

**DRAFT GUIDELINES ON SHADOW REPORTING
UNDER THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS
AND THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND
PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA**

October 2019

**Guidelines on Shadow Reporting under the African Charter on Human and Peoples' Rights and
The Protocol to The African Charter on Human and Peoples' Rights on the Rights of Women in
Africa**

I. INTRODUCTION

1. Pursuant to Article 62 of the African Charter on Human and Peoples' Rights ('the African Charter' or 'the Charter') and other relevant legal instruments which supplement it, including the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), particularly in its Article 26, State Parties must submit reports in accordance with the guidelines of the African Commission on Human and Peoples' Rights ('the African Commission' or 'the Commission') on the measures they have taken including but not limited to legislative, administrative, institutional and programmatic actions, to give effect to the provisions of the African Charter and the Maputo Protocol.
2. According to Rule 74 (2) of the Rules of Procedure of the African Commission, 'institutions, organisations or any interested party wishing to contribute to the examination of the [State] report and the human rights situation in the country concerned, shall send their contributions, including shadow reports, to the Secretary at least 60 days prior to the examination of the report.'¹ This points to the important role of civil society organisations and individuals with relevant expertise in monitoring the implementation of the provisions of the African Charter and Maputo Protocol through reporting processes.
3. The African Commission has acknowledged the role of shadow reports in building 'constructive dialogue with a State representative when that country's periodic report is being considered.'² In the consideration of States Parties' reports by the Commission, organisations or individuals with relevant expertise may submit "shadow" reports, which provide credible and reliable information that substantiates or critiques the official government's report.
4. In improving the reporting mechanisms of the African Commission, this guideline addresses the need to enhance the format and content of Shadow Reports considering that State Parties have guidelines to follow in their reporting obligations.

II. DEFINITIONS

5. State report: is a report by a state on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognized and guaranteed by the African Charter and the Maputo Protocol.
6. Shadow Report: is a report by any institution, organization or interested party including individuals with relevant expertise who wish to contribute to the examination of a State Party report.

¹ See Rules of Procedure of the African Commission on Human and Peoples' Rights of 2010 <https://www.achpr.org/legalinstruments/detail?id=34>.

² Resolution on the Cooperation between the African Commission on Human and Peoples' Rights and NGOs having Observer Status with the Commission' ACHPR/Res.30(XXIV)98 adopted in Banjul (31 October 1998) para 5.

III. AIMS AND PURPOSE OF SHADOW REPORT

7. The aims and purpose of the shadow reports is to:
 - a) Enable the African Commission to get a more comprehensive picture of the human rights situation in the country under consideration by providing it with independent information;
 - b) Alert the African Commission to issues not raised in the report of the State Party. These reports may take the form of a general report, which provides information on implementation of the substantive provisions of the Charter and the Maputo Protocol, or they can be thematic reports that targets specific themes;
 - c) Provide suggested questions that the African Commission could direct to the reporting State Party, and suggested recommendations that the African Commission may issue to address particular concerns;
 - d) Encourage States Parties to prepare more accurate reports in the future; and
 - e) Further strengthen co-operation between civil society, Non-Governmental Organisations (NGOs) and National Human Rights Institutions and the African Commission in the promotion and protection of human and peoples' rights on the continent.
8. Given the above, these guidelines provide an outline of the various elements to be considered by civil society in developing shadow reports for submission to the African Commission.

IV. GENERAL GUIDANCE FOR PREPARATION OF REPORT

9. The report should be presented in a concise, detailed, comprehensive and structured manner. Use simple and free flowing language. As far as possible, avoid any unnecessary use of Latin terms, abbreviations/acronyms, phrases and maxims.
10. The report must constitute factual, specific, reliable and objective information that is supported by a body of evidence including court cases, official reports, academic research, surveys, NGO reports, news articles, etc. Sources utilised by the authors must be clearly cited where possible, and up-to-date statistical information should be provided.
11. Shadow reports should be accompanied by copies of the relevant provisions of the principal legislative, judicial, administrative and other texts referred to in the report, where applicable.
12. The report and all accompanying documentation should be drafted in at least one of the official languages of the African Union.³ Reports should be submitted at least 60 days prior to the examination of the report.
13. The report should strive to take into account the following:

³ The languages of the African Union are French, English, Portuguese, Arabic. It is advisable, when possible, to make your report available in more than one official language.

OCT 2019

- a) Concluding observations issued by the Commission in respect of the past State report that the Commission considered (if any).
- b) General Comments,⁴ Guidelines⁵, Declarations,⁶ thematic resolutions,⁷ and country specific resolutions adopted by the African Commission (in so far as these are relevant).⁸
- c) Findings ('decisions') (in particular remedial recommendations) on communications against the specific State (or against other States in so far as they may be of relevance.
- d) The reports can also incorporate emerging human rights issues as well as pertinent actions/inactions of the State regarding other human rights mechanisms like the United Nations (UN). These should be mentioned in reference mode and not go into great detail.

