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The Arab Charter on Human Rights and International Human Rights Standards: The Practices and Approaches of the Arab Human Rights Committee**

الميثاق العربي لحقوق الإنسان والمعايير الدولية لحقوق الإنسان: مقاربات اللجنة العربية لحقوق الإنسان وممارساتها

Abstract: This article examines the Arab Human Rights Committee (AHRC)'s interpretation of the rights enshrined in the Arab Charter on Human Rights. It argues that the AHRC has positioned its work not as contradictory to the international human rights system, but as supportive of and complementary to it. The AHRC has generally adopted an interpretative approach consistent with international human rights interpretations, drawing upon them in its approach to the provisions of the Arab Charter. Instead of taking an interpretative approach that clashes with the work of UN human rights treaty bodies, particularly on culturally or religiously sensitive issues, the AHRC has often opted to avoid these topics entirely or has addressed them in minimal detail. Efforts to engage with human rights norms and their interpretation in the context of the Arab Charter have resulted from the increased attention of scholars to the issue of fragmentation in international law and its implications for the development of International Human Rights Law (IHRL).

Keywords: Arab Human Rights Committee; Arab Charter on Human Rights; Human Rights; International Human Rights Law.

المخلص: تهدف هذه الدراسة إلى تقييم تفسير لجنة حقوق الإنسان العربية لحقوق الإنسان الواردة في الميثاق العربي لحقوق الإنسان، وتستنتج أن هذه اللجنة لم تقدم عملها باعتباره مناقصاً للمنظومة الدولية لحقوق الإنسان، بل بوصفه داعماً ومكملاً لها؛ إذ سعت اللجنة عموماً لتبني مقاربة تفسيرية تتناغم مع التفسيرات الدولية لحقوق الإنسان، وتستعين بها في تفسيرها لمواد الميثاق العربي. ولاحظت الدراسة أن اللجنة، بدلاً من تبني مقاربة تفسيرية تكون في حالة اصطدام مع عمل لجان حقوق الإنسان في منظمة الأمم المتحدة خلال التعامل مع بعض القضايا ذات الحساسية الثقافية أو الدينية، اتجهت إلى الامتناع كلياً عن تناولها، أو تناول بعضها من دون تفصيل. ويأتي تناول المضمون المعياري لحقوق الإنسان وتفسيرها في سياق الميثاق العربي، ضمن الاهتمام الأكاديمي بإشكالية التجزئة في القانون الدولي، وانعكاساتها على تطور القانون الدولي لحقوق الإنسان.

كلمات مفتاحية: اللجنة العربية لحقوق الإنسان؛ الميثاق العربي لحقوق الإنسان؛ حقوق الإنسان؛ القانون الدولي لحقوق الإنسان

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Introduction

The Arab Charter on Human Rights¹ has faced substantial criticism since it was adopted by the League of Arab States on 23 May 2004. Critics expressed concerns that Arab governments would use it as a means of circumventing their obligations under international human rights treaties. Additionally, there were fears that the Charter would restrict opportunities to promote the universality of human rights in the Arab region, as some of the rights it enshrines differ from those contained in international treaties.²

The Charter was adopted in its original form in 1994, but it was met with a tepid response, as it starkly contradicted international human rights treaties.³ Its revised second version was published in a charged atmosphere as the international community focused on issues of rights, public freedoms, and democracy in the Arab region in the aftermath of the 11 September 2001 events.⁴

The revised version of the Charter represented an improvement over the previous one, but it remained ambiguous in defining several fundamental rights, and its interpretations of other rights were inconsistent with those outlined in international treaties. The Charter also repeatedly pointed to national legislation as the basis for regulating the exercise of certain rights. Mechanisms for monitoring the implementation of the Charter only specified the establishment of the Arab Human Rights Committee (AHRC) to receive and review periodic reports from States Parties on their compliance with the Charter's provisions and to issue concluding observations and recommendations in that regard.⁵

Previous research has focused on the origins of the Arab Charter on Human Rights and evaluated its content and mechanisms.⁶ More recent research has focused on efforts to establish an Arab Court of Human Rights, whose statute was adopted by the League of Arab States in 2014, although it has yet to come into force.⁷ However, there is a notable dearth of studies evaluating the AHRC's work, particularly its habitual interpretation of the Charter's provisions. Human rights actors have shown limited interest in both the Charter and the work of the AHRC, largely due to the normative flaws in the document's content, and the lack of implementation and enforcement mechanisms. As a result, the Charter's impact is diminished compared to other international and regional human rights frameworks.

This article adopts a different perspective on the Charter and the AHRC for two key reasons. First, regardless of how the Charter and its mechanisms are evaluated, the very existence of the Charter as an international treaty – along with the AHRC's active role in reviewing reports from States Parties and contributing to interpretative literature on the Charter's content – establishes a legal and normative framework. In the long term, this framework could shape Arab jurisprudential traditions concerning the Charter's interpretation and its relationship with international human rights treaties. Such developments

¹ League of Arab States, *Arab Charter on Human Rights* (Tunis: 2004). It was adopted at the Arab Summit by Resolution 270 Decision 270, AS 16, on 23 May 2004 and entered into effect on 16 March 2008.

² Dalia Vitkauskaitė-Meurice, "The Arab Charter on Human Rights: The Naissance of New Regional Human Rights System or a Challenge to the Universality of Human Rights?," *Jurisprudencija*, vol. 1, no. 119 (2010), pp. 166-178; Mervat Rishmawi, "The Revised Arab Charter on Human Rights: A Step Forward," *Human Rights Law Review*, vol. 5, no. 2 (2005), pp. 366-376.

³ Mona Rishmawi, "The Arab Charter on Human Rights: A Comment," *Interrights Bulletin*, no. 10 (1996), pp. 8-10.

⁴ See Paragraphs 27 and 28 at: "Naṣṣ al-Bayān al-Khitāmī lil-Qimma al-'Arabiyya bi-Tūnis 2004," *Aljazeera*, 3/10/2004, accessed on 17/9/2022, at: <https://tinyurl.com/4pnza5r7>

⁵ *Arab Charter on Human Rights*, Articles 45-48; Mervat Rishmawi, "The Arab Charter on Human Rights and the League of Arab States: An Update," *Human Rights Law Review*, vol. 10, no. 1 (2010), pp. 169-178.

⁶ Vitkauskaitė-Meurice, pp. 366-376; Konstantinos D. Magliveras, "Completing the Institutional Mechanism of the Arab Human Rights System," *International Human Rights Law Review*, vol. 6, no. 1 (2017), pp. 32-39; Rishmawi, "The Revised Arab Charter on Human Rights," pp. 361-376; Mohamed Y. Mattar, "Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards," *Harvard Human Rights Journal*, vol. 26 (2013), pp. 91-148; Jamil Ddamulira Mujuzi, "The Protection of the Right to Freedom from Torture in the Arab League States and under the Arab Charter on Human Rights," *City University of Hong Kong Law Review*, vol. 2, no. 2 (2010), pp. 247-259.

⁷ Ahmed Al-Mutawa, "The Failure of the Arab Court of Human Rights and the Conflicting Logics of Legitimacy, Sovereignty, Orientalism and Cultural Relativism," *Netherlands International Law Review*, vol. 68, no. 3 (2022), pp. 479-500.

merit critical examination, particularly in terms of their impact on the interpretation of human rights law in the Arab region and their influence on the process of forming a substantive global concept of human rights. Second, the Charter, as a legal document, remains open to multiple interpretative scenarios. In this context, expert members of the AHRC could play a major role in addressing the shortcomings of the text by developing interpretative approaches that expand the scope of the rights it enshrines, while also enhancing its normative authority in the Arab region.

