



Road map for civil society engagement

State reporting procedure of the
African Commission on Human
and Peoples' Rights



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Acronyms

ACHPR: African Commission on Human and Peoples' Rights

AU: African Union

AJPD: Association Justice, Peace and Democracy

CSOs: Civil Society Organisations

The Charter: African Charter on Human and Peoples' Rights

ISHR: International Service for Human Rights

Introduction

The African Charter on Human and Peoples' Rights (or the Charter), a regional human rights document, was adopted on 11 June 1981 and became legally binding on 21 October 1986. The Charter provides specific responsibilities to African Union (AU) Member States to give effect to the African Charter at domestic level. In particular, each State party shall submit every two years, from the date the Charter comes into force, a report on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognized and guaranteed by the Charter (Art. 62).

The consideration of State reports is an important part of the work of the African Commission on Human and Peoples' Rights (ACHPR or the Commission)¹, which falls under Article 62 of the African Charter on Human and Peoples' Rights. The purpose of this process, in the words of the ACHPR, is to "to create a channel for constructive dialogue"² on the implementation of the African Charter. It provides an opportunity to evaluate State actions to advance the rights protected in the ACHPR and its protocols, identify obstacles

¹ The official website of the African Commission on Human and Peoples' Rights is www.achpr.org.

² The African Commission on Human and Peoples' Rights, Information Sheet Number 4: State Reporting Procedure, undated.

to the realization of these rights, and formulate recommendations for improving State practice.

Civil society participation is critical to provide a counterpoint to government reports, ensuring that the Commission has an accurate picture of the situation on the ground. Civil society organisations (CSOs) can work to improve the quality of the recommendations and also work to ensure their implementation at the national level.

Despite its potential, the State reporting procedure faces a number of serious difficulties. In general, States parties have shown insufficient engagement in the process: the majority of States parties are not up-to-date in their reporting; States fail to engage actively with the ACHPR; and the Commission lacks capacity to ensure appropriate follow up and implementation of its recommendations.

Despite the potential to address these questions, civil society organisations have not extensively engaged in this process. Relatively few CSOs participate regularly



in ACHPR's sessions, and those that do often do not focus on the State reporting procedure. In addition, available advice on CSO engagement with the ACHPR focuses relatively little attention on this procedure.

This road map is an effort to address this gap and encourage CSOs to engage more extensively in the process. It provides basic information, describes challenges and share tips based on concrete experiences by CSOs working with the ACHPR.

Basic information on the African Commission

The ACHPR was created by the Article 30 of the African Charter on Human and Peoples' Rights in 1986. The Commission is comprised of 11 commissioners nominated by States and approved by heads of State and government of the African Union for a mandate of 6 years, that can be renewed. All commissioners serve in their personal capacity.

The Commission's mandate includes the protection, promotion and interpretation of the rights enshrined in the Charter. Although the examination of State reports is an important element of the Commission's mandate, it is important to note that the ACHPR develop other activities including country visits to follow the promotion of the Charter; participating in public fora in Member States; consideration of communications submitted by African Union States, CSOs or individuals; and undertaking fact-finding

missions. In addition, the Commission has created a number of specialized mechanisms dealing with particular thematic areas, including working groups³ and special rapporteurs.⁴ The ACHPR also issues public statements, which can be useful in drawing attention to a particular issue.

CSOs and State parties can also propose the adoption of items into the agenda through formal communication with the commission at least ten weeks in advance of the session; this is easier for NGOs with observer status⁵ and can be a useful mechanism for promoting

³ There are currently working groups on the death penalty; indigenous populations; economic, social and cultural rights; extractive industries, and conditions of detention. More information available at www.achpr.org.

⁴ There are currently special rapporteurs on the rights of women; prisons and detention conditions; freedom of expression; human rights defenders; refugees, asylum seekers and internally displaced persons; arbitrary, summary and extra-judicial executions; and torture. More information available at www.achpr.org.

thematic issues.

What is the State reporting procedure?

As noted previously, the consideration of State reports is an important function of the Commission. It is important in the framing of dialogue between States, the Commission and other stakeholders (including CSOs).

Pursuant to the Charter, States parties are to present reports to the Commission every two years outlining steps taken to ensure implementation of rights contained in the Charter. The guidance provided by the ACHPR to States regarding the preparation of reports defines that States should make available both information on the legal structure for integrating rights into their national systems and the extent to which these measures have been successful in ensuring enjoyment of these rights in practice.

