The Enforceability of Human Rights in the States of the Arab League

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<td>Arab Court of Human Rights</td>
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<td>AHRC</td>
<td>Arab Human Rights Committee</td>
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<td>CAT</td>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
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<td>CDHR</td>
<td>Cairo Declaration in Human Rights</td>
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<td>Human Rights Council</td>
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<td>ICC</td>
<td>International Criminal Court</td>
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<td>ICJ</td>
<td>International Commission of Jurists</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>LAS</td>
<td>League of Arab States</td>
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<td>MENA</td>
<td>Middle East and North Africa Region</td>
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<td>OIC</td>
<td>Organization of Islamic Conference</td>
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<td>OIC</td>
<td>Organization of Islamic Cooperation</td>
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<td>PLO</td>
<td>Palestine Liberation Organization</td>
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<td>UN</td>
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<td>UNCh</td>
<td>United Nations Charter</td>
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<td>VDPA</td>
<td>Vienna Declaration and Program of Action</td>
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1. Introduction

“Every State should provide an effective framework of remedies to redress human rights grievances or violations. The administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development”¹

No. I.27, Vienna Declaration and Program of Action, 1993

The Vienna Declaration and Program of Action (VDPA) is one of the most important human rights documents in the history of humankind. It is the result of the World Conference on Human Rights, which took place in June 1993 with over 7000 international participants including various NGOs and was adopted by 171 states, and confirmed by the General Assembly of the UN with Res. 48/121, 1993.² Beside the Universal Declaration of Human Rights 1948, the VDPA represents a huge step towards the universal recognition of a common human rights standard to be achieved by all states of the United Nations (UN).³ Furthermore, its content emphasizing the universality of human rights and the fact, that human rights are not solely a domestic but an international affair as well as the introduction of the office of the High Commissioner on Human Rights underline the importance of the document.⁴ Moreover, the Declaration urged the implementation and protection of human rights as well as encouraged for a closer cooperation between the states in this particular field and pointed out the need to adapt their human rights systems to international standards.⁵

¹ UN General Assembly, Vienna Declaration and Program of Action, 12 July 1993, A/CONF.157/23
⁴ Ibid. 2
⁵ UN General Assembly, Vienna Declaration and Program of Action (1993)
Yet not all states have developed human rights systems that are able to meet with international standards. My thesis focuses on the so far established regional enforcement mechanism of human rights within the League of Arab States (LAS, also Arab League), which is guaranteed by the Arab Charter on Human Rights (ACHR, Arab Charter) in particular. The document’s development history dates back to the late 20th century and the Charter has been revised just recently, which makes the issue of human rights enforcement within the LAS even more topical.

Moreover, the new 2004 Charter is seen as a huge step towards a human rights system compatible with international standards because of its very “western” and universal approach to human rights. This is of great significance due the fact that initially most of the Arab states did not agree to the universal approach to human rights, as set out in the Vienna Declaration and Program of Action 1993 and other international documents concerning human rights. The long lasting resistance of Arab states to adapt their system to international standards can be shown by looking at the Arab Charter’s predecessor, which failed to guarantee human rights compatible with international standards in an effective way and by the lengthy process it took to revise the 1994 Charter.6

Besides, other developments indicate the unwillingness of the LAS to adapt their human rights system to international standards. In particular the adoption of the Cairo Declaration of Human Rights in Islam by the Organization of the Islamic Cooperation (OIC, formerly Organization of the Islamic Conference) is seen as an opposition to the VDPA, as it provides a human rights catalogue solely based on the Shariah.7 This Declaration was set into force to emphasize the point of view represented by many Islamic states, who accused the UN to impose western morals and ethics on them through international human rights declarations. Therefore, and contrary to the “western values”, the Cairo Declaration aims to provide an Islamic influenced catalogue without any references to international treaties of human rights.8

6 see Chapter 2.2
In this context, the issue of cultural relativism vs. universalism of human rights needs to be addressed briefly. It is a historic and fundamental debate of great importance, particularly in the context of the newly developed Arab human rights system, as the 2004 Charter aims to combine Islamic principles and international human rights standards. However, these controversial approaches towards human rights involve the question of whether human rights are universal, meaning that they apply for everyone as “all human beings are born free and equal in dignity and rights”, and “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” as set out in the Universal Declaration on Human Rights. On the opposite, the Cairo Declaration sets out that “all men are equal in terms of basic human dignity” and that “all human beings are Allah’s subjects”, but also that “no one has superiority over another except in the basis of piety and good deeds”. Furthermore, art. 1 declares that “the true religion is the guarantee for enhancing such dignity along the path of human integrity”. Therefore, the Declaration grades human beings by their faiths and as a result, does not guarantee equal rights for everyone but rather predicates human dignity based on a person’s religiousness. In regards to religion the document clearly refers to Islam in art. 10 as “the religion of true unspoiled nature”.

Especially since the terror attacks on the 11th of September 2001 Islam has been associated with terrorism and as such has been constituted as a potential threat to a democratic and a peaceful society. Furthermore it often is argued, that “Islamic” culture does not go together with the “western” system. This argument is mostly underpinned with reasons such as the lack of the rule of law in Islamic states and of an effective democratic system as well as the lack of secularism within most of the states, whereas the West claims to fulfill all these conditions. However, meeting those “western” criteria is seen as essential to guarantee an effective enforcement mechanism of human rights as well as to accept the

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9 see Chapter 2.2.2
10 UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, Res. 217A
11 Ibid. 8, art 1
12 Ibid.
15 still some states are reigned by dictatorship, as for example Saudi Arabia
universality of human rights as a whole. High importance is attributed in particular to the necessity of the democratic principle, which is vital to guarantee the individual’s freedom of movement, freedom of speech, expression and religion and non-discrimination through a state structure composed of three powers, namely the legislative, executive and judicial.  

Freely elected political decision-makers, independent courts with necessary regulatory functions and the separation of powers guarantee a fair and transparent democratic system and are crucial for an effective human rights system.

Another aspect concerning the differences between the Arab and western world is the Islamic understanding of rights as such, beginning with the belief, that they are God-given and therefore not accessible to modification. This is also stressed within the Cairo Declaration’s preamble which states that they are “binding divine commands”. Therefore it could be assumed that no other legal authority is acknowledged but God, which means that any resolution, declaration and legal source introduced by international organizations could not be fully accepted within Islamic states, as it is said to be incompatible with the Islamic law. However, it is to keep in mind that within Islam different schools of thoughts exist and therefore opinions and arguments differ. As a result, generalizations are to be avoided. Regarding the above, the argument only reflects a very conservative view.

Nevertheless, the concepts of brotherhood, freedom and equality of humankind are not inconsistent with Islamic scripts, they are in fact based on the Qur’anic principles as well, and thus not very different from Christian precepts. This fact is particularly important to highlight, as the principle of inviolability of human dignity is not at all alien in Islam.

In order to find common grounds, the way to go might be through religion itself and to interpret these religious principles in conformity with universal values but in a way which will be accepted by Muslims. This approach is close to the “moderate universalist” approach made by the OIC Secretary-General within a session of the OIC, on 20th of

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17 Ibid.
20 Ibid. 18, p. 31
February, 2012: “Islam in fact has the normative potential to add to the modern values and standards and push for a better implementation, both at the social and political levels”.

This statement sets out that universal human rights are the priority and that Islam should be interpreted in conformity with those rights.

Nevertheless, it is critical to call into question whether human rights are even universal as well as whether human rights set out in international documents fail to address all people and to acknowledge the variety of existing conceptions of humankind. Already, universal declarations such as the Universal Declaration on Human Rights and the Vienna Declaration and Program of Action 1993 have proved that international human rights are not solely based on western principles. Mary Robinson, a United Nations High Commissioner for Human Rights, who was part of drafting the Universal Declaration on Human Rights, claimed, that representatives of all parts of the world were involved within the drafting process and therefore differing cultural and religious traditions were taken into account: “The result is a distillation of many of the values inherent in the world’s major legal systems and religious beliefs including the Buddhist, Christian, Hindu, Islamic and Jewish traditions”. Therefore the West cannot simply be seen as cultural imperialist. However, in order to guarantee an effective human rights system within the Arab states, a compromise must be reached and all perspectives must be incorporated in order to agree on a common path. It is to be evaluated within this thesis whether this has been achieved within the area of the Arab League with the new 2004 Charter.

Moreover, as a result of this controversial debate as well as the still ongoing human rights violations in the Arab area, which are often attracting international interest, the Arab system is frequently discussed amongst human rights activists, scholars and human rights organizations. Due to the aforementioned recent developments in the field of human rights within the area of the LAS and especially due to the adoption of the new Arab Human

21 Esmaeili Hossein, Marboe Irmgard, Rehman Javaid, , The Rule of Law, Freedom of Expression and Islamic Law, p. 96
Rights Charter by the League of Arab State’s Council in 2004, entering into force in 2008, the issue is even more topical as it is important.25

However, the Arab human rights system is still in its “status nascendi” and not fully established yet. This does not mean that other regional or international human right systems have already achieved a “perfect” system. As a matter of fact human rights will always be a work in progress because they have to be adapted to a constantly changing society and to new social developments. The transforming meaning and content of human rights also affects the enforcement mechanisms as such. However, in comparison to other regional systems, such as the African, Inter-American, Asian, the advanced European system and the international UN human rights system existing besides the Arab system, the latter one is criticized for not complying with international standards and for lacking very important aspects. In order to illustrate the differences and shortcomings of this particular system, this thesis aims to constantly draw comparison to the international system. This contrast helps to point out positive and negative aspects of the so far existing Arab human rights system.

In order to evaluate the effectiveness of the present mechanism a precise definition is required to define the indispensable requirements for an effective human rights system. Therefore, I refer to an Arab human rights activist Sohair Riad’s description: “[…], a human rights system can be said to consist of permanent institutions with effective compliance and enforcement procedures and a legal framework that guarantees the promotion and protection of universal human rights.”26 This definition accurately summarizes the needs and requirements a human rights system has to meet in order to be effective. Independent institutions are needed to monitor the human rights mechanism and possible violations as well as to guarantee their compliance and effective procedures. Furthermore a legal framework assuring human rights of international standard are being enforced effectively is essential. Whether the Arab system meets these requirements and provides for an effective human rights system is the central issue to be evaluated in my thesis.

In order to answer this question, chapter two will give a brief overview of the League of Arab States itself and of the Arab Charter on Human Rights, as this background knowledge is needed to understand the enforcement mechanism as such. However, as pointed out before and due to its importance for the LAS and its human rights mechanism, this chapter also provides an overview of the most important aspects of the Cairo Declaration on Human Rights too. A particular focus will be on differences and commonalities of the ACHR and the Cairo Declaration.

Following this chapter, the centerpiece of my thesis is an evaluation of the characteristics and effectiveness of the monitoring bodies existing in the member states of the LAS and the enforcement mechanism as far as it has been established at this stage and as far as information is available. The latter aspect is to highlight, a state reports and some other documents are only available in Arabic, which poses an obstacle and is criticized for being an exclusion of the non-Arab-speaking public.\(^{27}\) As a result, my research relies mainly on reports and translations by NGOs, such as Amnesty International, the International Commission of Jurists (ICJ) and other activists and law scholars in the field of human rights. Here, too, statements of NGOs must be read critically, as they often tend to be not neutral but rather full of accusations and criticism.

Whilst evaluating the institutions and the mechanism concerning human rights enforcement within the States of the Arab League, the thesis constantly draws comparison to the UN human rights system. This should illustrate the differences of the Arab and the international system, and any shortcomings and positive aspects will be evaluated. Assessing existing deviations from the international human rights system is of great importance due to the fact that the Arab states are part of the United Nations and thus are subject to the Charter of the United Nation (UNCh) and its human rights mechanism. Also, Arab states have ratified international human rights treaties, although often with reservations. Some of the most important treaties are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESC), both ratified by 16 member states; the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT), ratified

\(^{27}\) Homepage League of Arab States, *Reports*, available at: http://www.lasportal.org/ar/humanrights/Committee/Pages/Reports.aspx (accessed 10 June 2018)
by 18 member states; the International Convention on Elimination of all Forms of all Racial Discrimination (ICERD), signed by all LAS member states; the Convention of the Rights of the Child (CRC) counts 20 ratifications, as well as the Convention on Eliminating all Forms of Discrimination against Women (CEDAW) with 19 ratifications. Therefore, Arab states are obliged to adhere to these international regulations. However, within the thesis the comparison will be drawn to the system of the charter-based mechanism of the Human Rights Council and the treaty-based mechanism of the International Covenant on Civil and Political Rights in particular. As a result, this comparative analysis aims to demonstrate how and to what extent the international standard is realized within the Arab system.

Closing my thesis the last chapters will examine future perspectives and current changes and developments within the enforcement process. Finally, I will give my personal opinion on the Arab human rights mechanism and also highlight short comings as well as possible amendments and positive aspects.

2. The Arab Charter on Human Rights and the League of Arab States

In order to explain the human rights enforcement mechanism, it is important to discuss essential features of the regional organization behind the process as well as the Arab Charter itself.

2.1 The Arab League

2.1.1 Development History and Characteristics of the LAS

The LAS is a unity formed by states on a regional basis with its legal foundation on chapter VIII (art. 52-54) UN Charter. Commonly known as the Arab League, it is an intergovernmental, regional organization of independent Arab states with its headquarters

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29 United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, art. 52
in Cairo.  

Founded in 1945 on the basis of the Alexandria Protocol, which was approved within the first meeting between the founding states, the Arab League Charter was adopted by Iraq, Egypt, Jordan, Lebanon, Saudi Arabia, Syria and Yemen (by then North Yemen, later on federated with South Yemen) shortly after. 

Today, the League of Arab States counts 22 member states. Beside the states mentioned above members are: Libya, Sudan, Morocco, Tunisia, Kuwait, Algeria, Oman, Qatar, United Arab Emirates, Bahrain, Mauritania, Somalia, Palestine (represented by the PLO), Djibouti and Comoros. It is interesting to note that Palestine joined the League of Arab States in 1976 even though at this time it was a matter of dispute whether Palestine met all criteria to be accepted as a state at all and therefore was not formally recognized by the UN. Furthermore, Eritrea, India, Brazil and Venezuela enjoy observer status.

As the Arab League is the parent body of the recently established Statute of the Arab Court of Human Rights as well as of the Arab Charter on Human Rights, it is important to give its organization as well as its members a closer look.

31 Ibid.
32 Ibid., p. 10
33 Ibid.
Founded in 1945, the Arab League is one of the oldest regional organizations. Other regional regroupings of states were established later on, for example the Council of Europe in 1949 as a reaction to the Second World War, and the Organization of African Unity in 1963. Therefore, it could be called one of the first regional intergovernmental organizations.

However, the Arab League Charter did not mention any human rights nor did it mention any direct representation of Arab citizens, which is not a surprise considering that international human rights standards had not been fully established at that time. On a universal level, the Universal Declaration on Human Rights was adopted three years later in 1948 followed by the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966, forming the International Bill of Human Rights.

Instead, art. II of the Arab League Charter focuses on strengthening the relationship between the states, but also to safeguard their sovereignty and independence as well as enabling cooperation between the states in six areas: Economic and financial affairs, communication, cultural affairs, nationality, passports and visas, social affairs and health affairs. This shows that the Arab League Charter has its main purpose in strengthening its members without losing their sovereignty. Clearly, this derives from the fact that the LAS was founded by newly independent states which did not want to restrict their independency through a superior organization.

Besides, one could argue that this rather loose bond is the result of the member state`s composition as they show significant differences regarding economic, cultural, religious and also geographical aspects. This heterogenic composition might be due to the fact that

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36 Magliveras Konstantinos, Naldi Gino, The Arab Court of Human Rights: A Study in Impotence (2016), Revue québécoise de droit international, p. 149
38 Rishmawi Mervat, Civil Society Interaction with the League of Arab States: Key insights, principles, good practices and emerging lessons (2013), p. 12
41 Ibid. 37, pp. 345-346
the criteria for achieving the membership are wide open and not precisely determined. There are no restrictions to certain aspects set out, as art. I of the Charter of the Arab League states that “...any independent Arab state has the right to become a member of the League”. There is no definition of what exactly an independent Arab state is. However, possible indicators such as the Arab language as well as certain cultural aspects also cannot be used to define “Arab”, as for example the population of Somalia and Djibouti does not speak Arab and cultural traditions are not shared among all member states either.

Also, economic differences are enormous. On the one hand there are Qatar and the United Arab Emirates and Kuwait, which are known as some of the richest countries in the world; on the other hand, Somalia and Comoros are some of the poorest countries. Obviously, this might lead to divergent views as well as diverse aims and interests, which underlines the sharp contrasts and diversities within the Arab League. It is worth mentioning, that these huge discrepancies do not only exist between the member states but also within the countries themselves.

Referring to the illustration above, the member’s geographical location is to be pointed out. Most of the member states are from the MENA (Middle East and North Africa Region), but for example Turkey, Iran and Israel are not members of the Arab League even though their geographic location could lead to the assumptions that they should be. In comparison to other regional organizations, the member states of the Arab League are further apart and cannot be categorized in relation to their geographical positions, as they are even located in different continents: Africa as well as Asia.

Furthermore, Islam is mostly assumed to be the binding aspect; this, however, has not proven true: There is not one “Arab culture”, as Islam is practised differently in every state. Also, there are various groups within Islam: Sunni Islam is dominant in most of the

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44 League of Arab States, *Charter of the Arab League* (1945), art. I
47 Ibid. 43, p. 9
member states, whereas the Shi’a is dominant in Bahrain, Iraq and also some minorities existing in Lebanon, Syria and Saudi Arabia. Additionally, Christian minorities can be found in Lebanon, Palestine, Jordan, Syria and Egypt.49

After listing some of the differences and features of the LAS, it becomes clear that due to the variety of states within this organization, it is challenging to agree upon a co-operative path towards a common human rights system. Of course, other regional organizations are compositied of very divergent states too. In my opinion however, the League of Arab States consists of member states with particularly wide disparities, which consequently have effects on the human rights mechanism within their area. It is possible to say that these 22 states are grouped together because of only one common feature, which is that “the historical, cultural, religious and political links between them are stronger than the links of each of them with the part of the world they belong to”.50

Moreover, the fact that the principle of the protection of human rights in art. II of the Arab League Charter is still missing symbolizes that this issue is still not a matter of great importance for the member states.51

2.1.2 Organizational Structure

This chapter provides an overview of the most important institutions within the League of the Arab States. However, bodies of high importance for the human rights enforcement mechanism are explained separately in more detail within chapter three of the thesis.

The LAS structure as well as its institutions and their functions are set out in the Arab League Charter, which was adopted on 22nd March, 1945.52 This legal document provides the foundation for various kinds of bodies, which can be categorized into political, judicial and independent bodies.53

2.1.2.1 Political Bodies

50 Ibid. 48, p. 85
53 Ibid.
First of all, the supreme body of the Arab League is the Council. It consists of member state representatives, which are often foreign ministers or permanent delegates. However, the number of delegates per country is not limited. Art. III sets out, that each state has one vote, irrespective of the number of representatives.

The Council of the Arab League meets twice a year and additional sessions are possible when proposed by at least two state parties. The Council is responsible for supervising agreements of member states concerning the Arab League’s Statute as well as deciding on the cooperation between the Arab League and international bodies. Additionally, it functions as a mediator for disputes between the member states.

Furthermore, art. IV, Charter of the Arab League, provides for special committees to be reinstated. These bodies are supervised by the Arab Council and are charged with the task to lay down principles and the extent of co-operation in draft agreements concerning the main matters of the LAS set out in art. II. Art. IV of the Arab League Charter sets out that state representatives may take part in their work; however the extent of participation will be determined by the Arab Council. This indicates that these committees are not composed of member states representatives only.

Furthermore, committees could be split into three categories: “ad hoc” committees entrusted with special tasks, committees established by the LAS main institutions, and “permanent committees”, which are not time-limited. The latter are responsible for a certain area within the LAS and to address problems and evaluate solutions in this particular field, which are submitted to the Council for approval. Amongst these is the Arab Permanent Committee on Human Rights, which is of great importance for the Arab human rights system and therefore will be discussed later on in more detail.

