



Improving reporting under African human rights treaties

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Dedication

To my dearest wife Tanele,

You have been an unwavering source of love, support, and inspiration throughout this challenging journey of completing my HRDA Programme. Your boundless patience, understanding, and belief in me have fueled my determination to reach this academic milestone. Without your constant encouragement and sacrifices, this accomplishment would not have been possible. I dedicate this dissertation to you with all my heart, as a token of my deep appreciation for everything you have done.

To my parents,

This dissertation is a testament to the unwavering love and support you have given me throughout my life. Your guidance, sacrifices, and endless encouragement have shaped me into the person I am today, and for that, I am eternally grateful. This dissertation is a tribute to the love and sacrifices of my parents, without whom this accomplishment would not have been possible.

To my beloved daughters Sicalolesihle and Mpilolenhle,

This dissertation dedication is a testament to my promise to be a better advocate, father, and ally for you both. Your presence in my life has ignited a burning passion to address the systemic challenges that women face. I hope that as you grow, you will witness the change we strive to create together—a world where gender equality is not just a dream but a reality.

As I delve deeper into the field of human rights, I carry your hopes and dreams with me, knowing that our shared vision for a fairer world will guide my path. My commitment to ending social injustices and economic exclusion for women is an extension of my love for you both.

I hope it inspires you to pursue your own dreams with the same passion and determination.

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List of Abbreviations and Acronyms

| | |
|--------|---|
| ACERWC | African Committee of Experts on the Rights and Welfare of the Child |
| AU | African Union |
| CAT | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| CCD | Common Core Document |
| CEDAW | Convention on the Elimination of All Forms of Discrimination against Women |
| CED | International Convention for the Protection of All Persons from Enforced Disappearance |
| CERD | International Convention on the Elimination of All Forms of Racial Discrimination |
| CHR-UP | Centre for Human Rights -University of Pretoria |
| CMW | International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families |
| COs | Concluding Observations |
| CRC | Convention on the Rights of the Child |
| CRPD | The Convention on the Rights of Persons with Disabilities |
| CSOs | Civil Society Organisations |
| ECOSOC | United Nations' Economic and Social Council |
| HRCtee | Human Rights Committee |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social, and Cultural Rights |
| ILO | International Labor Organisation |
| NGOs | Non-Governmental Organisations |
| NHRIs | National Human Rights Institutions |
| NMRF | National Mechanism for reporting and follow-up |
| OHCHR | Office of the High Commissioner for Human Rights |
| RECs | Regional Economic Communities |
| SRP | Simplified Reporting Procedure |

| | |
|-------|--------------------------------------|
| UN | United Nations |
| UNCT | UN Country Team |
| UNDP | United Nations Development Programme |
| UNGA | UN General Assembly |
| UNTBs | United Nations Treaty Bodies |

Chapter 1:

Introduction

1.1 Background

State reporting is a process whereby state parties to a particular treaty compile, at certain specified intervals, a comprehensive report highlighting legislative, judicial, administrative, or other measures taken to protect, promote and fulfil human rights obligations emanating from the instrument.¹ This process is sometimes referred to as self-reporting because it is state driven in which prescribed steps are undertaken to systematically develop a quality report. Creamer and Simmons state that self-reporting is a consent-based treaty obligation that seeks to improve the effectiveness of implementation.²

The reports compiled are submitted for review by treaty bodies mandated to oversee the implementation of a treaty. In the United Nations (UN), the treaty-specific reports compiled are submitted to the relevant treaty body. Currently, the UN has ten specialised bodies mandated to oversee the implementation of the nine core human rights treaties.³

Thus, the ten United Nations Treaty Bodies (UNTBs) are listed as follows:

| Treaty Body | Founding Treaty |
|---|---|
| Committee on the Elimination of Racial Discrimination (CERD Committee) | The International Convention on the Elimination of All Forms of Racial Discrimination 1965 (CERD); article 8 |
| Human Rights Committee (HRCtee) | The International Covenant on Civil and Political Rights 1966 (ICCPR); article 28 |
| Committee on Economic, Social, and Cultural Rights (Committee on ESCR) | The International Covenant on Economic, Social, and Cultural Rights 1966 (ICESCR); the Economic and Social Council (ECOSOC) |

¹ CD Creamer and BA Simmons 'The Proof is in the Process: Self-Reporting under International Human Rights Treaties' (2020) 114/1 *American Journal of International Law* at 15.

² As above.

³ Office of the High Commissioner for Human Rights (OHCHR) 'The Core International Human Rights Instruments and Their Monitoring Bodies' <https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies> (accessed 16 May 2023).

| | |
|--|--|
| | Resolution 1985/17 (28 May 1985) to give effect to articles 21 and 22 of the ICESCR. |
| Committee on the Elimination of Discrimination against Women (CEDAW Committee) | The Convention on the Elimination of All Forms of Discrimination against Women 1979(CEDAW); article 17 |
| Committee against Torture (Committee on CAT) | The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT); article 17 |
| Committee on the Rights of the Child (Committee on CRC) | The Convention on the Rights of the Child 1989 (CRC); article 43 |
| Committee on Migrant Workers (Committee on CMW) | The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 (CMW); article 72 |
| Committee on the Rights of Persons with Disabilities (Committee on CRPD) | The Convention on the Rights of Persons with Disabilities 2006 (CRPD); article 34 |
| Committee on Enforced Disappearances (Committee on CED) | The International Convention for the Protection of All Persons from Enforced Disappearance 2006 (CED); article 26 |
| The Subcommittee on Prevention of Torture (SPT) | The Optional Protocol to the Convention against Torture 2002 (OPCAT); article 2 |

The international human rights law is supplemented by regional human rights treaties which are tailored to address human rights issues in the context of social, historical, and political realities of that particular region.⁴ At the African level, human rights instruments such as the African Charter on Human and Peoples' Rights 1981(African Charter), and African Charter on the Rights and Welfare of the Child 1990 (African Children's Charter) establish the African human rights system

⁴ OHCHR Regional Office for Europe *Making a difference; an introduction to human rights* (2018) 35.

composed of institutions safeguarding the implementation of human rights in Africa.⁵ State reports within the African human rights system are submitted to the African Commission on Human and Peoples' Rights (African Commission)⁶ and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC).⁷

Once the national process of compiling state report has been completed, it is submitted to the Secretariat of the relevant UN treaty body which will format and translate it to all official languages and a date for constructive dialogue will be scheduled.⁸ The African Commission Rules of Procedure (2020) are not clear whether state reports submitted before it are translated, they only direct the Secretariat to publish them on the African Commission's website and stipulate the date of constructive dialogue.⁹ In practice most reports from non-Anglophone states retrieved from the African Commission's website are translated to English. During constructive dialogue, committee members will ask questions about the submitted report and government officials will respond on the spot.¹⁰ The approach taken during the dialogue leans towards providing assistance and guidance to state parties being reviewed to improve the implementation of the provisions of a treaty.¹¹

State reporting is a complex system that creates many opportunities for impact. It is a process in which state actors audit legislative, policy, and other measures to assess if they give effect to the spirit and purpose of the treaty in question.¹² The outcome of which external experts provide technical advice on how state parties can improve the implementation of the provisions of treaties.

⁵ OC Okafor and GEK Dzah 'The African human rights system as "norm leader": Three case studies' (2021) 21 *African Human Rights Law Journal* at 670.

⁶ The Assembly of Heads of State and Government of the AU (the Assembly) at its 24th Ordinary Session, authorised the African Commission to examine State Reports submitted in accordance with Article 62 of the African Charter, Resolution on the African Commission on Human and Peoples' Rights, AHG/ Res. 176 (XXIV), para 5(c).

⁷ African Charter on the Rights and Welfare of the Child, art 43(1).

⁸ OHCHR 'Reporting to the United Nations human rights treaty bodies training guide, part 1 – Manual' (2017) 47.

⁹ Rule 79(2).

¹⁰ African Commission 'State reporting procedure and guidelines' <https://achpr.au.int/en/states/reporting-procedures> (accessed 11 August 2023); Centre for Human Rights – University of Pretoria 'The State Reporting Process under the African Commission' <https://www.maputoprotocol.up.ac.za/state-reporting#:~:text=States%20parties%20that%20have%20ratified,rights%20situation%20in%20their%20countries.> (accessed 11 August 2023); OHCHR (n 8) 54.

¹¹ Creamer and Simmons (n 1) 16.

¹² Creamer and Simmons (n 1) 21.

In essence, self-reporting to human rights treaty bodies may help states to discharge their human rights obligations effectively which ultimately benefits right holders.

However, both at the UN and African human rights systems there have been challenges about state reporting activities which prompted the former to take steps to address them. In the African human rights system, member states of African human rights instruments have not been faithful to their treaty reporting obligations. The African Commission has on a number of occasions expressed its displeasure on how state parties are defaulting to fulfil their reporting obligations. Addressing this subject, the African Commission in its 50th and 51st Combined Activity Reports highlighted the non-submission of periodic reports in violation of treaty reporting obligations by member states under the African human rights instruments as one of its areas of concern.¹³

This mini dissertation analyses how the UN and African human rights mechanisms ensure that treaty reporting obligation is seen through by member states and how the African states are facilitating their report preparation processes to honour their obligations. This is done with a view of making recommendations on how the African human rights system can be improved.

1.2 Problem statement

Article 62 of the African Charter brings about the obligation for state parties to periodically report the legislative, administrative, judicial, and other measures (including disaggregated data) taken to give effect to the rights contained in the instrument. Other African human rights instruments such as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol)¹⁴ and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention)¹⁵ have corresponding reporting obligations for member states. However, compliance with such obligation is not at the desired level as member states are not submitting implementation reports on time as envisaged in article 62 of the African Charter and article 26 of the Maputo Protocol.

¹³ African Commission 'The 50th and 51st Combined Activity Reports of the African Commission on Human and Peoples' Rights' (4 December 2020 to 5 December 2021) at 27.

¹⁴ Art 26(1).

¹⁵ Art XIV.

To date, out of 54 ratifications,¹⁶ a total of 14 member states are in good standing with state reporting obligation, 34 member states have defaulted in respect of submission of periodic status reports and 6 member states have completely not complied with this obligation.¹⁷ This in turn begs the question of whether the two-year reporting interval imposed by the African Charter,¹⁸ Maputo Protocol,¹⁹ and other African human rights instruments is realistic.

1.3 Research questions

In light of the poor record of state reporting on the main African human rights treaties, questions arise on the efficiency and effectiveness of the state reporting system. Hence, the main question that this research seeks to resolve is ‘what is the reason for the lack of effectiveness of the African Commission in overseeing state reporting?’ Sub-questions supporting the main question are:

- i. How are the treaty bodies structured to carry out their obligation to supervise the implementation of human rights instruments?
- ii. Is the two-year reporting interval imposed by the African human rights treaties realistic?
- iii. What interventions can the African Commission put in place to ensure that member states meet their reporting obligations in terms of the African Charter as well as Protocols on human rights?
- iv. What lessons can be drawn from the UN human rights treaty reporting mechanisms having a similar mandate with the African Commission to address the issue of non-compliance?

1.4 Methodology

Primary sources of information from the UN and African human rights system on the subject have been used. These include human rights treaties, resolutions, state reports, rules of procedures, records of proceedings for constructive dialogues and meetings, institutional reports, and project programmes.

¹⁶ African Union ‘List of countries which have signed, ratified/acceded to the African Charter’ https://au.int/sites/default/files/treaties/36390-sl-african_charter_on_human_and_peoples_rights_2.pdf (accessed 23 March 2023)

¹⁷ African Commission ‘States Reporting Status’ <<https://achpr.au.int/en/states-reporting-status>> (accessed 23 March 2023).

¹⁸ African Charter art 62

¹⁹ Maputo Protocol (n 14).

The assessed state reports are from the Republic of Angola (Lusophone), the Republic of Togo (Francophone), the Kingdom of Eswatini (Anglophone), and the Arab Republic of Egypt (Arabic). The criterion for selecting these countries is premised on ensuring that the linguistic spread (before Swahili was introduced) of African countries is accommodated as well as that their state reports are readily available on the African Commission's and UNTBs websites.

Secondary sources of information were consulted to develop substantive solutions to the issues raised in the problem statement including published academic books and articles, manuals, press releases, statements from Civil Society Organisations (CSOs) and Non-Governmental Organisations (NGOs) and technical reports.

Thereafter, a comparative analysis is done to assess the practices of the UNTBs and African Commission on state reporting activities to obtain knowledge about the issues being investigated by this mini-dissertation. Hence, a qualitative and desktop study was primarily adopted to complete this research.

1.5 Literature review

The human rights situation of member states regarding the implementation of human rights treaties is used to measure the effectiveness of international and regional human rights systems.²⁰ Heyns and Viljoen assert that the focus now is no longer on working towards securing universal ratification of human rights treaties but on ensuring that the human rights norms and standards contained in the instruments are implemented to improve the lives of ordinary people around the world.

Krommendijk after analysing literature from various scholars observes that developed countries with liberal democracies and adequate bureaucratic structures as well as financial capacity are most likely to fulfil their treaty reporting obligations.²¹ On the other hand, most African countries are least developed or developing in most cases grappling with issues of democratisation and weak bureaucratic structures which brings the high likelihood for them not to adequately comply with treaty reporting obligations.

²⁰ CH Heyns and F Viljoen 'The Impact of the United National Human Rights Treaties on the Domestic Level' (2001) 23 *Human Rights Quarterly* at 483.

²¹ J Krommedijk 'the (In)effectiveness of UN Human Rights Treaty Body Recommendations' (2015) 33/2 *Netherlands Quarterly of Human Rights*, at 198. See also CH Heyns and F Viljoen (n 20) 485.

