1, 1.

¹⁶ Thomas Buergenthal, 'International Human Rights Law and Institutions: Accomplishments and Prospects' (1988) 63 *Washington Law Review* 10.

¹⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

¹⁸ Purna Sen and Jena Patel, *Human Rights in the Commonwealth: A Status Report 2010* (Commonwealth Secretariat 2011) 11.

¹⁹ However, certain provisions may be part of customary international law so it would bind the states even if the states have not signed the relevant human rights treaty. For more details, see: Linda Keith, 'The United Nations International Covenant on Civil and Political Rights: Does it Make a Difference in Human Rights Behavior?' (1999) 36(1) *Journal of Peace Research* 95, 97.

²⁰ Andrew Guzman, 'A Compliance-based Theory of International Law' (2002) 90 *California Law Review* 1825; Jay Goodliffe and Darren Hawkins, 'Explaining Commitment: States and the Convention Against Torture' (2006) 68(2) *Journal of Politics* 358; Oona Hathaway, 'The Cost of Commitment' (2002-03) 55(5) *Stanford Law Review* 1821.

²¹ Oona Hathaway, 'Why Do Countries Commit to Human Rights Treaties?' (2007) 51(4) *Journal of Conflict Resolution* 588, 596-597; George Downs and Michael Jones, 'Reputation, Compliance, and International Law' (2002) 31(2) *The Journal of Legal Studies* 95.

²² Hathaway (n.21) 596-597.

rights treaties may be a fundamental motivation behind the acceptance by states of those treaties and compliance with their provisions.

The Arab League has not been isolated from the human rights movement but has made numerous attempts to encourage its Member States to engage with those instruments and their universal human rights standards. Among the many resolutions that have been passed, Resolution No.2366 from 1971 is a landmark, calling on all Member States to be bound by certain international conventions, especially those relating to the protection of human rights.²³ In the same year, the Arab Summit was held to discuss the possibility of establishing an Arab Charter on Human Rights based on the idea of accepting and ratifying some of these international treaties by some Member States.²⁴ Subsequently, the Arab League Council issued several resolutions which aim to encourage Member States to accede to these treaties, to comply with their provisions, and to submit periodic reports to the appropriate bodies for the purpose of developing the human rights environment in the Arab world.²⁵ At the 20th Arab Summit, held in Cairo in 2000, the voice of the Arab League emerged to strengthen the international discourse on human rights in the Arab world. However, this conference had been convened in order to discuss ways of supporting the Palestinian cause financially and of demanding a freeze on political and economic relations with Israel.²⁶ The Arab League announced the benefits to Arab states of their accession to international human rights treaties, which included important economic benefits to those states that have a clean record on the issue of human rights.²⁷ The League, as a regional organisation, has a better understanding of the situations that impact on the protection of human rights in the region, which include the economic standing of Member States; thus the League tries to link economic standing to the benefits.²⁸

Sixteen Arab League states have ratified or acceded to the ICCPR,²⁹ whereas the ICCPR's first optional protocol obtained accession from only four Arab League Member States.³⁰ However, only one Arab League member, Djibouti, ratified the second Optional Protocol relating to the abolition of the death penalty.³¹ In addition, 15 Arab League Member States ratified or acceded to the ICESCR.³² However, at present, no Arab States have ratified the Optional Protocol of the ICESCR. The Arab League may not be able to take full credit for the accession of the Arab states to those treaties. Despite this, these efforts can be seen as a positive step towards strengthening regional action to enforce international human rights standards and sharing

²³ Arab League Resolution No.2366.

²⁴ Ibrahim Al-Jazy, 'The Arab League and Human Rights Protection' in Eugene Cotran and Adel Sherif (eds), *Democracy, the Rule of Law and Islam* (Kluwer 1999) 215.

²⁵ See for example: Arab League Resolution No.239 in 14th Summit in 2002 about Arab Child Rights. It mentioned the importance of complying with the Convention on the Rights of the Child.

²⁶ For more details, see: Philip Mattar, *Encyclopedia of the Palestinians* (Infobase Publishing 2005) 51.

²⁷ League of Arab States, Arab Summits in Cairo (2000) www.lasportal.org/ar/summits/Pages/default.aspx?Stype=1&imgLib=ArabicSummit&RID=41#tab2 [Arabic version] (last accessed 30 July 2018).

²⁸ Mahasen Aljaghoub, Ibrahim Aljazy and Maysa Bydoon, 'The Arab League' in Gention Zyberi and Kevin Mason (eds), *An Institutional Approach to the Responsibility to Protect* (Cambridge University Press 2013) 290.

²⁹ The states parties in the ICCPR: Tunisia (1969), Syria (1969), Kuwait (1996), Libya (1970), Iraq (1971), Lebanon (1972), Jordan (1975), Morocco (1979), Egypt (1982), Sudan (1986), Yemen (1987), Algeria (1989), Djibouti (2002), Mauritania (2004), Bahrain (2006), State of Palestine (2014).

³⁰ Algeria (1989), Libya (1989), Djibouti (2002), Tunisia (2011).

³¹ Djibouti ratified in 2002.

³² Tunisia (1969), Syria (1969), Libya (1970), Iraq (1971), Lebanon (1972), Jordan (1975), Morocco (1979), Egypt (1982), Sudan (1986), Yemen (1987), Algeria (1989), Djibouti (2002), Mauritania (2004), Bahrain (2007), State of Palestine (2014).

successful experiences in the Arab world.³³ Theoretically, the accession of Member States to international treaties would facilitate the Arab League's role as a regional organisation working to promote universal standards of human rights (as included in international instruments) at the local level in individual states.³⁴ However, the Arab League has advocated adherence to international treaties without itself intervening regarding any human rights violations occurring in Member States.³⁵

In response to the encouragement of the Arab League to engage with international human rights instruments, Arab states set forth a number of apprehensions in relation to international human rights treaties in the form of reservations. According to the Vienna Convention on Law of Treaties,³⁶ reservations allow the state to exclude or modify the legal effect of some provisions of international treaties.³⁷ Many Arab states have used this tool to limit the scope of application of human rights treaties.³⁸ Cavanaugh highlighted the crucial issues relating to the Arab states' reservations. The Arab states had some reservations regarding the obligations arising from these treaties due to aspects of their domestic law or Islamic standards, which those states believe could impede and hinder their application on the ground.³⁹

The Arab League adopted a contrasting stance, condemning the use of the reservations. The resolutions adopted at the Arab Summit in Tunis in 2004 reflected the importance and priority given by the Arab League to the compliance of states with international treaties and demanded a withdrawal certain reservation that undermine the effectiveness of those treaties.⁴⁰ Unfortunately, this strong stance has not been reflected in the only legal instrument issued under the Arab League for the protection of human rights.

The Arab states' reservations towards the international human rights treaties have been criticised internationally because these reservations are incompatible with those treaties' objects and purpose.⁴¹ However, the Arab Charter on Human Rights itself contains, in relation to some rights, provisions referring

³³ The Charter Committee (we will see details of this Committee later) completed this effort and announced the adoption of a plan to support the completion of ratification of the two International Covenants by those Arab States, who have not ratified yet; See: *Newsletter of the Arab Human Rights Committee* (Second Issue, June 2015) www.lasportal.org/ar/humanrights/Committee/Documents/%D8%A7%D9%84%D9%86%D8%B4%D8%B1%D8%A9%20%D8%A7%D9%84%D8%A5%D9%84%D9%83%D8%AA%D8%B1%D9%88%D9%86%D9%8A%D8%A9%20%D8%A7%D9%84%D8%B9%D8%AF%D8%AF%20%D8%A7%D9%84%D8%AB%D8%A7%D9%86%D9%8A.pdf [Arabic version] (last accessed 30 July 2018).

³⁴ Ryan Goodman, and Derek Jinks, 'Measuring the Effects of Human Rights Treaties' (2003) 14(1) *European Journal of International Law* 171, 177; in contrast, McGoldrick argued that there is no evidence that 'the existence of the Covenant and the work of the HRC is having any concrete and positive effect on human rights positions in the State parties'. See: Dominic McGoldrick, *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights* (Oxford University Press 1991) 504.

³⁵ Michael Barnett and Etel Solingen, *Designed to Fail or Failure of Design? The Origins and Legacy of the Arab League* (Cambridge University Press 2007) 217.

³⁶ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT).

³⁷ *ibid* Art 19.

³⁸ For more details about Arab state reservation on human rights treaties see: Eva Brems, *Human Rights: Universality and Diversity* (Martinus Nijhoff Publishers 2001) 268.

³⁹ Kathleen Cavanaugh, 'Narrating Law' in *Islamic Law and International Human Rights Law* (Oxford University Press 2012) 38. Although not the subject of this article, such reservations are questionable. They raise many questions about whether international standards of human rights can be protected and applied in ways that do not contradict Islamic standards. For more details about the possible clash between human rights standards and Islamic standards see: Mashood Baderin, *International Human Rights and Islamic Law* (Oxford University Press 2003) 229.

⁴⁰ League of Arab States, Arab Summits in Tunisia (2004) www.lasportal.org/ar/summits/Pages/default.aspx?Stype=1&imgLib=ArabicSummit&RID=41#tab2 [Arabic version] (last accessed 30 July 2018).

