AN ASSESSMENT OF NIGERIA'S FULFILMENT OF ITS OBLIGATIONS UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

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Abstract

State parties to the ICCPR are under an obligation to submit periodic reports to the HRC for review on the level of their compliance with the treaty. However, some state parties shy away from submitting such reports. To compel the submission, the HRC introduced a procedure where it reviews a state's level of compliance in the absence of such report. It equally invites NHRIs and NGOs to submit reports on the level of compliance of states with their obligations under the treaty. Nigeria failed to submit its report for 18 years despite repeated reminders from the HRC. This article examined the effect of the reporting procedure of the HRC in the absence of a state's report and whether it has any impact on the compliance level of state obligations to the ICCPR. Nigeria was chosen for the study, as it has serially refused to comply with the HRC's request to submit its report but was 'forced' to participate in the review process by the HRC despite not presenting a report to the Committee. The study analysed relevant literature and the jurisprudence of the HRC to assess the effectiveness of the state reporting system as it relates to Nigeria. There is need for the NHRC and NGOs to exert pressure on the authorities to submit an objective report periodically to the HRC. It also recommends that the work of the HRC be disseminated within the territory of Nigeria so that

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the public will likewise participate in monitoring the fulfilment of Nigeria's obligations to the treaty.

KEYWORDS: *ICCPR, Human Rights Committee, National Human Rights Commission, Non-Governmental Organisations.*

Introduction

The United Nations (UN), was established in 1945, with one of its main objectives as the promotion and protection of human rights among member states.[738] The Universal Declaration of Human Rights (UDHR), was the first human rights instrument to be proclaimed by the UN, providing a catalogue of human rights agreed by all states after the horror of massive violations of human rights that occurred during the Second World War.[739] In 1966, two human rights treaties were adopted by the UN. They were: The International Covenant on Civil and Political Rights (ICCPR);[740] and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[741] These two Covenants, unlike the UDHR, are legally binding treaties for the states that are

[738] Article 1(3) of the Charter of the United Nations and Statute of the International Court of Justice, adopted in San Francisco on the 6th June1945, after the conclusion of the United Nations Conference on International Organisations and came into force on the 24 October 1945.
[739] General Assembly Resolution 217 A, in Paris on 10 December 1948.
[740] General Assembly Resolution 2200A (XXI).
[741] Ibid.

parties to them.[742] Of interest to this paper is the ICCPR which has 173 state parties.[743]

The ICCPR consists of the civil and political rights contained in the UDHR. The treaty safeguards an individual's rights from being infringed by the state party. These rights, which are justiciable, are referred to as "the first generation of rights" in human rights law.[744] Some of these rights include: gender equality;[745] right to life;[746] prohibition from torture;[747] right to liberty;[748] and freedom of opinion and expression[749] among others.

The implementation of the provisions of the ICCPR, consists of a combination of domestic and international laws. At the domestic level, state parties are mandated to ensure that individuals within their territories are given access to remedies where any of the rights contained in the treaty is violated.[750] At the international level, to monitor the implementation of the provisions of the

[742] Muhammad Tawfiq Ladan, *Materials and Cases on Public International Law* (Ahmadu Bello University Press, 2007) 173.
[743] See status of the ICCPR as at 28 March 2022 <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en> accessed 28 March 2022.
[744] B Simmons, 'Civil Rights in International Law: Compliance with Aspects of the "International Bill of Rights"'. Indiana Journal of Global Legal Studies [2009] (16) (2) 440.
[745] ICCPR (n 3) article 3.
[746] Ibid article 6.
[747] Ibid article 7.
[748] Ibid article 9.
[749] Ibid article 19.
[750] Dinah Sheldon, *Regional Protection of Human Rights* (Oxford University Press, 2008) 8.

ICCPR by state parties, the Human Rights Committee (HRC)[751] is established by the treaty. The HRC is mandated to hold three sessions annually,[752] and these sessions are regularly held either in Geneva or New York but can be moved to any other place after consultations with the Secretary-General of the UN.[753]

The HRC is described as the UN's "most important component in its entire human rights framework" due to its active supervision of the implementation of the treaty.[754] This paper will analyse the efficacy of the HRC by examining its impact on the protection of civil and political rights by Nigeria as a State party to the treaty.[755]

Supervisory Functions of the HRC

The HRC has the mandate to ensure state parties' implementation of the provisions of the ICCPR is compatible with its own interpretations.[756] To achieve this objective, it is vested 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.[757] These reports should outline the successes and challenges states

[751] ICCPR (n 3) Article 28 (1).
[752] Rules of Procedure of the HRC rule 2.
[753] Ibid rule 5.
[754] H Tuomisaari, 'Guarding Utopia: Law, Vulnerability and Frustration at the UN Human Rights Committee' *European Association of Social Anthropologists* [2020] (28) (1) 38.
[755] Nigeria became a party to the ICCPR on 29 July 1993 <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx> accessed 23 February 2022.
[756] A Seibert-Fohr, 'Domestic Implementation of the ICCPR Pursuant to its article 2 para.2'. *Max Planck Yearbook of United Nations Law* [2001] (5) 457.
[757] ICCPR (n 3) article 40(1).

