

# Perspectives on the African Commission's state reporting guidelines

Waruguru Kaguongo

*The African Charter on Human and Peoples' Rights (African Charter) requires states to submit, every two years, reports on legislative and other measures taken to give effect to the rights protected in the Charter (article 62). To this end, the African Commission on Human and Peoples' Rights (African Commission) set up a working group tasked with drafting reporting guidelines to help states provide relevant information. The working group has recently developed draft*

*State Reporting Guidelines for Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (state reporting guidelines).*

This article briefly examines these guidelines with a view to assessing the extent to which they respond to the objectives sought by the state reporting process.

By way of background: the state reporting guidelines relate exclusively to economic, social and cultural rights (ESCRs) in the Charter, and are complementary

to the draft Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights, (principles and guidelines), a document that seeks to elaborate on the provisions in the African Charter and, in so doing, help states comply with their obligations under the Charter.

The idea behind the state reporting guidelines is to give the states parties a clearer idea of what kind of information is required of them in relation to ESCRs. While this is also described in the draft principles and guidelines, the latter are more detailed and general, and are not specifically drafted to elicit information – in particular, the information necessary for monitoring purposes. The state reporting guidelines are a summarised distillation of important points to consider when reporting and are therefore much shorter and less detailed than the principles. Having said that, however, when reporting, states will find it necessary to refer to the draft principles and guidelines, and this highlights the complementary nature of the two documents.

### Main features of the state reporting guidelines

The state reporting guidelines are divided into three sections: the introduction, the general contents of state reports and the contents of individual rights.

The introduction provides a brief preamble to the state reporting guidelines and makes the link to the draft principles and guidelines.

The general contents section requires states to provide information that is, in a sense, cross-cutting in relation to all the individual rights. This information includes the laws, policies and strategies that a state has put in place to implement the rights; monitoring mechanisms, including indicators and national benchmarks; judicial and other remedies available for redress in case of violation; difficulties that a state may be encountering in realising the rights, including structural obstacles; and generally disaggregated statistical information depicting the level of enjoyment of the right among different population groups. Information on transparency, accountability and participation in priority-setting exercises, as well as on the reporting process, is also required.

The third section, titled 'content of individual rights', deals with each of the individual rights and focuses on the more specific information required in relation to each right. States are required to indicate measures taken to achieve the results stipulated in the principles as constituting the realisation of the rights. It is here that states rely extensively on the draft principles and guidelines in order to understand what the obligations and expected outcomes are.

The state reporting guidelines cover ten individual rights: those to property, work, health, education, culture, housing, social security, food, water and sanitation, and protection of the family. Of these rights, only six are explicitly provided for in the African Charter.

- ● The state reporting guidelines aim to give states parties a clearer idea of what kind of information is required of them. ● ●

### A comparative perspective on the state reporting guidelines

It is useful to compare the state reporting guidelines with other treaty guidelines in order to gauge the strengths and weaknesses of the document. There are notable similarities and differences, both structural and substantive.

The structure of the state reporting guidelines differs from that of the guidelines issued by the United Nations (UN) treaty bodies, which are consolidated guidelines. In other words, the UN guidelines are part of a single document that contains a section setting out the introductory aspects of state party reports and then subsequent sections detailing the substantive rights provided for in each of the individual human rights treaties. The idea is to identify general information that is relevant for all rights and that remains the same regardless of the treaty, and to ensure it is provided in a consistent manner. The state reporting guidelines generally adopt the same format by requesting general information relating to the national framework law, policies and strategies around the implementation of each right, monitoring mechanisms, available remedies, and statistics and information about procedural issues relating to the development of national plans and policies, as well as the state report.

The difference between the two sets of guidelines is that the general section in the state reporting guidelines requires more information than the equivalent part of the UN guidelines, such as details of structural or significant obstacles that impede the realisation of the rights. By contrast, the UN guidelines specifically require this information in respect of each right. Although the state reporting guidelines request statistics on the enjoyment of each right, this is done without reference to specific rights or aspects of rights. The difference between the two approaches is that the UN approach will tend to elicit more precise information on difficulties or gaps in the enjoyment of rights than the more general approach by the state reporting guidelines. Arguably, the broad purpose of the state reporting guidelines is to identify and highlight these difficulties so that they can be redressed.

On the other hand, the state reporting guidelines emphasise national plans and policies and how these are formulated, a concern that is not addressed in the UN guidelines. Recognising the role that national plans and policies play in facilitating the enjoyment of rights, and the need

for the citizenry to be involved in determining development priorities, is important. This enquiry is appropriately situated in the general section of the state reporting guidelines.

In terms of the substantive rights and the content of the state reports in this regard, the UN guidelines ask a mix of specific and open-ended questions. This means that questions are aimed at eliciting fairly exact information on the status quo and also require information broadly on steps that a state is taking. By contrast, the state reporting guidelines do not place much emphasis on establishing the status quo in relation to particular rights. Thus, for example, statistics are requested as general information and not in relation to particular aspects of rights. Most of the information required by the state reporting guidelines relates to the measures and steps the state is taking to achieve certain results. Presumably the state will indicate, in the process, how close it is to achieving these results.