As noted above, the creation of a constructive environment for dialogue is an important objective of the process. The process is, therefore, intended to

⁵ Information on how to a NGO can obtain an observer status is available at www.achpr.org/english/_info/observer_en.html

provide a basis for exchange between the Commission and States with a view to promoting the exchange of best practices and lessons learned when implementing the Charter.

The process includes the following phases:

- 1. Elaboration of the State report**
- 2. Preliminary consideration of reports by the Commission**
- 3. Presentation of the State report during the public session of the Commission**
- 4. Final consideration of the State report and adoption of recommendations in private session**
- 5. Transmission of concluding observations to States party for its comments**
- 6. Implementation of the recommendations by the State**



General challenges

The State reporting procedure suffers from a number of serious challenges. These include:

Delay in the submission of reports by States: a major challenge for activists is the delay in State reporting before the Commission. Of 53 member states, only ten were up to date on their reporting to the Commission as of May 2010. These were Algeria, Benin, Botswana, Cameroon, Congo-Brazzaville, Ethiopia, Mauritius, Nigeria, Rwanda and Uganda. Twelve countries (Comoros, Cote d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Gabon, Guinea-Bissau, Liberia, Malawi, Sao Tome and Principe, Sierra Leone and Somalia) have not submitted a single report. In addition, only two or three State reports are considered at each session of the Commission, slowing the review process. At times even this is not done (for example, at the 48th session in November 2010, the ACHPR considered only one State report). There are few repercussions for non-compliance; the Commission regularly reports on this, both at the session and to other AU organs, but little action is taken. This is a serious obstacle to civil society engagement, particularly in those countries that have not submitted reports.

Lack of predictability regarding when a State report will be reviewed: Another obstacle is the lack of clarity about when State reports will be considered, making it difficult for CSOs to plan their involvement. Typically, the States which are to be examined at a given session are identified at the preceding session. However, reports of these sessions are often not available promptly. Fortunately, however, the Commission does make reports publicly available on its website, several months before they are to be considered. In addition, the format of the Commission sessions is such that particular debates or themes are not scheduled for particular days, rather moving from one agenda item to the next as previous business is completed. This means that it is difficult for CSOs to plan targeted interventions around the date and time when the report will be discussed.



Delay in the review of State reporting: Even when the schedule is made public, State presentations are often delayed. For example, Madagascar was scheduled to present its report at both the 47th and 48th session of the African Commission (in May and November 2010, respectively) but had yet to do so in October 2011. This is sometimes due to the lack of attendance by State delegations. Not only does this send a worrying signal about the lack of government commitment, but it also makes it difficult for civil society organisations, particularly those with scarce resources, to be present during the relevant session. While the Commission generally seeks to avoid consideration of State reports without their participation, it has decided that examinations can proceed where two invitations have gone unheeded.

Lack of CSO oral statements during the sessions of the review: Although CSOs can attend the sessions in which State reports are considered, they cannot take the floor to make statements or ask questions.

Lack of emphasis on follow up: Another obstacle is the minimal focus placed on follow up by the Commission itself. For example, although the ACHPR posts State reports on its website, only a handful of observations of the Commission are available, impeding capacity to monitor State responses. In addition, recent editions of the Commission's regular report to the AU Summit include only a two paragraph description of the review of State reporting.

Guidelines for reporting

In order to facilitate proper State reporting, the ACHPR has developed guidelines⁶ for States parties in relation to the preparation of report. The Commission focuses on two sorts of State reporting: the initial and periodic reports. Although these are differentiated quite extensively in the guidelines, the questions dealt with are more or less the same. The key difference is only that the initial report should provide comprehensive information and periodic reports should focus on developments since its previous report and response to comments.

The Commission guidelines request information on a broad spectrum of rights issues at the national level:

- Civil and political rights;
- Economic, social and cultural rights; peoples' rights;
- Specific rights and duties provided for in the Charter;
- Elimination of all forms of discrimination based on race, identity, gender, ethnicity, religion, or country of origin.

