

ARAB CONSTITUTIONAL GUARANTEES
OF CIVIL AND POLITICAL RIGHTS

(A COMPARATIVE ANALYSIS)

FATEH S. AZZAM

**ARAB CONSTITUTIONAL GUARANTEES OF
CIVIL AND POLITICAL RIGHTS**

**ARAB CONSTITUTIONAL GUARANTEES OF
CIVIL AND POLITICAL RIGHTS**

Copyright © 1996 By *FATEH S. AZZAM*
CAIRO INSTITUTE FOR HUMAN RIGHTS STUDIES

Published by Dar El-Mostaqbal Al Arabi
41 Beirut Street, Heliopolis Cairo, Egypt
Tel.: (202) 29 04 727

ISBN 977 - 239 - 111 - 2

Cairo National Library Number: 4930 / 96
Printed in Egypt

To

Every Arab lawyer and every human rights activist who, in spite of painful realists, still believes in the Rule of Law and in a law that respects the dignity of every individual Arab citizen.

F.A.

Acknowledgments

This study began as a dissertation for an LLM in international Human Rights Law at Essex University, Colchester, U.K. It has since gone through many stages and reviews, and sincere thanks are due to all who helped in the effort. Particular thanks are due to Professor Nigel Rodley, Essex University and Bahey El Din Hassan Cairo Institute for Human Rights Studies, for their valuable comments and input. Also appreciated are the efforts of researcher Alaa Qa'oad and the other colleagues at CIHRS for their research assistance efficiency and their patience, especially the center librarian, Mr. Mohammed Hussein.

Fateh S.Azzam

TABEL OF CONTENTS

INTRODUCTION	9
PART I.	
ARAB WORLD BACKGROUND	13
A. Islam, Arabdom and Law	13
B. Contemporary History	16
C. Present Political Realities	18
PART II.	
THE GUARANTEE OF RIGHTS IN ARAB CONSTITUTIONS	25
A. Status of Constitutions	25
B. Recognition of Rights in Constitutions	28
1. Freedom of Opinion and Expression	28
2. Freedom of Association	33
3. Rights to Personal Security and Integrity	38
a) Right to life	38
b) Arrest and detention	41
c) Prohibition of torture	44
4. Legal rights	47
a) Equality before the law	47
b) Presumption of innocence	51
c) Right to defence	52
d) Right to a fair trial	55
e) Right to judicial remedy and appeal	58

PART III.	
THE IMPLEMENTATION OF	
CONSTITUTIONAL GUARANTEES.	65
A. Judicial Oversight.	65
B. Power of the Executive	71
C. States of Emergency.	73
D. In Accordance with the Law: The Legislative	
Regulation of Rights	76
1. Freedom of Opinion and Expression	77
- Country study: Egypt	79
2. Exceptional Courts	84
- Country study: Syria; a dual legal system	85
 PART IV.	
INTERNATIONAL AND REGIONAL	
COMMITMENTS	97
A. Arab States' Commitments to Multilateral	
Human Rights Treaties.	97
B. Regional Commitments.	103
 CONCLUSIONS	111
APPENDICES	115
Bibliography	119

INTRODUCTION

It is indeed a daunting task, to attempt to discuss the Arab World as a whole; a region which includes more than 210 million people⁽¹⁾, living in twenty countries sprawled across two continents from the Arabian Gulf across the Red Sea and North Africa to the Atlantic Ocean⁽²⁾. The Arab people, however, share a common history, religion, language and culture, together creating a powerful sense of common identity which has survived the upheavals and convulsions of fifteen centuries. This commonality of identity continues to be a compelling factor in Arab politics today - in spite of incessant inter-Arab conflict - and provides several common denominators which, added to the close economic and political inter-dependence in the region, serve as bases for the following discussions.

One quick perusal of the reports of Arab and international human rights organizations reveals that the human rights of the individual Arab citizen today are in a sorry state indeed⁽³⁾. These reports beg the question: why?

The answer would undoubtedly require volumes, especially in the attempt to understand and explain a complexity of political, cultural and historic as well as legal factors. A modest research paper such as this one can only hope to provide a beginning.

This research began as an attempt to look into the Arab States' protection of their citizens' civil and political rights as enunciated and standardized by the International Covenant on Civil and Political Rights⁽⁴⁾. The immensity of the topic, however, necessitated its limitation to the Arab constitutional guarantees of those rights and the consistency of such guarantees with the ICCPR's standards. Soon thereafter, the scope of the paper needed to be further limited to some of the civil and political rights, rather than a comprehensive look at all such rights.

Part of the reason for this further limitation is that it quickly became evident that a theoretical look at Arab constitutional guarantees alone is deceptive; one cannot understand the status of rights without at least a brief look at the operation of those guarantees and their implementation within States. Consequently, this paper can best be described as an overview of the recognition and formal acceptance of civil and political rights in Arab constitutions, with necessary attention paid to the factors that affect the enjoyment and exercise of those rights by Arab citizens.

The paper begins with Part I, a background chapter which sets out as briefly as possible the history of the Arab world, focusing on providing the necessary context for the discussions that follow. Part II is a comparative overview of the Arab constitutional guarantees of some fundamental civil and political rights. Some important rights were excluded from this discussion, such as the right to take part in the conduct of public affairs and the right to vote and be elected⁽⁵⁾. As the section on present political realities in Part I will reveal, the discussion of those rights would be too specific to each individual country and so complex as to make their proper treatment in this study impractical.

Part III looks at implementation problems, including judicial oversight and the result of the legislative regulation of rights. Also included is a look at other important factors that have a serious effect on those rights, such as the frequent and persistent imposition of states of emergency and the power of the executive in most of the political regimes of the region. Finally, Part IV adds a few comments about Arab States' commitments under international and regional human rights instruments.

It is hoped that this study will at least provide a perspective on the issues under discussion - rather than a definitive and comprehensive analysis - which may serve as a basis for direly-needed future action aimed at the amelioration of the human rights situation in an increasingly sensitive and central area in the world. The study hopes to

identify the main problems affecting Arab human rights, pointing the way to where further research and understanding is needed.

-
- (1) The Economist, *Book of Vital World Statistics*, (London: The Economist Books, 1990), p. 17. For a breakdown of the populations of each country and other significant statistics, see Appendix A.
 - (2) Members of the League of Arab States are: Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the United Arab Emirates and Yemen. For the purposes of this study, Palestine and the human rights of Palestinians under Israeli occupation will not be considered.
 - (3) See, for example, Arab Organization for Human Rights annual reports (in Arabic), Amnesty International world reports, and relevant sections of Article 19 Bulletins. Several of these as well as special reports on individual Arab countries are included in the appended bibliography.
 - (4) Ratified by the General Assembly in Resn. 2200 A (XXI) of 16 December 1966 and entered into force on 23 March 1976. Hereinafter the ICCPR or the Covenant.
 - (5) ICCPR art. 25.

PART I.

ARAB WORLD BACKGROUND

A. ISLAM, ARABDOM AND LAW

The roots of the commonality referred to in the introduction lie in the rise of Islam as a social and intellectual renaissance in the seventh-century tribal Arabia of the Peninsula⁽⁶⁾. As Islam rapidly spread, so did the Arabic language, with the Holy Qur'an - the Word of God as revealed to His Prophet Mohammed - providing its essential linguistic principles⁽⁷⁾, and spreading Arab tribal traditions and values, amended forever by Islam's concepts of the unity of creation, of law, and of civil society, and detailing the place and role of the individual within that society⁽⁸⁾.

It was not long after the death of the Prophet Mohammed, however, that the interplay - and at times confusion - between the divinely inspired concepts of life and of society and the political struggles for power and control of the Umma (the Nation) began⁽⁹⁾. These struggles resulted in the creation of various interpretations

of Islam and several schools of Islamic jurisprudence, carrying different interpretations and adaptations of these concepts⁽¹⁰⁾

For over a thousand years caliphates came and caliphates went, each governing the Islamic world with its own brand of synthesis of the spiritual and the temporal, each basing its own legitimacy on the Holy Qur'an and the Sunna (The delineated Path) of the Prophet. The last of these was the Ottoman Turkish empire, also Islamic, which had conquered most of the Arab world in the early Sixteenth Century.

By the middle of the Nineteenth Century, the Ottoman Empire, under pressure from the wave of European reform and in response to popular demand for similar reform within its domain, began to secularize its law. Concepts adopted from the French Napoleonic Code - such as personal liberty, the sanctity of private property, equality before the law and non-discrimination - were legally recognized for the first time in the First Constitutional Document of 1839. The Ottoman Penal Law of 1840 was based on a combination of Shari'a, French and Italian principles. These laws were applied in all of the Arab regions under Ottoman control, and formed the first basis of the legal systems of the contemporary Arab States⁽¹¹⁾.

In spite of this common history, the legal systems in the Arab countries today are not uniform or identical. They

are in some ways the result of each particular country's search for an appropriate synthesis: of secular law required to meet the needs of modern society, and divinely-inspired Islamic Shari'a law, closely intertwined with the very identity and sense of being of the Arab world, but a law which had effectively ceased to develop with the closure of the gates of Ijtihad around the Tenth Century⁽¹²⁾.

The juxtaposition of Islamic and secular law in the Arab world is beyond the scope of this paper, but these two sets of laws continue to derive from and depend on each other to a great extent. It is important to note that the Constitution of Lebanon is the only Arab constitution that does not formally acknowledge that Islam is the religion of the State. Furthermore, in Egypt and the Gulf countries (with the exception of Iraq), Islamic Shari'a and jurisprudence are considered the main or primary source of legislation, with slight variations as to whether it is "a" primary or "the" primary source.

Most Arab legal systems today demonstrate the influences of Ottoman law, the European family of laws and Islamic Shari'a. The introduction of the Egyptian Civil Code was "heralded as the harbinger of a uniform Arab Civil Code" and for containing nothing "un-Islamic" and indeed was adopted with few variations in several Arab countries⁽¹³⁾. Some systems are today well developed such as those of Egypt, Iraq, Syria and Tunisia, and tend to be closer approximations of the European laws - especially the

French legal system. The more traditionalist countries have tended to steer a course closer to traditional Islamic principles, interpreting them in their own fashion in accordance with their own purposes; as is the case in the monarchial Gulf States⁽¹⁴⁾.

B. CONTEMPORARY HISTORY

With the collapse of the Ottoman Empire at the end of the First World War, the Arabs found themselves seriously and dangerously divided by colonial powers seeking to extend their spheres of influence. Consistently with the *modus operandi* of those colonial powers, borders were drawn and the concept of the nation-state that had begun to take hold in the Middle East and North Africa during the late nineteenth century was confirmed⁽¹⁵⁾.

By the end of the Second World War, the contemporary sense of Arab identity found its strongest expression in Arab nationalism and unity in the struggle to be free of colonialism⁽¹⁶⁾. There was little discussion of human rights at the time, but as in the rest of the Third World, there was a sense of hope in the achievement of the right to self-determination. It was a time of liberation and anti-colonialism⁽¹⁷⁾; a time for progress and a time of promised renaissance for the Arabs. One by one the Arab countries gained their independence, and as they did so, constitutions and basic legislation were written and developed. The Arab world divided into two main patterns of organization to meet the challenges of the new era: a

secularist approach which focused on development, education and modernization, with socialism and nationalism as economic and political unifiers in at least half of the countries of the Middle East and North Africa⁽¹⁸⁾. The other approach, adopted primarily in the countries of the Gulf, was a traditionalist one emphasizing invariably Islamic values and traditional political structures through which the process of development and progress was to be achieved⁽¹⁹⁾.

By 1967, the year of the Arabs' catastrophic defeat in the six-day war with Israel, the promise of the forties and fifties had already soured. In fact, the situation had deteriorated significantly on all levels of social, economic and political life. While blaming the legacy of colonialism, the Union of Arab Jurists described the state of affairs in the Arab world fifteen years ago in the following words:

[C] losed minds, tribal systems, economic and social backwardness which has retarded evolution and development, artificial political division leading to the establishment of petty states unable to achieve development in any field, internal problems which from time to time explode in the form of civil war, conflicts among certain regimes and rulers which sometimes give rise to bloody confrontations, the closure of boundaries and the aggravation of relations between Arab states⁽²⁰⁾.

Arab leadership, political systems and ideologies are today perceived to have failed to deliver on any of their promises, so that today "[t]here is a pervasive feeling of failure throughout, including the failure at reproducing what was successful elsewhere."⁽²¹⁾ This has led to a situation of extreme instability and indeed crisis in most Arab States, engendered not only by the failure of development, but by the lack of democracy and the repressive nature of the ruling regimes throughout nearly all of the Arab countries⁽²²⁾.

Coups d'état and sudden changes of government are not rare occurrences in Arab countries. Many of the constitutions have reflected this instability, being promulgated, revised, re-written, suspended and reinstated several times in the space of two decades.

C. PRESENT POLITICAL REALITIES.

Of the twenty Arab countries, eight are monarchies with a King, Emir or Sultan wielding absolute or near absolute authority over the affairs of his realm⁽²³⁾. This is true even when a particular kingdom has a constitution, as is the case in all but Saudi Arabia and Oman⁽²⁴⁾. In kingdoms where government is parliamentary, as in Jordan and Morocco for example, various legislative and executive privileges are given to the subsidiary bodies of government, but the King has the power and the final prerogative to decree and/or to ratify governmental decisions; including the power to dissolve the government by royal decision.

Five states are still formally organized along one-party systems, espousing nationalist-socialist ideology⁽²⁵⁾. Except for Algeria in its very recent history, the remaining states have a strong executive leadership in the form of a President who wields extraordinary power, within the one ruling party and through it in the country as a whole; powers which are not substantively different from - and sometimes are even greater than - those of an absolute monarch⁽²⁶⁾.

Five states are non-monarchical republics which espouse democratic multi-party systems, at least in theory and structure⁽²⁷⁾. A closer look at those states, however, belies the weakness of those democracies. While several parties are legally registered in Egypt, for example, effective political power has been in the hands of one party, the National Democratic Party, since 1980⁽²⁸⁾. The Lebanese government is only now regaining some of its control of the country after a bloody 15-year civil war that has become a synonym for chaos and brutality. The Arab Republic of Yemen is still finding its footing after the re-unification of its Northern and Southern parts in 1989, and its breakdown a few years later in a short but broad civil war which reaffirmed that reunification. Mauritania's multi-party system created by its new Constitution is less than three years old.

The Sudan has suffered three different regimes and three constitutions since June 1986⁽²⁹⁾. At present, the

Constitution is suspended and Sudan is now operating as an Islamic State applying some of the most rigid and narrow interpretations of Islamic Shari'a law.

Most of the Arab states, with the exception of Lebanon and Algeria, continue to suffer from the President/King-for-life syndrome. Tunisia only recently deposed Habib Bourguiba and abolished the President for Life provision in its constitution⁽³⁰⁾.

The regimes of many Arab countries came to power through a coup d'état, and the threat of further coups d'état are ever present. Attempts are periodically uncovered, leading to mass trials, executions, and purges in the army and government. Serious armed opposition and periodic insurrections are occurring, to varying degrees of intensity and duration, in Algeria, Djibouti, Egypt, Iraq, Lebanon, Mauritania, Sudan, Syria and Tunisia - not to mention the recent Iraqi occupation of Kuwait and the resultant multi-national war that has completely re-drawn the political map of the region. Central authority in Somalia, on the other hand, has completely desintegrated, and the country, even as famine was killing people daily by the hundreds during the most difficult period of the civil war, continues to be at the mercy of warlords controlling different parts of the country.

Situations of such extreme instability make difficult a normal and proper functioning of the institutions of

government or a rigorous implementation of constitutional principles and human rights guarantees. When societal mechanisms in all fields become extremely unpredictable and uncertain, the generally accepted norms of behavior, let alone a logical assessment of conditions, also become unpredictable. Muhammad Guessous, a Moroccan professor of sociology, aptly described such unpredictability:

What makes life possible, what makes rational behavior possible, what makes it possible for us to cope with events, to suffer and endure them ... is the fact that you are normally used to dealing with somewhat determinate situations. You go to a barber, you see him holding a knife; but you don't expect the barber to slit your throat just like that⁽³¹⁾.

(6) See Tareq al-Khudairy, "*Athar al-hadhara al-islamiyya fi tatawwor mawdou' huquq al-insan: nathra tarikhiya* [The Influence of Arab Islamic Civilization on the Development of Human Rights: A Historical Perspective]" in Arab Organization for Human Rights (hereinafter AOHR), *al-i'lan al-'alami lihuquq al-insan wa ahwal al-watan al-arabi* [The Universal Declaration of Human Rights and the Status of the Arab World], Thought Forum Series No. 1 (Cairo: Dar al-Mustaqbal al-Arabi, 1989) p. 47.

(7) al-Khudairy, Id.

(8) For a legal discussion of pre-Islamic Arab society, see Subhi Mahmasani, *Al-awda' al-tashri'iyya fil duwal al-'arabiya: madheeha wa hadhiriha* [Legal Systems in the Arab States: Past and Present]

Fourth Edition, (Beirut: Dar al-'Ilm Lilmalayeen, 1981) pp.15-79.

- (9) al-Khudairy, *Supra* note 6, p. 48.
- (10) A major division in A.D. 661 created *Shi'a* and *Sunni* Islam, and the latter eventually developed four separate jurisprudential schools: the *Hanafi*, *Maliki*, *Shafi'i* and *Hanbali* schools. See Barton, Gibbs, Hadi and Merryman, *Law in Radically Different Cultures*, (St. Paul, Minnesota: West Publishing Co., 1983) Chart I., p. 20. For a thorough discussion of the development of Islamic jurisprudence, See Mahmasani, *Supra* note 8, pp. 89-140.
- (11) Mahmasani, *Supra* note 8, pp. 180-95.
- (12) Gamal Moursi Badr, "Islamic law and the Challenges of Modern Times" in Piscatori et. al., eds., *Law, Personalities and Politics of the Middle East*; (Boulder and Washington: Westview Press, 1989) pp. 27-34. Ijtihad is "the maximum effort expended by the jurist to master and apply the principles of *usul al-fiqh* (legal theory) for the purpose of discovering God's law." In other words, legal scholarship needed to continue the development of Islamic law. See Wael B. Hallaq, "Was the Gate of *Ijtihad* Closed?" in 16 *Int'l J'l of Middle East Stds.* (1984) p. 3.
- (13) Badr, *Id.* p. 33.
- (14) Sayyed Hassan Amin, *Middle East Legal Systems*, (Glasgow: Royston, 1985) p. 1.
- (15) For example, soon after the First World War, the secret Sykes-Picot agreement of 1916 between France and England came to light, dividing the Arab Middle East into respective spheres of influence. In 1920, the League of Nations formalized the arrangement by giving France and England mandates over Syria/Lebanon, and Iraq/Palestine/Transjordan respectively. See Mahmasani, *Supra* note 8, p. 213.
- (16) It was not until 1971, however, that the British finally left their

last outpost in Bahrain and Aden, while the French fought a bitter war against Algerian independence up until the sixties. See Hourani, *A History of the Arab Peoples*; (London: Faber and Faber, 1991) Chapter 21, pp. 353-69.

