



African Policing Civilian Oversight Forum

**NGO Observer Status No. 372**

## **Statement in response to the activity report of the Chairperson of the Committee for the Prevention of Torture in Africa**

**71<sup>st</sup> Ordinary Session of the African Commission on Human and Peoples' Rights (2022)**

### **ITEM 6: Activity Reports of the Members of the Commission & Special Mechanisms**

Honourable Chairperson and Commissioners,

The African Policing Civilian Oversight Forum (APCOF) welcomes this opportunity to make a statement in response to the activity report of the Chairperson of the Committee for the Prevention of Torture in Africa. We are a not-for-profit Trust based in Cape Town, South Africa, working on issues of police accountability and governance in Africa.

In February 2022, South Africa's National Preventive Mechanisms (NPM) [released its first report](#) on conditions of custody in police holding cells in South Africa. The NPM had previously developed and piloted a system of independent custody visits to places of detention under the management of the South African Police Service (SAPS). SAPS arrest 2.5 million people annually and every day across South Africa, thousands of detainees are held in police stations and court cells under the management of SAPS.

APCOF commends the South African NPM for conducting 106 independent visits to police facilities and for publishing this important report. The visits were conducted between June 2019 and December 2020. Amongst the findings are poor conditions of custodial facilities,

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with limited provision of water and sanitation, overcrowding, and non-compliance by SAPS with procedural safeguards. Alarming, a third of the visits reported on allegations of torture.

The NPM report further notes a very high proportion of cases of torture reported to the Independent Police Investigative Directorate (IPID) by police stations in KwaZulu-Natal. The NPM motivates that the alleged use of torture by police in KwaZulu-Natal is itself an issue that merits investigation.

**We call on the Commission to urge South Africa to conduct a full investigation into the pattern of abuse by police in KwaZulu-Natal, and to report its findings to the African Commission during its next report, which is considerably overdue.**

The NPM report also raises concerns regarding the state of neglect and decay of South African police custody infrastructure, with the cleanliness of cells and other facilities widely found to be inadequate. The NPM reports that:

If the maintenance of stations and custody facilities continues to be neglected, overcrowding of custody facilities is likely to become more and more of a problem. In turn, this will inevitably further detract from the ability of police to adhere to custody standards. This has implications for the safety of people in custody as well as for other issues of concern such as the ability of the police to ensure that people who are linked to the same crime do not conspire with each other to present a mutually agreed version of events to authorities.<sup>1</sup>

**We urge the Commission to call on South Africa to prioritise the rehabilitation and maintenance of police station facilities, and specifically custodial facilities, to ensure it meets its obligations under Article 5 of the African Charter.**

The prolonged detention of undocumented migrants at some police stations remains a considerable concern. The NPM had previously recommended that there be concerted cooperative efforts between the SAPS and the Department of Home Affairs to ensure that the repatriation process is rapid. Unfortunately, challenges continue to persist. The

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<sup>1</sup> South African National Preventive Mechanism, 'The Conditions and Treatment of People in Police Custody in South Africa: Report on visits to police stations by independent custody visitors 2019 – 2020', South African Human Rights Commission, 2021, p. 27, available at <https://sahrc.org.za/npm/index.php/npm-resources/general-reports> (accessed on 22 April 2022).

problem is compounded by what can only be described as arbitrary and xenophobic performance instructions reported by the NPM: ‘At one of the frequently overcrowded stations, the SAPS member attributed this to ‘an instruction from the Provincial office that gave a target to arrest 20 illegal foreigners per week (the station has two cells)’.<sup>2</sup> Ill-conceived police operations, like the current [Operation Restore](#), will only exacerbate this problem.

**We encourage the Commission to urge South Africa to implement the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance and to make a full report on measures being taken to address xenophobia within policing in its upcoming report to the Commission.**

Finally, APCOF draws the Commission’s attention to the [Méndez Principles on Effective Interviewing for Investigations and Information Gathering](#), recently developed under the leadership of Professor Juan E. Méndez , former UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2010 – 2016). The Principles provide concrete alternatives to interrogation methods that rely on coercion to extract confessions. They provide guidance on obtaining accurate and reliable information in full respect of human rights and dignity, including through the implementation of legal and procedural safeguards in the first hours of police custody. Importantly, the Principles finally provide an authoritative framework for the review of domestic frameworks as required by Article 11 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

**We request that the Commission encourage African states to note these Principles and to report on the measures taken to review domestic procedures with regard to interviewing in their reporting to the Commission.**

**Submitted on behalf of APCOF by:**

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<sup>2</sup> Ibid, p. 21.