

# **Raising the Bar: The Role of the Reporting Procedure of the United Nations Human Rights Committee in the Protection of Human Rights in Africa**

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## **Key words**

ICCPR, HUMAN RIGHTS COMMITTEE, FREEDOM OF EXPRESSION, RIGHT TO LIBERTY

## **Abstract**

The United Nations Human Rights Committee (HRC) is saddled with the responsibility of supervising the implementation of the provisions of the ICCPR by its state parties. However, it is only the reporting procedure that mandates each state party to submit a report to the HRC periodically, outlining the steps it has taken to fulfil its obligations to the treaty. Over the years, it was observed that states tend to embellish these reports before submitting them to the HRC because it had no means of checking the veracity of the contents of the reports. Consequently, the HRC has continued to introduce novel ways of checking the accuracy of the state parties' reports, which includes the Committee partnering with National Human Rights Institutions (NHRIs) and Non-Governmental Organisations (NGOs) within the territories of state parties. This is to monitor the implementation of the provisions of the ICCPR and submit alternative reports to the HRC for it to have a more objective perspective on the level of the state compliance. To examine the effectiveness of the reporting procedure among African state parties, two states (Morocco and Rwanda) have been selected with the aim of gauging the effect of the reporting procedure in influencing state parties to fulfil their obligations to the treaty. In the course of the study, the jurisprudence of the HRC and domestic legislation of states were analysed and it is observed that for the HRC to be more effective it needs more visibility, especially within the African Continent.

## **I. Introduction**

The International Convention on Civil and Political Rights (ICCPR) was adopted by the United Nations (UN) on 16 December 1966.<sup>1</sup> These rights in the ICCPR are divided into two sub-groups with civil rights comprising of rights that protect the physical integrity, procedural due process and non-discrimination rights of a person, while political rights enable one to participate fully in the political life of one's country.<sup>2</sup> Civil and political rights are human rights that are clearly guaranteed by the treaty.<sup>3</sup> Once a state becomes a party to the ICCPR, it has

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<sup>1</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

<sup>2</sup> Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (Oxford University Press 2000) 3; These political rights include the right to vote and be voted for, participate in public affairs, freedom of expression and assembly.

<sup>3</sup> *ibid* 4.

an obligation to implement its provisions within its jurisdiction.<sup>4</sup> The treaty has 173 state parties<sup>5</sup> among which 51 are African states.<sup>6</sup> The ICCPR has been described as ‘one of the most important guarantees of human rights in history’.<sup>7</sup>

To supervise the implementation of the provisions of the ICCPR, an 18 member committee was established by the treaty, referred to as the Human Rights Committee (HRC).<sup>8</sup> The members of the HRC compose of nationals of state parties to the treaty of high moral character with evident competence in human rights.<sup>9</sup> While members are elected to the Committee, they serve in their personal capacities and not as the representatives of their states.<sup>10</sup> The HRC is saddled with four responsibilities: First, it examines reports submitted by state parties to the ICCPR on the measures they have taken in the implementation of the ICCPR within their territories.<sup>11</sup> These reports should outline the successes and challenges states encounter in the course of implementing the ICCPR.<sup>12</sup>

While examining a state report, the HRC engages the representatives of the state in a ‘constructive dialogue’,<sup>13</sup> recommending steps to the state in order to improve on the implementation of the ICCPR.<sup>14</sup> Secondly, the HRC has jurisdiction to receive inter-state complaints regarding breaches of the ICCPR.<sup>15</sup> Thirdly, the individual complaints mechanism, where persons alleging that any of their rights contained in the ICCPR have been violated by any state party to the First Optional Protocol (OP1) can submit ‘communications’ (complaints) to the HRC against that state party.<sup>16</sup> Finally, the HRC issues general comments, which are commentaries on the scope of rights contained in the ICCPR.<sup>17</sup> The HRC has, over the years, influenced some state parties into changing their laws or practices so as to conform to the ICCPR.<sup>18</sup>

<sup>4</sup> Hari O Agarwal, *International Law and Human Rights* (18<sup>th</sup> edn, Central Law Publishing 2011) 756.

<sup>5</sup> OHCHR, ‘International Covenant on Civil and Political Rights’ (Database of the United Nations Office of Legal Affairs, 4 July 2019) <[https://www.ohchr.org/Documents/HRBodies/CCPR/OHCHR\\_Map\\_ICCPR.pdf](https://www.ohchr.org/Documents/HRBodies/CCPR/OHCHR_Map_ICCPR.pdf)> accessed 7 January 2022.

<sup>6</sup> HRC, ‘Ratification status for CCPR - International Covenant on Civil and Political Rights’ (*UN Treaty Body Database*) <[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en)> accessed 25 August 2021.

<sup>7</sup> Margaret Thomas, ‘“Rogue States” within American Borders: Remediating State Compliance with the International Covenant on Civil and Political Rights’ (2002) 90(1) *California Law Review* 165, 168.

<sup>8</sup> ICCPR (n 1) art 28(1).

<sup>9</sup> *ibid* art 28(2).

<sup>10</sup> *ibid* art 28(3).

<sup>11</sup> *ibid* art 40(1).

<sup>12</sup> *ibid* art 40(2).

<sup>13</sup> OHCHR ‘Human Rights Fact Sheet No. 15 (Rev.1) Civil and Political Rights: The Human Rights Committee’ (*UNCHR*, May 2005) <<https://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf>> accessed 25 September 2021.

<sup>14</sup> Nomthandazo Ntlama, ‘Monitoring the Implementation of Socio-Economic Rights in South Africa: Some Lessons from the International Community’ (2004) 8(2) *Law Democracy and Development* 207, 209.

<sup>15</sup> ICCPR (n 1) art 41.

<sup>16</sup> *ibid* art 1.

<sup>17</sup> *ibid* art 40(4).

<sup>18</sup> Joseph and Castan (n 2) 14.

The procedure obliging state parties to submit their reports for review by the HRC is the only mandatory requirement of the ICCPR once a state accedes to or ratifies the treaty.<sup>19</sup> The sole objective of the review of state reports is for the HRC to assess the level of implementation of ICCPR rights among state parties and where they fail to do so, take steps to prompt them to comply with their obligations to the treaty.<sup>20</sup> The HRC holds three sessions annually to carry out its mandate.<sup>21</sup> These sessions are regularly held either in Geneva or New York, but may be moved to any other location after consultations with the Secretary-General of the UN.<sup>22</sup>

## **II. State Reporting System under the ICCPR**

The state reporting system is viewed as an enforcement mechanism of international human rights law, as it gives the UN human rights mechanisms an opportunity to assess the level of human rights protection within the territories of state parties.<sup>23</sup> Consequently, it is mandatory under the ICCPR for each state party to submit an initial report one year after becoming a party to the ICCPR, and whenever the committee requests for it.<sup>24</sup> As a matter of practice, the HRC requests periodic reports at five years intervals.<sup>25</sup> The Committee derives its mandate to review reports from art. 40 (4) which provides that:

The Committee shall study the reports submitted by the State Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States parties. The Committee may also transmit to the Economic and Social Council, these comments along with the copies of the reports it has received from States parties to the present Covenant.<sup>26</sup>

At the end of the review, concluding observations are issued to each state party. These concluding observations are ‘the mainstay of treaty body’s work’ as they emanate from tailored assessments made by the HRC on country specific reports. Concluding observations are divided into four parts: an introduction, which assess the quality of the report; the positive steps taken by the state to comply with its obligations; challenges of compliance by the state; and the recommendations of the HRC to the state party that would remedy the concerns that were raised in the concluding observations.<sup>27</sup>

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<sup>19</sup> Dominic McGoldrick, *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights* (Oxford University Press 1994) 62.

<sup>20</sup> HRC ‘Consolidated Guidelines for State Reports under the International Covenant on Civil and Political Rights’ (29 September 1999) UN Doc CCPR/C/66/GUI/Rev.2, para E.1.

<sup>21</sup> HRC ‘Rules of Procedure of the Human Rights Committee’ (4 January 2021) UN Doc CCPR/C/3/Rev.12, Rule 2.

<sup>22</sup> *ibid* Rule 5.

<sup>23</sup> Cosette D Creamer and Beth A Simmons, ‘The Proof is in the Process: Self-Reporting under International Law’ (2020) 114(1) *American Journal of International Law* 1, 9.

<sup>24</sup> ICCPR (n 1) art 40(1).

<sup>25</sup> Thomas Buergenthal, ‘The UN Human Rights Committee’ (2001) 5 *Max Planck Yearbook of United Nations Law* 341, 348.

<sup>26</sup> ICCPR (n 1) art 40(4).

<sup>27</sup> Michael O’Flaherty, ‘The Concluding Observations of the United Nations Human Rights Treaty Bodies’ (2006) 6(1) *Human Rights Law Review* 27, 30.

The HRC, in preparing the concluding observations, resorts to going beyond the provisions of ICCPR to other human rights instruments that overlap or support the implementation of the provisions of the ICCPR. It adopts a number of approaches in doing so, which includes encouraging state parties' ratification or accession to certain human rights instruments that will facilitate the implementation of the ICCPR. These human rights treaties are sometimes included in the concluding observations issued to respective state parties.<sup>28</sup>

The International Court of Justice (ICJ) had cited the concluding observations of the HRC issued to Israel with approval, and ruled that the provisions of the ICCPR are applicable to the acts of a state party done outside its territory in pursuance of its jurisdiction.<sup>29</sup>

The HRC also appointed a special rapporteur to follow-up on its concluding observations and to remind state parties to submit their reports on the level of implementation of the concluding observations of the Committee. This has improved the level of compliance by individual states.<sup>30</sup> It is through the follow-up procedure that the HRC can assess the level of implementation of the ICCPR by state parties. International law lacks a central enforcement mechanism. Hence, human rights bodies such as the HRC rely on soft methods in persuading state parties to fulfil their treaty obligations.<sup>31</sup> Tuomisaari describes the HRC as the UN's 'most important component in its entire human rights framework'.<sup>32</sup>

To determine the effect of the ICCPR review procedure, two state parties have been selected for this study, namely: Morocco and Rwanda. These state parties have been chosen based on the fact that they have undergone the review process before the HRC more than twice, with Morocco submitting six reports thus far, which is the highest among African state parties and all of them have had their reports reviewed recently.<sup>33</sup> Analysing the participation of these two state parties will show the effect of the reporting procedure, especially with the introduction of some novel innovations, which are aimed at increasing the participation of state parties to the procedure and will show whether it has had the desired effect. In addition, two provisions of the ICCPR were chosen to be examined in more detail in the course of reviewing the effectiveness of the reporting procedure. These provisions are the right to liberty and security of person (art. 9), and the freedom of opinion and expression (art. 19).<sup>34</sup> These rights have all been subjects about which the HRC has adopted general comments, with art. 9

<sup>28</sup> David Weissbrodt, 'The Role of the Human Rights Committee in Interpreting and Developing Humanitarian Law' (2010) 31(4) *University of Pennsylvania Journal of International Law* 1185, 1216, 1218.

