



**Network of African National Human Rights Institutions  
(NANHRI)**

# DOCUMENTATION REPORT



***Developing and Strengthening African  
NHRIs' Existing Protection Mechanisms for  
Human Rights Defenders***

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**November 2021**



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## **DOCUMENTATION REPORT**

*Developing and Strengthening African  
NHRIs' Existing Protection Mechanisms  
for Human Rights Defenders*

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(NANHRI)

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## Acknowledgment

Over the last few decades, the human rights situation globally has been a growing concern. In response, human rights defenders (HRDs), including National Human Rights Institutions, have dedicated their work in addressing the human rights situation in line with their mandate. For a better approach to expanding the shrinking civic space, the Global Alliance of National Human Rights Institutions (GANHRI) organised the 13th Triennial Conference under the theme: *'Expanding the civic space and promoting and protecting human rights defenders, with a specific focus on women: The role of National Human Rights Institutions'*. The meeting, which was held on 10-12 October, 2018 in Marrakech, Morocco, culminated in the adoption of the Marrakech Declaration.

On this basis, the Network of African National Human Rights Institutions (NANHRI) embarked on establishing and strengthening structures of preserving the rights of HRDs in Africa. To effectively deliver on this assignment, NANHRI sought to understand the status and gaps in the existing structures by commissioning this study.

Development of this report has been made possible through the participation of a host of actors. We thank the NHRIs of Côte d'Ivoire, Kenya, Madagascar, Morocco, Tanzania and Zimbabwe for offering to be case studies. We also thank the Consultants – Dr. Tarisai Mutangi, Dr. Japheth Biegon and Dr. Ashwanee Budoo- for making time for the development of this report and subsequent tools. Special thanks go to the NANHRI Secretariat team for its dedication and infatigable support to the entire project.

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**OH**  
HUMAN RIGHTS

An artist performs during a human rights event. Photo: Defenders Coalition Kenya

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# ABBREVIATIONS

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACRWC	African Charter on the Rights and Welfare of the Child
AIPPA	Access to Information and Protection of Privacy Act (Zimbabwe)
AU	African Union
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on Elimination of all Forms of Discrimination against Women
CHRAGG	Commission for Human Rights and Good Governance (Tanzania)
CMS	Complaints Management System
CI-DDH	Ivorian Coalition of Human Rights Defenders
CNDH-CI	National Council for Human Rights (Côte d'Ivoire)
CNDH-Ma	National Council for Human Rights (Morocco)
CNIDH-Ma	Independent National Commission on Human Rights (Madagascar)
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organization
EACJ	East African Court of Justice

## ABBREVIATIONS

EU	European Union
FDI	Foreign Direct Investment
FGM	Female Genital Mutilation
GANHRI	Global Alliance of National Human Rights Institutions
GBV	Gender Based Violence
HRD	Human Rights Defender
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IIAG	Ibrahim Index of African Governance
KNCHR	Kenya National Commission on Human Rights
LGBTI	Lesbians, Gays, Bisexual, Transgender and Intersex
LHRC	Legal and Human Rights Centre (Tanzania)
MDC	Movement for Democratic Change (Zimbabwe)
MoU	Memorandum of Understanding
NANHRI	Network of African National Human Rights Institutions
NGEC	National Gender and Equality Commission (Kenya)
NGO	Non-Governmental Organization
NHRI	National Human Rights Institution
OHCHR	Office of the United Nations High Commissioner for Human Rights

PBO	Public Benefits Organization
PVO	Private Voluntary Organization
SAHRDN	Southern Africa Human Rights Defenders Network
THRDC	Tanzania Human Rights Defenders Coalition
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UPR	Universal Periodic Review
WHRD	Women Human Rights Defenders
ZANU-PF	Zimbabwe National Union - Patriotic Front
ZHRC	Zimbabwe Human Rights Commission

# Foreword

*One of Africa's greatest human rights defenders, Tata Nelson Madiba Mandela, has been called a 'prolific letter-writer' during his 27 years in prison (Robben Island), in that it was through his writings, especially his 'special letters', when he was entirely under the control of his tormentors, that he carried out the noble work of defending human rights.<sup>1</sup>*

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As the leading human rights defender on the continent, it is a great pleasure to present this Foreword to this publication by the most important organization in the defence of human rights in Africa, the Network of African National Human Rights Institutions (NANHRI).

As you may be aware, national human rights institutions (NHRIs) are a crucial pillar of the African regional human rights system. Their critical role is recognized under Article 26 of the African Charter on Human and Peoples' Rights, which requires States Parties to 'allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms

guaranteed by the present Charter'. On the basis of this provision, the African Commission on Human and Peoples' Rights (African Commission) adopted a resolution in 1989 urging States Parties to proactively establish NHRIs. At the time, only a single NHRI existed in Africa. But the landscape today has evolved a lot.

Over the last three decades, NHRIs have rapidly proliferated across the continent. Out of 54 States party to the Charter, 49 NHRIs have been established. The majority of these NHRIs enjoy affiliate status with the African Commission. In November 2020 during the African Commission's 67<sup>th</sup> Ordinary Session, the Cape Verde National Commission for Human Rights and Citizenship

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<sup>1</sup> *The Prison Letters of Nelson Mandela*, Robert Laffont, Pocket, 2018, p.15 and Fourth cover (edited by Sahn Venter).

became the 29<sup>th</sup> African NHRI to be granted affiliate status. The African Commission has established a cordial and vibrant relationship with NHRIs since 2000 when the grant of affiliate status to NHRIs was inaugurated.

As partners of the African Commission, NHRIs are instrumental in popularizing and catalysing the implementation of regional human rights instruments and standards at the domestic level. They constitute the natural prolongation of the African Commission in the promotion and protection of human rights. They act as a bridge between the State, citizens and the African Commission.

In my capacity as the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa, I have had the pleasure and honour of working and interacting with NHRIs, those with and without affiliate status,<sup>2</sup> in protecting and promoting the rights of human rights defenders (HRDs) in Africa.

In this context, I have fond memories

of my participation and contribution to the drafting and adoption of the Marrakech Declaration during the 13<sup>th</sup> International Conference of the Global Alliance of National Human Rights Institutions (GANHRI) held in Marrakech, Morocco, in October 2018 under the theme *'Expanding the civic space and promoting and protecting human rights defenders, with a specific focus on women: The role of national human rights institutions'*.

One of the many ways through which NHRIs are responding to the protection needs of HRDs is collaborating with regional mechanisms and supporting them according to their mandate. It is in this context that this report by NANHRI is seminal. I am deeply encouraged and inspired to foreword this enormous work of documentation of African NHRIs in the area of protecting HRDs.

The reader will note that this report shows that the work of NHRIs in respect to HRDs covers a relatively wide range. This includes public sensitization on the role and rights

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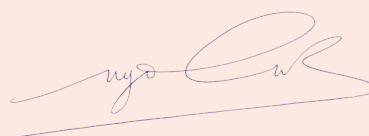
<sup>2</sup> While Morocco has not yet ratified the African Charter on Human and Peoples' Rights, in my capacity as Special rapporteur on human rights defenders, I have, since 2017 organised and taken part in various activities of the National Council for Human Rights (CNDH), which is among the important organizations for the defence of human rights on the continent. In 2021, I did not hesitate to collaborate with the Ethiopian Human Rights Commission on questions related to the protection of human rights in Ethiopia.

of HRDs, investigating threats and attacks against HRDs, training HRDs and other relevant stakeholders, norm elaboration and advocacy, and undertaking dedicated programmatic activities on women HRDs.

Although this report only covers six selected African NHRIs,<sup>3</sup> it is nonetheless relevant to all NHRIs on the continent as it filters out and highlights best practices that can be adapted and contextualized depending on specific country situations.

The report comes at a point in time when the work of HRDs has been gravely affected by the COVID-19 pandemic. In far too many countries, government responses to combat the pandemic have created a hostile environment for HRDs. Indeed, there have been reports of reprisals against HRDs and the use of COVID-19 related restrictions to justify repressive measures against HRDs. In brief, responses to the pandemic have worsened pre-existing dire situations for HRDs.

Yet, as indicated in a press release I issued in May 2020, '*in the context of this COVID-19 global pandemic, the role of human rights defenders has become ever more important to safeguard the fundamental human rights enshrined in the African Charter on Human and Peoples' Rights (African Charter)*'. In the same light, the role and relevance of NHRIs is now more crucial than ever before, especially considering that NHRIs are HRDs themselves. This report contains recommendations on strengthening NHRIs' responses to the plight of HRDs. It undoubtedly reinforces the commitments that NHRIs have already undertaken in the Marrakech Declaration. I look forward to working with African NHRIs and NANHRI in unlocking the full potential of NHRIs so that they can play an even greater role in the protection of HRDs.



**Prof Rémy Ngoy Lumbu**

***Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa and the Chairperson, African Commission on Human and Peoples' Rights***

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<sup>3</sup> These are the NHRIs of the following countries: Kenya, Madagascar, Morocco, Tanzania and Zimbabwe.

# Executive Summary

The convening of the 13<sup>th</sup> International Conference of the Global Alliance of National Human Rights Institutions (GANHRI) on 10-12 October 2018 in Marrakech, Morocco, marked an important milestone in the history and evolution of national human rights institutions (NHRIs). Designed as a forum for promoting the exchange of creative ideas and experiences with and among peer NHRIs, the conference celebrated the 25<sup>th</sup> anniversary of the adoption of the Paris Principles and the establishment of GANHRI. It offered an opportunity to reflect on the journey of building legitimate, credible, and effective NHRIs globally.

Yet, the conference was a celebration of two other auspicious anniversaries: the 70<sup>th</sup> anniversary of the Universal Declaration of Human Rights (UDHR) and the 20<sup>th</sup> anniversary of the adoption of the United Nations (UN) Declaration of Human Rights Defenders. The latter anniversary had a specific meaning and resonance

for NHRIs. They are not only human rights defenders (HRDs), but also uniquely and strategically positioned to respond to the increasing dire situation of HRDs, being as they are independent State institutions with broad mandates to promote and protect human rights. It was thus fitting that the conference focused on the protection of HRDs as its main agenda.

In adopting the Declaration, NHRIs acknowledged the context and reality of the environment in which most HRDs operate. In this regard, the NHRIs expressed deep concern on ‘the increasing number of physical attacks against human rights defenders particularly where this includes sexual violence or killings’ as well as ‘*shrinking civic space and on threats, risks and reprisals faced by human rights defenders*’. The NHRIs also noted in the Marrakech Declaration, ‘women human rights defenders, whilst facing similar risks as other human rights defenders, may



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**13<sup>th</sup> International Conference of the Global Alliance of National Human Rights Institutions (GANHRI) on 10-12 October 2018 in Marrakech, Morocco**

*Under the theme, ‘Expanding the civic space and promoting and protecting human rights defenders, with a specific focus on women: The role of national human rights institutions’, the Conference discussed issues entwined in the protection of HRDs and adopted the Marrakech Declaration.*

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also face additional gender-specific discrimination and violence, not only by State agents but also private actors’.

Against this background, the Marrakech Declaration sets out commitments by NHRIs aimed at ensuring they consistently and robustly respond to the situation of HRDs. These commitments are clustered in three key areas: promotion, protection, and cooperation and partnerships. It thus contains the most elaborate articulation by NHRIs on their role in the protection of HRDs. Since the adoption of the Marrakech Declaration, NHRIs have sought to bolster their efforts and programming relating to HRDs.

Commissioned by the Network of African National Human Rights Institutions (NANHRI), this report examines and documents the extent to which six African NHRIs are implementing the Marrakech Declaration and thus protecting the rights of HRDs. It identifies good practices as well as implementation challenges. The six NHRIs selected for the study were drawn from four geopolitical (and linguistic) regions of the continent (Eastern, West, Southern, and North). In particular, the study focused on the work of NHRIs in the following countries: Côte d’Ivoire, Kenya, Madagascar, Morocco, Tanzania and Zimbabwe.

This report is based on extensive desk research of primary documents, including national laws establishing the selected NHRIs, annual reports,



activity reports, press releases, project documents and other programming outputs and materials. Secondary literature, including academic studies and reports of civil society organizations (CSOs), was also reviewed. The report also draws upon qualitative data obtained through a questionnaire filled by the six NHRIs as well as additional information shared by the NHRIs during the drafting process. The six NHRIs and other partners also reviewed the report for accuracy during a validation meeting convened in January 2021.

A primary finding of the study is that the implementation of the Marrakech Declaration has dovetailed into ongoing general as well as HRD-related work of the selected NHRIs. Although the laws establishing the majority of the NHRIs do not expressly mention the protection of HRDs, the mandates of the NHRIs are broad and flexible enough to include this area. The *Conseil National des Droits de l'Homme Côte d'Ivoire* (CNDH-CI) has a clear mandate in law to serve as the national mechanism

for the protection of HRDs while in Madagascar, the members of the Independent National Council on Human Rights (CNIDH Madagascar) are explicitly recognized in law as HRDs. The rest of the NHRIs do not have a similar anchor in law, but they are nevertheless involved in HRD-related work and are keen to enhance their capacity in this regard. Indeed, HRD-related work of all the six NHRIs predate the adoption of the Marrakech Declaration.

However, the consistency and robustness with which the six NHRIs carry out HRD-related work or more generally engage in the protection of HRDs varies considerably. Several factors account for the differences. These include historical evolution of the NHRIs, the openness or otherwise of the civic space in the respective countries, and the extent to which the establishment, design and operations of the NHRIs conform to the Paris Principles, as well as the availability of human and financial resources.

Specific, sustained and programmatic work has been recorded within

NHRIs that have had a strategic focus and dedicated resources for the protection of HRDs.

For example, the Kenya National Commission on Human Rights (KNCHR) has had a long-running programmatic work on HRDs. It started to strategically focus on HRDs in 2008 when some of its staff members were under threat because of their work in relation to the investigations and reports on the 2007/2008 post-poll violence. In subsequent years, the KNCHR undertook a strand of intensive work on HRDs between September 2014 and September 2016 under a European Union (EU) funded project titled *Safeguarding constitutional gains: Human rights defenders and security in Kwale, Marsabit and Busia*

*counties*. KNCHR's ongoing work is reflected in its 2018-2023 Strategic Plan.

The findings of this study have been categorized into seven broad categories. These are: sensitization and awareness raising; capacity building and training; complaints handling and investigations; norm elaboration and advocacy; interaction with regional and international human rights mechanisms; protection of women HRDs; and collaboration with civil society and other partners.

*Findings*  
— based on **7** —  
*categories*

*sensitization and awareness raising, capacity building and training, complaints handling and investigations, norm elaboration and advocacy, interaction with regional and international human rights mechanisms, protection of women HRDs, collaboration with civil society*

# 1

## Public sensitization and awareness raising:

The six NHRIs operate in countries in which negative attitudes against HRDs are prevalent amongst State actors and the general public. For this reason, public sensitization and awareness raising is a key activity of the NHRIs. The purpose of sensitization is to educate the public and State actors on the role and rights of HRDs to gain their support. Sensitization takes many forms. In Kenya, the KNCHR has used public forums and radio talk shows to raise awareness on HRDs. In Madagascar, the CNIDH-Ma organized a colloquium on *'The situation of human rights defenders in Madagascar'* in December 2017. The CNIDH-Madagascar is also involved in the organization of the "Madagascar Human Rights Prize" which recognizes HRDs. In Tanzania, the Commission for Human Rights and Good Governance (CHRGG) has participated in the Tanzania Human Rights Defenders Day, an event organized by the Tanzania Human Rights Defenders Coalition (THRDC) to raise awareness on HRDs' work.

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# 2

## Capacity building and training:

In addition to raising awareness, the six NHRIs are actively involved in capacity building and training of HRDs and State actors on the protection of HRDs. Trainings targeting HRDs mostly focus on increasing their knowledge of their rights and enhancing their capacity to protect themselves from risks and threats. Some trainings target security agencies, such as in Kenya and Côte d'Ivoire. In Côte d'Ivoire, a 2018 training targeting members of the National Intelligence Coordination ended with the drafting of a draft code of ethics by the CNDH-CI, which was adopted by the intelligence community. In Kenya, the KNCHR has also extended its trainings to judges and magistrates to enhance their understanding of the role of HRDs. These trainings are based on partnership between the KNCHR and the Judicial Training Institute.

# Findings of this study

## 3

### **Complaints handling and investigations:**

The six NHRIs are mandated to receive and investigate complaints of human rights violations from individuals and groups, including HRDs. Every year, these NHRIs receive and process hundreds of human rights-related complaints. However, none of the NHRIs disaggregates the complaints they receive to distinguish HRDs from other complainants. In Madagascar, the CNIDH-Ma often intervenes on behalf of arbitrarily arrested HRDs while in Kenya, the KNCHR has in certain instances evacuated and relocated HRDs. In Côte d'Ivoire and Tanzania, the respective NHRIs have intervened on behalf of human rights NGOs experiencing harassment or investigation and prosecution by government agencies. In Zimbabwe, the Zimbabwe Human Rights Commission (ZHRC) often monitors demonstrations and reports on violations against HRDs.

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## 4

### **Norm elaboration and advocacy:**

The selected NHRIs have a long history of engaging in human rights advocacy, including protection of HRDs. In this context, a prime example involves advocacy by the NHI of Madagascar for the enactment of specific national laws on HRD protection. These countries have draft laws on HRD protection in which the NHRIs participated in the drafting process, albeit in varying degrees. In Kenya, the KNCHR has developed a Model Human Rights Defenders Policy and Action Plan and has been engaging relevant State agencies to ensure that it is adopted as a national policy document.

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## 5

### **Interaction with regional and international human rights mechanisms:**

The six NHRIs regularly participate in relevant sessions of regional and international human rights mechanisms where the agenda includes the situation of HRDs. The ZHRC, for example, has submitted alternate reports to

## Findings of this study

the African Commission on Human and Peoples' Rights (ACHPR) as well as to the UN Human Rights Council. The NHRIs also interact with these mechanisms at the country level. The CNDH-CI hosted a seminar in April 2017 in which the ACHPR and UN Special Rapporteurs on human rights defenders participated. Similarly, the CNDH-Morocco has often engaged with the UN Special Rapporteur on the situation of HRDs through submissions of statements or responding to questionnaires from the Special Rapporteur. CNDH-Marocco also interacted with the current ACHPR Special Rapporteur on human rights defenders who visited Morocco in September 2019.

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### **6 Protection of women HRDs:**

Most of the NHRIs have gender departments or units assigned to respond to the situation of women HRDs. Beyond specific interventions, the Kenyan NHRI has conducted and published a study on the situation of women HRDs. In Côte d'Ivoire, the NHRI has established a working group comprising of NGOs and HRDs to specifically work on issues affecting women HRDs. Established in the last quarter of 2019, the working group meets regularly to discuss and find possible solutions to issues related to the work of women HRDs. In Morocco, the CNDH organized a workshop focusing on the legal protection for women HRDs in October 2019. This workshop built the capacity of women HRDs to contribute to the protection of vulnerable groups in the Arab region.

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### **7 Collaboration with civil society and other partners:**

The NHRIs recognize the value of collaboration in the protection of HRDs. As such, they have all established partnerships with civil society, donors and other relevant actors. In Côte d'Ivoire, the CNDH has worked with the International Service for Human Rights, an international NGO championing the adoption of national laws on HRDs protection. In Zimbabwe, the ZHRC has signed a Memorandum of Understanding (MoU) with the Zimbabwe Lawyers for Human

## Findings of this study

Rights (ZLHR). Under the MoU, the ZHRC refers cases requiring public interest litigation to the ZLHR. In Kenya respective NHRI often collaborate with the national coalitions of HRDs.

The HRD-related activities of the six NHRIs face challenges and impediments. Although the NHRIs operate in different contexts, most of the challenges are similar. These include: lack of adequate resources; absence of specific national laws on protection of HRDs; absence of focal points within the NHRIs on HRDs; and lack of adequate knowledge or training on HRD protection. With mitigation of these challenges, this study demonstrates that there is significant potential within NHRIs to play an even greater role in the implementation of the Marrakech Declaration.

# Introduction

# 1

## 1.1 Background

The Network of African National Human Rights Institutions (NANHRI) is a regional body of 46 African national human rights institutions (NHRIs). NANHRI, whose Secretariat is based in Nairobi, Kenya, is registered under Kenyan law as an independent legal entity and has been operational since 2007. NANHRI seeks to support and strengthen NHRIs in Africa as well as to facilitate coordination and cooperation between and among themselves and other key human rights actors at the regional and international level. The term ‘national human rights institutions’ refers to bodies established by governments to aid in promotion and protection of human rights at the national level through handling complaints and conducting investigations, conducting research, advocacy and educational programmes in line with the Paris Principles, among other competences.

Being alive to a context of shrinking civic space that limits the work of HRDs, NANHRI is implementing a project that seeks to support NHRIs to develop/ strengthen existing protection mechanisms for HRDs. The NANHRI commissioned a study to

*NANHRI seeks to support and strengthen NHRIs in Africa as well as to facilitate coordination and cooperation between and among themselves and other key human rights actors at the regional and international level.*

establish and document the existing practices and experiences towards the protection of HRDs and provide capacity-building support or training to NHRIs and other stakeholders working in the area. Additionally, the process also aims to develop an HRDs legal assistance and complaints handling mechanism reference handbook based on the Marrakech Declaration of 2018.

## **1.2 Objectives and scope of the study**

This report documents case studies of six countries, namely, Côte d'Ivoire, Kenya, Madagascar, Morocco, Tanzania and Zimbabwe. It aims to assess the extent of implementation of the Marrakech Declaration. The analysis framework is based on the obligations agreed upon by delegate NHRIs, which participated in the 13<sup>th</sup> GANHRI Conference that adopted the Marrakech Declaration. Without exception, the case studies are presented following a similar structure to ensure that all points of inquiry are accounted for and data collected is comparable and individual performance of each country is accurate. At the end of the case studies is a conclusion tying up patterns, identifying good practices and consolidating recommendations on the protection of HRDs the application of which goes beyond the six countries, but extends to African NHRIs in general.

## **1.3 Methodology of the study**

In terms of methodology, qualitative data was collected primarily from the NHRIs, who filled in a questionnaire. Activity reports, project documents and other programming materials were shared and reviewed to better articulate the situation in each case study. A limited number of guided virtual interviews were conducted with other key sources based on or with knowledge of the situation of HRDs in these countries. Secondary information was also used to triangulate data collected from NHRIs with the view to ensuring that all data was verified before it was analyzed and relied upon for the purpose of preparing this report.



## 1.4 Protection of human rights defenders: An overview

Negotiations for the formal recognition of individual and collective promoters of human rights now known as ‘human rights defenders’ (HRDs) took 13 years to reach the adoption of the ‘United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms’ (UNDHRDs), although the issue had been on the agenda of the UN for decades. Needless to retrace the adoption history, it suffices to pick on some of the key milestones of the process to give context to the Study.<sup>4</sup> It would appear ironic that in spite of a long list of fundamental rights and freedoms guaranteed upon individuals and groups by international human rights instruments, none of these specifically recognize the right of a person, groups or associations to advocate for the effective promotion and protection of human rights and freedoms while protected from harm. This is because some States do not acknowledge that effective implementation of international standards for human rights relies on activists and civil society groups inside and outside the State and that such work, potentially exposes these individuals to increased risks.

Accordingly, the UNDHRDs is the key international legal framework regulating the recognition and protection of HRDs across the world.<sup>5</sup> It was the first UN instrument to particularly recognize the importance and legitimacy of the work of human rights defenders, as well as their need for better protection. The adoption of this Declaration has provided recognition of HRDs and increased their visibility. This has also paved the way for the establishment of a UN mechanism

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<sup>4</sup> The idea of the UNDHRDs is credited to Canada through a resolution (1980/23) in 1980, which appealed to all governments to “encourage and support individuals and organs of society exercising their rights and responsibilities to promote the effective observance of human rights”. Inspired by Resolution 1980/23, the Sub-Commission of the Human Rights Commission presented some guiding principles in March 1984, the same year the Human Rights Commission established a Working Group to prepare a declaration on the subject. The strong involvement of NGOs should be seen in light of a development from the 1970s, where international NGOs played an increasingly important role in the UN. The fall of dictatorships in Latin America, disintegration of apartheid in South Africa and the collapse of the Soviet Union contributed significantly to the completion of the Declaration, there was still considerable resistance, which continued until the adoption of the Declaration. At that time, a view that did not allow individuals to have rights and be subjects under international law was prominent. Human rights issues were something that should only be interpreted and carried out between states at the international level and by the state at the national level. In 1992, the Working Group presented a preliminary draft in the Human Rights Commission, with a view to submitting a finalised text to the General Assembly at the 1993/94 session. At its adoption, the final version was generally regarded as a compromise or ‘strict minimum’ in which none of the parties were fully satisfied. Egypt made a statement for 26 all of which were Asian and African, which emphasised respect for the sovereignty of States and their territorial integrity and non-interference in their internal affairs thereby lowering the expectations of the Declaration.

<sup>5</sup> Article 1 thereof provides for the right to promote and strive for the protection and realisation of fundamental rights and freedoms.

of the Special Rapporteur on the Situation of Human Rights Defenders<sup>6</sup> for their protection. The UN General Assembly adopted the Declaration after acknowledging:

*“ the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations.”<sup>7</sup>*

This is recognition of the important role HRDs play in the effective implementation of human rights in their respective countries. Recognition of HRDs was one of the recurring issues during negotiations because of the divided views between developed and developing States. Western states fully supported the obligations on HRDs.

The UN Declaration does not define an HRD. The approach was to define HRDs by their activities, and to emphasize that these activities are what needed promotion and protection. Human rights defenders are identified by what they do, through a description of their actions, and contexts in which they work. . For practical purposes, a ‘human rights defender’ is a term used to describe people who, individually or with others, act to promote or protect human rights of all categories. Thus, NHRIs are also considered HRDs, based on the context and nature of their work.

The work of human rights defenders is protected in several national, regional and international human rights instruments. Other human rights instruments enshrine rights and freedoms States should respect and guarantee to all persons under their jurisdiction including human rights defenders. Further, there are

<sup>6</sup> The Terms of Reference include “to identify the main areas of progress and the remaining challenges that need to be addressed in relation to the implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms.”

<sup>7</sup> Preamble to the UNDHDRDs, adopted during the Fifty-third session Agenda item 110 (b) Resolution Adopted by the General Assembly [on the report of the Third Committee (A/53/625/Add.2)].

instruments that call on States to specifically protect human rights defenders. Such instruments include the EU Guidelines on Protection of Human Rights Defenders,<sup>8</sup> African Commission on Human and Peoples' Rights Resolution 69 of 2004 on the Protection of HRDs, Resolution 196 on Human Rights Defenders in Africa (2018), among others. The most recent of these instruments is the Marrakech Declaration (2018), which tasked NHRIs to ensure the protection of human rights defenders, especially women.