This approach can also be contrasted with the Guidelines for Preparation of Progress Indicators in the area of Economic, Social and Cultural rights in the Inter-American System (IACHR guidelines). The IACHR guidelines were not developed exclusively for the preparation of state reports, but they are very useful for this purpose. As the title of the IACHR guidelines suggests, their emphasis is on the measurement of progress in the realisation of rights, which is done through the development of indicators. The point is made that the purpose of the monitoring exercise is not to assess the quality of the public policies of states, but rather to monitor compliance or otherwise with legal obligations under the Protocol of San Salvador. A particular emphasis is therefore placed on establishing a baseline from which progress is then measured. The progress indicators also presume that the state will develop goals for the performance of obligations in a given time frame which can then be reviewed through the indicators.

The draft principles and guidelines take cognisance of the need for indicators and benchmarks in the design and implementation of national policies and place the responsibility for developing these indicators and benchmarks on the state. No similar recognition is contained in the state reporting guidelines, through which, ideally, a state can be assessed on progress made in achieving the goals it has set out for itself, and also whether these goals are acceptable and in line with the African Charter. Nevertheless, this point again illustrates the complementarity between the draft principles and guidelines and the draft state reporting guidelines.

This comparison with the UN and IACHR guidelines highlights certain strengths and weaknesses of the state reporting guidelines.

With respect to the strengths, firstly, one of the reasons why they were drafted was to provide a user-friendly document that would make it easier for states to understand the kind of information required to monitor ESCRs. This is achieved in that the state reporting guidelines are summarised, but still linked back to the principles and guidelines with sufficient clarity to provide additional guidance on the nature of information required.

- ● States are required to provide statistics on the enjoyment of each right on an annual comparative basis covering the previous five years. ● ●

Secondly, the state reporting guidelines have the advantage of encouraging states to provide a wealth of information on the measures they are taking to realise the rights. On one hand, this is beneficial. On the other, though, it has the potential to burden the African Commission with information that may be useful in other contexts, but perhaps does not immediately reveal whether a state is making progress in realising socio-economic rights. This can, however, be remedied in the course of the constructive dialogue that takes place during the consideration of the state reports, where a state could be given an opportunity to focus on specific aspects of a right. The focus could also be narrowed down by shadow reports sent in by other entities within the state with particular areas of interest.

Thirdly, the inclusion of implied rights means that states will consider and implement rights that are not explicitly in the Charter, but are just as important.

As for shortcomings, the first, already alluded to, is the lack of a progressive outlook in the state reporting guidelines, because no baseline is established that can be used as a reference point in assessing subsequent reports for progress in realising rights. This could result in a lot of repetition in the reporting process, since there is little reference to time frames and achievements resulting from the steps and measures taken by states over time. States are required to provide statistics on the enjoyment of each right on an annual comparative basis covering the previous five years, but there is no correlation with any indicators or benchmarks in order to evaluate how well the state is meeting standards and goals. In addition, the amount of data required to meet this obligation may be onerous in many countries where data collection and management is still not well developed.

Although reference is made to initial and periodic reports, there is no distinction in terms of the kind of information that would be relevant to the two sets of reports, although, presumably, this is not relevant for states that have already reported under the general reporting guidelines.

Secondly, although state reporting is not entirely about identifying violations of rights, it is an important component of ensuring that rights are guaranteed to all. The draft state reporting guidelines do not place any particular emphasis on identifying violations of rights, and, in fact, information provided may relate to social and economic conditions and not specifically to the state of rights realisation. For example, the statistics that are most prevalent in most countries relate to development indicators and not necessarily human rights indicators. So a question relating

to legislative and administrative steps taken to ensure that all children enjoy free and compulsory primary education does not tell us how many children actually enjoy this right as a result of the measures, and which children do not have access to this right and why. Statistical information may provide an indication of the magnitude of the problem, but may not indicate in all respects the degree to which obligations have been met to ensure that children enjoy their right to education. A deliberate effort needs to be made, given the questions in the state reporting guidelines, to adopt a human rights perspective that will go beyond simply stating measures and steps taken without further assessment of effectiveness.

Thirdly, it is important to note that the state reporting guidelines are to be used in conjunction with the 1989 Guidelines for National Periodic Reports under the African Charter. It is not clear to what extent the 1989 guidelines should be used. It would therefore be useful if the points of divergence between the two sets of guidelines, the value added and how the two complement each other were made clear. Further, the African Commission has adopted reporting guidelines in relation to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and the kinds of information required for the two sets of guidelines may overlap. It is not clear how these overlaps should be addressed in order to make the process simpler for states.

## Conclusion

In conclusion, the state reporting guidelines do serve to raise the profile of economic and social rights in state reporting, especially since they are linked with the principles and guidelines on the implementation of ESCRs. But in order to exploit the full potential of the state reporting guidelines, a number of issues need to be further clarified: for instance, how do these guidelines relate to and interface with existing state reporting guidelines developed by the African Commission? If the idea is to use them all in a complementary fashion, then it would have to be made clear how this complementarity is achieved so that states know how and when to use the two documents.

An appropriate balance needs to be struck between the need to summarise the guidelines to make them user-friendly and the importance of eliciting information not only on measures, but also on the effectiveness of those measures, as well as the progressive realisation of rights. If issues such as these are resolved, the state reporting guidelines could considerably improve the way in which state parties report on ESCRs.

**Waruguru Kaguongo is a researcher at the Centre for Human Rights, University of Pretoria, South Africa.**