- (17) See Anabtawi, *Al-insan qadiyya wahuquq* [The Human Being: Rights and a Cause]; (Tunisia: Arab Organization for Human Rights, 1991) p. 97-8.
- (18) Kevin Dwyer, *Arab Voices: The Human Rights Debate in the Middle East*; (London: Routledge, 1991), p. 214.
- (19) Mansour Farhang, "Fundamentalism and Civil Rights in Contemporary Middle Eastern Politics" in Leroy S. Rouner, ed., *Human Rights and the World's Religions*; (Notre Dame: Univ. of Notre Dame Press, 1988) p. 65.
- (20) Union of Arab Jurists, "Memorandum on Human Rights and Fundamental Freedoms in the Arab Homeland" in 3-4 *Al-Hukuki Al-Arabi* (Baghdad: UAJ, 1979). p. 58-9.
- (21) Dwyer, *Supra* note 18, p. 23. See also Halim Barakat, *Al-Dimuqratiya wal 'Adala al-Ijtima'iyah* [Democracy and Social Justice] (Ramallah: Muwatin-Palestinian Institute for the Study of Democracy, 1995); see in particular Chapter 5, "Arab Regimes: The Absence of Both Freedom and Social Justice: pp. 79-110.
- (22) For a more elaborate discussion by Arab academics of these issues, see Dwyer, *Supra* note 18, pp. 15-29.
- (23) Bahrain, Jordan, Kuwait, Morocco, Oman, Qatar, Saudi Arabia and the United Arab Emirates.
- (24) In March 1992, King Fahd of Saudi Arabia promulgated a new Basic Law -a form of constitution. To date, however, it is not clear whether this Basic Law enjoys the same scope of authority as a constitution in the proper or commonly understood sense of the word.
- (25) Algeria, Djibouti, Iraq, Libya and Syria.

(26) Due to lack of available information, it is not known whether Djibouti suffers from the same problem of a strong executive, therefore it cannot be confidently included here.

(27) Egypt, Lebanon, Mauritania, Tunisia and Yemen.

(28) In fact, the National Democratic Party was single-handedly created by the late President Anwar Sadat in 1980 after dissolving the previous ruling party which had been in power under President Gamal Abdel-Nasser since the military coup which brought him to power in 1952.

(29) See Sudan's report to the Human Rights Committee, U.N. Doc. CCPR/C/45/Add.3, p. 1.

(30) AOHR 1988 Report, p. 42, also AOHR 1989 Report, p. 46.

(31) Quoted in Dwyer, *Supra* note 18, p. 20.

PART II.

THE PROTECTION OF RIGHTS IN ARAB CONSTITUTIONS

A. THE STATUS OF ARAB CONSTITUTIONS⁽³²⁾

All but one of the twenty Arab States, irrespective of their political systems, now have constitutions or Basic Laws which define in varying degrees of detail their fundamental aims, the principles and systems of governmental organization, as well as the rights, liberties and duties of their citizenry. Four of the constitutions have been promulgated since the beginning of the present decade⁽³³⁾.

Only one state does not have a constitution as such, the traditionalist Sultanate of Oman, which takes the position that the Qur'an is the divine source of all rights and duties in Islamic society, codified and defined in Islamic Shari'a law. Consequently, the determination and guarantees of civil and political rights is dependent upon the interpretations of Islamic Shari'a provisions pertaining to those rights. This continues to be the case in Saudi Arabia

even after the promulgation of its new Basic Law in March 1992 by King Fahd. The Basic Law contains the simple provision in art. 26 that "The State protects human rights in accordance with the Islamic Shari'a," but continues to delineate a few of those rights in subsequent provisions.

Libya followed suit from the opposite political spectrum when in March 1977 it replaced its 1969 Constitution with a Declaration on the Establishment of the Authority of the People, which affirmed the Qur'an as the Constitution of the Land, and vowed the People's "total commitment to blocking the way in face of all forms of traditional instruments of government."⁽³⁴⁾ In June 1988, the People's General Congress passed *The Great Green Charter of Human Rights of the Jamahiriyan Era*. This Green Charter is unique in the annals of human rights protective instruments, and requires a special study, but most importantly the set of principles it does contain are intended to be legally enforceable. Article 26 of the Green Charter states that:

The members of the Jamahiriyan society are committed to the bases laid out by this Charter. They shall not permit that it be violated and they shall refrain from committing any act conflicting with the principles and rights it guarantees. Each member is entitled to plead his case before a court of law to request legal redress against any violating of the rights and liberties set forth

in this Charter⁽³⁵⁾.

Accordingly, Law No. 5 of 1991 was passed, art. 1 of which ordered the amendment of legislation previous to the Green Charter's passage "to accord with the principles of this Charter" and prohibited "the passage of legislation that contradict those principles."⁽³⁶⁾

Article 2 of Djibouti's Constitutional Law No. 1 simply stated that the Republic "adheres to the Universal Declaration of the Rights of Man ... [and] affirms the necessity of establishing a political order where the rights and liberties ... may have full force."⁽³⁷⁾ Until recently, Mauritania also had a briefly worded constitutional act the preamble of which proclaimed the intention to "adhere to the principles consecrated by the Universal Declaration of the Rights of Man."⁽³⁸⁾ In 1991 the country declared its first Constitution which added a commitment to the African Charter for Human and People's Rights, and contained more detailed protection of basic human rights⁽³⁹⁾.

The remaining Arab states have constitutions which include chapters that cover basic rights and fundamental liberties of their citizens. The only exceptions are the Moroccan and Tunisian Constitutions which include civil and political rights under a introductory "General Provisions" chapter, but covers them in substantively similar manner to other constitutions. Additionally, nearly all Arab constitutions contain provisions delineating the

duties and obligations of citizens, some more extensively than others. These provisions will not be considered in this paper.

As we shall see, however, serious limitations are placed on the enjoyment of human rights by the constitutional guarantees themselves, by penal and civil codes which regulate and limit them, by the lack of effective and independent judicial oversight, and by the near absolute power of the executive over the affairs of the legislative and judicial branches of government.

B. THE RECOGNITION OF CIVIL AND POLITICAL RIGHTS IN ARAB CONSTITUTIONS.

Most human rights and fundamental freedoms, with a few notable exceptions, are protected in Arab constitutions in varying levels and degrees of detail. According to Anabtawi, however, human rights most in need of attention are prioritized as follows: the right to life, the prevention of torture and other protections of the right to personal safety and security, and the promotion and protection of the freedom of opinion and expression, as well as freedom of association and assembly⁽⁴⁰⁾. Those rights, chosen for the following discussion, are used as illustrative examples of the approaches that Arab constitutions have taken.

1. Freedom of Opinion and Expression

As in the ICCPR, most Arab constitutions

differentiate between the right to hold opinion and that of expressing it. While the constitutions differ in their treatment, language and the limitations imposed on those rights, they do have one thing in common: their guarantees of the freedom of both opinion and expression fall below the accepted standards as articulated in the Covenant; certainly in spirit if not in letter as well, in the majority of those constitutional provisions.

The first feature to note is that only seven out of the fifteen Arab States' constitutions provide for an unfettered guarantee of the freedom of thought or opinion:⁽⁴¹⁾ Algeria (art.39), Bahrain (art. 23), Egypt (art.47), Jordan (art. 15), Kuwait (art. 36), Mauritania (art. 10), and Sudan (art. 48). The Bahraini and Egyptian Constitutions add the freedom to conduct scientific research to the general freedom of opinion.

The constitutions of Iraq, Morocco, Tunisia, the United Arab Emirates and Yemen subject the right to hold opinions to legal limitation and regulation. Article 8 of the Tunisian Constitution, for example, restricts the exercise of the freedom of opinion, along with that of expression, the press, publication, assembly and association, to "the conditions defined by law," without further elaboration of the nature of any of those rights or of the criteria by which law is to regulate them. A similar restriction is found in the new Yemeni Constitution (art. 26)⁽⁴²⁾, and the Constitution of the Emirates (art. 30). This is in contrast to the clarity of

art. 9.1 of the Covenant which states that "everyone shall have the right to hold opinions without interference." It is important to note that the word "interference" is not preceded by qualifications such as 'arbitrary' or 'unlawful', and is therefore more absolute in its scope, disallowing any interference by public authorities or private citizens⁽⁴³⁾.

It is not clear whether the legal regulation of the freedom to hold opinions in Arab constitutions is intentionally placed to allow the authorities a margin of control of that freedom, or whether it is more due to the lack of clarity in lumping or grouping together a number of rights as we saw in the Tunisian example above. There is probably an element of truth in both these possibilities, leading one to conclude that the probable intention of States was to guarantee this and other rights as a matter of principle but without thorough and precise definition, and to entrust the regulation of those rights to laws which are amended and re-drafted and promulgated much more easily than constitutions are.

All Arab constitutions guarantee freedom of expression, usually in one simple phrase and with rare elaboration of the scope of that freedom. They all condition this freedom and regulate it by law, using a variety of formulae. Thus we find that in most constitutions, the freedom of expression is guaranteed "within the limits of the law," "in accordance with the law," or "within the conditions clarified by law." The Constitution of Qatar

stands out in that the rights to freedom of opinion and expression are not even mentioned, but the "freedom of publication and the press" are, and "shall be guaranteed in accordance with the law" (art. 13).

The International Covenant on Civil and Political Rights recognizes in art. 19.3 that freedom of expression is a right which "carries with it special duties and responsibilities." The article proceeds to allow for:

certain restrictions, but those shall only be such as are provided by law and are necessary:

- a) For respect of the rights and reputations of others;
- b) For the protection of national security or of public order (*ordre public*), or public health or morals.

The Arab constitutional provisions contain none of the restrictions allowed for by art. 19.3 of the Covenant. Rather, the limitations they impose seem to focus more on the broader concepts of "special duties and responsibilities" in the exercise of that freedom. For example, art. 38 of the Syrian Constitution, while providing for every citizen's right to "freely and openly express his views in words, in writing, and through all the other means of expression," states that:

constructive criticism [is to be conducted in a manner] that will safeguard the soundness of the domestic and nationalist structure and will

strengthen the socialist system.

Similarly, the Iraqi Constitution's article 26, again while guaranteeing a number of freedoms in one provision, including freedom of expression, stipulates that the practice of these freedoms be "in line with the nationalist and progressive line of the revolution." Apart from the evident limitation the above imposes on the freedom to criticize the socialist system, or the expression of views inconsistent with the "progressive line of the revolution," such formulations are so broad as to be easily abused by law-makers or a strong executive.

The most severe restrictions, however, are found in the new Saudi Basic Law, which states in art. 39 that:

The media of information and publication and all means of expression shall commit themselves to the good word and to the laws of the State. They shall contribute to the education of the nation and support its unity. All that leads to disputes or division, or threatens the security of the State or its public relations or does harm to a person's dignity and his rights shall be forbidden, as clarified by the law⁽⁴⁴⁾.

By contrast, article 5 of the Libyan Green Charter provides a novel formulation. It bans "clandestine action, resorting to force in all its forms, violence, terrorism and sabotage" and affirms:

The sovereignty of the individual within the Main Popular Congress, guaranteeing him the right to publicly express his opinion and in the open air. They [the masses] reject violence as a means to impose ideas and opinions, and adopt democratic dialogue as the one and only method of debate...

The important phrase here of course is "within the Main Popular Congress." Accordingly, it is unclear whether the individual has any "sovereignty" outside this Congress, and consequently, whether any guarantees of his right of expression extend beyond the meeting halls. It remains entirely possible that, criticisms of the Congresses themselves may be understood as a form of "sabotage" of the Jamahiriyan ideal.

2. Freedom of Association.

Article 22 of the International Covenant on Civil and Political Rights guarantees the freedom to associate with others, and specifically includes the right to form trade unions. Limitations and restrictions on this freedom are framed in the negative, so that :

No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public

order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

The guarantee of freedom of association is covered in all Arab constitutions, with the exception of Qatar's Constitution and the Basic Law of Saudi Arabia, which are completely silent on the issue. The definition, and seemingly, the very concept of "association" differs from one constitution to the next. For example, a general reference to the right to form or establish societies or associations is found in nearly all the constitutions: Algeria (art.39), Bahrain (art. 27), Egypt (art. 55), Iraq (art. 26), Jordan (art. 16), Kuwait (art. 43), Lebanon (art. 13), Mauritania (art. 10), Morocco (art. 9), Somalia (art. 12), Sudan (art. 51), Syria (art. 48), Tunisia (art. 8), the Emirates (art. 33) and Yemen (art. 39).

The constitutions of Algeria (art. 40), Iraq (art. 26), Jordan (art. 16), Mauritania (arts. 10, 11), Morocco (art. 9) and Yemen (art. 39) specifically add the right to form political parties (or societies of a 'political nature') as part of the guarantee of freedom of association, whilst eleven constitutions further guarantee the right to form "syndicates" and/or trade unions; those of Algeria (art. 53), Bahrain (art. 27), Egypt (art. 56), Iraq (art. 26), Kuwait (art. 43), Mauritania (art. 10), Morocco (art. 9), Sudan (art. 51), Syria (art. 48), Tunisia (art. 8) and Yemen (art. 39). Lastly, the Libyan Green Charter's art. 6 guarantees the

right "to form associations, trade unions and leagues in order to defend their professional interests."

Article 22 of the International Covenant simply guarantees the "freedom of association with others," which may include the right to form organizations or parties of a political nature. Article 25 more specifically guarantees "without unreasonable restrictions" the right to "take part in the conduct of public affairs, directly or through freely chosen representatives" (25a), and in art. 25b, "to vote and be elected." Thus in the Covenant the two rights of civil and political association are subsumed within art. 22, while the more specific right of political participation in the conduct of public affairs is guaranteed as additional and separate right under article 25 of the Covenant..

Arab constitutional provisions tend to elaborate more specifically the freedom of association, adding certain limitations as to result in much narrower restrictions than those made possible by the Covenant. For example, according to the official translation of the Jordanian Constitution, Article 16 guarantees the right :

to form societies and political parties provided their objectives are lawful, their means are peaceful, and their internal regulations do not contravene the provisions of the constitution⁽⁴⁵⁾.

Similarly, the Bahraini Constitution conditions the

guarantee of freedom of association on its being "on a patriotic foundation and for lawful objectives and by peaceful means."⁽⁴⁶⁾ This clearly opens the way for governmental interference with or even closure of associations which may be seen by the authorities as "unpatriotic," defined as less than fully loyal to the government.

The Iraqi Constitution, on the other hand, adds a more specific and dangerous coda to its guarantee of freedom of association - along with other rights - which is that "[t]he State aims to ensure the considerations necessary for the exercise of those liberties which are in harmony with the nationalist and progressive line of the revolution."⁽⁴⁷⁾ Article 39 of the Algerian Constitution simply guarantees freedom of association, but article 40 further recognizes the "right to establish associations of a political character", while stipulating that this right "may not be invoked against fundamental liberties, national unity, territorial integrity, the independence of the country and the sovereignty of the people."

While the Egyptian Constitution guarantees the right to form associations, it prohibits the "establishment of societies whose activities are hostile to the social system, clandestine or have a military character." (Art. 55). With respect to syndicates and trade unions, it goes even further to charge them with the responsibility to participate in "implementing the social programs and plans ...[and]

consolidating socialist behaviour among their members." (Art. 56).

All of the constitutions defer the regulation of the freedom of association - in all its formulations - to the law, either by a brief reference (for example, "within the law") or by detailing more clearly the function of legislation as regulating "the formation of societies and political parties and oversight of their resources" (Jordan, art. 16 para. 3). The Syrian Constitution's article 48 states that the law shall determine "the framework of associations, their relations, and the scope of their activities."

One may conclude from the above that Arab constitutions guarantee freedom of association in a two-tiered fashion. Firstly, the right to form "societies" and/or "associations" - understood as social and/or professional but definitely not political - is guaranteed with little reservation. The right to form and join trade unions, for example, is specifically granted in several of the constitutions. When it comes to associations involved in political activity, however, restrictions are placed on this right, limiting the freedom to join organizations that may be perceived as a threat to "public order and national security" as perceived by the State. In Arabic, the language used in the formulation of those restrictions is overly broad and easily interpretable; in other words, not precise enough for clear and legally definable concepts that can be referred to in the regulation or adjudication of rights and responsibilities.

On the other hand, the language in the Covenant is not so strictly clear either; particularly the phrase "necessary in a democratic society" (art. 22.2), which is a very elastic and debatable concept.

3. Right to Personal Security and Integrity

a) The right to life

Article 6.1 of the ICCPR considers the right to life "inherent" and asserts that "[t]his right shall be protected by law." While allowing in principle for States Parties to continue to implement the death penalty, the Covenant places strict limitations on its use (arts. 6.2 and 6.5) and encourages its abolition (art. 6.6).

Not one Arab constitution guarantees the right to life. The complete absence of other constitutional provisions that limit the use of the death penalty - such as when the accused is under 18 or pregnant (ICCPR art. 6.5), would suggest that the authors of Arab constitutions either took this right for granted or chose to bypass it altogether under the assumption that the state indeed has the right to use capital punishment.

It is safe to conclude that the second possibility is more likely, since the only related reference is to the granting of amnesty or pardon, covered in art. 6.4 of the Covenant which stipulates that the sentenced person has "the right to seek pardon or commutation of the sentences."

