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Uganda's interaction with state reporting under the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child

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in Human Rights and Democratisation in Africa

by

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1 November 2021

PLAGIALISM DECLARATION

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DEDICATION

I dedicate this work, firstly to my grandmother, Florence Nanteza-Kagumba, who raised me through a lot of struggles but did not live to see the fruits of her labor.

Finally, are millions of Ugandan citizens who funded my Bachelor of Laws Degree at Makerere University through a merit scholarship sponsored by the government of Uganda that taxes them.

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TABLE OF CONTENTS

PLAGIALISM DECLARATION.....	i
DEDICATION	ii
ACKNOWLEDGMENTS.....	iii
TABLE OF CONTENTS.....	iv
LIST OF ACRONYMS.....	vii
CHAPTER 1	1
INTRODUCTION.....	1
1.1 Background	1
1.2 Statement of the Research Problem.....	7
1.3 Study objective and research questions	7
1.4 Methodology.....	8
1.5 Literature review.....	8
1.5.1 Experiences with State reporting at the international level.....	8
1.5.2 State reporting to the African Commission	11
1.5.3 Reporting before the ACERWC	15
1.5.4 The Ugandan case	17
1.6 Limitations encountered and efforts at maneuvering around them.....	20
1.7 Organization of chapters.....	20
CHAPTER TWO	21
LAW AND GUIDELINES FOR STATE REPORTING TO THE AFRICAN COMMISSION AND THE ACERWC	21
2.1 Introduction	21
2.2 Africa’s instruments on human rights.....	21
2.3 State reporting under the African human rights framework.....	23
2.3.1 Significance	23
2.3.2 Mandate to examine state reports	24
2.4 Standards for state reporting to the African commission and the ACERWC.....	25
2.4.1 Reporting to the African Commission	26

2.4.2 Reporting to the ACERWC.....	35
2.5 Conclusion.....	38
CHAPTER THREE	40
ANALYSIS OF UGANDA’S REPORTS TO THE AFRICAN COMMISSION	40
3.1 Introduction	40
3.2 Overview of Uganda’s reports before the African Commission	40
3.3 Analysis of the reports	40
3.3.1 The 3 rd Report	40
3.3.2 The 4 th Report	43
3.3.3 The 5 th Report	44
3.4 Cross cutting patterns.....	46
3.4.1 Report preparation	46
3.4.2 Background information	47
3.4.3 Measures taken to implement the instruments.....	47
3.4.4 Challenges faced in implementation of the Charter.....	48
3.4.5 Dialogue on the reports	49
3.5 Conclusion.....	50
CHAPTER FOUR	52
ANALYSIS OF UGANDA’S INITIAL REPORT TO THE ACERWC	52
4.1 Introduction	52
4.2 Overview of Uganda’s Initial Report.....	52
4.2.1 Structure	52
4.2.2 Preparation	53
4.2.3 Reflection on the challenges to implementation of children’s rights.....	53
4.3 Dialogue on the report.....	53
4.4 General observations.....	54
4.5 Conclusion.....	55
CHAPTER FIVE	56

CONCLUSION AND RECOMMENDATIONS.....	56
5.1 Introduction	56
5.2 Major findings and conclusions	56
5.3 Comparison with Uganda’s reporting before the UN Treaty Bodies and the APRM.....	57
5.4 Recommendations	59
BIBLIOGRAPHY	61

LIST OF ACRONYMS

ACERWC	African Committee of Experts on the Rights of the Child
ACRWC	African Charter on the Rights and Welfare of the Child
APRM	African Peer Review Mechanism
AU	African Union
CEDAW	Convention on the elimination of all forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CSO(s)	Civil Society Organisation (s)
EOC	Equal Opportunities Commission
ESCRs	Economic, Social and Cultural Rights
FHRI	Foundation for Human Rights Initiative
GOU	Government of Uganda
HURINET-U	Human Rights Network Uganda
HURIPEC	Human Rights and Peace Centre
ILO	International Labour Organisation
JLOS	Justice, Law and Order Sector
MoGLSD	Ministry of Gender, Labour and Social Development
NCC	National Council for Children
NEPAD	New Partnership for Africa's Development
NGO(s)	Non-Government Organisation (s)
NRM	National Resistance Movement
OAU	Organisation of African Unity
UHRC	Uganda Human Rights Commission

UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UPDF	Uganda Peoples' Defence Forces

CHAPTER 1

INTRODUCTION

1.1 Background

State reporting connotes a mechanism of enforcement of international human rights law, whereby state parties subscribing to a treaty that prescribes periodic reporting furnish a treaty monitoring body with reports containing information on the standards and practices they have adopted to give effect to obligations assumed under the relevant treaty.¹ Bayefsky summarizes the purpose of state reporting thus:²

The...report, in theory, is intended to generate a dialogue...about the requirements of the treaty, the application of the standards to local conditions, the shortfalls in compliance, priorities for redress, and the design of a plan of action.

In addition to the state report, treaty monitoring bodies often invite third parties, mainly non-government organisations (NGOs) to submit shadow reports to the state report.³ This is intended to counter the risk of the review being based solely on the state's account which may paint a vague or exaggerated picture of the situation on the ground.⁴ In this regard, Killander observes as follows:⁵

If the state itself is the only one involved in [the] assessment the risk for an inadequate report increases. The reports risk becoming purely copies of constitutional provisions without any reference to actual practice. Civil society should be involved in the preparation of a state report.

¹ See, for instance, F Viljoen 'International Human Rights Law in Africa' (2012); J Crawford 'The UN human rights treaty system: A system in crisis' in P Alston & J Crawford (eds) *The Future of UN human rights treaty monitoring* (2001) and AF Bayefsky *The UN Human Rights Treaty System: Universality at the Crossroads* (2001); P Alston 'The Purposes of State Reporting' in United Nations *Manual on Human Rights Reporting* (1997); and African Commission 'Examination of State Reports' (1995) 31.

² Bayefsky (n 1) 3.

³ Viljoen (n 1) 360-61.

⁴ As above.

⁵ M Killander 'The Role of the African Peer review Mechanism in inducing compliance with human rights' unpublished PhD thesis, University of Pretoria, 2009 145. My emphasis.

However, as Killander cautions, the involvement of civil society does not diminish ‘the role of the state as the author and the entity ultimately responsible for the report...’⁶ It follows that shadow reports constitute a tool to be used by the monitoring bodies in their dialogue with the state, on the latter’s implementation of the obligations assumed under the treaty.⁷ As a climax of the process, the treaty monitoring body makes concluding observations indicating whether or not ‘a state party has satisfied the legal obligations it assumed upon ratification of the treaty.’⁸

The state reporting procedure is regarded as ‘one of the most common methods of trying to induce compliance with international norms’⁹ in a number of human rights treaties under the United Nations and some regional systems including Africa, Europe and America albeit with varying levels of application.¹⁰

Notably, the evolution of state reporting into a binding treaty obligation is attributed to the ‘regulatory turn’ in international law which was witnessed in the aftermath of the second World War.¹¹ Before this turn, there had been only ‘hints of such accountability in areas we might recognize as related to human rights.’¹² For instance, in the immediate aftermath of the first World War, the International Labour Organisation (ILO) and the Mandates system¹³ adopted some form of state reporting.¹⁴ Under the ILO arrangement, state reporting served

⁶ As above.

⁷ Bayefsky (n 1) 12.

⁸ Bayefsky (n 1) 66.

⁹ Killander (n 5) 143.

¹⁰ See Killander (n 5) 144.

¹¹ CD Creamer & BA Simmons ‘The Proof is in the Process: Self-Reporting Under International Human Rights Treaties’ (2020) Vol 114 No 1 *American Journal of International Law* 1-50, 9 citing Jacob Katz Cogan, ‘The Regulatory Turn in International Law’ (2011) 52 *HARV. INTL L.J.* 321.

¹² Creamer & Simmons (n 11) 8.

¹³ The Mandate System was established by the League of Nations ‘to govern non-self-governing entities and to supervise powers performing colonial and post-colonial administration in such territories.’ See N Matz *Civilization and the Mandates System under the League of Nations as Origin of Trusteeship* (2005) citing Q Wright ‘Mandates under the League of Nations’ (1930).

¹⁴ Killander (n 5) 143.

to assess how member states were applying international labour standards¹⁵ while under the Mandates system, it served as a check on the administration of former colonies of Germany and Turkey.¹⁶

The current and earlier forms of state reporting are distinguished by the fact that the latter was employed ‘in general hortatory requests’ to states and had no review or follow-up procedures.¹⁷ Yet, long after the mechanism evolved into a binding treaty obligation, its enforcement remains a challenge principally because it still relies on ‘moral suasion’ and ‘peer pressure.’¹⁸ Treaty monitoring bodies have only a ‘very limited ability to punish delinquent non-reporters’¹⁹ which serves as a motivation for non-reporting or infrequency of reporting.

It is now over three decades since the state reporting mechanism of the African human rights system became operational. Examination of state reports has been described as ‘the core of the African Commission’s “promotional” mandate.’²⁰ It is noted that ‘the recommendations...contained in “concluding observations” ...can serve as clear guidance to the government about how to improve implementation of the African Charter.’²¹ They also ‘serve as a yardstick, both to the government domestically, and to the Commission when it next considers a report from that country.’²²

Just as is the case with the UN human rights system, the potential of state reporting under the African human rights system has historically not been fully harnessed²³ due to challenges such as a tepid commitment of states to comply with their reporting obligations which often manifests through ‘the total lack of or infrequency of

¹⁵ As above & Creamer and Simmons (n 11) 9.

¹⁶ Killander (n 5) 143.

¹⁷ Creamer & Simmons (n 11) 9.

¹⁸ Creamer & Simmons (n 11) 5.

¹⁹ As above.

²⁰ Viljoen (n 1) 349. The Promotional mandate of the African Commission is bestowed under art 45(1) of the African Charter on Human and Peoples’ Rights.

²¹ F Viljoen ‘State Reporting under the African Charter on Human and Peoples’ Rights: A Boost from the South’ (2000), Vol 44 No 1 *Journal of African Law* 110-118, 117.

²² As above. My emphasis.

²³ M Mutua ‘The African Human Rights System: A critical Evaluation’ (undated) 21. <http://hdr.undp.org/sites/default/files/mutua.pdf> (accessed 15 April 2021).

reporting.²⁴ Yet, ‘even when states report, the system often does not function very well...due to the conduct of states and of the African Commission²⁵ on Human and Peoples’ Rights (hereinafter the African Commission) itself.

In the case of Uganda, the database of the African Commission indicates that the country has so far submitted a meagre 5 reports.²⁶ Notably, the African Commission’s website does not provide the 1st (initial) and 2nd Periodic reports of Uganda. Secondly, its summary of information indicates different dates of submission of Uganda’s reports from those provided in the corresponding Concluding Observations and Recommendations. This study notes that the website erroneously captures the dates when the Commission concluded examination of these reports as dates on which they were submitted. This is confusing for researchers and should be immediately rectified.

The table below highlights the details and inconsistencies of the database of the African Commission in relation to reports submitted to the Commission by Uganda.

Report	Period covered by report	Submission date according to website summary	Submission date according to the Commission in the Concluding Observations report²⁷
1 st Periodic report	1986-2000	11 May 2000	Date of submission to the Secretariate: No comparison as the researcher was unable to

²⁴ Viljoen (n 21) 111.

²⁵ As above. My emphasis.

²⁶ See African Commission ‘State Reports and Concluding Observations’ <https://www.achpr.org/statereportsandconcludingobservations> (accessed 1 September 2021).

²⁷ There is an apparent confusion emerging from the usage of terminology regarding submission of reports to the African Commission. In some cases, the African Commission states that a report was *submitted*, in the sense of it having been handed in to the Secretariat (see, African Commission ‘Concluding Observations and Recommendations on the 5th Periodic Report State Report of the Republic of Uganda’ para 3). In other cases, *submitted* is used to refer to presentation of the country’s Report by a delegation during the Commission’s Ordinary Session held for consideration of the report in question (Concluding Observations on Uganda’s 5th Periodic Report, para 2). Notably, in the case of the 5th Report of Uganda, the Commission replaces the terminology of ‘submitted at’ with ‘examined during’ to refer to dates for the same event in the second usage (see paragraph 3 of the aforesaid Concluding Observations and Recommendations on Uganda’s 5th Periodic Report). For avoidance of doubt, this table provides the dates for both events, where these have been established.

			<p>access both the report and its concluding observations.</p> <p>Date(s) of submission before the Commission: This report was 'submitted' at the 27th Ordinary Session of the Commission held from 27 April to 11 May 2000.²⁸</p>
2 nd Periodic report	2000-2006	No details	<p>Date of submission to the Secretariate: No comparison as the researcher was unable to access both the report and its concluding observations.</p> <p>Date(s) of submission before the Commission: This Report was reportedly 'submitted' at the 40th Ordinary Session of the African Commission held from 15 to 29 November 2006.²⁹</p>
3 rd Periodic report	2006-2008	27 May 2009	<p>Date of submission to the Secretariate: October 2008 (no specified date)</p> <p>Date(s) of submission before the Commission: This Report was submitted during the 45th Ordinary Session of the Commission held from 13 to 27 May 2009.³⁰</p>
4 th Periodic report	2008-2010	12 May 2011	<p>Date of submission to the Secretariat: April 2011 (no specified date)</p> <p>Date(s) of submission before the Commission: This report was submitted during the 49th Ordinary Session of the</p>

²⁸ African Commission (n 27) para 2.

²⁹ As above.

³⁰ As above.

			Commission held from 28 April to 12 May 2011. ³¹
5 th Periodic report	2010-2012	7 May 2015	Date of submission to the Secretariat: September 2013 (no specified date) Date(s) of submission before the Commission: This Report was 'examined during' the 56 th Ordinary Session of the Commission held from 21 April to 7 May 2015. ³²

Additionally, Uganda has so far only managed to submit an Initial Report to the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) which is dated November 2007³³ and recorded by the ACERWC as having been submitted in the same year.³⁴ Notably, the recorded date of submission of this report is four years after its official due date of 29 November 2003 according to the ACERWC's website.³⁵ In the Preface to this report, the Minister for Gender, Labour and Social Development (MoGLSD) admits the lateness.³⁶ The relevant part of the Preface reads thus:³⁷

³¹ As above.

³² African Commission (27) para 3.

³³ MOGLSD 'Report on the Implementation of the African Charter on the Rights and Welfare of the Child in Uganda' November 2007 https://acerwc.africa/wp-content/uploads/2018/04/Uganda_Initial_Report_under_the_ACRWC.pdf (accessed 3 September 2021).

³⁴ ACERWC, Initial and Periodic Reports Table <https://www.acerwc.africa/initial-and-periodic-reports/> (accessed 1 September 2021).

³⁵ As above.

³⁶ MOGLSD (n 33) ii.

³⁷ As above.

Uganda's initial report was due in 2006, a reporting time frame that was delayed due to the African Union's delay to provide guidelines and related mechanisms for State Parties to report.

It would appear from the above statement, that the Minister erroneously thought that the relevant date was 29 November 2006 which is actually indicated as the due date for submission of the Periodic Report.³⁸ This confusion exemplifies a possibility of miscommunication of reporting instructions and the potential of its impact on the promptness with which states meet their reporting milestones. It also stresses the need for treaty bodies to always ensure that their communication to states is done in the clearest of terms.