encounter in the course of implementing the ICCPR, and their submission is mandatory for every state party to the treaty.[758] While examining a state report, the HRC engages the representatives of the state in "constructive dialogue",[759] recommending steps to the state on how to improve on the implementation of the ICCPR.[760] Secondly, the HRC has jurisdiction to receive inter-state complaints of breaches of the ICCPR.[761] Thirdly, the individual complaints mechanism, where persons can submit "communications" (complaints) to the HRC against a state on any of their rights contained in the ICCPR that have been violated by any state party to OP1.[762] Finally, the HRC issues general comments, which are commentaries on the scope of rights contained in the ICCPR.[763] The focus of this paper is the mandatory periodic review of state parties' reports, as it relates to Nigeria.

State Reporting System

It is an obligation for each state to submit an initial report to the HRC for review one year after becoming a party to the ICCPR, and subsequently at the request of the Committee.[764] The HRC, as a matter of practice, asks for the submission of periodic reports

[758] Ibid article 40(2).
[759]Civil and Political Rights: The Human Rights Committee <www.ohchr.org/Documents/Publications/FactSheet15rev.1enpdf> accessed 19 October, 2021.
[760] N Ntlama, 'Monitoring the Implementation of Socio-Economic Rights in South Africa: Some Lessons from the International Community'. *Law, Democracy and* Development [2004] (8) 209.
[761] ICCPR (n 3) article 41.
[762] Adopted by the UN General Assembly Resolution 2200A (XXI) on 16 December, 1966, entered in to force on the 23rd March, 1976, article 1.
[763] ICCPR (n 3) article 40 (4).
[764] Ibid article 40 (1).

five years after consideration of the preceding report.[765] However, to simplify and make the reporting procedure more focused, the Committee has introduced an optional reporting procedure, in which the HRC prepares 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, and it is then referred to as the "List of Issues prior to Reporting" (LOIPR). The response by the state party to the LOIPR that is sent to the HRC will satisfy the requirement of a state report under article 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.[766]

The reporting procedure was criticised for its lack of an independent mechanism that will verify the reports submitted by the state parties, as some of them are self-serving and contain unsubstantiated facts. The reports totally exclude challenges of implementing the provisions of the treaty.[767] To remedy this deficiency, the HRC incorporated two emphasisings into the procedure. These are: The National Human Rights Institutions (NHRIs) and Non-Governmental Organisations (NGOs).

[765] T Buergenthal, 'The UN Human Rights Committee' Max Planck Yearbook of United Nations Law [2001] (5) 348.
[766] Focused Reports Based on Replies to Lists of Issues Prior to Reporting (LOIPR): Implementation of the New Optional Reporting Procedure (LOIPR Procedure): UN DOC CCPR/C/2009/I, Adopted by the HRC at its Ninety-Ninth Session held at Geneva 12-30 July 2010, para I.
[767] Dominic Mcgoldrick, The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights (Oxford University Press 1994) 79.

National Human Rights Institutions

These institutions are expected to participate in the reporting procedure, if they comply with the Paris Principles[768] which confer a broad mandate on NHRIs for the promotion and protection of human rights.[769] They also serve as a bridge between states and the UN by promoting the ratification and implementation of human rights treaties,[770] and make contributions in the reporting obligations of states before any UN organ or committee.[771] NHRIs that comply fully with the provisions of the Paris Principles are granted "A" accreditation status, and must operate independently of government interference with their activities.[772] Nigeria's NHRI, the National Human Rights Commission (NHRC)[773] is accredited with "A" status.[774]

The HRC recognises the importance of partnering with accredited NHRIs in the promotion and implementation of the provisions of the ICCPR at the domestic level,[775] as it is a bridge between the

[768] Principles relating to the Status of National Institutions (Paris Principles)', adopted by General Assembly Resolution 48/134 of 20 December 1993.
[769] Ibid principle 1.
[770] Ibid principle 3c.
[771] Ibid principle 3d.
[772] Global Alliance of National Human Rights Institutions: Accreditation < https://ganhri.org/accreditation/> accessed 26 November 2020.
[773] Established by the National Human Rights Commission (Establishment) Act 1995.
[774] GANHRI: As of 28 December 2021 GANHRI is Composed of 128 Members: 86 with "Ä" Status Accredited NHRIs and 32 "B" Status Accredited NHRIs and 10 with "C" Status (no accreditation) < https://ganhri.org/wp-content/uploads/2022/02/StatusAccreditationChartNHRIs_28.12.21.pdf > accessed 26 March 2022.
[775] Paper on the Relationship of the Human Rights Committee with the National Human Rights Institutions, adopted by the Committee at its 106th Session (15 October-November 2012) UN DOC NO: CCPR/C/106/3 para 1.