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54 League of Arab States, Charter of the Arab League (1945), art. III
55 Ibid.
56 Ibid., art. IX
57 Ibid., art. V
58 Ibid., art. II; main matters: economic and financial affairs, communications, cultural affairs, passport and visas, social and health affair
59 Ibid., art. IV
61 see chapter 3.1
Besides that, the Arab League established an Arab Parliament, which is a rather young body and was set up as an official institution in March 2005 based on a decision by the Council. Due to the fact that the Arab League Charter does not mention any direct presentation of Arab citizens, the establishment of this body is a huge step towards a more democratic system. However, no election procedure for direct representatives has been established yet. So far, national parliaments nominate four members to participate within the Arab Parliament. These representatives are not considered to represent the nation but rather the Arab world as such and are therefore not depending on their home country’s politics. This political body is composed of 88 delegates; each country is represented by four state representatives, the presidency, which represents the Parliament at external matters, the Parliament’s bureau for administrative work and four committees. Besides, Turkey holds observer status since 2010. The Arab Parliament does not have legislative power and is limited to give recommendations only. Different issues are possible to be subject to the Parliament’s session. The latest meeting was held in February 2018, focusing on the issue of combating terror and extremism.

Art. XI and art. XII set out the functions of the General Secretary, which consists of a Secretary-General, Assistant Secretaries and officials. The current General-Secretary Ahmed Aboul-Gheit, Egypt, was elected in 2016 for a five-year period. His priority is to manage the Arab League General Secretariat and its administrative work.

Moreover, the Arab League Summits have to be mentioned. Summits are gatherings of the heads of the member states to discuss recommendations, reports, and acceptances of new members and suspensions of a member state as well as to make decisions. Since 2000 they are held on a regular basis every in March and September. Before that, they were simply

63 Ibid.
64 Ibid.
65 Ibid.
set up whenever they were needed. Extraordinary sessions in consequence of requests of member states or the General Secretary are possible. However, the Summits’ decisions are available in Arabic only.

Other political bodies are the Ministerial Councils and the Arab Economic and Social Council as well as the Joint Defense Council.

2.1.2.2 Judicial Bodies

The LAS have planned to establish judicial bodies which are not in use yet. These bodies are an Administrative Court, the Arab Court of Justice and the Arab Court of Human Rights. However, the Arab Human Rights Court will be subject to chapter 3.3.

2.1.2.3 Independent Expert Bodies

Moreover, there exists the possibility to establish independent expert’s bodies functioning as supervisors for treaties and advisors for certain issues. In fact, the Arab League only counts one expert body so far, namely the Arab Human Rights Committee, which is responsible for overseeing the Arab Charter of Human Rights and its implementation. As this Committee is of great importance for the Arab human rights system, it will be discussed in more detail in chapter 3.2.

2.1.3 Critical summary

First of all, the LAS composition is very heterogenic, which could stand in the way of a common approach towards a closer cooperation in the field of human rights. There is no denying that other regional organizations consist of divergent states too, as does the UN, which includes basically all states. However, there are major conflicts within the area of the League of Arab States, especially due to recent events such as the Syria crisis and the

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72 Ibid., 69, p. 19
73 Ibid.
74 Ibid.
Gaza conflict.\textsuperscript{75} This in fact might be a barrier to find a common approach and to agree on creating a regional human rights system.

Furthermore, the Arab League Charter as such needs to be modernized. Since the Arab Spring, NGOs have called for reforming the League’s Charter and in particular for the inclusion of human rights protection as a main principle within art. II.\textsuperscript{76} This demand was also stressed by the International Commission of Jurists, because the LAS is a regional institution legally based on chapter VIII of the UN Charter, which states, that states may form unities concerning subjects relating to the maintenance of international peace and security consistent with the UN principles. As human rights violations are to be considered a threat to peace by the Security Council, it is therefore necessary to constitute this guarantee within the League’s Charter.\textsuperscript{77} Thereupon attempts to reform the document were made. Four committees were established concerning the reform of the League’s Charter and the LAS structure as a whole as well as to make NGOs engagement possible.\textsuperscript{78} In March 2015, a new draft was presented at the Sharm El-Sheikh Summit in order to be adapted. It included the recognition of human rights as well as the Arab Court and the Arab Parliament, which were established in the years before.\textsuperscript{79} Unfortunately, the draft was not adopted but postponed.\textsuperscript{80} Therefore, the Arab League Charter is still not amended but exists in its old version, and neither is there a legal foundation for the Arab Parliament recognized as an institution nor for the Arab Court of Human Rights. Unfortunately, the principle for the recognition of human rights as a priority for the states of the Arab League is still missing, too.

Furthermore, it is notable that the LAS structure has several features which are worth being discussed. First, the Arab League mainly consists of political bodies composed of state representatives; thus, they are not independent. There are only a limited number of

\textsuperscript{78} Ibid. 76, p. 15
\textsuperscript{79} Ibid.
\textsuperscript{80} League of Arab States, Sharm El-Sheikh Summit, Decision No. 621, 29 March 2015
independent and neutral institutions, if they become reality at all, as for example the Arab Human Rights Court. This is problematic, as an effective system would need independent organs in order to monitor the system. Therefore, as judicial bodies have not been fully established, there is still an “independent control” missing to monitor not only human rights violations but also any other violations by the states of the Arab League.

Secondly, the Arab League lacks democracy. The recently established Arab Parliament is not functioning as a direct representation of the Arab public yet, as there is no direct election procedure established so far.\textsuperscript{81} However, in theory, the representatives sent from national parliaments should represent the Arab people as such and not their national governments. There is well founded fear that the focus will be laid on political interests of the governments rather than the actual interests of Arab people. Also, the Arab Parliament has remained in the background so far, but due to its recently raised criticism of Arab League members, especially Yemen and Syria, and the call for freezing their membership, this institution might gain more importance.\textsuperscript{82}

Due to the lack of transparency and a democratic organization within the LAS, which are fundamental requirements for a regional human rights mechanism, the implementation of human rights is feared not to be effective.\textsuperscript{83}

\section*{2.2 The Arab Charter on Human Rights}

The Vienna Declaration and Program of Action sets out that “\textit{regional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standards, as contained in international human rights instruments, and their protection}.”\textsuperscript{84} Therefore, the Arab Charter on Human Rights (ACHR, also “Arab Charter”) as a regional instrument should complement the international human rights

\begin{footnotes}
\item[81] European Parliament Directorate-General for External Policies of the Union, \textit{Background: The Arab Parliament}
\item[82] Ibid.
\item[84] UN General Assembly, \textit{Vienna Declaration and Program of Action} (1993), par. 37
\end{footnotes}
mechanism by implementing human rights on a regional level under consideration of and in compliance with international standards.\textsuperscript{85}

In general, regional human rights systems are placed at an intermediate level between the national and the international.\textsuperscript{86} Holding this position, these mechanisms have the advantage to react to and consider specific cultural features within certain areas whilst enforcing universal human rights norms.\textsuperscript{87} As a result these systems are more trusted than external international bodies, which are often seen as mistrustful and suspicious.\textsuperscript{88} Furthermore, regional human rights mechanisms have the ability to adapt to local circumstances and are more flexible and “nearer to action” than the distanced international mechanism. This is why these systems are able to guarantee a more effective monitoring mechanism due to their proximity to situations, whereas the international system is far away from anything that is happening.

So far, there are five human rights systems: the European system, which is the oldest (European Convention on Human Rights, 1950), the American system (American Convention on Human Rights, 1968), the African system (Banjul Charter on Human and People’s Rights, 1981), the Arab system (Arab Charter on Human Rights, 2004) and the Asian system (ASEAN Human Rights Declaration, 2012).\textsuperscript{89} As pointed out previously, these systems are varying greatly from being advanced to being nascent. Besides the Asian human rights system, the Arab mechanism is known as one of the youngest regional human rights systems and presents another regional human rights instrument to enforce and guarantee human rights within some of the LAS member states, as not all member states have ratified the Charter yet.

However, this chapter provides a closer look at the Arab Charter’s development history. First, the 1994 Charter’s history as well as its human rights features will be evaluated. Secondly, the current version - the 2004 Charter - will be discussed in more detail. This section illustrates amendments and differences of the two human rights documents.

\textsuperscript{87} Ibid.
\textsuperscript{88} Ibid. 85
\textsuperscript{89} Ibid., p. 169
2.2.1 The Arab Charter on Human Rights 1994

2.2.1.1 Development History

The LAS’ main treaty as well as the only regional legally binding document in the field of human rights in this particular area is the current version of the Arab Charter on Human Rights 2004. Its drafting history dates back to 1960, when the Union of Arab Lawyers, a NGO, asked the Arab League Council to draft an Arab Convention on Human Rights at a meeting in Damascus.\(^90\) Eight years later, the Arab Commission on Human Rights started to prepare a draft, which then was sent to the Arab States Council for ratification in 1985.\(^91\) Due to the rejection of this first version, another draft was sent to and finally approved by the Council in 1994.\(^92\) However, because of several severe shortcomings concerning the protection of human rights and the lack of fundamental guarantees, this human rights document never became effective.\(^93\) It was signed by one state only (Iraq in 1996) and ratified by none.\(^94\)

2.2.1.2 Characteristics of the Human Rights within the Arab Charter 1994

Going into more detail, the 1994 Charter is composed of four parts and 43 articles, including civil, political, economic, social and cultural and collective rights.\(^95\) In general, there is no coherent system organizing the rights within the Charter, as for example rights concerning a fair trial are found in art. 6, 7, 8, 15 and 16.\(^96\) However, the confusing structure is not the only aspect to be condemned: Strong criticism was voiced by NGOs and other organizations concerning the draft’s poor human rights standard as compared to the international level and the lack of an effective protection for these rights. The most serious shortcomings will be discussed in the following.


\(^{92}\) League of Arab States, *Arab Charter on Human Rights*, 15 September 1994

\(^{93}\) von Arnauld Andreas, *Völkerrecht* (2016), 3. Auflage, C.F. Müller, p. 335

\(^{94}\) Ibid.

\(^{95}\) Ibid. 92

\(^{96}\) Ibid.
First of all, the 1994 Charter’s preamble sets out that Zionism is seen as a threat to world peace and needs to be rejected, as it constitutes a violation to human rights.\(^97\) This is reaffirmed again in art. 1 lit. b, saying that besides racism, occupation and foreign domination, Zionism is seen as a challenge to human dignity. As a human rights charter should concentrate on human rights only and a political statement of such kind has no place in this particular wording, it is considered to be unsuitable. It takes away the 1994 Charter’s genuineness and leaves a bad aftertaste which overshadows the actual significance of the document.\(^98\)

In reference to the position paper of the International Commission of Jurists (ICJ), which was published in 2003 and contains a list of recommendations concerning the new 2004 Charter, suggestions to improve the 1994 Charter were made. A major concern raised by the ICJ was the reference to Islamic law, especially to the Shariah, within the preamble of the 1994 Charter. The commission claimed that any references to “notions of uncertain legal import and which are susceptible to varied or even contradictory interpretations should be limited as much as possible”.\(^99\) Therefore, any such recourse has the potential ability to limit the human rights effectiveness due to the fact that various interpretations of such texts may result in different meanings of these rights. This creates considerable legal uncertainty and should be eliminated.

Besides, the preamble refers to the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, as well as the International Covenant on Economic, Social and Cultural Rights and reaffirms their principles.\(^100\) Amongst these, the Cairo Declaration on Human Rights in Islam is mentioned as well. Listing all these human rights documents in a row may indicate that they are of equal importance for setting out guiding principles for the 1994 Charter. However, the International Commission of Jurists claimed the need to emphasize the importance of the international human rights documents in particular and in case of norm

\(^{97}\) League of Arab States, *Arab Charter on Human Rights* (1994), preamble
\(^{99}\) Ibid.
\(^{100}\) Ibid. 97, preamble
conflicts the latter should enjoy priority.\textsuperscript{101} This is because most of the Arab League member states ratified these international human rights documents, and some of them constitute imperative norms which are mandatory.

Furthermore, art. 2 states, that “each State party to the present Charter undertakes to ensure that every individual located within its territory and subject to its jurisdiction, shall have the right to enjoy all the rights and freedoms recognised in this (Charter), without distinction on the basis of race, colour sex, language, religion, political opinion, national or social origin, wealth, birth or other status, and without any discrimination between men and women”.\textsuperscript{102} NGOs claim the need to emphasize the non-discrimination clause more and to stress its importance and abolish any ambiguity. Therefore, another paragraph should be added to stress the importance of the equality of the sexes.

Besides, other essential provisions are missing: The right not to be held in slavery; a prohibition of death penalty for minors as well as for people with mental illness; political rights, such as the right to elect and to be elected. The 1994 Charter sets out that “Political capacity is a right for every citizen of full legal age to be exercised in accordance with the law”.\textsuperscript{103} This provision is problematic since the scope of this right could be limited by national laws. Hence, women may be excluded from any political participation, for example. Similarly, art. 20 setting out the right of movement and freedom and art. 28 concerning the right to freedom of peaceful assembly and association are restricted as well, as these rights are guaranteed in accordance with national law only.\textsuperscript{104}

Moreover, art. 26 sets out the right of freedom of belief, thought and opinion.\textsuperscript{105} Unfortunately, the provision does not explicitly refer to the right of freedom of expression and religion. Also, there is neither a right to freely choose a religion nor to decide not to be part of a religious group.\textsuperscript{106}

\textsuperscript{102} League of Arab States, Arab Charter on Human Rights (1994), art. 2
\textsuperscript{103} Ibid., art. 19
\textsuperscript{104} Ibid., art. 28
\textsuperscript{105} Ibid., art. 26
One of the most heavily criticized provisions can be found in art. 4 ACHR (1994), setting out far-reaching derogations from the 1994 Charter: “No restrictions shall be placed on the rights and freedoms recognized in the present Charter except where such is provided by law and deemed necessary to protect the national security and economy, public order, health or morals or the rights and freedoms of others.”\textsuperscript{107} Furthermore, the provision allows the states to derogate from the rights set out in the 1994 Charter “in time of public emergency which threatens the life of the nation, the State parties may take measures derogating from their obligations […]”.\textsuperscript{108} The provision does not set out whether these derogations or measures have to be compatible with international law nor if they have to happen in a non-discriminating way.

Moreover, the 1994 Charter did not require the member states to adapt their national law in accordance with the Charter, and as a result the old version of the ACHR only had a subordinated role compared to national legislation.\textsuperscript{109} Therefore, NGOs and human rights activists feared that the implementation of human rights would depend on the member state’s arbitrariness. Additionally, the 1994 Charter did not provide for the establishment of an institution to interpret its provisions compulsory.\textsuperscript{110}

Also heavily criticized was the lack of an effective enforcement mechanism established within the 1994 Charter. Art. 40 sets out that a Committee of Experts is to be established, which is not endowed with such powers. However, it was not said how the members would be elected within the member states.

In fact, the 1994 Charter was even criticized by the former representative of Egypt within the Arab League to be “a regional defense”. By this it was meant that states would only sign the Charter in order to be able to counter possible criticism and international pressure for establishing an effective human rights system.\textsuperscript{111} However, after evaluating some of the most severe deficiencies the 1994 Charter has, one might support this statement.

\textsuperscript{107} League of Arab States, \textit{Arab Charter on Human Rights} (1994), art. 4 lit. a
\textsuperscript{108} Ibid., art. 4 lit. b
\textsuperscript{109} Ibid., art. 4
\textsuperscript{110} Rishmawi Mervat, \textit{Civil Society Interaction with the League of Arab States: Key insights, principles, good practices and emerging lessons} (2013), p. 17
\textsuperscript{111} Rishmawi Mervat, \textit{Civil Society Interaction with the League of Arab States: Key insights, principles, good practices and emerging lessons} (2013), p. 18
2.2.2 The Arab Charter on Human Rights 2004

2.2.2.1 Development History

As the 1994 Charter failed to enter into force and more sustained pressure was put on the LAS, especially from NGOs as well as the UN after the terror attacks on 11th September, 2001, it was decided by the Council of the Arab League to revise the 1994 Charter by adopting Res. 6184 and 6243, which then entered into force on the 15th of March, 2008.\(^{112}\) This reform included a whole package of acts, e.g. the introduction of new institutions such as the Arab Parliament, a Regional Security Council and the establishment of the Arab Court of Justice.\(^{113}\) However, due to the lack of consent at the summit in 2004, only the revision of the 1994 Charter was pushed through. The LAS agreed – again under the pressure of NGOs – to include an independent Arab expert group helping to revise the 1994 Charter, as well as to accept the collaboration of NGOs and various other experts.\(^{114}\) As the activist Mervat Rishmawi points out in her work, this reforming process was claimed to have been intended not so much to show respect for human rights and the importance and acceptance of the latter but rather to satisfy and calm the US down in showing an increased interest in anti-terror measures as well as reforming the human rights system and to tolerate the Iraq war.\(^{115}\)

In June 2003, the Permanent Committee on Human Rights was entrusted with the task of modernizing the 1994 Charter and of establishing a Regional Security Council, an Arab Parliament and an Arab Court of Justice.\(^{116}\) However, it was pointed out that the new Charter would have to meet international standards and in particular fulfill the requirements of the Vienna Declaration and Program of Action adopted by the World Conference on Human Rights in June 2003.\(^{117}\)

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\(^{112}\) Ibid., p. 19
\(^{114}\) Ibid.
\(^{115}\) Ibid. 111, p. 19
\(^{116}\) Ibid., p. 14
The reforming process started shortly after an external meeting of several regional as well as international NGOs, which prepared a proactive declaration that was sent to the Committee in order to request that the new Charter should include these drafted principles concerning material law.\footnote{Rishmawi Mervat, \textit{Civil Society Interaction with the League of Arab States: Key insights, principles, good practices and emerging lessons} (2013), p. 19} Besides, this particular document emphasized the need for an effective mechanism as well as a legal framework for NGOs’ participation and to amend the so far existing human rights institutions.\footnote{Ibid., p. 20}

Finally, the new Charter was adopted in 2004 by the Council of the LAS and entered into force four years later, on 15\textsuperscript{th} of March, 2008, after seven ratifications were received.\footnote{Benedek Wolfgang, Jacque Jean Paul, Kedzia Zdzislaw et al., \textit{The Role of Regional Human Rights Mechanism} (2010), p. 86} Today, the 2004 Charter has been ratified by 14 states and signed by 3: Algeria (2006), Bahrain (2006), Egypt (signed 2004, not yet ratified), Iraq (2013), Jordan (2004), Kuwait (2013), Lebanon (2011), Libya (2006), Morocco (signed 2004, not yet ratified), Palestine (2007), Qatar (2009), Saudi Arabia (2009), Sudan (2013), Syria (2007), Tunisia (signed 2004, not yet ratified), the United Arab Emirates (2008), and Yemen (2008).\footnote{The International Center for Not-for-Profit Law (ICNL), \textit{Civic Freedom Monitor: League of Arab States}, 29 January 2018, available at: http://www.icnl.org/research/monitor/las.html (accessed 10 May 2018)} In comparison to the 1994 Charter, the number of ratifications is impressive in particular because the new Charter sets out universal human rights. Taking into consideration that the LAS counts 22 member states, it is notable that more than half of them have already committed to the new Arab Human Rights Charter.

However, as will be discussed in the following, the revised Charter is still not flawless, even though it constitutes a huge improvement compared to its predecessor. In order to illustrate this, amendments, features and positive as well as negative aspects of the new Charter will be evaluated.

\subsection*{2.2.2.2 Characteristic of the Human Rights within the Arab Charter 2004}

The Arab Charter on Human Rights counts 53 articles and is on the one hand – especially in comparison to the version of 1993 – seen as a huge improvement, while on the other
hand it is severely criticized due to various aspects which will be discussed in the following.\footnote{Vitkauskaite-Meurice Dalia, \textit{The Arab Charter on Human Rights: The Naissance of new regional Human Rights Systems or a Challenge to the Universality of Human Rights?} (2010), p. 172}

In conformity with the Universal Declaration on Human Rights, which calls for an equilibrium between all different kinds of human rights the 2004 Charter provides for such variety. Civil, political, social, cultural, economic rights as well as individual rights are set out in art. 5, 6, 7, 8, 9, 18 and 20 concerning the right to life, not to be subject to torture or inhuman treatment, to be free from slavery and the right to security of the person.\footnote{League of Arab States, \textit{Arab Charter on Human Rights} (2004)}

Besides, rights concerning a fair trial and to be equal before the law are established in art. 12, 13, 15, 16, 17, and 19. Civil and political rights are set out in art. 24, 26, 27 and 28 as well as art. 30 to 33. Economic, social and cultural rights can be found for example in art. 34 concerning the right to work, art. 35, the right to form unions, as well as art. 42, setting out the right to participate in cultural life.\footnote{Magliveras Konstantinos, Naldi Gino, \textit{The Arab Court of Human Rights: A Study in Impotence} (2016), Revue quebecoise de droit international, p. 152} Also, the impact of Arab cultural aspects can be found in many rights set out in the document, as for example in art. 40 and 33, which emphasize the importance of family and the duty to care for one’s relatives. Furthermore, collective rights, also so-called \textit{third generation rights} are set out within the 2004 Charter focusing on the collective rather than on the individual, which are considered to reflect Western traditions instead.\footnote{Ibid. 123, art. 37} As for example, art. 37 sets out the right to development as well as the duty of the state to promote health education and to combat environmental pollution.\footnote{Ibid. 126}

Even though the 2004 Charter includes more rights than the old version, there are still some important ones missing. In response to the deficits of the 1994 Charter discussed in the previous chapter, amendments and shortcomings are evaluated below.