More fundamentally, the Minister re-echoed the country's commitment to maintain the practice of 'reporting on international and regional instruments in order to seek review and guidance from the relevant Committees and other related stakeholders.'³⁹ This undertaking provokes a legitimate expectation that, henceforth, Uganda would be more diligent in not only submitting the reports, but also to promptly do so. If nowhere else, at least with the country's reporting to the ACERWC. Surprisingly, fourteen years later, the Initial Report has not been followed up.

1.2 Statement of the Research Problem

While Uganda has managed to submit some reports to the African Commission and the ACERWC, there is not yet a focused inquiry into the content of these reports, particularly regarding whether they provided the monitoring bodies with adequate information to facilitate an adequate review of the human rights situation in the country. It is also not known how the effort invested in, and the quality of the country's engagement with the African human rights reporting mechanism, compares with the reporting before UN human rights mechanisms. This interrogation is necessary both to facilitate an understanding of the value of importance states attach to reporting under the African human rights system as well as identification of potential areas for reform of the African human rights reporting process itself.

1.3 Study objective and research questions

The objective of this study is to examine Uganda's interaction with state reporting under the African Charter on Human and Peoples' Rights and the African Charter on the Rights and welfare of the Child (ACRWC). In pursuing this objective, the study proceeds with this broad question: Has Uganda provided adequate information in its Periodic State reports to the African Commission and the ACERWC which would enable

³⁸ n 34.

³⁹ As above.

them to adequately examine the country's implementation of the provisions of the relevant treaties? To answer that broad question, the study embarked on answering the following specific questions:

- i. What kind of information is the state of Uganda, through its periodic reports, expected to provide to the African Commission and the ACERWC?
- ii. In its reports submitted to these bodies thus far, what information has Uganda provided?
- iii. From a review of the submitted reports, has the information provided by Uganda enabled the African Commission and the ACERWC to adequately review the country's human rights situation?
- iv. What lessons can be drawn, and what recommendations can be made, for Uganda to maximize the benefits of state reporting to the African Commission and the ACERWC?

1.4 Methodology

The study is fully desk researched involving a review of literature on state reporting generally with emphasis on state reporting under the African human rights system. This is coupled with a content analysis of Uganda's periodic reports to the African Commission and the ACERWC in terms of their adequacy in facilitating the reviewing bodies with sufficient information to undertake an adequate examination of the human rights situation in the country. In this regard, the study relies on the data available on the websites of the African Commission and the ACERWC as well as library and online publications making commentaries on the same.

1.5 Literature review

There is a great deal of literature touching on the mechanism of state reporting at both the international/United Nations level and specifically on the mechanism under the African human rights system. This section samples a select few works from both the international and African experience purposely to highlight aspects that are of relevance to the study.

1.5.1 Experiences with State reporting at the international level

Available literature on the experiences with state reporting at the international level reveals that there are both benefits which accrue to states from engaging in the process on the one hand, and challenges which limit the reach of its impact on the other hand.

Writing on the benefits, Creamer and Simmons observe that states which engage in periodic reporting 'improve their rights practices when they engage in ongoing dialogue with ...treaty bodies.'⁴⁰ They reference studies which link cumulative participation in the reporting process to improvement in the human rights situation in

⁴⁰ Creamer & Simmons (n 11) 1.

compliant states, especially women's and physical integrity rights.⁴¹ They further note that 'state-generated information provision and review have been critical in increasing the transparency necessary' for implementation of, not only human rights treaties, but also those relating to environment, trade, among others.⁴² In their assessment, self-reporting by states constitutes 'a crucial and pervasive 'enforcement'⁴³ and 'the spear of accountability revolution in international human rights.'⁴⁴ Based on this understanding, a case can be made that, states can only claim to be genuinely interested in improving their human rights situation if they fully embrace and diligently undertake periodic reporting to monitoring bodies. Through this lens, this study analyses Uganda's periodic reporting practices before African human rights monitoring bodies to provide insights into her commitment to observe, promote and protect human rights.

Of relevance to this study, Creamer and Simmons' work also highlights the importance of undertaking studies on 'the nature and quality of the self-reporting process' particularly as part of the ongoing discussions at the United Nations level, around how to reinforce human rights treaty bodies in order to enhance their capacity to protect human rights.⁴⁵ In terms of the trends in the quality of state reporting at the UN level over the years, this work notes that⁴⁶

reports are becoming more thorough, increasingly candid, and more relevant to treaty obligations. More states are developing the capacity to collect, systematize, and analyze information—and more are willing to include such information in their reports—than in the past. Most importantly, the report-and- review process seeps into domestic politics, as reflected in the growth and localization of civil society participation and local media publicity. In other words, what is discussed in Geneva does not stay in Geneva. It spills over into domestic debates, adding fuel to mobilization and prompting demands for implementation.

These findings evidence an important shift in the quality of state reporting under the UN human rights system from the situation which obtained about two decades ago. This begs the question: does it necessarily follow that states naturally improve their reporting practices the more they engage with the process? Inquiries of this

⁴¹ Creamer & Simmons (n 11) 2.

⁴² Creamer & Simmons (n 11) 7.

⁴³ Creamer & Simmons (n 11) 4.

⁴⁴ Creamer & Simmons (n 11) 8.

⁴⁵ Creamer & Simmons (n 11) 2. Notably, this work also highlights a need to study equally important aspects such as 'how self-reporting affects treaty implementation and ultimately domestic laws and practices.' See Creamer & Simmons (n 11) 1.

⁴⁶ Creamer & Simmons (n 11) 3.

nature are equally important to reporting done under the African human rights system. In this study, I attempt an analysis of Uganda's reports to the African Commission and the ACERWC to see if there has been a notable improvement across the cycles of reporting. It is hoped that similar studies will be replicated for other African countries to provide a broader understanding of the general trends and patterns across the continent.

The challenges to state reporting under the UN system have mainly been non-reporting, delay and poor quality of reporting as well as states failing to send representatives at the dialogue with monitoring bodies. Writing in 2000, Bayefsky reported a trend of states – mostly those with very poor human rights records – eluding being monitored through non-submission of reports. Although treaty bodies tried to counter this by reviewing states in the absence of their reports,⁴⁷ treaty monitoring bodies had an uphill task of undertaking research on their own to try and establish the obtaining situation in a country under review, as well as the fact that there would, in most cases, be no opportunity to engage in dialogue with the delinquent state.⁴⁸

As regards quality of the reports, Bayefsky notes that some states would simply recite their constitutional and other legal provisions or make claims in terms as ambiguous as: 'There is no problem of minorities...the population being fully integrated socially'; 'The State of Emergency Act...which is currently in force...is an exceptional constitutional regime...'; 'The phenomenon of racial discrimination is unknown in our history and totally alien to our society'.⁴⁹ Such limitations negatively impact the quality of the review process, and especially so if the report is not backed by shadow reports.⁵⁰

Killander similarly flags the issue of states being either 'tardy with their reports' or not submitting them 'at all'.⁵¹ He cites the UN Committee on economic, social and cultural rights (CESCR Committee) which previously expressed concerns regarding states' failure to submit enough information and send enough experts to facilitate an effective review of the status of implementation of their treaty obligations.⁵²

⁴⁷ Bayefsky (n 1) 12-13.

⁴⁸ As above.

⁴⁹ Bayefsky (n 1) 22.

⁵⁰ Bayefsky (n 1) 23.

⁵¹ Killander (n 5) 146.

⁵² As above citing Concluding observations of the Committee on Economic, Social and Cultural Rights on the Initial Report of Zambia, E/C.12/1/Add.106, 23 June 2005, paras 2-3.

Notably, majority of the culprits cited in this work are African countries. This begs a question: what is the state of self-reporting under the African human rights system?

1.5.2 State reporting to the African Commission

There is no shortage in the supply of literature on the state reporting mechanism of the African Commission touching on both general aspects of the mechanism in its entirety⁵³ and specific issues such as reporting under the Maputo Protocol.⁵⁴ This literature touches on a wide array of themes relating to the mechanism such as its efficacy,⁵⁵ challenges,⁵⁶ effectiveness of reporting guidelines among others. There are also a few studies on state reporting practices of specific countries.⁵⁷ What follows is a brief review of sampled works touching on some of these aspects.

The problems relating to the African human rights system are age-old. Writing in 1996, barely a decade after official commencement of the reporting mechanism of the African Commission, Ankumah⁵⁸ noted an apparent lack of seriousness on the part of states when reporting to the African Commission. This unseriousness manifested for instance: in submission of very brief reports of along as five pages as was the case with Ghana's initial report, wasting away the reporting space to detailing the country's legislation instead of providing the Commission with substantial information on the prevailing situation of human rights in the country, as well as

⁵³ See Viljoen (n 1); Viljoen (n 21); A Danielsen *The State Reporting Procedure under the African Charter* (1994); FD Gaer 'First Fruits: Reporting by States under the African Charter on Human and Peoples' Rights' (1992) 10 *Netherlands Quarterly of Human Rights*.

⁵⁴ See A Johnson 'Barriers to fulfilling reporting obligations in Africa under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2021) 21 *African Human Rights Law Journal*; J Biegon 'Towards the adoption of guidelines for State Reporting under the African Union Protocol on Women's Rights: A review of the Pretoria gender expert Meeting' (2009) 9 *African Human Rights Law Journal*; F Viljoen 'An introduction to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2009) 16 *Washington and Lee Journal of Civil Rights and Social Justice*.

⁵⁵ See K Quashigah 'The African Charter on Human and Peoples' Rights: Towards a More Effective Reporting Mechanism' (2002) 2 *African Human Rights Law Journal*; C Mugwanya 'Examination of state reports by the African Commission: A critical Appraisal' (2001) 1 *African Human Rights Law Journal*.

⁵⁶ For example, Johnson (n 54).

⁵⁷ For example, Viljoen (n 21) commenting on South Africa's initial reporting; P Tigere 'State Reporting to the African Commission: The case of Zimbabwe' (2012) 38 *JAL* 64 writing on Zimbabwe and other brief analyses of different countries by Viljoen (n 1).

⁵⁸ EA Ankumah 'The African Commission on Human and Peoples' Rights: Practice and Procedures' (1996) 16 *Nijhoff Law Specials*.

failure of state representatives to adequately prepare for their appearance before the Commission.⁵⁹ According to this work, such challenges significantly affected the potential gains from the African human rights state reporting mechanism in its initial stages.

Komeja's equally dated (1996) work speaks to the other problem bedeviling the African human rights reporting mechanism, namely: the Commission's lack of power to force states to comply with their reporting obligations. It reports how, since the coming into force of the African Charter in 1987, a majority of states had yet to submit their reports by 1996.⁶⁰ It should however be noted that the African Commission actually did not consider any state reports until March 1991 when the reports of Rwanda, Libya and Tunisia were reviewed.⁶¹ As already highlighted, enforcement of compliance remains a challenge even for state reporting under the UN human rights monitoring mechanisms.

Viljoen's work of 2000 also identifies as challenges to state reporting under the African human rights system, among others: the failure of states to follow the reporting guidelines, states providing 'incomplete or even scant information,' not being 'self-reflective and critical,' absence of government representatives during examination of reports as well as the low level of publicity of the process in municipal systems.⁶² The work further critiques the tendency of the Commission being less critical of the substance of reports where states fulfilled the formality of reporting, the result being that, in some cases, no significant impact emerged from the process.⁶³ In view of such challenges, Viljoen proposes ways of enhancing state reporting.⁶⁴

Similar challenges are re-echoed in works published after 2000 when Uganda started engaging with the state reporting mechanism. Quashigah, for instance, observed that states parties to the African human rights system were generally expressing 'a lackadaisical attitude' towards meeting their reporting obligations, much to the embitterment of the African Commission.⁶⁵ Notably, this work acknowledges the fact that the problem is not

⁵⁹ Ankumah (n 60) 91-99.

⁶⁰ M Komeja 'The African System of Human and Peoples' Rights: an Annotated Bibliography' (1996) 3 *East Afr. J. of Peace & Hum. Rts.* 271, 284-85 cited in Mutua (n 19) 21.

⁶¹ Viljoen (n 21) 111.

⁶² As above.

⁶³ Viljoen (n 21) 116.

⁶⁴ Viljoen (n 21) 117.

⁶⁵ Quashigah (n 57) 261.

exclusive to the African human rights system.⁶⁶ In this regard, Quashigah described as non-encouraging, the nature of the African human rights reporting mechanism which, for all its ‘laudable objectives’ was evidently not being embraced by ‘many states’ which appeared to ‘not appreciate the importance of putting together and submitting their...reports as and when due.’⁶⁷

Quashigah also identified political will as one of the key necessary conditions to facilitate states’ regular reporting, noting that the approach of ‘self-criticism and good faith’ which appeared to be the basis of state reporting under the African human rights system would not be effective on a continent where commitment to human rights was yet ‘to be fully ingrained in the psyche of...governments’.⁶⁸ To resolve these challenge of lack of political will, this work emphasized the need to make states realise ‘the necessity, responsibility and benefits of reporting’.⁶⁹ It also cites a lack of seriousness during the reporting process which, for instance, manifests in states not sending representatives to the dialogue or sending representatives who are not in position to meaningfully engage with the Commission and the Commission allocating very limited time for consideration of reports respectively as well as its weak manner of treating the reports.⁷⁰ It also acknowledges the resource (financial and human resource) constraints cited by other works.⁷¹

Although Killander’s work does not specifically provide insights into how African states report before these bodies, he decries the limited participation of NGOs in the reporting process.⁷² He attributes this to the inaccessibility of state reports in the initial stages and the common tendency of governments not being ‘keen to inform NGOs in advance.’⁷³ He however notes that this issue has since been addressed by having the reports uploaded on the African Commission website ahead of the review.⁷⁴ Should it then be assumed that the fact that NGOs can now more readily access state reports has motivated states such as Uganda to report better by

⁶⁶ As above.

⁶⁷ Quashigah (n 57) 267. My emphasis.

⁶⁸ Quashigah (n 57) 268 citing Crawford (1).

⁶⁹ Quashigah (n 57) 274.

⁷⁰ Quashigah (n 57) 276-278.

⁷¹ Quashigah (n 57) 279-80.

⁷² Killander (n 5) 148.

⁷³ As above.

⁷⁴ As above.

providing the Commission and the ACERWC adequate information? This study's analysis provides insights into these kinds of debates.

Viljoen's work of 2012 notes that state reporting is one of the incidental obligations that states assume upon ratification of the African Charter.⁷⁵ According to this work, state reporting should, at the national level, be perceived as⁷⁶

an opportunity to take stock of...achievements and failures in making the guarantees in the Charter a reality...full compliance with this obligation will give the government insight into, or will remind it about, the need to adapt laws, policies, and practices.

At the international level, the mechanism is intended to 'establish an objective and impartial inspection by an external body of the state's recent human rights record... [and is] an opportunity for constructive dialogue between the government and the Commission.'⁷⁷

Beyond providing an overview of the background to and aim of state reporting on under African human rights system, Viljoen ably discusses the evolution of the applicable reporting Guidelines; state practice with regards to the standard of submitting reports every two years as required under article 62 of the African Charter which, it notes, 'no state has so far met'; performance of the African Commission at examining reports; the role of NGOs; representation of states at dialogues; concluding observations, their implementation and follow-up.⁷⁸ The work considers the two-year window of reporting to be an unrealistically short interval in comparison with reporting before bodies monitoring international human rights treaties, noting further that even if states had been more prompt in meeting their reporting obligations, the African Commission would not be in position to examine all the reports based on its past practice.⁷⁹

Viljoen generally reiterates the same challenges cited by Quashigah above. Of interest to the current study, Viljoen comments on the quality of reports submitted to the African Commission, noting that these have mostly been deficient in form, length, currency and substance – in some cases states only 'listing legislative provisions

⁷⁵ Viljoen (n 1) 350.

