



African Policing Civilian Oversight Forum

NGO Observer Status No. 372

Statement in response to the activity report of the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants 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 Refugees, Asylum Seekers, Internally Displaced Persons and Migrants 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 Special Rapporteur's work to promote implementation of ACHPR/Res.404(LXII) 2018 on the need to conduct a study on violations of the human rights of migrants, including the recent pilot study in Niger, and the roundtable discussion held on 31 March 2022 to gather information from relevant actors on human rights concerns in the context of migration in different parts of Africa.

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APCOF notes that this work is being undertaken with the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa, in recognition of the significant role played by law enforcement officials in the promotion and protection of the rights of migrants, including refugees and asylum seekers.

APCOF commends the Commission for adopting this focus. Based on its work in South Africa, APCOF has observed the impact that law enforcement officials can have on the enjoyment of a broad range of human rights by migrants. We are particularly concerned about:¹

- The use of criminal justice infrastructure for immigration purposes, including the prolonged and arbitrary detention of migrants, refugees and asylum seekers in police custody facilities which are not designed to hold detainees beyond 48 hours;
- The use of criminal law enforcement – such as ‘raids and sweeps’ on informal sector or ‘crime prevention operations’ in areas where non-nationals reside - to target migrants for immigration enforcement in a way that undermines and circumvents the procedural safeguards contained in immigration law;
- Lack of compliance with procedural safeguards, and adequate conditions of detention, in dedicated immigration detention facilities;
- The prevalence of xenophobic statements by police leadership, and in the actions of police officials, which have a negative impact on guarantees of non-discriminatory and equitable delivery of policing services to non-nationals; and
- The failure by law enforcement officials to respect the right to life of migrants, both in terms of the excessive use of force against migrants in the enforcement of

¹ More information about the situation in South Africa is available in the following APCOF publications: 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); 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); 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); and 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>.

immigration and criminal law, and weak policing responses to the prevention, detection and investigation of xenophobic violence and related hate crimes.

The proposed continental study on violations of the human rights of migrants is a welcome initiative, and based on its experience of working on these issues in South Africa, APCOF urges the Special Rapporteur to ensure that the study has the role of law enforcement officials as a central focus.

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