



African Policing Civilian Oversight Forum

NGO Observer Status No. 372

Statement on the Human Rights Situation in Africa

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

ITEM 3: Human Rights Situation in Africa

Honourable Chairperson and Commissioners,

The African Policing Civilian Oversight Forum (APCOF) welcomes this opportunity to make a statement on the human rights situation 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.

Our statement concerns two issues: (1) the continued use of states of emergency or disaster by African states in response to the Covid-19 pandemic; and (2) xenophobic violence and related hate crimes in South Africa.

1. Continued use of states of emergency or disaster by African states in response to the Covid-19 pandemic

As the Commission is aware, the outbreak of Covid-19 has prompted many African states to adopt and implement emergency or disaster measures to manage the spread of the pandemic. While we acknowledge that the adoption of emergency or disaster measures

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might be necessary to address the impacts of the global public health emergency, we are concerned about potential unjustified retention and extension of emergency plans and programmes adopted to address the impact of Covid-19 pandemic. In particular, we are concerned about potential abuse and misuse of emergency powers to undermine the free exercise of fundamental human rights and freedoms, the rule of law and democratic processes. Emergency response and recovery efforts should have a defined duration, and be subjected to independent oversight and accountability processes.

We urge the African Commission to remind African states of their obligations under Article 1 of the African Charter and ensure that Covid-19 emergency or disaster measures are temporary, regularly reviewed, and subject to oversight and accountability mechanisms. In this regard, we encourage the African Commission to pursue the objectives of ACHPR/Res.447 (LXVI) 2020 on upholding human rights during situations of emergency or in other exceptional circumstances, and develop a normative framework that will guide African states on the achievement of rights-based declaration and management of states of emergencies and disasters.

We also call on the Commission to request that African states to strengthen their preparedness and response to public emergencies to reduce reliance on measures that limit human rights and freedoms during emergency conditions, including through the development of comprehensive emergency plans that will govern response to future emergencies.

2. Xenophobic violence and related hate crimes in South Africa

APCOF expresses its ongoing concern about incidents of xenophobic violence and related hate crimes against non-nationals in South Africa, and the need for a policy framework to urgently address the role of the South African Police Service (SAPS) in the prevention, detection and resolution of incidents. Our concerns are drawn from our recent research reports on:

- police prevention, detection and investigation of xenophobic violence;¹
- the role of community structures in preventing xenophobic violence;² and
- the need to strengthen oversight and accountability in the policing of xenophobic violence.³

As the Chairperson will be aware, for over 10 years, significant efforts have been made at local, regional and international level – including by the African Commission⁴ – to address the pre-conditions, drivers and impact of recurrent xenophobic violence across South Africa. South Africa responded in part by adopting the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (NAP). While a welcome measure, APCOF is deeply concerned that the NAP is silent on issues of policing. The role of the police has been overwhelmingly identified as both:

- Contributing to community hostility towards non-nationals, by (a) perpetuating harmful stereotypes that conflate irregular migration with criminal activity; and (b) failing to deliver non-discriminatory and equitable policing services to non-national communities; and
- Exacerbating the harm to non-nationals during incidents of violence through police inaction which, at times, includes police protection to the perpetrators of the violence while failing to adequately protect the life and property of the non-national victims.

A comprehensive national response to recurring xenophobic violence will only be effective if it contains concrete measures to address how SAPS fulfils its obligation to deliver equal and non-discriminatory services to all persons who reside in the Republic, and to take

¹ Louise Edwards and Laura Freeman, 'Policing and non-nationals: Analysis of police prevention, detection and investigation of xenophobic violence in South Africa', African Policing Civilian Oversight Forum, 2021, available at <https://apcof.org/wp-content/uploads/policing-and-non-nationals-report.pdf> (accessed on 22 April 2022).

² Louise Edwards, Azwi Netshikulwe and Laura Freeman, 'Policing and non-nationals: Community Police Forums and xenophobic violence in South Africa', African Policing Civilian Oversight Forum, 2021, available at <https://apcof.org/wp-content/uploads/policing-and-non-nationals-community-police-forums-and-xenophobic-violence-in-south-africa.pdf> (accessed on 22 April 2022).

³ Laura Freeman, Lauren October and Louise Edwards, 'Policing and non-nationals: External police oversight, accountability and xenophobic violence in South Africa', African Policing Civilian Oversight Forum, 2022, available at <https://apcof.org/wp-content/uploads/policing-and-non-nationals-external-police-oversight-accountability-and-xenophobic-violence-in-south-africa-.pdf> (accessed on 22 April 2022).

⁴ See, for example, African Commission on Human and Peoples' Rights, Resolution 304 Condemning the Xenophobic Attacks in the Republic of South Africa, ACHPR/Res.304(LVI)2015, available at <https://www.achpr.org/sessions/resolutions?id=334> (accessed on 22 April 2022).

proactive steps to protect the right to life and property of non-nationals during incidents of violence.

Amongst the challenges faced by SAPS including lack of training for members on prevention, detection and investigation of xenophobic violence and related crimes; the absence of early warning systems to pre-empt and recognise trends that give rise to xenophobic violence; the categorisation of xenophobic violence as an 'ordinary' crime without the need to adopt specific or targeted interventions; and the problematic attitude of some SAPS members towards non-nationals.

We call on the African Commission to remind South Africa of its obligation to respect the rights of all non-nationals, including the right to life and property, and to take immediate steps to ensure that SAPS uphold these rights in their delivery of non-discriminatory and equitable policing services.

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