⁷⁶ As above.

⁷⁷ As above.

⁷⁸ Viljoen (n 1) 355.

⁷⁹ As above.

and policies in their reports.⁸⁰ Specifically in reference to Uganda, this work cites Uganda's second report which the 40th session of the Commission (November 2006) found to have followed the provisions of the ICCPR rather than the African Charter, for which the Ugandan delegation had no fitting explanation.⁸¹

Finally, is Johnson's latest work of 2021 on reporting under the Maputo Protocol.⁸² According to this work, the significant commitment that states express by ratifying human rights treaties is often not accompanied by them meeting obligations thereunder.⁸³ State reporting is cited among the unmet obligations mainly because of non-reporting and late submission of reports by states.⁸⁴ For instance, 'only a handful' of states that ratified the Maputo Protocol have been able to meet their reporting obligation, which affects realisation of women's rights on the continent.⁸⁵ Johnson attributes this to among others: states' lack of clarity on how to write the report;⁸⁶ limitations in political will, allocation of financial and administrative resources towards the process, technical expertise to write the report either due to scarcity of qualified personnel and an increased risk of staff turnover;⁸⁷ reporting fatigue and a weak reporting mechanism of the African Commission;⁸⁸ as well as negative perception of reporting as a way of 'encouraging unnecessary criticisms and the shaming of states'.⁸⁹ This work provides the most updated iteration of the challenges facing the reporting mechanism of the African human rights system.

1.5.3 Reporting before the ACERWC

There is not yet as much literature on state reporting to the ACERWC compared to the African Commission. Among the few commentators on this aspect is Viljoen who among other observations, notes that state

⁸⁰ Viljoen (n 1) 353.

⁸¹ Viljoen (n 1) 354.

⁸² See Johnson (n 54).

⁸³ Johnson (n 54) 176.

⁸⁴ Johnson (n 54) 200.

⁸⁵ Johnson (n 54) 178.

⁸⁶ Johnson (n 54) 186.

⁸⁷ Johnson (n 54) 195.

⁸⁸ Johnson (n 54) 198.

⁸⁹ Above.

reporting under the ACRWC is more frequent compared to that under the United Nations Committee on the Rights of the Child (CRC Committee).⁹⁰ He also commends the rare provision for harmonisation of the reporting procedures under the ACRWC with those of the Convention on the Rights of the Child (CRC) which is in the form of requiring states to submit their report to the CRC Committee side by side with a 'supplementary report' on provisions that are unique to the ACRWC.⁹¹ On this basis, he considers reporting under the ACRWC to double as 'a mechanism for following up on the concluding observations of the CRC Committee' considering that the applicable reporting guidelines require states to indicate the action they have taken in respect of the CRC Committee's recommendations.⁹² This is presented as one way in which 'the regional system reinforces the global human rights system.'⁹³

In terms of the quality of reports submitted, Viljoen notes that the ACERWC 'seems reasonably satisfied' even as some states did not provide enough information on particular aspects which prompted the ACERWC to recommend that states provide this information in their subsequent reports.⁹⁴

Yet, Viljoen cites a few challenges in respect to state reporting before the ACERWC. For instance, the harmonisation by the ACERWC of its state reporting mechanism with that of the CRC Committee initially prompted states such as Mauritius to purport to fulfill their reporting obligations to the ACERWC by submitting to it the same report submitted to the CRC Committee, which the ACERWC rejected.⁹⁵ He also notes that the delayed adoption of Concluding Observations and recommendations by the ACERWC makes the recommendations lose 'the immediacy of their appeal.'⁹⁶

Equally of concern to Viljoen is the tendency of the ACERWC's recommendations to states being too open-ended making it difficult to follow them up leaving it upon the state to determine what is necessary to remedy

⁹⁰ Viljoen (n 1) 400.

⁹¹ As above, citing paras 24 & 25 of the Reporting Guidelines to the ACERWC. Viljoen notes, however, that states are yet to get proper guidance on the exact aspects that are unique the ACRWC due to the pendency of 'a complete comparative analysis.' As above.

⁹² As above.

⁹³ As above.

⁹⁴ As above.

⁹⁵ Viljoen (n 1) 401.

⁹⁶ As above.

the situation.⁹⁷ In this regard, Viljoen reiterates an earlier work by Nielsen and Mezmur, and recommends that the ACERWC 'should endeavor to be more specific and selective in what it recommends, on the basis of a careful analysis of the feasibility and potential impact of its implications.'⁹⁸

Notably, Sloth-Nielsen also authored an article on the initial experience of the ACERWC in examining state reports.⁹⁹ Among others, this work applauds, as a best practice, ensuring involvement in the preparation of state reports, of all possible stakeholders such as youth and children, relevant UN agencies, NGOs among others. It is even more valuable if the process for preparation of the report is transparent¹⁰⁰, and details of it availed to the ACERWC for instance by way of annexing to the report a detailed Workplan of the entire process of its preparation from inception to finalization as was done with Nigeria's Initial Report.¹⁰¹ The work also highlights some gaps in the reporting guidelines that required to be addressed for instance on the specific information which states are required to avail the ACERWC on aspects such as general measures of implementation of children's rights¹⁰² and the minimum ages in respect of more issues than those that were covered¹⁰³ among others.

These works thus provide a lens for analysing Uganda's Initial Report to the ACERWC.

1.5.4 The Ugandan case

Specific to the Ugandan reporting to the African Commission and the ACERWC, there is not a lot of scholarship yet. The few available examples in this regard include Agaba's 2016 work¹⁰⁴ discussing the impact

⁹⁷ Viljoen (n 1) 402.

⁹⁸ As above, citing J Sloth-Nielsen & BD Mezmur 'Out of the Starting Blocks: The 12th and 13th Sessions of the African Committee of Experts on the Rights and Welfare of the Child' (2009) 9 *African Human Rights Law Journal* at 342.

⁹⁹ See J Sloth-Nielsen 'An Icebreaker: State Party Reports and the 11th Session of the African Committee of Experts on the Rights and Welfare of the Child' (2008) 8 *African Human Rights Law Journal* at 596.

¹⁰⁰ This work cites some strategies through which transparency and full participation can be achieved for example calling on the public to participate through adverts on televisions and in newspapers. Sloth-Nielsen (n 101) 605.

¹⁰¹ As above.

¹⁰² As above.

¹⁰³ Sloth-Nielsen (n 101) 606.

¹⁰⁴ D Agaba 'The Impact of the African Charter and the Maputo Protocol in Uganda' in VO Ayeri (ed) *African Charter and the Maputo Protocol in Selected African Countries* (2016).

of the African Charter and the Maputo Protocol in Uganda. This work flags the issue of delays in Uganda's submission of reports which, it notes, is attributable to a human resource gap at the Ministry of Foreign Affairs which is responsible for state reporting to the African Commission.¹⁰⁵ It notes that the Ministry is faced with a shortage in the number of qualified personnel to write the reports mainly because its former officers either migrated from the country or to newer workstations.¹⁰⁶ Notably, Agaba's analysis is based on a report issued in 1998, and does not indicate whether and if so, how, the lack of qualified personnel is reflected in the state reports Uganda submitted to the African Commission and the ACERWC.

Agaba further notes that Uganda's reports on the implementation of the African Charter have previously been lacking in content. For instance, one of its earlier reports was so identical to the report submitted to the UN Human Rights Committee which, according to the African Commission, evidenced Uganda's lack of commitment to undertake research and present issues that are peculiar to the African Charter and to the African situation in general.¹⁰⁷ On a good note, Agaba notes that Uganda subsequently addressed this concern, particularly by starting to follow the reporting guidelines.¹⁰⁸ Since, she does not provide evidence to substantiate this conclusion, the analysis in the current study discusses Uganda's reports in detail, including whether they comply with reporting guidelines.

Agaba's work also comments on the important role that non-state actors, particularly non-government organisations (NGOs) in Uganda have previously played in the country's reporting to the African Commission. An example in this regard is 'sending shadow reports to the African Commission to complement the state reports...providing information on the human rights situation which the government might have left out.'¹⁰⁹ Agaba however notes that NGOs' involvement has since been frustrated by the Ugandan government which reportedly shrinks their operational space in the guise of supervising them.¹¹⁰ As a result, NGOs did not submit shadow reports to Uganda's periodic reports to the African Commission since the 2006 cycle.¹¹¹ This finding further stresses the need for this study which reviews Uganda's reports to the African Commission and the

¹⁰⁵ Agaba (n 106) 273 citing EVO Dankwa 'Report on promotional visits to Uganda and Kenya' 12-21 July 1998.

¹⁰⁶ As above.

¹⁰⁷ Agaba (106) 275.

¹⁰⁸ As above.

¹⁰⁹ Agaba (106) 271.

¹¹⁰ Agaba (106) 272.

¹¹¹ As above.

ACERWC after 2006. The study provides an understanding of whether Uganda's reports were comprehensive enough to facilitate an adequate review of the country's human rights situation, especially considering that they were not complemented by shadow reports.

In addition to Agaba, in 2008, Mbazira undertook an assessment¹¹² of the findings of Uganda's 2007 Country Self-assessment Report under the African Peer Review Mechanism (APRM)¹¹³. Although it does not specifically focus on Uganda's reporting before the African Commission and the ACERWC, Mbazira's work is relevant to the extent that it sheds light on the partial commitment of Uganda towards undertaking a thoroughly honest self-assessment.

Mbazira's work notes that Uganda's reporting to the APRM mostly concentrates on highlighting ratification of key international instruments incorporating the relevant standards as evidence of compliance, instead of showing how the instruments are being implemented.¹¹⁴ In other cases, it only details the 'programmes, plans and objectives' introduced for instance by the country's Justice, Law and Order Sector (JLOS), still without explaining their impact.¹¹⁵

Mbazira is also critical of the report's presentation of the National Resistance Movement (NRM) government as an infallible player in Uganda's democratisation and governance journey, and the country's progress in many ways being assessed in comparison to regimes that preceded the NRM, rather than against the standards prescribed under the ratified instruments and domestic laws, policies and programmes.¹¹⁶

Overall, Mbazira's assessment of Uganda's initial APRM report is that it is incomplete and imbalanced in favor of the government, such that 'one has to look for more evidence outside the Country Report' if they seek to investigate the full extent of the country's situation.¹¹⁷

¹¹² C Mbazira 'Dream Deferred? Democracy and Good Governance: An Assessment of the Findings of Uganda's Country Report under the African Peer Review Mechanism' (2008) HURIPPEC Working Paper No. 19, 2008 https://huripec.mak.ac.ug/wp-content/uploads/Docs/Publications/working_paper_19.pdf (accessed 2 October 2021).

¹¹³ Uganda African Peer Review Mechanism (APRM) National Commission 'The Country self-assessment report' (2007).

¹¹⁴ Mbazira (n 112) 37.

¹¹⁵ Mbazira (n 112) 30.

¹¹⁶ Mbazira (n 112) 37.

¹¹⁷ See in this regard, the discussion on presentation of the challenges facing the Electoral Commission [Mbazira (n 112) 23] and on the liberative role of the NRM [Mbazira (n 112) 26-29].

It is evident from the above review, that there is a very limited scholarship on Uganda's interaction with state reporting under the African human rights system, and generally on the content of periodic reports of African countries in terms of facilitating the monitoring bodies with sufficient information to undertake adequate reviews of their human rights situation. This makes the current study an important addition to the discourse.

1.6 Limitations encountered and efforts at maneuvering around them

One of the major limitations to this study is the fact that the 1st and 2nd periodic reports submitted by Uganda to the African Commission and the Concluding Observations thereto, are not available on the Commission's website. To get a general picture of Uganda's reporting practices, the study relies on insights from earlier commentaries for instance by Agaba and Viljoen which it compares with its findings from analysing Uganda's three latest and available periodic reports to the African Commission, and the Initial Report to the ACERWC.

Secondly, the study does not capture insights from any of the shadow reports to Uganda's periodic reports to the African Commission and the ACERWC as these are not available on the respective websites. It would appear that the Shadow Reports are not intended to be public documents as was indicated to the Researcher in correspondences with a contact at the African Commission. Efforts to contact and informally access them directly from websites of their authors such as the Uganda Human Rights Network Uganda (HURINET-U) also proved futile as they do not have them uploaded.

Notably, shadow reports would only have been an additional point of reference for understanding what the non-state actors believed to be key issues that the state reports should have addressed but did not. The study therefore concentrates on analysing Uganda's reports through the lenses of prescribed reporting guidelines and major developments around the time of reporting where possible.

1.7 Organization of chapters

The study is presented in five chapters. Following immediately hereafter is Chapter Two which discusses the legal basis and applicable guidelines for state reporting before the African Commission and the ACERWC which Uganda is expected to follow. On their part, chapters Three and Four present and discuss Uganda's reports to the African Commission and the ACERWC respectively; in that highlighting the structure, preparation process, content, the dialogue at which the reports were examined. Finally, Chapter Five draws the study's conclusion based on its findings and makes recommendations in the hope that, if considered, Uganda's interaction with state reporting before the African Commission and the ACERWC and indeed other international bodies, will improve.

CHAPTER TWO

LAW AND GUIDELINES FOR STATE REPORTING TO THE AFRICAN COMMISSION AND THE ACERWC

2.1 Introduction

This chapter discusses the legal standards on, and guidelines for, state reporting to the African Commission and the ACERWC. It proceeds, firstly with a note on the key instruments providing for recognition and protection of human rights on the continent. This is followed by a brief on state reporting particularly in terms of the significance of the mechanism in facilitating realisation of human rights on the African continent. Finally, it presents and discusses the legal basis and guidelines for state reporting before the two monitoring bodies.

2.2 Africa's instruments on human rights

Africa has a fairly broad legal framework providing for a range of human rights. To begin with is the African Charter on Human and Peoples' Rights (herein after 'The African Charter')¹¹⁸ which was adopted on 1 June 1981 in Kenya's capital – Nairobi and entered into force on 21 October 1986.¹¹⁹ By 1999, the African Charter had assumed full coverage of the continent – which popularity still stands following a 19 May 2016 ratification by the youngest state on the continent, South Sudan.¹²⁰ In terms of its contours, the African Charter provides for general recognition of human rights of all peoples on the continent as well as mechanisms for their enforcement key among which is the African Commission on Human and Peoples' Rights (variously referred to as 'the African Commission' across this study).¹²¹

¹¹⁸ <https://au.int/sites/default/files/treaties/36390-treaty-0011 - african charter on human and peoples rights e.pdf> (accessed 3 September 2021).

¹¹⁹ <https://au.int/en/treaties/african-charter-human-and-peoples-rights> (accessed 3 September 2021).

¹²⁰ See <https://www.achpr.org/statepartiestotheafricancharter> (accessed 3 September 2021) and Centre for Human Rights, University of Pretoria & African Commission 'A Guide to the African Human Rights System: Celebrating 30 years since the entry into force of the African Charter on Human and Peoples' Rights 1986-2016' (2016) 3 <https://www.corteidh.or.cr/tablas/31712.pdf> (accessed 5 September 2021).

¹²¹ The establishment, mandate and workings of the African Commission are provided for under Part II of the African Charter.