Creamer and Simmonds observe that treaty reporting improves the implementation of human rights in the reporting member state because they engage in continuous dialogue with the relevant treaty bodies.²² During constructive dialogue, the reporting state gets an opportunity to get technical advice from independent experts that interpret and elaborate on the international obligations emanating from the treaty provisions.²³ Challenges and constraints faced on the implementation of the treaty are discussed to find practical mitigating measures and recommendations issued by treaty body members are tailored to fit the context and realities of the reporting states.²⁴

Just like the African human rights system, the United Nations human rights treaty body system in the past faced a number of challenges attributable to a number of issues that ranged from under-resourcing, lack of engagement, backlog, complexity of working methods which watered down its efficiency and effectiveness.²⁵ To mitigate such challenges the Office of the High Commissioner for Human Rights (OHCHR) undertook four major reform initiatives between 1988 and 2014 which culminated in the adoption of Resolution 68/268 by the UN General Assembly (UNGA). Worth noting is that the last treaty body strengthening process was initiated by the UN High Commissioner for Human Rights in 2009 which led to the publication of a report in which innovative measures were proposed to strengthen treaty bodies.²⁶

Murray after assessing the African Commission's treaty reporting dashboard remarks that the record of submission of state reports over the years is 'depressing', as there are nine states that are fully compliant with reporting obligations, 38 states are late, and six yet to submit any report at all (as at June 2018).²⁷ To accommodate non-compliant States, the African Commission has adopted a special dispensation where States are allowed to combine all out-of-date reports for submission, thus most reports cover a period that is above the stipulated two-year period.²⁸

²² Creamer and Simmons (n 1) 1.

²³ Creamer and Simmons (n 1) 21.

²⁴ As above.

²⁵ OHCHR 'History of treaty body strengthening' <https://www.ohchr.org/en/treaty-bodies/history-treaty-body-strengthening> (accessed 17 May 2023).

²⁶ OHCHR 'The report of the United Nations High Commissioner for Human Rights on the strengthening of the human rights treaty bodies pursuant to Assembly resolution 66/254 – A/66/860' (2012) at 9.

²⁷ R Murray *The African Charter on Human and Peoples' Rights – A commentary* (2019) 794.

²⁸ As above.

To date, academic research on the effectiveness and impact of state reporting under the African human rights instruments has been limited. There is hardly any comprehensive information on the causes of the failure or neglect of member states to comply with their treaty reporting obligations. Neither systematic nor in-depth studies have been done to examine the entire reporting processes under the African human rights system which can in turn inform the design of interventions that can be put in place to improve treaty reporting under the African human rights system.

This paper proposes interventions that can be adopted by the African Commission to strengthen its monitoring mechanisms for treaty reporting. Other African Human Rights Mechanisms, such as the ACERWC, charged with the responsibility to consider state reports may also benefit from the recommendations made. Such interventions should be exceptionally innovative to entice member states to domestically set up institutions that coordinate treaty reporting processes and to always have the urge of complying with their treaty reporting obligations.

1.6 Chapter outline

This paper is divided into four chapters. Chapter 1 contains the background, problem statement, research questions, and methodology. Chapter 2 analyses how the UN and African human rights mechanisms ensure that treaty reporting obligation is carried out by member states. Chapter 3 presents a comparative analysis of state reports for four African countries representing the four main official languages of the African Union (AU) to identify their patterns of behaviour when undertaking state reporting obligation. Chapter 4 discusses the findings and conclusions emanating from the research and presents recommendations with a view to improve the African Commissions working methods on state reporting.

1.7 Scope and limitations

The time allotted for carrying out this research paper is about four months, from 1 July to 23 October 2023. It was not possible to conduct interviews as the process for getting permission to conduct interviews takes longer due to complex bureaucratic processes. The prospective participants are officials within the African human rights system, state parties government officials as well as the stakeholders involved.

Further, there are limited studies that have been done to assess the efficiency of the African human rights system, hence a reliance was made on materials on similar subjects in the UNTBs and other regional human rights systems.

This research paper only focuses on state reporting obligations under the African Charter and Maputo Protocol and does not focus on reporting obligations under the African Children's Charter, Kampala Convention as well as other African human rights instruments.

Chapter 2:

State reporting in the United Nations treaty bodies and the African Commission

2.1 Introduction

This chapter resolves questions that relate to the efficiency and effectiveness of the state reporting system in the UNTBs and African Commission. In resolving this question, a discussion on the provisions of the UN core human rights instruments, African Charter, and Maputo Protocol giving rise to state reporting obligations is made. Then, I discuss how UNTBs and the African Commission are configured, how do they ensure that member states submit state reports, and how are they examining state reports. Further, an evaluation is made to ascertain whether the UNTBs and the African Commission are effective in ensuring that state parties are committed to their state reporting obligations. If not, what steps have been taken to ensure that state reporting obligations are upheld.

2.2 History of the state reporting

In the early 1900s, state reporting was established through treaties among states with the aim of improving labour standards and preventing human trafficking, sexual exploitation, and slavery.¹ States were required to periodically publish reports on their implementation of the labour convention and share them amongst themselves. The International Labor Organisation (ILO) was later made responsible for supervising state reporting after the establishment of the League of Nations.²

The responsibility of state reporting also arose when the United Nations' Economic and Social Council (ECOSOC)³ requested member states to report every three years on measures taken to advance the rights provided by the Universal Declaration of Human Rights, 1948 (Universal

¹ CD Creamer and BA Simmons 'The Proof is in the Process: Self-Reporting Under International Human Rights Treaties' (2020) *Faculty Scholarship at Penn Carey Law* at 8.

² As above.

³ ECOSOC acted in terms of art 64 of the UN Charter.

Declaration).⁴ The reason ECOSOC took this route was that the Universal Declaration was not legally binding, though later it acquired the international customary law status.⁵

Member states submitted their reports to the UN Secretary-General, who then delegated specialized agencies to prepare summaries of the information gathered.⁶ The Commission on Human Rights considered these summaries, focusing on general progress made in advancing human rights. The Commission made comments, conclusions, and recommendations which were shared with the ECOSOC. The first cycle of reporting was between 1954 and 1956, with a total of 41 reports submitted. The second cycle of reporting was between 1957 and 1959, with a total of 91 countries submitting reports.⁷

After the second cycle, the UN Commission on Human Rights noted a low turnout in periodic reports submitted by states and urged them to keep up with reporting requests. The Commission disseminated summaries of reports to other specialized UN agencies for attention and appointed a Committee to work on the periodic reports in preparation for upcoming sessions.⁸ Humphrey noted that such reporting arrangement did not yield the desired results as those reviewing the reports were not independent experts with capacity to critically examine them.⁹

This process continued until 1980 when the UNGA through Resolution 35/209 put an end to this mode of periodic reporting because several core human rights treaties had been adopted with provisions that imposed legally binding reporting obligations by state parties.¹⁰

⁴ ECOSOC 'Resolution 624 B (XXII)' (1 August 1956).

⁵ JP Humphrey 'The international Bill of Rights: Scope and implementation' (1976) *William & Mary Law Review* 529.

⁶ UN Commission on Human Rights 'Report of the eighteen session' (19 March – 14 April 1962) 9.

⁷ As above.

⁸ As above.

⁹ Humphrey (n 5) 530.

¹⁰ UNGA 'Resolution 35/209: Identification of activities that have been completed or are obsolete, of marginal usefulness or ineffective (17 December 1980).

2.3 Obligation to submit state reports

All the core human rights treaties impose state reporting obligations to state parties. The initial reports for CERD,¹¹ CCPR,¹² CEDAW,¹³ CAT,¹⁴ and CMW¹⁵ must be submitted within one year of ratification or accession, while for ICESCR,¹⁶ CRC,¹⁷ CRPD,¹⁸ and CED¹⁹ the deadline is two years.

After that, periodic reports must be submitted at specified intervals. The submission timeline varies by treaty, with CERD²⁰ requiring reports every two years, ICCPR,²¹ CEDAW,²² CAT,²³ CRPD²⁴ every four years, ICESCR,²⁵ CRC,²⁶ and CMW²⁷ every five years. The CED does not address the issue of submission of periodic reports, it simply empowers the monitoring body to request additional information after the initial report has been submitted and considered.²⁸

Article 62 of the African Charter directs state parties to prepare and submit initial and periodic reports every two years. Unlike the UN core human rights instruments, the African Charter does not make different timelines for the submission of the initial and periodic reports.

Perhaps this might be what demotivates state parties to keep up with their treaty reporting obligations, as the timeline of two years is more onerous. Countries that have ratified a number of the UN core human rights treaties as well as African human rights instruments will be fatigued or

¹¹ CERD Art 9(1).

¹² ICCPR art 40(1).

¹³ CEDAW art 18(1).

¹⁴ CAT art 19(1).

¹⁵ CMW art 73

¹⁶ ICESCR art 17(1).

¹⁷ CRC art 44(1).

¹⁸ CRPD art 35(1).

¹⁹ CED art 29(1).

²⁰ CERD (n 7).

²¹ Article 40 of the ICCPR gives the Human Rights Committee discretion to determine when periodic reports shall be submitted and it has in practice requested states to submit every four years.

²² CEDAW art 18(1).

²³ CAT art 19(1).

²⁴ CRPD art 35(2).

²⁵ Article 17 of the ICESCR does not address the issue of periodic reports but empowers Committee on Economic, Social and Cultural Rights (previously known as the Economic and Social Council) with the discretion to establish its own reporting programme. As such Rule 58(2) has fixed the time intervals to submit periodic reports to five years (resolution 1988/4 of the Economic and Social Council).

²⁶ CRC art 44(1).

²⁷ CMW 73.

²⁸ CED art 29(4).

overburdened to report every two years. Viljoen observes that the reporting timeline under the African Charter is ‘unrealistic’ considering that states are also obliged to report on other human rights instruments which makes it impossible to comply with the 2-year timeline.²⁹

If the 54 member states to the African Charter were to perform their treaty reporting obligations faithfully and punctually, the African Commission would be overwhelmed by the volume of work of reviewing the reports as it would be difficult to keep up with the high number of reports that need to be considered each year. This is because state reports are reviewed during the sessions of the African Commission as per Rule 80 of the African Commissions Rules of Procedure (2020) and during such sessions there are many other items to be considered in the Agenda. The frequency of convening the African Commissions sessions and their durations is discussed in section 2.7.3.1 Below.

Article 26 of the Maputo Protocol obligates state parties to submit periodic reports on the implementation of the instrument in a similar manner as required by article 62 of the African Charter. This essentially means state reports on the implementation of the Maputo Protocol must be submitted together with those under the African Charter, with the African Charter report forming Part A and the Maputo Protocol report forming part B.³⁰

2.4 Benefits of state reporting

State reporting is essentially not a procedural matter where state parties should only strive to tick the box by submitting a report to the appropriate treaty body, but it is deeper than that with a variety of objectives.³¹ The ultimate goal of state reporting is to improve the human rights situation at the national level which benefits rights holders. Some of the objectives and benefits of state reporting are discussed below.

2.4.1 Self-assessment of treaty compliance

The processes undertaken in preparation of a treaty report offers an opportunity for states to take stock and deeply evaluate their human rights fulfilment progress.³² This is a holistic process where

²⁹ F Viljoen *International Human Rights Law in Africa* (2012) 355.

³⁰ Centre for Human Rights -University of Pretoria (CHR-UP) *Guidelines for state reporting under the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa* (2016) 4; Viljoen (n 30) 353.

³¹ Viljoen (n 29) 350.

³² As above; CHR-UP (n 30) 10.

states conduct audits to assess if legislation, policies, programmes, and other administrative measures have been harmonised with the provisions of the relevant treaty being reported under.³³ During such process challenges and gaps inhibiting the full implementation of the rights are identified which helps to further develop mitigation strategies and plans.³⁴

2.4.2 Constructive engagement with civil society

The wording ‘state report’ denotes that the reports being prepared should not only contain information on the interventions that the government has put in place to advance the rights provided in the treaty but also the programmes which CSOs have implemented. For quality reporting, during the report preparation process state parties must devise better coordination mechanisms within government machinery to assess legislative, policy, and other measures taken to give effect to the specific rights under the treaty in question.³⁵ Further, a similar discussion should be done with CSOs and National Human Rights Institutions (NHRIs) to assess the progress made. The shape and form of the dialogue or consultations between the government, CSOs, and NHRIs should not be adversarial, rather it should be predicated on a constructive spirit of cooperation and mutual respect to improve the livelihood of citizens.³⁶

An inclusive consultative process of report preparation informs the public and stakeholders on the progress made to comply with the treaty, thus raising awareness of the rights provided by the treaty.³⁷ Moreover, national stakeholder takes ownership of the state report which improve the relationship for the development and implementation of future programmes geared towards the implementation of the treaty’s provisions and recommendations issued by treaty bodies.³⁸

2.4.3 Learning opportunity for reporting state

During the interactive dialogue process between treaty bodies and state parties, members of treaty bodies provide a simplified interpretation of the treaty provisions that enhance understanding of the state being reviewed of the obligations flowing from the treaty in question.³⁹ By its nature

³³ Committee on ESCR General Comment 1: Reporting by States Parties (1981) paras 5, 6 & 8.

³⁴ OHCHR *Reporting to the United Nations human rights treaty bodies training guide; part 1 – manual* (2017) 26.

³⁵ OHCHR *The United Nations Human Rights treaty system; Fact sheet no. 30 rev. 1* (2012) 24.

³⁶ OHCHR (n 34) 27.

³⁷ As above.

³⁸ As above.