In his 2018 report, the UN Special Rapporteur on the Situation of Human Rights Defenders Michael Forst noted shrinking civic space despite the existence of instruments that provide legal framework for the protection of HRDs. He noted that the work of HRDs is essential for the process of strengthening democracies and expanding the civic space. The Special Rapporteur found that the 'Declaration continues to be disregarded by almost all States' and 'a growing number of States have actively taken steps to frustrate the enjoyment of the rights outlined in the Declaration.'<sup>9</sup> There was a further observation that 'many of its [international community] more recent commitments to sustainable development, migration, and climate change – are under threat because of the restrictions imposed on and attacks directed against human rights defenders' calling it a 'war on human rights defenders'.<sup>10</sup>

The Special Rapporteur marked three key findings, namely: the evolution of the use of the term 'human rights defenders'; the development of mechanisms and practices to support human rights defenders; and the use of legal and administrative frameworks to protect and persecute defenders. These findings speak directly to the objectives of the study. However, the Rapporteur summed up the situation of HRDs as follows:

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<sup>8</sup> [https://eeas.europa.eu/headquarters/headquarters-homepage\\_en/3958/EU%20Guidelines%20on%20Human%20Rights%20Defenders](https://eeas.europa.eu/headquarters/headquarters-homepage_en/3958/EU%20Guidelines%20on%20Human%20Rights%20Defenders) (accessed on 30 July 2020).

<sup>9</sup> Michel Forst, *World Report on the Situation of Human Rights Defenders United Nations Special Rapporteur on the Situation of Human Rights Defenders, December 2018*, p. 7.

<sup>10</sup> *Ibid* 8

*Many country entries reveal troubling attacks on human rights defenders, whether the attacks are on all of them or on those engaged in specific issues, by the State, the media and powerful interests. Negative depictions in popular culture, even in such mundane productions as local soap operas or on radio and television call-in shows, have an insidious effect on the safety of defenders in already precarious situations. In otherwise safe and enabling societies, particular types of defenders can be singled out for vilification as evidenced by the anti-media rhetoric in the United States of America.<sup>11</sup>*

As a possible solution for this development, the World Report pointed to the need to develop ‘mechanisms and practices to support human rights defenders’.<sup>12</sup> Civil Society Organizations have taken the lead in the creation of regional, national and local networks to support HRDs, leading to the expansion of programmes of protection. These included temporary relocation initiatives, and the establishment of international CSOs, networks and funding initiatives especially to support vulnerable HRDs. On their part, States have institutionalized national legislative frameworks, policies and administrative measures to protect HRDs. However, some of these initiatives have been used to ‘unwittingly and deliberately, to frustrate the defense of human rights’.<sup>13</sup> The report further makes the findings that ‘regional organizations and national human rights institutions (NHRIs) are two key actors now playing critical roles in the support of human rights defenders’.<sup>14</sup> This explains the increase in the mobilization of NHRIs to better fulfill this role, and inevitably the convening of the 13<sup>th</sup> International Conference of the Global Alliance of National Human Rights Institutions leading to the adoption of the Marrakech Declaration.

## **1.5 The Marrakech Declaration**

In 2018, the GANHRI held its 13<sup>th</sup> International Conference in Marrakech, Morocco, under the theme ‘*Expanding the civic space and promoting and protecting*

<sup>11</sup> World Report on HRDs (2018), p. 8.

<sup>12</sup> World Report on HRDs (2018), p. 10.

<sup>13</sup> Ibid 12

<sup>14</sup> Ibid 12

*human rights defenders, with a specific focus on women: The role of national human rights institutions*.<sup>15</sup> The theme resonated with the landmark 2013 United Nations General Assembly Resolution 68/181 recognizing the situation of women human rights defenders, which in itself is indicative of the broadening of the HRDs community. The Conference took place against the backdrop of deep concerns on reports of the increasing number of physical attacks against human rights defenders particularly where these included sexual violence or killings as depicted in the 2018 World Report on HRDs. Additionally, there were concerns on the shrinking civic space and on threats, risks and reprisals faced by human rights defenders, worldwide. These concerns manifested in restrictions on the rights to freedom of opinion, expression, association or peaceful assembly, and the right to privacy, or arbitrary use of civil or criminal proceedings (law fare), prosecution, cruel, inhuman and degrading treatment, or acts of intimidation or reprisals, among others.

The delegates to the Conference discussed several areas of engagement, which included the following:

- What are the crucial elements of an enabling environment for HRDs;
- How to monitor civic space and threats to it ;
- How to protect HRDs;
- How specifically to protect women HRDs;
- How to protect NHRIs who are themselves HRDs;
- How to develop effective communication on human rights and promotion of positive narratives.

At that Conference, 260 representatives from NHRIs and stakeholders reaffirmed their commitment to upholding the UN Human Rights Defenders Declaration. They committed to setting out strategies to promote, protect and build cooperative partnerships with CSOs, NGOs, and State actors like Parliament, in protecting HRDs.

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<sup>15</sup> The Conference was held between 10<sup>th</sup> and 12<sup>th</sup> October 2018, marking the 70<sup>th</sup> Anniversary of the Universal Declaration of Human Rights; the 25<sup>th</sup> Anniversary of the adoption of the Paris Principles by the United Nations General Assembly and the establishment of the global network of NHRIs, today known as GANHRI; and the 20<sup>th</sup> Anniversary of the Declaration on Human Rights Defenders. It was co-hosted, under the High Patronage of His Majesty King Mohammed VI, by GANHRI and the National Human Rights Council of Morocco (CNDH), in cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR).

Further, States were encouraged to ratify all international human rights instruments and for NHRIs to advise on implementation through strategies such as domestication. The NHRIs also encouraged each other to monitor and report on human rights violations including shrinking of civic space and incidental violations by collecting and analyzing disaggregated data and statistics related to killings, fabricated legal charges, misuse of laws and other attacks against HRDs.

There was a reaffirmation to establishing efficient and robust early warning mechanisms and focal points within NHRIs as well as promoting gender equality and developing strategies to combat all forms of discrimination against women HRDs. Further, the NHRIs encouraged each other to interact regularly with human rights defenders and civil society and help each other to develop and strengthen national and regional defenders' networks. In essence, the Marrakech Declaration was a strong reaffirmation of the UNDHRDs as it committed to upholding the UNDHRDs provisions.

The Marrakech Declaration was specific to the role of women human rights defenders (women HRDs) who often face additional gender-specific discrimination and violence, not only from State agents but also private actors.<sup>16</sup> The risk often manifests in the form of intimidation, threats, and sexual violence in their own organizations, communities and families, among others contexts. The women HRDs also face social, political, economic and cultural barriers.

The NHRIs pledged to engage in rigorous promotional and protective activities in the implementation of the Marrakech Declaration, and the UNDHRDs by extension. The specific activities and methods of work to achieve full implementation of the commitment are summarized in Table 1 below:

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<sup>16</sup> Marrakech Declaration, para 14.

## NHRIs' obligations to implement the Marrakech Declaration

<b>Promotional activities/ initiatives )</b>	Call on States to ratify and implement all international human rights instruments;
	Advise on national legislation, policies and programmes to ensure compliance with the State's international human rights obligations.
	Contribute to the establishment of national protection systems for HRDs, who need an enabling environment which is accessible and inclusive and in which all rights are respected.
	Advance positive narratives on the importance of human rights in every aspect of our societies, and on the important and legitimate role of HRDs, in particular women human rights defenders.
	Raise awareness about the Declaration on HRDs, translate it into local languages and disseminate it widely;
	Support the State in implementing the Declaration on HRDs.
	Promote gender equality and develop strategies to combat all forms of discrimination against women human rights defenders;
<b>Protective activities/ initiatives</b>	Raise awareness among private actors about their responsibility to respect the rights of human rights defenders and advise them on actions and measures to ensure that they meet this responsibility.
	Monitor and report on civic space – online and offline – through the collection and analysis of disaggregated data, including gender-based disaggregation and statistics related to killings, fabricated legal charges, misuse of specific laws and other attacks against human rights defenders, journalists and trade unionists, lawyers, students, academics, in line with SDG indicator 16.10.1;
	Identify when policy implementation disproportionately impacts on human rights defenders and civic space;
	Set up efficient and robust early warning mechanisms and focal points within NHRIs.
	Interact with the international and regional human rights systems in support of human rights defenders, and monitor follow-up and implementation of recommendations;
Report cases of intimidation, threats and reprisals against human rights defenders, including against the NHRI members or staff, and do what is possible to ensure protection;	
<b>Protective activities/ initiatives</b>	Ensure that international, regional and national mechanisms available for the protection of human rights defenders are widely known, gender-sensitive and accessible also for persons with disabilities;
	Monitor places of detention including where appropriate by conducting preventive visits, and provide legal aid to persons in detention;
	Promote access to justice for victims of violations of rights and fundamental freedoms, and work closely with the judiciary in that regard.

<p><b>Cooperation/ partnerships activities/ initiatives</b></p>	<p>Interact with human rights defenders and civil society in a regular manner and include them in the planning and implementation of, as well as follow-up on, the NHRI's activities, in a gender and disability-sensitive manner;</p> <p>Look for ways to cooperate with organizations including human rights organizations, the media, academia, business organizations, trade unions, national statistics offices, and local, national, regional and international intergovernmental and non-governmental organizations and institutions;</p> <p>Support the development of national and regional defenders' networks and strengthen existing ones, in coordination with human rights defenders.</p>
<p><b>GANHRI/ NHRIs partnerships</b></p>	<p>In close collaboration with the United Nations, continue to promote the establishment and strengthening of effective and independent NHRIs worldwide in full compliance with the Paris Principles.</p> <hr/> <p>Ensure that NHRIs can rely on effective protection measures when the NHRI, its members or staff are at risk or under threat, including cases of political pressure, intimidation of any kind, harassment or unjustifiable budgetary limitations;</p> <hr/> <p>Support capacity-building, sharing of experiences and good practices as well as knowledge management with and among NHRIs in relation to civic space and human rights defenders, with particular attention to the situation of women human rights defenders;</p> <hr/> <p>Encourage regional networks to elaborate regional action plans to follow-up on this Declaration. Regional Chairs are encouraged to report thereon to the GANHRI Annual Meeting in March 2019 and to subsequent regional and international meetings of NHRIs;</p> <hr/> <p>Establish a mechanism on human rights defenders within GANHRI, mandated to identify emerging global trends and challenges in the area of civic space and human rights defenders and provide advice and support to the strategic work of GANHRI, regional networks and individual NHRIs in that regard.</p>





# Côte d'Ivoire

# 2



*Security officers crack down on protesters in the shrinking civic space in Côte d'Ivoire. Photo: Article 19*

## 2.1 Background

Côte d'Ivoire is a francophone country on the west coast of Africa. It has an estimated population of 26 million.<sup>17</sup> The country gained political independence from the French on 7 August 1960<sup>18</sup> and was stable for three decades. Since 2002, there were army revolts<sup>19</sup> that stabilized after the post-electoral war in 2010-2011.<sup>20</sup>

Côte d'Ivoire promulgated a new constitution in 2016 triggering political stability,<sup>21</sup> and replacing the 2000 constitution. It provides for the rights, freedoms and duties of Ivoirians. The Constitution is relatively new and one can note from the different human rights measurement indexes that its implementation is dismal. For instance, the Mo Ibrahim Index for African Governance (IIAG) ranked the country 22 out of 54 countries, with a score of 54.5 out of 100.<sup>22</sup> The Index considers four indicators that are; safety and rule of law, participation and human rights, sustainable economic opportunity, and human development. Additionally, the UN Human Development Report ranked the country 165 out of 188 countries in 2018.<sup>23</sup> This report considers factors such as human development, inequality, gender development,

*Côte d'Ivoire promulgated a new constitution in 2016 triggering political stability and replacing the 2000 Constitution. It provides for the rights, freedoms and duties of Ivoirians.*

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<sup>17</sup> [https://data.worldbank.org/indicator/SP.POP.GROW?locations=CI&name\\_desc=false](https://data.worldbank.org/indicator/SP.POP.GROW?locations=CI&name_desc=false) (accessed on 20 July 2020).

<sup>18</sup> <https://au.int/en/countryprofiles/republie-cote-divoire> (accessed on 20 July 2020).

<sup>19</sup> Human Rights Watch 'Côte d'Ivoire: Government abuses in response to Army Revolt' (2002) <https://www.refworld.org/docid/3e31416e.html> (accessed on 20 July 2020).

<sup>20</sup> <https://www.worldbank.org/en/country/cotedivoire/overview> (accessed on 20 July 2020).

<sup>21</sup> English version [https://www.constituteproject.org/constitution/Cote\\_DIvoire\\_2016.pdf?lang=en](https://www.constituteproject.org/constitution/Cote_DIvoire_2016.pdf?lang=en) (accessed on 20 July 2020).

<sup>22</sup> <http://iiag.online> (accessed on 16 July 2020).

<sup>23</sup> UN Development Programme 'Beyond income, beyond averages, beyond today: Inequalities in human development in the 21<sup>st</sup> century' Human Development Report 2019 302.

gender inequality and multi-dimensional poverty. These two rankings demonstrate that Côte d'Ivoire is struggling to ensure the full realization of rights of its citizens, including HRDs, as protected by international instruments and its Constitution.

To assist the country in enhancing its human rights record, the country established the National Human Rights Commission of Côte d'Ivoire, which was the fruit of a process that started in 2005 to 31 July 2008.<sup>24</sup> This institution was replaced by the *Conseil national des droits de l'homme de Côte d'Ivoire* (CNDH-CI) in 2018. In order to ensure a better reach in communities, the CNDH-CI has also established 31 regional commissions on human rights (CRDH) at the local level. The CNDH-CI and by extension the CRDH, have several mandates, including receiving and investigating complaints relating to cases of human rights violations, studying any question related to human rights, and maintaining relationships with CSOs working in the field of human rights.<sup>25</sup>

It is also notable that beyond the overall mandate under the establishing legislation and other overall legal frameworks, Côte d'Ivoire has enacted a specific Law No. 2014-388 on the rights of HRDs, and the CNDH-CI has been assigned to supervise its implementation.

This section of the report explores the role of CNDH-CI in the protection of the rights of HRDs using the Marrakech Declaration by providing a situational analysis of HRDs in Côte d'Ivoire. Second, it elaborates on the mandates of the CNDH to protect the rights of HRDs. Third, it analyzes whether the CNDH-CI is operating in line with the Marrakech Declaration and fourth, it identifies best practices within the CNDH. Fifth, it examines the challenges that the CNDH faces in protecting the rights of HRDs generally, and more particularly in the implementation of the Marrakech Declaration. It ends with a conclusion and recommendation.

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<sup>24</sup> National Human Rights Commission Côte d'Ivoire's 2009 Annual Report 5 <https://cndh.ci/wp-content/uploads/2015/10/Rapport-annuel-sur-l'état-des-Droits-de-l'Homme-2009.pdf> (accessed on 24 June 2020).

<sup>25</sup> Chapter 2 of Decision No 2005-08 of 15 July 2005 on the Establishment of a National Human Rights Commission in Côte d'Ivoire.

## 2.2 Situational analysis of HRDs

HRDs in Côte d’Ivoire are vulnerable. They face several human rights violations such as ‘violence, intimidation and harassment’ without perpetrators being held accountable.<sup>26</sup> Such ‘violence, intimidation and harassment’ take the form of threats, break-ins and ransacking of HRDs’ offices, and arbitrary arrests and detention.<sup>27</sup> Women HRDs who advocate for environmental rights and against women’s rights violations such as female genital mutilation and child marriage are also subject to such ‘intimidation, harassment and threats’.<sup>28</sup>

Côte d’Ivoire has ratified several treaties at the international level, many of which provide for the protection of the rights of HRDs as demonstrated by the table below:

**Table 2: Ratification status of human rights treaties by Côte d’Ivoire**

Treaty	Date of ratification/ accession
International Covenant on Civil and Political Rights	26 March 1992
International Covenant on Economic, Social and Cultural Rights	26 March 1992
Convention on the Rights of the Child	4 February 1991
Convention on the Elimination of All Forms of Discrimination against Women	18 December 1995
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	18 December 1995
Convention on the Rights of Persons with Disabilities	10 January 2014
African Charter on Human and Peoples’ Rights	6 January 1992
African Charter on the Rights and Welfare of the Child	1 March 2004
Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol)	5 October 2011

<sup>26</sup> Human Rights Committee ‘Concluding observations on the initial report of Côte d’Ivoire’ adopted on 28 April 2015 CCPR/C/CIV/CO/1 paragraph 21.

<sup>27</sup> International Service for Human Rights ‘Côte d’Ivoire: Establish a mechanism to protect human rights defenders’ 2 April 2019 <https://www.ishr.ch/news/cote-divoire-establish-mechanism-protect-human-rights-defenders> (accessed on 21 July 2020); UN Special Rapporteur on the Situation of HRDs ‘World Report on the Situation of Human Rights Defenders’ 2018 28.

<sup>28</sup> Committee on the Elimination of Discrimination against Women ‘Concluding observations on the fourth periodic report of Côte d’Ivoire’ adopted on 30 July 2019 CEDAW/C/CIV/CO/4 paragraph 35; UN Committee on the Rights of the Child ‘Concluding observations on the second periodic report of Côte d’Ivoire adopted on 12 July 2019 CRC/C/CIV/CO/2 paragraph 13.

Apart from the laws at the international level, the Constitution, which is the ‘basic law’<sup>29</sup> of Côte d’Ivoire contains several provisions that promote and protect the rights of HRDs despite not having a provision that specifically mentions HRDs. To begin with, the Preamble of the Constitution aims ‘to build a rule of law in which human rights, public freedoms, human dignity, justice and good governance as defined in the international legal instruments to which Côte d’Ivoire is a party’. Article 28 reinforces the importance of human rights and public freedoms.

Article 2 further provides for non-violability of the rights of the human person and the right to human dignity. Article 3 provides for non-discrimination, including on the basis of sex and Article 32 provides for the protection of vulnerable groups, including women. Moreover, Article 35 contemplates ‘promotion, development and protection of women’, including protecting them against violence. This implies in addition to all the provisions of the Constitution being applicable to citizens equally,<sup>30</sup> the Constitution considers women as part of a vulnerable group that need reinforced protection. This may be applicable to women HRDs, who also need express protection of the law in addition to a general provision on HRDs.

The Constitution further protects the rights of the people of Côte d’Ivoire from, amongst others, ‘forced labour, physical or moral torture, inhumane, cruel, degrading and humiliating treatment, physical violence, female genital mutilation as well as all other forms of degradation of a human being’.<sup>31</sup> The fact that the Constitution mentions female genital mutilation as a degrading treatment implies that women HRDs advocating against the act must be protected from threats, harassment and violence.

Moreover, the Constitution protects the right to access to justice as follows:<sup>32</sup>

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<sup>29</sup> Preamble of the Constitution of Côte d’Ivoire.

<sup>30</sup> Article 4 of the Constitution of Côte d’Ivoire.

<sup>31</sup> Article 5 of the Constitution of Côte d’Ivoire.

<sup>32</sup> Article 6 of the Constitution of Côte d’Ivoire.

*The right of everyone to free and equal access to justice is protected and guaranteed.*

*Everyone has the right to a fair trial and to judgment rendered within a reasonable period as determined by law. The State promotes the development of local justice.*

However, as demonstrated above, in many instances, perpetrators of attacks or reprisals against HRDs are not held accountable. Article 7 of the Constitution protects Ivoirians from arbitrary arrests and detention. Nevertheless, HRDs in Côte d'Ivoire are often arbitrarily arrested or detained, and are harassed or intimidated. Articles 18, 19 and 20 of the Constitution provide for the rights to information, freedoms of thought, expression, assembly and peaceful demonstration. However, other laws such as the Penal Code of 2019, Article 73, which outlaws fake news and Articles 174 and 243 which elaborate on offences against the President, restrict these rights and freedoms. Members of the CSOs who organise anti-government demonstrations are often arrested under these laws, thus closing the civic space.<sup>33</sup> The reducing civic space is contrary to Article 26 of the Constitution, which provides that 'Civil society is one of the components of the expression of democracy. It contributes to the economic, social and cultural development of the Nation'.

Recognizing that HRDs in Côte d'Ivoire face vulnerabilities, the African Commission, amongst others, recommended Côte d'Ivoire to adopt a law on HRDs.<sup>34</sup> Following these recommendations, Côte d'Ivoire enacted Law 2014-388 on 20 June 2014 for the promotion and protection of the rights of HRDs. By so doing, it became the first country to adopt a legal framework for the protection and promotion of HRDs although it was not until 2017 that the government passed Decree 2017-21 on the implementation of the law.

<sup>33</sup> Human Rights Watch 'Côte d'Ivoire: Events of 2019' <https://www.hrw.org/world-report/2020/country-chapters/cote-divoire> (accessed on 21 July 2020).

<sup>34</sup> African Commission 'Concluding observations and recommendations – Côte d'Ivoire: Initial and combined reports 1994-2012' adopted in October 2012 Recommendation XX.

The Decree 2017-21 defines human rights defenders as:<sup>35</sup>

*Any person belonging to an association, organization or institution legally founded that works for the promotion and protection of human rights as recognized by national law and international human rights instruments ratified by Côte d'Ivoire; Any person or group of persons, association, organization or institution who advocates for new human rights in strict respect for prevailing laws and in conformity with the national conscience; Any person, who alone or in group, decides, occasionally or permanently to work towards the realization of human rights.*

The Decree further provides that the status of HRDs is presumed when, alone or in-group, occasionally or permanently, a person participates in an activity falling within the scope of promotion and protection of human rights provided by national and international law.<sup>36</sup>

HRDs are expected to be free in the exercise of their functions and they have the right to:<sup>37</sup>

- Evaluate the situation concerning respect of human rights;
- Peacefully gather and assemble;
- Access information necessary for the accomplishment of their missions;
- Publish, communicate and disseminate information on fundamental human rights and freedoms;
- Not to reveal their source;
- Visit all places of detention such as prisons and other places of deprivation of liberty in conformity with prevailing laws;
- Offer qualified professional, including legal assistance or any other advice and support pertinent to the defence of fundamental rights and freedoms;

<sup>35</sup> Article 2 of Decree 2017-21; own translation.

<sup>36</sup> Article 3 of Decree 2017-21.

<sup>37</sup> Article 10 of Decree 2017-21; own translation.

- Elaborate new principles and ideas on human rights, and to discuss and promote recognition;
- Attend hearings, proceedings and public trials;
- Communicate with international human rights bodies;
- Receive national and international funding from licit sources to undertake their mission;
- Have an effective remedy and benefit from protection in case of violation of their rights.

HRDs must not be prosecuted, arrested, detained or judged for their opinions and reports published in the exercise of the duties unless there are flagrant cases of misdemeanors.<sup>38</sup> This law recognizes that WHRDs are vulnerable and provides for their protection from threats, violence, and discrimination on the basis of sex.<sup>39</sup>

Decree 2017-21 elaborates on the obligations of the State to protect HRDs from violence, threats, harassment, pressure, discrimination or any other arbitrary action when they are exercising legitimate activities,<sup>40</sup> as well as their families in case of danger or risks<sup>41</sup> and to ensure that it investigates into cases that violate the legitimate rights of the HRDs and punishes such perpetrators.<sup>42</sup> It also elaborates on the duties of HRDs.<sup>43</sup>

In addition to the legal framework, to mitigate such human rights violations, some of the HRD civil society organizations have regrouped into a coalition since 2004, the *Coalition ivoirienne des défenseurs des droits de l'Homme* (CI-DDH).<sup>44</sup> The CI-DDH, which includes women's rights organisations as members, was established during precarious times for human rights defenders and it aims to bring 'relief and assistance' to various human rights in the country.

Despite these legal and institutional frameworks for the promotion and protection

<sup>38</sup> Article 13 of Decree 2017-21.

<sup>39</sup> Article 6 of Decree 2017-21.

<sup>40</sup> Article 4 of Decree 2017-21.

<sup>41</sup> Article 5 of Decree 2017-21.

<sup>42</sup> Article 7 of Decree 2017-21.

<sup>43</sup> Chapter IV of Decree 2017-21.

<sup>44</sup> ICHR <http://ci-ddh.org/historical/?lang=en> (accessed on 21 July 2020).



of HRDs, HRDs in Côte d'Ivoire still face human rights violations as demonstrated in the introductory paragraph to this section. A State can ensure the protection of HRDs through different mechanisms and as elaborated in the introductory chapter to this report. National human rights institutions play a pivotal role in ensuring that the rights of HRDs are respected, protected and promoted. Decree 2017-21 formalizes this role of the CNDH-CI and identifies it as the institution responsible for the protection of HRDs.<sup>45</sup>

### **2.3 Mandate of the *Conseil National des Droits de l'Homme de Côte d'Ivoire* to protect HRDs**

The *Conseil National des Droits de l'Homme de Côte d'Ivoire*, established in 2018, is the product of an evolving institution. It replaced the National Commission for Human Rights, which was an advisory body under the Ministry of Justice. Its independence was, therefore, not guaranteed and hence, following several recommendations from the international community, it evolved into the CNDH-CI through legal review. To emphasize on its independence, Article 1 of Law 2018-200 of 30 October 2018 refers to the CNDH-CI as an independent institution, with financial independence. The CNDH-CI comprises 12 members from different backgrounds<sup>46</sup> and its presidents are responsible for the different regional commissions (CRDH).<sup>47</sup> The law protects members of the CNDH-CI. The law states that they cannot be arrested, prosecuted, detained or judged for exercising their functions.<sup>48</sup>

In ensuring the respect, promotion and protection of human rights, the CNDH-CI acts in an advisory capacity, holds consultations, evaluation missions and makes recommendations. It has several mandates such as:<sup>49</sup>

- advising organs of government through reports or recommendations on human rights issues; pointing out instances of human rights violations;
- lobbying for the ratification of international human rights instruments;

<sup>45</sup> Article 18 of Decree 2017-21.

<sup>46</sup> Article 6 of Law 2018-200.

<sup>47</sup> Article 8 of Law 2018-200.

<sup>48</sup> Article 11 of Law 2018-200.

<sup>49</sup> Article 2 of Law 2018-200.

promoting domestic human rights laws and ensuring that they are compatible with international law; receiving complaints of human rights violations;

- investigating cases of human rights violations lodged and preparing a report with recommendations to the government; flagging human rights violations by authorities and providing recommendations to end them;
- advising on any question related to human rights;
- receiving and reviewing draft laws on fundamental freedoms to disseminate them with human rights organizations; inspection of prisons; participating in the preparation of State reports;
- maintaining relationships with national and international organizations that focus on human rights; and
- analyzing any question related to the protection and promotion of human rights.

