

HUMAN RIGHTS AND THE FUNDAMENTAL FREEDOMS. THE ARAB SYSTEM

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Abstract

In some Arab states, there are significant violations of fundamental rights and freedoms. In certain Arab countries, some women's rights face discriminations and restrictions in areas such as education, the right to work and family rights.

Another important aspect to monitor is related to human rights in the context of armed conflict. In states amidst armed conflicts or in areas affected by instability, there are concerns about human rights violations.

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1. Introductory aspects

The presence of a complex human rights system is crucial for advancing and safeguarding human rights. It offers accessible avenues for human rights protection after exhausting national remedies and reinforces states obligation to uphold and ensure human rights. Accordingly, it is crucial to comprehend that the commitment to upholding human rights originates within civil society and how to address the normative demands of civil society on one hand, while, on the other hand, it is also important to understand the nature of the state in its specific context, the role of various actors, economic dimensions, legitimate security concerns, and the underlying causes of human rights violations (Lewellen, 1995). The endeavors to safeguard human rights manifest the ongoing endeavor of individuals and communities to achieve the upheld human dignity within their respective contexts. This perspective is crucial to realizing the aims of longstanding struggles in today's context, given the nature of post-colonial states in the era of globalizations. The moral or philosophical justification of the universality of human rights can be identified in the major religious and cultural traditions worldwide. This should be underscored in the discourse within each tradition, acknowledging and addressing elements that may be detrimental or antagonistic to human rights (An-Na'im, 1992). The principles of self-determination, as recognized under international law, along with the complex dynamics of international relations, grant states exclusive control

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over their territories and populations. As a result, promoting and safeguarding human rights in a practical and sustainable manner is contingent upon the cooperation of the respective states. Although humanitarian intervention might be deemed justifiable in exceptional circumstances, practical realities suggest that the international community lacks the capacity or willingness to oversee the long-term legal, administrative, and human rights protection aspects in any part of the world. From a human rights perspective, it is considered unacceptable for any entity, acting unilaterally or multilaterally, to seize control of a territory under the pretext of acting in the “best interest of its own people”. This approach mirrors past rationalizations that may not align with contemporary human rights standards (Iliuffe, 1995, p.187). Human rights should be the outcome of the free exercise of determinations, rather than an external intervention. Therefore, it is vital to understand that the respect of human rights is generated within civil society, and to know how to respond to civil society demands that are based on norms. On the other hand, it is important to understand the nature of the state in its own context, the role of other actors, the economic dimensions, legitimate security, human rights violations. The Arab world approach will contribute to building consensus among different segments of the international community by providing a clear contextual understanding of the regional component’s position (Téson,1997).

2. Conceptual background

The existence of an effective regional human rights system is important to the promotion and protection of human rights.¹

The global promotion of human rights began in 1945 with the establishment of the United Nations (UN), which subsequently established the UN Commission on Human Rights in 1946 and adopted the Universal Declaration of Human Rights (UDHR) in 1948 (Mégret & Alston, 2020, pp. 1-36).

An effective regional human rights system provides accessible mechanisms for protection of human rights once national remedies have been exhausted and it strengthens states responsibilities to respect and guarantee human rights.² The Arab Charter on Human Rights was adopted by the Council of Arab States on 22nd May 2004, which affirms the principles contained in the United Nations Charter, the Universal Declaration of Human Rights, the International Covenants on Human Rights and the Cairo Declaration on Human Rights in Islam. On September 7th, the League of Arab States approved the Statute of the Arab Court of Human Rights, finalizing a 20-year process to establish a human rights mechanism similar to those operating in other regions such as Europe and the Americas (Rishmawi, 2015). The Arab Charter was a hugely important step in the development of a regional human

¹ International Justice Resource Center, Regional Systems (2017), www.ijrcenter.org/regional/.

