

Barriers to fulfilling reporting obligations in Africa under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

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Summary: *The state reporting process is one of the important means through which human rights compliance is monitored. Pursuant to article 62 of the African Charter on Human and Peoples' Rights and article 26(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, state parties are required to provide a detailed report on the human rights situation in their respective countries to the African Commission on Human and Peoples' Rights. The state report should be submitted every two years, and should outline the steps, the progress made, and challenges encountered in realising the rights provided for in the African Women's Protocol. Unfortunately, only a handful of states have fulfilled this reporting obligation. Consequently, this article identifies and investigates barriers to fulfilling reporting obligations under the African Women's Protocol. Specifically, it interrogates why some African governments have failed to fulfil their reporting obligations after showing significant commitment by their ratification of this instrument. It is acknowledged that while there might*

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be a myriad of barriers that could be advanced, the article identifies specific barriers to non-reporting on the African Women's Protocol. It concludes with some form of optimism, arguing that the difficulties to fulfilling the reporting obligations on the African Women's Protocol notwithstanding, African governments should be held accountable and made to see the value that could be derived from reporting on human rights compliance. The African Commission's need to take up proactive steps to facilitate increased seriousness to the reporting process itself, which would then encourage and compel state parties to begin to take their reporting obligations seriously and fulfil the obligations therein, is underscored. Finally, to overcome these barriers, recommendations are proffered to critical stakeholders such as the African Commission, African governments and civil society organisations.

Key words: *African Charter; African Women's Protocol; women's rights; state reporting; African Commission*

1 Introduction

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol) was adopted on 11 July 2003 and entered into force on 25 November 2005.¹ It is a substantive supplementary document drafted under article 66 of the African Charter on Human and Peoples' Rights (African Charter).² The African Women's Protocol's supplementary status earns it a close connection with the African Charter to the extent that it could be described as its offspring. The Preamble to the African Women's Protocol sets out the rationale behind its existence. It was drafted primarily because of the growing concern and response to ongoing violations of women's human rights in Africa.³ This is despite the existence of its principal instrument, the African Charter, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), commonly referred to as the International Bill of Rights of Women.⁴

Commendably, the African Women's Protocol has expanded and included robust normative standards on women's rights since

1 The African Women's Protocol adopted in Maputo, Mozambique, supplements the African Charter and deals specifically with the rights of African women.

2 Art 66 African Charter.

3 Preamble to the African Women's Protocol para 12.

4 J Bond 'CEDAW in sub-Saharan Africa: Lessons in implementation' (2014) 241 *Michigan State Law Review* 243.

it entered into force.⁵ This expansion is coupled with innovatively addressing African women's unique inequalities that many activists felt were omitted in CEDAW.⁶ According to Banda, the adoption and the entry into force of the African Women's Protocol are powerful indications of the normative endorsement that human rights indeed are women's rights.⁷ For Banda, because of the expansion of international women's human rights architecture exemplified in the African Women's Protocol, it no longer is justifiable to continue to claim that women's rights have been disregarded globally.⁸

However, despite the optimism that the African Women's Protocol carries as an instrument to ensure the fulfilment of the rights of African women, it remains doubtful whether, in reality, there has been any actual progress or improvement in the implementation of the rights of women in Africa. One criterion in determining how effective a human rights instrument has been is the extent to which its rights have been realised.⁹ Research has shown that the failure to realise the rights in the African Women's Protocol can occur in three ways:¹⁰ first, when a state does not sign or ratify the instrument; second, when there is ratification by the state but a failure to follow-up with domestication; finally, when there is ratification and domestication, but there is a failure to implement the provisions of the African Women's Protocol.

Unfortunately, as the argument is advanced here, the realisation of the rights of African women is deterred, among other things, by the failure of state parties to fulfil their reporting obligations as captured in article 62 of the African Charter and article 26(1) of the African Women's Protocol.¹¹ Article 26(1) of the African Women's Protocol, a reflection of article 62 of the African Charter, obligates ratifying states to not only ensure the implementation of rights but to also ensure that they draft a report every two years indicating the steps taken to ensure that the rights of women in their domestic jurisdictions are guaranteed.¹² Thus, a state report provides a detailed account of

5 F Viljoen 'An introduction to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2009) 16 *Washington and Lee Journal of Civil Rights and Social Justice* 21.

6 As above.

7 F Banda 'Blazing a trail: The African Protocol on women's rights comes into force' (2006) 50 *Journal of African Law* 84.

8 As above.

9 V Ayeni 'Introduction' in V Ayeni (ed) *The impact of the African Charter and the Maputo Protocol in selected African states* (2016) 11.

10 K Davis 'The emperor is still naked: Why the Protocol on the rights of women in Africa leaves women exposed to more discrimination' (2009) 42 *Vanderbilt Journal of Transnational Law* 975.

11 Art 62 African Charter; art 26(1) African Women's Protocol.

12 Art 26(1) African Women's Protocol.

the human rights situation in the respective countries to the African Commission on Human and Peoples' Rights (African Commission).

In the same way as its principal instrument, the African Women's Protocol has acquired weak monitoring mechanisms.¹³ One of these weak monitoring mechanisms is the state reporting process. Its weakness manifests in the non-reporting and late submission of reports that currently characterise the process. There is a rich body of literature that supports this claim. For example, Quashigah reviews the efficacy of the reporting process on the African Charter.¹⁴ The effectiveness of the African Charter's reporting process's is essential, considering its close link to the African Women's Protocol.

Consequently, as predicted, the African Women's Protocol, similar to its principal instrument, has suffered the same fate of non-reporting or late submission of reports.¹⁵ This prediction has proven to be accurate, considering that only a handful of ratifying states have included a section on the African Women's Protocol in their reports, almost 18 years after its adoption and 16 years after its entry into force. Unfortunately, even when included, state parties have failed to report consistently, timeously and comprehensively on that section.

Given this background, the question that arises is what the possible barriers are that prevent ratifying states from reporting consistently, timeously and comprehensively on the African Women's Protocol section of the state report. By posing this question, the article aims to identify and explore possible difficulties that prevent state parties from fulfilling their reporting obligations on the African Women's Protocol.

The article consists of six parts. This introduction forms the first part. The second part provides a brief elaboration of the African Commission's mandate with respect to the state reporting obligation. In the third part the rationale behind the state reporting process, especially on the African Women's Protocol, is discussed. This discourse lays a good foundation for part 4, which outlines difficulties that have thus far prevented state parties from fulfilling their reporting obligations. These difficulties are not necessarily an exhaustive list. There might be other difficulties not discussed

13 Viljoen (n 5) 35.

14 K Quashigah 'The African Charter on Human and Peoples' Rights: Towards a more effective reporting mechanism' (2002) 2 *African Human Rights Law Journal* 261.

15 Viljoen (n 5) 35.

here that a state party might experience and that serve as barriers to fulfilling the reporting obligation, particularly on the African Women's Protocol. However, there is no denying that many African states commonly experience the difficulties identified and discussed here.

