



# African Policing Civilian Oversight Forum

NGO observer status no. 372

## **Statement in response to the report of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa during the 69<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights**

### **Item 7: Activity Reports of the Members of the Commission & Special Mechanisms**

Honourable Chairperson, Honourable Commissioners

The [African Policing Civilian Oversight Forum](#) (APCOF) welcomes this opportunity to make a statement to the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa, Honourable Commissioner Manuela, in response to her activity report. Our statement addresses the following issues: (1) The lack of effective police response in South Africa to gender-based violence (GBV) and the need for effective police training, (2) developments regarding policing and xenophobia in South Africa, and (3) the broader continental threat to police oversight and accountability in the context of Covid-19 restrictions.

### **Issue 1: The lack of effective police response to gender-based violence (GBV) and the need for training**

In accordance with its obligations under the African Charter and the Maputo Protocol, the South African government has made overt commitments to address and combat the high levels of GBV within South Africa. In spite of this commitment and the country's progressive [National Strategic Plan](#) on GBV and Femicide, the high levels of GBV remains a serious human rights concern within South Africa.

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Violence perpetrated by the police, and the police response to survivors of GBV, including domestic violence has been particularly problematic. This has been compounded by Covid-19, with the pandemic effectively highlighting the existing institutional failures in responding to women's safety needs. Examples of violent incidents include police brutality levelled against [women protestors](#) (protesting the high levels of GBV) in 2020, violence perpetrated by members of the South African Police Service (SAPS) [National Intervention Unit](#) against women who refused their advances, and violence perpetrated against soprano singer [Sibingile](#) Mngoma in November of 2021. The closure of forensic labs and police stations during government enforced lockdowns further compounded obstacles to accessing justice for women experiencing GBV. [Leadership](#) within the South African Police Services further expressed concerning views over the responsibility of the police to respond to violence that occurs within private spaces, insinuating that this is a private matter beyond the responsibility of the police. There is therefore a need for improved police accountability in relation to GBV, both in terms of ending violence against women by police, and improving policing responses to incidents and investigations.

APCOF welcomes the statement by South African Minister of Justice and Correctional Services Hon. [Ronald Lamola](#), that government institutions should receive gender sensitivity training. This statement is progressive in itself with the Minister recognising that there is a need for a broader understanding of (and response to) gender. This training is necessary given the patriarchal culture within police institutions and in the police response to survivors of GBV, which still often entails victim-blaming, and ultimately a failure to deliver appropriate and quality investigatory and support services to victims. Furthermore, while South Africa has progressive laws on domestic violence and sexual offences, there is a significant gap in implementation when it comes to the training of police officers and in ensuring their capacity. This was highlighted by the Western Cape Government's Report on Policing Needs, which stated that 74% of detectives at the Province's top twenty police stations [had not received training on the Domestic Violence Act](#). This is in spite of the National Strategic Plan on GBV specifically referring to the need to train police officers and the South African Domestic Violence Act 116 of 1998, placing positive duties on police officers. This calls for the need for sustained gender sensitivity training at all levels.

## **Issue 2: Policing and xenophobia in South Africa**

APCOF welcomes the [South African Constitutional Court's decision](#) to strike down section 13(7)(c) of the South African Police Service Act relating to intrusive searches within areas cordoned off by the police during 'crime prevention operations'. This provision had been used to identify where non-nationals reside and to target them with so-called 'sweep and raid' operations. In doing so, the police essentially criminalised a whole community of people for the purpose of taking a chance at finding people in breach of immigration laws that have administrative, not criminal, consequences.

Implementing the Court's decision is only one of a range of measures that are needed to address the [many challenges identified by APCOF](#) and others in the policing of foreign nationals by the SAPS. Removing the possibility of using these sweep and raid powers is important, but SAPS must use the opportunity to critically examine how, at both the policy and operational level, it deals with issues of diversity and discrimination on the basis of nationality.

We also remain concerned about [the absence of an overarching policy framework for SAPS on xenophobia, violence and related hate crimes](#). While South Africa's Constitutional and legislative framework lays a solid foundation for the promotion of responsive, equitable and non-discriminatory policing services to non-natinals, it lacks detail on how SAPS intends to implement these obligations at the institutional and operational levels. There are a number of broad issues which require a policy reponse by SAPS to improve its policing of xenophobia and related hate crimes. At a minimum, these include acknowledging xenophobia and related hate crime as an issue and adopting a zero tolerance for xenophobia through a variety of measures including prevention (training, recruitment and screening), and combating (enforcement of the Code of Conduct and effective internal and external accountability).

### **Issue 3: The threat to police oversight and accountability in the context of Covid-19 restrictions**

The African Commission has undertaken important work in setting standards for police oversight and accountability, most notably in the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, and Resolution 103a on police reform, accountability and civilian police oversight in Africa. In its work across the continent to promote police oversight and accountability, APCOF has observed encouraging signs that states are embracing this concept, with an external mechanism established most recently in Malawi. Securing gains made in promoting oversight and accountability has always been tenuous, but the scale at which limitations have formed part of African states' efforts to curb the spread of Covid-19 has been unprecedented in both its scale and endurance. Forthcoming research from APCOF will explore these issues in detail, but preliminary research indicates that the challenges have included restriction of physical access to complaints mechanisms for the public, limiting access to places of detention, work from home orders for staff that have limited their capacity and accessibility, and failure (at least initially) to give oversight workers special status as essential workers. APCOF is also concerned that the closure or shift to remote hearings by courts has undermined a key element in protecting the rights of persons held in police custody by limiting court access in the first 24 to 48 hours after their arrest. Similarly, the suspension, and subsequent limitations, on parliamentary activities have stifled their capacity to fulfil an oversight role.

### **Recommendations**

APCOF calls on the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa:

- On the issue of policing and GBV, to encourage South Africa to:
  - implement its National Strategic Plan on GBV;
  - guarantee the prompt, impartial and effective investigation into all complaints of GBV against officers;
  - ensure that all complaints of GBV, including those occurring within the domestic sphere, receive an appropriate law enforcement response;
  - provide appropriate training to police officers, and to ensure access to justice for women, in accordance with Article 8(c) of the Maputo Protocol.

- On the issue of policing and xenophobia, to encourage South Africa to adopt a rights-based approach to improving addressing the safety and security needs of foreign nationals, including through measures to promote the prevention and combating of discrimination, violence and related crimes against foreign nationals.
  
- On the issue of police accountability during Covid-19 in Africa, to:
  - Remind African states of the Commission’s call for the establishment of independent civilian police oversight mechanisms in resolution 103a.
  - Promote the effective functioning of all mechanisms of police oversight and accountability, including during states of emergency and disaster, as an integral part of policing systems.

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