Nearly all Arab constitutions specifically accord to the Head of State the authority to grant individual pardon or amnesty. Only the Libyan Green Charter, however, expressly states that "a person upon whom a capital punishment sentence has been passed may request a mitigation of his sentence or he may, to preserve his life, offer compensation." (art. 8). The same article goes on to define and condemn the various methods of capital punishment, including "execution by inhuman means such as the electric chair, injections and poisonous gasses." No other Arab constitution or law discusses capital punishment thus.

Another interesting article to note is art. 33 of the Yemeni Constitution, which states that "no cruel or degrading means may be used in executing penalties and no laws permitting such means may be enacted." Read in isolation, it is of course not clear whether this article also covers the death penalty, and whether it can be invoked to argue that any form of execution constitutes a "cruel and degrading" means of punishment. A look at the relevant laws will be necessary to find an answer. It is important to note that this text is weaker than the constitutional text applicable prior to the last amendment on 28 September 1994. The old text prohibited "the use of inhuman means of implementing penalties" and included the phrase "no laws may be passed that allow such means."

A browse through the sections on Arab countries in Amnesty International's 1992 Report and the reports of

other international human rights organizations reveals that the death penalty is in active use in nearly all of the Arab countries. By the year 1987 in Iraq, for example, 29 offences had been made punishable by death, a rare and unparalleled number, including membership in or propagation of Masonic principles, "attempting to jeopardize the military, political or economic situation of Iraq,"⁽⁴⁸⁾ or insulting "in an inciteful fashion" the President of the Republic, the government or the ruling Ba'ath Party.⁽⁴⁹⁾ In the Sudan, the new Penal Law of 1991 prescribes the death penalty for such offences as adultery, homosexuality, rape and prostitution.⁽⁵⁰⁾ In 1991, 365 individuals were sentenced to death in Arab Countries, and at least 72 executions took place.⁽⁵¹⁾

Such broad criminalizations are inconsistent with the Covenant's restrictions on the imposition of the death penalty "only for the most serious crimes ... and not contrary to the provisions of the present Covenant..." (art. 6.2).

Finally, the only document that makes a reference to the abolition of the death penalty, as encouraged by the Covenant's art. 6.6, is the Libyan Green Charter, which states in art. 8 that:

Members of the Jamahiriyan society hold sacred the life of a human being and protect it. The goal of Jamahiriyan society is to abolish capital

punishment. In view of this, the death sentence should only be passed against an individual whose very existence constitutes a danger or is harmful to society.

b) Arrest and detention

All Arab constitutions, with the exception of the Qatari one, contain provisions dealing with the arrest and detention of persons. Few of the constitutions, however, measure up adequately to the standards required by the ICCPR. Article 9.1 of the Covenant affirms everyone's "right to liberty and security of person," prohibits "arbitrary arrest or detention" and the deprivation of liberty "except on such grounds and in accordance with such procedures as are established by law."

A number of constitutions guarantee "personal liberty" such as Kuwait (art. 30), Bahrain (art. 19a), Jordan (art. 7), Lebanon (art. 8), Yemen (art. 32A) and the Emirates (art. 26). For some, the human person is "inviolable" (Tunisia, art. 5), and freedom is "a natural right and shall not be touched" (Egypt, art. 41) or it is "a sacred right" (Syria, art. 25.1).

All of the constitutions, without exceptions, defer the regulation of this freedom and right to the law, specified in the negative in a formula fairly close to that used in art. 9.1 of the Covenant. However, a most important word is absent from all of the Arab constitutional provisions, which

is the word "arbitrary." According to Erica-Irene Daes, Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, the intention behind the use of the word "arbitrary" in the Universal Declaration and the International Covenant "was to protect individuals from both 'illegal' and 'unjust' acts."⁽⁵²⁾ If the protection was only against illegal acts, then "all oppressive acts of the Administration would be unassailable so long as they were in accordance with national laws."⁽⁵³⁾

Indeed, this may very well be the case in Arab States' constitutions, which allow the arrest and detention of persons only in accordance with the law. There is no qualification of the arrest being 'arbitrary' nor of the law having to be 'just', and one cannot grasp the extent of protection of individual Arab citizens against "arbitrary arrest or detention" without looking into the specific laws of each country. Therefore, the Arab constitutional guarantees of this right which go no further than relegating it to the law fall short of the standard provided by art. 9.1 of the International Covenant on Civil and Political Rights.⁽⁵⁴⁾

Some constitutions do go further. Consistently with art. 9.3 of the Covenant, the constitutions of Algeria, Bahrain, Egypt and Yemen provide more detailed protection and extensive guarantees of this right than others, particularly by assigning the judiciary a role in assuring those protections. The Algerian Constitution distinguishes

between cases where the pursuit, arrest or defamation of persons, the manner of which is to be determined by legislation (art. 44), and cases of criminal investigation which must be submitted to judicial control (art. 45). The Bahraini Constitution allows for arrest, detention and imprisonment in accordance with the law and "under the supervision of the judicial authorities" without distinction between criminal and non-criminal cases (art. 19b).

The Egyptian Constitution further requires an order for arrest and detention, "necessitated by investigations and the preservation of the security of the society" and given by a competent judge or by the Public Prosecutor "in accordance with the provisions of the law." This, however, excludes "cases of *flagrante delicto*" (art. 41). Article 32B of the Yemeni Constitution is virtually identical to the Egyptian provision, and is bolstered by the preceding art. 32A which, while relegating to the law the specification of "cases of depriving a citizen of his freedom," adds the stipulation that "no one may be deprived of his freedom except under a ruling by a competent court."

Article 9.2 of the ICCPR says that "[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him." Additional guarantees are provided in art. 9.3 for trial or release "within a reasonable time."

Only Egypt, Algeria and Yemen provide for such time

considerations or limitations in their constitutions. Article 71 of the Egyptian Constitution, which sits under a separate chapter entitled "Sovereignty of the Law" rather than within the citizens' rights chapter, says that "any person arrested or detained should be informed forthwith with the reasons for his arrest or detention ... He must be faced as soon as possible with the charges directed against him." Then it goes further to say that the law regulates the right of appeal to be decided within a specified period, "otherwise release is necessary."⁽⁵⁵⁾

The Yemeni Constitution's art. 32C provides a very specific time limit in cases of criminal investigation. Firstly, it refers to "[w]hoever is temporarily arrested for suspicion of committing a crime" then proceeds to require that that person "shall be arraigned within twenty-four hours at the most," adding that the Prosecution or a judge "shall inform him of the reasons for his arrest." It remains up to a judge to "issue a reasoned order for his continued detention or release." In all cases, detention should not exceed seven days except by judicial order. In the Algerian Constitution's art. 45, the period of detention for questioning in cases of criminal investigation "may not exceed forty-eight hours," and "the exceptional prolongation of the detention for questioning may not take place other than under the conditions specified by the law."

c) Prohibition of torture

A number of Arab constitutions make no reference

whatever to torture or cruel, inhuman or degrading treatment in their provisions. These are: Tunisia, Jordan, Lebanon, Morocco and Qatar. Other Arab constitutions guarantee this right in various degrees of specificity and clarity, while others still provide for sanctions against those who commit acts of torture or violate the prohibitions thereof.

Torture is clearly proscribed in only half of the Arab constitutions; those of Kuwait (arts. 31 and 34), Bahrain (arts. 19d and 20d), Egypt (art. 42), Iraq (art. 22a), Mauritania (art. 13), the United Arab Emirates (arts. 26 and 28), Syria (art. 28.3) and Yemen (arts. 32B and 33). The prohibitions are consistently framed against both physical and what is variously described as "moral," "mental" or "psychological" "harm," "injury," "abuse" or "torture." The Kuwaiti and Bahraini constitutional provisions add the prohibition against "degrading treatment," while the Syrian Constitution includes the provision that "no one shall be ... treated in a humiliating manner." Others of these constitutions frame the latter point in the positive, assuring, for example, the treatment of detainees or the accused "with dignity" (Yemen), or insisting that "the dignity of man is safeguarded (Iraq). All of these definitions - like the terms used in the International Covenant - tend to be rather broad, requiring a further search into their meaning, scope and interpretation by the domestic courts of each State.

A few of the constitutions strengthen the prohibition

of torture and degrading treatment with penalties and other consequences to the commission of torture. Two texts prescribe punishment for the violation of the constitutional prohibition of torture: The Bahraini Constitution states in art. 19d that "the law shall provide the penalty for these acts" [of] "torture, enticement or degrading treatment," and an almost identical provision is found in the Syrian Constitution (art. 28.3). The Constitutions of Bahrain and Egypt go even further by stating in arts. 19d and 42 respectively that if it is proved that statements or confessions were made under various forms of duress or enticement or coercion as described in those provisions, such statements would be considered null and void.

An interesting text to note is that of art. 45 of the Algerian Constitution, which says: "At the expiration of the detention for questioning, it is obligatory to proceed with a medical examination if the detained person demands it, and in any case, [the detained person] must be informed of its availability." This text seems to replace a clear and express prohibition of torture, which is not found elsewhere in the Algerian Constitution. It is doubtfully an adequate protection from torture, however, since it puts the onus on the detained person to request such examination, while the State's responsibility is simply to inform him of such a right. To understand the full impact of this text, however, it is necessary to read it in conjunction with the other requirements in art. 45 for judicial control of the detention period and the legal requirements for its extension.

4. Legal Rights

a) Equality before the law and non-discrimination

All Arab constitutions guarantee the principle of equality before the law, in language that is clear and straightforward, and which provides that "all," "people" or "citizens" are equal before the law. The following formulation in the Egyptian Constitution accurately represents the standard wording used in most other constitutions with few exceptions:

All citizens are equal before the law. They are equal in public rights and duties with no discrimination between them as to sex, ethnic origin, language, religion or creed. (art. 40)

The only constitutions which do not have the added proviso that citizens are "equal in public rights and duties" or similar provision are those of Iraq, Mauritania, Morocco, the United Arab Emirates and the new Saudi Basic Law. The Algerian Constitution, on the other hand, adds further strength to the guarantee by stating in article 131, under the chapter on the Judiciary, that:

Justice is founded on the principles of legality and equality. It is equal for all, accessible to all, and is expressed by respect of the law.

The non-discrimination clause in article 26 of the

ICCPR provides prohibitions on discrimination on a number of different bases. Arab constitutions are generally consistent with this article, with few slight variations in wording rather than substance. The following chart summarizes these variations:

	Relevant Article	Race and/or Colour	Origin or Culture	Sex	Religion and/or Belief	Language	Residence	Social Status / Occup.
ICCPR	26	R + C	O	S	R	L		
Algeria	28	R	O (birth)	S	B (optn.)			SS
Bahrain	18		O	S	R + B	L		
Egypt	40		O	S	R + B	L		
Iraq	19 (a)	R	O	S	R	L		
Jordan	6 (1)	R	O		R	L		
Kuwait	29		O	S	R	L		
Lebanon	7							
Libya	17	C	C	S	R			
Mauritania	1	R	O	S				SS
Morocco	8			S*				
Qatar	9	R		S	R			
Sudan	38	R	O	S	R	L	R	
Syria	25 (3)							
Tunisia	6							
Emirates	25		O		R + B		R	SS
Yemen	27	C	O	S	R	L		SS + Oc

* Article 8 of the Moroccan Constitution specifies that "men and women shall enjoy equal political rights ." This is the only non-discriminatory aspect, and one not relating to equality before the law *per se* in civil matters or matters related to marriage and family status.

The Covenant includes additional prohibitions on discrimination on the basis of political or other opinion, property, birth or other status. None of these - with the exception of what is found in the chart above - are found in any of the Arab constitutions.

The constitutions of Algeria, Syria and Tunisia, while providing for equality before the law, do not specify non-discrimination as a particular additional criteria. The Constitution of Lebanon adds the simple provision that equality before the law is "without any distinction." The Basic Law of Saudi Arabia contains no provision related to equality before the law nor a prohibition against discrimination.

Of particular note in reviewing the chart above is the prohibition of discrimination on the basis of race, origin and gender, in spite of popular belief and scholarly assertion that Muslim states - and indeed Islamic Shari'a - contain structural discrimination against minorities and women.⁽⁵⁶⁾ Clearly, the existence of these prohibitions on discrimination in the constitutions is no proof of their implementation, and has little to do with discrimination, structural or otherwise, in practice. Nevertheless, these provisions express points of principle accepted by most of the fifteen states and affirmed by their constitutions, and we need emphasize their application in law and in practice.

The Libyan Green Charter's reference to

non-discrimination on the bases included in the chart above, does not appear in the context of equality before the law, but refers to the equal right of members of the society "to share in the benefits, advantages, values and principles which are the fruit of harmony, cohesion, unity, affinity and affection among the family, the tribe, the nation and mankind." This, in the view of the Green Charter, is towards the end of establishing the "natural national entity of [the] nation", in the process of which "they [the masses] reject any and all segregation between men because of their color, sex, religion or culture."⁽⁵⁷⁾

The Green Charter further contains the clearest guarantees of minority rights than any of the Arab Constitutions. Article 16 of the Charter affirms that :

All nations, all peoples and all national communities have the right to live freely, according to their own choices and the principles of self-determination. They have the right to establish their national entity. Minorities have the right to safeguard their own entity and heritage. The legitimate aspirations of those minorities may not be repressed. Minorities may not either be forcefully assimilated within one or several nations or national communities.

However, in spite of these clear expressions, we must note the trap set up in the phrase "legitimate

aspirations" of minorities. Who but the executive arm of the government defines what is a legitimate aspiration and what is not? Despite this phrase, however, this text remains one of the strongest expressions for minority protection in any of the Arab constitutions and documents.

b) Presumption of innocence

Article 14.2 of the International Covenant on Civil and Political Rights guarantees the right of "[e]veryone charged with a criminal offence ... to be presumed innocent until proven guilty according to law." It is an "absolute and immediate" obligation under the Covenant⁽⁵⁸⁾, derogable only in special circumstances threatening "the life of the nation," as strictly circumscribed by article 4.1 of the Covenant.

Arab constitutions, with few exceptions, provide for the presumption of innocence up to the point of establishment of guilt by "trial," "court" or a "legal trial" in each of the constitutions of Bahrain (art. 20c), Egypt (art. 67), Iraq (art. 20a), Kuwait (art. 34), Mauritania (art. 13), and the United Arab Emirates' Constitution, article 28 of which adds a "legal and just trial." The Tunisian constitution's article 12 simply provides that guilt would be established "in accordance with a trial". The Yemeni Constitution's art. 31 and the Syrian Constitution's art. 28.1 both presume innocence "until proven guilty by a final judicial decision."

Some constitutions do not guarantee the presumption of innocence of the accused. In the Lebanese Constitution the "conditions and limits of judicial guarantees are determined by law." (art. 20), and thus contains no specific guarantees to the accused except as may be found in legislation. The Jordanian and Moroccan constitutions, on the other hand, are completely silent on the presumption of innocence of the accused, as are the Green Charter of Libya and the Saudi Basic Law.

c) The right to defence

In most Arab constitutions, the right to defence is guaranteed as part and parcel of the presumption of innocence clause and the right to a fair trial (see below); usually found in one article or even in one sentence. The formulation in some constitutions is that proof of guilt must be rendered in a court where the defendant "is granted the right to defend himself" (Egypt, art. 67), "personally or through an agent" (Qatar, art. 11), to mention two examples. Some constitutions require a trial "in which the necessary guarantees for the exercise of [the accused's] right of defense are secured" (in the Kuwaiti Constitution's art. 34) or are ensured "in all the stages of investigation and trial ... in accordance with the law." (Bahrain, art. 20c).

Several constitutions emphasize the right to defence in separate articles or sub-paragraphs using fairly clear language. For example, in article 142 of the Algerian Constitution, "the right to defence is recognized. In criminal

matters it is guaranteed." The Egyptian Constitution's article 69, in addition to article 67 mentioned above, "guarantees the right of defence in person or by mandate," and an almost identical provision is found in the Qatari Constitution's art. 11. In the Iraqi Constitution, "the right of defence is sacred in all stages of proceedings and prosecution," (art. 20b), and in Syria this right is "safeguarded by law" (art. 28.4).

The new Yemeni Constitution accords one additional right to the individual "whose freedom is restricted," seemingly adopted directly from the American experience, which is "the right to remain silent and to speak only in the presence of an attorney." (art. 32B).

Some of the formulations temper the guarantees in rather vague and broad terms. In the Kuwaiti Constitution, for example, the defendant is presumed innocent "until proven guilty in a legal trial at which the necessary guarantees for the exercise of the right of defence are secured." (art. 34). The Tunisian Constitution refers to a trial "offering [the accused] guarantees indispensable for his defence" (art. 12). In both of those provisions, the scope of the terms "guarantees," "necessary" and "indispensable" are not clear, nor is the term "secured" further qualified or elaborated. Presumably, penal laws and the laws of criminal procedures are expected to clarify these terms, but the constitutions themselves offer very little guidance to clarify those broad principles in a manner easily

interpretable and in such a way as to safeguard against the incremental destruction of rights by practice.

Indeed, several constitutions make definite reference to the law to define and specify these principles and guarantees, but still with insufficient guidance. The Bahraini constitution, for example, provides that the trial should assure the accused "necessary guarantees for the exercise of the right of defense in all stages of investigation and adjudication in accordance with the law" (article 20c); this of course without any further delineation of the substance of those necessary guarantees. We also find a similar formulation in the article 42 of the Algerian Constitution, and indeed in most Arab constitutions..

The brief Lebanese Constitution simply transfers all such requirements of judicial guarantees to the law by stating in article 20 that "conditions and limitations of judicial guarantees are determined by law." The inclusion of both "conditions and limitations" is to be especially noted.

Some constitutions more specifically assure the right to defence by requiring the appointment of counsel "with the approval of the accused." (Bahrain, art. 20c and Egypt, art. 67). The Egyptian Constitution goes further by providing in art. 69 for financial assistance to guarantee the accused's access to justice. Article 28 of the Emirates' Constitution, while giving the accused the right to "appoint the person who shall conduct his defence," opens the

possibility of trials *without* defence by further stipulating that "the law shall prescribe the circumstances in which the presence of a counsel for the defence shall be obligatory."