<sup>29</sup> *Western Sahara (Advisory Opinion)* [1975] ICJ Rep 12 [179]– [180].

<sup>30</sup> O'Flaherty (n 27) 33.

<sup>31</sup> Adriene Komaovics, 'Strengthening the Human Rights Treaty Bodies: A Modest but Important Step Forward' (2014) 17 *Pécs Journal of International and European Law* 7, 28-29.

<sup>32</sup> Miia Halme-Tuomisaari, 'Guarding Utopia: Law, Vulnerability and Frustration at the UN Human Rights Committee' (2020) 28(1) *Social Anthropology* 35, 38.

<sup>33</sup> Morocco submitted its 6<sup>th</sup> Periodic Report UN Doc CCPR/C/MAR /6 on 15 June 2015. The report was considered at the 118<sup>th</sup> Session of the HRC on 24 and 25 October 2016 after which it proceeded to issue concluding observations; See HRC 'Concluding Observations on the Sixth Periodic Report of Morocco' (1 December 2016) UN Doc CCPR/C/MAR/CO/6; Rwanda submitted its 4<sup>th</sup> Periodic Report UN Doc CCPR /C/RWA/4 on 11 July 2014 which was reviewed at the 116<sup>th</sup> Session of the HRC on 17 and 18 March 2016 and it issued its concluding observations; See HRC 'Concluding Observations on the Fourth Periodic Report of Rwanda' (2 May 2016) UN Doc CCPR/RWA/CO/4.

<sup>34</sup> ICCPR (n 1) art 19.

being one of the most recent;<sup>35</sup> these rights that are subjects of these general comments have the propensity to being violated on a daily basis in some African states.<sup>36</sup>

To encourage the state parties to submit reports to the HRC for review, it had introduced some innovations to make the reporting procedure less cumbersome and to ensure objectivity in the reports before it. These include the following:

- a. Optional reporting procedure
- b. Submission of alternative reports by National Human Rights Institutions (NHRIs)
- c. Inputs of Non-Governmental Organisations (NGOs)

### **A. Optional reporting procedure**

Under this procedure, the HRC formulates a series of questions referred to as list of issues (LOIs) on particular provisions of the ICCPR which it requires the state to address on the level of implementation within its jurisdiction. These LOIs are sent to the reporting state party before it submits its state report. The response by the state party to the LOIs that is sent to the HRC will satisfy the requirement of a state report under art. 40 of the ICCPR. It should be noted that this procedure is optional as state parties can elect to undergo the review of their reports by submitting a state report under the regular procedure. This procedure makes the preparation of state reports less cumbersome, as it dispenses with the requirement of submitting state reports and replies to LOIs. Rather, LOIs are designed for individual state parties to address specific provisions of the ICCPR in their reports to the HRC, which makes the reports more focused.<sup>37</sup> It is also more beneficial to the HRC as the procedure encourages submission of detailed reports to it; this enables the committee to ascertain the level of implementation of treaty obligations by state parties. Also, the procedure provides an opportunity for the HRC to re-engage state parties with overdue reports, and those that lack the resources to prepare and submit reports to do so.<sup>38</sup>

This procedure is applicable to state parties whose periodic reports are due for review, while those state parties that are coming before the HRC for the first time are requested to submit a comprehensive report.<sup>39</sup> Where substantial changes in the 'political and legal' processes that conflict with ICCPR obligations had taken place within their jurisdictions, state parties may be required to submit standard reports.<sup>40</sup>

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<sup>35</sup> HRC 'General Comment No. 35 - Article 9: Liberty and Security of Person' (16 December 2014) UN Doc CCPR/C/GC/35.

<sup>36</sup> Amnesty International, 'Countries' (*Amnesty International*, 2021) <[www.amnestyusa.org/our-work/countries/africa](http://www.amnestyusa.org/our-work/countries/africa)> accessed 25 August 2021.

<sup>37</sup> HRC 'Focused Reports Based on Replies to Lists of Issues Prior to Reporting (LOIPR): Implementation of the New Optional Reporting Procedure (LOIPR Procedure)' (12 - 30 July 2010) UN Doc CCPR/C/99/4, para I.

<sup>38</sup> *ibid* para A4.

<sup>39</sup> *ibid* para B8.

<sup>40</sup> *ibid* para B10.

## B. Submission of alternative reports by National Human Rights Institutions (NHRIs)

The enforcement of ‘internationally recognised human rights’ would be more effective where internal monitoring mechanisms are created at the domestic levels.<sup>41</sup> The UN adopted the Paris Principles,<sup>42</sup> which enjoined states to establish NHRIs within their jurisdictions with a broad mandate to protect and promote human rights<sup>43</sup> and to be a bridge between states and the UN by promoting the ratification and implementation of human rights treaties.<sup>44</sup> There are 31 African states that have established NHRIs, out of which 20 have been accredited with ‘A’ status, which signifies that they have complied with the requirements of the Paris Principles.<sup>45</sup>

The HRC acknowledges the importance of these institutions as they act as a bridge between domestic and international law.<sup>46</sup> It called on these institutions to participate in its activities by submitting parallel reports on the level of implementation of ICCPR rights by individual states and furthermore to monitor the implementation of the concluding observations issued to individual state parties.<sup>47</sup> The HRC also expects the NHRIs to submit reports to it as part of the follow-up procedure on the level of compliance of state parties with its concluding observations.<sup>48</sup> NHRIs have access to information on the level of protection of ICCPR rights within the territories of individual states; hence, they will be in a better position to provide objective reports at every stage of the reporting procedure.

Because of the importance of these institutions, the Office of the High Commissioner for Human Rights (OHCHR) continues to financially support the creation of NHRIs in member states of the UN, which makes the institutions to be considered as ‘less national institutions and more an international project’.<sup>49</sup>

<sup>41</sup> Chinedu Idike, ‘Deflectionism or Activism? The Kenya National Human Rights Commission in Focus’, (2004) 2(1) *Essex Human Rights Review* 40.

<sup>42</sup> UNGA ‘Principles Relating to the Status of National Institutions’ (20 December 1993) UN Doc A/RES/48/134 (hereinafter Paris Principles).

<sup>43</sup> *ibid* Principle 1.

<sup>44</sup> *ibid* Principle 3c.

<sup>45</sup> As of 2019, the Global Alliance of National Human Rights Institutions is composed of 114 members, 80 of which are ‘A’ status accredited NHRIs and 34 ‘B’ status accredited NHRIs. Africa states that have ‘A’ status include: Cameroon, Democratic Republic of Congo, Egypt, Ghana, Kenya, Malawi, Mauritania, Mauritius, Morocco, Namibia, Niger, Nigeria, Rwanda, Sierra Leone, South Africa, Tanzania, Uganda, Zambia, Zimbabwe; See Global Alliance of National Human Rights Institutions, ‘Membership’ (*GANHRI*, 2021) <[ganhri.org/membership/](http://ganhri.org/membership/)> accessed 1 November 2020.

<sup>46</sup> HRC ‘Paper on the Relationship of the Human Rights Committee with National Human Rights Institutions, Adopted by the Committee at its 106<sup>th</sup> Session (15 October - 2 November 2012)’ (13 November 2012) UN Doc CCPR/C/106/3, para 9.

<sup>47</sup> *ibid* para 4.

<sup>48</sup> *ibid* para 8.

<sup>49</sup> Richard Carver, ‘A New Answer to an Old Question: NHRIs and Domestication of International Law’ (2010) 10(1) *Human Rights Law Review* 1, 2.

### **C. Inputs of Non-Governmental Organisations (NGOs) to the reporting procedure**

One of the major weaknesses of the reporting procedure of the HRC is said to be the lack of independent fact-finding machinery that can check the veracity of state parties' reports.<sup>50</sup> NGOs became increasingly essential for the work of the HRC because they are domiciled in the territories of state parties and can easily collect data on the status of human rights. They also don't rely on the states for funding, which makes it difficult for state parties to influence the information it supplies to the HRC. On the downside, however, caution should be exercised as NGOs could furnish misleading information against the state in pursuance of its own set objectives against the state party concerned.<sup>51</sup>

NGOs participate in this procedure at three stages; at the initial stage, they are invited to make relevant submissions to the HRC with regard to the LOIs which are taken into consideration when they are drafted and prior to having been transmitted to the state party concerned. Secondly, representatives of NGOs are allowed to attend the public presentation of state reports; prior to the presentation, they are given the opportunity to brief the HRC informally on issues of concern. These meetings are closed as only members of HRC and those of NGOs are allowed to attend them. Finally, after the review of the state parties' reports, NGOs are expected to monitor the steps taken by the state parties in implementing the recommendations of the HRC and to publicise both the recommendations and the provisions of the ICCPR.<sup>52</sup>

Written reports are expected to be submitted by NGOs outlining the level of compliance by state parties with the HRC's concluding observations after a year of the review.<sup>53</sup> The support of NGOs will remain critical to human rights enforcement within the territories of states<sup>54</sup> as supported by a HRC member's assertion that 'the HRC would have been fifty percent less effective without NGOs' expertise.<sup>55</sup>

### **III. Interpretation of the Scope of Rights in the ICCPR (General Comments)**

General comments are issued by the HRC to guide state parties in the preparation of their state reports and implementation of the provisions of the ICCPR.<sup>56</sup> These assist the states that signify their intention to ratify the ICCPR to realise the level of obligations they are expected to implement within their respective jurisdictions. These general comments serve as a guide

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<sup>50</sup> Yogesh K Tyagi, 'Cooperation between the Human Rights Committee and Nongovernmental Organisations: Permissibility and Propositions' (1983) 18 *Texas International Law Journal* 273, 286.