This article examines trends in the AHRC's interpretation of the Arab Charter based on its actual activities. It explores areas of consistency and inconsistency between interpretations of the rights enshrined in the Charter on the one hand, and the broader UN human rights framework on the other. This article focuses on the development of the normative content of these rights without evaluating the enforcement mechanisms within States Parties or researching their development. Its interest lies in understanding the AHRC's approach to interpreting the Charter's provisions.

This focus on the normative substance of rights and methods of interpreting them, in light of regional and international mechanisms for protecting human rights, aligns with the growing attention among international law scholars to the phenomenon of the "fragmentation of international law" which coincided with the normative and institutional expansion of various branches of international law.⁸ The approach to addressing this phenomenon has shifted from examining the relationship between subsystems of international law to exploring the normative harmony between different systems and mechanisms within the same subfield – International Human Rights Law (IHRL), in this article.

This article argues that the practical experience of the AHRC since its establishment illustrates its keenness to establish a delicate balance between acting as a regional committee that complements, rather than competes with, the international human rights system, and the AHRC's status as a regional human rights mechanism that operates in a context characterized by weighty political, cultural, and religious sensitivities around issues of human rights. The AHRC has worked to ensure that its interpretation of the Charter, through its commentary on States Parties' reports, is generally consistent with the normative interpretations proposed by UN human rights treaty bodies.

The AHRC has demonstrated an openness to using international human rights treaties to address gaps in the Charter regarding the definition of certain rights. It has prioritized the rights contained in the Charter, even when they conflict with national legislation. In addition, the AHRC has adopted a gradual approach to interpreting culturally and religiously sensitive rights issues. In some instances, it has encouraged States Parties to amend local practices that derive their legitimacy from specific cultural and religious interpretations. In many others, the AHRC has chosen to remain silent or not to elaborate on certain rights rather than provide interpretations that are completely inconsistent with international interpretations thereof.

The Arab Charter and International Human Rights Law

The amended Arab Charter on Human Rights, issued in 2004, reflected an evolution of IHRL in terms of the comprehensiveness of the rights it addressed. It encompassed not only civil and political rights, but also economic, social, and cultural rights. It also stipulated rights for specific groups, such as refugees, migrant workers, children, women, the elderly, people with special needs, and people with mental or physical disabilities, as well as the right to development. The Charter addressed certain rights in detail, drawing on the jurisprudence of the UN Human Rights Committee, including the protection of non-derogable rights

⁸ Martti Koskeniemi, *Report on Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law* (Geneva: International Law Commission, 2006).

that remain intact even under exceptional measures in times of emergency.⁹ However, four main issues have sparked criticism of the Arab Charter, raising doubts over its normative effectiveness. The first relates to the possibility that the scope of the rights it enshrines may be restricted due to the frequent references to national legislation in many of its articles. The second stems from lack of certain fundamental components in some articles which are rather included in international treaties. The third issue is the Charter's inclusion of articles that directly conflict with international human rights treaties. The fourth relates to the nature of its relationship with IHRL.

Stipulating Recourse to National Legislation within Standards for Exercising Rights

The Arab Charter repeatedly refers to States Parties' national legislation as the regulatory or defining framework for exercising many rights. Such references are found in articles addressing restrictions on the application of the death penalty (Articles 6 and 7); controls on medical or scientific procedures and the use of organs (Article 9); political rights (Article 24); minority rights (Article 25), freedom of movement and choice of residence (Articles 26 and 27); the right to a nationality (Article 29); freedom of thought, belief, and religion (Article 30); the right to property (Article 31); the right to information and freedom of opinion and expression (Article 32); the rights and duties of men and women in family and marriage (Article 33); protection of migrant workers (Article 34.5); and the rights to form associations or trade unions and to strike (Article 35). These references to national legislation and certain regulations pertaining to the exercise of rights have drawn criticism of the Charter, with concern that they may undermine the rights they are meant to protect. However, this remains subject to the interpretation of the Charter. These limitations are recognized in many international and regional human rights treaties and national constitutions, and are intended to accommodate local variations in the application of rights. They should therefore be interpreted within a narrow, justified scope that is consistent with the general objectives of the Charter.¹⁰

Components of Rights in International Treaties That Are Absent from the Charter

Article 8 of the Arab Charter prohibits "physical or psychological torture or cruel, degrading, humiliating or inhuman treatment of any person". It clearly defines torture as a crime that is not subject to a statute of limitations.¹¹ However, this article notably lacks a prohibition on cruel or inhumane punishments and does not provide a definition of torture, which would align it with Article 1 of the International Convention against Torture.¹² Furthermore, it neglects to guarantee that investigating authorities and courts cannot accept confessions obtained under torture, as stipulated in Article 15 of the Convention against Torture.¹³ Article 33.1 of the Charter, which addresses the rights and duties of men and women within the family, does not explicitly ensure gender equality,¹⁴ opening the door to various interpretations. This contrasts with the corresponding Article 23.4 of the International Covenant on Civil and Political Rights, which states that "States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children".¹⁵ Additionally, Article 3.3 refers to equality between men and women in rights and duties, "in light of the positive discrimination recognized by Islamic law, other divine laws, and the laws and charters in force in favour of women".¹⁶ This reference

⁹ Rishmawi, "The Revised Arab Charter on Human Rights," pp. 364-366.

¹⁰ Mattar, pp. 115-116.

¹¹ *Arab Charter on Human Rights*, Article 33.

¹² Mujuzi, p. 257.

¹³ Rishmawi, "The Revised Arab Charter on Human Rights," pp. 372-373.

¹⁴ *Arab Charter on Human Rights*, Article 33.1.

¹⁵ *International Covenant on Civil and Political Rights*, United Nations Treaty Series, vol. 999 (United Nations: 19 December 1966), p. 171, accessed on 22/10/2024, at: <https://tinyurl.com/4yemsvyh>

¹⁶ *Arab Charter on Human Rights*, Article 3.3.

to positive discrimination in Islamic law is ambiguous, and open to multiple interpretations. From a conservative perspective, discrimination against women in the family or public spheres can be seen as a form of positive discrimination in their favour, given the conservative theory of complementarity of roles between men and women. In contrast, a liberal perspective might interpret this article as an opportunity to expand gender equality and to enact measures that empower women in public and private life, particularly given their social, economic, and political marginalization in Arab societies.

Points of Conflict Between the Charter and International Human Rights Treaties

The Arab Charter adopts a restrictive approach to the application of the death penalty, in line with the provisions of the International Covenant on Civil and Political Rights.¹⁷ Article 6 stipulates that the penalty only be applied for the most serious crimes, pursuant to a final judgment issued by a competent court, and that every person sentenced to death shall have the right to seek a pardon or a lighter penalty.¹⁸ Article 7.2 prohibits the implementation of the death penalty against “pregnant women, until they give birth, or nursing mothers, until two years have passed from the date of birth; in all cases, the interests of the infant shall prevail”.¹⁹ However, Article 7.1, despite prohibiting “the imposition of the death penalty on persons under the age of eighteen”, permits such a measure when the national legislation of States Parties authorized it at the time the crime was committed.²⁰ This article sparked widespread international criticism upon the issuance of the Arab Charter as certain Arab countries, such as Saudi Arabia and Sudan, permit the application of the death penalty against children under 18.