Despite the fact that all of the mandates above extend to HRDs, the law expressly mentions contribution to the protection of HRDs thus emphasizing on the role of the CNDH-CI in ensuring the rights of HRDs are protected. This, in addition to the provisions of Article 18 of Decree 2017-21 confirm the mandate of the CNDH-CI to protect the rights of HRDs.

A victim or any other physical or moral person can approach the CNDH-CI and report human rights violations. The CNDH-CI can also, on its own accord, investigate human rights violations. External complaints can be either verbal or oral and if written, include the identity and address of the complainants. If a complaint is verbal, it will be treated as a self-referral. The identity of the complainant is preserved when the latter makes such a request. Therefore, in addition to contributing to the promotion of HRDs, the CNDH-CI can also receive complaints from them in the event their human rights have been violated. The section that follows assesses the initiatives of the CNDH-CI against the Marrakech Declaration to determine whether the NHRI is indeed implementing its mandates in line with international human rights standards.

## 2.4 Implementation of the Marrakech Declaration

The Marrakech Declaration provides several steps that NHRIs must take to ensure the protection of HRDs, especially Women Human Rights Defenders (WHRDs). The then National Commission for Human Rights participated in the Conference that led to the adoption to the Marrakech Declaration. Its successor institution, the CNDH-CI, therefore, has to ensure that it acts in accordance with the recommendations of the Marrakech Declaration. The establishment of the CNDH-CI as an independent administrative institution in itself can constitute compliance with the Marrakech Declaration, which emphasizes the importance of independent national human rights institutions for the protection of HRDs. To ensure that one sees it as an independent institution, the welcoming portal which is very plain, describes the CNDH-CI as an independent administrative authority.<sup>50</sup>

The CNDH-CI has, since the adoption of the Marrakech Declaration, worked towards the appropriation of the Declaration in its current activities with other stakeholders, in particular the CI-DDH and the International Service for Human Rights. It has also advocated for the inclusion of the protection of HRDs as a mandate for the CNDH-CI.<sup>51</sup> The CNDH-CI also ensures that violations against HRDs in remote areas are addressed.

For the purposes of this analysis, the report elaborates on the activities undertaken by the CNDH-CI and identify which of following three categories in the Marrakech Declaration the activities fall under: promotion, protection, and cooperation and partnerships. It also highlights the major activities before 2018, the year of adoption of the Marrakech Declaration, assess the response of the NHRI towards the situation of HRDs.

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<sup>50</sup> <https://cndh.ci> (accessed on 22 July 2020).

<sup>51</sup> Article 2 of Law 2018-200.

### **2.4.1 Awareness raising on the situation of HRDs**

The country has received special mechanisms of the AU and the UN on several occasions to discuss the plight of HRDs. The CNDH-CI has worked in collaboration with these special mechanisms to raise awareness on HRDs. For instance, from 12 to 13 April 2017, it organized a seminar on protection laws of HRDs in Africa with the participation of Reine Alapini Gansou (then Special Rapporteur on HRDs in Africa), Michel Forst (then UN Special Rapporteur on HRDs) and Clément Voulé (UN Special Rapporteur on the rights to freedom of peaceful assembly and association) in Abidjan.

In addition to the above, the CNDH-CI participated/organized the following:

- In 2017, the CNDH-CI participated in a workshop held in Abidjan for the operationalization of protection mechanisms for HRDs, focusing on women HRDs, in certain West African countries with participants from Côte d'Ivoire, Burkina Faso and Mali. A similar workshop is expected to take place with participants from Benin;
- On 14 February 2019, the CNDH-CI was a co-organizer of a consolidation ceremony for the Ubuntu Hub Cities initiative with Defend Defenders (Pan-African Network of HRDs) and the CI-DDH, in Abidjan;
- The CNDH-CI also disseminates the protection framework for HRDs, including women, during lectures at the *Université des droits de l'Homme* under a module dedicated to the protection of HRDs.

These activities fall under the all categories of the Marrakech Declaration of promotion, protection, collaboration and interaction with mechanisms at the international level.

### **2.4.2 Training and capacity building**

Since the adoption of Law 214-388 on HRDs, the CNDH-CI (and the defunct National Commission on Human Rights), in collaboration with the International

Service for Human Rights and the ICHRD have been sensitizing civil society organizations and other stakeholders through building their capacity and popularizing the content of law. Moreover, from 14 to 20 May 2018, in collaboration with other partners, it organized a capacity-building workshop on the security of HRDs.

The CNDH-CI also regularly conducts capacity-building for the *Gendarmerie* and the police. On 22<sup>nd</sup> May, 2018 at the request of National Intelligence Coordination, the CNDH organized a capacity-building seminar aimed at ensuring that staff consider the respect for human rights in the exercise of their mission. The workshop ended in a draft code of ethics by the CNDH-CI and adopted by the Intelligence Community.

Furthermore, on 21-22 July 2020, the CNDH-CI, in collaboration with the ICHRD and the International Service for Human Rights, organized a capacity-building workshop for HRDs to discuss the use of Law 2018-200 to ensure their protection.

These training and capacity building activities fall under the promotion of the rights of HRDs and cooperation since in most instances, the CNDH-CI undertakes these activities in collaboration with other partners.

#### **2.4.3 Interventions in specific cases**

Generally, when the CNDH-CI is informed of a threat to an HRD, it establishes contact with the competent regional administrative authorities, the defense and security forces and the public prosecutor. In the capital city of Abidjan, in addition to the aforementioned authorities, The CNDH-CI has ties with the Government Commissioner (Military Prosecutor) and the State Secretariat in charge of human rights that can speed up the process.

The CNDH-CI has also intervened in specific cases before and after the adoption

of the Marrakech Declaration as follows:

- In 2015, following the sacking and looting of the headquarters of the NGO Alternative-Côte d'Ivoire, the CNDH-CI made a referral which allowed the initial complaint of this NGO (initially deemed inadmissible), to be heard.
- Following the theft of the equipment of the NGO *Observatoire ivoirien des droits de l'Homme* in May 2020, the CNDH-CI visited the NGO and drew the attention of the public authorities to the protection and inviolability of the seats of HRDs.

By intervening in specific instances of violations of the rights of HRDs, the NHRI is ensuring that it exercises its protective and promotional mandates.

#### **2.4.4 Internal norm development concerning HRDs**

Although there is no internal policy for the protection of HRDs, staff are mentored and trained about HRDs, including women HRDs and they are aware of the different domestic and international instruments that focus on HRDs.

There is also a focal person within the CNDH-CI who is dedicated to the work involving HRDs. This focal person interacts with other national and international stakeholders on the instruction of the president of the institution. Moreover, commissioners responsible for specific human rights issues such as women's rights are instructed to work closely with the focal person.

Concerning the role of security agents in protecting the HRDs, the CNDH-CI has set up a mechanism with the Armed Forces, which meets monthly to discuss cases of human rights violations attributable to the military; a similar mechanism is being finalized with the *Gendarmerie* and the police. These norms ensure that HRDs are protected and promoted.

#### **2.4.5 Women HRDs**

In accordance with the provisions of Article 6 of Decree 2017-21, the CNDH-CI sensitized WHRDs about the law. It organized training sessions, including one, which consisted of training 20 WHRDs in the media, from 25 to 27 September 2017. Further to the training, in 2018, the CNDH-CI awarded a two-week scholarship (from 12 to 23 June 2018) to the laureate of the 2017 Ebony Prize (Delphine Gbla) to attend the University of Media and Human Rights, allowing her to understand the issues between human rights and media in the international context, in Geneva, Switzerland, and making her an ambassador for human rights.

Since the last quarter of 2019, a working group has been set up comprising of NGOs and HRDs working on women's rights. The group meets regularly to find possible solutions to the challenges and reprisals that women HRDs face. The focus on women in these activities demonstrates that the CNDH-CI is dedicated to implementing the Marrakech Declaration.

#### **2.4.6 Collaboration at domestic and international levels**

In addition to the collaborative initiatives mentioned in the other sub-sections, there are other specific instances where the CNDH-CI collaborates with other organizations working on the promotion and protection of HRDs. For instance, the CNDH-CI works in close collaboration with HRDs within the framework of the organization of a Human Rights Forum bringing together more than 150 CSOs which is held every two months, in addition to the other thematic groups' meetings.

The CNDH-CI also works in close collaboration with other governmental institutions with similar mandates through sharing of information, working sessions and joint missions, as was the case in the Mediating Team of the country. Moreover, it is collaborating with the CI-DDH, the West African Network of HRDs and the International Service for Human Rights to reinforce the network of CSOs.

### **2.4.7 Interaction with the international human rights system**

The CNDH-CI also interacts with global and regional human rights systems. For instance, it has often intervened in the sessions of the African Commission on HRDs in its affiliate status capacity. In April 2016, it also participated in a high-level panel organized on the sidelines of the African Commission's session and shared Côte d'Ivoire's legislation on HRDs (Côte d'Ivoire was the first country to adopt a law to protect HRDs following a recommendation by the African Commission in November 2012). Additionally, the last contribution of the CNDH-CI to the UN Universal Periodic Review (UPR) of Côte d'Ivoire in May 2019 was on how the NHRI handles HRDs.

### **Good practices in the protection of HRDs**

- ✔ Participation in norm development concerning HRDs such as the inclusion of the protection of HRDs in its mandate
- ✔ Active involvement in cases concerning HRDs whose rights are violated
- ✔ Regional commissions that ensure a better response to violations of the rights of HRDs at the grassroots
- ✔ A focal person on HRDs, who also focuses on women HRDs
- ✔ Training and capacity building of staff on HRDs, including women HRDs
- ✔ Specific programming that focuses on women HRDs
- ✔ Training and capacity building of HRDs to understand and apply law on HRDs
- ✔ Collaboration with State and non-State stakeholders
- ✔ Participation at the international level at the sessions of the African Commission and through the UN UPR process



## **2.5 Challenges in implementing the Marrakech Declaration**

### **2.5.1 Absence of a national mechanism for the protection of HRDs**

Chapter V of Decree 2017-21 provides for a protection mechanism for HRDs. Article 18, as discussed above, identifies the state in collaboration with the CNDH-CI as custodians of such protection. The Decree does not identify other institutions or provide for the setting up of other mechanisms for implementation. Despite the engagement of the CNDH-CI on HRDs and the designation of a focal point, it is a bare minimum, therefore, more can be done.

### **2.5.2 Negative attitudes towards sexual minorities' rights**

Although homosexuality is not criminalized in the country, it is challenging for the CNDH-CI to protect HRDs on such issues. The rights of sexual minorities are considered a taboo topic in the country with HRDs in this space facing violence, intimidation and threats.<sup>52</sup> The CNDH-CI has often worked in collaboration with CSOs on the issue of the rights of sexual minorities. Moreover, the CNDH-CI often engages the relevant authorities when cases of violence and intimidation of sexual minorities or HRDs working in the area are reported. Despite these interventions, the attitude in the country on sexual minorities is largely negative.

### **2.5.3 Women HRDs**

Even with the Decree 2017-21, which provides for the protection of women HRDs, they still face intimidation, threats and violence in their advocacy on for environmental rights and against female genital mutilation and child marriage.<sup>53</sup> Although the government published an inter-ministerial circular in August 2016 related to reporting of cases of gender-based violence, women HRDs are still at risk, more so because of the cultural belief that a woman's place is at home.<sup>54</sup> The CNDH-CI has a commissioner focusing on women's rights, in addition to the focal person on HRDs. Moreover, the Working Group with NGOs HRDs

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<sup>52</sup> <https://www.frontlinedefenders.org/en/profile/claver-touré> (accessed on 22 July 2020).

<sup>53</sup> CEDAW Committee.

<sup>54</sup> World Report (2018) 28.

focusing on women also brings into fore issues that women face, including HRDs. Nevertheless, there is no permanent focal person, who focuses on women HRDs. However, the Working Group on Women assists in implementing mandates concerning women HRDs.

#### 2.5.4 Restrictive legal framework

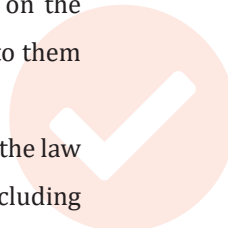
Article 2 of the Decree 2017-21 restricts the definition of HRDs to those working for the promotion and protection of human rights recognized by human rights treaties *ratified* by the State. For those advocating for emerging human rights that have not been adopted in the country, they have to do so in conformity with national conscience. The fact that the law mentions treaties ratified by the country and in conformity with national conscience may restrict the recognition of HRDs. For instance, abortion is only allowed if the life of the mother is in danger<sup>55</sup> and more recently, in cases of rape.<sup>56</sup> Therefore, a person or organization advocating for abortion as a choice will not be considered as an HRD and will therefore not benefit from the protection of Decree 2017-21. Moreover, the CNDH-CI will have no obligation to treat such a person as an HRD and ensure their protection as per their mandate.

#### 2.6 Recommendations

- ✔ Sensitize all relevant stakeholders on the Marrakech Declaration;  
Adopt a guideline within the CNDH-CI to implement the Marrakech Declaration;
- ✔ Establish a working group to deal with cases concerning HRDs, including women. Members of the working group must undertake training on HRDs, including the specific vulnerabilities of women HRDs;
- ✔ Set up an independent case management reporting, investigating, documenting and follow up mechanism for women HRDs;
- ✔ Organize sensitization campaigns on the rights of sexual minorities;

<sup>55</sup> Article 367 of the Penal Code of Côte d'Ivoire.

<sup>56</sup> <https://www.safeabortionwomensright.org/cote-divoire-fight-against-clandestine-abortions-advances/> (accessed on 22 July 2020).

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- ✔ Organize training sessions for law enforcement officials on rights of sexual minorities and their duty towards the protection of HRDs working on the topic;
  - ✔ Continue providing training to HRDs, including women HRDS, on the laws and policies applicable to them and the avenues available to them in instances of human rights violations;
  - ✔ Provide training and engage in sensitization campaigns aimed at the law enforcement agencies and the courts on the rights of HRDs, including women;
  - ✔ Translate and simplify the Declaration on HRDs into local languages and disseminate it widely; and
  - ✔ Continue collaborating with different stakeholders on activities concerning HRDs, including women HRDs.

## **2.7 Conclusion**

The Republic of Côte d'Ivoire remains one of the few countries in Africa which have identified the importance of legislating for the protection of HRDs. As the lead institution in the preservation of the rights of HRDs, the CNDH-CI has made progress in the implementation of the Marrakech Declaration on promotion, protection and partnership. This is through short term, midterm and long term interventions, as well as a structured approach to ad hoc matters led by the focal point under the supervision of the NHRI's president.

In spite of this, a number of challenges have been noted in law and practice. There is need to work on these challenges to firm up the gaps for a more versatile and sustained protection of HRDs through legal, administrative and programmatic practice.



# Kenya

# 3



*Police arrest human rights defenders during protests in Nairobi. Photo:Defenders Coalition*

### 3.1 Background

Kenya is a country in the East African region with a population of about 55 million<sup>57</sup>. It gained independence from the British in December 1963. The landscape of human rights in Kenya has dramatically changed over the last three decades. Domestic and international pressure in the 1980s and early 1990s changed the country from a one-party to a multi-party State, with the first multi-party general elections taking place in 1992.

The clamour for constitutional change and greater respect and protection of human rights continued throughout the 1990s. Pro-democracy activists and HRDs played a key role in demanding for the opening up of the civic space. Many human rights NGOs emerged and thrived during this period.

Amidst a wave of State-sponsored ethnic violence and systematic human rights violations in the country, the government established the Standing Committee on Human Rights in May 1996. It had the power to investigate human rights violations and educate the public on human rights issues. But without it being anchored on legislation, and like most NHRIs established in Africa during the 1990s, the Standing Committee was criticized for lack of legitimacy, independence and impartiality.<sup>58</sup> Many

<sup>57</sup> <https://www.worldometers.info/world-population/kenya-population/#:~:text=Kenya%202020%20population%20is%20estimated,of%20the%20total%20world%20population.>

<sup>58</sup> Human Rights Watch *Protectors or pretenders? Government human rights commissions (2001)*; C Idiye 'Deflectionism or activism: The Kenya National Commission on Human Rights in focus' (2004) 1 *Essex Human Rights Review* 40.

# 1992

*The landscape of human rights in Kenya has dramatically changed over the last three decades. Domestic and international pressure in the 1980s and early 1990s changed the country from a one-party to a multi-party State, with the first multi-party general elections taking place in 1992.*

saw it as a ploy to deflect criticism of the country's human rights record.

In the 2002 general elections, a coalition of opposition parties dislodged the independence party, Kenya African National Union from power, ending its 40-year reign. The pace of human rights reforms in Kenya accelerated from here onwards. In July 2003, a proper NHRI was established in the form of the Kenya National Commission on Human Rights (KNCHR). Unlike the Standing Committee, the KNCHR was established through an Act of Parliament and had the necessary safeguards to ensure its independence and autonomy.<sup>59</sup>

With the adoption of the Constitution of Kenya 2010, the KNCHR has been elevated to a constitutional commission. It was restructured and reconstituted following the enactment of the Kenya National Commission on Human Rights Act, 2011.<sup>60</sup> The KNCHR Act aligns the structure and functioning of the KNCHR with the provisions of the 2010 Constitution. As at the time of writing, there was a Bill pending in the Kenyan Parliament that proposes to merge the KNCHR with another constitutional commission: the National Gender and Equality Commission (NGEC).<sup>61</sup>

### **3.2 Situational analysis of HRDs**

The 2010 Constitution of Kenya contains a robust Bill of Rights. The rights protected therein apply to HRDs as to everyone in the country. However, a specific legislation on HRD protection does not exist. Kenya has ratified most of the core regional and international human rights treaties. Under Article 2(6) of the 2010 Constitution, these treaties *'form part of the law of Kenya'*. The table below presents a list of the human rights treaties ratified by Kenya.

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<sup>59</sup> Kenya National Commission on Human Rights Act No. 9 of 2002.

<sup>60</sup> Kenya National Commission on Human Rights Act No 14 of 2011.

<sup>61</sup> Kenya National Commission on Human Rights (Amendment) Bill, 2020, Kenya Gazette Supplement No. 6 (National Assembly Bills No. 1).

**Table 3: Ratification status of human rights treaties by Kenya**

<b>Treaty</b>	<b>Date of ratification/accession</b>
International Covenant on Civil and Political Rights	1 May 1972
International Covenant on Economic, Social and Cultural Rights	1 May 1972
Convention on the Rights of the Child	30 July 1990
Convention on the Elimination of All Forms of Discrimination against Women	9 March 1984
Convention on the Elimination of All Forms of Racial Discrimination	13 September 2001
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	21 February 1997
Convention on the Rights of Persons with Disabilities	19 May 2008
African Charter on Human and Peoples' Rights	23 January 1992
African Charter on the Rights and Welfare of the Child	25 July 2000
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)	6 October 2010

The Ibrahim Index for African Governance (IIAG) ranked the country 14 out of 54 countries, with a score of 58 out of 100.<sup>62</sup> The Index considers four indicators that are safety and rule of law, participation and human rights, sustainable economic opportunity, and human development. On the other hand, the UN Human Development Report ranks the country 143 out of 189 countries in 2020.<sup>63</sup> This report considers factors such as human development, inequality, gender development, gender inequality and multi-dimensional poverty.

Kenya has a relatively dynamic and vibrant media, civil society and HRD community. The country is rated as 'partly free' in the 2020 Freedom in the World Index.<sup>64</sup> Progress in human rights has always been truncated by retrogressive moments. The civic space in the country significantly opened up after the 2002 general elections. But like in many parts of the world, this space has rapidly shrunk in the last decade. The initial trigger was the concerted calls for political and criminal accountability for the 2007/2008 post-election violence (PEV). Many HRDs and civil society actors were vilified and targeted for demanding perpetrators to be brought to justice. The operating environment for HRDs has

<sup>62</sup> Ibrahim Index of African Governance <http://iiag.online> (accessed on 16 July 2020).

<sup>63</sup> UN Development Programme 'The Next Frontier: Human Development and Anthropocene.' Human Development Report, 2020.

<sup>64</sup> Freedom House Freedom in the world 2020: A leaderless struggle for democracy (2020).

since then deteriorated as a general pattern of harassment and criminalization of HRDs has emerged. Those working on sensitive political issues such as exposing extrajudicial killings, electoral malpractice or government corruption have been specifically targeted.

Repression of HRDs in Kenya has often intensified during election periods.<sup>65</sup> Indeed, electoral cycles in the country are almost always characterized by violent dispersal of demonstrations. Many HRDs have been arrested and prosecuted for participating in peaceful demonstrations relating to elections or other human rights and rule of law issues.<sup>66</sup> This form of harassment dovetails into the broader clampdown on the freedoms of expression, assembly and association in the country. The media always highlight cases of prominent Kenyan HRDs who are harassed by the State. Yet, in reality, HRDs in rural and remote areas of the country face constant harassment too.<sup>67</sup> Those that work on land rights and environmental justice are particularly vulnerable and targeted.<sup>68</sup> HRDs in the digital space, such as bloggers, have also increasingly become the focus of attacks, arrests and judicial harassment.

The Non-Governmental Organizations Coordination Act of 1990 (NGO Act) is the primary law regulating the registration and operations of NGOs in Kenya. It establishes the NGO Coordination Board and gives it the responsibility of registering and coordinating the work of NGOs. In some cases, the NGO Board has used its authority under the NGO Act to undermine and frustrate civil society work, instead of playing a facilitative role. A range of other laws have also been used to harass HRDs and restrict their work. These include the Security Law (Amendment) Act 2014, Kenya Information and Communication Act 2013, Prevention of Terrorism Act 2012, and Penal Code 1963.

In January 2013, the Public Benefits Organizations Act (PBO Act) was enacted into law to align the regulation of civil society in Kenya with the provisions of

<sup>65</sup> The Observatory for the Protection of Human Rights Defenders Kenya: 2017 elections – broken promises put human rights defenders at risk (2017).

<sup>66</sup> M Ruteere & P Mutahi (eds) Policing protests in Kenya (2019).

<sup>67</sup> Protection International Criminalisation of rural-based human rights defenders in Kenya: Impact and counterstrategies (2017).

<sup>68</sup> Human Rights Watch & National Coalition of Human Rights Defenders – Kenya, They just want to silence us: Abuses against environmental activists at Kenya's coast region (2018).



the 2010 Constitution. The PBO Act provides for an enabling environment for registration and operations of NGOs. However, the State has not operationalized the PBO Act, seven years after it was enacted and despite several court orders requiring its operationalization. Instead, the State has attempted to amend the PBO Act to include harsh conditions, such as capping foreign funding for NGOs. Without the PBO Act being operationalized, the 1990 NGO Act continues to be in effect.

### **3.3 KNCHR and the protection of HRDs**

The KNCHR is established under Article 59(1) of the Kenyan Constitution. The detailed functioning of the KNCHR is spelt out in the KNCHR Act 2011. It provides, *inter alia*, for the legal status, composition, powers, and procedures of the KNCHR. In this regard, the KNCHR is composed of a chairperson and four other members with extensive knowledge and experience in law and human rights.<sup>69</sup> The protection of HRDs is not expressly listed as one of the mandates of the KNCHR. However, there is no doubt that its mandate covers this area. The constitutional functions of the KNCHR include: promoting respect for and a culture of human rights in the country; monitoring and investigating human rights violations; receiving and determining human rights-related complaints; and ensuring State compliance with obligations under international and regional human rights treaties.<sup>70</sup> The Constitution further provides that every person, including an HRD, has a right to lodge a complaint with the KNCHR if any of their right is under threat or has indeed been denied, violated or infringed.<sup>71</sup> The KNCHR indeed considers the protection of HRDs as a ‘key aspect’ of its mandate.

#### **3.3.1 Institutional design and capacity**

The KNCHR is a robust and active NHRI. It is a member of NANHRI and hosts its Secretariat. The KNCHR is also a member of the GANHRI where it is accredited with an ‘A’ status. This means that it fully complies with the Paris Principles in

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<sup>69</sup> KNCHR Act, Sec 10.

<sup>70</sup> Constitution of Kenya, 2010, Art 59(2).

<sup>71</sup> Constitution of Kenya, 2010, Art 59(3).

its design, composition, powers and functioning. Three aspects are relevant in evaluating the KNCHR's institutional design and capacity relating to HRD protection: whether it has a strategic focus on HRDs; whether it has established systems and structures to address HRD issues; and whether it has the necessary expertise and resources to effectively respond.

### 3.3.2 Strategic focus on HRDs

The protection of HRDs has been and continues to be a key strategic area of work for the KNCHR. The need to open a strand of work on the protection of HRDs became urgent to the KNCHR in 2008. The previous year (2007), the KNCHR had started investigating reports of widespread and systematic extrajudicial killings and enforced disappearances of suspected members of *Mungiki*, an outlawed militia group, linked to the Kenyan Police. Its final report of September 2008 revealed that more than 500 *Mungiki* members had been extra-judicially executed or forcefully disappeared.<sup>72</sup> This report attracted international attention, leading to a country visit by the United Nations Special Rapporteur on Extrajudicial Killings, whose report corroborated the findings of the KNCHR.<sup>73</sup>

The KNCHR report had a heavy price. A key witness to the extrajudicial killings was killed. Members of KNCHR, staff who had investigated the killings were threatened and forced into exile. This experience prompted the KNCHR to initiate a dedicated strand of work on HRDs. In its 2008/2009 Annual Report, the KNCHR explained the decision as follows:

**||** *One of the negative consequences of the extrajudicial killings investigation was the intimidation and threats to many human rights defenders, including staff of the Commission. As a result, the Commission was forced to send its staff away for protection and many human rights defenders were forced to flee the country. It is for this reason that the Commission will in the next planning period seek to have a structured mechanism, strategy and funds for the protection of human rights defenders and/or witnesses facing threats and risks arising out of their human rights protection work.<sup>74</sup>*

<sup>72</sup> KNCHR Report on Extra-Judicial Killings and Disappearance, 2008

<sup>73</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Mission to Kenya, A/HRC/11/2/Add.6, 26 May 2009.

<sup>74</sup> KNCHR Annual report for the 2008-2009 financial year (2009) viii.