Part 5 concludes with some optimism that the difficulties notwithstanding, African governments should be held accountable to fulfil their reporting obligations, particularly under the African Women's Protocol. The conclusion, therefore, draws support from scholarship that advocates the need for the African Commission to take proactive steps that will facilitate increased seriousness to the reporting process itself. These steps would encourage and compel state parties to take their reporting obligations seriously and fulfil the obligations therein.

The last part proposes some recommendations to key stakeholders such as the African Commission, African governments and civil society organisations involved in the state reporting process to mitigate the barriers.

2 The African Commission' mandate with respect to the state reporting function

The African Commission is a quasi-judicial body established in 1986 under articles 30 and 31 of the African Charter.¹⁶ Article 30 of the African Charter states two fundamental points. First, it provides that the African Commission will be set up within what was previously referred to as the Organisation of African Unity (OAU), now known as the African Union (AU). Second, it states the African Commission's mandate to promote and protect human and peoples' rights in Africa. These mandates will be performed through but not limited to the state reporting and communications procedures.¹⁷ The African Commission also interprets and clarifies the provisions of the African Charter and the African Women's Protocol.¹⁸ This interpretation is usually made through the adoption of General Comments.¹⁹

The 11-member African Commission was established as specially stipulated by article 31(1) of the African Charter.²⁰ According to

16 Art 30 African Charter.

17 As above.

18 Art 45 African Charter.

19 Art 45(3) African Charter. Examples of General Comments are General Comments 1 and 2 under art 14 of the African Women's Protocol.

20 Art 31(1) African Charter.

the article, these 11 members must be Africans of high repute, be morally sound, have high integrity, and be impartial and competent in human and peoples' rights.²¹ They are to be nominated by their governments but expected to serve in their personal capacity, which means that they are expected to act without any interference or influence from the governments that nominated them.²² They serve a six-year term, which may be continuously renewed.²³

The African Commission is specifically entrusted with the task of examining state reports.²⁴ As suggested by Quashigah, the state reporting process is the backbone of the mission of the African Commission.²⁵ This includes the authority to monitor states' human rights compliance to treaties, for example, as captured under article 62 of the African Charter and article 26(1) of the African Women's Protocol. Specifically, the Rules of Procedure regulates the African Commission's activities, particularly with respect to state reporting.²⁶

3 State reporting under the African Women's Protocol

It is essential at this juncture to explore the rationale and benefits of the state reporting process. The rationale of the state reporting process is hinged on its potency as the means through which the African Commission can monitor and ensure compliance with the promotion and protection of, in this case, women's human rights. This means that if state parties do not report on the African Women's Protocol, women's human rights compliance cannot be evaluated and monitored. Thus, it has been accurately established that where self-reflection, accountability, evaluation and monitoring are absent, it will be difficult, if not impossible, to track implementation. The state reporting process as a self-evaluation and oversight exercise, therefore, is apparent.²⁷ It is precisely on this basis that state reporting

21 As above.

22 As above.

23 As above. See also J Sarkin 'The African Commission on Human and Peoples' Rights and the future African Court of Justice and Human Rights: Comparative lessons from the European Court of Human Rights' (2011) 18 *South African Journal of International Affairs* 283.

24 African Commission Resolution Reiterating the Importance of Compliance with Reporting Obligations under the African Charter' ACHPR/Res.108 (XXXXI) (2007) paras 2 & 3.

25 Quashigah (n 14) 265.

26 2020 Rules of Procedure (ROP) ch II (rules 78-83), adopted at the African Commission's 27th extraordinary session held from 19 February to 4 March 2020 entered into force 2 June 2020 as provided by rule 145. See <https://www.achpr.org/legalinstruments/detail?id=72> (accessed 5 March 2020). The 2020 ROP replaces the 2010 ROP.

27 ROP (n 26) 261.

has become internationally recognised as a critical characteristic of human rights monitoring and evaluation.²⁸ To illustrate the salience of this point, the African Commission has gone to great lengths to explain and clarify the rationale behind the state reporting process.²⁹ This explanation was presented to dispel the misgivings that states had expressed that the state reporting process was a means of shaming and embarrassing states.³⁰

Drawing from the African Commission's reasoning, fulfilling reporting obligations should be viewed as an opportunity to accomplish several objectives. The United Nations (UN) has outlined seven purposes and objectives of the state reporting process, including for initial review purposes; monitoring purposes; policy formulation; public scrutiny; evaluation purposes; identifying problems; and information exchange purposes.³¹ In addition, the African Commission listed one of the main objectives of the state reporting process as the creation of a framework that will encourage constructive dialogue between the states and the African Commission.³² In its elaboration of this point, the African Commission is clear that this dialogue is not an end in itself but a means through which other objectives can be achieved.³³ This means that once the state reporting process opens the lines of communication between the African Commission and a state party, then that communication line can be employed to enhance the promotion and protection of rights.³⁴

Using the above reasoning, therefore, it will be correct to point out that when state parties report on the African Charter and particularly on the African Women's Protocol, it provides an opportunity for constructive conversation to be held on women's rights issues between eminent human rights experts in the African Commission and representatives of state parties who in turn would benefit from recommendations offered by the experts. Considering that women's human rights issues in most African countries usually are shrouded in silence and secrecy, the state reporting process as a useful framework through which constructive dialogues can be held cannot be overemphasised. In sum, as far as the African Commission

28 C Bernard & P Wille 'The preparation and drafting of a national report' in United Nations *Manual on human rights reporting under six major international human rights instruments* (1997) 24.

29 Website of the African Commission <https://www.achpr.org/statereporting/proceduresandguidelines> (accessed 5 March 2020).

30 As above. See also Bernard & Wille (n 28) 24.

31 Bernard & Wille (n 28) 25.

32 Website of the African Commission (n 29).

33 As above.

34 As above.

is concerned, once the lines of communication and dialogue are open, the promotion and protection of women's human rights are strengthened.

The African Commission has furthermore outlined three benefits of the state reporting process.³⁵ First, state reports assist in monitoring the implementation and a state's human rights compliance with a treaty, for example, to monitor the realisation of the African Charter and its Protocols. Second, state reports are valuable tools in identifying implementation gaps and areas of non-compliance. In other words, it allows for a thorough examination of the state's promotion and protection of rights by highlighting the challenges that governments face that hinder the full realisation of human rights. Third, state reports are beneficial in detecting and sharing best practices between and among states.