³⁹ African Commission *Guidelines for National Periodic Reports under the African Charter* (1989) para 2.

treaty bodies are composed of members with diverse expertise in the treaty being monitored, hence during the review of state reports they render their expertise, experience, and technical advice.⁴⁰

Moreover, state reporting provides a platform where states share their experiences, best practices, and better approaches to implementing specific rights which helps those lagging to draw lessons on human rights treaty implementation.⁴¹

2.5 State report preparation processes

When preparing state reports on human rights treaties, state parties are expected to meet the benchmarks set by the respective human rights treaty bodies. These bodies have developed specific guidelines that enhance states' capacity to effectively and punctually discharge their reporting obligations.⁴² By following these guidelines, states can ensure that the information captured in the reports is of high quality and substance, thereby reducing the need for supplementary information and enabling the treaty bodies to use a consistent approach when reviewing the reports.⁴³

To guide state parties through the process of developing quality state reports, the OHCHR has developed a manual outlining seven phases to be undertaken to achieve this output.⁴⁴ These phases are; planning and organizing, identifying key issues, information gathering, report drafting, consultation on the draft report, report finalization, and submission to the treaty body.

The reporting system under the UNTBs is divided into two parts: the Common Core Document (CCD) and the treaty-specific document, which must be submitted separately.⁴⁵ The common core document provides general factual and statistical information that appraises committee members on the political, legal, social, economic, and cultural setup in which the reporting state operates.⁴⁶ On the other hand, a treaty-specific document provides detailed information on the interventions and programmes put in place by reporting states to advance human rights provided by the treaty in question.⁴⁷

⁴⁰ Creamer and Simmons (n 1) 16.

⁴¹ African Commission (n 49) para 2.

⁴² OHCHR *Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a CCD and treaty-specific documents* (2006) para 4; African Commission (n 39) page 2.

⁴³ As above.

⁴⁴ OHCHR (n 34) 41.

⁴⁵ Harmonised guidelines (n 42) para 17.

⁴⁶ Harmonised guidelines (n 42) para 27.

⁴⁷ Harmonised guidelines (n 42) para 29.

The African Commission first developed the Guidelines for National Periodic Reports under the African Charter in 1989, however they were clumsy and difficult to follow making compliance impossible.⁴⁸ To make them more clearer, they were amended to produce the Guidelines for State Reporting 1998, Maputo Protocol Guidelines 2009, Tunis Reporting Guidelines 2010 (socio – economic rights), and State Reporting Guidelines on Articles 21 and 24 of the African Charter Relating to the Operations of Extractive Industries 2016. Despite amendment of these guidelines, it is still difficult to follow, hence a need that they be harmonised.

Maputo Protocol reporting guidelines divide the state report into two parts: Part A, which reports under the African Charter, and Part B, which reports on the implementation of the Maputo Protocol.⁴⁹ Unlike the UNTBs, the African Charter and Maputo Protocol reporting guidelines do not have requirements for a CCD and treaty-specific document.

To avoid bulky state reports, the UNTBs reporting guidelines provide word limits for the two categories of reports. The CCD should not exceed 42,400 words, while the treaty-specific reports should not exceed 31,800 words for initial reports and 21,200 words for periodic reports.⁵⁰ The Maputo Protocol reporting guidelines set a 50-page limit for initial reports and a 30-page limit for periodic reports, but there is no page or word limit for African Charter state reports.

The next chapter will examine submitted state reports to treaty bodies by the countries listed under section 1.4 above. The criteria used to assess the state reports focuses on:

- a. how information was gathered to prepare the reports,
- b. the level of engagement or consultation with CSOs, NGOs and NHRIs
- c. the level of compliance with reporting guidelines prepared by the relevant treaty bodies,
- d. whether states respond to the recommendations issued, and
- e. what are treaty bodies doing to ensure that states fulfil their reporting obligations and the reports meet the reporting standards.

⁴⁸ Viljoen (n 29) 352.

⁴⁹ CHR-UP (n 30) 4.

⁵⁰ UNGA 'Resolution 68/268: Strengthening and enhancing the effective functioning of the human rights treaty body system (9 April 2014) para 16.

- f. the time taken by a treaty body to review a state report is also noted to identify trends between the UNTBs and the African Commission for purposes of determining efficient ones.

The assessment criterion from paragraphs a. to d. has been developed from the benchmarks set by reporting guidelines discussed above for state parties to submit high quality reports. This gives an idea on the capacity needs of state parties to develop reports, which answers this research sub question on what interventions can the African Commission put in place to ensure that member states meet their reporting obligations.

Criterion e. and f. have been inspired by the desire to measure treaty bodies performance standards in discharging their state reporting mandate. The analysis emanating from such assessment contributes to responding to this research main question, whether treaty bodies are effectively and efficiently performing their mandate on state reporting.

Analysing comparatively state reports of the selected countries using these criteria enables the researcher to identify common shortcomings of the existing state reporting processes. This in turn assist to adequately propose interventions aimed at improving state reporting on African human rights treaties. In respect of state reports submitted to UNTBs, the focus is on those submitted to HRCtee, Committee on ESCR and CEDAW Committee because their thematic areas are substantially the same as that covered by the Guidelines for National Periodic Reports under the African Charter and Maputo Protocol Reporting Guidelines.

2.6 UN Treaty Reporting

The main mandate of the ten UNTBs is to monitor and measure progress made by countries in meeting their human rights obligations. For the purposes of this study, the focus is on state reporting mandate of the UNTBs.

The purpose of this discussion is to highlight how UNTBs discharge their mandate on state reporting with a view of spotlighting challenges and weaknesses. This is followed by a discussion on the interventions put in place to mitigate the bottlenecks inhibiting the effective exercise of UNTBs state reporting mandate. It lays a foundation for using criterion e. and f. of the assessment criteria and answers this research sub questions i. and iv. in section 1.3 above.

2.6.1 United Nations Treaty Bodies

State reports are submitted to treaty bodies that facilitate the processes of reviewing them. During the process of reviewing state reports, a constructive dialogue process is undertaken by the relevant UNTB and the state under review which in most cases sends a delegation to participate.⁵¹ Issues identified by the UNTB from the submitted state report are discussed through probing and response. Thereafter, concluding observations (COs) accompanied by recommendations are made by the committee.⁵² Worth noting is that shadow reports written by NGOs, NHRIs, and UN Country Teams assist committee members in identifying issues that form the basis of constructive dialogue.⁵³

The recommendations issued after the constructive dialogue are not binding on state parties as they only serve as a guide on how the implementation of human rights provisions can be improved.⁵⁴ Further, when preparing periodic reports state parties must provide information on the implementation of recommendations issued under individual communications and country visits.⁵⁵

2.6.2 Role of UN agencies in state reporting activities

2.6.2.1 The Office of the High Commissioner for Human Rights

The OHCHR was established in 1993 by the UNGA Resolution 48/141 to promote the human rights agenda. The OHCHR facilitates human rights training and activities aimed at assisting states to prepare quality reports and to efficiently implement recommendations issued by treaty bodies.⁵⁶

The OHCHR through the Human Rights Treaties Division (HRTD), supports all treaty bodies, special procedures, and the Human Rights Council by providing professional personnel that serve as secretariat.⁵⁷ The secretarial services provided by the HRTD perform the day-to-day functions of UNTBs which include legal research, vetting of state reports deposited, translation, formatting of the reports, analysing the reports, and preparatory processes for constructive dialogues.⁵⁸ In a

⁵¹ OHCHR (n 35) 10.

⁵² As above.

⁵³ OHCHR (n 35) 27.

⁵⁴ J Krommendijk 'The (In)effectiveness of UN Human Rights Treaty Body Recommendations' (2015) 33/2 *Netherlands Quarterly of Human Rights*, at 195.

⁵⁵ OHCHR (n 35) 11.

⁵⁶ OHCHR *Handbook for Human Rights Treaty Body Members* (2015) 44 - 47.

⁵⁷ As above.

⁵⁸ As above.

nutshell, the OHCHR stands at the heart of the healthy functioning of treaty bodies, it serves as engine which keeps treaty bodies running.

2.6.2.2 UN Country Teams

In most UN member states, the UN sets up offices of UN Country Teams (UNCTs) which aim to further various initiatives that contribute to the realisation of sustainable development agenda to alleviate poverty and improve the livelihood of everyone.⁵⁹ The framework used to achieve this objective is the United Nations Development Assistance Framework (UNDAF)⁶⁰ and the 2030 Agenda. In supporting the alignment of national development plans and policies, UNCTs are guided by recommendations made to the country by treaty bodies.⁶¹

UNCTs through their advocacy tools and funding assist state parties to develop adequate implementation plans for recommendations issued by treaty bodies and national human rights action plans to ensure that recommendations in respect of state reports are implemented and linked to national development priorities.⁶² They provide technical assistance to state parties to ensure that these plans have specific timelines, indicators, benchmarks for success and Sustainable Development Goals (SDGs) targets have been integrated.⁶³

2.6.3 Processes to strengthen UN state reporting system.

To improve state reporting activities in the UNTBs, several intensive research and initiatives aimed at improving the efficiency and working methods of treaty bodies were undertaken. The first notable one was carried out in 1997 by Philip who sought to identify possible measures to be explored in improving the effectiveness of the human rights treaty system.⁶⁴

In 1999, Bayefsky initiated a study in collaboration with the OHCHR on the UN human rights treaty system which sought to assess the factors that make the system inefficient and ineffective.⁶⁵

⁵⁹ OHCHR (n 34) 64.

⁶⁰ Now replaced by the Sustainable Development Cooperation Framework (UNSDCF)

⁶¹ UNDAF guidance (2017) 10.

⁶² OHCHR (n 34) 65.

⁶³ As above.

⁶⁴ A Philip 'Effective functioning of bodies established pursuant to United Nations human rights instruments' (1997) 4.

⁶⁵ AF Bayefsky 'The UN human rights treaty system: Universality at the crossroads' (2001).

At the time of study, there were six treaty bodies and 80 percent of states had ratified four or more of the core human rights treaties.⁶⁶

Similar to the Bayefsky study is research by Heyns and Viljoen which assessed the impact of the core human rights treaties on the implementation of human rights in twenty countries across the five UN regions.⁶⁷ This study also attributed the failure to report to treaty bodies on the lack of capacity of the government to undergo the onerous processes of preparing the required reports, if done some of the reports would be below the reporting standards.⁶⁸

The UNGA through Resolution 48/141 mandated the OHCHR to conduct research aimed at finding solutions on how the treaty body system can be strengthened to improve its efficiency and effectiveness. The study was commenced by the OHCHR in 2009 until 2012 when a report was presented to the UNGA.

The challenges identified in the Alston, Bayefsky, and OHCHR studies highlighted above include:

- i. States default on their reporting obligations because of treaty fatigue. If a state ratifies all human rights treaties, optional protocols, and other treaties, it is expected to submit periodic reports in respect of all the treaties signed. The number of overdue state reports was 714 in 1993 and 957 in 1996. In 2002, 70 percent of state parties to every treaty had overdue reports, with 25% defaulting on submitting initial reports. African states had the highest default percentage with an average of 38%. In 2012, there were 626 overdue state reports.
- ii. Backlog on UNTBs to review submitted state reports and failure to follow up on concluding observations. In 2002, Four of the six treaty bodies have two-year backlogs of unreviewed submitted state reports. In 2012, there was a total of 281 state reports pending to be reviewed by UNTBs. If state parties were to submit reports on time UNTBs could not be able to review them within a reasonable time.

⁶⁶ Bayefsky (n 65) 2.

⁶⁷ CH Heyns and F Viljoen 'The impact of the United Nations Human Rights Treaties on the domestic level' (2001) 23/3 *Human Rights Quarterly*.

⁶⁸ Heyns and Viljoen (n 67) 488.

- iii. The quality of state reports in terms of content is not meeting the standards set by reporting guidelines, hence there is a need for intensified capacity-building activities on the part of the state parties.
- iv. The budget and resources allocated to sustain the activities of UNTBs are not adequate, with the increase of treaty bodies from six to ten means that more committee members and members of the secretariat need to be appointed. Yet the source of funding for these activities is from the UN's regular budget and voluntary contributions which is very constrained.

The outcome of these studies led to the UNGA passing Resolution 68/268 in 2014 which introduced innovative measures to improve the effectiveness of UNTBs.

2.6.4 The Impact of Resolution 68/268

UNGA's Resolution 68/268 brought about a significant shift in the way we approach the effectiveness of UNTBs. This resolution introduced interventions that are aimed at making UNTBs more efficient and impactful in their work. Some of the innovative interventions are;

2.6.4.1 National Mechanism for Reporting and Follow up

To be better placed and equipped to effectively carry out treaty reporting obligations, states are gradually heeding the recommendations made in the Bayefsky, Heyns and Viljoen and OHCHR reports by establishing the National Mechanism for reporting and follow-up (NMRF). The NMRF is a standing inter-ministerial committee mandated to coordinate the processes of preparation of state reports and coordinate the processes of following up the implementation of recommendations issued by treaty bodies.⁶⁹ Sarkin observes that NMRFs have become vital in ensuring that states are fulfilling their human rights obligations.⁷⁰ In state report preparations processes, NMRFs organise and streamline the contents thereof with constant consultation and inclusion of stakeholders which brings a sense of ownership to all parties involved.⁷¹

Recommended features for the optimal function of NMRF are that it must be a standing mechanism specialising in drafting state reports which should have a comprehensive legislative mandate,

⁶⁹ OHCHR *A Practical Guide and Study on National Mechanisms for Reporting and Follow-up* (2016) 2.

⁷⁰ J Sarkin 'The role of National Human Rights Mechanisms for Reporting and Follow-up (NMRF): Understanding these new global processes using the cases of Georgia and Portugal as a focus' (2019) 113 *Teise* at 170.