KNCHR's focus on HRDs is reflected in its current five-year strategic plan from 2018-2023. First, the Strategic Plan identifies violations of the rights of HRDs as one of the issues that hinder the enjoyment of human rights in Kenya. In this regard, the Strategic Plan laments the fact that HRDs '*continue to face the wrath of a criminal justice system and a public that does not understand and/or feel threatened by their work*'.<sup>75</sup> Partly for this reason, the foremost strategic objective of the KNCHR for the five-year period is to '*promote and deepen a culture of human rights and fundamental freedoms among the public*'. To realize this objective, it undertakes to strengthen the capacity, structures and systems of HRDs and other relevant actors in responding to human rights violations. Second, the Strategic Plan identifies insecurity of KNCHR's staff and HRDs who approach the institution for redress. To mitigate this threat, the KNCHR is lobbying for the adoption of the Model Human Rights Defenders Policy and Action Plan prepared in 2017.

### **3.3.3 Structures and systems**

Two main departments or directorates of the KNCHR are responsible for responding to and addressing protection issues affecting HRDs: the Directorate of Complaints and Investigations; and the Directorate of Legal Services. The Directorate of Research, Advocacy and Outreach is also actively involved in programs and projects focusing on HRDs.

Every year, the KNCHR receives and processes thousands of human rights-related complaints. These complaints are received directly by the KNCHR or are referred through the Integrated Public Complaints and Referral Mechanism (IPCRM). The IPCRM is a shared system between independent constitutional commissions that allows for receipt and onward referral of public complaints to participating institutions. Some of the complaints received by the KNCHR are filed or submitted by HRDs. However, the data in the complaints management system (CMS) is not analyzed and disaggregated to show how many complaints are indeed filed by HRDs.

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<sup>75</sup> KNCHR Strategic Plan 2018-2023 (2018) 41.

### **3.3.4 Knowledge and resources**

As an active member of NANHRI and GANHRI, the KNCHR is aware of the Marrakech Declaration and its role in the implementation process. With more than ten years of dedicated work on HRDs, the KNCHR has developed extensive expertise and knowledge on HRD protection. Thus, although relevant staff members do not necessarily undergo regular formal training on HRD protection, there is relatively sufficient in-house practical experience to allow for the organization to effectively undertake its work in this area.

Moreover, KNCHR staff members are continuously informed on how to engage with HRDs, on one hand, and other relevant stakeholders on matters concerning HRD protection, on the other. Additionally, the division that works on international human rights instruments and institutions provides regular updates to other staff members on developments relating to HRDs. To fill resource or capacity gaps, the KNCHR has developed partnerships with a range of organizations, including CSOs such as the National Coalition of HRDs and the Independent Medico-Legal Unit (IMLU).

### **3.4 Implementation of the Marrakech Declaration**

The bulk of HRD protection-related work of the KNCHR predates the Marrakech Declaration and seems to be tied to dedicated donor funding exclusively. The institution started to implement a structured programme for HRD protection in 2008. A strand of intensive work was also done between September 2014 and September 2016 under a European Union (EU) funded project titled *“Safeguarding constitutional gains: Human rights defenders and security in Kwale, Marsabit and Busia counties”*.

The work on HRDs falls under eight broad thematic areas:

- (a) mapping and assessing the situation of HRDs;
- (b) protection and safe evacuation of HRDs;

- (c) investigating and following up of specific cases of HRDs;
- (d) capacity building and training of HRDs;
- (e) facilitating HRDs' constructive interaction, engagement and dialogue with State agencies;
- (f) sensitization and awareness raising targeting the public on the role of HRDs;
- (g) advocacy on legislation and policy on protection of HRDs; and
- (h) legal representation and public interest litigation relating to HRDs.

### **3.4.1 Mapping and assessing the situation of HRDs**

Because the media largely focuses and highlights the plight of prominent HRDs or human rights NGOs, and those mainly based in Nairobi, the KNCHR has actively sought to call attention to the situation of HRDs in other parts of the country. It has undertaken research and reported on the situation of HRDs in far-flung places, including Busia, Kwale and Marsabit. The mapping of HRDs in these three counties happened in November 2014. It sought to understand the challenges that HRDs in the counties face and the gaps in their capacities to conduct human rights work. The exercise also sought suggestions from the HRDs on how those gaps could be filled and their views on the role of the KNCHR in facilitating their work.

The findings of the mapping exercise were published in a report issued in January 2015.<sup>76</sup> The report documents three broad categories of challenges that HRDs in the three counties faced:

- (a) violations of their civil and political rights, including arbitrary arrests and unfair trial;
- (b) difficulties stemming from their socio-economic status and poor infrastructure in their areas;
- (c) and negative socio-cultural attitudes and practices of the community they serve.

<sup>76</sup> KNCHR *Champions of rights: Report of the situation of human rights defenders (Busia, Kwale and Marsabit counties) (2015)*.

The mapping exercise also established that while they were aware of and based their work on the Constitution of Kenya 2010, many of the HRDs in the three counties were unfamiliar with other relevant instruments, especially those of regional or international nature. The exercise also revealed that most of the HRDs had received some training on general human rights, but not on the specific topic of HRDs. The mapping formed the basis of the interventions that the KNCHR took in subsequent years to build the capacity of HRDs in the three counties.

In two other studies, the KNCHR focused on the situation of HRDs in conflict with the law and women HRDs. The first study, published in 2016 was based on a monitoring and inspection that the KNCHR undertook in detention facilities in the counties of Busia, Kwale and Marsabit.<sup>77</sup> The study found that HRDs in the three areas suffer judicial harassment from State agents. They are often arbitrarily arrested, subjected to spurious charges, and slapped with punitive bail terms. The study also found that most HRDs always represented themselves when prosecuted although they lacked the requisite knowledge. This finding prompted the KNCHR to subsequently prepare the KNCHR Self Representation manual for Human Rights Defenders, 2015 to help them in representing themselves in court.

The second study was published in 2017.<sup>78</sup> It sought to identify the risk factors and human rights violations against women HRDs and other vulnerable HRDs. The study found that patriarchy, poverty and inequality were the main drivers of violations against women HRDs. It also established that because they deploy protests and picketing in their activism, most women HRDs are often charged with the offences of ‘incitement to violence’ and ‘disobedience to the law’. The report also noted that women HRDs face social stigma and discrimination by the very societies they serve.

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<sup>77</sup> KNCHR *Defending the defenders: Human rights defenders in conflict with the law* (2016).

<sup>78</sup> KNCHR *A report on gender audit of the situation of women and other vulnerable human rights defenders in Kenya* (2017).

### 3.4.2 Protection and safe evacuation of HRDs



Since its staff members and witnesses were threatened in 2008/2009, the KNCHR has implemented a structured program for the protection and safe evacuation of HRDs. In the 2009/2010 financial year, the KNCHR initiated a 'Human Rights Defenders Fund', which it used in 'protecting and relocating human rights defenders at risk including witnesses of the 2007/2008 post-election

violence'.<sup>79</sup> An HRD was relocated under this programme while six others were put under protection within the country. With the full operationalization of the Kenya Witness Protection Agency under Witness Protection Act 2012, the KNCHR refers HRDs to this body for protection.

### 3.4.3 Investigations and follow-up

The KNCHR often conducts investigations into cases concerning HRDs either on its own motion or when a complaint has been lodged. It also follows up on these cases to ensure accountability of the perpetrators. One prominent case that the KNCHR has previously worked on relates to two HRDs, Oscar Kingara and Paul Oulu, who were killed in March 2009. In 2010, the KNCHR held a commemoration as part of efforts to pressure the State to investigate the killings.<sup>80</sup> It has also investigated or pursued accountability for the killing of less known HRDs, including the case of Hassan Guyo, a Moyale-based HRD, who died in August 2014.<sup>81</sup> Other forms of violations against HRDs investigated include intimidation and arbitrary arrests.<sup>82</sup>

<sup>79</sup> KNCHR Annual report for the 2009-2010 financial year (2010) 25.

<sup>80</sup> *Ibid* 79

<sup>81</sup> KNCHR 12<sup>th</sup> annual report 2015/2016 (2016) 33.

<sup>82</sup> *Ibid* 81

#### **3.4.4 Training and capacity building for HRDs**

Training and capacity building have been a longstanding focus area for the KNCHR. At least since 2014, the KNCHR has conducted numerous training and capacity building activities aimed at enhancing the knowledge and skills of HRDs, especially those working in remote areas. During the 2014/15 financial year, the KNCHR trained 150 HRDs on their rights under domestic and international law as well as how to conduct advocacy. It trained 392 HRDs during the 2017/18 financial year.<sup>83</sup>

KNCHR trainings have also targeted other stakeholders who interact with or are relevant to the work of HRDs, including magistrates, law enforcement officials, and journalists. The trainings have focused on empowering the various stakeholders understand the role and rights of HRDs and what KNCHR could do to facilitate their work. One of these is the training of magistrates and judges based on a memorandum of understanding between the KNCHR and the Judicial Training Institute. This training was informed by the realization that courts imposed stiff penalties and bond or bail terms against HRDs charged with relatively minor offences. The training thus, sought to raise the awareness of judicial officers on the role of HRDs and their operating environment. Following the training, the KNCHR has noted that the courts are granting lenient bond or bail requirements to HRDs. With the renewal of the MoU with the Judicial Training Institute, more trainings of this nature are envisaged to reach a wider pool of magistrates and judges.

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<sup>83</sup> KNCHR Human rights annual report and financial statements 2017/2018 (2018) 2.



**Table 4: Trainings and dialogue platforms organized by KNCHR**

Year	Training/Dialogue
2017/18	<ul style="list-style-type: none"><li>▪ Training of 131 magistrates to understand the role of HRDs</li><li>▪ Training of 392 HRDs on their rights and advocacy</li></ul>
2016/17	<ul style="list-style-type: none"><li>▪ Training of 24 journalists in Busia and Kwale counties on the work of HRDs and the role of the media in facilitating that work</li><li>▪ Training of 50 HRDs in Elgeyo Marakwet and Baringo counties</li></ul>
2015/16	<ul style="list-style-type: none"><li>▪ Two-day retreat with judicial officers and HRDs to discuss the operational environment and legal provisions relating to HRDs</li><li>▪ Establishment of six HRD platforms in Isiolo, Kilifi, Kisumu, Mandera, Nakuru and Uasin Gishu</li></ul>
2014/15	<ul style="list-style-type: none"><li>▪ Training of 150 HRDs</li><li>▪ Training of 60 law enforcement officials</li></ul>

### 3.4.5 Facilitating dialogue with State agencies

In addition to training and capacity building, the KNCHR has helped grassroots HRDs and CSOs to establish networks and platforms for dialogue, interaction or engagement with relevant State agencies, such as law enforcement and judicial officers. These platforms have been used by HRDs to discuss issues of concern with State agencies. During the 2015/16 financial year, such platforms were established in Isiolo, Kilifi, Kisumu, Mandera, Nakuru and Uasin Gishu counties.<sup>84</sup> According to the KNCHR, 'since their establishment, the platforms have become useful in bridging the gap between CSOs and government for greater respect and accountability for human rights'.<sup>85</sup>

The KNCHR has also facilitated meetings in which HRDs meet with other relevant stakeholders to discuss their operational environment and working relationships. During the 2015/16 financial year, for instance, the KNCHR organized a two-day retreat bringing together judicial officers and HRDs.<sup>86</sup> In the 2016/17 financial year, the KNCHR organized a public forum of 25 HRDs, 15 government officials and 10 members of the public on HRDs.<sup>87</sup>

<sup>84</sup> KNCHR Annual report 2015/16 (2016) 20.

<sup>85</sup> *Ibid* 84

<sup>86</sup> KNCHR Annual report 2015/16 (2016) 38.

<sup>87</sup> KNCHR Annual report and financial statements for the period 2016/17 (2018) 23.

### **3.4.6 Public sensitization and awareness raising**

The trainings offered by KNCHR to HRDs have always gone hand-in-hand with broader sensitization of the public on the role of HRDs and their rights. The sensitization is to educate the public on the role and rights of HRDs to gain their support. Sensitization has taken various forms, including public forums and radio talk shows. In 2015/16, the KNCHR held 30 community forums on HRDs in different parts of the country.<sup>88</sup> In 2016/17, it held six radio talks shows in Busia during which HRDs were offered the platform to speak about their work and call for community support.<sup>89</sup>

### **3.4.7 Advocacy on legislation and policy**

Kenya does not have a specific law or policy on the protection of HRDs. The KNCHR has thus, been working with HRDs and CSOs to advocate for the adoption of such a law or policy. In the meantime, the institution partnered with the Kenya National Coalition of Human Rights Defenders and the Office of the Attorney General in 2017 to develop *the Model Human Rights Defenders Policy and Action Plan*. The Policy provides a framework for the protection and creation of a safe and enabling environment for HRDs. It also contains an action plan that identifies the priority areas on safeguarding the rights of HRDs. It was envisaged that the Attorney General would use this model policy to seek support towards the development of a national policy framework for the protection of HRDs. This is yet to happen.

The KNCHR has also been involved in advocacy on other laws and policies relevant to the rights and protection of HRDs. In 2010, it participated in the review of the Witness Protection (Amendment) Bill 2010. The bill was passed into law the same year and it is the enabling legal instrument for the Kenya Witness Protection Agency. The KNCHR has been referring HRDs to the agency for protection.

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<sup>88</sup> KNCHR 12<sup>th</sup> annual report 2015/2016 (2016) 26.

<sup>89</sup> KNCHR Annual report and financial statement for the period 2016/17 (2018) 24.

### 3.4.8 Legal representation and public interest litigation

In addition to mapping the experience of HRDs who are subjected to judicial harassment, the KNCHR often represents the HRDs in court or assists them to engage with law enforcement officials at police stations, or navigate the criminal justice system. Yet, the NHRI acknowledges that for one reason or another, many HRDs represent themselves when they are charged before court. For this reason, it published a self-representation manual for HRDs in 2015. The manual seeks to equip HRDs with the basic knowledge and skills needed to engage with the criminal justice process.

The KNCHR has also engaged in public interest litigation to tackle issues that affect or threaten HRDs at a systemic level. For instance, in the case of *Coalition for Reforms and Democracy and 2 Others v the Republic and 10 Others* it successfully challenged, with other actors, the constitutionality of several provisions of the 2014 Security Laws (Amendment) Act.<sup>90</sup> In another case of *KNCHR and Another v Attorney General and 3 Others*<sup>91</sup>, the KNCHR filed a case against police officers for alleged involvement in an extrajudicial killing.<sup>92</sup> The NHRI has also participated in public interest cases as *amicus curiae* (friend of the court) or as an interested party. For example, it participated in the case concerning the failure of the State to operationalize the PBO Act.<sup>93</sup> In this case, the High Court found that the failure to operationalize the PBO Act was a violation of the Constitution and immediate operationalisation.

## Good practices in the protection of HRDs

- ✔ Conducting empirical studies and mapping of the situation of HRDs, especially in rural and remote areas of the country
- ✔ Publication of thematic studies on HRDs in conflict with the law and the situation of women HRDs

<sup>90</sup> *Coalition of Reform and Democracy (CORD) & 2 Others v Republic of Kenya & 10 Others* (2015) eKLR.

<sup>91</sup> *KNCHR and Another v Attorney General and 3 Others* [2014] eKLR.

<sup>92</sup> *Kenya National Commission on Human Rights & Another v Attorney General & 3 Others* (2014) eKLR.

<sup>93</sup> *Trusted Society of Human Rights Alliance v Cabinet Secretary Devolution and Planning & 3 Others* (2016) eKLR.

- ✔ Initiation of a ‘Human Rights Defenders Fund’ earmarked for safe evacuation of HRDs at risk of imminent danger
- ✔ Training of judicial officers (judges and magistrates) on issues relating to HRDs under a partnership and MoU signed with the Judicial Training Institute
- ✔ Supporting grassroots HRDs and CSOs to establish networks and platforms for dialogue, interaction and engagement with relevant state agencies
- ✔ Development of the Model Human Rights Defenders Policy and Action Plan and the Self-Representation Manual for HRDs
- ✔ Legal representation of HRDs in conflict with the law and participation in public interest litigation involving issues affecting HRDs

### **3.5 Challenges in implementation the Marrakech Declaration**

The work of the KNCHR in ensuring optimal protection for HRDs faces several challenges. These include the following:

- State complacency in establishing legal and institutional framework for the protection of HRDs, including activating key focal persons and departments in government to engage with on issues affecting HRDs. To mitigate this challenge, the KNCHR engages in continuous discussion with the relevant State agencies to build their understanding on the work of HRDs and the need to protect them;
- High level of impunity and abuse of power by security agencies in engagement with HRDs. The KNCHR continues to document and call for accountability in addressing this challenge;
- Lack of resources to implement practical strategies and programs to promote and protect the rights of HRDs, especially women HRDs. A key strategy to deal with this challenge has been partnering with other institutions to leverage their comparative strengths and capacities; and

- Public misunderstanding and negative profiling of HRDs by the media. To mitigate this challenge, the NHRI continues to engage and educate the public using relatively low-budget media platforms.

#### 4.6 Recommendations

- ✔ Continue advocating for the adoption of a national policy and action plan on HRDs;
- ✔ Continue discussion with the relevant State agencies to build their understanding on the work of HRDs and the need to protect them;
- ✔ Continue to document and call for accountability regarding violations of the rights of human rights defenders;
- ✔ Continue to mobilize resources earmarked for HRD protection and continue partnering with other institutions to leverage on their comparative strengths and capacities; and
- ✔ Continue to engage and educate the public using relatively low-budget media platforms on HRD protection.

#### 3.7 Conclusion

The protection of HRDs is already well entrenched and mainstreamed in the work of the KNCHR. The implementation of the Marrakech Declaration has been assimilated into ongoing work. The organization takes a multifaceted approach that ensures that protection issues concerning HRDs are tackled on all possible fronts and with the current lobby for the adoption of the model policy, HRDs will be better protected under a dedicated framework.



# Madagascar

# 4



Police Officers ready to deal with demonstrators in Madagascar. Photo: Frontline Defenders.

## 4.1 Background

Madagascar, the fourth largest island in the world, is located in the Indian Ocean. It gained political independence from the French in 1960 and has an estimated population of 26 million people.<sup>94</sup> The Constitution of Madagascar,<sup>95</sup> which was adopted through a referendum in 2010, provides for the fundamental rights and freedom of the Malagasy people. The various human rights measurement indexes note that the implementation of the Constitution requires more effort. For instance, the Mo Ibrahim IIAG Index ranked the country 31 out of 54 countries, with a score of 49 out of 100.<sup>96</sup> The Index considers four indicators that are safety and rule of law, participation and human rights, sustainable economic opportunity, and human development. Additionally, the UN Human Development Report ranks the country 162 out of 188 countries in 2018.<sup>97</sup> This report considers factors such as human development, inequality, gender development, gender inequality and multi-dimensional poverty. These two rankings demonstrate that Madagascar is struggling to ensure the full realization of rights to the citizens, including HRDs, as protected by the Constitution and international instruments.

To assist the country in furthering its human rights

*To assist the country in furthering its human rights agenda, the country established the Commission nationale indépendante des droits de l'Homme ( CNIDH Madagascar )*

<sup>94</sup> National Statistics of Madagascar <https://www.instat.mg/accueil/madagascar-en-chiffre/> (accessed on 16 July 2020).

<sup>95</sup> English version [https://www.constituteproject.org/constitution/Madagascar\\_2010.pdf?lang=en](https://www.constituteproject.org/constitution/Madagascar_2010.pdf?lang=en) (accessed on 16 July 2020).

<sup>96</sup> Ibrahim Index of African Governance <http://iiag.online> (accessed on 16 July 2020).

<sup>97</sup> UN Development Programme 'Beyond income, beyond averages, beyond today: Inequalities in human development in the 21<sup>st</sup> century' Human Development Report 2019 302.

agenda, the country established the *Commission nationale indépendante des droits de l'Homme* (CNIDH Madagascar) in 2014.<sup>98</sup> This institution has been operational since 2016.<sup>99</sup> This was a turning point in human rights protection and promotion since this institution was the product of several attempts at establishing an independent human rights institution,<sup>100</sup> including a National Council of Human Rights, which received much criticism from the international community.<sup>101</sup>

The NHRI has an elaborate mandate towards the protection of all human rights, including HRDs. This report explores the role of CNIDH Madagascar in the protection of the rights of HRDs under the Marrakech Declaration. It first provides a situational analysis of human rights defenders in Madagascar. Second, it elaborates on the mandate of the CNIDH Madagascar to protect the rights of HRDs. Third, it analyses whether the institution is undertaking activities on HRDs in line with the Marrakech Declaration and fourth, it identifies good practices. It also examines the challenges in protecting the rights of HRDs generally, and more particularly in the implementation of the Marrakech Declaration. Sixth, is a conclusion and recommendations section.

## 4.2 Situational analysis of HRDs

In many instances, the rights of HRDs in Madagascar have been violated. There have been unjustified arrests, prolonged pre-trial detention, persecution and conviction of HRDs who stand up against corruption and other human rights violations<sup>102</sup> such as violence against locals,<sup>103</sup> illegal trafficking and exploitation of natural resources like rosewood and timber,<sup>104</sup> mining that causes environmental hazards,<sup>105</sup> online threats, harassment of women for voicing concerns on the

<sup>98</sup> Law No 2014-007 on the Establishment of an Independent National Commission on Human Rights.

<sup>99</sup> INHCR-Ma <https://www.cnidh-madagascar.org/cnidh/> (accessed on 25 June 2020).

<sup>100</sup> Electoral Institute for Sustainable Democracy in Africa <https://www.eisa.org.za/wep/madagency.htm> (accessed on 25 June 2020).

<sup>101</sup> Preamble of Law No 2014-007.

<sup>102</sup> Amnesty International 'Madagascar: Weak human rights protection' Submission for the UN Universal Periodic Review, 34<sup>th</sup> Session of the UPR Working Group, November 2019, 9.

<sup>103</sup> Thomas Razafindremaka, militant des Droits de l'Homme, Arrêté le 16 février dernier à Ihoisy' Midi Madagasikara 19 février 2020 (<http://www.midi-madagasikara.mg/politique/2020/02/19/thomas-razafindremaka-militant-des-droits-de-homme-arrete-le-16-fevrier-dernier-a-ihosy/>) accessed on 16 July 2020).

<sup>104</sup> Amnesty International 'Madagascar: Next government must end human rights violations' 3 November 2018 <https://www.amnesty.org/en/latest/news/2018/11/madagascar-next-government-must-end-human-rights-violations/> (accessed on 16 July 2020); Amnesty International 'Madagascar: Reverse the human rights downwards spiral' 10 July 2017 <https://www.amnesty.org/en/latest/news/2017/07/madagascar-reverse-the-human-rights-downward-spiral/> (accessed on 16 July 2020)

<sup>105</sup> CIVICUS 'Republic of Madagascar: Joint submission to the UN Universal Periodic Review' 34<sup>th</sup> Session of the UPR Working Group 28 March 2019 3.



poor human rights and governance situation in the country.<sup>106</sup>

In addition to being guided by the principles contained in the UDHR, the UN Declaration on HRDs, and the Marrakech Declaration, Madagascar has ratified several treaties at the regional and international level, many of which provide for the protection of the rights of HRDs as demonstrated below:

**Table 5: Ratification status of human rights treaties by Madagascar**

Treaty	Date of ratification/accession
International Covenant on Civil and Political Rights	21 June 1971
International Covenant on Economic, Social and Cultural Rights	22 September 1971
Convention on the Rights of the Child	19 March 1991
Convention on the Elimination of All Forms of Discrimination against Women	17 March 1989
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	13 December 2005
Convention on the Rights of Persons with Disabilities	12 June 2015
African Charter on Human and Peoples' Rights	19 March 1992
African Charter on the Rights and Welfare of the Child	24 June 2005

In addition to treaties at the international level, the Constitution of Madagascar contains several provisions that apply to HRDs. The Preamble of the Malagasy Constitution recognizes *'the respect for and protection of fundamental freedoms and rights'* as a condition for the *'development of the personality and identity of all Malagasy'*. Article 1 further states that *'democracy and the principle of the rule of law'* is the foundation of the country.

Article 6 of the Constitution envisages freedom of expression, equality before the law and enjoyment of fundamental rights and freedoms protected by the law without discrimination on several grounds, including on one's opinion and gender. Article 10 further elaborates on the right to freedom of expression and opinion by stating the following:

<sup>106</sup> Front Line Defenders 'Online threats against human rights defender Mbolatiana Raveloarimsa' 28 August 2019 <https://www.frontlinedefenders.org/en/case/online-threats-against-human-rights-defender-mbolatiana-raveloarimsa> (accessed on 16 July 2020).

*The freedoms of opinion and of expression, of communication, of the press, of association, of assembly, of circulation, of conscience and of religion are guaranteed to all and may only be limited by the respect for the freedoms and rights of others, and by the imperative of safeguarding the public order, the national dignity and the security of the State.*

However, this freedom contains limitation clauses that were translated into the much-debated<sup>107</sup> Communication Code of 2016.<sup>108</sup> The government used these clauses to limit the rights of the citizens by arresting journalists and activists who spoke about misconduct of public authorities.<sup>109</sup> The Communication Code contains several provisions that limit the freedom of the press and media and freedom of speech. For instance, Article 85 that requires the owner of a media company to be a chief publisher. This allows for harassment of opposition presidential candidates who own media companies. Moreover, it gives the government more powers of discretion to deny media licenses, impose fines and seize assets. In addition, the government used laws on libel, slander, or defamation to restrict freedom of expression.

Article 8 protects the individual from torture, inhuman or degrading treatments while Article 9 protects the right to liberty. These Articles are applicable in challenging arbitrary arrest, detention and other forms of ill treatment by security officers during detention to silence HRDs.

In addition to the constitutional provisions, recognizing the vulnerabilities of HRDs in Madagascar, stakeholders have drafted a Bill on HRDs (HRDs Draft Law). This has been validated by CSOs and the CNIDH Madagascar and submitted to the Minister of Justice for furtherance to Parliament for enactment. If enacted, this law will reinforce the protection of HRDs. The objective of the law is to delineate the obligations that the State has towards HRDs and the duties that the HRDs

<sup>107</sup> Library of Congress 'Madagascar: Controversial Mass Media Code Approved' 9 September 2006 (<https://www.loc.gov/law/foreign-news/article/madagascar-controversial-mass-media-code-approved/> (accessed on 16 July 2020)).

<sup>108</sup> Law No 2016-029: French version <http://www.justice.mg/wp-content/uploads/2019/02/L2016-029.pdf> (accessed on 16 July 2020).

<sup>109</sup> United States Department of States 'Country Reports on Human Rights Practices for 2019: Madagascar' 2019 10.

have towards the State.<sup>110</sup> It defines HRDs as follows:<sup>111</sup>

- any person who is part of a legally formed association, working for the promotion and protection of human rights;
- any person or group of persons not belonging to an association, who, on an *ad hoc* basis or as a habitual occupation, works in the field of the promotion and protection of human rights;
- institutions and bodies which, within the framework of their mission, work for the promotion, protection and realization of human rights.