Further, since the African Women's Protocol is a supplementary document to the African Charter, ratifying states are already bound by similar reporting obligations as encapsulated in article 62 of the African Charter. Therefore, it is not surprising that a similarly-worded reporting obligation is captured in article 26(1) of the African Women's Protocol.³⁶

A careful examination of article 26(1) exposes that ratifying states have committed not only to the implementation of the African Women's Protocol in the respective states but also to ensuring that periodic reports are submitted. Viljoen suggests that this article's inclusion was necessary primarily for emphasis and to remove any reservations that ratifying states may have with regard to their reporting obligations under the African Women's Protocol.³⁷

Interestingly, as of March 2021, 42 out of the 55 African member states of the AU have made commitments to this reporting obligation, specifically by ratifying the African Women's Protocol.³⁸ Yet, only a handful of these 42 state parties have fulfilled their reporting obligations. So far, 17 of the 42 state parties have included and

35 As above.

36 Art 26(1) of the African Women's Protocol provides that '[s]tates parties shall ensure the implementation of this Protocol at national level, and in their periodic reports submitted in accordance with article 62 of the African Charter, indicate the legislative and other measures undertaken for the full realisation of the rights herein recognised'.

37 Viljoen (n 5) 21.

38 African Union 'List of countries which have signed, ratified/acceded to the African Women's Protocol' 9 March 2020, <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 9 March 2020).

incorporated a section on the African Women's Protocol provisions in their state reports and by so doing have submitted an initial report of the African Women's Protocol to the African Commission.³⁹ Kenya and Eswatini are among the latest states to have included a section on the African Women's Protocol in their reports.⁴⁰ According to the African Commission, only 11 state parties are up to date in their state reporting.⁴¹

3.1 Overview of the Reporting Guidelines on the African Women's Protocol

In 2009 the African Commission, at its 46th ordinary session, issued State Reporting Guidelines on the African Women's Protocol (Guidelines).⁴² The compilation and adoption of these Guidelines have been widely commended.⁴³ They were issued to explain how states parties that have ratified the African Charter, and mainly the African Women's Protocol, could report on the instrument, thereby fulfilling reporting obligations.⁴⁴

The Guidelines provide that a state party that has ratified the African Charter and the African Women's Protocol only needs to submit one report every two years from the date of ratification and accession. This report must be split into two parts: part A referring to the African Charter and part B referring to the African Women's

39 These countries include Angola, Burkina Faso, Cameroon, Democratic Republic of the Congo, Eswatini, The Gambia, Kenya, Lesotho, Malawi, Mauritania, Namibia, Nigeria, Rwanda, Senegal, South Africa, Togo and Zimbabwe. Malawi is submitting a subsequent report on the African Women's Protocol after having submitted its initial report on the African Women's Protocol in 2015. For more information, see <https://www.achpr.org/statereportsandconcludingobservations> (accessed 9 March 2021).

40 Kenya submitted its combined report of the 12th and 13th Periodic Reports to the African Commission on 15 March 2021 for the period covering 2015-2020. Eswatini submitted its combined report of the 1st to 9th Periodic Reports to the African Commission on 10 March 2021 for the period covering 2001-2020. For more information, see <https://www.achpr.org/statereportsandconcludingobservations> (accessed 23 March 2021).

41 See website of the African Commission, <https://www.achpr.org/statereportsandconcludingobservations> (accessed 5 March 2020).

42 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa's State Reporting Guidelines (African Women's Protocol State Reporting Guidelines) adopted at the African Commission's 46th ordinary session held from 11-25 November 2009. The full text of these guidelines is available at <https://www.achpr.org/statereportingproceduresandguidelines> (accessed 5 March 2020).

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

44 J Biegon 'Towards the adoption of guidelines for state reporting under the African Union Protocol on Women's Rights: A review of the Pretoria gender expert meeting, 6-7 August 2009' (2009) 9 *African Human Rights Law Journal* 618.

Protocol.⁴⁵ With regard to the contents of the initial report, state parties must provide comprehensive information following four simple steps.⁴⁶ The first step relates to the process of compilation of the African Women's Protocol section of the report. The state party, for example, has to provide information on the extent to which civil society organisations and other organisations working on gender and women's issues were involved in the preparation of the report. The second step involves providing background Information.⁴⁷

State parties, for example, are expected to supply a brief description of the legal framework as it relates to women's rights. The information required from the state party is the process of domestication; reservations entered (if any); a description of institutions and gender machinery relevant to the African Women's Protocol; information on budgetary allocation for implementation of the African Women's Protocol; information on legal reform; as well as gender mainstreaming efforts. Step three requires state parties to report on all the African Women's Protocol provisions either chronologically or preferably thematically as grouped under eight themes.⁴⁸ The eight themes include the following: The first theme deals with equality and non-discrimination; the second theme covers the protection of women from violence; the third theme applies to rights relating to marriage; the fourth theme indicates health and reproductive rights; and the fifth theme relates to economic, social and cultural rights. Women's rights to peace must be reported on under the sixth theme. The seventh theme discusses the protection of women from armed conflict. The last theme explains the rights of specially-protected groups of women.

The final step requires that when reporting either thematically or chronologically on the provisions of the African Women's Protocol, state parties provide comprehensive, accurate and verifiable information on the legislative and other steps of implementation that have been taken to ensure the realisation of rights within their domestic jurisdictions.⁴⁹

45 As above.

46 African Women's Protocol State Reporting Guidelines (n 42) 2.

47 As above.

48 African Women's Protocol State Reporting Guidelines (n 42) 3.

49 African Women's Protocol State Reporting Guidelines (n 42) 2 5. The contents to be included in subsequent or periodic reports are also addressed in the African Women's Protocol Reporting Guidelines. The subsequent and periodic report must (i) respond to the Concluding Recommendations and Observations from the examination of the initial report issued by the African Commission; the state must outline the steps taken to implement the observations; (ii) the state must outline steps taken to publicise and disseminate the Concluding Observations; (iii) the state must detail improvements and progress made on each right in the African Women's Protocol since the country last reported (initial report)

4 Barriers to fulfilling reporting obligations under the African Women's Protocol

The African Commission has expressed grave concerns about the lackadaisical attitude that state parties have shown towards their reporting obligations.⁵⁰ It raises the question of what could be responsible for the *lacunae* between the number of ratifying states and the number of states reporting on the African Women's Protocol. However, the non-reporting or late submission of reports is not limited to the African context.⁵¹ For Quashigah, aside from the European Social Charter, none of the other reporting systems is without flaws in their reporting records.⁵² Yet, it has to be stated that the reporting obligation cannot be achieved unless state parties fulfil this obligation consistently, timeously and comprehensively.

Therefore, the following part explores some difficulties that so far have prevented state parties from fulfilling their reporting obligations under the African Women's Protocol.

4.1 Limited or lack of clarity on how to write the report on the African Women's Protocol

One difficulty that state parties have often encountered with regard to fulfilling their reporting obligations is the lack of clarity on how to write the reports.

The effectiveness and impact of state reporting as a human rights-monitoring process is hinged on how clear and precise the reporting obligation is.⁵³ This argument has been proven to be accurate, especially when considering the ambiguity that often characterises the language and wording of treaties.⁵⁴ While the African Women's Protocol provisions are generally broadly drafted and worded, there are a few exceptions where the instrument is specific in the obligations required. For instance, it is a clear requirement that state

either thematically or chronologically; (iv) the state must detail challenges and future plans on each right in the African Women's Protocol since the country last reported (initial report) either thematically or chronologically.