<sup>51</sup> Gianluca Rubagotti, 'Non-Governmental Organisations and the Reporting Obligation under the ICCPR' (2005) 5 *Non-State Actors and International Law* 59, 74.

<sup>52</sup> Peggy Brett and Patrick Mutzenberg, *UN Human Rights Committee, Participation in the Reporting Process: Guidelines for Non-Governmental Organisations (NGOs)* (2<sup>nd</sup> edn, Centre for Civil and Political Rights 2015).

<sup>53</sup> HRC 'The Relationship of the Human Rights Committee with Non-Governmental Organizations' (4 June 2012) UN Doc CCPR/C/104/3, para 11.

<sup>54</sup> Dinah Sheldon, 'International Human Rights Law: Principled, Double, or Absent Standards' (2007) 25(2) *Law and Equality* 467, 513, 472.

<sup>55</sup> Ida Lintel and Cedric Ryngaert, 'Interface between Non-Governmental Organisations and the Human Rights Committee' (2013) 15(3) *International Community Law Review* 359, 375.

<sup>56</sup> Machiko Kanetake, 'UN Human Rights Treaty Monitoring Bodies Before Domestic Courts' (2018) 67(1) *British Institute of International and Comparative Law* 201.

to the state parties in preparing their state reports, and NGOs too refer to them as a guide when monitoring state compliance with the treaty and in putting together a shadow report for submissions before the HRC. In order to appreciate the contributions of these general comments issued by the HRC, the right to freedom of opinion and expression (General Comment No: 34),<sup>57</sup> and the right to liberty (General Comment No: 35)<sup>58</sup> will be briefly examined:

### **A. Freedoms of opinion and expression (General Comment no 34)**

Art. 19 of the ICCPR guarantees two rights: the right of an individual to hold an opinion without any interference,<sup>59</sup> and the freedom of expression, which:

Shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.<sup>60</sup>

General comment no 34 outlined the scope of art. 19 in order to guide state parties in the implementation of the right within their territories and in preparation of state reports to be reviewed by the HRC.<sup>61</sup>

The right to freedom of opinion is described by the HRC as not only critical for the development of an individual, but ‘also constituting the foundation stone for every free and democratic society’. Equally, freedom of opinion and expression are inter-related in that the latter is the instrument through which opinions are developed and conveyed.<sup>62</sup> In addition, this right is essential for transparency and accountability in society and for the promotion and protection of human rights.<sup>63</sup> Freedom of expression is mandatory for the enjoyment of art. 17 (right to privacy); art. 18 (right to freedom of thought, conscience and religion; art. 25 (political rights); and finally art. 27 (minority rights).<sup>64</sup>

Restriction of information on the internet by state parties according to the HRC is only permitted if it is in accordance with art. 19 (3), which provides that freedom of expression may be curtailed where it is for the protection of reputation of others or protection of national security, public order, or morality. Any other ground is a violation of art. 19.<sup>65</sup> Journalists should also be allowed to exercise the right unimpeded and should only be restricted if it violates arts. 19 (3) and 20 ICCPR.<sup>66</sup>

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<sup>57</sup> HRC ‘General Comment No. 34 Article 19: Freedoms of Opinion and Expression’ (12 September 2011) UN Doc CCPR/C/GC/34.

<sup>58</sup> UN Doc CCPR/C/GC/35 (n 35).

<sup>59</sup> ICCPR (n 1) art 19(1).

<sup>60</sup> *ibid* art 19(2).

<sup>61</sup> Alfred de Zayas and Áurea Roldán Martín, ‘Freedom of Opinion and Freedom of Expression: Some Reflections on General Comment No 34 of the Human Rights Committee’ (2012) 59(3) *Netherlands International Law Review* 425, 427.

<sup>62</sup> UN Doc CCPR/C/GC/34 (n 57) para 2.

<sup>63</sup> *ibid* para 3.

<sup>64</sup> *ibid* para 4.

<sup>65</sup> *ibid* para 43.

<sup>66</sup> *ibid* para 11.



## **B. Liberty and Security of Person (General Comment no 35)**

The HRC issued an elaborate general comment on the right to liberty and security of person no 35.<sup>67</sup> This general comment elaborates on the provisions of art. 9, which provides:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.<sup>68</sup>

Art. 9 recognises and protects the liberty and security of persons; the deprivation of this right affects the enjoyment of all other ICCPR rights.<sup>69</sup> The general comment defines liberty as the freedom from confinement of the body of the individual, while security of person protects the person from injury to his body, mind and mental integrity; when state agents assault an individual, it amounts to a violation of his right to security.<sup>70</sup> This protection is extended to 'everyone', including: girls, boys, soldiers, persons with disabilities, lesbians, gays, bisexual and transgender persons, aliens, refugees and asylum seekers, stateless persons, migrant workers, persons convicted of crimes, and individuals alleged to have committed acts of terrorism.<sup>71</sup> An individual deprived of his liberty shall be entitled to appeal the process that led to his incarceration.<sup>72</sup>

The HRC further widened the scope of instances of deprivation of liberty from only confinement of an individual to include: police custody, short-term detention (*arraigo penal*), remand detention, imprisonment after conviction, house arrest, administrative detention, involuntary hospitalisation of an individual, institutional custody of children, and confinement in restricted areas in airports.<sup>73</sup> To ensure an individual's right to the security of his person is protected, the HRC enjoins state parties to ensure that intentional infliction of bodily or mental injury to the individual is prohibited by law and measures to enforce the protection are to be put in place.

Also, the HRC widened the scope of the prohibition of arbitrary detention and went further to point out that any person deprived of his liberty on terms not provided by the law is arbitrary. Continued incarceration of individuals beyond their prison term limits is equally arbitrary, as is unlawful extension of all forms of detention. Refusal to release detainees in violation of court orders is unlawful and arbitrary.<sup>74</sup> Another procedural safeguard that protects the right to liberty is:

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise

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<sup>67</sup> UN Doc CCPR/C/GC/35 (n 35).

<sup>68</sup> ICCPR (n 1) art 9(1).

<sup>69</sup> UN Doc CCPR/C/GC/35 (n 35) para 2.

<sup>70</sup> HCR 'Communication No. 2214/2012 – Views Adopted by the Committee at its 115<sup>th</sup> Session (19 October-6 November 2015 – John-Jacques Lumbala Tshidika v Democratic Republic of the Congo' (24 December 2015) UN Doc CCPR/C/115/D/2214/2012 para 12.6.

<sup>71</sup> UN Doc CCPR/C/GC/35 (n 35) para 3.

<sup>72</sup> *ibid* para 4.

<sup>73</sup> *ibid* para 5.

<sup>74</sup> *ibid* para 11.

judicial power and shall be entitled to trial within a reasonable time or to release.<sup>75</sup>

The ICCPR did not specify the time-frame for arraigning a detained person before a judge, but the HRC has interpreted the word ‘shall be brought promptly before a judge’ to mean within 48 hours. It is only in exceptional circumstances that he may not be taken before a court within the 48-hour time-frame. As noted earlier, the longer an individual stays in detention, the higher the probability of being ill-treated by state officials. In the case of juvenile offenders, they should be taken before a judge within 24 hours.<sup>76</sup> It appears that the assertion that ‘most sustainable contribution of the HRC to the international protection of human rights’<sup>77</sup> could turn out to be its general comments after all.

## IV. Implementation of the ICCPR by State Parties

### A. Morocco

Morocco ratified the ICCPR on 3 May 1979.<sup>78</sup> Being a state that falls under the civil law jurisdiction that applies the principle of *pacta sunt servanda* (agreements must be kept) means international treaties that are ratified or acceded to automatically becomes part of its domestic legislation. The ICCPR is therefore not only part of its domestic law, but also above it in order of precedence.<sup>79</sup> As pointed earlier, Morocco has submitted the highest number of reports to the HRC among African state parties; it submitted its sixth report in 2015, which was examined in 2016.<sup>80</sup>

#### i. Contributions of the CNDH in the Review of Morocco’s 6<sup>th</sup> Periodic Report

The HRC encourages NHRIs to participate in its review procedure by submitting alternative reports to it.<sup>81</sup> The CNDH, a Paris Principles compliant NHRI, participated fully in the process.<sup>82</sup>

As pointed earlier, these institutions are required to engage in the promotion and protection of human rights within the territory of state parties<sup>83</sup> and they must be vested with as broad a mandate as possible.<sup>84</sup> Among the responsibilities expected to be assigned to an NHRI is that it participates in the review process of UN treaty bodies, which includes the HRC.<sup>85</sup> The CNDH participated in submitting a report at the LOIs stage<sup>86</sup> and made

<sup>75</sup> ICCPR (n 1) art 9(3); UN Doc CCPR/C/GC/35 (n 35).

<sup>76</sup> UN Doc CCPR/C/GC/35 (n 35) para 33.

<sup>77</sup> Eckart Klein and David Kretzmer, ‘The UN General Comment - The Evolution of Autonomous Monitoring Instrument’ (2015) 58 *German Yearbook of International Law* 189.

<sup>78</sup> HRC (n 6).

<sup>79</sup> Christopher Harland, ‘The Status of the International Covenant on Civil and Political Rights (ICCPR) in the Domestic Law of State Parties: An Initial Global Survey Through UN Human Rights Committee Documents’ (2000) 22(1) *Human Rights Quarterly* 187, 235.

<sup>80</sup> UN Doc CCPR/C/MAR/CO/6 (n 33).

<sup>81</sup> UN Doc CCPR/C/106/3 (n 46) para 9.

<sup>82</sup> Global Alliance of National Human Rights Institutions (n 45).

<sup>83</sup> Paris Principles (n 42) Principle 1.

<sup>84</sup> *ibid* Principle 2.

<sup>85</sup> *ibid* Principle 3e.

<sup>86</sup> Conseil National des droits de l’Homme (CNDH) ‘Contribution of the National Council of Human Rights of Kingdom of Morocco (CNDH) to the Human Rights Committee for the Establishment of the List of Issues

suggestions on issues that should be included in the LOIs that the HRC was to forward to the state party for its response. For instance, it requested the HRC to inquire from Morocco if it allows persons in custody immediate access to their lawyers.<sup>87</sup> The CNDH did not raise any issue related to art. 19 of the ICCPR;<sup>88</sup> doing so would have given the HRC more information which it could have included in the LOIs.