⁷¹ Sarkin (n 70) 174.

clothing it with authority to discharge its functions.⁷² Further, they should have dedicated permanent staff to build institutional memory and expertise on state reporting activities as opposed to having ad hoc personnel arrangements.⁷³

Through the advocacy campaigns and technical support of the OHCHR – Regional Office of Southern Africa, the following Southern African countries have established NMRFs; Angola, Botswana, Eswatini, Lesotho, Madagascar, Mauritius, Mozambique, Namibia, Zambia, and Zimbabwe.⁷⁴ The governments of Malawi and Seychelles are being engaged by OHCHR – Regional Office of Southern Africa to also establish similar mechanisms. Other African countries to have established NMRFs include Benin, Botswana, Burkina Faso, Cameroon, Côte d’Ivoire, Djibouti, Egypt, Gabon, Kenya, Morocco, Tanzania, Togo, Tunisia, Senegal, and Sudan.⁷⁵ At this point, it is not yet the right time to examine whether countries with NMRFs are better at reporting than those who have not established them as most NMRFs are still at infancy stage. With time they will be well-established and resourced to effectively discharge their functions as states are still improving capacities of these institutions to meet the standards set by the OHCHR on the Practical Guide and Study on National Mechanisms for Reporting and Follow-up (2016).⁷⁶

2.6.4.2 Simplified Reporting Procedure

UNTBs are offering a simplified reporting procedure (SRP) for the submission of periodic reports.⁷⁷ This procedure is optional and is commenced by a treaty body, after being lobbied by the state party to be reviewed. The SRP makes the process of reviewing a state party more focused and effective by adopting the following structure: it follows up on the implementation of previous recommendations, prompts the reporting state to update on recent developments on the

⁷² OHCHR (n 69) 2.

⁷³ Sarkin (n 71) 174.

⁷⁴ OHCHR ‘The status of NMRF in Southern Africa: practices, challenges, and recommendations for effective functioning’ (2021) 7.

⁷⁵ OHCHR ‘Regional consultations on experiences and good practices relating to the establishment and development of national mechanisms for implementation, reporting and follow-up’ (2022), paras 13, 14, 16, 18, 22, 24, 30, 33, 41, 47, and 50.

⁷⁶ OHCHR (n 75) 21.

⁷⁷ OHCHR (n 34) 61.

implementation of human rights provisions, and treaty body spotlights specific or topical human rights issues under the specific treaty.⁷⁸

2.6.4.3 Webcasting

As of September 2016, all public sessions of Treaty Bodies were made to be available live online and retrospectively at <http://webtv.un.org/meetings-events/treatybodies/>. This library can be useful for states to prepare for a constructive dialogue by observing other dialogues.⁷⁹ Further, state delegates, CSOs, stakeholders, and all individuals having an interest can follow the sessions of treaty bodies without traveling to Geneva.⁸⁰ This greatly improves the visibility and accessibility of treaty bodies which was a concern raised in the reports on strengthening the effectiveness of treaty bodies.

2.6.4.4 Publication of materials on state reporting

The OHCHR has published a number of documents aimed at improving the capacity of state parties on state reporting and the human rights treaty system. These documents are written in simple English which government officials, CSOs, and other stakeholders can read without the need for interpretation or training by the OHCHR. The publications include: Treaty Reporting Guidelines, A Practical Guide and Study on National Mechanisms for Reporting and Follow-up (2016), Reporting to the United Nations Human Rights Treaty Bodies Training Guide; Part 1 – Manual’ (2017).

Further, the OHCHR in collaboration with ILO developed online training courses on the UN human rights treaty system as well as state reporting.⁸¹ The lessons are in videos, graphic illustrations on the processes, and documents that are easy to read. At the end of each lesson, there are assessments to gauge the level and quality of knowledge acquired. On completion of the last module, participants are awarded certificates of completion. The online learning courses can be accessed at: <https://ecampus.itcilo.org/enrol/index.php?id=529>.

⁷⁸ As above.

⁷⁹ V Ploton ‘Digital shift’: What have the UN treaty bodies achieved, and what is still missing?’ in F Viljoen et al *A life interrupted: Essays in honour of the lives and legacies of Christof Heyns* (2022) 412.

⁸⁰ As above

⁸¹ OHCHR treaty bodies e-learning tool.

2.6.4.5 The National Recommendations Tracking Database (NRTD)

On 4 October 2019, the OHCHR in collaboration with the United Nations Development Programme (UNDP) developed an NRTD platform which is an interactive web-based application that assists states in developing implementation plans on human rights and recommendations issued by treaty bodies.⁸² This platform further integrates the implementation of SDGs to clustered recommendations in the plans. NRTDs assist in strengthening the capacity of information management for NMRFs making the tracking of recommendations implementation easier.⁸³

2.6.5 Current state of reporting

During the 29th meeting of Chairpersons of UNTBs held in 2017, it was reported that the challenge of late and non-reporting by States parties persisted which undermined the effectiveness and credibility of the treaty body system.⁸⁴ This is premised on the fact that 36 of 196 state parties were up to date in their reporting obligations, which accounts for 18 percent of state parties.⁸⁵ A total of 574 reports were overdue, 280 accounts for initial reports and 294 accounts for periodic reports.⁸⁶

During the 33rd meeting of Chairpersons of UNTBs held in 2021, it was reported that 33 of the 197 States parties had no overdue reports with translates to 16.8 percent of States parties.⁸⁷ This is a decline of about 1.2 percent from the 2017 statistics. A total of 197 initial reports and 263 periodic reports (adds to 460 reports) were overdue.⁸⁸

As of 26 September 2023, the UN database on late or non-reporting state parties lists a total of 566 overdue reports, with the African region accounting for 217 (about 38%) reports.⁸⁹ Compared to the statistics of overdue reports from 2012 (626 reports), there has been a slight improvement by states in compliance with treaty reporting obligations considering that the number of overdue

⁸² UNDP and OHCHR Present the National Recommendations Tracking Database (2019) <https://www.undp.org/turkmenistan/press-releases/undp-and-ohchr-present-national-recommendations-tracking-database> (accessed 5 August 2023).

⁸³ OHCHR 'The National Recommendations Tracking Database' <https://nrt.d.ohchr.org/en/> (accessed 5 August 2023).

⁸⁴ The report of the 29th meeting of the Chairs of the treaty bodies (26 to 30 June 2017) New York.

⁸⁵ OHCHR 'Compliance by States parties with their reporting obligations to international human rights treaty bodies' (2017) para 6.

⁸⁶ OHCHR (n 85) para 10.

⁸⁷ OHCHR 'Compliance by States parties with their reporting obligations to international human rights treaty bodies' (2021) para 11.

⁸⁸ OHCHR (n 87) para 16.

⁸⁹ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/LateReporting.aspx (accessed 11 August 2023).

reports has been reduced by 60. Worth noting is that the number of overdue reports in 2021 was greatly reduced.

The reports published by OHCHR do not provide statistics of submitted state reports that are due for review by UNTBs. When generating monthly reports from the OHCHR UNTBs Database between the period of January 2020 and December 2022, a total number of state reports submitted is 396. The OHCHR ‘UN Human Rights Appeal’ reports for 2021, 2022 and 2023 indicates that 30 state reports were considered in 2020 (page 7), 45 in 2021 (page 7), 99 in 2022 (page 7), totalling to 174. The backlog of state reports submitted between 2020 and 2022 is 222, worth noting is that figures for reports pending to be reviewed before 2020 have not been included.

2.7 African Treaty Reporting

The African Charter establishes the African Commission to ensure that the rights provided by the instrument are adequately protected and promoted in the domestic jurisdictions of state parties.⁹⁰ To respond to research sub question i. in section 1.3 above, this section discusses how the African Commission is configured and how it reviews state reports submitted under the African Charter and Maputo Protocol.

The purpose of this discussion is to highlight how the African Commission performs its mandate on state reporting with a view of highlighting challenges and weaknesses. This is followed by a discussion on the interventions put in place to mitigate the bottlenecks inhibiting the effective exercise of the African Commission’s state reporting mandate. This is connected to criterion e. and f. of the assessment criteria.

2.7.1 The African Charter

The African Charter is considered the main instrument on human rights for the African region and has 54 ratifications with Morocco the only AU member state not to have ratified.⁹¹ It caters for civil and political rights in articles 1 to 13, economic, social, and cultural rights in articles 14 to 18, and collective rights in articles 19 to 24.⁹² Murray remarks that the African Charter is an

⁹⁰ African charter art 30.

⁹¹ List of countries which have signed, ratified/acceded to the African Charter <https://au.int/sites/default/files/treaties/36390-sl-african-charter-on-human-and-peoples-rights-2.pdf> (accessed 20 August 2023).

⁹² C Heyns & M Killander *The African Regional Human Rights System* (2006) 514, 516 & 518.

instrument written by Africans for Africans with provisions containing principles found in the UN and other regional human rights instruments.⁹³

2.7.2 Maputo Protocol

After realising that the African Charter does not comprehensively protect and promote the rights of women in the African region, the African Union (AU) was pressured by various women's rights groups and NGOs to develop the Maputo Protocol.⁹⁴ Further, another factor that motivated the development of an instrument tailored to fit the contextual realities of women in Africa was the fact that CEDAW was not addressing some specific issues affecting women in Africa.⁹⁵

The AU adopted the Maputo Protocol on 11 July 2003 which complements the African Charter and CEDAW by providing protection of the specific rights of women in Africa. Currently, it has a total of 44 ratifications or accessions.⁹⁶ The Maputo Protocol has gone a step further by introducing ground-breaking provisions that encourages the participation and contribution of women in the establishment of cultural policies to entrench the right to a positive cultural context,⁹⁷ prohibit violence against women,⁹⁸ and provide the right for women to opt for medical abortion and to protect from HIV infection.⁹⁹

2.7.3 African Commission

The African Commission performs most of the functions of the ten UNTBs thematic areas with the exception of the thematic area on the rights of children. The main functions of the African Commission are categorised into promotional, protective, and interpretive, for the purposes of this research the focus is on the promotional aspect which encompasses state reporting.¹⁰⁰ The process

⁹³ R Murray *The African Charter on Human and Peoples' Rights; A commentary* (2019) 8.

⁹⁴ S Mutambasere et al *The impact of the Maputo Protocol: in selected African States* (2023) 3; Heyns and Killander (n 92) 517.

⁹⁵ As above.

⁹⁶ AU 'Maputo Protocol on the rights of women in Africa: Commemorating 20 years' (5 July 2023) <https://au.int/en/newsevents/20230705/maputo-protocol-20-years#:~:text=As%20at%20June%202023%2C%2044,the%207th%20of%20June%202023>. (accessed 16 August 2023).

⁹⁷ Maputo Protocol art 17.

⁹⁸ Maputo Protocol art 4.

⁹⁹ Maputo Protocol art 14.

¹⁰⁰ African Charter art 45.

for consideration of state reports by the African Commission is the same as that of UNTBs discussed in section 2.6.1 above.¹⁰¹

Complementing the African Commission are the ACERWC and the African Court on the African Charter on Human and Peoples' Rights (African Court). Having fewer treaty bodies to monitor the implementation of African human rights instruments minimise challenges that are currently being experienced by the UNTBs such as conflicting working methods and jurisprudence, reporting guidelines, and constrained resources.

2.7.3.1 Composition

The African Commission is composed of eleven members from state parties to the African Charter elected by the AU assembly through a secret ballot.¹⁰² The Chairperson and the Vice Chairperson are elected by the members of the African Commission and they form the Bureau.¹⁰³ Just like the UN treaty bodies, the Commissioners work on a part-time basis and normally meet during the sessions of the African Commission which are convened twice a year that lasts for about 10 to 15 days.¹⁰⁴

Such working arrangement has been viewed as setting the work of the African Commission for failure and on a number of occasions calls to either have the Chairperson work on a full-time basis or increase the number of Commissioners have been ignored by the AU.¹⁰⁵ If the bureau worked on full time basis they were going to have adequate time to develop strategies that would focus on improving state reporting on African human rights treaties monitored by the African Commission. Furthermore, the bureau would gain up-to-date information on the most prevalent and most recent human rights issues in the African region, which enhances Commissioners ability to engage member states during the constructive dialogue.

¹⁰¹ African Commission 'Rules of Procedure' (2020) part two; chapter II.

¹⁰² African Charter arts 31(1), 33, & 34.

¹⁰³ African Charter art 42, Rules of Procedure (n 101) Rule 13.

¹⁰⁴ African Commission 'The 52 and 53 activity report of the African Commission' (2022) para 6; Heyns and Killander (n 92) 524.

¹⁰⁵ Viljoen (n 29) 293.

2.7.3.2 Secretariat

The work of the African Commission is supported by a Secretariat, headed by the Executive Secretary, for the efficient and effective execution of its mandate.¹⁰⁶ The Secretariat performs administrative functions of the African Commission through the provision of technical and logistical support.¹⁰⁷ The Secretariat is very key to the efficient functioning of the African Commission, if not properly resourced its goals and objectives cannot be met. Unlike the OHCHR which has presence and visibility within all regions and sub-regions of UN countries, the Secretariat of the African Commission is only stationed in the Gambia, Banjul.

The functions of the Secretariat are not as comprehensive as that of the OHCHR, in that they are not mandated to provide technical assistance to member states on the implementation of the monitored human rights instruments, capacity building on the reporting guidelines for the human rights treaties, and human right education to diverse stakeholders within and beyond Africa. The African Commission can extend the scope of functions for the secretariat by passing a decision mandating the Secretariat to render capacity-building activities to state parties.¹⁰⁸ Such resolution can improve the implementation of the African Charter, the quality of state reports as well as the implementation of recommendations issued by the African Commission to the relevant country.

Currently, the Secretariat has an Acting Secretary, five Senior Legal Officers, four legal officers, one Documentalist, one Senior Administration and Human Resources Officer, one Finance and Administration Officer, one Protocol Assistant, and one Information, Communication and Technology (ICT) Officer.¹⁰⁹ The staff complement of the Secretariat has been strengthened compared to 2012 when it was noted that it fluctuates, averaged around five and it was mostly composed of legal officers.¹¹⁰ However, still more essential staff is needed to sustain the activities of the African Commission.

The Secretary is appointed by the Chairperson of the AU Commission after consulting the Chairperson of the African Commission and answers to the Chairperson of the African

¹⁰⁶ African Charter art 41.

¹⁰⁷ Rules of Procedure (n 101) Rule 21.

¹⁰⁸ Rules of Procedure (n 101) Rule 21(h).