Interesting to note are the Constitutions of Mauritania which presumes innocence as mentioned above but is silent on the right to defence, and those of Jordan and Morocco, which make no mention of presumption of innocence nor of the right to defence beyond the non-discrimination and equality before the law clauses.

d. Right to a fair trial

The first observation to make is that scant guarantees for fair judicial process in the trials of persons are to be found in the constitutional provisions contained in the chapters and sections on individual rights and freedoms of citizens. One needs to read those provisions together with other articles in the constitutions, usually found several chapters down, under the broader discussions of "The Judicial Authority," "the Judiciary" or "The Sovereignty of the Law." Those latter articles are more general in nature and are designed to define the judiciary's role and responsibility, rather than the rights of individual citizens, although they may be interpreted to have a direct bearing on those rights.

Articles 14-16 of the ICCPR guarantee a number of essential legal rights, and detail the permissible exceptions, pronounced in some detail. Pursuant to those articles, the

rights of the individual charged in a court of law includes five constituent elements, as stated in article 14 sub paragraph 1 and emphasized below:

In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a *fair* and *public* hearing by a *competent, independent* and *impartial tribunal* established by law.

Upon examining Arab constitutions in light of this guarantee, one finds them sorely lacking and may indeed state that very few real guarantees of judicial standards are provided for individuals facing trial by the texts of those constitutional provisions. Rather, it is necessary to turn to the specific procedural and penal laws of each state in order to better grasp the rights and status of the individual in any one or the other of the Arab courts of law. For example, a clear guarantee of a "fair" trial is enunciated only in the constitutions of the United Arab Emirates (art. 28), and of Qatar (art. 11), where it is subsumed within the presumption of innocence clause stating that conviction shall only be "by means of a legal and just trial."⁽⁵⁹⁾

Six constitutions, those of Algeria, Bahrain, Egypt, Iraq, Jordan and Kuwait stipulate that trials and judgments must be public, and provide for certain exceptions to that rule. In the case of the Kuwaiti Constitution, for example, a trial is public "unless it becomes secret by a court's

decision." (art. 20c), or "save in exceptional circumstances prescribed by law" (Iraqi Constitution, art. 165).

The Egyptian Constitution's article 169 and the Jordanian Constitution's article 101(ii) both allow for *in camera* trials for the protection of public order and morality, while maintaining that the judgments must be made public. This would appear to be the only such restrictions consistent with the standard detailed in Article 14.1 of the ICCPR, which spells out the circumstances under which the press and the public may be excluded from trials, and which include "reasons of morals, public order or national security" and protection of the "interest of the private lives of the Parties" as well as "the interests of justice."

As mentioned above, there are no specific Arab constitutional guarantees to individuals to be tried by a "competent, independent and impartial tribunal" as required by article 14.1 of the ICCPR. One does find, however, guarantees of the principle of independence of the judiciary as a whole in all of the constitutions, without exception. These guarantees are formulated in general terms, and would seem to indicate statements of principle rather than enforceable guarantees of any kind - especially since all of the constitutions refer the organization and implementation of these principles to the law. Nearly all of the constitutions stipulate, for example, that judges "shall obey only the law" and that "no authority may interfere in [the work of the judiciary]", or that "The judiciary is an independent

authority."

The specific connection between guarantees of such a general nature and those provided as rights to individuals is found in some constitutional provisions stating that the "honor, conscience and impartiality of Judges are guarantees of public rights and freedoms" (Syria; art. 133.2), or that the honor and integrity of judges "are the bases of rule and a guarantee of rights and liberties" (Kuwait; art. 162), and similarly with the Bahraini Constitution's article 101(a). All other matters relating to trials, procedurally and legally, are referred to the law for organization and regulation.

e) Right to a judicial remedy and appeal.

The clearest constitutional provisions dealing with individual's right of recourse to the courts and judicial remedy are found in the Egyptian, Emirates and Yemeni Constitutions. Article 34 of the latter states that "every citizen has the right to resort to court to seek the protection of his legal rights and interests." The Egyptian Constitution's art. 71 says that "[a]ny person may lodge a complaint to the courts against any measure taken to restrict his individual freedom." and adds that the law will regulate this right while "ensuring a ruling regarding it within a definite period," within which a determination by the courts must be made or else "release is imperative." The Emirates' Constitution provides an inclusive right formulated in the following manner:

Every person shall have the right to submit complaints to the competent authorities, including the judicial authorities, concerning the abuse or infringements of the rights and freedoms stipulated in this chapter [on public freedoms, rights and duties]. (art. 41)

The right to submit complaints to judicial authorities among other "competent authorities", as stated, may not necessarily entail the individual's right to actually have his/her complaint heard and decided through a judicial procedure.

Only two of the constitutions strengthen the protection of individuals against the abuses of authority by providing for the right to compensation against such abuses. The Egyptian Constitution affirms that :

Any assault upon personal freedom or the sanctity of citizens' private lives and other rights and public freedoms guaranteed by the constitution and the law is a crime, where the civil or criminal case resultant therefrom is not ameliorated by statutes of limitation. The State shall grant a fair compensation to the victims of such an assault.

The Algerian Constitution's art. 46 does not refer to abuses by public authorities, rather, it simply states that "judicial error calls for compensation by the State."

The above three constitutions come closest to the standard as articulated by the Covenant's art. 2.3, and which leaves little doubt as to the strength of the guarantee needed. The article commits each State Party to ensure an "effective remedy" for the claimants (2.3a); to have the claim "determined by competent judicial, administrative or legislative authorities" (2.3b); and significantly, to "ensure that the competent authorities shall enforce such remedies when granted." (2.3c).

The remaining constitutions include very brief, unclear and inadequate guarantees of this right. For example, specific reference to a right of recourse to the courts is found in the Kuwaiti Constitution which guarantees it "to all people" but adds that "[l]aw shall prescribe the procedures and manner necessary for the exercise of this right." (art.166) The Jordanian Constitution's art. 101(i) is even more indeterminate and hesitant, simply providing that "the courts shall be open to all.." with no further specific reference to the right of recourse against the encroachment of public authorities on rights and freedoms. With slightly different wording, the Bahraini Constitution reaches the same result by saying that "the right to trial shall be guaranteed in accordance with the law" (art. 20f).

Other constitutions treat the matter in a broader "right to litigation" manner, which may be interpreted simply as the right of recourse to the judiciary in civil disputes

between individual citizens. One needs to look into the law and the jurisprudence of the courts of each of those countries in order to determine whether or not civil rights suits against public authorities are included in these provisions. This "right to litigation" is found in the Constitutions of Egypt as "inalienable to all" (art. 68), in Iraq as "ensured to all citizens" (art. 60b), and in Syria, art. 28(4) of which states that "the right of litigation ... and defense before the judiciary is safeguarded by law."

With respect to the right of appeal to a higher judicial authority, the situation of Arab constitutions is even worse. Art. 14.5 of the Covenant guarantees that "[e]veryone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law." Not one constitution expressly guarantees such a right, but two hesitantly approach the issue in the following manner. The Syrian Constitution, in art. 28(4), adds the right of "contest" to that of litigation and defense before the judiciary, as a right "safeguarded by the law." The Yemeni Constitution, on the other hand, while including no specific provision guaranteeing the right of appeal, includes as within the competence of the Supreme Court the duty to "decide appeals against final sentences in civilian and criminal cases and cases of personal statutes." (art. 124.4). As mentioned earlier in this paper, the Lebanese Constitution defers all judicial guarantees to the law in a general fashion, which law may include a right to appeal.

- (32) This study will review all available constitutions regardless of whether or not these constitutions are in force in this country or that. Unless otherwise indicated, all references to constitutional provisions and articles are based on the translations provided in Blaustein and Flanz, eds. *Constitutions of the Countries of the World*; Release 92-3 (Oceana: Dobbs Ferry, New York, May 1992), checked against the original Arabic texts in *al-ahkam al-dusturiyya lilbilad al-arabiya* [Constitutions of the Arab Countries] (Dar al-Jami'a: Beirut, [no d]). Some translations have been amended in the interest of more closely approximating the original Arabic texts. The copy of Mauritania's Constitution used in this study is found in the library of the Cairo Center for Human Rights Studies.
- (33) Djibouti (1992), Mauritania (1991), Yemen (1991) and the New Basic Law of Saudi Arabia (1992).
- (34) AOHR, "Introduction to the 1988 Report" in 9 *Journal of Arab Affairs*, p. 8. Also, AOHR 1989 Report p. 11. A complete translation of the Declaration is found in Blaustein and Flanz, *Supra* note 33, Volume IX.
- (35) Article 26, *The Great Green Charter of Human Rights of the Jamahiriyan Era*, Executed in Baida, 12 June 1988; From an official Libyan governmental publication [no publication data].
- (36) *Official Gazette* of the Great Libyan Arab Popular Socialist Jamahiriya, No. 20 (12 October 1991) p. 726-7.
- (37) Republic of Djibouti Law No. LR/77-001 of June 27, 1977, Known as Constitutional Law No. 1 (See Blaustein and Flanz, *Supra* note 32. It was reported by the Arab Organization for Human Rights that Djibouti had ratified a new Constitution in 1992 which establishes political pluralism, separation of powers and respect for rights and fundamental freedoms. To date, no copy has been available. See AOHR 1993 Report, p. 101.
- (38) Constitutional Charter of the Military Committee of National Salvation, February 9, 1985. This is a slightly re-worded version

of the earlier Charter of July 10, 1978. See Blaustein and Flanz, *Supra* note 32.

- (39) AOHR 1992 Report.
- (40) Anabtawi, *Supra* note 17, pp. 128-141.
- (41) It should be noted here that the concept of "thought" in Arabic is more closely associated with that of opinion rather than with conscience or belief.
- (42) Ratified by the new unified Yemeni Parliament in 1990. Amnesty International Annual Report 1992, p. 249-50. Original text in a special governmental publication on the new constitution (San'aa: Republic of Yemen, Higher Committee for the Referendum on the Constitution NO DATE).
- (43) See discussion in Erica-Irene Daes, *Freedom of the Individual Under Law*, U.N. Human Rights Centre Study Series No. 3, (New York: United Nations, 1990) p. 117 at para. 181-2.
- (44) Translated from the official Saudi Arabian Government Arabic text re-printed as a Special Issue of Al-Majalla, (London, no date).
- (45) *The Constitution of the Kingdom of Jordan*, Government's Publication (National Assembly: Amman, 1956) p. 5.
- (46) The term "national", found in Blaustein and Flanz, is an inadequate translation from the Arabic wataniya which more accurately means "patriotic". Thus, in the original Arabic formulation, the restriction is on forming associations the aims of which may be perceived to be contrary to "patriotic" values or nationalist loyalty.
- (47) This is a more accurate translation than that found in Blaustein and Flanz which reads "the State ensures the considerations necessary to exercise these liberties which comply with the revolutionary, national and progressive trend."
- (48) Middle East Watch *Human Rights in Iraq*; (Human Rights

- Watch: New York, 1990) p. 57
- (49) AOHR 1988 Report, p. 9.
- (50) AOHR 1992 Report, p. 15.
- (51) Compiled from the sections on Arab countries in Amnesty International's 1992 Report.
- (52) Daes, *Supra* note 43, p. 116 at para. 169.
- (53) Daes, *Id.*, at para. 161.
- (54) This problem is not unique to Arab constitutions, and exists in most constitutions written prior to the passage of the ICCPR. See Paul Sieghard, *The International law of Human Rights*, (Clarendon Press: Oxford, 1983) p. 141. However, in the case of Arab constitutions, only three were written or last amended prior to the adoption of the Covenant by the General Assembly in December 1966: Lebanon (last amended in 1947), Jordan (last amended in 1952) and Kuwait (1962).
- (55) This is a rather poor translation from the Arabic. An alternative translation to 'forthwith' is the more accurate 'immediately'. A more literal translation than 'as soon as possible' is 'in a speedy manner'. Both would seem to be very close approximations of the provisions of the Covenant.
- (56) See for example An-Naim, *Toward an Islamic Reformation*; (Syracuse Univ. Press: Syracuse, 1990) p. 172. The Arabic word for gender or sex is *jins*, erroneously translated in three of the constitutions in Blaustein and Flanz as 'race'.
- (57) Article 17, as in the original governmental translation, *Supra* note 35. Rather than "men," a proper translation of the Arabic *bashar* is 'human kind' which is more properly neutral gender-wise.
- (58) Sieghart, *Supra* note 54, p. 294.
- (59) The Arabic word *muhakama 'aadila* can mean both "just" and "fair" trial.

PART III.

THE IMPLEMENTATION OF CONSTITUTIONAL GUARANTEES

A. JUDICIAL OVERSIGHT

The existence of independent judicial oversight over the constitutionality of laws and the legality of administrative and executive action are necessary prerequisites for the proper functioning of the rule of law in any society.⁽⁶⁰⁾ In the case of most Arab countries, however, this is one of the weaker links in the effective implementation of the constitutional civil and political rights guarantees.

Only four Arab constitutions provide for the establishment of a high court or a constitutional court and clearly define the competence of such a court as to include determination of the constitutionality of laws and of the acts of public officials; those of Egypt, Sudan, the United Arab Emirates and Yemen. The clearest and most developed of those is also the newest constitution, that of Yemen, which in article 124 provides for the establishment of a Supreme Court, whose competence includes, *inter alia*, the

verification of the constitutionality of "laws, statutes, regulations and decrees" (art. 124.a), and authority to decide on appeals against final sentences in civilian and criminal cases (art. 124.d).

The Sudanese Constitution, were it operable, would have followed close behind Yemen with its establishment of a High Court (art. 189.1) - defined as "the guardian of the Constitution" (art. 190) - and charged with its interpretation (art. 190.a) and with review of the constitutionality of legislation (art. 190.c). It is the only Arab constitution which specifically charges the High Court with the "protection of the rights and liberties guaranteed by the Constitution" (art. 190b). Unfortunately, neither the Constitution nor the judiciary itself are any longer in a position to provide any such guarantees nor to protect rights⁽⁶¹⁾.

The United Arab Emirates is unique in the Arab world because of the federal nature of the State⁽⁶²⁾. Its Constitution divides the judicial system into Emirates' courts and Union Courts (art. 95), and provides for a Union High Court with competence to check the constitutionality of legislation of the Union and of each specific Emirate within it (art. 99.2); a system not dissimilar on the face of it to that of the American federal system.

In Egypt, a Supreme Constitutional Court is created by article 174 of the Constitution as "an independent

judicial body." Article 175 gives the Court sole "judicial control in respect of the constitutionality of the laws and regulations" as well as interpretation of constitutional texts.

Only the constitutions of the Emirates, Yemen and Morocco provide specific provision for judicial oversight of the actions of governmental ministers and public officials. These provisions, however, seem to indicate more concern with administrative abuses and abuse of office, rather than a protection of rights and liberties. While the substantive aspects of the provisions are similar, the formulations differ. In the United Arab Emirates, the Union High Court may "question ministers and high ranking Union officials" with respect to their actions "in the course of fulfilling their official duties" (art. 99.5). The Yemeni Supreme Court may hear appeals against final sentences in "administrative disputes and disciplinary actions" (art. 124.d), while the Moroccan Constitution, which devotes an entire chapter (Chapter X) to the Constitutional Chamber of the Supreme Court, strongly asserts that "[m]embers of the government shall be criminally liable for crimes and offenses committed in the exercise of their functions." (art. 82).

Several Arab Constitutions provide for the establishment of a High Court of one sort or another, or of a "judicial body" with functions related to the constitution. These constitutions, six in all, differ widely, but they all defer the detailed definition of the competence and origination of these courts to the law. In Algeria, the

Supreme Court "constitutes, in all fields of law, the regulatory body of all activity by the courts and tribunals" (art. 143). Jordan's provision in the Constitution is broader, simply referring to a "special law" which shall provide for the "establishment of a High Court of Justice" (art. 100). During the discussion of Jordan's second periodic report to the Human Rights Committee at its meetings on the 17th and 18th July 1991, the Jordanian representative informed the Committee that "it had been decided to establish a constitutional court" without further elaboration⁽⁶³⁾

In Kuwait, the "law shall specify the judicial body competent to decide upon disputes relating to the constitutionality of laws and regulations and shall determine its jurisdiction and procedure." Article 173 continues by assuring the right to challenge constitutionality and affirms that "[i]f the said body decides that a law or a regulation is unconstitutional it shall be considered null and void." The Bahraini Constitution's art. 103 is virtually identical to the Kuwaiti provision, while the Tunisian Constitution specifies that the High Court "meets in a case of high treason by a member of the government" and adds that "the competence and the composition of the High Court as well as the procedure applicable before it, are specified by law" (art. 68).

Three constitutions do not specify the creation of a constitutional court or similar such judicial body nor do

they provide for a judicial competence in adjudication of disputes of a constitutional character. The relevant constitutional provisions in Iraq (art. 10c), Qatar (art. 66) and Lebanon (art. 20) simply state that the law shall determine the judiciary's organization, jurisdiction and competence.

Of special note is the Constitution of Syria, which has the most extensive provisions - mostly regulatory. Article 139 provides for a Supreme Constitutional Court composed of five members "all of whom shall be appointed by the President of the Republic by decree." The membership is for a four-year term, subject to renewal (art. 141). One of the competence of the Supreme Constitutional Court is to hear and decide cases related to the constitutionality of laws in accordance with quite extensive criteria - on who (specific percentages of the People's Assembly, or the President of the Republic) and when (specific time limitations in days) such cases may be brought before it (art. 145 entire). An important caveat is provided by article 146 which reads:

The Supreme Constitutional Court shall have no right to look into laws which the President of the Republic submits to public referendum and are approved by the people.

Another notable article is 148, which stipulates that the Supreme Constitutional Court shall, at the request of the

President of the Republic, give its opinion on the constitutionality of bills and legislative decrees and the legality of draft decrees.

The broad effect of these provisions would appear to undermine the independence of the judiciary and the separation of powers in Syria by according the President of the Republic excessive powers: to appoint all members of the Supreme Constitutional Court - and should he be dissatisfied with the performance of one such member of the Court, he may choose not to renew that judge's mandate at the end of four years. The restrictions on appealing to the Supreme Court on constitutional matters can be circumvented by the President through going over the government's heads directly to the Court at will, or to the people through a referendum. Instead of judicial oversight in Syria, the result is Presidential oversight of both the government and the Court.

