



Assessing Human Rights in the Arab World

An Overview of the Arab Human Rights System

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I. Introduction: The Situation of Human Rights in the Arab World

The situation of human rights in the Arab world today is at a critical juncture as the region grapples with successive and ongoing crises. The recovery process from those remains slow, with persistent wars, conflicts, and external interventions continuing to plague the entire Arab community. Losses of innocent lives, multiple economic crises, the rise of extremism and conservatism, the lack of accountability and repeated impunity have contributed to a steep increase¹ in human rights violations. Indeed, achieving societal development² remains elusive amid recurrent cycles of violence and restrictions and the failure to uphold the rule of law and justice.

The trajectory of human rights in the Arab world is a complex one, characterized by both progress and setbacks. Despite the ratification of treaties and conventions by international bodies to ensure Arab human rights, numerous treaties have not been ratified by all Arab countries. While civil society group collaborations as well as government initiatives have made significant strides towards improvement, challenges, such as reservations to the Human Rights treaties, persist.

In the Arab World, the right to life is often violated in armed conflicts and areas of tension and civil unrest, resulting in the loss of civilian lives, whether in Sudan, Gaza, Yemen, or Syria. In some countries, irregular migration movements are increasing, leading to the loss of many lives when trying to cross the Mediterranean, to name a few of the dire repercussions³. Non-governmental organizations continue to face restrictive regulations, impeding their practical operations,⁴ while freedom of speech remains constrained in many countries in the region.⁵ It is evident that much work remains to be done to establish and strengthen human rights for civil society and human rights defenders, particularly in areas such as the right to life, liberty, and education, gender equality, as well as freedom from torture and the death penalty.⁶

Therefore, a robust human rights system is vital not only to counter violations, but also to help improve the general status quo of human rights in the Arab World. Indeed, human rights systems are important pillars of the international system for the promotion and protection of human rights.⁷ Through their

1 See Amnesty International: "Middle East and North Africa Regional Overview"; April 2024, <https://www.amnesty.org/en/location/middle-east-and-north-africa/report-middle-east-and-north-africa/>; Accessed on 03/06/2024.

2 "A process of constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom;" See UNGA: "Declaration of the Right to Development"; 4 December 1986, <https://www.ohchr.org/en/documents/instruments/declaration-right-development>; Accessed on 01/06/2024.

3 See MENA Rights Group: "Boats of Death: Killing Borders and Lost Justice"; 6 February 2023, <https://www.menarights.org/en/articles/boats-death-killing-borders-and-lost-justice>; Accessed on 28/04/2024.

4 See Anwar Mhajne: "The State of Civil Society in MENA after the 2011 Uprisings"; Arab Center Washington DC; 10 April 2024; <https://arabcenterdc.org/resource/the-state-of-civil-society-in-mena-after-the-2011-uprisings/>; Accessed on 30/04/2024.

5 See Our World in Data: "Freedom of Expression and Alternative Sources of Information index"; <https://ourworldindata.org/grapher/freedom-of-expression-index>; accessed 30/04/2024.

6 See Human Rights Watch: "World Report 2024"; <https://www.hrw.org/world-report/2024>; Accessed on 30/04/2024.

7 See European Parliament – Directorate General for External Policies: "The Role of Regional Human Rights Mechanisms"; 2010, [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET\(2010\)410206_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET(2010)410206_EN.pdf); Accessed on 01/06/2024.

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work, mechanisms can address complaints of victims, interpret human rights, or monitor violations, aiming to ensure that violations are averted, stopped, investigated or that remedial actions are in place.⁸ This is crucial, as the rule of law and human rights are closely linked: the set-up of functioning human rights systems is essential to ensure access and equality before the law and vice-versa.⁹ These factors, in turn, create more peaceful, just, and inclusive societies, as highlighted by the UN Sustainable Development Goal 16.

This research aims to examine the current status of human rights in the Arab World, elucidating specifically the key characteristics that define the Arab Human Rights System. Through an exploration of the distinctive features and institutional framework of this system, the study seeks to provide insight into its functionality, effectiveness, and areas requiring enhancement. Moreover, the research attempts to address the impact of states' reservations on the implementation of human rights in the region, while also comparing the main features of the Arab Human Rights System with those of its counterparts. By conducting this comparative analysis, the study aims to deepen the understanding of human rights governance in the Arab World and its position within the broader landscape of international human rights frameworks.

For the purpose of this research, the following questions are examined: what is the current state of human rights in the Arab World, and what are the primary characteristics that define the Arab Human Rights System? How does it compare with other human rights systems? The paper adopts a mixed-method approach, comprising a desk review and a closed discussion with experts held on April 22nd, 2024, including Professors Amin Al Midani and Thomas Skouteris; Dr. Elie Abou Aoun, Dr. Maya Mansour as well as Dr. Zied Ayari¹⁰, to investigate the current status of human rights in the Arab World and delineate the primary characteristics of the Arab Human Rights System.

II. The Arab Human Rights System: Newest Among Counterparts

1. Establishment of the Arab Human Rights System

Since the end of WWII, the coexistence of regional and global human rights protections has been a fundamental aspect of international law.¹¹ Regional human rights frameworks play a vital role in shaping global human rights norms and their implementation within specific regional contexts, contributing to both the development and enforcement of these norms.¹² While established regional protection

8 See OHCHR: "Instruments and Mechanisms"; <https://www.ohchr.org/en/instruments-and-mechanisms#:~:text=Through%20addressing%20complaints%2C%20the%20mechanisms,and%20how%20to%20do%20it>; Accessed on 01/06/2024.

9 See Act4RuleofLaw: "Human Rights and the Rule of Law"; <http://www.act4ruleoflaw.org/en/news/humanrights>; Accessed on 30/05/2024.

10 See recording of closed discussion; April 22nd 2024: <https://www.youtube.com/watch?v=kGC0xm6km0o>.

11 See Başak Çali: "Regional Protection", in "International Human Rights Law" Oxford University Press, Edited by Daniel Moekli and others, Fourth Edition, 2022, Chapter 20, pp. 429-440.

12 Ibid.

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mechanisms in the Americas,¹³ Europe,¹⁴ and Africa¹⁵ generally reinforce global human rights norms,¹⁶ newer systems initiated by the League of Arab States and the Association of Southeast Asian Nations raise questions about their alignment with global standards.

Regional human rights systems have proven to be particularly effective, with independent interpretive bodies and mechanisms for individual access that have successfully managed to balance out potential tensions, especially in implementation, between regional and universal human rights protection, serving as models for emerging systems.¹⁷ For example, on the one hand, the Committee on the Elimination of Racial Discrimination (CERD), which is the treaty body for the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), monitors the implementation of the treaty by member states, mostly by issuing (non-binding) recommendations for states. On the other hand, the European System of Human Rights reiterates these same commitments to eliminate racial discrimination on the European level, allowing the European Court to issue binding judgments against member states.