Although these guidelines focus on the provisions of the Charter, they also draw on other areas of international law, particularly in the sections on discrimination against women and relating to the crime of apartheid. In its guidelines on social and economic rights, the ACHPR sets out specific standards and rights on which it would like information. CSOs wishing to engage with the process should familiarize themselves with the particular information requested by the Commission. The ACHPR has also adopted specific guidelines on reporting on the implementation of the Protocol to the African Charter on Human and Peoples' Rights, on the rights of women in Africa on economic, social, and cultural rights.

As a general rule, certain core questions should be addressed in each section:

- *Is the right in question protected in the national constitution?*
- *What other national laws and policies regulate the enjoyment of this right?*



- *What limitations are placed on this right?*
- *Can charter provisions related to this right be invoked in national courts?*
- *What recourse is available in the event that this right is violated?*
- *What other measures have been taken to ensure that this right is respected in practice? In the case of social and economic rights specific questions as to social programs and laws regulating work are also included.*
- *What obstacles lay in the way of full realization of this right?*

In addition to responding to the substantive questions above, it is important that reports include detailed and concrete information useful in assessing the human rights situation in each country.

The following suggestions would help to ensure that the report is comprehensive:

- The report should contain the following as

attachments: copies of the relevant laws, regulations, agreements and judicial decisions in order to facilitate their consideration. Detailed discussion of relevant provisions should be included.

- The report should, as much as possible, refer to concrete cases and actions. There are more useful in illustrating the situation of human rights than general assertions that rights are protected.
- The report should reflect on the extent to which rights are enjoyed in practice and not only on efforts that it State party has undertaken.
- The use of credible statistics will provide an opportunity for concrete evaluation and for assessment in the State's progress in implementing its human rights obligations.
- The report should be elaborated in a consultative manner, including ministries and State agencies as well as civil society organizations with access to relevant information.

⁶ The guidelines are available at www.achpr.org/english/_info/state_procedure_en.html

- In order to ensure transparency, the report should include a methodology section and a description of civil society engagement in the process. The Commission has already urged States to do this, for example, criticizing the lack of a list of actors consulted in Algeria's third periodic report⁷.
- The report must address the range of human rights issues, including the rights of minorities (including sexual minorities) and women.
- The report must acknowledge challenges to the fulfillment of human rights, acknowledging and responding to criticism of its human rights record previously raised by the Commission, national human rights bodies, and CSOs.

⁷ During the 42nd Session of the ACHPR, November 2007

From past sessions, frequent questions asked by the Commission to the States are related to :

- Request for statistics;
- Involvement of CSOs in the drafting of the report;
- The compliance of the report to the guidelines;
- The link between the rights reported and the articles of the Charter.



How CSOs can engage in each phase

NGO engagement in the State reporting process can play an important role in improving the State reporting process, both by providing information to governments and the Commission, and by following up on the implementation of recommendations. The ways in which CSOs can engage at every step of the process are the subject of the next section.

Elaboration of the State report

This is the process of drafting by the government under review. The Commission's guidelines do not provide specific guidance as to the procedure to be followed, except that it should be produced in a consultative manner.

Challenges:

- The failure of States' parties to undertake the preparation of State reports.
- Inconsistent quality of State reports.
- Lack of engagement with civil society organisations in the drafting of State reports.
- Lack of transparency about when State reports are likely to be prepared and submitted, limiting the possibility for early engagement in the process.
- Lack of awareness about State reporting procedures at the national level.



Tips:

- Pressure your State to submit their report to the ACHPR and to do it in a timely manner.
- Advocate to make sure the authorities engage relevant stakeholders in the drafting process, such as National Human Rights Institutions and CSOs. The participation in this process does not exclude the possibility to submit CSOs reports directly to the ACHPR.
- Draw attention to States' negligence in the submission of report at the national level through direct communication with States (advocacy letters and meetings with relevant departments) and indirectly through articles in newspapers.
- Ask members of the ACHPR to ask for information about engagement in the elaboration of the State report, including requesting a list of CSO's consulted.
- Urge commissioners to pay close attention to State compliance with reporting guidelines.
- Encourage trainings to governments on best practices with regard to State reports. Such efforts

could also be undertaken at the regional level through arrangement of peer reviews. Launched in 2003 by the AU, the African Peer Review Mechanism is a mutually agreed instrument voluntarily acceded to by the Member States of the AU as an African self-monitoring mechanism.