⁴¹ Cavanaugh (n.39) 38-39; Brems (n.38) 268-269.

to national legislation as well as Islamic law in the protection of these rights and their application in practice. Those provisions weaken the role of the League in the real relevance of international standards in the context of these states, as will be mentioned later when discussing the Arab Charter.

The Arab League's steps towards officially recognising the important place of human rights did not take place until much later than its recommendation to Member States to recognise international treaties and instruments. This was only in 1966 when the Arab League took part in the celebrations to mark the twentieth birthday of the Universal Declaration of Human Rights (UDHR) at the invitation of the UN,⁴² and was asked to compile a report on the 'accomplishments, programmes and other measures to realize protection of human rights'.⁴³ The Arab League set up a special committee to prepare for this participation and to prepare the report.⁴⁴ However, many of the programmes were not implemented.⁴⁵

It can be seen that the Arab League's most significant response to the issue of human rights did not originate from within the organisation but took place in reaction to a particular request by the UN. Furthermore, the motivation for the Arab League's continued attention to the area of the defence of human rights is primarily its interest in the Palestinian crisis. Any decisions were limited for long periods to ones relating solidarity with the Palestinian people and to discussing ways to protect their human rights against Israeli violations,⁴⁶ while completely ignoring the human rights situation in the other Member States. This may be due to the fact that the Arab League bodies (the Arab Permanent Commission on Human Rights and the Arab League Council) are composed of political representatives of the states and not independent members, which may make it difficult for it to play an effective neutral role in considering violations of human rights in those states.⁴⁷

After approximately two decades, the Arab League adopted the Arab Charter on Human Rights in 1994 (1994 Charter).⁴⁸ This Charter represents the first steps of the Arab League to show itself to be a regional organisation which is concerned with human rights issues. Even so, this step was not firm, and the League was unable to defeat the regional difficulties that remained and hindered it in effectively defending human rights.

2. The 1994 Charter and the Main Obstacles

To evaluate the efficacy of the Arab League as a regional organisation for the protection of human rights, it is important to examine the 1994 Charter. This was the first agreed version of the Charter and the first instrument under the League to firm up human rights standards and monitoring mechanisms.⁴⁹ After being

⁴² International Year of Human Rights, UNGA Res 2081 (XX) (20 December 1965) UN Doc A/RES/2081.

⁴³ *ibid* [8].

⁴⁴ Arab League Resolution No.2259. This was accompanied by the establishment of another committee to support the previous one: Arab League Resolution No.2304.

⁴⁵ Arthur Robertson and John Merrills, *Human Rights in the World: An Introduction to the Study of the International Protection of Human Rights* (Manchester University Press 1996) 239.

⁴⁶ Arab League Resolution No.3304. See: Vera van Hüllen, 'Just Leave Us Alone: The Arab League and Human Rights' cited in Tanja A Börzel and Vera van Hüllen (eds), *Governance Transfer by Regional Organizations: Patching Together a Global Script* (Palgrave Macmillan 2015) 139.

⁴⁷ Zeynep Sahin Mencütek, 'The "Rebirth" of a Dead Organization? Questioning the Role of the Arab League in the "Arab Uprisings" Process' (2014) 19(2) *Journal of International Affairs* 92; Mohammed Al-Midani, 'Human Rights Bodies in the League of Arab States' in Dinah Shelton and Paolo Carozza (eds), *Regional Protection of Human Rights* (Oxford University Press 2013) 163-169.

⁴⁸ Arab Charter on Human Rights (adopted 15 September 1994).

⁴⁹ Prior to this, the League, after several meetings of the Permanent Arab Commission, adopted a draft of the Arab Declaration of Human Rights in 1971. This step for the protection of human rights was opposed by the majority of

examined by the Arab Permanent Commission on Human Rights,⁵⁰ it was adopted by Arab League Resolution No.5437. The Charter consists of 43 articles preceded by a preamble. The definition of human rights in this Charter was derived from the Cairo Declaration on Human Rights in Islam from 1990.⁵¹ While this declaration was adopted to '[serve] as a guide for Member States on human rights issues',⁵² it did not conform to the standards embodied in international human rights instruments. Islamic law alone is the basis for the interpretation of its articles,⁵³ and there is no attempt to stipulate how the provisions of Islamic law are to be interpreted. The standards of Islamic law appear to be a hindrance to the implementation of international human rights standards within the Arab states.⁵⁴ Tadjdini summarised the weakness of this as follows: each member state has its own approach to interpreting Islamic principles to protect human rights, so they interpret the Cairo Declaration in different ways; some of these approaches are radical in their provisions and do not support the international discourse on human rights.⁵⁵ Although the Cairo Declaration was issued by another organisation rather than by the Arab League, and is a non-binding document, the construction of the 1994 Charter has been criticised.

The 1994 Charter received strong criticism for being ineffective in its drafting.⁵⁶ Other critics have described it as a weak instrument due to the vagueness of its articles and its restrictions contesting the very essence of human rights.⁵⁷ The 1994 Charter also does not provide adequate protection of fundamental rights as it contains extensive exemptions and limitations that have emptied it of its fundamental purpose to preserve and protect human rights.⁵⁸ It can be said that the contents of the Charter do not conform to the international human rights standards stipulated in the international treaties ratified by the Arab states.⁵⁹ Instead of determining an effective enforcement mechanism to monitor the progress made in the area of human rights, it limits its role to receiving periodic reports from Member States on the human rights situation within their borders and examining this via the Arab Permanent Commission on Human Rights.⁶⁰ This clearly shows the inherent glaring defect lingering in this committee. Thus, the 1994 Charter was still a source of concern for all Member States; it was not ratified by any state, and eventually was not enforced.⁶¹

Member States so it was ruled out and not discussed again. See: Al-Jazy (n.24) 215; However, it can also be argued that the impetus here for this step is an external, simultaneous impulse originating with the United Nations' support for regional human rights organisations.

⁵⁰ Al-Midani (n.47).

⁵¹ Organisation of Islamic Conference, Cairo Declaration on Human Rights in Islam (adopted 5 August 1990) Res 217 A(III).

⁵² Abdullah Al-Ahsan, 'Law, Religion and Human Dignity in the Muslim World Today: An Examination of OIC's Cairo Declaration of Human Rights' (2008) 24(2) *Journal of Law and Religion* 573.

⁵³ Cairo Declaration on Human Rights in Islam (n.51) Arts 24-25.

⁵⁴ Al-Ahsan (n.52) 592.

⁵⁵ Azin Tadjdini, 'The Organisation of Islamic Cooperation and Regional Challenges to International Law and Security' (2012) 4 *Amsterdam Law Forum* 41.

⁵⁶ van Hüllen (n.46) 140.

⁵⁷ Vitit Muntarbhorn 'Human Rights Monitoring in Asia-Pacific Region' in Gudmunder Alfredsson *et al* (eds) *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob Th. Möller* (2nd edn, Martinus Nijhoff Publishers 2009) 644.

⁵⁸ Mohamed Mattar, 'Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards' (2013) 26 *Harvard Human Rights Journal* 93; Mohammed Saeed, 'Which Arab Charter on Human Rights' (Cairo Institute for Human Rights Studies 2003) www.cihrs.org/?p=4868&lang=en (last accessed 30 July 2018).

⁵⁹ Wael Allam, 'The Arab Charter on Human Rights: Main Features' (2014) 28 *Arab Law Quarterly* 14, 42.

⁶⁰ Abdullahi An-Na'im, 'Human Rights in the Arab World: A Regional Perspective' (2001) 23(3) *Human Rights Quarterly* 715.

⁶¹ For more information about the reasons for objections on the first version of the charter, see: Al-Jazy (n.24) 218.

Nonetheless, the 1994 Charter must be seen as a significant movement in the direction of protecting human rights in the Arab world, being the first to highlight the idea of human rights regionally.⁶² The Arab states suffered from many problems that have prevented and continue to prevent the development of the Arab League in establishing real and effective protection of human rights in the region. The first problem was the existence of unstable political systems among those Member States at the time.⁶³ Most Member States have suffered as a result of colonialism which has affected the human rights situation throughout the whole region.⁶⁴ These states sought to strengthen their internal stability by refusing to allow any intervention in their internal affairs, no matter how despotic these might be.⁶⁵ They consider human rights to be at the core of their internal affairs.⁶⁶

In general, a state that has suffered from colonialism and foreign interference regards the advocating for human rights as a pretext for intervention from other states.⁶⁷ This made the Arab states 'prefer a weak regional organisation' in their founding charter of the Arab League, which emphasises the sovereignty of states and omits to mention human rights and the ways of strengthening them.⁶⁸ This problem is currently recurring in the case of the Arab revolutions that arose in the region in 2011. These have left new and unstable governments in power that consider it of the utmost importance to enhance their stability. Although these states suffer from difficult human rights issues following these revolutions (such as the growing numbers of displaced people and refugees from their own states),⁶⁹ they seek support from the Arab League for their political systems⁷⁰ rather than stand up for the interests of victims of human rights violations.