Additionally, the proximity of regional systems to domestic legal and political contexts is considered as a shield for regional human rights, countering the critique of Western imposition.¹⁸ This proximity enables human rights law to transcend binary discourse, facilitating the global dissemination of local human rights concerns and influencing the United Nations and other regional bodies. Regional systems also play a crucial role in enforcing international human rights standards, with regional human rights courts serving as distinct institutional features and efforts to establish such courts under the League of Arab States underway, emphasizing the pivotal role of regional mechanisms in reinforcing, advancing, and enforcing human rights globally.¹⁹

While the League of Arab States (LAS) holds the distinction of being one of the oldest regional intergovernmental organizations established since 1945, predating even the Council of Europe founded in 1949 and the Inter-American Commission on Human Rights established in 1950, it stands out as one of the latest to implement a human rights system. Several factors contributed to this delay. Firstly, during its inception, many member states of the Arab League were either colonized or under the direct and indirect control of Western powers, lacking autonomy in decision-making processes.²⁰ Moreover, the League of Arab States was established even before the United Nations, which meant there was limited

13 See Organization of American States: "Inter-American Human Rights System"; <https://www.oas.org/ipsp/images/English%20FAQs.pdf>; Accessed on 01/06/2024.

14 See European Union: "European System of Human Rights"; https://european-union.europa.eu/priorities-and-actions/actions-topic/human-rights-and-democracy_en; Accessed on 01/06/2024.

15 See African Commission on Human and Peoples' Rights: "The African System of Human Rights"; <https://achpr.au.int/en>; Accessed on 01/06/2024.

16 Global human rights norms usually refers to international standards set by International Human Rights Law, which refers to international treaties, especially the core human rights treaties; See OHCHR: "The Core International Human Rights Instruments and their Monitoring Bodies"; <https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies>; Accessed on 01/06/2024.

17 See Başak Çali: "Human Rights Treaties: Specialized Rules for Treaty Interpretation," in "The Law of Treaties" Oxford University Press, Edited by Hollis and others, 2020, pp.525.

18 Ibid.

19 See Mirvat Richmawi: "Arab Charter on Human Rights and the League of Arab States: An Update", Human Rights Law Review, 2010, pp. 169.

20 See Nazeq El Khatib: "Human Rights in the League of Arab States", Halabi Legal Publications, 2012, pp. 10-15.

precedent or expertise to advocate for the establishment of a human rights framework.²¹ Additionally, human rights concerns also took a backseat as member states prioritized achieving independence from colonial powers and establishing autonomous governments.²² Lastly, widespread illiteracy and limited education hindered awareness and advocacy for human rights issues, with development and security taking precedence on the agenda.²³

2. Permanent Arab Committee on Human Rights (Also called the Arab Commission on Human Rights)

The Permanent Arab Committee on Human Rights (PACHR) (also referred to as the Arab Commission on Human Rights) was established in 1968, initially as one of the permanent specialized committees under the umbrella of the Arab League. After its establishment, the PACHR initiated its efforts to establish a comprehensive convention on human rights in 1969 when the LAS Council passed a resolution allowing for the drafting of an Arab charter on human rights.²⁴ The LAS Council formed an (other) expert committee specifically tasked to work with the PACHR in creating this charter, which convened in April 1971 at the LAS Secretariat in Cairo and presented the initial draft of the Arab Charter in July of the same year. However, the Arab States showed little interest, resulting in the draft being neglected. Years later, the PACHR revised the draft and presented a second version by March 31, 1983.²⁵

Regarding its composition, the PACHR comprises one representative from each member state serving as a political appointee rather than an independent expert in human rights; the Permanent Committee's rules stipulate that countries should consider experience in human rights when nominating representatives. Therefore, PACHR is not an expert committee but rather a body composed of representatives from the 22 Arab countries (similar to the United Nations Human Rights Council), with its primary technical role defined by its internal regulations adopted in 2007.²⁶

This includes establishing rules for cooperation among member states in the field of human rights, formulating an Arab stance on human rights issues²⁷ subject to regional and international discussion, including positions on draft agreements, preparing human rights conventions for submission to the Arab League Council of Foreign Ministers for approval, reviewing Arab declarations related to human rights to assess their compatibility with human rights principles and standards, enhancing the implementation of human rights agreements and recommendations, providing recommendations on any human rights issues referred to it by the Council or the General Secretariat of the Arab League or any of the member states, and promoting cooperation in human rights education.²⁸

²¹ Ibid.

²² Ibid.

²³ See Nazek El Khatib, *Supra* Note (20), pp. 15-16.

²⁴ LAS Council, Resolution 2605, 11 March 1971.

²⁵ See Wael Ahmad Allam: "The Arab Charter on Human Rights: Main Features," BRILL, *Arab Law Quarterly*, No. 28, 2014, pp. 40-63.

²⁶ Ibid.

²⁷ Until today, not many stances were issued, and documents are not publicly available online.

²⁸ Ibid.

The PACHR is limited in its ability to comment on matters, as it can only study the issues referred to it or those it monitors. The committee, therefore, lacks an independent mechanism to review the human rights situation in member states, along with the capacity to undertake specific procedures, such as appointing country-specific rapporteurs, thematic experts, or working groups to monitor the respective country's situation of human rights closely. For these reasons (among others), the PACHR has not proven to be an effective mechanism for addressing human rights issues in the region (either generally or concerning individual cases).

III. International Human Rights in the Arab World: Between International Standards and Cultural Sensitivity

1. Ratification of Core International Human Rights Treaties

Since 1945, human rights have been organized in regional and global institutional frameworks. Indeed, contemporary international human rights law predominantly stems from international and regional treaties as a main source for international human rights law. On the international level, the UN Charter mentions human rights and freedoms within a global treaty, using general and imprecise language, which was later followed by the Universal Declaration of Human Rights in 1948 as a non-binding document. This eventually led to the adoption of the two UN Covenants of 1966 (the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)). Many human rights treaties exist today, with nine of them considered core (found in Table 1).

These international treaties have inspired regional systems to draft their own treaties on human rights in general and specific human rights issues too. Examples include the European Convention on Human Rights of 1950 (ECHR),²⁹ the African Charter on the Rights and Welfare of the Child,³⁰ the Arab Convention on Regulating the Status of Refugees in the Arab Countries, 1994,³¹ etc. Indeed, states become bound by these treaties upon formal consent. This formal consent is usually provided through ratification or accession³² with the designated treaty body, which is commonly the UN Secretary-General for UN human rights treaties.