- Due to the lack of proactive engagement by the secretariat, it is critical that CSOs conduct their own outreach to the secretariat through e-mail. This can solicit feedback on the possibility of State reporting and promote close coordination to reinforce the ACHRP advocacy for State participation.
- Identify the commissioner responsible for your country and seek to forge a collaborative relationship and engagement throughout the process.
- Submit CSOs reports. This process is particularly important in situations in which CSOs are not involved in the elaboration process, but can also be used to supplement direct participation where governments do not integrate CSO comments.

Phase 2

Preliminary consideration of reports by the Commission

When a report is received, the ACHPR may take a number of steps at the commencement of the examination process. According to the ACHPR's rules of procedures, once the Secretary has received a report from a particular State, he or she may, in consultation with the Commission, transmit it to relevant specialized mechanisms and solicit comments. The rules of procedures are not completely clear on which institutions are to be approached,

▣ Challenges:

- Lack of public information from the commission about when reports are initially received.
- Limited outreach by the Commission in developing its initial list of questions.

but the Commission has, in practice, shared reports with credible CSOs working on that country. The Commission has also begun publishing reports to be examined at its next session publicly on its website. In addition, the Commission may prepare questions for the State concerned to be transmitted to the State at least six weeks prior to the session at which their report is to be considered.

▣ Tips:

- Advocacy with national authorities to encourage them to make preliminary reports available to civil society organisations.
- Engagement with both commissioners and the secretariat in encouraging them to share State reports as early as possible.
- Submission of alternative information: as soon as a copy of the State report can be obtained, civil society organisations may consider compiling a CSO report in order to complement the government report.
- Provision of suggested questions to be asked to States, even without a CSO's report, can be useful. These can be e-mailed directly to the commissioner in charge of your country and their assistant.
- Advocate with organisations at the NGO Forum held prior to every ACHPR session to add to and endorse your list of suggested questions.
- Given the important role the Commissioner Rapporteur in charge of the country plays in the review of the country, it is important for CSO's to keep in contact with him or her and copy him or her all information sent to the secretariat in relation to the review of the country.



Phase 3

Presentation of the State report during the public session of the Commission

The Commission is to advise the State in question as soon as possible of the date of the session at which its report will be considered. At the session, the State is invited to present its report. Commissioners then have the opportunity to pose questions on the content of the report (which need not be limited to those questions transmitted in advance). The Commission encourages States to send high level representatives, able to respond effectively to questions. Although the presentation is conducted during the open session and CSOs can attend, only commissioners may pose questions.

Challenges:

- Difficulty in attending the sessions, which can be expensive, especially given the lack of predictability with regard to the timing of the discussion of State reports.
- The fact that CSOs may not directly take the floor at the session.



Tips:

- Engagement with other CSOs which regularly attend ACHPR's sessions in order to seek assistance in transmitting ideas or information where organisations lack the resources to attend.
- Direct engagement with national authorities in relation to the content of reports.
- Engagement with both commissioners and the secretariat to encourage them to pose questions suggested by civil society.
- CSOs may also take advantage of the ability of organisations with observer status to make comments on other agenda items to address the content of a particular State party's report. Many issues raised by the reports can be addressed either through the agenda item on the general situation of human rights in Africa or in one of the thematic agenda items.
- CSOs may also want to consider the organisation of side events or private briefings for commissioners as alternative fora for engaging in discussion on the content of State reports.

CSOs reports

Reports may be prepared by any organisation (even those that do not hold observer status with the Commission). They may be transmitted directly to the secretariat at the contact details below:

The African Commission on Human and Peoples' Rights
31 Bijilo Annex Layout, Kombo North District, Western Region
P.O. Box 673
Banjul, The Gambia
Tel (220) 4410 505
Fax (220) 4410 504
Email: au-banjul@africa-union.org

Although there is no set format for such reports, it is useful to organise the structure around the rights enumerated in the African Charter on Human and Peoples' Rights

It is important to consult other CSO's reports for best practices⁸.

The inclusion of statistics with reliable sources and detailed case examples can be a powerful way to illustrate human rights violations.

It is useful to draft suggested questions to be posed by commissioners, organized by theme and relevant charter provisions and include these in the CSO report.

⁸ An example of a previous NGO report which was compiled by the Zimbabwe civil society organisations for the May 2007 session may serve as a useful reference (available online at www.hrforumzim.com/frames/inside_frame_special.htm)

Phase 4

Final consideration of the State report and adoption of recommendations in private session

Once the Commission has gathered all available information (including the State report, materials provided by CSOs and responses to questions posed by commissioners), it conducts a final consideration of the report. If the Commission decides that the State in question has not discharged some of its obligations under the Charter, it may make observations and recommendations to the relevant State.