The Syrian situation described above, is a microcosm of the more general endemic problem of the lack of proper judicial oversight in the Arab world. The problem compelled one Arab lawyer and human rights activist to write:

There is no oversight of any kind to stand watch, and if some forms of oversight are found in some Arab countries (constitutional and administrative courts), their judgments are

most often not adhered to, or [we find that] the legislative authority -always supportive of the executive which created it - will enact new legislation to circumvent judicial rulings⁽⁶⁴⁾.

B. POWER OF THE EXECUTIVE

All Arab constitutions, monarchical, socialist or multi-party, clearly state that ultimate sovereignty resides with the people who are the source of all authority. However, according to al-Mani, "rare are the constitutions that were formulated as a result of the will of a collectivity of sectors of the population." Most were formulated as a result of the will of a ruler, one class or sector, or a foreign power⁽⁶⁵⁾. A telling fact is that only one Arab Constitution, that of Tunisia, provides for the direct and public election of the head of government "by universal, free, direct and secret suffrage" (art. 39) In other Arab countries, the Head of State is indirectly elected, through a representative council (Lebanon, arts. 73-75), or through nominations by a People's Assembly and later confirmation by public referendum (Egypt, Iraq, Algeria and Syria). In those cases, the governments operate on a one-party system or have had one party in power for decades (as is the case in Egypt) in spite of a formal multi-party system. The Party, in both cases, exercises hegemonic control over the Parliament or People's Assembly, assuring success of the Party's choice for a head of state. The public only gets that one choice for confirmation, and the result is invariably the

broad acclamation of the nominee, often by over 90 percent of the vote.

Only two constitutions set a specific time period for the exercise of power by the Head of State: Lebanon (two consecutive terms), and more recently, Tunisia (three consecutive terms). It is also important to note that all Arab constitutions exempt the head of state from responsibility in the performance of his duties,⁽⁶⁶⁾ with the exception of the Tunisian and Yemeni constitutions which hold him responsible for high treason or violation of the constitution. The new, post-civil war Yemeni constitution further added to the High Court the jurisdiction to try the President as well as the Vice-President, deputies and ministers (art. 124e). The last point to add is a reminder that eight of the Arab States are monarchies - with and without constitutions - where the head of state is the King, Emir or Sultan, with hereditary accession to power.

Arab constitutions - of monarchical and republican States - give the head of State a number of authorities and privileges that allow him to practice absolute or near-absolute control of the affairs of state. These authorities include:

- (a) Participation with Parliament in the legislative process and in some cases, the power to legislate individually, usually but not always subject to approval and

ratification by Parliament - which he most often controls, individually or through his party in power;

- (b) Executive authority, alone or through a ministerial council or cabinet whom he has the power to appoint and dismiss at will;
- (c) Extraordinary power to appoint and dismiss senior governmental staff, as well as senior judicial posts and those of the military apparatus of the State, and in some cases, even members of Parliament..

A system of checks and balances exists in a few constitutions, but those have been practically inoperable for years⁽⁶⁷⁾. One study determined that there existed in the world today 12 countries with absolute executives⁽⁶⁸⁾. Seven of the states listed are Arab. Based on the foregoing, however, one can conclude that at least 15 of the twenty Arab States are governed by executives with almost absolute powers. It may even be a matter of time before such executives are cultivated in the remaining States⁽⁶⁹⁾.

C. STATES OF EMERGENCY.

The powers of the executive include the authority to declare states of emergency which suspend constitutional safeguards of basic human rights and fundamental freedoms, described by the Union of Arab Jurists as "one of the major obstacles before the implementation of human

rights, and has become the Legal cover [for human rights violations]." (69)

The International Covenant on Civil and Political Rights recognizes the occasional presence of situations and times "of public emergency which threatens the life of the nation" which may require the official proclamation of a state of emergency, during which time some rights may be suspended. The ICCPR, however, places severe restrictions on such a proclamation, and affirms that such measures can be taken only for a specific period of time and "to the extent strictly required by the exigencies of the situation..." It further lists a number of rights and fundamental freedoms which the state may not derogate from even in the most difficult state of emergency⁽⁷⁰⁾.

States of emergency are in such common use in the Arab World that we can safely say that this exception to a normal state of affairs has become the rule, with normal civil life becoming the exception. States of emergency have been declared three times in Algeria since the end of 1988, most recently for a 12-month period starting 9 February 1992. Egypt has had a state of emergency in force since 1967⁽⁷¹⁾, which was most recently extended for a further three years on 1 June 1991. In Jordan, the state of emergency was finally lifted on 7 July 1991 after having been continually in force since the June 1967 war with Israel. On 19 December 1989, the Jordanian Prime Minister announced a "freeze" on emergency regulations in

preparation for their final cancellation. The government had recently abrogated many decisions previously taken under the state of emergency, such as the dissolution of the Writers' Union in 1987, and of the Directorial Boards of several daily newspapers in 1988⁽⁷²⁾.

A state of emergency has been periodically in force in Sudan since 1987⁽⁷³⁾. Most recently it was declared on 30 June 1989 and is still in force, while Syria has had a perpetual emergency declared since 8 March 1963⁽⁷⁴⁾.

Some States resort to temporary declarations of states of emergency in response to serious outbreaks of political opposition, or social unrest, such as the Egyptian "bread riots" of January 1977, or the Algerian "October riots" Of 1988 which precipitated major changes in the Constitution and government of that country. Tunisia also declared a state of emergency for one month on 26 January 1987 in the aftermath of political upheaval⁽⁷⁵⁾.

In some states, however, a formal declaration of a state of emergency is not necessary for the constitution or certain of its provisions to be suspended by royal/executive decree. In Bahrain, for example, major portions of the 1973 Constitution were suspended on August 26, 1975 and the 30-member National Assembly dissolved, less than two years after its very first election⁽⁷⁶⁾. The Bahraini Prime Minister said that the move was necessary in order to "give the country an assembly representing the entire nation, all

its sections, values and ideas as they exist in reality.⁽⁷⁷⁾" All constitutional provisions related to the organization of the legislative authority were suspended, including art. 65 which regulates the dissolution and re-election of the National Assembly⁽⁷⁸⁾. To date, there has been no change in the Bahraini Constitution's status. Similarly, the entire Constitution of Qatar and significant parts of the Kuwaiti Constitution have been suspended since 1986⁽⁷⁹⁾.

Armed conflicts and civil wars in Lebanon, Somalia, Sudan, Iraq, Kuwait, Mauritania, and Djibouti have necessitated curfews in some countries and an ongoing suspension in practice if not by decree of constitutional rights in others, or a total collapse of governmental authority and control as in Lebanon for over 15 years until recently, and in Somalia today.

It is of course self evident that once a constitution or any part of it is suspended, it cannot be relied upon or referred to in the determination and protection of the civil, political and other rights of the citizenry.

D. IN ACCORDANCE WITH THE LAW: THE LEGISLATIVE REGULATION OF RIGHTS

As noted earlier in this paper, most of the rights and freedoms guaranteed in Arab constitutions are regulated by law. The following section briefly discusses the legislative impact on these constitutional guarantees, taking only two country studies as examples of how those guarantees are

indeed regulated by the law. Although care must be taken in order not to over-generalize the issues - especially when it comes to legal provisions - the statement can be made that the situation in most Arab States does not differ greatly in substance from the two examples discussed below. The specifics of the law may differ, and legislative provisions in the different countries vary between effective regulation of or effective derogation from the guarantees provided in the constitutions, but the results are very similar. The conclusions drawn from the following discussion are representative of the situation in the Arab world as a whole.

1. Freedom of Opinion and Expression.

This is perhaps one of the least respected human rights in the Arab world today, regardless of the relevant constitutional provisions in each country. The legislative regulation of this right in most Arab States has effectively gutted whatever protection exist on paper, rendering it without substance. Anabtawi summarized the status of the freedoms of opinion and expression in the Arab countries by suggesting that:

This right disappears altogether if it is limited to the freedom to criticize policies of other unfriendly States or regimes, or [if it is allowed] only in general criticism of the Arab region without naming particular States, especially not one's own. In such situations,

freedom of opinion becomes simply the freedom to agree.⁽⁸⁰⁾

Limitations on freedom of opinion and expression are endemic to the Arab world as a whole. Representative scenarios can be found in Syria, Saudi Arabia and Iraq, where means of information are totally controlled. One Iraqi writer is quoted as saying that:

It is pointless to talk about censorship of the press, because the press was created by the State. Nothing that offends the system will appear, so censorship is unnecessary. What is found in the papers was put there by the Ministry of Information.⁽⁸¹⁾

Iraqi law itself may even be subject to censorship as a consequence of Law No. 78 (1977), which gives the President of the Republic the authority to decide on the publication of laws "if the supreme interests of the State require so ... [furthermore] the President of the Republic may decide on the non-publication of laws, resolutions and regulations which concern the security of the State or which have nothing of public interest in their provisions."⁽⁸²⁾

In Saudi Arabia, the National Security Law of 1965 criminalizes, *inter alia*, public criticism of the government, interference in political affairs - including membership in political organizations - and the fomenting of or participation in strikes, as well as the "encouragement and

dissemination of anti-government ideas.⁽⁸³⁾" The 1982 Press and Publications Code provides an extensive list of prohibited material, including the advocacy of "destructive ideology, disturbing or destabilizing public confidence, or sowing discord amongst citizens." (art.6, sub - paragraph 8).⁽⁸⁴⁾

Country Case Study: Egypt

Egypt is chosen for this study because, comparatively, it has the reputation of a more open press and more open dialogue on political, civil, and other matters than in most Arab States. Egypt also has the most developed legal system, which has inspired Arab legislators in other countries in the region⁽⁸⁵⁾.

Article 47 of the Egyptian Constitution guarantees freedom of opinion and the right to express and publicize this opinion "verbally or in writing or by photography or by other means within the limits of the law." The article even encourages "[s]elf-criticism and constructive criticism [as] the guarantees for the safety of the national structure." Article 49 adds that the State shall guarantee the freedom of scientific research and "artistic and cultural invention and provide the necessary means for its realization."

Article 48 further guarantees freedom of the "press, printing, publishing and media" and prohibits censorship on newspapers "as well as notifying, suspending or canceling them by administrative methods." Significantly,

the article adds:

In a state of emergency or in time of war a limited censorship may be imposed on the newspapers, publications and mass media in matters related to public safety or purposes of national security, all in accordance with the law.

Indeed, a state of emergency has been in force in Egypt since 1967⁽⁸⁶⁾, justifying the invocation of Emergency Law No. 162 (1958)⁽⁸⁷⁾. Article 3 of the Emergency Law imposes a number of restrictions on freedom of opinion and expression including prior censorship, censorship of correspondence, closure and confiscation of printing shops, and other forms of control over the media⁽⁸⁸⁾.

The state of emergency declaration in Egypt is not the only derogation from the Egyptian constitutional guarantees of freedom of expression. Constitutional amendments in 1980 added a chapter entitled "The Press Authority", establishing a "popular and independent body" to deal with matters concerning the press and to "uphold the basic foundations of society, and to guarantee the soundness of national unity and social peace as stipulated in the Constitution and defined by law." (art. 211). There are no specific provisions to guarantee the "independence" of this Press Authority other than the brief reference to the constitution and the law in its formation and operations.

Press Law No. 148 (1980) implemented this constitutional amendment by creating the Supreme Press Council, subject to the Consultative Assembly and headed by its President⁽⁸⁹⁾. The Supreme Press Council has the power to appoint the editors-in-chief of the main Cairo dailies, *al-Ahram*, *al-Akhbar* and *al-Gumhuriyya*. In practice, these editors are chosen on the basis of their loyalty to the party in power⁽⁹⁰⁾. Thus, the government's ongoing control of the major press is assured. The same law makes it impossible to initiate any new publication unless it is a corporate entity or cooperative society, with a large bond payment, and subject to approval by the Supreme Press Council⁽⁹¹⁾.

Fortunately, article 18 of the law was recently ruled unconstitutional by the Constitutional Court. That article prohibits the ownership of newspapers, their publication or participation in their publication by individuals whose political rights have been formally withheld by the authorities. The prohibition includes those whose right to participate in political parties have been withdrawn, those whose political position is considered "heresy", and those against whom judgments were passed by the Court of Ethics⁽⁹²⁾.

However, despite this success, the battle for freedom of expression in Egypt was joined once again when the Parliament approved the new Law No. 93 on 27 May 1995. President Husni Mubarak ratified that law on the very next

day. Law 93(1995) severely limits freedom of the press through amending penal law and the laws of criminal procedures as well as making changes in the Press Union Law. Most Egyptian journalists considered this law so flawed that it was nicknamed "The Press Assassination Law."⁽⁹³⁾

In addition to the above restriction, television and radio are state-owned and highly controlled, especially when it comes to access for opposition groups and the interpretation of major news events⁽⁹⁴⁾.

The Egyptian Penal Law contains no less than 15 provisions criminalizing several forms of expression, written in rather elastic language that may be broadly interpretable⁽⁹⁵⁾. According to those provisions, punishable acts include "spreading false and inciteful rumors," "creating fear amongst the people or weakening the nation's resolve in time of war" (art. 80c), and even in time of peace if the purpose of such "false rumors" is to "disturb public security or create panic amongst the people or harm the public welfare (art. 102 bis). All who "advocate" in any manner for a "change in the basic constitutional principles or the political foundations ... or for "the tearing down of any of the basic foundations of the social structure" are to be punished by imprisonment (art. 98b). Moreover, these provisions prohibit the "encouragement" of all such acts (art. 98.b), "shouting or singing to create disputes" (art. 102), distribution of pictures intended to "harm the

reputation of the country ... or showing inappropriate scenes" (art. 178) and "insulting the President" of the Republic (art. 179), of a foreign country (art. 181) or any official representative of a foreign country in Egypt (art. 182).

The amendments to the Penal Law contained in Law No. 97(1992), also known as "The Terrorism Law," have reflected the Egyptian legislators' increased propensity towards further restrictions on freedom of opinion and expression by expanding the list of criminal acts and instituting ever more severe punishments (arts. 86 bis. And 87). These amendments carried out in 1992 were re-affirmed in the infamous Law 93(1995) discussed above.

Article 201 of the Penal Law (as amended by Law No. 36 of 1980) places special restrictions on the public pronouncements of religious figures by stipulating that:

Any person, even a man of religion, in the course of performing his functions, delivers in a place of worship or during a religious celebration, a pronouncement containing praise or criticism of the government, of a law, of a decision or decree of Republic or of any of the activities of a public administration body, or broadcasts or publishes as religious instruction and advice a message containing anything of the

sort, is punishable by imprisonment and a fine [or either] ... if force or violence are used, the punishment is prison⁽⁹⁶⁾.

It would appear from the foregoing that in Egypt, freedom of opinion and expression as guaranteed in that country's Constitution does not in fact survive the legal regulation. The Egyptian Penal law, emergency laws, and even amendments to the Constitution itself allow the authorities extremely wide leverage in controlling public discussion and debate at will. The broad and elastic restrictions on these freedoms give the authorities excessive powers of interpretation, which can be used to limit the exercise of these rights - especially by members of a political opposition.

2. Exceptional Courts.

States of emergency accord the executive further excessive powers, especially to issue emergency temporary decrees and to institute exceptional and emergency courts and tribunals, identified by Arab jurists and human rights activists as one of the most serious sources of human rights violations in the Arab world⁽⁹⁷⁾.

. In many Arab States, matters of State security - broadly interpreted to include political offenses of different types - are tried before special tribunals variously called State Security Courts, Special Courts or Exceptional Trials. These tribunals are often - although not always - established

by emergency regulations justified by the imposition of a state of emergency. Sometimes, these tribunals are established by special laws and do not require the existence or a formal declaration of a state of emergency. In Iraq, for example, Law No. 180, amended by Laws No. 1, 85 and 120 of 1969, instituted the Revolutionary Court in Baghdad, a permanent special court for political and security offenses run directly from the President's office. The sentences of the Revolutionary Court are final and not subject to any judicial review⁽⁹⁸⁾.

The August 1992 trials in Tunisia - known as the "Conspiracy 1 Trials" - of members of the al-Nahda Islamic movement were conducted in a special military court⁽⁹⁹⁾. The Jordanian National Charter, ratified in 1991 after the cancellation of the state of emergency in force since 1967, greatly strengthened the independence of the Jordanian judiciary but nevertheless failed to dis-establish the Exceptional Courts, which continue to try cases of a political nature⁽¹⁰⁰⁾.

The following Syrian case study serves to illustrate the complex methods by which that government has achieved thorough control over the judiciary in all matters interpreted to be of a political nature.

Country Study: Syria; a dual legal system

The Syrian Constitution guarantees the independence of the judiciary in more than one provision. Article 131 of

the Constitution, which states that "the judicial authority is independent" is bolstered by article 133 which further stipulates the "independence of judges," making them "subject to no authority except that of the law." The actual guarantee of that independence, however, is the responsibility of the President of the Republic as expressed in art. 131, who also presides over the Higher Council of the Judiciary (art. 132). The judicial system as a whole, including the determination of courts' jurisdictions as well as the administrative aspects pertaining to judges, such as their appointments, promotion, disciplinary measures and dismissal, are to be organized by the law (arts 135-138).

A full ten years before the promulgation and adoption of the present Syrian Constitution in March 1973, law was already wreaking havoc with the Syrian judiciary's independence. A state of emergency was declared by Military Order No. 2 of 8 March 1963, better known as the Emergency Law⁽¹⁰¹⁾. Consequent to this declaration, a number of decrees and laws were put into effect, creating a shadow judicial system for all matters related to political offenses or what are perceived by the authorities as security crimes. They remove any case broadly defined as "security-related" from the jurisdiction of the ordinary courts of the land. This special legal system, which continues to be in force today, effectively negates the constitutional guarantees to a fair trial and cancels other fundamental rights such as the right to appeal. As detailed

below, the decrees and laws creating this system violate many provisions of the International Covenant on Civil and Political Rights, and are not consonant with the United Nations' Basic Principles on the Independence of the Judiciary⁽¹⁰²⁾.