The HRC also made inquiries on whether the CNDH has competence to independently receive complaints on human rights violations.<sup>89</sup> However, in the report it submitted to the HRC after Morocco has submitted its response to the LOIs, it asserted that the law that established it mandates it to do so and faces no impediment from the state in discharging the mandate; it has received 10,050 complaints relating to human rights violations between January 2014 and June 2016.<sup>90</sup> Also, the CNDH urged the HRC to include in its concluding observations the need for the state party to increase funding for the Commission to enable it to carry out its mandate more effectively.<sup>91</sup> The CNDH was commended by the HRC for investigating and monitoring human rights violations within the territory of Morocco in its concluding observations.<sup>92</sup>

However, the HRC failed to include the request of the CNDH for more funds in its concluding observations, which could discourage other NHRIs from participating in its review since it does not request more support from state parties for the institutions.

## **ii. Inputs of NGOs into the Review Process**

Before the review of the sixth report of Morocco as requested by the HRC, NGOs also made contributions by submitting alternative reports.<sup>93</sup> While NGOs do not have an official role in the review process as they are not provided with the opportunity to make presentations during the proceedings, by virtue of reports, they make submissions and the informal meetings they have with members of the HRC gives them an opportunity to influence the reviews of state parties reports.<sup>94</sup> Boerefijn is of the view that the reason why the participation of NGOs was not officially integrated into the review process was because of the objection of state parties to the use of NGO reports during the review.<sup>95</sup> In addition, allowing NGOs to directly participate in the review process will discourage some state parties from engaging in the process.

Diverse issues were raised by these NGOs in their reports to the HRC; for example, journalists are prosecuted for criticising government officials. An instance of this was the arrest

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(LOIs) by Morocco Prior to Consideration of the Sixth Report' (February 2016) UN Doc CCPR/MAR/23037.

<sup>87</sup> *ibid* para 23.

<sup>88</sup> UN Doc CCPR/MAR/23037 (n 86).

<sup>89</sup> HRC 'List of Issues in Relation to the 6<sup>th</sup> Periodic Report of Morocco' (9 May 2016) UN Doc CCPR/C/MAR/Q/6, para 2.

<sup>90</sup> Conseil National des droits de l'Homme (CNDH) 'Submission of the National Human Rights Council of Morocco to the Human Rights Committee on the List of Issues and Replies Provided by the Government' (19 September 2016) UN Doc CCPR/NHS/MAR/25254, para 8.

<sup>91</sup> UN Doc CCPR/MAR/23037 (n 86), para 83.

<sup>92</sup> UN Doc CCPR/C/MAR/CO/6 (n 33), para 27.

<sup>93</sup> UN Doc CCPR/C/104/3 (n 53), para 7.

<sup>94</sup> Michael O'Flaherty, *Human Rights and the UN: Practice before the Treaty bodies* (2<sup>nd</sup> edn, Springer 2002) 33.

<sup>95</sup> Ineke Boerefijn, *The Reporting Procedure under the Covenant on Civil and Political Rights: Practice of the Human Rights Committee* (Intersentia 1999) 5.

of the editor of *Akhbar Al Yaoum* by the Moroccan judicial police on account of his article in which he criticised two government officials.<sup>96</sup> In addition, journalists are charged for supporting terrorism despite constitutional guarantees.<sup>97</sup> The state party even resorts to media blackouts and censorship to prevent the *Sarahawi* people from voicing out their agitations for the right to self-determination, including the blocking of websites.<sup>98</sup>

It was also observed that the state party should adopt preventive measures against the torture of detainees to include the introduction of medical examinations by independent medical doctors during periods of detention, and to grant immediate access to lawyers to all persons taken into its custody, including those accused of terrorism offences.<sup>99</sup> NGOs played a significant role in providing information on violations of human rights by the state party.

#### a. Freedom of Opinion and Expression

The Moroccan Constitution<sup>100</sup> guarantees the right to access information from government institutions to its citizens. This right is limited only on the grounds of national security and infringement of the rights of other citizens protected by the Constitution.<sup>101</sup> It equally protects the freedom of press and also prohibits prior censorship of the press.<sup>102</sup> However, it is observed that in Morocco, the internet gives individuals unhindered opportunity to exercise the right to freedom of expression. The state party has resorted to clamping down on this source of information with the intention to suppress dissent.<sup>103</sup> It has also adopted surveillance of the internet as a means of repressing opinions that oppose government policies. This is done by blocking websites and detaining journalists which has in turn heightened anxiety and self-censorship among the populace.<sup>104</sup> This is a major challenge to the implementation of the provision of art. 19 in Morocco.

The HRC in its LOIs to the state party sought information on the accusations of imprisonment and imposition of fines on journalists as provided by the Moroccan Press Code for publications that do not favour the government. Along with that, information on steps

<sup>96</sup> Dignity Forum for Human Rights published by the Human Rights Committee, 'Comments on the Sixth Periodic Report of the Kingdom of Morocco on the Implementation of the International Pact on Civil and Political Rights' (February 2016) UN Doc No CCPR/CSS/MAR/25211, 8.

<sup>97</sup> Mediator for Democracy and Human Rights (MDDH) published by the Human Rights Committee, 'Parallel Report to the Sixth Periodic Report of Morocco on the Implementation of the ICCPR Submitted to the Human Rights Committee on 15 June 2015 at the Initiative and Coordination of the Moroccan Organisation of Human Rights' (18 December 2015) Doc No 1055232, para 211 <[https://www.ecoi.net/en/file/local/1055232/1930\\_1454581496\\_int-ccpr-ico-mar-22571-e.doc](https://www.ecoi.net/en/file/local/1055232/1930_1454581496_int-ccpr-ico-mar-22571-e.doc)> accessed 5 February 2021.

<sup>98</sup> Robert F Kennedy Human Rights, 'Alternative Report: On the Occasion of the Human Rights Committee Review of the Kingdom of Morocco's Implementation of the International Covenant on Civil and Political Rights' (*Robert F Kennedy Human Rights*, 19 September 2016) <[https://rfkhumanrights.org/assets/documents/western\\_sahara\\_alternative\\_report\\_human\\_rights\\_committee\\_english.pdf](https://rfkhumanrights.org/assets/documents/western_sahara_alternative_report_human_rights_committee_english.pdf)> accessed 13 December 2020.

<sup>99</sup> HRC 'APT Submission on Morocco' (19 September 2016) UN Doc CCPR/CSS/MAR/25217, para 6.

<sup>100</sup> Draft Text of the Constitution Adopted at the Referendum of 1 July 2011, Dahir No. 1-11-82 (17 June 2011).

<sup>101</sup> *ibid* art 27.

<sup>102</sup> *ibid* art 28.

<sup>103</sup> Mustapha Zanzoun, 'The Use of Social Media in Promoting Human Rights Among Speakers of English in Morocco: The Case of Facebook' (2017) 5(19) *International Journal of Education and Research* 169, 175.

<sup>104</sup> Bouziane Zaid, 'Internet and Democracy in Morocco: A Force for Change and an Instrument for Repression' *Global Media and Communication* (2016) 1, 3.

taken to align domestic legislation with provisions of art. 19 was requested by the HRC.<sup>105</sup> In its response, the state party informed the HRC that right to freedom of expression is guaranteed by art. 27 of its constitution.<sup>106</sup> Furthermore, its constitution also protects journalists from censorship.<sup>107</sup>

At the review of Morocco's sixth periodic review, the HRC requested its representatives to respond to allegations made by an NGO that despite the establishment of a Press Code, journalists were prosecuted under the Penal Code.<sup>108</sup> The delegation denied this claim and further informed the HRC that a new Press Code decriminalizing defamation had been established. This meant that the journalists found in violation of the law were only liable to fines and not a prison term.<sup>109</sup> At the end of the review, the HRC called on the State to desist from carrying out surveillance operations that target journalists.<sup>110</sup>

In its concluding observations, the HRC commended Morocco for the establishment of a new Press Code 2016 that does not contain custodial sentences. However, it did point out that the provisions of the state's new Criminal Code that provides jail terms for persons that are critical of the Monarchy or voice out opinions that are adverse to the territorial integrity of the state should be reviewed as it curtails the provision of art. 19. It urged the state party to align the restriction of free speech with the provision of art. 19 (3) ICCPR.<sup>111</sup>

## **b. Right to Liberty and Security of Person**

In the 1970s and 1980s, the Moroccan State was accused of engaging in arbitrary detention of members of the opposition, with an estimated 50,000 persons held in various detention centres.<sup>112</sup> What made the situation grave was the absence of the Anglo-American legal right to *Habeas Corpus* (a writ requiring a person in custody to be brought before a court), which resulted in individuals being detained and kept in solitary confinement in Morocco for long periods of time in contradiction to art. 9 of the ICCPR.<sup>113</sup>

### **1. 48 Hour Police Custody Timeline**

As pointed earlier, the HRC has recommended that individuals in the custody of the police should be arraigned before the courts within 48 hours after their arrest to avoid being mistreated while still in the custody of state officials.<sup>114</sup> However, under Moroccan law, the period for keeping individuals in police custody is 48 hours and may be extended by 24 hours. In cases of offences that affect the state, including terrorism charges, the period is 96 hours and may be extended twice. It is to be noted, however, that any breach in these periods of

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<sup>105</sup> UN Doc CCPR/C/MAR/Q/6 (n 89) para 26.

<sup>106</sup> HRC 'List of Issues in relation to the Sixth Periodic Report of Morocco - Addendum Replies of Morocco to the List of Issues' (10 August 2016) UN Doc CCPR/C/MAR/Q/6/Add.1, para 211.

<sup>107</sup> *ibid* para 212.

<sup>108</sup> HRC 'Consideration of Reports Submitted by State Parties under Article 40 of the Covenant (Continued) Sixth Periodic Report of Morocco' (25 October 2016) UN Doc CCPR/C/SR.3320, para 18.

<sup>109</sup> *ibid* para 23.

<sup>110</sup> UN Doc CCPR/C/MAR/CO/6 (n 33), para 37.

<sup>111</sup> *ibid* para 44.