\textbf{The Preamble}
At first glance, the preamble seems not to have changed in comparison to the 1994 Charter. It is still set out that “all forms of racism, Zionism...” violate human dignity, which is again repeated in art. 2 (3), saying that it “constitutes an impediment to human dignity and a major barrier to the exercise of the fundamental rights of peoples”. This reference is still seen skeptical as it lends the 2004 Charter an oppositional character as well as because of the fact that it is a political statement which does not have any purpose within a human rights instrument. Furthermore, it equates racism and Zionism, which is seen as a threat to world peace, “as Zionism is the movement for Jewish self-determination and asserts the inherent and internationally-recognized right of Israel to exist”. It was stated that this wording clearly is anti-Semitic and needs to be eliminated, as it stands in the way of the principle of human dignity.

Moreover, the preamble focuses on the regional aspect, as for example when talking about the “faith of the Arab nation in the dignity of the human person whom God has exalted”, the “Arab homeland”, and the “humanitarian values and principles that the Arab nation has established throughout its long history, which have played a major role in spreading knowledge between East and West”. This is still very similar to the old version 1994.

However, reading the preamble more carefully, minor changes are visible. Firstly, the reference to “Islamic Sharia and other religions” has changed to “Islamic religion and the other divinely-revealed religions”. Also, the new Charter reaffirms the international human rights treaties and mentions the Cairo Declaration of Human Rights in Islam concurrently: “and in regards to the Cairo Declaration on Human Rights”. Therefore, more importance has been given to international documents.

127 League of Arab States, Arab Charter on Human Rights (2004), preamble
130 Ibid.
131 Ibid. 127
132 Ibid. (emphasis added)
133 Ibid., it is set out in the preamble: “…and having regard to the Cairo Declaration on Human Rights in Islam”
Furthermore, art. 1 of the 2004 Charter acknowledges universal principles and “the principles set out in human rights international instruments” explicitly.\footnote{League of Arab States, \textit{Arab Charter on Human Rights} (2004), art. 1} Human rights are also stressed to be “universal, indivisible, interdependent and interrelated”.\footnote{Ibid.} This recognition is indeed a huge improvement to the old version of 1994, as there was no such reference made.

**Non-Discrimination-Clause and Women Rights**

The 1994 Charter has completely left out any provisions concerning the rights of women. The only specific reference could be found in art. 2, 1994 Charter, within the last few words regarding the enjoyment of the set-out rights to be without any discrimination between men and women.\footnote{Ibid., art. 2} The new document provides more provisions recognizing women in particular, which are explained below. This is important, as especially the Arab world is criticized to infringe these rights and therefore an improvement of the position of women within Arab society is requested. However, as most of the LAS member states have ratified the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the adaption of such rights needs to meet international standards even though most states have made reservations on articles concerning non-discrimination of women.\footnote{UN General Assembly, \textit{Convention on the Elimination of all Forms of Discrimination against Women}, 18 December 1979, UNTS, Vol. 1249, p. 13} However, as these are seen as \textit{core provision}, and therefore are central to fulfill the whole purpose of the Convention, such reservations are prohibited.\footnote{Frick Marie-Luisa, Müller Andreas Th., \textit{Introducing and Intricate Relationship}, in Islam and International Law. Engaging Self-Centrism from a Plurality of Perspectives (2013), p. 15}

First of all, the new version confirms the principle of non-discriminations as set out in art. 3 of the 2004 Charter, saying that “\textit{men and women are equal in respect of human dignity, rights and obligations}”.\footnote{Ibid. 134, art. 3} However, the article allows for “\textit{the positive discrimination established in favor of women by the Islamic Shariah, divine laws and by applicable laws and legal instruments}”.\footnote{Ibid.} Depending on how and in what context to interpret the wording of “\textit{positive discrimination}”, it might limit women rights. However, the other way around
it could be interpreted to seek for enhancement of these rights, which should be preferred as it would be in conformity with international law.\textsuperscript{141} Furthermore, the equality between the sexes is recognized in other provisions, such as art. 34, saying that “There shall be no discrimination between men and women in their enjoyment of the right to effectively benefit from training, employment and job protection and the right to receive equal remuneration for equal work”.\textsuperscript{142}

Additionally, art. 33 sets out that “family is the natural and fundamental group unit of society”. Importantly, the article states that “no marriage can take place without the full and free consent of both parties” as well that within family “all forms of violence or abuse in the relations among its members, and particularly against women [...] are prohibited”.\textsuperscript{143} Unfortunately, the 2004 Charter leaves it up to the national laws in force to regulate the exact age for marriage as well “as rights and duties of the man and woman as to marriage, during marriage and at its dissolution”. This could have the negative effect of limiting the rights for women again.

Besides, marriage is defined as being based between a man and a woman, which excludes gay marriage.\textsuperscript{144}

Prohibition of Slavery, Death Penalty and Torture

Art. 10 sets out, that “all forms of slavery and trafficking in human beings are prohibited”. Importantly, changes are visible concerning the death penalty, set out in art. 6.\textsuperscript{145} This sanction now may only be imposed on “the most serious crimes in accordance with the laws in force at the time of commission of the crime and pursuant to a final judgment rendered by a competent court”. In comparison to the 1994 Charter, the phrase “accordance with the laws in force at the time of commission of the crime and pursuant to a final judgment rendered by a competent court” was inserted and offers more protection for convicts to at least be sentenced by a competent court in accordance with the laws in force.\textsuperscript{146} Unfortunately, the death penalty for persons under 18 and pregnant or nursing

\textsuperscript{141} Mattar Mohamed Y., Article 43 on the Arab Charter on Human Rights: Reconciling National, Regional and International Standards, p. 96
\textsuperscript{142} League of Arab States, Arab Charter on Human Rights (2004), art. 34
\textsuperscript{143} Ibid., art. 33
\textsuperscript{144} Ibid.
\textsuperscript{145} Ibid., art. 6
\textsuperscript{146} Ibid.
women has not been removed; however, the phrase “in all cases, the best interests of the infant shall be the primary consideration” was incorporated instead.

Furthermore, art. 8 sets out that “no one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment”.147 New to this provision is that an additional paragraph 2 has been added, stating that “each State party shall guarantee in its legal system redress for any victim of torture and the right to rehabilitation and compensation”.148 This is a very important aspect to be mentioned and consistent with international human rights standards as set out in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) art. 14, “each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible”.149

Rights of Handicapped Persons and Children

Importantly, handicapped persons are recognized within the new 2004 Charter. Art. 40 states that “the States parties undertake to ensure to persons with mental or physical disabilities a decent life that guarantees their dignity, and to enhance their self-reliance and facilitate their active participation in society.” Also, art. 3 recognizes the equality of persons with mental disabilities, which is again emphasized in art. 40.150 Furthermore, art. 40 sets out that states should provide social services free of charge for handicapped persons and help the family financially to care for the affected person.151 Interestingly, the article calls upon the relatives to “do whatever is needed to avoid placing those persons in institutions”. Here the Islamic perspective on rights becomes visible, as it places greater focus on collective rights than on individual rights, which commonly are of great importance in western human rights treaties.152

147 League of Arab States, Arab Charter on Human Rights (2004), art. 8
148 Ibid.
149 UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, UNTS, Vol. 1465, p. 85, art. 14
150 Ibid. 147, art. 40
151 Ibid.
Besides handicapped persons, children are considered within some provisions. The 1994 Charter mentioned children only once in art. 38 emphasizing the need to protect them. However, within the new version, infants have been taken into account to a greater extent. Art. 10, for example, emphasizes that “the exploitation of children in armed conflict are prohibited” and art. 30 states that violation is prohibited “particularly against women and children”. Furthermore, art. 34 par. 3 constitutes the right to work and recognizes children “to be protected from economic exploitation and from being forced to perform any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development”. Moreover, the article sets out to take into account international provisions concerning child labor and encourages the member states to define a minimum age for the admissibility to work, to establish appropriate working hours and to impose sanctions in case of non-compliance. This is in conformity with international standards, especially due to the fact, that all states of the Arab League have ratified the Convention of the Rights of the Child (CRC).

Political Rights, Freedom of Association

The new 2004 Charter extended the scope of political rights in comparison to the old draft and complemented it with more precise phrases. Art. 24 sets out that every citizen has the right to “freely pursue a political activity”, “to take part in the conduct of public affair, directly or through freely chosen representatives” as well as “to stand for election or choose his representatives in free and impartial elections”. Besides, art 2 par. 1 emphasizes the right to self-determination as well as to “freely choose their political system”.

153 League of Arab States, Arab Charter on Human Rights (1994), art. 38
155 Ibid., art. 34
156 Ibid.
158 Ibid. 154, art. 24
159 League of Arab States, Arab Charter on Human Rights (2004), art. 2
Within the same article, par. 5 and 7 set out the freedom to join associations and to peacefully assembly.\textsuperscript{160} However, the last paragraph states that “restrictions may be placed on the exercise of these rights other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public health or morals or the protection of the rights and freedoms of others”. There are concerns that these freedoms concerning political activities as well as association may be restricted and limited by national laws. However, on an international level such restrictions are commonly found, such as art. 21, ICCPR, declaring that “No restrictions may be placed on the exercise of this right (the right of peaceful assembly) other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others”.\textsuperscript{161} Therefore, the Arab Charter provides a provision compatible with international standards.

**Freedom of Movement, Freedom of Speech, Religion, Expression,**

Art. 26 states that “everyone lawfully within the territory of a State party shall, within that territory, have the right to freedom of movement and to freely choose his residence in any part of that territory in conformity with the laws in force.”\textsuperscript{162} On one hand, this article states the right of free movement and freedom, but on the other hand, it unfortunately authorizes the member states to impose limitations on, for example, a certain group of people (women, for instance) due to the laws in force. As it is counting to the law in force in most of the member states, Islamic law might be applied.

Furthermore, art. 30 sets out the right of freedom, conscience and religion.\textsuperscript{163} However, again this provision is restricted, as “no restrictions may be imposed on the exercise of such freedoms except as provided for by law and are necessary in a tolerant society that respects human rights and freedoms for the protection of public safety, public order, public

\textsuperscript{160} Ibid., art. 2
\textsuperscript{162} Ibid. 159, art. 26
\textsuperscript{163} Ibid., art. 30
Therefore, the right’s scope may be limited due to national legislation. Within the ICCPR, however, restrictions are allowed, as art. 18 par. 3 states that, that “the freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”. Therefore, this restriction within the 2004 Charter is compatible with international standard. Also, such limitations can be found in the European Convention on Human Rights as well.

The second paragraph of art. 30 states the “freedom to manifest one's religion or beliefs or to perform religious observances, either alone or in community with others”. Nevertheless, the Charter 2004 is still missing the right to change the religion freely, as is set out in the ECHR, as well as the freedom to perform religion in private and in public.

Furthermore, western human rights documents guarantee not only positive rights but also negative rights, such as to practice religion, but also to have the freedom to not join any religious group. Sadly, this feature is still missing in the new Charter. In comparison, such provision is given within the ICCPR on international level, declaring that that “no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice”.

Besides, art. 30, ACHR, sets out the right for parents and guardians to freely choose and provide for the child’s religious and moral education.

The present Charter also guarantees “the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries”. This provision is of great importance, as especially western media is subject to censorship within many Arab states.
It could be seen as a start to end censoring as well as to provide a legal basis for journalism to be independent and free from pressure of the national governments. However, again an additional paragraph was added within art. 32, stating that “such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order and public health or morals”. In comparison to the European Convention, such limitations are not new, since art. 10 ECHR also sets out that these freedoms are subject to restrictions. Nevertheless, these have to be prescribed by law and need to be “necessary in a democratic society, in the interest of national security, territorial integrity or public safety [...]”. It is obvious that the 2004 Charter’s restrictions are much wider and enable the states to limit these particular freedoms in case they are not in conformity with social values or morals. This, however, is a very vague formulation and basically allows such limitations any time.

Besides, art. 25 sets out the right for minorities “to enjoy their own culture, to use their own language and to practice their own religion”. However, the addition of “the exercise of these rights shall be governed by law” sets out the task for states to embody these within national laws. However, comparing it to international provisions, such as in art. 27, ICCPR, setting out that “in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”, the choice of words is more precise. It clearly states which kinds of minorities are addressed and that they are given the right to practice their culture together. This, however, is missing within the 2004 Charter, as it leaves the exact regulation of these rights up to national legislation, which – depending on the actual implementation – poses a risk to the effectiveness of this right.

**Fair Trial and Access to Justice**

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173 Ibid., art. 32
175 Ibid.
176 Ibid. 172, art. 25
177 UN General Assembly, *International Covenant on Civil and Political Rights* (1966), art. 27
Similarly to art. 6 ECHR, art. 12 and 13 guarantee a fair trial, independency of judges, equality before court, that trials are public and, most importantly, that “all Persons within the territory of the State Parties are ensured a right to legal remedy”. Besides, art. 13 provides the legal basis to guarantee legal aid for “those without the requisite financial resources to enable them to defend their rights.”

Furthermore, the 2004 Charter provides for other important provisions, such as the principle of nulla poena sine lege set out in art. 15, stating that “no crime and no penalty can be established without a prior provision of the law” as well as that “in all circumstances, the law most favorable to the defendant shall be applied”. Moreover, art. 16 sets out minimum guarantees for the trial, as for example the principle of the presumption of innocence until “proved guilty by a final judgment” as well as the right to be informed in a “language he understands”. Importantly, and new in contrary to the 1994 Charter, the article appeals to the contracting parties to introduce a legal system for minors concerning “special treatment that takes account of his age, protects his dignity, facilitates his rehabilitation and reintegration and enables him to play a constructive role in society”. Furthermore, art. 19 states that “No one may be tried twice for the same offence”.

Moreover, art. 14 sets out that “no one shall be subjected to arbitrary arrest, search or detention without legal warrant”. A procedure is needed in order to “be deprived of his liberty”. Again, it is set out that the arrested has to be informed with a his/her language as well as the right to be brought promptly before a judge or other authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release”. Furthermore, art. 20 sets out that a person deprived from liberty has rights too, such as “to be treated with humanity and with respect for inherent dignity of the human person” and that “persons in pre-trial detention shall be separated from convicted persons and shall be treated in a manner consistent with their status as unconvicted persons”.

178 League of Arab States, Arab Charter on Human Rights (2004), art. 12, 13
179 Ibid., art. 13
180 Ibid., art. 15
181 Ibid., art. 16
182 Ibid., art. 17
183 Ibid., art. 14
184 League of Arab States, Arab Charter on Human Rights (2004), art. 14
185 Ibid., art. 20
Noteworthy and new to the 2004 Charter is that in compensation is offered to those who are arrested and imprisoned arbitrarily.\textsuperscript{186}

These provisions set out important human rights to be guaranteed as some states of the Arab League are accused to impose detentions arbitrarily.

**Derogation-Clause and Reservations**

The strongly criticized inadequate wording of the derogation clause set out in art. 4 of the 1994 Charter was amended as well. Now, derogations are possible only if “\textit{provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin}”.\textsuperscript{187} This means that limitations are still possible but only in a non-discriminating way and in compatibility with international standards. Therefore, the clause restricts the possibility of derogation and is a huge improvement in comparison to the old draft.\textsuperscript{188} Also, this is compatible to international standards, as the very same wording can be found in art. 4, ICCPR.\textsuperscript{189}

Furthermore, a state derogating from a right set out in the 2004 Charter has to inform the Secretary General of the League of the Arab States as well as to justify any departure from the latter.\textsuperscript{190} Also, the general comment no. 24 adopted UN Human Rights Committee in 2001, which provides a list of non-derogable rights, was included in the Charter in art. 4 (2).\textsuperscript{191} Therefore, 16 human rights are not subject to suspension, containing inter alia the rights to live, the prohibition of slavery and torture, fair trials guarantees, and the right to seek asylum.\textsuperscript{192}

In comparison to the old version 1994, which provided a list of only seven non-derogable rights, this is a huge step forward.

\textsuperscript{186} Ibid., art. 19, 14 (7)  
\textsuperscript{187} Ibid., art 4 (1)  
\textsuperscript{188} See chapter 2.2.1.2  
\textsuperscript{189} UN General Assembly, \textit{International Covenant on Civil and Political Rights} (1966), art. 4  
\textsuperscript{190} Ibid. 186, art. 4 (3)  
\textsuperscript{192} League of Arab States, \textit{Arab Charter on Human Rights} (2004), art. 4
However, art. 53 of the 2004 Charter states that “*any State party, when signing this Charter, depositing the instruments of ratification or acceding hereto, may make a reservation to any article of the Charter, provided that such reservation does not conflict with the aims and fundamental purposes of the Charter*.”\(^{193}\) By now, no reservations have been made. Therefore, it remains to be seen, what kind of the latter will be accepted.

**Adoption of Arab Human Rights and Enforcement Guarantees**

The missing provision to oblige the ratifying state parties to adopt the human rights set out within the 1994 Charter, is now inserted in the new version: “*The states parties undertake to adopt, in conformity with their constitutional procedures and with the provisions of the present Charter, whatever legislative or non-legislative measures that may be necessary to give effect to the rights set forth herein*.”\(^{194}\) Therefore, states have to adapt their national law in accordance to this regional human rights system and to guarantee its effectiveness.

However, the enforcement mechanism, which was strongly criticized by NGOs to be not effective, has not changed within the new 2004 Charter. Still, there is neither a judicial body established in the Charter nor is the Arab Human Rights Committee empowered with functions to guarantee an effective human rights mechanism. Instead, the 2004 Charter only assigns limited tasks to the Arab Committee, which will be discussed later on in this thesis.\(^{195}\)

At least, a number of provisions concerning the enforcement mechanism have been included in the new version 2004. Spread among the Arab Charter on Human Rights are some articles which guarantee the implementation of human rights. Firstly, art. 3 sets out that each state has to ensure that any individual is able to enjoy the rights and freedoms which are recognized in the Charter 2004.\(^{196}\) Besides, any state has to *undertake necessary measures to guarantee effective quality in enjoyment of all rights and liberties established in the present Charter...* Even more emphasis is placed on the last paragraph, art. 3 ACHR, pointing out, that “the present Charter shall undertake all necessary measures to

\(^{193}\) Ibid., art. 53

\(^{194}\) Ibid., art. 44

\(^{195}\) Ibid., art. 48; see chapter 3.1.2

\(^{196}\) League of Arab States, *Arab Charter on Human Rights* (2004), art. 3
guarantee the effective equality between men and women”. Furthermore, art. 22 ACHR points out that “…every person whose rights or freedoms recognized in the present Charter are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.” Theoretically, this means that even sovereign activities violating the Charter’s human rights can be subject to complaints.

The enforceability of these rights is guaranteed within the new version of the 2004 Charter, which is in fact a huge amendment. How these provisions have been implemented practically is part of chapter three.

2.2.2.3 Critical Summary

All in all, the 2004 Charter contains very modern, universal human rights which resemble those in, for example, the ECHR and the ICCPR. Besides those mentioned above, other rights concerning the right for education and the obligation of the states to eradicate illiteracy (art. 41) as well as the right to take part in cultural life and enjoy the benefits of scientific progress are other important new provisions (art. 42). In regards to the rights’ content, improvement is clearly visible and most provisions have accomplished international standard. However, major concerns exist regarding the right of freedom of expression, speech and religion, which is seen as an essential element for a liberal and democratic system, as it guarantees the people’s freedom to openly criticize.

However, the lack of clarity still remains a problem, as does the fact that the 2004 Charter does not provide a distinct classification of its rights but rather randomly lists the latter without any organizational structure. In comparison to the version of 1994, the new one is not divided into parts anymore. As this division did not contribute to a more organized structure then, it is therefore not missed in the new Charter. However, the lack of clarity gives the impression that the Charter is not fully established yet.

197 Ibid.
198 Ibid., art. 22
199 Ibid.
200 Frick Marie-Luisa, Müller Andreas Th., Introducing and Intricate Relationship, in Islam and International Law. Engaging Self-Centrism from a Plurality of Perspectives (2013), p. 21
201 Benedek Wolfgang, Jacque Jean Paul, Kedzia Zdzislaw et al., The Role of Regional Human Rights Mechanism (2010), p. 86
Also, there is still no established body with the legally assigned task to interpret the 2004 Charter with a binding effect for all state parties, which makes the problem of norms phrased in general and unclear terms even worse. However, in regards to the construction of the Arab human rights, art. 43 states that “nothing in this Charter may be construed or interpreted as impairing the rights and freedoms protected by the domestic laws of the States parties or those set force in the international and regional human rights instruments which the states parties have adopted or ratified, including the rights of women, the rights of the child and the rights of persons belonging to minorities”. This provision is similar to the ICCPR, art. 5; the latter, however, sets out more specific rules, as “nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant”. Differences can be seen within the words chosen in the Arab Charter, especially concerning the domestic law; however, whether this might restrict the rights is to be awaited.