Despite a slow start—illustrated by the ten-year period it took for each of the two UN Covenants to garner the necessary number of parties for their enforcement—the goal of widespread, ideally

²⁹ European Convention on Human Rights, 1950.

³⁰ African Charter on the Rights and Welfare of the Child, 1999.

³¹ Arab Convention on Regulating the Status of Refugees in the Arab Countries, 1994.

³² "Ratification" and "accession" both result in a state becoming legally bound by the terms of the document. Though accession and ratification have the same legal effect, their procedures differ. Ratification involves two steps: the state first signs, then ratifies the treaty, making it official and binding. The procedure for accession only involves one step and is not necessarily preceded by a signature. The specific procedures vary according to the domestic legislative requirements. It is important to note that prior to ratification or accession, a state normally reviews the treaty to determine whether domestic laws are consistent with provisions of the treaty and takes appropriate measures for assure compliance with the treaty.

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universal, adherence to human rights treaties has largely been achieved.³³ This broad adherence fosters a level of consistency among states in their interpretation of international human rights standards, diminishing arguments based on cultural differences or other specificities.³⁴

Regarding ratification trends, Arab countries are lagging in fulfilling their ratification commitments.³⁵ Despite some improvements over the past decade, key treaties such as the ICCPR and ICESCR, which encompass most fundamental rights, have not been ratified by all countries in the region. Additionally, certain treaties still have alarmingly low levels of ratification. For example, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW, 1990) and the International Convention for the Protection of All Persons from Enforced Disappearance (CED, 2010) have only been ratified by six and seven states respectively (see table 1). As a result, the protection of specific rights guaranteed by these treaties, such as the protection of vulnerable groups, the likes of migrant workers, and victims of enforced disappearance, cannot be effectively enforced in these countries. This translates into a lack of accountability mechanisms in the respective national legal frameworks, exposing these individuals to human rights abuses without adequate legal remedies.

Indeed, reports have shown that migrant workers suffer exploitation and abuse in the MENA region.³⁶ Migrant workers are subjected to low payment, long work hours, abuse, discrimination, harassment, working without contracts, food and water deprivation, non-access to healthcare, and the list goes on.³⁷ In some countries, Migrant Domestic Workers (MDWs) are totally excluded from the law. They are not granted any protection, which is the case of Egypt, where Article 4 of the labor law³⁸ explicitly excludes domestic workers from its scope of regulation, singling them out as an “exception” and framing the relationship as a personal and private bond rather than a contractual relationship.³⁹ In other countries, MDWs have a special discriminatory system against them, specifically violating their rights, like the KAFALA system in Lebanon.⁴⁰

This shows how the implementation of a comprehensive human rights framework is essential for the protection and support of victims of human trafficking. The failure to implement the necessary changes in the domestic legal system in order to meet these required commitments is the main reason behind the low number of signatories on the CMW. Notably, there is a significant correlation between societal discrimination—prohibited by the ICCPR and other international treaties—and the prevalence of human trafficking.⁴¹ Moreover, the thorough and effective enforcement of labor protection systems, as

33 Ibid.

34 Ibid.

35 See Table 1.

36 See International Organization for Migration: “Migrant Workers Suffer Exploitation, Abuse in the Middle East and North Africa: Report”, 24 November 2015, <https://www.iom.int/news/migrant-workers-suffer-exploitation-abuse-middle-east-north-africa-report>; Accessed 30/04/2024.

37 Ibid.

38 See Egyptian Government, Labor Law No. 12, 2003.

39 See Nada Wahba: “Background Paper: Improving the Conditions of Domestic Workers in Egypt”; Alternative Policy Solutions, 21 March 2022, <https://aps.aucegypt.edu/en/articles/772/background-paper-improving-the-conditions-of-domestic-workers-in-egypt#>; Accessed on 04/06/2024.

40 Saad Melhem and Others: “The Kafala System in Lebanon”, University of Oxford, 2023, <https://mapthesystem.sbs.ox.ac.uk/site-files/american-university-of-beirut-the-kafala-system-in-lebanon.pdf>; Accessed on 04/06/2024.

41 See International Organization for Migration, Supra Note (37).

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mandated by International Labor Organization (ILO) treaties,⁴² plays a crucial role in mitigating the vulnerability to human trafficking. Indeed, while the ratification of the Convention is not the ultimate solution, it would certainly be a step forward in recognizing the existence and legitimacy of these commitments.

Table 1: Status of Ratification of the Nine Core Intl. Human Rights Treaties by Arab States

	Civil and Political Rights (ICCPR)	Economic, Social and Cultural Rights (ICESR)	Racial Discrimination (CERD)	Torture and Inhuman Treatment (CAT)	Rights of Women (CEDAW)	Rights of the Child (CRC)	Rights of Migrant Workers (CMW)	Rights of Persons with Disabilities (CRPD)	Enforced Disappearance (CED)
Algeria	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Bahrain	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Comoros	No	No	No	Yes	Yes	Yes	No	Yes	No
Djibouti	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No
Egypt	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Iraq	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Jordan	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No
Kuwait	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No
Lebanon	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
Libya	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Mauritania	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Morocco	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Oman	No	Yes	Yes	No	Yes	Yes	No	Yes	Yes
Palestine	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No

42 Ibid.

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Qatar	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No
Saudi Arabia	No	No	Yes	Yes	Yes	Yes	No	Yes	No
Somalia	Yes	Yes	Yes	Yes	No	Yes	No	Yes	No
Sudan	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes
Syria	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Tunisia	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
UAE	No	No	Yes	Yes	Yes	Yes	No	Yes	No
Yemen	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No
Ratification	18	19	22	20	20	22	6	20	7
<i>Data: OHCHR, Status of Ratification, May 2024, Gathered and Put Together by the Author</i>									

2. Effect of Ratification of Human Rights Treaties

By ratifying these treaties, states agree on how human rights would be applied within their territories and under their jurisdiction.⁴³ Indeed, states assume obligations and duties under international law to respect, protect, and fulfill human rights. Through ratification of international human rights treaties, governments commit to implementing domestic measures and legislation that align with their treaty obligations and duties.⁴⁴ Therefore, the domestic legal system serves as the primary safeguard for human rights, guaranteed under international law. When domestic legal proceedings fall short in addressing human rights violations, mechanisms and procedures exist at the regional and international levels. These mechanisms aim to ensure that international human rights standards are upheld, implemented, and enforced locally.

Treaty law is indisputably the most significant source of international human rights law today. It offers several advantages, foremost among them the potential for a large number of states to become parties to a treaty, thereby accepting its provisions as binding legal obligations. This widespread treaty adherence fosters a degree of uniformity among states in their interpretation of international human rights law requirements, thereby weakening arguments based on cultural differences or other specificities.⁴⁵

⁴³ See Christine Chinkin: "Sources," in "International Human Rights Law" Oxford University Press, Edited by Daniel Moekli and others, Fourth Edition, 2022, Chapter 4, pp. 65-75.