The Bill further states that the status of HRD is presumed when one is engaging in an activity promoting and protecting human rights as prescribed by national and international instruments.

Moreover, it imposes an obligation on the State to protect national or foreign HRDs in the execution of its function, while ensuring that its agents do not arrest or detain such persons if they are performing their duties in line with the law.<sup>112</sup> The police cannot search the domicile of an HRD or arrest them therein without an express warrant by the District Attorney.<sup>113</sup> The law also protects the freedom of assembly and association and the right to information, and provides that HRDs can organize sensitization activities. In addition to the rights, it enumerates on the duties of HRDs. As can be noted, this is a law, once enacted, that will reinforce the protection framework for HRDs in Madagascar.

From the above examples, the legal framework for the protection of HRDs in the country is flawed despite the constitution guaranteeing rights. Aware of the situation of HRDs, the international community has required Madagascar to ensure their protection. For instance, the Human Rights Committee has recommended the State to ensure that HRDs are 'protected against threats

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<sup>110</sup> Article 1 of the HRDs Draft Law.

<sup>111</sup> Article 3 of the HRDs Draft Law.

<sup>112</sup> Articles 4 and 5 of the HRDs Draft Law.

<sup>113</sup> Article 6 of the HRDs Draft Law.

and intimidation’ and to ‘investigate, prosecute and convict perpetrators of harassment, threats and intimidation.’<sup>114</sup> The United States, through the Universal Periodic Review mechanism, recommended the State to ‘*cease the harassment, arbitrary detention and intimidation of human rights defenders exercising their right to freedom of expression, including environmental activists.*’<sup>115</sup>

Several stakeholders at the domestic level can assist in ensuring the protection and promotion of the human rights of HRDs and the CNIDH Madagascar is one of them as discussed below.

#### **4.3 Mandate to protect HRDs**

Law No 2014-007 established the CNIDH Madagascar in implementing recommendations from the international community to ensure an independent national human rights institution in line with the Paris Principles.<sup>116</sup> The CNIDH Madagascar, which enjoys ‘A’ status since May 2019, has been described as a specialized institution, which has the mandate to promote and protect human rights.<sup>117</sup> To ensure its independence, the establishing law provides that the CNIDH Madagascar is an apolitical and independent institution, and cannot be subjected to undue influence in the execution of its functions, including injunctions.<sup>118</sup> It confers the members of the NHRI the status of HRDs as stipulated by the UN Declaration on Human Rights Defenders.<sup>119</sup> The 10 commissioners<sup>120</sup> are employed on a full-time basis to ensure that they react efficiently and timely to human rights violations.<sup>121</sup> To ensure the proper functioning, the law provides that no organ of the State can seek an injunction to halt the activities of the institution in executing its mandate.<sup>122</sup>

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<sup>114</sup> Human Rights Committee ‘Concluding observations on the fourth periodic report of Madagascar’ 22 August 2017 CCPR/C/MDG/CO/4 Paragraphs 49 and 50.

<sup>115</sup> Human Rights Council ‘Review of the Working Group on the Universal Periodic Review’ 17 December 2019 A/HRC/43/13 Paragraph 122.17.

<sup>116</sup> Preamble of Law No 2014-007.

<sup>117</sup> *Ibid* 116

<sup>118</sup> Article 1 of Law No 2014-007.

<sup>119</sup> Article 5 of Law No 2014-007.

<sup>120</sup> Article 6 of Law No 2014-007.

<sup>121</sup> Preamble of Law No 2014-007.

<sup>122</sup> *Ibid* 121

The CNIDH Madagascar has the mandate to:

- promote and protect all human rights without any exception;
- provide, in an advisory capacity, to the Executive, the Legislative, the Supreme Court and any other competent body, either at the request of the authorities concerned, or by using its power of self-referral, opinions, recommendations, proposals and reports on any question relating to the promotion and protection of human rights;
- while respecting its independence, formulate opinions to the Executive concerning fundamental freedoms and human rights, on the rights of women, children, people with disabilities, the elderly and any other vulnerable group;
- draw up reports on situation of human rights and fundamental freedoms at the national level in general, as well as on more specific questions;
- promote and ensure the harmonization of national laws, regulations and practices with sub-regional, regional and international human rights instruments, to which the Malagasy State is a party, and ensure their effective implementation;
- encourage the ratification or accession to regional and international human rights instruments and ensure their implementation;
- challenge the Executive and its branches on situations of human rights violations throughout the country, propose any initiative to end it and, if necessary, issue an opinion on the positions and reactions of the authorities concerned;
- examine the laws and regulations in force as well as the draft laws and proposals and make the appropriate observations with a view to guaranteeing that these texts comply with fundamental principles of human rights; recommend, if necessary, the adoption of new legislation, the adaptation of existing legislation and regulations, and if necessary their modification;
- cooperate with the United Nations and any other United Nations body,

sub-regional and regional institutions as well as national institutions of other countries, competent in the fields of promotion and protection of human rights;

- contribute to the drafting of the reports that the State must present to the organs and committees of the United Nations, as well as to the sub-regional, regional institutions, in application of its treaty obligations and, if necessary, issue an opinion on this subject in respect for its independence;
- promote awareness of human rights and fight against all forms of violation of human rights, by raising public awareness, in particular through information, education and by appealing, among others, to all media outlets;
- be associated with the development of human rights education and research programs and participate in their implementation in schools, universities, social and professional circles;
- receive and examine individual and collective complaints and requests regarding human rights violations and seek an amicable settlement through conciliation or forward them to all competent authorities if necessary.

This mandate is broad and gives the NHRI a wide margin of operation. In addition to the above, it has the mandate to approach relevant authorities in instances of:<sup>123</sup> torture, inhumane and degrading treatment during pre-trial detentions and arrests; clandestine arrest or detentions; enforced disappearances or secret transfers; racial discrimination, child labor and human trafficking; and freedom of opinion, expression and protest. The CNIDH Madagascar also hosts the National Independent Mechanism on the Prevention of Torture and Other Forms of Cruel, Inhumane or Degrading Treatment since December 2018<sup>124</sup> as recommended by the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

<sup>123</sup> Articles 4 of Law No 2014-007.

<sup>124</sup> Law No 2018-028 amending Article 2 of Law 2014-007.

Victims, NGOs or any interested physical or moral person can lodge an individual or collective complaint with the CNIDH Madagascar.<sup>125</sup> Such a complaint can be made in writing or verbally at the Office through description of the alleged violation, with the name and address of the complainant.<sup>126</sup> It cannot receive a complaint already before another jurisdiction, including administrative instances.<sup>127</sup> However, the CNIDH Madagascar can intervene and, either advise or provide recommendations, when other bodies are committing human rights violations.

Matters before the CNIDH Madagascar are confidential and free, with them being heard in closed sessions.<sup>128</sup> To ensure independence of the Commission, the victim or the author of the complaint can request the removal of a commissioner from the bench if:<sup>129</sup>

- he or his spouse has a personal interest in the matter;
- he is a parent or ally up to and including the 4<sup>th</sup> degree of one of the accused persons, or called to testify or interested party as a victim or witness in the case under investigation;
- there is friendship or enmity pronounced between him and one of the parties;
- he has already given his opinion in the case;
- one of the accused persons or victims is attached to his service.

The law establishing the CNIDH Madagascar has provided for several safeguards to ensure that the institution executes its mandates without any challenges.

Although the law does not specifically mention HRDs, its mandate covers HRDs due to the nature of their work.

The following section assesses the initiatives of the CNIDH Madagascar towards

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<sup>125</sup> Article 21 of Law No 2014-007.

<sup>126</sup> *Ibid* 125

<sup>127</sup> Article 23 of Law No 2014-007.

<sup>128</sup> Article 24 of Law No 2014-007.

<sup>129</sup> Article 25 of Law No 2014-007.

implementation of the Marrakech Declaration as well as to determine whether it is indeed implementing its mandates in line with international human rights standards.

#### **4.4 Implementation of the Marrakech Declaration**

The Marrakech Declaration provides several steps that NHRIs must take to ensure the protection of HRDs, including women HRDs. The CNIDH Madagascar participated in the Conference that led to the adoption of the Marrakech Declaration and their missions coincide with the recommendations therein.

For this analysis, we elaborate on the activities undertaken by the CNIDH Madagascar and identify which of the following three categories in the Marrakech Declaration the activity falls under: promotion, protection, and cooperation and partnerships. We also highlight the major activities before 2018, the year of adoption of the Marrakech Declaration, to generally assess the response of the NHRI towards the situation of HRDs.

##### **4.4.1 Awareness raising on the situation of HRDs**

The CNIDH Madagascar has organized and participated in many sensitization campaigns in prisons, schools and universities in different parts of the country. They have also conducted sensitization forums on television and radio. It has organized, on its own and in partnership with other institutions, several events that focus on the protection and promotion of the rights of HRDs.

On 6 December 2017, to celebrate the human rights week, the CNIDH Madagascar, in collaboration with the Office of the High Commissioner for Human Rights (OHCHR) in Madagascar, the European Union, the Royal Norwegian Embassy in Madagascar and the Ministry of Justice, organized a colloquium on ‘The situation of human rights defenders in Madagascar’. This colloquium highlighted the vulnerabilities of HRDs in rural areas and advocated against the illegal exploitation



of natural resources. It emphasized how silencing HRDs and preventing them from carrying out their work deprives thousands of victims of human rights violations justice. It concluded that in view of the difficult context in which defenders operate at the national level, it is necessary to encourage dialogue and cooperation between national key actors, in particular public authorities and members of civil society to mitigate the risks of conflict, and to allow for better protection of defenders and more broadly respect for human rights.

As part of human rights week, and on the occasion of the 71<sup>st</sup> anniversary of the Universal Declaration of Human Rights, the OHCHR, in collaboration with the Ministry of Justice, the CNIDH Madagascar, CSOs, as well as technical and financial partners launched the second edition of the 'Madagascar Human Rights Prize', which recognizes the work of HRDs working in the field to ensure effective protection and promotion of human rights, in the spirit of the UDHR. The first and second prizes were awarded to two women lawyers for their commitment to the defence of the rights of HRDs in Madagascar.

In 2019, in collaboration with the *Organisation internationale de la Francophonie*, the CNIDH Madagascar conducted a study on internal migration and its impact on human rights in Madagascar. On 6 August 2020, it issued a press statement raising concerns on the plight of HRDs in the country while making reference to threats, harassments, detentions and arrests.<sup>130</sup> Such events, publications and press releases fall under the promotion, and cooperation and partnerships aspects of the Marrakech Declaration.

#### **4.4.2 Interventions in specific cases**

In addition to investigating complaints on arbitrary arrests and detention and police brutality, there are several instances where the NHRI intervened when HRDs were arrested. The intervention in the case of Clovis Razafimalala, who is known for the fight against rosewood trafficking. He was arrested on

<sup>130</sup> *Madagascar: Les défenseurs des droits de l'homme en danger?* RFI 7 August 2020 <https://www.rfi.fr/fr/afrique/20180807-madagascar-defenseurs-droits-homme-danger> (accessed on 17 July 2020).

16 September 2016 in Maroantsetra (northeast of Madagascar) for 'inciting rebellion' and 'destroying administrative buildings'. The CNIDH Madagascar intervened in this case as follows:

- Joined the campaign launched by Amnesty International to denounce illegal detention based on a false accusation because of the activists' environmental activities;
- Interviewed the Minister of Justice about the detention of Mr Clovis Razafimalala on 20 March 2017 and 21 April 2017;
- Visited Mr Razafimalala while in detention on 23 March 2017. He had been in preventive detention since 16 September 2016;
- Wrote letters to the Minister of Justice (10 and 21 April 2017) recommending his provisional release, that witnesses be heard and that his trial takes place in Maroantsetra or Antananarivo rather than in Tamatave where he was transferred immediately after his arrest; and Observed the trial on 24 June 2017.

Another case involves Rajoany also known as Raleva who was arrested and sentenced to two years suspended imprisonment in September 2017 for demanding gold exploitation license from some individuals. The CNIDH Madagascar recognized him as an HRD and intervened by appealing his conviction and addressing a letter to the Minister of Justice to denounce the abuse of power by the Head of District.

On 16 February 2020, Thomas Razafindremaka, an HRD who fights against corruption, was arrested and held in pre-trial detention for extortion, usurpation of function and fraud. He alerted civil society that his detention was linked to denouncing corruption and torture perpetrated by the Head of the *Gendarmerie* to the Secretary of State for Defence in charge of *Gendarmerie*. He had also lodged a complaint against the President of the District Electoral Commission and a candidate for corruption during the legislative elections of 27 May 2019.

Moreover, on 6 January 2020, Thomas Razafindremaka wrote a letter to the

Ministry of Justice pointing out to the poor work ethics of some officials of the Lhosy Court, including investigating judges, the President of the court and the Prosecutor. In this instance, the President of the CNIDH Madagascar wrote to the First President of the Supreme Court, in support of the actions of civil society, asking for the case to be heard by the court in Antananarivo, instead of the Lhosy Court, which was approved by the Supreme Court. Thomas Razafindremaka was released on 27 February 2020. The intervention in these specific cases can be classified under the protection and promotion aspects of the Marrakech Declaration.

#### **4.4.3 Norm development concerning HRDs**

Using international human rights standards, the CNIDH Madagascar participated in the development of the Bill on HRDs. This draft law was discussed at various levels between July and October 2018. This Bill was prepared under the aegis of the OHCHR in Madagascar with the support of the Minister of Justice and the participation of relevant stakeholders such as CSOs and the CNIDH Madagascar. The NHRI wrote a proposal which was the basis for reflections and discussions. Working closely with the Human Rights and International Relations Unit of the Ministry of Justice, they are advocating for the submission of the Bill on HRDs to Parliament for debate and enactment. The participation of the CNIDH Madagascar in the drafting and advocating for adoption is in line with the promotion and protection sections of the Marrakech Declaration.

Additionally, in 2019, the NHRI participated in the elaboration of the Ethics Charter for electoral candidates promoted by civil society organization, ROHY.

#### **4.4.4 Women HRDs**

Although the CNIDH Madagascar lacks specific protective measures for the protection of women HRDs, it produced a booklet on women's rights in 2019. The booklet is an awareness and training toolkit for women's rights, not only within

the institution but also for private and public entities. Moreover, in 2019, CNIDH Madagascar participated in a session of the Criminal System Reform Commission on the drafting of a law against gender-based violence.

#### **4.4.5 Participation at the international level**

In November 2019, the CNIDH Madagascar participated in the UPR process and raised concerns about the following: conditions of detention at the penitentiary establishments in Madagascar (prison overcrowding, women detained for acts attributable to their spouse, long preventive detentions); the fight against popular reprisals and private justice (due to the loss of confidence of the population in the institutions of the State as the result of corruption).

## **Good practices in the protection of HRDs**

- ✔ Participation in norm development concerning HRDs such as the law on HRDs, and law against gender-based violence
- ✔ Establishment of the National Independent Mechanism on the Prevention of Torture
- ✔ Active involvement in cases concerning HRDs whose rights are being violated, including engaging in dialogue with the Minister of Justice and providing assistance for legal representation
- ✔ The members of CNIDH Madagascar are classified as HRDs and this gives them a better protection
- ✔ Security of tenure in law for the members of the CNIDH-Madagascar diminishes fears of removal or dismissal;
- ✔ The multifaceted approach of the NHRI, including through courts, direct engagement with authorities like the Ministry of Justice, CSOs and the media enhances protection of HRDs
- ✔ Collaboration with other stakeholders for events and publications on HRDs
- ✔ Press releases on the situation of HRDs

- ✔ Participation in radio and television shows
- ✔ Organization of competitions to recognize HRDs
- ✔ Participation at the international level through the UPR process.

## 4.5 Challenges in implementing the Marrakech Declaration

Despite the activities of the CNIDH Madagascar to ensure the implementation of the Marrakech Declaration, the institution faces challenges. Some of these challenges are institutional and /or influenced by other factors as discussed below.

### 4.5.1 Non-accountability of police officers

In Madagascar, it is difficult to hold the police responsible for perpetration of human rights violations. One of the main obstacles for accountability (in addition to corruption) is Article 17 of the Law 96-026 of 2 October 1996, which states that *'[e]xcept in cases of flagrant crimes and offences, the prosecution of police officers is subject to the authorization of the Minister responsible for the National Police'*. This blocks legal proceedings against police officers in many instances since it is a lengthy procedure without reasonable expectation of success. This has deterred complainants. The CNIDH Madagascar has repeatedly asked the Minister of Public Security to sign the necessary prosecution orders so that the violations perpetrated by police officers do not go unpunished.

### 4.5.2 Reliance on Parliament for budgetary allocation

The Preamble of Law No 2014-007 establishing the CNIDH Madagascar indicates that it is an independent institution. However, its budget is part of the country's budget, therefore, it relies on Parliament for allocation – a factor that may injure independence and implementation of activities, including protection of HRDs.<sup>131</sup> The day-to-day running expenses are financed by the government budget while other sources of funding can finance specific activities. This was also raised by the

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<sup>131</sup> Article 29 of Law 2014-007.

Human Rights Committee, which recommended that the country should ‘ensure that the [NHRI] is provided, as soon as possible, with an independent budget that is sufficient for it to implement its mandate in full’.<sup>132</sup>

All public money is included in the *Loi de Finances* which Parliament enacts every year. It is impossible for any institution to get a budget outside the framework of the *Loi de Finances*. The Human Rights Committee in the year 2017, when the CNIDH Madagascar budget had been included in the *Loi de Finances* voted by Parliament, but was blocked by the Ministry of Finance, by order of the President of the Republic. The President was in conflict with the NHRI. The stalemate was resolved after an intervention of international donors, and since 2018 CNIDH Madagascar has been using its budget as independently as possible. To implement some of its activities, the NHRI secures funding from development partners without jeopardizing its independence.<sup>133</sup>

#### **4.5.3 Non-ratification of Maputo Protocol**

Paragraph 20(A)(a) of the Marrakech Declaration recommends NHRIs to call on States to ratify all international human rights instruments. As demonstrated above, Madagascar has ratified several international instruments related to human rights. Madagascar ratified CEDAW in 1989. However, it has not ratified the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) despite having signed in 2004. One might argue that the CEDAW offers enough protection to women HRDs. However, the Maputo Protocol is an African document that expands on the legal framework for the protection of women’s rights. For instance, it is the first legally binding document that defines violence against women,<sup>134</sup> and imposes an obligation on States to take steps to ensure that violence against women is eliminated and requires States to punish perpetrators.<sup>135</sup> It also provides for sexual and

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<sup>132</sup> Human Rights Committee ‘Concluding observations on the fourth periodic report of Madagascar’ adopted on 22 August 2017 CCPR/C/MDG/CO/4 Paragraphs 7 and 8.

<sup>133</sup> Article 30 of Law 2014-007.

<sup>134</sup> Article 1(j) of the Maputo Protocol.

<sup>135</sup> Article 4 of the Maputo Protocol.

reproductive rights of women,<sup>136</sup> including medical abortion in certain cases. These Articles, in addition to the other ground-breaking provisions of the Maputo Protocol can be used by women HRDs to seek remedy if subjected to violence or to advocate for abortion, which is criminalized in Madagascar.

Furthermore, ratification of the Maputo Protocol will allow women HRDs to have access to the African human rights bodies such as the *African Commission on Human and Peoples' Rights* and the African Court on Human and Peoples' Rights (African Court) in case of violations. In August 2020 the CNIDH Madagascar wrote to the Minister of Foreign Affairs advocating for the ratification of the Ouagadougou Protocol on the African Court for Human and Peoples' Rights, as well as making a declaration under Article 34(6) of the said Protocol. This declaration will allow for HRDs, including women, to have direct access to the African Court in the event their human rights are violated.

The CNIDH Madagascar has undertaken activities relating to women's rights such as the booklet on women's rights and participation in the law against gender-based violence.

In the course of its annual reports to Parliament, the NHRI has repeatedly advocated for the ratification of the Maputo Protocol. Every time, however, some women parliamentarians have rejected the call citing Article 14 on religious grounds.

#### **4.5.4 Delay in enacting the draft law on HRDs**

As demonstrated in the above sections, the CNIDH Madagascar, in collaboration with other stakeholders, including the Minister of Justice, finalized a Bill on HRDs in October 2018. This draft is comprehensive and central to the protection of HRDs since, amongst others, it provides a broad definition of HRDs. This is important since it can be used as a basis for CNIDH Madagascar and other stakeholders to ensure that the human rights of HRDs are effectively protected. However, since

<sup>136</sup> Article 14 of the Maputo Protocol.

2018 the draft has been with the Human Rights and International Relations Unit of the Ministry of Justice and has not been presented to Parliament. The NHRI has advocated for the adoption of the law, without success. This delay creates a legal gap and in a way restricts the NHRI in executing its mandates towards HRDs.

#### **4.5.5 Vulnerable groups**

The CNIDH Madagascar has been very vocal about instances of human rights violations of HRDs. However, as per the instances listed above, it has not intervened in any case of women HRDs even when there has been alleged violations. Some of the violations reported include online threat and harassment of women HRDs. One might argue that it has intervened only in cases where HRDs were arrested and detained. However, online threats and harassment of women HRDs are equally important since they can cause psychological suffering and fear. The lack of focus on women HRDs can be attributed to the fact that trainings for staff of the CNIDH Madagascar focus on human rights generally, without focusing on women HRDs specifically. Additionally, physical access to CNIDH Madagascar premises is challenging for persons with disabilities since it is in a building with no lifts.

#### **4.5.6 Absence of focal point to deal with groups at risk**

One of the recommendations of the Marrakech Declaration is the setting up of 'efficient and robust early warning mechanisms and focal points within NHRIs to deal with groups at risk such as HRDs, including women.<sup>137</sup> At the moment, the NHRI has a Protection Unit responsible for all the complaints lodged. The complaint is registered in the register. A commissioner to whom the file is assigned is responsible for the pre-processing, which consists of presenting a file of the case and proposing avenues for resolution of the case. The pre-processed case is presented to the Assembly for discussion and validation of the immediate measures to be taken (notifications of the parties to the dispute,

<sup>137</sup> Paragraph 20(B)(c) of the Marrakech Declaration.



convening of the parties out of respect for the adversarial principle, conciliation if necessary, investigation in the field, questioning of the authorities concerned). The commissioner or the sub-commission responsible for the file deals with the case and follows up on the recommendations made after.

In the event of an emergency, an extra-ordinary session of the Assembly of the CNIDH- Madagascar is convened to urgently decide on whether the institution will proceed with the issue. Such a mechanism, even if convened on an emergency basis, can delay since the protection unit might have a backlog and cannot, therefore, fast track cases on HRDs. Moreover, the generalized nature of the complaint mechanism might overlook the entrenched vulnerabilities that women HRDs face in urgent medical attention and counselling in cases of sexual violence.

#### **4.6 Recommendations**

- ✔ Sensitize all stakeholders on the Marrakech Declaration;
- ✔ Intensify advocacy on the ratification of the Maputo Protocol;
- ✔ Adopt a guideline within the CNIDH Madagascar to implement the Marrakech Declaration;
- ✔ Create a focal person, desk, department/working group to deal with cases concerning HRDs, including women. Such a focal person/working group must undertake training on HRDs, including the specific vulnerabilities of women HRDs;
- ✔ Provide training to HRDs, including women HRDS, on the laws and policies applicable and the avenues available to them in instances of human rights violations;
- ✔ Provide training and engage in sensitisation campaigns aimed at the police and the courts on the rights of HRDs, including women;
- ✔ Ensure that the CNIDH Madagascar is sensitive to vulnerabilities and take steps to make the CNIDH Madagascar more accessible for persons

with disabilities;

- ✔ Translate the Declaration on HRDs in local languages and develop simplified/summarized versions and disseminate it widely; and
- ✔ Establish and strengthen partnership and collaborating with different stakeholders concerning HRDs promotion and protection with a specific focus on special interest groups such as women HRDs.

#### **4.7 Conclusion**

The CNIDH Madagascar has several mandates that extend to HRDs. Being an HRD, the NHRI has been active on issues concerning HRDs even before the adoption of the Marrakech Declaration. The Marrakech Declaration provides a better framework and basis for developing programmes on the protection of HRDs. Nevertheless, the institution still faces challenges in implementing all the recommendations of the Marrakech Declaration, including adoption of a dedicated law on HRDs.



Protest against crackdown on social media and human rights defenders in Morocco. Photo: Human Rights Watch.

## 5.1 Background

The Kingdom of Morocco, a country in the northern part of Africa, has a population of about 36 million<sup>138</sup> and its official languages are Arabic and Tamazight.<sup>139</sup> The country is a 'constitutional, democratic, parliamentary and social monarchy',<sup>140</sup> with the Prime Minister being the Head of Government and the King being the Head of State.

In 2011, as part of the reforms launched in the country aiming at strengthening democracy and rule of law, the King appointed a commission to draft a new constitution, which was adopted on 1 July 2011. Major human rights and democracy indices show that there is still work to be done to reinforce human rights. For instance, the 2020 Mo Ibrahim IIAG Index ranked the country 10 out of 54 countries, with a score of 61 out of 100,<sup>141</sup> which was a progress compared to 2019 when the country was ranked 15.<sup>142</sup> The Index considers four indicators that are safety and rule of law, participation and human rights, sustainable economic opportunity, and human development.

Additionally, the UN Human Development Report ranks the country 121 out of 188 countries in 2019.<sup>143</sup> This report considers factors such as

*In 2011, as part of the reforms launched in the country aiming at strengthening democracy and rule of law, the King appointed a commission to draft a new constitution, which was adopted on 1 July 2011.*

<sup>138</sup> National Centre of Documentation Morocco [https://www.hcp.ma/Projections-de-la-population-totale-du-Maroc-par-age-simple-et-sexe-2014-2050\\_a2209.html](https://www.hcp.ma/Projections-de-la-population-totale-du-Maroc-par-age-simple-et-sexe-2014-2050_a2209.html) (accessed on 22 July 2020).

<sup>139</sup> Article 5 of the Constitution of Morocco.

<sup>140</sup> Article 1 of the Constitution of Morocco.

<sup>141</sup> <https://mo.ibrahim.foundation/iiag/downloads> (accessed on 3 December 2020).

<sup>142</sup> Ibrahim Index of African Governance <http://iiag.online> (accessed on 16 July 2020).

<sup>143</sup> UN Development Programme 'Beyond income, beyond averages, beyond today: Inequalities in human development in the 21<sup>st</sup> century' Human Development Report 2019 305.

human development, inequality, gender development, gender inequality and multi-dimensional poverty. Hence, despite making progress, the country is facing challenges in ensuring that human rights are fully implemented, especially social and cultural rights, such as the right to education and the right to health.