The process of sidelining the ordinary Syrian courts began with the Emergency Law itself, art. 4 of which authorized the Martial Law Governor (The Prime Minister) to enact written orders adopting a number of listed "restrictions on freedom of individuals with respect to meetings, residence, travel and passage in specific places or at particular times. Preventive arrest ... [a]uthorization to investigate persons and places" as well as several forms of censorship. Violators of the orders of the Martial Law Governor were to be tried in military courts⁽¹⁰³⁾. Two years later, Decree No. 6 of 1 July 1965 established "exceptional military courts" with few procedural controls⁽¹⁰⁴⁾. Decree No. 6 also listed a number of broadly defined "crimes" which fall within the jurisdiction of those exceptional military tribunals, regarded by sub-paragraph (e) as "offenses against the security of the state", such as:

opposing the fulfillment of unity between Arab countries, or opposing any of the goals of the Revolution, or obstructing these goals through committing demonstrations, assemblies, or conducting disorderly acts, or inciting for such, or publishing false news with the aim of

causing disorder and shaking the confidence of the masses in the aims of the Revolution.⁽¹⁰⁵⁾

On 28 March 1968, Decree No. 47 created the State Security Courts, and in August of that same year, Decree No. 109 created what are called Military Field Tribunals, replacing the "exceptional courts" provided by the emergency law. Article 6 of the Emergency Law authorizes those courts to adjudicate cases of crimes against State security, public order and "public authority."⁽¹⁰⁶⁾

It is an open question whether the perpetual state of emergency in Syria since 1963 continues to be justifiable under the ICCPR's art. 4.1 as one "which threatens the life of the nation," and whether the state of emergency and the consequent establishment of the exceptional courts are indeed measures "strictly required by the exigencies of the situation" as stipulated by the same article of the Covenant.

The broad and elastic terminology in sub-paragraph (e) of Decree No. 6 above, used in the definitions of punishable crimes against state security is problematic and comes into direct conflict with art. 19.3b of the ICCPR, where they would be difficult to justify under the exceptions provided for as necessary for the "protection of national security or of public order."

In addition, art. 5 of Decree No. 47 gives the State Security Court jurisdiction over any case "referred to it by the Emergency Law Governor," contradicting a principle

important to the guarantee of the independence of the judiciary. Article 3 of the Basic Principles on the Independence of the Judiciary states that:

The judiciary shall have jurisdiction over all issues of a juridical nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

Decree No. 47 and Decree No. 109 also stipulate that court sessions may be held *in camera*, and in the latter, the defendant is not permitted legal representation⁽¹⁰⁷⁾. Decree No. 47 further erodes procedural guarantees for a fair trial, by suggesting in its art. 7a that the State Security Court's rules of procedure need not be "confined to the usual measures." The article allows, for example, for the admissibility of hearsay evidence or the prosecutor's personal opinion on a case⁽¹⁰⁸⁾. This is a further departure from the Basic Principles' art. 2, which stipulates that "the judiciary shall decide matters before them impartially, on the basis of facts ..." and art. 5 which requires the conduct of trials by "ordinary courts or tribunals using established legal procedures."

No appeals are permitted after the final decisions of both the State Security Court and the Military Field Tribunals. Rather, it is the President of the Republic who has the power to review and amend sentences at will,

including ordering retrials⁽¹⁰⁹⁾. The President of the Republic has the authority to confirm or reject a sentence, or to revise it upwards if he so wishes. He is not limited to its "mitigation or commutation" as stipulated by the Basic Principles' art. 4, which prohibits as a rule "any inappropriate or unwarranted interference with the judicial process," including the revision of judicial decisions.

The executive's hold on the functions and operations of these special courts is sealed by the authority conferred upon it by the above-mentioned decrees to appoint the judges sitting in both types of courts. The President has the power to appoint judges to the State Security Courts, while the Prime Minister, acting as Martial Law Governor, appoints judges to the Military Field Tribunals. In neither case is it a requirement that the judges be legally trained, and in most cases they are career military officers⁽¹¹⁰⁾.

To summarize, the exceptional court system in Syria is a shadow legal operation controlled entirely by the executive authority, and is devoid of the basic guarantees of proper judicial process. Its determinations are unappealable, and the President of the Republic has full discretion in amending courts' decisions at will. Any perceived threat to the executive authority, whether by word or deed and no matter how loosely defined, may be referred to that shadow legal system. The rights of an individual, once trapped in that system, are in theory and effect practically non-existent.

- (60) See Adama Dieng, "The Rule of Law and the Independence of the Judiciary: An Overview of Principles, in Center for the Independence of Judges and Lawyers (CIJL), *Constitutional Guarantees for the Independence of the Judiciary*; CIJL Yearbook No. 1 (Geneva: International Comm. of Jurists, 1992) p. 22.
- (61) Following the last military coup in 1989, a state of emergency was declared in Sudan and the constitution was suspended. Military Decree No. 1 brought the Sudanese judiciary under the direct control of the ruling Revolutionary Command Council, and strict interpretations of the code of Islamic Shari'a, including Hudud punishments, were re-instituted. Hundreds of Sudanese judges were dismissed pursuant to their protests. See CIJL, *Attacks on Justice: The Harassment and Persecution of Judges and Lawyers*; May 1991 - June 1992 (Draft Copy) (ICJ: Geneva, 1992), pp. 95-100.
- (62) The U.A.E. is a federation of six autonomous Emirates: Abu-Dhabi, Ajman, Al-Fujeira, Al-Shargah, Dubai and Umm Al-Qewain.
- (63) *Report of the Human Rights Committee, General Assembly Official Records, 46th Session, A/46/40, p. 141 at para. 572.*
- (64) Hameed Fayyad, "*al-qanun al-dusturi fil watan al-'arabi*" [*Constitutional Law in the Arab World*] in AOHR, *Supra* note 6, p. 71.
- (65) Abed al-Ghani al-Mani, "*Mudakhala Qanuniya dusturiya* [A Legal-Constitutional Intervention]"; in AOHR, *sina'at al-qarar fil watan al-'arabi fi dhu' al-shar'iya al-dimuqratiya* [Decision-Making in the Arab world in Light of Democratic Legitimacy]; Thought Forum Series No. 5, (Cairo: Dar Al-Moustaqbal Al-'Arabi, 1992) p. 110.
- (66) al-Mani, *Id.*, p. 109

- (67) See al-Mani, *Id.*, pp. 110-6.
- (68) J. Denis Derbyshire and Ian Derbyshire, *World Political Systems: An Introduction to Comparative Government*, (Edinburgh: Chambers, 1991) p. 48.
- (69) U. of Arab Jurists, *Supra* note 20, p. 72.
- (70) Article 4 ICCPR.
- (71) Excepting a brief period from May 1980 to October 1981, when it was reimposed after the assassination of Anwar Sadat. See AOHR 1992 Report, p. 239.
- (72) Amnesty International, *Jordan: Human Rights After the State of Emergency* (in Arabic), AI Index No. MDE/6/02/90/A, pp. 1-3.
- (73) AOHR 1988 Report, p. 9.
- (74) For more information on states of emergency, see the Fifth Annual Report of Leonardo Despouy, Special Rapporteur on the Administration of Justice and the Human Rights of Detainees: *The Question of Human Rights and States of Emergency*, presented in August 1992 to the Sub-Commission on Prevention of Discrimination and Protection of Minorities. U.N. Doc. E/CN.4/Sub.2/1992/23.
- (75) AOHR 1988 Report, p. 9.
- (76) Article 19, *Bahrain: Time for Change*; Censorship News No. 7 (December 1991) p. 2-3.
- (77) Blaustein and Flanz, *Supra* note 32, Volume II, Constitution of Bahrain Historical Chronology, p. 7.
- (78) Article 19, *Supra* note 76, p. 3.
- (79) AOHR 1988 Report, p. 9. Introduction to AOHR 1991 Report, p. 6.
- (80) Anabtawi, *Supra* note 17, pp. 128-9.

- (81) Quoted in Article 19, *Information, Freedom and Censorship: The Article 19 World Report 1988*; (Essex: Longman, 1988) p. 257.
- (82) Article 19, *Id.*
- (83) Art. 19, *Silent Kingdom: Freedom of Expression in Saudi Arabia*, (London: Article 19, October 1991) p. 3.
- (84) Article 19, *Id.* pp. 9-10.
- (85) See Part I section A above.
- (86) See Part III section C above.
- (87) As amended by Laws No. 60(1968), 37(1972), 164(1981) and 50(1982). See Muhammad Hilmi Murad, "*al-tashri'at al-misriyya al-mujafiya lihuquq al-insan* [Egyptian Legislation Contrary to the Universal Declaration of Human Rights]" in Egyptian Organization for *Human Rights, Huquq al-insan fi misr* [Human Rights in Egypt], Thought Forum Series No. 2, (Cairo: Dar al-Mustaqbal al-Arabi, 1990) p. 26.
- (88) Murad, *Id.*, p. 26-7.
- (89) Murad, *Id.*, p. 37.
- (90) Article 19, *Supra* note 81, p. 248.
- (91) Murad, *Supra* note 87, p. 37
- (92) Amir Salem, *al-bina al-qanuni al-istibdadi wamarkez huquq al-insan fi misr* [The Repressive Legal Structure and the Centrality of Human Rights in Egypt], in AOHR, Thought Forum Series, No. 2, p. 49.
- (93) See Center for Human Rights Legal Aid, *Ma'rakat Hurriyat al-Sahafa: Dirasa Naqdiya li-Qanun 93 li-Sanat 1995* [The Battle for Freedom of the Press: A Critical Analysis of law 93 of 1995] (Cairo: Center for Human Rights Legal Aid, August 1995).
- (94) Article 19, *Supra* note 81.

- (95) *inter alia*, several paragraphs in Penal Law articles 80, 98, 174, 176, 177, 179, 181, 182, 184. See Amira Mahmoud Bahieddine, "*Huquq al-insan wahurriyatahu al-dimuqratiyya: muqarana bayna al-qawaneen al-misriyya wal mawatheeeg al-dawliyya lihuquq al-insan* [Human Rights and Democratic Freedoms: A Comparison Between Egyptian laws and the International Human Rights Treaties]", in AOHR, *Huquq al-Insan fi Misr* [Human Rights in Egypt] Thought Forum Series No. 2, (Cairo: Dar al-Mustaqbal al-Arabi, 1990) pp. 138-141.
- (96) Quoted in Murad, *Supra* note 87, p. 38.
- (97) The Arab Lawyers Union, for example, has been demanding the cancellation of exceptional courts in Arab countries since their 15th Annual Conference in Tunisia in November 1984. See *Huquq al-insan al-arabi* No. 7 (December 1984) pp. 30-43. See also *al-muhamoun al-arab* No. 48-49, p. 33-4.
- (98) Middle East Watch, *Supra* note 48, p. 50-1.
- (99) Reported by *Al-Hayat* daily newspaper, London, 11 August 1992, p. 1.(in Arabic)
- (100) AOHR, 1992 Report, pp. 10-11.
- (101) CIJL, *Supra* note 60, p. 116. The State of Emergency Law was actually passed on 22 December 1962, art. 2a of which stipulated approval of a Presidential declaration of a state of emergency by the People's Assembly. This approval was never formally given, but a state of emergency has been in force in Syria since 1963. See Sayyed H. Amin, *Supra* note 14, p. 368.
- (102) Adopted by the Seventh Annual U.N. Congress on the Prevention of Crime and the Treatment of Offenders in 1985, and endorsed by General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. Text is found in United Nations, *A Compilation of International Instruments*, ST/HR/1/Rev.3, (United nations: New York, 1988) pp. 265-8.

- (103) Article 4a and 4b of the Emergency Law. Quoted in Sayyed H. Amin, *Supra* note 14, p. 368.
- (104) Middle East Watch, *Human Rights in Syria*, (New York: Human Rights Watch, September 1990) p. 33.
- (105) CIJL, *Supra* note 60, p. 121.
- (106) CIJL, *Id.*
- (107) CIJL *Supra* note 61, p. 100.
- (108) CIJL, *Id.*, p. 117. See also Middle East Watch, *Supra* note 105, p. 34.
- (109) Middle East Watch, *Id.*, p. 35. See also CIJL, *Supra* note 61, p. 100.
- (110) Middle East Watch, *Id.*, p. 34-5.

PART IV.

INTERNATIONAL AND REGIONAL COMMITMENTS

A. ARAB STATES' COMMITMENTS TO MULTILATERAL HUMAN RIGHTS TREATIES.

A quick review of Arab States' commitments to international human rights instruments is of little use in clarifying the degree of protection of those rights enjoyed by their citizens in practice. However, the chart in appendix C, detailing the status of those instruments in the Arab world, does offer some useful insights into the commitments made by those countries as a matter of principle if not practical implementation.

The first observation is that the countries which seem to be averse, on principle, to committing themselves to international human rights treaties, are all traditionalist monarchical Gulf States, with the exception of Djibouti which in December 1990 ratified its very first human rights treaty, the Convention on the Rights of the Child. Kuwait is party to only three instruments: The Convention on the

Elimination of All Forms of Racial Discrimination, The Convention on Apartheid, and the Convention on the Rights of the Child. In August 1991, the Sultanate of Oman ratified the Convention on Apartheid - its only multilateral human rights commitment. Qatar and the United Arab Emirates are party only to the Racial Convention and the Apartheid Convention, and Saudi Arabia has since 1950 been party only to the Genocide Convention.

Indeed, as of July 1992, the Racial and Apartheid Conventions both have the greatest number of Arab States Parties, with the Genocide Convention and the Children's Convention running close seconds.

What is of direct concern to this discussion, however, is the status of the International Covenant on Civil and Political Rights, which twelve Arab States have ratified or acceded to. Of those Arab States parties, only Libya has no Constitution, although The Great Green Charter may be referred to in the translation of this international commitment into domestically guaranteed and potentially enforceable principles. For the remaining eleven States Parties, the discussions in Part II above of some of the civil and political rights guaranteed by their constitutions serves as an indicator of the degree to which those constitutional provisions accord with the States' commitments under the ICCPR.

It is surprising to note that in ratifying or acceding to

the ICCPR, only two states made reservations: Algeria and Syria. The Syrian reservation did not concern any of the substantive provisions of the Covenant. Rather, it objected to article 48.1 (elaborating the criteria for signature of the Covenant by States) which, in their view, was "incompatible with the object and purpose of the Covenant" and constituted a form of discrimination against States that may not fit the detailed criteria⁽¹¹¹⁾; the intended reference apparently being to dependent and colonial territories, such as the Occupied Palestinian Territories.

Algeria, on the other hand, did make some interpretive reservations. The Algerian government stated that it would interpret article 22 of the Covenant as making "law the framework for action by the State with respect to the organization and exercise of the right to organize."⁽¹¹²⁾ Additionally, its reservation to article 23.4 of the Covenant on the equality of rights of spouses in marriage and its dissolution subjected that commitment to the proviso that it may not "impair the essential foundations of the Algerian legal system."⁽¹¹³⁾

With the exception of Algeria and the Sudan in 1992, none of the other Arab States Parties to the ICCPR fulfilled their obligations under art. 4 to notify other States Parties through the Secretary General of the United Nations of their declaration of a state of emergency, its duration, and of the articles they intended to derogate from as a consequence of such declaration.

There is little consistency between the constitutions of Arab States Parties to the ICCPR with respect to its legal effect as an international treaty in domestic law. The Tunisian Constitution is the only one which states clearly that after ratification by the People's Assembly, treaties acquire priority with respect to "what may contradict them in internal laws" (art. 48).

In the Egyptian Constitution, treaties acquire "the force of law" after ratification and publication (art. 151). In other words, the Covenant, signed and ratified, is not understood to be hierarchically superior but simply another law which updates or amends previous domestic legislation, but may itself be updated or amended by subsequent legislation⁽¹¹⁴⁾. The Sudanese Constitution takes the same position (art. 103). The question is not yet settled in Egypt where there is an ongoing jurisprudential debate over this issue, in and out of the courts⁽¹¹⁵⁾.

The Jordanian situation is somewhat confusing. It appears that, according to the official position, international treaties have the force of law in Jordan, "and prevail over all domestic legislation, with the exception of the Constitution. The Jordanian courts therefore give those international conventions precedence over domestic legislative enactment unless public order would be jeopardized thereby." The Jordanian Court of Cassation ruling No. 32/82 of 6 February 1982 confirmed the precedence of international conventions over domestic law,

but the basis of the derogation on the basis of public order is not clear⁽¹¹⁶⁾.

The Constitutions of Algeria and Morocco disallow the ratification of an international treaty if provisions of that treaty are in conflict with constitutional texts. The constitution must be amended through standard procedures if ratification is to proceed.

Finally, it is important to note that only three Arab States have so far acceded to the First Optional Protocol to the ICCPR, thus accepting the competence of the Human Rights Committee to hear individual complaints. All of those accessions are recent: Algeria in September of 1989, Libya in May of 1989, and Somalia in January of 1990. This research has revealed that no communications from citizens of any of the three countries have been received by the Human Rights Committee to date.

Other difficulties arise in the actual implementation of Arab States' commitments to the ICCPR. States Parties to the Covenant are committed by its article 2.2 to "take the necessary steps, in accordance with [their] constitutional processes ... to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant." For a treaty to become active law in most Arab States, the publication of its text in the official government publication is required as is the case with any other domestic legislative act or law. This is often not done

in Arab States, which makes adjudication for rights before a court of law a difficult prospect⁽¹¹⁷⁾.

It is not the intent of this paper to provide a thorough study of Arab States' reports to the Human Rights Committee under art. 40 of the Covenant, as this would require another research altogether. Suffice it to say that a quick review of those reports reveals little that is helpful in the determination of the status of the Covenant's guarantees of human rights - or of the implementation of the constitutional guarantees - within each country. Nearly all the reports assert that the individual reporting country is indeed fulfilling its obligations under the Covenant. For example, Syria's initial report simply stated that:

The provisions of the laws in force [in Syria] are fully compatible with the obligations arising from the international covenants on human rights. A comparison of those provisions with the obligations imposed by the Covenant will demonstrate that this is so⁽¹¹⁸⁾.