Beyond the African Charter, there are instruments dedicated to rights of specific interest groups including women,¹²² children,¹²³ refugees,¹²⁴ youths,¹²⁵ internally displaced persons,¹²⁶ persons with disabilities¹²⁷ and older persons¹²⁸. As at 1 October 2021, relevant instruments on the rights of the latter two categories are yet

¹²² See Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted in Maputo, Mozambique on 01 July 2003 and entered into force on 25 November 2005) https://au.int/sites/default/files/treaties/37077-treaty-charter_on_rights_of_women_in_africa.pdf (accessed 5 September 2021).

¹²³ African Charter on the Rights and Welfare of the Child (ACRWC) (adopted in 1990 and entered into force in 1999) https://www.achpr.org/public/Document/file/English/achpr_instr_charterchild_eng.pdf (accessed 5 September 2021). The ACRWC is ratified by a great majority (50) of the member countries of the AU.

¹²⁴ OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (adopted in Addis Ababa, Ethiopia, on 10 September 1969 and entered into force on 20 June 1974) https://au.int/sites/default/files/treaties/36400-treaty-0005_-_oau_convention_governing_the_specific_aspects_of_refugee_problems_in_africa_e.pdf (accessed 5 September 2021).

¹²⁵ African Youth Charter (adopted in Banjul, The Gambia on 2 July 2006 and entered into force on 8 August 2009). https://au.int/sites/default/files/treaties/7789-treaty-0033_-_african_youth_charter_e.pdf (accessed 5 September 2021).

¹²⁶ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (adopted in Kampala, Uganda on 23 October 2009 and came into force on 6 December 2012) https://au.int/sites/default/files/treaties/36846-treaty-kampala_convention.pdf (accessed 5 September 2021).

¹²⁷ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (adopted on 29 January 2018). Note: the link https://au.int/sites/default/files/treaties/36440-treaty-protocol_to_the_achpr_on_the_rights_of_persons_with_disabilities_in_africa_e.pdf provided by the African Union Website for accessing this instrument is inaccessible.

¹²⁸ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (adopted on 31 January 2016) <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-older-persons> (accessed 5 September 2021). Notably, this instrument is yet to enter into force since it has not yet attracted the required 15 ratifications.

to enter into force. There are also instruments seeking to address issues of particular concern to the continent such as terrorism,¹²⁹ environmental degradation,¹³⁰ corruption¹³¹ and governance¹³².

2.3 State reporting under the African human rights framework

2.3.1 Significance

As part of the strategy to induce compliance, the African Charter¹³³ and some of its accompanying instruments¹³⁴ require states to submit periodic reports on the measures put in place, progress and challenges encountered with respect to giving effect to the rights thereby guaranteed. Under the African Charter, state reporting is ‘(o)ne of the main obligations’ of states parties.¹³⁵

The adoption of state reporting under Africa’s human rights system reflects an understanding of the ‘parallel significance’ of implementation of the legal instruments whose ‘elaboration and acceptance’ is only ‘a mere

¹²⁹ See OAU Convention on the Prevention and Combating of Terrorism (adopted 01 July 1999 and entered into force 06 December 2002) https://au.int/sites/default/files/treaties/37289-treaty-0020_-_oau_convention_on_the_prevention_and_combating_of_terrorism_e.pdf (accessed 5 September 2021) and the Protocol thereto (adopted in 2004) https://au.int/sites/default/files/treaties/37291-treaty-0030_-_protocol_to_the_oau_convention_on_the_prevention_and_combating_of_terrorism_e.pdf (accessed 5 September 2021).

¹³⁰ See OAU Convention on the Conservation of Nature (adopted on 15 September 1968 and entered into force on 16 June 1969) https://au.int/sites/default/files/treaties/7763-treaty-0003_-_african_convention_on_the_conservation_of_nature_and_natural_resources_e.pdf (accessed 5 September 2021). This Convention was revised in 2003 (see <https://au.int/en/treaties/african-convention-conservation-nature-and-natural-resources-revised-version> (accessed 5 September 2021)).

¹³¹ See Convention on Preventing and Combating corruption (adopted on 01 July 2003 and entered into force on 05 August 2006) https://au.int/sites/default/files/treaties/36382-treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.pdf (accessed 5 September 2021).

¹³² See African Charter on Democracy, Elections and Governance (adopted on 30 January 2007 and entered into force on 15 February 2012) <https://au.int/sites/default/files/treaties/36384-treaty-african-charter-on-democracy-and-governance.pdf> (accessed 5 September 2021).

¹³³ Article 62.

¹³⁴ Namely: the Maputo Protocol (article 26), the ACRWC (article 43), the African Union Convention for the Protection of the Rights of Internally Displaced Persons (art 14(4)), the Older Persons’ Protocol (article 22) and the Africa Disability rights protocol (art 34(1)). As already noted, the protocols on the rights of Africa’s older persons’ and persons with disabilities have not yet entered into force.

¹³⁵ Viljoen (n 21) 110.

beginning in the essential exercise of promotion, protection and restoration of human and peoples' rights...¹³⁶ The Grand Bay Declaration and Plan of Action adopted at the First Organisation of African Unity (OAU) Ministerial Conference on Human Rights held in April 1999 in Grand Bay, Mauritius, elaborates on the significance of state reporting thus:¹³⁷

16. The Conference recognises that the reporting of states parties under the African Charter on Human and Peoples' Rights provides an important mechanism and an opportunity for African governments to engage in a process of continuous dialogue with the African Commission on Human and Peoples' Rights. Accordingly, the Conference recommends that states parties take appropriate measures to meet their reporting obligations under the Charter.

A call for states to meet the reporting obligations assumed under their ratified treaties was also reiterated by the AU Ministerial Conference on Human Rights in Africa held in May 2003, in Kigali, Rwanda.¹³⁸

2.3.2 Mandate to examine state reports

In spite of the initial confusion on the matter, it is now settled that the mandate of examining state reports under the African Charter is with the African Commission.¹³⁹ Notably, the African Commission is additionally charged with reviewing states' performance at implementing provisions of the protocols which further expound on the rights of women, older persons and persons with disabilities.¹⁴⁰ As already indicated, of these, it is only the Protocol on women's rights (variously referred to as the Maputo Protocol in this study) that is in force so far.

As highlighted in Chapter One above, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) is also entrusted with reviewing state reports on the implementation of the African Charter

¹³⁶ ACHPR 'Guidelines for National Periodic Reports' (1989) 1
[https://www.achpr.org/public/Document/file/English/National%20Periodic%20Reports%20Guidelines%20\(1989\).pdf](https://www.achpr.org/public/Document/file/English/National%20Periodic%20Reports%20Guidelines%20(1989).pdf)
(accessed 10 September 2012).

¹³⁷ Cited in Heyns & Killander (eds) 'Compendium of Key Human Rights Documents of the African Union' (2016) 149.

¹³⁸ Heyns & Killander (n 137) 154 citing Kigali Declaration, para 25.

¹³⁹ For a discussion on the initial confusion around which authority was intended to receive and consider state reports, see Viljoen (n 21) 110 and African Commission 'State Reporting Procedures and Guidelines' information sheet accessible at <https://www.achpr.org/statereportingproceduresandguidelines> (accessed 5 September 2021).

¹⁴⁰ See Maputo Protocol, art 26(1), Africa Older Persons Protocol, art 22 and Africa Disability Rights Protocol, art 34(1).

on the Rights and Welfare of the Child (ACRWC) as part of its overall mandate to promote and protect the rights and welfare of the child.¹⁴¹ The ACERWC notes as follows in respect to its state reporting mechanism:¹⁴²

The Committee conceives the state reporting process established under the Charter as a non-adversarial process that is based on the principle of constructive dialogue and for the ultimate benefit of the State Parties. The reporting process is designed to provide State Parties with the opportunity for self-reflection and assessment on the extent to which the rights guaranteed under the Charter are enjoyed in practice.

The ACERWC regards states' continuous participation in the reporting process as 'an ongoing reaffirmation by States Parties of their commitment to respect and ensure observance of the rights set forth in the Children's Charter...'¹⁴³ Viewed from the lenses suggested by Viljoen, state reporting is a 'backbone' to the mission of the African Commission and the ACERWC.¹⁴⁴

Notably, there is also another mechanism under the African Union structures for review of states' implementation of their commitments, namely the African Peer Review Mechanism (APRM).¹⁴⁵ However, this study strictly focuses on state reporting before the African Commission and the ACERWC.

2.4 Standards for state reporting to the African commission and the ACERWC

To ensure standardization of reports submitted by states, the African Commission and the ACERWC developed and issued reporting guidelines for both the initial and periodic reports before them. The initial report is the one immediately following ratification of the relevant instrument and generally informs the

¹⁴¹ ACRWC, arts 32 and 43.

¹⁴² ACERWC 'Guidelines on the Form and Content of Periodic State Party Reports to be Submitted Pursuant to Article 4 3(1)(b) of the African Charter on the Rights and Welfare of the Child' para 3.

¹⁴³ ACERWC 'Guidelines for Initial Reports of States Parties' Cmttee/ACRWC/2 II. Rev2, para 4 <https://www.acerwc.africa/wp-content/uploads/2018/04/ACERWC-Guidelines-on-Initial-State-reports-English.pdf> (accessed 10 September 2021).

¹⁴⁴ Viljoen (1) 350.

¹⁴⁵ African Heads of States and Government adopted the APRM 'as a systematic peer learning and self-assessment mechanism' based on the Declaration on Democracy, Political and Corporate Governance adopted in July 2002 in Durban, South Africa. The APRM operates within the framework of the New Partnership for Africa's Development (NEPAD) and through it, member states undertake a self-assessment of 'all aspects of their governance and socio-economic development' with a view to building consensus on the way forward. See APRM 'About the APRM' accessed at <https://www.aprm-au.org/page-about/> (accessed 10 September 2021).

monitoring bodies about the background of the country and its legal framework.¹⁴⁶ This serves as a basis for subsequent engagements between the state and the African Commission and the ACERWC.¹⁴⁷ On its part, the periodic report avails updated information on the developments related to observance of guaranteed rights in the reporting state during the reporting cycle.¹⁴⁸ Below is a highlight of the specific reporting guidelines before the African Commission and the ACERWC.

2.4.1 Reporting to the African Commission

States are required to submit an initial report to the African Commission three years following ratification of the African Charter and thereafter regular periodic reports in two-year cycles.¹⁴⁹ Notably, the two-year cycle has been criticised for being unrealistically short, and there is a proposal for it to be extended to four years.¹⁵⁰ According to the Commission's website, there are currently three categories of guidelines for reporting before the African Commission namely: general guidelines on the African Charter, guidelines on specific articles of the African Charter as well as guidelines for reporting on the Maputo Protocol.¹⁵¹ These guidelines are discussed below.

2.4.1.1 General guidelines for reporting on the African Charter

What exactly are the operational guidelines for reporting on the African Charter has for long been a confusing issue on account of the different versions in place.¹⁵² The first of these are the National Periodic Reports Guidelines¹⁵³ reportedly issued on 14 April 1989 during the 2nd session of the African Commission.¹⁵⁴ These 24-paged Guidelines require state reports to cover a detailed range of issues under 7 thematic areas namely: (I) civil and political rights; (II) economic and social rights specifically (a) the rights related to the family namely the right to an adequate standard of life and to the highest attainable level of health and (b) the rights to

¹⁴⁶ Viljoen (n 1) 351.

¹⁴⁷ As above.

¹⁴⁸ As above.

¹⁴⁹ African Charter, art 62.

¹⁵⁰ See Viljoen (n 1) 355 citing the brainstorming meeting of the Commission of 9-10 May 2006.

¹⁵¹ African Commission (n 139).

¹⁵² Viljoen (n 1) 352.

¹⁵³ African Commission, 1989 Guidelines (n 136).

¹⁵⁴ See Viljoen (n 1) 352 & <https://www.achpr.org/resources> (accessed 10 September 2021).

education; (III) peoples' rights (articles 19 to 24 of the African Charter); (IV) specific duties under the charter; (V) elimination of all forms of racial discrimination; (VI) suppression and punishment of the crime of apartheid; as well as (VII) elimination of all forms of discrimination against women.

However, the manner in which the initial guidelines are presented is unnecessarily 'too lengthy and complicated, making compliance a matter of impossibility'.¹⁵⁵ Additionally, accessing these guidelines was initially difficult on account of their unavailability on the Commission's website.¹⁵⁶ Such concerns provoked an amendment (the Umozurike amendment) almost a decade later, in 1998, during the 23rd session of the African Commission.¹⁵⁷ By this time, the African Commission had already examined 20 state reports.¹⁵⁸

The Umozurike amendment reduced the Initial Guidelines to 11 points which, although highlighted 'certain important issues, [ended up being] too brief and its provisions...too vague to function as a comprehensive guideline'.¹⁵⁹ Indeed, the amendment appears to have been abandoned soon after its adoption, so much so that, by the year 2000, there was already introduced another version – the '*Simplified Guidelines for State Reporting*' also named the Dankwa document after Commissioner Dankwa who prepared them.¹⁶⁰ This document elaborates the Umozurike amendment.¹⁶¹

The Dankwa document requires initial reports submitted by states to provide: background information on the state, the form of government, its legal system as well as notes on how the three arms of government relate with each other.¹⁶² This is in addition to the information required by periodic reports namely:¹⁶³

¹⁵⁵ Viljoen (n 1) 352.

¹⁵⁶ As above. Notably, the Guidelines are now accessible on the Commission's website (see n 136 above).

¹⁵⁷ See Viljoen (n 1) 352 citing ACHPR 'Guidelines to Periodic Reporting under Article 62 of the African Commission on Human and Peoples' Rights by UO Umozurike' (adopted at the 23rd session of the ACHPR in 1998, DOC/OS/27(XXIII) reproduced in Killander & Heyns 'Compendium of Key Human Rights Documents of the African Union' (2010) 205.

¹⁵⁸ A list of reports examined by the Commission from 1991 to 2011 is reproduced in Viljoen (n 1) 356-57.

¹⁵⁹ Viljoen (n 1) 352.

¹⁶⁰ As above citing the '*Simplified Guidelines*' referenced above at n 157 reproduced in Viljoen (n 21) 112 – 13.

¹⁶¹ As above.

¹⁶² As above.

¹⁶³ As above.

- (1) particulars about ratification, domestication, and state reporting under the major human rights instruments to which the state is a party;
- (2) measures taken to implement the rights protected in the African Charter under the following headings:
 - (a) civil and political rights;
 - (b) socio-economic and cultural rights;
 - (c) collective rights;
 - (d) steps taken to implement the right to development;
 - (e) steps taken to protect the following specific groups: women, children, the disabled, the aged, minorities, and other 'oppressed and/or disadvantaged groups';
 - (f) steps taken to 'protect the family and encourage its cohesion';
 - (g) any domestic protection that goes beyond the African Charter;
 - (h) steps taken 'to ensure that individual duties are observed'; and
 - (i) difficulties encountered in implementing the African Charter;
- (3) particulars about human rights teaching, education, and publication [as required by article 25 of the African Charter];
- (4) the role of the Charter in the state's international relations.