The National Human Rights Council of Morocco (CNDH-Ma), which replaced its predecessor, the Consultative Council on Human Rights (CCDH), was established in May 1990 and was reformed several times, the most recent of which was in February 2018 by Law 76-15 reorganizing the CNDH-Ma.<sup>144</sup> It is a constitutional institution for the protection, promotion and defense of human rights and freedoms in Morocco.<sup>145</sup> It has been accredited with 'A' status since 1999, testifying to its full compliance with the Paris Principles.

This section of the report assesses the extent to which the NHRI includes the promotion and protection of the rights of HRDs in the execution of its mandates, using the Marrakech Declaration. It first provides a situational analysis on the laws of human rights defenders in Morocco. Second, it elaborates on the mandates of the CNDH-Ma to protect the rights of HRDs. Third, it analyses whether the institution is operating in line with the provisions of the Marrakech Declaration and fourth, it identifies good practices. Fifth, it examines the challenges in protecting the rights of HRDs generally, and more particularly in the implementation of the Marrakech Declaration. Sixth, there is a conclusion and recommendations section.

## **5.2 Laws protecting the human rights of HRDs in Morocco**

Morocco has ratified all core international human rights instruments, many of which provide for the protection of the rights of HRDs.

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<sup>144</sup> [http://www.sgg.gov.ma/Portals/0/lois/Loi\\_76.15\\_Fr.pdf?ver=2018-07-19-161236-017](http://www.sgg.gov.ma/Portals/0/lois/Loi_76.15_Fr.pdf?ver=2018-07-19-161236-017) (accessed on 24 December 2020).

<sup>145</sup> Article 161 of the Constitution of Morocco.

**Table 6: Ratification status of human rights treaties by Morocco**

<b>Treaty</b>	<b>Date of ratification/accession</b>
International Covenant on Civil and Political Rights	3 May 1979
International Covenant on Economic, Social and Cultural Rights	3 May 1979
Convention on the Rights of the Child	3 May 1979
Optional Protocol to the CRC on the Involvement of Children in Armed Conflict	22 May 2002
Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography	2 October 2001
Convention on the Elimination of All Forms of Discrimination against Women	21 June 1993
Convention on the Elimination of All Forms of Racial Discrimination	18 December 1970
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	21 June 1993
Optional Protocol to CAT	24 November 2014
Convention on the Protection of the Rights of all Migrant Workers and Members of their Families	21 June 1993
Convention for the Protection of All Persons from Enforced Disappearance	14 May 2013
Convention on the Rights of Persons with Disabilities	8 April 2009

Morocco has not ratified some regional human rights instruments, including African Charter on Human and Peoples' Rights (African Charter). As Morocco rejoined the African Union in 2017, the NHRI recommended in its annual report of 2019 that this instrument be ratified.<sup>146</sup> The government programme 2016-2021 states that the government will accede to the African Charter on Human and Peoples' Rights.<sup>147</sup>

Besides international law, the domestic laws in Morocco also protect the rights of HRDs, the primary one being the Constitution.<sup>148</sup> Article 6 of the Constitution of Morocco stipulates that public authorities work towards creating an environment where both men and women can benefit from liberty and equality, and participate in political, economic, cultural and social life. Article 12 protects the right of CSOs and NGOs to associate freely in line with the Constitution and the prevailing

<sup>146</sup> [https://www.cndh.org.ma/sites/default/files/rapport\\_annuel.pdf](https://www.cndh.org.ma/sites/default/files/rapport_annuel.pdf) (accessed on 24 December 2020).

<sup>147</sup> <http://muat.gov.ma/?q=fr/article/programme-gouvernemental-2016-2021> at (accessed on 24 December 2020)

<sup>148</sup> English version [https://www.constituteproject.org/constitution/Morocco\\_2011.pdf](https://www.constituteproject.org/constitution/Morocco_2011.pdf) (accessed on 20 July 2020).

laws. Article 19 provides that women and men in the country enjoy equally, civil, political, social, cultural and environmental rights and freedoms. It further provides for equality and parity between women and men. The Constitution protects the right to security,<sup>149</sup> right to physical or moral integrity,<sup>150</sup> right to be protected from torture and cruel, inhuman and degrading treatment,<sup>151</sup> right to be protected from arbitrary arrests and detention,<sup>152</sup> rights to privacy of life, of communication, and movement,<sup>153</sup> freedom of thought, opinion and expression,<sup>154</sup> freedom of the press,<sup>155</sup> and the right to gather, associate and peacefully protest.<sup>156</sup> These rights involve protection of HRDs, including women.

The Constitution stipulates roles for civil society, including human rights defenders. Thus, Articles 14 and 15 provide for participatory democracy by way of new rights including the right to submit legislative proposals and petitions to public authorities.

Article 136 provides that regional and territorial organization rests upon the principles of free administration, cooperation and solidarity. It assures the participation of the populations concerned in the management of their affairs and favours their contribution to comprehensive and lasting human development. Article 139 stipulates that participative mechanisms of dialogue and consultation are set up by the regional councils and councils of other territorial collectivities to boost the participation of citizens and associations in the elaboration and follow-up of development programmes. Citizens and associations can exercise the right of petition with a view to demanding the inclusion of a relevant question in the council's agenda.

These provisions allow citizens, who may also be human rights defenders, to engage with the authorities to improve human rights, especially by way of participative democratic mechanisms.

<sup>149</sup> Article 21 of the Constitution of Morocco.

<sup>150</sup> Article 22 of the Constitution of Morocco.

<sup>151</sup> Article 22 of the Constitution of Morocco.

<sup>152</sup> Article 23 of the Constitution of Morocco.

<sup>153</sup> Article 24 of the Constitution of Morocco.

<sup>154</sup> *Ibid* 153

<sup>155</sup> Article 28 of the Constitution of Morocco.

<sup>156</sup> Article 29 of the Constitution of Morocco.

Morocco has also promulgated several laws related to HRDs. Thus, it adopted in 1958 (two years after independence) a liberal legislative framework on associations,<sup>157</sup> which was reinforced by a reform in 2002 and by the Constitution of 2011. The law regulating this right establishes a 'declaratory scheme' according to which the founders of associations have only to declare their creation to the authorities to start working.

Organic Law 44-14<sup>158</sup> was promulgated in July 2016 determining the conditions and modalities for exercising the right to submit petitions to public authorities. This law allows citizens, who can be HRDs, to submit a written request containing claims, proposals or recommendations with a view to taking appropriate measures.

HRDs can be also journalists. The Press and Publishing Code<sup>159</sup> guarantees replacement of custodial sentences with fines; and legal recognition of the electronic press and the State's commitment to protect journalists against any aggression.

Law 90-13<sup>160</sup> establishing the National Press Council sets up an independent and elected self-regulation mechanism for the profession, responsible in particular for regulating access to the profession through the granting of the press card, mediation and arbitration in matters related to the press, for drawing up the code of ethics for the sector and ensuring its respect and giving its opinion on the draft laws relating to the profession.

In addition, Law No. 89-13<sup>161</sup> relating to the status of professional journalists strengthened the protection of journalists, in particular the judicial protection of the confidentiality of sources, the right of access to information and the strengthening of the independence of journalists. Also, Law No. 13-31 on the

<sup>157</sup> <https://adala.justice.gov.ma/production/html/fr/44724.htm>

<sup>158</sup> [http://www.sgg.gov.ma/Portals/0/lois/Loiorganique\\_44-14\\_Fr.pdf?ver=2017-02-08-171743-837](http://www.sgg.gov.ma/Portals/0/lois/Loiorganique_44-14_Fr.pdf?ver=2017-02-08-171743-837)

<sup>159</sup> <https://adala.justice.gov.ma/production/legislation/fr/Nouveautes/Presse%20et%20Edition.pdf>

<sup>160</sup> Adopted on 30 March 2016 and published in Official Gazette n° 6454 of 7 April 2016.

<sup>161</sup> Adopted on 3 February 2016 and published in Official Gazette n° 6506 of 6 October 2016.



right of access to information was adopted in February 2018.

Law No. 103-13 on combatting violence against women of 2018 defines violence against women as physical, sexual, psychological and economic violence.<sup>162</sup> Despite the fact that Morocco does not have a specific law on HRDs, the above constitutional and legal provisions can, therefore, be applied.

The Constitution of Morocco also provides for the establishment of several constitutional institutions, including an NHRI to ensure the respect, promotion and protection of human rights. The CNDH-Ma and its regional human rights commissions include in their memberships HRDs representing CSO, journalists and lawyers. The NHRI can ensure that rights of HRDs are respected, promoted, and protected.

The Constitution also provides for the Advisory Council for Youth and Associative Life,<sup>163</sup> which is responsible for studying and formulating proposals on any subject of an economic, social and cultural nature of interest to young people and associative action, to strengthen their contribution to public debate and to citizenship. This Council will contribute to improving the working environment for HRDs. Despite the promulgation of its enabling Law No. 89-15 in 2018,<sup>164</sup> it is not operational.

### **7.3 Mandate of CNDH-Ma to protect HRDs**

The CNDH-Ma is a constitutional institution<sup>165</sup> for the promotion and protection of human rights. It was established in 1990 and has been accredited with 'A' status since 1999, testifying to its full compliance with the Paris Principles of 1993. It has 12 regional human rights commissions, which cover the entire national territory and whose new members, composed mainly of civil society representatives

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<sup>162</sup> Article 1 of Law 103-13.

<sup>163</sup> Articles 33 and 170 of the Constitution.

<sup>164</sup> [http://www.sgg.gov.ma/Portals/0/lois/Loi\\_89.15\\_Fr.pdf?ver=2018-02-01-170512-620](http://www.sgg.gov.ma/Portals/0/lois/Loi_89.15_Fr.pdf?ver=2018-02-01-170512-620)

<sup>165</sup> Article 161 of the Constitution of Morocco.

and human rights defenders, assumed office in September and October 2020. A new Law No. 15-76 reforming the CNDH-Ma was adopted unanimously by the Parliament in February 2018.<sup>166</sup> This law considerably broadens the powers of the CNDH-Ma, particularly by entrusting it with the mandate of three mechanisms provided for by international human rights standards. These are the National Preventive Mechanism against Torture (NPM), in line with OPCAT, National Child Redress Mechanism, in line with General Comment 2 of the Committee on the Rights of the Child, and National Monitoring Mechanism for Persons with Disabilities, in line with Article 33 of the Convention on the Rights of Persons with Disabilities.

The CNDH-Ma has a general mandate and examines all cases of human rights violations. The protection of human rights, including those of HRDs, is an essential component of the CNDH-Ma's work which ensures the observation, monitoring and follow up of the human rights situation throughout Morocco. According to its enabling law, the CNDH-Ma can carry out the necessary inquiries and investigations into human rights violations and draw up thematic and annual reports. It submits these reports to the competent authorities together with its recommendations, and monitors the implementation of these recommendations. The CNDH-Ma examines all cases of human rights violations, either on its own initiative, or upon complaint from the parties concerned or by virtue of a power of attorney from these parties.

The NHRI may, within its missions, intervene urgently whenever there is a case of tension which could lead to individual or collective violation of a human right, by deploying the necessary mediation and conciliation means that it deems appropriate in coordination with the public authorities concerned.

The NHRI receives complaints and information from HRDs on violations found in the course of their work. The victim or their representative should write such

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<sup>166</sup> : [https://www.cndh.org.ma/sites/default/files/loi\\_76-15\\_relative\\_a\\_la\\_reorganisation\\_du\\_cndh\\_1.pdf](https://www.cndh.org.ma/sites/default/files/loi_76-15_relative_a_la_reorganisation_du_cndh_1.pdf)

complaints.<sup>167</sup> If the complaint is oral, a representative of the CNDH-Ma write it down and it has to be signed by the complainant.

The 12 regional commissions of the CNDH-Ma play a key role not only as HRDs but also as mechanisms responsible for protecting and promoting the human rights of other defenders. In particular, these commissions handle complaints, monitor events and mediate, work to build the capacity of civil society, and provide support to associations and individuals.

The NHRI is further responsible for ensuring that the domestic human rights laws are in conformity with ratified treaties<sup>168</sup> and lobby for the ratification of treaties.<sup>169</sup> It also participates in the preparation of State reports that are submitted to treaty bodies and other regional and international human rights mechanisms.<sup>170</sup> The CNDH-Ma should also ensure that the country promotes international humanitarian law, in addition to human rights and freedoms through all appropriate means including sensitization, education, capacity building, national and international dialogues, establishment of networks, creation of a national prize on human rights and workshops.

In implementing its mandates, the CNDH-Ma may collaborate with the UN human rights institutions and international, regional and foreign human rights institution.<sup>171</sup> In addition to a president, a secretary general and 12 chairpersons of regional human rights commissions, the CNDH-Ma is composed of 27 commissioners who represent NGOs, international experts, trade unions, association of lawyers, university professors, doctors, journalists, Muslim scholars, Jewish community and the Moroccan community abroad. The regional human rights commissions are also composed of members, who are mainly HRDs.

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<sup>167</sup> Article 54 of the Internal Regulations of the CNDH-Ma.

<sup>168</sup> Article 19 25 of Law on CNDH-Ma.

<sup>169</sup> Article 26 of Law on CNDH-Ma.

<sup>170</sup> Article 27 of Law on CNDH-Ma.

<sup>171</sup> Article 31 of Law on CNDH-Ma.

The CNDH-Ma has a broad mandate for the protection and promotion of human rights of all groups, including HRDs. The CNDH-Ma, being part of the drafting committee of the Marrakech Declaration, has adopted the definition of HRDs in the Marrakech Declaration, including the principle of self-identification in paragraph 10.

The following section assesses the initiatives of the CNDH-Ma against the Marrakech Declaration to determine the extent of the implementation within its mandates and in line with international human rights standards.

#### **5.4 Implementation of the Marrakech Declaration**

The Marrakech Declaration provides several steps that NHRIs must take to ensure the protection of HRDs, including women HRDs. The CNDH-Ma co-hosted the Conference and was member of the drafting committee of the Marrakech Declaration.

With regard to the appropriation of the Marrakech Declaration, it has circulated the document to its staff and members for implementation. As highlighted in the Marrakech Declaration, as an independent national human rights institution, the CNDH-Ma, its members and staff, are themselves human rights defenders. All staff members have the electronic version of the Marrakech Declaration. Most of the staff are involved, in one way or another, in complaint handling, the implementation of the institution's strategic orientations and the promotion and protection of human rights in general, including the protection of HRDs.

This analysis elaborates on the activities undertaken by the CNDH-Ma under the following three categories in the Marrakech Declaration: promotion, protection, and cooperation and partnerships. It also highlights the major activities before 2018, the year of adoption of the Marrakech Declaration, to generally assess the response towards the situation of HRDs.

#### **5.4.1 Awareness raising and capacity building**

The CNDH-Ma has engaged in several capacity building, training and awareness raising initiatives targeting HRDs. Some of them are as follows:

- In July 2019, in collaboration with the African Centre for Human Rights Studies, the CNDH-Ma through its Rabat Idriss Benzekri Institute for Human Rights, organized a capacity building workshop for HRDs on the African human rights system and advocacy techniques.
- The NHRI considers CSOs as strategic partners in these initiatives. It coordinates and consults with associations in its various missions and projects. It supports associations in promotion, awareness-raising, training and continuing education programs in the field of human rights and international humanitarian law. It also involves civil society in the public debates it initiates on human rights issues, at both national and regional levels.
- During COVID-19, several online and in-person consultations took place in 2020 between CNDH-Ma and NGOs as well as other HRDs and stakeholders on the rights of women, children, people with disabilities, migrants and refugees, the rights to education, the right to health, online trials, etc.<sup>172</sup>

These activities fall under the promotional aspects of the Marrakech Declaration and it has established cooperation and partnerships while so doing.

#### **5.4.2 Interventions in specific cases**

The CNDH-Ma often receives complaints concerning HRDs. For instance, during 2019, 79 complaints and requests (56 complaints handled at central level and 23 at regional commission level) were received mostly from associations. All of these complaints relate to administrative decisions relating to the constitution

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<sup>172</sup> Detailed information is <https://www.cndh.ma/fr/rubriques/rubriques/activites/communiqués>

of an association or its renewal. In this context, the NHRI has issued several recommendations, particularly to public authorities on reviewing the legal provisions relating to the procedures for setting up, renewing, financing and using public halls to organize activities, to guarantee the exercise of freedom of association in accordance with the Constitution and the International Covenant on Civil and Political Rights.

By intervening in these cases, the CNDH-Ma is ensuring participating in the protection of HRDs as per the Marrakech Declaration.

#### **5.4.3 Norm development concerning HRDs**

The CNDH-Ma co-drafted the Marrakech Declaration, which provides for a framework relating to HRDs. Also, in its parallel report to the Human Rights Committee in 2016,<sup>173</sup> its memorandum on freedom of association,<sup>174</sup> memorandum on the amendments to the Penal Code<sup>175</sup> and its annual report of 2019, the NHRI made significant recommendations to reform laws related to HRDs in line with its mandate of the contribution to the harmonization of national legislation with international standards.

More particularly, it has recommended the government to take steps concerning the protection of HRDs. For instance, in its annual report published in April 2020, the CNDH-Ma brought to the attention of relevant stakeholders the importance of expanding civic space and ensuring that the rights of HRDs are guaranteed. The report also recommended legislative reforms concerning associations, public gatherings, peaceful protests and freedom of expression with a view to bringing relevant laws in line with the Constitution and international human rights standards and expanding civic space to guarantee a conducive environment for HRDs, including women. More specifically, it recommended the following:

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<sup>173</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fFL%2fMAR%2f23037&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fFL%2fMAR%2f23037&Lang=en)

<sup>174</sup> [https://www.cndh.org.ma/sites/default/files/la\\_liberte\\_associative\\_au\\_maroc\\_memo\\_fr.pdf](https://www.cndh.org.ma/sites/default/files/la_liberte_associative_au_maroc_memo_fr.pdf)

<sup>175</sup> [https://www.cndh.org.ma/sites/default/files/cndh\\_-\\_web\\_code\\_penal\\_va.pdf](https://www.cndh.org.ma/sites/default/files/cndh_-_web_code_penal_va.pdf)

- to review the legal provisions relating to the procedures for the creation, renewal and financing of associations, as well as to the use of public halls, so as to guarantee the exercise of freedom of association in accordance with the Constitution and the International Covenant on Civil and Political Rights;
- to review legal provisions by replacing custodial sentences with fines;
- to encourage dialogue between public authorities and associations to overcome the obstacles and constraints that prevent associations from exercising their role;
- to adopt provisions explicitly guaranteeing the protection of all human rights defenders, including journalists and media workers, who cover peaceful protests;
- to ensure that any restriction imposed on the freedom of association is clearly defined by a legal text, explicit and available, and that these restrictions are necessary to respect the rights or the reputation of others, to protect national security, public order, public health or public morals.

At the internal level, and in conformity with its mandate, the CNDH-Ma has created a mediation unit that can urgently intervene in case of tension which could lead to an individual or collective violation of one of the human rights and this, by deploying the necessary means of mediation and conciliation as deemed appropriate in coordination with the public authorities concerned. This platform has the capacity to respond to HRDs who need assistance.

By providing for recommendations to the government and creating a mediation unit, the NHRI is fulfilling its promotion and protective mandate.

#### **5.4.4 Women HRDs**

The CNDH-Ma stated in its annual report of 2019 that campaigns of women HRDs continued in 2019 through advocacy and awareness-raising for implementing equality and parity and speaking up against violations, especially sexual and gender based violations.

Also, in this report, the NHRI underlined that modern technologies sometimes provide environments for violating the private life, especially through disseminating private information of individuals without their consent and using it for defamation, criminal or profit activities. These violations are more pronounced in women. The institution gives the example of a woman journalist who was victim of this.<sup>176</sup>

In addition, in October 2019, in collaboration with the OHCHR, CNDH-Ma organized a workshop on the legal protection for women HRDs. This workshop built the capacity of women HRDs to contribute to the protection of vulnerable groups in the Arab region, including interaction with the UN human rights mechanisms.

The institution has also signed a partnership agreement with the Canadian Embassy and Oxfam on the voice and leadership of women in Morocco. The partnership aims at reinforcing the capacity and supporting organizations working on the protection of women's rights. As part of this partnership, five human rights NGOs engaged in projects to assist women in the context of COVID-19.

The CNDH-Ma has, therefore, built partnership and cooperation to ensure the promotion of the rights of women HRDs.

#### **5.4.5 Participation at the international level**

The NHRI often engages with international mechanisms for the protection of HRDs. For instance, it has a working relationship with the mechanism of the UN Special Rapporteur on HRDs where they interact either through oral or written statements, or through responses to questionnaires. One such example is a questionnaire of the Special Rapporteur on HRDs, on the situation of HRDs in the southern provinces of the country in 2019. The institution's responses focused on the role played by its regional commissions of the southern provinces in the

<sup>176</sup> See para. 87 of the Annual Report of the CNDH-Ma, [https://www.cndh.org.ma/sites/default/files/cndh\\_-\\_web\\_code\\_penal\\_va.pdf](https://www.cndh.org.ma/sites/default/files/cndh_-_web_code_penal_va.pdf)



promotion and protection of human rights.

At the regional level, the CNDH-Ma cooperated with Prof Rémy Ngoy Lumbu, a member and Special Rapporteur on Human Rights Defenders at the African Commission on Human and Peoples' Rights, who visited Morocco from 20-24 September 2019. He also facilitated a training session on the African human rights system. This session was marked by the participation of HRDs from The Gambia, Tunisia, Benin, Algeria, Mauritania, Niger, Egypt, Côte d'Ivoire, Senegal, the Democratic Republic of the Congo and Morocco.

The NHRI has also supported the participation of NGOs from North Africa (Morocco, Algeria, Egypt, and Tunisia) in the NGO Forum, which was held from 17-19 October 2019 in Banjul on the sidelines of the 65<sup>th</sup> Ordinary Session of the African Commission. These NGOs contributed to the formulation of recommendations, which were submitted to the African Commission.

In terms of cooperation with international NGOs, the institution cooperates with international NGOs by exchanging information and views on human rights situations, in particular on individual cases. For example, upon their request, correspondences on these cases was sent to several NGOs in 2019 and 2020, including Human Rights Watch and Front-Line Defenders. The CNDH-Ma has ensured that it strengthens its cooperation and partnership while participating in the international platforms concerning the protection and promotion of HRDs as recommended by the Marrakech Declaration.

## Good practices in the protection of HRDs

- ✔ The Constitution provides for new roles of civil society, including HRDs, regarding the right to submit petitions and motions to public authorities as well as the management of public affairs, as part of participative democracy;
- ✔ The regional human rights commissions of CNDH-Ma ensure proximity and faster responses to violations of human rights violations of HRDs at the local level. They are composed mainly of local HRDs and hold partnerships with HRDs on human rights issues;
- ✔ The CNDH-Ma has a Memorandum of Understanding with both chambers of the Parliament, by virtue of which both parties can hold joint activities on human rights, to which HRDs can be invited. This MoU allows the NHRI to better influence draft laws from a human rights perspective;
- ✔ Partnership agreements with universities constitute a framework for promoting human rights standards, including on HRDs;
- ✔ The CNDH-Ma provides logistical and financial support to NGOs and organizes capacity building sessions based on their own needs, as expressed by such NGOs;
- ✔ The Constitution provides for equality and parity between women and men as well as the establishment of an authority for parity and combating all forms of discrimination. The enabling law of this authority was promulgated in 2017;<sup>177</sup>
- ✔ Law on violence against women sets up a national commission to support women victims of women, who includes in its membership representatives of CSO working on women's issues;
- ✔ Collaboration with different relevant stakeholders, including HRDs themselves as well as UN and African Union mechanisms, especially the special rapporteurs of both bodies;
- ✔ The CNDH-Ma is a constitutional institution;
- ✔ Creation of a mediation unit within the CNDH-Ma.

<sup>177</sup> <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/106449/130597/F1299340281/MAR106449.pdf>

## **5.5 Challenges faced in implementing the Marrakech Declaration**

### **5.5.1 Challenges facing associations defenders of human rights**

There exist significant disparities in the territorial distribution of associations of HRDs, whose human and financial resources remain fragile as well. In addition, despite being required to do so by law, the authorities sometimes refuse to issue a receipt, when the creation-related file is submitted to them.

### **5.5.2 Shortcomings in the law**

In 2018, Morocco adopted Law No. 103-13 on combatting violence against women. This was a milestone since it was the first time such a law was adopted in Morocco. However, this law has been criticized because it does not offer enough protection against marital violence.<sup>178</sup> This is a gap for HRDs fighting violence against women since lack a robust legal framework to base their activism.

### **5.5.3 Non-ratification of AU human rights instruments**

Paragraph 20(A)(a) of the Marrakech Declaration recommends NHRIs to call on States to ratify all international human rights instruments. As demonstrated earlier, Morocco has ratified core international human rights instruments. However, it has not ratified the human rights instruments of the AU after it joined the continental body in 2017. In its annual report of 2019, the CNDH-Ma urged the State to ratify these instruments.

The African Charter on Human and Peoples' Rights contains several provisions that can be extended to HRDs. Additionally, by ratifying the African Charter, aggrieved HRDs will have access to the African human rights bodies such as the African Commission and the African Court on Human and Peoples' Rights (African Court). Moreover, the country should ratify the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court

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<sup>178</sup> See annual report of the CNDH-Ma, para. 157, [https://www.cndh.org.ma/sites/default/files/rapport\\_annuel.pdf](https://www.cndh.org.ma/sites/default/files/rapport_annuel.pdf).

on Human and Peoples' Rights (African Court Protocol) and make a declaration under its Article 34(6). This Declaration will allow HRDs, including women, to have direct access to the African Court.

Concerning women's rights and by extension women HRDs, Morocco ratified the CEDAW in 1993. However, it has not ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). One might argue that the CEDAW offers enough protection to women HRDs. However, the Maputo Protocol is an African document that expands on the legal framework for the protection of women's rights. For instance, it is the first legally binding document that defines violence against women,<sup>179</sup> and imposes an obligation on States to take steps to ensure that violence against women is eliminated. It also requires States to punish perpetrators of violence against women.<sup>180</sup> It also provides for sexual and reproductive rights of women,<sup>181</sup> including medical abortion in certain cases. These Articles, in addition to the other ground-breaking provisions of the Maputo Protocol can be used by women HRDs to seek remedy if violated.

