

Introduction

The League of Arab States adopted an Arab Human Rights Charter in 1994 but it never came into force. The Council of the League of Arab States adopted resolutions in 2002 and 2003 to “modernize” the 1994 Charter through the Arab Standing Committee on Human Rights.¹ A process of consultation with Member States, independent experts and nongovernmental organizations took place. The Arab Charter on Human Rights² was adopted during the 16th Ordinary Session of the Arab Summit which was held on 23 May 2004 in Tunis.³ The 2004 Charter is not in force yet since a sufficient number of Member States has not yet ratified it. According to article 49 of the Charter, seven Member States must ratify it in order for the Charter to enter into force.

¹ Resolutions of the Council of Ministers of the League of Arab States: 6184 March 2002, 6243 September 2002 and 6302/119 (Part II) March 2003 only available in Arabic on www.arableagueonline.org/las/index.jsp, noted in *The Revised Arab Charter on Human Rights: A Step Forward?*, Mervat Rishmawi, 5:3 (2005) pp. 362–3, fn. 4 and 7.

² The Arab Charter on Human Rights will herein be referred to as the Arab Charter or Charter.

³ If otherwise not referenced the information included in this fact sheet can be found in the English version of the Arab Charter on Human Rights (translation from the Office of the High Commissioner for Human Rights).



The Arab Charter on Human Rights

The Charter in general

The Arab Charter on Human Rights protects civil, cultural, economic, political and social rights. Once the Charter comes into force, States parties undertake to implement and protect such rights and freedoms as: the right of all individuals subject to the State party's jurisdiction to enjoy the rights and freedoms in the Charter without distinction on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability (the right to non-discrimination) (article 3); the right to life (article 5)⁴; freedom from torture (article 8); the right to equality before the law and the equal protection of the law (article 11); the right to privacy (no one is to be subject to arbitrary or unlawful interference with their privacy, family, home or correspondence) (article 21); the right to political participation (article 24); the freedom of movement and residence (article 26); the prohibition of collective expulsions of aliens (article 26); the right to nationality (article 29); the freedom of thought, conscience and religion (article 30); the right to own property (article 31); the right to information and freedom of opinion and expression (article 32); the right to seek, receive and impart information and ideas (article 32); the protection, survival, development and well-being of the child (article 33); the right of workers to enjoy just and favourable work conditions (article 34); the right to join or form trade unions (article 35); the right to an adequate standard of living which includes access to food, clothing, housing, services and the right to a healthy environment (article 38); the right to health (article 39); the right to education (article 41); and the right to participate in cultural activities (article 42). The Charter, moreover, guarantees that anyone whose rights or freedoms recognized within the Charter are violated will have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity (article 23).

Limitations of the rights contained in the Charter

The Charter permits States parties to take measures derogating from their obligations under the Charter in exceptional situations of emergency which threaten the life of the nation (article 4). States parties may only take such measures if they have officially

⁴ As far as death sentences are concerned these may only be imposed on the most serious crimes and pursuant to a final judgment (article 6). Death sentences may be imposed on persons below 18 years of age if so stipulated in the laws in force at the time of commission of the crime. Death sentences may not be imposed on pregnant women prior to delivery or on a nursing mother within two years from the date of her delivery (article 7).





proclaimed such an emergency, where such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on grounds of race, colour, sex, language, religion or social origin. There are, however, provisions within the Charter from which no derogation is permissible such as, for example, the right to life, freedom from torture, freedom from slavery, right to a fair trial and the right to not be imprisoned for being unable to pay a debt arising from a contractual obligation (article 4).

The following two sections consider those obligations in the Charter that are directly and indirectly linked to the right to health. While reading this section, keep in mind the introduction to this folder discussing the linkages between the implementation of various human rights and the specific right to health.

Direct linkages to health

In article 39 of the Charter, States parties recognize 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the right of the citizen to free basic health care services and to have access to medical facilities without

discrimination of any kind'. The States parties are furthermore obliged to take steps to fulfil this obligation by taking such actions as: developing basic health care services and guaranteeing free and easy access to the centres that provide these services regardless of geographical location or economic status; reducing the mortality rate through disease control by prevention and cure; promoting health awareness and health education; suppressing harmful traditional practices; providing basic nutrition and safe drinking water for all; combating environmental pollution and providing proper sanitation systems; and combating smoking and abuse of drugs and psychotropic substances. Moreover, article 40 establishes specific rights for persons with mental or physical disabilities and imposes corresponding obligations on States parties. As far as the right to health is concerned the article establishes that States parties must provide all health services appropriate for persons with disabilities, including rehabilitation with a view to integrating disabled persons into society. Under the same article States parties also undertake to take all necessary measures to curtail the incidence of disabilities including by creating preventive health programmes, raising awareness and providing education.