Some Arab communities also suffer from limited human rights awareness. This limited awareness of the citizens of these states arises from poverty and illiteracy, which prevents a democratic shift in dealing with human rights⁷¹ as this shift depends on the willingness of the community.⁷² It is widely believed in these communities that economic development has priority rather than considerations of human rights and seeking freedom in a society which suffers from a lack of the basic necessities of life. In return, civil and political rights must be neglected in the face of considerations of economic development considerations.⁷³ Thus it was widely believed that 'individual rights must give way to demands of [...] economic growth, or that

⁶² Mervat Rishmawi, 'The Revised Arab Charter on Human Rights: A Step Forward?' (2005) 5 *Human Rights Law Review* 361, 364.

⁶³ An-Na'im (n.60) 708.

⁶⁴ Fred Halliday, *The Middle East in International Relations: Power, Politics and Ideology* (Cambridge University Press 2005) 83; Istvan Pogany, 'Arab Attitudes Toward International Human Rights Law' (1986) 2 *Connecticut Journal of International Law* 367, 369.

⁶⁵ Naseer Aruri, 'Disaster Area: Human Rights in the Arab World' (1987) 149 *MERIP Middle East Report* 7, 13.

⁶⁶ Bassam Tibi, 'Old Tribes and Imposed Nation-States' cited in Philip Shukry, *Tribes and State Formation in the Middle East* (University of California Press 1990) 149; Also: Paul Close and David Askew, *Asia Pacific and Human Rights: A Global Political Economy Perspective* (Ashgate Publishing Ltd 2004) 112.

⁶⁷ Joanne Bauer and Daniel Bell, *The East Asia Challenge for Human Rights* (Cambridge University Press 1999) 105.

⁶⁸ Barnett and Solingen (n.35) 181.

⁶⁹ United Nations High Commissioner for Refugees, 'Report on Global Trends: Forced Displacement in 2016' (2016) www.unhcr.org/5943e8a34.pdf (last accessed 30 July 2018).

⁷⁰ Mervat Rishmawi, 'The League of Arab States in the Wake of the "Arab Spring"' in Cairo Institute for Human Rights Studies, *Delivering Democracy 5th CIHRS' Annual Report on the Human Rights Situation in the Arab World* (2012) 57.

⁷¹ Arab Organisation for Human Rights, 'Study on The Links Between Economic and Social Rights and Legal Empowerment Of The Poor In The Arab World' (UNDP Regional Centre in Cairo 2010) 20.

⁷² Isma'il al-Shatti, 'The State of Democracy and Human Rights in the Arab Ummah (Nation)' (2016) 9(4) *Contemporary Arab Affairs* 523.

⁷³ Hussein Al-Ammash, *Freedom and Development: The Future of New Syria* (Al-Biruni Publishers 2014) 103 [Arabic version].

human rights can be realized only after a certain level of economic advancement has been achieved'.⁷⁴ The idea of 'always using Western values as a yardstick in every human rights discourse' is also commonly accepted.⁷⁵ There is a perception that the protection of human rights is a Western barrier to introduce elements of instability that would eventually destabilise the process of any development plan.⁷⁶

Surprisingly, human rights are no better in the states that do not suffer from economic problems or a lack of basic needs among their people.⁷⁷ Arguably, the weakness of the human rights culture in the Arab community has been overcome in recent years, due to that fact that protests in some Arab states (in the Arab Spring) were based on claims regarding the violation of basic human rights,⁷⁸ such as freedom, justice and dignity. In other words, an increase in the awareness of the people led them to revolt against their regimes.

A further issue was sometimes raised regarding conflict between international standards of human rights national standards and Islamic law.⁷⁹ This appears in the observations made by Saudi Arabia on the 1994 Charter. The government said that it is to be assumed that the Saudi constitution is closely linked to Islamic law and Islamic standards that are presumed to protect and preserve human rights which are different and preferable to the standards stipulated in the international conventions.⁸⁰ Saudi Arabia therefore considers this Charter dispensable.⁸¹ Indeed many Member States invoke Islamic law to avoid the need for compliance with certain international human rights standards as we have seen earlier. Professor Bassiouni refutes this claim and says that Arab states take Islamic law as a cover and excuse for not complying with international standards for social or political reasons.⁸² On the other hand, in some liberal interpretations, Islamic law may be seen as an essential platform for creating international human rights standards in the Arab region.⁸³ Although this is not the subject of this article, it should be noted that the 2004 revised version of the 1994 Charter has also used Islamic standards as a justification for states to absolve themselves of their international obligations. These obstacles have hindered the progress of the Arab League in the process of preserving and protecting human rights, and the Charter was left sitting on the shelf for more than 10 years.

In line with this, various non-governmental organisations (NGOs) lobbied the Arab League. They held several conferences and seminars, both within and outside of the Arab states, to make their voice heard and convey their desire to reformulate and develop the 1994 Charter.⁸⁴ Subsequently, the 1994 Charter was revised in

⁷⁴ Paul Close and David Askew, *Asia Pacific and Human Rights: A Global Political Economy Perspective* (Ashgate Publishing Ltd 2004) 112.

⁷⁵ Baderin (n.39) 2.

⁷⁶ Frank Lechner and John Boli, *The Globalization Reader* (Blackwell Publishing 2005) 16.

⁷⁷ See: Yusif Sayigh, *Elusive Development: From Dependence to Self-Reliance in the Arab Region* (Routledge Press 1991); Al-Ammash (n.73) 103.

⁷⁸ United Nations Development Programme, *Human Rights for Development* (News Brief, Vol.4, 2011) www.undp.org/content/dam/undp/library/Democratic%20Governance/NewsbriefVol4_F_WEB.pdf (last accessed 30 July 2018).

⁷⁹ Precepts of Islam were arguably used as a justification for human rights violations by politicising it; See: An-Na'im (n.60) 708.

⁸⁰ Hasan Khalil, 'The Position of Saudi Arabia on Violence and Aggression and the Violation of Human Rights' [1994] *Journal of Justice* 37 [Arabic Version].

⁸¹ *ibid*; Al-Ahsan (n.52) 586.

⁸² Cherif Bassiouni, *The Shari'a and Islamic Criminal Justice in Time of War and Peace* (Cambridge 2013) 285.

⁸³ Jason Morgan-Foster, 'Third Generation Rights: What Islamic Law Can Teach the International Human Rights Movement' (2005) 8(1) *Yale Human Rights and Development Law Journal* 67.

⁸⁴ Mohammed Al-Midani, 'The Enforcement Mechanisms of the Arab Charter on Human Rights and the Need for an Arab Court of Human Rights' (2010) 3 *The Protection Project Journal of Human Rights and Civil Society* 61, 62.

2003.⁸⁵ A memorandum of understanding between the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Arab League⁸⁶ recommended setting up an independent panel of experts.⁸⁷ When the Charter was being revised, the panel adopted international human rights law and, together with several civil society organisations, looked closely at regional human rights instruments.⁸⁸ However, the updated Arab Charter on Human Rights is not without its critics.

3. Modernising the Arab Human Rights Instrument

Ten years after the original charter, the Arab Charter for Human Rights (2004 Charter) was issued and subsequently, came into force in 2008.⁸⁹ Member States did not have any reservations regarding this Charter. The League adopted a single instrument, combining the first (civil and political rights), second (social and economic rights) and third generations of human rights (collective rights).⁹⁰ This could mean that the Arab League was willing to limit this Charter to the general principles and fundamental rights, and leave the details of the preservation and protection of human rights to complementary treaties which will hopefully be issued in the future. Importantly, the 2004 Charter was adopted by the Arab Permanent Commission on Human Rights⁹¹ whose political members represent their states. This Commission was potentially 'cautious in dealing with differing human rights issues' and put the responsibility on the states,⁹² which is arguably reflected in the drafting of the Charter. In the next section, we will evaluate the revised Charter in the light of the prohibition against torture. Thus, the efficiency of the regional system of human rights in the Arab League can be assessed.

The 2004 Charter consists of 53 articles after the preamble.⁹³ It was poor in quality and vague despite all the years of waiting which had passed before it was adopted.⁹⁴ The preamble characterises the highlights of this Charter which is in line with the cultural nature of the Member States.⁹⁵ It also points out that the 2004

⁸⁵ It can be said that this was due to international pressure to revise the 1994 Charter after the attacks of 11 September 2001 and the political effect on the area. For more details about drafting the 1994 Charter see the statement of Leila Zerrougui; Leila Zerrougui, 'The Arab Charter on Human Rights' (2011) 7(2) *Essex Human Rights Review* 7, 8.

⁸⁶ Mervat Rishmawi, *The League of Arab States: Human Rights Standards and Mechanisms* (Open Society Foundations and Cairo Institute for Human Rights Studies 2015) 68; See also: Allam (n.59) 43.

⁸⁷ The expert committee all worked in the field of human rights. It included: Professor Ibrahim Al-Shadi of Saudi Arabia and a member of the UN Committee on the Rights of the Child; Ms Ghaliya Al-Thani of Qatar and a member of the same committee; Mr Ahmed Khalil of Egypt from the UN Commission on Human Rights, and; Hatem Qattan of Tunisia. The chairmanship of the committee was assigned to the Algerian Judge Leila Zerrougui, chairperson of the UN Working Group on enforced disappearances.

⁸⁸ Rishmawi, *The League of Arab States: Human Rights Standards and Mechanisms* (n.86) 68.

⁸⁹ Arab Charter on Human Rights 2004 (adopted 22 May 2004, entered into force 15 March 2008). Its official translation is provided by the UN High Commissioner for Human Rights; See: www.lasportal.org/ar/sectors/dep/HumanRightsDep/Documents/%D8%A7%D9%86%D8%AC%D9%84%D9%8A%D8%B2%D9%8A.pdf (last accessed 30 July 2018).