The exercise of some rights contained in the Charter is limited to citizens of the states concerned. In Article 25, the International Covenant on Civil and Political Rights stipulates that the exercise of political rights may be limited to citizens of the States Parties, including the right to participate in the management of public affairs, as well as the right to vote and hold public office.²¹ Article 24 of the Arab Charter, which deals with political rights exercised only by citizens, is broader than its counterpart in the International Covenant on Civil and Political Rights. It encompasses not only participation in the management of public affairs, but also the right to run for office and choose representatives, the right to hold public office based on equal opportunity, the freedom to form associations, and the freedom to assemble peacefully.²²

Freedom of association, as referenced in this article, is related to the exercise of political rights and can be seen as a guarantee of the right to form political associations or parties. The Arab Charter committee has tended toward adopting this view, as will be further explained in the following section. Beyond the political freedom covered in Article 24, which is limited to citizens, the Charter also guarantees the broader right to form associations through Article 35.1, which stipulates that every person, citizen or resident, has the right to freedom of association.²³ However, the Charter does not address the right to freedom of association and freedom of peaceful assembly beyond Article 24. Article 24.6 guarantees the rights of freedom of association and peaceful assembly to citizens only, in contrast with the International Covenant on Civil and Political Rights, which devotes a separate article to protecting the right to peaceful assembly (Article 21) and stipulates that it is the right of every person within the jurisdiction of the state.²⁴

¹⁷ *International Covenant on Civil and Political Rights*, Article 6.

¹⁸ *Arab Charter on Human Rights*, Article 6.

¹⁹ *Ibid.*, Article 7.2.

²⁰ *Ibid.*

²¹ *International Covenant on Civil and Political Rights*, Article 25.

²² *Arab Charter on Human Rights*, Article 24.

²³ *Ibid.*, Article 35.1.

²⁴ *International Covenant on Civil and Political Rights*, Article 24.6.

The Relationship Between the Arab Charter and IHRL

The Arab Charter emphasizes the universality of human rights and acknowledges the authority of international human rights treaties. It does not directly address cultural specificity or relativity, but rather underscores that one of its key objectives is “to establish the principle that all human rights are universal, indivisible, interconnected and interrelated”. However, the Charter includes references that blur the concept of human rights’ universality, such as the preambular text on “taking into account the Cairo Declaration on Human Rights in Islam”.

Previous literature has expressed great concern on this point, particularly given the Cairo Declaration’s ambiguous positions on the rights encompassed by international human rights treaties. However, the Cairo Declaration remains a non-binding document and has not been interpreted by specialized organs. The numerous references to Islamic law in the Cairo Declaration remain subject to different interpretations, given the diverse and flexible nature of Islamic jurisprudence and the various national practices across Muslim countries. Moreover, in October 2020, the Organization of Islamic Cooperation (OIC) adopted a new version of the Cairo Declaration,²⁵ responding to a number of previous criticisms and taking a more open position toward IHRL,²⁶ but has not created a body to interpret its provisions.

Moreover, Article 43 of the Arab Charter reconciles the relationship between the rights outlined in the Charter with national legislation and international treaties ratified by the States Parties, ensuring that these rights are protected to the greatest extent possible. This article stipulates that

nothing in this Charter may be construed or interpreted as impairing rights and freedoms protected by the domestic laws of the States Parties or those set forth 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.²⁷

Known in legal literature as the “saving clause”, this article preserves the obligations the signatories have undertaken in other frameworks beyond the Charter.

Article 43 also plays an important role in interpreting the Charter’s remaining articles, as it ensures that national legislation is not used to restrict the rights contained in the Charter. It further enables the Charter’s provisions to be interpreted in light of the States’ obligations under the human rights treaties they have signed. This allows for the Charter’s articles to be broadened, and overcomes some of the restrictions inherent in its definition of rights.²⁸ According to the Vienna Convention on the Law of Treaties (1980), “any relevant rules of international law applicable in the relations between the parties” can be used in the interpretation of treaties.²⁹ However, reservations made by States Parties to the Charter³⁰ regarding international human rights treaties constitute an obstacle to the AHRC when using States’ obligations under these treaties in interpreting certain provisions of the Charter under Article 43.³¹ In such cases, the AHRC has the option of assessing the legal validity of these reservations in light of international law, based on the

²⁵ The Organization of Islamic Cooperation, *Cairo Declaration of the Organization of Islamic Cooperation on Human Rights* (Cairo: 28/11/2020), accessed on 18/9/2022, at: <https://tinyurl.com/z5ka7hj2>

²⁶ Turan Kayaoglu, “The Organization of Islamic Cooperation’s Declaration on Human Rights: Promises and Pitfalls,” *Policy Briefing*, Brookings Doha Center, September 2020, accessed on 18/9/2022, at: <https://brook.gs/3dojs9w>

²⁷ *Arab Charter on Human Rights*, Article 43.

²⁸ Mattar, pp. 91-148.

²⁹ Koskenniemi, p. 208.

³⁰ Paul McDonough, *Human Rights Commitments of Islamic States: Sharia, Treaties and Consensus* (London: Hart, 2021); Nisrine Abiad, *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study* (London: British Institute of International and Comparative Law, 2008).

³¹ Mattar, pp. 126-127.

jurisprudence of the relevant UN human rights treaty bodies, and encouraging States Parties to withdraw their reservations to international human rights treaties.

The Practical Experience of the Arab League's AHRC

This section discusses how the AHRC has approached problematic issues in the Arab Charter on Human Rights. Based on observations and commentary on the reports of States Parties, the following analysis explores the AHRC's approach to interpreting the Charter.

Position on the Ratification of International Human Rights Conventions

In its concluding observations and recommendations, the AHRC sought to encourage States Parties to the Charter to sign international human rights conventions and to cooperate with UN mechanisms for the protection of human rights. This reflects the AHRC's recognition that the Arab Charter is a *complement* to the international human rights' system, rather than a substitute for it. The AHRC has noted and welcomed the ratification of international human rights conventions by States Parties and urged them to incorporate these conventions into their national legal systems.

However, the AHRC has not directly encouraged States Parties to withdraw their reservations to such conventions, although it has commended those that have made this step. For example, it welcomed the United Arab Emirates' accession to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,³² but did not publicly encourage the UAE to withdraw its reservations to the Convention, which include a reluctance to categorize lawful sanctions or the resulting pain or suffering within the scope of the definition of torture, as per Article 1 of the Convention.³³ The AHRC did, however, recommend that the Convention's provisions be incorporated into the UAE's national legal system.³⁴ It has also urged the Iraqi authorities to amend their national legislation to align with the International Convention Against Torture,³⁵ and to adopt a definition of the offence of torture in national law consistent with international agreements.³⁶

The AHRC also welcomed Qatar's amendment of its Penal Code through Law No. 8 of 2010, which amended certain provisions of the Code under Law No. 11 of 2004 to conform with the definition of the offence of torture as per Article 1 of the Convention against Torture.³⁷ In its observations on Qatar's first report, the AHRC welcomed the country's ratification of several international human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women in 2009.³⁸ However, it did not urge Qatar to withdraw its reservations to the Convention, most of which were related to guarantees of equality between men and women in family and nationality laws.³⁹ In its commentary on the need to protect migrant and domestic workers in Lebanon, the AHRC urged the Lebanese government to consider ratifying the International Labour Organization's Convention No. 189 on Domestic Workers.⁴⁰

³² League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the United Arab Emirates*, Fifth Session, 2013, paragraph 3.