⁴⁴ See United Nations: "The Foundation of International Human Rights Law"; <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law>; Accessed on 04/06/2024.

⁴⁵ See Christine Chinkin, *Supra* Note (44), pp.65.

Moreover, treaty ratification and accession provide certainty in identifying state parties, with written texts clearly delineating the obligations they have accepted.

For example, the Kingdom of Saudi Arabia ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 2000. However, it did not make the necessary amendments required for domestic laws to comply with CEDAW provisions. After several reports by the Committee of CEDAW (the treaty body responsible for the domestic implementation of CEDAW) blaming the lack of implementation, the latest report of 2018 actually showed a clear improvement of the situation with regards to the country's compliance with CEDAW provisions. To do so, Prince Muhammed Ben Nayef and later Prince Mohammed Ben Salman have both enacted various laws enhancing women's independence and economic roles. In addition, some other laws strengthened justice and child protection laws, improved access to education, healthcare, and mobility, and awareness campaigns on women's rights. Today, women are able to hold significant positions in government, such as the Sharia Council and National Human Rights Council, and occupy high-ranking financial roles.⁴⁶

3. Reservations on International Human Rights Treaties: Selected Commitments

Even if a state has signed or ratified a treaty, it can still limit its obligations by making reservations. Indeed, reservations allow states to enter into a treaty while simultaneously exempting themselves from specific obligations within the treaty. Reservations are used by states, often, to exempt themselves from specific provisions, even if they agree to be bound by others. Reservations to treaties are defined in Article 2 of the Vienna Convention of the Law of Treaties (VCLT) as "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State."⁴⁷ The justification for reservations is grounded in two fundamental aspects of the international legal system: state sovereignty and the diversity between states.⁴⁸

While the VCLT sets out the applicable regime on reservations, this regime is not necessarily suitable for human rights treaties. Unlike other multilateral or bilateral treaties, human rights treaties benefit not only states but also (and mostly) individuals and marginalized communities.⁴⁹ The contractual aspect of human rights treaties, which entails reciprocity, is transcended by a moral and wider dimension that entails fulfilling legal obligations to third parties, i.e., individuals and/or communities.⁵⁰ Therefore, human rights treaties may contain provisions specific to reservations due to their unique character as a particular type of multilateral treaty. i.e. the Convention on the Rights of the Child (CRC) clearly states:

46 See Committee on the Elimination of Discrimination against Women: "Saudi Arabia Report," 2018, <https://www.ohchr.org/en/press-releases/2018/02/committee-elimination-discrimination-against-women-examines-saudi-arabias>; Accessed on 06/06/2024.

47 See Vienna Conventions on the Law of Treaties, adopted 23 May 1969, Entered into force 27 January 1980, 11155 UNTS, Article 2.

48 See Ryan Goodman: "Human Rights Treaties, Invalid Reservations, and State Consent," *The American Journal of International Law*, Vol.96, 2002, pp. 532.

49 See Yvonne Donders: "Cultural Pluralism in International Human Rights Law: The Role of Reservations", Oxford University Press, 2013, pp. 207.

50 Ibid.

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“A reservation incompatible with the object and purpose of the present Convention shall not be permitted.”⁵¹

The most prevalent types of reservations made by the Arab countries are reservations justified by religion. Identifying, counting, and mapping reservations “justified by religion” poses significant methodological challenges. Therefore, for the purpose of this research, a reservation shall be deemed to be religion-justified under the following circumstances: if the reservation mentions religion explicitly as an independent normative order or as a fundamental aspect of the constitution or domestic law; if the reservation is grounded in domestic or constitutional law without explicit mention of religion, but religion is the predominant source and/or inspiration of legislation,⁵² such as reservations on family or criminal procedural law that rely explicitly on principles of religious regulations;⁵³ and finally, if it is rooted in customary or traditional practices that are reasonably linked to the religions observed in the respective States.⁵⁴

Examples of reservations based on religion include, for example, Jordan, which expressed the following reservation upon ratification of the CRC in 1990: “The Hashemite Kingdom of Jordan expresses its reservation and does not consider itself bound by articles 14, 20 and 21 of the Convention, which grant the child the right to freedom of choice of religion and concern the question of adoption, since they are at variance with the precepts of the tolerant Islamic Shariah.” Another example is Mauritania’s reservation upon the ICCPR’s ratification in 2004: “...The Mauritanian Government, while accepting the provisions set out in article 18 concerning freedom of thought, conscience, and religion, declares that their application shall be without prejudice to the Islamic Shariah.” Indeed, both reservations emphasize the supremacy of the Shariah as the most imperative and main source of Law in their country. Therefore, while both states signed the treaty, they both made reservations on provisions deemed to be non-aligned with Shariah commandments.

A comprehensive overview of reservations made by Arab countries to international treaties, with an emphasis on reservations justified by religion, shows that across the listed countries, a total of 231 reservations have been made, with 212 of these being based on religion (See OHCHR, table 2). The most frequently reserved treaties include the ICCPR, ICESCR, CEDAW, and CRC, covering a broad spectrum of human rights. While variation exists among countries in the number and scope of reservations, common themes can be traced, particularly concerning reservations related to women’s rights (CEDAW) and the CRC.

Indeed, the prevalence of reservations based on religion in treaties is closely related to the issue area they cover. Treaties that address more private aspect⁵⁵ issues than others, such as the CEDAW, the CRC, the CRPD, the ICCPR, and the ICESCR, have received more religion-justified reservations. For

51 Convention on the Rights of the Child, 1989, Article 51.

52 Which is known considering countries’ history, i.e., Lebanon is a secular country by constitution, however, personal status and family laws are exclusively religious laws - with the absence of civil marriage - set by religious courts, as this is part of the country’s culture.

53 See Ahmed Ali Sawad: “Reservations to Human Rights Treaties and the Diversity Paradigm: Examining Islamic Reservations,” University of Otago, New Zealand, 2008, pp. 213.

54 Baçak Cal and Mariana Montoya: “The March of Universality? Religion-Based Reservations to The Core UN Treaties and What They Tell Us About Human Rights and Universality in the 21 Century,” Policy Report, Universal Rights Group, May 2017, https://www.universal-rights.org/wp-content/uploads/2017/05/Policy_report_march_universality_LR_spread.pdf; Accessed on 14/03/2023.