The Arab Charter contains further provisions which are also directly linked to health such as the obligation of States parties to guarantee that: no one is subjected to physical or psychological torture or to cruel, inhuman, degrading or humiliating treatment (article 8); no one is subjected to medical or scientific experimentation or the use of their organs without their free consent (article 9); all forms of slavery and trafficking in human beings are prohibited (article 10); forced labour, trafficking in human beings for the purposes of prostitution or sexual exploitation, exploitation of the prostitution of others and all other forms of exploitation are prohibited (article 10); and anyone who is arrested or detained has the right to request a medical examination (article 14). Furthermore, States parties must prohibit the exploitation of children in armed conflict (article 10) and all forms of violence or abuse within the family, in particular against women and children (article 33), and ensure that children are protected from economic exploitation and performing any work which is likely to be hazardous, interfere with the child's education or be harmful to the child's health or physical, mental,

spiritual, moral or social development (article 34). In relation to workers' human rights and health, the Charter recognizes the necessity to ensure occupational health and safety standards at the workplace (article 34).

Indirect linkages to health

The fulfilment of the right to health is, furthermore, linked to the protection and implementation of other provisions in the Arab Charter which may have direct or indirect implications on a person's enjoyment of the right to health. These provisions include: the right to life (article 5); the right to enjoy the benefits of scientific progress and its application (article 42); the right to privacy (no one is to be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence) (article 21); the right to information and freedom of opinion and expression (article 32); the right to seek, receive and impart information (article 32); the right to an adequate standard of living including access to food, clothing, housing and services (article 38); the right to a healthy



environment (article 38); and the right to education (article 41). In addition, the Charter enshrines specific rights for certain groups of peoples, for example the Charter requires States parties to give the necessary protection and care for mothers, children, older persons and persons with special needs. It also requires States parties to provide opportunities for the physical and mental development of adolescents and young people (article 33). As far as children are concerned, States parties must take all necessary legislative, administrative and judicial measures to guarantee the protection, survival, development and well-being of the child (article 33). In relation to workers' rights, the Charter recognizes that every worker must enjoy just and favourable conditions of work that ensure appropriate remuneration, regulated working hours, rest and holidays with pay, and the protection of women, children and disabled persons in the place of work (article 34).

The Arab Human Rights Committee

The Committee in general

The Charter, under article 45, establishes the Arab Human Rights Committee. States parties in accordance with article 48 undertake to submit reports on the measures they have taken to give effect to the rights and freedoms recognized in the Charter and on the progress made towards their enjoyment. The Committee will consider the reports in the presence, and with the participation, of the State party in question. The Committee may request additional information relating to the implementation of the Charter. Having considered the report, the Committee will issue final comments and recommendations which will be included in the annual report to the Council of the League of Arab States. It is possible to discern in article 48 that the Committee will have the power to issue general recommendations or comments, similar to those issued by the United Nations human rights treaty bodies, on the Charter in order to clarify State parties' duties with respect to certain provisions and/or suggest approaches to implementing the provisions of the Charter. The reports, final comments and recommendations of the Committee are to be made public and the Committee will ensure wide dissemination of this documentation (article 48).

How can the Committee help in ensuring the right to health?

Once the Committee begins working and the Committee has considered a State party's report, the Committee may highlight in its final comments and recommendations a State party's shortcomings in relation to implementing the right to health and for other directly or indirectly related rights. The Committee may also indicate how the State party should go about correcting these shortcomings. Similarly, in any future general recommendations or comments the Committee may decide to consider States parties' obligations in relation to the right to health and other related rights.



Additional instruments dealing with the right to health

The two African regional human rights instruments, the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child are relevant human rights instruments for those members of the League of Arab States that are also members of the African Union. These two African instruments protect the right to health in articles 16 and 14, respectively.

Eastern Mediterranean Region ratifications

The countries of the Eastern Mediterranean Region that have ratified the Charter are Jordan and Tunisia (as of June 2005).⁵

⁵ See Rishmawi, *supra*, p. 364.