▣ Challenges:

- Difficulty in engaging with commissioners at this stage of the process. Concluding observations and recommendations are generally adopted in closed session, which limits the possibilities for engagement even for CSOs able to attend the Commission.



▣ Tips:

- Suggestions of potential recommendations in earlier engagements with the Commission. They might also be included in NGO reports.
- Engagement with commissioners in order to encourage adoption of particular recommendations of concern.

Phase 5

Transmission of concluding observations to States party for its comments

The Commission will then submit its observations to the State party for comment and may fix a deadline for submission of these comments. The Commission may submit these observations to the Assembly of Heads of State and Government with any comments supplied by the State.

☒ Challenges:

- Lack of timely communication with regard to the transmission of observations and recommendations.



☒ Tips:

- Advocacy with governments to ensure a timely response to the Commission's preliminary assessment.

Phase 6

Implementation of the recommendations by the State

An effective State reporting process does not end with the adoption of recommendations. It must be maintained between reporting periods and continued at the national level. CSOs have a particular role to play in ensuring that the Commission's recommendations are implemented and followed up at the national level.

📏 Challenges:

- Lack of emphasis by the Commission on following up on recommendations.
- Limited capacity of the Commission to enforce recommendations.
- Lack of political will from the States authorities to implement the recommendations.
- Lack of coordination among State organs in charge of the implementation of the recommendations.
- Some recommendations are “vague”, making follow up difficult.

📏 Tips:

- Advocacy with the Commission to ensure that observations are made public, particularly where States have undertaken insufficient efforts to ensure compliance.
- Dissemination of, and awareness-raising around, available recommendations.
- Conduct advocacy campaigns in support of Commission recommendations at the national level.
- Monitor government compliance with ACHPR recommendations and provision of this information to the Commission.
- Urge collaboration between the ACHPR and the Office of the High Commissioner for Human Rights and other United Nations organs to carry out joint advocacy work for the implementation of similar recommendations.
- Advocacy with governments to encourage them to report regularly to the Commission the status of implementation of previous recommendations.



List of contacts

The African Commission on Human and Peoples' Rights can be contacted at:

31 Bijilo Annex Layout, Kombo North District,
Western Region
P.O. Box 673
Banjul, The Gambia
Tel (220) 4410 505 - 6
Fax (220) 4410 504
Email: au-banjul@africa-union.org

The Commission's guidelines on the preparation of State reports is appended to its 2nd Activity Report as Annex X, available online at: http://www.achpr.org/english/activity_reports/2nd%20Activitiy%20Report.pdf

The Commission "Fact Sheet No. 4" also includes relevant information and is available at http://www.achpr.org/english/_info/state_procedure_en.html

More information is available at their website:
www.achpr.org



About the organizations that promote this publication

Association Justice, Peace and Democracy (AJPD) is a national non-governmental, not-for-profit organization, founded in Luanda, Angola in 21 May 2000. Its mission is to contribute and work in advocacy of rights of citizens and the communities in Angola through Programs that aim the protection of human rights and citizenship. The AJPD was accorded consultative status with the African Commission on Human and Peoples' Rights in May 2007, and was chosen as the lusophone focal point for The Coalition for an Effective African Court on Human and Peoples' Rights (African Court Coalition) in May 2008.

Contact: ajpd@netangola.com

Conectas Human Rights is an international non-governmental, not-for-profit organization, founded in Sao Paulo, Brazil in October 2001. Its mission is to promote the realization of human rights and the consolidation of the Rule of Law, especially in Latin America, Asia and Africa. Conectas was accorded consultative status with the ECOSOC-UN in January 2006, and observer status with the African Commission on Human and Peoples' Rights in May 2009.

Contact: conectas@conectas.org

International Service for Human Rights (ISHR) is an international non-governmental organization which was founded more than 25 years ago. Its mission is to support the engagement of human rights defenders with the United Nations human rights system and regional human rights systems. ISHR also aims to make these systems more effective, more accessible to human rights defenders, and more responsive to their concerns. ISHR works at the national, regional and international levels.

Contact: information@ishr.ch




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