⁹⁰ For an example of collective rights: Article 38 states '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.'

⁹¹ The Council of the Arab League, Resolution No.5/437.

⁹² Allam (n.59) 41.

⁹³ Mohammed Al-Midani suggested to group the rights in this Arab Charter into four main categories. He said that the 'first category concerns individual rights: the right to life in Articles 5, 6, and 7; the right to be free of torture in Articles 8, 9, and 20; and the right to security of the person in Articles 14 and 18. The second category concerns the rule of law and justice in Articles 12, 13, 15, 16, 17, and 19. The third category concerns civil and political rights: the right to freedom in political activities and the right to freedom of movement'; See: Al-Midani (n.84) 62.

⁹⁴ Rishmawi (n.62) 370-371.

⁹⁵ It points out that the Arab nation believes in human dignity and in the Arab homeland as the cradle of religion and civilisation.

Charter embraces the principles of rights established by Islamic law (referring here again to the Cairo Declaration, despite the previous criticism that it is questionable). Thus, the preamble defines the identity of the Charter. This Charter can be criticised as being Arab nationalist and influenced by Islamic principles, rather than being a charter for a regional instrument for the protection and preservation of human rights.⁹⁶ However, it was welcomed as presenting ‘a unique framework’, and serving the Arab region in relation to international human rights obligations while taking into account regional considerations.⁹⁷

To assess the scope of the Arab League’s interest in human rights, it is important to examine the charter in depth. This examination of the Charter will be divided into three sections to cover the most important aspects. The first section focuses on the Arab League’s permanent interest in the Palestinian cause; the second highlights the articles in the 2004 Charter regarding the protection of various human rights, and; the third is about procedures for the enforcement of the Charter.

(a) The Arab League’s permanent interest in the Palestinian cause

According to Article 2, the 2004 Charter affirms the right of citizens to self-determination and control over their resources.⁹⁸ This stems from the suffering of the Arab states due to colonialism. It also refers to the right of the Arab states over the lands which are occupied by Israel.⁹⁹ The text of this article states that Zionism and occupation are a challenge to human dignity and a fundamental obstacle to the basic rights of citizens.¹⁰⁰ Nevertheless, the General Secretariat of the Arab League announced that the Charter was put together taking into consideration international human rights standards.¹⁰¹ The UN High Commissioner for Human Rights criticised ‘the equating of Zionism with racism’¹⁰²; instead, upholding ‘universal values rather than focusing on particular ideologies’.¹⁰³ Even though the Arab League’s insistence on equating Zionism with racism cannot be justified, it could be understood in the light of the idea behind the emergence of the organisation. The Arab League emerged due to the Arab states’ united position regarding the Palestinian-Israeli conflict.¹⁰⁴

⁹⁶ Allam (n.59) 55.

⁹⁷ Mattar (n.58) 96.

⁹⁸ Arab Charter on Human Rights (n.89) Art 2(1).

⁹⁹ Allam (n.59) 55.

¹⁰⁰ Arab Charter on Human Rights (n.89) Art 2(3).

¹⁰¹ The General Secretariat of the Arab League, ‘League of Arab States and Human Rights’ (2006) 1 www.arableague.org.uk/uk/League%20of%20Arab%20states%20and%20Human%20Rights.pdf (last accessed 30 July 2018).

¹⁰² UN News Centre, ‘Arab Rights Charter Deviates from International Standards, says UN Official’ (30 January 2008) <https://news.un.org/en/story/2008/01/247292-arab-rights-charter-deviates-international-standards-says-un-official> (last accessed 30 July 2018).

¹⁰³ Mervat Rishmawi, ‘The Arab Charter on Human Rights and the League of Arab States: An Update’ (2010) 10 Human Rights Law Review 169, 171.

¹⁰⁴ However, the Charter fails to restrict the right to self-determination in accordance with the General Comment issued by the Human Rights Committee in the UN on the right to self-determination, specifying that exercising this right should be in line with the states’ obligations under the UN Charter and international law; See: UN HRC, ‘CCPR General Comment No 12: Article 1 (Right to Self-determination), The Right to Self-Determination of Peoples’ (13 March 1984) HRI/GEN/1/Rev9 [6].

(b) Substantive articles in the 2004 Charter

The Charter, in its enumeration of articles, underscores protecting rights and emphasises equality and non-discrimination for any reason whatsoever in the granting of those rights.¹⁰⁵ Dr Zaalani, vice-president of the Arab Committee for Human Rights, announced that the Arab League ‘has lagged behind in the area of human rights’. However, he acknowledged that the Arab region took ‘the initiative of joining fellow members of the international community in the battle for human rights’ with this Charter due to its obligation to guarantee these rights for every human being on their territory.¹⁰⁶ However, the compatibility of the 2004 Charter with other international human rights instruments is reflected in the provisions of non-suspension clauses. It states that Member States may, in times of emergency, impose certain measures and restrictions, on condition that these do not affect: the prohibition of torture and humiliation; the return home; political asylum, and; fair trial.¹⁰⁷ Unfortunately, the Arab states who declared a state of emergency did not comply with these provisions but these rights, specifically the right to prohibit torture and humiliation are even stipulated by Arab states’ constitutions to varying degrees, were blatantly violated in these states with the declaration of a state of emergency.¹⁰⁸

There are a number of human rights which are guaranteed by the Charter. One positive aspect of the Charter is that it emphasises achieving the following aim: to ‘entrench the principle that all human rights are universal, indivisible, interdependent and interrelated’.¹⁰⁹ In general, the provisions of the Charter can be said to be consistent – to some extent – with international standards.¹¹⁰ However, there are two important issues that could hinder the implementation of international human rights norms by restricting some rights by national law or by Islamic standards. Some provisions allow a larger margin for national legislation of each state, for example in regards to having a certain religion or set of beliefs, or the imposition of the death penalty on children under the age of 18.¹¹¹ This leaves the door open for each state to set its own standards without taking into account international standards.¹¹² Further, the responsibilities of men and women in marriage and divorce and the provision of women’s rights are restricted with reference to Islamic law.¹¹³ Some religious interpretation can be used as barriers to equality and lead to violations of international standards due to the state not implementing international human rights treaties.¹¹⁴

The 2004 Charter did not urge states to take any real steps to preserve human rights. These provisions allow states to evade the implementation of the provisions of the Charter.¹¹⁵ No other regional human rights

¹⁰⁵ This is the case even if it is based on ‘race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability.’ However, age and nationality are not mentioned; See: The Arab Charter on Human Rights (n.89) Art 3.

¹⁰⁶ Abdelmadjid Zaalani, ‘Human Rights: Universal Principles and Regional Guarantees’ (The Johns Hopkins University Paris, 1 February 2010) www.protectionproject.org/activities/conferences-seminars/ (last accessed 30 July 2018).

¹⁰⁷ Arab Charter on Human Rights (n.89) Art 4.

¹⁰⁸ For more details see: UNDP, ‘Arab Human Development Report: Challenges to Human Security in Arab Countries’ (2009) 59 www.arab-hdr.org/Reports/2009/2009.aspx (last accessed 30 July 2018).

¹⁰⁹ Arab Charter on Human Rights (n.89) Art 1.

¹¹⁰ Rishmawi (n.62) 369.

¹¹¹ Arab Charter on Human Rights (n.89) Arts 7 and 30.

¹¹² For more details about the conflict between protecting these rights in national and on international levels: Mervat Rishmawi, ‘The League of Arab States and Human Rights’ in Anja Mihr and Mark Gibney (eds), *The Sage Handbook of Human Rights* (Sage Publications Ltd 2014) 622.

¹¹³ Arab Charter on Human Rights (n.89) Art 33.

¹¹⁴ Shaheen Ali and Siobhán Mullally, ‘Women’s Rights and Human Rights in Muslim Countries: A Case Study’ in Hilary Hinds, Ann Phoenix and Jackie Stacey (eds), *Working Out: New Directions for Women’s Studies* (Falmer Press 1992) 117.

¹¹⁵ Allam (n.59) 62.

convention has any similar provisions.¹¹⁶ The Charter strengthens the constitutions of Arab states and their positions in relation to these rights. It is also clear from the foregoing that religious factors play a central role in determining the scope of human rights to which Member States are committed. The Arab League has not explored this area to study the compatibility of Islamic law standards with international standards of human rights and how consequently to pressure these states to accept such rights. Instead of stipulating the obligation of states to amend their national legislation to comply with the provisions of the Charter, these states have been given the opportunity to evade their obligations and to pass legislation that would violate international standards without censorship, thus impairing the implementation of these articles.¹¹⁷ As Rishmawi states, 'the Charter mirrors to a large extent the degree of acceptance of international human rights treaties by Member States and the reservations that have been entered by these states to international instruments'.¹¹⁸ Moreover, the Arab states are using the Arab Charter as 'a regional shield against international pressures on Arab states in the field of human rights'.¹¹⁹

(c) Enforcement procedures of the 2004 Charter

According to Article 49, this Charter will be instituted two months after the date of deposit of the instrument of ratification by seven states to the Secretariat of the Arab League.¹²⁰ At present, the Charter has been ratified or signed by only 14 of 22 members of the League¹²¹ thus questioning the effectiveness of the Charter. There were attempts during the drafting of this Charter to include an Arab human rights court giving individuals the right to complain against states.¹²² Many NGOs and civil society organisations have also requested the inclusion of an annex protocol (under Article 25 of the Charter) with a view to establishing such a court.¹²³ Indeed, after ten years, the Arab League acted on this by adopting an independent draft of the statute of the Arab Court of Human Rights, as we shall see later.