¹⁰⁹ African Commission 'Secretariat of the Commission' <https://achpr.au.int/en/commission/secretariat> (accessed 20 August 2023).

¹¹⁰ Viljoen (n 29) 293.

Commission.¹¹¹ However, there are instances where the appointment of the Executive Secretary was done without the consultation of the Chairperson of the African Commission and instances where the Executive Secretary's office has remained vacant for a considerable period of time. A case in point is when the African Commission expressed its concern and discontent on several issues in its 42nd Activity report in 2017. The issues were in relation; to the manner in which Commissioners learnt about the secondment of the Deputy Executive Secretary to the African Commission through a circular published on the AU website, the vacancy in the office of the Executive Secretary, the non-recruitment of essential staff of the Secretariat of the African Commission.¹¹²

Prior to the publication of the 42nd activity report, the African Commission had adopted a resolution that castigated the Secretariat for not adequately supporting members of the African Commission when performing their mandates and not implementing decisions adopted by the African Commission.¹¹³ As a result, these governance and accountability concerns may strain the good functioning of the African Commission that includes preliminary processes of reviewing state reports and following up on the implementation of recommendations. Since 2017, the office of the Executive Secretary has been held on an acting basis with no substantive office bearer being appointed.¹¹⁴

2.7.4 The current state of reporting

As highlighted in Chapter 1, a total of six countries (Comoros, Equatorial Guinea, Guinea-Bissau, Sao Tome and Principe, Somalia, and South Sudan) have never submitted state reports to the African Commission.¹¹⁵ Countries with outstanding state reports are thirty-four, Cabo Verde with the highest number (13) of outstanding periodic reports, followed by Guinea (12), Ghana (10), Central Africa Republic (8), Madagascar (7), Tanzania (7), Tunisia (7).¹¹⁶ There are fourteen

¹¹¹ Rules of Procedure (n 101) Rule 20(3).

¹¹² African Commission 'The 42nd Activity Report of the African Commission'(2017) paras 52, 53, 54, & 58(b).

¹¹³ African Commission 'Resolution on the Governance of the Commission and its Secretariat - ACHPR/Res.294(EXT.OS/XVII) (2015).

¹¹⁴ Chairperson of the African Commission 'press release on the change in the management of the secretariat of the African Commission on Human and Peoples' Rights (ACHPR) (14 August 2023).

¹¹⁵ <https://achpr.au.int/en/states-reporting-status> (accessed 7 September 2023).

¹¹⁶ As above.

Countries that have no outstanding reports with Senegal and Zambia being the latest countries to have their state reports considered during the 75th Ordinary Session held in May 2023.¹¹⁷

No studies have been conducted to identify the root cause of poor treaty reporting by state parties. The practice adopted by the African Commission to deal with states defaulting their reporting obligation is that it publishes a list of defaulting countries during its sessions and on its activity reports submitted to the AU Assembly.¹¹⁸ Further, it writes reminders every three months to defaulting states of outstanding reports.¹¹⁹ In some instances, it conducts promotional missions to defaulting states to encourage compliance.

However, the African Commission acknowledges that its state reporting system ‘is still in its infancy’ stage.¹²⁰ This acknowledgement is odd considering that the African Commission has been in existence for about 36 years. Despite financial and resources constraints, it could have done better to improve its state reporting system.

States are gradually establishing NMRFs and using them to prepare reports to the African Commission as demonstrated in the next chapter. Additionally, the African Commission sessions are now streamed live on its YouTube channel, however they are not accessible on its website's digital archive.

2.7.5 Role of intergovernmental institutions, NGOs and other partners

The African Commission is empowered by article 45(1)(c) of the African Charter and Rules of Procedure to collaborate with intergovernmental Organisations, NHRIs, NGOs and other partners in carrying out its Mandate.¹²¹

Murray commends the African Commission for the level of engagement and openness it has with NGOs and CSOs.¹²² She notes that such collaborations have made the African Commission reach positive milestones. During the state reporting process NHRIs, NGOs and CSOs provide information on shadow reports which form the basis of discussion during constructive dialogues

¹¹⁷ <https://achpr.au.int/en/sessions/75th-ordinary> (accessed 7 September 2023).

¹¹⁸ Rules of Procedure (n 101) Rule 81.

¹¹⁹ As above.

¹²⁰ African Commission ‘State reporting procedures and guidelines’ <https://achpr.au.int/en/states/reporting-procedures> (accessed 7 October 2023).

¹²¹ Rules of Procedure (n 101) Part 1: Chapter XV.

¹²² Murray (n 93) 643.

and after concluding observations NHRIs, NGOs and CSOs disseminate them to the local population.¹²³

The Network of African National Human Rights Institutions (NANHRI) is a regional body of about 44 African NHRIs that provides technical support and facilitate coordination to NHRIs.¹²⁴ NANHRI builds capacity to NHRIs on effective engagement with governments on state report preparation and implementation of recommendations and decisions issued by treaty bodies.¹²⁵ It also assist NHRIs during applications for affiliate status in the African Commission.

NGOs such as the Centre for Human Rights - University of Pretoria (CHR-UP) provide technical assistance to African countries in building their capacity to implement the African Charter and Maputo Protocol as well as state report preparation processes.¹²⁶ To date, the CHR-UP has conducted training on state reporting under the African Charter and Maputo Protocol to thirty-eight African Countries.¹²⁷

During informational sessions at the African Commission, NGOs such as CHR-UP provide information to state parties on state reporting, and reporting guidelines to raise awareness on the process involved and standards required to be met when preparing state reports.¹²⁸

In addition to the role played by UNCTs and intergovernmental organisations highlighted in section 2.6.2 above, intergovernmental organisations make statements on the human rights situation in Africa during the sessions of the African Commission. Some of the UN specialised agencies such as UNDP, UNICEF, OHCHR provide technical assistance to state parties when preparing reports under the African Charter and the Maputo Protocol as demonstrated in chapter 3.

¹²³ Murray (n 93) 646.

¹²⁴ NANHRI *The role of NHRIs in monitoring the implementation of recommendations of the African Commission and judgments of African Court* (2016) 4.

¹²⁵ NANHRI (n 124) 10.

¹²⁶ <https://www.maputoprotocol.up.ac.za/training/state-reporting-training> (accessed 1 September 2023).

¹²⁷ CHR – UP ‘Country status’ <https://www.maputoprotocol.up.ac.za/countries/countries-table> (accessed 1 September 2023).

¹²⁸ <https://www.maputoprotocol.up.ac.za/training/info-sessions-at-the-african-commission> (accessed 1 September 2023).

2.8 Conclusion

This chapter demonstrates that state reporting activities are not at the desired level, as the UNTBs and the African Commission are still grappling with a number of challenges that constrain the effectiveness and efficiency of its human rights treaty body system. Poor compliance with treaty reporting obligations by states, the backlog of submitted reports for consideration by treaty bodies, and resource constraints are still a threat to the monitoring of the implementation of human rights treaties by treaty bodies. Despite these drawbacks, the UN is tirelessly working to find sustainable solutions to how these challenges can be mitigated and some fruits of this toil are being realised. Before the Covid 19 Pandemic brought everything to standstill, states were commendably reducing their overdue reports submitted to UNTBs from 574 in 2017 to 460 in 2021. Further, states are gradually establishing NMRFs to ensure that quality state reports are prepared and submitted and that follow-ups on the implementation of recommendations of treaty bodies are systematically done. There are also innovative solutions discussed in section 2.6.4 above that have been introduced by the UN, which the African Commission can draw lessons from to ensure that treaty bodies' activities and services reach the desired level of performance standards.

Chapter 3:

Comparative analysis of state reports submitted by African Countries

3.1 Introduction

This chapter examines and assesses state reports submitted to the African Commission, the UN Human Rights Committee (HRCtee), the CEDAW Committee, and the Committee on CESCR. The assessed state reports are from the Republic of Angola, the Republic of Togo, the Kingdom of Eswatini, and the Arab Republic of Egypt. During the assessment of the reports, an analysis was made on level of satisfaction of the criteria outlined in section 2.5 above. After examining the reports, notable trends from the reports are discussed for purposes of flagging out areas needing more attention to improve the efficiency of the African Commission on state reporting activities.

Information on ratification and reporting status on the UN human rights instruments has been sourced from the OHCHR UNTB Database.¹ Information on the ratification status of the African charter² and Maputo protocol³ has been sourced from the AU website and reporting status⁴ has been sourced from the African Commission website.

3.2 Angola

The Republic of Angola acceded to the ICCPR and ICESCR on 10 January 1992, and CEDAW on 17 September 1986. Regionally Angola is a state party to the African Charter and Maputo Protocol after ratification on 2 March 1990 and 30 August 2007 respectively. In 2009, it established an NMRF which was named the Inter-sectoral Committee for the Preparation of Human Rights Reports (CIERDH) through Resolution No. 121/09.

¹ OHCHR 'Status of ratification interactive dashboard' <https://indicators.ohchr.org> (accessed 6 October 2023).

² AU 'List of countries which have signed, ratified/acceded to the African Charter' (2017) https://au.int/sites/default/files/treaties/36390-sl-african_charter_on_human_and_peoples_rights_2.pdf (accessed 6 October 2023).

³ AU 'List of countries which have signed, ratified/acceded to the Maputo Protocol' (2019) <https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE%27S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf> (accessed 6 October 2023).

⁴ African Commission 'States reporting status' <https://achpr.au.int/en/states-reporting-status> (accessed 6 October 2023).

3.2.1 United Nations Reports

State reports submitted by Angola to the HRCtee, Committee on ESCR and CEDAW Committee are examined. Angola submitted all the reports past the set deadlines for submission, even after the NMRF was established. Generally, Angola cooperates with UNTBs because it submits information appraising committee members on the progress made to implement selected recommendations.

3.2.1.1 ICCPR

Angola did not submit its initial report under ICCPR, instead submitted its first periodic report (23 pages) on 23 February 2010 which was reviewed by the HRCtee in March 2013.⁵ The second periodic report (31 pages) was submitted on 3 October 2017 and was reviewed by the HRCtee on 7 and 8 March 2019.⁶

The first periodic report did not have information on which stakeholders contributed to the drafting process of the report, save to vaguely state in paragraph 5 that it collected up to date information and data for a period from 1992 to 2010. Further, no information was provided on the level of engagement of CSOs and NHRI during the process of preparation the first periodic report.

The second periodic report was prepared by the CIERNDH provides updates on the developments made after the initial report and measures taken to implement the recommendations issued in respect of the initial report.⁷ The CIERNDH collaborated with CSOs and NHRI to prepare the second periodic report and extensive stakeholder consultative process was undertaken to prepare this report.⁸

The first periodic report to a certain extent complies with the reporting guidelines while the second periodic report is of good quality as it complied with the reporting guidelines. The improvement of the quality of the second periodic report is attributed to the existence of CIERNDH whose members are gradually trained on state reporting.

To ensure that state reports meet the reporting standards the HRCtee sent list of issues for Angola to provide more information on areas that fall short of meeting the reporting standards. The

⁵ HRCtee 'COs on the ICCPR initial report of Angola' (2013) para 1.

⁶ HRCtee 'COs on the ICCPR second periodic report of Angola' (2019) para 1.

⁷ Angola 'Second periodic report of the ICCPR (2017) para 6.

⁸ Angola (n 7) paras 17 to 19.

HRCtee further requested Angola to provide an update within one year on the progress made on the implementation of selected recommendations.⁹ Angola duly submitted the requested information on 25 August 2014 and 29 March 2021 to show commitment to the human rights agenda and cooperation with the HRCtee.

3.2.1.2 ICESCR

Angola submitted a set of three reports to the Committee on ESCR. The first set is the combined initial, second and third periodic reports (90 pages) submitted on 16 April 2008. It was reviewed by the Committee on ESCR on 12 and 13 November 2008.¹⁰ The structure of this report does not follow the structure outlined in the reporting guidelines and has information ought to be on the CCD. There is no information on the engagement and consultation of CSOs and NHRI during its preparation. As a result there is no information on the programmes implemented by CSOs to advance the rights provided by the ICESCR.

The second set is the Combined fourth and fifth periodic reports (62 pages) submitted on 26 February 2014 and was reviewed by the Committee on ESCR on 14 and 15 June 2016.¹¹ It was prepared by the CIERDH in collaboration with CSOs and NHRI and has details of stakeholders that provided information.¹² The report provides information on the developments made after the consideration of the previous periodic reports as well as strides taken to implement the recommendations issued by the Committee on ESCR. It complies with the reporting guidelines.

To ensure that state reports meet the reporting standards the HRCtee sent list of issues for Angola to provide more information on areas that fall short of meeting the reporting standards. The Committee on ESCR further urged Angola to develop implementation plan for recommendations to improve the tracking of the progress made to implement the rights provided by the ICESCR.¹³

On 31 May 2023, Angola submitted its fifth periodic report to the Committee on ESCR for consideration. The fifth periodic report was submitted approximately one year and eleven months beyond the set deadline.

⁹ HRCtee COs (n 5) para 26; HRCtee COs (n 6) para 52.

¹⁰ Committee on ESCR 'COs on the combined initial, second, and third periodic reports of Angola' (2008) para

1.

¹¹ Committee on ESCR 'COs on the fourth and fifth periodic report of Angola' (2016) para 1

¹² Angola 'Combined fourth and fifth periodic reports of the ICESCR' (2014) para 3.

¹³ Committee on ESCR (n 10) para 61.

3.2.1.3 CEDAW

Angola submitted a set of three reports to the CEDAW Committee. The first set is combined initial, second and third periodic reports (42 pages) which was submitted on 2 May 2002 and the combined fourth and fifth periodic reports (58 pages) were submitted on 20 May 2004. These reports were reviewed on 16 July 2004.

The second batch is the sixth periodic report (45 pages) which was submitted on 18 January 2011 and considered by the CEDAW Committee on 20 February 2013.¹⁴

These reports neither provide information on stakeholders that contributed during their preparations nor provide information on CSOs and NHRI that were engaged. The reports partly comply with the reporting guidelines and there is information meant to be put on the CCD. The sixth periodic report does not provide information on the implementation of recommendations issued in respect of previous reports.

The third batch is the seventh periodic report (45 pages) submitted on 7 November 2017 and considered on 27 February 2019.¹⁵ It was prepared by the CIERDH and complies with the reporting guidelines for periodic reports, it makes reference to recommendations issued by the CEDAW Committee in relation to previous periodic reports. Stakeholder consultation was extensively undertaken during the preparation of the report.¹⁶

To ensure that reports submitted by Angola meet the reporting standards, it was encouraged by the CEDAW Committee to develop an information management system to track the implementation of the rights contained in CEDAW and recommendations issued. Further Angola was urged to explore the avenue of international cooperation for technical assistance from the UN specialised agencies to improve the implementation of recommendations issued by treaty bodies.

The sixth and seventh periodic reports concluding observations requested Angola to submit information on the progress made on implementing specific recommendations within two years.¹⁷ Angola duly provided an update on the progress made within the stipulated time frame.

¹⁴ CEDAW Committee 'COs on the sixth periodic report of Angola' (2013).

¹⁵ CEDAW Committee 'COs on the seventh periodic report of Angola' (2019).

¹⁶ Angola 'Seventh periodic report of the CEDAW' (2017) paras 1 to 4.

¹⁷ CEDAW Committee (n 14) para 48; CEDAW Committee (n 15) para 56.

3.2.2 African Charter and Maputo Protocol Reports

Angola submitted the initial report to the African Charter on 1 October 1998. However, this report and concluding observations/recommendations are not available on the African Commission website. The cumulative second to fifth periodic report (68 pages) covers a period between 1999 to 2010. It was submitted to the African Commission in August 2010 and considered on 30 July to 4 August 2012. This report did not include a part reporting on the implementation of the Maputo Protocol which its initial report was due in September 2009.

The combined second to fifth periodic reports do not provide information on the processes undertaken to develop the report, and whether CSOs, NGOs, NHRIs, and other stakeholders from outside the government participated in the process. Further, this periodic report neither provide information on the progress made on the implementation of recommendations issued by the African Commission in respect of the initial, first to third periodic reports nor it complies with the Guidelines of the African Charter and the Maputo Protocol.

To ensure that Angola submit quality reports, the African Commission encouraged it to prepare reports that are compliant with the reporting guidelines and to engage broad stakeholders such as human rights CSOs and NHRIs in the preparation of periodic reports.¹⁸ No recommendation was explicitly made for Angola to include report on the implementation of the Maputo Protocol.

Angola submitted its cumulative sixth and seventh periodic reports (71 pages) in January 2017 and considered by the African Commission on 24 October to 13 November 2018. This report has a part that provides updates on the progress made on the implementation of the Maputo Protocol (Part C). The Maputo Protocol report has been labelled as an initial report omitting to also assign the cumulative first, second and third periodic reports, being the timelines missed. It was prepared by the CIERNDH based on information collected from a monitoring and evaluation system of the recommendations issued by the African Commission and UN Treaty bodies as well as information drawn from different stakeholders within the government and outside government.¹⁹

¹⁸ African Commission 'COs on the Cumulative Periodic Reports (2nd, 3rd, 4th, and 5th) of the Republic of Angola' (2012) para 41.

¹⁹ Angola 'Sixth Periodic Report on African Charter' (2016) para 9.

The report provides updates on the measures taken to implement recommendations issued and those issued during the sessions of the African Commission under the item of the human rights situation in Angola. Despite positive signs of involving stakeholders outside the government institutions, there is a need for Angola to provide comprehensive information on the consultation processes and the list of NGOs, CSOs, NHRIs engaged. The COs for the cumulative sixth and seventh periodic reports sourced from the African Commission website have not been translated into English, internet-based tools had to be used for translation.

3.3 Eswatini

The Kingdom of Eswatini acceded to the ICCPR, ICESCR and CEDAW on 26 March 2004. It ratified the African Charter on 15 September 1995 and the Maputo Protocol on 5 October 2012. In 2019 with technical assistance from the OHCHR, Eswatini established an NMRF through legal notice 220 of 2020.

Most of Eswatini's state reports attributes its failure to timely fulfil its state reporting obligations to constrained resources which validates the assertion made by Heyns and Viljoen as well as Krommedijk that less developed countries are less likely to fulfil their state reporting obligations.²⁰ Eswatini mainly relies on international cooperation from UN specialised agencies, international NGOs and other partners to fulfil its reporting obligations. While Eswatini has established the NMRF, there are still overdue state reports. The time taken to review state reports under SRP is relatively shorter (about a month) compared to the time taken (about two years) on Standard Reporting Procedure.

3.3.1 United Nations Reports

State reports submitted by Eswatini to the HRCtee, Committee on ESCR and CEDAW Committee are examined. Despite establishing the NMRF, Eswatini has not submitted a report on the implementation of the ICESCR.

²⁰ J Krommedijk 'the (In)effectiveness of UN Human Rights Treaty Body Recommendations' (2015) 33/2 *Netherlands Quarterly of Human Rights*, at 198. See also CH Heyns and F Viljoen 'The Impact of the United National Human Rights Treaties on the Domestic Level' (2001) 23 *Human Rights Quarterly* at 483.

3.3.1.1 ICCPR

Eswatini's defaulted for over 10 years to submit its the initial report and periodic reports until 2017, when the HRCtee engaged Eswatini through the Simplified Reporting Procedure (SRP). On 31 March 2017, the HRCtee sent a List of Issues Prior Reporting (LOIPR) to which Eswatini sent its Replies to the List of Issues (17 pages) on 15 May 2017.

When responding to the question of what steps have been taken to establish an NMRF that will assist Eswatini in discharging its state reporting obligations,²¹ Eswatini pointed out that processes to establish such an institution were underway as the OHCHR and UNDP Eswatini were capacitating the government on the modalities of establishing it.²² During the constructive dialogue held on 7 July 2017, the government of Eswatini attributed the failure to carry out its state reporting obligations to the absence of a permanent inter-ministerial Committee (NMRF) to perform this task.²³

Eswatini further opened to the HRCtee that the method that was used in the past to prepare state reports was through ad hoc committees, which were established to develop specific reports.²⁴ Such ad hoc committees were disbanded at the conclusion of the task and this caused difficulties of deterioration of institutional memory and the loss of officials knowledgeable in state reporting processes.

The replies to the list of issues have no information on the participation of CSOs, NGOs and NHRI during the preparation of the report. The replies briefly respond to the questions posed without elaborating on the details and data of the programmes implemented. The timelines given for Eswatini to respond to the list of issues was about three months which is very limited to undergo the complex processes of preparing state reports. The word count of the replies is about 8,700 which is way below the set limit of 21,200 words.

²¹ HRCtee 'List of issues in the absence of the initial report of Swaziland' (2017) para 3.

²² Eswatini 'Replies to the list of issues' (2017) para 3.

²³ HRCtee 'Summary of record of the 3382nd meeting on Consideration of country situations in the absence of reports, pursuant to rule 70 of the Committee's rules of procedure: Swaziland' (2017) para 2.

²⁴ As above.

The HRCtee by initiating the SRP was making an effort to ensure that Eswatini comply with its reporting obligations and the latter was given guidance on the specific issues to address in the replies. The next periodic report was due on 28 July 2021, to date it has not been submitted.

3.3.1.2 CEDAW

Eswatini submitted its combined initial and second periodic report (84 pages) on 13 March 2012, about six years past the due date. This report was considered by the CEDAW Committee on 10 July 2014, about two years and four months after submission.²⁵ The report was compiled by an Adhoc committee consisting of government ministries and departments, CSOs, NGOs, Faith Based Organisations, Organisations of Persons with Disabilities amongst others. Prior to the report drafting the Adhoc committee was capacitated by UNCT on the components of CEDAW and reporting guidelines.

However, such capacity building efforts only benefited that specific activity of developing the initial and second periodic report, as later the Adhoc committee was disbanded. This is because Eswatini missed submitting the next periodic report in July 2018 and most of the members of the NMRF were not part of the Adhoc committee that drafted the initial report.

The initial and second periodic report to a certain extent complies with the reporting guidelines and has information meant to be only included in the CCD. Perhaps such information of CCD was included because by then Eswatini had not submitted its CCD.

To ensure that Eswatini submit quality report, the CEDAW Committee urged Eswatini to seek technical assistance through international cooperation to improve the implementation of CEDAW and recommendations. The process of sending list of issues by the CEDAW Committee also improves the quality and substance of the report.

3.3.2 African Charter and Maputo Protocol

Eswatini submitted the initial report (9 pages) to the African Charter on 1 May 2000 was reviewed during the 27th Ordinary session of the African Commission held from 27 April to 11 May 2000. The report does not comply with the guidelines for national periodic reports. The timing for

²⁵ CEDAW Committee 'COs on the combined initial and second periodic reports of Swaziland' (2014) para 1.

submission of the report suggests that it was prepared in haste while attending the African Commission session without conducting wide stakeholder consultation within and outside the government. This is because the initial report is very brief only highlights legislative measures that have been taken to give effect to the African Charter, there are no administrative and other measures discussed therein. The COs issued in respect of the initial report cannot be found from the African Commission.

After twenty years, Eswatini submitted its cumulative first to ninth periodic reports and an initial report on the Maputo Protocol (222 pages) to the African Commission. A constructive dialogue was held on 24 November 2021. The Maputo Protocol report has been labelled as an initial report omitting to also assign the cumulative first, second, third, and fourth periodic reports, for the missed timelines. The report was prepared by the NMRF in collaboration with CSOs, NGOs, Faith Based Organisations that conducted a series of stakeholder consultation processes.²⁶ The process of preparing this report was supported by the CHR-UP with technical expertise.²⁷ The training of the NMRF and CSOs and NHRI came right in time when the NMRF had just been established and it immensely improved the quality of the report prepared as it was compliant with the guidelines for national periodic reports and Maputo Protocol.

To ensure that Eswatini complied with its reporting obligation, the African Commission conducted promotional visit in 2015 and 2016 to Eswatini encouraging it to improve the implementation of the African Charter and Maputo Protocol and submit overdue state reports. The African Commission further gave recommendations on specific thematic areas that needed attention.

However, due to the fact that the concluding observations/recommendations for the initial report are not available from the African Commission, the cumulative first to ninth periodic reports did not provide information on progress on the implementation of the recommendations. It provided updates on the recommendations that were made by the African Commission members who undertook a joint promotion mission to Eswatini in 2015 and 2016.

²⁶ Eswatini 'Combined first to ninth periodic report on the African Charter and the initial report on the Maputo Protocol' (2020), paras 7 to 12.

²⁷ As above.

Further, Eswatini was encouraged to engage and interact with the African Commission on the progress made to implement its recommendations.²⁸ This is meant to follow up on the implementation of the recommendations and a measure giving a platform to Eswatini to seek technical assistance from the African Commission on improved implementation of the African Charter and Maputo Protocol.

Eswatini is to submit its tenth periodic report under the African Charter and the next periodic report under the Maputo Protocol in March 2024.

3.4 Togo

The Togolese Republic acceded to the ICCPR and ICESCR on 24 May 1984 and CEDAW on 26 September 1983. It is also a party to the African Charter after ratifying same on 5 November 1983 and the Maputo Protocol since 12 October 2005. The Inter-Ministerial Committee on initial and periodic report writing was established in the late 90s with the technical assistance from OHCHR and UNCT. Over the years it has undergone a process of transformation to keep up with the capacities and features of NMRF. Togo has also not been complying with deadlines for submitting state reports due to a series of social and political instabilities experienced domestically, as well as administrative and resource constraints.²⁹

3.4.1 United Nations Reports

State reports submitted by Togo to the HRCtee, Committee on ESCR and CEDAW Committee are examined.

3.4.1.1 ICCPR

Togo submitted a total of five series of reports to the HRCtee. The initial report was submitted on 22 September 1988 and reviewed on 21 and 23 March 1989. The Second periodic report (13 pages) was submitted on 29 December 1993, and was reviewed by the HRCtee on 7 and 8 July 1994.³⁰ The third periodic report (56 pages) was submitted on 19 April 2001 and was considered on 21

²⁸ African Commission 'COs on Eswatini's Combined first to ninth periodic report on the African Charter and initial report on the Maputo Protocol' (2022) para 57.

²⁹ Togo 'ICCPR third periodic report' (2001) para 3; Togo 'ICESCR initial report' (2010) para 2.

³⁰ HRCtee 'COs on the second periodic report of Togo' (1994).

and 22 October 2002. On 10 July 2009, Togo submitted its fourth periodic report and was considered by the HRCtee in April 2011.³¹

The initial to third periodic reports do not conform to the reporting guidelines, as it does not provide details on the processes undergone for their preparation and did not engage CSOs and NHRI during preparation. These reports do not provide updates on the measures taken to implement the recommendations issued in respect of previous reports. The third periodic report was the first report to be prepared by the Inter-Ministerial Committee on initial and periodic report.

The fourth periodic (49 pages) report has information on the stakeholders, including CSOs and NHRI, that contributed to its preparation and comply with the requirements set in the reporting guidelines. It provides updates on the progress made on the implementation of recommendations issued in respect of previous reports.

The fifth periodic report (33 pages) was prepared through the SRP, wherein Togo submitted the Reply to the list of issues to the HRCtee on 23 August 2018, about nine months past the deadline. The fifth periodic report was considered on 29 June to 1 July 2021 virtually.³² Generally, dates for constructive dialogues of reports prepared under SRP are normally predetermined by UNTB schedule. If the stipulated timelines for submitting reply to list of issues are missed, it becomes difficult to reschedule the calendar as there are other activities already lined up. No information was provided on the processes of preparing the fifth periodic report and NHRI, CSOs and NGOs were not engaged during its preparation.

