

Proposal: Draft Guidelines for Reporting by NGOs to the African Commission on Human and Peoples' Rights

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Summary:

The contributions of Non-governmental Organisations (NGOs) have been a prominent feature of the work of the African Commission on Human and Peoples' Rights (African Commission), and contributed significantly to its progress. In recognition of this important role, the Commission decided to accord 'observer status' to interested NGOs that meet certain criteria. Under the resolutions allowing for these possibilities, adopted by the Commission in 1999, all NGOs with observer status are required to submit bi-annual 'activity reports'. However, subsequent reporting by NGOs has been unsatisfactory, both in terms of the quantity and quality of reports. One of the reasons for the dearth of reports is the lack of guidance as to the content or format of these reports. This is a proposal to fill this gap, by suggesting Draft Guidelines for Reporting by NGOs to the African Commission.

Introduction: The origin, rationale and lack of NGO reporting

Although the African Charter on Human and Peoples' Rights (African Charter) does not specifically mention the potential role of civil society in the promotion and protection of Charter rights, it does, in article 45(1)(c), stipulate that the African Commission may co-operate with 'other African national and international institutions concerned with the promotion and protection of human and peoples' rights'. It is now generally agreed that civil society - and in particular NGOs - has been indispensable to the growth and strengthening of the African human rights system. One of the reasons for the significant role of NGOs in the system is the collaborative relationship that the Commission cultivated with African and international NGOs. The Commission often refers to NGOs as supplementing its mandate at the domestic level.

Early in its existence, in 1988, the Commission formalized this collaborative relationship by adopting a resolution granting observer status to NGOs working in the field of human rights in Africa. This process was adjusted in 1999, when the Commission at its 11th ordinary session held in Tunis, Tunisia, adopted the 'Criteria for the Granting of and Maintaining Observer Status with the African Commission on

Human and Peoples' Rights'. Between 1988 and the end of 2012, 447 NGOs have been granted observer status with the African Commission. According to the 1999 Criteria, all NGOs that have observer status with the Commission must submit activity reports every two years from the date observer status was granted (Chapter III, para 2 of the Guidelines).

In its resolutions, the Commission mentions two factors to justify NGO reporting. It emphasized that the relationship between the Commission and NGOs should be one based on reciprocity, and that NGO reporting should enrich this reciprocity. It also identifies the submission of NGO activity reports as 'a way of enhancing the protection of human rights, and the co-operation between the Commission and NGOs'. Further, it expressed concern that it was not 'adequately informed by most of them about what work they are doing in the sphere of human rights or how they are helping to promote and/or protect human rights in Africa'. It added that the 'very essence of having NGOs as partners in creating a culture of recognition of and respect for human rights on the African continent is thereby betrayed.'

However, few NGOs enjoying observer status have subsequently submitted these activity reports. The Commission has on numerous occasions expressed concern about the dearth of NGO reports. In 1998, at its 26th ordinary session, it adopted a resolution expressing concern about NGOs that have observer status with the Commission but which have not yet submitted their overdue reports, asking them to do so before the 27th ordinary session of the Commission; and decided to revoke observer status of NGOs that do not submit any activity reports at the 27th Ordinary Session. At its 53rd session, in April 2013, the Commission noted that only 283 out of 447 NGOs with observer status have submitted one or more activity report.

One of the main reasons why NGOs have not reported regularly is the lack of any guidelines for these reports. Another pertinent reason is the lack of a clear rationale of these reports, informed by a lack of clarity about the purpose for and way in which the reports that have actually been submitted, had been put to use by the Commission. As much as there has now been regular scrutiny of NGO reporting, there has been silence about the use to which submitted NGO reports have been put.

In the absence of such Guidelines, it seems to serve very little purpose to suggest any punitive measures against NGOs that are not up to date with their reporting obligation. It is important to first develop and eventually adopt Guidelines to assist NGOs in their efforts to report; and to clarify and illustrate how these reports are actually put to use. It should be kept in mind that the legal basis and purpose of NGO reporting is distinctly different from that of state reporting. While state reporting lies at the core of the African Charter, and is provided in its article 62, the reporting obligations of NGOs are derivative, and are based on resolutions of the Commission

and not the Charter itself. The public scrutiny of state reports, leading to the adopting of Concluding Observations, is aimed at holding states accountable to their Charter obligations. No such scrutiny or Charter-based accountability relates to NGOs, who are, quite obviously, not parties to the Charter.

Draft Guiding Principles for Reporting by NGO to the African Commission on Human and Peoples' Rights

NGO activity reports to the African Commission should be guided by the following principles:

- The aim of reporting by NGOs is to provide information to the African Commission relevant to the fulfilment of its mandate to promote and protect human rights in Africa, and to enhance a close cooperative relationship between NGOs and the African Commission.
- Activity reports by NGOs should enable the African Commission to identify potential areas of collaboration with the particular NGO.
- NGO activity reports are not 'shadow' or parallel reports, in response to initial or periodic state reports, and serve a broader purpose than criticizing state parties for their human rights observance.
- Reports should focus on the specific benefits that the activities and position of a particular NGO may bring to the work of the African Commission.
- Reports by NGOs should be concise and accurate, and as far as possible contain specific details, such as statistics and case names, and where necessary annexures such as laws, judgments, or newspaper clippings (as appropriate to the subject-matter). However, reporting must not be too onerous or detailed so as to inhibit regular reporting.
- Reporting should be easy. An electronic template for easy completion should be easily accessible on the Commission's web site.
- Each consecutive report should deal with the intervening period between the current report and the previous report. However, initial report should deal with the period between the granting of observer status and the submission of the initial report.
- If an NGO publishes an annual report this could be annexed to the report to give more general information about the NGO's work.
- **NGOs are encouraged to include a section in their annual reports devoted to the issues set out in the 'proposed content' below. In instances where the NGO's annual report contains all the required information, the NGO may**

submit its annual reports for the last two years, together with a covering letter, as its activity report to the Commission.