international and domestic human rights systems.[776] Consequently, it encourages accredited NHRIs to participate at all stages of the review of state parties reports, particularly the submission of alternative reports to that of the state parties on level of implementation of the provisions of the treaty. In addition, it provides follow-up reports on the level of compliance and issues the concluding observations to individual state parties after the review.[777]

During the sessions of the HRC, when it officially conducts its activities, it welcomes oral presentations from NHRIs on the status of the implementation of the ICCPR within the jurisdiction of the state.[778] Recently, officials of NHRIs held closed door meetings with members of the HRC prior to the review of individual state parties to furnish the committee with additional information on the level of compliance with the provisions of the treaty.[779] NHRIs continue to inspire confidence in their abilities to compile information on human rights violations by state parties and make it accessible to both national and international communities. This serves as a deterrent to state parties from infringing on the rights of individuals within their territories.[780]

[776] Ibid para 2.
[777] Ibid para 3.
[778] Ibid para 6.
[779] Report of the Human Rights Committee 2014, UN DOC NO: A/69/40 (VOL.1) paras 57-58.
[780] M R Welch, 'National Human Rights Institutions: Domestic Implementation of International Human Rights Law'. *Journal of Human Rights* [2017] (16) (1) 97.

Non-Governmental Organisations

As pointed out earlier, one of the major weaknesses of the reporting procedure is said to be the lack of an independent fact finding machinery that can check the veracity of state parties' reports.[781] The increasing involvement of NGOs in the monitoring of states' compliance and enforcement of human rights,[782] made the HRC to encourage these organisations to increasingly rely on the information supplied by NGOs during their closed door meetings with them, prior to the review of state parties' reports.[783]

NGOs have been making such enormous contributions to the activities of the HRC that in acknowledgement of that, the HRC refers to them as "the HRC's eyes and ears…in general (they have) been doing an excellent job",[784] and states have gradually come to accept the practice of incorporating the NGO's input into the reporting procedure of the HRC[785] against the state party concerned. NGOs are essential for the work of the HRC, as they operate within the jurisdictions of state parties, and also generate funds for their operations independent of the states, consequently,

[781] K Y Tyagi,'Cooperation between the Human Rights Committee and Non-Governmental Organisations: Permissibility and Propositions'. *Texas International Law Journal* [1983] (18) 286.
[782] Ntlama (n 27)212.
[783] I Lintel and C Ryngaert, 'Interface between Non-Governmental Organisations and the Human Rights Committee '..*International Community Law Review*[2013] (15) 365.
[784] Ibid 366.
[785] I Boerefijn, 'Towards a Strong System of Supervision: The Human Rights Committee's Role in Reforming the Reporting Procedure under Article 40 of the Convention on Civil and Political Rights'. *Human Rights Quarterly* [1995] (17) (4) 785.

it will be difficult to influence the organisations to submit reports that are not objective to the HRC.[786]

The Inputs of NGOs in the review process are essential, as they have also been submitting shadow reports to the HRC on the level of implementation of the provisions of the ICCPR by state parties before the review takes place. The organisations also, provide briefings to the members of the HRC on the eve of the review of a state party's report on the level of compliance with its obligations. After the review of the reports, NGOs are further mandated to monitor the implementation of the concluding observations issued to respective states and submit a follow-up report on the level of implementation to the HRC.[787] The mandatory review of state parties' reports is referred to as the HRC's 'pulse'.[788]

Forcing Nigeria's Hand: HRC's Adoption of LOIs in the Absence of Nigeria's State Report

The major hindrance to the reporting procedure of the HRC is the failure of state parties to submit their state reports – timeously or not at all – as required by the treaty.[789] As pointed out earlier, Nigeria is a state party to the ICCPR,[790] and in 1996, submitted its initial periodic report,[791] which contains information that

[786] G Rubagotti, 'Non-governmental organisations and the reporting obligation under the ICCPR'. *Non-State Actors and International Law* [2005] (5) 74.
[787] The Relationship of the Human Rights Committee with Non-Governmental Organisations 4 June 2012 UN DOC NO: CCPR/C/104/3 Para 3.
[788] Tuomisaari (n 17) 40-41.
[789] Report of the Human Rights Committee, 2019 UN DOC NO: A/74/40 para 60.
[790] Nigeria became a party to the ICCPR (n 22).
[791] Initial Report of State Parties' due in 1996: Nigeria. 02/26/1996 (state party report) UN DOC NO: CCPR/C/92/Add.1.

projects the then Military Junta in power as fulfilling all obligations to the treaty, especially in issues that had to do with right to liberty. [792] However, the report pointed out that freedom of opinion and expression,[793] were only restricted in the "overall interest of justice".[794] In the course of the review of the initial report, the HRC observed that the Nigerian report was "too general" and its contents look "meaningless as there is need for clarifications.[795] The Commission aldo raised concerns on the Nigerian Constitution not being supreme and the Military Junta having unchecked executive and legislative powers.[796] The delegation avoided responding to most of the queries raised by the HRC, but informed it of the establishment of a Paris Principles compliant NHRC.[797] The point raised by Mcgoldrick that the inability to have an independent mechanism to verify state reports within their territories is a setback to HRC's reporting procedure,[798] appears to hold water.