Taking into account all negative and positive aspects highlighted – and being aware of the fact that these are only some of the most important features – in this section, the 2004 Charter is a huge improvement, as it is much more comprehensive than its predecessor. Still, it lacks some indispensable provisions, such as a judicial supervisory body as well as the guarantee for a practical implementation, and some too vague formulations may not contribute to the effectiveness of these rights. All in all, it must not be forgotten that the Arab Charter on Human Rights 2004 is still young and due to its reforming process from 1994 to 2004, the next modernizing steps are to be awaited patiently and optimistically.

### 2.3 The Cairo Declaration on Human Rights

As mentioned in the introduction of the thesis and due to its presence within the Arab Charter on Human Rights 2004’s preamble, the Cairo Declaration on Human Rights is discussed in the following section.

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202 League of Arab States, *Arab Charter on Human Rights* (2004), art. 43
203 UN General Assembly, *International Covenant on Civil and Political Rights* (1966), art. 5
Not only the reference within the ACHR shows the declaration’s importance – this is also highlighted by the fact that among the numerous member states of the declaration’s parent organization, the Organization of Islamic Cooperation (OIC, formerly the Organization of Islamic Conference), there are many member states of the LAS.205

However, this section provides an overview of the Cairo Declaration’s historical development and the characteristics of its rights. As this particular human rights document is based on Islam only and therefore has a different approach to human rights as such, the chapter aims to demonstrate differences between the Islamic based Declaration and the new Charter 2004, which is considered to reflect universal principles instead.

2.3.1 Historical Aspects

In 1969, the Organization of the Islamic Cooperation (OIC, at the time Organization of Islamic Conference) was founded. Today, it is the second largest organization besides the UN, counting 57 member states spread over 4 continents.206

The present OIC Charter was adopted by the 11th Islamic Summit held in Dakar in March 2008 and lays out the organization’s main principles and its purposes.207 It sets out in its preamble “to promote human rights and fundamental freedoms, good governance, rule of law, democracy and accountability in Member States in accordance with their constitutional and legal systems.”208 The task of promoting human rights was realized by establishing the Cairo Declaration on Human Rights (CDHR) and its predecessor, the Universal Islamic Declaration on Human Rights (UIDHR). The UIDHR was introduced by the Islamic Conference as a response to the Universal Declaration on Human Rights, 1948, as these human rights were criticized by Islamic states for not being compatible with their human image and their religious ideology of human rights.209 The Universal Islamic Declaration on Human Rights is known as the first legal Islamic international instrument

205 Homepage of the Organization of Islamic Cooperation, Member States, available at: https://www.oic-oci.org/states/?lan=en (accessed 22 May 2018)
207 Organization of Islamic Cooperation, OIC Charter, March 2008, available at:
208 Organization of Islamic Cooperation, OIC Charter (2008), preamble
concerning human rights. However, due to many deficits within the UIDHR it never became effective and was replaced by the CDHRI, which was adopted successfully by the UN Human Rights Council later on in 1992 and is the only practiced international Islamic human rights instrument yet.

Nevertheless, the Cairo Declaration does not represent an alternative to the UDHR or any other international human rights treaty. It is rather complementary due to the fact that it is a declaration and therefore not legally binding. However, even this supplementing character was considered critically by western scholars due to the declaration’s emphasis being on the Shariah only. Therefore, it is seen as contradiction to universal human rights. In contrast to this opinion, Islamic scholars claim that classifying or rather downgrading this document to a regional document would not do it justice due to the fact that it counts 57 signatures by states located all around the world. However, due to the fact that the document in concern is a declaration and represents what is called soft law and therefore cannot be enforced by law, it is not legally binding, which limits its importance anyway. It basically simply sets out recommendations and principles a society has agreed on.

As mentioned before, the Cairo Declaration has not lost its importance for the Arab states. Nevertheless, its impact was limited within the new 2004 Charter, as this document only “takes regard” of the Declaration. In comparison to the 1994 Charter, which had listed the latter row in row with other international human right documents, it has clearly lost significance.

2.3.2 Characteristic of Human Rights within the Cairo Declaration

In reference to its content, the Cairo Declaration sets out guidelines in the field of human rights for the OIC member states. However, these guiding principles differ from the universal human rights understanding in many ways, as will be shown in the following.

211 Ibid.
213 Ibid. 210, p. 33
215 Organization of the Islamic Conference, Cairo Declaration on Human Rights in Islam (1990), preamble
First of all, the Cairo Declaration refers to the Shariah as its only source.\textsuperscript{216} Without going into more detail, the concept of Shariah Law is understood as a whole complex of texts and writings of Prophet Mohammed as well as interpretations and ideas, which are summarized and taken together set out the religious obligations of Muslims.\textsuperscript{217} This particular reference raises considerable problems due to the fact that the Shariah sets out very restrictive and – especially in regard to women – discriminating laws. As a result, it weakens the effectiveness of human rights declared within the document.

However, in almost all of the articles in the Declaration Islam, Islamic law, Allah or Shariah are named. For example, the preamble reaffirms “the right to a dignified life in accordance with the Islamic Shari’ah”, and art. 1 states that “All human beings form one family whose members are united by their subordination to Allah and descent from Adam” as well as that “all human beings are Allah’s subjects”.\textsuperscript{218} Furthermore, art. 12 states that “every man shall have the right, within the framework of Shari’ah, to free movement [...]”. Also, such references can be found in art. 16, stating that “everyone shall have the right to enjoy the fruits of his scientific, literary, artistic or technical production and the right to protect the moral and material interests stemming there from, provided that such production is not contrary to the principles of Shari’ah.” \textsuperscript{219} and in art. 19 lit. d, emphasizing that “there shall be no crime or punishment except as provided for in the Shari’ah”\textsuperscript{219}. Therefore, this particular Islamic text is even more significant, as the Declaration leaves it up to the latter to specify the rights set out. Besides, the Shariah sets out main guidelines for the Cairo Declaration’s interpretation.

Moreover, the Cairo Declaration’s preamble states that human rights declared within this Declaration are “fundamental freedoms according to Islam” and therefore “are binding divine commands, which are contained in the Revealed Books of Allah”. Also, any violation or neglect is considered a sin.\textsuperscript{220} It is highlighted that the law is directly delivered from God and therefore must be observed. Furthermore, the preamble defines the aspired goal “to guide all humanity which is confused because of different and conflicting beliefs

\begin{thebibliography}
\bibitem{ibid.} Ibid., art. 25
\bibitem{216} Ibid., art. 25
\bibitem{217} Ibid., art. 25
\bibitem{218} Ibid., art. 25
\bibitem{219} Ibid., art. 25
\bibitem{220} Ibid., art. 25
\bibitem{221} Organization of the Islamic Conference, \textit{Cairo Declaration on Human Rights in Islam} (1990), preamble
\end{thebibliography}
and ideologies and to provide solutions for all chronic problems of this materialistic civilization”.

The latter wording includes strong criticism on today’s society and at the same time rejects any diversity of different religious believes. This can be assumed, as the Declaration claims Islam to be “the religion of true and unspoiled nature” and refers to confusion concerning “different and conflicting beliefs”.

Besides, art. 10 not only states “the true unspoiled nature” of Islam but also sets out the prohibition to pressure someone to “force him to change his religion to another religion or to atheism”. Clearly, this right is not constituted as a “freedom of religion” as set out in other regional and international human rights instruments. Instead, it acknowledges only the Islamic denomination and prohibits any missionary work to change it. Therefore, this provision demotes any other religious persuasion, faith and atheism.

Moreover, the Cairo Declaration also contains the right to life, stating that “life is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies and states to safeguard this right against any violation, and it is prohibited to take away life except for a Shari’ah prescribed reason”. Again, in accordance to Shariah law it is possible to deviate from the right, which is repeated in lit. c of the article: “the preservation of human life throughout the term of time willed by Allah is a duty prescribed by Shari’ah”.

Furthermore, art. 11 states that “human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them and there can be no subjugation but to Allah the Almighty”. Moreover, torture is prohibited in art. 20, as are inhuman treatment and scientific or medical experiments.

The importance of the family “as the foundation of society” is stressed within art. 5 (a). In consistence with the 2004 ACHR, gay marriage is not accepted, as it is emphasized that “marriage is the basis of making family. Men and women have the right to marriage

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221 Ibid., preamble
222 Ibid., art. 10
223 Ibid.
224 see for example art. 9 ECHR: to freely choose ones religion; art. 18 ICCPR
225 Ibid., art. 2
226 Ibid.
227 Organization of the Islamic Conference, Cairo Declaration on Human Rights in Islam (1990, art. 11
228 Ibid., art. 20
Also, states are obligated to protect and safeguard families. Interestingly, art. 7 lit. c sets out that “both parents are entitled to certain rights from their children, and relatives are entitled to rights from their kin, in accordance with the tenets of the Shari’ah.” The meaning of these rights is not defined precisely; however, comparing this to the 2004 Charter, which sets out the duty of family members to care for the older and sick, it could be interpreted in the light of this purpose.

Furthermore, focus should be laid on art. 6, setting out women’s rights: “woman is equal to man in human dignity, and has her own rights to enjoy as well as duties to perform, and has her own civil entity.” Due to the wording of “has her own rights” and “her own civil entity” it is to assume that a woman is not equal to a man. Also, the article sets out that “the husband is responsible for the maintenance and welfare of the family”, which clearly means that the men holds a dominant position and a patriarchic system is preferred.

Interestingly, the Cairo Declaration takes into consideration environment-related rights, such as art. 4 lit. b stating that “it is prohibited to cut down trees, to destroy crops or livestock”. In addition to that, art. 17 provides for a right “to live in a clean environment away from vice corruption that would favour a healthy ethical development”. However, on the basis of the importance of Islam in the Cairo Declaration, a healthy ethical environment must be interpreted in accordance to Islamic morals.

The right to work is set out “for each person with the capability to work”. If child work is prohibited is doubtful. Besides, this article sets out that everyone “without any discrimination between males and females” is entitled to fair wages. This is also set out in the 2004 Charter, stating that men and women have the right “to receive equal remuneration for equal work”.

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229 Ibid., art. 5
230 Ibid., art. 7 lit. c
231 Ibid., art. 6
232 Ibid.
233 Ibid., art. 4 lit. b
234 Ibid., art. 17
235 Organization of the Islamic Conference, Cairo Declaration on Human Rights in Islam (1990), art. 13
236 Ibid.
237 League of Arab States, Arab Charter on Human Rights (2004), art. 34 (4)
However, in comparison to the legally binding Arab Human Rights Charter, the Cairo Declaration misses many important provisions, such as taking into account rights of children and persons with mental disability as well as the protection of minorities and political rights as well as important principles for a fair trial.\textsuperscript{238} In comparison to the 2004 ACHR, which sets out a substantial number of rights concerning inter alia a fair trial, the principle of \textit{ne bis in idem, nulla poena sine lege} and the right to an independent judge, the Declaration misses several of these important provisions.\textsuperscript{239}

Furthermore art. 2 (the right to life), art. 12 (the right of free movement), art. 16 (the right to enjoy fruits of science, literature, [...])), art. 22 (freedom of opinion) are all to be construed in accordance to Shariah which limits the effect of these rights significantly.\textsuperscript{240}

To summarize, it has to be noted that in comparison to the Arab Charter on Human Rights 2004, which is formulated in a neutral way, the Cairo Declaration is much more influenced by Islam and the Shariah. The Declaration focuses particularly on Islamic Law and its principles. This is implied by several direct references to the latter as much as by the choice of words and terminology, which are different from other human rights instruments: For example, “\textit{God-given}” life, the special reference to \textit{religious education} in art. 9 as well as “\textit{Allah’s subjects}”.\textsuperscript{241} Therefore, the amendment of the 1994 Charter’s preamble – which referred to this Declaration – was indeed necessary, as even as a guiding instrument, it indicates that the Arab states are sympathizing with a human rights instrument which is in no matter compatible with international standards.

\section*{3. The Human Rights Enforcement Mechanism within the LAS}

Human rights need implementation in order to be effective and not only to be written down on paper. Every human rights system has different monitoring bodies and mechanisms; however, some are found more often than others. This part of the thesis focuses on the most important bodies established in the past few years either within the Arab Charter on Human Rights itself or within other legal sources as well as the enforcement tools being used to ensure an effective human rights mechanism. Furthermore, this section aspires to

\textsuperscript{238} Ibid. 235  
\textsuperscript{239} Ibid.; see chapter 2.2.2.2  
\textsuperscript{240} Ibid. 235  
\textsuperscript{241} Ibid. 
constantly draw comparison to the established international human rights system in order to demonstrate the differences.

3.1 Monitoring Bodies

3.1.1 The Arab Permanent Committee on Human Rights and the Human Rights Department

Also called the Permanent Arab Commission on Human Rights, the Arab Permanent Committee on Human Rights is one of the LAS’ permanent specialized committees as set out in art. 4, Statute of the Arab League and was established as a result of the League’s Council Res. 2443, 3rd of September 1968. Despite the similarity of names, the Permanent Committee is not to be mixed up with the Arab Committee on Human Rights, which is explained in chapter 3.2.

The Permanent Committee is responsible for encouraging member states of the LAS to increase their cooperation in the field of human rights. It is a body of the LAS and is not linked to the Arab Committee, whom legal foundation is provided within the Arab Charter on Human Rights. Nevertheless, the Permanent Committee is an important body within the Arab human rights system, as it was inter alia responsible for revising the Arab Charter on Human Rights and still has an advisory role. Therefore, it will be discussed in more detail in the following chapter.

3.1.1.1 Permanent Committee’s Members

The Permanent Committee is a political body because it is composed of political representatives of the LAS member states rather than of independent experts, similar to the Human Rights Council of the UN, which is considered to be the main political institution

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242 League of Arab States, *Charter of the Arab League* (1945), art. 4
244 Ibid. 242
to promote and monitor human rights on an international level.  

Within the Committee, each member state is represented by one delegate. The rules of the Permanent Committee set out that a certain expertise in the field of human rights is not mandatory. Therefore, the actual representatives tend to be political commissioners rather than human rights experts, as it is claimed by NGOs.

3.1.1.2 Permanent Committee’s Functions

The Arab Permanent Committee on Human Rights is responsible for ensuring the cooperation between the states concerning human rights. In 1968, this body was entrusted with the following tasks given by the Council of the Arab League: “to promote awareness of human rights among the Arab people”, “to support joint Arab action in the field of human rights” and “to endeavor to protect human rights, while emphasizing the human rights dimensions of the Arab concerns.”

In 2007, the Permanent Committee adopted its own internal regulations with Res. 6826 in the session 1285 of the Council of Ministers of Foreign Affairs. Those regulations include the tasks of “establishing rules of cooperation among the member states in the field of human rights, formulating an Arab position on human rights issues that are under discussion at the regional and international level, including positions on draft treaties; as well as preparing draft human rights treaties, to be referred to the Arab League Council of Ministers of Foreign Affairs for adoption; studying Arab agreements pertaining to human rights in order to give an opinion on their compatibility with human rights principles and standards; promoting the implementation of human rights treaties and recommendations”.

These functions are carried out and are discussed in meetings held twice a year in Cairo. The comprehensive list of tasks gives the impression that the Permanent Committee has gained more power and that it could present a step towards a more transparent enforcement mechanism, particularly regarding the fact that the Committee is allowed to establish rules

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247 Ibid.
249 Rishmawi Mervat, *Civil Society Interaction with the League of Arab States: Key insights, principles, good practices and emerging lessons* (2013), p. 28
in the field of human rights as well as to prepare human rights treaties.\textsuperscript{250} However, this impression is deceptive, as the tasks are restricted and therefore do not automatically mean an expansion of the Committee’s functions. This is because the topics which will actually be discussed by the body are limited to those proposed by the member states and the LAS Council as well as the Secretary-General.\textsuperscript{251} Therefore, the scale of tasks is reduced arbitrarily by these organs, as they determine the scope of topics as well as the content.

However, as the Permanent Committee is established as the main political body within the Arab League, criticism such as a lack of independence and imparity cannot be held against this particular institution, as it is not its task to enforce human rights. It represents the member states and functions as a consultative body rather than a monitoring one due to the mentioned restrictions as well as the fact that it can prepare drafts of human rights treaties but not adopt them.\textsuperscript{252} Also, unlike the UN Human Rights Council and its universal periodic review mechanism, the Permanent Committee has no mandate to monitor the human rights situation within the LAS member states; special procedures, experts or certain working groups in the field of human rights are not provided yet.\textsuperscript{253}

Nevertheless, there has been criticism from several human rights activists, who claim that the Permanent Committee mainly focuses on the situation in Palestine but none of the other human rights problems in other Arab states.\textsuperscript{254} A human rights institution should not pick out certain cases and disregards others just because of a special political interest.

However, NGOs fear that because most of the LAS member states have neither signed the Arab Court Statute nor the Arab Human Rights Charter, there is no institution controlling and monitoring the human rights implementation within these states on a regional level. The Permanent Human Rights Committee represents the only organ responsible for the protection and promotion of human rights for all states within the LAS, except those who have ratified the Arab Charter on Human Rights.\textsuperscript{255}

\textsuperscript{250}\textit{Ibid.}, p. 28
\textsuperscript{251} LSE Centre for Women, Peace and Security, \textit{Arab Permanent Committee on Human Rights}
\textsuperscript{253}\textit{Ibid.}
\textsuperscript{254}\textit{Ibid.}, 250, p. 14
This is seen as a severe issue, especially in comparison with other regional human rights systems or the UN, for example, where diverse institutions share this mandate and therefore control each other to guarantee an effective monitoring mechanism. On an international level, there are several bodies responsible to guarantee, promote and monitor human rights: Besides the treaty-based mechanisms, which depend on the state’s ratification in order to be embedded into a certain human rights system, the UN provides for the charter-based mechanism based on the UN Charter. UN bodies with specific competence regarding human rights are the Human Rights Council as the highest political organ and the General Assembly with its third committee, responsible for social, humanitarian and cultural issues, which is authorized by the UN Charter, art. 13 lit. b to make recommendations and initiate studies in its particular field. Based on art. 62 (2) UNCh, the Economic and Social Committee of the UN (ECOSOC) is enabled to give recommendations in order to promote human rights within the UN. In order to fulfill this function, the ECOSOC works out resolutions addressing the General Assembly. However, the UN Security Council functions as a promoting organ for human rights as well, as it carries the “primary responsibility for the maintenance of international peace and security”. In case a state cannot provide for an effective protective mechanism concerning human rights, this responsibility is transferred to the UN Security Council in order to prevent grave human rights violations. However, such an intervention needs particular severe human rights violations, such as genocide, cleansing and serious war crime.

The fact that the Permanent Committee has been established as a political organ and therefore is not neutral as well as its lack of expertise weakens the body’s capacity to enforce human rights within the LAS. This has also been criticized by the International Commission of Jurists, an international organization working inter alia towards an effective Arab human rights system, which has been calling for strengthening the Arab

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256 as for example the ICCPR, ICESC, CEDAW
257 United Nations, Charter of the United Nations (1945)
258 ibid., art. 62
259 von Arnauld Andreas, Völkerrecht (2016), p. 268
260 Ibid., art. 62
261 Reinisch August, Österreichisches Handbuch des Völkerrechts (2013), p. 268
Permanent Committee in order to guarantee the existence of a working monitoring body.\textsuperscript{263} As was pointed out before, the most important aspect would be to change the Committee into an independent body, in particular independent from the Council of the League. Also, it was argued that the Permanent Committee should have more power to make genuine decisions rather than just – as is its current function – recommendations. This means the power of decision-making in regards to human rights should be taken away from the Council and be given to the Permanent Committee, which should function as an independent organ.\textsuperscript{264} However, whether these recommendations will be accepted and taken forward is to be awaited.