55 See Ahmed Ali Sawad, *Supra* Note (54), pp.126.

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example, while states have not made any reservations about the general ideas of equality between men and women in the ICCPR and ICESCR, other more specific provisions on the same ideals, such as gender equality in the family sphere, have attracted a significant number of religion-justified reservations in the Arab region, these concepts being not only fundamental but also being strictly tied to religious foundations. Therefore, it is unsurprising that provisions dealing with private cultural-societal issues,⁵⁶ such as religious freedom, gender equality, family rights, and children's rights, have received many religion-justified reservations. What is more unsurprising is that these areas of human rights are the most attractive to human rights violations in the region.⁵⁷ Indeed, as seen in the following table, nearly all, if not all, reservations made by Arab countries are based on religious grounds.

Country	Total number of standing reservations	Total number of reservations justified by religion	Main reserved Treaties
Algeria	30	28	ICCPR ICESCR CEDAW CERD
Bahrain	30	27	ICCPR ICESCR CEDAW
Egypt	19	19	ICCPR ICESCR CEDAW CRPD CRC
Iraq	13	9	CEDAW CRC
Jordan	15	15	CEDAW CRC
Kuwait	25	16	ICCPR ICESCR CEDAW

56 See Christina M. Cerna: "Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts," *Human Rights Quarterly*, Vol. 6, pp. 746.

57 See Amnesty International: "Middle East and North Africa Regional Overview"; April 2024, <https://www.amnesty.org/en/location/middle-east-and-north-africa/report-middle-east-and-north-africa/>; Accessed on 03/06/2024: MENA Overview: "Discrimination remained rife across the region on the basis of gender, race, nationality, legal status, ethnicity, sexual orientation, gender identity or expression, religion and economic class. In some countries it was entrenched in law."

			CRC CRPD
Mauritania	6	6	ICCPR CRC
Morocco	8	8	CEDAW CRC
Oman	9	9	CEDAW CRC
Qatar	20	20	CEDAW CRC CAT
Saudi Arabia	4	4	CEDAW CRC CAT
Syria	4	3	CEDAW CRPD
Tunisia	19	19	ICCPR ICESCR CEDAW CRC CRPD
UAE	29	29	CEDAW CRC
Total Reservations	231	212	
<i>Source: OHCHR Dashboard, viewed April 2024, gathered and put together by the author</i>			

In summary, the international human rights system in the Arab world is characterized by a complex interplay between international standards and regional cultural and religious sensitivities. Since the adoption of the UN Charter and subsequent treaties like the ICCPR and ICESCR, many Arab states have ratified core international human rights treaties, although inconsistently. While some Arab countries have made significant strides in ratification, others still lag behind, particularly concerning treaties addressing individuals' private life aspects. As previously shown, cultural and religious factors often influence ratification and the implementation of these treaties, leading to numerous reservations that limit the obligations of these states. For instance, reservations based on Islamic Shariah law are common, particularly concerning treaties like CEDAW and CRC, which address sensitive areas such as gender equality and children's rights. Consequently, many vulnerable groups, including migrant workers and women, remain inadequately protected under national laws.

IV. The Arab System of Human Rights: A Flawed System

In the following section, the Arab human rights system will be presented alongside the gaps in protection and functionality, beginning with the core regional human rights treaties and then discussing the institutions and key elements of the system.

1. Core Regional Human Rights Treaties

a. The Arab Charter on Human Rights, 2004

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The 2004 Arab Charter on Human Rights⁵⁸ of the Arab League Council (Arab Charter), which serves as the primary human rights treaty within the Arab League, came into effect in 2008 and has been ratified by 12 Arab states.⁵⁹ Since then, four additional countries have become parties.⁶⁰ Its predecessor from 1994 did not succeed in overcoming the project phase due to a lack of ratifications.⁶¹ Widely seen as a notable achievement, the adoption of the Arab Charter signified the acknowledgment among member states of the significance of human rights in the Arab world. Unlike other Arab League treaties, the Charter of 2004 was developed with the participation of civil society and experts.⁶²

Despite its shortcomings, the 2004 charter represents an improvement over its predecessor by incorporating several human rights previously absent.⁶³ These provisions include a broad anti-discrimination clause (Art. 3(1)), obligating states to ensure effective gender equality measures (Art. 3(3)). Additionally, it guarantees the freedom to manifest religion or beliefs (Art. 30), safeguards minorities' cultural rights (Art. 25), and establishes mechanisms for redress, compensation, and rehabilitation for victims of torture or cruel treatment (Arts. 8(2)). Moreover, the Charter clarifies rights to participate in public life, including the freedom to form associations, and restricts derogation for numerous rights, ensuring that fair trial guarantees remain intact even during emergency situations, such as the right to challenge detention before a competent court.⁶⁴

However, the Arab Charter also has significant shortcomings. While it prohibits torture and cruel treatment, it does not explicitly rule out other forms of cruel punishments like lashing or limb amputation, which are practiced in some member states.⁶⁵ Additionally, although it restricts the death penalty to the most serious crimes and prohibits its imposition on children under 18, certain member states still permit and execute the death penalty on minors, indicating a discrepancy between the Charter's provisions and actual practices.⁶⁶

Furthermore, the Charter falls short in addressing freedom of non-religion (freedom not to have a religion), implying that this right can be restricted by law without explicitly addressing the issue of apostasy (leaving one's religion), which is practically impossible for Muslims in most Arab states.⁶⁷ Additionally, Art. 34 (5), which entails the protection of migrant workers "in accordance with the laws in force", condones discrimination against migrant workers in Arab Gulf states, where such laws favor citizens

58 Arab Charter on Human Rights, League of Arab States, 15 September 1994.

59 The first State Parties to the Arab Charter were Jordan, Algeria, Bahrain, Libya, Syria, Palestine, Emirates, Yemen, Qatar, Saudi Arabia, Lebanon and Iraq, while the State Signatories are Tunisia, Egypt, Morocco, Sudan and Kuwait.

60 Egypt, Kuwait, Mauritania, and Sudan.

61 See Nazek El Khatib, *Supra Note* (10), pp. 33-38.

62 The team consisted of Arab Experts that were part of the UN Treaty bodies, and were led by Leila Zerrougui, as head of the team.

63 See The German Institute for Human Rights: "The Arab Human Rights System", Bonn, 2017, https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/E-Info-Tool/e-info-tool_abc_of_hr_for_dev_coop_the_arab_hr-system.pdf; Accessed 15/04/2024.

64 Irmgard Marboe and Mohammed Amin Al-Midani: "Arab Charter on Human Rights," *Elgar Encyclopedia of Human Rights*, Edited by Christina Binder and others, 6 September 2022, pp.139-145.

65 *Ibid.*

66 Yemen has faced significant challenges due to its ongoing civil war. In such contexts, legal systems may not always adhere to international standards. There have been reports of juvenile offenders facing the death penalty in Yemen, although precise statistics are hard to obtain. Saudi Arabia and Sudan also allow death penalty on minors.