The absence of any mention of the role of NGOs in the Charter is to be noted. However, they play an important role in bringing attention to issues which are not taken into account by the Member States.¹²⁴ Moreover, Arab NGOs can play a more important role in confronting Arab states. They can demonstrate that standards of human rights are universal and can be adopted without compromising the regions' unique cultural, religious, and historical character.¹²⁵ NGOs work with the Arab Permanent Commission on Human Rights¹²⁶ with the 'aim of enriching discussions and promoting human rights' in the region.¹²⁷ However, the

¹¹⁶ Mattar (n.58) 101.

¹¹⁷ Jean-Paul Delevoye, 'The Arab Charter on Human Rights and the European Convention on Human Rights: Universal Principles and Regional Guarantees' (2010) 3 *The Protection Project Journal of Human Rights and Civil Society* 185.

¹¹⁸ Rishmawi (n.112) 622.

¹¹⁹ An-Na'im (n.60) 715.

¹²⁰ Seven states ratified the Charter in the beginning: Algeria, Bahrain, Jordan, Palestine, Syria, Libya and the United Arab Emirates; See: Arab Charter on Human Rights (n.89).

¹²¹ At the time of writing, the Member States that have ratified the Charter are: Algeria (2006), Bahrain (2006), Iraq (2013), Jordan (2004), Kuwait (2013), Lebanon (2011), Libya (2006), Palestine (2007), Qatar (2009), Saudi Arabia (2009), Sudan (2013), Syria (2007), the United Arab Emirates (2008), and Yemen (2008). However, three states have signed but not yet ratified it: Egypt (2004), Morocco (2004), Tunisia (2004); See: The Arab League, 'State Parties to the Arab Charter on Human Rights' www.lasportal.org/ar/humanrights/Committee/Pages/MemberCountries.aspx (last accessed 30 July 2018).

¹²² Delevoye (n.117) 189.

¹²³ Al-Midani (n.84) 63.

¹²⁴ Kareem Elbayar, 'NGO Laws in Selected Arab States' (2005) 7(4) *International Journal of Not-for-Profit Law* 3, 27.

¹²⁵ An-Na'im (n.60) 721.

¹²⁶ Human rights NGOs have been playing the role of observers of state members under the Arab League since 1992; See: General Secretariat of the Arab League (n.101).

¹²⁷ *ibid.*

Arab League Council imposes several criteria and requirements on NGOs which limit their activities.¹²⁸ For example, an NGO is obliged to register its membership in an Arab state; consequently, it has its nationality and is subject to its control. As a result, several human rights organisations have had their work disrupted and are not able to register themselves due to 'the repressive measures applied to associations in their country'.¹²⁹

Since the UN General Assembly resolution established the Human Rights Council in 2006, the position of NGOs has been strengthened at 'the national, regional and international levels, in the promotion and protection of human rights'.¹³⁰ Nevertheless, the development of NGOs has been limited due to the regulations and laws on associations and civil society which Arab governments have passed so that the NGOs are largely ineffective.¹³¹ Indeed, a number of Arab NGOs have been launched by the governments of the Arab states themselves and are working with their financial support and under the states' observation.¹³² Thus it is difficult for Arab NGOs under those conditions to play an effective role in monitoring the states' human rights violations or to work alongside the Arab League.

Despite several positive points, the Charter still has many weaknesses,¹³³ so the recent announcement of the Chairman of the Arab Human Rights Committee, Dr Al-Yami, is surprising. He confirmed that the Charter represents a real qualitative leap for the human rights movement in the Arab world and that 'the lesson will be in implementing and application of the provisions of the charter and not in drafting or writing its articles'.¹³⁴ This is an indication of the League's satisfaction with the Charter in spite of its defects, and that it has no desire to amend it in the future. It is clear from the above that the Arab League has been weak in drafting a regional convention in accordance with international human rights standards and creating a legally binding obligation to hold Member States accountable for their actions. It has also failed to provide protection to victims of human rights violations by not providing an appropriate enforcement mechanism to protect their rights or to allow them to appeal to a regional body for their redress. Moreover, modernising the 2004 Charter seems to be difficult due to the bureaucracy of the Arab League as we have already observed.

¹²⁸ See the criteria and requirements on NGOs in the League of Arab States [Arabic version]

www.lasportal.org/ar/sectors/dep/HumanRightsDep/Documents/%D8%A7%D9%84%D8%B6%D9%88%D8%A7%D8%A8%D8%B7%20%D9%88%D8%A7%D9%84%D9%85%D8%B9%D8%A7%D9%8A%D9%8A%D8%B1%20%D9%88%D8%A7%D9%84%D8%A5%D8%AC%D8%B1%D8%A7%D8%A1%D8%A7%D8%AA%20%D8%A7%D9%84%D8%AE%D8%A7%D8%B5%D8%A9%20%D8%A8%D9%85%D9%86%D8%AD%20%D8%B5%D9%81%D8%A9%20%D9%85%D8%B1%D8%A7%D9%82%D8%A8.pdf (last accessed 30 July 2018); See also: Rishmawi, (n.112) 619.

¹²⁹ International Federation for Human Rights, 'The Arab League and Human Rights: Challenges Ahead' (Regional Seminar in Cairo, FIDH 16-17 February 2013) 15 www.fidh.org/IMG/pdf/arab_league_human_rights_challenges.pdf (last accessed 30 July 2018).

¹³⁰ UNGA, 'Human Rights Council' (3 April 2006) UN Doc A/RES/60/251.

¹³¹ Abd al-Ghaffar Shukr, 'Islamic NGOs and the Development of Democracy in Egypt' in Sarah Ben Néfissa *et al* (eds), *NGOs and Governance in the Arab World* (The American University in Cairo Press 2005) 169.

¹³² Sarah Ben Néfissa, 'NGOs and Governance in the Arab World: A Question of Democracy' in Ben Néfissa, *ibid*, 3.

¹³³ Bahrain National Institution for Human Rights, 'Human Rights' (July 2014) www.nihr.org.bh/en/MediaHandler/GenericHandler/documents/download/15-%20Edition%2008%20-%20English.pdf (last accessed 30 July 2018).

¹³⁴ See the statement of Dr Hadi Al-Yami, head of the Arab Human Rights Charter Committee, at the end of an official visit to Morocco: 'The Value of The Arab Charter For Human Rights In Its Application And Not Its Formulation' (2015) *Sabiq Newspaper* [Arabic version] <https://sabq.org/689gde> (last accessed 30 July 2018).

C. EVALUATION OF THE HUMAN RIGHTS MECHANISMS OF THE ARAB LEAGUE

1. The Role of the Arab League in Relation to the Right to Freedom from Torture

After briefly referring to the previous Arab Charter on Human Rights and the obstacles faced by the Arab League as well as highlighting the updated version of this Charter, it is worth focusing on the right to the prohibition of torture under the League. The 2004 Charter's provisions should be an essential tool for guaranteeing and strengthening freedoms as well as for responding to various kinds of crises as per international standards. Torture is one of the most serious human rights violations because of its relationship with human dignity;¹³⁵ thus, many international instruments are focused on the prevention and control of torture.¹³⁶ International law has also played a role in the criminalisation of torture. Higgins states that 'no one doubts there exists a norm prohibiting torture. No state denies the existence of such a norm; and, indeed, it is widely recognised as a customary rule of international law by national courts'.¹³⁷

Internationally, the UDHR states in Article 5 that '[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.' The UN adopted the International Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)¹³⁸ in 1984 and established the Committee Against Torture¹³⁹ in 1987; further, it also established the Optional Protocol to the Convention¹⁴⁰ that aimed to assist states in implementing their obligations under the CAT and to take the necessary steps to protect individuals from having their rights violated. On the other hand, the practice of torture is locally widespread in the Member States of the Arab League, although some of these states are involved in this treaty. Eighteen of the Arab states have ratified the Treaty¹⁴¹; however, the Working Group on the Universal Periodic Review under the UN Human Rights Council has monitored allegations of torture being widely and systematically practiced in the territory of these states.¹⁴² Moreover, several NGO reports have indicated that torture is widespread in states, such as the Arab States, subject to war, political violence, armed opposition, terrorism, and other similar issues.¹⁴³

In this context, the Arab Permanent Commission on Human Rights held several meetings after adopting the 2004 Charter to implement this at the national and regional levels. Shammout, Chairman of the Arab Permanent Commission on Human Rights, stated that the Commission conducts several tasks pertaining to the consideration of human rights files in the Arab region, and considered the 'legislative kitchen' for these

¹³⁵ Nigel Rodley and Matt Pollard, *The Treatment of Prisoners under International Law* (Oxford University Press 2009) 471.

¹³⁶ *ibid.*

¹³⁷ Rosalyn Higgins, *Problems & Process: International Law and How We Use It* (Oxford University Press 1994) 20.

