

African Commission on Human and Peoples' Rights



GUIDELINES ON SHADOW REPORTS OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

ADOPTED BY THE AFRICAN COMMISSION ON HUMAN AND PEOPLES'
RIGHTS (THE COMMISSION), MEETING AT ITS 72ND ORDINARY
SESSION HELD FROM 19 JULY TO 2 AUGUST 2022

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Table of Contents

Preamble	5
PART I: GENERAL PROVISIONS	7
PART II: FORMAT AND CONTENT OF SHADOW REPORT	11
PART III: PRACTICAL SUGGESTIONS	15
PART IV: MISCELLANEOUS PROVISIONS.....	16

Preamble

The African Commission on Human and Peoples' Rights ('African Commission'):

Affirming its mandate to promote human and peoples' rights in accordance with Article 45 of the African Charter on Human and Peoples' Rights (the African Charter);

Pursuant to Article 62 of the African Charter, State Parties must submit reports in accordance with the guidelines of the African Commission on the measures they have taken, including legislative, administrative, institutional and programmatic actions, to give effect to the provisions of the African Charter;

Considering Article 26 of the Protocol to the African Charter on the Rights of Women in Africa (the Maputo Protocol), which provides that 'States Parties shall ensure the implementation of this Protocol at national level, and in their periodic reports submitted in accordance with Article 62 of the African Charter, indicate the legislative and other measures undertaken for the full realization of the rights herein recognize';

Further considering Article 14 of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the IDP Convention), which provides that 'States Parties shall, when presenting their report under Article 62 of the African Charter on Human and Peoples' Rights ... indicate the legislative and other measures which have been taken to give effect to this Convention';

Further mindful of Article 22(1) of the Protocol to the African Charter on the Rights of Older Persons in Africa, Article 34(1) of the Protocol to the African Charter on the Rights of Persons with Disabilities in Africa, and Article 28(1) of the Protocol to the African Charter on the Rights of Citizens to Social Protection and Social Security, which require States Parties to indicate the legislative and other measures undertaken for the full realisation of the rights recognised in these Protocols;

Considering that state parties have guidelines to follow in their

reporting obligations;

Recognising that the African Charter is silent on the preparation and submission of shadow reports;

Bearing in mind Rule 80(4) of the Rules of Procedure of the African Commission, 2020 provides: ‘During the consideration of the Report submitted by a State Party in accordance with Article 62 of the Charter, the Commission shall explore all the pertinent information relating to the human rights situation in the State concerned, including reports by international, regional and national human rights organs as well as statements and shadow reports from National Human Rights Institutions and non-governmental organisations’;

Further noting Rule 79(3) of the Rules of Procedure of the African Commission, 2020, which provides that ‘institutions, organisations or any interested party wishing to contribute to the examination of the report and the human rights situation in the country concerned, shall send their contributions, including Shadow Reports, to the Secretary at least 30 days prior to the examination of the report’;

Taking into account Rule 79(4) of the Rules of Procedure of the African Commission, 2020, which states that ‘The Secretary may also invite specific institutions to submit information relating to the State Report within a time limit that he or she may specify;’

Recognising that the Rules of Procedure of the African Commission, 2020 point out that Shadow Reports should follow the Commission’s Guidelines on Shadow Reports, but that these guidelines referred to in this Rule have not yet been adopted;

Recalling the mandate granted to the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa, the Special Rapporteur on the Rights of Women in Africa and the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrant in Africa to draft Guidelines on Shadow Reporting (ACHPR/Res.436);

Further recalling Resolution 30 (ACHPR/Res.30(XXIV)98) recognising that NGOs with Observer Status enjoy the benefit of preparing shadow reports on the human rights situation in their countries, which enables the Commission to have ‘constructive

dialogue with a State representative when that country's periodic report is being considered';

Further Noting Resolution 361 (ACHPR/Res.361(LIX)2016) on the Criteria for Granting and Maintaining Observer Status to Non-Governmental Organisations working on Human and Peoples' Rights in Africa;

Considering Resolution 370 (ACHPR/Res.370(LX)2017), which acknowledges the critical role of National Human Rights Institutions (NHRIs) and specialized institutions in assisting the Commission in the promotion and protection of human rights at the national level;

The African Commission adopts the **Guidelines on Shadow Reports**.

These guidelines are for relevant stakeholders, including NHRIs, NGOs with Observer Status, institutions and any other interested party submitting Shadow Reports under the African Charter; and its Protocols, including the Protocol to the African Charter on the Rights of Women in Africa; the Protocol to the African Charter on the Rights of Older Persons in Africa, the Protocol to the African Charter on the Rights of Persons with Disabilities in Africa; the Protocol to the African Charter on the Rights of Citizens to Social Protection and Social Security; the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa; and any other subsequent regional human rights treaties in respect of which the African Commission has the mandate to monitor state reporting.