After the conclusion of the review of Nigeria's initial report, the State party was scheduled to submit its second periodic report on the 28 October 1999. It however failed to submit the report for more than 18 years despite repeated reminders.[799] Consequently, the HRC, adopted LOIs in the absence of Nigeria's report and slated the review of its level of implementation of the provisions

[792] Ibid paras 61-68.
[793] Ibid paras 145-154.
[794] Ibid para 153.
[795] Summary of Record of the 1494th Meeting at the Fifty-Sixth Session on Monday 1 April 1996 UN DOC NO: CCPR/C/SR.1494 para 16.
[796] Ibid para 24.
[797] Summary of Record of the 1495th Meeting at the Fifty-Sixth Session on Monday 1 April 1996 UN DOC NO: CCPR/C/SR.1495 4.
[798] Mcgoldrick (n 30) 79.
[799] Report of the Human Rights Committee 2018 UN DOC NO: A/73/40 16.

of the ICCPR, with or without the participation of the State party, analysing materials available to it.[800] This procedure has forced state parties to appear before the HRC. For instance, South Africa submitted its initial state report to the HRC for review on 26 November 2014, after it was informed by the Committee that its level of compliance with the ICCPR would be reviewed despite its failure to submit a report for 14 years.[801] Before the adoption of the LOIs, the HRC requested for alternative reports for possible inclusion in the LOIs, and some were submitted to it detailing Nigeria's implementation with some provisions of the ICCPR respectively.

Inputs of NGOs to the Reporting Procedure of the HRC

During Nigeria's initial review by the HRC, there was an allegation that some members of an NGO (civil liberties organisation) were intercepted by the operatives of the State Security Service on their way to witness the review of Nigeria's initial report, and had their passports confiscated.[802] The Chairperson of the HRC wrote a letter to the State party requesting an investigation into the alleged act.[803] The State party claimed not to have completed the investigation up to the time of the initial review of its report, resulting in the HRC criticising the conduct of the Nigerian Government as it viewed its failure to

[800] Rules of Procedure (n 15) rules 66-67.
[801] Report of the Human Rights Committee 2015 UN DOC NO: A/70/40 para 74.
[802] Concluding Observations of the Human Rights Committee on Nigeria's Initial Report 24, July 1996 UN Doc No.: CCPR/C/79/Add.65 para. 24
[803] Ibid

conduct a timely investigation on the matter as unwillingness to provide remedies to the members of the NGO.[804]

However, in the build up to the review of Nigeria's second periodic report, there were no such restrictions and NGOs submitted shadow reports on the level of implementation of some provisions of the ICCPR by Nigeria. For instance, it was observed that the NHRC lacks adequate funds to carry out its functions adequately, hence there is need to encourage the State party to increase its funding.[805] A coalition of NGOs led by Access to Good Health Initiative, also submitted a report to the Committee advocating for the legalisation of homosexuality, and calling on Nigeria to repeal all laws that criminalise same-sex.[806] The Coalition further implored HRC to persuade Nigeria to decriminalise abortion, as the restriction result in illegal and unsafe abortions that violate articles 2,3,6,7, 17 and 26 of the ICCPR.[807]

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[804] Ibid,.

[805] Amnesty International Submission to the United Nations Human Rights Committee on Nigeria, Holding at the 126th Session, 1-26 July 2019 6 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fNGA%2f35128&Lang=en> accessed 21 November 2020.

[806] Ibid 7; Human Rights for Lesbians, Gays, Bisexual and Transgender (LGBT) Persons and Sexual Rights in Nigeria: Report Presented to the UN Human Rights Committee 126th Session, July 1-26 of 2019 < https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fNGA%2f35448&Lang=en> accessed 17 August 2022.

[807] Ipas: Supplementary Information for List of Issues for Nigeria, Scheduled for Adoption by the Human Rights Committee during Its 123rd Session, July 2018 1 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fICO%2fNGA%2f30996&Lang=en> accessed 1 December 2020.

