

Draft: Reporting Guidelines for Activity Reports by NHRIs to the African Commission on Human and Peoples' Rights

(comments to magnus.killander@up.ac.za / mkillander@gmail.com by 31 January 2014)

Introduction

The contributions of National Human Rights Institutions (NHRIs) 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 their important role, the Commission decided to accord 'affiliate status' to NHRIs. Under the resolution allowing for this possibility, adopted by the Commission in 1998, all NHRIs with affiliate status are required to submit a bi-annual 'activity report'. However, subsequent reporting by NHRIs has been unsatisfactory. One of the reasons for the dearth of reports is the lack of any guidance as to the content or format of these reports.

PART I: NHRI Reporting

The origin, rationale and lack of NHRI reporting

The African Charter, adopted in 1981, already foresaw the role of NHRIs in the work of the African Commission. Article 26 of the African Charter stipulates as follows: 'States Parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall 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.' In the meantime, NHRIs have risen to much greater prominence. NHRIs are now internationally recognized if they function according to the 'Principles Relating to the Status of National Institutions' (also known as the Paris Principles), endorsed by the General Assembly of the United Nations endorsed these principles in 1993.

In 1998, the African Commission decided to grant special observer status (referred to mostly as 'affiliate status') to any African national institution established in Africa and functioning according to internationally recognized norms and standards. The following criteria for the status of affiliated institution apply: (i) the national institution must be established by law, constitution or by decree; (ii) it must be a national institution of a state party to the African Charter; (iii) it should conform to the Paris Principles; and (iv) it should formally apply for status in the African Commission. By 2013, the number of NHRIs enjoying 'affiliate status' with the Commission stood at 23.

In return, an affiliated NHRI is required to submit a report, every two years, to the Commission on its activities related to the promotion and protection of the rights enshrined in the Charter.

Reporting by NHRIs has been irregular. By April 2013, only 10 out of 23 affiliated NHRIs were up to date with the submission of their reports, while six have never submitted any report.

As in the case of NGOs, one of the reasons for the lack of reporting is the absence of any guidelines for reporting.

Guiding principles for reporting by NHRIs

NHRI activity reports should be guided by the following principles:

- The aim of reporting by NHRIs 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 NHRIs and the African Commission.
- Activity reports by NHRIs should enable the African Commission to identify potential areas of collaboration with the particular NHRI.
- NHRI 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 NHRI may bring to the work of the African Commission.
- Reports by NHRIs should be concise and accurate, and in 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 or affiliate status and the submission of the initial report.
- If an NHRI publishes an annual report this could be annexed to the report to give more general information about the NHRI's work.
- NHRIs 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 NHRI's annual report contains all the required information, the NHRI may submit its annual reports for the last two years, together with a covering letter, as its activity report to the Commission.
- NHRI 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 NHRI Reporting

The guidelines below provide a framework for ‘activity reports’ by NHRIs, enjoying ‘affiliate status’ with the African Commission on Human and Peoples’ Rights and should be adjusted to reflect the mandate of a particular NHRI.

The report should indicate the period covered.

1 Current status

NHRIs should indicate the date when affiliate status was granted, explain the nature of the NHRI, and inform the Commission of any changes to their founding legal basis, their funding sources, and contact details. They should indicate (or confirm) the particulars of the designated focal point/ person serving as liaison between it and the African Commission. NHRIs should indicate to what extent they are able to maintain and uphold and any challenges and obstacles encountered in adhering to the Paris Principles. NHRIs should indicate the nature and extent of its relationship with civil society, including human rights NGOs. NHRIs should indicate the extent of their participation in the Network of African NHRIs (NANHRI).

2 Relationship with African Commission

NHRIs 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 relationship with the Secretariat of the Commission, for example, in respect of obtaining relevant information.

3 Human rights situation in the country concerned

NHRI should report on the most prominent human right issues in country, and the potential role of the African Commission in addressing these situations.

4 Activities

NHRIs 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.

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

NHRIs should explain the status of the Charter, the Women's Protocol and other AU human rights 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

NHRIs should report on activities undertaken 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, other AU human rights treaties and African Commission documents such as decisions, recommendations and resolutions into local languages;

- popularise the African Union’s human rights instruments; and on the level of awareness about the African human rights system in the population;
- educate and teach and train individuals and groups about human and peoples’ rights.

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

7 State reporting

NHRIs should report on the state’s reporting obligations under all human rights treaties (in particular the African Charter and African Children’s Charter), the status of compliance with reporting obligations, and implementation of concluding observations, for example by integrating the concluding observations into their programme of activities.

NHRIs should report about its role in state reporting, for example, its inclusion in the reporting process, efforts made to support or improve the state’s reporting record or processes.

8 Special mechanism and promotional visits

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

10 Relationship with other AU human rights organs and RECs

NHRIs should, as far as relevant, report on their involvement in any activities involving the African Court on Human and Peoples' Rights, the African 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 Any other relevant activities or issues

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

12 Recommendations

NHRIs 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 in which it operates;
- the improvement of the relationship between the NHRI and the Commission (including its Secretariat); and
- the improvement of the processes and procedures of the African Commission (including its Secretariat).