\textbf{3.1.1.3 The Human Rights Department}

The Human Rights Department is under the authority of the Secretary General and is responsible to set up the meetings and the organization of the Permanent Human Rights Committee.\textsuperscript{265}

This institution is important because it presents some sort of “contact point” for NGOs and the Office of the High Commissioner for Human Rights. In addition, it is continuously in contact with other bodies of the UN and other regional organizations, such as the European Union and the African Union.\textsuperscript{266} Therefore, this institution’s importance for exchange on an international level is not to be underestimated, as it reports current human rights issues and concerns as well as recommendations to a higher political level.\textsuperscript{267}

\textbf{3.1.2 The Arab Human Rights Committee}

The Arab Human Rights Committee (Arab Committee, AHRC), seated in Cairo, was established in March 2009.\textsuperscript{268} In comparison to other monitoring bodies, the Arab Human

\begin{thebibliography}{99}
\bibitem{264} Ibid., no. 4
\bibitem{266} Rishmawi Mervat, \textit{The League of Arab States: Human Rights Standards and Mechanism: Towards further civil society engagement: A manual for Practitioners} (2015), p. 29
\bibitem{268} Magliveras Konstantinos, Naldi Gino, \textit{The Arab Court of Human Rights: A Study in Impotence} (2016), p. 155
\end{thebibliography}
Rights Committee is the only institutional body with a legal basis provided within the Arab Charter on Human Rights. It presents the first independent human rights committee within the Arab League.

### 3.1.2.1 The Committee’s members

The Committee consists of seven members, which are nationals of state parties elected secretly every four-year term. Currently members represented are the United Arab Emirates, Algeria, Bahrain, Palestine, Syria, Jordan and Libya. Art. 45 (7) ACHR sets out that within the Committee a chairman has to be elected for a two-year term; this position is currently filled by the United Arab Emirates. However, only one expert per country is allowed.

Moreover, art. 47 of the 2004 Charter sets out, that the members of the Arab Committee enjoy immunity to be protected from harassment, moral or material pressure or prosecution. This should guarantee the independency and impartiality of the Committee’s members. The importance of independent experts has been highlighted by the UN High Commissioner claiming that “the ultimate success of any monitoring system, including of a unified standing treaty body, depends on the calibre and independence of the experts monitoring implementation of treaty standards”.

Another desirable criterion for individuals to be elected for this monitoring body would be the requirement of expertise in the field of human rights, which is also declared within art. 45 par. 2 ACHR. It is set out that not only the competence “in field of human rights” is required but also certain experience in this particular field. The wording “highly experienced and competent in the Committee’s field” was criticized to be formulated too

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269 League of Arab States, *Arab Charter on Human Rights* (2004), art. 45
271 Ibid. 269
273 LSE Centre for Women, Peace and Security, *Arab Permanent Committee on Human Rights*.
vague and therefore would have a very broad meaning, as the legal experience as such is not required explicitly. Also, a commonly used phrase on the international level which is missing within the 2004 Charter is the need of the elected delegates to have a certain moral understanding and to respect the values set out in the ICCPR.²⁷⁵

Each international human rights convention provides an independent committee which is obligated to monitor and guarantee the effective implementation of its treaty within the state parties.²⁷⁶ Within the ICCPR, the committee is called the Human Rights Committee, whose members (18 independent experts) are elected in accordance to the requirements set out in art. 28 ICCPR. It states that “the Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience”.²⁷⁷ Legal knowledge is not mandatory, but it is recommended. Furthermore, art. 31 of the ICCPR sets out that “in the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems”.²⁷⁸ Suchlike requirements cannot be found within the 2004 Charter.

The criteria set out in the current Arab Charter were criticized by NGOs for being in need of clarification because of not being formulated precisely enough.²⁷⁹ Also the required qualifications for becoming a member of the Committee were criticized, as it would be essential for individuals to be elected to at least provide some understanding or education of human rights as well as the legal experience in the field of human rights.²⁸⁰ Therefore, it was claimed that in order to achieve an effective monitoring body, the election of experts on the national level has to be thoughtful and transparent. The Arab Charter 2004 is missing guidance for such a nomination procedure, as the only guidance for the national election procedure is set out in art. 45 saying that members have to be nationals of the state parties. To avoid arbitrary choices on a national level, NGOs called for more interaction.

²⁷⁵ UN General Assembly, International Covenant on Civil and Political Rights (1966)
²⁷⁶ Von Arnauld Andreas, Völkerrecht (2016), p. 269-270
²⁷⁷ Ibid. 275, art. 28
²⁷⁸ Ibid., art. 31 (2)
²⁸⁰ Ibid.
with them in the nomination process. Besides the election procedures, applications should be open for public, as well as certain expertise has to be required in order to become member.

These conditions have to be considered within the Committee’s Rule of Procedure, which are established for the Committee member’s selection procedure according to art. 45 par. 7. Because of these reasons it was claimed, that the Committee fails to guarantee independent experts with certain knowledge as well as a transparent procedure of their elections. The current members are mostly representatives of the national governments, such as the Yemeni minister for human rights and the delegate of the United Arab Emirates, who serves as the director of the human rights department in the Ministry of Foreign Affairs. So far, it is known that one woman has been elected to serve as a member. On an international level, balanced gender representation is taken into consideration, as the ICCPR Human Rights Committee counts eight female and eight male representatives. It is noteworthy, however, that this has not always been the case, as it took until 1984 to finally nominate a woman to become a member of the Committee.

In regards to the election of the members, another comparison can be drawn to the Human Rights Council (HRC) on international level. As mentioned before, it is one of the most important bodies within the UN charter-based human rights system and was set into force in 2006 with the General Assembly’s Resolution 60/251. Thus, it replaced its predecessor institution, the Human Rights Commission, which had been criticized in particular for its composition of delegates from member states with a poor human rights standard. The HRC is a subsidiary body of the General Assembly and therefore its members are elected by the latter. The Human Rights Council exists of 47 political

281 League of Arab States, Arab Charter on Human Rights (2004), art. 45 (7)
283 Ibid.
representatives of member states who are elected by the General Assembly. Some member states of the LAS are represented at the Council: Iraq, United Arab Emirates, Saudi Arabia, Qatar and Tunisia. The election procedure is very similar to that of the Arab Human Rights Committee, which was pointed out before. The main difference between these institutions is the regulation of how to elect the member. Within the Arab system, these provisions are missing completely, whereas the UN provides a so-called peer-review procedure, to ensure that representatives are sent from states which are respecting human rights and to maintain an equitable geographical distribution of members. Therefore, these rules might serve an example for the election procedure within the Arab human rights system.

3.1.2.2 The Committee’s functions

The Committee’s functions are limited to a supervisory role rather than a judicial or guarding one, which limits the possibility to hold the member states accountable for human rights violations as will be explained in the following:

Its primary responsibility is set out in art. 48 ACHR and in its Rule of Procedure, adopted in November 2014, to oversee the implementation of the Charter 2004 by reviewing state reports, which are being transmitted to it by the Secretary-General. The reports are discussed with state representatives resulting in recommendations the Committee can follow. These recommendations have to be adapted by the absolute majority of the Committee. The comments and recommendations should then be summarized in an annual report, sent to the Council of the League and be made public. Besides, the AHRC

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293 League of Arab States, *Arab Charter on Human Rights* (2004), art. 48 (1)
294 LSE Centre for Women, Peace and Security, *Arab Permanent Committee on Human Rights*
provides guidelines concerning the format and structure of reports.296 This is similar to the Human Rights Committee, as set out in art. 40, ICCPR.

However, another rather new and important function of the Committee was established within its Rules of Procedure in 2014. The Committee expanded its mandate by seeing the interpretation of the Arab Charter as implied, which means it now has much more power than the 2004 Charter intended to give in the first place, as this function is similar to a quasi-judicial function. Due to this new responsibility, the Arab Committee is allowed to define rights and ensures the best implementation of human rights set out in the 2004 Charter.297 By doing so, the Committee may also request further information from the Arab League as well as its bodies and other institutions.298 So far, no information is available of how or where the Committee publishes and interprets the 2004 Charter. Perhaps it might follow the Human Rights Committee on international level, which interprets provisions set out in the ICCPR in so called General Comments as well as General Recommendations.299 These comments contribute to a more uniform interpretation and give concrete form to the set-out provisions. They are considered to be an evolving authoritative interpretation.300

However, the Committee lacks many important conditions to guarantee an effective enforcement mechanism: Firstly, it has no legitimacy to receive individual complaints. Even reports only focus on the situation within states in general and do not consider individual cases.301 Therefore, the Arab Committee does not provide any protection for individuals who have been violated in their human rights. This is particularly problematic due to the fact that this body is the only one established within the Arab Human Rights Charter.302 Secondly, as mentioned before, the recurrent linguistic problem is again present, as the Committee’s work as well as its Rules of Procedure are published in Arabic only.303

296 Ibid. 292
297 Ibid. 291
298 Ibid. 192
299 von Arnauld Andreas, Völkerrecht (2016), p. 117
300 Reinisch August, Österreichisches Handbuch des Völkerrechts (2013), p. 349
On the international level, by contrast, the Human Rights Council is entrusted with a comprehensive range of important functions, as set out in Resolution 60/251 by the General Assembly, stating that its tasks are to “promote human rights education and learning as well as advisory services, technical assistance and capacity-building, to be provided in consultation with and with the consent of Member States concerned”, to “serve as a forum for dialogue on thematic issues on all human rights”, to make recommendations to the General Assembly, as well as to “promote the full implementation of human rights obligations”.

Furthermore, it is entrusted with the task to receive individual and collective complaints as well as with the responsibility to oversee periodic reports procedures and special procedures. It is suggested that the Arab Committee should take this international system as an example in order to guarantee an effective implementation of human rights on the regional level. Besides, the Human Rights Committee, which guarantees the implementation of rights set out in the ICCPR, is entrusted with important functions, such as complaint procedures and the report mechanism as well as the aforementioned competence to give general comments.

It is set out in art. 46 (5) ACHR, that the Secretary-General should determine the Arab Committee’s budget in order to guarantee an effective performance of the latter. Therefore, a bank account has been set up allocated by the Arab League Secretary General. However, NGOs fear that – as the resources depend on the Arab League – it is unpredictable whether the Committee is able to obtain sufficient funding or has to rely on donations by member states. This would be problematic as the dependency on external donations would pose a risk to the stability and independency of the Committee. However, on the international level, the Human Rights Committee’s financing is also depending on the General Assembly, as art. 35, ICCPR, states that “the members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee’s

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304 UN General Assembly, A/RES/60/251, 3 April 2006, art. 5
308 Ibid.
responsibilities’. Therefore, the Arab Charter’s provision is compatible with international standards.

Finally, any provisions regulating the Committee’s relationship with other organs of the Arab League are missing. Therefore, the only body with a legal basis within the 2004 Charter appears as an isolated organ rather than as an integrated body.

3.1.3 The Arab Court of Human Rights

Unlike other regional systems, such as the European (European Court of Human Rights, established first in 1959), the Inter-American (the Inter-American Court of Human Rights, established in 1979) or the African (African Human Rights Court, established in 2004), or the international Human Rights Council and the treaty-based committees, the Arab Charter on Human Rights has not created a judicial or at least a quasi-judicial body within its 2004 Charter. The only body established within the Arab system constitutes the Arab Committee on Human Rights, which lacks these criteria. Therefore, the adoption of the Arab Court of Human Rights Statute on 7th of September in 2014 could be seen as a huge step towards an effective enforcement mechanism.

The Arab Court’s establishment was a consequence of the Arab Spring, a popular uprising happening in many states of the MENA in 2011, which called inter alia for the amendment of an effective human rights system. The final impetus for the establishment of the Statute was given by the Kingdom of Bahrain in 2012, when it proposed the creation of an Arab Court. This idea was later approved by the Arab League at the Doha summit in 2013. In order to establish the Statute, LAS entrusted an expert committee to prepare the

309 UN General Assembly, International Covenant on Civil and Political Rights (1966), art. 35
311 Benedek Wolfgang, Jacque Jean Paul, Kedzia Zdzisław et al., The Role of Regional Human Rights Mechanism (2010), pp. 56, 69, 759
314 The Delegation of the Kingdom of Bahrain, Memorandum No. 38 (2/1/15), 15 January 2012
However, the composition of this committee was secret, as were its procedures and meetings, and therefore it was criticized to lack transparency, especially because it did not accept any external advice, neither from academics nor from NGOs.\textsuperscript{316}

The Court is located in Manama city, Bahrain.\textsuperscript{318} However, it is not operational because the Statute has not received the necessary seven ratifications yet.\textsuperscript{319} Locating the Court in Bahrain has raised lots of criticism as well, especially because this particular state has a long history of human rights violations and therefore issues regarding the protection of the Court and its independent work are feared.\textsuperscript{320}

The Arab Court of Human Rights (ACtHR) has its own legal foundation in the Statute of the Arab Court of Human Rights, which also means that it is neither attached to the Arab Charter 2004, nor was it adopted as a protocol to the LAS Charter or in any other way integrated in the LAS structure.\textsuperscript{321} Therefore, this institution is rather seen as a separate judicial subsidiary body, as is set out in art. 2 of the Statute: “\textit{as an independent Arab judicial organ}”.\textsuperscript{322}

On the one hand, the establishment of the Court could be seen as a formal commitment to international human rights standards and a step forward towards an effective monitoring mechanism in the field of human rights; on the other hand, however, it was pointed out by many NGOs that the Court lacks international standards and would be an “\textit{empty gesture}”.\textsuperscript{323} At this point, it has to be taken into consideration that the Arab League has failed to establish an Arab Court of Justice since 1950 and therefore it could be argued that at least it is better to have one court than none.\textsuperscript{324}

\begin{thebibliography}{99}
\bibitem{1} League of Arab States, \textit{Decision no. 573}, 26 March 2013, Doha Summit
\bibitem{2} Ibid. 313
\bibitem{4} Ibid. 312, p. 171
\bibitem{5} Ibid. 315, p. 55
\bibitem{6} Magliveras Konstantinos, Naldi Gino, \textit{The Arab Court of Human Rights: A Study in Impotence} (2016), p. 157
\bibitem{7} League of Arab States, \textit{Statute of the Arab Court of Human Rights} (2014), art. 2
\bibitem{9} Ibid. 321, p. 150
\end{thebibliography}
Keeping these arguments in mind, this chapter will evaluate the Arab Court’s effectiveness and therefore look at its functions and body structure as well as its jurisdiction and accessibility. Again, comparison will be drawn to the international level, in particular to the Human Rights Council, as it provides for complaint procedures “to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances”.

Besides, commonalities as well as differences will be identified in contrast to the Human Rights Committee, which has introduced complaint procedures within its Optional Protocol, Resolution 2200A, which are considered to be quasi-judicial. These are of great importance due to the high number of persons that have recourse to these procedures. However, the protocol was ratified by only some of the LAS member states: Somalia, Tunisia, Libya, Djibouti and Algeria.

Also, as there has not been established a World Court for Human Rights yet, the International Criminal Court, which is another important institution beside the International Court of Justice, will be compared to the Arab system. In accordance to the Rome Statute it covers some human rights issues, as its jurisdiction is limited to the “most serious crimes of concern to the international community as a whole, including genocide, crimes against humanity, war crimes and the crime of aggression”. However, member states of the Arab League have ratified the Statute as well and therefore are subject to its jurisdiction, such as Djibouti, Palestine, Comoros and Jordan.

### 3.1.3.1 Body Structure

#### 3.1.3.1.1 The Judges

326 UN General Assembly, *Optional Protocol to the International Covenant on Civil and Political Rights* (1966)
In order to guarantee effective, transparent and fair procedures, the election of the judges as well as their independency has to be guaranteed.

Art. 6, Statute of the Arab Court of Human Rights (also “Statute”) sets out the rules for the election of the judges: The assembly, consisting of state’ representatives and described in the following chapter, elects the judges from a list with potential candidates. The conditions for being a candidate are set out in art. 7, which implies that the chosen ones have to possess high integrity, show commitment to high moral values and be able to provide legal experience.\(^\text{331}\) However, expertise in the field of human rights is only “preferred” and therefore not a must. Interestingly, the issue of the requirement of this special knowledge on human rights is not addressed within the ECHR.\(^\text{332}\)

On the international level, however, the requirements for members of the Human Rights Council are not defined precisely, as emphasis is only placed on the membership to be based “on equitable geographical distribution” and that “Member States shall take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto”.\(^\text{333}\) There is no explicit provision concerning the integrity or morals of the elected. However, for the election of the judges within the ICC, nominated candidates need to have “high moral character, impartiality and integrity” and also to “possess the qualifications required in their respective States for appointment to the highest judicial offices”.\(^\text{334}\) However, it also states that judges need to “have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court”.\(^\text{335}\) The difference to the set-out requirements of judges elected for the Arab Court is that the Arab Court Statute only prefers the elected to have human rights knowledge whereas the ICC demands judges to have certain legal knowledge.

\(^{331}\) League of Arab States, Statute of the Arab Court of Human Rights (2014), art. 7

\(^{332}\) Magliveras Konstantinos, Naldi Gino, The Arab Court of Human Rights: A Study in Impotence (2016), p. 160; see art. 21 (1) ECHR

\(^{333}\) UN General Assembly, A/RES/60/251, 3 April 2006, art. 7

\(^{334}\) UN General Assembly, Rome Statute of the International Criminal Court (1998), art. 36 lit. a

\(^{335}\) Ibib., art. 36 lit. b
Furthermore, the Statute of the Arab Court sets out that member states can put two candidates on the list, but only one per nationality will finally be chosen.\footnote{336} How those candidates are elected within a member state is not regulated and therefore assumed to be subject to national legislation. However, this might lead to non-transparent and rather political than neutral choices.\footnote{337} The Court consists of seven judges, and if necessary, the number can be increased to eleven. However, this needs the approval of the Assembly and therefore depends on decisions made by political representatives.\footnote{338}

Judges are elected for a four-year term; a re-election is only possible once, as set out in art. 8 of the Statute.\footnote{339} This period is shorter than that of other regional courts, such as the European Court on Human Rights (ECHR).\footnote{340} However, on the international level, members for the Human Rights Council are elected for a three-years period; the same period of time is set out for the judges of the ICC.\footnote{341}

However, the Charter does not set out whether judges serve half-time or full-time, only the work load of the president of the Court is regulated to be a full time job, as set out in art. 11 (3) of the Statute.\footnote{342} Besides, periods of vacancy are also defined in the Statute, as art. 9 sets out that another judge has to fill in and complete the predecessor’s term.\footnote{343} However, another critical look is to be taken at the fact that regulations concerning a fixed pension salary of the judges are missing. Besides, provisions regarding a fair procedure including a fair hearing in case a judge is suspended from office is missing as well, and therefore arbitrary suspensions could be possible.\footnote{344}

\footnote{336 League of Arab States, Statute of the Arab Court of Human Rights (2014), art. 5}
\footnote{338 Ibid. 336}
\footnote{339 League of Arab States, Statute of the Arab Court of Human Rights (2014), art. 8}
\footnote{340 Council of Europe, European Convention for the Protection of Human Rights (1950), art. 23}
\footnote{341 UN General Assembly, Rome Statute of the International Criminal Court (1998)}
\footnote{342 Magliveras Konstantinos, Naldi Gino, The Arab Court of Human Rights: A Study in Impotence (2016), p. 160}
\footnote{343 Ibid.}
Art. 24 (2) of the Statute sets out that judges convene in chambers of three in order to hear the subject matter of disputes.\textsuperscript{345} However, the Statute does not go into detail of how exactly the composition of the chamber should look like; therefore, there is no guarantee of the presentation of different regions of judicial traditions within those chambers. However, when looking at the composition of judges within the chambers of the ICC, it has to be noted that there is also no such provision.\textsuperscript{346}

The independency and impartiality of the judges is set out in art. 15 of the Statute of the Arab Court of Human Rights. From that it is to derive that judges have to serve in an autonomous way rather than as representatives of the states. However, it was suggested to reinforce the judicial independence explicitly to prevent states from influencing the judges.\textsuperscript{347} In order to do so, an additional regulation to guarantee the independency of the states of origin should have been added, as the risk of state interventions and of political influence as well as pressure coming from the national governments are dreaded.\textsuperscript{348} Looking at the European Court of Human Rights, though, there is no such special guarantee either, and neither is there one on the international level.