50 Quashigah (n 14) 261.

51 As above.

52 As above.

53 Biegion (n 44) 618. The barriers discussed in this part are informed by a survey exercise conducted by the Women's Rights Unit (formerly called the Gender Unit) in 2015. Survey participants were primarily state representatives from ratifying states involved in the state reporting process in their different countries.

54 Biegion (n 44) 618.

parties must forbid female genital mutilation (FGM) in their domestic jurisdictions through law and sanctions.⁵⁵

Nevertheless, there are ambiguities present in the African Women's Protocol, for example, in the requirement that state parties take measures to ensure the realisation of rights without clearly spelling out what these measures should be or how they should be achieved. Scholarship supports this claim, underscoring how several provisions in the African Women's Protocol are broadly drafted and worded.⁵⁶ A case in point is to be found in article 6(d) that requires state parties to record and register every marriage according to national laws to be legally recognised.⁵⁷ This article appears to stipulate an obligation without outlining how this obligation should be achieved. It seems to leave the fulfilment of this obligation to the discretion of the state. This fluctuation between specificity and ambiguity has led Rebouche to describe the African Women's Protocol as an inconsistent instrument.⁵⁸

Unfortunately, the African Women's Protocol's ambiguity also extends to the reporting obligation as captured in article 26(1). This reporting obligation's attention is focused on the time line within which state parties are expected to submit reports, namely, bi-annually.⁵⁹ This timeline is given without providing clarity and precision on other vital questions that scholarship raises, such as how reports on the African Women's Protocol should be drafted.⁶⁰ Critical insights by Viljoen echo how the article does not answer relevant questions.⁶¹ The difficulty that such ambiguities in the African Women's Protocol's reporting obligation create, therefore, becomes evident.

To mitigate this difficulty and aid state parties in fulfilling their reporting obligations, the African Commission was left with the responsibility of issuing Guidelines for state reporting.⁶² Reporting Guidelines assist state parties to understand and fully grasp the expectations of what is required in a state report. With such a grasp, state parties would be well equipped to include pertinent and adequate

55 Art 5(b) African Women's Protocol.

56 Davis (n 10) 952.

57 Art 6 African Women's Protocol.

58 R Rebouche 'Health and reproductive rights in the Protocol to the African Charter: Competing influences and unsettling questions' (2010) 16 *Washington and Lee Journal of Civil Rights and Social Justice* 110.

59 Art 26(1) African Women's Protocol.

60 Biegon (n 44) 618.

61 F Viljoen 'State reporting under the African Charter on Human and Peoples' Rights: A boost from the South' (2000) 44 *Journal of African Law* 111.

62 Biegon (n 44) 618.

information in their reports.⁶³ If this is true, it means that the opposite is also accurate, which is that, without a proper understanding of the Reporting Guidelines, state parties would not be adequately equipped to fulfil their reporting obligations. Consequently, the impact of Reporting Guidelines and the entire reporting process is hinged on three main points, as raised by Biegon:⁶⁴ first, how effectively the Reporting Guidelines are distributed; second, how harmonised the Reporting Guidelines are; and, finally, the improvement and reform of the African Commission's reporting process.

However, despite the adoption of the Guidelines, their effectiveness can be questioned. This question stems from the poor track record of the African Commission when it comes to drafting reporting guidelines if the one on the African Charter is anything to go by. The Guidelines on state reporting on the African Charter, for instance, has been generally criticised for being too lengthy, ambiguous and unhelpful.⁶⁵ It could explain why governments found it difficult and lacked clarity on reporting on the African Charter.⁶⁶ This lack of clarity had been inherited by the African Women's Protocol, particularly in the first few years of its entry into force. The salience of the above point cannot be overemphasised considering that the Reporting Guidelines have not necessarily always fulfilled the purpose they set out to achieve. Compared to the Guidelines on the African Charter, the Guidelines are detailed and precise.⁶⁷ The optimism shown that these Guidelines, if followed, would aid the implementation of rights, therefore, is valid.⁶⁸

Nevertheless, precedence has demonstrated that state parties have been unaware of or displayed indifference to guidelines generally.⁶⁹ Although some states commendably have included a section on the African Women's Protocol, many do not necessarily follow the Guidelines or provide comprehensive information on this section as required.⁷⁰ This precedence depicts the difficulty that the lack or limited awareness on the state reporting guidelines on the instruments presents, proving that non-reporting and the late submission of reports are not the only problems that undermine the state reporting process.⁷¹ As Viljoen argues (although with

63 As above.

64 Biegon (n 44) 616.

65 Quashigah (n 14) 261.

66 Viljoen (n 61) 111.

67 Kamga (n 43) 9.

68 Kamga 9 12.

69 Viljoen (n 61) 111.

70 Website of the African Commission <https://www.achpr.org/statereportingproceduresandguidelines> (accessed 5 March 2020).

71 Viljoen (n 61) 111.

reference to the African Charter but equally valid for the African Women's Protocol), even when state parties do fulfil their reporting obligations, the reporting process itself is questionable.⁷² This is because, even when state parties do report, the pattern has been that, generally, states tend not to follow and disregard the Reporting Guidelines.⁷³ Aside from this, some state parties simply provide scant and piecemeal information.⁷⁴ Thus, it is hardly surprising that even when state parties do report, the reports often are not thorough and end up, as Viljoen suggests, lacking self-reflection and adequate analysis.⁷⁵

4.2 Limited or lack of understanding of and conflicts arising from the radical provisions of the African Women's Protocol

Paradoxically, one difficulty that state parties might grapple with regarding fulfilling their reporting obligations under the African Women's Protocol is linked to its radical provisions.

The African Women's Protocol has generally been described as a comprehensive and landmark instrument that deals with African women's specific and unique interests.⁷⁶ It is the first time, for instance, that women's rights to be protected from the human immunodeficiency virus (HIV) has been explicitly recognised in an international treaty.⁷⁷ It is also the first time that women's rights to abortion have been explicitly recognised in certain circumstances.⁷⁸ Other radical provisions contained in the Women's Protocol include article 4(2)(a), which requires state parties to take effective steps to enact laws that innovatively and explicitly prohibit violence against women, including coerced sex, that occurs in the public and private life.⁷⁹ Article 5(b) innovatively and explicitly forbids harmful practices such as FGM.⁸⁰ Article 6(c) views monogamy as the preferred form of marriage while still protecting women's rights in marriage, including polygamous contexts.⁸¹

72 As above.

73 As above.

74 As above.

75 As above.

76 K Ebeku 'A new dawn for African women? Prospects of Africa's protocol on women's rights' (2004) 16 *Sri Lanka Journal of International Law* 85.

77 Art 14(d) African Women's Protocol.

78 Art 14(2)(c) African Women's Protocol.

79 Art 4(2)(a) African Women's Protocol.

80 Art 5 African Women's Protocol.

81 Art 6(c) African Women's Protocol.

While some scholars have praised the African Women's Protocol based on these radical provisions,⁸² others have drawn attention to the way in which these radical provisions might hinder and frustrate the implementation of the African Women's Protocol provisions.⁸³ This can include the fulfilment of the reporting obligations as captured in article 26(1). This is particularly true where conflicts might arise between customary and religious norms, for instance, Shari'a law in some African states, on the one hand, and specific articles of the African Women's Protocol that emphasise the protection of women's rights, on the other.⁸⁴ The challenge with realising women's rights in Africa has not necessarily been only the scarcity of laws that the African Women's Protocol ostensibly fills. However, the challenge mainly lies in the conflicts and tensions that most times exist between harmful practices that are excused in the name of religion and tradition, on the one hand, and the rights of women, on the other.⁸⁵ It is this situation that Ebeku has referred to as 'cultural pull'.⁸⁶ In other words, what has happened is that the governments of many state parties are not entirely convinced that modern ideas of women's rights, as encapsulated in the African Women's Protocol, should supersede their traditions and local beliefs. The consequence is what Davis points to when describing the institutional resistance that a state party might encounter despite its best intentions exemplified by its ratifying the instrument.⁸⁷

Consequently, even though states sign and ratify the African Women's Protocol, its implementation, including fulfilling reporting obligations, particularly on steps taken to realise controversial rights, might prove difficult.⁸⁸ Ebeku has rightly cited and documented how government officers in Zambia, barely a year after adopting the African Women's Protocol, stated how discrimination against women originated from 'God' and would be very difficult to abolish.⁸⁹ Yet another government delegate had also reportedly commented that practices such as polygamy, FGM and bride price are so deeply ingrained in the African fabric that it would be difficult, if not impossible, to forbid these practices.⁹⁰

However, it is possible to question the integrity of this reasoning, especially considering a country such as Nigeria with substantial

82 Banda (n 7) 84.

83 Davis (n 10) 977.

84 Ebeku (n 76) 130.

85 Davis (n 10) 975.

86 Ebeku (n 76) 130.

87 Ebeku 133.

88 Davis (n 10) 975.

89 Ebeku (n 76) 133.

90 As above.

proof of conflictual issues between religion and tradition and women's human rights.⁹¹ Yet, Nigeria is one of the few countries that is almost current with its reports and has reported on section B on the African Women's Protocol.⁹² While there undeniably are merits to this argument, the rebuttal would be that part of state reporting expectations is the frankness in detailing the human rights situation and compliance. Perhaps this country's frankness, especially in the compilation and record of the steps it has taken to implement the provisions of the African Women's Protocol and realise the rights of its women, can be questioned.

4.3 Limited and/or lack of political will

Another barrier to fulfilling states' reporting obligations under the African Women's Protocol relates to limited political will.⁹³ In this context, limited or a lack of political will refers to the lack of resolve, disinterest or ambivalence that African governments usually portray when it comes to guaranteeing human rights for women. Yet, the submission of reports to treaty-monitoring bodies such as the African Commission has been identified as a legal obligation resting on state parties.⁹⁴ This is validated by the fact that inherent in the legal commitment is a requirement to take positive action. As such, the political will to prepare a candid and comprehensive report is necessary, mainly if the fulfilment of this reporting obligation is to be achieved.

Nevertheless, sufficient evidence shows how African governments are generally reluctant to prioritise the implementation of women's rights in their respective countries.⁹⁵ Unfortunately, this reluctance is extended and reflected in state parties' failure to fulfil the reporting obligations as outlined in the African Women's Protocol. This is exemplified generally by the state reporting process not being taken seriously, the lackadaisical attitudes that government delegates officials often display, and their lateness or absence even when their state reports are to be examined.⁹⁶ The reluctance to fulfil reporting

91 N Odiaka 'The concept of gender justice and women's rights in Nigeria: Addressing the missing link' (2013) 2 *Journal of Sustainable Development Law and Policy* 190.

92 As at the time of writing, Nigeria reportedly has two overdue reports. See website of the African Commission <https://www.achpr.org/states/statereport?id=115> (accessed 5 March 2020).

93 Centre for Human Rights *A guide to the African human rights system celebrating 30 years since the entry into force of the African Charter on Human and Peoples' Rights 1986-2016* (2016) 40.

94 Bernard & Wille (n 28) 25.

95 Davis (n 10) 975.

96 Viljoen (n 61) 111.

obligations connects to several reservations that states hold with regard to submitting a state report. An example could be the commonly-held misgiving that the reporting obligation is an indirect way of impinging on state parties' sovereignty.⁹⁷

The reluctance also connects to the fact that governments generally do not understand why there is a special preference for women's rights. For instance, there is scepticism on why state parties should bother reporting on the human rights situation of women as prescribed in the African Women's Protocol when this is already done under article 18(3) of the African Charter.⁹⁸ This limited or lack of political will may be the consequence of the idea that the employment of a protocol for the implementation of women's rights rather than a stand-alone treaty has its difficulties. The insight Davis provides in this regard is valuable. Davis describes how protocols such as the African Women's Protocol tend to be perceived as more of an academic exercise than an answer or revisions to international law.⁹⁹ Outlining rights as is done in the African Women's Protocol may indicate that the rights of women in Africa are an afterthought, evidenced by the lack of initial backing and the near silence of the rights of women in the African Charter.¹⁰⁰ This point is exemplified in the indifference shown towards African women's rights when the African Charter was conceived.¹⁰¹

Nevertheless, the specialised focus on women's rights exemplified in women-specific treaties such as the African Women's Protocol comes with its troubles, one of which being the creation of a predicament where women's interests become 'ghettoised'.¹⁰² This refers to a situation that eventually leads to assigning less power, reduced resources, and lower priority to the African Women's Protocol than the mainstream human rights.¹⁰³ With this reasoning, one can already foresee a difficulty that state parties may encounter with regard to fulfilling their reporting obligations.

97 Bernard & Wille (n 28) 25.

98 Davis (n 10) 975.

99 Davis 952.

100 Davis 976.

101 Ebeku (n 76) 84.

102 UA O'Hare 'Realising human rights for women' (1999) 21 *Human Rights Quarterly* 364.

103 H Charlesworth 'What are women's international human rights' in RJ Cook (ed) *Human rights of women: National and international perspectives* 59.

4.4 Limited allocation of financial and administrative resources

Limited financial and administrative resources allocated to the reporting obligation also pose significant difficulties for state parties. This difficulty is likely to prevent state parties from reporting on the African Women's Protocol.