³³ McDonough, p. 168.

³⁴ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the United Arab Emirates*, p. 7.

³⁵ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the Republic of Iraq*, Sixth Session, 2014, paragraph 44.

³⁶ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Republic of Iraq*, Fourteenth Session, 2018, paragraph 52.

³⁷ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the State of Qatar*, Fourth Session, 2013, paragraph 4.

³⁸ *Ibid.*, paragraph 3.

³⁹ McDonough, pp. 171-180.

⁴⁰ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the Republic of Lebanon*, Seventh Session, 2015, paragraph 74.

In February 2014, the AHRC welcomed Iraq's withdrawal of its reservations to Articles 9.1 and 9.2 of the Convention on the Elimination of All Forms of Discrimination Against Women, relating to the establishment of equality between men and women in nationality laws.⁴¹ These changes followed the passage of Iraqi Nationality Law No. 26 of 2006, which enshrines the principle of gender equality in granting nationality to children born to Iraqi mothers married to non-Iraqi fathers.⁴² The AHRC also welcomed Kuwait's withdrawal of its reservations to Article 25(b) of the International Covenant on Civil and Political Rights (ICCPR) on 20 May 2016. This reservation restricted the right to vote to men.⁴³ However, the AHRC declined to comment on the reservations Kuwait continues to express toward the same convention.

In general, the AHRC has been keen to encourage States Parties to the Charter to engage with the mechanisms of the UN Human Rights Council and Special Rapporteurs.⁴⁴ It has also urged them to address the final recommendations of UN treaty bodies concerned with monitoring the implementation of international human rights conventions,⁴⁵ along with the recommendations issued under the Universal Periodic Review mechanism.⁴⁶ Additionally, the AHRC has recommended the designation of national bodies to monitor the implementation of the recommendations of international and regional human rights mechanisms.⁴⁷

Guarantees of the Exercise of Political Rights

The Charter's AHRC has monitored the implementation of various aspects of the freedom of political activity contained in Article 24 and has offered critical commentary on the institutions and legislation governing political rights in States Parties. In its review of Jordan's first report, the AHRC noted the unfair state of voting and voter representation in the Jordanian electoral system and noted that restrictions on freedom of assembly and peaceful assembly contravene the Jordanian constitution.⁴⁸

In its discussion of the UAE's initial report, the AHRC noted the absence of guarantees of freedom to engage in politics or laws regulating the right to peaceful assembly.⁴⁹ In its observations on the UAE's subsequent first periodic report, the AHRC recommended amending laws governing the Federal National Council, so that all or the majority of its members would be elected rather than appointed, thereby better safeguarding the political rights enshrined in Article 24 of the Arab Charter.⁵⁰ The AHRC also noted that UAE citizens had few avenues to exercise their right to political participation, particularly in the formation of associations or organizations.⁵¹

The AHRC also addressed political rights in Saudi Arabia, concluding that the country lacks an appropriate legal framework to ensure exercising political rights, including guarantees for freedom of association and

⁴¹ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the Republic of Iraq*, paragraph 11.

⁴² *Ibid.*, paragraph 9.

⁴³ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the State of Kuwait*, Twelfth Session, 2017, paragraph 6.

⁴⁴ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Republic of Algeria*, Eleventh Session, 2016, paragraph 6; League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Saudi Arabia*, Tenth Session, 2016, paragraph 8; League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the United Arab Emirates*, Sixteenth Session, 2019.

⁴⁵ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the United Arab Emirates*, paragraph 8.

⁴⁶ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Saudi Arabia*, paragraph 9.

⁴⁷ *Ibid.*, paragraph 16.

⁴⁸ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Jordan*, Ninth Session, 2016, paragraphs 31, 32.

⁴⁹ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the United Arab Emirates*, paragraph 19.

⁵⁰ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the United Arab Emirates*, paragraph 51.

⁵¹ *Ibid.*, paragraphs 52 and 53.

peaceful assembly.⁵² It also recommended that additional measures be taken to expand the base of political participation among Saudi citizens and that elections be supervised by independent mechanisms.⁵³

In its observations on Lebanon's first report in April 2015, the AHRC recommended that the country's authorities hold parliamentary and presidential elections on the date stipulated in the Constitution.⁵⁴ In its review of Qatar's second periodic report, the AHRC welcomed the promulgation of Law No. 6 of 2021 on the Shura Council election system. It recommended, however, that the law be amended to guarantee that the right to stand and vote in elections applies equally to all citizens.⁵⁵ The AHRC also urged Kuwait to establish a legal framework for the exercise of political rights, including the freedom to form political parties.⁵⁶

Guarantees of Respect for Civil Rights

a. The Rights to Free Movement, Residence, and Nationality

The AHRC has cited articles on the right to free movement (Article 26), freedom of residence (Article 27), and the right to a nationality (Article 29) in commentaries highlighting arbitrary travel bans or revocations of nationality. For example, in its observations on Bahrain's first periodic report in 2019, the AHRC raised the issue of arbitrary travel bans levelled against citizens without a legal or judicial basis, in contravention of Article 27 of the Charter.⁵⁷ The UN Human Rights Committee made the same remark on Bahrain in its concluding observations in November 2018.⁵⁸ The Arab committee also noted the inadequate legal safeguards in Jordan against arbitrary and unlawful revocation of citizenship. It recommended amendments to the Nationality Law to enable judicial appeals against any such decision.⁵⁹

In its observations on Qatar's second periodic report, the AHRC recommended adopting a mechanism for judicial review of administrative procedures and decisions restricting freedom of movement and residence.⁶⁰ In its concluding observations on Qatar's first report, the AHRC paid particular attention to the issue of statelessness and its denial of many individuals' civil, economic, social, and cultural rights.⁶¹ However, the AHRC did not address the rights of Kuwait's stateless "Bedoon" minority in its concluding observations and recommendations on the country's reports, in contrast to the UN Human Rights Committee which particularly focused on the group's political, civil, economic, social, and cultural rights in its concluding comments on Kuwait's report.⁶²

b. Minority Rights and Freedom of Thought, Belief, and Religion

The AHRC has paid particular attention to minority rights and respect for cultural and religious diversity. In its commentary on Saudi Arabia's first report, it scrutinized the extensive powers of the Kingdom's

⁵² League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Saudi Arabia*, paragraphs 40 and 41.

⁵³ *Ibid.*, paragraph 44.

⁵⁴ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the Republic of Lebanon*, paragraph 67.

⁵⁵ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Second Periodic Report of the State of Qatar*, Eighteenth Session, 2021, paragraph 44.

⁵⁶ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the State of Kuwait*, Seventeenth Session, 2021, paragraph 37.

⁵⁷ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Bahrain*, Fifteenth Session, 2019, paragraphs 51-52.

⁵⁸ UN Human Rights Committee, *Concluding observations on the first periodic report of Bahrain* (New York: 15/11/2015), paragraph 49.

⁵⁹ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Jordan*, paragraph 34.

⁶⁰ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Second Periodic Report of the State of Qatar*, paragraph 40.

⁶¹ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the State of Qatar*, paragraph 20.

⁶² UN Human Rights Committee, *Concluding observations on the third periodic report of Kuwait* (New York: 11/8/2016), paragraphs 10 and 11.