However, the Statute sets out that in cases the judge’s national state is involved he/she has to oppose the case; the same procedure has to be followed if the judge himself was previously involved in the case\textsuperscript{349} – any possible conflict of interest is to be prevented.\textsuperscript{350}

However, critics have emphasized the need to incorporate the UN Basic Principles on the Independency of Judiciary.\textsuperscript{351} Those principles set out certain minimum requirements and represent soft law, which means these are not legally binding and only provide guidance. Nevertheless, they might become binding if incorporated within a treaty or by the conviction that it reflects a legal obligation after some time.\textsuperscript{352} This applies not only to the aforementioned principles, but also to declarations such as the Cairo Declaration and the

\textsuperscript{345} League of Arab States, Statute of the Arab Court of Human Rights (2014), art. 24 (2)
\textsuperscript{346} UN General Assembly, Rome Statute of the International Criminal Court (1998), art. 39
\textsuperscript{347} Magliveras Konstantinos, Naldi Gino, The Arab Court of Human Rights: A Study in Impotence (2016), p. 160
\textsuperscript{348} Ibid., p. 161
\textsuperscript{349} Ibid.
\textsuperscript{350} Ibid.
\textsuperscript{352} von Arnauld Andreas, Völkerrecht (2016), p. 117
Universal Declaration on Human Rights 1948. The latter, however, is considered to already be customary law.\textsuperscript{353} The UN Basic Principles aspire to “assist Member States in their task of securing and promoting the independence of the judiciary.”\textsuperscript{354} In particular, they set out guidelines concerning the judges’ qualification, selection and immunity as well as the procedure of suspension of the latter.\textsuperscript{355}

**3.1.3.1.2 The Assembly of States Parties**

Art. 4 of the Statute provides for the legal foundation to establish an Assembly of State Parties. This organ is similar to the Committee of Ministers within the European system, as it is composed of member state representatives: Each state party is represented by one delegate.\textsuperscript{356}

Art. 4 is very general in scope and sets out the Assembly’s functions to elect the judges, adopt annual reports of the Court and to ensure that the judgments are executed.\textsuperscript{357} It is also authorized to introduce its *internal regulations*, as set out in art. 4 (3) of the Statute. However, art. 4 (4) of the Statute leaves it to the Assembly to introduce more competencies in by-laws, which are to be adopted after the Statute enters into force.\textsuperscript{358} As this has not happened yet, it remains to be seen, whether the assembly will take advantage of this article in a good or a negative way.

Another very important function is set out in art. 28 of the Statute. It sets out that the Assembly is responsible for approving and adopting the Rules of Procedure for the Arab Court on Human Rights. Therefore, these rules have to be submitted to the Assembly in order to be approved and as a result depend on the will of the political representatives.\textsuperscript{359} This is claimed not to be compatible with international practice and it shows, that the LAS is keen on controlling the Arab Court.\textsuperscript{360}

\textsuperscript{353} Ibid.
\textsuperscript{354} Ibid. 351
\textsuperscript{356} League of Arab States, *Statute of the Arab Court of Human Rights* (2014), art. 4 (2)
\textsuperscript{357} Magliveras Konstantinos, Naldi Gino, *The Arab Court of Human Rights: A Study in Impotence* (2016), pp. 158-159
\textsuperscript{358} Ibid.
\textsuperscript{359} League of Arab States, *Statute of the Arab Court of Human Rights* (2014), art. 28
\textsuperscript{360} Ibid. 357, p. 158
In regards to the criticism that has been made concerning the Rules of Procedure of the Court, a comparison is to be drawn to the international level, in particular to the ICC. Art. 51 clearly states that “the Rules of Procedure and Evidence shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.”

Also, it declares that proposed amendments of the latter are to be adopted by the Assembly of State Parties. Therefore, any accusations of incompatibility with international standards are groundless.

The Statute also sets out that states which are not part of the Statute may join the meetings of the Assembly only as an observer, without the right to vote.

3.1.3.2 The Jurisdiction of the Arab Court

Art. 16 of the Statute sets out that “...all cases and litigations arising from the application and interpretation of the Arab Human Charter in Human Rights or any other Arab treaty in the field of human rights to which the disputing States are party” are falling within the Arab Court’s jurisdiction. Therefore, the Courts legal competence applies not only to the Charter but goes beyond that. This could also be led back to the fact that the Court is an independent judicial body, as set out in its Statute, and not primarily the Arab Human Rights Court as such.

However, the term “any other Arab treaty in the field of human rights” used in art. 16 of the Statute to refer to the Court’s jurisdiction remains open to interpretation. It is unclear which treaties are being referred to, or whether international treaties are included as well. It could mean that any human rights treaty ratified by at least one of the state parties is already implemented or that the treaty has to be adopted by the LAS as a whole, which would be Arab Charter on Human Rights only, as no other Arab human rights instrument exists so far. However, assuming the primary role of the Arab Charter would be consistent with other regional human rights systems, as for example the European

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361 UN General Assembly, Rome Statute of the International Criminal Court (1998), art. 51
362 Ibid. 359, art 4 (5)
364 League of Arab States, Statute of the Arab Court of Human Rights (2014), art. 2
365 Ibid. 363, p. 164
Court’s subject matter jurisdiction is restricted exclusively to the ECHR too.\textsuperscript{367} However, as the Court has not been in practice yet, this remains to be answered.

Moreover, the applicable law, which has to be considered by the Arab Court for decision making, remains unclear as well. Not only the term “Arab treaties in the field of human rights” remains open for definition, but also the phrase “application and interpretation”.\textsuperscript{368} On the international level as well as in other regional human rights systems, it is a practiced custom of courts to take international law and cases into consideration in order to apply provisions.\textsuperscript{369} This could lead to the assumption that the Court is able to – and in fact should – interpret the Arab Charter in conformity with international treaties and therefore enhance its provisions as well as consider other international laws for the decisions, which would be necessary for the Court to be effective.\textsuperscript{370}

However, it is set out in the Vienna Convention on the Law of Treaties, which has reached customary status, that a Court has to interpret treaties “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose”.\textsuperscript{371} The Convention lays out that regional human rights courts should take other judicial decision into account to include current trends in international law as well as in jurisprudence in interpreting treaties.\textsuperscript{372} Therefore, the Arab Court is in charge of construing the Arab Charter in order to ensure its effective implementation and also has to adapt its interpretations due to the fact that human rights treaties are living instruments and have to meet up to new developments.\textsuperscript{373}

\begin{flushright}
\textsuperscript{367} Ibid.
\textsuperscript{368} Ibid. 364, art. 16
\textsuperscript{369} Ibid. 363, p. 164
\textsuperscript{370} Magliveras Konstantinos, Naldi Gino, The Arab Court of Human Rights: A Study in Impotence (2016), p. 164
\textsuperscript{372} Mamakulov and Askarov vs. Turkey, European Court of Human Rights, 4 February 2005; (paragraph 124: “The Court observes that the ICJ, the Inter-American Court of Human Rights, the Human Rights Committee and the Committee against Torture of the United Nations, although operating under different treaty provisions to those of the Court, have confirmed in their reasoning in recent decisions that the preservation of the asserted rights of the parties in the face of the risk of irreparable damage represents an essential objective of interim measures in international law.”)
\textsuperscript{373} Tyrer vs. United Kingdom, European Court of Human Rights, 25 April 1978; (paragraph 31: “.. human rights treaties are living instruments, whose interpretation must go hand in hand with evolving times and current conditions”)\
\end{flushright}
Moreover, the Court’s jurisdiction is limited to cases concerning conflicts resulting from the implementation and interpretation of the Arab Charter on Human Rights”, the Court is then obligated to make decisions concerning conflicts resulting from the implementation and interpretation of the ACHR.\textsuperscript{374}

Also, it is set out that “the jurisdiction of the Court is complementary to the national judiciary and does not supplant it”.\textsuperscript{375} This could be interpreted to mean that the Arab Human Rights Court’s jurisdiction does not have primacy over national jurisdiction. However, on an international level, the Rome Statute sets out the very same provision, declaring that the International Criminal Court “shall be complementary to national criminal jurisdictions”.\textsuperscript{376} The aspect of complementarity is therefore given within international systems too, as it serves to lessen the caseload of a court. Also, a comparison could be drawn to the European system: Art. 35 ECHR declares “that (the Court) may only deal with the matter after all domestic remedies have been exhausted”. Therefore, to be able to access the European Court, the case must have been subject to legal proceedings in front of a national court first, and all national legal remedies must already have been exhausted.\textsuperscript{377} Besides, the European Court’s decisions enjoy precedent status and the decisions are legally binding, as is set out in art. 46 ECHR: “any of the High Contracting Parties may at any time declare that it recognizes as compulsory ipso facto and without special agreement the jurisdiction of the Court in all matters concerning the interpretation and application of the present Convention”.\textsuperscript{378} However, such a provision is missing within the Arab Court’s Statute.

Furthermore, the admissibility of cases is set out in art. 18 of the Statute of the Arab Court, declaring three circumstances in which the Court may not hear cases: Firstly, the judicial body is not legally authorized to hear the case if there is no exhaustion of local remedies “according to a final judgment of a national legal regime”.\textsuperscript{379} In regard to the international level, the complaint procedure of the Human Rights Council does also require that “domestic remedies have been exhausted, unless it appears that such remedies would be

\textsuperscript{374} Ibid. 370, p. 163
\textsuperscript{375} League of Arab States, Statute of the Arab Court of Human Rights (2014), art. 18
\textsuperscript{376} UN General Assembly, Rome Statute of the International Criminal Court (1998), art. 1
\textsuperscript{377} von Arnauld Andreas, Völkerrecht (2016), p. 324-325
\textsuperscript{378} Reinisch August, Österreichisches Handbuch des Völkerrechts (2013), p. 366
\textsuperscript{379} League of Arab States, Statute of the Arab Court of Human Rights (2014), art. 18
ineffective or unreasonably prolonged”.

This means that the Arab Court Statute misses the important provision to allow complaints to be filed if they are ineffective or unreasonable. However, it was criticized as well that the very vaguely formulated term “national legal regime” should be interpreted as a judicial body. Otherwise, the result of a broad construction of the latter might lead to the effect that complaints are inadmissible.

Secondly, other requirements are that the case is not pending before “another regional human rights court”, which means that the Court does not have an exclusive jurisdiction because submitting complaints to international treaty bodies would be possible but not to, for example, the African Court on Human Rights. This would mean that at the same time, a complaint could be submitted to the Arab Court on Human Rights and also – on the international level – to the UN Human Rights Committee, for example, which might lead to two different decisions. As long as these possibly divergent outcomes are not legally binding, this provision does not represent a problem. However, whether or not other international or regional committees or commissions will accept the Arab Court’s jurisdiction is to be awaited.

As a third requirement, the period for filing cases sets out that the case is not to be heard by the Court if it “has been filed six month after the notification of the claimant of the definitive judgment”. Even though the period length is similar to the conditions set out in art. 34 ECHR, NGOs raised concern claiming the period would be too short due to the fact that the Arab human rights system still lacks experience and a transparent mechanism, and that it is not easily accessible and understandable.

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380 UN Human Rights Council, Institution-building of the United Nations Human Rights Council (2007), A/HRC/RES/5/1, art. 87 lit. g
382 Ibid., p. 166; Bakweri Land Claims Committee vs. Cameroon, Communication No 260/02, African Commission on Human Rights (paragraph 49-53 : “The African Commission has held that it is not precluded from receiving communications identical to those submitted to another international body so long as a decision on the merits has not been reached”)
383 League of Arab States, Statute of the Arab Court of Human Rights (2014), art. 18 (3)
384 Council of Europe, European Convention for the Protection of Human Rights (1950), art. 34
Another target for criticism is the provision set out in art. 24 of the Statute, as one single judge carries the responsibility to examine challenges to the Court’s jurisdiction.\textsuperscript{386} This aspect of “understaffing” is seen as inappropriate, especially as very important questions are to be decided by only one judge.\textsuperscript{387}

However, the Statute provides for a promissory clause in art. 20, claiming that states which are not party to the Statute are able to accept the jurisdiction of the Arab Court in general or just for certain cases.\textsuperscript{388} These acceptances can be either limited by a certain time or be unconditional and are based on reciprocity.

Besides, art. 17 of the Statute sets out further restrictions regarding the cases to be accepted and decided on by the Arab Court: Only those issues may be taken into consideration, which come up after the Statute has entered into force in the state in question.\textsuperscript{389} However, how the ACHR will handle continuing violations, which started before the implementation but continue beyond that date, remains to be seen. As it is internationally accepted that jurisdiction will not be declined in such cases, the ACHR should also see this the same way.\textsuperscript{390}

\textbf{3.1.3.3 Procedural Issues}

First of all, art. 23 of the Statute sets out rules of public hearings and parties’ representation within procedures before the Arab Court.\textsuperscript{391} Hearings are public “\textit{except in the cases it (the Court) decides otherwise, for the different Parties’ best interest, and in order to guarantee the application of justice, or at the interested Parties’ request}”. However, the Court can “\textit{decide otherwise}” basically anytime. Besides, it remains unclear if, in case a party requests the exclusion of publicity, the Court has to decide on this request or if it is bound by the application. The provision leaves all these questions unclear and is claimed to represent a major shortcoming of the Court’s Statute, as the publicity should function as a

\begin{itemize}
\item \textsuperscript{386} Ibid., p. 163
\item \textsuperscript{387} Ibid.
\item \textsuperscript{388} League of Arab States, \textit{Statute of the Arab Court of Human Rights} (2014), art. 20
\item \textsuperscript{389} Ibid., art. 17
\item \textsuperscript{390} \textit{Amnesty International and Others vs. Sudan}, Communication No 48/90, 50/91, 89, African Commission on Human Rights, 1999-2000 (paragraph 40: “Continuing violations, as in the case of a law adopted prior to 1986, but that remains in force, fall within the competence of the Commission”)
\item \textsuperscript{391} League of Arab States, \textit{Statute of the Arab Court of Human Rights} (2014), art. 23
\end{itemize}
monitoring mechanism within a proceeding too. Therefore, the exclusion of publicity in exceptional circumstances only would be preferable.\textsuperscript{392}

In comparison to the international level, the Human Rights Council’s complaint procedure is noteworthy. It is set out that matters are to be “examined in a confidential manner, unless the Council decides otherwise”.\textsuperscript{393} This is to preserve and strengthen the state’s confidence and to enhance an increasing cooperation. Besides, another comparison could be drawn to the international treaty-based mechanism, namely the Human Rights Committee within the ICCPR. The procedure is set out in the Optional Protocol as well as within the Rules of Procedure and states that “the Committee shall hold closed meetings when examining communications under the present Protocol”.\textsuperscript{394} Also, the Protocol declares that it is rather a written procedure than an oral.\textsuperscript{395} Furthermore, the Committee’s Rules of Procedure set out that “the Committee shall examine communications under article 41 (State Complaints) of the Covenant at closed meetings”.\textsuperscript{396} However, the Committee also provides a quasi-judicial procedure, as “the States parties concerned shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing”.\textsuperscript{397} Therefore, the possibility of an oral debate is given, but there is no provision including the public. However, in regard to individual complaints, similarly the Rules of Procedure set out that “meetings of the Committee or its subsidiary bodies during which communications (complaint) under the Optional Protocol will be examined shall be closed. Meetings during which the Committee may consider general issues such as procedures for the application of the Optional Protocol may be public if the Committee so decides”.\textsuperscript{398} Therefore, and taking into consideration the international norm, the Arab Statute complies with these requirements.

\textsuperscript{392} Magliveras Konstantinos, Naldi Gino, The Arab Court of Human Rights: A Study in Impotence (2016), p. 167
\textsuperscript{393} UN Human Rights Council, Institution-building of the United Nations Human Rights Council (2007), A/HRC/RES/5/1, par. 104
\textsuperscript{394} UN General Assembly, Optional Protocol to the International Covenant on Civil and Political Rights (1966)
\textsuperscript{395} Ibid., art. 41 lit. a
\textsuperscript{396} UN Human Rights Committee, Rules of Procedure of the Human Rights Committee, 11 January 2012, CCPR (C/3/Rev.10, no. 77
\textsuperscript{397} Ibid., no. 81
\textsuperscript{398} Ibid., no. 88
However, comparison should also be drawn to the European human rights system, as it provides for an actual human rights court. In regards to the involvement of the public, art. 40 set out that “Hearings shall be public unless the Court in exceptional circumstances decides otherwise”. This provision resembles with the Arab Statute very much. However, it does not set out the possibility to exclude the public on a state’s request.

Problematic is that the Statute does not guarantee the victim the right to appeal for remedy or reparation. In addition, the Statute neither provides any regulation of protection of witnesses, nor the empowerment of the Arab Court to implement preliminary injunctions in order to avoid any harm done to them. The Statute is also silent about evidence and other procedural matters such as oral or written procedures, representative competence and the language; however, it can be assumed that Arabic will be the procedural language. All these important rules of procedure may be content within the rules, which have to be laid down by the Court, as set out in art. 28.

On an international level, decisions of the Human Rights Committee are not legally binding. Therefore, it is set out that after the complaint is sent to the state in concern, “the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any that may have been taken by that State”. However, there is no mention of compensation or remedy. In comparison to the European Rights Court, however, it is stressed that art. 41 ECHR claims that “if the Court finds that there has been a violation (...) the Court shall, if necessary, afford just satisfaction to the injured party”. These include the costs of proceeding as well as reparation concerning material and non-material damage. However, the liability for damaged is only given in the extent

401 Human Rights Watch, Proposed Arab Court of Human Rights: An Empty Vessel without substantial Changes to the Draft Statute (2014)
402 Ibid. 400, p. 170
403 League of Arab States, Statute of the Arab Court of Human Rights (2014), art. 28
404 UN General Assembly, Optional Protocol to the International Covenant on Civil and Political Rights (1966), art. 4 (2)
405 Council of Europe, European Convention for the Protection of Human Rights (1950), art. 41
of the damage actually done to the injured party. Furthermore, art. 43 provides for any party to appeal against the judgment of the Court within three months.\(^{407}\) However, the remedy is restricted to cases raising serious question affecting the interpretation of the Convention or if it is a serious issue of general importance.\(^{408}\)

The issuance of judgment is set out in art. 25 of the Statute, saying that judgments are issued within sixty days from the Court’s deliberation. The majority is needed to pass a judgment and dissenting opinions can be attached to the judgment, which is finally read out in an open court.\(^{409}\) Judgments are final and irrevocable; in exceptional circumstances, however, the Court is able to reconsider cases due to an application submitted by a party within six month from the date they received the decision.\(^{410}\) As set out in art. 27 of the Statute, it depends on six conditions (art. 27 (2) a-f) if the Court reconsiders its decision. Some of these conditions are procedural, such as “if the judgment includes a breach of an essential procedural rule”, as well as material: “if the Court flagrantly exceeds its jurisdiction”.\(^{411}\) Due to their formulation, NGOs fear that the cases in lit a-f in art. 27 represent a danger to the effectiveness of the Court, as state parties may recourse to this article in case they are not satisfied with the judgment.\(^{412}\) However, the provision should be interpreted in another way, namely that it offers the possibility for parties to request the Court to reconsider its decision, similarly to a legal remedy, which was claimed to be missing within the Statute.

Another important aspect is the enforcement of the judgments, which is essential in order to guarantee an effective mechanism. Art. 26 sets out that “they shall be enforced immediately against a State Party, as if they were final judgments rendered by its national judiciary”.\(^{413}\) In order to ensure the enforcement, state parties would have to change their national legislation, but this necessity is not set out in the Statute.\(^{414}\) Also, it is not clear

\(^{407}\) Ibid. 405, art. 43  
\(^{408}\) Ibid., see for example \textit{F.G. vs. Sweden} (Grand Chamber), no. 43611/11, European Court of Human Rights, 23 March 2016  
\(^{409}\) League of Arab States, \textit{Statute of the Arab Court of Human Rights} (2014), art. 25  
\(^{410}\) Ibid., art. 27  
\(^{412}\) Ibid.  
\(^{413}\) League of Arab States, \textit{Statute of the Arab Court of Human Rights} (2014), art. 26  
which body is responsible for the supervision of a judgment’s execution.\textsuperscript{415} It could be the Assembly, or the Court itself. Due to the fact that the Arab Court has no legally based connection to the Arab League as such, and neither has the Assembly, this might cause problems. Within the European system, judgments are transmitted to the Committee of Ministers, which is responsible for this task and also embedded within the European system.\textsuperscript{416}

\textbf{3.1.3.4 Amendments and Withdrawal of the Statute}

The Statute is open for potential amendments as set out in art. 34 of the Statute. It is possible to amend the Statute due to an initiative by one state or the Court itself.\textsuperscript{417} The proposal is to be submitted to the Assembly and enters into force one month after the needed ratifications and a two-third majority of the member states.\textsuperscript{418} The amended Statute is only binding for the states accepting it. This might lead to various versions of the Statute to be complied by the states; however, this is not unusual on international level.

A withdrawal from the Statute has its legal foundation in art. 35 and becomes effective one year after submitting a written note to the LAS Secretary-General. It is not clear whether a withdrawal from the LAS means a withdrawal from the LAS means to withdraw from the ACHR as well.\textsuperscript{419} However, due to the fact that there is no link between the organization and the Court so far, it will not affect the membership as such.