⁴ These include: *General Comments No.1 on Article 14 (1) (d) and (e) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (6 March 2012) <https://www.achpr.org/legalinstruments/detail?id=14>; *General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14. 2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (28 November 2014) <https://www.achpr.org/legalinstruments/detail?id=13>; *General Comment No. 3 On The African Charter On Human And Peoples' Rights: The Right To Life: Article 4* (12 December 2015) <https://www.achpr.org/legalinstruments/detail?id=10>; *General Comment No. 4: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment: Article 5* (4 March 2017) <https://www.achpr.org/legalinstruments/detail?id=60>.

⁵ On reporting guidelines see, *Guidelines for National Periodic Reports under the African Charter* (1989) <https://www.achpr.org/legalinstruments/detail?id=47>; *Guidelines for state reporting under the Maputo Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (2009) https://www.achpr.org/public/Document/file/English/Guidelines%20on%20State%20Reporting%20under%20the%20Maputo%20Protocol_2.pdf; *State Party reporting guidelines for Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights* (2012) <https://www.achpr.org/legalinstruments/detail?id=33>; *State Reporting Guidelines on Articles 21 and 24 of the African Charter on Human and Peoples' Rights Relating to the Operations of Extractive Industries* (2018) <https://www.achpr.org/legalinstruments/detail?id=1>. Other guidelines include the Guidelines on Access to Information and Elections in Africa (2015) <https://www.achpr.org/legalinstruments/detail?id=61>.

⁶ For example, *Grand Bay (Mauritius) Declaration* (1999) <https://www.achpr.org/legalinstruments/detail?id=44>; *Kigali Declaration* (2003) <https://www.achpr.org/legalinstruments/detail?id=39>; *Solemn Declaration on Gender Equality in Africa* (2004) <https://www.achpr.org/legalinstruments/detail?id=36>; *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (2012) <https://www.achpr.org/legalinstruments/detail?id=22>. For access to other materials, see African Commission 'Resources' <https://www.achpr.org/resources>.

⁷ See codified resolutions adopted by the Commission from 1987 to 2017 <https://www.achpr.org/adoptedresolution>.

⁸ For a collection of key human rights documents of the African Union, see C Heyns & M Killander (eds) *Compendium of key human rights documents of the African Union - Sixth Edition* (2016) <http://www.pulp.up.ac.za/legal-compilations/compendium-of-key-human-rights-documents-of-the-african-union-sixth-edition>.

- e) The report should provide information on any other additional area(s) requested by State reporting guidelines adopted by the African Commission.⁹

V. FORMAT AND CONTENT OF SHADOW REPORT

A. FORMAT

14. A shadow report should be comprised of the following depending on the thematic focus of the report.
- a) *Cover page*: The cover page of the shadow report should clearly identify the submitting organisations or individuals (including, as applicable, letterhead, name and acronym, logo, webpage, email and postal address, etc.). If it is a joint submission, this should be indicated for example by a list of organisations or individuals as an endnote in the cover page, or as an annex to the document.
 - b) *Table of contents*: to ensure the report is user-friendly, include a table of contents and page numbers.
 - c) *Executive summary*: Provide an overview of the main points of the report; the evidence/data included to support the main points; proposed questions and recommendations for government action to address the key issues, in wording that the Commission can use in its Concluding Observations. The one-page executive summary in bullet form should be at the beginning of the document.
 - d) *Introduction*: Provide general factual information about the relevant State Party. In particular, provide information about the structure, mode of governance and any significant changes that occurred during the reporting period. Also include introductory information that may be relevant to the Commission in its process of evaluating the report of the State Party concerned. This section can also indicate the level of stakeholder consultation that the State Party engaged in during the process of drafting the State report. However, care should be taken not to make this a lengthy explanation and also not to duplicate information already provided in the State report.
 - e) To the extent possible, structure the shadow report in respect of each issue:
 - i. Identify the issue as discussed in the State's report (make reference to the specific paragraph, or if there are no paragraphs, the specific page- indicate to which language version of the State report reference is made.
 - ii. Indicate, with supporting evidence why the position set out by the State is inaccurate. Provide the correct/alternative version and indicate why the actual position is of concern.
 - iii. Formulate questions that the Commission may pose to the State delegation, with reference to the specific issues raised above.

⁹ See *Indicative Questions to State Parties in respect of Article 5 of the African Charter* (2019) <https://www.achpr.org/legalinstruments/detail?id=51>

iv. Formulate draft concluding observations in respect of each particular issue, for the Commission's consideration.

f) *Appendix*: If necessary; include text of important laws, lists of references or participants in shadow report preparation, media clips, etc.).

B. CONTENT

i. The Status of General Implementation of the African Charter and the Maputo Protocol

15. Reporting on the status of the implementation of the African Charter and/or Maputo Protocol requires organisations or individuals with relevant expertise to reflect on and analyse information provided in State reports or to provide substantive and objective information that demonstrates measures undertaken by the respective State Party to implement the African Charter and/or Maputo Protocol.