The attention of the HRC was equally drawn to the invocation of criminal defamation to detain journalists and bloggers for criticising government. This led to the advocacy for its abolition[808] and that of the death penalty.[809]

The Coalition also canvassed for the protection of women with disabilities,[810] while the massive violations of human rights in the *Boko Haram* conflict was a point of concern. On the former, the Coalition requested that HRC inquire on the steps taken by the State party to address it.[811] Issue of breach of minorities' right to freedom of religion was also raised. The body pointed out that the breach of religious freedom infringes on the rights to peaceful assembly and expression of these religious minorities[812] and

[808] Amnesty International (n 68) 12.
[809] Ibid 15.
[810] NGOs Submission to the Human Rights Committee for its Development of Nigeria's List of Issues in the Absence of a State Report (30 April 2018) 13. <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fICO%2fNGA%2f31012&Lang=en> accessed 2 December 2020.
[811] International Alliance for Peace and Development: Briefing on Nigeria for the Human Rights Committee List of Issues in the Absence of the Second Periodic Report, 126th Session (1-26 July 2019) 6 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGO%2fNGA%2f34783&Lang=en> accessed 29 November 2020.
[812] Islamic Human Rights Commission on the Implementation of the International Covenant on Civil and Political Rights by Nigeria (Non-Reporting State) 126th Session (1 July to 26 July 2019) 11 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fNGA%2f34885&Lang=en> accessed 19 November 2020.

requested that HRC inquire from the State party on measures it had taken to improve the enjoyment of the right.[813]

It further urged the HRC to persuade Nigeria to impose the death penalty for the "most serious" of crimes only as provided under article 6 of the ICCPR, and provide information on when it will ratify OP2 that seek to abolish the death penalty altogether.[814] It also recommended to the HRC to prevail on Nigeria to prohibit all forms of corporal punishment for children in.[815] The incompatibility of laws that allow communication surveillance without providing adequate protection to the right to privacy was highlighted. As a result, the HRC was called upon to prevail upon Nigeria to amend the Cyber Crimes Act and incorporate more human rights safeguards into it.[816] These were most of the issues

[813] Human Rights Situation in the Federal Republic of Nigeria: Submission to the 126th Human Rights Committee by Christian Solidarity Worldwide (June 2019) 6 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fNGA%2f35125&Lang=en> accessed 15 October 2020.

[814] Advocates for Human Rights & The World Coalition Against the Death Penalty: Shadow report on Nigeria's Compliance with the ICCPR Suggested List of Issues Relating to the Death Penalty Submitted to the Task Force for the Adoption of List of Issues on 30 April 2018 para 24 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fICO%2fNGA%2f31008&Lang=en> accessed 1 December 2020.

[815] Global Initiative to End All Corporal Punishment of Children: Briefing on Nigeria for Human Rights Committee Country Report Task Force, 123rd Session (July 2018) 4 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fICO%2fNGA%2f31005&Lang=en> accessed 29 November 2020.

[816] Paradigm Initiative: Submission in Advance of the Review of Nigeria, Human Rights Committee 126th Session, 1-26 July 2019 2 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fNGA%2f35127&Lang=en> accessed 19 November 2020.

raised by the NGOs in their contributions prior to the review of Nigeria's report. However, it is observed that most of the contributions were made by mostly international human rights NGOs; and that local human rights NGOs did not submit reports to the HRC, which would have given it more perspectives on the level of protection of civil and political rights within the territory of the state.

NHRC: Closing the International Gap

As mentioned earlier, the NHRC was established in 1995,[817] with a mandate to promote and protect human rights contained in the Nigerian Constitution and other human rights treaties including the African Charter on Human and Peoples' Rights and the Universal Declaration of Human Rights, among others.[818] The ICCPR was not expressly mentioned in the Act. The NHRC had some restrictions that made it not to be independent. For instance, the Executive Secretary was appointed by the President on the recommendation of the Attorney General of the Federation.[819] Also, the Attorney General had powers to give directives to the Governing Council of the Commission in the exercise of its duties.[820] It is pointed out that the NHRC was established by one of the most reprehensive Military regimes in the history of Nigeria to "hoodwink" the international community into

[817] National Human Rights Commission Act (1995) Now CAP N46 Laws of the Federation of Nigeria 2004.
[818] Ibid section 5 (a).
[819] Ibid section 7 ((2).
[820] Ibid section 17.

believing it was working towards the improvement of human rights within its territory.[821]

When democratic rule was restored, the NHRC Act was amended,[822] and its mandate was strengthened by incorporating more treaties which it can promote and protect, one of which was the ICCPR.[823] The appointment of the Executive Secretary is to be made by the President, subject to confirmation by the Senate,[824] the Governing Council of the Commission was also freed from the shackles of the Attorney General, and it was instead mandated to submit to the President and the National Assembly an Annual Report of its activities in the preceding year.[825]

Another novel function of the NHRC introduced in the amendment Act is the power to award compensation for human rights violations which is enforced by the Federal or State High Courts as the case may be.[826] In 2014, the Commission awarded generous compensation to families of some individuals who were found and killed by security operatives in an uncompleted building in Abuja. Many others sustained injuries in the operation.[827] The security operatives alleged that the victims were members of *Boko Haram.* Those that did not lose their lives

[821] C O Okafor and C S Agbakwa, 'On Legalism, Popular Agency and "Voices of Suffering": The Nigerian National Human Rights Commission in Context'. *Human Rights Quarterly* [2002] (24) (3) 666.
[822] National Human Rights Commission (Amendment) Act 2010.
[823] Ibid section 5a.
[824] Ibid section 7 (1) c.
[825] Ibid section 17.
[826] Ibid section 22.
[827] Editorial, 'Apo Killings: NHRC has Done Well'*Blueprint* (21 April 2014) < https://www.blueprint.ng/apo-killings-nhrc-has-done-well/> accesed 10 August 2022.

denied the allegation, and insisted that they were squatters in the uncompleted building.[828] An attempt to quash the award by security agencies was refused by a Federal High Court.[829] The Nigerian Government finally complied with the order of the NHRC in 2018, and it paid the compensation to the beneficiaries in full as directed by the Commission.[830] This has given the work of the NHRC a big boost by making the general public develop more confidence in its ability to protect the human rights of the citizenry.

The NHRC did not submit a report to the HRC in the build-up to the review of Nigeria's second periodic report, hence the HRC did not have the benefit of the Commission's insight in terms of the level of its independence in accordance with the Paris Principles, and the level of compliance of Nigeria with the provisions of the ICCPR.

Adoption of LOIs in the Absence of Nigeria's Second Periodic Report

The failure of Nigeria to submit its periodic report to the HRC forced the Committee to adopt LOIs in relation to the implementation of the state's obligations to the treaty.[831] It sought

[828] A Balal and R Mutum and M A Krishi, 'Nigeria: Human Rights Commission to Investigate Apo 7 Abuja Killings' NewsRescue.com (23September 2013) < https://allafrica.com/stories/201309231622.html > accessed 25 December 2015.
[829] Tobi Soniyi,'Nigeria: Court Okays NHRC's Decision in Apo Killings' *AllAfrica.com* (29 November2015) <http://allafrica.com/stories/201511302219.html> accessed 25 November 2016.
[830] Alex Enumah, 'FG Pays N135m Compensation to Victims of Apo 8 Killings by the DSS' *Thisday* (26 April 2018) < https://www.thisdaylive.com/index.php/2018/04/26/fg-pays-n135m-compensation-to-victims-of-apo-8-killings-by-dss/> accessed 15 August 2022,
[831] List of Issues in the Absence of the Second Periodic Report of Nigeria (28 November 2018) UN DOC NO: CCPR/C/NGA/Q/2.

information on various aspects of Nigeria's level of implementation of the provisions of the ICCPR. For instance, the applicability of the provisions of the ICCPR before the Courts of Nigeria despite not being domesticated by the National Assembly in conformity with Section 12 of the Nigerian Constitution, [832] and the level of compliance of the NHRC with the Paris Principles.[833] The HRC also requested for information on the excessive use of force by security agents, which leads to extra judicial killings in some instances as well as the specific steps taken to reform the Special Anti-Robbery Squad (SARS).[834] Of concern to the Committee was condition of Nigeria's detention centres,[835] safeguards against arbitrary detention and fair trial rights in Nigeria.[836] Of equal interest were the level of protection of religious minorities,[837] and the status of criminal defamation as it relates to the prosecution of journalists, bloggers, human rights defenders that criticise the government[838] and the abolition of polygamy.[839] The HRC also requested for information on some controversial issues, which include the legalisation of LGBT rights in Nigeria.[840] The failure of Nigeria to submit a report to the HRC to study before it adopted the LOIs, has prevented it from formulating issues based on the submission of the state. This is a major drawback to the reporting procedure as its main objective is for the Committee to engage states on the level of

[832] Ibid para 1.
[833] Ibid para 2.
[834] Ibid para 10.
[835] Ibid para 16.
[836] Ibid para 17.
[837] Ibid para 21.
[838] Ibid para 22.
[839] Ibid para 6.
[840] Ibid para 5.

implementation of the provisions of the treaty and how it can be improved upon. Nigeria, in response to the LOIs issued by the HRC, submitted a nine page reply to the issues raised by the Committee,[841] it acknowledges that the ICCPR has not been domesticated in accordance with the procedure provided under Section 12 of the Nigerian Constitution. It however, argued that the provisions of the treaty have been largely incorporated in the State party's laws, and an instance was given of Chapter IV of the Constitution, which protects the Fundamental Rights of all individuals.[842] However, there are some provisions of the ICCPR that are not captured in the Constitution. For instance the ICCPR prohibits imprisoning persons because of their inability to fulfil contractual obligations,[843] but state parties have enacted laws that not only infringe on this right but criminalises it.[844] Hence, its domestication will enable individuals enjoy the rights fully as provided by the treaty.