Evidence suggests that if the reporting process is to be taken seriously, it will require sufficient time and resources to be allocated to the state reporting activity.¹⁰⁴ Similarly, how a state party's national budget is outlined is a direct reflection and a mirror of the state's priorities.¹⁰⁵ The desirable reporting record of the European Social Charter, for instance, has been traced to several reasons raised by Quashigah.¹⁰⁶ One key reason is that state parties to the European Social Charter are generally believed to be better equipped administratively and financially to prepare and compile state reports.¹⁰⁷ Consequently, limited budgetary allocations to women's rights by most African state parties make the implementation of rights as outlined in the African Women's Protocol difficult.

However, an additional difficulty is the compilation of state reports with limited budgetary allocations, particularly every two years, as required under article 62 of the African Charter and article 26(1) of the African Women's Protocol.¹⁰⁸ This reporting obligation and time line of two years that state parties hold with respect to the African Charter and the African Women's Protocol are accompanied by serious cost, financial and administrative implications. Without sufficient financial and administrative resource allocation, it would be challenging to report, but there would also be nothing to report on. Research validates the above point by demonstrating how a state party may fail to implement its obligations, including the reporting obligation, because it is yet to meet some of the lofty objectives required by the instrument.¹⁰⁹ This situation is perhaps what the African Women's Protocol's drafters had in mind by requiring that state parties allocate sufficient budgetary allocations to the realisation of rights.¹¹⁰ Yet, it is clear that because the ratification of treaties such as the African Women's Protocol is an expression of commitment,

104 Bernard & Wille (n 28) 26.

105 Davis (n 10) 976.

106 Quashigah (n 14) 275.

107 As above.

108 This point is informed by the unpublished results of the survey exercise conducted by the Women's Rights Unit (formerly called the Gender Unit) in 2015.

109 Davis (n 10) 976.

110 Arts 10(c) & 26(2) African Women's Protocol.

constrained budgetary and financial resources cannot be used as a justification for non-reporting.¹¹¹

Nevertheless, it has been pointed out how the African Women's Protocol requires state parties to take specific measures that could be misconstrued as luxuries rather than necessities.¹¹² For instance, the African Women's Protocol requires state parties to ensure that women enjoy certain rights.¹¹³ As commendable as these rights are, some African governments might wrongly see them as aspirational and progressive goals. Such a perception is evident, considering that the African Charter contains no specific provision relating to how states parties are expected to use their budgetary allocations and resources to guarantee rights. However, under the African Women's Protocol, state parties are obliged to take all necessary steps, including ensuring budgetary allocations to ensure the full implementation of rights. Unfortunately, many state parties for various reasons, including war and internal conflicts, can hardly afford to guarantee these rights for any member of society, whether it involves men, women or even children.¹¹⁴

Therefore, the foregoing could result in the struggle between competing needs and priorities for scarce financial resources that many state parties very often encounter. How state parties, for example, balance and reconcile meeting what rights may be considered a priority and what rights are subject to progressive realisation is questioned. This kind of conflict is easily reflected in the priority usually accorded to civil and political rights instead of economic, social and cultural rights. This could perhaps explain why it is common to see that for many state parties in Africa, male-centric rights tend to supersede the more female-centric economic, social and cultural rights.¹¹⁵ This is exemplified in African societies where the right to vote, for instance, tends to supersede the right to food security as captured in the African Women's Protocol that could be viewed as unnecessarily burdensome.¹¹⁶

It is because of this tendency that the drafters of the African Women's Protocol included the obligation on state parties to ensure that budgetary allocations for the realisation of the rights for women and social development supersede military expenditures.¹¹⁷ However,

111 Bernard & Wille (n 28) 25.

112 Davis (n 10) 975.

113 Arts 15 & 18 African Women's Protocol.

114 Davis (n 10) 975.

115 O'Hare (n 102) 367.

116 Davis (n 10) 975.

117 Art 10(3) African Women's Protocol.

whether international treaties can dictate how resources and, specifically, military resources, can be spent and how this obligation will translate in reality is subject to debate.

4.5 Limited technical expertise

Another possible barrier that state parties face concerning fulfilling their reporting obligations under the African Women's Protocol may be connected to a limited or lack of technical expertise.

Studies have described how many human rights departments in African countries are poorly staffed and under-resourced.¹¹⁸ This difficulty may be linked to several factors and can often be attached to the limited incentives tied to working in a typical public service in African countries. Limited technical expertise could indicate the scarcity of and few or no qualified staff tasked with writing the reports, aggravated by an increased risk of staff turnover.¹¹⁹ In addition, by this limited technical expertise, reference is made to the demand and burden placed on the scarce qualified staff and an already overstretched civil and public department to prepare and submit state reports every two years.

To mitigate this difficulty, the Centre for Human Rights at the University of Pretoria since 2013 has been involved in a state reporting project.¹²⁰ This project aims to strengthen the capacity of state parties to fulfil their reporting obligations under both the African Charter and the African Women's Protocol. Another aspect of the project is the technical assistant/consultancy project which began in 2017.¹²¹ Although still in its embryonic stages, this project focuses on providing state parties with the necessary technical skills, expertise and assistance needed for drafting their state reports on the African Charter and, importantly, the African Women's Protocol.¹²²

118 This argument is not a new one. This is considering that African states are usually among the weakest, unstable and underdeveloped countries in the world. However, what is relatively novel is how the poorly-resourced public and civil service in these countries affect the fulfilment of reporting obligations.

119 This point was informed by the survey responses where participants expressed how the number of public servants tasked with the duty of drafting reports for the state usually is small.

120 The Centre for Human Rights (CHR) started the state reporting project in 2013, aimed at strengthening the capacity of state parties to fulfil their reporting obligations to the African Charter and particularly on the African Women's Protocol. It has so far trained 32 out of the 42 state parties that have ratified the African Women's Protocol. For more information on the state reporting project, see [www.African Women'sprotocol.up.ac.za](http://www.AfricanWomen'sprotocol.up.ac.za) (accessed 5 March 2020).

121 For further details on the project, see CHR 'Virtual platform on state reporting on the African Women's Protocol, www.African Women'sprotocol.up.ac.za (accessed 5 March 2020).

122 As above.

4.6 Reporting fatigue

Another possible barrier that state parties face in fulfilling their reporting obligations on the African Women's Protocol is reporting fatigue. This alludes to the burden that comes with the numerous reporting obligations, not only under the African human rights system but also under the UN human rights system.¹²³

Some African states, for example, have to report to different monitoring mechanisms, including peer reviews such as the African Peer Review Mechanisms and the Universal Periodic Review. Therefore, reporting obligations can become burdensome to an overstretched government civil service, particularly given the short reporting time lines as contained in the African Charter and the African Women's Protocol.

Even where states do fulfil their reporting obligations, the state report to the African Commission sometimes is perceived as an administrative burden and less of an opportunity for critical engagement.¹²⁴

4.7 Weak reporting mechanism of the African Commission

An added difficulty that state parties might encounter with regard to fulfilling their reporting obligations on the African Women's Protocol can easily be traced to the weak reporting mechanism of the African Commission.¹²⁵ For instance, as a monitoring body, the state reporting process is one of the mechanisms that the African Commission has employed to measure states' compliance with human rights treaties.