To ensure that Togo fulfil its reporting obligation, the HRCtee constantly reminds Togo to submit overdue reports and further encourages it to accept technical assistance from UN specialised bodies to improve the implementation of the ICCPR and the drafting process of periodic reports. The HRCtee exercised its follow up mandate on the last three series of periodic reports by requesting Togo to provide an update within two years on the progress made on the implementation of selected recommendations. To show its willingness to cooperate and engage with the HRCtee, Togo responded within the set timeframes on the implementation of selected recommendations.

³¹ HRCtee 'COs on the fourth periodic report of Togo' (2011) para 1.

³² HRCtee 'COs on the fifth periodic report of Togo' (2021) para 1.

3.4.1.2 ICESCR

Realising that Togo has serially been breaching its reporting obligation for a period of about 15 years, the Committee on ESCR reviewed the progress made on the implementation of the ICESCR in the absence of state report during its 7th Session held from 4 to 9 May 2001.³³ In reviewing the progress made the Committee on ESCR relied on information provided by intergovernmental organisations and NGOs.³⁴ This was one of the measures the Committee on ESCR used to remind Togo of its reporting obligation, however it was not effective as the latter submitted its initial report about nine years later.

The initial report was considered on 6 and 7 May 2013, about three years and four months after submission and the Committee on ESCR.³⁵ During the preparation of the initial report CSOs and NHRI were consulted and stakeholders that provided information constituting the report were acknowledged. However, the report is bulky (120 pages) as it contains information meant to for CCD, to a certain extent it does not comply with reporting guidelines as it does not address recommendations made by the Committee on ESCR in the absence of Togo's initial report.

In ensuring that Togo submit quality report, the Committee on ESCR encouraged it to seek technical assistance from the UN specialised bodies and to develop an information management system in line with the conceptual and methodological framework on human rights indicators to improve the tracking of the progress made to implement recommendations. The second periodic report was due on 31 May 2018, however, to-date Togo has not yet submitted same. The reasons related to administrative and resources constrained referred to in the ICCPR third periodic report and ICESCR initial report must be persisting.

3.4.1.3. CEDAW

A total of two sets of report was submitted to the CEDAW Committee. The combined initial, first to fifth periodic reports (135 pages) is the first batch which was submitted about two decades after ratification (on 11 March 2004) and was considered in January 2006.³⁶ The second set is the

³³ Committee on ESCR 'COs: Togo' (2001) para 2.

³⁴ Committee on ESCR 'COs: Togo' (2001) paras 6.

³⁵ Committee on ESCR 'COs on the initial report of Togo' (2013) para 1.

³⁶ CEDAW Committee 'COs on Togo's initial, second, third, fourth, and fifth periodic reports' (2006) para 1.

combined sixth and seventh periodic reports (77 pages) that were submitted on 24 September 2010 and considered by the CEDAW Committee on 4 October 2012.

These reports were prepared by the Inter-ministerial Commission in collaboration with NGOs, CSOs, NHRIs, and associations concerned with the advancement of human rights. UN specialised agencies such as UNDP and United Nations Children's Fund (UNICEF) supported the process of their preparation to ensure for quality reporting. However, the reports have background information that is meant to be put in CCD as opposed to treaty specific document. Further, the combined sixth and seventh report does not provide updates on the progress made to implement recommendations issued in respect of the previous periodic reports.

To improve the collection of statistical data and tracking of progress made on the implementation of CEDAW, Togo was urged by the CEDAW Committee to develop an information management system and recommendations implementation plan.

The next periodic report was due in October 2016 and Togo has not submitted it.

3.4.2 African Charter and Maputo Protocol

The initial report (28 pages) on the African Charter was submitted in 1992 and was considered by the African Commission during its 13th Ordinary Session held from 29 March to 7 April 1993. The initial report retrieved from the African Commission website is in a scanned PDF file format which cannot be translated through the online translation tools and its concluding observations are also not available on the African Commission website.

The second periodic report covered the period between 1991 to 2001 as well as COs are not available on the African Commission's website. The unavailability of such document on the website demonstrates the ineffectiveness of the African Commission in providing information to the public and such violates the right to access information as well as Rule 79(2) of the African Commission Rules of Procedure (2020). It further substantiates the point stressed by the African Commission on Resolution 294 of 2015 reprimanding the Secretariat for not adequately performing its functions.

The Cumulative third to fifth periodic reports (91 pages) covering the periods between 2003 to 2010 was submitted to the African Commission on December 2010 and reviewed in April 2012.³⁷ The report to a certain extent contains information on the interventions implemented by CSOs/NGOs and was prepared by the Inter-Ministerial Commission consisting of government departments that collaborated with about four NGOs.³⁸ The level of engagement of CSOs was relatively low and there was no participation of Togo's NHRI. The report do not provide updates on the progress made in implementing previous recommendations issued by the African Commission.

The OHCHR supported the process of preparation of the Cumulative third to fifth periodic reports. The report does not have a part providing information on measures taken to implement the Maputo Protocol. Perhaps at the time of training the inter-ministerial Commission the OHCHR did not have technical skills on unpacking the reporting guidelines of the Maputo Protocol since they were relatively new. On COs, the African commission did not make any recommendation that Togo must also submit outstanding cumulative reports on the Maputo Protocol.

The sixth, seventh and eighth cumulative periodic report (201 pages) covering the period of 2011 to 2016 was submitted in August 2017 and reviewed in October 2018.³⁹ This report has a part that provides information on the measures taken to implement the Maputo Protocol and makes reference to recommendations issued in respect of the previous periodic report. It was prepared by the Inter-Ministerial Committee in collaboration with CSOs.⁴⁰ There was improvement on the level of engagement with stakeholders as over twenty government departments, NHRI and nine CSOs participated in the report preparation process the UNICEF provided support on the activities.⁴¹

The African Commission write letters reminding Togo to submit outstanding reports which should be consolidated into a single document. Further, through the African Commission sessions state parties are encouraged to collaborate with NGOs for technical assistance on state reporting

³⁷ African Commission 'COs on the African Charter Combined 3rd, 4th and 5th Periodic Report of the Republic of Togo' (2012).

³⁸ Togo 'Third, fourth, and fifth Combined periodic reports on the African Charter' (2010) 85.

³⁹ African Commission 'COs on the Combined Periodic Report of Togo on the African Charter and the Initial Report on the Maputo Protocol' (2021).

⁴⁰ Togo 'Sixth, seventh, and eighth Combined periodic reports on the implementation of the African Charter' (2017) paras 3 & 678.

⁴¹ Togo (n 40) pages 198 to 201.

activities. That is how the collaboration between Togo and CHR-UP was started, where the latter trained the former on state reporting under the African Charter and Maputo Protocol.

After reviewing Togo's sixth, seventh, and eighth cumulative periodic reports, the African Commission commended the country for adopting an inclusive and participatory approach in preparing the reports. The African Commission also praised Togo for including detailed statistics and highlighting the challenges encountered during the implementation of the instruments.⁴² The COs for sixth to eighth periodic reports did not provide a submission date for the next periodic report for Togo. When applying the two-year prescribed period, the due date is March 2023 which makes the next periodic report to be overdue.

3.5 Egypt

The Arab Republic of Egypt ratified the ICCPR and ICESCR on 14 January 1982 and the CEDAW on 18 September 1981. Egypt became a party to the African Charter on 20 March 1984 and has not acceded to the Maputo Protocol. Activities for drafting Egypt's Reports and follow up on the recommendations on human rights is carried out by a standing Drafting Committee under the Directorate for Human Rights Affairs established in terms of Republican decree no 233 of 2003.⁴³ The Drafting Committee serves as an NMRF.

3.5.1 United Nations Reports

State reports submitted by Egypt to the HRCtee, Committee on ESCR and CEDAW Committee are examined.

3.5.1.1 ICCPR

Egypt submitted a total of four sets of reports to the HRCtee. The initial report was submitted on 8 March 1984 and considered the initial report on 2 and 5 April 1984. The second periodic report (115 pages) was submitted on 23 March 1992, and was considered on 19 and 20 July 1993.⁴⁴ However, the initial report cannot be found on the state reporting status website and the second periodic report is in French text.

⁴² African Commission (n 39) para 9.

⁴³ Egypt 'Seventh & eighth periodic report of Egypt on African Charter (2004) 31.

⁴⁴ HRCtee 'COs on the second periodic report of Egypt' (1993) paras 1 & 2.

The third and fourth periodic report (136 pages) was submitted on 13 November 2001 and considered on 17 and 18 October 2002.⁴⁵ The fifth periodic report (44 pages) was submitted on 12 November 2019, and was considered on 28 February and 1 March 2023.⁴⁶ The average time taken to consider the submitted Egypt's ICCPR reports by the HRCtee is one and a half years.

Most of the reports do not have details of stakeholders that contributed to their preparation and have no information on CSOs and NHRI that were engaged during their preparation process. To a certain extent they do not comply with the reporting guidelines in that periodic reports do not provide updates on the implementation of recommendations and they include information that is not relevant to treaty specific documents. It is only during the constructive dialogue on the third and fourth periodic report where Egypt after being probed on the engagement of CSOs and NHRI during its preparation stated that they were consulted.⁴⁷

Such poor quality of the reports may be attributable to the lack of technical skills to prepare state reports as the first three set of reports was prepared before the establishment of the Drafting Committee. The fifth periodic report is not bulky, complies with the reporting guidelines and provides updates on the implementation of recommendations issued in respect of previous reports. Possibly members of the drafting committee were adequately trained on the reporting guidelines. Worth noting is that close to thirty shadow reports were submitted by CSOs in response to the fifth periodic report.

The HRCtee in most of its COs encouraged Egypt to actively collaborate with CSOs on the implementation of the ICCPR and following up on the implementation of its recommendations. Egypt has been neglecting to collaborate with CSO when preparing most of its reports, hence the reason a large number of CSOs submitted shadow reports on the last periodic report. In March 2023 the HRCtee reiterated that Egypt should improve its collaboration with CSOs, it remains to be seen whether the latter will heed to the call.

⁴⁵ HRCtee 'COs on the third and fourth periodic report of Egypt' (2002).

⁴⁶ HRCtee 'COs on the fifth periodic report of Egypt' (2023).

⁴⁷ HRCtee 'summary of record of the 2048th meeting' (2002) para 7.

Furthermore, the HRCtee exercised its follow up mandate on selected recommendations of the last two sets of periodic reports to which Egypt submitted three reports to show commitment to cooperate with the HRCtee.

3.5.1.2 ICESCR

Egypt submitted two sets of reports to the Committee on ESCR. The first set is the initial report (77 pages) that was submitted on 20 November 1997 and considered on 2 and 3 May 2000. The second set is the combined second, third and fourth periodic reports (120 pages) that was submitted on 11 May 2010 and considered on 14 November 2013. The average time taken by the Committee on ESCR to consider reports submitted by Egypt is about two and a half years.

The reports acknowledge the contribution made by CSOs on the implementation of the ICESCR. The initial report do not provide information regarding the engagement and consultation of CSOs in the process of its preparation. During the preparation of the second set of periodic reports CSOs and public sector institutions were extensively consulted. The reports have information meant to be put on CCD which makes them not compliant with the reporting guidelines. The periodic reports provide updates on the progress made on the implementation of recommendations issued in respect of the initial report.

To improve the quality of reports submitted by Egypt, the Committee on ESCR encouraged Egypt to seek technical assistance through international cooperation in developing information management system that tracks progress on implementing the ICESCR and recommendations.⁴⁸ This in turn helps in designing strategies that promote economic, social, and cultural rights. Further, Egypt was urged to collaborate with CSOs on the implementation of ICESCR.⁴⁹

The next periodic report was due by 30 November 2018, however, no report has been deposited as of 6 September 2023.

3.5.1.3 CEDAW

A total of five sets of reports were submitted to the CEDAW Committee. The reports are

⁴⁸ Committee on ESCR 'COs on the initial report of Egypt (2000) para 31.

⁴⁹ Committee on ESCR 'COs on the combined second, third and fourth periodic reports (2013) paras 27 & 28.

- i. The initial report submitted on 2 February 1983 and considered on March 1984.⁵⁰
- ii. The Second periodic report submitted on 19 December 1986 and considered on 31 January 1990.⁵¹
- iii. The combined third, fourth and fifth periodic report (93 pages) submitted on 30 January 1996, and considered on 19 January 2001.⁵²
- iv. The sixth and seventh periodic report (79 pages) was submitted on 27 February 2008 and considered on 28 January 2010.
- v. The combined eighth to tenth periodic reports (55 pages) was submitted on 3 February 2020 and considered on 26 October 2021.⁵³

The initial report is not available on the OHCHR UNTB database, only its summary can be gleaned from the summary of records and reports of the CEDAW Committee. The average period taken by the CEDAW Committee to consider these reports is about two and a half years.

The first three reports do not provide information on the methodology used during its preparation and participation of CSOs. They provide information on the role played by CSOs in the implementation of the CEDAW. The sixth to tenth periodic reports provide information on the processes underwent for their preparation and CSOs as well as NHRI were engaged. The third to tenth periodic reports to a certain extent provide updates on the measures taken to implement recommendations issued in respect of previous reports. The substance and quality of the last two sets of report greatly improved because the Drafting Committee had been established and had been receiving technical assistance to capacitate its members from the UNCT.

To improve the quality of reports submitted, the CEDAW Committee encouraged Egypt to seek technical assistance from UN specialised agencies and to improve its information management system to accurately capture statistical data to assess the situation of women.

Worth noting is that Egypt in most its state reports to the various treaty bodies includes information on treaty-specific documents that should be on the CCD. This makes the reports to be bulky as

⁵⁰ Report of the CEDAW Committee presented before the UN General Assembly, volume 2 (1984) para 181.

⁵¹ Report of the CEDAW Committee presented before the UN General Assembly (1990) para 386.