On the effectiveness of the NHRC, the HRC was assured that it has presence in 36 states of the Federation and the Federal Capital Territory, Abuja. The Commission has also complied with the Paris Principles and enjoys 'A' status ranking by GANHRI.[845] In the case of the battle against the *Boko Haram* insurgency, the state party informed the HRC that its troops use

[841] List of Issues in the Absence of the Second Periodic Report of Nigeria: Replies to the List of Issues (12 April 2019) UN DOC NO: CCPR/C/NGA/Q/2/Add.1.
[842] Ibid para 1.
[843] ICCPR (n 3) article 11.
[844] S 381 Penal Code Law of Northern Nigeria (CAP 89 Laws of Northern Nigeria, 1963) prescribes one month imprisonment or fine or both for a person that breaches the terms of contract of service, this provision is *impari materia* with all the penal codes in the various states of Northern Nigeria.
[845] Replies to the List of Issues (n 104) para 6.

minimal force in its operations and all reported misconduct are investigated and those found culpable are sanctioned.[846]

In reply to the issue of the legalisation of gay rights, it was pointed out to the HRC that majority of Nigerians strongly resist homosexuality, as it goes against national values, hence it cannot be legalised.[847] However, the state party did not respond to the issues related to freedom of expression and pre-trial detention in its replies to the HRC, which failed to give the Committee an idea on the level of compliance with the provisions of the treaty by the state relating to these issues.

HRC's Review of Nigeria's Implementation of the ICCPR in the Absence of its State Report

As noted earlier, Nigeria failed to send a State report to the HRC, but sent a delegation to participate in the review of the implementation of its obligations to the ICCPR.[848] It is observed that one of the main drawbacks of the reporting procedure of the HRC is the lack of awareness within the territories of state parties. In many instances, it is the Foreign Affairs Ministry that is saddled with the responsibilities of preparing the state report and engaging the Committee. All other Ministries like that of Justice take a back seat and are only consulted. The general public is hardly informed, with the result that there is a high level of lack of awareness of the process within the domestic

[846] Ibid paras 14-15.
[847] Ibid para 24.
[848] List of Delegation/Participants 7 June 2019 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fLOP%2fNGA%2f35223&Lang=en> accessed 23 November 2020.

jurisdictions of states.[849] The Nigerian delegation, with the Permanent Secretary of the Federal Ministry of Justice as a member, was also led by the Permanent Secretary of the Federal Ministry of Foreign Affairs.[850] However, publicity was not given to the impending review in the Nigerian press or by the Government. For that reason, there were no visible debates in the public sphere on the performance of the state regarding the protection of civil and political rights within Nigeria. In fact, the review was reported by a few foreign media outlets.[851]

Nigeria's failure to submit a report to the HRC was pointed out to the delegation as another setback to the process, as it robbed the State of the opportunity to present the successes and challenges it encounters in the implementation of its obligations, which would have put the Committee in a better position to recommend ways of addressing the challenges.[852] This has made the review less effective as it was the HRC that took the initiative and not the State, which if it had, would have made the reporting process more effective.

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[849] J Sarkin,,'The 2020 United Nations Human Rights Treaty Body Review Process: Prioritising Resources, Independence and Domestic State Reporting Process Over Rationalising and Streamlining Treaty Bodies'. *The International Journal of Human Rights* [2020] 12.

[850] List of Delegations/Participants (n111).

[851] Human Rights Committee Reviews the Situation of Civil and political Rights in Nigeria *African News* (9 December 2019) <https://www.africanews.com/2019/07/05/human-rights-committee-reviews-the-situation-of-civil-and-political-rights-in-nigeria//> accessed 12 November 2020.

[852] Human Rights Committee Reviews Situation of Civil and Political Rights in Nigeria (4 July 2019) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24792&LangID=E> accessed 11 October 2020.

During the review, the HRC raised some issues of concern regarding Nigeria's implementation of the ICCPR, the use of torture by the infamous Special Anti-Robbery Squad (SARS) to extract confessional statements from suspects in violation of the Anti-torture Act of 2017.[853] The delegation did not respond to the issue of SARS, it rather informed the HRC that detainees had a right to challenge the reasons for their detention.[854] When the delegation was requested to provide information why Nigerian prisons were overcrowded, it informed the Committee that new prisons were being constructed to accommodate inmates, especially in urban areas.[855]

On criminal defamation, the HRC declared that it was hampering freedom of expression, and therefore should be repealed from the penal laws of state parties.[856] When the Commission inquired what steps Nigeria was taking to comply with its general comment, especially as it relates to journalists, the delegation merely responded that Nigeria has a free press, and avoided addressing the issue of decriminalisation of defamation.[857] The delegation refused to respond to some questions from the HRC. For instance, it failed to give information on the effectiveness of safeguards against arbitrary arrest and detention available to individuals within its territory.[858]

[853] Human Rights Committee 126th Session: Consideration of Country Situations in the Absence of Reports, Pursuant to Rule 70 of the Committee's Rule of Procedures (Continued) 4 July 2019 UN DOC NO: CCPR/C/SR.3614 para 3.
[854] Ibid para 25.
[855] Human Rights Committee (n 115).
[856] General Comment No. 34, Adopted by the HRC at its 102nd Session 12 September 2011 UN DOC NO: CCPR/C/GC/34 para 48.
[857] Human Rights Committee (n 115).
[858] Human Rights Committee 126th Session (n 116) para 7.