## 5.6 Recommendations

- ✔ Continue to advocate for the ratification of the AU human rights instruments
- ✔ Advocate for the enactment of a national law on HRDs protection;
- ✔ Set up a focal person, department within CNDH-Ma to deal with HRDs and train them on the vulnerabilities that women HRDs are exposed to;
- ✔ Sensitize all stakeholders on the Marrakech Declaration;
- ✔ Continue efforts to support the role of regional committees of the CNDH-Ma, especially in the southern provinces;
- ✔ Translate the Declaration on HRDs in local languages and disseminate it widely; and
- ✔ Continue collaborating with different stakeholders on activities concerning HRDs, including women HRDs.

<sup>179</sup> Article 1(j) of the Maputo Protocol.

<sup>180</sup> Article 4 of the Maputo Protocol.

<sup>181</sup> Article 14 of the Maputo Protocol.

## **5.7 Conclusion**

Based on this assessment, Morocco has to a great extent protected the rights of HRDs based on the Constitution and international instruments ratified by the country even with the exception of the African Charter. The NHRI is even more intentional in the implementation of the Marrakech Declaration, a commitment that can be attributed to it being part of the drafting committee. Further, it has carried out monitoring, inquiries and investigations into human rights violations and published and submitted reports with recommendations to competent authorities.

# Tanzania

# 6



Police arrest protesters, including human rights defenders in Tanzania. Photo: Tanzania Human Rights Defenders Coalition

## 6.1 Background

Tanzania is a multilingual country on the Eastern part of Africa. It has an estimated population of 60 million<sup>182</sup>. The country (Tanganyika) gained political independence from Britain on 9 December 1961 and became an independent republic known as Tanzania.<sup>183</sup>

The legal protection of human rights in Tanzania happened relatively late in the history of the country. As national leaders negotiated freedom from colonial rule, they were categorical and resolute in their rejection of the inclusion of a bill of rights in the Independence Constitution. For this reason, the Independence Constitution of 1961 did not have a Bill of Rights, and so were the subsequent versions adopted in 1962, 1965 and 1977. To pacify demands for a Bill of Rights in the 1965 Interim Constitution, the State established the Permanent Commission of Enquiry (PCE) in 1966. The PCE did not have an explicit human rights mandate. It was an ombudsperson's office charged with investigating and addressing maladministration in the public sector; although its enquiries extended to human rights-related matters.

The 1977 Constitution of Tanzania remains in force to date with multiple amendments. Of these,

<sup>182</sup> <https://data.worldbank.org/country/tanzania?view=chart> accessed on 26 November 2021.

<sup>183</sup> Paul Bjerk 'Julius Nyerere' (Ohio University Press) 2017 p9 [http://C:/Users/aochieng/AppData/Local/Temp/Julius%20Nyerere%20by%20Bjerk,%20PaulNyerere,%20Julius%20R%20\(z-lib.org\).pdf](http://C:/Users/aochieng/AppData/Local/Temp/Julius%20Nyerere%20by%20Bjerk,%20PaulNyerere,%20Julius%20R%20(z-lib.org).pdf) accessed on 26 November 2021

*The 1977 Constitution of Tanzania remains in force to date with multiple amendments. Of these, the 1984 amendment incorporating a Bill of Rights into the Constitution has had the most influence in the development of human rights in the country.*

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the 1984 amendment incorporating a Bill of Rights into the Constitution has had the most influence in the development of human rights in the country.<sup>184</sup> The procedure for judicial enforcement of the rights enshrined in the Bill of Rights is provided in the 1994 Basic Rights and Duties Enforcement Act (Cap 33). Another consequential amendment to the Constitution was in 2000. This amendment, the 13<sup>th</sup> after the adoption of the constitution in 1977, provided for the establishment of the country's national human rights institution (NHRI): the Commission for Human Rights and Good Governance (CHRAGG).

The constitutional amendment providing for the establishment of the CHRAGG was the fruit of concerted calls throughout the 1990s for legal and institutional reforms in the human rights sector.<sup>185</sup> Not less than three legal reform committees recommended the establishment of an NHRI during this period.<sup>186</sup> The proposal for an NHRI was accepted by the State as reflected in its White Paper No. 1 published in 1998. A series of other developments in 1998 accelerated the momentum towards the establishment of an NHRI. First, an NHRI Bill was drafted in a workshop held in January 1998 under the auspices of the United Nations Association of Tanzania and the Zanzibar Legal Services Centre. Second, CSOs used the 50<sup>th</sup> anniversary of the Universal Declaration of Human Rights (UDHR) to ramp up pressure for the establishment of an NHRI. In September 1999, the CSO-led NHRI Bill was further scrutinized in a stakeholder meeting convened by the Ministry of Justice and Constitutional Affairs. The revised Bill was then injected into the legislative process, resulting in the enactment of the 13<sup>th</sup> constitutional amendment.

The 13<sup>th</sup> constitutional amendment was followed by the enactment of the Commission for Human Rights and Good Governance Act, 2001.<sup>187</sup> The Act elaborates upon and provides for the functioning, staffing, structure and working methods of the CHRAGG. It also provides for the replacement of the PCE with the

<sup>184</sup> It is instructive that the same year Tanzania introduced the bill of rights into its Constitution, it also ratified the African Charter on Human and Peoples' Rights.

<sup>185</sup> For a historical background of the CHRAGG see A Mbuya 'The Tanzanian Commission for Human Rights and Good Governance' in C Fombad (ed) *Compendium of documents on national human institutions in eastern and southern Africa* (2019) 713; C Peter 'Human rights commissions in Africa: Lessons and challenges' in A Bosl & J Diescho (eds) *Human rights in Africa: Legal perspectives on their protection and promotion* (2009) 351.

<sup>186</sup> These are: Nyalali Commission; Bomani Committee; and Kisanga Committee.

<sup>187</sup> The Commission for Human Rights and Good Governance Act, Cap 391 of 2001.



CHRAGG. The CHRAGG was officially inaugurated in March 2002. Its jurisdiction for the first year was limited to mainland Tanzania, but was extended to cover Zanzibar in 2003.<sup>188</sup> The CHRAGG established physical presence in Zanzibar when it opened its office on the island in 2007.

## 6.2 Situational analysis of HRDs

Tanzania is commonly referred to as a cohesive and peaceful country. Unlike several of its neighbours, it has not experienced a major conflict situation. The Constitution of Tanzania provides for a Bill of Rights which protects many of the rights and freedoms that are also relevant to HRDs, including the right to freedoms of expression, assembly and association. Tanzania has also ratified most of the major regional and international human rights instruments as shown below.

**Table 7: Ratification status of human rights treaties by Tanzania**

Treaty	Date of ratification/accession
International Covenant on Civil and Political Rights	11 June 1976
International Covenant on Economic, Social and Cultural Rights	11 June 1976
Convention on the Rights of the Child	10 June 1991
Convention on the Elimination of All Forms of Discrimination against Women	20 August 1985
Convention on the Elimination of All Forms of Racial Discrimination	27 October 1972
Convention on the Rights of Persons with Disabilities	10 November 2009
African Charter on Human and Peoples' Rights	18 February 1984
African Charter on the Rights and Welfare of the Child	1 August 2007
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	14 December 2007

In the Freedom in the World Index, Tanzania has always been rated as a 'partly free' country.<sup>189</sup> The civic space in the country has rapidly closed in recent years. The State has enacted and aggressively enforced several laws over the last few years whose cumulative effect has been to create a climate of fear for all HRDs,

<sup>188</sup> The Commission for Human Rights and Good Governance (Extension) Act No. 12 of 2003.

<sup>189</sup> Freedom House, 'Freedom in the world 2020: Tanzania', <https://freedomhouse.org/country/tanzania/freedom-world/2020> (accessed 14 August 2020).

including CSOs, media houses, researchers, journalists, bloggers, comedians, and HRDs. Human rights work has not only been undermined, severely restricted and criminalized by this raft of laws, but an increasing number of HRDs have faced intimidation, arrests and judicial harassment.<sup>190</sup>

For instance, the Mo Ibrahim Index for African Governance (IIAG) ranked the country 19 out of 54 countries, with a score of 53 out of 100.<sup>191</sup> The Index considers four indicators that are safety and rule of law, participation and human rights, sustainable economic opportunity, and human development. Additionally, the UN Human Development Report ranks the country 163 out of 189 countries in 2020.<sup>192</sup> This report considers factors such as human development, inequality, gender development, gender inequality and multi-dimensional poverty.

The restrictive laws that have been enacted in Tanzania in recent years have mainly targeted the free expression of thought and opinion. All of them contain vaguely defined offences that attract harsh penal sanctions. These include the 2015 Cybercrimes Act, the 2015 Statistics Act, the 2016 Media Services Act, and the 2018 Electronic and Postal Communications (Online Content) Regulations Act. In its 2019 annual report on the situation of human rights in Tanzania, the Legal and Human Rights Centre (LHRC), a leading NGO in the country, urged the government to amend these restrictive laws in the following words:<sup>193</sup>

*The Government and Parliament to facilitate amendment of all laws and regulations that have contributed to reduced civic space in Tanzania so that they conform with international standards on freedom of expression. Freedoms of expression, assembly and association for civil society are essential for social, economic, political and cultural development. An active and vibrant civil society can also be a huge asset as Tanzania seeks to become a middle-income country through industrialization and infrastructural development.*

In March 2019, the East African Court of Justice (EACJ) held that several provisions

<sup>190</sup> See e.g. 'UN experts call on Tanzania to end crackdown on civic space', 22 July 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26117&LangID=E>;

<sup>191</sup> the Ibrahim Index of African Governance <http://iiag.online> (accessed on 16 July 2020).

<sup>192</sup> UN Development Programme 'The Next Frontier: Human Development and Anthropocene.' Human Development Report, 2020.

<sup>193</sup> LHRC Summary of the Tanzania human rights report 2019 (2020) 8.

of the Media Services Act violated press freedom, the right to information and freedom of expression.<sup>194</sup>

The NGO sector in Tanzania is governed by the 2002 NGO Act. The rules regarding the implementation of the Act are contained in the 2004 NGO Regulations. Parallel to stifling freedom of expression since 2015, the State has also intensified restrictions on the NGO sector. In August 2017, the State suspended registration of new NGOs, to allow for the vetting and screening of existing NGOs.<sup>195</sup> In 2018, the NGO Regulations were amended to introduce tighter controls of the finances of NGOs.<sup>196</sup> Recent years have also seen suspension and deregistration of NGOs or threats to do so, raids of NGO premises or activities, and abduction, arbitrary arrests and intimidation of NGO staff.<sup>197</sup>

### **6.3 CHRAGG and the protection of HRDs**

The CHRAGG is established under Article 129 of the 1977 Constitution of Tanzania as amended. It is composed of seven members: a chairperson, a vice-chairperson, and five commissioners. The current members of the CHRAGG were appointed into office in September 2019. The CHRAGG is a hybrid institution in execution of its mandate as an NHRI and ombudsman. It is a member of NANHRI and GANHRI and it is accredited 'A' status. Its functions as stipulated in the Constitution and the CHRAGG Act include the following: receiving and determining human rights complaints; launching investigations into human rights violations and issues; visiting prisons and places of detention; advising the government on matters of human rights; and promotion of the ratification or accession to human rights treaties.<sup>198</sup>

The broad mandate of the CHRAGG covers the promotion and protection of HRDs. Section 6(2) of the CHRAGG particularly reinforces the institution's general mandate in relation to HRD protection. It provides that the CHRAGG shall

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<sup>194</sup> *Media Council of Tanzania & 2 Others v The Attorney General of Tanzania*, EACJ Reference No. 2 of 2017, Judgment of 28 March 2019.

<sup>195</sup> Human Rights Watch "As Long as I am quiet, I am safe": Threats to independent media and civil society in Tanzania (2019) 31.

<sup>196</sup> *The Non-Governmental Organizations (Financial Transparency and Accountability) Regulations*, Gazette Notice No. 609 of 2018.

<sup>197</sup> Human Rights Watch "As long as I am quiet, I am safe": Threats to independent media and civil society in Tanzania (2019) 31-42.

<sup>198</sup> *Constitution of Tanzania 1977*, Art 130(1); CHRAGG Act, Sec 6.

‘use Commission’s good office to promote, protect and where necessary to aid persons whose human rights have or are in imminent danger of being violated’. The CHRAGG has had three strategic plans since its inception. The 2018-2023 Strategic Plan is the third. It sets out five strategic objectives for the CHRAGG for the period as follows:<sup>199</sup>

- HIV/AIDs infections are reduced and supportive services are improved;
- The implementation of the national anti-corruption strategy is enhanced and sustained;
- The promotion of human rights and principles of good governance is enhanced;
- The protection of human rights and principles of good governance is improved; and
- The capacity of the CHRAGG to deliver services is improved.

Although the protection of HRDs is not expressly mentioned in the Strategic Plan, the third to fifth strategic objectives are relevant to HRD protection.

## **6.4 Implementation of the Marrakech Declaration**

### **6.4.1 Participation in HRD-related activities**

The CHRAGG is aware of the Marrakech Declaration and works to implement it within its broader mandate. The CHRAGG particularly interacts with HRDs, especially human rights NGOs, as part of its general capacity building activities on human rights or through participation in events organized by such NGOs. For example, former CHRAGG chairperson Amir Manento participated in the inaugural Tanzania Human Rights Defenders Day held in December 2013 as the chief guest.<sup>200</sup> This is an annual event dedicated to HRDs and organized by the Tanzania Human Rights Defenders Coalition (THRDC). Staff members of CHRAGG

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<sup>199</sup> CHRAGG 5-year Strategic Plan 2018-2023 (2017) 25.

<sup>200</sup> THRDC Annual progress report January – December 2013 (2013)

have also participated as facilitators in NGO events organized to prepare joint CSOs Universal Periodic Review (UPR) submissions.<sup>201</sup>

#### **6.4.2 Complaints management**

Like most NHRIs, the CHRAGG has a complaints management system. Its complaints handling procedure is outlined in a set of regulations adopted in 2003.<sup>202</sup> A different set of regulations deal with the procedure of conducting enquiries.<sup>203</sup> In implementing its 2010 to 2015 Strategic Plan, the CHRAGG investigated more than 6000 complaints of human rights violations and contraventions of principles of good governance. Given the broad definition of HRDs under the UN Declaration of HRDs, some of the complaints may have been filed by HRDs. However, the CHRAGG's data on complaints is not disaggregated to distinguish between HRDs and other complainants.

#### **6.4.3 Visits to prisons**

The CHRAGG visited 127 prisons and 129 police stations from 2010 to 2015. Individuals met during these visits may have included HRDs. In the questionnaire administered for this study, the CHRAGG indicated as follows: *'Commission has no knowledge of any HRD in the detention centers'*.

#### **6.4.4 Intervention in specific cases**

The CHRAGG occasionally intervenes on behalf of specific individual HRDs or human rights organizations. For instance, the THRDC filed a complaint with the CHRAGG concerning the freezing of its bank accounts in 2020, which led to the closure of the offices of the organization. Following the receipt of this complaint, the CHRAGG engaged the Inspector General of Police urging him to expedite the relevant investigations concerning THRDC's compliance with financial provisions under the 2002 NGO Act.

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<sup>201</sup> THRDC, *Public update on the Tanzania Human Rights Defenders Coalition coordination on the Universal Periodic Review (UPR) September 2009*, <https://thrdc.org/tz/wp-content/uploads/2019/09/UPDATES-ON-THE-UPR-UNDER-THRDCs-COORDINATION.pdf> (accessed 14 August 2020).

<sup>202</sup> *The Commission for Human Rights and Good Governance (Complaints Handling Procedure) Regulations 2003*.

<sup>203</sup> *The Commission for Human Rights and Good Governance (Enquiries Procedure) Regulations, 2003*.

## Good practices in protection of HRDs

- ✓ Intervention on behalf of specific cases involving HRDs or human rights organizations
- ✓ Participation in HRD-related activities organized by partners, including civil society organizations
- ✓ Visits to prisons and other places of detention

### 9.4 Challenges in implementing the Marrakech Declaration

The CHRAGG has been perennially underfunded. This means that it cannot roll out elaborate HRDs protection programme and activities. However, in recent years the allocated budget of the CHRAGG has been steadily increasing. For the 2020/2012 financial year, the budget was increased by almost 8% compared to the 2019/2020 financial year.

Tanzania has no law specifically protecting the rights of the HRDs. This means that interventions rely on the Constitution and other national and international frameworks, which may be broad.

### 6.5 Recommendations

- ✓ Advocate for the adoption of a specific law on protection of HRDs
- ✓ Educate and sensitize stakeholders on the Marrakech Declaration
- ✓ Translate and disseminate the Marrakech Declaration into local languages to the community
- ✓ Establish a focal person or desk within its structure to focus on protection of HRDs;
- ✓ Mobilise resources specifically earmarked for protection of HRDs to supplement funding from the government
- ✓ The NHRI to work with the other national stakeholders in developing and adoption of a law on HRDs.

## **6.6 Conclusion**

The CHRAGG has a broad mandate that allows it to defend HRDs. This work fits in the broader parameters related to the implementation of the Marrakech Declaration. In this regard, the CHRAGG has handled a range of human complaints from individuals including HRDs, visited prisons and places of detention, and intervened on behalf of specific HRDs or human rights organizations.

While there have been legal reforms, especially to the Constitution little has happened to improve the human rights situation in the country. Beyond the Constitution and regional and international human rights instruments, there is need for triggering and sustaining a discussion for a law as a sustainable complement for addressing HRDs. In addition to such a law defining an HRD, it will also support the realization of the Marrakech Declaration.



# Zimbabwe

# 7



*Human Rights activists headed to court to answer to charges of instigating civil disobedience in Zimbabwe. Photo: AP News*



## 7.1 Background

Located in Southern Africa, Zimbabwe – formerly Southern Rhodesia – gained political independence from British rule on 18 April 1980 following a protracted war of liberation. It is thus, one of the very last countries in Africa, including Namibia and South Africa, to achieve majority rule. The country has a population of 15.1 million<sup>204</sup> Prior to the formal declaration of independence, the warring parties negotiated a constitution in 1979 that later became known as the Lancaster House Constitution.<sup>205</sup> This document was a truce document as it primarily focused on ending of the armed conflict. As was then, the Constitution-making process allowed for minimum civil and political rights for the black majority on one hand while on the other hand it precluded and deferred any discussion on the land question. For this and other reasons, the Constitution of the Republic of Zimbabwe had been amended 20 times as of the date of publishing this report, the first of which happened in 1985.<sup>206</sup>

The end of the war of liberation sparked a civil war between the military wings of the black political parties, who had collaborated to end the British Rule. The government was accused of perpetrating atrocities in the Southern parts of the country

*Prior to the formal declaration of independence, the warring parties negotiated a constitution in 1979 that later became known as the Lancaster House Constitution*

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<sup>204</sup> <https://www.worldometers.info/world-population/zimbabwe-population/>

<sup>205</sup> 1979 Constitution No 12, Rhodesia, Act To Provide For A New Constitution. <https://www.ifes.org/sites/default/files/con00006.pdf>.

<sup>206</sup> The current version of this Constitution is Amendment No. 20 adopted in 2013.

targeting a rival party and its supporters, an operation known as Gukurahundi.<sup>207</sup>

The government has neither acknowledged nor apologized to the affected families, a fact that has been linked to wave after wave of activism on the issue as well as calls for political secession.

By the late 1980s, amendments to consolidate executive power in the Head of State by eliminating the post of Prime Minister came into force triggering the trend of political power consolidation. At the dawn of the new millennium, calls for a new constitutional dispensation to end this trend became louder through CSOs and the launch of a formidable opposition party the Movement for Democratic Change (MDC) in 1999. In the year 2000, government sponsored a controversial land reform process by invading white-owned farms to garner support for the Zimbabwe African National Union – Patriotic Front (ZANU-PF) political party led by the late President Robert Mugabe. It also launched a process to adopt a new constitution. However, this draft was comprehensively rejected in a referendum over claims that it was not a ‘people-driven constitution’ and therefore, did not reflect the aspirations of the people of Zimbabwe. The opposition’s unprecedented seizing majority seats in Parliament in the 2005 parliamentary elections quickly followed this loss. This ended a pseudo one-party State scenario in the politics of the country. However, the 2008 general elections opened up a new wave of political violence when Mugabe lost to the opposition, forcing a re-run. This was another event in the political history that triggered endless activism leading to a Government of National Unity (GNU) between ZANU-PF and the opposition in September 2009 to July 2013.

Since the year 2000, Zimbabwe has been ranking poorly on indices that utilize democracy, governance and protection of human rights as key indicators of freedom. These include World Freedom Index,<sup>208</sup> Transparency International

<sup>207</sup> A political event that took place in Zimbabwe around 1982 where Government is alleged to have carried out a military operation in Matabeleland, a part of Zimbabwe where people of the Ndebele ethnicity are based. Government says it was suppressing an uprising soon after independence. It is estimated that around 20000 people lost their lives and some were not accounted to date. This event triggered tribalism in the country that thrives to this day.

<sup>208</sup> [https://www.eiu.com/public/topical\\_report.aspx?campaignid=democracyindex2019](https://www.eiu.com/public/topical_report.aspx?campaignid=democracyindex2019).

ranking 158 out of 180 countries,<sup>209</sup> among others. The adoption of another constitution in 2013 brought about significant changes to the legislative framework. There is an expanded Bill of Rights covering all categories of rights and an improved enforcement framework where courts are required to follow international law when interpreting any law.<sup>210</sup> The 2013 Constitution has also introduced a number of thematic NHRIs such as the Gender Commission and the Media Commission as well as the Zimbabwe Human Rights Commission (ZHRC). However, the temporarily popular November 2017 coup brought about a pseudo military State marred with harassment, abductions and military brutality with impunity, thereby generating a new wave of political activism and targeting of HRDs individually or in association with others.

These historical events are mirrored in the brief below on the situation of the human rights of HRDs in Zimbabwe. Activists have essentially mobilized on issues such as corruption, media freedom, electoral law reform, devolution of governmental powers and responsibilities to lower tiers by Government, service delivery, poverty reduction, police brutality, and arbitrary evictions, abductions, among others.

**Table 8: Ratification status of human rights treaties by Zimbabwe**

<b>Treaty</b>	<b>Date of ratification/accession</b>
International Covenant on Civil and Political Rights	13 May 1991
International Covenant on Economic, Social and Cultural Rights	13 May 1991
Convention on the Rights of the Child	11 September 1990
Convention on the Elimination of All Forms of Discrimination against Women	13 May 1991
Convention on the Elimination of All Forms of Racial Discrimination	13 May 1991
Convention on the Rights of Persons with Disabilities	23 September 2013
African Charter on Human and Peoples' Rights	13 May 1991
African Charter on the Rights and Welfare of the Child	19 January 1995
Protocol to the African Charter on the Rights of Women in Africa	15 April 2008

<sup>209</sup> <https://www.transparency.org/en/countries/zimbabwe>.

<sup>210</sup> Section 46 of the 2013 Constitution of Zimbabwe.

## **7.2 Situational analysis of HRDs**

The situation of HRDs in Zimbabwe is best captured by the experiences they go through, with the major source being reports by civil society organizations, independent commissions, particularly the ZHRC, United Nations Special Procedure mandate holders, human rights State Party reporting mechanisms such as Universal Periodic Review (UPR), United Nations human rights treaty bodies, regional human rights mechanisms and so on. Further evidence from reports by think tanks, the academia, UN agencies and development partners.

Zimbabwe has not attempted to develop and adopt a law specifically recognizing the role of HRDs and providing the protection required by international human rights treaties cited above as well as the guidance of soft law such as the HRDs Declaration and the Marrakech Declaration. In fact, the State rejects the notion of HRDs and label them as ‘regime change agents’. HRDs rely primarily on the Constitution in defending themselves against persecution in their work. Accordingly, it is crucial to benchmark experiences of HRDs with thematic rights and freedoms derived from provisions of some of the international human rights instruments and declarations highlighted above.

### **7.2.1 Right to be protected**

The State has a duty to protect HRDs. For Zimbabwe, this right is derived from its primary responsibility and duty to protect all human rights. Despite the above standards, HRDs in Zimbabwe, including women HRDs<sup>211</sup> and sometimes in extreme situations their families, are subjected to intimidation, threats, extra-judicial killings, disappearances, torture and ill-treatment, allegations of rape, arbitrary detention, surveillance, administrative and judicial harassment. Worse still and most rampantly, stigmatization by State authorities and non-State actors working and conspiring with the State has been reported. Thus, a general climate of impunity for criminal conduct against HRDs has been documented extensively in Zimbabwe.

<sup>211</sup> This is echoed by the events of May 2020 when three female members of the opposition: MP Johana Mamombe, Cecilia Chimбири and Netsai Marova were allegedly abducted, tortured and sexually assaulted by suspected State agents and later formally arrested and charged for faking the abductions.

### **7.2.2 HRDs right to freedom of assembly**

The right to peaceful assembly is protected under various international and regional instruments.<sup>212</sup> This is a very crucial right for HRDs such that failure by State to respect it would restrict HRDs ability to fulfil their fundamental role of protecting and promoting human rights. Various forms of assembly exist ranging from meeting in private spaces, conferences, public places, demonstrations, vigils, marches and other kinds of assemblies, (both indoors and outdoors), with the aim of promoting and protecting human rights.<sup>213</sup>

In Zimbabwe, severe restrictions have been imposed on this right by the State by broadly applying it with the view to prohibiting or disrupting peaceful human rights assemblies. This is done on the pretext of the need to maintain public order, and relying on legislation such as the Maintenance of Peace and Order Act of 2019 (MPOA), which imposes stringent requirements for people to gather, demonstrate or protest. The law has been used to stifle activism in electoral reform and demands for free and fair elections. Its reform has been widely criticized as superficial, only significant in changing the name but maintaining arbitrary provisions of the old law.

### **7.2.3 The HRDs right to freedom of association**

This freedom entails the HRDs right to interact and organize among themselves to collectively express, promote, pursue and defend common interests.<sup>214</sup> This covers HRDs in various spaces including religious groups, political parties, commercial activities and trade unions clubs or associations of any form. States Parties should interfere with, or prohibit the founding of associations or their activities.