PART I: GENERAL PROVISIONS

1. Definitions

- a **State Report:** is a report by a State on the legislative, judicial, administrative, and other measures taken with a view of giving effect to the rights recognised and guaranteed by the African Charter, its supplementary Protocols, and the IDP Convention.
- b **Shadow Report:** is a report aimed at addressing perceived omissions, deficiencies, or inaccuracies as well as providing supplementary information to that provided in the official State Report. Shadow reports are presented to the African

Commission by NHRIs, NGOs with Observer Status, institutions, and any other interested party.

2. Aims and Purpose of a Shadow Report

- a To enable the African Commission to get a more comprehensive picture of the human rights situation in the country under review by providing it with credible and reliable information;
- b To alert the African Commission to human rights issues of concern not raised in the report presented by the State Party;
- c To provide the African Commission with country-specific recommendations. These should be Specific, Measurable, Achievable, Result-Oriented and Time-Bound (SMART); and
- d To further strengthen cooperation between the African Commission and NHRIs, NGOs with Observer Status, institutions and any other interested party in the promotion and protection of human and peoples' rights on the continent.

3. General Guiding Principles for the Preparation of Shadow Report

- a The Shadow Report should be concise, specific, and clearly structured. It should use simple and free flowing language.
- b The Shadow Report must contain reliable, and objective information that is supported by a body of evidence including court cases, official reports, NHRIs annual reports, academic research, surveys, NGO reports, news articles. Sources used in the Report must be clearly cited, where at all possible, and up-to-date statistical information should be provided.
- c The Shadow Report 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.
- d The Shadow Report and all accompanying documentation should be drafted in at least one of the official languages of the African Union (AU) (French, English, Portuguese, Arabic, Swahili, and Spanish). It is advisable, when possible, to make

the report available in more than one official language.

- e The Shadow Report should be submitted at least 30 days prior to the examination of the State Report.
- f The report should not include abusive, insulting, or defamatory language against individuals, institutions, or other entities.
- g The Shadow Report should strive to take into account the following:
 - i. Concluding Observations issued by the Commission in respect of past State Reports in respect of the specific State that it had considered (if any);
 - ii. General Comments adopted by the African Commission (in so far as these are relevant);¹
 - iii. Guidelines adopted by the African Commission (in so far as these are relevant);²
 - iv. Declarations adopted by the African Commission (in so far as

1 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>; *General Comment No.5 on the African Charter on Human and Peoples' Rights: The Right to Freedom of Movement and Residence, Article 12(1)* (10 November 2019) <https://www.achpr.org/legalinstruments/detail?id=74>; *General Comment No. 6 on The Protocol To The African Charter On Human And Peoples Right On The Rights Of Women In Africa (Maputo Protocol): The Right To Property During Separation, Divorce Or Annulment Of Marriage, Article 7(D)* (4 March 2020) <https://www.achpr.org/legalinstruments/detail?id=75>.

2 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*

- these are relevant);³
- v. Thematic resolutions adopted by the African Commission (in so far as these are relevant);⁴ and
 - vi. Country specific resolutions adopted by the African Commission (in so far as these are relevant);⁵
 - vii. 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), and any progress made towards monitoring their implementation;
 - viii. Any additional area(s) required by the various State Reporting guidelines adopted by the African Commission;⁶ and
 - ix. Emerging human rights issues and pertinent actions or inactions of the State regarding other human rights mechanisms, such as United Nations (UN) human rights treaty bodies (but without going into great detail).

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>.

- 3 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>; *Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019* (2019) <https://www.achpr.org/legalinstruments/detail?id=69>; For access to other materials, see African Commission 'Resources' <https://www.achpr.org/resources>.
- 4 See codified resolutions adopted by the Commission from 1987 to 2017 <https://www.achpr.org/adoptedresolution>.
- 5 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>.
- 6 See for example, *Indicative Questions to State Parties in respect of Article 5 of the African Charter* (2019) <https://www.achpr.org/legalinstruments/detail?id=51>.

PART II: FORMAT AND CONTENT OF SHADOW REPORT

1. Format

The Shadow Report should comprise the following, adjusted to 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). 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 that the report is user-friendly, a table of contents and page numbers should be included.
- c **Executive summary:** Provide an overview of the main points of the report; the evidence or data included to support the main points; proposed questions and recommendations for government action to address the key issues, in language the Commission can use in its Concluding Observations. The one-page executive summary should be at the beginning of the document.
- d **Introduction:** Provide an introductory paragraph describing the submitting NHRI, NGOs with Observer Status, institution or any other interested party presenting the Shadow Report. The introduction should also contain an introductory paragraph on the Shadow Report.
- e **Structure:** To the extent possible, structure the Shadow Report as follows 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), while indicating 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 accurate, inaccurate or incomplete. Where the information is accurate, commend the State Party while elaborating on measures to be taken to redress the gaps. In the

- event that the information is inaccurate or incomplete, provide the correct or alternative version and indicate why the actual position is of concern;
- iii. Suggest questions to assist the Commission to formulate questions that they may pose to the State delegation, with reference to the specific issues raised above; and
 - iv. Suggest concrete and implementable recommendations in respect of each particular issue, for the Commission's consideration.
- f **Appendices:** The methodology adopted for the preparation of the report should be added as an appendix. If necessary; include the text of important laws, lists of references or participants in Shadow Report preparation, media clips, etc.).
- g **Document format:** Shadow Reports should be saved and submitted as Word document only. Annexes can have other formats, such as PDF.