¹³⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, enforced 26 June 1987) 1465 UNTS 85.

¹³⁹ CAT, Art 17.

¹⁴⁰ UNGA, 'Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' UN Doc A/RES/57/199.

¹⁴¹ The Arab League Member States who are also parties to CAT: Egypt (1986), Tunisia (1988), Algeria (1989), Libya (1989), Jordan (1991), Yemen (1991), Morocco (1993), Kuwait (1996), Saudi Arabia (1997), Bahrain (1998), Lebanon (2000), Qatar (2000), Djibouti (2002), Syria (2004), Mauritania (2004), Iraq (2011), United Arab Emirates (2012).

¹⁴² See Human Rights Council, Working Group on the Universal Periodic Review Egypt (A/HRC/WG6/7/EGY/3, 2009); Bahrain (A/HRC/WG6/13/BHR/2, 2012); Algeria (A/HRC/WG6/13/DZA/2, 2012); Saudi Arabia (A/HRC/WG6/17/SAU/3, 2013); Yemen (A/HRC/WG6/18/YEM/3, 2013), and; Qatar (A/HRC/WG6/19/QAT/3, 2014).

¹⁴³ Redress Trust, 'Torture in the Middle East and North Africa Region: The Law and Practice' (2013) www.redress.org/downloads/publications/130821%20MENA%20report.pdf (last accessed 30 July 2018).

issues in the Arab League.¹⁴⁴ However, the Commission's role was not mentioned in the 2004 Charter. The Commission discussed the draft of the Arab Guide against torture that will be based on the provisions of the 2004 Charter.¹⁴⁵ However, during the discussion the Commission focused its attention on the Arab citizens detained in Israeli prisons and criticised the practice of torture and the massive violations of international human rights of these detainees held by the Israeli authorities.¹⁴⁶ The Commission, as per the common practice of the Arab League, diverted its attention and efforts from the violations of human rights in the Arab states and ignored the torture of the victims in the territories of the Arab states. However, it is unclear whether this draft will include guidelines for interpreting the meaning of 'torture' in the 2004 Charter or whether it will include standard guidelines for implementing the provisions of this article, similar to the standards for the prevention of torture in other regional instruments.¹⁴⁷

2. Prohibition of Torture under the 2004 Charter

Article 8(1) of the 2004 Charter states '[n]o one shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment or punishment'. This Article is similar to Article 7 of the ICCPR.¹⁴⁸ However, some argue that the provision in the 2004 Charter is stronger because it includes physical torture in addition to psychological torture.¹⁴⁹ Further, it is stronger as it obligates the Member States to protect everyone in their territory against torture.¹⁵⁰

The 2004 Charter, like other regional human rights instruments, does not give any definition of the concept of 'torture'.¹⁵¹ An explicit and comprehensive definition is found in Article 1 of the CAT. According to Article 1 CAT, there are three basic elements required for an act to constitute torture: (1) any physical or mental pain or severe suffering; (2) any action performed with the specific purpose and motivation of obtaining information or confessions to convict the accused, and; (3) torturous actions performed by a public official or any other person (provided there is incitement, consent, or silence of a public official). While some argue that it is unnecessary to include a legal definition of torture in the Charter, the absence of any definition leaves a wide area that potentially includes any practice, method, or penalty included within its scope.¹⁵² Despite this, the absence of a definition of torture in the 2004 Charter does not limit the application of a protective mechanism and may include all forms of torture and penalties or inhuman or degrading treatments.¹⁵³ In practice, however, states are not committed to the minimum elements mentioned in the CAT definition, making it necessary to include a definition in the 2004 Charter. This is evident in its concluding

¹⁴⁴ Bahrain News Agency, 'Meetings of the 41st Session of the Permanent Arab Committee on Human Rights' (2017) <http://bna.bh/portal/news/771350> [Arabic version] (last accessed 30 July 2018).

¹⁴⁵ It is being prepared and drafted by representatives of the legal departments of the Arab League and the relevant NGOs and is expected to be issued after three years; See: Arab Permanent Commission on Human Rights, 'Meetings of the Commission 41st Session of the Standing Arab Committee on Human Rights' (2017) 16.

¹⁴⁶ *ibid* 8-11.

¹⁴⁷ Barbara Bernath, 'Preventing Torture: An Operational Guide for National Human Rights Institutions' (OHCHR, Association for the Prevention of Torture and Asia Pacific Forum 2010) 33.

¹⁴⁸ ICCPR (n.17), Art 7: 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.'

¹⁴⁹ Negad Al Borai, 'Human Rights in the Arab Way: Civil and Political Rights Between the Arab Charter on Human Rights and International Obligations' (2006) *Cairo Institute for Human Rights Studies* 97 [Arabic Version].

¹⁵⁰ Arab Charter on Human Rights (n.89) Art 8(2).

¹⁵¹ See: Article 3 of the European Convention on Human Rights and; Article 5 of the African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58

¹⁵² Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (Oxford University Press 2013) 229.

¹⁵³ UN HRC, 'CCPR General Comment No.20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)' (10 March 1992) [4].

observations; indeed, the Committee against Torture has consistently recommended that state parties amend their national legislation to include the elements contained in Article 1 of the CAT.¹⁵⁴

The 2004 Charter seems more effective than other regional instruments in preserving this right, as it considers international standards. The CAT excludes the possibility of deviating from this provision of prohibition of torture. Article 2(2) states, 'no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture'. The 2004 Charter also prohibits physical and psychological torture as something that cannot be overlooked,¹⁵⁵ even in times of emergency.¹⁵⁶ However, some Arab League members violate this right when imposing emergency laws. They use multiple means of torture to terrorise people and to suppress their freedoms.¹⁵⁷ Indeed, the imposition of a state of emergency in these states may be used as a justification for many human rights violations in a manner contrary to the obligations of these states under international treaties.¹⁵⁸

The Arab Charter has broadened the definition of prohibition of torture to include the perpetrator, contributor, and participant in torture.¹⁵⁹ This means that the mandate of the Charter extends the punishment to include not only government employees, but also all other individuals.¹⁶⁰ Article 16(6) shows the Arab League's concern with the prevention of torture and protection of the individual when it states that the testimony of the accused obtained under coercion shall not be accepted. This is in accordance with the General Comment No.20 of the UN Human Rights Committee that states: 'the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment.'¹⁶¹ In addition, it shows an enhancement of the rule of law and respect for human rights that is a fundamental pillar in the prohibition of torture.¹⁶²

A strength of the Arab Charter is that in the event of a violation of this right and an individual being subjected to torture, it ensures full compensation and rehabilitation.¹⁶³ Apart from the prohibition of torture, the Charter does not guarantee any effective remedies to protect any other rights. However, the CAT emphasises the inclusion of compensation for all the five forms as an obligation of the states.¹⁶⁴ Thus, this provision is insufficient because of the absence of any measures supporting reparations such as restitution, satisfaction,

¹⁵⁴ See for example: Committee against Torture, 'Consideration of Reports Submitted by States Parties under Article 19 of the Convention' (21 December 2011) UN Doc CAT/C/CAN/CO/5, [9].

¹⁵⁵ Also, no derogation shall be made from prohibition of torture; See: ICCPR (n.17), Art 4(2).

¹⁵⁶ Arab Charter on Human Rights (n.89) Art 4(2).

¹⁵⁷ Michael Macaulay, 'Syria: The Need to Reform Monitoring of States of Emergency' (2005) 13 www.lrwc.org/ws/wp-content/uploads/2012/03/Syria.StateofEmergency.Macaulay.Feb..06.pdf (last accessed 30 July 2018).

¹⁵⁸ UN HRC, 'CCPR General Comment No.29: Article 4: Derogations during a State of Emergency' (31 August 2001) UN Doc CCPR/C/21/Rev1/Add11.

¹⁵⁹ Arab Charter on Human Rights (n.89) Art 8(2).

¹⁶⁰ For instance, private individuals such as: 'medical doctors who could be invited to give their opinion during the torture of an individual on whether the victim is about to succumb to death or not'; Jamil Mujuzi, 'The Protection of the Right to Freedom from Torture in the Arab League States and under the Arab Charter on Human Rights' (2010) 2(2) *City University of Hong Kong Law Review* 255.

¹⁶¹ HRC, 'General Comment No.20' (n.153).

¹⁶² Committee Against Torture, 'Report of the Committee against Torture in CAT's 51st and 52nd session' (2013) UN Doc A/69/44, [22(c)].

¹⁶³ Arab Charter on Human Rights (n.89) Art 8(2).