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<sup>212</sup> *The Universal Declaration of Human Rights (Article 20(1)); the International Covenant on Civil and Political Rights (Article 21); the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5 (d) (ix)); the Convention on the Right of the Child (Article 15); the African Charter on Human and Peoples' Rights (Article 11); the African Charter on the Rights and Welfare of the Child (Article 8); and Articles 5 and 12 of the Declaration on Human Rights Defenders.*

<sup>213</sup> *See Article 5 of the UN Declaration on HRDs.*

<sup>214</sup> *This freedom is recognized in the Universal Declaration of Human Rights (Article 20); the International Covenant on Civil and Political Rights (Article 22); the International Covenant on Economic, Social and Cultural Rights (Article 8 recognizes the right to form and join trade unions); the Convention on the Elimination of All Forms of Discrimination against Women (Article 7); the Convention No. 87 on Freedom of Association and Protection of the Right to Organize of the International Labour Organization (Article 2); the African Charter on Human and Peoples' Rights (Article 10); and Article 5 of the Declaration on Human Rights Defenders 14.*

In Zimbabwe, national laws regulating non-State actors, associations and individuals such as NGOs impose severe restrictions on registration, funding, management and operations of organizational frameworks for HRDs. Domestic legislation in form of the Private Voluntary Organization Act (PVO Act)<sup>215</sup> has often been criticized for being restrictive. In some cases, the Government has requested HRDs to sign memoranda of understanding (MoU) with ministries for them to operate in certain localities as a way to monitor them. Some HRDs have been forced to operate in less significant formations such as trusts or associations with loose legal arrangements, which further restricts their reach and diminish their chances for funding. This has led to difficulties in the establishment and registration of human rights associations, and stiffer criminal sanctions are often invoked for HRDs operating without such registration. Worse still, registration authorities who in the case of Zimbabwe are under the Ministry responsible for Social Welfare have been criticized for lack of independence. Further, grounds and procedures for dissolution are also not informed by objective considerations, but political expediency.

#### **7.2.4 Right to access international human rights mechanisms**

This right to access international mechanisms of protection is contained in the instruments, which Zimbabwe has not ratified, probably because of the fact that authorities are averse to subjecting themselves to a process where remedies may be availed to HRDs against them.<sup>216</sup> The United Nations Human Rights Council has often, through several resolutions,<sup>217</sup> strongly disapproved of any acts of intimidation and reprisals against HRDs, individuals and groups who seek to cooperate or have cooperated with the UN, its representatives and mechanisms in the field of human rights urges States to prevent the occurrence of such acts as well as to provide adequate protection. Accessing and communicating with

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<sup>215</sup>Chapter 17:05

<sup>216</sup> These include the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* Art. 11; the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)* Art. 15; and the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)* Art. 13 provide for this right. Articles 5 (c) and 9 (4) of the *HRDs Declaration* also guarantee this right and the *Protocol on the Establishment of the African Court on Human and Peoples' Rights*.

<sup>217</sup> *Human Rights Council Resolution 12/2: Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*, 12 October 2009, A/HRC/RES/12/2; Also UN Commission on Human Rights, *Human Rights Resolution 2005/9: Cooperation with Representatives of United Nations Human Rights Bodies*, 14 April 2005, E/CN.4/RES/2005/9.

international bodies is essential for HRDs to carry out their work, forewarning and whistle blowing to the international community of violations, to laying bare crucial cases to the attention of regional and international human rights platforms is desirable for their work.

Violations to this right have occurred in Zimbabwe through preventing HRDs from attending human rights meetings by confiscating their travel documents.<sup>218</sup> Retaliations after HRDs have engaged in capacity building or participating at different bodies and mechanisms has been witnessed. Defenders have also faced threats and intimidation during their participation in events.<sup>219</sup> However, HRDs have potential access to effective remedies under the Constitution if their rights have been violated.

### **7.2.5 HRDs right to freedom of opinion and expression**

The right is indispensable for the formation of public opinion and the formation and development of political parties, trade unions, scientific and cultural societies. It derives from the adage that knowledge and/or information is power. This right is key to the HRDs as it encompasses three aspects: right to hold opinions without interference; right of access to information; and right to impart information and ideas of various form. In Zimbabwe, the use of legislation to persecute defenders who criticize government has been commonplace with the one of subverting a constitutionally elected government under Section 22 of the Criminal Law (Codification and Reform) Act<sup>220</sup> being topical.

Access to information related to some programmes of government is also hard. The legal system, through spurious charges and prosecutions to harass HRDs and laws restricting printing and publication including censorship, suspension, closing or banning of media outlets has been recorded in Zimbabwe. This has

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<sup>218</sup> <https://rsf.org/en/news/government-draws-blacklist-people-whose-passports-are-be-confiscated> (accessed on 1 August 2020).

<sup>219</sup> On 20 May 2019, four HRDs namely, Tatenda Mombeyarara, Gamuchirai Mukura, George Makoni and Nyasha Mphahlo were arrested by the police at Robert Mugabe International Airport upon their return from the Maldives where they had attended capacity building for the CSO sector on allegations that they had attended a specialized course on protest for treasonous purposes

<sup>220</sup> Chapter 99:23

been compounded by attacks against HRDs, politicians and journalists. The recent cases of Jacob Ngarivhume and Hopewell Chin'ono who were arrested on 20 July 2020 are examples after they were accused of inciting citizens through their recorded and written messages on the micro-blogging platform, Twitter for exposing corruption in government and calling for protests.

### **7.2.6 HRDs right to protest**

This right is interdependent with the right to freedom of expression and opinion, freedom of association, freedom of peaceful assembly and trade union rights, including the right to strike. Article 5 (a) of the Declaration on Human Rights Defenders provide for this right. Protests are regarded as drivers of democratic transformation and change and advances in human rights. Thus, the right to protest is a critical component of the right to democratic participation.

In Zimbabwe, protests by HRDs are generally not tolerated and unjustified restrictions are placed on them. Unwarranted and restrictive requirements to obtain authorizations and lack of effective remedies have been a common tool by Zimbabwean authorities to frustrate this right. Arbitrary and violent arrests, arbitrary detentions and enactment of pieces of legislation, which violate international human rights law and imposing cumbersome procedures infringing on the right to protest and jeopardizing legitimate activities in a democratic society has been widely reported in Zimbabwe. Student unions,<sup>221</sup> trade unionists,<sup>222</sup> lawyers, social rights movements, economic freedom protesters, Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTQI) HRDs, the clergy and equitable sharing of natural resources activists in extractive industries have been victims of State brutality.

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<sup>221</sup> Student leaders arrested in Zimbabwe. <https://www.refworld.org/publisher/AMNESTY,ZWE,4a8136f9c,0.html> (accessed on 30 July 2020).

<sup>222</sup> Arrest of ZCTU leaders highlights continued repression of trade unions in Zimbabwe Equal Times. <https://www.equaltimes.org/arrest-of-zctu-leaders-highlights#.XyWpoigzY2w> (accessed on 30 July 2020). More recently, see Zimbabwe union leader arrested after general strike call Industrial-Union. <http://www.industrial-union.org/zimbabwe-union-leader-arrested-after-general-strike-call> (accessed on 30 July 2020).



### 7.3 Legislative framework for HRDs

Zimbabwe has not adopted HRDs legislation. Domestic legislation has not fully conformed to the Constitution and international standards to recognize and avail remedies that are specific. The ZHRC reported that they engaged government through Parliament to enact laws that protect HRDs. The terms 'HRDs', consistent with the findings of the World Report (2018), is rarely used in public institutions, but by HRDs referring to themselves. Nonetheless, the constitutional framework provides for a comprehensive Bill of Rights, which indirectly entrenches rights of every person including HRDs. The catalogue of rights is largely in line with international human rights treaties, the HRDs Declaration and the Marrakech Declaration except that it does not recognize HRDs. The rights, which have been subjected to wide analysis, are stated from Sections 48 to 78 of the Constitution. The framework allows for justiciability of the rights through Section 85, which avails to victims or their representatives direct *locus standi* to the courts including the Constitutional Court.<sup>223</sup>

While the acquittal rate of falsely accused HRDs in criminal cases has been encouraging, arbitrary arrests and unjustifiably lengthy detentions have been a cause of concern, which hampers the promotion, and protection of human rights defenders.<sup>224</sup>

The legal framework governing the exercise of various rights crucial for the operations of the HRDs has historically been characterized by restrictive and implemented selectively, reportedly in a similar fashion as was during the colonial era predating 1980. During that era, the infamous Law and Order Maintenance Act (LOMA) of 1960 was used as an instrument of repression to suppress civil unrest during the liberation struggle. Although LOMA was repealed by POSA in 2002, two years after the advent of multi-party democracy, its notoriety

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<sup>223</sup> Section 167 of the Constitution provides for the jurisdiction of the Constitutional Court. Human rights complaints can be filed in other courts except in respect of issues reserved for the Constitutional Court.

<sup>224</sup> In terms of the Zimbabwe criminal justice procedure, it takes at least three weeks for a person denied bail in a lower court to have their appeal over the refusal determined by the High Court. The State often uses this time frame to frustrate and punish HRDs well aware that the criminal allegations have no basis and will be ultimately dismissed in court.

only pointed out to the view that it did not provide adequate promotion and protection to HRDs. It was repealed by the MPOA, but managed to retain many of its arbitrary provisions.

#### **7.4 Mandate of the ZHRC**

The Zimbabwe Human Rights Commission (ZHRC) is the premier NHRI for the promotion and protection of human rights in the country. On 12 May 2016, the ZHRC was accredited, with an 'A' rating by GANHRI as a stamp of approval to compliance with the Paris Principles. This allowed the constitutional body to participate fully in international and regional meetings, holding office and exercising voting rights on all the agenda items of NANHRI and GANHRI meetings. Its mandate, wide enough to cover all categories of human rights, is founded in section 242 of the 2013 Constitution read together with the Zimbabwe Human Rights Commission Act, a law adopted to operationalize the ZHRC.<sup>225</sup> The mandate includes competence to promote and protection human rights and freedoms including through receipt and determination of complaints and securing appropriate remedies in the circumstances. The Commission is further empowered to visit for inspection, places of detention, prisons, refugee camps and such other places.

Section 243 (1) (a-k) of the Constitution of Zimbabwe<sup>226</sup> provides for the mandate of the ZHRC. In general, the ZHRC has a mandate to promote and protect fundamental rights. Specifically, Section 243 of the Constitution presents the mandate of the ZHRC as follows:

- (1) The Zimbabwe Human Rights Commission has the following functions:
  - (a) to promote awareness of and respect for human rights and freedoms at all levels of society;
  - (b) to promote the protection, development and attainment of human rights and freedoms;

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<sup>225</sup> Act No. 2 of 2012

<sup>226</sup> Constitution of Zimbabwe Amendment (No. 20) Act, 2013

- (c) to monitor, assess and ensure observance of human rights and freedoms;
  - (d) to receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate;
  - (e) to protect the public against abuse of power and maladministration by State and public institutions and by officers of those institutions;
  - (f) to investigate the conduct of any authority or person, where it is alleged that any of the human rights and freedoms set out in the Declaration of Rights has been violated by the authority or person;
  - (g) to secure appropriate redress, including recommending prosecution of offenders, where human rights or freedoms have been violated;
  - (h) to direct the Commissioner-General of Police to investigate cases of suspected criminal violations of human rights or freedoms and to report to the Commission on the results of such investigation;
  - (i) to recommend to Parliament effective measures to promote human rights and freedoms;
  - (j) to conduct research into issues relating to human rights and freedoms and social justice; and
  - (k) to visit and inspect-
    - (i) prisons, places of detention, refugee camps and related facilities; and
    - (ii) places where mentally disordered or intellectually handicapped persons are detained; in order to ascertain the conditions under which persons are kept there, and to make recommendations regarding those conditions to the Minister responsible for administering the law relating to those places.
- (2) The Commissioner-General of Police must comply with any directive given to him or her by the Zimbabwe Human Rights Commission under subsection (1) (h).

Further, Section 4 of the Zimbabwe Human Rights Commission Act<sup>227</sup> confers additional functions to the ZHRC, which include *'to ensure and provide appropriate redress for the violations of human rights and for injustice and to co-operate with human rights institutions belonging to international, continental or regional organizations of which Zimbabwe is a member'*.

In terms of Section 235, which provides for the independence of all independent commissions, the above mandate should be exercised independently. Accordingly, the ZHRC, which is accountable to Parliament,<sup>228</sup> must not be subject to the direction or control of anyone by acting in accordance with the Constitution. The ZHRC must also exercise its functions without fear, favour or prejudice. The State and all institutions and agencies of government at every level, through legislative and other measures required to assist it to protect its independence, impartiality, integrity and effectiveness. Therefore, the mandate is so wide such that it affords the NHRI scope to develop and implement programmes for the protection of HRDs, although to date it has not implemented such programs.

## **7.5 Implementation of the Marrakech Declaration**

The ZHRC does not have particular programmes specifically to implement the Marrakech Declaration. The issue of HRDs comes up in the context of protection and promotion of human rights for everyone. The use of the terms 'HRDs' is rare as it is associated with political activists with a presumed 'regime change agenda'. The ZHRC is itself an HRD as it seeks to enforce the rights of others. HRD issues are covered in the course of discharging the mandate as follows:

### **7.5.1 Monitoring the implementation of rights by the State**

The ZHRC monitors government in the exercise of executive powers including the administrative functions. When the ZHRC receives complaints of violations of the rights of any person including HRDs, they investigate and bring it to the

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<sup>227</sup> Zimbabwe Human Rights Commission Act of 2012.

<sup>228</sup> See also Section 323 of the Constitution, which prescribes that Independent Commissions should present annual reports to Parliament.

attention of relevant Ministry, Department or agency of government. The ZHRC investigates, documents and periodically communicates to government on alleged violations or complaints. The Commission also issues periodic press statements on the human rights situations urging the HRDs to exercise their rights responsibly and peacefully. Further, the ZHRC urges law enforcement agencies to sustainably manage assemblies and proportionally respond to excesses by HRDs in their exercise of their various rights discussed above. The Director for Complaints Handling and Investigations Department is the focal person. This Department handles cases involving HRDs, utilizing the electronic case management system, which is used for all other cases. A press statement of 19 September 2019 by the ZHRC on planned demonstrations is a case in point on how the Department handles such cases.<sup>229</sup>

### **7.5.2 Reporting to Parliament**

In terms of Section 323 of the Constitution, the ZHRC presents an annual report to Parliament through the relevant Minister. The ZHRC also report on other aspects under its purview. This reporting allows for legislative overview over executive excesses, which may include State violations of HRDs' rights. While this role is commended, it has been criticized by many as ineffective as the annual report is easily overtaken by events where HRDs' rights are violated often and the ZHRC only report later. Thus, Parliamentary reporting does not avail immediate remedies for HRDs. It is more of a reactionary rather than a proactive response. Further, the government and the relevant Minister in particular, who should table the report in Parliament has been on record discrediting reports of the ZHRC as unrepresentative of the situation on the ground. Such a scenario poses a risk to the reputation of the Commission as a protector of HRDs. This can also be a strength when the NHRI differs with the government because an NHRI should not succumb to government demands to water down its reports. It is also not clear if the Minister can table a report which criticizes government in Parliament without seeking to review critical sections.

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<sup>229</sup> <http://www.zhrc.org.zw/press-statement-by-the-zimbabwe-human-rights-commission-on-the-planned-demonstrations/> (accessed on 30 July 2020).

### 7.5.3 Alternate reports

The ZHRC submits alternate reports to human rights mechanisms when Zimbabwe as a State Party presents its various reports. These reports range from the UPR to the Treaty body-specific reports at the international and regional levels. Most of the ZHRC's reports have been commended for their objectivity as they have strongly urged government to improve its human rights record as it pertains to concerns raised in use of excessive force on HRDs on the 1 August 2018 post-election killings by security agents<sup>230</sup> and 14 to 16 January 2019 demonstrations against fuel hikes.

### 7.5.4 Cooperation with partners

The ZHRC works closely with CSOs and development partners such as UN agencies and EU, which are into human rights programming for experience and good practice sharing, technical support, financing and human capital capacity development. ZHRC works with the UNDP, *Deutsche Gesellschaft für Internationale Zusammenarbeit* (GIZ) and EU in this regard. Further, the ZHRC has signed an MoU with the Zimbabwe Lawyers for Human Rights (ZLHR) for referral of some of the cases, which require public interest litigation for the HRDs for example.<sup>231</sup> The ZLHR signed an MoU with the ZHRC outlining setting up a referral structure used by HRDs to report violations to it as a constitutional body mandated with promoting and protecting human rights in Zimbabwe.<sup>232</sup>

The ZHRC works closely with the police through its parent Ministry of Home Affairs and National Heritage to build the capacity of the officers in human rights policing. It also convenes meetings, workshops and seminars with different HRDs to build their capacity in the work of the Commission and human rights processes such as State Party reporting. Part of the engagement is to promote the ratification of international human rights instruments such as the CAT that has remained outstanding for a long time.

<sup>230</sup> Six people were shot and killed by state security agents during a demonstration in the aftermath of 2018 General Elections. In January 2019, there were violent protests against fuel hikes resulting in aggravated brutality resulting in many complaints being lodged with the ZHRC. In its Report, the ZHRC identified CSO leader and political opposition as the major victims of the crackdown including abductions from homes, assault and threats. See <https://www.zhrc.org.zw/monitoring-report-in-the-aftermath-of-the-14-january-to-16-january-2019-stay-away-and-subsequent-disturbances/>.

<sup>231</sup> <https://www.zhrc.org.zw/download/mous-signing-ceremony-with-civil-society-organisations-report-14-march-2016/>.

<sup>232</sup> Human rights defenders project [https://www.zlhr.org.zw/?page\\_id=67](https://www.zlhr.org.zw/?page_id=67) accessed on 24/07/2020

Further collaborations with other CSOs through joint activities and development of referral pathways for complaints of violation of rights of HRDs. For instance, once the ZHRC assesses the needs of the HRDs, it refers them to collaborate with institutions programming in that area such as counselling, medical services, legal services to defend spurious charges or to seek damages from perpetrators. To this end, a well-coordinated referral system is necessary.

The ZHRC has also collaborated at regional and international level by interacting with NANHRI and UN Special Rapporteurs including the one on the situation of HRDs as well as the UPR. It participates in the development of regional and international networks on HRDs through participation in platforms hosted by NANHRI as well as research projects.

#### **7.5.5 Interaction with the international human rights systems**

The ZHRC strives to attend and participate in regional and international systems and networks. For instance, the ZHRC attended the 59<sup>th</sup> Ordinary Session of African Commission on Human and Peoples Rights held in Gambia from the 20-29 October, 2016. The Session was particularly focusing on the rights of women and it was a chance for the ZHRC to learn from other NHRIs on how to deal with women's rights and WHRDs. Notable it learnt in that Session that Zimbabwe had fallen behind in terms of submission of periodic state party reports. The Commission later engaged Government and the reporting under the African Charter is now up to date.

It also participates in the UPR process whenever Zimbabwe is up for review and takes the floor to address certain issues or questions. From 3 to 7 October 2016 in Geneva, Switzerland, ZHRC attended the pre-session to the UPR accompanying government delegations for the presentation of reports as government advisor on human rights. The ZHRC did not submit alternate reports.

### **7.5.6 Women HRDs**

The ZHRC has a dedicated Gender Equality and Women's Rights Thematic Working Group. The 2016 Annual Activity Report reveals that the Working Group engaged in activities such as Parliamentary Public Hearings on the high prevalence of child marriages; the Gendered Assessment of the Conditions of Women and Children in Prison; Sensitization on UN Resolution 1325 meeting by the Ministry of Women Affairs, Gender and Community Development and UN Women to enhance key stakeholders' understanding of Resolution 1325 and the utility of a National Action Plan, craft a framework to guide the development of the Zimbabwe National Action Plan on Resolution 1325, among other engagements. While there is no policy to handle WHRDs cases, the ZHRC is engaged with cases involving women activists in the electoral reforms who were abducted by suspected State security agents, tortured and sexually harassed. However, they were arrested on allegations that they stage-managed the abduction and are facing criminal prosecution.

## **Good practices in the protection of HRDs**

- ✔ Submission of alternate reports to regional and international human rights treaty bodies
- ✔ Signing of an MoU with the Zimbabwe Lawyers for Human Rights on referral of cases requiring public interest litigation, including on matters affecting HRDs
- ✔ Active involvement with cases involving women HRDs working in the electoral reform sector and other areas

## **7.6 Challenges in implementing the Marrakech Declaration**

### **7.6.1 Interference from Government**

Interference is the biggest challenge facing the ZHRC in executing its mandate.



Government, through especially the Minister for Justice, Legal and Parliamentary Affairs (MOJLPA) has been on the forefront in discrediting reports of the ZHRC and accusing it of acting like a CSO.<sup>233</sup> This criticism and association with CSOs confirms the role of the NHRI as an HRD operating in a hostile environment. In fact, the mere fact that government is compelled to respond to most ZHRC press statements or findings, is a sign that the NHRI is effective and needs more support to voice out concerns without fear or favour.

### **7.6.2 Funding**

While the Paris Principles on human rights institutional independence cites funding as a key aspect of the NHRIs independence, it is noted that the ZHRC, together with other independent commissions have suffered from underfunding. Its programmes are also heavily underfunded, relying mostly on donors. There is high staff turnover. This compromises its capacity to effectively promote and protect HRDs.

### **7.6.3 Recruitment**

While the recruitment of the ZHRC Commissioners is through the Standing Rules and Orders Committee, which allows for parliamentary oversight in their selection, there are concerns that it remains a political process. Although Parliament conducts public interviews, the results of the interviews are not released and the President has the final discretion to select from a list submitted by Parliament. In 2020, the government delayed replacement of retired commissioners making the ZHRC improperly constituted in taking some key decisions on national events due to lack of quorum. The delay can be politically convenient, but undermining the constitutional role of the ZHRC regarding promotion and protection of human rights and protection of HRDs.

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<sup>233</sup> <https://www.news.pindula.co.zw-january-2019> (accessed on 23 July 2020).

#### **7.6.4 Inadequate coordination with other stakeholders**

There appears to be poor coordination of stakeholders in the human rights sector by the ZHRC. Ordinarily, the Commissioner General of Police should cooperate in the investigations of violations of human rights with the ZHRC. However, it is not clear if the Commissioner General of Police has complied all the time and if there are any punitive measures in case he refuses to cooperate. This poses a real risk of confusion in the work of the ZHRC with other stakeholders, which can diminish its capacity to protect HRDs.

#### **7.6.5 General non-implementation of the Marrakech Declaration**

The general findings from the administered questionnaire and correspondences with the NHRI is that the Declaration is generally not deliberately implemented. There are no projects or programmes targeted at implementing the obligations under the Declaration. There are no specific efforts to engage the government on adopting programmes that implement the UN Declaration on HRDs. This can be attributed to the finding that government is generally hostile to human rights activism and is quick to label them as ‘regime change agents’. Consistent with findings of the World Report (2018), even the terms ‘HRDs’ is rarely used in the country. No person or institution other than the HRDs themselves, individually or collectively, refers to HRDs in their programming. It is CSOs that have active HRDs protection projects, and the ZHRC, to its credit, has a referral system with them.<sup>234</sup> All these point to a hostile environment for HRDs including the NHRI itself. The threats are not only targeted at HRDs, but the NHRI included.

Additionally, it was noted that the conversation on HRDs is kept between the NHRI and fellow HRDs through technical support it provides such as human rights training, joint programs activities involving human rights awareness, community legal assistance and solidarity with their causes through advocacy and lobbying and commemorative events. There is no evidence that the ZHRC has ever contacted the private sector on HRDs. While the ZHRC conducts investigations

<sup>234</sup> Zimbabwe Lawyers for Human Rights, Human rights defenders project. [https://www.zlhr.org.zw/?page\\_id=67](https://www.zlhr.org.zw/?page_id=67) (Accessed on 1 July 2020).

and has regular engagements with State institutions accused of violating rights of human rights defenders, such an engagement is not narrowed down to HRDs but to general violation of human rights with some victims being HRDs.

It is also a finding of the study that the NHRI contributes to generally safeguarding and promoting civic space and protecting human rights defenders, especially women. This is not a WHRDs intervention. Until a unit is dedicated to dealing specifically with HRDs issues, all interventions in the time being are circumstantial at best. The absence of a clear dialogue on engaging government to adopt a law specific to HRDs is noted. All these challenges are activities awaiting to be embarked on, funds permitting.

### **7.7 Recommendations**

- ✔ Advocate for the ratification of international and AU human rights instruments
- ✔ Advocate for the adoption of a national law on the protection of HRDs and train them on the vulnerabilities of women HRDs;
- ✔ Establish a focal person or desk within its structure to focus on protection of HRDs;
- ✔ Mobilize resources specifically earmarked for protection of HRDs to supplement funding from government.
- ✔ Galvanize the stakeholders and commence discussions towards drafting of a law for adoption, to provide a specific legal framework for the protection of HRDs
- ✔ Sensitize all stakeholders on the Marrakech Declaration;
- ✔ Translate the Declaration on HRDs into local languages and disseminate it widely.



## 7.8 Conclusion

There is generally a dearth of policy framework on several aspects of promoting and protecting the rights of HRDs in Zimbabwe, and WHRDs in particular, or guideline on gender and special interest groups. There is also no financial commitment towards implementation of the Marrakech Declaration. It appears there is need for specific mobilization of funds for this purpose.

However, the ZHRC seems to be performing well in promotional activities, though again they are being done under the general mandate of human rights promotion. It has and continues to visit places of detention as required by the Marrakech Declaration (para 20(g)); interacts with regional and international mechanisms for the protection of HRDs such as NANHRI and GANHRI etc.

The networks and partnerships established with CSOs and individual HRDs in the country is commendable. This was after the ZHRC became internal limitations and the need to divide labour and responsibilities. Through these networks, its work and existence was effectively publicized through platforms created by the partners. Formalizing these partnerships through MOUs was a show of good will. The partnership also saw the consolidation of national efforts to mobilize on the promotion and protection of the rights of HRDs through the referral system. However, very little is being done to engage regional networks such as the Southern African Human Rights Defenders Network (SAHRDN),<sup>235</sup> which pools together about eight countries to focus on the promotion and protection of HRDs in the sub-region.

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<sup>235</sup> Southern African Human Rights Defenders Network: <https://africandefenders.org/members/southern-africa/>.

# General Conclusion 8

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As independent State institutions with broad mandate to promote and protect human rights, NHRIs are uniquely and strategically positioned to respond to the situation of HRDs. In recent time, NHRIs around the world have thus sought to respond to the situation of HRDs. In a 2013 report,<sup>236</sup> Margaret Sekaggya, former UN Special Rapporteur on HRDs, outlined some of the commendable initiatives taken by NHRIs to protect HRDs. These include intervening through complaints mechanisms, engaging in advocacy in favor of a conducive work environment for HRDs, publicly supporting HRDs when violations against them are perpetrated, visiting HRDs in detention or prison, providing legal aid to HRDs, and strengthening the capacity of HRDs to ensure their own security. However, this report shows that the consistency with which NHRIs carry out these activities or more generally engage in the protection of HRDs varies considerably. In this context, the following recommendations are provided for the consideration of the countries and NHRIs discussed in this report.

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<sup>236</sup> Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, A/HRC/22/47, 16 January 2013.