Another critical aspect has to be highlighted: In the Statute of the Arab Court of Human Rights, there is no mention of the Arab Committee – which is the only institution legally based within the Arab Human Rights Charter – at all. This leads to the assumption that “the two bodies appear to exist in a vacuum with no formal relationship”.\textsuperscript{420} There is no interaction whatsoever provided by the Statute. This is a major deficiency, as cooperation between those two bodies is essential to guarantee an effective enforcement mechanism, as both are the main bodies of the Arab human rights system. In order to ensure cooperation between these very important institutions, reference should be made to the Arab

\begin{flushright}
\textsuperscript{415} Ibid.
\textsuperscript{416} Council of Europe, \textit{European Convention for the Protection of Human Rights} (1950), art. 46 (2)
\textsuperscript{417} Ibid. 413, art 34
\textsuperscript{418} Ibid.
\textsuperscript{419} Magliveras Konstantinos, Naldi Gino, \textit{The Arab Court of Human Rights: A Study in Impotence} (2016), p. 170
\textsuperscript{420} Ibid., p. 156
\end{flushright}
Committee within the Statute or the other way around. To ensure the cooperation between these two institutions the possibility to adopt an Optional Protocol is given, too. Art. 52 ACHR provides for the option to propose such protocol.\textsuperscript{421}

As the Arab Court on Human Rights exists on paper only and has not been put into practice yet, this section has examined the competences and procedural issues as set out in the Statute from a purely theoretical point of view. The Statute has been ratified by only one state so far, namely Saudi Arabia, in June 2016.\textsuperscript{422} The Statute needs six more member states in order to become effective.\textsuperscript{423} Therefore, it is still to be seen which actual effects the implementation of the Statute will have on states as well as on the human rights system of the Arab states, and to what extent the Court will prove its significance and importance.

3.1.4 NGOs

Another very important role within the enforcement mechanism as well as within the whole reforming process of the human rights system in the States of the Arab League is played by NGOs. Especially since the Arab Spring, the work of NGOs and also their participation within the reforming process and enforcement mechanism of human rights increased as they were finally tolerated at least in some areas by the member states of the LAS. This, however, is the result of a patiently awaited process which is still at its initial stages.

Additionally, looking at the selected literature for this thesis, it becomes clear that NGOs such as Amnesty International, the International Federation for Human Rights (FIDH), the International Commission of Jurists (ICJ) and many human rights activists are primarily dealing with this particular topic and therefore seem to be the driving forces behind this reform.

This chapter deals with the NGOs’ functions and tasks within the Arab human rights system and evaluates their functions and relations – as far as they exist – to and within the enforcement bodies mentioned above.

\textsuperscript{421} League of Arab States, \textit{Arab Charter on Human Rights} (2004), art. 52
\textsuperscript{422} Ibid. 419, p. 171
\textsuperscript{423} Ibid.
3.1.4.1 Overview

There were and still are various - international and regional - NGOs included in the reforming process of the Arab human rights system. Especially the Cairo Institute for Human Rights Studies (CIHR), the Arab Organization for Human Rights (AOHR) as well as the International Federation for Human Rights (FIDH), Amnesty International and the International Commission of Jurists (ICJ) are to be pointed out.

Even though their role is so important, their right for participation within the enforcement mechanism is very limited, as the states of the Arab League tend to exclude NGOs from the reforming process and avoid any other interaction.\textsuperscript{424} In fact, NGOs are facing several challenges due to the introduction of several legal restrictions by the LAS in order to keep them in check.\textsuperscript{425} This is shown by restrictive laws, which were introduced to make it almost impossible for NGOs to meet or intervene with governments due to the establishment of time-consuming bureaucratic procedures as well as high-security precautions.\textsuperscript{426} But not only the accessibility of the states representatives is hardly guaranteed – human rights activists have to fear for their lives and risk a lot in order to be heard or to participate within certain national organizations, meetings or governments.\textsuperscript{427}

In the 1990s, NGOs started to interact with Arab states in the field of human rights more closely.\textsuperscript{428} Several initiatives were introduced by NGOs to amend the human right system within the LAS, especially concerning the reforming process of the 1994 Charter. A conference was held shortly before the Permanent Committee convened in order to amend the charter in October 2002.\textsuperscript{429} At this conference, 36 regional Arab NGOs as well as 11 international NGOs and 15 independent experts participated, resulting in the “Beirut Declaration on Regional Human Rights Protection in the Arab World”.\textsuperscript{430} This Declaration contained essential international human rights principles as well as guarantees promoting an effective enforcement mechanism to be included in the new charter and was presented

\textsuperscript{424} Rishmawi Mervat, \textit{Civil Society Interaction with the League of Arab States: Key insights, principles, good practices and emerging lessons} (2013), p. 10
\textsuperscript{425} Ibid., p. 10
\textsuperscript{426} Rishmawi Mervat, \textit{Civil Society Interaction with the League of Arab States: Key insights, principles, good practices and emerging lessons} (2013), p. 10
\textsuperscript{427} Ibid., p. 11: The Arab Organization for Human Rights was finally allowed to hold its third meeting in Cairo in 1993; however one activist disappeared and was found dead in 2012
\textsuperscript{428} Ibid., p. 14
\textsuperscript{429} Ibid., p. 19
\textsuperscript{430} Ibid.
to the Permanent Committee in order to be taken into account while amending the 1994 Charter.431 This is highlighted as one example out of many of NGOs’ contribution to an Arab human rights system.

Latest developments show that NGOs were able to increase their participation due to the Arab Spring in 2011, which opened more opportunities for NGOs to engage with the LAS particularly in the field of human rights. In March 2012, several NGOS came together to deepen their understanding of organizational structure of the LAS and its mechanisms.432 As a result, recommendations for the improvement of the existing human rights mechanism were sent to the LAS, including the suggestion to let NGOs participate in the enforcement mechanism and the aim to establish a maintaining dialog between the LAS and them.433

In the following years, other conferences were held to bring several regional organizations together in order to summarize the outcome of the past work of NGOs and talk about their work’s success, challenges and possible improvements.434 Also, the exchange of different perspectives and the effort the LAS made to protect and promote human rights within the area were discussed.435

However, NGOs are still not very welcome in the LAS.436 As explained above, it should be noted that NGOs and the LAS rather work alongside than together and interact and exchange experience and knowledge, which might lead to diverse results and views. This is mostly due to the fact that international NGOs in particular are seen as a “western intervention” whenever they try to interfere with the local governments.437 They are coming from the outside and therefore are foreign, which in other words means they are built on western values and are forcing those on the Middle East. Here again, the debate of the west “against” the Arab world and the other way around appears. However, because of the hostile attitude towards international NGOs, local organizations – for instance the

431 Ibid.
432 Ibid., p. 31
433 Ibid., p. 25
434 Rishmawi Mervat, Civil Society Interaction with the League of Arab States: Key insights, principles, good practices and emerging lessons (2013), pp. 30-31
435 Ibid.
436 Ibid., p. 33
437 Ibid., p. 11
Cairo Institute for Human Rights studies and the Arab Organization for Human Rights – do not face as much resistance and, in consequence, have a better chance to be accepted.

However, another problem faced by both international as well as regional NGOs are authoritarian regimes, who claim the power to be only theirs and feel threatened by an intervention of NGOs.\(^{438}\)

Nevertheless, NGOs have also been criticized because the results of their work are only made public in western states and not within the state of concern.\(^{439}\) As a result, western governments put pressure on the developing countries because of these published findings of international NGOs. It could, however, be argued that NGOs publishing their finding in the state of concern are mostly not taken seriously and therefore address states which value their reports, as this is the only possible way their voice is heard.

However, despite these issues, NGOs work hard to be integrated not only in the reform process but also in the enforcement mechanism because the collaboration of NGOs with states is essential to guarantee an effective human rights system. The following sections will highlight their collaboration opportunity within the institutions explained before, namely the Arab Human Rights Commission, the Permanent Committee and the Arab Court on Human Rights.

### 3.1.4.2 NGOs Participation within the Arab Human Rights Bodies

#### 3.1.4.2.1 NGOs and the Arab Permanent Committee

The Arab Permanent Committee was the first body to include NGOs in their sessions as observers. However, this access is very limited and NGOs are not able to make statements, recommendations or to consult.\(^{440}\) In 2015, only 23 organizations enjoyed this status, and these NGOs are mostly based on very restrictive association law.\(^{441}\)

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\(^{438}\) Ibid.


\(^{441}\) Ibid.
There are some criteria to meet in order to obtain observer status: The NGOs headquarters must be in an Arab country and it must be registered there.\footnote{Ibid.} Besides, the organization has to have been active for three years at the date it applies for observer status, and it has to work on issues mandated by the Arab Permanent Committee only.\footnote{Ibid.} Additionally, NGOs have to unfold their funding.

These very strict conditions to become an observer in the Permanent Committee make it impossible for many NGOs to apply. Also, the function of NGOs is limited to a minimum, as they are not allowed to work on any other issues but the ones they are entrusted with by the Permanent Committee. Therefore, NGOs are subject to a constant control by the states, as the Committee consists of political representatives. Collaboration and exchange on equal terms is not guaranteed. However, this criticism should be treated with caution, as the states’ sovereignty and their national self-determination are to respect, as set out in the UN Charter.\footnote{United Nations, \textit{Charter of the United Nations} (1945), art. 2 (1)}

\textbf{3.1.4.2.2 NGOs and the Arab Human Rights Committee}

The Arab Human Rights Committee is open for NGOs participation and has maintained close contact to such organizations since its introduction in 2008.\footnote{Rishmawi Mervat, \textit{The League of Arab States: Human Rights Standards and Mechanism: Towards further civil society engagement: A manual for Practitioners} (2015), p. 44} They are included within the report procedure and they are allowed to join sessions of the Committee:\footnote{LSE Centre for Women, Peace and Security, \textit{Arab Permanent Committee on Human Rights} (accessed 17 April 2018)}

In regards to the sessions, the Committee is not bound to only invite NGOs with observer status within the LAS, such as for example the Arab Organization for Human Rights, which is known as an important regional NGO within the Arab League as well as within the African Union.\footnote{Homepage Arab Organization for Human Rights, \textit{About Us}, available at: http://aohr.net/en/about-us/ (accessed 17 April 2018)} Instead, it can invite NGOs with observer or consultative status within the LAS, the OIC or the UN.\footnote{Ibid. 445, p. 45} Other NGOs, which do not meet this condition, can cooperate with such an organization in order to be able to participate.\footnote{Ibid.} This is a huge step
forward, as within the LAS and in other Arab institutions, NGOs only enjoy observer status if they meet very restrictive standards, for example that they have to be Arab-based cannot be financed not from the outside. Thus, the scope of eligible NGOs is reduced to only a limited number of these kinds of organizations.

Importantly, NGOs are also able to participate in the report mechanism of the Committee. As this mechanism is explained in the following chapters in more detail, only the NGOs functions will be discussed below.

Although the 2004 Charter does not provide a legal foundation for NGOs to participate within the report mechanism, the Arab Committee allows NGOs to submit so-called shadow-reports or parallel-reports. This means that the latter are submitted parallel to the state report, containing comments on possible false statements or recommendations. Also, this mechanism may highlight certain aspects of the state reports in order to encourage the Committee to pay more attention to a special topic. However, guidelines were introduced as a condition for sending in these shadow reports, demanding a certain length (max. 30 pages), a brief introduction of the NGO sending the report and that it must not focus on specific individual cases. However, this mechanism is restricted to NGOs located and registered within the state it wants to report on; only those NGOs are allowed to submit statements. This excludes many NGOs, as they often refuse to or are not able to get registered in a state due to its repressive measures. Moreover, these reports can only be effective if the concerned states accept recommendations. A further issue is that individuals are not protected at all, as the shadow report cannot focus on individual cases.

Subsequently, after the report as well as the shadow report have been submitted, the Committee meets with the states to discuss its report within approximately two days.

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addition to that, there is also a meeting held between the Arab Committee and the NGO dealing with these shadow reports excluding any state representatives. However, in order to be invited, NGOs have to explicitly express the wish to attend in their shadow report. 457

3.1.4.2.3 NGOs and the Arab Court of Human Rights

First of all, it has to be pointed out that NGOs and other civil organizations were excluded in the process of drafting the Statute. 458 This emphasizes the LAS’ recurring rather hostile attitude towards civil society organizations. 459 The draft of the Statute was not accessible to NGOs until it was already closed up and even though some recommendations were made anyway, they were not taken into account. 460 However, it has to be kept in mind that there is no explicit provision or whatsoever for states to include NGOs in their legislative procedure. There is no denying that NGOs play a fundamental role in promoting human rights; however, as mentioned before, the states’ sovereignty has to be respected.

Art. 19 of the Statute sets out that “State Parties can accept [....] 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”. 461 This provision sets out that NGOs are able to be party before the Court but only due to the discretion of the state. This is again very restrictive, as it depends on the state whether the NGO is allowed to carry out this responsibility and, additionally, the NGO has to be located within the state of concern.

Furthermore, NGOs should be involved in the selection process of judges on a national level, as there is no transparency guaranteed yet. 462 There are no regulations set out and therefore NGOs with human rights experience would be essential in order to exchange expertise and recommendations with the relevant national authorities electing the judges.

However, as the Court is not practicing yet, it remains to be seen how NGOs will interact with this institution.

457 Ibid., p. 46
458 Ibid., p. 54
459 Ibid., p. 27
460 International Federation for Human Rights, Proposed Arab Court of Human Rights: Rewind the process and get it right (2014)
461 League of Arab States, Statute of the Arab Court of Human Rights (2014), art. 19
462 see chapter 3.1.3.1.1
3.1.5 The independent Permanent Commission on Human Rights (IPHRC)

As chapter 2.3 introduced the Cairo Declaration as an important human rights document for Islamic states, its one and only institution to promote the declared human rights is discussed in the following:

The OIC has an institutional body established in 2011 consisting of independent experts in the field of human rights, namely the Independent Permanent Human Rights Commission.\(^{463}\) The IPHRC was the outcome of the “Ten-Year Program of Action”, which aimed to reform and to modernize the OIC, focusing among other things on universal human rights as well as implementing them in all member states.\(^{464}\)

The body’s legal foundation as well as its functions are set out in art. 15, OIC Charter, which are to “promote the civil, political, social and economic rights enshrined in the organization’s covenants and declarations and in universally agreed human rights instruments, in conformity with Islamic values.”\(^{465}\) Therefore, the Commission is responsible to support and monitor human rights within the OIC members.

Those responsibilities are undertaken by applying different kinds of monitoring instruments, such as a report-mechanism, the interpretation of human rights provisions and the establishment of working groups.\(^{466}\) The Commission also welcomes NGOs in their meetings and is keen on an increasing cooperation with other international and regional human rights systems.\(^{467}\)

Nevertheless, the IPHRC lays its focus especially on an Islamic approach to human rights, as set out above “in conformity with Islamic values.” However, especially the former Secretary-General Ekkmeledin Ihsanoglu was keen on modernizing the OIC and emphasized the fact that Islam and international human rights are compatible.\(^{468}\) He was

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\(^{464}\) Esmaeili Hossein, Marboe Irmgard, Rehman Javaid, The Rule of Law, Freedom of Expression and Islamic Law (2017), p. 95

\(^{465}\) Organization of the Islamic Conference, Cairo Declaration on Human Rights in Islam (1990), art. 15


\(^{467}\) Ibid.

\(^{468}\) Ibid. 464, p. 96
keen on promoting a compatible approach between universal and Islamic perspectives and to modernize the OIC in conformity with international standards.\textsuperscript{469}

Concerning the enforcement of such Islamic human rights in particular, some Islamic scholars claim that due to their divine nature and the strong link to religion they are enforced “automatically”. This automatic application of human rights in Islamic society is explained by the fact that these rights are God-given and, therefore, of a divine nature. A monitoring mechanism would not be necessary because the law is not made by human beings but by God. Islam very much permeates Islamic society and therefore enjoys high – if not the highest – priority in some Islamic states. This is because in most states of the Arab League, Islam shapes peoples’ lives; for example, it controls their daily routines: when and how to pray, what to eat, the access to school system and education. In western societies, religion does not have the same significance, or at least it is not embedded in the people’s daily routine. Therefore, it could be argued that Islamic law is “easier” to enforce. Also, “Western” human rights are characterized by compromises, as the societies are mostly a mix of various cultures, which makes them susceptible to controversy.

However, such an automatic implementation would require a society living with the same religion and the very same understanding of religious texts and rituals. But the claim that society adheres to the law just because of its supposed divine nature cannot be true, as in some Islamic states the freedom of religion only extends to Islam and no negative freedom of religion exists. Even the Cairo Declaration sets out that “Islam is the religion of unspoiled nature”, and it is prohibited to convert someone to another religion.\textsuperscript{470} How can it be argued that a law is freely and willingly accepted if there is no free will guaranteed in the first place?

3.2 Enforcement Tools

3.2.1 State Reports

\textsuperscript{469} Ibid.
\textsuperscript{470} Organization of the Islamic Conference, \textit{Cairo Declaration on Human Rights in Islam} (1990), art. 10
Art. 48 of the Arab Charter on Human Rights provides the legal foundation for state reports, which have to be submitted to the Secretary-General of the LAS.\textsuperscript{471} The main purpose of these reports is to reflect on the member state’s domestic implementations of the human rights set out in the 2004 Charter, “on the measures they (the states) have taken to give effect to the rights and freedoms recognized in this Charter and on the progress made towards the enjoyment thereof”.\textsuperscript{472} The Secretary-General is then obligated to transmit these to the Arab Human Rights Committee.

Initial reports must be submitted one year after the 2004 Charter enters into force; these are then followed by periodic reports every third year.\textsuperscript{473} However, the Committee may ask the states to provide more information or additional facts. Further on, the Arab Committee studies the reports together with the state’s representative, resulting in comments and recommendations it can give according to art. 48 (4) of the Arab Charter. Additionally, an annual report is submitted to the Council of the League, summarizing the Committee’s findings as well as its activities in the field of human rights.\textsuperscript{474} All these documents are made public and the Committee shall disseminate these widely.\textsuperscript{475}

However, art. 48 of the Arab Charter does not set out any sanctions or consequences in case reports are not submitted in time or not at all. Another critical aspect is the fact that reports are published in Arab only, which limits their accessibility.\textsuperscript{476}

On the international level, the Human Rights Council provides for a similar mechanism known as the Universal Periodic Review (UPR). This mechanism was introduced with Resolution 60/251 on 18th of June in 2007 and aspires to evaluate the human rights situations within the states and to find out where advice concerning human rights is needed.\textsuperscript{477} However, it does not replace report procedures of the committees established within the UN Conventions but rather complements them. It includes all countries of the UN and therefore also the member states of the Arab League. Apart from countries,

\begin{itemize}
\item \textsuperscript{471} League of Arab States, Arab Charter on Human Rights (2004), art. 48
\item \textsuperscript{472} Ibid.
\item \textsuperscript{473} League of Arab States, Arab Charter on Human Rights (2004), art. 48 (2)
\item \textsuperscript{474} Ibid., art. 48 (5)
\item \textsuperscript{475} Ibid., art. 48 (6)
\item \textsuperscript{476} Magliveras Konstantinos, Naldi Gino, \textit{The Arab Court of Human Rights: A Study in Impotence} (2016), p. 156
\item \textsuperscript{477} Mayrhofer Monika, Chavez Carmela, Hegde Venkatachala et al., \textit{International Human Rights Protection: Institutions and Instruments} (2014), p. 8
\end{itemize}
stakeholders as for example international, regional and national NGOs may also participate.\textsuperscript{478} However, this procedure is periodic and is happening in a four-year cycle.\textsuperscript{479} It is constituted as a peer-review proceeding, based on equal states enhancing and assisting each other in regards to human rights in a cooperative way.\textsuperscript{480} The outcomes of these procedures are recommendations concerning how to amend the human rights situation within a particular country, which the state in concern may accept or just take note of.\textsuperscript{481} Accepted and noted recommendations are included within the report afterwards.\textsuperscript{482} The states are obliged to implement the accepted recommendation concerning their human rights situation and within a second review they should provide information on how this has been going so far.\textsuperscript{483} Concerning possible sanction, it is mentioned that the “Council will address, as appropriate, cases of persistent non-cooperation with the mechanism”.\textsuperscript{484} Therefore, it may “take all appropriate steps and measures, in accordance with his mandate, to urge the State under review to resume its cooperation with the universal periodic review mechanism”.\textsuperscript{485} These measures are not defined precisely and as a result open to interpretation. Also, states do not have to accept the recommendations as this procedure strongly depends on the willingness to cooperate.