The presentation of reports and the consequent discussions in the Committee proceed in some detail, and Committee members often raise substantive questions on the individual country's legislative implementation of the Covenant's provisions. These questions are answered by the representatives of the reporting State, in varying degrees of detail, and the discussions end with thanks being

proffered for "candor and cooperation", and hopes are expressed for "serious progress in implementing the international standards set forth in the Covenant."⁽¹¹⁹⁾

It is a matter of open debate whether the public discussion of a State Party's report to the Human Rights Committee has a real and practical effect on that Party's policies and practices as regards its respect for human rights. Much depends on the country in question, its political position in the world community, and its own sensitivity to public exposure as a human rights violator. As a matter of international law, however, notwithstanding States parties' contractual obligation under the Covenant to give effect to its provisions⁽¹²⁰⁾, the weakness of the international enforcement mechanisms indicates that the international community has not yet accepted fully the sovereignty of the individual, his/her dignity and the importance of protection - certainly not where this protection or even its discussion may be to the detriment of the sovereign State.

Graefrath was undoubtedly correct in asserting that "international human rights standards are not identical with the human rights and liberties which exist in the various countries" and that "[i]t remains the task of the national legal system to guarantee the rights of the individual."⁽¹²¹⁾

B. REGIONAL COMMITMENTS.

1. The League of Arab States

The Arab countries are all members of the League of

Arab States, established on 22 March 1945. The League predates the United Nations and all European and Afro-Asian regional organizations⁽¹²²⁾. The Arab League was indeed the first regional organization to respond to a United Nations proposal to create regional human rights commissions, thus initiating by its decision 2443/48 of September 1968 the Permanent Arab Commission on Human Rights (PACHR) to operate within the framework of the League⁽¹²³⁾.

The PACHR first met in 1969, and immediately fired off three cables dealing with human rights in the Occupied Palestinian Territories. For the first two years, the PACHR worked well and hard, making recommendations for adoption by the Council of the League of Arab States. The Commissions' concerns, however, belied the political nature and limits of its orientation, and the importance it really gave to the human rights of the average Arab citizen. During the first two years, the Commission adopted 20 recommendations on Palestinian human rights - understandably, in the aftermath of the 1967 war with Israel - but only two recommendations were adopted on human rights in the Arab world as a whole. The Council of the Arab League approved only one of those latter two. Between 1971 and 1988, the Council took only eight decisions related to the Arab Commission - all of them having to do with the chairmanship of the Commission, and none substantive⁽¹²⁴⁾.

In 1971 the PACHR completed a Draft Declaration for an Arab Charter for Human Rights, described by Anabtawi as:

no more than a collection of some principles related to some rights, appearing more briefly than in the Universal Declaration of Human Rights, devoid of a great number of important rights and of any mechanism to oversee its implementation or guarantee the rights therein⁽¹²⁵⁾.

It was not until 23 years later, on 1 September 1994, that the Council of the Arab League during its 102st session formally passed the charter and opened it for ratification by each Arab state. To date, however, the Arab States have failed to ratify the Charter and bring it into force. The last major discussion of the Charter took place in November 1982, and the disagreements on the texts of the Charter's provisions and protections centered around the inclusion of non-derogability for some rights, the scope of several political rights, the death penalty and the related provisions against 'arbitrary' vs. 'non-legitimate' executions, Islamic Shari'a principles and others.⁽¹²⁶⁾ This disagreement, and the long delay in adopting the charter and failure to ratify it are all interesting in light of the fact that twelve of the twenty Arab States are already States Parties to the International Covenant on Civil and Political Rights, having accepted its demanding reporting procedures and

committing themselves in principle to its provisions, yet are unable to agree to a regional instrument.

The foregoing puts in question the seriousness of Arab States' commitment to human rights principles. The political basis of decision-making in the League of Arab States is primarily responsible for the lack of effective action on the human rights as well as in other fields. Members of the Permanent Arab Commission on Human Rights are States' representatives, each having one vote. The Commission recommends decisions and resolutions for approval by the Council of the League, where the most serious problem exists. Decisions of the Council are taken only by consensus. No decisions are adopted unless consensus is reached, which effectively gives every Member State a power of veto. Furthermore, there is no mechanism to implement decisions taken and many such decisions go no further than the meeting rooms of the League. Thus, the League of Arab States is effectively crippled in its efforts to bring about regional cooperation in all matters, including human rights, and often falls prey to the political power of individual countries in the area. The Arab Organization for Human Rights summed up its report on the status of the Draft Arab Charter in the following rather sad comment:

The only development with respect to the Draft Arab Charter of Human Rights in the year 1987 was that another year was added to the age of

the Arab failure to agree⁽¹²⁷⁾.

2. Other Regional Arrangements

Seven Arab States are Parties to the African Charter on Human and People's Rights: Algeria, Egypt, Libya, Mauritania, Somalia, Sudan and Tunisia⁽¹²⁸⁾. Much has been written on the effectiveness and functioning of the African Charter, and on the problems encountered by the African Commission created under article 30 of the Charter in the implementation of its mandate. Little can be added here by a discussion of Arab States' participation in and their commitments under the Charter, which follows essentially the same pattern as that of all African States⁽¹²⁹⁾.

Arab States are also members of the Islamic Conference Organization, which has been trying - unsuccessfully - to ratify a Human Rights Charter in Islam since 1980. Most recently, the Cairo Declaration of 5 August 1991 also failed to be ratified⁽¹³⁰⁾.

A more thorough research is needed in both those areas, particularly to investigate the thesis made by some scholars that regional specificity is sometimes more conducive to human rights respect and promotion,⁽¹³¹⁾ rather than a culturally insensitive international document. While this may be true, the problems remain essentially political. In the Arab world, for example, the search for a practical and workable philosophic synthesis between Islam, the State and the individual is ongoing. In the view of the Arab Organization for Human Rights, the elusiveness

of this synthesis accounts only partially for the obstacles that stood in the way of ratification of the Arab Charter for Human Rights:

If it is not resolved in Arab political thinking first, there is nothing that can be added by an Arab Charter for Human Rights ... nor by a specifically Arab regional system for human rights⁽¹³²⁾.

(111) United Nations, *Multilateral Treaties Deposited with the Secretary General: Status as of 31 December 1991*, U.N. Doc. ST/LEG/SER.E/10 (U.N: New York, 1992) p. 125.

(112) U.N. Id. p. 123

(113) *Id.*

(114) See discussion in Al-Sadeq Sha'ban, "*al-mu'ahadat fil qanun al-dakhili lilduwal al-arabiya* [Treaties in the Domestic Law of Arab Countries]" in Bassiouni et. al, eds., *Human Rights Vol. 3: Dirasat tatbiqiya 'anil 'alam al-'arabi* [Applied Studies About the Arab World]; (Beirut: Dar El-Ilm Lilmalayeen, 1989) pp. 157-76.

(115) For a review of the various legal positions, see Ibrahim al-'Anani, *al-mabade' allati tahkum tanfeeth ittifaqiyat huquq al-insan fi misr* [Principles Governing the Implementation of Human Rights Treaties in Egypt] in AOHR, *supra* note 96, pp. 163-72.

(116) See Jordan's Second Periodic Report to the Human Rights Committee, U.N. Doc. CCPR/C/46/Add.5 (18 December 1989) p. 2.

(117) Sha'ban, *Supra* note 115, p. 165.

(118) U.N. Doc. CCPR/C/1/Add.1/Rev.1 (1 July 1977) p. 1.

(119) These representative quotes are taken from the discussion of

Sudan's initial report to the Human Rights Committee. See *Report of the Human Rights Committee, Supra* note 66, p. 124-8 at. paras. 492-521.

(120) ICCPR art. 2.

(121) Graefrath, "The Application of International human Rights Standards to States with Different Economic, Social and Cultural Systems" in *Bulletin of Human Rights, Special Issue*, (Geneva: UN Centre for Human Rights, 1985) pp. 10-1.

(122) B. Boutros-Ghali, "The League of Arab States"; in Karel Vasak, Ed., *The International Dimensions of Human Rights*, Vol. 2 (Paris: UNESCO, 1982) p. 575.

(123) Boutros-Ghali, *Id.*, p. 576-7.

(124) Jameel Matar, "Comment 3" in Center for Arab Unity Studies, *Azmat al-dimuqratiya fil watan al-'arabi* [The Crisis of Democracy in the Arab World]; a collection of conference papers (Beirut: Centre for Arab Unity Studies, 1984) 560-1.

(125) Anabtawi, *Supra* note 17, p. 108.

(126) Matar, *Supra* note 125, p. 561-2.

(127) AOHR, 1988 Report p. 8.

(128) AOHR 1992 Report, p. 311.

(129) See AOHR 1992 Report, Part III: "The African Charter for Human And Peoples' Rights: The Experience of Applying a Regional Convention in Developing Countries"; pp. 299-308.

(130) ICJ *Newsletter* No. 48(1992).

(131) See for example B.G. Ramcharan, "The Role of Regional, National and Local Institutions: Future Perspectives" in B.G. Ramcharan, ed., *Human Rights: Thirty Years After the Universal Declaration*; (Dordrecht: Martinus-Nijhoff, 1979) pp. 233-48.

(132) AOHR, *Supra* note 130, p. 308.

CONCLUSIONS

Constitutions in the Arab States are a relatively new phenomenon, as is the concept of the modern nation-state. The concept of the human rights of the individual citizen as entailing the obligation of the State to protect them is even newer. These concepts are still trying to find their interpretation in the Muslim Arab world in terms of finding the balance between the sovereignty of "God's Law on Earth" and the myriad interpretation by individual regimes of that law, vs. the law of the modern nation-state.

This philosophic dynamic, however, is not the main cause of the denigrated state of human rights in the Arab countries. Rather, the problem is essentially a political one of excessive executive power and the lack of democratic participation in government.

This study of civil and political rights, as standardized in the International Covenant on Civil and Political Rights and guaranteed in Arab constitutions, reveals that in principle, the Arab States have indeed

accepted and recognized most of those rights, evidenced by their inclusion in the constitutions. The standard and degree of protection of rights, however, leaves a lot to be desired. There is a lack of clarity in the language used, which tends to be rather broad and elastic, making it overly prone to subjective interpretations. Furthermore, the standard practice in all of those constitutions is to defer the regulation of the substantive content of those rights to the law, thus allowing the legislative and executive authorities a great leeway in interpreting the constitutional provisions at will.

In general, one can say with some confidence that the guarantees and protection of human rights in any one Arab State's constitution and in practice are inversely proportional to the proximity of those rights to the political life of that country; the more the exercise of those freedoms and rights is perceived to be political, the less guaranteed and protected those rights are. The preponderance of excessive executive power in most of the Arab countries puts human rights at severe risk. The Presidents, Kings and Emirs of the Arab world, conscious of their tenuous hold on power, have sought - and succeeded - to institutionalize that power in the constitutional, legislative and even the judicial machinery of their countries. It was suggested by one scholar that:

the Arab constitutional legislator is distinguished by his selectivity, for when he is inspired by other constitutions, he chooses only

the worst, taking for example the powers of the American President without a Congress, or taking Soviet centralism without a party⁽¹³³⁾.

One result is that today there exist ever-widening gaps between noble constitutional principles, the legislative regulation of those principles and their implementation in practice. Rather than protect those rights and freedoms, Arab regimes seek to protect themselves from the exercise of those rights by their citizens. This engenders popular frustration and political opposition - sometimes violent - which is most often dealt with harshly by the regimes in power and used, under the rubric of national security and public safety, to reduce even further the scope of rights guaranteed by their constitutions.

A glance over the chart in Appendix B reveals that the citizens of less than half of the Arab countries can actually rely upon a document such as a constitution as a measure of rights to claim upon their states. Even then, some of the constitutions or constitutional documents offer extremely inadequate guarantees of those rights. Additionally, political instability in most Arab States has led to situations of civil strife and armed conflict within and between States in the region. This has further led to the imposition of states of emergency or the suspension by executive order of all or parts of the constitution for the stated purposes of maintaining public order and protecting national security.

The effect of the foregoing on the status of the human

rights in the Arab countries in considerable, and represents to some degree the attitude of the ruling Arab regimes to those constitutions and to the rights of their own citizens. This attitude would seem to validate Duchacek's assertion that constitutions are often statements of faith rather than real programs of action; of more symbolic rather than real value:

Today, or in the turbulent past, many constitutions, with bills of rights, are being drafted and adopted to symbolize a leader's or his people's wish to 'make a fresh start ... to begin again.' As the record indicates, a fresh start is difficult in all matters involving men and nations: it is easier to write a new national charter - a certificate of birth for a new nation or a certificate of rebirth or reincarnation for an established nation - than to close a chapter of past tragedies or errors and begin a new life⁽¹³⁴⁾.

(133) Kamel Zuheiri, statements made during a round-table discussion on human rights, held in September 1990 in Vienna. Quoted in AOHR, *Huquq al-insan fil watan al-arabi* [Human Rights in the Arab world] No. 24, p. 150.

(134) Ivo D. Duchacek, *Rights and Liberties in the World Today: Constitutional Promise and Reality*; (Santa Barbara: Clio Press, 1973).p. 5.

APPENDIX A. Vital Statistics on the Arab World(135)

Country	Population 1988(Millions)	Population est. 2010	1988 GDP in Billions U.S.\$	1988 GDP per head in U.S.\$	1988 Debt as % of GDP
Algeria	23.84	40.69	54.1	\$ 2,269	45.9 %
Bahrain	.48	.82	3.64	7,583	--
Egypt	51.9	78.46	29.5	568	182.6
Iraq	17.25	35.32	53.3	3,090	22.8
Jordan	3.94	8.94	4.58	1,162	120.8
Kuwait	1.96	3.45	19.97	10,189	36.7
Lebanon	2.83	4.17	5.34	1,887	9.3
Libya	4.23	8.98	24.76	5,853	9.5
Mauritania	1.92	3.55	1	521	223.5
Morocco	23.91	36.98	18.52	775	90.6
Oman	1.38	2.88	7.59	5,500	41
Qatar	.33	.63	5.25	15,909	--
Saudi Arabia	14.02	29.55	74.46	5,311	24.9
Somalia	7.11	13.25	1.71	241	214.8
Sudan	23.8	44	11.1	467	106.7
Syria	11.34	23.65	14.9	1,314	28
Tunisia	7.81	11.27	10.05	1,287	56.5
U.A.Emirates	1.5	2.29	23.34	15,560	32.8
N.Yemen	9.83	20.31	5.53	579	211.9
S. Yemen	2.35	4.58	1.36	241	214.8
Total	211.76	373.77			

(135) Source: The Economist. *Vital World Statistics*, *Supra* note 1, pp. 17,25,33,185-6

APPENDIX B. Status of Arab Constitutions (September 1992)

State	Document	Status
Algeria	Constitution (Last amended 23 Feb 89)	State of Emergency
Bahrain	Constitution (June 1973)	Major parts suspended since 1975
Djibouti	New Constitution (Sept 1992)	No information-fighting in some areas
Egypt	Constitution (Last amended 22 May 80)	State of Emergency
Iraq	Interim Constitution (16 July 1970)	Ongoing state of war
Jordan	Constitution (1952 & (1952) Nat'l Charter (1991)	Operable
Kuwait	Constitution (11 November 1962)	Parts suspended
Lebanon	Constitution (1926) (Last amended 21 Jan 1974)	15-year conflict. Regaining central authority
Libya	No Constitution Green Charter for Human Rights (June 1988)	Not a constitution but has legal effect
Mauritania	New Constitution (1991)	
Morocco	Constitution (Last amended 10 March 1972)	No information-fighting in some areas
Oman	None	Operable
Qatar	Interim Basic Law (amended 10 Apr 1972)	n/a
Saudi Arabia	New Basic Law (March 1992)	Suspended
Somalia	Constitution	Most parts not yet in force
Sudan	Constitution	State of war. No central authority
Syria	Constitution (last amended 1973)	Suspended. Islamic Shari'a applied
Tunisia	Constitution (Last amended 25 Jul 1988)	State of Emergency
U.A. Emirates	Interim Constitution (2 Dec 1971)	Operable
Yemen	New Constitution (ratified by public referendum 1994)	Operable

APPENDIX C2. Multilateral Treaty Ratification By Arab States

Country	Genocide Conv.	Racial Conv.	Apartheid Conv.	Women's Conv.	Children's Conv.
Algeria	A-31 Oct 63	R-14 Feb 72	R-26 May 82		S-26 Jan 90
Bahrain	A-27 Mar 90	A-27 Mar 90	A-27 Mar 90		S-13 Feb 92
Djibouti					R-6 Dec 90
Egypt	R-8 Feb 52	R-1 May 67	A-13 Jun 77	R-18 Sep 81	R-6 Jul 90
Iraq	A-20 Jan 59	R-14 Jan 70	R-9 Jul 75	A-13 Aug 86	
Jordan	A-3 Apr 50	A-30 May 74	S-5 Aug 74	S-3 Dec 80	R-24 May 91
Kuwait		A-15 Oct 68	A-23 Feb 77		R-21 Oct 91
Lebanon	R-17 Dec 53	A-12 Nov 71			R-14 May 91
Libya	A-16 May 89	A-3 Jul 68	A-8 Jul 76	A-16 May 89	
Mauritania		R-13 Dec 88	A-13 Dec 88		R-16 May 91
Morocco	A-24 Jan 58	R-18 Dec 70			S-26 Jan 90
Oman					
Qatar		A-22 Jul 76	R-22 Aug 91		
Saudi Arabia			R-19 Mar 75		
Somalia	A-13 Jul 50				
Sudan		R-26 Aug 75	R-28 Jan 75		
Syria	A-25 Jun 55	A-21 Mar 77	R-21 Mar 77		R-3 Aug 90
Tunisia	A-29 Nov 56	A-21 Apr 69	R-18 Jun 76		S-18 Sep 90
U.A.Emirates		R-13 Jan 67	A-21 Jan 77		R-30 Jan 92
Yemen	A-9 Feb 87	A-20 Jun 74	R-15 Oct 75	R-20 Sep 88	
		A-18 Oct 72	A-17 Aug 87	A-30 May 84	R-31 May 91

A - Accession R - Ratification S - Signature

APPENDIX C1. Multilateral Treaty Ratification By Arab States⁽¹³⁶⁾

Country	ICESCR	ICCPR	ICCPR-OPI	Torture Conv.
Algeria	R-12 Sep 89	R-12 Sep 89	A-12 Sep 89	R-12 SEp89
Bahrain				
Djibouti				
Egypt	R-14 Jan 82	R-14 Jan 82		A-25 Jun 86
Iraq	R-25 Jan 71	R-25 Jan 71		A-13 Nov 91
Jordan	R-28 May 75	R-28 May 75		
Kuwait				
Lebanon	A-3 Nov 72	A-3 Nov 72		
Libya	A-15 May 70	A-15 May 70	A-16 May 89	A-16 May 89
Mauritania				
Morocco	R-3 May 79	R-3 May 79		R-1992
Oman				
Qatar				
Saudi Arabia				
Somalia	A-24 Jan 90	A-24 Jan 90	A-24 Jan 90	A-24 Jan 90
Sudan	A-18 Mar 86	A-18 Mar 86		S-4 Jun 86
Syria	A-21 April 69	A-1 April 69		
Tunisia	R-18 Mar 69	R-18 Mar 69		R-23 Sep 88
U.A.Emirates				
Yemen	A-9 Feb 87	A-9 Feb 87		A-5 Nov 91

(136) Source: *United Nations, Multilateral Treaties Deposited with the Secretary General; Status as of 31 Dec. 1991*. Additionally, U.N. Doc. C.N.32.1992.Treaties-2 (Depository Notification).