In its concluding observations to the second periodic review of Nigeria,[859] HRC observed that these its Concluding observations are "the mainstay of treaty body's work" as they are the assessment of the HRC tailored to country specific reports which had been reviewed by it. HRC further expressed its reservations on the level of state compliance with its obligations to the treaty.[860] The International Court of Justice (ICJ) for instance, had cited with approval the concluding observations of the HRC issued to Israel, 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.[861]

It issued many recommendations to Nigeria on how to improve human rights within its territory. For instance, it suggested that the excessive use of force by security agents should always be investigated and those involved prosecuted.[862] It also recommended that acts of torture should be curtailed,[863] while alleged human rights violations in the *Boko Haram* Conflict should be investigated and those found culpable sanctioned.[864] On Freedom of Religion, the Commission recommended that it should be guaranteed to all without distinction.[865]

[859] Human Rights Committee: Concluding Observations on Nigeria in the Absence of its Second Periodic Report 19 July 2019, UN DOC NO: CCPR/C/NGA/CO/2.
[860] K Mechlem,'Treaty Bodies and the Interpretation of Human Rights'. *Vanderbilt Journal of Transnational Law* [2009] (42) 923.
[861] International Court of Justice 'Western Sahara: Advisory Opinion of 16 October 1975' (1975) *ICJ Reports*; 179-180 <http://www.icj-cij.org/files/case-related/61/061-19751016-ADV-01-00-EN.pdf> accessed 15 October 2020.
[862] Concluding Observations on Nigeria (n 122) para 27.
[863] Ibid para 33.
[864] Ibid para 31.
[865] Ibid para 45.

Regarding Freedom of Expression, HRC identified criminal defamation as a hindrance to its exercise in Nigeria, and urged the state party to repeal it from its legislation.[866] Nigeria is mandated by the HRC to disseminate information on the activities of the Committee, including the concluding observations and provisions of the treaty to the general public within its territory.[867] For a state that refuses to submit its periodic report for review, only time will tell if it will comply with the request of the HRC to promote the protection of the provisions of the ICCPR within its territory. Nigeria is expected to submit its third periodic report to the HRC by 26 July 2025.[868] The review of the state's civil and political rights without its input, will perhaps, prompt it to submit the report in accordance with the request of the HRC.

Conclusion

Nigeria as a State party to the ICCPR, defaulted in submitting its second periodic report for more than 18 years. That compelled HRC to schedule the review of Nigeria's level of compliance with the treaty despite its refusal to submit a report and this forced the State party to send a delegation to participate in the process. It appears that in the case of Nigeria there was no publicity of the impending and outcome of its second periodic review. Majority of Nigerian citizens have no idea of the existence of the HRC and what it does, if they did. Otherwise, it would have provoked debates in the public space and encouraged stakeholders in human rights protection to monitor government implementation of its obligations to the ICCPR. The locally

[866] Ibid para 47.
[867] Ibid para 52.
[868] Ibid para 54.

domiciled NGOs appear not to have known that Nigeria's report was up for review, as it is mostly NGOs that are domiciled in the west that submitted alternative reports to the HRC regarding Nigeria. Futhermore, the NHRC despite having an "A" status failed to submit a shadow report to the HRC, which would have provided more insight into Nigeria's human rights record. The failure of Nigeria to submit a report also affected the dialogue between its delegation and the HRC.

Nigeria as a party to the ICCPR should be submitting its reports timely, as it is a mandatory for member states to so do. Equally, there is virtually no awareness of the work of the HRC in Nigeria, hence the Government fails to fulfil its obligation of submitting a report when due, as it is not pressured by the public. The HRC needs to be more visible and should hold its review process in the African continent. Conducting the reviews in New York and Geneva will continue to make it invisible to those in Nigeria and other African states but holding some of its reviews within the African continent will pressurise states to ensure they submit their reports timeously. Local human rights NGOs should participate also by sending alternative reports to the HRC, this will also add pressure on the state parties to prepare an objective report. The NHRC should be encouraged to also prepare and submit shadow report on Nigeria's implementation of its obligations to the ICCPR and also partner with NGOs to pressurise the state authorities to submit an objective report to the HRC and monitor the implementation of the concluding observations by the state party for a more human rights compliant Nigeria.