States are further required to conduct 'a compatibility study 'of each of their national legislation with each article of the African Charter' [and to report about the follow-up measures] taken "to comply with the decisions of the African Commission"' implicating them for violation of human rights.¹⁶⁴ Finally, the reports must be 'substantive, accurate, and up to date.'¹⁶⁵

However, the status of these Simplified Guidelines is unclear, especially on whether they were ever officially adopted by the African Commission.¹⁶⁶ In spite of the foregoing concerns and evolution of the guidelines, the African Commission on its website, under the heading 'general guidelines on the African Charter', only provides the initial *National Periodic Reports Guidelines* of 1989. One wonders whether this is intentional or simply a lack of

¹⁶⁴ Viljoen (n 1) 353. My emphasis.

¹⁶⁵ As above.

¹⁶⁶ Viljoen (n 1) 352.

awareness about the concerns and practice of the African Commission itself which, for instance, reportedly ‘often’ sends out the Dankwa document ‘together with the original guidelines to prospective reporting states.’¹⁶⁷

2.4.1.2 *Guidelines on specific articles of the African Charter*

The aforesaid general guidelines for state reporting are supplemented by two sets of guidelines relating to specific articles of the African Charter. These include: the State Party Reporting Guidelines for Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights (Tunis Reporting Guidelines) adopted on 24 October 2011¹⁶⁸ and Guidelines on State Reporting under Articles 21 and 24 of the African Charter¹⁶⁹.

a. Reporting Guidelines for Economic, Social and Cultural Rights (ESCRs) in the African Charter

On their part, the Tunis Reporting Guidelines were developed to give further guidance to states parties to the African Charter in reporting on implementation of their obligations in respect of the ESCRs guaranteed under the Charter.¹⁷⁰ It is required that states use these guidelines in conjunction with the 1989 Guidelines for National Periodic Reports and the 2010 Principles and Guidelines on the implementation of ESCRs in the African Charter which elaborately define states’ obligations in respect to these rights.¹⁷¹

Generally, the guidelines require state reports to avail the following information in relation to all the guaranteed ESCRs:¹⁷²

2...

a) Whether the State party has adopted a national framework law, policies and strategies for the implementation of each right, identifying the resources available for that purpose and the most cost-effective ways of using such

¹⁶⁷ As above.

¹⁶⁸ [https://www.achpr.org/public/Document/file/English/State%20Reporting%20Guidelines%20on%20ECOSOC%20Rights%20\(2012\).pdf](https://www.achpr.org/public/Document/file/English/State%20Reporting%20Guidelines%20on%20ECOSOC%20Rights%20(2012).pdf) (accessed 10 September 2021).

¹⁶⁹ <https://www.achpr.org/public/Document/file/English/Articles%2021%20&%2024%20State%20Reporting%20Guidelines.pdf> (accessed 10 September 2021).

¹⁷⁰ Para 1.

¹⁷¹ As above.

¹⁷² Paras 2-4.

resources (please note that a recitation of legislative steps without an indication of policies and implementation will be regarded as insufficient measures towards the realisation of the protected rights);

b) Any mechanisms in place to monitor progress towards the full realization of the rights, including identification of indicators and related national benchmarks in relation to each right;

c) The incorporation and direct applicability of each right in the domestic legal order, with reference to specific examples of relevant case law;

d) The judicial and other appropriate remedies in place enabling victims to obtain redress in cases where their rights have been violated; and

e) Structural or other significant obstacles arising from factors beyond the State party's control which impede the full realization of the rights guaranteed in the Charter.

3. ...statistics on the enjoyment of each right, disaggregated by age, gender, ethnic origin, urban/rural population and other relevant status, particularly with reference to groups identified as vulnerable or marginalised in the Principles and Guidelines, on an annual comparative basis over the past five years.

4. ...steps taken to make the reporting process as transparent and accountable as possible, particularly regarding how the process was publicised and which members of civil society were involved in drafting the report.

States must, in addition, provide information on the existing national plans and summaries in terms of the process through which they were developed, actors involved implementation strategy and statistics, as well as the steps (legislative or otherwise) taken to ensure: (a) that the guaranteed rights are enjoyed by members of vulnerable or marginalized groups and (b) gender equality.¹⁷³

b. Guidelines on state reporting under Articles 21 & 24 of the African Charter

In 2016, the African Commission adopted Resolution *ACHPR/Res.364(LIX) 2016* on Developing Reporting Guidelines with Respect to the Extractive Industries.¹⁷⁴ This was intended to address inefficiencies of the existing Guidelines on National state reporting in relation to guiding states on how to report on their

¹⁷³ Paras 5 & 6.

¹⁷⁴ See Foreword by Commissioner Solomon A. Derso, Chairperson of the Working Group on Extractive Industries, the Environment and Human Rights, at vii.

implementation of Articles 21 and 24 of the African Charter.¹⁷⁵ Accordingly, the Working Group on Extractive Industries, the Environment and Human Rights developed the relevant Guidelines.¹⁷⁶

According to these guidelines, state parties are expected to avail the African Commission with information on a range of issues relating to the extractive industry¹⁷⁷ and protection of the environment¹⁷⁸. While reporting on Article 21, states are required to provide information on: all the natural resources under exploitation or available within the state's territory, ongoing extractive activities, all actors involved and the extent of their involvement; recognition and guarantees for enforcement of article 21 in national laws; as well as details relating to the government body responsible for natural resources development and the scope of its legal authority and responsibility. This is in addition to details on land use and ownership, participation and consultation, human rights compliance in relation to large- and small-scale extractive industries, grievance mechanisms and fiscal regulation.

In respect to Article 24, state reports should capture the nature and scope of the domestic legal recognition, judicial enforcement mechanisms, as well as details of institutions and regulatory bodies responsible for inspection, monitoring and enforcement of environmental laws and their competencies. This is in addition to providing details on implementation of the rights, consultation and participation as well as sanctions and grievance mechanisms.

If states provided all this information, the African Commission would be in a better position to monitor how states progress with natural resource management and environmental protection whose mismanagement has often been a recipe for disaster on the continent. Importantly, the Commission would be able to advise states on the best practices through which to harness Africa's resources in a sustainable manner.

Notably, these Guidelines have not yet been tested on Uganda which has no known reporting record since their adoption on 30 October 2018.¹⁷⁹

¹⁷⁵ As above.

¹⁷⁶ See n 169 above.

¹⁷⁷ See art 21.

¹⁷⁸ See art 24.

¹⁷⁹ <https://www.achpr.org/resources> (accessed 15 September 2021).

2.4.1.3 *Guidelines on State Reporting under the Maputo Protocol.*

The Guidelines on State Reporting under the Maputo Protocol¹⁸⁰ (hereinafter the Maputo Protocol Reporting Guidelines) were adopted during the 46th Ordinary Session of the African Commission held in November 2009 in Banjul, The Gambia, in keeping with article 26 of the Protocol.¹⁸¹ Notably, this was four years since the entry into force of the Maputo Protocol in 2005.

In terms of their standards, the Maputo Protocol Reporting Guidelines require states' initial reports to include: details on the report preparation process and how different stakeholders were involved; background information, the measures undertaken and relevant statistics with regard to implementation of each of the provisions of the Protocol, challenges relating to accessibility of rights by women in different settings, remedies available to those whose rights are breached and finally the difficulties experienced by the state in ensuring realisation of the guaranteed rights.

On their part, periodic reports are expected to provide information on the: measures taken to publicise and implement the concluding observations and recommendations issued by the African Commission at the immediately preceding review of the state, as well as the recommendations made to the state during country visits by the Commission's Special mechanism on women's rights.¹⁸² State parties must also update the African Commission on the progress made and the challenges faced in implementing the Protocol, steps taken to address these challenges and future implementation plans.¹⁸³

¹⁸⁰ See African Union 'Guidelines for state reporting under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' https://www.achpr.org/public/Document/file/English/Guidelines%20on%20State%20Reporting%20under%20the%20Maputo%20Protocol_2.pdf (accessed 15 September 2021).

¹⁸¹ See Centre for Human Rights 'State Reporting Guidelines on the Maputo Protocol' accessed at <https://www.maputoprotocol.up.ac.za/index.php/documents> (accessed 15 September 2021).

¹⁸² Guidelines for state reporting on the Maputo Protocol (n 180) 5.

¹⁸³ As above.

It has been stated that ‘the compilation and adoption of these Guidelines’ was commended widely¹⁸⁴ for, among others, being more precise compared to the Guidelines for reporting on the African Charter.¹⁸⁵ This notwithstanding, there are a number of concerns relating to these guidelines. Firstly, it is not clear how states are expected to report on the Maputo Protocol. The Guidelines simply provide that:¹⁸⁶

A state party to the African Charter and the Protocol must submit *its report* in two parts: Part A, dealing with the rights in the African Charter, and Part B, dealing with the rights in the Protocol. A state’s first report under Part B must, preferably, not exceed 50 pages and subsequent reports should not exceed 30 pages.

This guidance can lead to at least two possible interpretations. The first, which appears to be incorrect, is that States Parties to the Maputo are required to develop a specific periodic report on implementation of the Maputo Protocol with two sections namely: Section A (on the rights under the African Charter presumably in terms of their application to women) and Section B (on implementation of the provisions of the Maputo Protocol). The second – indeed accurate interpretation – is that States Parties are required to include the reporting on the Maputo Protocol as Section B of the already existing periodic reporting to the African Commission on the African Charter, the latter continuing uninterrupted as Section A of the now expanded report.¹⁸⁷

To exemplify this confusion, reference is made to Viljoen’s 2012 work which observed that as of 31 July 2011, the African Commission had not yet examined *any report* on the Maputo Protocol.¹⁸⁸ It is not clear what this means. For instance, does it mean that states that had ratified the Maputo Protocol ignored indicating, in their subsequent periodic reports to the African Commission, how they were implementing its provisions?¹⁸⁹ Is it in respect to the fact that no state had followed the requirement in the Maputo Protocol Reporting Guidelines, for states to include section B in their reporting to the African Commission? Or, is it that some states instead

¹⁸⁴ Johnson (n 54)184 citing S Kamga ‘The rights of women with disabilities in Africa: Does the Protocol on the Rights of Women in Africa offer any hope?’ (2011) Barbara Faye Waxman Fiduccia Papers on women and girls with disabilities, Centre for Women Policy Studies 9-12.

¹⁸⁵ Johnson (n 54) 188 citing Kamga above.

¹⁸⁶ As above, 1. My emphasis.

¹⁸⁷ Viljoen (n 1) 353 & Viljoen (n 54) 35.

¹⁸⁸ Viljoen (n 1) 350.

¹⁸⁹ Notably, this could have formed part of states’ reporting on implementation of Article 18(3) of the African Charter which provides for women’s rights. However, Viljoen notes that prior to the adoption of the Maputo Protocol Reporting Guidelines, states parties almost universally omit[ted] any specific discussion on the measures taken to give effect to the Maputo Protocol’ in their periodic on implementation of the African Charter. See Viljoen (n 54) 36. My emphasis.

submitted separate reports on their implementation of the Maputo Protocol which were pending examination by the African Commission?

Furthermore, neither the Maputo Protocol nor its reporting Guidelines, is clear on how to compute the due date for submission of the initial report. The guidance offered by Viljoen in this regard is that, a state party should be expected to include Section B in its next periodic report immediately following that state's ratification of the Maputo Protocol, then every two years thereafter.¹⁹⁰ It would help states if the African Commission clarified on these areas to rule out any doubts.

The other issue with the Maputo Protocol Reporting Guidelines is that they further contribute to the burden of states to report on similar issues before different bodies. This is true in respect of states parties that also report under the United Nations Convention on the elimination of all forms of Discrimination against Women (CEDAW) and the African Solemn Declaration on Gender Equality in Africa.¹⁹¹ This unnecessary duplication could have been avoided by the reporting Guidelines.

It had been suggested, for instance, that instead of subjecting states to the overtiring task of writing a separate section on implementation of the Maputo Protocol with as much detail as required under the Maputo Guidelines, – which practically amounts to a full separate report – states could instead have been required to only report on specific aspects of the Protocol.¹⁹² States would then be required to attach their CEDAW and Solemn Declaration reports to cater for shared aspects provided that, if dated much earlier, these reports would have to be updated to cover the more recent developments.¹⁹³

Arguably, had the Maputo Protocol Reporting Guidelines adopted this seemingly convenient approach, they would have lowered the incidence of delinquency and late submission of reports that continues to bedevil the Maputo Protocol.¹⁹⁴ As of March 2021, a paltry 17 out of 42 state parties to the Maputo Protocol had managed to include in their periodic reports, a section on their implementation of the Protocol.¹⁹⁵

¹⁹⁰ Viljoen (n 54) 35.

¹⁹¹ See Viljoen (n 54).

¹⁹² Viljoen (n 54) 37.

¹⁹³ As above.

¹⁹⁴ For a further discussion on this, see Johnson (n 54).

¹⁹⁵ Johnson (n 54) 183-84.

The African Commission may have to consider revisiting the modalities of reporting on the Maputo Protocol to address some of the concerns raised.¹⁹⁶ Proposals such as those cited above would provide a good starting point in this regard.

2.4.2 Reporting to the ACERWC

Among the many provisions of the ACRWC is the requirement of states parties to submit to the ACERWC “reports on the measures they have adopted which give effect to the provisions of [the] Charter and on the progress made in the enjoyment” of the rights thereby guaranteed.¹⁹⁷ The ACRWC set for itself an ambitious target of having states submit an initial report within two years following its entry into force for a State Party concerned.¹⁹⁸ The initial report is expected to be followed by periodic reports submitted every three years.¹⁹⁹

In terms of the reporting standards, the ACRWC requires state reports to contain sufficient information to enable the ACERWC to comprehensively understand how the reporting state is implementing the Charter²⁰⁰ as well as indicate the factors and difficulties faced in fulfilling the Charter obligations, if any.²⁰¹ To ensure standardization of state reports the ACERWC issued specific guidelines on the form and content of the initial and periodic state party reports.²⁰²

Notably, most (43) of the 50 states parties to the ACRWC – including Uganda – already submitted an initial report, leaving only 7 delinquent states namely: Botswana, Cape Verde, Djibouti, Equatorial Guinea, Gambia and Mauritius.²⁰³ In fact, Uganda was among the earliest states to submit an initial report to the ACERWC.²⁰⁴ The database of the ACERWC indicates that only 7 states have been able to submit a periodic report to the Committee. These include: Burkina Faso in 2011 (5 years since submission of its initial report in 2006),

¹⁹⁶ In this regard, Biegon highlights improvement and reform as one of the key strategies of ensuring effectiveness of reporting Guidelines and the reporting process generally. See Biegon (n 54) 616 cited by Johnson (n 54) 188.

¹⁹⁷ Art 43(1).

¹⁹⁸ Art 43(1)(a).

¹⁹⁹ Art 43(1)(b).

²⁰⁰ Art 43(2)(a).

²⁰¹ Art 43(2)(b).

²⁰² See ACERWC (n 143) and ACERWC (n 142).

²⁰³ See <https://www.acerwc.africa/initial-and-periodic-reports/>.

²⁰⁴ Viljoen (n 1) 400.

Cameroon in 2015 (6 years since submission of its initial report in 2006), Kenya in 2014 (7 years since submission of its initial report in 2007), Nigeria in 2015 (9 years since submission of its initial report in 2006), Niger in 2017 (11 years since submission of its initial report in 2006), Rwanda in 2014 (8 years since submission of its initial report in 2006) and South Africa in 2014 (8 years since submission of its initial report in 2006).²⁰⁵ The best performing country in meeting its reporting obligations before the ACERWC is Burkina Faso, which has since submitted a second periodic report (2017).²⁰⁶ However, there is to date no in-depth analysis of the substance of these reports.