2. Content

The content of the Shadow Report should follow the following outline:

A. General measures of implementation of the African Charter and its supplementary Protocols and/or the IDP Convention

- a The shadow report should complement information related to general measures of implementation undertaken by the respective State Party to implement the African Charter and/or relevant human rights treaties.
- b The general implementation measures can be addressed by; gathering documentation and evidence to illustrate the issue: The issues addressed should be supported with sufficient data that substantiate all statements. Such evidentiary documentation may include legal cases, individual testimonies, and domestic regulations. In addition, statistical information should be disaggregated, where relevant, by age, sex, race, ethnicity, marital status, disability, geographical location, or other characteristics.
- c The status of the general implementation of the African

Charter, its supplementary Protocols and the IDP Convention should be guided by the following:

- i. *Identify gaps in the implementation of the African Charter and its supplementary Protocols and IDP Convention:* The Shadow Report should primarily be informed by the State report.
- ii. Identify impediments to the realisation of the African Charter and its supplementary Protocols and the IDP Convention both in legislation and practice with recommended approaches; by:
 - Identifying the main issues or challenges that may restrict effective implementation; and
 - Suggesting concise, realistic, and actionable recommendations to ensure that identified challenges are rectified.
- iii. *Identify and address reservations:* It is also important for a Shadow Report to point out reservations made by State Parties to the African Charter and its supplementary Protocols and the IDP Convention, the effect of these reservations on the enjoyment of rights and indicate changes that would allow for withdrawal of such reservations.
- iv. *Identify and address other key African human rights instruments* that the state is yet to ratify and highlight any progress as well as challenges towards ratification.
- v. *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.

B. Reporting on the substantive provisions of the African Charter, its supplementary Protocols and/or the IDP Convention

Submitting NHRIs, NGOs with Observer Status, institutions, or any other interested party may choose to report on the African Charter in whole or in part, and/or its supplementary Protocols and/or the IDP Convention, in accordance with their areas of expertise. Reporting on the substantive provisions 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.

I. Specific Provisions of the Charter

With respect to 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 Provide examples of progress made in respect of each right in question; and
- d Indicate how best the State Party can address violations of the rights in question.

II. Specific Considerations of provisions of the Protocols to the African Charter and/or the IDP Convention

While reporting on specific provisions of the Protocols to the African Charter, and/or the IDP Convention, NGOs with Observer Status, institutions, and any other interested party, with relevant expertise shall consider (preferably grouped thematically):

- a The various measures the State Party has taken, or neglected to take, to give effect to the rights provided for in the specific 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 of the Protocols to the African Charter, and/or the IDP Convention, which may be accompanied by statistical data to support the provided information;
- c Existing discriminatory laws, administrative bureaucracies, ineffective policies and unprincipled judicial systems that hinder implementation of provisions of the Protocols to the African Charter, and/or the IDP Convention, as well as measures States should, but have not yet taken to ensure implementation;

- d Suggest questions to guide the Commission in preparing questions in response to the State Party report; and
- e Where specific guidelines exist, such as the *Guidelines for State Party Reporting under the Maputo Protocol*, NGOs with Observer Status, institutions, or any other interested party should follow the format African Commission already provides.

PART III: PRACTICAL SUGGESTIONS

- a ***Length:*** Written submissions should not exceed 15 pages (additional documentation can be annexed for reference). The cover page, footnotes, and a maximum of 10 annexes will not be counted within the page limits of contributions.
- b ***Format:*** The font used throughout the report should be in size 12, and with line spacing of 1.5.
- c ***Numbering paragraphs and pages:*** For ease of reference, paragraphs and pages should be numbered.
- d ***Document format:*** Shadow Reports should be saved and submitted as Word documents only.
- e ***Use of footnotes:*** Written submission should only use footnotes to reference information. Footnotes should not include any additional substantive information as it will not be taken into consideration.
- f ***Methodology:*** While it is possible for a single actor to prepare and submit a Shadow Report, joint submissions are encouraged for maximum impact.
- g ***Confidentiality:*** Shadow Reports shall be made publicly available on the Commission's website, with the name of the submitting stakeholder(s). Where submitting stakeholder(s) fear retaliation, they can submit a request for the Commission to ensure its anonymity.
- h Reports should be sent directly to the Secretary to the Commission, either by email, by hand or by post.

PART IV: MISCELLANEOUS PROVISIONS

- a ***Adoption and entering into force:*** These Guidelines come into force and take effect 30 days after the date on which they are adopted.
- b ***Amendment:*** The Commission may amend these guidelines as it deems fit.
- c ***Citation:*** These Guidelines may be cited as the ‘Guidelines on Shadow Report of the African Commission on Human and Peoples’ Rights.’