16. The general implementation measures can be addressed by; gathering documentation and evidence to illustrate the issue: The issues addressed should be backed with sufficient data that supports the individual or CSO(s)'s claim(s). Such evidentiary documentation may include legal cases, individual testimonies and domestic regulations. In addition, statistical information disaggregated by age, sex, and marital status can provide a significant contribution.

17. The status of general implementation of the African Charter and Maputo Protocol shall be guided by the following:

a) *Identify gaps in implementation of the Charter and the Protocol*: The shadow report should primarily be informed by the State report. Organisations or individuals with relevant expertise should apply their experience and knowledge to identify and examine priority issues.

b) *Identify impediments to the realisation of the Charter and the Protocol both in legislation and practice with recommended approaches; by:*

- identifying the main issues or challenges that may restrict effective implementation;
- Provide concise, realistic and actionable recommendations to ensure that identified challenges are rectified;
- The purpose of the report should ensure that the role players are clearly outlined to ensure implementation of the recommendations.

c) *Identify and address reservations*:¹⁰ It is also important for a shadow report to point out reservations made by State Parties to the African Charter and Maputo Protocol and indicate changes that would allow for withdrawal of such reservations. The

¹⁰ Article 2(1)(d) of the 1969 Vienna Convention on the Laws of Treaties defines reservation as:

a unilateral statement, however phrased or named, made by a state when signing, ratifying, accepting, approving, or acceding to a treaty, whereby it purports to *exclude or modify the legal effect of certain provisions of the treaty in their application to that State*

shadow report should also indicate whether the reservation (s) impede certain rights in the African Charter and the Maputo Protocol.

- d) *Suggested questions*: The shadow report should provide suggested questions to guide the Commission in developing questions to put to the State Party based on the submitted State report.

II. Reporting on the Specific Principles and Substantive Provisions of the African Charter and the Maputo Protocol

18. Reporting on the specific provisions of the African Charter and the Maputo Protocol requires a specific thematic analysis of rights enshrined in each of the human rights instruments, with particular focus on those rights considered in the initial and/or periodic State report.

Part A: Specific Thematic Reporting on the Charter and its Protocol

19. With respect to each of the rights enshrined within the African Charter, and in particular response to those rights which are being considered by the State in its initial and/or periodic report, the report should:
 - a) Report on legislative and other practical measures taken by the state to give effect to the rights in question;
 - b) Report on whether these legislative and other practical measures have been implemented, and to what extent;
 - c) As far as possible, provide examples of developments made in respect of each right in question;
 - d) Indicate how best the State Party can address violations of the rights in question; and
 - e) Provide questions to the State Party, with reference to its report, that require the State to further explain or elaborate upon its efforts to protect and promote each of the rights addressed in its initial and/or periodic State report.

Part B: Specific Considerations on the Maputo Protocol

20. While reporting on specific provisions of the Maputo Protocol, organisations or individuals with relevant expertise shall consider:
 - a) The various measures the State Party has taken, or neglected to take, to give effect to the rights provided for in the Maputo Protocol;
 - b) Legislative and administrative measures, policies and programs, and the availability of judicial remedies and institutional mechanisms put in place to foster implementation of the rights and freedoms enshrined under the particular provisions of the Maputo Protocol, which may be accompanied by statistical data to support the provided information.

- c) Existing bad and repressive laws, administrative bureaucracies, ineffective policies and unprincipled judicial systems that hinder implementation of a specific provision of the Maputo Protocol, as well as measures States should, but have not yet taken to ensure implementation.
- d) The shadow report should also provide suggested questions to guide the Commission in preparing questions in response to the State Party report.
- e) To assist in the development of a structured reporting system, the shadow can be thematic by following the rubric provided for in the State Party Reporting Guidelines on the Maputo Protocol, which groups the provisions of the Maputo Protocol into eight thematic areas. Alternatively, one can report on a specific provision.

VI. Practical suggestions

- 21. Written submissions on both the African Charter and Maputo Protocol must not exceed 10 pages. Written submission on either the African Charter or Maputo Protocol must not exceed 5 pages. Additional documentation can be annexed for reference. The font used throughout the report should be in size 12, and with line spacing of 1.5. The cover page, endnotes and annexes will not be counted within the page limits of contributions.
- 22. For ease of reference, paragraphs and pages should be numbered.
- 23. Shadow reports should be saved and submitted as word document only.
- 24. While it is possible for a single actor to prepare and submit a shadow report, a joint submission is encouraged for maximum impact.

VII. Miscellaneous Provisions

- 25. Adoption and entering into force: These Guidelines come into force and shall take effect 30 days after the date on which they were adopted.
- 26. Amendment: The Commission may amend these guidelines in consultation with various stakeholders.
- 27. Citation: These Guidelines may be cited as the "Reporting Guidelines for Shadow and Alternative Reporting Guidelines under the African Charter on Human and Peoples' Rights and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa."