

Lilian Chenwi, 2010. *South Africa: State of state reporting under international human rights law*

This research paper was presented at the seminar on 'Promoting constitutional rights through international human rights law: The state of South Africa's state reporting' held in Cape Town on 22 September 2010. It outlines South Africa's reporting obligations and provides an update of its reporting status under core international human rights treaties at the UN and African regional levels. The paper examines South Africa's obligations, emphasising those that it has ratified as well as relevant optional protocols. It also considers South Africa's reporting obligations and status under other mechanisms, such as the Universal Periodic Review (UPR) and African Peer Review Mechanism (APRM).

The paper also sets out the objectives of state reporting in relation to treaties, and the general guidelines on reporting. Treaty-specific guidelines are further considered for each treaty. The objectives of the UPR and APRM are also stated. The paper further considers the role of other actors in the reporting process, such as National Human Rights Institutions (NHRI), Civil Society Organisations (CSOs) and Parliament.

It shows the gloomy picture of the status of South Africa's reporting under core UN and African human rights treaties. Reporting under other mechanisms, such as the UPR and APRM, is also a matter of concern. It seems that reporting is approached not as a self-critical assessment of South Africa's efforts to realise the rights in the treaties it has ratified, but rather as a mere formality. The government's general non-compliance with its reporting obligation in terms of the UN and the AU is glaring. Further, a number of reports fail to meet the reporting guidelines and do not include information on the implementation of recommendations made on previous reports.

Accordingly, the paper makes recommendations for improving compliance with South Africa's reporting obligations, including the following:

- The effective participation of other stakeholders in the reporting process is important to ensuring compliance with the reporting obligation, as the preparation of the State report requires input from a variety of sources.

- Civil society involvement in the reporting process is weak. Although the government has commissioned specific CSOs or consultants to prepare reports, this does not qualify as CSO engagement in the reporting process.
- There is also need to improve institutional capacity and coordination between government departments in the preparation of reports.
- The limited role that Parliament has played in the reporting process is also of concern. While Parliament has been more visible in relation to the APRM, the same cannot be said for reporting under the UPR or human rights treaties.
- Parliament must be more involved in the State reporting process. Its oversight function provides it with an opportunity to interrogate government on complying with its reporting obligation and to question the veracity of the information in State reports. Further, Parliament is free to provide inputs on draft reports.
- South Africa does not also seem to take its reporting obligation in relation to the UPR and APRM as seriously as it should. It failed to submit its report under the UPR in advance and the APRM process was rushed, which impacted negatively on the consultation process with other stakeholders.
- State report-writing has placed a burden on the South African government. Though the reporting process requires resources, data and technical expertise and can be time consuming, investment in resources to produce a quality report that is part of a continuing process of realising rights can assist in governments' accountability to its citizens and its international accountability on human rights issues. It should be noted that States can seek technical assistance from a range of UN agencies.
- Preparing concrete and comprehensive reports requires political will and positive action.
- Government must prepare a methodology to deal with the reporting backlog.
- Findings and recommendations arising from concluding observations or UPR and APRM reports must be mainstreamed into policy discussions and documents, to ensure their effective implementation.
- CSOs and NHRIs need to be proactive in participating in the reporting process and the submission of shadow reports on South Africa's compliance with its human rights obligations.

The full paper is available at www.communitylawcentre.org.za/news/south-africa-state-of-state-reporting-research-paper/. See also www.peopletoparliament.org.za