



African Policing Civilian Oversight Forum

Statement to the 66th Ordinary Session of the African Commission on Human and Peoples' Rights

July 2020

Honourable Chair and Commissioners,

1. Introduction

APCOF is a not-for-profit Trust based in South Africa, working on issues of police accountability and governance in Africa. We acknowledge the end of the term of the former Hon. Commissioners Soyata Maiga, Yeung Kam John Yeung Sik Yuen, Lucy Asuagbor and Lawrence Murugu Mute, and thank them for their work on strengthening human rights on the African continent. We welcome the appointment of the four new Commissioners, and extend our congratulations to the new Chairperson, Hon. Commissioner Solomon Ayele Dersso, with whom we look forward to engaging during this session, and for the duration of his term. We hope that under Chairperson Dersso's leadership, the African Commission on Human and Peoples' Rights can work to bring attention to critical human rights issues that may arise as a result of measures to prevent the spread of Covid-19, or issues which are at risk of being forgotten or neglected because of the focus on Covid-10 related challenges.

2. Human rights impact of the enforcement of Covid-19 related regulations

To limit the spread of Covid-19, a number of Member States (including South Africa, Kenya and

Ghana, to name just a few) have implemented regulations, policies and other measures to curtail the movement and gathering of people, sometimes under declarations of states of emergency or disaster, which allow for the curtailment or suspension of various constitutionally protected human rights. Measures to address a public health crisis should be evidence based, and both necessary and proportionate to the objective of curbing the spread of Covid-19. However, there is a trend across Member States towards blanket limitations and suspension of rights, and the use of criminal law to penalise infringements of regulations. Those who are unable to comply with limitations on movement and gatherings - particularly when orders to isolate or 'staying at home' are made impossible by homelessness, informal or overcrowded housing - bear the brunt of increasingly brutal and militarised policing responses. That States have taken an overwhelmingly securitised response to a public health crisis is deeply concerning, and there is growing evidence that the enforcement of so-called 'lockdown measures' has resulted in the violation of non-derogable human rights, including the right to life and freedom from torture and other ill-treatment, as was the case, for example, in the death of Mr. Collins Khosa by South African law enforcement officials.

We urge the African Commission on Human and Peoples' Rights to remind States of their obligations to respect the rule of law, and to ensure that any limitations on rights enshrined in the African Charter on Human and Peoples' Rights are legitimate, proportionate and necessary to the public health objective. We ask the African Commission on Human and Peoples' Rights to further remind States of the requirement under the African Charter to ensure prompt, impartial and effective investigations – and to promote a culture of accountability – in response to any potential human rights violation by law enforcement officials, including under Covid-19 regulation enforcement.

3. Policing and xenophobic violence in South Africa

As the African Commission is aware, since its democracy, South Africa has made significant progress towards promoting equality and dignity for all persons. Its unique history has seen the prioritization of programmes and policies that promote racial equality and dignity for previously disadvantaged groups. However, any strides South Africa has made towards the realization of these key rights has been marred by repeated and often widespread incidents of violence against non-nationals, as well as others on the basis of their national origin. The nature of the violence has had a particular impact on the rights of affected individuals and communities to not only life

and security, but to key socio-economic rights such as the right to work and trade, access housing and basic services, and freedom of movement. There have been successive inquiries, research and interventions (including by the African Commission on Human and Peoples' Rights) into the causes and impact of xenophobic violence in South Africa over the past 11 years. A common thread has been concern about the capacity of the South African Police Service (SAPS) to effectively prevent, detect and investigate incidents of racist and xenophobic violence. Despite recommendations and calls to action by national and international mechanisms, an effective State response to preventing the violence remains outstanding. Social and economic tensions as a result of Covid-19 lockdowns are raising concerns about the potential for more widespread violence against non-nationals.

In Resolution 304 condemning the xenophobic violence in 2015, the African Commission on Human and Peoples' Rights called on South Africa to comply with its human rights obligations, including that perpetrators of the violence are held accountable in accordance with the law.

APCOF requests that the African Commission on Human and Peoples' Rights remind South Africa about its obligation to ensure accountability, and reiterate the critical role played by SAPS in the prevention, detection and response to xenophobic violence and related hate crimes, including the obligation to investigate to ensure that perpetrators of the violence are held accountable in accordance with the law.

4. Arbitrary Arrest and minor offences

Over the past 15 years, the Commission has adopted a range of interpretive instruments that provide guidance to State Parties on the implementation of Charter rights relating to police actions. These includes, most recently, the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines) and the Principles on the Decriminalisation of Petty Offences in Africa. However, arbitrary arrest, particularly in relation to minor or petty offences, remains a critical human rights issue. One of the key challenges is the lack of alternatives to arrest that are both available and responsive to the unique constraints experienced by criminal justice systems across the continent. APCOF calls on the Commission to consider a Study into this critical issues related to Article 6 of the Charter, and which intersects with various others including Article 2 on non-discrimination and Article 5 on ill-treatment

(particularly as arbitrary arrest is a cause of detention overcrowding), and provide specific guidance to States on alternatives to criminalisation and arrest for minor offences.

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