Commission for the Promotion of Virtue and Prevention of Vice and how the body's practices violate the right to liberty and security of the person, as well as the rights of religious minorities.⁶³ In its observations on Iraq's first report, the AHRC commended the Iraqi Constitution's provisions that grant minorities the right to enjoy their cultures.⁶⁴ However, it later noted that the country had not passed any legislation to guarantee this right, nor the rights of such minorities to use their languages or practice their religions.⁶⁵ While Iraq adopted the Official Languages Law No. 7 of 2014, the AHRC noted that the Iraqi authorities have not taken sufficient measures to ensure that the state's activities reflect the society's religious and linguistic diversity.⁶⁶

Indeed, the AHRC has generally avoided addressing issues of freedom of thought, belief, and religion, refraining from detailing the components of this right as it pertains to individuals' beliefs, changing religion, or practicing religious rituals privately or openly.⁶⁷ The UN Human Rights Committee has repeatedly raised concerns over respect for freedom of religion in its review of reports submitted by Arab states that are parties to the International Covenant on Civil and Political Rights, which are also parties to the Arab Charter. The UN committee has criticized civil penalties imposed on Jordanians who leave Islam, such as restrictions on marriage and the deprivation of inheritances.⁶⁸ It has also criticized Sudan for criminalizing apostasy under Article 126 of the Penal Code, calling for the repeal of this provision.⁶⁹

c. Freedom of Association, Trade Union Rights, and the Right to Freedom of Peaceful Assembly

The AHRC has made repeated observations on the signatories' national laws governing the right to form associations and trade unions, as well as the right to strike. These rights are restricted by most States Parties to the Charter. For example, the ACHR has urged Jordan to amend its Law on Charitable Associations "to eliminate obstacles to the exercise of the right to form associations".⁷⁰ It noted that workers are unable to establish trade union organizations and recommended introducing guarantees of their right to bargain collectively over terms and conditions of work, and their right to strike.⁷¹ In its review of Algeria's first periodic report, the AHRC also commented on the country's Law No. 12-06 on associations, which gives the authorities broad discretionary powers to reject the establishment of associations.⁷² The AHRC further noted that the UAE's Federal Law No. 8 of 1980 on labour relations restricts the free exercise of trade union activity and the right to strike,⁷³ and recommended that the UAE create a conducive environment for civil society organizations, including those focused on defending human rights.⁷⁴ Additionally, the AHRC

⁶³ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Saudi Arabia*, paragraph 36.

⁶⁴ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the Republic of Iraq*, paragraph 6.

⁶⁵ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Republic of Iraq*, paragraphs 80 and 81.

⁶⁶ *Ibid.*, paragraph 172.

⁶⁷ On the components of the rights to freedom of thought, conscience, and religion in the International Covenant on Civil and Political Rights, see: Sarah Joseph & Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary*, 2nd ed. (Oxford: Oxford University Press, 2013), pp. 501-516.

⁶⁸ UN Human Rights Committee, *Concluding observations on the fifth periodic report of Jordan* (New York: 4/12/2017), paragraph 28.

⁶⁹ UN Human Rights Committee, *Concluding observations on the fifth periodic report of Sudan* (New York: 19/11/2018), paragraphs 49 and 50.

⁷⁰ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the Kingdom of Jordan*, First Session, 2012, paragraph 43; League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Jordan*, paragraph 74.

⁷¹ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Jordan*, paragraphs 45 and 46.

⁷² League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Republic of Algeria*, paragraph 36.

⁷³ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the United Arab Emirates*, paragraph 31.

⁷⁴ *Ibid.*, p. 10.

called on the UAE to “insert an explicit provision stipulating the freedom to engage in trade union activity and the right to strike in its national law, in line with Article 35 of the Charter”.⁷⁵

The AHRC called on Bahrain to adopt a new law for civil organizations and institutions that would guarantee their ability to work in a suitable environment.⁷⁶ It noted the restrictions imposed by Bahrain’s Law No. 21 of 1989 on the freedom to form associations and the wide powers granted to the executive to interfere in the work of associations.⁷⁷ The AHRC also noted Saudi Arabia’s restrictions on the freedom to establish associations and professional unions and lack of guarantees of the right to strike. It recommended that the Kingdom pass laws guaranteeing the rights to form associations and professional unions and to strike, as well as encouraging involvement in defending human rights.⁷⁸ The AHRC also urged Sudan to “lift legislative restrictions on the freedom of professional unions [to operate] on a purely professional basis, and the freedom to practice trade union activity so the members of each profession can defend their interests”.⁷⁹

Regarding Qatar, the AHRC noted the restrictions imposed by Law No. 12 of 2004 on Private Associations and Institutions.⁸⁰ While it welcomed the issuance of a new law for associations (Law No. 21 of 2020), it also noted the limitations within the legislation, including the broad powers granted to the administrative body to issue decisions on the establishment and dissolution of associations.⁸¹

The AHRC noted that Algeria’s Law 89-28 on Public Meetings and Demonstrations restricts the freedom of peaceful assembly and demonstration by requiring prior authorization and failing to lay out rules on the dispersal of peaceful demonstrations by security forces.⁸² It also noted the UAE’s lack of regulations governing the right to organize peaceful assemblies and marches,⁸³ as well as Sudan’s frequent use of lethal force to disperse peaceful demonstrations and gatherings.⁸⁴

d. The Right to a Free Press and Freedom of Expression

The AHRC called on Jordan to amend its Right to Access to Information Act and repeal the Provisional Law on Protection of State Secrets & Documents.⁸⁵ It also commented on the implications of the Information System Crimes Law (2011) and the Prevention of Terrorism Law (2006) on the exercise of freedom of opinion, expression, and the press in Jordan. The AHRC recommended protecting journalists from criminal penalties for their media work and reviewing media legislation that imposes restrictions on press freedom.⁸⁶

⁷⁵ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the United Arab Emirates*, paragraph 85.

⁷⁶ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Bahrain*, paragraph 43.

⁷⁷ *Ibid.*, paragraph 48.

⁷⁸ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Saudi Arabia*, paragraphs 54 and 56.

⁷⁹ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the Republic of Sudan*, Eighth Session, 2015, paragraph 15.

⁸⁰ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the State of Qatar*, paragraph 26.

⁸¹ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Second Periodic Report of the State of Qatar*, paragraph 45.

⁸² League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Republic of Algeria*, paragraph 38.

⁸³ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the United Arab Emirates*, paragraph 54.

⁸⁴ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the Republic of Sudan*, paragraph 9. See also: League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the Republic of Iraq*, paragraph, 35; League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Republic of Iraq*, paragraph 83.

⁸⁵ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Jordan*, paragraph 35.

⁸⁶ *Ibid.*, paragraph 36.

In its discussion of the first periodic report submitted by Algeria, the AHRC noted the implications of adopting a broad definition of terrorism in Article 78 (bis) of the Penal Code on the exercise of freedom of opinion, expression, and peaceful assembly.⁸⁷ Additionally, the AHRC noted the UAE's restrictions on press freedom, the lack of regulated access to information, and the impact of national law imposing penalties on journalists and bloggers. It also expressed concerns over internet censorship⁸⁸ and recommended further liberalization of cyberspace in the UAE.⁸⁹ The AHRC also outlined concerns about the UAE's adoption of Law No. 2 of 2003 on the State Security Service, Decree-Law No. 6 of 2012 on combating cybercrime, and Anti-Terrorism Law No. 7 of 2014, noting "vague and broad definitions of certain criminal offences they contain, making it difficult to determine what actually constitutes an offence; these provisions violate the principle of *nulla poena sine lege* (no punishment without law) and open the door to arbitrary interpretation and misuse".⁹⁰

Regarding Bahrain, the AHRC raised concerns about the possible prosecution and imprisonment of journalists and bloggers under legislation regulating the press and media, noted restrictions on the right of journalists to access information, given the absence of national legislative protections for this right.⁹¹ Additionally, the AHRC cited restrictions imposed by Saudi Arabia's cybercrime law and the severe penalties for the practice of peaceful expression of opinion in the Kingdom.⁹²

e. Protection of Human Rights Under Exceptional Measures and States of Emergency

In considering the reports of States Parties to the Charter, the AHRC made critical observations on the declaration of states of emergency and their effects on the exercise of rights and freedoms. The AHRC particularly stressed the principle that laws governing exceptional measures should guarantee rights that are non-derogable even during states of emergency, as outlined in Article 4 of the Charter.