¹⁶⁴ The five forms are: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition; See: Committee against Torture, 'General Comment No 3: Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Implementation of Article 14 by States Parties' (13 December 2012) UN Doc CAT/C/GC/3, [2].

and a guarantee of non-repetition, in cases of torture.¹⁶⁵ However, due to the absence of enforcement mechanisms for the 2004 Charter, it is completely ignored by state members and considered ‘cheap talk with virtually no impact on state practice.’¹⁶⁶

It should be noted that the 2004 Charter is the only regional treaty (that is not directly related to torture and its prohibition) that obligates Member States to compensate and rehabilitate the torture victims.¹⁶⁷ The inclusion of remedies in this Charter may be due to a lack of willingness by the League to issue other instruments for the establishment of bodies to implement and monitor the states’ compliance with these provisions.¹⁶⁸ If so, it is important that the Arab Charter includes a legal definition of the concept of torture to determine the scope of obligations.¹⁶⁹ The importance of this is demonstrated by the absence of explicit provisions in the majority of state constitutions of the League Member States.¹⁷⁰ Even Member States that have made such amendments to the definition of torture in their legislation have not consistently abided by Article 1 CAT.¹⁷¹ It is important to define torture in a way that allows it to be used by the Arab Court to interpret it in the context of the aim and purpose of the provision.¹⁷²

Amnesty International has expressed its concern about the Arab Charter, calling for an amendment as per the definition of torture in Article 1 of the CAT.¹⁷³ Hopefully the Charter Committee can fill this gap and define the types of ‘torture’ which are prohibited by the Arab Charter. This can be determined by examining its reports and the recommendations adopted by the Member States.

3. Measures Regarding the Prohibition of Torture Recommended by the Charter Committee

(a) *The role of the Charter Committee*

The Charter Committee was established by the 2004 Charter and is tasked with monitoring the implementation of the Charter. Unlike the members of the Arab Permanent Commission on Human Rights, members of the Charter Committee are required to be highly experienced experts who are competent in the field of human rights.¹⁷⁴ Accordingly, the Charter guarantees that these experts ‘enjoy the immunities necessary while carrying out their functions as members of the Committee’.¹⁷⁵ Generally, every member state nominates such experts every four years,¹⁷⁶ thereafter, seven experts are elected by secret ballot to

¹⁶⁵ Rishmawi (n.62) 370.

¹⁶⁶ Hathaway (n.2121) 593.

¹⁶⁷ Mujuzi (n.160) 257.

¹⁶⁸ Arab Human Rights Committee, ‘Eighth Annual Report for Charter Committee’ (2016) 38 www.lasportal.org/ar/humanrights/Committee/Documents/للجنة%20الثامن%20السوي%20التقرير.pdf [Arabic version] (last accessed 30 July 2018).

¹⁶⁹ Manfred Nowak, ‘What Practices Constitute Torture? US and UN Standards’ (2006) 28(4) *Human Rights Quarterly* 809, 818.

¹⁷⁰ Mujuzi (n.160) 248-249.

¹⁷¹ See for example: Committee Against Torture, ‘Concluding Observations on the Second Periodic Report of Qatar’ (25 January 2013) UN Doc AT/C/QAT/CO/2, [8].

¹⁷² Magnus Killander, ‘Interpreting Regional Human Rights Treaties’ (2011) 7(13) *International Journal on Human Rights* 145, 150.

¹⁷³ Amnesty International, ‘Middle East and North Africa: Re-Drafting the Arab Charter on Human Rights: Building for a Better Future’ (11 March 2004) 9 www.amnesty.org/en/documents/mde01/002/2004/en/ (last accessed 30 July 2018).

¹⁷⁴ Arab Charter on Human Rights (n.89) Art 45(2).

¹⁷⁵ *ibid* Art 47.

¹⁷⁶ The Committee can be faulted for not electing any female member until now, see: Renaud Detalle, ‘Religious Freedom and Minority Rights in the Arab World in Light of the Arab Charter’ (2010) 3 *The Protection Project Journal of Human Rights and Civil Society* 103, 105.

constitute this Committee.¹⁷⁷ The main mission of the Committee is to highlight the progress or decline of respect for human rights in the Arab world.¹⁷⁸ While the Committee works as independent expert body, there is no system of thematic or country-specific special procedures.

The Committee is the only means for the Arab League to monitor the compliance of states to the principles implemented by the 2004 Charter. Unfortunately, the Committee could be described as an under-developed mechanism,¹⁷⁹ due to the lack of an enforcement mechanism and the absence of an individual complaint procedure.

Every three years, the Member States are required to submit a periodic report to the Committee. This report includes the main measures that states 'have taken to give effect to the rights and freedoms recognised in this Charter and on the progress made towards the enjoyment thereof'.¹⁸⁰ After discussion, the Committee provides comments and recommendations as per the aims of the Charter.¹⁸¹ However, there is no enforcement mechanism that ensures the implementations of the Committee's recommendations.¹⁸² Consequently, these recommendations are not binding on the Member States and can only 'affect the public opinion in the Arab world and beyond'.¹⁸³

The Committee could also be labelled as under-developed owing to the absence of any procedure or mechanism for submitting individual petitions. Individual or state complaints about alleged violations of human rights cannot be addressed by this Committee.¹⁸⁴ However, individual petitions 'would be a valuable means of ensuring domestic enforcement of rights provided by the Charter'.¹⁸⁵ Moreover, it is important to have a regional complaints mechanism because most Member States have not signed up for the UN complaint system.¹⁸⁶ Therefore, the Committee fails to guarantee any form of reparation due to 'the lack of an effective remedy for those whose rights and freedoms have been violated'.¹⁸⁷ Thus, these criticisms show that the contribution of this Committee as a treaty body could be strengthened. Despite these flaws, the Charter Committee is the only effective body for the protection of human rights under the Arab League, as has been discussed further in this review.

To enhance its role and influence, the Charter Committee participated in the 25th Session of the UN Subcommittee against Torture¹⁸⁸ in Geneva in 2015. Moreover, various meetings were held (with the Vice-President of the International Committee of the Red Cross, Secretary of the Committee Against Torture, and the President of the Victims of Torture Fund) with the aim of exchanging information and experiences

¹⁷⁷ Arab Charter on Human Rights (n.89) Art 45.

¹⁷⁸ Dalia Vitkauskaitė-Meurice, 'The Arab Charter on Human Rights: The Naissance of a New Regional Human Rights System or a Challenge to the Universality of Human Rights?' (2010) 119(1) *Jurisprudence* 165, 176.

¹⁷⁹ It can be described as a primitive mechanism due to it stipulating the same mechanisms as specified in ICCPR and ICESCR in 1966, even though it is a recently formed body, having been formed in 2009; See: Al-Midani (n.84) 63.

¹⁸⁰ Arab Charter on Human Rights (n.89) Art 48.

¹⁸¹ *ibid.*

¹⁸² Rishmawi (n.70) 52.

¹⁸³ Al-Midani (n.47) 168.

¹⁸⁴ Unlike the same bodies in other regional organisations, see: Vitkauskaitė-Meurice (n.178) 175.

¹⁸⁵ Mattar (n.58) 144.

¹⁸⁶ Rishmawi (n.62) 365.

¹⁸⁷ Vitkauskaitė-Meurice (n.178) 176.

¹⁸⁸ The Subcommittee against Torture was established under the provisions of the Optional Protocol to the Convention against Torture, adopted by the UN General Assembly in 2002, and entered into force in 2006.

regarding the efforts to combat torture.¹⁸⁹ During these meetings, the Charter Committee called for a sustainable preventive approach that focused on the prevention of torture and ill-treatment as well as visits to any region where individuals may be deprived of their liberty. This call was reflected in the Committee's observations and recommendations in the states' periodic report. The Charter Committee also announced that it would publish several UN recommendations aimed at establishing preventive mechanisms and the means for developing them.¹⁹⁰

(b) Observations and Recommendations of the Committee in Relation to Torture

In its work thus far, it should be noted that the Committee has made considerable efforts with respect to the protection of persons from torture and its effects.¹⁹¹ Generally, the Committee has not only recommended the enshrining of the Charter provisions in the states' legal systems, but also has adopted a flexible interpretative approach, considering the establishment of such preventive and protectionist measures that are not necessarily automatically derived from Article 8 of the 2004 Charter. In order to thoroughly examine the Committee's observations and recommendations concerning torture, these are presented in three groups: the first regards the limitations and claims for compensation; the second describes the detection and examination of cases of torture, and; the third mentions the protection of persons from torture.

The observations and recommendations of the Charter Committee on the limitations and claims for compensation were repeated in almost every state report.¹⁹² The Committee criticised the absence of an explicit provision in the national legislation enshrining the principle of non-derogation of torture. In addition, the Committee recommended including a special provision in the national law of the Member States regarding compensation. This provision would offer a legal basis to support each victim of torture and would support the demand of fair compensation by any person who had undergone torture.¹⁹³ In response to this, in the discussion session of the reports, Member States often invoke the general principle included in their national laws that anyone subjected to direct harm as the result of a crime is entitled to bring a civil action in order to claim compensation for the harm caused by this crime.¹⁹⁴ However, the Committee considered that this general principle was not sufficient to ensure compliance with the Charter.

The Committee's observations also included the detection and examination of the torture cases. In response to Algeria's report, the Committee expressed the view that existing institutional measures were ineffective in monitoring the places of detention.¹⁹⁵ Following this, the Committee recommended the strengthening of

¹⁸⁹ The Charter Committee of the Arab League, 'Seventh Annual Report for Charter Committee' (2015) 25 www.lasportal.org/ar/humanrights/Committee/Documents/الع20الإنسان20حقوق20اللجنة20السابع20السنوي20التقرير.pdf [Arabic version] (last accessed 30 July 2018).

¹⁹⁰ *ibid.*

¹⁹¹ The Charter Committee in the Arab League, 'The Reports Submitted by Member States' (undated) www.lasportal.org/ar/humanrights/Committee/Pages/Reports.aspx [Arabic version] (last accessed 30 July 2018).