However, another comparison should be drawn to the treaty-based bodies such as the Human Rights Committee. Its report review procedure is set out in art. 40 ICCPR, and in more detail within the Rules of Procedure of the Human Rights Committee.\textsuperscript{486} According to these provisions, the Arab report mechanism meets the international standard, as it sets out very similar procedures. However, in regards to the missing sanctions, rule no. 69 of the Rules of Procedure sets out that in case a state does not submit its report in time, a

\textsuperscript{478} UN Human Rights Council, \textit{Institution-building of the United Nations Human Rights Council} (2007), art. 3 lit. m
\textsuperscript{479} Ibid., art. 14
\textsuperscript{480} Ibid.
\textsuperscript{483} Ibid. 481, art. 3
\textsuperscript{484} Ibid., art 38
\textsuperscript{486} Human Rights Committee, \textit{Rules of Procedure} (2012)
reminder may be sent to the latter. 487 If the state in concern still does not send in the report, the “Committee may, at its discretion, notify the State party (...) to examine in a public session the measures taken by the State party to give effect to the rights recognized in the Covenant, and to proceed by adopting concluding observations.” 488 This provision provides for an action to be taken in case a state does not submit its report in time, but it is not a sanction in the sense of, for example, a fine that has to be paid. However, as can be seen, report mechanisms strongly depend on the states’ will, even on the international level. The Arab Charter is therefore clearly compatible with international standards; however, it could insert a provision setting out possible consequences similar to the procedure within the ICCPR in order to stress the mechanism’s importance.

The Arab reports contain information regarding the states’ current situation concerning the implementation of the Arab human rights and what has been done to give effect to the human rights set out in this particular instrument. 489 The reports have to follow certain formal standards, which the Arab Committee has set out in its guidelines; for example, a certain sequence of the articles being referred to is required. 490

Yet in practice, states have not met these stipulations set out in art. 48 of the 2004 Charter. In fact, a first initial report was sent in by Jordan in 2012, followed by Algeria and Bahrain in 2013, all of them unfortunately only published in Arabic. 491 As the Arab Charter was ratified in 2008, initial reports would have been due for all member states of the Arab Charter on Human Rights. 492 By now, seven more states have sent in their reports: Qatar, Kuwait, Saudi Arabia, Iraq, Sudan, Lebanon and the United Arab Emirates. 493 This is a great number, especially taking into consideration that states are commonly late on the international level, too, as for example within the report mechanism of the ICCPR. According to the Human Rights Committee’s report, no. 40 A/71/40 in March 2016, 21

487 Ibid., no. 69
488 Ibid., no. 70 (1)
489 League of Arab States, Arab Human Rights Charter (2004), art. 48 (1)
states are listed of which the initial report is overdue and 20 states of which the periodic report has been overdue for more than 10 years.\(^{494}\)

Nevertheless, the reports which have been reviewed by the Committee so far clearly show that this institution seems to actually work independently and in compatibility with international standards.\(^{495}\) As an example, within its recommendations and comments in Jordan’s report it referred to international law and also criticized the current human rights implementation, concerning in particular the lack of legal reparation for victims of torture, the still present punishment of children in education systems and the discrimination of women in many areas.\(^{496}\) In addition to that, the guarantee of NGOs’ participation within the human rights enforcement mechanism was demanded.\(^{497}\)

However, some critics claim that these reports are not effective because individual cases cannot be included and because the reports are not legally binding, meaning that recommendations must not necessarily be accepted by the states. However, as evaluated above, states do not have to necessarily accept recommendations within the URP nor within the Human Rights Committee procedure.\(^{498}\) Also, the content of reports is strictly limited to “the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights” and therefore does not include individuals as such.

Therefore, it is to conclude that the report mechanism established with the 2004 Charter actually meets international standards.

### 3.2.2 Complaint Procedures


\(^{495}\) Ibid., p. 52


\(^{497}\) Ibid., p. 54

The Arab Court of Human Rights is the only institution within the Arab system to review complaints, as the Arab Committee was not entrusted with this task.\textsuperscript{499}

The legal foundation for this procedure is set out in art. 19 of the Statute, regulating that only the state party of whom individuals are violated in their human rights may access the Court.\textsuperscript{500} Also, both the claimant and the defendant state have to be parties to the Statute or have to have accepted the jurisdiction of the Court.\textsuperscript{501} This means that the provision restricts the access for states only, whereas a \textit{locus standi} for individuals is not provided.\textsuperscript{502} Individuals do not have any access to the Court, as it is limited to interstate cases only.\textsuperscript{503} Interestingly, in a previous draft of the Statute, a mechanism for individual complaints was provided, but unfortunately this was removed in the adopted version.\textsuperscript{504}

The importance of individual complaints is also due to the fact that interstate complaints are hardly submitted, as confirmed by its practices in other regional human rights systems as well as on the international level.\textsuperscript{505} The cautious use of state complaints is on the one hand based on political as well as diplomatic thoughts, as states in general avoid proceeding against another state.\textsuperscript{506} On the other hand, in many cases states are considered to be the offender and their citizens the victims, and a state accusing itself for violating human rights is not likely to be seen soon. As a result, the hesitant attitude towards this particular mechanism will be no different in the Arab than in other human rights systems.

Nevertheless, art. 19 (2) of the Statute sets out that NGOs are able to access the Court if they have been accepted by a state party.\textsuperscript{507} However, NGOs have to be “accredited and working in the field of human rights in the state, whose subject claims to be a victim of a

\begin{footnotes}
\item[499] International Federation for Human Rights, \textit{Proposed Arab Court of Human Rights: Rewind the process and get it right} (2014)
\item[500] League of Arab States, \textit{Statute of the Arab Court of Human Rights} (2014), art. 19
\item[501] Ibid.
\item[503] Ibid.
\item[505] International Commission of Jurists, \textit{The Arab Court of Human Rights: A Flawed Statute for an Ineffective Court} (2015), p. 26: “no interstate complaint has ever been lodged before any UN treaty-body”
\item[506] Ibid. 502
\item[507] League of Arab States, \textit{Statute of the Arab Court of Human Rights} (2014), art. 19
\end{footnotes}
human rights violation [...]”.\textsuperscript{508} By looking at the set-out conditions realistically, they represent a serious barrier for NGOs to participate. This is because it is in the state’s discretion whether to accept the organization, and a state will hardly do so, as the result of this would be to hold itself accountable before a judicial body.\textsuperscript{509} Additionally, NGOs might fear to lose their registration in that particular state as well.

However, art. 19 of the Statute refers to a “subject” which is claiming to be a victim of human rights violation.\textsuperscript{510} Clearly, despite concerns raised in this matter, legal persons may be subsumed under this term as well. Furthermore, the subject is limited to be “a victim” and therefore refers to a single person, which means that the possibility of a community or any collective interest to be asserted is excluded.\textsuperscript{511} In comparison to the international level, however, the plural was chosen, as art. 1 sets out that “[…] individuals claiming to be victims […]”.\textsuperscript{512} Whether this concern is justified remains to be seen.

Moreover, the Statute is missing any regulation concerning amicus curiae (literally meaning: friend of the court), which means the participation of individuals or organizations at proceedings without being a party, or third party intervention. It offers the possibility to give an opinion regarding a pendent dispute in form of a brief. The lack of the latter was claimed to illustrate that the contracting parties do not have “to be collectively interested in upholding the provisions of the 2004 Charter”.\textsuperscript{513} Therefore, if severe human rights violations are happening in another Arab State, there is no possibility to intervene.

The Rules of Procedure of the Human Rights Committee do not provide for such a mechanism within its complaint procedure.\textsuperscript{514} The ICC, however, does so in its Rules of Procedure and Evidence, as it is set out that “at any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on

\textsuperscript{508} Ibid., art. 19 (2)
\textsuperscript{509} International Commission of Jurists, The Arab Court of Human Rights: A Flawed Statute for an Ineffective Court (2015), p. 27
\textsuperscript{510} Ibid., 507, art. 19
\textsuperscript{511} Magliveras Konstantinos, Naldi Gino, The Arab Court of Human Rights: A Study in Impotence (2016), p. 162
\textsuperscript{512} UN General Assembly, Optional Protocol to the International Covenant on Civil and Political Rights (1966), art. 1
\textsuperscript{513} Ibid. 511
\textsuperscript{514} UN Human Rights Committee, Rules of Procedure (2012)
any issue that the Chamber deems appropriate”.515 Also, the European system allows for a third party, as it is set out in art. 36 ECHR that “the President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings”. Besides, this opportunity is also given to the Council of Europe Commissioner for Human Rights.516 However, in my opinion, this mechanism stresses the fact, that it is a matter of mutual interest of all state parties to guarantee the most effective implementation of human rights set out in the Arab Charter within all state parties. Therefore, such a mechanism should be included in a regional human rights treaty.

As pointed out by critics, the raison d’être of the Arab Court should be to guarantee individuals an effective remedy and an access to a judicial and a non-judicial decision.517 The Arab human rights system neither provides any access to the Court nor to the Arab Committee and therefore fails to achieve the very purpose of a human rights system, which is a substantial gap within this particular mechanism, as the Court cannot work effectively as a monitoring body for human rights. It was claimed that the missing individual complaint procedure illustrates the fact that in the Arab states, human rights still are existing more in theory than they are actually applied in reality.

However, from an international perspective, the European Human Rights Court provides for individual complaints but is overloaded due to the great number of submissions that are being lodged—over 65.250 were pending at 31st December 2017.518 Therefore, the Optional Protocol No. 14 was adopted in order to “maintain and improve the efficiency of the control system for the long term, mainly in the light of the continuing increase in the workload of the European Court of Human Rights and the Committee of Ministers of the Council of Europe”.519 Therefore, a balance must be sought between the possibility to

516 Council of Europe, European Convention for the Protection of Human Rights (1950), art. 36 (3)
517 Human Rights Watch, Proposed Arab Court of Human Rights: An Empty Vessel without substantial Changes to the Draft Statute (2014)
lodge a complaint and not overloading the judicial body, which also poses a risk to the effective enforceability of human rights. Besides, since the ICCPR Optional Protocol entered into force in 1977, 2,759 individual complaints have been submitted to the Human Rights Committee, 668 of which were declared to be inadmissible, 386 were withdrawn and 540 remain to be concluded.\textsuperscript{520} This is far less than the European Court has to deal with.

Nevertheless, the numbers proof that individual complaints are of great importance and the Arab Court needs to provide such mechanism.

3.2.3 Advisory Opinions

Another monitoring or rather supportive instrument within the Arab human rights mechanism is provided within art. 21 of the Statute, which sets out that the Court has the competence to give advisory opinions on “any legal issue related to the Charter or to any other Arab convention on human rights”.\textsuperscript{521} Again, in order to pursue this function, the request of the LAS Council or any subordinated organization of the latter is required.\textsuperscript{522} Therefore, the right to demand such an opinion is limited to these organs only, and member states as well as NGOs are excluded. Also, advisory opinions are restricted to legal issues only.\textsuperscript{523}

However, it is open to question whether the Arab Human Rights Committee as well as the Permanent Committee may count as subsidiary organizations as set out in art. 21.\textsuperscript{524} If so, and in case these bodies take initiative, this would mean a step towards a more promoted human rights mechanism.\textsuperscript{525} Finally, art. 21 (2) of the Statute sets out that second opinions are welcomed and that submitted opinions must supported by a reason.\textsuperscript{526}

Similarly, Resolution 5/1, no. 65 sets out the legal foundation for an Advisory Committee composed of experts to be established. Its functions set out that it should “provide expertise to the Council in the manner and form required by the Council” and

\textsuperscript{520} UN General Assembly, \textit{Report of the Human Rights Committee} (2016), no. 24
\textsuperscript{521} League of Arab States, \textit{Statute of the Arab Court of Human Rights} (2014), art. 21
\textsuperscript{522} Ibid.
\textsuperscript{523} Ibid.
\textsuperscript{524} Ibid.
\textsuperscript{525} Ibid.
\textsuperscript{526} Magliveras Konstantinos, Naldi Gino, \textit{The Arab Court of Human Rights: A Study in Impotence} (2016), p. 169
\textsuperscript{526} Ibid.
furthermore, it is set out that it may only take active steps based on the “latter’s (the Council) request, in compliance with its resolutions and under its guidance”.\textsuperscript{527} Furthermore, its work needs the Council’s approval and consultation. Therefore, art. 21, which restricts the legal issue the Court gives an opinion on to those requested by other institutions, should not raise much concern, as there are similar mechanisms on an international level.

Whether these advisory opinions set out in the Arab Court’s Statute contribute to a more effective human rights system remains to be seen when it enters into force.

4. Conclusion

The aim of my thesis was to examine the positive and negative aspects of the Arab enforcement mechanism of human rights and its institutional bodies as well as to assess whether an effective human rights system exists within the League of Arab States. In order to conclude, it is necessary to briefly recall and summarize my findings.

First of all, I want to look at the League of the Arab States, the parent body of the Arab Charter, which forms the basis for the Arab human rights system. In regards to human rights, this organization’s main shortcoming in my opinion is the fact that human rights are still not legally set out as a priority within the Arab League Statute, which clearly illustrates that the importance of these rights is not fully recognized. Furthermore, and even though the Arab states’ sovereignty has high priority and must not be encroached, the LAS is obliged to take the principles of the UN into consideration, as is set out in the UN Charter.\textsuperscript{528} These principles are inter alia “to take effective collective measures for the prevention and removal of threats to the peace” as well as “promoting and encouraging respect for human rights”.\textsuperscript{529} I argue that due to the LAS compositions of mainly political bodies, these principles, which apply for regional agreements too, cannot be fulfilled. This is because decisions depend on political bodies only, which is not a bad thing as long as there is an independent control mechanism. However, as an Arab Court of Justice has not

\textsuperscript{527} UN Human Rights Council, Institution-building of the United Nations Human Rights Council (2007), no. 75-77
\textsuperscript{528} United Nations, Charter of the United Nations (1945), art. 52
\textsuperscript{529} Ibid., art. 1
been successfully established yet, this control is missing within the LAS.\textsuperscript{530} More positively, the Arab Parliament is about to increase its importance, and as soon as a transparent election procedure is established, it might emerge to be an important institution to promote democracy and give the people a voice. Besides, the LAS has started to hire professionals who have already worked within the international human rights system for its institutions: The newly elected General-Secretary Nabil al-Arabi, for example, has served as a member of the International Court of Justice and has previously been a member of the International Law Commission.\textsuperscript{531}

Furthermore, in the last few years huge steps have been taken towards a more effective Arab human rights system. Despite of much criticism, there is no doubt that the new version of the new Arab Charter represents a major improvement and that the modernizing process has shown positive effects. Particularly noteworthy is the 2004 Charter’s universal approach towards human rights, as lots of essential provisions to guarantee a democratic society are set out in conformity with other international human rights instruments. The acknowledgment of universal principles and “the principles set out in human rights international instruments” in particular as well as the fact that human rights are stressed to be “universal, indivisible, interdependent and interrelated” are emphasizing this approach.\textsuperscript{532} In my opinion, the decision to only take regard of the Cairo Declaration within the 2004 Charter’s preamble shows that a less significant role is given to the latter and also symbolizes the recognition of the universality of human rights.

Importantly, the difference between the Western approach towards human rights vs. the Islamic perspective, which I briefly evaluated in the introduction of my thesis, is to be taken into consideration while assessing the progress of modernizing the Arab Charter. This is because even though the West claims that human rights set out in international human rights treaties are truly universal and are separated from specific western values, it is arguable that detaching human rights from these external factors is not possible. This is because everyone lives in and is surrounded by certain cultural and traditional habits. As a result, human rights vary because they are based on a different understanding of the “human image”. In Europe, for example, the individual and its freedom have priority and

\textsuperscript{530} Rishmawi Mervat, The League of Arab States in the Wake of the “Arab Spring” (2013), p. 50
\textsuperscript{531} Ibid.
\textsuperscript{532} League of Arab States, Arab Charter on Human Rights (2004)
as a result individual rights are frequently found within the ECHR, whereas the Arabic society focuses rather on the collective. Therefore, universal human rights represent a compromise, which clearly has been accepted with the 2004 Charter.

A universal understanding of human rights has to represent a concept existing for all human beings, which perhaps will always remain a controversial issue to be discussed. However, the importance of this universal approach must not be undermined, as it is needed in order to guarantee individuals a minimum standard they can rely on. At the same time, the significance of Islam (or other influences) is not to negate, as the states of the Arab League – even though in different ways and various degrees – have incorporated Islam into their legal system. Therefore, Islam should not be masked over but rather be used to find common ground in order to achieve full acceptance. Filtering common principles is possible, as – despite widespread view that Islam is incompatible with human rights – the concept of human dignity as such is not alien to Islam. As a result, religious aspects cannot be used as derogation from universal human rights either. However, at this point it is to be kept in mind that most of the Arab states have ratified many international human rights treaties, too, and are therefore legally bound to comply with them.

Nevertheless, the new version of the Arab Charter provides for a non-discriminating clause as well as for the right of freedom of expression and religion. Also, provisions concerning people with disability, children, the prohibition of violence against women, the prohibition of slavery and the rights of minorities are included. Even though the 2004 Charter has made great progress, some concerning aspects still remain. A major difference in comparison to provisions set out in the European Convention on Human Rights as well as within the ICCPR are that the 2004 Charter allows for wide restriction, especially in regards to the rights of freedom of expression and opinion. Furthermore, the freedom of movement can be subject to national legislation, and therefore a restriction of the scope of these rights is dreaded. Another major shortcoming is found in the right of freedom of religion, as it is not set out that people have the right to freely change their religion or

533 Baderin Mashood, Islam and the Realization of Human Rights in the Muslim World: A Reflection on Two Essential Approaches and Two Divergent Perspectives, Muslim World Journal of Human Rights, Vol. 4, Issue 1, p. 25
534 see chapter 1
536 Ibid.
choose not to join a religious group at all. Besides, the present Arab Charter lacks an organizational structure, and articles are still formulated vaguely. The missing organ to interpret the latter is a risk to the effective implementation of Arab human rights.

The task of interpreting the Charter has been undertaken by the Arab Human Rights Committee; so far, however, it is not clear how this process will work or if its outcome is legally binding for the state parties of the 2004 Charter. The Arab Committee, which represents the only independent supervisory body with a legal foundation within the Arab Charter itself, does not provide an effective monitoring mechanism, as it only is entrusted with the task to evaluate state reports. Furthermore, its composition of experts elected according to national procedures, for which no rules have been set out yet, as well as the Committee’s lack of transparency constitute major risks to an effective and independent human rights mechanism. It is to stress that the Arab Committee cannot receive individual complaints, and therefore its role is limited. Again, compared to the international covenants, which all provide for committees to monitor human rights set out in their particular documents, it becomes clear that the Arab system lacks such procedure.

Furthermore, it was demanded to enhance the Permanent Committee’s functions and to give it more independency in order to create something like the Human Rights Council, which is the main political body in regards to human rights on an international level. However, I argue that there is no need for such independence as long as there is another institution entrusted with the task to monitor the enforcement of human rights independently, such as the Arab Human Rights Committee or the Arab Court of Human Rights.

However, the Arab Human Rights Court has not been in use yet. The Court as such lacks the essential provision to give individuals the opportunity for an individual complaint. However, the possibility of state complaints is given, but as evaluated within chapter 3.2.2, this cannot be expected to be exploited that often. In regards to the complaint mechanism, the Court should guarantee an effective mechanism for individuals and at the same time avoid being overworked due to too many lodged complaints, as otherwise its effectiveness may be undermined.

In my opinion, a further major lack is the missing link between the institutions as such. Therefore, the Court has to be incorporated within the Arab human rights system, possibly
with an optional protocol, as set out in art. 52 ACHR, as well as within the Arab League Statute. By doing so, the execution of the Court’s judgments would be guaranteed.

However, it cannot be overseen that basically all amendments have been due to international pressure and especially due to the contribution of NGOs. Their efforts have contributed to a more effective system and to a revision of the 1994 Charter.

In the end, it is an incontrovertible fact that the only way to guarantee an effective enforcement mechanism is having the consent of the state concerned. Therefore, it is to conclude that it strongly depends on the practical implementation of the Arab Human Rights Charter, the institutions as well as what priority is given to human rights protection within the Arab states in the future. However, the LAS member states cannot be asserted of a general unwillingness to participate within the Arab regional human rights system. This is proven by several aspects, for example the high number of state reports received so far, the fact that an official day was settled as “Arab Human Rights Day” on 16th of March, and the fact that the Arab Committee counts already one female delegate. Current changes within Arab society towards a more tolerant system are visible, particularly in Saudi Arabia, which allows women to drive since 2018 and to vote as well as to join the Olympics since 2012.

Future developments will show whether the Arab enforcement mechanism will turn into an effective and assertive mechanism, due to the fact that many provisions only exist on paper at the moment and have not been put into practice yet. Nevertheless, the Arab Human Rights Charter 2004 provides a solid foundation to work with and is a good start to build an effective human rights system. It has to be kept in mind that the Arab human rights system is still young, and considering the reforming process resulting in the 2004 Charter, I believe that we can wait optimistically for what the next years will bring.

537 Rishmawi Mervat, Civil Society Interaction with the League of Arab States: Key insights, principles, good practices and emerging lessons (2013), p. 12
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