² Directorate-General for External Policies, Policy Department, The Role of Regional Human Rights Mechanisms, European Parliament (2010), [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET\(2010\)410206_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET(2010)410206_EN.pdf).

rights regime, establishing a human rights framework.³ With the Arab human rights system in its early stages, the Statute aims to fill a notable gap in the local protection of human rights and, in theory, could represent a crucial step toward ensuring such rights. Nevertheless, its true value can only be assessed if the Arab Court of Human Rights (ACtHR) is capable of making, or indeed makes, a substantial and tangible contribution to safeguarding the rights of citizens of the League of Arab States (LAS) Member States. The parent organization, the League of Arab States (LAS), is a regional intergovernmental body established in 1945, located in Cairo, Egypt.⁴ It was only in the 1990s that the LAS earnestly began to pursue a human rights-based path, culminating in the signing of the Arab Charter on Human Rights (1994 Charter).⁵ The 1994 Charter never entered into force and was replaced ten years later by a revised Arab Charter on Human Rights (2004 Charter), which became operative in 2008.⁶ A noteworthy aspect of the 2004 Charter is the absence of a regional human rights court serving as a judicial oversight body. Instead, it establishes an Arab Human Rights Committee with the responsibility to review and provide feedback on state reports detailing the domestic actions taken to uphold the rights and freedoms outlined in the 2004 Charter.

3. Challenges

3.1 The Arab Charter on Human Rights and the Arab Court of Human Rights

The Arab Charter on Human Rights – The 1994 Charter was revised and replaced and adopted by 16th Ordinary LAS Summit at Tunis on 22nd May 2004 (Zerrougui, 2011). The 2004 Charter joins the ranks of regional instruments that contain in a single binding legal document all three categories of human rights, civil and political rights, economic, social and cultural rights and third generation or people rights.⁷ It thus reflects in part the position adopted by the Universal

³ Rishmawi, ‘The Arab Charter on Human Rights and the League of Arab States: An Update’ (2010) 10 *Human Rights Law Review* 169.

⁴ LAS Charter, *supra* note 1 at art I. The current membership of the LAS is twenty-two, including Palestine, admitted in 1976. Most of the Member States are from the MENA (Middle East and North Africa) region but the membership stretches to Comoros, Djibouti and Somalia. In 2011 Syria’s membership was suspended due to government repression.

⁵ Arab Charter on Human Rights, LAS Res 5437, Ministerial Council, 102nd Regular Sess, (1994) (1994 Charter). For English translation see (1997) 18 *Hum Rts LJ* 151; for French translation see (1995) 7 *RUDH* 212. The Permanent Commission was responsible for drafting the 1994 Charter.

⁶ 2004 Arab Charter on Human Rights, LAS Summit, 16th Ordinary Sess, 22 May 2004 (entered into force 15 March 2008) (2004 Charter). For English translation see Mohammed Amin Al-Midani & Mathilde Cabanettes, ‘Arab Charter on Human Rights 2004’ (2006) 24 *BU Int’l LJ* 149. See generally Salem Alshehri, ‘An Arab Court of Human Rights: The Dream Desired’ (2016) 30 *Arab LQ* 34; Mervat Rishmawi, ‘The Arab Charter on Human Rights and the Arab League of States: An Update’ (2010) 10 *Hum Rts L Rev* 169 (Rishmawi, *The Arab Charter on Human Rights*).

⁷ Universal Declaration of Human Rights, GA Res 217 A (III), UNGAOR, 3rd Sess, Supp No 13, 1948, p71

Declaration on Human Rights (UDHR) and the Vienna Declaration which call for a party between different generations of rights.⁸

The Arab Court of Human Rights is established within the framework of the League of Arab States as an independent Arab judicial organ to reinforce the desire of the States Parties to implement their obligations regarding human rights and freedoms.

3.2 Challenges facing in the progress of human rights system in the Arab countries.

The Arab Human Rights system faces several challenges in its development and progress in Arab countries (Moeckli, 2013, p. 27). For example:

- Limited Enforcement Mechanisms: While the Arab Court of Human Rights was established, its jurisdiction is restricted to interstate cases and individuals do not have direct access.
- Incomplete Implementation of Charter: Some states may not fully adhere to the provisions, and inconsistencies persist in terms of aligning national laws and practices with international human rights standards.
- Diverse Political Systems: Arab countries have experienced political instability, conflict, and humanitarian crises. In such contexts, human rights violation may occur, making it challenging to uphold and protect fundamental rights.
- Cultural and Religious Sensitivities: Balancing Cultural and religious values with the universality of human rights poses a challenge, leading to debates over the interpretation and application of certain rights.
- Limited Civil Society Engagement: In some Arab countries, restrictions on civil society activities, freedom of expression, and association hinder the effective participation of non-governmental organizations in promoting and protecting human rights.
- Lack of Public Awareness: Many citizens in Arab countries may not be fully aware of their human rights or how to assert them. Lack of public awareness and education on human rights issues can impede progress in promoting a culture of respect for fundamental rights.⁹

4. Example: Gaza-Israel conflict

The Gaza-Israel conflict is a long complex story of lost opportunities, fragile truces, dashed expectations and broken agreements.

