



# African Policing Civilian Oversight Forum

## **NGO observer status no. 372**

### **Statement to the 67<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights**

#### **ITEM 4: Human Rights Situation in Africa**

Honourable Chair, Honourable Commissioners,

All protocols observed

The African Policing Civilian Oversight Forum (APCOF) welcomes the opportunity to make a statement to the 67<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights. We are a not-for-profit Trust based in South Africa, working on issues of police accountability and governance in Africa.

Our statement deals with four key issues: the human rights impact of the enforcement of Covid-19 related regulations, the use of force by South African police; the recent death of protestors in Nigeria; and policing and xenophobic violence in South Africa. Each issue is discussed in turn below.

#### **1. Human rights impact of the enforcement of Covid-19-related regulations**

APCOF remains concerned about the impact of the enforcement of Covid-19-related regulations across many African states. As the Commission is aware, a number of states have implemented regulations, policies and other measures to curtail the movement and gathering of people, sometimes under states of emergency or disaster, which limit or suspend various constitutionally protected human rights. The

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enforcement of these measures has also continued to raise significant human rights concerns, particularly in relation to the excessive use of force by law enforcement and other security agencies, and the disproportionate impact of measures on the poor and other marginalised groups.

We welcome the adoption by the African Commission of resolution 447 on upholding human rights during situations of emergency and in other exceptional circumstances. In particular, we support the Commission's decision to task the Focal Point on Human Rights in Conflict Situations in Africa to develop a normative framework to guide African states on their human rights obligations in the context of states of emergency and disaster. We encourage the African Commission to engage civil society organisations as part of a consultative methodology for the development of the framework. We further welcome the adoption by the Commission of resolution 449 on human rights as a central pillar to a successful response to Covid-19 and recovery from its socio-political impacts, which provided a much needed and comprehensive guidance to State Parties on their obligations to ensure a rights-based response to Covid-19.

However, despite the efforts of the African Commission, and other stakeholders such as civil society organisations, to encourage African states to ensure that measures are proportionate and necessary to a legitimate public health objective, the criminalisation of Covid-19 infractions, and human rights violations by police and other security officers during enforcement, persist. This has a disproportionate impact on the poor and other marginalised persons who are overwhelmingly bearing the brunt of the ongoing securitised response to this public health crisis.

We call on the African Commission to again remind State Parties of their obligations under the African Charter on Human and Peoples' Rights, as set out in resolutions 447 and 449, and in particular to ensure prompt, impartial and effective investigations in response to any human rights violations by law enforcement officials during Covid-19 regulation enforcement.

We also urge the African Commission to encourage all African States to decriminalise minor and petty offences that have arisen as a result of Covid-19 measures – such as failure to wear a mask, or being outside after curfew – in accordance with the Commission's Principles on the Decriminalisation of Petty Offences in Africa.

## 2. Use of force by the police in South Africa

APCOF remains concerned about the extent to which the South African Police Service has the necessary legal framework to support a rights-based approach to the use of force as part of its obligation to protect the right to life in Article 4 of the African Charter. In October 2020, the Civilian Secretariat for Police Service released for comment the draft *South African Police Service Amendment Bill 2020*, which proposes, amongst others, changes to provisions regarding the use of force. However, the proposed amendment does not align fully with international law as it:

- Does not include the principle of precaution, which requires officers to apply non-violent means before resorting to the use of force, unless such means are unlikely to achieve the intended legitimate law enforcement objective (as required by the African Commission in General Comment No. 3 on the Right to Life and further elaborated in the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, and the Guidelines on the Policing of Assemblies by Law Enforcement Officials in Africa).
- Is potentially ambiguous in its prohibition against the use of deadly force to protect property.
- Fails to set out the steps under international and regional law that must precede, occur during, and follow the use of potentially lethal force, namely:
  - **Before** to the use of a firearm or other potentially lethal force: identify themselves as a police officer and give a clear warning of their intention to use firearms with sufficient time for the warnings to be observed, unless to do so would be ineffective or would put lives at undue risk.
  - **During** the use of firearms or potentially lethal force: exercise restraint, minimise damage and injury with a focus on preserving human life.
  - **After** the use of a firearm or potentially lethal force: ensure that assistance and medical aid are rendered to any injured or affected person at the earliest possible moment after the use of force or firearms; that the discharge of a weapon, or the use of force causing injury or death be reported to superior officers as soon as possible and if within the mandate of the Independent Police Investigative Directorate, that a report in terms of the IPID Act is made promptly.

- May still permit the use of automatic capable weapons where the automatic component has been disabled.

We call on the African Commission to engage South Africa on its duty to protect against the arbitrary deprivation of life by law enforcement officials by ensuring that the legal framework for the use of force aligns with international and regional standards. This includes the Commission's General Comment No. 3 on the Right to Life, the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, and the Guidelines on the Policing of Assemblies by Law Enforcement Officials in Africa.

### **3. Death of protestors in Nigeria**

APCOF is concerned about the use of force by police and other law enforcement agencies in response to public gatherings across Africa, particular where the right to assemble has been limited or banned under Covid-19 containment measures. In particular, we note with grave concern the death of protestors at the Lekki toll plaza in Nigeria on 20 October 2020. We welcome the Commission's press statement on unlawful killings by security forces in Nigeria, and further call on the Commission to urge Nigeria to take the following action in response to the incident:

- Establish an independent inquiry on the action of security forces that resulted in the civilian deaths on 20 October 2020; and
- Implement the previous recommendations of all panels of inquiry established by states to investigate extra judicial killings and human rights abuses by police and other security agencies, including redress for victims and their families.

### **4. Policing and xenophobic violence in South Africa**

In its statement to the Commission during its 66<sup>th</sup> Ordinary Session, APCOF highlighted how any strides South Africa has made towards the realisation of Article 2 of the African Charter 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. Since July, social and economic tensions as a result of Covid-19 measures have continued to raise concerns about the potential for more widespread violence against non-nationals. We urge the Commission to remind South Africa of its obligations under Article 2, particularly with respect to the effective prevention, response and accountability for xenophobic violence and related hate crimes, and to ensure that the *National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and*

*Related Intolerances* is implemented as a matter of priority. This includes ensuring that the South African Police Service is properly trained, equipped and accountable in terms of its obligation to provide equitable and rights-based policing services to all persons in the Republic, given the ongoing concerns about their capacity to prevent, detect and investigate xenophobic violence as outlined in our statement to the 66<sup>th</sup> Ordinary Session.

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