<sup>112</sup> Francesco Cavatorta and Emanuela Dalmaso, 'The Emerging Power of Civil Society? Human Rights Doctrine' in Bruce Maddy-Wetzman and Daniel Zisenwine (eds), *Contemporary Morocco: State, Politics and Society under Mohammed VI* (Routledge 2013) 120, 120-135.

<sup>113</sup> Susan Slyomovics, 'A Truth Commission for Morocco' (2001) 218 *Middle East Report* 18.

<sup>114</sup> UN Doc UN Doc CCPR/C/GC/35 (n 35) para 33.

custody is arbitrary and unlawful and may lead to the initiation of disciplinary action against those culpable.<sup>115</sup>

This is an improvement from the previous period of prescribed time of detention by the police which was 92 hours and which could've been extended by a maximum period of 48 hours. Provided, approval for such extension is sought and granted to the police by the King's Prosecutor, except where the alleged offence was an attack on the state where the extension of time may be doubled.<sup>116</sup> The HRC recommended the state party to reduce the period of police custody to 48 hours.<sup>117</sup>

## 2. Arbitrary Detention

The HRC did not request information on incidences of arbitrary detention in its LOIs to the sixth periodic review of Morocco.<sup>118</sup> This is the result of the state party informing it on the steps it had taken to remedy the violations of art. 9 by its security services. It conducted comprehensive investigations into 17,000 complaints of human rights violations and had paid compensation to 7000 individuals at the time of the submission of the report in 2015. It also provided physical and psychological rehabilitation to the victims free of cost.<sup>119</sup>

The CNDH in its submission to the HRC in the build-up to the review of the sixth report gave out impressive statistics on the amount of compensation offered to victims of violations of human rights by Morocco. It reported that as of 30 July 2016, the state party had compensated 26,998 individuals who were victims of massive violations of human rights, to the tune of US\$199,440,000, in local currency equivalent.<sup>120</sup>

The HRC also intervenes in cases of arbitrary detention brought to its attention. For example, it made inquiries into the veracity of the allegation that members of the Oufkir family were being kept in the custody of the state party for a period of 18 years without being arraigned before a court.<sup>121</sup> The delegation gave assurances that the family had been released and no further action was taken against them to inhibit the enjoyment of any of their human rights.<sup>122</sup> Other issues of concern to the HRC were the lack of clarity on the law guiding maximum periods of pre-trial detention<sup>123</sup> and additional information was received by the HRC from unnamed sources that hundreds of people were detained in numerous detention centres as a result.<sup>124</sup>

Despite these weighty allegations, the delegation merely informed the HRC that the Moroccan Criminal Code was reviewed recently and the maximum period for pre-trial

<sup>115</sup> UN Doc CCPR/C/MAR/6 (n 33), para 148.

<sup>116</sup> HRC 'Summary of Record of the 332<sup>nd</sup> Meeting of the HRC where it considered the initial report of Morocco submitted under art. 40 ICCPR' (13 November 1981) UN Doc CCPR/C/SR 332, para 28.

<sup>117</sup> UN Doc CCPR/C/MAR/CO/6 (n 33) para 26.

<sup>118</sup> UN Doc CCPR/C/MAR/Q/6 (n 89) para 10.

<sup>119</sup> UN Doc CCPR/C/MAR/6 (n 33) para 4.

<sup>120</sup> UN Doc CCPR/NHS/MAR/25254 (n 90) para 23.

<sup>121</sup> Jamal Amiar, 'Morocco Frees Family of Former Minister After 18 Years in Prison' (*Washington Report on Middle East Affairs*, 8 April 1991) <<https://www.wrmea.org/1991-april/morocco-frees-family-of-former-minister-after-18-years-in-prison.html>> accessed 2 January 2022.

<sup>122</sup> UNGA 'Report of the UN Human Rights Committee (Volume I)' UN GAOR 50<sup>th</sup> Session Supp No 40 UN Doc CCPR/A/50/40 (1996) 24.

<sup>123</sup> HRC 'Summary of Record of the 1365<sup>th</sup> Meeting: Consideration of Reports Submitted by State Parties under Article 40 of the Covenant - Third Periodic Report of Morocco' (25 October 1994) UN Doc CCPR/C/SR.1365, para 18.

<sup>124</sup> *ibid* para 23.

detention was put at two months, which may be renewed periodically, not exceeding one year.<sup>125</sup> HRC was informed by the Moroccan Organisation for Human Rights that a person is only released at the end of the 12 months period with the consent of an investigative Magistrate, in violation with art. 154 of the Moroccan Code of Criminal Procedure.<sup>126</sup> The same human rights organisation further informed the HRC that the implementation of art. 9 (4) of the ICCPR was not complied with, as courts refuse to accept complaints of the arbitrary detention by persons in custody, unless the case files were already assigned to them for consideration by the state which also prolonged detention.<sup>127</sup>

The HRC further referred the state party to the report of the USA State Department which claimed that the alleged leader of a banned NGO, the Islamist organisation Justice and Charity, had been in the custody of the state for more than two years without trial, and this information was not listed in the state party report. The state party, however, refused to address these issues raised by the HRC.<sup>128</sup> The HRC did not raise the issue of pre-trial detention in the LOIs to the sixth periodic report of Morocco as a result of which it was not part of the dialogue during the review. This could have given it a clearer picture of the status of pre-trial procedure in the state party.<sup>129</sup> As Morocco had appeared consistently before the HRC, Viljoen viewed its cooperation during these reviews as impressive because of its frank responses to issues raised by the HRC.<sup>130</sup>

## **B. Rwanda**

Rwanda was a colony of Belgium and it consequently inherited a German/Belgian civil law legal system after being granted independence in 1962.<sup>131</sup> However, it presently practices a hybrid system of civil and common law, and is shifting towards a common law legal system. For instance, it had adopted the concept of applying judicial precedents as a source of law in addition to its written laws.<sup>132</sup> Rwanda acceded to the ICCPR on 16 April 1975,<sup>133</sup> and made no reservations to the applicability of any of the provisions of the ICCPR within its territory.<sup>134</sup>

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<sup>125</sup> *ibid* para 40.

<sup>126</sup> UN Doc CCPR/C/SR.1365 (n 123) para 9.

<sup>127</sup> *ibid* para 10; An instance was given by the human rights NGO of the case of a union leader who was kept in preventive detention because he was alleged to have committed an offence which did not fall under the category of offences that provided for a person to be kept in preventive detention under Moroccan Law. His application for judicial intervention of his unlawful detention was not determined until his case went before the Court of Appeal after he had been in custody for 12 months.

<sup>128</sup> *ibid* para 26.

<sup>129</sup> UN Doc CCPR/C/MAR/MAR/6 (n 33) para 10.

<sup>130</sup> Frans Viljoen, *International Human Rights Law in Africa* (2<sup>nd</sup> edn, Oxford University Press 2012) 100-101.

<sup>131</sup> Eunice Musiime, 'Rwanda's Legal System and Legal Materials' (*Globalex*, 2007) <[www.nyulawglobal.org/globalex/Rwanda.html](http://www.nyulawglobal.org/globalex/Rwanda.html)> accessed 30 May 2017.

<sup>132</sup> William E. Kosar, 'Rwanda's Transition from Civil to Common Law' (2013) 16(3) *Globe Trotter* 1.

<sup>133</sup> OHCHR, 'Reporting Status for Rwanda' (*UN Human Rights Treaty Bodies Database*, 2021) <[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=RWA&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=RWA&Lang=EN)> accessed 19 March 2021.

<sup>134</sup> 'ICCPR Declarations and Reservations' (*United Nations Treaty Collection*) <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en)> accessed 9 January 2022.

The state party failed to submit its report for review on 22 March 1977, as recommended by the HRC. It, however, submitted the report on 20 January 1981,<sup>135</sup> which was subsequently reviewed in 1982.<sup>136</sup> It submitted its second periodic report within a reasonable time for consideration.<sup>137</sup> The failure of Rwanda to submit its third periodic report made the HRC send a reminder to its government urging it to do so in compliance with its obligation under art. 40 of the ICCPR.<sup>138</sup> However, before it could do so, civil war broke out resulting in massive human rights violations. Consequently, the HRC requested that the state party submit as a matter of urgency, its third periodic report not later than 31 January 1995 in a summary form if possible, with particular emphasis directed towards arts. 6, 7, 9, 10, 14 and 27 of the ICCPR.<sup>139</sup>

Rwanda failed to submit the report as requested by the HRC and despite several reminders thereafter, at its sixty-eighth session, two of its members met the Rwandan Ambassador to the UN, who assured them that the report would be submitted in the year 2000. The state party failed to do so again and as a result of this refusal, the HRC fixed March 2007 at its eighty-ninth session to consider the application of ICCPR rights within the territory of Rwanda.<sup>140</sup> Consequently, the HRC adopted a LOIs on Rwanda in the absence of its report<sup>141</sup> which raised issues such as the implementation of ICCPR rights within the territory of the state party,<sup>142</sup> compliance of the National Human Rights Commission of Rwanda (NHRC) with the Paris Principles,<sup>143</sup> measures adopted to curb domestic violence against women and remedies available to those affected by it,<sup>144</sup> and accusations made by the NHRC of the state party operating unlawful and secret detention centres within its territory.<sup>145</sup>

Also, the maximum time period of pre-trial detention and complaints of harassment and arbitrary detention of members of NGOs were matters to be considered by the HRC during the third periodic review.<sup>146</sup> As a response to the HRC's adoption of LOIs in the absence of a report, Rwanda submitted its report a year later after the adoption of the LOIs.<sup>147</sup> After the

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<sup>135</sup> UNGA 'Report of the UN Human Rights Committee' UN GAOR 36<sup>th</sup> Session Supp No 40 UN Doc CCPR/A/36/40 (1981) 99.

<sup>136</sup> HRC 'Summary of Record of the 345<sup>th</sup> Meeting: Consideration of Reports Submitted by State Parties under Article 40 of the Covenant - Initial Report of Rwanda' (1 April 1982) UN Doc CCPR/C/SR. 345.

<sup>137</sup> UNGA 'Report of the UN Human Rights Committee' UN GAOR 42<sup>th</sup> Session Supp No 40 UN Doc CCPR/A/42/40 (1987) 9.