**ARAB CONSTITUTIONAL
GUARANTEES OF
CIVIL AND POLITICAL RIGHTS
Bibliography**

Sources in Arabic

AL-HAFEZ, Mehdi "*afaq al-dimuqratiya fil watan al-arabi fi du' al-mutaghayirat al-dawliya* [Democratic Horizons in the Arab world in Light of International Developments]" Report of a seminar held in Vienna, September 1990; in **24 *Huquq al-insan fil watan al-'arabi*** (Arab Organization for Human Rights: Cairo, December 1990).

AL-NUWAIDY, Abed al-Aziz, "*min ajl tatwee' nathariyat wamumarasat huquq al-insan ma' haqa'eq al-'alam al-thaleth* [Towards Adapting the Theory and Practice of Human Rights to the Realities of the Third World]" in **23 *Huquq al-insan fil watan al-'arabi*** (Arab Organization for Human Rights: Cairo, August 1989) pp. 47-56.

AL-SAYEGH, Nabil et. al., Eds., *Al-ahkam al-dusturiya lilbilad 'al-arabiya* [Constitutions of the Arab Countries]; (Dar al-Jami'a: Beirut, [no date]).

AMNESTY INTERNATIONAL, *al-Urdun: himayat huquq al-insan ba'da ilgha' halat al-taware'* [Jordan: Human Rights after the State of Emergency], AI Index No. MDE/6/02/90/A (AI: London, June 1990).

ANABTAWI, Munther, *Al-insan qadiyya wahuquq* [The Human Being: Rights and a Cause] (Arab Organization for Human Rights: Tunis, 1991).

ARAB JOURNALISTS UNION, "*Hurriyat al-ra'i wassahafa Ifil watan al-'arabi* [Freedom of Opinon and the Press in the Arab World], Presentation at a seminar on Human Rights and Fundamental Freedoms held in Baghdad, Iraq 18-20 May 1979; in 3-4 *Al-Huquqi Al-'Arabi* (Arab Lawyers' Union: Baghdad, 1979).

ARAB LAWYERS UNION, *Al-Muhamoun Al-Arab*; monthly periodical (Arab lawyers Union General Secretariat, Cairo).

ARAB ORGANIZATION FOR HUMAN RIGHTS, *Arab Human Rights*, Occasional Paper Series; (AOHR: Geneva).

-----, *Afaq al-dimuqratiya fil watan al-'arabi fi du' al-mutaghayirat al-duwaliya* [The Democratic Horizons in the Arab World in Light of International Developments]; Thought Forum Series No. 4; (Dar Al-Mustaqbal Al-'Arabi: Cairo, 1991).

-----, *Al-i'lan al-'alami lihuquq al-insan wa ahwal al-watan al-'arabi* [The Universal Declaration of Human Rights and the Status of the Arab World] Report of a seminar in Austria; Thought Forum Series No. 1; (Dar Al-Moustaqbal Al-'Arabi: Cairo, 1989).

-----, "The Arab Human Rights Movement;" Report of a round-table discussion organized by the AOHR in Cairo 17 October 1990; in *24 Huquq al-insan fil watan al-'arabi* (Arab Organization for Human Rights: Cairo, December 1990).

-----, *Huquq Al-Insan Fil Watan Al-'Arabi* [Human Rights in the Arab World] Annual Reports, 1988, 1989, 1991, 1992. (AOHR: Cairo).

-----, Semiperiodical *Newsletter*; (AOHR: Geneva).

-----, *Sina'at al-qarar fil watan al-'arabi fi du' al-shar'iya al-dimuqratiya*

[Decision-making in the Arab World in Light of Democratic Legitimacy]; Report of the Fourth Annual Forum held in Vienna 13-14 September 1991; Thought Forum Series No. 5; (Dar al-Mustaqbal Al-'Arabi: Cairo, 1992).

BASSIOUNI, M. Cherif, AL-DAQQAQ, Muhammad Said, and WAZEER, Abed al-Azeem, Eds. *Human Rights Vol. 3: Dirasat tatbiqiya 'anil 'alam al-'arabi* [Applied Studies About the Arab World]; (Dar El-'Ilm Lilmalayeen: Beirut, 1989) .

-----, *Human Rights Vol. 2: Dirasat hawl al-watha'eq al-'alamiya wal iqlimiya* [Studies on the International and Regional Documents]; (Dar El-'Ilm Lilmalayeen: Beirut, 1989)

CENTER FOR ARAB UNITY STUDIES; *Azmat al-dimuqratiya fil watan al-'Arabi* [The Crisis of Democracy in the Arab World], Papers and Discussions of a seminar on the topic, (Center for Arab Unity Studies: Beirut, 1984).

EGYPTIAN ORGANIZATION FOR HUMAN RIGHTS, *Huquq al-insan fi misr* [Human Rights in Egypt] Papers and discussions of a seminar held 8-9 September 1988 (Dar Al-Moustaqbal Al-Arabi: Cairo, 1990).

JAMIL, Hussein, *Huquq al-insan fil watan al-'arabi* [*Human Rights in the Arab World*]; National Culture Series No. 1; (Center for Arab Unity Studies: Beirut, 1986).

LEAGUE OF ARAB STATES, "*ITaqreer muqaddam ila al-sayyed al-ameen al-'am...etc.* [Report to the Secretary General of the United Nations from the Secretary General of the League of Arab States in Implementation of the Recommendation by the Permanent Arab Commission of Human Rights, As Ratified by the Council of the League during its 91st Session in Accordance By Its Decision No. 4907, 30/3/1989]"; in *52-54 Al-Muhamoun Al-'Arab* (1989) pp. 37-70.

MAHMASANI, Subhi, *Al-awda' al-tashri'iyah fil duwal al-'arabiya: madeeha wahadhirihah* [Legal Systems in the Arab States: Past and Present]; Fourth Edition; (Dar Al-'Ilm Lilmalayeen: Beirut, 1981).

SALEM, Amir, *Difa'an 'an haq takween al-jam'iyat: dirasa naqdiyya liqanun al-jam'iyat* [In Defense of the Right to Form Associations: A Critical Study of the Law of Associations] (Legal Information and Study Center for Human Rights: Cairo, 1991).

SECOND ARAB NATIONAL CONFERENCE, "*Bayan*

ilal Umma [Statement to the Nation]"; Conference Statement made at the Second Annual conference of Arab academics and intellectuals; in 149 *Al-Mustaqbal Al-'Arabi* (July 1991) pp. 158-172.

UNION OF ARAB JURISTS, "Memorandum on Human Rights and Fundamental Freedoms in the Arab Homeland: Situations, Obstacles, Proposals" in 3-4 *AL-Hukuki Al-Arabi* (English Section); (Union of Arab Jurists General Secretariat: Baghdad, 1979) pp. 55-99

Sources in English

AL-JADIR, Adib, "Forward to the Special Edition on Human Rights in the Arab World" in 9 *Journal of Arab Affairs* (Spring 1990) Special Human Rights Issue; pp. 1-4.

AMIN, Sayyed Hassan, *Middle East Legal Systems* (Royston Ltd: Glasgow, 1985).

AN-NA'IM, Abdullahi Ahmed, "Islamic Law, International Relations, and Human Rights: Challenge and Response" in 20 *Cornell Int'l Law J'l* (1987) pp. 317-35.

_____, *Toward an Islamic Reformation,*

(Syracuse Univ. Press: Syracuse, 1990).

AMNESTY INTERNATIONAL, *Annual Reports* 1991,
1992 (AI: London).

_____, *Egypt: Security Police Detentions Undermine the Rule of Law*, AI Index No. MDE/12/01/92 (AI: London, January 1992).

_____, *Egypt: Ten Years of Torture*, AI Index No. MDE/12/18/91, (AI: London, October 1991).

_____, *Syria: Torture by the Security Forces*, AI Index MDE/24/09/87 (Amnesty International: London, October 1987).

ARAB ORGANIZATION FOR HUMAN RIGHTS,
"Human Rights Situation in the Arab World:
Introduction to AOHR Report for 1988, in *9 Journal of Arab Affairs* (Spring 1990)
Special Human Rights Issue; pp. 5-22.

_____, *Human Rights Situation in the Arab World: Introduction to AOHR Report for 1990*, (AOHR: Cairo, May 1991):

_____, *Human Rights Situation in the Arab World: Introduction to AOHR Report for 1991*, (AOHR: Cairo, May 1992).

ARAT, Zehra F., *Democracy and Human Rights in Developing Countries*; (Lynne Rienner Publishers: Boulder, 1991).

ARTICLE 19, *Bahrain: Time for Change*; Censorship News No. 7 (December 1991).

-----, *Freedom of Expression and Information in Jordan*; (Article 19: London, July 1991).

-----, *Information, Freedom and Censorship: The Article 19 World Report 1988*; (Longman: Essex, 1988)

-----, *Morocco; Attacks on Freedom of Expression: November 1990-June 1991*; Censorship News No. 3 (July 1991).

-----, *Silent Kingdom: Freedom of Expression in Saudi Arabia*; (Article 19: London, October 1991).

-----, *Sudan: Torture as Censorship*; Censorship News No. 13 (April 1992).

-----, *Tunisia: Attacks on the Press and Government Critics*; Censorship News No. 4 (August 1991).

BASSIOUNI, M. Cherif, "The Arab Human Rights

Program of the International Institute of Higher Studies in Criminal Sciences, Siracusa, Italy" in *12 Human Rights Quarterly*; pp. 365-96.

BLAUSTEIN, Albert P. and FLANZ, Gisbert H., Eds., *Constitutions of the Countries of the World*; Release 92-3; (Oceana Publications: Dobbs Ferry, N.Y., May 1992).

BOUTROS-GHALI, Boutros, "The League of Arab States" in Karel VASAK, Ed., *The International Dimensions of Human Rights*; Vol. 2; (UNESCO: Paris, 1982).

CENTER FOR THE INDEPENDENCE OF JUDGES AND LAWYERS, *Attacks on Justice: The harassment and Persecution of Judges and Lawyers*; June 1990 - May 1991; (International Commission of Jurists: Geneva, 1991).

_____, *Attacks on Justice: The harassment and Persecution of Judges and Lawyers*; June 1991 - May 1992 (Draft Copy) (International Commission of Jurists: Geneva, 1992).

_____, *Constitutional Guarantees for the Independence of the Judiciary*; CIJL Yearbook, Volume 1. (International

Commission of Jurists: Geneva, April 1992).

DAES, Erica-Irene, *Freedom of the Individual Under Law*; U.N. Centre for Human Rights Study Series No. 3; Sales No. E.89.XIV.5, (United Nations: New York, 1990).

DE ZAYAS, Alfred, MOLLER, Jakob and OPSAHL, Torkel, *Application of the International Covenant on Civil and Political Rights Under the Optional Protocol by the Human Rights Committee; originally in 28 German Yearbook of Int'l Law* (1985) pp. 9-64; reprinted by the U.N. Centre for Human rights as Reprint No. 1, FE.89-16294 (U.N.: Geneva, June 1989).

DUCHACEK, Ivo D., *Rights and Liberties in the World Today: Constitutional Promise and Reality*; (Clio Press Inc.: Santa Barbara, 1973).

DUDLEY, James, "Human Rights Practices in the Arab States: The Modern Impact of Shari'a Values" in *12 Georgia It'l and Comp. Law Quarterly* (1982) pp. 55-93.

DWYER, Kevin, *Arab Voices: The Human Rights Debate in the Middle East*; (Routledge: London, 1991).

- FARHANG, Mansour, "Fundamentalism and Civil Rights in Contemporary Middle Eastern Politics" in Leroy S. ROUNER, Ed., *Human Rights and the World's Religions*; (Univ. of Notre Dame Press: Notre Dame, 1988) pp. 63-75.
- GRAEFRATH, Bernhard, "The Application of International Human Rights Standards to States with Different Economic, Social and Cultural Systems" in *Bulletin of Human Rights*; Special Issue (1985) pp. 7-16.
- HALLAQ, Wael, "Was the Gate of Ijtihad Closed?" in 16 *Int'l J'l of Middle East Stds.* (1984) PP. 3-41.
- HOURANI, Albert, *A History of the Arab Peoples*; (Faber and Faber: London, 1991).
- INTERNATIONAL COMMISSION OF JURISTS, *Human Rights in a One-Party State*; Record of an International Seminar on Human Rights, Their Protection and the Rule of Law in a One-Party State, convened by the International Commission of Jurists at Dar es-Salaam, 23-28 September 1976; (Search Press: London, 1978).
- LAWYERS COMMITTEE FOR HUMAN RIGHTS, *Asylum Under Attack: A report on the*

protection of Iraqi refugees and displaced persons one year after the Humanitarian Emergency in Iraq; (LCHR: New York, april 1992).

_____, *Attacks on Lawyers and Judges in 1991*; (LCHR: New York, 1992).

_____, *Kuwait: Building the Rule of Law; Human Rights in Kuwait After Occupation*; (LCHR: New York, 1992).

MAYER, Ann Elizabeth, "The Dilemmas of Islamic Identity" in Leroy S. ROUNER, Ed., *Human Rights and the World's Religions*; (Univ. of Notre Dame Press: Notre Dame, 1988) pp. 94-110.

MIDDLE EAST WATCH, *Human Rights in Iraq*; (Human Rights Watch: New York, January 1990) later republished (Yale Univ. Press: New Haven, 1990).

_____, *Human Rights in Syria*; (Human Rights Watch: New York, September 1990).

OVERSEAS DEVELOPMENT INSTITUTE, *Economic Crisis in the Arab World*; ODI Briefing Paper, (ODI: London, March 1992).

PISCATORI, James, and HARRIS, George S., Eds.,

Law, Personalities and Politics of the Middle East (Westview Press: Boulder & Washington, 1987).

.RAMCHARAN, B.G., *Keeping Faith with the United Nations*; (Martinus Nijhoff: Dordrecht, 1987).

_____, *The Concept and Present Status of the International Protection of Human Rights*; (Martinus Nijhoff: Dordrecht, 1989).

SAJOO, Aryn B., "Islam and Human Rights: Congruence or Dichotomy?" in *4 Temple Int'l & Comp. Law J'l* (Spring 1990) pp. 23-34.

SA'ID, Mohammad el-Sayyed, "Human Rights in the Third World: The Question of Priorities" in *9 Journal of Arab Affairs* (Spring 1990) Special Human Rights Issue; pp. 61-83.

Cairo Institute for Human Rights Studies
CIHRS

LIST OF PUBLICATIONS

I. *Human Rights Debates* :

- 1- Human Rights Guarantees Under Palestinian Self-Rule Authority,
Part one : The Political and Legal Considerations.(Arabic & English).
- 2- Part Two: The Cultural Considerations. (Arabic).

Coming

- 3- Human Rights Guarantees Under a Totalitarian Islamic Regime, Model of Sudan
1989 - 1994 (Arabic & English)
- 4- Human Rights Guarantees of the Palestinian Refugees Under the Current Peace -
Process. (Arabic & English).

II. *Intellectual Initiatives Booklets*:

- 1- Sectarianism and Human Rights, Violette Daguerec (Lebanon), (Arabic).
- 2- The Victim and the Executioner : Hytham Mannaa (Syria), (Arabic).
- 3- The Civil and Political Rights in the Arab Constitutions :
Fateh Azam (Palestine),
(Arabic).
- 4- Human Rights in the Arab Islamic Culture: Hytham Mannaa (Arabic). (*Coming in English*).

Coming

- 5- Human Rights - The Right to Participate : Ahmed Abdullah (Egypt)
- 6- Human Rights - The New Vision : Moncef El Marzouki (Tunis)
- 7- The Minority Problem in the Arab World - The Case of Syrian kurds: Mohamed El Sayed Said (Egypt) & Hytham Manaa (Syria).

III. Ibn Rusd Booklets :

- 1- Freedom of the Press : A Human Rights Perspective.(Arabic).

Coming

- 2- Renewal of the Main Political Trends in the Context of Democracy and Human Rights (Pan Arabism, Left and Political Islam), (English & Arabic).

IV. Periodicals:

- 1- "Sawasiah", Bimonthly Bulletin, (Arabic & English).
- 2- "Rowaq Arabi", Periodical, (Arabic & English).

V. Other Publications :

- 1- How do University Students think of Human Rights?, A monograph of 9 papers . *written by the students of the 1st and 2nd Training course of CIHRS (Arabic), volume 1 & 2.*
- 2- Principles of Human Rights, El Ghali Publish House (Arabic)

Fateh S.Azzam

- * Director of the Palestinian human rights organization al-Haq 1987-1995.
- * Member of the board of Trustees of the Cairo Institute for Human Rights Studies, and Advisory Board Member of the International Human Rights Internship Program Washington, DC., and other organizations. Member of the people's Permanent Tribunal.
- * B.A. of Community Planning, University of Massachusetts, LLM International Human Rights law, Essex university.
- * Has written a number of articles and studies in Arabic and English on human rights and international law and human rights violations under Israeli occupation.
- * Also works in theater on Occasion and has recently directed *Ansar*, a play about Palestinians incarcerated in the Israeli military detention facility in Negev desert.