In the first place, as underscored earlier, the African Commission was entrusted by the Assembly of Heads of State and Government of the African Union with the task of examining state reports as captured under article 62 of the African Charter and article 26(1) of the African Women's Protocol. This could mean that the African Commission has been entrusted with the arduous task of monitoring the same governments' human rights compliance that gives it the authority and permission to do its state reporting function.¹²⁶ Given this state of affairs, one is immediately tempted to question whether

123 Bernard & Wille (n 28).

124 Bernard & Wille 31.

125 Quashigah (n 14) 261.

126 African Commission Resolution (n 24) paras 2 & 3.

the African Commission can thoroughly and effectively perform its state reporting function.

Although one argument might be that this is how treaty bodies are established, the problem arises where the Heads of State and Government could negatively influence the African Commission's state reporting function. Although not in respect of its state reporting function, a case in point is the withdrawal of the observer status of the Coalition of African Lesbians (CALs) at the behest of the Executive Council that consists of Heads of State and Government.¹²⁷ Another example is Rwanda's withdrawal of its article 34(6) declaration. This declaration had allowed individuals and non-governmental organisations (NGOs) direct access to the African Court on Human and Peoples' Rights (African Court). Many scholars view this unfortunate withdrawal as a dent in the African Court's authority.¹²⁸ These kinds of issues validate discussions that have been held on the difficulties that hinder the effective and efficient functioning of the African Commission in its role of examining state reports.¹²⁹

The African Commission's function of examining state reports is sometimes undermined by a few of its methods and Rules of Procedure.¹³⁰ For example, although the 2010 Rules of Procedure were revised in 2020, the Rules relating to state reporting have not changed significantly.¹³¹ Besides, the African Commission's method of dealing with the non-submission of reports by defaulting state parties as outlined in the African Commission's 2020 Rules of Procedure might not be appropriately suited to African governments.¹³² Rules 81(1) and (2) of the 2020 Rules mention sending a reminder to defaulting states at the start of the year or the beginning of each ordinary session.¹³³ Although this effort is commendable, the effectiveness of sending what could be considered mere reminders may be questioned. This doubt is valid, considering that very few defaulting African governments respond to or act on such reminders.

127 The full text of the withdrawal decision can be found in the 39th Activity Report of the African Commission paras 49-51.

128 M Killander & MG Nyarko 'Human rights developments in the African Union (January 2017-September 2018)' (2018) 18 *African Human Rights Law Journal* 742.

129 Quashigah (n 14) 261.

130 2020 ROP (Rules 78-83); 1988 ROP (Rules 81-86).

131 See 2010 ROP (Rules 73-78) *vis-à-vis* the 2020 ROP (78-83). One difference that can be identified is that the 2020 Rules 81(3) gives an indication of the information that would be included in the reminder letter, namely, the date of the next report or when information is to be received. Rule 83(3) of 2020 is also worded differently from Rule 78(3) of 2010.

132 2020 Rules 81(1-3) ROP.

133 Rule 81(1-2).

The above assertion is the exact point the African Commission made in its 2015-2019 strategic plan identifying slow responses by states to its requests as a threat to its work.¹³⁴ This is also true given that certain misgivings persist about the state reporting process. Reiterating one common reservation is the fear that reporting will encourage unnecessary criticism and the shaming of states.¹³⁵ Such misgivings fuel the indifference that African governments have generally shown to the compliance with their reporting obligations and the protection of human rights on the continent.¹³⁶ Such indifference to the compliance with reporting obligations could be potentially attacked with sustained criticism at the local level.¹³⁷ There are also more proactive methods of dealing with the non-submission of reports by defaulting states that might be more effective. For instance, as Viljoen suggests, there could be an implementation review even in the absence of reports.¹³⁸

Also, the African Commission's 1988 Rules of Procedure had not dealt adequately with Concluding Observations.¹³⁹ For example, there was very little information about what is to be done by the state arising from the state report's scrutiny in the form of Concluding Observations and recommendations.¹⁴⁰ However, this error appears to have been corrected with the revised adopted 2020 Rule of Procedure.¹⁴¹ Rules 82 and 83 provide detailed information on Concluding Observations and follow-up of state reports.¹⁴² Yet, as Viljoen correctly points out, the African Commission itself is complicit in undermining the effectiveness of the state reporting process by, for instance, failing to adopt and publicise Concluding Observations and recommendations consistently and timeously.¹⁴³

If this is the case, a similar question arises as to whether the African Commission would be able to cope realistically if all state parties to the African Charter and the African Women's Protocol reported consistently and timeously every two years. The feasibility of the time line of the two-year reporting cycle in the African human rights system evident in article 62 of the African Charter and article 26(1) of the African Women's Protocol is questionable. This question arises

134 Killander & Nyarko (n 128) 740.

135 Website of the African Commission <https://www.achpr.org/statereporting/proceduresandguidelines> (accessed 5 March 2020).

136 Website of the African Commission (n 135) 265.

137 Viljoen (n 61) 117.

138 As above.

139 1988 ROP (Rules 81-86).

140 1988 ROP (Rules 85 and 86); Viljoen (n 61) 111 118; Quashigah (n 14) 264.

141 2020 ROP (Rule 82 on Concluding Observations and 83 on follow-up of implementation of Concluding Observations of state reports).

142 2020 ROP Rules 82-83.

143 Viljoen (n 5) 21.

especially when this time line is compared with the UN human rights system with a longer time line of a four-year reporting cycle. While there might be merits to this two-year reporting cycle, it is doubtful whether, with the addition of the African Women's Protocol as well as the recent adoption of other protocols, the African Commission would be able to cope with the burden of the additional reporting that comes with the expansion of the scope of rights to be reported upon, particularly within the short time lines, to an already overstretched monitoring body.

As such, it would be correct to assert that apart from the reporting fatigue that state parties encounter, the African Commission itself is overburdened and overstretched by its state reporting function given the short time lines. To illustrate the salience of this point, it would be helpful to look at what is steadily becoming an African Commission pattern with respect to responses. For instance, although Gabon is yet to submit its initial report on the African Women's Protocol, it had submitted a combined report on the African Charter from 1986-2012 in 2013, and the African Commission issued its Concluding Recommendations in 2014. One of the areas of concern identified in the Concluding Recommendations was the non-ratification of the African Women's Protocol. Yet, Gabon had reportedly ratified and deposited on the African Women's Protocol in 2011.¹⁴⁴ The area of concern at this point in 2014 should instead have focused on encouraging Gabon to submit its initial report to the African Women's Protocol. As a result, the quality of engagement the African Commission has with reporting states could be questioned.