67 See The German Institute for Human Rights, *Supra Note* (64).

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over foreign workers.⁶⁸ Moreover, the Charter limits several key rights exclusively to citizens,⁶⁹ leaving non-citizens, including migrant workers and refugees, vulnerable to rights violations.

The preamble speaks to the principles of religions that recognize human rights in a dignified life based on freedom, justice, and peace, reaffirming the principles of the 1990 Cairo Declaration⁷⁰ on Human Rights in Islam.⁷¹ However, significant tension exists between the Cairo Declaration and the UDHR regarding concepts of universality and cultural and religious relativity.⁷² Many, including Islamic scholars, question the compatibility between the two documents, with the Cairo Declaration limiting the rights of religious minorities (denominations not belonging to Islam-majority groups, such as Bahais, Christians, Kurds, Jews, etc.), contradicting international human rights principles and providing evidence of discrimination against women.⁷³

b. The Charter of the Rights of the Arab Child, 1983

The Charter of the Rights of the Arab Child (not to be confused with the international treaty mentioned earlier, CRC), issued in 1983 and currently ratified by seven Arab states, outlines fundamental rights for children. The Charter delineates key rights for Arab children, encompassing the right to family upbringing, identity, and nationality, as well as access to education, healthcare, and social security. States are mandated to bolster the legislative framework by amending laws affecting children and implementing comprehensive policies and programs to promote children's development and well-being.⁷⁴ Throughout these endeavors, the "best interest of the child" serves as the guiding principle, as a general guideline and standard left to the discretion of each state. However, notably, the Charter does not extend to non-Arab minority children within Arab states, such as those of Kurdish or Amazigh backgrounds.⁷⁵

c. Arab Declaration on Combating All Forms of Violence against Women and Girls, 2022

On December 5th–6th, 2022, the LAS convened a significant event in the United Arab Emirates to introduce the Arab Declaration on Combating All Forms of Violence against Women and Girls, the most recent document of the Arab League.⁷⁶ This momentous occasion marked a crucial step towards

68 See Arab Charter on Human Rights, 2004, Art. 34: "Each State party shall ensure to workers who migrate to its territory the requisite protection in accordance with the laws in force."

69 Such as the right to work, among others, where the term "citizen" instead of "resident" or "individual" is repeatedly used, therefore distinguishing between citizens and non-citizens.

70 The Cairo Declaration on Human Rights in Islam is a declaration adopted by the member states of the Organization of Islamic Cooperation (OIC). It was first adopted in Cairo, Egypt, in 1990 and later revised in 2020. The declaration emphasizes human dignity, equality, and fundamental rights within the context of Islamic principles. See The Cairo Declaration on Human Rights in Islam, 1990, https://www.oic-oci.org/upload/pages/conventions/en/CDHRI_2021_ENG.pdf; Accessed on 07/06/2024.

71 See Armis Sadri: "The Arab Human Rights System: Achievements and Challenges," *The International Journal of Human Rights*, Vol. 23, No. 7, 2019, <https://doi.org/10.1080/13642987.2019.1597713>; pp. 1166-1182.

72 Ibid.

73 Ibid.

74 See The German Institute for Human Rights, *Supra* Note (64).

75 Ibid.

76 See The Arab Declaration on the Elimination of All Forms of Violence Against Women and Girls"; session (157), Resolution No. (8768) on 03/09/2022; found in the Arab Journal for International Human Rights and Humanitarian Law, Issue 6, <https://acihi.org/review.htm>.

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addressing gender-based violence in the region, as the Declaration underscores a commitment to safeguarding women and girls from all forms of violence and to intensifying efforts to eradicate discrimination.⁷⁷ It defines violence against women and girls comprehensively, encompassing acts of physical, sexual, and psychological violence, coercion, arbitrary deprivation of rights, and digital violence occurring within family, domestic, community, and digital spheres,⁷⁸ adopting a very close definition to the 1981 CEDAW General Recommendation number 19 definition.⁷⁹

Key provisions of the Declaration call for the reinforcement of legislative measures and legal mechanisms to protect women and girls, ensuring their access to justice (Art. 3). Moreover, it advocates for the adoption and enhancement of policies promoting gender equality (Art. 4), as well as the development of comprehensive national programs and action plans to empower and safeguard women (Art. 6), particularly in times of crisis and armed conflict (Art. 5). Additionally, the Declaration emphasizes the pivotal role of education (Art. 8) and media (Art. 9) in raising awareness about women's participation in public life, fostering a culture of dialogue and tolerance, and rejecting all forms of violence against women and girls.⁸⁰

To date, this Declaration, while representing a promising milestone, has not had any practical effect. Similar to other Arab declarations, it lacks binding effect, as it is a “declaration” rather than a “convention,” thus not translating into commitments on the part of states⁸¹. Similarly, because of its nature, it has not been ratified by Arab states. Consequently, states are not obligated to enact domestic changes to comply with its provisions. Thus, the Declaration serves merely as an expression of commitment towards women’s rights, but indeed a hopeful one.

2. Monitoring and Enforcement Mechanisms

a. Arab Committee on Human Rights

In 2009, on the basis of Art. 45 of the Arab Charter, the Arab Human Rights Committee was established as a treaty body with seven human rights experts as members with the task of overseeing the implementation of the Charter.⁸² The Committee has reviewed state reports of Charter member states and issued concluding observations, as other international treaty bodies do. Unlike them, however, the Arab Human Rights Committee does not have the authority to receive individual complaints regarding

77 See Samia Smadi: “The League of Arab States (LAS) Launches the Arab Declaration on Combatting All Forms of Violence against Women and Girls”, Coalition of Arab MPs From Arab Countries to Combat Violence Against Women, 15 December 2022, [https://cvaw-arabcoalition.org/en/3799-2/#:~:text=On%20December%205th-%206,United%20Arab%20Emirates%20\(UAE\);](https://cvaw-arabcoalition.org/en/3799-2/#:~:text=On%20December%205th-%206,United%20Arab%20Emirates%20(UAE);) Accessed on 02/05/2024.

78 Arab Declaration on the Elimination of All Forms of Violence Against Women and Girls, Article 1: “Violence against women and girls: all acts of violence at the level of the family and society, which may cause material or moral harm to women and girls. This includes physical, sexual, and psychological violence, or threats thereof, coercion or arbitrary deprivation of rights and freedoms. Such violence includes, but is not limited to, family, domestic, community and digital violence.”

79 See Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19, UN Doc. A/47/38, 1992, <https://www.legal-tools.org/doc/f8d998/pdf/&ved=2ahUKewi4r8KY2dX;> Accessed on 07/06/2024.