<sup>138</sup> UNGA 'Report of the UN Human Rights Committee (Volume I)' UN GAOR 51<sup>st</sup> Session Supp No 40 UN Doc A/51/40 (1997) 12.

<sup>139</sup> UNGA 'Report of the Human Rights Committee (Volume I)' UN GAOR 50<sup>th</sup> Session Supp No 40 UN Doc A/50/40 (1996) 14.

<sup>140</sup> UNGA 'Report of the Human Rights Committee (Volume I)' UN GAOR 60<sup>th</sup> Session Supp No 40 UN Doc A/61/40 (2006) 19.

<sup>141</sup> HRC 'List of Issues to be Taken Up in Connection with the Consideration of Third Periodic Reports of States parties - Third Periodic Report of Rwanda (CCPR/C/RWA/3)' (3 November 2006) UN Doc CCPR/C/RWA/Q/3.

<sup>142</sup> *ibid* para 1.

<sup>143</sup> *ibid* para 3.

<sup>144</sup> *ibid* para 5.

<sup>145</sup> *ibid* para 8.

<sup>146</sup> *ibid* para 15.

<sup>147</sup> HRC 'Consideration of Reports Submitted by State Parties under Art. 40 of the Covenant: 3<sup>rd</sup> Periodic Report of Rwanda' (12 September 2007) UN Doc CCPR/C/RWA/3.



review of the third periodic report,<sup>148</sup> the failure of Rwanda to submit its report for more than 15 years was a major concern and Rwanda was urged to submit its next report when due;<sup>149</sup> there was a marked improvement as it submitted its fourth periodic report only a year later than it was due.<sup>150</sup>

### **i. Independence of the National Commission of Human Rights (NCHR)**

The state party had established a National Commission on Human Rights (NCHR) which had been strengthened to comply with the Paris Principles, and it had been accredited as an 'A' status NHRI, which means that it is recognised as an institution that operates without external interference.<sup>151</sup> For an NHRI to be truly effective, it must operate independent from the government and that its members must be selected from different sectors of society, including NGOs.<sup>152</sup> However, the HRC was informed that with regard to the selection of members of the NCHR, the President establishes a committee which he mandates under his control in order to choose members of the Rwandan NHRI which he then submits to the Parliament for approval.<sup>153</sup> Another concern raised about the NCHR was its refusal to criticise the security agents of the state party when they violated the human rights of individuals, especially when they are political in nature. It was also accused of undermining the efforts of NGOs to carry out their mandate of monitoring human rights violations and further discrediting the work of international NGOs.<sup>154</sup> The concerns raised by various sources on the lack of independence of the NCHR also included the lack of transparency in the selection of members of the NCHR.

In addition, the NCHR is accused of subverting the work of human rights NGOs; for instance, it is alleged that it pressurised a particular NGO to withdraw a report it submitted to the Human Rights Council on the human rights record of Rwanda<sup>155</sup> In their response, the delegation claimed that the selection of members of the NCHR is done in an open and transparent manner, but did not dispute the fact that the selection process is not transparent.<sup>156</sup> It however denied the allegation that the NCHR undermines the functions of NGOs. With regard to its challenge of the contents of a report presented to the Human Rights Council by

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<sup>148</sup> HRC 'Concluding Observations of the Human Rights Committee on Rwanda's 3<sup>rd</sup> Periodic Report' (30 March 2009) UN Doc CCPR/C/RWA/CO/3, para 2.

<sup>149</sup> *ibid.*

<sup>150</sup> UN Doc CCPR/C/RWA//4 (n 33).

<sup>151</sup> HRC 'Replies of Government of Rwanda to the List of Issues in Relation to Rwanda 3<sup>rd</sup> Periodic Report' (9 March 2008) UN Doc CCPR/C/RWA/Q/3/ Rev.1/Add.1, para 13.

<sup>152</sup> Institute for International Law and Human Rights, 'A Comparative Look at Implementing Human Rights Commissions Laws' (*IILHR*, March 2009) <<http://hrlibrary.umn.edu/research/Egypt/Implementing%20HR%20Commission%20Laws.pdf>> accessed 10 September 2017, 9 and 10.

<sup>153</sup> Human Rights Watch, 'Submission to the Human Rights Committee in Advance of the Fourth Periodic Review of Rwanda' (*Human Rights Watch*, 12 February 2016) <[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/RWA/INT\\_CCPR\\_CSS\\_RWA\\_23\\_062\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/RWA/INT_CCPR_CSS_RWA_23_062_E.pdf)> accessed 9 January 2020.

<sup>154</sup> *ibid.*

<sup>155</sup> HRC 'Summary of Record of the 3250<sup>th</sup> Meeting of the HRC Where it Considered the 4<sup>th</sup> Periodic Report of Rwanda Submitted under Article 40 ICCPR' (17 March 2016) UN Doc CCPR/C/SR. 3250, para 12.

<sup>156</sup> *ibid* para 32.

an NGO, it stated it is within the scope of its mandate to do so in cases where reports contained facts that were not true as in that particular case.<sup>157</sup>

The HRC raised concerns about the level of compliance of the Rwandan NHRI with the Paris Principles<sup>158</sup> which the state party disputed, submitting that it was an independent NHRI with a mandate for the protection and promotion of human rights.<sup>159</sup> The HRC observed that the NCHR failed to submit a shadow report alongside that of the state party and inquired on the reason behind its omission. It further wanted to know which body the NHRI is answerable to and what its powers were.<sup>160</sup> It also noted its members were part of the government delegation that attended the review of Rwanda's third periodic report.<sup>161</sup> The delegation informed the HRC that it was felt that it wasn't appropriate for the NCHR to submit an alternative report to the HRC for consideration at that material time but they were evasive on the issue of the mandate of the NCHR and rather just outlined its functions as contained in the Rwandan Constitution and its enabling law.<sup>162</sup>

The HRC recommended the state party to make the selection of the members of the NHRI transparent and expand the scope of its mandate in line with the Paris Principles.<sup>163</sup> It is observed that the Rwandan NCHR is not an independent NHRI, and therefore cannot fulfil the mandate of promotion and protection of human rights. This calls into question the credibility of the 'A' status it has been conferred with. From the above discussion, it does not meet the criteria set by the Paris principles for a truly independent NHRI.

## ii. Suppressing the Oversight Functions of the NGOs

NGOs play an active role in the protection of human rights at both the UN and domestic levels by collecting reliable information from the latter and submitting it to the former on the status of human rights protection.<sup>164</sup> As noted earlier, the HRC has also incorporated NGOs into its activities, especially the reporting procedure.<sup>165</sup> Despite the efforts of the NGOs to support the promotion of human rights in Rwanda, information on challenges faced by their members was submitted to the HRC in terms of the persecution they encounter. For instance, members of one of the few truly independent NGOs in Rwanda, known as the Human Rights League in the Great Lakes Region, had been barred from traveling freely within the territory of the state, and members of another NGO were arrested for being in possession of forged documents which they denied.<sup>166</sup>

Furthermore, NGOs complain of intimidation, harassment, and threats to their lives and administrative bottlenecks erected by the government to frustrate their abilities to carry out

<sup>157</sup> *ibid* para 33.

<sup>158</sup> UN Doc CCPR/C/RWA/Q/3 (n 141) para 3.

<sup>159</sup> HRC 'Replies of Government of Rwanda to the List of Issues in Relation to Rwanda 4<sup>th</sup> Periodic Report' (9 December 2015) UN Doc CCPR/C/RWA/Q/4/Add.1, para 5.

<sup>160</sup> HRC 'Summary of Record of the 2603<sup>rd</sup> Meeting of the HRC Where it Considered the 3<sup>rd</sup> Periodic Report of Rwanda Submitted under Art. 40 ICCPR' (18 March 2009) UN Doc CCPR/C/SR. 2603, para 9.

<sup>161</sup> HRC 'Summary of Record of the 2602<sup>nd</sup> Meeting of the HRC Where it Considered the 3<sup>rd</sup> Periodic Report of Rwanda Submitted under Art. 40 ICCPR' (18 March 2009) UN Doc CCPR/C/SR. 2602, para 36.

<sup>162</sup> UN Doc CCPR/C/SR. 3250 (n 155) para 33.

<sup>163</sup> UN Doc CCPR/RWA/CO/4 (n 33) para 10.

<sup>164</sup> John C Mubangizi, 'The Role of Non-Governmental Organisations in the Protection of Human Rights in South Africa' (2004) 2 *Journal of South African Law* 324, 326.

<sup>165</sup> UN Doc CCPR/C/104/3 (n 53), para 4.

<sup>166</sup> HRC 'Summary of Record of the 3251<sup>st</sup> Meeting of the HRC Where it Considered the 4<sup>th</sup> Periodic Report of Rwanda, Submitted under Art. 40 ICCPR' (18 March 2016) UN Doc CCPR/C/SR. 3251, para 14.

their lawful duties. Most of the human rights activists have fled out of the state and those who have chosen to stay behind and speak out are arbitrarily detained. In 2013, one of the leading human rights activists was murdered by two members of the Rwandan police, and as a result of these threats, NGOs were facing extinction in Rwanda.<sup>167</sup>

The delegation was asked to respond to these allegations but they refused to do so.<sup>168</sup> While it is observed that the HRC showed concern in the restrictions on the registration of NGOs and their administration<sup>169</sup>, it is submitted that the HRC ought to have raised the issue of the suppression of the NGOs in its concluding observations to Rwanda, as it had cogent information of its members fleeing the territory and some losing their lives. This certainly indicated the urgency of the need for intervention on their behalf as the HRC does for NHRIs, so that it will enable them to carry out their function of the promotion and protection of human rights in a more conducive environment.