Since Uganda has so far only managed to submit an initial report to the ACERWC and due to space constraints, the guidelines for periodic reporting are touched on very briefly.

2.4.2.1 Initial reports

The guidelines for initial reporting require states to provide the ACERWC with information on the content of existing or upcoming principal legislative, judicial, administrative or other measures, implementation priorities, progress achieved, specific goals for the future and difficulties encountered in realising provisions of the charter relating to: (a) the general principles of non-discrimination, best interests of the child, the right to life, survival and development, respect for the views of the child, and provision of information to children and promotion of participation; (b) civil rights and freedoms of the child; (c) family involvement and alternative care; (d) health and welfare of the child; (e) education, leisure and cultural activities; (f) special protection mechanisms; as well as (g) responsibilities of the child.²⁰⁷

Relevant statistical information and indicators on these aspects is also required for instance on: homeless children, abused or neglected children taken into protective custody, children placed in foster care, children placed in institutional care, children placed through domestic adoption, children entering the country through inter-country adoption procedures, children leaving the country through inter-country adoption procedures;²⁰⁸ children in the education system;²⁰⁹ children in situations of emergency, children in conflict with the law, children of imprisoned mothers, children in situations of exploitation and abuse, children victims of harmful

²⁰⁵ See n 203 above.

²⁰⁶ As above.

²⁰⁷ ACERWC (n 143).

²⁰⁸ This data must be captured annually and should be desegregated by age group, sex, ethnic or national background and rural or urban environment. ACERWC (n 143) para 15.

²⁰⁹ ACERWC (n 143) para 20.

social and cultural practices affecting their welfare, dignity, normal growth and development, children belonging to a minority group, children who need a special protection on account of being in risky or vulnerable conditions and situations such as street children or HIV/AIDS orphans.²¹⁰

It is also required that states accompany their reports with ‘copies of the principal legislative and other texts as well as detailed statistical information and indicators referred to therein’ failing which ‘the report should contain sufficient information to be understood without reference to those texts.’²¹¹

Both the initial and periodic reporting guidelines under the ACRWC allow states to use information contained in reports they submitted to the United Nations Committee on the Rights of the Child (UNCRC) and the African Commission in the preparation of their reports to the ACERWC.²¹² However, such information is required to be tailored to the reporting requirements of the African Charter and the ACRWC reporting guidelines.²¹³ Particularly, the report has to ‘highlight the areas of rights that are specific to the Children’s Charter’²¹⁴ and ‘must specify the action taken by the State Party in response to any recommendations made to it by the Committee and/or the UN Committee on the Rights of the Child.’²¹⁵

Therefore, states do not have the liberty of simply duplicating their reports to UN bodies without adapting them to the regional standards or even indicating the application of the recommendations they received from the UN Committee on the Rights of the Child. This way, the ACERWC effectively complements the UN Committee on the Rights of the Child by monitoring states’ implementation of its recommendations.

2.4.2.2 Periodic reports

The guidelines for periodic reports under the ACRWC were adopted on 7 November 2013 in Addis Ababa, Ethiopia and came into effect on the same date. They generally prescribe the expected format, drafting process and content of these reports as summarized below.

a) Format of the report

²¹⁰ ACERWC (n 143) para 22.

²¹¹ ACERWC (n 143) para 6.

²¹² ACERWC (n 143) paras 24-25 & Guidelines for periodic reporting, para 5.

²¹³ As above.

²¹⁴ ACERWC (n 143) paras 24-25.

²¹⁵ As above.

The guidelines require the reports to be presented in a concise and structured manner and to adopt simple and free flowing language covering a maximum of 80 pages or 35,000 words.²¹⁶ The word count does not include annexes to the report such as legal, judicial, administrative and other texts.²¹⁷

b) Drafting process

States are required to provide for active participation of and actually indicate the role played by the relevant government agencies, civil society organisations, children and child-led initiatives and other non-state actors in the report drafting process.²¹⁸ This is intended to ensure that the reporting processes is sufficiently consultative and inclusive.²¹⁹

c) Content of the report

Section D of the guidelines contains detailed specifications of information that state reports should provide in relation to: general information about the State Party; general measures of implementation of the Charter as required under art. 1(1); definition of the child; general principles of the ACRWC; civil rights and freedoms of the child; economic, social and cultural rights of the child; family environment and alternative care; protection of children in most vulnerable situations; harmful practices; child justice; as well as responsibilities of the child.

The ACERWC notes that the detailed guidance on the content of periodic reports is intended to ‘ensure that State Parties provide...the Committee...with a comprehensive understanding of the implementation of the Charter in State Parties.’²²⁰

2.5 Conclusion

From the foregoing discussion, it is evident that generally, the different existing guidelines for state reporting before the African Commission and the ACERWC provide enough room for these bodies to access sufficient information to facilitate an adequate review of implementation of the African Charter, the Maputo Protocol, the ACRWC and other related instruments. Yet, there remain challenges of compliance with these guidelines

²¹⁶ Guidelines for periodic reporting, para 6.

²¹⁷ As above, paras 6-7.

²¹⁸ As above, para 10.

²¹⁹ As above.

²²⁰ Guidelines for periodic reporting, para 2.

which is not helped by the fact of the guidelines being scattered and some being rather complex for states' easy comprehension.

Notably, in the pendency of adoption of updated, unified and simplified guidelines for state reporting, Viljoen advises that states should follow the revised guidelines.²²¹ The next two chapters analyse how Uganda has been able to exploit these guidelines to ensure maximum benefit from its interaction with the African Commission and the ACERWC.

²²¹ Viljoen (n 1) 353.

CHAPTER THREE

ANALYSIS OF UGANDA'S REPORTS TO THE AFRICAN COMMISSION

3.1 Introduction

This Chapter analyses the reports submitted by Uganda to the African Commission. The Chapter commences with an overview of Uganda's reporting before the African Commission, followed by a presentation of the reports submitted to the two bodies generally highlighting these aspects: their structure; actors and process of preparation; content (reported measures of implementation and challenges faced in that regard) as well as details relating to their presentation and representation of the state during interfaces with the monitoring bodies.

3.2 Overview of Uganda's reports before the African Commission

At the time of writing this, Uganda has submitted a total of 5 reports to the African Commission namely: the Initial Report which covered the 14-year period between Uganda's ratification of the African Charter in 1986 up to the year 2000 when the report was submitted; the 2nd report which covered a much shorter (6 year) period from 2000 to 2006; as well as the 3rd, 4th and 5th report covering the years 2006-2008, 2008-2010 and 2010-2012 respectively. The regularity with which Uganda's 3rd to 5th reports were submitted was indeed noted and commended by the African Commission in its Concluding Observations to the 5th Periodic Report 6 years ago.²²²

3.3 Analysis of the reports

In this analysis, only the last three reports are considered because the first two reports are not available on the Commission's website yet the short timeframe for undertaking the study could not allow the researcher to request and wait for them from the Commission's Secretariat.

3.3.1 The 3rd Report

There is no consistence in the structure of Uganda's reports. On its part, Uganda's 3rd Report, which was submitted in October 2008, was presented in six parts, in addition to the introduction and conclusion.²²³ These include: Part I providing general information and basic data on the country as well as the existing legal and institutional framework; Part II detailing the legal, judicial and other measures the country had taken since the

²²² African Commission 'Concluding Observations and Recommendations on the 5th Periodic Report of Uganda' para 9 <https://www.achpr.org/sessions/concludingobservation?id=94> (accessed 15 September 2021).

²²³ Government of Uganda (GOU) '3rd Periodic Report to the African Commission (2006-2008)' https://www.achpr.org/public/Document/file/English/staterep3_uganda_2008_eng.pdf (accessed on 15 September 2021).

last reporting cycle in order to implement the Charter; Part III dealing with what are referred to as other measures taken by the Government in implementing the Charter; Part IV highlighting the decided constitutional cases with an impact on the human rights regime; Part V responding to the questions raised by the African Commission at the review of the preceding report and finally Part VI presenting the challenges faced by the country in implementing the Charter.

This report is unique in the sense that it dedicates an entire 20 pages to a section responding to the Commission's section at the preceding cycle.²²⁴ The report also categorically states that it is in 'compliance with the Reporting guidelines contained in Information Sheet No.5 Issued by the Commission.'²²⁵ This researcher is not privy to the said Information Sheet and whether it corresponds with any of the set of Guidelines discussed in Chapter Two. Notably, the African Commission did not controvert the state's claims. In what turns out to be the tradition across Uganda's reports, the Commission simply thanked Uganda for complying with the guidelines.²²⁶

In terms of its content, the report specifically commits,²²⁷

to avoid repeating that which has been presented to the Commission in earlier reports (except for purposes of coherence and/or emphasis...it strives to specifically raise new developments occurring in the reporting period 2006-2008.

This statement mirrors an appreciation of the load of work the African Commission is seized with and the need to not unnecessarily overburden it further.

In respect to measures in place to give effect to the African Charter, the report highlights some important judicial developments in the form of ground-breaking decisions including: *Federation of Uganda Women Lawyers (FIDA-U) & 5 Ors v Attorney General*,²²⁸ in which the Constitutional Court outlawed discriminatory provisions in the country's Divorce Act; *Susan Kigula and 416 Ors v Attorney General*²²⁹ challenging the Constitutionality of

²²⁴ GOU (n 223) 40-60. Notably, the Commission also noted that some of its recommendations had not been complied with including revision of the NGO Registration (Amendment) Act over which NGOs had voiced concerns. See African Commission 'Concluding Observations and Recommendations on the 3rd Periodic Report of Uganda' para 27 <https://www.achpr.org/sessions/concludingobservation?id=84> (accessed 15 September 2021).

²²⁵ GOU (n 223) 2.

²²⁶ African Commission (n 224) 27.

²²⁷ GOU (n 223) 2.

²²⁸ GOU (n 223) 9.

²²⁹ GOU (n 223) 10.

the death penalty and the holding convicts for a long period of time before being executed; *Foundation for Human Rights Initiative (FHRI) v Attorney General* on the right to liberty;²³⁰ Petition No. 20 of 2005, *Uganda v Rtd Dr Kizya Besigye* on the right to a fair trial;²³¹ *Muwanga Kivumbi v Attorney General* (Constitutional Petition no. 5 of 2005), challenging powers of the Inspector General of Police under section 32(2) of the Police Act to unilaterally prohibit public assemblies²³² among others. Details of domestic laws enacted and/or drafted and the ratified international instruments relevant to the rights under the African Charter, are provided.

Among others, the report highlights: initiation of the International Criminal Court Bill, coupled with consultations on the establishment of a War Crimes Court seeking to domesticate the Rome Statute and complement jurisdiction of the ICC at the local level;²³³ enactment of the Employment Act 2006,²³⁴ development of a new HIV/AIDS strategic plan (2007-2012),²³⁵ enactment of the Equal Opportunities Commission Act 2007,²³⁶ raising awareness on human rights among JLOS officers,²³⁷ improvements in access to law resources and court decisions²³⁸ and increasing the number of judicial officers.²³⁹ It also mentions successful submission of the country's periodic reports to the ACERWC and the UNCRC.²⁴⁰

Although most of these developments are presented with sufficient detail, the reporting on some aspects is inadequate. For instance, in respect to implementation of the rights under the ICCPR, it vaguely states: 'Uganda's country report was submitted to the UN and the recommendations have been worked on.'²⁴¹ Elsewhere, it states: 'Uganda is currently undertaking action in response to the recommendations arising from its initial report submitted to the United Nations in 2006.'²⁴² This makes it difficult for the African Commission

²³⁰ GOU (n 223) 11.

²³¹ GOU (n 223) 12.

²³² GOU (n 223) 13.

²³³ GOU (n 223) 6.

²³⁴ GOU (n 223) 15.

²³⁵ GOU (n 223) 16.

²³⁶ GOU (n 223) 18.

²³⁷ GOU (n 223) 24.

²³⁸ GOU (n 223) 26.

²³⁹ GOU (n 223) 27.

²⁴⁰ GOU (n 223) 5.

²⁴¹ GOU (n 223) 6.

²⁴² GOU (n 223) 7.

to know which areas of concern the UN body had deemed deserving of action by Uganda, as well as whether – and the extent to which – they had been implemented.

3.3.2 The 4th Report

Uganda's 4th Periodic Report was submitted to the African Commission in April 2011.²⁴³ Unlike the 3rd report, this report was structured around four parts with slight modification in the focus as follows: Part I providing the general information and basic data on the country and its legal and institutional framework; Part II highlighting the legal, judicial and practical measures undertaken since 2008; Part III on the measures taken in ensuring implementation of the Charter; and Part IV presenting the challenges faced by the country in providing and ensuring the provision and protection of human rights guaranteed under the African Charter.

The state praises itself in this report as having complied with the guidelines contained in Information sheet No. 5 in preparing it,²⁴⁴ which is confusing considering, for example, the fact that it is structured differently from the 3rd report which made a similar claim. This report details a range of other developments in the country including ratification of instruments such as the Maputo Protocol²⁴⁵ and enactment of laws,²⁴⁶ although this is mostly done by way of merely paraphrasing the provision without showing its impact.

For instance, in respect to article 10 of the African Charter providing for the right to freedom of association, Uganda merely paraphrases article 29 of the Constitution and mentions, purportedly in respect to its implementation, that 'Uganda continues to abide by these constitutional provisions.'²⁴⁷ In respect to article 25 of the African Charter, the report merely mentions that the government 'has yet to design a comprehensive national programming to promote the African Charter on Human and People's Rights'²⁴⁸ without indicating why this is the case. Although limitation in 'funding of activities to implement the Charter' is listed as a challenge,²⁴⁹ the report does not attempt to explain the connection between the two aspects. This is left to assumptions – with all that it can imply.

²⁴³ GOU '4th Periodic Report to the African Commission (2008-2010)' https://www.achpr.org/public/Document/file/English/periodic_report_2008_2012_eng.pdf (accessed 15 September 2021).

²⁴⁴ GOU (n 239) 2.

²⁴⁵ GOU (n 239) 10.

²⁴⁶ GOU (n 239) 26-27.

²⁴⁷ GOU (n 239) 15.

²⁴⁸ GOU (n 239) 26.

²⁴⁹ GOU (n 243) 27.

Following consideration of this report, the African Commission among others noted that this report complied with its Reporting Guidelines²⁵⁰ The Commission further noted that Uganda had complied with some of the recommendations on the 3rd report.²⁵¹

However, some of the aspects of the engagement between Uganda and the Commission on the 4th report are questionable. For instance, while the 4th report itself does not include them, the Commission in its Concluding Observations to this report lists several laws which predate the 2008-2010 reporting cycle, as notable developments in the country. These include: the Land (Amendment) Act 2007; The Political Parties and Organisations Act No 18 of 2002; The Political Parties and Organisations (Amendment) Act No. 18 of 2005; The Electoral Commission (Amendment) Act No 23 of 2002 and 284 of 2002; The Parliamentary Elections (Amendment) Act No.1 of 2006; the Presidential Elections (Amendment) Act No. 16 of 2005; The Persons with Disabilities Act 2006.²⁵²

Furthermore, in its review of this report, the African Commission did not highlight which of its recommendations on Uganda's 3rd report had or had not been complied with and the extent thereof. Such omissions potentially cast doubt on the seriousness of the African Commission in examining reports when it is apparent that states could regurgitate information and still get away with it.