⁵² Report of the CEDAW Committee presented before the UN General Assembly (2001) para 312.

⁵³ CEDAW Committee 'COs on the combined eighth to tenth periodic reports of Egypt (2021).

there is often repetitive information which makes them not compliant to the reporting guidelines. The CEDAW Committee noted this anomaly and directed Egypt to comply with the harmonised guidelines for state reporting, that is to prepare the CCD separately from treaty-specific documents.⁵⁴

3.5.2 African Charter and Maputo Protocol

The initial report (54 pages) on the African Charter was submitted on 28 February 1991 and considered during the 11th Ordinary Session of the African Commission held on 2–9 March 1992, about one year after submission. The report does not comply with the guidelines for national reports and does not provide information on the processes undertaken when preparing it. COs issued in respect of it cannot be found on the website of the African Commission.

The second periodic report covers the period between 1994 to 2000, it was submitted on 7 May 2001 and was never considered by the African Commission as it was withdrawn by Egypt.⁵⁵ It was replaced by the Seventh & eighth periodic report (194) covering a period from 2001 to 2004, submitted on 30 December 2004 and considered in May 2005.⁵⁶ This report was prepared by the Drafting Committee and UNDP provided technical support for improved output.⁵⁷ The report does not fully comply with the guidelines for national reporting and does not provide updates on the implementation of the concluding observations issued in respect of the initial report. It only provides information on the progress made on the implementation of recommendations for other treaty bodies.

There is no information on the engagement of CSOs during the preparation of the report. Strangely, the African Commission commended Egypt for presenting a report compliant with the guidelines for the preparation of periodic reports.⁵⁸ There is no recommendation urging Egypt to ratify the Maputo Protocol.

The Combined ninth to seventeenth Periodic Reports (100 pages), covering the period between 2001 to 2017 was submitted in 2017. The period covered by this report overlaps with the period

⁵⁴ CEDAW Committee 'COs on the sixth and seventh periodic reports of Egypt (2010) para 62.

⁵⁵ Egypt 'Seventh & eighth periodic report of Egypt on African Charter' (2004) 8.

⁵⁶ African Commission 'COs on the African Charter Seventh and Eighth Periodic Report of Egypt (2005) para 2.

⁵⁷ Egypt (n 55) 31.

⁵⁸ African Commission (n 56) para 7.

covered by the seventh and eighth periodic report. One may be inclined to conclude that the combined ninth to seventeenth Periodic Reports replaces the previous one.

This report was prepared by the Drafting Committee and CSOs, NGOs, NHRI, and other stakeholders were engaged and consulted.⁵⁹ The report does not make specific reference to the recommendations issued by the African Commission in respect of the previous periodic reports. The Concluding Observations and Recommendations on the African Charter Seventh and Eighth Periodic Report of Egypt starts in paragraph 24, while Egypt makes reference to the second and eighth recommendations,⁶⁰ twelfth recommendation,⁶¹ first recommendation,⁶² and eleventh recommendation which is confusing.⁶³

This report was considered at the 64th Ordinary Session of the African Commission held from 24 April to 14 May 2019 and concluding observations were adopted during the 31st Extraordinary Session held from 13 to 25 February 2021, about four years after submission.⁶⁴ The late adoption of the COs is because of the disruptions brought by the Covid 29 pandemic. The African Commission seems to be too friendly to Egypt as it does not call upon the latter to comply with the reporting guidelines such as addressing recommendations issued in respect of previous reports. On a positive note, the African Commission encouraged Egypt to accede to the Maputo Protocol.⁶⁵

3.6 Notable trends from the examined reports

The average period taken to consider state reports by UN treaty bodies is about two years, while the African Commission takes about a year. This is because, at the African regional level, there are few state parties compared to UN treaties on human rights, the African Commission monitors the African Charter and Maputo Protocol with many states breaching their reporting obligations under the African human rights instruments. The UN treaty bodies monitor instruments that have over 180 state parties and more than 60 per cent of members submitting their state reports. None of the

⁵⁹ Egypt 'Combined ninth to seventeenth Periodic Reports on the African Charter' (2017) page 30.

⁶⁰ Egypt (n 59) 20.

⁶¹ Egypt (n 59) 44.

⁶² Egypt (n 59) 64.

⁶³ Egypt (n 59) 98.

⁶⁴ African Commission 'COs on the Cumulative Periodic Report of Egypt on the Implementation of the African Charter' (2021) para 2.

⁶⁵ African Commission (n 64) para 47.

examined states in this chapter submitted their treaty reports on the stipulated timeline and most states submitted several years past the due date.

The level of compliance with reporting guidelines was poor in the 90s compared to the period towards 2010 and beyond. The engagement and participation of CSOs, NGOs, NHRIs during the report preparation processes increased during the period towards 2010 and beyond, prior to that they were seldomly engaged or consulted. This may be attributed to the capacity of building initiatives undertaken by the OHCHR, UN specialised agencies and NGOs on state reporting activities. For example, the quality of state reports submitted by Angola, Togo, Eswatini improved after the CHR-UP provided technical assistance on treaty reporting on the African Charter and Maputo Protocol.

Reporting on the implementation of the Maputo Protocol was omitted by states before 2010, post that period states started reporting. This may be due to capacity-building initiatives administered by NGOs such as the CHR-UP to state parties on the Maputo Protocol Reporting Guidelines. To date, the CHR-UP has conducted training on state reporting under the African Charter and Maputo Protocol to thirty-eight African Countries.⁶⁶ Another reason for the change of this pattern may be that the African Commission issues recommendations urging state parties to submit such reports.

State Reports submitted to the UN treaty bodies have word limits set by resolution 68/268. On the other hand, those submitted to the African Commission do not have word or page limits and in most cases, they are bulky with repetitive or redundant information. This is further propagated by the fact that guidelines for national reports developed by the African Commission do not make provision for state parties to submit a separate CCD. If such a document can be required from states, the challenge of submitting bulky reports with repetitive information may be alleviated.

In respect of state reports submitted to UNTBs, states fail to fully comply with reporting guidelines despite the efforts of the OHCHR and UNCTs to administer capacity building initiatives. A case in point is that state reports examined above the state parties mix up information meant to be included in CCD on treaty specific documents.

⁶⁶ CHR – UP ‘Country status’ <https://www.maputoprotocol.up.ac.za/countries/countries-table> (accessed 1 September 2023).

The sequence for labelling of cumulative periodic state reports, especially under the African Commission, is mixed up which causes confusion as to which series the report submitted covers. Some states properly account for missed reports while other states after defaulting on several reports label the missed periodic report under one periodic report.

Post-2010 period most countries have established NMRFs to undertake state reporting obligations, however, resource constraints still hinder their effectiveness and efficiency. Further, establishing NMRFs does not necessarily mean that states are going to submit outstanding state reports on time. Of the countries examined, all of them have established NMRFs but they are still defaulting to fulfil their reporting obligations and they still rely on international cooperation for support.

In the countries examined, the African Commission has not exercised its follow-up mandate in terms of Rule 83 when issuing concluding observations, it waits for updates on the next periodic report. This may be due to the fact that the reporting interval of two years with respect to the African Charter and the Maputo Protocol is short enough to receive updates on developments made.

3.7 Conclusion

Based on the patterns observed from the state reports of four African countries representing four main linguistic diversity in Africa, one can say that more still needs to be done to improve the efficiency and effectiveness of the African Commission. State parties to the African Charter, Maputo Protocol and UN core human rights treaties also need to renew their commitment to honour their reporting obligations as well as to improve the methodologies used in the preparation of state reports. This can be achieved by establishing and resourcing NMRFs, consulting the reporting guidelines before preparing state reports, and actively engaging CSOs, NHRIs and other stakeholders. The role played by the UN specialised agencies and NGOs in providing technical assistance for the preparation of quality state reports cannot go unnoticed, hence states need to leverage on international cooperation for improved state reporting.

Chapter 4:

Findings, recommendations, and conclusions

4.1 Introduction

After comparatively analysing state reporting processes in the UNTBs and the African Commission as well as assessing state reports submitted to these bodies, it becomes apparent that the systems are not functioning satisfactorily. State reporting under the African Commission needs more attention for improvements to function optimally. This chapter begins by highlighting the findings of this study. Thereafter, lessons derived from analysing the state reporting process of the UNTBs inform the recommendations made to improve the efficiency and effectiveness of the African Commission on state reporting.

4.2 Findings

The findings emanating from this study are:-

- a) The reporting interval of two years for submitting state reports prescribed by the African Charter is unrealistic. The process of preparing a state report is very complex and takes a long time considering that there must be extensive stakeholder consultative activities for ownership of the contents of the reports by everyone. Preparing a state report might take a period that is more than two years.
- b) The African Charter state reports do not have a page or word limit as a result state parties submit bulky reports with information that is repetitive or redundant. This further consumes time when reviewed by the African Commission. The page limit set by the Maputo Protocol Guidelines is commended, however, page limits are not sufficient to curb the challenge of poor quality to the contents for state reports.
- c) The reporting guidelines for the African Charter and Maputo Protocol Reports do not have provisions for the CCD. Yet CCDs have great potential of reducing the incidence of providing repetitive information which is often done by states.
- d) Whilst the efforts of the African Commission to proactively revise its rules of procedure are noted, no comprehensive studies have been undertaken to trace the root cause of poor compliance with treaty reporting obligations by state parties and to find ways of improving the efficiency and effectiveness of state reporting under the African human rights main

instruments. On the other hand, the UN has done a number of studies aimed at strengthening state reporting to UNTBs. This has resulted on the innovative development of several interventions to improve the operations of UNTBs, one of which led to the gradual establishment of NMRFs to carry out state reporting obligations for regional and UN human rights instruments by African countries.

- e) Publication of state reports, concluding observations, and other related documents on the African Commission website still remains a challenge. Such documents are not consistently available on the African Commission website, yet the African Commission rules instruct the secretariat of the African Commission to make such documents available. The publication of such information is crucial for assessing the extent of effectiveness of state reporting activities. Same applies for translation of state reports and concluding observations to official languages of the AU. The African Commission Rules of Procedure (2020) do not address the issue of translation of state reports and related documents into official languages of the AU, they simply instruct the Secretariat of the African Commission to publish these documents on the African Commission website.
- f) The Bureau of the African Commission is not serving on a full-time basis, yet the mandate of the African Commission is very demanding. This effectively leaves the Secretariat to run the day-to-day business of the African Commission yet some of the activities require decisions to be taken by the Bureau. Ultimately, the African Commission's efficiency and effectiveness is hampered.
- g) The Chairperson of the AU Commission does not consistently consult with the Bureau of the African Commission during the recruitment process of the members of the secretariat. The non-involvement of the Bureau when appointing members of the secretariat may breed unhealthy working relations between the members of the African Commission and the Secretariat which negatively impacts on the effectiveness of the African Commission.
- h) The African Commission does not directly train state parties of the main African human rights instruments on their implementation and state reporting, it mainly relies on the generosity of NGOs to get this done.

- i) The Secretariat of the African Commission is always short-staffed, this adversely affects the African Commission to deliver its mandate. In some instances, NGOs second or hire essential staff to supplement the Secretariat, which is not sustainable as the seconded staff always serve for a short-term period.

4.3 Recommendations

4.3.1 Short term: -

- a) African states should be encouraged to establish NMRFs to undertake state reporting activities. Those that have established NMRFs, its members must be periodically capacitated by the African Commission and accredited partners on state reporting under African human rights instruments.
- b) The African Commission should develop an online learning platform for state parties, NGOs and stakeholders to build capacity on reporting under the African Human Rights instruments. At the end of lessons, assessments must be undertaken, and certificates be issued to ensure that quality standards are met.
- c) African Commission should collaborate with accredited NGOs, academic institutions, Regional Economic Communities (RECs), UN specialised agencies amongst others to extend capacity building activities to state parties and stakeholders on treaty reporting activities.
- d) Guidance notes, manuals and other documents simplifying state reporting processes must be developed by the African Commission to ensure that comprehensive information on state report preparation steps is available to assist state parties. Such documents must be made available on the African's Commissions website in all working languages of the AU.
- e) State reports, concluding observations, summary of proceedings, shadow reports and related documents must be made available on the African Commission's website in all working languages of the AU.
- f) Reporting guidelines for the African Charter, Maputo Protocol and other African human rights instruments should be revised, simplified and harmonised to set word limits and introduce the submission of CCDs.

- g) To address the shortage of essential staff for the secretariat, the African Commission must explore options of securing more staff members through secondments from state parties, RECs, NGOs. The expenses which should be paid by the institutions seconding the staff.
- h) To increase visibility, the African Commission should develop partnerships to decentralise its offices/services to the subregions of Africa through RECs, OHCHR regional offices and accredited NGO's.
- i) The manner of appointment of the Executive Secretary of the African Commission and members of the Secretariat should be transparent, the Bureau must be consulted by the Chairperson of the AU Commission during the recruitment processes.

4.3.2 Long term

- a) The African Charter and Maputo protocol should be amended: -
 - i. to increase the time interval for submission of periodic reports to four or five years;
 - ii. to make it compulsory that state reports and related documents are translated into AU working languages and made available online; and
 - iii. to allow the Bureau to work for the African Commission on a full-time basis.

4.4 Conclusion

The preceding chapters have demonstrated what makes the African Commission not to be efficient and effective in ensuring that member states comply with their reporting obligations. The major factors are insufficient staff in the African Commission to actively engage and capacitate state parties on state reporting, impossible reporting timelines, clumsy and complex reporting guidelines and lack of capacity from state parties to carry out state reporting activities. The findings and recommendations discussed above will go a long way in addressing the identified bottlenecks inhibiting the effectiveness of the African Commission to efficiently exercise its promotional mandate. The ball is now in the court for the African Commission and state parties to make use of these recommendations to seamlessly score the goal of improving the implementation of the African Charter and the Maputo Protocol, which ultimately improves the livelihood of everyone in Africa.

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