In its observations on the UAE's first periodic report, the AHRC noted that Federal Law No. 11 of 2009 Concerning Martial Laws does not cover rights that remain non-derogable during states of emergency, as stipulated in the Arab Charter.⁹³ In its concluding observations on Bahrain's first report, the AHRC also commented on the formal implications of the declaration of a state of emergency, arguing that the country's "state of national security" did not comply with the formal procedures stipulated in Article 4 of the Arab Charter.⁹⁴ It also noted the absence of national Bahraini legislation to regulate states of emergency or to protect non-derogable rights during such times.⁹⁵ The AHRC urged Saudi Arabia to draw up legislative regulations to regulate states of emergency and define the conditions for declaring such measures, taking into account the protection of rights that may not be suspended or restricted during a state of emergency.⁹⁶

⁸⁷ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Republic of Algeria*, paragraph 31.

⁸⁸ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the United Arab Emirates*, paragraphs 22-24.

⁸⁹ *Ibid.*, p. 9.

⁹⁰ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the United Arab Emirates*, paragraphs 47 and 66.

⁹¹ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Bahrain*, paragraphs 20 and 21.

⁹² League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Saudi Arabia*, paragraph 44.

⁹³ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the United Arab Emirates*, paragraph 21.

⁹⁴ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Bahrain*, paragraph 11.

⁹⁵ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Bahrain*, paragraph 14.

⁹⁶ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Saudi Arabia*, paragraph 24.

f. Guarantees of the Right to Liberty and Security of Person, the Right to a Fair Trial, and the Independence of the Judiciary

The AHRC noted the widespread use of pretrial detention by States Parties and the absence of legal provisions for victims of arbitrary and unlawful detention to receive reparations. It reserved particular criticism for anti-terrorism and public security legislation and their impact on States Parties' respect for the right to liberty and security of the person. The AHRC noted that Jordan's Law No. 18 on Anti-Terrorism of 2014 adopts a broad definition of a terrorism offence and grants the security authorities expansive powers to detain suspects.⁹⁷ It also criticized Sudan's Public Order Law for failing to uphold guarantees of the right to liberty and security of the person, urging Khartoum to review the legislation.⁹⁸ Furthermore, it criticized Iraq over its Anti-Terrorism Law No. 13 of 2005, particularly in relation to guarantees of the right to a fair trial.⁹⁹ It subsequently commented on the practice of detaining suspects in pretrial detention for prolonged periods under Iraq's Criminal Procedure Code No. 23 of 1971, noting that the Iraqi authorities frequently detained people without charge for extended periods, which it considered unlawful.¹⁰⁰

In its review of Algeria's first periodic report, the AHRC noted that despite the lifting of the country's emergency law in February 2011, the army still enjoys broad powers to maintain public order, beyond exceptional cases, under its amended Law No. 91-23, and called for these powers to be brought into line with the Charter.¹⁰¹ It also noted that the UAE's report to the AHRC did not cover the legislation and measures put in place to protect persons from enforced disappearance, and urged the Emirati authorities to take effective national measures to address this issue.¹⁰² It also urged Lebanon to "address the issue of enforced disappearance, and to clarify the fate of persons who have gone missing [since the beginning of the 1975-1990 civil war], using modern forensic techniques".¹⁰³ The AHRC based its references to the issue of enforced disappearance on the Charter's articles on the protection of the right to life (Article 5) and the protection of the right to liberty and security of person (Article 14).

The AHRC made observations to States Parties regarding the lack of guarantees, in national legislation, of the independence of the judiciary. It recommended that the UAE amend its laws regulating the judiciary to ensure the latter's independence from the executive branch.¹⁰⁴ It voiced concerns over the executive's interference in the composition of the Supreme Council of the Federal Judiciary, and the subordination of the Attorney General and his deputies to the Minister of Justice. It called for a review of the Federal Judicial Authority Law No. 3 of 1983.¹⁰⁵ In its observations on Saudi Arabia's first report, the AHRC noted the absence of measures to ensure the independence of the Supreme Council of the Judiciary and the Public Prosecution, recommending that the Public Prosecutor's Office should be subordinate to the judiciary rather than the Ministry of the Interior.¹⁰⁶ The AHRC also urged Lebanon to review the composition of

⁹⁷ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Jordan*, paragraph 26.

⁹⁸ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the Republic of Sudan*, paragraph 5.

⁹⁹ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the Republic of Iraq*, paragraph 34.

¹⁰⁰ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Republic of Iraq*, paragraphs 69 and 71.

¹⁰¹ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Republic of Algeria*, paragraph 18.

¹⁰² League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the United Arab Emirates*, paragraph 18.

¹⁰³ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the Republic of Lebanon*, paragraphs 12, 48.

¹⁰⁴ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the United Arab Emirates*, p. 8.

¹⁰⁵ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the United Arab Emirates*, paragraph 39.

¹⁰⁶ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Saudi Arabia*, paragraphs 32 and 33.

the Supreme Judicial Council to ensure its independence and recommended that the authorities amend the rules governing trials before the Judicial Council and military courts to guarantee fair trials.¹⁰⁷

g. Prohibition of Torture and Restrictions on the Death Penalty

The AHRC paid particular attention to Article 8 of the Charter, which relates to the prohibition on torture. It examined the definition of the offence of torture in the national legislation of States Parties, as well as the assessment of national mechanisms and policies to combat torture. To do so, it relied on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. For example, the AHRC noted that the penalties prescribed in Article 208 of the Jordanian Penal Code for the crime of torture are disproportionate to the severity of the offense, noting the lack of provisions in Jordanian law regarding compensation for victims of torture and arbitrary detention. The AHRC also argued that civil law alone is insufficient to deal with “abuses and breaches of the law by agents of the public authorities”, and noted the absence of any independent mechanism for lodging complaints about torture.¹⁰⁸ Regarding Jordan’s first periodic report, the AHRC welcomed the amendment of the Jordanian Penal Code to align the definition of the crime of torture with that of the UN Convention Against Torture. However, it reiterated its previous observation that the penalty for torture was not commensurate with the seriousness of the crime, as it had been considered no more than a misdemeanour.¹⁰⁹ Notably, the AHRC relied on the definition of the offence of torture in the International Convention, bypassing the limitations of Article 8 of the Arab Charter.

