

Executive summary

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Chapter 14: Advancing Gender Equality through the Arab Charter on Human Rights, published in [Frontiers of Gender Equality - Transnational Legal Perspectives](#), Rebecca J. Cook (editor), University of Pennsylvania Press (2023).

Chapter 14 examines the approach of the Arab Human Rights Committee (AHRC) when reviewing States parties' implementation of the Arab Charter on Human Rights (the Arab Charter) of the League of Arab States. The Chapter focusses specifically on how the AHRC has applied the Arab Charter to advance gender equality, comparing its approach to that of the Committee on the Elimination of Discrimination against Women (CEDAW Committee), established to monitor compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention). The review is based on analysis of sixteen conclusions and recommendations to States parties' reports by the AHRC from the start of its work in 2008 until April 2020. The Chapter provides a background about the AHRC, highlighting that the Arab Charter must be interpreted in line with international standards. The Chapter illustrates how the AHRC faces hurdles in interpreting the Arab Charter in accordance with international law because of the Charter's reference to national laws in some provisions. Reference to national laws would undermine gender equality, for example, in relation to freedom of movement (Article 26 of the Arab Charter) and the right to nationality (Article 29.2). However, the Chapter shows that in many occasions, the AHRC did not shy away from criticising national legislation.

The Chapter points out that many Arab laws, like several aspects of the Charter, are grounded in Islamic Shariah. However, it highlights that there is little uniformity of laws and interpretations of Shariah. This is reflected in the diversity of approaches of national laws to the same issues, as well as the diversity of reservations by Arab States to the CEDAW Convention.

The Chapter places rights of women and girls within many realities in the region. This includes socio-economic and political situations including the impact of the protracted conflicts engulfing several Arab countries, as well as the Israeli occupation of Palestine. Further, Arab countries have various legal systems and diverse approaches to issues relating to human rights, including rights of women and girls, through national laws. In some countries, diverse sectarian laws apply to different groups of women concerning the same matter. Most national legal frameworks in the region are a combination of laws derived from each country's colonial legacy and religious codes, as well as postcolonial legislation.

Chapter 14 draws inspiration from frameworks presented in [Frontiers of Gender Equality - Transnational Legal Perspectives](#). Chapter 1 by Sophia Moreau (Faces of Gender Inequality); Chapter 2 by Sandra Fredman (Challenging the Frontiers of Gender Equality); and Chapter 3 by Shreya Atrey (A Prioritarian Account of Gender Equality). These Chapters assist in evaluating the AHRC's approach. Moreau explains the distinct wrongs of discrimination; Fredman proposes four dimensions for understanding substantive equality: redistribution, recognition, participation and structural transformation; and Atrey discusses intersectionality.

This Executive Summary provides a few examples to illustrate the approach of the AHRC.

The Provisions of the Arab Charter on Gender Discrimination and Equality

Chapter 14 focusses on a review of the Arab Charter's provisions on non-discrimination and equality, and specific aspects of women's rights including in marriage, family relations, violence against

women including trafficking and sexual slavery, participation in political and public life, nationality rights, and employment.

Equality and non-discrimination: Article 3(3) of the Charter is seen as unique in its promotion of positive gender discrimination within an Islamic legal framework. The AHRC has interpreted this to require temporary special measures, focusing primarily on the use of quota systems. However, the AHRC has yet to address the full potential by recommending the adoption of positive measures to benefit subgroups of disadvantaged women. In order to reach the frontiers of gender equality, the AHRC will need to consider the CEDAW Committee's approach to substantive equality by addressing major barriers to women's equality found in underlying causes of discrimination, such as degrading gender stereotypes, persistent discriminatory practices, and by ensuring that legal structures in the Arab region are gender sensitive. Chapter 14 highlights that unlike CEDAW, the Arab Charter does not specifically address stereotypes and harmful practices, but the AHRC could interpret Article 3 to obligate States to take appropriate measures to eliminate prejudices and stereotypes in order to ensure women's equality. The CEDAW Committee repeatedly stressed that States must take effective and systematic action to modify or eliminate negative stereotypes and harmful traditional practices. Among the harmful traditional practices that discriminate against women and girls that emerge from such stereotypes are child marriage, temporary marriage and forced marriage. The AHRC has raised concerns over these issues, but it did not link these practices to cultural attitudes and stereotypes.

