



African Policing Civilian Oversight Forum

NGO Observer Status No. 372

Statement in response to the activity report of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa

71st 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 Special Rapporteur on Prisons, Conditions of Detention and Policing 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.

We welcome the efforts by the Special Rapporteur to highlight the challenge of conditions of detention through the upcoming Study on Prisons and Places of Detention in Africa. While APCOF is alarmed at the general state of prisons and the systematic failure by States to ensure human rights protections in prisons, we encourage the Special Rapporteur to also include specific consideration in the Study on conditions of detention in police custody, for which a unique set of challenges for compliance with the African

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Charter have been observed by APCOF¹ and others. We further encourage the Special Rapporteur to include migration detention in the study, with current practices across the continent posing a significant risk to the rights of migrants, refugees and asylum seekers.

1. Conditions of detention in police custody in Africa

As APCOF has previously observed, detainees in police custody often exist in the shadows of the criminal justice system, as their detention and treatment are generally not subject to the same levels of judicial or other oversight as sentenced prisoners.² With official custodial limits of between 24 to 48 hours, facilities are basic. Chronic lack of investment in police infrastructure means that conditions often do not meet even the basic health and hygiene standards required, particularly when detainees are held for periods longer than permitted by law. Detainees are also at a particularly heightened risk of torture and other ill-treatment during the first 48 hours of police custody, but it is during this time that judicial and other oversight of detainees is often at its most limited. Arbitrary use of police custody undermines the rule of law, is a waste of public resources, and with a transient population in conditions that do not accord with basic minimum standards, poses a danger to public health.³

The African Commission has provided states with a blueprint for rights-based custody management through its adoption in 2014 of the Luanda Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa. The Luanda Guidelines include provisions on the limitations on the use of restraints; medical treatment; notification of rights; communication with legal practitioners and next of kin; procedures on search and seizure; separation of categories of detainees; minimum accommodation, health and

¹ See, for example, APCOF's studies into compliance by states with the African Commission's Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, which highlighted specific human rights challenges related to the treatment of detainees in police custody environments – APCOF, 'The Luanda Guidelines: Assessments for Ghana, Malawi, South Africa, Tanzania and Uganda, 2017, available at <http://apcof.org/wp-content/uploads/2017/04/apcof-implementation-of-the-luanda-guidelines-assesmmnts-for-ghana-malawi-south-africa-tanzania-and-uganda-.pdf>; APCOF, 'Perspectives on Pre-Trial Detention in Africa', 2015, available at <http://apcof.org/wp-content/uploads/2017/03/perspectives-on-pre-trial-detention-in-africa.pdf>; Louise Edwards, 'Pre-Trial Justice in Africa: An Overview of the Use of Arrest and Detention, and Conditions of Detention', APCOF Policy Paper 7, February 2013, available at http://apcof.org/wp-content/uploads/2016/05/No-7-Pre-Trial-Justice-in-Africa-An-Overview-of-the-Use-of-Arrest-and-Detention-and-Conditions-of-Detention_-English-Louise-Edwards-.pdf; and Melody Kozah, 'Implementation of the Luanda Guidelines in Zimbabwe', APCOF Research Paper 24, August 2018, available at <http://apcof.org/wp-content/uploads/024-luanda-implementation-in-zimbabwe-.pdf>. APCOF has also published other research that identifies key risks in police custody, including David Bruce, 'The Risk of Police Custody: The Potential for Independent Monitoring of Police Custody in South Africa', APCOF Research Paper 26, October 2019, available at <http://apcof.org/wp-content/uploads/026-risksofpolicecustody-thepotentialforindependentmonitoringofpolicecustodyinsouthafrica-davidbruce.pdf>.

² Louise Edwards, 'Pre-Trial Justice in Africa: An Overview of the Use of Arrest and Detention, and Conditions of Detention', APCOF Policy Paper 7, February 2013, p. 1, available at http://apcof.org/wp-content/uploads/2016/05/No-7-Pre-Trial-Justice-in-Africa-An-Overview-of-the-Use-of-Arrest-and-Detention-and-Conditions-of-Detention_-English-Louise-Edwards-.pdf.

³ Ibid, p. 2.

hygiene facilities; oversight access to detention; risk profiling; special measures for vulnerable detainees; and recording of information.

However, failure by police officials to comply with these procedural safeguards pose an unacceptable risk to the fundamental human rights of detainees, including in particular the right to life under Articles 4, and freedom from torture and other ill-treatment under Article 5 of the African Charter. Using South Africa as an example, where data on deaths in police custody is regularly published, APCOF has identified a number of clear risks faced by people in police custody:⁴ torture and other abuse by police officials; injuries sustained prior to custody (including during arrest); suicide; “natural causes” deaths which are often attributable to shortcomings in custody management, such as the failure to provide medical care or regular cell inspections; and violence or abuse by other persons in custody, including the risk of rape and assault.

Accordingly, we encourage the Special Rapporteur to include specific consideration of the risks to the human rights of detainees in police custody as part of her upcoming Study on Prisons and Places of Detention in Africa.

2. Conditions in migration detention

In a number of African countries, the law makes provision for the arrest and detention of foreign nationals for immigration law infringement. There is a clear regional and international human rights framework that applies to arrest and detention of suspected undocumented migrants – including the African Commission’s Luanda Guidelines. However, there are reports from across the continent of endemic non-compliance with procedural and conditional safeguards for apprehended foreigners.⁵ Challenges include, but are not limited to, the use of the criminal justice system infrastructure (including, in particular, police custody facilities) to hold migrants who have been arrested for violations of immigration, rather than criminal law; arbitrary arrest and detention of migrants; extensions of detention; lack of assistance by interpreters; the use of force, corruption and inadequate conflict management in places of detention; accommodation that does not

⁴ David Bruce, ‘The Risk of Police Custody: The Potential for Independent Monitoring of Police Custody in South Africa’, APCOF Research Paper 26, October 2019, p. 7, available at <http://apcof.org/wp-content/uploads/026-risksofpolicecustody-thepotentialforindependentmonitoringofpolicecustodyinsouthafrica-davidbruce.pdf>.

⁵ APCOF has examined this issue in detail in the context of South Africa: Alexandra Hiropoulos, ‘Migration and Detention in South Africa’: A review of the applicability and impacts of the legislative framework on foreign nationals’, APCOF Policy Brief 18, November 2017, available at <http://apcof.org/wp-content/uploads/018-migration-and-detention-in-south-africa-alexandra-hiropoulos.pdf>.

meet standards of basic hygiene; limited access to health care; and limited visitation from lawyers, next of kin and support organisations.

APCOF calls on the Special Rapporteur to include specific consideration of the risks to the human rights of migrants who are held in custodial facilities, including those administered by immigration services, as well as those within the criminal justice system, as part of her upcoming Study on Prisons and Places of Detention in Africa.

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