#### **a. Right to Freedom of Opinion and Expression**

The media in Rwanda played a significant part in accelerating the genocide that occurred in the state by inciting the public, which precipitated the violence between the Hutus and Tutsis and led to the loss of millions of lives.<sup>170</sup> Hefti and Jonas argued that without the media, the level of genocide 'would not have reached the dimensions and levels of rage it did'.<sup>171</sup> However, after peace was restored in Rwanda, the state has stifled the independence of the media as journalists are afraid to report on issues that are not favourable to the government, especially those that concern human rights violations.<sup>172</sup>

In the build-up to review of the fourth periodic report, the HRC requested Rwanda to furnish it with information on steps it had taken to decriminalise defamation and insult laws,<sup>173</sup> and also, safeguards available to journalists against intimidation, harassment, and arbitrary detention.<sup>174</sup> The state party refused to address these issues in its reply. It only pointed out that the Constitution and domestic legislation provides regulations for the media.<sup>175</sup>

During the review of Rwanda's fourth report by the HRC, it was asked to comment on the veracity of the information that journalists are harassed by agents of the state, and that a correspondent of the Chronicles Newspaper was arrested and detained for requesting an investigation on the seizure of his laptop and phone by the police.<sup>176</sup> The HRC was also alarmed by the report of prosecutions of a high number of journalists, which discouraged them from reporting on issues that were not favourable for the state.<sup>177</sup> The Rwandan delegation

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<sup>167</sup> Human Rights Watch (n 153).

<sup>168</sup> UN Doc CCPR/C/SR. 3251 (n 166) para 14.

<sup>169</sup> UN Doc CCPR/RWA/CO/4 (n 33) para 42.

<sup>170</sup> Meghan Sobel and Karen McIntyre, 'The State of Journalism and Press Freedom in Postgenocide Rwanda' (2018) 96(2) *Journalism and Mass Communication Quarterly* 1, 2.

<sup>171</sup> Angela Hefti and Laura A. Jonas, 'From Hate Speech to Incitement to Genocide: The Role of the Media in the Rwandan Genocide' (2020) 38(1) *Boston University International Law* 1, 3.

<sup>172</sup> Meghan Sobel and Karen McIntyre, 'Journalists' Perceptions of Human Rights Reporting in Rwanda (2018) 39(3) *African Journalism Studies* 85, 101.

<sup>173</sup> HRC 'List of Issues in Relation to the 4<sup>th</sup> Periodic Report of Rwanda' (21 August 2015) UN Doc CCPR/C/RWA/Q/4, para 20.

<sup>174</sup> *ibid* para 23.

<sup>175</sup> UN Doc CCPR/C/RWA/Q/4/Add.1 (n 159) para 55.

<sup>176</sup> UN Doc CCPR/C/SR. 3251 (n 166) para 15.

<sup>177</sup> *ibid* para 51.

refused to respond to these questions. They, however, informed the HRC that its Penal Code was being reviewed and steps were being taken to repeal criminal defamation and other insult laws from its legislation.<sup>178</sup>

The HRC enjoined the state party to strictly align its restrictions of freedom of expression with the provision of art. 19 (3) ICCPR. It also requested it to refrain from persecution of journalists and provide them with an environment free of any restrictions. The HRC reiterated its call to the state party to decriminalise defamation.<sup>179</sup>

### **b. Right to Liberty and Security of Person**

After the 1994 Rwandan genocide, the maintenance of peace and security was one of the essential priorities of the state party, especially since the neighbouring states were grappling with instability within their own territories.<sup>180</sup> However, the state party has resorted to detaining individuals for long periods of time without arraigning them before a competent court of law. For example, it has a law that allows it to detain beggars and street vendors without proffering charges against them.<sup>181</sup> This type of detention was declared as unlawful by HRC, when it held that:

Every decision to keep a person in detention should be open to review periodically, so that the grounds justifying the arrest can be assessed. In any event detention should not continue beyond the period for which the state can provide appropriate justification.<sup>182</sup>

The application by Rwanda of the safeguards provided under art. 9 of the ICCPR will be examined below.

### **1. Period of Police Custody**

As highlighted earlier, the HRC in its general comment no 35 asserted that individuals alleged to have committed criminal offences should not be kept in detention for more than 48 hours without being arraigned before a court of law.<sup>183</sup> It also recommended that access must be given to detainees to challenge the legality of their detention before a court of law (*habeas corpus*).<sup>184</sup> Under Rwandan law, a person can be kept in custody for a maximum of 72 hours. The only improvement is the introduction of the procedure of *habeas corpus* to enable those detained unlawfully to enforce their rights.<sup>185</sup> This is a setback for Rwanda; in its initial report to the HRC, it asserted that the maximum period of police custody was 24 hours and if there was the need for an extension of stay in custody, the police must apply to a judge for a warrant which must not exceed five days.<sup>186</sup> However, during that period, the state was under one

<sup>178</sup> *ibid* para 41.

<sup>179</sup> UN Doc CCPR/RWA/CO/4 (n 33) para 40.

<sup>180</sup> Andrea M. Grant, 'Quiet Insecurity and Quiet Agency in Post-Genocide Rwanda' (2015) 27(2) *Etnofoor* 15.

<sup>181</sup> William R. Pruitt, 'Crime and Punishment in Rwanda' (2017) 20(2) *Contemporary Justice Review* 193, 206.

<sup>182</sup> HRC 'Av Australia Communication No: 560/1993' (30 April 1997) UN Doc CCPR/C/59/D/560/1993, para 9.4.

<sup>183</sup> UN Doc CCPR/C/GC/35 (n 35) para 33.

<sup>184</sup> *ibid* para 39.

<sup>185</sup> UN Doc CCPR/RWA/CO/4 (n 33) paras 161, 168.

<sup>186</sup> UNGA 'Report of the Human Rights Committee' UN GAOR 37<sup>th</sup> Session Supp No 40 UN Doc A/37/40 (1982) 52.

party rule and dissent was suppressed by the only party in existence then.<sup>187</sup> At that particular time, state parties were accused of embellishing their reports because of the lack of independent organisations that could provide information to the HRC on the conduct of state parties within their territories by verifying the objectivity of their reports.<sup>188</sup> Consequently, it is submitted that it is doubtful that this provision of a 24 hour timeline ever existed under the Rwandan law.

## **2. Arbitrary Detention**

Arbitrary detention takes many forms. For example, detention of individuals is deemed arbitrary if those accused of committing criminal offences have not been convicted of the allegations levelled against them or are unable to have the validity of their detention periodically reviewed.<sup>189</sup> The HRC further held that detainees are entitled to be taken before a court of law to determine the lawfulness of their incarceration.<sup>190</sup> The HRC, in the course of the review of Rwanda's report, requested information from the state party on the maximum period of pre-trial detention and at what stage a person accused of a crime is allowed access to a lawyer and his family.<sup>191</sup> Other issues raised with regard to the implementation of Art. 9 were whether the period of pre-trial detention can be extended indefinitely. The HRC was informed by an unnamed source that an individual was kept in detention for a period of 14 months and denied access to a lawyer and his family; it asked whether this type of detention was a regular occurrence.<sup>192</sup>

The delegation responded by saying that when a person is kept in pre-trial detention, if a judge issues a maximum 30-day remand order, provided he is satisfied with the materials put before the court that circumstances warrant the issuance of such an order, this order is subject to renewal at the expiry of 30 days as the situation warrants.<sup>193</sup> Pruitt restates this as the true position of the law, but he points out that in cases where bail is granted to an accused person, it is the prosecutor in most cases that sets the conditions for the bail of the person.<sup>194</sup> This power given to the prosecutor is detrimental to the detainees, and judges that are empowered to grant bail should also be allowed to set bail conditions. Also, the period of detention must not exceed the period of imprisonment of the alleged offence, should the detainee be found guilty.

The HRC was also reassured that a person taken into custody is granted immediate access to a lawyer of his or his family's choice at the onset of the investigation of the alleged

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<sup>187</sup> 'Constitutional History of Rwanda' (*ConstitutionNet*, 2016) <[www.constitutionnet.org/country/constitutional-history-rwanda](http://www.constitutionnet.org/country/constitutional-history-rwanda)> accessed 17 September 2017.

<sup>188</sup> Tyagi (n 50) 286.

<sup>189</sup> Kristin Hausler and Robert McCorquodale, 'Pre-Trial Detention and Human Rights in the Commonwealth: Any Lessons from Civil Law Systems' (2014) 2(1) *Journal of Human Rights in the Commonwealth* 8, 14.

<sup>190</sup> HRC 'Luyeye Magana ex-Philibert v. Zaire, Communication No. 90/1981' (1990) UN Doc CCPR/C/OP/2, para 8.

<sup>191</sup> UN Doc CCPR/C/SR. 3250 (n 155) para 20.

<sup>192</sup> *ibid* para 21.

<sup>193</sup> *ibid* para 36.

<sup>194</sup> Pruitt (n 181) 205.

crime.<sup>195</sup> The delegation, however, denied any knowledge of a person held in detention for a period of 14 months.<sup>196</sup>

In its concluding observations to the fourth periodic report, the HRC observed that Rwanda's failure to provide information on measures it had taken to investigate these allegations were of concern to it and equally it was still concerned with the long periods of time for which the individuals are kept in the custody of the police before they are arraigned before a judge which was in violation of Art. 9.<sup>197</sup> Consequently, the concluding observations issued to the state party at the end of the review of its fourth periodic report with regards to the right to liberty, made the following recommendations: (1) reduction of the maximum period of police detention to 48 hours;<sup>198</sup> (2) persons lawfully arrested should be detained in government owned detention centres;<sup>199</sup> (3) complaints of arbitrary detention should be promptly investigated and those found culpable be prosecuted;<sup>200</sup> and (4) any individual who is alleged to have been unlawfully detained should be allowed to seek legal redress.<sup>201</sup>

As an initial stage to the follow-up procedure, the state party is requested to submit a report on the level of implementation of some of the recommendations made in the concluding observations highlighted by the HRC within one year of the issuance of the concluding observations, and in this case recommendation made to it on unlawful detention was chosen among them.<sup>202</sup>

## V. Follow-up to HRC's Concluding Observation Procedure

Under the follow-up procedure, the HRC selects a minimum of two to four recommendations in the concluding observations issued to state parties for immediate implementation and state parties are expected to submit a report to the HRC on their level of progress within a year of the adoption of the concluding observations.<sup>203</sup> It mandates a Special Rapporteur on follow-up to the Concluding Observations, to monitor the compliance of the procedure, and report to it.<sup>204</sup> Morocco and Rwanda have participated in this procedure.

In the case of Morocco, it informed the HRC that it has not amended its law to comply with its recommendation for the individuals not to exceed 48 hours in the custody of the Police without being arraigned before a court.<sup>205</sup> It, however, outlined legal safeguards to protect the human rights of individuals in custody of the police. For instance, if the police seek to detain a person beyond 48 hours, an application must be made to the King's Prosecutor to justify the need for an extension, which must not exceed 24 hours.<sup>206</sup> Furthermore, it has revised the Code of Criminal Procedure (CCP) and has provided for several safeguards which includes

<sup>195</sup> *ibid.*

<sup>196</sup> UNGA 'Report of the Human Rights Committee' UN GAOR 43<sup>rd</sup> Session Supp No 40 UN Doc A/43/40 (1988) 52.