On May 14, 1948, Israel was officially declared a state, marking the first Jewish state in over 2000 years. Just one day later, war broke out between Israel and five Arab countries (Jordan, Iraq, Syria, Egypt and Lebanon). At the end of this conflict, known as the 1948 Arab Israeli War, Egypt was given control of the Gaza

⁸ Vienna Declaration and Program of Action (1993).

⁹ <https://www.alhaq.org> – Palestinian Human Rights Organization.

Strip. Egypt controlled Gaza until the Six-Day war in 1967, when Israel seized the strip, along with several other important areas of land. The 1993 and 1995 Oslo Peace Accords between Palestinian and Israeli leaders negotiated for Israel's withdrawal from Gaza and other key areas, which happened in 2005. An Islamist political group called Hamas won elections and took control of Gaza in 2006. Since then, Gaza become a site of protests, bombings, land assaults and other acts of violence. Major conflicts between Israel and Hamas in Gaza include Operation Case Lead (2008-2009), Operation Pillar of Defense (2012), in spring of 2018, tensions erupted when the U.S. Embassy relocated from Tel Aviv to Jerusalem, which was interpreted as a signal of American support for Israel's capital, where Palestinians responded with a planned protest called the "Great March of Return" at the Gaza-Israel border. In May 2021, violence between Israelis and Palestinians escalated and in October 2023, Hamas militants launched coordinated assault on Israel, kidnapping and killing more than 1000 Israelis, many of them civilians, leading Prime Minister Netanyahu to declare "we are at war". Israel began retaliatory airstrikes in Gaza, leading to thousands of Palestinian deaths.¹⁰ On 15 November was approved a humanitarian pause, during these seven-day truce, 105 Israeli hostages were exchanged for 240 Palestinian prisoners.

On 19 December 2023 Israel has said air attacks across Gaza, including in the southernmost city of Rafah with 20.000 death since the start of the conflict. Moreover, the UN human rights office accusing Israeli forces of summarily executing at least 11 unarmed Palestinian men in Gaza city.¹¹

On 24 December 2023, Israel announced that 15 IDF soldiers had been killed in heavy fighting in Gaza, on 10th January 2024, videos have emerged showing Israeli forces shooting a 17-year-old boy and repeatedly driving over the body of a man they had shoot, adding to accusations over the use of deadly force without provocation. On 15th January, two Palestinian men from Hebron conducted a car-ramming attacks in Ra'anana ran over Israelis, killed one woman and wounded 17 civilians including children.¹²

5. Discussion

Regional human rights systems existing alongside a universal human rights system should be seen as complementing each other. A regional human rights mechanism is given a mandate to promote and protect human rights in accordance with the human rights commitments of the individual States parties. The legal framework between Israel-Gaza conflict involves a complex interplay of international humanitarian law, human rights law and domestic legislation (Shapira, 2016, p.23).

¹⁰ www.history.com – accessed on 28.12.2023.

¹¹ www.aljazeera.com – accessed on 29.12.2023.

¹² www.wikipedia.org - accessed on 16.01.2024.

- Blockade and Humanitarian Crisis. The blockade of Gaza, which restricts the movement of good and people, has contributed to a humanitarian crisis. Legal debates revolve around the characterization of the blockade as collective punishment, its impact on the rights of the civilian population, and compliance with international humanitarian law.
- Use of Administrative Detention. Where the individuals are held without trial or formal charges, has been employed by both Israel and Hamas. Human rights organizations have criticized this practice, questioning its compliance with international legal standards related to due process and the right to a fair trial.
- War Crimes and Accountability. Actions during the conflicts, such as deliberate targeting of civilians or civilian infrastructure, constitute war crimes. The principles are outlined in the Rome Statute of the International Criminal Court (ICC).
- Right to Self-Defense. Israel often cites the right to self-defense under international law as a justification for its military actions.
- Refugee and Human Rights Law. The impact of the conflict on the rights of refugees and internally displaced persons. Legal principles related to the rights of Palestinians, including the right of return, are considered in light of international human rights and refugee law (Quingley, 2005).