- NGO reports should as far as possible be submitted electronically, to email address XXX, so as to allow the Commission to post these reports on its web site.
- The Commission should as part of its activities make use of and explicitly refer to these activity reports as frequently as possible.

Proposed content: Guidelines for NGO Reporting to the African Commission

The guidelines below provide a framework for ‘activity reports’ by NGOs enjoying observer status with the African Commission, and should be adjusted to reflect the specific field of operation, expertise and interests of a particular NGO.

The report should indicate the period covered. Reports should be submitted every two years, and should state the two-year period covered.

1 Current status as NGO

NGOs should indicate when observer status was granted, explain its nature (especially if they operate in one country, sub-regionally, regionally or globally), inform the Commission of any changes to their founding legal basis, legal status and contact details. They should indicate (or confirm) the particulars of the designated focal point/ person serving as liaison between them and the African Commission. NGOs should indicate to what extent they, and civil society organisations more generally, are able to operate without constraints in relevant AU member state(s).

2 Relationship with African Commission

NGOs should indicate how frequently they have attended sessions of the Commission, and explain any obstacles inhibiting their attendance. They should indicate what they consider to be the main benefits of their attendance of sessions. They should further indicate what obstacles they have experienced in maintaining a productive and effective relationship with the Commission (in particular, its Secretariat), for example, in respect of the submission of communications or requests for obtaining information.

3 Human rights situation in the country/countries concerned

NGO should report on the most prominent human right issues in the state(s) in which they operate, or thematic issues which they deal with, indicate what approach they are taking or have taken to address those issues, and identify the potential role of the African Commission in addressing these situations or thematic issues. This information should be provided in a form enabling the Commission to use it in the examination of state reports and in promotional and other visits.

4 NGO activities

NGOs should provide an overview of activities over the reporting period, with emphasis on those activities relevant to and making use of the African Charter rights framework. They should, in particular, indicate what activities have been undertaken together with or in support of members of the African Commission.

5 Domestic application and use of African Charter and Women's Rights Protocol

NGOs should indicate the status of ratification of the African Charter, Women's Rights Protocol and other AU human rights treaties. NGOs should explain the status of the ratified treaties in the domestic legal order; and the extent to which these treaties have been domesticated through legislation, policies, and in the judgments of courts.

6 Promotional activities

NGOs should report on activities undertaken by them to

- enhance awareness of the African Charter, the African Women's Rights Protocol and other AU human rights instruments;
- raise awareness of the work of the African Commission, in particular the decisions, recommendations contained in Concluding Observations issued after the examination of periodic state report of the African Commission in respect of the state(s) in which they operate, resolutions and General Comments; for example through training and advocacy; by issuing press releases; or by simplifying and translating the Charter, the Women's Rights Protocol and other AU human rights treaties and African Commission documents such as decisions, recommendations and resolutions into local languages;
- indicate communications in which they have been involved in the intervening period and indicate the status of implementation of any decisions as well as processes adopted to ensure implementation and the challenges experienced;
- popularise the African Union's human rights instruments; and on the level of awareness about the African human rights system in the population as a whole, and in specific segments of society with which the NGO engages; and

- educate and teach and train individuals and groups about human and peoples' rights.

NGOs should report on the extent of media coverage about and public debates relevant to the African human rights system.

7 State reporting

NGOs should report about its role in the state reporting process, for example, the extent of their inclusion in the reporting process, efforts made to support or improve the state's reporting record or processes, and, if applicable, the submission of any 'alternative' report to the state report.

8 Special mechanism and promotional visits

NGOs should report about its awareness of, support for and involvement in the activities of special mechanism, or promotional visits of the African Commission and its special mechanisms.

9 Follow up of African Commission recommendations at the domestic level

NGOs should, as far as possible, provide information on the current status of national implementation of the Commission's recommendations in individual communications, its Concluding Observations adopted after examining the report from that particular state, and of recommendations by special mechanisms.

10 Relationship with other AU human rights organs and RECs

NGOs should, as far as relevant, report on their involvement in any activities involving the African Court on Human and Peoples' Rights, the Committee of Experts on the Rights of the Child, and of other AU organs involved in human rights, and in the human rights-related activities of Regional Economic Communities.

11 Relationship with other NGOs and NHRIs

NGOs should indicate the extent and nature of collaboration with other NGOs, for example, its participation in networks or collaborative campaigns, and with National Human Rights Institutions (NHRIs).

12 Any other relevant activities or issues

NGOs should report on any other activities or issues relevant to the relationship between them and the African Commission.

13 Recommendations

NGOs should make recommendations to the Commission, including recommendations related to:

- the role of the African Commission in the improvement of the human rights situation in the state(s) in which the NGOs operate;
- the improvement of the relationship between the NGO and the Commission (including its Secretariat);
- the improvement of the processes and procedures of the African Commission (including its Secretariat).