80 Ibid.

81 A declaration is a non-binding statement expressing the signatory parties' intentions or aspirations. It lacks legal force but carries moral and political weight. Conversely, a convention is a legally binding agreement between states that creates enforceable obligations under international law.

82 See Arab Charter 2004, Article 45.

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human rights violations committed by member states.⁸³ Committee members are elected by member states to serve as independent experts.⁸⁴ Some of the experts perform governmental functions: One member was the current Yemeni minister for human rights, and another was an acting director of the human rights department in the UAE Ministry of Foreign Affairs.⁸⁵

Just as in the international human rights system (UN System), the Arab Human Rights Committee issues yearly Concluding Observations regarding the human rights situation in a member country.⁸⁶ Since the Arab Concluding Observations need to cover all human rights guaranteed in the Arab Charter, they do not address each right in-depth as the specialized international treaty bodies do. This often makes their concluding observations less precise and less detailed compared to the ones made by international treaty bodies. For example, the 2015 Arab Human Rights Committee's Concluding Observations on Lebanon recommended the country "Continue their effort to enable persons with disabilities to enjoy a dignified life"⁸⁷ as opposed to the 2016 recommendations given to Lebanon by the (specialized international) Committee on Economic, Social and Cultural Rights on persons living with disabilities, which recommended to: "Adopt rights-based policies and programs for persons with disabilities to (a) Bring the definition of disability in law [...] into conformity with international standards; (b) Ensure that sufficient resources are allocated to the special fund for persons with disabilities [...]; (c) Ensure that persons with disabilities have equal access to education and training, including by promoting inclusive education."⁸⁸ Indeed, more precise and detailed recommendations allow the translation of these recommendations into concrete plans and detailed pathways to improve the status quo. As the Committee is an expert committee, it should offer detailed and comprehensive guidelines to address different and specific aspects of rights, such as equal access to education for people with physical disabilities, as seen in the example above, instead of broadly recommending the enabling of a "dignified life."

Further, the Committee regularly criticizes member states for preparing their reports without including civil society in the process, for failing to provide statistics, and for the lack of legal domestication and awareness-raising on the Arab Charter.⁸⁹ As they operate inside states and often monitor and report on violations and implementations of human rights from a local perspective, having civil society actors participate in the reporting process is highly beneficial, providing a contextualization of the recommendations.

83 See Armis Sadri, *Supra* Note (72).

84 See Arab Charter 2004, Article 45.

85 See The German Institute for Human Rights, *Supra* Note (64).

86 See Arab Charter 2004, Article 48.

87 See Arab Committee on Human Rights: "Recommendations and Concluding Observations on Lebanon's Report", 2015, Para. 79, <https://shorturl.at/jLYDX>, Accessed on 07/06/2024.

88 See Committee on Economic, Social and Cultural Rights: "Concluding Observations on the Second Periodic Review of Lebanon"; UN Doc. E/C.12/LBN/CO/2, 2016, Para. 22, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovL-CuW%2bqI9EVGtH59rb%2f5qYCKL9EJN1b6cd380Vay5v9yoUJhyrQK06cMljwD15gpkbzvjRlrOYI2CrCaFiz1cOLXSms6YBVh-kiA3XPLdcCWvUwFL>; Accessed on 06/06/2024.

89 See Armis Sadri, *Supra* Note (72).

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Regarding NGO participation, the Committee's official competence is limited to receiving reports and information solely from NGOs that are officially registered in their countries of origin.⁹⁰ Consequently, human rights organizations that have been denied official registration due to repressive measures may be excluded from participating in the reporting process.⁹¹ The integration of civil society into formal proceedings is not solely due to NGO efforts but also results from treaty bodies recognizing the benefits of promoting and strengthening civil society's position, thereby giving its observations a more far-reaching and sustainable effect. Indeed, regular meetings involving the International Federation for Human Rights (FIDH), the Cairo Institute for Human Rights Studies (CIHRS), the Arab Organization for Human Rights (AOHR), and others, including the Secretariat of the Arab Human Rights Committee, have facilitated and have enabled some NGOs in Algeria and Jordan to submit alternative reports before their respective country's State report is examined.⁹²

b. The Arab Court on Human Rights

The statute of the Arab Human Rights Court was ratified by the member states of the LAS on September 7, 2014, following an initiative led by the Kingdom of Bahrain, which resulted in the Court being based in Manama City, Bahrain. This latter decision has been met with significant criticism from human rights NGOs due to Bahrain's documented record of human rights violations at the time.⁹³ This development coincided with efforts to modernize the LAS, initiated by the Arab Secretary-General in response to the "Arab Spring" uprisings of 2011.⁹⁴

Designed to serve as the primary judicial body for human rights within the LAS, the Arab Court of Human Rights is specifically tasked with enforcing the rights and obligations outlined in the Arab Charter of Human Rights. It operates alongside the Arab Human Rights Committee and comprises three entities: the presidency, the office, and the court chambers. The Court consists of seven judges who serve four-year terms, renewable once, and must be citizens of the member states outlined in the Court's Statute.^{95, 96} Regarding chambers, according to the Statute of the Court, the Court shall convene in chambers comprised of at least three Judges in each chamber to hear the subject matter of disputes.⁹⁷

The jurisdiction of the Court encompasses both judicial and advisory functions. Article 21 of the statute empowers the Court to issue opinions upon request from the Assembly "or any organizations or agencies affiliated with the League of Arab States."⁹⁸ It also has jurisdiction over cases concerning the

90 M.F. Rietveld: "NGO Participation in Regional Human Rights Systems, A Comparison of Europe and the Americas"; University of Leiden, 2015, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/33629/Rietveld-Myrinne-s1580868-MA%20Thesis-2015.pdf?sequence=1>, Accessed on 06/06/2024.

91 Ibid, cf. Armis Sadri, *Supra* Note (72).

92 See International Foundation for Human Rights: "The Arab League and Human Rights: Challenges Ahead Regional Seminar held in Cairo on 16–17 February"; 2013, https://www.fidh.org/IMG/pdf/rapport_lea_uk-Iddouble.pdf; Accessed on 06/06/2024.

93 Dr. Maya Mansour, closed roundtable minutes, 22 April 2024.

94 Dr. Elie Abou Aoun, closed roundtable minutes, 22 April 2024.

95 See Irmgard Marboe and Marie Ghantous: "Arab Court of Human Rights" Elgar Encyclopedia of Human Rights, Edited by Christina Binder and others, 6 September 2022, pp.145-150.

96 See The Statute of the Arab Court of Human Rights, Council of the League of Arab States, resolution n° 7790, E.A (142) C 3, 07/09/2014; https://aci.hl.org/texts.htm?article_id=44&lang=ar-SA.