All the states have the legal duty (third state responsibility) to respect and protect peremptory norms and may apply sanctions against the violating state for this purpose. Israel severely violates many of these peremptory norms, including the right to self-determination of the Palestinian people and the prohibitions of colonialism and apartheid. As a part of the third state responsibility, all the states are required to cooperate and adopt measures in order to bring these Israeli violations to an end.

States can take action individually, in groups and in the framework of the United Nations and are entitled to adopt sanctions for this purpose.

There are at least four areas to which sanctions, in the form of cutting relations, can be applied:

- Military links, including partnerships, agreements and joint operations;
- Economic links, including trade, co-operation agreements and forums, and joint research initiatives;
- Cultural links, including academic cooperation and sports;
- Diplomatic links, including relations on an official level, participation in international institutions, networks and meetings.¹³

6. Conclusion

The effectiveness of the Arab Charter of Human Rights and the Arab Court of Human Rights hinges on the commitment of Arab states and human rights

¹³ www.bdsmovement.net – accessed on 03.01.2024.

organizations in the region. Beyond the practical implementation of legal changes to align with the Charter, it raises the question of whether Arab civil society organizations will actively participate, similar to their engagement with other regional and international systems. For the Charter to genuinely advance human rights, Arab governments must be open to revisiting provisions that conflict with international standards. Another key aspect is whether, after states submit reports on their efforts to align with the Charter, substantive discussions on human rights ensue within the League of Arab States.¹⁴ However, both entities are doing war crimes and severe casualties to civilian, altering the actual meaning of battlefield.¹⁵

Bibliography

1. *2004 Arab Charter on Human Rights*, LAS Summit, 16th Ordinary Sess, 22 May 2004.
2. An-Na'im, A.A., (1990), „Human Rights Cross-Cultural Perspectives: quest for consensus” in An-Na'im, A.A., & Deng, F.M., (ed), *Human Rights in Africa: Cross-Cultural Perspectives*. Washington, D.C.: The Brookings Institution.
3. *Arab Charter on Human Rights*, LAS Res 5437, Ministerial Council, 102nd Regular Sess, (1994) (*1994 Charter*).
4. Directorate-General for External Policies, Policy Department, (2010), *The Role of Regional Human Rights Mechanisms, European Parliament*.
5. Iliuffe, J., (1995), *Africans: The history of a continent*. Cambridge: Cambridge University Press.
6. Lewellen, T.C., (1995), *Dependency and Development: an introduction to the third world*. Westport: Praeger.
7. Mégret, F. & Alston, P., (2020), ‘Appraising the United Nations Human Rights Regime’ in Mégret, F. & Alston, P., (eds), *The United Nations and Human Rights—A Critical Appraisal*, 2nd ed. Oxford: Oxford University Press.
8. Moeckli, D., (2013), “The League of Arab States and Human Rights: A Change of Course”, *Human Rights Quarterly*,
9. Quingley, J., (2005), *The Case for Palestine: An International Law Perspective*. Duke University Press.
10. Rishmawi, M., (2010), ‘The Arab Charter on Human Rights and the League of Arab States: An Update’ (2010) 10 *Human Rights Law Review*, pp.169-178.
11. Rishmawi, M., (2015), *The League of Arab States, Human Rights Standards and Mechanisms*. Cairo: Open Society and Cairo Institute for Human Rights Studies.
12. Shapira, A., (2016), *Israel: A History*. Brandeis University Press.
13. Tésou, F.R., (1997), *Humanitarian Intervention: an inquiry into law and morality* 2nd ed. London: Transnational.
14. Universal Declaration of Human Rights, 1948.
15. Zerrougui, L., (2011), “The Arab Charter on Human Rights”, *Essex Human Rights Review* (7).

¹⁴ www.jstor.org – accessed on 04.01.2024.

¹⁵ www.piha.com.pk – accessed on 05.01.2024.

Online References:

1. <https://www.alhaq.org> – Palestinian Human Rights Organization, accessed on 28.12.2023.
2. www.history.com, accessed on 28.12.2023.
3. www.aljazeera.com, accessed on 29.12.2023.
4. www.bdsmovement.net, accessed on 03.01.2024.
5. www.jstor.org, accessed on 04.01.2024.
6. www.piha.com.pk, accessed on 05.01.2024.
7. www.ijrcenter.org/regional/, 05.01.2024.
8. [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET\(2010\)410206_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET(2010)410206_EN.pdf), 05.01.2024.