<sup>197</sup> UN Doc CCPR/RWA/CO/4 (n 33) para 19.

<sup>198</sup> *ibid* para 20(a).

<sup>199</sup> *ibid* para 20(b).

<sup>200</sup> *ibid* para 20(c).

<sup>201</sup> *ibid* para 20(d).

<sup>202</sup> *ibid* para 50.

<sup>203</sup> HRC, 'Note by the Human Rights Committee on the Procedure for Follow-Up to Concluding Observations' (21 October 2013) UN Doc CCPR/C/108/2, para 7.

<sup>204</sup> *ibid* para 3.

<sup>205</sup> HRC 'Information Received from Morocco Concerning Action Taken to Concluding Observations Relating to its 6<sup>th</sup> Periodic Report' (27 December 2018) UN Doc CCPR/C/MAR/CO/6/Add.1, para 10.

<sup>206</sup> *ibid* para 12.

individuals receiving immediate access to a lawyer of their choice once taken into custody.<sup>207</sup> The state party also reported that the CNDH continues to be strengthened to carry out its functions as it collaborates with international partners like the Council of Europe to train its staff in techniques of protection of human rights.<sup>208</sup> The CNDH in collaboration with the UN High Commissioner for Human Rights and GANHRI, organised a regional conference on expanding civic space for the promotion and protection of human rights defenders.<sup>209</sup> NGOs are equally allowed to operate unhindered within its territory.<sup>210</sup> Morocco also asserts that its new Press Code abolishes jail terms for journalists who breach any provision of the law, replacing it with fines.<sup>211</sup>

The HRC seems to be satisfied with the response of Morocco on steps it had to address the challenges it has with the implementation of arts. 9 and 19 ICCPR; it did not raise any concerns in its report to the follow-up.<sup>212</sup> It, however, discontinued the follow-up procedure and requested the state party to address all pending issues in its seventh periodic report, which was due on 31 March 2019.<sup>213</sup> It is observed that the failure of the CNDH and NGOs to submit alternative reports to that of the state party makes it difficult for the HRC to ascertain the veracity of the claims by Morocco.

In the case of Rwanda, its report was not as detailed as that of Morocco, as it merely informed the HRC that its criminal procedures were under review.<sup>214</sup> It denied operating unofficial detention centres and further claimed that its detention centres comply with those of the UN and persons in custody are provided with legal safeguards.<sup>215</sup> On freedom of expression, the state party submitted that the right is guaranteed to all citizens, and curtailed on grounds of public order, good morals, the protection of youth and children, dignity of every citizen, and protection of personal and family privacy.<sup>216</sup> It also informed the HRC that it had decriminalised defamation and other 'related offences'.<sup>217</sup> The state party did not provide any information relating to steps it had taken on strengthening its NCHR and issues that have to do with the persecution of journalists and NGOs.

The HRC was concerned about the skeletal report submitted by Rwanda and it did not provide information on police custody, pre-trial detention, and measures taken to address unlawful detention.<sup>218</sup> It welcomed the decriminalisation of defamation by the state party and also sought to know if insult laws have been decriminalised as well.<sup>219</sup> It also requested

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<sup>207</sup> *ibid* para 14.

<sup>208</sup> *ibid* para 39.

<sup>209</sup> *ibid* para 55.

<sup>210</sup> UN Doc CCPR/C/MAR/CO/6/Add.1 (n 205) para 42.

<sup>211</sup> *ibid* para 51.

<sup>212</sup> HRC 'Report on Follow-Up to Concluding Observations of the Human Rights Committee: Evaluation of the Information on Follow-Up to the Concluding Observations on Morocco' (adopted at the 127<sup>th</sup> session 14 October - 8 November 2019) UN Doc CCPR/C/127/R.1/Add.4, paras 1-6.

<sup>213</sup> *ibid* 5.

<sup>214</sup> HRC 'Concluding Observations on the 4<sup>th</sup> Periodic Report of Rwanda: Information Received from Rwanda on Follow-Up to the Concluding Observations' (8 May 2018) UN Doc CCPR/C/RWA/CO/4/Add.1, para 8.

<sup>215</sup> *ibid* para 9.

<sup>216</sup> *ibid* para 16.

<sup>217</sup> *ibid* para 17.

<sup>218</sup> HRC 'Report on Follow-Up to Concluding Observations of the Human Rights Committee' (8 November 2018) UN Doc CCPR/C/124/2, para 4.

<sup>219</sup> *ibid* 5.

information on the protection afforded to journalists and NGOs in relation to the exercise of right to free speech as provided by art. 19 ICCPR.<sup>220</sup> The follow-up procedure was discontinued, and information requested by HRC from Rwanda was to be included in its fifth periodic report which was also due on 31 March 2019.<sup>221</sup> In the case of Rwanda also, the NCHR and NGOs did not submit any parallel report to the HRC in relation to the follow-up procedure. The HRC, therefore, could not test the veracity of the claims of Rwanda in its follow-up report.

The discontinuance of the follow-up procedure at this stage seems premature, as there is need for the HRC to continue supervising the compliance of its recommendations up to the period when state parties submit their reports. Also, the adoption of visits to the territories of state parties by members of the HRC after the completion of the review of state parties' reports will make the follow-up procedure more effective, as it will provide an opportunity to the members to interact with stakeholders in the state party concerned with the promotion and protection of human rights concerning the implementation of the committee's concluding observations. Recently, Members of the HRC were in Namibia on such a visit and they engaged officials of various departments who are responsible for the implementation of the concluding observations of the HRC. Representatives of NGOs equally interacted with members of the HRC on issues related with the implementation of the concluding observations in Namibia and the HRC was pleased with the interaction.<sup>222</sup> If the HRC can sustain these visits, it will add more teeth to the follow-up procedure and encourage state parties to put more efforts in fulfilling their obligations to the ICCPR.

## VI. Conclusion

The HRC was established by the ICCPR to monitor the implementation of its provisions by state parties to the treaty. It is vested with four mechanisms to be able to discharge its mandate which includes the mandatory submission of reports by state parties for review by the HRC.<sup>223</sup> These reports are to contain the successes and challenges recorded by state parties in the implementation of the provisions of the treaty. As a result of the importance of the reporting procedure, Morocco and Rwanda were selected among the state parties to the HRC to test the efficacy of the procedure, which produced mixed results due to differences in their ability to implement the provisions of the ICCPR. At the inception of the HRC, its major challenge was its inability to verify the contents of reports submitted to it by state parties, as it lacked an independent mechanism within their territories. As a result, it encourages NHRIs and NGOs to submit parallel reports alongside that of the state parties at every stage of the review to close this gap. While these two institutions participated in various stages of the review of the selected state parties report, none participated in the follow-up procedure of the HRC, which is crucial in analysing the level of compliance by state parties.

There is a need for improvement in the reporting procedure of the HRC and its visibility must be increased by scheduling the consideration of these reports according to regions,

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<sup>220</sup> *ibid.*

<sup>221</sup> *ibid.* 6.

<sup>222</sup> Centre for Civil and Political Rights, 'Follow-up Visit to Namibia' (*CCPR*, 19 August 2016) <<https://ccprcentre.org/ccprpages/un-human-rights-committee-members-visit-namibia>> accessed 12 January 2020.

<sup>223</sup> ICCPR (n 1) art. 40(1).



instead of the practice of holding its state parties' reviews in New York or Geneva.<sup>224</sup> It should select a number of African state parties two years prior to the review and notify them. The HRC should rotate its sessions between territories of African state parties. Doing so will improve the state reporting mechanism in three ways. It will add more pressure to the state parties to participate in the procedure, because if the HRC comes to Africa, there will be more awareness about its work, and put those African state parties in the spotlight, especially if it stays for one month in the territory of a particular State party. Secondly, the HRC will have the opportunity to engage more senior government officials, even Heads of State of state parties, and be able to present their recommendations before those officials who can influence the implementation of its concluding observations.

Finally, it can also embark on follow-up procedures on the implementation of the concluding observations as state parties neglect to implement these concluding observations because they know that the HRC will just send reminders which they may choose to ignore, and it seems NGOs and NHRIs are not keen in participating in the follow-up procedure. However, if members of the HRC in the course of the sessions embark on visits to various territories of state parties to make inquiries on the level of the implementation of the concluding observations, the state parties will put in more effort to implement them. As pointed out earlier, members of the HRC were in Namibia on such a visit recently.<sup>225</sup> Adopting this practice would spur state parties into compliance with the concluding observations of the HRC.

The inclusion of NGOs and NHRIs in the review procedure has benefitted the HRC, and it has been seen that NGOs make considerable contributions to the review process because they operate independent of the governments. Their members, however, face challenges and some have been threatened or even harmed for engaging in the collection of information of human rights violations by state parties. Rwanda, for instance, is alleged to have committed such acts against members of NGOs, which has resulted in some of them losing their lives.<sup>226</sup> As a result, there is a need for the HRC to make a point of including this issue in its LOIs and make inquiries about the level of freedom allowed to NGOs to operate within the respective territories.

The HRC has been described as akin to the 'babblings of a raggedly old man on the street corner; even if he is correct and even if passers-by periodically give him their attention, no one is really listening'.<sup>227</sup> It has, however, recorded modest success in ensuring state parties fulfil their obligations to the ICCPR. The participation of NGOs and NHRIs in the state reporting procedures have made a positive impact. However, there is a need for the reporting procedure of the HRC to be strengthened. In its current status, it has not made the desired impact and the HRC continues to be considered a 'raggedly old man' whose decisions are largely ignored by state parties to the ICCPR.

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<sup>224</sup> *ibid* art 37(3).

<sup>225</sup> Centre for Civil and Political Rights (n 222).

<sup>226</sup> Human Rights Watch (n 153) 15, 16.

<sup>227</sup> Cindy A Cohn, 'Who's Listening? Modest Suggestions for the Human Rights Committee' (1990) 59 *Nordic Journal of International Law* 321.

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