3.3.3 The 5th Report

Uganda's 5th Report to the African Commission²⁵³ evidences a further revision in structure. This report was presented in 3 parts: (I) General information and Country statistics; (II) Legal and Administrative measures taken by the Government to implement the Charter; and (III) the challenges faced by the country in meeting its Charter obligations.

From its structure, it becomes immediately clear that this report fell short of complying with the requirement to include a specific section on implementation of the Maputo Protocol.²⁵⁴ One wonders whether this is because

²⁵⁰ African Commission 'Concluding Observations and Recommendations on the 4th Periodic Report of Uganda' Para 8 (1) https://www.achpr.org/public/Document/file/English/achpr49_conc_staterep4_uganda_2011_eng.pdf (accessed 15 September 2021).

²⁵¹ African Commission (n 250), Para 9(1).

²⁵² African Commission (n 250) para 9(2).

²⁵³ GOU '5th Periodic Report to the African Commission (2010-2012)' https://www.achpr.org/public/Document/file/English/uganda_state_report_eng.pdf (accessed 15 September 2021).

²⁵⁴ Maputo Protocol Reporting Guidelines (n 180).

the Commission had not furnished Uganda with the Guidelines for reporting on the Maputo Protocol, or if it is simply a sign of disrespect for reporting standards on the part of Uganda.

Nevertheless, the study notes that the African Commission was able to undertake a fairly extensive review of Uganda's human rights situation. In addition to noting the reported progress in several areas, the Commission highlighted a number of shortfalls in Uganda's implementation of human rights. These included: a failure to ratify some key human rights treaties at the regional and international level,²⁵⁵ nonalignment of its laws and regulations with some of the international and regional instruments such as the Maputo Protocol,²⁵⁶ delays in finalisation/enactment of key draft legislation such as the Marriage and Divorce Bill (2009),²⁵⁷ failure to make a declaration under article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights²⁵⁸ as well as lack of a comprehensive national programme for promotion of the African Charter.²⁵⁹ The Commission called on the state to ensure that these issues are addressed.

However, the Commission also noted that this report failed to contain certain important information which it needed to undertake a comprehensive review of Uganda's human rights situation. This included:²⁶⁰

- (i) The measures taken by the Government...to address some of the specific concerns and recommendations raised by the Commission in its Concluding Observations on Uganda's 4th Periodic Report;
- (ii) Uganda's implementation of the Maputo Protocol as required under Article 26 of the said Protocol, and set out in the Guidelines for State Reporting under the Protocol to the African Charter on Human and Peoples' Rights of Women in Afro a (Maputo Protocol Guidelines); and
- (iii) The steps taken by Uganda on the implementation of economic, social and cultural rights as set out in the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (ECOSOCC Guidelines).

²⁵⁵ African Commission 'Concluding Observations and Recommendations on Uganda's 5th Report' para 51 https://www.achpr.org/public/Document/file/English/concluding_observations_5th_state_report_uganda.pdf (accessed 15 September 2021).

²⁵⁶ African Commission (n 255) Para 52.

²⁵⁷ African Commission (n 255) Para 53.

²⁵⁸ African Commission (n 255) Para 54.

²⁵⁹ African Commission (n 255) Para 55.

²⁶⁰ African Commission (n 255) Para 50.

Furthermore, the report did not provide statistics on death sentences commuted to life imprisonment in line with the *Susan Kigula case*, and called on Uganda to provide them in its subsequent report.²⁶¹

3.4 Cross cutting patterns

3.4.1 Report preparation

Generally, Uganda's reports to the African Commission provide very scanty and at times no information relating to the process through which they were developed. For instance, other than indicating that it 'tries to avoid repeating that which has been presented to the Commission in earlier reports (except for purposes of coherence and/or emphasis)',²⁶² Uganda's 3rd Report does not provide any clues on the process through which it was prepared.

The 4th and 5th reports also do not go beyond a single line claiming to have been 'prepared by the Government ...working closely with the Uganda Human Rights Commission and Non-Governmental Organisations.'²⁶³ There is no detail in relation to which exact organisations – or even how they – were involved. This is concerning, in view of observations made by Agaba regarding the tendency of Uganda to generally suffocating NGOs' operations and, more specifically, sidelining them in the report preparation process.²⁶⁴ This researcher also notes that the African Commission makes no reference to there having been a shadow report submitted by NGOs to the 3 reports under review, thus confirming Agaba's claims that none was submitted since 2006.²⁶⁵

Surprisingly, the Concluding Observations to the 5th Periodic Report commended Uganda's '...efforts...to ensure that the preparatory process of this Periodic Report was participatory and involved all relevant stakeholders, including civil society organisations...'²⁶⁶ Respectfully, the reports submitted to the Commission cannot lead to such a conclusion without further details.

It is possible that the Commission may have gotten better particulars in the dialogue with Uganda's delegations. However, the currency of that dialogue could not be established by this study since the researcher had no access to a record of the minutes of the relevant session. It would have been more helpful if the Commission listed

²⁶¹ African Commission (n 255) Para 91.

²⁶² GOU (n 223) 2.

²⁶³ See GOU (n 243) 2 & GOU (n 253) 2.

²⁶⁴ Agaba (n 106) 272.

²⁶⁵ As above.

²⁶⁶ African Commission (n 255) para 10.

which organisations the state reported to have involved in case there is need to verify whether they were indeed involved, as well as to identify those that would not have been involved yet critical. This would ultimately motivate the state to ensure to engage all relevant stakeholders in the process, thereby improving on the quality of Uganda's reports.

It is also worth noting that in its response to Uganda's 4th Periodic Report, the African Commission recommended to the state to 'increase...its efforts in working closely with NGOs in the report writing process.'²⁶⁷ This could imply that the Commission was not necessarily as satisfied as it had indicated.

3.4.2 Background information

The background information provided in Uganda's Periodic reports to the African Commission covers aspects of the country's geographical location, system of governance, population size and composition, state of the economy as well as social services. Particularly, the 4th and 5th reports elaborate on education and health which are believed to be key in the realisation of human rights. They provide details and statistics relating to ownership, enrollment, staffing levels, accessibility and coverage of these services and they indicate that the country was registering improvements in the provision and access to education and health services at all levels through government, private and donor-funded/not-for-profit investments. The reports also discuss other social-economic indicators such as life expectancy, infant, under five and maternal Mortality rates and it appears that the results have generally been improving over time.

Generally, the background information provided by Uganda in its reports captures the major themes of interest to the African Commission. However, in the same way that Mbazira observes in respect to the country's self-assessment under the APRM,²⁶⁸ the information provided is in many ways skewed to present the government as being in charge, while fault is apportioned to external circumstances.

3.4.3 Measures taken to implement the instruments

In respect to the measures taken by the country to give effect to the provisions of the African Charter, the reports generally adopt a similar approach of discussing the 'Legislative Measures' and 'Other Policy Measures' adopted for purposes of giving effect to each article of the Charter. In rare cases, the two (legislative and policy measures) are discussed together under the heading 'Legislative and Other Policy Measures'.²⁶⁹

²⁶⁷ African Commission (n 250) at xviii, para 15.

²⁶⁸ Mbazira (n 112).

²⁶⁹ See African Commission (n 253) 29 reporting on Article 24.

The country's reporting on the adopted 'Legislative Measures' has generally involved reproducing or paraphrasing the legal provisions – including corresponding Constitutional provisions and/or Acts of Parliament enacted or amended – which give effect to the rights guaranteed under the African Charter. Bills pending before Parliament or presidential assent, have also featured in the reports. Often, the reports attempt to provide a brief explanation of the purpose of these bills or legal enactments.

Under the discussion on 'Policy and other Measures' adopted, the reports provide information on Policies and plans adopted, as well as efforts at implementing the laws and policies exemplified by the establishment, expansion and resourcing of relevant institutions such as the Equal Opportunities Commission (EOC), the Uganda Human Rights Commission (UHRC), the police and armed forces, Courts such as the Family and Children's Court, local government administrations, the National Council for Children (NCC) among others. To this is added a highlight of key developments such as judicial decisions setting groundbreaking precedents for improved realisation of human rights guaranteed under the relevant ratified instruments.

3.4.4 Challenges faced in implementation of the Charter

Over the three reporting cycles to the African Commission, Uganda has highlighted these challenges to its implementation of the African Charter: difficulties in investigating violations involving mob-justice; limitations in funding necessary to implement the Charter for instance the costs for development and harmonization of laws and meeting some of the critical requirements for the health and education sectors; a high birth rate amidst slowing economic growth rates; enduring high maternal and infant mortality rates due to insufficient medical facilities; inability to offer continuous general civic education due to resource constraints; social, economic and cultural pressures which contribute to the low retention rates for the girl child in school; rising unemployment especially among the youth; corruption; gaps in the disaster response mechanism; delayed justice due to case backlog and delayed compensation for victims of violations among others.

While, realization of human rights in Uganda is partly affected by some of the above obstacles highlighted in the reports, some of them appear to be a deflation of responsibility by the government. For example, the 4th Report cited 'a challenge of getting the civil society to fully participate in compiling periodic reports'²⁷⁰ without indicating if any and what efforts were invested to address it. This is also ironical in view of indications that it is the government's high handedness on NGOs which prevented them from participating in the reporting process since 2006.²⁷¹

²⁷⁰ African Commission (n 243) 28.

²⁷¹ See Agaba (n 106) 272.

Furthermore, in both the 4th and 5th Periodic reports, Uganda raised a concern regarding the 2-year reporting cycle which is regarded as a short time frame and requested that this be revised to at least 3 years.²⁷² It is indeed true that concerns over a two-year reporting cycle are widely shared across African states as indicated in Chapter Two.

However, Uganda's non-reporting cannot solely be attributed to the short reporting cycles given its record of delaying in submitting its reports for much longer periods than the 3 years it suggests as convenient. For instance, it is now over 8 years since Uganda submitted its 5th report to the African Commission in 2012, which has not been followed up yet. This is notwithstanding the fact that states are allowed leverage to merge the reporting on all their pending cycles into one as discussed in Chapter Two.

In the sum, Uganda's poor performance at reporting to the African Commission, and more generally in meeting her obligations under the African Charter and other instruments, could be attributable to conditions over which it has absolute control, the major suspect in this regard being lack of commitment.

3.4.5 Dialogue on the reports

The African Commission managed to secure a dialogue with delegations from Uganda on all of the submitted reports as follows: the Initial Report was discussed at the 27th Ordinary Session of the Commission held from 27 April to 11 May 2000 while the 2nd, 3rd, 4th and 5th reports were respectively presented at the Commission's 40th Ordinary Session (held from 15 to 29 November 2006), 45th Ordinary Session (held from 13 to 27 May 2009), 49th Ordinary Session (held from 28 April to 12 May 2011) and lastly the 56th Ordinary Session (held from 21 April to 7 May 2015).²⁷³

In terms of representation, at the examination of its 3rd Report, Uganda's delegation was led by the Attorney General/Minister of State for Justice and Constitutional Affairs and accompanied by six other senior Officials including: the Director for Human Rights in the Uganda Peoples' Defence Forces (UPDF), a Head of the African Union Department at the Ministry of Foreign Affairs, an Officer from the Uganda Law Reform Commission, an Officer from the Amnesty Commission, a State Attorney from the Ministry of Justice as well as an Official from the Ministry of Internal Affairs.²⁷⁴ On its part, the delegation which presented the 4th Report was more than half of that at the 3rd Report, with only 3 persons including: a Senior State Attorney in the Ministry of Justice and Constitutional Affairs; a Director for Human Rights in the UPDF; as well as a State

²⁷² See GOU (n 243) para 28 & GOU (n 253) para 32.

²⁷³ African Commission (n 255) paras 2 & 3.

²⁷⁴ See <https://www.achpr.org/sessions/concludingobservation?id=84> (accessed 20 September 2021).

Attorney from the Ministry of Justice and Constitutional Affairs.²⁷⁵ This study was not able to establish what may have led to this meagre representation as it did not involve interviews with people who may have an explanation such as those who attended.

Finally, the latest (5th) Periodic Report was presented by a record 27 person delegation from the following government Ministries and departments: Ministry of Justice and Constitutional Affairs (Attorney General, Commissioner Legal Advisory Services, a State Attorney); Parliament (9 Members of Parliament, a Principal Clerk Assistant and an Officer responsible for human rights); Ministry of Education and Sports (Senior Assistant Secretary and another Officer); Ministry of Health (Senior Health Planner); an Officer from the Prisons Head Quarters; a Refugee Protection Assistant from the Office of the Prime Minister; a State Delegate from the Ministry of Defence; a Foreign Service Officer from the Ministry of Foreign Affairs; a Senior Planner Governance; a Senior Public Affairs Officer as well as Secretaries for the Delegation. Again, reasons for this shift were not established.²⁷⁶

It is evident that Uganda has been able to send high level government officials with presumed expertise to meaningfully engage with the Commission.²⁷⁷ While Uganda's representation was relatively smaller at the examination of its 3rd and 4th reports, the country appears to have considered the need to have a wider representation of all key institutions at the examination of its 5th report with a total of 27 officials constituting its delegation.

However, in view of the very short time that the Commission allocates to dialogue with state delegations,²⁷⁸ one wonders whether having a big delegation with all required experts gives the state any more leverage in its examination than would a similarly qualified but much smaller one. Reflection on the necessary size of the state's delegation is pertinent when put in context with the cost implications in terms of facilitating the travels and sustenance of the delegation on the one hand, and the characteristic shortfalls in service delivery back home on the other hand.

3.5 Conclusion

The foregoing discussion has revealed that although Uganda's reports to the African Commission are far from blameless, the information they still provided relevant information to enable the African Commission to assess

²⁷⁵ African Commission (n 243) para 3.

²⁷⁶ African Commission (n 255) para 4 & 'Annex 1' thereto.

²⁷⁷ See the discussion by Viljoen (n 1) on the value of having a high-level delegation with experts, at 359-60.

²⁷⁸ As above.

the country's human rights situation and identify areas for reform as seen in the Concluding Observations. It is expected that if Uganda resurrects what currently appears to be a dead interest in engaging with the process, both the quality of its reports, and of the feedback from the Commission, can improve. The next Chapter analyses the interaction between Uganda and the ACERWC to see how the patterns and deliverables of state reporting identified in this Chapter are replicated there.

CHAPTER FOUR

ANALYSIS OF UGANDA'S INITIAL REPORT TO THE ACERWC

4.1 Introduction

Uganda is a State Party to the ACRWC following her signature, ratification and deposit of instruments thereof on 26 February 1992, 17 August 1994 and 21 October 1994 respectively.²⁷⁹ The country has so far only managed to submit an Initial Report to the ACERWC, which happened in November 2007,²⁸⁰ and was considered by the ACERWC from 15 – 19 March 2010.²⁸¹ Uganda appears to have considered submission of the Initial Report to the ACERWC to be a big step, so much so that it was even highlighted in the country's 3rd Periodic Report to the African Commission.²⁸²

This section analyses this Report with a view to understanding its adequacy in facilitating an adequate review of Uganda's Implementation of the ACRWC.

4.2 Overview of Uganda's Initial Report

4.2.1 Structure

Uganda's Initial Report to the ACERWC is presented in 9 sections namely: Section I 'Introduction' which details the process through which the report was prepared, the country profile, summary of the measures adopted to give effect to the provisions of the ACRWC, progress made in the enjoyment of rights, difficulties in implementation of the Charter as well as a re-affirmation and evidence of Uganda's commitment to observe children's rights. Section II details the country's general measures of implementation; Section III provides a review of the definition of the child and its related challenges; Section IV is on the general principles; Section V is on the civil rights and freedoms; Section VI is on family, environment and alternative care; Section VII is on health and welfare; Section VIII is on leisure, education and cultural activities; and finally, section IX on the

²⁷⁹ See <https://www.acerwc.africa/ratifications-table/> (accessed 15 September 2021).

