



African Policing Civilian Oversight Forum

NGO Observer Status No. 372

**Statement in response to the Activity report of the Committee for the
Prevention of Torture in Africa**

**77th Ordinary Session of the African Commission on Human and
Peoples' Rights**

**20 October – 9 November 2023
Arusha, Tanzania**

Item 5: 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 note and welcome the judgement of the South Gauteng High Court in *Smith and Others vs the Minister of Correctional Services*, which was delivered on 31 August 2023. As the CPTA may be aware, the court found the state liable for acts of torture in a correctional facility, in the first judgement delivered under the Prevention and Combatting of Torture of Persons Act.

Tragically, torture remains a reality in our country. 228 of alleged torture

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were reported to IPID in South Africa in 2022 – 2023 up from the 192 the previous year.

APCOF has previously welcomed the ratification of OPCAT by South Africa, and the subsequent establishment of the NPM, which will play an important role in the prevention of torture in the country. As the CPTA is aware, the South African NPM is a multi-body model, comprising of several oversight bodies. We call on the Commission to encourage South Africa to expediate the amendment of legislation governing these various bodies to ensure they fully comply with the principles of OPCAT in terms of their independence and mandate.

We further ask the Commission to encourage South Africa to develop and expedite legislation to affirm and consolidate the NPM. Such legislation will entrench the NPM and importantly allow it to secure for its own funds building further independence.

Honourable Chairperson, APCOF is further concerned about the absence of an independent legislative instrument that regulates police use of force in South Africa in a comprehensive and integrated manner. As the CPTA is aware, effective management of police use of force is an important means of preventing torture and other forms of ill-treatment. However, we are concerned that currently the capacity of South African law enforcement officials to use force and firearm in an effective and right-compliant manner is complicated by the fragmented nature of legal provisions that regulate the use of force.

As APCOF has previously noted, the use of force by law enforcement officials in South Africa can be better regulated if it was provided for under a single, independent legislative instrument, drafted in compliance with regional and international human rights law. This is clearly articulated and supported in recommendation 35 of the recommendations of the Farlam Commission of Inquiry, established in response to the Marikana Massacre of 2012.

We therefore call on the CPTA to again call on South Africa to expediate the amendment of legislation governing the operation of various NPM designated bodies, to ensure they are fully compliant with the requirements of OPCAT. We further urge the CPTA to encourage South Africa to fast-track the development of the legislation that will affirm and consolidate the NPM. Such legislation will entrench the NPM, and importantly allow it to secure for its own funds.

We also urge the CPTA to encourage South Africa to implement the recommendations of the Farlam Commission, and consider the development of a Model Bill for use of Force by law enforcement agencies in South Africa.

Submitted on behalf of APCOF by:

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