Murray's point in querying the impact of the African Commission's work on the ground therefore is apt.¹⁴⁵ This is because, apart from the short time lines, the lack of resources, whether human or financial or both, presents a difficulty. Resources are essential to the effective performance of the state reporting function. Yet, there is a failure to adequately fund and allocate sufficient resources and a budget to perform the state reporting function. This situation confirms Sarkin's reference to the African Commission as a 'lame duck'.¹⁴⁶ This situation is aggravated by the potential and real doubts that shroud the African Commission's members' independence from their respective governments, particularly concerning the examination of state reports.

144 Website of the African Commission <https://www.achpr.org/states/statereport?id=88> (accessed 6 March 2020).

145 R Murray 'International human rights: Neglect of perspectives from African institutions' (2006) 55 *International and Comparative Law Quarterly* 194.

146 Sarkin (n 23) 288.

5 Conclusion

It has been established that one of these weak monitoring mechanisms is the state reporting process. Its weakness manifests in the non-reporting and late submission of reports that currently characterise treaties. The African Women's Protocol has suffered the same fate of non-reporting or late submission of reports of preceding treaties. This argument is particularly valid when considering that almost 18 years after its adoption and 16 years after its entry into force, only a handful of state parties have fulfilled their reporting obligations. Generally, state parties have failed to report consistently, timeously and comprehensively on the African Women's Protocol. Therefore, the article explored the difficulties that prevent state parties, despite their ratification of the instrument, from fulfilling their reporting obligations.

The question arises as to what the way forward is to mitigate these difficulties. The mere fact that a state party has ratified the African Women's Protocol is an immediate expression of its commitment to protecting and promoting women's human rights in that state. Based on this, governments should be held accountable for their reporting obligations and made to see the value that is and could be derived from reporting on their women's human rights compliance. African governments must be willing and prepared to use and maximise the information and opportunities available and exist to assist with the reporting obligation on the African Charter and specifically the African Women's Protocol, particularly on the art of writing and compiling the state report.¹⁴⁷ The African Commission's need to take proactive steps that will facilitate increased resolve to the reporting process itself, which would then encourage and compel state parties to begin to take their reporting obligations seriously and fulfil the obligations therein, cannot be overemphasised.

6 Recommendations

Having outlined the barriers to reporting on the African Women's Protocol, it is essential to propose recommendations to key and specific stakeholders involved in the reporting process such as the AU, the African Commission, African governments and civil society

¹⁴⁷ The CHR is currently developing a virtual platform on state reporting on the African Women's Protocol, [www.African Women'sprotocol.up.ac.za](http://www.AfricanWomen'sprotocol.up.ac.za) (accessed 6 March 2020). It is anticipated that in the near future the virtual platform grows and expands to be a one-stop shop on the state reporting process on the African human rights system.

organisations in a bid to improve state party reporting and mitigate the outlined barriers.

First, the barriers outlined above have exposed the African Commission's need to establish a more effective and robust monitoring and evaluation mechanism to encourage state parties to understand the value of reporting. An example could be establishing a solid check and warning system to periodically oversee the state party reporting progress and ensure that the African Commission itself is adequately strengthened to fulfil its reporting function. Moreover, there is a need for the AU and the African Commission to consider seriously reviewing the two-year reporting time lines. A possible suggestion could be to consider extending this to a four-year reporting time line consistent with the UN treaty body systems. Such consideration and review of the two-year reporting period might assist in mitigating some of the outlined barriers. This includes reporting fatigue as well as improving the quality of engagement by the African Commission.

However, admittedly, a fixed reporting time line for state parties has become increasingly less feasible. Consequently, following the Human Rights Committee example, it might be helpful for the African Commission to adopt the Simplified Reporting Procedure.¹⁴⁸ This Simplified Reporting Procedure is a reporting procedure based on replies to lists of issues coupled with adopting the predictable review cycle.¹⁴⁹ This cycle could improve predictability in reporting and ensure that states that currently are not reporting or are late in reporting can begin to report regularly and consistently.

Additionally, another suggestion following the Human Rights Committee's example that might be beneficial for the African Commission is to create a new position of Special Rapporteur on Follow-Up to Concluding Observations and Recommendations.¹⁵⁰ This Special Rapporteur could be tasked with following up with states on the African Commission's recommendations. As indicated above,

¹⁴⁸ Website of the United Nations (UN), <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/SimplifiedReportingProcedure.aspx> (accessed 10 March 2020); International Covenant on Civil and Political Rights Focused Reports Based on Replies to Lists of Issues Prior to Reporting (LOIPR); Implementation of the new optional reporting procedure (LOIPR procedure Human Rights Committee 99th session (2010) CCPR/C/99/4; see generally General Assembly Resolution 68/268 'Strengthening and enhancing the effective functioning of the human rights treaty body system' A/RES/68/268 (2014).

¹⁴⁹ Website of the UN <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/PredictableReviewCycle.aspx> (accessed 5 March 2020).

¹⁵⁰ Civil and Political Rights: The Human Rights Committee (Fact Sheet 15) 20, <https://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf> (accessed 5 March 2020).

although Rule 83 of the African Commission's 2020 Rules of Procedure provides information on the follow-up of the implementation of Concluding Observations of state reports, it entrusts this follow-up task vaguely to members of the African Commission.¹⁵¹

Second, African governments need to take seriously their reporting obligations on the African Charter and specifically the African Women's Protocol. One way to show resolve is to allocate adequate budgetary, financial, administrative and human resources required to fulfil reporting obligations to the African Commission. A good practice that governments could adopt is establishing national task teams in respective countries that comprise a representation of the relevant stakeholders from government ministries, national human rights commissions and civil society organisations to be involved in the state reporting and drafting process.

Finally, civil society in African countries needs to work actively in creating awareness on the obligation and the value of reporting on the African Charter and the African Women's Protocol specifically. Civil society could also be instrumental in strengthening the capacity of relevant stakeholders with respect to reporting. Civil society needs to engage and initiate impactful projects that would encourage African states to fulfil their reporting obligations. A good example is the state reporting project discussed above.¹⁵² With this state reporting project, 32 out of 42 states that have ratified the African Charter and the African Women's Protocol have been trained by the Centre for Human Rights.¹⁵³ Reiterating, the Centre for Human Rights has also been involved in the technical consultants' project.¹⁵⁴ Upon the state government's request, the project involves appointing technical consultants to provide technical expertise to the state reporting and drafting process in African states.

In addition, civil society organisations could help mitigate some of the barriers outlined through increased involvement in the state reporting process at the African Commission level by acquiring observer status. At that level, civil society can put the necessary pressure on governments to fulfil reporting obligations. By being involved in the state reporting process at the national level, civil

151 Rule 83(2) 2020 ROP.

152 See CHR virtual platform (n 121).

153 As above.

154 The technical consultant/assistant pilot project began in 2017. Lesotho and Zambia were the first states involved in the project. Under this project, Lesotho submitted its report on the African Charter (Part A) and initial report on the African Women's Protocol to the African Commission in 2018 which was examined in 2019. See www.AfricanWomen'sprotocol.up.ac.za for further details on the project.

society can be pivotal through the compilation of shadow and alternative reports.