²⁸⁰ GOU 'Initial Report to the ACERWC' (2007) https://acerwc.africa/wp-content/uploads/2018/04/Uganda_Initial_Report_under_the_ACRWC.pdf (accessed 1 October 2021).

²⁸¹ See ACERWC, 'Recommendations and Observations on Uganda's Initial Report' https://acerwc.africa/wp-content/uploads/2018/14/CO_Uganda_eng.pdf (accessed 1 October 2021).

²⁸² See GOU (n 223) 5.

country's special protection measures for children. It is evident that structure of this report religiously follows the prescription given by the Guidelines.

4.2.2 Preparation

According to this Report, it was 'prepared through a consultative process' which entailed 'looking at annual and progress reports from all actors, field consultations and consultative and validation workshops.'²⁸³ It also claims to bring 'experiences from the civil society, child oriented development actors including UN agencies, central and local government.'²⁸⁴ These experiences are said to have been drawn from both a review of relevant literature and a field survey in 8 districts selected from the northern, north-eastern and western parts of Uganda where either the government or NGOs had operations or there were experiences of the issues identified as critical.²⁸⁵ This claim is indeed supported by the comprehensiveness of the report, compared to its counterparts presented to the African Commission.

4.2.3 Reflection on the challenges to implementation of children's rights

In respect to the challenges to implementation of the ACERWC, the Report highlights a contradiction in national laws, for instance in respect to the definition of a child, poverty, conflict and its effect on children's safety, illiteracy, high numbers of school dropouts, inability of schools to protect girls from abuse, limitations in funding for programmes designed for realisation of children's rights, the HIV/AIDs pandemic among others. These challenges appear to reflect an honest reflection on the apart of Uganda.

4.3 Dialogue on the report

Uganda's Initial Report was discussed during the ACERWC's 15th session held from 15-19 March 2010, in Addis Ababa, Ethiopia. Unlike the African Commission, the ACERWC does not provide sufficient details of the numbers and names of Uganda's delegates at the review of its Initial Report. In terms of representation at the examination, the ACERWC simply mentions that Uganda was '...represented by an important high level inter-ministerial Delegation led by the Minister of State for Youth and Children Affairs.'²⁸⁶

Omitting to provide important details of the profiles of state officials who represent the state at the dialogue with the monitoring body potentially affects analyses of how effective the engagement could have been. This

²⁸³ ACERWC (n 280)1.

²⁸⁴ As above.

²⁸⁵ As above.

²⁸⁶ ACERWC (n 283) 2.

is because the quality of a state's representation at the dialogue with the monitoring body influences the quality of the dialogue. It has been noted that a state should be represented by a team of experts who can answer emergent technical and focused questions with enough detail and precision.²⁸⁷

The ACERWC should therefore adopt the African Commission's practice of providing the numbers and names of the delegates appearing before it as way of facilitating future analyses on the issue.

4.4 General observations

Generally, Uganda's Initial Report to the ACERWC allowed the Committee a reasonable degree of latitude to understand the progress made by Uganda in implementing the rights and welfare of the child. The ACERWC acknowledged the efforts of the government and other sector players at: supporting handicapped children to access education, sensitising the public about harmful social and cultural practices, and addressing them although it was recommended that the efforts needed to be doubled.²⁸⁸

The Committee also raised concerns relating to: discrepancies in the minimum age for work, marriage and penal responsibilities under national laws from that of the Charter; discrimination against handicapped children and gender-based discrimination against the girl child especially denying them education by instead giving them childcare and marital responsibilities; low declaration of births and deaths; a mismatch between the efforts in promoting primary education and those for secondary education where, it was noted, there was insufficient capacity to absorb the massive influx of pupils leaving primary education; a shortage in specialized teachers to meet the education needs of handicapped children; absence of a children's Parliament through which children are expected to express their rights of participation among others.²⁸⁹

Despite its lateness,²⁹⁰ the ACERWC's response to Uganda's Initial Report is fairly detailed and gives targeted responses on a right-by-right basis which can easily be followed up at the next round of reporting. The ACERWC also evidently had a much deeper engagement with Uganda's report. For instance, in respect to freedom of expression, the Committee appears to comment on how Uganda's report could have been

²⁸⁷ Viljoen (n 1) 358.

²⁸⁸ ACERWC (n 283) 5-7.

²⁸⁹ As above.

²⁹⁰ The Concluding Observations to Uganda's Initial Report were issued in March 2010, three and a half years after submission of the report in November 2007.

structured better by presenting information relating to promotion of children's right to expression as Section 4-2 of the report on 'child participation'²⁹¹ where related aspects are discussed.²⁹²

Other areas identified by the ACERWC as deserving improvement in Uganda's reporting practices include mentioning of the data contained in the section of the Annual situation of human rights Report of the Uganda Human Rights Commission which is focused on 'the violations of the rights and welfare of the child.'²⁹³ This means that the next report of Uganda will have to synthesise data from all the Annual Reports released by the UHRC since 2007 when the country submitted its Initial Report to the ACERWC.

However, some of the observations of the Committee are so general and clothed in a noncommittal tone which has a legacy of affecting realisation and enforcement of human rights - especially ESCRs. A case in point is the call to Uganda to²⁹⁴

popularize the Charter across the whole country *and if possible* translating the Charter in national languages and to undertake the training is stakeholders regarding the Provisions of the Charter at a national level.

This recommendation followed from an observation that there is a knowledge gap about the Charter including among authorities responsible for implementation of the laws, teachers, health personnel, social workers and those in charge of children.²⁹⁵ This recommendation is almost a license to the State party not to undertake any action, although this is controvertible by the understanding that states should implement the Charter – and by extension the recommendations issued by monitoring bodies – in good faith.

4.5 Conclusion

This Chapter reveals that Uganda's initial expression of total commitment to cooperate with and harness the opportunities provided by state reporting to the ACERWC are void of sustainability as evidenced by the country's failure to follow up its Initial Report with another report. This notwithstanding, compared to Uganda's reports before the African Commission, both Uganda and the ACERWC performed better in the quality of report submitted and comprehensiveness and relevance of the Concluding Observations and Recommendations respectively.

²⁹¹ GOU (n 280) 14.

²⁹² ACERWC (n 283) 3.

²⁹³ ACERWC (n 283) 9.

²⁹⁴ As above.

²⁹⁵ As above 9.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This Chapter summarises the major findings and conclusions of the study coupled with a note on how Uganda's reporting to the African Commission and the ACERWC compares with that before the UN and the APRM. Finally, it offers tentative recommendations going forward.

5.2 Major findings and conclusions

This study notes that Uganda generally attempts to structure its reports in such a way that, in the very least, it provides information on most of the key themes required by the Guidelines for reporting to both the African Commission and the ACERWC. Exceptionally, the country totally disregarded inclusion of the recommended section on implementation of the Maputo Protocol in its 5th report to the African Commission.

In terms of feedback on the reports, the African Commission and the ACERWC have endeavored to examine and make a response to all reports so far submitted to them by Uganda. It also appears that the African Commission has become more efficient, detailed and relevant in examining state reports as reflected by its Concluding Observations and Recommendations to Uganda's 5th report which, unlike the 3rd and 4th reports, goes right-by-right in highlighting the areas of concern and recommendations that Uganda needed to implement. This approach is similar to that of the ACERWC in responding to the Initial Report of Uganda. This should be maintained as a motivation for states continued involvement in the process.

Notably, there are several notable reforms that have happened in Uganda subsequent to the different reporting cycles, especially in the form of legislation and pro-human rights court decisions. However, it is hard to establish if these reforms are solely – or even at all – attributable to the reporting before and recommendations from the African Commission in view of the fact that Uganda also reports to the UN and the APRM. Many of the issues are also debated nationally. The influence of international human rights monitoring in general is therefore difficult to establish without undertaking a specifically dedicated and extensive study on the issue.

As such, the country's reporting to the African Commission and the ACERWC can best be seen as having played a supplementary – if any – role in the web of other key considerations that influence the progress so far witnessed in observance of human rights in Uganda. Conversely, the country's poor performance at, and the shortfalls in the effectiveness of, state reporting under the African human rights system should not be reprimanded for the enduring stagnation and retrogressive experiences characterising human rights observance in Uganda. At the same time, state reporting under the African human rights system is seized with potential to

influence more positive developments in Uganda and across Africa. This is if there is continued and more effective engagement of states supported by political will at the national level.

Despite the progress, Uganda continues to be characterised by odious delays in submitting reports. The country last reported to the African Commission in 2013 and has not updated the Commission of its human rights situation for the period 2012 to date. The non-reporting is even worse before the ACERWC where the country has only submitted an Initial Report and has not provided the Committee with updated information on the developments in the country over the last 14 years. The non-submission of Periodic Reports to the ACERWC up to this date suggests that the country has long forgotten about its duty to report as well as the commitment to cooperate with the ACERWC in the pursuit of ‘a society where children, its largest population and asset live to their full potential.’²⁹⁶

The implication of the above situation is that, for the period it has not fulfilled its reporting obligations, Uganda has neither sought, nor received, substantive guidance from these bodies on how to achieve enhanced realisation of the guaranteed rights within Uganda. How this has affected the human rights situation in the country would be an interesting inquiry but which, unfortunately, is beyond the scope of the current study.

5.3 Comparison with Uganda’s reporting before the UN Treaty Bodies and the APM

Uganda has not performed any better in meeting its reporting obligations before UN Treaty Bodies. For instance, the country was late by over 6 years by the year 2003 when it submitted its initial report to the UN Human Rights Committee which monitors implementation of the ICCPR.²⁹⁷ According to the Database of the OHCHR, this report was due on 20 September 1996.²⁹⁸ There are a few spectacular aspects to note about Uganda’s Initial Report to the UN Human Rights Committee, including the fact that it lists both state and non-state (NGOs and Diplomatic) actors involved in its preparation, under the acknowledgments section.²⁹⁹

²⁹⁶ GOU (n 280) ii.

²⁹⁷ See Human Rights Committee (HRC) ‘Consideration of reports submitted by States Parties under Article 40 of the Covenant, Initial Report, Uganda’ CCPR/C/UGA/2003/1 (25 February 2003) Submitted on 14 February 2003 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fUGA%2f2003%2f1&Lang=en (accessed 20 October 2021).

²⁹⁸ See https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=UGA&Lang=EN (accessed 20 October 2021).

²⁹⁹ HRC (n 297) 5.

An even worse delay was witnessed in Uganda's submission of its second report to the UN Human Rights Committee which only happened on 17 August 2020,³⁰⁰ almost 12 years since 1 April 2008 when it was expected.³⁰¹ In nothing more than 32 pages, this report purports to cover the human rights situation of the country over the 15-year period (2005 to 2020) preceding it. From a closer look at its contents, this report generally does not go beyond conveniently detailing the political, legal, institutional and judicial developments in the country. It falls short of an honest self-reflection intended to facilitate meaningful engagement with the monitoring body.

In respect to other UN bodies, Uganda has so far only managed to submit an initial report to the Committee on the Convention against Torture, which happened on 19 May 2004 16 years after its due date of 25 June 1988.³⁰² The country's best performance is with respect to reporting before the CEDAW Committee where a bigger number of reports have been submitted.³⁰³

The frequency of Uganda's reporting to the APRM is equally unimpressive, it having only submitted a second report there very recently, in 2018, after 10 years of waiting.³⁰⁴ Of special mention, the APRM notes that the Ugandan President expressed 'leadership and openness in the conduct of the peer review of Uganda' and describes the country's self-assessment report as being 'thorough' and of 'high quality.'³⁰⁵ The review process leading to this report was led by a National Governing Council (NGC) constituting 8-members drawn from the academia, civil society, private sector, political interests (both government/ruling party and opposition in

³⁰⁰ <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhski7UxQY9zqiQHguHwoy sEb4qjb2ARtdUNwTldnkRRWckCEIFn3qlv1uP7B6AyR9G GvS%2b9Pihd%2fO5L%2ftfBgaigpc0cd8Iz0MrAd8v4CKtTa Y> (accessed 20 October 2021).

³⁰¹ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=UGA&Lang=EN (accessed 20 October 2021).

³⁰² See https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f5%2fAdd.32&Lang=en (accessed 20 October 2021).

³⁰³ See https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=UGA&Lang=EN (accessed 20 October 2020).

³⁰⁴ APRM 'Uganda APRM Second Country Review Report, January 2018' <https://www.aprm-au.org/wp-content/uploads/2021/01/APRM-Uganda-Country-Review-Report-II.pdf> (accessed 20 October 2021).

³⁰⁵ APRM (n 304) iv.

parliament), the Inter-Religious Council of Uganda and the National Planning Authority.³⁰⁶ While this study has not undertaken a deep analysis of this report, the apparent inclusivity of participation leads to a legitimate expectation for the assessment to have been more objective.

5.4 Recommendations

In view of the foregoing, the study makes the following recommendations to the different stakeholders concerned.

The African Union

- Increase resources (human and financial) towards the African Commission and the ACERWC to enable them to meaningfully implement their mandate, including state reporting.
- Encourage Uganda to implement the recommendations issued to it by the African Commission and the ACERWC.
- Call on Uganda to submit pending reports to the African Commission and the ACERWC.

The African Commission

- Upload Uganda's initial and second periodic reports and the concluding observations thereof (if they exist) for ease of access.
- Continue issuing more specific and measurable recommendations to states to impact human rights in countries.
- Require state reports to provide details of non-state actors involved in preparation of periodic reports.
- Consider extending the interval between periodic reports to at least 3 years as requested by Uganda.
- Increase on the time allocated for consideration of state reports beyond three hours to facilitate a more meaningful engagement.
- Reconcile and harmonize the reporting guidelines to give states proper guidance for instance on how to report on implementation of the Maputo Protocol.
- Ensure that states get access to all changes in reporting requirements in a timely manner.

The ACERWC

- Adopt the African Commission's practice of providing the numbers and names of the delegates appearing before it as way of facilitating future analyses on the issue.

³⁰⁶ APRM (n 304) 13.

- Continue engaging Uganda to ensure that it submits a combined report for all the pending cycles since 2007.
- Ensure timely examination of state reports.

Government of Uganda

- Hasten development and submission of pending reports to the Commission and ACERWC.
- Engage specific personnel in the state reporting department of the Ministry of Foreign Affairs specifically charged with state reporting under the Africa human rights system (see recording) to avoid backlog.
- Promote coordination between government agencies to ensure accurate and meaningful reporting on the relevant developments across agencies.
- Be more open to involving NGOs in the report writing process.
- Ensure to report genuinely on the country's human rights situation rather than merely painting a good picture or deflating responsibility.
- Ensure to implement the recommendations made by the African Commission and the ACERWC.

NGOs and development partners

- Embrace working together with the government in preparation of its periodic reports.
- Develop training programs for relevant government officials on how to report with a view to improving on the quality of reports submitted.
- Increase on funding towards African human rights reporting programs.
- Strengthen efforts and capacity to complement state reporting through preparation of shadow reports.
- Undertake advocacy around the value of periodic reporting and popularise the recommendations made on Uganda's past reports.

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