Marriage, Divorce, and Family Relations: The AHRC has several challenges in interpreting Article 33 of the Arab Charter to achieve substantive equality in marriage, divorce, and family relations. This is due in part to the text of Article 33 which requires marriage to be conducted "according to the rules and conditions of marriage," a concept that is derived from Sharia. Despite the restrictive language of Article 33 and the patriarchal attitudes and structures prevailing in Arab countries, the AHRC has criticized domestic legislation in Arab countries where they discriminate against women, and asked States to amend its national legislation to ensure the consent of the woman is obtained before marriage. The AHRC asked States parties to set a minimum legal age for marriage to ensure that children are not being forced to marry and was troubled by the exceptions to the legal minimum age permitted by the authorization of a judge or a guardian, which it found undermines free and full consent to marriage.

The AHRC's discussion on the *Qiwamah* system in Saudi Arabia is noteworthy. While there are variant opinions on how the *Qiwamah* system should work in practice, in the case of Saudi Arabia, the AHRC explained that some practices related to the *Qiwamah* system limit the ability of women to practice their rights on equal footing with men. Even though the Committee did not issue specific recommendations related to the *Qiwamah* system, it called on the State to take effective legislative measures to ensure non-discrimination, especially on grounds of sex. It also called for equality of opportunities and for the enjoyment of all rights in the Charter.

Violence against Women and Girls: Article 33(2) of the Charter prohibits all forms of domestic violence or abuse particularly against women and children. The Chapter argues that the fact that the Charter specifically addresses domestic violence does not mean that this is the only form of violence that the Charter prohibits. Therefore, it is important that the AHRC builds on the approach of the CEDAW Committee to advocate for a more expanded approach to combating all forms of violence against women and girls including its causes and consequences. The AHRC's approach to violence against women focuses primarily on ensuring legislative frameworks for the prohibition and punishment of domestic violence, mechanisms for complaint, and monitoring mechanisms. However, there are many gaps in legislation in Arab States and diverse definitions and elements of domestic violence. The AHRC is yet to address what should be in these definitions and has not criticised problems with existing legislation including the exclusion of marital rape from several legislations. On the other hand, the AHRC criticized and called for the repeal of laws that allow a rapist to escape

punishment if he marries his victim. The AHRC has yet to call on States parties to review their family status and criminal laws that embody discrimination against women, especially in relation to adultery and “honour crimes,” to bring the legislation in line with Article 3 (prohibition of discrimination and equality) and Article 11 (equality before the law).

Trafficking, Exploitation, and Prostitution: Article 10 of the Charter prohibits trafficking in human beings for the purposes of prostitution or sexual exploitation, slavery, and forced labor. The AHRC applauded States’ efforts in raising awareness of this problem, calling for enacting or strengthening legislation on human trafficking and for establishing national committees on trafficking. It also called for the adoption of, or strengthening and implementation of, national strategies on trafficking. It called for adequate training on trafficking for judges, prosecutors, and law enforcement officers. The AHRC also called for provision of protection of victims and witnesses in cases of trafficking, and for the establishment or strengthening of shelters and services for survivors of trafficking. The AHRC has not directly addressed prostitution but raised concern over kidnapping, rape, sexual slavery, and exploitation, especially against women and children from ethnic and religious minorities as a result of acts by ISIL.

Participation in Political and Public Life: Article 24 of the Arab Charter addresses women’s right to participation in political and public life, directly or through freely chosen representatives on the basis of equality. The AHRC called on States parties to ensure increased representation of women, including in parliamentary bodies, local councils, and the judiciary, as well as allowing them to occupy leadership positions, including through positive discrimination measures, and welcomed quota systems. Article 24(7) allows for restrictions on Article 24 rights. Chapter 14 argues that Article 24 must be read in the context of Article 3 on equality of the Charter. Therefore, where restrictions disproportionately impact women, the AHRC might determine that the restrictions are impermissible. Further, the need for appointment and participation of more women from diverse backgrounds in order to ensure that laws and public policies address the needs of women and subgroups of women.