The AHRC advised Bahrain to provide effective, independent institutional mechanisms to investigate all complaints of torture.¹¹⁰ It called on the Lebanese authorities to address the problem of overcrowding in prisons and transfer responsibility for prison management to the Ministry of Justice.¹¹¹ The AHRC noted that the UAE’s Code of Criminal Procedure does not stipulate that investigations and evidence obtained under torture are invalid, nor does it exempt the offence of torture from any statute of limitations.¹¹² It advised the Emirati authorities to incorporate the provisions of the Convention against Torture into national law by amending the Penal Code and the Code of Criminal Procedure to provide a comprehensive definition of the offence of torture.¹¹³ Additionally, the AHRC emphasized that national law in the UAE must prohibit the deportation of foreigners to any country where they may face a risk of torture.¹¹⁴

However, the AHRC did not address the issue of harsh punishments within the definition of the offence of torture. In its concluding observations on Saudi Arabia’s first report, the AHRC noted that Saudi national legislation lacks a definition of that offence and does not provide rules for compensation and rehabilitation for victims of torture. It also highlighted the ineffectiveness of institutions charged with monitoring places of detention.¹¹⁵ However, the AHRC avoided commenting on corporal punishment in the Kingdom, instead calling for a penal code that codifies penalties for crimes of *hudud* (serious acts seen as crimes against God) and *qisas* (retaliatory) offences, and *ta’zir* (lesser crimes with discretionary

¹⁰⁷ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the Republic of Lebanon*, paragraphs 56 and 66.

¹⁰⁸ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the Kingdom of Jordan*, paragraphs 10, 11, and 25.

¹⁰⁹ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Jordan*, paragraph 17.

¹¹⁰ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Bahrain*, paragraph 29.

¹¹¹ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the Republic of Lebanon*, paragraphs 61 and 62.

¹¹² League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the United Arab Emirates*, paragraphs 12 and 13.

¹¹³ *Ibid.*, p. 7.

¹¹⁴ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the United Arab Emirates*, paragraphs 27 and 58. See also: League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Republic of Algeria*, p. 26.

¹¹⁵ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Saudi Arabia*, paragraphs 28-30.

penalties), in accordance with the principle of *nulla poena sine lege*.¹¹⁶ In its commentary on harsh punishments, the AHRC could have evoked Saudi Arabia's obligations under the Convention Against Torture, which it ratified in 1997, without expressing reservations about the definition of that crime. The UN Committee Against Torture has called on Saudi Arabia to amend its legislation to abolish all forms of corporal punishment, such as flogging and amputations, arguing that such punishments constitute torture and cruel, inhuman, or degrading treatment.¹¹⁷

The AHRC has called for limiting the use of the death penalty to the most serious offences and for mechanisms that allow for amnesty from its application.¹¹⁸ It has noted the wide range of offences punishable by death under Sudanese national law, particularly noting the lack of a precise definition of certain offences, such as "undermining the constitutional order".¹¹⁹ While the AHRC has not addressed the application of the death penalty to persons under the age of 18, it has emphasized the need to set an appropriate age of criminal responsibility. It has noted that Lebanon, which holds children under the age of 12 criminally responsible, does not align with the child protection clauses of the Arab Charter.¹²⁰ This age limit is generally accepted in the jurisprudence of the Committee on the Rights of the Child, which, in its General Comment No. 24, recommended raising the minimum age of criminal responsibility to 14.¹²¹ It could have encouraged states not to apply the death penalty to children under the age of 18; most States Parties to the Arab Charter, except for Saudi Arabia, have ratified the International Covenant on Civil and Political Rights, which explicitly prohibits such punishments under Article 6.5.¹²²

Women's Rights

In its observations on States Parties' reports, the AHRC addressed the issue of equality between men and women and the positive discrimination measures that States could take to turn this into a reality. It expressed regret that Article 6 of the Jordanian Constitution does not guarantee equality between men and women, arguing that this violates the provisions of the Arab Charter and Jordan's obligations under the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹²³ This is the only reference the AHRC has made to a State Party's obligations under the CEDAW. It also deemed insufficient the measures taken by Saudi Arabia to promote positive discrimination in favour of women in order to implement this article,¹²⁴ emphasizing that the application of the wardship system in the Kingdom undermines women's enjoyment of their fundamental rights on an equal basis with men.¹²⁵ The AHRC also urged the Lebanese authorities to boost women's representation in parliament, evoking the positive discrimination mentioned in Article 3.3.¹²⁶ It urged Qatar to adopt positive measures (quotas) to expand women's participation in the Shura Council and municipal councils.¹²⁷ In its observations on Kuwait's first periodic report, it recommended measures to eliminate discrimination against women "in conformity with

¹¹⁶ Ibid., paragraph 38.

¹¹⁷ UN Committee Against Torture, *Concluding observations on the second periodic report of Saudi Arabia* (New York: 8/6/2016), paragraph 11. See also: UN Human Rights Committee, *Concluding observations on the fifth periodic report of Sudan* (New York: 2018), paragraphs 35 and 36.

¹¹⁸ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Bahrain*, paragraphs 22 and 23; League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Saudi Arabia*, paragraph 27.

¹¹⁹ UN Human Rights Committee, *Concluding observations on the fifth periodic report of Sudan*, Paragraph 20.

¹²⁰ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the Republic of Lebanon*, paragraph 26.

¹²¹ UN Committee on the Rights of the Child, *General comment No. 24, Children's rights in the child justice system* (New York: 18/9/2019).

¹²² *International Covenant on Civil and Political Rights*, Article 6.5.

¹²³ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the Kingdom of Jordan*, paragraph 9.

¹²⁴ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Saudi Arabia*, paragraph 22.

¹²⁵ Ibid., paragraph 23.

¹²⁶ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the Republic of Lebanon*, paragraph 47.

¹²⁷ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Second Periodic Report of the State of Qatar*, paragraph 19.

Islamic law”, without elaborating on what this meant within the context of its commentary on Kuwait’s medium-term development plan.¹²⁸ This is the only instance in which the AHRC explicitly referred to Islamic law in relation to discrimination against women.

The AHRC urged the UAE to eliminate gender-based discrimination in the judiciary and public prosecution by amending certain provisions of Federal Law No. 3 of 1983 on the Judiciary.¹²⁹ In discussing Algeria’s first periodic report, it recommended that the country promote de facto equality between women and men in senior public positions.¹³⁰ It welcomed the appointment of women to senior positions in Sudan and encouraged the government to take measures to promote female enrolment in education.¹³¹ The AHRC urged Iraq to ensure women’s participation in public life without discrimination, equality between women and men in labour laws, and that women receive preferential benefits in cases of pregnancy and childbirth.¹³²

The AHRC stressed the need for States Parties to take measures to address violence against women. It welcomed the 2016 amendment of the UAE’s Penal Code, which removed a clause allowing husbands to “discipline” their wives, as well as the passing of the 2019 law on protection against domestic violence, recommending that policies be implemented to ensure the effective enforcement of this law.¹³³

The AHRC criticized the Bahraini law that allows rapists to evade criminal liability by marrying their victims, arguing that this practice contradicts the principle of consent in marriage.¹³⁴ It subsequently welcomed the Bahraini authorities’ announcement of the adoption of legal amendments to abolish these provisions, as well as the move to reject the use of violence when justified based on local customs or “mitigating circumstances”, such as a wife being caught in the act of adultery.¹³⁵

The AHRC’s commentary on discrimination against women in personal status laws was limited to its responses to the reports of Bahrain, Saudi Arabia, Iraq, and Kuwait. It welcomed Bahrain’s promulgation of Unified Family Law No. 19 of 2017, which applies to all citizens whether they follow Sunni or Jaafari (Shiite) jurisprudence. However, the AHRC did not address women’s rights within the family under this law.¹³⁶ It noted the absence of a codified legal framework for personal status in Saudi Arabia and recommended the development of a personal status law that would strengthen women’s rights.¹³⁷ It urged Iraq to review provisions of its Personal Status Law that discriminate against women.¹³⁸ It also criticized Kuwait for preventing women from exercising guardianship over their children under Article 209 of the Kuwaiti Personal Status Law No. 51 of 1984 and Article 110 of the Civil Code No. 67 of 1980.¹³⁹

Additionally, the AHRC has raised the issue of forced marriage and the legal age of marriage in States Parties. It noted Iraq’s insufficient legal protections for women against forced marriage¹⁴⁰ and called on

¹²⁸ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the State of Kuwait*, paragraph 43.