¹⁹² See the Committee's observations on the reports of Jordan, Algeria, Bahrain, Qatar, UAE, Iraq, Lebanon, Sudan, Saudi Arabia and Kuwait.

¹⁹³ For more details, see: Gabriela Echeverria, 'Do Victims of Torture and Other Serious Human Rights Violations have an Independent and Enforceable Right to Reparation?' (2012) 26 *The International Journal of Human Rights* 698, 716.

¹⁹⁴ For example, see the Jordanian response to the Charter Committee about this issue: The Arab League, 'Response of the Hashemite Kingdom of Jordan to the list of issues on the Kingdom's first periodic report' (2016) www.lasportal.org/ar/humanrights/Committee/Documents/التساؤ20فانمة20على20الهاشمية20الأردنية20المملكة20دالمسبقة20لات.pdf [Arabic version] (last accessed 30 July 2018).

¹⁹⁵ The Charter Committee in the Arab League, 'Concluding Observations and Recommendations of the Arab Human Rights Committee to Consider Reports Submitted by Democratic People's Republic of Algeria' (13 November 2017) www.lasportal.org/ar/humanrights/Committee/Documents/%D8%A7%D9%84%D9%85%D9%84%D8%A7%D8%AD%D8%B8%D8%A7%D8%AA%20%D9%88%D8%A7%D9%84%D8%AA%D9%88%D8%B5%D9%8A%D8%A7%D8%AA%20%D8

the institutional measures for the effective monitoring of the places of detention; this recommendation was reaffirmed for several other states. The recommendation also involved establishing an independent national mechanism to monitor and supervise all places of detention for impartial and prompt investigation of all torture complaints. The Committee further proposed increasing the number of programmes in each state with the aim of training judges, prosecutors and medical professionals in investigative techniques, evidence collection, and document authentication in torture cases. Some Member States were also recommended to reduce the cost incurred on forensic medicine for providing proof in torture cases; however, in other cases, these expenses were directed to be the respective state's responsibility. All these recommendations fall within the framework of the Committee's flexible approach for expanding the interpretation of the 2004 Charter in relation to torture.

The third group of the Committee's observations and recommendations concerns the protection of persons against torture. The Committee considers that Member States should take effective measures to prevent torture. The most important of these measures is the criminalisation of torture in the national law.¹⁹⁶ As mentioned previously, some Member States have not included criminalisation of torture in their national legislation; alternatively, in some cases, the criminalisation of this crime does not include a definition of the scope of torture. Thus, the Committee issued recommendations to most Member States to criminalise torture and reconsider the criminalisation of all forms of torture in their legal systems, as stipulated in Article 8 of the 2004 Charter and Article 1 of the CAT. Thus, the Charter Committee through its recommendations and comments on state parties' reports did not provide a definition of 'torture' although it confirmed the definition adopted in the international instrument.

Thus, through its recommendations, the Committee is driving the Arab League to uphold international standards.

D. THE ARAB COURT ON HUMAN RIGHTS

The Arab Charter on Human Rights did not mention the establishment of any court. However, the Arab League took an important step for protecting human rights by drafting the Statute of the Arab Court on Human Rights. This Statute proposal was adopted by Resolution No.7790 in 2014 and consists of a preamble and 35 articles.¹⁹⁷ The Arab League Secretary General Al-Arabi announced that establishing this Court represents 'a civilizational move in the field of human rights in the world Arab' and reflects the demand of people for political and democratic reforms.¹⁹⁸ However, this proposal is the second attempt of the Arab League to establish a judicial organ to protect human rights. The previous attempt proved a failure.¹⁹⁹

[%A7%D9%84%D8%AE%D8%AA%D8%A7%D9%85%D9%8A%D8%A9%20%D8%A7%D9%84%D8%B5%D8%A7%D8%AF%D8%B1%D8%A9%20%D8%B9%D9%84%D9%89%20%D8%AA%D9%82%D8%B1%D9%8A%D8%B1%20%D8%A7%D9%84%D8%AC%D9%85%D9%87%D9%88%D8%B1%D9%8A%D8%A9%20%D8%A7%D9%84%D8%AC%D8%B2%D8%A7%D8%A6%D8%B1%D9%8A%D8%A9.pdf](#) [Arabic version] (last accessed 30 July 2018).

¹⁹⁶ The recommendations of the Committee included the need to explicitly stipulate the criminalisation of torture in states whose constitution does not criminalise torture, such as Saudi Arabia, as well as the states that criminalise torture in its constitution in physical forms only, such as Kuwait.

¹⁹⁷ The Statute of the Arab Court of Human Rights, 'The Arab Court of Human Rights: A Flawed Statute for an Ineffective Court' (2015) [unofficial translation] 35 www.icj.org/wp-content/uploads/2015/04/MENA-Arab-Court-of-Human-Rights-Publications-Report-2015-ENG.pdf (last accessed 30 July 2018).

¹⁹⁸ See the official speech: Bahrain National Institution for Human Rights (n.133) 3.

¹⁹⁹ There was a proposal regarding an Arab Court of Justice in 1996 which has not entered into force yet.

Although the Arab Court Statute was welcomed within the Arab League,²⁰⁰ there were many criticisms regarding this proposal from human rights NGOs.²⁰¹ The most common criticism here was that the torture victims would not be able to directly seek redress in this Court. According to Article 19, only Member States can be allowed to petition. This undermines the aim of the court because Member States will likely rarely file complaints against each other for diplomatic reasons.²⁰² However, individual complaints are important as they give 'concrete meaning' to human rights.²⁰³ In addition, NGOs are not allowed access to the Court on behalf of an individual victim if they do not have the state's permission.²⁰⁴ This is an example of the Arab League imposing various restrictions on the activities of the NGOs, thereby limiting their role, as mentioned previously.

The effectiveness of the Court remains to be seen, given that it has not yet come into force. The Court Statute will be enforced after being ratified by seven Member States.²⁰⁵ After submitting the ratification documents to the Secretary General, the Court will start proceedings one year after the date of enforcement.²⁰⁶ It is hoped that the adoption and enforcement of this Court will help decision making and interpret provisions, such as clearly defining 'torture' in the 2004 Charter. It is highly likely that this Court would be willing to uphold the international standards of human rights in defining torture, based on the Committee's dealings with the states' reports. Further, this Statute would potentially overcome the lack of an enforcement mechanism in the 2004 Charter that did not allow the Charter Committee to hold accountable Member States that did not respect the prohibition of torture and other practices that violate human rights and dignity.

E. CONCLUSION

In the seven decades since its establishment, the contribution of the Arab League as a regional organisation in protecting human rights has been relatively weak. In an attempt to increase the effectiveness of their role, the League issued the Arab Charter on Human Rights in 1994. This Charter was not compatible with international human rights standards and was not enforced. The situation in the Arab regions also prevented the effective application of this Charter. Equally, the current Charter seems ineffective primarily because it does not require Member States to be obliged to amend their domestic legislation as per the standards and provisions of international law. Despite this, the Charter Committee has made some positive impact by encouraging the League to uphold international standards to protect individuals against the violation of their human rights.

²⁰⁰ For example, the Chairman of the Arab Parliament, Mr Ahmad Al-Jarwan, said: 'We in the Arab Parliament, as representatives of the will of the Arab people, firmly support the establishment of the court to meet the aspirations of the people, and to complement the system of human rights justice in the Arab world.' See: Bahrain National Institution for Human Rights (n.133) 8.

²⁰¹ See the statement from several regional and international organisations concerning the proposed Statute of the Arab Court on Human Rights: International Commission of Jurists, 'Proposed Arab Court of Human Rights: An Empty Vessel Without Substantial Changes to the Draft Statute' (*International Commission of Jurists*, 6 June 2014) www.icj.org/wp-content/uploads/2014/06/Arab-Court-Statement-June-2014-ENG-FINAL1.pdf (last accessed 30 July 2018).

²⁰² OHCHR, 'Human Rights Bodies – Complaints Procedures' (OHCHR) www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx#individualcomm (last accessed 30 July 2018).

²⁰³ OHCHR, 'Procedure for Complaints by Individuals under the Human Rights Treaties' (OHCHR) www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx#individualcomm (last accessed 30 July 2018).

²⁰⁴ Statute of the Arab Court of Human Rights, Art 19.

²⁰⁵ *ibid* Art 33.

²⁰⁶ *ibid*.

An assessment of the role of the Arab League in upholding the prohibition led to the conclusion that the Charter Committee is the driving force in the Arab League, pushing for the upholding of international standards. However, the lack of scope of torture in the Charter is a major issue. In response to this failure, the Charter Committee adopted a flexible approach for the interpretation of the Charter as per international standards by issuing several recommendations for the Member States. However, these recommendations are based on the periodic reports submitted by the Member States and are not binding, hindering the effective protection of human rights.

The Arab League has not played an effective role in protecting individuals, in general and in the light of the prohibition of torture. Hopefully, after it has been enforced, the Arab Court for Human Rights will play a more effective role in this regard and will be able to interpret the provisions of the 2004 Charter, clearly defining the practice of torture. In order for these efforts to be meaningful and effective, the Court Statute should be amended to allow individuals to petition to the Arab Court on Human Rights. Otherwise, the Arab League will continue to be ineffective in its role and fail to effectively fulfil its potential as a key agent in the protection of human rights in the region.