Work and Employment: The AHRC has taken important steps in interpreting the Charter to ensure that women can participate equally with men in the workforce, but it has yet to realize the full benefits of the Charter’s provisions. Article 34(1) of the Charter recognizes the right to every citizen to freedom to work and equality of opportunity without discrimination because of sex; and Article 34(2) relates to the right to the enjoyment of just and favourable conditions of work. Article 34(4) prohibits discrimination between men and women in the enjoyment of the right to effectively benefit from training, employment and job protection and the right to receive equal remuneration for equal work. The AHRC called on States parties to remedy wage differences between men and women, and unequal wages for work of equal value. It raised concern over the exclusion of some employment sectors from the protection of the law, including migrant workers, agricultural workers, workers in care responsibilities, and domestic workers. It was also concerned about discrimination against foreign workers, including domestic workers, in law or practice. The AHRC criticized the *kafalah* system and the practice of confiscation of passports by employers, stating that this denies workers their right to freedom to choose their employment and freedom of movement. It called on States parties to adopt a time-bound plan for terminating such systems, and raised concern when these systems were cancelled on paper, but the practice continues. Among the issues that were yet to be addressed by the AHRC is the prohibition of women working in certain sectors, the challenges of balancing work and family responsibilities, and the requirement of women needing the authorization of a male guardian to work.

Nationality: Legislation in most Arab countries follow a patrilineal kinship structures, which subordinate women to men, especially by endowing fathers, but not mothers, to automatically pass their nationality to their children at birth. Reform efforts in this regard are underway in several Arab countries. This includes a regional conference held at the Arab League headquarters, which called on

States to reform and implement legislation relating to nationality in conformity with international standards. Article 29(2) of the Charter requires States to “take such measures as they deem appropriate, in accordance with their domestic laws on nationality, to allow a child to acquire the mother’s nationality, having due regard, in all cases, to the best interests of the child.” The AHRC has interpreted this to mean not only that the child should have the right to gain the nationality of his or her mother, but also that the mother should have the equal right with her husband to give her nationality to her children, basing its interpretation on both Articles 3 (right to equality) and 29 (nationality rights). The AHRC recommended that State parties should review legislation to guarantee equality between men and women in nationality rights. The AHRC criticized laws that prevent a woman married to a nonnational from passing her nationality to her children, and welcomed laws that allowed this. AHRC needs to continue to obligate States parties to accommodate difference when it comes to family structures, such that Muslim women can marry non-Muslims, women can marry foreigners, and women can choose not to marry and still have children.

Women Human Rights Defenders: There is no specific provision in the Charter or CEDAW Convention to protect human rights defenders. But the role of women human rights defenders is an important aspect of women’s participation in the public sphere, grounded in freedoms of expression and association. There is a severe problem in practice in several Arab countries in this regard, often connected to restrictions on freedoms of expression, information, association, and peaceful assembly. The AHRC has tended to adopt a general approach by calling on States parties to ensure freedom of association and peaceful assembly. The AHRC is yet to acknowledge that attacks against women human rights defenders often take place because their work on women’s rights challenges cultural values and practices. Many of these attacks take the form of gender-based violence. Their visibility as women puts them at increased risk. Such attacks often take place by the community, non-state actors, or by State agents. The AHRC needs to follow the approach of the CEDAW Committee, which was alarmed in several occasions over restrictions on the work of human rights defenders and the various forms of harassment, intimidation, violence that they and their relatives face, as well as various other forms of retribution for their civic engagement.

Reservations: Iraq was the only country that initially had reservations to the Arab Charter, which was then lifted. Arab States that made reservations to the CEDAW Convention and other international human rights treaties did not make reservations to the Arab Charter. The Chapter argues that this is simply because the text of the Arab Charter is drafted in a way that largely mirrors the areas of reservations entered by Arab States; therefore, there is no need for entering reservations to the Arab Charter. Chapter 14 notes that the AHRC has welcomed ratification of international human rights treaties, including the CEDAW Convention, and has applauded the relevant States when they lift their respective reservations to international treaties. Very few Arab States, such as Palestine, did not enter any reservations when they became party to human rights treaties. Some Arab States, such as Tunisia, withdrew their reservations to the CEDAW Convention following political change and extensive pressure by the human rights movement that specifically advocated for lifting these reservations in these countries.

Conclusions

Chapter 14 concludes by highlighting that the Arab system is unique in that its regional Charter references religion-based legal systems and allows for domestic laws to inform how the Charter is to be interpreted. To redress that, and considering that the Arab Charter makes reference to international treaties, the AHRC must consistently reference and interpret the Charter in line with international law. Through reviewing the work of the AHRC, it is clear that the AHRC has made some strides in advancing gender equality. However, it could enhance its role to advance gender equality by requiring the systematic review and reforms of laws and practices in Arab countries. The AHRC must continue to engage with civil society organizations (CSOs) that are playing an important role in

analyzing legislation and advocating for legal reform. . Consistently with these efforts, the AHRC needs to address the underlying causes of gender discrimination by taking measures to remedy disadvantage; redress stereotypes, prejudices, harmful practices and violence; increase participation by women; and transform structures.