¹²⁹ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the United Arab Emirates*, paragraph 36.

¹³⁰ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Republic of Algeria*, paragraph 17.

¹³¹ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the Republic of Sudan*, p. 1, paragraph 20.

¹³² League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Republic of Iraq*, paragraph 115.

¹³³ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the United Arab Emirates*, paragraphs 68 and 71.

¹³⁴ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Bahrain*, paragraph 23.

¹³⁵ *Ibid.*, paragraph 62.

¹³⁶ *Ibid.*

¹³⁷ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Saudi Arabia*, paragraph 47.

¹³⁸ *Ibid.*, paragraph 49.

¹³⁹ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the State of Kuwait*, paragraph 17.

¹⁴⁰ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Republic of Iraq*, paragraph 108.

Sudan to introduce a minimum age of marriage to protect minors from such practices.¹⁴¹ However, the AHRC did not follow the UN Human Rights Committee in taking a position on what this minimum age should be,¹⁴² except in its observations on Kuwait's first periodic report, in which it urged the authorities to amend the Personal Status Law to ensure that women enter into marriage only after giving their full consent without coercion, and to set the minimum marriage age at 18, in line with Kuwait's law on the rights of the child.¹⁴³

In its observations on States Parties reports, the AHRC has emphasized the question of equality between men and women in nationality laws. For example, the AHRC noted the discrimination suffered by women in the UAE under Nationality and Passports Law No. 17 of 1972, which denies citizenship to the children of Emirati women married to foreigners.¹⁴⁴ In its observations on Saudi Arabia's first report, the AHRC recommended amending the Nationality Law to allow the children of Saudi women married to foreign men to acquire Saudi nationality, on an equal footing with children of Saudi men married to foreign women.¹⁴⁵ The AHRC also criticized Lebanon's discrimination against women in its Nationality Law No. 15 of 1925¹⁴⁶ whilst welcoming Qatar's adoption of Law No. 10 of 2018, which enables the children of Qatari women married to foreigners to obtain permanent residency. It also urged the country to extend the right to citizenship to these children, on the same basis as Qatari men married to foreign women.¹⁴⁷

Conclusion

The AHRC has generally followed an approach of harmonizing its interpretation of the Arab Charter on Human Rights with international human rights conventions. The AHRC's concluding observations and recommendations have been characterized by a critical approach to national laws and practices, while consistently monitoring the adherence to the rights enshrined in the Arab Charter. It has upheld these rights without allowing them to be undermined by national legislation, particularly in areas such as freedom of opinion and expression, the prohibition of torture, the right to peaceful assembly, freedom of association, the independence of the judiciary, and the guarantees of a fair trial.

The AHRC has also reviewed States Parties' implementation of its recommendations, creating continuity and consistency in its own work, regardless of its composition. It has stressed the importance of international conventions and welcomed cooperation with international human rights mechanisms, the accession of the Charter's signatories to those treaties, as well as steps taken by some States Parties to withdraw certain reservations. However, the AHRC has avoided discussing, evaluating, or directly encouraging the withdrawal of these reservations, particularly when discussing the application of certain rights enshrined in the Charter, which are affected by such reservations. Although the AHRC could have commented on these reservations, taking advantage of the evolution of the jurisprudence of the UN Human Rights Committee regarding the regulation of reservations to human rights conventions, it has chosen

¹⁴¹ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Report of the Republic of Sudan*, paragraph 12. See also: League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the State of Qatar*, Thirteenth Session, 2017, paragraph 110.

¹⁴² UN Human Rights Committee, *Concluding observations on the first periodic report of Bahrain* (New York: 15/11/2015), paragraph 18.

¹⁴³ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the State of Kuwait*, paragraph 44.

¹⁴⁴ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the United Arab Emirates*, paragraph 19.

¹⁴⁵ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Saudi Arabia*, paragraph 43.

¹⁴⁶ League of Arab States: AHRC, *Concluding Observations and Recommendations on the First Periodic Report of the Kingdom of Saudi Arabia*, paragraph 68.

¹⁴⁷ League of Arab States: AHRC, *Concluding Observations and Recommendations on the Second Periodic Report of the State of Qatar*, paragraph 48.

instead to base its opinions on international conventions when affirming certain rights contained in the Charter. This is especially true when defining the offence of torture, as the Charter does not provide a comprehensive definition thereof.

The AHRC has avoided detailed discussions of rights that involve cultural or religious sensitivities, opting to remain silent on some of these issues and to develop its positions according to the political and legal contexts within States Parties. At the same time, it has avoided direct conflict with international human rights conventions or adopting interpretations of articles of the Charter that entirely contradict these conventions. In this context, the AHRC has not taken an interpretive position on the relationship between Islamic law and the rights enshrined in the Arab Charter, steering clear of in-depth discussion of related issues such as freedom of religion and belief.

The AHRC has refrained from elaborating on women's rights in personal status laws, except for passing references in its concluding observations on some States Parties' reports, without delving into issues of discrimination against women in marriage and divorce. In its comments on personal status matters, the AHRC has restricted its commentary on women's guardianship over children, women's full consent when entering marriage, and the need to set a minimum marriage age (without specifying this age). An exception to this is in its observations on Kuwait's report in December 2021, when the AHRC called for setting the minimum age at 18, which may establish a precedent on this issue. The AHRC has paid extensive attention to issues of violence against women and guarantees of women's participation in public life.

The AHRC has refrained from taking a position on the application of Islamic criminal law and corporal punishment, except in relation to the broad powers of Saudi Arabia's Committee for the Promotion of Virtue and the Prevention of Vice and the impact of these practices on the rights to liberty and personal security. The AHRC has also called for the codification of Saudi Arabia's penal code to ensure it aligns with the principle of *nulla poena sine lege*. It is worth noting that the AHRC has indirectly supported more progressive interpretations of Sharia law when advocating for the elimination of discrimination against women in the personal status laws of certain States Parties.

That said, the AHRC could have placed greater emphasis on the cultural legitimacy approach to human rights by encouraging the reinterpretation of religious laws or practices based on local cultures, in a manner consistent with the rights enshrined in the Charter. Additionally, it could also have drawn on comparative jurisprudence to transfer and adopt good practices from other countries in the Muslim world and share them with States Parties to promote women's rights, freedom of religion and belief, and reforms to Islamic criminal law, and to restrict or halt the application of corporal punishments.

Whether the AHRC continues to adopt, develop, or even revoke these approaches will depend on its composition, the keenness of its members to preserve and develop its traditions in interpreting the Charter, and the extent of States Parties' support and cooperation with its work. The limited representation of Arab and international human rights NGOs at the Arab League and the Arab Human Rights Commission deprives the AHRC of allies and supporters of its independence, as well as divesting the Charter's substance of an important factor in developing the Charter and safeguarding the expansion of its normative scope.

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