97 Ibid, Article 24 (2).

98 See Statute of the Arab Court of Human Rights, 2014, Article 21.

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application and interpretation of the Arab Charter of Human Rights and "any other Arab treaty in the field of human rights" to be brought before the Court:⁹⁹

Similarly to other monitoring bodies in contentious proceedings, individuals lack direct access to the Court. Only states or accredited NGOs may initiate cases, as stated in Article 19(1) of the Court's Statute.¹⁰⁰ States can resort to the Court if Arab citizens claim to be victims of human rights violations, under the condition that they and the state where their citizens have been victims of violations are parties to the Statute or have accepted the Court's jurisdiction.¹⁰¹ Further, also similarly to other monitoring bodies under the Charter, NGO access under Article 19(2) is more restrictive and requires explicit acceptance by the respondent state.¹⁰² NGOs must also be accredited and working in the field of human rights in the relevant state. However, this accreditation requirement has faced criticism for favoring NGOs that are politically aligned with the governments, less controversial and critical towards the regime.¹⁰³

This provision (Article 19 of the Statute) is starkly hindering the individuals' access to justice through NGOs. Most notably in the European system, human rights NGOs have played a significant role in establishing, supporting, and developing the European human rights system, and they continue to do so by participating in procedures before the European Court of Human Rights, representing victims, and acting as third parties intervening in support of complaints to highlight specific issues.¹⁰⁴ Another admissibility criterion, set in Article 18¹⁰⁵ of the Statute, prohibits parallel proceedings before other national¹⁰⁶ and regional human rights courts, such as the African Court on Human and Peoples' Rights, which creates a conflict of jurisdiction for cases in North Africa, as these countries belong to two systems at once.

However, such a conflict of jurisdiction has not occurred yet, as, most significant of all, the Arab Court of Human Rights is not yet functional, for several reasons. The judges still have to be appointed, a step currently delayed for political reasons, as there is disagreement on the issue of enforceability of court decisions on the local level and the nationality of the judges. Lastly, the Court Statute must also still be

99 Ibid.

100 Ibid, Article 19(1): "The State Party whose citizen claims to be a victim of a human rights violation has the right to access the Court, provided that both the claimant State and the Defendant State are party to this Statute, or they have accepted the jurisdiction of the Court as determined by Article 20 of the Statute."

101 An important reminder is, in the absence of an individual complaint mechanism, individual cannot complain about human rights violations they are subjected to by their own state.

102 Ibid, Article 19(2): "State Parties can accept when ratifying or acceding to the Statute or at any time later, that one or more NGOs that are accredited and working in the field of human rights in the State whose subject claims to be a victim of a human rights violation has access to the Court."

103 See Armis Sadri, *Supra* Note (72).

104 See The German Institute for Human Rights, *Supra* Note (64).

105 See Statute of the Arab Court of Human Rights, 2014, Article 18: "The jurisdiction of the Court is complementary to the national judiciary and does not supplant it. The Court may not hear a case in the following cases:

- 1- Non-exhaustion of local remedies in the respondent State by a final and definitive judgment according to the national legal regime.
- 2- The case with the same subject matter has been filed before another regional human rights court.
- 3- The case has been filed six months after the notification of the claimant of the definitive judgment."

106 Indeed, victims of alleged violations must obtain a 'final and definitive judgment according to the national legal regime' (Art 18(1), Statute of the Court).

ratified by the requisite seven member states to be established, as mentioned in Article 33 of the Statute. Thus, currently, the Arab Countries of North Africa are only evaluated by the two committees and submit reports to the two committees. Once the Arab Court of Human Rights is established, however, Article 18 prohibits the filing of the same case in both courts.

V. Conclusion and Recommendations

The Arab human rights system is very particular in terms of the cultural heaviness it represents. Indeed, the discourse surrounding human rights in the Arab world encapsulates a myriad of perspectives, religions, and political challenges. Reservations to treaties are, without a doubt, a reflection of a cross-road between cultural sensitivity, more specifically, religious sensitivity and universal human rights. The Arab Charter's approach, invoking Shariah while endorsing universality, fundamentally questions the essence of human rights amid such juxtapositions. Indeed, while human rights discourse boasts a universal vocabulary, its practical application may not universally align, necessitating a candid exploration of the underlying conflicts. But the question is: who is to judge what the "correct" universal vocabulary is? Is the universality of human rights feasible amid cultural and context specificities? Isn't universal application enough? Why are these reservations made? And who is the judge of their validity, when for most countries of the region, God is (or should be) the ultimate judge?

On the other hand, the current system falls short of effective protection, offering no protection whatsoever. The system is hardly in place and is hardly considered to be functional. Establishing the Arab Court of Human Rights and making the Arab Committee on Human Rights effective are inevitable for establishing an effective regional human rights system in Arab countries. For the Arab Court of Human Rights to be impactful, it must possess the authority to order interim or provisional measures and provide protection for victims, witnesses, and participants in court proceedings from reprisals. The current Statute's denial of victims' direct recourse to the Court undermines its fundamental purpose. In addition, the Court must be granted discretion in determining case admissibility without strict prerequisites for exhausting local remedies. Reforms to the access provisions should allow individuals alleging human rights violations within the Court's jurisdiction to seek direct access.

Finally, other necessary reforms include ensuring the independence and impartiality of the Court and its judges on the one hand and the Arab Human Rights Committee on the other, away from political interference, regional conflicts, and eagerness to govern. Inevitably, at the heart of this discourse lies political will, which serves as a fundamental precursor to any meaningful advancement in human rights agendas.¹⁰⁷ Without genuine commitment and action from governmental and non-governmental actors alike, progress towards safeguarding and promoting human rights remains elusive. Indeed, the advancements in collaboration, at least among Gulf countries, are promising, for example, in the current decision to open the borders through the incoming Gulf Visa, which has been approved by the Gulf Cooperation Council and is currently in final administrative steps before implementation at either the end of 2024 or beginning of 2025.¹⁰⁸

107 Dr. Maya Mansour and Dr. Elie Abou Aoun, closed roundtable minutes, 22 April 2024.

108 See The Economic Times: "Gulf countries announce plans for a Schengen-like unified tourist visa"; 2023, https://economictimes.indiatimes.com/nri/visit/gulf-countries-announce-plans-for-a-schengen-like-unified-tourist-visa/articledeshow/105115587.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst, Accessed on 05/06/2024.

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Publication edited by:

Valeska Heldt, LL.M, Research Fellow, KAS Rule of Law Programme Middle East & North Africa

Imprint / V.i.S.d.P.

Konrad-Adenauer-Stiftung e.V.

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Publisher: Konrad-Adenauer-Stiftung e. V., 2024, Berlin

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